



## CITY OF HENDERSONVILLE BOARD OF ADJUSTMENT

City Hall - Council Chambers | 160 6th Avenue East | Hendersonville NC 28792  
Tuesday, August 13, 2024 – 1:30 PM

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### AGENDA

1. **CALL TO ORDER**
2. **APPROVAL OF AGENDA**
3. **APPROVAL OF MINUTES**
  - A. Minutes of July 9, 2024
4. **OLD BUSINESS**
5. **NEW BUSINESS**
  - A. 709 Florida Avenue – Variance (B24-040-VAR) – Sam Hayes / *Planner II*
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, July 9, 2024  
1:30 p.m. in the Council Chambers

The Hendersonville Board of Adjustment held their regular meeting on July 9, 2024, at 1:30 p.m. in the Council Chambers in City Hall, 160 6<sup>th</sup> Avenue East, Hendersonville, North Carolina. Those present were: Ernest Mowell, Vice-Chair, Charles Webb, Reid Barwick, Libby Collina, Laura Flores, Sam Hayes, Planner II, Tyler Morrow, Current Planning Manager, Daniel Heyman, Staff Attorney.

Absent: Kathy Watkins, Mark Russell, Steve Saalfeld, Chauncey Whiting, Lynette Oliver

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

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

Approval of the minutes of the December 5, 2023 meeting. A motion was made by Mr. Barwick to approve the minutes as written. The motion was seconded by Mr. Webb and passed unanimously.

**Election of Chair and Vice-Chair.** Mr. Mowell was elected Chair with a unanimous vote. The Board decided to elect a Vice-Chair at this hearing. Mr. Barwick was elected Vice-Chair with a unanimous vote.

**Variance – 911 Tebeau Drive – (B24-038-VAR).** Chair stated today we have one public hearing to consider. A variance from Linda Carter of WCCA, Inc. for the property located on 9<sup>th</sup> Avenue West (PIN 9569-40-8533). Any persons desiring to testify in these hearings must first be sworn in. Since this is a quasi-judicial hearing, it is very important that we have an accurate record of what goes on here. Therefore, we must ask that you refrain from speaking until recognized by the Chair and, when recognized, that you come forward to the podium and begin by stating your name and address. Anyone present who has knowledge of anything of value that has been given or promised in exchange for a position to be taken on these applications should disclose it now.

Chair swore in all persons to give testimony. Linda Carter, Margot Nelson, David White, Tyler Morrow and Sam Hayes were sworn in.

Chair opened the public hearing.

Sam Hayes, Planner stated his name and title for the record. He formally entered the staff report and presentation into the record. He stated the City is in receipt of an application from Linda Carter, Children's Services Director at WNC Source for an application for authorization to construct a 14' by 20' storage building on their property. The subject property possess a PIN 9569-40-8533 and is zoned R-15 Medium Density Residential, which does not allow Childcare services as a usage within the district. On May 12, 2021, the Board of Adjustments voted to grant the applicant's request to alter a structure that houses a nonconforming use, thereby allowing the applicant to establish their childcare center. The current application for authorization is to extend the nonconforming use by authorizing the construction of a 14' x 20' storage building for the storage of playground equipment.

Mr. Hayes gave the project background:

The subject property is located at 911 Tebeau Drive and is flanked to the north by Thornton Place and to the south by 9<sup>th</sup> Avenue West. The property is broken into two separate parcels, the left parcel is the subject parcel where the storage building will be constructed. The left parcel is approximately 1 acre or 43,560 square feet. The subject parcels contains a portion of the childcare center as well as a fenced in play area.

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

The proposed site plan was shown and is included in the staff report. Mr. Hayes stated aside from the nonconforming use, the applicants site plan complies with all requirements in the R-15 zoning district which is shown on the right of the slide.

Mr. Hayes gave a recap and stated R-15 Medium Density Residential which makes the childcare a nonconforming use. With the applicants request to place a 14' x 20' storage building on the property, they are requesting to extend the nonconforming use. Section 6-2-1 (b) of the zoning ordinance is applicable for this project.

