



CITY OF HENDERSONVILLE BOARD OF ADJUSTMENT

Operations Center - Assembly Room | 305 Williams St. | Hendersonville NC 28792
Tuesday, February 14, 2023 – 1:30 PM

AGENDA

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

A. Minutes of December 13, 2022

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

A. 0 Geneva St. – Variance (B23-010-VAR) – *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, December 13, 2022
1:30 p.m. in the City Operations Center

The Hendersonville Board of Adjustment held its regular monthly meeting on December 13, 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, Vice-Chair, Libby Collina, Charles Webb, Kathy Watkins, Stefan Grunwald, Peter Hanley, Chauncey Whiting, Alexandra Hunt, Planner I, Daniel Heyman, Staff Attorney and Kathy Martin, Code Enforcement Officer.

Absent: Michael Edney, Laura Flores

Chair called the meeting to order at 1:35 p.m.

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

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

Approval of the Decisions: **B22-087-VAR** – Rick Moore and **B22-093-VAR** – Maria Lawing. A motion was made by Mr. Mowell to approve the decisions for Rick Moore and Maria Lawing as written. Mr. Hanley seconded the motion which passed unanimously.

Variance – Patricia Addiss – 714 Florida Avenue (B22-107-VAR).

Chair stated today we have one public hearing to consider. A variance request from Patricia Addiss for the property located at 714 Florida Avenue. 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 this application should disclose it now.

Chair swore in all persons to give testimony.

Chair opened the public hearing.

Alexandra Hunt, Planner I stated her name and title for the record. She stated staff is in receipt of an application from Patricia Addiss for a variance from the Dimensional requirements in Section 5-10-3 of the Zoning Ordinance.

Ms. Hunt gave the project background:

The subject property is identified as PIN 9568-58-3641 and is zoned MIC, Medical, Institutional and Cultural. The variance request is to reduce the side and rear setback requirements of Section 5-10-3,

specifically to reduce the required 10' side setback to 1.4' and to reduce the required 20' rear setback to 4'.

The subject property is located at 714 Florida Avenue and is part of the West Side Historic District as the structure on the subject property was constructed in 1930. The single-family use on the subject property pre-dates the City's Zoning Ordinance. Based on Henderson County records the lot size of the subject property is approximately 5,227.2 sq. ft. or 0.12 acres.

An aerial view of the subject property on the County GIS map was shown and outlined in red. There are 11 parcels that front Florida Avenue.

The Community Development Department received a complaint about a storage shed at 714 Florida Avenue stating the shed did not conform with the setback requirements of Section 5-10-3. The City's Code Enforcement Officer investigated the complaint and determined that the storage shed was in violation of the side and rear setback requirements. The property owner/applicant was notified of the violation and promptly filed for a variance. The photo on the bottom left is the photo that was sent to the property owner/applicant along with the violation notice. The applicant submitted a survey along with her application showing the current location of the shed and where it is in proximity to the property line.

Site photos were show of the property and are included in the staff report.

The minimum yard requirements of the MIC zoning district were shown.

There are no setback standards for accessory structures in the MIC district which means accessory structures must meet the same setback requirements as principal structures. Based on Henderson County GIS records, there are 11 lots fronting Florida Avenue with the average lot size being 10,019 sq. ft. or 0.23 acres. The subject property is one of the four lots that do not meet the minimum lot size requirements of the MIC zoning district. The property at 714 Florida Avenue is approximately 5,227.2 sq. ft. and the minimum lot size requirement in the MIC district is 8,000 sq. ft.

Section 10-9 of the Zoning Ordinance states that a variance constitutes permission to depart from the literal requirements of the ordinance. In order for a variance to be granted, the findings of fact in subsections 1-4 of Section 10-9 must be made.

Staff suggested motions were presented to the Board.

Ms. Hunt stated the applicant is present.

Chair asked if there were any questions for staff. A Board member asked when the shed was constructed. Ms. Hunt stated she did not know the exact date.

Chair asked if anyone would like to speak concerning the application.

Patricia Addiss, 714 Florida Avenue stated she was the applicant. She stated the shed was placed on her property in August of 2021. The company she bought the shed from stated a permit was not needed. She is at fault for not checking with the city first, but she took the business at their word. She pointed out the driveway and Mr. Smolski's property. There are businesses all around her. She pointed out her home and the businesses all around her including Mr. Smolski's business and his property. She pointed out how small her property really is. She does not have a garage and needs a place to keep her stuff in it. She asked Mr. Smolski about getting a shed and he actually recommended Boondock's. The color of the shed matches the color of her home and she wanted it to look nice for the neighbors. When her shed got placed it was during covid and it got delivered unexpectedly after waiting quite some time for

it. Mr. Smolski was there when the shed was delivered and later after the shed was placed, he told her that he really did not like where the shed had been placed. It was a little close to the property line. At her own expense she called the company and asked if they would come back out and move it, which they did for a cost. He was there for the second placement, and she asked Mr. Smolski if he was happy where they had moved it. He said it was fine and that is where it remains today. She rents two storage spaces also. She moved here from Raleigh to start a new life and this unfortunate situation happens.

Mr. Mowell asked the space between the corner of the house and the shed is that reading 56". Ms. Addiss stated she had four feet there.

Discussion was made on the moving of the shed and if it was very far from where it first was placed. Ms. Addiss stated it was not far from the first location. Discussion was also made on Mr. Smolski's concerns. Ms. Addiss stated he just had some input that he didn't like it that close to the property line. There was an old fence down the property line, and it must have been a shared fence because it is right on the property line so it was clear to her what her property line was and it was in that but just a little too close for comfort for Mr. Smolski.

