

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
Zoning Board of Adjustment

MEETING DATE: 11/30/22 ZBA

SUBJECT: Variance Application (V-22-01) located at 803 Barbara Blvd

PRESENTER: Matt Champion, Zoning Administrator

ATTACHMENTS:

1. Staff Report
2. Photographs
3. Site Plan

SUMMARY OF REQUEST:

The applicant is requesting a variance to reduce the front yard setback in the Estate Residential District (R-40) from 60' to 45'. 42-37(B) Dimensional Requirements, Table 2.11 of the Henderson County Land Development Code states:

(3) *Yard Setbacks* (feet), *Front* or *ROW*, All Others 60.
Yard setbacks shall be measure from the centerline of the *right-of-way*.

Suggested Motion:

I move that the Board of Adjustment approve/deny variance application V-22-01 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:** Christopher Bridges
- 1.2. **Request:** Front Yard Setback Variance
- 1.3. **PIN:** 9557-55-6893
- 1.4. **Size:** 0.47 acres +/-
- 1.5. **Location:** The subject area is located at 803 Barbara Blvd within the Kanuga Parks Subdivision.
- 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.

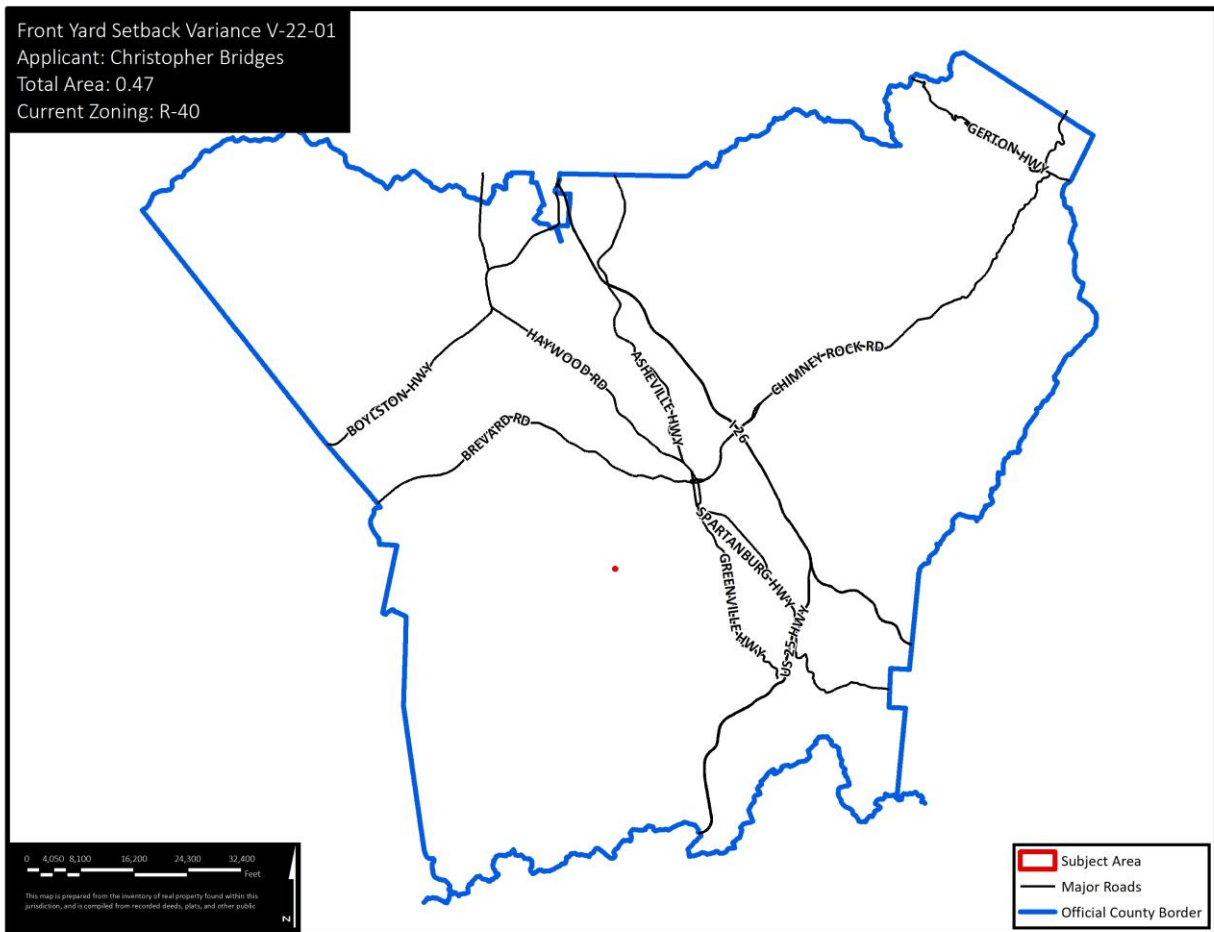
(1) *Variance Revocation*. If construction or operation is not commenced within 12 months (or other specified time period), the *Variance* shall no longer be valid.

