

**REQUEST FOR COMMITTEE ACTION**

**HENDERSON COUNTY**

**Zoning Board of Adjustment**

**MEETING: February 26, 2020**

**SUBJECT: Morgan Appeal**

**PRESENTER: Toby Linville**

**ATTACHMENTS: Staff Report**

**SUMMARY OF REQUEST: Appeal of Chapter 52 Nuisances/Notice of Violation**

**Suggested Motion: I move to uphold/overturn the Notice of Violation for a Public Health Nuisance at 38 Macedonia Rd.**



## Henderson County, North Carolina Code Enforcement Services

### **1. Committee Request**

- 1.1. **Applicant:** Darrell Morgan
- 1.2. **Request:** Appeal of Chapter 52 Nuisances
- 1.3. **PIN:** 9595089314
- 1.4. **Size:** 25.33 acres +/-
- 1.5. **Location:** 38 Macedonia Rd

### **Timeline:**

- 12/31/19 Notice of Violation mailed
- 1/20/20 Phone Conversation with Renee Morgan
- 1/23/20 Letter of Appeal
- 2/17/20 Property Posted for Appeal-Signs removed
- 2/26/20 Zoning Board of Adjustment Appeal

### **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 non-maintained 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.

#### 52-9. Appeals

- A. Right of appeal. When a public nuisance is declared, an owner and/or occupant of the affected property may appeal the declaration, including an order for abatement or remediation from the Department, by filing a written request with the Henderson County Zoning Board of Adjustment for an administrative hearing within 10 calendar days of the date of service under §52-7A. In the event of an unknown or absent property owner, the appeal must be requested within 10 calendar days of the day of posting of the notice under §52-7B.
- B. Hearing. If any owner or occupant makes a written request to the Zoning Board of Adjustment for hearing, such hearing shall be held before the Zoning Board of Adjustment.
- C. Schedule. The hearing shall be held at the next available meeting after the request for a hearing was received.
- D. Notice. The Department shall mail a notice to the appealing party of the time and place of the hearing at least 10 calendar days prior to the hearing.
- E. Witnesses and evidence. All parties shall have full opportunity to respond to and present evidence and witnesses.
- F. Standard of proof. The appellant shall have the burden of proving its position by clear and convincing evidence.
- G. Rules of evidence. Hearings shall be informal and the rules of evidence as applied in the courts shall not apply. Irrelevant, immaterial and repetitious evidence shall be excluded.
- H. Record of hearing. The hearing shall be recorded, and the minutes of the meeting shall be approved by the Zoning Board of Adjustment at their next scheduled meeting.
- I. Notice of decision. The decision of the Zoning Board of Adjustment shall be issued within 10 calendar days following the hearing. Unless otherwise provided by law, the decision of the Zoning Board of Adjustment shall constitute the final decision.
- J. Further appellate rights. Any party aggrieved by a final decision is entitled to judicial review of the decision. A petition for a writ of certiorari by the party must be filed with the Court of Appeals not more than 30 calendar days after the party receives the final decision from the County Zoning Board of Adjustment.



