



CITY OF HENDERSONVILLE BOARD OF ADJUSTMENT

City Hall - 2nd Floor Chambers | 160 Sixth Ave. E. | Hendersonville NC 28792
Tuesday, March 09, 2021 – 1:30 PM

AGENDA

1. **CALL TO ORDER**
2. **APPROVAL OF AGENDA**
3. **APPROVAL OF MINUTES**
4. **OLD BUSINESS**
5. **NEW BUSINESS**

A. MINS OF DEC 8 2020

A. VARIANCE APPLICATION - TIM CAGLE - 305 BLYTHE ST

The variance requested is to reduce the rear setback required by Section 5-3-3 of the Zoning Code for R-15 Medium-Density Residential Zoning District from 15' to 6.8'.

B. APPROVAL OF DECISION - PAHLE VARIANCE

6. **OTHER BUSINESS**

A. Adoption of Monthly Meeting Dates - Ratify location change

7. **ADJOURNMENT**

The City of Hendersonville is committed to providing accessible facilities, programs and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or an accommodation for this meeting please contact the City Clerk no later than 24 hours prior to the meeting at 697-3005.

MINUTES OF THE HENDERSONVILLE BOARD OF ADJUSTMENT

Tuesday, December 8, 2020
1:30 p.m. in the City Operations Center

The Hendersonville Board of Adjustment held its regular monthly meeting on December 8, 2020 at 1:30 p.m. in the City Assembly Room in the City Operations Center, 305 Williams Street, Hendersonville, North Carolina. Those present were: Melinda Lowrance, Chair, Chris Freeman, Ernest Mowell, Roger Woolsey, Steve Smith, Charles Webb, Barbara McCoy, Vice-Chair, Kathy Watkins, Lew Holloway, Community Development Director, Angela Beeker, City Attorney, Tyler Morrow, Planner, Tyler Henry, Code Enforcement Officer and Secretary to the Board Terri Swann.

Absent: Libby Collina

Chair called the meeting to order at 1:30 p.m.

Approval of the Agenda: A motion was made by Mr. Freeman and seconded by Mr. Mowell to approve the agenda. The motion passed unanimously.

Approval of the Minutes of the November 10, 2020 meeting. A motion was made by Ms. McCoy and seconded by Mr. Freeman to approve the minutes as written. The motion passed unanimously.

Approval of the Decisions for a variance from Dignity Funeral Services, Inc./dba Shuler Funeral Home (File No. V-11-10-20-01), 136 Orrs Camp Road. A motion was made by Mr. Freeman to accept the decision as written. Ms. Watkins seconded the motion which passed unanimously.

Chair swore in all persons to give testimony. Those sworn in were Lew Holloway, Community Development Director and Brian Pahle, applicant.

Variance – Brian Pahle – 318 N. Whitted Street.

Chair opened the public hearing.

Application for a variance on the side setback for the property located at 318 N. Whitted Street to enclose an existing deck for heated living space.

Lew Holloway, Community Development Director certified the following facts:

1. The subject property is located at 318 N. Whitted Street.
2. The subject property is identified as tax parcel 9568-47-6416
3. The subject property is zoned R-6, High Density Residential.

4. The applicant would like to enclose the existing deck to create more heated living space to accommodate a family. The deck already encroaches into the side setback. The primary structure sits 2.13 feet into the 8-foot side setback.
5. The home was constructed in 1920 per the applicant.
6. The subject property is 0.21 acres (9,147 sq. ft.) according to the Henderson County GIS.
7. The required setbacks in Section 5-5-3 of the zoning ordinance are front – 20', side 8' and rear – 10'.
8. The requested variance is for 1.66 feet on the required 8-foot side setback after the enclosure of the deck. The enclosure of the deck will bring the primary structure more into conformity with the existing zoning ordinance.

Mr. Holloway stated the applicant will be reducing the encroachment to the setback by .47 feet.

Chair asked if there were any questions for staff.

Mr. Smith asked about the comment from the neighbor they had received, and he asked if this enclosure will have less of an encroachment on the setback. Mr. Holloway stated he will let the applicant address the comment from the neighbor and yes, the rear corner of the deck protrudes into the setback as shown on the site plan and the site plan shows the encroachment will be less with this enclosure than with the existing deck. The comment received from the neighbor has no related concern to the encroachment into the setback.

Brian Pahle, 318 N. Whitted Street stated him, and his wife have lived in Hendersonville for the past six years. They love this neighborhood and their neighbors. They want more heated square footage for family growth. They will be bringing the home more in conformity.

Ms. Watkins asked if the house has a basement and if the addition would be two stories. Mr. Pahle stated yes, the home has an unfinished basement and the addition will be two stories. Ms. Watkins asked if it would be in the same footprint as the deck. Mr. Pahle stated yes.

