

The Madison County Board of Adjustment met on Monday, January 22, 2024, at 6:30 p.m. at the Madison County Public Library Marshall Branch, 1335 N. Main Street, Marshall, North Carolina.

In attendance were Chair Karen Kiehna, Vice-Chair Richard Molland, members Hart Barnhill, Darlyne Rhinehart, Ernest Ramsey, County Planning and Zoning Attorney Carly Gillingham, Development Services Director Brad Guth, and Clerk Mandy Bradley. Member Robert Briggs was not in attendance.

The meeting was called to order at 6:32 p.m. by Chair Kiehna.

#### **Welcome**

Chair Kiehna welcomed those in attendance to the meeting and introductions of the Board were provided.

#### **Approval of the Minutes**

The minutes draft of the December 18, 2023, meeting was reviewed by members of the Board.

Upon motion by member Barnhill and second by member Ramsey, the Board voted unanimously to approve.

#### **Administrative Ruling Application**

##### ***Home Occupation Land Use Permit Application from Timothy Denton Request for Gun Sales at 400 Tweed Road Marshall, NC 28753***

Development Services Director Brad Guth presented and discussed the Home Occupation Land Use Permit application with the Board noting that the matter was continued from the previous meeting of the Board. The staff report for the permit and provisions of the County's Land Use Ordinance were also presented by Mr. Guth.

Owner Timothy Denton presented to address the Board with Chair Kiehna administering the oath to Mr. Denton.

Discussion was had by the Board and Mr. Denton with counsel being provided by Attorney Gillingham. Chair Kiehna called for others in attendance with standing with none presenting to the Board.

Upon motion by member Rhinehart and second by member Ramsey, the Board voted unanimously to approve. (Attachment 1.1)

#### **Variance Applications (Quasi-Judicial Evidentiary Hearings)**

##### ***Variance Application from Joseph Frabotta Requesting a Variance from Setback Requirements at 127 Old Road, Marshall, NC 28753 PIN # 8798-26-2016***

Counsel was provided by Attorney Gillingham regarding requirements of the hearing.

Chair Kiehna administered the oath to witnesses Joseph Frabotta, Jeremy Stauffer, Joe Loops, and Brad Guth who presented for request of standing in the hearing.

Development Services Director Brad Guth presented and discussed the application and request for variance of setback requirements at 127 Old Road in Marshall as well as additional information including the staff report, analysis of criteria, and topography of the property.

Counsel was provided by Attorney Gillingham.

Jeremy Stauffer, representative for the applicant presented to addressed the Board to discuss the request.

Discussion was had by the Board regarding consideration of variance factors with counsel being provided by Attorney Gillingham.

Upon motion by member Barnhill and second by member Rhinehart, the Board voted unanimously to approve. (Attachment 2.1)

***Variance Application from Joseph Capel Requesting a Variance from Setback Requirements at Lot 27 Running Deer Lane, Mars Hill, NC PIN # 9748-64-6846***

Chair Kiehna discussed the application and request for variance of setback requirements at 27 Running Deer Lane in Mars Hill.

Joseph Capel, applicant, presented for request of standing in the hearing with Chair Kiehna administering the oath to the witness.

Counsel was provided by Attorney Gillingham. Development Services Director Brad Guth presented and discussed information with the Board including the application, site plan, ordinance criteria, staff report, and topography map.

Mr. Capel presented information in consideration of the variance request as well as answered questions from members of the Board.

Discussion was had by the Board and Mr. Guth regarding consideration of variance factors and counsel was provided by Attorney Gillingham.

Upon motion by member Barnhill and second by member Rhinehart, the Board voted unanimously to approve. (Attachment 2.2)

***Variance Application from Matt Nowicki and Dayna Gury Requesting a Variance from Setback Requirements at 82 Walnut Ridge, Seven Glens, Weaverville, NC PIN # 9776-04-9130***

Matt Nowicki, owner and Gus Katsigianis, owner's contractor, presented for request of standing in the hearing with Chair Kiehna administering the oath to the witnesses.

Counsel was provided by Attorney Gillingham.

Development Services Director Brad Guth presented and discussed the request for variance from the Mountain Ridge Protection Ordinance standard 50 feet (50') ridgetop setback to a reduction of 25 feet to 45 feet (25'-45') with the Board. Information discussed included the project in progress and permits previously issued for the project as well as the requested variance.

Matt Nowicki and Gus Katsigianis presented information in consideration of the variance request as well as answered questions from members of the Board.

Mr. Guth presented and discussed the staff report and topography of the property for consideration of the Board with counsel being provided by Attorney Gillingham.

Discussion was had by the Board and Mr. Guth with further counsel being provided by Attorney Gillingham.

The Board took recess from 8:34 p.m. until 8:41 p.m.

Discussion was had by the Board and Mr. Guth regarding consideration of variance factors with counsel being provided by Attorney Gillingham and Mr. Nowicki providing additional information for consideration of the Board.

The Board took recess from 10:20 p.m. until 10:26 p.m.

Additional discussion was had by the Board.

Upon motion by member Barnhill and second by Vice-Chair Molland, the Board voted unanimously to approve the variance. (Attachment 2.3)

***Appeal of Administrative Decision***

***Appeal of Administrative Decision from Zenina Farms, Represented by Matthew Ponder 98 Zenina Farms Drive, Marshall, NC 28753 PIN # 9725-33-0389 of a Zoning Determination Not to Permit a Septage Detention and Treatment Facility (SDTF) in the R-A Land Use District and Such Use is Not Exempt from the Land Use Regulations Through the Bona Fide Farm Exemption***  
Development Services Director Bard Guth requested a continuation of the hearing. Counsel was provided by Attorney Gillingham regarding a continuance of the matter until March 25, 2024.

Upon motion by member Barnhill and second by member Rhinehart, the Board voted unanimously to continue until March.

**Other Announcements/Updates**

**February Meeting: SUP Application Special Event Facility Dustin and Marisa Dye**  
Mr. Guth discussed that the item will be in consideration of the February meeting.

**March Meeting: Appeal of Administrative Decision from Zenina Farms**  
No discussion was had.

**Land Use Amendments Approved for Chapter 11 Board of Adjustment**  
Mr. Guth discussed amendments to Chapter 11 of the County's Land Use Ordinance with the Board.

Additional discussion was had by the Board and Mr. Guth.

**Adjournment**

Upon motion by Vice-Chair Molland and second by member Barnhill, the Board voted unanimously to adjourn at 10:43 p.m.

This the 22nd day of January 2024.

MADISON COUNTY



## Madison County Board of Adjustment

### Staff Findings Report

**Administrative Determination:** Home Occupation Determination Request

**Location:** 400 Tweed Road PIN# 9717-51-3392

**Applicant:** Timothy Denton

**Representative:** Timothy Denton

**Date:** 12.18.2023

**Prepared by:** Brad J. Guth

---

### Introduction

This report is intended to aid the Board of Adjustment in their review of the application and to provide an assessment of its compliance with existing zoning regulations and the spirit of home occupation uses in a residence.

### Description of Home Occupation:

Mr. Denton seeks a Home Occupation Land Use Permit to engage in the business of gun sales from his residence located at 400 Tweed Road. The applicant has provided the necessary documentation and information required for this application.

The Madison County Land Use Ordinance defines Home Occupation as:

**Home Occupation-** Customary home occupations, including dressmaking, cooking and baking, hairdressing, music instruction, the renting of not more than one room, and the practice of such professions as insurance and accounting shall be permitted as accessory uses in a residence. ***The Board of Adjustment shall decide whether other home occupations not listed here are within the spirit of this category of accessory uses.***

## **Zoning and Compliance Assessment:**

The property at 400 Tweed Road is in the RA Residential-Agriculture Land Use District, and the home occupation land uses are permitted in the RA Land Use District. A review of the application suggests the following:

- The proposed use appears to align with the requirements outlined in the Madison County Land Use Ordinance for Home Occupation Land Uses
- The applicant is currently operating a home occupation land use for gun sales, demonstrating that the use will not result in increased traffic, noise, or other disruptions to the neighborhood.



**PAID**  
\$40.00

**RECEIVED**  
NOV 29 2023  
BY: Sylvia Shelton



### Land Use Permit Application

**Property Information:**

Property Address: 400 Tweed Rd

Parcel/Tax ID Number: 9717 - 51 - 3392

Land Use Classification: A-O  RA  R-1  R-2  NC  CMU  RB  C  I

Lot Size: 3.53 Lot Width: 486 ft Lot Coverage Percentage           

Current Use: Residential

Proposed Use: Gun Sales

Accessory Buildings: N/A

Site Plan: The attached site plan should include property boundaries, setbacks, dimensions, and the placement of any buildings or structures. **Including the following:**

Flood Plain:  Yes  No SPS

Watershed:  Yes  No SPS

Protected Ridge:  Yes  No SPS

Elevation: 2000

Building Height: Single story

**Applicant Information:**

Full Name of Applicant: Timothy Denton Date 11/22/2023

Phone Number: 828-206-9091 Email Address: jdentons3@yahoo.com

Mailing Address: 400 Tweed Rd

Is the applicant the owner  Yes  No

**Certifications:**

If a permit is granted, I/We, the undersigned, agree to conform to all county ordinances and codes. Furthermore, we agree to meet all state-mandated standards such as health, building safety, and fire. I hereby swear that the above information is truthful and accurate to the best of my understanding.

