

**STATE OF NORTH CAROLINA  
HENDERSON COUNTY**

**BEFORE THE HENDERSONVILLE  
BOARD OF ADJUSTMENT  
FILE NO. B23-069-VAR**

**IN RE THE APPLICATION OF  
JARED WEBB  
FOR A ZONING VARIANCE  
PIN 9577-19-8629**

**DECISION**

This matter came before the Hendersonville Board of Adjustment on September 12, 2023 for a quasi-judicial hearing on the application of Jared Webb for a variance from the Hendersonville Zoning Ordinance *Section 17-3-3 Prohibition Against Development Within the Stream Buffer* to accommodate a single-family residential home on the existing vacant lot.

Giving testimony were Alexandra Hunt, Planner I, and Jared Webb, property owner, both of whom were sworn and placed under oath.

**Issues**

Section 10-9 of the Hendersonville Zoning Ordinance states in pertinent part:

**Section 10-9 Variances.** A variance is a means whereby the City may grant relief from the effect of the Zoning Ordinance in cases of hardship. A variance constitutes permission to depart from the literal requirements of the ordinance.

A variance from the dimensional requirements of this ordinance may be granted by the Board of Adjustment if it finds the following:

- a) strict enforcement of the regulations would result in practical difficulties or unnecessary hardships to the applicant for the variance,
- b) the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, and
- c) in the granting of the variance the public safety and welfare have been secured and substantial justice has been done. Such findings shall be based on the following considerations:
  - 1) The fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not be considered as grounds for granting the variance.

- 2) The hardship relates to the applicant's property rather than to personal circumstances.
- 3) The hardship results from the application of the ordinance and from no other cause, including the actions of the owner of the property or previous owners.
- 4) The hardship is peculiar to the property in question rather than a hardship shared by the neighborhood or the general public.

The Board of Adjustment shall not have authority to grant a variance when to do so would: 1) result in the extension of a nonconformity regulated pursuant to Section 6-2, above, or 2) permit a use of land, building or structure which is not permitted within the applicable zoning district classification.)

Section 17-3 of the Hendersonville Zoning Ordinance states, in pertinent part:

**Sec. 17-3. Stream buffer protection standards.**

The primary objective of stream buffer protection standards is to maintain land adjacent to streams in an undisturbed vegetated state in order to enhance and maintain water quality, protect stream channel wetlands, minimize stormwater runoff, reduce sedimentation and erosion, conserve plant and wildlife habitat and protect wildlife movement corridors. The standards contained in this section will further this objective (1) by regulating water temperature through shading of the stream bed, (2) by limiting sedimentation from streambank erosion and stormwater flow, and (3) by supporting aquatic life through the provision of organic debris such as leaves and twigs.

**17-3-1 Applicability.**

Except as modified in this section, stream buffer protection standards shall apply to all watercourses depicted as a solid blue line on the most recent USGS seven-and-one-half minute quadrangle topographic maps covering the City of Hendersonville and its area of extraterritorial jurisdiction. Stream buffers shall be clearly indicated on all development plans, including concept plans, preliminary plans and final plans, and on all preliminary and final plats.

**17-3-2 Stream buffer size.**

Stream buffers shall apply on each side of the stream and shall measure 30 feet horizontally from the top of the stream bank in a direction perpendicular to the stream flow.

### **17-3-3 Prohibition against development within the stream buffer.**

To avoid a loss of effectiveness in protecting streams, the stream buffer shall remain in natural undisturbed forest vegetation and no development or land-disturbing activities shall be undertaken therein, except as provided in section 17-3-5. Furthermore, there shall be a 20-foot transitional area immediately landward of the stream buffer which may be graded, landscaped and/or used for pedestrian or vehicular purposes so long as no impervious materials are utilized. Certain uses of land, as specified in section 17-3-5, below, may be permitted within the stream buffer so long as they meet the requirements of that section and are designed and constructed to minimize the amount of intrusion into the stream buffer and to minimize clearing, grading, erosion and water quality degradation. Nothing herein is intended to preclude the removal of downed vegetation from the stream bed in order to improve stream flow dynamics. If it is necessary to remove downed or dead vegetation, it should be cut and the root ball left in place to help maintain stability of the shoreline. Nothing herein is intended to [or shall] preclude any activity specifically authorized pursuant to Section 401 and/or Section 404 of the Clean Water Act.

