



CITY OF HENDERSONVILLE BOARD OF ADJUSTMENT

City Hall - Old Council Chambers | 160 Sixth Ave East | Hendersonville NC 28792
Tuesday, November 12, 2024 – 1:30 PM

AGENDA

1. **CALL TO ORDER**
2. **APPROVAL OF AGENDA**
3. **APPROVAL OF MINUTES**
 - A. Minutes of July 9, 2024
4. **OLD BUSINESS**
 - A. Approval of Decision B23-081-VAR
 - B. Approval of Decision B24-038-VAR
5. **NEW BUSINESS**
 - A. 709 Florida Avenue – Variance (B24-040-VAR) – Sam Hayes / *Planner II*
 - B. 629 5th Ave. W – Variance (B24-073-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 6th 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 Saalfield, 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 9th 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 9th 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.

Ernest Mowell, Chair

Terri Swann, Secretary

**STATE OF NORTH CAROLINA
HENDERSON COUNTY**

**BEFORE THE HENDERSONVILLE
BOARD OF ADJUSTMENT
FILE NO. B23-081-VAR**

**IN RE THE APPLICATION OF
FIRST VICTORY, INC.
FOR A ZONING VARIANCE
PIN 9579-06-5791, et al.**

DECISION

This matter came before the Hendersonville Board of Adjustment on December 5, 20234 for a quasi-judicial hearing on the application of First Victory, Inc. for a variance from the Minimum Street ROW Requirements in Section 4.03.C.1 of the Hendersonville Subdivision Ordinance for “local” streets from the required 45’ to 30’

Giving testimony were Alexandra Hunt, Planner I for the City of Hendersonville, Travis Fowler of First Victory Inc. and Rob Dull for the property owner, all of whom were sworn and placed under oath.

Issues

The Hendersonville Subdivision Ordinance states in pertinent part:

Section 4.03.C – Street Configuration.

- a) Street rights-of-way.
 - a. All new streets established in the city’s jurisdiction after March 5, 2020 shall include a minimum street right-of-way configured in accordance with Table 4.03.C.1: Minimum Street Right-of-Way Requirements.

TABLE 4.03.C.1: MINIMUM STREET RIGHT-OF-WAY REQUIREMENTS		
TYPE OF STREET	CONFIGURATION	MINIMUM RIGHT-OF-WAY (FEET) [1] [2]
Major Thoroughfare	7 lanes	120
	5 lanes	100
	4 lanes	90
	3 lanes	80
Minor Thoroughfare	2 lanes, parking on each side	80
	2 lanes, parking on one side	70
	2 lanes, paved shoulder	70
Local	45	
Cul-de-Sac	45 [3]	
Alley	20	
NOTES:		
[1] The street right-of-way shall include curb and gutter, sidewalks, multi-use paths, bicycle lanes (where indicated), and associated utility strips.		

Section 2.04.H.2 - Major Subdivision: Applicability. Unless exempted by section 1.06 of this ordinance or by G.S. 160D-802, all divisions of land involving eight or more lots; or involve the dedication of a new street or change in existing streets shall be considered major subdivision subject to the standards of this section. Conservation subdivisions must also be approved under this section 2.04 H., major subdivision.

Section 2.04.H.4 – Major Subdivision Review Standards.

- a) An application for a major subdivision shall be approved, if it complies with the following:
 - i. The major subdivision is prepared and sealed by a licensed professional authorized by the state to prepare such documents;
 - ii. The major subdivision complies with the applicable standards in G.S. 47-30;
 - iii. The major subdivision includes all required certifications and other pertinent information as required by the city;
 - iv. All lots shall be served by a NCDOT-maintained roadway or a right-of-way constructed to and maintained in accordance with NCDOT or city standards, as appropriate;
 - v. The name of the subdivision shall not duplicate or be similar to the name of an existing subdivision in Hendersonville or Henderson County;
 - vi. Street names used in the subdivision shall not duplicate or be similar to the names of streets in an existing subdivision in Hendersonville or Henderson County;
 - vii. All standards or conditions of any prior applicable permits and development approvals; and
 - viii. The major subdivision complies with all other applicable requirements in this ordinance and the City Code of Ordinances.
- b) Land located within a special flood hazard area shall comply with all applicable city standards for flood damage prevention.

Section 2.04.J.4 – Subdivision Variance Review Standards.

- a) **Required findings.** A subdivision variance application shall be approved provided on a finding the applicant demonstrates all of the following:
 - i. Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - ii. 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.
 - iii. 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.

- iv. The requested variance is consistent with the spirit, purpose, and intent of this ordinance, such that public safety is secured, and substantial justice is achieved.
- v. The variance approval is the minimum necessary to make possible the reasonable use of the land, building, or structure.

TESTIMONY

Testimony is accurately reflected in the minutes.

FINDINGS OF FACT

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

- 1) The proposed project is composed of parcels identified as PINs 9579-06-5791, 9579-06-8507, 9579-06-8117, and 9579-07-6259.
- 2) The parcels are zoned R-15 Medium Density Residential and are located in the City's ETJ Section
- 3) The parcels are currently vacant lots and are accessed by two privately maintained roads, Lafolette Street and Amazing Grace Lane.
- 4) Section 2.04.H.2 of the Hendersonville Subdivision ordinance states that all divisions of land involving eight or more lots; or involve the dedication of a new street or change in existing streets shall be considered a major subdivision subject to the standards of this section.
- 5) Section 2.04.H.4(iv) of the Hendersonville Subdivision ordinance requires that all lots of a major subdivision shall be served by a NCDOT-maintained roadway or right-of-way constructed to and maintained in accordance with NCDOT or city standards, as appropriate.
- 6) Section 4.03.C.1 of the Hendersonville Subdivision Ordinance requires that the minimum right-of-way for local streets is 45'.
- 7) The variance request to reduce the required right-of-way to 30' is only for a short distance of the proposed road that is adjacent to private properties.
- 8) The 30' right-of-way is existing and is unable to be widened because of existing development.
- 9) The developer will construct the road according to City street standards, including a 24' fire access lane and 5' sidewalk within the reduced right-of-way.