Mr. Smith asked if the stairs would be removed. Mr. Pahle stated yes, therefore it will be less of an encroachment into the setback.

Mr. Woolsey asked why he didn't just move the addition over the other way. He also asked about the neighbors' concern about the driveway. Mr. Pahle stated the neighbors' concern was for the driveway on the right side. There is a two-foot encroachment on the gravel driveway, and he has no issue with the neighbor taking that two-foot encroachment of the driveway. He also does not plan to have any construction equipment/materials on her property. If he moves the addition to the left it will shift the bedroom into the kitchen and he does not want to do that.

Chair asked if Mr. Pahle has spoken with Ms. Collier. Mr. Pahle stated he has not spoken with her, but she can take back any property that is hers.

Chair asked if anyone else would like to speak in favor of the project. No one spoke. Chair asked if anyone would like to speak in opposition. No one spoke.

Chair closed the public hearing for Board discussion.

Ms. Watkins stated the applicant is trying to improve his property and lots like this in the city are awkwardly shaped properties.

Mr. Freeman made the following motion: With regard to the request by Brian Pahle for a variance from Section 5-3-3 of 1.66 feet on the required 8 foot side setback to enclose an existing deck for heated living space for the property identified as tax parcel 9568-47-6416 and located at 318 N. Whitted Street, I move the Board to find (a) strict enforcement of the regulations would result in practical difficulties or unnecessary hardship to the applicant, (b) the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, and (c) in the granting of the variance the public safety and welfare have been secured and substantial justice has been done. Accordingly, I further move the Board to grant the requested variance in accordance with and only to the extent represented in the application. Mr. Woolsey seconded the motion.

Chair called for the vote. The following vote was taken by a show of hands.

Mr. Woolsey	Yes
Mr. Freeman	Yes
Mr. Webb	Yes
Ms. McCoy	Yes
Ms. Lowrance	Yes
Mr. Smith	Yes
Mr. Mowell	Yes
Ms. Watkins	Yes

The vote was unanimous. Motion approved.

Meeting adjourned a 1:45 p.m.

Melinda Lowrance, Chair

Terri Swann, Secretary

MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: March 9, 2021

RE: Variance Application – Tim Cagle – 305 Blythe St

SUMMARY: The Community Development Department has received an application from Tim Cagle for a variance from Section 5-3-3: Dimensional Requirements. The subject property is currently zoned R-15, Medium Density Residential. The lot is unusual in its small size and triangular-like shape. The specific variance requested is for the following:

	<u>Required</u>	<u>Proposed</u>
Rear setback	15'	6.8'

BACKGROUND: In the Fall of 2020, the residential structure sited at 305 Blythe St was destroyed when a neighboring pine tree fell and struck the building. The applicant is proposing to rebuild a structure of the same size and within the same footprint as the previous home. The demolished structure was built in the 1930s, while the adjacent home was built in the 1920s. The unusual size and shape of the lot is due to the adjacent railroad line (formerly owned by Norfolk Southern) which was constructed in 1894 and is the future site of the Ecusta Trail. It is due to this unusual size and shape that the rear setback cannot be met.

The lot size is 3,920 Sq Ft. This is well below the required minimum lot size for the R-15 zoning district (15,000 Sq Ft). However, *Section 6-2-3* of the Zoning Code allows for existing lots of record created prior to the City's Zoning Ordinance to be developed with single-family homes as long as the setbacks are met or a variance to the setbacks is granted by the Board of Adjustments (see code reference below). Therefore, a variance to the minimum lot size is not required.

The Proposed Site Plan suggests the structure would also not meet the minimum front setback for the R-15 District. However, *Section 8-1* of the Zoning Code allows for an exception to the minimum required front yard. In this case, the average front setbacks for homes within 100' of the property fronting on Blythe St is 13'. The proposed setback for 305 Blythe St is also 13'.

VARIANCE REQUEST: The variance requested is to reduce the rear setback required by Section 5-3-3 of the Zoning Code for R-15 Medium-Density Residential Zoning District from 15' to 6.8'.

CODE REFERENCES.

