



CITY OF HENDERSONVILLE BOARD OF ADJUSTMENT

City Operations- Assembly Room | 305 Williams Street | Hendersonville NC 28792
Tuesday, June 08, 2021 – 1:30 PM

AGENDA

1. **CALL TO ORDER**

2. **APPROVAL OF AGENDA**

3. **APPROVAL OF MINUTES**

A. Minutes of May 11, 2021

4. **OLD BUSINESS**

A. Approval of the Decision - WCCA - 911 Tebeau Drive

5. **NEW BUSINESS**

A. Staff Report: Variance Request - Doyle Barnes - 1523 Druid Hills Ave

B. Staff Presentation regarding the application for a variance from Doyle Barnes - Tyler Henry, Code Enforcement Officer

C. Staff Report: Variance Request - Iris Diaz - 636 Midway St

D. Staff Presentation regarding the application for a variance from Iris Diaz - Tyler Henry, Code Enforcement Officer

6. **OTHER BUSINESS**

A. Adoption of Meeting Dates 2021-2022

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, May 12, 2021
1:30 p.m. in the City Operations Center

The Hendersonville Board of Adjustment held its regular monthly meeting on May 12, 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, Steve Smith, Lew Holloway, Community Development Director, Matt Manley, Planning Manager, Angela Beeker, City Attorney, Tyler Henry, Code Enforcement Officer and Secretary to the Board Terri Swann.

Absent: Barbara McCoy, Candi Guffey, Kathy Watkins

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

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

Approval of the Minutes of the April 13, 2021 meeting. A motion was made by Mr. Freeman and seconded by Mr. Woolsey to approve the minutes as written. The motion passed unanimously.

Approval of the Decision for a variance from Craig Payne (File No. V-04-13-01), Lot 2 Laurel Spring Lane. A motion was made by Mr. Mowell to accept the decision as written. Mr. Woolsey seconded the motion which passed unanimously.

Approval to Alter a Nonconforming Use – WCCA- David White – 911 Tebeau Drive

Chair swore in all persons to give testimony. Those sworn in were Tyler Henry, Code Enforcement Officer, Linda Carter, Margot Nelson and Will Buie, WGLA.

Lew Holloway, Community Development Director stated there are seven members of the Board present and it will take an affirmative vote of all seven to approve the application. The applicant can request to postpone their application to the next meeting if they would like to have more than seven members present for the application to be heard. Mr. Buie conferred with the applicants and stated he would like to reserve the right to table the item, but he would like to proceed today with the hearing.

Chair opened the public hearing.

Application for a request seeking approval to alter a nonconforming use from David White of Western Carolina Community Action, Inc. (WCCA).

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

Mr. Henry stated this is not a variance request. It is a request to alter a nonconforming use for the property located at 911 Tebeau Drive (PIN 9569-40-9564). The current use is a childcare center and the property is zoned R-15, Medium Density Residential.

Mr. Henry stated the following concerning the subject property:

- The size of Parcel 1 is approximately 25,264 sq. ft.
- Parcel 2 is approximately 43,560 sq. ft.
- The primary building located on Parcel 1 is calculated to have 3,424 sq. ft. of gross floor area.
- The building of Parcel 2 has approximately 4,000 sq. ft. of gross leasable area.
- WCCA operates a childcare center on Parcel 1 and Parcel 2. Childcare center was previously but is not currently a permitted use in the R-15 Zoning District. The childcare center at the subject property is an existing, legal nonconforming use.
- The applicant is proposing to remove the cottage located on Parcel 1, which would reduce the total square footage of the structure by approximately 884 sq. ft.
- The applicant proposes to expand the primary structure on Parcel 1 in two places, adding approximately 291 sq. ft. to the total structure.
- At this time, there are no proposed changes or alterations to the structure primarily located on Parcel 2.

Mr. Henry stated the applicant is proposing to reconfigure the handicap parking and drop-off area. The applicant is also proposing to improve the gravel lot that currently exists on the lower portion of Parcel 1.

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.

Mr. Smith asked if the cottage shown in exhibit 3 was connected to the primary building. Mr. Henry stated that is a question for the applicant.

Will Buie with WGLA, 724 5th Avenue West stated his name for the record. He is the engineer working on the project. He is attending with Linda Carter and Margot Nelson both are with WWCA.

Mr. Buie stated to answer Mr. Smith's question, the cottage is connected to the primary building by a set of stairs. This will be closed off and a small expansion will be added.

Mr. Buie asked Ms. Carter to address the Board.

Linda Carter, Children's Services Director with WCCA stated her name and title for the record. Ms. Carter stated they are the largest branch of children's services in the area. They serve over 1,000 children a year. This is a free Head Start program for children ages 0-5. They have facilities in Henderson, Transylvania, Polk and Rutherford Counties.

Mr. Buie gave a presentation to the Board. He stated WCCA has been serving the community for over 50 years. Children's Services is a key program with WCCA. The facility on Tebeau Street will provide early Head-Start and Head Start and also NC Pre-K services for families in Henderson County.

Mr. Buie stated the facility has operated as a childcare facility since construction in the 1950's. WCCA purchased the property in 2020 with the intention of improving the facility to provide needed childcare for the community. WCCA has secured grant funding that will help to modernize and improve the Tebeau Street facility providing a safe and secure environment for children.

Mr. Buie showed the 2019 aerial of the facility. He showed the 2010 aerial of the facility and he showed the 2001 aerial of the facility. All show both buildings on the property. Mr. Buie showed the 1984 aerial of the facility which shows that the second building was constructed after 1984 but before 2001.

Mr. Buie showed the proposed site plan and stated the existing cottage will be removed. He pointed out the proposed building expansion area. He stated the existing drop-off area will be reconfigured and the existing gravel parking area will be improved. There will be two small expansions, one to the northern side and one to the western side. They will add ADA bathrooms and other safety measures. He showed the Board a photo of the proposed facility improvements. The expansion will have less square footage than what is there today.

Mr. Buie stated in summary the proposed expansion or enlargement will be de minimis and would in fact be less building square footage than exists today. The intensity of the non-conforming use will be less on the surrounding neighborhood by removing existing structures in the setback and serving fewer children than the previous operator. The facility will be more compatible with the neighborhood with the removal of existing buildings and proposed expansion will be limited to current area of operation. The enlargement of the facility will support the public health, safety and welfare of the community by providing a vitally needed service.

Margot Nelson with WCCA stated the early Head Start program does provide much needed services for the community. The need for quality childcare is the greatest need in this community. They will have five classrooms and provide infant care. This is no cost to the parents that qualify. WCCA does important work for the community. They focus on school readiness and they also help the parents whether it is for wellness or to help with obtaining their GED and also with transportation. The Henderson County Public School system believes a child has a much greater chance of success when the child goes through the WCCA Head Start program.

