



AGENDA

Regular Town Board Meeting

January 17, 2023 - 6:00 PM

TOWN HALL (101 Huntersville-Concord Road)

Live Stream available via YouTube @townofhuntersvillenc28078

Persons desiring to address the Board during a public comment period or a public hearing shall list their full name, address, telephone number, and subject matter to be discussed on the speaker sign-up sheet as provided by the Town Clerk prior to the beginning of the meeting. Once the meeting has begun, a person may not sign up to speak.
(Public Comment and Public Hearing Policy - Adopted April 19th 2021)

1. Pre-meeting - 5:00 p.m.

1.A. Joint meeting with the Downtown Plan Steering Committee and the Planning Board to receive update on the Draft Downtown Plan.

2. Call to Order

3. Invocation/ Moment of Silence

4. Pledge of Allegiance

5. Staff Questions

6. Public Comments, Requests, or Presentations

6.A. Presentation of The Year of the Trail Proclamation. (*Michael Jaycocks*)

7. Agenda Changes/Adoption of Agenda

8. Consent Agenda

8.A. Approve the minutes of the January 3, 2023 Regular Town Board Meeting. (*Janet Pierson*)

9. Public Hearings

- 9.A. Conduct continuation of public hearing on Petition #TA22-12, a request by the Huntersville Town Board to amend Article 4 of the Zoning Ordinance clarifying first floor residential and commercial area requirements for Shopfront and Workplace mixed-use buildings. *(Jack Simoneau)*

10. Other Business

- 10.A. Consider decision on Petition #R22-01, a request by DDRTC Birkdale Village, LLC to rezone +/- 8.82 acres located at the intersection of Townley Drive and Lindholm Drive (Parcels 00537157 and 00537197) from Highway Commercial Conditional District to Highway Commercial Conditional District for 350 multi-family units, 125-room hotel, 150,000 sq. ft. office, and 25,000 sq. ft. commercial. ***The Applicant has requested the decision to be deferred to February 20, 2023.*** *(Brian Richards)*
- 10.B. Consider adopting Resolution to approve contract with Alta Planning +Design for RAISE grant writing services. *(Heather Maloney)*
- 10.C. Consider approving budget amendment appropriating Unallocated Interest Income in the amount of \$65,000 to Planning Department Contract Services for a consultant to prepare the RAISE grant application. *(Pattie McGinnis)*
- 10.D. Consider approving Purchase Agreement and Resolution for property for future expansion of Public Works facility. *(Kevin Fox)*
- 10.E. Consider adopting Resolution to condemn property for Gibson Park Drive Phase 2 project. *(Stephen Trott)*

11. Mayor and Commissioner Reports/Closing Comments

12. Adjourn

Special Accommodations: Anyone needing special accommodations when attending this meeting and/or if this information is needed in an alternative format please contact the Town Clerk. The Clerk can be reached by phone or fax: 704-875-6541, email: clerk@huntersville.org or at 101 Huntersville-Concord Rd, Huntersville, NC 28078.
We request at least 72-hours' notice prior to the meeting to make the appropriate arrangements.

The Board reserves the right to deviate from the agenda.

**Town of Huntersville
Town Board
January 17, 2023**

To: Town Board

From:

Date: January 17, 2023

Subject: Joint Meeting Regarding Draft Downtown Plan

EXPLAIN REQUEST:

Pre-meeting Placeholder

ACTION RECOMMENDED:

FINANCIAL IMPLICATIONS:

N/A

ATTACHMENTS:

None

**Town of Huntersville
Town Board
January 17, 2023**

To: Town Board

From: Michael Jaycocks, Director of Parks & Recreation

Date: January 17, 2023

Subject: Year of the Trail Proclamation

EXPLAIN REQUEST:

The North Carolina General Assembly designated 2023 as the Year of the Trail in North Carolina to promote and celebrate the state's extensive network of trails that showcase our state's beauty, vibrancy and culture. The Town of Huntersville will participate and celebrate the Year of the Trail locally and will provide activities and events that promote our local trails for our residents and visitors to enjoy.

ACTION RECOMMENDED:

The Year of the Trail Proclamation

FINANCIAL IMPLICATIONS:

N/A

ATTACHMENTS:

1. Year of the Trail Proclamation

Town of Huntersville

Proclamation

WHEREAS, Town of Huntersville's natural beauty is critical to its residents' quality of life, health, and economic wellbeing; and

WHEREAS, the trails that span across our community are an integral part of the recreational and transportation possibilities of our area and promote an enjoyment of scenic beauty by our residents and our visitors; and

WHEREAS, the parks, greenways, trails and natural areas in our community are welcoming to all and provide a common ground for people of all ages, abilities and backgrounds to access our rich and diverse natural, cultural, and historic resources; and

WHEREAS, Town of Huntersville's natural assets and resources are integral to disaster recovery and resiliency to climate change for future generations; and

WHEREAS, nature trails within the Town of Huntersville vary from less than a mile in length to 8.5 miles within Mecklenburg County's Latta Nature Preserve; range from footpaths within parks and nature preserves, from canoe trails down the Catawba River; to greenways through local neighborhoods; and

WHEREAS, trails offer quality-of-life benefits to all as expressions of local community character and pride, as outdoor workshops for science education, as tools for economic revitalization, as free resources for healthy recreation, as accessible alternative transportation, and as sites for social and cultural events; and

WHEREAS, the Greenway, Trail, & Bikeway Commission, Tarheel Trailblazers, Carolina Thread Trail, & trail volunteers impact our community by making trails and greenways accessible to the Town of Huntersville residents; and

WHEREAS, the North Carolina General Assembly designated 2023 as the Year of the Trail in North Carolina to promote and celebrate the state's extensive network of trails that showcase our state's beauty, vibrancy and culture; and

WHEREAS, North Carolina is known as the "Great Trails State;"

NOW, THEREFORE, I, Melinda Bales, Mayor of the Town of Huntersville, do hereby proclaim 2023 as "**THE YEAR OF THE TRAIL**" in Town of Huntersville, and commend its observance to all people.

IN WITNESS WHEREOF, I do hereby set my hand and cause the Seal of the Town of Huntersville to be affixed, this the 17th day of January, 2023

Melinda Bales, Mayor

**Town of Huntersville
Town Board
January 17, 2023**

To: Town Board

From: Janet Pierson, Town Clerk

Date: January 17, 2023

Subject: Approval of Minutes

EXPLAIN REQUEST:

Consider approving the minutes of the January 3, 2023 Regular Town Board Meeting.

ACTION RECOMMENDED:

Approve Minutes

FINANCIAL IMPLICATIONS:

N/A

ATTACHMENTS:

1. Draft Minutes

**TOWN OF HUNTERSVILLE
TOWN BOARD MEETING
MINUTES**

**January 3, 2023
6:00 p.m. – Huntersville Town Hall
101 Huntersville-Concord Road**

PRE-MEETING

The Huntersville Board of Commissioners held a Pre-meeting at Huntersville Town Hall, 101 Huntersville-Concord Road, at 5:30 p.m. on January 3, 2023.

GOVERNING BODY MEMBERS PRESENT: Mayor Melinda Bales; Commissioners Dan Boone, Rob Kidwell, Amber Kovacs, Lance Munger, Derek Partee and Stacy Phillips.

Mayor Bales called the Pre-meeting to order.

Closed Session. Commissioner Kidwell made a motion to go into closed session pursuant to N.C.G.S. §143-318.11(a)(5) to instruct staff or negotiating agents concerning the price and other material terms for the acquisition of real property.

Commissioner Boone seconded motion.

Motion carried unanimously.

Upon return from closed session, there being no further business, the Pre-meeting was adjourned.

**REGULAR MEETING
TOWN OF HUNTERSVILLE
BOARD OF COMMISSIONERS**

The Regular Meeting of the Huntersville Board of Commissioners was held at the Huntersville Town Hall, 101 Huntersville-Concord Road, at 6:00 p.m. on January 23, 2023.

GOVERNING BODY MEMBERS PRESENT: Mayor Melinda Bales; Commissioners Dan Boone, Rob Kidwell, Amber Kovacs, Lance Munger, Derek Partee and Stacy Phillips.

Mayor Bales called the meeting to order.

Mayor Bales called for a moment of silence.

Mayor Bales led the Pledge of Allegiance.

Mayor Bales recognized former elected officials present – John Aneralla, Charles Guignard and Sarah McAulay.

STAFF QUESTIONS

Commissioner Boone asked how the process of redacting the names and identifiable information on advisory board applications was working.

Anthony Roberts, Town Manager, explained that there is confusion with the process and suggested going back to including the names on the applications.

PUBLIC COMMENTS, REQUESTS, OR PRESENTATIONS

Kevin Fox, Director of Public Works and Steve Robbins, Public Works Operations Manager, recognized Lonnie Whitley who retired as of December 31, 2022, after 30 years of service to the Town.

Dawn Snow, 8132 Evanston Falls Road, said on the Birkdale Village Facebook page managed by NAP, there's a post from November 1 suggesting that Birkdale needs to be reimagined and asking for the public's help by signing a petition supporting the rezoning. In this post it is suggested that the redevelopment is needed to ensure Birkdale stay relevant. Ironically, with most of the comments being negative in response to that Facebook post, NAP found their attempt to get public support backfiring and had to shut down the comments in a matter of days. The petition has been up now for over two months and still only has 145 supporters, while another petition opposing the rezoning has 1,230 signatures as of this afternoon. I captured this post and the comments and emailed them to you in case it suddenly disappears. I also included both of the petitions and emailed them to you as well. Here are a few comments from the post asking for support. First comment – No, we don't love it, it was beautiful before. Room to walk. Room for kids to play. Plenty to do. Lots of charm. It's so crowded now with the stores and stage on the green. We definitely don't need a hotel or office space or chain stores and restaurants. Please keep Huntersville Huntersville. Charlotte is an easy drive for everything else that you are trying to add. We don't need it here and we definitely don't want it here. Second comment – If your idea of vision is throwing out beloved businesses that have grown and prospered, you don't have a vision. You have no sense of commitment to your community or your businesses. Obviously, what we have now is a unique gem that our community loves. It is to be treasured and protected, not torn apart and transformed into a cookie cutter replica of Avalon. It does not need to be reimagined and to call it relevant is arrogant and dismissive. With this stark difference in level of support between the two petitions, our community has made it clear that we do not want or need what NAP is selling. NAP has made it clear that they do not care about what we want. This is where you, our elected Town officials, come in. Please listen to your constituents. You have heard so many valid concerns regarding traffic, parking, safety, aesthetics, and maintaining character over the last few months. Carefully consider all the feedback you have received from the community. In closing, we have not yet seen a revised conditional rezoning since the text amendment and SUP have been removed, but if the new conditional rezoning is materially different by eliminating the more restrictive conditions that existed in the original proposal, then the rezoning request should technically be a new application with a new public hearing, but let's just move on and deny this unnecessary and irrelevant rezoning request. Ms. Snow presented the Board with the petitions. *Petitions attached hereto as Exhibit No. 1.*

Kerry Edelstein, 8810 Camberly Road, said I know I've gotten to talk individually with nearly all of you in the last couple of months. In fact, most of you in the last couple of weeks. I did want to share a few things that I heard about Birkdale Village. One of the things that I heard is that as the current rezoning

has been submitted, nobody's actually really in favor of it as it has been submitted. There are various reasons for that. Some people are in favor of the idea, but don't feel that we have an infrastructure plan for it. Some people didn't like the lack of harmonious design or plan for that. Some people didn't like the lack of transparency coming from NAP. We still don't know what they are planning to present on the 17th. Some had concerns about public safety and where we are today, let alone where we would be with growth. There seemed to be a feeling that what's being presented today is not something that everyone is excited about and I think it's important to reflect on that. The other thing is there was no consistency of understanding or clarity on what's going to be presented for you to vote on on the 17th. It sounds like all of you guys don't know and that's pretty important because this is a big deal and it's a crown jewel of the community and you should have time to reflect and think about it and I feel like you're not being given that time and I think there's this belief going around that this is all in negotiation, there's compromise, but in a good negotiation both sides come to the table. It's not one side is sort of blindsided and it feels like all of us, including all of you, are being a little bit blindsided by what's coming down the pipeline and you deserve better, and so do all of us. It doesn't seem like there was a cost benefit analysis of any of this, so there's benefit in tax revenue to all this, but there's also a cost – increase in law enforcement, fire safety, school expansion, road expansion, things like that. The potential convention center has a cost to you. I haven't seen, and it doesn't sound like you've seen, any cost benefit analysis of this proposal. The other common thread is that you all love Birkdale just as much as I do, just as much as my neighbors do, so why are we putting it at risk. If all of us love it and none of us really understand exactly the details that are at stake here, why would we put any of that at risk. I believe that in any kind of growth or future opportunity, that there's a time and a place. It feels to me like right now this is the wrong time and the wrong place for this rezoning.

Mike Murphy, 8514 Brentfield Road, said this is my third time speaking in opposition to the continued development in Birkdale. Last time I spoke about litany of negative news stories associated with Northlake Mall. I also spoke about a carjacking that occurred, something that hasn't received any news coverage and as far as I can tell no one from property management has informed any of the store owners and operators. A couple recent news stories I noticed was on December 19 the Charlotte Observer published a story about Mooresville. As of November 1 and the time of the publishing of that article, 113 drivers were cited for blocking busy intersections. I saw another article on December 26 from WBTV affiliate that a pilot program in Salisbury resulted in 30 parking spaces being available for lease monthly or annually and those available parking spaces sold out in 8 minutes. Those stories are a little bit ridiculous and unfortunate. I think that's the reality that we are heading towards and I am asking you all to use your power and influence to help us take a step back and have some caution. I can tell you that living on the golf course side what we typically see is just cut-through traffic. A lot of my neighbors are uncomfortable about the speeds. If we are going to go to the village, we've got to park at the golf course or have to park at Summit Coffee. I was in Birkdale last week with my family and traffic was backed up bumper to bumper from the movie theatre all the way to the main intersection at 73, so you've got people that are frustrated, confused, irritated. I think it's really a quality of life and public safety issue. I would argue that Birkdale for many reasons is still one of the greatest neighborhoods in the country, but it feels like it's changing and I'm asking you to just help us urge caution and patience, especially with the golf course development that is still expected to occur.

Brian Rice, 17232 Bridgeton Lane, said I'm here today not on behalf of just my family and me, but on behalf of the 1,230 people that have signed our petition to say no to the current proposal for Birkdale Village as written. Although I have already sent this to you in an email, I'll read the petition as written and signed by these 1,230 people.

Dear Huntersville Community,

If you are opposed to North American Properties' current proposals before the Huntersville Board of Commissioners, please sign this petition. We intend to use this petition as evidence to the Huntersville Town Board that while we encourage progress and growth, these two current proposals are not the right solutions.

The current property owners of Birkdale Village, North American Properties, want to increase development that exacerbates parking and traffic issues to the point that customer traffic will reduce, tenants will flee and the Village will be left empty. Now for the details.

There are two proposed changes currently sitting with the Town Board. Firstly, there is a proposal to increase the maximum height of the buildings from 48 feet to 145 feet (12 stories). Additionally, there is a proposal, if the first is accepted, that includes the construction of a 12-story building, additional but still insufficient parking and the potential to build more 12-story structures in the future.

To make matters worse, the developers have used deceptive tactics to try and conceal this project and in at least one case, have outright lied to Huntersville homeowners just to get this approved. If this passes, what else is in store?

Huntersville is a great place to live and we want progress. Plans that lead to lower property values and dealing with a company bent on deception to achieve their goals is not progress.

Now a note on the current new development. The new look is still not completed. Storefronts that were developed are not showing signs of construction and parking spaces that were eliminated only add to the traffic and parking issues. Neither the Good Wurst Company nor the beer garden construction are moving. As Nick O'Shaughnessy said at the last Town Board meeting, be careful because this company is all about showing the potential of the development and not actually developing the property. They have time and again said one thing, but not followed through just to get a yes to these proposals. Please don't let them destroy Birkdale Village. It was never meant nor is set up to be a town center, a mini Charlotte, or a mini Alpharetta. In my last comment, I know that many of you probably visited Birkdale Village during the holiday period and saw all that traffic and as residents of the Greens of Birkdale Village, we respect that and that happens every couple of months because it's the holiday season and we don't want to be grinch. But if this passes, this will be the norm, not the exception and we will have parking issues and traffic issues like you pointed out that go all the way back to my house and I'm on the corner of Cranlyn and Bridgeton.

Suzanne Villar, 17130 Bridgeton Lane, said I'm a resident of the Greens at Birkdale Village. The Council has heard at several Town Council meetings in the past and again tonight the many serious concerns the residents of Birkdale Village have about traffic congestion, discordant architecture that's out of place with the ambiance of the existing structures in the Village that have charmed residents and guests for over 20 years. You've heard our concerns about insufficient parking, despite promised parking deck expansion. You've heard about the gridlock during November's Christmas events which promises to be repeated for every special event that North American Properties promotes during the year and our genuine worry about fire, police and medical assistance access in the future. And you've heard our concerns about the potential for catastrophic traffic issues if construction of the already permitted

development at the Birkdale driving range happens to coincide with either DOT's widening of Sam Furr and/or with the construction of the North American Properties desired expansion if this rezoning request is approved. Making matters worse, there's apparently no mechanism for coordinating construction activities between developers, themselves, or with DOT, so there is no way to prevent or minimize an impassable major east/west thoroughfare that would adversely affect all of the south Lake Norman area. Furthermore, even after all construction ends, 10-15 years from now, our concerns will simply morph into a permanent gridlock as new apartments, hotel rooms and a conference center draw thousands of additional vehicles into and out of the Village each week, with no hope of widening our Village roads. There are structures confining the width of the roads and they're simply not going to be able to be widened. When my husband and I were looking for property to purchase 12 years ago we looked all over the greater Charlotte area from Mountain Island Lake all the way up to Concord. Our realtor specifically warned us about buying anything in the vicinity of the racetrack due to the impossible traffic issues that develop on a few weekends each year when races are held. I guarantee you that affected our buying decision and advice like that from a realtor adversely affects property values. I fear that will be the future for property owners anywhere near Birkdale Village if the Town Council allows this rezoning request to be approved as it is now. North American Properties is requesting a zoning approval with no conditions or performance requirements either to the Council or to the residents of the area. North American Properties promises solutions that don't hold up to common sense evaluations, leaves many concerns completely unaddressed, leaving our safety, security and property values very much at risk. For the safety of all of those who live and work in Birkdale Village, as well as the safety of the entire Huntersville community who are impacted by the traffic on Sam Furr, I'm asking that the Town Council deny this rezoning request until after DOT has completed the widening of Sam Furr and until the already permitted development at the Birkdale driving range is completed.

Tammy Davis, 17114 Bridgeton Lane, said I have lived in Birkdale for 20 years. I was the first resident in that home. I don't have a prepared speech today, I just want to talk of three experiences that I have had as of late. This past weekend I was walking to my niece's townhouse and noticed that the cars were parked on both sides of Townley. It actually made me pause for a moment and just reflect on my situation, because I have a daughter who has a rare condition where her blood pressure drops and she can basically collapse at any moment. I have had the ambulance at my house three or four times in the past several years. What struck me was if something were to happen to my child, how was I going to get an ambulance to my child. How was a fire truck going to get through or what was going to be the outcome if something happened to my child on that day or any day. Secondly, there's a four-way intersection and every time I leave my neighborhood I have to go through the four-way intersection and have just been noticing the difference in traffic as everybody has talked about and the demeanor and how people are changing. It used to be everyone takes their turn and there was a car that wanted to go right after the car that went in front of them and didn't want to wait their turn. And it was my turn to go and I went to go, got a horn blown at me, got a finger stuck up at me, just different than I have ever dealt with before in living there for 20 years. And then the last experience that I had was last weekend my three children wanted to go to Starbucks and it was about 6 p.m., so we walked down to Starbucks and we were walking around and we walked past some teenagers and my 13 year old noticed that they were going up to all the apartments and just pressing on buttons and my son was like why are they doing that, Grandma lives there. Do you think they are going to do that to Grandma. That was the first thing that we had noticed and then they were pushing each other and cursing and just not an environment in the last 20 years that I have ever taken my children around and my 10 year old looked at me and said are we safe. At that moment I was like I have a 10 year old child with an underdeveloped brain knowing enough that he didn't feel safe.

Errol Genoio, 8537 Camberly Road, said I have lived there for 22 years. I want to speak to remind the Board members of their moral and economic responsibilities to protect their constituents of Birkdale Village from the psychological and economic abuses of overdevelopment, meaning the consumption is seemingly not making people happy but rather increasing the west ecological footprint. One little specific, when I moved to Birkdale the acceptable speed limit was 15 mph in the business area. As you have heard tonight, even with recent developments, the speed limit in front of Barnes and Noble and almost in front of the movie theatre is 25 mph. These are in two high traffic areas and this is before anything we've heard about will happen. We are already experiencing some safety issues there that I think are very critical.

Nick O'Shaughnessy said I'm not going to bore you with reiterations because everybody has said things that I have said before. My current issue right now is the situation that both you guys and us here find ourselves in, in that the original application has been modified. This SUP has been withdrawn, the text amendment has been withdrawn and according to Brian Richards today in an email to me, the plan has not changed. There will be text amendments which you will not see until Thursday the 12th of January and then they will be public knowledge the following day, so none of us know what the plans are. We know what the plans look like. It's 145', because that's what the original text amendment application was for 145'. Is it 75', is it 110', nobody knows and we won't know. You guys won't know and we won't know and that is totally unfair. That's par for the course with NAP because they are not transparent. They are trying to hoodwink you guys and us guys and I don't appreciate that. I have to live here. When I did rezonings here I would not represent scumbags like these guys because they are going to come here, screw up Birkdale Village and leave. That's all I have to say. I'm sorry I used a bad word. That's the way I feel about these guys. They are not honest. They are not transparent. I know you love them. They have wine and dined you guys. They haven't wine and dined me. They've patronized me and said we'll give you an architectural review committee and you can be on it. BS, I don't want to be on it. They don't have any reason to do that. They don't have any legal obligation to do that. They are just trying to tell you what you want to know. I'm sorry I used a bad word, but that's the way I feel about it. It's my community, my life, my home and these guys are not the right people to modify Birkdale Village. Please deny it. Make them come back. I'm not against development. They can modify it but their modifications are unreal, unattractive, out of scale and you know what I think about the conspiracy theory.

AGENDA CHANGES

Commissioner Kidwell made a motion to move Item 8.D under the Consent Agenda (Adopt resolution to acquire right-of-way and/or easements for the construction of Beatties Ford at Gilead Road Project) to Item 10.E under Other Business.

Commissioner Munger seconded motion.

Motion carried unanimously.

Commissioner Phillips made a motion to adopt the agenda, as amended. Commissioner Kidwell seconded motion. Motion carried unanimously.

CONSENT AGENDA

Approval of Minutes – November 7, 2022. Commissioner Phillips made a motion to approve the minutes of the November 7, 2022 Regular Town Board Meeting. Commissioner Kidwell seconded motion. Motion carried unanimously.

Approval of Minutes – November 21, 2022. Commissioner Phillips made a motion to approve the minutes of the November 21, 2022 Regular Town Board Meeting. Commissioner Kidwell seconded motion. Motion carried unanimously.

Approval of Minutes – December 5, 2022. Commissioner Phillips made a motion to approve the minutes of the December 5, 2022 Regular Town Board Meeting. Commissioner Kidwell seconded motion. Motion carried unanimously.

Resolution – Reclassification of Road to Minor Collector. Commissioner Phillips made a motion to adopt Resolution to request approval from the Charlotte Regional Transportation Planning Organization for the functional reclassification of 0.4 miles of Stumptown Road to a Minor Collector.

Commissioner Kidwell seconded motion.

Motion carried unanimously.

Resolution attached hereto as Exhibit No. 2.

Call for Public Hearing – Petition #TA22-17. Commissioner Phillips made a motion to call a public hearing for February 6, 2023 at 6:00 p.m. at Huntersville Town Hall on Petition #TA22-17, a request by the Huntersville Planning Department for a text amendment to Section 7.5.3, increasing the buffer width when higher density major residential subdivisions adjoin lower density development.

Commissioner Kidwell seconded motion.

Motion carried unanimously.

Call for Public Hearing – Petition #R22-05. Commissioner Phillips made a motion to call a public hearing for February 6, 2023 at 6:00 p.m. at Huntersville Town Hall on Petition #R22-05, Oak Grove Hill Expansion, a request by Carver Bowman, LLC to rezone +/- 45.12 acres generally located north of Mt. Holly-Huntersville Road, east of Beatties Ford Road and south of Pembroke Road from existing Neighborhood Residential - Conditional District (existing Oak Grove Hill CD-Rezoning) and Rural to Neighborhood Residential - Conditional District (REVISED Oak Grove Hill CD-Rezoning) for a 156-lot subdivision; (Parcels 01526443, 01526504, 0152606, 01526460, 015254432, 01526456, 01526432, 01526450, 01526455, 01526428, 01526429 & 015264431).

Commissioner Kidwell seconded motion.

Motion carried unanimously.

PUBLIC HEARINGS

Public Hearing – Petition #TA22-13. Mayor Bales called to order public hearing on Petition #TA22-13, a request by the Huntersville Planning Department for a text amendment to the Zoning Ordinance to

amend Article 3.3.1(a) Manufactured Home Overlay District to update skirting requirements to comply with G.S. Chapter 160D-910 and to amend Article 11.6.1(a) Zoning Compliance to clarify application requirements and to amend Article 9.9 Commercial Communication Tower to comply with G.S. Chapter 160D-937 on co-locating wireless facilities on Town utility poles.

Kayleigh Mielenz, Planner I, entered the Staff Report into the record and reviewed the request. *Staff Report and Staff PowerPoint attached hereto as Exhibit No. 3.*

Staff recommends approval of the proposed text amendment.

The Huntersville Ordinances Advisory Board recommended approval of the text amendment by a vote of 7-1 on December 1, 2022.

In response to a question from Commissioner Kidwell concerning skirting, Emily Sloop, Town Attorney, explained that G.S. 160D-910(g) was amended to state masonry skirting shall not be required. The Huntersville Ordinances Advisory Board suggested the Town require non-masonry skirting. If the home is owned by the person who owns the land that it sits upon, masonry skirting would still be required.

In response to a question from Commissioner Phillips, Ms. Mielenz explained that the ordinance does not allow people to bring in mobile homes, campers, etc. to live in while they build permanent residence on the property.

Commissioner Phillips suggested that staff reach out to the residents in Huntington Green concerning the proposed change to skirting requirements since it is one of the most impacted areas.

There being no further questions or comments, Mayor Bales closed the public hearing.

Public Hearing – Petition #R22-06. Mayor Bales called to order public hearing on Petition #R22-06, a request by Hotel Ventures of Lake Norman, Inc. to rezone +/- 2.66 acres located at 16221 Northcross Drive (Parcel #00930115) from Corporate Business - Conditional District to Corporate Business - Conditional District for a 109-room hotel proposal.

Jesse James, Principal Planner, entered the Staff Report into the record and reviewed the request. *Staff Report and Staff PowerPoint attached hereto as Exhibit No. 4.*

Staff recommends approval as submitted. The Planning Board will hear the petition at their January 24, 2023 meeting.

Commissioner Phillips asked what could go on the property by-right.

Mr. James said currently it's everything in Corporate Business, excluding hotels. There were some outdated uses like blacksmiths on there.....laundry, dry cleaning, garment services, highway right-of-way uses. Under the current CB-CD zoning of this property, hotels were excluded as a permitted use.

Commissioner Munger asked if the applicant was able to accommodate the request to move hotel signage from the south side of the building to the east side of the building.

Mr. James said they were able to move the signage. Where it was proposed wouldn't have met the code anyway and would have been caught during the construction plans.

Commissioner Boone asked when the single-family homes to the west were built. Mr. James will provide that information at a later time.

Mayor Bales called on the citizens who signed up to speak.

Peter Bourke, 16136 Grafham Circle, said this proposal is full of accommodations and terminology that is something to the effect of generally compliant. It's written in such a way that it frames all of these exceptions that the property owner is making in some type of good faith to add merit basically to influence the decision of you to change this zoning to include a hotel. To have a hotel excluded I could tell you that it's probably for a good reason and I have many on here, mainly it's a 24/7 business. People are coming and going non-stop. What is behind there now is the Birkdale Business Center. I can go home 5:00 – 5:30 p.m. and there is no one back there. That will change completely. I have three little kids, ages 8, 6 and 4. If I went to go buy that house today and there's a 4-story hotel there, I would walk away. I'm concerned about the negative impacts of the property value. The building is too tall. They are asking for accommodation to go 3' more than they are actually allowed. They are changing the grade. They are bringing up the backend of the property to make it level and so what's going to happen is that 4-story building is going to turn into a 6-story building because of the topography of the land. There should not be a hotel abutting a residential community for every reason imaginable. People coming out of town, you go to a vacation destination you go to let loose. It's not something you want next to where you eat your breakfast every morning. The separation distance proposed is 339', with a minimum of three times the height, so that ends up being at a difference what they are giving us is 198', but at a minimum it says 100', so they are basically meeting this criteria by 98' which is 30 yards. I could go into this whole thing where they are saying they are saving 60 percent of the trees. There's 11 trees on the lot and they are cutting down 6. It's full of fluff. No matter what, it's a 4-story building against the street. You are robbing Peter to pay Paul by putting it against the street to get that 339' from the community.

Stella Troup, 16130 Grafham Circle, said I am the last designated residential lot on this particular map. Personally, I have the same concern as Peter. This is a 24/7/365 business. Right now we have only one-story businesses. One of them is a restaurant. Yes, they are open late at night, but they've been very good neighbors. When we've asked them to be quieter at night, they have accommodated that. Second, what the picture does not show you is that this grayed area is a ravine. Our back lots go down and then it crosses the creek and goes back up about 30' and then you begin this lot that's in question. It is a refuge for much wildlife. I enjoy it very much. I've done what I can to make the slope not so bad. I don't want to see a multi-story building up there and as we talked about at the Neighborhood Meeting, this thing of evergreen trees, unless they are going to pay thousands of dollars per tree, it will take 5 to 8 years for the evergreen trees to grow up enough to make that hotel invisible. Also, nobody has mentioned tonight that not a block from this site are three other hotels and as far as we can tell they don't have 100 percent occupation. Why do we need another hotel. We just don't. While staff said they are only asking for 2' exception, no the entire hotel is an exception. I'm speaking in objection to having the hotel. You look at it from the city's point of view, it puts a further strain, that's 109 rooms plus staffing areas. That's a greater strain on the sewage system. Our internet is already very spotty. It's 109 new houses with internet ability, not maybe individually but they've got to cover 109 rooms. And then there's the idea of light pollution. Again, being 24/7/365, those lights at night for security reasons probably by some other regulation will be on and to think of this business as being 339' from my backyard is not taking into account that the business encompasses the entire parking lot. People don't arrive on foot. They bring their cars and their trucks.

