

AMENDED MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: November 14, 2023

RE: Variance Application – B23-081-VAR (Signal Hill Townhomes)

SUMMARY: The Community Development Department has received an application from First Victory Inc. for a variance from Section 4.03.C.1 and Section 4.03.C.8 of the City of Hendersonville Subdivision Ordinance. The specific variance requested is for the following:

VARIANCE REQUEST: The variance requested by the Applicant is to reduce the Minimum Street Right-of-Way Requirements in Section 4.03.C.1 and the Minimum Curve Radii Requirements in Section 4.03.C.8 of the Hendersonville Subdivision Ordinance as part of a proposed Major Subdivision project. (See Exhibit A).

The variance is to reduce the Minimum Street Right-of-Way Requirements in Section 4.03.C.1 of the Hendersonville Subdivision Ordinance for “Local” streets from the required 45’ to 30’ in the area outlined in red and marked as “Note A” on the proposed site plan attached as Exhibit B.

Additionally, the Applicant requested a variance to reduce the Minimum Curve Radii Requirements for “Local Streets” provided in Section 4.03.C.8 of the Hendersonville Subdivision Ordinance from the required 150’ to 90’ in the area outlined in red and marked as “Note B” on the proposed site plan attached as Exhibit B. However, during its November 2, 2023 meeting, City Council voted to adopt an ordinance amending Section 4.03.C.8 of the Subdivision Ordinance and changed the required Minimum Centerline Curve Radii for “Local Streets” from 150’ to 90’. Therefore, only the variance from Section 4.03.C.1 of the Subdivision Ordinance will be considered.

PROPOSED FINDINGS OF FACT:

- The proposed project is composed of parcels identified as PINs 9579-06-5791, 9579-06-8507, 9579-06-8117, and 9579-07-6259.
- The parcels are zoned R-15 Medium Density Residential and are located in the City’s ETJ.
- The parcels are currently vacant lots and are accessed by two privately maintained roads, Lafolette Street and Amazing Grace Lane.

- 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.
- 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.
- Section 3.04.A.3 of the Hendersonville Subdivision Ordinance requires accessways serving more than three lots shall be designed, built, and maintained to public street standards.
- Section 4.03.C.1(a) of the Hendersonville Subdivision Ordinance requires that the minimum right-of-way for local streets is 45’.
- Section 4.03.C.1(b) of the Hendersonville Subdivision Ordinance requires that in cases where an existing street is depicted on the city’s adopted policy guidance, but is not configured to the required width or cross section, the roadway shall be improved in accordance with the city’s adopted policy guidance as part of the development.
- The proposed site plan submitted by the Applicant shows an existing 30’ right-of-way on Lafolette St. indicated in Exhibit B - Note A.
- The Henderson County GIS Map shows two existing parcels located at 365 Signal Hill Rd and 329 Signal Hill Rd that abut Lafolette St. (*See Exhibit C*)
- Lafolette Street and Amazing Grace Lane are depicted on the city’s adopted policy guidance as local streets.

CODE REFERENCES.

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.

Section 3.04.A.3 – Access serving more than three lots. Accessways serving more than three lots outside a bona fide farm or exempt subdivision shall be designed, built, and maintained to public street standards.

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.		

- b. In cases where an existing street is depicted on the city’s adopted policy guidance, but is not configured to the required width or cross section, the roadway shall be improved in accordance with the city’s adopted policy guidance as part of the development.

EXHIBITS:

- A. Variance Application**
- B. Proposed Site Plan**
- C. Henderson County GIS Maps**
- D. Warranty Deed**