

REQUEST FOR COMMITTEE ACTION

HENDERSON COUNTY

Zoning Board of Adjustment

MEETING: December 18, 2019

SUBJECT: Martin Appeal

PRESENTER: Toby Linville

ATTACHMENTS: Staff Report

**SUMMARY OF REQUEST: Appeal of use requirements of Henderson County Land
Development Code §42-62**

**Suggested Motion: I move to uphold/overturn the decision of the Zoning Administrator to allow
a Recreational Vehicle to be set-up permanently on a parcel of land.**



Henderson County, North Carolina Code Enforcement Services

1. Committee Request

- 1.1. **Applicant:** Michael Martin
- 1.2. **Request:** Appeal Table of Permitted Uses of Land Development Code
- 1.3. **PIN:** 9575951772
- 1.4. **Size:** .31 acres +/-
- 1.5. **Location:** 248 Camp Windy Wood
- 1.6. **Requirements:**

Timeline:

- 5/8/18 Stop Work Order Picnic Shelter
- 5/15/18 Building Permit for single family dwelling issued
- 9/7/18 Notice of Violation RV Setup
- 8/7/19 Newspaper Classified
- 9/20/19 Mitchell Letter clarifying permitting
- 10/24/19 Planning Board Appeal
- 11/20/19 Zoning Board of Adjustment Appeal

§42-309. Henderson County Zoning Administrator

A. Powers and Duties Pursuant to This Chapter. The *Zoning Administrator* shall have the following duties with respect to this Chapter, to be carried out in accordance with the terms of this Chapter:

- (1) Interpretation. To interpret the terms and provisions of this Chapter.
- (2) Enforcement. To enforce the provisions of this Chapter related to zoning regulations including properly investigating complaints from *persons* who allege that *violations* of this Chapter have occurred and initiating appropriate action as necessary to prevent, enjoin, abate or remove any *violations* found. The *Zoning Administrator*, or his/her duly authorized representative, may enter any *building*, *structure* or premises, as provided by law, to perform any duty imposed upon him/her by this Chapter.
- (3) Staff Support. To provide staff support to the Zoning Board of Adjustment.
- (4) Membership on the Technical Review Committee. To serve as a member of the Technical Review Committee.
- (5) Communication Facilities Administrator. To serve as the *Communication Facilities Administrator*.
- (6) Manufactured Home Park Administrator. To serve as the *Manufactured Home Park Administrator*.
- (7) Site Plan Review. To approve, approve conditionally or deny all minor *site plans*;
- (8) Text Amendments. To initiate *text amendments* to this Chapter by submittal to the *Planning Director*.
- (9) Map Amendments. To initiate *map amendments* to the Official Zoning Map.
- (10) Sign Permits. To grant *sign permits* as authorized by this Chapter.
- (11) Temporary Use Permits. To grant *temporary use permits*, administer the provisions of this Chapter related to *temporary use permits* and, at the discretion of the *Zoning Administrator*, refer applications for *temporary use permits* to the Zoning Board of Adjustment for approval.
- (12) Zoning Permits. To grant *zoning permits* as authorized by this Chapter.
- (13) Zoning Compliance Inspections. To administer the provisions of this Chapter relating to *zoning compliance inspections*.

(14) Variances. To review *variance* requests and make recommendations to the Zoning Board of Adjustment for final action thereon.

(15) Statutory Vested Rights. To administer the provisions of this Chapter relating to Vested Rights for which he/she is the approving official.

(16) Additional Powers and Duties. Such additional powers and duties as may be set forth for the *Zoning Administrator* elsewhere in this Chapter and in other laws and regulations.

§42-347. General

All permit applications shall include, at minimum: (1) the name(s) and address(es) of the *owner(s)* of the property in question; (2) the location of the property; (3) the *PIN* as shown on the County tax listing; (4) a description and/or statement of the present zoning district; (5) the appropriate level of *site plan*; and, where an *applicant* chooses to appoint an agent to speak on their behalf, (6) an agent form. Permit applications may run concurrently with *site plan* review, amendment requests or other applications for approvals required for the particular development. All permit applications shall adhere to the applicable review and approval process as outlined in this Article.

§42-379. Appeals

Questions arising in connection with the enforcement of this Chapter shall be presented first to the approving official or agency and shall be presented to the appellate agency only on *appeal* from the approving official or agency (See Table 12.1). *Appeals* must be filed 30 days from the date of the decision with the approving official or agency. Where the appellate agency is the Zoning Board of Adjustment (*ZBA*), the *ZBA* shall hold a public hearing on the *appeal* in accordance with §42-371 (Quasi-Judicial Process Standards).

§42-38. Waterfront Residential District (WR)

- A. **Purpose.** The Waterfront Residential District (WR) is established to maintain the zoning in place prior to the adoption of this Chapter 42. This district is established for residential development on or adjacent to waterfront property, that which is navigable for small recreational-type boats and watercraft. The district is intended to maintain and promote low-density single-family development and is intended to provide protection of the existing waterfront character and environmental sensitivity, particularly the water quality and any adjacent wetlands. The WR District shall not be extended from the locations designated on the Official Zoning Map, nor shall new WR District areas be designated except where initiated by the Board of Commissioners or *Planning Board*. The WR District may be altered or removed with the completion of *Community Plans*.
- B. **Dimensional Requirements.** Each *use* allowed in this district shall at a minimum conform to the following requirements. In some cases a specific *use* may be required to meet the Supplemental Requirements as set forth in §42-63 (Supplemental Requirements). The Conservation Subdivision option shall be available in the WR District. Minimum *lot* sizes shall not apply when using the Conservation Subdivision option and an average density of one (1) unit per 30,000 square feet shall be applied.

