



AGENDA

Regular Board of Adjustment Meeting

March 14, 2023 - 6:30 PM

Meeting Location:

Town Hall

101 Huntersville-Concord Road

Huntersville NC 28078

- 1. Roll Call, Determination of Quorum**
- 2. Approval of Minutes**
 - 2.A. Consider approval of the January 10, 2023 regular meeting minutes ()
- 3. Hearing of Cases**
 - 3.A. V22-03 12006 HILLCREST LN HUNTERSVILLE 28078
The applicant is requesting a variance from Article 3.2.2 (d) of the Zoning Ordinance. This request is to allow the placement of a Mobile Home within both side setbacks.
(Nathan Farber)
 - 3.B. *(Written request to withdraw submitted)* Hear preliminary matter of standing for Appeal 22-02 (A22-02) an appeal by Lindsay Dastrup regarding consistency with Section 3.2.4(d) of the Huntersville Zoning Ordinance as it relates to the proposed 244-unit apartment development for the property located at 10410 Sam Furr Road by North State Development and JHG Commercial Properties, LLC. ()
 - 3.C. *(Written request to withdraw submitted)* Hear preliminary matter of standing for Appeal 22-01 (A22-01) an appeal by Hampton at Northcross Homeowners Association, Inc. regarding consistency with Section 3.2.4(d) of the Huntersville Zoning Ordinance as it relates to the proposed 244-unit apartment development for the property located at 10410 Sam Furr Road by North State Development and JHG Commercial Properties, LLC. ()
 - 3.D. *(Written request to withdraw submitted)* Hear preliminary motions for A22-01 an appeal by Hampton at Northcross Homeowners Association Inc. regarding consistency with Section 3.2.4(d) of the Huntersville Zoning Ordinance as it relates to the proposed

244-unit apartment development for the property located at 10410 Sam Furr Road by North State Development and JHG Commercial Properties, LLC ()

- 3.E. *(Written request to withdraw submitted)* Hear preliminary motions for A22-02 an appeal by Lindsay Dastrup regarding consistency with Section 3.2.4(d) of the Huntersville Zoning Ordinance as it relates to the proposed 244-unit apartment development for the property located at 10410 Sam Furr Road by North State Development and JHG Commercial Properties, LLC. ()
- 3.F. *(Written request to withdraw submitted)* Hear motions for consolidation of A22-01 and A22-02 for purposes of a consolidated evidentiary hearing. (Items 3.G. and 3.H. will be consolidated if a consolidated evidentiary hearing is held) ()
- 3.G. *(Written request to withdraw submitted)* Evidentiary hearing on Appeal 22-02 an appeal by Lindsay Dastrup regarding consistency with Section 3.2.4(d) of the Huntersville Zoning Ordinance as it relates to the proposed 244-unit apartment development for the property located at 10410 Sam Furr Road by North State Development and JHG Commercial Properties, LLC. *(Jack Simoneau, Jesse James)*
- 3.H. *(Written request to withdraw submitted)* Evidentiary hearing on Appeal 22-01 by Hampton at Northcross Homeowners Association, Inc. regarding consistency with Section 3.2.4(d) of the Huntersville Zoning Ordinance as it relates to the proposed 244-unit apartment development for the property located at 10410 Sam Furr Road by North State Development and JHG Commercial Properties, LLC *(Jack Simoneau, Jesse James)*

4. Other Business

5. Adjourn

Minutes of the Town of Huntersville Board of Adjustments

The Town of Huntersville Board of Adjustments met at 6:30 p.m. on Tuesday, January 10, 2023.

Call to Order/Roll Call

Chairman Cecil called the meeting to order at 6:30 pm.

Present: E. Cecil, P. Jacobson, S. Genenbacher, J. Bradshaw, K. Burton, M. Bennett & J. Loucks

Alternate Members Present & Voting: J. Carbonell & C. Price

Alternate Members Absent: J. Passarelli

Approval of Minutes

Item 2A. Consider approval of the revised December 13, 2022, Regular Meeting Minutes

Motion: S. Genenbacher made a Motion to Approve the December 13, 2022, minutes. M. Bennett seconded the motion.

Vote: The motion passed unanimously (7-0).

Public Comments

No comments

Quasi-judicial

J. Glass, Town Attorney completed the reading of the quasi-judicial statement.

Conflict of Interest

Chairman Cecil asked the Board if there was any conflict of interest. There was no conflict.

Attestation

Vice-Chair P. Jacobson completed the attestation. The applicant Christopher Fogleman and staff N. Farber, Planner II were sworn in.

Hearing of Cases

Item 3A: V22-02 12109 EASTFIELD RD HUNTERSVILLE NC 28078 The applicant is requesting a variance from Article 8.16.7 of the Huntersville Zoning Ordinance. The request is to allow the construction of a detached garage not fully located in the rear yard.

N. Farber, Planner II reviewed the applicant's variance request and staff report as included in the agenda packet. Staff finds that the application meets one of the four requirements and therefore recommends denial of the variance request.

Applicant C. Fogelman, 12109 Eastfield Road stated that he believes he meets requirement one based on this not being a choice they made. The primary contractor applied for the permit and the contractor abandoned the job which the applicant had no control over and which is costing the applicant unnecessary time and money. Regarding the second requirement the placement of the building was meant to be in the rear yard. Due to the overhead power line, side yard setback, and location of the 40' white pine tree to rear of this new structure the placement fully in rear yard would be challenging. The applicant stated that he feels he did all that he could in hiring a licensed contractor who applied for the

appropriate permits and then they made an error. For these reasons the applicant stated they disagree with the recommendation of staff to deny.

Chairman Cecil asked if there was anyone else here in opposition or in favor who would be speaking. There were no additional speakers.

P. Jacobson asked staff if the proposed structure was moved back 11' if it would be in compliance and if the side setbacks could accommodate this. Staff confirmed that is correct and the side setbacks can accommodate it based on the proposed size of building and width of yard as stated on GIS measurements of the parcel. The applicant highlighted challenges this would present.

P. Jacobson asked if the applicant had considered reusing the poured footing and making that part of the driveway then pouring the back end as needed to place the structure in the rear yard. The applicant stated that it would be extremely close and would cause him to remove the 40' white pine and would get closer to the overhead utility line.

J. Bradshaw asked the applicant if the structure had been installed as drawn if he still would have had to remove that tree. The applicant said that the original drawing was further to the left and they would have had to trim the tree back.

E. Cecil commented on the 35' measurement shown to the tree and the applicant confirmed this is to the trunk. There was discussion as to the size of the tree, overhang, and distance from ground to first limbs on the tree.

J. Bradshaw asked who submitted the application for the second permit. The applicant stated it was his second and current contractor.

E. Cecil asked if the current contractor knew what was required with placement of the garage. The applicant stated the contractor had never worked in Huntersville. They worked with the Planning department and that is how the encroachment was identified.

E. Cecil asked if the concrete was staked and where it is now and if the applicant saw the placement before the concrete was poured. The applicant stated he did see it but the contractor explained it could not be five feet it had to be twelve feet off of the side yard to meet Mecklenburg County standards.

E. Cecil asked if the current contractor provided a cost estimate to correct the issue. The applicant said that he has not at this time they are waiting for the results of this request.

Motion: S. Genenbacher made a Motion to Deny the case V22-02 as only one of the four criteria have been met and including the staff's findings of facts as presented. P. Jacobson seconded the motion.

Vote: The motion passed unanimously (7-0).

Other Business

No other business.

Adjourn

Motion: M. Bennett made a Motion to Adjourn. S. Genenbacher seconded the motion.

Vote: The motion passed unanimously (7-0).

Approved this ____ day of _____ 2023.

Chairman or Vice Chairman

Board Secretary

**Town of Huntersville
Board of Adjustment
March 14, 2023**

To: Town Board

From: Nathan Farber, Planner I

Date: March 14, 2023

Subject: #V22-03

EXPLAIN REQUEST:

V22-03 12006 HILLCREST LN HUNTERSVILLE 28078

The applicant is requesting a variance from Article 3.2.2 (d) of the Zoning Ordinance.
This request is to allow the placement of a Mobile Home within both side setbacks.

ACTION RECOMMENDED:

Make Decision

FINANCIAL IMPLICATIONS:

NA

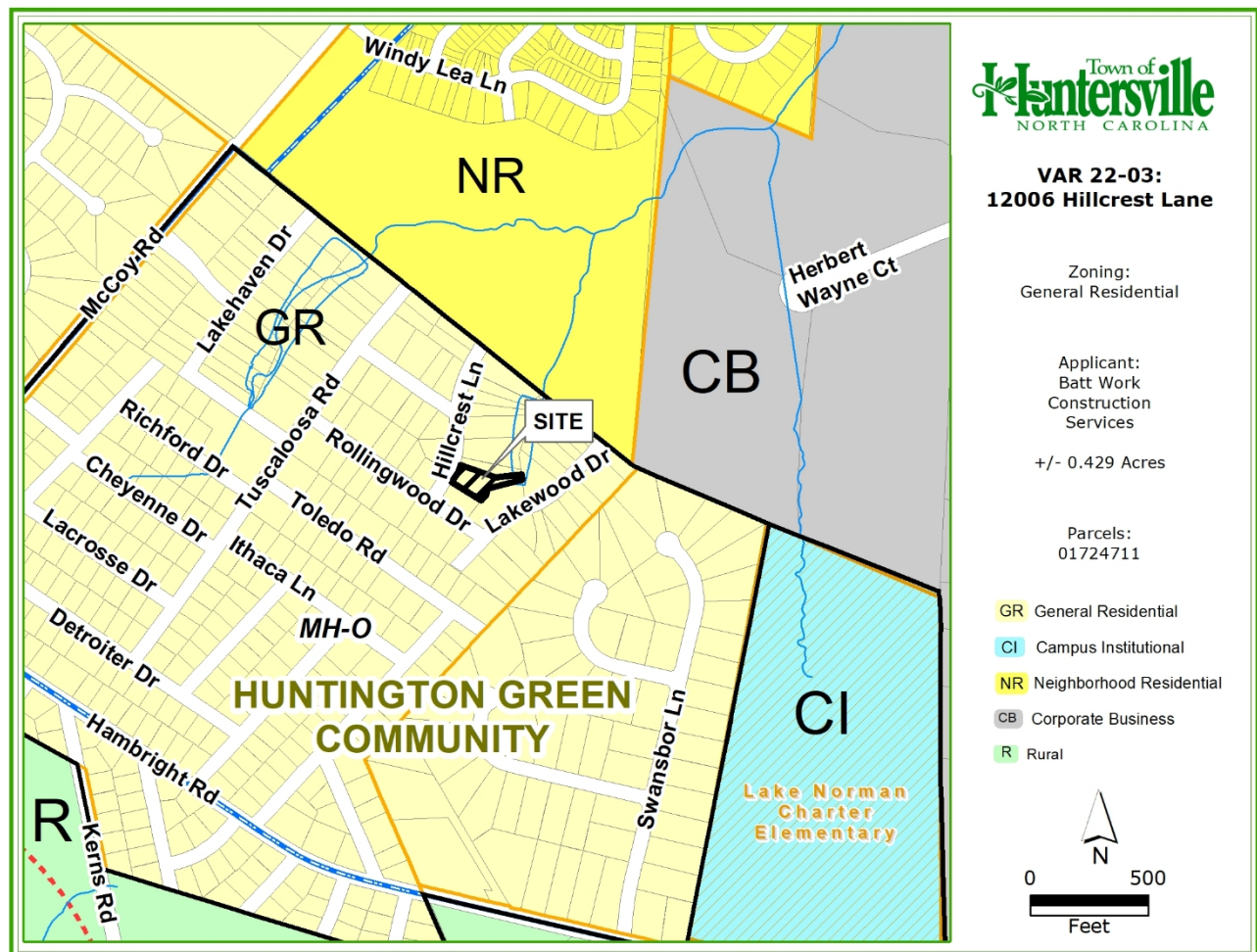
ATTACHMENTS:

1. V22-03 Staff Report
2. EXHIBIT 1 Building Permit Approval
3. EXHIBIT 2 FINAL SURVEY
4. EXHIBIT 3 V22-03 Application
5. EXHIBIT 4 Original Septic Application
6. EXHIBIT 5 Health Department Emails
7. EXHIBIT 6 Permit PlotPlan
8. EXHIBIT 7 1967 Mecklenburg County Zoning Ordinance
9. EXHIBIT 8 Combination Deed 1981

**V 22-03, 12006 Hillcrest Ln
Parcel ID 01724711**

Case #: V22-03
Address: 12006 Hillcrest Ln Huntersville, NC 28078
Parcel #: 017-247-11
Acreage: 0.429ac
Property Owner/Applicant: B & C Acquisitions LLC / Batt Work Construction Services
Owner/Applicant Address: 179 Pine Valley Dr Stanley, NC 28164
Staff: Nathan Farber - Planner II

The applicant Batt Work Construction Services, who is representing the owner B & C Acquisitions LLC, is requesting a variance from **Article 3.2.3 (d) Setback Requirements**, stated below, to allow a mobile home to encroach into the side setbacks.



BACKGROUND:

1. The subject property, Parcel ID 017-247-11, is zoned General Residential (GR) and is also within the Manufactured Home Overlay District (MH-O).
2. The subject property is located within the boundaries of the Town of Huntersville.
3. The Subject property is owned by B & C Acquisitions LLC.”
4. The applicant, Batt Work Construction Services, is representing the property owner.
5. Article 3.2.3 (d) states that the property must comply with the setbacks shown on the subdivisions approved preliminary plans. The property was created and later combined in 1981, which at the time would have subject the property to the Mecklenburg County Zoning Ordinance setbacks. (Exhibit 7, 8)
6. The property located at 12006 Hillcrest Lane has a required front setback of 20’, Side setback of 6’ on one side and 8’ on the other, and a rear setback of 35’. (EXHIBIT 2)
7. The applicant applied for a building permit to place a mobile home on the property. Staff approved the permit on June 2, 2022. (Exhibit 1, 6)
8. The final survey required for the removal of the Huntersville Zoning Hold for the Certificate of Occupancy showed that the Mobile Home encroached into both side setbacks. The left setback has been encroached by 1.8’. The right setback has been encroached by 0.7’. (Exhibit 2)
9. When the applicant applied for the permit, he was notified by the Mecklenburg County Health department that the property had previously been perked for a three-bedroom home, which meant that the proposed Mobile Home could be placed on the property in the desired location. (Exhibit 1, 3, 4)
10. Once Mecklenburg County Environmental Health finished inspections on the existing septic field the applicant was notified that the existing septic field would only support a two-bedroom Mobile Home. (EXHIBIT 3, 5)
11. The applicant states that the Mecklenburg County Health Department required the mobile home to move towards the street so the required septic system for a three bedroom home could be installed. This ultimately forced the mobile home to encroach into the side setbacks. (Exhibit 2, 3, 5)

STAFF FINDINGS (ordinance standards are in italics):

Please see Exhibit 6 for the applicant’s responses to the required criteria for granting a variance.

In considering any variance request, the following Standards for Granting a Variance of the Huntersville Zoning Ordinance (Article 11.3.2.e) must be addressed:

Article 11.3.2.e Standards for Granting a Variance of the Huntersville Zoning Ordinance:

Before granting a variance, the Board of Adjustment shall have made the following findings:

Standards for Granting a Variance. 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 all of the following:

- 1) *Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.*

Staff Findings:

- A. The applicant applied for a building permit and received approval to place a mobile home on the property on June 2, 2022. (Exhibit 1, 6)
- B. The building permit showed that the mobile home would comply with the required setbacks associated with 12006 Hillcrest Ln. (Exhibit 6)
- C. After approval of the building permit, the Mecklenburg County Health Department determined that a new septic field would be required thus forcing the location of the mobile home to move closer to the street and encroach into both side setbacks. (Exhibit 2, 5)
- D. The applicant was originally told that the property’s original perc test and septic field located was sufficient. (Exhibit 4)
- E. Staff finds that this requirement has been met.

- 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.*

Staff Findings:

- A. The Mecklenburg County Health Department determined that the original septic application was not accurate and could only handle a two-bedroom Mobile Home. To place a three-bedroom mobile home the septic field would need to be replaced. (Exhibit 4, 5)
- B. According to the applicant the required location of the septic field would not allow the original desired placement of the Mobile Home. (Exhibit 3, 6)
- C. The placement of the new septic field required the Mobile home to encroach into the side setbacks of the property. (Exhibit 2)
- D. Staff finds this requirement has been met.

- 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 shall not be regarded as a self-created hardship.*

Staff Findings:

- A. The applicant was provided documentation that originally stated that the properties septic perked for a 3-bedroom mobile home. The applicant believed that the property would not require a new septic line. (Exhibit 3, 4, 5)
- B. Mecklenburg County Health Department determined later than the properties septic field was only built for a two-bedroom mobile home. This required the installation of a new septic line. (Exhibit 5)
- C. The applicant filed a building permit application that showed the structure to be in compliance with Article 3.2.3 (d) of the zoning ordinance. (Exhibit 1, 6)
- D. Staff finds this requirement has been met.

- 4) *The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.*

Staff Findings:

- A. The purpose of setbacks is to ensure adequate space between property lines, structures, and uses.
- B. Granting the variance would not harm public safety or welfare, while ensuring that the structure has adequate utilities. (Exhibit 6)
- C. Staff finds that the variance would be consistent with this requirement as it would not harm surrounding properties.

STAFF POSITION:

The applicant is seeking a variance from Article 3.2.3 (d) of the Huntersville Zoning Ordinance, which requires the property to comply with the setbacks outlined within the subdivisions approved preliminary plans. Staff finds that the approved building permit shows that the applicant did not intend to place the home within the setbacks. The conditions created by the Mecklenburg County Health department forced the location of a new septic line that would force the home forward into the side setbacks. The applicant was originally provided documentation that the properties original septic field perked for a three-bedroom mobile home and would allow the structure to be placed where stated within the plot plan of the building permit. Staff finds that the application meets all of the four requirements for granting a variance and therefore recommend approval of the request based on the below findings:

- 1. The subject property, Parcel ID 017-247-11, is zoned General Residential (GR).
- 2. The subject property is located within the boundaries of the Town of Huntersville.
- 3. The Subject property is owned by B & C Acquisitions LLC.
- 4. Article 3.2.3 (d) states that the property must comply with the setbacks shown on the subdivisions approved preliminary plans.
- 5. The property located at 12006 Hillcrest Lane has a required front setback of 20', Side setback of 6' on one side and 8' on the other, and a rear setback of 30'. (EXHIBIT 2)
- 6. The applicant applied for a building permit to place a mobile home on the property. Staff approved the permit on June 2, 2022. (Exhibit 1, 6)

7. In the process of trying to remove the Occupancy Hold, the final survey showed that the Mobile Home encroached into both side setbacks. The left setback has been encroached by 1.8'. The right setback has been encroached by 0.7'. (Exhibit 2)
8. When the Applicant applied for the permit, he was notified by the Mecklenburg County Health department that the property had previously been perked for a three-bedroom home, which meant that the proposed Mobile Home could be placed on the property in the desired location. (Exhibit 1, 3, 4)
9. Once the Health department finished inspections on the existing septic field the applicant was notified that the original septic application was wrong, and the existing septic field would only support a two-bedroom Mobile Home. (EXHIBIT 3, 5)
10. The applicant states that the Mecklenburg County Health Department required the Mobile home to move further towards the street so the required updated septic system could be installed. This ultimately forced the Mobile Home to encroach into the side setbacks. (Exhibit 2, 3, 5)

EXAMPLE MOTION: V22-03, 12006 Hillcrest Ln Huntersville, NC 28078

Planning Department	Board of Adjustment
APPROVAL: In considering the application for V22-03, a request by Batt Work Construction Services for a variance from Article 3.2.3 (d) of the Zoning Ordinance, the Planning Department recommends approval based on the above findings that the request meets all of the four criteria as outlined in the Zoning Ordinance, for granting a variance.	APPROVAL: In considering the application for V22-03, a request by Batt Work Construction Services for a variance from Article 3.2.3 (d) of the Zoning Ordinance, the Board of Adjustment approves the variance request based on a finding that the request meets ____ of the four criteria, outlined in the ZONING ORDINANCE, for granting a variance. The Board of Adjustment finds the request meets ____ of the four criteria for granting a variance based on the following findings of fact: <i>(explain findings of fact)</i>
DENIAL:	DENIAL: In considering the application for V22-03, a request by Batt Work Construction for a variance from Article 3.2.3 (d) of the Zoning Ordinance, the Board of Adjustment denies the variance request based on a finding that the request meets ____ of the four criteria, outlined in the ZONING ORDINANCE, for granting a variance. The Board of Adjustment finds the request does not met the criteria for granting a variance based on the following findings of fact: <i>(explain findings of fact)</i>

Exhibit 1 –Building Permit Approval

Exhibit 2 – Final Survey

Exhibit 3 – V22-03 Application

Exhibit 4 – Original Septic Application

Exhibit 5 – Health Department Emails

Exhibit 6 – Permit Plot Plan

Exhibit 7 – 1967 Mecklenburg County Zoning Ordinance

Exhibit 8 – Combination Deed 1981

Mecklenburg County
Land Use and Environmental Services
2145 Suttle Avenue
Charlotte, NC 28208
(980) 314 - CODE (2633)



Permit: B4168430
Issue Date: 06/02/2022
Issued By: Mielenz, Kayleigh

Building Permit

One/Two Family

Property Details:

Address:	12006 HILLCREST LN	Tax Jurisdiction:	HUNTERSVIL LE
Subdivision:		Parcel Id:	01724711
Owner:	Brian Hutto	Owner Phone No:	4125922015
Owner Address:	9815 Sam Furr Rd Suite J #276HUNTERSVILLE, NC 28078		

Block:	Lot:	Land Area:	Corner Lot: N	Irregular Lot: N	Through Lot: N
Minimum Setbacks (ft.):	Front: 20.0	Rear: 30.0	Right Side: 8.0	Left Side: 6.0	

Project Details:

Project Number:	NR0778846	Res Master Plan #:	
Project Name:	12006 Hill Crest Ln New. Mobile Home Move-on.		
USDC Code:	112 - Mobile Home		
Occupancy:	R3 * RESIDENTIAL - SINGLE FAMILY		
Lien Agent:	Agent: Chicago Title Company, LLCPhone: (888) 690-7384Fax: (919) 489-5231Email: support@liensnc.comMailing Address: 19 W Hargett ST Unit: 507, Raleigh, North Carolina 27601Physical Address: 19 W Hargett ST Unit: 507, Raleigh, North Carolina 27601	Lien Agent No:	1656066

Trade Details:

Building

Details:	New. Mobile Home Move-on.	SI Required:	N	Bedroom Addition:	
Type of Work:	New				

Square Footage:	Heated:	1976	Renovated:	Deck:
	Unheated:		Converted:	

Does the weight of the PV system exceed 3lbs per square foot?

Does the roof possess more than one layer of asphalt shingles?

