

MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: October 11, 2022

RE: Variance Application –153 Queen St.

SUMMARY: The Community Development Department has received an application from Rick Moore for a variance from Section 5-14-6.2 Dimensional Requirements. The subject property is currently zoned R-20, Low-Density Residential. The specific variance requested is for the following:

VARIANCE REQUEST: The variance requested is to reduce the setback requirements of Section 5-14-6.2 of the Hendersonville Zoning Ordinance from 35' from the centerline to 27' from the centerline for only townhomes numbered 1-10 as shown on the submitted preliminary site plan in Exhibit C (attached) for the purpose of limiting the amount of required fill within the 100-year Flood Zone.

PROPOSED FINDINGS OF FACT:

- The subject property located at 153 Queen St. and possesses a PIN of 9569-75-0342.
- The subject property is zoned R-20 Low Density Residential and is located in the City's Extraterritorial Jurisdiction (ETJ).
- Based on Henderson County records, the lot size is approximately 13.26 acres or 577,605.6 square feet.
- Based on Henderson County records a North Carolina General Warranty Deed between the Estate of Martha Kate Maxwell Lancaster and Stanley Freno Lancaster and Elain Lancaster (Grantor) and Rick Moore and Mitch Gaither (Grantee) was recorded on April 22, 2022. (*Exhibit B*)
- Section 5-14-6.2 of the City of Hendersonville Zoning Ordinance requires all 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.
- Based on the Variance Application (*Exhibit A*), the Applicant is requesting to reduce the setback requirement in Section 5-14-6.2 from 35 ft to 27 ft for townhomes numbered 1-10 as shown on the submitted preliminary site plan (*Exhibit C*).
- Based on Henderson County GIS Mapping a portion of the subject property is in the 100-year Flood Plain (*Exhibit D*).
- Section 17-2-4(d) of the City of Hendersonville Zoning Ordinance allows a property owner or developer to fill and/or use for development more than 10% of the special

flood hazard area when such would be necessary so that the property to be developed, including both the special flood hazard area and land adjacent thereto, equals one-half acre.

- Section 12-2 of the City of Hendersonville Zoning Ordinance defines special flood hazard area as the land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year.

CODE REFERENCES.

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.

5-14-7 Minor Planned Residential Developments. An applicant may elect to have a development processed as a minor planned residential development so long as the proposed development, including all phases, does not exceed 50 dwelling units and so long as no accessory commercial development is requested for the project. A minor planned residential development may be located in one or more of the following zoning district classifications: R-40, R-20, R-15, R-10, R-6, MIC, RCT, C-2, C-3, I-1.

17-2-2 Development Allowed in the Floodway and Special Flood Hazard Area.

- a) Land in the floodway and special flood hazard area may be used for the following purposes, provided that such uses are designed and constructed to minimize clearing, grading, erosion and water quality degradation:
 - 1) Crossings by streets, driveways, culverts and railroads;
 - 2) Active and passive recreational activities authorized in the zoning district in which the property is situated;
 - 3) Intakes, docks, utilities (including water and wastewater treatment, stormwater control and sedimentation and erosion control facilities), bridges, other public facilities and water-dependent structures;
 - 4) Wetlands constructed or restored for mitigation purposes;
 - 5) Redevelopment pursuant to Section 17-2-4, below; and
 - 6) Land within the floodway and special flood hazard area can serve to meet minimum lot size requirements if there is sufficient buildable area remaining on the tract.
- b) Land in the special flood hazard area may be used for up to 25% of the parking required for the development on the tract; provided, there is no increase in the elevation of the land resulting in a loss of flood storage. Furthermore, no more than one-third of the special flood hazard area on any development tract shall be used for parking. Parking in the special flood hazard area shall undergo development review in accordance with Article VII, above. In considering the application for development approval, the City shall consider whether the proposed parking on the site is designed and arranged to minimize adverse environmental impact from placement of parking in the special flood hazard area and whether the proposed development would result in significant degradation of water quality, loss of significant wetlands, increase in sedimentation and erosion, increase in stormwater runoff, loss of significant plant and wildlife habitat or would otherwise constitute a threat to public safety. Where feasible, the proposed parking shall be designed making maximum use of pervious materials.
- c) Streets and driveways may run generally within special flood hazard area and parallel to the stream only where no other access to the property is feasible. Such streets and driveways shall be designed to minimize loss of flood storage.
- d) In order to allow design flexibility to achieve high quality site design and better utilization of land adjacent to the special flood hazard area, a property owner or developer may fill and/or use for development up to 10% of the special flood hazard area contained within the boundaries of any development site upon satisfactorily demonstrating the following:

- 1) The proposed fill and/or development provides for a higher quality site design and better utilization of land adjacent to the special flood hazard area than would be possible without the intrusion necessary to achieve the high quality design; and
- 2) The proposed fill and/or development represents the minimum amount of special flood hazard area intrusion necessary to achieve the high quality design.

Public and private roads and sidewalks shall not count toward the allowable 10% of the special flood hazard area on a tract that can be filled and/or used for development in accordance with Section 17-2-2(d).

A property owner or developer may fill and/or use for development more than 10% of the special flood hazard area when such would be necessary so that the property to be developed, including both the special flood hazard area and land adjacent thereto, equals one-half acre.

- e) Notwithstanding the foregoing, for parcels existing prior to the effective date of this ordinance situated entirely within the 100-year flood plain as depicted on the most recent Flood Insurance Rate Map, a property owner or developer may fill and/or use for development up to one-half acre or 10% of such property, whichever is greater. Provided, however, in order to develop such lands, the property owner or developer must comply with all applicable regulations of the Federal Emergency Management Administration including obtaining a “no-rise” certificate, if necessary. Furthermore, in order to qualify for the exception contained in this paragraph, proposed development shall be situated and designed in such a way as to be consistent with the purposes of this article as set forth in Section 17-1, above.
- f) It is intended that this ordinance be congruous with the City of Hendersonville Flood Damage Prevention Ordinance. Therefore, any uses, development or land disturbing activity allowed by Section 17-2 shall be conducted in accordance with the requirements of the Flood Damage Prevention Ordinance, including, without limitation, the requirement to obtain a “no-rise” certificate for activities within the floodway.

Section 12-2 Definition of Commonly Used Terms and Words:

Special Flood Hazard Area: The land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year.

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.

MOTION:

With regard to the request by Rick Moore for a variance from Section 5-14-6.2: Setback Requirements to:

- 1) Reduce the setback requirement from 35' to 27' for townhomes numbered 1-10 on the submitted preliminary site plan attached and labeled as Exhibit C.

I move the Board to find that (a) strict enforcement of the regulations would result in practical difficulties or unnecessary hardship to the applicant, (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.

(After the motion has been seconded, the movant should state the factual basis and reasoning for the motion. In doing so, bear in mind the considerations set out in Section 10-9 of the zoning ordinance.)

Remember: Staff suggest the motion be made in the affirmative regardless of whether it is your intention to support or oppose the issuance of a variance. This does not mean that staff is recommending approval of the application. RATHER, we believe it is better procedurally to approach it this way. Once you have made the motion, you should state your position as to the required findings. For variance applications, it takes seven affirmative votes to approve this application, if others are voicing support of the application, you should make it a point to state your position vis-à-vis the required findings since your vote, even standing by itself may represent the position of the Board.

EXHIBITS

- Exhibit A – Application and Site Plan**
- Exhibit B – Warranty Deed**
- Exhibit C – Preliminary Site Plan**
- Exhibit D – Henderson County GIS Map**
- Exhibit E – Site Photos**