



The Hickory Regional Planning Commission will hold its regular meeting on **Wednesday, August 25, 2021 at 6:00 p.m. in the City Council Chambers of City Hall.** The following will be the agenda for the Regular Meeting:

AGENDA

- Parliamentary Call to Order
- Welcome
- Roll Call
- Items of Correspondence
- City Council Action
- Approval and signing of minutes from the July 28, 2021 meeting.

PRESENTATIONS AND PUBLIC HEARINGS

Rezoning Petition (RZ) 21-03. Request by Trivium Corporate Group, LLC for the consideration of rezoning 108.25 acres of property located off Startown Road, from Planned Development (PD) to Industrial- Conditional Zoning (IND-CZ). The subject property is shown as PINs 3721-19-61-2638, and a portion of 3721-19-51-1871 on the Catawba County Tax Map.

Rezoning Petition (RZ) 21-04. Request by Amicus Partners, PLLC, as agent for Claudette Franklin and Jean Hedrick, for the consideration of rezoning +/- 35.58 acres of property located at 2909 16th Street NE from Medium Density Residential (R-2) to Planned Development (PD). The subject property is shown as PINs 3714-15-62-4958 on the Catawba County Tax Map.

OTHER BUSINESS

1. **None**

The Hickory Regional Planning Commission does not discriminate on the basis of disability in the provision of its service as charged by the City Council of the City of Hickory. All meetings are held in accessible facilities. Any person with a disability needing special accommodations should contact the Planning Department at telephone number (828) 323-7422 at least 48 hours prior to the scheduled meeting.

Attendance Roster
FY 21-22

Key	A	Absent	AX	Excused		No meeting		No
	P	Present				Vacant/Not yet appointed		Quorum

Hickory Regional Planning Commission

		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Appoint	Expire
Catawba County	Jeff Kerley	P												Jul-20	Jun-23
Catawba County	William Pekman	P												Jul-20	Jun-23
Burke County	Robert Weaver	P												Dec-19	Jun-22
Ward 1	Bill McBrayer	P												Jul-19	Jun-22
Ward 2	Philip Reed	P												Jul-21	Jun-24
Ward 3	Junior Hedrick	P												Jul-20	Jun-23
Ward 4	Sam Hunt	P												Jul-18	Jun-21
Ward 5	Wallace Johnson	P												Jul-20	Jun-23
Ward 6	Anne Williams	P												Jul-19	Jun-22

Hickory Regional Planning Commission
Wednesday, July 28, 2021, 6:00 pm

A regular meeting of the Hickory Regional Planning Commission (HRPC) was held on Wednesday, July 28, 2021, 6:00 pm, in Council Chambers of the Julian G. Whitener Municipal Bldg.

Members Present: Bill McBrayer, Robert Weaver, Junior Hedrick, Philip Reed, Wallace Johnson, Anne Williams, Bill Pekman, Sam Hunt, and Jeff Kerley

Members Excused: none

Members Absent: none

Others Present: Director of Planning Brian Frazier, Planning Manager Cal Overby, Senior Planner Brian Burgess, Deputy City Attorney Arnita Dula, City Councilwoman Jill Patton, and Minutes Clerk Anne Starnes

Parliamentary Call to Order & Welcome: Bill McBrayer, Vice-Chair, called the meeting to order at 6:00 pm and welcomed everyone.

Roll Call: Mr. Frazier said a quorum was present, with all nine (9) members attending the meeting.

Administer New Member Oath of Office: Philip Reed was welcomed to the Commission. The Hickory Regional Planning Commission was recently re-organized. Each member took the oath of office and was sworn in as a new member.

Annual Election of Officers: Mr. McBrayer said members would elect their FY 2021-22 officers – a Chair, Vice-Chair, and Secretary. Mr. Frazier explained the process and opened the floor for nominations of a Chair.

Bill Pekman moved, seconded by Anne Williams, to nominate Bill McBrayer as Chair. There were no other nominations, and Mr. McBrayer accepted the nomination. By a show of hands, Bill McBrayer was unanimously elected Chair, and abstained from voting.

Mr. Frazier opened the floor for nominations of a Vice-Chair.

Bill McBrayer moved, seconded by Jeff Kerley, to nominate Bill Pekman as Vice-Chair. There were no other nominations, and Dr. Pekman accepted the nomination. By a show of hands, Bill Pekman was unanimously elected Vice-Chair, and abstained from voting.

Mr. Frazier opened the floor for nominations for Secretary.

Bill McBrayer moved, seconded by Robert Weaver, to nominate Sam Hunt as Secretary. There were no other nominations, and Mr. Hunt accepted the nomination. By a show of hands, Sam Hunt was unanimously elected Secretary.

The Hickory Regional Planning Commission officers for FY 2021-22 are Bill McBrayer, Chair, Bill Pekman, Vice-Chair, and Sam Hunt, Secretary.

Items of Correspondence: Mr. Frazier said each City of Hickory appointee had received a letter from Mayor Hank Guess, and the Burke County and Catawba County appointees received a letter from their respective Board of Commissioners, regarding their appointment to the new Hickory Regional Planning Commission. Mr. Frazier received copies of the letters, which will be kept on file in the Planning Department.

City Council Action: Mr. Frazier said City Council held a public hearing at their last meeting and agreed with the Planning Commission's recommendation to approve Rezoning Petition 21-02, the REC Group's residential project to build over 300 single-family residential structures in Startown. He said City Council had also approved the annexation requested for the property.

Approval and Signing of Minutes from the June 23, 2021, Meeting: Minutes from the previous meeting were distributed to members in advance. No additions, deletions or corrections to the minutes were stated. Jeff Kerley moved, seconded by Sam Hunt, to approve the June 23, 2021, minutes as presented. By a show of hands, the motion carried unanimously.

PRESENTATIONS & PUBLIC HEARINGS

Mr. McBrayer said there was one public hearing on the agenda tonight, for Special Use Permit (SUP) 21-01. He read the NC Ethics Commission's Ethics Awareness & Conflict of Interest Reminder aloud:

In accordance with the State Government Ethics Act, it is the duty of each member of this board to avoid both conflicts of interest and appearances of conflict. Does any member of this board have any known conflict of interest, or appearance of conflict, with respect to any matters coming before us today? If so, please identify the conflict, or appearance of conflict, and refrain from any undue participation in the particular matter involved.

None of the members present stated a known conflict or asked to be recused.

1. Special Use Permit (SUP) 21-01. Request by Ken Simmons, agent for Linn Reid Gardner, for the consideration of the establishment of a Family Care Home in a Commercial Corridor (CC-2) district. The subject property is located at 2329 Springs Road NE and shown as PIN 3723-10-04-0794 on the Catawba County Tax Map.

All speakers were sworn in by the Clerk prior to their testimony.

Cal Overby presented the Staff Report and referred to PowerPoint slides. He reviewed slide #2 (Special Use Permit 21-01):

- Property Owners: Reid Gardner
- Applicant: Ken Simmons
- Location: 2329 Springs Road NE
- Current Zoning: Commercial Corridor (CC-2)
- Property Size: +/- 0.7 acres
- Background: The subject property was most recently used as a professional office.
- Request: The applicant requests a Special Use Permit to operate a Family Care Home (six or fewer residents) in a Commercial Corridor (CC-2) district. If the property were zoned residential, a Special Use Permit to operate a Family Care Home would not be required and could be permitted by-right.

