BUNCOMBE COUNTY
PLANNING & DEVELOPMENT

Agenda for Special Meeting
Buncombe County Planning Board
January 22, 2024 at 5:30 p.m.
Public Meeting will be at ABTech Ferguson Auditorium 19 Tech Drive Asheville, NC 28801

- **Call to Order**
- **Announcements - Nancy Waldrop**
- **Roll Call of Board Members**
- **Approval of Agenda**
- **Approval of Minutes – December 18, 2023**
- **Public Hearing**
    - **ZPH2023-00040**: Marc Wright of East Valley, LLC has applied to rezone one (1) parcel of land identified as tax lot PIN 9678-47-0815 (1700 and 1702 Tunnel Road) R-2 Residential to EMP Employment.
- **Comprehensive Plan Implementation:**
    - **ZPH2023-00038 Module 1:** Short Term Rentals-Review of Proposal
    - Public Input/Listening Session for **ZPH2023-00038 Module 1**
- **Adjourn**

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Notice of Special Meeting

This notice is for your information only; there is no required response or action If you have any questions about this special meeting, please call **828-250-4830** or e-mail **planninginfo@buncombecounty.org**

Notice is hereby given that the Buncombe County Planning Board will hold a special meeting on January 22, 2024, at 5:30 PM at AB Tech Ferguson Auditorium, 19 Tech Drive Asheville, NC 28801 at which the Board will discuss the following agenda items:

- **Public Hearing**
    - **ZPH2023-00040**: Marc Wright of East Valley, LLC has applied to rezone one (1) parcel of land identified as tax lot PIN 9678-47-0815 (1700 and 1702 Tunnel Road) R-2 Residential to EMP Employment.
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Notice of Cancellation Meeting

This notice is for your information only; there is no required response or action. If you have any questions about this special meeting, please call **828-250-4830** or e-mail **planninginfo@buncombecounty.org.**

Notice is hereby given that the Buncombe County Planning Board regular Planning Board meeting on Monday, January 22, 2024 at 30 Valley Street is Canceled. Please be aware that the Board will be holding a special meeting that evening at 5:30 pm at **ABTech Ferguson Auditorium 19 Tech Drive Asheville, NC 28801.**

Buncombe County Planning Board
December 18, 2023
Minutes

The Buncombe County Planning Board met on December 18, 2023, at 30 Valley St., Asheville, NC 28801

Planning Board members present were Nancy Waldrop-Chairperson, Ken Kahn-Vice Chair, Tim Collins, Mike Fisher, Anthony Coxie and John Noor.

Also, present were Terri Rogers, Gillian Phillips, Shannon Capezzali, Brittain Sluder-Planning Staff, Nathan Pennington-Planning Director and Curt Euler, Amy Broughton-County Attorneys.

Call to Order
Chair Ms. Waldrop called the meeting to order at 9:44 am.

Announcements
Public Comments protocol was shared.

Roll Call of Board Members
Complete.

Approval of Agenda
Today's public comments were rearranged till after the presentation by a motion made by Mr. Noor and seconded by Mr. Collins and passed unanimously.

Approval of Minutes (November 20, 2023)
Mr. Noor made a motion to approve the November 20, 2023 meeting minutes. The motion was seconded by Mr. Collins and passed unanimously.

Comprehensive Plan Implementation

Text Amendment Modules and Process was presented by Ms. Phillips. Text amendment modules are as follows:

1. Short Term Rentals
2. Mixed Use, Design Standards, Missing Middle, Affordable Housing and Transportation
3. Planned Unit Development & Conditional Zoning,
4. Environmental Energy & Safety
5. Economic Development and
6. Unified Ordinance

Each module will have a 5-step process: these are Research, Drafting and Review, Planning Board, Commissioners and lastly Implementation & Review.

Mr. Noor asked what determined the order of the modules. Mr. Pennington said that this process was presented to the County Commissioners in a work session and the recommendation was that the Short-

Term Rental module be the first, due to the amount of input received regarding it during the Comprehensive Plan Process.

Mr. Noor indicated he would like to see the Environment, Energy & Safety module switch places with Planned Unit Development & Conditional Zoning. No other member had a problem with that change.

Additional information about this process can be found in the presentation attached to these minutes.

ZPH2023-00038 Module 1: Short Term Rentals: Ms. Phillips shared the proposed timeline for this Module which will include numerous meetings with 2 meetings in January and 2 meetings in February. These meetings will start with review, discussion and revision to propose regulations and then the Public Hearing, which will be for the Planning Boards recommendation to the County Commissioners and which is to be complete by the last meeting in February.

Staff reviewed the proposed regulations regarding short term rentals, and the proposed grandfathering process regarding short term rentals. Mr. Pennigton reviewed the proposed process for this text amendment. Ms. Waldrop asked what prompted this topic for STR review, Mr. Pennington said it was primarily the Comprehensive Plan.

Mr. Kahn wondered if there would be an exemption for generational transfers on the grandfathering in of STR's. Mr. Pennington stated that they are recommending if it ceases operation or deed transferred. Ms. Broughton stated that based on the language of the proposed ordinance any deed transfer would constitute an end to that grandfather so we would have to make an exception for anything different.

Mr. Noor was interested in the Clarion report (Clarion was the consultancy firm used during the Comprehensive Plan process) and if the data is available to board members. Staff indicated that they would provide that data to the Board. Mr. Noor also enquired what we think the average square footage of STR's might be and how many are being used as accessory units compared to ones that are principal structures that are just being leased out that would be an interesting piece of information. Mr. Noor also wonders how many STR's would convert back to long-term rentals. Mr. Pennington states that it would be difficult information to gather.

Mr. Kahn asked to review the case law out of Wilmington on the PowerPoint slide and the conclusion comment about regulating STR's as land use not the activity of leasing or maintaining a registry, which would be a difficult task in itself. Ms. Phillips stated that NC allows local government to regulate land use, and place standards on those land uses, and gave the examples of subdivisions, buffering, and mobile home parks development standards.

Ms. Waldrop expressed an interest in the percentage of STR's might turn into long term or affordable housing options. She read an email someone sent in referring to a 6000 Sq. Ft. home used as a STR that she does not believe would be affordable housing.

Mr. Kahn asked if we knew the percent of STR's currently and what that might look like in 5, 10 years from now.

Mr. Noor spoke about what costs might be related to enforcement of STR's and what would that look like for cost of the county. What also may be regulations set up by Raleigh as to how these laws pertain to STR's. Mr. Pennington said the department is looking at requesting a code enforcement position. Staff

also indicated they were aware of one draft bill out there that could significantly affect a local government's ability to enforce a STR ordinance.

Additional information about this process can be found in the presentation attached to these minutes.

Public Comment

Public comments will be heard until 11:30 am. There will be additional meetings to allow comments about this in the next couple of months.

The following people shared public comment:
Josh Houde- was not in favor of changes to the text amendments.
Mark Bastin- was not in favor of changes to the text amendments.
Matt Allen- was not in favor of changes to the text amendments.
Bob Ragsdale- was not in favor of changes to the text amendments.
Chip Craig- was not in favor of changes to the text amendments.
Steve Frellick- was not in favor of changes to the text amendments.
Branden Davis- was not in favor of changes to the text amendments.
Brian Bishop- was not in favor of changes to the text amendments.
Byron Greiner- was not in favor of changes to the text amendments.
David Plyler- was not in favor of changes to the text amendments.
Phillis Morgan- was not in favor of changes to the text amendments.

Andra Golden-Spoke in favor of changes to the text amendments.
Geny Hernandez- Spoke in favor of changes to the text amendments.
Tomas Tocoa- Spoke in favor of changes to the text amendments.
Rocio Alviter- Spoke in favor of changes to the text amendments.
Jonathan Palma- Spoke in favor of changes to the text amendments.

Ms. Waldrop ended the public comment session as it is now 11:33 am and thanked everyone for coming and sharing comments that brought valid points to the table for the board to hear, she encouraged everyone who did not have a chance to provide comment to come to future meetings discussing the proposed text amendments.