Signature of Applicant: Timothy Denton Date: 11/29/2023

#OVER#

**INVOICE**

**Madison County Inspections & Zoning**

5707 US Hwy 25-70  
Suite 5  
PO Box 579, 28753, Marshall

Phone: (828) 649-3766

Email: inspections@madisoncountync.gov



**Bill to**  
Timothy Denton  
400 Tweed Road , 28753 Marshall

Invoice No.: 23-200-000949  
Date: 11/29/2023  
Due date: 11/29/2023  
Payment status: Paid

#	Item	Quantity	Unit price	Tax	Discount	Total
1	Zoning Permit	1	40.00	---	0.00%	40.00

<b>Total</b>	<b>\$40.00</b>
--------------	----------------

**Payment method:**

Credit Card: \$40.00  
Paid amount: \$40.00  
Amount due: \$0.00

Zoning Request for Gun Sales



# INVOICE

## Madison County Inspections & Zoning

5707 US Hwy 25-70

Suite 5

PO Box 579, 28753, Marshall

Phone: (828) 649-3766

Email: inspections@madisoncountync.gov



Bill to  
Timothy Denton  
400 Tweed Road , 28753 Marshall

Invoice No.: 23-200-000949  
Date: 11/29/2023  
Due date: 11/29/2023  
Payment status: Paid

#	Item	Quantity	Unit price	Tax	Discount	Total
1	Zoning Permit	1	40.00	—	0.00%	40.00

<b>Total</b>	<b>\$40.00</b>
--------------	----------------

**Payment method:**

Credit Card: \$40.00

Paid amount: \$40.00

Amount due: \$0.00

Zoning Request for Gun Sales



# Madison County Inspections & Zoning

5707 US Hwy 25-70  
Suite 5  
PO Box 579

28753, Marshall  
(828) 649-3766

inspections@madisoncountync.gov

Receipt No.: 23-200-000949

11/29/2023 2:26:40 PM

User: Sylvia Shelton

Order No.: 4365

**Customer:**

Timothy Denton

**Address:**

400 Tweed Road

28753 Marshall

**Tax No.:**

Zoning Permit

1 x 40.00 40.00

Items count: 1

**TOTAL: 40.00**

Credit Card: 40.00

Paid amount: 40.00

Zoning Request for Gun Sales

Have a Blessed day!

MADISON COUNTY  
5707 US 25-70 HWY STE 5  
MARSHALL, NC 28753  
(828)649-3766

## SALE

Store: 4053

REF#: 00000002

Batch #: 005

RR#: 333319502611

11/29/23

14:23:34

Trans ID: 583333698146364

APPR CODE: 661620

VISA

Contactless

\*\*\*\*\*6722

AMOUNT

\$40.00

APPROVED

SIGNATURE NOT REQUIRED

VISA DEBIT

AID: A0000000031010

TVR: 00 00 00 00 00

I AGREE TO PAY ABOVE TOTAL AMOUNT  
IN ACCORDANCE WITH CARD ISSUER'S  
AGREEMENT  
(MERCHANT AGREEMENT IF CREDIT VOUCHER)  
RETAIN THIS COPY FOR STATEMENT  
VERIFICATION

THANK YOU

MERCHANT COPY



## Madison County Planning Board

### Staff Findings Report

**Variance Application:** Applicant seeks a variance for an exception to the current side property setback for constructing an office studio, which will contain no plumbing and is not intended as a dwelling unit.

**Applicant:** Joseph Frabotta

**Representative:** Joseph Frabotta

**Property Address:** 127 Old Road, Marshall, NC 28753

**Property PIN #:** 8798262016

**Variance Requested:** Reduction in side setback requirement from the required 20 feet to 17-19 feet.

**Date:** 1/22/2024

**Report Prepared By:** Brad J. Guth

---

### Summary of the Request

Joseph Frabotta requests a variance for a reduced side property setback to construct an office studio. The requested reduction is 1 to 3 feet from the standard 20-foot setback due to property constraints.

### Ordinance Criteria

**Special Conditions:** The property must have unique circumstances that are not common to other properties.

**Literal Enforcement Hardship:** Strict application of the ordinance should cause unnecessary hardship to the property owner.

**No Self-Created Hardship:** The hardship should not be self-imposed or self-created by the property owner.

**No Special Privileges:** The variance should not confer special privileges that are denied to other properties in the district.

**Minimum Necessary:** The variance should represent the minimum deviation from the ordinance necessary to alleviate the hardship.

**Harmony with Ordinance's Intent:** The variance should be in harmony with the general intent and purpose of the ordinance and should not be injurious to the neighborhood or detrimental to public welfare.

## Analysis of the Request

**Special Conditions:** The property's topography and existing well placement create unique circumstances.  
**Literal Enforcement Hardship:** Strict adherence to the setback rule poses undue hardship due to natural property constraints.

**No Self-Created Hardship:** The hardship results from existing property conditions, not the applicant's actions.

**No Special Privileges:** The variance does not grant privileges not available to others but addresses the property's specific needs.

**Minimum Necessary:** The requested variance is the least deviation needed for the property's development.

**Harmony with Ordinance's Intent:** The variance maintains the zoning ordinance's spirit, ensuring no adverse neighborhood impact.

## Attachments and Supporting Documents

Application  
Topographic Map  
Site Plan



P.O. Box 873  
Marshall, N.C. 28753

### COUNTY OF MADISON ZONING APPLICATION

Check Appropriate Item(s):

- \*AMENDMENT TO ZONING MAP -- ZONING CHANGE REQUEST
- \*CONDITIONAL USE or SPECIAL USE
- \*APPEAL OF ADMINISTRATIVE DECISION
- \*VARIANCE

*To be completed by staff*

Date Received: \_\_\_\_\_

Fees Rec'd \_\_\_\_\_

#### PART I – To be completed by ALL Applicants

##### I-A IDENTIFICATION OF PROPERTY

- 1) Number and Street: 129 Old Rd. Marshall NC 28753
- 2) Present Zoning: RA      3) Acres: 0.68 Acres      4) Pin Number: 8798262016
- 5) Legal Description of Property (Omit for zoning text amendment) – Attach if necessary.

Attached separately

##### I-B PROPERTY

- 1) The deed restrictions, covenants, trust indentures, etc. on said property are as follows (or copy attached): if NONE so state:  
None
- 2) (a) Has this property or any part thereof ever been considered for Variance, Special Use, Appeal of Administrative Decision or Amendment to the Zoning Map before? \*YES  \*NO

(b) Date: \_\_\_\_\_ (c) What was the disposition of the case? \_\_\_\_\_

(d) Former Applicant Name: \_\_\_\_\_  
Former Applicant Address: \_\_\_\_\_  
Former Phone: \_\_\_\_\_

L-C

**IDENTIFICATION OF APPLICANT** - All applicants must have standing (an interest in property that will be directly affected by requested action)

1) Applicant:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

Agent (if any):

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

2) Owners of all property included in this application:

Name: Joseph Frabotta  
Address: 1091 Old Rd. Marshall NC 28753  
Phone: 415-350-9012

3) If the applicant is a Land Trust, Partnership, Corporation, or LLC, etc., or if the subject property is owned or controlled by a Land Trust, Partnership, Corporation or LLC, List name and interest of all Land Trust Beneficiaries or Partners and attach evidence that the person submitting the application on behalf of the Land Trust or Partnership is authorized to do so.

NAME/ADDRESS	PHONE	INTEREST
Trustee/Partner: _____		
Beneficiary/Partner: _____		
Beneficiary/Partner: _____		
Beneficiary/Partner: _____		

5) Does the applicant have a proprietary interest in the land or land improvements?  YES  NO

If YES, state interest and attach documentation: property ownership/improvement (deed attached)

If NO, state what interest otherwise qualifies the applicant to apply.

6) Names of the owners of the improvement(s) on the property in this applicant if different from above:

NAME	Address
_____	_____
_____	_____

7) If the applicant is a corporation or LLC etc., attach evidence that the person submitting the application on behalf of the corporation is authorized to do so.

**Part 2 - Request Type**

**2-A REZONING - (AMENDMENT TO THE ZONING MAP)** - Application for amendments to the Zoning District Map are heard by the Planning Board which makes a recommendation to the County Commissioners. Only the County Commissioners has authority to grant or deny amendments to the Zoning District Map.

