

Board of Adjustment  
Thursday, November 5 2015  
7:00 PM  
Hood Room, Matthews Town Hall

**AGENDA**

- I. CALL TO ORDER
- II. INVOCATION
- III. APPROVAL OF MIINUTES
- IV. VARIANCE REQUEST: BA 2015-4, Tree save variance, 2800 Mt. Harmony Church
- V. ADJOURNMENT

**MINUTES  
BOARD OF ADJUSTMENT  
THURSDAY, JULY 9, 2015  
HOOD ROOM, MATTHEWS TOWN HALL**

**PRESENT:** Chairman Jim Jiles, Members Jim Mortimer, Cecil Sumners, and Jeanne Moore; Alternate Member Peter Tuz; Attorney Robert Blythe; Senior Planner Jay Camp and Zoning Technician/Deputy Town Clerk Betty Lynd

**ABSENT:** Member Jerry Meek; Alternate Members Gary Smith and Thomas Lawing.

**CALL TO ORDER/INVOCATION:**

Chairman Jiles called the meeting to order at 7:03 p.m. and gave the invocation.

Mr. Jiles also noted that the appeal scheduled as Item 5 on the agenda was rectified at the staff level and was therefore struck from the agenda.

**APPROVAL OF THE MINUTES:**

Ms. Moore noted a misspelling of Mr. Sumners name in the attendance portion of the first page.

Mr. Jiles made a motion to approve the May 7, 2015 minutes as amended. Mr. Mortimer seconded the motion and the vote was unanimous.

At this time, Mr. Peter Tuz was designated as a voting member for tonight's meeting.

**SWEARING IN:**

Senior Planner Jay Camp and applicant Mr. Julius Milani were sworn in.

**VARIANCE REQUEST: BA2015-2, 400 S. FREEMONT STREET**

**STAFF REPORT:**

Mr. Camp stated that this request consisted of two variances. The first variance is a 5 foot encroachment into the 50 foot rear setback. The second variance is a 3 foot encroachment into the 10 foot side setback. These variances will allow for renovations on an existing home. The home was constructed in 1952 and possibly moved on the property in the 1970s or 80s. The property is currently zoned R-12 and does conform to Town regulations. The property is adjacent to the Alexander unopened right-of-way. There are some driveway encroachments on neighboring properties, which is something the Town Board can grant. From a zoning perspective, staff is fine with the driveway encroachments because driveways are not considered structures. The owner has provided a survey as well as entered into the record some additional information such as a floorplan that shows the additions and encroachments.

Mr. Sumners asked if the neighbors next door have a driveway that comes onto Alexander Street. Mr. Camp stated that was correct. Mr. Sumners stated that gave a buffer between Mr. Milani's home and the neighboring home across the street. Mr. Camp stated there was some distance between structures.

Mr. Jiles asked if other driveways encroached onto the right-of-way. Mr. Camp stated there are a few. The Town has rarely on occasion abandoned right-of-way and it is then split between adjacent property owners. The Town typically doesn't have justification to do this, but it is a right of the citizen to request. That would be the only alternative to the variance of the side yard.

Mr. Julius Milani of 400 S. Freemont Street came forward to speak. He stated the home used to sit where Aldi currently resides. The property is nearly an acre now. The property used to be smaller, therefore the home was oriented towards the side of the property. There is significant sloping and a creek on the property which limited his options for adding on to the structure. They had considered a second-story renovation, but a contractor advised against it due to the age of the home and the extensive foundation work that would be required. The side yard encroachment would include a master bathroom and master bathroom. In the rear of the property there is a retaining wall that we would like to build up against. Mr. Milani stated that he worked from home with three children and that is their main desire for wanting to grow the home and provide additional space. The elevation will be for a craftsman style home in order to compliment the Downtown Master Plan.

Mr. Mortimer asked how many square feet are the additions. Mr. Milani stated that the front addition would be 750 square feet and the rear would be between 350-400 square feet. Mr. Moritmer asked how big the additions would be without the rear setback. Mr. Milani stated the rear room would be 60 square feet smaller.

