

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

**MEETING DATES:** 4/2/19 TRC 4/24/19 ZBA

**SUBJECT:** Variance Application (V-19-02) located at 283 McKinney Pointe Dr

**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 an accessory structure in the front yard. 42-27 of the Henderson County Land Development Code states:

(5) *Accessory structures* shall be located in *side* or *rear yards* and shall be *setback* a minimum of five (5) feet from any property line.

**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:** Joel Kalsbeck
- 1.2. **Request:** Front yard setback variance
- 1.3. **PIN:** 9539122334
- 1.4. **Size:** .76 acres +/-
- 1.5. **Location:** The subject area is at the end of McKinney Pointe 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.

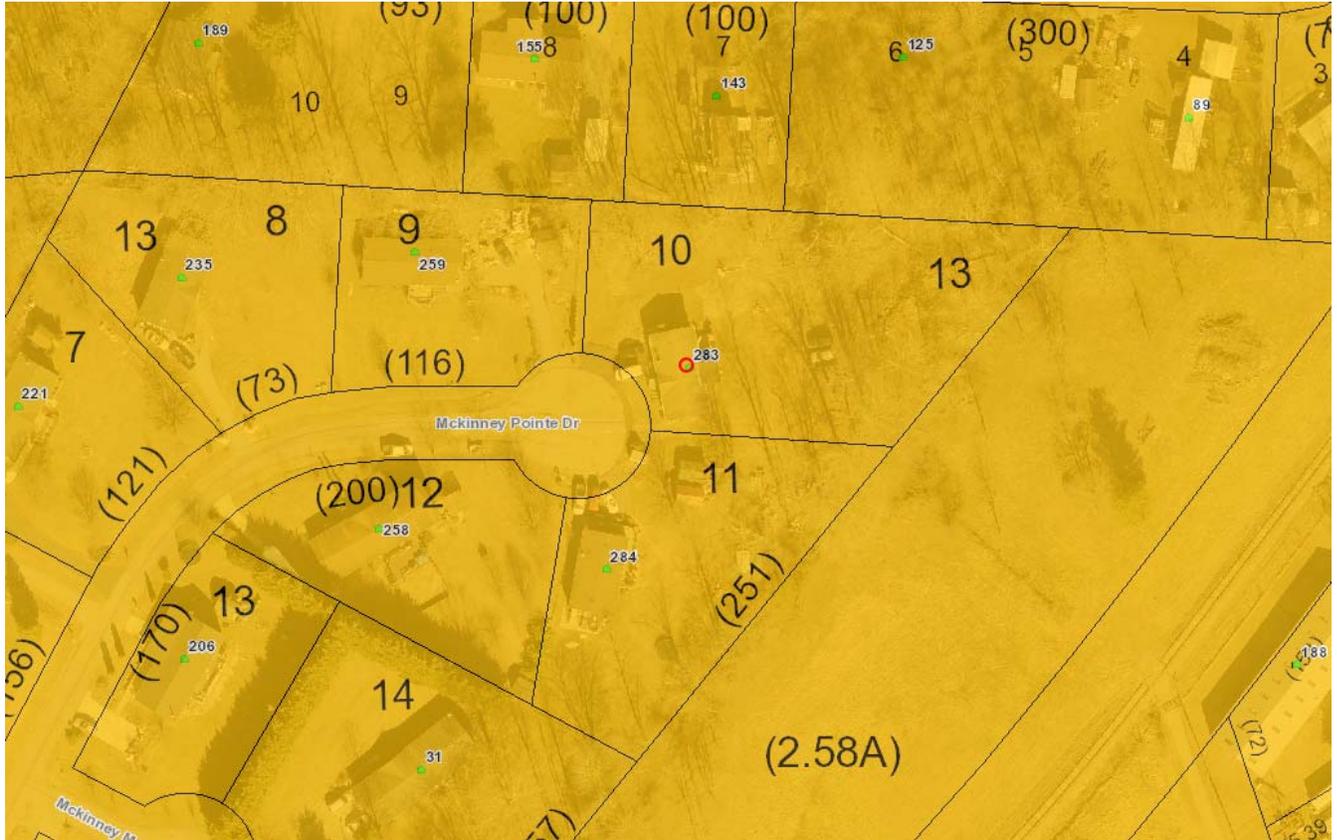
Map A: Aerial Photo/ Pictometry



**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 R1.

**Map B: Current Zoning**



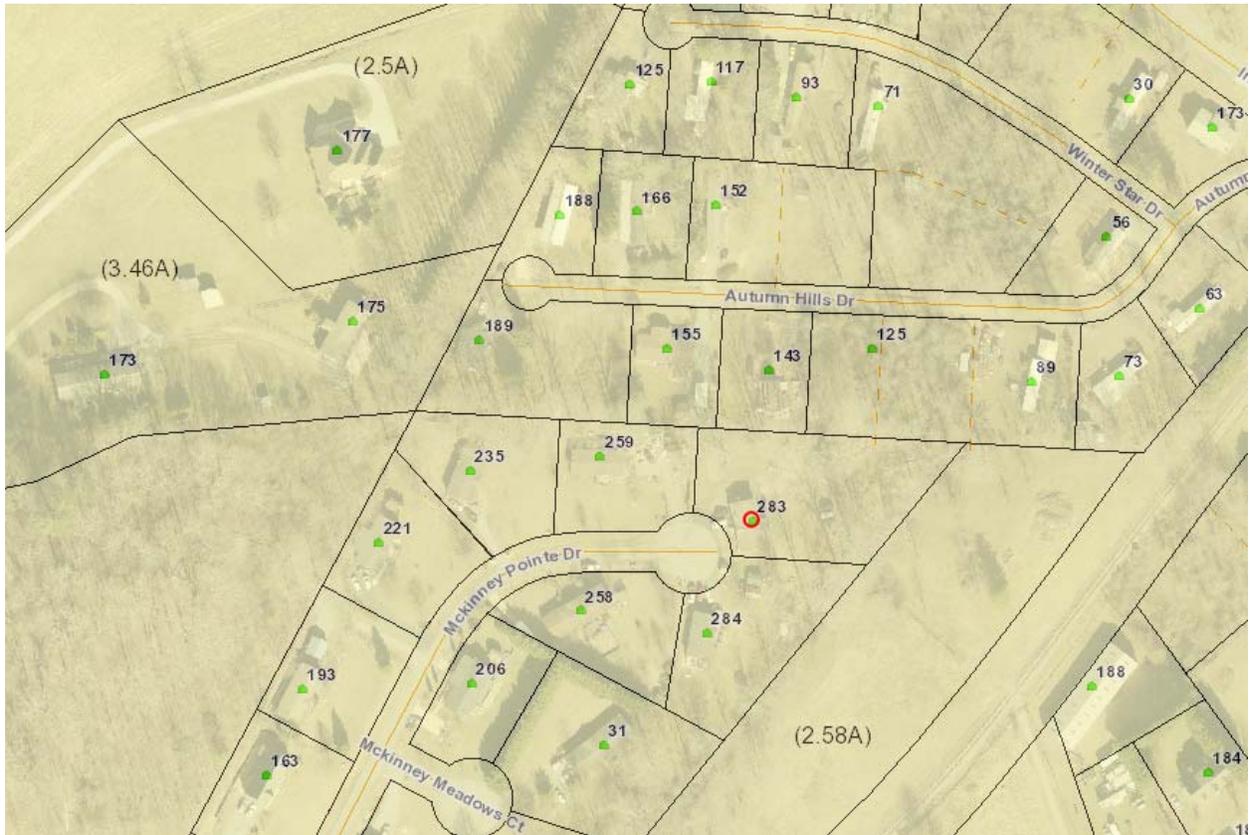
3. **Floodplain /Watershed Protection:** The property is not located in a Special Flood Hazard Area. The property is in the Upper French Broad River WS-IVP Water Supply Watershed district.

