

NOTICE OF APPEAL



ATTN: City Clerk

I, TROY LEE,

PURSUANT TO ARTICLE 10 OF THE ZONING ORDINANCE I AM APPEALING THE VIOLATION DATED MAY 4, 2022 FOR THE OAK PRESERVE DEVELOPMENT PROJECT LOCATED AT 2201 OLD SPARTANBURG RD., HENDERSONVILLE, NC.. AS REQUIRED BY §10-7(a) THE GROUNDS FOR APPEAL ARE AS FOLLOWS:

- 1.) MANY OF THE TREES REMOVED WERE NOT VIABLE AND POSED SAFETY HAZARDS. SOME HAD BLOWN OVER INTO THE NEIGHBORS' ADJACENT PROPERTY CAUSING DAMAGE. WE SPOKE TO THE NEIGHBORING HOA PRESIDENT AND WERE ASKED TO REMOVE SEVERAL TREES THAT WERE SAFETY HAZARDS
 - 2.) SEVERAL TREES WERE IN DIRECT CONFLICT W/ STORM WATER STRUCTURES
 - 3.) TREE SURVEY FAILED TO ACKNOWLEDGE THE CONDITION OF THE TREES
 - 4.) SEVERAL TREES REQUIRING PROTECTION PURSUANT TO §15-4(c) OF THE ZONING CODE WERE IN THE ENVELOPE OF A BUILDING OR TOO CLOSE TO A STRUCTURE TO ALLOW FOR THE PROTECTIVE MEASURES REQUIRED.
 - 5.) THE COUNT OF REMOVED TREES IS INCORRECT
 - 6.) THE AMOUNT OF TIME GIVEN TO REMEDY THE VIOLATION IS UNREASONABLE
 - 7.) THE FINE BEING ASSESSED IS INCORRECTLY CALCULATED AND UNCONSCIONABLE.
 - 8.) ALL THE ABOVE CONDITIONS / ~~WERE~~ ^{CONCERNS} WERE RAISED AT THE ON SITE PRE CONSTRUCTION MEETING.
- PLEASE CONTACT ME AT 828-435-2216 OR BY EMAIL AT TROY@DARKHORSEBUILDS.COM.
- Troy Lee* TROY LEE

Notice to Remedy Code Violation

CITY OF HENDERSONVILLE, NORTH CAROLINA

Date: MAY 4, 2022

Name: OP MANAGEMENT LLC
Mailing Address: 707 BROOKLYN AVE
HENDERSONVILLE, NC 2879

YOU ARE HEREBY NOTIFIED that at or on property owned or occupied by you is located at: **The Oak Preserve located at 2201 Old Spartanburg Rd. Hendersonville NC**

There exists Violations of the Code of Ordinances of the City of Hendersonville.

Upon investigation, your property is in violation of: **Conditional Rezoning Ordinance**

In accordance with Section 1-6 of said Code and rezoning Ordinance #0-21-31, which states the following:

2. Development of the parcel shall occur in accordance with the final site plan requirements of Article VII of the Zoning Ordinance of the City of Hendersonville, North Carolina, and shall be based on the site plan submitted by the applicant and subject to the following.

b. Conditions that shall be satisfied prior to final site plan approval include:

- i. Trees slated for preservation as shown on the site plan must be protected in accordance with section 15-4 of the Zoning Code prior to construction: and

And in accordance with Section 15-4-c) Protection of existing trees during construction, of said code which states the following:

- (1) No grading or other land-disturbing activity can occur on a site with existing trees which are designated to be preserved in order to meet landscaping requirements until protective barriers are installed by the developer and approved by the community development director or a designee appointed by the community development director. Trees designated for preservation which are counted toward the landscape requirements must be protected by barriers, while trees designated for preservation which do not count toward the landscape requirements are encouraged to be protected by barriers. The diameter of the preserved trees and the location of protective barriers must be shown on landscape and grading plans with the dimension between the tree trunk and barrier indicated.

Barricades shall be placed around the critical root zone of preserved trees that are within 50 feet of any grading or construction activity. The critical root zone is a circle extending around the tree with a one-foot radius for every one inch of tree diameter. For example, a ten-inch diameter tree would have a barricade surrounding it, erected ten feet away from the trunk. All protective barriers must be maintained throughout the building construction process.