Does the roofing material consist of a type other than asphalt or metal?

Solar PV Option:

Electrical

Service:	New	Power Company:	DUKE ENERGY	
Total Amps:	200	# of Circuits:	Circuits at 120V:	Circuits Over 120V:

Mechanical

Heating Details: Heat Pump

Gas Company:

# of Gas Connections:	# of Appliances
------------------------------	------------------------

This permit will expire if work either has not started within 6 months or is discontinued for a period of 12 months.

Inspection required for verification of progress made.

No credit or refund will be given unless applied for within 120 days after a permit has expired.

Plumbing

		<u>Public Meter/Connection</u>		<u>Private Service</u>	
# of Fixtures:	8	<u>Individual</u>	<u>Master</u>	<u>Individual</u>	<u>Community</u>
Type of Service:	Existing	<u>Water/Well:</u>	No	No	Yes
# of Appliances	2	<u>Sewer/Septic:</u>	No	Yes	No

Fees

Permit Fee Type:	Construction	Homeowner Recovery Fund:	\$0.00	Fast Track Fee:	\$0.00
*Permit Fee:	\$620.44	NESHAP Fee:	\$0.00	Fee Adjustment:	
Zoning Fee:	\$40.00	Paper Application Fee:	\$0.00	Total Fee:	\$660.44
Triple Fee:	\$0.00	HFR Fee:	\$0.00	NESHAP OK:	
Fire Damage Fee:	\$0.00	Paper Plans Fee:	\$0.00	Vector OK:	
Comm Surcharge:	\$0.00			Charge To Acct:	Y
IsSchool Bond: N	School Bond ID:	School Bond Name:			

* Permit Fee Calculation is based upon the following costs:

Equipment Summary

Bldg Cost less Equipment over \$500K:	\$30000.00	Total Equipment Costs:	
SubPermit Costs:	\$19000.00	Equipment Cost at 100%	\$0.00
Total Equipment Fee:		Equipment Cost at 20%	
Total Cost Calculation:	\$49000.00		

Contractors

Building Contractor	BATT WORK CONSTRUCTION SER LLC	Contr ID:	X59840
Phone:		License #:	84974
Address:	9515 SAM FURR ROADHUNTERSVILLE, NC 28078	Homeowner:	No
		Permit #:	B4168430
		Contract Cost:	\$30,000.00
Electrical Contractor	OSBORNE BROTHERS ELECTRIC INC	Contr ID:	X30810
Phone:	7049260045	License #:	21038
Address:	P O BOX 2103HUNTERSVILLE, NC 28070	Homeowner:	No
		Permit #:	E4219442
		Contract Cost:	\$6,000.00
Mechanical Contractor	TRUE HEATING & AIR LLC	Contr ID:	X59744
Phone:	7048901721	License #:	32885
Address:	5979 COUGAR LANECHARLOTTE, NC 28269	Homeowner:	No
		Permit #:	M4219443
		Contract Cost:	\$7,000.00
Plumbing Contractor	RS LITTON PLUMBING LLC	Contr ID:	X43366
Phone:	7045009034	License #:	29396
Address:	1586 BOLTON RDCATAWBA, NC 28609	Homeowner:	No
		Permit #:	P4219444
		Contract Cost:	\$6,000.00

Agency Holds

As of the time of this permit issuance, the following holds exist on this project:

This permit will expire if work either has not started within 6 months or is discontinued for a period of 12 months.

Inspection required for verification of progress made.

No credit or refund will be given unless applied for within 120 days after a permit has expired.

Additional Information:**NOTE:**

Permit Notes

Move Mobile Homes onto Lot and connect utilities

Maximum Impervious: 24% of lot with 1st build exemption. First build 2,027 sf impervious area proposed. Driveway shall be no more than 20 ft wide as measured at the public right-of-way. Driveway shall be a minimum of 20' behind public r/w. As built survey required for zoning inspection. Post construction zoning inspection required. Request zoning inspection through www.huntersville.org/planning. Mechanical equipment NOT permitted in required setbacks. Art 3.3.1 applies: Permanent masonry wall around perimeter of base required; All wheels, transporting lights, towing apparatuses removed at zoning inspection; Min 14 ft wide, 3:12 roof pitch, Permanent porch, steps for all entrances

McDOWELL

Swim Buffer: 30 ft

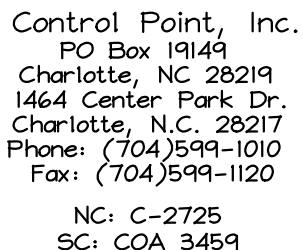
Disclaimer: Mechanical equipment shall be placed in side and rear yards only and shall not encroach into any required setbacks.

Inspection Team

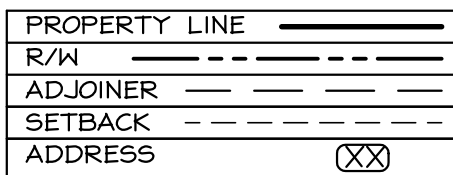
Your project has been assigned to the Residential Inspection Team. For further assistance you can contact the Residential Inspection Team:

Manager:	Griffin, Jeff
Supervisor:	Burgin, Brandon
Supervisor:	Kale, Michael
Supervisor:	Barrett, Dave
Supervisor:	Barrett, Dave

To contact your project manager, inspection supervisor, or obtain inspection assistance with your project, call 980-314-3168.



I CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (MAP RECORDED IN BOOK , PAGE___); THAT THE RATIO OF PRECISION OR POSITIONAL ACCURACY IS 1:10,000; AND THAT THIS MAP MEETS THE REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA (21 NCAC 56.1600). THIS SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND AND OR EXISTING BUILDING OR OTHER STRUCTURE AND DOES NOT CREATE A NEW STREET OR CHANGE AN EXISTING STREET. THIS 17th DAY OF _____ NOVEMBER _____, 20 22 .



MAXIMUM BUILT UPON AREA = 6,818 SF(34%)
EXISTING IMPERVIOUS AREA = 2,532 SF(13.3%)
1. HOUSE=2,027 SF
2. GRAVEL DRIVE=498 SF
3. HVAC PAD=7 SF

ZONING: GR(MH-0)
MTN ISLAND LAKE PA-2
SETBACK DATA:(NEIGHBORHOOD
REQUIREMENTS)
FRONT: 20'
SIDE: 6' ONE SIDE, 8' OTHER SIDE
REAR: 30'

CURVE TABLE				
CURVE	RADIUS	ARC	CHORD	BEARING
C1	348.27'	83.00'	82.80'	S 26°36'13" W

N/F
MARVIN A AUSTIN
DB 27173 PG 432

N/F
STEPHANIE HERAS
DB 34863 PG 330

N/F
JESUS
ZAPATA-REYNAGA \$
ANA LAURA JUAREZ
MARTINEZ
DB 34863 PG 330

Site plan showing a property with a modular residence and surrounding features:

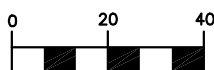
- Property Dimensions:**
 - North: $N 70^{\circ}29'10'' W 160.00'$
 - East: $S 58^{\circ}34'10'' E$
- Area:** 0.43 Ac, 18,940 SF
- Residence:** ONE STORY RESIDENCE (MODULAR) with dimensions 76.2' x 26.6'.
- Decks:** WOOD DECK (top) and WOOD DECK (bottom) with dimensions 6.3' x 3.8'.
- Other Features:**
 - HVAC unit.
 - Gravel area.
 - CI (Curb Inlet).
- Distances and Measurements:**
 - Top boundary distance: 9.8'
 - Left boundary distance: 7.4'
 - Bottom boundary distance: 4.2'
 - Right boundary distance: 9.7'
 - Distance from residence to gravel: 21.8'
 - Distance from residence to bottom deck: 8.0'
 - Distance from residence to top deck: 14.9'
 - Distance from residence to right boundary: 9.7'
 - Distance from residence to left boundary: 26.6'
 - Distance from residence to bottom boundary: 76.2'
 - Distance from residence to top boundary: 76.2'

HILLCREST LANE
60' PUBLIC R/W
(NO CURB & GUTTER)

Physical Survey
of
Lot #80 & Portion of Lot 81, Huntington Forest
Huntersville, Long Creek Township
Mecklenburg County, North Carolina

Deed Recorded in Deed Book 30683 at Page 419.
Map Recorded in Map Book 11 at Page 219.

To Be Conveyed To:



Scale: 1"=40'



Variance Application

Date of Application: 12/13/22

Property/Building Address: 12006 Hillcrest Ln Huntersville Parcel Size (ac): _____

Tax Parcel ID (PIN) Number: 01724711

Ordinance to be Varied

Ordinance (Zoning, Floodplain, etc.): Zoning Article: 3.2.3 Section: D

Description of Request (In this section describe what you are seeking to be allowed at this property. For example – According to Article 4: Detached House of the Huntersville Zoning Ordinance, mechanical equipment shall not encroach into any required setback. I am requesting a variance to allow mechanical equipment in the side yard at 000 Gilead Road, Huntersville, NC.):

Minimum Side Yard setback of 6' and 8'
I am requesting a variance to allow the mobile home to encroach into the
minimum side yard setback of 6' and 8'

Submittal Procedure and Requirements

See the current Board of Adjustment Submittal deadlines and Meeting Schedule for filing deadlines and meeting dates. **The variance and appeals processes are quasi-judicial. Contact with the Board of Adjustment shall only occur under sworn testimony.**

The property owner(s) or legal representative of the property owner must sign this application. If the applicant is different from the property owner, the applicant shall also sign.

The following shall be submitted with a completed application:

- One (1) electronic copy by email or (1) hard copy of applicable map(s), site plans, exhibits, and applications showing exact location of property with respect to existing streets, adjoining lots and other important features on or contiguous to the property. Include any maps and/or illustrations (to scale), which are necessary to show the location, number and size of buildings, signs, etc., on the property.
- A list of names, addresses and tax parcel identification numbers of properties that abut the site, are across the street from the site or are otherwise within one hundred feet (100') of the site.
- Review Fee - Please check most recent version of Fee Schedule for applicable Variance Review Fee. Reviews shall be submitted by mail as directed below or through the Town website: www.huntersville.org/ (Select How Do I > Pay Planning and Zoning Fees)
- Email completed application to planning@huntersville.org or mail as directed below.
- Submit the complete application, all supplemental documents, and the fee by noon on the filing deadline

Physical Address: 105 Gilead Road | Third Floor (**Fed Ex, UPS, and Couriers**)

Mailing Address: P.O. Box 664 | Huntersville, North Carolina 28070 (**USPS**)

Attention: Planning Department

Please make checks payable to: Town of Huntersville
Include property address and/or Tax Parcel ID in memo

In the following spaces, indicate **FACTS** that demonstrate to the Board of Adjustment you meet all the standards for granting a variance:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. The difficulty or hardship would result only from these regulations and from no other cause, including the actions of the owner or previous owners of the property.

See Attached

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 persona with a disability.

See Attached

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 shall not be regarded as a self-created hardship.

See Attached

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

See Attached

1. When we purchased the lot and had the survey company draw a plot plan, the mobile home that was purchased would fit on the lot. We emailed Sergio Gallo with Mecklenburg Health Department to make sure the septic perked for a three bedroom house. The septic records that were on file that Mr. Gallo sent back to us showed the lot did perk for a three bedroom house. With this information we felt comfortable to continue with moving the mobile home onto the lot. Mecklenburg Health Specialist Heather Rae then came to inspect the septic system and informed us that the old system needed to be replaced and a new line added because the records that Mr. Gallo sent back to us was incorrect and the lot only perked for a two bedroom house. We added the new septic tank and lines to the lot per the locations that Mrs. Rae gave us. The Septic tank moved roughly fifteen feet toward the front of the lot causing the house to move twenty-five toward the front of the lot. Moving the house twenty-five feet toward the road because of the septic tank setback caused the mobile home to be in the side setbacks of 6' and 8'.
2. When we purchased the lot and had the survey company draw a plot plan, the mobile home that was purchased would fit on the lot. We emailed Sergio Gallo with Mecklenburg Health Department to make sure the septic perked for a three bedroom house. The septic records that were on file that Mr. Gallo sent back to us showed the lot did perk for a three bedroom house. With this information we felt comfortable to continue with moving the mobile home onto the lot. Mecklenburg Health Specialist Heather Rae then came to inspect the septic system and informed us that the old system needed to be replaced and a new line added because the records that Mr. Gallo sent back to us was incorrect and the lot only perked for a two bedroom house. We added the new septic tank and lines to the lot per the locations that Mrs. Rae gave us. The Septic tank moved roughly fifteen feet toward the front of the lot causing the house to move twenty-five toward the front of the lot. Moving the house twenty-five feet toward the road because of the septic tank setback caused the mobile home to be in the side setbacks of 6' and 8'.
3. We were unaware of the septic tank issues because when we purchased the lot we were told that the septic was working properly and no work was needed. Also we had the information from Mr. Gallo that said lot perked for a three bedroom house.
4. We are requesting the variance of the side setbacks for 12006 Hillcrest Ln. Due to Mecklenburg County requiring us to install a new septic system and septic lines on the lot forcing us to move the mobile home forward into the set backs.

ApplicantPrinted Name Batt Work Construction Services Phone 412-592-2015☒ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

☒ By signature below, I hereby acknowledge, as/on behalf of (circle one) the applicant my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Adjustment except through sworn testimony at the public hearing. (Applicable if box is checked)

Signature Ray Kavelish Date 12/13/22Title Owner Applicant Phone 412-592-2015Applicant Email Raykavelish@gmail.comAddress of Applicant 9815 Samfun Rd Suite J # 276**Property Owner (if different than applicant)**

* Printed Name _____ Phone _____

☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

☐ By signature below, I hereby acknowledge, as/on behalf of (circle one) the owner my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Adjustment except through sworn testimony at the public hearing. (Applicable if box is checked)

Signature _____ Date _____

Title _____ Applicant Phone _____

Applicant Email _____

Address of Property Owner _____

* Property owner hereby grants permission to the Town of Huntersville personnel to enter the subject property for any purpose required in processing this application.

Every owner of each parcel included in this application, or the owner (s) duly authorized agent, must sign this application. If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION. **If additional space is needed for signatures, attach the Town of Huntersville Signature Addendum Form.**

ApplicantPrinted Name Batt Work Construction Services Phone 412-592-2015☒ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

☒ By signature below, I hereby acknowledge, as/on behalf of (circle one) the applicant my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Adjustment except through sworn testimony at the public hearing. (Applicable if box is checked)

Signature Ray Kavelish Date 12/13/22Title Owner Applicant Phone 412-592-2015Applicant Email Raykavelish@gmail.comAddress of Applicant 9815 Samfun Rd Suite J # 276**Property Owner (if different than applicant)*** Printed Name Clifford Scott Phone 704 574 4541☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

☐ By signature below, I hereby acknowledge, as/on behalf of (circle one) the owner my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Adjustment except through sworn testimony at the public hearing. (Applicable if box is checked)

Signature [Signature] Date 2/28/23Title _____ Applicant Phone 704 574 4541Applicant Email cliff.scott@installed.netAddress of Property Owner 514 Belwood Dr Belmont NC 28012

* Property owner hereby grants permission to the Town of Huntersville personnel to enter the subject property for any purpose required in processing this application.

Every owner of each parcel included in this application, or the owner (s) duly authorized agent, must sign this application. If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION. If additional space is needed for signatures, attach the Town of Huntersville Signature Addendum Form.

1955

1200 8111 West Lane

PA \$2500 4-28-92. CASH

APPLICATION FOR AN IMPROVEMENT PERMIT



HEALTH DEPARTMENT
ENVIRONMENTAL HEALTH DIVISION
1200 BLYTHE BOULEVARD
CHARLOTTE, NC 28203
PHONE (704) 376-4603

Mecklenburg County services are available without regard to ethnic origin, sex, or disability.

(OFFICE USE ONLY)

FILE: 17988
TC: 017-247-1B
SERIAL: No 16106

1001 ~~X~~
CRTV
X CRT

JOB LOCATION

① ADDRESS: 12006 Hillcrest in Huntersville NC 28028
STREET NO STREET
② JURISDICTION: _____
③ SUBDIVISION: Hunting Forest
④ TAX PARCEL NO.: 017-247-13
⑤ LOT: 782 & 581 ⑥ BLOCK: 247

OWNER

⑦ NAME: Joyce L Hager
(FIRST) (MIDDLE) (LAST)
⑧ MAILING ADDRESS: 90400 SAM FUR Rd.
⑨ CITY: Huntersville ⑩ STATE: NC ⑪ ZIP: 28028
⑫ PHONE: (WORK) Same as home ⑬ (HOME) 892-5300

REQUEST

This request is for a(n):
⑭ ☐ New permit
⑮ ☐ Repair or alteration permit
⑯ ☒ Authorization for mobile home exchange
⑰ ☐ Other (specify) _____

DESIGN CRITERIA

System will serve:
⑱ ☐ Residence ⑲ ☐ Mobile home
⑳ Number of bedrooms? 3
㉑ Maximum occupancy? 5
㉒ Basement? ☐ yes ☒ no
㉓ ☐ Business or place of public assembly
㉔ Type? _____
㉕ Maximum number of employees? _____
㉖ Maximum number of seats? _____

WATER SUPPLY

㉗ Water supply from (present or proposed):
A ☐ Individual well
B ☐ Municipal system
C ☐ Community well
D ☒ Community system

IMPROVEMENT PERMIT

The undersigned, an authorized agent of the MECKLENBURG COUNTY HEALTH DEPARTMENT, certifies that the Department has approved the Request for the Job Location contained in this document. This approval is granted in accordance with the provisions of Laws And Rules For Sanitary Sewage Collection, Treatment And Disposal in effect at the time of issuance of the permit and is subject to the following provisions:
... No work shall be conducted on the septic tank system until an Installation, Construction, Alteration and/or Repair permit is issued by this Department.
... This permit is not transferable, and shall become null and void 36 months from the date of issuance.

USE ONLY IF STAY, SITS, Mobile Home ETC.

Environmental W. H. L. - 6.3.92 Date

Director or Authorized Section Head _____ Date _____

*This permit must be signed by the Director of Mecklenburg County Health Department or an authorized section head in order to be valid.

㉘ The undersigned, owner of the property described above as the "JOB LOCATION" has read the foregoing application, acknowledges that the contents of same are true, and authorizes agents of the MECKLENBURG COUNTY HEALTH DEPARTMENT to enter onto the property for the purpose of processing this request.

Signed: Joyce L Hager
Date: 4-27-92

**INDIVIDUAL WATER AND WASTEWATER SYSTEMS PROGRAM
APPLICATION FOR SERVICES**

PCT #50
BCK 6-3-92 CRT

Life # 1988

Mecklenburg County Health Dept.
Environmental Health Division
c/o Hal Marshall Ctr., Suite 211
700 W. Tryon St.
Charlotte, NC 28202
(704)336-5102

PERSON FILING APPLICATION:
NAME: Russell John Kenneth
(last) (first) (mi)
ADDRESS: 9-67th 1492 PHONE: (704) 663-0605
CITY: Monroville STATE: NC ZIPCODE: 28115

Date:
PROPERTY INFORMATION (FROM ENGINEERING FORM):
TAX/PARCEL NUMBER: C17-247-13
STREET ADDRESS: 12006 H. Hunter Ln
Huntersville NC
ZONING:

PROPERTY OWNER:
NAME: H. H. H. H. James
(last) (first) (mi)
ADDRESS: 1492 9-67th Rd PHONE: (704) 892-5300
CITY: Huntersville STATE: NC ZIPCODE:

SUBDIVISION OR MOBILE HOME PARK NAME:
Huntersville Mills

Township (check one):
☐ 0 Mecklenburg County ☐ 2 Davidson ☐ 4 Pineville ☒ 6 Huntersville
☐ 1 Charlotte ☐ 3 Cornelius ☐ 5 Matthews ☐ 7 Mint Hill

TYPE APPLICATION (check one):
☐ SOIL TEST - INDIVIDUAL LOT (B)
☐ NEW CONSTRUCTION ON VACANT LOT - 4 BEDROOMS OR LESS (H)
☒ EXCHANGE MOBILE HOME - SAME # BEDROOMS (Y)
☐ ADDITION - INCREASE ROOMS/OCCUPANCY/MOBILE HOME SIZE (A or N)
☐ COMMERCIAL OR INDUSTRIAL (N)

LOT NUMBER: 828514 **LOT SIZE (in acres):**
☐ SOIL TEST DEVELOPMENT (P)
☐ ADDITION - GARAGE OR RENOVATION/NO MAJOR CHANGES (N)
☐ MODIFIED /ALTERNATIVE/ OR RESIDENCE > 4 BEDROOMS (Z)
☐ REPAIR TO SYSTEM (R)

RESIDENTIAL PROPERTY (Type Building, check one):
☐ SINGLE MOBILE HOME (S) ☐ HOUSE (H) ☐ MULTIPLE FAMILY (U)
☐ DOUBLE WIDE (D) ☐ MODULAR HOME (M) ☐ OTHER _____ (O)

NUMBER BEDROOMS: 03 **NUMBER OCCUPANTS:** 6
SYSTEM CLASSIFICATION:

COMMERCIAL/INDUSTRIAL PROPERTY:
Type Business _____ # Employees _____ Per Shift _____
Industrial Wastes (Y/N) _____
Underground Storage Tanks On Property (Y/N) _____ Type _____

WATER SUPPLY (check one):
☒ Community (C) ☐ Shared Well (S)
☐ Municipal (M) ☐ Other 'spring' (O)
☐ Private Well (P)

FUTURE ADDITIONS - ALL PLANNED ADDITIONS MUST BE ENTERED (check all that apply):
☐ Swimming Pool ☐ Jacuzzi ☐ Stable/Barn ☐ Workshop ☒ None
☐ Garage ☐ Storage Building ☐ Deck/Patio ☐ Bedrooms ☒ Other

The undersigned, owner, or legal agent for the owner, of the property described above as the "JOB LOCATION" has read the foregoing application, acknowledges that the contents of same are true, and authorizes agents of the MECKLENBURG COUNTY HEALTH DEPARTMENT to enter onto the property for the purpose of processing this request.

Signed: James Russell Date: 6-1-92

NOTICE:

The undersigned, an authorized agent of the MECKLENBURG COUNTY HEALTH DEPARTMENT, certifies that the Department has approved the Request for the Job Location contained in this document. This approval is granted in accordance with the provisions of Laws And Rules For Sanitary Sewage Collection, Treatment And Disposal in effect at the time of issuance of the permit and is subject to the following provisions:

...No work shall be conducted on the septic tank system until an installation, Construction, Alteration and/or Repair approval is granted by this Department.
...This permit is not transferable.
...

