

**REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF ADJUSTMENT**

MEETING DATES: Wednesday, December 3, 2025

SUBJECT: Variance Application (V-25-07) located at 50 Old Highway 64 at PIN: 9528-79-9840

PRESENTER: Matt Champion, Zoning Administrator

ATTACHMENTS:

1. Staff Report
2. Oblique Photographs
3. Site Plan

SUMMARY OF REQUEST:

The applicant is requesting a variance to remove SR 2.2 Drive-Thru Window passage lane requirement for a future restaurant. 42-62 Supplemental Requirements, 2. Accessory Uses, SR2.2 Drive-Thru Window (4) states: (B) Dimensional Requirements, Table 2.11 of the Henderson County Land Development Code states:

- (4) Passage Lanes. Passage lanes shall be provided to the outer edge of the stacking lane to ensure the adequate flow of traffic on the site.

Suggested Motion:

I move that the Board of Adjustment approve/deny variance application V-25-07 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:** NC Etowah Old Hwy 64, LLC (Jonathan Cochrane)
- 1.2. **Property Owner:** Cold Steel and Sunshine, LLC
- 1.3. **Request:** Passage Lane Variance
- 1.4. **PIN:** 9528-79-9840
- 1.5. **Size:** 0.35 acres
- 1.6. **Location:** The subject area is located at 50 Old Highway 64.
- 1.7. **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.
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- 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.

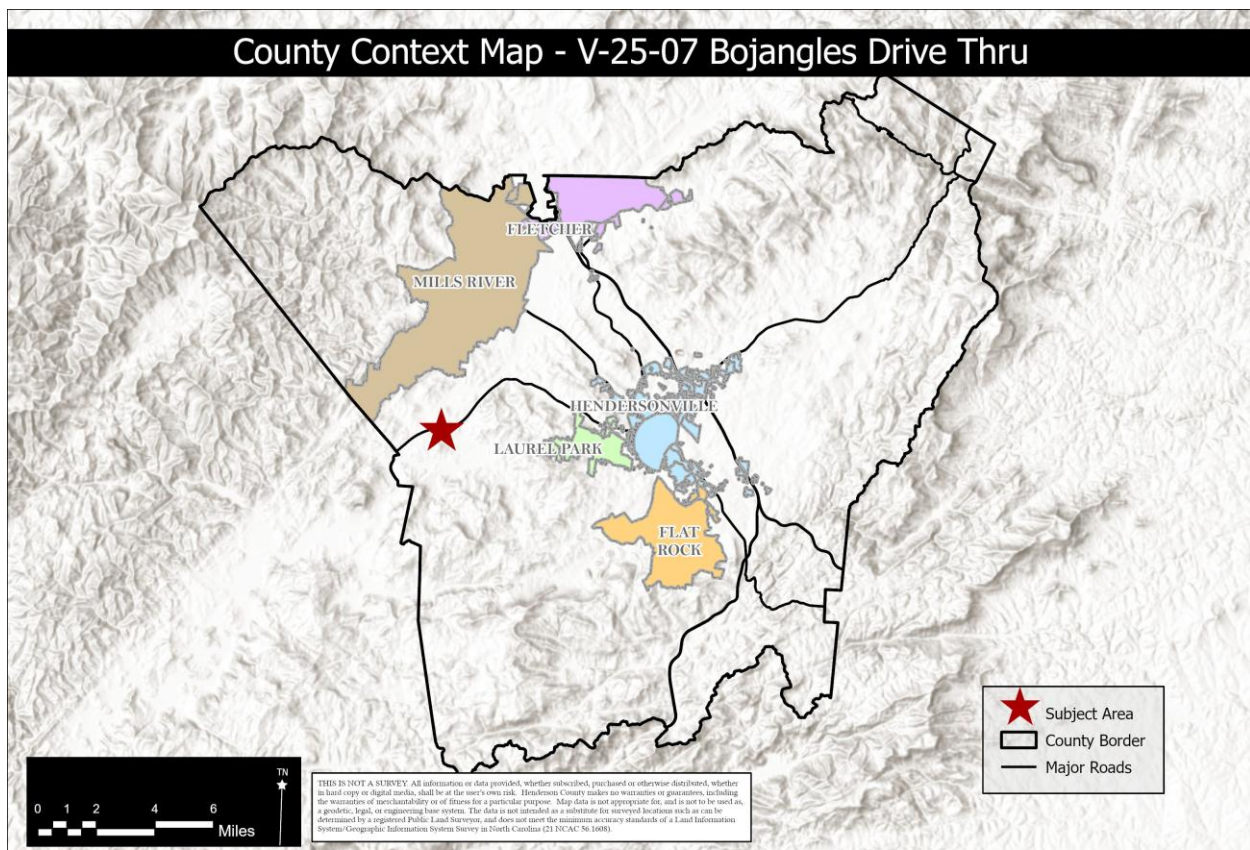
(2) Conditions. The *ZBA* may, in granting a *Variance*, prescribe: (1) additional conditions; (2) additional safeguards; (3) a time limit within which the action for which a *Variance* is sought shall be begun; (4) a time limit within which the action for a *Variance* is sought shall be completed; and (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.