**Map A: Aerial Photo/Pictometry**





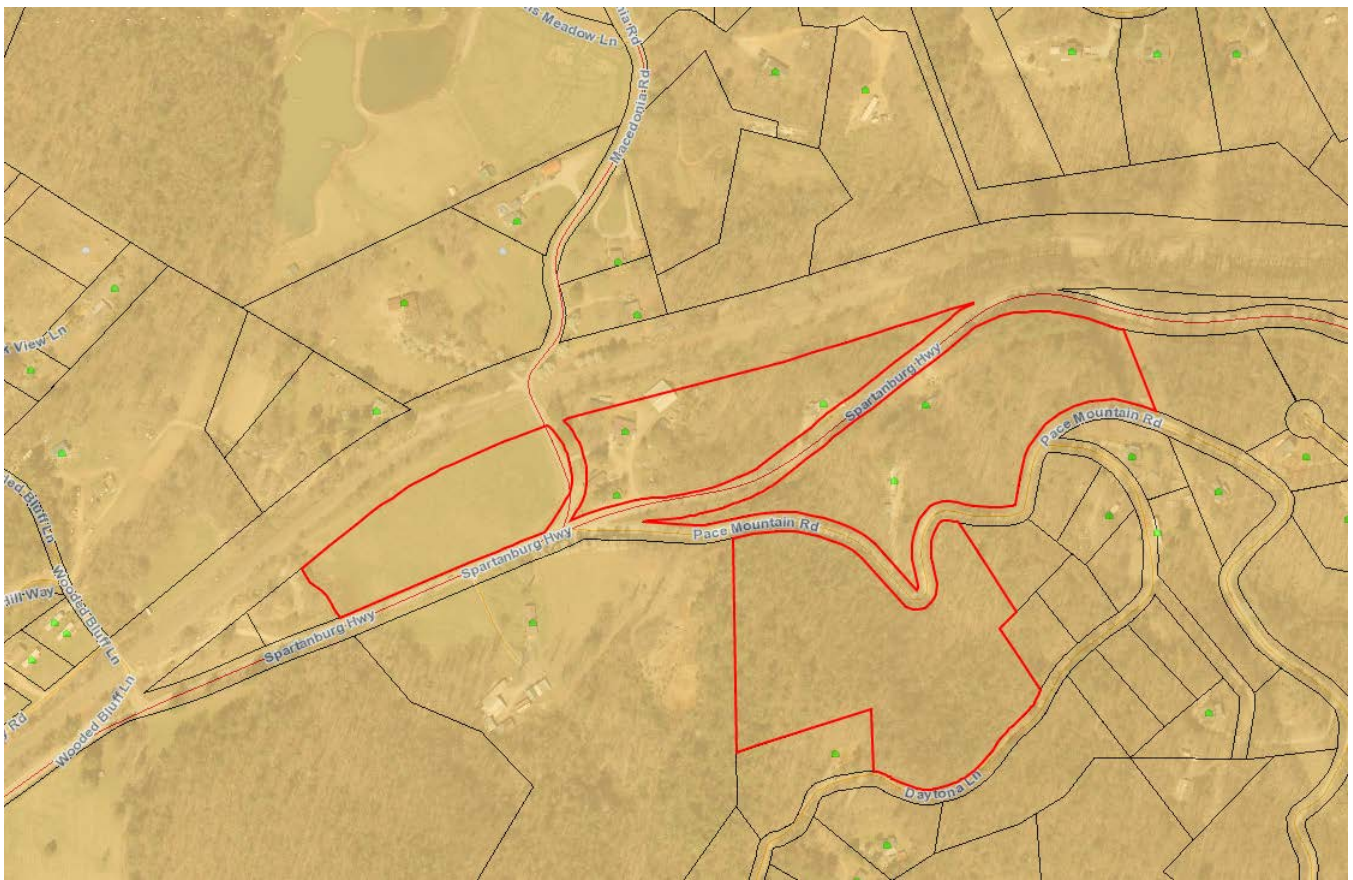
**2. Current Conditions**

**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 Residential Two Rural (R2R).

**Map B: Current Zoning**



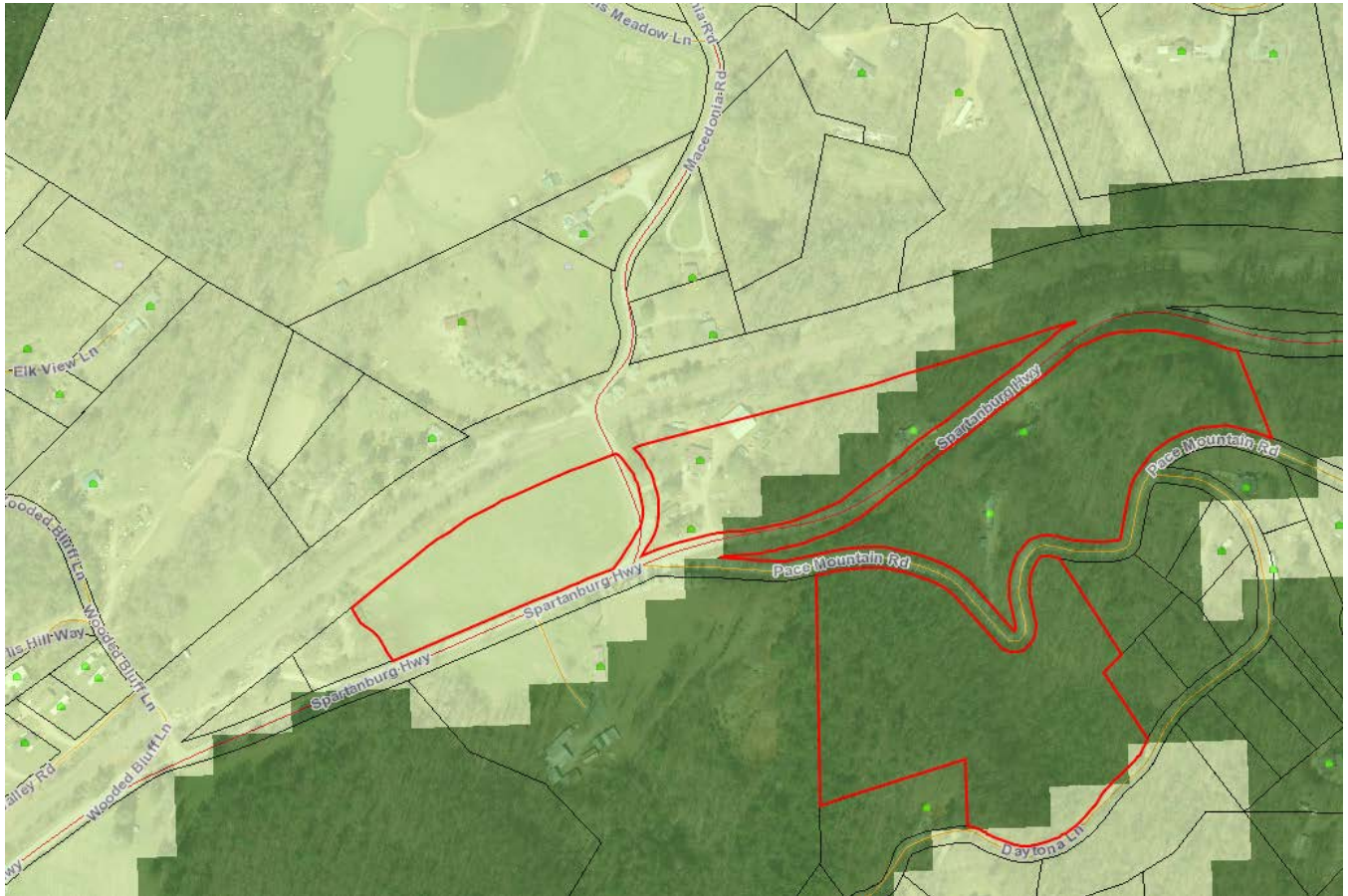
**3. Floodplain /Watershed Protection** The property is not located in a Special Flood Hazard Area. The property is not in a Water Supply Watershed district.

**4. Water and Sewer** Private 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/Agricultural Area. 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 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%.

**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 Public Health Nuisance Ordinance and require removal of all junked motor vehicles, and outdoor storage of solid waste.

**7. Photographs**





12.31.2019 10:42



12.31.2019 10:43



Justin White  
Pastor



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. 10 & 11 AM & 6 PM, W

**PUBLIC NOTICE**

3RD HENDRIX COUNTY  
**ZONING BOARD**  
WILL HOLD A PUBLIC HEARING/MEETING  
ON: CONSIDER

ADDITION	VARIANCE
EXTERIOR LIGHTS	SPECIAL USE
REZONING FROM	TO

**A-20-02 MORGAN**  
**38 MACEDONIA RD**

MEETING SCHEDULED FOR:

DATE: **2/26/20**

TIME: **4:00 PM**

LOCATION: **100 N KING ST**

For more information call:  
Planning Dept. (252) 333-2322 or  
Planning Dept. (252) 333-4333



2020/02/17

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

NOTICE OF APPEAL OF NOTICE OF VIOLATION AND  
REQUEST FOR ADMINISTRATIVE HEARING

To: Henderson County Board of Adjustment

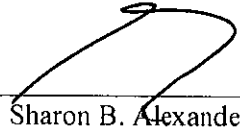
NOW COMES, Darrell Morgan, by and through his undersigned counsel, pursuant to Section 52-9 of the Henderson County Nuisance Ordinance, and appeals from that Notice of Violation and Declaration of Public Nuisance dated December 31, 2019, and requests that the Henderson County Board of Adjustment conduct an administrative hearing to review the purported determination of the Zoning Enforcement Officer as set out in such Notice of Violation and to determine whether such Notice of Violation and Declaration of Public Nuisance has been served on the Property Owner as required by Section 52-7 of the Henderson County Nuisance Ordinance.

This Notice of Appeal of Notice of Violation and Request for Administrative Hearing is filed without waiving any right to contest the procedural validity of such Notice of Violation and Declaration of Public Nuisance, particularly with regard to the fact that such Notice of Violation was not properly served as required by Section 52-7 of the Henderson County Nuisance Ordinance.

This the 24<sup>th</sup> day of January, 2020.