Mr. Hayes stated as mentioned before, this request for authorization is dealing with a nonconforming use in a residential district. Per the ordinance, no nonconforming use shall be enlarged, extended, reconstructed, moved or structurally altered unless such building or structure thereafter is devoted to a conforming use. However, the Board of Adjustment may authorize enlargement or extension if the following findings of fact are met: 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 is to say, it will not result in an increase in dwelling units for a 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. 4. The authorization of such proposed enlargement or extension is not otherwise contrary to the public health, safety or welfare.

Staff suggested motions were presented to the Board.

Mr. Hayes stated the applicant is present.

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

Chair asked if the property already is already nonconforming. Mr. Hayes stated yes.

Mr. Barwick asked if all neighbors were notified. Mr. Hayes stated yes they were notified by mail and could attend the hearing. Mr. Barwick asked if there were any calls from the neighbors. Mr. Hayes stated no.

There were no further questions for staff.

Chair asked the applicant to address the Board.

Linda Carter, Children's Services Director 220 King Creek Boulevard stated they had been before the Board before and took the Hendersonville School for Little Folks and did a major renovation and expanded a little bit to maximize all of the internal space of the two buildings so they could be licensed for up to 95 children. The back building will house about 54 children and the front building will house the remaining children. They maximized the internal space as much as they could to get as many children as they could. When they bought the property it did not have any external storage and that has

been a problem. They really do not have anywhere to put the small bicycles or tricycles and they cost anywhere from six to eight hundred dollars each and are very expensive. They have other equipment on the playground that they need to store. Some of that is for their developmental day for children with special needs. A lot of that equipment is very expensive and it is sitting outside and is exposed to the weather and could easily be stolen. They are looking to put the 14' x 20' storage building on the site and it visibly blends in with the other buildings. It is not obtrusive. It will help them store all the playground equipment that they need to store.

There were no questions for the applicant.

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

Chair closed the public hearing for Board discussion.

Ms. Collina asked about the location. It was stated it is close to Thornton Place. She asked if there was a rendering. Mr. Hayes stated there was not. Images of the property were shown. The Board had other discussion pertaining to the need for the storage building.

Ms. Flores made the following motion: ***With regard to the request by Linda Carter (Western Carolina Community Action, Inc.) for the Board of Adjustment to authorize the extension of a structure that contains a nonconforming use located on parcel 911 Tebeau Drive (PIN 9569408533), under Section 6-2-1 – Nonconforming Uses to: Construct a 14' x 20' storage building on the rear corner of the property to be used for nonconforming use. I move the Board to find that: 1. The proposed enlargement or extension shall be de minimis in relation to the existing building. 2. The proposed enlargement or extension shall not increase the intensity of the nonconforming use, which is to say, it will not result in an increase 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. 4. The authorization of such proposed enlargement or extension is not otherwise contrary to the public health, safety or welfare. Mr. Barwick seconded the motion.***

*Chair stated this is not a variance and therefore does not require seven members.*

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

Mr. Mowell	Yes
Mr. Webb	Yes
Mr. Barwick	Yes
Ms. Flores	Yes
Ms. Collina	Yes

The vote was unanimous. Motion approved.

Meeting adjourned at 1:56 p.m.

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Ernest Mowell, Chair

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Terri Swann, Secretary



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY PLANNING DIVISION

**SUBMITTER:** Sam Hayes, Planner II      **MEETING DATE:** August 13, 2024

**AGENDA SECTION:** New Business      **DEPARTMENT:** Community Development

**TITLE OF ITEM:** 709 Florida Avenue – Variance (B24-040-VAR) – Sam Hayes / *Planner II*

### **SUGGESTED MOTION(S):**

#### **1. For Recommending Approval:**

With regard to the request by Andrew Griffin for a variance from *Section 5-10-3* to:

1. *Reduce the side setback requirement 5' to 4.3' and reduce the 20' total side setback to 11.1' to allow the construction of a 336 square foot addition.*

I move the Board to find that:

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

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

[DISCUSS & VOTE]

#### **1. For Recommending Denial:**

With regard to the request by Andrew Griffin for a variance from *Section 5-10-3* to:

1. *Reduce the side setback requirement 5' to 4.3' and reduce the 20' total side setback to 11.1' to allow the construction of a 336 square foot addition.*

I move the Board to find that:

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

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

[DISCUSS & VOTE]

**SUMMARY:**

The Community Development Department has received an application from Andrew Griffin for a variance from Section 5-10-3. – Dimensional requirements in accordance with the definition of “setback” in Section 12-2-2 Definition of Terms to reduce the required 5’ side setback to 4.3’ and to reduce the 20’ total side setback to 11.1’ in order to construct a 336 square foot addition. The subject property is currently zoned MIC, Medical, Institutional and Cultural Zoning District. The specific variance requested is for the following:

Variance Request: The Applicant is requesting a variance from the requirement that side yards shall be a minimum of 5’ wide and that the lot should have a combined 20’ side setback in accordance with Section 5-10-3 of the Zoning Ordinance. The applicant is seeking to build a two-story addition (336 square feet footprint) that will include a garage on the ground level and an upstairs apartment. (Exhibit B)

The subject property is .08 acre or a 3,484 square feet lot zoned MIC – Medical Institutional and Cultural. There is a 1,872 square feet building on the property currently. The side setback requirements for MIC is 20’ total for the lot with a minimum of 5’ on any side according to Section 5-10-3. – Dimensional requirements. Other requirements for this district are a 50’ minimum lot width, a front setback of 10’, rear setback of 20’, and a maximum height of 50’.

<b>PROJECT/PETITIONER NUMBER:</b>	B24-040-VAR
<b>PETITIONER NAME:</b>	Andrew Griffin (Owner/Applicant)
<b>EXHIBITS:</b>	<ul style="list-style-type: none"> <li>A. Staff Report</li> <li>B. Application</li> <li>C. Warranty Deed</li> <li>D. Site Photos</li> </ul>

## AMENDED MEMORANDUM

**TO:** Board of Adjustment Members

**FROM:** Community Development Department

**DATE:** August 13, 2024

**RE:** Variance Application –709 Florida Avenue

**SUMMARY:** The Community Development Department has received an application from Andrew Griffin for a variance from Section 5-10-3. – Dimensional requirements in accordance with the definition of “setback” in Section 12-2-2 Definition of Terms to reduce the required 5’ side setback to 4.3’ and to reduce the 20’ total side setback to 11.1’ to construct a 336 square foot (footprint) addition. The subject property is currently zoned MIC, Medical, Institutional and Cultural Zoning District. The specific variance requested is for the following:

**VARIANCE REQUEST:** The Applicant is requesting a variance from the requirement that side yards shall be a minimum of 5’ wide and that the lot should have a combined 20’ side setback in accordance with Section 5-10-3 of the Zoning Ordinance. The applicant is seeking to build a two-story addition (336 square foot footprint) that will include a garage on the ground level and an upstairs apartment. (*Exhibit B*)

The subject property is .08 acre or a 3,484 square foot lot zoned MIC – Medical Institutional and Cultural. There is a 1,872 square foot building on the property currently. The side setback requirements for MIC is 20’ total for the lot with a minimum of 5’ on any side according to Section 5-10-3. – Dimensional requirements. Other requirements for this district are a 50’ minimum lot width, a front setback of 10’, rear setback of 20’, and a maximum height of 50’.

### PROPOSED FINDINGS OF FACT:

- Based on Henderson County records the subject property possesses a PIN of 9568-58-3783 and is zoned as MIC Medical, Institutional and Cultural.
- Based on Henderson County records, the lot size is approximately 0.08 acres or 3,484.8 square feet.
- Based on Henderson County records, the subject property has one structure built on it that is 1,872 square feet.
- Based on the City of Hendersonville records, Florida Avenue is a City maintained street.
- Based on Henderson County records a North Carolina General Warranty Deed between Lori Kay Eaton FKA Lori Kay Luhrs, unmarried (Grantors) and Andrew

Dennis Griffin and wife, Kassondra Marie Griffin (Grantees) was recorded on December 29, 2023.