☐ IMPROVEMENT PERMIT - VALID 60 MONTHS FROM ISSUANCE
☐ MOBILE HOME EXCHANGE APPROVAL - VALID 6 MONTHS FROM ISSUANCE
☐ ADDITION/RENOVATION APPROVAL - VALID 1 YEAR FROM ISSUANCE

Environmentalist _____ Date _____
Director or Authorized Section Head _____ Date _____

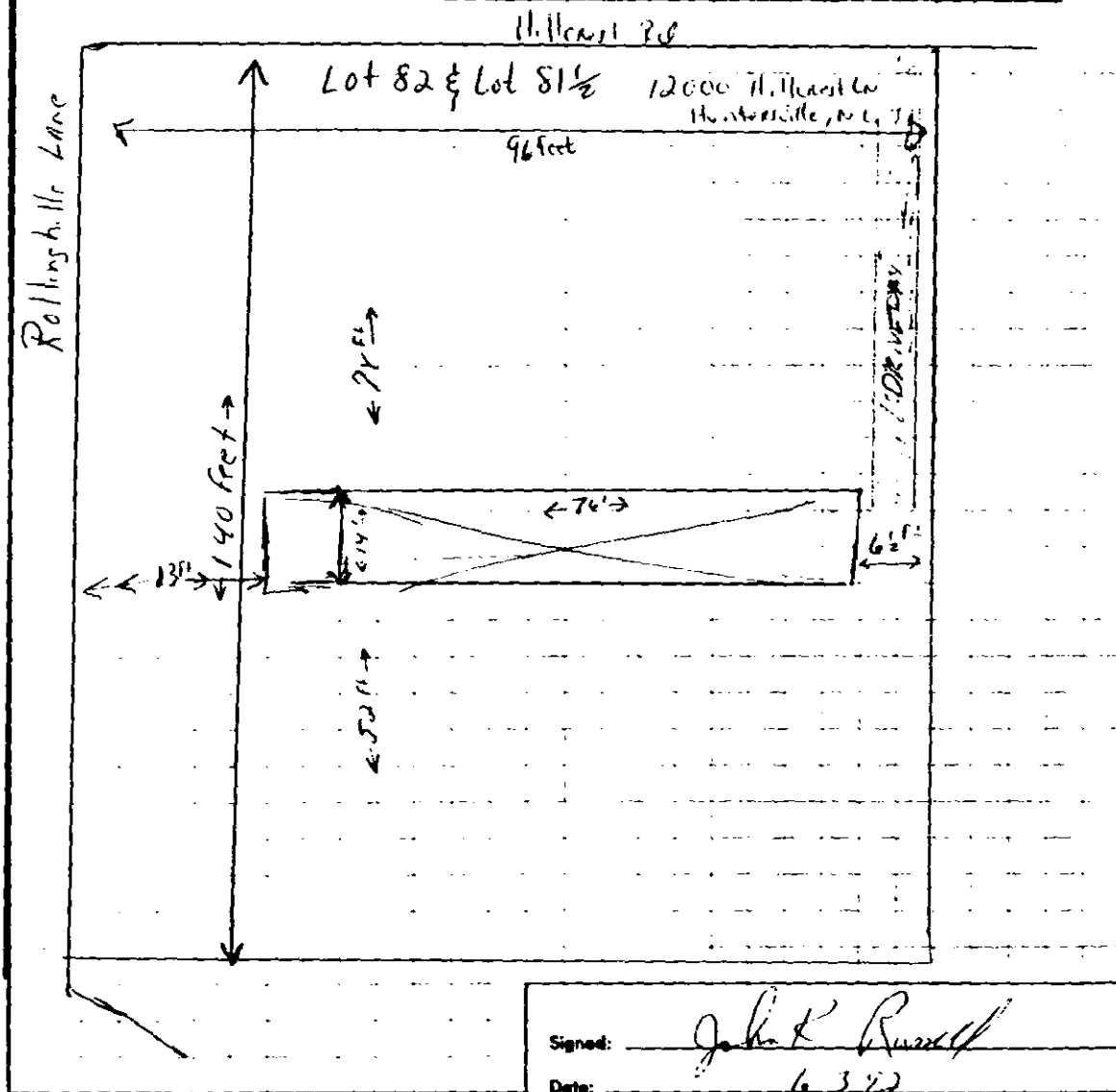
REFUND DUE TO 2nd request BCK #50
check returned to John Russell 6-8-92



HEALTH DEPARTMENT
ENVIRONMENTAL HEALTH DIVISION
1200 SLYTHE BOULEVARD
CHARLOTTE, NC 28203
PHONE (704) 376-4803

FILE: 17988
TC: 017-247-13.

Draw in and name all roads adjoining the property. Draw in and accurately dimension the lot concerned. Accurately indicate property boundaries, proposed and/or existing structures and driveways, underground utilities, and wells and springs within 100 feet of the proposed building or drainfield.



Signed:

Date: _____

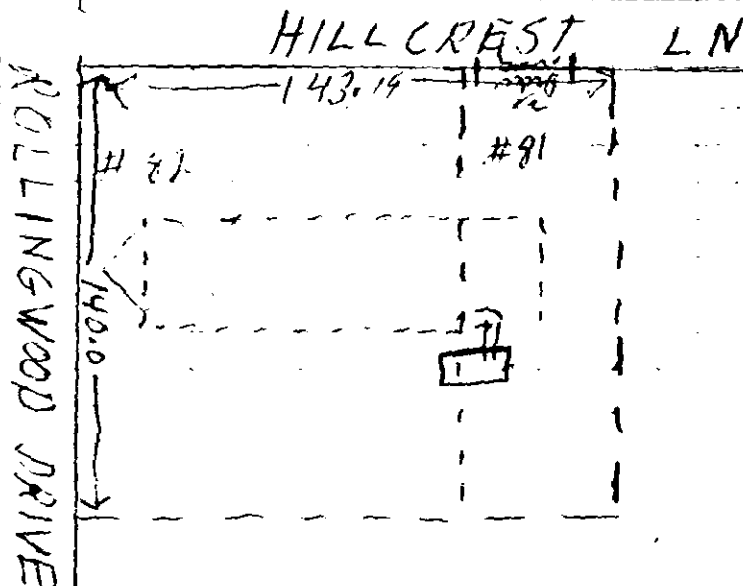


PROPOSED PLOT PLAN

1200 SLYTHE BOULEVARD
CHARLOTTE, NC 28203
PHONE (704) 376-4603

FILE: 17988
TC: 017-247-11

Draw in and name all roads adjoining the property. Draw in and accurately dimension the lot concerned. Accurately indicate property boundaries, proposed and/or existing structures and driveways, underground utilities, and wells and springs within 100 feet of the proposed building or drainfield.



Signed: _____

Date: _____

Jayce L. Ringer
4-22-82

From: Ray Kavelish <raykavelish@gmail.com>
Sent: Sunday, February 26, 2023 7:07 PM
To: Nathan Farber
Subject: Fwd: 12006 Hill Crest Ln

Follow Up Flag: Flag for follow up
Flag Status: Flagged

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Nathan,
Please see below.

Thanks
Ray

----- Forwarded message -----

From: **Ray Kavelish** <raykavelish@gmail.com>
Date: Thu, Apr 28, 2022 at 7:32 AM
Subject: Re: 12006 Hill Crest Ln
To: Ray, Heather A <Heather.Ray@mecklenburgcountync.gov>

Heather
12006 Hillcrest Ln has been surveyed and staked. We are ready for you to flag to new septic line when you can make it out here.

Thanks
Ray

On Thu, Mar 24, 2022 at 3:53 PM Ray, Heather A <Heather.Ray@mecklenburgcountync.gov> wrote:

Here are the two files I found linked to that parcel. It appears they were either combined or changed and originally had the same parcel number or there was a miss filing when theses were processed in the 80's/90's.

I'm sorry for the confusion. I have highlighted in the two documents where it clearly states the lot numbers and number of bedrooms associated with each lot.

Heather Ray, REHS

Environmental Health Specialist

Mecklenburg County Public Health Department

Environmental Health Division

Cell: 704-280-1485

Fax: 704-336-6894

Email: Heather.Ray@mecknc.gov

CONFIDENTIALITY NOTICE: This message and any attachments included are from the Mecklenburg County Health Department and are for sole use by the intended recipient(s). The information contained herein may include confidential or privileged information. Unauthorized review, forwarding, printing, copying, distributing, or using such information is strictly prohibited and may be unlawful. If you received this message in error, or have reason to believe you are not authorized to receive it, please contact the sender by reply email and destroy all copies of the original message. Thank you!

From: Ray, Heather A
Sent: Thursday, March 24, 2022 3:39 PM
To: raykavelish@gmail.com
Subject: 12006 Hill Crest Ln

Good afternoon

I reached out by phone and left a message but wanted to follow up with an email as well. I made a site visit to 12006 Hill Crest Ln today. The septic tank needs to be uncovered to confirm exact location and drain field needs to be marked by a septic contractor. Random bricks and other debris make it hard to confirm exact location of tank and drain field.

Also the original permit is only for 2 bedrooms and your application is for a 3 bedroom home. Before anything can be approved you will need to reapply for an alteration or change your new mobile home to a two bedroom home. If you decided to change layout to a 2 bedroom home you will need to amend the application and submit plans showing your new 2 bedroom home. If you decided to go with an

alteration please contact the front office at 980-314-1620 and they can help you change your application.

Heather Ray, REHS

Environmental Health Specialist

Mecklenburg County Public Health Department

Environmental Health Division

Cell: 704-280-1485

Fax: 704-336-6894

Email: Heather.Ray@mecknc.gov

CONFIDENTIALITY NOTICE: This message and any attachments included are from the Mecklenburg County Health Department and are for sole use by the intended recipient(s). The information contained herein may include confidential or privileged information. Unauthorized review, forwarding, printing, copying, distributing, or using such information is strictly prohibited and may be unlawful. If you received this message in error, or have reason to believe you are not authorized to receive it, please contact the sender by reply email and destroy all copies of the original message. Thank you!

--

Thank you,

Ray Kavelish
Operations Manager
Batt Work Construction Services
Cell: 412-592-2015
Email: raykavelish@gmail.com

Street # 12006 **N,S,E,W** **Street Name** Hill Crest **AV, RD, ST, etc.** LN **Suite**

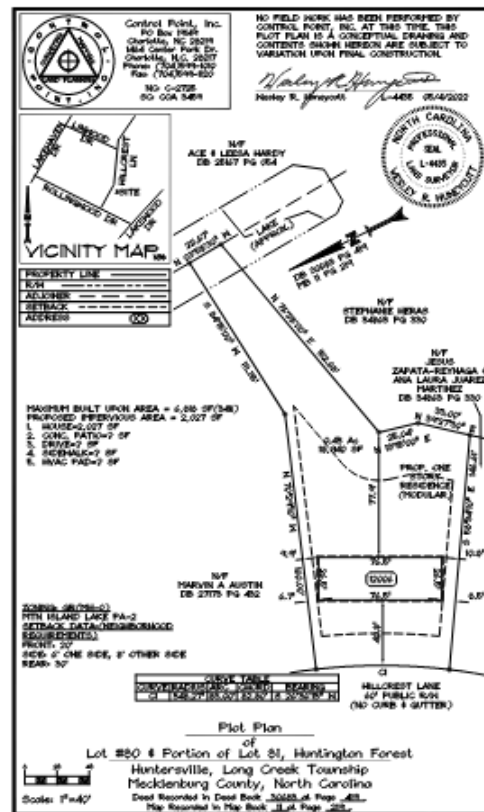
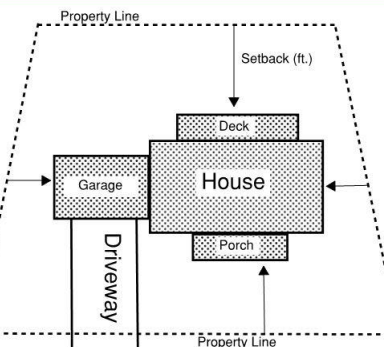
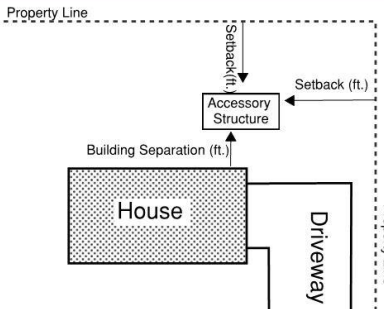
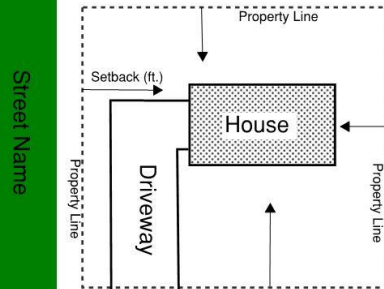
INSTRUCTIONS:

In the space provided, draw plot plan as neatly and accurately as possible, from a survey if available. Separate applications and plot plans are required for each building.

1. Draw street(s) and right-of-ways(s).
2. Draw property lines with showing setbacks for proposed structure.
3. Draw proposed buildings and existing structures including any driveway(s), walkway(s), attached porch(es), deck(s), chimney(s), carport(s), garage(s), shed(s), barn(s), pool(s), accessory dwelling(s), etc.
4. List area of existing and proposed structures.
5. List amount of existing impervious use and area of proposed structure, if subject to Watershed regulations.

Show access easements, open space, tree save, and environmental buffers if applicable.

EXAMPLE PLOT PLANS



All existing and proposed structures are shown with measurements indicated.

Applicant Name	Date	Applicant Signature	
Batt Work Construction Services, LLC	5/18/22	Ray Kavelish	
Zoning Approved By	Date	Notes	Parcel ID

3000. SINGLE FAMILY RESIDENTIAL DISTRICTS

3001. Single Family Residential Districts: R-6, R-9, R-12 and R-15. These districts are intended for single family housing at various densities of population and certain non-residential uses of public or semi-public nature. The regulations for these districts are designed to maintain a suitable environment for family living. Densities of development are controlled by minimum lot area requirements, which are different with each district. The minimum lot area requirement (in thousands of square feet) is indicated by the numerical identification of each district.

3002. Permitted uses. The following uses are permitted by right in all single family districts.

1. Arboretum.
2. Auction sale of real property and such personal property as is normally located thereon for the purpose of liquidating assets.
3. Dwellings, one-family detached.
4. Dwelling group, one-family semi-detached where situated on a corner lot with entrances facing different streets where situated on a through lot where the rear yard or side yard abuts a thoroughfare.
5. Dwellings, two-family, where situated on a corner lot with entrances facing different streets or where situated on a through lot where the rear yard or side yard abuts a thoroughfare, subject to additional lot area requirements of the corresponding multi-family district.
6. Farms, either in conjunction with or separate from dwellings, which may conduct retail sales of products produced on the premises.
7. Group homes for up to 6 clients.
8. Parks and playgrounds, operated on a non-commercial basis for the purposes of public recreation.
9. Subdivision sales office to serve the subdivision in which it is located and adjoining subdivision or subdivisions by the same developer or affiliate, provided that the sales office shall be terminated upon completion of the sale of 95% of the total number of homes and/or lots.
10. Trailer, overnight camping (stored unoccupied on a lot).
11. Trailer, overnight camping (within an overnight camping trailer park).
12. Reservoirs, municipal.
13. Railroad rights-of-way.
14. Saw mills for harvesting forest products on the premises where grown.
15. Telephone booths.
16. Temporary buildings and storage of materials in conjunction with construction of a building on a lot where construction is taking place or on adjacent lots, such temporary uses to be terminated upon completion of construction.

17. Public utility transmission and distribution lines.

3003.

Uses under prescribed conditions. The following uses are permitted subject to the conditions governing each use as specified in the appropriate section.

1. Cemeteries, public and private. See Section 3135.
2. Churches, synagogues and related uses. See Section 1626.
3. Community recreation centers. See Section 3128.
4. Colleges and universities with all accessory facilities except stadiums, subject to the regulations in Section 1626.
5. Convents and monasteries. See Section 1626.
6. Country clubs and swimming clubs operated on a non-commercial membership basis. See Section 3128.
7. Customary home occupations. See Section 3102.
8. Reserved.
9. Dormitories for the students of colleges, commercial schools, schools providing adult training and for the staffs of hospitals, operated by and located on the principal site of the institution served, subject to the regulations in Section 1626.
10. Equestrian oriented subdivisions. See Section 1630.
11. Fire stations. See Section 1626.
12. Reserved.
13. Golf courses, public and private, for daytime use only. See Section 3128.
14. Golf driving ranges, par 3 golf courses, swimming pools, tennis courts, horse riding rings and fishing ranches as well as uses accessory to the above such as snack bars, club houses and pro shops. As a minor special use under Section 3319.
15. Reserved.
16. Hospitals and sanatoriums. As a major special use under Section 3323.
17. Libraries. See Section 1626.
18. Monasteries. See Section 1626.
19. Reserved.
20. Office of Doctor, Dentist, Lawyer, Architect, Accountant, Sales Representative, Realtor and similar professional, semi-professional and business representatives, conducted as Customary Home Occupations. See Section 3102.
21. Orphanages, Childrens' Homes and similar non-profit institutions providing domiciliary care for children. See Section 1626.
22. Police Stations. See Section 1626.
23. Riding Stables. See Section 3129.
24. Room Renting. See Section 3115.
25. Schools, Elementary, Junior and Senior high, public and private. See Section 1626.
26. Sewage treatment plants and pumping stations. See Section 3123.
27. Small group day care homes. See Section 3119.
28. Turkey Shoots. See Section 3134.

29. Young Men's Christian Associations and comparable organizations. As a minor special use under Sections 3319.
30. Civic Organizations. As a minor special use under Sections 3319.
31. Social and social service organizations. As a minor special use under Sections 3319.
32. Quarries. See Section 3117.
33. Electric and gas sub-station. See Section 3123.
34. Radio, telephone and television masts, towers, antennas and similar structures. See Section 1605.
35. Sanitary landfills. See Section 3124.
36. Telephone repeater stations and huts. See Section 3123.
37. Water storage tanks. See Section 1605.
38. Buildings for dramatic, musical or other cultural activities, with a capacity of more than 1000 seats and stadiums and coliseums with more than 5000 seats as a major special use under Section 3322.
39. Demolition landfills. See Section 3141.
40. On Site Demolition Waste Disposal. See Section 3140.

3004. Accessory uses. The following accessory uses are permitted in all single family districts.

1. Accessory residential uses and structures clearly incidental to the permitted principal use.
2. Petroleum storage, accessory to a permitted principal use or building, subject to the Fire Prevention Code of the National Board of Fire Underwriters.
3. Parking for uses permitted within the districts.
4. Vending machines for cigarettes, candy, soft drinks and similar items, and coin-operated laundries located within an enclosed building as an accessory to the uses in the principal building or buildings.
5. Accessory uses, clearly incidental to the principal permitted use as structure on the lot.
6. Marinas, as Accessory to Residential Development. See Section 3137.

3005. Yard, Area, and Height Regulations.

The following standards apply to residential uses in single family residential districts.

3005.1. One family detached dwellings.

	R-6	R-9	R-12	R-15
Min. lot area	6000	9000	12000	15000
Min. lot width	50	60	70	80
Min. side yard*	8/6	8/6	10	10
Min. Setback	25	25	30	35
Min. rear yard	35	40	45	50
Min. unobstructed open space (% of lot)	40%	55%	60%	65%
Max. height**	40	40	40	40

*In R-6 and R-9 one side yard must be at least 6 feet and the other side yard at least 8 feet.

**Except as provided in Section 1627

3005.2. One Family semi-detached dwelling (dwelling group) and two family dwellings.

	R-6	R-9	R-12	R-15
Min. lot area	8000	11500	15000	18500
Min. lot width	55	65	80	90
Min. side yard*	8/6	8/6	10	10
Min. setback	25	30	35	40
Min. rear yard	40	45	50	55
Min. unobstructed open space (% of lot)	50%	55%	60%	65%
Max. height**	40	40	40	40

*Side yard requirements are for one side only, the other side being attached. In the R-6 and R-9 districts if one side yard is 6 feet, the other side must be at least 8 feet. **Except as provided in Section 1627.

3006. Development Standards for Various Uses.

- .1 Cluster developments may be permitted in single family districts in accordance with the provisions of Section 1628.

3007. Signs.

Signs are permitted in all single family residential districts in accordance with the provisions of Section 2100.

3008. Parking and Loading Standards.

Development of any use in a single family residential district must conform to the parking and loading standards in Section 2000 and to the restrictions in Section 1625.

3009. Reserved.

INDIVIDUAL DEED

Revenue Stamp affixed \$

6.00

STATE OF NORTH CAROLINA — Mecklenburg County

THIS DEED, Made this 10 day of April A. D., 1981, by and between THOMAS D. SMITH and wife, ALICE F. SMITH

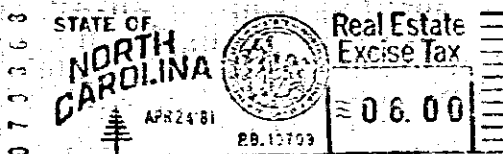
of the County of Mecklenburg and State of North Carolina, parties of the first part, and JOYCE L. HAGER

of the County of Mecklenburg and State of North Carolina, part Y of the second part.

WITNESSETH, That the said parties of the first part in consideration of ONE HUNDRED DOLLARS AND OTHER VALUABLE CONSIDERATIONS to them paid by the part Y of the second part, the receipt of which is hereby acknowledged, have bargained and sold, and by these presents do grant, bargain, sell and convey unto the said part Y of the second part, his heirs, successors or assigns, all that certain lot or parcel of land, situate, lying and being in Long Creek Township, Mecklenburg County, State of North Carolina, and more particularly described and defined as follows:

BEING all of Lots 80 and 81 of HUNTINGTON FOREST as shown on map thereof recorded in Map Book 11 at Page 219 in the office of the Register of Deeds for Mecklenburg County, North Carolina.

BEING the same property conveyed to the parties of the first part by deeds recorded in Book 3081 at Page 41 and Book 3081 at Page 174 of the Mecklenburg Public Registry.



PRESENTED
MECKLENBURG COUNTY
APR 24 3 40 PM '81
CHARLES CROWDER
MECKLENBURG CO N.C.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the said part Y of the second part, his heirs, successors or assigns, to his only use and behoof forever.

And the said parties of the first part for themselves, their heirs, successors, executors and administrators, covenant with the said part Y of the second part, his heirs, successors and assigns, that they are seized of said premises in fee and have the right to convey the same in fee simple, that the same are free and clear from all encumbrances, and that they will warrant and defend the said title to the same against the lawful claims of all persons whomsoever.

HOWEVER, there is excepted from these warranties all such valid and enforceable easements, conditions and restrictions as may appear of record and the lien of ad valorem taxes for the current year, which the grantee(s) hereby assumes and agrees to pay

IN TESTIMONY WHEREOF, The said parties of the first part to these Presents have hereunto set their hand, seal and seal the day and year above written.

