



## CITY OF HENDERSONVILLE BOARD OF ADJUSTMENT

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

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### AGENDA

1. **CALL TO ORDER**
2. **APPROVAL OF AGENDA**
3. **APPROVAL OF MINUTES**
  - A. Minutes of January 11.2022
4. **OLD BUSINESS**
  - A. Variance Application –Halford Partners LLC & ALPHA Investments LLC– John Halford Court Lot 3 - Alexandra Hunt, Planner I
5. **NEW BUSINESS**
  - A. Special Use Application - City of Hendersonville - 0 Shepherd St - Alexandra Hunt, Planner I
  - B. Variance Application - Todd Leoni & Osceola Landing LLC - 0 Osceola Inn Rd - Alexandra Hunt, Planner I
  - C. Temporary Use Permit Application - Ginger Elliot - 214 Wilmont Dr - Alexandra Hunt, Planner I
  - D. Variance Application - Dan Mock & AYD Partners LLC - 824 Locust St - Alexandra Hunt, Planner I
6. **OTHER BUSINESS**
7. **ADJOURNMENT**

*The City of Hendersonville is committed to providing accessible facilities, programs and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or an accommodation for this meeting please contact the City Clerk no later than 24 hours prior to the meeting at 697-3005.*

## MINUTES OF THE HENDERSONVILLE BOARD OF ADJUSTMENT

Tuesday, January 11, 2022  
1:30 p.m. in the City Operations Center

The Hendersonville Board of Adjustment held its regular monthly meeting on January 11, 2022 at 1:30 p.m. in the Assembly Room in City Operations Center, 305 Williams Street, Hendersonville, North Carolina. Those present were: Melinda Lowrance, Chair, Ernest Mowell, Roger Woosley, Libby Collina, Charles Webb, Kathy Watkins, Stefan Grunwald, Matthew Manley, Planning Manager, Tyler Morrow, Planner II, Alexandra Hunt, Planner I, and Angela Beeker, City Attorney.

Absent: Barbara McCoy and Edney

Chair called the meeting to order at 1:38 p.m.

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

Approval of the Minutes of the November 8, 2021 meeting. A motion was made by Mr. Webb and seconded by Ms. Collina to approve the minutes as written. The motion passed unanimously.

Approval of the Decision for a variance application from Sullivan File No. V-11-09-01 Variance from 1002 5<sup>th</sup> Avenue W. A motion was made by Ms. Watkins to accept the Decision as written. Ms. Collina seconded the motion which passed unanimously.

### **Variance – Halford Partners LLC & ALPHA Investments LLC – John Halford Ct. Lot 3**

Chair stated we have a variance to consider today from Halford Partners, LLC & ALPHA Investments, LLC for the property located on John Halford Court Lot 3. Any persons desiring to testify in these hearings must first be sworn in. Since this is a quasi-judicial hearing, it is very important that we have an accurate record of what goes on here. Therefore, we must ask that you refrain from speaking until recognized by the Chair and, when recognized, that you come forward to the podium and begin by stating your name and address. Anyone present who has knowledge of anything of value that has been given or promised in exchange for a position to be taken on these applications should disclose it now.

Chair swore in all persons to give testimony. Those sworn in were Tyler Morrow, Planner II, Mr. Manley, Planning Manager, and Mr. Bruce Fleming of Halford Partners LLC.

Chair opened the public hearing.

Mr. Manley, Planning Manager, asks the Chair if she would like to give the applicant the option to proceed with this hearing since only seven (7) members are present and would require a unanimous vote.

Mr. Fleming, applicant, asks Mr. Manley for clarification as to the Chair's statement and what would Mr. Manley recommend, he do.

Mr. Manley stated that he cannot give advice.

Ms. Beeker, City Attorney, stated that it is staff's position that they cannot give advice to the applicant.

Mr. Manley stated that there are nine (9) members of the Board and that all nine are not always present each month.

Ms. Beeker stated that one person who was recently appointed is expected to attend all meetings.

The applicant stated that he would like to proceed with the hearing.

Tyler Morrow, Planner II, with the City of Hendersonville, stated his name and title for the record. He asked that the staff reports, and attachments be entered into evidence for this hearing.

Mr. Morrow stated that the Community Development Department has received an application from Halford Partners, LLC and ALPHA Investments, LLC for a variance from Sections 17-3-2, 17-3-3 and Section 5-3-3 of the Zoning Ordinance. The variances requested are to reduce the required stream buffer from the required 30' to 15' in Section 17-3-2; to reduce the transitional area from the required 20' to 15' in Section 17-3-3; and to reduce the front setback from the required 30' to 12' in Section 5-3-3.

Mr. Morrow stated the following concerning the subject property:

- The subject property possesses a PIN of 9569-77-4636 and is zoned as R-15 Medium Density Residential.
- The lot is currently vacant.
- Based on Henderson County records, the lot size is approximately 0.34 acres or 15,002 square feet.
- The principal structure setbacks for R-15 are:
  - Front: 30'
  - Side: 10'
  - Rear: 15'
- Based on the most recent USGS seven-and-one-half minute quadrangle topographic maps, the subject property has a blue line stream running through its boundaries.
- The subject property was platted on December 9th, 2005
- The stream is identified as Horse Creek based on a plat recorded on December 9th, 2005.
- City Council adopted an ordinance creating stream buffer protection standards which included a 30' stream buffer and 20' transitional area at their meeting on September 6th, 2001.
- Section 17-3-2 of the Hendersonville Zoning Ordinance requires that Stream buffer protection shall apply on each side of the stream and shall measure 30 feet horizontally from the top of the stream bank in a direction perpendicular to the stream flow.
- Section 17-3-3 of the Hendersonville Zoning Ordinance requires that there be a 20-foot transitional area immediately landward of the stream buffer which may be graded, landscaped and/or used for pedestrian or vehicular purposes so long as no impervious materials are utilized.

The site plan was shown. Mr. Morrow identified the proposed structure on the site indicated in green.

Mr. Morrow read the requirements of Sections 17-3-2, 17-3-3 and 5-3-3 (R-15) of the Zoning Ordinance and reviewed the requested variances from each of these sections.

Mr. Morrow stated that the applicant is requesting a 15' variance from the stream buffer and a 5' variance from the transitional area as well as an 18' variance from the front setback requirements.

Photos were shown of the property. An image of the blue line stream was shown on the property.

Mr. Morrow highlighted the standards for granting a variance in Section 10-9 of the Zoning Ordinance and indicated that a proposed motion is located in the file.

Chair asked if there were any questions for staff.

Mr. Woosley asked about the planting of lawns.

Ms. Watkins asked to show the ordinance requirements for stream buffers and transitional areas.

Ms. Collina asks for clarification on the variance requests by the applicant.

Mr. Morrow states that the applicant is requesting a 15' variance from the 30' stream buffer requirement and to reduce the transitional area requirement from 20' to 15'.

Chair asks if the applicant would like to speak.

Bruce Fleming, 414 Overhill Drive stated his name and address for the record. He stated that they are really stuck and says that without a variance they cannot develop the subject property.

Ms. Collina asks if the current owner is the one who originally platted the property.

Mr. Fleming states he believes another company was involved in 2005 before the owner was.

Ms. Collina asks if both the owner and the applicant are involved in platting the subject property.

Mr. Fleming states again he believes there was another company involved in the platting process in 2005.

Ms. Collina asks if the plat that is shown is the recorded plat.

Mr. Morrow, Planner II, stated that the plat shown is the 2005 plat.

Ms. Collina asked if the location of the stream has changed since the 2005 plat.

Mr. Fleming stated that the site plan that was shown is where the stream is located today.

Mr. Grunwald asked whether the stream shifted toward where it is currently drawn on the site plan.

Ms. Collina asked approximately how much did the stream shift.



Ms. Watkins stated that she is viewing it on her phone as it was hard to see on the map shown and proceeds to ask a question about what is viewed on her phone.

Ms. Beeker, City Attorney, stated that staff can pull up the GIS Map so all Board members can see more clearly.

Staff works to bring up the GIS Map on the projector.

Mr. Morrow stated that an updated easement survey shows the creek and asked for this recent survey to be entered into the record and file.

Ms. Collina asked if the Board were to grant the 15' variance would they need a 20' setback.

Mr. Fleming stated that they are asking for the 30' variance to be reduced and to have a 15' no build area and a 15' transitional area instead of the 50' stream buffer requirement.

Mr. Woosley asked whether any vegetation would be removed and if it was brush.

Mr. Manley, Planning Manager, stated that the zoning ordinance does approve removal of invasive plants.

Mr. Manley asked the applicant why he was proposing a 15' no build area and a 15' transitional area instead of a 30' buffer.

Mr. Fleming stated he thinks the transitional area is useful for the landscaping and the appearance. He was basing what he is requesting on a similar exception in the code that allows for the lots platted prior to 2001, a little bit of room to be developed. It would still be protecting the creek but allowing a little more latitude for development of those lots and that called for a 15' buffer and a 15' transitional zone.

Ms. Collina asked whether the green box indicated the proposed house and what is the 12' setback measured from.

Mr. Fleming stated that the 12' is measured from the sidewalk.

Mr. Manley stated that the 12' is from the property line not the sidewalk.

Ms. Collina asked about the placement of a sidewalk and if it could be adjusted to somewhere else on the property.

Mr. Fleming stated that they are working with a draftsman to make it look nice and appropriate.

Chair asked if anyone else wished to speak.

Mr. Morrow, Planner II, stated that if the Board can make their motion for the most recent plat instead of the 2005 plat.

Ms. Collina asked if the most recent plat is the one with the accurate setbacks.

Mr. Morrow responded that the most recent plat meets the zoning ordinance setback requirements.

Chair closed the public hearing for Board discussion.

Mr. Fleming, applicant, asked the Chair to reopen the hearing in order to provide additional information for the Board to consider.

Chair reopened the public hearing.

Chair swore in all persons to give testimony. Those sworn in were Steve Katsadourous of ALPHA Investments, LLC, and Matthew Manley, Planning Manager.

Mr. Katsadourous stated that the property was purchased in 2009 and has paid property taxes and they would like to develop the property and do not want to violate any rules and if they cannot get a variance, he has been paying property taxes and doing what he was supposed to do for no reason.

Mr. Manley stated that Staff would like to enter the deed to the subject property into the record showing the ALPHA Investments purchased the lot in 2008.

Ms. Watkins stated that there are other properties that exist that cannot be developed, and that the applicant purchased a group of these lots when the ordinance has these requirements and that the Board should protect the intent of the ordinance.

Mr. Grunwald stated that what needs to be understood is the transition of the stream since the 2005 plat and how much the stream has moved which then created the current hardship.

Ms. Collina stated that the size of the proposed building could be reduced.

Mr. Woosley agreed with Ms. Collina and stated that the house could be smaller.

Ms. Watkins asked whether the lot is in the floodplain and if she could see the floodplain map.

The floodplain map was shown.

Ms. Beeker, City Attorney, stated that Board has the option to grant a variance in whole or in part and can also place conditions on a variance.

Mr. Manley gave an example of a condition and used the types of plantings in the transitional zone as an example.

Mr. Webb stated that the transitional zone that is shown on the site plan is small but that it can still be functional and compared the transitional zones that exist in his neighborhood that are much larger but no longer have any kind of vegetation or plantings which do not help or protect the stream and suggested that the Board allow the reduced transitional zone but with the condition that the applicant improve the transitional zone with vegetation.

Ms. Collina stated that her concern from a builder's perspective is that when digging footers, it will disturb the transitional area if reduced.

Ms. Watkins asked who monitors the conditions to make sure that they are followed.

Ms. Beeker stated that it is staff's position that you could grant the variance on the condition that the transition area not be disturbed except for the removal of brush for instance. You can put some conditions like that to help address some of the concerns that the Board is expressing. She felt the Board was unaware of this and Staff's position is that you would have this option as well.

Ms. Collina asked if the Board can see the transitional zone requirement of the zoning ordinance.

Mr. Webb asked if conditions needed to be made now when reading the motion.

Ms. Beeker stated that the Board can defer the vote to give time for staff to draft a motion with conditions the Board suggests, and the Board can vote during the next meeting.

Mr. Woosley stated that it is his suggestion to hold the vote until the motion and conditions is drafted and the Board can review during the next meeting.

Ms. Beeker asked the Board to give staff guidance on the conditions they would like to see.

Ms. Collina asked if the applicant can do anything within the stream buffer under Sections 17-3-2 and 17-3-3.

Mr. Manley stated that the ordinance contains exceptions to the stream buffer and reviewed some of the exceptions.

Ms. Collina stated that whoever platted the lots in 2008 platted an unbuildable lot per the zoning ordinance at the time.

Ms. Beeker stated that it is staff's position that the Board must consider the evidence presented.

Mr. Manley stated that it is his understanding that the Board is considering a possible condition regarding the vegetation of the transitional area.

Ms. Collina suggested the condition state the transitional zone be disturbed as little as possible and when construction is completed it is required to be replanted and restored.

Ms. Beeker asked if the Board would be amenable to staff working with the applicant on some conditions to bring back to the Board at their next meeting.

Chair motioned to delay the vote until next meeting so staff can work with the applicant on drafting proposed conditions.

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

|              |     |
|--------------|-----|
| Mr. Woosley  | Yes |
| Mr. Mowell   | Yes |
| Mr. Webb     | Yes |
| Ms. Lowrance | Yes |
| Ms. Watkins  | Yes |
| Ms. Collina  | Yes |
| Mr. Grunwald | Yes |

Meeting adjourned at 2:53 p.m.

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Melinda Lowrance, Chair

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Terri Swann, Secretary

## MEMORANDUM

**TO:** Board of Adjustment Members

**FROM:** Community Development Department

**DATE:** February 8, 2022 (deferred from January 11, 2022)

**RE:** Variance Application –Halford Partners LLC & ALPHA Investments LLC– John Halford Court Lot 3

**SUMMARY:** The Community Development Department has received an application from Halford Partners LLC & ALPHA Investments LLC for a variance from Section 17-3-2: Stream Buffer Size, Section 17-3-3 Prohibition Against Development Within the Stream Buffer and Section 5-3-3 Dimensional Requirements. The subject property is currently zoned R-15, Medium-Density Residential. The specific variance requested is for the following:

**VARIANCE REQUEST:** The requested variance is to reduce the required stream buffer and transitional area provided in sections 17-3-2 and 17-3-3 of the Hendersonville Zoning Ordinance and to reduce the front setback for a principal structure in R-15 provided in section 5-3-3 of the Hendersonville Zoning Ordinance.

The variance is to reduce the stream buffer from the required 30' to 15' and to also reduce the transitional area from the required 20' to 15'. The variance requested follows the dimensional requirements set forth in "17-3-8 Special Provisions Pertaining to Certain Residential Uses." The requirements of section 17-3-8 are not applicable to this parcel since it was platted after September 6<sup>th</sup>, 2001. Based on the proposed development the applicants are requesting a 15' variance from Section 17-3-2 and a 5' variance from Section 17-3-3.

The applicants are also requesting to reduce the front setback from the required 30' to 12'. Based on the proposed development the applicants are requesting an 18' variance from the front setback in Section 5-3-3.

### PROPOSED FINDINGS OF FACT:

- The subject property possesses a PIN of 9569-77-4636 and is zoned as R-15 Medium Density Residential.
- The lot is currently vacant.
- Based on Henderson County records, the lot size is approximately 0.34 acres or 15,002 square feet.
- The principal structure setbacks for R-15 are:
  - Front: 30'

- Side: 10'
- Rear: 15'
- Based on the most recent USGS seven-and-one-half minute quadrangle topographic maps, the subject property has a blue line stream running through its boundaries.
- The subject property was platted on December 9<sup>th</sup>, 2005
- The stream is identified as Horse Creek based on a plat recorded on December 9<sup>th</sup>, 2005.
- City Council adopted an ordinance creating stream buffer protection standards which included a 30' stream buffer and 20' transitional area at their meeting on September 6<sup>th</sup>, 2001.
- Section 17-3-2 of the Hendersonville Zoning Ordinance requires that Stream buffer protection shall apply on each side of the stream and shall measure 30 feet horizontally from the top of the stream bank in a direction perpendicular to the stream flow.
- Section 17-3-3 of the Hendersonville Zoning Ordinance requires that there be a 20-foot transitional area immediately landward of the stream buffer which may be graded, landscaped and/or used for pedestrian or vehicular purposes so long as no impervious materials are utilized.

#### **CODE REFERENCES.**

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

Minimum Lot Area in Square Feet: 15,000

Lot Area per Dwelling Unit in Square Feet: 15,000 for the first; 7,500 square feet for one additional dwelling unit in one building.

Minimum Lot Width at Building Line in Feet: 85

##### **Minimum Yard Requirements in Feet:**

Front: 30

Side: 10

Rear: 15

##### **Accessory Structures:**

Front: 30

Side: 5

Rear: 5

Maximum Height in Feet: 35

**17-3-1 Applicability.** Except as modified in this section, stream buffer protection standards shall apply to all watercourses depicted as a solid blue line on the most recent USGS seven-and-one-half minute quadrangle topographic maps covering the City of Hendersonville and its area of Extraterritorial Jurisdiction (ETJ). Stream buffers shall be clearly indicated on all development plans, including concept plans, preliminary plans and final plans, and on all preliminary and final plats.

**17-3-2 Stream Buffer Size.** Stream buffers shall apply on each side of the stream and shall measure 30 feet horizontally from the top of the stream bank in a direction perpendicular to the stream flow.

**17-3-3 Prohibition Against Development Within the Stream Buffer.** To avoid a loss of effectiveness in protecting streams, the stream buffer shall remain in natural undisturbed forest vegetation and no development or land-disturbing activities shall be undertaken therein, except as provided in Section 17-3-5. Furthermore, there shall be a 20-foot transitional area immediately landward of the stream buffer which may be graded, landscaped and/or used for pedestrian or vehicular purposes so long as no impervious materials are utilized. Certain uses of land, as specified in Section 17-3-5, below, may be permitted within the stream buffer so long as they meet the requirements of that Section and are designed and constructed to minimize the amount of intrusion into the stream buffer and to minimize clearing, grading, erosion and water quality degradation. Nothing herein is intended to preclude the removal of downed vegetation from the stream bed in order to improve stream flow dynamics. If it is necessary to remove downed or dead vegetation, it should be cut and the root ball left in place to help maintain stability of the shoreline. Nothing herein is intended to [or shall] preclude any activity specifically authorized pursuant to Section 401 and/or Section 404 of the Clean Water Act.

**17-3-5 Exceptions.** Subject to prior written authorization by the Planning Director, the following activities may be undertaken within the stream buffer provided they meet all the standards specified herein as well as other applicable provisions of the Zoning Ordinance:

- a) Crossings by streets, driveways, culverts, railroads, recreational features, intakes, docks, utilities, bridges or other facilities shall be allowed provided that they are designed to minimize the amount of intrusion into the stream buffer. Streets and driveways may run generally within and parallel to the stream buffer only where no other access to the property is feasible and when their design minimizes the amount of intrusion into the stream buffer. Crossings with a width of 40 feet or more are permitted only when it has been demonstrated that there is no practical alternative.
- b) Stream buffers may be used for passive recreational activities, such as unpaved or paved trails or greenways, provided that service facilities for such activities, including but not limited to parking, picnicking and sanitary facilities, are located outside of the stream buffer. Where practical, such activities shall be kept at least 15 feet from the stream bank.

- c) Clearing and revegetating the stream buffer pursuant to a plan approved by the Community Planning Director when it has been demonstrated that such clearing and revegetation will improve stream buffer's pollutant removal efficiency.
- d) Stormwater control structures and temporary erosion control structures shall be considered utilities for the purposes of this section and may be allowed in stream buffers, provided that:
  - 1) The property owner or applicant demonstrates to the satisfaction of the Community Planning Director that such facilities cannot be practicably located outside of the stream buffer, and that any proposed stormwater control structure is sited and designed to minimize disturbance of the stream and stream buffer.
  - 2) Alternate methods of stormwater and erosion control shall be considered prior to approval of such structures in the stream buffers.
  - 3) A vegetated buffer of a width approved by the Community Planning Director shall be required around the stormwater control structures.
  - 4) Any land disturbed for these structures shall be revegetated with appropriate native species in accordance with a revegetation plan approved by the Planning Director.
- e) Sanitary sewer lines, on an alignment generally parallel to the stream, may be allowed in stream buffers, provided that:
  - 1) The property owner or applicant demonstrates in writing to the satisfaction of the Director of Water & Sewer that the sanitary sewer lines cannot be practicably located outside of the stream buffer;
  - 2) Design and construction specifications minimize damage to the stream and the possibility of line leakage;
  - 3) The sewer line is located at least 15 feet from the top of the stream bank; and
  - 4) The sanitary sewer plan and a plan for revegetating the stream buffer disturbance shall be approved by the Director of Water & Sewer.
- f) Streams may be piped, thereby exempting the piped section of the stream from stream buffer requirements, provided such piping complies with the permitting/certification requirements of the Clean Water Act and any other applicable state and federal regulations. Piping undertaken for the purpose of accommodating public roads, railroads, greenways, recreational facilities and



private roads and drives should be designed so that the right-of-way or roadway-and-shoulder width is no more than is necessary considering the design capacity of the facility and so that the proposed stream piping is not substantially in conflict with the other objectives of this Section. Where stream piping is approved, a vegetated buffer area or other device shall be provided at any intake or discharge structure. All buffers and physical improvements related to the stream piping shall be located entirely on the site or, pursuant to easement, on lands adjacent to the site.

- g) Selective removal of invasive exotic species in accordance with a plan approved by the Community Planning Director.
- h) View corridors are allowed so long as the soil is undisturbed and the natural forest floor, ground cover and understory vegetation are left intact. Pruning associated with the creation and maintenance of a view corridor is exempt. Thinning of the overstory and mid-canopy trees is permissible with the written authorization of the Community Planning Director.

Site plan approval by the Community Planning Director shall be required for any of the stream buffer intrusions described above. When any of the activities described above involves land clearing, the cleared area shall be revegetated pursuant to an approved plan. However, where a site plan is not required by any other provision of the Zoning Ordinance, the Director of Public Works is authorized to approve plans for stream piping and erosion control structures in stream buffers.

**17-3-8 Special Provisions Pertaining to Certain Residential Uses.** For certain residential uses as prescribed herein, the stream buffer shall be reduced to fifteen feet and the transitional area described in Section 17-3-3 shall be reduced to fifteen feet. To qualify for these special provisions, a proposed development must meet the following criteria:

- a) The lot on which the development is to occur must be a lot of record in the Henderson County Registry as of 6 September 2001.
- b) Use of the lot must be limited to a one- or two-family residential dwelling.
- c) The lot may not exceed one acre in area. d) The amount of impervious surface allowed on the lot shall not exceed 25% of the lot or 3,000 square feet, whichever is greater.

#### **Section 10-9 Variance.**

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

- 1) Unnecessary hardship would result from the strict application of the ordinance. It is not necessary to demonstrate that, in the absence of the Variance, no reasonable use can be made of the property.

- 2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a Variance. A Variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- 3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a Variance is not a self-created hardship.
- 4) The requested Variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

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

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

## MOTION:

With regard to the request by Halford Partners LLC & ALPHA Investments LLC for a variance from Section 17-3-2: Stream Buffer Size to reduce the stream buffer requirement from 30' to 15' with the following conditions:

- 1) *The stream buffer will be reduced from 30' to 20'.*

I move the Board to find that (a) strict enforcement of the regulations would result in practical difficulties or unnecessary hardship to the applicant, (b) the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, and (c) in the granting of the variance the public safety and welfare have been secured and substantial justice has been done.

Furthermore, with regard to the request by Halford Partners LLC & ALPHA Investments LLC for a variance from Section 17-3-3 Prohibition Against Development Within the Stream Buffer to reduce the transitional area requirement from 20' to 15' with the following conditions **[see addendum for proposed conditions]**:

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

I move the Board to find that (a) strict enforcement of the regulations would result in practical difficulties or unnecessary hardship to the applicant, (b) the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, and (c) in the granting of the variance the public safety and welfare have been secured and substantial justice has been done.

Furthermore, with regard to the request by Halford Partners LLC & ALPHA Investments LLC for a variance from Section 5-3-3 Dimensional Requirements to reduce the front setback for a principal structure from 30' to 12', I move the Board to find that (a) strict enforcement of the regulations would result in practical difficulties or unnecessary hardship to the applicant, (b) the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, and (c) in the granting of the variance the public safety and welfare have been secured and substantial justice has been done.