Mr. Overby emphasized that if the location of this Family Care Home were in a residential area, a SUP would not be required. He said there are group ones all over Hickory, and they are treated as single-family residences. The only reason this request is coming to the Commission is due to the location being in a commercial district.

Mr. Overby reviewed slide #3 (Map 1. Hickory by Choice Future Land Use), saying the subject property was hashed in red and located in a Commercial Corridor, adjacent to High Density Residential.

Mr. Overby reviewed slide #4 (Map 2. Current Zoning), saying the subject property is on the west side of Springs Road, with a large area of Medium Density Residential (R-3) beyond to the west. He said R-3 is one of the higher density residential districts, allowing for single-family homes, duplexes, town homes, apartment complexes, and some non-residential uses, such as churches and schools. High Density Residential (R-4) is on the opposite side of

Springs Road, which is probably the City's highest residential zoning. Included are apartment complexes, institutions, and schools, and some of Hickory's large churches. The designation was formulated about 10 years ago to recognize the diversity of Hickory's largest corridors, namely Highway 127 and Springs Road, where a lot of commercial development exists.

Dr. Pekman noted the three structures on 15th Avenue NE that could be seen on the zoning map and asked what they are. Mr. Overby said they are town homes located on large lots. Dr. Pekman asked if the area behind them was an open field. Mr. Overby said yes, and the aerial photo on the next slide would show this better.

Mr. Overby reviewed slide #5 (Map 3. Aerial Photography), pointing out the subject property and town homes behind it to the right, and with vacant property behind them. A large church and shopping areas on Springs Road are located across from the property.

Mr. Overby reviewed slides #6 & 7 (Photos of the house at 2329 Springs Rd. NE), saying it was a former residence, that was turned into an office.

Mr. Overby reviewed slide #8 (Special Use Permit 21-01).

- The property is currently zoned Commercial Corridor (CC-2). The property's most recent use was professional office, and the structure housing that use remains.
- The general area is **classified Commercial Corridor** by the Hickory by Choice 2030 Comprehensive Plan.
- The Hickory by Choice 2030 Plan states the following about the Commercial Corridor land use classification (as summarized):
 - The land use category is intended to **accommodate vehicular traffic** and designed to **protect residential areas** and **alleviate conflicts** in land use.
 - The Commercial Corridor land use designation was created to **acknowledge the existence** of areas along **Springs Road NE and NC 127** (North Center Street / 2nd Street NE) that consist of **established corridor style non-residential development**. Specific accommodations were outlined within the Hickory by Choice 2030 Comprehensive Plan for the **continued growth and success** of these corridors. Much of the non-residential development along these corridors was in place prior to the city's current and former comprehensive plans.
 - The Commercial Corridor land use classification **does not speak to any specific use types**, rather it places emphasis on the **protection of adjacent residential development** and the corridor's continued success.

Mr. Overby reviewed slides #9-11 (Special Use Criteria).

1. Consistency with Hickory's Comprehensive Plan

- *While the comprehensive plan **does not speak to specific use types** along the corridors, the Hickory Land Development Code's table of **permissible uses provides, perhaps, some guidance** in how the corridors are intended to exist and grow.*
- *The use table lists numerous types of uses permissible within Commercial Corridor (CC-2) districts, the majority of which are non-residential. **Nursing, convalescent, and extended care facilities** are also permissible along the corridors but possess non-residential characteristic. In addition to non-residential uses, several residential use types are also permitted. **Two-family and multi-family residential are permissible** by-right along the corridors. Given this, it would not be a large departure to consider Family Care Homes as being consistent with the comprehensive plan.*

2. Compliance with the Land Development Code

- *The proposed use complies with all applicable provisions of the Land Development Code.*
- *Compliance will be **affirmed during the administrative plan review** and permitting process.*

3. Land Use Compatibility

- *The proposed use is a Family Care Home. While this possesses some **characteristics different than those of residences**, most recognizable professional care, the **use is very similar to adjacent residences**.*

4. Mitigation of significant impacts

- *Adverse impacts from the use of this property as a Family Care Home are **not anticipated**.*

5. Diminution in value of surrounding properties

- ***No qualified information** has been submitted that would indicate the proposed Family Care Home would have detrimental impacts on the values of properties in the area.*

6. Levels of service (police, fire, utilities, etc.)

- *Adequate public services are **currently in place** and in sufficient quantities to serve the proposed use.*

7. Assurances of continued maintenance

- *The applicant will be required, by city ordinance, to maintain all portions of the property.*

Mr. Overby reviewed slide #12 (Public Input).

- Planning staff has received approximately six (6) inquiries regarding the requested Special Use Permit. Those who contacted staff were provided information about the request.

He said the six (6) inquires were phone calls and e-mails, mainly asking what this would be. No one stated an objection to it, and there was no negative feedback.

Mr. Overby reviewed slide #13 (Staff Recommendation & Findings).

- **Staff Recommendation**

- Staff finds the request to be in conformance with the standards for approval contained with the City's Land Development Code, and recommends approval contingent upon the following:
 1. All aspects of the project, and its subsequent improvements, shall comply with all applicable provisions of the City's Land Development Code, and the Building and Fire Codes of the State of North Carolina; and
 2. Prior to the occupancy of the space, any required construction plans must be submitted, reviewed, and approved by the City of Hickory.

Mr. Overby said staff recommends approval of this request. He asked for questions from members.

Mr. McBrayer said that during his years of leading meetings, one process has been very successful. He said any Commission member who wants to make a comment or ask a question should verbally request to be recognized by the Chair, and the purpose of this was to be respectful of everyone and not talk over each other. This procedure helps to center the discussion in an orderly fashion and create order. He said it would be especially helpful during intense situations, such as when the matter at hand is difficult and/or if a large audience is present.

Dr. Pekman was recognized. He asked Mr. Overby where the city had derived their definition of a Family Care Home. Mr. Overby said they were basically using a modified version of what is contained in several laws and ordinances; in terms of the definition, it is a very broad one. Dr. Pekman asked when it was last updated, and Mr. Overby said possibly in 2011. Dr. Pekman asked where other Family Care Homes are located, and Mr. Overby said there are probably at least 3-4 dozen in Hickory. Dr. Pekman asked if any other ones exclusively serve adolescents. Mr. Overby said staff did not know this statistic, and if this one was being located in a residential district, they would not need to issue a permit for it. Dr. Pekman said, so the city does not know if there are any

other adolescent homes, and Mr. Overby said no. Dr. Pekman asked what the Safe Harbor facility would be, and what if you had both adults and children present, then how is that home categorized. Mr. Overby said adults and children together would not be considered a Family Care Home – that would be given to another authority for approval, which he believes is the NC Department of Health & Human Services.

Dr. Pekman said the reason that he was asking these questions is that Hickory’s definition is not the same as the state’s definition – at least, it is not the state definition as is applicable to a Family Care Home. He said the state describes a Family Care Home as having less than six (6) residents and being limited to adults. Mr. Overby said he understands that, but as far as the licensing requirements of this section of the North Carolina General Statutes (NCGS), basically it states that a Family Care Home means a private residential childcare facility, or a group home that cares for foster children, or a public residential childcare facility, or a group home that cares for no more than 25 children.

Dr. Pekman read from the North Carolina Department of Health & Human Services website, referencing information from the NC General Statutes (NCGS), re: Minimum Licensing Standards for Residential Childcare. He quoted their information, saying, “*License for a Family Care Home, 2 to 6 beds. This procedure outlines the steps to license a new Family Care Home in North Carolina.*” Dr. Pekman said Family Care Homes are licensed under General Statute 131.D, and it makes it explicitly clear that it is limited to adults.

