

**REQUEST FOR COMMITTEE ACTION  
HENDERSON COUNTY  
BOARD OF ADJUSTMENT**

**MEETING DATE:** August 29, 2012

**SUBJECT:** V-12-02

**PRESENTER:** Toby Linville

**ATTACHMENTS:** 1. Staff Report

**SUMMARY OF REQUEST:**

SUP-12-04 was approved at the July 25, 2012 Board of Adjustment meeting. The applicant would now like to request a variance of the 100' perimeter setback in the rear yard to the 20' district setback. Since the property adjoins the Vulcan Quarry, this is a logical request.

Staff requests the Board of Adjustment take action to approve, approve with modifications, table, or deny Variance-12-02.

**Suggested Motion:**

**I move that the Board of Adjustment approval/deny variance application V-12-02 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

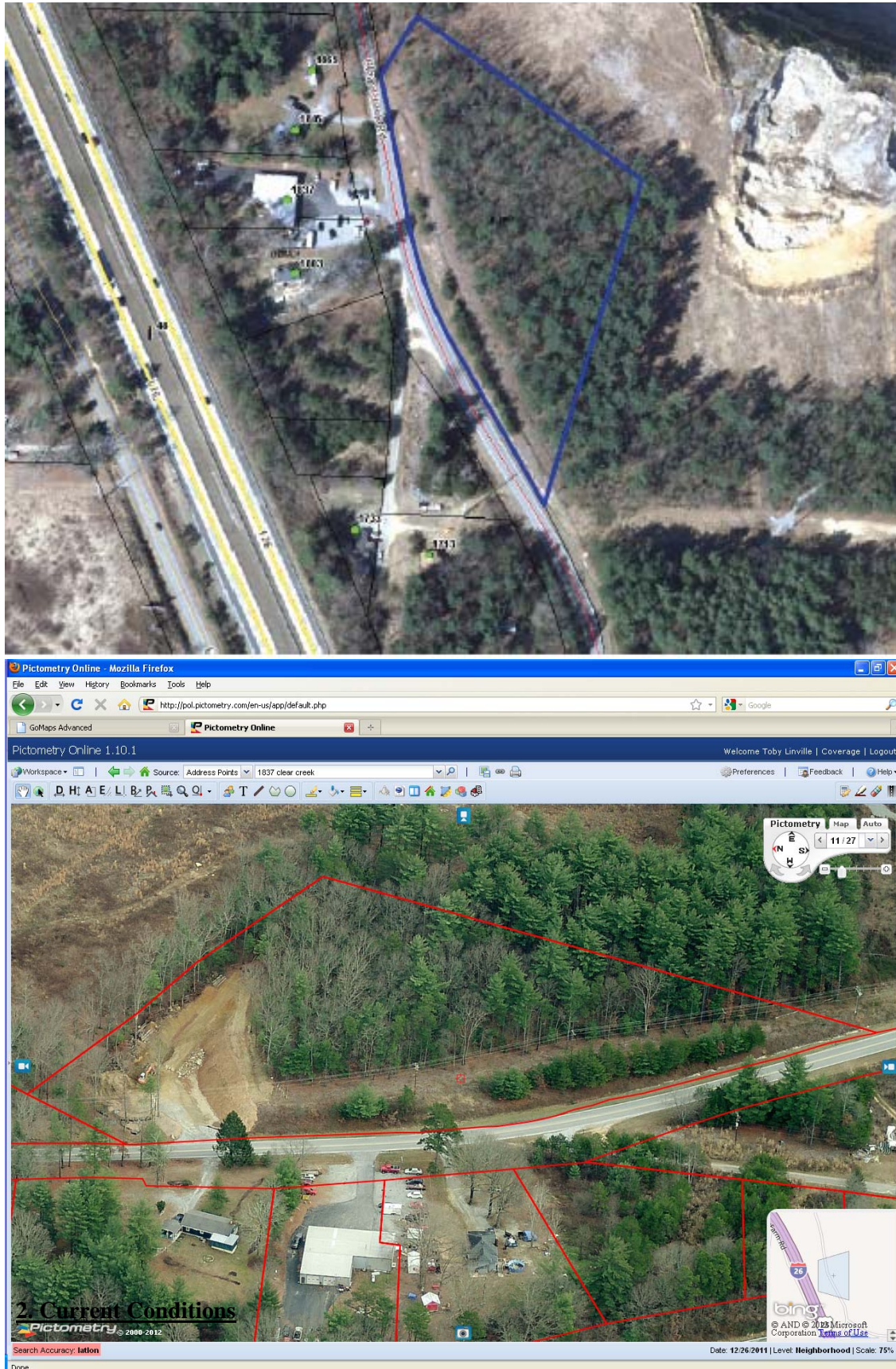
### 1. Board Request

- 1.1. **Applicant:** Boyd Hyder
- 1.2. **Request:** Variance from 100' rear yard setback to 20' Industrial district setback
- 1.3. **PIN:** 9660929834
- 1.4. **Size:** 4.18 acres +/-
- 1.5. **Location:** Right side of Clear Creek Rd approx. 500' north of Nix Rd intersection
- 1.6. **Standards for Review:**