Accordingly, I further move the Board to grant a variance from Sections 17-3-2, 17-3-3 and Section 5-3-3 in accordance with and only to the extent represented in the application and conditions.

**(After the motion has been seconded, the movant should state the factual basis and reasoning for the motion. In doing so, bear in mind the considerations set out in Section 10-9 of the zoning ordinance.)**

Remember: Staff suggest the motion be made in the affirmative regardless of whether it is your intention to support or oppose the issuance of a variance. This does not mean that staff is recommending approval of the application. RATHER, we believe it is better procedurally to approach it this way. Once you have made the motion, you should state your position as to the required findings. For variance applications, it takes seven affirmative votes to approve this application, if others are voicing support of the application, you should make it a point to state your position vis-à-vis the required findings since your vote, even standing by itself may represent the position of the Board.

## **EXHIBIT LIST**

- Exhibit A - Subject Property**
- Exhibit B - Site Plan (drawing)**
- Exhibit C - Pictures of the Property**
- Exhibit D - Variance Application (see attached)**

## Exhibit A – Subject Property

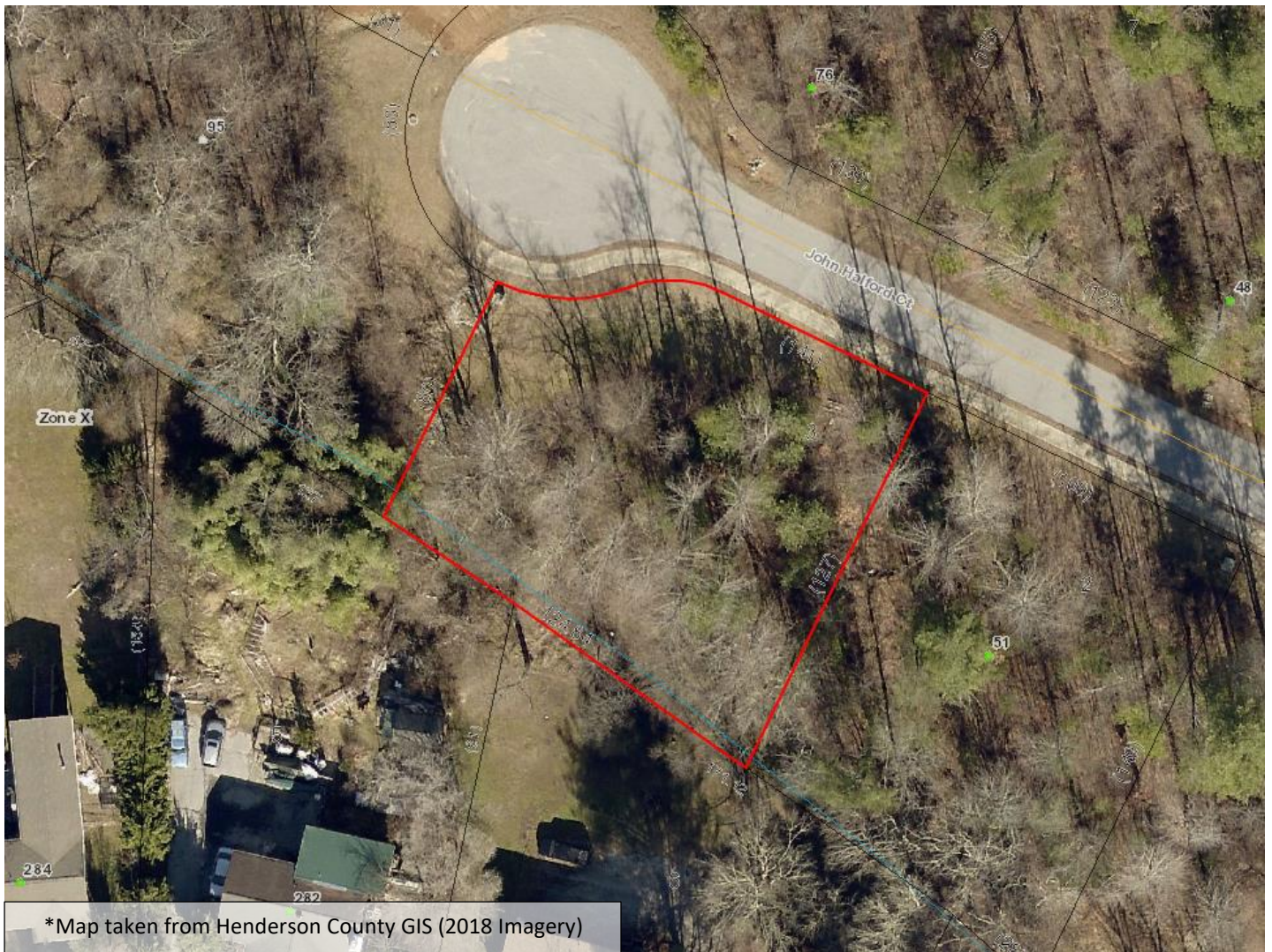
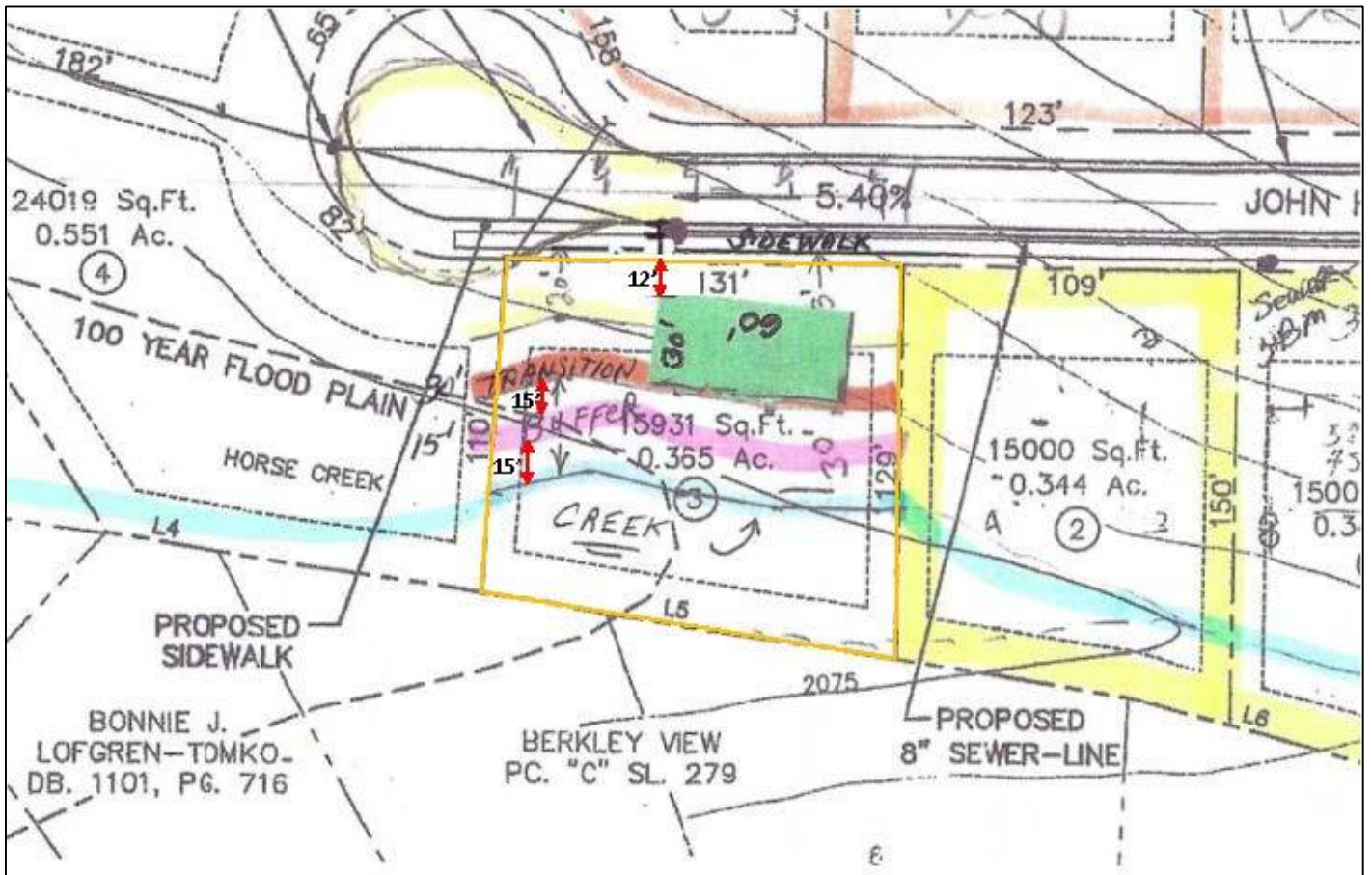




Exhibit B – Site Plan (drawing)





### Exhibit C – Pictures of Property













**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 City Staff for placement on the Board of Adjustment agenda. By placing a check mark by each of the following items, you are certifying that you have performed that task. A check mark must be placed by each numbered item before placement on the Board agenda.

- ☒ 1. Pre-application meeting with the Planning staff.
- ☐ 2. Completed Variance Application
- ☐ 3. Completed Zoning Permit Application
- ☐ 4. Site Plan of property showing any existing structures, natural features (e.g. streams, ponds, etc.), **as well as** the proposed building or additions indicating distance from such to the centerline of street, side & rear lot lines, and elevations, as applicable, and placement of septic system & drainage field with distances from structures, if applicable.
- ☐ 5. One copy of the septic permit (if applicable)
- ☐ 6. Application Fee of \$75.00
- ☐ 7. Petitioner has checked for Homeowner Association rules, property covenants, deed restrictions, Building Safety Department permits, and other requirements that might have a bearing on the application.

**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 advised 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.**

Office Use:

Date Received: \_\_\_\_\_ By: \_\_\_\_\_ Fee Received? Y/N

**B. Property Information**PIN(s): 9569774636Address(es): (0) John Halford Court Hendersonville, NC 28792 (no address assigned yet) Lot 3Current Zoning: residential Acreage: .34**C. Applicant Contact Information**

Bruce Fleming

\* Printed Applicant Name

Halford Partners LLC

Printed Company Name (if applicable)

☐ Corporation ☒ Limited Liability Company ☐ Trust ☐ Partnership☐ Other: \_\_\_\_\_

☒ By signature below, I hereby acknowledge, as/on behalf of (circle one) the Applicant named above my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the City Council except through sworn testimony at the public hearing. (Applicable if box is checked.)

Bruce Edward Fleming III  
Applicant Signature

Member

Applicant Title (if applicable)

415 Overhill Drive

Address of Applicant

Hendersonville NC 28792

City, State, and Zip Code

828-275-9739

Telephone

bthreeservices@gmail.com

Email

**D. Owner Contact Information (if different from Applicant)**

Steve Katsadouros

\* ^ Printed Owner Name

ALPHA Investments LLC

\* ^ Printed Company Name (if applicable)

☐ Corporation     ☒ Limited Liability Company     ☐ Trust     ☐ Partnership
☐ Other: \_\_\_\_\_

☒ By signature below, I hereby acknowledge, as/on behalf of (circle one) the Applicant named above my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the City Council except through sworn testimony at the public hearing. (Applicable if box is checked.)

Owner Signature

Member

Owner Title (if applicable)

373 Kenmure Drive

Address of Property Owner

Flat Rock NC 28731

City, State, and Zip Code

828 674 7922

Telephone

skatsadouros@aol.com

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.

Note: Additional Owner Signature pages attached.

### E. To the Zoning Board of Adjustment

I, Bruce Fleming, 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):  
zoning ordinance XVII section 17-3-2, 17-3-3, 5-3-3

### F. 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.

applying the ordinance makes the lot unusable for residential construction

the buffer zones would push even the narrowest designs outside of the setback

and even into the sidewalk areas. we would also like a variance for the 30'

setback from the front of the property to allow a house to sit closer to the road.

We are applying for an 18' setback variance (we would provide a 12' setback).

- 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.

Horse creek is actually closer to the center of the property

Than indicated on the GIS map. When the 30' and 20' buffer area is marked out, the outermost edge of the buffer is on the John Halford Court side of the setback area.

- 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 creek's location has not been impacted by the property owner.

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 variance will not do away with the stream buffer, only reduce it's size.

We request a variance similar to the special provisions described in section 17-3-8 of the regulation, except that the time of recording the lot is after 2001. We wish to both protect the creek with a smaller buffer and make use of the property for a residence.

### Certification

In granting a variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with the City of Hendersonville Zoning Code. Violations of the provisions of the variance granted, including any conditions or safeguards, which are part of the granting of the variance, shall be deemed in violation of the City of Hendersonville Zoning Ordinance.

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

12/1/21

Date

Bruce Edward Fleming III

Applicant Signature

Member, Halford Partners LLC

Applicant Title

Bruce Fleming

Applicant Name (Please Print)



**Additional Property Owners: (Signature indicates intent that this page be affixed to Application.)**

\* ^ Printed Owner Name

\* ^ Printed Company Name (if applicable)

☐ Corporation      ☐ Limited Liability Company      ☐ Trust      ☐ Partnership

☐ Other: \_\_\_\_\_

☐ By signature below, I hereby acknowledge, as/on behalf of (circle one) the Applicant named above my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the City Council except through sworn testimony at the public hearing. (Applicable if box is checked.)

Owner Signature

Owner Title (if applicable)

Address of Property Owner

City, State, and Zip Code

Telephone

Email

\* Property owner hereby grants permission to the City of Hendersonville personnel to enter the subject property for any purpose required in processing this application.

^ If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION.

**Additional Property Owners: (Signature indicates intent that this page be affixed to Application.)**

\* ^ Printed Owner Name \_\_\_\_\_

\* ^ Printed Company Name (if applicable) \_\_\_\_\_

☐ Corporation      ☐ Limited Liability Company      ☐ Trust      ☐ Partnership

☐ Other: \_\_\_\_\_

☐ By signature below, I hereby acknowledge, as/on behalf of (circle one) the Applicant named above my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the City Council except through sworn testimony at the public hearing. (Applicable if box is checked.)

\_\_\_\_\_  
**Owner Signature**

\_\_\_\_\_  
**Owner Title (if applicable)**

\_\_\_\_\_  
**Address of Property Owner**

\_\_\_\_\_  
**City, State, and Zip Code**

\_\_\_\_\_  
**Telephone**

\_\_\_\_\_  
**Email**

\* Property owner hereby grants permission to the City of Hendersonville personnel to enter the subject property for any purpose required in processing this application.

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\* ^ Printed Owner Name \_\_\_\_\_

\* ^ Printed Company Name (if applicable) \_\_\_\_\_

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\_\_\_\_\_  
**Owner Signature**

\_\_\_\_\_  
**Owner Title (if applicable)**

\_\_\_\_\_  
**Address of Property Owner**

\_\_\_\_\_  
**City, State, and Zip Code**

\_\_\_\_\_  
**Telephone**

\_\_\_\_\_  
**Email**

\* Property owner hereby grants permission to the City of Hendersonville personnel to enter the subject property for any purpose required in processing this application.

^ If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION.

## MEMORANDUM

**TO:** Board of Adjustment Members

**FROM:** Community Development Department

**DATE:** February 8<sup>th</sup>, 2022

**RE:** Special Use Application –City of Hendersonville – 0 Shepherd St.

**SUMMARY:** The Community Development Department has received an application and preliminary site plan from the City of Hendersonville for a Special Use Permit. The subject property is currently zoned C-4, Neighborhood Commercial. The Special Use requested is Public Utility Facilities under Section 5-9-2 of the Zoning Ordinance.

**SPECIAL USE REQUEST:** The Special Use requested is Public Utility Facilities under Section 5-9-2 of the Zoning Ordinance.

### PROPOSED FINDINGS OF FACT:

- The subject property possesses a PIN of 9578-51-3579 and is zoned as C-4 Neighborhood Commercial.
- Based on Henderson County Records, a North Carolina General Warranty Deed between George R. Gosnell and Ann Marie Gosnell (Grantors) and The City of Hendersonville (Grantee) was recorded October 11, 2019. (Exhibit A)
- The subject property is located in the City's extraterritorial jurisdiction (ETJ).
- The subject property is currently a vacant lot.
- The lot can be accessed by both Shepherd Street and Old Spartanburg Road.
- Based on Henderson County records, the lot size is approximately 2.1 acres or 91,476 square feet.
- City Council, during its regular meeting on December 2, 2021, approved a rezoning of the subject property from R-15 Medium Density Residential to C-4 Neighborhood Commercial.
- The applicant submitted a Preliminary Site Plan for a temporary fire station to house firefighters while Fire Station 1 completes renovations. (Exhibit B)
- The applicant submitted a Concept Plan for a permanent, future fire station to be located at the subject property. (Exhibit C)
- Section 10-8-2 of the Zoning Ordinance requires that the preliminary site plan meet the requirements set out in this section.
- The Preliminary Site Plan for the Temporary Fire Station 1 meet the requirements of Section 10-8-2.
- The Preliminary Site Plan for the Temporary Fire Station 1 does not meet subsections (d) and (e) of the Supplementary Standards in Section 16-4-22 Public Utility Facilities.

## CODE REFERENCES.

**5-9-2 Special Uses:** The following uses shall be permitted in the C-4 Neighborhood Commercial Zoning District Classification only upon issuance of a Special Use pursuant to Article X and shall be subject to Special Use requirements contained in Section 16-4, below:

- Bed & breakfast facilities
- Child care centers
- Civic clubs & fraternal organizations
- Pet-sitting
- Public utility facilities
- Restaurants

## Section 12-2 Definition of Commonly Used Terms and Words.

**Public Utility Facility:** Any structure or facility transmitting a service provided by a government or public utility, including, without limitation, fire stations, emergency medical service centers, telephone and repeater stations, pumping substations, and water towers, but not including telecommunication towers, antennas, and other telecommunication devices.

## 16-4-22 Public Utility Facilities.

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

- g) The Board of Adjustment may give relief from these requirements so long as public safety and neighborhood compatibility are protected, if strict adherence could constitute a hardship or is unnecessary.

**Section 10-8 Special Use Permits.** A Special Use Permit from the Board of Adjustment is required for all Special Uses.

**10-8-1 Application.** When a Special Use Permit is required by the terms of this

Ordinance, application for such permit, along with a fee established by resolution of City Council, shall accompany the application for a building permit.

**10-8-2 Preliminary Site Plan.** The application for a Special Use Permit shall be accompanied by seven copies of a preliminary site plan showing the following:

- a) The proposed title of the project and the name of the engineer, architect, designer, landscape architect, planner and/or licensed surveyor, developer and owner of record;
- b) The north arrow point, scale at not greater than one inch equals 40 feet, and such information as the names of adjacent roads, streams, railroads, subdivisions or other landmarks sufficient to clearly identify the location of the property;
- c) Location of site by an insert vicinity map at a scale no less than one inch equals 2,000 feet;
- d) Existing project zoning and zoning of adjacent property, to include properties abutting either side of a public right-of-way; City of Hendersonville Zoning Ordinance
- e) City limits line;
- f) Names of adjacent property owners;
- g) Boundary survey of site and the location of all existing easements, buildings, rights-of-way or other encroachments;
- h) Existing topography and proposed finished contours at not more than five feet intervals, with project bench mark clearly identified. Location of the 100 year floodplain, if applicable. Other significant natural features affecting the site including but not limited to marshes, major rock outcrops and lakes or streams;
- i) All proposed streets with proposed names, pavement widths and rights-of-ways. All alleys, driveways, curb cuts for public streets and handicap ramps, loading areas, and provisions for off-street parking spaces and sidewalks; calculations

- indicating the number of parking spaces required and the number provided. All streets shall be clearly identified as public or private; a typical cross-section of the public or private street shall be included;
- j) Preliminary utility layout including location and size of existing and proposed water, sanitary and storm sewer lines; proposed location of electrical transmission lines, gas pipelines, street lights, fire hydrants and the location of garbage disposal facilities or a note indicating arrangements for these facilities;
  - k) Location and size of all entrances and exits to the site showing sight distances and their relationship to all street and driveway intersections within 25 feet for driveways and 200 feet for street intersections;
  - l) A landscape plan showing wood line before site preparation with species and average diameter of trees indicated and areas to be screened, fenced, walled and/or landscaped; also location of buffer strips, if required;
  - m) Proposed location and intended use of all buildings with their dimensions, the number of floors, total floor area and maximum height above lowest ground point of each building;
  - n) Notations to include the total project area, the amount and percentage of the site to be covered by buildings, open space, streets and parking;
  - o) General location, size, height, orientation, and appearance of proposed signs.

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

Upon receipt of an application and site plan, the Administrative Officer shall review same to determine if all required information has been provided or if additional information is needed. If the site plan is insufficient, the Administrative Officer shall notify the applicant in writing of such deficiencies. An application for a Special Use Permit will not be scheduled for Evidentiary Hearing until such time as the Board of Adjustment is in receipt of a complete application and site plan, that is, an application and site plan containing all the information required under this Ordinance. City of Hendersonville Zoning Ordinance.

**10-8-3 Evidentiary Hearings on Applications for Special Use Permits.** Once the Administrative Officer is in receipt of a complete application and seven copies of a

complete site plan, the Administrative Officer will schedule the application for an Evidentiary Hearing before the Board of Adjustment.

The Administrative Officer shall mail or deliver written notice of the public hearing to the person or entity whose application or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

The Board of Adjustment shall conduct an Evidentiary Hearing (quasi-judicial hearing) on the application. Per 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.

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

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



**MOTION:**

With regard to the request by the City of Hendersonville for a Special Use Permit with the following conditions:

- 1) *A fence not easily climbable shall be installed on the temporary site as required in Section 16-4-22(d) except along the frontages of Old Spartanburg Road and Shepherd Street where a fence would interfere with access to the site by the City of Hendersonville Fire Department.*
- 2) *The proposed building or facility is temporary in nature and will not be required to conform to the design standards required in Section 16-4-22(e) and applicant will be required to meet the design standards for any future permanent building or facility.*
- 3)
- 4)

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

**(After the motion has been seconded, the movant should state the factual basis and reasoning for the motion. In doing so, bear in mind the considerations set out in Section 10-9 of the zoning ordinance.)**

Remember: Staff suggest the motion be made in the affirmative regardless of whether it is your intention to support or oppose the issuance of a variance. This does not mean that staff is recommending approval of the application. RATHER, we believe it is better procedurally to approach it this way. Once you have made the motion, you should state your position as to the required findings. For variance applications, it takes seven affirmative votes to approve this application, if others are voicing support of the application, you should make it a point to state your position vis-à-vis the required findings since your vote, even standing by itself may represent the position of the Board.

## **EXHIBIT LIST**

- Exhibit A – North Carolina General Warranty Deed**
- Exhibit B - Temporary Fire Station 1 Preliminary Site Plan**
- Exhibit C - Permanent Fire Station 3 Concept Plan**
- Exhibit D – Pictures of Subject Property**
- Exhibit E – Special Use Application**



This document presented and filed:  
10/11/2019 12:38:34 PM

WB

WILLIAM LEE KING, Henderson COUNTY, NC  
Transfer Tax: \$533.00

Doc Stamps \$533.00

Prepared By: Sharon B. Alexander

→ Pym

This instrument is prepared by Sharon B. Alexander, a licensed North Carolina Attorney. Delinquent taxes, if any are to be paid by the closing attorney to the County Tax Collector upon disbursement of closing proceeds.