Mr. Tuz asked if Mr. Milani knows where the flood zone is for the creek on the property. Mr. Camp pulled up the property to show the swim buffers for the creek on Polaris. Mr. Jiles asked if the construction will be within the flood zone. Mr. Milani stated that it would not. The additions would not impact the driveway on the property either. Mr. Mortimer asked about the deck in the rear of the home. Mr. Milani stated the deck is in conformity, but the existing deck would be removed.

#### **DELIBERATION:**

Mr. Sumners stated that the distance between homes is large and Alexander Street will not be greatly impacted with this variance. Mr. Jiles stated that the only potential issue he foresees is the side yard variance should Alexander Street be opened. There is no guarantee that it could not be opened in the future. Mr. Moritmer and Ms. Moore both stated that they did not expect Alexander Street to be developed at all. There was further discussion concerning unopened right-of-ways.

Ms. Moore asked if there were any neighbors present at the meeting. Mr. Dale Schell of 441 S. Freemont Street, was sworn in and showed his home's location on the map. Ms. Moore asked if all the neighbors were informed. Mr. Camp stated a sign had been placed at the property and all adjacent property owners were sent a notification letter. Mr. Milani also stated that he received signatures from all the neighbors as well and should be included in the application.

Mr. Moritmer stated that he wanted to comment on the rear setback variance. The applicant could build a significantly large great room without the variance. Ms. Moore stated the applicant must have a reason for wanting that extra square feet. Mr. Milani said the extra space would allow for a door and built-in cabinets for storage for their three kids.

Mr. Milani stated that there was 85 feet in between his home and the neighbor due to Alexander Street.

Mr. Tuz asked what the front setback would be. Mr. Milani stated it was 30 feet.

Mr. Jiles stated that the property could be expanded without the variances. Ms. Moore stated the presented plan is what the homeowner would like to do. Mr. Mortimer stated that the board should consider the town setbacks and why they are put into place.

#### **Findings of Fact**

1. There would be unnecessary hardship from strict application of the ordinance.
2. Hardship results from the conditions that are peculiar to the property, without granting the variance.

3. The hardship did not result from actions taken by the applicant or property owner.
4. The requested variance is consistent with the spirit, purpose, and intent of the title, because public safety is secured and justice is achieved.

Mr. Jiles made a motion to approve the variance of a reduction of 3 feet to the rear yard setback based on the above findings of fact. Mr. Sumners seconded the motion and the motion carried unanimously.

Mr. Jiles made a motion to approve the variance of a reduction of 5 feet to the side yard setback based on the above findings of fact. The unused right-of-way will not be affected. Ms. Moore seconded the motion and the motion carried unanimously.

### **UDO OVERVIEW AND UPDATE**

Mr. Camp reviewed the UDO's current structure and contents for the board. He also stated that staff is available at any time for questions concerning the UDO or its application.

### **ADJOURNMENT:**

Mr. Jiles made a motion to adjourn the meeting at 8:19 p.m. The motion was seconded by Ms. Moore and carried unanimously.

Respectfully submitted,

Betty Lynd  
Zoning Technician/Deputy Town Clerk

**Matthews Board of Adjustment  
 Variance Request for 2800 Mt Harmony Church  
 November 5, 2015**

**Summary of Request**

The applicant requests a variance to reduce the minimum require tree canopy preservation from 20% to 10.6%.

**Background**

A subdivision is planned for the 8 acre tract at Mt Harmony Church Road, further identified as tax parcel 21512304. The land is primarily wooded with about 3/4 of an acre occupied by a pond that is located on the property line with the adjoining owner. The applicant, Bonterra Builders, intends to construct a subdivision with a single public street and 14 building lots.

**Unified Development Ordinance Requirements**

In 2007, the Town of Matthews began to require a certain percentage of tree canopy to be preserved on all development lots. The subject property is zoned R-15 and is required to have at least 20% of the tree canopy preserved. The table below provides the percentage of canopy required for all zoning districts:

<b>TABLE OF MINIMUM TREE CANOPY REQUIREMENTS</b>	
<b>Zoning District</b>	<b>Required Tree Canopy</b>
R-15, R-20	20%
R-9, R-12, R-MH, R-15MF, R-12MF, CrC, R/I	15%
O, B-1, B-1SCD, B-H, B-3, BD, AU	12%
I-1, I-2	10%
R-VS, MUD, SRN, ENT	8%
HUC, C-MF, TS	4%

**Example Findings of Fact**

*In reaching a decision on a variance request, the Board shall make findings upholding all of the following criteria:*

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

**The builder could elect to develop fewer lots or could grade the site selectively to leave wooded areas in the front setback of the new development lots. The property could also be used as a rural single family home site.**

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.)

