



CITY OF HENDERSONVILLE BOARD OF ADJUSTMENT

Operations Center - Assembly Room | 305 Williams St. | Hendersonville NC 28792
Tuesday, November 09, 2021 – 1:30 PM

AGENDA

1. **CALL TO ORDER**

2. **APPROVAL OF AGENDA**

3. **APPROVAL OF MINUTES**

A. Minutes of September 14, 2021

4. **OLD BUSINESS**

A. Approval of Decisions - September 14, 2021

5. **NEW BUSINESS**

A. Staff Report: Sullivan Variance Request - 1002 5th Ave W

B. Staff Presentation - Sullivan 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, September 14, 2021
1:30 p.m. in the City Operations Center

The Hendersonville Board of Adjustment held its regular monthly meeting on September 14, 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, Ernest Mowell, Barbara McCoy, Roger Woolsey, Libby Collina, Charles Webb, Kathy Watkins, Lew Holloway, Community Development Director, Matt Manley, Planning Manager, Tyler Henry, Code Enforcement Officer, Alex Hunt, Planner and Secretary to the Board Terri Swann.

Absent: Chris Freeman, Steve Smith, Candi Guffey

Chair called the meeting to order at 1:27 p.m.

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

Approval of the Minutes of the June 8, 2021 meeting. A motion was made by Mr. Woolsey and seconded by Ms. McCoy to approve the minutes as written. The motion passed unanimously.

Approval of the Decisions for a variance application from Doyle Barnes – 1523 Druid Hills Avenue and a variance application from Inez Diaz – 636 Midway Street. A motion was made by Ms. Collina to accept the Decisions as written. Mr. Webb seconded the motion which passed unanimously.

Variance – Dennis Dunlap – 1600 Four Seasons Boulevard

Chair swore in all persons to give testimony. Those sworn in were Tyler Henry, Code Enforcement Officer, Dennis Dunlap and Tracie Fowler.

Chair opened the public hearing.

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 Community Development Department has received an application from Dennis Dunlap for a variance from Section 5-8-3 of the Zoning Ordinance. The request is for 15' on the required 15-foot side setback to construct an addition to the existing building.

Mr. Henry stated the following concerning the subject property:

- The subject property is identified as PIN 9579-13-8904 and is currently zoned 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 which is 10,000 sq. ft.
- Based on Henderson County building records, the building located on the property was built in 1984.
- The proposed addition to the building is 16' (W) x 30' (L) x 14' (H) on Side A of the building.

Mr. Henry stated the applicant is claiming that they are unable to build the addition on Side B of the existing building because of the bad soil conditions consisting of loose backfill that was not properly compacted and is unsuitable to build on. The addition will be a pull-thru garage.

Photos were shown of the property. An image of the building was shown with the addition. It was not drawn to scale.

Mr. Henry stated based on the staff review of the applicant's information there is a suggested motion for the application. The motion is to be made in the affirmative.

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

Dennis Dunlap, Dunlap Construction, 720B N. Grove Street stated Jiffy Lube had approached him about building the addition. Van Clinkscales had done a survey on the property and that is when he realized this would not meet the setback requirement for the side of the building. The property slopes down to a steep bank. This addition is a drive-thru garage with an alignment machine. They did consider the other side but the fill dirt has settled and caved in about seven feet and the soil is not suitable to build on.

Chair asked if there were any questions for the applicant.

Mr. Mowell asked if this is a drive-thru bay and if there would be a pit underneath. Mr. Dunlap stated this was the old Fire Department building and there is a basement underneath. There will not be a pit underneath the addition. It is just an alignment machine.

Ms. Collina asked if the soil on Side B could be removed and filled with more stable soil. Mr. Dunlap stated with the grade and slope and how the area drops about seven feet it would not be possible to build on that side now.

Mr. Woolsey asked if there would be a wall on that side. Mr. Dunlap stated no it is a standard slope and is not greater than 45 feet so he would not have to construct a wall.

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. Watkins made the following motion: With regard to the request by Dennis 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. Mr. Woolsey seconded the motion.

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

Mr. Woolsey	Yes
Mr. Mowell	Yes
Mr. Webb	Yes
Ms. Lowrance	Yes
Ms. McCoy	Yes
Ms. Watkins	Yes
Ms. Collina	Yes

The vote was unanimous. Motion approved.