STATE OF NORTH CAROLINA

GENERAL WARRANTY DEED

COUNTY OF HENDERSON

THIS DEED, made and entered into this 11 day of October, 2019, by and between GEORGE R. GOSNELL and wife, ANN MARIE GOSNELL (herein collectively referred to as the "party of the first part" and having a mailing address of 17 Candlelight Way, East Flat Rock, N.C. 28726) and THE CITY OF HENDERSONVILLE (the "party of the second part" and having a mailing address of 145 Fifth Avenue East, Hendersonville, N.C. 28792);

WITNESSETH:

The said party of the first part, for and in consideration of the sum of Ten Dollars (\$10.00) and Other Valuable Consideration to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, has bargained and sold, and by these presents does bargain, sell, and convey in fee simple unto said party of the second part, its heirs and assigns, a certain tract or parcel of land lying and being in Henderson County, North Carolina, more particularly described as follows:

Beginning at a P.K. Nail located in the northernmost corner of that property as described in Deed Book 544, Page 767, Henderson County Registry, said beginning point also being located in the centerline of Shepherd Street (S. R. 1779) and traveling from said beginning point within the centerline of Shepherd Street North 48 deg. 30 min. 00 sec. East 248.57 feet to a point; thence leaving Shepherd Street and running South 41 deg. 30 min. 00 sec. East 344.50 feet to a point; thence South 46 deg. 57 min. 00 sec. West 294.03 feet to a point in the centerline of Old Spartanburg Highway (S. R. 1789); thence with the centerline of Old Spartanburg Highway the following three courses and distances: North 62 deg. 50 min. 44 sec. West 73.79 feet to a point; thence North 58 deg. 25 min. 02 sec. West 70.33 feet to a point; thence North 53 deg. 19 min. 52 sec. West 83.55 feet to a point set in the southernmost corner of that property as described in Deed Book 544, Page 767, Henderson County Registry; thence with the boundary of said tract North 43 deg. 11 min. 40 sec. East passing an existing iron pin at 30.07 feet for a total distance of 116 feet to a pipe; thence continuing with the boundary of said tract North 44 deg. 07 min. 54 sec. West passing an iron pin at 96.28 feet for a total distance of 124.07 feet to the point and place of beginning and being 2.40 acres more or less as shown on a survey prepared by Michael D. Case, R.L.S., entitled "Survey for George R. and Ann Marie Gosnell dated March 29, 1987, Job No.: 87-01-531, reference to which is hereby made and incorporated herein.

Being the same property as described in deed recorded in Deed Book 639, Page 285 and re-recorded


Being all of the same property as described in deed recorded in Deed Book 639, Page 285 and re-recorded in Deed Book 697, Page 89, and further re-recorded in Deed Book 724, Page 456, Henderson County Registry.


TO HAVE AND TO HOLD the aforesaid tract or parcel of land, together with all privileges and appurtenances thereunto belonging to them, the said party of the second part, and their heirs and assigns in fee simple forever.

And said party of the first part does covenant that they are seized of said lands in fee simple and have the right to convey the same in fee simple, that title to same is marketable and free and clear of all encumbrances, and that they will warrant and defend the title herein conveyed against the lawful claims of all persons whomsoever. This conveyance and these warranties are made subject to the rights-of-way of Shepherd Street and Old Spartanburg Highway to their full legal widths, to the utility easements and restrictive covenants of record and to 2019 Henderson County ad valorem property taxes.

The real property conveyed herein does not include the primary residence of the party of the first part.

IN TESTIMONY WHEREOF, said party of the first part has hereunto set their respective hands and seals the day and year first above written.

  
\_\_\_\_\_(SEAL)  
GEORGE R. GOSNELL

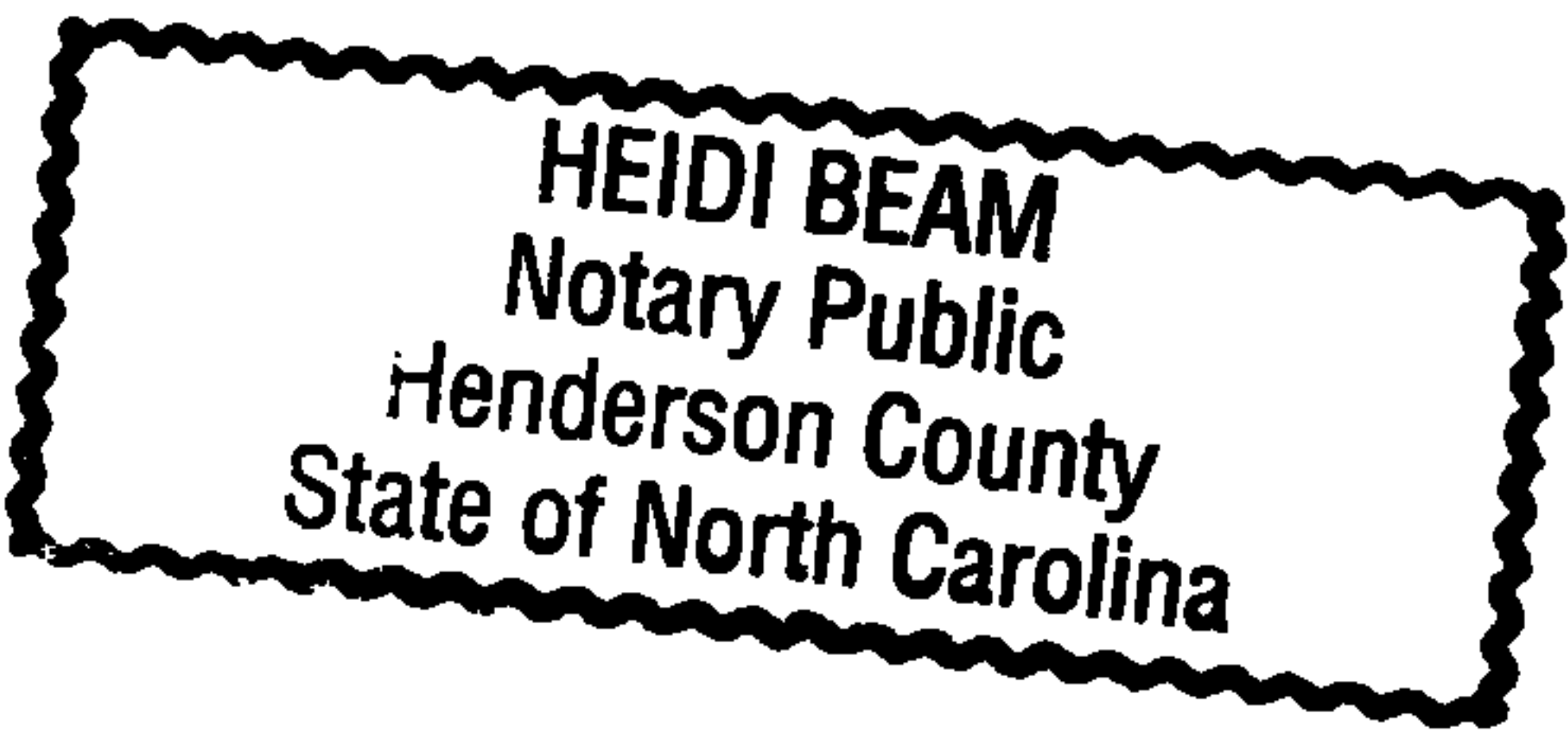
  
\_\_\_\_\_(SEAL)  
ANN MARIE GOSNELL

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

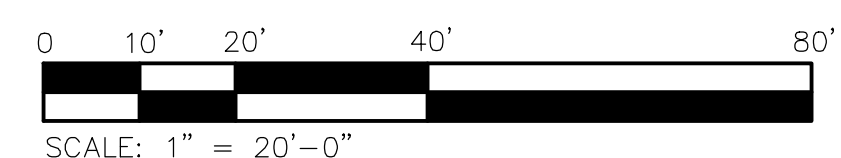
I, a Notary Public of the County and State aforesaid, certify that GEORGE R. GOSNELL and wife, ANN MARIE GOSNELL, personally appeared before me this day and acknowledged the voluntary execution of the foregoing instrument for the purpose stated therein. Witness my hand and official stamp or seal, this 11 day of October, 2019.

  
\_\_\_\_\_  
Notary Public

My commission expires: 11-24-22







# C300



OWNER/DEVELOPER:  
CITY OF HENDERSONVILLE  
160 SIXTH AVENUE EAST  
HENDERSONVILLE, NC 28792  
(828) 697-3000

CIVIL ENGINEER:  
BRIAN NEWMAN, PE  
MATTEN & CRAIG, INC.  
12 BROAD ST.  
ASHEVILLE NC 28801  
(828) 254-2201

ARCHITECT:  
ASHLEY LOVE, AIA, LEED AP BD+C, NCARB  
ADW ARCHITECTS  
SIX COLISEUM CENTRE  
2185 COLISEUM CENTRE DRIVE, SUITE 500  
CHARLOTTE NC 28217  
(704) 379-1919

PROJECT LOCATION:  
TEMPORARY FIRE STATION #1  
907 SHEPHERD STREET  
HENDERSONVILLE NC, 28792

PARKING REQUIREMENTS:

TOTAL SPACES REQ'D: 1 SPACE PER 400 SF OF BUILDING SPACE  
12770 SF ÷ 400 SF OF BUILDING SPACE  
= 31.93 SPACES → 32 SPACES

TOTAL SPACES PROV'D: 32 SPACES

ACCESSIBLE SPACES REQ'D: 2 SPACES  
ACCESSIBLE SPACES PROV'D: 2 SPACES

BUILDING INFORMATION:  
GROSS FLOOR AREA: 12770 SF  
NUMBER OF STORIES: 1 STORY

OPEN SPACE CALCULATIONS:  
REQUIRED SPACE: 10 % OF PARCEL AREA  
10 % = 5880 SF ( 0.135 AC)  
PROVIDED SPACE: 26573 SF ( 0.61AC)

NOTE ON SITE LIGHTING: SECTION 6-13.4 REQUIRES THAT LIGHTING "SHALL BE AIMED, DIRECTED, SHIELDED OR ARRANGED SO THE LIGHT SOURCES FOR SUCH FACILITIES DO NOT CAUSE GLARE SPILL OVER ON NEIGHBORING PROPERTIES OR INTERFERE WITH THE SAFE USE OF PUBLIC RIGHTS-OF-WAY."

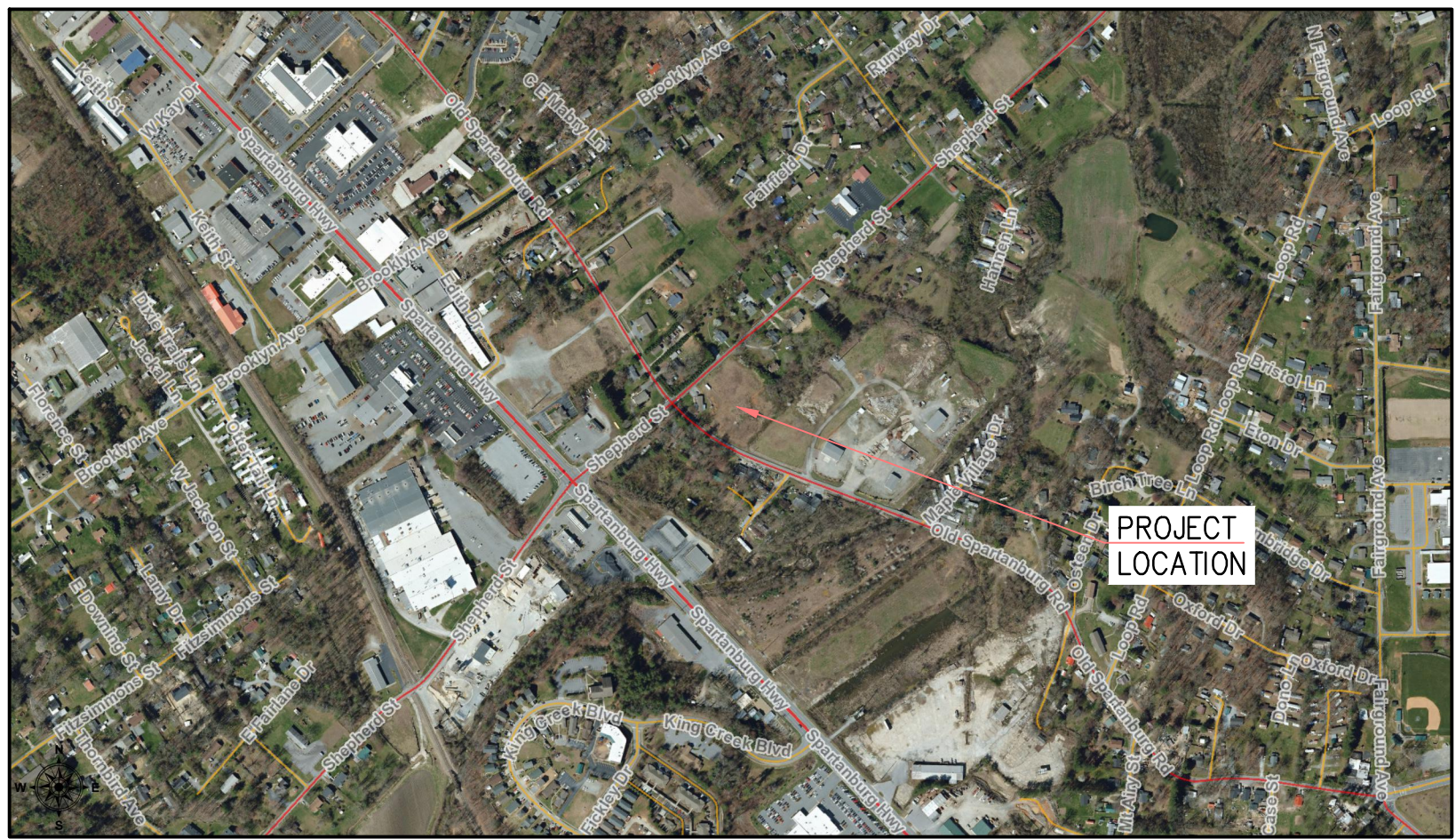
SITE INFORMATION: 2.10 ACRES TOTAL AREA  
CURRENT DEVELOPMENT: 1.35 AC  
PIN: 9578513579

GRADING/DRAINAGE CALCULATIONS:  
LIMITS OF DISTURBANCE: 1.35 AC  
PRE-DEVELOPMENT IMPERVIOUS: 0 AC (0%)  
POST-DEVELOPMENT IMPERVIOUS: 0.74 AC (54.8%)  
PRE-DEVELOPMENT PERVIOUS: 1.35 AC (100%)  
POST-DEVELOPMENT PERVIOUS: 0.61 AC (45.2%)

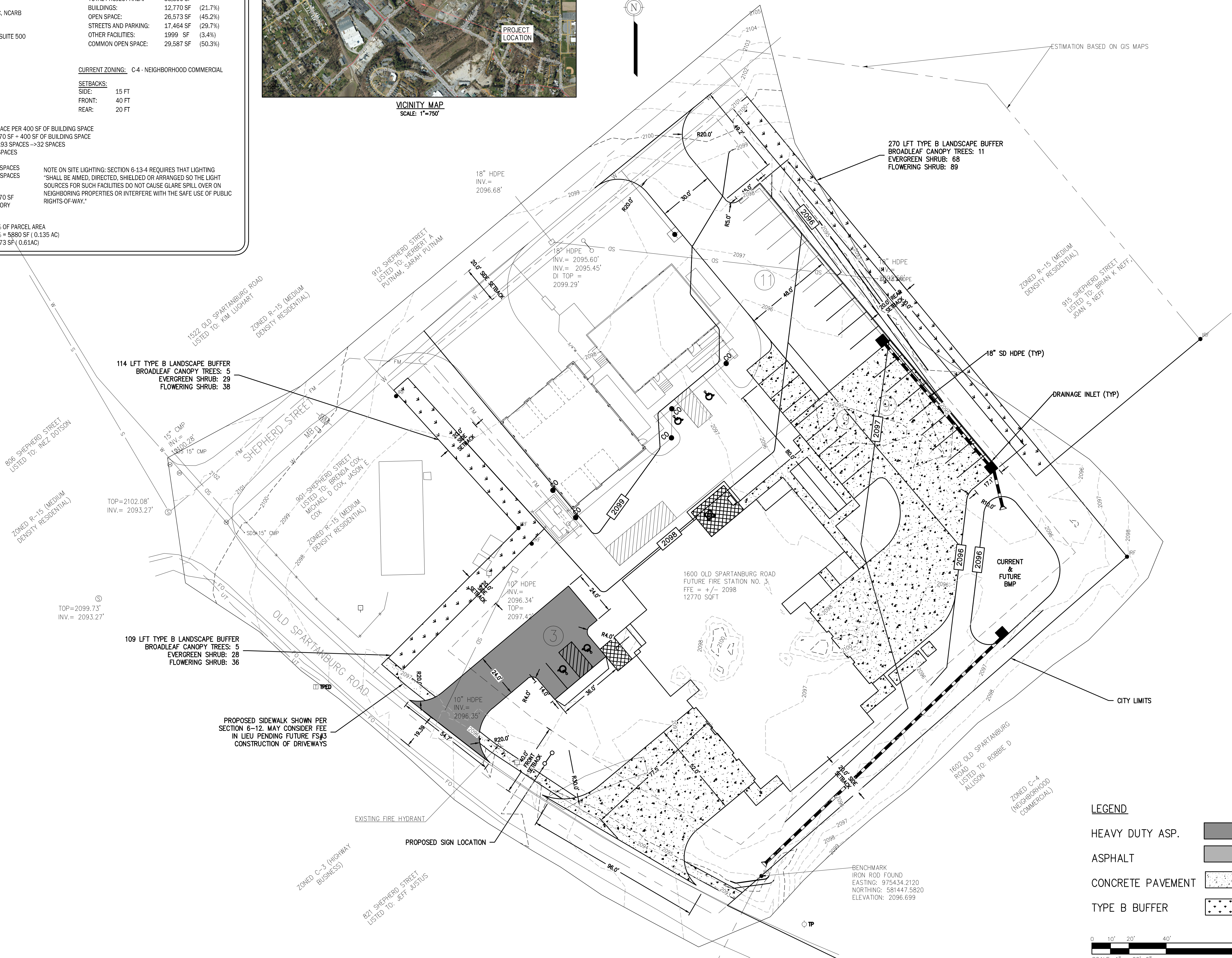
SITE COVERAGE AREA CALCULATIONS:  
TOTAL PROJECT AREA: 58,806 SF  
BUILDINGS: 12,770 SF (21.7%)  
OPEN SPACE: 26,573 SF (45.2%)  
STREETS AND PARKING: 17,464 SF (29.7%)  
OTHER FACILITIES: 1999 SF (3.4%)  
COMMON OPEN SPACE: 29,587 SF (50.3%)

CURRENT ZONING: C-4 - NEIGHBORHOOD COMMERCIAL

SETBACKS:  
SIDE: 15 FT  
FRONT: 40 FT  
REAR: 20 FT



VICINITY MAP  
SCALE: 1"=750'



adwarchitects  
environments

architecture    planning

2815 COLISEUM CENTRE DRIVE  
SUITE 500  
CHARLOTTE, NORTH CAROLINA 28217  
P 704.379.1919  
F 704.379.1920  
www.adwarchitects.com

THE CITY OF HENDERSONVILLE, NC  
1847

FIRE DEPT.  
THE CITY OF HENDERSONVILLE, NC  
EST. 1892

Mattern & Craig  
ENGINEERS • SURVEYORS

Hendersonville  
Fire Station 3  
Preliminary  
Site Plan

907 Shepherd Street  
Hendersonville, NC  
28792

PLANNING DEPARTMENT  
REVIEW DRAWINGS

FUTURE FIRE  
STATION 3 SITE PLAN

DATE: Feb 1 2022  
PROJECT NO: 4186D

REVISIONS

| NO. | DATE: | DESCRIPTION: |
|-----|-------|--------------|
|     |       |              |
|     |       |              |
|     |       |              |
|     |       |              |

THIS DRAWING IS THE PROPERTY OF ADW ARCHITECTS, P.A. AND SHALL NOT BE REPRODUCED OR COPIED IN WHOLE OR PART. IT SHALL NOT BE USED ON ANY OTHER PROJECT OR GIVEN TO ANY OTHER COMPANY OR AGENCY WITHOUT THE CONSENT OF ADW ARCHITECTS, P.A.

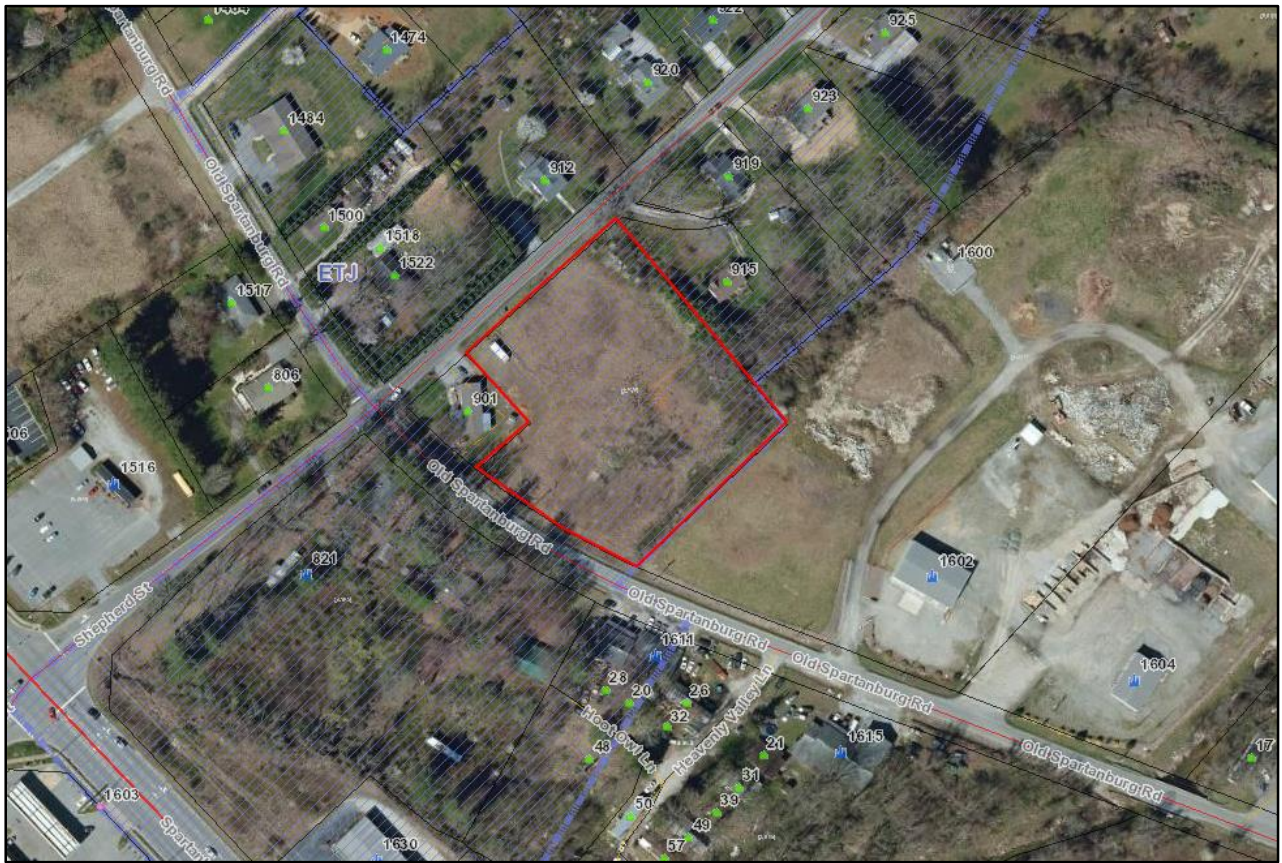
SHEET NUMBER

C301

42



## Exhibit D – Pictures of Subject Property













**CITY OF HENDERSONVILLE  
COMMUNITY DEVELOPMENT DEPARTMENT**

100 N. King Street, Hendersonville, NC 28792

Phone (828) 697-3010 | Fax (828) 698-6185

[www.hendersonvillenc.gov](http://www.hendersonvillenc.gov)

**Special Use Permit Application  
Section 10-8 of the City Zoning Ordinance**

The following information is **required** to be submitted prior to review by the Administrative Officer for placement on the Board of Adjustment agenda. Staff will not review applications until each item has been submitted and determined complete. Once the Administrative Officer is in receipt of a complete application and seven copies of a complete site plan, the Administrative Officer will schedule the application for an Evidentiary Hearing before the Board of Adjustment (*Section 10-8-3*).

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

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

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

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

- ☐ 1. Completed Application Form
- ☐ 2. Completed Signature Page (completed Owner's Affidavit if different from applicant)
- ☐ 3. Completed Preliminary Site Plan as described in Section 10-8-2 of the City Zoning Ordinance
- ☐ 4. Application Fee

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

Office Use:

Date Received: \_\_\_\_\_ By: \_\_\_\_\_ Fee Received? Y/N

### A. Quasi-Judicial Decisions Process

The Board of Adjustment is given the authority under Section 10-3 of the Zoning Ordinance of the City of Hendersonville to hear and decide requests for Special Use Permits from the dimensional requirements of the Zoning Ordinance in accordance with Section 10-8. The Board conducts quasi-judicial hearings and may consider sworn testimony and evidence presented during the hearing. Applicants are advised to bring data or experts in the relevant field to provide fact-based evidence to support any information they want considered. The Board may not consider personal opinions, subjective observations, or personal preferences.