**The property is typical of undeveloped lots in the area.**

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.

**The hardship described by the applicant could be avoided using a different development strategy.**

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

**Matthews places a high value on the preservation of trees. A 50% reduction in the required canopy area is not consistent with the spirit and intent of the UDO.**

### Findings of Fact Standards for Zoning Variances

***In granting any zoning variance, the Board of Adjustment shall make findings that the spirit of the ordinance shall be observed, public safety and welfare shall be secured, and substantial justice shall be done. To reach these findings, the Board of Adjustment shall consider the following 7 standards:***

1. That special or unique circumstances or conditions or practical difficulties exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts.
2. That the special conditions or circumstances or practical difficulties do not result from the actions of the property owner or applicant, their agent, employee, or contractor. Errors made by such persons in the development, construction, siting or marketing process shall not be grounds for a variance except in cases where a foundation survey submitted to the Planning Director, or designee, before a contractor proceeds beyond the foundation stage has not revealed an error which is discovered later.
3. That the unique hardship situations cited by the applicant are not hardships resulting from personal or household members' circumstances which would no longer be applicable to the location if the applicant or household was no longer present at the property.
4. That the strict enforcement of this Title would deprive the owner or applicant of reasonable use of the property that is substantially consistent with the intent of this Title.
5. That the granting of a variance will not result in advantages or special privileges to the applicant or property owner that this Title denies to other land, structures, or uses in the same district, and it is the minimum variance necessary to provide relief.
6. That the proposed use and the appearance of any proposed addition or alteration will be compatible with, and not negatively impact, nearby properties.
7. That the variance shall not be materially detrimental to the health, safety or welfare of persons residing or working in the neighborhood. Consideration of the effects of the variance shall include but not be limited to, increases in activity, noise, or traffic resulting from any expansion of uses allowed by the variance.

## Ordinance Interpretation

October 21, 2015

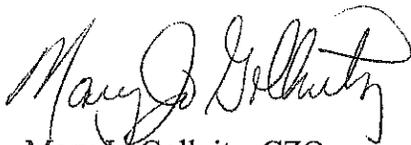
RE: Tree Canopy Requirements  
Tax Parcel #215-123-04 Mt. Harmony Church Rd.  
Lake Harmony Estates Subdivision

### Interpretation of the Zoning Administrator

Matthews UDO Section 155.606.7.A.2, requires the minimum tree canopy be maintained on any site of land disturbing activity. The percentage of required preserved tree canopy is calculated based on the zoning of the property and the percentage of existing tree canopy before land disturbing activity. The zoning classification for the property identified as Mecklenburg County tax parcel #215-123-04 along Mt. Harmony Church Rd is R-15 (residential with minimum lot size 15,000 sq. ft.). The UDO states that properties zoned R-15 are required to have a 20% tree canopy that must be preserved. Additionally, if the vegetation survey is calculated in excess of 20%, then all of the required tree canopy must be in preserved trees (see attached information).

Matthews Unified Development Ordinance definition of existing tree canopy clearly states that the canopy must have existed for at least three years. Online aerial sources indicate that the above referenced property in a natural undisturbed state as far back as 2009. The aerials provide evidence that the property currently has an existing tree canopy greater than 20%. The required tree save area for Lake Harmony Estates Subdivision is calculated at 1.44 acres.

The Ordinance does not allow for removal of trees and planting of new trees to meet the required tree canopy. Therefore it is the interpretation of the Zoning Administrator that the required 20% tree canopy must be maintained in the existing state on the property identified as Lake Harmony Estates Subdivision, parcel #215-123-04.



Mary Jo Gollnitz, CZO  
Planner II/Zoning Administrator

§ 155.103.C DEFINITIONS.

*Tree Canopy, Existing:* shall mean the tree canopy that has existed for at least three (3) years on a site as verified by aerial photographs.