Mayor Bales asked staff if a lighting plan has been reviewed.

Mr. James explained that the lighting plan would be reviewed as part of the construction plans, but would not get an approval at staff level if it didn't meet the ordinance.

Mayor Bales called on the applicant.

Suzanne Todd (Zoning Attorney), 1065 E. Morehead Street, Charlotte, introduced Hitesh Patel and Rakesh Patel with Hotel Ventures, the applicant and Jay Henson with HensonFoley.

Ms. Todd presented PowerPoint reviewing the applicant's request. *PowerPoint attached hereto as Exhibit No. 5.*

Commissioner Partee asked how many hotels Hotel Ventures has in the Town of Huntersville.

Ms. Todd noted they have one within the Town, which is a SpringHill Suites by Marriott. The anticipated product on this property is Fairfield Inn by Marriott and TownePlace Suites by Marriott.

Commissioner Munger asked if there is a demand for hotels of this nature.

Hitesh Patel explained the Huntersville market is growing and there is a strong demand for corporate clientele. These are Marriott branded hotels, so it comes with a lot of stringent standards that we must adhere to.

Commissioner Kidwell asked about the height of the evergreen trees to be planted.

Jay Henson, 121 Gilead Road, noted the intent is large evergreen trees. We are looking for something that would be an install height of 8' that will have a mature height of 15-20'

Commissioner Kidwell asked how high the building would raise from the current slope.

Mr. Henson said at the front it's probably 3'. It's whatever the curb elevation would be. It doesn't drop off sharp there right at the front.

Commissioner Boone asked how long the average stay is at SpringHill Suites in the business park.

Mr. Patel noted the average stay is probably about three nights.

Commissioner Boone asked out of the 109 rooms that you are proposing, how many will have kitchenettes.

Mr. Patel stated as of right now, the extended stay piece is about 48 rooms.

Mr. James responded to an earlier question from Commissioner Boone about when the houses to the west were developed. According to a timelapse map, the development to the west started around 1997 and it was up to mature building around 2002.

There being no further questions or comments, Mayor Bales closed the public hearing.

Public Hearing – Petition #TA22-12. Mayor Bales called to order public hearing on Petition #TA22-12, a request by the Huntersville Town Board to amend Article 4 of the Zoning Ordinance clarifying first floor residential and commercial area requirements for Shopfront and Workplace mixed-use buildings.

Jack Simoneau, Planning Director, entered the Staff Report into the record and reviewed the request. *Staff Report and Staff PowerPoint attached hereto as Exhibit No. 6.*

This text amendment has been heard by the Huntersville Ordinances Advisory Board on three occasions. They have not made a recommendation. A majority of them requested the public hearing be held open to allow them to submit their final recommendation to the Town Board.

Commissioner Boone requested Commissioner Munger ask the Ordinances Advisory Board to look at the 100 percent first floor retail space that fronts a primary street.

Commissioner Munger said I think if we keep it at the 50 percent you're still achieving the intended goal of we want some form of commercial along main streets.

Commissioner Phillips asked if we require elevators in all apartments.

Mr. Simoneau explained it's the state building code that governs elevators.

Commissioner Phillips expressed concern that by having apartments that are walk-ups we are unintentionally going to create a situation where disabled and elderly people have less places to live.

Commissioner Kovacs noted they would still have the ability to have those walk-ups as long as it's not street-facing.

Commissioner Munger made a motion to keep the public hearing on Petition #TA22-12 open until the Town Board meeting on January 17, 2023, at 6:00 p.m.

Commissioner Partee seconded motion.

Motion carried unanimously.

Public Hearing – Petition #ANNEX22-01. Mayor Bales called to order public hearing on Petition #ANNEX22-01, a request by Earl House III and Terrix Deanna Williams, to annex 0.45 acres into the Town of Huntersville.

Jack Simoneau, Planning Director, entered the Staff Report into the record and reviewed request. *Staff Report and Staff PowerPoint attached hereto as Exhibit No. 7.*

Commissioner Munger asked if staff has made any efforts to contact residents in this area to suggest further annexations.

Mr. Simoneau said the answer to question is no. There may be a community meeting with the residents in this area about the future of the area and staff's suggestion would be to have someone at that meeting to talk about the option of annexation.

There being no further questions or comments, Mayor Bales closed the public hearing.

Mayor Bales called for a 5-minute recess.

The Board returned from the recess.

OTHER BUSINESS

Petition #ANNEX22-01. Petition #ANNEX22-01 is a request by Earl House III and Terrix Deanna Williams, to annex 0.45 contiguous acres into the Town of Huntersville.

Commissioner Munger made a motion to adopt an Ordinance approving Petition #ANNEX22-01, a request by Earl House III and Terrix Deanna Williams to annex 0.45 contiguous acres into the Town of Huntersville.

Commissioner Kidwell seconded motion.

Motion carried unanimously.

Ordinance attached hereto as Exhibit No. 8.

Greenway, Trail and Bikeway Commission Appointments. The Greenway, Trail and Bikeway Commission has three 3-year terms that need to be filled. All three terms end on December 31, 2025. The Town received nine applications. Christianna Beirne has reapplied for her expired term. Applicant 3 has applied for the Greenway, Trail and Bikeway Commission as well as the Public Art Commission. Applicant 6 has applied for the Greenway, Trail and Bikeway Commission as well as the Parks & Recreation Commission.

Commissioner Boone expressed concern about using numbers on the applications instead of names and suggested revisiting the Meet and Greet process.

Commissioner Kidwell suggested the process be discussed at the Town Board retreat.

Mayor Bales called for three nominations for three 3-year terms.

Commissioner Munger nominated Applicants 2, 5 and 9.
Commissioner Partee nominated Applicants 2, 5 and 8.
Commissioner Kidwell nominated Applicants 2, 6 and 9.
Commissioner Kovacs nominated Applicants 2, 4 and 9.
Commissioner Boone nominated Applicants 2, 6 and 8.
Commissioner Phillips nominated Applicants 2, 4 and 9.

Applicant 2 received six nominations.
Applicant 9 received four nominations.
Applicants 4, 5, 6 and 8 received two nominations each.

There was a tie between Applicants 4, 5, 6 and 8.

Mayor Bales called for nominations for one number of those four.

Commissioner Munger nominated Applicant 5.
Commissioner Partee nominated Applicant 5.
Commissioner Kidwell nominated Applicant 5.
Commissioner Kovacs nominated Applicant 4.
Commissioner Boone nominated Applicant 5.
Commissioner Phillips nominated Applicant 4.

Applicant 5 received four nominations.

Commissioner Kidwell made a motion to appoint Applicants 2, 5, and 9 to the Greenway, Trail and Bikeway Commission for 3-year terms.

Commissioner Munger seconded motion.

Motion carried unanimously.

Applicant 2 is Christianna Beirne.

Applicant 5 is Geoffrey Locke.

Applicant 9 is Elaine Kerns.

Parks & Recreation Commission Appointments. The Parks & Recreation Commissioner has three 3-year terms that need to be filled. The Town received ten applications. Alisia Bergsman (Applicant 7), Kathy Lewis (Applicant 2) and Mark Burns (Applicant 9) have all reapplied for their expired terms. Applicant 5 has applied for the Parks & Recreation Commission as well as the Greenway, Trail and Bikeway Commission.

Mayor Bales called for nominations for three 3-year terms.

Commissioner Phillips nominated Applicants 2, 7 and 9.
Commissioner Boone nominated Applicants 2, 5 and 4.
Commissioner Kovacs nominated Applicants 2, 7 and 9.
Commissioner Kidwell nominated Applicants 4, 6 and 7.
Commissioner Partee nominated Applicants 4, 6 and 2.
Commissioner Munger nominated Applicants 2, 7 and 9.

Applicant 2 had five nominations.

Applicant 7 had five nominations.

There was a tie between Applicants 4 and 9 with three nominations each.

Mayor Bales called for nominations for one number of those two.

Commissioner Phillips nominated Applicant 9.
Commissioner Boone nominated Applicant 4.
Commissioner Kovacs nominated Applicant 9.
Commissioner Kidwell nominated Applicant 4.
Commissioner Partee nominated Applicant 4.
Commissioner Munger nominated Applicant 9.

There was a tie between Applicants 4 and 9 with three nominations each.

Mayor Bales called for nominations for one number of those two.

Commissioner Munger nominated Applicant 9.
Commissioner Partee nominated Applicant 9.
Commissioner Kidwell nominated Applicant 9.
Commissioner Kovacs nominated Applicant 9.
Commissioner Boone nominated Applicant 4.
Commissioner Phillips nominated Applicant 9.

Commissioner Munger made a motion to appoint Applicants 2, 7 and 9 to 3-year terms to the Parks & Recreation Commission.

Commissioner Kovacs seconded motion.

Motion carried unanimously.

Applicant 2 is Kathy Lewis.
Applicant 7 is Alisia Bergsman.
Applicant 9 is Mark Burns.

Mayor Bales called for nominations for the 1-year term.

Commissioner Partee nominated Applicant 4.
Commissioner Kidwell nominated Applicant 4.
Commissioner Kovacs nominated Applicant 4.
Commissioner Boone nominated Applicant 4.
Commissioner Phillips nominated Applicant 4.
Commissioner Munger nominated Applicant 4.

Commissioner Phillips made a motion to appoint Applicant 4 to the Parks & Recreation Commission for a 1-year term.

Commissioner Partee seconded motion.

Motion carried unanimously.

Applicant 4 is Janelle Harris.

Public Art Commission Appointments. The Public Art Commission has two 3-year terms that need to be filled. The Town received three applicants. Applicant 2 has applied for the Public Art Commission as well as the Greenway, Trail and Bikeway Commission.

Commissioner Kidwell nominated Applicants 1 and 3
Commissioner Kovacs nominated Applicants 1 and 3
Commissioner Boone nominated Applicants 1 and 2.
Commissioner Phillips nominated Applicants 1 and 2.
Commissioner Munger nominated Applicants 1 and 3.

Commissioner Partee nominated Applicants 1 and 3.

Commissioner Phillips made a motion to appoint Applicants 1 and 3 to the Public Arts Commission for 3-year terms.

Commissioner Partee seconded motion.

Motion carried unanimously.

Applicant 1 is Ryan Flores

Applicant 3 is Tim Kendra-Dill.

Resolution – Beatties Ford at Gilead Road Project. Commissioner Munger made a motion to recuse Mayor Pro Tem Phillips.

Commissioner Kidwell seconded motion.

Motion carried unanimously.

Commissioner Munger made a motion to adopt Resolution to acquire right-of-way and/or easements for the construction of Beatties Ford at Gilead Road Project.

Commissioner Partee seconded motion.

Motion carried unanimously.

Resolution attached hereto as Exhibit No. 9.

Commissioner Kidwell made a motion to bring Mayor Pro Tem Phillips back to the dais.

Commissioner Kovacs seconded motion.

Motion carried 5 to 0.

MAYOR AND COMMISSIONER REPORTS/CLOSING COMMENTS

Mayor Bales

- Brett Canipe, NCDOT, will be present at the February 20 meeting to give an update on the NC 73 project.
- Lake Norman Economic Development Corporation is working 34 projects, 21 of which are in Huntersville.
- Attended Cain Art Center Ribbon Cutting.

Commissioner Kidwell

- Next meeting of the Charlotte Regional Transportation Planning Organization is at the end of the month.

Commissioner Kovacs

- Provided update from the Lake Norman Chamber of Commerce.

Commissioner Boone

- Chief Jim Dotoli was elected Chief of the Huntersville Fire Department for the next two years. Assistant Fire Chief Ray Murphy received the Officer of the Year award.
- Provided update on traffic signal at Northdowns Lane and Highway 21.

Commissioner Phillips

- Provided update from Visit Lake Norman.

Commissioner Partee

- January is the month we recognize the legacy of Dr. Martin Luther King.
- Gave a shoutout to Betty Caldwell.
- Advocate for gun safety. Huntersville Police Department has free gun safety locks.
- Bring awareness to Cool Kids Clubhouse.

Commissioner Munger

- Next meeting of the Huntersville Ordinances Advisory Board is January 5.
- Attended the Cain Art Center Ribbon Cutting.
- Provided update on the Public Art Commission's Peace Pole Project.
- Consider supporting local non-profits.

Mayor Bales noted the Cain Art Center discussed the soundproofing of the building during the ribbon cutting and suggested soundproofing be a component that's discussed when designing the new town hall.

Mayor Bales reminded everyone of the 150th kick-off celebration on January 7.

There being no further business, the meeting was adjourned.

Approved this the ____ day of _____, 2023.

**Town of Huntersville
Town Board
January 17, 2023**

To: Town Board

From: Jack Simoneau, Planning Director

Date: January 17, 2023

Subject: Petition #TA22-12 Public Hearing

EXPLAIN REQUEST:

Continue a public hearing on Petition #TA22-12, a request by the Huntersville Town Board to amend Article 4 of the Zoning Ordinance clarifying first floor residential and commercial area requirements for Shopfront and Workplace mixed-use buildings.

ACTION RECOMMENDED:

FINANCIAL IMPLICATIONS:

N/A

ATTACHMENTS:

1. TA22-12 PH Staff Report 1-17-23
2. Text Amendment Application
3. TA22-12 Ordinance
4. HOAB Minutes on TA 22-12
5. Table of Municipalities 10.31.22

TA 22-12 – Town of Huntersville: Clarifying First Floor Residential and Commercial Area for Shopfront and Workplace Mixed-Use Buildings

PART 1: DESCRIPTION

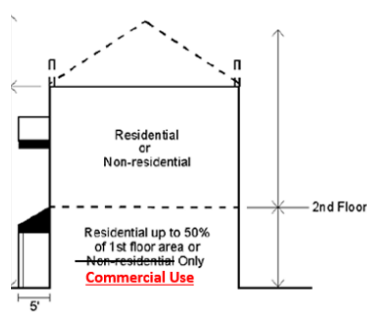
TA 22-12 is a request by the Huntersville Town Board to amend Article 4 of the Zoning Ordinance clarifying first floor residential and commercial area requirements for Shopfront and Workplace mixed-use buildings.

PART 2: BACKGROUND

First floor Shopfront and Workplace Buildings have the following standard: “Residential up to 50% of 1st floor area or Non-residential Only”.

The Town Board disagreed with staff assigning shared residential and non-residential floor area (i.e., mechanical rooms, maintenance space, etc.) as non-residential floor area. They requested an amendment indicating that only floor area dedicated 100% to non-residential uses would qualify as non-residential floor area.

Through the review process, it was determined the term “non-residential” should be replaced by the term ‘commercial’ as it better aligned with the Town Board’s intentions and is defined in the Zoning Ordinance (see below).



1. Building height shall be measured as the vertical distance from the highest finished grade relative to the street frontage, up to the eaves or the highest level of a flat roof.
2. The height of parapet walls may vary depending upon the need to screen mechanical equipment.
3. Building height to the ridge may vary depending on the roof pitch.
4. Permitted uses are indicated above and are further controlled by district regulations.
5. Where an existing residential building converts to a mixed-use building, at least 40% of the habitable floors area shall be residential
6. **First floor commercial area shall include floor area used exclusively for commercial use and shall not include any floor area that contains or is shared with residential uses, such as storage, mechanical rooms, etc. Any floor area devoted partially or wholly to serving residential uses, shall be considered residential floor area.**

PART 3: RELEVANT SECTIONS OF THE HUNTERSVILLE 2040 COMMUNITY PLAN

The proposed text amendment **could be supported** by the following policies in the Huntersville 2040 Community Plan:

Policy LU-6: Support a mix of land uses in key locations.

LU 6.1: A mix of land uses is encouraged in Mixed Use Centers, Activity Centers, Employment Centers identified on the Future Land Use Map.

LU 6.2: Commercial uses are encouraged in the Town Core and as specified in adopted Small Area Plans.

LU 6.3: Small scale, neighborhood-serving commercial and office uses may be allowed in Town Core and Moderate Density areas specified on the Future Land Use map at key locations if designed in a context sensitive manner.

Staff Comment: The proposed text amendment clarifies ambiguities for calculating residential and commercial floor area and may remove barriers to constructing mixed-use buildings.

Policy EV-1: Support a balanced economy through job growth in target industry sectors.

EV 1.4: Review development standards to support business growth.

- Support efforts to improve efficiency and responsiveness of the development review process for development proposals. Regularly review the market to ensure that standards are in line with current demand.
- Prioritize changes to standards that would encourage small business growth.

Staff Comment: The proposed text amendment clarifies ambiguities for calculating residential and commercial floor area and may remove barriers to constructing mixed-use buildings.

Policy EV-2: Encourage existing economic assets and entrepreneurial business development.

EV 2.1: Promote and encourage local businesses, particularly small businesses.

EV 2.2: Leverage Downtown as a unique destination.

EV 2.3: Attract businesses to Downtown.

Staff Comment: The proposed text amendment clarifies ambiguities for calculating residential and commercial floor area and may remove barriers to constructing mixed-use buildings.

Policy DT-1: Encourage future development in the Downtown area to adhere to the Regulating Plan.

DT 1.1: Encourage vertical mixed-use development with active visual engagement between the street and the ground and upper floors along Active Frontages

DT 1.2: In Tier 1 areas, encourage multistory buildings and allow for a mix of uses, including commercial, office, and residential.

Staff Comment: The proposed text amendment clarifies ambiguities for calculating residential and commercial floor area and may remove barriers to constructing mixed-use buildings.

PART 4: STAFF RECOMMENDATIONS

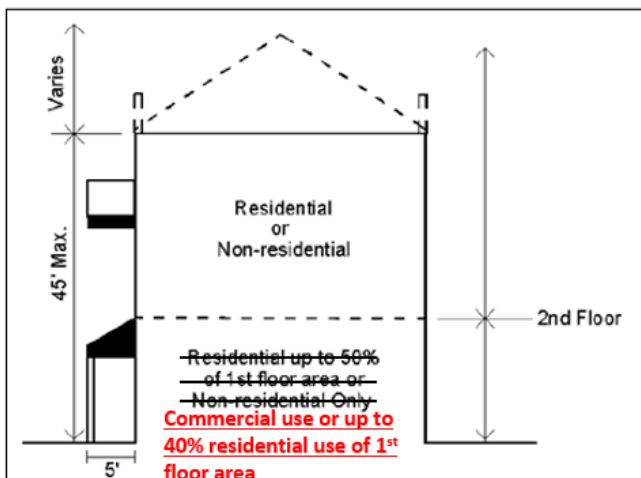
Approval. See Part 9 below.

PART 5: HUNTERSVILLE ORDINANCE ADVISORY BOARD

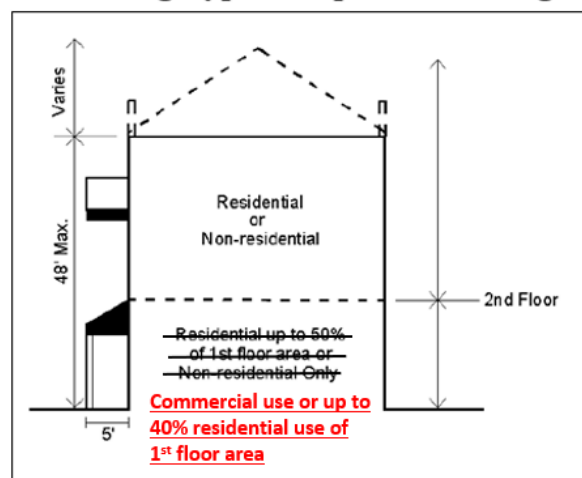
The HOAB discussed the request on November 3, December 1, and December 15, 2022. On January 5, 2023, the HOAB voted 5 to 2 (Skelly, Whittaker) as follows:

The Huntersville Ordinance Advisory Board (HOAB) recommends that Text Amendment 22-12, move forward for Public Hearing, Planning Board recommendation, and Town Board decision as written with the following change: Delete first floor diagram wording in Section 2 and Section 3 and replace with: “Commercial use, or up to 40% residential use of 1st floor area” This recommendation is based on the amendment being consistent with LU-6, LU-7, LU-10, EV-1, EV-2, DT-1 and DT-10 of the Huntersville 2040 Community Plan. It is reasonable and in the public interest to amend the Zoning Ordinance because the amendment clarifies first floor residential and commercial area requirements.

Building Type / Urban Workplace



Building Type / Shopfront Building



PART 6: PUBLIC HEARING

January 3, 2023

PART 7: PLANNING BOARD RECOMMENDATION

To be held January 24, 2023

PART 8: ATTACHMENTS

1. Application
2. Ordinance
3. Huntersville Ordinance Advisory Board Minutes November 3, December 1 and December 15, 2022, Minutes
4. Floor Area Requirement Comparison of Nearby Cities

PART 9: STATEMENT OF CONSISTENCY

Planning Department	Planning Board	Board of Commissioners
APPROVAL: In considering the proposed amendment TA22-12, the Planning Staff recommends approval based on the amendment being consistent with LU-6, EV-1, EV-2, and DT-1 of the Huntersville 2040 Community Plan. It is reasonable and in the public interest to amend the Zoning Ordinance because the amendment clarifies first floor residential and commercial area requirements.	APPROVAL: In considering the proposed amendment TA22-12, the Planning Board recommends approval based on the amendment being consistent with <u>(insert applicable plan reference)</u> of the Huntersville 2040 Community Plan. It is reasonable and in the public interest to amend the Zoning Ordinance because...(Explain)	APPROVAL: In considering the proposed amendment TA22-12, the Town Board recommends approval based on the amendment being consistent with <u>(insert applicable plan reference)</u> of the Huntersville 2040 Community Plan. It is reasonable and in the public interest to amend the Zoning Ordinance because...(Explain)
	DENIAL: In considering the proposed amendment TA22-12, the Planning Board recommends denial based on the amendment being <u>(consistent OR inconsistent)</u> with <u>(insert applicable plan reference)</u> of the Huntersville 2040 Community Plan. It is not reasonable and in the public interest to amend the Zoning Ordinance because.... (Explain)	DENIAL: In considering the proposed amendment TA22-12, the Town Board recommends denial based on the amendment being <u>(consistent OR inconsistent)</u> with <u>(insert applicable plan reference)</u> of the Huntersville 2040 Community Plan. It is not reasonable and in the public interest to amend the Zoning Ordinance because.... (Explain)



Text Amendment Application

Date of Application October 4, 2022

Fee

See Current Town of Huntersville Fee Schedule for Text Amendment to the Zoning/Subdivision Ordinance

Type of Change

☐ New Addition to text of Zoning Ordinance / Subdivision Ordinance / Other

☒ Revision/Modification to text of Zoning Ordinance / Subdivision Ordinance / Other

Description of Change

Proposed text amendment will affect the following:

Ordinance(s): Zoning Ord. Article(s): 4 Section(s): Shopfront & Workplace Bldg.

See attached

Current Ordinance

See attached

Proposed Text

**Reason for Proposed
Change**

To clarify determination of residential/ non-residential/commercial floor area
in a mixed-use building (Shopfront & Workplace building type)

Attach additional pages if needed.

NOTE: If the proposed text amendment effects property located along Hwy 73; is 2000 feet from an adjoining municipality, and/or the Mountain Island and Lake Norman Watersheds, additional peer review is required.

Applicant

Printed Name Jack Simoneau

☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

Signature Jack Simoneau (For Huntersville Town Board) Date 10/4/22

Title Planning Director Email jsimoneau@huntersville.org

Address of Applicant PO Box 664, Huntersville, NC 28070

Property Owner (if different than applicant)

* Printed Name N/A

☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

Signature _____ Date _____

Title _____ Email _____

Address of Property Owner _____

* Property owner hereby grants permission to the Town of Huntersville personnel to enter the subject property for any purpose required in processing this application.

Every owner of each parcel included in this application, or the owner (s) duly authorized agent, must sign this application. If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION. **If additional space is needed for signatures, attach the Town of Huntersville Signature Addendum Form.**

Contact Information

**Town of Huntersville
Planning Department**
PO Box 664
Huntersville, NC 28070

Phone: 704-875-7000
Fax: 704-875-6546
Physical Address: 105 Gilead Road, Third Floor, Huntersville, NC 28078
Website: <https://www.huntersville.org/228/Planning-Department>

Date Received By Planning Department: October 4, 2022

Staff Initials: JS

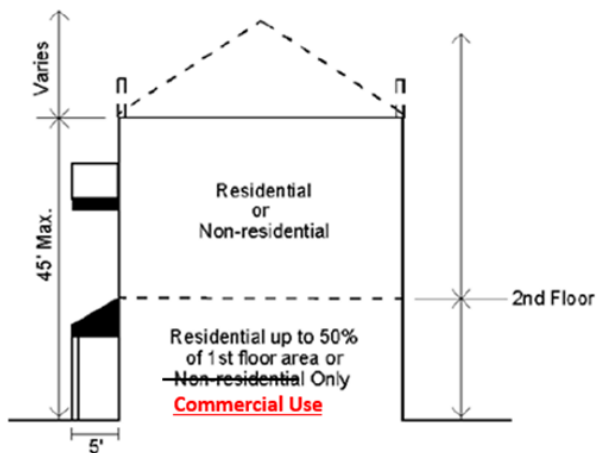
AN ORDINANCE TO AMEND ARTICLE 4, URBAN WORKPLACE AND SHOPFRONT BUILDINGS OF THE ZONING ORDINANCE TO CLARIFY THE RESIDENTIAL AND COMMERCIAL FLOOR AREA REQUIREMENTS

Section 1. Be it ordained by the Board of Commissioners of the Town of Huntersville that Article 12, Definitions, of the Zoning Ordinance is hereby amended by modifying the definition of Commercial Use and adding a new definition of non-residential use as follows:

Commercial use. A category of uses that includes retail establishments, offices, professional and personal services, light manufacturing and assembly, branch banks, financial services, health care services, indoor motion picture theatres, conference centers, laboratories and associated research facilities whose products or waste products entail no special environmental handling requirements, studios, broadcast facilities (excluding towers), inns, theatres, restaurants without drive-through windows, bars, and day care facility as a principle use. Each use permitted in the commercial use category shall also meet any applicable conditions set out in Article 9, Conditions for Certain Uses. Excluded from the commercial use category are adult uses; vehicle, boat, or manufactured home sales, service, and repair; drive-through windows as a principal or accessory use; wholesale sales; heavy manufacturing; outdoor storage; **floor area that is shared with residential uses as provided in Article 4;** outside commercial kennels, and other uses that, by their nature or service characteristics are auto dependent, have potential for environment degradation, or are otherwise incompatible with nearby residential use.

Non-residential use. All uses that are not a residential use.

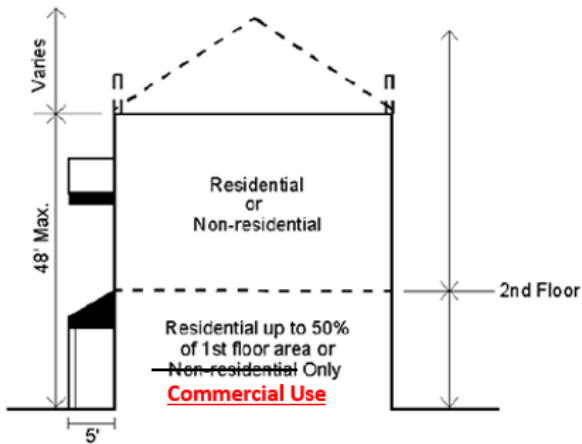
Section 2. Be it ordained by the Board of Commissioners of the Town of Huntersville that Article 4, Workplace Building, of the Zoning Ordinance is hereby amended as follows:



1. Building height shall be measured as the vertical distance from the highest finished grade relative to the street frontage, up to the eaves or the highest level of a flat roof.
2. The height of parapet walls may vary depending upon the need to screen mechanical equipment.
3. Building height to the ridge may vary depending on the roof pitch.
4. Permitted uses are indicated above and are further controlled by zoning district standards.
5. Hotels in the Highway Commercial (HC) zoning district may exceed the maximum building height (shown above), not to exceed six (6) stories, subject to the provisions of Article 9.45.
6. **First floor commercial floor area shall include floor area used exclusively for commercial use and shall not include any floor area that contains or is shared with residential uses, such as storage, mechanical rooms, etc. Any floor area devoted partially or wholly to serving residential uses, shall be considered residential floor area.**

Section 3. Be it ordained by the Board of Commissioners of the Town of Huntersville that Article 4, Shopfront Building, of the Zoning Ordinance is hereby amended as follows:

TA 22-12: Residential and Commercial Floor Area



1. Building height shall be measured as the vertical distance from the highest finished grade relative to the street frontage, up to the eaves or the highest level of a flat roof.
2. The height of parapet walls may vary depending upon the need to screen mechanical equipment.
3. Building height to the ridge may vary depending on the roof pitch.
4. Permitted uses are indicated above and are further controlled by district regulations.
5. Where an existing residential building converts to a mixed-use building, at least 40% of the habitable floors area shall be residential
6. First floor commercial area shall include floor area used exclusively for commercial use and shall not include any floor area that contains or is shared with residential uses, such as storage, mechanical rooms, etc. Any floor area devoted partially or wholly to serving residential uses, shall be considered residential floor area.

Section 4. This ordinance shall become effective upon adoption.

HUNTERSVILLE ORDINANCE ADVISORY BOARD: November 3, December 1, and December 15, 2022

PUBLIC HEARING DATE: January 3, 2023

PLANNING BOARD MEETING: January 24, 2023

TOWN BOARD DECISION: February 20, 2023

HOAB November 3, 2022, Minutes

Item 4C: Consider a Town Board sponsored amendment to Article 4, Urban Workplace and Shopfront Building Types clarifying how to count residential and non-residential floor areas in mixed-use buildings.

J. Simoneau, Planning Director reviewed the recent approved plan that identified that referencing non-residential space may not be achieving the desired results of the use of the space. The proposed amendment would adjust 'non-residential' to 'commercial' use for shopfront and workplace building types with the added wording to achieve the percentage indicated being used for commercial purposes only.

K. Jones reviewed the use of 'up to' in the proposed language and when would a developer be allowed to adjust this requirement. Staff confirmed that the proposed language would allow for the residential use to vary from 0 – 50% with the remaining square footage being used for commercial and a developer can always request a conditional rezoning that the Town Board would have to decide to grant or not grant on a variance from the standard.

K. Jones asked if 100% commercial could be proposed. Staff stated that the Board could offer that recommendation, staff would recommend keeping it as it is since there are times that commercial may not make sense on the first floor of these buildings, such as when facing a side property yard.

F. Gammon commented on approaches to the language that could create the requirement for this to be a conditional rezoning and allow for the developer to come before the Planning and Town Board to assist with avoiding further issues.

A. Hallman commented that she would like to see greater commercial percentage on the first floor in Town Center and that commercial areas that do not face the storefront may be a good opportunity for start-up businesses with a lower rent option that can be connected to larger businesses.

M. Jones commented that there seems to be two pieces to this, the ordinance, and the interpretation. Staff agreed that clarity is the goal and the proposed language is intended to achieve that. M. Jones commented that a clear and consistent method for interpretation of the Board, motions, Staff, and the Ordinances.

