

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: August 5, 2019

SUBJECT: Request by Mr. and Mrs. Walter Johnson to Close an Un-opened Right of Way and Set Public Hearing

PRESENTER: Autumn Radcliff – Planning Director

ATTACHMENT(S): 1) Petition to close Right of Way  
2) Plat of area  
3) Survey of area  
4) Copy of N.C. G. S. 153A-241  
5) Proposed Resolution

### SUMMARY OF REQUEST:

Mr. and Mrs. Walter Johnson have submitted a petition to close an un-opened right of way (ROW) located on or adjacent to their property. Under N.C. Gen. Stat. §153A-241, the Board can close any public road or easement which meets the requirements of that statute (copy attached). The requirements are:

- The road or easement must be located within the County and not within any municipality.
- The road or easement must not be under the control and supervision of the North Carolina Department of Transportation.

This property is located outside any municipality in Henderson County according to the County's GIS and is not a part of the DOT. Under §153A-241, the following procedure is required to be followed by the Board.

1. The Board must first adopt a resolution "declaring its intent to close the public road or easement and calling a public hearing on the question."
2. The public hearing be noticed in a way "reasonably calculated to give full and fair disclosure of the proposed closing".
3. The notice of the public hearing must be published in the newspaper once a week for three (3) weeks.
4. A copy of the resolution adopted above must be sent by registered or certified mail to "each owner as shown on the county tax records of property adjoining the public road or easement who did not join in the request to have the road or easement closed".
5. A notice of closing and of the public hearing must be "prominently posted" in at least two places along the road or easement.
6. The Board must hold the public hearing and hear "all interested persons" on the issue as to whether the closing "would be detrimental to the public interest or to any individual property rights."
7. After the hearing, the Board must be "satisfied that closing the easement is not contrary to the public interest".

### BOARD ACTION REQUESTED:

Approval of the resolution to begin the road/ easement closing process and set public hearing.

**Suggested Motion:** I move that the Board adopt the proposed Resolution and set the public hearing for Wednesday, September 18, 2019 at 9:00 AM.

# COINER & HARRELSON, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

FRANCIS M. COINER 1923-2004  
EDWARD L. HARRELSON  
[WWW.EDWARDHARRELSON.COM](http://WWW.EDWARDHARRELSON.COM)  
[EDWARD@CHSLEGAL.COM](mailto:EDWARD@CHSLEGAL.COM)

136 S. KING STREET, SUITE B  
HENDERSONVILLE, NC 28792  
TELEPHONE: (828) 698-2345  
FAX: (828) 697-1283

June 24, 2019

Curtis Griffin  
Henderson County Property Addressing  
100 N. King St.  
Hendersonville, N.C. 28792

Re: Permanent Road Closure – Section of Golden Street (Unopened)

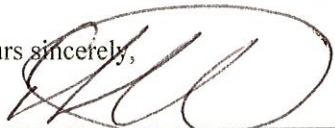
Dear Mr. Griffin:

I am writing on behalf of Walter Johnson and wife, Deborah S. Johnson (hereinafter referred to as Johnson) regarding the permanent closure of an unopened street pursuant to N.C.G.S. 153A-241. Johnson requests that the county permanently close that 0.07 ac+/- (3,024 sq.ft+/-) portion of the unopened Golden Street which adjoins the Johnson property and the 0.07ac+/- (3,261sq.ft+/-) portion of the unopened Golden Street which adjoins the Vanderlois property, as shown on an updated plat of survey by Freeland-Clinkscales & Associates. Johnson is joined in this request by the adjacent property owner, Bryan R. Vanderlois.

A map of the street to be closed is attached. Johnson and Vanderlois comprise all of the affected owners of property adjoining the section of unopened street to be closed. The section of street to be closed is not necessary for access to any lot. The street was previously identified as Gordon Street, as shown on that plat entitled "Section of Central Park" dated September 27, 1941 and recorded in Plat Book 3, at Page 149 (now re-indexed to Plat Cabinet B, Slide 280), Henderson County Registry, which is a re-plat of a portion of the Annex Park property referred to in that plat entitled "W.A. Smith ~ Cole Land ~ Annex Park" dated July, 1913 and recorded in Plat Book 3, at Page 85 (now re-indexed to Plat Cabinet B, Slide 247-A), Henderson County Registry.

