



CITY OF HENDERSONVILLE BOARD OF ADJUSTMENT

Operations Center - Assembly Room | 305 Williams St. | Hendersonville NC 28792
Tuesday, January 11, 2022 – 1:30 PM

AGENDA

1. **CALL TO ORDER**

2. **APPROVAL OF AGENDA**

3. **APPROVAL OF MINUTES**

A. Minutes of November 9, 2021

4. **OLD BUSINESS**

A. Approval of Decision File No. V-11-09-01

5. **NEW BUSINESS**

A. Variance Application –Halford Partners LLC & ALPHA Investments LLC– John Halford
Court Lot 3 - *Tyler Morrow, Planner II*

6. **OTHER BUSINESS**

A. Election of Chair and Vice-Chair

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, November 9, 2021
1:30 p.m. in the City Operations Center

The Hendersonville Board of Adjustment held its regular monthly meeting on November 9, 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, Chris Freeman, Libby Collina, Charles Webb, Kathy Watkins, Angela Beeker, City Attorney, Matthew Manley, Planning Manager, Tyler Henry, Code Enforcement Officer, Alexandra Hunt, Planner I and Secretary to the Board Terri Swann.

Absent: Roger Woolsey, Steve Smith

Chair called the meeting to order at 1:42 p.m.

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

Approval of the Minutes of the September 14, 2021 meeting. A motion was made by Ms. Watkins and seconded by Mr. Freeman to approve the minutes as written. The motion passed unanimously.

Approval of the Decisions for a variance application from Dennis Dunlap – 1600 Four Seasons Boulevard. A motion was made by Mr. Mowell to approve the Decision as written. Ms. McCoy seconded the motion which passed unanimously. A variance application from Tracie Fowler – 526 Fleming Street. A motion was made by Ms. Watkins to approve the Decision as written. Mr. Webb seconded the motion which passed unanimously.

Variance – Jeremy and Angela Sullivan – 1002 5th Avenue West

Chair swore in all persons to give testimony. Those sworn in were Tyler Henry, Code Enforcement Officer, Matthew Manley, Planning Manager and Angela Sullivan.

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 report be entered into evidence for this hearing with one amendment in the proposed findings of fact that the deck is compliant with the North Carolina Building Code if there is a ramp.

Mr. Henry stated the Community Development Department has received an application from Jeremy and Angela Sullivan for a variance from Section 6-1-7: Corner Lots.

Mr. Henry stated the following concerning the subject property:

- The subject property is identified as PIN 9568-47-0819 and is currently zoned R-15, Medium Density Residential.

- The variance is to reduce the side setback from 20 feet to 10 feet. The purpose is to build a deck to connect two points of egress on a residential lot.
- The required minimum lot size in the R-15 District is 15,000 sq. ft. The lot size is 14,810 sq. ft. The 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.
- Based on Henderson County building records, the building located on the property was built in 1952.
- The applicant is proposing to build a deck that would expand 1' further into the side setback from the landing that currently exists and connect it to another point of egress on the back portion of the dwelling unit.
- 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.

Mr. Henry showed a site plan of the proposed addition. He stated the setback excludes the outermost three feet of any uncovered porches, steps, eaves, gutter and similar fixtures. This is quote from the Zoning Ordinance. Therefore staff believes that only a seven-foot variance on the side setback for a corner lot is needed.

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

Section 10-9 Variances was part of the presentation.

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

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

Angie Sullivan, 1002 5th Avenue West stated they bought the home two or three years ago and began restoring it. They do not have steps down to the back yard and their goal is to construct a deck that is in harmony with the neighborhood but also allows for them to have an entrance and exit in the rear of the home. She has a small child and from a safety aspect would like to have an exit into the backyard.

Chair asked if there were any questions for the applicant.

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. Mowell stated from a health and safety standpoint he believes they need a way out of the back of the house. The Board members all agreed.

Ms. Collina made the following 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. Ms. Collina stated approving the variance will provide safety and security for the applicant's children and provide another way to exit the home.

