



**MINUTES OF THE MEETING
Regular Board of Adjustment Meeting
July 13, 2021 - 6:30 PM**

Meeting Location:

Town Hall 101 Huntersville-Concord Road Huntersville NC 28078

1. Roll Call, Determination of Quorum

Quorum was determined, and Chairman Cecil called the meeting to order.

Regular Members in attendance: E. Cecil, Chairman, S. Genenbacher, J. Bradshaw, J. Loucks, P. Jacobson, and K. Burton.

Alternate Members present: K. Bray, J. Carbonell, and J. Passarelli who was called upon to serve as a Voting Member.

Regular Members absent: M. Bennett

2. Approval of Minutes

2.A. Consider approval of the May 11, 2021 Minutes of the Meeting

J. Bradshaw made a Motion to Approve the May 11, 2021 Minutes of the Meeting. S. Genenbacher seconded the motion. Chairman Cecil stated that only members present at the May 11, 2021 should vote. The motion passed unanimously (5-0).

Chairman Cecil read the conflict of interest disclosure statement and asked all Board members if there was any conflict. There was no conflict stated.

3. Hearing of Cases

Prior to testimony, a group attestation was completed for all parties involved or giving testimony to the case. This included: Lauren Speight, Planner 1; Jack Simoneau, Planning Director; Terry Montgomery, Barbara Montgomery, Matt Hedrick, Sandy Lusk, Dee Bailey, Clint Gandy, and James Gilbert.

3.A. V 21-03, 6960 HEDRICK CR HUNTERSVILLE NC 28078

Lauren Speight, Planner I (also referred to herein as "staff") presented, and entered the Staff Report into the record through verbal testimony as indicated below, and written documentation, which is attached hereto as Exhibit A, and incorporated herein by reference.

Chairman Cecil requested both variances be heard as one and voted on individually. The Board concurred, there was no objection.

L. Speight, Planner I provided an overview of the variance request as follows:

BACKGROUND:

1. The subject property, Parcel ID 023-062-31, is zoned Rural (R) and located in Critical Area 1

(CA-1) of the Mountain Island Lake Watershed Overlay (MIL-O).

2. The subject property is located within the extraterritorial jurisdictional (ETJ) of the Town of Huntersville.
3. The subject property was last conveyed via deed to Barbara S. Campbell (McQueen) December 3, 1954 and Staff does not find any public record of a residential structure existing on the property. (Exhibit 1)
4. Staff have been in communication with the applicant for several years. Most recently, the applicant contacted Staff May 4, 2021 regarding requirements, specifically access requirements, for zoning approval of a building permit as the subject property and parcel 02306232 were under contract for sale. (Exhibit 2)
5. Staff replied that while 6960 Hedrick Circle abuts Hedrick Circle the subject property is not connected to the the maintained portion of Hedrick Circle and that access could be achieved for the lots. (Exhibit 2)
6. While 6960 Hedrick Circle abuts Hedrick Circle, it is an unmaintained section of Hedrick Circle and the passage through to the maintain section of Hedrick Circle is blocked by vegetation.
7. The 2020 Town of Huntersville Powell Bill map shows the NCDOT-maintained section of Hedrick Circle ends several hundred linear feet west of the Charlotte-Mecklenburg School property. (Exhibit 3)
8. The applicants would like to obtain a variance to relieve the requirement of Article 8.1 that lots shall abut a public street. (Exhibit 4)

“Any lot for which a building (or buildings) is to be erected or use is to be established shall abut a **public street** [defined below] with the following exceptions:

1. Any lot for which a residential use has been legally established prior to the effective date of this ordinance in accordance with provisions permitting establishment of use on a lot served by a private and exclusive recorded easement of at least 15 feet in width connecting said lot to a public street, may be used as if it abutted a street, provided that it is served by a driveway located on said easement. A lot of one (1) acre or more in area created through a division of land not subject to the subdivision ordinance shall be eligible for issuance of a permit to establish a single-family detached house, provided the lot is served by a private and exclusive recorded easement or fee-simple projection of the building lot at least 15 feet in width connecting said lot to a public street. A driveway accessible by emergency equipment must be located on said easement or lot projection. Lots created under these provisions shall be known as “easement-access lots” and “flag lots”, respectively...”

