

REQUEST FOR COMMITTEE ACTION
HENDERSON COUNTY
BOARD OF ADJUSTMENT

MEETING DATE: August 29, 2012

SUBJECT: Variance-12-01

PRESENTER: Toby Linville

ATTACHMENTS: 1. Staff Report

SUMMARY OF REQUEST: The applicant Janet Hilliard wants to subdivide her property into two lots. The buildings are too close to meet the 10' side yard setback for the lots.

Staff requests the Board of Adjustment take action to approve, approve with modifications, table, or deny Variance-12-01.

Suggested Motion:

I move that the Board of Adjustment approve/deny variance application V-12-01 because it meets the requirements of the Land Development Code to grant a variance.

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. Board Request

- 1.1. **Applicant:** Janet Hilliard
- 1.2. **Request:** 4.5' Variance for side yard setbacks
- 1.3. **PIN:** 9528175335
- 1.4. **Size:** 1.65 acres +/-
- 1.5. **Location:** 7741 Brevard Rd
- 1.6. **R2R Setback Requirements:**
 - 10' Side
 - 10' Rear
 - 15' Front

200A-367. G. (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:
 4. 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.
 5. The hardship of which the *applicant* complains results from unique circumstances related to the *applicant's* land.
 6. 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.

Map A: Aerial Photo



2. Current Conditions

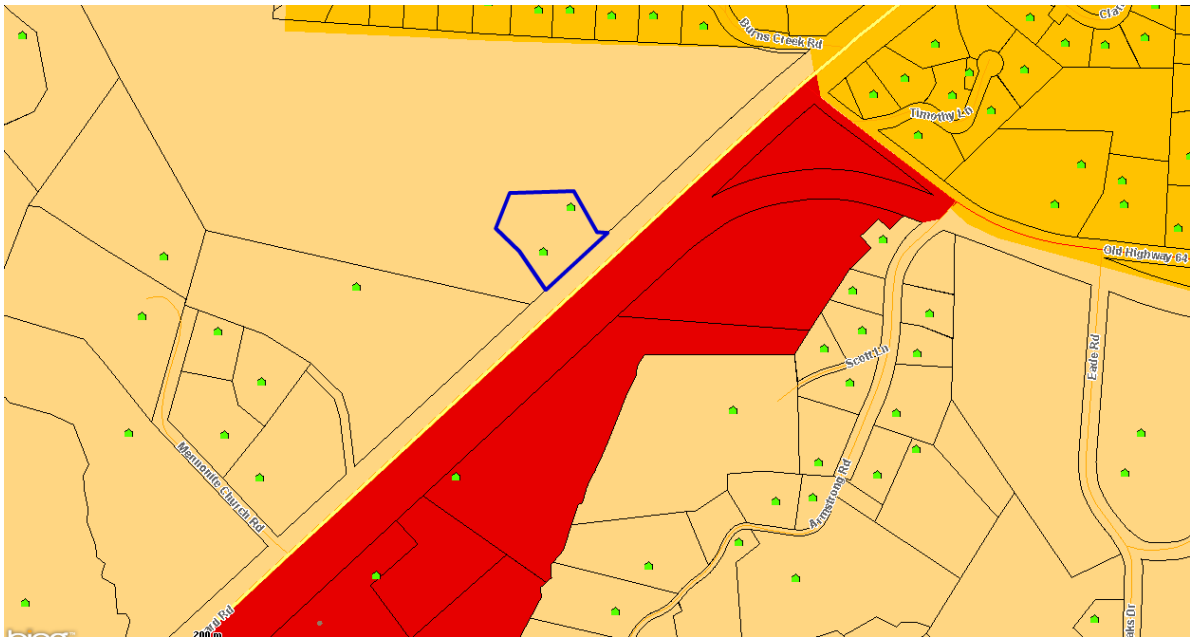
2.1 Current Use: The parcel is currently in mixed use with residential and commercial uses. The buildings in question were erected prior to the enactment of the Land Development Code before these setback requirements were in place.

2.2 Adjacent Area Uses: The surrounding properties consist primarily of rural and undeveloped land with sparse residential development.

2.3 Zoning: The current zoning of surrounding property is Residential 2 Rural (R2R). The purpose of this zoning district classification is designed to foster orderly growth where the principal use of land is residential. The intent of this district is to allow for low to medium density residential development and rural commercial and light industrial development consistent with the recommendations of the Comprehensive Plan. This general use district is typically meant to be utilized in areas designated as Transitional (RTA) in the Comprehensive Plan.