5-3-3 Dimensional Requirements:

Minimum Lot Area in Square Feet:	15,000
Lot Area per Dwelling Unit in Square Feet:	15,000 for the first; 7,500 ft2 for one additional dwelling unit in one building.
Minimum Lot Width at Building Line in Feet:	85
Minimum Yard Requirements in Feet:	
Principal Structure	
Front:	30
Side:	10
Rear:	15
Accessory Structures	
Front:	30
Side:	5
Rear:	5
Maximum Height in Feet:	35

6-2-3 Nonconforming Vacant Lots. A nonconforming vacant lot is a lot that was lawfully created prior to the effective date of this ordinance, or any amendment thereto, but which does not conform to the minimum gross land area or minimum lot requirements for the zoning classification in which it is located.

a) Except as provided herein, a nonconforming vacant lot may be used for any of the uses permitted by this ordinance in the zoning classification in which it is located, provided that the use meets all limitations and minimum requirements for setback and yards, height, open space, buffers, screening, parking, density and floor area required in this ordinance for the zoning classification in which the lot is located.

b) If compliance of the structure(s) intended on the nonconforming lot with applicable setback requirements is not reasonably possible, the nonconforming lot may be used as a building site subject to the granting of a variance from such setback requirements by the Board of Adjustment in accordance with the provisions of Article X.

Section 8-1 Minimum Required Front Yard for Dwellings. The minimum required front yard requirements of this Ordinance for dwellings shall not apply on any lot where the average front yard of existing buildings located wholly or in

part within 100 feet on each side of such lot within the same block and zoning district and fronting on the same side of the street is less than the minimum required front yard. In such cases, front yard on such lot may be less than the required front yard, but not less than the average of the front yards of the aforementioned existing buildings.

Section 10-8 Variances. A variance is a means whereby the City may grant relief from the effect of the Zoning Ordinance in cases of hardship. A variance constitutes permission to depart from the literal requirements of the ordinance. When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of the following:

- a) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- b) The variance is in harmony with the general purpose and intent of the ordinance, preserves its spirit, public safety is secured, and substantial justice is achieved.
- c) The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- d) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

The Board of Adjustment shall not have authority to grant a variance when to do so would: 1) result in the extension of a nonconformity regulated pursuant to Section 6-2, above, or 2) permit a use of land, building or structure which is not permitted within the applicable zoning district classification.

MOTION:

With regard to the request by Mr. Tim Cagle for a variance from Section 5-3-3 to construct a new residence in the same footprint as the previous residence and thus receiving a reduced rear setback as depicted in the site plan, I move the Board to find that (a) strict enforcement of the regulations would result in practical difficulties or unnecessary hardship to the applicant, (b) the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, and (c) in the granting of the variance the public safety and welfare have

been secured and substantial justice has been done. Accordingly, I further move the Board to grant the requested variance in accordance with and only to the extent represented in the application.

(After the motion has been seconded, the movant should state the factual basis and reasoning for the motion. In doing so, bear in mind the considerations set out in Section 10-8 of the zoning ordinance.)

Remember: Staff suggest the motion be made in the affirmative regardless of whether it is your intention to support or oppose the issuance of a variance. This does not mean that staff is recommending approval of the application. RATHER, we believe it is better procedurally to approach it this way. Once you have made the motion, you should state your position as to the required findings. For variance applications, it takes seven affirmative votes to approve this application, if others are voicing support of the application, you should make it a point to state your position vis-à-vis the required findings since your vote, even standing by itself may represent the position of the Board.

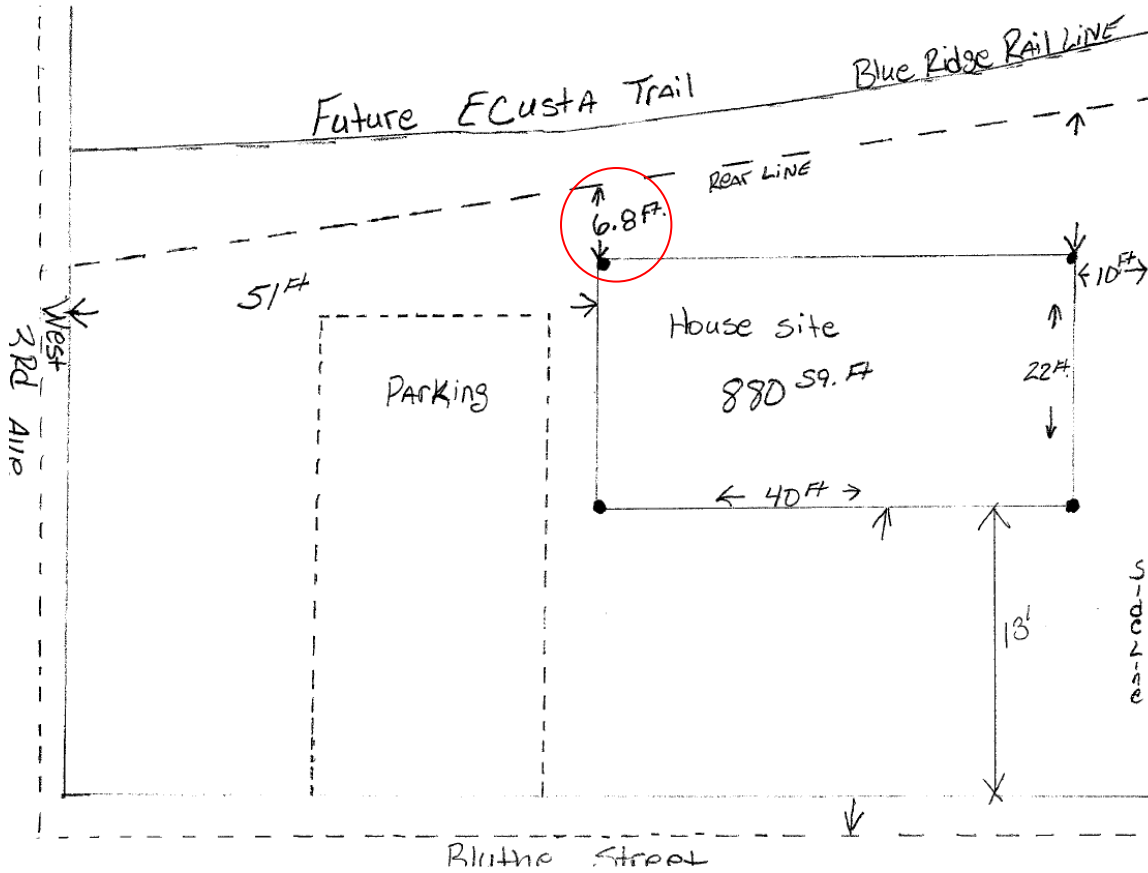
ATTACHMENTS:

- 1) Subject Property Map**
- 2) Site Plan**
- 3) Photo of Tree Damage**
- 4) Variance Application**

1) Subject Property



2) Site Plan



3) Photo of Tree Damage



4) Variance Application – See Attached

Variance Application

Items to Accompany Application:

Completed application form

Site plan of property showing existing structures, natural features (i.e. streams, ponds, etc.) proposed building or addition and indicating distance from such to the centerline of street and to the side and rear lot lines, as applicable. Show placement of septic systems and drain field if applicable and distances from structures.

Copy of septic permit, if applicable

Other documents supporting application, if applicable.

Photographs (optional)

Application fee of \$75.00

Shortly after application for a variance is accepted, staff will take photographs of the site. Please have the corners of the proposed structure and septic system staked so that they may be seen in such photos.

For more information call (828) 697-3010

Date:

2/11/2021

Applicant Name:

Tim

First

Cagle

Last

Address

PO Box 355

Address Line 1

Address Line 2

Dana

City

North Carolina

State

28724

Zip Code

Phone

(828) 388-1425

Email

tcagle904@gmail.com

Property Owner's Name (if different from above)

Same

Property Owner's Address (if different from above)

Same

Parcel ID #

109100

Zoning District:

R-15

Directions to property from Hendersonville:

Attach site plan and any supporting

305 Blythe Street.
Corner of 3rd & Blythe Street.

documents/pictures
20210211_120809.jpg
20210211_110321.jpg
20210211_110303.jpg
20210211_110225.jpg
20210211_110139.jpg
20210211_110036.jpg

To the Board of Adjustment:

Name

Tim

First

Cagle

Last

(owner/agent), hereby petition the Zoning Board of Adjustment for a VARIANCE from the literal provisions of the Zoning Ordinance of the City of Hendersonville because I am prohibited from using the parcel of land described in the form "Zoning Permit Application" in a manner shown by the site plan.

I request a variance from the following provisions of the ordinance (cite section numbers):

Section 5-3-3

Factors Relevant to the Issuance of a Variance

The Zoning Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under the state enabling act the Board is required to reach four conclusions as a prerequisite to the issuance of a variance: (a) unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property, (b) the variance is in harmony with the general purpose and intent of the ordinance, preserves its spirit, public safety is secured, and substantial justice is achieved, (c) the hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or general public, may not be the basis for granting a variance, (d) the hardship did not result from actions taken by the applicant or owner of the property. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. In the spaces provided, indicate the facts that you intend to show and the arguments that you intend to make to convince the Board that it can properly reach these four required conclusions:

Unnecessary Hardship would result from the strict application of the ordinance: State facts and arguments to show that, unnecessary hardship would result from the strict application of the ordinance. (it shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property)

Previous home on property was destroyed by a neighboring tree which fell. Due to the irregular shape and size of the lot, unable to meet current set backs. Without approval, no reasonable use can be made of the property.

The variance is in harmony with the general purpose and intent of the ordinance. preserves its spirit, public safety is secured and substantial justice is achieved. (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially

outweighed by the harm suffered by the applicant).

The previous home on this property did not meet current set backs for R-15. The home was in place for more than 90 years. Replacing the single family home is in the best interest of the neighborhood, city and us.

The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood).

