

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

**MEETING DATES:** 12/19/17 TRC 12/27/17 ZBA

**SUBJECT:** Variance Application (V-17-01) located at 1362 Ridge Rd

**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 reduce the side-yard setback for the property to 6.3'. The Residential Two Rural district requires a minimum 10' side yard setback. The subdivision requirements of the Land Development Code require a 30' access easement. The existing home and private roadway are not creating the nonconformity.

Staff requests the Board of Adjustment take action to approve, approve with modifications, table, or deny Variance-17-01.

**Suggested Motion:**

**I move that the Board of Adjustment approve/deny variance application V-17-01 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:** Lois Bishop/Monica Jernigan
- 1.2. **Request:** 4' Variance of side yard setback
- 1.3. **PIN:** 9599672666
- 1.4. **Size:** 0.58 acres +/-
- 1.5. **Location:** The subject area is off Ridge Rd and Windsack Ln
- 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**

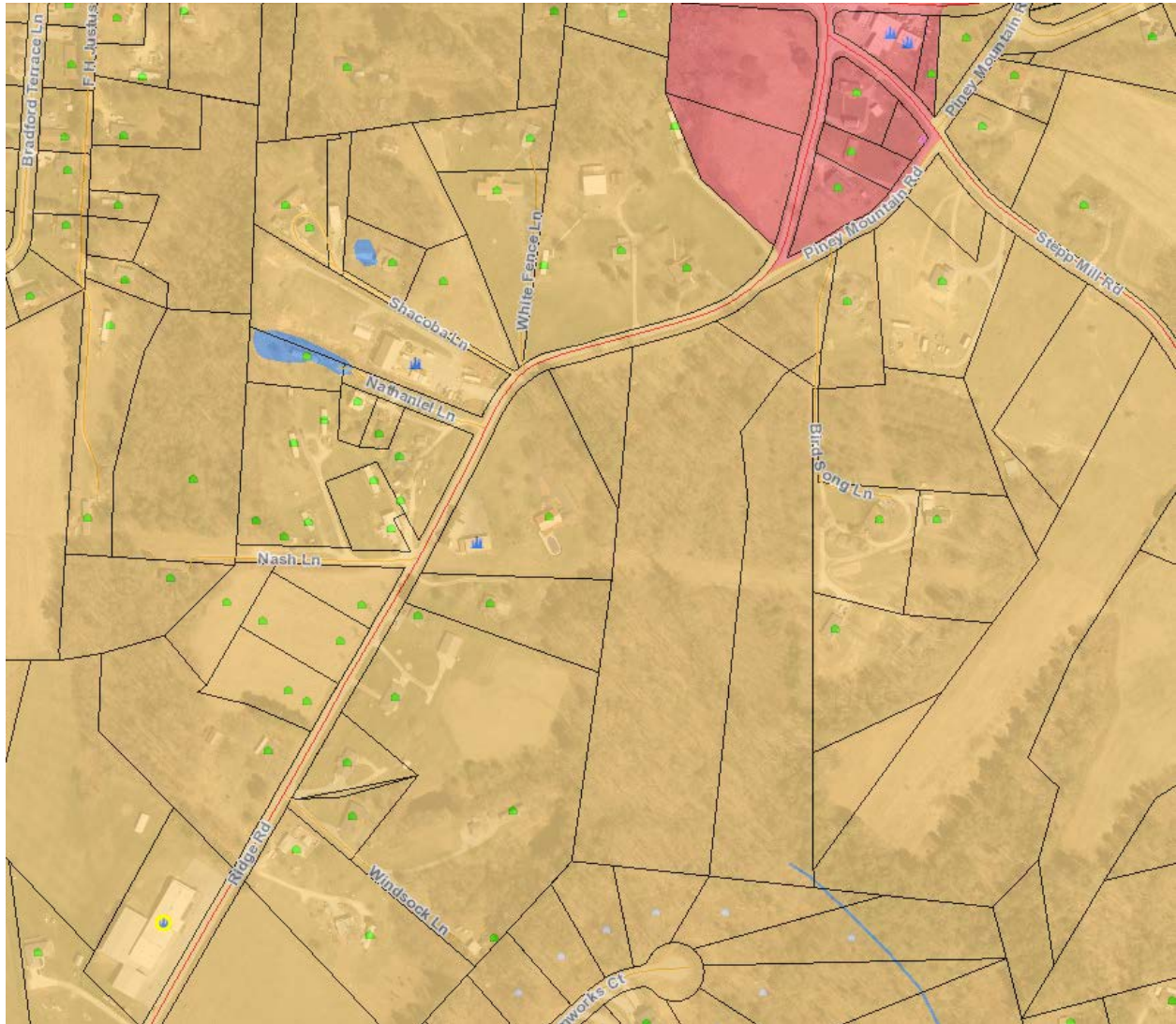




**2. Current Conditions**

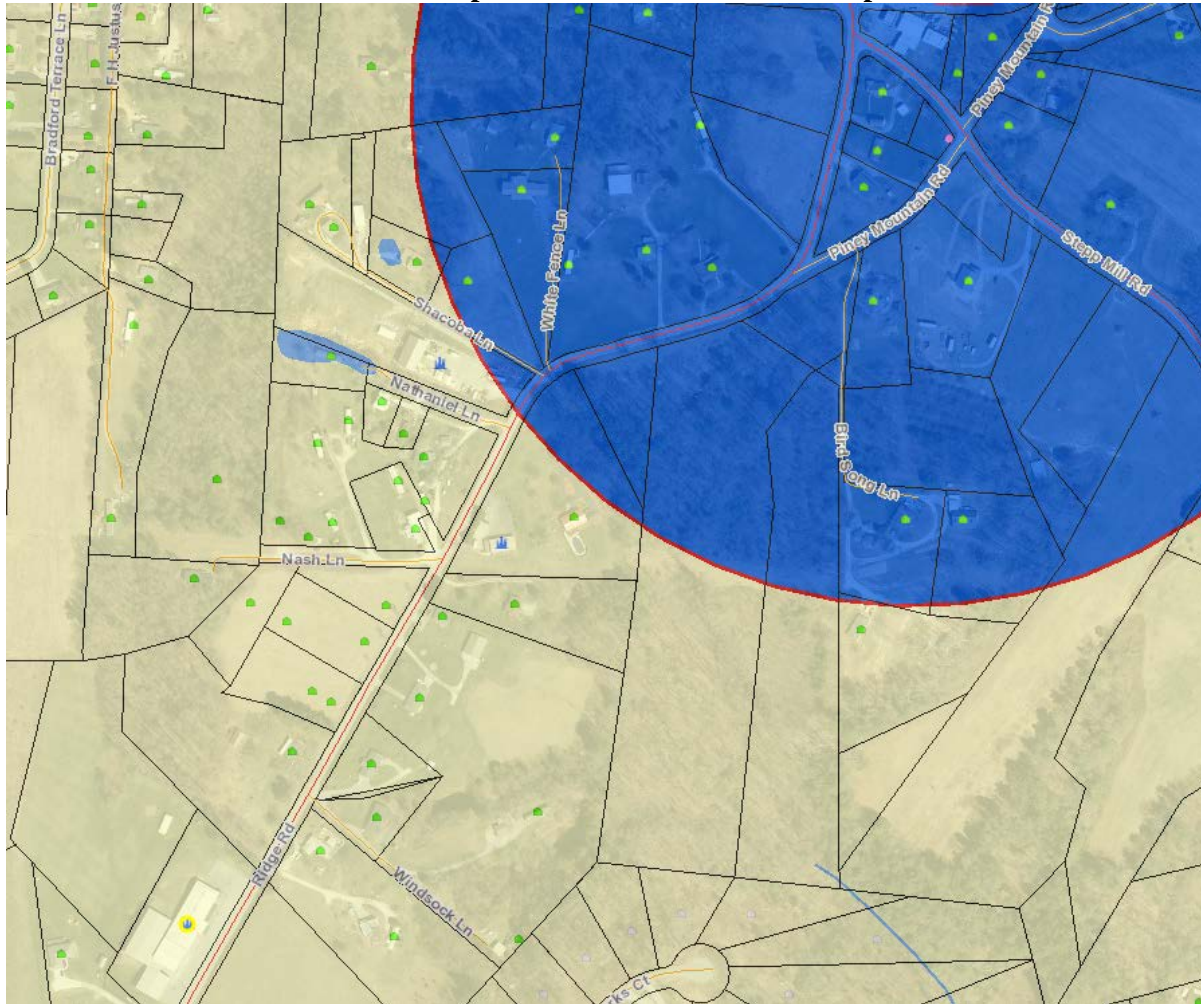
- 2.1 Current Use: The parcel has a modular home that was built in 1994
- 2.2 Adjacent Area Uses: The surrounding properties are residential and commercial.
- 2.3 Zoning: The subject property and surrounding properties are R2R.