Ms. Addiss stated her property is so small that wherever she sets the shed it will not be in compliance with the setbacks. She discussed an area that would not be feasible for the shed as she could not access her crawl space if placed there. She did offer to buy some property from Mr. Smolski, but he wanted to keep it.

Chair asked if there were any questions for the applicant. There were no questions for the applicant.

Chair asked if anyone would like to speak in favor or against the application.

Chair swore in Tom Fox.

Tom Fox, 1743 Haywood Manor Road stated when they put the shed up there, they were not aware of any variance request up there. They took it at face value when they bought the shed from Pineview here in Hendersonville, we asked about permits and he said you don't need a permit. They took that as they did not need any type of permit. They didn't understand and they were unaware of the setbacks. They did not do anything intentional to bypass the requirements. When someone sells you a shed, you think they are the authority and when they say you don't need anything, you don't think anything is needed. They moved it and they asked the neighbor is this is okay, and they thought everything was fine until they got the letter.

The Board asked if Mr. Fox lived at 714 Florida Avenue. He stated part time as they are getting married, and he will be living there.

Joe Smolski, 723 Florida Avenue stated like Ms. Addiss said neither one of them knew there were setbacks. He knows ignorance of the law is no excuse. They were not happy about her putting it there. He discussed there being a fence there originally and if she placed the shed there, she would not be able to paint it. He is not against it being there, but he would like to have it five feet over. The back if it is four feet, he doesn't know if it could be five feet or not. He understands it is a small lot and we all accumulate more stuff. Basically, if she could get around her shed, we don't have a problem with it. It's not particularly something they would like to look at, but everyone has their own land. He wants to be a good neighbor, but he wants to be able to put a fence up there.

Ms. Collina asked when he found out about the setbacks. Mr. Smolski stated he did not find out about the setbacks until later. They are building a low-income housing thing off of 64 and that is when he was reading about setbacks. When he was reading about the setbacks for MIC it does not have setbacks for out buildings like the other residential districts do, so he assumed there were no setbacks.

Mr. Smolski thought the original placement of the shed was over the line. He was there for the second placement of the shed. He thinks five feet would be a reasonable request so that he could install a fence and she could have a space to paint the shed.

Ms. Addiss stated there was a fence there and it was right on the lot line and apparently the previous owners of both properties had agreed they could put the fence on the lot line. That fence has been gone for a few years now. There were the existing posts and that is how she knew where the lot line was. They were cut down, but you could still see them. It is to her knowledge that if he puts up a fence, it would have to be six inches away from the lot line. He is worried about her being able to paint the shed, but it is a high quality shed and she doesn't know that it will need painting anytime soon. She is not a big person, and she would still have room to paint the shed if need be.

Chair asked if anyone else would like to speak. When no one spoke, Chair closed the public hearing.

The Board discussed having to go by the setbacks for primary structures because this zoning district does not allow different setbacks for accessory structures. Ms. Hunt explained that residential districts do have separate setbacks for accessory structures but this district does not.

Daniel Heyman, Staff Attorney explained the accessory uses for this district are listed in the permitted uses.

Ms. Hunt gave an example of the R-6 zoning and how that residential zoning has different setbacks for accessory structures. Mr. Heyman clarified this property is not zoned R-6.

The Board discussed if the accessory structure could actually meet the setbacks or not. The aerial map was shown again. Mr. Mowell pointed out this was one of the smallest lots in the neighborhood and it could not compare to the other lots on Florida Avenue. This is a unique situation for the neighborhood.

Ms. Hunt explained the suggested motions and the recommendation that are included in their packets now. These are examples provided by staff. She also explained that fences under nine feet in height do not have to meet the setback standards.

The Board discussed the different configurations and size of the different sheds.

Mr. Mowell made the following motion: *With regard to the request by Patricia Addiss for a variance from Section 5-10-3: Dimensional Requirements to: Reduce the side setback requirement from 10' to 1.4' and the rear setback requirement from 20' to 4' for an existing storage shed. 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: The lot size and its peculiar alignment with surrounding properties.*

The Board discussed the applicant placing the shed on the property before finding out the setbacks. Ms. Collina felt like the shed was too close to the side property line. Discussion was made on finding a resolution that was agreeable and more in line with the requirements. Mr. Mowell stated while he does

agree nothing the Board will do or say will bring that shed into compliance. The Board discussed Mr. Smolski being able to put up his fence and the applicant still be able to have her shed.

Ms. Hunt discussed this application being withdrawn and the applicant coming back with another plan as an alternative for the Board to consider with the shed not placed as close to the side setback. Mr. Mowell stated that would be the applicant's decision to withdraw and come back. Chair stated it will take seven affirmative votes to pass this variance.

Chair reopened the public hearing.

Ms. Addiss stated the shed costs \$6,000 and it will cost a lot to move it. She placed it at the end of her driveway where a garage would normally be. If this was not approved, it won't fit anywhere else. If she got a different size, she will be out \$6,000. She stated this is where a garage would be. If she asked for a garage this is where it would go. The variance process is for a hardship, and this is a hardship. She would also like to have some usable yard. Wherever she placed this shed on her property, it would not meet the setbacks.

The Board discussed adding conditions to the motion. Ms. Hunt stated they could do that. The Board was in agreement with amending the motion. Ms. Collina felt like it would be better to get a surveyor out there and have the placement of the shed and the setbacks staked and drawn on a survey. The Board discussed the cost and it being difficult to move the shed.