Mr. Noor requested that the board take a moment to discuss this before we move on to the item on the agenda next. Mr. Noor indicated he was interested in looking at the data and information that some have shared here today, and if there is the opportunity for Planning Board staff to review the data. He also questioned how the next meeting should be formatted.

Mr. Coxie would also like to see any documentation that was referred to at the meeting sent in so it can be reviewed. We also hope to have a larger place for the next meeting and possibly one in the evening where it will allow other people to be able to attend.

Mr. Kahn also thanked everyone for attending.
Mr. Pennington said that we would look at a larger venue for an evening meeting.

Ms. Waldrop said they will now move on to the follow-up discussion of Planning Board Bylaws/Attendance policy.

Mr. Kahn made a motion to postpone that discussion to a later date. Mr. Coxie seconded that motion.

Adjourn

Mr. Khan motioned to adjourn the meeting seconded by Mr. Coxie. Meeting adjourned at 11:50 am.

ZONING MAP AMENDMENT (REZONING) INFORMATION

What is a Zoning Map Amendment (Rezoning)?

The Official Zoning Map is a map, adopted by the Buncombe County Board of Commissioners, which breaks the unincorporated areas of Buncombe County into zoning districts. Regulations pertaining to each zoning district are described in the Buncombe County Zoning Ordinance, including a list of the land use types that may be permitted within each district. A land owner may submit an application for a Zoning Map Amendment ("Rezoning") to change the zoning district to which their property has been assigned. Once a property is rezoned, any use allowed in that Zoning district, as listed in *Section 78-641 Permitted Uses* of the Zoning Ordinance, could be permitted.

Who decides if I will get a Map Amendment?

The proposed rezoning is first reviewed by the Buncombe County Planning Board, which makes a recommendation to approve or deny the proposal. The Planning Board's recommendation is then presented to the Board of Commissioners, which makes the final decision. The Planning Board and Board of Commissioners must consider issues of neighborhood compatibility, zoning consistency, and Comprehensive Land Use Plan priorities for development when considering a rezoning request.

When will my application be decided?

The Planning Board meets the first and third Monday of every month at 9:30am. Staff will confirm your meeting date upon submittal of your application. The applicant or their chosen representative **should be present** at the meeting in order to receive a review by the Board. Applications must be received by the Planning Department 30 days prior to the scheduled Board meeting.

What is the process for obtaining a Map Amendment?

1. **Pre-Conference:** Complete a pre-submittal conference with the Zoning Administrator to review the proposed rezoning.
2. **Submit Application:** At least 30 days prior to the public hearing date.
3. **Public Notice # 1:** Public notice procedures for the Planning Board hearing will be conducted by County staff. Staff must notify all property owners within 1,000 feet of the property in addition to online and newspaper legal advertisements of the public hearing.
4. **Public Hearing # 1:** The Planning Board will hear a summary of Staff's recommendations, information presented by the applicant, statements by the public, and will recommend approval or denial.
5. **Public Notice # 2:** Public notice procedures are repeated for the Board of Commissioner's meeting.
6. **Public Hearing # 2:** The Board of Commissioners will review Planning Board and Staff recommendations, hear statements by the public, and make a final decision at a public hearing to approve or deny the proposal.

Is the Board of Commissioner's decision the final step?

Yes. The Zoning Map amendment process is complete, and the Board of Commissioner's decision takes effect, immediately following a majority decision to approve or deny the request. Once approval is received, the applicant may seek approval to develop the property in accordance with the Zoning, Subdivision, and other ordinance requirements for the approved Zoning district.

What else should I know?

Sometimes, an application is continued to another meeting due to a lack of a quorum or insufficient information, or sent back to the Planning Board for further deliberation. If this occurs, please note that the change in your Planning Board meeting date will also alter your scheduled Board of Commissioners meeting date. Contact the Planning Department for any questions about your assigned meeting dates.

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Application for a Zoning MAP AMENDMENT *(Rezoning)*

A PRE-SUBMITTAL CONFERENCE WITH THE PLANNING DEPARTMENT IS REQUIRED PRIOR TO SUBMITTAL.

A. Property Information

Application is hereby made to the Board of Commissioners of Buncombe County to amend the Official Zoning Map of Buncombe County as it pertains to the following properties:

PIN(s): 9678-47-0815

Address(es): 1700 Tunnel Road

Acreage: 0.99 Ac.

Available Utilities: X Public water ☐ Private well ✠ Public MSD Sewer ☐ Private septic

B. Zoning Classification

Current zoning district(s): R-2 Requested zoning district(s)*: EMP

**If only a portion of the property is requested to be rezoned, or a rezoning to include more than one zoning district is proposed, please enclose a map indicating the area(s) of the property to be considered for rezoning.*

C. Applicant Contact Information

East Valley, LLC
Company/Corporate Name (*if applicable*)

Marc Wright
Applicant's Name

1800 U.S. Highway 70
Mailing Address

Swannanoa, NC 28778
City, State, and Zip Code

(828) 712-5501
Telephone

mw@wrightscarpet.net
Email

Property Owner Contact Information (*If different*)

East Valley, LLC
Owner's Name

1800 U.S. Highway 70
Mailing Address

Swannanoa, NC 28778
City, State, and Zip Code

(828) 712-5501
Telephone

mw@wrightscarpet.net
Email

OFFICE USE ONLY:

Date Received: _____

Pre-Submittal meeting with: _____

Case Number: ZPH _____ - _____

Owner's Affidavit Submitted: ☐ Yes ☐ No

Planning Board Hearing Date: _____

D. MAP AMENDMENT CONSISTENCY & APPROPRIATENESS

Please answer the following questions (if necessary attach a separate sheet of paper):

1. Describe how the size of the tract proposed for rezoning in reference to surrounding properties makes it suitable for the proposed zoning classification:

The property to be rezoned is 0.99 acres, which is consistent with the contiguous properties zoned EMP. The tract contiguous to the east (Edens Christian Hill) is 0.99 acres. The tract contiguous to the west (Sugarbears Properties, LLC) is 0.99 acres. The tracts across the street (Blue Vista, Inc. and Gotham Properties) are 1.52 acres and 3.28 acres respectively. The tracts contiguous to the north are zoned R-2. The tract owned by Keith Manson & Christine Gabriella Penland is a developed residence on 0.55 acreas. The tract owned by Fins Deep, LLC is an undeveloped 1.01 acre lot.

2. Describe how the proposed rezoning is consistent with the Growth, Equity, and Conservation Framework from Buncombe County's 2043 Comprehensive Plan *(available on the BC Planning Department website, section starts on page 46 in the Plan).*

The rezoning of the property is consistent with the 2043 Comprehensive Plan, Mixed Use Area 1. EMP zoning will allow the Applicant to develop a 10,000 single story commercial building and associated parking lot and loading area. The height of the building would not exceed 25' in height. The proposed commercial building would be consistent with the existing mixed commercial and residential development in the U.S. Highway 70 corridor.

3. Describe how the proposed rezoning would be reasonable and in the public interest, with specific attention to the zoning and existing land uses of surrounding properties, and the potential effects of the proposed rezoning on property owners, adjacent neighbors, and the surrounding community.

The proposed rezoning is consistent with the zoning and land uses of surrounding properties. The R-2 tracts are contiguous to the EMP zoned commercial tracts fronting U.S. Highway 70. The R-2 zoned lots, one with an existing house and the other, unimproved, sit approximately 20' above the lot proposed to be rezoned. The vertical separation mitigates the size and height of the proposed commercial building. The health, safety and welfare of the surrounding residential lots will not be affected by the rezoning of the subject tract from R-2 to EMP.

4. Is/are the applicant(s) listed below the owner(s) of the property? X **Yes** ☐**No**

If the applicant(s) listed herein are not the owner(s) as listed within the Buncombe County Tax Records, North Carolina General Statutes require the applicant to certify that the owner(s) received notice for each public hearing. An owner's affidavit must be submitted with this application, and certification of notice must be provided by the applicant once notice has been made for each public hearing 5 days prior to the hearing date; sample documents for both items can be obtained from the Planning Department.

E. CERTIFICATION

- I hereby certify that I am the owner, authorized agent of the owner, or have provided legal notification to the owner, and the above information is correct to the best of my knowledge and hereby make application for a Zoning Map Amendment. Any information given that is incorrect will cause this application to become null and void.
- I acknowledge that withdrawal of this application after notice has been made will result in forfeiture of any application fees associated with said application.

