



The Hickory Board of Adjustment will hold its regular meeting on **Wednesday, July 27, 2016 at 6:00 p.m. in the City Council Chambers of City Hall**. The following will be the agenda for the Regular Meeting:

AGENDA

- Parliamentary Call to Order
- Welcome
- Roll Call
- Items of Correspondence
- City Council Action
- Approval and Signing of Minutes from the October 28, 2015 Meeting

PRESENTATIONS AND PUBLIC HEARINGS

1. **Variance Petition 16-01.** Request by Phillip and Karen Pruett for variance from Article 7, Section 7.1 of the Hickory Land Development Code. The specific request pertains to a side street yard setback. The subject property is located at 1056 5th Avenue NW and 526 10th Street Place NW, and is shown in more detail as PINs 3703-17-12-1216 and 3703-17-12-0442 on the Catawba County G.I.S. maps.

OTHER BUSINESS

1. None

The Hickory Regional Planning Commission does not discriminate on the basis of disability in the provision of its service as charged by the City Council of the City of Hickory. All meetings are held in accessible facilities. Any person with a disability needing special accommodations should contact the Planning Department at telephone number (828) 323-7422 at least 48 hours prior to the scheduled meeting.

Hickory Board of Adjustment
Wednesday, October 28, 2015, 6:00 pm

A regular meeting of the Hickory Board of Adjustment (BOA) was held on Wednesday, October 28, 2015, 6:00 pm, in Council Chambers of the Julian G. Whitener Municipal Building, Hickory NC.

Members Present: Randall Mays, Jim Noggle, Barbara Clemons, Shauna O'Brien, Wallace Johnson, Junior Hedrick and Sam Hunt

Members Excused: Bill McBrayer and John Eldridge

Members Absent: None

Others Present: Director of Planning and Development Services Brian Frazier, Principal Planner Cal Overby, Planner Ross Zelenske, Deputy City Attorney Arnita Dula and Minutes Clerk Anne Starnes

Parliamentary Call to Order & Welcome: Randall Mays, Chairman, called the meeting to order at 6:05 pm and welcomed everyone present.

Roll Call: Director of Planning and Development Services Brian Frazier stated a quorum was present.

Items of Correspondence: Mr. Frazier said information was distributed to members at their seats, from Deputy City Attorney Arnita Dula, a synopsis of the current petition of David French and Anne-Sophie French vs. City of Hickory. He said the Board of Adjustment's decision at the previous meeting, regarding the denial of the variance, has been appealed to the State Superior Court. He suggested Ms. Dula could best explain the status of the case to members, and Mr. Mays requested that she do so.

Ms. Dula addressed members, noting the actual hearing date of November 30, 2015 was not included in the information she provided, and that City Attorney John Crone will handle the appeal on behalf of the City of Hickory. She said, basically, the petition contains four assignments of error, which boiled down to say the decision of the Board of Adjustment (BOA) was not competent, material, and substantial evidence, and that all evidence presented at the hearing was actually favorable to the petitioner. Therefore, the BOA acted outside the scope of your authority, and you made your decision, not based on the evidence that was presented. She said members could read the prepared information, and that the fourth assignment of error states the denial was not based on the four statutory criteria, but it all boils down to the BOA really had no reason to deny the variance, and therefore it really should have been granted.

Ms. Dula said the petitioner is requesting that the petition be granted, meaning the Court will agree to review the case; that they either reverse the BOA decision and order you to grant the variance, or, remand it back to the BOA for another hearing; and, that all court costs and attorney fees be paid. She said that his daughter is serving as their attorney, so she was unsure what attorney fees would be charged. Ms. Dula asked if members had any questions.