Chair asked if there were any further questions for the applicant.

Mr. Woolsey asked about the building in exhibit 2 and if it would remain. Mr. Buie stated the cottage would be removed but the building in exhibit 2 would remain.

Mr. Mowell asked about the dotted line shown on the site plan. Mr. Buie explained that was a sidewalk and that right-of-way had been closed now.

Some discussion was made concerning the gravel lot. Mr. Buie stated improvements will be made to that lot.

Ms. Collina asked about the direction of the vehicles being altered and how the traffic will flow afterward. Mr. Buie stated the current traffic pattern will reverse and this will make access safer and will improve the drop-off area. Ms. Nelson stated they will do everything they can to make the arrival and departure easy for both the parents and the children.

Mr. Henry stated there is an error in the motion and he made the correction to the Board.

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 made the following motion: With regard to the request by Mr. David White for authorization to alter a structure that houses a nonconforming use under Section 6-2-1 (b) of the Zoning Ordinance as depicted in the site plan, I move the Board to find that 1) The proposed enlargement or extension shall be de minimis in relation to the existing building or structure. 2) The proposed enlargement or extension shall not increase the intensity of the nonconforming use, which to say, it will not result in an increase in dwelling units for residential use nor in gross floor area for a nonresidential use. 3) The proposed enlargement or extension is designed so that it will not render the use of the property any less compatible than it is in its existing circumstances and, 4) The authorization of such proposed enlargement or extension is not otherwise contrary to the public health, safety or welfare. Accordingly, I further move the Board to grant the requested authorization to alter a nonconforming use in accordance with and only to the extent represented in the application. Mr. Woolsey seconded the motion.

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

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

The vote was unanimous. Motion approved.

Variance– InterFaith Assistance Ministry– 119 Jack Street

Chair stated she would need to recuse herself as she is on the Board for InterFaith Assistance Ministry and she cannot vote on their variance application. Only six Board members were left in attendance and therefore the item for the variance for InterFaith Assistance Ministry had to be postponed for lack of a quorum. This application will be heard at the next regular monthly meeting in June.

Meeting adjourned at 2:06 p.m.

Melinda Lowrance, Chair

Terri Swann, Secretary

May 23, 2021

City of Hendersonville...Application for a Variance

RE: 1523 Druid Hills Avenue

Attached are the original Application (dated 4/20/21) and an Addendum regarding a variance request for 1523 Druid Hills Avenue. This request is scheduled to be reviewed by the Board of Adjustment at a meeting on June 8, 2021 at 1:30 p.m.

Thank You....Doyle Barnes, Homeowner

ADDENDUM TO REQUEST FOR VARIANCE "PARAGRAPH (a)" (said request dated 04/20/21)

RE: 1523 Druid Hills Avenue, Hendersonville, NC 28791

We are submitting this addendum to our original request for variance, dated 04/20/21, regarding the enlargement of our existing backyard patio area. A copy of the original application, addendum and updated site plan is attached.

We wish to enlarge the patio by simply extending the existing patio/deck instead of widening it to the fence line, as was requested in our original document dated April 20, 2021.

We are asking for a variance, therefore, that will allow our patio/deck to be five feet (5 ft.) from the property line (in accordance with the existing patio as well as being in line with the edge of our house). See attached site map.

All other requests, details and comments in our original document remain the same.

CITY OF HENDERSONVILLE
STATE OF NORTH CAROLINA
APPLICATION FOR A VARIANCE

April 20, 2021
Month Day Year

Applicant: Doyle L. Kathleen Barnes Phone: 818-943-6476
Address: 1523 Druid Hills Avenue
Property Owner's Name (if different from above): _____
Property Owner's Address (if different from above): _____
Parcel ID Number: 9569-42-9977 Zoning District: R-10

Directions to property from Hendersonville: Asheville Hwy. north to Kimberly. Left on Kimberly to dead end.

TO THE ZONING BOARD OF ADJUSTMENT:

I, Doyle Barnes (owner/agent), hereby petition the Zoning Board of Adjustment for a VARIANCE from the literal provisions of the Zoning Ordinance of the City of Hendersonville because I am prohibited from using the parcel of land described in the form "Zoning Permit Application" in a manner shown by the site plan. I request a variance from the following provisions of the ordinance (cite section numbers): _____

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE:

The Zoning Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under the state enabling act the Board is required to reach four conclusions as a prerequisite to the issuance of a variance: (a) unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property, (b) the variance is in harmony with the general purpose and intent of the ordinance, preserves its spirit, public safety is secured, and substantial justice is achieved, (c) the hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or general public, may not be the basis for granting a variance, (d) the hardship did not result from actions taken by the applicant or owner of the property. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. In the spaces provided below, indicate the facts that you intend to show and the arguments that you intend to make to convince the Board that it can properly reach these four required conclusions:

- (a) UNNECESSARY HARDSHIP WOULD RESULT FROM THE STRICT APPLICATION OF THIS ORDINANCE. State facts and arguments to show that, unnecessary hardship would result from the strict application of the ordinance. (it shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property) See Attached

- (b) THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ORDINANCE, PRESERVES ITS SPIRIT, PUBLIC SAFETY IS SECURED, AND SUBSTANTIAL JUSTICE IS ACHIEVED. (State facts and arguments; to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.) See Attached

- (c) THE HARDSHIP RESULTS FROM CONDITIONS THAT ARE PECULIAR TO THE PROPERTY, SUCH AS LOCATION, SIZE OR TOPOGRAPHY. HARDSHIPS RESULTING FROM PERSONAL CIRCUMSTANCES, AS WELL AS HARDSHIPS RESULTING FROM CONDITIONS THAT ARE COMMON TO THE NEIGHBORHOOD OR THE GENERAL PUBLIC, MAY NOT BE THE BASIS FOR GRANTING A VARIANCE. (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood.) See Attached

- (d) THE HARDSHIP DID NOT RESULT FROM ACTIONS TAKEN BY THE APPLICANT OR THE PROPERTY OWNER. THE ACT OF PURCHASING PROPERTY WITH KNOWLEDGE THAT CIRCUMSTANCES EXIST THAT MAY JUSTIFY THE GRANTING OF A VARIANCE SHALL NOT BE REGARDED AS A SELF-CREATED HARDSHIP. (State any facts pertaining to the hardship that is not the result of the applicant's own actions.) See Attached

(Please continue remarks on separate page if necessary)

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

(a) Our understanding is that construction must be ten (10) feet from the property line. In this case, the house (c. 1926) sits approx. twenty-nine (29) inches from the property line, with the roofline at approx. two (2) feet from the property line. The existing patio/deck is in line with the house. Our desire is to enlarge and extend the existing patio/deck to the existing privacy fence, which is just within the property line.