CONCLUSIONS OF LAW

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

- 1) Strict enforcement of the regulations would result in practical difficulties or unnecessary hardships to the applicant for the variance, because adequate access to the rest of the property would not be possible.
- 2) The hardship is peculiar to the property in question rather than a hardship shared by the neighborhood or the general public because of the existing right-of-way and adjacent development that prohibits expanding the right-of-way.
- 3) The hardship results from the application of the ordinance and from no other cause, including the actions of the owner of the property or previous owners.
- 4) The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, because the road that is constructed will still meet emergency access requirements and have pedestrian facilities.
- 5) In the granting of the variance the public safety and welfare have been secured and substantial justice has been achieved.
- 6) The fact that the property could be utilized more profitably or conveniently with the variance than without the variance has not been considered as grounds for granting the variance.
- 7) The variance is the minimum necessary to make possible the reasonable use of the land because the development standards for the road have not been modified.

DECISION

For the above reasons,

The Board of Adjustment grants a variance to from Section 4.03.C.1 of the City of Hendersonville Subdivision Ordinance to reduce Minimum Street Right-of-Way Requirements in for “Local” streets from the required 45’ to 30’ for the area shown in the application, and only to the extent represented in the application and supporting materials and on the record of the public hearing.

Done this _____ day of _____, 2024

Ernest Mowell, Chair

**STATE OF NORTH CAROLINA
HENDERSON COUNTY**

**BEFORE THE HENDERSONVILLE
BOARD OF ADJUSTMENT
FILE NO. B24-038-VAR**

**IN RE THE APPLICATION OF
WESTERN CAROLINA
COMMUNITY ACTION, INC.
FOR A ZONING AUTHORIZATION
PIN 9569-40-8533**

DECISION

This matter came before the Hendersonville Board of Adjustment on July 9, 2024 for a quasi-judicial hearing on the application of Western Carolina Community Action, Inc., for an authorization pursuant to the Hendersonville Zoning Ordinance *Section 6-2-1(b) Nonconforming Uses* in order to add a rooftop addition to an existing structure.

Giving testimony were Sam Hayes, Planner II, Linda Carter, Children's Services Director for the Applicant, both of whom were sworn and placed under oath.

Issues

The issue is whether or not the Zoning Ordinance permits the extension of a structure devoted to a nonconforming use.

Section 6-2-1 of the Hendersonville Zoning Ordinance states in pertinent part:

6-2-1 – Nonconforming uses. A nonconforming use is a use of land, buildings, or structures that was lawfully established prior to the effective date of this ordinance, or any amendment thereto, but which does not conform to the regulations for the zoning classification in which it is located. Nonconforming uses may be continued subject to the following limitations:

- a) No nonconforming use shall be extended, expanded, enlarged, or moved to occupy a different or greater area of land, buildings or structures than was occupied by such use at the time it became nonconforming; provided, however, a nonconforming use may be extended throughout any parts of a building which were specifically designed and arranged for such use at the time it became nonconforming.
- b) No building or structure devoted to a nonconforming use shall be enlarged, extended, reconstructed, moved, or structurally altered unless such building or structure is thereafter devoted to a conforming use; provided, however, such building or structure may be enlarged or extended upon prior authorization from the board of adjustment, which authorization shall not be granted unless the board of adjustment makes each of the following findings of fact:
 - 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.

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

Minimum Lot Area in Square Feet:	15,000
Lot Area per Dwelling Unit in Square Feet: additional dwelling unit in one building.	15,000 for the first; 7,500 ft2 for one
Minimum Lot Width at Building Line in Feet:	85
Minimum Yard Requirements in Feet:	
Principal Structure	Front: 30 Side: 10 Rear: 15
Accessory Structures	Front: 30 Side: 5 Rear: 5
Maximum Height in Feet:	35

TESTIMONY

Testimony is accurately reflected in the minutes.

FINDINGS OF FACT

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

- 1) The subject property possesses a PIN of 9569-40-8533 and is zoned as R-15 Medium Density Residential.
- 2) Based on Henderson County records, the lot size is approximately 1 acre or 43,560 square feet.

- 3) The subject property contains one building with approximately 2,740 square feet of heated floor area.
- 4) The owner of the subject property is Western Carolina Community Action, Inc., a North Carolina non-profit corporation.
- 5) The building houses a childcare facility which is a nonconforming use in the R-15 zoning district.
- 6) The applicant is proposing to construct a 14' x 20' storage building in the rear/side yard of the property.
- 7) There is no other location on the property to store outdoor toys and various maintenance tools used for the day-to-day operation of a childcare facility.
- 8) The proposed shed will meet the applicable setbacks.

CONCLUSIONS OF LAW

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

1. The proposed enlargement or extension is de minimis in relation to the existing building or structure because the existing structure is approximately 2,740 square feet and the proposed storage building is only 280 square feet.
2. The proposed enlargement or extension does not increase the intensity of the nonconforming use because the only increase is an external storage shed, not floor area devoted to the primary commercial 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 because it will meet the applicable setbacks and storage sheds are generally permitted in the R-15 zoning district.
4. The authorization of such proposed enlargement or extension is not otherwise contrary to the public health, safety or welfare.

DECISION

For the above reasons,

The Board of Adjustment grants an authorization pursuant to 6-2-1(b) of the Hendersonville Zoning Ordinance to construct a 14' x 20' storage shed to the extent represented in the application and supporting materials and based on the evidence within the record of the hearing.

Done this _____ day of _____, 2024

Ernest Mowell, Chair



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY PLANNING DIVISION

SUBMITTER: Sam Hayes, Planner II

MEETING DATE: November 12, 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’.

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

Entry #: 27 - 6/21/2024

Status: Submitted

Submitted: 6/21/2024 11:14 AM

Item A.

Items to Accompany Application:

Completed application form

Site plan of property showing existing structures, natural features (i.e. streams, ponds, etc.) proposed building or addition and indicating distance from such to the centerline of street and to the side and rear lot lines, as applicable. Show placement of septic systems and drain field if applicable and distances from structures.

Copy of septic permit, if applicable

Other documents supporting application, if applicable.

Photographs (optional)

Application fee of \$75.00

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

For more information call (828) 697-3010

Date:

6/21/2024

Applicant Name:

Andrew Griffin

Address

709 Florida Ave, Hendersonville, North Carolina 28739

Phone

(828) 699-7624

Email

Griffinworks@yahoo.com

Property Owner's Name (if different from above)

Property Owner's Address (if different from above)

Parcel ID #

9568583783

Zoning District:











MC

Item A.

