CITY OF HENDERSONVILLE
BOARD OF ADJUSTMENT

City Hall – 2nd Floor Meeting Room | 160 6th Ave. E. | Hendersonville, NC 28792
Tuesday, November 10, 2026 – 1:30 PM

AGENDA

1. **CALL TO ORDER**
2. **APPROVAL OF AGENDA**
3. **APPROVAL OF MINUTES**
   - A. Minutes of October 13, 2026
4. **OLD BUSINESS**
   - A. Mastermind – Cottages at Highland Square – Variance (26-67-VAR) – Sam Hayes | *Planner II*
   - B. Approval of Decision - 323 Blythe St - 26-71-VAR
   - C. Approval of BOA Bylaw amendments
5. **NEW BUSINESS**
6. **OTHER BUSINESS**
   - A. Approval of the Annual Meeting Dates for 2027
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, October 13, 2026
1:30 p.m. in the Council Chambers

The Hendersonville Board of Adjustment held their regular meeting on October 13, 2026, at 1:30 p.m. in the 2nd Floor Meeting Room in City Hall, 160 6th Avenue East, Hendersonville, North Carolina. Those present were: Charles Webb, Reid Barwick, Vice-Chair, Rhona Reagen, Kyle Gilgis, Chair, Brett Werner, Libby Collina, Bob Pace, Sam Hayes, Planner II, Sarah McLaurin, Planner, Daniel Heyman, Assistant City Attorney, Lew Holloway, Community Development Director.

Absent: Aubrey Parks

Chair called the meeting to order at 1:30 p.m. Chair stated a quorum has been established, and it takes four out of five votes in favor to approve a variance.

Approval of the Agenda: A motion was made by Ms. Reagen to approve the agenda. Mr. Barwick seconded the motion which passed unanimously.

Approval of the Minutes of the August 11, 2026 meeting. A motion was made by Ms. Collina to approve the minutes as written. The motion was seconded by Mr. Barwick and passed unanimously.

Approval of the Decision for 26-50-VAR. A motion was made by Ms. Collina to approve the decision for 26-50-VAR. Ms. Reagen seconded the motion which passed unanimously.

Variance – Dee Gambrell -323 Blythe Street – (26-71-VAR). Chair stated today we have two public hearings to consider. A variance from Dee Gambrell for the property located at 323 Blythe Street and a variance from Andrew Basile of DR Horton for the property located at 197 Baxley Lane, Unit 3.

Chair swore in all persons to give testimony. Dee Gambrell, Diane Rhoades, David Skye, and Sam Hayes were sworn in.

Chair opened the public hearing.

Sam Hayes, Planner II stated his name and title for the record. He formally entered the staff report and presentation into the record. He stated the City is in receipt of an application for a variance from Dee Gambrell, applicant, and Diane Rhoades, property owner for the property located at 323 Blythe Street.

Mr. Hayes gave the project background:

The location of the site is 323 Blythe Street. The applicant is requesting a variance from Section 8-4-3. Dimensional Requirements to increase the maximum allowable square footage from 1,200 square feet to 1,385 square feet.

The request is to allow the existing house on the property to exceed the maximum building size allowed under Section 8-4-3, Dimensional Requirements. The ordinance allows a maximum gross floor area of 1,200 square feet, and the applicants are requesting approval for the house to remain at its actual size of 1,385 square feet.

The property was created under Section 8-4, Reduced Pole Flag Lot and Small Lot, which allows smaller lots to be established if the existing or proposed house is no larger than 1,200 square feet. The original parcel, which contained three structures, was divided into two lots. The subject property is 7,060 square feet in size, while the adjoining lot is 18,784 square feet.

At the time of the subdivision, Henderson County property records listed the house as containing 1,131 square feet. However, a recent professional measurement found that the home's actual gross floor area is 1,385 square feet. Because the house exceeds the 1,200-square-foot limit, a variance is required.

Site photos were shown and are included in the staff report.

Mr. Hayes stated he will answer any questions the Board may have.

Ms. Collina asked about the basement, whether it was included or not. Mr. Hayes read the definition of Gross Floor Area from the zoning ordinance. Ms. Collina asked if a condition could be added to state they cannot improve the basement. Daniel Heyman, Assistant City Attorney, stated it is staff's opinion that would be a reasonable condition to address compliance with the ordinance.

Mr. Webb asked what would happen if they didn't approve the variance. Mr. Hayes explained that staff has not had the discussion internally on how they would proceed but it would be up to staff, not the Board, to determine how to handle the violation if the variance wasn't approved. They might have to recombine or move lot lines, or some other option.

There were no further questions for staff.

Chair asked the applicant to address the Board.

Diane Rhoades, property owner of 323 Blythe Street stated I want to make it clear that I am not requesting an exception to this ordinance. When I applied for this subdivision, I was confident that I was in compliance, that my house was under 1200 square feet with 250 square feet of land to sell with the house. My deed, tax REID number and Zillow all reflected that the square footage of my house was 1,131. I believe I was one of the first home owners to engage in the Small Lot Ordinance that was passed on April, 2025. Helen Purdum, from Asheville, brought the ordinance to my attention as she was eager to buy my house in light of the new ordinance. She did the initial legwork.

I spoke with Matthew Manley, the city's Long Range Planning Manager, who was instrumental in creating this opportunity to make more single-family housing available within the city. I ran my situation by him. All appeared to be in compliance. I was excited to be a candidate for this Small Lot Ordinance, grateful to make the highest and best use of my property.

I had given 3 months notice to my tenants who were renting my house. They left August 30. Helen had decided to stay in Asheville, but now I was eager to sell my house. I hired Charles Erdman to survey my land. We mapped out 850 square feet to sell with the house. I hired Dee Gambrell with BluAxis to be my realtor. She came up with some great marketing. This cost $1K.

It was at this time that I was informed of a discrepancy. I was told that my house is not 1131 square feet; it is 1385 square feet. This error has been in place since 1951. It was through no fault of Matthew Manley or any of those involved in subdividing and marketing my property, as all the records state that my house is 1,131.

I have had two months without rental income. I paid over 3K to survey the boundaries. I initiated and exhausted my home equity loan to install heat/air splits upstairs, buy a new washer/dryer and was about to replace the roof when the sale of my home became controversial. I have been retired and

without debt for several years. It is unsettling to be in the position I am in now. It is a hardship for me. This experience has been confusing, painful and expensive.

The Small Lot Ordinance is designed to create more housing. A separate sale of my house will bring in another homeowner. The only reason anyone knows about the difference in square footage is due to professional measurements for the listing. Agents are required to measure and disclose this. If such a requirement were in place to subdivide the property we would never have gotten this far. A uniform guide with requirements to check before moving forward would address the challenge that I have run into.

I would not have gone through with the efforts to sell my home if I had been aware of the error in the square footage of my house. As it is, I enthusiastically entered into this process and ran into an honest discrepancy. The square footage of my house has been in error with four different owners. I am here today to request a variance so that I can sell my house, get out of this uncomfortable debt and have someone else enjoy the house.