If we are required to be ten (10) feet from the property line, the edge and screened wall of the deck would encroach on the existing outside door that is on the back of the house, interfering with a clear, safe exit from the house. The 10x24 foot strip that would be created between the deck and the privacy fence would be rendered useless as part of an already small back yard space.

In addition, there is not an existing exit from the back yard to that side of our home. As part of our planned deck enlargement and as an added safety feature, we will place a gate between the house and the existing privacy fence, which will require two outside steps due to a sloped lot. The steps would then be in line with the fence which is located just within the property line. This added access into and out of the back of our property, is, in our opinion, a very important safety feature.

(b) As residents of an Historic District, we are cognizant of and dedicated to the preservation of the neighborhood, its beauty, its history and its property values. This deck addition will be built using materials that are commensurate with the age and style of our home. The design is one that will add beauty and charm to an already distinctive home. In addition we believe that the enlargement of the patio/deck area will add significant value to this property, as it makes optimum use of a rather compact space. All of these factors will result in enhancing the ambience and authentic feel of our very special Historic neighborhood of Druid Hills.

(c) This has been addressed within (a) and (b). I will state that since the patio/deck in question is on the back of our house, and since we are within extremely close proximity of our neighbors (whose house butts up to the

property line) on the side of our house where the patio/deck will be constructed, the likelihood of this construction distracting from the neighborhood is nonexistent, as it will not be seen from the street. As for what the neighbors (side and back) will see; their view will be of a well planned and constructed patio/deck that conforms with our home and, therefore, with the neighborhood.

- (d) The hardship results from the house being situated only twenty-nine (29) inches from the property line when it was built in c. 1926. This makes any adjustments, such as the patio/deck addition that we are proposing, very difficult due to today's planning ordinances; hence the request for a variance.

[Signature]
Signature of Applicant

4/20/21
Date

[Signature]
Signature of Property Owner

4/20/21
Date

IN THE EVENT THAT ANY DISCREPANCIES EXIST BETWEEN THE CRITERIA OUTLINED ON THIS FORM AND THE ZONING ORDINANCE OF THE CITY OF HENDERSONVILLE, THE ORDINANCE SHALL PREVAIL.

