CITY OF HENDERSONVILLE
BOARD OF ADJUSTMENT

City Hall – 3rd Floor Meeting Room | 160 6th Ave. E. | Hendersonville, NC 28792
Tuesday, October 13, 2026 – 1:30 PM

AGENDA

1. **CALL TO ORDER**

2. **APPROVAL OF AGENDA**

3. **APPROVAL OF MINUTES**

   A. Minutes of August 11, 2026

4. **OLD BUSINESS**

   A. Approval of Decision - 26-50-VAR

5. **NEW BUSINESS**

   A. 323 Blythe Street – Variance (26-71-VAR) – Sam Hayes | *Planner II*

   B. Mastermind – Cottages at Highland Square – Variance (26-67-VAR) – Sam Hayes | *Planner II*

   C. Revision of Bylaws

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, August 11, 2026
1:30 p.m. in the Council Chambers

The Hendersonville Board of Adjustment held their regular meeting on August 11, 2026, at 1:30 p.m. in the 2nd Floor Meeting Room in City Hall, 160 6th Avenue East, Hendersonville, North Carolina. Those present were: Charles Webb, Reid Barwick, Vice-Chair, Rhona Reagen, Kyle Gilgis, Chair, Brett Werner, Libby Collina, Bob Pace, Sam Hayes, Planner II, Daniel Heyman, Assistant City Attorney.

Absent: Aubrey Parks

Chair called the meeting to order at 1:30 p.m. Chair stated a quorum has been established, and it takes four out of five votes in favor to approve a variance.

Approval of the Agenda:

Approval of the Minutes of the October 14, 2025 meeting. A motion was made by Ms. Collina to approve the minutes as written. The motion was seconded by Ms. Reagen and passed unanimously.

Election of Chair. Ms. Collina moved to nominate Kyle Gilgis as Chair. Ms. Reagen moved to nominate Reid Barwick. The vote was four in favor of Kyle Gilgis as Chair

Election of Vice-Chair. Ms. Reagen moved to nominate Reid Barwick as Vice-Chair. The vote was unanimous for Reid Barwick as Vice-Chair.

Variance – Sheetz -780 Upward Road – (26-50-VAR). Chair stated today we have one public hearing to consider. A variance from Jesse Hanlin of Blue Ridge Engineering for the property located at 780 Upward Road.

Chair swore in all persons to give testimony. Wes Hall, Devon Stanley and Sam Hayes were sworn in.

Chair opened the public hearing.

Sam Hayes, Planner II 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 for a variance from the property known as Sheetz located on Upward Road.

Mr. Hayes gave the project background:

The location of the site is 780 Upward Road. That PIN is 9588-40-7325. He showed a map with the property highlighted in purple. The owner of the property is Quattlebaum Property FLLC, and the applicant is Jesse Hanlin with Blue Ridge Engineering PLLC.

The acreage of the property is 2.65 acres, and the zoning is Commercial Highway Mixed Use.

The variance request is to reduce the required corner clearance along a side street from 100 feet to 71.7 feet.

Site photos were shown and are included in the staff report. It is a vacant piece of property, and the proposal is to construct a gas station.

The site plan was shown and discussed and is included in the staff report and presentation.

Mr. Hayes stated looking at the zoning ordinance, the variance request is from Section 5-27-5. He discussed the specific variance. An image was shown showing the corner clearance.

Mr. Hayes stated the applicant has provided a helpful exhibit so that you all can see very similar to that last image what their site plan entails. Chair asked if that was a right turn only. Mr. Hayes stated he did not know and the applicant could answer that.

The standards (Section 10-9) for granting a variance were shown and were included in the staff report.

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

Mr. Barwick asked if there have been any similar variances approved. Mr. Hayes stated in the past two years, fairly certain we haven't had a commercial variance request, it's all been residential.

Discussion was made about the building being set back more. Mr. Hayes stated he did review the site plan, but the applicant can answer that question.

There were no further questions for staff.

Chair asked the applicant to address the Board.

Wes Hall stated he works for Sheetz and he stated he had Devon Stanley from Blue Ridge Engineering with him. Mr. Hall stated to answer your question regarding the rear of the site and why we positioned it the way we did. The way this site, is laid out mainly is because of the topography of the rear of the site, and how it falls off, steeply behind that back and curb back there. We originally were going to try to put a car wash back there, but because of the grades, we had to remove that from the site plan. This way, we can keep our grading on our property.

Devon Stanley with Blue Ridge Engineering explained the variance request to the Board and stated they are requesting the request to reduce the required corner clearance from 100 feet to 71.7 feet due to topographical constraints and the need for adequate truck access.

Chair asked if there were any questions for the applicant.

There were no questions for the applicant.

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

Chair asked if there was anyone that would like to speak. No one spoke.

Chair closed the public hearing for Board discussion.

Chair stated she would entertain a motion if there was no discussion.

Mr. Webb made the following motion: **With regard to the request by Jesse Hanlin for a variance from *Section 5-27-5.2.1* to: 1.*Reduce the 100 ft minimum corner clearance to 71.7 ft.* I move the Board to find that :**

1) **An unnecessary hardship <u>would</u> result from the strict application of the ordinance.**

2) **The hardship <u>results</u> from the conditions that are peculiar to the property, such as location, size, or topography.**

3) **The hardship <u>did not</u> result from actions taken by the applicant or the property owner.**

4) **The requested variance <u>is consistent</u> with the spirit, purpose, and intent of the regulation, such that public safety <u>is secured</u> and substantial justice <u>is achieved.</u>**

For the following reasons: the strict application of the ordinance would result in significant challenges to the internal vehicular flow, which is a direct result of the peculiar conditions of the property. *Ms. Collina seconded the motion.*

Chair called for the vote. A roll call vote was taken.

Ms. Reagen	Yes
Mr. Webb	Yes
Mr. Barwick	Yes
Ms. Collina	Yes
Ms. Gilgis	Yes

The vote was unanimous. Motion passed.

Meeting adjourned at 1:53 p.m.

_____ _____

Kyle Gilgis Chair Terri Swann, Secretary

DRAFT

CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY
PLANNING DIVISION

SUBMITTER:	Sam Hayes, Planner II	**MEETING DATE:**	October 13th, 2026
AGENDA SECTION:	New Business	**DEPARTMENT:**	Community Development

TITLE OF ITEM: 323 Blythe Street – Variance (26-71-VAR) – Sam Hayes | *Planner II*

SUGGESTED MOTION(S):

1. For Recommending Approval:

With regard to the request by Dee Gambrell (applicant) and Diane Rhoades (property owner) for a variance from 8-4-3. Dimensional Requirements to:

1. *Increase the allowable maximum square footage from 1,200 square feet to 1,385 square feet.*

I move the Board to find that (must find all of these):

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.*]**

1. The applicant did not intentionally deceive the City when initiating a small lot subdivision.
2. The footprint of the building is under 1200 square feet of allowable square footage, which is consistent with the spirt of the ordinance.

[DISCUSS & VOTE]

1. For Recommending Denial:

With regard to the request by Dee Gambrell (applicant) and Diane Rhoades (property owner) for a variance from 8-4-3. Dimensional Requirements to:

3. *Increase the allowable maximum square footage from 1,200 square feet to 1,385 square feet.*

I move the Board to find that (must find at least one of these):

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.*]**

1. The increase in allowable gross square footage above 1200 square feet does not follow the spirit of the ordinance, which mandates that structures utilizing the small lot ordinance be no greater than 1200 square feet total.

Based on the foregoing findings I further move the Board deny the request for a variance.

[DISCUSS & VOTE]

SUMMARY: The Community Development Department has received a variance application from Dee Gambrell (applicant) and Diane Rhoades (property owner). The request is to allow the existing house on the property to exceed the maximum building size allowed under Section 8-4-3, Dimensional Requirements. The ordinance allows a maximum gross floor area of 1,200 square feet, and the applicants are requesting approval for the house to remain at its actual size of 1,385 square feet.

The property was created under Section 8-4, Reduced Pole Flag Lot and Small Lot, which allows smaller lots to be established if the existing or proposed house is no larger than 1,200 square feet. The original parcel, which contained three structures, was divided into two lots. The subject property is 7,060 square feet in size, while the adjoining lot is 18,784 square feet.

At the time of the subdivision, Henderson County property records listed the house as containing 1,131 square feet. However, a recent professional measurement found that the home's actual gross floor area is 1,385 square feet. Because the house exceeds the 1,200-square-foot limit, a variance is required.

VARIANCE REQUEST: The applicant is requesting a variance from Section 8-4-3. Dimensional Requirements to increase the maximum allowable square footage from 1,200 square feet to 1,385 square feet.

PROJECT/PETITIONER NUMBER:	26-71-VAR
PETITIONER NAME:	Dee Gambrell (Applicant) Diane Rhoades (Owner)
EXHIBITS:	A. Staff Report B. Application C. Warranty Deed

MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: October 13th, 2026

RE: Variance Application –323 Blythe Street

SUMMARY: The Community Development Department has received a variance application from Dee Gambrell (applicant) and Diane Rhoades (property owner). The request is to allow the existing house on the property to exceed the maximum building size allowed under Section 8-4-3, Dimensional Requirements. The ordinance allows a maximum gross floor area of 1,200 square feet, and the applicants are requesting approval for the house to remain at its actual size of 1,385 square feet.

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VARIANCE REQUEST: The applicant is requesting a variance from Section 8-4-3. Dimensional Requirements to increase the maximum allowable square footage from 1,200 square feet to 1,385 square feet.

PROPOSED FINDINGS OF FACT:

- Based on Henderson County records the subject property possesses a PIN of 9568-37-2279 and is zoned R-15 Medium Density Residential.
- Based on Henderson County records, the lot size is approximately .16 acres.
- Based on Henderson County records a North Carolina Corrective Deed was acquired by Diane Rhoades on the 8th of August, 2008.
- 8-4-3. – Dimensional requirements.

Maximum structure size in square feet (SF), gross floor area (GFA):

New lot with new structure	1,200**
Existing structure on existing lot	No structure size limit. Structures >1,200 SF GFA, lot shall meet underlying zoning district dimensional standards; structures ≤1,200 SF GFA may use reduced pole flag lot or small lot.

- Based on the Variance Application (*Exhibit A)*, the Applicant is claiming that the size of the structure is 1,385 square feet based on measurements of all of the usable space.

CODE REFERENCES.

Sec. 8-4. Reduced pole flag lots and small lots.

8-4-1. Purpose.

The purpose of this section is to provide greater flexibility in the development of housing units and use of available land by allowing small footprint housing on small lots and reduced pole flag lots to encourage residential infill development, provide missing middle housing, and allow more opportunities for the construction of workforce housing, all within parameters that will preserve the identity and character of the community.

8-4-2. Applicability.

In applicable zoning districts (reference article V, zoning district classifications for applicable zoning districts), reduced pole flag lots or small lots or a combination thereof can be applied to any lot of record two acres in size or less. Residential uses shall be allowed subject to the applicable zoning district's permitted uses.

8-4-3. Dimensional requirements.

Reduced Pole Flag Lots	
Minimum lot area in square feet:	2,000
Minimum flag portion of lot width in feet:	25
Minimum pole portion of lot width in feet*:	10
Driveways and accessways	See section 8-4-4, access and frontage improvements.
Minimum yard requirements in feet:	5 from all perimeter lot lines
Maximum structure size in square feet (SF), gross floor area (GFA):	
New lot with new structure	1,200**

Existing structure on existing lot	No structure size limit. Structures >1,200 SF GFA, lot shall meet underlying zoning district dimensional standards; structures ≤1,200 SF GFA may use reduced pole flag lot or small lot.
Structure location:	All structures shall be located in compliance with fire code requirements.***
Maximum structure height in feet:	Subject to the height limit of the underlying zoning district.
Small Lots	
Minimum lot area in square feet:	2,000
Minimum lot width* in feet:	25
Minimum yard requirements in feet:	
Front:	10
Side	5
Rear	10
Maximum structure size in square feet (SF), gross floor area (GFA)	1,200** for new construction
Structure location:	All structures shall be located in compliance with fire code requirements.***
Maximum structure height in feet:	Subject to the height limit of the underlying zoning district.
Residual lots with existing structures:	
Existing structure > 1200 SF gross floor area	Must comply with dimensional requirements of underlying zoning district.
Existing structure < 1200 SF gross floor area	May use small lot standards.
Reduced Pole Flag Lot Developments	
Maximum total number of lots permitted:	6
Maximum number of reduced pole flag lots permitted:	5
Maximum total acreage:	2.0 acres
Small Lot Developments	
Maximum total number of lots permitted:	6
Maximum number of reduced pole flag lots permitted:	5
Maximum total acreage:	2.0 acres

* Accessory dwelling unit (ADU) conversions to fee-simple lots shall install independent water and sewer connections for the unit.