PRINCE, YOUNGBLOOD & MASSAGEE, PLLC  
Attorneys for Property Owner

By: \_\_\_\_\_

  
Sharon B. Alexander  
State Bar No. 9688  
240 Third Avenue West  
Hendersonville, NC 28739  
828/692-2595



STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

**Notice of Violation and Declaration of Public Nuisance**

Name of Violator / Property Owner: Darrell Mungen  
Street Address: 38 Macedonia Rd  
PIN Number: 9595089314

On or about the 31 day of Dec, 2019, in the County of Henderson a violation of Henderson County Nuisance Ordinance Section 52 did occur by:

- ☐ 52-.03 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.
- ☐ 52-.03 B. An unsecured opening caused by improperly abandoned cistern, well pit, sewage treatment system, unused or non-maintained swimming pool, mine shaft or tunnel.
- ☐ 52-.03 C. Failure to keep waste, refuse, or garbage in an enclosed building or properly contained in a closed, insect and rodent-proof container.
- ☐ 52-.03 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.
- ☐ 52-.03 E. Significant outdoor storage of solid waste.
- ☒ 52-.03 F. Accumulations of rubbish or junk as to become dangerous or injurious to the health and safety of any individual or to the public.
- ☒ 52-.03 G. Any junked motor vehicles without a current Vehicle Restoration Permit and/or any abandoned manufactured home.
- ☐ 52-.03 H. Infestations of flies, fleas, cockroaches, lice, rats, mice, fly larvae, hookworm larvae or other insects, parasites or vermin.
- ☐ 52-.03 I. Breeding grounds which support mosquito larvae and mosquitoes.
- ☐ 52-.03 J. Use of a Recreational Vehicle as a primary residence without permitted electric, water and sewage connections.
- ☐ 52-.03 K. Recreational vehicles used to store solid waste.
- ☐ 52-.04 A. Improper outdoor storage location violation for zoning purposes.
- ☐ Other Zoning Violation (Chpt 42): \_\_\_\_\_
- ☐ Solid Waste Violation (Chpt 95): \_\_\_\_\_

Furthermore the property mentioned above is hereby declared a Public Nuisance by Henderson County Code Enforcement Services and will remain so until the specific problem(s) is/are abated and approved by Code Enforcement Services at which time the Declaration of Public Nuisance will be dismissed. It is your responsibility to abate the existing problem on the property.

You have 30 days, ending on 1 / 31 / 20, to abate the current nuisance. Failure to legally abate the nuisance could result in a warrant being issued against you. Each day that the violation exists past the allotted time period constitutes a separate violation. Violation of this ordinance is a class 3 Misdemeanor, per Section 1-14 of the Henderson County Code for criminal violation and/or \$50 per day per violation for civil violation.

