

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
Zoning Board of Adjustment

MEETING DATES: 8/18/20 TRC 8/26/20 ZBA

SUBJECT: Variance Application (V-20-02) located at 43 Youngs Gap 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 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-20-02 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:

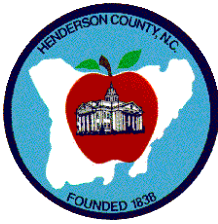
- 1. The fact that, if the *applicant* complies with the literal terms of this Chapter, he/she cannot secure a reasonable return from, or make a reasonable *use* of, the property.**
- 2. The hardship of which the *applicant* complains results from unique circumstances related to the *applicant's* land.**
- 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:** Jeffrey and Kathleen Benzel
- 1.2. **Request:** Front yard setback variance
- 1.3. **PIN:** 9673894621
- 1.4. **Size:** 21.41 acres +/-
- 1.5. **Location:** The subject area is off Youngs Gap 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.

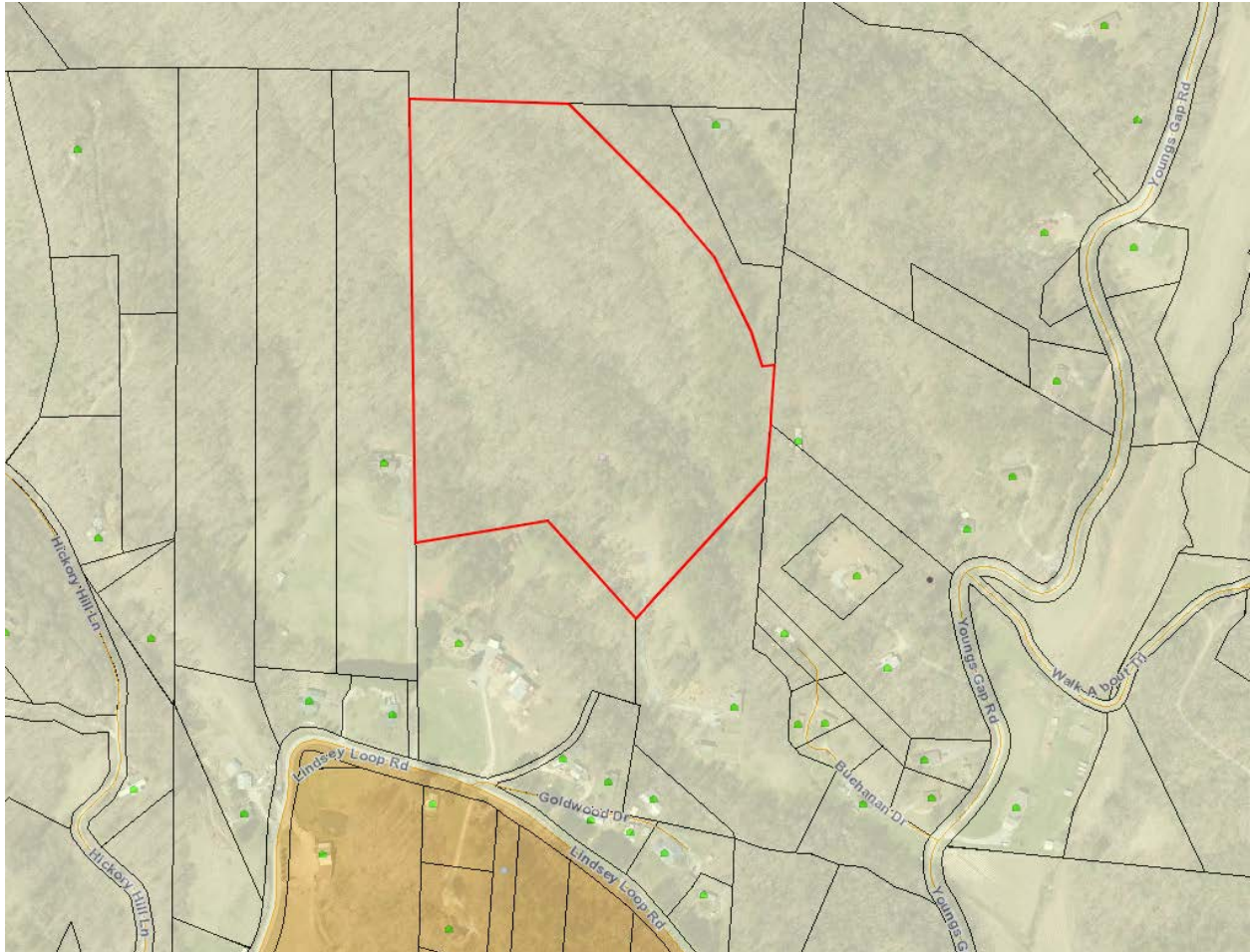
Map A: Pictometry



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 R3.

Map B: Current Zoning



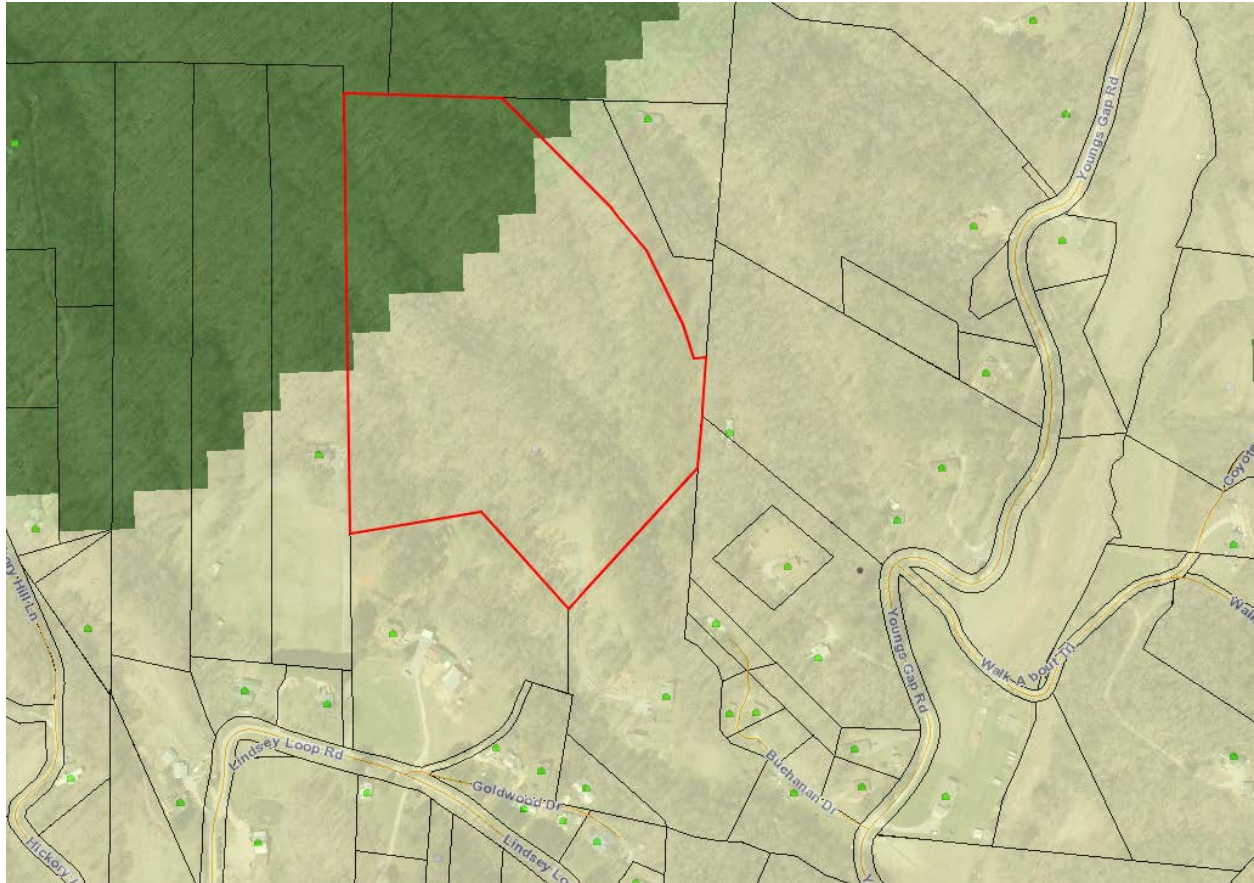
3. **Floodplain /Watershed Protection:** The property is not located in a Special Flood Hazard Area. The property is not located in a Water Supply Watershed district.