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

6. **Staff Recommendations**

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

7. **Photographs**





Application No. V-19-02

**HENDERSON COUNTY  
VARIANCE APPLICATION FORM**

**GENERAL INFORMATION**

Date of Application: 2-12-19  
Previously Submitted (Circle One): Yes  No   
Date of Pre-Application Conference: 2-12-19  
Site Plan Attached (Circle One):  Yes  No

**PARCEL INFORMATION**

Property Address 283 McKinney Pt Drive  
PIN: 9539122334 Deed Book/Page: 3921/92 Acreage: .89 .76  
Zoning District: R1 Fire District: EHS Watershed: WSIV Floodplain: NO  
Driving Directions: \_\_\_\_\_

**REASON FOR VARIANCE** \_\_\_\_\_

**FRONT SETBACK (feet/foot)** \_\_\_\_\_

**SIDE SETBACK (feet/foot)** \_\_\_\_\_

**REAR SETBACK (feet/foot)** \_\_\_\_\_

**PROPERTY OWNER CONTACT INFORMATION:**

Name: Joel Kalsbeck Phone: (715) 308-3418  
Address: 283 McKinney Pt City, State, and Zip: Etowah NC 28729

**Applicant:**

Name: Joel Kalsbeck Phone: (715) 308-3418  
Address: 283 McKinney Pt City, State, and Zip: Etowah NC 28729

**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.)

yes

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.)