Variance. A grant of relief from the requirements of this Chapter (excluding *variances* from *watershed* and *floodplain* development requirements).

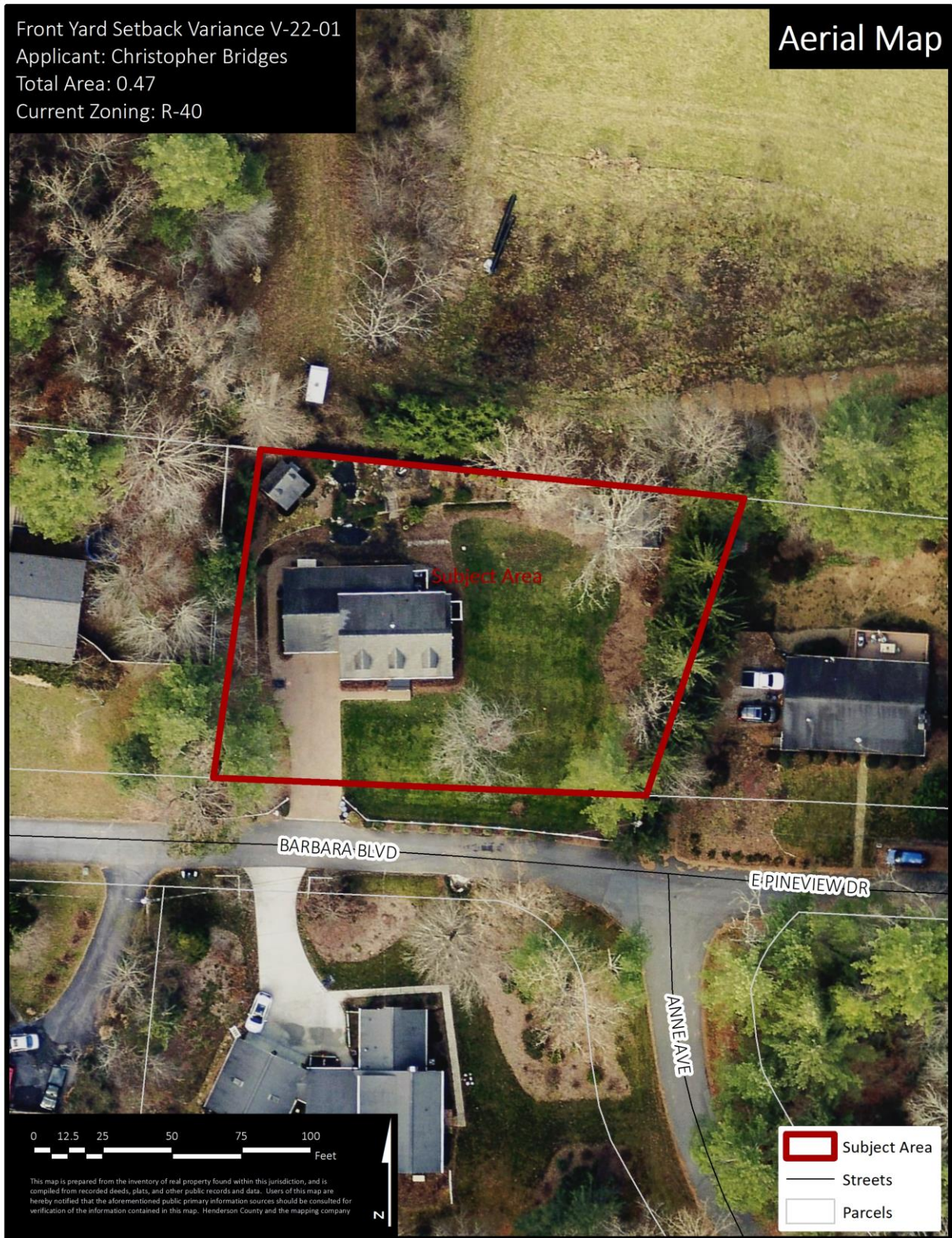
§42-366. Accommodative Temporary Variances