Chair asked if there were any questions for the applicant.

Ms. Collina asked about the basement. Ms. Rhoades stated the basement is pretty much entirely below grade. It is a dirt floor and about 1,822 square feet in total. Ms. Collina stated if that is the case it is unlikely someone is going to improve it anyway because you would have to get a slab poured down there.

Mr. Barwick asked if there was a buyer. Dee Gambreel, realtor, stated it is on hold until the variance decision. A couple of interested buyers have asked, and she has informed them of the situation.

There were no further questions for the applicant.

Mr. Barwick stated to Mr. Hayes, you were on the commission, we were all at the presentation. Mr. Hayes was unclear on what he was being asked. Mr. Barwick stated sometimes you're pregnant and sometimes you're not. This house is an existing condition owned by somebody that is trying to be compliant with the regulation.

Chair asked if there was anyone that would like to speak against the application. No one spoke.

Chair asked if there was anyone that would like to speak.

David Skye, 315 Blythe Street stated he is a neighbor and had no objections. He is in support of what she is doing.

Chair closed the public hearing for Board discussion.

Chair stated she would entertain a motion if there was no discussion.

Ms. Reagen made the following motion: **With regard to the request by Dee Gambrell (applicant) and Diane Rhoades (property owner) for a variance from 8-4-3. Dimensional Requirements to:**

1. ***Increase the allowable maximum gross floor area from 1,200 square feet to 1,385 square feet.***

I move the Board to find that:

1) **An unnecessary hardship <u>would</u> result from the strict application of the ordinance.**
2) **The hardship <u>results</u> from the conditions that are peculiar to the property, such as location, size, or topography.**

DRAFT

3) **The hardship did not result from actions taken by the applicant or the property owner.**

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.**

For the following reasons: 1. The applicant used information from Henderson County Property Records when applying for the small lot subdivision, which stated that the square footage of the existing structure was under 1,200 square feet and was presumed by the applicant and city staff to be accurate. 2. The footprint of the existing structure is under 1200 square feet, which is consistent with the spirit of the ordinance. *Ms. Collina seconded the motion.*

Chair called for the vote. A roll call vote was taken.

Ms. Reagen	Yes
Mr. Webb	Yes
Mr. Barwick	Yes
Ms. Collina	Yes
Ms. Gilgis	Yes

The vote was unanimous. Motion passed.

Variance – Andrew Basile – Mastermind – Cottages at Highland – (26-67-VAR). Mr. Hayes stated the applicant would like to defer this item to the November meeting.

Chair moved to defer this variance application to the November meeting. Ms. Reagen seconded the motion which passed unanimously.

Revision of Bylaws. Mr. Heyman explained that the charter requires two readings to approve an amendment, with a vote on the second reading occurring within 60 days of the first. He noted that the amendment had been presented in June of the previous year but was not followed up on until the most recent meeting.

Ms. Reagen moved to approve the amendments to the bylaws. Ms. Collina seconded the motion which passed unanimously.

Meeting adjourned at 2:16 p.m.

_____ _____

Kyle Gilgis Chair Terri Swann, Secretary

CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY
PLANNING DIVISION

SUBMITTER: Sam Hayes, Planner II

MEETING DATE: November 10th, 2026

AGENDA SECTION: New Business

DEPARTMENT: Community Development

TITLE OF ITEM: Mastermind – Cottages at Highland Square – Variance (26-67-VAR) – Sam Hayes | *Planner II*

SUGGESTED MOTION(S):

1. For Recommending Approval:

With regard to the request by Jason Pass (applicant) and DR Horton, represented by Andrew Basile (property owner) for a variance from Section 5-14-6.2. Setbacks. to:

1. *Decrease the required 30 foot setback to 26.6 feet to enable the building shown in Exhibit B to become conforming.*

I move the Board to find that (must find all of these):

1) An unnecessary hardship **would** result from the strict application of the ordinance.
2) The hardship **results** from the conditions that are peculiar to the property, such as location, size, or topography.
3) The hardship **did not** result from actions taken by the applicant or the property owner.
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.**

For the following reasons: **[*list factual basis for Approval here.*]**

1. The hardship is not self-created because the applicant relied upon a professional survey when constructing the units that was presumed to be accurate.
2. Granting a variance is conforming with the current Planned Residential Development ordinance, which requires a 20-foot rear setback.

[DISCUSS & VOTE]

1. For Recommending Denial:

With regard to the request by Jason Pass (applicant) and DR Horton, represented by Andrew Basile (property owner) for a variance from Section 5-14-6.2. Setbacks. to:

2. *Decrease the required 30 foot setback to 26.6 feet to enable the building shown in Exhibit B to become conforming.*

I move the Board to find that (must find at least one of these):

1) An unnecessary hardship **would not** result from the strict application of the ordinance.
2) The hardship **does not** result from the conditions that are peculiar to the property, such as location, size, or topography.
3) The hardship **did** result from actions taken by the applicant or the property owner.
4) The requested variance **is not** consistent with the spirit, purpose, and intent of the regulation, such that public safety **is not** secured and substantial justice **is not** achieved

For the following reasons: **[*list factual basis for Denial below.]***

1. The request is considered a self-created hardship.

Based on the foregoing findings I further move the Board deny the request for a variance.

[DISCUSS & VOTE]

SUMMARY:

The Community Development Department has received an application from Jason Pass (applicant) and DR Horton (owner) represented by Andrew Basile for a variance from Section 5-14-6.2. Setbacks. requirements in accordance with the setback requirements established as part of the conditional zoning approval from 2022 which established a 30 foot rear setback.

Variance Request: The Applicant is requesting a variance from the 30 foot rear setback for a portion of a single building that was constructed within this 30 foot setback. The applicant would request a variance, allowing the building to encroach 3.4 feet, thereby reducing the 30 foot setback to 26.6 feet.

The subject property was zoned in 2022 to Planned Residential Development Conditional Zoning District (PRD CZD) which established the site plan included in Exhibit B.

PROJECT/PETITIONER NUMBER:	26-67-VAR
PETITIONER NAME:	Jason Pass (Applicant) DR Horton represented by Andrew Basile (Owner)

EXHIBITS:	A. Staff Report and Site Photos B. Application C. Warranty Deed

MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: November 10th, 2026

RE: Variance Application – Mastermind Cottages at Highland

SUMMARY: The Community Development Department has received an application from Jason Pass (applicant) and DR Horton (owner) represented by Andrew Basile for a variance from Section 5-14-6.2. Setbacks. requirements in accordance with the setback requirements established as part of the conditional zoning approval from 2022 which established a 30 foot rear setback.

VARIANCE REQUEST: Variance Request: The Applicant is requesting a variance from the 30 foot rear setback for a portion of a single building that was constructed within this 30 foot setback. The applicant would request a variance, allowing the building to encroach 3.4 feet, thereby reducing the 30 foot setback to 26.6 feet.

The subject property was zoned in 2022 to Planned Residential Development Conditional Zoning District (PRD CZD) which established the site plan included in Exhibit B.