Discussion was made with the Board and staff regarding the reasons for the variance approval. Angela Beeker, City Attorney stated safety could be a reason if staff has no objection to it. Staff had no objection to making safety a reason.

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

Mr. Freeman	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.

Meeting adjourned a 2:05 p.m.

Melinda Lowrance, Chair

Terri Swann, Secretary

**STATE OF NORTH CAROLINA
HENDERSON COUNTY**

**BEFORE THE HENDERSONVILLE
BOARD OF ADJUSTMENT
FILE NO. V-11-09-01**

**IN RE THE APPLICATION OF
JERRY AND ANGELA SULLIVAN,
FOR A ZONING VARIANCE
PIN 9568-47-0819**

DECISION

This matter came before the Hendersonville Board of Adjustment on 9 November 2021 for a quasi-judicial hearing on the application of Jerry and Angela Sullivan, for a variance from *Section 6-1-7 Corner Lots* of 7 feet in order 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. Granting this variance would also require a variance from *Section 6-2-2 (e) Nonconforming Structures*.

Giving testimony were Tyler Henry, Code Enforcement Officer, and Angela Sullivan, Applicant, both of whom were sworn and placed under oath. Planning Manager, Matt Manley spoke but did not give testimony.

Issues

Section 10-9 of the Hendersonville Zoning Ordinance states in pertinent part:

Section 10-9 Variances. A variance is a means whereby the City may grant relief from the effect of the Zoning Ordinance in cases of hardship. A variance constitutes permission to depart from the literal requirements of the ordinance.

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

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

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

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

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

5-5-3 Dimensional Requirements:

Minimum Lot Area in Square Feet:	15,000
Lot Area per Dwelling Unit in Square Feet:	15,000 for the first; 7,500 ft ² for one additional dwelling unit in any one building
Minimum Lot Width at Building Line in Feet:	85
Minimum Yard Requirements in Feet:	
Principal Structure	Front: 30 Side 10 Rear: 15
Accessory Structures:	Front: 30 Side: 5 Rear: 5
Maximum Height in Feet:	35

Section 6-1-7 of the Hendersonville Zoning Ordinance states:

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.

Section 6-2-2 (e) of the Hendersonville Zoning Ordinance states:

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.

TESTIMONY

Testimony is accurately reflected in the minutes.

FINDINGS OF FACT

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

1. The subject property possesses a PIN of 9568470819 and is zoned as R-15 Medium Density Residential.
2. Based on Henderson County building records, the dwelling unit located on the property was built in 1952.
3. 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.
4. Section 5-3-3 (R-15) of the Hendersonville Zoning Ordinance requires a side setback of 10 feet for principal structures.
5. 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. This increases the required setback to 20 feet.
6. The current landing that exists affixed to the dwelling unit is 4' wide. According to Henderson County Building Code department, a landing is required to be at least 5' X 5' in size to be compliant with North Carolina State Building Code standards. To meet North Carolina State Building Code standards the applicants would be required to expand 1' further into the side setback.
7. Section 12-1 of the Zoning Ordinance excludes the outermost 3 feet of any uncovered portions from setback requirements, and therefore a variance of only 7 feet is required.
8. Currently, there are no steps leading from the rear door of their home to the back yard, and the back hard slopes away from the rear door, resulting in a drop off from the door to the ground that is unsafe. Not allowing the variance would pose an undue hardship.

CONCLUSIONS OF LAW

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

- 1) strict enforcement of the regulations would result in practical difficulties or unnecessary hardships to the applicant for the variance.
- 2) the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, and
- 3) in the granting of the variance the public safety and welfare have been secured and substantial justice has been done.
- 4) The fact that the property could be utilized more profitably or conveniently with the variance than without the variance has not been considered as grounds for granting the variance.
- 5) The hardship relates to the applicant's property rather than to personal circumstances. In particular, the hardship would be the continuance of the unsafe drop off from the rear door to the back yard.
- 6) The hardship results from the application of the ordinance and from no other cause, including the actions of the owner of the property or previous owners.
- 7) The hardship is peculiar to the property in question rather than a hardship shared by the neighborhood or the general public.