Table 2.12. WR Dimensional Requirements			
(1) Minimum <i>Lot</i> Area (sq ft)			30,000
Minimum <i>Lot</i> Area Per Dwelling (Family Unit) (sq ft)			30,000
(3) <i>Yard Setbacks</i> (feet)	<i>Front</i> or <i>ROW</i>	(2) Major <i>Roads</i>	60
		All Others	45
	<i>Side</i>		None
	<i>Rear</i>		25
	Waterfront		None
Maximum Height <i>Principal Structure</i> (feet)			35
Maximum Height <i>Accessory Structure</i> (feet)			15
Maximum Height Boat House (feet) (Measured from <i>Full Pond Elevation</i>)			25

- (1) The minimum *lot* area for portions of the *tract* with a *slope* of 60 percent or greater (where such *slope* areas of the *tract* account for ten (10) percent or more of the *tract*) shall be twice the minimum *lot* area of the district.
- (2) Major *roads* shall include: Interstate 26, US Highway 64, US Highway 25, US Highway 176, NC Highway 280, NC Highway 191, Kanuga/Crab Creek Road (SR 1127), Clear Creek Road (SR 1503), Upward Road (SR 1722), and the Upward Road Connector (SR 1783).
- (3) *Yard setbacks* shall be measured from the centerline of *right-of-way*. Where the *road* is a major *road* and more than two (2) lanes (including parking lanes), the *yard setback* requirements shall be measured and begin at a point on the pavement 12 feet from the edge of the paved *road* abutting the property in subject.

- C. **Permitted Uses.** Within the WR District, the following uses are permitted:

- (1) *Dwelling, single-family, and manufactured homes (multi-section)*, excluding *manufactured homes (singlewide)* and *mobile homes* (See SR 1.4 (*Dwelling, Manufactured/Mobile Home (multi-section/singlewide)*) and SR 1.6 (*Dwelling, Single Family Detached*)).
- (2) Customary Accessory Building (Including garages, storage buildings, pools, tennis courts, boathouses and similar recreational uses). Customary accessory buildings:
 - a. Shall be permitted in *rear yards*, provided that they are located not less than five (5) feet from any property line;
 - b. May be permitted in *side yards*, provided that their placement shall not exceed the minimum *side yard* setback requirement for that district or use;
 - c. Shall not be permitted in *front yards*, except in the following cases:
 1. Where, by definition, more than one (1) *front yard* exists, such as in corner *lots* or *double fronted lots*; or
 2. Where the measurement of a *lot's* perimeter boundary is equal to or exceeds 50 percent of the abutting *road right-of-way*;
 - d. In Subsection c.1. and c.2. above, an accessory building shall not be located closer to the center line of the abutting *road* than is otherwise permitted by this Chapter;
 - e. In these cases only, such determination shall be made by the *Zoning Administrator* on a case-by-case basis. Determinations shall take into account orientation of the *structure* and dwelling, *road* and *driveway* location, topographical features, traffic volume, and visual buffers; and
 - f. In no case shall an accessory building be permitted in any *front, side* or *rear yard* if it exceeds 15 feet in height or if it occupies more than 30 percent of the required yard area; however, height restrictions do not apply on lots of one (1) or more acres. Maximum building height for private boathouses shall be 25 feet measured from the *full pond elevation* (lakes) or *mean sea level* elevation (rivers).
- (3) *Signs* not more than four (4) square feet in area advertising the sale or rental of property on which they are located.
- (4) *Church*, 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*; and
 - 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. (See also SR 5.3 (Cemetery/Mausoleum/Columbarium (excluding crematoriums)))
- (5) *Church* bulletin boards not exceeding 12 square feet in area.

- (6) *Utility Substation* (See SR 9.13 (*Utility Substation*)).
- (7) *Communications Facilities, Category 1* (See SR 9.3 (*Communications Facilities, Category 1*)).
- (8) *Family Care Home* (See SR 1.8 (*Family Care Home*)).
- (9) Solar Panels (See SR 2.11 (Solar Panels)).

D. **Permitted with a Special Use Permit.** Within the WR District, the following uses are permitted with a *special use* permit provided that the conditions listed below be met. This *special use* permit shall be issued in accordance with §42-356 (Special Use Permits):

- (1) *Park* (See SR 4.16 (*Park*)).
- (2) Tennis Club (See SR 4.24 (*Swim and Tennis Club*)).
- (3) Racquet Club.
- (4) *Golf Course* (See SR 4.7 (*Golf Course and/or Country Club*)).
- (5) *Camp* (See SR 4.3 (*Camp*)).
- (6) Customary Incidental Home Occupation (permitted as accessory uses in a residence). Customary incidental home occupations include, but are not limited to: construction, and the practice of such professions as insurance, medicine, artistry, architecture, and accounting. Customary incidental home occupations must:
 - a. Be conducted entirely within a dwelling;
 - b. Be carried on by the occupants thereof;
 - c. Be clearly incidental and secondary to the use of the dwelling for residential purposes;
 - d. Not change the character thereof;
 - e. Not install or use mechanical equipment except such as is normally used for domestic or professional purposes;
 - f. Not have over 25 percent of the total floor space of any *structure* in use for a home occupation; and
 - g. Not be conducted in any accessory building.
- (7) *Communication Facilities, Category 2* where such towers are limited to: (1) monopole towers, and (2) a height no greater than 100 feet (See also SR 9.3 (*Communication Facilities, Category 2*)).
- (8) Wind Mill/Turbine, Accessory \leq 40 ft (See SR 3.16).
- (9) Wind Mill/Turbine, Accessory $>$ 40 ft (See SR 3.17).