Variance. A grant of relief from the requirements of this Chapter (excluding *variances* from *watershed* and *floodplain* development requirements).

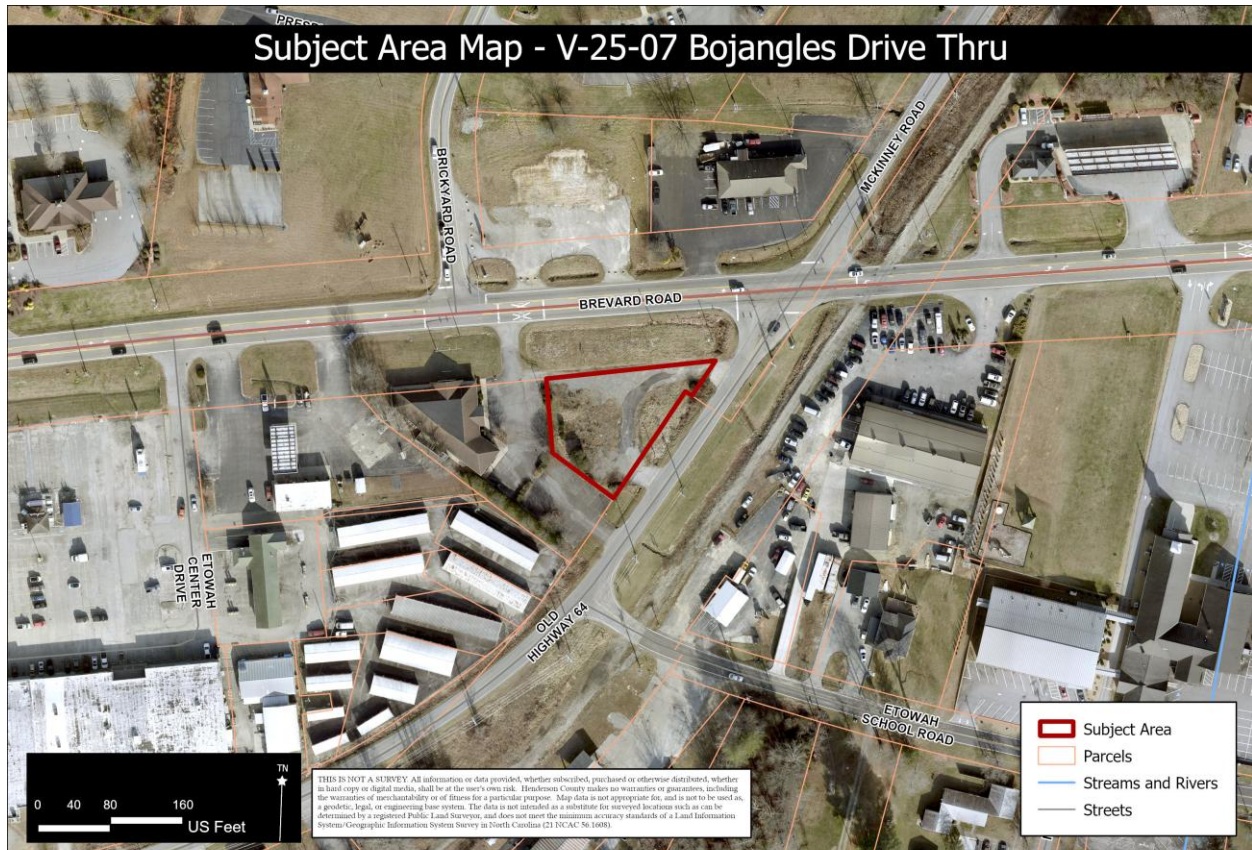
Map A: County Context Map



Property Owner: Cold Steel and Sunshine, LLC / Applicant: NC Etowah Old Hwy 64, LLC