NOTE: NO MOTION WAS MADE AS THIS WAS A DISCUSSION ITEM.

HOAB December 1, 2022, Minutes

Item 4C: Consider a Town Board sponsored amendment to Article 4, Urban Workplace and Shopfront Building Types clarifying how to count residential and non-residential floor areas in mixed-use buildings.

J. Simoneau, Planning Director presented the proposed amendment that would adjust 'non-residential' to 'commercial' use for shopfront and workplace building types with the added wording to achieve the percentage indicated being used for commercial purposes only. Staff reviewed research completed of a comparison of mixed-use standards in Downtown for local area municipalities.

F. Gammon referenced paragraph 5 of Article 4, Shopfront Building Types and asked about the reference to 40% habitable area requirement. Staff responded that this refers to an existing building and would be different criteria than the land development criteria being discussed.

F. Gammon shared that there is no definition for 'commercial, residential or non-residential' in the Ordinance and this could leave it open to interpretation which seems to lend to the confusion. Staff responded that the proposed amendment is to clarify the text and use and staff is comfortable with interpreting this in reviewing land development.

K. Jones commented that she would like the requirement to be 75% or greater for commercial use.

A. Hallman agreed that it should be 75% or greater for commercial use particularly because this is for Town Center, and we are focused on invigorating our Downtown and we do not have that many existing store front/shop front roads, so we need this type of requirement to attract as much commercial development as possible. She then expressed her support of definitions for words as F. Gammon stated. She agreed that the purpose of the definitions is not for staff but rather for developers who may have one use and definition of terms and may not choose to update the descriptions on their plans which can lead to lack of clarity between developers, planners, and citizens as to what the intended use is for that space. The definition and the implementation of the words would be important. Staff commented that the new software for the Ordinances will allow you to search for a word and find all references to that word which will assist with accessing existing definitions such as commercial.

F. Gammon commented that he agreed with the recommendations of 75% commercial, but he does not want to be too restrictive for a developer. He would recommend a 75% commercial, 25% residential through a modification request to be approved by the Town Board so they could view the circumstances of that development and not overregulate the developer.

Commissioner Munger agreed that the true definition of commercial would be beneficial to alleviate confusion. He then referred to the local area municipality research that was shared and commented that the wording of Concord is good phrasing. Staff agreed that presenting the definition with the proposed amendment would be beneficial. The current definition of commercial use is all encompassing.

Commissioner Munger responded that the goal is to clearly identify that a mailroom, storage room or other shared space are not what is intended. The intention is tax revenue generating space.

M. Jones requested staff bring up MuniCode and the definition for Commercial in the Zoning Ordinance.

F. Gammon recommended the implied understandings be included in the definition such as storage rooms, HVAC space when used for commercial only versus HVAC that is shared with commercial and residential. E. Sloop commented that the Ordinances currently define residential and commercial, and she would recommend the addition of non-residential to the definitions as 'everything not residential.'

M. Jones commented that the definition piece and interpreting Town Board conditions and the Ordinance in a consistent fashion is also critical, and he recommends it be wrapped into this as well.

Motion: M. Jones made a motion to call a virtual Special Meeting of the Ordinance Advisory Board on Thursday, December 15, 2022, at 3:30 p.m. to hear Items 4C, 5A, 5B & 5C from the December 1, 2022, agenda and to include an Item 5D to discuss forming sub-committees. K. Jones seconded the motion.

Vote: The motion passed unanimously (8-0).

HOAB December 15, 2022, Minutes

Item 4A: Consider recommendation on petition TA22-12, a Town Board sponsored text amendment to Article 4, Urban Workplace and Shopfront Building Types to clarify how to count residential and non-residential floor areas in mixed-use buildings.

J. Simoneau, Planning Director reviewed the proposed amendment with the normal definition of commercial use, exclusions to commercial use category as outlined in Article 4. Staff reviewed local area communities and it is staff's recommendation for commercial use requirement to be at 50%. This is an increase over the current requirements, and it is Staff's opinion that it would be a disincentive to increase the first-floor commercial requirement to 75-100%.

A. Hallman commented that she would support an increased percentage requirement for commercial since developers would still have the opportunity to request that be reduced with the Town Board.

M. Jones asked Staff to confirm that definition of non-residential and commented on concerns over the clarity. Staff stated that this is not a new definition and Staff is comfortable with it.

M. Jones asked Staff if the definition should be improved with the statements added by E. Sloop that all Commercial is Non-Residential but not all Non-Residential is Commercial. Staff responded that the Board is welcome to make a recommendation of that. M. Jones followed up that he thinks the definition of Non-Residential should be more specific because in his mind he does not necessarily think Commercial.

A. Hallman asked when this will go to Public Hearing. Staff responded that Public Hearing is January 3, 2023, and a recommendation from the Ordinance Advisory Board would be preferable. The Town Board could also keep the Public Hearing open and not close it and forward it to the Planning Board, otherwise it would go to the Planning Board on January 24, 2023, and then to the Town Board for final decision on February 20, 2023.

A. Hallman followed up and said it would be nice to understand more of what the Non-Residential uses could be that are not Commercial and additional time to figure that out would be helpful.

M. Jones commented that the interpretation is also important to create a more comprehensive solution which he believes is what the Town Board was trying to address. He then stated that he has written up some recommendations to the rules of construction for the Zoning Ordinance and Subdivision Ordinance that he thinks would be in keeping with the solution that the Town Board is seeking. Staff responded that they would defer to Legal to weigh in since staff's concern is that the rules of construction amendments have not been advertised so if there is going to be discussion on amending Section 2.2 of the Subdivision Ordinance or Section 12.1 of the Zoning Ordinance, that needs to be a clear agenda item. E. Sloop responded that this is a Special Meeting, and that discussion is not on the agenda we should wait until it is properly advertised to discuss it. M. Jones commented that he brought this up at each of the previous two discussions on this item so he does not understand how this would be new or unrelated. Staff commented that it was understood M. Jones wanted to work on those sections, but it was not clear that was meant to be in conjunction with TA22-12, so the sections referenced have not been advertised.

F. Gammon commented that his understanding of the Rules of Procedure was that the Board had more leniency to discuss the ordinances that may apply but he would defer to Legal.

A. Hallman said that if it cannot legally be discussed now then the Board should not spin their wheels discussing part of the problem versus the entire solution that as a Board they should be considering for clarity for all future users of the Zoning Ordinance for years to come.

F. Gammon followed up that he does not want to encumber this text amendment with discussion that has not been totally vetted and will slow down the process. It may be appropriate for discussion in Item 5A on how to improve the Zoning Ordinance.

M. Jones asked Commissioner Munger if in his opinion the proposed text amendment is a comprehensive solution that addresses the concerns expressed by the Town Board that led to the proposal of the amendment. Commissioner Munger commented that while he can see room for improvement it is a step in the right direction, and he would be open to the Ordinance Advisory Board trying to work out whatever additions may be appropriate. Another consideration is that the Town Board does review the notes forwarded from the Ordinance Advisory Board meetings and that is taken into consideration when determining how to proceed and what the final amendment should look like when the Town Board reviews it.

M. Jones then asked Commissioner Munger if he felt like conditions imposed by the Town Board that the applicant agrees to should have precedence over other aspects or everything else. Commissioner Munger stated he would defer to Legal. Staff clarified that the Board is specifically authorized in the Ordinance through conditional rezoning to modify existing codes which takes precedence.

M. Jones said he would entertain a motion to defer if the Board was with him to broaden the discussion related to this text amendment to include the aspects he has brought up.

Motion: K. Jones made a Motion to Defer TA22-12 until next regularly scheduled meeting and include aspects of rules of construction in that recommendation. A. Hallman seconded the motion to support some more thought about what non-residential but not commercial is.

Vote: The motion passed (5-3) with T. Finlay, F. Gammon, B. Skelly opposed

	Definiton of Residential?	Definiton of Non-Residential?	Definiton of Commercial?	Definiton of Non-Commercial?	Definition of Mixed-Use?	Limit of commercial/residential in mixed-use buildings?
Huntersville	Yes, definition of Residential Use	Yes, definition for Nonresidential Development	Yes, definition of Commercial Use	No	Yes, definition of mixed-use land use and mixed-use building	Yes, limit based on building type
Charlotte	Yes, definition of Residential Development	Yes, definition for Nonresidential Development	Yes, definition of Commercial Development	No	Yes, definition of Mixed-Use Development & Mixed-Use Building	No, could not find a limit of the SF of residential and commercial in mixed-use buildings
Cornelius	No	No	Yes, definition of Commercial, Retail and Service Use	No	Yes, definition of Mixed-Use and Mixed-Use Building	Yes, limit based on conditions of the mixed-use building use or the multi-family dwelling use
Davidson	No	Yes, definition for Nonresidential Development	Yes, definition of Primary Commercial, Secondary Commercial, Commercial Services, & Restircted Commercial	No	No	Yes, limit dependent on building type requirements
Matthews	Yes, definition of Residential Area, Net Residential Area, & Residential Use	No	No	No	Yes, definition of Mixed-Use Development	Yes, limit dependent on zoning district, land use, and commercial & mixed-use building lot development standards
Mooresville	No	No	No	No	Yes, definition of Mixed-Use	Yes, limit dependent on zoning district, conditions of land use, and commercial
Concord	Yes, definition of Residential Use	No	No	No	Yes, definition of Mixed Use Building, Mixed Use Dwelling, & Mixed Use Development or Mixed Use Project	Yes, limit dependent on what mixed-use zoning district the development is in (4 mixed-use zoning districts)

**Town of Huntersville
Town Board
January 17, 2023**

To: Town Board

From: Brian Richards, Assistant Planning Director

Date: January 17, 2023

Subject: Petition #R22-01 DDRTC Birkdale Village, LLC Rezoning Request

EXPLAIN REQUEST:

Consider making a decision on Petition #R22-01, a request by DDRTC Birkdale Village, LLC to rezone +/- 8.82 acres located at the intersection of Townley Drive and Lindholm Drive (Parcels 00537157 and 00537197) from Highway Commercial Conditional District to Highway Commercial Conditional District for 350 multi-family units, 125-room hotel, 150,000 sq. ft. office, and 25,000 sq. ft. commercial.

ACTION RECOMMENDED:

Consider making a decision on Petition #R22-01, a request by DDRTC Birkdale Village, LLC to rezone +/- 8.82 acres located at the intersection of Townley Drive and Lindholm Drive (Parcels 00537157 and 00537197) from Highway Commercial Conditional District to Highway Commercial Conditional District for 350 multi-family units, 125-room hotel, 150,000 sq. ft. office, and 25,000 sq. ft. commercial.

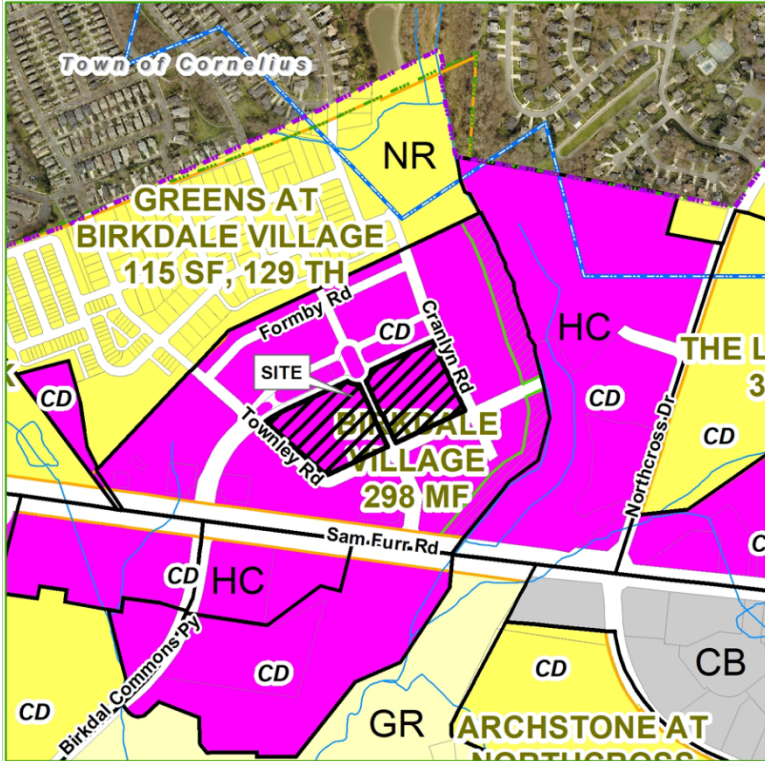
FINANCIAL IMPLICATIONS:

ATTACHMENTS:

1. R22-01 TB Staff Report 1-17-23 v2
2. A - TOH_General_Application
3. B - Birkdale_Village_Rezoning_Plan_Set_V5
4. C - Birkdale Neighborhood Meeting Report Package v.01
5. D - CMS Student Generation Birkdale Village Rezoning - R22-01
6. E - Building Facade Perspectives
7. Continuation Request Letter

Petition R22-01 Birkdale Village

PART 1: PROJECT SUMMARY



Applicant: DDRTC Birkdale Village, LLC
Property Owner: DDRTC Birkdale Village, LLC
Property Address: 8725 Townley Dr
Project Size: (+/-) 8.82 acres
Parcel Numbers: 00537157 & 00537197
Current Zoning: Highway Commercial Conditional District (HC-CD)
Current Land Use: Multifamily, Commercial, Office.
Proposed Zoning: Highway Commercial Conditional District (HC-CD)
Proposed Land Use: 350 Multifamily Units, 25,000 sf Commercial, 150,000 sf Office, and a 125 Room Hotel.



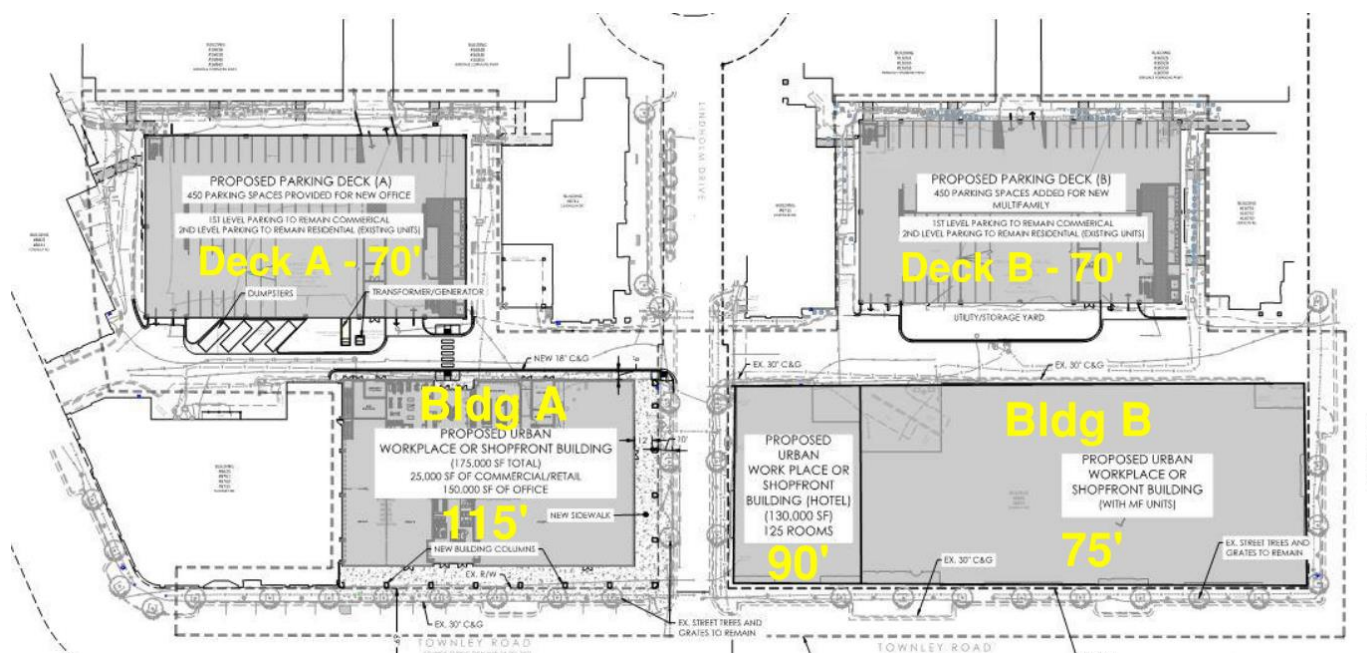
- Applicant has requested a deferral until the January 17, 2023, Town Board Meeting.**
- Purpose: Rezone 8.82 acres at the intersection of Townley Dr and Lindholm Dr. from Highway Commercial Conditional District (HC-CD) to Highway Commercial Conditional District (HC-CD) for up to 350 Units Multifamily Units, 125 Room Hotel, 150,000 sf Office, and 25,000 sf Commercial.
- Adjoining Zoning and Land Uses.
 - North: Neighborhood Residential – Greens at Birkdale Village Subdivision.
 - South: Highway Commercial – Birkdale & Birkdale Landing Developments
 - East: Highway Commercial – North Pointe Office Park.
 - West: Neighborhood Residential – Greens at Birkdale Village Subdivision.
- A neighborhood meeting was held on September 22, 2022, and the questions asked by residents and the responses from the applicants are summarized in the Neighborhood Meeting Report (see Attachment C).
- Birkdale Village was originally rezoned in 1996 (R96-07) and has had two revisions (R97-23 & R01-03). A Major Sketch Plan revision was approved in 2021 and construction is wrapping up now.
- Notice for this rezoning petition was sent via a postcard to adjoining property owners; a legal ad placed in the Charlotte Observer; and posting of rezoning signs on the property along Sam Furr Rd and inside of Birkdale Village.

PART 2: REZONING/SITE PLAN

The proposed Conditional District Rezoning Plan is generally compliant with the Zoning and Subdivision Regulations. Significant elements include:

- Replacement of two existing buildings with two new buildings. Building A (150,000 sf Office, 25,000 sf Commercial) and Building B (125 Room Hotel, 350 Multifamily Units). See site plan image below.
- Replacement of Two Existing parking decks with two new parking decks of 70' (450 spaces each – 900 total). There will be an overall increase of 900 parking spaces (2,762 total for Birkdale Village – 2,362 are required to meet Article 5).
- The new buildings and parking decks exceed current height limit allowed by the Zoning Ordinance (Article 4 - Urban Workplace 48'). The applicants are requesting modification of the current height amendment as provided in Section 11.4.7(k).

"In approving a conditional zoning district, the Town Board may modify standards established in the Zoning or Subdivision ordinance provided the spirit of the regulations are maintained."



Use	Currently Allowed (sf)	Existing (sf)	Proposed (sf)	Total (sf)
Indoor Movie Theatre	75,000	53,270	53,270	53,270
Commercial/Retail/Restaurant	275,000	252,090	25,000	277,090
Office	160,000	150,829	150,000	300,829
Multifamily Units	320	320	350	670 Units
Hotel	0	0	130,000 (125 Room)	125 Room

- Urban Open Space is being provided by the existing McDowell Creek Greenway (4.62 acres) and a Promenade (0.16 acres). There are 2.2 acres of Common Open Space. All are existing and there are no changes proposed.
- There will be no impacts to the existing tree canopy or specimen tree count as part of this rezoning.
- There are no identified Heritage Trees on site.
- Building elevations for the proposed structure have not been submitted. Architectural renderings have been provided (Attachment E).
- The applicant has requested a 5-year vesting period for the Rezoning Plan. The Zoning Ordinance currently offers a 2-year vesting period (Article 2.2.3).
- Planning, Transportation, and Storm Water Engineering staff have minor rezoning plan comments outstanding that need to be addressed prior to final plan approval.
- Two (2) Ordinance Modifications are Proposed:

- Article 4.2 Urban Workplace – Has a maximum building height of 45'. The applicant is requesting to increase the maximum height to 115'
- Article 4.4 Shopfront Building – Has a maximum building height of 48'. The applicant is requesting to increase the maximum height to 115'
- Office building (115'), Hotel building (90'), Muti-Family building (75'), and two accessory parking decks (70').

Staff Comment - The request would allow for a significant increase in building height over what is curenntly permitted by the Zoning Odiance. This is not in keeping with the Spirit of the Ordiance, staff DOES NOT SUPPORT this modification request.

PART 3: TRANSPORTATION ISSUES

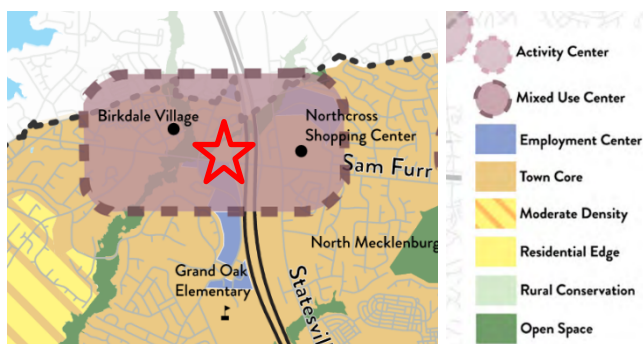
Traffic Impact Analysis (TIA)

Both the Town and NCDOT required a TIA. The Town deferred the TIA to NCDOT. The TIA did not recommend any additional improvements. Please note NCDOT project U-5765 is programmed for construction to begin in 2026 with Right-of Way acquisition to beginning in 2023.

PART 4: REZONING CRITERIA

Article 11.4.7(d) of the Zoning Ordinance states that “in considering any petition to reclassify property, the Planning Board in its recommendation and the Town Board in its decision shall take into consideration any identified relevant adopted land-use plans for the area including, but not limited to, comprehensive plans, strategic plans, district plans, area plans, neighborhood plans, corridor plans, and other land-use policy documents”.

2040 Huntersville Community Plan



STAFF COMMENT – The 2040 Huntersville Community Plan DOES SUPPORT this project through the following sections:

- **Policy LU 2.1:** Higher intensity residential uses will be focused generally within 2 miles of the I77/NC115 corridor and future activity centers in the eastern and western areas of Huntersville zoning jurisdiction.
- **Policy LU 6.1:** A mix of land uses is encouraged in Mixed-Use Centers, Activity Centers, Employment Centers identified on the Future Land Use Map.
- **Policy LU 6.2:** Commercial uses are encouraged in the Town Core and as specified in adopted Small Area Plans.
- **Policy LU 7.1:** Require all new development to adhere to the following design principles: In Mixed Use Centers, Activity Centers, Town Core, and Moderate Density Areas, Streets and sidewalk are meant to be attractive and inviting. New development in these areas shall follow these principles:
 - In Mixed-Use Centers, Activity Centers, Town Core, and Moderate Density Areas, streets and sidewalks are meant to be attractive and inviting. New development in these areas shall follow these principles:
 - All buildings shall front a public street or open space.
 - Streets should be connected, have short blocks and sidewalks on both sides of streets.

- Improve connectivity, particularly for pedestrians and vehicles.
 - Parking lots, if required, should be predominately located behind buildings screened from view and larger lots should be broken by buildings and or landscape features.
 - In lower intensity areas (including MD, RE, RC, CW) preservation of rural character and natural resources are prioritized.
 - In these areas, structures can be set back further from the road and should blend into the landscape and the scenic nature of roadways should be preserved.
- **Policy LU 8.1:** Continue to emphasize form and flexibility in development regulations for these areas.
 - The current zoning ordinance has basic form based standards with flexibility built-in. Key elements include allowing multiple types of land uses, a mix of uses, minimal setbacks, and parking requirements.
 - **Policy LU 8.2:** Evaluate and strengthen incentives to encourage the achievement of higher design standards. Consider incentives that allow applicants to demonstrate excellence in design and exceptional public benefit for projects in key areas.
 - Offer flexibility using performance standards, guided by the design principles.
 - Specify intended outcomes and how site or building-specific design solutions can better achieve desired outcomes.
 - Evaluate incentives periodically to determine their value given shifting market and neighborhood conditions.
 - Incentives that could include:
 - Modification of height limit.
 - Increase in percent of allowable attached residential.
 - Reduced parking requirements.
 - Reduced buffer yard requirements
 - **Policy EV 1.2:** Focus economic development in areas that support growth
 - Preserve areas suitable for business and industrial development, along with a mixture of support uses, to ensure an adequate inventory of land for future growth and development, with increases to this inventory as required. These areas should have proximity to existing or future activity centers, have access to transportation options and utility service, and offer amenities for employees.

STAFF COMMENT – The 2040 Huntersville Community Plan DOES NOT SUPPORT this project through the following sections:

- **Policy LU 5.1:** Allow for more intense development only where transportation infrastructure and utilities already exist. Staff Comment – NCDOT widening project will not begin until 2026. The widening project completion will most likely occur after the construction of the new buildings at Birkdale.
- **Policy LU-11: Protect Existing Housing Stock.**
 - **LU 11.1:** Protect and enhance the unique character of Huntersville’s neighborhoods by using planning tools to safeguard from potentially negative impacts of development and redevelopment.
 - Promote quality design and neighborhood improvements including increasing access to parks and recreation and mobility options.
 - Encourage coordination with neighborhoods to address infrastructure needs such as sidewalks and drainage.
 - **LU 11.2:** Along existing streets, encourage new buildings to respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings.
- **Policy LU 12.3:** Blend new development with existing neighborhoods, structures and landscapes through the use of transitions in building types and placement of open space, buffers, and other site features.

Article 11 Section 11.4.7(e) of the Zoning Ordinance states that: “in considering any petition to reclassify property the Planning Board in its recommendation and the Town Board in its decision should consider:

1. Whether the proposed reclassification is consistent with the overall character of existing development in the immediate vicinity of the subject property.

STAFF COMMENT:

The proposed rezoning for the Birkdale Village is consistent with envisioned uses and development pattern set forth in the 2040 Community Plan.

2. The adequacy of public facilities and services intended to serve the subject property, including but not limited to roadways, transit service, parks and recreational facilities, police and fire protection, hospitals and medical services, schools, storm water drainage systems, water supplies, and wastewater and refuse disposal.

STAFF COMMENT:

- A Transportation Impact Analysis was not required – see Part 3 of this report.
- Charlotte Water currently provides service to the site.
- CMS Student Generation Report:

<i>Schools Affected</i>	<i>Total Classroom Teachers</i>	<i>Building Classrooms/ Teacher Stations</i>	<i>20th Day, Enrollment (non-ec)</i>	<i>Building Classroom/ Adjusted Capacity (Without Mobiles)</i>	<i>20th Day, Building Utilization (Without Mobiles)</i>	<i>Additional Students As a result of this development</i>	<i>Utilization As of result of this development (Without Mobiles)</i>
J. V. WASHAM ELEMENTARY	51.80	39	861	648	133%	19	135%
BAILEY MIDDLE	73.65	57	1370	1060	129%	10	129%
WILLIAM AMOS HOUGH HIGH	117.8	100	2470	2097	118%	14	119%

3. Whether the proposed reclassification will adversely affect a known archeological, environmental, historical, or cultural resource.”

STAFF COMMENT:

Planning staff has no indication that the request will adversely affect known archeological, environmental, or cultural resources. Staff and applicant are awaiting a final determination from the Historic Landmarks Commission. Currently the site is not encumbered by any historic easements or deed restrictions.

PART 5: STAFF RECOMMENDATION

While there are multiple Huntersville 2040 Plan policies the proposed rezoning plan is consistent with, in considering the proposed rezoning petition R22-01, Birkdale Village, staff recommends denial based on the amendment being inconsistent with Huntersville 2040 Community Plan policies LU 5.1, LU 11.1, LU 11.2, and LU 12.3.

It is not reasonable and in the public interest to amend the Zoning Ordinance because the building height modifications requested under Section 11.4.7(k) of 70', 75', 90' & 115', substantially exceed the maximum 48' established for Shopfront buildings (and 45' Urban Workplace buildings) and is not "in the spirit of the regulations". Previous height modifications requested under Section 11.4.7(k) have been several feet to one story and some involved unusual topography to demonstrate the modifications were in the "spirit of the regulations".

PART 6: PUBLIC HEARING COMMENTS

A Public Hearing was held on for October 3, 2022.

PART 7: PLANNING BOARD RECOMMENDATION

NOTE: The Huntersville Planning Board hearing was October 25, 2022, when the height modification was 145'. The proposed rezoning plan was amended January 3, 2023.

Amended Motion: F. Gammon made a Motion to recommend approval of the petition R22-01 Birkdale Village. The Planning Board has considered and finds that the rezoning is consistent with Huntersville Zoning Ordinance Articles 11.4.7 (d) and 11.4.7 (e). Furthermore, the petition is consistent with the Huntersville 2040 Community Plan policies LU2.1, LU6.1, LU7.1, LU8.1 and LU8.2. This recommendation for approval is contingent upon Huntersville Town Board approval of TA22-06 Building Height and SUP22-01, all outstanding staff comments are addressed, and that hotel and commercial building maximum heights be changed from 145 to 115 feet. It is reasonable in the public interest to amend the zoning ordinance because the rezoning is consistent with the envisioned uses and development pattern set forth in the 2040 Community Plan. S. Swanick seconded the motion.

Amended Motion Vote: The motion passed (4-2-1) with C. Boyd and T. Loomis opposed and S. Hensley abstaining.

PART 8: TOWN BOARD CONSIDERATION

Town Board consideration is scheduled for January 17, 2023

PART 9: ATTACHMENTS/ENCLOSURES

Attachments

- A – Rezoning Application
- B – R22-01 Rezoning Plan
- C – Neighborhood Meeting Report (September 22, 2022)
- D – CMS Student Generation
- E – Building Facade Perspectives

PART 10: CONSISTENCY STATEMENT – R22-01 Birkdale Village

Planning Department	Planning Board	Board of Commissioners
	Amended Motion: F. Gammon made a Motion to recommend approval of the petition R22-01 Birkdale Village. The Planning Board has considered and finds that the rezoning is consistent with Huntersville Zoning Ordinance Articles 11.4.7 (d) and 11.4.7 (e). Furthermore, the petition is consistent with the Huntersville 2040 Community Plan policies LU2.1, LU6.1, LU7.1, LU8.1 and LU8.2. This recommendation for approval is contingent upon Huntersville Town Board approval of TA22-06 Building Height and SUP22-01, all outstanding staff comments are addressed, and that hotel and commercial building maximum heights be changed from 145 to 115 feet. It is reasonable in the public interest to amend the zoning ordinance because the rezoning is consistent with the envisioned uses and development pattern set forth in the 2040 Community Plan. S. Swanick seconded the motion. Amended Motion Vote: The motion passed (4-2-1) with C. Boyd and T. Loomis opposed and S. Hensley abstaining.	APPROVAL: In considering the proposed rezoning application R22-01, Birkdale Village, the Town Board recommends approval based on the Plan being consistent with <u>(insert applicable plan reference)</u>. <u>It is reasonable and in the public interest to approve the Rezoning Plan because... (Explain)</u>
DENIAL: While there are multiple Huntersville 2040 Plan policies the proposed rezoning plan is consistent with, in considering the proposed rezoning petition R22-01, Birkdale Village, staff recommends denial based on the amendment being inconsistent with Huntersville 2040 Community Plan policies LU 5.1, LU 11.1, LU 11.2, and LU 12.3. It is not reasonable and in the public interest to amend the Zoning Ordinance because the building height modifications		DENIAL: In considering the proposed rezoning application R22-01, Birkdale Village, the Town Board recommends denial based on the Plan being <u>(consistent OR inconsistent) with (insert applicable plan reference)</u>. <u>It is not reasonable and in the public interest to approve the Rezoning Plan because... (Explain)</u>

requested under Section 11.4.7(k) of 70', 75', 90' & 115', substantially exceed the maximum 48' established for Shopfront buildings (and 45' Urban Workplace buildings) and is not "in the spirit of the regulations". Previous height modifications requested under Section 11.4.7(k) have been several feet to one story and some involved unusual topography to demonstrate the modifications were in the "spirit of the regulations".		
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General Application

INCOMPLETE SUBMISSIONS WILL NOT BE ACCEPTED. PLEASE CHECK ALL ITEMS CAREFULLY.