- *Section 5-10-3* of the zoning ordinance requires the principal structure setbacks for MIC be:
  - Front: 10'
  - Side: 20' total for lot; with minimum of 5'; on any side
  - Rear: 20'
- *Section 12-2-2* defines the building setback as an open, unobstructed area that is required by this zoning ordinance to be provided from the furthestmost projection of a structure to the property line of the lot on which the building is located.
- Based on the Variance Application (*Exhibit B*), the Applicant is proposing to construct an addition on the home.
- Based on the survey submitted by the Applicant, the addition will be 24' by 14'.

#### CODE REFERENCES.

##### **5-10-3 Dimensional Requirements:**

Minimum Lot Area in Square Feet: 8,000

Minimum Lot Width at Building Line in Feet: 50

Minimum Yard Requirements in Feet:

Front: 10

Side: 20 total for lot; with minimum of 5; on any side

Rear in Feet: 20

Maximum Height in Feet: 50

##### **Section 12-2 Definition of Terms**

**Setback:** An open, unobstructed area that is required by this zoning ordinance to be provided from the furthestmost projection of a structure to the property line of the lot on which the building is located.

##### **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.

## **EXHIBITS**

**Exhibit A – Staff Report**  
**Exhibit B – Application**  
**Exhibit C – Warranty Deed**  
**Exhibit D – Site Photos**

BK 4123    PG 672 - 674 (3)

This Document eRecorded:

Fee: \$26.00

Henderson County, North Carolina

William Lee King, Register of Deeds

DOC# 1001008814

01/05/2024    03:24:55 PM

Tax: \$674.00

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$ 674.00

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Parcel Identifier No. 114867 Verified by \_\_\_\_\_ County on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

By: \_\_\_\_\_

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Mail/Box to: Staton Law Firm 640 N Main St, Hendersonville, NC 28792

This instrument was prepared by: McDuffy Law Firm, PLLC Attorney Scott McDuffy- 317 Banner Farm Road, Suite A, Mills River, NC 28759. (DEED PREP ONLY. NO TITLE EXAMINED)

Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds.

Brief description for the Index: 709 Florida Ave, Hendersonville, NC 28739

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THIS DEED made this <u>29th</u> day of <u>December</u> , 2023 by and between	
GRANTOR	GRANTEE
Lori Kay Eaton FKA Lori Kay Luhrs, unmarried	Andrew Dennis Griffin and wife, Kassondra Marie Griffin
PO Box 69 Hendersonville, NC 28793	709 Florida Ave Hendersonville, NC 28739

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in **Henderson** County, North Carolina and more particularly described as follows:

SEE ATTACHED EXHIBIT A

Submitted electronically by "Staton Law P.A."  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Henderson County Register of Deeds.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 3579, at Page 24.

All or a portion of the property herein conveyed   x   includes or    does not include the primary residence of a Grantor.

A map showing the above-described property is recorded in Slide Book           .