Deputy City Attorney Arnita suggested that Mr. McBrayer open the public hearing and let the applicant present his testimony.

Mr. Overby said Dr. Pekman may have a valid point, but that is not what the Commission is considering here. Dr. Pekman said he questioned if what is being licensed is truly a Family Care Home.

There were no further questions for Mr. Overby.

The Staff Report was entered into the record as Exhibit A.

Mr. McBrayer reviewed the Commission’s procedure for a quasi-judicial public hearing, saying members would hear from the proponents first, for 15 minutes total, followed by the opponents for 15 minutes total. He said after both have presented their testimonies, there would be time for rebuttal of 5 minutes and surrebuttal of 5 minutes, followed by discussion and voting by the Commission members.

Mr. McBrayer declared the public hearing for Special Use Permit 21-01 open.

PROPONENTS

Ken Simmons, 14530 Sunset Walk Lane in Huntersville, NC addressed the Commission. He said as the applicant, he would speak to the point that had already been made. Yes, he is asking for a rezoning for this Family Care Home, that what happens is the state always defers to a local authority. Mr. McBrayer clarified that this hearing was for a Special Use Permit, not a rezoning. Mr. Simmons said yes, he misspoke and that is correct. He said the permit would be for six (6) or less adolescent residents under 18-years, all of one (1) gender, either male or female, that they cannot mix adults and children together, and it is short-term.

Mr. Simmons said this is a highly sought after, highly needed service in North Carolina. He referred to a July 2019 map of North Carolina, “Local Management Entities/Managed Care Organizations” that he brought with him. (Note: each county in NC was shown on the map as belonging to one of seven different entities or organizations: Vaya Health, Partners Behavioral Health Management, Cardinal Innovations Healthcare Solutions, Sandhills Center, Alliance Health, Eastpointe, and Trillium Health Resources. Catawba County was one of nine counties being under Partners Behavioral Health Management, along with Burke, Rutherford, Cleveland, Gaston, Lincoln, Iredell, Yadkin, and Surry Counties.)

Mr. Simmons said the map shows the population being served, and that he had already been contacted by some of the groups on the map. He said the need exists for this specialized service. It will be a structured facility and they will have staff there 24/7, including a psychiatrist, counselors, etc., but none of them will be allowed to live there, except for the clients. They will work with outside organizations, including DSS.

Mr. Simmons asked if there were any questions from members.

Dr. Pekman asked who Mr. Simmons had contacted in Catawba County, and if he had contacted DSS. Mr. Simmons said no. Dr. Pekman said Mr. Simmons had noted there are other facilities around the state and asked if any of them were his. Mr. Simmons said no, this is his first residential one; however, he has an outpatient one with a psychiatrist who sees substance abuse and mental health clients, but this is his first residential home. Dr. Pekman clarified that Mr. Simmons was looking to serve clients under the age of 18, or children, and asked how he would obtain his clients, or patients. Mr. Simmons said they would go on the DHHS list and confirm that they are open, and all the DSS facilities would then be alerted that there is a new residential care home open in the state. He said that once they go on the list, they would all contact him directly for placement.

Dr. Pekman asked if he meant the residential home would serve people from outside of Catawba County, that they could take someone from Rowan County. Mr. Simmons again referred to the (July 2019) NC map of "Local Management Entities/Managed Care Organizations," saying it was a Local Management Entity map, and they are also known as LMEs.

Mr. McBrayer requested Mr. Simmons share the map with members and be brought into evidence, so the map was circulated.

Mr. Simmons said they are specifically looking at two of the entities, Vaya Health and Partners Behavioral Health Management, and explained that he is credentialed with both. He noted that Vaya Health serves 22 counties in western NC. When he found the property here, he advised Vaya that he would be opening a residential home in Hickory; he asked them if that would be a problem, and they said no. Mr. Simmons said, to Dr. Pekman's earlier question, that they like to place a child locally so that when DSS goes in and removes a child, their family will not have far to go. He said the only problem, or issue with that is if you call DSS for Catawba County, he could guarantee you they are having problems finding placement, because there is a lack of facilities for clients. His name is already on the list, and he received a call from Alexander County. He asked them how they got his name, and they said that his name was on the list, that they saw it there. When they called him, they had three (3) kids they needed to place who were siblings. Mr. Simmons said he does not have a contract with them and is not credentialed with them, but Alexander County is not far from here and they already have his information. He said the ideal situation is for Catawba County to have some homes here to take in local kids, but it is just not reality. So, what they are doing now is sending them out-of-state, because they have nowhere in-state to send them.

Dr. Pekman said as a matter of fact, there are none in the state of North Carolina; there were four (4) in Catawba County, but the last one closed; a conscious decision was made to close. He said the reason he was asking Mr. Simmons these questions were, is he going to serve children who have special needs? Mr. Simmons said no, no special needs children. Dr. Pekman said so none with developmental needs. Mr. Simmons said those are someone else's clients. Dr. Pekman asked what kinds of clients he would be taking. Mr. Simmons said they would be ambulatory clients, 18 and under, all of them males, and direct placements from DSS. He does not have a license for the clients Dr. Pekman asked about, that he will be getting regular ambulatory clients; they could be mental health or substance abuse clients, but most of them would be categorized as regular ambulatory clients.

Dr. Pekman said he could tell Mr. Simmons right now that if he called Catawba County DSS they would tell him that they have closed all their in-patient facilities and have no intention of opening them again, and no county DSS is going to do that. Mr. Simmons said to do what, and Dr. Pekman said no county DSS is going to open an in-patient facility, that it has been discouraged, both at the state level and at the federal level, and by regulatory and statutory actions. They have cut the remuneration, and no one could afford to do this.

Mr. Simmons said he respectfully refuted Dr. Pekman, saying that just before this meeting he had received a phone call from a friend of his who recently opened the same service that he is offering, but in Statesville. She has opened it and is serving all female clients. Dr. Pekman said this is not congruent with what is happening all over the state, and he is trying to understand where this fits in. He has made multiple inquiries to Catawba County DSS, and this is not what they would endorse. Mr. Simmons said he is not credentialed with them; if he does not get a client from them, he is okay with that. He gets his license from the state; they give him a license, and if he does not speak with Catawba County DSS, then he is okay, because he has already gotten calls from other counties. Again, Mr. Simmons said the ideal situation is to keep the clients close to where they live. He said he owns property here, this is where he is opening, the state will tell them, hey, we have a place here, an hour or two away, and the placement is open if you want it. Mr. Simmons said he was confident enough to open it, with the understanding that Catawba County may not send him any referrals.

Dr. Pekman said he could not speak for the entire Board of the DSS, but that what Mr. Simmons has told him here tonight is in direct variance with what they are doing in Catawba County and what is being done all over the state, and that he is having difficulty reconciling the two. Mr. Simmons said he could not tell him how much he appreciates that, that he is giving him a warning of what is ahead, but he has done the research and has spoken with different entities around the state, and he knows this is a needed service.

Mr. Simmons said, again, he just wanted to make sure Dr. Pekman was clear, that he did not have to hold conversations with the local DSS. Dr. Pekman said he could not comment on that, but his research would suggest that Mr. Simmons should do a local needs assessment and specifically speak with the area DSS.

