

**REQUEST FOR BOARD ACTION**  
HENDERSON COUNTY  
Zoning Board of Adjustment

**MEETING DATE:** August 28, 2013

**SUBJECT:** Variance Application (V-13-01) 291 Spring Place Drive

**PRESENTER:** Toby Linville, Code Enforcement Director

**ATTACHMENTS:**

1. Staff Report
2. Photographs
3. Site Plan

**SUMMARY OF REQUEST:**

The applicants are requesting a variance to have the setbacks for the property be set less than 10 feet so that the existing property lines can be realigned.

Staff requests the Board of Adjustment take action to approve, approve with modifications, table, or deny Variance-13-01.

**Suggested Motion:**

**I move that the Board of Adjustment approval/deny variance application V-13-01 because it meets the requirements of the Land Development Code to grant a variance.**

**There are practical difficulties or unnecessary hardships in carrying out the strict letter of this Chapter, as demonstrated by:**

- 1. The fact that, if the *applicant* complies with the literal terms of this Chapter, he/she cannot secure a reasonable return from, or make a reasonable *use* of, the property.**
- 2. The hardship of which the *applicant* complains results from unique circumstances related to the *applicant's* land.**
- 3. The hardship is not the result of the *applicant's* own action.**
- b. The *Variance* is in harmony with the general purpose and intent of this Chapter and will preserve its spirit.**
- c. The *Variance* will secure the *public safety* and welfare and will do substantial justice.**
- d. The *Variance* shall not be based on the existence of a *nonconforming use* of neighboring land or *structures* in the same district, or permitted *nonconforming uses* in other districts, and shall in no way constitute a reason for the requested *Variance*.**
- e. The *Variance* shall not allow for an increase in density for the purposes of subdividing the land that would otherwise not be permitted by the applicable zoning district or *subdivision* regulations.**



## Henderson County, North Carolina Code Enforcement Services

### 1 Committee Request

- 1.1. **Applicant:** Danny Sharpe
- 1.2. **Request:** Variance Request
- 1.3. **PIN:** 9650-79-1698
- 1.4. **Size:** 0.17 acres +/-
- 1.5. **Location:** The subject area is off Spring Place Drive
- 1.6. **Variance Requirements:**

**G. Quasi-Judicial Proceeding.** The concurring vote of four-fifths (4/5) of the *ZBA* shall be necessary to grant a *Variance*. Any approval or denial of the request must be in writing and permanently filed with the office of the *ZBA* and with the Administrator as public record.

(1) Standards of Review. The *ZBA* shall not grant a *Variance* the effect of which would be to: (1) allow the establishment of a *use* not otherwise permitted in a general *use district*, (2) extend physically a *nonconforming use* of land or (3) change the district boundaries shown on the Official Zoning Map. No *Variance* shall be granted or considered where the fact that the property could be used more profitably is the reason for the request for the *Variance*. The following written findings must be made in order for the *ZBA* to grant a *Variance*:

a. There are practical difficulties or unnecessary hardships in carrying out the strict letter of this Chapter, as demonstrated by:

1. The fact that, if the *applicant* complies with the literal terms of this Chapter, he/she cannot secure a reasonable return from, or make a reasonable *use* of, the property.
2. The hardship of which the *applicant* complains results from unique circumstances related to the *applicant's* land.
3. The hardship is not the result of the *applicant's* own action.

b. The *Variance* is in harmony with the general purpose and intent of this Chapter and will preserve its spirit.

c. The *Variance* will secure the *public safety* and welfare and will do substantial justice.

d. The *Variance* shall not be based on the existence of a *nonconforming use* of neighboring land or *structures* in the same district, or permitted *nonconforming uses* in other districts, and shall in no way constitute a reason for the requested *Variance*.

e. The *Variance* shall not allow for an increase in density for the purposes of subdividing the land that would otherwise not be permitted by the applicable zoning district or *subdivision* regulations.

(2) Conditions. The *ZBA* may, in granting a *Variance*, prescribe: (1) additional conditions; (2) additional safeguards; (3) a time limit within which the action for which a *Variance* is sought shall be begun; (4) a time limit within which the action for a *Variance* is sought shall be completed; and (5) a time duration within which construction, operation or installation shall commence on the project for which the *Variance* was obtained.

