

MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: February 8, 2022 (deferred from January 11, 2022)

RE: Variance Application –Halford Partners LLC & ALPHA Investments LLC– John Halford Court Lot 3

SUMMARY: The Community Development Department has received an application from Halford Partners LLC & ALPHA Investments LLC for a variance from Section 17-3-2: Stream Buffer Size, Section 17-3-3 Prohibition Against Development Within the Stream Buffer and Section 5-3-3 Dimensional Requirements. The subject property is currently zoned R-15, Medium-Density Residential. The specific variance requested is for the following:

VARIANCE REQUEST: The requested variance is to reduce the required stream buffer and transitional area provided in sections 17-3-2 and 17-3-3 of the Hendersonville Zoning Ordinance and to reduce the front setback for a principal structure in R-15 provided in section 5-3-3 of the Hendersonville Zoning Ordinance.

The variance is to reduce the stream buffer from the required 30' to 15' and to also reduce the transitional area from the required 20' to 15'. The variance requested follows the dimensional requirements set forth in "17-3-8 Special Provisions Pertaining to Certain Residential Uses." The requirements of section 17-3-8 are not applicable to this parcel since it was platted after September 6th, 2001. Based on the proposed development the applicants are requesting a 15' variance from Section 17-3-2 and a 5' variance from Section 17-3-3.

The applicants are also requesting to reduce the front setback from the required 30' to 12'. Based on the proposed development the applicants are requesting an 18' variance from the front setback in Section 5-3-3.

PROPOSED FINDINGS OF FACT:

- The subject property possesses a PIN of 9569-77-4636 and is zoned as R-15 Medium Density Residential.
- The lot is currently vacant.
- Based on Henderson County records, the lot size is approximately 0.34 acres or 15,002 square feet.
- The principal structure setbacks for R-15 are:
 - Front: 30'

- Side: 10'
- Rear: 15'
- Based on the most recent USGS seven-and-one-half minute quadrangle topographic maps, the subject property has a blue line stream running through its boundaries.
- The subject property was platted on December 9th, 2005
- The stream is identified as Horse Creek based on a plat recorded on December 9th, 2005.
- City Council adopted an ordinance creating stream buffer protection standards which included a 30' stream buffer and 20' transitional area at their meeting on September 6th, 2001.
- Section 17-3-2 of the Hendersonville Zoning Ordinance requires that Stream buffer protection shall apply on each side of the stream and shall measure 30 feet horizontally from the top of the stream bank in a direction perpendicular to the stream flow.
- Section 17-3-3 of the Hendersonville Zoning Ordinance requires that there be a 20-foot transitional area immediately landward of the stream buffer which may be graded, landscaped and/or used for pedestrian or vehicular purposes so long as no impervious materials are utilized.

CODE REFERENCES.

5-3-3 Dimensional Requirements:

Minimum Lot Area in Square Feet: 15,000

Lot Area per Dwelling Unit in Square Feet: 15,000 for the first; 7,500 square feet for one additional dwelling unit in one building.

Minimum Lot Width at Building Line in Feet: 85

Minimum Yard Requirements in Feet:

Front: 30

Side: 10

Rear: 15

Accessory Structures:

Front: 30

Side: 5

Rear: 5

Maximum Height in Feet: 35

17-3-1 Applicability. Except as modified in this section, stream buffer protection standards shall apply to all watercourses depicted as a solid blue line on the most recent USGS seven-and-one-half minute quadrangle topographic maps covering the City of Hendersonville and its area of Extraterritorial Jurisdiction (ETJ). Stream buffers shall be clearly indicated on all development plans, including concept plans, preliminary plans and final plans, and on all preliminary and final plats.

17-3-2 Stream Buffer Size. Stream buffers shall apply on each side of the stream and shall measure 30 feet horizontally from the top of the stream bank in a direction perpendicular to the stream flow.

17-3-3 Prohibition Against Development Within the Stream Buffer. To avoid a loss of effectiveness in protecting streams, the stream buffer shall remain in natural undisturbed forest vegetation and no development or land-disturbing activities shall be undertaken therein, except as provided in Section 17-3-5. Furthermore, there shall be a 20-foot transitional area immediately landward of the stream buffer which may be graded, landscaped and/or used for pedestrian or vehicular purposes so long as no impervious materials are utilized. Certain uses of land, as specified in Section 17-3-5, below, may be permitted within the stream buffer so long as they meet the requirements of that Section and are designed and constructed to minimize the amount of intrusion into the stream buffer and to minimize clearing, grading, erosion and water quality degradation. Nothing herein is intended to preclude the removal of downed vegetation from the stream bed in order to improve stream flow dynamics. If it is necessary to remove downed or dead vegetation, it should be cut and the root ball left in place to help maintain stability of the shoreline. Nothing herein is intended to [or shall] preclude any activity specifically authorized pursuant to Section 401 and/or Section 404 of the Clean Water Act.

17-3-5 Exceptions. Subject to prior written authorization by the Planning Director, the following activities may be undertaken within the stream buffer provided they meet all the standards specified herein as well as other applicable provisions of the Zoning Ordinance:

- a) Crossings by streets, driveways, culverts, railroads, recreational features, intakes, docks, utilities, bridges or other facilities shall be allowed provided that they are designed to minimize the amount of intrusion into the stream buffer. Streets and driveways may run generally within and parallel to the stream buffer only where no other access to the property is feasible and when their design minimizes the amount of intrusion into the stream buffer. Crossings with a width of 40 feet or more are permitted only when it has been demonstrated that there is no practical alternative.
- b) Stream buffers may be used for passive recreational activities, such as unpaved or paved trails or greenways, provided that service facilities for such activities, including but not limited to parking, picnicking and sanitary facilities, are located outside of the stream buffer. Where practical, such activities shall be kept at least 15 feet from the stream bank.