Variance– Tracie Fowler– 526 Fleming Street

Mr. Henry asked that the staff report and application be submitted into the record. He stated his name and title for the record.

Mr. Henry stated this application is for a variance from Section 6-2-4: Repairs and Maintenance. The request is to repair a legal non-conforming use beyond 10% of the total taxable value withing a 12-month period.

Mr. Henry stated the following concerning the subject property:

- The subject property is identified as PIN 9568-68-2651 and is zoned 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 the Henderson County building records, the dwelling units located on this 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, non-conforming 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 two project proposals in the amounts of \$768,200 and \$766,750.

Mr. Henry showed the estimates on the screen along with the photos of the property and structures.

Mr. Henry stated based on the staff review of the applicant's information there is a suggested motion for the application. The motion is to be made in the affirmative.

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

Tracie Fowler, applicant stated she is not sure what the age of the buildings are but she estimated them to be 80+ years. The materials that were used are no longer used and are expensive. There is no practical way to do this, but they are wanting to bring the properties up to a modern look and functionality.

Ms. Watkins asked if this was just for the small building. Ms. Fowler stated no, it is for all the buildings. It will not be an exact replica. There are two duplexes and a cottage on the property and the larger house is the baseline for a more consistent look and still represent the original style.

Mr. Woolsey asked if she plans to change the main building. Ms. Fowler stated yes, not the footprint, but they will change the exterior (replacing siding, roof and decking). The two cabins will be upgraded.

Ms. Watkins asked if the property would need approval from the Historic Preservation Commission. The applicant stated no, it would not.

Ms. Collina asked what the applicant planned to do with the property. Ms. Fowler stated it will be short term/vacation rentals. Ms. Collina asked if she planned to do the work all at once or in phases. Ms. Fowler stated they will do the work over a course of a year and in phases. Ms. Fowler stated they are almost at the breaking point of making this work.

Chair asked if the buildings were rented out now. Ms. Fowler stated yes, and those tenants will have the option to continue to rent after the remodeling is finished. Chair asked how many tenants were there now. Ms. Fowler stated 7 to 9.

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 or if anyone would like to speak in opposition.

Chair swore in Jim Crafton.

Jim Crafton, First Baptist Church stated he has a couple of questions and is not necessarily opposed to this application. Will the buildings be on septic or city sewer? There is drainage

from the wall that has weep holes in it. Ms. Fowler stated it is on city sewer. Mr. Crafton stated in the pictures it shows landscape changes and he would ask that the changes not create surface run-off onto the church property.

Chair asked if anyone else would like to speak. No one spoke.

Mr. Mowell asked what the history was on the maintenance and repairs and not exceeding 10% of the current assessed taxable value. He would like to hear from staff after the meeting.

Chair closed the public hearing for Board discussion.

Mr. Mowell made the following 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 (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. Webb seconded the motion.

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

Mr. Woolsey	Yes
Mr. Mowell	Yes
Mr. Webb	Yes
Ms. Lowrance	Yes
Ms. McCoy	Yes
Ms. Watkins	Yes
Ms. Collina	Yes

The vote was unanimous. Motion approved.

Lew Holloway, Community Development Director stated he did not have any specific insight on when or why the 10% cap was put into place. He stated the goal for nonconforming uses is to remove that use over time and if in fact it is a nonconforming use they do want it to go away eventually and this cap provides a way to do this.

Meeting adjourned a 2:00 p.m.

Melinda Lowrance, Chair

Terri Swann, Secretary

MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: November 9, 2021

RE: Variance Application – Jeremy & Angela Sullivan – 1002 5th Ave W.

SUMMARY: The Community Development Department has received an application from Jeremy & Angela Sullivan for a variance from Section 6-1-7: Corner Lots. The subject property is currently zoned R-15, Medium-Density Residential. The specific variance requested is for the following:

VARIANCE REQUEST: The variance requested is to build a deck that would connect two points of egress from the dwelling unit. The proposed deck would require extending 1ft beyond the landing that currently exists on the property, into the side setback. Based on the proposed work the applicants are requesting a 7ft variance from Section 6-1-7.