Ms. Dula asked to interrupt them, saying that she believed there was a disconnect here, in the process Dr. Pekman is describing and the one faced by Mr. Simmons. She said Mr. Simmons is opening a private facility, this is not the state, and it is not the county, so regarding the process, there seemed to be bit of a disconnect. She reminded members that this board does not have the authority to approve the facility – location, yes, but not the facility; as far as licensing and such, that is not under the members’ purview. She suggested members steer back to their decision on whether it could be located in this particular zoning district..

Mr. Simmons said he could certainly appreciate what Dr. Pekman was saying, that he was saying if he opened here, he was not going to get any clients. Ms. Dula said no, there are no group homes operated by Catawba County; they closed all of them. Mr. Simmons said that was their decision. Ms. Dula said, however, you are not a governmental program, you are private. Mr. Simmons said that was correct, his is a private program.

Mr. McBrayer asked if there were any further questions for Mr. Simmons, and there were none.

The “Local Management Entities/Managed Care Organizations” map referenced by Mr. Simmons was submitted to the Clerk and entered into the record as Exhibit B.

Linn Reid Gardner, 4046 Golf Drive NE in Conover, addressed Commission members. He is the property owner and retired May 1, 2018, after operating a successful insurance agency. He said the agency was split in three different directions; the main one was not large enough to stay in the building, so they moved downtown and operate as The Gardner Group. Since then, this building has been vacant. He has had quite a few people ask about it, and this past year they had someone who wanted to buy it, but it did not work out due to COVID issues. He has had several people want to put things in there that he knew the city would not particularly like, like FISH Games.

Mr. McBrayer noted the 15 minutes allowed for the proponents had expired and asked if members would like to vote to give Mr. Gardner more time.

Sam Hunt moved, seconded by Wallace Johnson, to add more time for testimony by the proponents. The motion carried unanimously.

Mr. Gardner continued, saying a lot of people have asked about having their business there, but he did not feel good about having FISH Games in that building. He said others present here may not agree with that, but he did not think that was the proper type of business to have located in front of St. Stephens Church, noting that the house had been their parsonage at one time. He said one person wanted to buy the house last year, but it fell through because of COVID. He also had a church that wanted to move in there, but they were not approved due to wanting to have people sleep upstairs. The church leaders were planning to teach them the Bible and how to witness to people. It was a program aimed at teaching them missionary skills, and while they were in training, they would live in the house. A beauty salon owner was also interested in setting up a business in the house, as was a day care operator.

Mr. Gardner said that when he met Mr. Simmons, he was impressed with him, and he also felt like his program assisting children was a good one to bring to Hickory. He said Dr. Pekman had done a lot of research, but that he had not done any; he just assumed there is a need for this service. Mr. Gardner said he understands that the new facility in Statesville had filled up immediately, and that with or without DSS, he hopes Mr. Simmons will be successful because they plan to sign a 3-year lease. He needs to do something with the building, and a commercial use has not come forward. It has been listed for rent for a good while now and he has not seen any other businesses that want to rent or buy it. Mr. Gardner believes this is a good program and a good fit for the neighborhood.

Mr. Gardner concluded his testimony and said he would answer any questions from members.

There were no questions for Mr. Gardner, and no additional proponents.

Mr. Frazier addressed Mr. McBrayer and requested that Senior Planner Brian Burgess be recognized, saying he might be able to bring clarity to the discussion. Mr. McBrayer asked if any of the members had an objection to hearing additional testimony from staff, and none objected.

Mr. Burgess said he might be able to clarify some of the questions and discussion on this topic, which he had been researching. He said there are two different chapters at play here. The one that Dr. Pekman referenced is Chapter 131, which is the legislative document giving the NC DHHS DSS (North Carolina Department of Health & Human Services) their legislative authority. They also have policies that further change the definitions of what is allowed. Specifically, though, any of those things require a zoning letter before they can open, regardless of if it is a healthcare home, a residential childcare placement, maternity, any of that, it will require having a zoning letter.

Mr. Burgess said 160.D, however, Article 9 gives the definition of a family care home as being exempt from Hickory's zoning regulations, which is why they are all allowed in residential districts. It defines it as an umbrella term, so a family care home in 160.D is not the same thing as a family care home in 131. He said that, for the City, it is about the individual licenses and that means the 160.D definition, because it is consistent with the Land Development Code (LDC) and the LDC is the only thing giving the City zoning authority. He said 131 had nothing to do with what the Commission is discussing tonight. He wanted to make this clear, because it is important; he just checked it, and Article 9 in 160.D says family care home is an umbrella term.

Dr. Pekman said, so 131, the definition you are saying the DHSS uses to define a family care home, that would be 131. Mr. Burgess said correct, and in the same way that some of the applicable bills have different definitions for what agriculture is, that would differ from 160.D because it is a land use purpose, versus a technical purpose. For land use purposes, "family care home" just becomes an umbrella term, any of those things that fall under that category, whereas when you get into the nitty-gritty of dealing with healthcare providers and service providers, they are going to have different types of focus. For the City, he said the term is interchangeable, while for DSS, they are very specific about what is a family care home, what is a maternity care home, etc. For land use purposes, Mr. Burgess said the city has that one definition.

Mr. McBrayer asked if there were any other questions for Mr. Burgess, and there were none. He thanked Mr. Burgess for the clarification.

OPPONENTS

None

REBUTTAL – PROPONENTS

Mr. McBrayer said there would be 5-minutes for rebuttal, if Mr. Simmons or Mr. Gardner had any additional testimony or comments. Mr. Simmons said he had no additional testimony, but would answer any further questions, if needed. There were no additional questions.

Mr. McBrayer asked if any of the members had further comments or questions, and there were none.

Mr. McBrayer declared the public hearing was closed.

Mr. McBrayer said when a public hearing for a rezoning is held, members vote by a show of hands and their recommendation then goes to City Council for a final decision. However, for this quasi-judicial hearing, the decision will be made by Commission members. It will not go forward as a recommendation to City Council, and the decision made here tonight will be final. After a motion is made to approve or deny the Special Use Permit, there will be a roll call vote, with each member voting individually and stating why they are voting for or against the petition, which could include the testimony given here tonight and the staff report.

Mr. McBrayer opened the floor for discussion by members.

Mr. Kerley asked if Mr. Simmons vacates the building at the end of his 3-year lease, would the Special Use Permit go forward with the next tenant.

Mr. Overby said the way Special Use Permits work now, due to recent statutory changes, is they now have a sunset clause. It was revised under “vested rights” recently and redefined by the NC legislature during their prior session. Now, if a Special Use Permit ceases to be operational for 12 consecutive months, then it no longer applies to the property. Additionally, if it has not started during the 12-month period since it was approved, the sunset clause would apply. Mr. McBrayer asked when this came about. Mr. Overby said this is new and was included in the changes adopted in January 2021. It came about during the prior legislative session.

Mr. Hunt said he operated a family care home at one time, with three (3) adults, two females and a male. He said it is not very difficult once you learn what is expected, that you cannot break any of the rules and you should make sure you have everybody on board that needs to be satisfied. If you do that, you will be fine, but if you don't do that, the authorities will find out about it.

There was no further discussion and Mr. McBrayer asked for a motion to approve or deny the petition.

Sam Hunt moved, seconded by Philip Reed, to approve SUP 21-01.

Mr. McBrayer there was a motion on the floor, and again stated there would be a roll call vote.

Mr. Hedrick voted **in favor** of approving SUP 21-01, based on the finding of facts, and that it is consistent with the Hickory by Choice 2030 Comprehensive Plan and the Land Development Code.

