

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
Board of Adjustment

MEETING DATE: 4/30/25

SUBJECT: Variance Application (V-25-01) located at lot 22 within Kanuga Ridge Subdivision at PIN: 9547-42-1526

PRESENTER: Matt Champion, Zoning Administrator

ATTACHMENTS:

1. Staff Report
2. Oblique Photographs
3. Site Plan

SUMMARY OF REQUEST:

The applicant is requesting a variance to reduce the right-of-way setback in the Estate Residential District (R-40) from 60' to 35.2'. Additionally, the applicant is requesting a variance to reduce the side yard setback in the R-40 zoning district from 35' to 21.1'. 42-37(B) Dimensional Requirements, Table 2.11 of the Henderson County Land Development Code states:

(3) *Yard Setbacks* (feet),

Front or *ROW*, Roads - All Others 60.

Side 35

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-25-01 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:** Jeffrey Bragg
- 1.2. **Property Owner:** Anne Elisabeth Reddish
- 1.3. **Request:** Right-of-Way & Side Yard Setback Variance
- 1.4. **PIN:** 9547-42-1526
- 1.5. **Size:** 0.71 assessed acres +/- & 1.12 deeded acres
- 1.6. **Location:** The subject area is lot 22 within the Kanuga Ridge Subdivision.
- 1.7. **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.

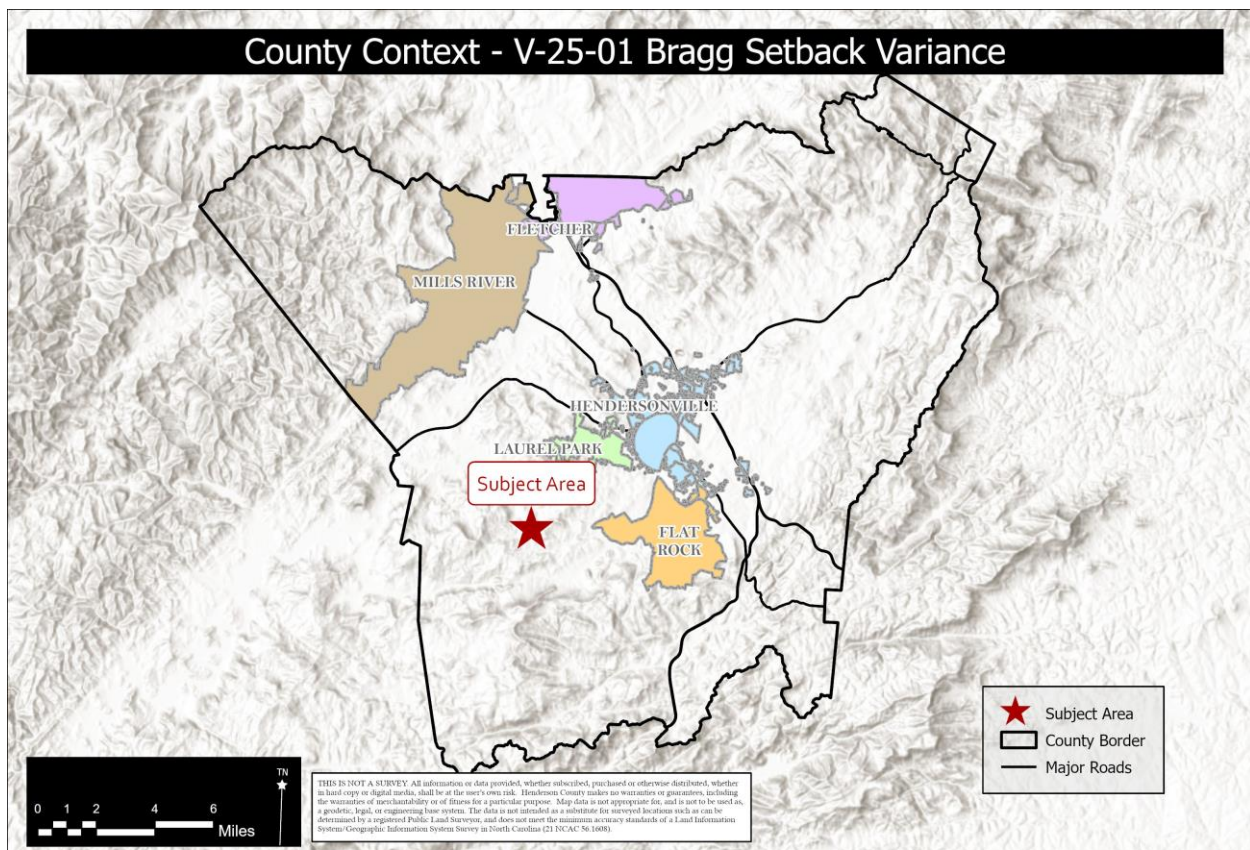
- (2) Conditions. The ZBA may, in granting a *Variance*, prescribe: (1) additional conditions; (2) additional safeguards; (3) a time limit within which the action for which a *Variance* is sought shall be begun; (4) a time limit within which the action for a *Variance* is sought shall be completed; and (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).