PROPOSED FINDINGS OF FACT:

- Based on Henderson County records the subject property possesses a PIN 9579-48-6853 of and is zoned Planned Residential Development Conditional Zoning District (PRD-CZD).
- Based on Henderson County records, the lot size is approximately 12.81 acres.
- Based on Henderson County records a North Carolina deed was acquired by DHIC – Mastermind LLC on the 9th of May, 2024.
- The current PRD-CZD ordinance, adopted on June 5th, 2025, allows a 20 foot rear setback.

Previous PRD-CZD Ordinance with Relevant Section Highlighted:

5-14-6. Development standards.

Unless noted otherwise, the following development standards shall apply to all planned residential developments, whether major or minor. In addition, planned residential developments shall meet all applicable standards contained in article VI, below

5-14-6.1. Open space and footprint requirements. Planned residential developments shall have a maximum footprint of 20 percent of the site and shall have, as a minimum, 60 percent of the site as open space. In addition, planned

residential developments shall meet the common open space requirements of section 6-16.

5-14-6.2. Setbacks. All dwellings and their accessory structures shall be set back not less than 40 feet from the nearest right-of-way line for any street or railroad adjoining the site; provided, however, such setback may be reduced to ten feet when parking is situated to the side or rear of the lot and screened from view from public rights-of-way. Furthermore, such buildings and structures shall be set back not less than 30 feet from any exterior property line which is not a right-of-way.

The planning board or city council, as the case may be, shall require reservations of rights-of-way, as well as increased setbacks, for roads identified in the comprehensive transportation plan, including existing roads to be widened as well as corridors of new roads.

All dwellings and their accessory structures shall be located at least ten feet from the edge of the paving for any street or drive and at least five feet from the edge of the paving for any area devoted principally to parking. Carports shall be situated at least ten feet from the edge of the paving for any street or drive and may be physically connected to the principal structure which they serve. In addition, dwellings and accessory structures abutting a street intended to serve more than 32 dwelling units or intended to be dedicated as a public street must be set back a minimum of 35 feet from the center line of such street. The approved setback lines shall be shown on the plan of development and on any recorded subdivision plat.

In addition to the foregoing setback requirements, minimum spacing between buildings shall be provided as per the NC State Building Code Volume V-Fire Prevention.

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.

SITE PHOTOS



Photo 1: View north east at corner of building encroaching into setback. Note that the City of Hendersonville does not regulate fences, so there is no encroachment request needed for the fence.



Photo 2: Northern corner of building encroaching into setback.



Photo 3: View north west of corner of building encroaching into setback.

WORKSPACE INFORMATION

Application number
26-67-VAR

Category
Variance

Workspace state
Waiting for payment

Workspace created
09/04/2026, 1:31:08 PM EDT

Application submitted
09/16/2026, 1:41:08 PM EDT

Assignee
Sam Hayes

Package generation date
10/06/2026, 1:08:14 PM EDT

LOCATION INFORMATION

Address
197 BAXLEY LN, Hendersonville, NC

Property information
9579486853,

PARTIES

NAME AND COMPANY	CONTACT DETAILS	ROLES
Jason Pass Civil Design Concepts, PA	84 Coxe Avenue 260 Asheville [redacted]	Applicant
Andrew Basile DR Horton	8025 Arrowridge Blvd Charlotte [redacted]	Applicant
DHIC - MASTERMIND LLC	1341 HORTON CIR ARLINGTON TX 76011	Applicant, Property owner
DHIC - MASTERMIND LLC	1341 HORTON CIR ARLINGTON TX 76011	Applicant, Property owner

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Variance Application

City of Hendersonville | Community Development D nt

160 6th Ave E.

Hendersonville, NC 28792

planning@hvlnc.gov

Project Description
Please describe the nonconformity: Unit 3 has been built 3 feet 4 inches into the required 30' setback to the north of the unit. The building was not discovered to be in the wrong location until an ALTA survey was performed.
Please describe the requested modifications: The project team requests a variance to allow the existing occupied unit to remain as built with the 3 foot 4-inch encroachment into the buffer.
Total Project Area (acres) 12.76

Variance Burden of Proof

When unnecessary hardships would result from carrying out the strict application of a zoning ordinance, the Board of Adjustment shall vary any of the provisions upon a showing of the factors listed below. The Board does not have unlimited discretion in deciding whether to grant a variance. Under the state enabling act, the Board shall grant a variance only upon showing of all of the factors below as provided in Section 10-9 of the City of Hendersonville Zoning Ordinance.

Instructions: In the spaces provided below, indicate the facts you intend to demonstrate and the arguments that you intend to make to demonstrate to the Board that it can properly grant the variance as provided in Section 10-9 of the City of Hendersonville Zoning Ordinance.

1. Unnecessary hardship would result from the strict application of the ordinance. In order to determine whether an unnecessary hardship exists, the Applicant must demonstrate the following factors:	a. Indicate how an 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. In order to remove the existing structure from the setback area, the entire building would have to be vacated, demolished, and rebuilt. This is due to the main electrical panel for the home being located in the setback area. The current renters would have to move out, and the neighboring units who rented the units under the assumption that construction was done would have to endure the demolition and reconstruction of the building more than 3 feet closer to their units. This will include construction traffic daily, and construction noises, etc.	b. Indicate how 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 This particular unit is not easily accessed from any road inside the project for construction traffic. If the DOT does not allow a temporary construction access to come off Francis Rd., then the only other possible access point would be to remove the ADA parking in the adjacent parking lot, grade in a temporary vehicular access from the parking lot and refurbish the grades and ADA parking upon completion of the rebuilding efforts.	c. Indicate how the hardship did not result from actions taken by the applicant or 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. The unit was built in it's existing location based on staking provided by the surveyor based on the approved site plan. This was not intentionally placed in the wrong location, but was a mistake made during construction. No decision was made by the applicant or property owner to encroach in the setback.

2. Indicate how 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 30-foot buffer was maintained per the approved plan throughout the remainder of this site which follows the spirit purpose and intent of the regulation. It was the intention of all involved in the construction of this project to follow the approved plans to ensure all applicable regulations were met. On the property adjacent to the buffer there is a large planted vegetative buffer row already in place so they cannot see that the unit appears closer. This variance if approved does not cause any issues with public safety and will allow the current inhabitants of the development and the surrounding neighbors to avoid unnecessary disruption to their home life.

Zoning-Applicant (Developer) Company Information

City of Hendersonville | Community Development D nt

160 6th Ave E.

Hendersonville, NC 28792

planning@hvlnc.gov

Applicant (Developer) Company Information	
Authorized Representative Name: Andrew Basile	Company Name (if applicable, check corresponding box below) D.R. Horton

Company Type:

- [x] Corporation:
- [ ] Limited Liability Company:
- [ ] Trust:
- [ ] Partnership:
- [ ] Other:

If other:

Authorized Representative Title (if applicable - i.e. Member/Manager, President, etc.)

Zoning-Property Owner Company Information

City of Hendersonville | Community Development D nt

160 6th Ave E.

