

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
Zoning Board of Adjustment

MEETING DATES: 9/15/20 TRC 9/30/20 ZBA

SUBJECT: Variance Application (V-20-03) located at 398 Laurel Mountain Trl

PRESENTER: Toby Linville, Code Enforcement Director

ATTACHMENTS:

1. Staff Report
2. Photographs
3. Site Plan

SUMMARY OF REQUEST:

The applicant is requesting a variance to allow an encroachment into the front yard setback. Section §42-29 (Residential District Two Rural (R2R)) of the Henderson County Land Development Code requires a 15' front yard setback from the edge of the right-of-way. This is a variance of 5'10" making the setback 9'2" from the edge of the right-of-way.

Suggested Motion:

I move that the Technical Review Committee recommend review to the Zoning Board of Adjustment.

I move that the Board of Adjustment approve/deny variance application V-20-03 because it meets/does not meet the requirements of the Land Development Code to grant a variance.

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

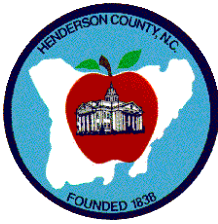
- 1. The fact that, if the *applicant* complies with the literal terms of this Chapter, he/she cannot secure a reasonable return from, or make a reasonable *use* of, the property.**
- 2. The hardship of which the *applicant* complains results from unique circumstances related to the *applicant's* land.**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



Henderson County, North Carolina Code Enforcement Services

1 Committee Request

- 1.1. **Applicant:** Charles Morris and Anne Lee
- 1.2. **Request:** Front yard setback variance
- 1.3. **PIN:** 9596816684
- 1.4. **Size:** 2.08 acres +/-
- 1.5. **Location:** The subject area is off Laurel Mountain Trl in Saluda
- 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*.

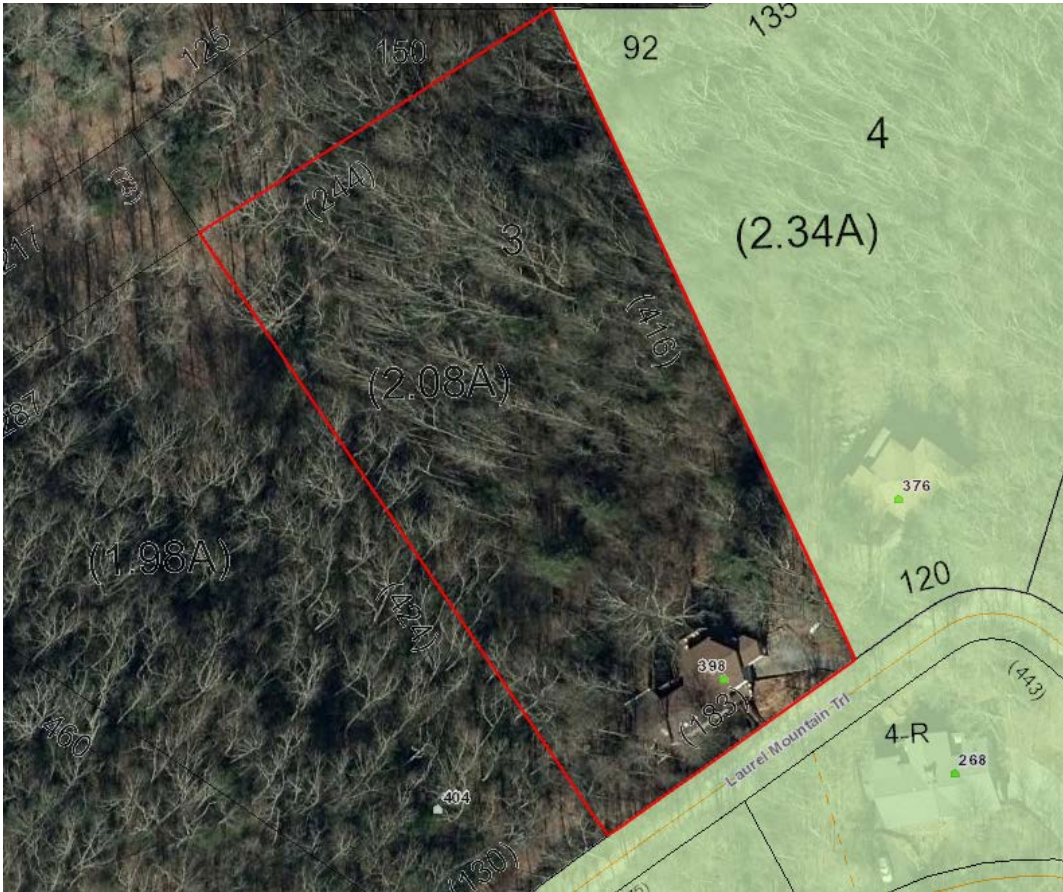
e. The *Variance* shall not allow for an increase in density for the purposes of subdividing the land that would otherwise not be permitted by the applicable zoning district or *subdivision* regulations.