**NOTE: The City Planning staff may not provide legal advice to applicants. Applicants are encouraged to consult the appropriate sections of the North Carolina General Statutes, City of Hendersonville Zoning Ordinance, and the Rules of Procedure for the Board of Adjustment, or to consult with an attorney, if more information is needed.**

### B. Property Information

Name of Project: City of Hendersonville Temporary Fire Station 3

PIN(s): 9578-51-3579

Address(es) / Location of Property: Old Spartanburg Rd. & Shepherd St.

No address assigned.

Type of Development:      ☐ Residential      ☐ Commercial      ☒ Other

Current Zoning: C-4, Neighborhood Commercial

Total Acreage: 2.1 Acres

List of Requested Special Uses:

Public Utility Facilities

[APPLICATION CONTINUED ON NEXT PAGE]

### C. Special Use Findings of Fact

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

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

**Instructions:** *In the spaces provided below, indicate the facts you intend to demonstrate and the arguments that you intend to make to demonstrate to the Board that it can properly grant the Special Use Permit as provided in Section 10-8-4 of the City of Hendersonville Zoning Ordinance. (If additional space is required, please provide the information on a separate sheet of paper).*

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

The proposed property development is a fire station facility required to provide fire and medical services to the surrounding neighborhood and City. The Public Utility Facility use is met explicitly. The definition of Public Utility Facility includes "fire stations" and other governmental facilities.

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

The proposed use will positively affect the health and safety of persons residing or working in the neighborhood by providing improved emergency response times and public service provision.

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

There will be no detrimental effect to property or public improvements thorough the installation of the fire station facility.

[APPLICATION CONTINUED ON NEXT PAGE]



**D. Applicant Contact Information and Signature**

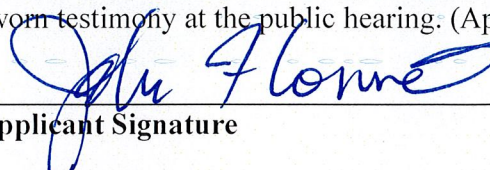
John Connet

**Printed Applicant Name**

City of Hendersonville, NC

**Printed Company Name (if applicable)**☐ Corporation      ☐ Limited Liability Company      ☐ Trust      ☐ Partnership☒ **Other:** Local Government

☒ By signature below, I hereby acknowledge, as/on behalf of (circle one) the Applicant named above my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Adjustment except through sworn testimony at the public hearing. (Applicable if box is checked.)

  
**Applicant Signature**

City Manager

**Applicant Title (if applicable)**

160 6th Avenue East

**Address of Applicant**

Hendersonville, NC 28792

**City, State, and Zip Code**

828.697.3000

**Telephone**

jconnet@hvlnc.gov

**Email**

[SIGNATURE CONTINUED ON NEXT PAGE]

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

John Connet

**\*Printed Owner Name**

City of Hendersonville, NC

**\*Printed Company Name (if applicable)**

☐ Corporation      ☐ Limited Liability Company      ☐ Trust      ☐ Partnership

☒ **Other:** Local Government

☒ 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.)

  
**\*Property Owner Signature**

City Manager

**Property Owner Title (if applicable)**

Hendersonville, NC 28792

**City, State, and Zip Code**

828.697.3000

**Telephone**

jconnet@hvlnc.gov

**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.

## MEMORANDUM

**TO:** Board of Adjustment Members

**FROM:** Community Development Department

**DATE:** February 8<sup>th</sup>, 2022

**RE:** Variance Application –Todd Leoni, 0 Osceola Inn Rd

**SUMMARY:** The Community Development Department has received an application from Todd Leoni of Osceola Landing LLC for a variance from Section 5-3-3 Dimensional Requirements. The subject property is currently zoned R-15, Medium-Density Residential. The specific variance requested is for the following:

**VARIANCE REQUEST:** The variance requested is to reduce the side setback from the required 10' to 2.2' for a principal structure in R-15 provided in section 5-4-3 of the Hendersonville Zoning Ordinance. Based on the proposed development the applicant is requesting a 7.8' variance from the side setback in Section 5-3-3.

### PROPOSED FINDINGS OF FACT:

- The subject property possesses a PIN of 9568-31-7733 and is zoned as R-15 Medium Density Residential.
- A concrete structure is located on the subject property.
- Based on Henderson County records, the lot size is approximately 0.38 acres or 16,552.8 square feet.
- Based on a recombination plat dated August 24, 2021, the concrete structure located on the subject property encroached onto the neighboring parcel to the east. (Exhibit A).
- Based on Henderson County Records, a North Carolina Non-Warranty Deed between Michael G. Hydrick and Cynthia T. Hydrick (Grantor) and Osceola Landing LLC (Grantee) was recorded November 30, 2021, recombining the two tracts to correct the encroachment. (Exhibit B)
- Based on the August 24, 2021, recombination plat, the concrete structure encroaches onto the side setback of the subject property.
- Section 5-3-3 of the Zoning Ordinance requires 10' side setbacks.



## CODE REFERENCES.

### 5-3-3 Dimensional Requirements:

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

### Section 10-9 Variance.

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

- 1) Unnecessary hardship would result from the strict application of the ordinance. It is not necessary to demonstrate that, in the absence of the Variance, no reasonable use can be made of the property.
- 2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a Variance. A Variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

- 3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a Variance is not a self-created hardship.
- 4) The requested Variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

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

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

**MOTION:**

*With regard to the request by Osceola Landing LLC for a variance from Section 5-3-3 Dimensional Requirements to reduce the side setback for a principal structure from 10' to 2.2', I move the Board to find that (a) strict enforcement of the regulations would result in practical difficulties or unnecessary hardship to the applicant, (b) the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, and (c) in the granting of the variance the public safety and welfare have been secured and substantial justice has been done.*

**(After the motion has been seconded, the movant should state the factual basis and reasoning for the motion. In doing so, bear in mind the considerations set out in Section 10-9 of the zoning ordinance.)**

Remember: Staff suggest the motion be made in the affirmative regardless of whether it is your intention to support or oppose the issuance of a variance. This does not mean that staff is recommending approval of the application. RATHER, we believe it is better procedurally to approach it this way. Once you have made the motion, you should state your position as to the required findings. For variance applications, it takes seven affirmative votes to approve this application, if others are voicing support of the application, you should make it a point to state your position vis-à-vis the required findings since your vote, even standing by itself may represent the position of the Board.

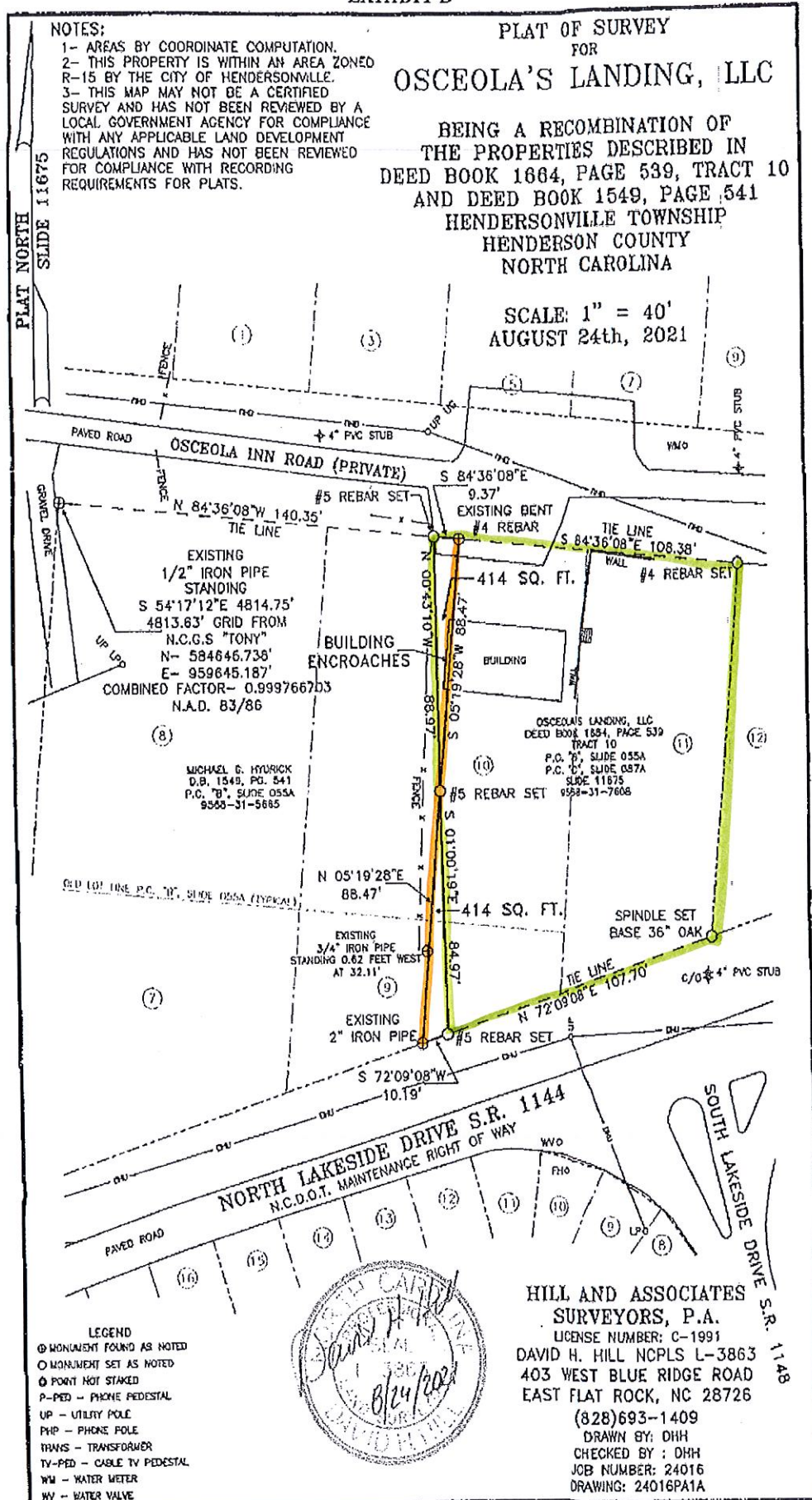
### **Exhibit List**

**Exhibit A – Recombination Plat dated August 24, 2021**

**Exhibit B – North Carolina Non-Warranty Deed dated November 30, 2021**

**Exhibit C – Pictures of Subject Property**

**Exhibit D – Application**



This map is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable development land regulations.

This Document eRecorded:

11/30/2021 12:44:49 PM

Fee: \$26.00

Henderson County, North Carolina

William Lee King, Register of Deeds

## NORTH CAROLINA NON-WARRANTY DEED

\$0.00 Excise Tax

Recording Time, Book and Page

Tax Lot No. \_\_\_\_\_ Parcel Identifier No. \_\_\_\_\_  
Verified by \_\_\_\_\_ County on the \_\_\_\_\_ day of \_\_\_\_\_, 20 21  
by \_\_\_\_\_

Van Winkle, Buck, Wall, Starnes, & Davis, P.A. (Michael M. Thompson) 422 S. Main St.  
Mail after recording to Hendersonville, NC 28792

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

Brief description for the Index

Tract on North Lakeside Drive

THIS DEED made this 28 day of October, 20 21, by and between

## GRANTOR

OSCEOLA'S LANDING, LLC, A North Carolina Limited  
Liability Company

## Whose mailing address is:

PO BOX 381703  
MIAMI, FL 33238

## GRANTEE

MICHAEL G. HYDRICK and spouse, CYNTHIA T. HYDRICK

## Whose mailing address is:

536 SANDY POINT ROAD  
LEXINGTON, NC 29072

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:

**EXHIBIT A****OSCEOLA'S LANDING, LLC TO HYDRICK**

**B***EGINNING* at an existing 2" iron pin located at the north margin of the right of way of North Lakeside Drive (SR1144), said point also being located at the Southwestern corner of the Osceola Landing tract described in Deed Book 1664 Page 539, Henderson County Registry; thence from said **BEGINNING POINT** and leaving the right of way of North Lakeside Drive, North 05 degrees 19 minutes 28 seconds East 88.47 feet to a point; thence South 01 degrees 00 minutes 19 seconds East 84.97 feet to a point located in the northern margin of the right of way of North Lakeside Drive; thence with the northern margin of same, South 72 degrees 09 minutes 08 seconds West 10.19 feet to the **POINT AND PLACE OF BEGINNING**, consisting of 414 square feet and being shown on that plat entitled "Plat of Survey for Osceola's Landing, LLC" and attached as Exhibit B hereto, reference to which is hereby made and incorporated herein for greater certainty of description.

**BEING** a portion of that real property described in Deed Book 1664 Page 539, Henderson County Registry.

**THE TRACT TO BE RECOMBINED WITH TAX PARCEL ID # 9568-31-5665 FOR HENDERSON COUNTY AD VALOREM TAX PURPOSES.**

4855-3991-3984, v. 1



## EXHIBIT B

Item B.

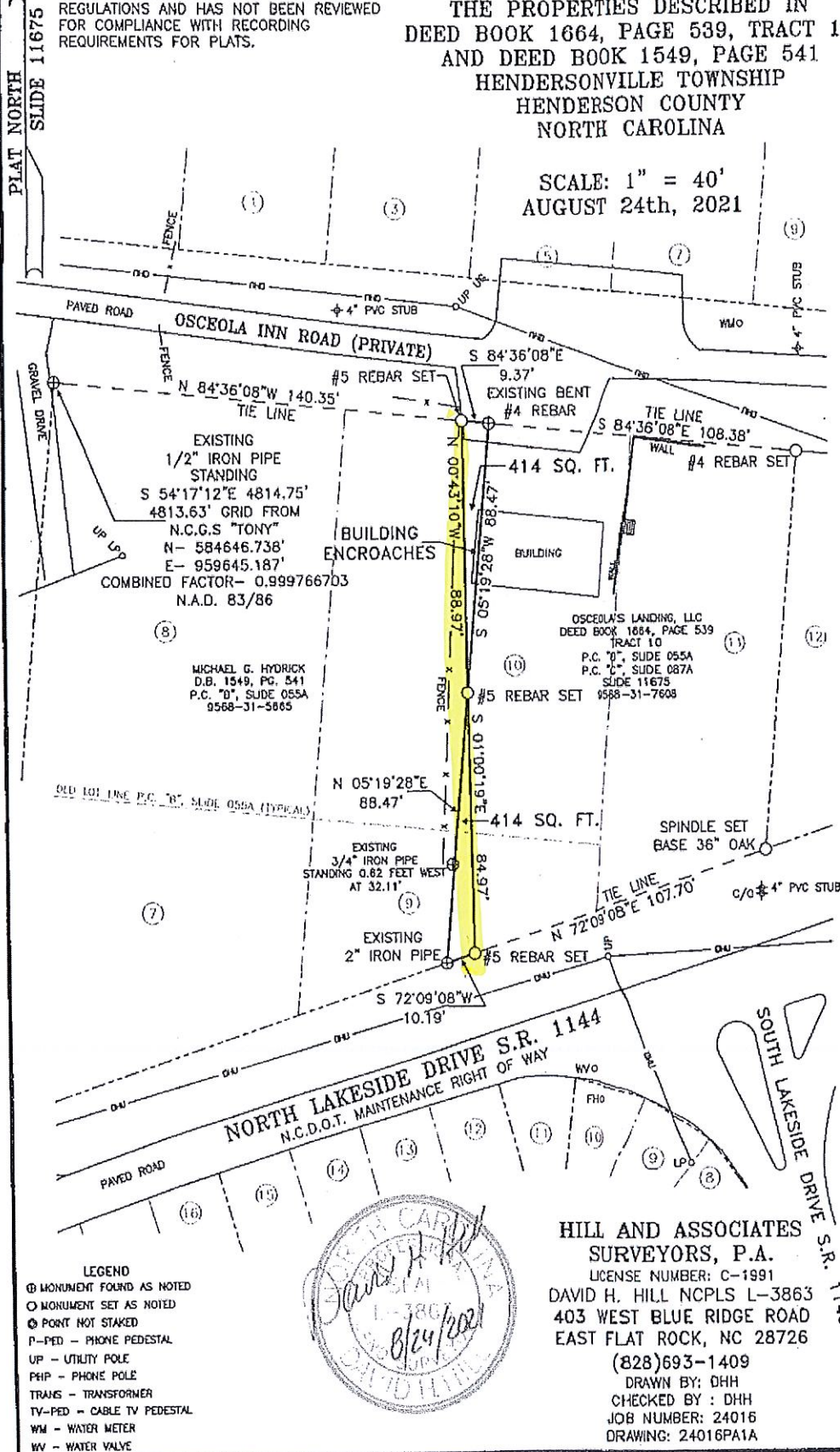
## NOTES:

- 1- AREAS BY COORDINATE COMPUTATION.
- 2- THIS PROPERTY IS WITHIN AN AREA ZONED R-15 BY THE CITY OF HENDERSONVILLE.
- 3- THIS MAP MAY NOT BE A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS AND HAS NOT BEEN REVIEWED FOR COMPLIANCE WITH RECORDING REQUIREMENTS FOR PLATS.

# PLAT OF SURVEY FOR OSCEOLA'S LANDING, LLC

BEING A RECOMBINATION OF  
THE PROPERTIES DESCRIBED IN  
DEED BOOK 1664, PAGE 539, TRACT 10  
AND DEED BOOK 1549, PAGE 541  
HENDERSONVILLE TOWNSHIP  
HENDERSON COUNTY  
NORTH CAROLINA

SCALE: 1" = 40'  
AUGUST 24th, 2021



This map is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable development land regulations.





Fee: \$26.00

Henderson County, North Carolina

William Lee King, Register of Deeds

## NORTH CAROLINA NON-WARRANTY DEED

\$0.00 Excise Tax

Recording Time, Book and Page

Tax Lot No. \_\_\_\_\_ Parcel Identifier No. \_\_\_\_\_  
 Verified by \_\_\_\_\_ County on the \_\_\_\_\_ day of \_\_\_\_\_, 20 21  
 by \_\_\_\_\_

Mail after recording to Van Winkle, Buck, Wall, Starnes, & Davis, P.A. (Michael M. Thompson) 422 S. Main St.  
Hendersonville, NC 28792

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

Brief description for the Index

Tract Osceola Inn Road

THIS DEED made this 30<sup>th</sup> day of October, 20 21, by and between

GRANTOR

GRANTEE

MICHAEL G. HYDRICK and spouse, CYNTHIA T. HYDRICK

OSCEOLA'S LANDING, LLC, A North Carolina Limited Liability Company

Whose mailing address is:

536 SANDY POINT ROAD  
 LEXINGTON, NC 29072

Whose mailing address is:

PO BOX 381703  
 MIAMI, FL 33238

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 property hereinabove described was acquired by Grantor by instrument recorded in DEED BOOK 1549  
PAGE 541, HENDERSON COUNTY REGISTRY.

A map showing the above described property is recorded in Plat Book 2021 Slide                     .  
 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.

The Grantor makes no warranty, express or implied, as to title to the property hereinabove described.

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.

|                            |       |                                  |
|----------------------------|-------|----------------------------------|
| _____                      | USE   | <u>Michael G. Hydrick</u> (SEAL) |
| (Corporate Name)           |       | Michael G. Hydrick               |
| By: _____                  | BLACK | <u>Cynthia T. Hydrick</u> (SEAL) |
| _____                      | INK   | Cynthia T. Hydrick               |
| ATTEST: _____              | ONLY  | _____ (SEAL)                     |
| _____                      |       | _____ (SEAL)                     |
| Secretary (Corporate Seal) |       |                                  |

SEAL-STAMP

STATE OF South Carolina COUNTY OF Lexington

I, Janice L Horne, a Notary Public of the County and State aforesaid, certify that  
MICHAEL G. HYDRICK AND SPOUSE, CYNTHIA T. HYDRICK, personally appeared before me  
 this day and acknowledged the execution of the foregoing instrument. Sworn to and subscribed to  
 before me. Witness my hand and official stamp or seal, this 8 day of OCTOBER 2021.

November

Janice L Horne

Notary Public

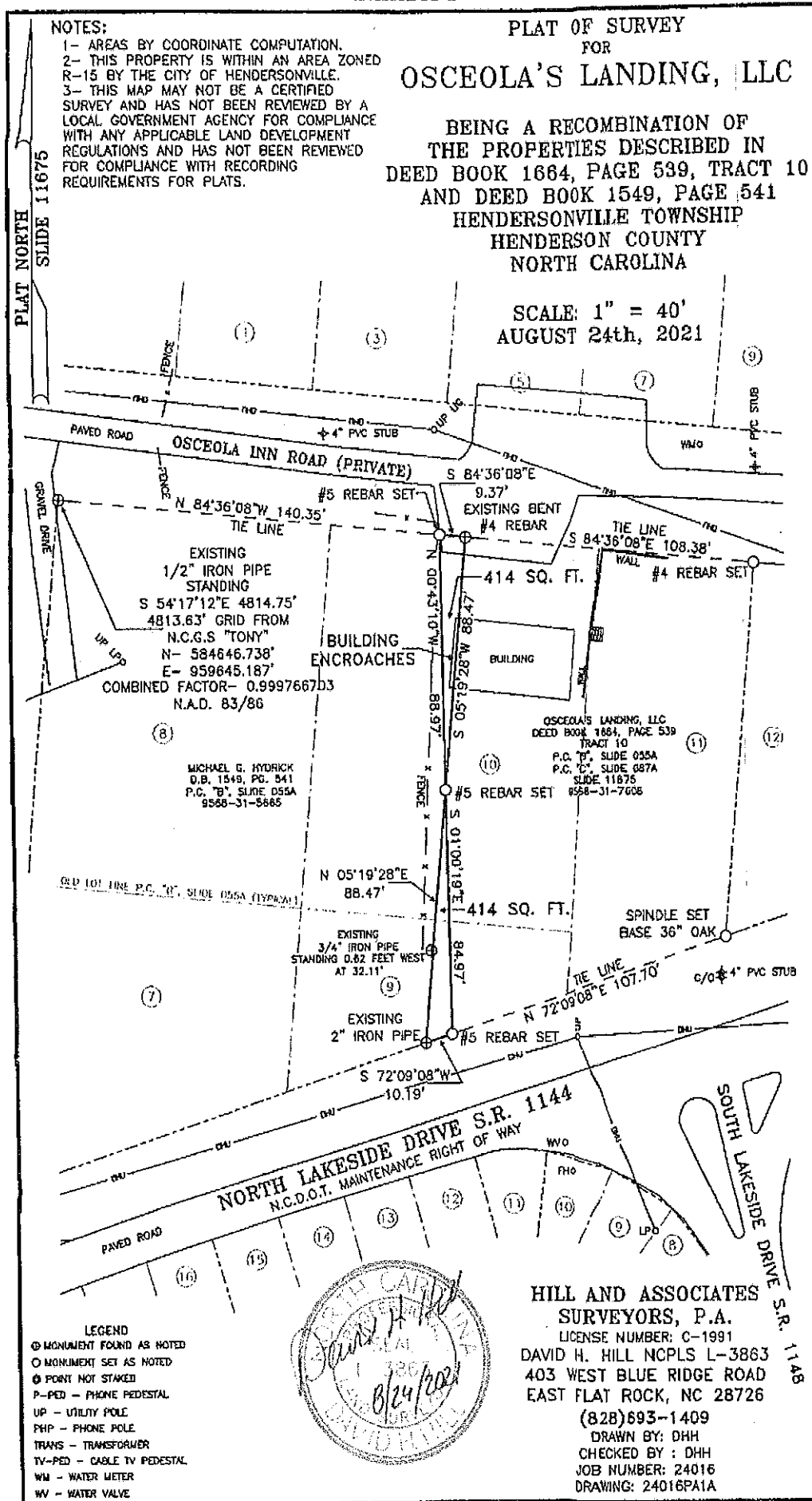
My Commission Expires: 2/8/2023

**EXHIBIT A****HYDRICK TO OSCEOLA'S LANDING, LLC**

**B***EGINNING* at an existing #4 rebar set located at the southern margin of the right of way of Osceola Inn Road (private), said point also being located at the Northeastern corner of the Hydrick tract described in Deed Book 1549 Page 541, Henderson County Registry; thence from said **BEGINNING POINT** thence South 05 degrees 19 minutes 28 seconds West 88.47 feet to a point; thence, North 00 degrees 43 minutes 10 seconds West 88.97 feet to a point in the southern margin of Osceola Inn Road; thence with the southern margin of same, South 84 degrees 36 minutes 08 seconds East 9.37 feet to the **POINT AND PLACE OF BEGINNING**, consisting of 414 square feet and being shown on that plat entitled "Plat of Survey for Osceola's Landing, LLC" and attached as Exhibit B hereto, reference to which is hereby made and incorporated herein for greater certainty of description.