PROPOSED FINDINGS OF FACT:

- The subject property possesses a PIN of 9568470819 and is zoned as R-15 Medium Density Residential.
- Based on Henderson County building records, the dwelling unit located on the property was built in 1952.
- Based on Henderson County building records, the lot size is approximately 14,810 Sq Ft. This is not within the required minimum lot size for the R-15 zoning district (15,000 Sq Ft) and is considered a nonconforming lot.
 - This estimate is based on a calculation of Henderson County Records showing the acreage of the property being 0.34 (the required minimum lot size would be equivalent to 0.34444 acres). It is possible that the lot meets the required minimum lot size.
- Section 5-3-3 (R-15) of the Hendersonville Zoning Ordinance requires a side setback of 10 feet for principal structures.
- Section 6-1-7 of the Hendersonville Zoning Ordinance requires that the side setback for all residential corner lots to be increased by 10 feet.
- The current landing that exists affixed to the dwelling unit is 4' wide. According to Henderson County Building Code standards, a landing is required to be at least 5' X 5' in size to be ADA compliant. To meet ADA standards the applicants would be required to expand 1' further into the side setback.

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 square feet for one additional dwelling unit in one building.
Minimum Lot Width at Building Line in Feet:	85
Minimum Yard Requirements in Feet:	
Front:	30
Side:	10
Rear:	15
Accessory Structures:	
Front:	30
Side:	5
Rear:	5
Maximum Height in Feet:	35

6-1-7 Corner Lots

In any residential district, the side yard requirements for corner lots along the side street shall be increased by ten feet. Accessory buildings shall observe all setback requirements.

6-2-2 Nonconforming Structures

A nonconforming structure is a building or other structure which lawfully existed prior to the effective date of this ordinance, or an amendment thereto, and which no longer could be built under the terms of this ordinance, as amended, by reason of restrictions on area, footprint, open space, building height, setbacks, lot width, or other requirements concerning the structure.

- e) A nonconforming structure may be expanded, without bringing the nonconforming structure into conformity with these regulations, only if the part of the structure to be expanded and the area of the lot into which the expansion is taking place are both brought into conformity with the requirements of this ordinance.

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.

Section 12-1 Interpretation of Commonly Used Terms and Words

Building, Setback Line: A line establishing the minimum allowable distance between the nearest portion of any building (excluding the outermost three feet of any uncovered porches, steps, eaves, gutter and similar fixtures) and the street or highway right-of-way when measured perpendicularly thereto.

MOTION:

With regard to the standards set forth by Section 6-2-2 e) and the request by Jeremy & Angela Sullivan for a variance from Section 6-1-7 to reduce the side setback requirement for a residential corner lot from 20' to 13', 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 a variance from Section 6-2-2 e) along with the requested variance from Section 6-1-7 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.