Signature of Applicant 12-20-23	Marc Wright **Signature of Owner**
Signature of Applicant	**Signature of Owner**
Signature of Applicant	**Signature of Owner**
Signature of Applicant	**Signature of Owner**
Signature of Applicant	**Signature of Owner**
Signature of Applicant	**Signature of Owner**

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NORTH CAROLINA
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NOTE TO USER: THIS VERSION OF SECTION E. CERTIFICATION IS FOR USE IN CASES WHERE NUMEROUS PROPERTIES, OWNED BY NUMBEROUS PROPERTY OWNERS, ARE INVOLVED IN THE REZONING APPLICATION

E. CERTIFICATION

E.1. Required Information: Each property owner who is participating in this rezoning application must complete this form. Each owner or group of owners (corporation, LLC, trust, or similar) should provide their information on a separate form. Owners of multiple properties within the rezoning area may use one form to list all affected properties. Use additional forms if necessary.

E.1.1. Location of Properties Proposed for Rezoning

	Physical E-911 Address *Street number, name, city, state, zip code. You may verify your E911 Address at* https://discover.buncombecounty.org/	**PIN Number** *15-digit unique identifier for each parcel. PIN numbers can be found on your tax bill or online at https://gis.buncombecounty.org/buncomap/. Example: 965415728000000 or 9654-15-7280*
1	1700 Tunnel Road Swannanoa, NC 28778	9678-47-0815
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		

E.1.2. ***Contact Information and Certification of All Owners of Above-Referenced Property or Properties.***

By signing this document I hereby certify that I am the owner of the property or properties referenced herein, and that any information given that is incorrect will cause this application to become null and void. I hereby authorize Buncombe County Staff to enter upon the property referenced below for the purpose of processing this rezoning request. I acknowledge that withdrawal of this application after notice has been made will result in forfeiture of any application fees associated with said application. I hereby authorize the Applicant referenced below, to act as my representative for the purposes of this rezoning request.

	Owner Name	**Corporate Title** (if applicable)	**Mailing Address** *Street number, name, city, state, zip code*	**Telephone Number**	**Email Address**
1	Marc Wright East Valley, LLC	Member	1800 U.S. Highway 70 Swannanoa, NC 28778	(828) 712-5501	marc@wrightscarpet.net
	Owner Signature: Date:		Applicant/ Designated Representative - Name: Signature: Date:		
2					
	Owner Signature: Date:		Applicant/ Designated Representative - Name: Signature: Date:		
3					
	Owner Signature: Date:		Applicant/ Designated Representative - Name: Signature: Date:		
4					
	Owner Signature: Date:		Applicant/ Designated Representative - Name: Signature: Date:		

E.1.2. *Contact Information and Certification of All Owners continued.*

By signing this document I hereby certify that I am the owner of the property or properties referenced herein, and that any information given that is incorrect will cause this application to become null and void. I hereby authorize Buncombe County Staff to enter upon the property referenced below for the purpose of processing this rezoning request. I acknowledge that withdrawal of this application after notice has been made will result in forfeiture of any application fees associated with said application. I hereby authorize the Applicant referenced below, to act as my representative for the purposes of this rezoning request.

	Owner Name	**Corporate Title** (if applicable)	**Mailing Address** *Street number, name, city, state, zip code*	**Telephone Number**	**Email Address**
5					
	Owner Signature: Date:		Applicant/ Designated Representative - Name: Signature: Date:		
6					
	Owner Signature: Date:		Applicant/ Designated Representative - Name: Signature: Date:		
7					
	Owner Signature: Date:		Applicant/ Designated Representative - Name: Signature: Date:		
8					
	Owner Signature: Date:		Applicant/ Designated Representative - Name: Signature: Date:		

E.1.2. *Contact Information and Certification of All Owners continued.*

By signing this document I hereby certify that I am the owner of the property or properties referenced herein, and that any information given that is incorrect will cause this application to become null and void. I hereby authorize Buncombe County Staff to enter upon the property referenced below for the purpose of processing this rezoning request. I acknowledge that withdrawal of this application after notice has been made will result in forfeiture of any application fees associated with said application. I hereby authorize the Applicant referenced below, to act as my representative for the purposes of this rezoning request.

	Owner Name	**Corporate Title** (if applicable)	**Mailing Address** *Street number, name, city, state, zip code*	**Telephone Number**	**Email Address**
9					
	Owner Signature: Date:		Applicant/ Designated Representative - Name: Signature: Date:		
10					
	Owner Signature: Date:		Applicant/ Designated Representative - Name: Signature: Date:		
11					
	Owner Signature: Date:		Applicant/ Designated Representative - Name: Signature: Date:		
12					
	Owner Signature: Date:		Applicant/ Designated Representative - Name: Signature: Date:		

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ZONING MAP AMENDMENT
STAFF ANALYSIS
Legislative Hearing

LOCATION MAP

A. CASE

ZPH2023-00040
East Valley LLC Rezoning

B. PROPERTY INFORMATION

- **PIN(s):** 9678470815
- **Addresses:** 1700 & 1702 Tunnel Rd.
- **Owner(s):** East Valley LLC
- **Acreage:** .99 total acres
- **Utilities:** Public water and sewer
- **Access Road:** Tunnel Rd.

C. REZONING REQUEST

Summary: Marc Wright of East Valley LLC has requested to rezone one parcel of land from R-2(Residential) to EMP (Employment).

Existing: R-2 Residential

Proposed: EMP – Employment

D. PUBLIC NOTICE	Planning Board	Board of Commissioners
Citizen Times and BC website:	1/10/24 &1/11/24	
Mailed to owners within 1,000 ft:	1/11/24	
Physical posting on site:	1/12/24	
Hearing Date:	1/22/24	

E. RECOMMENDATION & SUMMARY OF CONSISTENCY REVIEW

STAFF: APPROVAL	Staff recommends that the rezoning of the parcel be approved as it conforms to the recommendations from the Comprehensive Plan's GEC Character Map, the Plan Policies and Actions, and neighborhood consistency.

F. SPOT ZONING ANALYSIS		
Spot Zoning: *A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the smaller tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected, is called "spot zoning." Spot Zoning, David W. Owens, April, 2020, quoting Blades v. City of Raleigh, 280 N.C. 531, 547, 187 S.E.2d 35, 45 (1972).*	**CONSISTENT**	**POTENTIAL SPOT ZONING**
1. Staff Analysis of spot zoning: The subject acreage is adjacent to property currently zoned EMP. Based on the nature of the request, Staff does not have concerns related to spot zoning.	**X**	

G. 2043 COMPREHENSIVE PLAN CONSISTENCY		
PLEASE NOTE: If a rezoning request is approved that is not consistent with the adopted comprehensive plan, the zoning amendment shall have the effect of also amending any future land use map (e.g., the Growth, Equity, and Conservation Map) in the approved plan. No additional request or application for a plan amendment shall be required per the statute.		
GEC CHARACTER FRAMEWORK (FUTURE LAND USE MAP):	**CONSISTENT**	**NOT CONSISTENT**
1. **FLUM CATEGORY DESCRIPTION** The proposed rezoning is consistent with the Character area description of 'Mixed Use I' where this parcel is located.	**X**	
2. **WASTEWATER & POTABLE WATER TYPE** The parcel has access to public water and sewer.	**X**	
3. **DENSITY** The proposed zoning district has a maximum density of up to 12 units an acre which is consistent with the Character area recommendations.	**X**	
4. **PRIMARY AND SECONDARY LAND USES** The uses allowed in the proposed zoning district match those recommended in the Character Framework for this area.	**X**	
PLAN POLICIES AND ACTIONS:	**CONSISTENT**	**NOT CONSISTENT**
5. **Proximity to Transportation Corridor** *(Transportation Action 4)* The parcel is located on a major transportation corridor, Tunnel Rd., which turns into US HWY 70.	**X**	
6. **Support higher density residential development near job centers and amenities** *(Transportation Action 4)* The rezoning from R-2 to EMP will not result in any change to the allowable density.	**X**	

