

REQUEST FOR COMMITTEE ACTION

HENDERSON COUNTY

Zoning Board of Adjustment

MEETING: June 24, 2020 continued July 29, 2020

SUBJECT: Barnwell Appeal

PRESENTER: Toby Linville

ATTACHMENTS: Staff Report

SUMMARY OF REQUEST: Appeal of Chapter 42 Land Development Code

**Suggested Motion: I move to uphold/overturn the Notice of Violation for a Zoning Violation at
105 Georgetown Rd**



Henderson County, North Carolina Code Enforcement Services

1. Committee Request

- 1.1. **Applicant:** Gary Barnwell
- 1.2. **Request:** Appeal of Chapter 42 Land Development Code
- 1.3. **PIN:** 9557773440
- 1.4. **Size:** 10.52 acres +/-
- 1.5. **Location:** 105 Georgetown Rd

Timeline:

- 2/19/20 Notice of Violation mailed
- 3/23/20 Attorney Edney Requests Appeal
- 4/24/20 Appeal Filed
- 5/27/20 Deny Zoom Meeting
- 6/24/20 Continue to hire another attorney

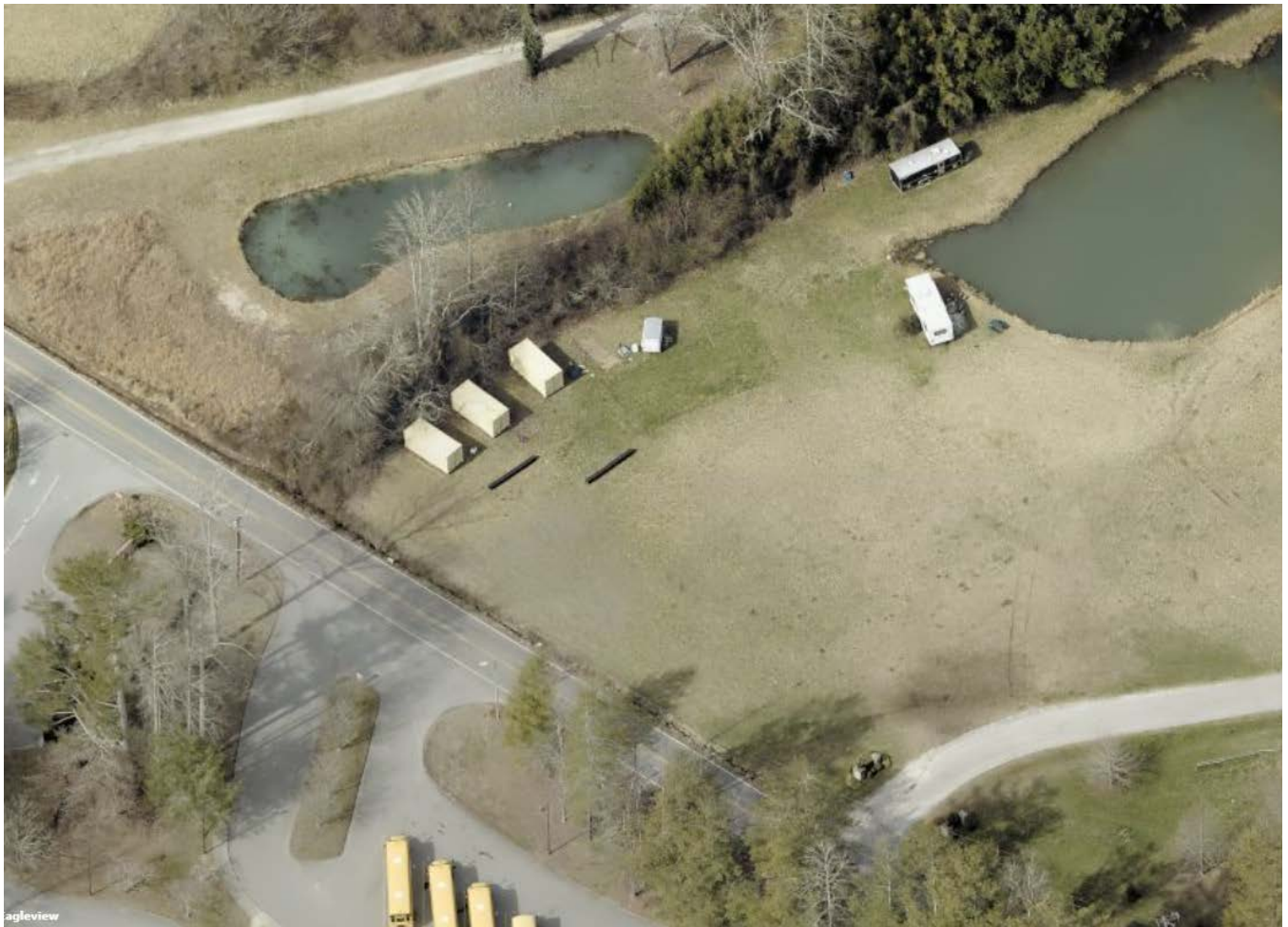
SR 12.1. Portable Storage Containers

- (1) Maximum Number Permitted Per Lot. One (1) for *residential zoning district* property.
- (2) Duration and Frequency. *Portable storage containers* shall be placed on *residential zoning district* property for no more than 30 days, no more than four (4) times in a 12-month period.
- (3) Permanent Structures. *Portable storage containers* may be permitted as *accessory structures*. In no case shall more than one (1) container be permitted on a single property or shall any permanent *accessory portable storage container* be permitted on *residential zoning district* property.

§42-379. Appeals

Questions arising in connection with the enforcement of this Chapter shall be presented first to the approving official or agency and shall be presented to the appellate agency only on *appeal* from the approving official or agency (See Table 12.1). *Appeals* must be filed 30 days from the date of the decision with the approving official or agency. Where the appellate agency is the Zoning Board of Adjustment (ZBA), the ZBA shall hold a public hearing on the *appeal* in accordance with §42-371 (Quasi-Judicial Process Standards).

