



CITY OF HENDERSONVILLE BOARD OF ADJUSTMENT

**Operations Center - Assembly Room | 305 Williams St. | Hendersonville NC 28792
Tuesday, March 08, 2022 – 1:30 PM**

AGENDA

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

A. Minutes of February 8, 2022

- 4. OLD BUSINESS**
- 5. NEW BUSINESS**

A. Variance Application - 824 Locust St- Alexandra Hunt, Planner I

- 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, February 8, 2022
1:30 p.m. in the City Operations Center

The Hendersonville Board of Adjustment held its regular monthly meeting on February 8, 2022 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, Roger Woosley, Charles Webb, Kathy Watkins, Stefan Grunwald, Michael Edney, Matthew Manley, Planning Manager, Lew Holloway, Community Development Director, Alexandra Hunt, Planner I, Angela Beeker, City Attorney, Daniel Heyman, Staff Attorney and Terri Swann, Secretary to the Board.

Absent: Barbara McCoy, Libby Collina, Chris Freeman

Chair called the meeting to order at 1:40 p.m.

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

Approval of the Minutes of the January 11, 2022 meeting. A motion was made by Mr. Woolsey and seconded by Ms. Watkins to approve the minutes as written. The motion passed unanimously.

Variance – Halford Partners LLC & ALPHA Investments LLC – John Halford Ct. Lot 3 (Continued)

Chair stated today we have 5 public hearings to consider, a variance application from Halford Partners, LLC & ALPHA Investments, LLC for the property located on John Halford Court Lot 3 which is continued from the January meeting, a Special Use application from the City of Hendersonville for Shepherd Street, a variance application from Todd Leoni and Osceola Landing, LLC for a property on Osceola Inn Road, a Temporary Use Permit application from Ginger Elliott for 214 Wilmont Drive and a variance application from Dan Mock and AYD Partners, LLC for 824 Locust Street. 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. Those sworn in were Alexandra Hunt, Planner I, Mr. Manley, Planning Manager, John Connect, City Manager, Mr. Bruce Fleming of Halford Partners LLC, Steve Katsadourous, Hunter Marks, Todd Leoni and Ginger Elliott.

Chair opened the public hearing.

Alexandra Hunt, Planner I stated her name and title for the record. She asked that the addendum be submitted into the record. She stated this application was deferred from the January meeting.

Ms. Hunt gave the project background: The property is identified at PIN # 9569-77-4636 and is zoned R-15, Medium Density Residential. 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 purpose is to build a single-family residence on this parcel.

The subject property was platted on December 9th, 2005. The subject property is zoned- R-15 Medium Density Residential. The property is approximately 0.34 acres or 15,002 square feet. 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 stream is identified as Horse Creek based on a plat recorded on December 9th, 2005. City Council adopted an ordinance creating stream protection standards which included a 30' stream buffer and 20' transitional area at their meeting on September 6th, 2001.

A site plan was shown. 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.

Section 5-3-3 (R-15) of the Hendersonville Zoning Ordinance requires a front setback of 30 feet for principal structures.

The applicant is requesting to reduce the stream buffer from 30' to 15'. This would constitute a 15' variance. The applicant is requesting to reduce the transitional area from 20' to 15'. This would constitute a 5' variance. (The variances requested concerning stream protections follow the dimensional requirements set forth in "17-3-8 Special Provisions Pertaining to Certain Residential Uses." However, the requirements of section 17-3-8 are not applicable to this parcel since it was platted after September 6th, 2001.) The applicant is also requesting a reduction in the required front setback for a principal structure. The applicant is requesting to reduce the setback from 30' to 12'. This would constitute an 18' variance.

Site photos were shown of the property.

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.

Ms. Hunt stated staff worked with the applicant on conditions after the January meeting. The proposed conditions are:

Stream Buffer Variance: The stream buffer will be reduced from 30' to 20'.

Transitional Zone Variance: The transitional zone will be reduced from 20' to 10'. The applicant shall submit a site plan illustrating that no further disturbance can occur beyond that which is permitted by Section 17-3-3 and 17-3-5 of the Zoning Ordinance. The applicant shall submit a revegetation plan to the Community Development Department for approval prior to a zoning compliance permit being issued. The revegetation of the transitional area must be comprised of appropriate native sedges, grasses, herbaceous, woody ground covers, and low shrubs. No turf grasses are to be used. The Community Development Department shall inspect the site for compliance prior to the issuance of a Certificate of Occupancy.

The suggested motions with conditions were shown. Ms. Hunt asked if the Board had any questions.

Ms. Watkins asked if the conditions were basically just recommendations. Ms. Hunt stated after speaking with the applicant and reworking the site plan, the changes were agreed upon with the applicant. Mr. Manley stated the conditions were developed based on the feedback from the hearing last month and the Board.

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

Hunter Marks, Architect – 513 N. Justice Street stated his clients asked him to prepare information for the Board. He presented the information to the Board. Mr. Marks showed illustrations and what they are proposing to do. A survey of the property was shown along with site photos of the property from this past Sunday. Photos of the creek as it exists today with overgrown invasive species was shown and explained. Mr. Marks stated they will prepare a plan for the city before the final CO is released. They will revegetate and create a buffer that actually works. He showed the Board what they plan to plant and how they plan to stabilize the bank. Examples were shown of what the project would look like and an example of a project that was done on West Allen Street was shown. Mr. Marks stated when it is all said and done, this will be a much better buffer.

Chair asked if anyone had any questions for the applicant. There were no questions. Chair asked if anyone would like to speak in favor of the project, no one spoke. Chair asked if anyone would like to speak against the project, no one spoke.

Chair closed the public hearing for Board discussion.

Mr. Mowell asked if the new member understood what the Board had discussed concerning this application last month. Mr. Edney stated he had reviewed the packet last month and the minutes from that meeting.

Ms. Watkins stated she felt like this proposal is appealing. The Board agreed.

Ms. Watkins made the following 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 required 30' width of the Stream Buffer with the following conditions: [see addendum for proposed conditions]. 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 required 20' Transitional Area with the following conditions: [see addendum for proposed conditions], 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 and conditions. Mr. Webb seconded the motion.*

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

Mr. Woolsey	Yes
Mr. Mowell	Yes
Mr. Webb	Yes
Ms. Lowrance	Yes
Mr. Grunwald	Yes
Mr. Edney	Yes
Ms. Watkins	Yes

The vote was unanimous. Motion approved.

Special Use Application – City of Hendersonville – 0 Shepherd Street.

Chair opened the public hearing.

Alexandra Hunt, Planner I stated her name and title for the record. She asked that the staff report and exhibits be entered into the record.

Ms. Hunt stated this is a Special Use Permit application for the property identified as PIN # 9578-51-3579. The current zoning is C-4, Neighborhood Commercial. Staff has received an application and preliminary site plan from the City of Hendersonville for a Special Use Permit. The Special Use requested is Public Utility Facilities under Section 5-9-2 of the Zoning Ordinance. The purpose of this request is to construct a temporary fire station to house firefighters while Fire Station 1 completes renovations.

The subject property possesses a PIN of 9578-51-3579 and is zoned as C-4 Neighborhood Commercial. Based on Henderson County records, the subject property is approximately 2.1 acres or 91,476 sq ft. The subject property is located in the City's extraterritorial jurisdiction and is currently a vacant lot. The lot can be accessed by both Shepherd St and Old Spartanburg Road. City Council approved a rezoning of the subject property from R-15 Medium Density Residential to C-4 Neighborhood Commercial.

Site photos of the property were shown. Section 5-9-2 of the Zoning Ordinance permits Public Utility Facilities as a Special Use. The definition of Public Utility Facilities is: Any structure or facility transmitting a service provided by a government or public utility, including, without limitation, **fire stations**, emergency medical service centers, telephone and repeater stations, pumping substations, and water towers, but not including telecommunication towers, antennas, and other telecommunication devices.

Ms. Hunt stated the Supplementary Standards for Public Utility Facilities set out in Section 16-4-22 are listed on the screen. As you can see, some of the standards do not apply and are shown by the strike through part of subsection (a) and subsection B.

- a) Lots must conform to minimum setback and yard requirements of the district in which they are located. ~~Unstaffed utility structures with internal floor space of less than 600 square feet are exempted from the minimum lot size requirement.~~
- ~~b) Electric and gas substations and sewage treatment plants will be separated by a ten-foot B type buffer meeting the specifications of Article XV from the street and any abutting residential use or any property located in a residential zoning district.~~
- c) Control houses, pump and lift stations, and other similar uses shall be screened from the street and any abutting residential use or any property located in a residential zoning district.
- d) A fence not easily climbable or comparable safety devices must be installed and maintained in order to deter access to the facility.
- e) The design of buildings, structures and facilities on a site should conform as closely as possible to the character of the area or neighborhood.
- f) The facility's lighting shall be shielded to prevent light and glare spill-over on to any adjacent residential properties, if such exist.
- g) The Board of Adjustment may give relief from these requirements so long as public safety and neighborhood compatibility are protected, if strict adherence could constitute a hardship or is unnecessary.

The Temporary Fire Station preliminary site plan was shown. Section 10-8-2 Preliminary Site Plan Requirements for a Special Use Application were listed. This section lists the requirements of the preliminary site plan. The submitted preliminary site plan meets the requirements of section 10-8-2.

The future Fire Station 3 concept plan was shown. Ms. Hunt stated only the approval for the temporary station is being considered today. The city will have to come back before the Board of Adjustment for an approval for permanent station.

Section 10-8-4 states: After the Evidentiary Hearing, and on consideration of the record, the Board of Adjustment shall take action on the application, either (1) denying it, (2) approving it, or (3) approving it subject to one or more reasonable and appropriate conditions. The Board of Adjustment shall not approve an application for a Special Use Permit, with or without conditions, unless it makes each of the following findings of fact:

- a) The proposed use complies with the standards for such use contained in Article XVI;
- b) The proposed use will not adversely affect the health or safety of persons residing or working in the neighborhood of such proposed use; and
- c) The proposed use will not be detrimental or injurious to property or public improvements in the neighborhood of such proposed use.

The suggested motions were shown. Staff has suggested conditions to address the supplementary standards in Section 16-4-22 "d" and "e".