Map A: Aerial Photo/Pictometry



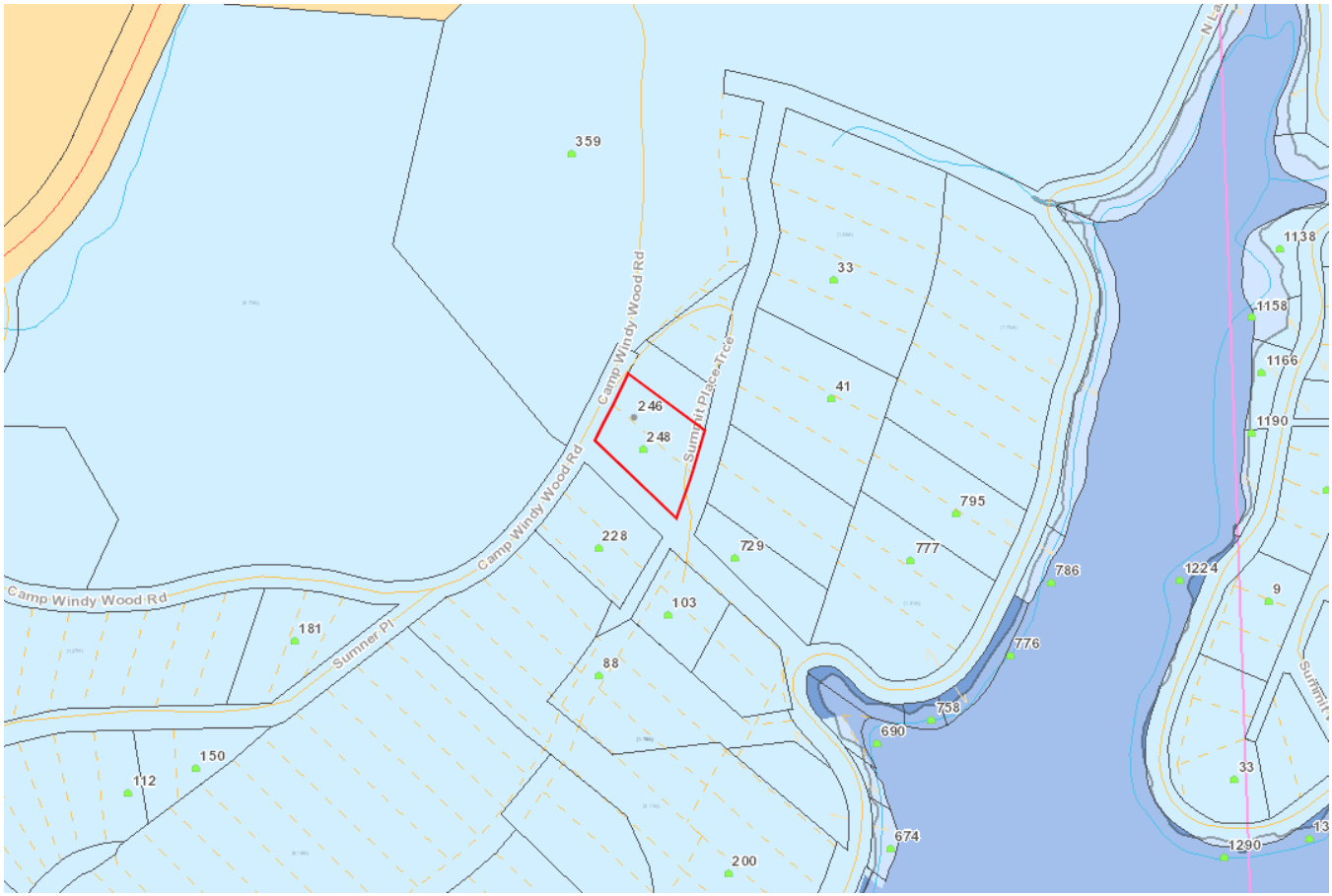
2. Current Conditions

2.1 Current Use: This parcel is currently in residential use.

2.2 Adjacent Area Uses: The surrounding properties are residential uses.

2.3 Zoning: The subject property is Waterfront Residential (WR).

Map B: Current Zoning



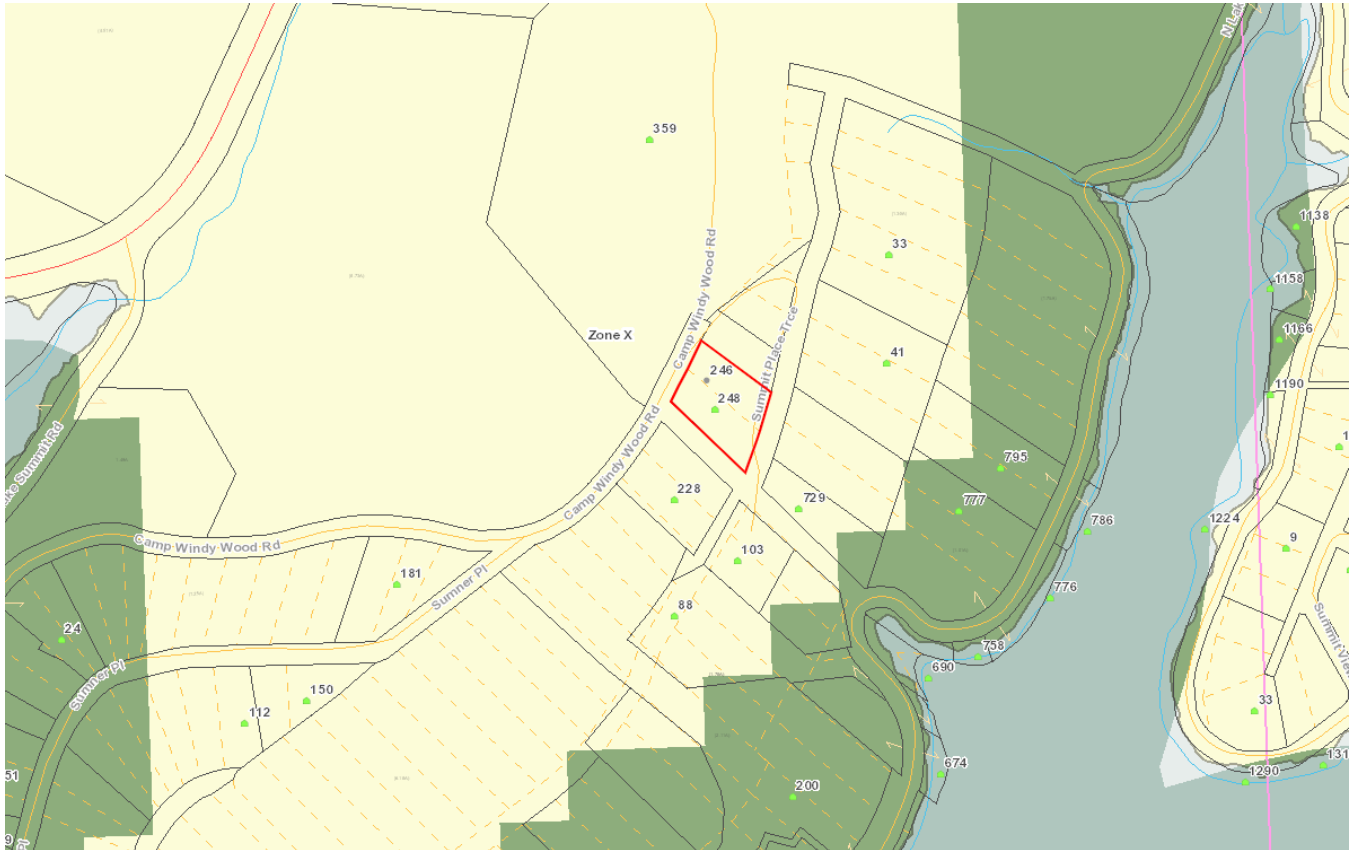
3. Floodplain /Watershed Protection The property is not located in a Special Flood Hazard Area. The property is not in a Water Supply Watershed district.

