

**STATE OF NORTH CAROLINA
HENDERSON COUNTY**

**BEFORE THE HENDERSONVILLE
BOARD OF ADJUSTMENT
FILE NO. B23-081-VAR**

**IN RE THE APPLICATION OF
FIRST VICTORY, INC.
FOR A ZONING VARIANCE
PIN 9579-06-5791, et al.**

DECISION

This matter came before the Hendersonville Board of Adjustment on December 5, 2023⁴ for a quasi-judicial hearing on the application of First Victory, Inc. for a variance from the Minimum Street ROW Requirements in Section 4.03.C.1 of the Hendersonville Subdivision Ordinance for “local” streets from the required 45’ to 30’

Giving testimony were Alexandra Hunt, Planner I for the City of Hendersonville, Travis Fowler of First Victory Inc. and Rob Dull for the property owner, all of whom were sworn and placed under oath.

Issues

The Hendersonville Subdivision Ordinance states in pertinent part:

Section 4.03.C – Street Configuration.

- a) Street rights-of-way.
 - a. All new streets established in the city’s jurisdiction after March 5, 2020 shall include a minimum street right-of-way configured in accordance with Table 4.03.C.1: Minimum Street Right-of-Way Requirements.

TABLE 4.03.C.1: MINIMUM STREET RIGHT-OF-WAY REQUIREMENTS		
TYPE OF STREET	CONFIGURATION	MINIMUM RIGHT-OF-WAY (FEET) [1] [2]
Major Thoroughfare	7 lanes	120
	5 lanes	100
	4 lanes	90
	3 lanes	80
Minor Thoroughfare	2 lanes, parking on each side	80
	2 lanes, parking on one side	70
	2 lanes, paved shoulder	70
Local	45	
Cul-de-Sac	45 [3]	
Alley	20	
NOTES:		
[1] The street right-of-way shall include curb and gutter, sidewalks, multi-use paths, bicycle lanes (where indicated), and associated utility strips.		

Section 2.04.H.2 - Major Subdivision: Applicability. Unless exempted by section 1.06 of this ordinance or by G.S. 160D-802, all divisions of land involving eight or more lots; or involve the dedication of a new street or change in existing streets shall be considered major subdivision subject to the standards of this section. Conservation subdivisions must also be approved under this section 2.04 H., major subdivision.

Section 2.04.H.4 – Major Subdivision Review Standards.

- a) An application for a major subdivision shall be approved, if it complies with the following:
 - i. The major subdivision is prepared and sealed by a licensed professional authorized by the state to prepare such documents;
 - ii. The major subdivision complies with the applicable standards in G.S. 47-30;
 - iii. The major subdivision includes all required certifications and other pertinent information as required by the city;
 - iv. All lots shall be served by a NCDOT-maintained roadway or a right-of-way constructed to and maintained in accordance with NCDOT or city standards, as appropriate;
 - v. The name of the subdivision shall not duplicate or be similar to the name of an existing subdivision in Hendersonville or Henderson County;
 - vi. Street names used in the subdivision shall not duplicate or be similar to the names of streets in an existing subdivision in Hendersonville or Henderson County;
 - vii. All standards or conditions of any prior applicable permits and development approvals; and
 - viii. The major subdivision complies with all other applicable requirements in this ordinance and the City Code of Ordinances.
- b) Land located within a special flood hazard area shall comply with all applicable city standards for flood damage prevention.

Section 2.04.J.4 – Subdivision Variance Review Standards.

- a) **Required findings.** A subdivision variance application shall be approved provided on a finding the applicant demonstrates all of the following:
 - i. Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - ii. 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.
 - iii. 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.

- iv. The requested variance is consistent with the spirit, purpose, and intent of this ordinance, such that public safety is secured, and substantial justice is achieved.
- v. The variance approval is the minimum necessary to make possible the reasonable use of the land, building, or structure.

TESTIMONY

Testimony is accurately reflected in the minutes.

FINDINGS OF FACT

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

- 1) The proposed project is composed of parcels identified as PINs 9579-06-5791, 9579-06-8507, 9579-06-8117, and 9579-07-6259.
- 2) The parcels are zoned R-15 Medium Density Residential and are located in the City's ETJ Section
- 3) The parcels are currently vacant lots and are accessed by two privately maintained roads, Lafolette Street and Amazing Grace Lane.
- 4) Section 2.04.H.2 of the Hendersonville Subdivision ordinance states that all divisions of land involving eight or more lots; or involve the dedication of a new street or change in existing streets shall be considered a major subdivision subject to the standards of this section.
- 5) Section 2.04.H.4(iv) of the Hendersonville Subdivision ordinance requires that all lots of a major subdivision shall be served by a NCDOT-maintained roadway or right-of-way constructed to and maintained in accordance with NCDOT or city standards, as appropriate.
- 6) Section 4.03.C.1 of the Hendersonville Subdivision Ordinance requires that the minimum right-of-way for local streets is 45'.
- 7) The variance request to reduce the required right-of-way to 30' is only for a short distance of the proposed road that is adjacent to private properties.
- 8) The 30' right-of-way is existing and is unable to be widened because of existing development.
- 9) The developer will construct the road according to City street standards, including a 24' fire access lane and 5' sidewalk within the reduced right-of-way.

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, because adequate access to the rest of the property would not be possible.
- 2) The hardship is peculiar to the property in question rather than a hardship shared by the neighborhood or the general public because of the existing right-of-way and adjacent development that prohibits expanding the right-of-way.
- 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 variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, because the road that is constructed will still meet emergency access requirements and have pedestrian facilities.
- 5) In the granting of the variance the public safety and welfare have been secured and substantial justice has been achieved.
- 6) 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.
- 7) The variance is the minimum necessary to make possible the reasonable use of the land because the development standards for the road have not been modified.

DECISION

For the above reasons,

The Board of Adjustment grants a variance to from Section 4.03.C.1 of the City of Hendersonville Subdivision Ordinance to reduce Minimum Street Right-of-Way Requirements in for “Local” streets from the required 45’ to 30’ for the area shown in the application, and only to the extent represented in the application and supporting materials and on the record of the public hearing.

Done this _____ day of _____, 2024

Ernest Mowell, Chair