- 1) (a) Existing Zoning: \_\_\_\_\_  
(b) Proposed Zoning: \_\_\_\_\_  
(c) Existing Use: \_\_\_\_\_  
(d) Proposed Use: \_\_\_\_\_

**Zoning Designations:**

AO	Agriculture Open-Space District	RA	Residential Agriculture
R-1	Residential District	R-2	Residential-Resort District
I-D	Industrial District	C	Commercial
N-C	Neighborhood Commercial	CMU	Commercial Mixed Use

2) The following must be submitted with this application:

- \*Preliminary Site Plan - prepared by a registered design professional
- \*Rendering or Perspective - depicting possible uses.
- \*Other - please describe.

3) Please list names, addresses, and phone numbers of the adjoining property owners.

**2-B SPECIAL USE REQUEST or CONDITIONAL USE** - Conditional Use requests are heard by the Board of Adjustment which will make a decision. Special Use requests are heard by the Planning Board.

1) Are development plans submitted with this application? \*YES \*NO

2) Parking requirements:

- a) Proposed number of parking spaces to be provided:
- b) Number of parking spaces required of Zoning Ordinance:

Other

- a) Attach tabulation of total land area and percentage thereof designated for various uses
- b) Are there any land use intensity requirements? \*YES \*NO if yes, attach data.

2-C

VARIANCE

To the Madison County Board of Adjustment

I, hereby petition the Board of Adjustment for a Variance from the provisions of the Madison County Ordinance because, under the interpretation given to me by the Zoning Administrator, I am Prohibited from using the parcel of land described in the application in a manner shown by the plat plan attached. I request a variance from the following provision(s) of the ordinance:

Attached Separately: Variance description + Site plan

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE

The board must find there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, that the variance is in harmony with the general purposes and intent of the ordinance and preserves its spirit, and that in granting of the variance the public safety and welfare have been assured and substantial justice has been done. Please attach any proof, evidence or other documentation to show why this variance is being applied for.

2-D Appeal of an Administrators Decision

An appeal must be taken within 30 days after the date of the decision or order appealed from.

I, the undersigned, do hereby respectfully make application and petition the Board of Adjustment of Madison County as hereinafter requested, and in support of this application, the following facts are shown:

- 1. Reasons for appeal
- 2. Decision rendered by Zoning Office

PART 3 - TO BE COMPLETED BY ALL APPLICANTS

To the best of my knowledge, I hereby affirm that all information in this application and any attached material and documents are true and accurate:

- a) Signature of Applicant: Joe Frabotta
- b) Signature of Agent (if any): [Signature]
- c) Date: 11/29/23



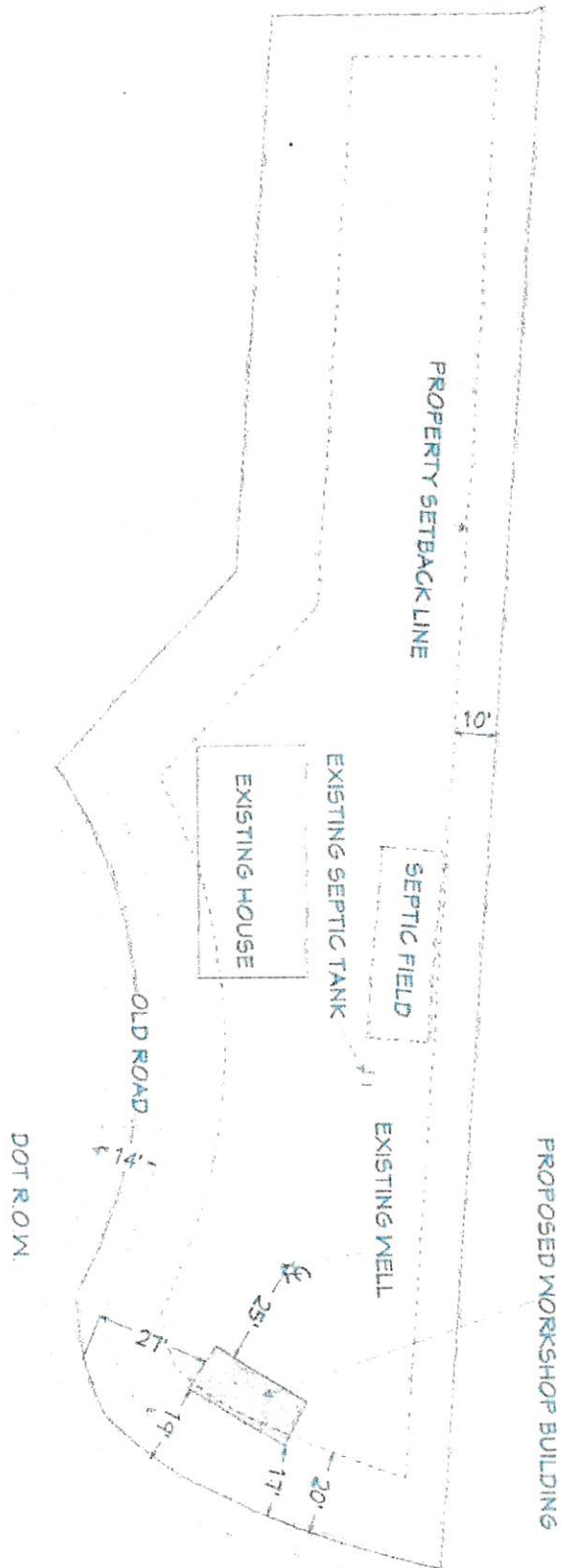
## Frabotta Variance Application Description

We are applying for a variance to be granted at 127 Old Road, Marshall NC 28753 owned by Joe Frabotta at PIN#8798262016 for an exception to be made to the current side property setback for an office/studio containing no plumbing, and with no intention of existing as a dwelling unit. The current maximum distance the building can be built from the property line along Old Road (SR 1145) on the side border of the property is 19' on the southern corner of the building and 17' on the northern corner of the building. The required setback from the property line along this road is 20'. The property setbacks for the other side of the building, the front of the building and the back of the building will all be able to be achieved with no variance necessary.

The proposed location of the building is limited to this spot because of a number of factors: The slope and accessibility of the parcel limits us to this proposed spot. We are also not able to move the proposed building any farther to the west (away from the road) as we will be encroaching into the setback for the already constructed well.



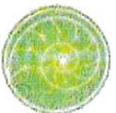
VICINITY MAP



# SITE PLAN



1"=20'-0"



**nanostead**  
 449 W. Lane Road, Suite 101, No. 28753  
 | 336.206.2506

**FRABOTTA PROPERTY**  
 187 OLD ROAD  
 MARSHALL NC 28753

1/12/28/2023

PERMIT SET

SITE PLAN

01

**NORTH CAROLINA GENERAL WARRANTY DEED**

Excise Tax: \$470.00

Parcel Identifier No. Verified by \_\_\_\_\_ County of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
By: \_\_\_\_\_

Mail/Box to: Worley & Peltz, PLLC, 42 Orchard Street, Asheville, NC 28801, Box # 99

This instrument was prepared by: Goosmann Rose Colvard & Cramer, P.A. 77 Central Ave. Suite H Asheville, NC 28801 Box # 81 (20-7076)

Brief description for the Index: \_\_\_\_\_

THIS DEED made this 12 day of January, 2021, by and between

GRANTOR	GRANTEE
Richard Brandon Messer and Mariella Elizabeth LaRue, married to each other <u>Casey Waterwood TR</u> <u>Bertram, TX 76632</u>	Joseph Frabotta aka Joseph W. Frabotta 127 Old Road Marshall, NC 28753

Enter in appropriate block for each Grantor and Grantee: name, mailing address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot, parcel of land or condominium unit situated in the City of Marshall, \_\_\_\_\_ Township, Madison County, North Carolina and more particularly described as follows:

See Exhibit A attached hereto and incorporated herein by reference. This instrument was prepared by the Law Office of Goosmann Rose Colvard & Cramer, P.A., without review or examination of the herein described property and no opinions or representations are being made, either expressed or implied, by said law firm or any of its attorneys. This instrument was prepared by John R. Rose, a licensed NC attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 663 page 713.

All or a portion of the property herein conveyed \_\_\_\_\_ includes or X does not include the primary residence of a Grantor.