Mr. Heyman stated staff position is as long as it is clear what motion is being approved and they place a reasonable condition on it that would be satisfactory. Staff's position is they do not have to repeat the motion. A variance does run with the land.

The motion was amended to include the condition that the shed has to be moved and placed with a minimum setback on the side and rear of 4'. Mr. Hanley seconded the amended motion.

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

Mr. Hanley	Yes
Mr. Mowell	Yes
Mr. Webb	Yes
Ms. Lowrance	Yes
Mr. Grunwald	Yes
Ms. Collina	Yes
Ms. Watkins	Yes
Mr. Whiting	Yes

The vote was unanimous. Motion approved.

Approval of the Annual Schedule of Regular Meeting Dates for 2023. Mr. Mowell moved to adopt the annual schedule of regular monthly meeting dates. Mr. Hanley seconded the motion which passed unanimously.

Meeting adjourned at 2:35 p.m.

Melinda Lowrance, Chair

Terri Swann, Secretary



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY PLANNING DIVISION

SUBMITTER: Alexandra Hunt, Planner I **MEETING DATE:** February 14, 2023

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

TITLE OF ITEM: 0 Geneva St. – Variance (B23-010-VAR) – *Alexandra Hunt / Planner I*

SUGGESTED MOTION(S):

1. For Recommending Approval:

With regard to the request by Edith and James Smith for a variance from *Section 6-1-7: Corner Lot Requirements* to:

1. *Reduce the side setback requirement from 18' to 14' for the addition of a modular home on the subject property.*

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 Edith and James Smith for a variance from *Section 6-1-7: Corner Lot Requirements* to:

2. *Reduce the side setback requirement from 18' to 14' for the addition of a modular home on the subject property.*

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 Edith and James Smith for a variance from Section 6-1-7 Corner Lot Requirements in accordance with the definition of “building, setback line” in Section 12-2-2 Definition of Terms to reduce the required 18’ side setback to 14’. The subject property is currently zoned R-6, High-Density Residential.

VARIANCE REQUEST: The Applicant is requesting a variance from the requirement that side yards on corner lots along a side street, shall be increased by ten feet as defined in Section 6-1-7 of the Zoning Ordinance in order to place a modular home on the lot. (Exhibit A).

The subject property is currently a vacant corner lot zoned R-6 High Density Residential. The lot conforms to the dimensional requirements for the R-6 zoning district. The side setback requirements for R-6 are 8’. Section 6-1-7 Corner Lot Requirements requires that an additional 10’ be added to the side setback on corner lots along a side street.

The subject property is located on the corner of Geneva Street and N Oak Street and fronts N Oak Street. The Section 6-1-7 corner lot requirement increases the side setback on Geneva St. from the required 8’ to 18’. The Applicant was sold a modular home that when placed on the lot in accordance with the setback requirements, would encroach a total of 4’ into the side setback on Geneva St. excluding the outermost 3’ of the uncovered porch per the building setback line definition in Section 12-2-2.

PROJECT/PETITIONER NUMBER:	B23-010-VAR
PETITIONER NAME:	James and Edith Smith (Owner/Applicant)
EXHIBITS:	<ul style="list-style-type: none"> A. Staff Report B. Application C. Warranty Deed D. Site Photos

AMENDED MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: February 14, 2023

RE: Variance Application –0 Geneva St.

SUMMARY: The Community Development Department has received an application from Edith and James Smith for a variance from Section 6-1-7 Corner Lot Requirements in accordance with the definition of “building, setback line” in Section 12-2-2 Definition of Terms to reduce the required 18’ side setback to 14’. The subject property is currently zoned R-6, High-Density Residential. The specific variance requested is for the following:

VARIANCE REQUEST: The Applicant is requesting a variance from the requirement that side yards on corner lots along a side street, shall be increased by ten feet as defined in Section 6-1-7 of the Zoning Ordinance in order to place a modular home on the lot. (*Exhibit A*).

The subject property is currently a vacant corner lot zoned R-6 High Density Residential. The lot conforms to the dimensional requirements for the R-6 zoning district. The side setback requirements for R-6 are 8’. Section 6-1-7 Corner Lot Requirements requires that an additional 10’ be added to the side setback on corner lots along a side street.

The subject property is located on the corner of Geneva Street and N Oak Street and fronts N Oak Street. The Section 6-1-7 corner lot requirement increases the side setback on Geneva St. from the required 8’ to 18’. The Applicant was sold a modular home that when placed on the lot in accordance with the setback requirements, would encroach a total of 4’ into the side setback on Geneva St. excluding the outermost 3’ of the uncovered porch per the building setback line definition in Section 12-2-2.

PROPOSED FINDINGS OF FACT:

- Based on Henderson County records the subject property possesses a PIN of 9568-57-3034 and is zoned as R-6 High Density Residential.
- Based on Henderson County records, the lot size is approximately 0.14 acres or 6,098.4 square feet.
- Based on Henderson County records, the subject property is a vacant lot.
- Based on the City of Hendersonville records, Geneva Street is a City maintained street.