DECISION

For the above reasons,

The Board of Adjustment grants a variance of 7 feet foot side setback (Section 6-1-7) and from the requirements of Section 6-2-2(e) of the Hendersonville Zoning Ordinance, but only to the extent represented in the application and supporting materials.

Done this 11th day of January, 2022

Melinda Lowrance, Chair

MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: January 11th, 2022

RE: Variance Application –Halford Partners LLC & ALPHA Investments LLC– John Halford Court Lot 3

SUMMARY: The Community Development Department has received an application from Halford Partners LLC & ALPHA Investments LLC for a variance from Section 17-3-2: Stream Buffer Size, Section 17-3-3 Prohibition Against Development Within the Stream Buffer and Section 5-3-3 Dimensional Requirements. 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 reduce the required stream buffer and transitional area provided in sections 17-3-2 and 17-3-3 of the Hendersonville Zoning Ordinance and to reduce the front setback for a principal structure in R-15 provided in section 5-3-3 of the Hendersonville Zoning Ordinance.

The variance is to reduce the stream buffer from the required 30' to 15' and to also reduce the transitional area from the required 20' to 15'. The variance requested follows the dimensional requirements set forth in "17-3-8 Special Provisions Pertaining to Certain Residential Uses." The requirements of section 17-3-8 are not applicable to this parcel since it was platted after September 6th, 2001. Based on the proposed development the applicants are requesting a 15' variance from Section 17-3-2 and a 5' variance from Section 17-3-3.

The applicants are also requesting to reduce the front setback from the required 30' to 12'. Based on the proposed development the applicants are requesting an 18' variance from the front setback in Section 5-3-3.

PROPOSED FINDINGS OF FACT:

- The subject property possesses a PIN of 9569-77-4636 and is zoned as R-15 Medium Density Residential.
- The lot is currently vacant.
- Based on Henderson County records, the lot size is approximately 0.34 acres or 15,002 square feet.
- The principal structure setbacks for R-15 are:

- Front: 30'
- Side: 10'
- Rear: 15'
- Based on the most recent USGS seven-and-one-half minute quadrangle topographic maps, the subject property has a blue line stream running through its boundaries.
- The subject property was platted on December 9th, 2005
- The stream is identified as Horse Creek based on a plat recorded on December 9th, 2005.
- City Council adopted an ordinance creating stream buffer protection standards which included a 30' stream buffer and 20' transitional area at their meeting on September 6th, 2001.
- Section 17-3-2 of the Hendersonville Zoning Ordinance requires that Stream buffer protection shall apply on each side of the stream and shall measure 30 feet horizontally from the top of the stream bank in a direction perpendicular to the stream flow.
- Section 17-3-3 of the Hendersonville Zoning Ordinance requires that there be a 20-foot transitional area immediately landward of the stream buffer which may be graded, landscaped and/or used for pedestrian or vehicular purposes so long as no impervious materials are utilized.

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

17-3-1 Applicability. Except as modified in this section, stream buffer protection standards shall apply to all watercourses depicted as a solid blue line on the most recent USGS seven-and-one-half minute quadrangle topographic maps covering the City of Hendersonville and its area of Extraterritorial Jurisdiction (ETJ). Stream buffers shall be clearly indicated on all development plans, including concept plans, preliminary plans and final plans, and on all preliminary and final plats.

17-3-2 Stream Buffer Size. Stream buffers shall apply on each side of the stream and shall measure 30 feet horizontally from the top of the stream bank in a direction perpendicular to the stream flow.

17-3-3 Prohibition Against Development Within the Stream Buffer. To avoid a loss of effectiveness in protecting streams, the stream buffer shall remain in natural undisturbed forest vegetation and no development or land-disturbing activities shall be undertaken therein, except as provided in Section 17-3-5. Furthermore, there shall be a 20-foot transitional area immediately landward of the stream buffer which may be graded, landscaped and/or used for pedestrian or vehicular purposes so long as no impervious materials are utilized. Certain uses of land, as specified in Section 17-3-5, below, may be permitted within the stream buffer so long as they meet the requirements of that Section and are designed and constructed to minimize the amount of intrusion into the stream buffer and to minimize clearing, grading, erosion and water quality degradation. Nothing herein is intended to preclude the removal of downed vegetation from the stream bed in order to improve stream flow dynamics. If it is necessary to remove downed or dead vegetation, it should be cut and the root ball left in place to help maintain stability of the shoreline. Nothing herein is intended to [or shall] preclude any activity specifically authorized pursuant to Section 401 and/or Section 404 of the Clean Water Act.