Directions to property from Hendersonville:

64 west to L on N. Justice then R on Florida Ave. First house on R

Attach site plan and any supporting documents/pi

-  [S-24-156 SitePlan Preliminary.pdf](#) 97.5 KB 
-  [PNG image 2.png](#) 0.7 MB 
-  [PNG image 3.png](#) 0.7 MB 
-  [PNG image.png](#) 0.6 MB 
-  [PNG image 4.png](#) 0.6 MB 

To the Board of Adjustment:

Name

Andrew Griffin

(owner/agent), hereby petition the Zoning Board of Adjustment for a VARIANCE from the literal provisions of the Zoning Ordinance of the City of Hendersonville because I am prohibited from using the parcel of land described in the form "Zoning Permit Application" in a manner shown by the site plan.

I request a varaince from the following provisions of the ordinance (cite section numbers):

Section 5-10-3 minimum yard requirement and setbacks

Factors Relevant to the Issuance of a Variance

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

Unnecessary Hardship would result from the strict application of thei ordinance: State facts and arguments to show that, unnecessary hardship would result from the strict application of the ordinance. (it shall not be necessary to demonstrate that, in the absence of the variance, no reasonable ise can be made of the property)

Non conforming lot with permitted uses in MIC converting current driveway to covered garage with 336 sqft addition above.

The variance is in harmony with the general purpose and intent of the ordinance. preserves its spirit, public safety is secured and substantial justice is achieved. (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be sustantially outweighed by the harm suffered by the applicant).

Allowed uses are single family residence Addition

Item A.

The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood).

Lot is .08 acre and the orientation of home established in 1930.

The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. (State any facts pertaining to the hardship that is not the result of the applicant's own actions).

No

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

Signature of Applicant:

Date:

6/21/2024



Signature of Property Owner:

Date:

6/21/2024



In the event that any discrepancies exist between the criteria outlined on this form and the Zoning Ordinance of the City of Hendersonville, the ordinance shall prevail.

Received By:

Date:

Fee Paid:

Date Received:

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

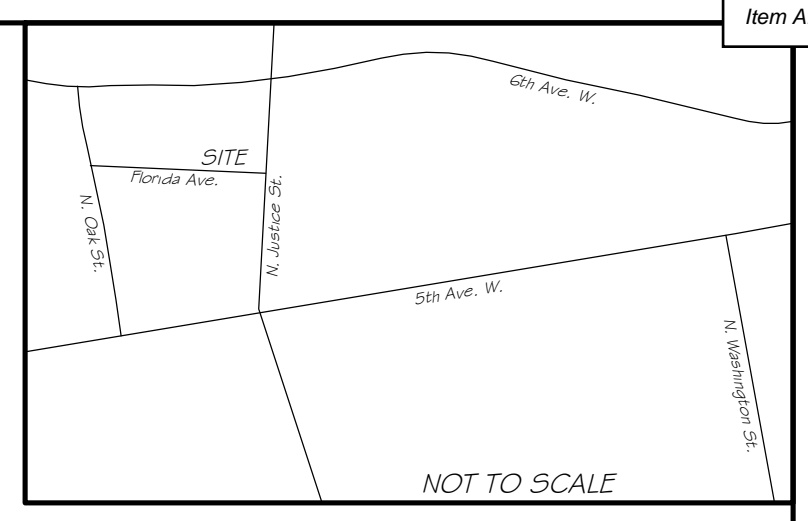
Notes:

- Property is subject to all easements, restrictions and right of ways of record.
- The locations of underground utilities are based on above-ground structures and record drawings provided to the surveyor. Locations of underground utilities/structures may vary from locations shown hereon. Additional buried utilities/structures may be encountered.
- Surveyor has made no investigation or independent search for easements of record, encumbrances, restrictive covenants, ownership title evidence, or any other facts that an accurate title search may disclose.
- The certification of survey and plat was prepared for the entity named in the title block hereon and does not extend to any other entity, unless recertified by the professional land surveyor.
- All miscellaneous survey related materials, including but not limited to, project plans, deed and ROW research, maps, field notes and data, survey reports, record title report, calculations, working drawings, estimates, and other materials acquired and/or prepared by the surveyor as instruments of service shall remain the property of the surveyor and assigns.
- This drawing is not valid unless the original signature and stamp are attached. Any reproduction or variance to this survey by electronic or any other means are not to be considered issued by the professional surveyor.
- Property is currently zoned MIC (Medical, Institutional, Cultural) by the City of Hendersonville as per Henderson County GIS.
- Property is located in Zone X (Minimal Flood Risk) as per FRIS Map Panel 9568, Map # 3700956800J effective date 10/02/2008

Building Setbacks as per the City of Hendersonville MIC Zoning:
 Front: 30'
 Side: 10'
 Rear: 20'

Grid North
 NAD83 (2011)