** 1,200 SF GFA may be allocated to one dwelling unit or split over one to three units (i.e., ADU, single-family, or two-family). Accessory dwelling units on a small lot or flag lot shall remain subject to the requirements of section 16-4-1.

NOTE: Any plat created for this option shall require a note stipulating a maximum home size of 1,200 SF GFA.

*** City of Hendersonville Code of Ordinances, chapter 22, fire prevention and protection, section 22-6, access requirements for fire apparatus.

See article XII for definition of "flag" and "pole".

NOTE: This section contains zoning requirements only. Compliance with zoning requirements does not guarantee compliance with private restrictions. Developers are encouraged to consult with an attorney concerning private restrictions.

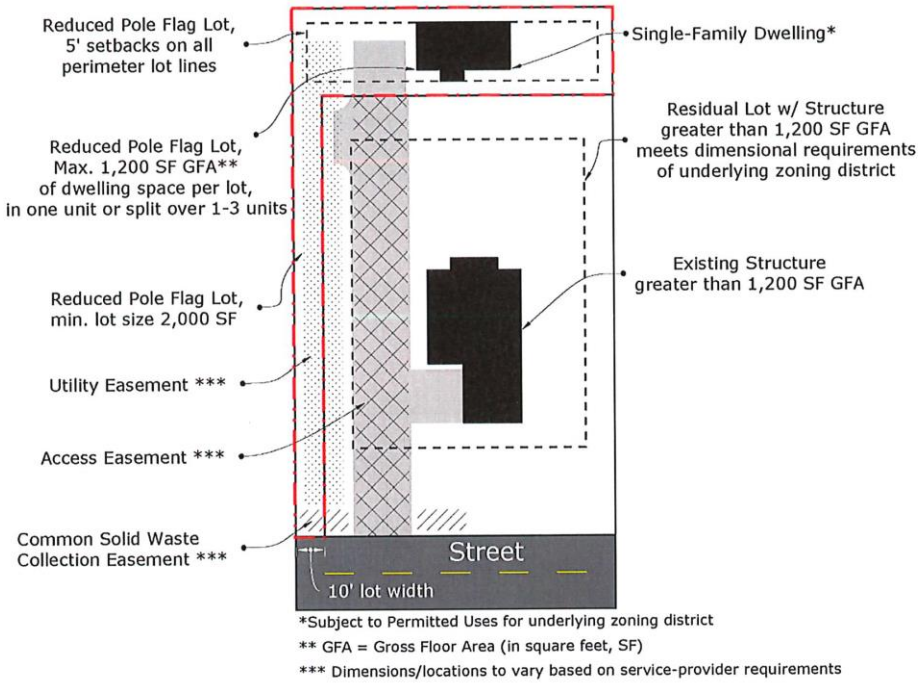

Figure 1: Reduced Pole Flag Lot

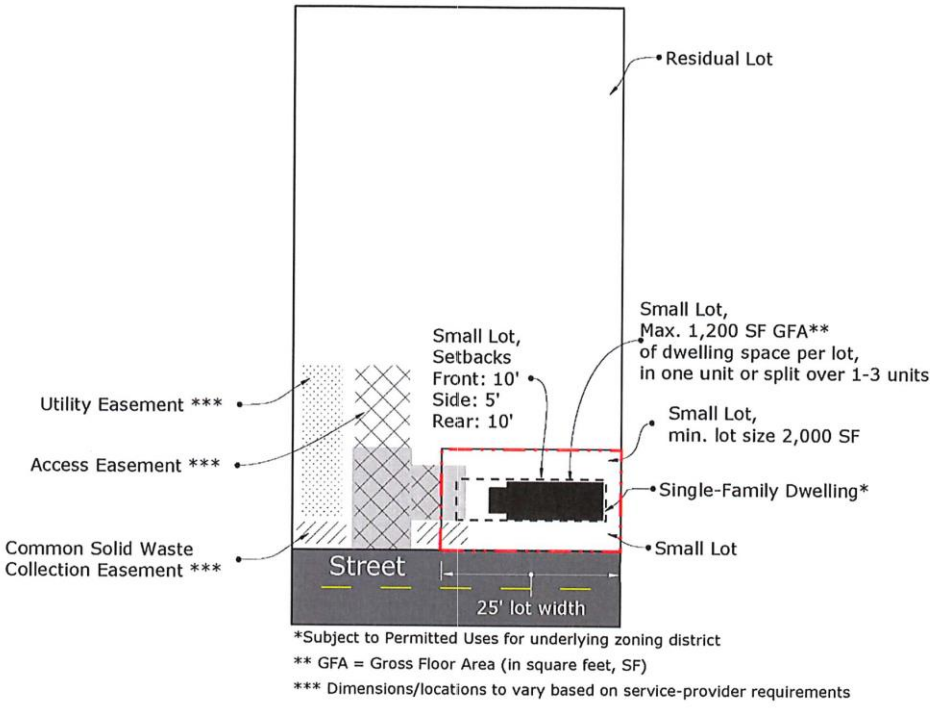

Figure 2: Small Lot

8-4-4. Access and frontage improvements.

a) Driveways, utilities and accessways may be placed within the "pole" or an alternate site location via "access" and/or "utility" easements.

b) Shared driveways:

Use of a shared driveway to serve one reduced pole flag lot and one or more adjoining small lots, residual lots, or conventional lots is permitted. When using a shared driveway, placing the driveway within the pole(s) is encouraged but not required. (ref. Figures 1 and 2)

Where the poles of two or more reduced flag pole lots adjoin, use of a shared driveway to serve the reduced pole flag lots is required. The shared driveway must be located within the adjoining pole(s) (ref. Figure 3).

Shared driveways must meet the following standards:

i. The shared driveway must have a minimum of unobstructed width of ten feet,

ii. The shared driveway must be shown on the recorded plat, and

iii. The shared driveway must be memorialized in a recorded* access easement containing provisions for the maintenance of the shared driveway. If utility infrastructure (e.g., water, sewer, electric, etc.) is located within a shared driveway, the recorded access easement shall also allow access within the easement for repair, maintenance and placement of the utility infrastructure.

*Recorded in the Henderson County Register of Deeds Office

c) Utility easements:

Where utility service lines and/or equipment serving a reduced pole flag lot, small lot or residual lot are located on or cross another lot, a shared utility easement is required. Shared utility easements may be placed on "pole" and other alternative site locations including within a shared driveway. Shared utility easements must meet the following standards:

i. The shared utility easement must have a minimum of width of ten feet,

ii. The shared utility easement must be shown on the recorded plat, and

iii. The shared utility must be memorialized in a recorded* easement and must contain provisions allowing the repair, maintenance and placement of utility infrastructure, and access for the foregoing purposes.

*Recorded in the Henderson County Register of Deeds Office

Utility meters and associated infrastructure shall be located according to service-provider requirements.

(Please see chapter 52 of the Hendersonville Code of Ordinances for additional requirements.)

d) Solid waste collection easements:

Appropriately-sized "common solid waste collection easements" are required for the orderly placement of, and access to, solid waste containers and bulk item/brush collection. These easements shall be sized according to container dimensions and the number of containers serving the development along with sufficient space to meet brush collection standards. These easements shall be located in accordance with best practices and avoid being placed on/near/under water meters, sewer cleanouts, power lines, guy wires, fire hydrants, etc., and shall comply with any additional locational or sizing standards contained within chapter 44 of the Hendersonville Code of Ordinances.

Solid waste collection easements must be shown and identified as a "common solid waste collection easement" on the plat and shall require review and approval from planning staff and the city public works director.

e) Sidewalks (section 6-12) and street trees (section 15-15) shall apply to all reduced pole flag lot developments and small lot developments.

8-4-5. Reduced pole flag lot developments.

In all reduced pole flag lot developments or small lot developments containing more than one reduced flag pole lot, the following provisions shall apply:

a) Each lot within the development shall have at least ten feet of street frontage. The pole of a reduced pole flag lot may serve as the street frontage.
b) A shared driveway shall be used as the sole access to reduced pole flag lots whose poles are adjacent.
c) Reduced pole flag lot developments and/or small lot developments consisting of two or more lots, shall not abut another reduced pole flag lot development or small lot development consisting of two or more lots.

8-4-6 Landscaping.

In addition to required street trees, at least one large maturing and one small maturing tree shall be planted or preserved on the lot.

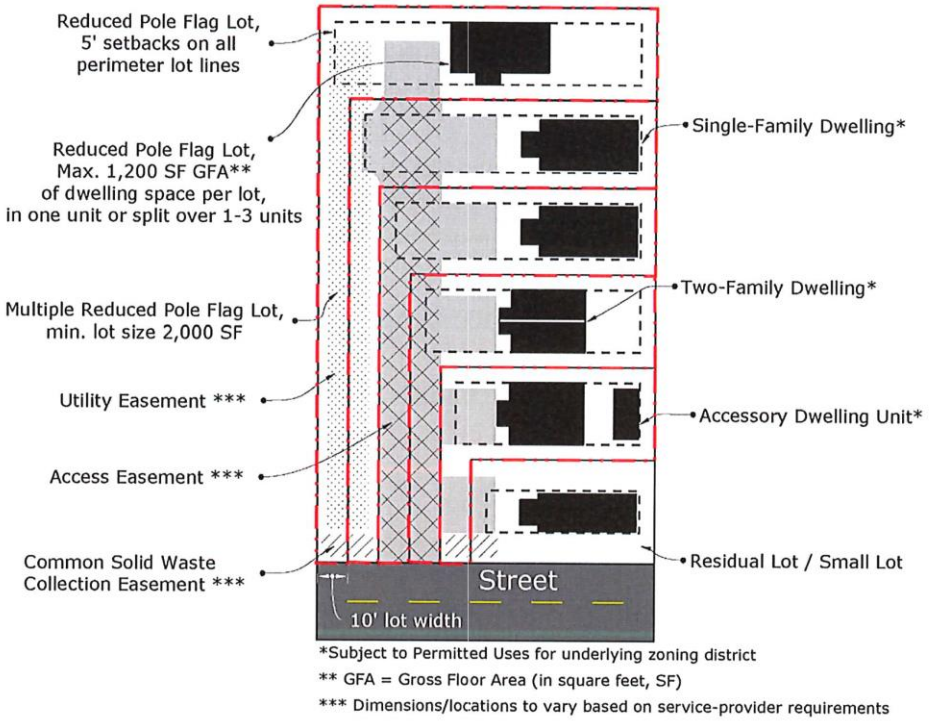

Figure 3: Reduced Pole Flag Lot Development + Small Lot

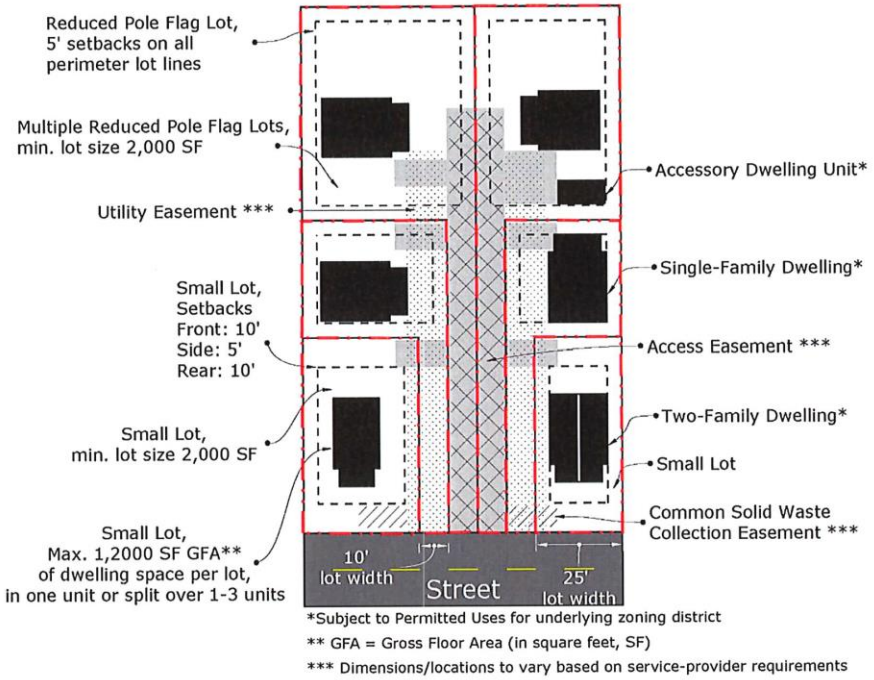

Figure 4: Small Lot combined with Reduced Pole Flag Lot Development, six (6) lot maximum

(Ord. No. 25-17, § 2, 4-3-25)

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.