7. **Prioritize environmental conservation of other natural lands (such as intact forest lands, wetlands, and other unique habitats) to protect and increase the capacity to sustain the county's existing biodiversity** *(Env. Conserv. Action 3)* This parcel is in the Mixed Use I area on the GEC Map. This is a growth area and so this question does not apply.	**N/A**	
8. **Prioritize the conservation of physical connections between natural landscapes to avoid fragmentation of large forest blocks in order to benefit wildlife migration** *(Env. Conserv. Action 3)* This rezoning would not cause the fragmentation of a large forest block.	**X**	
9. **Using the guidance of the GEC Map, work with private development partners to bring new sites to market that have promising transportation access, proximity to current and future economic corridors, a robust utility service, labor draw, community synergies, etc.** *(Economic Dev. Action 2)* The rezoning of this parcel will increase the land use options for the existing and future property owners. It is located on Tunnel Rd., a major transportation corridor.	**X**	
10. **Support the creation of place-based community gathering destinations at Walkable Destination Centers, Mixed Use Areas, and Rural Centers identified on the GEC Map** *(Economic Dev. Action 3)* The EMP Employment District is primarily intended to concentrate sites for office uses, industrial uses, storage and warehousing, and wholesale trade. Rezoning the subject parcel to EMP would not necessarily result in the creation of more place-based community gathering destinations in the Mixed Use I area where it is located.	**N/A**	
11. **Integrate equity considerations into projects that improve air, water, and land quality by utilizing tools including redlining maps of Asheville and other municipalities and EPA's Environmental Justice Screening Tool** *(Health Action 7)* The parcel is not in an area identified on the red lining map of Asheville and does not score high on the Buncombe County Community Index Map Equity Index.	**Equity Analysis is not recommended for this parcel.**	
ENVIRONMENTAL:	**CONSISTENT**	**NOT CONSISTENT**
12. Steep Slope/High Elevation and Protected Ridge Overlay Districts The parcel is not within an Overlay District.	**X**	
13. Regulated Flood Hazard Areas The parcel is not located within a regulated flood hazard area.	**X**	
14. High or Moderate Hazard Stability Areas The parcel does not contain hazard stability areas.	**X**	

H. NEIGHBORHOOD CONSISTENCY			CONSISTENT	NOT CONSISTENT
1. CURRENT DEVELOPMENT TYPES: Subject acreage has the following adjacent zonings and uses:				
DIRECTION	**ZONING**	**ADJACENT USES**		
NORTH	R-2 Residential	Residential Building Lot	**X**	
EAST	R-2 Residential	Residential Builidng Lot		
SOUTH	EMP Employment	Multiple Residence and Manufacturing		
WEST	EMP Employment	Medical Office		
2. Does the proposed rezoning allow for any transition between higher density or intensity uses and lower density or intensity uses? *(Examples include medium intensity zoning between a low and high intensity district, topographic separations, other natural features to ensure a transition or buffer.)* The rezoning of the property from R-2 to EMP will cause an increase in the types and intensity of uses allowed on the property. The properties to the north and east of the subject parcel are zoned R-2. While there would not be a zoning district transition between them and the proposed EMP zoning district there is currently a wooded area buffering these parcels from the subject parcel and buffering is required for any commercial development adjacent to a residential use.				**X**
3. Are the uses allowed in the proposed zoning district compatible with the existing uses in the area? The proposed zoning district allows a variety of uses from residential to commercial, storage, and industrial. The existing uses in the area includes single-family residential, warehouse storage, and medical office. Tunnel Road is a major transportation corrdior and the EMP zoning district is well suited for this location.			**X**	
4. ALLOWED DEVELOPMENT TYPES AFTER CHANGE: The proposed rezoning would allow additional uses in the EMP district that are not currently allowed in the R-2 districts. Examples of uses that would be allowed after the rezoning include commercial planned unit developments, adult entertainment establishments, asphalt plants, concrete plants, motor vehicle maintenance and repair, nighclubs, bars, veterinary clinics, banks, cargo terminals, hotels or motels, manufacturing facilities, restaurants, retail, warehousing, vacation rental complexes, and more.				

5. DENSITY & DIMENSIONAL STANDARDS COMPARISON:

		Existing District:	Proposed District:
		R-2 Residential	**EMP Employment**
Min. Lot Size	No Public Sewer	30,000 SF	30,000 SF
	Public Sewer/No Water	10,000 SF	10,000 SF
	Public Water & Sewer	6,000 SF	5,000 SF
Max. dwelling units per acre		12	12
Setbacks (Front/Side/Rear)		10/7/15 with public sewer 20/10/20 septic system	20/10/20
Max. height		35 feet	90 feet

6. PREVIOUS ZONING ACTIONS & RELEVANT SITE HISTORY:

There are currently two strucutres on the property that appear to have been there since before 1998. There does not seem to be any record of previous zoning actions for this parcel.

I. COMPARISON OF ZONING ORDINANCE DISTRICT STATEMENT OF INTENT

EXISTING ZONING DISTRICT – R-2

The R-2 District is primarily intended to provide locations for residential development and supporting recreational, community service and educational uses in areas where public water and sewer services are available or will likely be provided in the future. These areas will usually be adjacent to R-1 Residential Districts, will provide suitable areas for residential subdivisions requiring public water and sewer services, and in order to help maintain the present character of R-1 districts, will not allow manufactured home parks.

PROPOSED ZONING DISTRICT – EMP

The EMP Employment District is primarily intended to provide appropriately located sites for employment concentrations primarily for office uses, industrial uses, storage and warehousing, and wholesale trade. Such locations should currently have public water and sewer services available or be expected to have these services in the future. Only those manufacturing uses will be allowed which meet all local, state and federal environmental standards, and do not involve obnoxious noise, vibrations, smoke, gas, fumes, odor, dust, fire hazards, or other objectionable conditions which would be detrimental to the health, safety, and general welfare of the community. These areas will also include sites suitable for supportive activities such as community service, commercial service, and residential uses.

J. EQUITY ANALYSIS

1. Buncombe County Government is utilizing an Equity Analysis Tool for certain types of planning-related development decisions. The following is Staff's Equity Analysis for this rezoning:

Based on this parcel's ranking on the Community Index Map, this parcel is not located in an equity opportunity area.

K. PLANNING BOARD RECOMMENDATION

1. BOARD BASIS FOR DECISION MAKING

The Board must determine if there is a reasonable basis for the requested change in light of its effect on all involved including the following considerations:

- The requested change does not directly or indirectly result in the creation of spot zoning
- Size of the tract in question
- Compatibility of the change with the adopted 2043 Comprehensive Plan
- Benefits and detriments resulting from the change for the owner of the newly zoned property, their neighbors, and the surrounding community
- Relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts

References: Good Neighbors of South Davidson v. Town of Denton, 355 N.C. 254, 559 S.E.2d 768 (2002)
Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988)