A **public street** is defined in Article 12 as:

“Street, Public: A right-of-way or fee simple tract of land which has been set aside for public travel, dedicated to the public by the recording of a subdivision plat, built to public street standards, and eligible for maintenance by either the Town of Huntersville or the State of North Carolina.”

STAFF FINDINGS (ordinance standards are in italics):

Please see Exhibit 4 for the applicant’s responses to the required criteria for granting a variance.

In considering any variance request, the following Standards for Granting a Variance of the Huntersville Zoning Ordinance (Article 11.3.2.e) must be addressed:

Article 11.3.2.e Standards for Granting a Variance of the Huntersville Zoning Ordinance:

Before granting a variance, the Board of Adjustment shall have made the following findings:

Standards for Granting a Variance. When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

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

Staff Findings:

- A. The applicants most recently contacted staff May 4, 2021 regarding zoning approval for a building permit for the subject property (Exhibit 2).
- B. More than approximately 1,168 linear feet of surface, approved by NCDOT and accepted for maintenance, is required for the frontage of the subject property to comply with Article 8.1 (Exhibit 5).
- C. There are various properties throughout Huntersville facing similar conditions. In 2021, an extension of Robert Street was privately constructed for the development of a single-family home in the Biltmore Park subdivision (Exhibit 6). Currently, there are lots in Biltmore and Norman Park that would require road improvements before a building permit was issued for construction on the property.
- D. The strict application of the Ordinance includes the frontage of the subject property must be paved to the applicable standards (NCDOT).
- E. Staff finds the requirements for this lot similar with the requirements of lots with a similar history in the Town and Staff does not find this requirement has been met.

- 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 that are common to the neighborhood or the general public, may not be the basis for granting a variance.*

Staff Findings:

- A. There are eight surrounding properties facing the same conditions (vacant lots on unmaintained apparent right-of-way) if the property owners wish to construct a building on their lot. (Exhibit 7)
- B. A variance was submitted July 2015 for 9840 Midas Springs Road (V15-01) to relieve the requirement of Article 8.1 that lots shall abut a public street. V15-01 was denied by the Huntersville Board of Adjustment.
- C. Two variances were submitted April 2021 for 9808 Midas Springs Road (V21-01) and parcel 02305204 (V21-02) to relieve the requirement of Article 8.1 that lots shall abut a public street. The Huntersville Board of Adjustment approved V21-01 and V21-02.
- D. Staff finds this requirement has been met.

- 3) *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.*

Staff Findings:

- A. The applicant is an heir of the property owner of the subject lot. The subject lot was last conveyed by deed December 3, 1954. Staff does not know of any action by the property owner or applicant to create this hardship.
- B. Staff finds this requirement has been met.

- 4) *The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.*

Staff Findings:

- A. Lots must abut a public street per Article 8.1 to provide public safety and essential services. Per confirmation from Randy Frazier, Mecklenburg County Fire Marshall existing conditions of the unmaintained gravel road meet the minimum requirements for fire emergency access to the subject lot. (Exhibits 8)
- B. During the staff visit to place required hearing signs, Staff observed the connection of Hedrick Circle and Midas Springs Road is partially unpassable. A barricade in Hedrick Circle near 7635 Hedrick Circle and the path is completely vegetated and appears to be impassible. (See Photo from #6 of Background, Exhibit 9)
- C. If the access to the lot is via the right-of-way for public access that connects Midas Springs Road and Hedrick Circle and road conditions are satisfactory for emergency access, Staff finds this requirement is met.