WORKSPACE INFORMATION

Application number
26-71-VAR

Category
Variance

Workspace state
In review

Workspace created
09/20/2026, 2:16:00 PM EDT

Application submitted
09/22/2026, 3:56:19 PM EDT

Assignee

Package generation date
09/29/2026, 11:20:49 AM EDT

LOCATION INFORMATION

Address
323 BLYTHE ST, Hendersonville, NC

Property information
9568372279,

PARTIES

NAME AND COMPANY	CONTACT DETAILS	ROLES
Dee Gambrell	642 Skytop Farm Ln Hendersonville [redacted]	Applicant
Diane Rhoades Dee Gambrell BLuAxis Realty	323 Blythe St. Hendersonville [redacted]	Applicant
Diane Rhoades	323 BLYTHE ST Hendersonville [redacted]	Property owner
Charles Erdman Erdman Land Surveying, PLLC	PO Box 333 Flat Rock [redacted]	Surveyor
Charles Erdman Erdman Land Surveying, PLLC	PO Box 333 Flat Rock [redacted]	Surveyor
Diane Rhoades	323 BLYTHE ST Hendersonville [redacted]	Property owner

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Variance Application

City of Hendersonville | Community Development Department

160 6th Ave E.

Hendersonville, NC 28792

planning@hvlnc.gov

Project Description

Please describe the nonconformity:

To Whom It May Concern: The seller/owner, Diane Rhoades, spoke to Matt Manley with the city regarding parceling off the front home of her property. GIS listed her home at 1131 sq ft; therefore, it was approved since it was under the 1200 sq ft required by the city for the new "small lot" provisions. Diane then proceeded to hire Charlie Erdman, surveyor, to parcel out the lot and paid $2400 for the recorded survey attached. After it was approved, she also had her renters move out so she could get the home listed. Once this was completed, we proceeded with the marketing so she could list her home. The marketing included a professional home measurement, interior and exterior photos, drone photography, 3D Zillow Tour and a video to ensure accuracy and to ensure we could capture as many buyers eyes as possible. The marketing expenses incurred have been around $1000 and were completed and can be viewed here, as well as the attached floor plan: https://listings.purehavenphotography.com/listings/01a08105-dfe8-70f4-929e-e958f4b7c64a/download-center?signature=652c53e2fbe1082d3a64e6a0950dc0791b292f8f274f76f704270803fb46d767 The measurement of the home came back at 1385 sq ft. Once the marketing was completed, the agent reached out to the city to inquire what could be done on the lot to ensure accurate marketing. Matt Manley responded, "We received your inquiry. Thank you for reaching out. For 323 Blythe St., this property was placed on its own lot via an exempt subdivision using the City's "Small Lot" provisions. These provisions allow for subdivisions less than the min. lot size of a zoning district (on lots as small as 2,000 Sq Ft) if the existing home or any new structure(s) on the property do not exceed 1,200 Sq Ft (Gross Floor Area) in total. The existing home on this property is 1,113 Sq Ft according to County records. This does not leave enough square footage to build a separate ADU on the same lot. I have attached the plat that established this as a Small Lot for your records. There are some options: 1) You could divide the property into smaller lot(s), as I have shown below, and build a separate structure(s) up to 1,200 Sq Ft GFA on a new small lot. Since the existing home is less than 1,200 Sq Ft, it only needs to be a lot with a minimum of 2,000 Sq Ft. It must also meet the setbacks for a Small Lot (see the link above for additional details). 2) You could divide the existing home into two units to make it a duplex. 3) You could demo the existing structure and build an 800 Sq Ft principal home and a 400 Sq Ft ADU." I then responded and let him know the professional sq feet was 1385, sent the attached floor plan and asked where we go from here. He then responded, "Are you saying that the existing home is 1,386 Sq Ft Gross Floor Area? The measurement for GFA should correspond with the City's definition for Gross floor area (GFA): The total enclosed area of the horizontal surface of all floors of a building or buildings measured to the outside face of the structural members in exterior walls. Can you confirm the Gross Floor Area measurement? If it is in fact over 1,200 Sq Ft (not matching the County records) then yes, it makes a difference. I would need to consult with our Legal Dept to confirm what impact that would make, but I can say that, if verified, this would make the Small Lot an illegally-established non-conforming lot. And, at a minimum, we would not permit further subdivision of the lot. If we received a request to further subdivide the lot we would request the Gross Floor Area measurement be placed on the plat. This was our first Small Lot recorded after the new rules were established and while it does state that the home can be no greater than 1,200 Sq Ft, it does not show the actual measurement of the structure." The seller/owner purchased the property in 2008 per the attached deed, recorded the new plat after she obtained permission from the city (see attached plat) and proceeded forward to sell her property then we discovered this information. The information was listed inaccurately on the GIS and the owner/seller was unaware of any discrepencies until the professional measurement was done after the city's approval. We've also been made aware recently there are numerous mistakes on the GIS and this is just one of hundreds. From the seller: From the seller: To those concerned, I believe I was the first person to engage with the Small Lot Ordinance that was recently passed. I was in touch with Matthew Manley, with the city, to see if I qualified. I was told if the house was under 1200 SF with at least 250 SF of land, that I would be eligible to subdivide and sell my house. As the GFA of my home is recorded under 1200 and I was open to selling the house with 850 SF, I was told this new ordinance would work for me. I got the green light from the city. I hired Charlie Erdman to survey my property, which was a $2400 expense. Today I was informed that the city has the GFA of my home incorrect. This mistake has changed the trajectory of my eligibility for the Small Lot Ordinance. This is very sobering to me. Right now, I am in Newfoundland with relatives and not able to address this in person. I am eager to sell my home as having to maintain it while this matter gets settled leaves me without income as well as the expense of keeping it heated throughout the coming cold months. Renting my home has been my main source of income in my retirement. I request that I am given a variance so that we can move forward with what we were told we could do; sell my house and 850 SF. I saw there was an option for a variance in the letter from Matthew Manley. A variance would allow this sale to move forward. Dee Gambrell has been representing me in the sale of my home. She has put a great deal of work in getting my house ready to put on the market. She will be advocating for me while I am away. Also, I do not understand the challenge mentioned with the front setback. How my house could be listed as an EXISTING GARAGE, if that is what you are saying, should have been rectified by the city. It is clearly an historic home. It pains me that things have come so far with information that was and is incorrect. I hope for the kind of cooperation in setting this right that will allow me to do what the Small Lot Ordinance intends to do, which is to make more housing available in the city. Respectfully and cooperatively, Diane Rhoades

Please describe the requested modifications:

We respectfully and cooperatively request a variance to approve the 1385 sq ft for the small lot so she can proceed with selling her property. She no longer has renters and will be unable to carry this property through the winter due to the expense. Also, we're aware of the housing issue and we're hopeful this would allow someone in need to purchase her property, as it will be listed for $400,000, below the average market value and will help another buyer in need.

Total Project Area (acres)
0.175

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.

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. nfortunately, the seller/owner is in this position through no fault of anyone. When she reached out to the city, there were no procedures in place requiring her to have her home professionally measured. The city's approval was based on the GIS square footage listed at 1,131 (tax assessor square footage). She purchased the home in 2008 and this [discrepancy] was there at that time as far as she knew. She proceeded with the survey only after receiving the green light from the city, and the surveyor recorded the results after the approval as well. She couldn't know there was an issue until she asked her realtor to begin marketing her home. Part of that marketing involved getting it professionally measured, which occurred after the small lot approval and after the survey was recorded. When this issue arose, it delayed her planned listing of the home. The hardship falls on her because the market is already tough, it gets tougher in the fall/winter, rates are increasing, and this becomes a material fact that must be dealt with and resolved to proceed with the listing and selling her home. It is a historic home, 103 years old and the information in GIS has always been there since her purchase. The other thing that happened after the city gave her the green light is that she allowed her renters to move in, expecting to list the home quickly. Therefore,	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 The home measured 1,385 sq ft (see attached floor plans) which differed from the GIS measurement. This discrepancy was discovered after the city's approval and after the survey was recorded. The small lot definition is 1200 sq ft or less and the home is 185 sq ft larger. She was also unaware of the setback issue until after the survey was recorded. Her home hasn't moved in 103 years and nothing has been added to it during that time either. She lives in the cottage behind the main home, and that cottage is parceled off from the small lot in the front.	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. To reiterate what was already mentioned, when the owner/seller spoke to the city, Matt Manley, there were no procedures in place for the city to recommend a professional measurement to ensure the GIS was accurate. This in turn has created the hardship previously mentioned.

	she currently has no income.		

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.

Given the circumstances mentioned, we believe this situation could have happened to anyone and we request the variance so she can proceed with listing and selling her home. We feel most people would understand this situation and this could have happened to anyone; therefore, we're asking for the variance and that new procedures be implemented to ensure this doesn't happen to someone else.

Zoning-Applicant (Developer) Company Information

City of Hendersonville | Community Development Department

160 6th Ave E.

Hendersonville, NC 28792

planning@hvlnc.gov

Applicant (Developer) Company Information	
Authorized Representative Name: Dee Gambrell	Company Name (if applicable, check corresponding box below) BluAxis Realty

Company Type:

- ☐ Corporation:
- ☐ Limited Liability Company:
- ☐ Trust:
- ☐ Partnership:
- ☑ Other:

If other:
Realtor

Authorized Representative Title (if applicable - i.e. Member/Manager, President, etc.)
Realtor

Zoning-Property Owner Company Information

City of Hendersonville | Community Development Department

160 6th Ave E.

Hendersonville, NC 28792

planning@hvlnc.gov

Property Owner Company Information (if different from Applicant)	
Authorized Representative Name: Diane Rhoades	Company Name (if applicable, check corresponding box below)
Company Type: ☐ Corporation: ☐ Limited Liability Company: ☐ Trust: ☐ Partnership: ☐ Other:	If other: Owner/Seller
Authorized Representative Title (if applicable - i.e. Member/Manager, President, etc.)	

Pre-Consultation Form

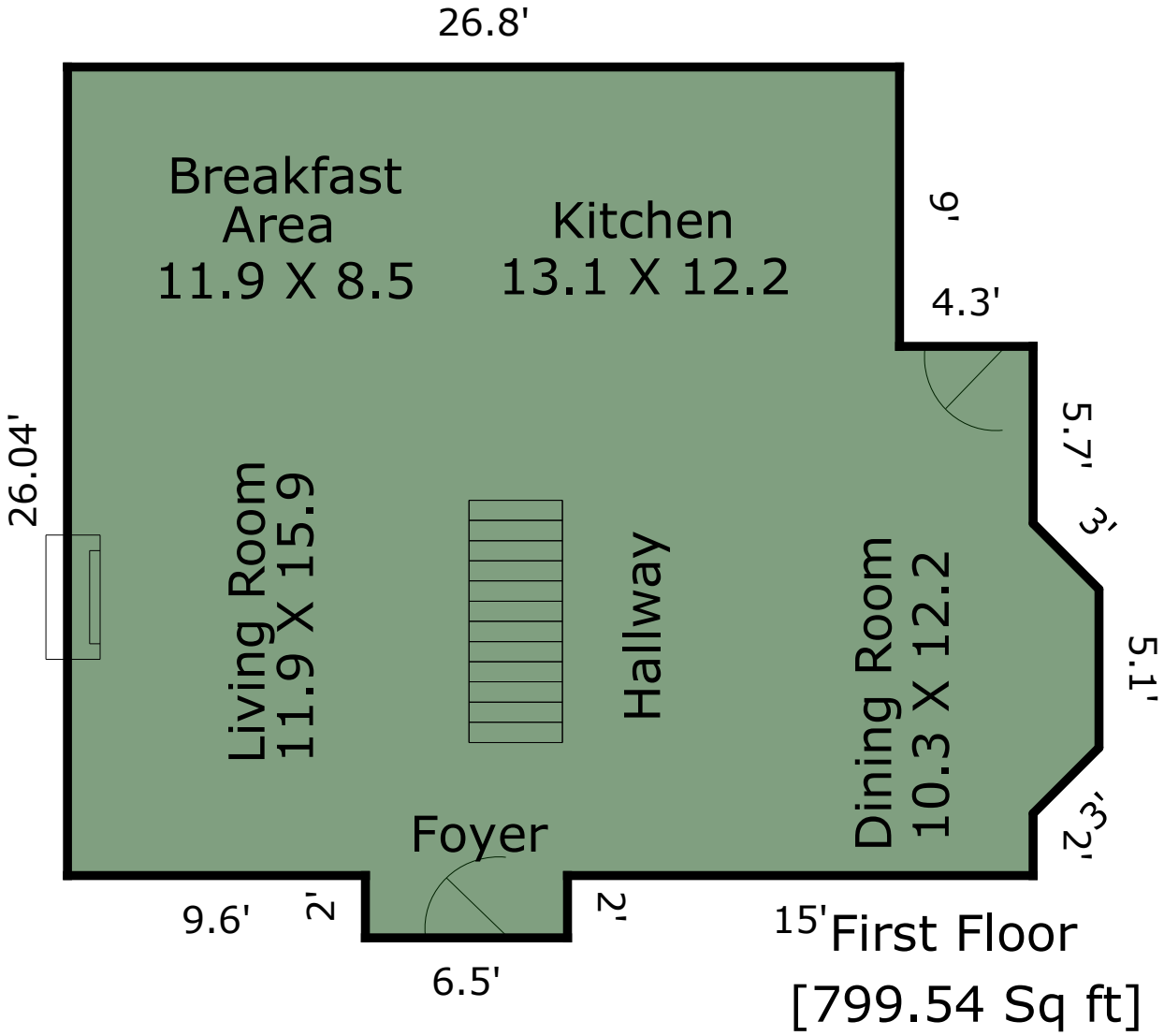
City of Hendersonville | Community Development Department

160 6th Ave E.