(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/Pictometry



2. Current Conditions

2.1 Current Use: The parcel is residential

2.2 Adjacent Area Uses: The surrounding properties are residential.

2.3 Zoning: The subject property and surrounding properties are R2R and City of Saluda.

Map B: Current Zoning



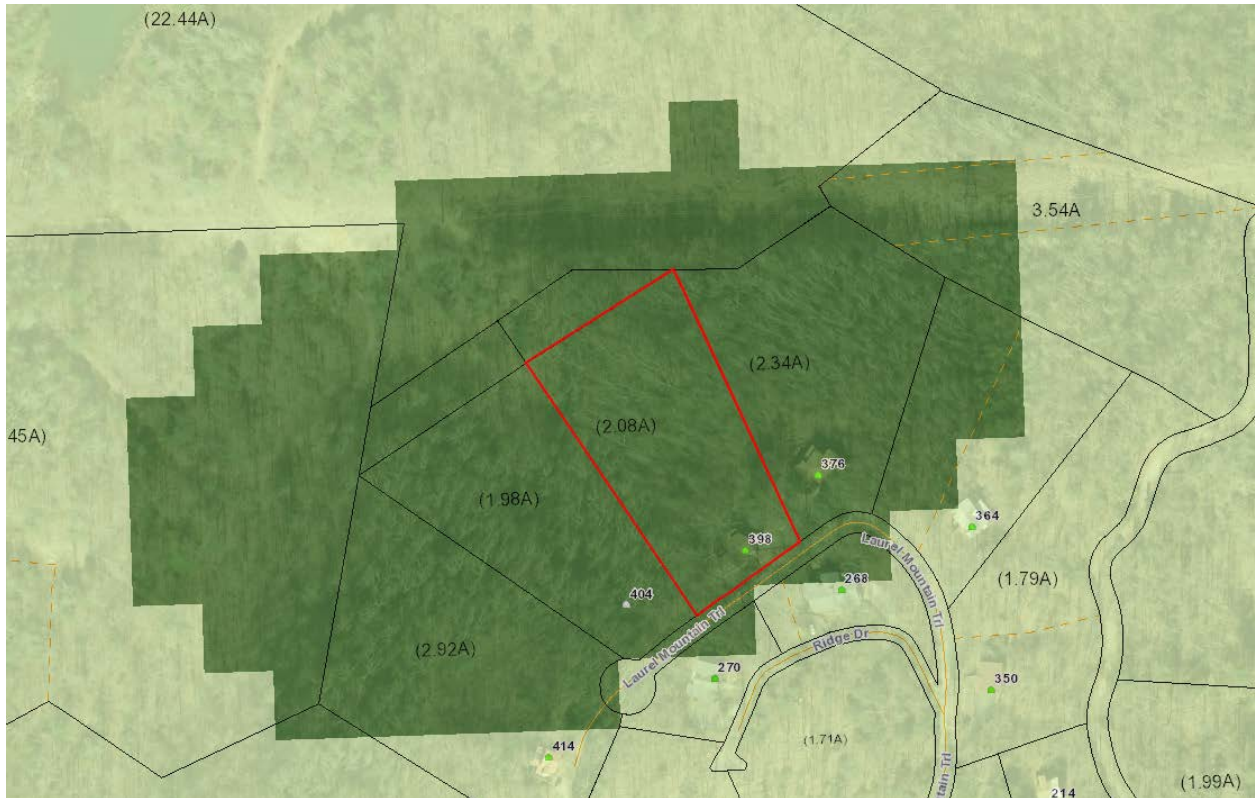
3. **Floodplain /Watershed Protection:** The property is not located in a Special Flood Hazard Area. The property is not located in a Water Supply Watershed district.