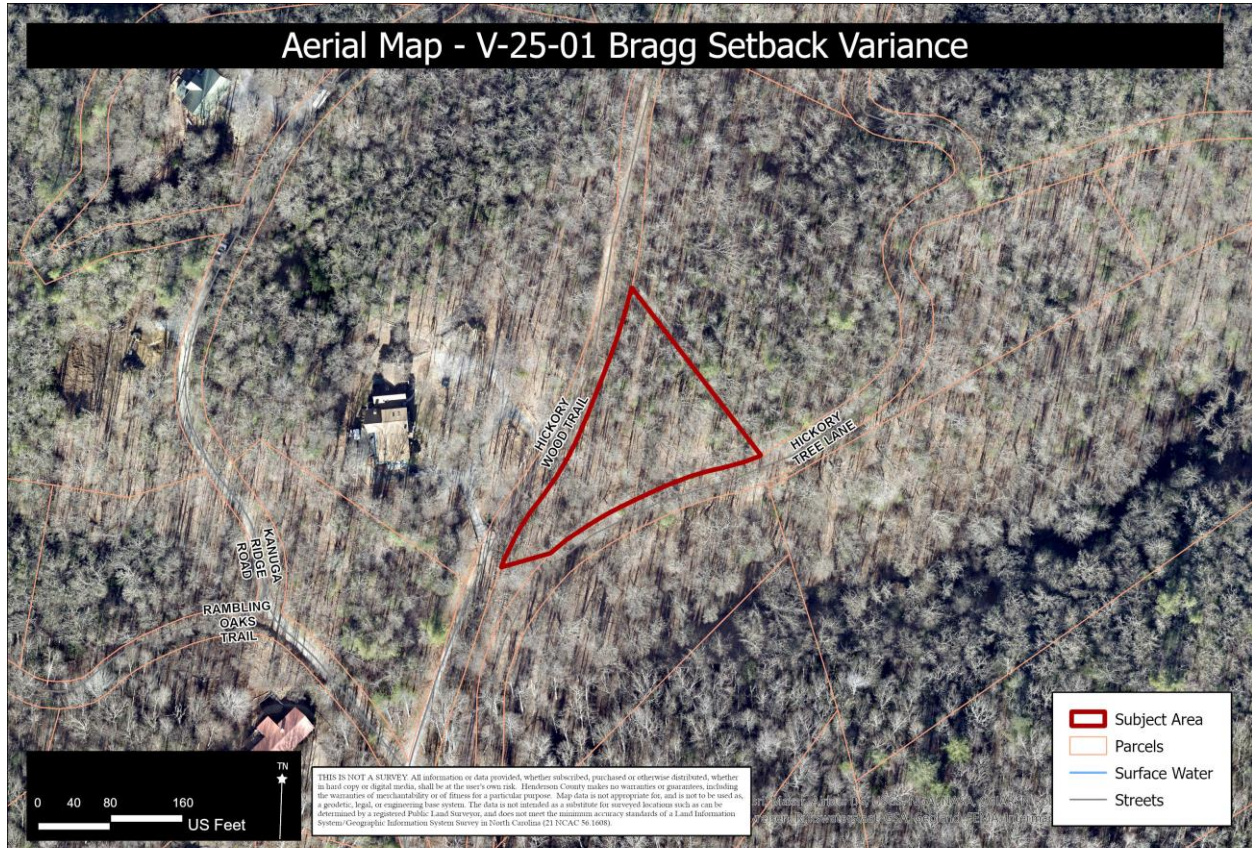
Map A: County Context Map



Property Owner: Anne Elisabeth Reddish / Applicant: Jeffrey Bragg
Assessed Acreage: 0.71 Acres / Deeded Acreage: 1.13 Acres / PIN: 9547-42-1526