Ms. Hunt asked if there were any questions. Mr. Manley pointed out "g" under supplementary standards which reads: The Board of Adjustment may give relief from these requirements so long as public safety and neighborhood compatibility are protected, if strict adherence could constitute a hardship or is unnecessary.

Mr. Grunwald asked if this was just a temporary status and if the permanent station would come back before them. Ms. Hunt stated yes. Mr. Grunwald asked if it would be located on the same site. Ms. Hunt stated it would be on the same location and the applicant is here to speak on the future station.

John Connet, City Manager, 160 6th Avenue East stated he is here to present information on the temporary station. He stated the Fire Station currently located on North Main Street will be completely demolished this summer. The temporary station will house some of the firefighters from that location. Part of the firefighters will go to this temporary location and part will go to Asheville Highway. The completion of Fire Station 1 is proposed to be in October or November 2023.

A picture of the temporary modular unit was shown. Mr. Connet stated this will strictly be a residential facility and house 7 or 8 firefighters. An exterior view of the modular unit was shown. They plan to keep the look as residential as they can. It will be a single-story unit with a pitched roof. Mr. Connet stated once Fire Station 1 is complete they could construct a permanent station at this location. It will be designed by an architect and will be more residential in nature. The temporary structure will be removed. They will come back to the Board for approval on a permanent station. A Type B buffer will be installed along the residential areas. They would like some relief on putting too much residential architectural features on the temporary station. Concerning the noise, Mr. Connet did speak with the

Fire Chief and he stated the sirens would not be turned on until they hit the main highway. They plan to be very mindful of the residential area much like Fire Station 2 on Sugarloaf Road.

Mr. Mowell asked if they would be building any structures for the equipment. Mr. Connet stated they plan to have a structure for the equipment much like an RV garage, just a bit larger.

Mr. Edney asked when the temporary structure is removed, do they plan to restore the property. Mr. Connet stated based on the growth of the city a permanent structure will be built within five years. They are roughly looking at construction in 2025.

Ms. Watkins asked if this property is in the ETJ. Mr. Connet stated yes, but the property will be annexed into the city limits. The city limit line is just across the street. Ms. Watkins asked if staff could show the location of the property from the GIS. Mr. Manley showed the location from the Henderson County GIS.

Mr. Connet pointed out the city limits where the car wash was being located and where Burger King is. He felt like the fire station would be beneficial to the south side.

Mr. Webb asked about the stormwater for the project. Mr. Connet stated anything over an acre must put in stormwater retention. The temporary structure is not disturbing over an acre. Mr. Webb asked if sidewalks would be constructed. Mr. Connet stated sidewalks or a fee in lieu. The permanent station will have sidewalks.

Chair asked if there were any further questions. There were no further questions. Chair asked if anyone would like to speak concerning the application.

Herb Putnam, 912 Shepherd Street stated he is concerned about the access being only on Shepherd Street. His bedroom window is facing and is closest to the station. He is glad they are talking about not turning on the sirens until they get to the main road. He asked why there is no access from Old Spartanburg Road. Mr. Connet stated with the temporary station they are trying to keep the costs down. The permanent station will have access off of Old Spartanburg Road. They want to be conscious of the traffic when backing out the apparatus.

Mr. Putnam stated he has lived there since 1965 and cars come over the hill and do not pay attention. It is a dangerous place, and he is glad to see the improvements. He felt safer even though he is not in the city.

Mr. Connet stated the larger apparatus will only be located here about 18 months. There will only be one firetruck there. The permanent building will not be started until 2024 or 2025.

Joanne McClure, 915 Shepherd Street asked about the rain containment. Mr. Connet explained that stormwater retention is not required unless you disturb more than an acre. They will have stormwater retention for the permanent station. Ms. McClure asked if this was in the Floodway. Mr. Connet stated there is very little floodplain on the property.

Mr. Edney asked about the ladder truck having the ability to maneuver through the four-way stop and if there are any improvements being proposed. Have they thought about improving the entire interchange? Mr. Connet stated at this point, no. The ladder truck will only be there through construction of Fire Station 1. Mr. Edney stated even the smallest truck would have a hard time at the

current interchange. Mr. Connet stated the city will be willing to make improvements when the permanent station is constructed.

Chair asked if anyone else would like to speak. No one spoke.

Chair closed the public hearing for Board discussion.

Mr. Mowell made the following motion: *With regard to the request by the City of Hendersonville for a Special Use Permit with the following conditions:*

- 1) *A fence not easily climbable shall be installed on the temporary site as required in Section 16-4-22(d) except along frontages where a fence would interfere with access to the site by the City of Hendersonville Fire Department.*
- 2) *The proposed building or facility is temporary in nature and will not be required to conform to the design standards required in Section 16-4-22(e) and applicant will be required to meet the design standards for any future permanent building or facility.*

I move the Board to find that:

- a) *The proposed use complies with the standards for such use contained in Article XVI;*
- b) *The proposed use will not adversely affect the health or safety of persons residing or working in the neighborhood of such proposed use; and*
- c) *The proposed use will not be detrimental or injurious to property or public improvements in the neighborhood of such proposed use. Mr. Woolsey seconded the motion.*

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

Mr. Woolsey	Yes
Mr. Mowell	Yes
Mr. Webb	Yes
Ms. Lowrance	Yes
Mr. Grunwald	Yes
Mr. Edney	Yes
Ms. Watkins	Yes

The vote was unanimous. Motion approved.

Variance – Todd Leoni – 0 Osceola Inn Road

Chair opened the public hearing.

Alexandra Hunt, Planner I, stated her name and title for the record. She asked that the staff report and exhibits be entered into the record.

Ms. Hunt stated the city is in receipt of a variance application from Todd Leoni of Osceola Landing, LLC for the property identified as PIN # 9568-31-7733. The variance requested is to reduce the side setback from the required 10' to 2.2' for a principal structure in R-15 provided in section 5-4-3 of the Hendersonville Zoning Ordinance. Based on the proposed development the applicant is requesting a 7.8'

variance from the side setback in Section 5-3-3. The purpose of the variance is to renovate an existing structure on the subject property.

The Subject property is zoned- R-15 Medium Density Residential. Based on Henderson County records, the lot size is approximately 0.38 acres or 16,552.8 square feet. An existing concrete structure is located on the subject property. Based on a recombination plat dated August 24, 2021, the concrete structure located on the subject property encroached onto the neighboring parcel to the east. Based on Henderson County Records, a North Carolina Non-Warranty Deed between Michael G. Hydrick and Cynthia T. Hydrick (Grantor) and Osceola Landing LLC (Grantee) was recorded November 30, 2021, recombining the two tracts to correct the encroachment.

The recombination plat was shown. The property was platted August 24, 2021. North Carolina Non-Warranty Deed recorded November 30, 2021, to correct encroachment. Existing structure encroaches into side setback. Applicant is requesting a 7.8' variance from the side setback requirements of Section 5-3-3.

Ms. Hunt gave the dimensional requirements for the R-15 zoning district in Section 5-3-3 of the City of Hendersonville Zoning Ordinance.

The aerial photo of the property was shown. Site photos of the property were also shown.

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.

Suggested motions were shown to the Board. Ms. Hunt asked if there were any questions.

Mr. Mowell stated they are not talking about new construction; this is an existing building that already encroaches into the setback? Ms. Hunt stated yes.

Todd Leoni, 801 N. Lakeside Drive stated he would be happy to answer any questions. He would like to renovate the building that is currently there now.

Ms. Watkins stated there are other properties in this area that have encroachments such as this one. This is not the only one.

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

Chair closed the public hearing for Board discussion.

Ms. Watkins stated this is not uncommon in that area.

Mr. Mowell made the following motion: *With regard to the request by Osceola Landing LLC for a variance from Section 5-3-3 Dimensional Requirements to reduce the side setback for a principal structure from 10' to 2.2', 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. Ms. Watkins seconded the motion.*

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

Mr. Woolsey	Yes
Mr. Mowell	Yes
Mr. Webb	Yes
Ms. Lowrance	Yes
Mr. Grunwald	Yes
Mr. Edney	Yes
Ms. Watkins	Yes

The vote was unanimous. Motion approved.

Temporary Use Permit – Ginger Elliott – 214 Wilmont Drive

Chair opened the public hearing.

Alexandra Hunt, Planner I, stated her name and title for the record. She asked that the staff report and exhibits be entered into the record.

Ms. Hunt stated the applicant is Ginger C. Elliott. The property is identified as PIN # 9579-21-5299 and is currently zoned R-15, Medium Density Residential.

The applicant is requesting a temporary use permit based on the existence of a personal hardship under Section 8-3 of the Zoning Ordinance. The purpose is the need for someone to help take care of the Applicant's mother.

Applicant provided a Conditional Use Permit from the City of Hendersonville Zoning Board of Adjustment was granted for the use of a mobile home at 216 Wilmont Drive on May 17, 1972. Applicant provided a Zoning Permit was issued to Ms. Gilliam on May 18, 1972, to locate a mobile home at 216 Wilmont Drive. Applicant provided the Title to the mobile home transferred to Clyde K. Elliot and Ginger C. Elliot on April 30, 1982. Based on Henderson County Map records, the manufactured/mobile home existed on the subject property in 1984. Based on Henderson County Records, a North Carolina General Warranty Deed between Grace G. Case (Grantor) and Clyde K. Elliot and Ginger C. Elliot (Grantees) was recorded on January 13, 1998. Based on the City of Hendersonville records, the subject property was annexed by the City on January 6, 2005. Based on information and belief, the manufactured/mobile home does not meet the principal structure setback requirements in Section 5-3-3. Section 6-2-2 requires that a nonconforming structure be a building or other structure which lawfully existed prior to the effective date of the zoning ordinance.

The subject property aerial was shown from 1984 and from 2019. You can see the mobile home in both photos. Site photos were also shown.

Section 8-3 of the City of Hendersonville Zoning Ordinance states: No more than one manufactured/mobile home may be permitted in the rear yard of a residential dwelling on a platted lot as an accessory structure, provided, the manufactured/mobile home shall meet the principal structure setback requirements for the district in which it is located. Such use shall be temporary and shall be based on a finding by Board of Adjustment that a personal hardship situation exists (such as the need to care for elderly parents or other dependents) which justifies a special exception of this nature. Temporary Use Permit shall be issued in such cases for one year and may be renewed by the Zoning Administrator so long as the hardship continues to exist.

