

**REQUEST FOR BOARD ACTION**  
**HENDERSON COUNTY**  
**Zoning Board of Adjustment**

**MEETING DATES:** 1/16/18 TRC 1/31/18 ZBA

**SUBJECT:** Variance Application (V-18-01) located at 306 & 292 Mountain Page Rd

**PRESENTER:** Toby Linville, Code Enforcement Director

**ATTACHMENTS:**

1. Staff Report
2. Photographs
3. Site Plan

**SUMMARY OF REQUEST:**

The applicant is requesting a variance to reduce the side-yard setback for the property to 0'. The Residential Two Rural district requires a minimum 10' side yard setback. The existing homes were built in 1924 (292) and 1946 (306). In order to apply for a home loan to remodel 306 the banks are requiring the two homes to be subdivided.

Staff requests the Board of Adjustment take action to approve, approve with modifications, table, or deny Variance-18-01.

**Suggested Motion:**

**I move that the Technical Review Committee recommend approval/denial to the Zoning Board of Adjustment.**

**I move that the Board of Adjustment approve/deny variance application V-18-01 because it meets 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:** Nancy Brennan
- 1.2. **Request:** 10' Variance of side yard setback
- 1.3. **PIN:** 9595642468
- 1.4. **Size:** 1.28 acres +/-
- 1.5. **Location:** The subject area is off Mountain Page Rd across from Old Mountain Page Rd.
- 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*.

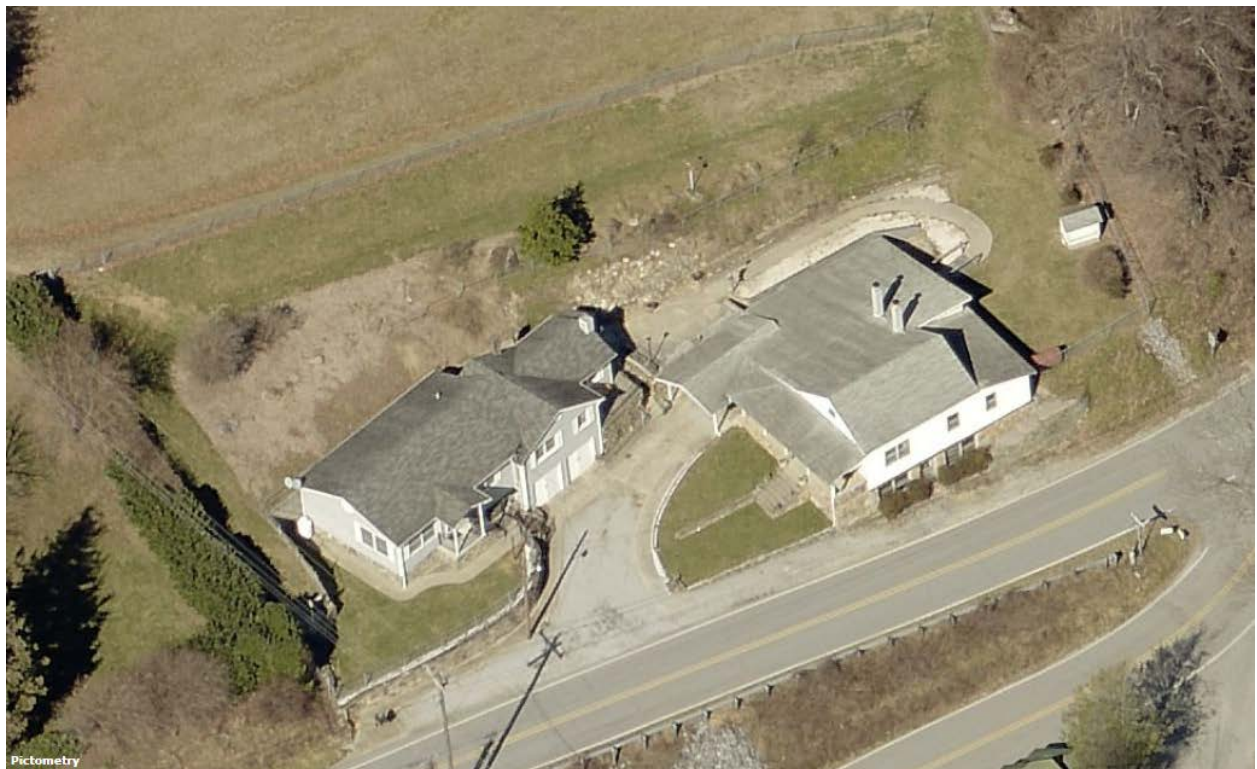
e. The *Variance* shall not allow for an increase in density for the purposes of subdividing the land that would otherwise not be permitted by the applicable zoning district or *subdivision* regulations.

(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.