0.08 Acres
 Area By Coordinate Computation



Vicinity Map

Preliminary
 For Review Purposes Only

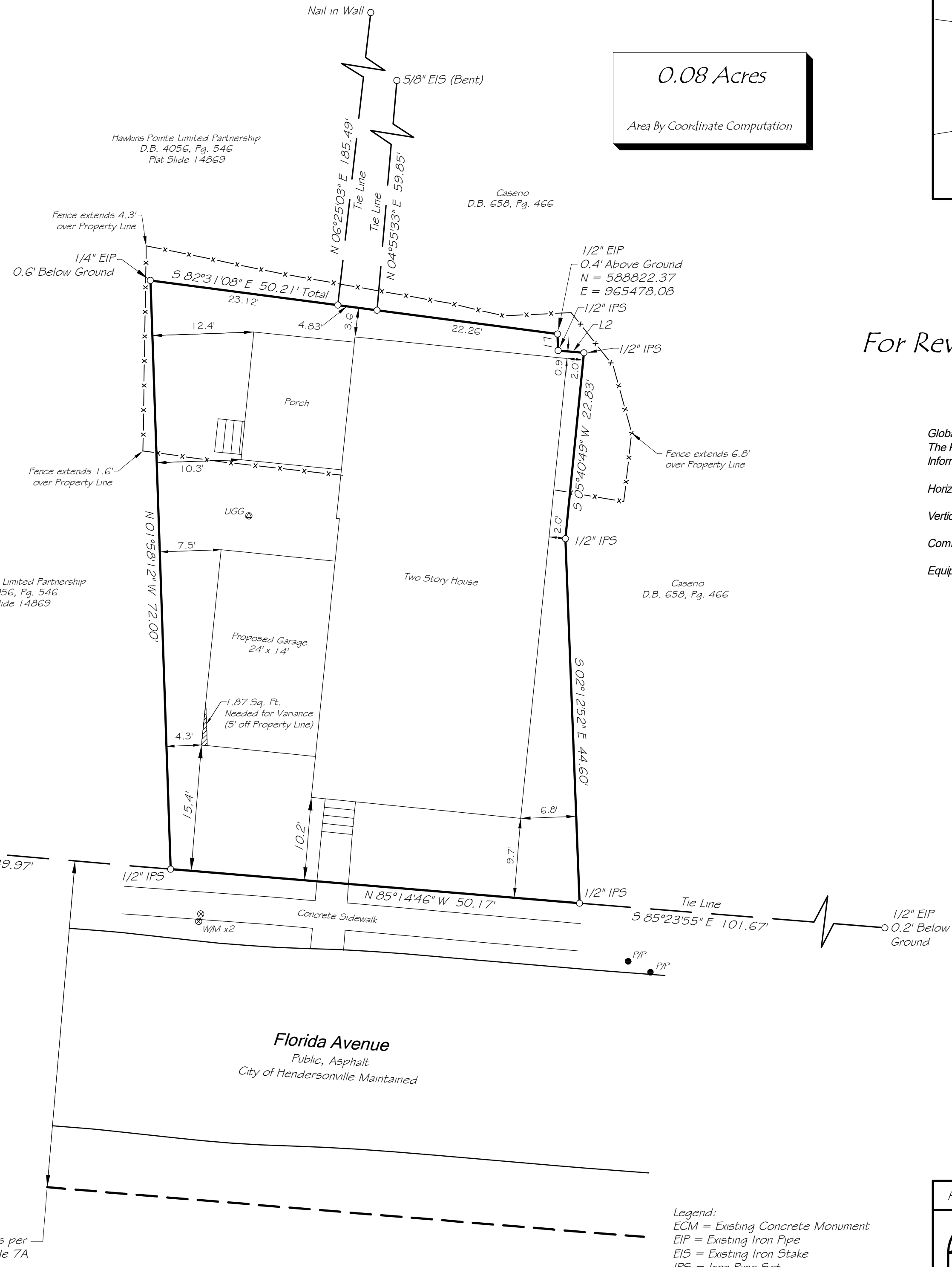
Global Positioning System Certification (RTK)
 The Positional Accuracy Of The RTK Derived Positional Information Is 0.03' Horizontal & 0.03' Vertical

Horizontal Positions Are Referenced to NAD 83 (NSRS 2011)

Vertical Positions Are Referenced To NAVD 88 (Geoid 12)

Combined Factor 0.99977581 (Ground To Grid)

Equipment Used: Carlson GPS-BRx6

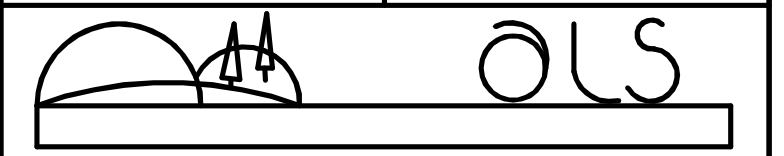


Being all of the Property as described in
 D.B. 4123, Pg. 672

Site Plan for
 Andrew Griffin
 and
 Kassondra Griffin
 -Owners-
 D.B. 4123, Pg. 672
 Plat Cab. B, Slide 7A

Pin: 9568-58-3783

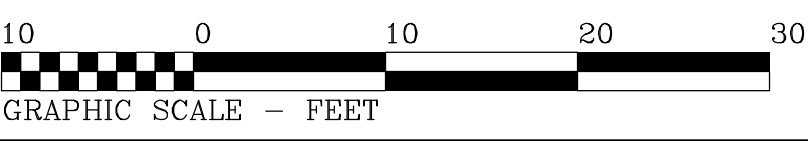
Hendersonville Township | Henderson County, NC



ASSOCIATED LAND SURVEYORS
 & PLANNERS PC.
 P.O. BOX 578 * HORSE SHOE, NC 28742
 (828) 890-3507 NC BUSINESS LICENSE NO. C-2774

SCALE: 1 Inch = 10 Feet | DATE: June 18, 2024
 JOB NO.: S-24-156 | DRAWN BY: KMK/JTB IntellCAD

Course	Bearing	Distance
L1	S 02°12'52" E	2.03'
L2	S 85°04'36" E	3.16'



GRAPHIC SCALE - FEET

Legend:
 ECM = Existing Concrete Monument
 EIP = Existing Iron Pipe
 EIS = Existing Iron Stake
 IPS = Iron Pipe Set
 o = Unmarked Point, Unless Otherwise Noted
 ROW/MON = Right of Way Monument
 ROW = Right of Way
 RRS = Railroad Spike
 P/P = Power Pole
 W/M = Water Meter
 UGG = Underground Gas line
 ---x---x---x---x---x--- = Fence

AMENDED MEMORANDUM

TO: Board of Adjustment Members
FROM: Community Development Department
DATE: November 12, 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 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 A*), 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.



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



Side yard and view of adjacent properties driveway.

BK 4123 PG 672 - 674 (3)

DOC# 1001008814

This Document eRecorded:

01/05/2024 03:24:55 PM

Fee: \$26.00

Henderson County, North Carolina

Tax: \$674.00

William Lee King, Register of Deeds

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$ 674.00

Parcel Identifier No. 114867 Verified by _____ County on the ____ day of _____, 20____

By: _____

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

THIS DEED made this 29th day of December, 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.

