



CITY OF HENDERSONVILLE BOARD OF ADJUSTMENT

Operations Center - Assembly Room | 305 Williams St. | Hendersonville NC 28792
Tuesday, September 14, 2021 – 1:30 PM

AGENDA

1. **CALL TO ORDER**

2. **APPROVAL OF AGENDA**

3. **APPROVAL OF MINUTES**

A. Minutes of June 8, 2021

4. **OLD BUSINESS**

A. Approval of the Decision - Doyle Barnes - 1523 Druid Hills Ave

(From meeting on June 08, 2021)

B. Approval of the Decision - Iris Diaz - 636 Midway St

(From the meeting on June 8, 2021)

5. **NEW BUSINESS**

A. Staff Report: Dunlap Variance Request - 1600 Four Seasons Blvd.

B. Staff Presentation - Dunlap Variance Request - presented by Tyler Henry, Code Enforcement Officer

C. Staff Report: Fowler Variance Request - 526 Fleming St.

D. Staff Presentation - Fowler Variance Request - presented by Tyler Henry, Code Enforcement Officer

6. **OTHER BUSINESS**

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, June 8, 2021
1:30 p.m. in the City Operations Center

The Hendersonville Board of Adjustment held its regular monthly meeting on June 8, 2021 at 1:30 p.m. in the Assembly Room in City Operations Center, 305 Williams Street, Hendersonville, North Carolina. Those present were: Melinda Lowrance, Chair, Chris Freeman, Barbara McCoy, Roger Woolsey, Libby Collina, Charles Webb, Steve Smith, Candi Guffey Lew Holloway, Community Development Director, Matt Manley, Planning Manager, Angela Beeker, City Attorney, Tyler Henry, Code Enforcement Officer and Secretary to the Board Terri Swann.

Absent: Ernest Mowell, Kathy Watkins

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

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

Approval of the Minutes of the May 11, 2021 meeting. A motion was made by Mr. Woolsey and seconded by Ms. Collina to approve the minutes as written. The motion passed unanimously.

Approval of the Decision for an application for authorization to alter a nonconforming use from WCCA (File No. NON-05-11-01), 911 Tebeau Drive. A motion was made by Mr. Freeman to accept the decision as written. Mr. Woolsey seconded the motion which passed unanimously.

Variance – Doyle & Kathleen Barnes – 1523 Druid Hills Avenue

Chair swore in all persons to give testimony. Those sworn in were Tyler Henry, Code Enforcement Officer and Kathleen Barnes.

Chair opened the public hearing.

Application for a variance from Doyle and Kathleen Barnes for the property located at 1523 Druid Hills Avenue.

Tyler Henry, Code Enforcement Officer with the City of Hendersonville stated his name and title for the record. He asked that the staff reports, and attachments be entered into evidence for this hearing.

Mr. Henry stated the following concerning the subject property:

- The subject property is identified as PIN 9569-42-9977.
- The property is zoned R-10, Medium Density Residential.

- The lot size is approximately 7,405 sq. ft. This is below the required minimum lot size of 10,000 sq. ft. for the R-10 zoning district.
- Based on Henderson County building records, the dwelling located on the property was built in 1930.
- Zoning regulations for the City that would have established setback requirements and minimum lot sizes went into effect on May 10, 1945.
- The dwelling currently is affixed to the property within the required 10-foot side setback for the R-10 zoning district.
- The applicant is proposing to build an addition to the dwelling unit that will add approximately 24' in length and 18' in width to the exterior walls in the back, right corner of the dwelling unit.

Mr. Henry stated the variance request is to reduce the side setback from 10 feet to 5 feet. Mr. Henry showed a site plan submitted by the applicant.

Mr. Henry stated based on the staff review of the applicant's information there is a suggested motion for the application.

Ms. McCoy asked about this being approved for a certificate of appropriateness by the Historic Preservation Commission. Mr. Henry stated the applicants have applied for a COA but the variance must be approved first before it moves forward with the Historic Preservation Commission. Ms. McCoy stated she would like to hear from the HPC on this.

Chair asked if there were any questions for staff. There were no further questions for staff.

Kathleen Barnes, applicant stated her address is 1523 Druid Hills Avenue. She stated she has not spoken directly to the Historic Preservation Commission, but they have filed an application with them. Ms. Barnes stated the addition will now be 5 feet from the property line. The addition will not be seen from the street. They have restored several historic homes and they chose to live in the historic district.

Ms. McCoy asked if she plans to get the variance first and then the COA approval. Ms. Barnes stated yes. Mr. Henry stated if this variance application is approved then the COA application is slated to be heard next week.

Chair asked if there were any further questions for the applicant. There were no further questions.

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. Collina stated the addition is in line with the original structure. She did not see any issues with it.

Mr. Webb made the following motion: With regard to the request by Mr. Doyle Barnes for a variance from Section 5-4-3 of 5' on the required 10' side setback to construct an addition in accordance with the plan submitted on 1523 Druid Hills Avenue with a PIN of 9569-42-9977, 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. Smith 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. Lowrance	Yes
Ms. McCoy	Yes
Ms. Guffey	Yes
Ms. Collina	Yes
Mr. Smith	Yes

The vote was unanimous. Motion approved.

Variance– Iris Diaz and Alan Dunn– 636 Midway Street

Chair sworn in Iris Diaz and Alan Dunn.

Mr. Henry asked that the staff report and application along with the owner signature addendum be submitted into the record.

Mr. Henry stated this application is for a variance from Section 5-3-3 of the Zoning Ordinance.

Mr. Henry stated the following concerning the subject property:

- The subject property is identified as PIN 9568-18-9214.
- The property is zoned R-15, Medium Density Residential.
- The lot size is approximately 16,553 sq. ft. This is well within the required minimum lot size of 15,000 sq. ft. for the R-15 zoning district.
- Based on the Henderson County building records, the dwelling located on this property was built in 1940.
- Zoning regulations for the City that would have established setback requirements went into effect on May 10, 1945.
- The dwelling currently is affixed to the property within the required 10' side setback for the R-15 zoning district.