A map showing the above described property is recorded in Plat Book \_\_\_\_\_ page \_\_\_\_\_

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple; has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances; and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions: Those matters set forth in the description for the property; easements and rights of way of record or in place; restrictive covenants of record; the use provisions of any governmental ordinance affecting the property and taxes for the current year.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

\_\_\_\_\_  
(Entity Name) Richard Brandon Messer (SEAL)

By: \_\_\_\_\_  
Print/Type Name & Title: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
Print/Type Name & Title: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
Print/Type Name & Title: \_\_\_\_\_ (SEAL)

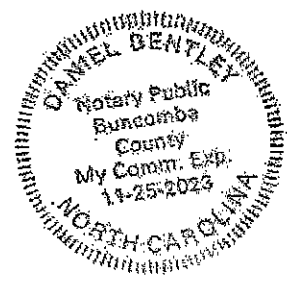
State of North Carolina - County of Runcombe

I, the undersigned Notary Public of the County and State aforesaid, certify that Richard Brandon Messer and Marielle Elizabeth LaRue personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 12 day of July, 2021

My Commission Expires: 11-25-2023 \_\_\_\_\_  
Notary Public

The foregoing Certificate(s) of \_\_\_\_\_ is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

By: \_\_\_\_\_ Register of Deeds for \_\_\_\_\_ County  
Deputy/Assistant - Register of Deeds



## EXHIBIT "A"

Beginning at a 3/8-inch rebar existing iron pin in the center of a 4-foot dirt road known as Old Parrot Hill Trail at the Southwestern corner of the Plimmons property (Deed 111 at Page 213 of the Madison County Registry) and running thence with the Southern margin of said Plimmons property South  $81^{\circ} 57' 12''$  East 378.31 feet to an approximate point as shown by William Plimmons in the right of way of The Old Road (SR 1148); thence following the course of said right of way for said road six (6) calls as follows: (1) South  $18^{\circ} 09' 09''$  West 60 feet; (2) South  $38^{\circ} 49' 48''$  West 42.57 feet; (3) North  $36^{\circ} 00' 59''$  West 46.19 feet; (4) North  $64^{\circ} 33' 49''$  West 41.82 feet; (5) South  $85^{\circ} 46' 39''$  West 41.05 feet; and (6) South  $54^{\circ} 30' 57''$  West 24.48 feet; thence leaving said road right of way and running North  $39^{\circ} 48' 05''$  West 72.33 feet to a locust post as shown by R.J. Plimmons; thence North  $81^{\circ} 07' 14''$  West 143.63 feet to a 3/8-inch rebar new iron pin in the Eastern margin of the McClure property (Deed Book 136 at Page 563, Plat Book 3 at Page 311, 312 of the Madison County Registry); thence with the Eastern margin of said McClure property and roughly approximating the Western margin of the aforesaid Old Parrot Hill Road, North  $03^{\circ} 24' 31''$  East 61.83 feet to the point of Beginning; and containing 0.68 acres, more or less, as per plat of survey by Freedland-Clerkscales, Inc., dated 5-11-1995 and bearing drawing No. HNC 15260, said survey incorporated herein for a more particular description of said property.

The above-described property is all of that property conveyed in that Deed recorded in Book 663, at Page 713 in the Office of the Register of Deeds for Madison County, North Carolina.



## Development Services

Brad J. Guth  
Development Services Director  
Madison County  
5707 US Hwy 25/70  
Marshall, NC 28753

January 4, 2024

### **Subject: Official Notice of Quasi-Judicial Evidentiary Hearing for a Variance from Setback Requirements at 127 Old Road Marshall, NC PIN # 8798-26-2016**

#### **Dear Neighbor of 127 Old Road Marshall:**

This letter is an official notice from the Madison County Development Services Department regarding a forthcoming Quasi-Judicial Evidentiary Hearing. The hearing will discuss the application for a Variance from Setback Requirements at 127 Old Road Marshall, NC PIN # 8798-26-2016

#### **The hearing is scheduled as follows:**

**Date: January 22, 2024**

**Time: 6:30 PM**

**Location: Marshall Library**

The purpose of this Quasi-Judicial Evidentiary Hearing is to provide a formal platform for all stakeholders, including residents, project developers, and county officials, to present evidence and testimony related to the proposed variance application. This hearing is a critical component of the decision-making process for a Variance.

#### **Key points to be addressed in the hearing include:**

- The project's compliance with local zoning and development ordinances.
- Potential impacts on the neighborhood, including traffic, environmental concerns, and community character.
- Benefits of the proposed development to the local community and economy.
- Any other relevant matters as outlined in the county's development regulations.

Economic Development ♦ Geographic Information Systems ♦ Inspections ♦ Planning  
Madison County, NC | Asheville, NC MSA  
County Plaza, Room 17, 5707 Hwy 25-70, Marshall, NC 28753

As residents in close proximity to the Variance site, your input is invaluable. Please attend this hearing to express your views, concerns, and any other relevant information you may have regarding this Application.

Please be aware that Quasi-Judicial Evidentiary Hearings differ significantly from standard public hearings. This hearing is a formal legal proceeding where the decision-making body acts in a judge-like capacity. It is imperative to understand that only factual evidence relevant to the case can be presented and considered during this hearing. Personal opinions, anecdotal narratives, or general comments, while valuable in other settings, are not appropriate or admissible in this context.

If you wish to participate or have material evidence pertaining to this application, we encourage you to prepare accordingly. Should you have any questions or need further information about the nature of evidence required or the procedures of this hearing, please do not hesitate to contact our office at 828-649-3766 or via email at [bguth@madisoncountync.gov](mailto:bguth@madisoncountync.gov).

We are committed to ensuring all participants are well-informed and prepared for this important community decision-making process.

Your participation in this process is crucial in shaping the future of your community, and we look forward to your involvement.

Sincerely,



Brad J. Guth  
Development Services Director

Economic Development ♦ Geographic Information ♦ Inspections ♦ Planning and Zoning

Madison County, NC | Asheville, NC MSA  
County Plaza, Room 17, 5707 Hwy 25-70, Marshall, NC 28753

*Frabotta*

PN	Pat_Book	Pat_Book	Zone	Ordinc	RFD	PROPERTY_D	PROPERTY_O	OWNER_MAIL	OWNER_MA_3	OWNER_MA_4	OWNER_MA_5	DEED BOOK	DEED PAGE
8798254562	0	0	0		15126	PLEHMONS, W. CLDICE;PLEHMONS, ERNESTINE	OWNER, MAIL PO BOX 172	MARSHALL NC	NC		28753	127	82
8798266456	0	0	0		6053	CODY, ROBERT GERALD	PO BOX 796	WEAVERVILLE NC	NC		28787	171	630
8798269331	0	0	0		650650 TR:1	ANDERSON, JEFF;ANDERSON, DAWN	475 WALNUT DRIVE PO BOX 172	MARSHALL NC	NC		28753	701	4
8798282284	0	0	0		6001	PLEHMONS, W. CLDICE;PLEHMONS, ERNESTINE	PO BOX 172	MARSHALL NC	NC		28753	111	213
8798266235	0	0	0		6000	PLEHMONS, W. CLDICE;PLEHMONS, ERNESTINE	PO BOX 172	MARSHALL NC	NC		28753	93	426
8798269335	0	0	0		6000	PLEHMONS, W. CLDICE;PLEHMONS, ERNESTINE	PO BOX 172	MARSHALL NC	NC		28753	93	426
8798282284	0	0	0		6001	PLEHMONS, W. CLDICE;PLEHMONS, ERNESTINE	PO BOX 172	MARSHALL NC	NC		28753	111	213
8798168996	0	0	0		658271	RAMSEY, ERNEST L. C. FREETRAIDER	434 SCHOOL ROAD	MARSHALL NC	NC		28753	670	262
8798288088	0	0	0		660651 TR:2	ANDERSON, JEFF;ANDERSON, DAWN	475 WALNUT DRIVE PO BOX 866	MARSHALL NC	NC		28753	701	4
8798282096	0	0	0		5997	PLEHMONS, R J	PO BOX 866	LENOIR CITY TN	TN		37771	101	166
8798256739	0	0	0		5652	CALDWELL, DAVID PIERSON;CALDWELL, JOAN JOHNSON;CALDWELL, JENNIFER LEIGH	26 BARNARD RD.	MARSHALL NC	NC		28753	756	406
8798252869	0	0	0		6175	PEARSON, MARK ALAN	74 THE OLD ROAD	MARSHALL NC	NC		28753	169	670
8798250638	0	0	0		15195	RAMSEY, ERNEST L. C. FREETRAIDER	434 SCHOOL ROAD	MARSHALL NC	NC		28753	670	262
8798252515	0	0	0		16048	DILLON, HETH BRYAN	17 OLD ROAD	MARSHALL NC	NC		28753	520	661
8798257558	0	0	0		18962	CEMETERIES	VARIOUS LOCATIONS	MARSHALL NC	NC		0	0	0
8798254531	0	0	0		5676	AVILETRA, DAKONI	PO BOX 239	KEY WEST FL	FL		33041	454	211
8798256664	0	0	0		28039	CALDWELL, DAVID PIERSON;CALDWELL, JOAN JOHNSON;CALDWELL, JENNIFER LEIGH	26 BARNARD RD.	MARSHALL NC	NC		28753	756	406
8798251455	0	0	0		5605	BREEDLOVE, GENE A.	7755 MULBERRY ROAD	BIG SANDY TX	TX		75755	136	563
8798267271	0	0	0		0						0	0	0
8798157361	0	0	0		5999	TR:4 PL:3-595 GUNTER, BRIAN;KEITH;GUNTER, CONNIE ADAMS	354 SANDY BOTTOM ROAD	MARSHALL NC	NC		28753	741	489
87982820669	0	0	0		16122	RAMSEY, ERNEST L. C. FREETRAIDER	434 SCHOOL ROAD	MARSHALL NC	NC		28753	670	262
8798168918	0	0	0		5953	PL:3-311 RAMSEY, ERNEST	434 SCHOOL RD.	MARSHALL NC	NC		28753	746	150