By granting a variance, it will allow us to rebuild our home that was destroyed. Due to the irregular shape of our lot, we cannot meet the current required set backs. Our new home will blend back into our neighborhood well. The back of our property runs along the future Ecusta Trail.

The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. (State any facts pertaining to the hardship that is not the result of the applicant's own actions).

We purchased our home in April 2002. It was a small brick cottage on the corner of 3rd & Blythe Street. For the past 90 years that home provided much needed housing for the city's residences. In the Fall of 2020, a large pine tree from a neighboring property fell, distroying our house. We are seeking a variance in set backs. This will allow us to rebuild in the old footprint of our previous home.

I certify that all of the information prsented by me in this application is accurate to the best of my knowledge, information and belief.

Signature of Applicant:

Date:

2/11/2021

Tim Cagle

Signature of Property Owner:

Date:

2/11/2021

Tim Cogle

In the event that any discrepancies exist between the criteria outlined on this form and the Zoning Ordinance of the City of Hendersonville, the ordinance shall prevail.

Received By:

Date:

2/11/21 - Terri Swann

2/11/21

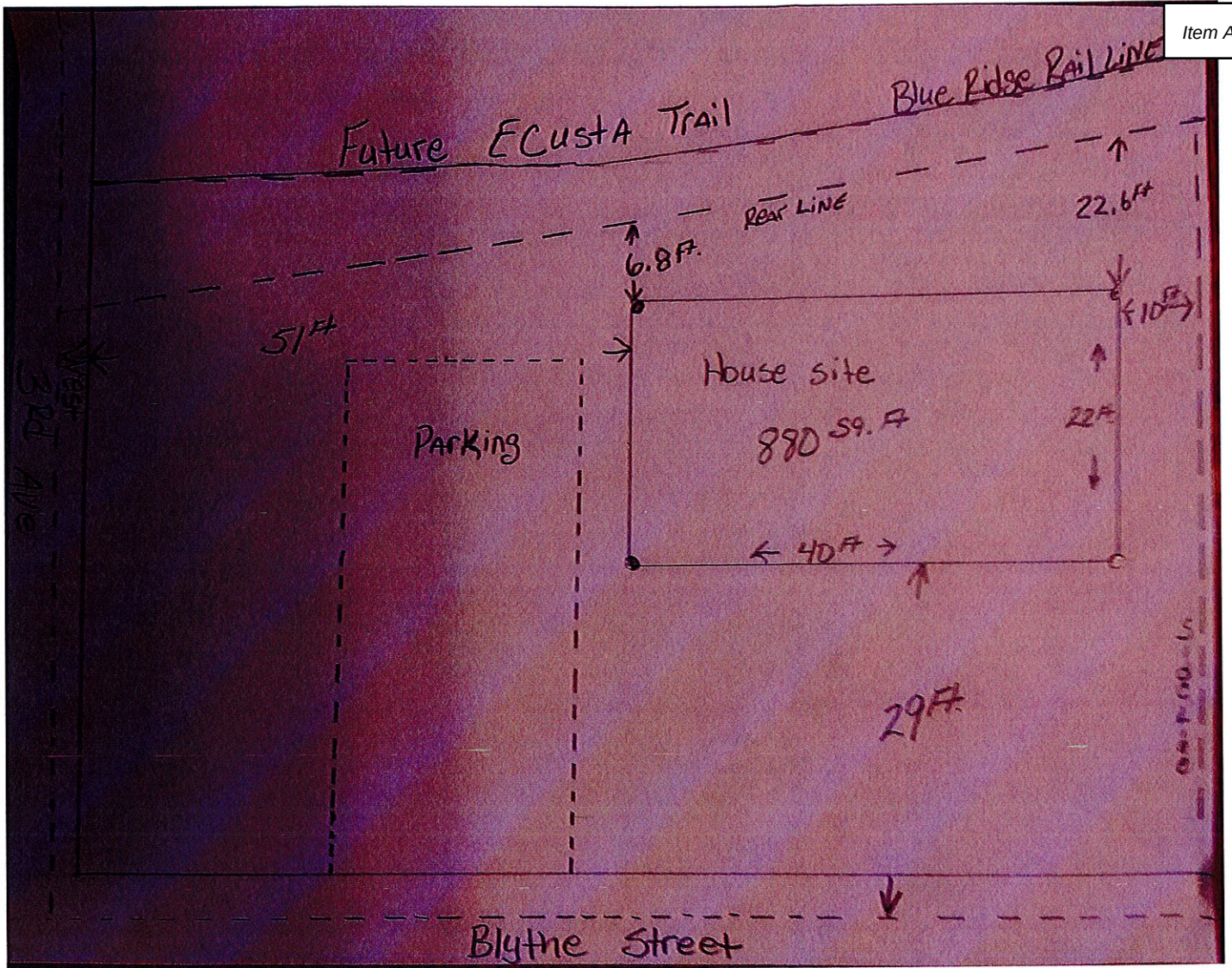
Fee Paid:

Date Received:

\$75.00

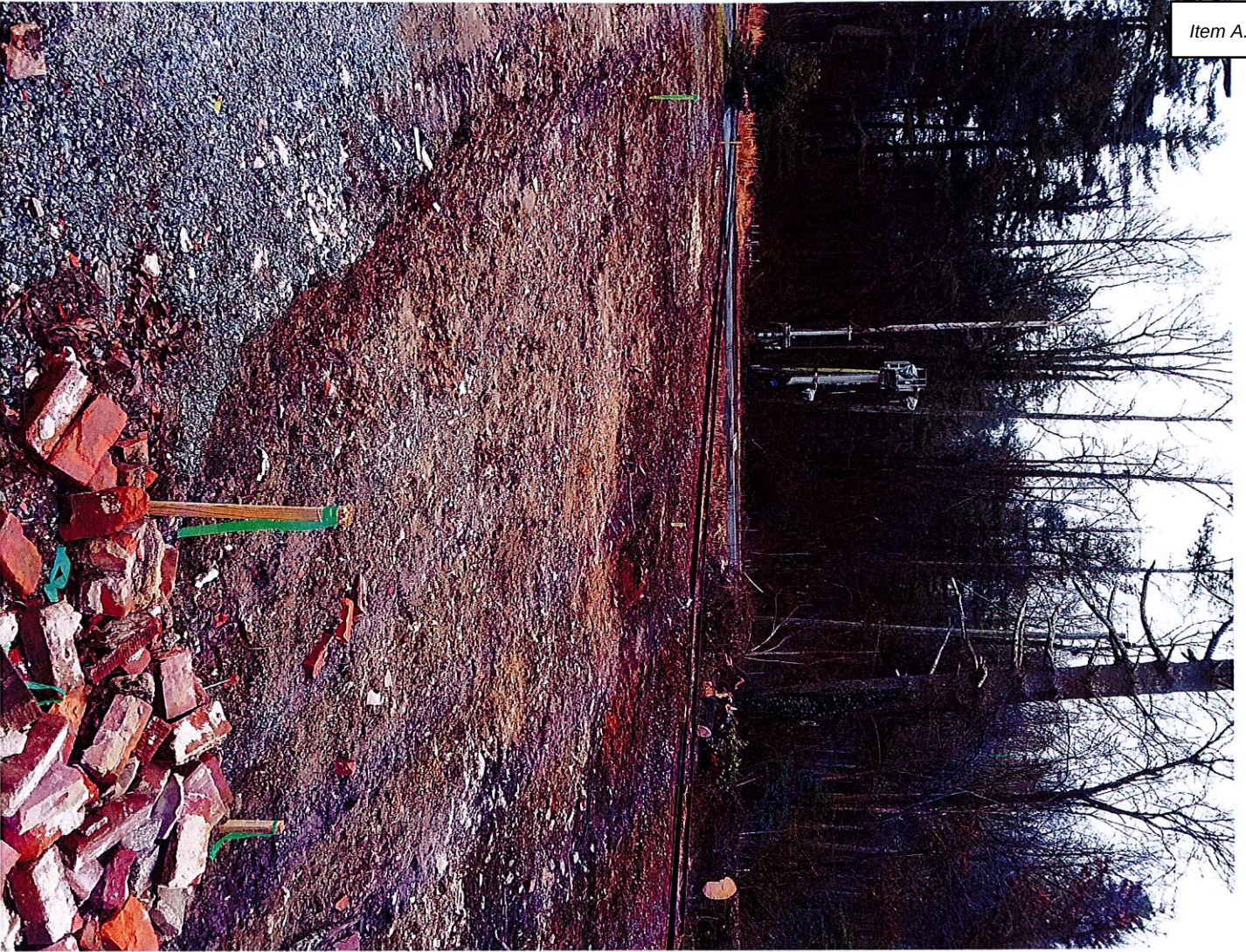
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