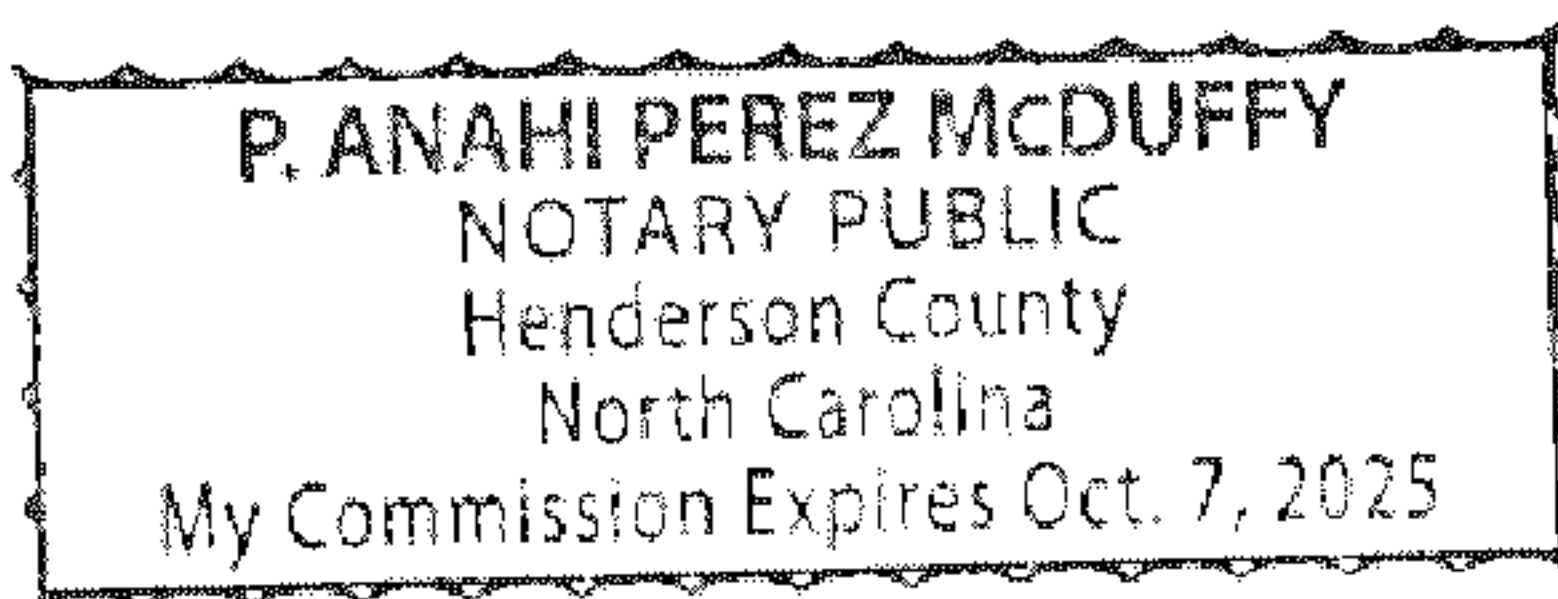
IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

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.



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY PLANNING DIVISION

SUBMITTER: Sam Hayes, Planner II **MEETING DATE:** November 12, 2024

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

TITLE OF ITEM: 629 5th Ave. W – Variance (B24-073-VAR) – Sam Hayes / *Planner II*

SUGGESTED MOTION(S):

<p>1. <u>For Recommending Approval:</u></p> <p>With regard to the Special Use Permit request by George Workman and Jessica Bayer:</p> <p>1. <i>The Special Use Permit is requested for restaurant use under Section 5-10-2 of the Zoning Ordinance.</i></p> <p>I move the Board to find that:</p> <ol style="list-style-type: none"> 1) The proposed use complies with the standards for such use contained in article XVI of the Zoning Ordinance. 2) The proposed use will not adversely affect the health or safety of persons residing or working in the neighborhood of such proposed use. 3) The proposed use will not be detrimental or injurious to property or public improvements in the neighborhood of such proposed use. <p>For the following reasons: <i>[list factual basis for Approval here.]</i></p> <p style="text-align: center;">[DISCUSS & VOTE]</p>	<p>1. <u>For Recommending Denial:</u></p> <p>With regard to the Special Use Permit request by George Workman and Jessica Bayer:</p> <p>1. <i>The Special Use Permit is requested for restaurant use under Section 5-10-2 of the Zoning Ordinance.</i></p> <p>I move the Board to find that:</p> <ol style="list-style-type: none"> 1) The proposed use does not comply with the standards for such use contained in article XVI of the Zoning Ordinance. 2) The proposed use will adversely affect the health or safety of persons residing or working in the neighborhood of such proposed use. 3) The proposed use will be detrimental or injurious to property or public improvements in the neighborhood of such proposed use. <p>For the following reasons: <i>[list factual basis for Denial below.]</i></p> <p style="text-align: center;">[DISCUSS & VOTE]</p>
--	--

SUMMARY:

The Community Development Department has received an application from George Workman and Jessica Bayer for a Special Use Permit for a restaurant under Section 5-10-2. The subject property is currently zoned MIC, Medical, Institutional and Cultural zoning district. The specific Special Use Permit has the following details:

The proposed restaurant will have its primary access off of 5th Avenue W, which is classified as a Major Thoroughfare according to City of Hendersonville records. There will be no exterior storage, and the dumpster will be located in the rear of the building. The seating in the restaurant will not exceed 40 seats maximum. The hours of operation will be M-F, 7:00 AM-3:00 PM and S/Su, 9:00 AM-3:00 PM.

The applicant addressed health, noise, traffic management, and community engagement in their application. The applicant also argued that this use is complimentary to the area.

PROJECT/PETITIONER NUMBER:	B24-073-VAR
PETITIONER NAME:	George Workman and Jessica Bayer (Applicant)
EXHIBITS:	A. Application B. Staff Report C. Site Photos D. Warranty Deed



**CITY OF HENDERSONVILLE
COMMUNITY DEVELOPMENT DEPARTMENT**

100 N. King Street, Hendersonville, NC 28792
Phone (828) 697-3010|Fax (828) 698-6185
www.hendersonvillenc.gov

**Special Use Permit Application
Section 10-8 of the 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 and seven copies of a complete site plan, 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. Completed Application Form
- 2. Completed Signature Page (completed Owner's Affidavit if different from applicant)
- 3. Completed Preliminary Site Plan as described in Section 10-8-2 of the City Zoning Ordinance
- 4. Application Fee

NOTE: Staff has the discretion to require additional items for preliminary site plans.

Office Use:

Date Received: 9/23/24

By: Terri Swann Fee Received

Paid 9/23/24

A. Quasi-Judicial Decisions 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 Special Use Permits from the dimensional requirements of the Zoning Ordinance in accordance with Section 10-8. 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: G + J Coffee House

PIN(s): 9568586340

Address(es) / Location of Property: 629 Fifth Ave W.
Hendersonville, NC 28739

Type of Development: Residential Commercial Other

Current Zoning: MIC

Total Acreage: .26

List of Requested Special Uses:
Restaurant

[APPLICATION CONTINUED ON NEXT PAGE]

C. Special Use Findings of Fact

Section 10-8-4 states that 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 be detrimental or injurious to property or public improvements in the neighborhood of such proposed use.

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 Special Use Permit as provided in Section 10-8-4 of the City of Hendersonville Zoning Ordinance. (If additional space is required, please provide the information on a separate sheet of paper).*

A. Indicate how proposed use complies with the standards for such use contained in Article XVI (Please see Article XVI Supplementary Standards if applicable)

Seperate Sheet Attached

B. Indicate how the proposed use will not adversely affect the health or safety of persons residing or working in the neighborhood of such proposed use.