# Madison County Board of Adjustment

## Staff Findings Report

**Variance Application:** Request for a 25-foot setback variance.

**Applicant:** Joseph Capel

**Representative:** V & V Land Management

**Property Address:** Lot 27, Running Deer Lane, Mars Hill

**Property PIN #:** 9748-64-6846

**Variance Requested:** 25-foot setback variance from the current setback requirements.

**Date:** 1|22|2023

**Report Prepared By:** Brad J Guth

## Summary of the Request

Joseph Capel, through V & V Land Management, is requesting a 25-foot setback variance for the development of a single-family residence at 27 Running Deer Lane. This request is to alleviate challenges associated with the property's unique topography.

## Ordinance Criteria

**Special Conditions:** The property must have unique circumstances that are not common to other properties.

**Literal Enforcement Hardship:** Strict application of the ordinance should cause unnecessary hardship to the property owner.

**No Self-Created Hardship:** The hardship should not be self-imposed or self-created by the property owner.

**No Special Privileges:** The variance should not confer special privileges that are denied to other properties in the district.

**Minimum Necessary:** The variance should represent the minimum deviation from the ordinance necessary to alleviate the hardship.

**Harmony with Ordinance's Intent:** The variance should be in harmony with the general intent and purpose of the ordinance and should not be injurious to the neighborhood or detrimental to public welfare.

## Analysis of the Request

**Special Conditions:** The property's unique topographical features establish conditions not common to other properties.

**Literal Enforcement Hardship:** Strict enforcement of the 40-foot setback would impose an undue hardship, affecting the reasonable development of the site.

**No Self-Created Hardship:** There is no indication that the hardship is self-imposed or a result of actions by the property owner. The topographical constraints appear inherent to the property.

**No Special Privileges:** There is no indication that the hardship is self-imposed or a result of actions by the property owner. The topographical constraints appear inherent to the property.

**Minimum Necessary:** The 25-foot variance is the least deviation needed to address construction challenges, particularly regarding cut/fill and retaining wall heights.

**Harmony with the Ordinance's Intent:** The variance maintains the intent of zoning regulations while allowing reasonable property use.

## Attachments and Supporting Documents

Application

Topography Map

27 Running Deer Lane Grading Plans



P.O. Box 873  
Marshall, N.C. 28753

## COUNTY OF MADISON ZONING APPLICATION

Check Appropriate Item(s):

- \*AMENDMENT TO ZONING MAP -- ZONING CHANGE REQUEST
- \*CONDITIONAL USE or SPECIAL USE
- \*APPEAL OF ADMINISTRATIVE DECISION
- \*VARIANCE

*To be completed by staff*

Date Received: \_\_\_\_\_

Fees Rec'd \_\_\_\_\_

**PART 1 – To be completed by ALL Applicants**

### I-A IDENTIFICATION OF PROPERTY

1) Number and Street:

27 Running Deer Ln

2) Present Zoning:

Residential

3) Acres:

5.8

4) Pin Number:

9748-64-6846

5) Legal Description of Property (Omit for zoning text amendment) – Attach if necessary.

### I-B PROPERTY

1) The deed restrictions, covenants, trust indentures, etc. on said property are as follows (or copy attached): if NONE so state:

None

2) (a) Has this property or any part thereof ever been considered for Variance, Special Use, Appeal of Administrative Decision or Amendment to the Zoning Map before? \*YES  NO

(b) Date: \_\_\_\_\_

(c) What was the disposition of the case? \_\_\_\_\_

(d) Former Applicant Name: \_\_\_\_\_

Former Applicant Address: \_\_\_\_\_

Former Phone: \_\_\_\_\_

J-C

**IDENTIFICATION OF APPLICANT** - All applicants must have standing (an interest in property that will be directly affected by requested action)

1) Applicant:

Name: Joseph Capel  
Address: 41 N. Merrimon Avenue Unit 312 Asheville NC 28804  
Phone: 828-712-2387

Agent (if any):

Name: VIV Land Management  
Address: PO Box 7, Del Rio, TN 37121  
Phone: 828-777-6637

2) Owners of all property included in this application:

Name: Joseph Capel  
Address: 41 N. Merrimon Avenue Unit 312 Asheville NC 28804  
Phone: 828-712-2387

3) If the applicant is a Land Trust, Partnership, Corporation, or LLC, etc., or if the subject property is owned or controlled by a Land Trust, Partnership, Corporation or LLC. List name and interest of all Land Trust Beneficiaries or Partners and attach evidence that the person submitting the application on behalf of the Land Trust or Partnership is authorized to do so.

NAME/ADDRESS	PHONE	INTEREST
Trustee/Partner: _____		
Beneficiary/Partner: _____		
Beneficiary/Partner: _____		
Beneficiary/Partner: _____		

5) Does the applicant have a proprietary interest in the land or land improvements? \*YES \*NO

If YES, state interest and attach documentation:

If NO, state what interest otherwise qualifies the applicant to apply:

6) Names of the owners of the improvement(s) on the property in this applicant if different from above:

NAME	Address
_____	_____
_____	_____

7) If the applicant is a corporation or LLC etc., attach evidence that the person submitting the application on behalf of the corporation is authorized to do so.

**Part 2 - Request Type**

**2-A REZONING – (AMENDMENT TO THE ZONING MAP)** – Application for amendments to the Zoning District Map are heard by the Planning Board which makes a recommendation to the County Commissioners. Only the County Commissioners has authority to grant or deny amendments to the Zoning District Map.

- 1) (a) Existing Zoning: \_\_\_\_\_
- (b) Proposed Zoning: \_\_\_\_\_
- (c) Existing Use: \_\_\_\_\_
- (d) Proposed Use: \_\_\_\_\_

**Zoning Designations:**

<b>AO</b>	Agriculture Open-Space District	<b>RA</b>	Residential Agriculture
<b>R-1</b>	Residential District	<b>R-2</b>	Residential-Resort District
<b>I-D</b>	Industrial District	<b>C</b>	Commercial
<b>N-C</b>	Neighborhood Commercial	<b>CMU</b>	Commercial Mixed Use

- 2) The following must be submitted with this application:

\*Preliminary Site Plan - prepared by a register design professional

\*Rendering or Perspective – depicting possible uses

\*Other – please describe

- 3) Please list names, addresses, and phone numbers of the adjoining property owners.

**2-B SPECIAL USE REQUEST or CONDITIONAL USE**– Conditional Use requests are heard by the Board of Adjustment which will make a decision. Special Use requests are heard by the Planning Board.

- 1) Are development plans submitted with this application? \*YES \*NO
- 2) Parking requirements:
  - a) Proposed number of parking spaces to be provided:
  - b) Number of parking spaces required of Zoning Ordinance:Other
  - a) Attach tabulation of total land area and percentage thereof designated for various uses
  - b) Are there any land use intensity requirements? \*YES \*NO If yes, attach data.

2-C

VARIANCE

To the Madison County Board of Adjustment:

I, hereby petition the Board of Adjustment for a Variance from the provisions of the Madison County Ordinance because, under the interpretation given to me by the Zoning Administrator, I am prohibited from using the parcel of land described in the application in a manner shown by the site plan attached. I request a variance from the following provisions of the ordinance:

Requesting 25' setback from GIS property boundary  
(see attachment)

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE

The board must find there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, that the variance is in harmony with the general purposes and intent of the ordinance and preserves its spirit, and that in granting of the variance the public safety and welfare have been secured and substantial justice has been done. Please attach any proof, evidence or other documentation to show why this variance is being applied for.

2-D Appeal of an Administrator's Decision

An appeal must be taken within 30 days after the date of the decision or order appealed from.

I, the undersigned, do hereby respectfully make application and petition the Board of Adjustment of Madison County as hereinafter requested, and in support of this application, the following facts are shown.