Mr. Mays said the BOA decision required a four-fifths majority, and Ms. Dula said yes. Mr. Mays said that member votes that night were not the four-fifths required, with two members voting to deny the variance, based on the fact it did not meet the four statutory criteria required for a variance under general statutes. Ms. Dula said they are contesting that, and their position is that the evidence presented in the staff report, Mr. French's testimony, the documents he presented, that it actually did meet the four statutory criteria, and that your decision was contrary to that, and the evidence did not support a denial. They are basically saying your decision was not based on sound, competent evidence. She said Mr. Crone is writing the brief to present to the court, and she has not seen it yet. Cal Overby prepared the record, which includes the

recording of the hearing, the minutes, the application, and all of the supporting documentation. She said it could go either way, and the Court could order the BOA to grant it or remand it; they could also uphold the decision. She said the City should know the Court's decision before the end of the calendar year.

Mr. Mays asked if the main thing the Court would look at was if members had followed protocol. Ms. Dula said they are not contesting the procedural part, in other words, that the BOA violated the procedural or due process requirements. They are contesting the substantive decision, saying that the evidence presented should have led the Board to the decision to grant the variance, because everything, according to them, was in favor of it, including meeting the criteria. Therefore, based on the statute, you should have been required to grant the variance. Ms. Dula said it is a review of the record, at the Superior Court level, and that is why Mr. Overby prepared all of the documents. The judge will review the record and there is no actual hearing, and no new evidence will be presented. Everything the judge reviews will be what took place at the actual hearing, and no new facts can be submitted, no new evidence can be introduced.

There were no further questions for Ms. Dula. She said members would be kept posted on the outcome. Mr. Mays thanked her for providing an update on the petition.

Mr. Frazier introduced Planner Ross Zelenske, who joined the staff nearly four months ago. He is from Virginia, a recent graduate of Virginia Tech, and will also be making staff presentations to members in the future. Mr. Mays welcomed Mr. Zelenske.

City Council Action: None

Approval and Signing of Minutes from the August 26, 2015 Meeting: Minutes of the previous meeting were distributed to members in advance. No corrections, additions or deletions to the minutes were stated. Shauna O'Brien moved, seconded by Barbara Clemons, to approve the minutes of the August 26, 2015 meeting as submitted. The motion carried unanimously.

PRESENTATIONS AND PUBLIC HEARINGS

None

Other Business: Mr. Mays asked if there was any other business to come before the Board of Adjustment, and there was none.

Adjourn: Sam Hunt moved, seconded by Jim Noggle, to adjourn. There being no further business, the meeting adjourned at 6:13 pm.

Randall Mays, Chairman
Hickory Regional Planning Commission

Anne Starnes, Minutes Clerk
City of Hickory

VARIANCE ANALYSIS

PETITION: VAR 16-01

APPLICANT: Phillip and Karen Pruett

PROPERTY OWNERS: Same as above

PROPERTY LOCATIONS: 1056 5th Avenue NW and 526 10th Street Place NW (Note: The Pruett's purchased the property located at 526 10th Street Place NW, and have filed a survey plat with the Catawba County Register of Deeds combining the two parcel into a single lot. However, at the time of the petition the Catawba County Tax Department has yet to amend the official county tax maps to reflect this action.)

PINs: 3703-17-12-0442 and 3703-17-12-1216

WARD: Ward 5, Councilman Zagaroli

ACREAGE: 0.734 acres (31,990 ft²)

REQUESTED ACTION: The petitioners' requests a variance from Article 7, Section 7.1, Residential District Standards of the Hickory Land Development Code. Specifically the petitioners requests a side street accessory building setback variance in the amount of ten (10) feet.

BACKGROUND: The petitioners' own residential property located at 1056 5th Avenue NW. The petitioners' have applied for and received a residential zoning compliance permit for an accessory structure on May 9, 2016. The structure was placed on the property by the owners' contractor after the permit was issued. Shortly afterwards staff received a complaint from the City Code Enforcement Division indicating they believed the structure did not meet the required setback of fifteen (15) feet. Staff from the City's Planning and Development Services Department visited the Pruett's property and verified the structure had been placed in violation of the required fifteen (15) foot setback.

City staff talked with Mr. Pruett several times, and notified him the building would either need to be moved, or a setback variance would need to be granted by the Board of Adjustment. Upon talking with Mr. Pruett about the process for applying for a variance, a petition for a variance was submitted along with supplemental information supporting the request.