- Based on Henderson County records a North Carolina General Warranty Deed between Joan Cooley, Dora Y. Brown and Willie Brown (Grantors) and James T. Smith, Jr. and Edith A. Smith (Grantees) was recorded on January 4, 2023.
- Section 5-5-3 requires the Principal Structure setbacks for R-6 are:
 - Front: 20'
 - Side: 8'
 - Rear: 10'
- Section 6-7-1 requires the side yards for corner lots in a residential district be increased by ten feet.
- Section 12-2-2 defines the building setback line as a line establishing the minimum allowable distance between the nearest portion of any building (excluding the outermost three feet of any uncovered porches, steps, eaves, gutter and similar fixtures) and the street or highway right-of-way when measured perpendicularly thereto.
- Based on the Variance Application (*Exhibit A*), the Applicant is proposing to place a modular home on the subject property.
- Based on the survey submitted by the Applicant, the proposed modular home is 27.6' x 60' with two, 4' x 8' uncovered porches.

CODE REFERENCES.

5-5-3 Dimensional Requirements:

Minimum Lot Area in Square Feet:	6,000
Lot Area per Dwelling Unit in Square Feet:	6,000 for the first; 4,000 square feet for one additional dwelling unit in one building.
Minimum Lot Width at Building Line in Feet:	50
Minimum Yard Requirements in Feet:	
Front:	20
Side:	8
Rear:	10
Accessory Structures:	
Front:	20
Side:	5
Rear:	5
Maximum Height in Feet:	35

6-1-7 Corner Lots. In any residential district, the side yard requirements for corner lots along the side street shall be increased by ten feet. Accessory buildings shall observe all setback requirements.

Section 12-2-2 Definition of Terms

Building, Setback Line: A line establishing the minimum allowable distance between the nearest portion of any building (excluding the outermost three feet of any uncovered porches, steps, eaves, gutter and similar fixtures) and the street or highway right-of-way when measured perpendicularly thereto.

Section 10-9 Variance.

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

- 1) Unnecessary hardship would result from the strict application of the ordinance. It is not necessary to demonstrate that, in the absence of the Variance, no reasonable use can be made of the property.
- 2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a Variance. A Variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- 3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a Variance is not a self-created hardship.
- 4) The requested Variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

The Board of Adjustment shall not have authority to grant a Variance when to do so would:

- 1) result in the extension of a nonconformity regulated pursuant to Section 6-2, above, or
- 2) permit a use of land, building or structure which is not permitted within the applicable zoning district classification. Per NCGS 160D-705 (d), appropriate conditions may be imposed on any Variance, provided that the conditions are reasonably related to the Variance.

EXHIBITS

Exhibit A – Application and Site Plan

Exhibit B – Warranty Deed

Exhibit C – Site Plan with Staff notes

Exhibit D – Site Photos



**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) *N/A*
- ☒ 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: EDITH & James Smith

PIN(s): 9568573034

Address(es) / Location of Property: TBD GENEVA STREET,
HENDERSONVILLE, N.C. 28739

Type of Development: ☒ Residential ☐ Commercial ☐ Other

Current Zoning: R-6

Total Acreage: .15 ACRES

C. To the Zoning Board of Adjustment

EDITH SMITH
I, JAMES SMITH, 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):

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.

Basically this is not a buildable lot with current front AND rear setbacks

- 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.

- 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.

Property owner is buying property from a family member. They had no knowledge of any zoning issues. There was no realtor involved.

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.

E. Applicant Contact Information

James Smith & Edith Smith
 * Printed Applicant Name

N/A
 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.)

✓ James T Smith JR ✓ Edith Smith
 Applicant Signature

NA
 Applicant Title (if applicable)

P.O. Box 2352
 Address of Applicant

Hendersonville, NC 28793
 City, State, and Zip Code

828-489-2779
 Telephone

N/A
 Email

F. Owner Contact Information (if different from Applicant)JAMES SMITH & EDITH SMITH

* ^ Printed Owner Name

N/A

* ^ 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 Title

☒ JAMES T SMITH JR☒ EDITH SMITH

Owner Signature

N/A

Owner Title (if applicable)

P.O. Box 2352

Address of Property Owner

HENDERSONVILLE, N.C

City, State, and Zip Code

828-489-2779

Telephone

(NONE)

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.

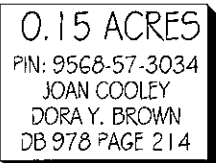
JAMES SMITH

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

1-6-23
Date

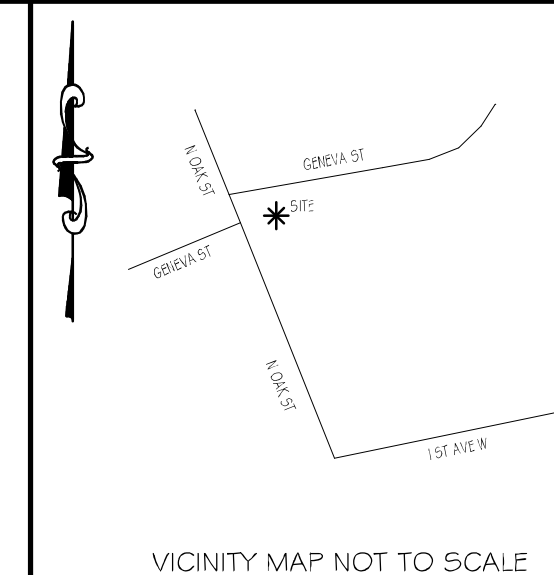
✓ James T. Smith Jr.
✓ Edith Smith
Applicant Signature

N/A
Applicant Title
✓ James T. Smith Jr.
✓ Edith Smith
Applicant Name (Please Print)





LINE	BEARING	DISTANCE
L1	S 04°28'57" W	13.42'
L2	N 81°24'19" E	46.98'



NOTES:

* ALL AREAS CALCULATED BY COORDINATE COMPUTATION METHOD.

* THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF ABSTRACT TITLE AND MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY-AT-LAW.

* THIS SURVEY MAY BE SUBJECT TO ALL RIGHTS-OF-WAYS, EASEMENTS, RESERVATIONS, AND RESTRICTIONS WRITTEN AND UNWRITTEN, RECORDED AND UNRECORDED.

* ADJOINING PROPERTY OWNER INFORMATION TAKEN FROM THE HENDERSON COUNTY GIS WEBSITE.

* NO UNDERGROUND UTILITIES WERE LOCATED.
CALL 811 OR 1-800-632-4949 BEFORE DIGGING.

* BASED ON GRAPHICAL DETERMINATION, THE SUBJECT PROPERTY DOES NOT LIE IN A FEMA/FIRM SPECIAL FLOOD HAZARD AREA PER THE NATION FLOOD INSURANCE PROGRAM, FLOOD INSURANCE RATE MAP 3700956800J, WITH AN EFFECTIVE DATE OF OCTOBER 2, 2008.

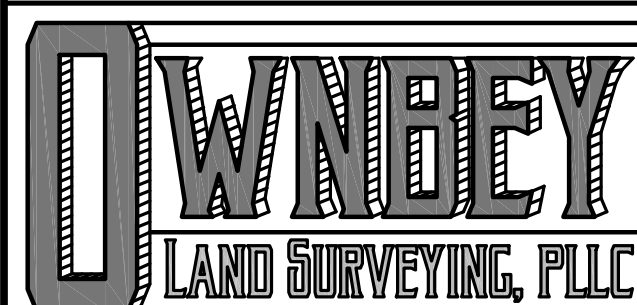
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- FRONT = 20'
- SIDES = 8'
- REAR = 10'

CURRENT RECORD OWNER INFORMATION:

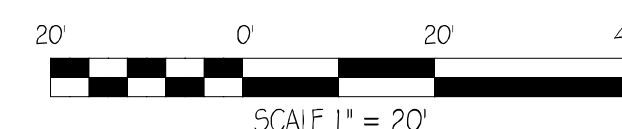
JOAN COOLEY
DORA Y. BROWN 1711 SANDRIDGE WIND LANE
CHARLOTTE, NC 28262

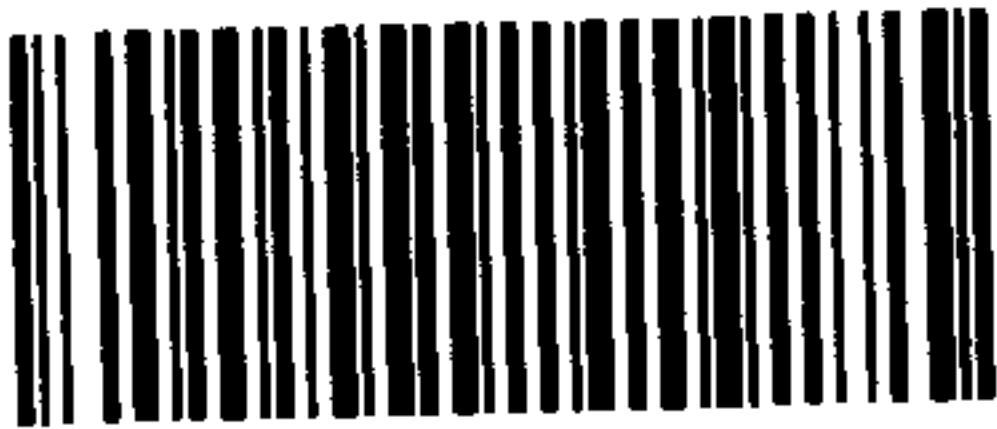
LEGEND:
EIP = EXISTING IRON PIPE
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NOT FOR RECORDING, SALES,
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This document presented and filed:
01/04/2023 11:20:50 AM

WB

WILLIAM LEE KING, Henderson COUNTY, NC
Transfer Tax: \$90.00

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$90.00

Parcel Identifier No. 102824 Verified by _____ County on the ____ day of _____, 20____
By: _____

Mail/Box to: C. Page Collie – 1645 Asheville Highway, Hendersonville, NC 28791

This instrument was prepared by: C. Page Collie (Deed Preparation Only – No Title Search Performed)

Brief description for the Index:

THIS DEED made this 20th day of September, 2022, by and between

GRANTOR

GRANTEE

JOAN COOLEY, Single, and
DORA Y. BROWN and husband, WILLIE
BROWN

JAMES T. SMITH, Jr., and wife,
EDITH A. SMITH

Address: 1711 Sunridge Wind Drive
Charlotte, NC 28262

Address: P.O. Box 2352
Hendersonville, NC 28793

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

SEE ATTACHED EXHIBIT A

The property being transferred by this Deed does include the primary residence of the Grantors.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 978, at Page 214, Henderson County, North Carolina Register of Deeds Office.


A map showing the above-described property is recorded in Plat Book ____, at Page ____, and re-indexed in Plat Cabinet ____, at Slide ____, Henderson County, North Carolina Register of Deeds Office.


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.

