

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
Zoning Board of Adjustment

MEETING DATES: 4/16/19 TRC 4/24/19 ZBA

SUBJECT: Variance Application (V-19-03) located on Pinnacle Mountain 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 allow a structure within the required setbacks. 42-37 of the Henderson County Land Development Code states:

Section 42-37 allows (9) Civic and cultural buildings, including auditoriums, theaters for the performing arts, museums, art galleries, symphony and concert halls and historical societies, provided that:

- a. The structures are placed not less than 50 feet from any property line;**
- b. They are located with access to a street, as shall be determined by the *Zoning Administrator*;
- c. There is a planted buffer strip along the side and rear property lines, except where such lines run parallel and contiguous with streets, streambeds, lakes and railroad tracks;
- d. The facility is not operated for profit and satisfactory proof of the tax-exempt status of the organization is exhibited to the *Zoning Administrator*. You are receiving this notice because you own property adjoining or near the subject property.

Suggested Motion:

I move that the Technical Review Committee recommend review to the Zoning Board of Adjustment.

I move that the Board of Adjustment approve/deny variance application V-19-02 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:** Green River Fire and Rescue Inc.
- 1.2. **Request:** Side yard setback variance
- 1.3. **PIN:** 9565193436
- 1.4. **Size:** 1.02 acres +/-
- 1.5. **Location:** The subject area is on Pinnacle Mountain Rd between Lake Falls Rd and Fortescue 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*.

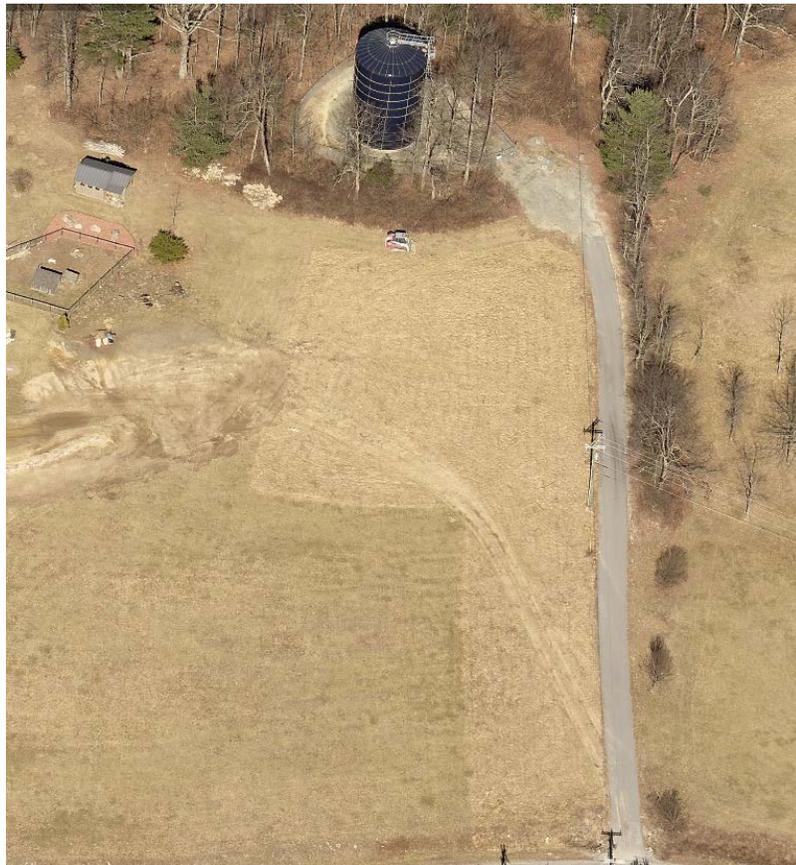
e. The *Variance* shall not allow for an increase in density for the purposes of subdividing the land that would otherwise not be permitted by the applicable zoning district or *subdivision* regulations.