- The applicant is proposing to build an addition to the dwelling unit that will add 9'11" in length and 8'5" in width to the exterior walls in the back, right corner of the dwelling unit.

Mr. Henry stated the variance request is to reduce the side setback required by Section 5-3-3 of the zoning ordinance for the R-15 district from 10 feet to 0 feet.

Mr. Henry showed the site plan submitted by the applicant.

Chair asked if the Board had any questions for staff. There were no questions.

Iris Diaz, 636 Midway Street stated she would be happy to answer any questions.

Ms. Collina asked about the site plan. Mr. Henry stated the site plan is what was submitted to staff. He explained the location of the addition and stated it will be in line with the existing dwelling.

Mr. Smith asked if the addition was for a bathroom. Ms. Diaz stated it is for a half bath and they are bumping out the washer/dryer area.

Ms. Collina asked if the existing house sits 0 feet as well and if the new wall will follow the same exterior wall as the current house. Mr. Henry stated yes.

Mr. Smith asked if the only addition to the property was to the rear. Ms. Diaz stated yes.

Chair asked if there were any further questions for the applicant. There were no further questions.

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.

Mr. Smith made the following motion: With regard to the request by Ms. Iris Diaz for a variance from Section 5-3-3 of 10' on the required 10' side setback to construct an addition in accordance with the plan submitted for 636 Midway Street with a PIN of 9568-18-9214, 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. Ms. McCoy 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. Lowrance	Yes
Ms. McCoy	Yes
Ms. Guffey	Yes
Ms. Collina	Yes
Mr. Smith	Yes

The vote was unanimous. Motion approved.

Adoption of annual schedule of regular meetings. Mr. Woolsey made a motion to approve the annual schedule of meetings for the Board of Adjustment. Mr. Freeman seconded the motion which passed unanimously.

Meeting adjourned a 1:55 p.m.

Melinda Lowrance, Chair

Terri Swann, Secretary

MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: September 14, 2021

RE: Variance Application – Denis Dunlap – 1600 Four Seasons Blvd.

SUMMARY: The Community Development Department has received an application from Denis Dunlap for a variance from Section 5-8-3: Dimensional Requirements. The subject property is currently zoned C-3, Highway Business Zoning District. The specific variance requested is for the following:

	<u>Required</u>	<u>Proposed</u>
Side setback:	15'	0'

The applicant is proposing to construct an addition to the south side of an existing building (see attachment 2-c) that is located at 1600 Four Season Blvd.

PROPOSED FINDINGS OF FACT:

- The subject property possesses a PIN of 9579138904 and is zoned as C-3, Highway Business.
- The lot size is approximately 20,908 Sq Ft. This is well within the required minimum lot size for non-residential uses in the C-3 zoning district (10,000 Sq Ft).
- Based on Henderson County building records, the building located on the property were built in 1984.
- The proposed addition to the building is 16'(W) X 30'(L) X 14'(H).

CLAIMS MADE BY THE APPLICANT

- The applicant is claiming that they are unable to build the addition on Side B of the existing building (see attachment 2-b) because of bad soil conditions consisting of loose backfill (approximately 7' deep) that was not properly compacted and is "unsuitable to build on".

VARIANCE REQUEST:

The variance requested is to reduce the side setback required by Section 5-8-3 of the Zoning Code for C-3 Highway Business Zoning District from 15' to 0'.

CODE REFERENCES.

Section 5-8-3 Dimensional Requirements: For Lots Containing Other Uses

Minimum Lot Area in Square Feet: 10,000

Lot Area per Dwelling Unit in Square Feet: N/A

Minimum Lot Width at Building Line in Feet: 80

Minimum Yard Requirements in Feet:

Front: 35 (Front yard requirements may be reduced to ten feet for an accessory canopy structure for a commercial building or use, provided the primary structure or use conforms to the established setback requirements.)

Side: 15

Rear: 20

Maximum Height in Feet: 48

Section 10-9 Variance.

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 is not necessary to demonstrate that, in the absence of the Variance, no reasonable use can be made of the property.
- b) 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. A Variance may be granted when necessary

and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

- c) 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 is not a self-created hardship.
- d) The requested Variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

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. Per NCGS 160D-705 (d), appropriate conditions may be imposed on any Variance, provided that the conditions are reasonably related to the Variance.

MOTION:

With regard to the request by Denis Dunlap for a variance from Section 5-8-3 to reduce the side setback required by Section 5-8-3 of the Zoning Code for C-3 Highway Business Zoning District from 15' to 0', 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 10-9 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**
- 2) Pictures of the Property**
 - a. Building Front**
 - b. Side B**
 - c. Side A**
 - d. Side A Street View**
- 3) Proposed Design of the Addition (Drawing)**
- 4) Survey of Property**
- 5) Variance Application**