Seperate Sheet Attached

C. Indicate how the proposed use will be detrimental or injurious to property or public improvements in the neighborhood of such proposed use.

Seperate Sheet Attached

[APPLICATION CONTINUED ON NEXT PAGE]

D. Applicant Contact Information and Signature

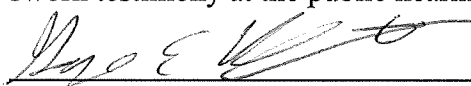
GEORGE WORKMAN / JESSICA BAYER
Printed Applicant Name

G+J Coffee House
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 Board of Adjustment except through sworn testimony at the public hearing. (Applicable if box is checked.)


Applicant Signature

PARTNER
Applicant Title (if applicable)

451 Hill Branch Rd #204
Address of Applicant

FLAT ROCK, NC, 28731
City, State, and Zip Code

310-923-5462
Telephone

George@GJCOFFEEHOUSE.COM
Email

[SIGNATURE CONTINUED ON NEXT PAGE]

E. Property Owner Contact Information and Signature (If different from Applicant)

FONDA HASKINS
*Printed Owner Name

*Printed Company Name (if applicable)

Corporation Limited Liability Company Trust Partnership

Other: PRIVATE OWNERS

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 Board of Adjustment except through sworn testimony at the public hearing. (Applicable if box is checked.)

Fonda Haskins
*Property Owner Signature

OWNER
Property Owner Title (if applicable)

120 RESORT ST.
City, State, and Zip Code

828-692-5455
Telephone

G-HASKIN@Bellsouth.net
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.

Response to Special Use Permit Application Question A:

In compliance with Article XVI Supplementary standards

1. Our primary access is located directly on Fifth Ave. W.
2. There will be no exterior storage. Dumpster will remain located in the rear and will be enclosed upon issuance of Special Use Permit
3. Seating will not exceed 40 seats at max.
4. Hours of operation to be no earlier than 7:00AM and no later than 11:00PM- Actual hours of operation to be M-F 7:00AM-3:00PM and Saturday/Sunday 9:00AM-3:00PM

Response to Special Use Permit Application Question B:

The proposed coffee shop is designed to enhance the local community while ensuring the health and safety of residents and workers in the neighborhood. Here are several key points to demonstrate how our coffee shop will not adversely affect the health or safety of the area:

1. **Compliance with Health Regulations:** We will adhere to all local health codes and regulations, including food safety standards, ensuring that our operations are safe for all patrons and employees.
2. **Noise Control:** The coffee shop will maintain reasonable operating hours and implement sound-proofing measures to minimize noise, ensuring a peaceful environment for neighboring residents and businesses.
3. **Traffic Management:** We plan to encourage walk-in customers, reducing vehicle traffic and promoting a safe environment for pedestrians. **Sanitation and Waste Management:** We will implement a comprehensive waste management plan, including regular trash pickups and recycling options, to keep the surrounding area clean and prevent any health hazards.
4. **Community Engagement:** We intend to engage with local residents and businesses to address any concerns they may have, fostering a cooperative relationship and ensuring that our coffee shop contributes positively to the neighborhood.

By prioritizing these aspects, we believe our coffee shop will not only coexist harmoniously within the community but also enhance its overall vitality.

Response to Special Use Permit Application Question C:

We believe the proposed coffee shop will not be detrimental or injurious to property or public improvements in the neighborhood for the following reasons:

1. **Complementary Use:** A coffee shop is a complementary addition to the neighborhood, providing a community gathering space that encourages foot traffic and supports local businesses. This will enhance the area's appeal rather than detract from it.

2. **Property Values:** Our establishment aims to elevate the neighborhood's aesthetic and social environment. By creating a welcoming space, we anticipate that property values in the vicinity will be positively impacted over time.
3. **Investment in Infrastructure:** We plan to invest in improvements that align with community standards, including landscaping and signage, which will enhance the overall appearance of the area and contribute to public improvements.
4. **Minimal Environmental Impact:** We will implement sustainable practices, such as energy-efficient appliances and responsible waste management, to minimize our environmental footprint and ensure the well-being of the neighborhood.
5. **Mitigation Measures:** We are committed to addressing any potential concerns proactively, such as monitoring noise levels and traffic patterns, to ensure that our operations do not disrupt the neighborhood's quality of life.

By focusing on these factors, we are confident that our coffee shop will be a positive addition to the community, promoting both property and public improvements rather than causing detriment.

MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: November 12, 2024

RE: Special Use Application – City of Hendersonville – 629 5th Avenue W.

SUMMARY: The Community Development Department has received an application from George Workman and Jessica Bayer, partners in G+J Coffee House, for a Special Use Permit. The subject property is currently zoned MIC, Medical, Institutional, and Commercial. The Special Use Permit is requested for restaurant use under Section 5-10-2 of the Zoning Ordinance.

SPECIAL USE REQUEST: The Special Use Permit is requested for restaurant use under Section 5-10-2 of the Zoning Ordinance.

PROPOSED FINDINGS OF FACT:

- Based on Henderson County records, the subject property possesses a PIN of 9568-58-7321 and is zoned MIC Medical Institutional and Cultural.
- Based on Henderson County records, the lot size is approximately .3 acres.
- Based on City of Hendersonville records, the subject property is located on a Major Thoroughfare.
- Based on Henderson County records, a North Carolina General Warranty Deed between Geral M. Haskins and wife, Fonda C. Haskins (Grantor) to Gerald M. Haskins and wife, Fonda C. Haskins.
- *Section 5-10-2* of the zoning ordinance requires a Special Use Permit for Restaurants in the MIC zoning district.

CODE REFERENCE:

5-10-2. Special uses.

The following uses shall be permitted in the MIC Medical Institutional Cultural Zoning District Classification only upon issuance of a special use permit pursuant to article X and shall be subject to special use requirements contained in section 16-4, below:

- Bed and breakfast facilities
- Civic clubs and fraternal organizations
- Cultural arts buildings
- Public utility facilities
- Restaurants

Sec. 16-4. Standards.

As stated herein, the following standards apply to the indicated use when such use is either a conditional zoning district, special use or a permitted use subject to supplementary standards. These standards are in addition to other applicable development standards contained in this ordinance.

16-4-26 Restaurants.

- a) The use must be located on, and have primary access from, a major or minor thoroughfare.
- b) All outside storage areas including dumpsters must be:
 - 1) Sited to the rear of the building;
 - 2) In compliance with the setback requirements for the zoning district classification within which it is located; and
 - 3) Made unnoticeable from both residential adjacent properties and public rights-of-way through installation of screening meeting the specifications of article XV.
- c) The use shall be limited to no more than 40 seats.
- d) Permissible hours of operation shall be limited to the hours between 7:00 a.m. and 11:00 p.m.