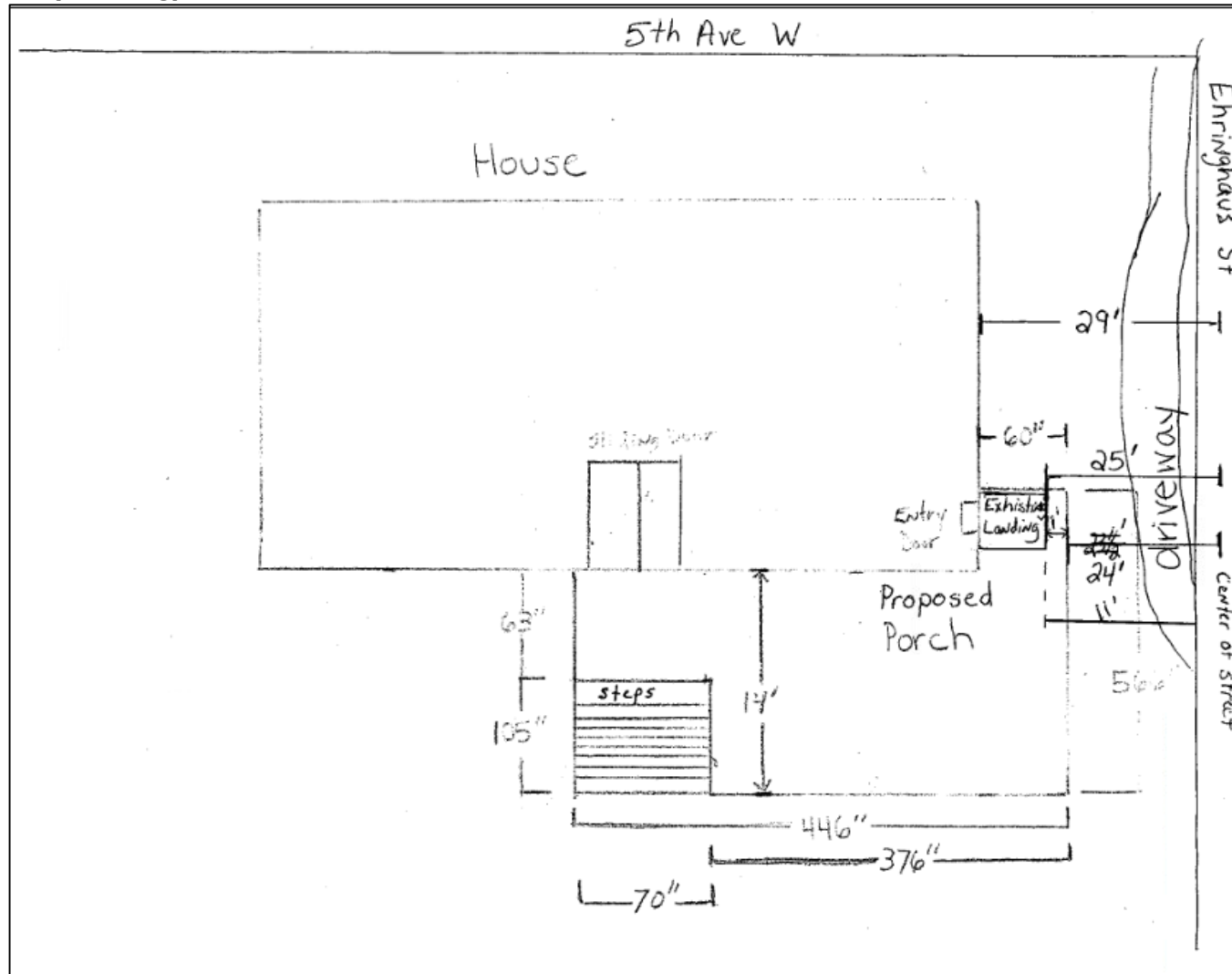
ATTACHMENTS:

- 1) Subject Property**
- 2) Site Plan (drawing)**
- 3) Pictures of the Property**
- 4) Footprint Example (LiDAR Screenshot)**
- 5) Variance Application (see attached)**

1) Subject Property



2) Site Plan (drawing)