**BEING** a portion of that real property described in Deed Book 1549 Page 541, Henderson County Registry.

**THE TRACT TO BE RECOMBINED WITH TAX PARCEL ID # 9568-31-7744 FOR HENDERSON COUNTY AD VALOREM TAX PURPOSES.**



This map is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable development land regulations.

**Exhibit C – Pictures of Subject Property**











**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 City Staff for placement on the Board of Adjustment agenda. By placing a check mark by each of the following items, you are certifying that you have performed that task. A check mark must be placed by each numbered item before placement on the Board agenda.

- ☒ 1. Pre-application meeting with the Planning staff.
- ☒ 2. Completed Variance Application
- ☒ 3. Completed Zoning Permit Application
- ☐ 4. Site Plan of property showing any existing structures, natural features (e.g. streams, ponds, etc.), **as well as** the proposed building or additions indicating distance from such to the centerline of street, side & rear lot lines, and elevations, as applicable, and placement of septic system & drainage field with distances from structures, if applicable.
- ☐ 5. One copy of the septic permit (if applicable)
- ☒ 6. Application Fee of \$75.00
- ☐ 7. Petitioner has checked for Homeowner Association rules, property covenants, deed restrictions, Building Safety Department permits, and other requirements that might have a bearing on the application.

**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 advised 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.**

Office Use:

Date Received: 1/12/22 By: Terri Swann Fee Received 67/N



**B. Property Information**PIN(s): 956 831 7733

Address(es): \_\_\_\_\_

Current Zoning: R-15 Acreage: .38**C. Applicant Contact Information**TOOD LEONT

\* Printed Applicant Name

OSCEOLA'S Land/ing LLC

Printed Company Name (if applicable)

☐ Corporation ☒ Limited Liability Company ☐ Trust ☐ Partnership☐ Other: \_\_\_\_\_

☒ By signature below, I hereby acknowledge, as/on behalf of (circle one) the Applicant named above my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the City Council except through sworn testimony at the public hearing. (Applicable if box is checked.)

Applicant Signature

Managing Member

Applicant Title (if applicable)

801 N Lakeside DR Hendersonville, NC 28739

Address of Applicant

Hendersonville, NC 28739

City, State, and Zip Code

305 - 300 - 4192

Telephone

TOOD @ LEONCOMPANIES.COM

Email

**D. Owner Contact Information (if different from Applicant)**

TODD LEON

\* ^ Printed Owner Name

\* ^ Printed Company Name (if applicable)

☐ Corporation      ☐ Limited Liability Company      ☐ Trust      ☐ Partnership

☐ Other: \_\_\_\_\_

☐ By signature below, I hereby acknowledge, as/on behalf of (circle one) the Applicant named above my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the City Council except through sworn testimony at the public hearing. (Applicable if box is checked.)

Owner Signature

Owner Title (if applicable)

Address of Property Owner

City, State, and Zip Code

Telephone

Email

\* Property owner hereby grants permission to the City of Hendersonville personnel to enter the subject property for any purpose required in processing this application.

^ If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION.

Note: Additional Owner Signature pages attached.

### E. To the Zoning Board of Adjustment

I, Todd Leoni, hereby petition the Board of Adjustment for a variance(s) from the literal provisions of the Zoning Ordinance of the City of Hendersonville because I am prohibited from using the parcel of land described in the form "Zoning Permit Applicant" in a manner shown by the Site Plan.

I request a Variance from the following provision(s) of the ordinance (cite section numbers):

Section 5-4-3 side setback - 8' variance

### F. 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.

There is an existing Building on the property  
with setbacks that Don't meet today's code,  
Applicant request A Variance to make existing  
Building a Residence.

- 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 ~~property~~ Building is An old Structure  
Built in the 50's, looking to Rehab it

- c. Indicate how the hardship did not result from actions taken by the applicant or property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.

This Property Was foreclosed on By Applicant  
and now trying to get My investment back.

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 Variance sits on the property But Just  
~~not~~ intrudes a bit into the setback


## Certification

In granting a variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with the City of Hendersonville Zoning Code. Violations of the provisions of the variance granted, including any conditions or safeguards, which are part of the granting of the variance, shall be deemed in violation of the City of Hendersonville Zoning Ordinance.

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

1/12/22

Date

  
Applicant Signature

Managing Member

Todd Leoni  
Applicant Name (Please Print)

## MEMORANDUM

**TO:** Board of Adjustment Members

**FROM:** Community Development Department

**DATE:** February 8<sup>th</sup>, 2022

**RE:** Temporary Use Permit Application – Ginger Elliot, 216 Wilmont Dr.

**SUMMARY:** The Community Development Department has received a request for a Temporary Use Permit for a mobile home located at 214 Wilmont Drive. The applicant is requesting a temporary use based on the existence of a personal hardship under Section 8-3 of the Zoning Ordinance.

### PROPOSED FINDINGS OF FACT:

- A Temporary Use Permit application dated December 15, 2021 indicates the following (Exhibit A):
  - The applicant is Ginger C. Elliot
  - The existing personal hardship is for someone to live in the mobile home to take care of applicant's mother
  - The existing mobile home has been on a permanent foundation for over 50 years and cannot be moved
- Based on Henderson County Records, the subject property possesses a PIN of 9579-21-5299 and is zoned R-15 Medium Density Residential.
- Based on Henderson County Records, a North Carolina General Warranty Deed between Grace G. Case (Grantor) and Clyde K. Elliot and Ginger C. Elliot (Grantees) was recorded on January 13, 1998 (Exhibit B).
- Section 8-3 of the Zoning Ordinance requires no more than one manufactured/mobile home be permitted in the rear yard of a residential dwelling on a platted lot as an accessory structure and shall meet the principal structure setback.
- Based upon information and belief the manufactured/mobile home does not meet the principal structure setback requirements of Section 5-3-3 and is an existing nonconforming structure.
- Section 6-2-2 requires that a nonconforming structure be a building or other structure which lawfully existed prior to the effective date of the zoning ordinance.
- Applicant provided a copy of a Conditional Use Permit from the City of Hendersonville Zoning Board of Adjustment for a Certificate of Occupancy submitted by applicant, Gertrude Gilliam, and granted for the use of a mobile home at 216 Wilmont Drive on May 17, 1972. (Exhibit C).
- Applicant provided a copy of a Zoning Permit issued to Ms. Gilliam on May 18, 1972 to locate a mobile home at 216 Wilmont Drive. (Exhibit D).

- Applicant provided a copy of an Assignment of Title to the mobile home located at 216 Wilmont Drive. (Exhibit E).
- Based on Henderson County Map records, the manufactured/mobile home existed on the subject property in 1984 (Exhibit F).
- Based on the City of Hendersonville records, the subject property was annexed by the City on January 6, 2005 (Exhibit G).

## CODE REFERENCES.

### 5-3-3 Dimensional Requirements:

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

**6-2-2 Nonconforming Structures.** A nonconforming structure is a building or other structure which lawfully existed prior to the effective date of this ordinance, or an amendment thereto, and which no longer could be built under the terms of this ordinance, as amended, by reason of restrictions on area, footprint, open space, building height, setbacks, lot width, or other requirements concerning the structure.

- a) A nonconforming structure devoted to a use permitted in the zoning classification in which it is located may continue to be used only in accordance with the provisions of this section.
- b) Normal repair and maintenance may be performed to allow the continuation of nonconforming structures.
- c) Except as provided in subsections (d) and (e) below, a nonconforming structure shall not undergo a change of use, renovation or expansion.



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

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

e) A nonconforming structure may be expanded, without bringing the nonconforming structure into conformity with these regulations, only if the part of the structure to be expanded and the area of the lot into which the expansion is taking place are both brought into conformity with the requirements of this ordinance.

f) A nonconforming structure shall not be moved unless it thereafter conforms to the standards of the zoning classification in which it is located.

g) Where a nonconforming structure is damaged by fire, flood, wind, or other act of God, and such damage does not exceed 50% of the current assessed taxable value of the structure, it may be restored to its original dimensions and conditions as long as a building permit for the restoration is issued within 12 months of the date of the damage.

### **Section 8-3 Temporary Use Permits for Manufactured/Mobile Homes.**

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

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

**MOTION:**

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

**(After the motion has been seconded, the movant should state the factual basis and reasoning for the motion. In doing so, bear in mind the considerations set out in Section 8-3 of the zoning ordinance.)**

Remember: Staff suggest the motion be made in the affirmative regardless of whether it is your intention to support or oppose the issuance of a Temporary Use Permit. This does not mean that staff is recommending approval of the application. RATHER, we believe it is better procedurally to approach it this way. Once you have made the motion, you should state your position as to the required findings. For Temporary Use Permit applications, it takes seven affirmative votes to approve this application, if others are voicing support of the application, you should make it a point to state your position vis-à-vis the required findings since your vote, even standing by itself may represent the position of the Board.

## **EXHIBIT LIST**

- Exhibit A – Temporary Use Application**
- Exhibit B – North Carolina General Warranty Deed**
- Exhibit C – Conditional Use Permit dated May 17, 1972**
- Exhibit D – Zoning Permit dated May 18, 1972**
- Exhibit E – Assignment of Title**
- Exhibit F – 1984 Henderson County Map Records**
- Exhibit G – City of Hendersonville Resolution to Consider Annexation**

**TEMPORARY USE PERMIT - (MOBILE HOME)**

The undersigned hereby appeals under Section 8-3 of the Zoning Ordinance for a Temporary Use Permit for a mobile home to be located at: 214 Wilmont Dr.

Hendersonville, NC 28792

Owned by: Ginger C. Elliott

As recorded in Book 851 Page 367 in the Office of the Register of Deeds, Henderson County.  
My appeal based on an existing personal hardship situation is as follows:

For someone to live in the Mobile Home to help me  
take care of my mother. The mobile home can't be  
move its on a permanent foundation and has  
been over 50 years. No way to move it at all.

A DRAWING OR PLOT PLAN SHOWING PARTICULARS MUST BE ATTACHED.

IF THIS PERMIT IS GRANTED, I UNDERSTAND IT IS ISSUED FOR A PERIOD OF ONE (1) YEAR ONLY FROM THE DATE OF APPROVAL. I FURTHER, UNDERSTAND IF THE HARDSHIP IS STILL EXISTING AT THE END OF THE ONE (1) YEAR, I MUST REAPPLY TO THE ZONING BOARD OF ADJUSTMENT FOR A ONE (1) YEAR EXTENSION AND MUST DO SO EVERY YEAR. I FURTHER AGREE THAT I WILL NOT ERECT ANY PERMANENT STRUCTURES SUCH AS DECKS, PORCHES, NO ADDITIONAL ROOMS OR GARAGES/ CARPORTS.

12-15-2021

Date

828-388-0288

Phone Number

Ginger C. Elliott

Signature of Applicant

214 Wilmont Dr Hendersonville  
NC 28792

Address

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

Date: \_\_\_\_\_

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

Date: \_\_\_\_\_

Section 8-3 - Temporary Use Permits for Mobile Homes

No more than one manufactured/mobile home may be permitted in the rear yard of a residential dwelling on a platted lot as an accessory structure. Such use shall be temporary and shall be based on a finding by the Board of Adjustment that a personal hardship situation exists (such as the need to care for elderly parents or other dependents), which justifies a special exception of this nature. Temporary Use Permits shall be issued in such case for one year, and may be renewed by the Zoning Administrator so long as the hardship continues to exist. All such manufactured/mobile homes situated in rear yards must have access to city water and sewer service or individual systems approved in writing by the County Health Officer and such manufactured/mobile homes must be maintained in such a way as to create no nuisance conditions. Furthermore, if any such manufactured/mobile home must be situated closer to the side or rear yard line than the required setback for the district involved, a variance must be obtained from the Zoning Board of Adjustment.

Section 10-10 - Appeal from the Decision of the Board of Adjustment

Appeal from the decision of the Board of Adjustment shall be taken to the appropriate Court of Record, as provided by law.

**A VOTE OF SEVEN MEMBERS OF THE BOARD IS REQUIRED TO APPROVE A TEMPORARY USE PERMIT FOR A MOBILE HOME.**

B 9 4 3 P 3 1 6

Had also recorded in the Register of Deeds Office for  
Henderson County, N. C. this 13 day of Jan, 1998  
at 9:41 o'clock A.M. in Book 943 at page 316  
Nedra Whitlock Molay  
Register of Deeds  
By: Patsy B Higgins  
asst.

Excise Tax 0

Recording Time, Book and Page

Tax Lot No. .... Parcel Identifier No. ....  
Verified by ..... HENDERSON ..... County on the ..... day of ..... JANUARY ....., 1998  
by .....

Mail after recording to ..... CLYDE K. and GINGER C. ELLIOTT .....  
..... 216 Wilmont Drive, Hendersonville, NC 28792 .....

This instrument was prepared by .....

Brief description for the Index Tract 216 Wilmont Drive TITLE NOT EXAMINED

## NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED made this 12<sup>th</sup> day of JANUARY ....., 1998 ....., by and between

GRANTOR  
GRACE G. CASE, widow

GRANTEE  
CLYDE K. ELLIOTT and wife  
GINGER C. ELLIOTT  
216 Wilmont Drive  
Hendersonville, NC 28792

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:

SEE ATTACHED EXHIBIT "A" FOR A MORE COMPLETE DESCRIPTION,  
WHICH SAID EXHIBIT IS INCORPORATED HEREIN AS IF FULLY SET  
FORTH.



The property hereinabove described was acquired by Grantor by instrument recorded in .....  
DEED BOOK , AT PAGE , HENDERSON COUNTY REGISTRY.

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

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:

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.

.....  
(Corporate Name) GRACE G. CASE, widow (SEAL)

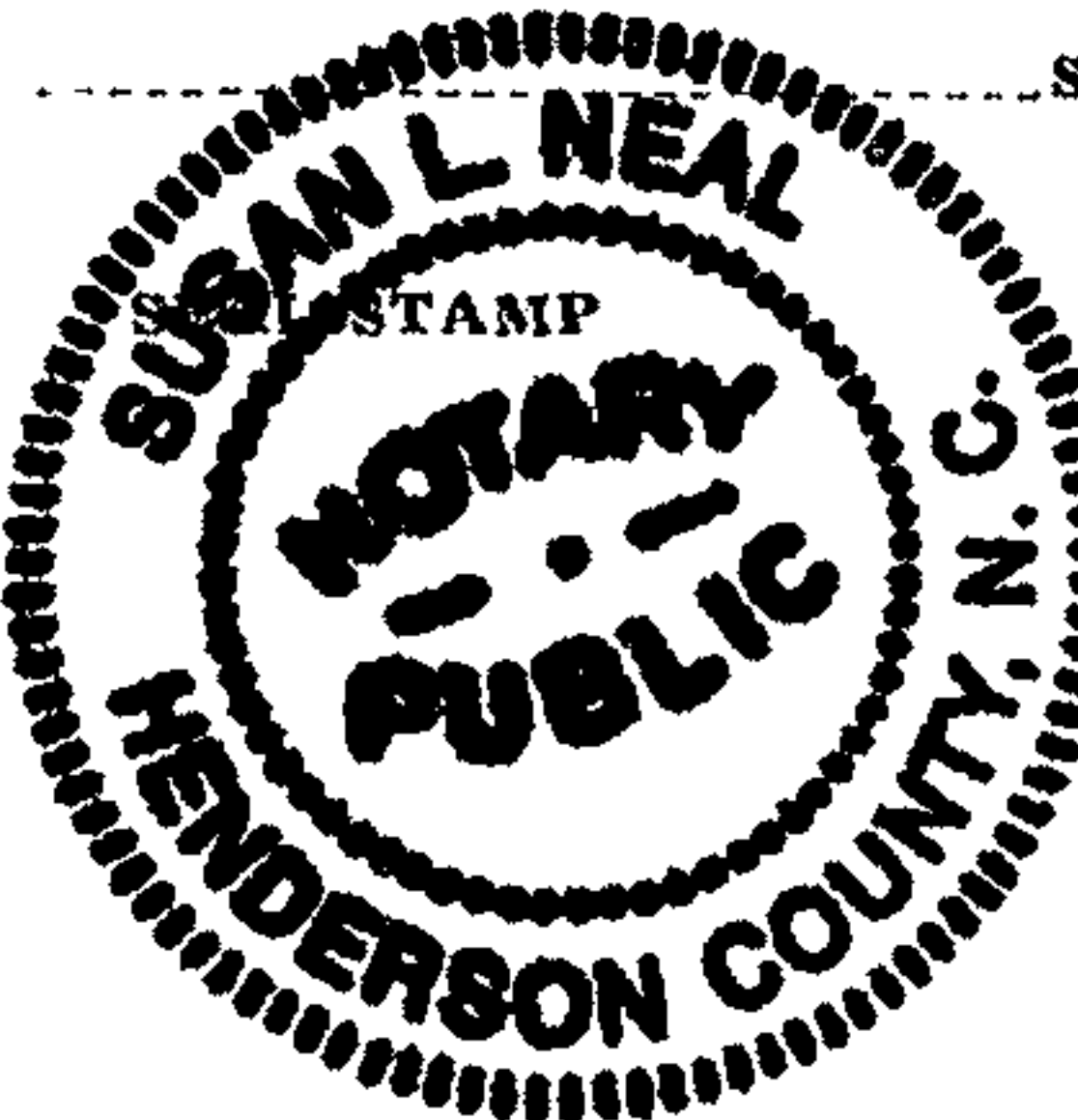
By: .....  
Grace G. Case (SEAL)

.....  
President

ATTEST: .....  
(SEAL)

.....  
Secretary (Corporate Seal) (SEAL)

USE BLACK INK ONLY



NORTH CAROLINA, Henderson County.

I, a Notary Public of the County and State aforesaid, certify that  
Grace G. Case, widow

personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my  
hand and official stamp or seal, this 12<sup>th</sup> day of January, 1997.

My commission expires: 06/16/2002 Notary Public

SEAL-STAMP

NORTH CAROLINA, County.

I, a Notary Public of the County and State aforesaid, certify that

personally came before me this day and acknowledged that he is Secretary of

a North Carolina corporation, and that by authority duly

given and as the act of the corporation, the foregoing instrument was signed in its name by its

President, sealed with its corporate seal and attested by as its Secretary.

Witness my hand and official stamp or seal, this day of, 19.

My commission expires: Notary Public

The foregoing Certificate(s) of Susan L. Neal, Notary Public

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Debra Whitlock Males REGISTER OF DEEDS FOR Henderson COUNTY

By: Cathy B. Higgins Deputy/Assistant - Register of Deeds



Ann C.

B 9 4 3      P 3 1 8      EXHIBIT A

DESCRIPTION OF PROPERTY LOCATED AT 216 WILMONT DRIVE, CONVEYED  
FROM GRACE G. CASE TO CLYDE K. ELLIOTT and wife, GINGER C. ELLIOTT.

TRACT ONE:

BEGINNING at the southernmost corner of that property conveyed to Glenn Gilliam and wife, Ruby C. Gilliam in Deed Book 496 at Page 567, Henderson County Registry; thence from said beginning point and running South 41 deg. East 109 feet to a point; thence North 58 deg. 30 min. East 151 feet to a point in the southwestern edge of the 30 foot wide road right of way (later increased to 60 feet) for Wilmont Drive (formerly known as Oakridge Street); thence with the southwestern edge of the 30 foot wide road right of way for Wilmont Drive (formerly known as Oakridge Street) (later increased to 60 feet wide) North 41 deg. West 139 feet to a point at the easternmost corner of that property conveyed to Glenn Gilliam and wife, Betty C. Gilliam in Deed Book 496 at Page 567, Henderson County Registry; thence with the southeastern edge of said Glenn Gilliam tract, South 49 deg. West 150 feet to the point and place of BEGINNING, and being a portion of that property recorded in Deed Book 284 at Page 307, which was inherited by Glenn O. Gilliam and Grace G. Case under the Will of Gertrude M. Gilliam, widow, who died in 1993; her will is filed under Henderson County, N.C. Estate File 94-E-370.

Subject to the road right of way for Wilmont Drive (formerly known as Oakridge Street).

BEING that property conveyed to Dennis B. McCarson and wife, Gail C. McCarson in Deed Book 851, at Page 365, Henderson County Registry..

TRACT TWO:

BEGINNING at an iron pin in the southwest margin of the original thirty foot wide road right of way for Wilmont Drive (formerly known as Oakridge Street) (later increased to 60 foot wide right of way) at the easternmost corner of that property conveyed to Seagle Blackwell in Deed Book 524 at Page 81, Henderson County Registry; thence with the southwestern edge of the thirty foot wide road right of way for Wilmont Drive (formerly known as Oakridge Street) (later increased to 60 foot wide); South 41 deg. East 150 feet to a point; thence South 49 deg. West 150 feet to a point; thence North 41 deg. West 150 feet to a point at the southernmost corner of that property conveyed to Seagle Blackwell in Deed Book 524 at page 81; thence with the southeastern edge of said Seagle Blackwell tract, North 49 deg. East 150 feet to the point and place of BEGINNING, and being that property recorded in Deed Book 496 at Page 567, Henderson County Registry.

BEING that property conveyed to Dennis B. McCarson and wife, Gail C. McCarson in Deed Book 851, at Page 363, Henderson County Registry.

## DECISION OF BOARD OF ZONING ADJUSTMENTS

HENDERSONVILLE, N. C.

With regard to authorization of a (Building Permit) (Certificate of Occupancy) for property located at 216 WILMONT DR.

Applicant MRS. GERTRUDE GILLIAM Address ABOVE

Sec. A. INTERPRETATION In accordance with Section \_\_\_\_\_ the Board adopted the following statement on interpretation of the \_\_\_\_\_ Ordinance; Section \_\_\_\_\_

## CONDITIONAL USE

Sec. B. ~~XXXXXXXXXX~~ In accordance with Section 8-4 the Board reviewed the appeal for a ~~XXXXXXXXXX~~ CONDITIONAL USE the requirements of Section 5-3-1 of the ZONING Ordinance. The Board applied the following criteria:

1. Strict application of the Ordinance would produce an undue hardship, other than financial.
2. The above hardship is unique and would not be shared by many other properties.
3. The variance would preserve the purpose and intent of the ordinance.

It was determined that all three of the above conditions (were) ~~XXXXXXXXXX~~ present, therefore, the appeal is

X

Granted

Denied

Granted, subject  
to Conditions.

Explanation of (Denial) (Conditional Use):

Date: MAY 17, 1972

Signed

W. E. GRANCE

Secretary, Board of Adjustments

Copies to: Applicant

Bldg. Off.

# ZONING PERMIT

Item C.

Permit No. 20 Hendersonville, N. C., May 18, 1972

Upon Application No. One, permission has been granted to

Mr. Gertrude Gulkan, as owner to locate ~~or erect~~ a

Story Mobile Home

At 216 Wilmont Dr Street, Lot No. \_\_\_\_\_

Area of Lot Sq. Ft. \_\_\_\_\_ Lot Width \_\_\_\_\_ Lot Depth \_\_\_\_\_

Use District Zone \_\_\_\_\_ Use Occupancy \_\_\_\_\_

Building Dimensions \_\_\_\_\_

Set Backs: Front on Side on Rear 57

The use of this property is to be in accordance with the Zoning Ordinance of the City of Hendersonville, N. C., and the Laws of the State of North Carolina as pertaining to same.

Remarks Permit Fee 3.00 Paid 5/18/72  
Wif



### ASSIGNMENT OF TITLE

To be filled in by Seller and delivered with vehicle to the Purchaser. Application for new certificate of title must be made by Purchaser on Form 400 and immediately filed with the Motor Vehicle Division, State Highway Department, Columbia, South Carolina.