Sec. 10-8. Special use permits.

A special use permit from the board of adjustment is required for all special uses.

10-8-1 Application.

When a special use permit is required by the terms of this ordinance, application for such permit, along with a fee established by resolution of city council, shall accompany the application for a building permit.

10-8-2 Preliminary site plan.

The application for a special use permit shall be accompanied by seven copies of a preliminary site plan showing the following:

- a) The proposed title of the project and the name of the engineer, architect, designer, landscape architect, planner and/or licensed surveyor, developer and owner of record;
- b) The north arrow point, scale at not greater than one inch equals 40 feet, and such information as the names of adjacent roads, streams, railroads, subdivisions or other landmarks sufficient to clearly identify the location of the property;
- c) Location of site by an insert vicinity map at a scale no less than one inch equals 2,000 feet;
- d) Existing project zoning and zoning of adjacent property, to include properties abutting either side of a public right-of-way;
- e) City limits line;
- f) Names of adjacent property owners;
- g) Boundary survey of site and the location of all existing easements, buildings, rights-of-way or other encroachments;
- h) Existing topography and proposed finished contours at not more than five feet intervals, with project bench mark clearly identified. Location of the 100-year floodplain, if applicable. Other significant natural features affecting the site including but not limited to marshes, major rock outcrops and lakes or streams;
- i) All proposed streets with proposed names, pavement widths and rights-of-ways. All alleys, drive-ways, curb cuts for public streets and handicap ramps, loading areas, and provisions for off-street parking spaces and sidewalks; calculations indicating the number of parking spaces required and the number provided. All streets shall be clearly identified as public or private; a typical cross-section of the public or private street shall be included;
- j) Preliminary utility layout including location and size of existing and proposed water, sanitary and storm sewer lines; proposed location of electrical transmission lines, gas pipelines, street lights, fire hydrants and the location of garbage disposal facilities or a note indicating arrangements for these facilities;
- k) Location and size of all entrances and exits to the site showing sight distances and their relationship to all street and driveway intersections within 25 feet for driveways and 200 feet for street intersections;
- l) A landscape plan showing wood line before site preparation with species and average diameter of trees indicated and areas to be screened, fenced, walled and/or landscaped; also location of buffer strips, if required;
- m) Proposed location and intended use of all buildings with their dimensions, the number of floors, total floor area and maximum height above lowest ground point of each building;
- n) Notations to include the total project area, the amount and percentage of the site to be covered by buildings, open space, streets and parking;

- o) General location, size, height, orientation, and appearance of proposed signs.

As a matter of discretion, the administrative officer may require additional items for preliminary site plans, which would be necessitated by conditions such as topography, location and anticipated traffic volumes on or near the site. The requirements may include but not be limited to traffic, noise, visual or fiscal impact studies, architect's models, renderings and other studies or data. In addition, if the administrative officer determines that one or more of the above submittal requirements is not applicable to the proposed project, it may be waived.

Upon receipt of an application and site plan, the administrative officer shall review same to determine if all required information has been provided or if additional information is needed. If the site plan is insufficient, the administrative officer shall notify the applicant in writing of such deficiencies. An application for a special use permit will not be scheduled for evidentiary hearing until such time as the board of adjustment is in receipt of a complete application and site plan, that is, an application and site plan containing all the information required under this ordinance.

10-8-3 Evidentiary hearings on applications for special use permits.

Once the administrative officer is in receipt of a complete application and seven copies of a complete site plan, the administrative officer will schedule the application for an evidentiary hearing before the board of adjustment.

The administrative officer shall mail or deliver written notice of the public hearing to the person or entity whose application or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners entitled to mailed notice. The notice must be deposited in the mail at least ten days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

The board of adjustment shall conduct an evidentiary hearing (quasi-judicial hearing) on the application. Per G.S. 160D-406(d), the applicant, the local government, and any person who would have standing under G.S. 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.

10-8-4 Board of adjustment action on applications for special use permits.

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;

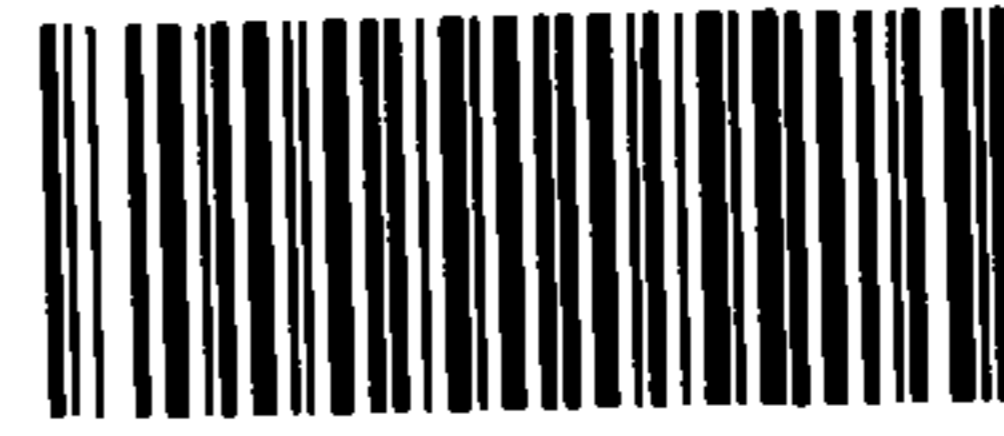
- b) The proposed use will not adversely affect the health or safety of persons residing or working in the neighborhood of such proposed use; and
- c) The proposed use will not be detrimental or injurious to property or public improvements in the neighborhood of such proposed use.

Photo 1: The restaurant will be located in the left ground floor storefront. Apartments are located in the upper floors of the building, and another store is located in the right ground floor storefront.



Map 1: Aerial view of the subject property. Adjacent properties include multi-family and single-family homes, offices, and stores.