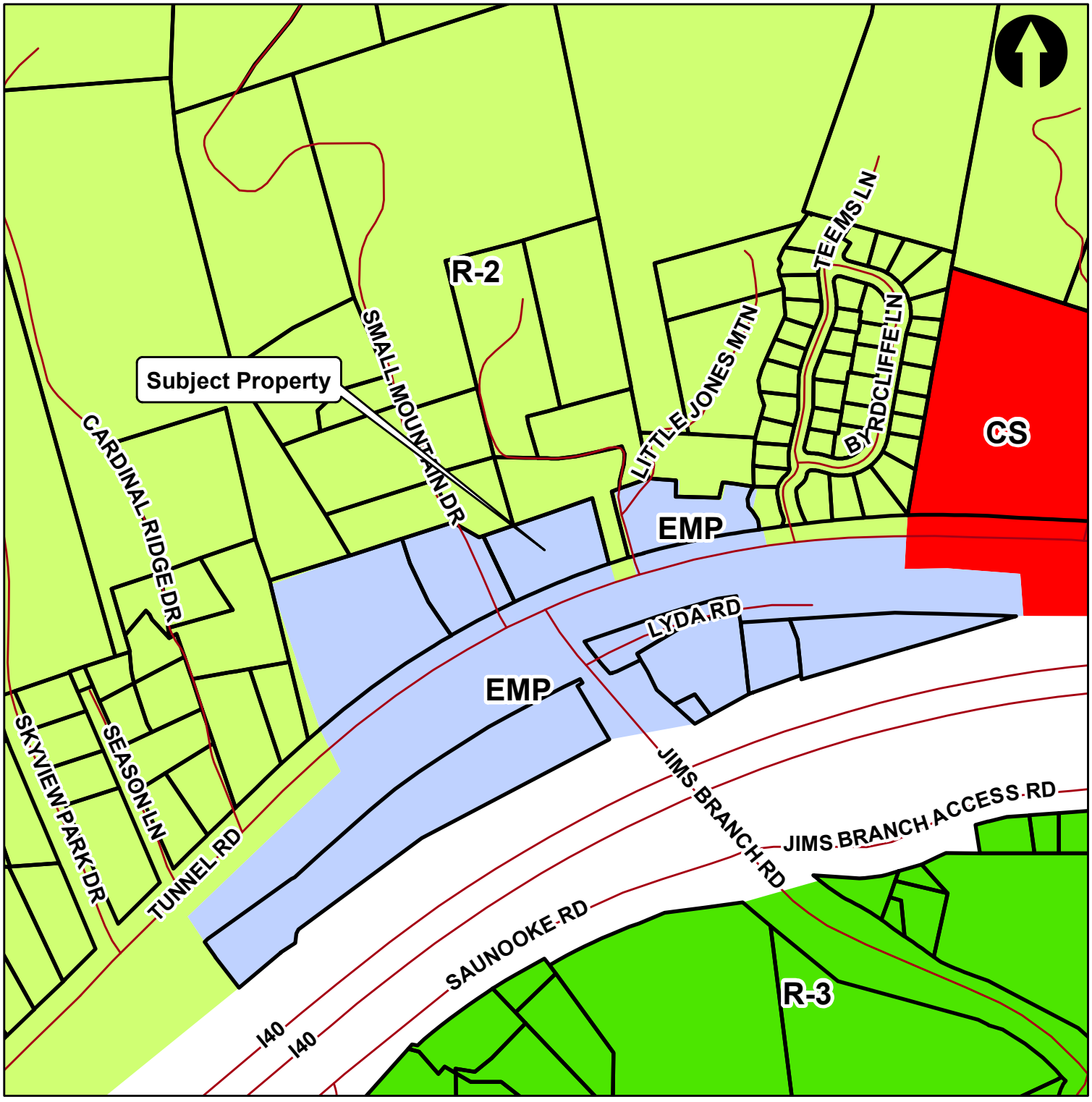
L. BOARD OPTIONS

The following options are available to the Board:

a. Recommend approval of the proposed rezoning, as presented.
b. Recommend approval of a portion of the proposed rezoning.
c. Recommend denial of the proposed rezoning, as presented.