The variance petition submitted by the Pruett's contend the structure should not be located further from the side property line, due to the location of an adjacent creek (Fitz Creek). Exhibit A shows the building is currently located five (5) feet away from the side property line, and approximately 17 feet from the edge of pavement of 10th Street Place NW.

As shown in Exhibit B, the required fifteen (15) foot setback would push the building ten (10) feet further to the east. Additionally, Exhibits C & D demonstrates that pushing the building an additional ten (10) feet to the east places the outermost wall of the building near the top of bank of Fitz Creek, and much deeper into the federally designated floodplain.

DEVELOPMENT POTENTIAL: The subject property is currently zoned Medium Density Residential -2 (R-2), and is currently developed as the site of a single-family residence, which is the maximum extent the subject property may be developed. Additionally, the location of Fitz Creek, and its designated floodplain greatly limits any further development on the property.

LAND USE AND ZONING: (See Maps 1 and 2 for additional details)

- **Subject Property:** The property is located in a Medium Density Residential (R-2) zoning district, and is currently occupied by a single-family residence;
- **North:** The property to the north is located in a Medium Density Residential (R-2) zoning district, and is currently occupied by a single-family residence;
- **South:** The property to the south is located in a Medium Density Residential (R-2) zoning district, and is currently occupied by a single-family residence;
- **East:** The property to the east is located in a Medium Density Residential (R-2) zoning district, and is currently occupied by a single-family residence; and
- **West:** The property to the west is located in a Medium Density Residential (R-2) zoning district, and is currently occupied by single-family residences.

ACCESS: Access to the property is available from 10th Street Place NW.

SEWER AND WATER: The property is currently served public water and sewer.

VARIANCE APPROVAL CRITERIA:

Zoning variances may be approved only when the Board of Adjustment finds substantial evidence in the official record and the application to support all the following findings:

- A. Unnecessary hardship would result from the strict application of this Land Development Code. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;

The strict application of the City's Land Development Code would not render the petitioners' property unusable, as the property currently contains a single-family residence. However, strict enforcement of the required property line setback (15 feet) for the accessory structure would result in its placement precariously close to the top of bank of Fitz Creek, and well within the federally designated floodplain.

The granting of the setback variance would provide for the placement of the accessory structure, while protecting the integrity of the designated floodplain.

- B. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the area or the general public, may not be the basis for granting a variance;

The peculiar condition that impacts the property relates to its proximity to Fitz Creek, and its designated floodplain. While Fitz Creek and its designated floodplain impacts other properties in the vicinity, the amount of designated floodplain, and the manner by which it covers the property is in itself unique. Although placing the accessory building on the property with the prescribed fifteen (15) foot setback is possible, in doing so the impact of its location on the adjacent designated floodplain has the potential to cause public harm.

It should also be noted the floodplain designation on the western margin of Fitz Creek is identified as being an AEFW (floodway), which by the City's Flood

Damage Prevention Ordinance, is indicated to be an area that is not to be disturbed, as it functions as the immediate overflow area for the creek bed in times of heavy rainfall. Unlike AE (100 year flood areas), the AEFW is considered to be extremely hazardous due to the velocity of floodwaters that have high erosion potential and carry debris and potential projectiles.

- C. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship; and

The waterway (Fitz Creek), and its floodplain are naturally occurring hydrologic features that are not the creation of the petitioners'.

- D. The requested variance is consistent with the spirit, purpose and intent of the Land Development Code, such that public safety is secured, and substantial justice is achieved.

The requested variance is consistent with the spirit and intent of the Land Development Code, in that, the variance will preserve and protect the adjacent floodplain. The granting of the requested variance will also do substantial justice, by allowing the petitioners' to locate the accessory structure on the property, while protecting the designated floodplain.

RECOMMENDED ACTION: Staff recommends approval of the requested ten (10) foot side street accessory building setback variance. With such approval the accessory building addition will be permitted to be located five (5) feet from the side street (western) property line.