All such manufactured/mobile homes situated in rear yards must have access to city water and sewer service or individual systems approved in writing by the County Health Officer and such manufactured/mobile homes must be maintained in such a way as to create no nuisance conditions. Furthermore, if any such manufactured/mobile home must be situated closer to the side or rear yard line than the required setback for the district involved, a Variance must be obtained from the Board of Adjustment.

Suggested motions were presented to the Board. Ms. Hunt asked if there were any questions.

Mr. Woolsey asked if another mobile home was being placed on the property. Mr. Manley stated no, this application is for the existing mobile home to be used again due to a personal hardship situation.

Ms. Hunt stated the applicant is here to answer any questions.

Chair asked if the applicant would like to speak. Ginger Elliott stated no, she did not want to speak.

Chair closed the public hearing for Board discussion.

Mr. Grunwald made the following motion: *With regard to the request by Ginger C. Elliot for a Temporary Use Permit under Section 8-3 of the Zoning Ordinance, I move the Board to find that a personal hardship situation exists which justifies a special exception and a Temporary Use Permit shall be issued for one (1) year and may be renewed by the Zoning Administrator so long as the hardship continues to exist. Mr. Mowell seconded the motion.*

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

Mr. Woolsey	Yes
Mr. Mowell	Yes
Mr. Webb	Yes
Ms. Lowrance	Yes
Mr. Grunwald	Yes
Mr. Edney	Yes
Ms. Watkins	Yes

The vote was unanimous. Motion approved.

Variance – Dan Mock and AYD Partners, LLC – 824 Locust Street.

Chair opened the public hearing.

Alexandra Hunt, Planner I, stated her name and title for the record. She asked that the staff report and exhibits be entered into the record.

Ms. Hunt stated the applicants are Dan Mock and AYD Partners, LLC. The property is located at 824 Locust Street and identified as PIN # 9569-80-2471 and is currently zoned I-1, industrial.

The request is for: A variance to increase the maximum building height of 35' allowed under Section 5-12-3 (I-Industrial Zoning District Classification) to 38.2', a variance of 9.8' from the front setback requirement, a variance of 21.6' & 6.6' from the side setback requirements of Section 5-12-3 and a variance from Section 6-2-2(e) Nonconforming Structures.

The purpose is to add an approximately 31.166' x 58.625' Community Room / Gym addition (1,827 Sq Ft) and two Covered Patios (436 Sq Ft and 510 Sq Ft) to the roof of an existing structure.

Subject property is approximately 0.22 acres or 9,583.2 sq ft. The subject property was built in 1926 and the Gross Leasable Area of approximately 13,516 sq ft. A North Carolina Warranty Deed made on August 5, 2021, between Hunting Creek Associates, LLC (Grantor) and AYD Partners LLC (Grantee) was recorded with the Henderson County Register of Deeds on August 6, 2021. The subject property contains an existing chimney measuring 39' 11" from the base elevation at the location of the chimney.

Mr. Manley explained how the height needed for the variance was determined.

Site photos of the property were shown. Digital renderings of the proposed rooftop were shown. The elevations of the rooftop were shown. The north side and front elevation were also shown.

The variance requested is to increase the maximum building height of 35' to 38.2' (3.2' height increase from setback standards). The property will require a variance from setback standards in Section 5-12-3. The building's current height is 24.5' and the building contains a chimney stack that is 39' 11". Section 8-2 Height Limitations allows for an exception to height limitations for chimney stacks.

The dimensional requirements for the I-1 District were shown. Ms. Hunt stated per the zoning ordinance: No building shall exceed 35 feet in height unless the depth of the front and total width of the

side yards required herein shall be increased one foot for each two feet or fraction thereof of building in excess of 35 feet.

The applicant is requesting a variance of 9.8' from the required front setback and a variance of 21.6' from the required side setbacks to allow for the proposed height increase. Request: Increase height by 3.2'. Increase of 3.2' in height = Required Setback increase of 1.6' per Section 5-12-3 (Dimensional Requirements). Typical Required Front Setback without height increase = 35'. Required Front Setback with proposed height increase = 36.6'. Applicant's Proposed Front Setback = 26.8'. Applicant's Requested Variance Amount = 9.8'. Typical Required Side Setback without height increase = 20'. Required Side Setback with proposed height increase = 21.6'. Applicant's Proposed Side Setback = 0' on Lynn St side / 15' on other side. Applicant's Requested Variance Amount = 21.6' on Lynn St side / 6.6' on other side.

The applicant is proposing to expand the building with an addition to the roof. The existing nonconforming structure does not meet setback requirements. The proposed addition could only be 6.8' wide to be in conformance with side setbacks. The proposed addition would have to be setback an additional 9.8' to be in conformance with the front setback. The existing parcel area (9,583 Sq Ft) does not meet minimum lot size requirements within the I-1 Zoning District (40,000 Sq Ft).

Section 6-2-2(e) Nonconforming Structures: 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.

Section 10-9 states: 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.

The suggested motions were shown to the Board. Ms. Hunt asked if there were any questions.

Mr. Manley, Planning Manager, asked the Chair if she would like to give the applicant the option to proceed with this hearing since only seven (7) members are present and would require a unanimous vote. Mr. Manley stated staff is required to give the option to defer an item when only 7 members are present.

Ms. Watkins asked if the building is a historic building. Mr. Manley stated it is not in a local historic district, but it would meet some criteria for a historic building being that the building is over 50 years old.

Discussion was made concerning the attendance of the Board members and deferring the application until next month.

Dan Mock. Applicant asked that the application be deferred to next month.

Election of Chair and Vice-Chair.

Mr. Woolsey made a motion to appoint Melinda Lowrance to serve as Chair for another year. Mr. Webb seconded the motion. The Board voted unanimously to elect Melinda Lowrance as Chair.

Ms. Watkins made a motion to appoint Ernest Mowell as Vice-Chair. Mr. Webb seconded the motion. The Board voted unanimously to elect Ernest Mowell as Vice-Chair.

Angela Beeker, City Attorney introduced Daniel Heyman as Staff Attorney.

Meeting adjourned at 3:26 p.m.

Melinda Lowrance, Chair

Terri Swann, Secretary

MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: March 8th, 2022

RE: Variance Application – Dan Mock, 824 Locust St.

SUMMARY: The Community Development Department received an application from Dan Mock of AYD Partners, LLC for a variance from Section 5-12-3 Dimensional Requirements and Section 6-2-2 Nonconforming Structures. This application was presented to the Board of Adjustment during the February 8, 2022, regular meeting where seven (7) board members were present. Section 10-6 of the Zoning Ordinance requires the concurring vote of seven (7) members of the Board of Adjustment to grant a Variance. The Applicant requested that the Chair defer this application to the March regular meeting. The Applicant has requested to change the previously requested height increase of 3.2' to 4'. The Applicant has also submitted updated elevations that include the elevator shaft. (Exhibit C)

The subject property is currently zoned I-1, Industrial. The specific variance requested is for the following:

VARIANCE REQUEST: The variance requested is to increase the maximum building height of 35' allowed under Section 5-12-3 (I-1 Industrial Zoning District Classification) to 39'. Based on the application, the applicant is proposing a 4' height increase from the maximum height requirement in Section 5-12-3 of the Zoning Ordinance which will require a variance from the setback standards (see Section 5-12-3 Dimensional Requirements for Maximum Height in Feet which allows for increase in height with increase in side and front setbacks).

The building is an existing nonconforming structure as defined in Section 6-2. The building's current height is 24.5' to the top of the parapet at the front elevation. Additionally, there is a chimney stack that is 39' 11" based on the base elevation at the location of the chimney. Section 8-2 Height Limitations allows for an exception to height limitations for chimney stacks. The applicant is proposing to expand the building with an addition to the roof. The mean height of the roof will be 39' which places the mean point of the roof below the chimney stack. Section 5-12-3 states that any building that exceeds 35' in height shall increase the front and total side yards one foot for each two feet or fraction thereof of building height.

In order to bring the existing building into conformance with the current Zoning Ordinance, the building would be required to have a 37' front setback and a 22' side

setback. The proposed roof addition is setback 26.8' from the front property line and setback 0' from the Lynn St side property line and 15' from the southeast side property line. Therefore, the applicant is requesting a variance of 10.2' from the required front setback and a variance of 22' on Lynn St. side and 7' on the southeast side of the building from the required side setbacks to allow for the proposed height increase of 4'.

The applicant is also requesting a variance from Section Nonconforming Structures 6-2-2(e). Since the existing non-conforming structure does not currently meet front or side setbacks, it would be impossible for the expansion to meet side setbacks. Front setbacks could potentially be met but may present challenges to the proposed development.

PROPOSED FINDINGS OF FACT:

- The subject property possesses a PIN of 9569-80-2471 and is zoned as I-1 Industrial.
- Based on Henderson County records, the lot size is approximately 0.22 acres or 9,583.2 square feet.
- Based on Henderson County records, the existing building located on the lot was built in 1926 and the Gross Leasable Area is 13,516 square feet. (Exhibit A)
- A North Carolina Warranty Deed made on August 5, 2021, between Hunting Creek Associates, LLC (Grantor) and AYD Partners LLC (Grantee) was recorded with the Henderson County Register of Deeds on August 6, 2021. (Exhibit B)
- Section 5-12-3 of the Zoning Ordinance requires the Maximum Height for I-1 Industrial is 35 feet with the following allowances:
 - No building shall exceed 35 feet in height unless the depth of the front and total width of the side yards required herein shall be increased one foot for each two feet or fraction thereof of building in excess of 35 feet.
- The subject property contains an existing chimney measuring 39' 11" from the base elevation at the location of the chimney (Exhibit C). This exceeds the maximum height requirements in Section 5-12-3, but is allowed by an exception granted under Section 8-2.
- The existing structure on the subject property does not meet the required front and side setbacks in Section 5-12-3 and is an existing nonconforming structure as defined in Section 6-2.
- The existing non-conforming structure on the subject property may be renovated without bringing the structure into conformance given the provisions found in Section 6-2-2(d) Nonconforming Structures.
- Section 8-2 Height Limitations of the Zoning Ordinance allows certain structures, including chimneys, to exceed the height limitations contained in Article V by no more than 20% of that specified for any zoning district classification.
- The applicant submitted elevations that indicate the proposed roof will not exceed the height of the existing chimney. (Exhibit C)
- Section 6-2-2(e) allows a nonconforming structure to be expanded without bringing the nonconforming structure into conformity 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 the zoning ordinance.