4. **Water and Sewer:** This property is served by private well and septic system.

Public Water: N/A

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:

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 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

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

7. Photographs



2020/06/30



THE HOME DEPOT

JOB	LOT	BLOCK
473 Youngs Edge		

BLVD. Street

WARNING!
THIS IS AN UNFINISHED CONSTRUCTION SITE.
NO ENTRY SHALL BE PERMITTED
UNTIL THE NEXT SIGNIFY OF THE LAW.



2020/06/30



2020/06/30



2020/06/30

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2020/06/30

Application No. _____

**HENDERSON COUNTY
VARIANCE APPLICATION FORM**

GENERAL INFORMATION

Date of Application: July 15, 2020
Previously Submitted (Circle One): Yes No
Date of Pre-Application Conference: _____
Site Plan Attached (Circle One): Yes No

PARCEL INFORMATION

Property Address 43 Youngs Gap Road, Fletcher, NC 28732
PIN: 9673-89-4621 Deed Book/Page: 3195/306 Acreage: 21.41
Zoning District: R3 Fire District: Fletcher Watershed: Outside Floodplain: Outside
Driving Directions: Hwy 25, Asheville Hwy to Cane Creek Road, Right on Cane Creek Road to Mills Gap Road, Right on Mills Gap Road to Hoopers Creek Road, Right on Hoopers Creek Road to Lindsey Loop Road, Right on Lindsey Loop Road to Youngs Gap Road, 43 Youngs Gap Road, Fletcher, NC 28732

REASON FOR VARIANCE Hardship due to topography of Tract for location of Pole Barn

FRONT SETBACK (feet/foot) 15
SIDE SETBACK (feet/foot) 15
REAR SETBACK (feet/foot) 15

PROPERTY OWNER CONTACT INFORMATION:

Name: Jeffrey and Kathleen Benzel Phone: 813-545-6804
Address: P.O. Box 1765 City, State, and Zip: Riverview, FL 33568

Applicant:

Name: Jeffrey and Kathleen Benzel Phone: 813-545-6804
Address: P.O. Box 1765 City, State, and Zip: Riverview, FL 33568

Agent:

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

Agent Form (Circle One): Yes No

Plan Preparer:

Name: Freeland Clinkscales Assoc. Phone: 828-697-6539
Address: 201 2nd Avenue East City, State, and Zip: Hendersonville, NC 28792

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.)

The topography of the tract is very steep: 78.71% with a slope of 25% - 60%, 14.97% with a slope of 16% - 25%, and 3.61% with a slope of 0 - 16%. Thus, the construction sites for improvements are very limited.

The approved construction site for a residence is on a ridgeline with very steep sides. It would be very difficult to impossible to construct an improvement to the side or behind the residence construction site. The applicants would not be able to construct a pole barn to protect other valuable personal property in an area near the residence.

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 topography of the tract is very limiting. The applicant would not be able to store, maintain and secure valuable personal property near close enough to the residence to protect it. The site chosen for the pole barn is located on the only level site near the residence site, which is approximately 150 feet to the right of the residence site. The location is not directly in front of the residence site.

