



CITY OF HENDERSONVILLE BOARD OF ADJUSTMENT

City Hall - 2nd Floor Council Chambers | 160 Sixth Ave. E. | Hendersonville NC
28792

Tuesday, April 13, 2021 – 1:30 PM

AGENDA

1. **CALL TO ORDER**
2. **APPROVAL OF AGENDA**
3. **APPROVAL OF MINUTES**

[A.](#) March 9, 2021 minutes

4. **OLD BUSINESS**

A. Approval of Decision

5. **NEW BUSINESS**

[A.](#) Variance Request for Lot 2 of Laurel Spring Ln - Craig Payne

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

The Hendersonville Board of Adjustment held its regular monthly meeting on March 9, 2021 at 1:30 p.m. in the Council Chambers in City Hall, 160 6th Avenue East, Hendersonville, North Carolina. Those present were: Melinda Lowrance, Chair, Chris Freeman, Ernest Mowell, Roger Woolsey, Libby Collina, Charles Webb, Barbara McCoy, Vice-Chair, Matt Manley, Planning Manager, Angela Beeker, City Attorney, Tyler Henry, Code Enforcement Officer and Secretary to the Board Terri Swann.

Absent: Steve Smith, Candi Guffey, Kathy Watkins

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

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

Approval of the Minutes of the December 8, 2020 meeting. A motion was made by Mr. Woolsey and seconded by Ms. McCoy to approve the minutes as written. The motion passed unanimously.

Chair swore in all persons to give testimony. Those sworn in were Matt Manley, Planning Manager and Tim Cagle, applicant.

Variance – Tim Cagle – 305 Blythe Street.

Chair opened the public hearing.

Application for a variance on the rear setback for the property located at 305 Blythe Street to rebuild the home that was damaged by a tree.

Matt Manley, Planning Manager gave a presentation to the Board. He stated the property is currently zoned R-15, Medium Density Residential. The required rear setback for the R-15 zoning district is 15 feet. The applicant is proposing the rear setback to be 6.8'. The home was damaged beyond repair by a large pine tree that fell in the Fall of 2020. The demolished structure was built in the 1930's and the adjacent home was built in the 1920's. Due to the unusual size and shape of the lot and the railroad that is adjacent, the rear setback cannot be met.

Mr. Manley presented the measurements of the lot to the Board. The lot is 3,920 sq. ft. The minimum lot size for R-15 zoning district is 15,000 sq. ft. A variance on the minimum lot size is not required. Section 6-2-3 of the Zoning Ordinance allows existing lots of record created prior to city zoning, to be developed with single family homes as long as the setbacks can be met, or a variance is granted by the Board of Adjustment.

The proposed site plan shows that the front setback of 30' cannot be met. The site plan shows the home with a 13' setback on the front. A variance on the front setback is not

required. Section 8-1 of the Zoning Ordinance allows for an exemption to the minimum required front yard. The average front setbacks for homes within 100' of the property fronting on Blythe Street is 13'. The proposed front setback for 305 Blythe Street is 13', therefore a variance is not required.

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

Tim Cagle, applicant stated he would answer any questions that Mr. Manley did not cover.

Mr. Woolsey asked about a garage. Mr. Cagle stated there would be a graveled lot area that would be paved. There is off-street parking.

Mr. Cagle submitted a plat from the 1920's.

Ms. Collina asked if he would be using the exact footprint. Mr. Cagle stated yes. She asked if the foundation would be used. Mr. Cagle stated no, the tree drove the footings into the ground.

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. Webb made the following motion: With regard to the request by Tim Cagle for a variance from Section 5-3-3 to construct a new residence in the same footprint as the previous residence and thus receiving a reduced rear setback as depicted in the site plan, I move the Board to find (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. Mowell seconded the motion.

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

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

The vote was unanimous. Motion approved.

Approval of the Decision for a variance from Brian Pahle (File No. V-12-8-01), 318 N. Whitted Street. A motion was made by Mr. Woolsey to accept the decision as written. Mr. Freeman seconded the motion which passed unanimously.

Adoption of Monthly Meeting Dates – Ratify location. A motion was made by Mr. Freeman to accept the ratification of the meeting location. The motion was seconded by Ms. Collina and passed unanimously.

Meeting adjourned a 1:48 p.m.