Date of Sale April 30 1982

For value received, I/we hereby assign, transfer and convey unto MARY  
Thomas CASE and GRACE E. CASE

Street No. 216 W. Mount DR City Wendland State NC  
the motor vehicle described on the reverse side of this certificate and I/we hereby warrant the title to said Motor Vehicle and that same is free of all liens and encumbrances except as noted on the face

of the title, and except

None

(List here any mortgages, liens or encumbrances not noted on face of certificate)

Sworn to and subscribed before me

at Wendland

this, the 30 day of April 1982

Paul R. Christy  
Notary Public 1-9-83

Horton J. Case  
(Signature of Seller)

### RELEASE OF FIRST LIEN

The undersigned, holder of first lien on the motor vehicle described on the reverse side of the certificate does hereby state that the first lien and encumbrance described in said certificate of title is released and discharged.

PT Financial  
Name of Lienholder

Patricia Bull  
Authorized Agent

Date of release 11-15-81

STATE OF SOUTH CAROLINA

County of Richland

Sworn to and subscribed before me this 15th day of November, 1981

James A. Smith  
Notary Public (SEAL) Exp 10-23-89

NOTE: Section 46-150.48, Code of Laws, 1962, as amended, requires that upon satisfaction and release of lien, this title should be mailed promptly to the State Highway Department, Motor Vehicle Division, Columbia, South Carolina. The Department will then note the satisfaction on its records and mail the title to the second lienholder or, if none, to the registered owner.

### CERTIFICATION BY REGISTERED DEALER

The undersigned registered dealer hereby certifies that title to the motor vehicle described on the face of the Certificate of Title was transferred to

on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

and that the vehicle described is subject to the following Lien

| Name of Lienholder        | Date            | Amount                  |
|---------------------------|-----------------|-------------------------|
| Dealers License No. _____ | Signature _____ | Registered Dealer _____ |

# 1984 Map of 216 Wilmont Drive

Item C.



January 28, 2022

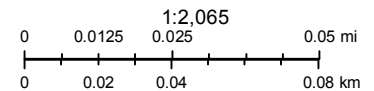
## Streets and Highways

- FREEWAY
- INTERSTATE
- BOULEVARD

- THOROUGHFARE
- COLLECTOR
- Local Roads
- Parcels

## THIS IS NOT A SURVEY.

All information or data provided, whether subscribed, purchased or otherwise distributed, whether in hard copy or digital media, shall be at the user's own risk. Henderson County makes no warranties or guarantees, including the warranties of merchantability or of fitness for a particular purpose. Map data is not appropriate for, and is not to be used as, a geodetic, legal, or engineering base system. The data is not intended as a substitute for surveyed locations such as can be determined by a registered Public Land Surveyor, and does not meet the minimum accuracy standards of a Land Information System/Geographic Information System Survey in North Carolina (21 NCAC 56.1608).



Resolution # **05-0104**

**A RESOLUTION STATING THE INTENT OF THE CITY OF HENDERSONVILLE  
TO CONSIDER THE ANNEXATION OF CERTAIN PROPERTIES  
AREA 23 - US HIGHWAY 64 EAST  
AREA 24 – SECTIONS A, B, C - FIFTH AVENUE WEST/JORDAN STREET  
AREA 26 - SECTIONS A, B, C, D, E, F - NC HIGHWAY 191  
AREA 27 - DANA ROAD**

WHEREAS; North Carolina General Statutes §160A-46 gives authority to municipalities to extend their corporate limits and

WHEREAS; North Carolina General Statutes §160A-49 requires municipal governing boards desiring to annex territory to first pass a resolution stating the intent of the municipality to consider annexation, and to fix dates for a public informational meeting and a public hearing.

NOW, THEREFORE BE IT RESOLVED:

Section 1: The City of Hendersonville intends to consider the annexation of the areas identified as the US 64 East (Area 23) and as described by the boundary description, Fifth Avenue/Jordan Street Sections A,B,C (Area 24) and as described by the boundary description, NC 191, Sections A,B,C,D,E,F (Area 26) and as described by the boundary description, and Dana Road (Area 27) and as described by the boundary description, which are attached to this resolution and are hereby made a part of this resolution.

Section 2: Notice of the Public Informational Meeting. A public informational meeting on the issue of the annexation of these areas will be held on February 24, 2005, at 6:00 p.m. at the City Operations Center at 305 Williams Street, Hendersonville, NC at which time plans for extending services to said territories will be explained. All residents and property owners in said territories and all residents of the City of Hendersonville will be given the opportunity to be heard.

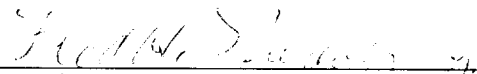
Section 3: Notice of the Public Hearing. A public hearing on the issue of the annexation of these areas will be held on April 7, 2005, at 6:00 p.m. at the City Operations Center at 305 Williams Street, Hendersonville, NC at which time plans for extending services to said territories will be explained. All residents and property owners in said territories and all residents of the City of Hendersonville will be given the opportunity to be heard.

Section 4: The Annexation Report and Services Plan, a map of these areas, and list of persons who have been identified as holding freehold interests in property in these areas will be available at the City Clerk's office on the second floor, City Hall, 145 Fifth Avenue East, Hendersonville, NC during usual business hours. The report will be available at least 30 days before the public information meeting.


Section 5: That a copy of this resolution shall be filed with the City Clerk.

Section 6: That notice of said public hearing shall be given by publication and first class mail as required by North Carolina General Statutes §160A-49.

Adopted the sixth day of January 2005.

  
Fred H. Niehoff, Jr., Mayor, City of Hendersonville

Attest:

  
Tammie K. Drake, CMC, City Clerk

G:\Clerk\Resolutions\Res 05\050104 Res of Intent to Annx.wpd



## APPENDIX A

### Area 23 Highway 64 East Boundary Description

BEGINNING at a point located at the intersection of the northern right-of-way line of the westbound lane of Highway 64 East the western right-of-way line of Howard Gap Road; thence northerly approximately 150 feet along the western right-of-way line of Howard Gap Road to a point located at the intersection of the western right-of-way line of Howard Gap Road and a projected eastern property line of the Ebenezer Baptist Church Cemetery; thence northerly approximately 1,140 feet along said projected property line and along property lines to a property corner; thence easterly approximately 735 feet along property lines to a property corner; thence northerly approximately 160 feet to a property corner; thence easterly approximately 475 feet along property lines and along a line across Highway 64 East to a property corner located on the southern right-of-way line of Highway 64 East; thence easterly 37.31 feet to a property corner; thence southerly approximately 680 feet along property lines to a property corner; thence westerly 468.7 feet along the northeastern property lines of Mt. Pisgah Lutheran Church to a property corner located on the southern right-of-way line of Highway 64 East; thence westerly 467.38 feet along the southern right-of-way line of Highway 64 East to a property corner of Mt. Pisgah Lutheran Church; thence northerly approximately 80 feet to a point located on the centerline of the eastbound lane of Highway 64 East; thence easterly approximately 110 feet to a property corner located on the centerline of the eastbound lane of Highway 64 East; thence northwesterly approximately 192 feet along a property line to a property corner located on the southern property line of the westbound lane of Highway 64 East; thence westerly 154.55 feet to a property corner; thence southerly 242.00 feet along the eastern property line of Blue Ridge Health Center to a property corner; thence continuing southerly approximately 66 feet to the southern right-of-way line of Highway 64 East; thence westerly 592 feet along the southern right-of-way line of Highway 64 East to a point located at the intersection of the southern right-of-way of the eastbound lane of Highway 64 East and the eastern right-of-way line of Howard Gap Road; thence southerly approximately 175 feet along the eastern right-of-way line of Howard Gap Road to a point; thence westerly approximately 219 feet across Howard Gap Road and along a property line to a property corner; thence northerly approximately 53 feet along a property line to a property corner located on the southern right-of-way line of the eastbound lane of Highway 64 East; thence westerly approximately 245 feet along the southern right-of-way line of Highway 64 East to a property corner; thence southerly approximately 718 feet along a property line to a property corner located on the western right-of-way line of Howard Gap Road; thence southerly approximately 753 feet along the western right-of-way line of Howard Gap Road to a property corner; thence westerly 1,138 feet along property lines to a property corner; thence southerly 285 feet along property lines to a property corner located on the eastern right-of-way line of Sparrow Road; thence approximately 300 feet long the eastern and northern right-of-way line of Sparrow Road to a property corner; thence southerly approximately 250 feet along property lines to a property corner; thence easterly approximately 100 feet to a property corner; thence southerly approximately 130 feet along a property line to a property corner located on the northern right-of-way line of Waddell Drive; thence westerly approximately 800 feet along the northern right-of-way line of Waddell Drive crossing Sparrow Road and Old Chimney Rock Road to a property corner located at the intersection of the northern right-of-way line of Waddell Drive and the western right-of-way line of an unnamed 20-foot right-of-way; thence northerly approximately 420 feet along the western right-of-way line of said 20-foot unnamed right-of-way to a point; thence easterly approximately 220 feet crossing said 20 foot unnamed right-of-way and along the northern right-of-way of another unnamed 20 foot right-of-way to a property corner; thence northerly approximately 125 feet along a property line and along a line crossing the eastbound and westbound lanes of Highway 64 East to a point located on the northern right-of-way line of the westbound lane of Highway 64 East; thence along the northern right-of-way line approximately 700 feet of the westbound lane of Highway 64 East crossing the entrance to Highland Square Shopping Center to a point located on the northern right-of-way line of the westbound lane of Highway 64 East; thence southerly 100 feet across the westbound lane of Highway 64 East to a property corner located on the northern right-of-way line of the eastbound lane of Highway 64 East; thence easterly approximately 469 feet along the northern right-of-way line of the eastbound lane of Highway 64 East to a property corner; thence northerly 308.77 feet along a property line and a property line projected to a point on the northern property line of the westbound lane of Highway 64 East; thence easterly approximately 780 feet to the point of BEGINNING.

### Area 24 Fifth Avenue/Jordan Street Section A Boundary Description

BEGINNING at point located at the intersection of the northern right-of-way line of Fifth Avenue West and the centerline of the Norfolk Southern Railroad; thence easterly approximately 650 feet along the northern right-of-way line of Fifth Avenue West to a point located at the intersection of the northern right-of-way line of Fifth Avenue West and the eastern right-of-way line of Ivy Lane projected; thence southerly 446 feet across Fifth Avenue West and along the eastern right-of-way line of Ivy Lane and along a property line to the centerline of the Norfolk Southern Railroad; thence westerly along the centerline of the Norfolk Southern Railroad approximately 750 feet to the point of BEGINNING.

**Area 24 Fifth Avenue/Jordan Street  
Section B  
Boundary Description**

BEGINNING at a point located on the southern right-of-line of the Norfolk Southern Railroad, said point being approximately 305 feet west of the western right-of-way line of Jordan Street; thence northerly approximately 200 feet across Fourth Avenue West and along the western right-of-way line of Midway Street to a point; thence easterly across Midway Street approximately 207 feet across to a property corner; thence southerly 70 feet along a property line to a property corner; thence southerly 100 feet to a property corner located on the northern right-of-way line of Fourth Avenue West; thence easterly along the northern right-of-way line of Fourth Avenue West approximately 320 feet crossing Jordan Street to a point located on the existing Hendersonville city limits line; thence southerly approximately 1,550 feet following the existing Hendersonville city limits line to a point on the southern right-of-way line of Armstrong Avenue; thence westerly along the southern right-of-way line of Armstrong Avenue approximately 600 feet, following the existing Hendersonville city limits line to a point; thence southerly 418.5 feet along a property line that is also the western boundary of the City of Hendersonville reservoir tract and the existing Hendersonville city limits line; thence westerly approximately 775 feet along the northern and eastern right-of-way line of Reservoir Drive to a point of intersection with an unopened 10-foot right-of-way; thence northerly approximately 160 feet along the eastern margin of said 10-foot right-of-way to a point; thence southwesterly approximately 214 feet along a property line to a property corner; thence northerly approximately 130 feet along a property line and across Daisy Lane; thence northeasterly 37 feet along the northwestern right-of-way line of Daisy Lane to a property corner; thence northwesterly 144 feet along a property line and along a property line projected across Seneca Street and Upland Way to a property corner located on the northern right-of-way of Upland Way; thence southwesterly approximately 359 feet to a property corner also being a property corner of Lakemoor Village; thence northeasterly approximately 340 feet along a property line, also being a boundary line of Lakemoor Village and the Town of Laurel Park corporate limits, to a property corner; thence easterly and southerly 215 feet along property lines and the existing Hendersonville city limits line to a property corner on the northern right-of-way line of Jordan Street; thence easterly approximately 965 feet along the northern right-of-way of Jordan Street to a point where Jordan Street turns to the north, also following the existing Hendersonville city limits line; thence northerly approximately 300 feet along the western right-of-way line of Jordan Street, also following the existing Hendersonville city limits to a point on the southern right-of-way line of the Norfolk Southern Railroad; thence westerly approximately 300 feet along the southern right-of-way line also following the existing Hendersonville city limits line to the point of BEGINNING.

**Area 24 Fifth Avenue/Jordan Street  
Section C  
Boundary Description**

The intent of this boundary description is to include all properties lying within the area bounded by Armstrong Avenue, Robleigh Drive and Ewart Drive not currently within the Hendersonville city limits.

BEGINNING at a property corner located at the intersection of the northern right-of way line of Ewart Drive and the eastern right-of-way line of Robleigh Drive; thence northerly along the eastern right-of-way line of Robleigh Drive to the point of intersection with the existing Hendersonville city limits line; thence southeasterly following the existing Hendersonville city limits line to its intersection with the northern right-of-way line of Ewart Drive; thence northwesterly along the northeastern right-of-way line of Ewart Drive to the point of BEGINNING.

**Area 26 NC Highway 191  
Section A  
Boundary Description**

BEGINNING at a property corner located on the northeastern right-of-way line of Haywood Road approximately 470 feet northwest of the western right-of-way line of Ewbank Drive; thence northerly approximately 400 feet along a property line to a property corner; thence northerly 56 feet along a property line to a property corner; thence easterly approximately 35 feet along a property line to a property corner; thence northerly approximately 270 feet along property lines to a property corner; thence west approximately 163 feet along a property line to a property corner; thence southerly 272.29 feet along a property line to a property corner; thence N84-54-05W 119.75 feet to a property corner; thence S40-28-09W 261.78 feet to a property corner located on the northeastern right-of-way line of Haywood Road; thence southeasterly approximately 314 feet along the northeastern right-of-way line of Haywood Road to the point of BEGINNING.

**Area 26 NC Highway 191  
Section B  
Boundary Description**

BEGINNING at a property corner set on the western right-of-way line of a 30-foot wide right-of-way leading from Haywood Road, said 30-foot right-of-way being located approximately 1,175 feet northwest of Ewbank Drive; thence S66-29-55E 210.15 feet to a property corner; thence N42-38-20E 170.96 feet to a property corner; thence N11-04-35W

107.97 feet to a property corner; thence N27-23-57W 34.03 feet to a property corner; thence N63-34-55W 212.18 feet to a property corner; thence southerly approximately 286 feet along a property line to the point of BEGINNING.

**Area 26 NC Highway 191  
Section C  
Boundary Description**

BEGINNING at a property corner located at the intersection of the western right-of-way line and the northern right-of-way line of Elizabeth Drive, an unopened right-of-way; thence northerly approximately 114 feet along the western right-of-way line of Nell Drive to a property corner; thence westerly 168 feet along a property line to a property corner; thence S09-06-28E 114.3 feet to a property corner; thence easterly approximately 136 feet along a property line to the point of BEGINNING.

**Area 26 NC Highway 191  
Section D  
Boundary Description**

BEGINNING at a point located on the southwestern right-of-way line of Skyline Drive approximately 955 feet southeast of the southern right-of-way line of Comet Drive; thence northwesterly approximately 185 feet along the southwestern right-of-way line of Skyline Drive to a point; thence northeasterly across Skyline Drive approximately 291 feet along a property line projected and a property line to a property corner; thence easterly approximately 304 feet along a property line to a property corner; thence easterly approximately 165 feet along a property line to a point located on the existing Hendersonville city limits line; thence southerly approximately 835 feet along the existing Hendersonville city limits line to a point on the southern right-of-way line of Coral Drive; thence westerly along the northern right-of-way line of Coral Drive approximately 720 feet to a property corner at the western terminus of Coral Drive; thence northerly approximately 190 feet along the western terminus of Coral Drive and along property line to a property corner; thence southeasterly approximately 115 feet along a property line to a property corner located on the western right-of-way line of Skyline Drive; thence northerly and northwesterly approximately 175 feet along the western right-of-way line of Skyline Drive to the point of BEGINNING.

**Area 26 NC Highway 191  
Section E  
Boundary Description**

BEGINNING at a property corner located on the southern right-of-way line of Stoney Mountain Road approximately 350 feet west of the western right-of-way line of Dartmouth Road; thence easterly approximately 280 feet along the southern right-of-way line of Stoney Mountain Road to a point on the existing Hendersonville city limits line; thence southerly following the existing Hendersonville city limits approximately 720 feet to a point on the northern right-of-way line of Somerset Drive approximately 40 feet to a point on the existing Hendersonville city limits line; thence northerly approximately 655 feet along the existing Hendersonville city limits lines to the point of BEGINNING.

**Area 26 NC Highway 191  
Section F  
Boundary Description**

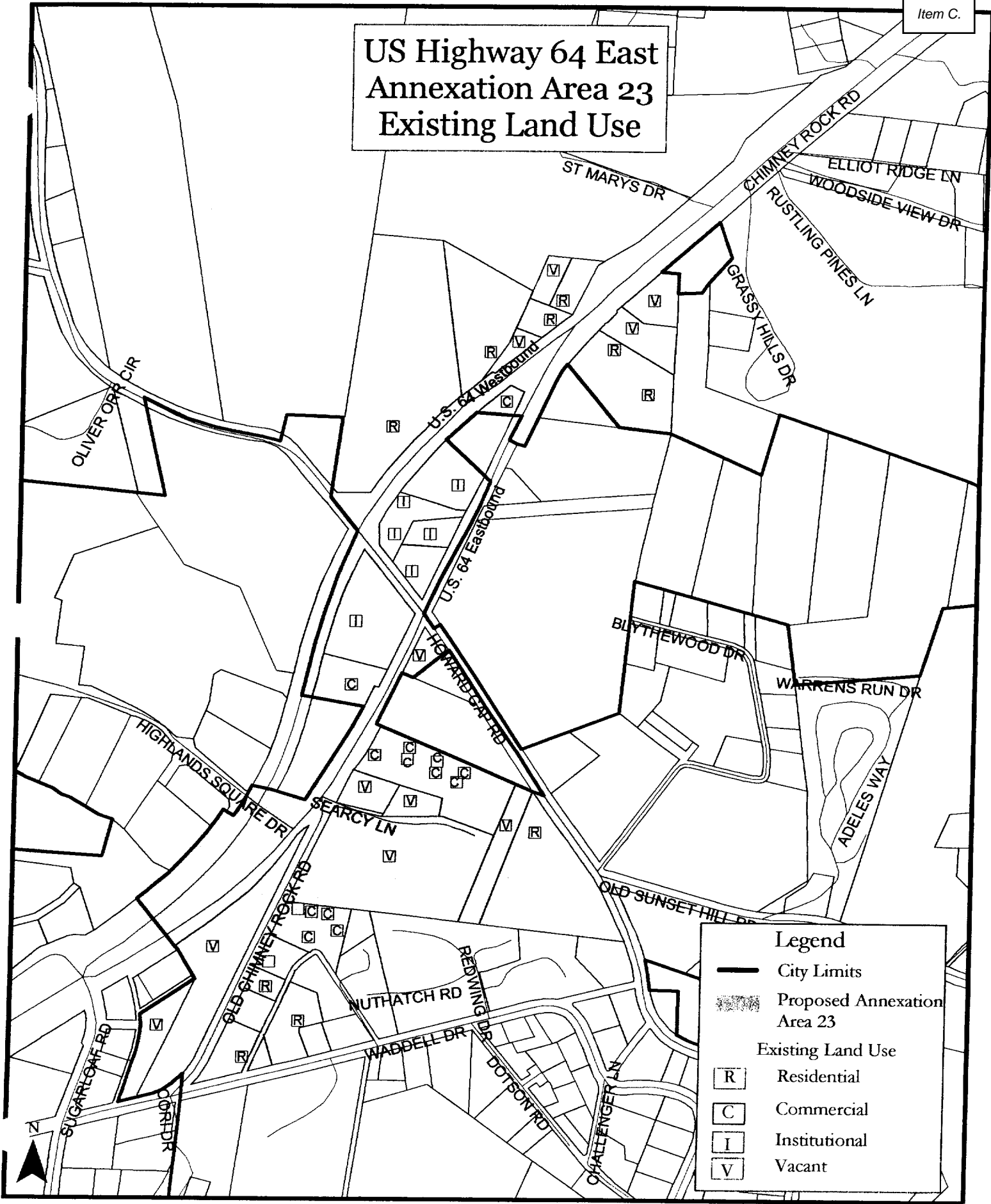
BEGINNING at a property corner located at the intersection of the western right-of-way line of Skyline Drive and the southern margin of Comet Drive; thence southerly 150 feet along the western right-of-way line of Skyline Drive to a property corner; thence westerly 245 feet along property lines to a property corner; thence northerly 150 feet to a property corner on the southern right-of-way line of Comet Drive; thence across Comet Drive approximately 57 feet along a property line projected to a point located on the northern right-of-way line of Comet Drive; thence easterly approximately 245 feet along the northern right-of-way line of Comet Drive; thence south approximately 57 feet across Comet Drive to the point of BEGINNING.