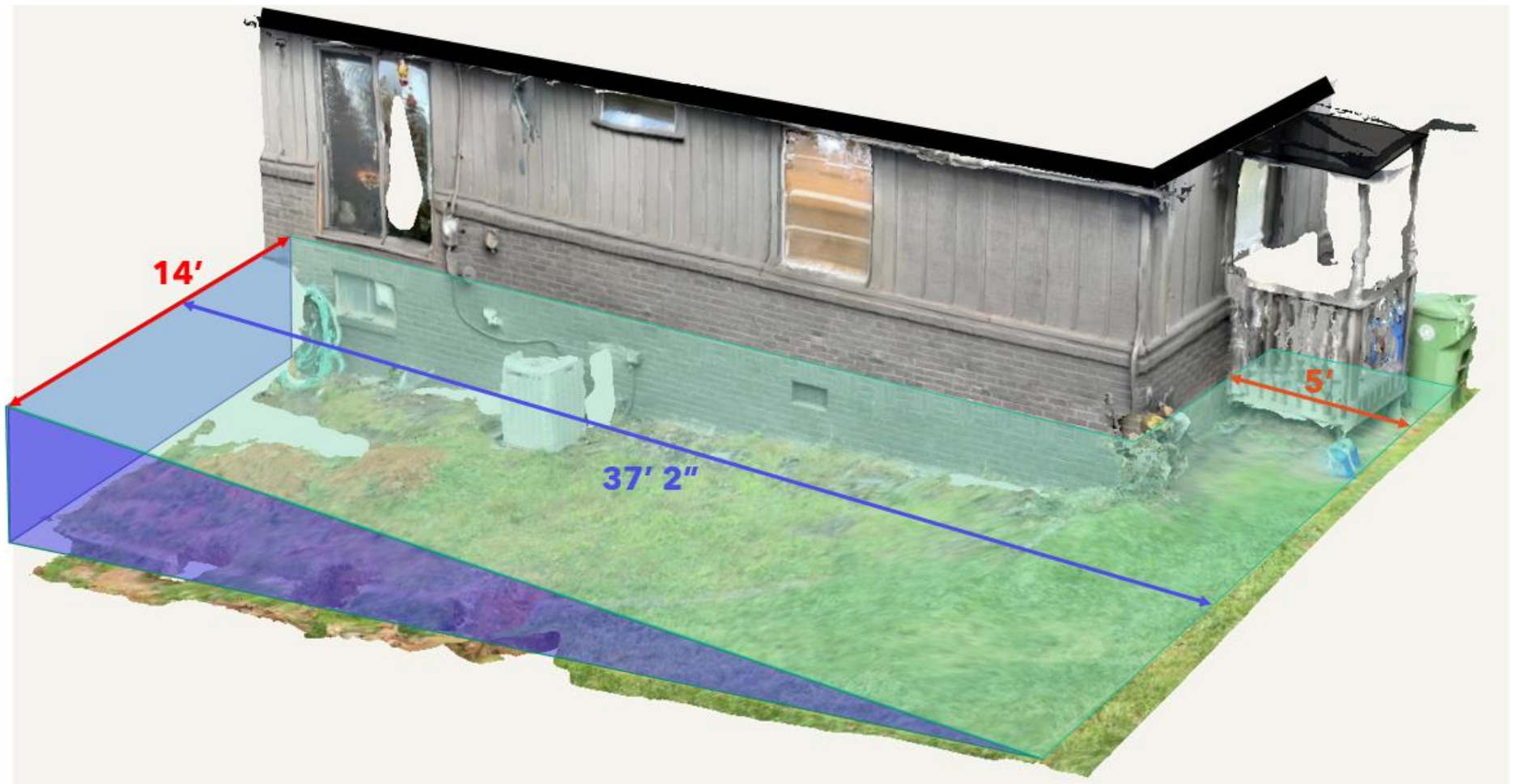


3) Pictures of the Property





4) Footprint Example (LiDAR Screenshot)



5) Variance Application (see attached)

CITY OF HENDERSONVILLE
STATE OF NORTH CAROLINA
APPLICATION FOR A VARIANCE

09 22 2021
Month Day Year

Applicant: Angela + Jeremy Sullivan Phone: 828-817-4174
Address: 1002 5th Ave W
Property Owner's Name (if different from above): _____
Property Owner's Address (if different from above): _____
Parcel ID Number: 9568 47 0819 Zoning District: _____

Directions to property from Hendersonville: North on Main St. Left onto 5th Ave to corner of 5th + Ehrinhaus.

TO THE ZONING BOARD OF ADJUSTMENT:

I, Angela + Jeremy Sullivan (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): _____

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)

☆ See attached ☆

- (b) THE VARAINCE 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.)

- (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.)

- (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.)

(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.

Angela Sullh 10/8/21
Signature of Applicant Date

Angela Sullh 10/8/21
Signature of Property Owner 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.