1. Application Type

Please indicate the type of application you are submitting. In addition to the application, the submission process for each application type can be found at <https://www.huntersville.org/528/Permits-Process>

- ☐ Change of Use
- ☐ Commercial Site Plan
- ☒ Conditional Rezoning
- ☐ General Rezoning
- ☐ Master Signage Program
- ☐ Special Use Permit
- ☐ Revision to
Original Project # _____
- ☐ Other _____

- SUBDIVISION CATEGORIES: Per the Huntersville Subdivision Ordinance
- ☐ Sketch Plan
 - ☐ Preliminary Plan
 - ☐ Final Plat (Includes Minor Subdivision)
 - ☐ Exempt Subdivision
 - ☐ Final Plat Revision
 - ☐ Farmhouse Cluster

2. Project Data

Date of Application 03/30/2022

Name of Project Birkdale Village Rezoning Phase # (if subdivision) _____

Project Address 8725 Townley Rd, Huntersville NC 28078

Parcel Identification Number(s) (PIN) 00537157 & 00537197

Current Zoning District HC-(CD) Proposed District (for rezoning only) HC-(CD)

Property Size (acres) 8.82 acres (2 parcels) Street Frontage (feet) 1,651 feet + 1,544 feet

Current Land Use Commercial

Proposed Land Use(s) Office, Hotel, Multi-Family, Commercial

Is the project within Huntersville's corporate limits?

Yes X No _____ If no, does the applicant intend to voluntarily annex? _____

3. Description of Request

Explain the nature of this request. If a separate sheet is necessary, please attach to this application.

The request is to amend the existing rezoning plans for Birkdale Village so that the owner can develop a 7-story office/commercial building, 12-story hotel, and a mixed use commercial/ residential building with 350 multifamily units. 2 new 6-story parking decks will also be added to accommodate the new development, in replacement of the existing ones.

4. Site Plan Submittals

Consult the particular type of *Review Process* for the application type selected above. These can be found at <https://www.huntersville.org/528/Permits-Process>.

5. Outside Agency Information

Other agencies may have applications and fees associated with the land development process. The *Review Process* list includes plan documents needed for most town and county reviewing agencies. For major subdivisions, commercial site plans, and rezoning petitions please enclose a copy of the Charlotte-Mecklenburg Utility *Willingness to Serve* letter for the subject property.

6. Applicant

Printed Name DDRTC Birkdale Village, LLC Phone 404-946-0939
☐ Corporation ☒ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

☒ By signature below, I hereby acknowledge, as/on behalf of (circle one) the applicant my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Commissioners except through sworn testimony at the public hearing. (Applicable for Special Use Permits and Subdivisions)

Signature  Printed Name: Mike Lant

Title Senior VP Development Email Mike.Lant@NAProperties.com

Address of Applicant 1175 Peachtree Street, Suite 1650, Atlanta Georgia 30361

7. Property Owner (if different than applicant)

*Printed Name _____ Phone _____
☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

☐ By signature below, I hereby acknowledge, as/on behalf of (circle one) the owner my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Commissioners except through sworn testimony at the public hearing. (Applicable for Special Use Permits and Subdivisions)

Signature _____ Printed Name _____

Title _____ Email _____

Address of Property Owner _____

* Property owner hereby grants permission to the Town of Huntersville personnel to enter the subject property for any purpose required in processing this application.

Every owner of each parcel included in this application, or the owner (s) duly authorized agent, must sign this application. If signed by an agent on behalf of the Owner, this application **MUST** be accompanied by a notarized Limited Power of Attorney signed by the property owner (s), specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an **INVALID APPLICATION**. **If additional space is needed for signatures, attach the Town of Huntersville Signature Addendum Form.**

8. Development/Design Firm Contact Information

North American Properties	Nick Lombardo	404-946-0939	nick.lombardo@naproperties.com
Development Firm	Name of Contact	Phone	Email
HensonFoley	Jay Henson	704-875-1615	jay@hensonfoley.com
Design Firm	Name of Contact	Phone	Email

Contact Information

Town of Huntersville	Phone:	704-875-7000
Planning Department	Fax:	704-992-5528
PO Box 664	Physical Address:	105 Gilead Road, Third Floor
Huntersville, NC 28070	Website:	https://www.huntersville.org/228/Planning-Department

Sheet List Table	
Sheet Number	Sheet Title
Z01	COVER
Z02	SURVEY-EXISTING FEATURES
Z02A	SURVEY-EXISTING FEATURES
Z03	REZONING PLAN
Z04	PRELIM GRADING PLAN
Z05	PRELIM LANDSCAPE PLAN

REZONING PLAN PACKAGE

PROPOSED

BIRKDALE VILLAGE OFFICE / HOTEL

HUNTERSVILLE, MECKLENBURG COUNTY, NC

EPM#439459

R22-01

OWNER/DEVELOPER:

DDRTC BIRKDALE VILLAGE, LLC

C/O NORTH AMERICAN PROPERTIES

8712 LINDHOLM DR SUITE 206

HUNTERSVILLE, NC 28078

PH: (404) 946-0939



VICINITY MAP

SCALE: N.T.S.



BIRKDALE VILLAGE REZONING

PIN #00537157 / 00537197

LINDHOLM DR AND TOWNLEY RD, HUNTERSVILLE NC 28078

COVER

REVISIONS:

2022/08/23 - REZONING COMMENTS

2022/09/19 - REZONING COMMENTS

2022/11/02- REZONING COMMENTS

2023/01/03- REZONING COMMENTS

1. CONTRACTOR IS FULLY RESPONSIBLE FOR CONTACTING APPROPRIATE PARTIES AND ASSURING THAT EXISTING UTILITIES ARE LOCATED PRIOR TO BEGINNING CONSTRUCTION.
2. CONTRACTOR IS RESPONSIBLE FOR PLACING BARRICADES USING FLAGMEN, ETC., AS NECESSARY TO INSURE SAFETY TO THE PUBLIC.
3. ALL PAVEMENT CUTS, CONCRETE OR ASPHALT, ARE TO BE REPLACED ACCORDING TO STANDARDS OF THE DEPARTMENT OF TRANSPORTATION.
4. SHORING WILL BE ACCORDING TO OSHA TRENCHING STANDARDS PART 1926 SUBPART F, OR AS AMENDED.



CONTROL #108
N=622,187.962'
E=1,435,768.273'
EL:734.95'
MAG NAIL

TOWNLEY ROAD
69' WIDE PUBLIC R/W (MB 34 PG 795)

BIRKDALE COMMONS PARKWAY
37.5' WIDE PUBLIC R/W (MB 33 PG 319 & MB 34 PG 795)

N 64°49'30" E 346.32'

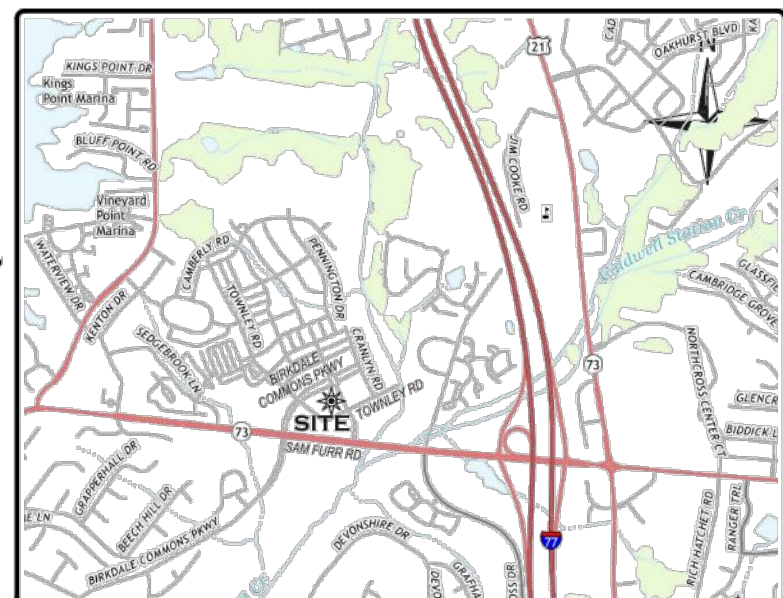
CONTROL #116
N=622,291.463'
E=1,440,090.441'
EL:731.02'
DRILL HOLE

CONTROL #119
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E=1,440,193.545'
EL:731.46'
DRILL HOLE

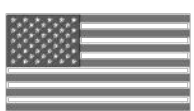
CONTROL #112
N=622,349.882'
E=1,440,301.896'
EL:731.32'
DRILL HOLE (PROPERTY CORNER)

BUILDING
#16836
#16838
#16840
#16842
BIRKDALE COMMONS PKWY.

BUILDING
#16848
#16846
#16850
BIRKDALE COMMONS PKWY.



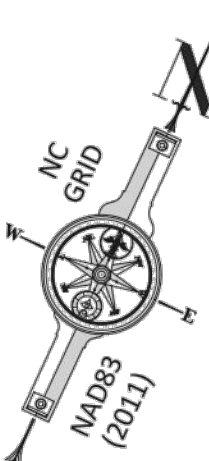
VICINITY MAP (NO SCALE)



CURVE TABLE				
CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING
C1	688.95'	125.86'	125.68'	N 59°17'40" E
C2	70.50'	64.32'	62.11'	S 74°17'30" E
C3	20.50'	24.07'	22.71'	N 82°40'38" W

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 64°45'52" W	3.49'

N/F
DDRTC BIRKDALE VILLAGE, LLC
PIN #005-371-97
DB 21859 PG 546
LOT 6, MB 33 PG 319 &
MB 34 PG 795
ZONED: HC(CD)
8711 - 8715 LINDHOLM DR.
16735 - 16739 CRANLYN RD.
8805 - 8825 TOWNLEY RD.
16916 - 16932 BIRKDALE COMMONS PKWY.



LINE LEGEND

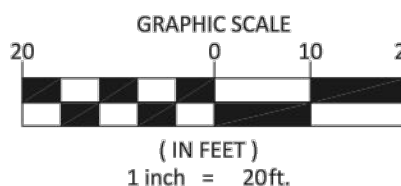
---	PROPERTY BOUNDARY
---	ADJACENT BOUNDARY (NOT SURVEYED)
---	PROPERTY BOUNDARY TIE LINE ONLY
---	RIGHT OF WAY LINE
---	EASEMENT LINE
---	CURB AND GUTTER
---	STORM DRAIN PIPE
---	HAND RAIL
---	SANITARY SEWER PIPE
---	FIBER OPTIC MARKOUT
---	TELECOMMUNICATIONS MARKOUT
---	TELEVISION MARKOUT
---	UNDERGROUND ELECTRIC MARKOUT
---	GAS MARKOUT
---	WATERLINE MARKOUT
---	UNKNOWN UTILITY

SYMBOL LEGEND

●	REBAR FOUND (RFB)
✱	DRILL HOLE FOUND (DHF)
✱	MAG NAIL FOUND (MNF)
✱	MAG NAIL SET (MNS)
△	CALCULATED POINT (CP)
○	SURVEY CONTROL POINT
□	AIR CONDITIONER
□	POSTAL MAILBOX
○	GAS METER
○	GAS VALVE
○	SANITARY CLEAN OUT
○	SANITARY MANHOLE
○	WATER METER
○	WATER VALVE
○	FIRE HYDRANT
○	FIRE DEPARTMENT CONNECTION
○	BACKFLOW PREVENTER
○	TELEPHONE HAND HOLE
○	TELEPHONE BOX
○	COMMUNICATIONS HAND HOLE
○	CABLE TV BOX
○	ELECTRIC HAND HOLE
○	ELECTRIC BOX
○	ELECTRIC TRANSFORMER
○	ELECTRIC METER
○	LIGHT POLE
○	STORM MANHOLE
○	CURB INLET
○	DROP INLET
○	AREA DRAIN
○	STORM CLEAN OUT
○	END OF INFORMATION
○	LINE CONTINUES

ABBREVIATIONS

DB	DEED BOOK
MB	MAP BOOK
PG	PAGE
N/F	NOW OR FORMERLY
R/W	RIGHT-OF-WAY
SF	SQUARE FEET
AC	ACRES
EX	EXISTING



PLAT SHOWING A
BOUNDARY &
TOPOGRAPHIC SURVEY

PREPARED FOR:
DDRTC BIRKDALE VILLAGE, LLC
LOT 5, BIRKDALE VILLAGE - MAP 1
(MAP BOOK 34 PAGE 795)
TOWN OF HUNTERSVILLE, MECKLENBURG COUNTY
NORTH CAROLINA
DEED REFERENCE: DB 21859, PG 546
TAX PARCEL ID #005-371-57

GUISEWHITE PROFESSIONAL
LAND SURVEYING, PC

GPLS

P.O. BOX 680388
CHARLOTTE, NC 28216
(704) 530-1700 NC FIRM #C-4411

- NOTES:
- THIS PLAT IS NOT INTENDED FOR RECORDATION AS PER G.S. 47-30 AS AMENDED.
 - THIS SURVEY WAS PERFORMED WITHOUT BENEFIT OF A TITLE COMMITMENT REPORT. GUISEWHITE PROFESSIONAL LAND SURVEYING, PC DOES NOT CLAIM THAT ALL MATTERS OF RECORD WHICH MAY OR MAY NOT AFFECT THE SUBJECT PROPERTY ARE SHOWN HEREON.
 - ALL CORNERS MONUMENTED AS SHOWN.
 - BROKEN LINES INDICATE PROPERTY LINES NOT SURVEYED.
 - PHYSICAL IMPROVEMENTS MAY EXIST ON THIS PROPERTY THAT ARE NOT SHOWN HEREON.
 - NO NORTH CAROLINA GEODETIC SURVEY HORIZONTAL CONTROL IS LOCATED WITHIN 2000' OF THIS SITE.
 - ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES UNLESS OTHERWISE SHOWN.
 - AREAS COMPUTED BY COORDINATE GEOMETRY.
 - THE LOCATION OF UNDERGROUND UTILITIES SHOWN ON THIS MAP IS APPROXIMATE, BASED ON INFORMATION PROVIDED BY OTHERS OR BY FIELD LOCATION. ALL UTILITIES SHOWN HEREON ARE SUBJECT TO VERIFICATION.
 - ANY ZONING & SETBACK INFORMATION SHOWN HEREON IS PER INFORMATION AVAILABLE AT THE TIME OF SURVEY AND IS SUBJECT TO VERIFICATION AND INTERPRETATION BY GOVERNING AUTHORITIES.

I, TIMOTHY S. GUISEWHITE, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION; THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DASHED LINES, DRAWN FROM INFORMATION REFERENCED ON THE FACE OF THIS PLAT; THAT THE RATIO OF PRECISION OR POSITIONAL ACCURACY IS 0.072 Sdppm; THAT THIS MAP MEETS THE REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA (21 NCAC 56.1600), THIS 28TH DAY OF FEBRUARY, A.D., 2022.

Seal of Timothy S. Guisewhite, Professional Land Surveyor, North Carolina, License No. L-4912.

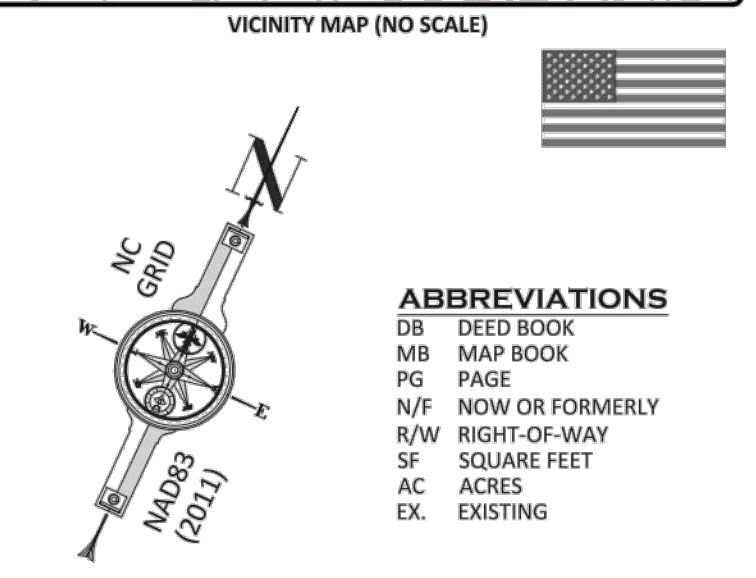
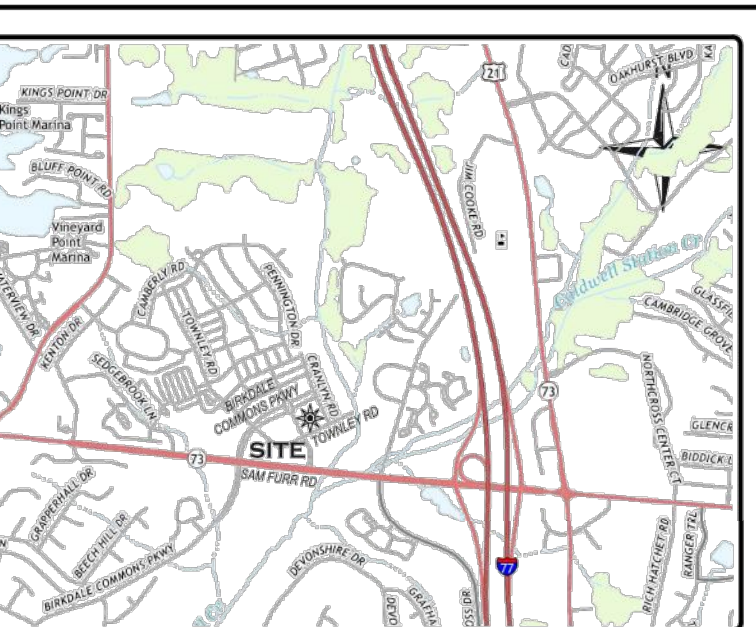
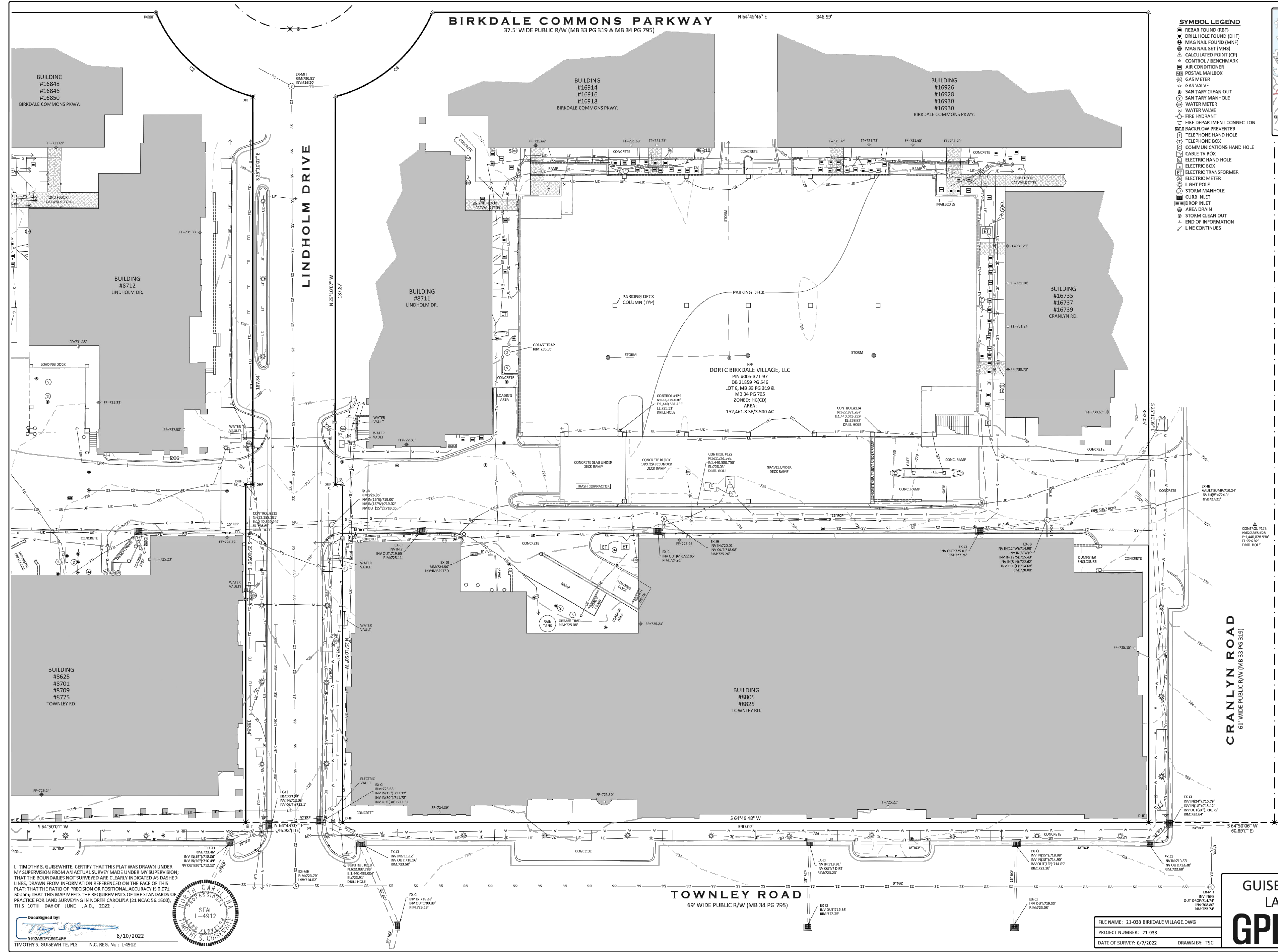
2/28/2022
TIMOTHY S. GUISEWHITE, PLS N.C. REG. NO.: L-4912

BUILDING
#8625
#8701
#8709
#8725
TOWNLEY RD.

TOWNLEY ROAD
69' WIDE PUBLIC R/W (MB 34 PG 795)

FILE NAME: 21-033 BIRKDALE VILLAGE.DWG
PROJECT NUMBER: 21-033
DATE OF SURVEY: XX/XX/2019
DRAWN BY: TSG

REVISIONS:



SYMBOL LEGEND

- REBAR FOUND (RBF)
- DRILL HOLE FOUND (DHF)
- MAG NAIL FOUND (MNF)
- MAG NAIL SET (MNS)
- CALCULATED POINT (CP)
- CONTROL / BENCHMARK
- AIR CONDITIONER
- POSTAL MAILBOX
- GAS METER
- GAS VALVE
- SANITARY CLEAN OUT
- SANITARY MANHOLE
- WATER METER
- WATER VALVE
- FIRE HYDRANT
- FIRE DEPARTMENT CONNECTION
- BACKFLOW PREVENTER
- TELEPHONE HAND HOLE
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- COMMUNICATIONS HAND HOLE
- CABLE TV BOX
- ELECTRIC HAND HOLE
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- STORM MANHOLE
- CURB INLET
- SEWER INLET
- AREA DRAIN
- STORM CLEAN OUT
- END OF INFORMATION
- LINE CONTINUES

ABBREVIATIONS

- DB DEED BOOK
- MB MAP BOOK
- PG PAGE
- N/F NOW OR FORMERLY
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LINE LEGEND

- PROPERTY BOUNDARY
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- PROPERTY BOUNDARY TIE LINE ONLY
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- TELEVISION MARKOUT
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- GAS MARKOUT
- WATERLINE MARKOUT
- UNKNOWN UTILITY

CURVE TABLE

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING
C1	688.50	125.80	125.80	N 59° 57' 48" E
C2	70.50	64.32	62.11	S 74° 17' 30" E
C3	20.50	24.07	22.71	N 82° 40' 38" W
C4	70.50	64.30	62.09	N 23° 54' 55" E

LINE TABLE

LINE	BEARING	DISTANCE
L1	S 64° 45' 52" W	3.49
L2	S 64° 49' 10" W	3.47

- NOTES:**
- THIS PLAT IS NOT INTENDED FOR RECORDATION AS PER G.S. 47-30 AS AMENDED.
 - THIS SURVEY WAS PERFORMED WITHOUT BENEFIT OF A TITLE COMMITMENT REPORT. GUISEWHITE PROFESSIONAL LAND SURVEYING, PC DOES NOT CLAIM THAT ALL MATTERS OF RECORD WHICH MAY OR MAY NOT AFFECT THE SUBJECT PROPERTY ARE SHOWN HEREON.
 - ALL CORNERS MONUMENTED AS SHOWN.
 - BROKEN LINES INDICATE PROPERTY LINES NOT SURVEYED.
 - PHYSICAL IMPROVEMENTS MAY EXIST ON THIS PROPERTY THAT ARE NOT SHOWN HEREON.
 - NO NORTH CAROLINA GEODETIC SURVEY HORIZONTAL CONTROL IS LOCATED WITHIN 200' OF THIS SITE.
 - ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES UNLESS OTHERWISE SHOWN.
 - AREAS COMPUTED BY COORDINATE GEOMETRY.
 - THE LOCATION OF UNDERGROUND UTILITIES SHOWN ON THIS MAP IS APPROXIMATE, BASED ON INFORMATION PROVIDED BY OTHERS OR BY FIELD LOCATION. ALL UTILITIES SHOWN HEREON ARE SUBJECT TO VERIFICATION.
 - ANY ZONING & SETBACK INFORMATION SHOWN HEREON IS PER INFORMATION AVAILABLE AT THE TIME OF SURVEY AND IS SUBJECT TO VERIFICATION AND INTERPRETATION BY GOVERNING AUTHORITIES.

PLAT SHOWING A BOUNDARY & TOPOGRAPHIC SURVEY

PREPARED FOR:
DDRTC BIRKDALE VILLAGE, LLC
LOT 6, BIRKDALE VILLAGE - MAP 1
(MAP BOOK 34 PAGE 795)
TOWN OF HUNTERSVILLE
MECKLENBURG COUNTY
NORTH CAROLINA
DEED REFERENCE:
DB 21859, PG 546
TAX PARCEL ID #005-371-97

GUISEWHITE PROFESSIONAL LAND SURVEYING, PC

GPLS

P.O. BOX 680388
CHARLOTTE, NC 28216
(704) 530-1700 NC FIRM #C-4411

FILE NAME: 21-033 BIRKDALE VILLAGE.DWG
PROJECT NUMBER: 21-033
DATE OF SURVEY: 6/7/2022
DRAWN BY: TSG

GENERAL NOTES:

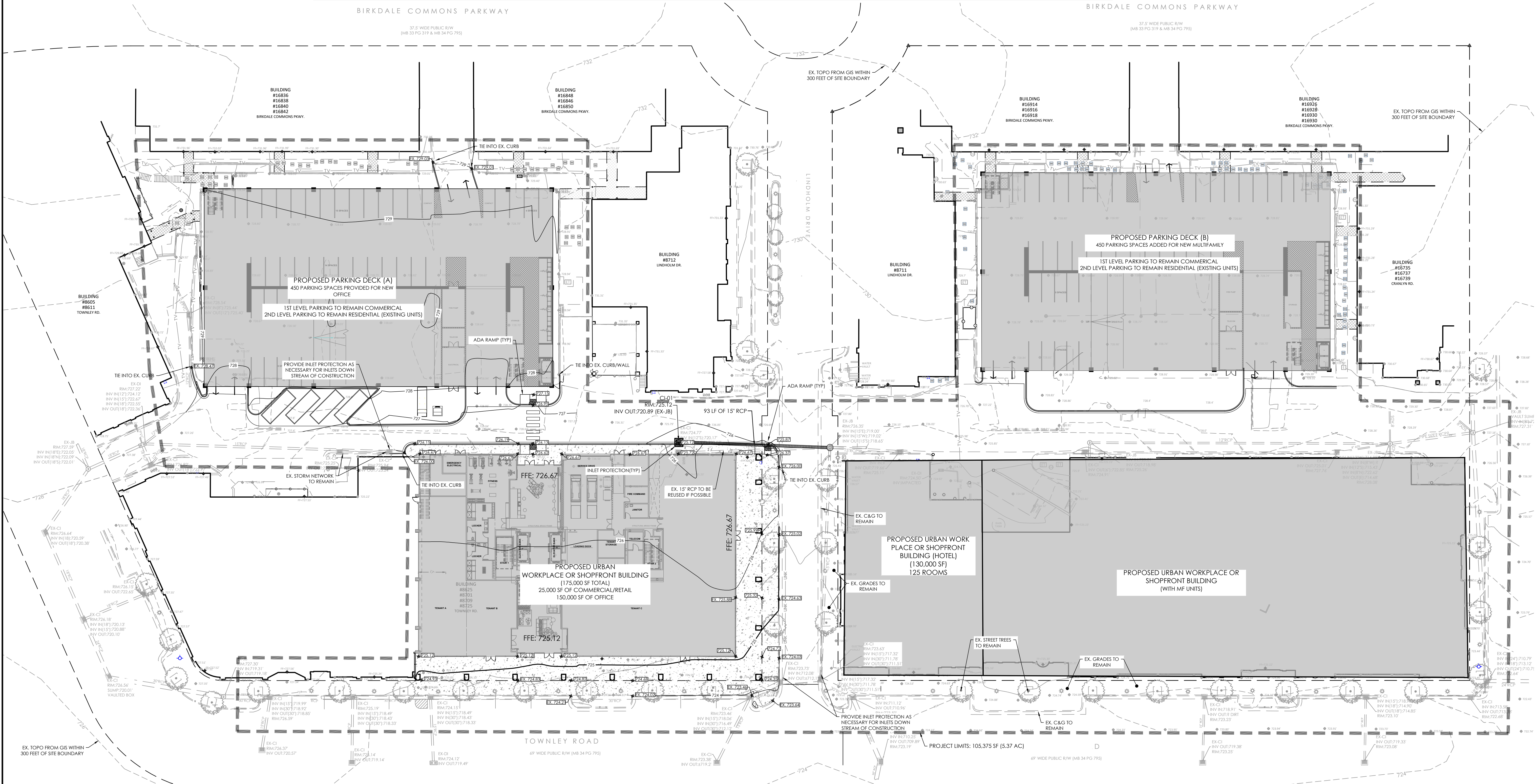
- APPROVAL OF THIS PLAN IS NOT AN AUTHORIZATION TO GRADE ADJACENT PROPERTIES. WHEN FIELD CONDITIONS WARRANT OFF-SITE GRADING, PERMISSION MUST BE OBTAINED FROM THE AFFECTED OWNERS.
- THE DEVELOPER SHALL MAINTAIN EACH STREAM, CREEK, OR BACKWASH CHANNEL IN AN UNOBSTRUCTED STATE AND SHALL REMOVE FROM THE CHANNEL AND BANKS OF THE STREAM ALL DEBRIS, LOGS, TIMBER, JUNK AND OTHER ACCUMULATIONS.
- COMMUNITY ENCROACHMENT LINE MUST BE MARKED AND MAINTAINED ON SITE UNTIL FINAL GRADING IS COMPLETED.
- ANY CONSTRUCTION OR USE WITHIN THE AREAS DELINEATED AS FLOODWAY DISTRICT FRINGE BOUNDARY LINE OR FLOODWAY DISTRICT ENCROACHMENT BOUNDARY LINE IS SUBJECT TO THE RESTRICTIONS IMPOSED BY THE FLOODWAY REGULATIONS OF THE TOWN OF HUNTERSVILLE AND MECKLENBURG COUNTY.
- THE MECKLENBURG COUNTY OR TOWN OF HUNTERSVILLE ENGINEERING DEPARTMENT HAS NOT REVIEWED THE STRUCTURAL STABILITY OF ANY RETAINING WALLS ON THE SITE AND DOES NOT ASSUME RESPONSIBILITY FOR THEM.
- NON-STANDARD ITEMS (I.E.: PAVERS, IRRIGATION SYSTEMS, ETC.) IN THE RIGHT-OF-WAY REQUIRE A RIGHT-OF-WAY ENCROACHMENT AGREEMENT WITH THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION OR TOWN OF HUNTERSVILLE BEFORE INSTALLATION.
- ALL ROOF DRAINS TO CONNECT TO UNDERGROUND STORM DRAINAGE SYSTEM.