17-3-8 Special Provisions Pertaining to Certain Residential Uses. For certain residential uses as prescribed herein, the stream buffer shall be reduced to fifteen feet and the transitional area described in Section 17-3-3 shall be reduced to fifteen feet. To qualify for these special provisions, a proposed development must meet the following criteria:

- a) The lot on which the development is to occur must be a lot of record in the Henderson County Registry as of 6 September 2001.
- b) Use of the lot must be limited to a one- or two-family residential dwelling.
- c) The lot may not exceed one acre in area. d) The amount of impervious surface allowed on the lot shall not exceed 25% of the lot or 3,000 square feet, whichever is greater.

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 Halford Partners LLC & ALPHA Investments LLC for a variance from Section 17-3-2: Stream Buffer Size to reduce the stream buffer requirement from 30' to 15', 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.

Furthermore, with regard to the request by Halford Partners LLC & ALPHA Investments LLC for a variance from Section 17-3-3 Prohibition Against Development Within the Stream Buffer to reduce the transitional area requirement from 20' to 15', 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.

Furthermore, with regard to the request by Halford Partners LLC & ALPHA Investments LLC for a variance from Section 5-3-3 Dimensional Requirements to reduce the front setback for a principal structure from 30' to 12', 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 Sections 17-3-2, 17-3-3 and Section 5-3-3 in accordance with and only to the extent represented in the application.

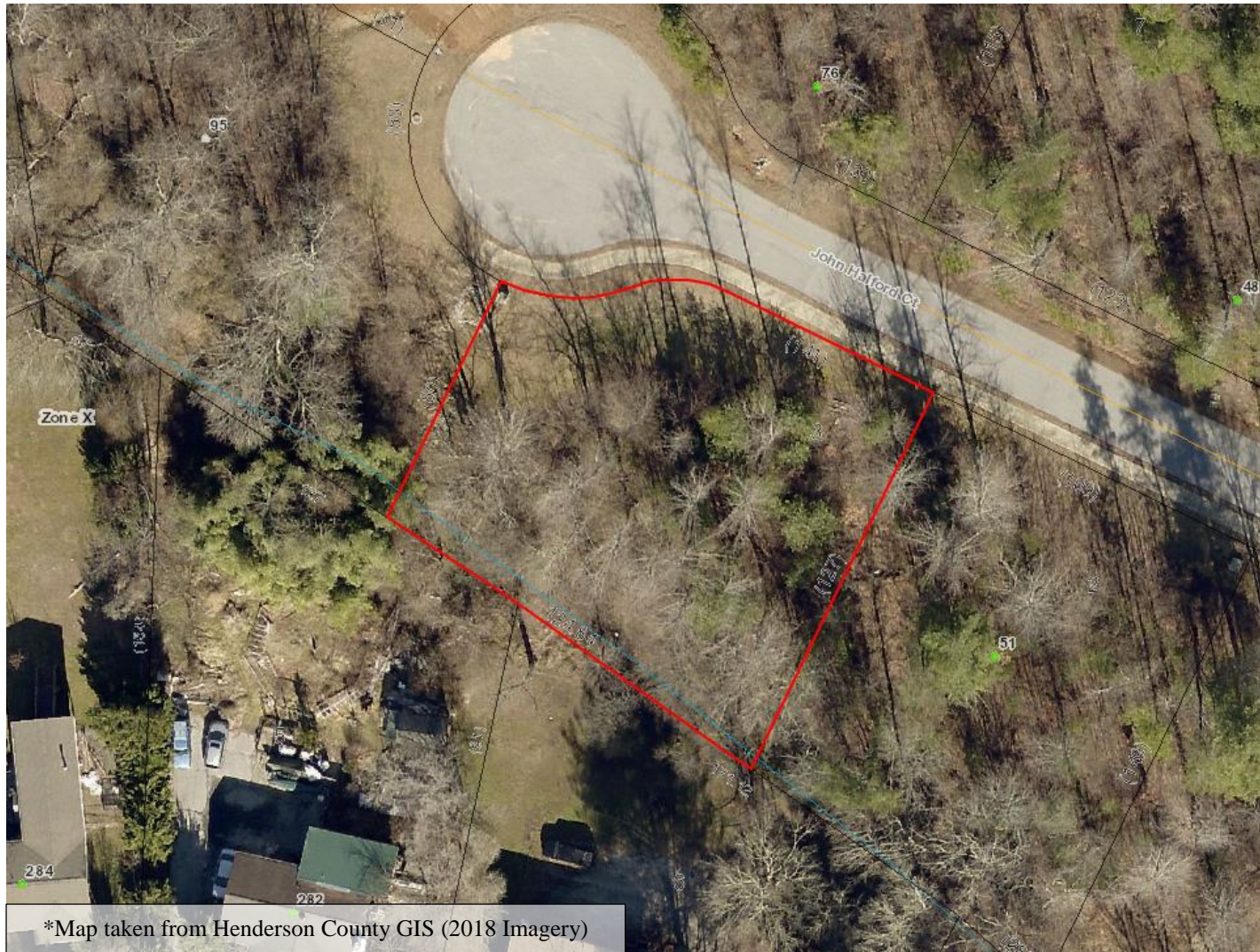
(After the motion has been seconded, the movant should state the factual basis and reasoning for the motion. In doing so, bear in mind the considerations set out in Section 10-9 of the zoning ordinance.)

