

**IN THE MATTER OF THE APPLICATION OF Covenant Presbyterian Church,
Applicant,**

To the

**HENDERSON COUNTY BOARD OF ADJUSTMENT,
Permit Authority**

ORDER GRANTING VARIANCE V-14-01

The **HENDERSON COUNTY BOARD OF ADJUSTMENT** having held a quasi-judicial public hearing on January 7, 2014 to consider the application submitted by Covenant Presbyterian Church, to request a Variance, makes the following FINDINGS OF FACTS and draws the following CONCLUSIONS:

FINDINGS OF FACT

1. A quasi-judicial public hearing was held by the Henderson County Board of Adjustment on variance V-14-01. A quorum of members was present.
2. This Order and the Variance herein was approved by a vote of 5-0. Mike Earle made the motion and Tony Engel seconded it.
3. Covenant Presbyterian Church is the owner of the subject property and was made parties to this action. Sam Riddle and David Fox are trustees of the Church and were present at the hearing to represent the Church.
4. Andrew Riddle was present as the contractor for the project and he was a witness for the Church.
5. The subject property is located at 2206 Hilltop Lane off Kanuga Road with a PIN of 9567172441.
6. Toby Linville is the Zoning Administrator for Henderson County. As an agent of Henderson County, Mr. Linville was made a party to this hearing.
7. Notice of a quasi-judicial public hearing, pursuant to the Ordinance, the Henderson County Code 42-338 was duly and timely given. This notice was posted on the property and sent by first class mail to the Applicants and the adjacent property owners.
8. The Applicant's variance request is not inconsistent with the Notice of Public Hearing produced, published, and posted for the quasi-judicial proceeding in that the notice contemplated the size and scope of the variance request.
9. Upon inquiry by the Chairman of the Zoning Board of Adjustment, no party objected to any other persons or entities made parties to this action being a party to this action.
10. All parties and all witnesses presented by any party were sworn as witnesses in this proceeding on January 7, 2015.
11. Without objection from any party, the Board of Adjustment received into evidence a memorandum and photographs by Toby Linville. No party disputed any of the information contained in this evidence and the Zoning Board of Adjustment finds all the information contained in the memorandum and its attachments to be credible and to be fact for the purpose of this hearing. Mr. Linville also entered the Applicant's application and site plan into evidence.
12. The subject property is .84 acres, has a PIN of 9567172441. It currently has a single family home on the property.
13. The property is zoned Residential 40 (R-40). The surrounding properties are residential. Nearby parcels are zoned Residential-2.
14. The property is not in the Floodplain or Water Supply Watershed.
15. The Henderson County 2020 Comprehensive Plan Future Land Use Map places the subject area in the Community Service Center.

16. The property has no public water and private septic.
17. The variance application is for reduction in the side setback so that an addition can be added to the house.
18. The other sides of the house include the septic field on one side, the air conditioning unit on the other side, and the third side is already nonconforming.
19. The variance request is for a 12.8 foot reduction in the side setback. There will be a 13.2 ft remaining setback on that side.
20. Also, the addition is a grand room and could not be put on another side because of the layout of the house and where the entrance to the structure is.
21. Toby Linville testified that the setbacks in R-40 are more rigorous than other residential zoning districts. R-40 has 35 foot setbacks while other districts have 10 foot setbacks.
22. Riddle testified that the house was built in 1960, prior to county zoning.
23. Andrew Riddle entered into evidence a letter from the neighbor on the side of the setback encroachment. The letter stated support for the project.
24. The property is owned as a parsonage and was previously used for missionaries.

CONCLUSIONS

1. All parties, and all persons entitled to notice, have been given proper notice of this hearing and afforded the right to be heard.
2. All parties were properly before the Board of Adjustment and all evidence presented herein was under oath, and was not objected to by any party. All evidence relied upon in this Order was credible and reliable.
3. Henderson County Code 200A-334 grants the Board of Adjustment the jurisdiction to hear and make variance decisions.
4. The variance does meet all the standards of the Ordinance and the variance should be granted based on the reasons established below:
 - a. This does not extend physically a nonconforming use because it was a residence and will remain a residence; the use is unchanged.
 - b. The variance does not change the district boundaries from the Official Zoning Map.
 - c. The reason for the request is not to make the property more profitable because it is a parsonage and the structure must be enlarged for the pastor's family.
 - d. There practical difficulties or unnecessary hardships in meeting the letter of the law in that the setback conflicts with state law regarding distances from septic.
 - i. A reasonable return on the property can be made without a variance because R-40 setbacks are too restrictive;
 - ii. The unique circumstances related to the land are that the house is in the R-40 and the other sides of the house are either nonconforming or have the septic field or air conditioning unit.
 - e. The variance is in harmony with the spirit and intent of the law because it reduces the setback to be in line with all the other residential zoning districts within the County.
 - f. The variance will protect public safety and welfare by not being closer to the road and will maintain a 13.2 foot side setback.
 - g. The variance will do substantial justice because the property lines were drawn and the house was built in 1960 prior to county zoning.

Based on the foregoing FINDINGS OF FACT and CONCLUSIONS drawn, and it appearing to the HENDERSON COUNTY BOARD OF ADJUSTMENT that the Variance must be **GRANTED**.

IT IS THEREFORE ORDERED by the HENDERSON COUNTY BOARD OF ADJUSTMENT as follows:

- 1. The Applicant may have a 12.8 foot variance in the side setback.

The Applicant's Variance has been GRANTED.

ORDERED this the _____ day of January 2015.

THE HENDERSON COUNTY BOARD OF AJUSTMENT

By: _____

Jim Clayton, Chairman

ATTEST:

Jenny Maybin
Secretary to the Zoning Board of Adjustment

ACCEPTANCE BY APPLICANT

I, Sam Riddle, Applicant, do hereby acknowledge receipt of this order as the Applicant for this variance request. I further acknowledge that no work may be done pursuant to this permit except in accordance with all of its conditions and requirements and that this restriction shall be binding on the owner and his successors in interest.

This the _____ day of _____, 2015

Sam Riddle, Applicant

ACCEPTANCE BY PROPERTY OWNER

I, Sam Riddle, Trustee for Covenant Presbyterian Church, Property Owner, do hereby acknowledge receipt of this order as the owner of subject property which is the subject of this variance request. I further acknowledge that no work may be done pursuant to this permit except in accordance with all of its conditions and requirements and that this restriction shall be binding on the owner and his successors in interest.

This the _____ day of _____, 2015

Sam Riddle, Trustee for Covenant Presbyterian Church