M. ATTACHMENTS

- Application
- Maps



0 0.05 0.1 0.2 Miles

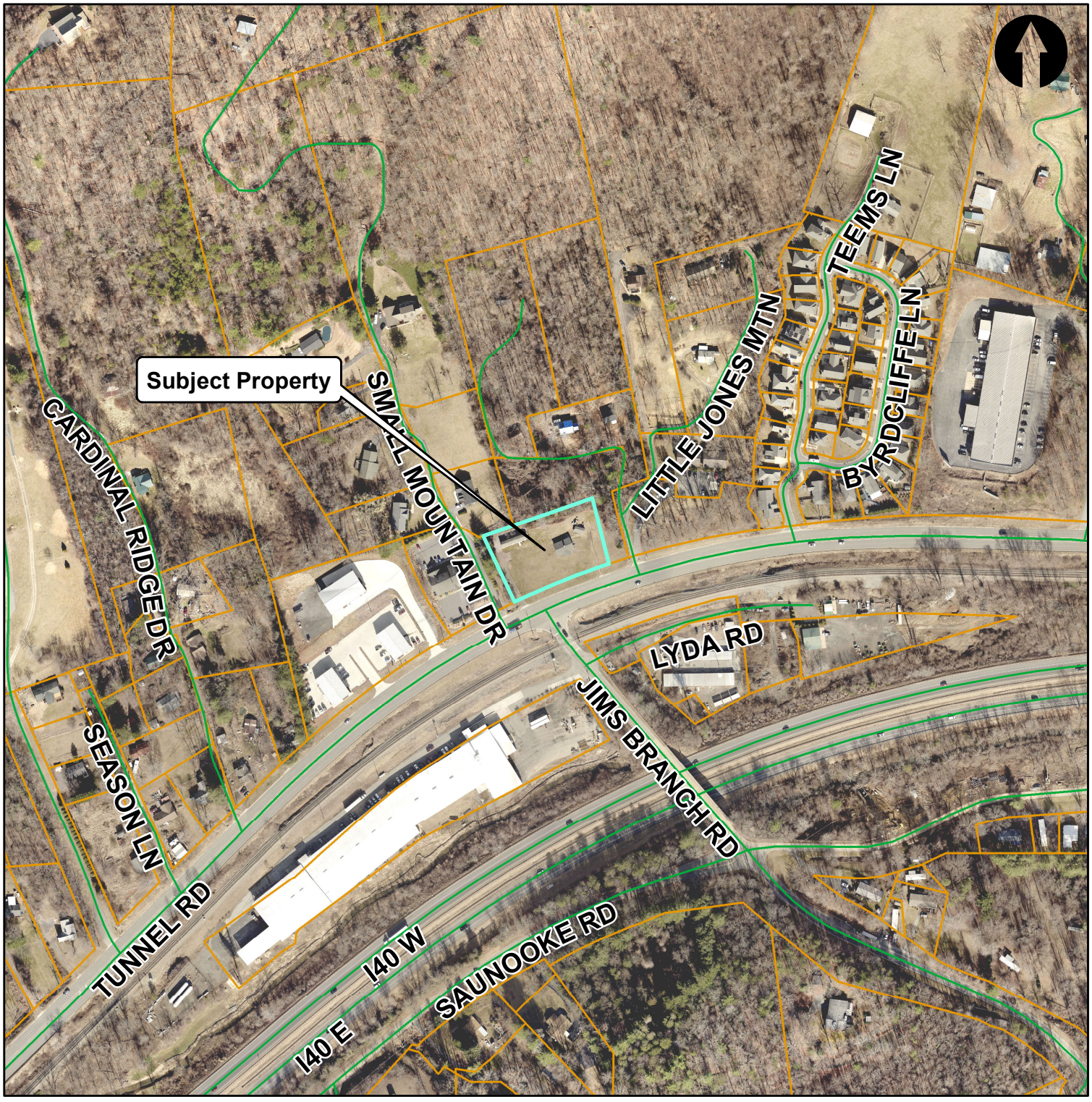
1700 Tunnel Rd
PIN 9678-47-0815

ZPH2023-00040
East Valley LLC
Map Amendment

Proposed Zoning Map

AI EMP R-1
BDM NS R-2
CR OU R-3
CS PS R-LD

Created By: Buncombe Co. Planning
Date: 1/3/2024



0 0.05 0.1 0.2 Miles

1700 Tunnel Rd
PIN 9678-47-0815

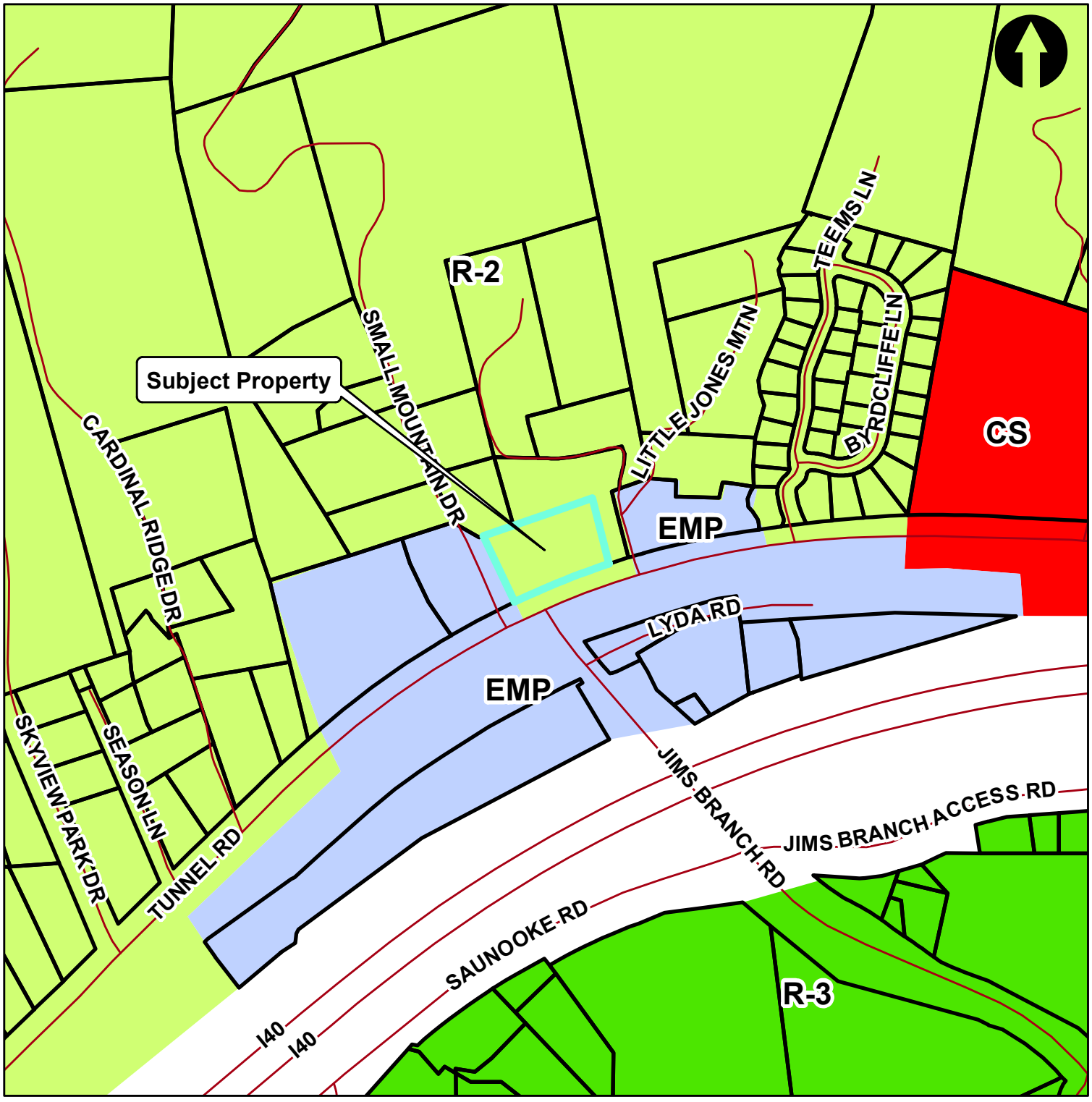
ZPH2023-00040
East Valley LLC
Map Amendment

Aerial Map

Roads

Property Boundaries

Created By: Buncombe Co. Planning
Date: 1/3/2024



0 0.05 0.1 0.2 Miles

1700 Tunnel Rd
PIN 9678-47-0815

ZPH2023-00040
East Valley LLC
Map Amendment

Zoning Map

AI EMP R-1
BDM NS R-2
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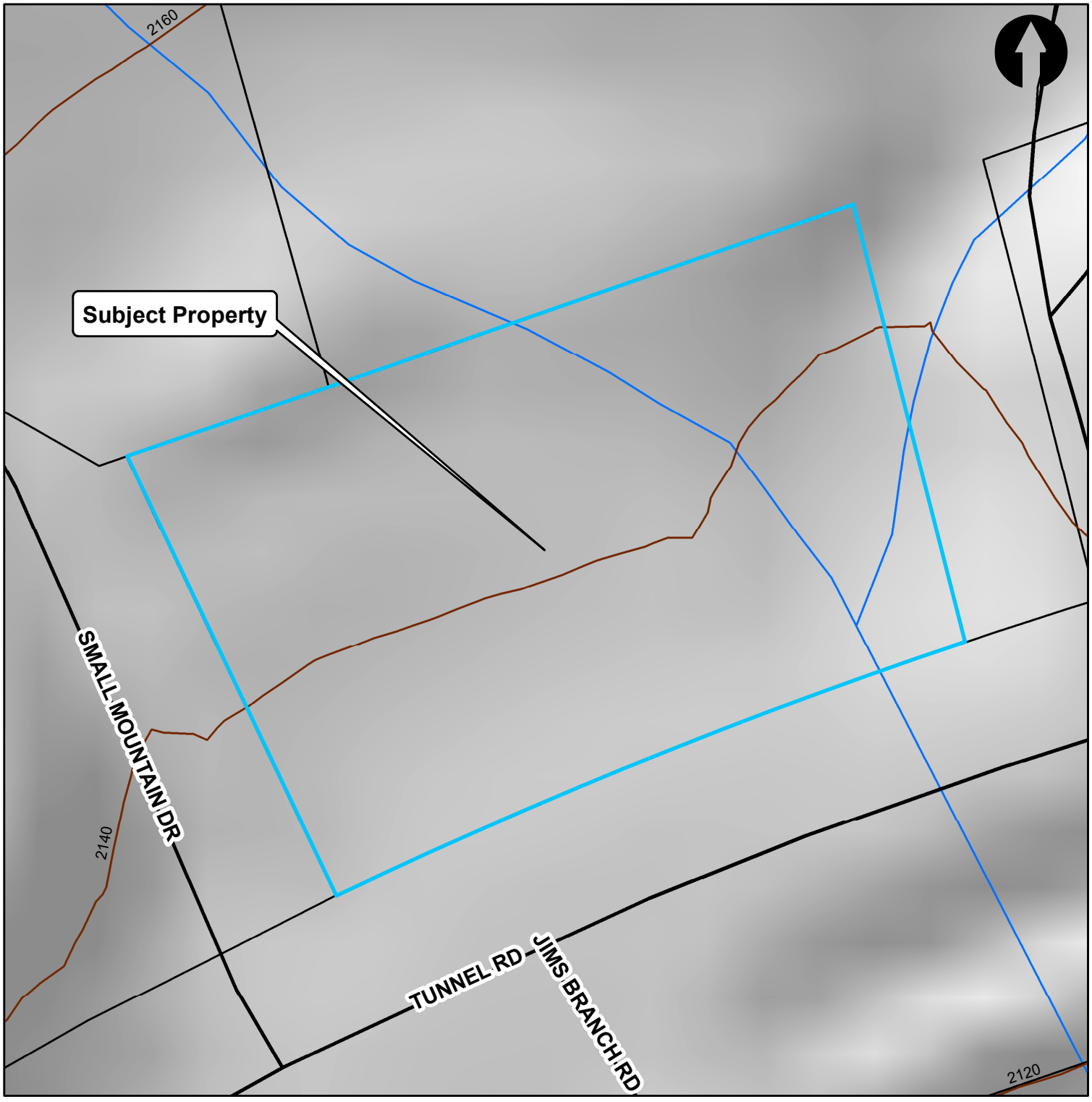
Created By: Buncombe Co. Planning
Date: 1/3/2024