Ms. Williams voted **in favor** of SUP 21-01, based on the staff report, and that it is consistent with Hickory by Choice and the Land Development Code.

Rev. Wallace voted **in favor** of SUP 21-01, based on the staff report and testimony from both the applicant and property owner.

Mr. Reed voted **in favor** of SUP 21-01, based on the applicant having met all the rules and regulations required for the permit.

Mr. McBrayer voted **in favor** of SUP 21-01, based on the staff report and testimony given, and that it meets the seven required criteria for the permit.

Dr. Pekman voted **in favor** of SUP 21-01, based on it following the Land Development Code.

Mr. Kerley voted **in favor** of SUP 21-01, based on it being consistent with the Hickory by Choice 2030 Comprehensive Plan and the Land Development Code, and the testimony given by the two proponents.

Mr. Hunt voted **in favor** of SUP 21-01, based on the staff report, that it meets the seven criteria, and it is consistent with Hickory by Choice 2030 and the Land Development Code.

Mr. Weaver voted **in favor** of SUP 21-01, based on the staff report and testimony from the proponents.

Mr. McBrayer said Special Use Permit 21-01 was granted by the Commission on a unanimous vote of 9-0, and he congratulated Mr. Simmons.

Other Business: Mr. McBrayer asked staff if they had any further business for the members.

Mr. Frazier asked if each member had received the most recently updated copy of Hickory by Choice 2030 Comprehensive Plan and the Hickory Land Development Code, and apparently so. For the August meeting, there will be one public hearing for a rezoning, and possibly two.

Mr. Kerley asked what vote is required for a motion to carry. Mr. McBrayer said a simple majority is required. Mr. Overby said a simple majority is required for a rezoning or SUP, also for a review of a decision made by the Planning Director. However, a 4/5 majority vote is required for a variance.

On behalf of Dr. Pekman, Mr. Hunt, and himself, Mr. McBrayer thanked the members for their vote of confidence in electing them as their officers this year.

Next Meeting: The next regular meeting will be on Wednesday, August 25, 6:00 pm, in Council Chambers.

Adjourn: There being no further business, Mr. McBrayer adjourned the meeting at 7:05 pm

Bill McBrayer, Chair
Hickory Regional Planning Commission

Anne Starnes, Minutes Clerk
City of Hickory

REZONING ANALYSIS

PETITION: Rezoning 21-03

APPLICANT: Trivium Corporate Center, Inc.

OWNER: Trivium Corporate Center, Inc.

PROPERTY LOCATION: Startown Road and Robinwood Road

PIN: 3721-19-61-2638, and a portion of 3721-19-51-1871

WARD: The properties are located Ward 3 (Councilman Seaver).

ACREAGE: 108.25 acres

REQUESTED ACTION: Rezone the properties to Industrial – Conditional District (IND-CZ).

BACKGROUND: The properties were recently voluntarily annexed. The properties currently retain Hickory's Planned Development (PD) designations. The requested action is to assign the properties a city zoning designation of Industrial – Conditional District (IND-CZ).

DEVELOPMENT POTENTIAL: Previously, Trivium Corporate Center, Inc. acquired a parcel on the east side of Startown Road across from the park's current entrance to be utilized for residential and/or commercial uses. Due to the rate of success for the park, Trivium Corporate Center has elected to expand the industrial opportunities onto this site.

The requested action is to adjust the zoning designation to these properties. This action would consist of zoning these properties as Industrial – Conditional District (IND-CZ).

REVIEW CRITERIA: In reviewing and making recommendations on proposed zoning map amendments, review bodies shall consider the following factors:

1. Consistency of the proposed zoning with the *Hickory Comprehensive Land Use and Transportation Plan* and the stated Purpose and Intent of this Land Development Code;

The areas under consideration are identified as High Density Residential by the Hickory by Choice 2030 Comprehensive Plan's future land use map (**Please refer to Map 1 for detail**). Chapter 3 of the plan states the following about the areas:

High Density Residential: *High density residential development in Hickory is located in or near mixed-use areas or higher-intensity commercial districts. The area covered by this land use extends approximately one half mile from the central point of each mixed use center, allowing for convenient walking or bicycling from home to shop. This will create higher density living in close proximity to neighborhood-scale shopping and office employment centers. The combination of smaller single-family lots, shorter building setbacks, shorter blocks, and multi-family development would create a gross average density for housing at approximately 12 to 20 units per acre. These areas may also contain office uses along thoroughfares and adjacent to commercial areas to act as a transition between commercial and residential land uses. Provided, such office uses, and their corresponding zoning districts, are located immediately adjacent to existing office uses and office zoning districts. This should be done to avoid saw tooth land use patterns along thoroughfares*

Section 1.7 of the Hickory Land Development Code contains its Stated Purpose and Intent. This section contains five (5) specific items which the Land Development Code is intended to uphold. These are as follows:

- Implement the Hickory by Choice 2030 Comprehensive Plan;

The areas under consideration for rezoning are clearly indicated by the Hickory by Choice 2030 Comprehensive Plan as being future High Density Residential Areas. However, these parcels would be bridging a gap between two existing residential districts, creating a more comprehensive and uniform future land use.

- Preserve and protect land, air, water and environmental resources and property values;

Any and all improvements that are to take place on the properties will be required to follow all applicable development regulations.

- Promote land use patterns that ensure efficiency in service provision as well as wise use of fiscal resource and governmental expenditures;

The current land use pattern is predominately residential and farm land. The location of the business park expansion and mixed-use area reflects a further southern expansion of Hickory's urban area. As development continues southward, it is easily conceivable to expect further urbanization of the area. Public utilities and transportation infrastructure are in place, or being constructed to serve the proposed development, as well as the surrounding area.

- Regulate the type and intensity of development; and

Any future development that takes place on the subject properties will be regulated by current and future development standards duly adopted by the City of Hickory and the State of North Carolina.

- Ensure protection from fire, flood and other dangers.

Any future development occurring on the subject properties will be required to adhere to all state and local building, fire, and flood zone related development regulations. Such regulations will ensure proper protections are provided to ensure surrounding residents, and employees are properly protected as prescribed by law.

2. Existing land uses within the general vicinity of the subject property (**Please refer to Maps 2 & 3 for more detail**):

- **North:** The properties are zoned R-20 Residential (Catawba County), and are occupied single family residences and vacant pasture land;
- **South:** The properties are zoned R-20 Residential, and are occupied by single family residences, or are vacant;
- **East:** The properties are zoned R-20 Residential and Industrial (IND), and are occupied by single family residences, vacant land, as well as some manufacturing; and

- **West:** The properties are zoned R-20 Residential, Neighborhood Commercial, Planned Development, and Industrial Conditional (IND-CZ) and are occupied by vacant land, single family homes, and Trivium Corporate Center.

3. The suitability of the subject property for the uses permitted under the existing and proposed zoning classification:

Part of the area was previously zoned for the business park's commercial and residential expansion the City of Hickory prior to its annexation. The land area is located in an area where public services and infrastructure support this type of development, and as such make them suitable for more urban type development.

4. The extent to which zoning will detrimentally affect properties within the general vicinity of the subject property:

Any rezoning has the potential to detrimentally impact properties in the general vicinity. Whenever non-residential development directly abuts residentially zoned land, screening and buffering is required by the City's Land Development Code.

5. The extent to which the proposed amendment (zoning map) will cause public services including roadways, storm water management, water and sewer, fire and police protection to fall below acceptable levels.