It is the desire of Johnson and adjoining owner Vanderlois to permanently close the unopened sections of Golden Street referenced above. It is the understanding of the parties that once closed, one half of each right of way will vest in the adjoining owner. Should you have any questions or require any further documentation, please do not hesitate to contact me.

Yours sincerely,



---

Edward L. Harrelson  
ELH/lb  
Enclosures

**CONSENT TO REQUEST FOR STREET CLOSURE  
PORTION OF THE UNOPENED GOLDEN STREET**

We join in this petition to permanently close the unopened streets identified in the letter of Edward L. Harrelson dated June 24, 2019.

  
WALTER JOHNSON

  
DEBORAH S. JOHNSON

Address: 1952 Davis Mtn Rd

Hendersonville NC 28739

Phone: (828) 606-5592

E-Mail: waltjohnsondeb@gmail.com

Owner of: 545 Broadway St.  
Hendersonville, N.C. 28739  
REID 112667

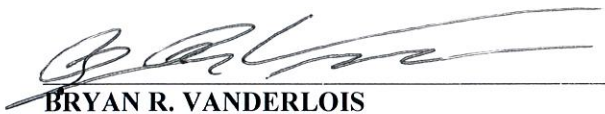
Address: 1952 Davis Mtn Rd

Hendersonville NC 28739

Phone: (828) 696-7847

E-Mail: waltjohnsondeb@gmail.com

Owner of: 545 Broadway St.  
Hendersonville, N.C. 28739  
REID 112667

  
BRYAN R. VANDERLOIS

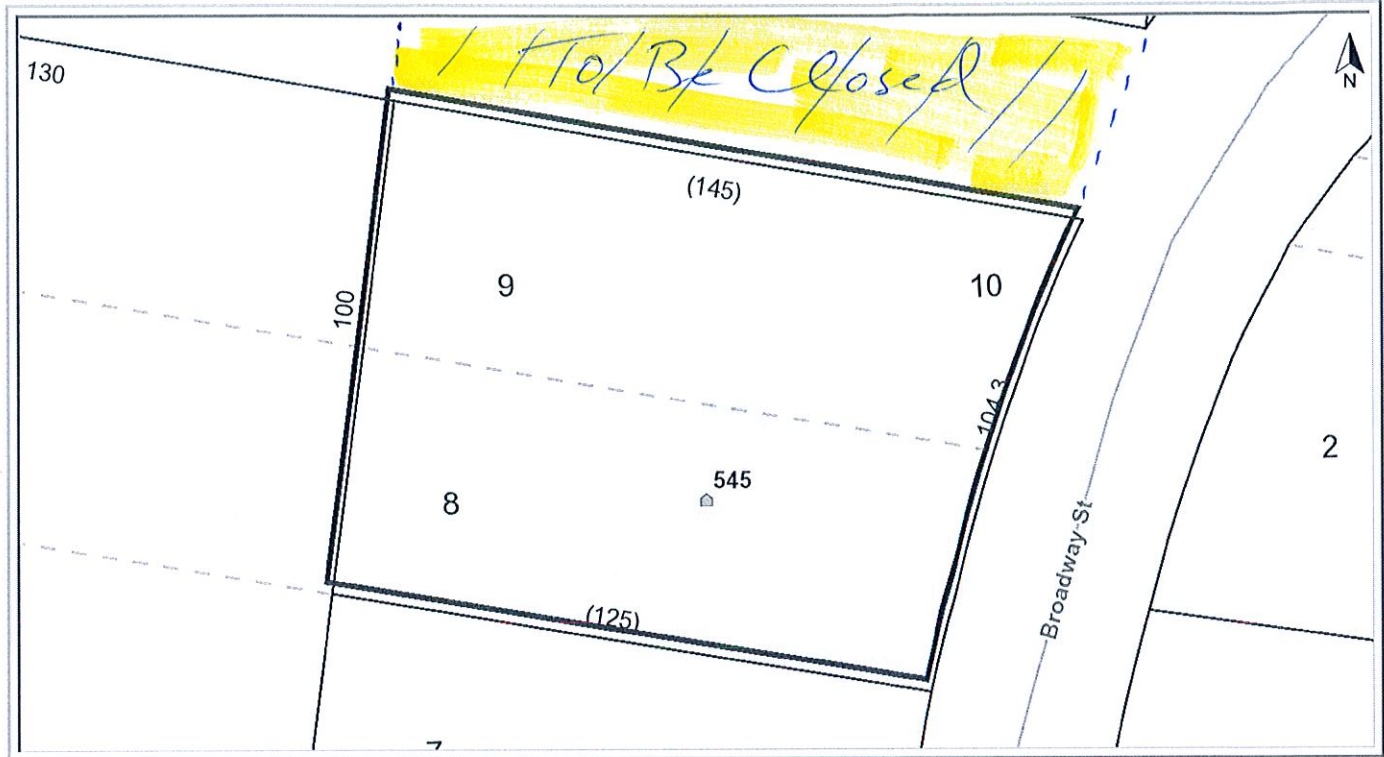
Address: 1512 Brevard Rd

Hendersonville, NC 28791

Phone: 828-774-8864

E-Mail: Bry228@gmail.com

Owner of: 1512 Brevard Rd.  