Current Zoning: Estate Residential (R-40)



Map B: Aerial Map



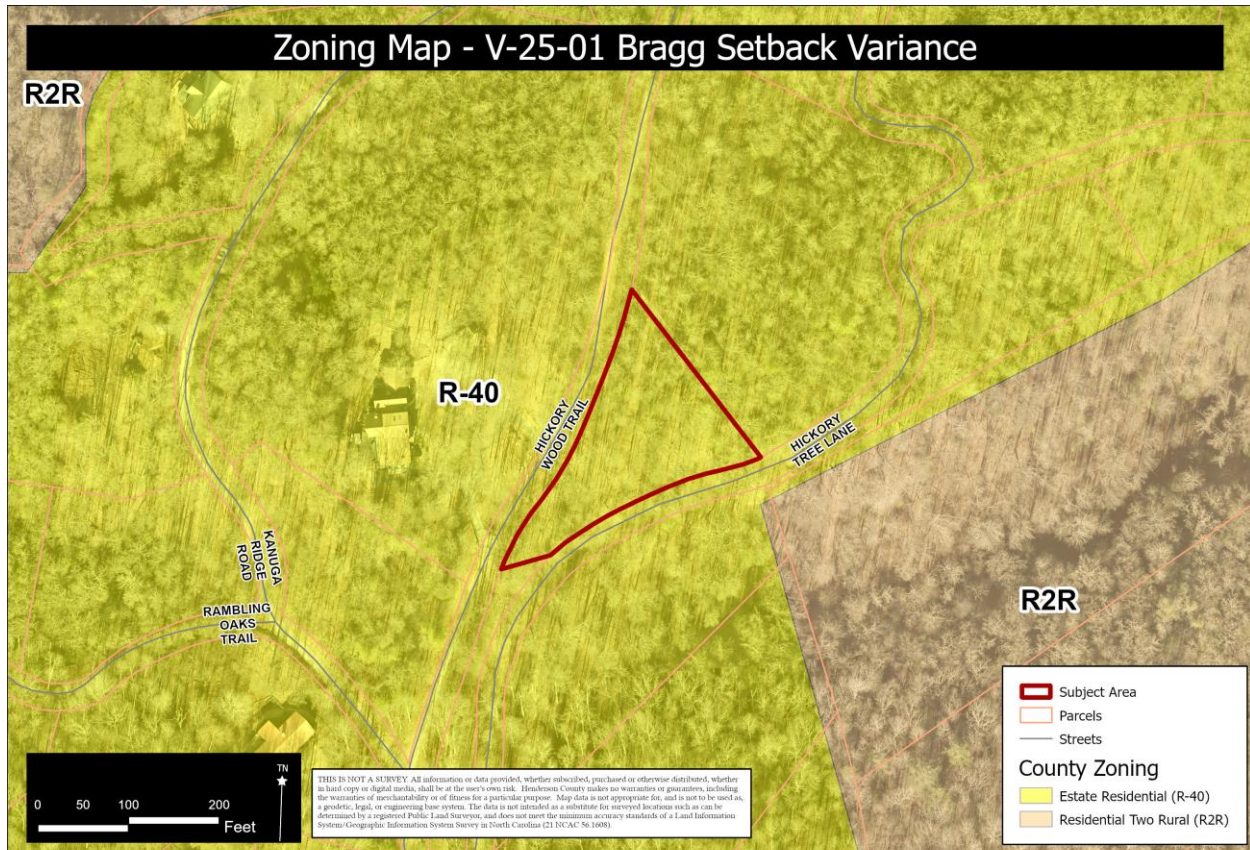
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2. History & Characteristics:

- 2.1. **Kanuga Ridge:** The subject area is comprised of Lot 22 of Kanuga Ridge Major Residential Subdivision. Staff has been unable to locate an original plat since the subdivision was recorded prior to the adoption of the Land Development Code.
- 2.2. **Current Use:** The parcel is currently vacant and heavily forested.
- 2.3. **Adjacent Area Uses:** Properties to the west and southwest are residential and contain single-family dwellings. Properties to the north, east, and southeast are vacant and heavily forested.

Map C: Current Zoning



Property Owner: Anne Elisabeth Reddish / Applicant: Jeffrey Bragg
 Assessed Acreage: 0.71 Acres / Deeded Acreage: 1.12 Acres / PIN: 9547-42-1526
 Current Zoning: Estate Residential (R-40)



3. **Zoning:** The subject area is zoned Estate Residential (R-40) by Henderson County. Property to the north, west, and south is also zoned R-40. Property to the east is zoned Residential Two Rural (R2R) by Henderson County. The R-40 zoning district is a holdover zoning district from the previous zoning ordinance.

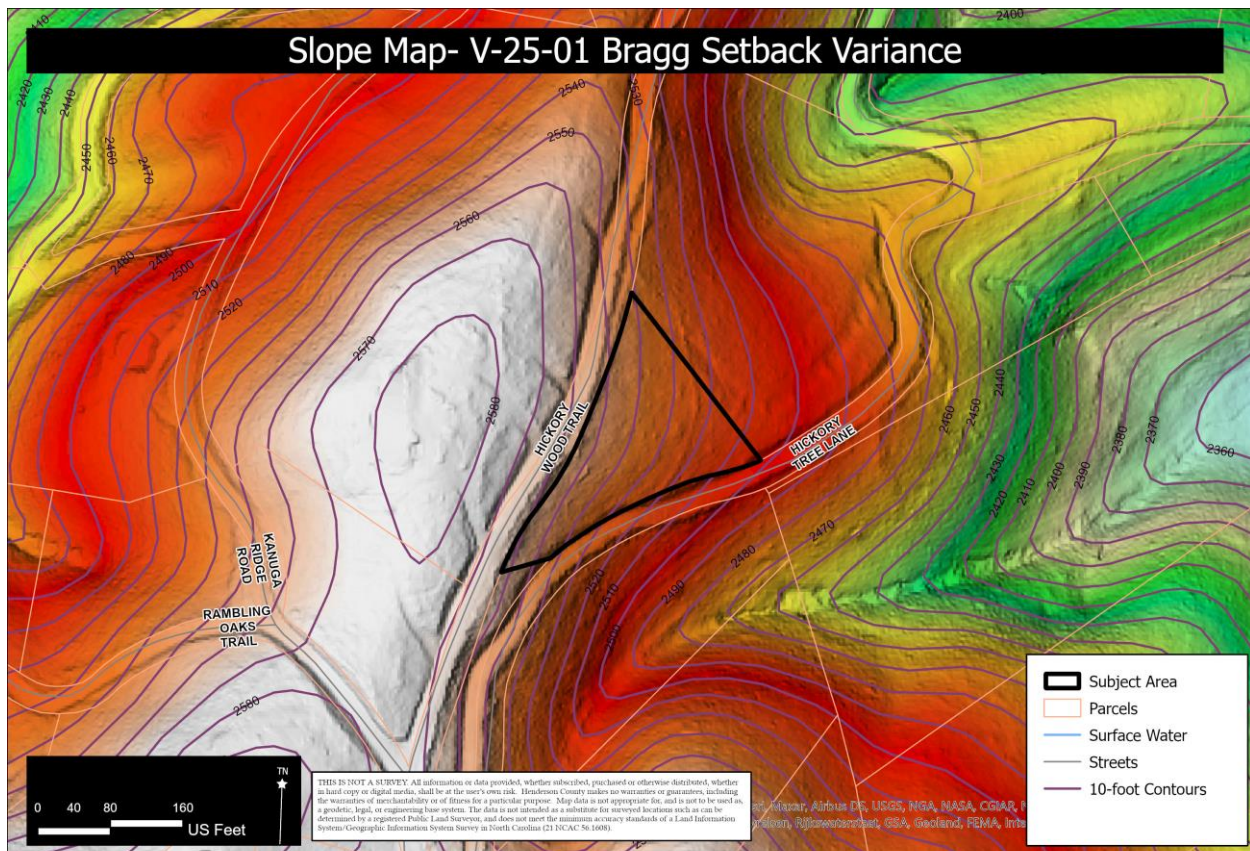
- 3.1. The Estate Residential District (R-40) is established to maintain the zoning in place prior to the adoption of this Chapter 42. This district is established as a district in which the principal use of the land is for low-density residential use. This district is intended to ensure that *residential development* not having access to public water supplies and dependent upon septic tanks for sewage disposal will occur at a sufficiently low density to provide a healthful environment. This district is also intended to be a quiet, low-density neighborhood consisting of single-family residences. The R-40 District shall not be extended from the locations designated on the Official Zoning Map, nor shall new R-40 District areas be designated except where initiated by the Board of Commissioners or *Planning Board*. The R-40 District may be altered or removed.