Melinda Lowrance, Chair

Terri Swann, Secretary

MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: April 13, 2021

RE: Variance Application – Craig Payne – Lot 2 Laurel Springs Ln.

SUMMARY: The Community Development Department has received an application from Craig Payne for a variance from Section 5-3-3: Dimensional Requirements. The subject property is currently zoned R-15, Medium Density Residential. The lot is 20,473 Sq Ft in size (well within the required minimum lot size for the R-15 zoning district - 15,000 Sq Ft). The specific variance requested is for the following:

	<u>Required</u>	<u>Proposed</u>
Front setback:	30'	8'

BACKGROUND:

The lot presents two potential hardships:

1. There exists an old roadbed that runs through the middle of the lot which creates a pre-existing constraint for development of the property. Between the front property line and the roadbed is approximately 39 linear feet of virgin soil. The applicant has been advised by "foundation specialist" that development "on or beyond the roadbed will be problematic and require additional geotechnical evaluation and engineering". If the variance for a front setback of 8' is granted, there will be 31' of lot depth for a structure if the roadbed is to be avoided.
2. The second potential hardship that exists is the topography of the lot. Between the front property line and the aforementioned roadbed, the slope of the lot is between 25 and 35 degrees. On the rear portion of the lot, between the roadbed running through the middle of the lot and the rear property line, the slope of the lot increases to 40 to 60 degrees.

Slopes can be developed. However, Section 10-8 c) of the City's Zoning Code states that topography can serve as a possible justification for a variance. The question becomes, at what point does development on a slope become a hardship? In order to help quantify the question of

hardship as it relates to slope, staff reviewed the City's ordinances for guidance on steep slope development. The subdivision ordinance does provide some guidance, though this portion of the City's development regulations are not enforceable in this case due to the fact that Lot 2 is an existing lot and no subdivision of land is proposed. However, we do find that slopes of "15%-25%" and "25% or greater" are used as a threshold when it comes to the requirement of additional minimum lot size (see Table 5.03.C: Steep Slope Lot Standards) during the review/approval process for subdivisions. While this portion of our local ordinance may not be directly applied to this development request, this information may be used as a guide and/or a tool for quantifying a hardship and in helping to determine if a variance may be granted to avoid development on the portion of the lot with the greatest degree of slope.

VARIANCE REQUEST: The variance requested is to reduce the front setback required by Section 5-3-3 of the Zoning Code for R-15 Medium-Density Residential Zoning District from 30' to 8'.

CODE REFERENCES:

**Section 5-3 R-15 Medium-Density Residential Zoning District Classification
5-3-3 Dimensional Requirements:**

Minimum Lot Area in Square Feet:	15,000
Lot Area per Dwelling Unit in Square Feet: one additional dwelling unit in one building.	15,000 for the first; 7,500 ft ² for
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 5.03. STEEP SLOPES

TABLE 5.03.C: STEEP SLOPE LOT STANDARDS		
AVERAGE SLOPE OF LOT	MINIMUM LOT SIZE	MAXIMUM LOT COVERAGE BY IMPERVIOUS SURFACE[%]
15.1% - 25%	1.3 times the minimum lot size of the zoning district where located	25
More than 25%	1.5 times the minimum lot size of the zoning district where located	20

Section 10-8 Variances.

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

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

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

MOTION:

With regard to the request by Mr. Craig Payne for a variance from Section 5-3-3 of 22' on the required 30' front set back to construct a single family dwelling on Lot 2 of Laurel Spring Lane with a PIN of 9568168927, I move the Board to find that (a) strict enforcement of the regulations would result in practical difficulties or unnecessary hardship to the applicant, (b) the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, and (c) in the granting of the variance the public safety and welfare have been secured and substantial justice has been done. Accordingly, I further move the Board to grant the requested variance in accordance with and only to the extent represented in the application.