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

Map B: Current Zoning



2.5 Water and Sewer Private well and septic system are proposed for this property.

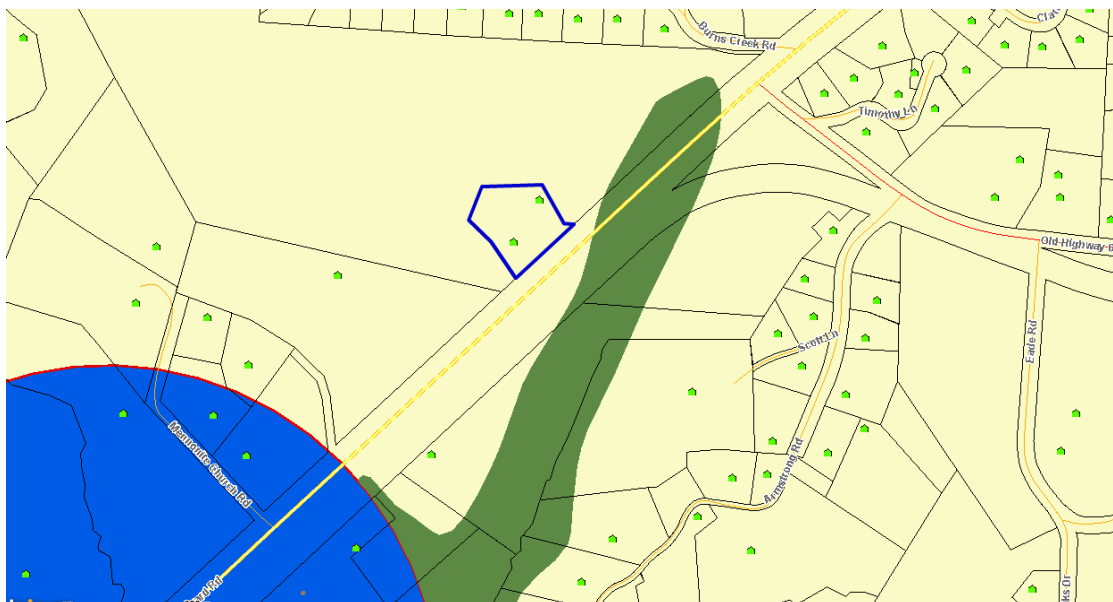
Public Water: Public water is not available for this property.

Public Sewer: Public sewer is not available for this property.

3. Comprehensive Plan

The 2020 CCP: The CCP Future Land Use Map places the Subject Area in the Rural/Urban Transition Areas classification. The text and map of the 2020 CCP suggest that the Subject Area would be more suitable for the following:

The RTA is currently rural in character, with existing pockets of limited higher density residential and commercial development. Slopes vary across the RTA, although the area can be considered to be generally developable. The primary factor preventing urban development in the RTA is the absence of sewer and water service. The RTA will continue to experience extensive development over the operational timeframe of this Comprehensive Plan.



4. Staff Recommendations

Staff's position at this time, under the guidelines of current plans, policies and studies, is that they do not support this variance.

- 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. **The inability to subdivide does not prohibit the property owner from reasonable use of this property.**
- The hardship of which the *applicant* complains results from unique circumstances related to the *applicant's* land. **The variance request does not result from unique circumstances related to the land.**
- The hardship is not the result of the *applicant's* own action. **The owner built the buildings in close proximity to the retaining wall creating the inability to meet current setbacks if subdivided.**

The Technical Review Committee recommended denial of this application because it does not prove a hardship. If approved by the Board, the site plan should show the current location of the well and septic system so that the subdivision does not create ownership issues on the property.

5. Photographs



Staff Report: V-12-01
Hilliard Property



Application No. _____

**HENDERSON COUNTY
VARIANCE APPLICATION FORM**

GENERAL INFORMATION

Date of Application: JUNE 12, 2012
Previously Submitted (Circle One): Yes ☐ No ☒
Date of Pre-Application Conference: _____
Site Plan Attached (Circle One): Yes ☒ No ☐

PARCEL INFORMATION

Property Address: 7741 BREVARD RD
PIN: 9528175335 Deed Book/Page: 1486/349 Acreage: 1.65
Zoning District: _____ Fire District: ETOWAH Watershed: _____ Floodplain: _____
Driving Directions: HEADING WEST ON US 64 NEXT DRIVE ON RIGHT PAST ENTRANCE TO EAGLE CHASE SUB-DIVISION

REASON FOR VARIANCE: To comply with set back rules
FRONT SETBACK (feet/foot) _____
SIDE SETBACK (feet/foot) 10'
REAR SETBACK (feet/foot) 10'

PROPERTY OWNER CONTACT INFORMATION:

Name: JANET L. HILLIARD Phone: _____
Address: PO BOX 14 City, State, and Zip: PENROSE, NC 28766

Applicant:

Name: _____ Phone: _____
Address: _____ City, State, and Zip: _____

Agent:

Name: JONATHAN HILLIARD Phone: 828-674-8109
Address: P.O. BOX 917 City, State, and Zip: ETOWAH, NC 28729
Agent Form (Circle One): Yes ☐ No ☐

Plan Preparer:

Name: GENE PARKER Phone: 828-891-5533
Address: 43 TARKLIN MTN. RD. City, State, and Zip: HORSE SHOE, NC 28742

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

- 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.

This issue is specific to this parcel of property

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

JONATHAN HILLIARD
Print Applicant (Owner or Agent)

Jonathan Hilliard
Signature Applicant (Owner or Agent)

6-14-12

Date

County Use Only

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

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

I JANET L. HILLIARD owner of property located on 7741 Brevard Rd,
(Name) (Street Address)
recorded in 1486/349 and having a parcel identification number of 9528175335,
(Deed Book/Page) (PIN)

located in Henderson County, North Carolina, do hereby appoint JONATHAN HILLIARD,
(Agent's Name)

828-674-8109, 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.

Janet L. Hilliard
(Property Owner)

6/19/12
(Date)