0 50 100 200 Feet

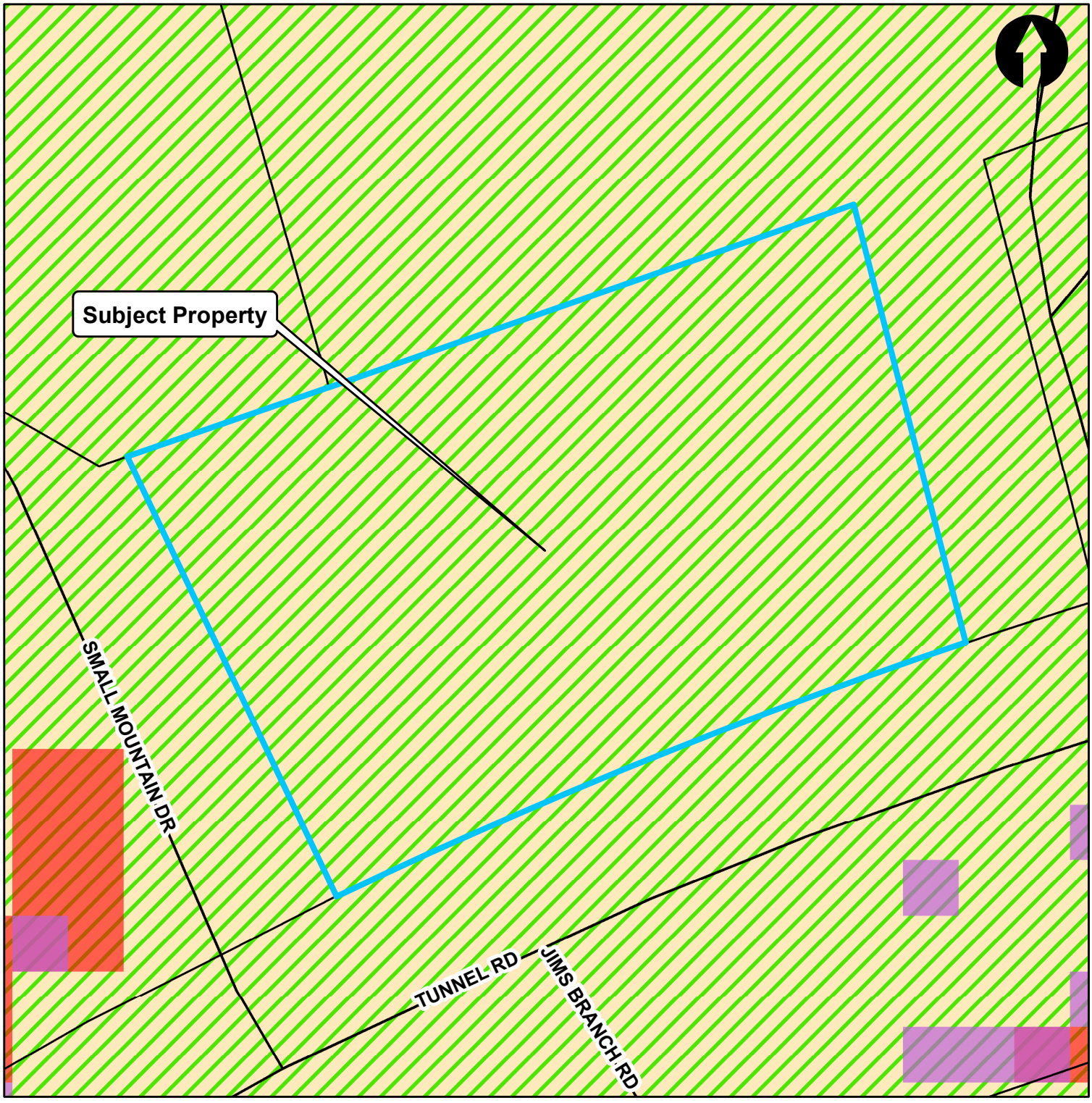
1700 Tunnel Rd
PIN 9678-47-0815

ZPH2023-00040
East Valley LLC
Map Amendment

Topo Map

Roads
20 Foot Contours
Property Boundaries

Created By: Buncombe Co. Planning
Date: 1/3/2024



0 50 100 200 Feet

1700 Tunnel Rd
PIN 9678-47-0815

ZPH2023-00040
East Valley LLC
Map Amendment

Land Use Map

Created By: Buncombe Co. Planning
Date: 1/3/2024

- 500 yr
- A - 100yr
- AE - 100 yr
- High Hazard
- Moderate Hazard
- Low Hazard
- 0 - 25 % Slope
- Greater than 25% Slope
- Greater than 2500'
- Proximity to Public Utilities
- Transportation Corridors

Buncombe County Planning and Development
Long Range Planning Division
46 Valley St.
Asheville, NC 28801

SHORT-TERM RENTAL TEXT AMENDMENTS MEMORANDUM

Original Date: **12-1-2023**

Updated: **1-12-2024**

To: **Buncombe County Planning Board**

From: **Buncombe County Planning and Development Department**

PURPOSE

The Short-Term Rental (STR) Memorandum provides an overview of key issues and proposed Zoning Ordinance changes related to short-term rentals in Buncombe County. The working definition of STR is any lodging rental that is for less than 30 days. The current Buncombe County Zoning Ordinance defines “vacation rentals”, but these can also be referred to as "short-term rentals”. This document will summarize an analysis of equity issues, relevant case law, current bills before the General Assembly, a consideration of regulations in other jurisdictions, and proposed text amendments.

EQUITY ANALYSIS

Planning staff are proposing a series of text amendments to the current zoning ordinance regarding STRs. These text amendments seek to mitigate the impact of STRs on affordable housing stock by limiting the use of existing and future residential development for STRs. The goal is to create more long-term rental and owner-occupied housing opportunities for residents and the local workforce.

During the extensive public input process of the Buncombe 2043 Comprehensive Plan, residents, including historically marginalized groups, expressed concerns about the lack of housing affordability and the use of housing as STRs, which leaves fewer options for year-round residents.

The changes in these text amendments will affect low and middle-income renters, home buyers, and local workers by seeking to make more housing stock available for long-term rentals and owner-occupied housing. According to a 2021 Dogwood Health Trust study, Buncombe County’s long-term rental housing gap was 7,699 units, while the housing ownership gap was 2,048 units.[1] Individuals and families earning less than or equal to

[1] Bowen National Research. (2021). Housing Needs Assessment Western North Carolina. https://dogwoodhealthtrust.org/wp-content/uploads/2021/10/Western-North-Carolina-Hsg-Needs-Assmt.pdf

50% AMI make up 70% of the housing gaps (both rental and home ownership); therefore, the loss of housing to short-term rentals uniquely affects Buncombe's low-income population.

Using AirDNA, a software company that provides analysis of vacation rental data, our Comprehensive Plan consulting firm Clarion & Associates identified 5,268 STRs in Buncombe as of 2022, which is roughly 4.5% of the county's housing stock. These rentals account for around 68% of the rental housing gap of 7,699 units. By limiting the amount of housing used for STRs, the County can work towards closing the long-term rental and homeownership gaps outlined in the Dogwood Study. Allowing STRs only within detached single-family dwellings can also help reduce conflict related to noise and safety that can be exacerbated in multi-family developments. Multi-family units also tend to be more affordable types of housing. Without these proposed text amendments, the County may be unable to minimize the ongoing loss of long-term rental and owner-occupied dwelling units to STRs.

The proposed text amendments aim to prioritize existing and new long-term housing stock. To measure the success of these Zoning Ordinance changes, staff will use the performance metrics from the Buncombe 2043 Comprehensive Plan. These metrics will measure the increase in the number of ownership units and rental units which are affordable to households earning less than 80% Average Median Income (AMI).

CASE LAW

Schroeder v. Wilmington

A 2019 amendment to G.S. 42A-3 clarified that housing code inspection, permits, and registration (IPR) programs apply to properties subject to the Vacation Rental Act (VRA), which was written with long-term rentals in mind but also includes most if not all STRs. The North Carolina Court of Appeals ruled that, per state law, local governments may not require registration or permits as a condition of renting. However, general land use zoning authority is retained: *you may require a zoning compliance permit but not a leasing/rental permit*. Many regulatory provisions in the Wilmington ordinance were upheld by the ruling while others were struck down simply because they were intertwined with the registration requirement. Density caps on rental units and requirements that the rentals be separated by a certain distance from each other are two issues that may be problematic. Both were among those struck down due to the relationship with the registration requirements of the Wilmington ordinance but are likely achievable through conventional zoning methods, which begin with defining short-term rentals as a land use*. For more information, see the October 2022 memo prepared by Clarion Associates, as well as the summary by Adam Lovelady from UNC School of Government on the Coates' Canons law blog.*

STR REGULATION IN OTHER JURISDICTIONS

This is a curated look at STR regulations from other counties and local governments in the state (generally and in response to *Schroeder*), including examples from other localities outside of North Carolina. *Please note, the examples from other states may not be allowed by North Carolina General Statute, but are presented to illustrate a variety of approaches.*

Common Practices and Language

Common design and operation standards are listed below. These are provisions which many or most jurisdictions include in their ordinances.