**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:** N/A  
**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 “Rural/Urban Transition Area” classification. The text and map of the 2020 CCP suggest that the Subject Area would be more suitable for the following:

The RTA is currently rural in character, with existing pockets of limited higher density residential and commercial development. Slopes vary across the RTA, although the area can be considered to be generally developable. The primary factor preventing urban development in the RTA is the absence of sewer and water service. The RTA will continue to experience extensive development over the operational timeframe of this Comprehensive Plan.

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 home was built. The LDC was approved in 2007 and this home was built in 1994.









CONSTRUCTION  
AHEAD

DO NOT  
ENTER

DO NOT  
ENTER





**NO  
PARKING**  
  
**WINDSOCK LANE**  
IS A PRIVATE ROAD  
FOR USE EMERGENCY  
VEHICLES ONLY.  
VEHICLES MUST BE  
REGISTERED IN VA.  
PARKING IN VA RESIDENTS  
ONLY. THIS DRIVE WILL  
CLOSE IN 15 MINUTES.  
PLEASE DRIVE IN WINDSOCK  
BY TURNING L & STOP!  
APPROVED BY  
LOCAL GOVERNMENT



Application No. V-17-01

HENDERSON COUNTY  
VARIANCE APPLICATION FORM

GENERAL INFORMATION

Date of Application: 11-29-17  
Previously Submitted (Circle One): Yes  No   
Date of Pre-Application Conference: \_\_\_\_\_  
Site Plan Attached (Circle One):  Yes  No

PARCEL INFORMATION

Property Address: No address yet 1362 Ridge Rd  
PIN: 9599-67-5499 2666 Deed Book/Page: 912/52 Acreage: 1.85 parcel A 1018/047  
Zoning District: R2K Fire District: 09 Dana Watershed: No Floodplain: No .58  
Driving Directions: Four Seasons Blvd to rt on Dana Rd. Go all way to end of Dana Rd. Left on Ridge Rd. 3/4 mile to rt on Windsock Ln.

REASON FOR VARIANCE For compliance to setback  
FRONT SETBACK (feet/foot) 15' from property line or R/W  
SIDE SETBACK (feet/foot) 10'  
REAR SETBACK (feet/foot) 10'

PROPERTY OWNER CONTACT INFORMATION:

Name: Lois V. Bishop Phone: 828-685-3759  
Address: PO Box 2851 City, State, and Zip: Dana, NC 28724

Applicant:

Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ City, State, and Zip: \_\_\_\_\_

Agent:

Name: Monica Jernigan Phone: 828-388-3321  
Address: PO Box 617 City, State, and Zip: Dana, NC 28724  
Agent Form (Circle One):  Yes  No

Plan Preparer:

Name: DAVID HUNTLEY Phone: 693-8077  
Address: 675 MAPLE ST City, State, and Zip: 28792

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.)

There is no way to move the modular home w/out substantial damage & expense. New mobile home for elderly mother

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.)

Modular home already existed when property was purchased and cannot be moved.

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

In existence prior to owner's purchase

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.)

Additional mobile home complies w/all ordinances

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.)

LED, EMS & Fire will still safely and quickly be able to access all properties



**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.

Placement of a second mobile home on parcel A  
as allowed by ordinance

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

Monica Ternigan  
Print Applicant (Owner or Agent)  
Monica Ternigan  
Signature Applicant (Owner or Agent)

11-29-17  
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)



POWER OF ATTORNEY

Know all people by these presents that Lois V Bishop (Property Owner) in the County of Henderson, State of North Carolina, City of Hendersonville, do hereby make, constitute, appoint, and authorize the representative(s) listed below as my true and lawful attorney in fact to appear for me and represent me before the TRC/Zoning/Planning in the County of Henderson, in connection with any matters involving the development or permitting of property with the physical address of No address yet 1362 Ridge Rd and PIN of 9599-67-5447-2666, I grant unto said attorney in fact the full power and authority to appear before the County regarding and the power to develop the property and I hereby authorize the said County to disclose to my attorney in fact all information used by the County in connection with permitting, appearances before staff, boards, or committees, inspections, appeals and other legislative and administrative determinations related to land use. I understand that said attorney cannot appear for me in quasi-judicial proceedings unless s/he is a North Carolina licensed attorney.

I understand that in the event of an adverse decision by either County Board or staff that if this matter is appealed to the North Carolina judicial system, the decision may be changed or unchanged as a result of the appeal.