Hendersonville, N.C. 28739  
REID 114841



WARNING: THIS IS NOT A SURVEY

Parcel Information

<b>REID:</b>	112667	<b>Pin:</b>	9568096037
<b>Listed to:</b>	JOHNSON, WALTER M; JOHNSON, DEBORAH S	<b>Neighborhood:</b>	VH HWY 64
<b>Mailing Address:</b>	1952 DAVIS MOUNTAIN RD	<b>Township:</b>	Hendersonville
<b>Mailing City, State, Zip:</b>	HENDERSONVILLE, NC 28739	<b>Municipality:</b>	
<b>Physical Address:</b>	545 BROADWAY ST	<b>Tax District:</b>	VALLEY HILL FIRE
<b>Deed:</b>	001619/00629	<b>Plat:</b>	B 280
<b>Date Recorded:</b>	2015-06-11 00:01:00.0	<b>Elementary School District:</b>	BRUCE DRYSDALE
<b>Revenue Stamps:</b>	180	<b>Middle School District:</b>	HENDERSONVILLE MIDDLE
<b>County Zoning:</b>	Cities	<b>High School District:</b>	HENDERSONVILLE HIGH
<b>Property Description:</b>	CENTRAL PARK LO8&9 BMB-280	<b>Soil:</b>	
<b>Map Sheet:</b>	9568.05	<b>Voting Precinct:</b>	Southwest
<b>Assessed Acreage:</b>	0.30000000	<b>Commissioner District</b>	1
<b>Building Value:</b>	\$69,600.00	<b>Agricultural District</b>	None Found
<b>Land Value:</b>	\$22,500.00	<b>North Carolina House District</b>	117
<b>Value To Be Billed:</b>	\$92,100.00	<b>U.S. House District</b>	11
<b>North Carolina Senate District</b>	48	<b>Flood Zone:</b>	Zone X, Not Shaded (Areas outside of the floodplain)