APPLICABLE CODE REFERENCES.

5-12-3 Dimensional Requirements:

Minimum Lot Area in Square Feet:	40,000
Lot Area per Dwelling Unit in Square Feet:	N/A
Minimum Lot Width at Building Line in Feet:	100
Minimum Yard Requirements in Feet:	Front: 35 Side: 20 Rear: 20
Maximum Height in Feet:	35. No building shall exceed 35 feet in height unless the depth of the front and total width of the side yards required herein shall be increased one foot for each two feet or fraction thereof of building in excess of 35 feet.

Section 6-2 Nonconformities. The purpose of this section is to regulate and limit the continued existence of uses and structures lawfully established prior to the effective date of this ordinance, or any amendment thereto, that do not conform to such ordinance, as amended. Any nonconformity created by a change in the classification of property or the text of these regulations shall be regulated by the provisions of this section. As used in this section, the term, “effective date of this ordinance, or any amendment thereto,” refers to the date of the ordinance which first rendered a use, structure or land nonconforming.

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.

- a) A nonconforming structure devoted to a use permitted in the zoning classification in which it is located may continue to be used only in accordance with the provisions of this section.
- b) Normal repair and maintenance may be performed to allow the continuation of nonconforming structures.

c) Except as provided in subsections (d) and (e) below, a nonconforming structure shall not undergo a change of use, renovation or expansion.

d) A nonconforming structure may undergo a change of use or renovation without having to bring the structure into conformity with the requirements of these regulations, provided that:

- 1) The change in use or renovation does not increase the floor area of the structure.
- 2) The change in use is to a permitted use within the district.
- 3) The number of parking spaces provided for the use is in conformity with the requirements of these regulations.

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.

Section 8-2 Height Limitations.

The following structures may exceed the height limitations contained in Article V of this Ordinance by no more than 20% of that specified for any zoning district classification: church spires, belfries, cupolas and domes not intended for human occupancy; monuments, water towers, observation towers, chimneys, smokestacks, conveyors, flag poles, masts and similar structures, except as otherwise restricted in the vicinity of airports or elsewhere in this Ordinance

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 AYD Partners LLC for a variance from Section 6-2-2(e) Nonconforming Structures and 5-12-3 Dimensional Requirements to reduce the front setback from 37' to 26.8' and to reduce the Lynn St side setback from 22' to 0' and to reduce the southeast side setback from 22' to 15' (for a principal structure measuring 4' above 35' in height), 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.

[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.

EXHIBIT LIST:

- Exhibit A – Henderson County Property Records**
- Exhibit B – North Carolina Warranty Deed**
- Exhibit C – Elevations**
- Exhibit D – Pictures of Subject Property**
- Exhibit E – Digital Renderings**
- Exhibit F – Application**

Property Summary

Item A.

Tax Year: 2022

REID	1001333	PIN	9569-80-2471	Property Owner	AYD PARTNERS LLC
Location Address	824 LOCUST ST	Property Description	HUNTING CREEK ASSOC LOFUTURE PLSLD-5562	Owner's Mailing Address	4470 W SUNSET BLVD STE 407 LOS ANGELES CA 90027

Administrative Data	
Plat Book & Page	SLD-5562
Old Map #	
Market Area	C103D
Township	NA
Planning Jurisdiction	HENDERSONVILLE
City	HENDERSONVILLE
Fire District	
Spec District	DOWNTOWN - SEVENTH A
Land Class	INDUSTRIAL
History REID 1	
History REID 2	
Acreage	0.22
Permit Date	
Permit #	

Transfer Information	
Deed Date	8/6/2021
Deed Book	003761
Deed Page	00657
Revenue Stamps	\$710
Package Sale Date	8/6/2021
Package Sale Price	\$355,000
Land Sale Date	
Land Sale Price	

Improvement Summary	
Total Buildings	1
Total Units	0
Total Living Area	0
Total Gross Leasable Area	13,516

Property Value	
Total Appraised Land Value	\$95,800
Total Appraised Building Value	\$248,200
Total Appraised Misc Improvements Value	
Total Cost Value	\$344,000
Total Appraised Value - Valued By Cost	\$344,000
Other Exemptions	
Exemption Desc	
Use Value Deferred	
Historic Value Deferred	
Total Deferred Value	
Total Taxable Value	\$344,000

Building Summary

Card 1 824 LOCUST ST

Building Details	
Bldg Name	
Primary Occupancy Type	LOFTS
Primary Occupancy	LOFTS
Primary Class	C
Primary Quality	GRADE C
Year Built	1926
Effective Year	1955
Physical Depreciation (Rating)	AVERAGE
Physical Depreciation (% Bad)	64
Economic Depreciation (% Bad)	0
Functional Depreciation (% Bad)	0
Gross Leasable Area (SQFT)	13,516
Remodeled Year	0
Total Stories	2

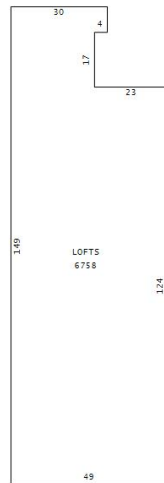
Building Total & Improvement Details	
Total Adjusted Replacement Cost New	\$689,442
Physical Depreciation (% Bad)	AVERAGE 64
Depreciated Value	\$248,200
Economic Depreciation (% Bad)	0
Functional Depreciation (% Bad)	0
Total Depreciated Value	\$248,200
Market Area Factor	1
Building Value	\$248,200
Misc Improvements Value	
Total Improvement Value	\$248,200
Assessed Land Value	\$95,800
Assessed Total Value	\$344,000

Section 1 Details	
Occupancy Type	LOFTS
Air Conditioning	NO AIR CONDITIONING
Baths	NO PLUMBING
Class	C
Depreciation	64%
Depreciation	AVERAGE
FIREPLACE OPENINGS	0
FIREPLACE STACKS	0
Heat	NO HEAT
Occupancy	LOFTS
Quality	GRADE C

Addition Summary

Story	Type	Code	Area
1.00	UNFINISHED BASEMENT	BSMT	5406

Building Sketch



Photograph



Misc Improvements Summary

Card #	Unit Quantity	Measure	Type	Base Price	Eff Year	Phys Depr (% Bad)	Econ Depr (% Bad)	Funct Depr (% Bad)	Common Interest (% Good)	Value
No Data										
Total Misc Improvements Value Assessed:										

Land Summary

Land Class: INDUSTRIAL			Deeded Acres: 0.35		Calculated Acres: 0.22		
Zoning	Soil Class	Description	Size	Rate	Size Adj. Factor	Land Adjustment	Land Value
I-1		COMMERCIAL PRIMARY	9583.00 SQUARE FOOT PRICED	\$10			\$95,800
Total Land Value Assessed: \$95,800							

Ownership History

	Owner Name	Deed Type	% Ownership	Stamps	Sale Price	Book	Page	Deed Date
Current	AYD PARTNERS LLC	SWD	100	710	\$355,000	003761	00657	8/6/2021
1 Back	HUNTING CREEK ASSOCIATES LLC	GWD	100	700		001157	00012	10/3/2003

Notes Summary

Building Card	Date	Line	Notes
No Data			

BK 3761 PG 657 - 660 (4)

DOC# 959953

This Document eRecorded:

08/06/2021

11:55:33 AM

Fee: \$26.00

Henderson County, North Carolina

William Lee King, Register of Deeds

NORTH CAROLINA SPECIAL WARRANTY DEED

Excise Tax: \$710.00

Parcel Identifier No. 9569802471 & 9569803335 Verified by _____ County on the ____ day of _____, 20____

By: _____

Mail/Box to: Goosmann Rose Colvard & Cramer, PA, 77 Central Ave., Ste. H, Asheville, NC 28801 21-4996 jrr/cm Box 81

This instrument was prepared by: William G. Burgin, III Tuggle Duggins PO Box 2888, Greensboro, NC 27402 (w/out title examination)

Brief description for the Index: 824 Locust Street and adjacent vacant tract, Hendersonville, NC

THIS DEED made this 5 day of August, 2021, by and between

GRANTOR

**HUNTING CREEK ASSOCIATES, LLC
a NC limited liability company**

104 Mull Street
Morganton, NC 28655

GRANTEE

**AYD Partners LLC, a Delaware limited liability
company**

Mailing Address:
4470 W. Sunset Blvd., Ste. 407
Los Angeles, CA 90027



Enter in appropriate block for each Grantor and Grantee: name, mailing address, and, if appropriate, character of entity, e.g. corporation or partnership.

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 the City of Hendersonville, Hendersonville Township, Henderson County, North Carolina and more particularly described as follows:

See Exhibit "A" attached hereto and incorporated herein by this reference.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 1268 page 518 and Book 1157, page 18.

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

A map showing the above described property is recorded in Plat Book ____ page ____.

submitted electronically by "Goosmann Rose Colvard & Cramer, PA"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Henderson County Register of Deeds.

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 has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, other than the following exceptions:

Restrictions, easements, rights of way of record, if any, and ad valorem taxes for the current year.

{Remainder of this page is left blank intentionally}

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

HUNTING CREEK ASSOCIATES, LLC,
a North Carolina limited liability company

By: *C. Michael Fulenwider II* (SEAL)
C. Michael Fulenwider II, Authorized Signatory

State of North Carolina - County of Burke

I, the undersigned Notary Public of the County of Burke and State aforesaid, certify C. Michael Fulenwider II personally came before me this day and acknowledged that he is an Authorized Signatory of Hunting Creek Associates, LLC, a North Carolina limited liability company, and that by authority duly gives and as the act of such entity, she signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this 28th day of July, 2021.