4. Water and Sewer Community well and private septic system serve this property.

4.1. Public Water: Public water is not available.

4.2. Public Sewer: Public sewer is not available.

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 Community. The text and map of the 2020 CCP suggest that the Subject Area would be more suitable for the following:

The following is a description of the patterns of development envisioned within the RTA.

1. 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.

6. Staff Recommendations

Staff's Position, under the guidelines of current plans, policies and studies, is to overrule the appeal and uphold Henderson County's decision to enforce the Land Development Code and disallow the Recreational Vehicle to be set-up permanently at 767 Hidden Valley Dr.

7. Photographs

4000 REAL ESTATE

4005 REAL ESTATE SERVICES
 4007 REAL ESTATE WANTED
 4008 BUYER'S AGENTS
 4010 OPEN HOUSES
 4020 OPEN CONDO/VILLA/TOWNHOME
 4095 HOMES FOR SALE
 4116 LOG HOMES
 4500 LUXURY HOMES OVER \$500,000
 4505 GOLF RESORT PROPERTIES
 4510 HOMES WITH ACREAGE
 4515 WATERFRONT HOMES
 4520 CONDOS/VILLAS/TOWNHOUSES
 4525 DUPLEXES/TRIPLEXES
 4530 TIMESHARES
 4535 VACATION/RESORTS
 4545 FARMS, GROVES, RANCHES
 4550 ACREAGE & LOTS
 4555 OUT OF AREA PROPERTIES
 4560 LEASE OPTION
 4570 REAL ESTATE AUCTIONS
 4600 MANUFACTURED HOMES
 4605 MANUFACTURED HOME LOTS
 4610 MANUFACTURED HOME SERVICES
 4620 MOBILE HOMES WANTED
 4630 MOBILE HOMES IN PARK
 4900 COMMERCIAL PROPERTY
 4910 COMMERCIAL LOTS/ACREAGE
 4920 COMMERCIAL PROP WANTED
 4930 INVESTMENT PROPERTY
 4940 INDUSTRIAL/WAREHOUSE

4550 ACREAGE & LOTS

LOT FOR SALE
 Now you can live in Carriage Park, a friendly gated community with great mountain views, a heated indoor pool, tennis courts, social parties, clubs from bridge to hiking to sports cars. We have a 6,500 SF house lot for sale. It will host a new two-level home on a quite cul-de-sac. Priced to move quickly at \$23,900. Call owners at 828-595-9484.

SALUDA -
 3 very private adjoining lots, 1.9 - 4.15 acres, each having extensive boundary with Green River Game Lands - 14K acre - largest recreational backyard in county - city water. \$75-160K. 828-699-0854

4555 OUT OF AREA PROPERTIES

HOME FOR SALE in Mountains of CENTRAL ITALY. Totally renovated, completely furnished, living room, full kitchen, 2 BR. Reasonably priced. 828-884-7451

6000 MERCHANDISE

6010 ANTIQUES
 6015 APPLIANCES
 6020 ARTS & CRAFTS
 6030 BABY ITEMS
 6035 BUILDING MATERIALS
 6040 BUSINESS EQUIPMENT
 6050 HEATING & AIR
 6100 AUCTIONS
 6105 CONSIGNMENT SALES
 6110 ESTATE SALES
 6115 MOVING SALES
 6120 FLEA MARKETS
 6125 YARD SALES
 6130 GARAGE SALE REMNANTS
 6330 CLOTHING
 6345 COMMERCIAL ITEMS FOR SALE
 6350 COMPUTERS & EQUIPMENT
 6355 ELECTRONICS
 6360 HEAVY EQUIPMENT
 6450 FLOOR COVERING
 6460 FRUITS & VEGETABLES
 6470 FIREWOOD & FUEL OIL
 6480 HOME FURNISHINGS
 6510 GENERAL MERCHANDISE
 6515 HOBBIES
 6520 HOME HEALTH SUPPLIES
 6540 ITEMS FOR TRADE
 6550 JEWELRY & WATCHES
 6570 LAWN & GARDEN
 6590 TOOLS & MACHINERY
 6600 MEDICAL EQUIPMENT
 6620 MUSICAL INSTRUMENTS
 6630 OFFICE FURNITURE
 6635 PAINTINGS/ART
 6640 PAWN SHOPS
 6680 PHOTO & VIDEO EQUIPMENT
 6690 PLANTS & TREES
 6700 POOL & PATIO
 6705 RADIO CONTROLLED
 6710 RESTAURANT EQUIP. & SUPPLIES
 6715 SPAS/HOT TUBS
 6720 STAMPS/COINS/CURRENCY
 6725 TELEPHONES
 6733 TOYS
 6735 TRADING CARDS
 6750 UTILITY BLDG/TRAILER
 6760 WANTED TO BUY
 6805 ANIMAL SERVICES
 6835 FARM EQUIPMENT
 6840 FEED/GRAIN/HAY
 6845 HORSES & SUPPLIES
 6850 LIVESTOCK & SUPPLIES
 6865 PETS & SERVICES

6015 APPLIANCES

Hisense dehumidifier. Used one year, excellent condition.

6510 GENERAL MERCHANDISE

Bar/Entertaining Items: Ice buckets, old fashioned glasses. 20+ items. \$20/all. 828-595-9359 for appt.

Table/countertop: Marble, beige & gray. 41"L x 20"W x 3/4", beveled edges. New in crate, \$70. 828-891-9920.