**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:
  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.

Map A: Aerial Photo/Pictometry





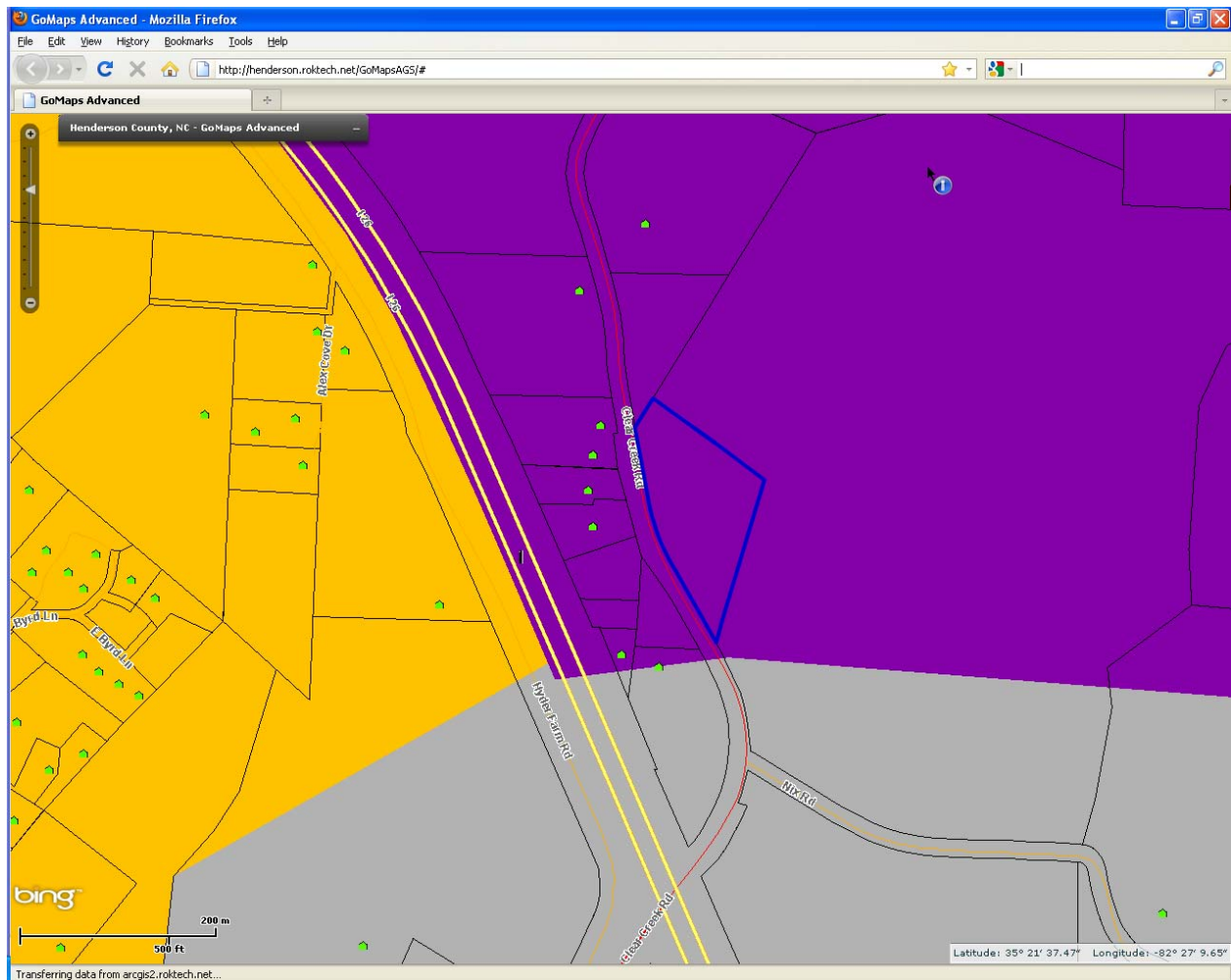
**2.1 Current Use:** The parcel is currently vacant. Some grading and logging has begun on the property. **The property received approval for a Special Use Permit for an asphalt plant at the July 25, 2012 Board of Adjustment Meeting. The applicant has requested a variance of the perimeter setback in the rear yard. If that variance is approved, the special use permit can be amended to accommodate the reduction in rear yard setback.**

**2.2 Adjacent Area Uses:** The surrounding properties are Residential, Commercial and Industrial. There is an automotive garage across Clear Creek Rd with single family dwellings flanking that business. There is a quarry and asphalt plant north of the proposed site.