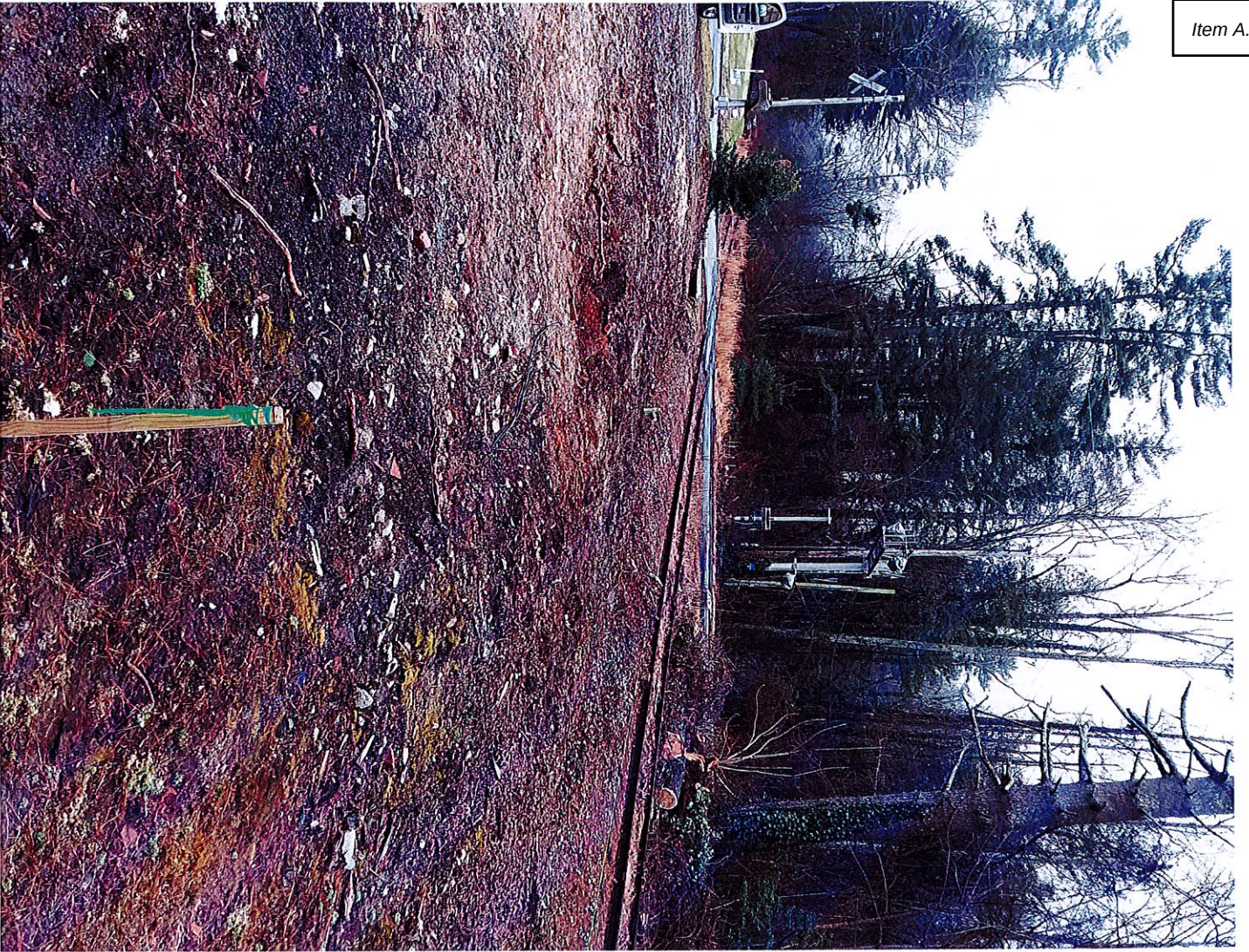
A VOTE OF SEVEN MEMBERS OF THE BOARD IS REQUIRED TO APPROVE A VARIANCE.