1) Subject Property



2) Pictures of the Property



a.) Building Front



b.) Side B

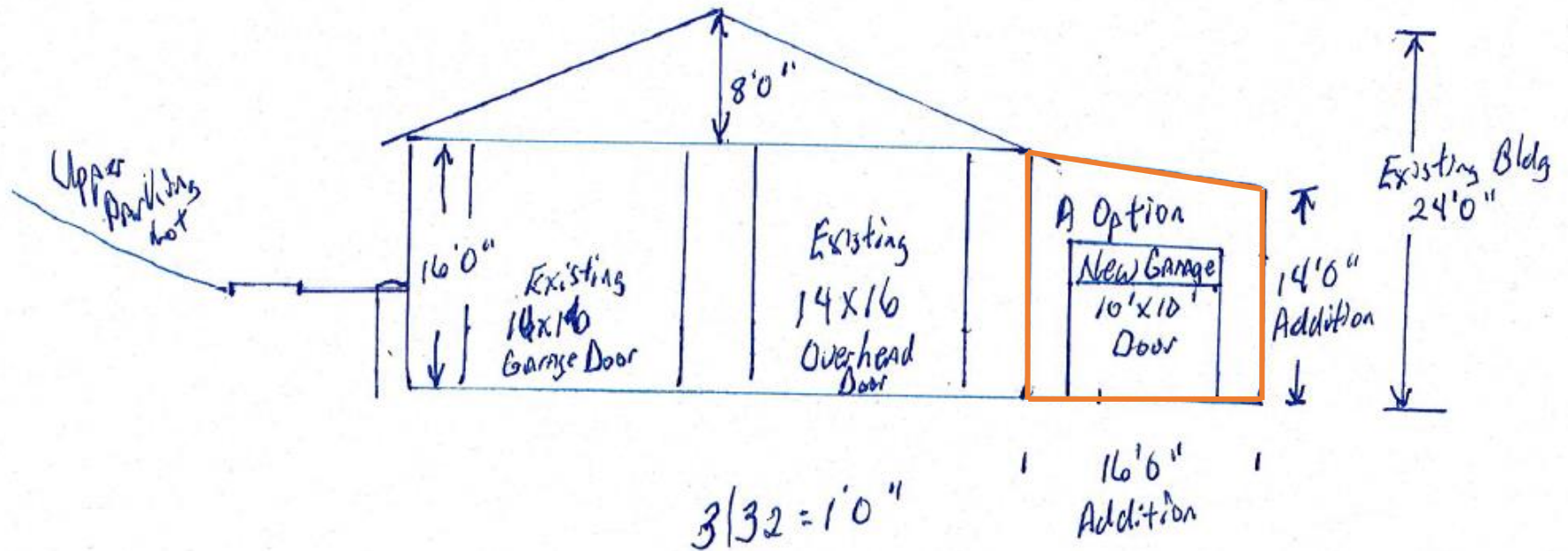


c.) Side A

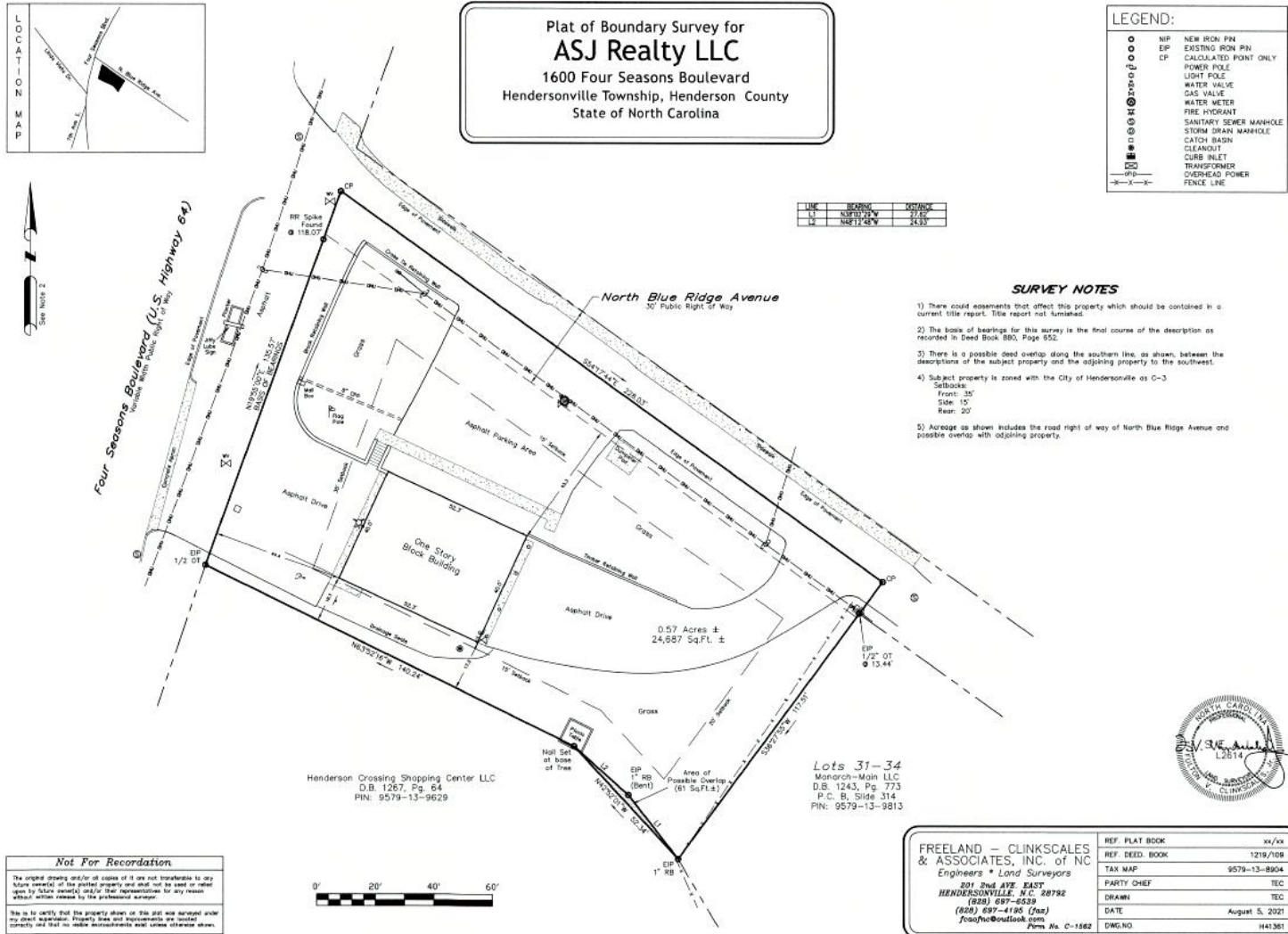
d.) Side A Street View



3) Proposed Design of the Addition (Drawing)



4) Survey of Property



5) Variance Application – See Attached

CITY OF HENDERSONVILLE
STATE OF NORTH CAROLINA
APPLICATION FOR A VARIANCE

August 11 2021
Month Day Year

Applicant: Dunlap Construction Co Phone: 920-697-9598
Address: 120B North Grove St. Hendersonville, NC 28792
Property Owner's Name (if different from above): ASJ Realty LLC - Alan Jackson
Property Owner's Address (if different from above): 720 Hendersonville Rd Asheville 28803
Parcel ID Number: 9579-13-0904 Zoning District: _____

Directions to property from Hendersonville: 1/4 E on MLK Blvd. to 1600
Four Seasons Blvd. Jiffy Lube on the right

TO THE ZONING BOARD OF ADJUSTMENT:

I, Dennis Dunlap (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): Side Set Back

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 below, 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:

(a) UNNECESSARY HARDSHIP WOULD RESULT FROM THE STRICT APPLICATION OF THIS 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) The owner of this property would like to add 1 bay to this existing building to perform auto alignments.