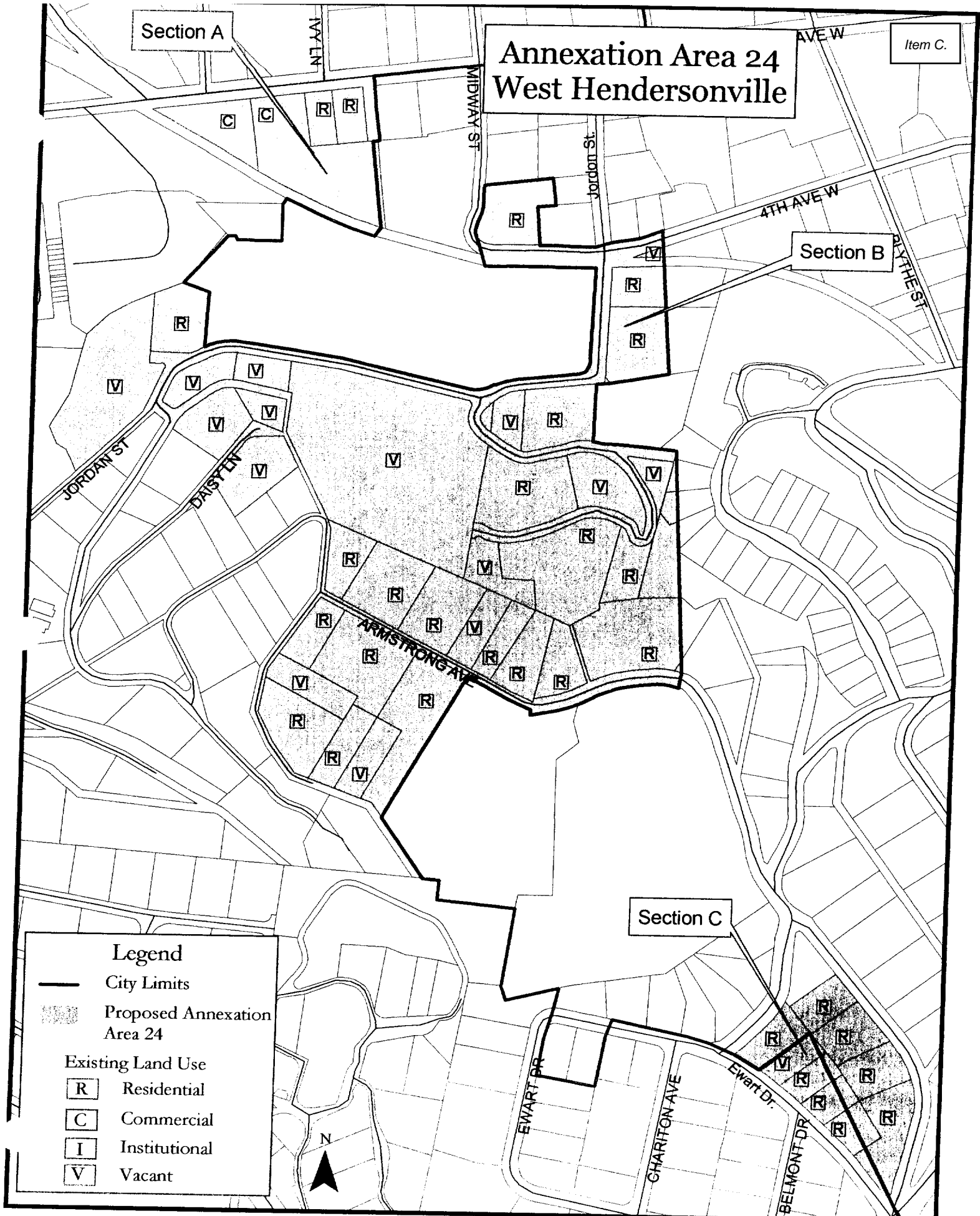
**Area 27 Dana Road  
Boundary Description**

BEGINNING at a property corner located on the northern right-of-way line of Dana Road, said property corner being 636.31 feet east of the eastern right-of-way line of Four Seasons Boulevard; thence northeasterly approximately 240 feet along a property line to a property corner; thence northwesterly approximately 100 feet along a property line to a property corner; thence northeasterly approximately 470 feet along a property line to a property corner; thence southeasterly approximately 400 feet along a property line to a property corner; thence easterly approximately 935 feet along property lines to a property corner located on the western right-of-way line of Orrs Camp Road; thence southerly approximately 490 feet along the western right-of-way line of Orrs Camp Road to a property corner located at the intersection of the western right-of-way line of Orrs Camp Road and the northern right-of-way line of Dana Road; thence southerly approximately 62 feet across Dana Road to a property corner located on the southern right-of-way line of Dana Road; thence southerly approximately 403 feet along a property line to a property corner; thence northwesterly

approximately 910 feet long a property line that follows Devil's Fork Creek to a property corner located on the eastern right-of-way line of Tracy Grove Road; thence southeasterly approximately 990 feet along the northeastern right-of-way line of Tracy Grove Road to a point located at the intersection of the northeastern right-of-way line of Tracy Grove Road and the southeastern right-of-way line of Wilmont Drive projected; thence southwesterly across Tracy Grove Road approximately 60 feet to a property corner located at the intersection of the southwestern right-of-way line of Tracy Grove Road and the southeastern right-of-way line of Wilmont Drive; thence southwesterly 745 feet along the southeastern right-of-way line of Wilmont Drive and along a property line to a property corner; thence northwesterly approximately 967 feet along property lines to a property corner; thence northerly approximately 760 feet along property lines to a property corner located on the southern right-of-way line of Tracy Grove Road; thence westerly approximately 145 feet along the southern right-of-way line of Tracy Grove Road to a point; thence northwesterly approximately 50 feet across Tracy Grove Road to a property corner; thence northeasterly approximately 143 feet along a property line to a property corner located on the southern right-of-way line of Dana Road; thence easterly approximately 100 feet along the southern right-of-way line of Dana Road to a point; thence northerly approximately 115 feet across Dana Road to a point located on the northern right-of-way line of Dana Road; thence westerly approximately 320 feet along the northern right-of-way line of Dana Road to the point of BEGINNING.

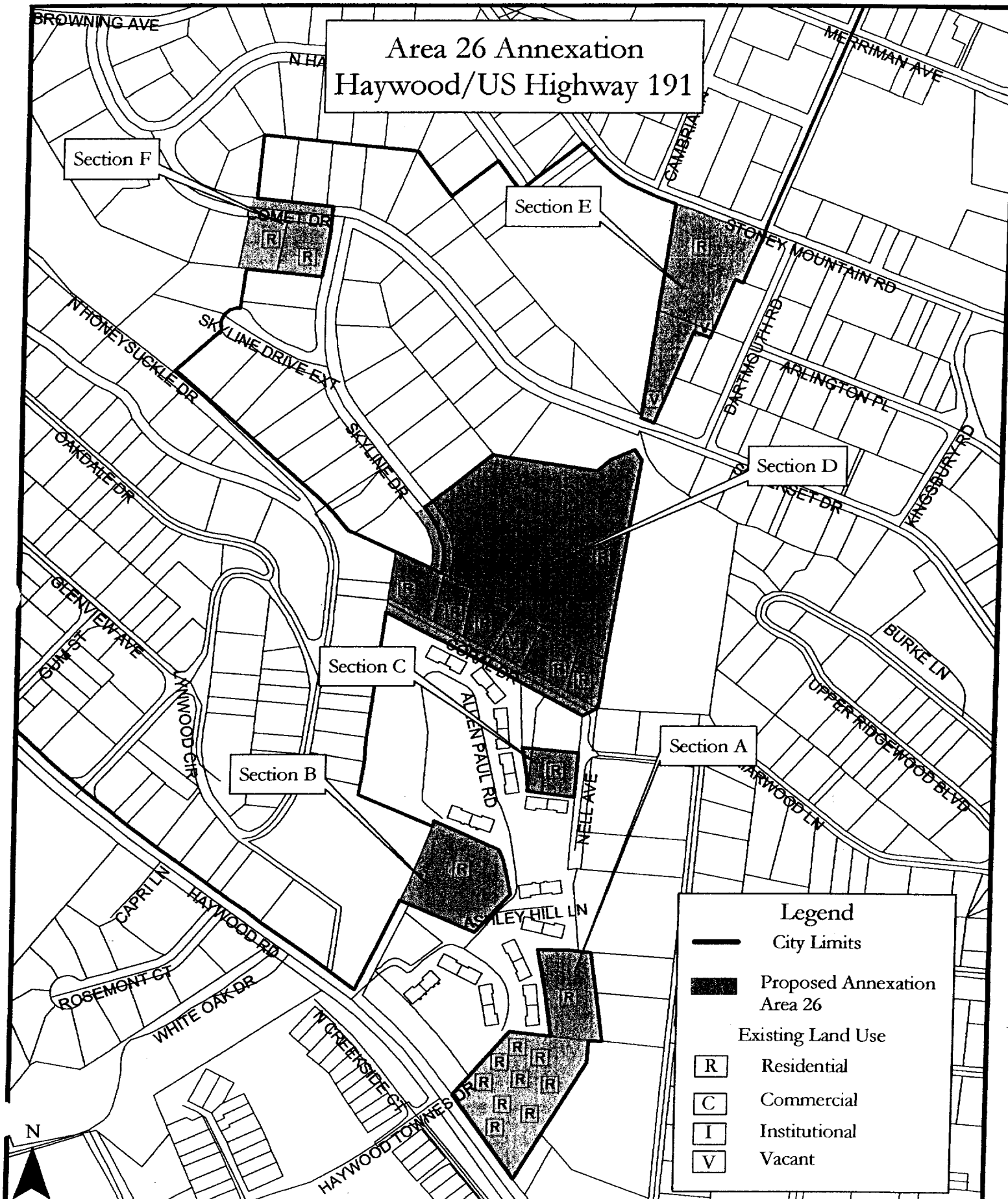
# US Highway 64 East Annexation Area 23 Existing Land Use





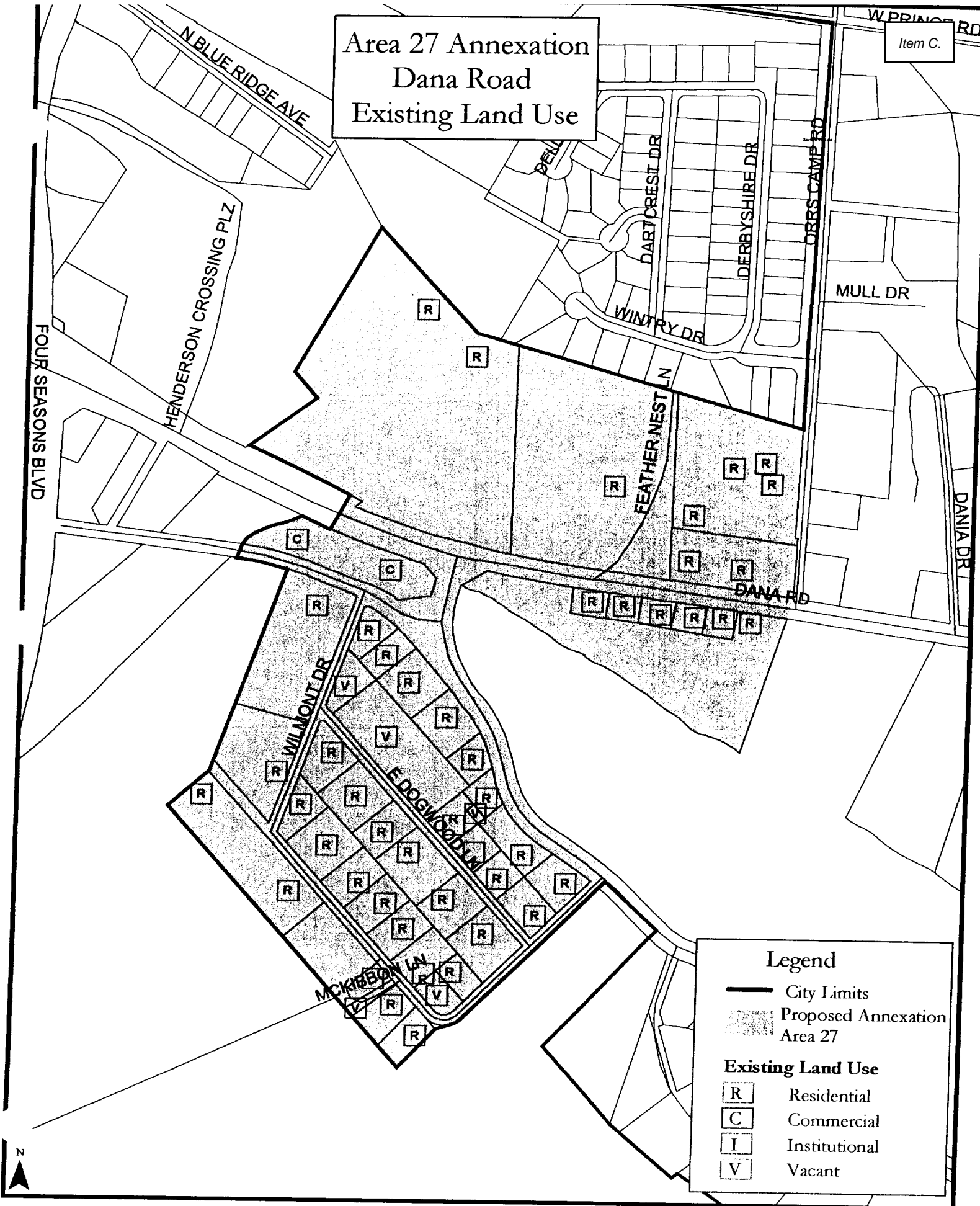


# Area 26 Annexation Haywood/US Highway 191



# Area 27 Annexation Dana Road Existing Land Use

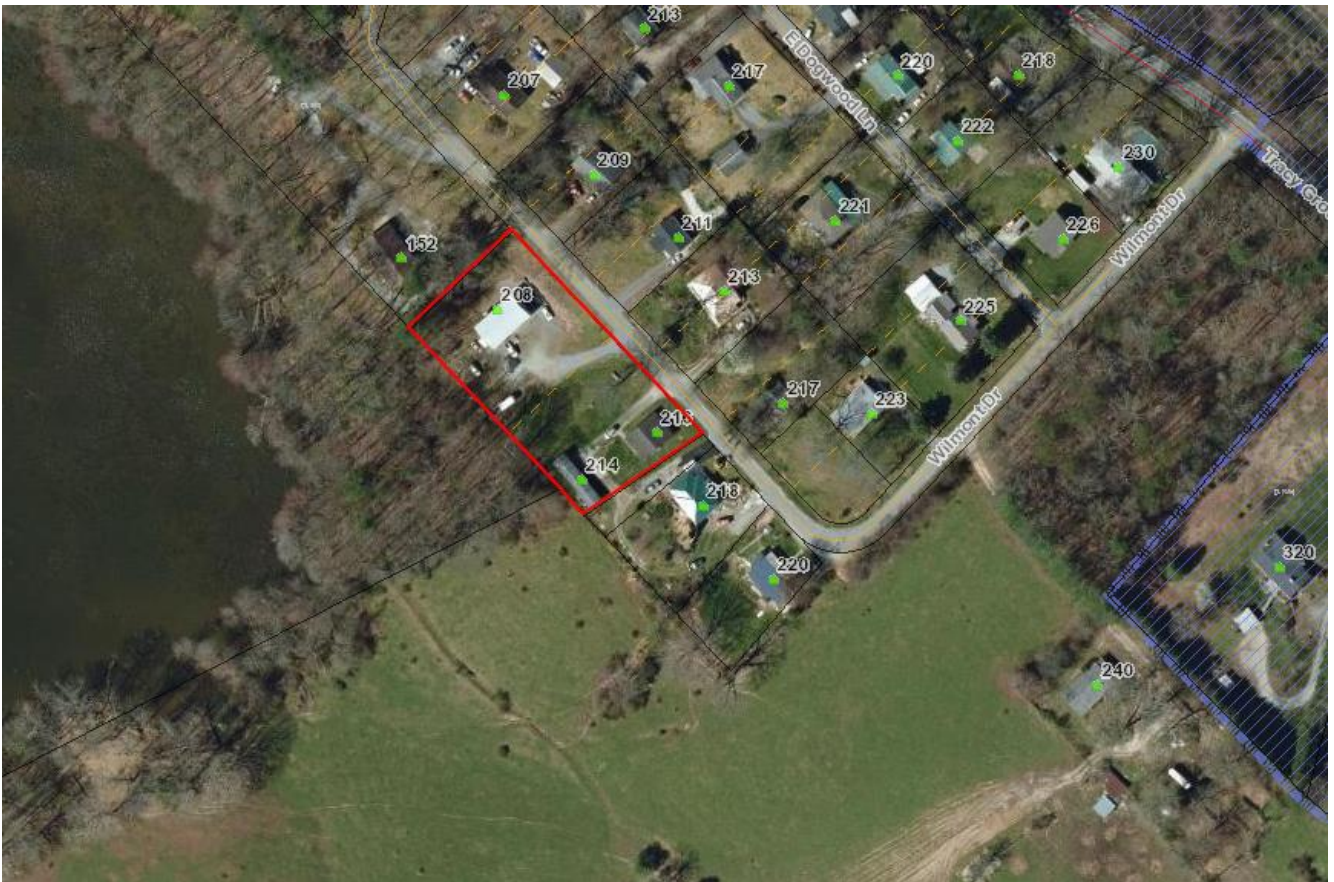
Item C.



## Legend

- City Limits
- Proposed Annexation Area 27
- Existing Land Use
  - R Residential
  - C Commercial
  - I Institutional
  - V Vacant

**Exhibit H – Pictures of Subject Property**







## MEMORANDUM

**TO:** Board of Adjustment Members

**FROM:** Community Development Department

**DATE:** February 8<sup>th</sup>, 2022

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

**SUMMARY:** The Community Development Department has received an application from Dan Mock of AYD Partners, LLC for a variance from Section 5-12-3 Dimensional Requirements and Section 6-2-2 Nonconforming Structures. The subject property is currently zoned I-1, Industrial. The specific variance requested is for the following:

**VARIANCE REQUEST:** The variance requested is to increase the maximum building height of 35' allowed under Section 5-12-3 (I-1 Industrial Zoning District Classification) to 38.2'. Based on the application, the applicant is proposing a 3.2' height increase from the maximum height requirement in Section 5-12-3 of the Zoning Ordinance which will require a variance from the setback standards (see Section 5-12-3 Dimensional Requirements for Maximum Height in Feet which allows for increase in height with increase in side and front setbacks).

The building is an existing nonconforming structure as defined in Section 6-2. The building's current height is 24.5' to the top of the parapet at the front elevation. Additionally, there is a chimney stack that is 39' 11" based on the base elevation at the location of the chimney. Section 8-2 Height Limitations allows for an exception to height limitations for chimney stacks. The applicant is proposing to expand the building with an addition to the roof. The mean height of the roof will be 38.2' which places the mean point of the roof below the chimney stack. Section 5-12-3 states that any building that exceeds 35' in height shall increase the front and total side yards one foot for each two feet or fraction thereof of building height.

In order to bring the existing building into conformance with the current Zoning Ordinance, the building would be required to have a 36.6' front setback and a 21.6' side setback. The proposed roof addition is setback 26.8' from the front property line and setback 0' from the side property lines. Therefore, the applicant is requesting a variance of 9.8' from the required front setback and a variance of 21.6' from the required side setbacks to allow for the proposed height increase of 3.2'.

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

## PROPOSED FINDINGS OF FACT:

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

## CODE REFERENCES.

### 5-12-3 Dimensional Requirements:

Minimum Lot Area in Square Feet: 40,000

Lot Area per Dwelling Unit in Square Feet: N/A



|   |  |
|---|--|
| Minimum Lot Width at Building Line in Feet: | 100  |
| Minimum Yard Requirements in Feet:          | Front: 35<br>Side: 20<br>Rear: 20  |
| Maximum Height in Feet:                     | 35. No building shall exceed 35 feet in height unless the depth of the front and total width of the side yards required herein shall be increased one foot for each two feet or fraction thereof of building in excess of 35 feet. |

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

**6-2-2 Nonconforming Structures.** A nonconforming structure is a building or other structure which lawfully existed prior to the effective date of this ordinance, or an amendment thereto, and which no longer could be built under the terms of this ordinance, as amended, by reason of restrictions on area, footprint, open space, building height, setbacks, lot width, or other requirements concerning the structure.

a) A nonconforming structure devoted to a use permitted in the zoning classification in which it is located may continue to be used only in accordance with the provisions of this section.

b) Normal repair and maintenance may be performed to allow the continuation of nonconforming structures.

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

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

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

e) A nonconforming structure may be expanded, without bringing the nonconforming structure into conformity with these regulations, only if the part of the structure to be expanded and the area of the lot into which the expansion is taking place are both brought into conformity with the requirements of this ordinance.

f) A nonconforming structure shall not be moved unless it thereafter conforms to the standards of the zoning classification in which it is located.

g) Where a nonconforming structure is damaged by fire, flood, wind, or other act of God, and such damage does not exceed 50% of the current assessed taxable value of the structure, it may be restored to its original dimensions and conditions as long as a building permit for the restoration is issued within 12 months of the date of the damage.

### **Section 8-2 Height Limitations.**

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

### **Section 10-9 Variance.**

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

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

- 4) The requested Variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

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

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

## **MOTION:**

With regard to the request by AYD Partners LLC for a variance from Section 6-2-2(e) Nonconforming Structures, I move the Board to find that (a) strict enforcement of the regulations would result in practical difficulties or unnecessary hardship to the applicant, (b) the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, and (c) in the granting of the variance the public safety and welfare have been secured and substantial justice has been done.

With regard to the request by AYD Partners LLC for a variance from Section 5-12-3 Dimensional Requirements to reduce the front setback (for a principal structure measuring 3.2' above 35' in height) from 36.6' to 26.8' and to reduce the side setback (for a principal structure measuring 3.2' above 35' in height) from 21.6' to 0', I move the Board to find that (a) strict enforcement of the regulations would result in practical difficulties or unnecessary hardship to the applicant, (b) the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, and (c) in the granting of the variance the public safety and welfare have been secured and substantial justice has been done.

**[After the motion has been seconded, the movant should state the factual basis and reasoning for the motion. In doing so, bear in mind the considerations set out in Section 10-9 of the zoning ordinance.]**

Remember: Staff suggest the motion be made in the affirmative regardless of whether it is your intention to support or oppose the issuance of a variance. This does not mean that staff is recommending approval of the application. RATHER, we believe it is better procedurally to approach it this way. Once you have made the motion, you should state your position as to the required findings. For variance applications, it takes seven affirmative votes to approve this application, if others are voicing support of the application, you should make it a point to state your position vis-à-vis the required findings since your vote, even standing by itself may represent the position of the Board.

**EXHIBIT LIST:**

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

## Property Summary

Item D.

Tax Year: 2022

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

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

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

| Improvement Summary              |        |
|----------------------------------|--------|
| <b>Total Buildings</b>           | 1      |
| <b>Total Units</b>               | 0      |
| <b>Total Living Area</b>         | 0      |
| <b>Total Gross Leasable Area</b> | 13,516 |

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

## Building Summary

Card 1 824 LOCUST ST

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

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

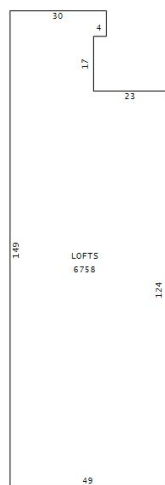


| Section 1 Details  |                     |
|--------------------|---------------------|
| Occupancy Type     | LOFTS               |
| Air Conditioning   | NO AIR CONDITIONING |
| Baths              | NO PLUMBING         |
| Class              | C                   |
| Depreciation       | 64%    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

#### Addition Summary

| Story | Type                | Code | Area |
|-------|---------------------|------|------|
| 1.00  | UNFINISHED BASEMENT | BSMT | 5406 |

#### Building Sketch



#### Photograph



### Misc Improvements Summary

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

### Land Summary

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

**Ownership History**

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

**Notes Summary**

| Building Card | Date | Line | Notes |
|---------------|------|------|-------|
| No Data       |      |      |       |

BK 3761 PG 657 - 660 (4) DOC# 959953  
This Document eRecorded: 08/06/2021 11:55:33 AM  
Fee: \$26.00  
Henderson County, North Carolina  
William Lee King, Register of Deeds

**NORTH CAROLINA SPECIAL WARRANTY DEED**

Excise Tax: \$710.00

Parcel Identifier No. 9569802471 & 9569803335 Verified by \_\_\_\_\_ County on the \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_  
By: \_\_\_\_\_

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

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

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

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

GRANTOR

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

104 Mull Street  
Morganton, NC 28655

GRANTEE

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

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



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

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

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

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

The property hereinabove described was acquired by Grantor by instrument recorded in Book 1268 page 518 and Book 1157, page 18.  
All or a portion of the property herein conveyed \_\_\_\_ includes or x does not include the primary residence of a Grantor.  
A map showing the above described property is recorded in Plat Book \_\_\_\_ page \_\_\_\_.