STAFF POSITION:

The applicant is seeking a variance from Article 8.1 of the Zoning Ordinance, which requires any lot on which a building (or buildings) is to be erected or use is to be established shall abut a public street. Staff finds the application meets three of the four requirements for granting a variance and therefore recommend denial of the request based on the below findings:

- 1. The subject property, Parcel ID 023-062-31, is zoned Rural (R) and located in Critical Area 1 (CA-1) of the Mountain Island Lake Watershed Overlay (MIL-O).
- 2. The subject property is located within the extraterritorial jurisdictional (ETJ) of the Town of Huntersville.
- 3. The subject property was last conveyed via deed to Barbara S. Campbell (McQueen) December 3, 1954 and Staff does not find any public record of a residential structure existing on the property. (Exhibit 1)
- 4. Staff have been in communication with the applicant for several years. Most recently, the applicant contacted Staff May 4, 2021 regarding requirements, specifically access requirements, for zoning approval of a building permit as the subject property and parcel 02306232 were under contract for sale. (Exhibit 2)
- 5. Staff replied that while 6960 Hedrick Circle abuts Hedrick Circle the subject property is not connected to the the maintained portion of Hedrick Circle and that access could be achieved for the lots. (Exhibit 2)
- 6. While 6960 Hedrick Circle abuts Hedrick Circle, it is an unmaintained section of Hedrick Circle and the passage through to the maintain section of Hedrick Circle is blocked by vegetation. During the staff visit to place required hearing signs, Staff observed the connection of Hedrick Circle and Midas Springs Road is partially unpassable. A barricade in Hedrick Circle near 7635 Hedrick Circle and the path is completely vegetated and appears to be impassible. (See below and Exhibit 9)
- 7. The 2020 Town of Huntersville Powell Bill map shows the NCDOT-maintained section of Hedrick Circle ends several hundred linear feet west of the Charlotte-Mecklenburg School property. (Exhibit 3)
- 8. The applicants would like to obtain a variance to relieve the requirement of Article 8.1 that lots shall abut a public street. (Exhibit 4)
 - i. “Any lot for which a building (or buildings) is to be erected or use is to be established shall abut a **public street** [defined below] with the following exceptions:
- 9. Any lot for which a residential use has been legally established prior to the effective date of this ordinance in accordance with provisions permitting establishment of use on a lot served by a private and exclusive recorded easement of at least 15 feet in width connecting said lot to a public street, may be used as if it abutted a street, provided that it is served by a driveway located on said

easement. A lot of one (1) acre or more in area created through a division of land not subject to the subdivision ordinance shall be eligible for issuance of a permit to establish a single-family detached house, provided the lot is served by a private and exclusive recorded easement or fee-simple projection of the building lot at least 15 feet in width connecting said lot to a public street. A driveway accessible by emergency equipment must be located on said easement or lot projection. Lots created under these provisions shall be known as “easement-access lots” and “flag lots”, respectively...”

- i. A **public street** is defined in Article 12 as:
 - ii. “Street, Public: A right-of-way or fee simple tract of land which has been set aside for public travel, dedicated to the public by the recording of a subdivision plat, built to public street standards, and eligible for maintenance by either the Town of Huntersville or the State of North Carolina.”
10. More than approximately 1,168 linear feet of surface, approved by NCDOT and accepted for maintenance, is required for the frontage of the subject property to comply with Article 8.1 (Exhibit 5).
 11. There are various properties throughout Huntersville facing similar conditions. In 2021, an extension of Robert Street was privately constructed for the development of a single-family home in the Biltmore Park subdivision (Exhibit 6). Currently, there are lots in Biltmore and Norman Park that would require road improvements before a building permit was issued for construction on the property.
 12. The strict application of the Ordinance includes the frontage of the subject property must be paved to the applicable standards (NCDOT).
 13. Staff finds the requirements for this lot similar with the requirements of lots with a similar history in the Town.
 14. There are eight surrounding properties facing the same conditions (vacant lots on unmaintained apparent right-of-way) if the property owners wish to construct a building on their lot. (Exhibit 7)
 15. A variance was submitted July 2015 for 9840 Midas Springs Road (V15-01) to relieve the requirement of Article 8.1 that lots shall abut a public street. V15-01 was denied by the Huntersville Board of Adjustment.
 16. Two variances were submitted April 2021 for 9808 Midas Springs Road (V21-01) and parcel 02305204 (V21-02) to relieve the requirement of Article 8.1 that lots shall abut a public street. The Huntersville Board of Adjustment approved V21-01 and V21-02.
 17. The applicant is an heir of the property owner of the subject lot. The subject lot was last conveyed by deed December 3, 1954. Staff does not know of any action by the property owner or applicant to create this hardship.
 18. Lots must abut a public street per Article 8.1 to provide public safety and essential services. Per confirmation from Randy Frazier, Mecklenburg County Fire Marshall existing conditions of the unmaintained gravel road meet the minimum requirements for fire emergency access to the subject lot. (Exhibits 8)