Hendersonville, NC 28792

planning@hvlnc.gov

Project Description			
Project Description Variance request.			
Parcel Identification Number (PIN): 9.568372279E9	Total Project Area (acres) 0.59	Total Lots/Units 1	Proposed building square footage: 1800.0 sq.ft.
Gen H Future Land Use Designation: Multi-Generational living	Current Zoning District R-15	Proposed Meeting Date Option 1 09/22/2026	
Proposed Meeting Date Option 2 09/23/2026	Proposed Meeting Time Option 1 9:00 AM	Proposed Meeting Time Option 2 9:00 AM	

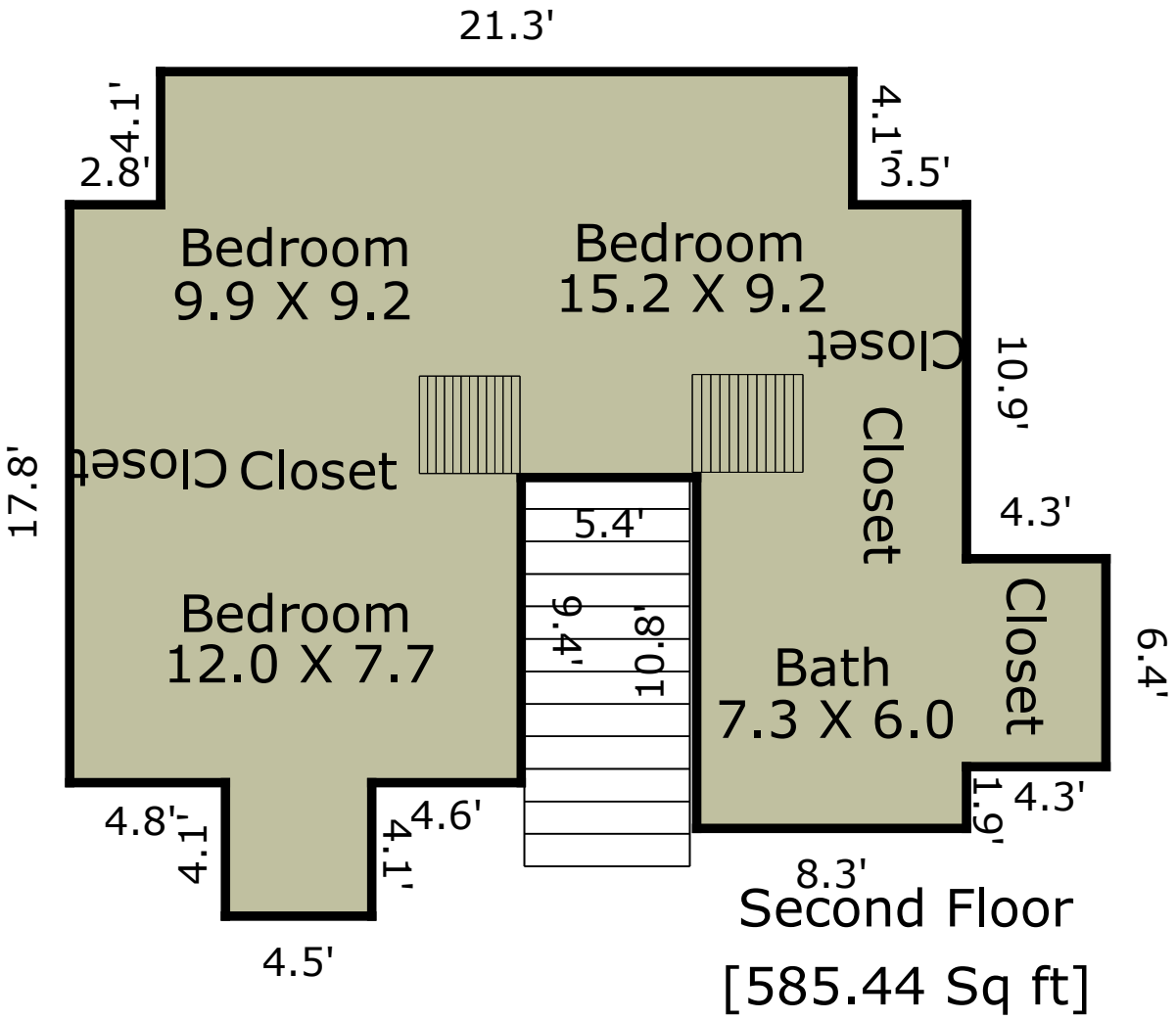


TOTAL Sketch by a la mode

Area Calculations Summary

Living Area		**Calculation Details**
First Floor	799.54 Sq ft	0.5 × 2.12 × 2.12 = 2.25
		0.5 × 2.12 × 2.12 = 2.25
		5.1 × 2.12 = 10.82
		6.5 × 2 = 13
		26.04 × 26.8 = 697.94
		4.3 × 17.04 = 73.28
Total Living Area (Rounded):	**800 Sq ft**	

TOTAL Sketch software by a la mode technologies, llc. 1-800-alamode

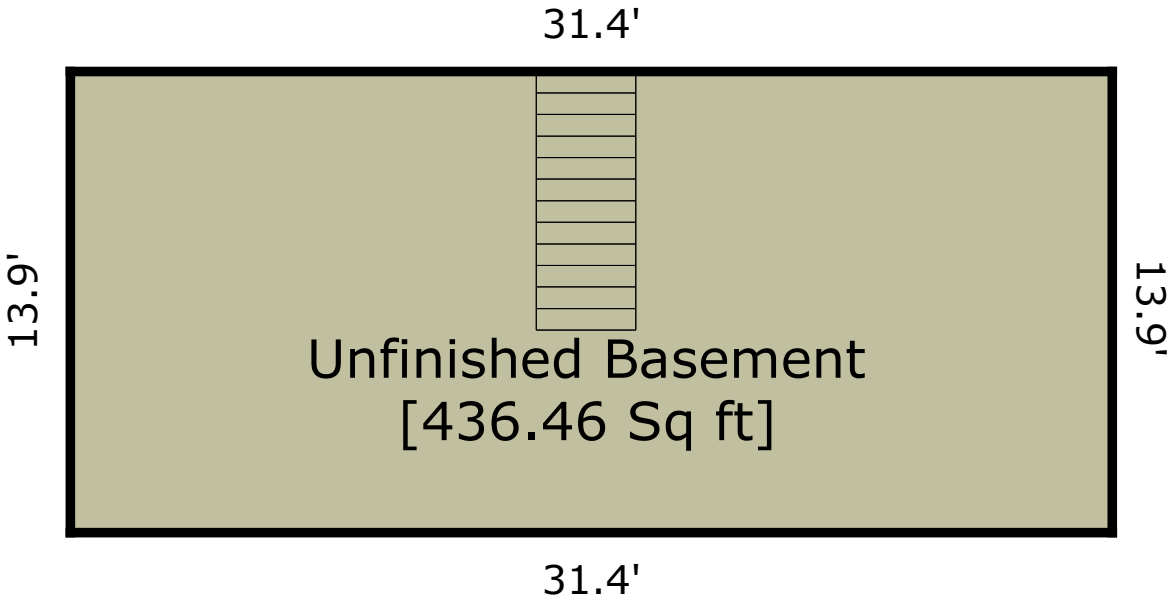


TOTAL Sketch by a la mode

Area Calculations Summary

Non-living Area				
Second Floor	585.44 Sq ft	6.4 × 4.3	=	27.52
		4.5 × 4.1	=	18.45
		21.3 × 4.1	=	87.33
		17.8 × 13.9	=	247.42
		8.3 × 10.8	=	89.64
		13.7 × 8.4	=	115.08

TOTAL Sketch software by a la mode technologies, llc. 1-800-alamode



TOTAL Sketch by a la mode

Area Calculations Summary

Non-living Area		
Basement	436.46 Sq ft	31.4 × 13.9 = 436.46

TOTAL Sketch software by a la mode technologies, llc. 1-800-alamode

Docusign Envelope ID: DE854D61-18B0-477D-BFD3-087A44EF9BF1

BK 2025 PG 16569 - 16569 (1) DOC# 1001036802
This Document eRecorded: 09/09/2025 04:25:21 PM
Fee: $21.00
Henderson County, North Carolina Tax: $0.00
William Lee King, Register of Deeds

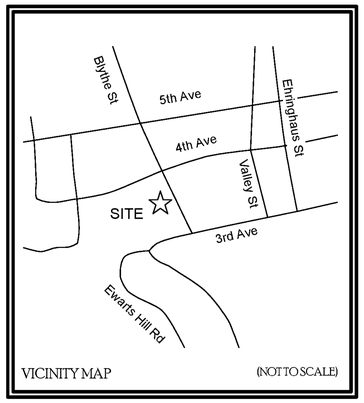
SUBDIVISION SURVEY FOR
DIANE RHOADES (OWNER)

LOTS 9-11 WEISBURG, PULLEN & OROVITZ SUBDIVISION
323 BLYTHE STREET

STATE OF NORTH CAROLINA
HENDERSON COUNTY
HENDERSONVILLE TOWNSHIP

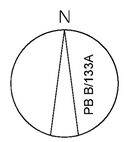
REFERENCES
DEED BOOK 1369 PAGE 636
PLAT BOOK B/133A
PIN 9568-37-1244

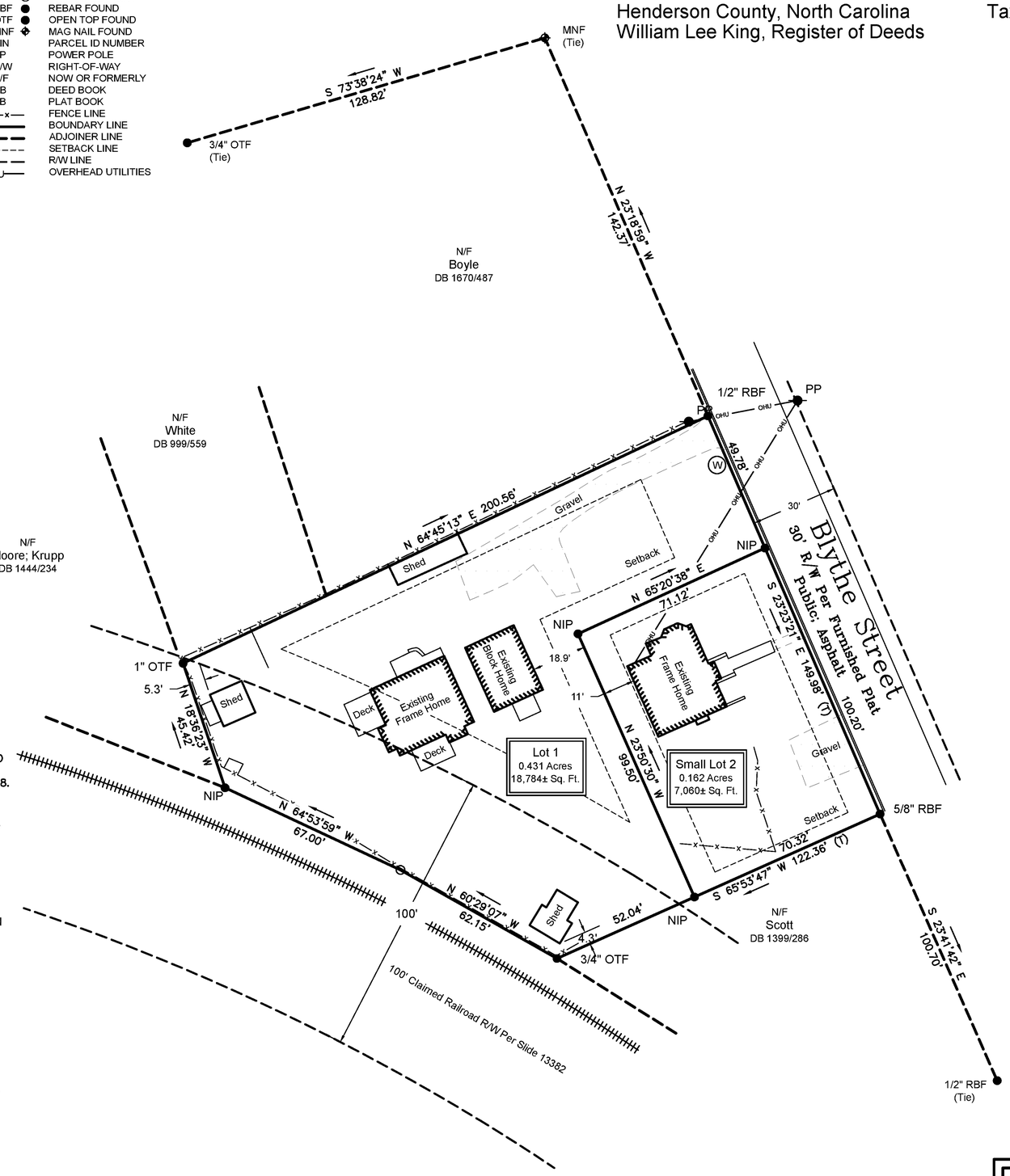
Total Area:
0.59 Acres
25,844± Sq. Ft.