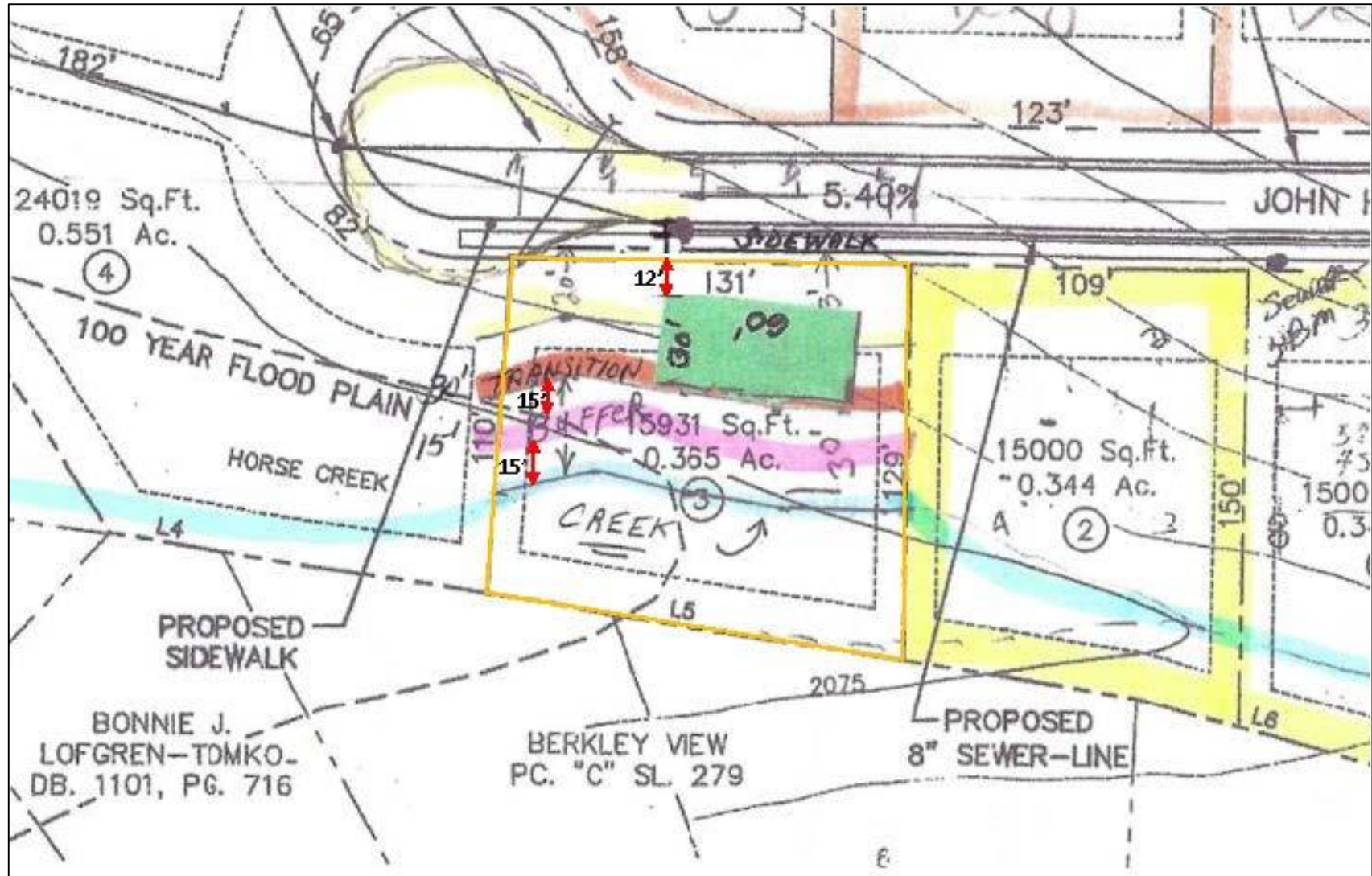
Remember: Staff suggest the motion be made in the affirmative regardless of whether it is your intention to support or oppose the issuance of a variance. This does not mean that staff is recommending approval of the application. RATHER, we believe it is better procedurally to approach it this way. Once 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) Variance Application (see attached)**