Signed, Sealed and Delivered in presence of

Thomas D. Smith (Seal)
Thomas D. Smith (Seal)
Alice F. Smith (Seal)
Alice F. Smith

STATE OF NORTH CAROLINA, COUNTY OF MECKLENBURG

I, William A. Carlin, a Notary Public for said County and State, do hereby certify that Thomas D. Smith and wife, Alice F. Smith appeared before me this day, and acknowledged the due execution of the foregoing (or annexed) instrument. Witness my hand and notarial seal, this 26th day of April, A. D., 1981. My Commission Expires 8-28-85. William A. Carlin, Notary Public

STATE OF NORTH CAROLINA, COUNTY OF MECKLENBURG

The foregoing (or annexed) Certificate of a Notary Public for said County and State, is certified to be correct. This day of April, A. D., 1981. Charles C. Crowder, Reg. of Deeds, By: Deputy Presented for registration o'clock, M., on the day of A. D., 1981 and verified. Register of Deeds.

Drawn By: Parham, Helms & Kellam

Please mail to Owner: Route 2, Box 96, Huntersville, N. C. 28078

**Town of Huntersville
Board of Adjustment
March 14, 2023**

To: Town Board

From:

Date: March 14, 2023

Subject:

EXPLAIN REQUEST:

ACTION RECOMMENDED:

FINANCIAL IMPLICATIONS:

ATTACHMENTS:

None

**Town of Huntersville
Board of Adjustment
March 14, 2023**

To: Town Board

From:

Date: March 14, 2023

Subject:

EXPLAIN REQUEST:

ACTION RECOMMENDED:

FINANCIAL IMPLICATIONS:

ATTACHMENTS:

None

**Town of Huntersville
Board of Adjustment
March 14, 2023**

To: Town Board

From:

Date: March 14, 2023

Subject:

EXPLAIN REQUEST:

ACTION RECOMMENDED:

FINANCIAL IMPLICATIONS:

ATTACHMENTS:

None

**Town of Huntersville
Board of Adjustment
March 14, 2023**

To: Town Board

From:

Date: March 14, 2023

Subject:

EXPLAIN REQUEST:

ACTION RECOMMENDED:

FINANCIAL IMPLICATIONS:

ATTACHMENTS:

None

**Town of Huntersville
Board of Adjustment
March 14, 2023**

To: Town Board

From:

Date: March 14, 2023

Subject:

EXPLAIN REQUEST:

ACTION RECOMMENDED:

FINANCIAL IMPLICATIONS:

ATTACHMENTS:

None

**Town of Huntersville
Board of Adjustment
March 14, 2023**

To: Town Board

From: Jack Simoneau, Planning Director
Jesse James, Senior Planner

Date: March 14, 2023

Subject:

EXPLAIN REQUEST:

ACTION RECOMMENDED:

FINANCIAL IMPLICATIONS:

ATTACHMENTS:

1. Staff Report for A22_01 A22_02
2. Amended Resident Appeal Dastrup
3. Record for October 11 Board of Adjustment Hearing for Appeal
4. Email Aug 3
5. Article 3.2.4
6. Article 11.3



Staff Report for A22-01, A22-02 Appeal Cases for an Apartment Building at 10410 Sam Furr Road.

Appeal of Decision:

Both Applicants A22-01(Hampton at Northcross Homeowners Association, Inc),A22-02(Lindsey Dastrup) filed on 8/3/22 contending that the Town email from Jesse James, dated August 3, 2022, and its contents noted in this document and attached, are not interpreted consistent with Huntersville Zoning Ordinance Section 3.2.4(d). (see narrative attached with the applications for appeal)

Email on August 3, 2022: (also attached)

Mr. Bynum and Concerned Neighbors,

“Good morning and sorry for the delay. Addressing your concerns over the massing and scale of the proposed building, staff's official ruling as it pertains to the section of the ordinance provided in your email is addressed below:

d) General Requirements

1) Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings.

- New buildings which adhere to the scale, massing, volume, spacing, and setback of existing buildings along fronting streets exhibit demonstrable compatibility.
- New buildings which exceed the scale and volume of existing buildings may demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume. The definition of massing in Article 12 illustrates the application of design techniques to reduce the visual perception of size and integrate larger buildings with pre-existing smaller buildings.

The second bullet in this section addresses “new buildings which exceed the scale and volume...” in which the ordinance gives some flexibility for new buildings if the proposal can demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume.

Over the course of several renderings prior to submitting the official application, staff offered advice on scaling back the overall massing from the original. This was done using article 12 seen above. Shown below is the first concept showing mostly a four-story building with some 3-story sections. The next concept and the current proposal shows the evolution of design using Ordinance section 3.4.2 (d). You will notice the majority 4 story building has been reduced in perceived scale by breaking up the building sections, and reducing the volume with 2, 3, and interior 4 story sections.

Staff’s ruling as it relates to this concept is that the developer has met the intent of Zoning Ordinance section 3.2.4 (d).

It is worth mentioning that this project is still in for review as many site related comments from staff are yet to be addressed.

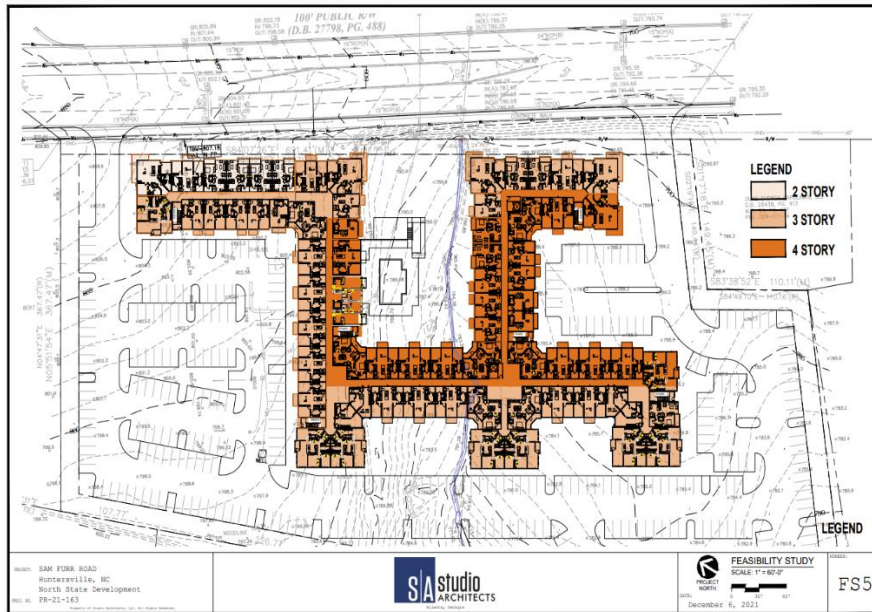


SUMMARY:

TOTAL ACRES = 10.03
 240 UNITS
 3/4 SPLIT BUILDING CONFIGURATION
 BUILDINGS SET AT 3 STORIES ON STREET
 LEVEL AND WRAP CORNERS INTO COURTYARD
 PARKING: 386 SPACES @ 1.61 SP/DU
 30' SHARED DRIVE WITH ELECTRICITIES
 TO ALLOW ACCESS TO 150'X200' PROPERTY



SAM FURR ROAD
 HUNTERVILLE, NC
 SEPTEMBER 1, 2021



Please let us know if you have any further questions or concerns.

Sincerely,

Jesse James, AICP, CZO
 Principal Planner
 Huntersville Planning Dept.
 105 Gilead Rd 3rd Floor
 Huntersville, NC 28078"

Background:

March 31, 2022- Incomplete application submitted for Sam Furr Road Multifamily EPM#435452

April 6, 2022 -First submittal revised and resubmitted (Massing Plan attached)

April 28, 2022- Town completes first round of reviews and comments sent out to applicant.

June 13- Town receives revised plan set in response to first round comments (Massing Plan Attached)

June 30, 2022- Jesse James sent an email to concerned residents of the Hamptons neighborhood—"Good afternoon, I have received several inquiries concerning the project proposed adjacent to your neighborhood. We invite you to Town Hall(Town Hall, 101 Huntersville-Concord Road) on July 19th at 6PM(this is the date and time that Mrs. Burnside and I agreed upon) to discuss this project proposal. You are welcome to invite anyone you would like. This is an informational meeting where staff including myself can answer questions regarding the proposal and what is permitted within our ordinances. Note: this is not a Town Board meeting, it is purely informational in nature".

July 5- Town sends out additional comments after second round of reviews.

July 19, 2022- Jack Simoneau, Brian Richards, Jesse James conducted an informational meeting at Town Hall to a full audience. Discussed zoning process, traffic issues, use and massing of proposed building and process within the zoning ordinance.

August 1, 2022- Bynum Sharpe, Hamptons resident sent email to planning staff:

"Huntersville Zoning Administrator/ Planning Administrator -

This letter is sent by, and on behalf of, property owners directly abutting the proposed Sam Furr Road Multifamily project at 10410 Sam Furr Road. Those property owners include William and Jennifer Sharpe, Joseph and Lindsey Dastrup, Robert and Elizabeth Funderburk, Nick and Jodi Obeid, Mark Owen Parrish and Rachel Murray, and Alvin and Angela Williams, among other concerned property owners within the Hamptons subdivision.

We do not believe this project meets the following General Requirements within the Neighborhood Residential zoning classification:

Section d) General Requirements:

1) Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings. New buildings which adhere to the scale, massing, volume, spacing, and setback of existing buildings along fronting streets exhibit demonstrable compatibility.

All buildings directly adjacent to this property and across Sam Furr Road are single-family homes. The nearby commercial buildings, including the proposed Day Care facility across Sam Furr Road and the CVS and Funeral Home at the corner of Sam Furr Road and Old Statesville Road, are all single level buildings. The proposed 2-4 story project has a scale and mass that is not consistent with existing nearby structures. It does not align with the ordinance requirement to respect existing spacing, mass, and scale.

Further, based on the current proposal many of the apartment units in this 2-4 story building will have windows and/or balconies with views directly down into the homes located at the end of Segars Ln, Cobb Ct and Arledge Ct within the Hamptons subdivision.

We are requesting that you please provide a ruling on this requirement for the proposed Sam Furr Road Multifamily project.

Regards,

William B Sharpe"

August 3, 2022- Jesse James replied to Mr. Bynum's email: (see above)

August 8, 2022- Jack Simoneau and Jesse James met with Hamptons Neighborhood on site with developer to discuss concerns and see properties affected by development.

August 8, 2022- Email sent to Hampton HOA and Developer summarizing meeting at Hamptons properties.

August 10, 2022- Lindsey Dastrup emailed Jack Simoneau, Jesse James and Northstate Development regarding dissatisfaction with proposal after meeting on 8/8/22.

September 2, 2022- Appeal applications are submitted.

September 16, 2022- Town receives third set of revised plans. (Massing Plan Attached)

December 12, 2022- Town receives fourth set of revised plans. (Developer adds 2 affordable units compliant with NCGS 160D-703(B1) for section 3.2.4 (D) (1) regarding massing of building)

January 25, 2023- Town receives fifth set of revised plans.

February 16, 2023- Town Approves and stamps final set.

STANDARDS FOR GRANTING AN APPEAL:

The Huntersville Zoning Ordinance Article 11.3.2(c) Standards for Granting an Appeal are as follows:

- 1) The Board of Adjustment shall reverse or modify the order, decision, determination, or interpretation under appeal only upon finding an error in the application of these regulations on the part of the officer rendering the order, decision, determination, or interpretation.
- 2) In modifying the order, decision, determination, or interpretation, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.

Staff Conclusions:

Staff concludes that the August 3 email by Jesse James accurately summarizes the interpretation of the ordinance stating that the proposed hotel meets the intent of section 3.2.4(d). Furthermore, the developer(s) have subsequently added two affordable housing units to this project in compliance with NCGS 160D-703(B1) which makes section 3.2.4 (D) of the Huntersville Zoning Ordinance as it pertains to the proposed apartment building, null and void.

Attachments:

1. Appeal Applications
2. Record for Appeal
3. August 3 Email from staff
4. Applicable Zoning Ordinance Articles



Notice of Appeal to Board of Adjustment Application

Date: 9/6/22 ; amendment to 9/2/22 application

Date of Notification of Decision for which there is an Appeal: 8/3/22

NOTICE: This Notice of Appeal must be filed within 30 days of the receipt of the Planning Director, or designated Administrator's Order, decision, determination or interpretation. Failure to file, in a timely manner, a complete Notice of Appeal (application, fee, all attachments, etc.) shall constitute a waiver of any rights to appeal under the Town of Huntersville Zoning Ordinance, Article 11.2, et seq. Appellant hereby grants permission to the Town of Huntersville personnel to enter the subject property for any purpose required in processing this Notice of Appeal. Town of Huntersville personnel also agree to coordinate such site visits with property owner at times agreeable to all parties.

Location of Building / Property

Address: 10410 Sam Furr Rd., Huntersville

Tax Parcel ID Number(s): 00911115

Acreage: Approx. 10.03 Zoning: NR

Text of Zoning Ordinance to be appealed

Article: 3 Section: 3.2.4

Text to be appealed: Please see attached narrative.

Submittal Requirements

The following must be submitted with this completed application (signed and dated by the Appellant):

- One (1) hard copy and one (1) electronic copy (PDF via email) of any applicable map(s), site plans, exhibits, and applications showing exact location of property with respect to existing streets, adjoining lots and other important features on or contiguous to the property. Also, include any maps and/or illustrations (to scale), which are necessary to show the location, number and size of buildings, signs, etc., on the property.
- A list of names, addresses and tax parcel identification numbers of properties that abut the site, are across the street from the site or are otherwise within one hundred feet (100') of the site.
- Review Fee (Please check most recent version of Fee Schedule for applicable review fee for Appeal)

Notifications Required

Planning Staff will be required to notify in writing each adjoining property owner. At least, one (1) sign will be placed on the property(ies) in question located along public streets, or where visible by the public.

APPEALS WITHIN WATERSHED OVERLAY DISTRICTS

If you are appealing a determination from the Mountain Island Lake or Lake Norman Watershed Overlay Districts, Planning Staff will be required to notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for consumption as follows:

- Mountain Island Lake Watershed Overlay. Local governments having jurisdiction in the watershed: Charlotte Mecklenburg, Cornelius and Huntersville. Entities using the water supply for consumption: Mecklenburg County, Gastonia and Mount Holly.
- Lake Norman Watershed Overlay. Local governments having jurisdiction in the watershed: Davidson, Cornelius and Huntersville. Entities using the water supply for consumption: Mooresville, Mecklenburg County and Lincoln County.

Appeal Requirements

STANDARDS FOR GRANDING AN APPEAL (Article 11.3.2.c):

1. The Board of Adjustment shall reserve or modify the order, decision, determination, or interpretation under appeal only upon finding an error in the application of these regulations on the part of the officer rendering the order, decision, determination, or interpretation.
2. In modifying the order, decision, determination, or interpretation, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.

In the following space, indicate the FACTS or evidence that demonstrates to the Board of Adjustment that should lead the Board to conclude the decision of the Planning Director or designated Administrator was in error.

Please see attached narrative.

Applicant

Printed Name Lindsey Dastrup Phone 443 - 824 - 5591

☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☒ Other: individual

☒ By signature below, I hereby acknowledge, as/on behalf of (circle one) the applicant my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Commissioners except through sworn testimony at the public hearing. (Applicable if box is checked.)

Signature Lindsey Dastrup

Title _____ Email lcdastrup@gmail.com

Address of Applicant 16544 Segars Ln. Huntersville NC 28078

Property Owner (if different than applicant)

Printed Name _____ Phone _____

☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

☐ By signature below, I hereby acknowledge, as/on behalf of (circle one) the owner my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Commissioners except through sworn testimony at the public hearing. (Applicable if box is checked.)

Signature _____

Title _____ Email _____

Address of Property Owner _____

* Property owner hereby grants permission to the Town of Huntersville personnel to enter the subject property for any purpose required in processing this application.

Every owner of each parcel included in this application, or the owner (s) duly authorized agent, must sign this application. If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION. **If additional space is needed for signatures, attach the Town of Huntersville Signature Addendum Form.**

Narrative to be Attached to Notice of Appeal to Board of Adjustment Application

Affected Residents Adjacent to Subject Property

Applicant appeals the ruling of the Town of Huntersville Planning Department as set forth in the email of Jesse James dated August 3, 2022, a copy of which is attached hereto, that the large 244-unit apartment development proposed for the subject property by North State Development and JHG Commercial Properties, LLC is consistent with Section 3.2.4(d) of the Huntersville Zoning Ordinance.

Applicants are residents who live or own property adjacent to the proposed project who will be damaged if the proposed project is approved in violation of the requirements of the Zoning Ordinance.

In particular, the ruling that "the developer has met the intent of Zoning Ordinance section 3.2.4(d)" is erroneous and should be reversed by the Board of Adjustment. Section 3.2.4(d) provides in pertinent part as follows:

Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings.

This requirement may be met in one of two ways:

- New buildings which adhere to the scale, massing, volume, spacing, and setback of existing buildings along fronting streets exhibit demonstrable compatibility.
- New buildings which exceed the scale and volume of existing buildings may demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume.

Staff has ruled on the behalf of the Town that the proposed project meets these requirements. It clearly does not. Sam Furr Road is an existing street which is primarily residential in nature. Indeed, all the properties directly to the west, north and south of the subject property are single-family detached homes, primarily one story with some one-and-a-half and two story homes. The property to the east is undeveloped dense woods. The proposed project consists of a massive 2, 3 and 4-story largely rectangular apartment block structure which clearly and obviously does not adhere to the scale, massing, volume, spacing and setbacks already established along Sam Furr Road by the existing single-family homes.

In fact, the nearest non-single-family-residential structures are a funeral home and a CVS Pharmacy located a quarter of a mile to the east of the subject property. Both are solitary one-story structures which again bear no resemblance to the proposed massive structure proposed for the apartment project. Going the other direction, the nearest non-single-family-residential structure to the west is an Advance Auto Parts store which again is a solitary one-story structure bearing no similarity in scale, massing, volume, spacing or setbacks to the proposed apartment complex.

The Planning Staff's ruling states that the staff offered advice to the developers on scaling back the massing from the original proposal. While the before and after renderings provided show that certain of the largest portions have been moved somewhat back from Sam Furr Road, the ordinance specifically states that "new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings." It is plain to the eye that slightly modifying the once extremely massive structure to make it somewhat less massive will not cause it to match the scale of the

surrounding single-family homes, nor the general spacing of the solitary one and two-story homes surrounded by grassy yards, nor the way the surrounding homes address the street. Certainly the volume and spacing of the large apartment block building is almost completely the opposite of those of the surrounding homes. And to our understanding, the project is still 244 units – the actual size of the project has not been diminished in any way.

It is clear from the wording of the Planning Staff's ruling that Staff's decision regarding the "spacing of structures, building mass and scale, and street frontage relationships" is final and not subject to significant change, even though the project itself may still be undergoing review and minor revisions related to staff comments. A review of the currently outstanding comments regarding the project available on the town website shows that the remaining concerns are mostly ministerial and regulatory in nature and that the Planning Staff has accepted the currently-proposed general spacing of structures, building mass and scale, and street frontage relationships of the proposed project. Thus this matter is ripe for review by the Board of Adjustment.

We will be negatively impacted by the visual impact of the large apartment building looming over our homes and our neighborhood pool and clubhouse, by excessive noise and light pollution, by construction noise and dust and construction dangers to our children who play in the area, by additional traffic congestion which will affect our ability to enter and exit our subdivision to get to our homes especially due to the divided nature of Sam Furr Road, by the noise and pollution caused by additional traffic, and by additional stormwater runoff which will affect our homes and yards. Some or all of these may also constitute nuisances to us, and will likely negatively affect the property values of our homes. We will be damaged in these and in numerous other ways as will be further shown at the hearing on this matter. We appreciate the Town's and the Board of Adjustment's attention to this matter.

from: Jesse James <jjames@huntersville.org>
to: Bynum Sharpe <bsharpe02@gmail.com>, Jack Simoneau <jsimoneau@huntersville.org>
cc: Lindsey Dastrup <lcdastrup@gmail.com>, Brian Richards <brichards@huntersville.org>
date: Aug 3, 2022, 9:01 AM
subject: RE: Sam Furr Road Multifamily - Zoning Requirements
mailed-by: huntersville.org
signed-by: dkim.mimecast.org
security: Standard encryption (TLS)

Mr. Bynum and Concerned Neighbors,

Good morning and sorry for the delay. Addressing your concerns over the massing and scale of the proposed building, staff's official ruling as it pertains to the section of the ordinance provided in your email is addressed below:

d) General Requirements

1) Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings.

- New buildings which adhere to the scale, massing, volume, spacing, and setback of existing buildings along fronting streets exhibit demonstrable compatibility.
- New buildings which exceed the scale and volume of existing buildings may demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume. The definition of massing in Article 12 illustrates the application of design techniques to reduce the visual perception of size and integrate larger buildings with pre-existing smaller buildings.

The second bullet in this section addresses "new buildings which exceed the scale and volume..." in which the ordinance gives some flexibility for new buildings if the proposal can demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume.

Over the course of several renderings prior to submitting the official application, staff offered advice on scaling back the overall massing from the original. This was done using article 12 seen above. Shown below is the first concept showing mostly a four-story building with some 3-story sections. The next concept and the current proposal shows the evolution of design using Ordinance section 3.4.2 (d). You will notice the majority 4 story building has been reduced in perceived scale by breaking up the building sections, and reducing the volume with 2, 3, and interior 4 story sections.

Staff's ruling as it relates to this concept is that the developer has met the intent of Zoning Ordinance section 3.2.4 (d).