LEGEND

NIP	●	NEW IRON PIN 1/2" REBAR
PT	○	UNMARKED POINT
RBF	●	REBAR FOUND
OTF	●	OPEN TOP FOUND
MNF	✦	MAG NAIL FOUND
PIN		PARCEL ID NUMBER
PP		POWER POLE
R/W		RIGHT-OF-WAY
N/F		NOW OR FORMERLY
DB		DEED BOOK
PB		PLAT BOOK
—x—x—		FENCE LINE
		BOUNDARY LINE
		ADJOINER LINE
		SETBACK LINE
		R/W LINE
—OHU—		OVERHEAD UTILITIES





0 30 60 90
1" = 30'

State of North Carolina
Henderson County

I, Nita Shelton, Review Officer of Henderson County, certify that the map or plat to which this certification is affixed meets all statutory requirements for recording.

Signed by: Nita Shelton
Review Officer 9/2/2025
Date

I, Charles P. Erdman, certify that this survey is of another category, such as the recombination of existing parcels, a court-ordered survey, or other exemption or exception to the definition of a subdivision. G.S. 47-30(f)(11)d.
I also certify that this plat was drawn under my supervision from an actual survey made under my supervision (Deed description recorded in Bk. 1369, Pg. 636); that the ratio of precision as calculated is 1:10,000; that this plat was prepared in accordance with G.S.47-30 as amended. Witness my original signature, registration number, and seal this 21st day of July, 2025.

Charles P. Erdman PLS L-5571

NOTES

THIS PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY FIRM #3700956800J, DATED 10/02/2008.

SURVEYOR WAS NOT PROVIDED WITH A LEGAL TITLE SEARCH. THERE MAY EXIST EASEMENTS OF RECORD, ENCUMBRANCES, RESTRICTIVE COVENANTS, OWNERSHIP TITLE EVIDENCE, OR ANY OTHER FACTS PERTINENT TO THIS PROPERTY THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE THAT ARE NOT SHOWN ON THIS SURVEY.

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

ALL BUILDINGS, SURFACE AND SUBSURFACE IMPROVEMENTS ON AND ADJACENT TO THE SITE ARE NOT NECESSARILY SHOWN. SUBSURFACE AND ENVIRONMENTAL CONDITIONS WERE NOT SURVEYED OR CONSIDERED AS PART OF THIS SURVEY.

NO EVIDENCE OR STATEMENT IS MADE CONCERNING THE EXISTENCE OF UNDERGROUND OR OVERHEAD CONDITIONS, CONTAINERS, OR FACILITIES THAT MAY AFFECT THE USE OR DEVELOPMENT OF THIS PROPERTY.

AREA BY COORDINATE COMPUTATION.

PROPERTY LINES SHOWED AS DASHED WERE NOT FIELD SURVEYED. THEY WERE PLOTTED FROM RECORD DOCUMENTS.

SUBJECT PROPERTY CURRENTLY ZONED R-15 BY THE CITY OF HENDERSONVILLE.
SETBACKS: FRONT-30' SIDE-10' REAR-15'
SETBACKS (SMALL LOT): FRONT & REAR-10' SIDE 5'

ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES UNLESS OTHERWISE NOTED.

MAXIMUM SQUARE FOOTAGE OF STRUCTURE WITHIN SMALL LOT MUST NOT EXCEED 1,200 PER SMALL LOT ORDINANCE #25-17. (CITY OF HENDERSONVILLE ZONING CODE ORDINANCE SECTION .8-4. REDUCED POLE FLAG LOTS & SMALL LOTS).

THIS PARCEL IS ADJACENT TO THE ECUSTA TRAIL. ANY ILLEGAL ENCROACHMENTS WITHIN THE TRAIL RIGHT-OF-WAY MAY BE REQUIRED TO BE REMOVED AT A FUTURE DATE. NO NEW ENCROACHMENTS MAY BE PLACED WITHIN THE RIGHT-OF-WAY WITHOUT A PERMIT FROM HENDERSON COUNTY.

Submitted electronically by "Erdman Land Surveying, PLLC" in compliance with North Carolina statutes, governing recordable documents and the terms of the submitter agreement with the Henderson County Register of Deeds.

NORTH CAROLINA PROFESSIONAL SEAL L-5571 LAND SURVEYOR CHARLES P. ERDMAN
C. P. ERDMAN PLS L-5571
FIRM LICENSE # P-2907

Erdman Land Surveying, PLLC
PO Box 333
Flat Rock, NC, 28731
Phone: (828) 210.3815

SURVEY	GAB
DRAWN	CPE
DATE	07/21/2025
JOB #	25-127

FILED IN HENDERSON COUNTY REGISTER OF DEEDS
OFFICE. NEDRA W. MOLES, REGISTER
PBH
DATE: 8-8-08 TIME: 9:55 A.M

EXCISE TAX STAMP:

BOOK: 1369 PAGE: 636

Excise Tax $ 0.00

Tax Lot No. **Parcel Identifier No.**
Verified by _____ **County on the** _____ **day of** _____, **20**____
by _____

Mail after recording to D. Samuel Neill, 222 Third Avenue West, Hendersonville, NC 28739
This instrument was prepared by D. Samuel Neill

Brief Description for the index | **Lots 9, 10 & 11 Weisburg, Pullen & Orovitz S/D**

NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED made **this the** 1st **day of** August **, 2008,** by and between

GRANTOR	GRANTEE
JOHN A. BERNING, JR., single	**DIANE J. RHOADES, single** **(Mailing Address:** **323 Blythe Street** **Hendersonville, NC 28739)**

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

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

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

The purpose of this deed is to correct the legal description.

BEING all of Lots 9, 10 & 11 of the WEISBURG, PULLEN and OROVITZ SUBDIVISION as shown on that plat thereof recorded in Plat Book 2, Page 63, and Plat Cabinet B, Slide 133A, Henderson County Registry, reference to which is hereby made for a more definite metes and bounds description thereof.

Subject to and benefitted by the right of way of Blythe Street widened to its full legal width for road and utility purposes.

BEING that property previously recorded in Deed Book 1136 at Page 457, Henderson County Registry. BEING all that property conveyed to John A. Berning, Jr. as found in Deed Book 954 at Page 634, Henderson County Registry.

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 except for the exceptions hereinafter stated.

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

Subject to that Deed of Trust recorded in Book 1266 at Page 117, Henderson County Registry.

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

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

_____

By: _____

John A. Berning, Jr. (SEAL)
JOHN A. BERNING, JR.

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

STATE OF NORTH CAROLINA, COUNTY OF HENDERSON NOTARY ACKNOWLEDGMENT

I, Constance R. Penfold, a Notary Public of the County and State aforesaid, certify that **JOHN A. BERNING, JR.** , Grantor(s), who is/are personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) described, personally appeared before me this day and acknowledged the voluntary execution of the foregoing instrument. Witness my hand and official stamp or seal, this 1st day of August, 2008.

NOTARY STAMP/SEAL BELOW
(must be no closer than 1/2" of left margin)

CONSTANCE R PENFOLD
Notary Public
Henderson County
My Commission Expires
12/02/2011
NORTH CAROLINA

Constance R. Penfold
Notary Public
My commission expires:

STATE OF NORTH CAROLINA, COUNTY OF HENDERSON NOTARY ACKNOWLEDGMENT

I,, a Notary Public of the County and State aforesaid, certify that , who is personally known to me or proved to me on the basis of satisfactory evidence to be the person described, personally came before me this day and acknowledged that he/she is (Vice) President of , a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed voluntarily in its name by its (Vice) President. Witness my hand and official stamp or seal, this day of , 20.

NOTARY STAMP/SEAL BELOW
(must be no closer than 1/2" of left margin)

_____
Notary Public
My commission expires: _____

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY
PLANNING DIVISION

SUBMITTER:	Sam Hayes, Planner II	**MEETING DATE:**	October 13th, 2026
AGENDA SECTION:	New Business	**DEPARTMENT:**	Community Development

TITLE OF ITEM: Mastermind – Cottages at Highland Square – Variance (26-67-VAR) – Sam Hayes | *Planner II*

SUGGESTED MOTION(S):

1. **For Recommending Approval:**	1. **For Recommending Denial:**
With regard to the request by Jason Pass (applicant) and DR Horton, represented by Andrew Basile (property owner) for a variance from Section 5-14-6.2. Setbacks. to: 1. *Decrease the required 30 foot setback to 26.6 feet to enable the building shown in Exhibit B to become conforming.* I move the Board to find that (must find all of these): 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.*]** 1. The hardship is not self created because the applicant relied upon professional expertise that was believed to be accurate. 2. Granting a variance would not go against the current PRD ordinance, which requires a 20-foot setback. **[DISCUSS & VOTE]**	With regard to the request by Jason Pass (applicant) and DR Horton, represented by Andrew Basile (property owner) for a variance from Section 5-14-6.2. Setbacks. to: 2. *Decrease the required 30 foot setback to 26.6 feet to enable the building shown in Exhibit B to become conforming.* I move the Board to find that (must find at least one of these): 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.*]** 1. A variance is not the appropriate process in which to grant relief from this self-created hardship. Based on the foregoing findings I further move the Board deny the request for a variance. **[DISCUSS & VOTE]**

SUMMARY:

The Community Development Department has received an application from Jason Pass (applicant) and DR Horton (owner) represented by Andrew Basile for a variance from Section 5-14-6.2. Setbacks. requirements in accordance with the setback requirements established as part of the conditional zoning approval from 2022 which established a 30 foot rear setback.

Variance Request: The Applicant is requesting a variance from the 30 foot rear setback for a portion of a single building that was constructed within this 30 foot setback. The applicant would request a variance, allowing the building to encroach 3.4 feet, thereby reducing the 30 foot setback to 26.6 feet.

The subject property was zoned in 2022 to Planned Residential Development Conditional Zoning District (PRD CZD) which established the site plan included in Exhibit B.

PROJECT/PETITIONER NUMBER:	26-67-VAR
PETITIONER NAME:	Jason Pass (Applicant) DR Horton represented by Andrew Basile (Owner)
EXHIBITS:	A. Staff Report and Site Photos B. Application C. Warranty Deed

MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: October 13th, 2026

RE: Variance Application – Mastermind Cottages at Highland

SUMMARY: The Community Development Department has received an application from Jason Pass (applicant) and DR Horton (owner) represented by Andrew Basile for a variance from Section 5-14-6.2. Setbacks. requirements in accordance with the setback requirements established as part of the conditional zoning approval from 2022 which established a 30 foot rear setback.

VARIANCE REQUEST: Variance Request: The Applicant is requesting a variance from the 30 foot rear setback for a portion of a single building that was constructed within this 30 foot setback. The applicant would request a variance, allowing the building to encroach 3.4 feet, thereby reducing the 30 foot setback to 26.6 feet.

The subject property was zoned in 2022 to Planned Residential Development Conditional Zoning District (PRD CZD) which established the site plan included in Exhibit B.

PROPOSED FINDINGS OF FACT:

- Based on Henderson County records the subject property possesses a PIN 9579-48-6853 of and is zoned Planned Residential Development Conditional Zoning District (PRD-CZD).
- Based on Henderson County records, the lot size is approximately 12.81 acres.
- Based on Henderson County records a North Carolina deed was acquired by DHIC – Mastermind LLC on the 9th of May, 2024.
- The current PRD-CZD ordinance, adopted on June 5th, 2025, allows a 20 foot rear setback.