4. **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. According to the USGS and NCDEQ, the subject area does not contain any surface water sources.

5. **Water and Sewer:** This property does not have access to public water or public sewer. Any future structures on this property will require an individual well and private septic system.

Public Water: N/A**Public Sewer:** N/A

Map D: Slope Map



Property Owner: Anne Elisabeth Reddish / Applicant: Jeffrey Bragg
Assessed Acreage: 0.71 Acres / Deeded Acreage: 1.12 Acres / PIN: 9547-42-1526
Current Zoning: Estate Residential (R-40)



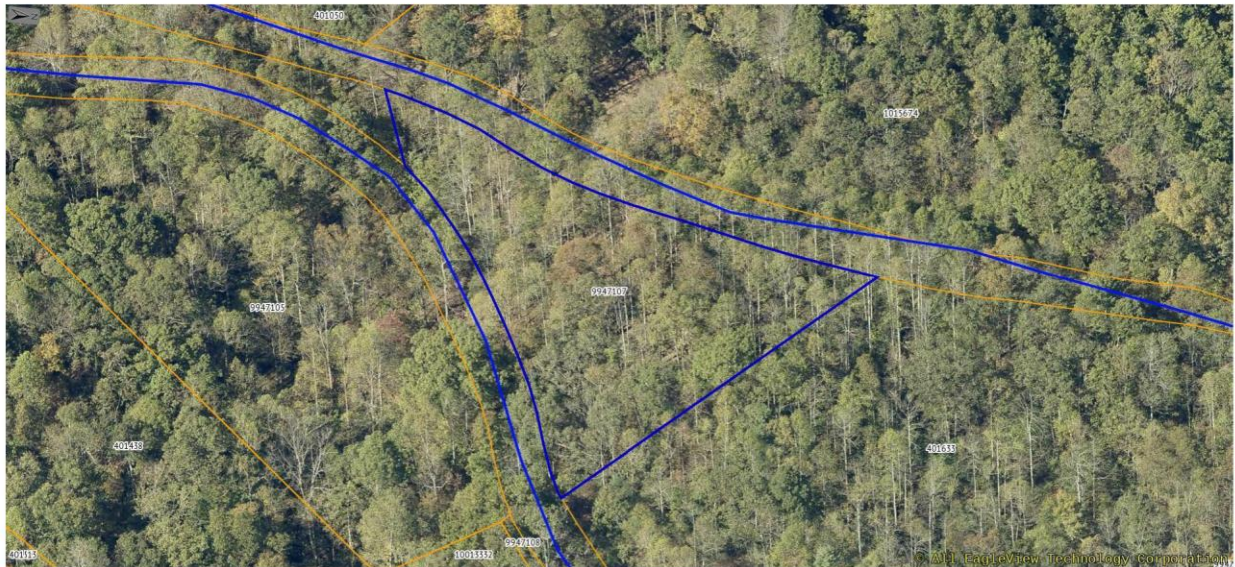
6. **Slopes:** The subject area does not contain any slopes between 0 to 16%. The subject area contains 0.08 acres of slopes between 16 to 25%. The subject area contains 0.63 acres of slopes between 25 to 60%.
7. **The Request:** The applicant has requested for a reduction in the right-of-way setback outlined in the R-40 zoning district requirements within the Land Development Code. The current prescribed right-of-way setback is 60' from the centerline of the private undefined right-of-way for Hickory Tree Ln. The applicant's request is to reduce the setback from 60' to 35.2' for a total of a 24.8' variance. Additionally, the applicant has requested a reduction in the side yard setback outlined in the R-40 zoning district requirements. The current prescribed side yard setback is 35' from the property line. The applicant's second request is to reduce the setback from 35' to 21.1' for a total of a 13.9' variance. The applicant had a soil scientist test the subject area and found a single location to support the proposed