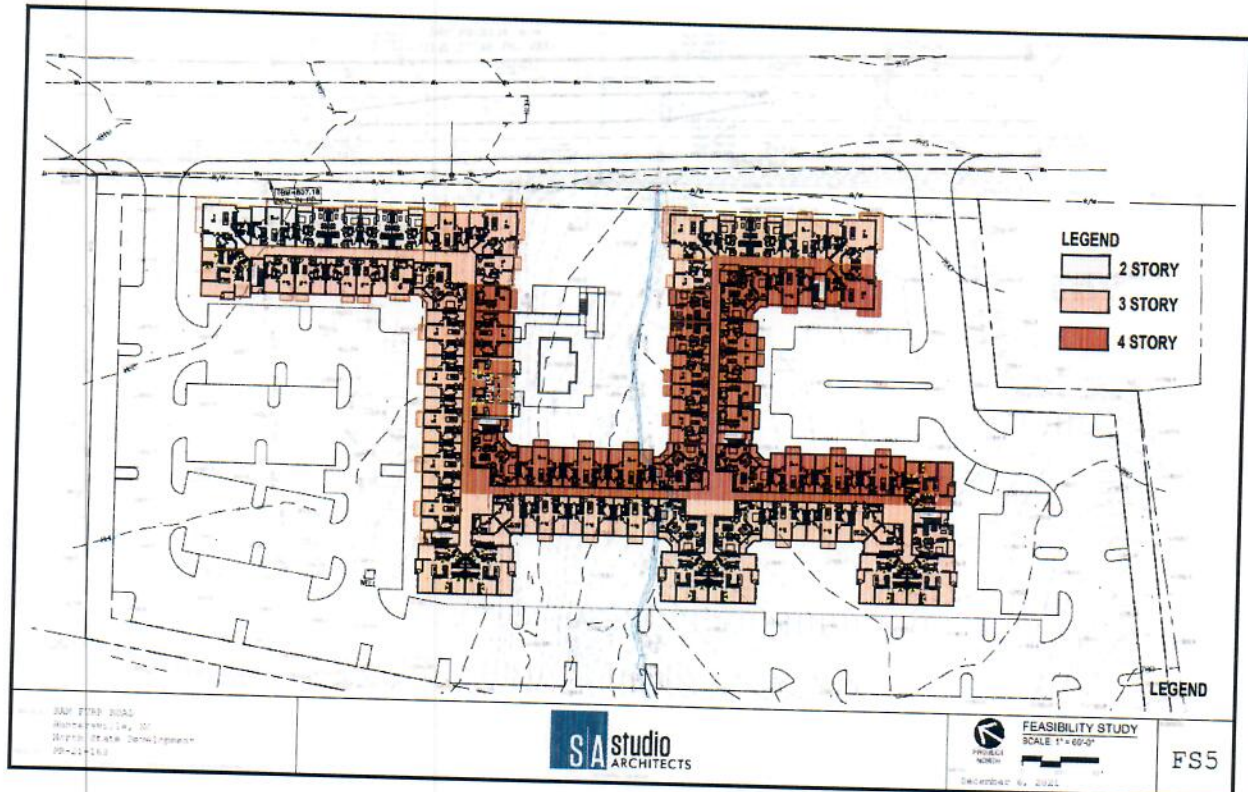


SUMMARY:

TOTAL ACRES = 10.03
 240 UNITS
 3/4 SPLIT BUILDING CONFIGURATION
 BUILDINGS SET AT 3 STORIES ON STREET
 LEVEL AND WRAP CORNERS INTO COURTYARD
 PARKING: 386 SPACES @ 1.61 SP/ DU
 30' SHARED DRIVE WITH ELECTRICITIES
 TO ALLOW ACCESS TO 150'X200' PROPERTY



SAM FURR ROAD
 HUNTERSVILLE, NC
 SEPTEMBER 1, 2021



It is worth mentioning that this project is still in for review as many site related comments from staff are yet to be addressed.

Please let us know if you have any further questions or concerns.

Sincerely,

Jesse James, AICP, CZO
Principal Planner
Huntersville Planning Dept.
105 Gilead Rd 3rd Floor
Huntersville, NC 28078

Mailing address
PO BOX 664
Huntersville, NC 28070
Ph 704 766 2212
Fx 704 992 5528
jjames@huntersville.org

Property Involved in Appeal

Address 10410 Sam Furr Road, Huntersville NC 28078

Owner JHG Commercial Properties, LLC

Tax Parcel 911115

Adjoining/ Nearby Properties

Address	Owner(s)	Tax Parcel
10332 Sam Furr Rd	Thomas Lambert & Wanda Hudson	911116
16610 Sutters Run Ln	Michelle Vogeli	911204
16548 Segars Ln	William & Jennifer Sharpe	911224
16544 Segars Ln	Joseph & Lindsey Dastrup	911225
16538 Segars Ln	Segal Sanjay Patel	911226
10507 Cobb Ct	Robert & Elizabeth Funderburk	911228
10511 Cobb Ct	Nick & Jodi Obeid	911229
10515 Cobb Ct	Lashauna Genine & Rochelle Lowry	911230
10510 Cobb Ct	Mark Parish & Rachel Murray	911231
10517 Arledge Ln	Robert & Jaimie Bass	911236
10521 Arledge Ln	John Z Bender	911237
10524 Arledge Ln	Alvin & Angela Williams	911238
16131 Old Statesville Rd	Mecklenburg County	911119
10528 Sam Furr Rd	Duke Energy Carolinas, LLC	911114
10532 Sam Furr Rd	Duke Energy Carolinas, LLC	911135
16710 Hampton Crossing Dr	Hampton Ridge Homeowners Association	543275
10340 Vixen Ln	Hampton at Northcross Homeowners Association	911244
10533 Sam Furr Rd	Genoveva & Leonardo Naranjo-Alvarez	543276

Record for March, 2023 Board of Adjustment Hearing for Appeal Case A22-01 A22-02

March 31, 2022- Incomplete application submitted for Sam Furr Road Multifamily EPM#435452

April 6, 2022 -First submittal revised and resubmitted (Massing Plan attached)

April 28, 2022- Town completes first round of reviews and comments sent out to applicant.

June 13- Town receives revised plan set in response to first round comments (Massing Plan Attached)

June 30, 2022- Jesse James sent an email to concerned residents of the Hamptons neighborhood— "Good afternoon, I have received several inquiries concerning the project proposed adjacent to your neighborhood. We invite you to Town Hall(Town Hall, 101 Huntersville-Concord Road) on July 19th at 6PM(this is the date and time that Mrs. Burnside and I agreed upon) to discuss this project proposal. You are welcome to invite anyone you would like. This is an informational meeting where staff including myself can answer questions regarding the proposal and what is permitted within our ordinances. Note: this is not a Town Board meeting, it is purely informational in nature".

July 5- Town sends out additional comments after second round of reviews.

July 19, 2022- Jack Simoneau, Brian Richards, Jesse James conducted an informational meeting at Town Hall to a full audience. Discussed zoning process, traffic issues, use and massing of proposed building and process within the zoning ordinance.

August 1, 2022- Bynum Sharpe, Hamptons resident sent email to planning staff:

"Huntersville Zoning Administrator/ Planning Administrator -

This letter is sent by, and on behalf of, property owners directly abutting the proposed Sam Furr Road Multifamily project at 10410 Sam Furr Road. Those property owners include William and Jennifer Sharpe, Joseph and Lindsey Dastrup, Robert and Elizabeth Funderburk, Nick and Jodi Obeid, Mark Owen Parrish and Rachel Murray, and Alvin and Angela Williams, among other concerned property owners within the Hamptons subdivision.

We do not believe this project meets the following General Requirements within the Neighborhood Residential zoning classification:

Section d) General Requirements:

1) Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings. New buildings which adhere to the scale, massing, volume, spacing, and setback of existing buildings along fronting streets exhibit demonstrable compatibility.

All buildings directly adjacent to this property and across Sam Furr Road are single-family homes. The nearby commercial buildings, including the proposed Day Care facility across Sam Furr Road and the CVS and Funeral Home at the corner of Sam Furr Road and Old Statesville Road, are all single level buildings. The proposed 2-4 story project has a scale and mass that is not consistent with existing nearby structures. It does not align with the ordinance requirement to respect existing spacing, mass, and scale.

Further, based on the current proposal many of the apartment units in this 2-4 story building will have windows and/or balconies with views directly down into the homes located at the end of Segars Ln, Cobb Ct and Arledge Ct within the Hamptons subdivision.

We are requesting that you please provide a ruling on this requirement for the proposed Sam Furr Road Multifamily project.

Regards,

William B Sharpe"

August 3, 2022- Jesse James replied to Mr. Bynum's email:

"Mr. Bynum and Concerned Neighbors,

Good morning and sorry for the delay. Addressing your concerns over the massing and scale of the proposed building, staff's official ruling as it pertains to the section of the ordinance provided in your email is addressed below:

d) General Requirements

1) Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings.

- New buildings which adhere to the scale, massing, volume, spacing, and setback of existing buildings along fronting streets exhibit demonstrable compatibility.
- New buildings which exceed the scale and volume of existing buildings may demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume. The definition of massing in Article 12 illustrates the application of design techniques to reduce the visual perception of size and integrate larger buildings with pre-existing smaller buildings.

The second bullet in this section addresses "new buildings which exceed the scale and volume..." in which the ordinance gives some flexibility for new buildings if the proposal can demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume.

Over the course of several renderings prior to submitting the official application, staff offered advice on scaling back the overall massing from the original. This was done using article 12 seen above. Shown below is the first concept showing mostly a four-story building with some 3-story sections. The next concept and the current proposal shows the evolution of design using Ordinance section 3.4.2 (d). You will notice the majority 4 story building has been reduced in perceived scale by breaking up the building sections, and reducing the volume with 2, 3, and interior 4 story sections.

Staff's ruling as it relates to this concept is that the developer has met the intent of Zoning Ordinance section 3.2.4 (d).

It is worth mentioning that this project is still in for review as many site related comments from staff are yet to be addressed.

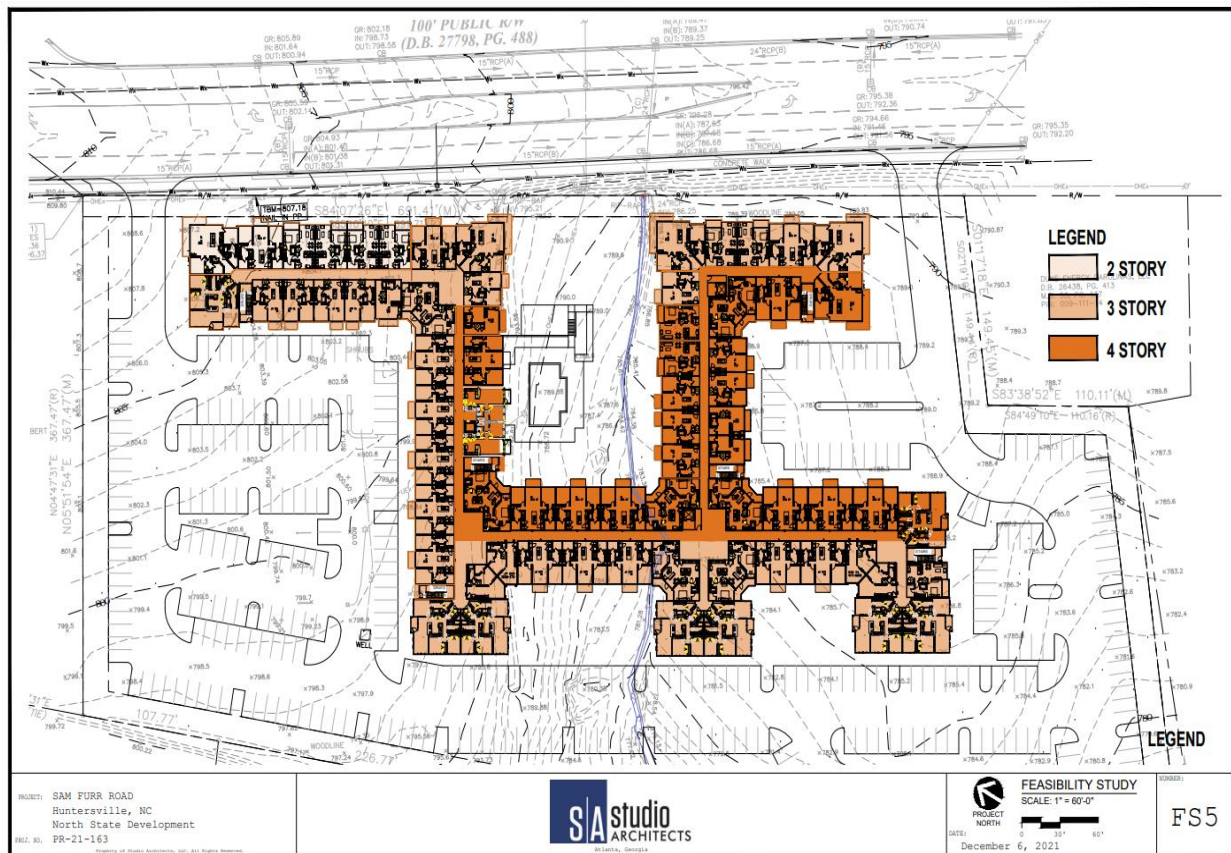


SUMMARY:

TOTAL ACRES = 10.03
 240 UNITS
 3/4 SPLIT BUILDING CONFIGURATION
 BUILDINGS SET AT 3 STORIES ON STREET
 LEVEL AND WRAP CORNERS INTO COURTYARD
 PARKING: 386 SPACES @ 1.61 SP/DU
 30' SHARED DRIVE WITH ELECTRICITIES
 TO ALLOW ACCESS TO 150'X200' PROPERTY



SAM FURR ROAD
 HUNTERSVILLE, NC
 SEPTEMBER 1, 2021



Please let us know if you have any further questions or concerns. "

August 8, 2022- Jack Simoneau and Jesse James met with Hamptons Neighborhood on site with developer to discuss concerns and see properties affected by development.

August 8, 2022- Email sent to Hampton HOA and Developer summarizing meeting at Hamptons properties.

August 10, 2022- Lindsey Dastrup emailed Jack Simoneau, Jesse James and Northstate Development regarding dissatisfaction with proposal after meeting on 8/8/22.

September 2, 2022- Appeal applications are submitted.

September 16, 2022- Town receives third set of revised plans. (Massing Plan Attached)

December 12, 2022- Town receives fourth set of revised plans. (Developer adds 2 affordable units compliant with NCGS 160D-703(B1) for section 3.2.4 (D) (1) regarding massing of building)

January 25, 2023- Town receives fifth set of revised plans.

February 16, 2023- Town Approves and stamps final set.

From: Jesse James
Sent: Wednesday, August 3, 2022 9:02 AM
To: Bynum Sharpe; Jack Simoneau
Cc: Lindsey Dastrup; Brian Richards
Subject: RE: Sam Furr Road Multifamily - Zoning Requirements

Mr. Bynum and Concerned Neighbors,

Good morning and sorry for the delay. Addressing your concerns over the massing and scale of the proposed building, staff's official ruling as it pertains to the section of the ordinance provided in your email is addressed below:

d) General Requirements

1) Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings.

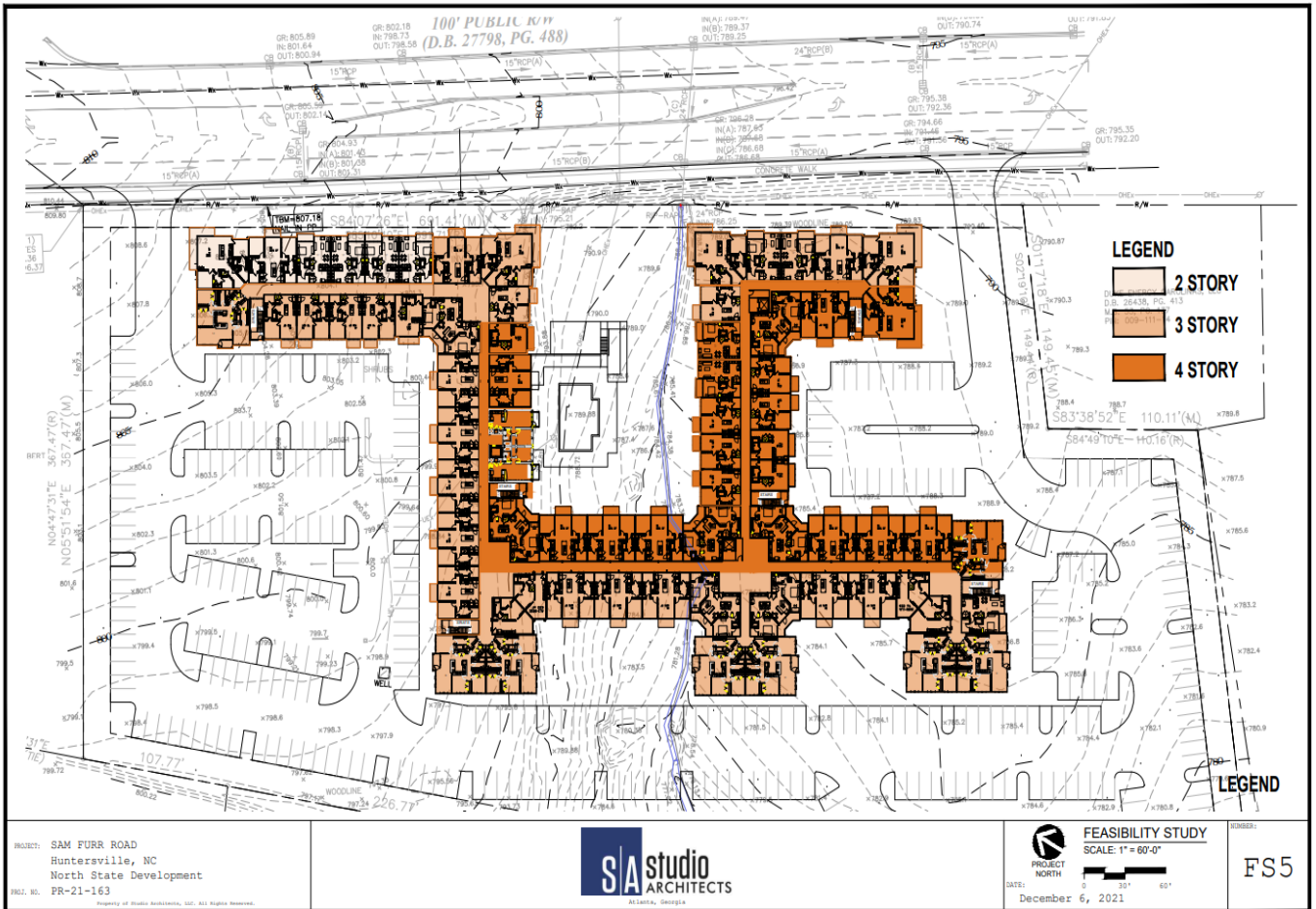
- New buildings which adhere to the scale, massing, volume, spacing, and setback of existing buildings along fronting streets exhibit demonstrable compatibility.
- New buildings which exceed the scale and volume of existing buildings may demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume. The definition of massing in Article 12 illustrates the application of design techniques to reduce the visual perception of size and integrate larger buildings with pre-existing smaller buildings.

The second bullet in this section addresses "new buildings which exceed the scale and volume..." in which the ordinance gives some flexibility for new buildings if the proposal can demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume.

Over the course of several renderings prior to submitting the official application, staff offered advice on scaling back the overall massing from the original. This was done using article 12 seen above. Shown below is the first concept showing mostly a four-story building with some 3-story sections. The next concept and the current proposal shows the evolution of design using Ordinance section 3.4.2 (d). You will notice the majority 4 story building has been reduced in perceived scale by breaking up the building sections, and reducing the volume with 2, 3, and interior 4 story sections.

Staff's ruling as it relates to this concept is that the developer has met the intent of Zoning Ordinance section 3.2.4 (d).

It is worth mentioning that this project is still in for review as many site related comments from staff are yet to be addressed.



Please let us know if you have any further questions or concerns.

Sincerely,

Jesse James, AICP, CZO
Principal Planner
Huntersville Planning Dept.
105 Gilead Rd 3rd Floor
Huntersville, NC 28078

Mailing address
PO BOX 664
Huntersville, NC 28070
Ph 704 766 2212
Fx 704 992 5528
jjames@huntersville.org

-----Original Message-----

From: Bynum Sharpe <bsharpe02@gmail.com>

Sent: Monday, August 1, 2022 12:45 PM

To: Jack Simoneau <jsimoneau@huntersville.org>; Jesse James <jjames@huntersville.org>

Cc: Lindsey Dastrup <lcdastrup@gmail.com>

Subject: Sam Furr Road Multifamily - Zoning Requirements

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Huntersville Zoning Administrator/ Planning Administrator -

This letter is sent by, and on behalf of, property owners directly abutting the proposed Sam Furr Road Multifamily project at 10410 Sam Furr Road. Those property owners include William and Jennifer Sharpe, Joseph and Lindsey Dastrup, Robert and Elizabeth Funderburk, Nick and Jodi Obeid, Mark Owen Parrish and Rachel Murray, and Alvin and Angela Williams, among other concerned property owners within the Hamptons subdivision.

We do not believe this project meets the following General Requirements within the Neighborhood Residential zoning classification:

Section d) General Requirements:

1) Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings. New buildings which adhere to the scale, massing, volume, spacing, and setback of existing buildings along fronting streets exhibit demonstrable compatibility.

All buildings directly adjacent to this property and across Sam Furr Road are single-family homes. The nearby commercial buildings, including the proposed Day Care facility across Sam Furr Road and the CVS and Funeral Home at the corner of Sam Furr Road and Old Statesville Road, are all single level buildings. The proposed 2-4 story project has a scale and mass that is not consistent with existing nearby structures. It does not align with the ordinance requirement to respect existing spacing, mass, and scale.

Further, based on the current proposal many of the apartment units in this 2-4 story building will have windows and/or balconies with views directly down into the homes located at the end of Segars Ln, Cobb Ct and Arledge Ct within the Hamptons subdivision.

We are requesting that you please provide a ruling on this requirement for the proposed Sam Furr Road Multifamily project.

Regards,

William B Sharpe

3.2.4 NEIGHBORHOOD RESIDENTIAL DISTRICT (NR)

Intent: The Neighborhood Residential District provides for residential infill development around the Town Core, Activity Centers and Mixed Use Centers and their logical extensions identified in adopted long range plans. . Streets in the Neighborhood Residential District must be interconnected, according to Article 5, Streets, and Urban Open Space provided according to Article 7. A range of housing types is encouraged. Low-intensity business activity is permitted in mixed-use and commercial buildings at residential scale, according to locational criteria. The intensity to which permitted uses may be built is regulated by the building type which corresponds to the use.

(a) Permitted Uses.

Uses permitted by right.

- bed and breakfast inns
- boarding or rooming houses for up to four roomers
- congregate housing designed within the “civic” building type
- family care home
- multi-family homes
- single family homes

Uses permitted with conditions.

- cemeteries, (9.7)
- religious institutions, (9.8)
- commercial use in a mixed-use building¹, located on an arterial or at the intersection of a local street and a larger capacity street
- commercial use, in a detached house building type, located within 1/4 mile of a Town Center district and fronting a major or minor thoroughfare (Includes properties in which any portion falls within the 1/4 mile boundary) (9.51)
- essential services 1 and 2, (9.14)
- government buildings up to 5000 sq. ft. of gross floor area
- neighborhood and outdoor recreation, (9.21)
- parks, (9.29)
- retirement communities (9.50)
- schools, (9.35)
- transit-oriented parking lots as a principal use, (9.49)
- transit shelters, (9.39)

Uses permitted with Special Use Permit.

- wind energy facility, minor, accessory, (9.53)

(b) Permitted Building and Lot Types.

- apartment
- attached house
- civic building
- detached house (Commercial uses up to 4,500 sq. ft. of first floor area)
- mixed use¹ , up to 3,000 sq. ft. of first floor area

(c) Permitted Accessory Uses.

- accessory dwelling, (9.1)
- day care home (small), (9.11)
- home occupation, (9.19)
- marinas, (9.42)
- solar facility, minor non-residential (9.54)
- solar energy facility, minor residential (9.54)
- accessory uses permitted in all districts (8.11)

(d) General Requirements.

1. Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings.
 - a. New buildings which adhere to the scale, massing, volume, spacing, and setback of existing buildings along fronting streets exhibit demonstrable compatibility.
 - b. New buildings which exceed the scale and volume of existing buildings may demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume. The definition of massing in Article 12 illustrates the application of design techniques to reduce the visual perception of size and integrate larger buildings with pre-existing smaller buildings.
 - c. Subsection 3.2.4(d)(1)(a)-(b) shall not apply to development on parcels where multifamily structures are an allowable use and the development contains two or more affordable housing units for families or individuals with incomes below eighty percent (80%) of the area median income.
 - d. A single-family detached house established on a lot of one acre or more that is created according to the provisions of Article 8.1, paragraph 1, need not adhere to the spacing, massing, scale, and street frontage relationships of existing buildings along an existing street or road, but shall, at a minimum, observe a front setback of 40 feet and a lot width of 90 feet. This paragraph shall take precedence over the requirement of Article 4: Lot Types/Detached House for placement of a building on its lot.
 - e. Nothing in this subsection shall be interpreted to conflict with the building design element provision as found in N.C.G.S. 160D-702(b) for structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings
2. On new streets, allowable building and lot types will establish the development pattern.
3. In major subdivisions, the aggregate number of dwelling units contained in attached houses, apartment buildings, and mixed-use buildings shall not exceed 30 percent of the total number of dwelling units in a project.
4. Notwithstanding the limitations of 3), above, in any section of a major subdivision located within 1/4 mile of a designated rail transit station, the percentage of dwelling units contained in attached houses, apartment buildings, and mixed-use buildings is not limited. Higher overall density is encouraged within 1/4 mile of rail transit stations. Rail transit stations are those locations designated by resolution adopted by the Board of Commissioners of the Town of Huntersville.
5. Every building lot shall have frontage upon a public street except as provided in Section 8.1.
6. The percentage of attached dwelling units contained in a retirement community is not limited when duplex style buildings are used.

7. See Section 8.16, Standards for Residential Lot Widths, Alleys, Garages and Parking in Residential Districts.

¹ The mixed-use building duplicates the shopfront building type and has at least two occupiable stories; at least 50% of the habitable area of the building shall be in residential use, the remainder shall be in commercial use. However, when an existing residential building is redeveloped to a mixed-use, at least 40% of the habitable area shall be in residential use.

HISTORY

Amended by Ord. TA22-07 on 11/21/2022

11.3 Appeals And Variances

1. Board of Adjustment.

- a. **Establishment.** The Board of Adjustment of the Town of Huntersville (the “Board of Adjustment”) shall consist of seven regular members and three alternate members. The regular membership shall consist of six members who reside within the corporate limits, appointed by the Town Board, plus one extraterritorial member. The number of regular members appointed who reside in the extraterritorial zoning jurisdiction shall at a minimum meet the requirements of N.C.G.S. 160D-307 for proportional representation, but shall in no instance be less than one. The alternate membership shall consist of at least two members who reside within the corporate limits, with the remaining alternate member residing in either the corporate limits or the extraterritorial jurisdiction of Huntersville.
- b. **Members from Within the Town Limits.** Each member and alternate shall be appointed by the Town Board for a term of three years. The terms of membership shall be staggered; therefore, in appointing the original members or in the filling of vacancies caused by the expiration of the terms of existing members, the Town Board may appoint certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. The expiration date for each term shall be the 30th day of June of the year in which said term is to expire and the term of office of the succeeding member shall begin on the 1st day of July. If the original members are appointed such that their terms of office begin prior to a July 1 date, such terms of original members shall be extended by the period of time between their appointment and June 30th of the year of their appointment, it being the intent of this proviso that original members shall serve terms of one, two, or three years plus a period of time between their initial appointments and June 30th of the year of their initial appointments. For purposes of this section, original appointments refer to members and alternates appointed upon first establishment of the Board of Adjustment, and to members and alternates appointed to newly created seats upon any expansion of the Board of Adjustment.
- c. **Extraterritorial Members.** In addition to the members and alternates herein above provided for, members of the Board of Adjustment shall be appointed from the area within the extraterritorial jurisdiction of the Town of Huntersville, pursuant to the appointment process prescribed in N.C.G.S. 160D-307. Members so appointed shall have all of the obligations and duties of the other members of the Board of Adjustment, including rights to vote on all matters coming before the Board. Each extraterritorial member shall be appointed for a period of three years. Expiration dates for each term, initially and thereafter, shall be the 30th day of June of the year in which said term is to expire and the term of office of the succeeding member shall begin on the 1st day of July; provided further that if the original members are appointed such that their terms of office begin prior to a July 1 date, such terms of original members shall be extended by the period of time between their appointment and June 30 of the year of their appointment. Eligibility for reappointment shall be determined by the procedures and policies established by the appointing body.
- d. **Term Limits and Service Limits.** Members and alternates shall be limited to serving two (2) consecutive terms; however, a member or alternate may be reappointed to the Board of Adjustment after remaining off of the Board for at least one (1) year. Time spent as an alternate member shall not count in determining whether an alternate is eligible for appointment as a regular member. Additionally, appointment to a vacant position as an alternate or regular member to fill an unexpired term shall not be counted in determining eligibility for appointment or reappointment. No person shall be eligible for appointment as

a regular or alternate member if such person is serving on any other board or commission appointed by the Board of Commissioners, unless such other service is in an ex officio capacity. These terms limits and service limits shall apply to both members and alternates residing in the corporate limits and within the extraterritorial jurisdiction of the Town of Huntersville. Notwithstanding the foregoing, the Board of Commissioners shall have the discretion to waive these term limits and service limits for a particular position on the Board of Adjustment when there are no other members of the public willing to serve in the position, or in other appropriate circumstances as determined by the Board of Commissioners.

e. Proceedings.

- (1) Meetings. All meetings of the Board of Adjustment shall be held at a regular place and shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, an indication of such fact. Final disposition of appeals or variances shall be recorded in the minutes, indicating the reasons of the Board therefore, all of which shall become a part of the public record.
- (2) Quorum Required. No final action shall be taken on any matter unless a quorum is present. A quorum is the majority of the members of the Board or, for variance actions (which require the concurring vote of 4/5ths of the Board), 4/5ths of the membership.

f. Powers and Duties. The Board of Adjustment shall have the following powers and duties:

- (1) Administrative Review. To hear and decide appeals according to the procedures of this section, where it is alleged there is an error in any order, decision, determination, or interpretation made by the Zoning Administrator or designated administrative official in the enforcement of this ordinance.
- (2) Variances. To hear and decide applications for variances from the terms of this ordinance according to the standards and procedures herein so that the spirit of the ordinance is observed, public safety and welfare secured, and substantial justice done. Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed by the Board.
- (3) Density Averaging Certificates. To hear and decide applications for density averaging certificates for paired-parcel averaged-density development, acting as the Watershed Review Board, to ensure both parcels considered together meet the standards of the ordinance and that potential owners have notice of how the watershed regulations were applied to the parcel pair.

2. Appeals and Variances.

a. Petition to Board of Adjustment for Appeal or Variance.

- (1) An appeal of an administrative decision may be initiated by any person with standing or by the local government.
- (2) A petition for variance may be initiated only by the owner of the affected property, an agent authorized in writing to act on the owner's behalf, or a person having a written contractual interest in the affected property.

b. **Appeals.** The Board of Adjustment shall hear and decide appeals of administrative decisions of administrative officials charged with enforcement of the zoning and subdivision ordinances and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

- (1) Any person who has standing under G.S. 160D-1402(c), or the Town may appeal a decision to the Board of Adjustment. An appeal is taken by filing a Notice of Appeal with the Clerk to the Board of Adjustment. The Notice of Appeal shall state the grounds for the appeal.
- (2) The official who made the decision shall give written notice of the determination to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
- (3) The owner or other party shall have 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
- (4) The official who made the decision shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the decision appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner. The record may be provided in written or electronic form.
- (5) Timely appeals of a notice of violation or other administrative decision shall stay enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the Board of Adjustment and any subsequent appeal in accordance with N.C.G.S. § 160D-1402 or during the pendency of any civil proceeding authorized by law or appeals therefrom. After notice of the appeal has been filed, if the official who made the decision certifies to the Board of Adjustment that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance, the enforcement proceedings shall not be stayed except by a restraining order granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for development approvals to use the property; in these situations, the appellant or local government may request and the Board of Adjustment may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.
- (6) Subject to the provisions of subdivision (6) of this subsection, the Board of Adjustment shall hear and decide the appeal within a reasonable time.
- (7) The applicant, the local government, and any person with standing to appeal shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the Board of Adjustment. The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town would be

unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board of Adjustment shall continue the hearing.

- (8) The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the official who made the decision.
- (9) When hearing an appeal pursuant to N.C.G.S. § 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in N.C.G.S. § 160D-1402(j).

c. Standards for Granting an Appeal.

- (1) The Board of Adjustment shall reverse or modify the order, decision, determination, or interpretation under appeal only upon finding an error in the application of these regulations on the part of the officer rendering the order, decision, determination, or interpretation.
- (2) In modifying the order, decision, determination, or interpretation, the Board of Adjustment shall have all the powers of the official from whom the appeal is taken.

d. Filing a Variance Petition. A petition for variance, in the form prescribed by the Board of Adjustment, shall be filed with the Clerk to the Board of Adjustment or designated administrator, accompanied by a non-refundable filing fee as established by the Town Board and a list of adjoining properties including tax parcel numbers and the name and address of each owner.

e. Standards for Granting a Variance. 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 all of the following:

- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be 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 shall not be regarded as a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

f. No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

g. Notice and Hearing.

- (1) The Board of Adjustment shall, in accordance with rules adopted by it for such purpose, hold public hearings on any appeal or variance petition which comes before it.
- (2) Notice of Hearing. – Notice of Hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning or subdivision ordinance. In the absence of evidence to the contrary, the Town may rely on the County tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the Town shall also prominently post a Notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The Board of Adjustment may continue an evidentiary hearing that has been convened without further advertisement.

h. Action by the Board of Adjustment.

- (1) The concurring vote of four-fifths (4/5ths) of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.
- (2) A member of the Board shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.
- (3) Quasi-Judicial Decisions. The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair, or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision with the Clerk to the Board, or such other office or official as the ordinance specifies. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

(4) Oaths. The Chair of the Board or any member acting as Chair and the Clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the Board of Adjustment determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

(5) Subpoenas. The Board of Adjustment through the Chair, or in the Chair's absence anyone acting as Chair, may subpoena witnesses and compel the production of evidence. To request the issuance of a subpoena, the applicant, local government, and any person with standing under G.S. 160D-1402(c) may make a written request to the Chair explaining why it is necessary for certain witnesses or evidence to be compelled. The Chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The Chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full Board of Adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

i. **Effect of Grant of Variance or Reversal or Modification of Administrative Decision.**

After the Board of Adjustment approves a variance, or reverses or modifies an order, decision, determination, or interpretation of an administrative official, the appellant or petitioner shall be responsible for obtaining a building permit and/or certificate of occupancy, as applicable, in order to proceed with the development of the subject property. All orders, decisions, determinations, and interpretations made by administrative officials under those procedures shall be consistent with the variance, reversal, or modification granted to the appellant or petitioner by the Board of Adjustment.

j. **Rehearing.** The Board of Adjustment shall refuse to hear an appeal or variance petition which has been previously denied unless it finds that there have been substantial changes in the conditions or circumstances relating to the matter.

k. **Appeal from Board of Adjustment.** Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. A petition for review shall be filed with the Clerk of Superior Court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with subsection 11.3.2(h)(3). When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

3. **Standards for Granting an Administrative Waiver.**

a. **Purpose and Intent.** Unless otherwise provided in the Zoning Ordinance, the Zoning Administrator (which term shall include an administrative official designated by the Town Manager to perform these functions) is authorized to grant an administrative waiver of minor deviations from measurable and quantifiable standards of this ordinance subject to the following limitations:

(1) The standard for which the waiver can be granted must be a quantifiable and/or measurable standard set forth in the ordinance. Such standards may include, but are not necessarily limited to, height requirements and limitation, yard requirements, parking requirements, screening or buffer requirements, planting requirements, ratio requirements, density requirements, spacing requirements, signage requirements and other similar measurable and quantifiable standards.

- (2) The Zoning Administrator shall grant such waiver only after the requesting party has demonstrated that such minor deviation was a result of an unintended error or unique conditions of the property, does not and will not violated the spirit and harmony of the ordinance, and does not and will not adversely affect the rights of other property owners in any material manner.
 - (3) The minor administrative waiver may not deviate by more than three percent (3%) any of the standards for which the waiver is given.
- b. **Construction.** The authority given to the Zoning Administrator to grant such waivers shall be construed to be permissive and not mandatory and the Zoning Administrator may decline to make such waiver, and instead, require that the applicant seek a variance from the Board of Adjustment. The Zoning Administrator may not grant any waiver affecting the use or zoning classification; however, this shall not be construed as limiting the zoning Administrator's duties and rights under the ordinance, and whose decisions are appealable to the Board of Adjustment.

**Town of Huntersville
Board of Adjustment
March 14, 2023**

To: Town Board

From: Jack Simoneau, Planning Director
Jesse James, Senior Planner

Date: March 14, 2023

Subject:

EXPLAIN REQUEST:

ACTION RECOMMENDED:

FINANCIAL IMPLICATIONS:

ATTACHMENTS:

1. Staff Report for A22_01 A22_02
2. A22-01 Sam Furr Apartment HOA Appeal Application
3. Record for October 11 Board of Adjustment Hearing for Appeal
4. Email Aug 3
5. Article 3.2.4
6. Article 11.3



Staff Report for A22-01, A22-02 Appeal Cases for an Apartment Building at 10410 Sam Furr Road.

Appeal of Decision:

Both Applicants A22-01(Hampton at Northcross Homeowners Association, Inc),A22-02(Lindsey Dastrup) filed on 8/3/22 contending that the Town email from Jesse James, dated August 3, 2022, and its contents noted in this document and attached, are not interpreted consistent with Huntersville Zoning Ordinance Section 3.2.4(d). (see narrative attached with the applications for appeal)

Email on August 3, 2022: (also attached)

Mr. Bynum and Concerned Neighbors,

“Good morning and sorry for the delay. Addressing your concerns over the massing and scale of the proposed building, staff's official ruling as it pertains to the section of the ordinance provided in your email is addressed below:

d) General Requirements

1) Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings.

- New buildings which adhere to the scale, massing, volume, spacing, and setback of existing buildings along fronting streets exhibit demonstrable compatibility.
- New buildings which exceed the scale and volume of existing buildings may demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume. The definition of massing in Article 12 illustrates the application of design techniques to reduce the visual perception of size and integrate larger buildings with pre-existing smaller buildings.

The second bullet in this section addresses “new buildings which exceed the scale and volume...” in which the ordinance gives some flexibility for new buildings if the proposal can demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume.

Over the course of several renderings prior to submitting the official application, staff offered advice on scaling back the overall massing from the original. This was done using article 12 seen above. Shown below is the first concept showing mostly a four-story building with some 3-story sections. The next concept and the current proposal shows the evolution of design using Ordinance section 3.4.2 (d). You will notice the majority 4 story building has been reduced in perceived scale by breaking up the building sections, and reducing the volume with 2, 3, and interior 4 story sections.

Staff’s ruling as it relates to this concept is that the developer has met the intent of Zoning Ordinance section 3.2.4 (d).

It is worth mentioning that this project is still in for review as many site related comments from staff are yet to be addressed.

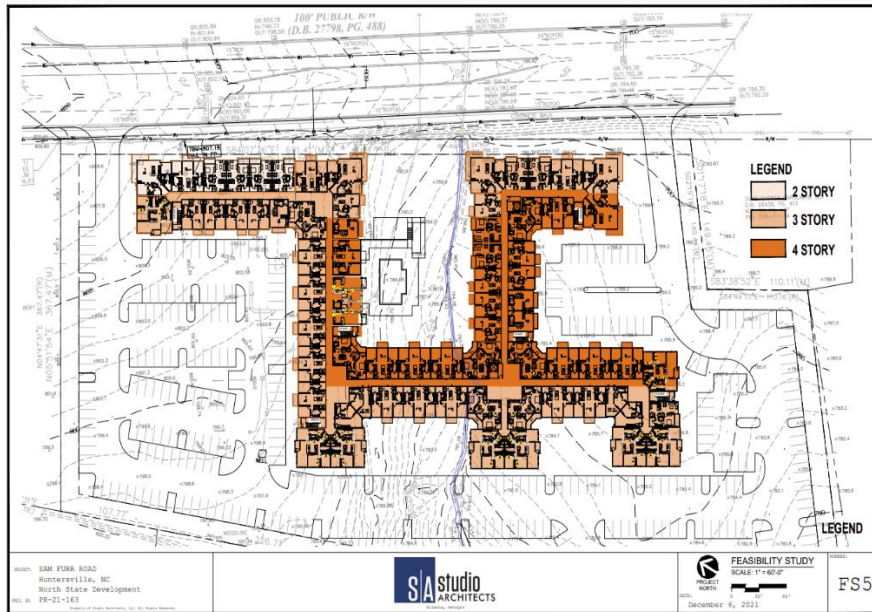


SUMMARY:

TOTAL ACRES = 10.03
 240 UNITS
 3/4 SPLIT BUILDING CONFIGURATION
 BUILDINGS SET AT 3 STORIES ON STREET
 LEVEL AND WRAP CORNERS INTO COURTYARD
 PARKING: 386 SPACES @ 1.61 SF/DU
 30' SHARED DRIVE WITH ELECTRICITIES
 TO ALLOW ACCESS TO 150'X200' PROPERTY



SAM FURR ROAD
 HUNTERVILLE, NC
 SEPTEMBER 1, 2021



Please let us know if you have any further questions or concerns.

Sincerely,

Jesse James, AICP, CZO
 Principal Planner
 Huntersville Planning Dept.
 105 Gilead Rd 3rd Floor
 Huntersville, NC 28078"

Background:

March 31, 2022- Incomplete application submitted for Sam Furr Road Multifamily EPM#435452

April 6, 2022 -First submittal revised and resubmitted (Massing Plan attached)

April 28, 2022- Town completes first round of reviews and comments sent out to applicant.

June 13- Town receives revised plan set in response to first round comments (Massing Plan Attached)

June 30, 2022- Jesse James sent an email to concerned residents of the Hamptons neighborhood—"Good afternoon, I have received several inquiries concerning the project proposed adjacent to your neighborhood. We invite you to Town Hall(Town Hall, 101 Huntersville-Concord Road) on July 19th at 6PM(this is the date and time that Mrs. Burnside and I agreed upon) to discuss this project proposal. You are welcome to invite anyone you would like. This is an informational meeting where staff including myself can answer questions regarding the proposal and what is permitted within our ordinances. Note: this is not a Town Board meeting, it is purely informational in nature".

July 5- Town sends out additional comments after second round of reviews.

July 19, 2022- Jack Simoneau, Brian Richards, Jesse James conducted an informational meeting at Town Hall to a full audience. Discussed zoning process, traffic issues, use and massing of proposed building and process within the zoning ordinance.

August 1, 2022- Bynum Sharpe, Hamptons resident sent email to planning staff:

"Huntersville Zoning Administrator/ Planning Administrator -

This letter is sent by, and on behalf of, property owners directly abutting the proposed Sam Furr Road Multifamily project at 10410 Sam Furr Road. Those property owners include William and Jennifer Sharpe, Joseph and Lindsey Dastrup, Robert and Elizabeth Funderburk, Nick and Jodi Obeid, Mark Owen Parrish and Rachel Murray, and Alvin and Angela Williams, among other concerned property owners within the Hamptons subdivision.

We do not believe this project meets the following General Requirements within the Neighborhood Residential zoning classification:

Section d) General Requirements:

1) Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings. New buildings which adhere to the scale, massing, volume, spacing, and setback of existing buildings along fronting streets exhibit demonstrable compatibility.

All buildings directly adjacent to this property and across Sam Furr Road are single-family homes. The nearby commercial buildings, including the proposed Day Care facility across Sam Furr Road and the CVS and Funeral Home at the corner of Sam Furr Road and Old Statesville Road, are all single level buildings. The proposed 2-4 story project has a scale and mass that is not consistent with existing nearby structures. It does not align with the ordinance requirement to respect existing spacing, mass, and scale.

Further, based on the current proposal many of the apartment units in this 2-4 story building will have windows and/or balconies with views directly down into the homes located at the end of Segars Ln, Cobb Ct and Arledge Ct within the Hamptons subdivision.

We are requesting that you please provide a ruling on this requirement for the proposed Sam Furr Road Multifamily project.

Regards,

William B Sharpe"

August 3, 2022- Jesse James replied to Mr. Bynum's email: (see above)

August 8, 2022- Jack Simoneau and Jesse James met with Hamptons Neighborhood on site with developer to discuss concerns and see properties affected by development.

August 8, 2022- Email sent to Hampton HOA and Developer summarizing meeting at Hamptons properties.

August 10, 2022- Lindsey Dastrup emailed Jack Simoneau, Jesse James and Northstate Development regarding dissatisfaction with proposal after meeting on 8/8/22.

September 2, 2022- Appeal applications are submitted.

September 16, 2022- Town receives third set of revised plans. (Massing Plan Attached)

December 12, 2022- Town receives fourth set of revised plans. (Developer adds 2 affordable units compliant with NCGS 160D-703(B1) for section 3.2.4 (D) (1) regarding massing of building)

January 25, 2023- Town receives fifth set of revised plans.

February 16, 2023- Town Approves and stamps final set.

STANDARDS FOR GRANTING AN APPEAL:

The Huntersville Zoning Ordinance Article 11.3.2(c) Standards for Granting an Appeal are as follows:

- 1) The Board of Adjustment shall reverse or modify the order, decision, determination, or interpretation under appeal only upon finding an error in the application of these regulations on the part of the officer rendering the order, decision, determination, or interpretation.
- 2) In modifying the order, decision, determination, or interpretation, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.

Staff Conclusions:

Staff concludes that the August 3 email by Jesse James accurately summarizes the interpretation of the ordinance stating that the proposed hotel meets the intent of section 3.2.4(d). Furthermore, the developer(s) have subsequently added two affordable housing units to this project in compliance with NCGS 160D-703(B1) which makes section 3.2.4 (D) of the Huntersville Zoning Ordinance as it pertains to the proposed apartment building, null and void.

Attachments:

1. Appeal Applications
2. Record for Appeal
3. August 3 Email from staff
4. Applicable Zoning Ordinance Articles



Notice of Appeal to Board of Adjustment Application

Date: 9/2/22

Date of Notification of Decision for which there is an Appeal: 8/3/22

NOTICE: This Notice of Appeal must be filed within 30 days of the receipt of the Planning Director, or designated Administrator's Order, decision, determination or interpretation. Failure to file, in a timely manner, a complete Notice of Appeal (application, fee, all attachments, etc.) shall constitute a waiver of any rights to appeal under the Town of Huntersville Zoning Ordinance, Article 11.2, *et seq.* Appellant hereby grants permission to the Town of Huntersville personnel to enter the subject property for any purpose required in processing this Notice of Appeal. Town of Huntersville personnel also agree to coordinate such site visits with property owner at times agreeable to all parties.