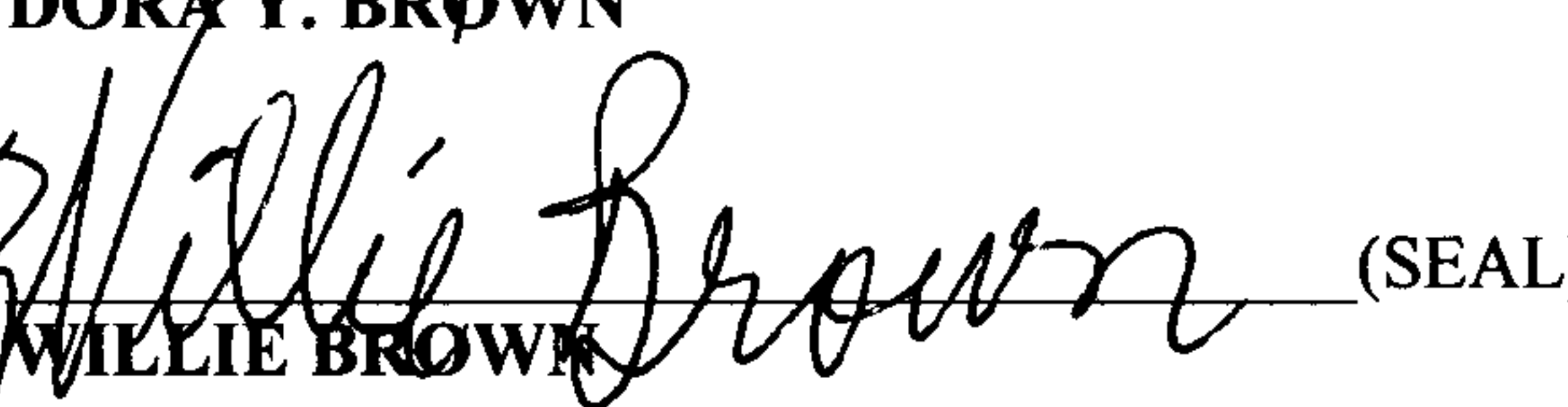
And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons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

Henderson County ad valorem taxes for 2022, and subsequent years, which are a lien, and are now due and payable, easements, rights of way and restrictions of record.