**2.3 Zoning:** The current zoning of surrounding property is Industrial. South of the site is City of Hendersonville ETJ zoned C-3 Highway Business. This zoning district classification is designed primarily to encourage the development of recognizable, attractive groupings of facilities to serve persons traveling by automobile and local residents. Since these areas are generally located on the major highways, they are subject to the public view. They should provide an appropriate appearance, ample parking, and be designed to minimize traffic congestion.

**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.

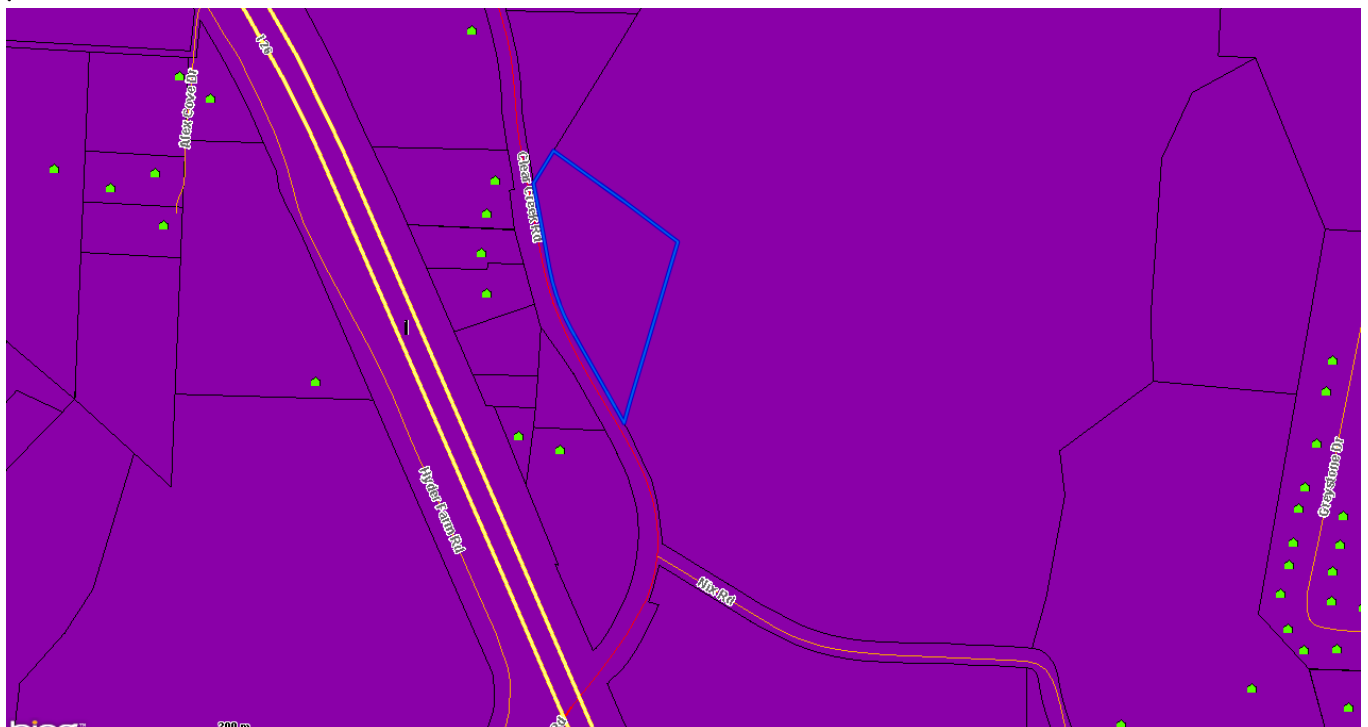
**Public Sewer:** Public sewer is not available for this property.