NOTE: ALL SPOT ELEVATIONS ARE TO FACE OF CURB
UNLESS OTHERWISE NOTED

GENERAL NOTES:

- ALL STORM WATER CATCH BASINS, INLETS, MANHOLES, ETC. SHALL BE PERMANENTLY LABELED AS "NO DUMPING, DRAINS TO RIVER" AND INCLUDE A FISH SYMBOL.
- SOIL FILL (GEOTECH REPORT SHALL TAKE PRECEDENCE OVER THIS SPECIFICATION IF EXISTS).
- FLOW, SCARIFY, BENCH, OR BREAK UP SLOPED SURFACES STEEPER THAN 1 VERTICAL TO 4 HORIZONTAL SO FILL MATERIAL WILL BOND WITH EXISTING MATERIAL.
- PLACE AND COMPACT FILL MATERIAL IN LAYERS TO REQUIRED ELEVATIONS AS FOLLOWS:
 - UNDER GRASS AND PLANTED AREAS, USE SATISFACTORY SOIL MATERIAL.
 - UNDER WALKS AND PAVEMENTS, USE SATISFACTORY SOIL MATERIAL.
 - UNDER STEPS AND RAMPS, USE ENGINEERED FILL.
 - UNDER BUILDING SLABS, USE ENGINEERED FILL.
 - UNDER FOOTINGS AND FOUNDATIONS, USE ENGINEERED FILL.
 - PLACE SOIL FILL ON SUBGRADES FREE OF MUD, FROST, SNOW, OR ICE.
- SOIL MOISTURE CONTROL
 - REVISE PERCENTAGES IN THIS ARTICLE ACCORDING TO GEOTECHNICAL ENGINEER'S WRITTEN RECOMMENDATIONS.
 - UNIFORMLY MOISTEN OR AERATE SUBGRADE AND EACH SUBSEQUENT FILL OR BACKFILL SOIL LAYER BEFORE COMPACTION TO WITHIN 2 PERCENT OF OPTIMUM MOISTURE CONTENT.
 - DO NOT PLACE BACKFILL OR FILL SOIL MATERIAL ON SURFACES THAT ARE MUDDY, FROZEN, OR CONTAIN FROST OR ICE.
 - REMOVE AND REPLACE, OR SCARIFY AND AIR DRY, OTHERWISE SATISFACTORY SOIL MATERIAL THAT EXCEEDS OPTIMUM MOISTURE CONTENT BY 2 PERCENT AND IS TOO WET TO COMPACT TO SPECIFIED DRY UNIT WEIGHT.
- COMPACTION OF SOIL BACKFILLS AND FILLS
 - PLACE BACKFILL AND FILL SOIL MATERIALS IN LAYERS NOT MORE THAN 8 INCHES (200 MM) IN LOOSE DEPTH FOR MATERIAL COMPACTED BY HEAVY COMPACTION EQUIPMENT, AND NOT MORE THAN 4 INCHES (100 MM) IN LOOSE DEPTH FOR MATERIAL COMPACTED BY HAND-OPERATED TAMPERS.
 - PLACE BACKFILL AND FILL SOIL MATERIALS EVENLY ON ALL SIDES OF STRUCTURES TO REQUIRED ELEVATIONS, AND UNIFORMLY ALONG THE FULL LENGTH OF EACH STRUCTURE.
 - COMPACT SOIL MATERIALS TO NOT LESS THAN THE FOLLOWING PERCENTAGES OF MAXIMUM DRY UNIT WEIGHT ACCORDING TO ASTM D 698:
 - UNDER STRUCTURES, BUILDING SLABS, STEPS, AND PAVEMENTS, SCARIFY AND RECOMPACT TOP 12 INCHES (300 MM) OF EXISTING SUBGRADE AND EACH LAYER OF BACKFILL OR FILL SOIL MATERIAL AT 100 PERCENT.
 - UNDER WALKWAYS, SCARIFY AND RECOMPACT TOP 6 INCHES (150 MM) BELOW SUBGRADE AND COMPACT EACH LAYER OF BACKFILL OR FILL SOIL MATERIAL AT 95 PERCENT.
 - UNDER TURF OR UNPAVED AREAS, SCARIFY AND RECOMPACT TOP 6 INCHES (150 MM) BELOW SUBGRADE AND COMPACT EACH LAYER OF BACKFILL OR FILL SOIL MATERIAL AT 85 PERCENT.
 - FOR UTILITY TRENCHES, COMPACT EACH LAYER OF INITIAL AND FINAL BACKFILL SOIL MATERIAL AT 95 PERCENT.

- GRADING
 - GENERAL: UNIFORMLY GRADE AREAS TO A SMOOTH SURFACE, FREE OF IRREGULAR SURFACE CHANGES. COMPLY WITH COMPACTION REQUIREMENTS AND GRADE TO CROSS SECTIONS, LINES, AND ELEVATIONS INDICATED.
 - PROVIDE A SMOOTH TRANSITION BETWEEN ADJACENT EXISTING GRADES AND NEW GRADES.
 - CUT OUT SOFT SPOTS, FILL LOW SPOTS, AND TRIM HIGH SPOTS TO COMPLY WITH REQUIRED SURFACE TOLERANCES.
 - SITE ROUGH GRADING: SLOPE GRADES TO DIRECT WATER AWAY FROM BUILDINGS AND TO PREVENT PONDING. FINISH SUBGRADES TO REQUIRED ELEVATIONS WITHIN THE FOLLOWING TOLERANCES:
 - TURF OR UNPAVED AREAS: PLUS OR MINUS 1 INCH (25 MM).
 - WALKS: PLUS OR MINUS 1 INCH (25 MM).
 - PAVEMENTS: PLUS OR MINUS 1/2 INCH (13 MM).
 - GRADING INSIDE BUILDING LINES: FINISH SUBGRADE TO A TOLERANCE OF 1/2 INCH (13 MM) WHEN TESTED WITH A 10-FOOT (3-M) STRAIGHTEDGE.
- FIELD QUALITY CONTROL
 - TESTING AGENCY: OWNER WILL ENGAGE A QUALIFIED GEOTECHNICAL ENGINEERING TESTING AGENCY TO PERFORM TESTS AND INSPECTIONS.
 - ALLOW TESTING AGENCY TO INSPECT AND TEST SUBGRADES AND EACH FILL OR BACKFILL LAYER. PROCEED WITH SUBSEQUENT EARTH MOVING ONLY AFTER TEST RESULTS FOR PREVIOUSLY COMPLETED WORK COMPLY WITH REQUIREMENTS.
 - FOOTING SUBGRADE: AT FOOTING SUBGRADES, AT LEAST ONE TEST OF EACH SOIL STRATUM WILL BE PERFORMED TO VERIFY DESIGN BEARING CAPACITIES. SUBSEQUENT VERIFICATION AND APPROVAL OF OTHER FOOTING SUBGRADES MAY BE BASED ON A VISUAL COMPARISON OF SUBGRADE WITH TESTED SUBGRADE WHEN APPROVED BY ARCHITECT.
 - TESTING AGENCY WILL TEST COMPACTION OF SOILS IN PLACE ACCORDING TO ASTM D 1556, ASTM D 2147, ASTM D 2922, AND ASTM D 2937, AS APPLICABLE. TESTS WILL BE PERFORMED AT THE FOLLOWING LOCATIONS AND FREQUENCIES:
 - PAVED AND BUILDING SLAB AREAS: AT SUBGRADE AND AT EACH COMPACTED FILL AND BACKFILL LAYER, AT LEAST ONE TEST FOR EVERY 2000 SQ. FT. (186 SQ. M) OR LESS OF PAVED AREA OR BUILDING SLAB, BUT IN NO CASE FEWER THAN THREE TESTS.
 - FOUNDATION WALL BACKFILL: AT EACH COMPACTED BACKFILL LAYER, AT LEAST ONE TEST FOR EVERY 100 FEET (30 M) OR LESS OF WALL LENGTH, BUT NO FEWER THAN TWO TESTS.
 - TRENCH BACKFILL: AT EACH COMPACTED INITIAL AND FINAL BACKFILL LAYER, AT LEAST ONE TEST FOR EVERY 150 FEET (46 M) OR LESS OF TRENCH LENGTH, BUT NO FEWER THAN TWO TESTS.
 - WHEN TESTING AGENCY REPORTS THAT SUBGRADES, FILLS, OR BACKFILLS HAVE NOT ACHIEVED DEGREE OF COMPACTION SPECIFIED, SCARIFY AND MOISTEN OR AERATE, OR REMOVE AND REPLACE SOIL MATERIALS TO DEPTH REQUIRED; RECOMPACT AND RETEST UNTIL SPECIFIED COMPACTION IS OBTAINED.



- CONTRACTOR IS FULLY RESPONSIBLE FOR CONTACTING APPROPRIATE PARTIES AND ASSURING THAT EXISTING UTILITIES ARE LOCATED PRIOR TO BEGINNING CONSTRUCTION.
- CONTRACTOR IS RESPONSIBLE FOR PLACING BARRICADES USING FLAGMEN, ETC., AS NECESSARY TO INSURE SAFETY TO THE PUBLIC.
- ALL PAVEMENT CUTS, CONCRETE OR ASPHALT, ARE TO BE REPLACED ACCORDING TO STANDARDS OF THE DEPARTMENT OF TRANSPORTATION.
- SHORING WILL BE ACCORDING TO OSHA TRENCHING STANDARDS PART 1926 SUBPART F, OR AS AMENDED.



BIRKDALE VILLAGE REZONING

PIN #00537157, 00537197
LINDHOLM DR AND TOWNLEY RD, HUNTERSVILLE NC 28078

PRELIM GRADING PLAN

REVISIONS:

- 2022/08/23 - REZONING COMMENTS
- 2022/09/19 - REZONING COMMENTS
- 2022/11/02 - REZONING COMMENTS
- 2023/01/03 - REZONING COMMENTS

Z04 - PRELIM GRADING.DWG

PROJECT NUMBER: 222020

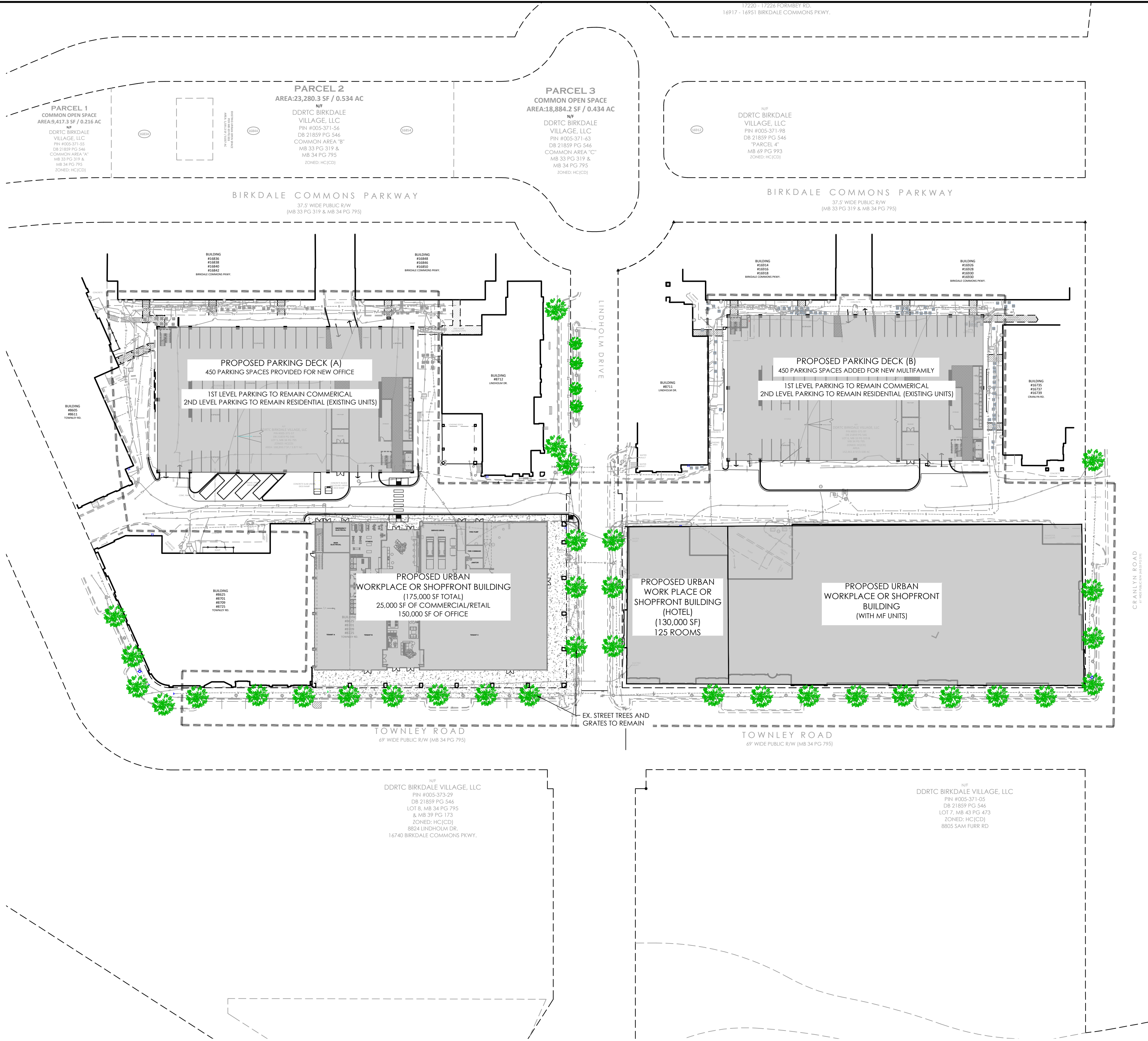
DATE: 06/21/2022 DRAWN BY: TSF

SHEET 204 OF 5

LEGEND



EXISTING STREET TREES TO REMAIN



BIRKDALE VILLAGE REZONING

LINDHOLM DR AND TOWNLEY RD, HUNTERSVILLE NC 28078

PRELIM LANDSCAPE PLAN

REVISIONS:

2022/08/23 - REZONING COMMENTS
2022/09/19 - REZONING COMMENTS
2022/11/02- REZONING COMMENTS
2023/01/03- REZONING COMMENTS

Z05 -PRELIM LANDSCAPE PLAN.DWG

PROJECT NUMBER: 222020

DATE: 06/21/2022 DRAWN BY: TSF

Z05 OF 5
SHEET OF

HensonFoley
Landscape Architecture | Civil Engineering
121 Gilead, Huntersville NC 28078
p: 704.875.1615 | f: 704.875.0959 | www.hensonfoley.com
NC ENGINEERING BOARD LICENSE #: C-3781
NC LANDSCAPE ARCHITECTURE BOARD LICENSE #: C-399

NORTH ARROW
GRAPHIC SCALE 1"=50 FT.
Professional Engineer Seal for HensonFoley, dated 06/20/2023.

- CONTRACTOR IS FULLY RESPONSIBLE FOR CONTACTING APPROPRIATE PARTIES AND ASSURING THAT EXISTING UTILITIES ARE LOCATED PRIOR TO BEGINNING CONSTRUCTION.
- CONTRACTOR IS RESPONSIBLE FOR PLACING BARRICADES USING FLAGMEN, ETC., AS NECESSARY TO INSURE SAFETY TO THE PUBLIC.
- ALL PAVEMENT CUTS, CONCRETE OR ASPHALT, ARE TO BE REPLACED ACCORDING TO STANDARDS OF THE DEPARTMENT OF TRANSPORTATION.
- SHORING WILL BE ACCORDING TO OSHA TRENCHING STANDARDS PART 1926 SUBPART F, OR AS AMENDED.



Birkdale Village Rezoning

Neighborhood Meeting Report

Date: September 22, 2022

Time: 6:00pm-7:45pm

Location: Dellwood Community Center, 508 Dellwood Drive, Huntersville, North Carolina 28078

Applicants and the neighborhood attendees discussed the following comments and questions:

General Comments

- There are traffic and congestion issues in Birkdale Village and the surrounding residences
 - Sam Furr/Highway 73 traffic
 - Lindholm Drive traffic
 - Formby Rd. traffic
 - Delivery truck traffic
 - Landscaper traffic
 - Cut through traffic in the Greens, specifically Pennington Dr.
 - Potential connection to Northcross Dr. with Townley Rd. extension
 - Traffic can be overwhelming sometimes and make it hard to leave the neighborhood
- Music volume on the speakers in Birkdale is too high, also change music selection
- Light pollution from the new buildings
- Current security of the property needs to be upgraded
- The design of the new buildings should be in keeping with the aesthetic and character of Birkdale Village
- The office building is very nice, and could be better if there were some design elements that fit with the original design
- Parking issues
 - Developer could remove some parking on Formby Rd. to make it more inviting to residents and visitors
- Neighbors would like to see the TIA and traffic count data
- Neighbors would like to see the future roadway improvement plans for the Sam Furr/Highway 73 corridor
- I love this project and the plans look great, I am just worried about traffic and congestion
- Birkdale is a little village, and the new buildings might change that
- Birkdale's original design was as a *Neotraditional* aesthetic with European-like streets

Questions

***Answers in bold**

1. Where will deliveries be made to the new buildings?
 - **There are alleyways to the rear of the new buildings where deliveries will be made.**
2. Can you design the office building and other structures to conform to the theme and design of the current Birkdale Village?
 - **The developer will explore options to better fit the aesthetic. Final design will be reviewed by Staff.**

3. Did the TIA consider the development of the Birkdale Golf Club across Highway 73?
 - **Yes, the Birkdale Golf Club is an approved plan and was included in the TIA calculations.**
4. Did the TIA consider the construction on Birkdale Commons Parkway during their traffic count?
 - **The TIA process includes traffic counts from a number of intersections and these intersections were designated by NCDOT.**
5. Can the developer remove parallel parking on certain streets (specifically Formby and other narrow roads) to allow for a more inviting pedestrian experience?
 - **This is public parking on a public street that the developer does not control.**
6. Is there a project on the books for the Townley Rd. extension to Northcross Dr.?
 - **This extension to Northcross Dr. has been contemplated for about 17 years. There is no official/definitive date on when this will occur.**
7. Can the developer give money to the Town to expedite the construction of the bridge connection to Northcross Drive?
 - **Developer will explore solutions with the Town, NCDOT, and landowners.**
8. With the scheduled improvements to Sam Furr/Highway 73, how much more capacity will the roads have? Can we see the documents related to NCDOT's plans?
 - **Significantly more capacity, turning Hwy 73 into a superstreet and other traffic alleviating measures will reduce the current stress on traffic in the area. Primarily traffic will be routed to Northcross Dr. to avoid gridlock at the I-77 Interchange.**
 - **NCDOT's plans are available on their website and are included in the Neighborhood Meeting presentation.**
9. What is the current parking ratio for Birkdale (parking spots per dwelling unit)?
 - **Current parking ratio is about 4.5, and after construction of the additional buildings the ratio will remain at about 4.5. However, on weekday evenings and weekends when the office tenants are not there, the ratio will increase due to the additional supply of 400 spots to the general public.**
10. What can the developer do to limit cut through traffic on Townley and Pennington?
 - **These are public roads, but the developer can explore options with the Town and NCDOT.**
11. Will parking in the new parking decks be free?
 - **Yes.**
12. Can the developer add no parking signs in areas where there are congestion issues?
 - **If it is a public street then most likely not, but developer can look into solutions.**
13. How will the NCDOT improvement projects line up with the new development?
 - **NCDOT improvements to Sam Furr/73 are scheduled for 2025-2026. The office building is at least 5 years out and the multi-family component/hotel would be completed after that. The NCDOT improvements and the construction of the new buildings coincide with each other based on the current schedule.**
14. If NCDOT plans get delayed will the Birkdale improvements be delayed?
 - **No, but the right of way acquisition process and easement acquisition process are currently underway for the Sam Furr/73 improvements.**
15. Can the developer tie construction of this project to the NCDOT improvements?

- **This agreement cannot be made as it would eliminate the opportunity for the developer to market the buildings to prospective tenants.**
16. When will all the NCDOT improvements to Sam Furr/Highway 73 be complete?
- **The improvements are scheduled for 2025-2026, right of way and easement acquisition are currently underway.**
17. What if there is another pandemic? Will this development continue?
- **Difficult to predict.**
18. Are there plans to expand Northcross Dr. and Westmoreland Rd.?
- **Yes, Northcross Drive will extend and connect to Westmoreland Rd., there are also traffic alleviation plans that will direct more traffic to Northcross Dr. and away from the I-77 Interchange.**
19. What is the timeline for the construction of the office, hotel, and multi-family?
- **The office and hotel are planned first, and that construction is at least 5 years out, financing will take at least 1-2 years from now to complete so the timeline is not set in stone. The multi-family component would begin after that.**
20. While NCDOT is constructing improvements to Northcross Dr. (including the roundabout) can they also construct the connection bridge to Townley Rd. at the same time?
- **Can explore options with NCDOT and the Town.**
21. Regal just went bankrupt, will this impact the Regal at Birkdale?
- **This will not impact the movie theater at Birkdale.**
22. Will the office building look like a 12-story building?
- **The office building's first floor is retail (height of 20 ft.), second floor conference center (height of 20 ft.), and 5 floors of class-A office space above (height of 15 ft. each).**
23. Did North American Properties build the office building in Avalon?
- **Yes.**
24. How many rooms are in the hotel?
- **125 rooms.**
25. What brand of hotel? Will it be a 4 or 5 star/higher quality hotel?
- **Will be a boutique hotel, 4 stars, similar to a Moxy or AC by Marriot or a Tempo by Hilton.**
26. What about the hotel across the street?
- **This hotel is lower quality and is currently on hold.**
27. What will this do for air quality? Will this create smog?
- **Developer is following all environmental requirements/regulations.**
28. Will there be apartments in the new buildings?
- **Yes, there are plans for 350 1 & 2-bedroom apartments.**
29. What are the prices for the new apartments? What about the old apartments
- **Current prices for 1-bedroom is about \$1600/month but will be closer to \$2000/month when completed, 2-bedroom apartments are closer to \$2500/month and could be higher once completed.**
 - **The older apartments are being renovated in line with the quality of the new apartments.**
30. Has the developer thought about doing condos instead of apartments?

- **There is not a demand for condos in this area and it doesn't make financial sense.**
31. What does class-A office mean?
- **Everything is higher quality, the materials used, interior furnishings and amenities are of a higher/highest standard.**
32. Why is there so much glass on the office building?
- **Office tenants require the large windows, especially in a class-A office.**
33. What about the remote/work from home movement, will this make the office building obsolete? Is there a market for this type of office?
- **There is a demand for this type of office in Huntersville. Currently Huntersville has no class-A office space available. With the proximity to Lake Norman this is a great location for this type of office.**
34. Can the developer put the office building across the street near the Birkdale Golf Club?
- **The developer does not own this land.**
35. Is Red Rocks being demolished? Is there a building going on top of Red Rocks?
- **Red Rocks is staying, they are upgrading and adding more outdoor seating. There is nothing going on top of Red Rocks.**
36. Where will the conference center be located?
- **Located on the second floor of the office building.**
37. What is going on top of Total Wine?
- **Nothing is going on top of Total Wine.**
38. Is the office building in the picture longer than the current Barnes & Noble building?
- **No, the perspective of the picture made it seem that way.**
39. How will the developer limit light pollution at night?
- **All the buildings are smart buildings and lights will turn off at night.**
40. How will the developer ensure that the greenery on the building will last and not die?
- **This is included in the developer's rezoning plans and is part of the rezoning requirement.**
41. Where are the parking decks located?
- **They will stay at their current location but will be upgraded to increase the number of parking spots.**
42. How is this hotel allowed to build up to 12 stories when the hotel across the street could only do 6?
- **These are two very different development, Birkdale is able to ask for this increase in height due to its density and size.**
43. There is another hotel across from Kenton Place, how will this impact the new Birkdale hotel?
- **This is a different type of hotel that will attract a different type of clientele.**
44. How tall will the buildings be?
- **The 7-story office building and the hotel will be around the same height (145'), the multi-family urban workplace building will be 75', and the parking garages will be 67'.**
45. Is the multi-family building as tall as the hotel?
- **No, hotel is 145' and multi-family is 75'.**
46. Is there currently a height limit in Birkdale?
- **Yes Birkdale has a current limit of 48'.**
47. Is Birkdale zoned as an urban center?