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

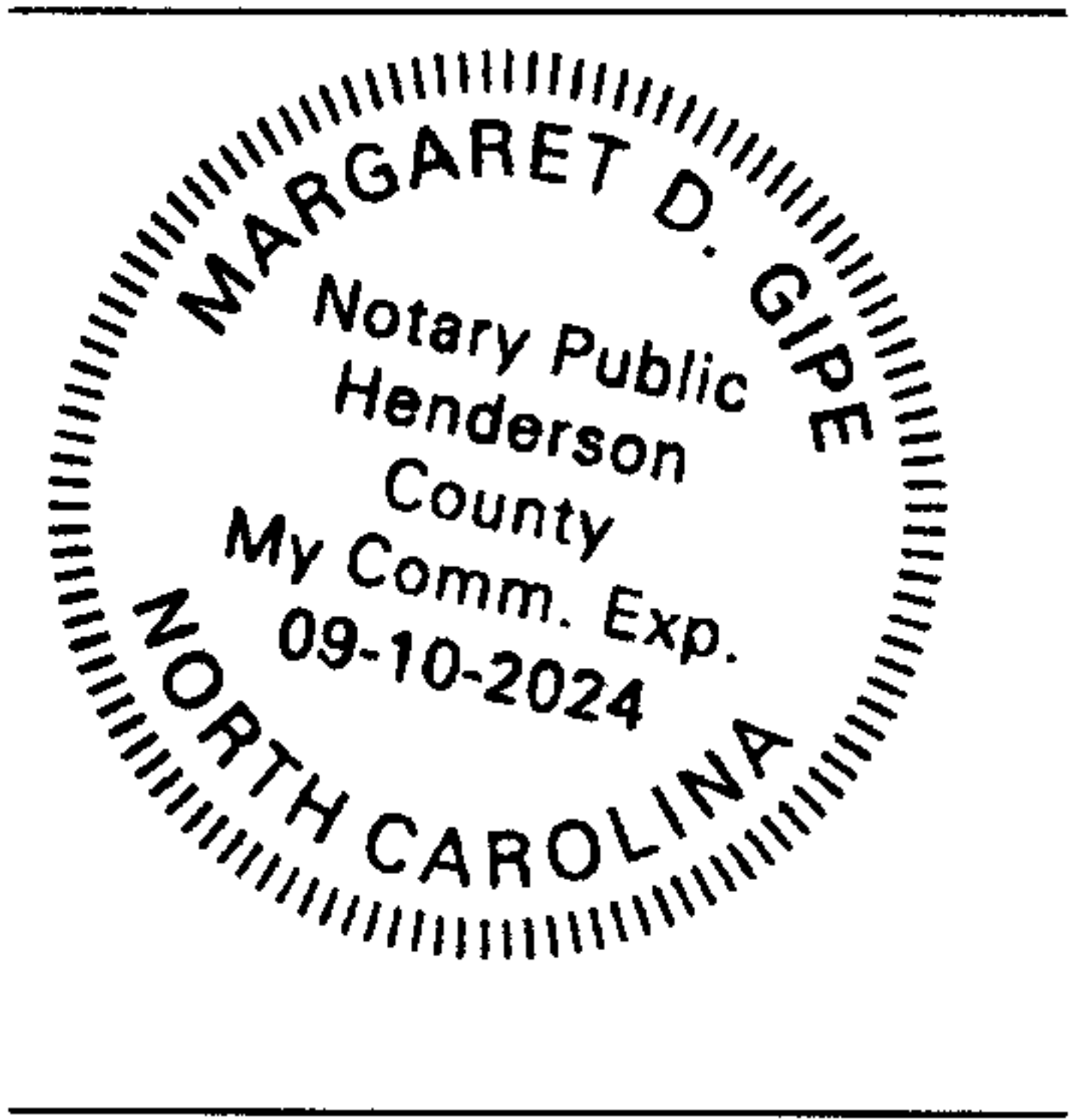
 (SEAL)
JOAN COOLEY

 (SEAL)
DORA Y. BROWN

 (SEAL)
WILLIE BROWN

SEAL-STAMP

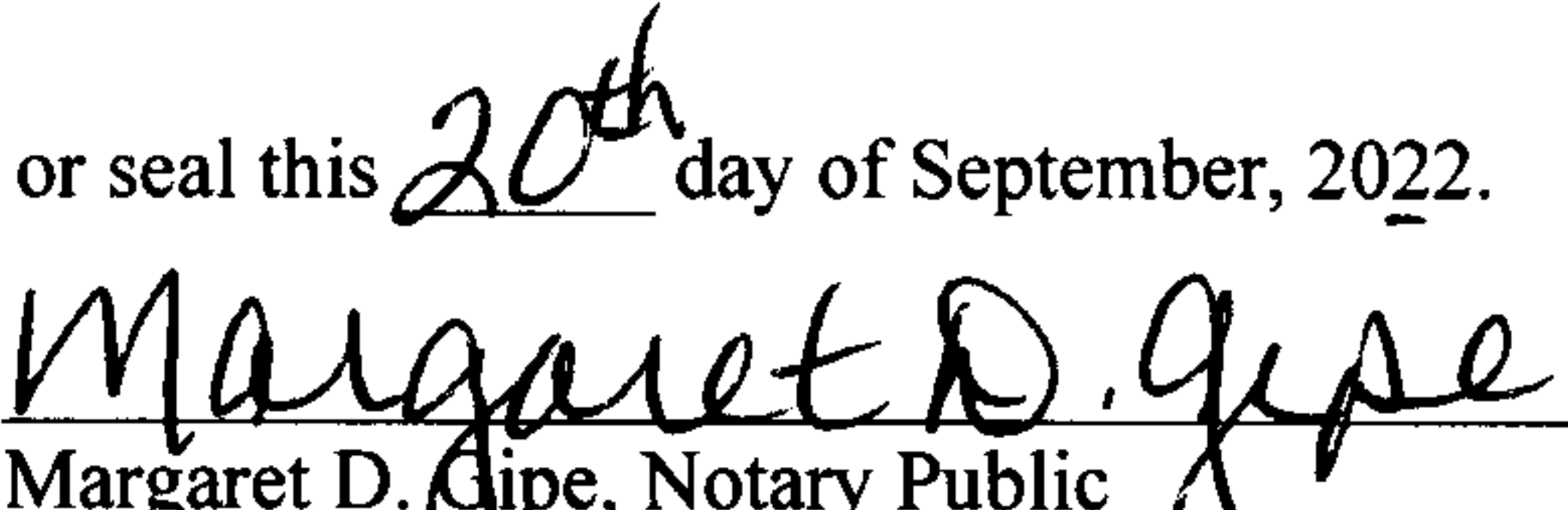
State of North Carolina – County of Henderson



I, Margaret D. Gipe, the undersigned Notary Public of the County and State aforesaid, certify that **JOAN COOLEY, Single**, Grantors, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

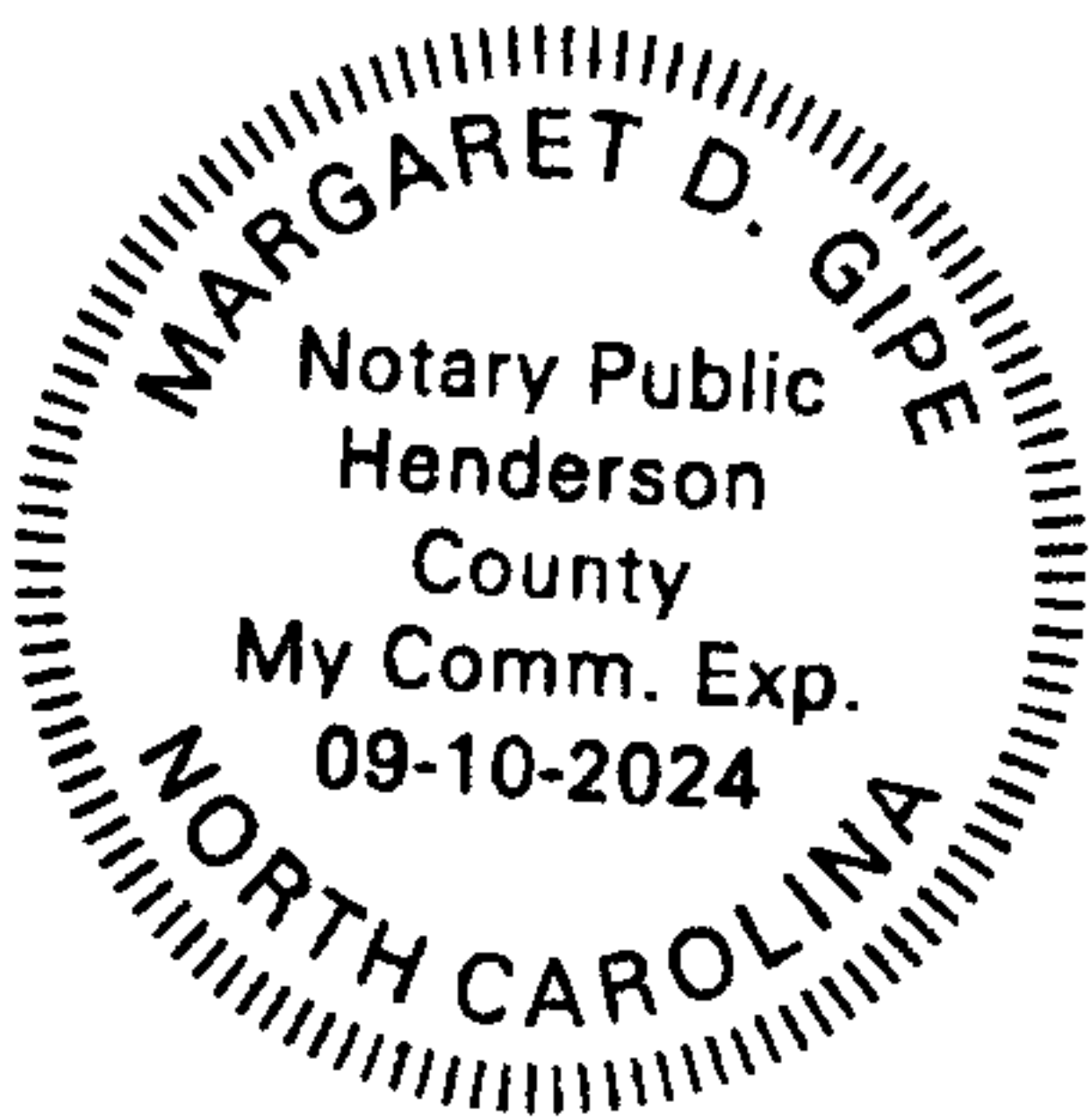
Witness my hand and Notarial stamp or seal this 20th day of September, 2022.