Location of Building / Property

Address: 10410 Sam Furr Rd., Huntersville

Tax Parcel ID Number(s): 00911115

Acreage: Approx. 10.030 acres Zoning: NR

Text of Zoning Ordinance to be appealed

Article: 3 Section: 3.2.4

Text to be appealed: Please see attached narrative.

Submittal Requirements

The following must be submitted with this completed application (signed and dated by the Appellant):

- One (1) hard copy and one (1) electronic copy (PDF via email) of any applicable map(s), site plans, exhibits, and applications showing exact location of property with respect to existing streets, adjoining lots and other important features on or contiguous to the property. Also, include any maps and/or illustrations (to scale), which are necessary to show the location, number and size of buildings, signs, etc., on the property.
- A list of names, addresses and tax parcel identification numbers of properties that abut the site, are across the street from the site or are otherwise within one hundred feet (100') of the site.
- Review Fee (Please check most recent version of Fee Schedule for applicable review fee for Appeal)

Notifications Required

Planning Staff will be required to notify in writing each adjoining property owner. At least, one (1) sign will be placed on the property(ies) in question located along public streets, or where visible by the public.

APPEALS WITHIN WATERSHED OVERLAY DISTRICTS

If you are appealing a determination from the Mountain Island Lake or Lake Norman Watershed Overlay Districts, Planning Staff will be required to notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for consumption as follows:

- Mountain Island Lake Watershed Overlay. Local governments having jurisdiction in the watershed: Charlotte Mecklenburg, Cornelius and Huntersville. Entities using the water supply for consumption: Mecklenburg County, Gastonia and Mount Holly.

- Lake Norman Watershed Overlay. Local governments having jurisdiction in the watershed: Davidson, Cornelius and Huntersville. Entities using the water supply for consumption: Mooresville, Mecklenburg County and Lincoln County.

Appeal Requirements

STANDARDS FOR GRANDING AN APPEAL (Article 11.3.2.c):

1. The Board of Adjustment shall reserve or modify the order, decision, determination, or interpretation under appeal only upon finding an error in the application of these regulations on the part of the officer rendering the order, decision, determination, or interpretation.
2. In modifying the order, decision, determination, or interpretation, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.

In the following space, indicate the FACTS or evidence that demonstrates to the Board of Adjustment that should lead the Board to conclude the decision of the Planning Director or designated Administrator was in error.

Please see attached narrative.

Applicant

Printed Name Hampton at Northcross Homeowners Association, Inc. Phone 704-953-7814

☒ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

☒ By signature below, I hereby acknowledge, as/on behalf of (circle one) the applicant my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Commissioners except through sworn testimony at the public hearing. (Applicable if box is checked.)

Signature [Signature]

Title President Email hamptonshoapresident@gmail.com

Address of Applicant 10340 Vixen Ln., Huntersville, NC 28178

Property Owner (if different than applicant)

Printed Name _____ Phone _____

☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

☐ By signature below, I hereby acknowledge, as/on behalf of (circle one) the owner my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Commissioners except through sworn testimony at the public hearing. (Applicable if box is checked.)

Signature _____

Title _____ Email _____

Address of Property Owner _____

* Property owner hereby grants permission to the Town of Huntersville personnel to enter the subject property for any purpose required in processing this application.

Every owner of each parcel included in this application, or the owner (s) duly authorized agent, must sign this application. If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the

property owner, will result in an INVALID APPLICATION. **If additional space is needed for signatures, attach the Town of Huntersville Signature Addendum Form.**

Narrative to be Attached to Notice of Appeal to Board of Adjustment Application

Hampton at Northcross Homeowners Association, Inc.

Applicant appeals the ruling of the Town of Huntersville Planning Department as set forth in the email of Jesse James dated August 3, 2022, a copy of which is attached hereto, that the large 244-unit apartment development proposed for the subject property by North State Development and JHG Commercial Properties, LLC is consistent with Section 3.2.4(d) of the Huntersville Zoning Ordinance.

Applicant is the homeowners association governing the Hamptons at Northcross subdivision; the subject property is in close proximity to common areas of the association and adjacent to properties owned by members of the association. The association and many of its residents will be damaged if the proposed project is approved in violation of the requirements of the Zoning Ordinance.

In particular, the ruling that “the developer has met the intent of Zoning Ordinance section 3.2.4(d)” is erroneous and should be reversed by the Board of Adjustment. Section 3.2.4(d) provides in pertinent part as follows:

Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings.

This requirement may be met in one of two ways:

- New buildings which adhere to the scale, massing, volume, spacing, and setback of existing buildings along fronting streets exhibit demonstrable compatibility.
- New buildings which exceed the scale and volume of existing buildings may demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume.

Staff has ruled on the behalf of the Town that the proposed project meets these requirements. It clearly does not. Sam Furr Road is an existing street which is primarily residential in nature. Indeed, all the properties directly to the west, north and south of the subject property are single-family detached homes, primarily one story with some one-and-a-half and two story homes. The property to the east is undeveloped dense woods. The proposed project consists of a massive 2, 3 and 4-story largely rectangular apartment block structure which clearly and obviously does not adhere to the scale, massing, volume, spacing and setbacks already established along Sam Furr Road by the existing single-family homes.

In fact, the nearest non-single-family-residential structures are a funeral home and a CVS Pharmacy located a quarter of a mile to the east of the subject property. Both are solitary one-story structures which again bear no resemblance to the proposed massive structure proposed for the apartment project. Going the other direction, the nearest non-single-family-residential structure to the west is an Advance Auto Parts store which again is a solitary one-story structure bearing no similarity in scale, massing, volume, spacing or setbacks to the proposed apartment complex.

The Planning Staff’s ruling states that the staff offered advice to the developers on scaling back the massing from the original proposal. While the before and after renderings provided show that certain of the largest portions have been moved somewhat back from Sam Furr Road, the ordinance specifically states that “new buildings shall respect the general spacing of structures, building mass and scale, and

street frontage relationships of existing buildings.” It is plain to the eye that slightly modifying the once extremely massive structure to make it somewhat less massive will not cause it to match the scale of the surrounding single-family homes, nor the general spacing of the solitary one and two-story homes surrounded by grassy yards, nor the way the surrounding homes address the street. Certainly the volume and spacing of the large apartment block building is almost completely the opposite of those of the surrounding homes. And to our understanding, the project is still 244 units – the actual size of the project has not been diminished in any way.

It is clear from the wording of the Planning Staff’s ruling that Staff’s decision regarding the “spacing of structures, building mass and scale, and street frontage relationships” is final and not subject to significant change, even though the project itself may still be undergoing review and minor revisions related to staff comments. A review of the currently outstanding comments regarding the project available on the town website shows that the remaining concerns are mostly ministerial and regulatory in nature and that the Planning Staff has accepted the currently-proposed general spacing of structures, building mass and scale, and street frontage relationships of the proposed project. Thus this matter is ripe for review by the Board of Adjustment.

The homeowners will be damaged, and the property values of the properties within the Hamptons at Northcross subdivision near to the project will be negatively impacted, by the visual impact of the large apartment building looming over neighboring homes and the neighborhood pool and clubhouse, by excessive noise and light pollution, by construction noise and dust and construction dangers to children who play in the area, by additional traffic congestion which will affect our ability to enter and exit our subdivision especially due to the divided nature of Sam Furr Road, by the noise and pollution caused by additional traffic, and by additional stormwater runoff which will affect homes and yards in the neighborhood. Some or all of these may also constitute nuisances. The association and many of its members will be damaged in these and in numerous other ways as will be further shown at the hearing on this matter. We appreciate the Town’s and the Board of Adjustment’s attention to this matter.

from: Jesse James <jjames@huntersville.org>
to: Bynum Sharpe <bsharpe02@gmail.com>, Jack Simoneau <jsimoneau@huntersville.org>
cc: Lindsey Dastrup <lcdastrup@gmail.com>, Brian Richards <brichards@huntersville.org>
date: Aug 3, 2022, 9:01 AM
subject: RE: Sam Furr Road Multifamily - Zoning Requirements
mailed-by: huntersville.org
signed-by: dkim.mimecast.org
security: Standard encryption (TLS)

Mr. Bynum and Concerned Neighbors,

Good morning and sorry for the delay. Addressing your concerns over the massing and scale of the proposed building, staff's official ruling as it pertains to the section of the ordinance provided in your email is addressed below:

d) General Requirements

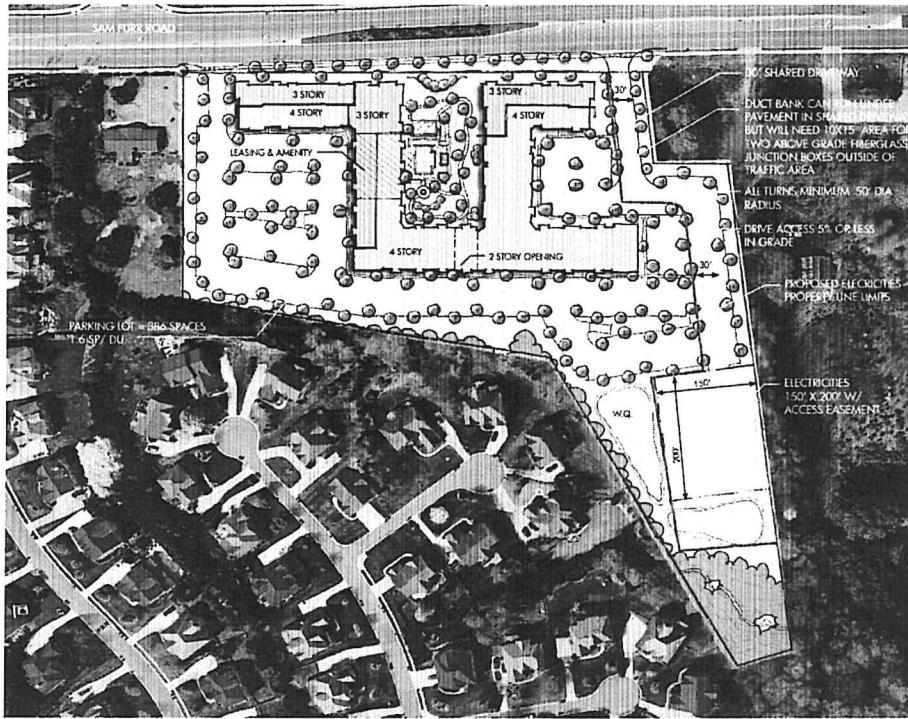
1) Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings.

- New buildings which adhere to the scale, massing, volume, spacing, and setback of existing buildings along fronting streets exhibit demonstrable compatibility.
- New buildings which exceed the scale and volume of existing buildings may demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume. The definition of massing in Article 12 illustrates the application of design techniques to reduce the visual perception of size and integrate larger buildings with pre-existing smaller buildings.

The second bullet in this section addresses "new buildings which exceed the scale and volume..." in which the ordinance gives some flexibility for new buildings if the proposal can demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume.

Over the course of several renderings prior to submitting the official application, staff offered advice on scaling back the overall massing from the original. This was done using article 12 seen above. Shown below is the first concept showing mostly a four-story building with some 3-story sections. The next concept and the current proposal shows the evolution of design using Ordinance section 3.4.2 (d). You will notice the majority 4 story building has been reduced in perceived scale by breaking up the building sections, and reducing the volume with 2, 3, and interior 4 story sections.

Staff's ruling as it relates to this concept is that the developer has met the intent of Zoning Ordinance section 3.2.4 (d).



SUMMARY:

TOTAL ACRES = 10.03
 240 UNITS
 3/4 SPILT BUILDING CONFIGURATION
 BUILDINGS SET AT 3 STORIES ON STREET
 LEVEL AND WRAP CORNERS INTO COURTYARD
 PARKING: 386 SPACES @ 1.61 SP/DU
 30' SHARED DRIVE WITH ELECTRICITIES
 TO ALLOW ACCESS TO 150'X200' PROPERTY



SAM FURR ROAD
 HUNTERSVILLE, NC
 SEPTEMBER 1, 2021



It is worth mentioning that this project is still in for review as many site related comments from staff are yet to be addressed.

Please let us know if you have any further questions or concerns.

Sincerely,

Jesse James, AICP, CZO
Principal Planner
Huntersville Planning Dept.
105 Gilead Rd 3rd Floor
Huntersville, NC 28078

Mailing address
PO BOX 664
Huntersville, NC 28070
Ph 704 766 2212
Fx 704 992 5528
jjames@huntersville.org

Property Involved in Appeal

Address 10410 Sam Furr Road, Huntersville NC 28078
Owner JHG Commercial Properties, LLC
Tax Parcel 911115

Adjoining/ Nearby Properties

Address	Owner(s)	Tax Parcel
10332 Sam Furr Rd	Thomas Lambert & Wanda Hudson	911116
16610 Sutters Run Ln	Michelle Vogeli	911204
16548 Segars Ln	William & Jennifer Sharpe	911224
16544 Segars Ln	Joseph & Lindsey Dastrup	911225
16538 Segars Ln	Segal Sanjay Patel	911226
10507 Cobb Ct	Robert & Elizabeth Funderburk	911228
10511 Cobb Ct	Nick & Jodi Obeid	911229
10515 Cobb Ct	Lashauna Genine & Rochelle Lowry	911230
10510 Cobb Ct	Mark Parish & Rachel Murray	911231
10517 Arledge Ln	Robert & Jaimie Bass	911236
10521 Arledge Ln	John Z Bender	911237
10524 Arledge Ln	Alvin & Angela Williams	911238
16131 Old Statesville Rd	Mecklenburg County	911119
10528 Sam Furr Rd	Duke Energy Carolinas, LLC	911114
10532 Sam Furr Rd	Duke Energy Carolinas, LLC	911135
16710 Hampton Crossing Dr	Hampton Ridge Homeowners Association	543275
10340 Vixen Ln	Hampton at Northcross Homeowners Association	911244
10533 Sam Furr Rd	Genoveva & Leonardo Naranjo-Alvarez	543276

Record for March, 2023 Board of Adjustment Hearing for Appeal Case A22-01 A22-02

March 31, 2022- Incomplete application submitted for Sam Furr Road Multifamily EPM#435452

April 6, 2022 -First submittal revised and resubmitted (Massing Plan attached)

April 28, 2022- Town completes first round of reviews and comments sent out to applicant.

June 13- Town receives revised plan set in response to first round comments (Massing Plan Attached)

June 30, 2022- Jesse James sent an email to concerned residents of the Hamptons neighborhood— "Good afternoon, I have received several inquiries concerning the project proposed adjacent to your neighborhood. We invite you to Town Hall(Town Hall, 101 Huntersville-Concord Road) on July 19th at 6PM(this is the date and time that Mrs. Burnside and I agreed upon) to discuss this project proposal. You are welcome to invite anyone you would like. This is an informational meeting where staff including myself can answer questions regarding the proposal and what is permitted within our ordinances. Note: this is not a Town Board meeting, it is purely informational in nature".

July 5- Town sends out additional comments after second round of reviews.

July 19, 2022- Jack Simoneau, Brian Richards, Jesse James conducted an informational meeting at Town Hall to a full audience. Discussed zoning process, traffic issues, use and massing of proposed building and process within the zoning ordinance.

August 1, 2022- Bynum Sharpe, Hamptons resident sent email to planning staff:

"Huntersville Zoning Administrator/ Planning Administrator -

This letter is sent by, and on behalf of, property owners directly abutting the proposed Sam Furr Road Multifamily project at 10410 Sam Furr Road. Those property owners include William and Jennifer Sharpe, Joseph and Lindsey Dastrup, Robert and Elizabeth Funderburk, Nick and Jodi Obeid, Mark Owen Parrish and Rachel Murray, and Alvin and Angela Williams, among other concerned property owners within the Hamptons subdivision.

We do not believe this project meets the following General Requirements within the Neighborhood Residential zoning classification:

Section d) General Requirements:

1) Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings. New buildings which adhere to the scale, massing, volume, spacing, and setback of existing buildings along fronting streets exhibit demonstrable compatibility.

All buildings directly adjacent to this property and across Sam Furr Road are single-family homes. The nearby commercial buildings, including the proposed Day Care facility across Sam Furr Road and the CVS and Funeral Home at the corner of Sam Furr Road and Old Statesville Road, are all single level buildings. The proposed 2-4 story project has a scale and mass that is not consistent with existing nearby structures. It does not align with the ordinance requirement to respect existing spacing, mass, and scale.

Further, based on the current proposal many of the apartment units in this 2-4 story building will have windows and/or balconies with views directly down into the homes located at the end of Segars Ln, Cobb Ct and Arledge Ct within the Hamptons subdivision.

We are requesting that you please provide a ruling on this requirement for the proposed Sam Furr Road Multifamily project.

Regards,

William B Sharpe"

August 3, 2022- Jesse James replied to Mr. Bynum's email:

"Mr. Bynum and Concerned Neighbors,

Good morning and sorry for the delay. Addressing your concerns over the massing and scale of the proposed building, staff's official ruling as it pertains to the section of the ordinance provided in your email is addressed below:

d) General Requirements

1) Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings.

- New buildings which adhere to the scale, massing, volume, spacing, and setback of existing buildings along fronting streets exhibit demonstrable compatibility.
- New buildings which exceed the scale and volume of existing buildings may demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume. The definition of massing in Article 12 illustrates the application of design techniques to reduce the visual perception of size and integrate larger buildings with pre-existing smaller buildings.

The second bullet in this section addresses "new buildings which exceed the scale and volume..." in which the ordinance gives some flexibility for new buildings if the proposal can demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume.

Over the course of several renderings prior to submitting the official application, staff offered advice on scaling back the overall massing from the original. This was done using article 12 seen above. Shown below is the first concept showing mostly a four-story building with some 3-story sections. The next concept and the current proposal shows the evolution of design using Ordinance section 3.4.2 (d). You will notice the majority 4 story building has been reduced in perceived scale by breaking up the building sections, and reducing the volume with 2, 3, and interior 4 story sections.

Staff's ruling as it relates to this concept is that the developer has met the intent of Zoning Ordinance section 3.2.4 (d).

It is worth mentioning that this project is still in for review as many site related comments from staff are yet to be addressed.

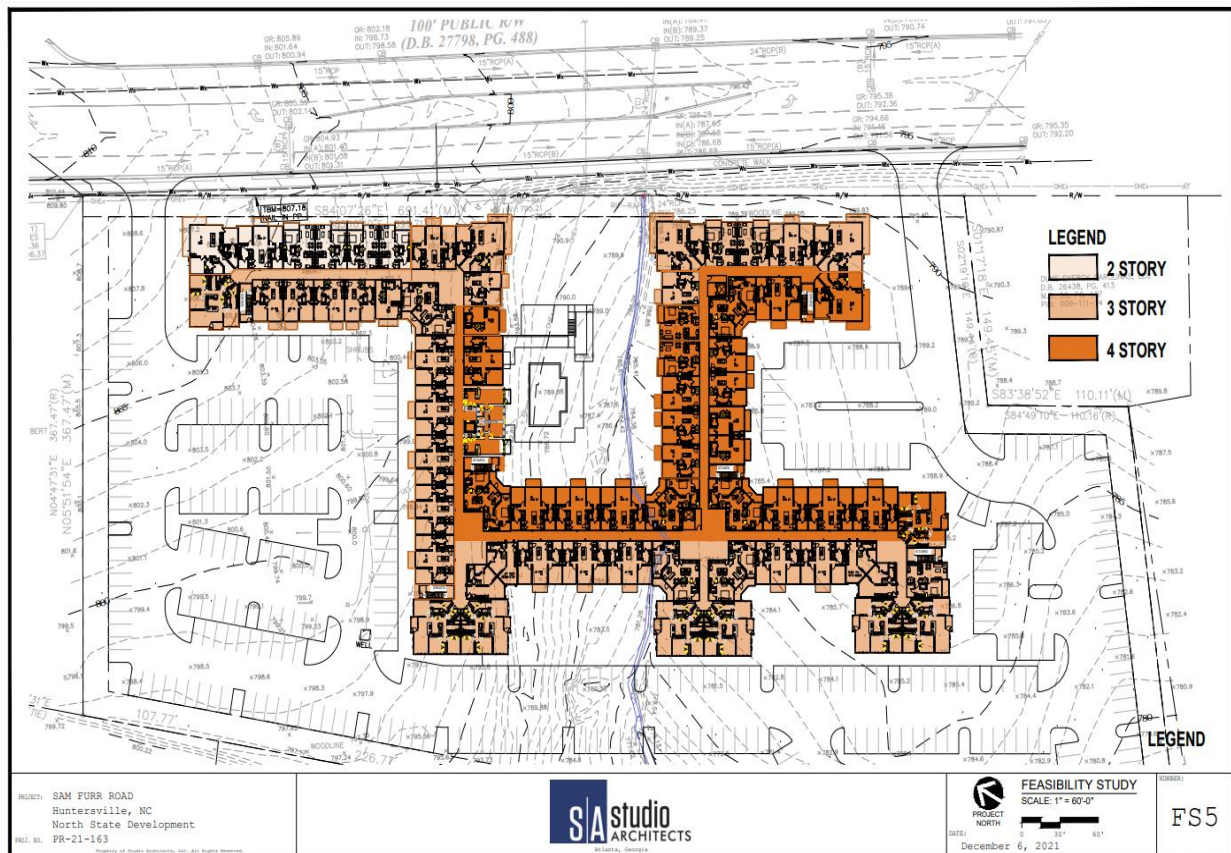


SUMMARY:

TOTAL ACRES = 10.03
 240 UNITS
 3/4 SPLIT BUILDING CONFIGURATION
 BUILDINGS SET AT 3 STORIES ON STREET
 LEVEL AND WRAP CORNERS INTO COURTYARD
 PARKING: 386 SPACES @ 1.61 SP/DU
 30' SHARED DRIVE WITH ELECTRICITIES
 TO ALLOW ACCESS TO 150'X200' PROPERTY



SAM FURR ROAD
 HUNTERSVILLE, NC
 SEPTEMBER 1, 2021



Please let us know if you have any further questions or concerns. "

August 8, 2022- Jack Simoneau and Jesse James met with Hamptons Neighborhood on site with developer to discuss concerns and see properties affected by development.

August 8, 2022- Email sent to Hampton HOA and Developer summarizing meeting at Hamptons properties.

August 10, 2022- Lindsey Dastrup emailed Jack Simoneau, Jesse James and Northstate Development regarding dissatisfaction with proposal after meeting on 8/8/22.

September 2, 2022- Appeal applications are submitted.

September 16, 2022- Town receives third set of revised plans. (Massing Plan Attached)

December 12, 2022- Town receives fourth set of revised plans. (Developer adds 2 affordable units compliant with NCGS 160D-703(B1) for section 3.2.4 (D) (1) regarding massing of building)

January 25, 2023- Town receives fifth set of revised plans.