§ 155.606.7.A.2. CANOPY PRESERVATION REQUIREMENTS.

a. The amount of existing canopy that must be preserved on the site during development is determined by two (2) factors: the zoning district classification; and the percentage of existing tree canopy present before any land disturbing activity, as indicated below:

TABLE OF MINIMUM TREE CANOPY REQUIREMENTS	
Zoning District	Required Tree Canopy
R-15, R-20	20%

b. Whenever the existing tree canopy is greater than twenty percent (20%) of the total property area, then a minimum canopy must be preserved, as defined in the above table at § 155.606.7.A.2.a.

§ 155.606.7.A.3. CALCULATION OF CANOPY AREAS.

g. *METHOD OF CALCULATION FOR TREE CANOPY:* The Tree Canopy shall be calculated by the following formulas:

$$(SA - U) \times 0.2 = RTC$$

Where:

SA: The total Site Area (square feet)

U: Any utility easements, road rights-of way or other area allowed to be excluded (in square feet)

RTC: Required Tree Canopy (square feet)

and,

(SA - U): Net land disturbance area (NLD) (square feet)

When Existing Tree Canopy as provided in the vegetation survey is calculated in excess of twenty percent (20%) of the NLD, then all of the RTC must be in preserved trees. When Existing Tree Canopy is calculated at less than twenty percent (20%) of the NLD, then all of the existing tree canopy must be preserved, and newly planted trees must be added to achieve the RTC.





and its placement on the lot will be left up to the discretion of the property owner, so long as the purpose and requirements of this section are met.

4. Within nonresidential districts walls and fences used for screening purposes must be at least six feet (6') in height, measured from the ground level to the top of the structure, and measured along the entire length of the finished side of the structure.

C. SCREENING STANDARDS. The following list contains specific standards to be used in installing screening:

1. Fences and walls used for screening shall be constructed in a durable fashion of brick, stone, other masonry materials or wood post and planks with no more than twenty five percent (25%) of the fence surface left open. The finished side of the fence shall face the adjoining property. The restrictions on fences and walls in Chapter 9, Floodplain Regulations also apply.
2. Where a fence or wall is used as part of a required screen area, any required plantings accompanying the fence or wall shall be located on the side of such fence or wall opposite the new development.
3. Shrubs used in any screening must be at least three feet (3') tall when planted and no further apart than five feet (5'). A minimum of fifty percent (50%) of the required shrubs shall be evergreen. They must be of a species and variety and adequately maintained so that an average height of five (5') to six feet (6') could be expected as normal growth within four (4) years of planting. Shrubs planted on a berm may be of a lesser height, provided that the combined height of the berms and plantings is at least six feet (6') after four (4) years.
4. No part of a berm shall be left as bare soil. No slope of a berm shall exceed one foot (1') of rise for every three feet (3') in plane. No part of a berm shall intrude into the existing or transitional right-of-way. At least seventy five percent (75%) of required plantings shall be planted on the top of the berm and opposite the new development. Plant species on a berm shall be selected to adapt well to slope and drainage conditions found on the berm.
5. Screening requirements may be waived when screening is already provided. There may be cases where the unusual topography or elevation of a site, or the size of the parcel involved, or the presence of required screening on adjacent property would make the strict adherence to § 155.606.6 serve no useful purpose. In those cases, the Planning Director may waive the requirements for screening so long as the spirit and intent of this section and the general provisions of this section pertaining to screening are adhered to. This waiver provision does not negate the necessity for establishing screening for uses adjacent to vacant property. **[formerly known as § 153.075(I)]**

**155.606.7. Tree Canopy Requirements**

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A. CANOPY PRESERVATION REQUIREMENT.