The proposed rezoning will not cause public services to fall below acceptable levels. Startown Road is maintained by NCDOT, and is proposed to be expanded in the future to accommodate growing traffic demands. Public water is available to serve the development. Stormwater control measures will be required during industrial development. The properties are within an acceptable distance from HFD's Engine 5 rural area, also the properties are within HPD's Charles PACT patrol area.

6. The proposed amendment (zoning map) will protect the public health, safety, and general welfare.

The properties in question are located within an area where the Hickory by Choice 2030 Comprehensive Plan anticipated additional non-residential and high-density residential growth. The current use of the properties is agricultural and unused, and the request would allow the properties to be redeveloped into a business park. Any future development that occurs of the subject properties as the result of the zoning map amendment, will be required to be adhere to regulations related to zoning, building and fire code, traffic, stormwater, etc.; which will work in conjunction with one another to ensure the health and safety of residents and visitors are properly protected.

CONDITIONS OF APPROVAL FOR INDUSTRIAL CONDITIONAL DISTRICT (IND-CZ):

1. Landscaping / Berms / Recreation

- a. Decorative fencing or an alternative shall be constructed and installed along the industrial boundary between residential on Startown Road.
- b. All parking areas shall be landscaped as required by Hickory's Land Development Code.

- c. All exterior buffering around the perimeter of the district shall comply with Hickory's Land Development Code.

2. Property Maintenance

- a. Long term maintenance shall be accomplished through a Property Owners Association.

3. Development Standards

- a. Building setback from all property lines external to the established district shall be fifty (50) feet. Building setbacks from all internal property lines shall be approved during of the site planning process.
- b. Maximum building height within the district shall be seventy (70) feet.
- c. All roof-top mounted mechanical equipment shall be screened from view of properties not located within the district.
- d. Metal facades shall not be permitted within the district. All buildings will be designed to exist in a complementary fashion to rural business park setting in as much as possible.
- e. Exterior lighting shall be designed to minimize adverse impact on properties not located within the district.

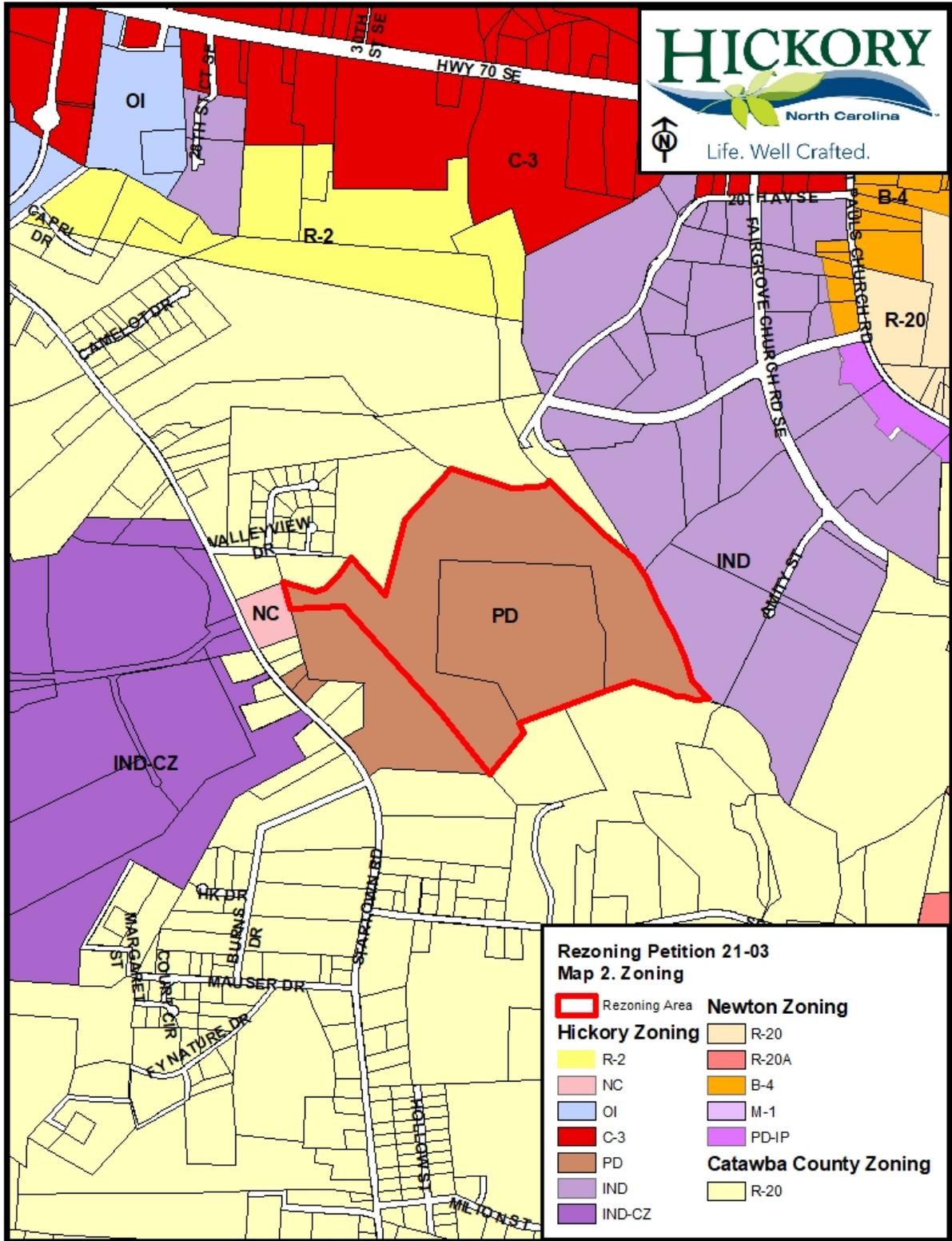
RECOMMENDED ACTION:

The area under consideration were identified by the by the finds and recommendations of the Hickory by Choice 2030 Comprehensive Plan as areas for future industrial and mixed-use development; and as such staff finds the proposed rezoning to be consistent with the plans findings and recommendation. Given this staff recommends:

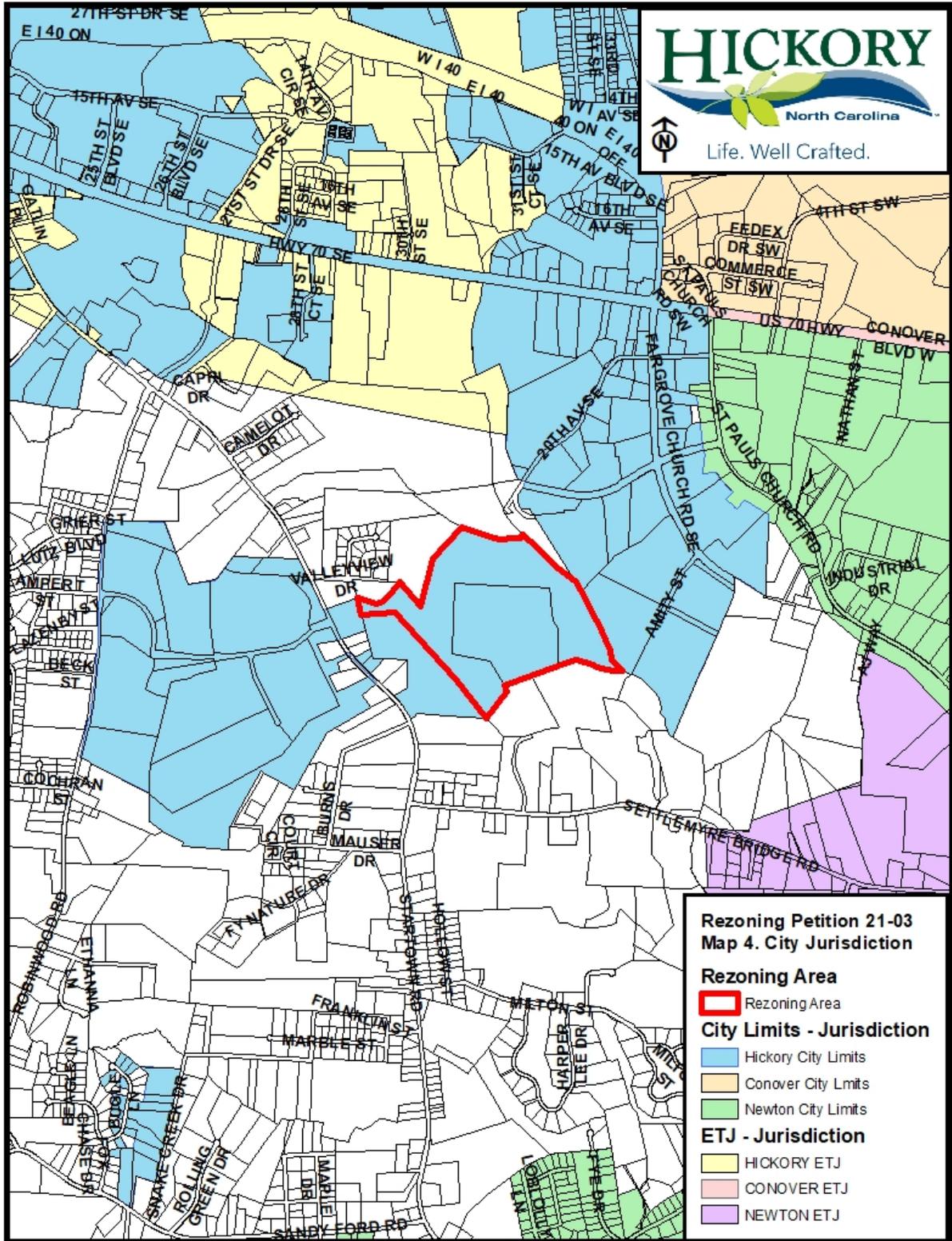
1. The Hickory Regional Planning Commission adopt a statement affirming the petition's consistency with the Hickory by Choice 2030 Comprehensive Plan; and
2. Forward a recommendation of approval to the Hickory City Council.

CITIZEN INPUT:

As of August 17, 2021, staff has not received any inquiries regarding this petition.







REZONING ANALYSIS

PETITION: Rezoning 21-04

APPLICANT: Nicholas R. Parker, P.E.

OWNER: Claudette Franklin & Jean Allen Hedrick

PROPERTY LOCATION: 2909 16th Street NE

PIN: 3714-15-62-4958

WARD: The property is located Ward 2 (Councilwoman Williams).

ACREAGE: 35.58 acres

REQUESTED ACTION: Rezone the property from Medium Density Residential (R-2) to Planned Development (PD).

BACKGROUND: The applicant has submitted a request to rezone the property to Planned Development (PD) to construct a residential community, consisting of single-family attached (townhomes) and detached cottage units. The breakdown of unit types is 139 single-family attached (townhomes) units, and 150 detached cottage units.

DEVELOPMENT POTENTIAL: Under the current R-2 zoning the property could be develop for detached single-family residential at a density of four (4) units per acre, which could theoretically yield 142 units. The proposal put forth, as shown on the included planned development concept plan, represents a density of 8.1 units per acre. The proposal also employs conservation subdivision principals with substantial open spaces areas.

REVIEW CRITERIA: In reviewing and making recommendations on proposed zoning map amendments, review bodies shall consider the following factors:

1. Consistency of the proposed zoning with the *Hickory Comprehensive Land Use and Transportation Plan* and the stated Purpose and Intent of this Land Development Code;

The general area under consideration is identified as High and Medium Density Residential by the Hickory by Choice 2030 Comprehensive Plan's future land use map (**Please refer to Map 1 for detail and note parcel lines are shown for geographic reference, as the future land use map is general and not parcel specific**). Chapters 3 and 4 of the plan states the discusses the following:

General Land Use Goals (not all-inclusive): Several general land use goals to consider in reviewing the requested Planned Development, as well as specific language regarding land use classifications:

- Support land uses that are complementary to surrounding land-uses.
- Promote pedestrian oriented neighborhood centers.
- Provide a balance between development and open space.

Medium Density:

- These residential areas are associated with each neighborhood mixed-use district

and/or higher intensity commercial districts throughout the city.

- *The medium density housing will be in the range of 6 to 8 units per acre.*
- *Conservation subdivisions principals should be used to conserve floodplains, wetlands and minimize stormwater run-off.*

High Density:

- *These areas are in or near mixed-use areas or higher intensity commercial districts.*
- *The high-density housing will be in the range of 12 to 20 units per acre.*
- *These areas act as a transition between commercial and lower density residential areas.*

General Housing Goals and Concepts (not all-inclusive): *Several general housing goals to consider reviewing the requested Planned Development:*

- *Provide diverse housing options suited to neighborhood character.*
- *Promote mixed-use neighborhoods.*
- *Provide a variety of housing options to meet citizen needs.*
- *Ensure compatibility between higher and lower density neighborhoods.*
- *Promote infill development.*

Plan Consistency:

The proposed Planned Development concept plan aligns with the previously mentioned plan concept and goals in the following manner:

- *The development density proposed is on the lower range of the density discussed.*
- *The envisioned land-uses in the development are like those of the surrounding area. Single-family attached (townhomes) has been positioned to share a boundary with the single-family attached to the north.*
- *The concept utilizes an infill parcel to mitigate utilizing open areas on the periphery of the city.*
- *The proposal includes two types of housing types. The cottages are a new arrival to the city and provides a product that further diversifies the city.*

Given the information provided by Hickory's comprehensive plan, and the concept provided by the applicant, the requests is consistent with the plan's recommendations.

Section 1.7 of the Hickory Land Development Code contains its Stated Purpose and Intent. This section contains five (5) specific items which the Land Development Code is intended to uphold. These are as follows:

- *Implement the Hickory by Choice 2030 Comprehensive Plan;*

As previously elaborated upon, the proposed rezoning is consistent with the Hickory by Choice 2030 Comprehensive Plan.

- *Preserve and protect land, air, water and environmental resources and property values;*

The concept plan sets aside significant areas for open space for recreation and minimization of stormwater damage and pollution. Other aspects of the concept will

be required to adhere to all applicable local, state, and federal environmental standards.

- Promote land use patterns that ensure efficiency in service provision as well as wise use of fiscal resource and governmental expenditures.

The current land use pattern is predominately residential, including multi-family single-family attached and detached, and includes office and commercial areas to the south. During a pre-submittal meeting between the developer's design team and city staff, discussion took place to ensure service provision could be accomplished in the most economic manner possible.

- Regulate the type and intensity of development; and

Any future development that takes place on the subject properties will be regulated by current and future development standards duly adopted by the City of Hickory and the State of North Carolina.

- Ensure protection from fire, flood and other dangers.