My Commission Expires:
9/10/2024


Margaret D. Gipe, Notary Public

SEAL-STAMP

State of North Carolina – County of Henderson



I, Margaret D. Gipe, the undersigned Notary Public of the County and State aforesaid, certify that **DORA Y. BROWN and husband, WILLIE BROWN**, Grantors, 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 20th day of September, 2022.

My Commission Expires:
9/10/2024

Margaret D. Gipe
Margaret D. Gipe, Notary Public

EXHIBIT A

**LYING AND BEING IN HENDERSONVILLE TOWNSHIP,
HENDERSON COUNTY, NORTH CAROLINA**

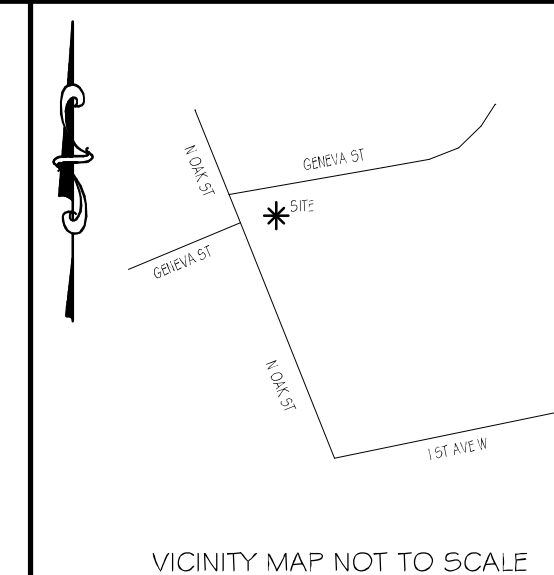
BEGINNING at a stake and fence post at the intersection of the East margin of Oak Street with the South margin of Geneva Street, and running thence with the South margin of Geneva Street, North 79° 15' East 130.4 feet to a stake; thence South 12° East 51.5 feet to a stake in the old line; thence with said old line, South 78° 30' West 121 feet to a stake in the East margin of Oak Street; thence with the East margin of Oak Street, North 22° 35' West 53.5 feet to the **BEGINNING**.

AND BEING the same property conveyed to Joan Cooley and Dora Y. Brown as joint tenants with right of survivorship by Deed recorded on February 3, 1999, in Deed Book 978, at Page 214, in the Henderson County Registry.

22-565/Smith



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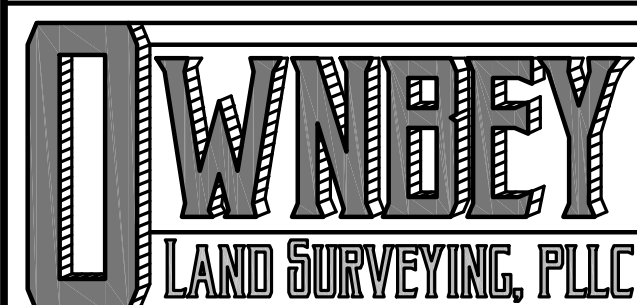
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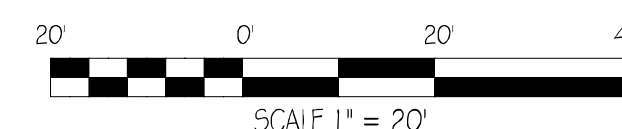




Photo taken facing East at the intersection of Geneva St. and N Oak with subject property to the right.



Photo taken from N Oak Street facing East.



Photo taken from Geneva St. facing West towards N Oak St.



Photo of subject property facing West towards N Oak St.



Photo of subject property from Geneva Street facing South towards 1st Ave W.



Photo of subject property from Geneva Street facing South towards 1st Ave W.