The specific property which my attorney in fact is authorized to appeal is described as follows: (Address and PIN)  
1362 Ridge Rd (9599-67-2666)

Property Owner(s) must sign and date this Power of Attorney before a Notary Public

Property Owner's name and address <u>Lois V Bishop</u> <u>1436 Ridge Rd</u> <u>Hvville, NC 28792</u>	Telephone: <u>828-685-3759</u> Fax number: Email:
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Witness my hand this the 30<sup>th</sup> day of November, 2017

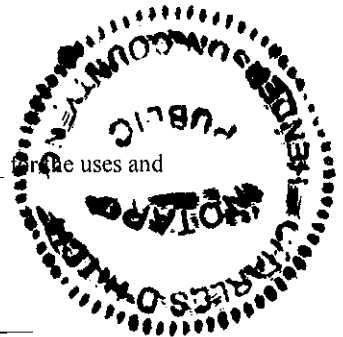
Lois V Bishop  
Property Owner(s)

State of North Carolina  
County of Henderson

The foregoing instrument was duly acknowledged before me by \_\_\_\_\_ for the uses and purposes therein expressed.

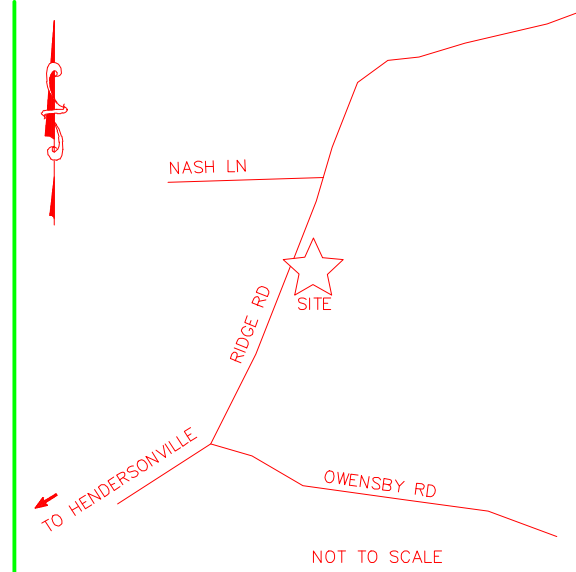
Witness my hand and seal this the 30 day of Nov, 2017  
My commissioner expires 06-22-2017 (seal)

[Signature]  
Notary Public



Representative(s) name and address <u>MONICA JERNIGAN (DAUGHTER)</u> <u>1580 Ridge Rd</u> <u>Hendersonville NC 28792</u>	Telephone Number: <u>828-388-3321</u> Fax Number: Email:
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LOCATION MAP  
NOT TO SCALE

Calls along Proposed 30.0' Private Driveway Easement:

Course	Bearing	Distance
L1	S 51°15'54" E	230.57'
L2	S 51°15'54" E	54.10'
L3	S 78°51'54" E	29.10'
L4	S 85°14'35" E	24.24'
L5	N 84°07'57" E	20.71'
L6	N 78°21'19" E	25.25'
L7	N 73°43'27" E	22.26'
L8	N 69°28'48" E	44.66'
L9	N 64°10'32" E	48.95'
L10	N 52°05'42" E	39.88'

Course	Bearing	Distance
L11	N 38°02'49" E	67.03'
L12	S 28°05'47" E	57.35'

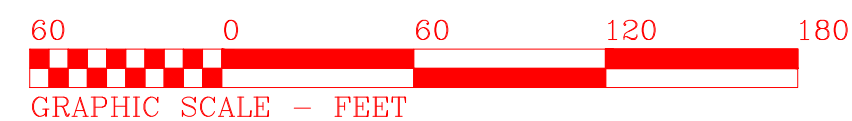
I hereby certify that I am the owner of the property located within the subdivision—regulation jurisdiction of Henderson County as shown and described hereon, and that I hereby adopt this plan of subdivision. I understand that expansion of this subdivision may result in the upgrading of road infrastructure, utilities and additional right-of-way dedication and other applicable requirements as required by the Subdivision Regulations (Article iii) of the Land Development Code (Chapter 200A of the Henderson County Code). All proposed roads in this subdivision will meet the minimum requirements outlined in 200A-81 (Major Subdivisions) C (1) for public roads.