**H. Variance Validity.** Upon issuance of a *Variance*, the *applicant* shall have 12 months within which (unless otherwise specified by the *ZBA*) to commence construction, operation or installation. If construction, operation or installation is commenced within the specified time period the *Variance* shall continue in force as long as the *structure*, operations or installation remains.

(1) Variance Revocation. If construction or operation is not commenced within 12 months (or other specified time period), the *Variance* shall no longer be valid.

**Map A: Aerial Photo/ Pictometry**



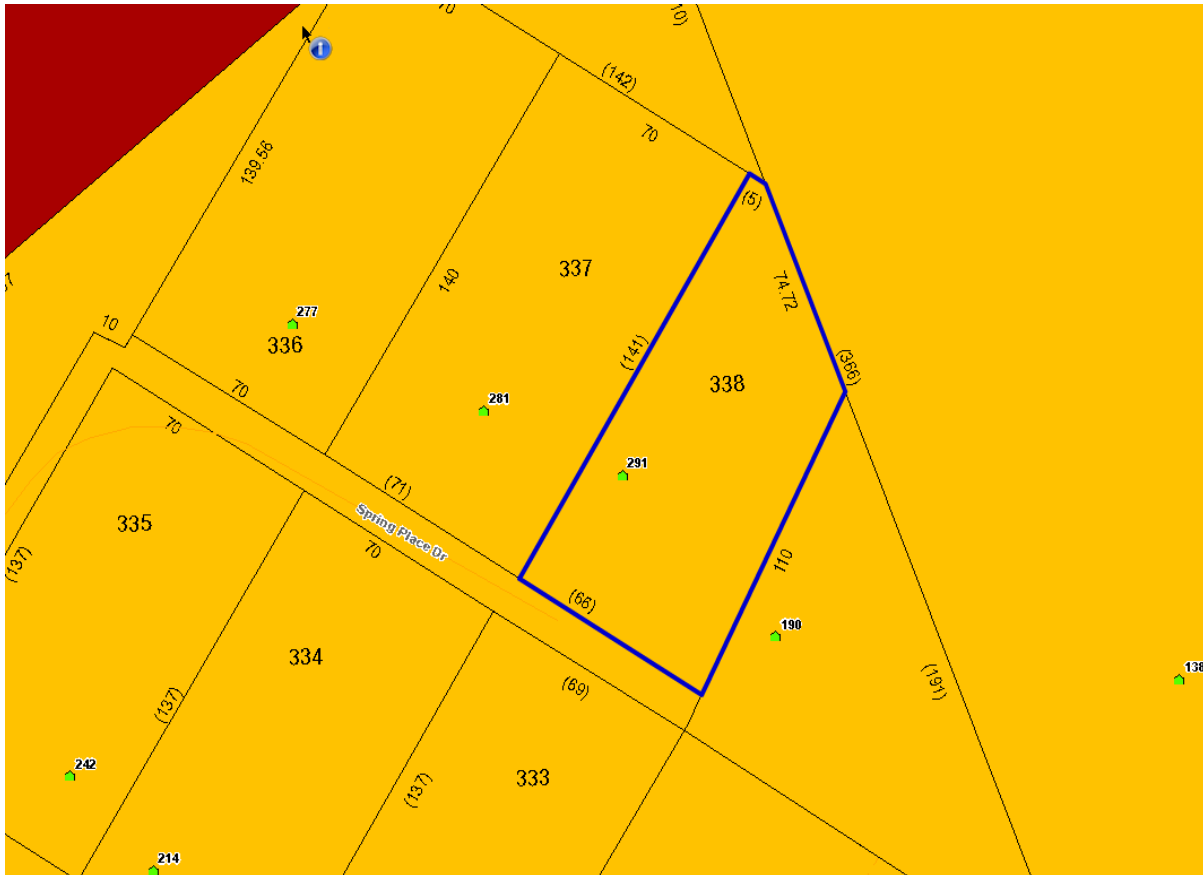
**2. Current Conditions**

**2.1 Current Use:** The parcel currently has a single wide manufactured home as the primary dwelling.

**2.2 Adjacent Area Uses:** The surrounding properties are residential.

**2.3 Zoning:** The current zoning of surrounding properties is Residential-1 (R1).

**Map B: Current Zoning**



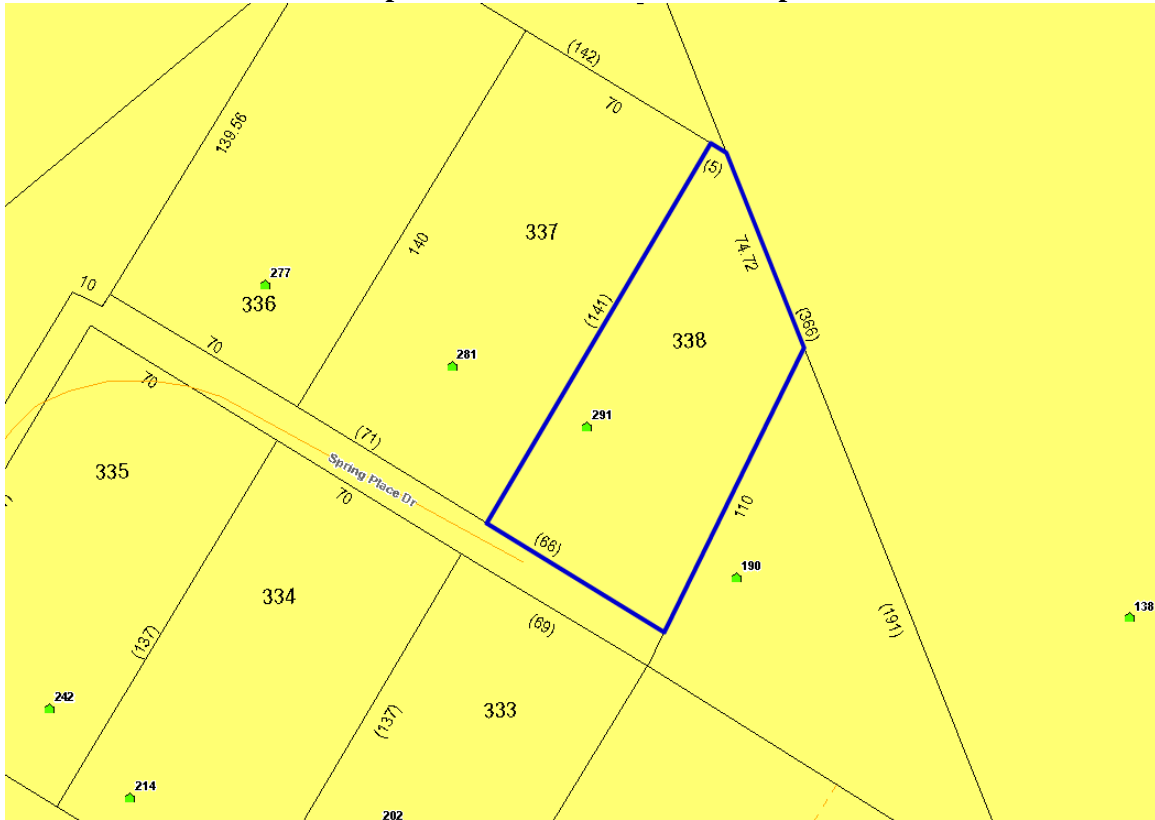
**3. Floodplain /Watershed Protection:** The property is not located in a Special Flood Hazard Area. The property is not in a Water Supply Watershed district.

**4. Water and Sewer:** This property is served by public water and private septic system.

**Public Water:** City of Hendersonville

**Public Sewer:** N/A

**Map C: CCP Future Land Use Map**



**5. Staff Comments**

**The 2020 CCP:** The CCP Future Land Use Map places the Subject Area in the “Urban Service Area” classification. The text and map of the 2020 CCP suggest that the Subject Area would be more suitable for the following:

1. The Urban Services Area is that area within which most urban services and urban scale development is currently concentrated, and within which such development should generally be concentrated through the year 2020.
2. Growth and development will be proactively managed through extensive planning. Much of the USA falls within municipal planning jurisdictions and will be managed by those jurisdictions. Land use planning for areas falling within the County’s jurisdiction should be comparable and compatible in its approach and intensity with planning conducted within the various municipal jurisdictions.

**6. Staff Recommendations**

Staff’s position at this time, under the guidelines of current plans, policies and studies, is that they support the application. The owner faces a hardship in that the current setbacks were not in place when the buildings were built.