(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. (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.) If the variance is denied the owner will not be able to offer the services.

(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. (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.) The property is located on Four Seasons Blvd which is a high traffic area and commercial use.

(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. (State any facts pertaining to the hardship that is not the result of the applicant's own actions.) The hardship did not result from actions taken by the applicant or the property owner.

(Please continue remarks on separate page if necessary)

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

Randa R. Webb
Signature of Applicant

8-11-21
Date

Alan F. Jackson
Signature of Property Owner

8-11-21
Date

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.

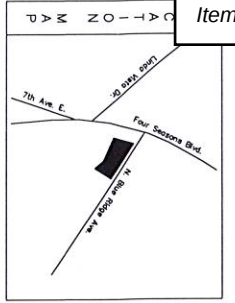
Terri Swann
Received By

8/12/21
Date

\$175.00
Fee Paid

8/12/21
Date Received

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



See Note 2

Four Seasons Boulevard (U.S. Highway 64)
Variable Width Public Right of Way

Plat of Boundary Survey for
ASJ Realty LLC
1600 Four Seasons Boulevard
Hendersonville Township, Henderson County
State of North Carolina

LINE	BEARING	DISTANCE
1	N 89° 07' 48" W	22.62'
2	N 89° 07' 48" W	22.62'

SURVEY NOTES

- 1) There could easements that affect this property which should be contained in a current title report. Title report not furnished.
- 2) The basis of bearings for this survey is the final course of the description as recorded in Deed Book 880, Page 652.
- 3) There is a possible deed overlap along the southern line, as shown, between the descriptions of the subject property and the adjoining property to the southwest.
- 4) Subject property is zoned with the City of Hendersonville as C-3
Front: 35'
Side: 15'
Rear: 20'
- 5) Acreage as shown includes the road right of way of North Blue Ridge Avenue and possible overlap with adjoining property.

LEGEND:	
○	NEW IRON PIN
○	EXISTING IRON PIN
CP	CALCULATED POINT ONLY
○	POWER POLE
○	LIGHT POLE
○	WATER VALVE
○	WATER METER
○	FIRE HYDRANT
○	SANITARY SEWER MANHOLE
○	STORM DRAIN MANHOLE
○	CATCH BASIN
○	CURB INLET
○	TRANSFORMER
○	OVERHEAD POWER
○	FENCE LINE



NOT FOR RECORDATION

This original drawing and/or copies of it are not to be recorded in any public office. This drawing is the property of the surveyor and is not to be reproduced or used in any way without written release by the professional surveyor.

This is to certify that the property shown on this plat was surveyed under the direction and supervision of the surveyor and that the survey was conducted in accordance with the laws and rules of the State of North Carolina.

A-Proposed
16 x 30 Bldg
W Set back variance

Henderson Crossing Shopping Center LLC
D.B. 1261, PG. 64
P.N. 9579-13-9029

Lots 31-34
Henderson Crossing Shopping Center LLC
D.B. 1261, PG. 773
P.C. B, Slide 314
P.N. 9579-13-9813

FREE LAND - CLINKSCALES & ASSOCIATES, INC. of NC
Engineers & Land Surveyors
201 2nd AVE. EAST
HENDERSONVILLE, N.C. 28792
(828) 697-6539 (fax)
jc@free-land.com
JCLM No. C-1562

REF. PLAT BOOK	xx/xx
REF. DEED BOOK	1219/109
TAX MAP	9579-13-8904
PARTY CHIEF	TEC
DRAWN	TEC
DATE	August 5, 2021
DWG. NO.	H41361



To: Tyler Henry
From: Marti Rimbault (828) 243-8074

Item C.

Variance Application

Thank you for filling out the form. Your application has been submitted.

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 *n/a*

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:

8/13/2021

Applicant Name:

Tracie Fowler

Address

15 Carriage Ct, Pittsboro, North Carolina 27312

Phone

(919) 457-7555

Email

traciefowler@gmail.com

Property Owner's Name (if different from above)

KMBL Properties LLC (Marti Rimbault - member/mgr)

Property Owner's Address (if different from above)

PO Box 1112, Fletcher, NC 28732

Parcel ID #

9568-68-2651

Zoning District:

MIC

Directions to property from Hendersonville:

64W (Brevard Rd) to Fleming Street; Left on Fleming.

Property is mid-block on left (faces the back of the

Elks Club) *526 Fleming St, Hendersonville NC 28739*

Attach site plan and any supporting documents/pictures

To the Board of Adjustment:

Name

Marti Rimbault - Member/Mgr of KMBL Properties, LLC

(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):

Article VI, Section 6-2-4 Repairs and Maintenance (limit on repair costs)

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)

The buildings on the property are in need of renovations to plumbing, electrical, roofing, siding, decks, framing, flooring, structural, etc. Multiple contractors have been consulted and feel more repairs may be required after the initial repairs have begun, which puts the improvement budget above 10% of the tax value. Some contractors have suggested new builds for the three smaller units to match the main building (quadplex) for a cohesive, intentional final product. There is no feasible way to do portions of this renovation over several years to stay within the 10% yearly limitation.

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 property has functioned as a multi-family unit for decades and needs ongoing maintenance and repairs to bring the buildings up to current standards and aesthetics. Without the proposed repairs, which may exceed 10% of the current assessed value, the property will continue to fall into disrepair until it becomes uninhabitable and, eventually, an eyesore to the community. If the variance is denied it will take away housing and negatively impact the downtown aesthetics.

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).