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

The hardship results from the topography of the tract.

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 allows for the reasonable use of the tract and the protection of personal property. The tract is 21.41 acres and is not in a neighborhood. The location of the pole barn does not impeded access to the residence site, nor the view of the residence site from the front. Additionally, the location is approximately 1,500 feet from Youngs Gap Road and 900 feet from the closest neighbor. The location is not visible from any public road or by any neighbor. The variance does not impede or detract from the purposes of the Land Development Code.

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 does not affect the public. Therefore there is no benefit to the public and the applicant cannot state such facts or make such arguements.

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.

The variance is based upon the topography of the tract and the need to maintain, secure and protect valuable personal property. It is also based upon the applicant's desire to make reasonable use of the tract.

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

Jeffrey Benzel
Print Applicant (Owner or Agent)

Jeffrey Benzel
Signature Applicant (Owner or Agent)

7/15/20
Date

County Use Only

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

**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)

Henderson County Variance Board

July 9, 2020

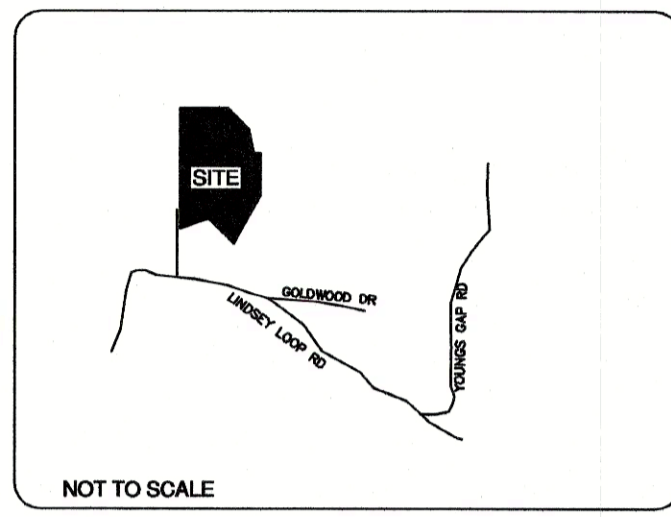
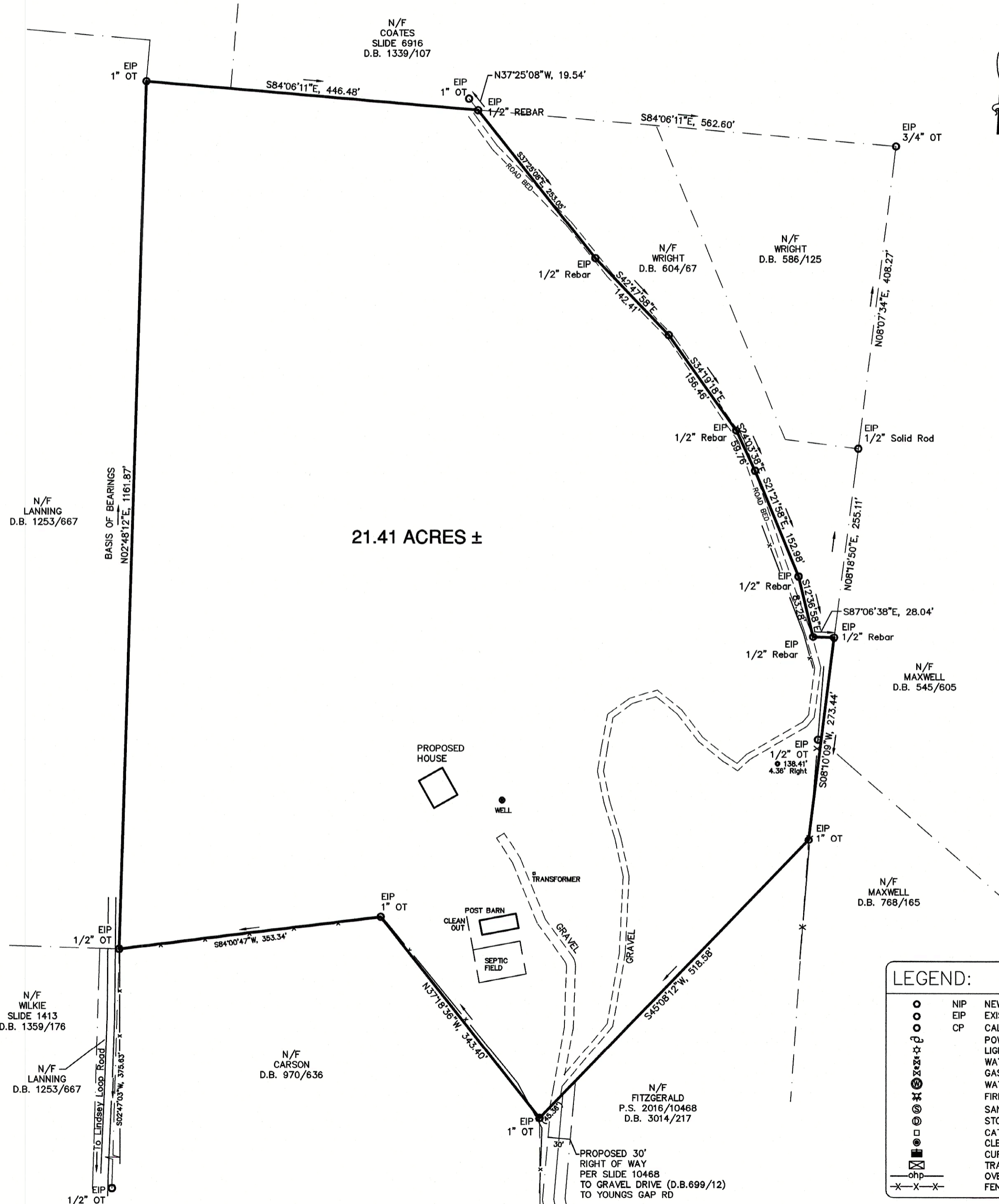
To Whom it may concern,