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

Public Water: City of Saluda

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 “Conservation Area” classification. The text and map of the 2020 CCP suggest that the Subject Area would be more suitable for the following:

This category includes land areas that are intended to remain largely in their natural state, with only limited development. Such areas should be targeted for protection through regulations and incentives. Conservation areas are lands that generally exhibit any of the following characteristics:

1. Sensitive natural areas such as steep slopes, floodplains, major wetlands, forest reserves and wildlife conservation areas, and key watersheds
2. Areas of historic and archeological significance
3. Local, state or federally managed natural areas
4. Areas managed for agricultural or forestry land uses
5. Other areas yet to be defined

6. Staff Recommendations

TRC recommends forwarding the site plan and application to the Zoning Board of Adjustment for review.

7. Photographs



08.25.2020 13:45



08.25.2020 13:46



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08.25.2020 13:47



08.25.2020 14:04



Application No. _____

**HENDERSON COUNTY
VARIANCE APPLICATION FORM**

GENERAL INFORMATION

Date of Application: 9/1/2020
Previously Submitted (Circle One): Yes No
Date of Pre-Application Conference: 8/25/2020
Site Plan Attached (Circle One): Yes No

PARCEL INFORMATION

Property Address 398 Laurel Mountain Trail Saluda, NC 28773
PIN: 9596816684 Deed Book/Page: 3003/42 Acreage: 2.08 ac
Zoning District: R2R Fire District: Saluda Fire Watershed: Broad River Basin Floodplain: NA
Driving Directions: From Saluda Public Library: Take a "R" onto Carolina St, a "L" onto Henderson St, a "L" onto Esseola St, a "R" onto Macedonia Rd. Drive through the cemetery. Turn "L" onto Laurel Mountain Trail. Proceed to the end of the asphalt road. The house is the last on the right before the road turns to gravel.

REASON FOR VARIANCE Please See Attached Document

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

PROPERTY OWNER CONTACT INFORMATION:

Name: Charles Morris & Anne Lee Phone: 843-437-8416
Address: P.O. Box 56 City, State, and Zip: Saluda, NC 28773

Applicant:

Name: Charles Morris & Anne Lee Phone: 843-437-8416
Address: 398 Laurel Mountain Trail City, State, and Zip: Saluda, NC 28773

Agent:

Name: Hunter Marks, RLA Phone: 828-551-7105
Address: 513 N Justice Street City, State, and Zip: Hendersonville, NC 28739

Agent Form (Circle One): Yes No

Plan Preparer:

Name: Watermark Landscape Architecture Phone: 828-551-7105
Address: 513 N Justice Street City, State, and Zip: Hendersonville, NC 28739

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.)

Please See Attached Document

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.)

Please See Attached Document

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

Please See Attached Document

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.)

Please See Attached Document

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.)

Please See Attached Document

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.

Please See Attached Document

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

Hunter Marks

Print Applicant (Owner or Agent)

8/27/20

Signature Applicant (Owner or Agent)

Date

County Use Only

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

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

I Anne Lee owner of property located on 398 Laurel Mountain Trail Saluda, NC 28773,
(Name) (Street Address)
recorded in 3003/42 and having a parcel identification number of 9596816684,
(Deed Book/Page) (PIN)

located in Henderson County, North Carolina, do hereby appoint Hunter Marks,
(Agent's Name)
828-551-7105, 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.