Staff Report: ZBA 8-28-13  
 Spring Place Drive Variance Request V-13-01

Parcel Information			
Listed To:	PANIAGUA, RICARDO B	Jurisdiction:	UNINCORPORATED
Mailing Address:	PO BOX 2259	Tax District:	07 Mountain Home Fire
Mailing City, State, Zip Code:	HENDERSONVILLE, NC 28793	County Zoning:	R1
Physical Address:	0 SPRING PLACE DR	Flood Zone:	Zone X, Not Shaded (Areas outside of the floodplain)
Physical Address Zip:		Watershed:	
Parcel Number:	9970293	Protected Ridges Buffer:	
PIN:	9650791698	Perennial Streams:	
Neighborhood:	MOUNTAIN HOME	Soils:	Hayesville loam, 7 to 15 percent slopes
Assessed Acreage:	0.1700	Agricultural District:	
Deed:	1356/128	Future Land Use:	Urban Service Area
Date Recorded:	04/02/2008		

Report on:

281 Spring Place Drive

I visited the above-noted property on July 12, 2013 with Danny Sharpe of Clayton Homes.

I was able to locate the portions of the septic system that were closest to the property-line between this lot and the adjacent lot, 291 Pleasant Place Drive. The septic tank and the “header ditch”\* are the closest to the common line; the tank being 19-feet and the “header ditch” 13-feet.

With this information a revised/resurveyed property-line would encroach on the 10-foot required setback from a septic system to a property-line and would violate state rules.

The options given in the previous report do not appear to be viable with the exception of obtaining a zoning variance for the mobile-home at 291. Should such a variance be allowed, the encroachment onto the septic system will have to be corrected. A permit-change will need to be made, a fee of \$250 be paid, the site evaluated and, if permitted, the system altered to meet setbacks. The encroachment by the drive-way and concrete slab will also have to be corrected.

This variance could be conditional to the effect that it is in effect as long as the current home is in place. At such time as the lot is vacated, a smaller home would be mandated subject to meeting all requirements for Health, zoning etc. This last part is just a suggestion.

I regret that there appear to be no other V options. Should there be further questions, feel free to call me.

Sincerely,

Jerry R. Robinson REHS

695 6155

Application No. \_\_\_\_\_

**HENDERSON COUNTY  
VARIANCE APPLICATION FORM**

**GENERAL INFORMATION**

Date of Application: 7-26-13  
Previously Submitted (Circle One): Yes  No   
Date of Pre-Application Conference: \_\_\_\_\_  
Site Plan Attached (Circle One): Yes  No

**PARCEL INFORMATION**

Property Address 291 Spring Place Dr Hendersonville NC 28741  
PIN: 915 079 1698 Deed Book/Page: 1356/28 Acreage: 0.000 +/-  
Zoning District: R1 Fire District: Mtn Home Watershed: \_\_\_\_\_ Floodplain: ND  
Driving Directions: 25 N (L) WICKINS DR (R) SPRING PLACE  
Left lot on L

**REASON FOR VARIANCE**

FRONT SETBACK (feet/foot) 15  
SIDE SETBACK (feet/foot) 10  
REAR SETBACK (feet/foot) 10

Corner of home over property line / neighbor  
close to reservoir & be 10' off  
hump

**PROPERTY OWNER CONTACT INFORMATION:**

Name: Ricardo Panigra Phone: 828-233-6173  
Address: 291 Spring Pl Dr City, State, and Zip: Hville NC 28741

Applicant:  
Name: Danny Sh Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ City, State, and Zip: \_\_\_\_\_

Agent:  
Name: Danny Shamp Clayton Humpes Phone: 828 776 0521  
Address: 10115 Ashford Hwy City, State, and Zip: Hville NC 28741

Agent Form (Circle One): Yes  No   
Plan Preparer:  
Name: David Hill Surveyor Phone: 828-699-5198  
Address: 403 W. Blue Ridge Rd City, State, and Zip: East Flat Rock NC 28726

**SITE PLAN REQUIREMENTS**

Site plan of property showing existing structures, natural features (i.e. streams, ponds, etc.) proposed building or addition and indicating distance from such to the edge of right-of-way (centerline for variance request in the R-40, WR, or SW districts) and to the side and rear lot lines, as applicable. It is required that the site be staked or flagged. The Zoning Administrator will take photos of the site and the staked or flagged area. Show placement of well & septic system and drain field if applicable and distances from structures.

NOTE: Site plan not to exceed 11 X 17 size. Anything submitted larger than 11 X 17, the applicant must provide 12 copies with the application form.

