MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: November 10th, 2026

RE: Variance Application – Mastermind Cottages at Highland

SUMMARY: The Community Development Department has received an application from Jason Pass (applicant) and DR Horton (owner) represented by Andrew Basile for a variance from Section 5-14-6.2. Setbacks. requirements in accordance with the setback requirements established as part of the conditional zoning approval from 2022 which established a 30 foot rear setback.

VARIANCE REQUEST: Variance Request: The Applicant is requesting a variance from the 30 foot rear setback for a portion of a single building that was constructed within this 30 foot setback. The applicant would request a variance, allowing the building to encroach 3.4 feet, thereby reducing the 30 foot setback to 26.6 feet.

The subject property was zoned in 2022 to Planned Residential Development Conditional Zoning District (PRD CZD) which established the site plan included in Exhibit B.

PROPOSED FINDINGS OF FACT:

- Based on Henderson County records the subject property possesses a PIN 9579-48-6853 of and is zoned Planned Residential Development Conditional Zoning District (PRD-CZD).
- Based on Henderson County records, the lot size is approximately 12.81 acres.
- Based on Henderson County records a North Carolina deed was acquired by DHIC – Mastermind LLC on the 9th of May, 2024.
- The current PRD-CZD ordinance, adopted on June 5th, 2025, allows a 20 foot rear setback.

Previous PRD-CZD Ordinance with Relevant Section Highlighted:

5-14-6. Development standards.

Unless noted otherwise, the following development standards shall apply to all planned residential developments, whether major or minor. In addition, planned residential developments shall meet all applicable standards contained in article VI, below

> **5-14-6.1. Open space and footprint requirements.** Planned residential developments shall have a maximum footprint of 20 percent of the site and shall have, as a minimum, 60 percent of the site as open space. In addition, planned

residential developments shall meet the common open space requirements of section 6-16.

5-14-6.2. Setbacks. All dwellings and their accessory structures shall be set back not less than 40 feet from the nearest right-of-way line for any street or railroad adjoining the site; provided, however, such setback may be reduced to ten feet when parking is situated to the side or rear of the lot and screened from view from public rights-of-way. Furthermore, such buildings and structures shall be set back not less than 30 feet from any exterior property line which is not a right-of-way.

The planning board or city council, as the case may be, shall require reservations of rights-of-way, as well as increased setbacks, for roads identified in the comprehensive transportation plan, including existing roads to be widened as well as corridors of new roads.

All dwellings and their accessory structures shall be located at least ten feet from the edge of the paving for any street or drive and at least five feet from the edge of the paving for any area devoted principally to parking. Carports shall be situated at least ten feet from the edge of the paving for any street or drive and may be physically connected to the principal structure which they serve. In addition, dwellings and accessory structures abutting a street intended to serve more than 32 dwelling units or intended to be dedicated as a public street must be set back a minimum of 35 feet from the center line of such street. The approved setback lines shall be shown on the plan of development and on any recorded subdivision plat.

In addition to the foregoing setback requirements, minimum spacing between buildings shall be provided as per the NC State Building Code Volume V-Fire Prevention.

Section 10-9 Variance.
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. 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 the following:

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

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. A Variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

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 is not a self-created hardship.

4) The requested Variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

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. Per NCGS 160D-705 (d), appropriate conditions may be imposed on any Variance, provided that the conditions are reasonably related to the Variance.

SITE PHOTOS



Photo 1: View north east at corner of building encroaching into setback. Note that the City of Hendersonville does not regulate fences, so there is no encroachment request needed for the fence.



Photo 2: Northern corner of building encroaching into setback.



Photo 3: View north west of corner of building encroaching into setback.