- **Yes.**
48. Will there be new designated delivery zones for delivery trucks?
- **Delivery trucks will use the current alleyways behind the new office building and the hotel/multi-family.**
49. Will there be any electric vehicle charging stations?
- **Yes, there will be infrastructure to support electric charging stations based on demand.**
50. Will there be dedicated electric/normal bike lanes?
- **There will not be dedicated bike lanes, but the new traffic pattern around Birkdale should calm the traffic enough for bikers and drivers to share the road safely.**
51. Can the developer do something to ensure that the firepit area is safe?
- **The firepit is designed to code and has a remote on-off switch. Only on-site personnel will be able to start the fireplace. Security routinely monitors the area.**
52. Will the rooftop beer garden be safe? Will drunk people fall over the sides or down the steps?
- **Yes, this beer garden will meet all the necessary standards.**
53. Will there be any escalators or elevators?
- **Where necessary, elevators will be placed in buildings. There are no plans for any escalators to reach the rooftop bar.**
54. Will there be a new wine bar?
- **Yes, Foxcroft Wine.**
55. How many more apartments will be constructed?
- **350.**
56. Is the Cheesecake Factory a new tenant?
- **Cannot say, there is no signed contract.**
57. Has North American Properties done anything like this before?
- **Yes, this is what North American Properties does. They did this in Alpharetta, Georgia with Avalon and have done similar projects in Atlanta and in Kentucky among others.**
58. Is there a phase 2 to this project?
- **This was just on the PowerPoint for labeling purposes, the “first phase” is the \$20 million refurbishment of the current Birkdale Village and the “second phase” would be the construction of the office building, hotel, and multi-family.**
59. When can the neighbors get a good look at the design and configuration of the hotel and multi-family component?
- **The neighbors will be kept in the loop regarding design plans as the development approval process continues.**
60. Are the plans done for this project?
- **These are concepts plans, the fully rendered architectural drawings would be completed after approval of the rezoning due to costs.**
61. Once the detailed plans are done do they go back to the Town Board for review or is that something that Planning Staff handles?
- **Staff handles the review of the construction documents and finalized plans to ensure that they meet all Town and other requirements.**
62. Will the building follow any of the green initiatives?
- **Yes, the building will incorporate green building initiatives.**

63. Is this a finalized design for the hotel and apartments?
- **No, these are just example images to show the quality and potential design of the buildings.**
64. Do you know what the parking garages will look like?
- **Portions that can be seen from the public ROW will blend in with the aesthetic of the adjacent building. There are guidelines that the developer must follow to ensure this.**
65. What is the developer asking for in the zoning amendment?
- **Developer is asking to change the height of the buildings to allow for these new uses.**
66. How much more height is the developer requesting for the parking decks?
- **The developer is adding 4 levels to the parking decks, totaling 6 levels each.**
67. What are the logistics for the staging areas related to the construction of these new buildings?
- **Office construction would begin first, Barnes & Noble will be demolished and the parking area directly in front will be used as staging area for that construction. Similarly with the hotel and multi-family, once demolition happens the adjacent parking areas will be used as staging areas.**
68. What buildings will be torn down?
- **Barnes & Noble is leaving, they no longer have stores of this size (24,000 square feet), this will be demolished for the office building. The building that houses Girl's Supply and the Dick's building will be demolished for the hotel and multi-family. The parking garages will be demolished and rebuilt to modern standards.**
69. Are Girl's Supply and Dick's leaving?
- **Yes, they will be leaving at some point in the future.**
70. Could we get a Trader Joe's or grocer into the development?
- **Developer would love to get Trader Joe's or another grocer in the development. They are exploring options.**
71. What is going where the Gap is?
- **A new tenant.**
72. What is the ratio of dining options to retail options?
- **Developer wants to have about 40-50% dining options.**
73. What is the cost of valet parking? Where are the cars parked for valet?
- **Valet parking is \$15, and the cars are parked in the bottom floor of one of the parking decks.**
74. What is the price tag for all these new buildings?
- **\$240 million.**

NEIGHBORHOOD MEETING

SIGN IN SHEET

September 22, 2022, 6:00pm to 7:00pm

Birkdale Village Rezoning

Location: Dellwood Community Center, 508 Dellwood Drive, Huntersville, North Carolina 28078

Name	Address	Phone Number	Email Address
Hefke Anker	8107 Tansley Rd Huntersville	704-987-3677	
Nathan Farber	TOH	704-764-2237	nfarber@huntersville.org
Jon Boggiano	17318 Ingleswood Ln Huntersville	704 996 8565	jonboggiano@gmail.com
Fetsje Goettsch	8114 Strandhill Rd.	704-517-8110	fetsje.goettsch@gmail.com
Leslie Brown	8322 Brickle Ln	(313) 282-3724	LNBrown201@gmail.com
BREAN HARRISON	17212 BRIDGETON LANE	704-576-5102	BGHTARLES09@YAHOO.COM
Chris Boggiano	8720 Kimberly Rd Hville	201-600-5977	christian.boggiano@gmail.com
Jenifer Takings	Tannton Place Rd	704-999-2915	jltakings@gmail.com
Helen Mason	17025 Carlton Way Rd	704 647 1432	ygagnapper@gmail.com
Kitty Giese	9525 Devonshire Dr	704-502-5656	Kitty@KittyGiese.com

NEIGHBORHOOD MEETING

SIGN IN SHEET

September 22, 2022, 6:00pm to 7:00pm

Birkdale Village Rezoning

Location: Dellwood Community Center, 508 Dellwood Drive, Huntersville, North Carolina 28078

Name	Address	Phone Number	Email Address
Gay C. Rudisill	19204 Bridgeton Lane	704-646-9547	rudisill@yahoo.com
Linda Barnes	17021 Bridgeton Lane	206 713 6122	lba2828926@aol.com
Sydney Zarsadiaz	17303 Inglewood Ln.	704-343-1414	SydneyZarsadiaz@gmail.com
Randy Moose	17216 Bridgeton Ln	704 609 4734	rhmoose@roadrunner.com
Kim Zarsadiaz	17303 Inglewood	704 621 7711	Kim.lake.realty@gmail.com

NEIGHBORHOOD MEETING

SIGN IN SHEET

September 22, 2022, 6:00pm to 7:00pm

Birkdale Village Rezoning

Location: Dellwood Community Center, 508 Dellwood Drive, Huntersville, North Carolina 28078

Name	Address	Phone Number	Email Address
Jill Brown	8361 Brick Ln, Huntersville	734-717-4834	Brown1331@TWC.COM
Thomas Wright	8203 Strandhill Rd Huntersville	704-608-1222	newright9@gmail.com
TERRI GAAR	17332 Villanova Ave. 17432 Calverton Rd.	205-960-1111	tmgaar@gmail.com
David Peete	TOH	704-766-2216	dpeete@huntersville.org
Pierre McCork	8712 Lindholm Dr.		
Nick O'Shaughnessy	8217 PARKTON GATE DR	704 506 4149	nickodent@gmail.com
Mark Keener	8142 EVANSTON FALLS RD	704-608-8142	Keener.mark@gmail.com
Daryl + Karen Poppen	17018 Gorton Wy Rd	209-202-5976	dpoppen@att.net
MAGGIE PARK	8313 STRANDHILL RD	704-492-9583	mepark6@hotmail.com
Sharon Bond	8124 PARKTON GATE DR.	301-351-1703	sho2cherry@aol.com
Dawn Snow	8132 EVANSTON FALLS RD HUNTERSVILLE, NC 28078	704-577-6785	rdsnow82@gmail.com



BIRKDALE
VILLAGE

Rezoning 22-01 Conditional Rezoning

OFFICE, HOTEL, COMMERCIAL, MULTI-FAMILY, PARKING GARAGES



PHASE 1 - \$20 Million Project

Community Garden & Dog Park

Warby Parker

Good Wurst

Beer Garden

Concierge
& Valet

Stage and
LED Screen

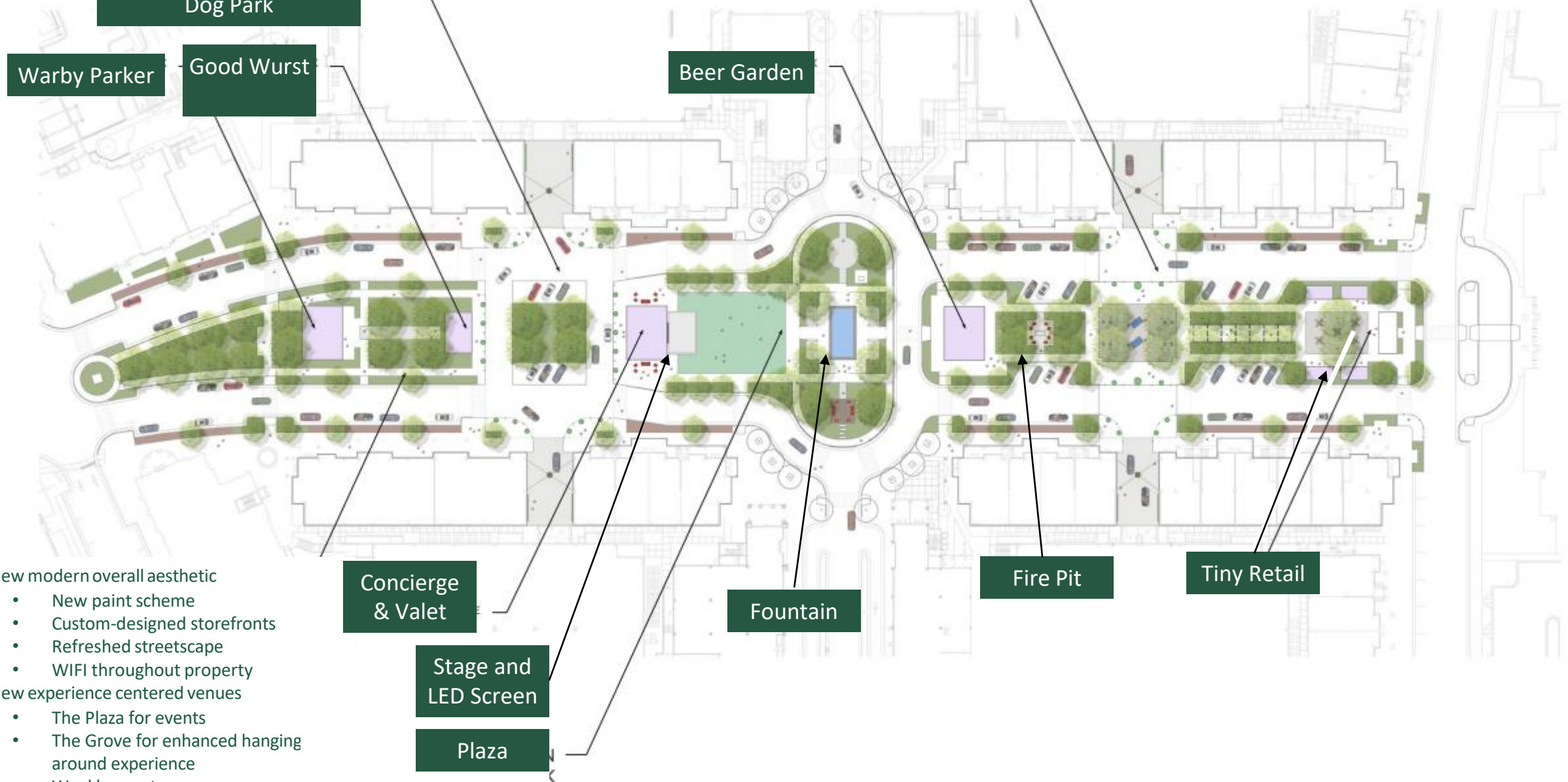
Plaza

Fountain

Fire Pit

Tiny Retail

- New modern overall aesthetic
 - New paint scheme
 - Custom-designed storefronts
 - Refreshed streetscape
 - WIFI throughout property
- New experience centered venues
 - The Plaza for events
 - The Grove for enhanced hanging around experience
 - Weekly events



Parking in Birkdale Village: Guest Comments

Follow up is there any plans to improve parking with the amount of extra people showing up parking must be a nightmare

I have no idea! 😬 there's no more parking...

. All this new stuff makes no difference unless they fix the parking problem. If they don't fix that everything they do is for nothing. Still going to have the same congestion problems.

When will new owners fix the parking issues

Would love to come if we could find parking that was taken away

Yeah, won't be coming back to Birkdale anytime soon. More congestion and no parking. Catering to who?

They just keep removing parking areas so you can valet. You're not South Park.

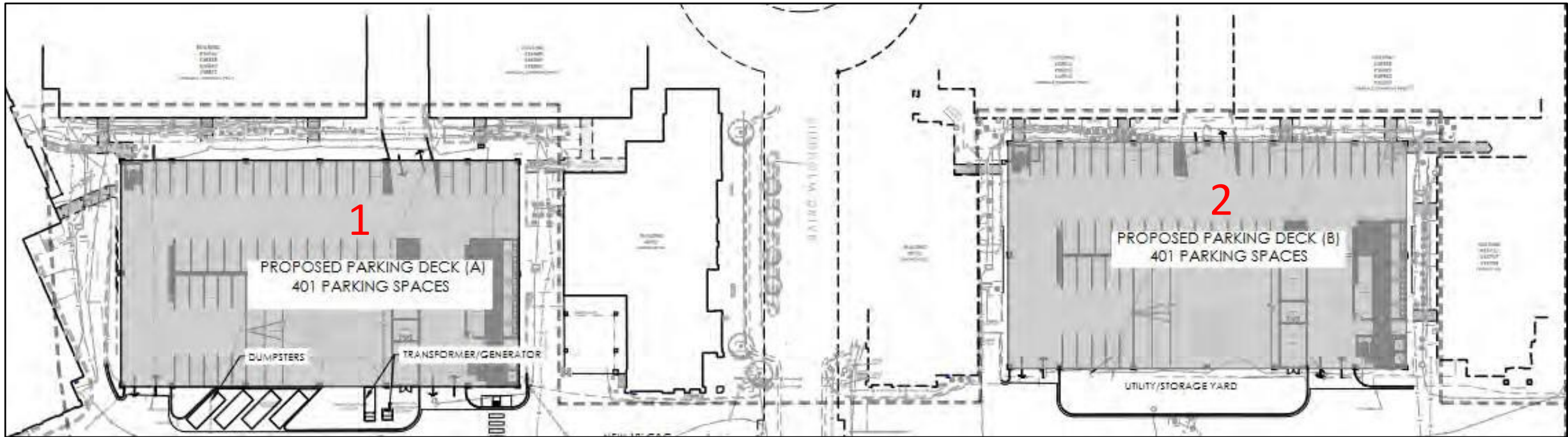
Unfortunately good luck finding parking

What a horrible idea. There's not enough parking today. Trying to change Birkdale too much.

Ah Yes ! The congestion, the increase of traffic onto streets already busy busy, and OMG – parking will be an even BIGGER problem ! ! Is there any realistic planning effort going into this "PLAN" or are residents and shoppers just supposed to "tolerate" the problems and troubles that will result ? ?



Parking in Birkdale Village: Upgraded Parking Garages



DECK #1

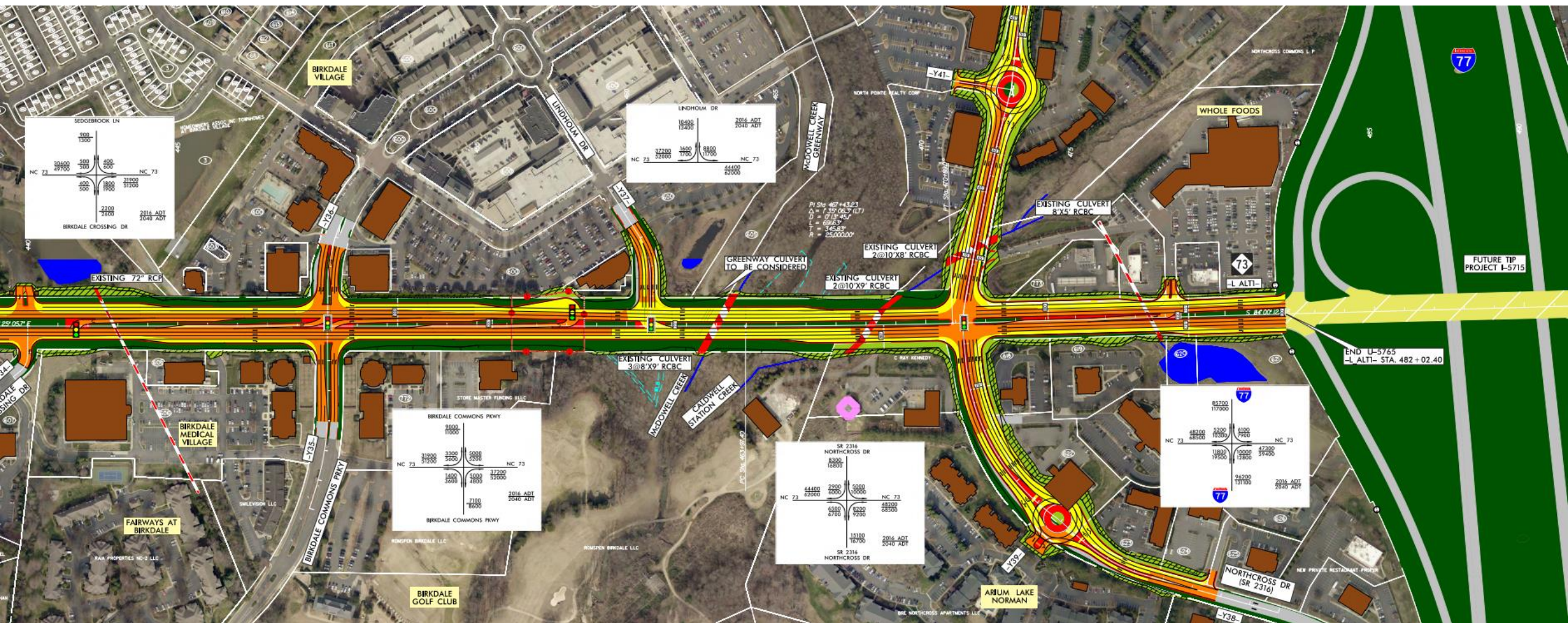
Enlarged to park 400 new spaces for the Office Building
All office parking spaces are available for public use after 5pm
and on weekends

DECK #2

Enlarged to park the additional Multi Family units.
Approx 150 spaces for Hotel and Conference Center for
public use.



NCDOT Highway 73 Improvements





NORTH AMERICAN PROPERTIES

Development Experience – Making Places to Hang Out











BIRKDALE
VILLAGE

NEW AND UPGRADED TENANT MIX

New Additions

- Foxcroft Wine Co.
- Morelia Gourmet Paletas
- The Good Wurst Co.
- Warby Parker
- Beck on Broad
- Cosmo Gypsy
- Icebox Cryotherapy
- Green Brothers Juice Co.
- Apricot Lane
- Girl Supply
- Lovesac
- Brown Bag Seafood
- Sephora
- Locals in small retail buildings

Upgrading Current Location

- Brixx Pizza
- EeZ Fusion & Sushi
- Midwood Smokehouse
- Red Rocks Café
- Savory Spice



- 86-acre mixed-use destination
- Best-in-class retailers
- Numerous dining options
- Movie theater
- Full-service hotel with conference center
- Luxury apartments and single-family residences
- Class-A office space

Nationally renowned Mixed-Use Development



What makes a great Mixed-Use Development



Connectivity



Activity



Food and Beverage



Programming





Daytime traffic goes home
Nighttime traffic comes home

Daytime traffic from Office adds activity during the weekday.



Parking for Office becomes available to the public in the evenings and on weekends





Parking Upgrades



Parking in Birkdale Village: Guest Comments

Follow up is there any plans to improve parking with the amount of extra people showing up parking must be a nightmare

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. All this new stuff makes no difference unless they fix the parking problem. If they don't fix that everything they do is for nothing. Still going to have the same congestion problems.

When will new owners fix the parking issues

Would love to come if we could find parking that was taken away

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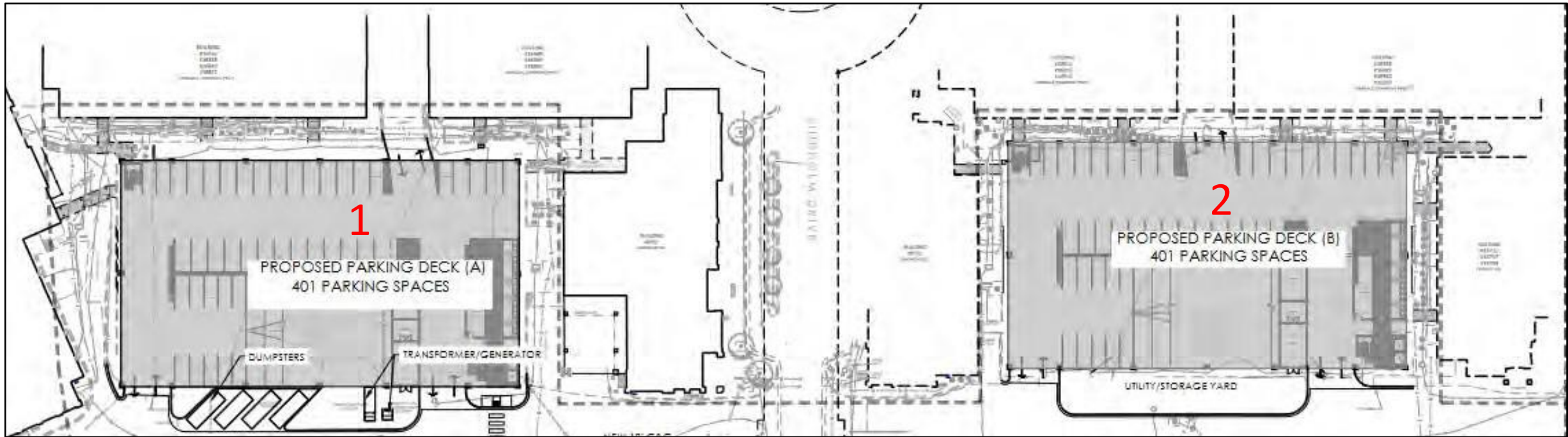
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Parking in Birkdale Village: Upgraded Parking Garages



DECK #1

Enlarged to park 400 new spaces for the Office Building
All office parking spaces are available for public use after 5pm
and on weekends

DECK #2

Enlarged to park the additional Multi Family units.
Approx 150 spaces for Hotel and Conference Center for
public use.





Design Concepts







Office/Conference Center Concept



 Office/Conference Center Concept



Hotel Concepts



Full service, Boutique type, similar to Moxy or AC by Marriott or Tempo by Hilton



Hotel Concepts



1- & 2- bedroom units
Few families with children

Mixed- Use Urban Workplace Concept





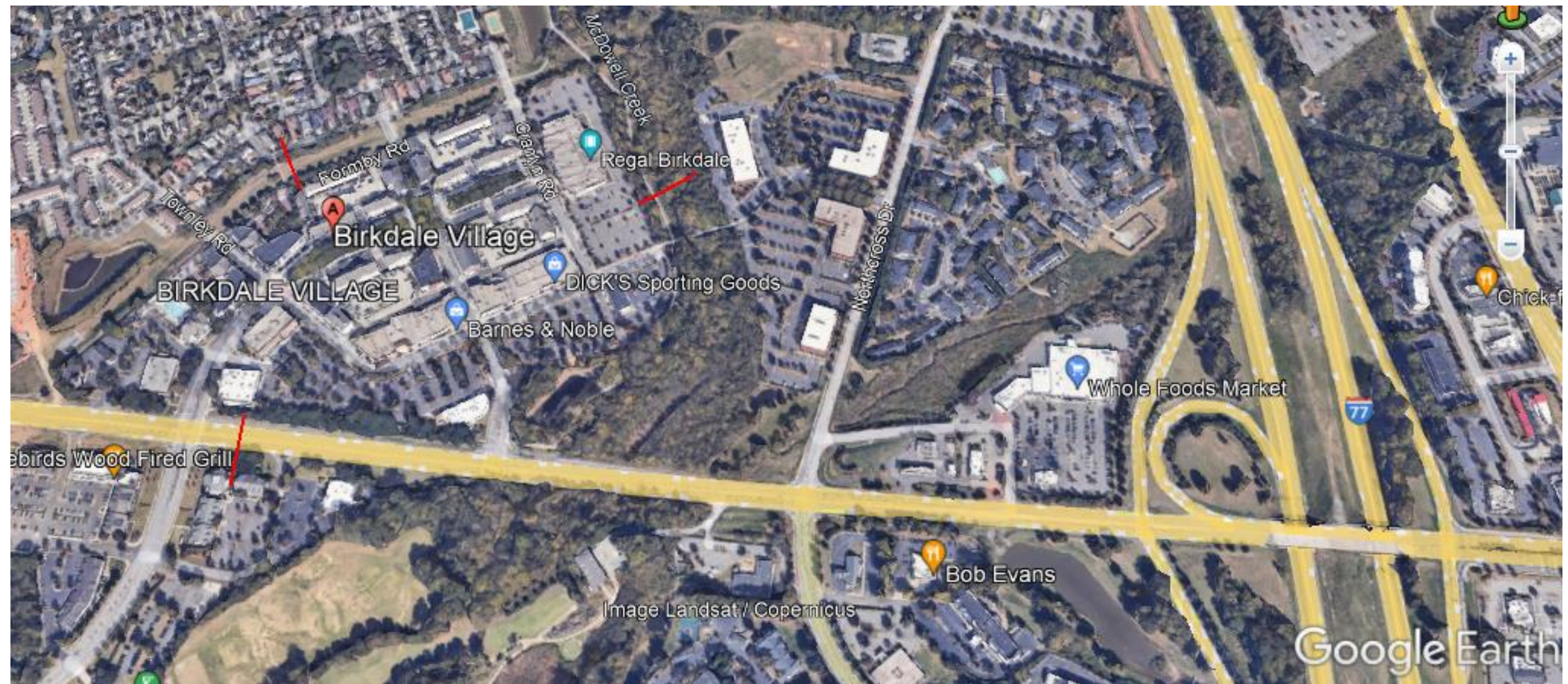
Smart Home Features
Nest thermostats
Tiled showers
Granite / Quartz counter tops
Upgraded Appliance package
Electronic entry locks



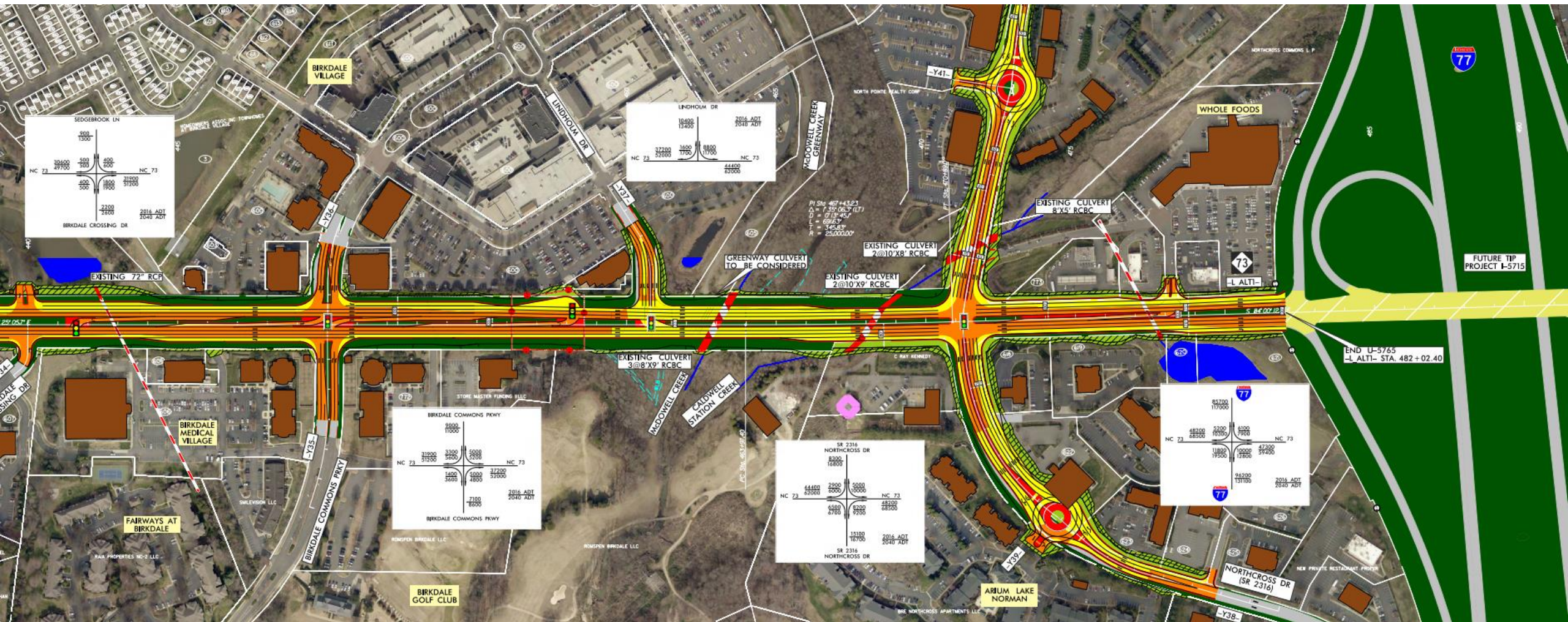


Location

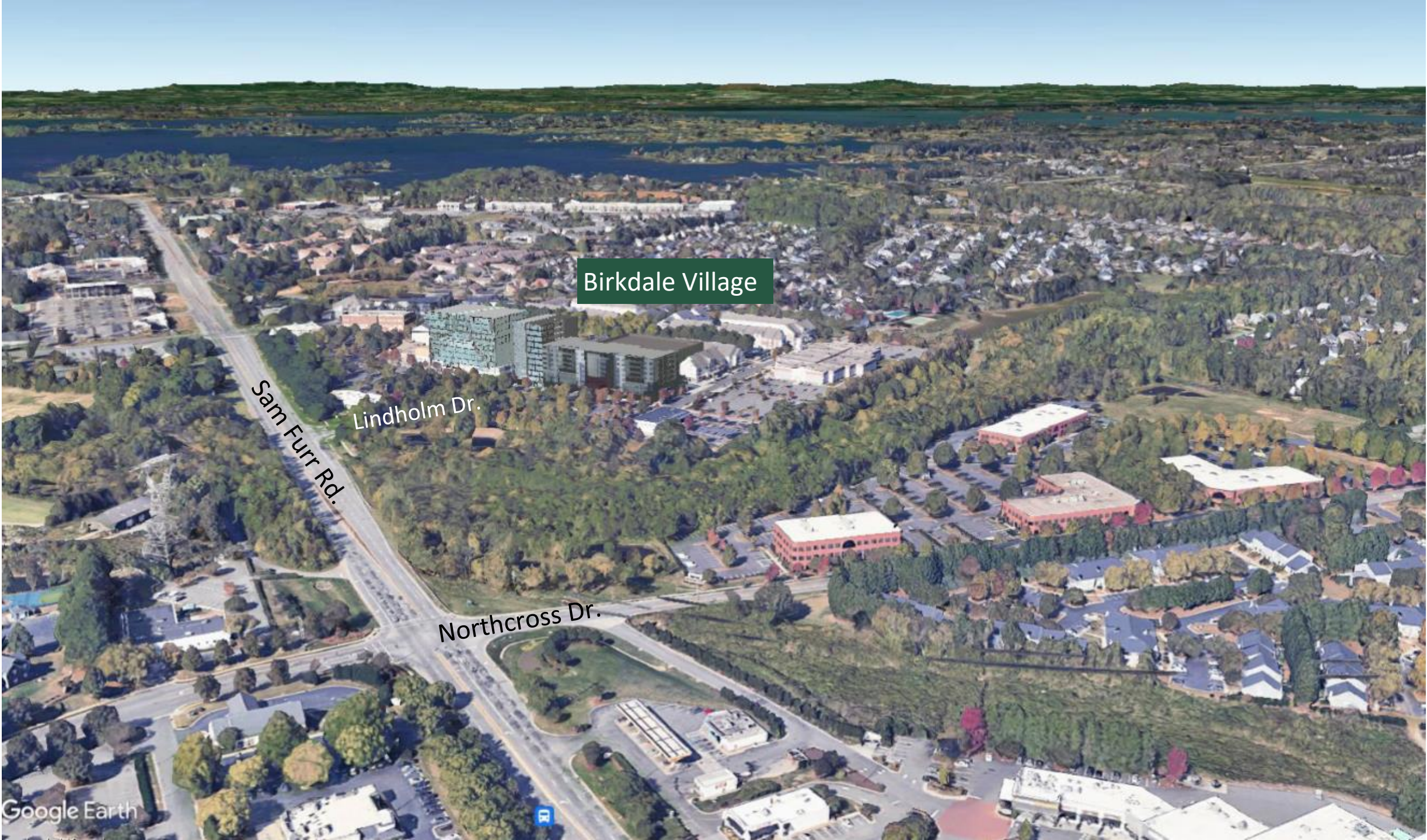




NCDOT Highway 73 Improvements







Birkdale Village

Sam Furr Rd.

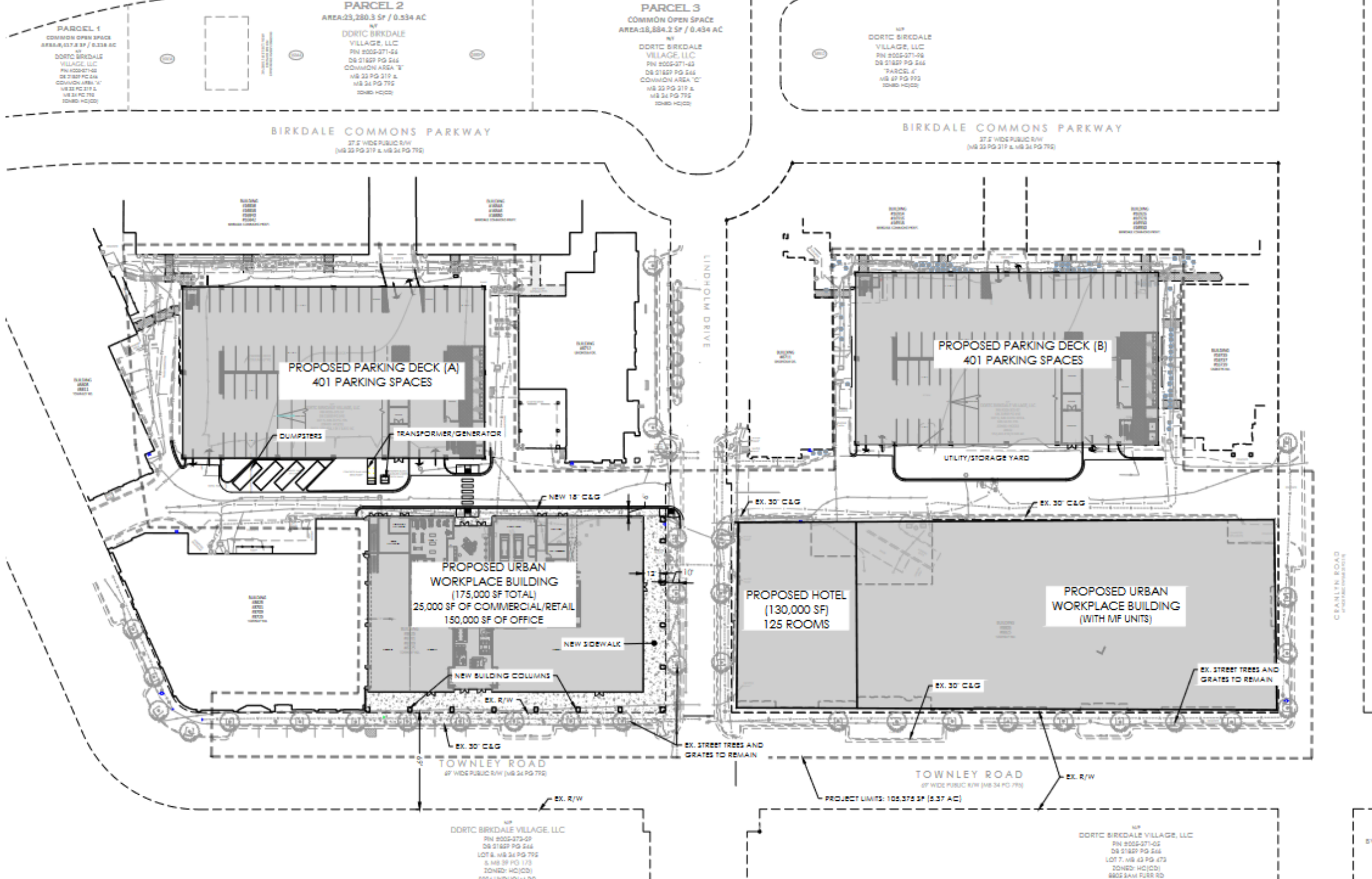
Lindholm Dr.