Drain field Holding tank Blocking any usage of side of home or back yard because drain field, right side of home too close to property line to put in Drive way also running into Drain Field

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

No, everything is pre existing

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.)

yes

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.)

yes

**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.

TRUE

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

JOEL R KALBEEL  
Print Applicant (Owner or Agent)

[Signature]  
Signature Applicant (Owner or Agent)

3-11-19  
Date

Fee: \$ \_\_\_\_\_ Paid: \_\_\_\_\_ Method: \_\_\_\_\_ Received by: TSL Permit#: \_\_\_\_\_

**County Use Only**

**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)

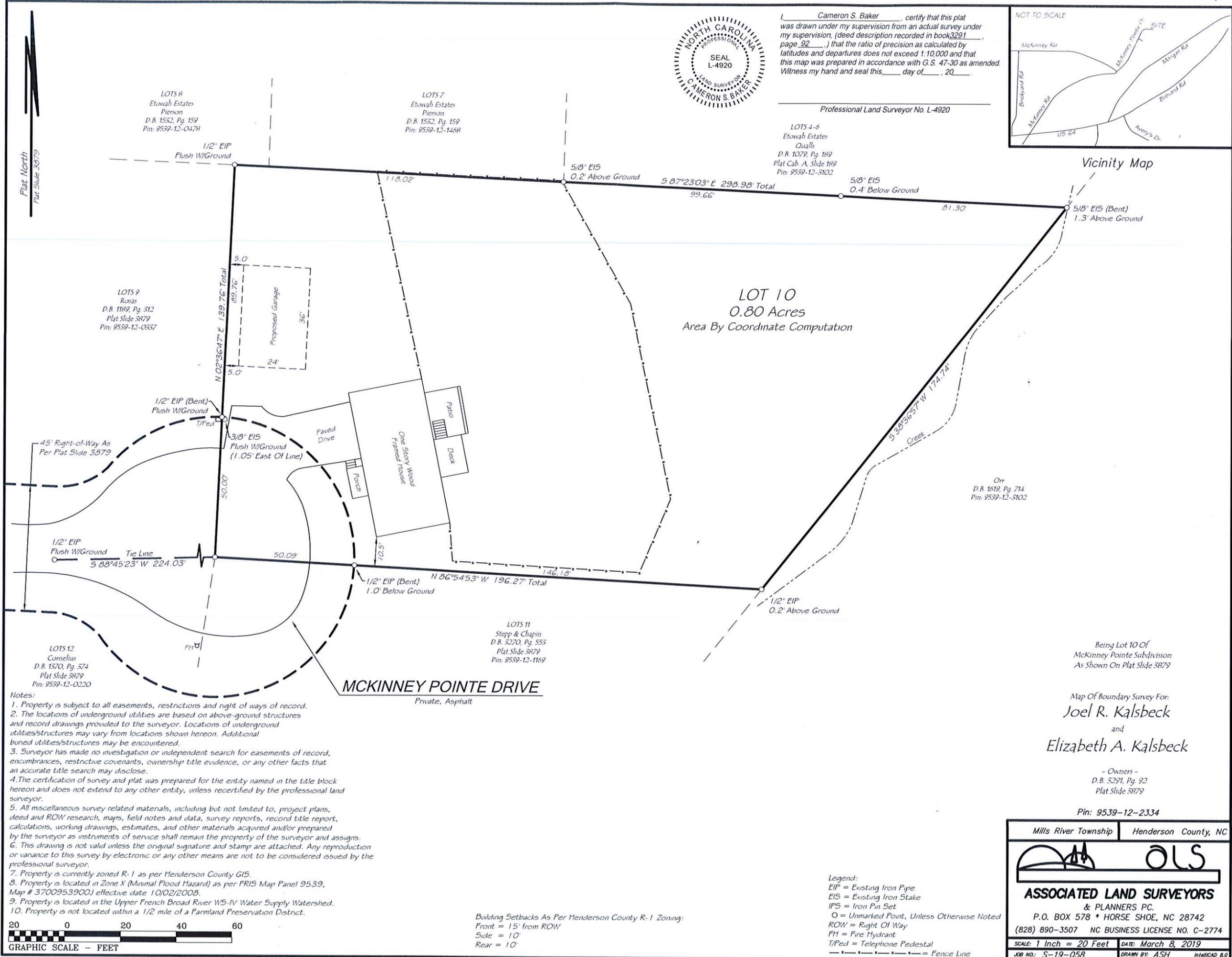
located in Henderson County, North Carolina, do hereby appoint \_\_\_\_\_,  
(Agent's Name)  
\_\_\_\_\_, to represent me in an **application to the Code Enforcement Services**  
(Agent's phone number)

**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)

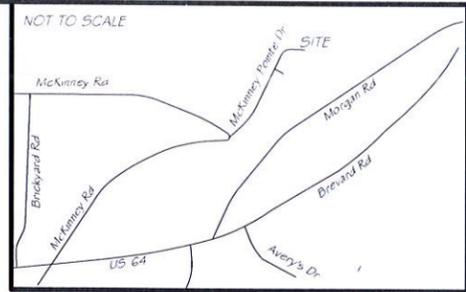
\_\_\_\_\_  
(Date)



I, Cameron S. Baker, certify that this plat was drawn under my supervision from an actual survey under my supervision, (deed description recorded in book 3291, page 92, ) that the ratio of precision as calculated by latitudes and departures does not exceed 1:10,000 and that this map was prepared in accordance with G.S. 47-30 as amended. Witness my hand and seal this        day of       , 20      .