My Commission Expires: 12-03-23
(Affix Seal)

Tomra T. Martin
Tomra T. Martin Notary Public
Notary's Printed or Typed Name

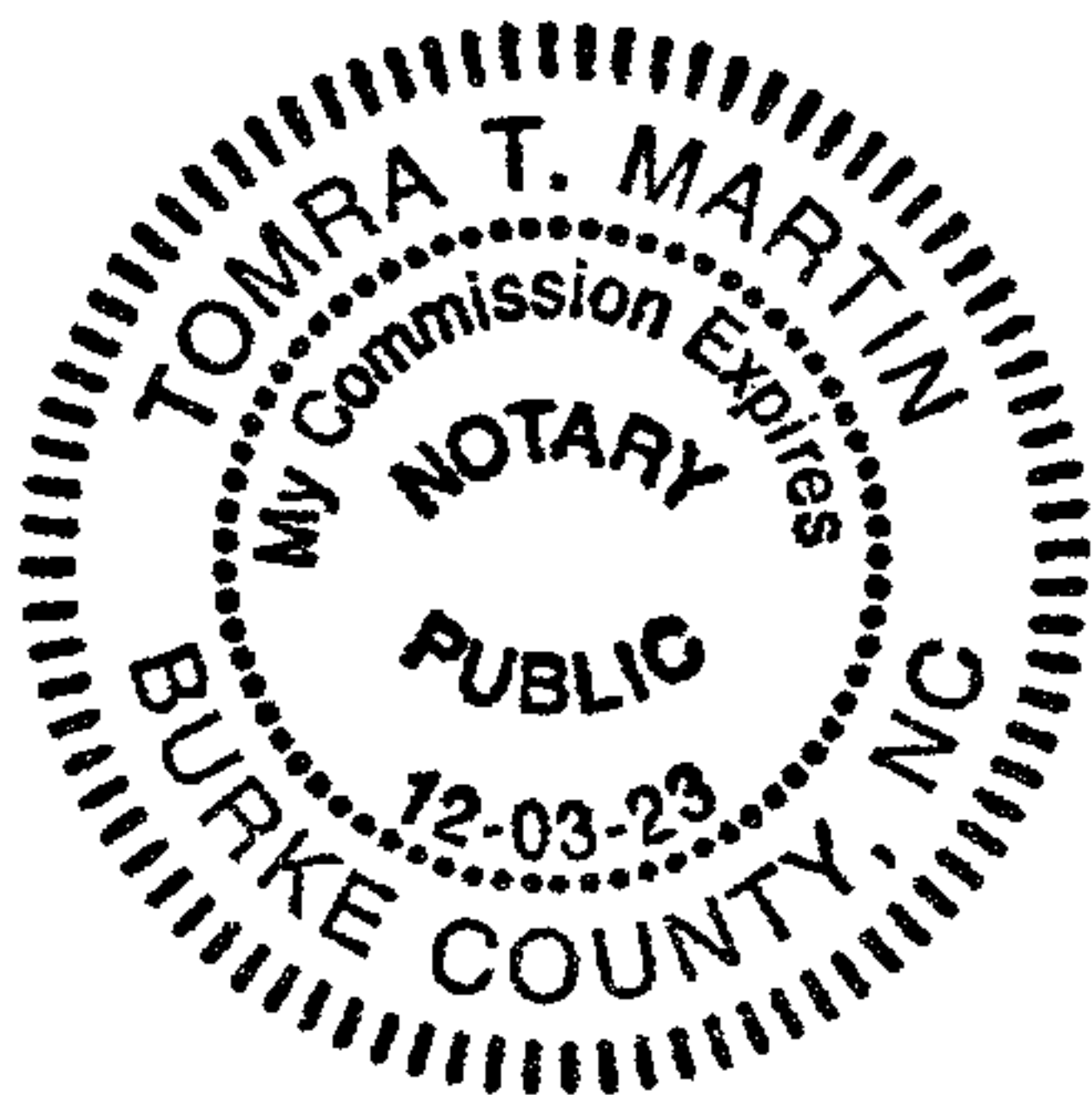


Exhibit ATract One:

Beginning at a stake on the second corner of a tract of land conveyed by T. G. Barker to W. B. Reese, said lot formerly owned by Foster Bennett, and runs thence with the line of said lot South 44 deg. West 112 ft. to a stake, Bennett's corner; thence North 43-¾ deg. West and parallel with Locus Street 171 ft. to a stake in the center of a 16 ft. alley; thence with the center of said alley North 57-¾ deg. East 117½ ft. to a stake; thence South 44-¾ deg. East 144½ ft. to the Beginning, and containing 4/10ths acre, more or less. The foregoing property being fully described in the deed to Foster Bennett recorded in Deed Book 79, at Page 31, in the office of the Register of Deeds for Henderson County, North Carolina, reference to the same being hereby made, and being devised to Myrtle Bennett in the Last Will and Testament of the late Foster Bennett.

Excepting that portion conveyed in that deed recorded in Book 1157 at Page 12, Henderson County Registry.

This conveyance is made subject to the right of way of the above reference 16 ft. alley.

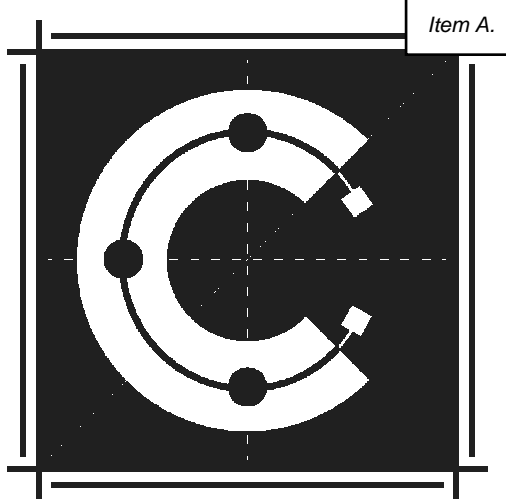
The above-described Property is a portion of that property conveyed in that deed recorded in Record Book 1268, at Page 518 of the Henderson County, NC Register's Office.

Tract Two:

Being all of that property shown as "N/F Hunting Creek Assoc. Remaining Portion of D.B. 1157, PG. 12" and being all of that property shown as "Alley", containing 0.05 acres, more or less, on that plat recorded in Plat Slide 5562 of the Henderson County, NC Register's Office; reference to which Plat is hereby made for a more particular description of said Property.

The above-described Property is a portion of that property conveyed in that deed recorded in Record Book 1157, at Page 12 of the Henderson County, NC Register's Office.



