

A-20-01 Ward Nuisance Appeal

REQUEST FOR COMMITTEE ACTION

HENDERSON COUNTY

Zoning Board of Adjustment

MEETING: June 24, 2020

SUBJECT: Ward 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 150 Wooded Bluff Ln.



Henderson County, North Carolina Code Enforcement Services

1. Committee Request

- 1.1. **Applicant:** Franklin Scott Ward
- 1.2. **Request:** Appeal of Chapter 52 Nuisances
- 1.3. **PIN:** 9585889319, 9585971963, 9585983074
- 1.4. **Size:** 9.85 acres +/-
- 1.5. **Location:** 150 Wooded Bluff Ln

Timeline:

- 1/10/20 Notice of Violation posted on door
- 1/13/20 Phone Conversation with Ward
- 1/23/20 Letter of Appeal
- 2/17/20 Property Posted for Appeal-Signs removed
- 2/18/20 Code Enforcement Officer Williams confronted and detained
- 2/26/20 Zoning Board of Adjustment Appeal Originally Scheduled

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.

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- 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



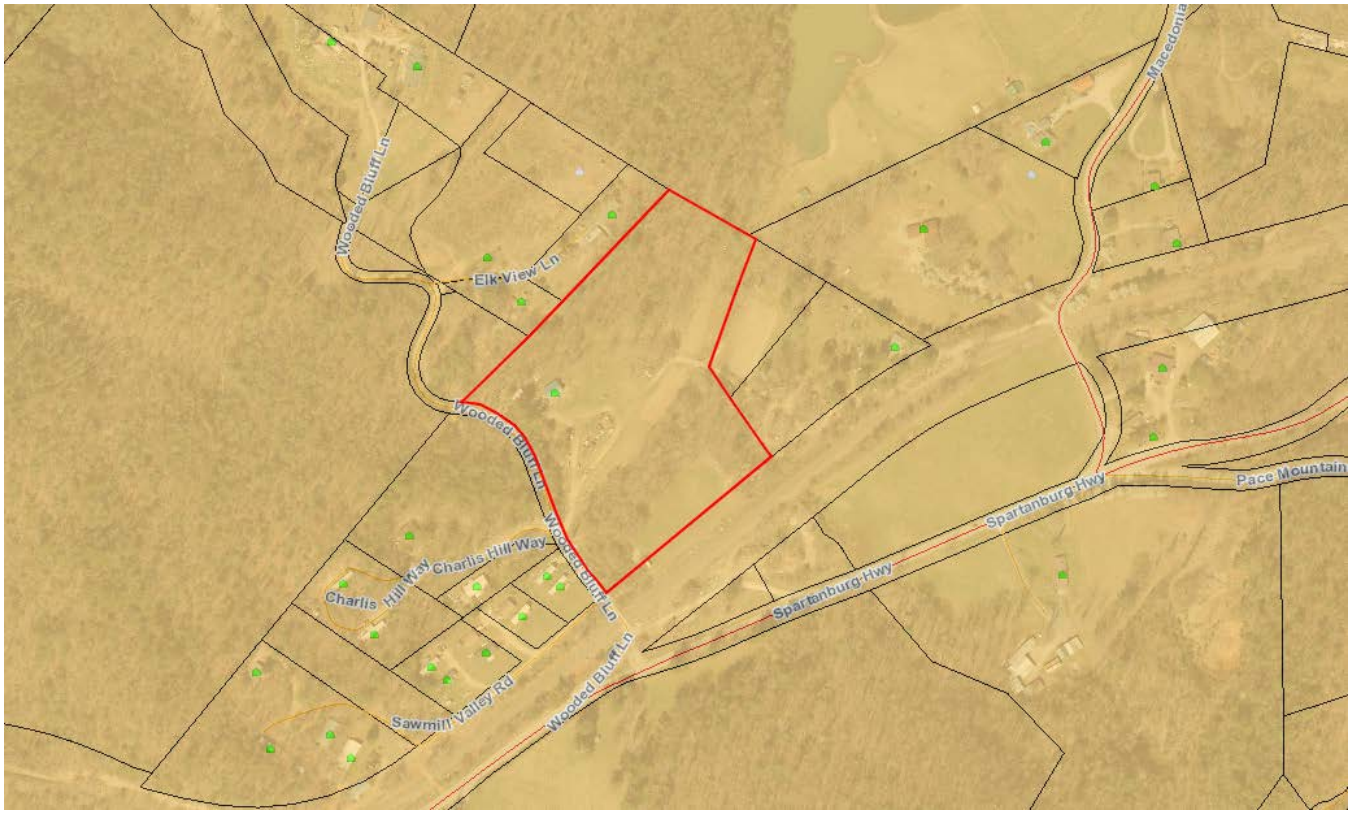
2. Current Conditions

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