### **17-3-8 Special provisions pertaining to certain residential uses.**

For certain residential uses as prescribed herein, the stream buffer shall be reduced to 15 feet and the transitional area described in section 17-3-3 shall be reduced to 15 feet. To qualify for these special provisions, a proposed development must meet the following criteria:

- a) The lot on which the development is to occur must be a lot of record in the Henderson County Registry as of 6 September 2001.
- b) Use of the lot must be limited to a one- or two-family residential dwelling.
- c) The lot may not exceed one acre in area.
- d) The amount of impervious surface allowed on the lot shall not exceed 25 percent of the lot or 3,000 square feet, whichever is greater.

### **TESTIMONY**

Testimony is accurately reflected in the minutes.

### **FINDINGS OF FACT**

Based on the above testimony, the Board finds as follows:

- 1) Based on Henderson County records the subject property is assigned PIN 9577-19-9746 and is zoned as R-15 Medium-Density Residential.
- 2) The lot is currently vacant
- 3) Section 5-3-1 requirements list single-family residential dwellings as a permitted use in the R-15 zoning district.
- 4) Based on the survey submitted by the applicant, the size of the subject property is 22,370 square feet or 0.51 acres.

- 5) Section 5-3-3 requires the following setbacks for principal structures in R-15:
  - Front: 30'
  - Side: 10'
  - Rear: 15'
- 6) Based on the most recent USGS seven-and-one-half minute quadrangle topographic maps, the subject property has a blue line stream running through its boundaries.
- 7) The subject property was platted April 15, 2022, however, it appears the property owners' surveyor was considering Henderson County's stream buffer requirements when drawing the property boundaries.
- 8) The applicant has agreed to revegetate the stream bank.
- 9) The stream is intermittent, at times there is little to no water running through it.
- 10) The stream bank is in stable condition. The property is relatively level such that significant runoff would not drain toward the stream.

### **CONCLUSIONS OF LAW**

Based on the above findings of fact, the Board concludes as follows:

- 1) Strict enforcement of the regulations would result in practical difficulties or unnecessary hardships to the applicant for the variance, namely that customary use of the lot as a single-family home, as compared to similarly situated lots, would not be possible.
- 2) The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, because reductions in the stream buffer are permitted in certain circumstances, and the applicant will revegetate the stream leaving it in better condition compared to preconstruction, and
- 3) In the granting of the variance the public safety and welfare have been secured and substantial justice has been done because there is not a risk of significant runoff into the stream.
- 4) The fact that the property could be utilized more profitably or conveniently with the variance than without the variance has not been considered as grounds for granting the variance.
- 5) The hardship relates to the applicant's property rather than to personal circumstances.
- 6) The hardship results from the application of the ordinance and from no other cause, including the actions of the owner of the property or previous owners.

- 7) The hardship is peculiar to the property in question rather than a hardship shared by the neighborhood or the general public because of the unique shape of the property and how the stream crosses it at a diagonal.

## **DECISION**

For the above reasons,

The Board of Adjustment grants a variance to from Section 17-3-3 of the Hendersonville Zoning Ordinance to remove the required transitional buffer, but only to the extent represented in the application and supporting materials and on the record of the public hearing, and subject to the following conditions:

- 1) The applicant shall submit a site plan illustrating that no further disturbance can occur beyond that which is permitted by Section 17-3-3 and 17-3-5 of the Zoning Ordinance.
- 2) The applicant shall submit a revegetation plan of the 30' buffer area to the Community Development Department for approval prior to a zoning compliance permit being issued.
- 3) The revegetation of the 30' buffer area must be comprised of appropriate native sedges, grasses, herbaceous, woody ground covers, and low shrubs. No turf grasses are to be used.
- 4) The Community Development Department shall inspect the site for compliance prior to the issuance of a Certificate of Occupancy.

Done this 10<sup>th</sup> day of October, 2023

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Melinda Lowrance, Chair