CITIZEN INPUT: Staff has not received any calls from the public inquiring about the Variance petition.

Variance Request 16-01 Map 1 Existing Land Use and Floodplain

-  Subject Properties
-  AE
-  AEFW



Variance Request 16-01
Map 2 Existing Zoning

-  Subject Properties
-  Medium Density Residential (R-2)
-  General Business (C-2)



10TH ST PL NW

5TH AV CT NW

R-2

C-2

5TH AV NW

10TH ST NW



Phil and Karen Pruitt
1056 5th Avenue NW
Hickory, NC 28601

June 28, 2016

City of Hickory
Board of Adjustment
P.O. Box 398
Hickory, NC 28601
C/O: Brian M. Frazier, Director of Planning

Honorable Board of Adjustment Members,

On May 9, 2016 I applied for and received a zoning compliance permit for the placement of an accessory structure on my property located at 1056 5th Avenue NW. The structure was placed on the property, and shortly afterwards I was contacted by of the City of Hickory indicating the structure did not meet the required setback from 10th Street Place NW, which is fifteen (15) feet. I met with staff members from the City's Planning and Development Services Department, and was advised the structure either needed to be relocated or a petition to the Board of Adjustment for a variance must be granted.

The narrative provided below is associated with my petition for a variance from Article 7, Section 7.1 of the Hickory Land Development Code. The specific request is for a ten (10) foot variance for a street side yard setback for an accessory structure.

1. Unnecessary hardship would result from the strict application of the Land Development Code. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

The hardship in which is present on my property is the result of a naturally occurring above surface waterbody (Fitz Creek). Holding the placement of the accessory structure to the prescribed fifteen (15) foot building setback, would cause the structure to be placed precariously close to top of the bank of Fitz Creek.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions common to the area or to the general public, may not be the basis for granting a variance.

Fitz Creek, which runs along the eastern boundary of my property, is designated by FEMA to contain a large floodplain. This floodplain covers approximately half of my property. If the accessory structure were to be placed fifteen (15) feet off the ROW of 10th Street Place NW, the structure would be precariously close to Fitz Creek, and deep into the designated floodplain. In requesting a setback variance, I intend to place the accessory structure ten (10) feet further away from Fitz Creek, which places the structure on the margin of the designated floodplain.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge circumstances exist may justify the granting of a variance shall not be regarded as a self-creating hardship.

Phil and Karen Pruet
1056 5th Avenue NW
Hickory, NC 28601

As referenced in criteria #1, Fitz Creek, with its designated floodplain, creates a hardship that was created by nature. This hardship creates a practical difficulty in safely locating the accessory structure on my property.

4. The requested variance is consistent with the spirit, purpose, and intent of the Land Development Code, such that public safety is secured, and substantial justice is achieved.

The granting of the requested setback variance, will be consistent with the spirit, intent, and purpose of the Land Development Code. This will be achieved, by ensuring the accessory structure is located on the property in a manner, as to minimize any potential negative impacts that may be caused by potential flooding caused by Fitz Creek.