A. *Purposes*. *Accommodative Temporary Variances* are intended to provide temporary limited relief from the requirements of this Chapter in those cases where the strict application of the provisions of this Chapter would result in unnecessary hardship.

Map A: County Context Map



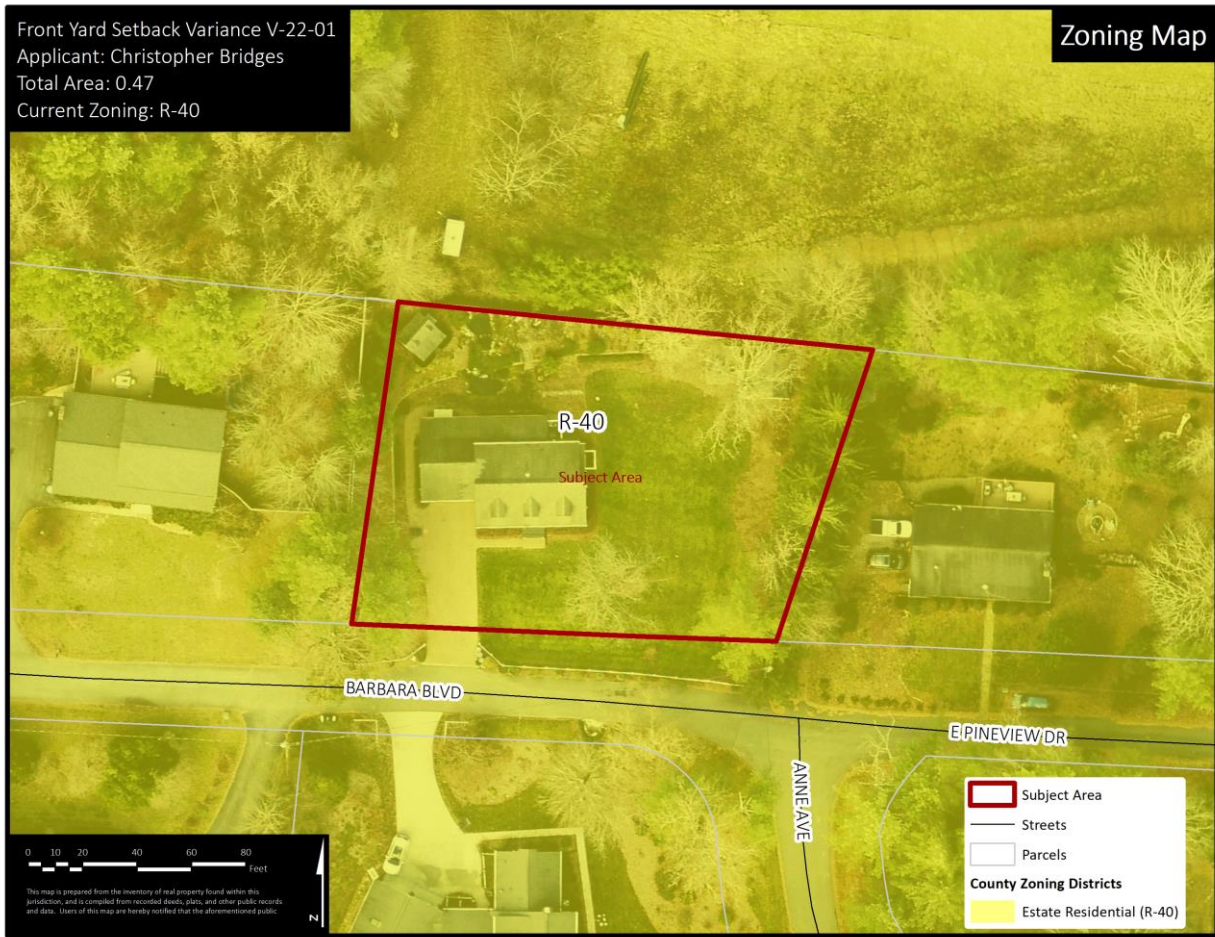
Map B: Aerial Map



2. Current Conditions