City requirements will necessitate the development of stormwater measures that both control and treat surface water on the site. Additionally, the development will be required to install hydrants and other infrastructure needed to handle dangers posed by fire.

2. Existing land uses within the general vicinity of the subject property (**Please refer to Maps 2 & 3 for more detail**):

- **North:** The properties are zoned Planned Development (PD) and are occupied single-family attached residences (townhomes) and known as the Cedars (developed at a density of 5 units per acre / 65 units on 13 acres).
- **South:** The properties are zoned Neighborhood Commercial (NC) and are occupied by a shopping Center (former Lowe's Foods).
- **East:** The properties are zoned Medium Density Residential (R-2) and Planned Development (PD). These are occupied by single family detached residences (Herbert Lee Propst subdivision / developed at approximately 1.5 units per acre / 22 lots on 17 acres), an apartment complex (Argyle Place / developed at 9 units per acre / 208 units on 24 acres) and vacant land.
- **West:** The properties are zoned Medium Density Residential (R-2) and Office Institutional and are occupied by a church (Tabernacle Baptist) and a cemetery (Woodlawn Memorial Gardens).

3. The suitability of the subject property for the uses permitted under the existing and proposed zoning classification:

The proposed uses (single-family attached and detached cottages) have forms like much of the surrounding area. The planned development is being sought to increase the permissible density and to permit for attached residences and multiple detached residences located on a single parcel. The greater density and building forms are the

most noticeable differing characteristic. The uses and densities are like the development to the north and east.

4. The extent to which zoning will detrimentally affect properties within the general vicinity of the subject property:

The uses requested for the planned development are either identical or like those of the area, except for the shopping center. While, any land use change can have detrimental impacts, the similarity of the requested uses to those currently existing, lends to the notion no adverse impact are anticipated.

5. The extent to which the proposed amendment (zoning map) will cause public services including roadways, storm water management, water and sewer, fire, and police protection to fall below acceptable levels.

The proposed rezoning will not cause public services to fall below acceptable levels. 16th Street NE is maintained by NCDOT and is adequately accommodating existing and future traffic. NCDOT has informed the developers roadway improvements, in the form of turn lanes, will likely be required. Stormwater control measures are shown on the concept plan and utilities are available to serve the development. There has been no indication fire or police protection will fall below acceptable levels.

6. The proposed amendment (zoning map) will protect the public health, safety, and general welfare.

The property in question is located within an area where the Hickory by Choice 2030 Comprehensive Plan anticipated higher density residential growth. The property is currently vacant, and the request would allow for the construction of additional housing choices within the city. The housing will provide additional opportunities at a time when the housing inventory appears to be low. This is a direct positive benefit for improving the general welfare of the city. With regards, to public health and safety, the development of the project will be required to provide necessary infrastructure to ensure safety for the area, and larger community.

CONDITIONS OF APPROVAL

1. The project will be constructed in compliance with the provided concept master plan.
2. Any improvements required by NCDOT will be provided in a manner as approved by the agency.
3. All infrastructure improvements will be designed in accordance with city and/or state specifications.

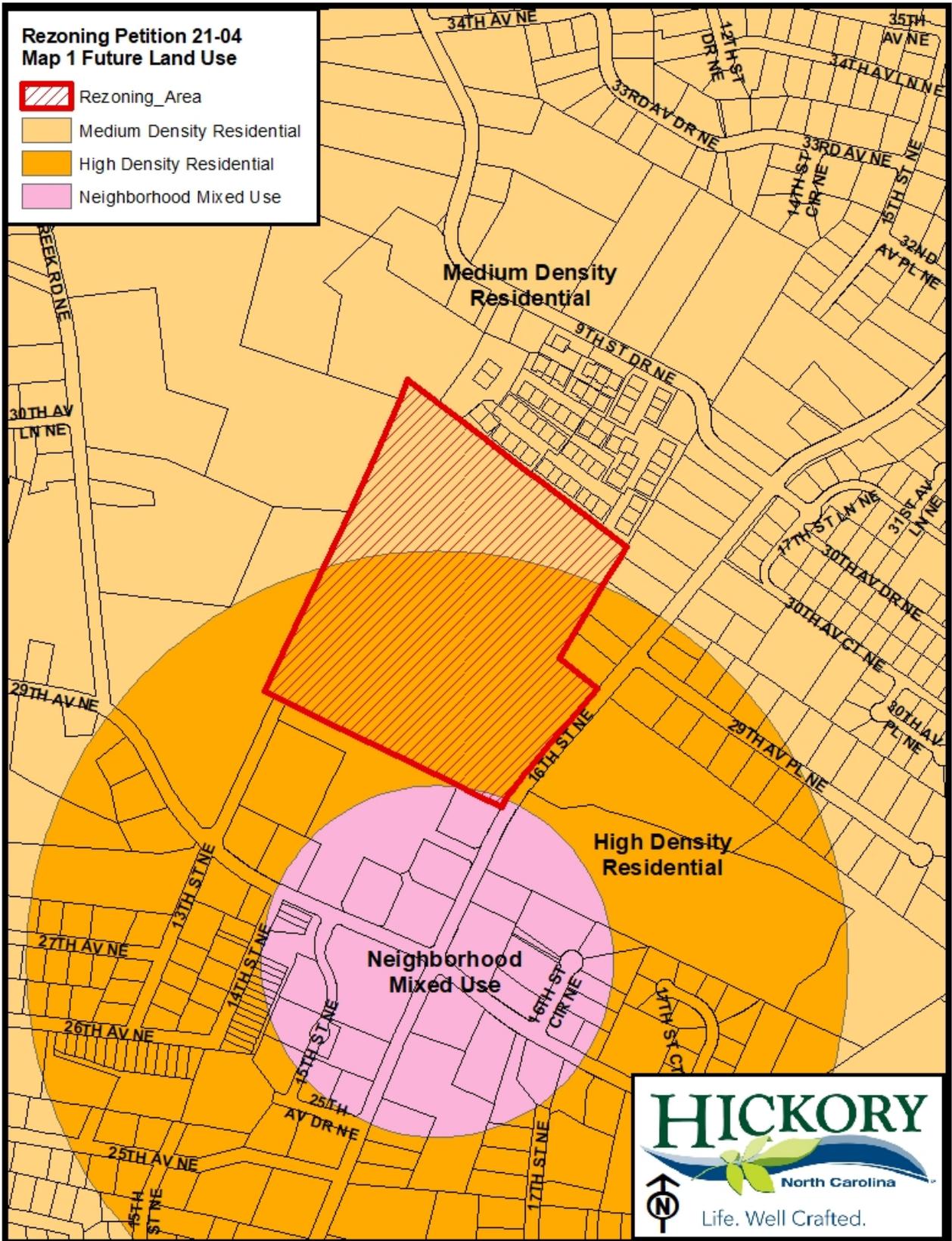
RECOMMENDED ACTION:

The area under consideration was identified by the Hickory by Choice 2030 Comprehensive Plan as areas for future higher density residential development and meets many land-use and housing concepts and goals; and as such staff finds the proposed rezoning to be consistent with the plan's findings and recommendations. Given this staff recommends:

1. Adopt a statement affirming the petition's consistency with the Hickory by Choice 2030 Comprehensive Plan.
2. Forward a recommendation of approval to Hickory City Council.

CITIZEN INPUT:

As of August 17, 2021, staff has received eight inquiries regarding this petition.



Rezoning Petition 21-04
Map 3 Aerial Photography

 Rezoning Area