6570 LAWN & GARDEN

2 Craftsman lawn mowers "gently" used. \$20/ea., or both for \$35. Gas can thrown in free. 828-698-3969.

Honda Self Propelled Lawn-mower: Versamow system HRX. Nearly new, \$250. 828-891-6043

Lawn Mower: Sun Joe 16", 12 amp, elec (50' cord), light wt. 2 yr+ ext warranty. Used 2x. \$100. Call 828-891-9212

6590 TOOLS & MACHINERY

2500 PSI gas pressure washer: 4 nozzles, easy-start 163cc OHV engine. Used few times, \$50. 828-698-3969.

6700 POOL & PATIO

Charbroil gas grill purchased at Lowes. Gently used. New gas tank! Hendersonville, \$60. 828-595-4235

6820 DOGS

CKC Labradoodles! \$300 EACH. All are boys. Have had all shots including rabies. Need fenced yard! DIFFERENT COLORS! 704-977-4307. (Gastonia, NC area).

ENGLISH BULLDOG PUPS - AKC. Champion & Grand Champion sired. Vet checked. 704-813-2432. Dallas, NC area.

6125 YARD SALES

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 7150 CAMP SITES
 7170 CAMPERS/TRAVEL TRAILERS
 7300 CAMPING EQUIPMENT
 7310 DIVE GEAR
 7320 FISHING EQUIPMENT
 7330 FITNESS EQUIPMENT
 7340 GOLF CLUBS/CARTS/EQUIP
 7345 GUNS & RIFLES
 7350 MOTOR HOMES
 7380 RECREATION RENTALS
 7400 SPORTS EQUIPMENT
 7410 TACKLE & BAIT SHOPS

7380 RECREATION RENTALS

LAKE SUMMIT FOR RV RENT
 6 month full hookup, boat possible, best offer by Aug. 9 for decision. 248 Camp Wendy Wood Rd., 28784. Call 828-697-2131.

7400 SPORTS EQUIPMENT

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8000 TRANSPORTATION

8050 AVIATION
 8055 MOTORCYCLES
 8060 ALL TERRAIN VEHICLES
 8065 SCOOTERS/MOPEDS
 8070 AUTO PARTS & TIRES
 8075 AUTO RENTAL
 8080 AUTOMOTIVE SERVICES
 8085 AUTO

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LAND OF SKY PAINTING: Ext/ Int Painting, power washing, sheet rock patching. 25 yrs exp. Free est. 828-685-2845

PATTERSON Painting, Remodeling, Driveway Sealing, Pressure Washing, Decks. 828-606-3329.

RODRIGUES PAINTING, pressure wash, interior/ exterior. Fully insured. Free est. Call 828-551-3252.

9798 TREE SERVICES

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12.04.2019 14:07

PERSON COUNTY, MANUFACTURED HOME
SETBACK PERMIT

PERMIT NUMBER: 1820017455

ISSUED TO: Michael Martin

TYPE OF HOME: Single-Family Mobile Home RV Other

ADDRESS: 249 Camp Windy Wood Rd.
Camp RV

ISSUED BY: J.D. DATE: 9/16/18

COPY THESE SHEETS CAREFULLY TO THE PERMITTEE

12.04.2019 14:08



12.04.2019 14:08



12.04.2019 14:08



12.04.2019 14:09



12.04.2019 14:09

CAMP

1
8
5
6



PUBLIC NOTICE

ZONING BOARD

MEMBER OF THE BOARD OF APPEALS

APPEAL - MICHAEL P. MARTIN

DATE: 12/8/18

TIME: 4:00 PM

LOCATION: 300 N. KING ST

Beverly-Hanks
REALTY
FOR SALE

12.04.2019 14:11

Michael L. Martin
131 Fourth Ave, West # 206
Hendersonville, NC 28792

Mr. Steve Dozier, Chair, and the
Henderson County Planning/Zoning Board

October 24, 2019

This is a follow up note to my attendance at your meeting of April 19, 2018.

Our purchase of a Lake Summit lot in 2000 was for recreational purpose. In 2005 we installed a septic system. In 2017 we decided to clean the lot and install a picnic table and subsequently opted to use the septic system rather than a porta-jon. Trouble began instantly. Of our 7 neighbors, one has been continuously hostile and one has been more surreptitious. Four have been cordial.

Our modest 12' x 12' "no permit required" picnic building quickly morphed into a "house" permit. We know that during construction, we may reside in a recreational vehicle. We do not need to do this as we have a perfectly comfortable home here in Henderson County. However, we do expect to use our recreational vehicle for occasional occupancy and we also expect our friends and guests to join us in our or their own vehicles.

I am told that a Certificate of Occupancy is often issued many years after an initial permit. We are not on a timetable to build a real house on this property, nor do we care how fast we complete the interim picnic building "house". It is inconceivable to us that no one can or does not use any part of their project during a 20 year construction span. In addition to a full bath, our picnic bldg. has a required washer and dryer hook up.

This note today speaks to only one issue, recreational vehicles. I believe guidance from this Board will help discern the distinction between Code vs. staff interpretation.

We all desire the well being, "health and safety" of the community at large. Attached is a copy of the 2000 Henderson County Zoning Code, page 56, of permitted uses in the WR (Waterfront Residential) area, being: "Single family ...dwellings...including garages, storage buildings, pools, tennis courts, boathouses and SIMILAR RECREATIONAL USES." This identical language is under Code Section 42-38 today.

Mobile home parks are defined on page 38 of today's Code as "three (3) or more...recreational vehicles". I have received Notice(s) of Violation using the Code 52-3 (J) prohibiting "Use...as a primary residence.." when non- existed.

In 2018, I engaged a young single father to help me speed up construction and allowed him to park his travel trailer on site. The neighbor so harassed him that he never occupied but left. In 2019, no rv's have been on site at all but because I placed an ad doing market research for demand purposes regarding a listed (the former Camp Windy Wood) neighbor property suitable for a park, I was told my own permit was revoked, but this was later abated by John Mitchell.

Signage at Hwy 25 exit 3 indicates "camping" is offered to travelers. I have found no one that is aware of this availability. Several long established youth summer camps, Mondamin, Greystone and Green Cove do operate here. There is no KOA or other similar private facility. However, there are Lake Summit postings on airbnb.com and vrbo.com., with real estate firms as well as private signage.