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

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

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

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

{Remainder of this page is left blank intentionally}

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

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

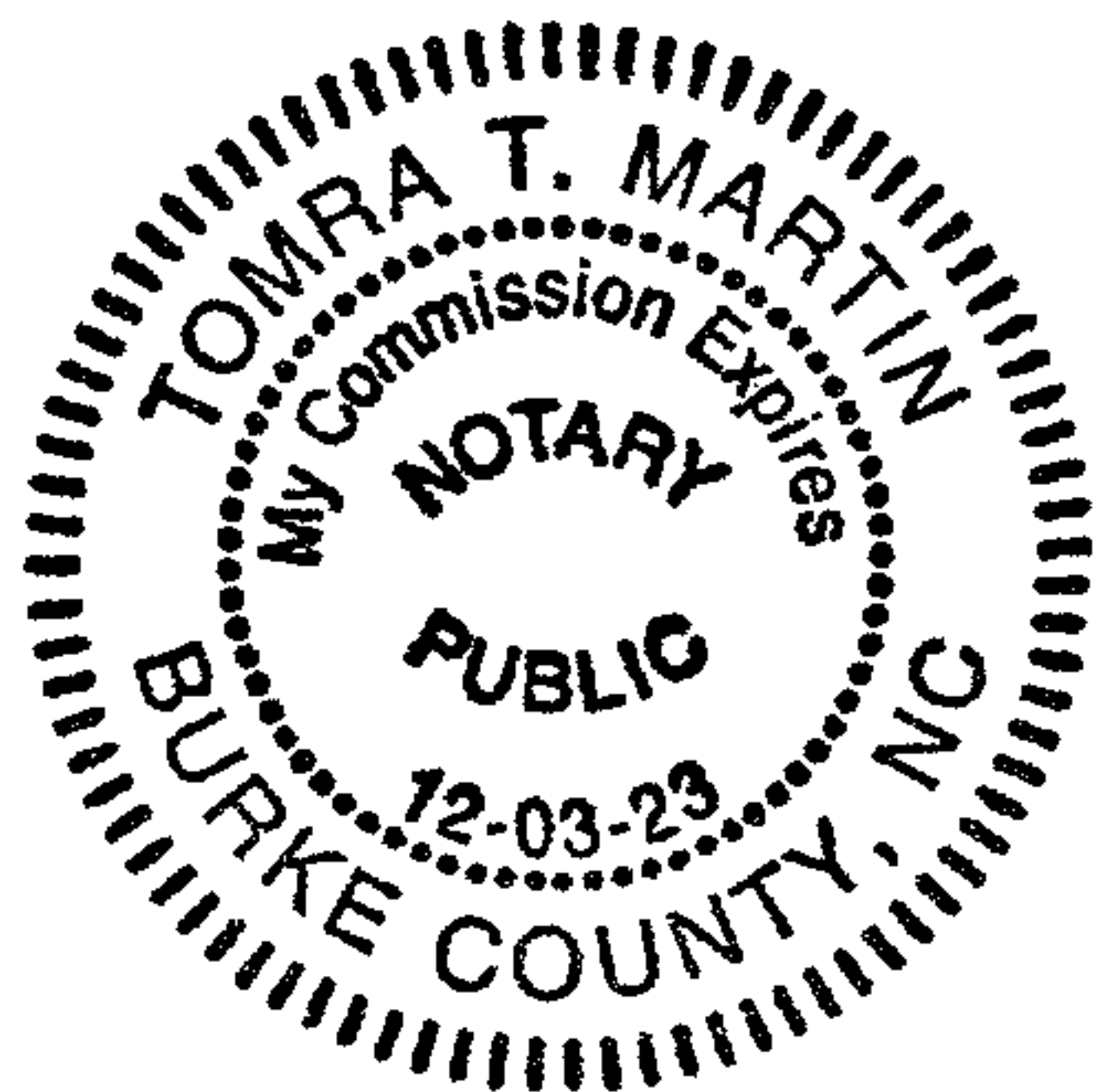
By: *C. Michael Fulenwider II* (SEAL)  
C. Michael Fulenwider II, Authorized Signatory

State of North Carolina - County of Burke

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

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

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



**Exhibit A**Tract One:

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

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

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

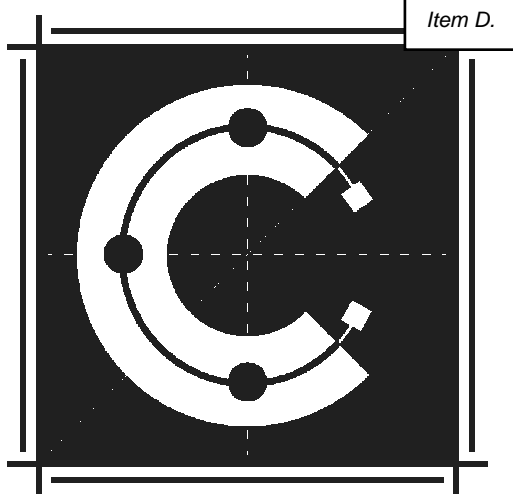
The above-described Property is a portion of that property conveyed in that deed recorded in Record Book 1268, at Page 518 of the Henderson County, NC Register's Office.

Tract Two:

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

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





Carleton Collins  
ARCHITECTURE

Thoughtful · Community · Design

105 Cranford Road  
Asheville, NC 28806  
828.285.0430

COCA COLA BLDG. APARTMENT UPFIT  
ROCKWOOD DEVELOPMENT  
824 LOCUST STREET HENDERSONVILLE, NORTH CAROLINA

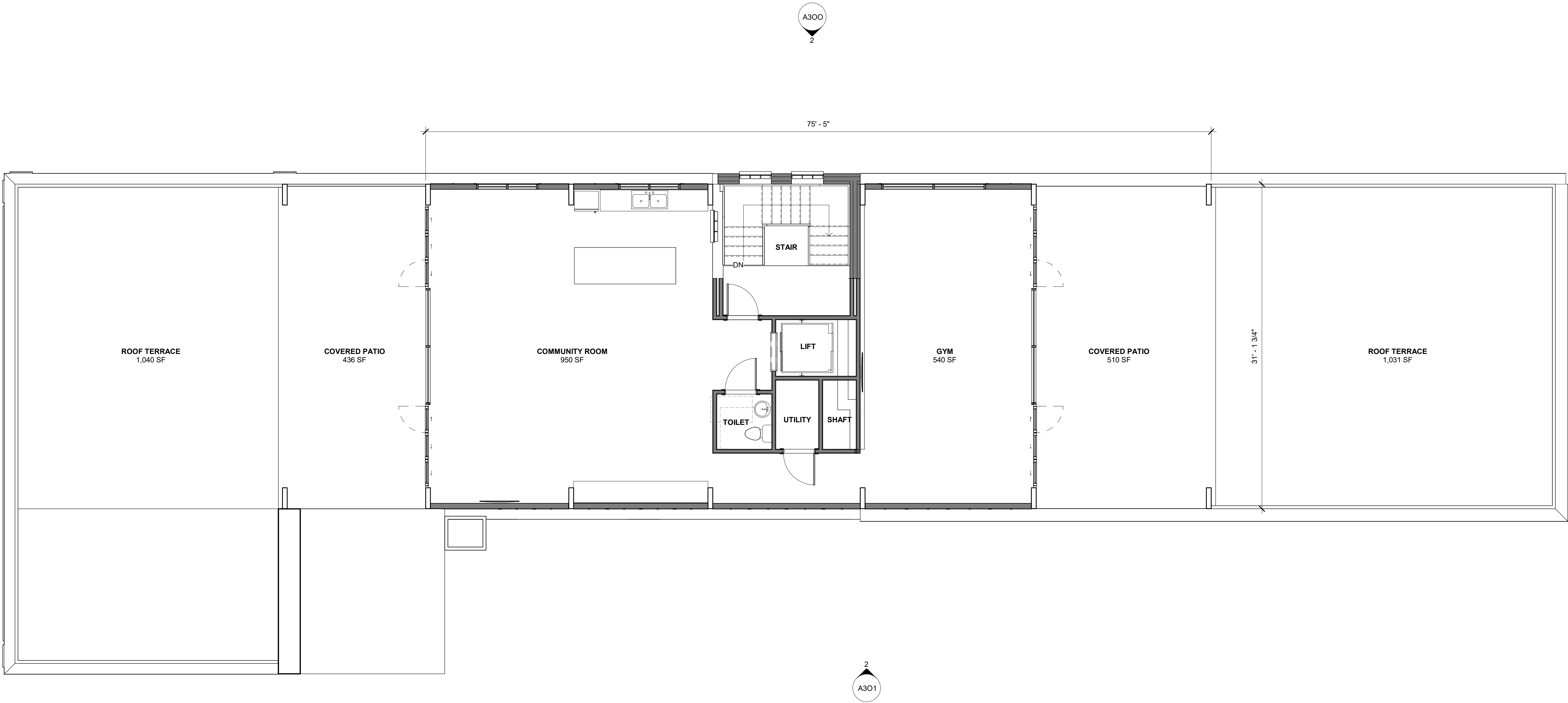
Issued: 01.06.22

Revisions

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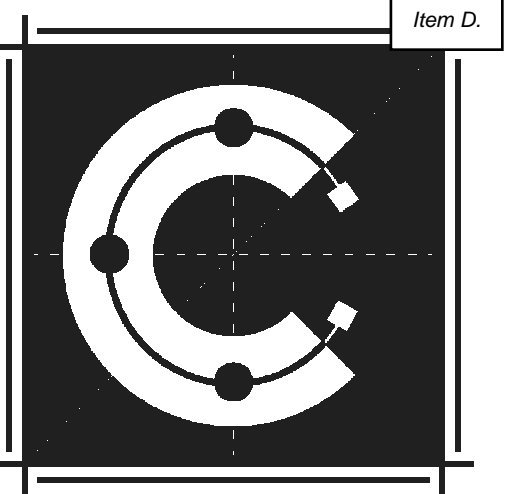
ROOF TOP  
AMENITIES  
PLAN

A103



1 ROOFTOP AMENITIES PLAN  
3/16" = 1'-0"





Carleton Collins  
ARCHITECTURE

Thoughtful · Community · Design

105 Cranford Road  
Asheville, NC 28806  
828.285.0430

COCA COLA BLDG. APARTMENT UPFIT  
ROCKWOOD DEVELOPMENT  
824 LOCUST STREET HENDERSONVILLE, NORTH CAROLINA

Issued: 01.06.22

| Revisions |
|-----------|
|           |
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|           |

ELEVATIONS

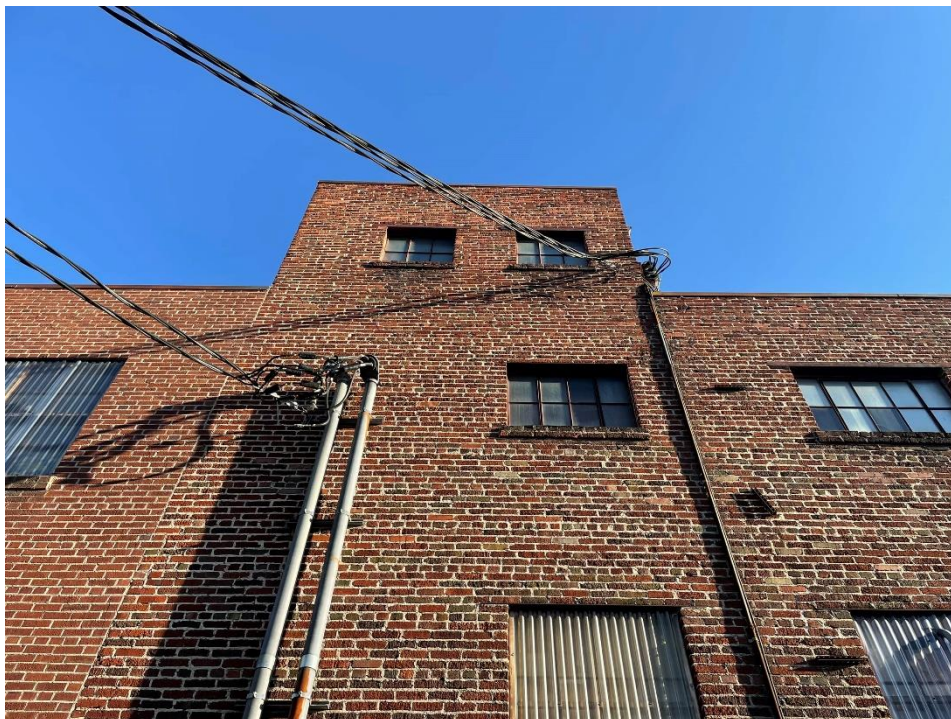
A300



## Exhibit D – Pictures of Subject Property

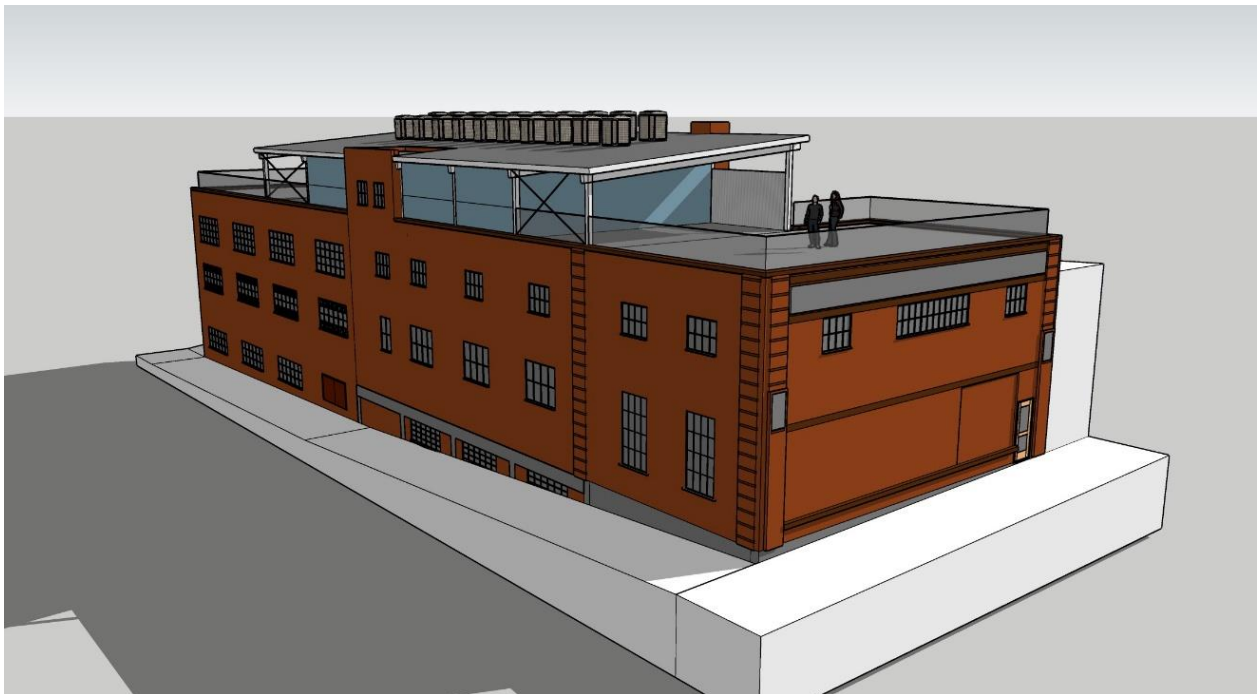
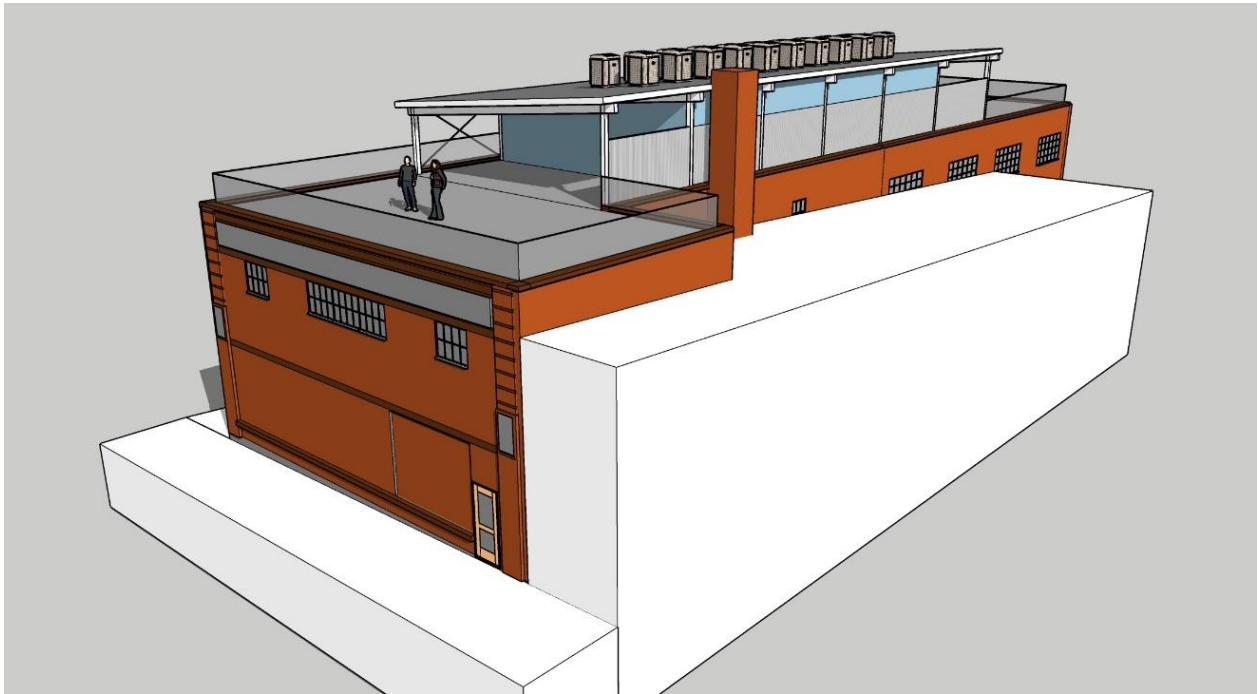




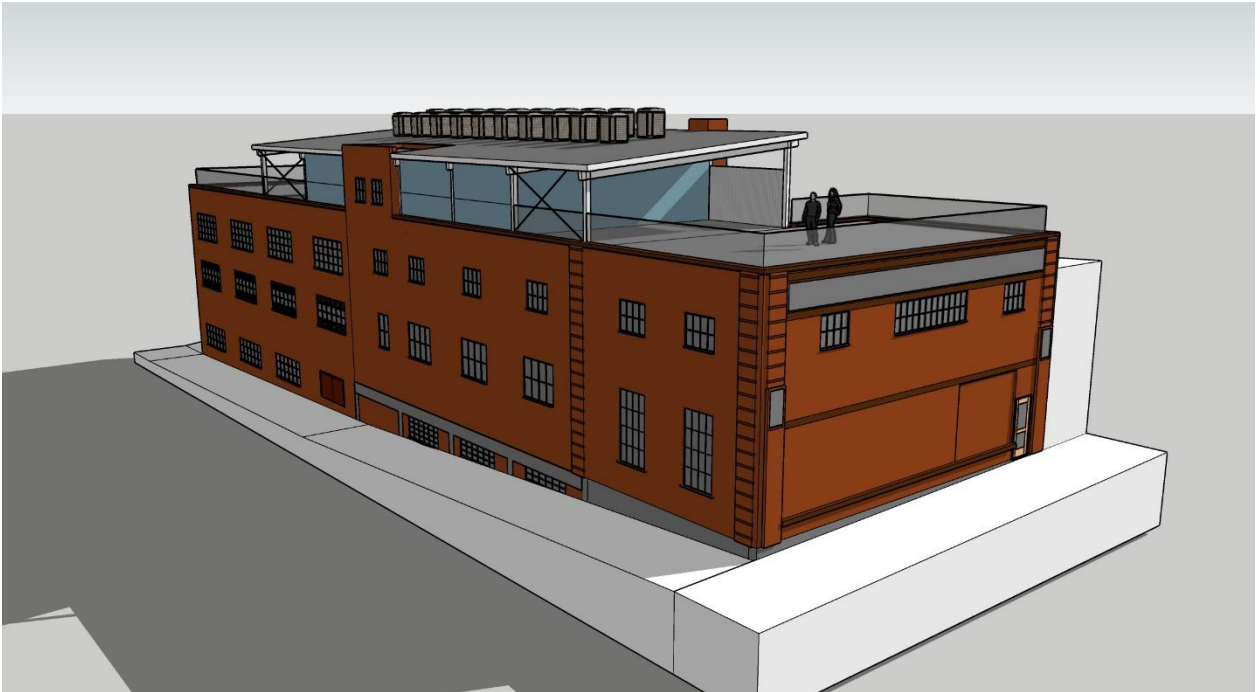




## Exhibit E – Digital Renderings









**CITY OF HENDERSONVILLE  
COMMUNITY DEVELOPMENT DEPARTMENT**

100 N. King Street, Hendersonville, NC 28792

Phone (828) 697-3010 | Fax (828) 698-6185

www.hendersonvillenc.gov

**APPLICATION FOR A VARIANCE**

**Section 10-9 City Zoning Ordinance**

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

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

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

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

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

- ☒ 1. Pre-application meeting with the Planning staff.
- ☒ 2. Completed Variance Application
- ☒ 3. Completed Zoning Permit Application
- ☒ 4. Site Plan of property showing any existing structures, natural features (e.g. streams, ponds, etc.), **as well as** the proposed building or additions indicating distance from such to the centerline of street, side & rear lot lines, and elevations, as applicable, and placement of septic system & drainage field with distances from structures, if applicable.
- ☐ 5. One copy of the septic permit (if applicable)
- ☒ 6. Application Fee of \$75.00
- ☒ 7. Petitioner has checked for Homeowner Association rules, property covenants, deed restrictions, Building Safety Department permits, and other requirements that might have a bearing on the application.

Office Use:

Date Received: \_\_\_\_\_ By: \_\_\_\_\_ Fee Received? Y/N

## A. Quasi-Judicial Process

The Board of Adjustment is given the authority under Section 10-3 of the Zoning Ordinance of the City of Hendersonville to hear and decide requests for variances from the dimensional requirements of the Zoning Ordinance in accordance with Section 10-9. The Board conducts quasi-judicial hearings and may consider sworn testimony and evidence presented during the hearing. Applicants are advised to bring data or experts in the relevant field to provide fact-based evidence to support any information they want considered. The Board may not consider personal opinions, subjective observations, or personal preferences.

**NOTE: The City Planning staff may not provide legal advice to applicants. Applicants are encouraged to consult the appropriate sections of the North Carolina General Statutes, City of Hendersonville Zoning Ordinance, and the Rules of Procedure for the Board of Adjustment, or to consult with an attorney, if more information is needed.**

## B. Property Information

**Name of Project:** Locust & Seventh (TBD)

**PIN(s):** 9569802471

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

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

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

**Current Zoning:** I-1

**Total Acreage:** 0.22

## C. To the Zoning Board of Adjustment

I, Dan Mock, hereby petition the Board of Adjustment for a variance(s) from the literal provisions of the Zoning Ordinance of the City of Hendersonville because I am prohibited from using the parcel of land described in the form "Zoning Permit Applicant" in a manner shown by the Site Plan.

I request a Variance from the following provision(s) of the ordinance (cite section numbers):

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

## D. Variance Burden of Proof

When unnecessary hardships would result from carrying out the strict application of a zoning ordinance, the Board of Adjustment shall vary any of the provisions upon a showing of the factors listed below. The Board **does not** have unlimited discretion in deciding whether to grant a variance. Under the state enabling act, the Board shall grant a variance **only upon showing of all of the factors** below as provided in Section 10-9 of the City of Hendersonville Zoning Ordinance.

**Instructions:** *In the spaces provided below, indicate the **facts you intend to demonstrate** and **the arguments that you intend to make** to demonstrate to the Board that it can properly grant the variance as provided in Section 10-9 of the City of Hendersonville Zoning Ordinance. (If additional space is required, please provide the information on a separate sheet of paper).*

1. Unnecessary hardship would result from the strict application of the ordinance. In order to determine whether an unnecessary hardship exists, the Applicant must demonstrate the following factors:
  - a. Indicate how an unnecessary hardship would result from the strict application of the ordinance. It is not necessary to demonstrate, that in the absence of the variance, no reasonable use can be made of the property.

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

- b. Indicate how the hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

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



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

- c. Indicate how the hardship did not result from actions taken by the applicant or property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.

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

2. Indicate how the requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured, and substantial justice is achieved.

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

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

**E. Applicant Contact Information**

Dan Mock

**\* Printed Applicant Name**

AYD Partners LLC

**Printed Company Name (if applicable)**☐ Corporation    ☒ Limited Liability Company    ☐ Trust    ☐ Partnership☐ Other: \_\_\_\_\_

☒ By signature below, I hereby acknowledge, as/on behalf of (circle one) the Applicant named above my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the City Council except through sworn testimony at the public hearing. (Applicable if box is checked.)

  
**Applicant Signature**

Member

**Applicant Title (if applicable)**

638 Spartanburg Hwy, Ste 70-338

**Address of Applicant**

Hendersonville, NC 28792

**City, State, and Zip Code**

310-750-7117

**Telephone**

dan@rockwooddevelopment.com

**Email**

**F. Owner Contact Information (if different from Applicant)**

\* ^ Printed Owner Name

\* ^ Printed Company Name (if applicable)

☐ Corporation      ☐ Limited Liability Company      ☐ Trust      ☐ Partnership

☐ Other: \_\_\_\_\_

☐ By signature below, I hereby acknowledge, as/on behalf of (circle one) the Applicant named above my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the City Council except through sworn testimony at the public hearing. (Applicable if box is checked.)

Owner Signature

Owner Title (if applicable)

Address of Property Owner

City, State, and Zip Code

Telephone

Email

\* Property owner hereby grants permission to the City of Hendersonville personnel to enter the subject property for any purpose required in processing this application.


^ If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION.

## Certification

In granting a variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with the City of Hendersonville Zoning Code. Violations of the provisions of the variance granted, including any conditions or safeguards, which are part of the granting of the variance, shall be deemed in violation of the City of Hendersonville Zoning Ordinance.

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

1/16/22  
Date

  
Applicant Signature

Member  
Applicant Title

Dan Mock  
Applicant Name (Please Print)