Trash	Owner is required to provide receptacles for and collect and dispose of trash

Liability Insurance	Owner is required to carry liability insurance
Posted Information	Various safety, information and contact info is required to be posted inside, often property manager's contact, but can include relevant ordinances or waste disposal information
Owner/Operator Proximity	Property manager is required to be within some reasonable and defined distance of the unit
Parking	Minimum, off-street parking requirements
Taxes	Places the tax responsibility on the owner/operator
Timeframe	Rentals are limited to 30 days or less
Zoning Compliance Permits	Zoning permits required for short-term rental land use
Occupancy and/or Gathering Limits	Limits on the number of occupants or visitors to the site, most often when located in residential areas
Cooking	Many prohibit cooking in bedrooms

Zoning Districts

Most localities limit, restrict, or prohibit STRs in various districts through their Permitted Use table. Where permitted by-right, many localities have a "use-by-right with additional requirements" category. Most localities prohibit STRs in residential districts.

Owner-Occupied/Homestays vs. Whole-Home/Dedicated Short-Term Rentals

There is an important distinction between owner-occupied homestays and whole-home dedicated STRs. These two kinds of STR are sometimes considered separate uses based on locality. For example, **Asheville** and **Boone** distinguish between homestays and non-owner-occupied STRs and have standards for each. **Sylva** limits STRs to accessory uses where the primary use is an owner-occupied residence or long-term rental. **Chapel Hill** distinguishes between primary residence STRs and dedicated STRs; the former differs from homestays in that there is no provision requiring the owner to be on-site during the rental period but only that the unit be their primary residence. In communities that take this approach, it is often difficult to police and enforce the nuances of homestays versus whole-home STRs.

Localities

LOCATION	STR STANDARD
Sylva, NC	In August 2022, Sylva redefined STRs as an accessory use provided the primary use is owner-occupied or a long-term rental. Requires that outdoor signage be no greater than 2 square feet and list the manager's name and 24-hour number. Requires the noise ordinance and waste disposal process, schedule, and routes to be posted conspicuously.
Highlands, NC	*Notable for involved parties*. The board sought amortization (a method requiring the termination of a nonconforming use within a specific time period) of existing STRs but encountered resistance including opposition from Institute for Justice firm, which won the Wilmington case. A text amendment passed on 9/15/22 which grandfathered STRs as nonconforming uses and required that the ordinance standards be posted in the rental unit.

Pinehurst, NC	Village Council recently voted to prohibit new STRs in residential districts and require existing ones to get a Zoning Certificate and be classified as a legal, nonconforming use.
Chapel Hill, NC	Dedicated STRs are not allowed in residential districts but are allowed in mixed-use districts. Owner-occupied STRs are allowed in neighborhoods based on certain residency criteria.
Asheville, NC	Asheville discerns between short-term vacation rentals (STVRs) and homestays, defining each as a commercial lodging use. *Homestays* are permitted only in the conditional-zoning-only Expansion (EXP) district and are classified as a "use by right subject to special requirements" (USSR) for most other districts, including all Residential districts. *STVRs* are permitted by right in two conditional zoning districts and as USSR in the resort district; they are not allowed anywhere else, including residential.
Black Mountain, NC	The Town Council recently directed staff to draft life, safety, and permitting regulations for short-term rentals, including: zoning permit requirement, annual fire inspection, and tax reporting if not using a management company or online rental booking site; Units required to have functional smoke and CO2 detectors, bear-proof trash cans, sufficient off-street guest parking spaces, an emergency ladder in upper story bedrooms, and posting of public safety and non-emergency numbers, garbage and recycling information, and noise ordinance requirements on the site; A local owner or property manager must live within 60 miles of the rental unit, and their contact information must be posted in the unit and on file with the town.
Charleston, SC	Charleston recognizes two types of STR: residential and commercial. Both are permitted as conditional uses. Commercial use is subject to an overlay district. Residential is owner-occupied only and requires a 15-day notice to neighbors about the STR application process; concerns must be addressed prior to approval.
Chattanooga, TN	The city allows homestays in limited areas and allows whole-house STRs in the commercial districts.
Jackson Hole, WY	STRs are only allowed in the Lodging Overlay District. The ordinance is framed as protecting the tourism economy and community from low-quality rentals. 300 ft neighbor notices are required. Unpermitted STR operator/owners are not allowed to operate a STR for 5 years from the date of the violation.
Santa Fe, NM	*Notable for comparable tourism economy and variety of unique regulations.* Santa Fe caps the number of STRs at a maximum of 1,000 STRs on residential property. There is a 50-foot spacing minimum between STRs and a 25% unit cap up to 12 STR permits in multifamily developments. The owner must be able to arrive on-site within an hour of receiving a complaint and keep 3 years of records. Units may only be rented once in a 7-day period. Neighbors within 200 feet of a permitted STR must be notified within 10 days of permit issuance.

PROPOSED TEXT AMENDMENTS

The following table summarizes the proposed Zoning Ordinance Text Amendments related to Short-term Rentals, and the associated Comprehensive Plan section related to the changes.

	SUMMARY OF PROPOSED TEXT AMENDMENTS	PLANNNING BOARD REVIEW	COMP PLAN SECTION
1	Limit the use of dwelling units for the purpose of short-term rentals or grouped complexes of STRs to commercial zoning districts (NS, CS, EMP, PS, CR). In Open Use District, allow grouped complexes of STRs as a Special Use Permit (*SEC 78-641 Permitted Uses.)*		**GEC - Policy 7:** Increase housing options and improve housing affordability for all residents. **GEC - Action 4:** Expand and protect affordable and accessible housing choices. Support a mix of housing types within growth areas to accommodate the projected demand for long-term rental and owner-occupied housing... **GEC - Action 5:** Consider the utilization of available tools to mitigate the loss of year-round housing to short-term rentals. **ECON. DEV., EDUCATION, AND JOBS - Policy 2:** Provide adequate housing options for all income levels to meet the needs of economic development opportunities. **GEC - Policy 7:** Explore protections for existing affordable housing, with a particular emphasis on manufactured housing parks...
2	Change the definition of short-term rental to allow only single-family detached units to be rented short-term.		
3	Lower the maximum gross floor area that a single unit can be for a short-term rental. (*SEC 78-581 Definitions.)*		
4	Clarify the definition of a short-term rental to state that it includes those which are rented for a minimum of two days and no greater than 30 days. (*SEC 78-581 Definitions.)*		
5	Create Special Requirement (SR) standards for short-term rentals in the commercial areas where they are allowed. Standards include parking, spacing, limits on events, waste management, signage, owner/operator distance from unit, access standards, permitting requirements, and fire safety. (*SEC 78-678 Uses by right subject to special requirements and special use standards.)*		
6	Provide a zoning permit process to grant legal, non-conforming status to pre-existing short-term rentals to allow them to remain in operation. (*SEC 78-657 Nonconforming Uses.)*		
7	To maintain legal, non-conforming status the structure must be rented as a short-term rental for a minimum of two nights every 180 days. (*SEC 78-657 Nonconforming Uses.)*		
8	Indicate that an existing non-conforming short-term rental that is transferred by deed shall end the grandfathering status of the use for a short-term rental. (*SEC 78-657 Nonconforming Uses.)*		
9	Prohibit short-term rentals in Manufactured Home Parks (*SEC 78-678 Uses by right subject to special requirements and special use standards.)*		
10	Prohibit short-term rentals in developments that receive a county incentive, such as a PUD, COD, density bonus program, etc.		
11	Create a definition of detached structure.		

TIMELINE

- November 2023 - Staff held internal technical meetings with County Departments regarding the proposed amendments.
- December 1, 2023 – Memo provided to Planning Board
- December 18, 2023 – Staff presentation of proposed amendments to Planning Board. A large number of residents wished to provide comments regarding the proposed amendments. The Planning Board asked staff to provide a large space for a night meeting to provide residents with an opportunity to provide feedback on the proposed amendments.