Sincerely,



Phillip Pruet

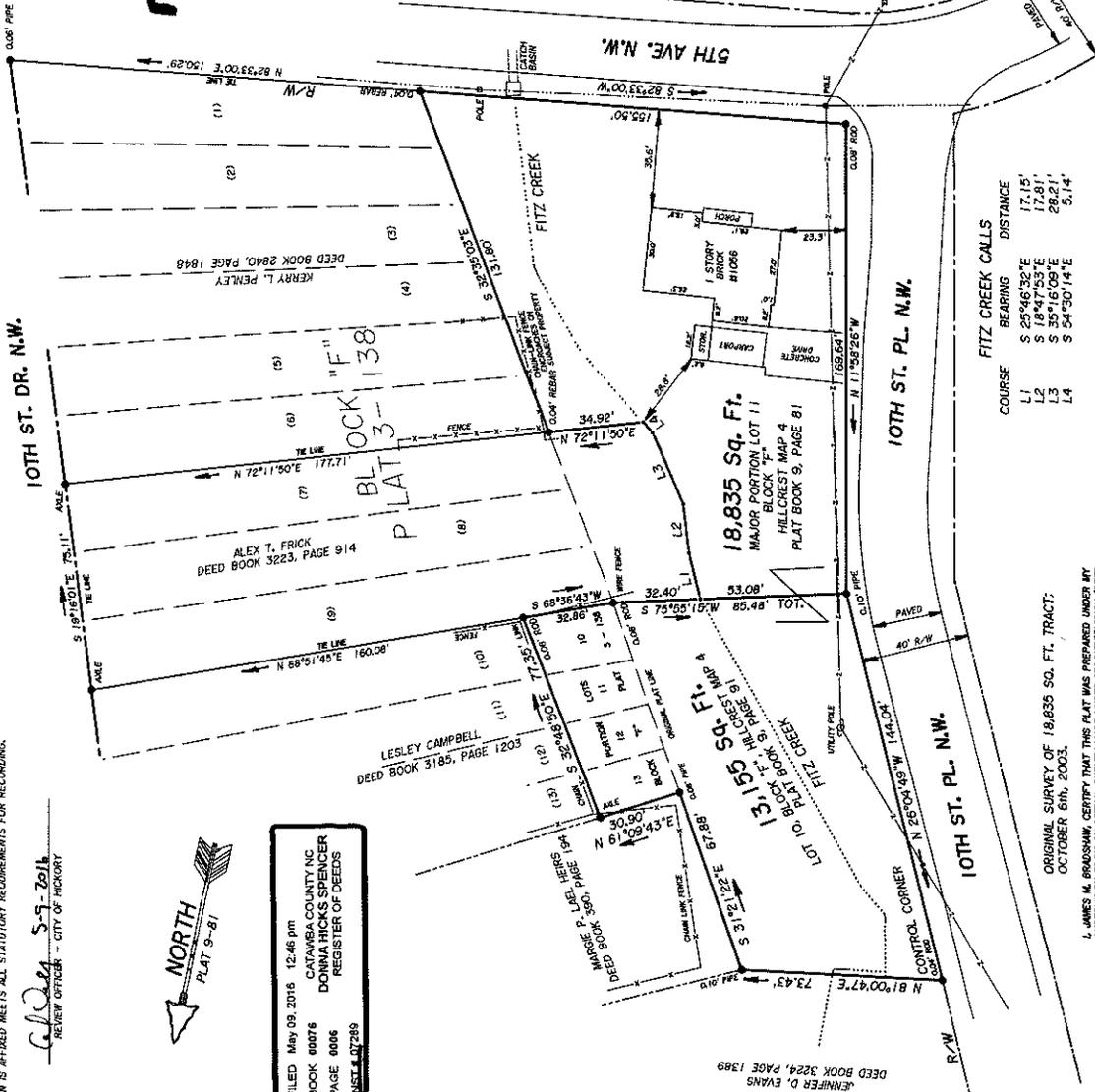
REVIEW OFFICER FOR THE CITY OF HICKORY CERTIFIES THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATE IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

Cal Overby
REVIEW OFFICER - CITY OF HICKORY



FILED May 09, 2016 12:46 pm
CATAMBA COUNTY NC
BOOK 00078
PAGE 0006
DONNA HICKS SPENCER
REGISTER OF DEEDS
INSTR. # 27369

10TH ST. DR. N.W.



COURSE	BEARING	DISTANCE
L1	S 25°46'32"E	17.15'
L2	S 18°47'53"E	17.81'
L3	S 35°16'09"E	28.21'
L4	S 54°50'14"E	5.14'

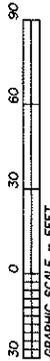
ORIGINAL SURVEY OF 18,835 SQ. FT. TRACT:
OCTOBER 6th, 2003.
JAMES M. BRADSHAW CERTIFIES THAT THIS PLAT WAS PREPARED UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN DEED BK. 2563, PG. 2327) THAT THE BOUNDARIES SHOWN ON THIS PLAT WERE MEASURED AND CALCULATED FROM A COMMON POINT CALCULATED AS 1110000. THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 87-30 AS AMENDED, WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL, THIS 27th OF APRIL, A.D. 2016.