Hendersonville, NC 28792

planning@hvlnc.gov

Property Owner Company Information (if different from Applicant)	
Authorized Representative Name: Andrew Basile	Company Name (if applicable, check corresponding box below) D.R.Horton

Company Type:

- [x] Corporation:
- [ ] Limited Liability Company:
- [ ] Trust:
- [ ] Partnership:
- [ ] Other:

If other:

Authorized Representative Title (if applicable - i.e. Member/Manager, President, etc.)

Pre-Consultation Form

City of Hendersonville | Community Development D nt

160 6th Ave E.

Hendersonville, NC 28792

planning@hvlnc.gov

Project Description

Project Description

The Cottages are a 99-unit multifamily project on Francis Road that we completed construction in February 2026. The property is currently 100% leased and residents are moved in. As part of our own due diligence post construction, we identified that the corner of one of the cottages is 3'6" over the 30' setback line from the neighboring property, Cedar Bluffs. After researching the issue, we discovered that the construction surveyor laid out the cottage correctly and as per plan when building permits were issue. Unfortunately, the concrete contractor laid out their forms incorrectly, misreading the plans and assumed the 3' offset of where the survey stakes were laid out was the actual location of the slab. The undergrounds were installed, inspections took place, slabs poured, vertical construction completed, certificate of occupancy issued and residents moved in over 12 months ago. As stated above, as part of our due diligence post construction, we noted something seemed off with the location of the building relative to the parking lot. We surveyed the site and building and discovered that a small portion of the building was over the setback line. We contacted our neighbor, Cedar Bluffs, to alert them of the condition and they indicated they did not have an issue with the condition. We next reached out to our civil engineer, CDC and asked them how we would go about notifying the City of Hendersonville to alert them of this condition and ask how best to resolve it. Staff looked at the information provided and stated we would need to bring this to the Board of Adjustment's attention and seek a variance.

Parcel Identification Number (PIN):	Total Project Area (acres)	Total Lots/Units	Proposed building square footage:
9579486853	12.76	99	12.0 sq.ft.

Gen H Future Land Use Designation:	Current Zoning District	Proposed Meeting Date Option 1
N/A	CZ	09/15/2026

Proposed Meeting Date Option 2	Proposed Meeting Time Option 1	Proposed Meeting Time Option 2
09/16/2026	9:00 AM	9:00 AM





PRELIMINARY - NOT FOR SALES, CONVEYANCES, OR RECORDATION

CHICAGO TITLE INSURANCE COMPANY (ISSUING OFFICE: CHICAGO TITLE COMPANY, LLC)
COMMITMENT NO.: 26-02634TR COMMITMENT DATE: MARCH 9, 2026 AT 05:00 PM
SCHEDULE B, PART II EXCEPTIONS FROM COVERAGE

EX. NO.	DESCRIPTION	REFERENCE	COMMENT
1	Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records ...	None	No such matters discovered.
2	Taxes or assessments for the year 2026 ...	None	Not a surveying matter.
3	Any discrepancy, conflict, matters regarding access, shortage in area or boundary lines, encroachment, encumbrance, violation, variation, overlap, setback, easement or claims of easement, riparian right, and title to land within roads, ways, railroads, watercourses, burial grounds, marshes, tidelands or submerged areas or land below the mean high water line, whether or not shown by the public records and which may cause adverse circumstance affecting the Title that would be disclosed by a current inspection and accurate and complete land survey of the Land.	None	All known items are shown on said preliminary survey.
4	Covenants, conditions, restrictions, easements, and liens ...	DB 4117, P. 158	No easements described. No other items are surveying matters.
5	Any right, easement, setback, interest, claim, encroachment, encumbrance, violation, variations or other adverse circumstance ...	Plat Slide 13238 Plat Slide 14720 Plat Slide 15377 Plat Slide 15627	All observed items shown.
6	Easement ...	DB 482, P. 486	Electric right-of-way is blanket in nature.
7	Ordinance ...	DB 4020, P. 532	Annexation by City of Hendersonville referenced in notes.
8	Right-of-Way Easement Agreement ...	DB 615, P. 105 DB 620, P. 383	Deed specifies 10' permanent and 20' temporary easements for utilities. Easement location is not specified and could not be determined from field observations.
9	Right-of-Way Deed ...	DB 169, P. 484	Electric right-of-way is blanket in nature.
10	Easement ...	DB 1035, P. 479	Right-of-way is shown on survey. Assumed to be abandoned due to recombination of properties as shown in Plat Slide 15377.
11	Utility Extension Agreement ...	DB 4091, P. 253	Agreement not a surveying matter. Water and sewer utilities shown on survey.
12	Temporary Construction Easements Agreement ...	DB 4117, P. 113	Does not affect subject property.
13	Utility Infrastructure Easement Agreement ...	DB 4117, P. 142	Not on subject property. Easement shown on survey. See also Plat Slide 15298.
14	Instrument of Combination ...	DB 4163, P. 240	Tax parcels as shown on Plat Slide 15377 combined into current boundary configuration.
15	Easement to the City of Hendersonville ...	DB 4319, P. 280	Easements shown on survey.
16	Rights of others in and to the continuous and uninterrupted flow of the waters bounding or crossing the Land and riparian and/or littoral rights incident to the Land.	None	Current location of centerline of Allen Branch was located and is shown on survey. Riparian rights are not known (not a surveying issue).
17	Title to any portion of the Land lying within the right of way of Mastermind Lane ...	None	Title to land not a surveying issue. See note for Exception #10 above for 45' right-of-way.
18	Rights of tenants in possession, as tenants only, under unrecorded leases.	None	Not a surveying matter.

C/L OF CREEK BOUNDARY CALLS

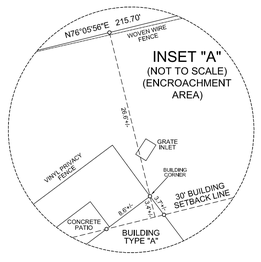
LINE	BEARING	DISTANCE
L1	S77°56'58"E	24.45'
L2	S82°02'13"E	21.98'
L3	N88°06'05"E	48.93'
L4	S82°28'37"E	64.97'
L5	S58°50'20"E	11.90'
L6	S76°43'27"E	16.95'
L7	S61°28'08"E	26.29'
L8	S79°03'33"E	16.10'
L9	S61°29'15"E	50.12'
L10	S66°59'05"E	29.12'
L11	S48°56'44"E	9.77'
L12	S69°45'29"E	37.15'
L13	S74°01'28"E	23.15'
L14	S64°37'46"E	9.50'
L15	S51°12'36"E	9.91'
L16	S59°06'54"E	16.14'
L17	S51°54'17"E	22.27'
L18	S69°09'16"E	14.47'
L19	N88°04'25"E	18.65'
L20	S75°31'01"E	12.91'
L21	S44°16'47"E	19.76'
L22	S47°21'26"E	31.56'
L23	S54°24'42"E	25.85'
L24	S69°58'01"E	18.46'
L25	S83°11'00"E	34.15'
L26	S34°28'04"E	7.59'
L27	S54°16'23"E	40.45'
L28	S34°54'26"E	34.80'
L29	S43°34'08"E	18.45'
L30	S59°25'04"E	25.78'
L31	S39°09'59"E	35.96'
L32	S44°44'37"E	13.66'

TIE LINE CALLS

L33	N76°05'56"E	6.66'

BOUNDARY CURVE CALLS

CURVE	RADIUS	ARC LENGTH	CHORD BEARING	CHORD LENGTH
C1	184.43'	44.97'	N00°48'44"W	44.86'
C2	184.43'	36.32'	N13°26'23"W	36.26'
C3	332.37'	64.35'	N24°37'42"W	64.25'



NOTES

* This is an ALTA survey of 1 existing parcel of land. Total acreage is 12.76+/- acres.