**Map A: Aerial Photo/ Pictometry**

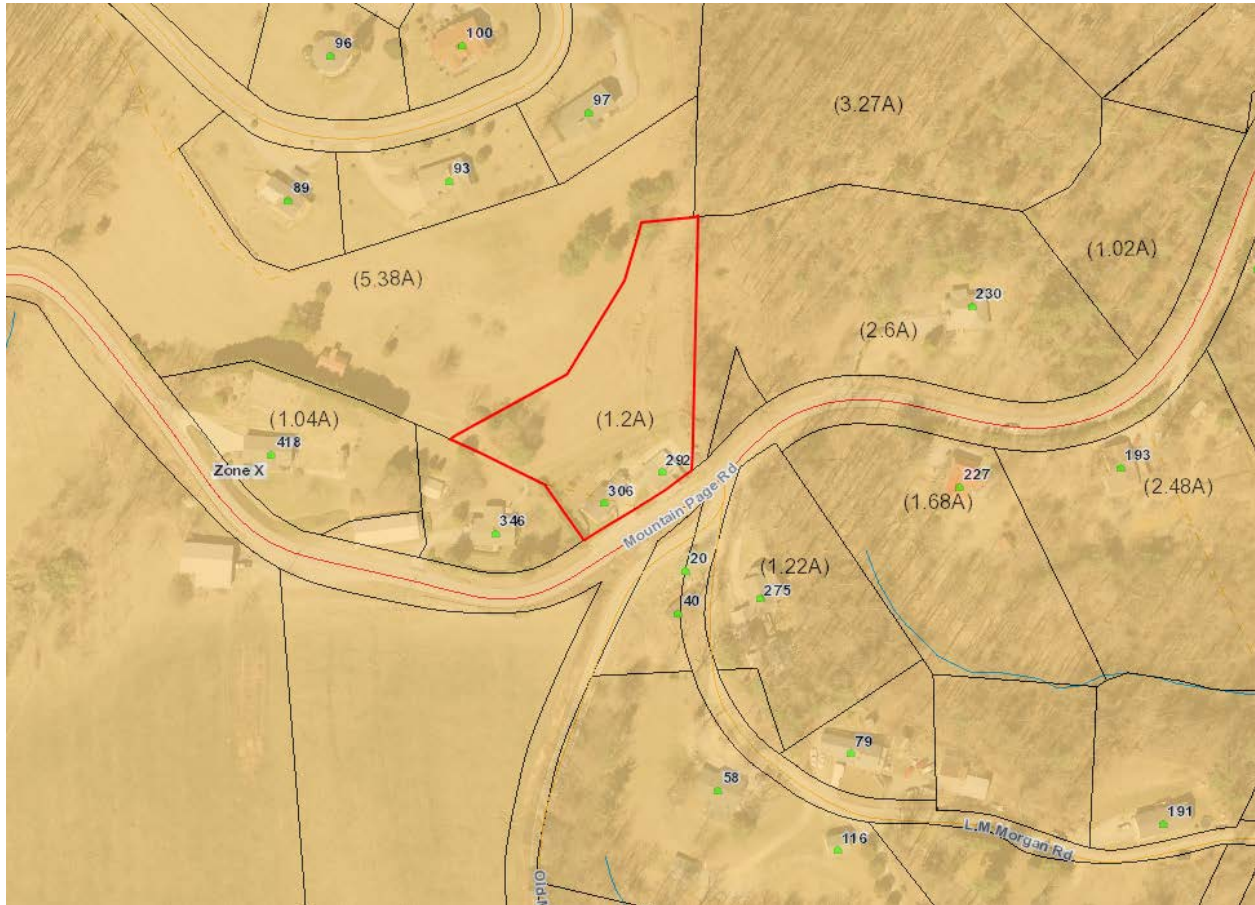




## 2. Current Conditions

- 2.1 Current Use: The parcel has two homes
- 2.2 Adjacent Area Uses: The surrounding properties are residential.
- 2.3 Zoning: The subject property and surrounding properties are R2R.

**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:** This property is served by individual well and septic system.  
**Public Water:** N/A  
**Public Sewer:** N/A

**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 “Rural/Urban Transition Area” classification. The text and map of the 2020 CCP suggest that the Subject Area would be more suitable for the following:

Rural / Agriculture Areas (RAA) The following is a description of the patterns of development envisioned within the RAA:

1. The RAA covers those portions of the county that are predominantly rural and are characterized by low-density residential development with substantial land areas devoted to agriculture and undeveloped lands. Land use policies will seek to retain that character.
2. Slopes are typically steep, often exceeding 10%, with significant areas greater than 20%.
3. Most sections of the RAA are so far from sewer services as to make their extension largely impossible. Land development regulations should recognize this by not permitting densities that would require sewer services or introduce traffic capacity problems and by encouraging densities that are consistent with steep slopes, poor septic capacities, and sensitive topography.

6. **Staff Recommendations**

Staff’s position at this time, under the guidelines of current plans, policies and studies, is that they support the application. The owner faces a hardship in that the current setbacks were not in place when the home was built. The LDC was approved in 2007 and the homes were built in 1924 and 1946. TRC recommends approval of the site plan and application.