Previous PRD-CZD Ordinance with Relevant Section Highlighted:

5-14-6. Development standards.

Unless noted otherwise, the following development standards shall apply to all planned residential developments, whether major or minor. In addition, planned residential developments shall meet all applicable standards contained in article VI, below

> **5-14-6.1. Open space and footprint requirements.** Planned residential developments shall have a maximum footprint of 20 percent of the site and shall have, as a minimum, 60 percent of the site as open space. In addition, planned

residential developments shall meet the common open space requirements of section 6-16.

5-14-6.2. Setbacks. All dwellings and their accessory structures shall be set back not less than 40 feet from the nearest right-of-way line for any street or railroad adjoining the site; provided, however, such setback may be reduced to ten feet when parking is situated to the side or rear of the lot and screened from view from public rights-of-way. Furthermore, such buildings and structures shall be set back not less than 30 feet from any exterior property line which is not a right-of-way.

The planning board or city council, as the case may be, shall require reservations of rights-of-way, as well as increased setbacks, for roads identified in the comprehensive transportation plan, including existing roads to be widened as well as corridors of new roads.

All dwellings and their accessory structures shall be located at least ten feet from the edge of the paving for any street or drive and at least five feet from the edge of the paving for any area devoted principally to parking. Carports shall be situated at least ten feet from the edge of the paving for any street or drive and may be physically connected to the principal structure which they serve. In addition, dwellings and accessory structures abutting a street intended to serve more than 32 dwelling units or intended to be dedicated as a public street must be set back a minimum of 35 feet from the center line of such street. The approved setback lines shall be shown on the plan of development and on any recorded subdivision plat.

In addition to the foregoing setback requirements, minimum spacing between buildings shall be provided as per the NC State Building Code Volume V-Fire Prevention.

Current PRD-CZD Ordinance Adopted on June 5th, 2025.

5-14-4. Development standards.

Unless noted otherwise, the following development standards shall apply to all planned residential developments, whether major or minor. In addition, planned residential developments shall meet all applicable standards contained in article VI, below.

5-14-4.1. Open space and footprint requirements. Planned residential developments shall have a maximum footprint of 40 percent of the site and shall have, as a minimum, 40 percent of the site as open space. In addition, planned residential developments shall meet the common open space requirements of section 6-16.

5-14-4.2. Dimensional standards. City council shall require reservations of rights-of-way, as well as increased setbacks, for roads identified in the comprehensive transportation plan, including existing roads to be widened as well as corridors of new roads.

Minimum lot area in square feet:	0
Minimum lot width at building line in feet:	None

Minimum yard requirements for principal structures in feet:	Front: 40, reduced to 0 when parking is situated to the rear of the lot and screened from view from public right-of-way, provided, however, that front-facing garages shall be setback a minimum of 45 feet.
	Side: 0. If provided, setbacks shall be a minimum of 5 with exception of corner lots where setback shall be 7.5 from side street right-of-way.
	Rear: 20
Maximum height in feet:	35
Minimum yard requirements for accessory structure in feet:	Front: Located to side or rear of principal structure.
	Side: 0 with exception of corner lots where setback shall be 7.5 from side street right-of-way.
	Rear: 0

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.

SITE PHOTOS

Photo 1: View north east at corner of building encroaching into setback. Note that the City of Hendersonville does not regulate fences, so there is no encroachment request needed for the fence.

Photo 2: Northern corner of building encroaching into setback.

Photo 3: View north west of corner of building encroaching into setback.

WORKSPACE INFORMATION

Application number
26-67-VAR

Category
Variance

Workspace state
Waiting for payment

Workspace created
09/04/2026, 1:31:08 PM EDT

Application submitted
09/16/2026, 1:41:08 PM EDT

Assignee
Sam Hayes

Package generation date
10/06/2026, 1:08:14 PM EDT

LOCATION INFORMATION

Address
197 BAXLEY LN, Hendersonville, NC

Property information
9579486853,

PARTIES

NAME AND COMPANY	CONTACT DETAILS	ROLES
Jason Pass Civil Design Concepts, PA	84 Coxe Avenue 260 Asheville [redacted]	Applicant
Andrew Basile DR Horton	8025 Arrowridge Blvd Charlotte [redacted]	Applicant
DHIC - MASTERMIND LLC	1341 HORTON CIR ARLINGTON TX 76011	Applicant, Property owner
DHIC - MASTERMIND LLC	1341 HORTON CIR ARLINGTON TX 76011	Applicant, Property owner

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Variance Application

City of Hendersonville | Community Development Department

160 6th Ave E.

Hendersonville, NC 28792

planning@hvlnc.gov

Project Description
Please describe the nonconformity: Unit 3 has been built 3 feet 4 inches into the required 30' setback to the north of the unit. The building was not discovered to be in the wrong location until an ALTA survey was performed.
Please describe the requested modifications: The project team requests a variance to allow the existing occupied unit to remain as built with the 3 foot 4-inch encroachment into the buffer.
Total Project Area (acres) 12.76

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.

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. In order to remove the existing structure from the setback area, the entire building would have to be vacated, demolished, and rebuilt. This is due to the main electrical panel for the home being located in the setback area. The current renters would have to move out, and the neighboring units who rented the units under the assumption that construction was done would have to endure the demolition and reconstruction of the building more than 3 feet closer to their units. This will include construction traffic daily, and construction noises, etc.	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 This particular unit is not easily accessed from any road inside the project for construction traffic. If the DOT does not allow a temporary construction access to come off Francis Rd., then the only other possible access point would be to remove the ADA parking in the adjacent parking lot, grade in a temporary vehicular access from the parking lot and refurbish the grades and ADA parking upon completion of the rebuilding efforts.	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. The unit was built in it's existing location based on staking provided by the surveyor based on the approved site plan. This was not intentionally placed in the wrong location, but was a mistake made during construction. No decision was made by the applicant or property owner to encroach in the setback.

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.

The 30-foot buffer was maintained per the approved plan throughout the remainder of this site which follows the spirit purpose and intent of the regulation. It was the intention of all involved in the construction of this project to follow the approved plans to ensure all applicable regulations were met. On the property adjacent to the buffer there is a large planted vegetative buffer row already in place so they cannot see that the unit appears closer. This variance if approved does not cause any issues with public safety and will allow the current inhabitants of the development and the surrounding neighbors to avoid unnecessary disruption to their home life.

Zoning-Applicant (Developer) Company Information

City of Hendersonville | Community Development Department

160 6th Ave E.

Hendersonville, NC 28792

planning@hvlnc.gov

Applicant (Developer) Company Information	
Authorized Representative Name: Andrew Basile	Company Name (if applicable, check corresponding box below) D.R. Horton

Company Type:

- [x] Corporation:
- [ ] Limited Liability Company:
- [ ] Trust:
- [ ] Partnership:
- [ ] Other:

If other:

Authorized Representative Title (if applicable - i.e. Member/Manager, President, etc.)

Zoning-Property Owner Company Information

City of Hendersonville | Community Development Department

160 6th Ave E.

Hendersonville, NC 28792

planning@hvlnc.gov

Property Owner Company Information (if different from Applicant)	
Authorized Representative Name: Andrew Basile	Company Name (if applicable, check corresponding box below) D.R.Horton

Company Type:

- [x] Corporation:
- [ ] Limited Liability Company:
- [ ] Trust:
- [ ] Partnership:
- [ ] Other:

If other:

Authorized Representative Title (if applicable - i.e. Member/Manager, President, etc.)

Pre-Consultation Form

City of Hendersonville | Community Development Department

160 6th Ave E.

Hendersonville, NC 28792

planning@hvlnc.gov

Project Description

Project Description

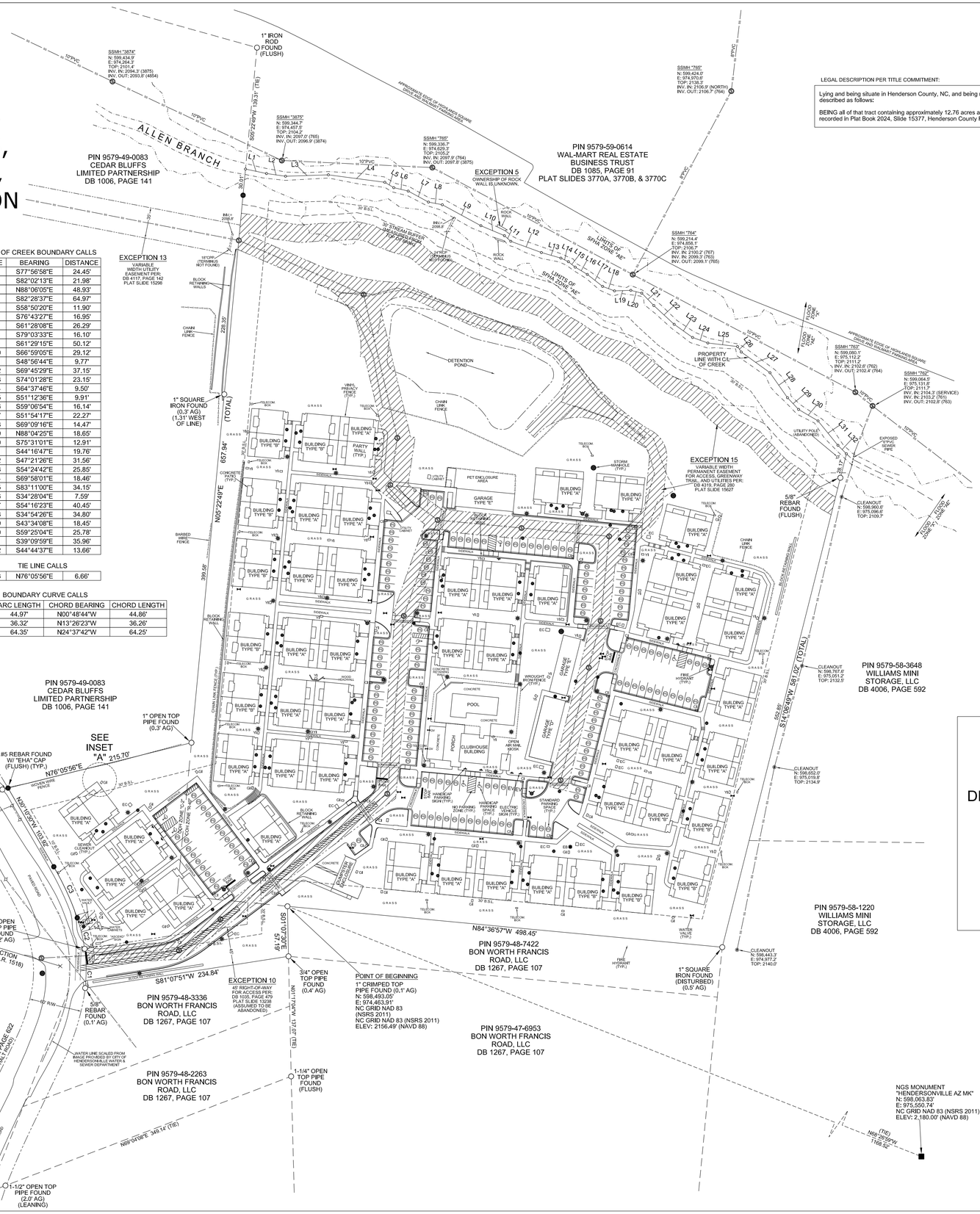
The Cottages are a 99-unit multifamily project on Francis Road that we completed construction in February 2026. The property is currently 100% leased and residents are moved in. As part of our own due diligence post construction, we identified that the corner of one of the cottages is 3'6" over the 30' setback line from the neighboring property, Cedar Bluffs. After researching the issue, we discovered that the construction surveyor laid out the cottage correctly and as per plan when building permits were issue. Unfortunately, the concrete contractor laid out their forms incorrectly, misreading the plans and assumed the 3' offset of where the survey stakes were laid out was the actual location of the slab. The undergrounds were installed, inspections took place, slabs poured, vertical construction completed, certificate of occupancy issued and residents moved in over 12 months ago. As stated above, as part of our due diligence post construction, we noted something seemed off with the location of the building relative to the parking lot. We surveyed the site and building and discovered that a small portion of the building was over the setback line. We contacted our neighbor, Cedar Bluffs, to alert them of the condition and they indicated they did not have an issue with the condition. We next reached out to our civil engineer, CDC and asked them how we would go about notifying the City of Hendersonville to alert them of this condition and ask how best to resolve it. Staff looked at the information provided and stated we would need to bring this to the Board of Adjustment's attention and seek a variance.

Parcel Identification Number (PIN):	Total Project Area (acres)	Total Lots/Units	Proposed building square footage:
9579486853	12.76	99	12.0 sq.ft.