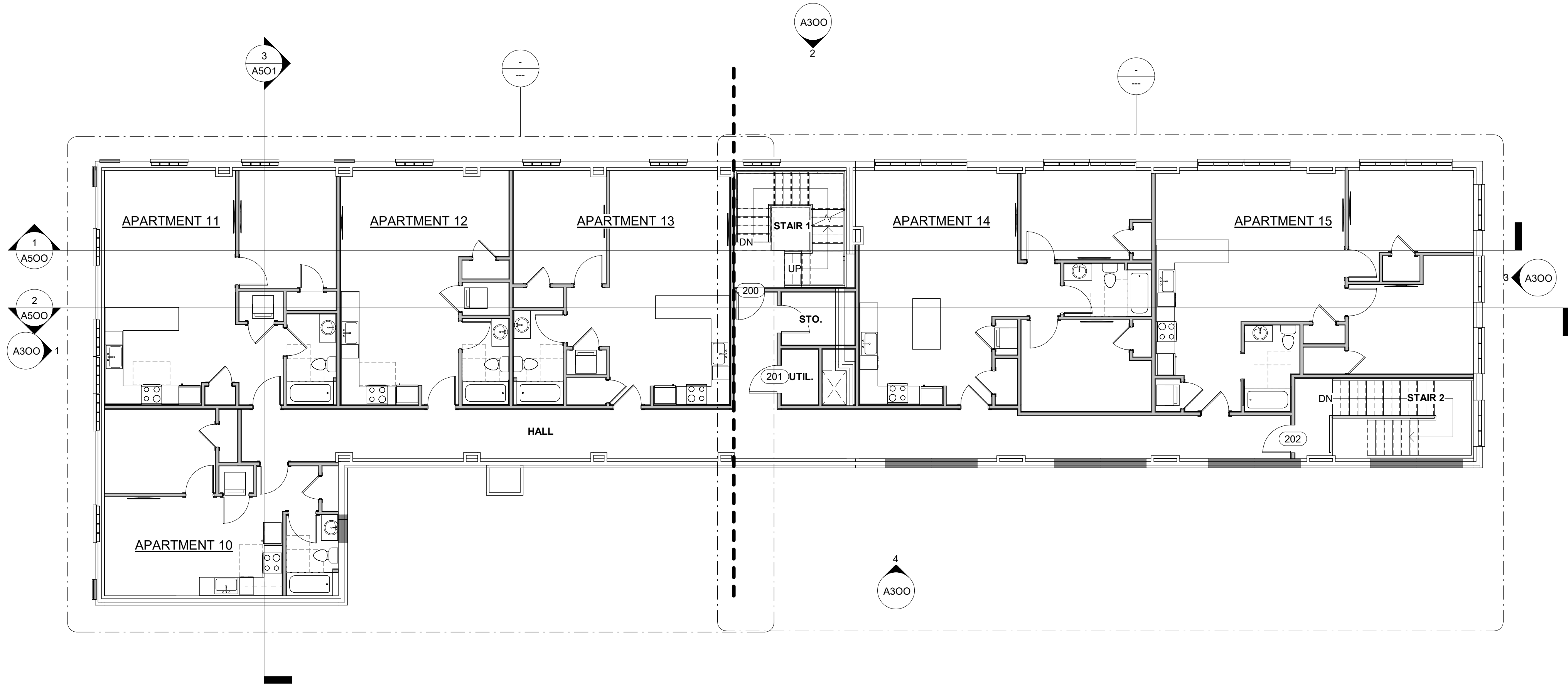


Carleton Collins
ARCHITECTURE

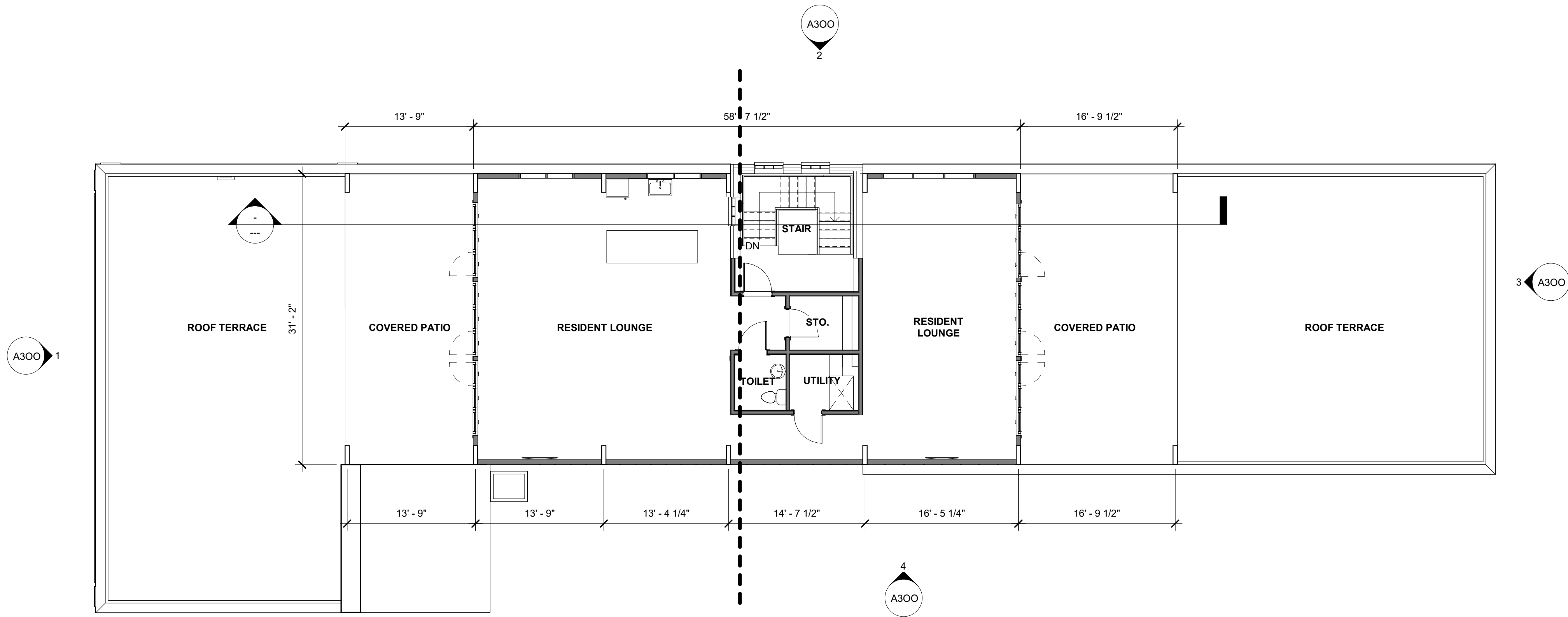
Thoughtful · Community · Design

125 S. Lexington Ave., Suite 101-8
Asheville, NC 28801
828.552.5415

UNIT SCHEDULE - UPPER LEVEL		
APARTMENT	# BEDROOMS	AREA
APARTMENT 10	STUDIO	440 SF
APARTMENT 11	1 BEDROOM	650 SF
APARTMENT 12	STUDIO	470 SF
APARTMENT 13	1 BEDROOM	600 SF
APARTMENT 14	2 BEDROOM	820 SF
APARTMENT 15	2 BEDROOM	811 SF



1 UPPER LEVEL PLAN
1/8" = 1'-0"



2 ROOFTOP AMENITIES PLAN
1/8" = 1'-0"

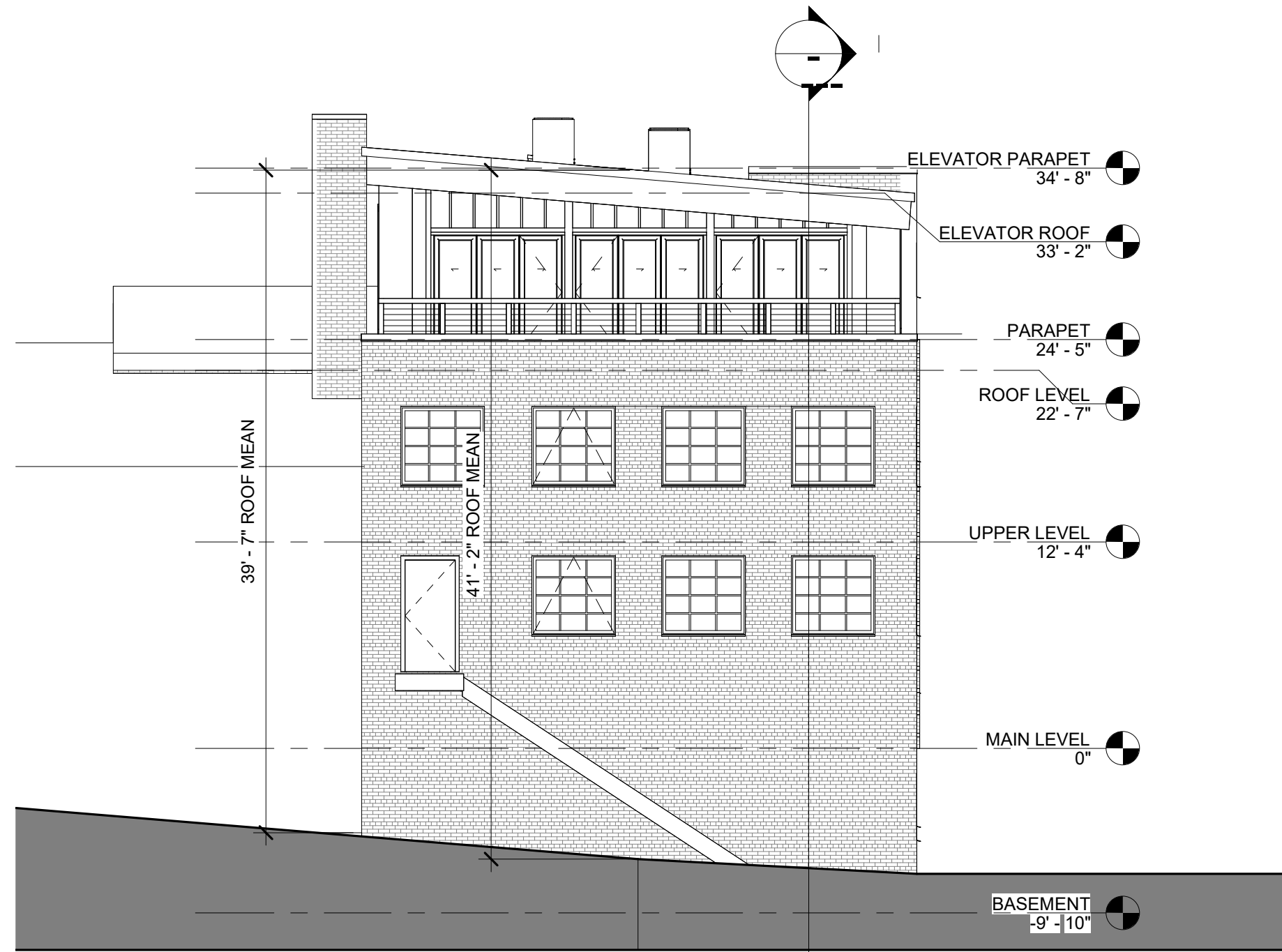
COCA COLA BLDG. APARTMENT UPFIT
AYD PARTNERS
824 LOCUST STREET HENDERSONVILLE, NORTH CAROLINA