City of Hendersonville Planning Staff identified 53 trees slated for preservation per the approved site plan dated April 22, 2021 were removed without approval. There was no evidence that the trees subject to preservation requirements were properly protected in accordance with Section 15-4-c) of the Zoning Code as agreed upon in the signed List of Conditions dated June 3, 2021. Additionally, 16 trees that were preserved were not properly protected according to the aforementioned Existing Vegetation protection measures.

You are hereby directed to remedy the violations by the end of day on: **MAY 20, 2022**

A Revegetation Plan shall be submitted to the Community Development Director for approval and shall be compliant with the City's approved species list and best practices. As derived from Section 15-4,

Removed trees which measured between 13"-18" in caliper will be replaced by 3 canopy trees.

Removed trees which measured between 19"-24" in caliper will be replaced by 4 canopy trees.

Removed trees which measured greater than +25" caliper will be replaced by 5 canopy trees.

All new plantings shall measure at least 1.5"-2" in caliper.

Should the violator refuse to remedy the violation with an approved revegetation plan as specified above, the City of Hendersonville will assess the following fines against OP Management LLC.:

Unlawful removal of 53 trees ordered to be preserved at \$500.00 per occurrence.

Failure to protect 53 trees slated for preservation as shown on the site plan must be protected in accordance with section 15-4 of the Zoning Code prior to construction at \$500.00 per occurrence.

Failure to protect 16 trees that were ordered to be preserved at \$500.00 per occurrence.

OP Management LLC is so ordered and shall submit a revegetation plan according to the specifications above or pay a fine in the amount of \$61,000.00 (Sixty-One Thousand Dollars)

or the City shall cause the same to be remedied and assess the cost to you in addition to any fines associated with said violations in accordance with the Ordinance, a copy is enclosed for your information.



STEPHEN CALVERLEY

Code Enforcement Officer

100 N. King Street, Hendersonville, NC 28712

Community Development Dept. – Planning Division Phone: 828-697-3010

Attached References / Evidence :

Signed 0-21-31_Conditional_Rezoning_ordinance; C6(1) -Oak Preserve Tree Preservation Plan; Photos

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO
AMEND THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE
FOR PARCEL NUMBER 9577-88-3870 BY CHANGING THE ZONING
DESIGNATION FROM COUNTY R1 TO PRD-CZD PLANNED RESIDENTIAL
DEVELOPMENT - CONDITIONAL ZONING DISTRICT**

IN RE: Parcel Number: 9577-88-3870 – 2201 Old Spartanburg Rd. (Oak Preserve)
(File # P21-11-CZD)

WHEREAS, the City is in receipt of a Conditional Rezoning application from applicant OP Management / Troy Lee (owner) for the development of 30 Residential Units / 15 Duplexes on approximately 5.6 acres; and

WHEREAS, the Planning Board took up this application at its regular meeting on May 10th, 2021; voting 5-0 to recommend City Council adopt an ordinance amending the official zoning map of the City of Hendersonville; and

WHEREAS, City Council took up this application at its regular meeting on June 3rd, 2021, and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville, North Carolina as follows:

1. Pursuant to Article XI of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of the following: Parcel number 9577-88-3870 from County R1 to PRD-CZD (Planned Residential Development - Conditional Zoning District)
2. Development of the parcel shall occur in accordance with the final site plan requirements of Article VII of the Zoning Ordinance of the City of Hendersonville, North Carolina, and shall be based on the site plan submitted by the applicant and subject to the following.
 - a. Permitted uses shall include:
 - i. Residential Dwellings, Two-Family.
 - b. Conditions that shall be satisfied prior to final site plan approval include:
 - i. Trees slated for preservation as shown on the site plan must be protected in accordance with Section 15-4 © of the Zoning Code prior to construction; and
 - ii. The developer shall work with staff to extend the driveways to increase parking for each unit; and

With their signatures below, the undersigned applicant(s) and property owner(s) consent to and agree to the imposition of all conditions stated.