Map A: Aerial Photo/Pictometry



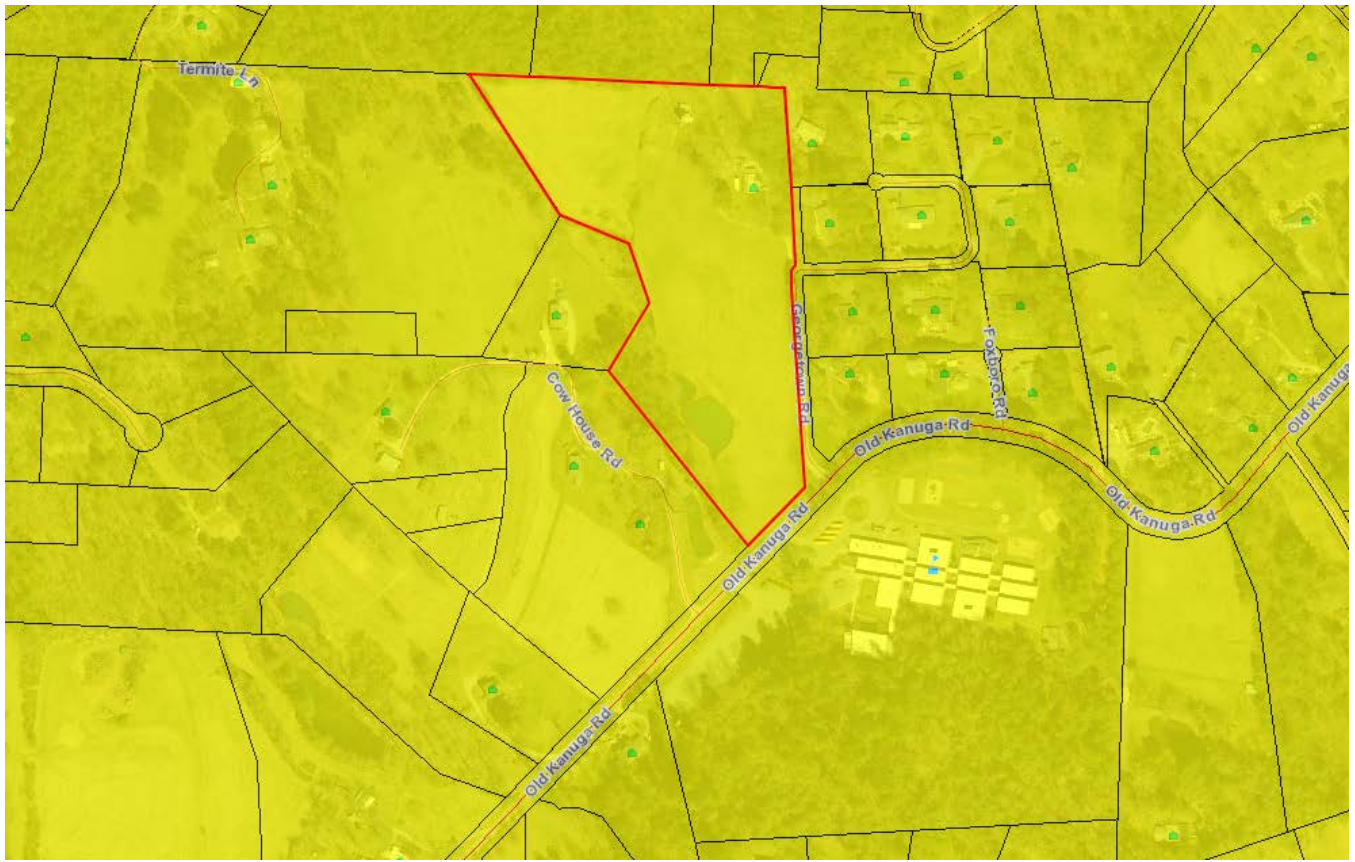
2. Current Conditions

2.1 Current Use: This parcel is currently in residential use.

2.2 Adjacent Area Uses: The surrounding properties are residential and institutional uses.

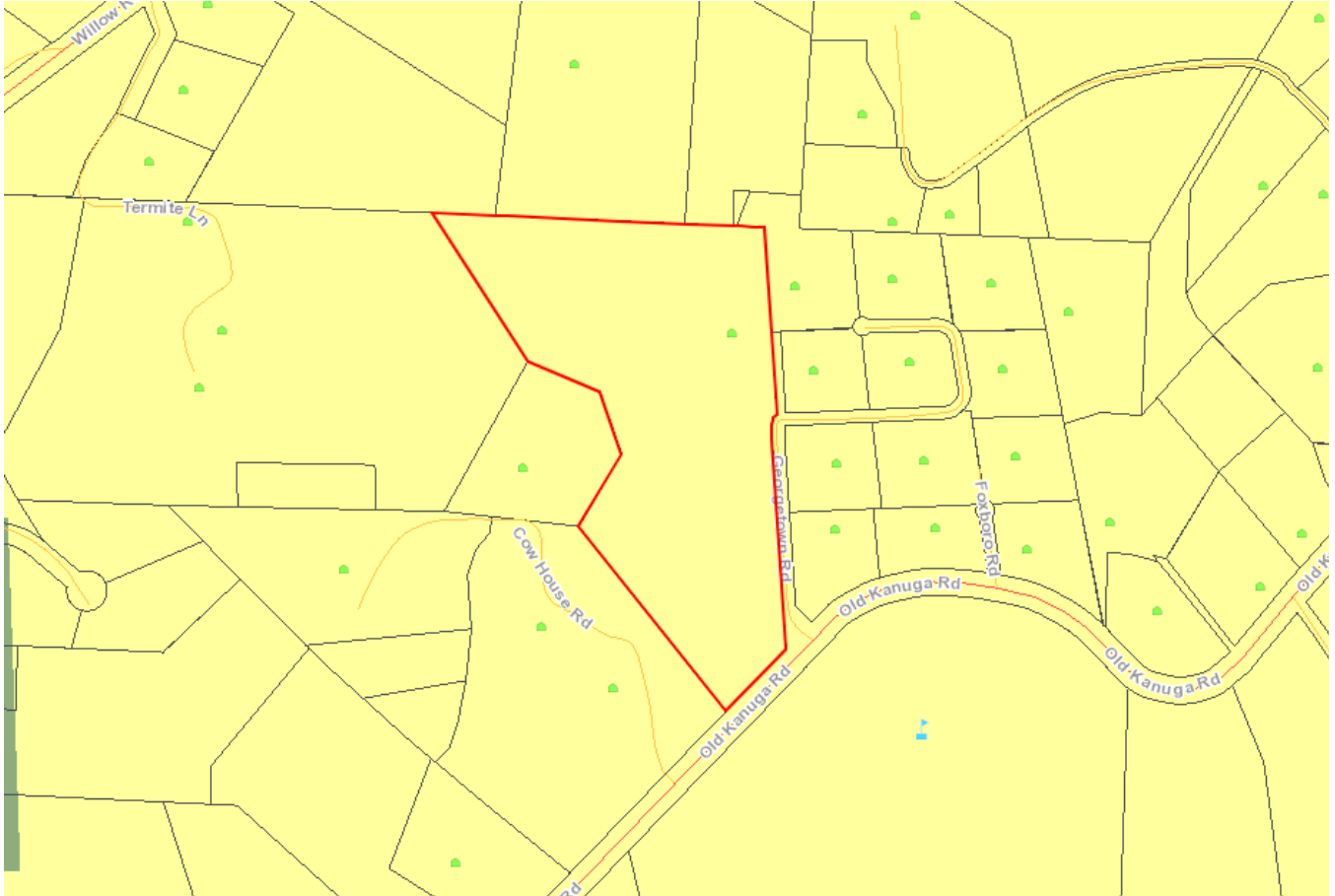
2.3 Zoning: The subject and surrounding properties are Estate Residential (R-40)

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** Private well and private septic system serve this property.
 - 4.1. **Public Water:** Public water is not available.
 - 4.2. **Public Sewer:** Public sewer is not available.

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

The following is a description of the patterns of development envisioned within the USA.

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, under the guidelines of current plans, policies and studies, is to overrule the appeal and uphold Henderson County’s decision to enforce the Public Health Nuisance Ordinance and require removal of all junked motor vehicles, and outdoor storage of solid waste.