1. PURPOSE. The amount of tree canopy covering a site is an indication of the site's ability to retard storm water run-off, mitigate air pollution, and contribute to site-cooling effects. The tree canopy requirements outlined here may also be applied to the minimum Undisturbed Open Space requirements of Chapter 8, the Post Construction Ordinance.
2. REQUIREMENTS. **A minimum percentage of tree canopy is required to be maintained or created on any development site or on any site of any land disturbing activity.** If a site over one (1) acre in size was formerly in a forested state and fifty percent (50%) or more of the land area was clear cut within three (3) years of the plan submittal date for any land disturbing activity, then the tree canopy preservation requirements must be applied as though the site was not clear cut. It will be the applicant's responsibility to provide proof that any clear cutting activity on the site took place greater than three years prior to the current submittal date.
  - a. The amount of existing canopy that must be preserved on the site during development is determined by two (2) factors: the zoning district classification; and the percentage of existing tree canopy present before any land disturbing activity, as indicated below:

TABLE OF MINIMUM TREE CANOPY REQUIREMENTS	
Zoning District	Required Tree Canopy
R-15, R-20	20%
R-9, R-12, R-MH, R-15MF, R-12MF, CrC, R/I	15%
O, B-1, B-1SCD, B-H, B-3, BD, AU	12%
I-1, I-2	10%
R-VS, MUD, SRN, ENT	8%
HUC, C-MF, TS	4%

- b. Whenever the existing tree canopy is greater than twenty percent (20%) of the total property area, then a minimum canopy must be preserved, as defined in the above table at § 155.606.7.A.2.a.
- c. Whenever the existing tree canopy of the site prior to land disturbance is less than twenty percent (20%) of the total property area, then the percentage of canopy, as defined in § 155.606.7.A.2.a, must be achieved by a combination of preservation and new planting.
- d. Tree save areas that include mature trees over minimum planting calipers are strongly encouraged. Placement of proposed buildings, vehicle use areas, and other site improvements should be designed to reduce disturbance of existing vegetation.

3. CALCULATION OF CANOPY AREAS.

- a. The baseline canopy measurements on a proposed development site shall be provided by the property owner and submitted as part of the vegetation survey and landscape plan. The percent canopy cover may be calculated by aerial photographs and verified, if feasible, by ground measurement. The area of existing dedicated rights-of-way, storm water facilities and easements that do not incorporate trees, utility easements, and existing ponds, lakes, or perennial streams shall be subtracted from the total property area before the tree preservation requirements are calculated. If root disturbance or construction activities occur within the drip line of any tree designated as protected, only the area actually being protected will be included in the calculated tree protection area
- b. Each large maturing tree, whether preserved or newly planted, is calculated to provide two thousand (2,000) square feet of tree canopy. Newly planted large maturing trees must be a minimum of two inch (2”) caliper and eight feet (8’) in height at time of planting.
- c. Each small maturing tree, whether preserved or newly planted, is calculated to provide four hundred (400) square feet of tree canopy. Newly planted small maturing trees must be a minimum of one and one-half inch (1½”) caliper and six feet (6’) in height at time of planting.
- d. Preserving a Specimen Tree is calculated to provide a tree canopy equal to six (6) times the actual square footage contained within its drip line.
- e. All preserved trees designated to meet this canopy coverage requirement must be protected according § 155.606.9.D.
- f. All tree planting requirements cited in § 155.606.3 through § 155.606.6, inclusive, may be credited toward the minimum tree canopy requirement.
- g. METHOD OF CALCULATION FOR TREE CANOPY: The Tree Canopy shall be calculated by the following formulas:

$$(SA - U) \times 0.2 = RTC$$

Where:

- SA: The total Site Area (square feet)
- U: Any utility easements, road rights-of way or other area allowed to be excluded (in square feet)
- RTC: Required Tree Canopy (square feet)

and,

(SA – U): Net land disturbance area (NLD) (square feet)

When Existing Tree Canopy as provided in the vegetation survey is calculated in excess of twenty percent (20%) of the NLD, then all of the RTC must be in preserved trees. When Existing Tree Canopy is calculated at less than twenty percent (20%) of the NLD, then all of the existing tree canopy must be preserved, and newly planted trees must be added to achieve the RTC.