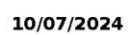
structure as shown on the site plan. Additionally, the subject area is bound to specific deed restrictions for the Kanuga Ridge Subdivision that requires dwellings to be a minimum of 1,700SQFT.

9. **Technical Review Committee:** The TRC met on April 1, 2025, to review the application. The TRC forwarded this item to the ZBA with no comments or conditions.

10. **Oblique Photos**

View from East





View from West



10/09/2024

Application No. _____

**HENDERSON COUNTY
VARIANCE APPLICATION FORM**

GENERAL INFORMATION

Date of Application: _____

Previously Submitted (Circle One): Yes ☐ No ☒

Date of Pre-Application Conference: _____

Site Plan Attached (Circle One): Yes ☒ No ☐

PARCEL INFORMATION

Property Address _____

PIN: _____ Deed Book/Page: _____ Acreage: _____

Zoning District: _____ Fire District: _____ Watershed: _____ Floodplain: _____

Driving Directions: _____

REASON FOR VARIANCE _____

FRONT SETBACK (feet/foot) _____

SIDE SETBACK (feet/foot) _____

REAR SETBACK (feet/foot) _____

PROPERTY OWNER CONTACT INFORMATION:

Name: _____ Phone: _____

Address: _____ City, State, and Zip: _____

Applicant:

Name: _____ Phone: _____

Address: _____ City, State, and Zip: _____

Agent:

Name: _____ Phone: _____

Address: _____ City, State, and Zip: _____

Agent Form (Circle One): Yes ☒ No ☐

Plan Preparer:

Name: _____ Phone: _____

Address: _____ City, State, and Zip: _____

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.)

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.)

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

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.)

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.)

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.

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

Print Applicant (Owner or Agent)

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 _____ 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)

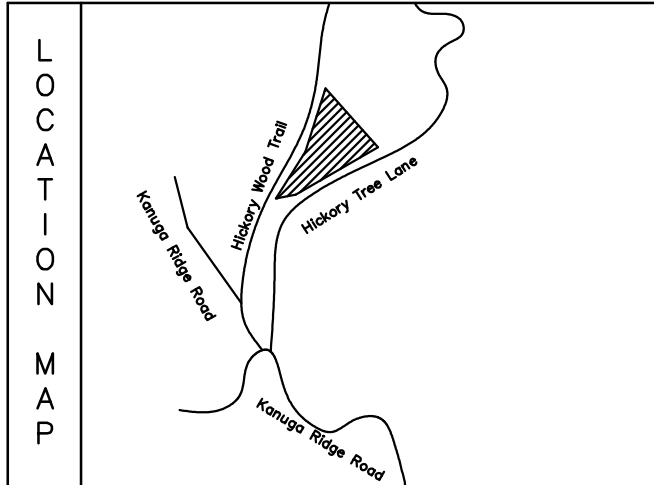
_____, to represent me in an **application to the Code Enforcement Services**
(Agent's phone number)

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)