I am the closest neighbor to Jeffrey and Kathleen Benzel at 43 Youngs Gap Rd. Fletcher NC.

I have no issue with the location of the accessory building (pole barn) in front of proposed residence.

This accessory building is not visible from my house.

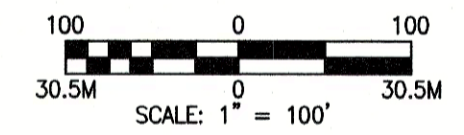
Jim Fitzgerald
47 Youngs Gap Rd
Fletcher NC. 28732
828-412-1088



Not For Recordation

The original drawing and/or all copies of it are not transferable to any future owner(s) of the platted property and shall not be used or relied upon by future owner(s) and/or their representatives for any reason without written release by the professional surveyor.

This is to certify that the property shown on this plat was surveyed under my direct supervision. Property lines and improvements are located correctly and that no visible encroachments exist unless otherwise shown.



STATE of NORTH CAROLINA
Henderson County, Hoopers Creek Township

Survey for
JEFFERY J. BENZEL
KATHLEEN A. BENZEL
43 YOUNGS GAP ROAD



FREELAND - CLINKSCALES & ASSOCIATES, INC. OF N.C.
ENGINEERS & LAND SURVEYORS
201 2nd AVE. EAST
HENDERSONVILLE, N.C. 28792
fcacinc@outlook.com
(828) 697-6539
Fax (828)-697-4195
Firm No. C-1562

REF. PLAT SLIDE	2018/11205
REF. DEED BOOK	3195/306
TAX MAP	9673-89-4621
PARTY CHIEF	SJM
DRAWN	JDA
DATE	JULY 22, 2020
DWG. NO.	H40374

RLS: F. V. CLINKSCALES JR., P.E.
NO: L-2614