**STATE OF NORTH CAROLINA
HENDERSON COUNTY**

**BEFORE THE HENDERSONVILLE
BOARD OF ADJUSTMENT
FILE NO. V-12-8-01**

**IN RE THE APPLICATION OF
BRIAN PAHLE
FOR A ZONING VARIANCE
PIN 9568-47-6416**

DECISION

This matter came before the Hendersonville Board of Adjustment on 8 December 2020 for a quasi-judicial hearing on the application of Brian Pahle for a variance from Section 5-5-3 of 1.66 feet on the required 8-foot side setback to enclose an existing deck to provide for heated living space, for a property situated at 318 North Whitted Street, Hendersonville, NC, PIN 9568-47-6416.

Giving testimony were Lew Holloway, Community Development Director, and Brian Pahle, Applicant, both of whom were sworn and placed under oath.

Issues

Section 10-8 of the Hendersonville Zoning Ordinance states in pertinent part:

Section 10-8 Variances. A variance is a means whereby the City may grant relief from the effect of the Zoning Ordinance in cases of hardship. A variance constitutes permission to depart from the literal requirements of the ordinance.

A variance from the dimensional requirements of this ordinance may be granted by the Board of Adjustment if it finds the following:

- a) strict enforcement of the regulations would result in practical difficulties or unnecessary hardships to the applicant for the variance,
- b) the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, and
- c) in the granting of the variance the public safety and welfare have been secured and substantial justice has been done. Such findings shall be based on the following considerations:

- 1) The fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not be considered as grounds for granting the variance.
- 2) The hardship relates to the applicant's property rather than to personal circumstances.
- 3) The hardship results from the application of the ordinance and from no other cause, including the actions of the owner of the property or previous owners.
- 4) The hardship is peculiar to the property in question rather than a hardship shared by the neighborhood or the general public.

The Board of Adjustment shall not have authority to grant a variance when to do so would: 1) result in the extension of a nonconformity regulated pursuant to Section 6-2, above, or 2) permit a use of land, building or structure which is not permitted within the applicable zoning district classification.)

Section 5-5-3 of the Hendersonville Zoning Ordinance states:

5-5-3 Dimensional Requirements:

Minimum Lot Area in Square Feet:	6,000
Lot Area per Dwelling Unit in Square Feet:	6,000 for the first; 4,000 ft ² for one additional dwelling unit in any one building
Minimum Lot Width at Building Line in Feet:	50
Minimum Yard Requirements in Feet:	
Principal Structure	Front: 20 Side 8 Rear: 10
Accessor Structures:	Front: 20 Side: 5 Rear: 5
Maximum Height in Feet:	35

TESTIMONY

Testimony is accurately reflected in the minutes.

FINDINGS OF FACT

Based on the above testimony, the Board finds as follows:

1. The subject property is identified as tax parcel 6568-47-6416.
2. The subject property is zoned R-6, High Density Residential.
3. The subject property is approximately .21 acres.
4. The subject property is located at 318 N. Whitted Street.
5. A single-family home was constructed on the property in 1920. There is an existing encroachment of 2.13 into the 8-foot side setback by an existing deck.
6. The required setbacks in Section 5-5-3 of the zoning ordinance are: front- 20', side - 8' and rear - 10'.
7. The requested variance is for 1.66 feet on the side setback in order to close in the deck and construct heated space. The enclosing of the deck will decrease the extent of the existing non-conformity due to the removal of the stairs from the deck.
8. The lot upon which the home sits is 60 feet wide.
9. The orientation of the home on the lot presents a practical difficulty or unnecessary hardship on the applicant in that enclosing of the existing deck without encroaching into the setback is not possible.

CONCLUSIONS OF LAW

Based on the above findings of fact, the Board concludes as follows:

- 1) strict enforcement of the regulations would result in practical difficulties or unnecessary hardships to the applicant for the variance, namely, that the lot size and width is such that enclosing the existing deck without encroaching into the setback is not possible without the grant of a setback variance.
- 2) the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, and

- 3) in the granting of the variance the public safety and welfare have been secured and substantial justice has been done.
- 4) The fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not be considered as grounds for granting the variance.
- 5) The hardship relates to the applicant's property rather than to personal circumstances. In particular, the hardship would render the enclosure of the existing deck on the property a practical impossibility.
- 6) The hardship results from the application of the ordinance and from no other cause, including the actions of the owner of the property.
- 7) The hardship is peculiar to the property in question rather than a hardship shared by the neighborhood or the general public.
- 8) No one offered evidence in opposition to the permit.

DECISION

For the above reasons,

The Board of Adjustment grants a variance of 1.66 feet on the required 8-foot side setback.

Done this 9th day of February 2021.

Melinda Lowrance, Chair

NOTICE

City of Hendersonville Board of Adjustment

305 Williams St. Hendersonville, NC 28792

NOTICE OF BOARD OF ADJUSTMENT REGULAR MEETINGS

LOCATION AMENDMENT

The following Regular Meetings of the City of Hendersonville Board of Adjustment are held on the **second Tuesday** of each month beginning at **1:30 p.m.** at City Hall in the Council Chambers on the 2nd floor at 160, Sixth Avenue. E, Hendersonville NC through May 2021.

January 12, 2021

February 9, 2021

March 9, 2021

April 13, 2021

May 11, 2021

The following Regular Meetings of the City of Hendersonville Board of Adjustment are held on the **second Tuesday** of each month beginning at **1:30 p.m.** in the Assembly Room of the Operation Center located at 305 Williams Street, Hendersonville NC. The following regular meetings have been scheduled for 2021:

June 8, 2021

July 13, 2021

August 10, 2021

September 14, 2021

October 12, 2021

November 9, 2021

December 14, 2021

Lew Holloway
Community Development Director

The City of Hendersonville is committed to providing accessible facilities, programs and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or a particular accommodation for this meeting please contact the City Clerk no later than 24 hours prior to the meeting at 697-3005.

Ratified: 12/01/2020 Posted: 12/01/2020

<https://www.hendersonvillenc.gov>