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

**Subject to all ad valorem taxes.**

**Subject to Restrictions, Easements, and Rights of Way of Record.**

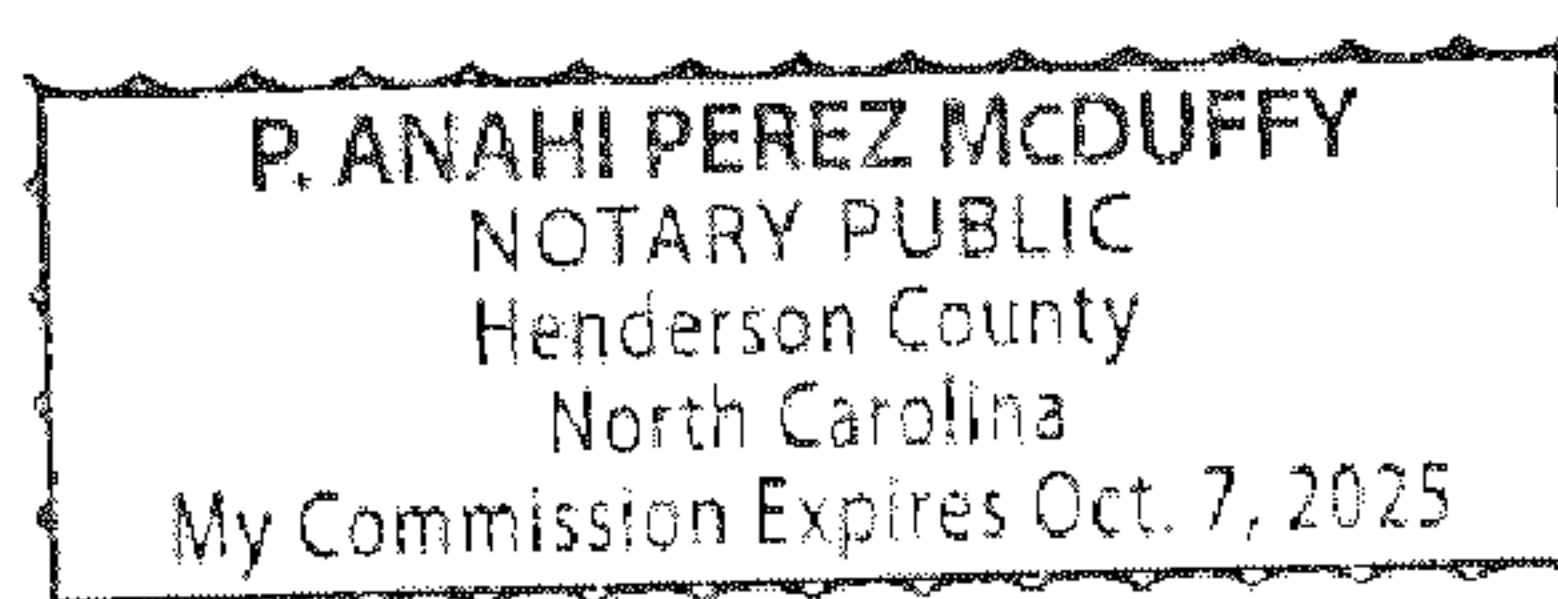
IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

*Lori Kay Eaton FKA Lori Kay Luhrs* (SEAL)  
Lori Kay Eaton FKA Lori Kay Luhrs

State of North Carolina - County of Henderson

I, the undersigned Notary Public of the County and State aforesaid, certify that **Lori Kay Eaton FKA Lori Kay Luhrs** personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 29 day of December, 2023

My Commission Expires: 10-7-25



*P. Anahi Perez McDuffy*  
Notary Public

**Exhibit A**

Tract one:

Beginning at a stake on the north margin of Florida Avenue, said stake standing North 86° 45' West 103.5 feet, measured along the north margin of said avenue, from the point where the same intersects with the western margin of Justice Street, and running thence, North 3° 23' West 72.6 feet to a stake; thence North 83° 50' West 50.1 feet to a stake; thence South 3° 23' East 74.5 feet to a stake in the north margin of Florida Avenue; thence, with said margin of said avenue, South 86° 45' East 50 feet to the point of beginning and being Lot 3 of the C.F. Bland Subdivision as shown on plat thereof recorded in Plat Book 1 at Page 15 of the records of plats for Henderson County, North Carolina.

And being that same property conveyed to Revertia L. Peggy by deed dated December 28, 2005 and recorded in Deed Book 1257 at Page 282 of the Henderson County Registry.

Tract two:

Beginning at a point standing North 03° 32' 41" West 44.56 feet from a 1/2-inch existing iron pipe which is the southeasternmost corner of the Revertia Pegg property described in deed recorded in Deed Book 1257 at Page 282 of the Henderson County Registry, and running thence North 03° 32' 41" West 23.04 feet to a point; thence South 86° 24' 25" East 3.16 feet to a point; thence South 04° 21' West 22.86 feet to the point and place of beginning and containing 36.17 square feet.

BEING the same property conveyed to William John Luhrs and Lori Kay Luhrs, by deed of Revertia L. Pegg and Carl Hansely, recorded Official Records Book 1358, Page 463 in Henderson County records.

ALSO BEING the property conveyed in a deed recorded in a Deed in Deed Book 3579 at Page 24 of the Henderson County, North Carolina Registry.



Front view of house and view of side yard where proposed addition would be constructed.



Side yard and view of adjacent properties driveway.