### **3. Comprehensive Plan**

**The 2020 CCP:** The CCP Future Land Use Map places the Subject Area in the “Industrial” classification. The text and map of the 2020 CCP suggest that the Subject Area would be more suitable for the following:

See the Current Land Use Definition of *Industrial*, in Appendix IV, Glossary. Most defined industrial areas should lie within the Urban Services Area, and in other areas on a very limited basis. Most industrial uses should be segregated from other uses with the exception of Regional Commercial uses. Industrial areas depicted on Map # 24,

*Future Land Use Map* are derived from existing industrial zoning districts, as well as from those area depicted upon Map # 8, “Committee of 100” Recommended Industrial Development Zones. It is intended that the *Countywide Industrial / Commercial Zoning Study* and *Community Plans* will further refine the location, extent, and intensity of future industrial areas.



### **4. Staff Recommendations**

- a. Staff recommends approval of this variance based on the following findings:
  - The hardship of which the *applicant* complains results from unique circumstances related to the *applicant's* land.
  - The hardship is not the result of the *applicant's* own action.
  - The *Variance* is in harmony with the general purpose and intent of this Chapter and will preserve its spirit.
  - The *Variance* will secure the *public safety* and welfare and will do substantial justice.

The Technical Review Committee recommended approval of the variance.

**5. Photographs (Looking South along Clear Creek Rd)**



**Looking North into property along Clear Creek Rd**





**Looking into property from Clear Creek Automotive**



**Grading area inside property**



**HENDERSON COUNTY  
VARIANCE APPLICATION FORM**

**GENERAL INFORMATION**

Date of Application: August 5 2012  
Previously Submitted (Circle One): Yes ☐ No ☒  
Date of Pre-Application Conference: July 31 2012  
Site Plan Attached (Circle One): Yes ☐ No ☐

**PARCEL INFORMATION**

Property Address: 1503 Clear Creek rd.  
PIN: 9660929834 Deed Book/Page: 1432 pg.720 Acreage: 4.18  
Zoning District: I Fire District: Mountain Home Watershed: N/A Floodplain: N/A  
Driving Directions: 25N Right onto north main (sr1503) cross over I-26 go appr 1/8 mile, property on right of road

**REASON FOR VARIANCE** 100' Perimeter Setback - reduce to 20'

**FRONT SETBACK (feet/foot)** 100'

**SIDE SETBACK (feet/foot)** 100'

**REAR SETBACK (feet/foot)** 100'

**PROPERTY OWNER CONTACT INFORMATION:**

Name: Boyd L Hyder Phone: (828) 606-4424  
Address: 163 Puncheon Camp City, State, and Zip: Hendersonville NC 28792

**Applicant:**

Name: Boyd L Hyder Phone: (828) 606-4424  
Address: 163 Puncheon Camp City, State, and Zip: Hendersonville NC 28792

**Agent:**

Name: Gregg S Bellini Phone: (828) 674-8974  
Address: P.O. Box 433 City, State, and Zip: Penrose NC 28766

Agent Form (Circle One): Yes ☐ No ☐

**Plan Preparer:**

Name: John Laughter Phone: (828) 692-9089  
Address: 2 ave east City, State, and Zip: Hendersonville NC 28792

**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.)

**The 100 foot perimeter setback on this property severely limit's the use of this rare industrial property. The shape of property is such that once setbacks are placed it creates two corners that create a large area of unusable land.**

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 remaining area that is not in setback will be drastically reduced by the shape of these corners. The result is usable land cut off by the 100 foot setback causing excessive maneuvering each day to avoid getting into the setback. The neighboring industrial rock quarry is similar tide business.**

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

**The unique shape of this tract of land lends itself to the hardship created wants the 100 foot setback is in place. The land is bordered by industrial property 100% of the massive Vulcan rock quarry on two sides. Land was not subdivided or altered by the current owner. The intent of the setback was to shield industry for residential not like kind industries from each other.**

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 property sets above the road, for all practical purposes is out of sight, it is surrounded on two of its three sides by Vulcan rock quarry, on the front side is clear creek road and 300 feet from there is interstate 26. The reduction request is only between our property and Vulcan rock quarry. The 20 foot setback would not alter the intent or character of the current land use plan. Granting the variants request is a simple solution to the space problem created by the 100 ft. setback. The plant will operate in more efficient fashion, the additional space provided by breaking this request will be a much safer environment for employees.**

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.)

**Granting this variants will in no way affect the public safety or welfare, the fence and buffers will still be in place. If denied this manufacturing facility will be cramped with limited space for trucks and machinery to maneuver on a daily basis. The chance for accidents will be higher if variance is not granted an overall plan operation will be hampered on a daily basis.**

**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.

**Based on above answers we are not comparing how Vulcan is using their land and my only point is that they are a similar business and the requested variance will in no way interfere with Vulcan's operation and will in fact make the best use of that section of land.**

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

Gregg S. Bellin  
Print Applicant (Owner or Agent)

Gregg S. Bellin  
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)