Gen H Future Land Use Designation:	Current Zoning District	Proposed Meeting Date Option 1
N/A	CZ	09/15/2026

Proposed Meeting Date Option 2	Proposed Meeting Time Option 1	Proposed Meeting Time Option 2
09/16/2026	9:00 AM	9:00 AM

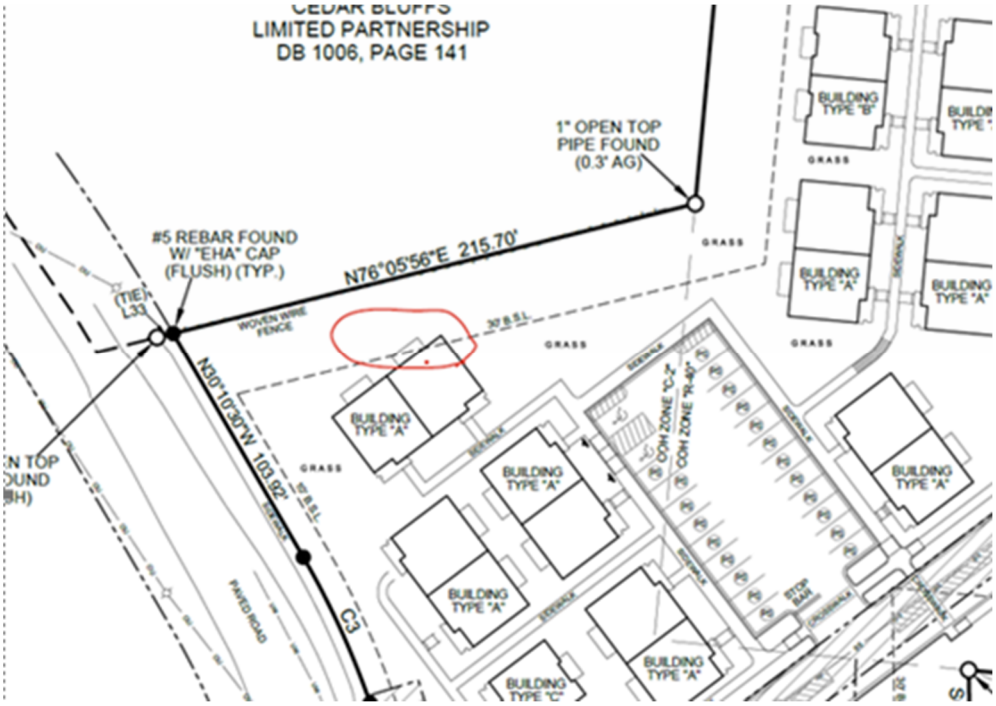
PRELIMINARY - NOT FOR SALES, CONVEYANCES, OR RECORDATION


ALLEN BRANCH
PIN 9579-49-0083
CEDAR BLUFFS
LIMITED PARTNERSHIP
DB 1006, PAGE 141
PIN 9579-59-0614
WAL-MART REAL ESTATE
BUSINESS TRUST
DB 1065, PAGE 91
PLAT SLIDES 3770A, 3770B, & 3770C
EXCEPTION 5
OWNERSHIP OF ROCK WALL IS UNKNOWN.
EXCEPTION 13
VARIABLE WIDTH UTILITY EASEMENT PER: DB 4117, PAGE 142 PLAT SLIDE 15298
EXCEPTION 15
VARIABLE WIDTH PERMANENT EASEMENT FOR ACCESS, GREENWAY TRAIL, AND UTILITIES PER: DB 4119, PAGE 289 PLAT SLIDE 15527
EXCEPTION 10
45' RIGHT-OF-WAY FOR ACCESS PER: DB 1035, PAGE 479 PLAT SLIDE 13298 (ASSUMED TO BE ABANDONED)
1" IRON ROD FOUND (FLUSH)
1" SQUARE IRON FOUND (0.3' AG) (1.31' WEST OF LINE)
1" OPEN TOP PIPE FOUND (0.3' AG)
#5 REBAR FOUND W/ "EHA" CAP (FLUSH) (TYP.)
3/4" OPEN TOP PIPE FOUND (FLUSH)
1" OPEN TOP PIPE FOUND (0.2' AG)
1" OPEN TOP PIPE FOUND (0.4' AG)
1-1/4" OPEN TOP PIPE FOUND (FLUSH)
1-1/2" OPEN TOP PIPE FOUND (2.0' AG) (LEANING)
1" SQUARE IRON FOUND (DISTURBED) (0.5' AG)
5/8" REBAR FOUND (FLUSH)
5/8" REBAR FOUND (0.1' AG)
SEE INSET "A" 215.70'
N76°05'56"E 215.70'
N05°22'49"E 657.94'
S05°22'49"W 561.02' (TOTAL)
N84°36'57"W 498.45'
S81°07'51"W 234.84'
S01°07'06"E 57.19'
N11°17'24"W 137.07' (TIE)
N89°04'08"E 349.14' (TIE)
N76°05'56"E 139.31' (TIE)
N76°05'56"E 1168.52' (TIE)
PIN 9579-48-7422
BON WORTH FRANCIS
ROAD, LLC
DB 1267, PAGE 107
PIN 9579-48-3336
BON WORTH FRANCIS
ROAD, LLC
DB 1267, PAGE 107
PIN 9579-47-6953
BON WORTH FRANCIS
ROAD, LLC
DB 1267, PAGE 107
PIN 9579-49-0083
CEDAR BLUFFS
LIMITED PARTNERSHIP
DB 1006, PAGE 141
PIN 9579-48-2263
BON WORTH FRANCIS
ROAD, LLC
DB 1267, PAGE 107
PIN 9579-58-3648
WILLIAMS MINI
STORAGE, LLC
DB 4006, PAGE 592
PIN 9579-58-1220
WILLIAMS MINI
STORAGE, LLC
DB 4006, PAGE 592
FRANCIS ROAD
(S.R. 1577) PAGE 622
60' R/W
(PAVED - 18' WIDE)
NGS MONUMENT
"HENDERSONVILLE AZ MK"
N: 598,063.83'
E: 975,550.74'
NC GRID NAD 83 (NSRS 2011)
ELEV: 2,180.00' (NAVD 88)
POINT OF BEGINNING
1" CRIMPED TOP PIPE FOUND (0.1' AG)
N: 598,493.05'
E: 974,463.91'
NC GRID NAD 83 (NSRS 2011)
ELEV: 2156.49' (NAVD 88)
WATER LINE SCALED FROM IMAGE PROVIDED BY CITY OF HENDERSONVILLE WATER & SEWER DEPARTMENT
POOL
CLUBHOUSE BUILDING
DETENTION POND
PET ENCLOSURE AREA
GARAGE TYPE "E"
GARAGE TYPE "D"
BUILDING TYPE "A"
BUILDING TYPE "B"
BUILDING TYPE "C"
PARTY WALL (TYP.)
PROPERTY LINE WITH C/L OF CREEK
LIMITS OF SPHA ZONE "AE"
FLOOD ZONE "AE"
FLOOD ZONE "X"
APPROXIMATE EDGE OF HIGHLANDS SQUARE DRIVEWAY AND HIGHWAY RIGHT-OF-WAY
CHAIN LINK FENCE
BARBED WIRE FENCE
WOVEN WIRE FENCE
VINYL PRIVACY FENCE
BLOCK RETAINING WALL
ROCK WALL
CONCRETE PATIO
CONCRETE PAVER PATIO
SIDEWALK
CROSSWALK
PARKING
DRIVEWAY
GRASS
TELECOM BOX
UTILITY POLE (ABANDONED)
EXPOSED 10"PVC SEWER PIPE
CLEANOUT
HYDRANT (TYP.)
WATER VALVE (TYP.)
STORM MANHOLE (TYP.)
GRATE INLET
YARD INLET
CURB INLET
EV
HANDICAP PARKING SPACE (TYP.)
NO PARKING ZONE (TYP.)
ELECTRIC VEHICLE SIGN (TYP.)
STANDARD PARKING SPACE (TYP.)
HANDICAP PARKING SIGN (TYP.)
PORCH
FRANCHISE DRIVE
DRIVE-THRU
ADDITIONAL PARKING SPACES
GRATE INLET
BUILDING CORNER
30' BUILDING SETBACK LINE
GRAVEL PATH
WATER METER
EXISTING ROCK WALL
EXISTING CONCRETE WALL
EXISTING CHAIN LINK FENCE
EXISTING BARBED WIRE FENCE
EXISTING WOVEN WIRE FENCE
EXISTING VINYL PRIVACY FENCE
EXISTING CONCRETE PATIO
EXISTING BUILDING CORNER
EXISTING GRATE INLET
EXISTING CLEANOUT
EXISTING HYDRANT
EXISTING WATER VALVE
EXISTING WATER METER
EXISTING STORM MANHOLE
EXISTING YARD INLET
EXISTING CURB INLET
EXISTING SIGN
EXISTING UTILITY POLE
EXISTING TELECOM BOX
EXISTING ELECTRIC BOX
EXISTING ELECTRIC CABINET
EXISTING GAS VALVE
EXISTING FIRE HYDRANT
EXISTING WATER VALVE
EXISTING WATER METER
EXISTING STANDARD PARKING SPACE
EXISTING HANDICAP PARKING SPACE
EXISTING ELECTRIC VEHICLE PARKING SPACE
EXISTING HANDICAP PARKING SIGN
EXISTING ELECTRIC VEHICLE SIGN
EXISTING STANDARD PARKING SIGN
EXISTING CONCRETE PAVER PATIO
EXISTING GRAVEL PATH
EXISTING DRIVE-THRU
EXISTING PORCH
EXISTING POOL
EXISTING CLUBHOUSE BUILDING
EXISTING PET ENCLOSURE AREA
EXISTING GARAGE TYPE "E"
EXISTING GARAGE TYPE "D"
EXISTING BUILDING TYPE "A"
EXISTING BUILDING TYPE "B"
EXISTING BUILDING TYPE "C"
EXISTING PARTY WALL (TYP.)
EXISTING PROPERTY LINE WITH C/L OF CREEK
EXISTING LIMITS OF SPHA ZONE "AE"
EXISTING FLOOD ZONE "AE"
EXISTING FLOOD ZONE "X"
EXISTING APPROXIMATE EDGE OF HIGHLANDS SQUARE DRIVEWAY AND HIGHWAY RIGHT-OF-WAY
EXISTING CHAIN LINK FENCE
EXISTING BARBED WIRE FENCE
EXISTING WOVEN WIRE FENCE
EXISTING VINYL PRIVACY FENCE
EXISTING BLOCK RETAINING WALL
EXISTING ROCK WALL
EXISTING CONCRETE PAVER PATIO
EXISTING SIDEWALK
EXISTING CROSSWALK
EXISTING PARKING
EXISTING DRIVEWAY
EXISTING GRASS
EXISTING TELECOM BOX
EXISTING UTILITY POLE (ABANDONED)
EXISTING EXPOSED 10"PVC SEWER PIPE
EXISTING CLEANOUT
EXISTING HYDRANT (TYP.)
EXISTING WATER VALVE (TYP.)
EXISTING STORM MANHOLE (TYP.)
EXISTING GRATE INLET
EXISTING YARD INLET
EXISTING CURB INLET
EXISTING EV
EXISTING HANDICAP PARKING SPACE (TYP.)
EXISTING NO PARKING ZONE (TYP.)
EXISTING ELECTRIC VEHICLE SIGN (TYP.)
EXISTING STANDARD PARKING SPACE (TYP.)
EXISTING HANDICAP PARKING SIGN (TYP.)
EXISTING PORCH
EXISTING FRANCHISE DRIVE
EXISTING DRIVE-THRU
EXISTING ADDITIONAL PARKING SPACES
EXISTING GRATE INLET
EXISTING BUILDING CORNER
EXISTING 30' BUILDING SETBACK LINE
EXISTING GRAVEL PATH
EXISTING

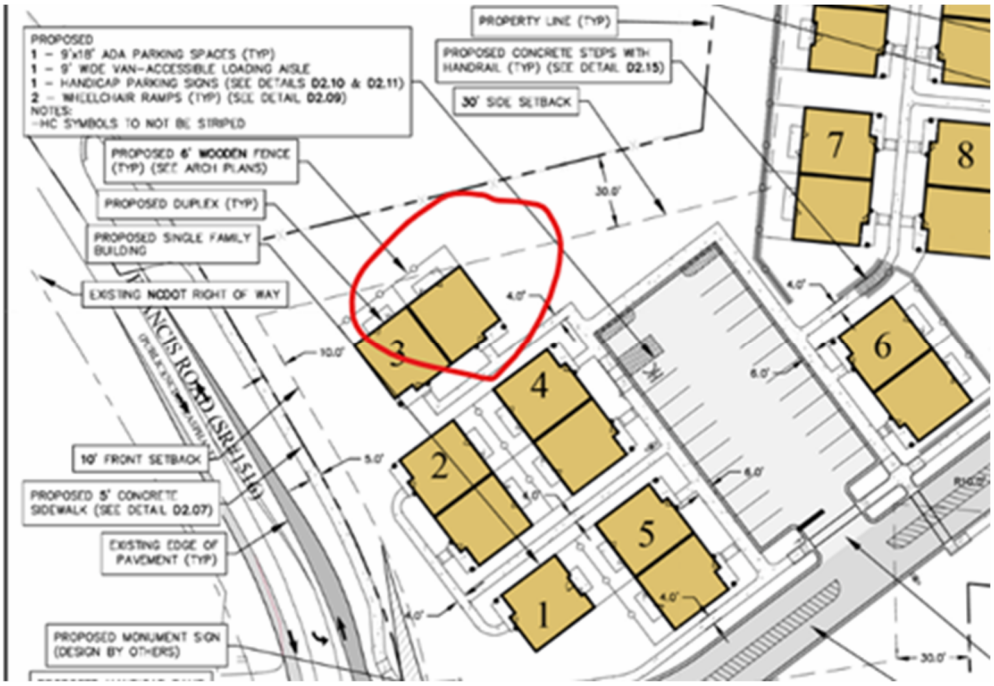
Cottages at Mastermind- BOA Submission

During the construction of the Cottages at Mastermind project in Hendersonville off Francis Road unit #3 on the approved master plan was unintentionally constructed 3 feet 4 inches into the required 30-foot setback from the adjacent parcel. This issue was not discovered until the ALTA survey of the finished project was completed. See below snip of the survey that shows the location of the encroachment, and the approved site plan.