The hardship is due to changes in local zoning over the life of the property. The property has always been a multi-family property and has been used exclusively in that way. Originally, MIC zoning allowed for multi-family but (per our zoning contact) that changed in 1965. The property continued to operate as legal non-conforming but has sustained damage over the years that cannot be rectified without exceeding the 10% limit set forth in

Section 6-2-4 of the City's Zoning Ordinance. If the property was a duplex, this would not be an issue as duplexes are still allowed in MIC zoning. It is only the unusual size of this property that results in a hardship that prevents proper repairs to be executed without losing legal use of multi-family.

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).

The property condition is not the result of actions taken by the current owner nor by the applicant (Future owner). The building is at least 70 years old and based on construction standards that changed over time (knob & tube electrical, size of framing, etc.). Contractors suggest actual age (time built) is somewhere between 1920's and 1940's depending on the unit.

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

Signature of Applicant:

Date:

8/13/2021

To Follow

Traci Ford

Signature of Property Owner:

Date:

8/13/2021

Marti Pembault
Marti Pembault

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:

Fee Paid: \$75.00

Date Received: 8/26/21

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

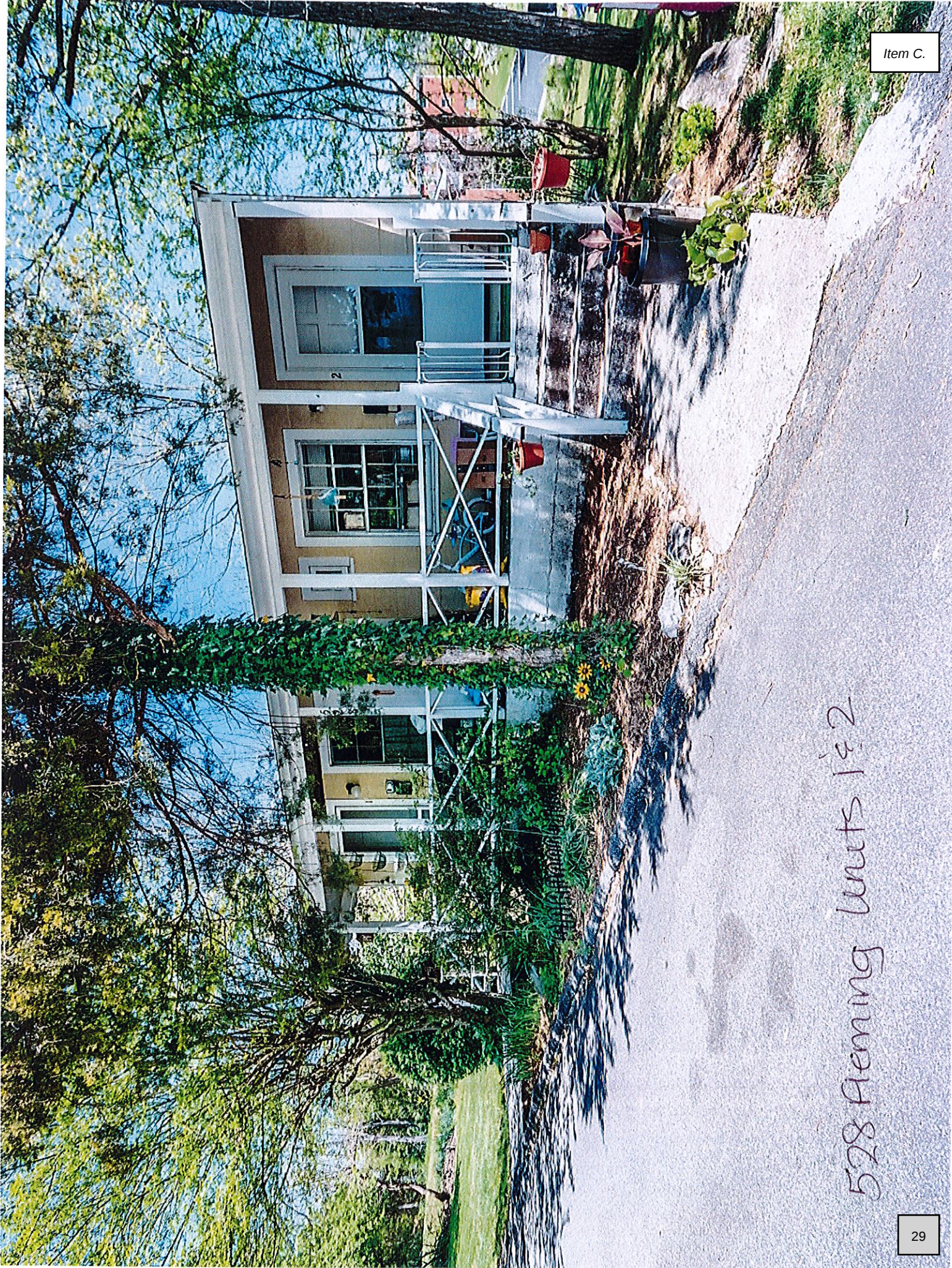


526 FRONT

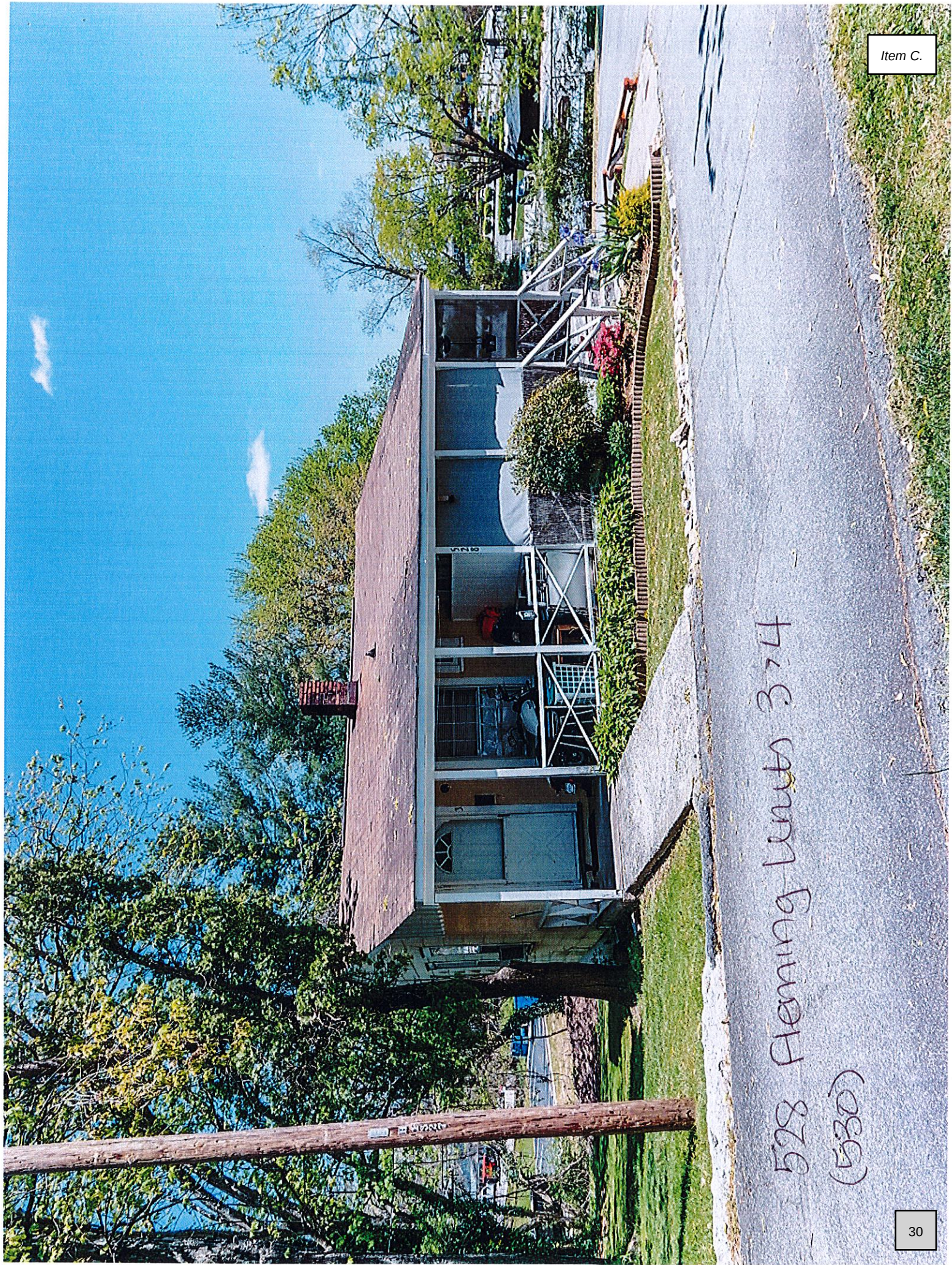


BACK VIEW





528 Fleming Units 1 & 2



Item C.

528 Fleming Units 3 & 4
(530)



Item C.

July 27, 2021

Tracie Fowler

Subject: 526 Fleming Street
Preliminary Estimate

Tracie:

I want to thank you for the opportunity to provide a preliminary budget for your project. The estimate is based on a project that we recently priced that was new construction. I included only the items that are relevant to your project. My assumption is that we will demo the interior of the structures to the framing, remove the exterior siding and trim and replace all roofing. This scope can be more clearly defined as you get further in the process.

The estimate includes the following scope of work for each building:

Permitting
Demo
Structural and Framing
Windows and Exterior Doors
Roofing
Electrical
Plumbing
HVAC
Insulation
Drywall
Cabinets and Countertops Solid surface countertops
Interior Doors and Trim
Flooring – Hardwood and tile
Interior Hardware Door and bathroom hardware
Closet Shelving
Appliances
Exterior Siding
Gutters and Downspouts
Decks and Porches
Final Grading

Based on the above scope of work and recent pricing for a similar project, we anticipate a cost of between \$125 - \$150 per square foot. This scope would be to basically salvage the existing