Received By

Date

Fee Paid

Date Received

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

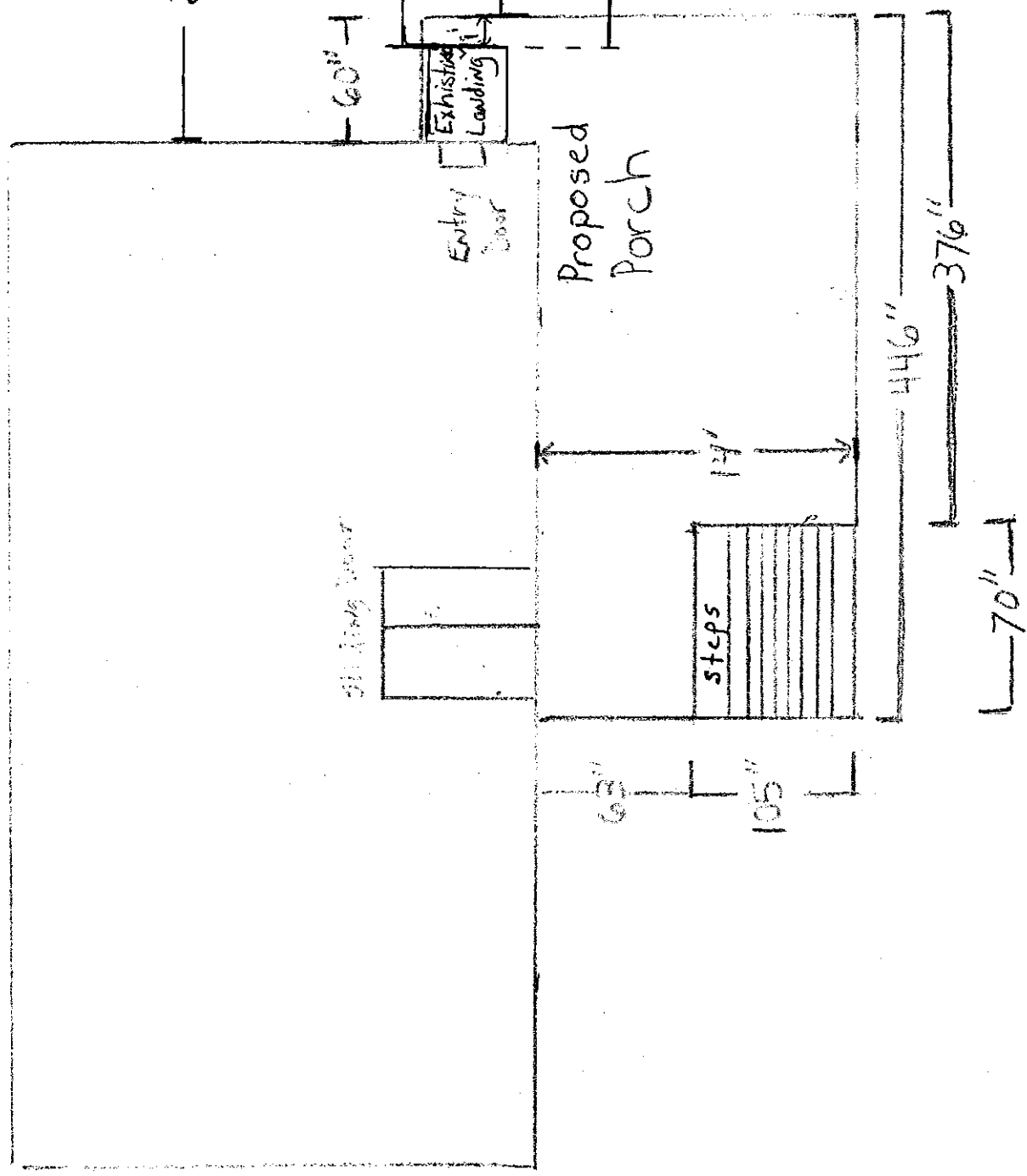
5th Ave W

Ehringhaus St

center of street

Item A.