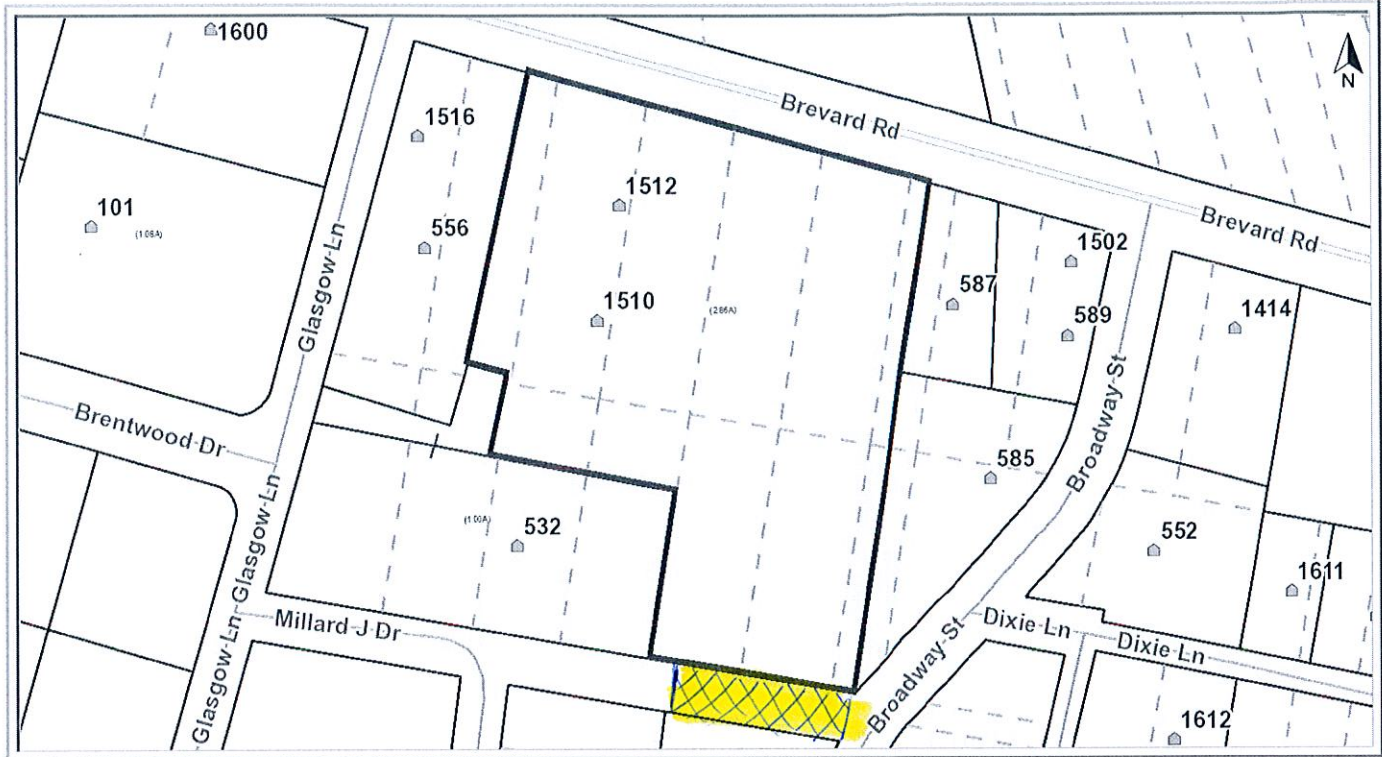


Henderson County  
 Geographic Information Systems (GIS)  
 200 North Grove Street  
 Hendersonville, NC 28792  
 P: (828) 698-5124  
 F: (828) 698-5122

**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).





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Parcel Information

<b>REID:</b>	114841	<b>Pin:</b>	9568096424
<b>Listed to:</b>	VANDERLOIS, BRYAN RUDOLPH	<b>Neighborhood:</b>	VH HWY 64
<b>Mailing Address:</b>	1512 BREVARD RD	<b>Township:</b>	Hendersonville
<b>Mailing City, State, Zip:</b>	HENDERSONVILLE, NC 28739	<b>Municipality:</b>	
<b>Physical Address:</b>	1512 BREVARD RD	<b>Tax District:</b>	VALLEY HILL FIRE
<b>Deed:</b>	003047/00371	<b>Plat:</b>	Not Available
<b>Date Recorded:</b>	2017-04-28 15:53:00.0	<b>Elementary School District:</b>	BRUCE DRYSDALE
<b>Revenue Stamps:</b>	350	<b>Middle School District:</b>	HENDERSONVILLE MIDDLE
<b>County Zoning:</b>	Cities	<b>High School District:</b>	HENDERSONVILLE HIGH
<b>Property Description:</b>	US64W ON	<b>Soil:</b>	
<b>Map Sheet:</b>	9568.05	<b>Voting Precinct:</b>	Southwest
<b>Assessed Acreage:</b>	2.86000000	<b>Commissioner District</b>	1
<b>Building Value:</b>	\$60,200.00	<b>Agricultural District</b>	None Found
<b>Land Value:</b>	\$57,100.00	<b>North Carolina House District</b>	117
<b>Value To Be Billed:</b>	\$117,300.00	<b>U.S. House District</b>	11
<b>North Carolina Senate District</b>	48	<b>Flood Zone:</b>	Zone X, Not Shaded (Areas outside of the floodplain)