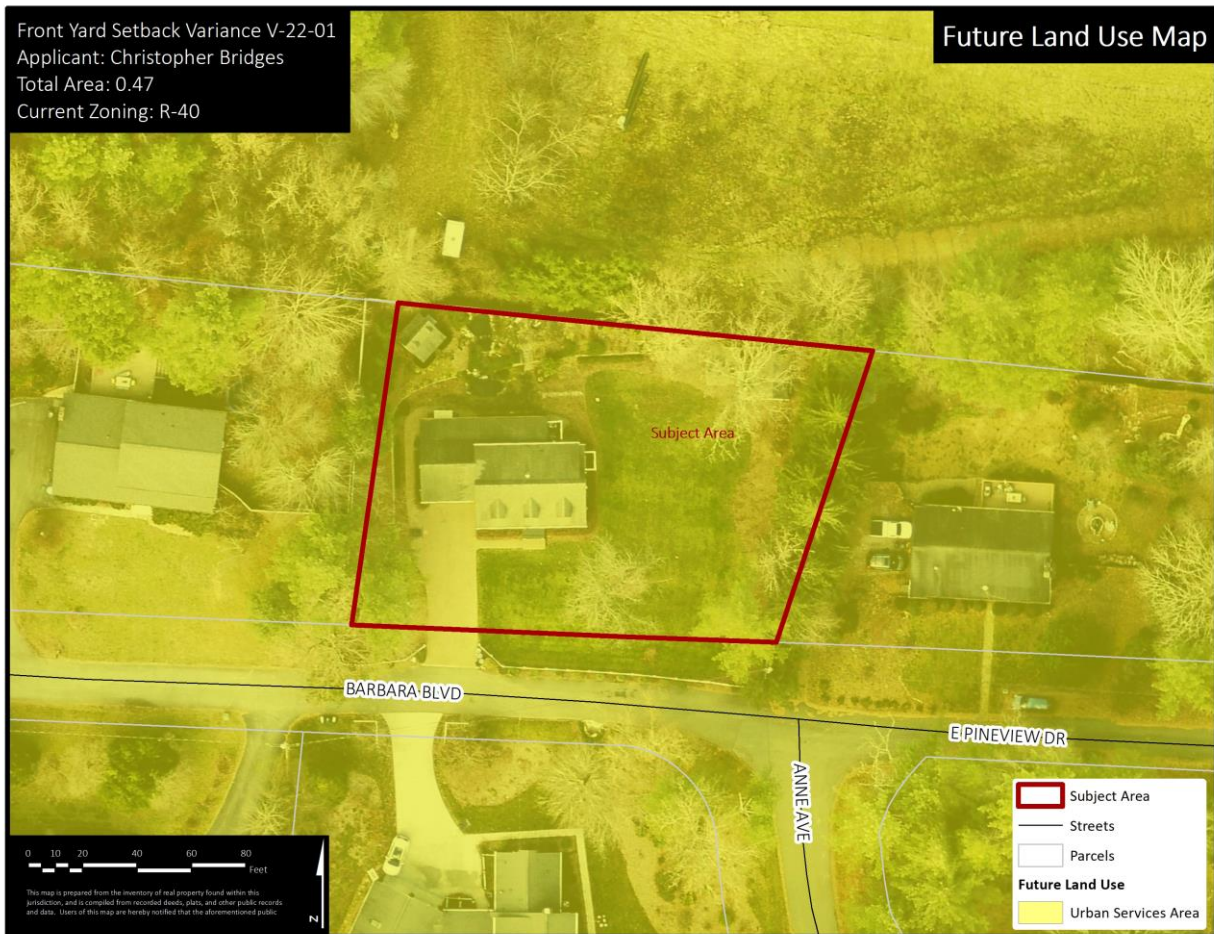
- 2.1 Current Use: The parcel is residential and contains a single-family dwelling.
- 2.2 Adjacent Area Uses: The surrounding properties are residential and contain single-family dwellings. The property to the north is vacant and is used for agricultural purposes.
- 2.3 Zoning: The subject property and surrounding properties are zoned R-40.