Northcross Dr.



Office Building







IMPLAN Economic Study





BIRKDALE
VILLAGE

IMPLAN STUDY: Economic Benefits

- IMPLAN is an economic impact assessment software program based in Huntersville, NC.
- Their local-level input-output models can estimate the economic impact from everything, including:
 - New firms moving to the area
 - Recreation/tourism
 - Commercial/Industrial development
 - Residential development

IMPLAN users in the region include:

- | | |
|---|-----------------------------|
| ▪ Lake Norman Economic Development Commission (EDC) | ▪ City of Miami |
| ▪ City of Greensboro | ▪ City of Sacramento |
| ▪ Pitt County Development Commission (Greenville, NC) | ▪ University of Chapel Hill |
| ▪ Asheville, NC Area Chamber of Commerce | ▪ University of Asheville |
| ▪ Birmingham Airport Authority | ▪ University of Charlotte |
| | ▪ Clemson University |

IMPLAN – Types of Benefits in Huntersville



Direct Benefits - Financial resources spent to build; including materials and labor



Indirect Benefits - Architectural and engineering services, appliance stores, employment services



Induced Benefits - Spending from people employed as a result of the development (restaurants and health care)



An architectural rendering of a city street scene. In the background, there are modern multi-story buildings with large glass windows and balconies. Lush green trees line the sidewalks. In the foreground, a paved street with yellow and white lane markings is shown. Several people are depicted: a person on a bicycle in the center-right, a group of pedestrians on the left, and others further back. A blue car is parked on the left, and a yellow car is on the right. The sky is blue with some white clouds.

	Construction Benefits for Huntersville (28078)
Direct	\$258,000,000.00
Indirect	\$1,633,559.22
Induced	\$726,873.80
Total	<u>\$260,360,433.02</u>

	Employment Benefits for Huntersville (28078)
Direct	\$210,316,781.85
Indirect	\$1,644,167.85
Induced	\$68,232.37
Total	<u>\$212,029,182.07</u>



BIRKDALE
VILLAGE

Thank you.





ESTD 1954

**NORTH AMERICAN
PROPERTIES**

September 7, 2022

SUBJECT: Notice of neighborhood meeting for information related to a Conditional Rezoning of approximately 8.82 acres on the northwest side of the intersection at Lindholm Drive and Townley Road, Huntersville, NC. The parcels are 005-371-57 and 005-371-97. The property owner and Applicant of the subject parcels is the DDRTC Birkdale Village, LLC.

To Whom It May Concern:

Recipients of this letter meet the notification requirements of the Town of Huntersville as being adjacent landowners with at least a portion of their properties located within 250 ft. of the subject properties, and neighborhood organizations registered with the Town of Huntersville within 2,000 ft. of any portion of the rezoning site. The purpose of the meeting is to provide an opportunity for the Applicant/Developer to describe the proposed project and to answer any questions you may have. The Applicant/Developer is requesting approval from the Town to amend the existing rezoning plans for Birkdale Village to accommodate revisions to its existing mixed-use development including new upgraded parking decks and two urban workplace buildings and a hotel to replace existing buildings.

MEETING DETAILS:

6:00 P.M. to 7:00 P.M.

Thursday, September 22, 2022

Dellwood Community Center

508 Dellwood Drive

Huntersville, NC 28078

You are welcome to attend the above-mentioned neighborhood meeting. There will be an opportunity to ask questions about the proposed subdivision.

Sincerely,

Mike Lant, Senior VP Development
DDRTC Birkdale Village, LLC

EXHIBIT A
Owners/Adjacent Owners to Parcel Numbers:
00537157 & 00537197

PARCEL 00537157, 00537154, 00537197, 00537161, 00537329, 00537105, 00537402 DDRTC BIRKDALE VILLAGE LLC C/O NORTH AMERICAN PROPERTIES 8712 LINDHOLM DR STE 206 HUNTERSVILLE, NC 28078	PARCEL 00537151 MDC NC2 LP C/O REALTY INCOME CORPORATION 2424 RIDGE RD ROCKWALL, TX 75087
PARCEL 00537194 BV INVESTMENTS LLC 177 OCEAN LANE DR UNIT 408 KEY BISCAYNE, FL 33149	PARCEL 00537114, 00537112, 00537113, 00537156, 00537163, 00537155 DDRTC BIRKDALE VILLAGE LLC C/O DEVELOPERS REALTY CORP 3300 ENTERPRISE PARKWAY BEACHWOOD, OH 44122
GREENS AT BIRKDALE VILLAGE, PROPERTY OWNERS ASSOC INC 919 NORLAND RD CHARLOTTE, NC 28205	TOWNHOMES AT BIRKDALE VILLAGE HOMEOWNERS ASSOC INC 1819 SARDIS RD NORTH UNIT 330 CHARLOTTE, NC 28270
GREENS AT BIRKDALE VILLAGE, PROPERTY OWNERS ASSOC INC C/O HENDERSON PROPERTIES 919 NORLAND RD CHARLOTTE, NC 28205	THE GREENS AT BIRKDALE VILLAGE PROPERTY OWNERS ASSOC 5970 FAIRVIEW RD STE 710 CHARLOTTE, NC 28210
TOWNHOMES AT BIRKDALE VILLAGE HOMEOWNERS ASSOC INC 3030 LATROBE DR CHARLOTTE, NC 28270	GREENS AT BIRKDALE VILLAGE PROPERTY OWNERS ASSOC INC 4055 FISH POND RD SALISBURY, NC 28146
STRATFORD FOREST COMMUNITY ASSOCIATION INC 8905 SHADOW FOREST CR CORNELIUS, NC 28031	CSP COMMUNITY OWNER LLC C/O CAMDEN SEDGEBROOK PO BOX 27329 HOUSTON, TX 77227
THE LANDINGS APARTMENTS LLC 1400 BATTLEGROUND AVE SUITE 201 GREENSBORO, NC 27408	



Planning Services

4421 Stuart Andrew Blvd.

Charlotte, NC 28217

Phone: 980-343-6246

Email: planning@cms.k12.nc.us

Town of Huntersville: 8725 Townley Rd Birkdale Village Rezoning – R22-01

IMPACT OF THE PROPOSED DEVELOPMENT

Proposed Housing Units: 350 multi- family units

CMS Planning Area: North

Average Student Yield per Unit: 0.1225

This development may add 43 students to the schools in this area.

The following data is as of 20th Day of the 2021-22 school year.

<i>Schools Affected</i>	<i>Total Classroom Teachers</i>	<i>Building Classrooms/ Teacher Stations</i>	<i>20th Day, Enrollment (non-ec)</i>	<i>Building Classroom/ Adjusted Capacity (Without Mobiles)</i>	<i>20th Day, Building Utilization (Without Mobiles)</i>	<i>Additional Students As a result of this development</i>	<i>Utilization As of result of this development (Without Mobiles)</i>
J. V. WASHAM ELEMENTARY	51.80	39	861	648	133%	19	135%
BAILEY MIDDLE	73.65	57	1370	1060	129%	10	129%
WILLIAM AMOS HOUGH HIGH	117.8	100	2470	2097	118%	14	119%

The total estimated capital cost of providing the additional school capacity for this new development is \$1,632,000; calculated as follows:

Elementary School: **19**x \$34,000 = \$646,000

Middle School: **10**x \$37,000 = \$370,000

High School: **14**x \$44,000 = \$616,000

RECOMMENDATION

Adequacy of existing school capacity is a significant problem. We are particularly concerned about a case where school utilization exceeds 100% since the proposed development may exacerbate the situation. Approval of this petition may increase overcrowding and/or reliance upon mobile classrooms at the schools listed above.

Elevations & Perspectives are conceptual which show the general theme of the architecture within the project. Final architecture shall be in keeping with this general theme.







January 10, 2023

Via Email

The Honorable Mayor and
Board of Commissioners of the Town of Huntersville
Jack Simoneau, Planning Director
Huntersville Town Hall
101 Huntersville-Concord Road
Huntersville, North Carolina 28078

RE: Rezoning Petition R22-01 *Birkdale Village* ("Application"); DDRTC Birkdale Village, LLC ("Applicant")

Dear Mayor, Commissioners and Jack:

The purpose of this letter is to respectfully request that action on the above referenced Application be deferred to the February 20, 2023 Town Board meeting. Applicant requests this deferral in order to allow review of the changes that have been made to address Commissioner comments and concerns.

We appreciate your consideration of this request.

Very truly yours,



Susan Irvin

cc: Tim Perry, North American Properties
Mike Lant, North American Properties

**Town of Huntersville
Town Board
January 17, 2023**

To: Town Board

From: Heather Maloney, Senior Planner

Date: January 17, 2023

Subject: RAISE Grant Resolution

EXPLAIN REQUEST:

Adopt Resolution to approve contract with Alta Planning +Design for RAISE grant writing services.

ACTION RECOMMENDED:

Recommendation for Approval

FINANCIAL IMPLICATIONS:

This resolution is related to item that requests approval for a budget amendment appropriating Unallocated Interest Income in the amount of \$65,000 to Planning Department Contract Services for a consultant to prepare the RAISE grant application.

ATTACHMENTS:

1. R-2023-05 Alta Board Resolution
2. Draft General Services Contract - Alta RAISE Grant Application 12-21-22



RESOLUTION TO APPROVE CONTRACT WITH ALTA PLANNING + DESIGN FOR GRANT WRITING SERVICES

WHEREAS, the Town has received the attached contract from Alta Planning + Design, Inc., for grant writing services; and

WHEREAS, The Town desires to contract with Alta Planning + Design, Inc., for the prescribed services and to approve the Contract;

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. Approves the Contract with Alta Planning + Design, Inc., for grant writing services (the "Contract") attached hereto as Exhibit A.
2. The Board authorizes the Town Manager for the Town of Huntersville to execute the Contract on behalf of the Town.
3. The Board authorizes the Town Manager to, on the advice of counsel, to take any actions necessary to execute the provisions of this resolution.

Adopted this the 17th day of January, 2023.

ATTEST:

Janet Pierson, Town Clerk

Melinda Bales, Mayor

APPROVED AS TO FORM:

Emily Sloop, Town Attorney

EXHIBIT A



105 Gilead Road, Suite 300
Huntersville, NC 28078
(704) 766-2220

CONTRACT FOR SERVICES

CONTRACTOR: Alta Planning + Design

508 West 5th Street, Suite 100
Charlotte, NC 28202

Spencer Finch

spencerfinch@altaplanning.com

PROJECT: RAISE Grant 2023

Application

SITE

Huntersville

LOCATION(S):

This Contract for Services, and all exhibits, (collectively this "Contract") is entered into this _____ day of _____, 20____ by and between the Town of Huntersville, a municipal corporation of the State of North Carolina, (the "Town") and _____ located at _____ (the "Contractor").

WITNESSETH:

That for and in consideration of the mutual promises set forth in this Contract, the sufficiency of which is acknowledged by the parties hereto, the parties do mutually agree as follows:

1. Scope of Services. The Contractor agrees to perform for the Town the services, which are further described and incorporated herein by reference as Exhibit C. The Contractor agrees to provide the labor, service, equipment, and materials, and other services included in Exhibit C, which shall constitute the "Work." The Contractor warrants that the Contractor has visited the location of the project and is familiar with all field conditions bearing upon the Contractor's performance of the Work; that the materials and equipment furnished under the Contract are of good quality and new (unless otherwise permitted); that the Work meets or exceeds the standards ordinarily observed in the industry; and that the Work conforms to the requirements of the Contract and to all applicable codes, ordinances, laws, or regulations. During such period, the Contractor will remedy at Contractor's expense any nonconformities or defects in the Work within a reasonable time after receiving notice thereof from the Town.
2. Fees: Fees for the Work shall be specified in a fee schedule, attached hereto in Exhibit D, (the "Contract Price").
3. Historically Underutilized Businesses (HUB). It is the policy of the Town of to provide minorities and women equal opportunity for participating in all aspects of the Town's contracting and procurement programs, including but not limited to employment, construction development projects, materials/services contracts and/or lease agreements, consistent with the laws of the State of North Carolina.

4. Contract Insurance. Contractor shall be required to purchase and maintain, during its performance under this Contract, insurance coverage as shown on the Insurance Requirements as stated in Exhibit B, which is incorporated herein by reference. All insurance purchased shall have a specific endorsement, copy of which shall be provided to the Town, naming the Town as an additional insured and providing that such insurance will not be cancelled without providing thirty (30) days advance written notice to the Town.
5. Materials, Equipment, Employees. The Contractor shall, unless otherwise specified, supply and pay for all labor, transportation, materials, tools, apparatus, and incidentals necessary for the completion of the work.
6. Protection of Work, Property, the Public, and Safety. The Contractor shall be responsible for any damage to the owner's property or of that of others on the job, by them, their personnel, or their subcontractors, and shall make good such damages. The Contractor shall be responsible for and pay for any damages caused to the owner.
7. Standard Terms and Conditions. The Standard Terms and Conditions, attached hereto as Exhibit A, shall be a part of this Contract. The Standard Terms and Conditions are hereby incorporated by reference, and all parties agree to be bound thereby.
8. Contract Term. This Contract shall be for a period of 2 months, ending on February 28, 2023.
9. Payment for Services. In consideration of the above services, the Town will pay the Contractor, in accordance with the submitted fee schedule in Exhibit D, attached hereto and incorporated by reference.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals at Huntersville, North Carolina, this _____ day of _____, 20_____.

Contractor

Town of Huntersville

Name:

Name of Contractor (type or print)

Town Manager

By:

(Signature)

Attest: _____
Town Clerk

Title:

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act

Attest:

(Secretary, if a corporation)

Finance Director

EXHIBIT A
STANDARD TERMS & CONDITIONS

1. **Acceptance.** Contractor's acknowledgment of the terms of this Contract constitutes an agreement to: (i) all terms and conditions set forth or referenced herein, (ii) on any attachments hereto, (iii) any applicable solicitation documentation related to this Contract (including without limitation any request for proposals or invitation for bids or Contractor's response thereto) that deal with the same subject matter as this Contract, and (iv) any other terms and conditions of a written agreement signed by Contractor and the Town that deals with the same subject matter as this Contract (collectively, the "Contract Documents"). The terms and provisions set forth in the Contract Documents shall constitute the entire agreement between Contractor and the Town with respect to the purchase by the Town of the: (i) goods ("Goods") and/or (ii) services provided or work performed ("Services") as described in the Contract Documents. The agreements set forth in the Contract Documents are sometimes referred to herein as the "Contract." In the event of any conflict between any terms and conditions of the Contract Documents, the terms and conditions most favorable to the Town shall control. No additional or supplemental provision or provisions in variance herewith that may appear in Contractor's quotation, acknowledgment, invoice, or in any other communication from Contractor to the Town shall be deemed accepted by or binding on the Town. The Town hereby expressly rejects all such provisions which supplement, modify, or otherwise vary from the terms of the Contract Documents, and such provisions are superseded by the terms and conditions stated in the Contract Documents, unless and until the Town's authorized representatives expressly assent, in writing, to such provisions. Stenographic and clerical errors and omissions by the Town are subject to correction.
2. **Entire Agreement.** These terms and conditions and any other specifications contained in any other documents referenced shall constitute and represent the complete and entire agreement between the Town and Contractor and supersede all previous communications, either written or verbal with respect to the subject matter of this Contract.
3. **Changes, Additions, Deletions.** No changes, additions, deletions, or substitutions of scope of work, specifications, terms and conditions, quantity, unit of issue, delivery date, delivery charges or price will be permitted without the prior written approval from the Town.
4. **Relationship of the Parties.** The Contractor is an independent contractor and not an employee of the Town. The conduct and control of the work will lie solely with the Contractor. The Contract shall not be construed as establishing a joint venture, partnership, or any principal-agent relationship for any purpose between the Contractor and the Town. Employees of the Contractor shall remain subject to the exclusive control and supervision of the Contractor, which is solely responsible for their compensation.
5. **Prices.** If Contractor's price or the regular market price of any of the Goods or Services covered hereunder is lower than the price stated in the Contract Documents on the date of shipment of such Goods or performance of such Services, Contractor agrees to give the Town the benefit of such lower price on any such Goods or Services. In no event shall Contractor's price be higher than the price last quoted or last charged to the Town unless otherwise agreed in writing. No charges for transportation, boxing, crating, etc. are allowable unless such charges are included in the Contract Documents.
6. **Taxes.** Any applicable taxes shall be invoiced as a separate item.
7. **Substitutions.** No substitutions or cancellations shall be permitted without prior written approval from the Town.
8. **Indemnification.** To the greatest extent allowed by North Carolina law the Firm shall indemnify and hold harmless the Town, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees ("Claims"). In the event that any portion

of the Service performed under the Contract shall be defective in any respect whatsoever, the Firm shall indemnify and save harmless the Town, its officers, agents, employees, and assigns from all loss or the payment of all sums of money, but only to the extent allowed by law.

9. **Invoices and Payment Terms.** It is understood and agreed that orders will be shipped at the established Contract prices in effect on dates orders are placed. Invoicing that does not comply with this provision will subject the Contract to cancellation. Upon satisfactory delivery of the Goods or satisfactory completion of the Work, all invoices and statements shall reference the Contract number and be submitted to: Town of Huntersville, Accounts Payable, PO Box 664, Huntersville, North Carolina, 28070. Payment terms are Net 30 days after receipt of correct, undisputed invoice or acceptance of Goods or Services, whichever is later.

When the Contract is for construction services, the Contractor will submit monthly Requests for Payment for Work performed, for review. The Request for payment shall be based upon the Contractor's estimate of the percentage of the total Work completed during the period represented on the Request for Payment. The Contractor must certify that the Work represented in the Contractor's Request for Payment has been completed in accordance with the Contract Documents and certify that the Request for Payment is appropriate for payment before the Town shall be obligated to make such payment to the Contractor. If any Request for Payment is disputed by the Town, in whole or in part, the Town shall provide a written explanation for such dispute to Contractor within five days of receipt of the certified Request for Payment and shall pay all undisputed amounts therein.

10. **Anti-Discrimination and Equal Employment.** During the performance of the Contract, Contractor shall comply with all federal and state requirements concerning fair and equal employment and shall not discriminate against or deny the Contract's benefits to any person on the basis of race, religion, color, creed, national origin, age, sex (including sexual orientation, gender identity, and pregnancy), disability or handicapping condition, or genetic information.
11. **Insurance.** The Firm shall provide the insurance coverages shown on Exhibit B, attached hereto and incorporated herein by reference. The Firm shall provide the Town with a North Carolina Certificate of Insurance and such endorsements as may be required by the Contract Documents prior to the commencement of any work under the Contract and agrees to maintain such insurance until the completion of the Contract. Such certificates of insurance shall be considered part of the Contract.
12. **Ethics in Public Contracting.** By submitting their prices and acceptance of this Contract, all Contractors certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other supplier, manufacturer, or subcontractor in connection with their offer, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
13. **Applicable Laws and Courts.** All Town Contracts for Services shall be governed in all respects by the laws of the State of North Carolina. All matters, whether sounding in contract or tort relating to the validity, construction, interpretation, and enforcement of the Contract, shall be governed in all respects by the laws of the State of North Carolina and venue shall be proper only in a court of competent jurisdiction located in Mecklenburg County, North Carolina. The Contractor represents and warrants that it shall comply with all applicable federal, state, and local laws, regulations, and orders, including, not limited to, licensure requirements.
14. **Codes and Permits.** When applicable, the Contractor shall obtain all required permits, give all required notices, and comply with all laws, ordinances, codes, rules, and regulations bearing on the conduct of the work under this contract. If the Contractor observes that the drawings and

specifications are at variance therewith, he shall promptly notify the designer in writing. All work under this contract shall conform to the current North Carolina Building Code and other state and national codes as are applicable. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the Owner, he shall bear all cost arising therefrom.

15. **License Requirement.** If applicable, the Contractor must be a licensed General Contractor as required by North Carolina General Statutes Section 87-1 and must have a good ethical and professional standing with the North Carolina General Contractor's Licensing Board. The Contractor will be responsible for providing properly qualified, licensed (if required) personnel to complete the Work in accordance with the standard of care ordinarily used by members of the Contractor's profession practicing under similar circumstances and at the same time in Mecklenburg County.
16. **Strict Compliance.** The Town may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous course of dealing or course of performance between the parties to the contrary.
17. **Assignment.** Contractor may not assign, pledge, or in any manner encumber Contractor's rights under this Contract or delegate the performance of any of its obligations hereunder, without Town's prior, express written consent.
18. **General Provisions.** The Town's remedies as set forth herein are not exclusive. Any delay or omission by the Town in exercising any right hereunder, or any waiver by the Town of any single breach or default hereunder, shall not be deemed to be a waiver of such right or of any other right, breach, or default.
19. **Warranties.** The Contractor warrants it shall adhere to all laws, codes, ordinances, and regulations of the United States, the State of North Carolina, the County of Mecklenburg, and the Town of Huntersville in the performance of the Services outlined in this Contract and any attached specifications. Contractor warrants that any finished work completed hereunder shall also adhere to all laws, codes, ordinances, and regulations of the United States, the State of North Carolina, the County of Mecklenburg, and the Town of Huntersville. Contractor warrants that all Services delivered hereunder will be free from defects in materials and workmanship and will conform strictly to the specifications, drawings, or samples specified or furnished. This warranty shall survive any inspection, delivery, acceptance, or payment by the Town of the Services and shall run to the Town and any user of the Services. Contractor warrants that all Services will be performed in a professional and workman like manner in accordance with best industry practices. This express warranty is in addition to Contractor's implied warranties of merchantability and fitness for a particular purpose which shall not be disclaimed. In addition to any other rights available at law or in equity, the Town shall be entitled to consequential and incidental damages.
20. **Quality and Workmanship.** All work shall be performed to the satisfaction of the Town. The work shall not be considered complete nor applicable payments rendered until the Town is satisfied with the Services provided.
21. **Default.** The Town may terminate the Contract, in whole or in part, immediately and without prior notice upon breach of the Contract by the Contractor. In addition to any other remedies available to the Town in law or equity, the Town may procure upon such terms as the Town shall deem appropriate, Services substantially similar to those so terminated, in which case the Contractor shall be liable to the Town for any excess costs for such similar supplies or services and any expenses incurred in connection therewith.
22. **Termination for Convenience.** The Town shall have the right, without assigning any reason therefore, to terminate any work under the Contract, in whole or in part, at any time at its complete discretion by providing 10 days' notice in writing from the Town to Contractor. If the Contract is

terminated by the Town in accordance with this paragraph, the Contractor will be paid in an amount which bears the same ratio to the total compensation as does the Services actually delivered or performed to the total originally contemplated in the Contract. The Town will not be liable to the Contractor for any costs for materials acquired or contracted for if such costs were incurred prior to the date of this Contract.

23. **Risk of Loss.** Risk of Loss for all supplies, materials, the Work performed, and the Project as it is being constructed, shall be on the Contractor until such time as substantial completion is achieved, and approved by the Town.
24. **No Third-Party Beneficiaries.** There shall be no intended nor incidental third-party beneficiaries of this Contract. Contractor shall include in all contracts, subcontracts, or other agreements relating to the Contract an acknowledgment by the contracting parties that the Contract creates no third-party beneficiaries.
25. **Exclusivity.** Nothing in this Contract shall require the Town to use the Contractor or prohibit the Town from soliciting third parties for the good or services provided in this Contract.
26. **Confidentiality.** The Contractor acknowledges the Town is subject to public records law and no term shall be inconsistent with N.C.G.S. §132 et al.
27. **Valid Contract for Services.** In order for a Contract for Services of the Town to be valid, it must be executed by the Town Manager or his or her authorized designee, and must be pre-audited in that manner required by the Local Government Budget and Fiscal Control Act, as the same may be amended.
28. **Verification of Work Authorization.** Contractor shall comply with, and require all contractors and subcontractors to comply with, the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, "Verification of Work Authorization," sometimes known as E-verify, for all contractors and subcontractors.
29. **Iran Divestment List.** With the execution hereof, Contractor, certifies that they are not on the Iran Final Divestment List created by the N.C. State Treasurer pursuant to N.C.G.S. § 147-86.58, and will not contract with anyone on such List in performance of the work hereunder.
30. **Buyer.** All references to Buyer or Town, throughout these terms and conditions, shall refer to the Town of Huntersville, North Carolina.
31. **Contractor.** All references to Contractor, Seller, or Firm throughout these terms and conditions shall refer to the contractor identified on page 1 of this Contract.
32. **Availability of Funds.** Any and all payments to the Contractor are dependent upon and subject to the availability of funds to the Town for the purpose set forth in this agreement.
33. **Severability.** If any provision of this Contract is found to be invalid or unlawful, then remainder of this Contract shall not be affected thereby, and each remaining provision shall be valid and enforced to the fullest extent permitted by law.
34. **Companies that Boycott Israel.** With the execution hereof, Contractor, certifies that they are not on the Companies that Boycott Israel List created by the N.C. State Treasurer pursuant to N.C.G.S. § 147-86.80, and will not contract with anyone on such List in performance of the work hereunder.
35. **Governmental Immunity.** Nothing contained in this Contract shall constitute a waiver of the Town's governmental immunity or of any limitation on liability or damages created by law.

ADDITIONAL TERMS AND CONDITIONS FOR FEDERAL CONTRACTS

For contracts using federal funds, the following additional terms and conditions shall apply:

1. **Davis-Bacon Act.** For all contracts in excess of \$2,000.00 for construction, alteration, or repair, including painting and decorating, of public buildings or public works, the Contractor shall comply with the Davis-Bacon Act, including payment of no less than the locally prevailing wages as determined by the Secretary of Labor. The contract shall not be valid unless the current prevailing wage as determined by the North Carolina Department of Labor is accepted. The Contractor shall also be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Town shall report all suspected or reported violations to the Federal awarding agency.
2. **Contract Work Hours and Safety Standards Act.** For contracts in excess of \$100,000 that involve the employment of mechanics or laborers, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. For construction work, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.
3. **Funding Agreements.** If a Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the Town or Contractor enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. Part 401.
4. **Clean Air Act and Federal Water Pollution Control Act.** Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and Federal Water Pollution Control Act as amended for any Contract in excess of \$150,000.00.
5. **Debarment and Suspension.** Contractor acknowledges and warrants that it is not listed on the governmentwide exclusions in the System Award Management (SAM) Exclusions, in accordance with the OMB guidelines at 2 C.F.R. § 180 for “Debarment and Suspension.”
6. **Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).** For an award exceeding \$100,000, Contractors must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Town.
7. **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** The Contractor warrants that their systems or equipment are not covered under telecommunication equipment as described in Public Law 115-232.
8. **Domestic Preference for Procurements.** As appropriate and to the extent consistent with law, the Contractor will, to the greatest extent practicable under a Federal award, provide a preference for the

purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products), as required under 2 C.F.R. § 200.322.

9. **Procurement of Recovered Material.** The Contractor agrees to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
10. **Conflict of Interest.** The Contractor agrees to be bound by the Town's Uniform Guidance Conflict of Interest Policy, which is included herein by reference.
11. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 include, by reference, the equal opportunity clause provided under 41 CFR 60-1.4(b). The Contractor agrees to abide by 41 CFR 60-1.4(b) during the performance of the contract¹.

¹ 60 CFR Part 60-1.4(b) can be accessed at: [https://www.ecfr.gov/current/title-41/subtitle-B/chapter-60/part-60-1/subpart-A/section-60-1.4#p-60-1.4\(b\)](https://www.ecfr.gov/current/title-41/subtitle-B/chapter-60/part-60-1/subpart-A/section-60-1.4#p-60-1.4(b))

EXHIBIT B

MINIMUM INSURANCE REQUIREMENTS

The Work under this Contract shall not commence until the Contractor has obtained all required insurance and verifying certificates of insurance have been approved in writing by the Town. Except for Worker's Compensation and Professional Liability policies, the Town shall be named as additional insured on all policies. These certificates shall document that coverages afforded under the policies will not be cancelled, reduced in amount or coverages eliminated until at least thirty (30) days after mailing written notice, by certified mail, return receipt requested, to the insured and the Town of such alteration or cancellation. If endorsements are needed to comply with the notification or other requirements of this article copies of the endorsements shall be submitted with the certificates.

a. Worker's Compensation and Employer's Liability

The Contractor shall provide and maintain, until final acceptance, workmen's compensation insurance, as required by law, as well as employer's liability coverage with minimum limits of \$100,000.

b. Comprehensive General Liability Insurance

The Contractor shall provide and maintain, until final acceptance, comprehensive general liability insurance, including coverage for premises operations, independent contractors, completed operations, products and contractual exposures, as shall protect such contractors from claims arising out of any bodily injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract, whether such operations be by the Contractor or by any subcontractor, or by anyone directly or indirectly employed by either of them and the minimum limits of such insurance shall be as follows:

Bodily Injury: \$1,000,000 per occurrence/\$2,000,000 aggregate
Professional Liability: \$1,000,000 per occurrence/\$2,000,000 aggregate
Property Damage: \$1,000,000 per occurrence/\$2,000,000 aggregate

Such coverage for completed operations must be maintained for at least two (2) years following final acceptance of the Work performed under the contract.

c. Deductible

Any deductible, if applicable to loss covered by insurance provided, is to be borne by the Contractor.

d. Other Insurance

The Contractor shall obtain such additional insurance as may be required by the Town or by the General Statutes of North Carolina including motor vehicle insurance, in amounts not less than the statutory limits.

e. Proof of Carriage

The Contractor shall furnish the Town with satisfactory proof of carriage of the insurance required before written approval is granted by the Town.