* All areas calculated by coordinate computation method.

* The legal description describes the same property as insured in the Title Commitment. Any exceptions have been noted.

* Reliance is made on the exceptions listed in the title commitment. No further research into recorded documentation made unless noted in Schedule B exceptions table.

* No underground utilities were located. Call 1-800-632-4949 before digging.

* A portion of this property lies in Zone AE (Special flood hazard areas subject to inundation by the 1% annual flood chance - Base Flood Elevations determined) as shown on the National Flood Insurance Program, Flood Insurance Rate Map 3700957900J, effective date October 2, 2008.

* Any streams, creeks, ponds, lakes, wetlands, etc. located on this property, shown or not shown hereon, may be subject to buffer areas. It is the owner/developer's responsibility to have the areas designated by person(s)/firm(s) authorized, by the proper authorities, to make such determination.

* All distances shown hereon are horizontal ground distances unless otherwise noted.

* All grid coordinates shown are NC Grid Coordinates (NAD 83 (NSRS 2011) based on GPS)

* This property does not lie within 1/2 mile of a "Farmland Preservation District".

* Per the City of Hendersonville Zoning Map, former PIN 9579-48-6832 (Tract 1 on Plat Slide 14720) is zoned "R-40" (Estate Residential) in the City of Hendersonville. See the City of Hendersonville Code of Ordinances or contact the City of Hendersonville Community Development Department for comprehensive descriptions of zoning regulations.

* Per the City of Hendersonville Zoning Map, former PIN 9579-48-2415 (Tract 2 on Plat Slide 14720) is zoned "C-2" (Secondary Business) in the City of Hendersonville. See the City of Hendersonville Code of Ordinances or contact the City of Hendersonville Community Development Department for comprehensive descriptions of zoning regulations.

* The subject properties were annexed into the City of Hendersonville per Ordinance #23-17, and shown in DB 4020, Page 532.

* Table A, Item 6(a) & 6(b): No zoning report or letter was provided. Zoning information as shown above was taken from the City of Hendersonville website. Please contact City of Hendersonville for correct application of setback lines. Setback line shown on survey taken from site plan.

* Table A, Item 7(b)(2) & 7(c): No locations specified.

* Table A, Item 8: All features found shown on survey.

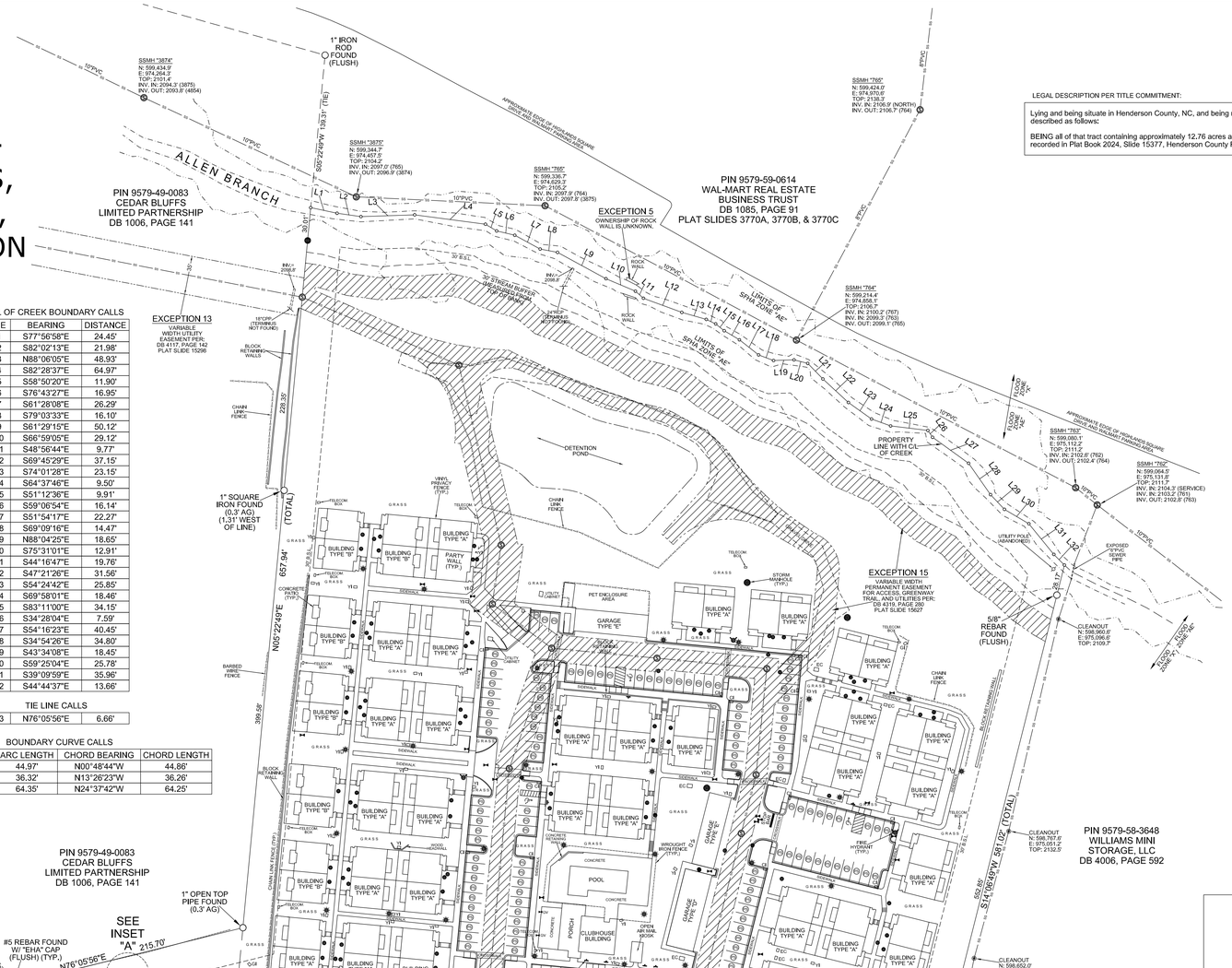
* Table A, Item 10: Party walls shown in building footprints.