Anne Lee

Anne Lee (Aug 27, 2020 11:59 EDT)

(Property Owner)

8/27/20

(Date)

Narrative:

The clients are renovating an existing house, originally constructed in 1990. The site topography is very steep, with an average grade of approximately fifty percent. This resulted in the original house being placed closer to the road than other houses on the street. The client would like to build a garage. We have explored several options. There are no reasonable locations on site due to the steep topography and utility conflicts. A garage is not practical, and the existing drive is dangerous and is causing drainage issues. We have assessed the site and in our professional opinion the best and most reasonable option to provide vehicular access and parking is a new driveway with a covered drop-off at the entrance of the house.

The proposed covered drop-off extends into the front setback a maximum of 5'11". The infringement into the setback consists of a roof extension from the house supported by two columns. The proposed extension has been kept to a design minimum. Please see the hatched area on the attached Site Plan. We have also included a color rendering with this submittal to provide clarification.

In the area of the proposed drop off there is currently a non-conforming deck and walk original to the house. With the approval of this variance the client would have the opportunity to remove the non-conforming structure and to replace it with a safer conforming brick walk.

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.)

Vehicular access and parking are needed for any residence. We believe the requested variance is the most reasonable location on site for this to occur.

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.)

The topography of the site is approximately fifty percent grade. There are no other reasonable options for vehicular access and parking.

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

This is an existing lot with an existing structure under renovation. The site topography and resulting location of the house presents a hardship to the clients in that there is no other reasonable option for vehicular access and parking.

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.)

The requested variance is in harmony with the Land Development Code as it replicates similar vehicular circulation and parking found in the neighborhood.

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.)

The proposed improvements will improve the safety of the site by eliminating the existing unsafe drive and non-conforming deck and walk.

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.

The proposed variance is not based on nonconforming uses in the neighborhood.



Know what's below.
Call before you dig.