1) Subject Property





3) Pictures of the Property







**CITY OF HENDERSONVILLE
COMMUNITY DEVELOPMENT DEPARTMENT**

100 N. King Street, Hendersonville, NC 28792

Phone (828) 697-3010 | Fax (828) 698-6185

www.hendersonvillenc.gov

APPLICATION FOR A VARIANCE

Section 10-9 City Zoning Ordinance

The following information is **required** to be submitted prior to review by City Staff for placement on the Board of Adjustment agenda. By placing a check mark by each of the following items, you are certifying that you have performed that task. A check mark must be placed by each numbered item before placement on the Board agenda.

- ☒ 1. Pre-application meeting with the Planning staff.
- ☐ 2. Completed Variance Application
- ☐ 3. Completed Zoning Permit Application
- ☐ 4. Site Plan of property showing any existing structures, natural features (e.g. streams, ponds, etc.), **as well as** the proposed building or additions indicating distance from such to the centerline of street, side & rear lot lines, and elevations, as applicable, and placement of septic system & drainage field with distances from structures, if applicable.
- ☐ 5. One copy of the septic permit (if applicable)
- ☐ 6. Application Fee of \$75.00
- ☐ 7. Petitioner has checked for Homeowner Association rules, property covenants, deed restrictions, Building Safety Department permits, and other requirements that might have a bearing on the application.

A. Quasi-Judicial Process

The Board of Adjustment is given the authority under Section 10-3 of the Zoning Ordinance of the City of Hendersonville to hear and decide requests for variances from the dimensional requirements of the Zoning Ordinance in accordance with Section 10-9. The Board conducts quasi-judicial hearings and may consider sworn testimony and evidence presented during the hearing. Applicants are advised to bring data or experts in the relevant field to provide fact-based evidence to support any information they want considered. The Board **may not** consider personal opinions, subjective observations, or personal preferences.

NOTE: The City Planning staff may not provide legal advice to applicants. Applicants are advised to consult the appropriate sections of the North Carolina General Statutes, City of Hendersonville Zoning Ordinance, and the Rules of Procedure for the Board of Adjustment, or to consult with an attorney, if more information is needed.