I installed two rv hookups with the utilities of our picnic "house". One is intended for long term availability to family, friends and guests and one for us is sited where a future ground level bath is expected when a home is built up and over the picnic bldg. We have declined requests to camp and to date, no rv has attached to either. This is not intended to be a Recreational Vehicle Park. Our typical camping season of 6 ? months minus foul weather might equate to 20 long weekend visits. But does it really matter if it is more, seasonal, etc. so long as not "primary".

Camping in the United States pre-dates the advent of the automobile. So popular is this activity that the book "Home on the Road" by Roger B. White was a result of his curating the National Museum of American History exhibit which opened in 1985 at the Smithsonian Institution.

Attached please find a copy of the letter received from John Mitchell together with a STOP WORK order. We satisfied the requirement for that order, but the language regarding use of our recreational intent is unequivocal and we believe contrary to the spirit as well as the language of our Code.

In fact, we find no guidance in the Code which states that "No tenants may occupy or individuals reside in the RV" or much less use the "Customary accessory buildings, including garages, storage buildings, pools, tennis courts, boathouses and similar recreational uses." So does this mean that we can build these storage buildings, pools, boathouses, etc. but dare not use them over the course of and duration of long term construction? I hope that you are as dismayed as we are.

We look forward to the conclusions from your deliberations, and appreciate your attention to this.

Sincerely
Michael Martin



Planning Department

100 North King Street
Hendersonville, NC 28792

MEMORANDUM

TO: John Mitchell, Business and Community Development Director
FROM: Allen McNeill, Planner One
DATE: May 11, 2018
SUBJECT: Waterfront Residential District (WR) – Usage and Building Requirements

Property Description: 248 Camp Windy Wood Rd (hereafter the “Subject Area”), is located East of Old US 25 Hwy and North-West of Lake Summit. The Subject Area (PIN 9575-95-1772) comprises approximately 0.31 acres of land with no existing improvements.

Current Zoning: The Subject Area is currently zoned WR (Waterfront Residential District) and is adjacent to WR zoning on all sides.

Proposed Usage: At the April 19, 2018 Henderson County Planning Board Meeting, Mr. Martian addressed a proposed usage not permitted according to the Land Development Code. Mr. Martian would propose the construction of a “Picnic Structure” to facilitate recreational use of Lake Summit. The proposed specifications of Mr. Martian’s “Picnic Structure” would include an enclosed building with plumbing to allow users a private place to change and a designated restroom facility.

Alternatives: According to the Land Development Code no usage, permitted by right, exists meeting Mr. Martian’s desired improvement. To facilitate Mr. Martian’s request, Planning Department Staff would propose the following alternatives.

Dwelling, Single Family: According to Henderson County Land Development Code, the subject area can occupy single family dwellings. According to North Carolina State Building Code, a single family dwelling may be constructed consisting of; one (1) habitable room (equaling at least 120 square feet) this room must also include an area to prepare food (having a sink and at minimum a microwave) and one (1) bathroom (no minimum square footage but must occupy a 30” by 30” shower, toilet setbacks from side walls equaling 15”, lavatory setbacks of 15”, and front of toilet setbacks of 21”). A dwelling must also be heated and have electric connection for a washing machine.

Park, via Special Use Permit: A “Park,” as defined by the Henderson County Land Development Code, is permitted in WR with a Special Use Permit. According to the Land Development Code, a park would require a Major Site Plan and Lighting Mitigation. The Special Use Permit would be reviewed by the Zoning Board of Adjustments at a regularly scheduled meeting.

Note: Property owner would also be applicable to apply for a text amendment to the Land Development Code. Such amendment would alter code allowing accessory structures without the presence of a primary structure.

Minimum Lot Area (sq. ft.)	Minimum Lot Area Per Dwelling (Family) Unit (sq. ft.)	Maximum Building Height (ft.)	Minimum Front Yard Setback From Center Line of Street		Minimum Yards	
			Major ¹ (ft.)	All Others (ft.)	Side (ft.)	Rear (ft.)
40,000	40,000	40	75	60	30	30

NOTES:

¹ Where the major street is more than two lanes, including parking lanes, setback requirements shall be measured and begin at a point on the pavement 12 feet from the edge of the paved street abutting the property in subject.

§ 200-29. WR Waterfront Residential District. [Added 11-16-1994]

The Waterfront Residential District is established for residential development on or adjacent to waterfront property, that which is navigable for small recreational-type boats and watercraft. The district is intended to maintain and promote low-density single-family development and is intended to provide protection of the existing waterfront character and environmental sensitivity, particularly the water quality and any adjacent wetlands.

A. Within the Waterfront Residential District, the following uses are permitted:

- (1) Single-family detached dwellings, excluding manufactured homes.
- (2) Customary accessory buildings, including garages, storage buildings, pools, tennis courts, boathouses and similar recreational uses.
- (3) Signs not more than four feet square in area for advertising the sale or rental of property on which they are located.
- (4) Churches, 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.
- (5) Church bulletin boards not exceeding 12 square feet in area.
- (6) Transformer and public stations, provided that:
 - (a) Transformer stations:
 - [1] The structures are placed not less than 75 feet from any property line.
 - [2] The structures are enclosed by a woven-wire fence at least eight feet high.
 - [3] No vehicles or equipment is stored on the premises.

batting cages, shuffleboard areas, bowling alley, skating rink, bingo games, miniature race tracks (remote control only) and/or other such uses that fit the intent of this Chapter as determined by the Zoning Administrator. A recreational facility shall, for purpose of this Chapter, not include go-cart tracks (a recreational motor sports facility), golf courses, miniature golf courses, driving tees or driving ranges.

Recreational Vehicle (RV). A vehicular-type unit primarily designed as a temporary and mobile living quarters for recreational, camping or travel use, which either has its own mode of power or is mounted on and drawn by another *vehicle*. Such units do not satisfy the dimensional requirements of a *manufactured home*.

Recreational Vehicle (RV) (Flood Damage Prevention). A vehicular-type unit primarily designed as a temporary and mobile living quarters for recreational, camping or travel use, which either has its own mode of power or is mounted on and drawn by another *vehicle*. Such units do not satisfy the dimensional requirements of a *manufactured home*. A vehicle which is: (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projection; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use.