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<b>Revenue Stamps:</b>	180	<b>Middle School District:</b>	HENDERSONVILLE MIDDLE
<b>County Zoning:</b>	Cities	<b>High School District:</b>	HENDERSONVILLE HIGH
<b>Property Description:</b>	CENTRAL PARK LO8&9 BMB-280	<b>Soil:</b>	
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<b>Assessed Acreage:</b>	0.30000000	<b>Commissioner District</b>	1
<b>Building Value:</b>	\$69,600.00	<b>Agricultural District</b>	None Found
<b>Land Value:</b>	\$22,500.00	<b>North Carolina House District</b>	117
<b>Value To Be Billed:</b>	\$92,100.00	<b>U.S. House District</b>	11
<b>North Carolina Senate District</b>	48	<b>Flood Zone:</b>	Zone X, Not Shaded (Areas outside of the floodplain)



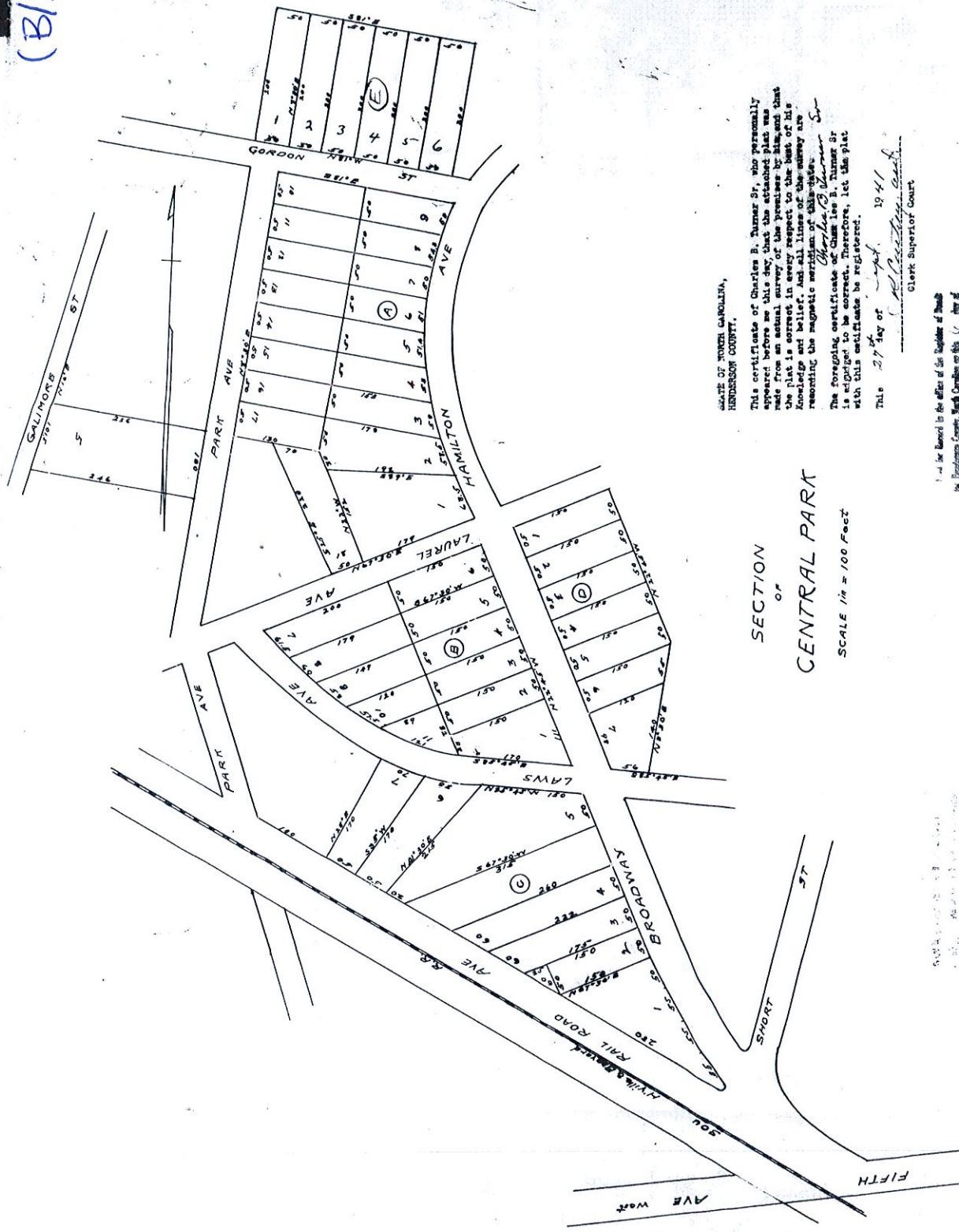
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141  
(B1280)



STATE OF NORTH CAROLINA,  
HENDERSON COUNTY.