Issued: 03.01.22

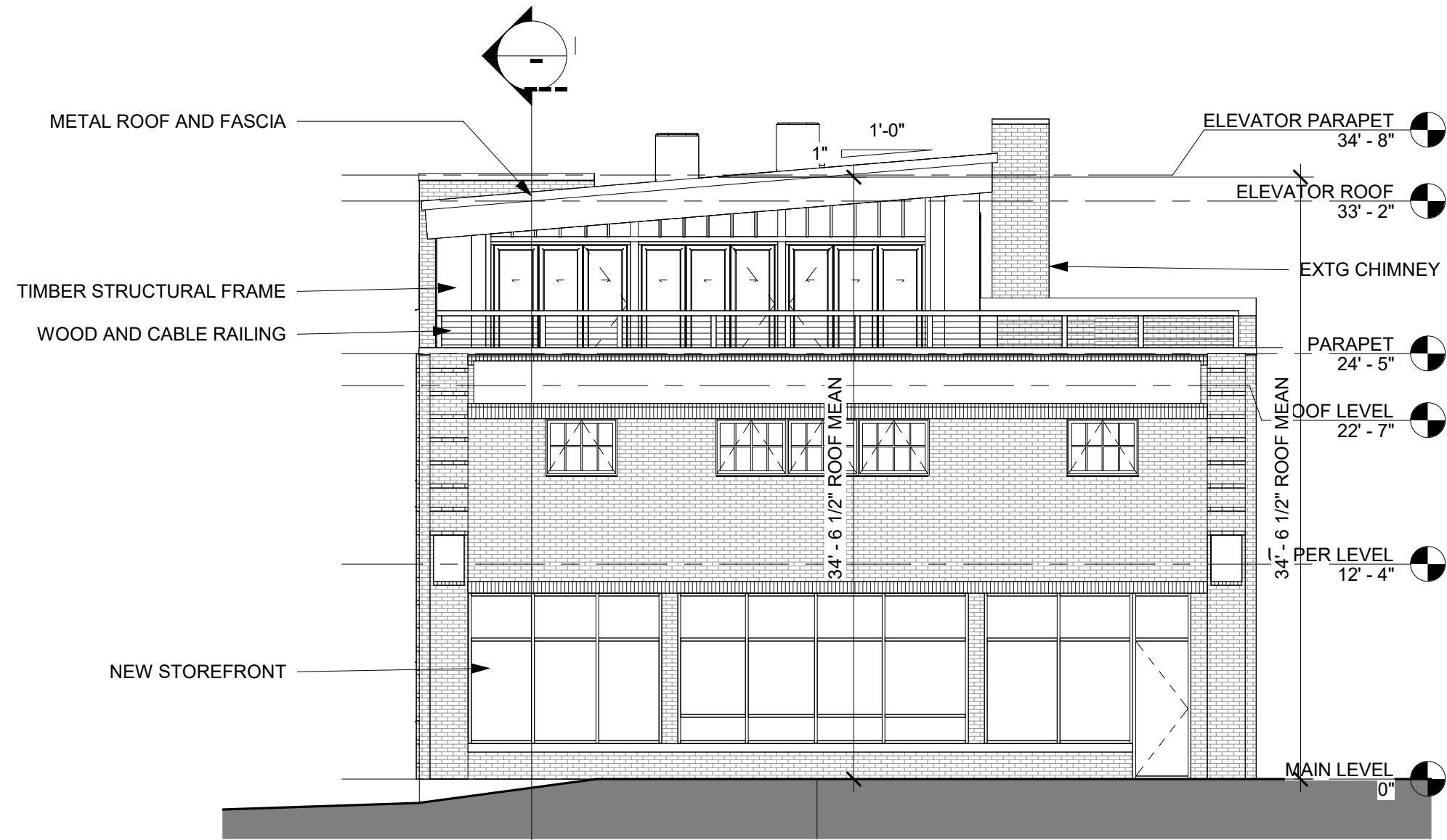
Revisions

UPPER LEVEL
AND ROOF
AMENITIES
PLANS

A101



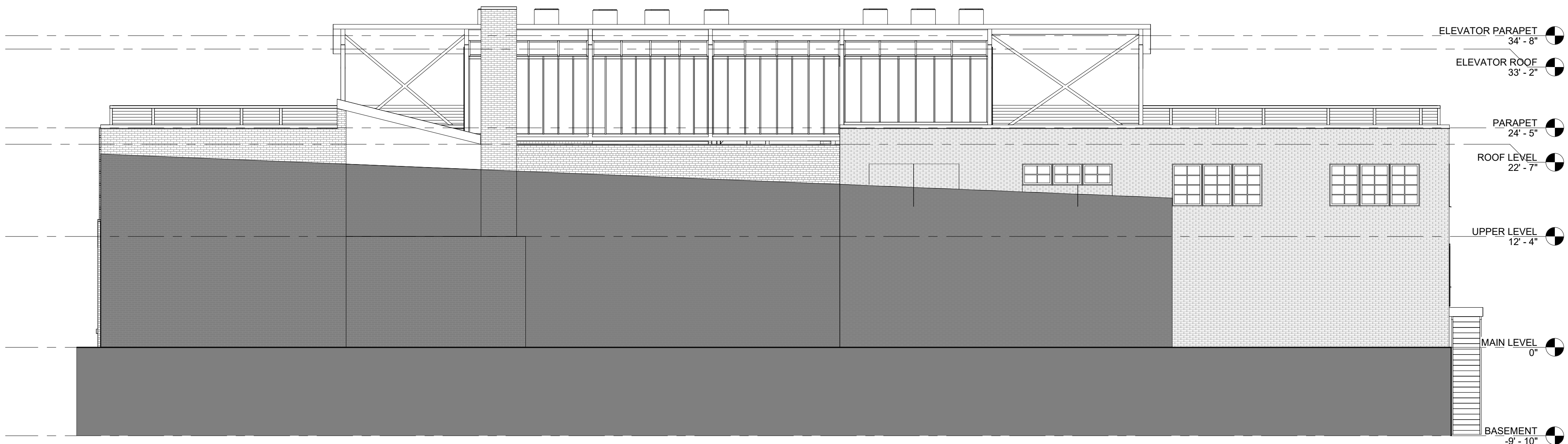
③ EAST ELEVATION
1/8" = 1'-0"



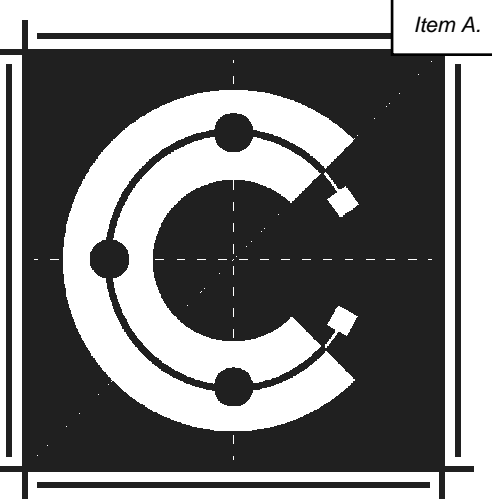
① WEST ELEVATION
1/8" = 1'-0"



② NORTH ELEVATION
1/8" = 1'-0"



④ SOUTH ELEVATION
1/8" = 1'-0"



Carleton Collins
ARCHITECTURE

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125 S. Lexington Ave., Suite 101-B
Asheville, NC 28801
828.552.5415