(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



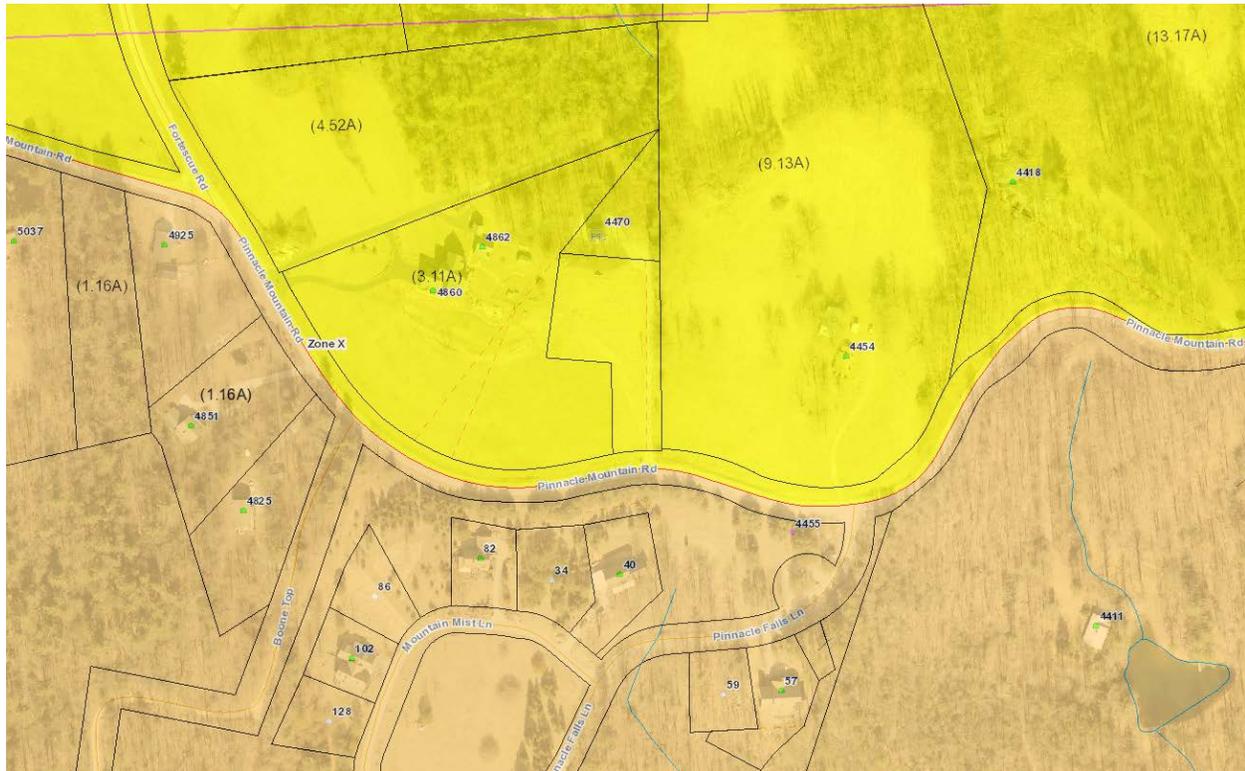
2. Current Conditions

2.1 Current Use: The parcel is residential

2.2 Adjacent Area Uses: The surrounding properties are residential.

2.3 Zoning: The subject property and surrounding properties are R-40 north and R2R South.

Map B: Current Zoning



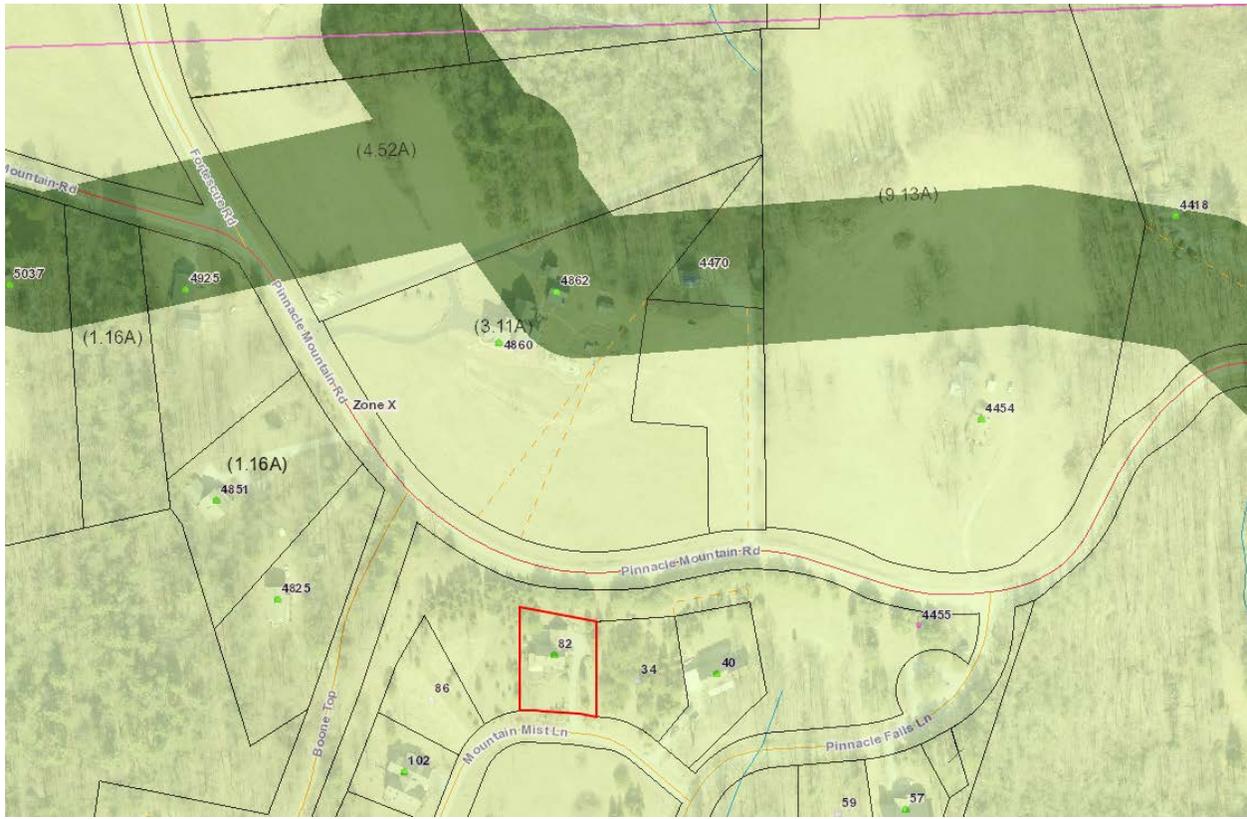
3. **Floodplain /Watershed Protection:** The property is not located in a Special Flood Hazard Area. The property is not located in a Water Supply Watershed district.

4. **Water and Sewer:** This property is served by public water and septic system.

Public Water: City of Hendersonville

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/Open Space/Agriculture” classification. The text and map of the 2020 CCP suggest that the Subject Area would be more suitable for the following:

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%.

6. Staff Recommendations

TRC recommends forwarding the site plan and application to the Zoning Board of Adjustment for review.

7. Photographs





Application No. _____

**HENDERSON COUNTY
VARIANCE APPLICATION FORM**

GENERAL INFORMATION

Date of Application: April 1st 2019
Previously Submitted (Circle One): Yes No
Date of Pre-Application Conference: _____
Site Plan Attached (Circle One): Yes _____ No _____

PARCEL INFORMATION

Property Address Pinnacle Mtn. Rd
PIN: 9565193436 Deed Book/Page: 1642 698 Acreage: 1.02
Zoning District: Flat RockR-40 Fire District: Green River Watershed: _____ Floodplain: No
Driving Directions: In Zirconia Community, from Old US 25 Hwy take Mt.Olivet Rd to Left on Pinnacle Mtn Rd. Site is .25 mile on right in front of City of Hendersonville Water storage tank.