Terry Montgomery, 205 Cherry Hills Drive, Aiken SC 29803 spoke on behalf of his wife Barbara Montgomery, the applicant. He stated that it is their intent to sell the two parcels together as access to the second parcel (02306232) is not feasible. It is their belief that unnecessary hardship has been met because without a variance no building permit can be issued leaving the land incapable of use. Supreme Court already ruled and determined a right-of-way exists and there is legal access.

He continued that Hedrick Circle has been used by the five existing properties for decades and the right-of-way has existed since 1954. This right-of-way has been accessed by emergency vehicles and postal without issue. It is a low volume, low speed road that serves the neighborhood and there is no necessity to upgrade the road.

Matt Hedrick, 7508 Hedrick Circle stated support of the variance. He has lived here since he was a child

and this has always been a well maintained public use road.

Sandy Lusk, 9709 Midas Springs Road stated support of the variance. She said Hedrick Circle has been there since she was a kid and as a resident they have no issue receiving package and postal delivery.

Dee Bailey, 9716 Midas Springs Road stated support of the variance. Reference to the Supreme Court ruling that this was a right-of-way.

Clint Gandy is the proposed purchaser of the land in question, he stated that his intention is to build a single-family home with a possible mother-in-law suite or accessory dwelling for a total of two homes that would comply with the lot allowances and watershed requirements.

James Gilbert, 9811 Midas Springs Road stated opposition to the variance. Reference was made to previous decisions, Whitson vs Dowling and Owens vs Elliot regarding a deed offer being revokable until the right-of-way is completed and accepted by NCDOT thereby making the current right-of-way private as no offer of dedication has been made. J. Gilbert stated that a previous owner granted a private easement which does not carry over to the new owners.

Dee Bailey commented that the Supreme Court already ruled on this matter and determined that it is a public right-of-way. The case was appealed and the decision was upheld.

T. Montgomery spoke to the Supreme Court ruling and stated that an agreement had been drafted by all neighbors who had ownership to the center of the road to grant 15 feet on either side, to be dedicated as public right-of-way.

L. Speight, Planner 1 shared that on the staff visit to the right-of-way in question they found that Midas Springs Road had too much vegetation to allow a car to pass.

P. Jacobson asked if a map or GIS system identifies this portion of the road as Hedrick Circle, and who built the right-of-way in question. The applicant responded that neighbors have stated that there is no issue with receiving their mail or packages and their understanding is that the road is an old logging road.

Chairman Cecil asked if there has ever been an objection to the use of the road from Hedrick Circle to Midas Springs Road. All present stated that there has never been an objection to the use of the road. In 2016 during the Supreme Court hearing was the first objection presented by J. Gilbert and the judge upheld that this was a public right-of-way.

L. Speight commented that the applicant would still require a variance regardless of the Supreme Court decision regarding public right-of-way because it does not meet the Huntersville Zoning definition of a public street.

J. Passarelli asked if the owners had considered combining the lots given the buyers intent with the land and the issue with road frontage for parcel 02306232. The applicant responded that they are selling the two lots together because of this issue but leaving it to the purchaser to resolve if they will recombine the lots.