Date \_\_\_\_\_ Owner \_\_\_\_\_

DEED REF:  
part of D.B. 912, PG. 52

part of TAX MAP #9599.02-67-5799

CURRENT OWNER: LOIS BISHOP



THERE ARE NO CEMETERIES LOCATED ON THIS PROPERTY  
 THERE ARE NO PERENNIAL STREAMS LOCATED ON THIS PROPERTY  
 THIS PROPERTY IS NOT LOCATED WITHIN A WATER SUPPLY WATERSHED  
 THERE ARE NO PROTECTED RIDGES LOCATED ON THIS PROPERTY  
 THIS PROPERTY IS LOCATED WITHIN 1/2 MILE OF AN AGRICULTURAL DISTRICT  
 THIS PROPERTY IS LOCATED WITHIN THE R2R ZONING DISTRICT  
 BUILDING SETBACKS ARE:  
 FRONT =15' FROM PROPERTY LINE OF RIGHT-OF-WAY  
 SIDES & REAR =10' FROM PROPERTY LINES  
 THESE STATEMENTS ARE MADE PER HENDERSON COUNTY GIS

I, David C. Huntley, Professional Land Surveyor, certify that the lot(s) created by this plat are served and accessed by a recorded driveway easement shown hereon. This easement may or may not meet the standards for roads serving subdivisions in the Henderson County Land Code. Neither the undersigned nor Henderson County certify whether this easement meets such standards.  
 This the 24th day of October, 2017

David C. Huntley PLS L-3204

Maintenance responsibility of the easement is conveyed to the homeowners utilizing it to access their property

BISHOP  
part of D.B. 912, PG. 52  
part of TAX MAP #9599.02-67-5799

CANNON  
TRACT I  
part of D.B. 1211, PG. 71  
SLIDE 5307  
TAX MAP #9599.02-78-1212

PARCEL A  
TOTAL AREA  
1.85 AC.

part of D.B. 912, PG. 52  
part of TAX MAP #9599.02-67-5799  
CURRENT OWNER: LOIS BISHOP

LOT 7  
CABIN DREAM HOMES, INC.  
part of D.B. 1302, PG. 151  
SLIDE 6988  
TAX MAP #9599.02-67-8413

LOT 6  
CABIN DREAM HOMES, INC.  
part of D.B. 1302, PG. 151  
SLIDE 6988  
TAX MAP #9599.02-67-7312

RIDGE ROAD  
S.R. 1783, PUBLIC

BISHOP  
TRACT I  
part of D.B. 1018, PG. 47  
TAX MAP #9599.02-67-2744

part of D.B. 1018, PG. 47  
TAX MAP #9599.02-67-2666

BISHOP  
D.B. 1018, PG. 169  
TAX MAP #9599.02-67-2854

MORROW  
D.B. 932, PG. 130  
TAX MAP #9599.02-67-2462

N 29°56'24"E  
25.15' total  
(tie line)

PLAT NORTH (SLIDE 5307)

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

Review Officer \_\_\_\_\_ Date \_\_\_\_\_

I, \_\_\_\_\_, Subdivision Administrator for \_\_\_\_\_ Henderson \_\_\_\_\_ County, certify that this plat/plan has been reviewed and approved as a \_\_\_\_\_ Special Subdivision \_\_\_\_\_ in accordance with the \_\_\_\_\_ Henderson \_\_\_\_\_ County Subdivision Ordinance.

Subdivision Administrator \_\_\_\_\_ Date \_\_\_\_\_

This plat was presented for registration and recorded in this office in Plat Slide \_\_\_\_\_ this the \_\_\_\_\_ day of \_\_\_\_\_ 2017 A.D. at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

Register of Deeds \_\_\_\_\_

Area was determined by Coordinate Computation.

- LEGEND
- EIP EXISTING IRON PIN
  - NIP NEW IRON PIN
  - PT UNMARKED POINT
  - CONC. MON. CONCRETE MONUMENT
  - PP POWER POLE
  - LP LIGHT POLE
  - C CENTER LINE
  - R/W RIGHT OF WAY
  - CONC. CONCRETE
  - REF. REFERENCE
  - OHU OVERHEAD UTILITIES

PRELIMINARY FOR REVIEW

D.C. HUNTLEY PLS L-3204  
C-1963

STATE OF NORTH CAROLINA  
HENDERSON COUNTY  
BLUE RIDGE TOWNSHIP  
  
PARCEL A, BISHOP PROPERTY  
SPECIAL SUBDIVISION FOR  
LOIS BISHOP

DAVID C. HUNTLEY & ASSOCIATES, INC.  
675 MAPLE STREET  
HENDERSONVILLE, NC 28792  
(828) 693-8077  
  
SURVEY DCH  
DRAWN KMC  
SCALE 1" = 60 FT.  
DATE: 10/23/17  
DWG. NO. H-7085