COCA COLA BLDG. APARTMENT UPFIT
AYD PARTNERS
824 LOCUST STREET HENDERSONVILLE, NORTH
CAROLINA

Issued: 03.01.22

Revisions

ELEVATIONS

A300

Exhibit D – Pictures of Subject Property



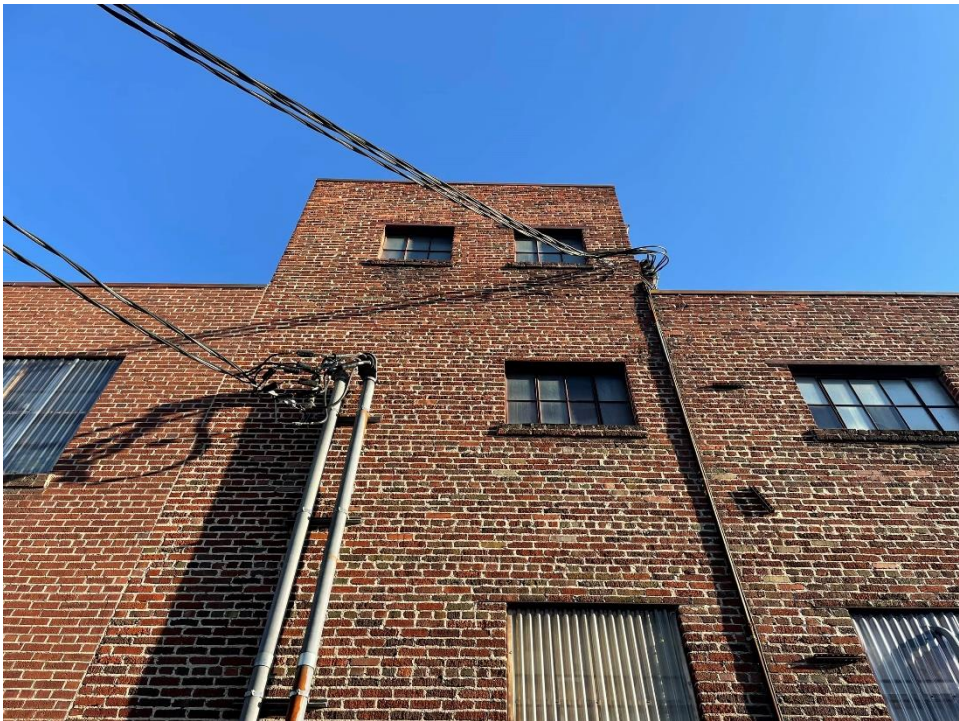
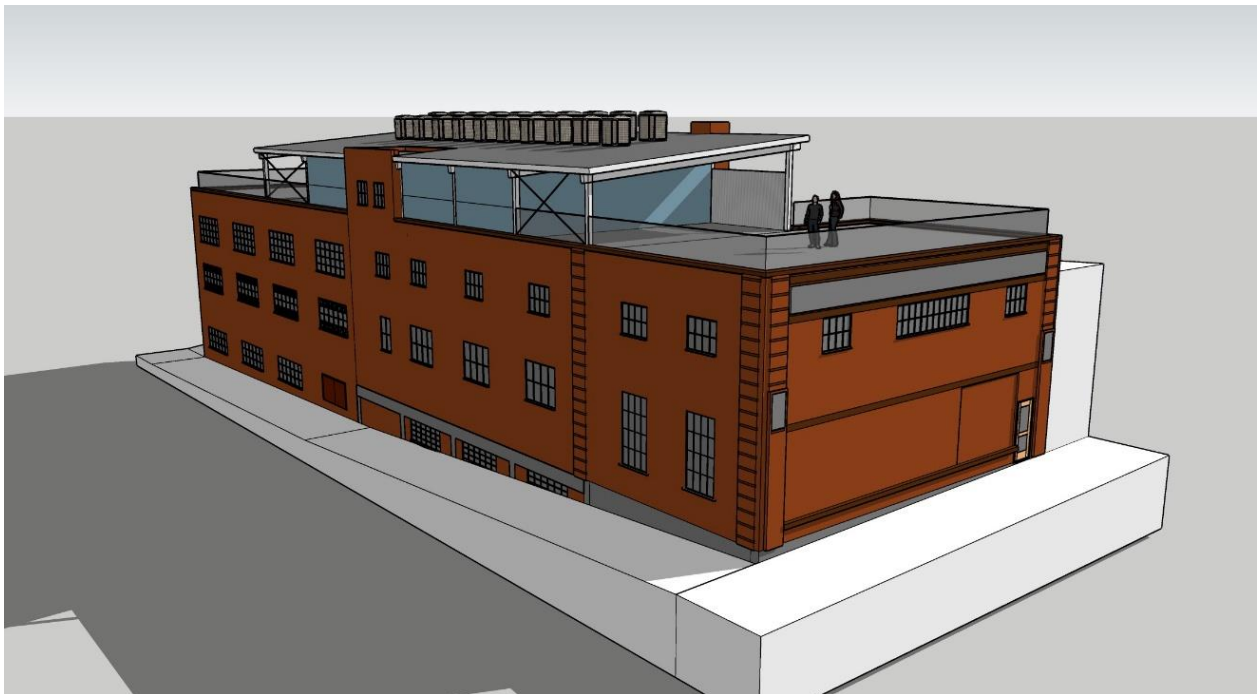
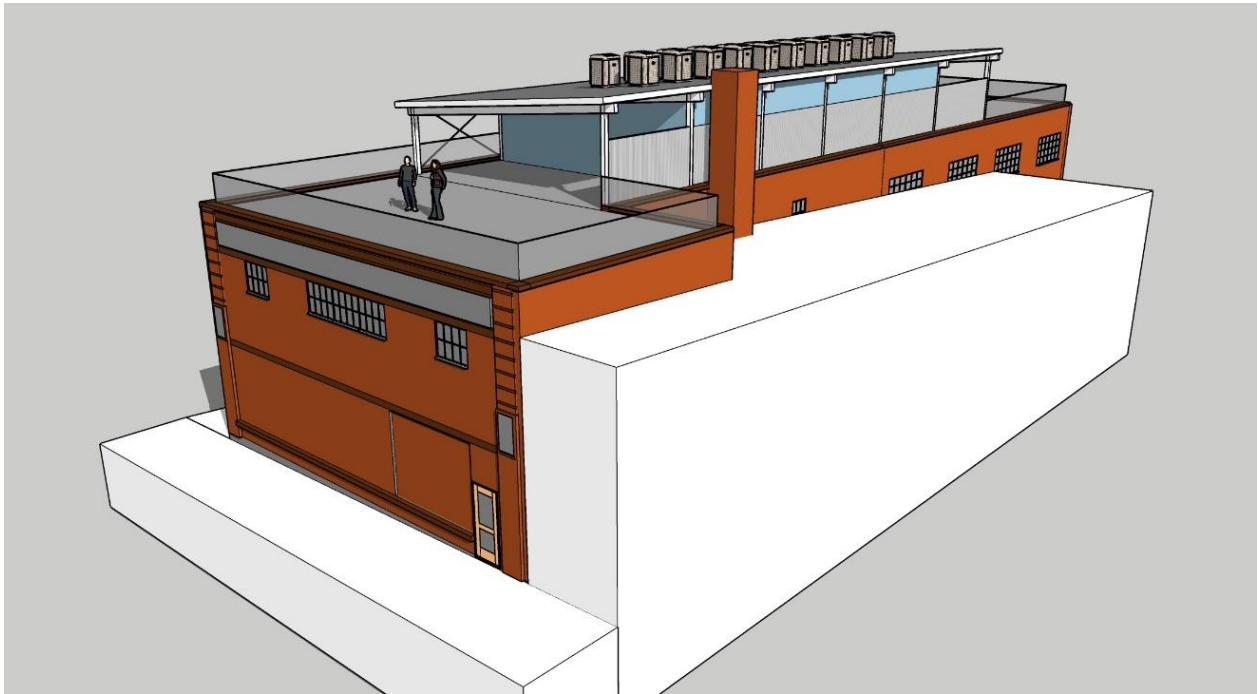
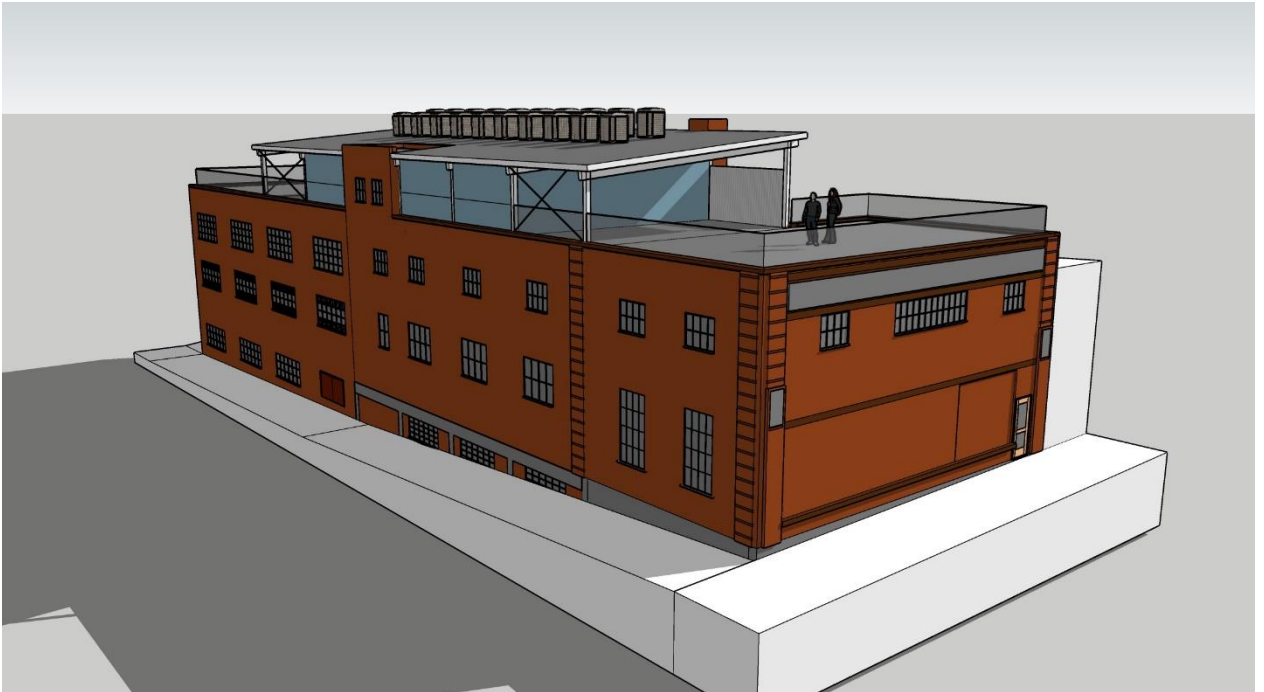


Exhibit E – Digital Renderings







**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 the Administrative Officer for placement on the Board of Adjustment agenda. Staff will not review applications until each item has been submitted and determined complete. Once the Administrative Officer is in receipt of a complete application, the Administrative Officer will schedule the application for an Evidentiary Hearing before the Board of Adjustment (*Section 10-8-3*).

The Board of Adjustment meets the second Tuesday of each month at 1:30PM at the Operations Center located at 305 Williams Street. Completed applications must be submitted to the Administrative Officer no later than the second Friday of each month, to be included on the following month's agenda.

The Board of Adjustment shall conduct an Evidentiary Hearing (quasi-judicial hearing) on the application. Per NCGS 160D-406(d), the applicant, the local government, and any person who would have standing under NCGS 160D-1402(c), shall have the right to participate as a party at the Evidentiary Hearing. Other witnesses may present, competent, material, and substantial evidence that is not repetitive as allowed by the board (*Section 10-8-3*).

The City Zoning Ordinance can be found on the City of Hendersonville Community Development website: www.hendersonvillenc.gov/community-development

By placing a check mark by each of the following items, you are certifying that you have performed that task.

- ☒ 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.

Office Use:

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

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 encouraged 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.

B. Property Information

Name of Project: Locust & Seventh (TBD)

PIN(s): 9569802471

Address(es) / Location of Property: 824 Locust St, Hendersonville, NC 28792

Corner of Locust St & Lynn St. Next door to Miller's Linen Services.

Type of Development: X Residential X Commercial Other
small 360sf retail space

Current Zoning: I-1

Total Acreage: 0.22

C. To the Zoning Board of Adjustment

I, Dan Mock, 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):

Section 8-2 Height Limitations and 5-12-3 Dimensional Requirements.

D. 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.

The former Coca-Cola bottling plant is perfectly suited for an adaptive reuse project in the 7th Ave. corridor. Rather than build some type of industrial storage I felt the highest and best use is an urban apartment development. However, the success of a modern building in today's market requires some basic amenities, common areas and open space. Given the existing parameters of the building, there were no areas for such spaces other than the roof deck. The enclosed space allows residents and their guests to enjoy the space rain or shine, while the open space provides pedestrian engagement to the street. I see the subject site as a vibrant anchor project that will spur future development in the 7th Ave. corridor.

- 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.

I am requesting a variance to increase the height by 3.2' without meeting the dimensional standards (increased setbacks) for I-1 that are required when increasing the height above 35'. The property does not allow me to completely meet the increased setback requirements because the building currently does not meet the setback requirements.

~~Given this is a redevelopment of an existing building and since we have yet to commence demolition, the final roof height is unknown at the moment. Rather than a 3.2' height variance, we prefer to keep the proposed structure under the existing height of the stairwell access on the North side and under the existing height of the chimney on the South side as shown on the provided elevations. The proposed structure will really only be noticeable from the North side.~~

- 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.

~~This is my fault as I assumed the building was built to code from a height perspective and both the existing stairway access and chimney were under the height limit. I was so excited about purchasing the building in our families' favorite city, I didn't think about the height until we started working on the elevations. My focus was on making an impact as a new developer in the community with the redevelopment of one of the most appealing multifamily projects in the downtown corridor.~~

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.

~~Although we couldn't meet every aspect of the variance, my architect and I took several measures to mitigate the issue as best we could.~~

- ~~1. We designed the roof deck in a way that significantly set back the front and rear structure and we are certain that one cannot see it from either the front street or rear driveway. The only side you will be able to see the roof structure will be from Lynn St., which is an underutilized side street that very few people use.~~
- ~~2. We are setting back the roof structure from each side of the exterior wall, similarly to what the code suggested.~~
- ~~3. All proposed roof structures will remain under the existing height of the stairwell access on the North side and under the existing height of the chimney on the South side.~~
- ~~4. The viewshed impact is minimal as Locust St. is a less traveled street compared to Main St. or 7th Ave.~~
- ~~5. As we increase the residents and foot traffic to the area, this will naturally encourage development making it safer at all hours of the day and night.~~

E. Applicant Contact Information

Dan Mock

*** Printed Applicant Name**

AYD 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.)


Applicant Signature

Member

Applicant Title (if applicable)

638 Spartanburg Hwy, Ste 70-338

Address of Applicant

Hendersonville, NC 28792

City, State, and Zip Code

310-750-7117

Telephone

dan@rockwooddevelopment.com

Email

F. Owner Contact Information (if different from Applicant)

*** ^ 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.

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

1/16/22
Date


Applicant Signature

Member
Applicant Title

Dan Mock
Applicant Name (Please Print)