224 S. GROVE STREET, HENDERSONVILLE, NC 28792 – PO BOX 6039, HENDERSONVILLE, NC 28793

foundation, framing, and some plumbing and electrical. Once plans and scope are further developed, we can provide a more detailed estimate.

Thank you again for the opportunity to work with you on your project. Please feel free to contact me with any questions.



Client: Stonepoint Properties LLC

Location: 526 Flemming St Hendersonville NC

Project: Multiple building renovations

The following scope of work is proposed from Grove Hill Enterprises Etc. but is subject to change orders throughout the process of the job because of the limitation or being able to view every unit with one hundred percent confidence in a set final price.

The scope of work includes the main building, two duplex's and one single unit.

Pricing includes all building permits for mechanical, electrical plumbing and building.

Pricing includes CertainTeed 3- tab shingles to be installed on the units that have not been re shingled recently, both duplexs and the single unit will have new housewrap and hardiplank cedar mill siding with board and batten gable ends and 5/4"x4 corners.

All windows on all units are to be plygem white vinyl (window lead time for all windows is 16 weeks). Pricing for the windows includes the demolition and brining the window sill height to code at 22.5". Window/ door tape will be installed on the exterior flanges and the vinyl siding re installed on the main building.

All demolition of lathe/ plaster, interior doors, flooring, cabinetry, appliances, all dumpsters and dump fees associated with this project will be the responsibility of GH.

Throughout the process of the project, there are to be no tenants living on the property as this project needs to be safe at all times.

*Exclusions for this estimate is the asbestos abatement *

All decks on the main building are to be re built with new treated materials and proper footings installed.

Crawl space work on the main building is not included at this time

All new electrical from the panels, outlets switches etc. will be brought up to code in each building. GH is responsible for all rough in materials but final lighting is supplied by the owner.

HVAC systems- The single family unit and both duplexes will have new disconnects and Mitsubishi ducted mini split system install. The main building will need two, 2 ton units but location of the air handler is undetermined at this time

Plumbing- will incorporate all repairs, moving of toilet flanges, water heater in basement, and trim out. Trim out fixtures are to be supplied by the owner. There were multiple items on the inspection report that will be addressed in this estimate.