- NOTES:
- 1) The Basis of Bearings for this survey is NAD83(2011).
 - 2) Surveyor was not provided with a legal title search. There may exist easements of record, encumbrances, restrictive covenants, ownership title evidence, or any other facts pertinent to this property that an accurate and current title search may disclose that are not shown on this plot.
 - 3) No underground utilities were located. Call NC811 before digging.
 - 4) All buildings, surface and subsurface improvements on and adjacent to the site are not necessarily shown. Subsurface and environmental conditions were not surveyed or considered as part of this survey.
 - 5) Area by coordinate computation.
 - 6) All distances are horizontal ground distances in US Survey Feet, unless otherwise noted.
 - 7) Subject Property is located within an area having a Zone Designation "X" by the Federal Emergency Management Agency (FEMA), on Flood Insurance Rate Map No. 3700954700J, with a date of identification of 10/2/2008.
 - 8) Subject property is zoned R40
Setbacks:
Front: 60' from Centerline of Road
Side: 35' from Property Boundary
Rear: 35' from Property Boundary

N/F
Laura & Larry Hanes
D.B. 3589/512
P.B. SLD 5547
PIN# 9547-32-9882

Hickory Wood Trail
(Formerly Kanuga Ridge Road)
Unknown Width Private Right of Way

1.08 Acres ±
46,955 Sq. ft. ±
VACANT

N/F
Nancy Clark
D.B. 1157/319
PIN# 9547-42-2788

LEGEND:

○	NIP	NEW IRON PIN (1/2" REBAR)
●	EIP	EXISTING IRON PIN
○	CP	CALCULATED POINT
□		UTILITY VAULT
☆		POWER POLE
★		LIGHT POLE
⊕		WATER VALVE
⊗		GAS VALVE
⊙		WATER METER
⊛		FIRE HYDRANT
⊞		SANITARY SEWER MANHOLE
⊟		STORM DRAIN MANHOLE
⊠		CATCH BASIN
⊡		CLEANOUT
⊢		CURB INLET
⊣		TRANSFORMER
⊤		OVERHEAD UTILITY
⊥		FENCE LINE
—X—X—X—		MEASURED LINE
(M)		RECORD
(R)		DEED BOOK
D.B.		PLAT BOOK
P.B.		RIGHT-OF-WAY
R/W		

N/F
Anne Reddish
D.B. 5E/222
PIN# 9547-42-5733

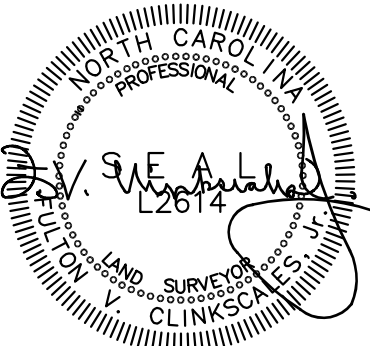
N/F
Allen Greene
D.B. 1431/281
P.B. 2024 15982
PIN# 9547-42-7507

Hickory Tree Lane
(Formerly Glynn Marsh Drive)
Unknown Width Private Right of Way

Site Plan for
Bragg & Bragg Properties
Hickory Wood Trail
Crab Creek Township, Henderson County
State of North Carolina
Lot 22, Kanuga Ridge

FREELAND — CLINKSCALES & ASSOCIATES, INC. of NC
Engineers * Land Surveyors
201 2nd AVE. EAST
HENDERSONVILLE, N.C. 28792
(828) 697-6539
(828) 697-4195 (fax)
info@fcaofnc.com
Firm No. C-1562

REF. PLAT BOOK	xx/xx
REF. DEED. BOOK	5E/222
TAX MAP	9547-42-1526
PARTY CHIEF	ACL
DRAWN	ABP/ACL
DATE	January 21, 2025
DWG.NO.	H45014



Not For Recordation

The original drawing and/or all copies of it are not transferable to any future owner(s) of the platted property and shall not be used or relied upon by future owner(s) and/or their representatives for any reason without written release by the professional surveyor.

This is to certify that the property shown on this plat was surveyed under my direct supervision. Property lines and improvements are located correctly and that no visible encroachments exist unless otherwise shown.