S. Genenbacher asked staff what the distance is from where NCDOT maintenance ends to these parcels. Staff responded that it is approximately 1,055 feet from end of NCDOT maintenance and approximately 700 feet of that is without gravel.

J. Passarelli asked J. Gilbert if their driveway and mailbox were on Midas Springs Road or Hedrick Circle. J. Gilbert responded that his address is 9811 Midas Springs Road. Chairman Cecil pointed out from the aerial images that it appears J. Gilbert mailbox is on Hedrick Circle and asked if he receives mail and packages at his home. J. Gilbert confirmed that his mailbox does face Hedrick Circle and he

does receive mail and packages at his home.

Chairman Cecil asked the applicant why they do not pave the road to meet the standard. The applicant stated that as with the 2015 variance request that was denied it was determined that it was cost prohibitive to curb, gutter and pave the road to public street standards.

K. Burton asked why the 2015 variance was denied and the recent 2021 variance was approved. J. Simoneau, Planning Director stated that the 2015 variance did not provide a commitment from the Fire Marshall stating that the road was usable by emergency vehicles. In the 2021 variance request the owners had already invested into clearing and maintaining the road and provided a statement from the Fire Marshall that the right-of-way was acceptable for emergency vehicles and the property could be serviced.

S. Genenbacher stated that what he was struggling with was the parcel 02306232 which has no road frontage at all. He asked the applicant and proposed buyer if they would be open to a stipulation that the lots be recombined. J. Loucks added if they would agree to a stipulation that their portion of the road be maintained to standards required for emergency vehicles.

J. Passarelli made a Motion to Approve V21-03 and accept the applicant's finding of facts, subject to the following conditions: 1) the lots be recombined and replatted such that each lot maintain separate road frontage along the public right-of-way between Hedrick Circle and Midas Springs Road and the right-of-way be maintained to the standard required for emergency vehicles. S. Genenbacher seconded the motion. The motion passed (6-1) with J. Bradshaw opposed.

3.B. V 21-04, Parcel ID 02306232

Lauren Speight, Planner I (also referred to herein as "staff") presented, and entered the Staff Report into the record through verbal testimony as indicated below, and written documentation, which is attached hereto as Exhibit A, and incorporated herein by reference.

Chairman Cecil requested both variances be heard as one and voted on individually. The Board concurred, there was no objection.

L. Speight, Planner I provided an overview of the variance request as follows:

BACKGROUND:

1. The subject property, Parcel ID 023-062-32 is zoned Rural (R) and located in Critical Area 1 (CA-1) of the Mountain Island Lake Watershed Overlay (MIL-O).
2. The subject property is located within the extraterritorial jurisdictional (ETJ) of the Town of Huntersville.
3. The subject property was last conveyed via deed to William H. and Barbara S. McQueen August 23, 1961 and Staff does not find any public record of a residential structure existing on the property. (Exhibit 1)
4. Staff have been in communication with the applicant for several years. Most recently, the applicant contacted Staff May 4, 2021 regarding requirements, specifically access requirements, for zoning approval of a building permit as the subject property and parcel 02306231 were under contract for sale. (Exhibit 2)
5. According to an email from NCDOT staff, the State-maintained portion of Midas Spring Road ends in front of 9730 Midas Springs Road as represented by the yellow line in the below map (also Exhibit 3). The blue line is an area that was not previously accepted for maintenance but will be accepted per a 1950 petition. The red line with arrows shows the unmaintained portion of Midas

Springs Road across the frontage of the subject property. Beyond parcel 023-052-04, this gravel drive is now overgrown.