1. Reasons for appeal.
2. Decision rendered by Zoning Office

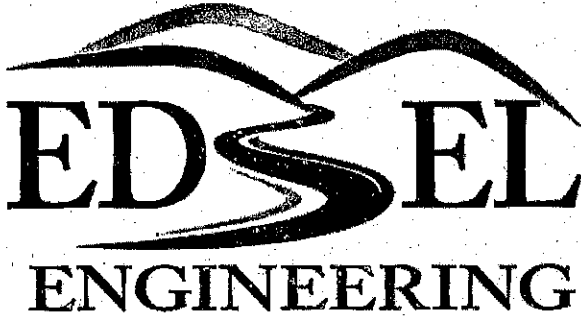
PART 3 - TO BE COMPLETED BY ALL APPLICANTS

To the best of my knowledge, I hereby affirm that all information in this application and any attached material and documents are true and accurate.

a) Signature of Applicant: \_\_\_\_\_

b) Signature of Agent in Charge: \_\_\_\_\_

c) Date 12-14-23



Edsel Engineering, PLLC  
Firm # P-2878  
Wyatt Edsel, PE  
104 Hiawassee Avenue  
Black Mountain, NC 28711  
828-707-6120

## Variance Application Narrative

Joseph Capel is requesting a variance from setback requirements at Lot 27 Running Deer Lane, Mars Hill, NC PIN # 9748-64-6846

Joseph Capel is requesting the setback reduction from Zoning due to the steep existing topography of his lot in order to limit disturbance to slopes and reduce retaining wall heights. We are requesting that the setback be reduced to 25'. The existing topography behind the proposed house seat is ranging from 2:1 to approximately 2.6:1. Therefore fill slopes will not be able to tie in quickly, creating large areas of tree clearing and land disturbance. Alternatively, the slopes can be retained with walls. The current plan is showing a retaining wall with a maximum height of 8-feet behind the proposed house seat. However, at a 2:1 slope, for every 2-feet further back the house is pushed, the retaining walls will get 1-foot taller.

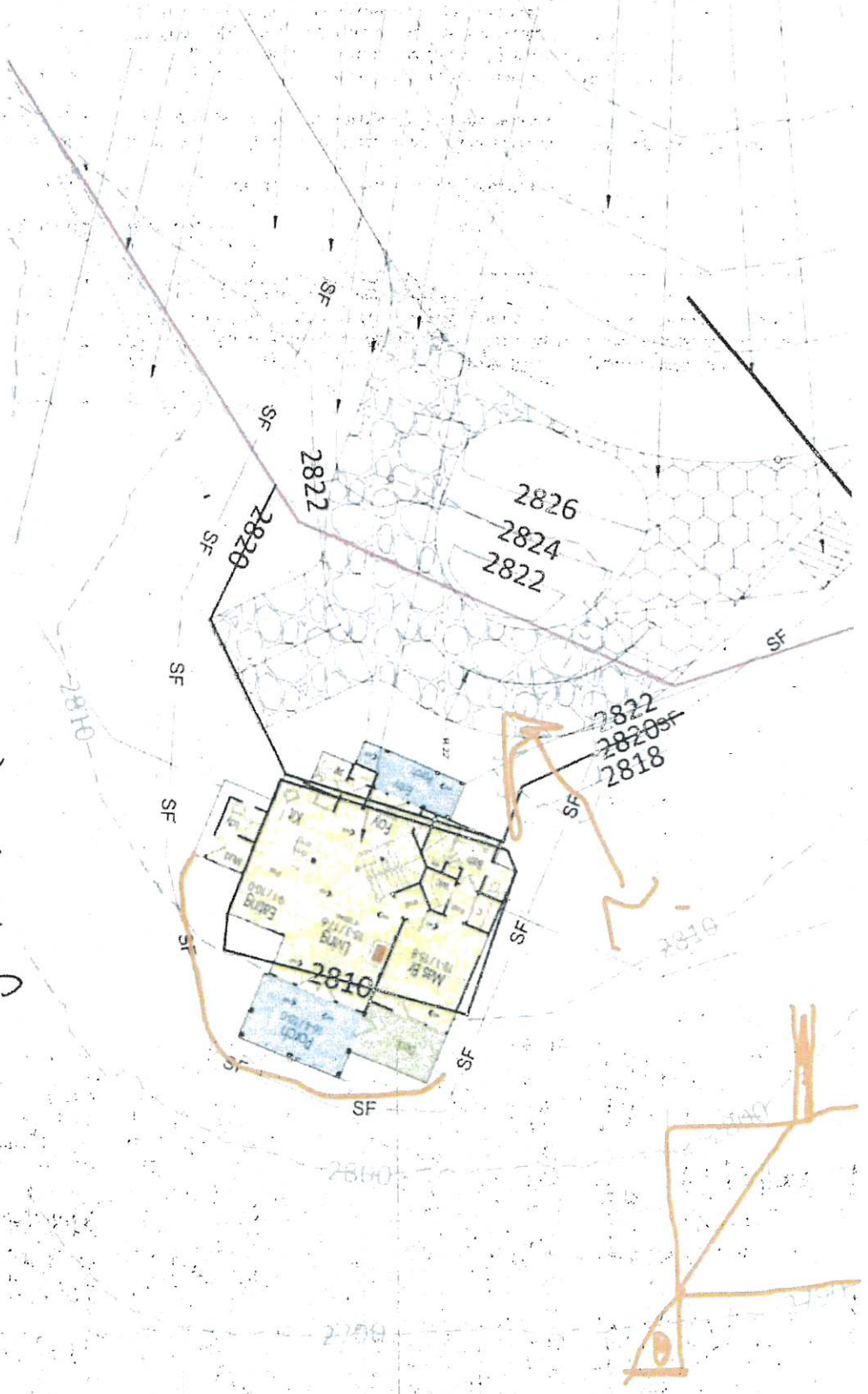
Therefore, in the interest of protecting the natural hillside and reducing retaining wall heights, we formally request this variance from the property line setback.

Thank you,

*Wyatt Edsel*  
Signed ID: EVCE3LRV11...

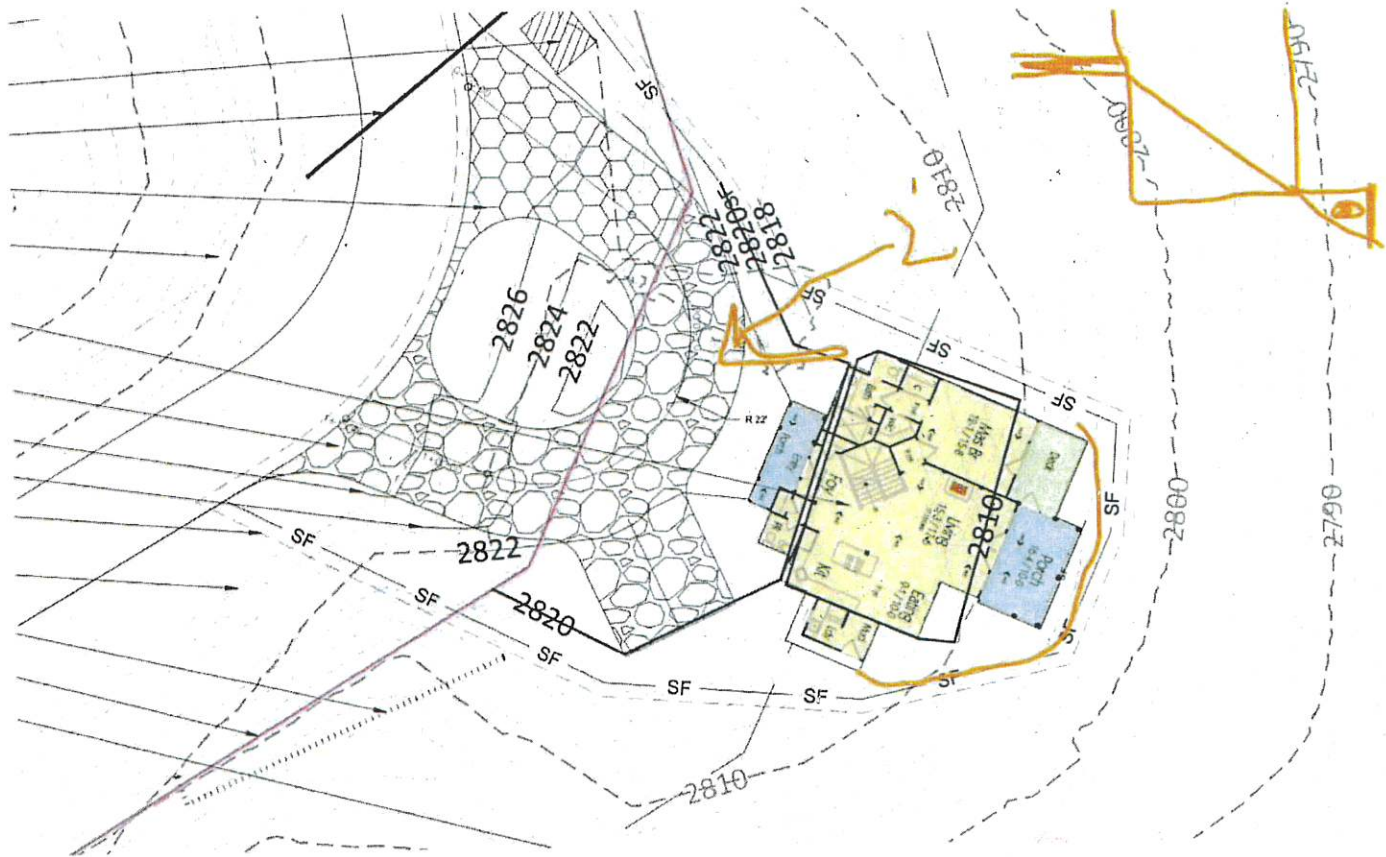
Wyatt Edsel, PE

Variance: Requesting 25' setback from  
GIS property boundary











## Madison County Board of Adjustment

### Staff Findings Report

**Variance Application:** Applicant seeks to reduce the 50ft setback from the protected ridgeline as required in the Madison County Mountain Ridge Protection Ordinance.