(Jonathan Cochrane) / Assessed Acreage: 0.35 Acres / PIN: 9528-79-9840
Current Zoning: Community Commercial (CC) / Requested Variance SR 2.2 (4)



Map B: Aerial Map



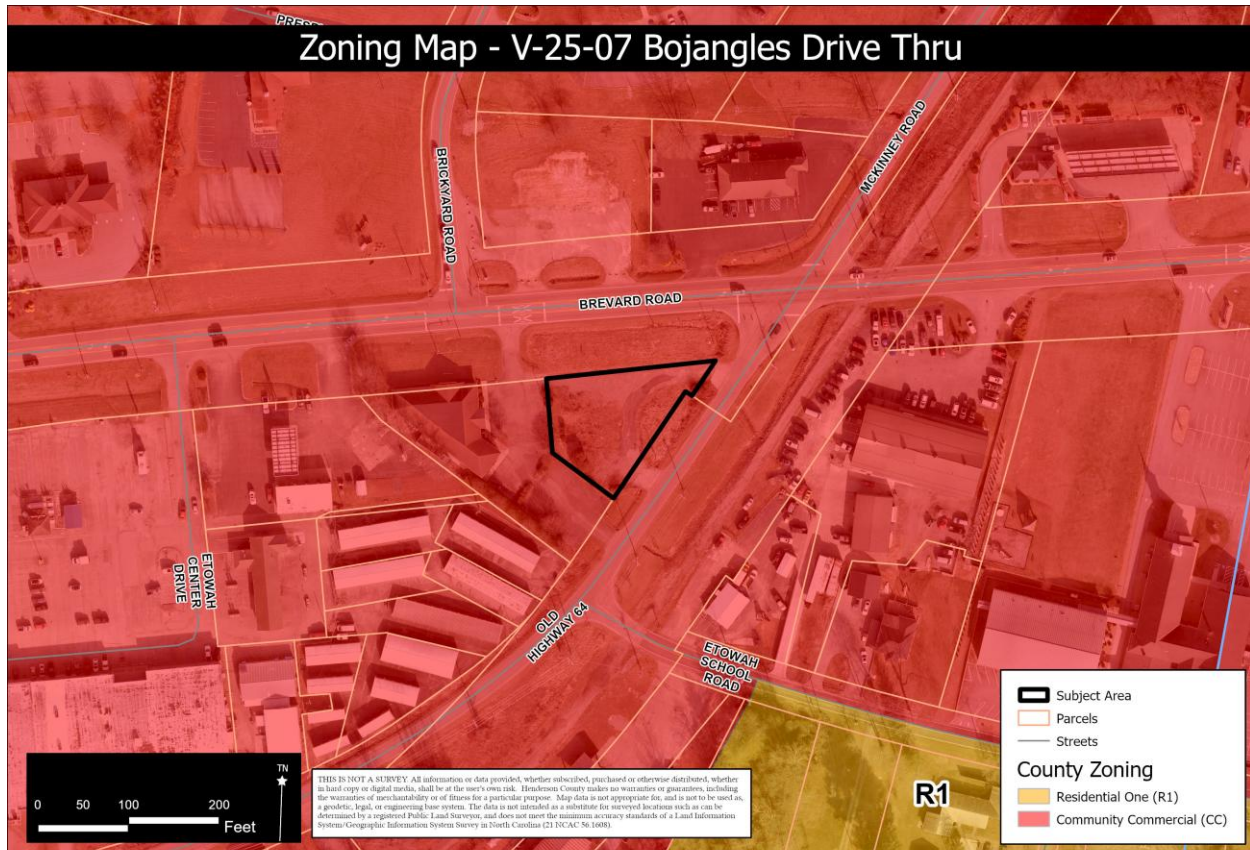
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2. History & Characteristics:

- 2.1. **Subject Area:** The subject area is comprised of Tract 2 as shown on the recorded plat slide 11493 in 2018. At the time of the plat recording, the site contained an existing one-story building with a drive-thru. The current property owners are shown as Cold Steel and Sunshine, LLC. Bart Van Oostendorp is listed as the agent of the registered LLC.
- 2.2. **Current Use:** The parcel is currently vacant.
- 2.3. **Adjacent Area Uses:** All the surrounding properties contain non-residential uses. An automotive repair garage is found east of the subject area. Etowah Pharmacy is located north of the subject area. Life Spring Wesleyan Church is located west of the subject area. A self-storage facility is located south of the subject area. Phase 2 of the Ecusta Trail is also located east of the subject area.

Map C: Current Zoning

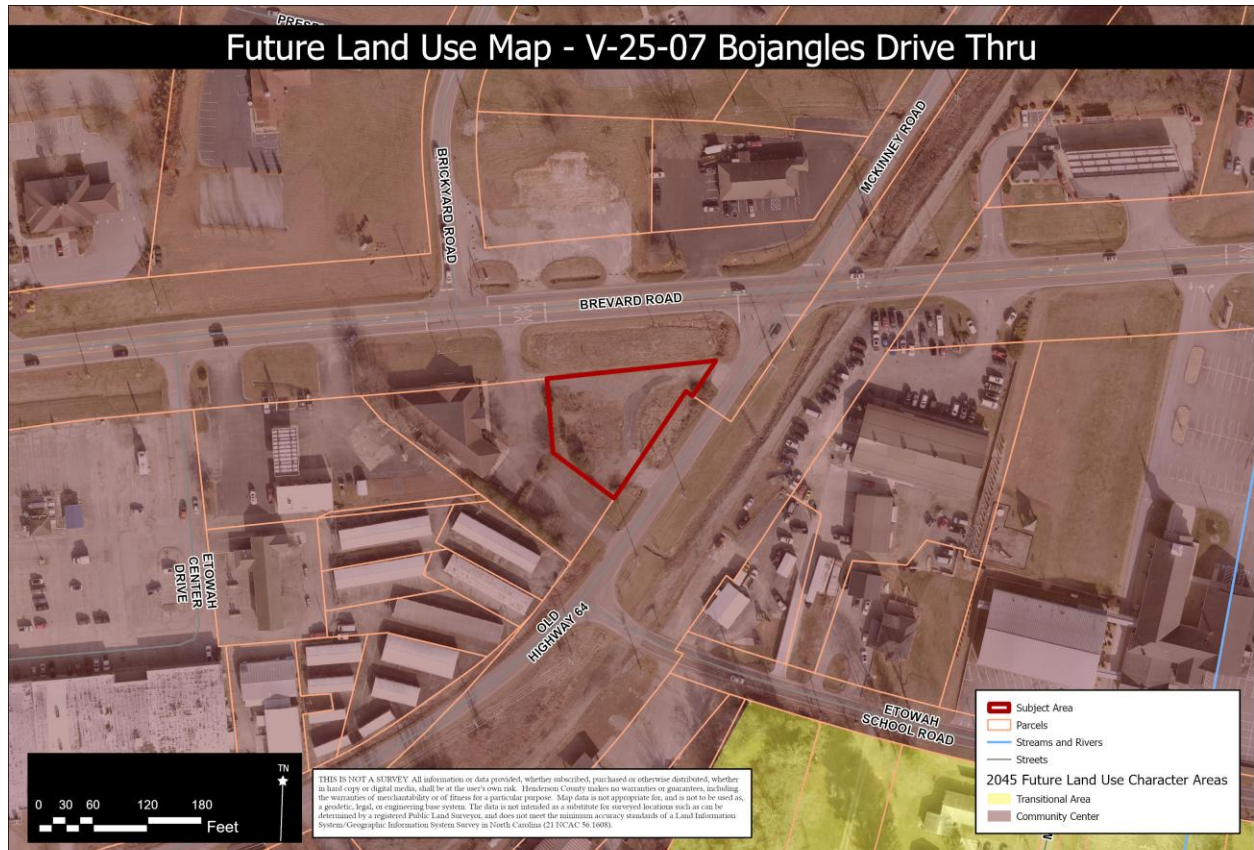


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3. **Zoning:** The subject area is zoned Community Commercial (CC) by Henderson County. Property in all directions is also zoned Community Commercial (CC).
 - 3.1. The purpose of the Community Commercial District (CC) is to foster orderly growth where the principal use of land is commercial. The intent of this district is to allow for commercial development that includes a variety of retail sales and services, public and private administrations, offices and all other uses done primarily for sale or profit on the local and community level.
4. **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. According to the USGS and NCDEQ, the subject area does not contain any surface water sources.
5. **Water and Sewer:** This property does have access to public water and public sewer.
Public Water: City of Hendersonville
Public Sewer: Etowah Community Sewer

Map : 2045 Future Land Use



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6. **2045 Comprehensive Plan Compatibility** The 2045 Comprehensive Plan Future Land Use Map identifies the subject area as being in an Community Center character area (See Map E).

- a. **Community Center:** From Part 2, page 46, “Community Centers are larger commercial nodes that serve broader geographic areas than Neighborhood Anchors. These areas typically have higher concentrations of nonresidential uses and commercial services that contribute to the tax base. *However, mixed-use development is also encouraged, especially to offer multi-story units* that provide commercial use on the bottom and residential units or office space above.”