6. There is no structure listed with the tax information for the parcel and there is no aerial data showing the lot has ever been developed.
7. The applicants would like to obtain a variance to relieve the requirement of Article 8.1 that lots shall abut a public street. (Exhibit 4)

“Any lot for which a building (or buildings) is to be erected or use is to be established shall abut a **public street** [defined below] with the following exceptions:

2. Any lot for which a residential use has been legally established prior to the effective date of this ordinance in accordance with provisions permitting establishment of use on a lot served by a private and exclusive recorded easement of at least 15 feet in width connecting said lot to a public street, may be used as if it abutted a street, provided that it is served by a driveway located on said easement. A lot of one (1) acre or more in area created through a division of land not subject to the subdivision ordinance shall be eligible for issuance of a permit to establish a single-family detached house, provided the lot is served by a private and exclusive recorded easement or fee-simple projection of the building lot at least 15 feet in width connecting said lot to a public street. A driveway accessible by emergency equipment must be located on said easement or lot projection. Lots created under these provisions shall be known as “easement-access lots” and “flag lots”, respectively...”

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STAFF FINDINGS (ordinance standards are in italics):

Please see Exhibit 4 for the applicant’s responses to the required criteria for granting a variance.

In considering any variance request, the following Standards for Granting a Variance of the Huntersville Zoning Ordinance (Article 11.3.2.e) must be addressed:

Article 11.3.2.e Standards for Granting a Variance of the Huntersville Zoning Ordinance:

Before granting a variance, the Board of Adjustment shall have made the following findings:

Standards for Granting a Variance. When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

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

Staff Findings:

- F. The applicants most recently contacted staff May 4, 2021 regarding zoning approval for a building permit for the subject property (Exhibit 2).
- G. More than approximately 1,055 linear feet of surface, approved by NCDOT and accepted for maintenance, is required for the frontage of the subject property to comply

with Article 8.1 (Exhibit 5).

- H. There are various properties throughout Huntersville facing similar conditions. In 2021, an extension of Robert Street was privately constructed for the development of a single-family home in the Biltmore Park subdivision (Exhibit 6). Currently, there are lots in Biltmore and Norman Park that would require road improvements before a building permit was issued for construction on the property.
- I. The strict application of the Ordinance includes the frontage of the subject property must be paved to the applicable standards (NCDOT).
- J. Staff finds the requirements for this lot similar with the requirements of lots with a similar history in the Town and Staff does not find this requirement has been met.

- 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 that are common to the neighborhood or the general public, may not be the basis for granting a variance.*

Staff Findings:

- E. There are eight surrounding properties facing the same conditions (vacant lots on unmaintained apparent right-of-way) if the property owners wish to construct a building on their lot. (Exhibit 7)
- F. A variance was submitted July 2015 for 9840 Midas Springs Road (V15-01) to relieve the requirement of **Article 8.1** that lots shall abut a public street. V15-01 was denied by the Huntersville Board of Adjustment.
- G. Two variances were submitted April 2021 for 9808 Midas Springs Road (V21-01) and parcel 02305204 (V21-02) to relieve the requirement of Article 8.1 that lots shall abut a public street. The Huntersville Board of Adjustment approved V21-01 and V21-02.
- H. Staff finds this requirement has been met.

- 3) *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.*

Staff Findings:

- A. The applicant is an heir of the property owner of the subject lot. The subject lot was last conveyed by deed August 23, 1961. Staff does not know of any action by the property owner or applicant to create this hardship.
- B. Staff finds this requirement has been met.

- 4) *The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.*

Staff Findings:

- A. Lots must abut a public street per Article 8.1 to provide public safety and essential services. Per confirmation from Randy Frazier, Mecklenburg County Fire Marshall existing conditions of the below highlighted unmaintained gravel road meet the minimum requirements for fire emergency access to the subject lot. (Exhibit 8)
- B. Because the frontage of the property along Midas Springs Road is currently wooded, Staff and the County Fire Marshal Office agree any immediate access should be via the public drive that connects Hedrick Circle and Midas Springs Road. This would require a recombination of the lots for the subject parcel to abut the gravel drive that connects Hedrick Circle and Midas Springs Road.
- C. If this lot is recombined with parcel 023-062-31 such that access to the lot is via the right-of-way for public access that connects Midas Springs Road and Hedrick Circle and road conditions are satisfactory for emergency access, Staff finds this requirement is met.