7. Photographs



PUBLIC NOTICE
ZONING BOARD
SABINWELL APPEALS
6/11/20
100N KING SE



06.11.2020 15:19

GEORGETOWN RD

PRIVATE
PROPERTY
NO
TRESPASSING
VIOLATORS WILL
BE PROSECUTED

06.11.2020 15:19



06.11.2020 15:19

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

Notice of Violation and Declaration of Public Nuisance

Name of Violator / Property Owner: GARY BARNWELL
Street Address: 105 Georgetown Rd
PIN Number: 9597773440

On or about the 19 day of February, 2020, in the County of Henderson a violation of Henderson County Nuisance Ordinance Section 52 did occur by:

- 52-.03 A. Improper sewage disposal to such degree that sewage or effluent is discharging onto the surface of the ground, backing up into a structure, or discharging into a body of water.
- 52-.03 B. An unsecured opening caused by improperly abandoned cistern, well pit, sewage treatment system, unused or non-maintained swimming pool, mine shaft or tunnel.
- 52-.03 C. Failure to keep waste, refuse, or garbage in an enclosed building or properly contained in a closed, insect and rodent-proof container.
- 52-.03 D. Accumulation of carcasses of animals, birds, or fish by failing to bury or otherwise dispose of in a sanitary manner within 24 hours after death.
- 52-.03 E. Significant outdoor storage of solid waste.
- 52-.03 F. Accumulations of rubbish or junk as to become dangerous or injurious to the health and safety of any individual or to the public.
- 52-.03 G. Any junked motor vehicles without a current Vehicle Restoration Permit and/or any abandoned manufactured home.
- 52-.03 H. Infestations of flies, fleas, cockroaches, lice, rats, mice, fly larvae, hookworm larvae or other insects, parasites or vermin.
- 52-.03 I. Breeding grounds which support mosquito larvae and mosquitoes.
- 52-.03 J. Use of a Recreational Vehicle as a primary residence without permitted electric, water and sewage connections.
- 52-.03 K. Recreational vehicles used to store solid waste.
- 52-.04 A. Improper outdoor storage location violation for zoning purposes.
- Other Zoning Violation (Chpt 42): Remove storage containers
- Solid Waste Violation (Chpt 95):