- 4. Mitigation for Required Tree Canopy may be provided concurrent with mitigation for undisturbed open space in Chapter 8, the Post Construction Ordinance (PCO).
  - a. Where a development site must meet the provisions of the PCO and chooses to comply with the Undisturbed Open Space provisions through one (1) of the mitigation measures, then those mitigation measures will also be allowed to be used to meet the tree canopy requirements of § 155.606.7. Mitigation for tree canopy shall be provided on the same site or within three hundred feet (300') of the boundary of the development site.
  - b. A development site which does not fall under the requirements of the PCO but would like to apply the mitigation provisions found in that regulation to Required Tree Canopy of § 155.606.7 may request a zoning variance. The property owner shall submit a zoning variance application with the Landscape Plan submission including full documentation on what tree canopy requirements are desired to be met through mitigation, and an explanation of the hardship. **[formerly known as § 153.075 (J)]**

#### **155.606.8. Vegetation Survey**

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- A. In order to assure that the location of existing trees and vegetation on the development site is acknowledged prior to preparing any design plans for development, a vegetation survey is required on all sites other than single family residential. The vegetation survey must be submitted to the Planning Office in advance of, or with a Landscape Plan, and prior to any land disturbing activity or any applications for grading, building, or rezoning. The vegetation survey should be completed in conjunction with a Concept Plan to meet the PCO requirements, when applicable.
- B. Elements required as a part of the vegetation survey include: a map, drawn to scale, and a written component, identifying any potential Specimen Tree on site, and all existing trees and vegetation eligible to be preserved. Where clear cutting activity occurred within the previous three years, then all trees that were previously on the site need to be identified and quantified in some way. A general grade of the condition of each tree shall be provided.
- C. A certified arborist, landscape architect, or forester shall evaluate the vegetation survey to determine what existing vegetation will be preserved, and how it can be incorporated into the development plans for the site. Root protection zones for all trees to be preserved must be indicated on the vegetation survey. **[formerly known as § 153.075 (K)]**

#### **155.606.9. Tree Preservation Planning**

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- A. CRITERIA FOR EVALUATING TREE PRESERVATION. Healthy and structurally sound trees, either singularly or in stands, located anywhere on the construction site shall be considered for preservation, and shall be evaluated for designation as protected trees.
- B. Trees preserved to meet streetscape, screening, and buffer requirements can receive credits according to the following:



232 Matthews Station Street  
Matthews, NC 28105  
704.847.4411

**APPLICATION FOR A ZONING VARIANCE**

Date Filed: September 16, 2015

Hearing Date: \_\_\_\_\_ Hearing Time: 7:00pm

HEARING LOCATION: Hood Room, Matthews Town Hall, 232 Matthews Station Street, Matthews, NC 28105

Property Owner Name(s): Bonterra Builders LLC

Subject Property Street Address: 2800 Mt Harmony Church Road, Matthews, NC 28105

Subject Property Tax Parcel ID: 21512304

Current Zoning District of Subject Property: R-15

Subject Property is Concurrently Seeking a Change in Zoning Classification To: No

Property Owner is Applicant Appearing Before Board of Adjustment: Yes

Applicant Appearing Before Board of Adjustment is Purchasor\*/ Lessee\*/Other\* N/A

\*Written explanation is required \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the Town of Matthews Zoning Board of Adjustment:

This Application for a Zoning Variance is being submitted because the property identified above cannot be used in the following manner: Developed as a single family subdivision with 14 lots as shown on the approved sketch plan.

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Without relief from one or more specific provisions of the Unified Development Ordinance (UDO). UDO section(s) which affect this ruling is/are: 155.606.7.A.2.b - Minimum of 20% tree canopy must be preserved. The site has over 20% tree canopy so per the ordinance at least 20% of the existing canopy must be preserved. We are proposing to preserve 10.6% of the tree canopy and provide another 10.2% of tree canopy by new planting (20.8% total).

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**APPLICATION FOR A ZONING VARIANCE, CONTINUED**

**FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE**

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. By law, the Board is required to reach four (4) conclusions as a prerequisite to issuing a variance: (i) that unnecessary hardship would result from the strict application of the ordinance; (ii) that the hardship results from conditions that are peculiar to the property; (iii) that the hardship does not result from actions taken by the applicant or the property owner; and, (iv) that the variance is consistent with the spirit, purpose, and intent of the zoning code, public safety is secured, and substantial justice is achieved. In the spaces provided below, indicate the facts that you intend to show and the arguments that you intend to make to convince the Board that it can properly reach these four required conclusions. IT WILL BE YOUR RESPONSIBILITY TO PRESENT THESE FACTS BY SWORN TESTIMONY AND COMPETENT EVIDENCE.