**Applicant:** Matt Nowicki & Dayna Gury

**Representative:** Matt Nowicki

**Property Address:** 82 Walnut Ridge, Seven Glens, Weaverville, NC 28787

**Property PIN #** 9776-04-9130

**Variance Requested:** Reduction in the Mountain Ridge Protection Ordinance's setback from 50ft to a range of 25-45ft

**Date:** 1/22/2024

**Report Prepared By:** Brad J. Guth

---

### Summary of the Request

The applicants seek a variance to reduce the required setback from the ridgeline, citing unique property conditions and ongoing construction based on previously granted permits.

### Ordinance Criteria

**Special Conditions:** The property must have unique circumstances that are not common to other properties.

**Literal Enforcement Hardship:** Strict application of the ordinance should cause unnecessary hardship to the property owner.

**No Self-Created Hardship:** The hardship should not be self-imposed or self-created by the property owner.

**No Special Privileges:** The variance should not confer special privileges that are denied to other properties in the district.

**Minimum Necessary:** The variance should represent the minimum deviation from the ordinance necessary to alleviate the hardship.

**Harmony with Ordinance's Intent:** The variance should be in harmony with the general intent and purpose of the ordinance and should not be injurious to the neighborhood or detrimental to public welfare.

## **Analysis of the Request**

**Special Conditions:** The property's topography and ridgeline curvature present unique conditions not common to other properties.

**Literal Enforcement Hardship:** Strict enforcement of the 50ft setback poses significant hardship due to the property's unique layout and initiated construction.

**No Self-Created Hardship:** The hardship arises partly due to the applicant's actions but is primarily due to the special conditions of the property and also influenced by the lack of previous code enforcement of the 50ft setback requirement.

**No Special Privileges:** Granting the variance would align with previous developments in the area and would not confer undue privileges.

**Minimum Necessary:** The requested variance is the minimum deviation necessary to mitigate the hardship while allowing reasonable property use.

**Harmony with the Ordinance's Intent:** The variance maintains the ordinance's objectives, balancing property use with environmental considerations without harming the neighborhood or public welfare.

## **Attachments and Supporting Documents**

Application

Narrative

Site Plan

Topographic Map



**I-C IDENTIFICATION OF APPLICANT** – All applicants must have standing (an interest in property that will be directly affected by requested action)

1) Applicant:

Name:  Matt Nowicki and Dayne Gury   
Address:  147 Scotch Moss Dr, Advance, NC 27006   
Phone:  336-404-4285  email:  mattnowicki@yahoo.com

Agent (if any):

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

2) Owners of all property included in this application:

Name:  Matt Nowicki and Dayne Gury   
Address:  147 Scotch Moss Dr, Advance, NC 27006   
Phone:  336-404-4285  email:  mattnowicki@yahoo.com

3) If the applicant is a Land Trust, Partnership, Corporation, or LLC, etc.. or if the subject property is owned or controlled by a Land Trust, Partnership, Corporation or LLC. List name and interest of all Land Trust Beneficiaries or Partners and attach evidence that the person submitting the application on behalf of the Land Trust or Partnership is authorized to do so.

NAME/ADDRESS	PHONE	INTEREST
Trustee/Partner: _____		
Beneficiary/Partner: _____		
Beneficiary/Partner: _____		
Beneficiary/Partner: _____		

5) Does the applicant have a proprietary interest in the land or land improvements? \*YES - Yes \*NO

If YES, state interest and attach documentation: -  Homeowner - Primary Residence Construction

If NO, state what interest otherwise qualifies the applicant to apply:

6). Names of the owners of the improvement(s) on the property in this applicant if different from above:

NAME	Address
_____	_____
_____	_____

7). If the applicant is a corporation or LLC etc., attach evidence that the person submitting the application on behalf of the corporation is authorized to do so.

Part 2 - Request Type

**2-A REZONING -- (AMENDMENT TO THE ZONING MAP)** - Application for amendments to the Zoning District Map are heard by the Planning Board which makes a recommendation to the County Commissioners. Only the County Commissioners has authority to grant or deny amendments to the Zoning District Map.

- 1) (a) Existing Zoning: \_\_\_\_\_
- (b) Proposed Zoning: \_\_\_\_\_
- (c) Existing Use: \_\_\_\_\_
- (d) Proposed Use: \_\_\_\_\_

**Zoning Designations:**

AO	Agriculture Open-Space District	RA	Residential Agriculture
R-1	Residential District	R-2	Residential-Resort District
I-D	Industrial District	C	Commercial
N-C	Neighborhood Commercial	CMU	Commercial Mixed Use

- 2) The following must be submitted with this application:

\*Preliminary Site Plan - prepared by a registered design professional  
\*Rendering or Perspective - depicting possible uses  
\*Other - please describe

- 3) Please list names, addresses, and phone numbers of the adjoining property owners.

**2-B SPECIAL USE REQUEST or CONDITIONAL USE**- Conditional Use requests are heard by the Board of Adjustment which will make a decision. Special Use requests are heard by the Planning Board.

- 1) Are development plans submitted with this application? \*YES \*NO

- 2) Parking requirements:

a) Proposed number of parking spaces to be provided:

b) Number of parking spaces required of Zoning Ordinance:

Other

a) Attach tabulation of total land area and percentage thereof designated for various uses

b) Are there any land use intensity requirements? \*YES \*NO If yes, attach data.

2-C

**VARIANCE**

To the Madison County Board of Adjustment:

I, hereby petition the Board of Adjustment for a Variance from the provisions of the Madison County Ordinance because, under the interpretation given to me by the Zoning Administrator, I am Prohibited from using the parcel of land described in the application in a manner shown by the plot plan attached. I request a variance from the following provision(s) of the ordinance:

50ft setback - Article 5, Section 503, #3 - Mountain Ridge Protection Ordinance  
Please see attached additional information for detailed explanation

**FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE**

*The board must find there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, that the variance is in harmony with the general purposes and intent of the ordinance and preserves its spirit, and that in granting of the variance the public safety and welfare have been assured and substantial justice has been done. Please attach any proof, evidence or other documentation to show why this variance is being applied for.*

**2-D Appeal of an Administrators Decision**

An appeal must be taken within 30 days after the date of the decision or order appealed from.

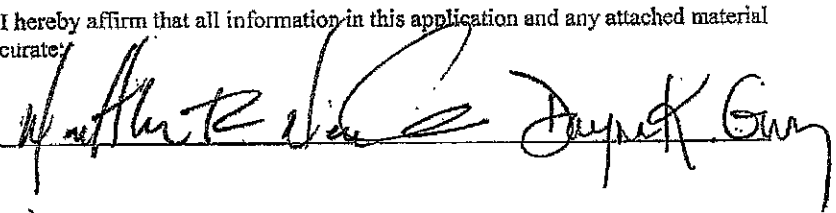
I, the undersigned, do hereby respectfully make application and petition the Board of Adjustment of Madison County as hereinafter requested, and in support of this application, the following facts are shown:

1. Reasons for appeal.
2. Decision rendered by Zoning Office

**PART 3 - TO BE COMPLETED BY ALL APPLICANTS**

To the best of my knowledge, I hereby affirm that all information in this application and any attached material and documents are true and accurate:

a) Signature of Applicant:



b) Signature of Agent (if any):

\_\_\_\_\_

c) Date

12-18-2023



## Information for Application for Variance

82 Walnut Ridge, Seven Glens  
Weaverville, NC 28787

Owners – Matt Nowicki & Dayna Gury

We are asking for a variance to the Mountain Ridge Protection Ordinance setback of 50ft from ridgeline as it will cause serious hardship and additional expense to the building of our primary residence here. We are currently placing the house at the site approved by the County permits which ranges from 25-45ft setback (the ridge curves past the straight line of the house).