James M. Bradshaw
JAMES M. BRADSHAW, R.C.P.S., L-5313

THIS SURVEY IS OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT-ORDERED SURVEY, OR OTHER EXCEPTION TO THE DEFINITION OF SUBDIVISION.

James M. Bradshaw
JAMES M. BRADSHAW, R.C.P.S., L-5313



I CERTIFY THAT TO THE BEST OF MY ABILITY, I HAVE CONDUCTED THIS SURVEY IN ACCORDANCE WITH THE CITY OF HICKORY SUBDIVISION REGULATIONS.

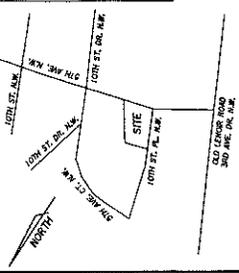
Cal Overby
PLANNING AND ZONING ADMINISTRATOR
DATE: 5-9-2016

76-6

NOTES

1. AREA BY COORDINATE METHOD.
2. WATER BY CITY OF HICKORY.
3. SEWER BY CITY OF HICKORY.
4. THIS PROPERTY IS SUBJECT TO ANY AND ALL EASEMENTS, RIGHTS OF WAY, COVENANTS, RESTRICTIONS, CONDITIONS & RESERVATIONS OF RECORD AFFECTING SUBJECT PROPERTY.
5. NO ACROSS HORIZONTAL CONTROL MONUMENTS FOUND WITHIN 2000 FEET OF THIS SITE.
6. PROPERTY IS SUBJECT TO 100-YEAR E.O.D. AS SHOWN ON FIRM PANEL #47103702000, DATED 08-20-2007.
7. PROPERTY IS LOCATED IN A WS-IV PROTECTED AREA W/LEISRD.
8. PROPERTY IS ZONED R-2.

SITE LOCATION - NOT TO SCALE



OWNERSHIP CERTIFICATE FOR EXEMPT FROM SUBDIVISION LAND DIVISION PLAT
WE CERTIFY THAT WE ARE THE OWNERS OF THE PROPERTY DESCRIBED HEREON WHICH PROPERTY IS LOCATED WITHIN THE JURISDICTION OF THE CITY OF HICKORY.

Phillip Pratt DATE: 5-2-16
Karen Pruett DATE: 5-2-16

NORTH CAROLINA - COUNTY OF CATAMBA
STATE APPEARED BEFORE ME THIS DAY AND ACKNOWLEDGED THE EXECUTION OF THE FOREGOING INSTRUMENT, WITNESS MY HAND AND SEAL THIS 27th DAY OF APRIL, A.D. 2016.

James M. Bradshaw
NOTARY PUBLIC
NOTARY NO. 10704
CATAMBA COUNTY, NC

MY COMMISSION EXPIRES: 7-30-2020

31,990 Sq. Ft. TOTAL
BEING LOT 10 AND A MAJOR PORTION OF LOT 11
BLOCK "F", HILLCREST MAP 4, PLAT BOOK 9, PAGE 81
AND A PORTION OF LOTS 10, 11, 12 & 13, BLOCK "F"
HILLCREST SUBDIVISION, PLAT BOOK 3, PAGE 138

A RECOMBINATION SURVEY FOR:

PROPERTY OF:
PHILLIP & KAREN PRUETT
1006 5TH AVE. N.W., HICKORY, N.C. 28601
HICKORY TOWNSHIP, CATAMBA COUNTY, NORTH CAROLINA
DATE: 10-08-2003 FIELD CREW: R02, JS-WH FIELD BOOK: 203
SCALE: 1" = 30' CAD: ROZZELLE APPROVED BY: JMB
PIN: 3703-17-12-1216 & 0442 TAX CODE: 31H-2-7 & 8
DEED BK. 651, PG. 66 & 2823-232 FOUND IRON: 0
PLAT BK. 9, PG. 81 SET IRON: 0
SURVEYED BY:
BRADSHAW SURVEYING COMPANY
1006 5TH AVE. N.W., HICKORY, N.C. 28603 F-0784
P. O. BOX 2851, HICKORY, N.C. 28603 F-0784
PH: 850-322-7445, FAX: 322-6160, EMAIL: bradshaw@vsn.net 429A