**STANDARDS FOR REVIEW**

The Zoning Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under the state enabling act, the Board is required to reach the following conclusions as a prerequisite to the issuance of a variance. State facts and argument in support of each of the following:

**SECTIONS A & D MUST BE ANSWERED BY APPLICANT OR AGENT**

A. There are practical difficulties or unnecessary hardships in carrying out the strict letter of this Chapter, as demonstrated by:

1. The fact that, if the applicant complies with the literal terms of this Chapter, he/she cannot secure a reasonable return from, or make a reasonable use of, the property. (It is not sufficient that failure to grant the variance simply make the property less valuable.)

if my resurvey property line to be 10' off home, will will go from 9' to 3' away from neighbor septic lines... state law require property line be 10' from septic

2. The hardship of which the applicant complains results from unique circumstances related to the applicant's land. (Note: Hardships suffered by the applicant common with his neighbors do not justify a variance. Unique personal or family hardships are irrelevant since a variance, if granted, runs with the land.)

installer of home is out of business... there was a home in same spot prior to 2008 install of present home

3. The hardship is not the result of the applicants own action.

prior home installed 2001... New home and owner installed 2008... County passed all requirements... Homeowner had nothing to do with install

B. The variance is in harmony with the general purpose and intent of the Land Development Code and will preserve its spirit. (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood.)

small mfg home subdivision... Last lot on left... Both home owners are in agreement

C. The variance will secure the public safety and welfare and will do substantial justice. (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.)

If variance denied set back laws in violation by environmental health... not doing so would essentially condemn lot... Again, two homes approved by county have had same footprint since 2001... Need to do right thing here



**SECTIONS A & D MUST BE ANSWERED BY APPLICANT OR AGENT**

D. The variance shall not be based on the existence of a nonconforming use of neighboring land or structures in the same district, or permitted nonconforming uses in other districts, and shall in no way constitute a reason for the requested variance.

*Will just need to move property line from 9' to 3' away from house in 20' section instead of 10'*

I certify that the information shown above is true and accurate and is in conformance with the Land Development regulations of Henderson County.

Danny Skimp  
Print Applicant (Owner or Agent)

[Signature]  
Signature Applicant (Owner or Agent)

7-26-13  
Date

**County Use Only**

Fee: \$ \_\_\_\_\_ Paid: \_\_\_\_\_ Method: \_\_\_\_\_ Received by: \_\_\_\_\_ Permit#: \_\_\_\_\_

**HENDERSON COUNTY  
CODE ENFORCEMENT SERVICES APPOINTMENT OF AGENT FORM (OPTIONAL)**

I \_\_\_\_\_ owner of property located on \_\_\_\_\_,  
(Name) (Street Address)  
recorded in \_\_\_\_\_ and having a parcel identification number of \_\_\_\_\_,  
(Deed Book/Page) (PIN)

located in Henderson County, North Carolina, do hereby appoint \_\_\_\_\_,  
(Agent's Name)  
\_\_\_\_\_ to represent me in an application to the Code Enforcement Services  
(Agent's phone number)

Department and authorize him/her to act as my agent in all matters, formal and informal except as stated herein, and authorize him/her to receive all official correspondence.

I however understand that as the listed property owner, I must sign all affidavits and statements required by any applicable ordinance.

\_\_\_\_\_  
(Property Owner)

\_\_\_\_\_  
(Date)



## PUBLIC NOTICE

THE HENDERSON COUNTY BOARD OF

Adjustment WILL HOLD A  
Public Hearing TO CONSIDER A

REZONING  
 SUBDIVISION  
 VESTED RIGHTS

SPECIAL USE  
 VARIANCE

APPLICATION / REQUEST FOR THIS PROPERTY.

WHERE: 100 N KING

WHEN: 8/28/13 4:00 pm

POSTED: 8/16/13

BY: JLM

For more information call:  
Zoning Dept. (828) 697-4857 or  
Planning Dept. (828) 697-4818  
(TDD for the hearing impaired) (828) 697-4580





**PUBLIC NOTICE**

NOTICE TO THE PUBLIC  
REGARDING THE  
REMOVAL OF  
A  
PROPERTY  
FROM THE  
PUBLIC RECORDS  
OF THE  
COUNTY OF  
[Illegible]  
[Illegible]  
[Illegible]