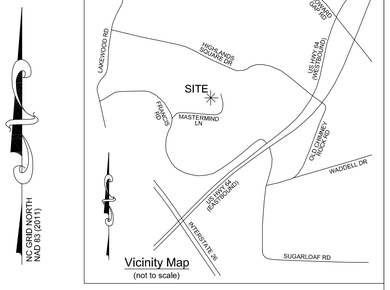
* Table A, Item 11(a) & 11(b): No utility plans, other than engineering site plan, was provided. No markings were painted subsequent to 811 ticket. Utilities shown on this survey were taken from visible surface structures and engineering site plan.

* Table A, Item 16: Subject has been developed with townhomes as shown on survey.

* Table A, Item 17: No evidence found of changes to street R/W lines. New sidewalks shown on survey.

* Table A, Item 18: All known easements shown on survey.





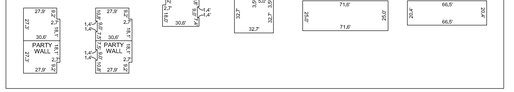
LEGAL DESCRIPTION PER TITLE COMMITMENT:

Lying and being situate in Henderson County, NC, and being more particularly described as follows:

BEING all of that tract containing approximately 12.76 acres as shown on that plat recorded in Plat Book 2024, Slide 15377, Henderson County Registry.

NORTH
NORTH AMERICAN DATUM OF 1983 (NAD 83) (2011)

TYPICAL BUILDING DIMENSIONS



PARKING CHART

ACTUAL MARKED PARKING SPACES:

REGULAR SPACES	=	163 SPACES
HANDICAP SPACES	=	7 SPACES
GARAGE SPACES	=	13 SPACES
ELECTRIC VEHICLE	=	2 SPACES
TOTAL SPACES	=	185 SPACES

SITE

TOTAL AREA
12.76+/- ACRES
PIN 9579-48-6853
DHIC-MASTERMIND, LLC
DB 4163, PAGE 240
DB 4117, PAGE 138
DB 4117, PAGE 132
DB 4117, PAGE 125
PLAT SLIDE 15377
197 BAXLEY LANE
ZONING: C-2 & R-40

LEGEND:

- ○ = CORNER FOUND (AS NOTED)
- ● = #5 REBAR W/ "EHA" CAP FOUND
- ■ = NCGS MONUMENT (AS NOTED)
- ⊙ = CALCULATED POINT (UNMARKED)
- AG = ABOVE GROUND
- BG = BELOW GROUND
- B.S.L. = BUILDING SETBACK LINE
- UP = UTILITY POLE
- LP = LIGHT POLE
- GUY WIRE
- EB = ELECTRIC BOX
- EC = ELECTRIC CABINET
- SMH = STORM MANHOLE
- CI = CURB INLET
- GI = GRATE INLET
- YI = YARD INLET
- CMP = CORRUGATED METAL PIPE
- CPP = CORRUGATED PLASTIC PIPE
- RCP = REINFORCED CONCRETE PIPE
- SS = SEWER MANHOLE
- SC = SEWER CLEANOUT
- GV = GAS VALVE
- FH = FIRE HYDRANT
- WV = WATER VALVE
- WM = WATER METER
- = STANDARD PARKING SPACE
- = HANDICAP PARKING SPACE
- EV = ELECTRIC VEHICLE PARKING SPACE
- OHU = OVERHEAD UTILITY LINE
- UGS = UNDERGROUND SEWER LINE
- UGW = UNDERGROUND WATER LINE
- = EDGE OF CONCRETE/ASPHALT
- = BUILDING SETBACK LINE
- = SUBJECT PROPERTY BOUNDARY LINE
- = ADJOINER PROPERTY LINE
- = FENCE LINE (CHAIN LINK)
- = FENCE LINE (VINYL PRIVACY)
- = FENCE LINE (OTHER AS DESCRIBED)
- = WATER FEATURE (AS NOTED)
- = LIMITS OF R/W
- = PERMANENT EASEMENT
- = PERMANENT EASEMENT

ALTA/NSPS LAND TITLE SURVEY FOR
DHIC-MASTERMIND, LLC
197 BAXLEY LANE

REFERENCES

Being all of PIN 9579-48-6853 as described in Deed Book 4163, Page 240 and in Deed Book 4117, Pages 125, 132, & 138 and shown in Plat Slide 15377

City of Hendersonville, Hendersonville Township, Henderson County, North Carolina
Date: 06-17-2026 Drawn By: M. Edgerton
Job#: 22028

C. M. Edgerton, Jr., PLS
medgerton@holmesgeo.com
Holmes Geospatial
200 Ridgefield Ct., Suite 208, Asheville, NC 28806
828.225.6562 Company# C-2806

60' 0' 60' 120'
SCALE 1" = 60'

CURRENT LISTED OWNER AT DATE OF THIS SURVEY PER HENDERSON COUNTY GIS:

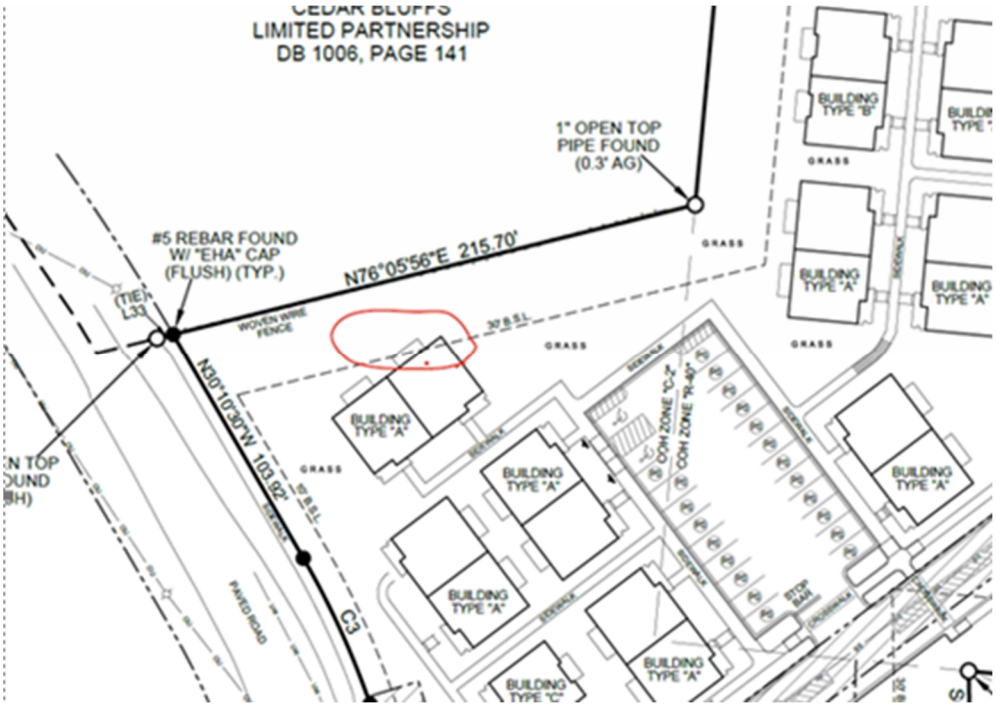
DHIC - MASTERMIND, LLC
1341 HORTON CIRCLE
ARLINGTON, TX 76011

DWG#: D26-088

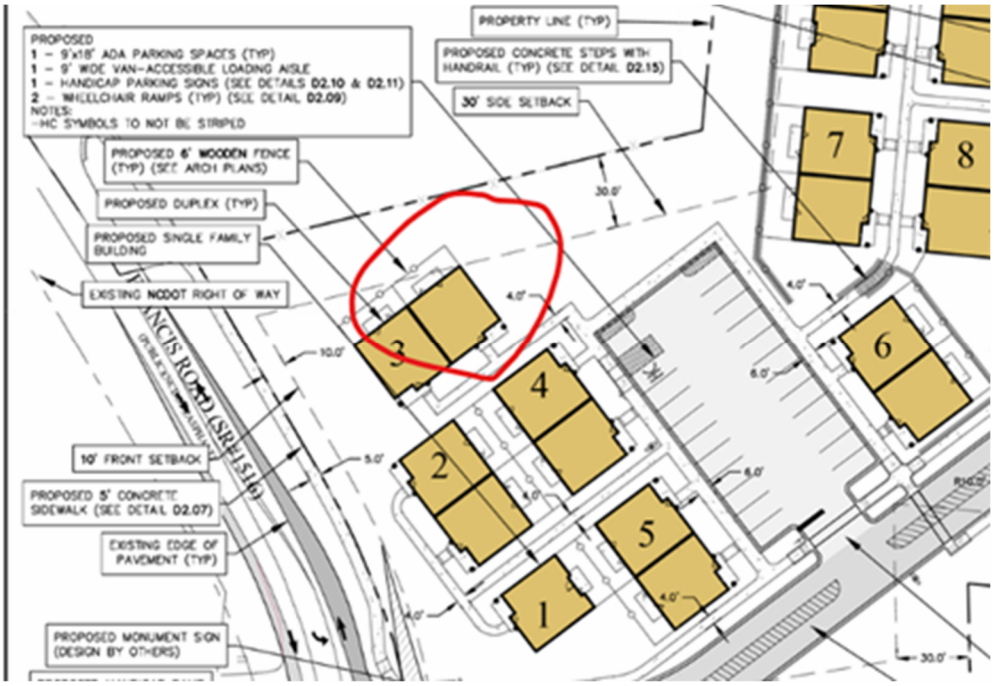
Cottages at Mastermind- BOA Submission

During the construction of the Cottages at Mastermind project in Hendersonville off Francis Road unit #3 on the approved master plan was unintentionally constructed 3 feet 4 inches into the required 30-foot setback from the adjacent parcel. This issue was not discovered until the ALTA survey of the finished project was completed. See below snip of the survey that shows the location of the encroachment, and the approved site plan.

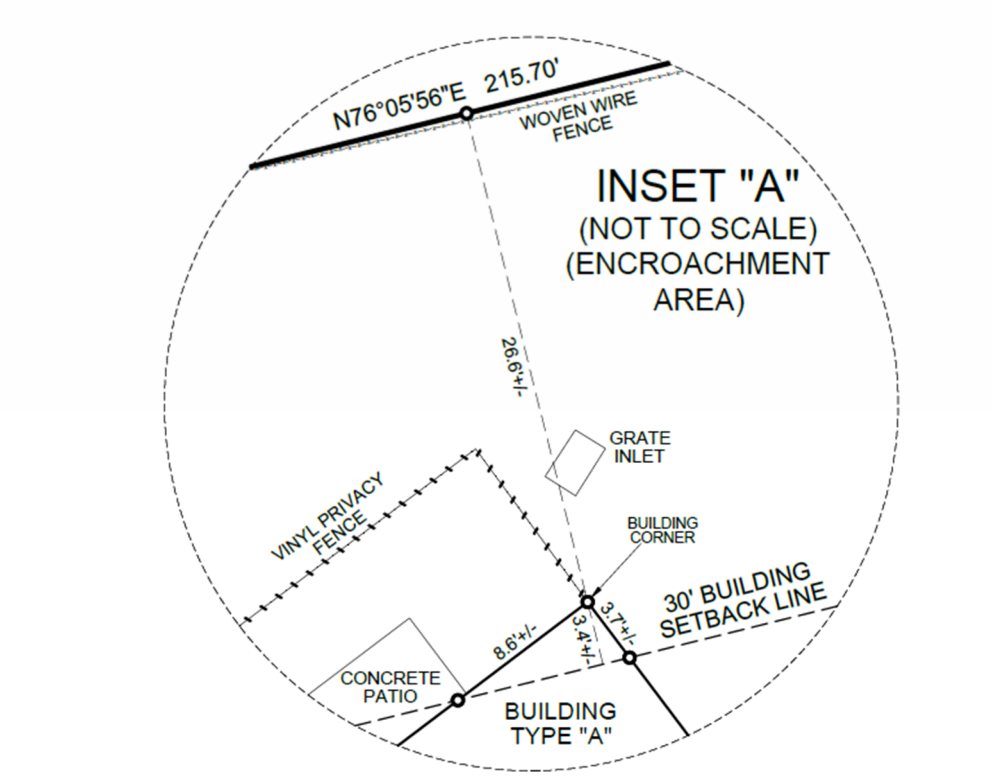
Snip of survey



Snip of approved site plan



See blow up of the encroachment issue provided by the surveyor for clarification.



Please also see attached pictures of the issue for clarification and help in understanding the issue surrounding the encroachment, and the potential complications involved in correcting the issue.



The setback line intersect the building 46" from the corner



Picture of the setback stake in relation to the building



Picture from the setback line on the hill looking at the building



Setback line stakes on the opposite side of the building



Picture of unit and buffer plantings on adjacent property during construction.

BK 4163 PG 240 - 241 (2) DOC# 1001014258
This Document eRecorded: 05/09/2024 03:23:53 PM
Fee: $26.00
Henderson County, North Carolina Tax: $0.00
William Lee King, Register of Deeds

Prepared by and return to:
Jonathan T. Sizemore
Adams Howell Sizemore & Adams, P.A.
1600 Glenwood Ave., Suite 101
Raleigh, NC 27608

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

INSTRUMENT OF COMBINATION

This Instrument of Combination is made this 7th day of May, 2024, by the owner, DHIC – Mastermind, LLC, a Delaware limited liability company (the "Owner"), whose mailing address is 1341 Horton Circle, Arlington, TX 76011, Attn: Scott Tuthill.

WITNESSTH:

WHEREAS, the Owner presently owns parcel numbers 9579-48-6832 and 9579-48-2415 located in Henderson County by virtue of deeds recorded in Book 4117, Page 132 and Book 4117, Page 138, Henderson County Registry respectively; and

WHEREAS, the Owner wishes to recombine parcels 9579-48-6832 and 9579-48-2415 into for compliance with Henderson County regulations, all taxation, and assessment purposes only; and

WHEREAS, this is a limited special purpose instrument for the purpose specified above and is not a conveyance and is a re-platting of the property and does not change or modify in any manner the ownership interest in the above mentioned property. This is not a legal binding recombination of the described parcels, but instead it is a request for the GIS and tax authority to tax as recombined tracts; and

Submitted electronically by Adams, Howell, Sizemore & Adams, P.A. in compliance with North Carolina statutes governing recordable documents and the terms of the submitter agreement with the Henderson County Register of Deeds.