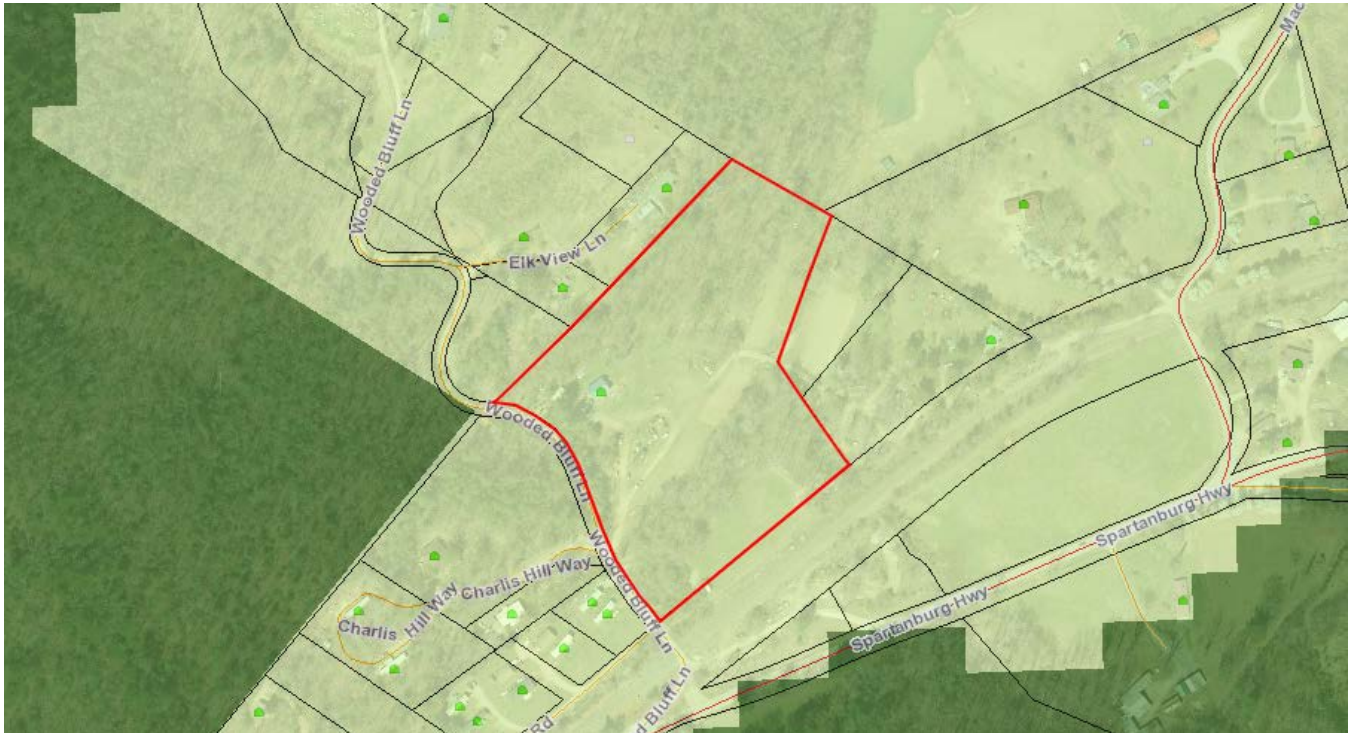
3. Floodplain /Watershed Protection The property is not located in a Special Flood Hazard Area. The property is not in a Water Supply Watershed district.

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, abandoned manufactured homes and outdoor storage of solid waste.

7. Photographs

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

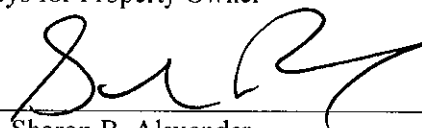
NOW COMES, Franklin Scott Ward, by and through his undersigned counsel, pursuant to Section 52-9 of the Henderson County Nuisance Ordinance, and appeals from that Notice of Violation and Declaration of Public Nuisance dated February 20, 2020, and requests that the Henderson County Board of Adjustment conduct an administrative hearing to review the purported determination of the Zoning Enforcement Officer as set out in such Notice of Violation.

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.

This the 4th day of March, 2020.

PRINCE, YOUNGBLOOD & MASSAGEE, PLLC
Attorneys for Property Owner

By: _____


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