Map C: 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 a private individual septic system.
Public Water: City of Hendersonville
Public Sewer: N/A

Map D: CCP Future Land Use Map



5. **County Comprehensive Plan:** The CCP Future Land Use Map places the subject area in the Urban Services Area (USA) classification. The text and map of the CCP suggest that the subject area would be more suitable for the following:

“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 life of the County Comprehensive Plan.”

6. **Subject Area History:** The subject area is part of the Kanuga Park residential subdivision. The subdivision plat for Kanuga Park was recorded on February 2, 1967, by John O’Donald Hill and the subject area is shown as lot 11 on the recorded plat. The single-family dwelling was constructed in 1971 and the current R-40 zoning was established after in the mid-1970’s. The existing structure does not meet one of the two side yard setbacks outlined in the Henderson County Land Development Code. Most of the structures built within the Kanuga Park subdivision were constructed prior to R-40 zoning being implemented.
7. **The Request:** The applicant has requested for a reduction in the front yard setback outlined in the R-40 zoning district requirements within the Land Development Code. The current prescribed front yard setback is 60’ from the centerline of the Barbara Blvd. The applicant’s request is to reduce the setback from 60’ to 45’ for a total of a 15’ variance. As per the variance application, the property owner has a medical condition that inhibits movement up and down stairs. Since the bedroom is located on the second floor, the applicant attempted to relocate the existing septic repair area/drain

field to accommodate the proposed master bedroom addition. The septic system was unable to be relocated and the applicant requested the variance to encroach into the front yard setback.

8. **TRC Recommendations:** The Technical Review Committee reviewed the variance application on November 1, 2022 and voted to forward the application on to the ZBA. The TRC did not add any conditions, but noted the applicant's effort to relocate the existing septic system on several occasions without any success.

9. **Photographs**

View from Barbara Blvd



View from Intersection of Barbara Blvd and Anne Ave



Front View of Proposed Addition



Side View of Proposed Addition



10. Oblique Photos

View from North



View from South



View from West



Application No. _____

HENDERSON COUNTY
VARIANCE APPLICATION FORM

GENERAL INFORMATION

Date of Application: 9/29/22
Previously Submitted (Circle One): Yes No
Date of Pre-Application Conference: 9/23/22
Site Plan Attached (Circle One): Yes No

PARCEL INFORMATION

Property Address: 803 BARBARA BLVD., HENDERSONVILLE, NC 28739
PIN: 9557556893 Deed Book/Page: 1465/352 Acreage: .47
Zoning District: R-40 Fire District: VALEY HILL Watershed: N/A Floodplain: N/A
Driving Directions: KANUGA TO RIGHT ON OLD KANUGA, LEFT ON ANNE, LEFT ON BARBARA BLVD. FIRST HOUSE ON RIGHT