- i. **Where:** Typically found at intersections of State Roads or thoroughfares in areas near residential development that can be served by commercial uses.
- ii. **Uses:** Medium to large-scale retail, services, restaurants, some offices, businesses, light industry, and institutional uses. **Mix of housing, including single-family homes, townhomes, and apartments.**
- iii. **Utility Access:** Typically served by water and potentially sewer.

7. **The Request:** The applicant has requested a variance for the drive-thru passage lane requirement as outlined within the Land Development Code. Currently, a drive-thru is an

accessory use and the supplemental requirements for this use require a passage lane for safe passage throughout the site. The applicant has requested this variance due to the size of the subject area and the two adjacent public rights-of-way that surround the property. Brevard Rd (US64) is located north of the subject area and has a 150' recorded right-of-way. Old Highway 64 (SR1203) is located east of the subject area and has a 60' recorded right-of-way. Pending the outcome of the variance application, the applicant will submit a major site plan application for a future drive-thru restaurant on the subject area.

8. **Technical Review Committee**

- a. The TRC will review this application during their November 18, 2025, meeting. Any conditions or comments placed on this application will be forwarded to the ZBA.

9. **Oblique Photos**

View from East



10/09/2024

View from North



10/09/2024

View from South



10/09/2024

View from West



10/09/2024

Application No. _____

**HENDERSON COUNTY
VARIANCE APPLICATION FORM**

GENERAL INFORMATION

Date of Application: _____

Previously Submitted (Circle One): Yes No

Date of Pre-Application Conference: _____

Site Plan Attached (Circle One): Yes No

PARCEL INFORMATION

Property Address 50 Old Highway 64, Etowah, NC 28729

PIN: 9528799840 Deed Book/Page: 3275/28 Acreage: 0.35

Zoning District: CC Fire District: _____ Watershed: _____ Floodplain: No

Driving Directions: Heading west on Highway 64 from Hendersonville, the site is located approximately 8.6 miles from the city center. Site is located at the southwest corner of Hwy 64 and Old Hwy 64.