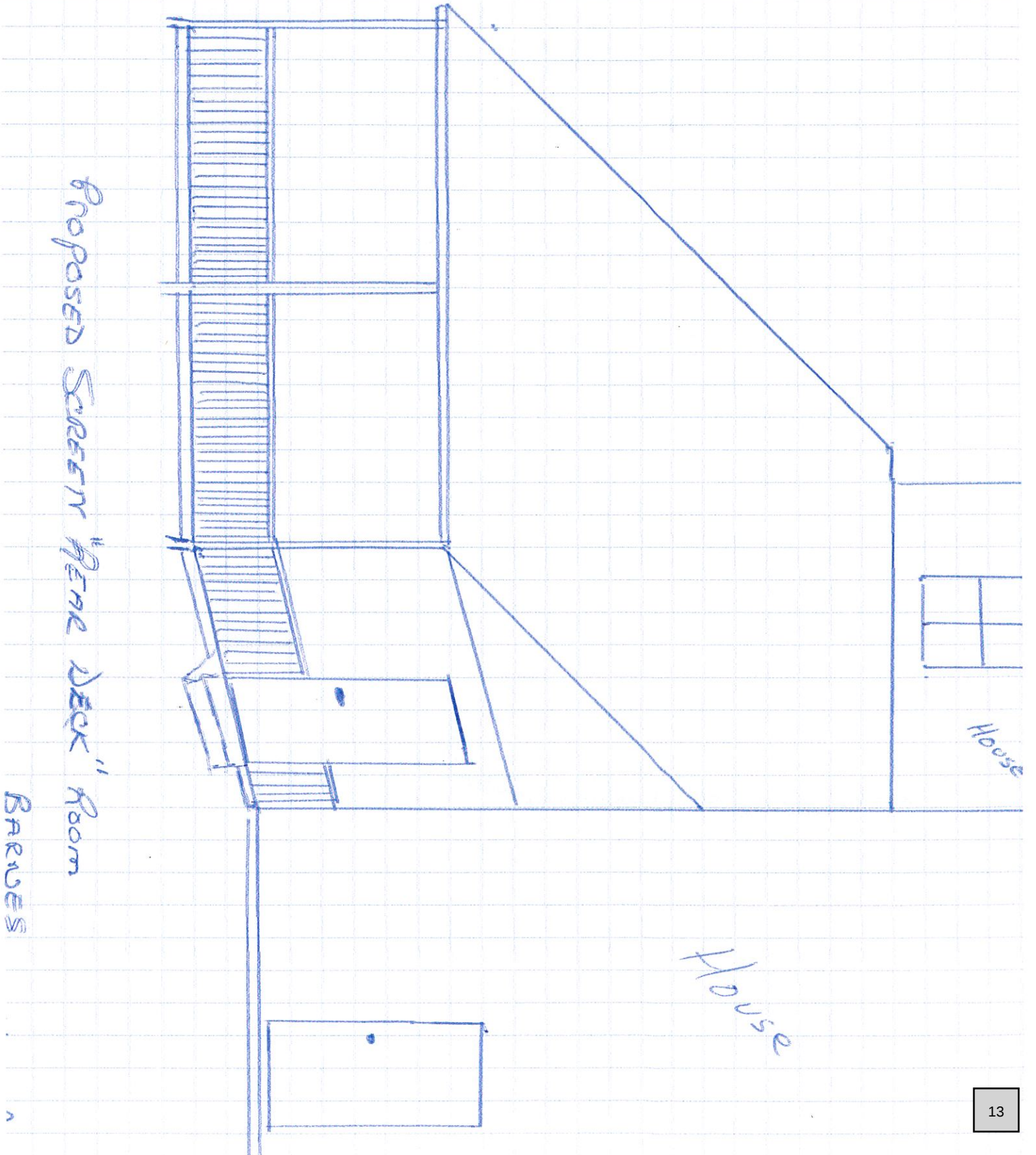
Received By

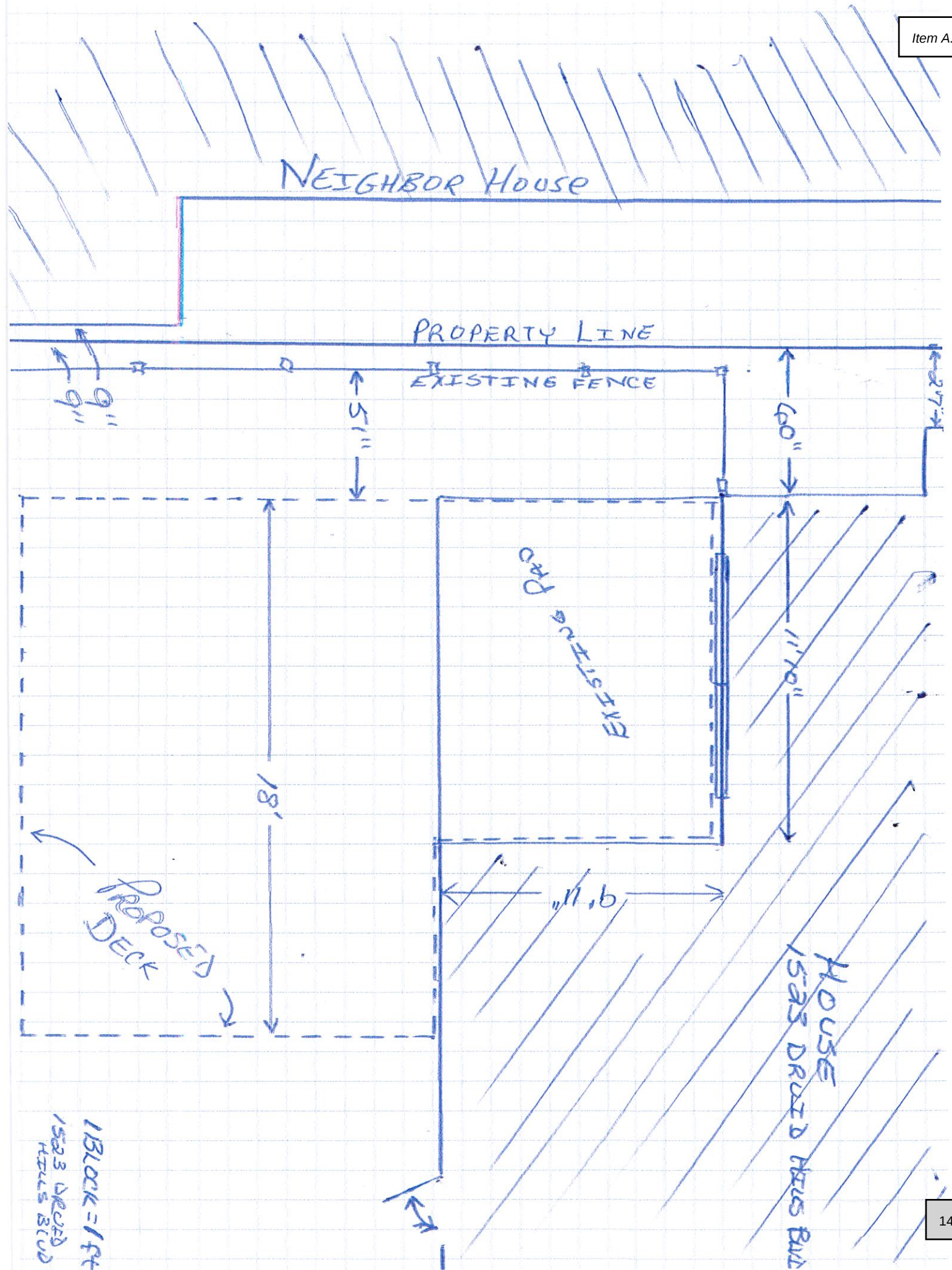
Date

Fee Paid

Date Received

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







Report	Tax Bill	Real Property	Slope Report	Find Adjoining Parcels	Permits	LOMR
Listed To:	BARNES, DOYLE R TRUSTEE;BARNES, KATHLEEN A TRUSTEE;THE BARNES FAMILY TRUST					
Physical Address:	1523 DRUID HILLS AVE					
REID:	101378					
PIN:	9569429977					
Plat:	<u>SLD 10194</u> (http://henderson.courtcompsys.com/hendersonncnw/application.asp?cmd=image_link&image_link_book=2016&image_link_page=10194&image_link_booktype=Record&tif2pdf=true)					
Deed:	<u>3445/351</u> (http://henderson.courtcompsys.com/hendersonncnw/application.asp?cmd=image_link&image_link_book=3445&image_link_page=351&image_link_booktype=Record&tif2pdf=true)					





MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: June 8, 2021

RE: Variance Application – Doyle Barnes – 1523 Druid Hills Ave.

SUMMARY: The Community Development Department has received an application from Doyle Barnes for a variance from Section 5-4-3: Dimensional Requirements. The subject property is currently zoned R-10, Medium Density Residential. The lot is approximately 7,405 Sq Ft in size. The specific variance requested is for the following:

	<u>Required</u>	<u>Proposed</u>
Side setback:	10'	5'

PROPOSED FINDINGS OF FACT:

- The subject property possesses a PIN of 9569429977 and is zoned as R-10, Medium Density Residential.
- The lot size is approximately 7,405 Sq Ft. This is below the required minimum lot size for the R-10 zoning district (10,000 Sq Ft).
- Based on Henderson County building records, the dwelling located on the property was built in 1930.
- Zoning regulations for the City that would have established setback requirements and minimum lot sizes went into effect on May 10, 1945.
- The dwelling currently is affixed to the property within the required 10' side setback for the R-10 zoning district.
- The applicant is proposing to build an addition to the dwelling unit that will add approximately 24' in length and 18' in width to the exterior walls in the back, right corner of the dwelling unit.

VARIANCE REQUEST:

The variance requested is to reduce the side setback required by Section 5-4-3 of the Zoning Code for R-10 Medium-Density Residential Zoning District from 10' to 5'.

CODE REFERENCES.

Section 5-4 R-10 Medium-Density Residential Zoning District Classification 5-4-3 Dimensional Requirements:

Minimum Lot Area in Square Feet:	10,000
Lot Area per Dwelling Unit in Square Feet:	1,000 for the first; 5,000 ft ² for one additional dwelling unit in one building.
Minimum Lot Width at Building Line in Feet:	75
Minimum Yard Requirements in Feet:	
Principal Structure	
Front:	25
Side:	10
Rear:	10
Accessory Structures	
Front:	25
Side:	5
Rear:	5
Maximum Height in Feet:	35

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. Doyle Barnes for a variance from Section 5-4-3 of 5' on the required 10' side set back to construct an addition in accordance with the plan submitted on 1523 Druid Hills Ave with a PIN of 9569429977, 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:

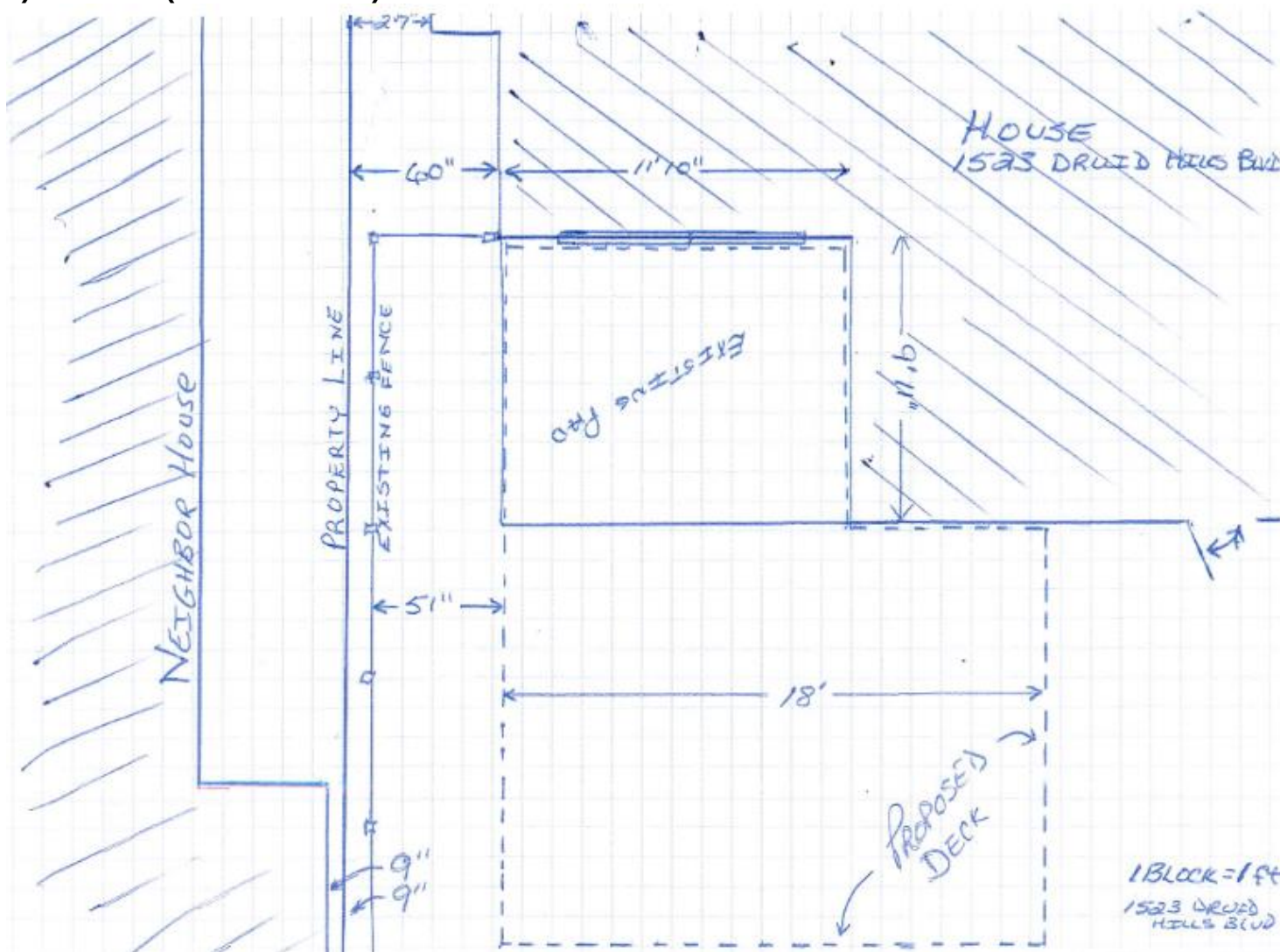
- 1) Subject Property**
- 2) Site Plan (measurements)**
- 3) Site Plan (exterior)**
- 4) Variance Application**

1) Subject Property

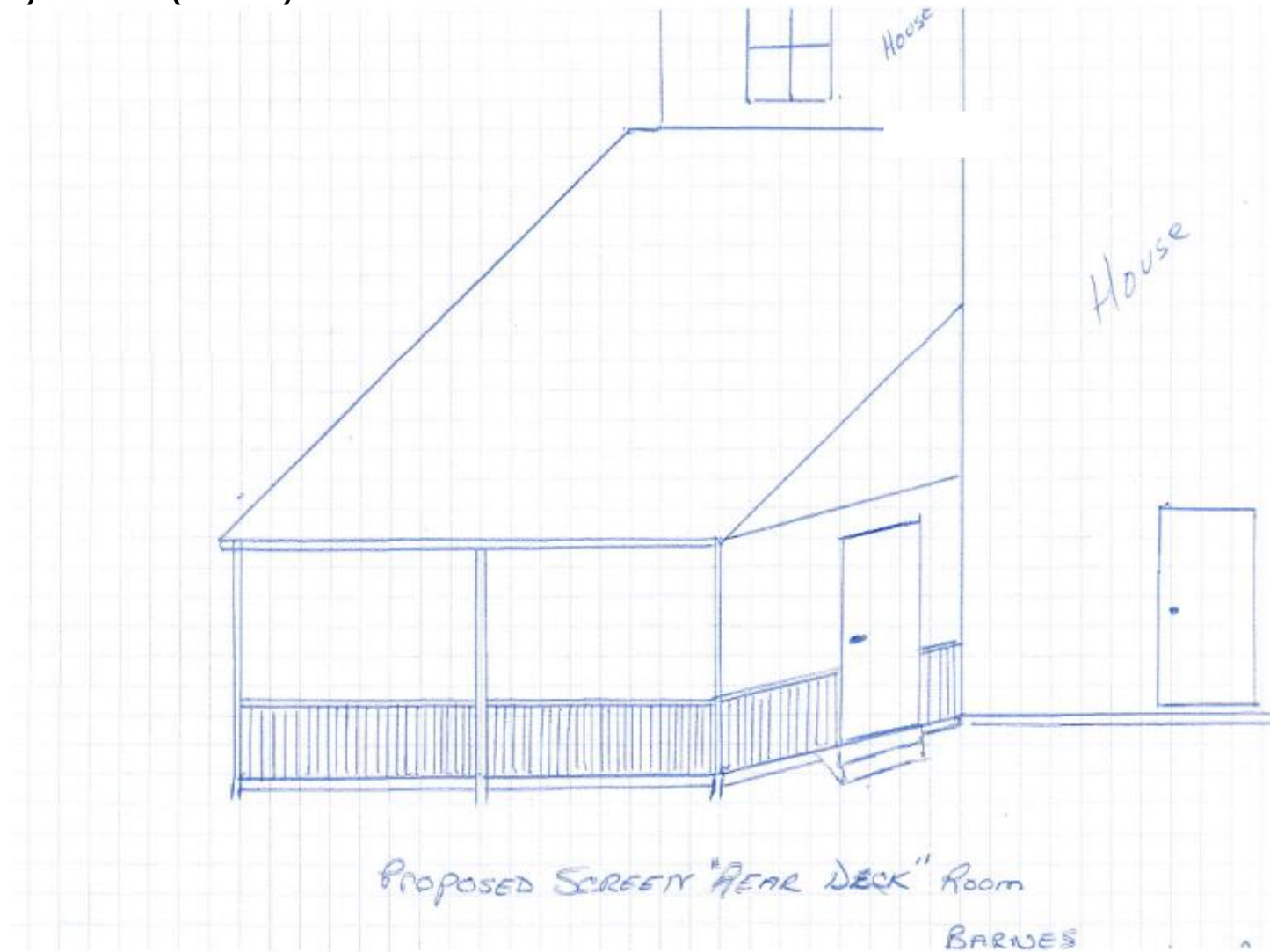


The green section
highlighting the addition
is not to scale.*

2) Site Plan (measurements)