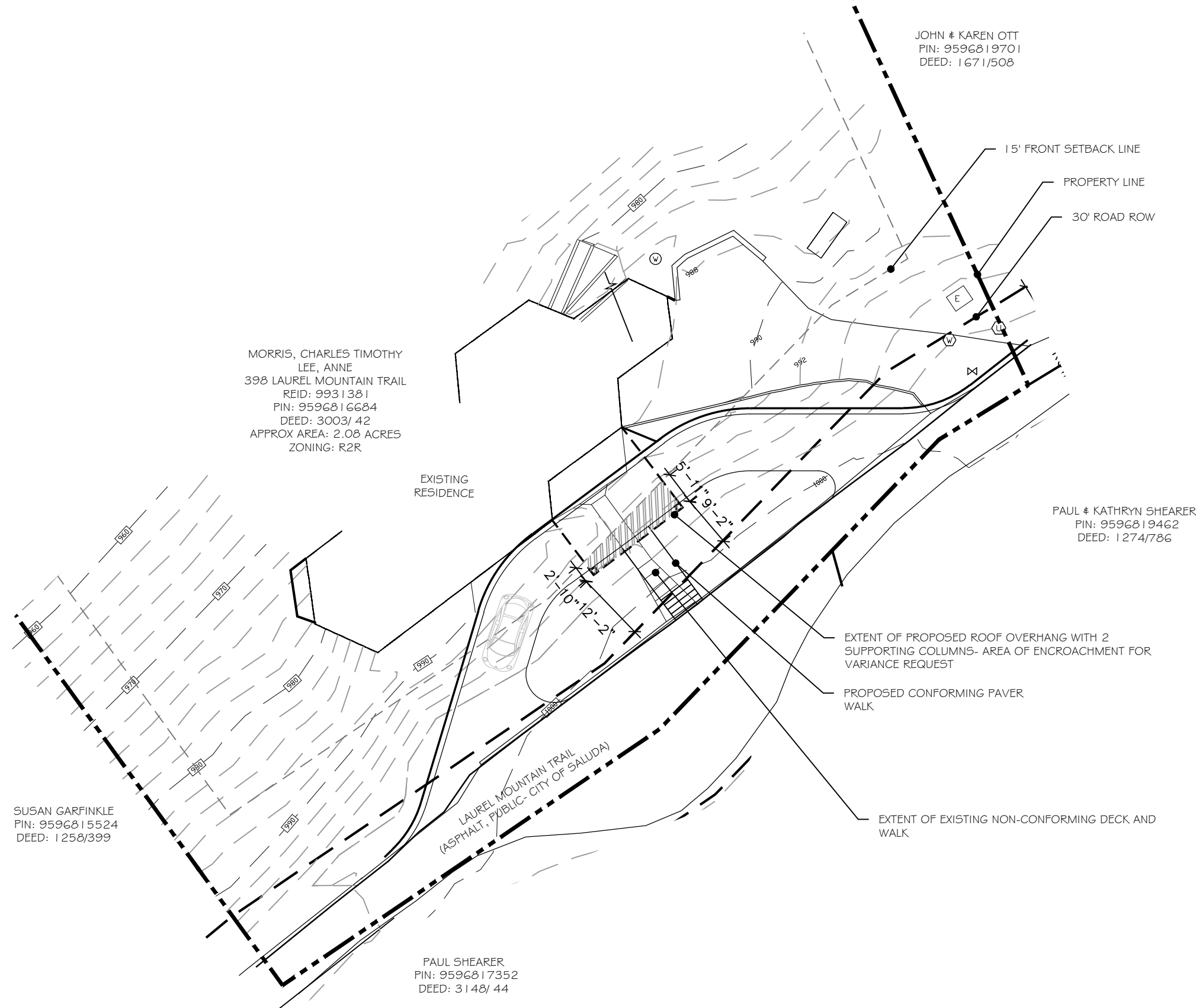
LEE/MORRIS RESIDENCE

OWNERS CHARLES TIMOTHY MORRIS & ANNE LEE
P.O. BOX 56
SALUDA, NC 28773
(843) 437-8416 (ANNE)

LANDSCAPE ARCHITECT HUNTER MARKS, RLA, ASLA, LEED AP
WATERMARK LANDSCAPE ARCHITECTURE
511 EAST CROOKED CREEK LANE
HENDERSONVILLE, NC 28739
(828) 595-2327