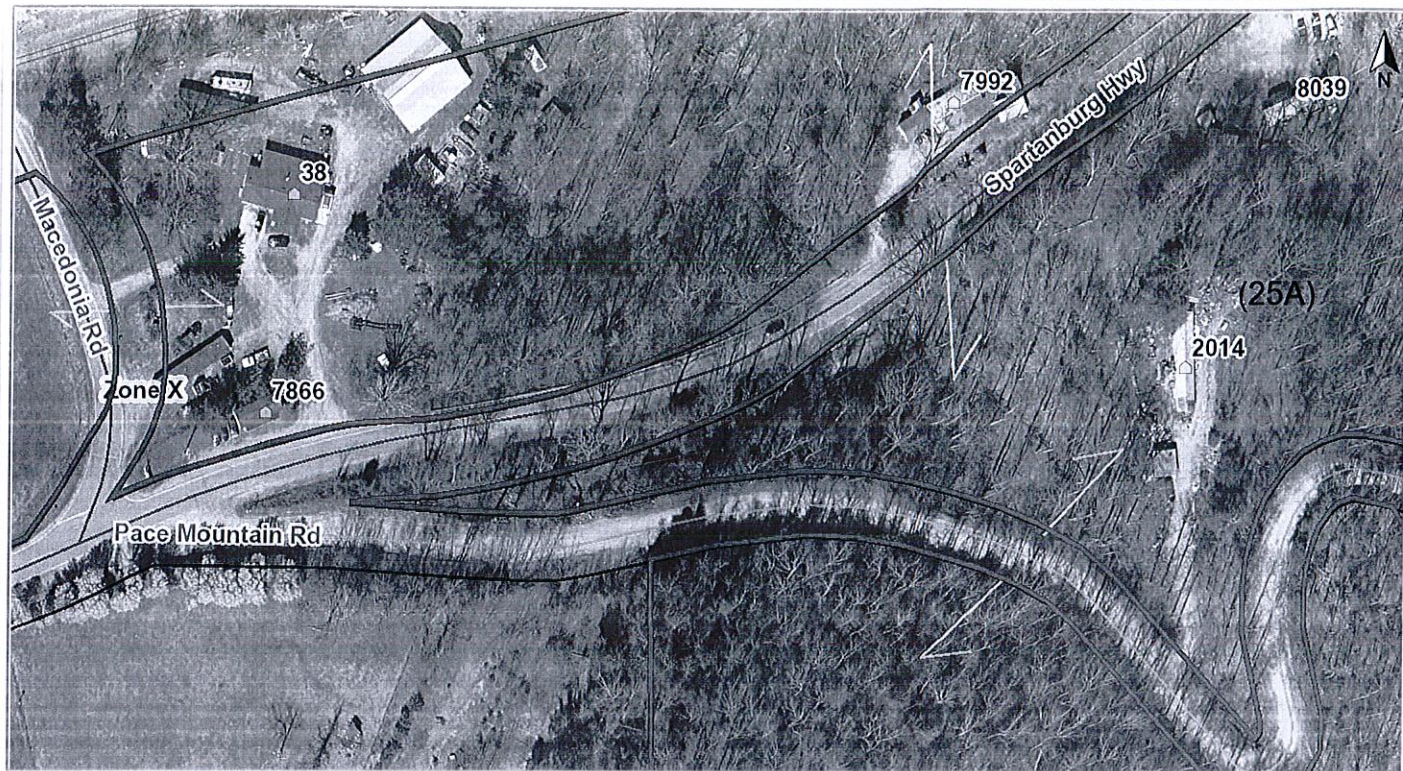
As the owner, occupant or person in control of the property mentioned it is your responsibility to bring the property into compliance with Henderson County Ordinances. You are hereby ordered to bring the property into compliance by remedying the nuisance in a legal manner and notifying the Henderson County Code Enforcement Department once completed. If the property is not abated or remedied in accordance with this order, Henderson County will have the nuisance abated or removed at the expense of the owner under the provisions of North Carolina Statute 153A-132 and this ordinance.

**Right to appeal:** As the owner of occupant of the property, you may appeal this Declaration by filing a written request with the Zoning Board of Adjustment for an administrative hearing within ten calendar days of receiving this notice. Correspondence may be made by mail to 100 N King St. Hendersonville, NC 28792.

Please contact Officer: Toby Linville as soon as possible at 828-697-4857

TSJ 12/31/19 242  
Zoning Enforcement Officer Date ID#





242

WARNING: THIS IS NOT A SURVEY

## Parcel Information

<b>Listed To:</b>	MORGAN, DARRELL	<b>Jurisdiction:</b>	UNINCORPORATED
<b>Mailing Address:</b>	38 MACEDONIA RD	<b>Tax District:</b>	RAVEN ROCK SALUDA FIRE
<b>Mailing City, State, Zip Code:</b>	SALUDA, NC 28773	<b>County Zoning:</b>	R2R
<b>Physical Address:</b>	2014 PACE MOUNTAIN RD	<b>Flood Zone:</b>	Zone X, Not Shaded (Areas outside of the floodplain)
<b>Physical Address Zip:</b>		<b>Watershed:</b>	
<b>REID:</b>	9935114	<b>Protected Ridges Buffer</b>	
<b>PIN:</b>	9595089314	<b>Perennial Streams:</b>	
<b>Neighborhood:</b>	RAVEN ROCK	<b>Soils:</b>	Evard soils, 15 to 25 percent slopes
<b>Assessed Acreage:</b>	25.33000000	<b>Agricultural District</b>	
<b>Deed:</b>	000737/00007	<b>Future Land Use</b>	CONSERVATION, Rural/Open Space/Agriculture
<b>Date Recorded:</b>	1989-05-02 00:02:00.0		



Henderson County  
Geographic Information Systems (GIS)  
200 North Grove Street  
Hendersonville, NC 28792  
P: (828) 698-5124  
F: (828) 698-5122

## THIS IS NOT A SURVEY.

All information or data provided, whether subscribed, purchased or otherwise distributed, whether in hard copy or digital media, shall be at the user's own risk. Henderson County makes no warranties or guarantees, including the warranties of merchantability or of fitness for a particular purpose. Map data is not appropriate for, and is not to be used as, a geodetic, legal, or engineering base system. The data is not intended as a substitute for surveyed locations such as can be determined by a registered Public Land Surveyor, and does not meet the minimum accuracy standards of a Land Information System/Geographic Information System Survey in North Carolina (21 NCAC 56.1608).