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

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

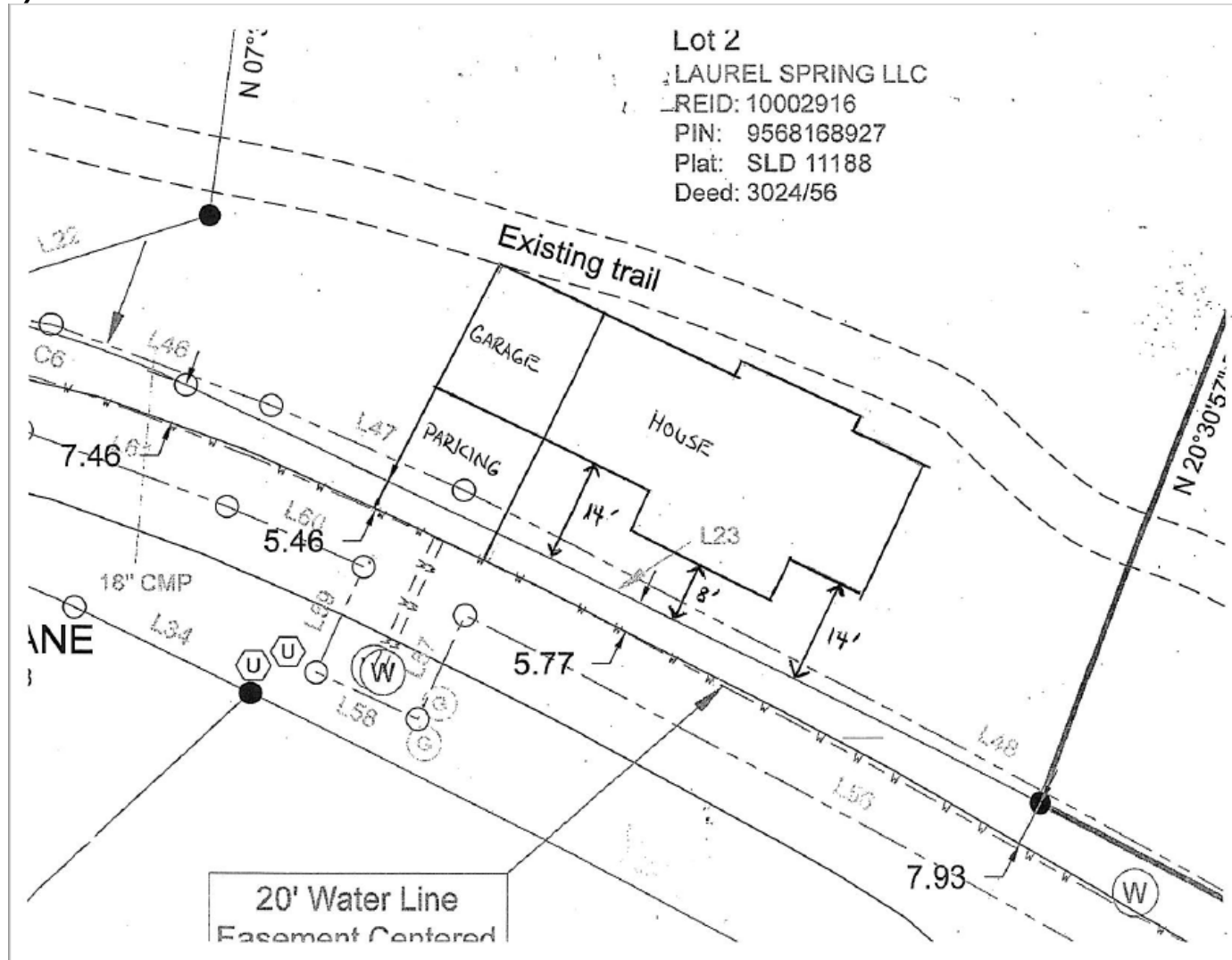
ATTACHMENTS:

- 1) Subject Property**
- 2) Site Plan**
- 3) Survey**
- 4) Variance Application**