BUILDER AARON BURDETT
SOLSTICE CONSTRUCTION COMPANY, INC.
P.O. BOX 474
SALUDA, NC 28773
(828) 817-3229

SURVEYOR DAVID C HUNTLEY & ASSOCIATES
675 MAPLE STREET
HENDERSONVILLE, NC 28792
(828) 674-1232



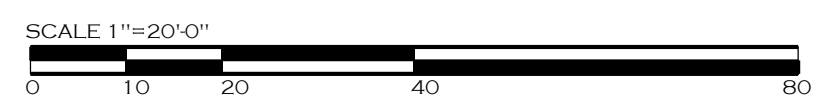
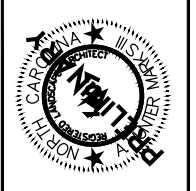
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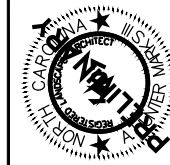
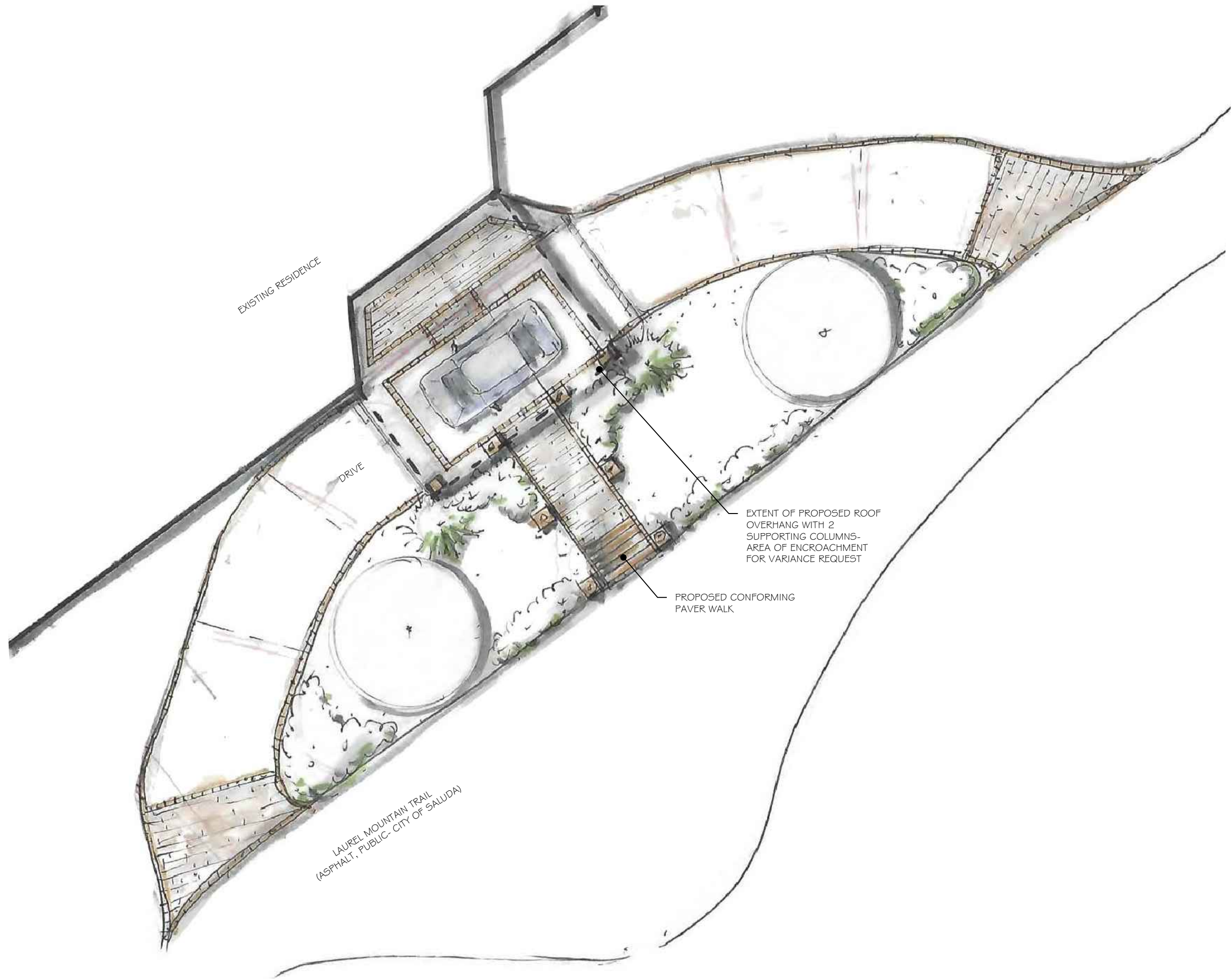
LEE/MORRIS RESIDENCE
HENDERSON COUNTY, NORTH CAROLINA

Date	Drawn By
08-25-2020	REJ
Job No:	Checked By:
200305RE	AHM
	Revisions

SITE PLAN FOR VARIANCE REQUEST
LA-2



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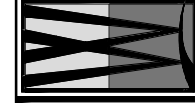
SUPPORTING GRAPHIC

LA-2

Date	Drawn By
08-27-2020	REJ
Job No:	Checked By:
20030508E	AHM
	Revisions

MORRIS-LEE RESIDENCE

HENDERSON COUNTY, NORTH CAROLINA



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