This certificate of Charles B. Turner Sr, who personally appeared before me this day, that the attached plat was made from an actual survey of the premises by him, and that the plat is correct in every respect to the best of his knowledge and belief, and that the survey is being recorded in the public records of Henderson County, North Carolina, this 27 day of Sept. 1941.

The foregoing certificate of Charles B. Turner Sr is adjudged to be correct. Therefore, let the plat with this certificate be registered.

This 27 day of Sept. 1941  
*Charles B. Turner Sr*  
 Clerk Superior Court

SECTION  
OF  
CENTRAL PART  
SCALE 1 in = 100 Feet

I am for Banned in the office of the Register of Deeds  
 in Henderson County, North Carolina on this 14 day of  
 Oct. 1941 at 11:00 AM  
 and recorded and filed in the  
 in Book 149 at page 149  
 Register of Deeds



(B247A)

Map of North Carolina

WA. SMITH, COLE LAND

ANNEX PARK

Surveyed and plotted by C.W. Justice & W.C. Jordan

July, 1913.

Scale = 1" = 100'

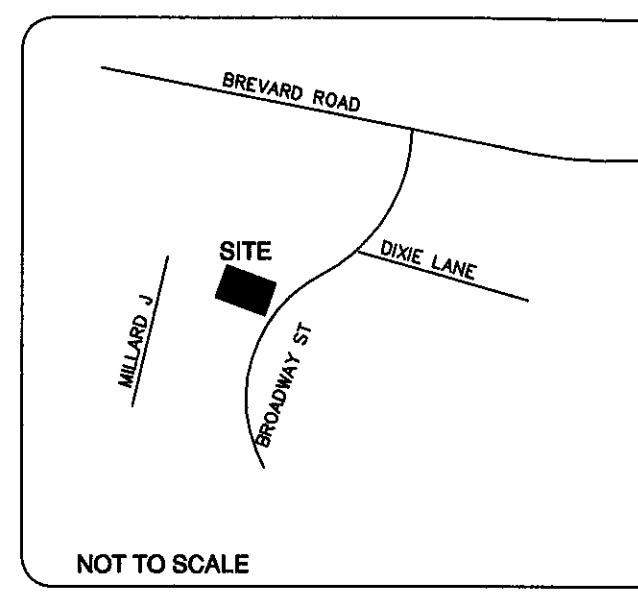
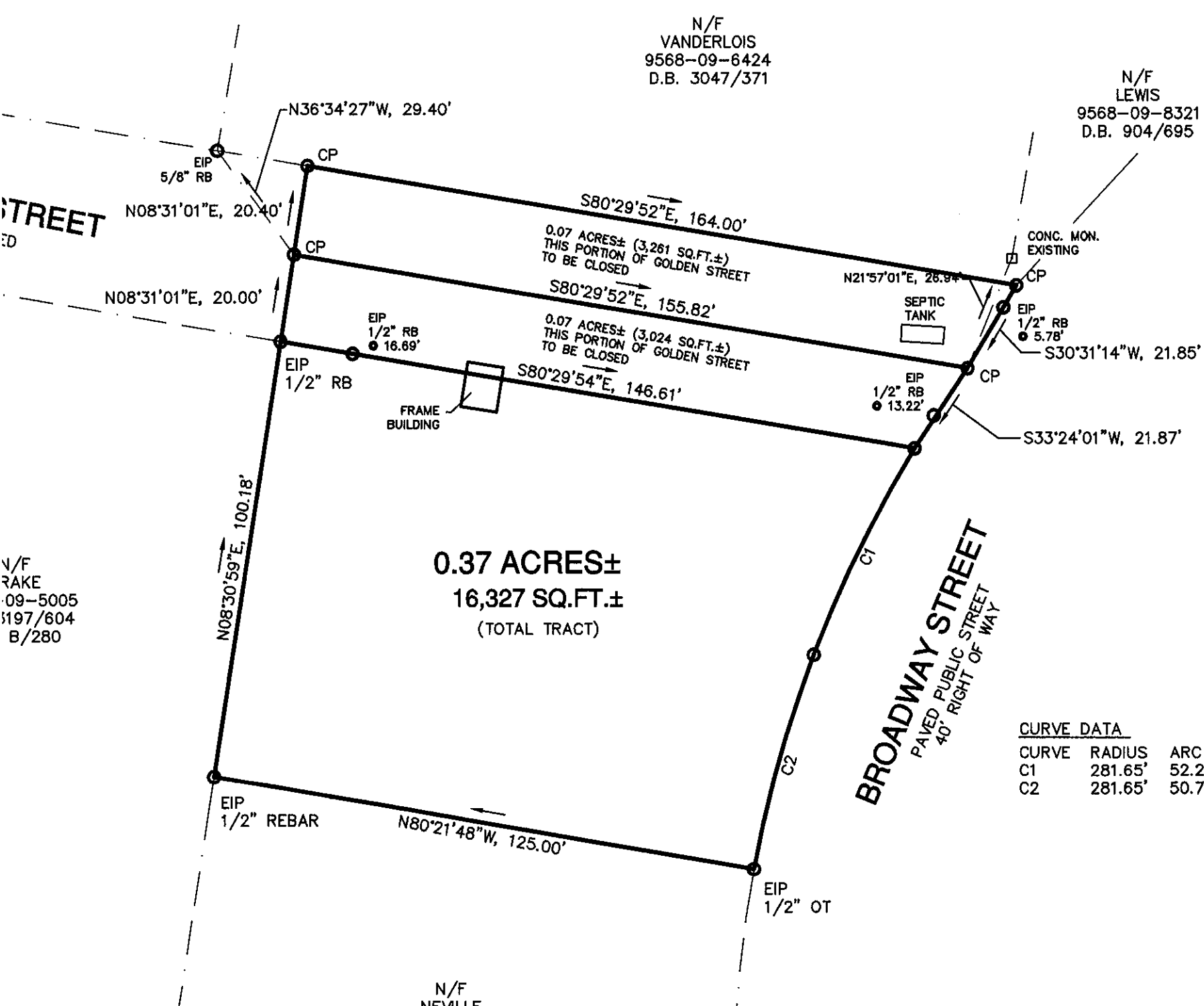