3) Site Plan (exterior)



4) Variance Application – See Attached

Application No. _____

HENDERSON COUNTY VARIANCE APPLICATION FORM

GENERAL INFORMATION

Date of Application: 5-5-2021
 Previously Submitted (Circle One): Yes ☐ No ☒
 Date of Pre-Application Conference: _____
 Site Plan Attached (Circle One): ☒ Yes ☐ No

PARCEL INFORMATION

Property Address 636 Midway St. Hendersonville, N.C. 28739
 PIN: 956 818 9214 Deed Book/Page: _____ Acreage: 0.38
 Zoning District: R-15 Fire District: Valley Hill Fire Watershed: _____ Floodplain: _____
 Driving Directions: 5th Ave West, 2 Blocks pass Blythe, Right at Midway St #636

REASON FOR VARIANCE Allow to variance of east side setback to extend existing pantry & closet
 FRONT SETBACK (feet/foot) 10 FT
 SIDE SETBACK (feet/foot) 10 FT
 REAR SETBACK (feet/foot) 10 FT

PROPERTY OWNER CONTACT INFORMATION:

Name: IRIS DIAZ Phone: 321-474-2304
 Address: 636 Midway St City, State, and Zip: Hendersonville, N.C. 28739

Applicant:

Name: IRIS DIAZ Phone: 321-474-2304
 Address: 636 Midway St City, State, and Zip: Hendersonville, N.C. 28739

Agent:

Name: _____ Phone: _____
 Address: _____ City, State, and Zip: _____

Agent Form (Circle One): Yes ☐ No ☒**Plan Preparer:**

Name: IRIS DIAZ Phone: 321-474-2304
 Address: 636 Midway St City, State, and Zip: Hendersonville, N.C. 28739

SITE PLAN REQUIREMENTS

Site plan of property showing existing structures, natural features (i.e. streams, ponds, etc.) proposed building or addition and indicating distance from such to the edge of right-of-way (centerline for variance request in the R-40, WR, or SW districts) and to the side and rear lot lines, as applicable. It is required that the site be staked or flagged. The Zoning Administrator will take photos of the site and the staked or flagged area. Show placement of well or septic system and drain field if applicable and distances from structures.

NOTE: Site plan not to exceed 11 X 17 size. Anything submitted larger than 11 X 17, the applicant must provide 12 copies with the application form.

STANDARDS FOR REVIEW

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 the following conclusions as a prerequisite to the issuance of a variance. State facts and argument in support of each of the following:

SECTIONS A & D MUST BE ANSWERED BY APPLICANT OR AGENT

A. There are practical difficulties or unnecessary hardships in carrying out the strict letter of this Chapter, as demonstrated by:

1. The fact that, if the applicant complies with the literal terms of this Chapter, he/she cannot secure a reasonable return from, or make a reasonable use of, the property. (It is not sufficient that failure to grant the variance simply make the property less valuable.)

2. 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. Unique personal or family hardships are irrelevant since a variance, if granted, runs with the land.)

- ✓ 3. The hardship is not the result of the applicant's own action.

This home was built in 1940, pre 1945 variance setback guidelines

B. The variance is in harmony with the general purpose and intent of the Land Development Code and will preserve 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.)

C. The variance will secure the public safety and welfare and will do substantial justice. (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.)

SECTIONS A & D MUST BE ANSWERED BY APPLICANT OR AGENT

- D. The variance shall not be based on the existence of a nonconforming use of neighboring land or structures in the same district, or permitted nonconforming uses in other districts, and shall in no way constitute a reason for the requested variance.

NA I am not asking for a use variance.

I certify that the information shown above is true and accurate and is in conformance with the Land Development regulations of Henderson County.

Lris. Diaz

Print Applicant (Owner or Agent)

Lris. Diaz

Signature Applicant (Owner or Agent)

5-5-2021

Date

Fee: \$

75

Paid:

X

County Use Only

#2472

Method: check

Received by: LMH

Permit#: _____

HENDERSON COUNTY

CODE ENFORCEMENT SERVICES APPOINTMENT OF AGENT FORM (OPTIONAL)

I, _____ owner of property located on _____,
 (Name) (Street Address)
 recorded in _____ and having a parcel identification number of _____,
 (Deed Book/Page) (PIN)

located in Henderson County, North Carolina, do hereby appoint _____,
 (Agent's Name)

_____, to represent me in an application to the Code Enforcement Services
 (Agent's phone number)

Department and authorize him/her to act as my agent in all matters, formal and informal except as stated herein, and authorize him/her to receive all official correspondence.

I however understand that as the listed property owner, I must sign all affidavits and statements required by any applicable ordinance.

 (Property Owner)

 (Date)

MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: June 8, 2021

RE: Variance Application – Iris Diaz – 636 Midway St.

SUMMARY: The Community Development Department has received an application from Iris Diaz for a variance from Section 5-3-3: Dimensional Requirements. The subject property is currently zoned R-15, Medium Density Residential. The lot is approximately 16,553 Sq Ft in size. The specific variance requested is for the following:

	<u>Required</u>	<u>Proposed</u>
Side setback:	10'	0'

PROPOSED FINDINGS OF FACT:

- The subject property possesses a PIN of 9568189214 and is zoned as R-15, Medium Density Residential.
- The lot size is approximately 16,553 Sq Ft. This is well within the required minimum lot size for the R-15 zoning district (15,000 Sq Ft).
- Based on Henderson County building records, the dwelling located on the property was built in 1940.
- Zoning regulations for the City that would have established setback requirements went into effect on May 10, 1945.
- The dwelling currently is affixed to the property within the required 10' side setback for the R-15 zoning district.
- The applicant is proposing to build an addition to the dwelling unit that will add 9' 11" in length and 8' 5" in width to the exterior walls in the back, right corner of the dwelling unit.

VARIANCE REQUEST:

The variance requested is to reduce the side setback required by Section 5-3-3 of the Zoning Code for R-15 Medium-Density Residential Zoning District from 10' to 0'.