EXHIBIT C – SCOPE OF SERVICES

(insert service description)

EXHIBIT D – FEE SCHEDULE

Company Name	Date
--------------	------

Print Name	Title
------------	-------

Signature

**Town of Huntersville
Town Board
January 17, 2023**

To: Town Board

From: Pattie McGinnis, Finance Director

Date: January 17, 2023

Subject: Budget Amendment for RAISE Grant Application Consultant

EXPLAIN REQUEST:

This budget amendment appropriates Unallocated Interest Income (103600.9999) in the amount of \$65,000 to the Planning Department Contract Services (104800.0314) for a consultant to assist in the RAISE grant application.

ACTION RECOMMENDED:

Approve Budget amendment

FINANCIAL IMPLICATIONS:

No net impact to fund balance; offsetting revenue and expense.

ATTACHMENTS:

None

**Town of Huntersville
Town Board
January 17, 2023**

To: Town Board

From: Kevin Fox, Director of Public Works

Date: January 17, 2023

Subject: Future Expansion of Public Works Facility Property Purchase Agreement

EXPLAIN REQUEST:

The Parcel indicated on Exhibit A of the attached Resolution is currently available on the market and is needed for the future expansion and construction of the Public Works Facility.

ACTION RECOMMENDED:

Adopt Resolution and Approve Purchase Agreement

FINANCIAL IMPLICATIONS:

ATTACHMENTS:

1. R-2023-3 Resolution to Acquire Property for Future Public Works Facility 12-21-22
2. 11835 Ramah Church rd purchase agreement
3. Legal description for 11835 Ramah Church Road



**RESOLUTION OF THE TOWN OF HUNTERSVILLE BOARD OF COMMISSIONERS TO ACQUIRE
PROPERTY NECESSARY FOR THE CONSTRUCTION OF FUTURE PUBLIC WORKS FACILITY**

WHEREAS, the Town of Huntersville (the "Town") has determined that the acquisition of property is necessary for the construction of a future Public Works Facility (the "Project"); and

WHEREAS, the statutory powers of the Town include the power to acquire real property (N.C.G.S. §160A-11 and §160A-240.1), including the power of eminent domain (N.C.G.S. Chapter 40); and

WHEREAS, the Town has certified that the parcel ("the Property"), represented on Exhibit A, is needed for the Project.

***NOW THEREFORE, BE IT RESOLVED BY THE TOWN OF HUNTERSVILLE BOARD OF
COMMISSIONERS (the "Town Board") AS FOLLOWS:***

1. The Town Board approves and authorizes the acquisition of the necessary Property as described on Exhibit A. No further action is required by the Town Board to authorize the acquisition pursuant to this subsection.
2. The Town Board hereby authorized the Town Manager, acting on advice of counsel, to take any actions necessary to carry out the provisions of this Resolution; and
3. This Resolution shall be effective as of the date its adoption.

Adopted this 17th day of January, 2023.

ATTEST:

TOWN OF HUNTERSVILLE

Town Clerk

Town Mayor

APPROVED AS TO FORM:

Town Attorney

EXHIBIT A - PARCEL INDEX
Future Public Works Facility

PARCEL #	PARCEL ID #	PROPERTY OWNER NAME
1	011-201-30	William H. Stewart, Jr.



AGREEMENT FOR PURCHASE AND SALE
OF IMPROVED REAL PROPERTY

THIS AGREEMENT, including any and all addenda attached hereto ("Agreement"), is by and between

The Town of Huntersville
a(n) NC Municipality ("Buyer"), and
(individual or State of formation and type of entity)
William H. Stewart, Jr.
a (n) Individual ("Seller").
(individual or State of formation and type of entity)

(NOTE: If the Buyer or Seller is an entity, in order to form a binding agreement and complete a transaction, the entities listed as Buyer or Seller in this Agreement should be validly formed and in good standing with the Secretary of State in the State of formation of the entity.)

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Terms and Definitions: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) "**Property**": (Address) 11835 Ramah Church Rd. Huntersville, NC 28078

Plat Reference: Lot(s) _____, Block or Section _____, as shown on Plat Book or Slide
63 at Page(s) 470, Mecklenburg County, consisting of 6.073+/- acres.

☒ If this box is checked, "Property" shall mean that property described on **Exhibit A** attached hereto and incorporated herewith by reference,

(For information purposes: (i) the tax parcel number of the Property is: 011-201-30; and,
(ii) some or all of the Property, consisting of approximately 6.073 +/- acres, is described in Deed Book 08574,
Page No. 913, Mecklenburg County.)

together with all buildings and improvements thereon and all fixtures and appurtenances thereto and all personal property, if any, itemized on **Exhibit A**.

\$ \$900,000.00 (b) "**Purchase Price**" shall mean the sum of Nine Hundred Thousand
Dollars,

payable on the following terms:

\$ 0.00 (i) "**Earnest Money**" shall mean _____ Dollars
or terms as follows: _____

The Earnest Money shall be deposited in escrow with
_____ (name of person/entity with whom
deposited- "Escrow Agent") within five (5) calendar days of the Contract Date, to be applied as part
payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon under the provisions
of Section 10 herein. Should Buyer fail to deliver the Earnest Money by the date required hereunder, or
should any check or other funds paid by Buyer be dishonored, for any reason, by the institution upon which

Page 1 of 9



This form jointly approved by:
North Carolina Bar Association
North Carolina Association of REALTORS®, Inc.

STANDARD FORM 580-T
Revised 7/2020
© 7/2020

Buyer Initials _____ Seller Initials _____

the payment is drawn, Buyer shall have one (1) banking day after written notice of such dishonor to deliver cash, official bank check, wire transfer or electronic transfer to the Escrow Agent. If Buyer fails to deliver the required funds within one (1) banking day after written notice, then Seller may terminate this Agreement by written notice to Buyer at any time thereafter, provided Seller has not then received acknowledgement by Escrow Agent of its receipt of funds from Buyer. If the Escrow Agent has not delivered to the Seller the acknowledgement of Earnest Money on the last page of this Agreement by the calendar day following the date the Earnest Money is required to be delivered hereunder, it shall be presumed that the Earnest Money was not delivered by the required time (unless, upon the written request of Seller, Escrow Agent can provide proof of its receipt of the Earnest Money by the required time). Buyer and Seller consent to the disclosure by the Escrow Agent, to the parties to this Agreement, the Broker(s) and any Buyer lender, of any material facts pertaining to the Earnest Money.

☐ **ANY EARNEST MONEY DEPOSITED BY BUYER IN A TRUST ACCOUNT MAY BE PLACED IN AN INTEREST BEARING TRUST ACCOUNT, AND: (check only ONE box)**

☐ **ANY INTEREST EARNED THEREON SHALL BE APPLIED AS PART PAYMENT OF THE PURCHASE PRICE OF THE PROPERTY AT CLOSING, OR DISBURSED AS AGREED UPON UNDER THE PROVISIONS OF SECTION 10 HEREIN. (Buyer's Taxpayer Identification Number is: _____)**

☐ **ANY INTEREST EARNED THEREON SHALL BELONG TO THE ACCOUNT HOLDER IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.**

\$ _____ (ii) **Delivery of a promissory note** secured by a deed of trust, said promissory note in the amount of _____ Dollars being payable over a term of _____ years, with an amortization period of _____ years, payable in monthly installments of principal, together with accrued interest on the outstanding principal balance at the rate of _____ percent (_____%) per annum in the amount of \$ _____, with the first principal payment beginning on the first day of the month next succeeding the date of Closing, or such other terms as may be set forth on **Exhibit B**. At any time, the promissory note may be prepaid in whole or in part without penalty and without further interest on the amounts prepaid from the date of such prepayment. **(NOTE: In the event of Buyer's subsequent default upon a promissory note and deed of trust given hereunder, Seller's remedies may be limited to foreclosure of the Property. If the deed of trust given hereunder is subordinated to senior financing, the material terms of such financing must be set forth on Exhibit B. If such senior financing is subsequently foreclosed, the Seller may have no remedy to recover under the note.)**

\$ _____ (iii) **Assumption** of that unpaid obligation of Seller secured by a deed of trust on the Property, such obligation having an outstanding principal balance of \$ _____ and evidenced by a note bearing interest at the rate of _____ percent (_____%) per annum, and a current payment amount of \$ _____.

\$ \$900,000.00 (iv) **Cash**, balance of Purchase Price, at Closing in the amount of Nine Hundred Thousand _____ Dollars.

Buyer, at Buyer's expense, shall be entitled to pursue qualification for and approval of any loan Buyer intends to obtain in connection with the transaction contemplated by this Agreement. **(Note: Buyer's obligations under this Agreement are not conditioned upon obtaining or closing any loan. Therefore, Buyer is advised to consult with Buyer's lender prior to signing this offer to assure that the Examination Period allows sufficient time for Buyer's lender to provide Buyer sufficient information to decide whether to proceed with or terminate the transaction.)**

(c) **"Closing"** shall mean the date of completion of the process detailed in Section 11 of this Agreement. Closing shall occur on or before _____ or _____ Within 60 days after this Agreement has been ratified by the Town Board of Commissioners on January 17, 2023, which shall be the effective date of the Agreement _____.

(d) **"Contract Date"** means the date this Agreement has been fully executed by both Buyer and Seller.

Buyer shall pay recording costs, costs of any title search, title insurance, survey, the cost of any inspections or investigations undertaken by Buyer under this Agreement, charges required by an owners' association declaration to be paid by Buyer for Buyer's future use and enjoyment of the Property, including, without limitation, working capital contributions, membership fees, or charges for Buyer's use of the common elements and/or services provided to Buyer, any costs or charges for determining restrictive covenant compliance, and the following:

Each party shall pay its own attorney's fees.

Section 4. Deliveries: Seller agrees to use best efforts to deliver to Buyer, as soon as reasonably possible after the Contract Date, copies of all material information relevant to the Property in the possession of Seller, including but not limited to: title insurance policies (and copies of any documents referenced therein), surveys, soil test reports, environmental surveys or reports, site plans, civil drawings, building plans, maintenance records and copies of all presently effective warranties or service contracts related to the Property. Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys. If Buyer does not consummate the Closing for any reason other than Seller default, then Buyer shall return to Seller all hard copy materials delivered by Seller to Buyer pursuant to this Section 4 (or Section 7, if applicable), if any, and shall, upon Seller's request, following release of the Earnest Money, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all studies, reports, surveys and other information relating directly to the Property prepared by or at the request of Buyer, its employees and agents, without any warranty or representation by Buyer as to the contents, accuracy or correctness thereof. Notwithstanding the above provisions regarding delivery and return of information and documentation, should there exist a separate non-disclosure, confidentiality, or similar agreement between Buyer and Seller, the terms of which conflict with this provision insofar as delivery and return of information and documentation, then the terms of such non-disclosure, confidentiality, or similar agreement shall control as to the delivery and return of information and documentation.

Section 5. Evidence of Title: Seller agrees to convey fee simple insurable title to the Property without exception for mechanics' liens, free and clear of all liens, encumbrances and defects of title other than: (a) zoning ordinances affecting the Property, (b) Leases (as defined in Section 7, if applicable) and (c) specific instruments on the public record at the Contract Date agreed to by Buyer (not objected to by Buyer prior to the end of the Examination Period), which specific instruments shall be enumerated in the deed referenced in Section 11 (items 5(a), 5(b) and 5(c) being collectively "Permitted Exceptions"); provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens. Seller shall not enter into or record any instrument that affects the Property (or any personal property listed on **Exhibit A**) after the Contract Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 6. Conditions: This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer, whether explicit or implied) of the following conditions:

(a) **Qualification for Assumption:** The obligations of Buyer under this Agreement are conditioned upon Buyer being able to assume the existing loan described in Section 1(b)(iii) above. If such assumption requires the lender's approval, Buyer agrees to use its best efforts to secure such approval and to advise Seller immediately upon receipt of the lender's decision. Approval must be granted on or before _____. On or before this date, Buyer has the right to terminate this Agreement for failure to be able to assume the loan described above by delivering to Seller written notice of termination by the above date, **time being of the essence**. If Buyer delivers such notice, this Agreement shall be null and void, and the Earnest Money shall be refunded to Buyer. If Buyer fails to deliver such notice, then Buyer will be deemed to have waived this condition. Unless provided otherwise in Section 3 hereof, Buyer shall pay all fees and costs associated with any such assumption, including any assumption fee charged by the lender. At or before Closing, Seller shall assign to Buyer all interest of Seller in any current reserves or escrows held by the lender, any property management company and/or Seller, including, but not limited to: any tenant improvement reserves, leasing commission reserves, security deposits and operating or capital reserves for which Seller shall be credited at Closing.

(b) **Title Examination:** After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event that such title examination shall show that Seller's title is not fee simple insurable, subject only to Permitted Exceptions, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, in no case later than the end of the Examination Period, and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, then Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the Property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(c) **Same Condition:** If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Earnest Money or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property.

(d) **Inspections:** Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, conducting timber cruises, and surveying the Property; provided, however, that Buyer shall not conduct any invasive testing of any nature without the prior express written approval of Seller as to each specific invasive test intended to be conducted by Buyer. Buyer shall conduct all such on-site inspections, examinations, testing, timber cruises and surveying of the Property in a good and workmanlike manner, at Buyer's expense, shall repair any damage to the Property caused by Buyer's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. In that respect, Buyer shall make reasonable efforts to undertake on-site inspections outside of the hours Seller's or any tenant's business is open to the public. Buyer shall provide Seller or any tenant (as applicable) reasonable advance notice of and Buyer shall cause its agents or representatives and third party service providers (e.g. inspectors, surveyors, etc.) to give reasonable advance notice of any entry onto the Property. Buyer shall be obligated to observe and comply with any terms of any tenant lease which conditions access to such tenant's space at the Property. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Property and shall be entitled to review such books and records of Seller that relate directly to the operation and maintenance of the Property, provided, however, that Buyer shall not disclose any information regarding this Property (or any tenant therein) unless required by law, and the same shall be regarded as confidential, to any person, except to its attorneys, accountants, lenders and other professional advisors, in which case Buyer shall obtain their agreement to maintain such confidentiality. Buyer assumes all responsibility for the acts of itself and its agents or representatives in exercising its rights under this Section 6(d) and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Except as provided in Section 6(b) above, Buyer shall have from the Contract Date through the end of the Examination Period to perform the above inspections, examinations and testing. **IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY.**

Section 7. Leases (Check one of the following, as applicable):

☒ If this box is checked, Seller affirmatively represents and warrants that there are no Leases (as hereinafter defined) affecting the Property.

☐ If this box is checked, Seller discloses that there are one or more leases affecting the Property ("Leases"), and the following provisions are hereby made a part of this Agreement.

(a) A list of all Leases shall be set forth on **Exhibit B**. Seller represents and warrants that, as of the Contract Date, there are no other Leases, oral or written, recorded or not, nor any subleases affecting the Property, except as set forth on **Exhibit B**;

(b) Seller shall deliver copies of any Leases to Buyer pursuant to Section 4 as if the Leases were listed therein;

(c) Seller represents and warrants that, as of the Contract Date, there are no current defaults (or any existing situation which, with the passage of time, or the giving of notice, or both, or at the election of either landlord or tenant, could constitute a default) either by Seller, as landlord, or by any tenant under any Lease ("Lease Default"). In the event there is any Lease Default as of the Contract Date, Seller agrees to provide Buyer with a detailed description of the situation in accordance with Section 4. Seller agrees not to commit a Lease Default as Landlord after the Contract Date; and agrees further to notify Buyer immediately in the event a Lease Default arises or is claimed, asserted or threatened to be asserted by either Seller or a tenant under the Lease.

(d) In addition to the conditions provided in Section 6 of this Agreement, this Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon the assignment of Seller's interest in any Lease to Buyer in form and content acceptable to Buyer (with tenant's written consent and acknowledgement, if required under the Lease). Seller agrees to deliver an assignment of any Lease at or before Closing, with any security deposits held by Seller under any Leases to be transferred or credited to Buyer at or before Closing. The assignment shall provide: (i) that Seller shall defend, indemnify and hold Buyer harmless from claims, losses, damages and liabilities (including, without limitation, court costs and attorneys' fees) asserted against or incurred by Buyer which are caused by or the result of any default by Seller under any Lease prior to the date of Closing, and (ii) that Buyer shall defend, indemnify and hold Seller harmless from claims, losses, damages and liabilities (including, without

limitation, court costs and attorneys' fees) asserted against or incurred by Seller which are caused by or the result of any default by Buyer under any Lease after the date of Closing.

(e) Seller also agrees to work diligently to obtain any tenant signatures on any estoppel certificates in such form as Buyer may reasonably request and to work diligently to obtain any subordination, nondisturbance and attornment agreements in such form as Buyer may reasonably request.

Section 8. Environmental: Seller represents and warrants that it has no actual knowledge of the presence or disposal, except as in accordance with applicable law, within the buildings or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to: those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the Clean Water Act of 1977 (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. §1317), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601). Seller has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

Section 9. Risk of Loss/Damage/Repair: Until Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

Section 10. Earnest Money Disbursement: In the event that any condition hereto is not satisfied, then the Earnest Money shall be refunded to Buyer. In the event of breach of this Agreement by Seller, the Earnest Money shall be refunded to Buyer upon Buyer's request, but such return shall not affect any other remedies available to Buyer for such breach. In the event of breach of this Agreement by Buyer, the Earnest Money shall be paid to Seller as liquidated damages and as Seller's sole and exclusive remedy for such breach, but without limiting Seller's rights under Section 6(d) or Section 22 of this Agreement. It is acknowledged by the parties that payment of the Earnest Money to Seller in the event of a breach of this Agreement by Buyer is compensatory and not punitive, such amount being a reasonable estimation of the actual loss that Seller would incur as a result of such breach. The payment of the Earnest Money to Seller shall not constitute a penalty or forfeiture but actual compensation for Seller's anticipated loss, both parties acknowledging the difficulty determining Seller's actual damages for such breach.

NOTE: In the event of a dispute between Seller and Buyer over the disposition of the Earnest Money held in escrow, a licensed real estate broker is required by state law (and Escrow Agent, if not a broker, hereby agrees) to retain the Earnest Money in the Escrow Agent's trust or escrow account until Escrow Agent has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, if a broker or an attorney licensed to practice law in North Carolina is holding the Earnest Money, the broker or attorney may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of N.C.G.S. §93A- 12.

Seller and Buyer hereby agree and acknowledge that the Escrow Agent assumes no liability in connection with the holding of the Earnest Money pursuant hereto except for negligence or willful misconduct of Escrow Agent. Escrow Agent shall not be responsible for the validity, correctness or genuineness of any document or notice referred to under this Agreement. Seller and Buyer hereby agree to indemnify, protect, save and hold harmless Escrow Agent and its successors, assigns and agents pursuant to this Agreement, from any and all liabilities, obligations, losses, damages, claims, actions, suits, costs or expenses (including attorney fees) of whatsoever kind or nature imposed on, incurred by or asserted against Escrow Agent which in any way relate to or arise out of the execution and delivery of this Agreement and any action taken hereunder; provided, however, that Seller and Buyer shall have no such obligation to indemnify, save and hold harmless Escrow Agent for any liability incurred by, imposed upon or established against it as a result of Escrow Agent's negligence or willful misconduct.

Section 11. Closing: At or before Closing, Seller shall deliver to Buyer a special warranty deed unless otherwise specified on **Exhibit B** and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, a bill of sale for any personalty listed on **Exhibit A**, an owner's affidavit, lien waiver forms (and such other lien related documentation as shall permit the Property to be conveyed free and clear of any claim for mechanics' liens) and a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act), and Buyer shall cause to be delivered the funds necessary to pay to Seller the Purchase Price. The Closing shall be conducted by Buyer's attorney or handled in such other manner as the parties hereto may mutually agree in writing. Possession shall be delivered at Closing, unless otherwise agreed herein. The Purchase Price and other funds to be disbursed pursuant to this Agreement shall not be disbursed until the Buyer's attorney's (or other designated settlement agent's) receipt of authorization to disburse all necessary funds.

Section 12. Notices: Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing (which shall include electronic mail) and shall be deemed to have been properly given and received (i) on the date delivered in person or (ii) the date deposited in the United States mail, registered or certified, return receipt requested, to the addresses set out in Section 1(g) as to Seller, and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith, (iii) at such time as the sender performs the final act to send such transmission, in a form capable of being processed by the receiving party's system, to any electronic mail address or facsimile number, if any, provided in Section 1(g) as to Seller, and in Section 1(h) as to Buyer or (iv) on the date deposited with a recognized overnight delivery service, addressed to the addresses set out in Section 1(g) as to Seller, and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith. If a notice is sent by more than one method, it will be deemed received upon the earlier of the dates of receipt pursuant to this Section.

Section 13. Counterparts; Entire Agreement: This Agreement may be executed in one or more counterparts, which taken together, shall constitute one and the same original document. Copies of original signature pages of this Agreement may be exchanged via facsimile or e-mail, and any such copies shall constitute originals. This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto. The invalidity of one or more provisions of this Agreement shall not affect the validity of any other provisions hereof and this Agreement shall be construed and enforced as if such invalid provisions were not included.

Section 14. Enforceability: This Agreement shall become a contract when signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that notice given in accordance with Section 12 is not required for effective communication for the purposes of this Section 14. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Agreement are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

Section 15. Adverse Information and Compliance with Laws:

(a) **Seller Knowledge/Assessments:** Seller has no actual knowledge of (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against the Property; (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; or (iv) governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments, except as follows (Insert "None" or the identification of any matters relating to (i) through (iv) above, if any):

None

Note: For purposes of this Agreement: (i) a "special assessment" is defined as a charge against the Property by a governmental authority in addition to ad valorem taxes and recurring governmental service fees levied with such taxes, or by an owners' association in addition to any regular assessment (dues), either of which may be a lien against the Property; a special assessment may be either pending or confirmed; (ii) a "confirmed" special assessment is defined as an assessment that has been approved by a governmental agency or an owners' association for the purpose(s) stated, whether, at the time of Closing, it is payable in a lump sum or future installments; (iii) a "pending" special assessment is defined as an assessment that is under formal consideration by a governmental agency or an owners' association but which has not been approved prior to Closing. Seller shall pay, in full at Closing, all confirmed governmental or association special assessments, provided that the amount thereof can be reasonably determined or estimated. The payment of such determined or estimated amount shall be the final payment between Buyer and Seller as to any confirmed special assessments. If the amount of any special assessment cannot be reasonably determined or estimated, the special assessment shall be deemed a pending special assessment. Buyer shall take title subject to all pending special assessments disclosed by Seller herein, if any.

(b) **Compliance:** To Seller's actual knowledge, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, constitute any default under or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.

(c) **Owners' Association:** If the Property is subject to regulation by an owners' association, Seller shall deliver the following information to Buyer pursuant to Section 4 as if the same were listed therein (or Seller shall state that Seller does not have same in their possession or that such item is not applicable): (i) the name of the owners' association; (ii) the amount of regular assessments

(dues); (iii) the name, address and telephone number of the president of the owners' association or of the association manager or management company; (iv) the owners' association website address; (v) the Seller's statement of account; (vi) the master insurance policy showing the coverage provided and the deductible amount; (vii) copies of any Declaration and/or Restrictive Covenants; (viii) the Rules and Regulations, (ix) the Articles of Incorporation and Bylaws of the owners' association; (x) the current financial statement and budget of the owners' association; (xi) the parking restrictions and information; and (xii) the architectural guidelines. Seller authorizes and directs any owners' association, any management company of the owners' association, any insurance company and any attorney who has previously represented the Seller to release to Buyer, Buyer's agents, representative, closing attorney or lender true and accurate copies of the foregoing items affecting the Property, including any amendments thereto.

Section 16. Survival of Representations and Warranties: All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Seller shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

Section 17. Applicable Law: This Agreement shall be construed under the laws of the state in which the Property is located. This form has only been approved for use in North Carolina.

Section 18. Assignment: This Agreement is freely assignable unless otherwise expressly provided on **Exhibit B**.

Section 19. Tax-Deferred Exchange: In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

Section 20. Memorandum of Contract: Upon request by either party, the parties hereto shall execute a memorandum of contract in recordable form setting forth such provisions hereof (other than the Purchase Price and other sums due) as either party may wish to incorporate. Such memorandum of contract shall contain a statement that it automatically terminates and the Property is released from any effect thereby as of a specific date to be stated in the memorandum (which specific date shall be no later than the date of Closing). The cost of recording such memorandum of contract shall be borne by the party requesting execution of same.

Section 21. Authority: Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party.

Section 22. Brokers: Except as expressly provided herein, Buyer and Seller agree to indemnify and hold each other harmless from any and all claims of brokers, consultants or real estate agents by, through or under the indemnifying party for fees or commissions arising out of the sale of the Property to Buyer. Buyer and Seller represent and warrant to each other that: (i) except as to the Brokers designated under Section 1(f) of this Agreement, they have not employed nor engaged any brokers, consultants or real estate agents to be involved in this transaction and (ii) that the compensation of the Brokers is established by and shall be governed by separate agreements entered into as amongst the Brokers, the Buyer and/or the Seller.

Section 23. Attorneys Fees: If legal proceedings are instituted to enforce any provision of this Agreement, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorneys fees and court costs incurred in connection with the proceeding.

☐ **EIFS/SYNTHETIC STUCCO:** If the adjacent box is checked, Seller discloses that the Property has been clad previously (either in whole or in part) with an "exterior insulating and finishing system" commonly known as "EIFS" or "synthetic stucco". Seller makes no representations or warranties regarding such system and Buyer is advised to make its own independent determinations with respect to conditions related to or occasioned by the existence of such materials at the Property.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

BUYER:**Individual**

 Date: _____

 Date: _____

Business Entity

 Town of Huntersville, NC
 (Name of Entity)

By: _____

Name: Anthony Roberts

Title: Town Manager

Date: _____

SELLER:**Individual**

 William H. Stewart, Jr.
 Date: _____

 Date: _____

Business Entity

 (Name of Entity)

By: _____

Name: _____

Title: _____

Date: _____

WIRE FRAUD WARNING

To Buyers: Before sending any wire, you should call the closing agent's office to verify the instructions. If you receive wiring instructions for a different bank, branch location, account name or account number, they should be presumed fraudulent. Do not send any funds and contact the closing agent's office immediately.

To Sellers: If your proceeds will be wired, it is recommended that you provide wiring instructions at closing in writing in the presence of the closing agent. If you are unable to attend closing, you may be required to send an original notarized directive to the closing agent's office containing the wiring instructions. This directive may be sent with the deed, lien waiver and tax forms if those documents are being prepared for you by the closing agent. At a minimum, you should call the closing agent's office to provide the wire instructions. The wire instructions should be verified over the telephone via a call to you initiated by the closing agent's office to ensure that they are not from a fraudulent source.

Whether you are a buyer or a seller, you should call the closing agent's office at a number that is independently obtained. To ensure that your contact is legitimate, you should not rely on a phone number in an email from the closing agent's office, your real estate agent or anyone else.

The undersigned hereby acknowledges receipt of the Earnest Money set forth herein and agrees to hold said Earnest Money in accordance with the terms hereof.

 (Name of Escrow Agent)

Date: _____

By: _____

Escrow Agent's contact/notice information is as follows:

e-mail address: _____ fax number: _____

except as same may be changed pursuant to Section 12.

BEGINNING at a #4 rebar set in the Right of Way of Ramah Church Road. Thence, from the said POINT OF BEGINNING N02°31'55"W a distance of 603.82' to a #4 rebar set. Thence, N89°41'55"W, a distance of 143.00' to a #4 rebar found. Thence, N00°19'14"E, a distance of 244.42'. Thence, S80°48'37"E, a distance of 399.99'. Thence, S20°57'31"E, a distance of 185.98'. Thence, S69°44'13"W, a distance of 162.69'. Thence, S20°16'36"E, a distance of 639.44 feet, into the right of way of Ramah Church Road. Thence, S73°37'32"W, a distance of 95.41'. Thence, N89°17'32"W, a distance of 100.00'. Thence, N76°15'00"W, a distance of 174.09'. Thence, N02°31'55"W, a distance of 32.10' to the POINT AND PLACE OF BEGINNING, having an area of 6.073 Acres according to a survey by Professional Property Surveyors, Inc., dates 05/08/2018, project #040218-03.

**Town of Huntersville
Town Board
January 17, 2023**

To: Town Board

From: Stephen Trott, Director of Engineering

Date: January 17, 2023

Subject: Gibson Park Drive Phase 2 Property Acquisition Resolution

EXPLAIN REQUEST:

Adopt resolution to acquire property for Gibson Park Drive Phase 2 project.

ACTION RECOMMENDED:

Adopt resolution to acquire property for Gibson Park Drive Phase 2 project.

FINANCIAL IMPLICATIONS:

Bond Funds/Fund Balance

ATTACHMENTS:

1. R-2023-4 Resolution to Acquire Property 1-3-22



**RESOLUTION OF THE TOWN OF HUNTERSVILLE BOARD OF COMMISSIONERS TO ACQUIRE
PROPERTY NECESSARY FOR THE CONSTRUCTION OF GIBSON PARK DRIVE PHASE 2**

WHEREAS, the Town of Huntersville (the "Town") has determined that the acquisition of property is necessary for the construction of Gibson Park Drive Phase 2 (the "Project"); and

WHEREAS, the statutory powers of the Town include the power to acquire real property (N.C.G.S. §160A-11 and §160A-240.1), including the power of eminent domain (N.C.G.S. Chapter 40); and

WHEREAS, the Town has certified that the parcel ("the Property"), represented on Exhibit A, is needed for the Project; and

WHEREAS, on January 18, 2022, the Town Board authorized the acquisition of the Property at a price not to exceed the Property's appraised value and permitted Administrative Adjustments; and

WHEREAS, the Town could not acquire the property by negotiations at the authorized price.

***NOW THEREFORE, BE IT RESOLVED BY THE TOWN OF HUNTERSVILLE BOARD OF
COMMISSIONERS (the "Town Board") AS FOLLOWS:***

1. The Town Board approves and authorizes the acquisition of the necessary Property as described on Exhibit A by instituting and pursuing acquisition by the process of Eminent Domain according to the procedures contained in Chapter 40A, including but not limited to, giving notice of intent to the property owner, executing and filing a complaint and declaration of taking, and depositing the amount estimated to be just compensation with the Clerk of Superior Court of Mecklenburg County; and
2. The Town Board hereby authorizes the Town Manager, acting on advice of counsel, to take any actions necessary to carry out the provisions of this Resolution; and
3. This Resolution shall be effective as of the date its adoption.

Adopted this 17th day of January, 2023.

ATTEST:

TOWN OF HUNTERSVILLE

Town Clerk

Town Mayor

APPROVED AS TO FORM:

Town Attorney

EXHIBIT A - PARCEL INDEX

PARCEL #	PARCEL ID #	PROPERTY OWNER NAME
1	019-053-22	Donald K. Holbrook