- c) Clearing and revegetating the stream buffer pursuant to a plan approved by the Community Planning Director when it has been demonstrated that such clearing and revegetation will improve stream buffer's pollutant removal efficiency.
- d) Stormwater control structures and temporary erosion control structures shall be considered utilities for the purposes of this section and may be allowed in stream buffers, provided that:
 - 1) The property owner or applicant demonstrates to the satisfaction of the Community Planning Director that such facilities cannot be practicably located outside of the stream buffer, and that any proposed stormwater control structure is sited and designed to minimize disturbance of the stream and stream buffer.
 - 2) Alternate methods of stormwater and erosion control shall be considered prior to approval of such structures in the stream buffers.
 - 3) A vegetated buffer of a width approved by the Community Planning Director shall be required around the stormwater control structures.
 - 4) Any land disturbed for these structures shall be revegetated with appropriate native species in accordance with a revegetation plan approved by the Planning Director.
- e) Sanitary sewer lines, on an alignment generally parallel to the stream, may be allowed in stream buffers, provided that:
 - 1) The property owner or applicant demonstrates in writing to the satisfaction of the Director of Water & Sewer that the sanitary sewer lines cannot be practicably located outside of the stream buffer;
 - 2) Design and construction specifications minimize damage to the stream and the possibility of line leakage;
 - 3) The sewer line is located at least 15 feet from the top of the stream bank; and
 - 4) The sanitary sewer plan and a plan for revegetating the stream buffer disturbance shall be approved by the Director of Water & Sewer.
- f) Streams may be piped, thereby exempting the piped section of the stream from stream buffer requirements, provided such piping complies with the permitting/certification requirements of the Clean Water Act and any other applicable state and federal regulations. Piping undertaken for the purpose of accommodating public roads, railroads, greenways, recreational facilities and

private roads and drives should be designed so that the right-of-way or roadway-and-shoulder width is no more than is necessary considering the design capacity of the facility and so that the proposed stream piping is not substantially in conflict with the other objectives of this Section. Where stream piping is approved, a vegetated buffer area or other device shall be provided at any intake or discharge structure. All buffers and physical improvements related to the stream piping shall be located entirely on the site or, pursuant to easement, on lands adjacent to the site.

- g) Selective removal of invasive exotic species in accordance with a plan approved by the Community Planning Director.
- h) View corridors are allowed so long as the soil is undisturbed and the natural forest floor, ground cover and understory vegetation are left intact. Pruning associated with the creation and maintenance of a view corridor is exempt. Thinning of the overstory and mid-canopy trees is permissible with the written authorization of the Community Planning Director.

Site plan approval by the Community Planning Director shall be required for any of the stream buffer intrusions described above. When any of the activities described above involves land clearing, the cleared area shall be revegetated pursuant to an approved plan. However, where a site plan is not required by any other provision of the Zoning Ordinance, the Director of Public Works is authorized to approve plans for stream piping and erosion control structures in stream buffers.

17-3-8 Special Provisions Pertaining to Certain Residential Uses. For certain residential uses as prescribed herein, the stream buffer shall be reduced to fifteen feet and the transitional area described in Section 17-3-3 shall be reduced to fifteen feet. To qualify for these special provisions, a proposed development must meet the following criteria:

- a) The lot on which the development is to occur must be a lot of record in the Henderson County Registry as of 6 September 2001.
- b) Use of the lot must be limited to a one- or two-family residential dwelling.
- c) The lot may not exceed one acre in area. d) The amount of impervious surface allowed on the lot shall not exceed 25% of the lot or 3,000 square feet, whichever is greater.

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 Halford Partners LLC & ALPHA Investments LLC for a variance from Section 17-3-2: Stream Buffer Size to reduce the stream buffer requirement from 30' to 15' with the following conditions:

- 1) The stream buffer will be reduced from 30' to 20'.*

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.

Furthermore, with regard to the request by Halford Partners LLC & ALPHA Investments LLC for a variance from Section 17-3-3 Prohibition Against Development Within the Stream Buffer to reduce the transitional area requirement from 20' to 15' with the following conditions **[see addendum for proposed conditions]**:

- 1) The transitional zone will be reduced from 20' to 10'.*
- 2) The applicant shall submit a site plan illustrating that no further disturbance can occur beyond that which is permitted by Section 17-3-3 and 17-3-5 of the Zoning Ordinance.*
- 3) The applicant shall submit a revegetation plan to the Community Development Department for approval prior to a zoning compliance permit being issued.*
- 4) The revegetation of the transitional area must be comprised of appropriate native sedges, grasses, herbaceous, woody ground covers, and low shrubs. No turf grasses are to be used.*
- 5) The Community Development Department shall inspect the site for compliance prior to the issuance of a Certificate of Occupancy.*

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.

Furthermore, with regard to the request by Halford Partners LLC & ALPHA Investments LLC for a variance from Section 5-3-3 Dimensional Requirements to reduce the front setback for a principal structure from 30' to 12', 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.

Accordingly, I further move the Board to grant a variance from Sections 17-3-2, 17-3-3 and Section 5-3-3 in accordance with and only to the extent represented in the application and conditions.

(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.

EXHIBIT LIST

- Exhibit A - Subject Property**
- Exhibit B - Site Plan (drawing)**
- Exhibit C - Pictures of the Property**
- Exhibit D - Variance Application (see attached)**