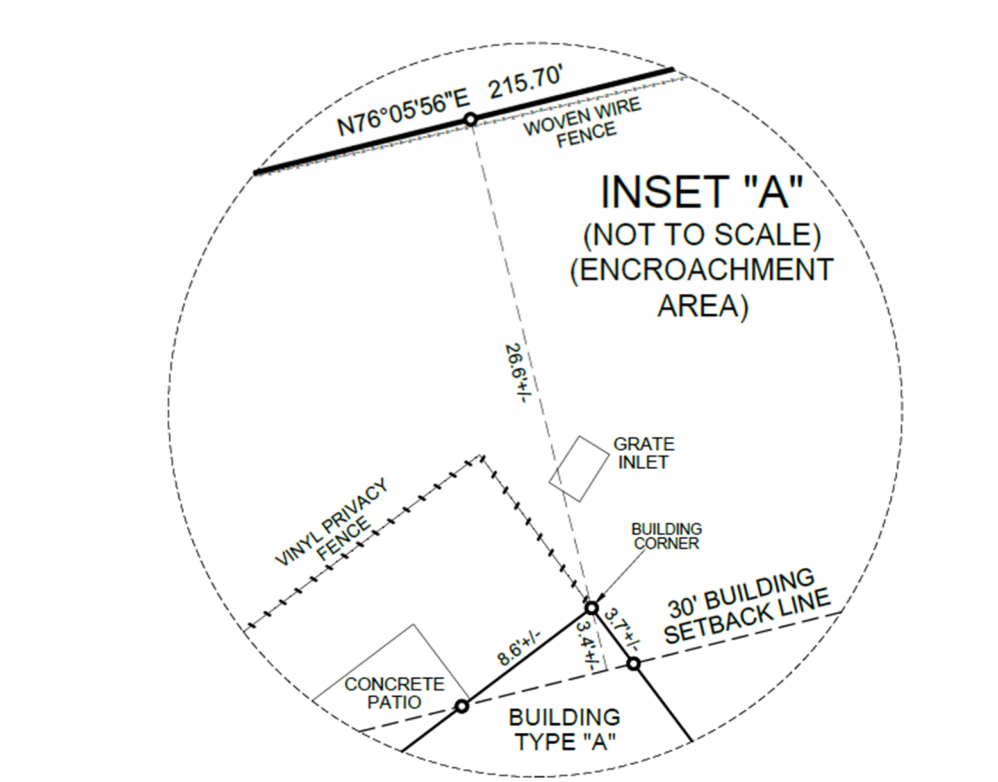
Snip of survey



Snip of approved site plan



See blow up of the encroachment issue provided by the surveyor for clarification.



Please also see attached pictures of the issue for clarification and help in understanding the issue surrounding the encroachment, and the potential complications involved in correcting the issue.

The setback line intersect the building 46" from the corner

Picture of the setback stake in relation to the building

Picture from the setback line on the hill looking at the building

Setback line stakes on the opposite side of the building

Picture of unit and buffer plantings on adjacent property during construction.

BK 4163 PG 240 - 241 (2) DOC# 1001014258
This Document eRecorded: 05/09/2024 03:23:53 PM
Fee: $26.00
Henderson County, North Carolina Tax: $0.00
William Lee King, Register of Deeds

Prepared by and return to:
Jonathan T. Sizemore
Adams Howell Sizemore & Adams, P.A.
1600 Glenwood Ave., Suite 101
Raleigh, NC 27608

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

INSTRUMENT OF COMBINATION

This Instrument of Combination is made this 7th day of May, 2024, by the owner, DHIC – Mastermind, LLC, a Delaware limited liability company (the "Owner"), whose mailing address is 1341 Horton Circle, Arlington, TX 76011, Attn: Scott Tuthill.

WITNESSTH:

WHEREAS, the Owner presently owns parcel numbers 9579-48-6832 and 9579-48-2415 located in Henderson County by virtue of deeds recorded in Book 4117, Page 132 and Book 4117, Page 138, Henderson County Registry respectively; and

WHEREAS, the Owner wishes to recombine parcels 9579-48-6832 and 9579-48-2415 into for compliance with Henderson County regulations, all taxation, and assessment purposes only; and

WHEREAS, this is a limited special purpose instrument for the purpose specified above and is not a conveyance and is a re-platting of the property and does not change or modify in any manner the ownership interest in the above mentioned property. This is not a legal binding recombination of the described parcels, but instead it is a request for the GIS and tax authority to tax as recombined tracts; and

Submitted electronically by Adams, Howell, Sizemore & Adams, 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.

NOW, THEREFORE, upon execution and recording of this Instrument of Combination the maker of this Instrument of Combination hereby declares that the property known for Henderson County Ad Valorem Tax purpose as PIN: 9579-48-6832 and PIN: 9579-48-2415 are hereby combined into a single parcel of property as shown on Plat Book 2024, Page 15377 of the Henderson County Registry and shall be considered as one parcel for all purposes.

IN WITNESS WHEREOF, the maker has hereunto set his/her hand and seal the day and year first above written.

OWNER:

DHIC - MASTERMIND, LLC,
a Delaware limited liability company

By: DHI Communities II, LLC,
a Delaware limited liability company
Its: Sole Member

By: _____(SEAL)
R. Elam Hall, Vice President

State of North Carolina
County of Gaston

I, Rachel Martin Hayes, a Notary Public of the County and State aforesaid, certify that R. Elam Hall, in his capacity as Vice President of DHI Communities II, LLC, a Delaware limited liability company, the sole member of DHIC – Mastermind, LLC, a Delaware limited liability company, appeared before me this day and acknowledged the execution of the foregoing Instrument of Combination.

Witness my hand and official stamp or seal, this 7 day of May, 2024.

My Commission Expires: May 27, 2025

Rachel Martin Hayes
Notary Public

Print Name: Rachel Martin Hayes

[Affix Notary Stamp or Seal below]

RACHEL MARTIN HAYES
Notary Public, North Carolina
Gaston County
My Commission Expires
May 27, 2025

ARTICLE V

Members

Section l. Composition. The Board shall be composed of five regular members and five alternates. Subject to the provisions of Section 10-1 of the City of Hendersonville Zoning Ordinance and N.C.G.S. §§ 160D-302 and 160D-307, or any successor statutes, the members shall be chosen as follows: Four regular members and Four alternates, each of whom shall be a resident of the City of Hendersonville, shall be appointed by the City Council of the City of Hendersonville. One regular member and one alternate, each of whom shall be a resident of the extraterritorial jurisdiction of the City of Hendersonville, shall be appointed by the Henderson County Commission.

Section 2. Term of Office. Members shall serve three-year terms as provided by the City of Hendersonville Zoning Ordinance.

Section 3. Vacancies. Vacancies shall be filled as soon as deemed advisable by the applicable appointing authority.

Section 4. Removal of Members. Any member of the Board may be removed by the applicable appointing authority for inefficiency, neglect of duty, malfeasance, or conflict of interest.

***

ARTICLE VII

Meetings

Section I. Regular and Special Meetings.

A. Regular meetings of the Board shall be held at 1:30 p.m. on the second Tuesday of each month at a time and place designated by the Board, except when otherwise decided by the Board, with due notice to the press. If a day scheduled for a regular meeting is a holiday for which the offices of the City of Hendersonville are closed, the regular meeting shall be held on the following Tuesday.

B. Special meetings of the Board may be called at any time by the Chair provided that at least forty-eight hours written notice of the time and place of a special meeting be given, to each regular and alternate member of the Board and to the secretary. In addition, members of the press shall be notified of each meeting in accordance with law. Special meetings may include Board retreats and like meetings held to conduct internal business of the Board.

Section 2. Quorum.

Four members of the Board (including alternates) eligible to vote on any issue, shall constitute a quorum for purposes of that issue. Notwithstanding the foregoing, a quorum shall not be necessary to do any of the following:

A. Set a date, Lime or place for any subsequent meeting.

B. Discuss general internal Board business, but in no case may the Board without a quorum hear or discuss the merits of any matter brought or to be brought before the Board as part of a public hearing.

C. Appoint a Chair pro tern for the meeting.

Section 3. Voting.

A. In accordance with G.S. 160D-406(i), the concurring vote of four-fifths majority of the members of the board of adjustment shall be necessary to grant a variance. Except as otherwise provided in these bylaws, including the policies and procedures attached hereto, a majority of all regular and alternate members eligible to vote shall be necessary to transact any other official business.

B. Except as otherwise provided herein: Any regular member in attendance at any meeting shall be eligible to vote on all matters brought before the Board at that meeting. Alternates members shall be eligible to vote in the absence of any regular member. By way of example, if four regular members attend the meeting then one alternate in attendance shall be eligible to vote, and if two alternates are in attendance the Chair may select one alternate to be eligible. The Chair may empower alternates to be eligible to vote at any portion of a meeting where a regular member is absent or excused, including any public hearing.

Section 4. Records.

The Board shall keep minutes and records of all proceedings, including resolutions, transactions, findings and determinations; shall record the number of votes for and against each question presented; and shall indicate whether any member is absent or abstains from voting. All such records shall be filed in the office of the Board Secretary immediately following the meeting at which they occurred.

Section 5. Absences.

Subject to the ordinances of the City of Hendersonville, any regular member of the Board who misses more than three consecutive regular meetings or more than half the meetings in any calendar year (not including meetings postponed for reasons other than lack or predicted lack of a quorum) shall by that fact no longer be a member of the Board.

Section 6. Open Meetings and Public Hearings.

Board meetings and public hearings shall be open to the public as required by N.C.G.S. Chapter 143 Article 33C.

Section 7. Order of Business.

The order of business at regular meetings shall be as follows:

Roll call; determination of quorum

Approval of Minutes of previous meeting

Hearing of cases

Other business

Adjourn

***

APPENDIX I

POLICIES AND PROCEDURES

***

6. Decisions

A.. In accordance with G.S. 160D-406(i), the concurring vote of four-fifths majority of the members of the Board shall be necessary to grant a variance. A majority of the members eligible to vote shall be required to decide any other matter. Votes taken more than seventy days after the close of the public hearing shall be accompanied by a declaration for the minutes, articulating clearly and specifically the reasons for the delay.

B. Written decisions containing findings of fact and conclusions of law may be approved at any time within seventy days after the initial vote. Any written decision presented to the board for final vote more than seventy days after the initial vote shall be accompanied by a written statement articulating clearly and specifically the reasons for the delay.

C. The final vote, if approving the written decision, shall be held on the following issue: "Do the findings of fact, conclusions of law and ruling contained in the written decision accurately reflect the sense of those who voted with the decision reached in the initial vote?" Subject to the Board's bylaws and procedures. this final vote may be approved by a majority of those members attending the meeting at which the final vote is held and eligible to vote.

If upon an attempted final vote no majority can be reached upon the issue. the Chair shall request of the members who voted with the decision reached in the initial vote to indicate as clearly as possible for the minutes, if in the Chair's opinion they did not do so at the time of the initial vote, the criteria of the ordinance, met or unmet, upon which they based their vote, and the facts adduced at the hearing that support their conclusions.