Framing – Multiple units, walls will need to be moved to allocate for toilet width of 15" to center of drain, along with the window sill height. The stairwell in the main building needs to be re framed and the bathroom floor(stairwell ceiling) will need to be framed to meet current building codes.

Insulation- All floor systems are to be insulated with r-19 insulation, all wall systems are to be insulated with r-15 insulation and ceilings will be insulated with r-38 insulation. Baffles will be installed if needed on the eaves. All windows are to be sprayed foamed and all sill plates will be sealed.

Drywall- A total of 756) 4'x12" sheets of drywall will be installed. We will need to boom all of the second floor drywall through the front and side windows. Apply three coats of joint compound, sand and prime.

Trim work- furnish and install all new two panel hollow core doors with brushed nickel hardware. Front doors will be thermal two panel and in the main building will need to be a two hour fire rated door. All baseboards are to be flat stock at 1"x8" and all casing on windows and door flat stock at 1"x6"

Cabinetry – All cabinets in the bathrooms and kitchens are to be Choice Cabinetry shaker white with 4" brushed nickel pulls.

Countertops- All level one granite (only 5 choices to choose from) but will continue in all kitchens and bathrooms.

Punch out- All shelving in closets is to be closetmaid wire shelving – pantrys will only have 3) shelves at 12" apart, closets will have (1) 12" deep wire shelf

Flooring- All flooring is to be Duarte Panzu Copa LVp with pine paint grade ¾ round

Interior painting- Furnish and apply chalk and putty to all trim work. Apply Sherwin Williams master Hide Bright White to all ceilings and closets. Furnish and apply two coats of Pro Mar 200 satin to all walls. Furnish and apply Pro mar 400 semi gloss white to all trim work

Exterior painting- Caulk putty and apply Sherwin Williams Super paint or equivalent to both duplexes and the single family unit. Trim work is all to be white gloss, siding color is to be chosen

Cleaning- All final cleanings of the interior and exterior of the buildings will be completed by GH

Project total- \$768,200.00

Exclusions: any zoning with city, any unforeseen problems that arise are billable at the below rates.

Lighting fixtures, plumbing fixtures and appliances are not included.

All showers are to be fiberglass pan base and 3"x6" white subway tile with white non sanded grout.

Shower glass and vanity mirrors are excluded at this time

Payment Schedule:

If project is accepted payment terms are to be discussed

Any changes to the above scope of work is billable at \$65.00/hr per carpenter. \$55.00/hr per painter and \$95.00/hr per trade.

Any plywood decking that needs to be replaced is billable at \$85.00/ sheet.

Any materials purchased for the change order is marked up 30%

MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: September 14, 2021

RE: Variance Application – Tracie Fowler – 526 Fleming St.

SUMMARY: The Community Development Department has received an application from Tracie Fowler for a variance from Section 6-2-4: Repairs and Maintenance. The subject property is currently zoned MIC, Medical, Institutional, and Cultural. The specific variance requested is for the following:

PROPOSED FINDINGS OF FACT:

- The subject property possesses a PIN of 9568682651 and is zoned as MIC, Medical, Institutional, and Cultural.
- The lot size is approximately 31,363 Sq Ft. This is well within the required minimum lot size for the MIC zoning district (8,000 Sq Ft).
- Based on Henderson County building records, the dwelling units located on the property were built in 1960.
- The MIC zoning district was established on March 4, 1965.
- When the MIC zoning district was originally formed, multi-family dwelling units including apartments were permitted uses.
- Staff could not establish any evidence that the use on the property ever changed or ceased for a period of time greater than 180 days since the creation of the MIC district.
- The use on the property is considered to be a legal, nonconforming use by staff.
- According to Henderson County building records, at the time of this report, the property is valued at \$423,639.
- The applicant has submitted a project proposal amount of \$768,200.

VARIANCE REQUEST: The variance requested is to renovate structures that serve a legal, nonconforming use beyond 10% of the total taxable value of the property, as established in section 6-2-4 of the Zoning Ordinance.

CODE REFERENCES.

6-2-4 Repairs and Maintenance.

Minor repairs to and routine maintenance of land, buildings, structures, or other development of land devoted to a nonconforming use or having nonconforming structures are permitted, provided the cost of such repairs and maintenance within any 12 month period does not exceed 10% of the current assessed taxable value of the land, buildings, structure, or other development of land.

Any structure or other development of land devoted to a nonconforming use that is declared unsafe by the Code Enforcement Officer or Building Inspector because of lack of repairs and maintenance shall not be restored, repaired, reconstructed, or used except in conformity with the provisions of this section.

Any structure or other development of land devoted to a nonconforming use that is declared unsafe by the Zoning/Code Enforcement Officer or Building Inspector but not because of lack

Section 10-9 Variance.

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:

- 1) Unnecessary hardship would result from the strict application of the ordinance. It is not necessary to demonstrate that, in the absence of the Variance, no reasonable use can be made of the property.
- 2) 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. A Variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

- 3) 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 is not a self-created hardship.
- 4) The requested Variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

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. Per NCGS 160D-705 (d), appropriate conditions may be imposed on any Variance, provided that the conditions are reasonably related to the Variance.

MOTION:

With regard to the request by Tracie Fowler for a variance from Section 6-2-4 to renovate structures serving a legal, nonconforming use beyond 10% of the total taxable value of the property within a 12 month period, 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 10-9 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**
- 2) Pictures of the Property**
- 3) Concept Design Photo**
- 4) Proposed Project Description**
 - a. Estimate 1**
 - b. Estimate 2**
- 5) Layout Description**
- 6) Variance Application**

1) Subject Property



2) Pictures of the Property













3) Concept Design



4) Proposed Project Description

a.) Estimate 1



Client: Stonepoint Properties LLC

Location: 526 Flemming St Hendersonville NC

Project: Multiple building renovations

The following scope of work is proposed from Grove Hill Enterprises Etc. but is subject to change orders throughout the process of the job because of the limitation or being able to view every unit with one hundred percent confidants in a set final price.

The scope of work includes the main building, two duplex's and one single unit.

Pricing includes all building permits for mechanical, electrical plumbing and building.