BK 4163 PG 240 - 241 (2) DOC# 1001014258

NOW, THEREFORE, upon execution and recording of this Instrument of Combination the maker of this Instrument of Combination hereby declares that the property known for Henderson County Ad Valorem Tax purpose as PIN: 9579-48-6832 and PIN: 9579-48-2415 are hereby combined into a single parcel of property as shown on Plat Book 2024, Page 15377 of the Henderson County Registry and shall be considered as one parcel for all purposes.

IN WITNESS WHEREOF, the maker has hereunto set his/her hand and seal the day and year first above written.

OWNER:

DHIC - MASTERMIND, LLC,
a Delaware limited liability company

By: DHI Communities II, LLC,
a Delaware limited liability company
Its: Sole Member

By: _____(SEAL)
R. Elam Hall, Vice President

State of North Carolina
County of Gaston

I, Rachel Martin Hayes, a Notary Public of the County and State aforesaid, certify that R. Elam Hall, in his capacity as Vice President of DHI Communities II, LLC, a Delaware limited liability company, the sole member of DHIC – Mastermind, LLC, a Delaware limited liability company, appeared before me this day and acknowledged the execution of the foregoing Instrument of Combination.

Witness my hand and official stamp or seal, this 7 day of May, 2024.

My Commission Expires: May 27, 2025

Rachel Martin Hayes
Notary Public

Print Name: Rachel Martin Hayes

[Affix Notary Stamp or Seal below]

RACHEL MARTIN HAYES
Notary Public, North Carolina
Gaston County
My Commission Expires
May 27, 2025

ARTICLE V

Members

Section l. Composition. The Board shall be composed of five regular members and five alternates. Subject to the provisions of Section 10-1 of the City of Hendersonville Zoning Ordinance and N.C.G.S. §§ 160D-302 and 160D-307, or any successor statutes, the members shall be chosen as follows: Four regular members and Four alternates, each of whom shall be a resident of the City of Hendersonville, shall be appointed by the City Council of the City of Hendersonville. One regular member and one alternate, each of whom shall be a resident of the extraterritorial jurisdiction of the City of Hendersonville, shall be appointed by the Henderson County Commission.

Section 2. Term of Office. Members shall serve three-year terms as provided by the City of Hendersonville Zoning Ordinance.

Section 3. Vacancies. Vacancies shall be filled as soon as deemed advisable by the applicable appointing authority.

Section 4. Removal of Members. Any member of the Board may be removed by the applicable appointing authority for inefficiency, neglect of duty, malfeasance, or conflict of interest.

***

ARTICLE VII

Meetings

Section I. Regular and Special Meetings.

A. Regular meetings of the Board shall be held at 1:30 p.m. on the second Tuesday of each month at a time and place designated by the Board, except when otherwise decided by the Board, with due notice to the press. If a day scheduled for a regular meeting is a holiday for which the offices of the City of Hendersonville are closed, the regular meeting shall be held on the following Tuesday.

B. Special meetings of the Board may be called at any time by the Chair provided that at least forty-eight hours written notice of the time and place of a special meeting be given, to each regular and alternate member of the Board and to the secretary. In addition, members of the press shall be notified of each meeting in accordance with law. Special meetings may include Board retreats and like meetings held to conduct internal business of the Board.

Section 2. Quorum.

Four members of the Board (including alternates) eligible to vote on any issue, shall constitute a quorum for purposes of that issue. Notwithstanding the foregoing, a quorum shall not be necessary to do any of the following:

A. Set a date, Lime or place for any subsequent meeting.

B. Discuss general internal Board business, but in no case may the Board without a quorum hear or discuss the merits of any matter brought or to be brought before the Board as part of a public hearing.

C. Appoint a Chair pro tern for the meeting.

Section 3. Voting.

A. In accordance with G.S. 160D-406(i), the concurring vote of four-fifths majority of the members of the board of adjustment shall be necessary to grant a variance. Except as otherwise provided in these bylaws, including the policies and procedures attached hereto, a majority of all regular and alternate members eligible to vote shall be necessary to transact any other official business.

B. Except as otherwise provided herein: Any regular member in attendance at any meeting shall be eligible to vote on all matters brought before the Board at that meeting. Alternates members shall be eligible to vote in the absence of any regular member. By way of example, if four regular members attend the meeting then one alternate in attendance shall be eligible to vote, and if two alternates are in attendance the Chair may select one alternate to be eligible. The Chair may empower alternates to be eligible to vote at any portion of a meeting where a regular member is absent or excused, including any public hearing.

Section 4. Records.

The Board shall keep minutes and records of all proceedings, including resolutions, transactions, findings and determinations; shall record the number of votes for and against each question presented; and shall indicate whether any member is absent or abstains from voting. All such records shall be filed in the office of the Board Secretary immediately following the meeting at which they occurred.

Section 5. Absences.

Subject to the ordinances of the City of Hendersonville, any regular member of the Board who misses more than three consecutive regular meetings or more than half the meetings in any calendar year (not including meetings postponed for reasons other than lack or predicted lack of a quorum) shall by that fact no longer be a member of the Board.

Section 6. Open Meetings and Public Hearings.

Board meetings and public hearings shall be open to the public as required by N.C.G.S. Chapter 143 Article 33C.

Section 7. Order of Business.

The order of business at regular meetings shall be as follows:

Roll call; determination of quorum

Approval of Minutes of previous meeting

Hearing of cases

Other business

Adjourn

***

APPENDIX I

POLICIES AND PROCEDURES

***

6. Decisions

A.. In accordance with G.S. 160D-406(i), the concurring vote of four-fifths majority of the members of the Board shall be necessary to grant a variance. A majority of the members eligible to vote shall be required to decide any other matter. Votes taken more than seventy days after the close of the public hearing shall be accompanied by a declaration for the minutes, articulating clearly and specifically the reasons for the delay.

B. Written decisions containing findings of fact and conclusions of law may be approved at any time within seventy days after the initial vote. Any written decision presented to the board for final vote more than seventy days after the initial vote shall be accompanied by a written statement articulating clearly and specifically the reasons for the delay.

C. The final vote, if approving the written decision, shall be held on the following issue: "Do the findings of fact, conclusions of law and ruling contained in the written decision accurately reflect the sense of those who voted with the decision reached in the initial vote?" Subject to the Board's bylaws and procedures. this final vote may be approved by a majority of those members attending the meeting at which the final vote is held and eligible to vote.

If upon an attempted final vote no majority can be reached upon the issue. the Chair shall request of the members who voted with the decision reached in the initial vote to indicate as clearly as possible for the minutes, if in the Chair's opinion they did not do so at the time of the initial vote, the criteria of the ordinance, met or unmet, upon which they based their vote, and the facts adduced at the hearing that support their conclusions.