- (i) **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. (State facts and arguments to show that the variance will not result in advantages or special privileges to the applicant or property owner that the ordinance denies to other land, structures, or uses in the same district, and it is the minimum variance necessary to provide relief.):

Strict application of the ordinance would result in losing two lots from this subdivision. Since this is a small subdivision two lots comprise 14% of the total number of lots. The subdivision has already lost one lot due to the requirement to have the BMP access in Common Open Space. If an additional 2 lots were lost the subdivision size would have diminished by 20%. The current site plan is in line with the lot yield that would be expected for a parcel of land this size. This variance would allow the site to be developed to the density that would appropriate and expected in the R-15 zoning district.

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- (ii) **THE HARDSHIP RESULTS FROM CONDITIONS THAT ARE PECULIAR TO THE PROPERTY, SUCH AS LOCATION, SIZE, OR TOPOGRAPHY.** Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. (State facts and arguments to show that special and unique circumstances or conditions exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning district.):

The hardship results from five factors that are peculiar to this property. The size of the property, shape of the property, the location of the existing trees on the property, and the presence of a pond on the site. The size and shape of the property and the location of the pond dictate where the lots and the road need to go. There is not another viable way to layout this subdivision. In this layout there are only certain areas where the trees can be saved (outside of the roads, building pads etc.). Apportion of the area where treesave is feasible does not have trees so new planting is needed in this area to meet the treesave requirements.

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**APPLICATION FOR A ZONING VARIANCE, CONTINUED**

(iii) THE HARDSHIP DOES 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. (State facts and arguments to show that the hardship did not result from personal circumstances which would no longer be applicable to the location if the applicant or household was no longer present at the property.):

The five factors that are peculiar to this property existed prior to the Owner purchasing this property. The Owner has made no changes to these items so the hardship is not a result of actions taken by the Owner.

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(iv) THE REQUESTED VARIANCE IS CONSISTENT WITH THE SPIRIT, PUPOSE, AND INTENT OF THE ZONING CODE, PUBLIC SAFETY IS SECURED, AND SUBSTANTIAL JUSTICE IS ACHIEVED. (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.):

If the variance is denied the benefit to the public will be minimal in that additional trees will be saved in the rear of the property instead of new trees being planted to buffer the adjoining property and create a buffer around the surface water. There will still be 20% of the site that will be wooded as a benefit to the public. The applicant will suffer significantly by reducing the potential value of the property by 14%.

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## **APPLICATION FOR A ZONING VARIANCE, CONTINUED**

The Board of Adjustment may apply the following standards to verify whether sworn testimony and/or submitted documents/exhibits have been provided to satisfactorily justify the required four findings of fact. Please provide any additional documents and statements that will assist the Board in their deliberations:

- A. That special or unique circumstances or conditions exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts.
- \_\_\_ Are there any other parcels in the vicinity of the subject site which have similar size, topographical, dimensional, configuration, or related characteristics.
- \_\_\_ What is the closest nearby parcel that exhibits similar characteristics, and what is that/are those characteristic(s)?
- B. That the special conditions or circumstances do not result from the actions of the property owner or applicant, their agent, employee, or contractor. Errors made by such persons in the development, construction, siting or marketing process shall not be grounds for a variance except in cases where a foundation survey submitted to the Planning Director, or designee, before a contractor proceeds beyond the foundation stage has not revealed an error which is discovered later.
- \_\_\_ Was any foundation or other survey done after construction commenced? If so, attach.
- \_\_\_ If the request for variance is due to inaccurate measurements, calculations, or actions by anyone contrary to code requirements, please identify who, what the inaccuracy was, when it occurred, when it was discovered, what work was done after discovery. If development activity continued after discovery of the inaccurate action, why was it necessary to continue prior to review of this variance request?
- C. That the unique hardship situations cited by the applicant are not hardships resulting from personal or household members' circumstances which would no longer be applicable to the location if the applicant or household was no longer present at the property.
- \_\_\_ If another person/entity had control of this site, how would that change the need for the specific variance being requested?
- D. That the strict enforcement of these zoning requirements would deprive the owner or applicant of reasonable use of the property that is substantially consistent with the intent of the code.
- \_\_\_ How can the property be used if the requested variance is not granted?
- \_\_\_ Could the property be reasonably used if a variance with less deviation from the adopted requirements be issued?
- E. That the granting of a variance will not result in advantages or special privileges to the applicant or property owner that are denied to other land, structures, or uses in the same district, and it is the minimum variance necessary to provide relief.
- \_\_\_ Why do nearby parcels not need a similar variance to what is being requested?
- \_\_\_ If granted, how will this site be able to support the same/similar development characteristics as surrounding parcels?
- F. That the proposed use and the appearance of any proposed addition or alteration will be compatible with, and not negatively impact, nearby properties.
- \_\_\_ If the requested variance is granted, what appearance changes will take place on this site?
- \_\_\_ Will any visual/appearance changes be visible from any public street?
- G. That the variance shall not be materially detrimental to the health, safety or welfare of persons residing or working in the neighborhood. Consideration of the effects of the variance shall include but not be limited to, increases in activity, noise, or traffic resulting from any expansion of uses allowed by the variance.
- \_\_\_ List any and all impacts that may be felt by/on adjacent parcels if this requested variance is approved.