Pricing includes Certainteed 3- tab shingles to be installed on the units that have not been re shingled recently, both duplexs and the single unit will have new housewrap and hardiplank cedar mill siding with boar and batten gable ends and 5/4"x4 corners.

All windows on all units are to be plygem white vinyl (window lead time for all windows is 16 weeks). Pricing for the windows includes the demolition and brining the window sill height to code at 22.5". Window/ door tape will be installed on the exterior flanges and the vinyl siding re installed on the main building.

All demolition of lathe/ plaster, interior doors, flooring, cabinetry, appliances, all dumpsters and dump fees associated with this project will be the responsibly of GH.

Throughout the process of the project, there are to be no tenants living on the property as this project needs to safe at all times.

***Exclusions for this estimate is the asbestos abatement ***

All decks on the main building are to be re built with new treated materials and proper footings installed.

Crawl space work on the main building is not included at this time

All new electrical from the panels, outlets switches etc. will be brought up to code in each building. GH is responsible for all rough in materials but final lighting is supplied by the owner.

HVAC systems- The single family unit and both duplexs will have new disconnects and Mitsubishi ducted mini split system install. The main building will need two, 2 ton units but location of the air handler is un determined at this time

Plumbing- will incorporate all repairs, moving of toilet flanges, water heater in basement, and trim out. Trim out fixtures are to be supplied by the owner. There were multiple items on the inspection report that will be addressed in this estimate.

Framing – Multiple units, walls will need to be moved to allocate for toilet width of 15” to center of drain, along with the window sill height. The stairwell in the main building needs to be re framed and the bathroom floor(stairwell ceiling) will need to be framed to meet current building codes.

Insulation- All floor systems are to be insulated with r-19 insulation, all wall systems are to be insulated with r-15 insulation and ceilings will be insulated with r-38 insulation. Baffles will be installed if needed on the eaves. All windows are to be sprayed foamed and all sill plates will be sealed.

Drywall- A total of 756) 4’x12” sheets of drywall will be installed. We will need to boom all of the second floor drywall through the front and side windows. Apply three coats of joint compound, sand and prime.

Trim work- furnish and install all new two panel hollow core doors with brushed nickle hardware. Front doors will be thermal two panel and in the main building will need to be a two hour fire rated door. All baseboards are to be flat stock at 1”x8” and all casing on windows and door flat stock at 1”x6”

Cabinetry – All cabinets in the bathrooms and kitchens are to be Choice Cabinetry shaker white with 4” brushed nickle pulls.

Countertops- All level one granite (only 5 choices to choose from) but will continue in all kitchens and bathrooms.

Punch out- All shelving in closets is to be closetmaid wire shelving – pantrys will only have 3) shelves at 12” apart, closets will have (1) 12” deep wire shelf

Flooring- All flooring is to be Duarto Panzu Copa LVp with pine paint grade ¾ round

Interior painting- Furnish and apply chaulk and putty to all trim work. Apply Sherwin Williams master Hide Bright White to all ceilings and closets. Furnish and apply two coats of Pro Mar 200 satin to all walls. Furnish and apply Pro mar 400 semi gloss white to all trim work

Exterior painting- Caulk putty and apply Sherwin Williams Super paint or equivalent to both duplex and the single family unit. Trim work is all to be white gloss, siding color is to be chosen

Cleaning- All final cleanings of the interior and exterior of the buildings will be completed by GH

Project total- \$768,200.00

Exclusions: any zoning with city, any unforeseen problems that arise are billable at the below rates.

Lighting fixtures, plumbing fixtures and appliances are not included.

All showers are to be fiberglass pan base and 3"x6" white subway tile with white non sanded grout.

Shower glass and vanity mirrors are excluded at this time

Payment Schedule:

If project is accepted payment terms are to be discussed

**Any changes to the above scope of work is billable at \$65.00/hr per carpenter.
\$55.00/hr per painter and \$95.00/hr per trade.**

Any plywood decking that needs to be replaced is billable at \$85.00/ sheet.

Any materials purchased for the change order is marked up 30%

b.) Estimate 2



526 FLEMING STREET	
COST ESTIMATE	
ITEM DESCRIPTION	COST
10100 PLANNING AND PERMITTING	\$ 5,850.00
20100 DEMO	\$ 100,000.00
30100 STRUCTURAL AND FRAMING	\$ 40,000.00
30200 WINDOWS/EXTERIOR DOORS	\$ 14,615.00
30300 ROOFING	\$ 16,534.00
40100 ELECTRICAL SYSTEM	\$ 36,000.00
40200 PLUMBING SYSTEMS	\$ 39,400.00
40300 HVAC SYSTEM	\$ 50,000.00
40500 INSULATION & DRYWALL	\$ 47,325.00
50100 CABINETRY & CASEWORK	\$ 82,278.20
50200 INTERIOR TRIM & STAIRS	\$ 23,589.08
50400 FLOOR FINISHES	\$ 37,696.00
50500 TILE & CERAMICS	\$ 7,560.00
50600 INTERIOR FINISHES	\$ 16,663.50
50700 FINISH HARDWARE	\$ 9,084.56
50800 CLOSETS	\$ 3,874.40
50900 APPLIANCES	\$ 24,500.00
60100 EXTERIOR VENEER	\$ 36,550.25
60200 GUTTERS & DOWNSPOUTS	\$ 4,341.60
60300 SITE IMPROVEMENTS	\$ 2,500.00
60400 EXTERIOR AREAS & FINISH	\$ 11,428.43
70100 CONSTRUCTIONS CLEAN UP	\$ 5,180.50
70300 JOB FACILITIES	\$ 700.00
70500 SUPERVISION	\$ 23,250.00
BASE TOTAL	\$ 638,920.52
OVERHEAD & MARGIN:COMPANY MARGIN	\$ 95,838.08
OVERHEAD & MARGIN:CONTINGENCY	\$ 31,991.41
TOTAL	\$ 766,750.00

5) Layout Description

Lot Layout

526 Fleming Street,
Hendersonville, NC

- All buildings to retain original footprint and structure.
- Interior to be gutted and modified per attached plans.
- Any additional decks shall comply with setback requirements.



6) Variance Application – See Attached