Office Use:

Date Received: _____ By: _____ Fee Received? Y/N

B. Property InformationPIN(s): 9569774636Address(es): (0) John Halford Court Hendersonville, NC 28792 (no address assigned yet) Lot 3Current Zoning: residential Acreage: .34**C. Applicant Contact Information**

Bruce Fleming

* Printed Applicant Name

Halford Partners LLC

Printed Company Name (if applicable)

☐ Corporation ☒ Limited Liability Company ☐ Trust ☐ Partnership
☐ Other: _____

☒ By signature below, I hereby acknowledge, as/on behalf of (circle one) the Applicant named above my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the City Council except through sworn testimony at the public hearing. (Applicable if box is checked.)

Bruce Edward Fleming III

Applicant Signature

Member

Applicant Title (if applicable)

415 Overhill Drive

Address of Applicant

Hendersonville NC 28792

City, State, and Zip Code

828-275-9739

Telephone

bthreeservices@gmail.com

Email

D. Owner Contact Information (if different from Applicant)

Steve Katsadouros

* ^ Printed Owner Name

ALPHA Investments LLC

* ^ Printed Company Name (if applicable)

☐ Corporation ☒ Limited Liability Company ☐ Trust ☐ Partnership
☐ Other: _____

☒ By signature below, I hereby acknowledge, as/on behalf of (circle one) the Applicant named above my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the City Council except through sworn testimony at the public hearing. (Applicable if box is checked.)

Owner Signature

Member

Owner Title (if applicable)

373 Kenmure Drive

Address of Property Owner

Flat Rock NC 28731

City, State, and Zip Code

828 674 7922

Telephone

skatsadouros@aol.com

Email

* Property owner hereby grants permission to the City of Hendersonville personnel to enter the subject property for any purpose required in processing this application.

^ If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION.

Note: Additional Owner Signature pages attached.

E. To the Zoning Board of Adjustment

I, Bruce Fleming, hereby petition the Board of Adjustment for a variance(s) 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 Applicant" in a manner shown by the Site Plan.

I request a Variance from the following provision(s) of the ordinance (cite section numbers):
zoning ordinance XVII section 17-3-2, 17-3-3, 5-3-3

F. 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. (If additional space is required, please provide the information on a separate sheet of paper).*

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.

applying the ordinance makes the lot unusable for residential construction

the buffer zones would push even the narrowest designs outside of the setback

and even into the sidewalk areas. we would also like a variance for the 30'

setback from the front of the property to allow a house to sit closer to the road.

We are applying for an 18' setback variance (we would provide a 12' setback).

- 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.

Horse creek is actually closer to the center of the property

Than indicated on the GIS map. When the 30' and 20' buffer area is marked out, the outermost edge of the buffer is on the John Halford Court side of the setback area.

- 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 creek's location has not been impacted by the property owner.

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 variance will not do away with the stream buffer, only reduce it's size.

We request a variance similar to the special provisions described in section 17-3-8 of the regulation, except that the time of recording the lot is after 2001. We wish to both protect the creek with a smaller buffer and make use of the property for a residence.

Certification

In granting a variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with the City of Hendersonville Zoning Code. Violations of the provisions of the variance granted, including any conditions or safeguards, which are part of the granting of the variance, shall be deemed in violation of the City of Hendersonville Zoning Ordinance.

I, Bruce Fleming, hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.

12/1/21

Date

Bruce Edward Fleming III

Applicant Signature

Member, Halford Partners LLC

Applicant Title

Bruce Fleming

Applicant Name (Please Print)

Additional Property Owners: (Signature indicates intent that this page be affixed to Application.)

* ^ Printed Owner Name

* ^ Printed Company Name (if applicable)

☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership

☐ Other: _____

☐ By signature below, I hereby acknowledge, as/on behalf of (circle one) the Applicant named above my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the City Council except through sworn testimony at the public hearing. (Applicable if box is checked.)

Owner Signature

Owner Title (if applicable)

Address of Property Owner

City, State, and Zip Code

Telephone

Email

* Property owner hereby grants permission to the City of Hendersonville personnel to enter the subject property for any purpose required in processing this application.

^ If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION.

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