This document presented and filed:
04/20/2016 09:16:52 AM

WB

WILLIAM LEE KING, Henderson COUNTY, NC
Transfer Tax: \$0.00

Please do not place anything in the 3" margin above - for recording information only

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax \$ -0-

Tax Lot No. _____ Parcel Identifier No. _____

Mail after recording to The Van Winkle Law Firm Attorney's Initials MMT
422 S. Main Street, Hendersonville, NC 28792

This instrument was prepared by Van Winkle, Buck, Wall, Starnes, & Davis, P.A. (Michael M. Thompson)

Brief description for the Index: 625 5th Avenue West, Hendersonville, NC (Document Preparation Only)

THIS DEED made this 13th day of April, 2016, by and between:

GRANTOR	GRANTEE
<p>GERALD M. HASKINS AND WIFE, FONDA C. HASKINS</p>	<p>GERALD M. HASKINS AND WIFE, FONDA C. HASKINS</p>
<p>Whose mailing address is: 120 Resort Street Hendersonville, NC 28792</p>	<p>Whose mailing address is: 120 Resort Street Hendersonville, NC 28792</p>

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

**SEE EXHIBIT A ATTACHED HERETO AND
INCORPORATED HEREIN BY REFERENCE**

The property hereinabove described was acquired by Grantor by instrument recorded in Deed Book 623, Page 431 and Deed Book 504 at Page 477, Henderson County Registry.

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 Slide ____.

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

And Grantor covenants with 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 Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated.

Title to the property hereinabove described is subject to the following exceptions:

Easements, covenants, conditions and restrictions of record; 2016 ad valorem taxes; and utilities physically located on the property

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

Gerald M. Haskins (seal)
GERALD M. HASKINS

Fonda C. Haskins (seal)
FONDA C. HASKINS

STATE OF NORTH CAROLINA COUNTY OF HENDERSON

I, *Kathryn J. Stankus* a Notary Public of the County and State aforesaid, certify that ***Gerald M. Haskins and wife, Fonda C. Haskins***, personally appeared before me this day and acknowledged the execution of the foregoing instrument for the purposes therein expressed. Sworn to and subscribed to before me. Witness my hand and official stamp or seal, this *13th* day of April, 2016. *14th*

My commission expires: *12-15-20*

Kathryn Stankus
Notary Public

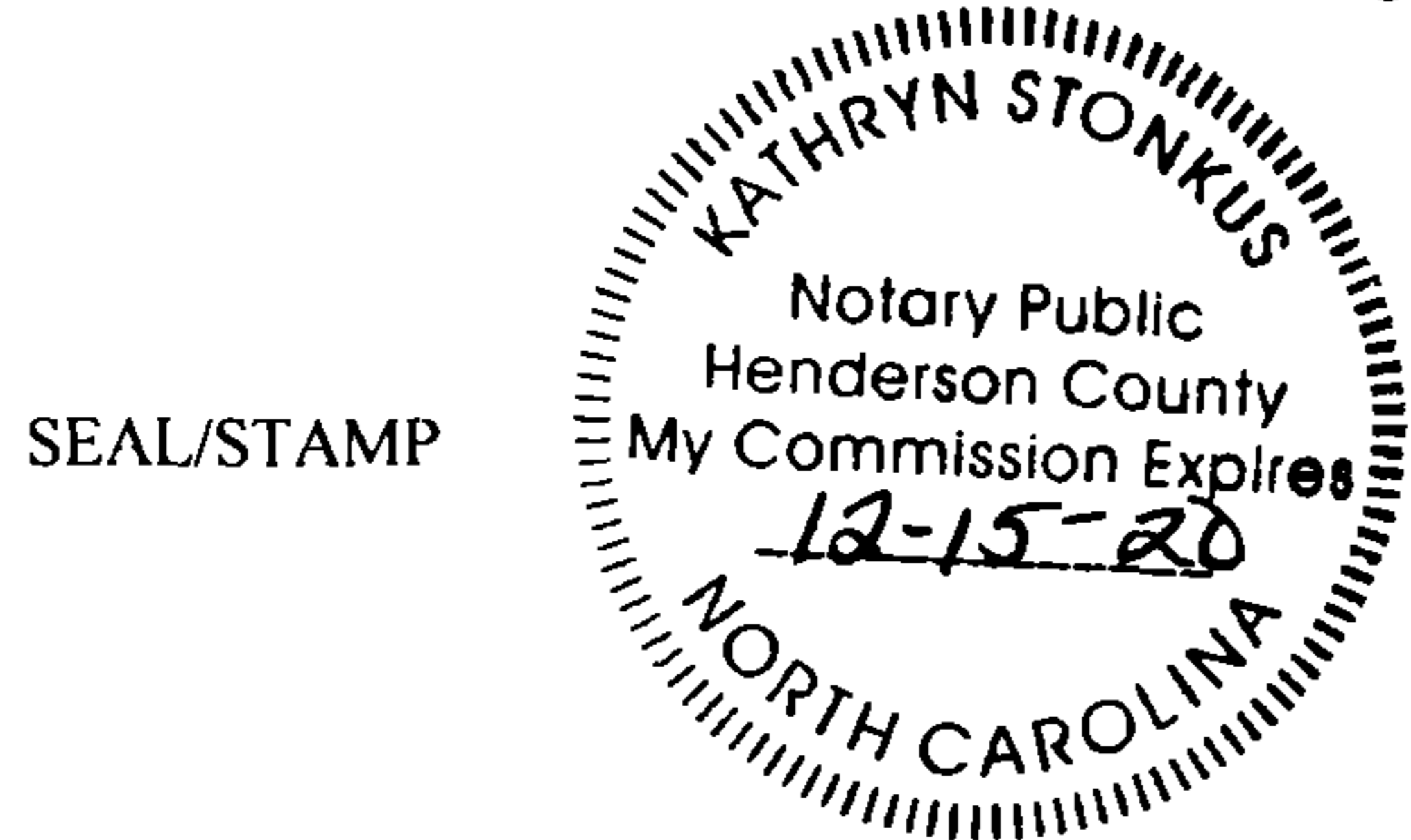


EXHIBIT A

B*EGINNING* at a stake in the northern margin of Fifth Avenue West, which stake stands North 81 degrees 30 minutes East 186 feet from the intersection of Fifth Avenue West and Justice Street, and running thence North 81 degrees 30 minutes East 89 feet to a stake in the northern margin of Fifth Avenue West; thence North 3 degrees 53 minutes West 150 feet to a stake in the southern margin of a 20-foot alley; thence with the southern margin of said alley, South 81 degrees West 84 feet to a stake; thence South 2 degrees 02 minutes East 150 feet to the **BEGINNING**, and being the identical property described in deed from DBM Corporation to John P. Sholar, dated April, 1971, and recorded in Deed Book 490 at Page 389, Henderson County Registry.

AND BEING that property described in Deed Book 504 at Page 477 and a portion of that property described in Deed Book 623, Page 431, Henderson County Registry.