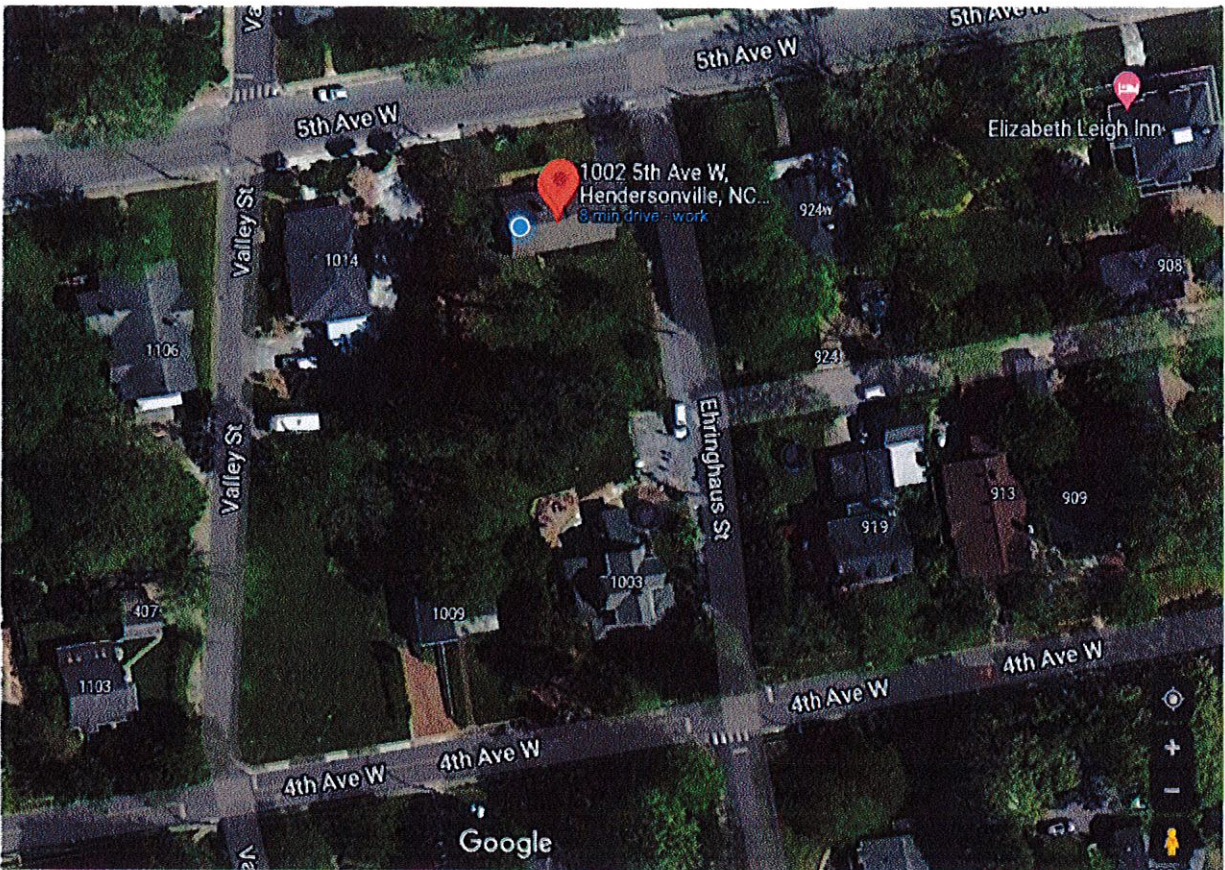
House



- a. Without a variance, we would be unable to exit from the rear or side of our home where there are existing doors. This is a safety, fire exit, and access issue. When purchased, the house had an existing wheelchair ramp and covered landing within the setback. The wheelchair ramp needed to be removed due to disrepair and issues with build and water. The current covered landing does not fit the architectural style of the home and is currently without steps.
- b. No harm will be caused by the build due to the existing structure and the entire east side of the house already being within the setback. The driveway of the home is also a buffer between the proposed decking and street. Additional landscaping will add to the aesthetics of the build.
- c. The house was built in the 1950s prior to the current zoning regulations. The house is situated on a corner city lot that is bordered by 5th Avenue West and Ehringhaus Street. The house was built closer to the road due to easements for city storm drainage and a creek. Due to the slope of the property the only alternative would be a patio with numerous stairs and two separate landings. This would require substantial grading, the use of multiple retaining walls, would be at a substantially higher cost, would be less pleasing aesthetically, and would create more safety concerns. All neighboring homes include substantial decking and/or porches in order for residents to enjoy their outdoor spaces. The proposed decking would add to the character. Special architectural choices have been made to keep with the feel of the home and surrounding neighborhood.
- d. We purchased the property three years ago with the intent of remodeling and landscaping to bring it up to the quality of the homes in the neighborhood. The property had sat several years unoccupied. Steps have been taken to increase safety and to update to today's housing standards. External work to the property including removal of deteriorating fencing, steps/ramps, and unstable trees have been completed and the decking is the last step needed in order for us to access and enjoy our backyard.

VARIANCE OF 10' REQUESTED
 20' SETBACK REQUIRED FOR CORNER LOTS
 DECK TO BE 10' FROM PROPERTY LINE

Angela Sullivan 10/8/21



June 2012 -prior to the sale of the house in 2019 and subsequent removal due to deterioration and water damage.



Item A.

Proposed deck outlined in orange string, current landing and cover to be removed.