Recreational Vehicle (RV) Park. An establishment primarily engaged in operating sites to accommodate *park model homes* or *recreational vehicles*. These establishments may provide access to facilities, such as laundry rooms, recreational halls, playgrounds, stores and snack bars. An RV park will generally contain **three (3) or more** *park model homes* or *recreational vehicles*.

Recycling Centers, Drop-off. An establishment primarily engaged in receiving recyclable materials via drop-off.

Reference Level. The top of the *lowest floor* for *structures* within *Special Flood Hazard Areas* designed as Zone A1, A30, AE, A, A99 or AO. The portion of a *structure* or other development that must be compared to the *regulatory flood protection elevation* to determine regulatory compliance of such *structure*.

Redevelopment. Any *development* on previously-developed land, other than a rebuilding activity that results in no net increase in *built-upon area* and provides equal or greater *stormwater* control than the previous development.

Regulatory Flood Protection Elevation. The *Base Flood Elevation* plus the *Freeboard*. The elevation to which all *structures* and other development located within the *Special Flood Hazard Areas* must be elevated or *floodproofed*. In *Special Flood Hazard Areas* where *Base Flood Elevations (BFE's)* have been determined, this elevation shall be the *BFE* plus two (2) feet of *freeboard*. In areas where no *BFE* has been established, all *structures* and other development



52-3. Prohibitions

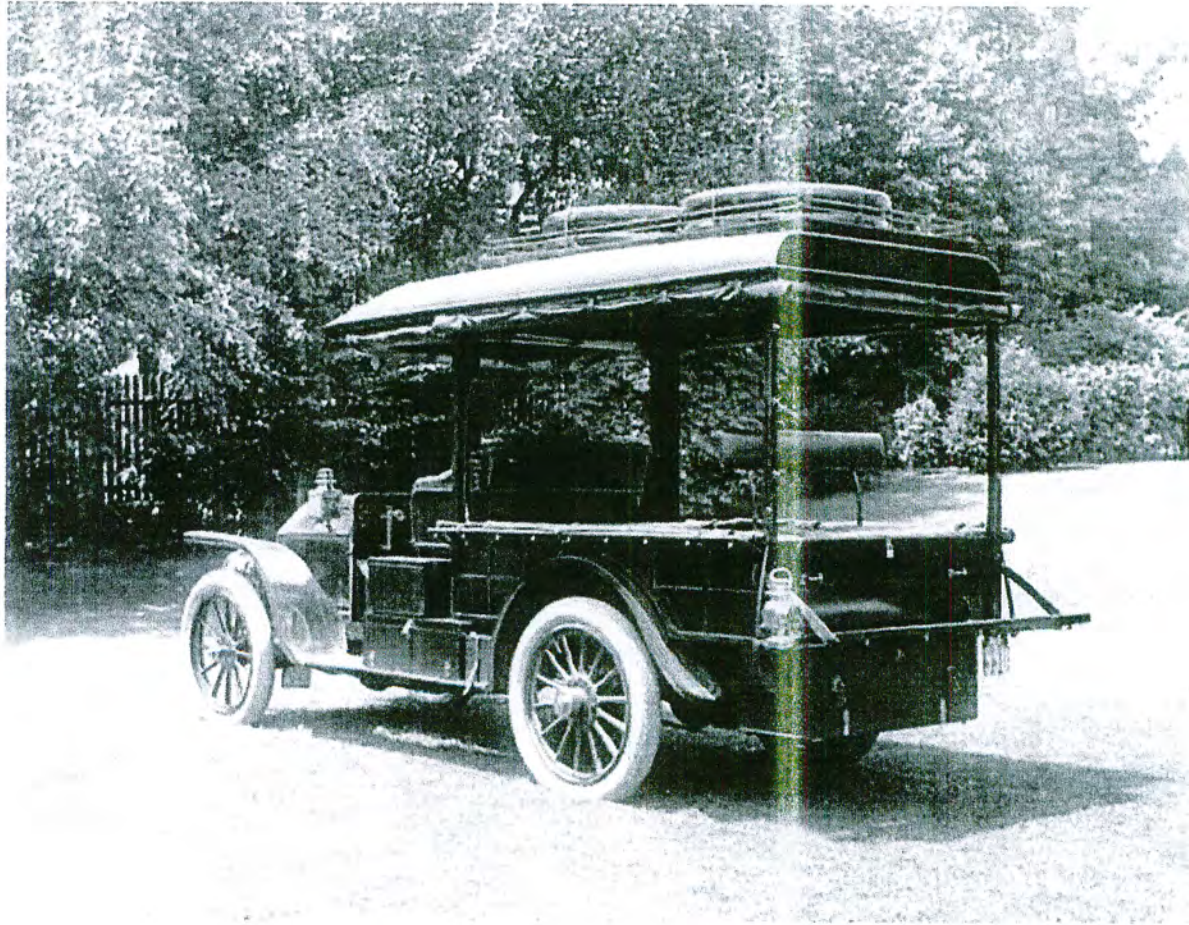
Published on Henderson County North Carolina (<https://www.hendersoncountync.gov>)

52-3. Prohibitions

The creation or maintenance of a public nuisance is prohibited. The following are hereby expressly declared to be public nuisances:

- A. Improper sewage disposal to such degree that sewage or effluent is discharging onto the surface of the ground, backing up into a structure, or discharging into a body of water.
- B. An unsecured opening caused by improperly abandoned cistern, well pit, sewage treatment system, unused or nonmaintained swimming pool, mine shaft or tunnel.
- C. Failure to keep waste, refuse, or garbage in an enclosed building or properly contained in a closed, insect and rodent proof container designed or reasonably adapted for such purpose.
- D. Accumulation of carcasses of animals, birds, or fish by failing to bury or otherwise dispose of in a sanitary manner within 24 hours after death.
- E. Significant outdoor storage of solid waste including but not limited to: decaying animal or vegetable matter, animal or human feces, trash, rubbish, garbage, rotting lumber, packing materials, scrap metal, pallets, fuel storage containers, tools, tires and wheels, furnaces, home appliances, furniture, plumbing fixtures, construction materials, amusement park devices, metal, pipes, rubber, glass bottles, machinery, wood, brick, cement block, all-terrain vehicles, toys, bicycles, junk or any other substances in which flies, mosquitoes, other disease-carrying insects, rodents or other vermin can harbor.
- F. Accumulations of rubbish or junk as to become dangerous or injurious to the health and safety of any individual or to the public.
- G. Any junked motor vehicles without a current vehicle restoration permit and/or any abandoned manufactured home as defined below.
- H. Infestations of flies, fleas, cockroaches, lice, rats, mice, fly larvae, hookworm larvae or other insects, parasites or vermin.
- I. Breeding grounds which support mosquito larvae and mosquitoes capable of carrying West Nile Virus, La Crosse Encephalitis Virus, or any other disease-causing microorganism.
- J. Use of a recreational vehicle **as a primary residence** without permitted electric, water, and sewerage connections.
- K. Recreational vehicles used to store solid waste.