CITY OF HICKORY

Hickory Office (828) 323-7410
Hickory Fax (828) 323-7474

RESIDENTIAL APPLICATION
FOR ZONING / GRADING PERMITS

(A City of Hickory application becomes a permit upon approval by a City of Hickory Zoning Administrator.)

If proposed land disturbance is 1 ACRE or MORE, applicant must obtain Erosion & Sedimentation Control Plan approval from Catawba County Erosion & Sediment Control. (828-465-8161)

Parcel Identification No. 3703-17-12-1216 ³⁷⁰³⁻¹⁷⁻¹²⁻⁰⁴⁴² Date 5-9-16

Physical Address: 1056 5th Ave NW

The building or land was previously used for: _____

Proposed use or change to this building or land: Storage Building 12x28

Applicant: Phil Pruett Applicant's telephone No.: 828-217-4344

Applicant's Address: 1056 5th Ave NW

Applicant's Fax: 828-431-2098 Applicant's Email wingatealumni@yahoo.com

Property Owner: Phil & Karen Pruett Owner's Telephone No.: 828-217-4344

Owner's Address: 1056 5th Ave NW, Hickory, NC 28601

This Permit is performance-oriented. Property owner is responsible for taking any additional measures not shown on the approved plan to prevent erosion and offsite sedimentation.

Applicant's Signature [Signature] Date 5-9-16

FOR PLANNING & DEVELOPMENT USE ONLY

<u>30'</u> Front Setback	<u>R-2</u> ZONING	Size of Lot	Approved PD
<u>5'</u> Rear Setback		<u>Yes</u> Lot of Record	<u>/</u> Approved Minor PD
<u>5'</u> Side Setback		<u>Yes</u> Use Permitted	<u>/</u> Elevation Certificate Required
<u>15'</u> Side Street Setback		<u>Yes</u> Flood Plain	
<u>15'</u> Maximum Height		<u>Yes</u> Watershed <u>1</u> <u>2</u> <u>3</u> <u>4</u> <u>/</u> Protected <u>/</u> Critical	

Other (Describe): _____

Zoning/Grading Permit Approved: [Signature] Date: 5-9-16
Zoning Administrator

Conditions of Approval: Property is located in floodzone. The structure must be properly anchored. Electrical services that are below ground must be properly designed and installed per Hickory's floodzone ordinance.

Zoning/Grading Permit Disapproved: _____ Date: _____
Zoning Administrator

Reasons For Disapproval: _____



1in=75ft

Parcel: 370317121216, 1056 5TH AV NW HICKORY, 28601

Owners: PRUETT PHILLIP, PRUETT KAREN

Owner Address: 1056 5TH AVE NW

Values - Building(s): \$76,100, Land: \$36,100, Total: \$112,200

This map/report product was prepared from the Catawba County, NC Geospatial Information Services. Catawba County has made substantial efforts to ensure the accuracy of location and labeling information contained on this map or data on this report. Catawba County promotes and recommends the independent verification of any data contained on this map/report product by the user. The County of Catawba, its employees, agents, and personnel, disclaim, and shall not be held liable for any and all damages, loss or liability, whether direct, indirect or consequential which arises or may arise from this map/report product or the use thereof by any person or entity.

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05/09/2016

Variance Petition 16-01
Exhibit A



5 feet from property line
to the outermost part of
the accessory structure.

Approximately 12 feet from the property
line to the edge of street pavement.

Variance Petition 16-01—Exhibit B

5 feet from property line to the outermost part of the accessory structure.