February 16, 2023- Town Approves and stamps final set.

From: Jesse James
Sent: Wednesday, August 3, 2022 9:02 AM
To: Bynum Sharpe; Jack Simoneau
Cc: Lindsey Dastrup; Brian Richards
Subject: RE: Sam Furr Road Multifamily - Zoning Requirements

Mr. Bynum and Concerned Neighbors,

Good morning and sorry for the delay. Addressing your concerns over the massing and scale of the proposed building, staff's official ruling as it pertains to the section of the ordinance provided in your email is addressed below:

d) General Requirements

1) Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings.

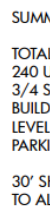
- New buildings which adhere to the scale, massing, volume, spacing, and setback of existing buildings along fronting streets exhibit demonstrable compatibility.
- New buildings which exceed the scale and volume of existing buildings may demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume. The definition of massing in Article 12 illustrates the application of design techniques to reduce the visual perception of size and integrate larger buildings with pre-existing smaller buildings.

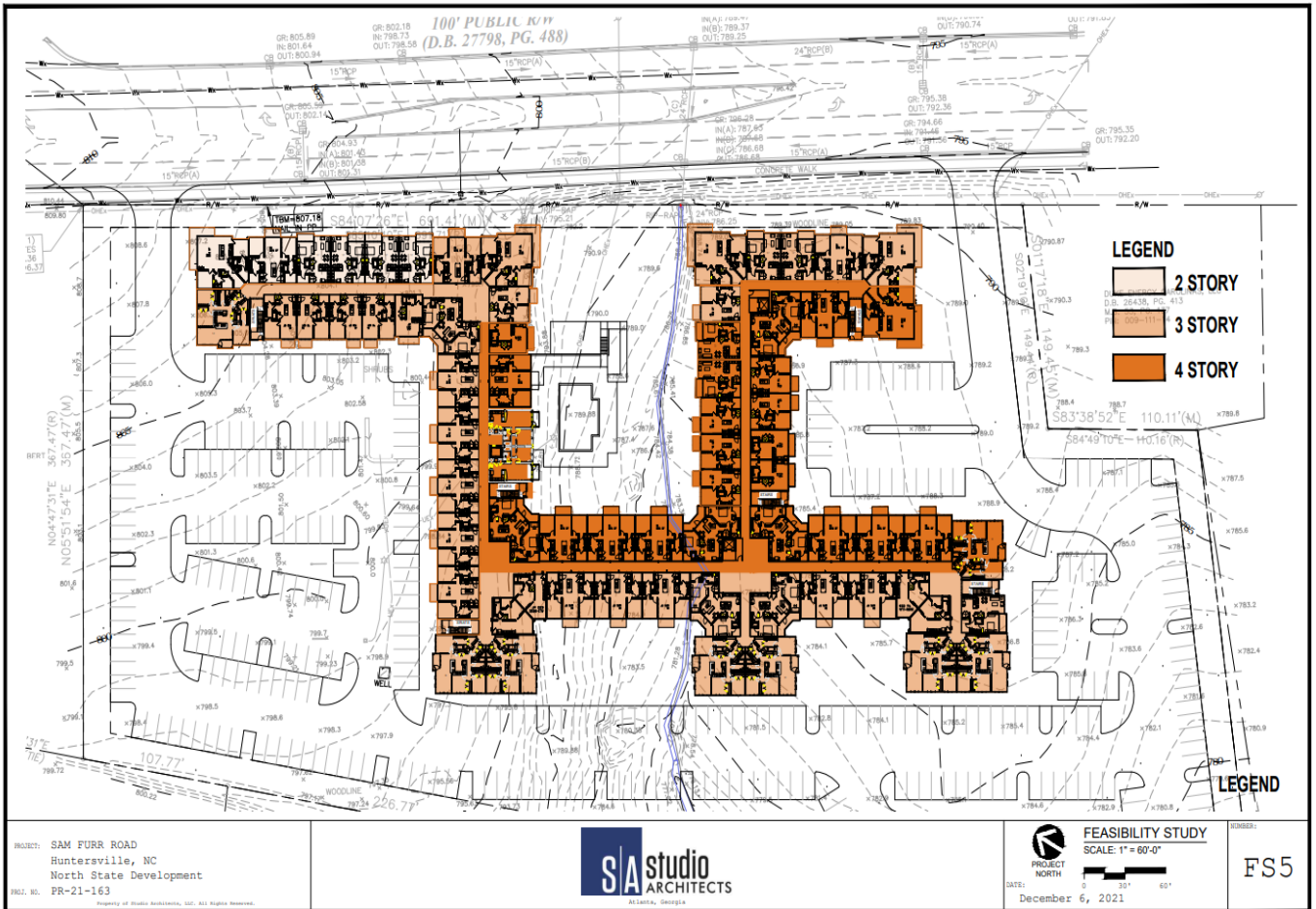
The second bullet in this section addresses "new buildings which exceed the scale and volume..." in which the ordinance gives some flexibility for new buildings if the proposal can demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume.

Over the course of several renderings prior to submitting the official application, staff offered advice on scaling back the overall massing from the original. This was done using article 12 seen above. Shown below is the first concept showing mostly a four-story building with some 3-story sections. The next concept and the current proposal shows the evolution of design using Ordinance section 3.4.2 (d). You will notice the majority 4 story building has been reduced in perceived scale by breaking up the building sections, and reducing the volume with 2, 3, and interior 4 story sections.

Staff's ruling as it relates to this concept is that the developer has met the intent of Zoning Ordinance section 3.2.4 (d).

It is worth mentioning that this project is still in for review as many site related comments from staff are yet to be addressed.





Please let us know if you have any further questions or concerns.

Sincerely,

Jesse James, AICP, CZO
Principal Planner
Huntersville Planning Dept.
105 Gilead Rd 3rd Floor
Huntersville, NC 28078

Mailing address
PO BOX 664
Huntersville, NC 28070
Ph 704 766 2212
Fx 704 992 5528
jjames@huntersville.org

-----Original Message-----

From: Bynum Sharpe <bsharpe02@gmail.com>

Sent: Monday, August 1, 2022 12:45 PM

To: Jack Simoneau <jsimoneau@huntersville.org>; Jesse James <jjames@huntersville.org>

Cc: Lindsey Dastrup <lcdastrup@gmail.com>

Subject: Sam Furr Road Multifamily - Zoning Requirements

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Huntersville Zoning Administrator/ Planning Administrator -

This letter is sent by, and on behalf of, property owners directly abutting the proposed Sam Furr Road Multifamily project at 10410 Sam Furr Road. Those property owners include William and Jennifer Sharpe, Joseph and Lindsey Dastrup, Robert and Elizabeth Funderburk, Nick and Jodi Obeid, Mark Owen Parrish and Rachel Murray, and Alvin and Angela Williams, among other concerned property owners within the Hamptons subdivision.

We do not believe this project meets the following General Requirements within the Neighborhood Residential zoning classification:

Section d) General Requirements:

1) Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings. New buildings which adhere to the scale, massing, volume, spacing, and setback of existing buildings along fronting streets exhibit demonstrable compatibility.

All buildings directly adjacent to this property and across Sam Furr Road are single-family homes. The nearby commercial buildings, including the proposed Day Care facility across Sam Furr Road and the CVS and Funeral Home at the corner of Sam Furr Road and Old Statesville Road, are all single level buildings. The proposed 2-4 story project has a scale and mass that is not consistent with existing nearby structures. It does not align with the ordinance requirement to respect existing spacing, mass, and scale.

Further, based on the current proposal many of the apartment units in this 2-4 story building will have windows and/or balconies with views directly down into the homes located at the end of Segars Ln, Cobb Ct and Arledge Ct within the Hamptons subdivision.

We are requesting that you please provide a ruling on this requirement for the proposed Sam Furr Road Multifamily project.

Regards,

William B Sharpe

3.2.4 NEIGHBORHOOD RESIDENTIAL DISTRICT (NR)

Intent: The Neighborhood Residential District provides for residential infill development around the Town Core, Activity Centers and Mixed Use Centers and their logical extensions identified in adopted long range plans. . Streets in the Neighborhood Residential District must be interconnected, according to Article 5, Streets, and Urban Open Space provided according to Article 7. A range of housing types is encouraged. Low-intensity business activity is permitted in mixed-use and commercial buildings at residential scale, according to locational criteria. The intensity to which permitted uses may be built is regulated by the building type which corresponds to the use.

(a) Permitted Uses.

Uses permitted by right.

- bed and breakfast inns
- boarding or rooming houses for up to four roomers
- congregate housing designed within the “civic” building type
- family care home
- multi-family homes
- single family homes

Uses permitted with conditions.

- cemeteries, (9.7)
- religious institutions, (9.8)
- commercial use in a mixed-use building¹, located on an arterial or at the intersection of a local street and a larger capacity street
- commercial use, in a detached house building type, located within 1/4 mile of a Town Center district and fronting a major or minor thoroughfare (Includes properties in which any portion falls within the 1/4 mile boundary) (9.51)
- essential services 1 and 2, (9.14)
- government buildings up to 5000 sq. ft. of gross floor area
- neighborhood and outdoor recreation, (9.21)
- parks, (9.29)
- retirement communities (9.50)
- schools, (9.35)
- transit-oriented parking lots as a principal use, (9.49)
- transit shelters, (9.39)

Uses permitted with Special Use Permit.

- wind energy facility, minor, accessory, (9.53)

(b) Permitted Building and Lot Types.

- apartment
- attached house
- civic building
- detached house (Commercial uses up to 4,500 sq. ft. of first floor area)
- mixed use¹ , up to 3,000 sq. ft. of first floor area

(c) Permitted Accessory Uses.

- accessory dwelling, (9.1)
- day care home (small), (9.11)
- home occupation, (9.19)
- marinas, (9.42)
- solar facility, minor non-residential (9.54)
- solar energy facility, minor residential (9.54)
- accessory uses permitted in all districts (8.11)

(d) General Requirements.

1. Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings.
 - a. New buildings which adhere to the scale, massing, volume, spacing, and setback of existing buildings along fronting streets exhibit demonstrable compatibility.
 - b. New buildings which exceed the scale and volume of existing buildings may demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume. The definition of massing in Article 12 illustrates the application of design techniques to reduce the visual perception of size and integrate larger buildings with pre-existing smaller buildings.
 - c. Subsection 3.2.4(d)(1)(a)-(b) shall not apply to development on parcels where multifamily structures are an allowable use and the development contains two or more affordable housing units for families or individuals with incomes below eighty percent (80%) of the area median income.
 - d. A single-family detached house established on a lot of one acre or more that is created according to the provisions of Article 8.1, paragraph 1, need not adhere to the spacing, massing, scale, and street frontage relationships of existing buildings along an existing street or road, but shall, at a minimum, observe a front setback of 40 feet and a lot width of 90 feet. This paragraph shall take precedence over the requirement of Article 4: Lot Types/Detached House for placement of a building on its lot.
 - e. Nothing in this subsection shall be interpreted to conflict with the building design element provision as found in N.C.G.S. 160D-702(b) for structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings
2. On new streets, allowable building and lot types will establish the development pattern.
3. In major subdivisions, the aggregate number of dwelling units contained in attached houses, apartment buildings, and mixed-use buildings shall not exceed 30 percent of the total number of dwelling units in a project.
4. Notwithstanding the limitations of 3), above, in any section of a major subdivision located within 1/4 mile of a designated rail transit station, the percentage of dwelling units contained in attached houses, apartment buildings, and mixed-use buildings is not limited. Higher overall density is encouraged within 1/4 mile of rail transit stations. Rail transit stations are those locations designated by resolution adopted by the Board of Commissioners of the Town of Huntersville.
5. Every building lot shall have frontage upon a public street except as provided in Section 8.1.
6. The percentage of attached dwelling units contained in a retirement community is not limited when duplex style buildings are used.

7. See Section 8.16, Standards for Residential Lot Widths, Alleys, Garages and Parking in Residential Districts.

¹ The mixed-use building duplicates the shopfront building type and has at least two occupiable stories; at least 50% of the habitable area of the building shall be in residential use, the remainder shall be in commercial use. However, when an existing residential building is redeveloped to a mixed-use, at least 40% of the habitable area shall be in residential use.

HISTORY

Amended by Ord. TA22-07 on 11/21/2022

11.3 Appeals And Variances

1. Board of Adjustment.

- a. **Establishment.** The Board of Adjustment of the Town of Huntersville (the “Board of Adjustment”) shall consist of seven regular members and three alternate members. The regular membership shall consist of six members who reside within the corporate limits, appointed by the Town Board, plus one extraterritorial member. The number of regular members appointed who reside in the extraterritorial zoning jurisdiction shall at a minimum meet the requirements of N.C.G.S. 160D-307 for proportional representation, but shall in no instance be less than one. The alternate membership shall consist of at least two members who reside within the corporate limits, with the remaining alternate member residing in either the corporate limits or the extraterritorial jurisdiction of Huntersville.
- b. **Members from Within the Town Limits.** Each member and alternate shall be appointed by the Town Board for a term of three years. The terms of membership shall be staggered; therefore, in appointing the original members or in the filling of vacancies caused by the expiration of the terms of existing members, the Town Board may appoint certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. The expiration date for each term shall be the 30th day of June of the year in which said term is to expire and the term of office of the succeeding member shall begin on the 1st day of July. If the original members are appointed such that their terms of office begin prior to a July 1 date, such terms of original members shall be extended by the period of time between their appointment and June 30th of the year of their appointment, it being the intent of this proviso that original members shall serve terms of one, two, or three years plus a period of time between their initial appointments and June 30th of the year of their initial appointments. For purposes of this section, original appointments refer to members and alternates appointed upon first establishment of the Board of Adjustment, and to members and alternates appointed to newly created seats upon any expansion of the Board of Adjustment.
- c. **Extraterritorial Members.** In addition to the members and alternates herein above provided for, members of the Board of Adjustment shall be appointed from the area within the extraterritorial jurisdiction of the Town of Huntersville, pursuant to the appointment process prescribed in N.C.G.S. 160D-307. Members so appointed shall have all of the obligations and duties of the other members of the Board of Adjustment, including rights to vote on all matters coming before the Board. Each extraterritorial member shall be appointed for a period of three years. Expiration dates for each term, initially and thereafter, shall be the 30th day of June of the year in which said term is to expire and the term of office of the succeeding member shall begin on the 1st day of July; provided further that if the original members are appointed such that their terms of office begin prior to a July 1 date, such terms of original members shall be extended by the period of time between their appointment and June 30 of the year of their appointment. Eligibility for reappointment shall be determined by the procedures and policies established by the appointing body.
- d. **Term Limits and Service Limits.** Members and alternates shall be limited to serving two (2) consecutive terms; however, a member or alternate may be reappointed to the Board of Adjustment after remaining off of the Board for at least one (1) year. Time spent as an alternate member shall not count in determining whether an alternate is eligible for appointment as a regular member. Additionally, appointment to a vacant position as an alternate or regular member to fill an unexpired term shall not be counted in determining eligibility for appointment or reappointment. No person shall be eligible for appointment as

a regular or alternate member if such person is serving on any other board or commission appointed by the Board of Commissioners, unless such other service is in an ex officio capacity. These terms limits and service limits shall apply to both members and alternates residing in the corporate limits and within the extraterritorial jurisdiction of the Town of Huntersville. Notwithstanding the foregoing, the Board of Commissioners shall have the discretion to waive these term limits and service limits for a particular position on the Board of Adjustment when there are no other members of the public willing to serve in the position, or in other appropriate circumstances as determined by the Board of Commissioners.

e. Proceedings.

- (1) Meetings. All meetings of the Board of Adjustment shall be held at a regular place and shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, an indication of such fact. Final disposition of appeals or variances shall be recorded in the minutes, indicating the reasons of the Board therefore, all of which shall become a part of the public record.
- (2) Quorum Required. No final action shall be taken on any matter unless a quorum is present. A quorum is the majority of the members of the Board or, for variance actions (which require the concurring vote of 4/5ths of the Board), 4/5ths of the membership.

f. Powers and Duties. The Board of Adjustment shall have the following powers and duties:

- (1) Administrative Review. To hear and decide appeals according to the procedures of this section, where it is alleged there is an error in any order, decision, determination, or interpretation made by the Zoning Administrator or designated administrative official in the enforcement of this ordinance.
- (2) Variances. To hear and decide applications for variances from the terms of this ordinance according to the standards and procedures herein so that the spirit of the ordinance is observed, public safety and welfare secured, and substantial justice done. Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed by the Board.
- (3) Density Averaging Certificates. To hear and decide applications for density averaging certificates for paired-parcel averaged-density development, acting as the Watershed Review Board, to ensure both parcels considered together meet the standards of the ordinance and that potential owners have notice of how the watershed regulations were applied to the parcel pair.

2. Appeals and Variances.

a. Petition to Board of Adjustment for Appeal or Variance.

- (1) An appeal of an administrative decision may be initiated by any person with standing or by the local government.
- (2) A petition for variance may be initiated only by the owner of the affected property, an agent authorized in writing to act on the owner's behalf, or a person having a written contractual interest in the affected property.

b. **Appeals.** The Board of Adjustment shall hear and decide appeals of administrative decisions of administrative officials charged with enforcement of the zoning and subdivision ordinances and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

- (1) Any person who has standing under G.S. 160D-1402(c), or the Town may appeal a decision to the Board of Adjustment. An appeal is taken by filing a Notice of Appeal with the Clerk to the Board of Adjustment. The Notice of Appeal shall state the grounds for the appeal.
- (2) The official who made the decision shall give written notice of the determination to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
- (3) The owner or other party shall have 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
- (4) The official who made the decision shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the decision appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner. The record may be provided in written or electronic form.
- (5) Timely appeals of a notice of violation or other administrative decision shall stay enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the Board of Adjustment and any subsequent appeal in accordance with N.C.G.S. § 160D-1402 or during the pendency of any civil proceeding authorized by law or appeals therefrom. After notice of the appeal has been filed, if the official who made the decision certifies to the Board of Adjustment that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance, the enforcement proceedings shall not be stayed except by a restraining order granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for development approvals to use the property; in these situations, the appellant or local government may request and the Board of Adjustment may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.
- (6) Subject to the provisions of subdivision (6) of this subsection, the Board of Adjustment shall hear and decide the appeal within a reasonable time.
- (7) The applicant, the local government, and any person with standing to appeal shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the Board of Adjustment. The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town would be

unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board of Adjustment shall continue the hearing.

- (8) The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the official who made the decision.
- (9) When hearing an appeal pursuant to N.C.G.S. § 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in N.C.G.S. § 160D-1402(j).

c. Standards for Granting an Appeal.

- (1) The Board of Adjustment shall reverse or modify the order, decision, determination, or interpretation under appeal only upon finding an error in the application of these regulations on the part of the officer rendering the order, decision, determination, or interpretation.
- (2) In modifying the order, decision, determination, or interpretation, the Board of Adjustment shall have all the powers of the official from whom the appeal is taken.

d. Filing a Variance Petition. A petition for variance, in the form prescribed by the Board of Adjustment, shall be filed with the Clerk to the Board of Adjustment or designated administrator, accompanied by a non-refundable filing fee as established by the Town Board and a list of adjoining properties including tax parcel numbers and the name and address of each owner.

e. Standards for Granting a Variance. 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 all of the following:

- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be 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 shall not be regarded as a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

f. No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

g. Notice and Hearing.

- (1) The Board of Adjustment shall, in accordance with rules adopted by it for such purpose, hold public hearings on any appeal or variance petition which comes before it.
- (2) Notice of Hearing. – Notice of Hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning or subdivision ordinance. In the absence of evidence to the contrary, the Town may rely on the County tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the Town shall also prominently post a Notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The Board of Adjustment may continue an evidentiary hearing that has been convened without further advertisement.

h. Action by the Board of Adjustment.

- (1) The concurring vote of four-fifths (4/5ths) of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.
- (2) A member of the Board shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.
- (3) Quasi-Judicial Decisions. The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair, or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision with the Clerk to the Board, or such other office or official as the ordinance specifies. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

(4) Oaths. The Chair of the Board or any member acting as Chair and the Clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the Board of Adjustment determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

(5) Subpoenas. The Board of Adjustment through the Chair, or in the Chair's absence anyone acting as Chair, may subpoena witnesses and compel the production of evidence. To request the issuance of a subpoena, the applicant, local government, and any person with standing under G.S. 160D-1402(c) may make a written request to the Chair explaining why it is necessary for certain witnesses or evidence to be compelled. The Chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The Chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full Board of Adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

i. **Effect of Grant of Variance or Reversal or Modification of Administrative Decision.**

After the Board of Adjustment approves a variance, or reverses or modifies an order, decision, determination, or interpretation of an administrative official, the appellant or petitioner shall be responsible for obtaining a building permit and/or certificate of occupancy, as applicable, in order to proceed with the development of the subject property. All orders, decisions, determinations, and interpretations made by administrative officials under those procedures shall be consistent with the variance, reversal, or modification granted to the appellant or petitioner by the Board of Adjustment.

j. **Rehearing.** The Board of Adjustment shall refuse to hear an appeal or variance petition which has been previously denied unless it finds that there have been substantial changes in the conditions or circumstances relating to the matter.

k. **Appeal from Board of Adjustment.** Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. A petition for review shall be filed with the Clerk of Superior Court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with subsection 11.3.2(h)(3). When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

3. **Standards for Granting an Administrative Waiver.**

a. **Purpose and Intent.** Unless otherwise provided in the Zoning Ordinance, the Zoning Administrator (which term shall include an administrative official designated by the Town Manager to perform these functions) is authorized to grant an administrative waiver of minor deviations from measurable and quantifiable standards of this ordinance subject to the following limitations:

(1) The standard for which the waiver can be granted must be a quantifiable and/or measurable standard set forth in the ordinance. Such standards may include, but are not necessarily limited to, height requirements and limitation, yard requirements, parking requirements, screening or buffer requirements, planting requirements, ratio requirements, density requirements, spacing requirements, signage requirements and other similar measurable and quantifiable standards.

- (2) The Zoning Administrator shall grant such waiver only after the requesting party has demonstrated that such minor deviation was a result of an unintended error or unique conditions of the property, does not and will not violated the spirit and harmony of the ordinance, and does not and will not adversely affect the rights of other property owners in any material manner.
 - (3) The minor administrative waiver may not deviate by more than three percent (3%) any of the standards for which the waiver is given.
- b. **Construction.** The authority given to the Zoning Administrator to grant such waivers shall be construed to be permissive and not mandatory and the Zoning Administrator may decline to make such waiver, and instead, require that the applicant seek a variance from the Board of Adjustment. The Zoning Administrator may not grant any waiver affecting the use or zoning classification; however, this shall not be construed as limiting the zoning Administrator's duties and rights under the ordinance, and whose decisions are appealable to the Board of Adjustment.