Source URL: <https://www.hendersoncountync.gov/code-document/52-3-prohibitions>



In 1911 T. Coleman du Pont commissioned a camping truck to inspect a new highway in Delaware that he funded. Enclosed tents extended approximately twelve feet from each side of the entire body of the vehicle.

Courtesy of the Hagley Museum and Library

"Home on the Road"



Hand Delivered
on 9/19/19 @ 2:46

Planning Department
100 North King Street
Hendersonville, NC 28792

September 17, 2019

Michael

Mike Martin
248 Camp Windy Wood Road
Zirconia 28790

Mr. Martin:

This letter is to memorialize our discussion concerning your project at 248 Camp Windy Wood Road, Zirconia 28790.

On May 15th, 2018 you received a permit from Henderson County for the construction of a Single Family Home. The permit entitles you to perform work associated with the completion of a residence conforming to the 2018 North Carolina Residential Building Code (NCRBC). Without inspections, the permit expires June 26th, 2020. You must receive one inspection per year to keep the permit active, and prevent expiration. Further inspections will not occur until a structural engineer or authorized inspector provides documentation ensuring that the footings for your home are in compliance with applicable code.

Since the foundation issue has been unresolved, and work continues on site, this letter will serve as notice that the County will enjoin to declare this property an unlawful structure if no inspection or documentation, as mentioned previously, is produced within 30 days of this letter. Per the requirements of North Carolina Law also find attached a stop work order pursuant to NC General Statute 153A-361. As of this time, you have approvals by the County for a temporary saw service power pole and your water and sewer line.

It will be necessary, as with any other project, for County Inspectors to be able to view electrical wiring, internal plumbing, framing, insulation and heating/air prior to issuance of a Certificate of Occupancy. These items must be inspected prior to the installation of interior finishes. Without a Certificate of Occupancy, no individual is permitted to stay the night or reside in the structure.

The Zoning on your property is WR (Waterfront Residential). You have a Zoning Permit issued on June 29, 2017 for a single family residence. I have attached the description of the zoning district with accompanying permitted uses to this letter.

The County allows builders to setup a temporary Recreational Vehicle to be used during the construction of a single family home. The Land Development Code defines temporary as no longer than two years. During this time, an RV set up on the site can only be used by the builder for the purpose of construction. **No tenants may occupy or individuals reside in the RV.** A permit for a temporary RV was issued on September 6th, 2018. If the terms of this permit is violated, the permit will be revoked.

The County has received complaints, and been made aware of an advertisement printed in area newspapers, seeking to lease space on your property for an RV. We believe that this is enough evidence of intent to revoke the temporary RV permit. However, after our meeting and at your request, I am writing this letter to communicate the entitlements that exist for your project. We will not be revoking the permit at this time.

Please do not hesitate to contact me or Henderson County staff if we can be of assistance during your construction process.

Sincerely,



John Mitchell
Henderson County



Crystal Lyda
Henderson County



GAS - NEXT RIGHT

CAMPING



November 20, 2019

Ron Kauffman, Chair, and
Henderson County Zoning Board

Dear Mr. Kauffman,

Attached please find a package delivered at the October 24, Planning Board meeting. I spoke with Mr. Dozier on November 13, and learned that our Planning Board does not write or interpret Zoning Code. According to Code personnel, I may only appear in front of your Board to appeal some decision of the Code Enforcement Director, Toby Linville.

This somewhat surprises us as it appears akin to having the fox guard the henhouse. Several County paid staff write Code which is perhaps too often rubber stamped by a Board, and then County staff under the same Code Enforcement office get job security by enforcement actions.

My current diary of an adventure to build a picnic shelter on a property purchased 20 years ago reads less like my hoped for Tom Sawyer and Robinson Crusoe daydreams, and more like chapters from Gulliver's Travels and Catch 22. The Code 20 years ago is 5/16" thick and 125 pages. Today's Code is so voluminous that it is no longer printed and must be accessed via internet, and reads like an IRS manual. Every government agency adds additional burdens.

I believe that if I asked permission to drive stakes for traditional mountain entertainment of pitching horseshoes, Code Enforcement will tell me it is not "permitted". My own interpretation is that the Code (hopefully) does not provide for this activity to be "prohibited".

I understand that we've encouraged many folks to retire or move here and that we have a swelled population. While many local developers incorporated Deed restrictions in their neighborhoods, many out of area developers went further with such micro-management as to require a committee approval for a property owner to cut down a 6" tree. Most of my native / local friends don't happen to live in those "guarded" areas.

My package for the Planning Board focuses on only one issue, recreational vehicles. When I've mentioned my experiences to local friends, many indicated some interest in subsidizing their income with one or two camping sites along their creeks, rivers, view knolls, etc. Local farmers have traditionally supported themselves with additional jobs where they could employ their farm equipment, take a Mill job and otherwise offer technical skills they have. I understand that the agricultural zoning has fewer restrictions, but many acreage owners do not fall in this category.

I believe my package containing a September 17, letter received should serve as entre to "Code" requirement that I appeal something. So, my appeal is identified in my cover letter to the Planning Board, seeking a broader perspective to the desire for "guidance". It is my belief that our County staff should be the recipient of Board directives, guidance, and decisions, not vice versa.

Thank you for your attention to this.

Sincerely,
Michael MARTIN

**"Conformity is the jailer of freedom
and the enemy of growth."**

- John F. Kennedy