Block of North Carolina, showing boundary. This is to verify that the location of the plat is truly permanent. The street was shown on the plat and the width and measurement of 46 feet. The plat was made in 1913 and the street was not laid out until 1914. The plat was made by the surveyor and the street was laid out by the city. The plat was made in 1913 and the street was not laid out until 1914. The plat was made by the surveyor and the street was laid out by the city. The plat was made in 1913 and the street was not laid out until 1914. The plat was made by the surveyor and the street was laid out by the city.



79-374





I, Fulton V. Clinkscales, Jr., certify that this plat was prepared under my supervision from an actual survey made under my supervision (Deed description recorded in Book xxx, page xxx) and that the boundaries not surveyed are clearly indicated from information found in Book \_\_\_\_\_, Page \_\_\_\_\_; that the precision of precision as calculated is 1:10,000; that this plat is in accordance with G.S. 47-30 as amended. Witness my signature, license number and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019, A.D..

f.(11)d. This survey is of another category, such as the recombination of existing parcels, a court ordered survey, or an exception to the definition of subdivision.

Professional Land Surveyor Fulton V. Clinkscales, Jr.  
License Number L-2614

State of North Carolina  
xxxxxxx County

I, \_\_\_\_\_, Review Officer of xxxxxxx County, certify that the map or plat to be recorded meets all statutory requirements for recording.