REASON FOR VARIANCE Construction of Fire Station. Postiong of Station on lot for septic field.

FRONT SETBACK (feet/foot) _____
SIDE SETBACK (feet/foot) 25ft
REAR SETBACK (feet/foot) 35ft

PROPERTY OWNER CONTACT INFORMATION:

Name: Green River Vol. Fire & Rescue Phone: 828-692-4009
Address: P.O. Box 667 City, State, and Zip: Zirconia, N.C. 28790

Applicant:

Name: Fire Chief Dustin Nicholson Phone: 828-674-8415
Address: P.O. Box 667 City, State, and Zip: Zirconia, N.C. 28790

Agent:

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

Agent Form (Circle One): Yes No

Plan Preparer:

Name: CSS Engineering Phone: 1-864-855-5200
Address: 402 East First Avenue City, State, and Zip: Easley, S.C. 29640

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.)

In the event the variance is not granted the fire station will not be able to be constructed on the site.

The property was purchased with the need of the community in mind. In the event the station cannot be built on the site the fire department will have to look for more land in another near by location costing the tax payers more money and delaying the project.

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 size of the lot doesnt allow for the 50ft setbacks on all sides of the building.

To allow for the septic system drainfield the fire station needs to be moved closer to the property lines.

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

Green River Fire & Rescue have in no way caused a hardship from our action to require a variance request.

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 variance is needed to allow for the septic system for the new fire station. The station is being designed to match the neighborhood it will be serving. The station will also help hide the City of Hendersonvilles water storage tank as well.

We have been working closely with the adjoining land owner Mr. Rash who approves and supports our design for the fire station.

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.)

The variance will allow for the construction of a New Fire Station to help service the communtiy and people with in it.

The fire station is needed in this particular location to help fill a gap in the departments response area.

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 variance in no way resembles any other type of project like this in the neighboring land or community that we at Green River Fire & Rescue are aware of.

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

Fire Chief Dustin Nielson
Print Applicant (Owner or Agent)

Chief Nielson
Signature Applicant (Owner or Agent)

4-1-19.
Date

County Use Only

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

HENDERSON COUNTY

CODE ENFORCEMENT SERVICES APPOINTMENT OF AGENT FORM (OPTIONAL)

I Green River Vol. Fire Assoc (Name) of property located on Pinnacle Mt. Rd. (Street Address),

recorded in 1642 (Deed Book/Page) and having a parcel identification number of 9565193436 (PIN),

located in Henderson County, North Carolina, do hereby appoint Fire Chief Dustin Nielson (Agent's Name)

828-674-8415 (Agent's phone number), to represent me in an **application to the Code Enforcement Services**

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.

Green River Vol. Fire Assoc
(Property Owner)

4-1-19.
(Date)

From: [Dustin Nicholson](#)
To: [Toby Linville](#)
Subject: FW: New message - grvfd.com
Date: Wednesday, April 10, 2019 8:09:51 PM

Toby I spoke with our neighbor Mr. Rash at the Station 4 site and he sent me this email so you guys would have conformation he good with the set backs. Thanks Dustin

Sent from [Mail](#) for Windows 10

From: Green River Fire & Rescue <donotreply@godaddy.com>
Sent: Wednesday, April 10, 2019 7:18:31 PM
To: greenriverfire@outlook.com
Subject: New message - grvfd.com

[Click here to reply](#)

Name:
George Rash

Email:
George.E.Rash@sbcglobal.net

Message:
Dusty, sorry for being late sending this. Per our discussion last Friday, my wife and I grant the Green River Fire dept a waiver of setback distance as required by county. From 50 ft as stated to 35 ft for the purposes of construction of the building. If additional information is required please let me know. George Rash

This message was submitted from your website contact form:
<http://grvfd.com>

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