Furthermore the property mentioned above is hereby declared a Public Nuisance by Henderson County Code Enforcement Services and will remain so until the specific problem(s) is/are abated and approved by Code Enforcement Services at which time the Declaration of Public Nuisance will be dismissed. It is your responsibility to abate the existing problem on the property.

You have 30 days, ending on 3/19/20, to abate the current nuisance. Failure to legally abate the nuisance could result in a warrant being issued against you. Each day that the violation exists past the allotted time period constitutes a separate violation. Violation of this ordinance is a class 3 Misdemeanor, per Section 1-14 of the Henderson County Code for criminal violation and/or \$50 per day per violation for civil violation.

As the owner, occupant or person in control of the property mentioned it is your responsibility to bring the property into compliance with Henderson County Ordinances. You are hereby ordered to bring the property into compliance by remedying the nuisance in a legal manner and notifying the Henderson County Code Enforcement Department once completed. If the property is not abated or remedied in accordance with this order, Henderson County will have the nuisance abated or removed at the expense of the owner under the provisions of North Carolina Statute 153A-132 and this ordinance.

Right to appeal: As the owner or occupant of the property, you may appeal this Declaration by filing a written request with the Zoning Board of Adjustment for an administrative hearing within ten calendar days of receiving this notice. Correspondence may be made by mail to 100 N King St. Hendersonville, NC 28792.

Please contact Officer: Toby Linville as soon as possible at 828-697-4857.

TSL
Zoning Enforcement Officer 2/19/20 2762
Date ID#

State of North Carolina

Appeal Notice of Violation

County of Henderson

I, Gary D. Barnwell, by and through the undersigned, hereby appeal the decision of the Zoning Enforcement officer who determined that the property owner of 105 Georgetown Road (PIN Number 9577773440 is in violation of the Henderson County Nuisance Ordinance Section 52.

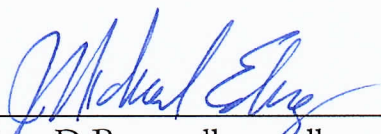
Said violation alleged to be: "Other Zoning Violation (Chpt 42): Remove storage containers.

The appellant hereby requests a hearing before the Henderson County Board of Adjustments at such time as one may be had under the terms of the various "Stay at Home" rules currently in effect.

The appellant shows the Board as follows:

1. The purpose of Chapter 52 of the Henderson County Code of Ordinances is to protect the health, safety and general welfare of the citizens of Henderson County as a result of those matters deemed to be a Public Nuisance.
2. A "Public Nuisance" is defined by the ordinance as: Public Nuisance - Any activity or failure to act that adversely affects the public and shall include, but is not limited to, any condition which poses an immediate and direct hazard to human health if left unheeded due to the existence of the condition itself or due to the immediate threat of transmission of disease through insects, animals, or other means of transmission or infections.
3. The actions alleged, even if true, do not amount to a Public Nuisance.
4. The appellant is exempt from Chapters 42 and 52 of the Code, being a ranch/farm.
5. The appellant is grandfathered in, having owned and operated the property as a ranch / farm since on or about September 1999.
6. The enforcement action is arbitrary and capricious, two other Storage Units on adjoining property being overlooked and ignored.

This 27th day of April 2020.



Gary D Barnwell, appellant
by J Michael Edney (Agent)