Location of 15 foot setback

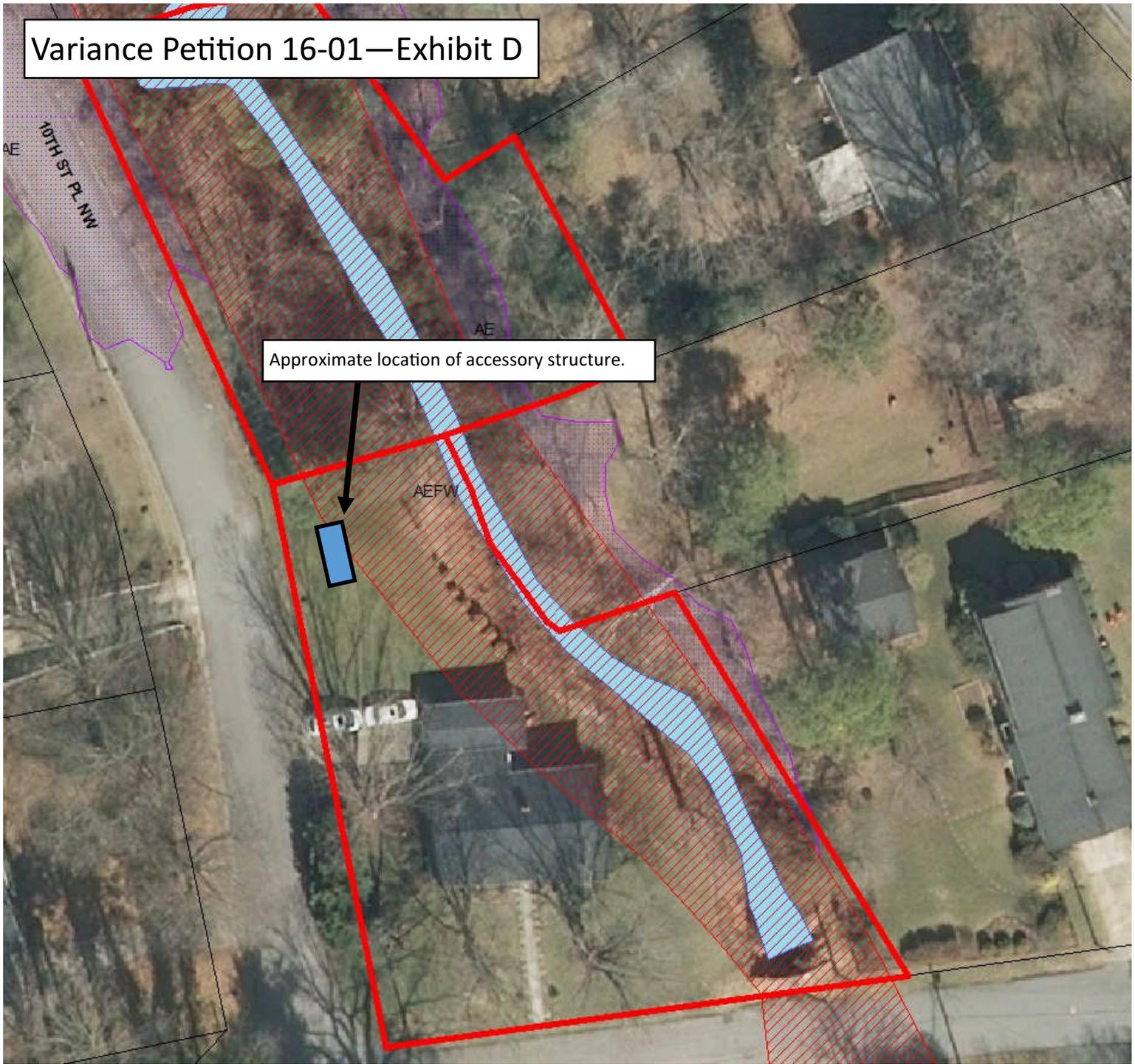


Variance Petition 16-01—Exhibit C



Top of bank of Fitz Creek

Variance Petition 16-01—Exhibit D



Approximate location of accessory structure.