Review Officer

Filed and recorded in the Register of Deeds Office for xxxxxxx County, N.C. this \_\_\_\_\_ day of xxxxxxx, xxxx o'clock \_\_\_M in Slide \_\_\_\_\_

Register of Deeds

**§ 153A-241. Closing public roads or easements.**

A county may permanently close any public road or any easement within the county and not within a city, except public roads or easements for public roads under the control and supervision of the Department of Transportation. The board of commissioners shall first adopt a resolution declaring its intent to close the public road or easement and calling a public hearing on the question. The board shall cause a notice of the public hearing reasonably calculated to give full and fair disclosure of the proposed closing to be published once a week for three successive weeks before the hearing, a copy of the resolution to be sent by registered or certified mail to each owner as shown on the county tax records of property adjoining the public road or easement who did not join in the request to have the road or easement closed, and a notice of the closing and public hearing to be prominently posted in at least two places along the road or easement. At the hearing the board shall hear all interested persons who appear with respect to whether the closing would be detrimental to the public interest or to any individual property rights. If, after the hearing, the board of commissioners is satisfied that closing the public road or easement is not contrary to the public interest and (in the case of a road) that no individual owning property in the vicinity of the road or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the board may adopt an order closing the road or easement. A certified copy of the order (or judgment of the court) shall be filed in the office of the register of deeds of the county.

Any person aggrieved by the closing of a public road or an easement may appeal the board of commissioners' order to the appropriate division of the General Court of Justice within 30 days after the day the order is adopted. The court shall hear the matter de novo and has jurisdiction to try the issues arising and to order the road or easement closed upon proper findings of fact by the trier of fact.

No cause of action founded upon the invalidity of a proceeding taken in closing a public road or an easement may be asserted except in an action or proceeding begun within 30 days after the day the order is adopted.

Upon the closing of a public road or an easement pursuant to this section, all right, title, and interest in the right-of-way is vested in those persons owning lots or parcels of land adjacent to the road or easement, and the title of each adjoining landowner, for the width of his abutting land, extends to the center line of the public road or easement. However, the right, title or interest vested in an adjoining landowner by this paragraph remains subject to any public utility use or facility located on, over, or under the road or easement immediately before its closing, until the landowner or any successor thereto pays to the utility involved the reasonable cost of removing and relocating the facility. (1949, c. 1208, ss. 1-3; 1957, c. 65, s. 11; 1965, cc. 665, 801; 1971, c. 595; 1973, c. 507, s. 5; c. 822, s. 1; 1977, c. 464, s. 34; 1995, c. 374, s. 1.)



**Henderson County  
North Carolina**

**Before the Board of Commissioners**

**Resolution on Proposed Road or Easement Closing**

BOARD OF COMMISSIONERS ENACTMENT 2019-\_\_\_\_

WHEREAS, N.C. Gen. Stat. §153A-241 allows for the closing by a county of any public road or easement located within the county but not within a municipality; and

WHEREAS, the Board of Commissioners of Henderson County has received a petition from Mr. and Mrs. Walter Johnson for the closing of an unopened Right of Way, as shown as the yellow highlighted area indicated on the attached copy of plat; and

WHEREAS, the Board of Commissioners of Henderson County, following the procedures required by §153A-241, are adopting this Resolution declaring their intent to possibly close the public road or easement, and of their intent to hold a public hearing on the question.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The Board of Commissioners shall hold a public hearing on the 18th day of September, 2019, at 9:00 o'clock a.m., on the issue of whether to close the public road/easements noted above.
2. A notice of this public hearing, giving full and fair disclosure of the proposed closing, shall be published once a week for three (3) weeks.
3. A copy of this notice shall be sent by registered or certified mail to each owner as shown on the county tax records of property adjoining the public road or easement who did not join in the request to have the road or easement closed.
4. A copy of this Resolution and the public hearing notice shall be prominently posted in at least two places along the road or easement.

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5. At the conclusion of the public hearing, the Board of Commissioners will determine whether or not closing the public road or easement is contrary to the public interest and (in the case of a road) whether any individual owning property in the vicinity of the road or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to their property. If the Board finds that such closing would not be contrary to the public interest and that, in the case of a road, that no individual would be deprived of reasonable means of ingress or egress, the Board may grant the closing of the public road or easement.

Adopted this the 5th day of August, 2019.

HENDERSON COUNTY BOARD OF COMMISSIONERS

By: \_\_\_\_\_  
GRADY HAWKINS, Chairman Attest:

\_\_\_\_\_  
TERESA L. WILSON, Clerk to the Board