Professional Land Surveyor No. L-4920

LOTS 4-6  
Etowah Estates  
Qualls  
D.B. 1079, Pg. 189  
Plat Cab. A. Slide 189  
Pin: 9539-12-5102



Vicinity Map

**LOT 10**  
0.80 Acres  
Area By Coordinate Computation

LOTS 8  
Etowah Estates  
Pierson  
D.B. 1552, Pg. 159  
Pin: 9539-12-0478

LOTS 7  
Etowah Estates  
Pierson  
D.B. 1552, Pg. 159  
Pin: 9539-12-1468

LOTS 9  
Rosas  
D.B. 1189, Pg. 512  
Plat Slide 3879  
Pin: 9539-12-0357

LOTS 11  
Stapp & Chapin  
D.B. 5270, Pg. 555  
Plat Slide 3879  
Pin: 9539-12-1169

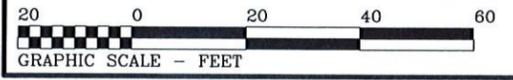
LOTS 12  
Cornelius  
D.B. 1570, Pg. 574  
Plat Slide 3879  
Pin: 9539-12-0220

Orr  
D.B. 1619, Pg. 714  
Pin: 9539-12-5102

**MCKINNEY POINTE DRIVE**  
Private, Asphalt

- Notes:
1. Property is subject to all easements, restrictions and right of ways of record.
  2. The locations of underground utilities are based on above-ground structures and record drawings provided to the surveyor. Locations of underground utilities/structures may vary from locations shown hereon. Additional buried utilities/structures may be encountered.
  3. Surveyor has made no investigation or independent search for easements of record, encumbrances, restrictive covenants, ownership title evidence, or any other facts that an accurate title search may disclose.
  4. The certification of survey and plat was prepared for the entity named in the title block hereon and does not extend to any other entity, unless recertified by the professional land surveyor.
  5. All miscellaneous survey related materials, including but not limited to, project plans, deed and ROW research, maps, field notes and data, survey reports, record title report, calculations, working drawings, estimates, and other materials acquired and/or prepared by the surveyor as instruments of service shall remain the property of the surveyor and assigns.
  6. This drawing is not valid unless the original signature and stamp are attached. Any reproduction or variance to this survey by electronic or any other means are not to be considered issued by the professional surveyor.
  7. Property is currently zoned R-1 as per Henderson County GIS.
  8. Property is located in Zone X (Minimal Flood Hazard) as per FRIS Map Panel 9539, Map # 3700953900J effective date 10/02/2008.
  9. Property is located in the Upper French Broad River WS-IV Water Supply Watershed.
  10. Property is not located within a 1/2 mile of a Farmland Preservation District.

Building Setbacks As Per Henderson County R-1 Zoning:  
Front = 15' from ROW  
Side = 10'  
Rear = 10'



- Legend:
- EIP = Existing Iron Pipe
  - EIS = Existing Iron Stake
  - IPS = Iron Pin Set
  - O = Unmarked Point, Unless Otherwise Noted
  - ROW = Right Of Way
  - FH = Fire Hydrant
  - T/Ped = Telephone Pedestal
  - - - - - = Fence Line

Being Lot 10 Of  
McKinney Pointe Subdivision  
As Shown On Plat Slide 3879

Map Of Boundary Survey For:  
**Joel R. Kalsbeck**  
and  
**Elizabeth A. Kalsbeck**

- Owners -  
D.B. 5291, Pg. 92  
Plat Slide 3879

Pin: 9539-12-2334

|  |                      |
|--|----------------------|
| Mills River Township   | Henderson County, NC |
|  |                      |
| <b>ASSOCIATED LAND SURVEYORS</b><br>& PLANNERS PC.<br>P.O. BOX 578 * HORSE SHOE, NC 28742<br>(828) 890-3507 NC BUSINESS LICENSE NO. C-2774 |                      |
| SCALE: 1 Inch = 20 Feet  | DATE: March 8, 2019  |
| JOB NO: S-19-058   | DRAWN BY: ASH        |