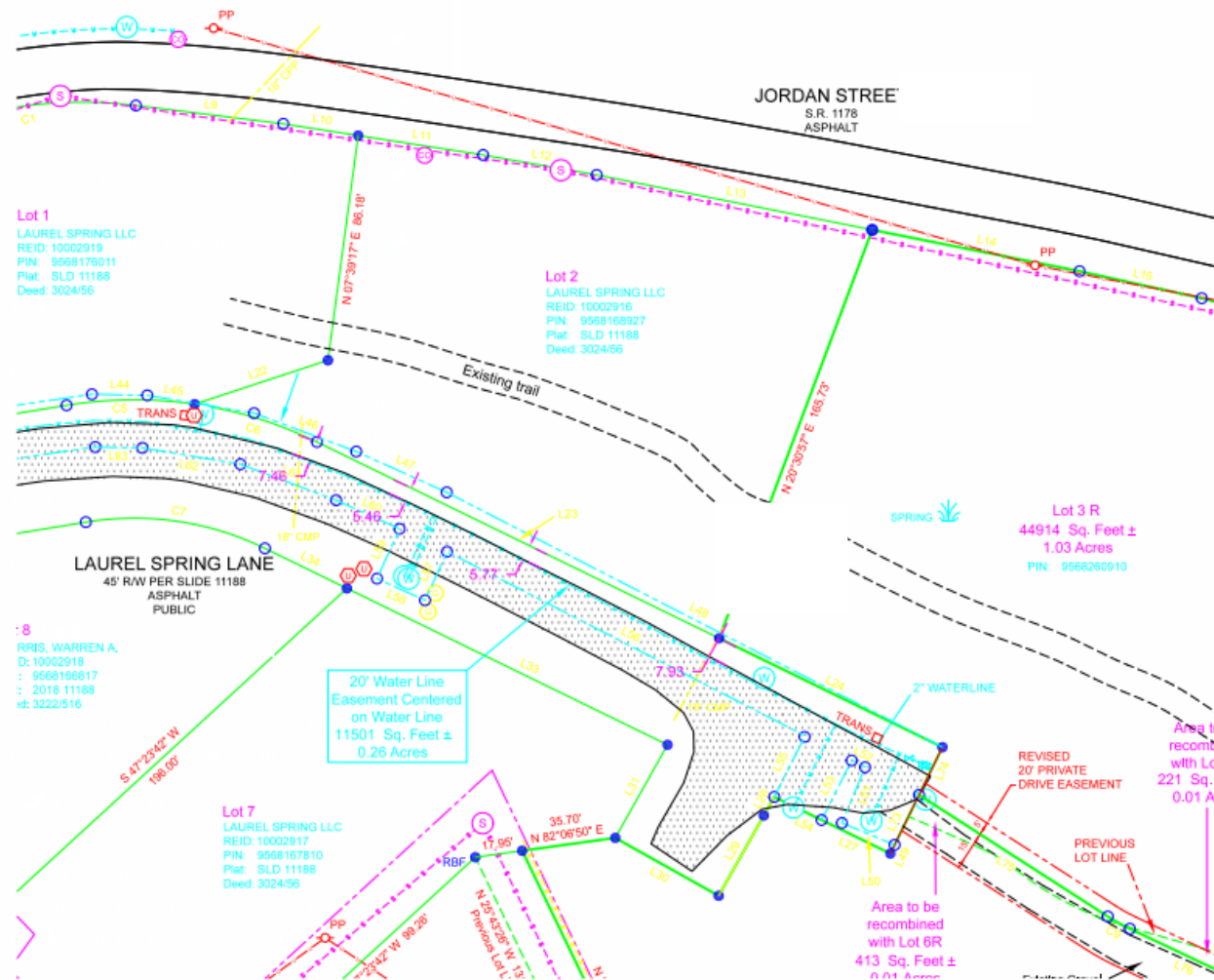
1) Subject Property



2) Site Plan



3) Survey



4) Variance Application – See Attached

dodocp signature verification: 38a4a2977-1094604



Print Form

CITY OF HENDERSONVILLE
DEVELOPMENT ASSISTANCE DEPARTMENT

100 N. King Street ~ Hendersonville, NC ~ 28792

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

www.cityofhendersonville.org

APPLICATION FOR A VARIANCE**Section 10-8 City Zoning Ordinance**

The following are required to constitute a complete application for a variance:

- ~ This form including the property owner(s) signature(s).
- ~ Application fee of \$60.00.
- ~ Site plan of property showing existing structures, natural features (i.e. streams, ponds, etc), proposed building or addition indicating distance from such to the centerline of street, side & rear lot lines, as applicable, and placement of septic system & drainage field with distances from structures, if applicable.
- ~ Copy of septic permit, if applicable.
- ~ Supporting documents, if applicable.
- ~ Photographs, optional.

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

Date 02-26-21

Application No.