REASON FOR VARIANCE SR2.2 Drive Thru Window Requirement of a Passage Lane
FRONT SETBACK (feet/foot) _____

SIDE SETBACK (feet/foot) _____

REAR SETBACK (feet/foot) _____

PROPERTY OWNER CONTACT INFORMATION:

Name: Cold Steel and Sunshine, LLC Phone: 828-884-3702

Address: 4 Market Street, Suite 4202 City, State, and Zip: Brevard, NC 28712

Applicant:

Name: NC Etowah Old Hwy 64, LLC Phone: 803-528-9798

Address: 201 Riverplace, Suite 400 City, State, and Zip: Greenville, SC 29601

Agent:

Name: Jonathan Cochrane Phone: 803-528-9798

Address: 201 Riverplace, Suite 400 City, State, and Zip: Greenville, SC 29601

Agent Form (Circle One): Yes No

Plan Preparer:

Name: Pharos Land Design Phone: 843-693-2335

Address: PO Box 31182 City, State, and Zip: Greenville, SC 29608

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 development is proposed on a 0.35-acre parcel that is triangular in shape. Due to these site constraints, there is not adequate space to accommodate the additional passage lane. As such, the parcel would be unable to be developed with this use if the variance request is denied.

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 development is proposed on a 0.35-acre parcel that is triangular in shape. Due to these site constraints, there is not adequate space to accommodate the additional passage lane. As such, the parcel would be unable to be developed with this use if the variance request is denied.

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

The applicant has made multiple site and building related changes to accommodate the lack of space on the property. These include a smaller (drive-thru only) building and therefore keeping the parking to a minimum. The site was also oriented as to eliminate the need to use a passage lane to access any parking. All parking can be accessed through full-width, two-way drive aisles.

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.)

Due to no parking spaces having to be accessed through the drive-thru lane and the drive-thru being both signed and striped as such, the general purpose and intent of the Land Development Code will be preserved in spirit with this variance.

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 applicant has taken every step to ensure public safety has not been compromised with this request.

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.

This variance request is not based on any nonconforming use or of any permitted nonconforming uses and stands on its own merits for variance.

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

Jonathan Cochrane

Print Applicant (Owner or **Agent**)

Signature Applicant (Owner or **Agent**)

10/23/2025
Date

County Use Only

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

**HENDERSON COUNTY
CODE ENFORCEMENT SERVICES APPOINTMENT OF AGENT FORM (OPTIONAL)**

I Bartel Van Oostendorp owner of property located on 50 Old Hwy 64, Etowah, NC,
(Name) (Street Address)
recorded in 3275/28 and having a parcel identification number of 9528799840,
(Deed Book/Page) (PIN)

located in Henderson County, North Carolina, do hereby appoint Jonathan Cochrane,
(Agent's Name)
(803) 528-9798, 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.