REASON FOR VARIANCE HOUSE ADDITION

FRONT SETBACK (feet/foot) 45
SIDE SETBACK (feet/foot) 35
REAR SETBACK (feet/foot) 35

PROPERTY OWNER CONTACT INFORMATION:

Name: CHRIS BRIDGES Phone: 828-713-7018
Address: 803 BARBARA BLVD City, State, and Zip: HENDERSONVILLE, NC 28739

Applicant:
Name: SAME AS ABOVE Phone: _____
Address: _____ City, State, and Zip: _____

Agent:
Name: N/A Phone: _____
Address: _____ City, State, and Zip: _____

Agent Form (Circle One): Yes No

Plan Preparer:
Name: THOMAS CZYZYK Phone: 828-316-1212
Address: 81 BROADWAY ST SUITE 201-090 City, State, and Zip: ASHEVILLE, NC 28801

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 SHEET.

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 SHEET.

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

PLEASE SEE ATTACHED SHEET.

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 SHEET.

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 SHEET.

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 SHEET

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

CHRIS BRIDGES
Print Applicant (Owner or Agent)

Chris Bridges
Signature Applicant (Owner or Agent)

9/29/22
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)

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.**

I have a debilitating auto immune disease that is uncurable and will be with me for the rest of my life. I am under the care of Dr. David Cogburn and Jay Clarke in Asheville, NC. The disease causes severe rheumatoid arthritis in my joints. Walking up the stairs of my home to my bedroom has become increasingly difficult and painful, and causes an unnecessary hardship in its everyday use. In order to decrease my pain and allow for a more reasonable use of my home, I need to build a bedroom for myself on the first floor. Currently, all the bedrooms are located on the second floor. Unfortunately, due to my current septic system location, I cannot build a bedroom within the R-40 front setback of 60 feet. Furthermore, as explained in #2 below, due to unique circumstances with my land, I am unable to relocate the septic system. Therefore, I need a zoning variance of 15 feet on the front setback only so that I can build the addition outside of the current location of the septic system.

- 2. The hardship of which the applicant complains results from unique circumstances related to the applicant's land.**

My land has unique soil properties that will not allow me to relocate the current septic system, and therefore build the addition within R-40 setbacks. I spent several months working with the Henderson County Environmental Health Dept. (HCEHD), including Supervisor Seth Swift, and a septic contractor, to try to design a new septic system that could be in a new location on my land. According to HCEHD, the depth of properly percolating soil on my land is too deep to allow for a new septic system. Despite their best efforts, they were unable to make it work. Furthermore, they advised me not to disturb my current system because of its age and the fact that it is working perfectly. I have spoken to Mr. Swift about this application, and he can confirm these facts.

- 3. The hardship is not the result of the applicant's own action.**

The condition of the soil is not the result of any of my own actions.

B. The variance is in harmony with the general purpose and intent of the Land Development Code and will preserve its spirit.

The R-40 front setback of 60 feet is onerous for a neighborhood possessing the character found in our development. This zoning was put in place many years after the neighborhood was built, and most of the homes in it would not comply with today's zoning. We are only requesting a variance of 15 feet for the front setback. That is only a 25% deviation from the stated R-40 front setback of 60 feet and would still leave 45 feet from the right of way. Over 50% of the homes in my neighborhood are less than 45 feet from the right of way already, so what I am requesting will not detract from the character of the neighborhood.

C. The variance will secure the public safety and welfare and will do substantial justice.

If the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by me. There is no benefit to the public if the variance is denied, and there is no cost to the public if the variance is approved. However, if the variance is approved, substantial justice will have been served in allowing me to continue to use my home in a reasonable way as I navigate health issues.

D. The variance shall not be based on the existence of 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.

My variance application is not related to any other nonconforming use of land or structures in any other district in Henderson county.