Applicant Craig Payne

Address 12 Flycatcher Way #302 Arden, NC 28704

Phone 828-450-8504

Fax

Email cpaynerpro@yahoo.com

If different from above:

Property Owner: Name Laurel Spring, LLC

Address Lot 2 Laurel Spring Ln. Hendersonville, NC 28739

List 10 digit PIN or 7 digit PID # 9568168927

Current Zoning R-15

Directions to property from
Hendersonville5th Ave, to Jordan St, to Seneca Blvd, immediate left in to Laurel Spring. Lot
2nd on left.

Official Use:

DATE RECEIVED: _____ BY _____ FEE RECEIVED \$ _____

Variance Application
Rev. 7.2015

Page 1 of 2

dodcoo signature verification: 012 02/25/21 12:50 PM EST

TO THE ZONING BOARD OF ADJUSTMENT:

Site Plan

02/25/21 12:50 PM EST

02/25/21 12:50 PM EST

(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 Applicant" in a manner shown by the Site Plan.

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

Separate page attached W/ explanation for the variance request

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 three conclusion as a prerequisite to the issuance of a variance. 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 three required conclusions.

(1) Strict enforcement of the regulations would result in practical difficulties or unnecessary hardship to the applicant. The courts have developed three rules to determine whether in a particular situation "practical difficulties or unnecessary hardships" exist. State facts and arguments in support of each of the following"

(A) If he complies with the provisions of the ordinance, the property owner can secure no reasonable return from or make no reasonable use of his property. (It is not sufficient that failure to grant the variance simply makes property less valuable.)

(B) The hardship of which the applicant complains results from unique circumstances related to the applicant's land. (Note: Hardships suffered by the applicant common with his neighbors do not justify a variance. Also unique personal or family hardships are irrelevant since a variance, granted, runs with the land.)

(C) The hardship is not the result of the applicant's own actions.

(2) The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit. (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.)

(3) In the granting of the variance the public safety and welfare have been secured and substantial justice has been done. (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.)

Signature

Page 2 of 2

Variance Application

Dear Hendersonville Planning Board,

I appreciate you considering my variance request to reduce the front setback for Lot #2 on Laurel Springs Ln. I have included the survey with the proposed house placement based on the property lines. My request is based on natural features that restrict my options for building on this lot. There are two main natural features that create barriers to building a home on Lot #2. I am requesting that the setback be reduced to an average of 8 ft from the front property line along Laurel Springs Lane. Only about one quarter of the front of the home will be needing the 8 ft setback as the remaining 3/4s of the front would be 14 ft from the front property line. The front property line averages about 6ft back from Laurel Springs Lane as it relates to the home's placement.

- 1) The topography of lot #2 is steep. At about 1/3 back from Laurel Springs Ln there is an existing roadbed that dissects the lot running almost parallel to the lane above. From the front property line to the roadbed the slope is 25 to 35 degrees. The slope of the lower section, beyond the roadbed, is 40 to 60 degrees. The distance between the front property line and the roadbed below is about 39 ft. This allows only about 31 ft, after being setback 8 ft from the front property line, of virgin soil to construct on.
- 2) The 2nd natural barrier is the existing roadbed. I have been advised by foundation specialists, with several decades of experience working in WNC, that building on or beyond the roadbed will be problematic and require additional geotechnical evaluation, and engineering.

Sincerely,

Craig Payne

(828) 450-8504

City of Hendersonville
General Application
Owner Signature Addendum

Item A.

Application Information

Date of Application _____ Application Number _____
Name of Project _____ Phase # (if subdivision) _____
Parcel Identification Number(s) (PIN) _____

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

* ^ Printed Name JAMIN KILPATRICK LAUREL SPRING LLC
☐ Corporation ☒ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

☐ By signature below, I hereby acknowledge, as/on behalf of (circle one) the owner 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.)

Signature _____
Title _____ Email jamin.kilpatrick@gmail.com
Address of Property Owner 84 LAUREL SPRING LN, HENDERSONVILLE, NC 28739

* ^ Printed Name _____
☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

☐ By signature below, I hereby acknowledge, as/on behalf of (circle one) the owner 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.)

Signature _____
Title _____ Email _____
Address of Property Owner _____

* ^ Printed Name _____
☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

☐ By signature below, I hereby acknowledge, as/on behalf of (circle one) the owner 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.)

Signature _____
Title _____ Email _____
Address of Property Owner _____

* 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.