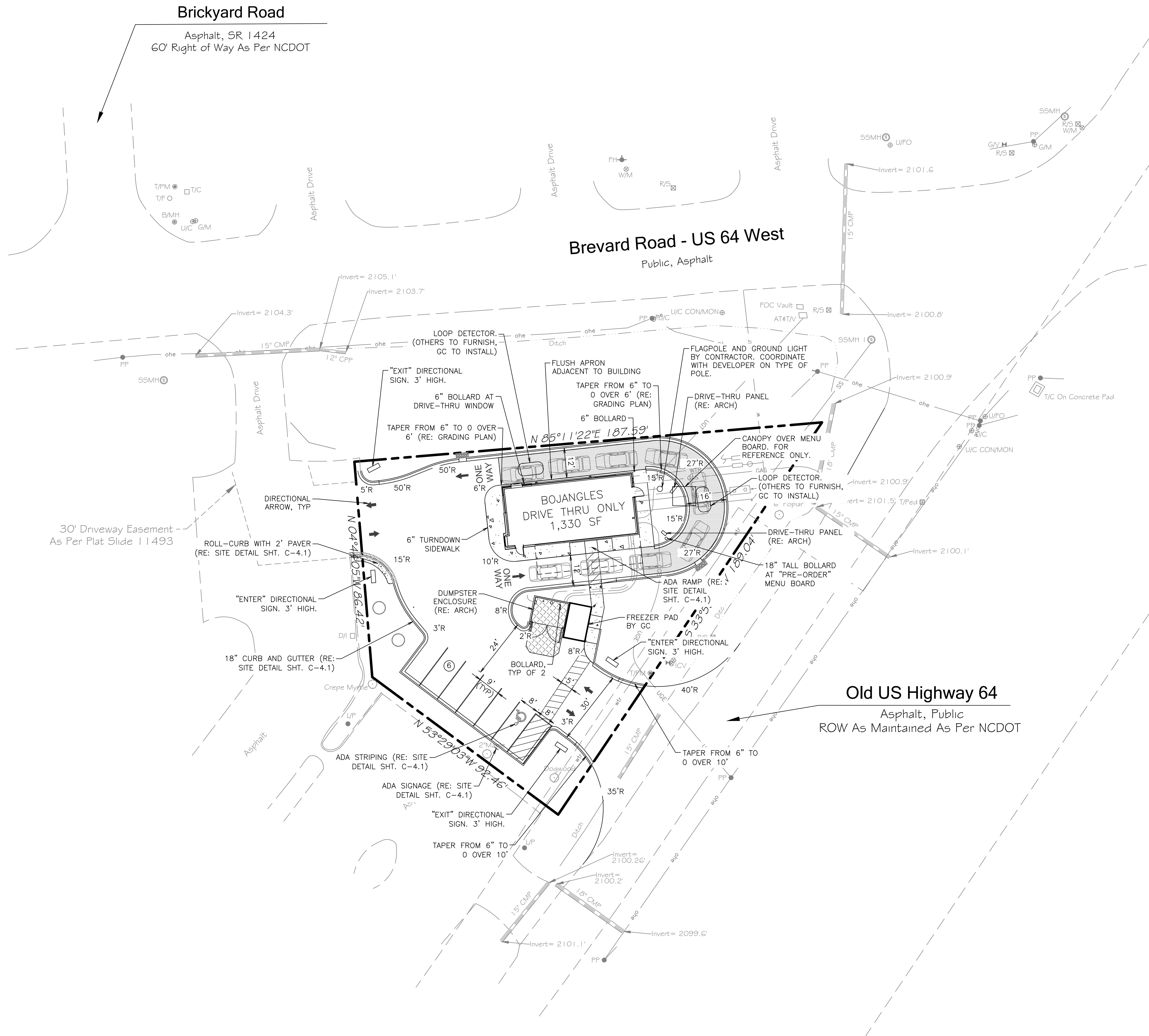
I however understand that as the listed property owner, I must sign all affidavits and statements required by any applicable ordinance.

Bartel Van Oostendorp
(Property Owner)
dotloop verified
10/22/25 11:03 PM
EDT
9ETJ-W7AS-EGYY-JG4J

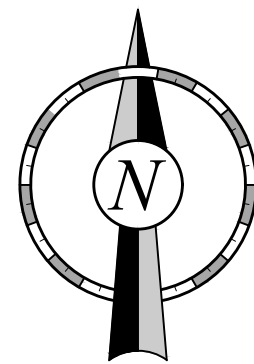
10/23/2025

(Date)

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SITE LEGEND	
	BOUNDARY LINE
	CONCRETE CURB AND GUTTER
	PARKING SPACE INDICATOR
	STANDARD DUTY ASPHALT (RE: DETAILS)
	SIDEWALK (RE: DETAILS)
	STANDARD DUTY CONCRETE (RE: DETAILS)
	HEAVY DUTY CONCRETE (RE: DETAILS)



PREPARED FOR: NC ETOWAH OLD HWY 64, LLC	PREPARED BY: PHAROS LAND DESIGN, LLC Civil Site Engineering PO Box 31182, Greenville, SC 29608 c: 843-693-2335	REVISIONS						BOJANGLES – ETOWAH, NC				
		NO.	DATE	DESCRIPTION	NO.	DATE	DESCRIPTION	SITE PLAN				
								FILE NAME: BOJANGLES CIVIL	DSGN. BY:	JOB NO: PMW—001	FLD. BK:	SHEET NO.
								DISC NUM:	DRN BY: WDE	SCALE: AS SHOWN	DATE: 09.29.2025	C—4.0