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 ft2 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 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 Ms. Iris Diaz for a variance from Section 5-3-3 of 10' on the required 10' side set back to construct an addition in accordance with the plan submitted on 636 Midway Street with a PIN of 9568189214, 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.)

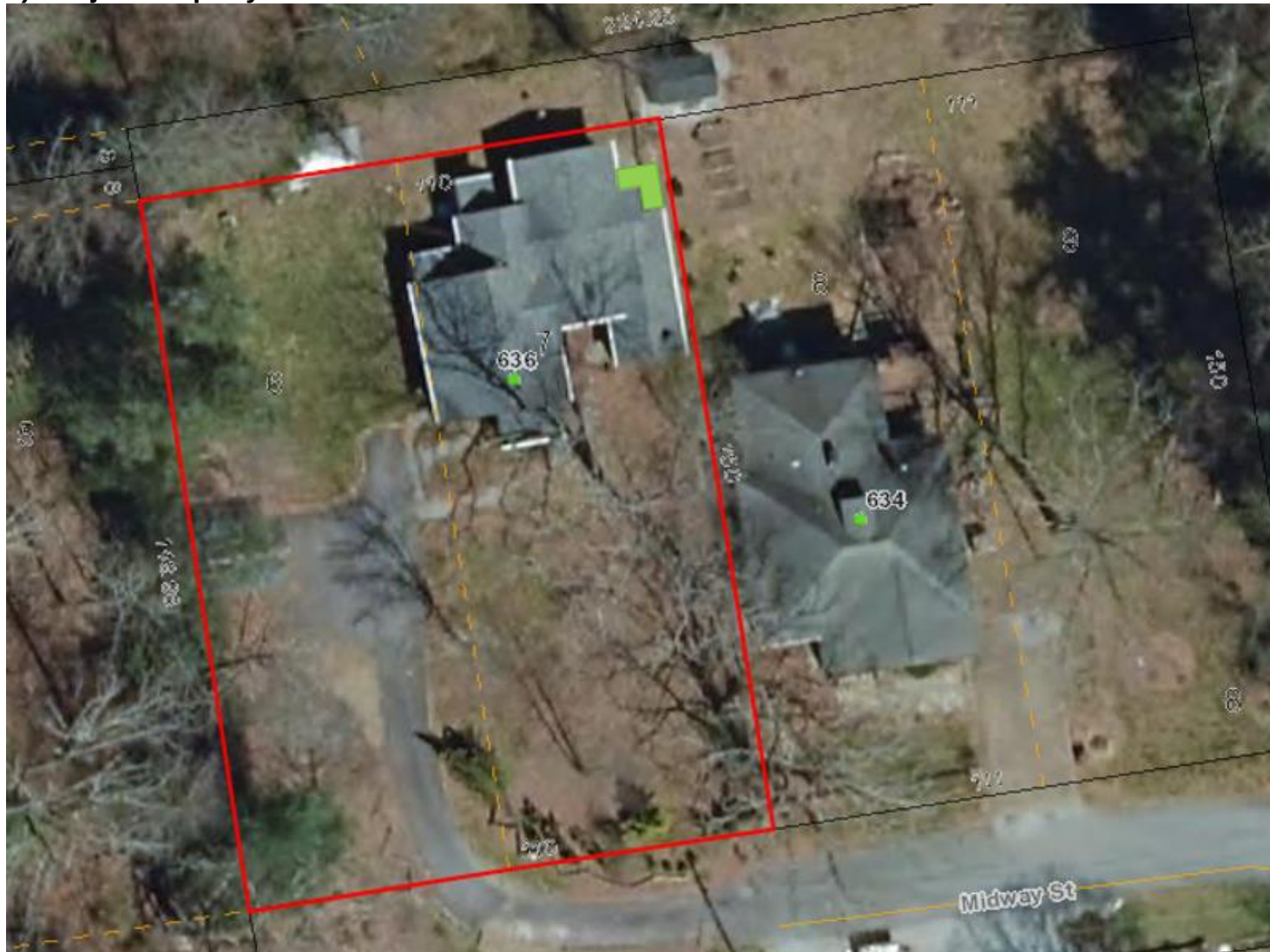
Remember: Staff suggest the motion be made in the affirmative regardless of whether it is your intention to support or oppose the issuance of a variance. This does not mean that staff is recommending approval of the application. RATHER, we believe it is better procedurally to approach it this way. Once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

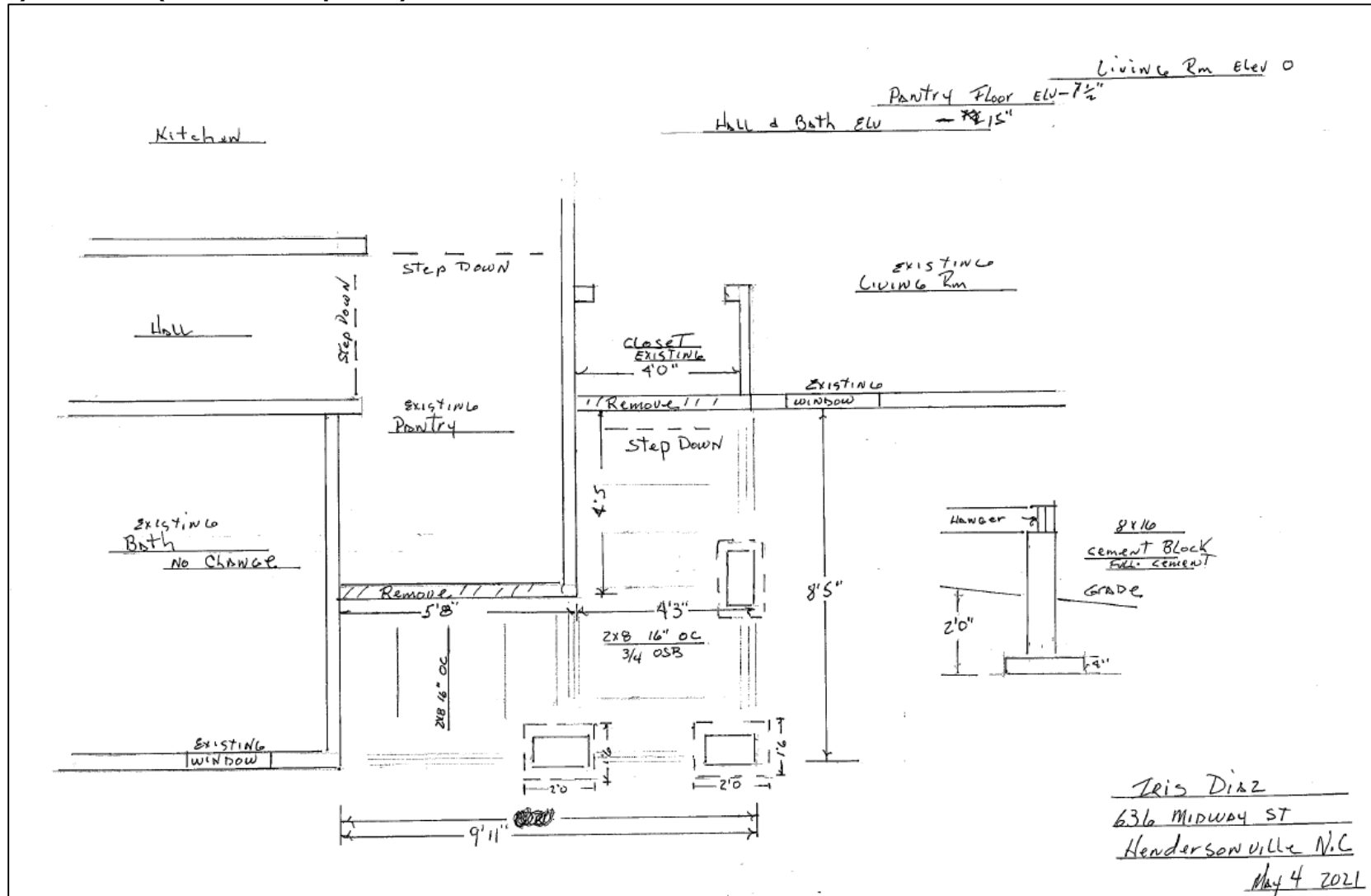
ATTACHMENTS:

- 1) Subject Property**
- 2) Site Plan (exterior and pillars)**
- 3) Site Plan (exterior and interior layout)**
- 4) Variance Application**

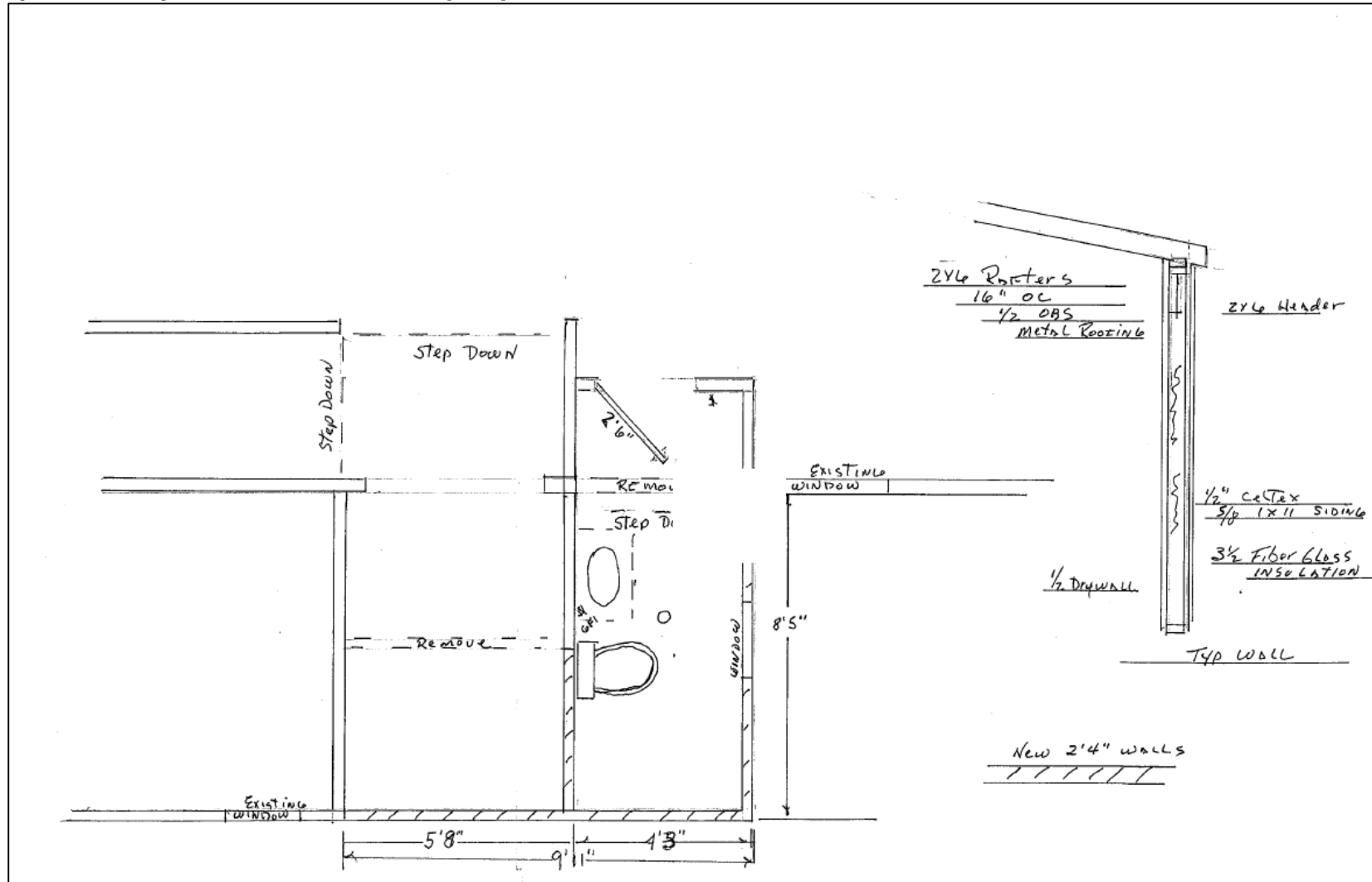
1) Subject Property



The green section highlighting the addition is not to scale.*



3) Site Plan (exterior and interior layout)



4) Variance Application – See Attached

NOTICE

City of Hendersonville Board of Adjustment

305 Williams St. Operations Center, NC 28792

BOARD OF ADJUSTMENT **ANNUAL SCHEDULE OF REGULAR MEETINGS**

Regular Meetings of the City of Hendersonville Board of Adjustment are held **on the Second Tuesday** beginning at **1:30 p.m.** in the City Operations Assembly Room located at 305 Williams St., Hendersonville NC. The following regular meetings have been scheduled for 2021-2022:

June 8, 2021
July 13, 2021
August 10, 2021
September 14, 2021
October 12, 2021
November 9, 2021
December 14, 2021

January 11, 2022
February 8, 2022
March 8, 2022
April 12, 2022
May 10, 2022
June 14, 2022
July 12, 2022
August 9, 2022
September 13, 2022
October 11, 2022
November 8, 2022
December 13, 2022

Melinda Lowrance
Chair

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 a particular accommodation for this meeting please contact the City Clerk no later than 24 hours prior to the meeting at 697-3005.

Adopted: _____ Posted 08/21/2021
<https://www.hendersonvillenc.gov>