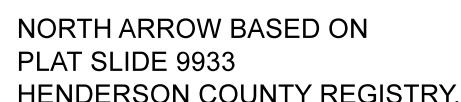


7. Photographs









GREEN RIVER TWP., HENDERSON CO., NO. CAR.  
LEGAL REFERENCE: DB. 1638-323

DECEMBER 7, 2017

BUTLER ASSOCIATES  
28 NORTH TRADE ST.  
TRYON, NC 28782  
828-859-5390



NOTE:

THIS PARCEL IS SUBJECT TO ALL EASEMENTS  
AND RESTRICTIONS OF RECORD.

NO TITLE SEARCH PERFORMED BY BUTLER ASSOCIATES.

PROPERTY IS NOT LOCATED WITHIN 1/2 MILE OF AN AGRICULTURAL DISTRICT.

CURRENT PROPERTY OWNER / OWNERS:  
NANCY LYNN BRENNAN & CONNI CELESTIE BRENNAN  
292 MOUNTAIN PAGE RD. SALUDA, NC 28773

ZONING: R2R  
SETBACKS:  
15' FRONT  
10' SIDES  
10' REAR

\_\_\_\_\_, Subdivision Administrator for \_\_\_\_\_

Henderson County certify that this plat plan has been

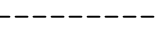
Reviewed and approved as (a)

In accordance with the Henderson County Subdivision

Ordinance.

Subdivision Administrator Date

**LEGEND:**  
 NIR - NEW IRON ROD  
 CM - CONCRETE MONUMENT  
 EIP - EXISTING IRON PIPE  
 EIR - EXISTING IRON ROD  
 ⓔ - ELECTRICAL POLE  
 ⚓ - FIRE HYDRANT  
 ☀ - AREA LIGHT  
 Ⓜ - WELL/WATER METER


 DRIVE/ROAD  
 ADJOINING BOUNDARY LINE  
 R/W  
 OVERHEAD UTILITIES  
 BOUNDARY LINE

LINE	BEARING	DISTANCE
L1	S 18°59'31" E	19.67'
L2	S 08°14'29" W	75.16'

9595547506  
NEIL J. & KAROL K. ROOD  
1653-1

9595645567  
DANIEL A. & SHANNEN L. KUZIA  
1672-4

*0.89 Acres*

*0.53 Acres*

*BENT 5/8 EIP*

5/8 EIP  
@ 98.26'  
0.26' LEFT

STATE OF NORTH CAROLINA

HENDERSON COUNTY  
OFFICE OF REGISTER OF DEEDS  
FILED FOR RECORD THIS THE \_\_\_\_ DAY OF  
\_\_\_\_, 20\_\_ AT \_\_\_\_ O'CLOCK \_\_\_\_ M  
AND DULY REGISTERED IN SAID OFFICE  
CARD FILE PAGE

REGISTER OF DEEDS

### REVIEW OFFICER CERTIFICATION

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

I, \_\_\_\_\_, REVIEW OFFICER OF  
HENDERSON COUNTY, CERTIFY THAT THE MAP OR PLAT  
TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL  
STATUTORY REQUIREMENTS FOR RECORDING.

REVIEW OFFICER \_\_\_\_\_ DATE \_\_\_\_\_

NOTE:  
THIS PROPERTY IS NOT  
LOCATED IN A SPECIAL FLOOD  
HAZARD AS DETERMINED BY THE  
FEDERAL INSURANCE RATE MAP OF  
NORTH CAROLINA.

NOTE:

THIS SURVEY CREATES A SUBDIVISION OF LAND  
WITHIN THE AREA OF A COUNTY OR MUNICIPALITY  
THAT HAS AN ORDINANCE THAT REGULATES  
PARCELS OF LAND. G.S. 47-30(F)(11)(A)

STATE OF NORTH CAROLINA, \_\_\_\_\_ COUNTY, I \_\_\_\_\_  
CERTIFY THAT THIS MAP WAS (DRAWN BY ME)/(DRAWN UNDER MY SUPERVISION)  
FROM (AN ACTUAL SURVEY BY ME)/(AN ACTUAL SURVEY MADE UNDER MY  
SUPERVISION); DEED DESCRIPTION RECORDED IN BOOK \_\_\_\_\_ PAGE \_\_\_\_\_  
BOOK \_\_\_\_\_ PAGE \_\_\_\_\_, ETC.; THAT THE RATIO OF PRECISION AS CALCULATED  
BY LATITUDES AND DEPARTURES IS 1/\_\_\_\_\_; THAT THE BOUNDARIES  
NOT SURVEYED ARE SHOWN AS BROKEN LINES PLOTTED FROM INFORMATION  
FOUND IN BOOK \_\_\_\_\_ PAGE \_\_\_\_\_; THAT THIS MAP WAS PREPARED IN  
ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY HAND AND SEAL  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

SURVEYOR

REG. NO.

**TAX PARCEL:**  
**9595642468**

13186B

GRAPHIC SCALE 1" = 30'



NC FIRM LICENSE NO. F-0409  
RATIO OF PRECISION: 1:10,000  
D-157-69