Applicant: TMFL Consultants, LLC

Signature: _____



Printed Name: _____

Troy A. Lee

Title: _____

Member Manager

Property Owner: OP Management, LLC

Signature: _____

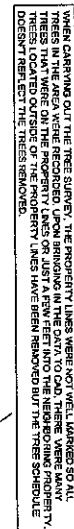


Printed Name: _____

Troy A. Lee

Title: _____

Member Manager



5-14-8.5 BUFFERING, SCREENING AND LANDSCAPING.

THE APPLICANT SHALL PROPOSE AND HAVE SATISFACTORY ARRANGEMENTS FOR THE PRESERVATION OF A PLANTED AND/OR STRUCTURED VEGETATION SERVICE STRIP, AND OVERSTREET SHALL BE SCREENED FROM VIEW BY ADJACENT SINGLE-FAMILY RESIDENCES. EXISTING VEGETATION SHALL BE PRESERVED WHENEVER POSSIBLE. IN ADDITION, THE DEVELOPER SHALL PROVIDE AN APPROPRIATE LANDSCAPING PLAN WITHIN THE PROJECT.

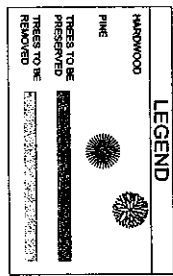
TRAFFIC RECEPACILES WILL BE REQUIRED TO BE LOCATED HEAVILY ALONG THE SIDE OF THE BUILDING AND SCREENED FROM VIEWING FROM THE ADJACENT SINGLE-FAMILY RESIDENCES.

DEVELOPER MUST TOLERATE AS MUCH OF THE EXISTING VEGETATION ON SITE, AS POSSIBLE, AS YOU CAN SEE ON SHEET C-2 AND ABOVE. THE DEVELOPER PLANS TO HAVE A WINTER TRAIL IN THE OPEN SPACE AREA SURROUNDING THE DUPLEXES.

OPEN SPACE TO BE MAINTAINED BY THE OWNER.

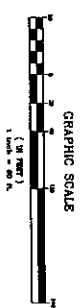
SECTION 12.5 GENERAL STANDARDS.
THE FOLLOWING GENERAL STANDARDS SHALL APPLY TO ALL LANDSCAPING REQUIREMENTS IN THIS ARTICLE.

g) UNLESS OTHERWISE SPECIFIED, THE EXACT PLACEMENT OF REQUIRED PLANTS AND STRUCTURES SHALL BE THE DECISION OF THE DEVELOPER. THE TYPE OF PLANTS USED SHALL BE LIMITED TO THOSE ON THE APPROVED SPECIES LIST WHICH SHALL BE PUBLISHED AND REVISED FROM TIME TO TIME BY THE PLANNING DIRECTOR IN CONSULTATION WITH THE TREE BOARD. REQUIRED LANDSCAPING SHALL BE DESIGNED IN SUCH A MANNER AS TO IMPART ITS AESTHETIC CHARACTER WHEN VIEWED FROM ANY AREA ACCESSIBLE TO THE PUBLIC OR FROM ADJACENT PROPERTIES.



- 1) INSTALLATION AND LARGENING/PROGRESSING SHALL BE NOTIFIED IN A 30-DAY WORKMAN RELEASE PERMIT TO THE AFFECTED JURISDICTION. THE PERMIT SHALL INCLUDE THE LOCATION, NUMBER AND QUANTITY OF PLANT MATERIALS AS DESCRIBED, ALL EVENTS OF REBULKS/SPRING SHALL BE INSTALLED SO AS TO MEET ALL OTHER APPLICABLE ORDINANCES AND CODE REQUIREMENTS.
- 2) SPECIES DIVERSITY, WHEN THE TOTAL NUMBER OF TREES REQUIRED EXCEEDS THE PROVISIONS OF THE APPLICABLE ORDINANCE, SHALL BE MAINTAINED. THESE SPECIES SHALL COMPOSE MORE THAN 25% OF THE TREES PLANTED ON THE DEVELOPMENT SITE.

1. PROPOSING TO REMOVE 37 TREES
(22 HARDWOODS, 15 PINES)
2. PROPOSING TO PRESERVE 100 TREES
(81 HARDWOODS, 40 PINES)

[illegible]

TMEL CONSULTANTS INC.

PESTERFIELD
CIVIL ENGINEERING

4335 Ashenale Hwy, Henderson, NV 89011
828-252-8428 www.justinfieldengineering.com

TREE SURVEY

99