It will also negatively impact all the protective aspects of the Ordinance if we have to setback 50 ft.

---

We have followed all aspects of the Ordinance to the letter except the 50ft setback and this is because we were not aware of it. The HOA in Seven Glens had never heard of it and there is a house a few hundred yards away built on the very summit of the ridge and the lot is cleared around it – the Ordinance was obviously ignored during this build 10 years ago.

The County inspectors even told us that the Ordinance setback rules had previously been ignored in all instances. We have THREE (3) County approved construction permits to build on exact spot and it had never been mentioned. We have started the foundation construction in the area that was approved in all these permits and it would be very expensive to re-excavate.

---

The 2 portions of the Ordinance that relate to our project and would be affected by the setback distance are the “Septic” and the “Natural Beauty”.

Both of these would be NEGATIVELY impacted if we adhere to the 50 ft setback in the Ordinance.

- SEPTIC: We have TWO (2) approved Septic Permit/Plans from the County that depict the house build in the exact spot we have placed it (existing approx. 25-45 feet setback).
- If we have to move the house site to the full 50 ft setback, the house will be directly on top the County approved Septic layout – there is no other reasonable area to place the septic plan, the slope of land around the house would create a necessity to reroute the septic to an unusable area or pump the waste to holding tanks and engineered solutions at extreme expense. Please see attached approved Septic Permit with new site drawn for 50ft setback.
- It would also create a “steep slope” building situation with major potential for damaging soil erosion.

- **NATURAL BEAUTY:** If the house is left in the site approved by the County permits, the roofline would only be approx. 26ft above grade at the ridgeline (Ordinance does not allow above 35 ft, this is well below that and within the trees). We have also left all the trees on the ridgeline which are already much higher than the roofline. The house will have siding in dark brown and green - it will essentially be invisible against the treeline, the house outline will not show against the skyline at all.
  - The house is located back at the end of a curved cove in the ridgeline and cannot be seen at all except when on the subdivision road directly below the lot or from the uninhabited peak on the other side of the subdivision. It cannot be seen from any public road or property outside the subdivision.
  - If we have to move the house to 50ft setback we will need to build a very obtrusive and much more visible retaining wall system to deal with the steep slope, negatively impacting Natural Beauty in a major way.
- 

## Summary

The Ordinance had previously (until several weeks ago) not been adhered to or even been a known issue as we were told by County Inspectors. The HOA had no knowledge of it and several neighboring houses had previously built directly on the ridge and in much more obtrusive positions than ours and obviously approved by County inspections, completely ignoring the Ordinance.

We have already been given THREE (3) approved County permits to proceed with construction and it would be very expensive to move the building site that is begun. It would also necessitate building on a much more difficult site and create a need for steep slope engineering and potential for major erosion problems.

If we move the house to 50ft setback it will completely cover the twice approved County Septic plan and create the need for a more difficult and expensive and much less efficient system.

If we move the house to the 50ft setback it would also negatively impact the "Natural Beauty" by making the building site much more obtrusive with a huge retaining wall system needed to build on the steep slope.

We are trying to be very sensitive to the site, clear as few trees as possible, appreciate the existing beauty and build a house that will complement the location very positively. If we have to move the house only about 20-30 ft to adhere to the 50ft setback it will negatively impact the protective aspect of the Ordinance and make the project much more difficult and give no benefit. Therefore, we are asking for a variance to the 50ft setback aspect of the Ordinance to remain at the existing site which ranges from 25-45ft setback.

# CONSTRUCTION AUTHORIZATION



Madison County Health Department  
5707 US Hwy 25  
Marshall, NC 28753  
Phone: 828-649-9598 FAX: 828-649-9370

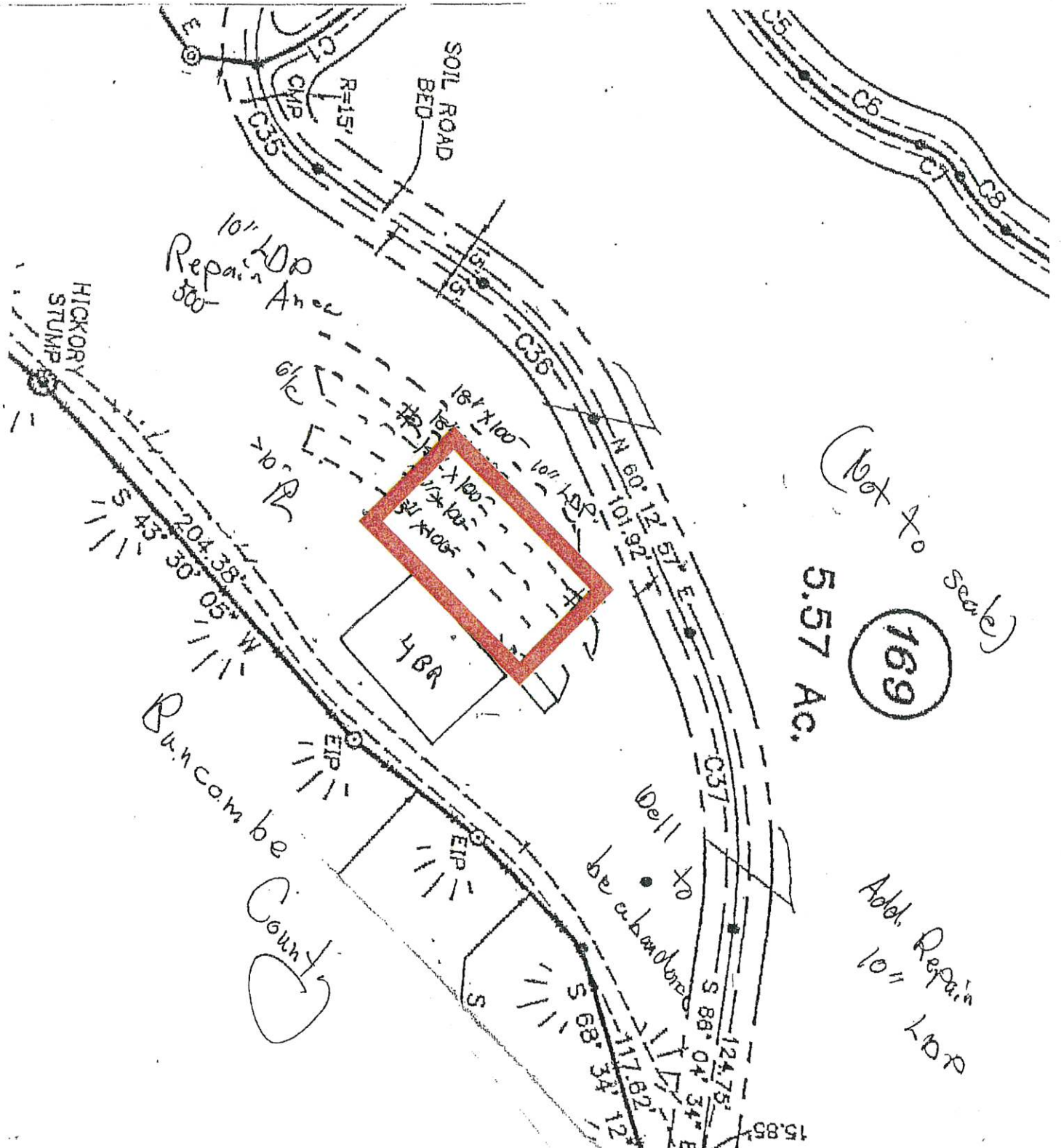
CDP File Number: 241443 - 2

PIN Number: 9776-04-9130

Date: 03/27/2023

**Drawing:** Drawing Type: Construction Authorization

Scale: \_\_\_\_\_  Inch = \_\_\_\_\_ ft.  
 Block  
 N/A



# INVOICE

## Madison County Inspections & Zoning

5707 US Hwy 25-70

Suite 5

PO Box 579, 28753, Marshall

Phone: (828) 649-3766

Email: inspections@madisoncountync.gov



Bill to  
Matt Nowicki & Dayne Gury  
147 Scotch Moss Drive, 27006 Advance

Invoice No.: 23-200-001020  
Date: 12/18/2023  
Due date: 12/18/2023  
Payment status: Paid

#	Item	Quantity	Unit price	Tax	Discount	Total
1	Application for Variance	1	250.00	---	0.00%	250.00

<b>Total</b>	<b>\$250.00</b>
--------------	-----------------

**Payment method:**

Credit Card: \$250.00

**Paid amount: \$250.00**

**Amount due: \$0.00**

Variance for  
82 Walnut Ridge  
Weaverville, NC 28787