STAFF POSITION:

The applicant is seeking a variance from Article 8.1 of the Zoning Ordinance, which requires any lot on which a building (or buildings) is to be erected or use is to be established shall abut a public street. Staff finds the application meets three of the four requirements for granting a variance and therefore recommend denial of the request based on the below findings:

1. The subject property, Parcel ID 023-062-32 is zoned Rural (R) and located in Critical Area 1 (CA-1) of the Mountain Island Lake Watershed Overlay (MIL-O).
2. The subject property is located within the extraterritorial jurisdictional (ETJ) of the Town of Huntersville.
3. The subject property was last conveyed via deed to William H. and Barbara S. McQueen August 23, 1961 and Staff does not find any public record of a residential structure existing on the property. (Exhibit 1)
4. Staff have been in communication with the applicant for several years. Most recently, the applicant contacted Staff May 4, 2021 regarding requirements, specifically access requirements, for zoning approval of a building permit as the subject property and parcel 02306231 were under contract for sale. (Exhibit 2)
5. According to an email from NCDOT staff, the State-maintained portion of Midas Spring Road ends in front of 9730 Midas Springs Road as represented by the yellow line in the below map (also Exhibit 3). The blue line is an area that was not previously accepted for maintenance but will be accepted per a 1950 petition. The red line with arrows shows the unmaintained portion of Midas Springs Road across the frontage of the subject property. Beyond parcel 023-052-04, this gravel drive is now overgrown.
6. There is no structure listed with the tax information for the parcel and there is no aerial data showing the lot has ever been developed.
7. The applicants would like to obtain a variance to relieve the requirement of Article 8.1 that lots shall abut a public street. (Exhibit 4)
 - a. “Any lot for which a building (or buildings) is to be erected or use is to be established shall abut a **public street** [defined below] with the following exceptions:
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 - b. A **public street** is defined in Article 12 as:
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8. More than approximately 1,055 linear feet of surface, approved by NCDOT and accepted for maintenance, is required for the frontage of the subject property to comply with Article 8.1

- (Exhibit 5).
9. There are various properties throughout Huntersville facing similar conditions. In 2021, an extension of Robert Street was privately constructed for the development of a single-family home in the Biltmore Park subdivision (Exhibit 6). Currently, there are lots in Biltmore and Norman Park that would require road improvements before a building permit was issued for construction on the property.
 10. The strict application of the Ordinance includes the frontage of the subject property must be paved to the applicable standards (NCDOT).
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 15. Lots must abut a public street per Article 8.1 to provide public safety and essential services. Per confirmation from Randy Frazier, Mecklenburg County Fire Marshall existing conditions of the below highlighted unmaintained gravel road meet the minimum requirements for fire emergency access to the subject lot. (Exhibit 8)
 16. Because the frontage of the property along Midas Springs Road is currently wooded, Staff and the County Fire Marshal Office agree any immediate access should be via the public drive that connects Hedrick Circle and Midas Springs Road. This would require a recombination of the lots for the subject parcel to abut the gravel drive that connects Hedrick Circle and Midas Springs Road.

J. Passarelli made a Motion to Approve V21-04 and accept the applicants findings of fact, subject to the following conditions: 1)the lots be recombined and replatted such that each lot maintain separate road frontage along the public right-of-way between Hedrick Circle and Midas Springs Road and the right-of-way be maintained to the standard required for emergency vehicles. S. Genenbacher seconded the motion. The motion passed (6-1) with J. Bradshaw opposed.

4. Other Business

4.A. Consider appointment of Chairman and Vice-Chairman

J. Passarelli nominated Ed Cecil to serve as Chairman. J. Loucks seconded. All regular and alternate members may vote. The appointment passed unanimously (9-0).

J. Passarelli nominated P. Jacobson to serve as Vice-Chairman. J. Loucks seconded. All regular and alternate members may vote. The appointment passed unanimously (9-0).

5. Adjourn

J. Passarelli made a Motion to Adjourn. J. Bradshaw seconded the motion. The motion passed unanimously (7-0).