**APPLICATION FOR A ZONING VARIANCE, CONTINUED**

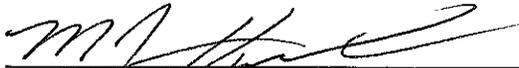
*I certify that all of the information presented by me in this application, including attachments, is accurate to the best of my knowledge, information and belief.*

Bonterra Builders, LLC - Mike Kissel

Print applicant name

Design Resource Group - Marc Van Dine, PLS, PE

Print representative name

  
Signature of applicant

  
Signature of representative

5615 Potter Road

Mailing address of applicant

2459 Wilkinson Blvd., Suite 200

Mailing address of representative

Matthews, NC 28104

City, State Zip

Charlotte, North Carolina 28208

City, State Zip

mkissel@bonterrabuilders.com

Email address of applicant

marc@drgrp.com

Email address of representative

10 July 2015  
Date

7/10/15  
Date

NO REQUEST FOR A ZONING VARIANCE WILL BE CONSIDERED COMPLETE AND PROCESSED PER § 155.403.2.B. UNTIL ALL SECTIONS HAVE RESPONSES, ALL DOCUMENTS AND EXHIBITS ARE ATTACHED, AND THE PROPERTY OWNER HAS SIGNED THE APPLICATION FORM.

IN THE SITUATION THAT THE PROPERTY OWNER IS NOT AN INDIVIDUAL, PLEASE INCLUDE DOCUMENTATION THAT APPLICANT IS AN AUTHORIZED REPRESENTATIVE.

IF THE PROPERTY OWNER IS NOT THE APPLICANT APPEARING TO SPEAK BEFORE THE BOARD OF ADJUSTMENT, SUCH AS LESSEE, PLEASE PROVIDE EXPLANATION OF RELATIONSHIP TO APPLICANT/REPRESENTATIVE. PRESENTING REPRESENTATIVE'S AUTHORITY TO APPEAR SHALL BE VERIFIED BEFORE THE APPLICATION IS CONSIDERED COMPLETE.



# Lake Harmony Estates

## Treesave Variance Narrative

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design resource group

The following narrative details the treesave requirements for Lake Harmony Estates. It explains how the treesave requirements are being met and the details the variance being requested.

The required treesave area for Lake Harmony Estates is calculated as 20% of the total site area minus the area in existing right-of-way on Mount Harmony Church Road, the existing power line right-of-way and the existing pond. The calculations for the required treesave are shown below:

Treesave Area Required:

Total Site Area = 346,768 SF

Site Area in Existing Utility Easements = 18,900 SF

Site Area in Existing Road R/W = 13,750 SF

Site Area for Treesave Calculations = 314,118 SF

*Treesave Required = 20 % of 314,118 SF = 62,824 SF (1.44 AC)*

Due to the size and the shape of the property, the development is limited in how the roadway and lots can be configured. As a result of these site constraints there are specific areas where treesave has to occur. In a few of the potential treesave areas there are no trees. The Owner is seeking a variance to plant these areas with trees to meet the treesave requirements. The calculations below show the amount of area where existing trees will be saved and the amount of area where trees will be planted.

Treesave Area Provided:

Area of Existing Trees to remain = 33,329 SF

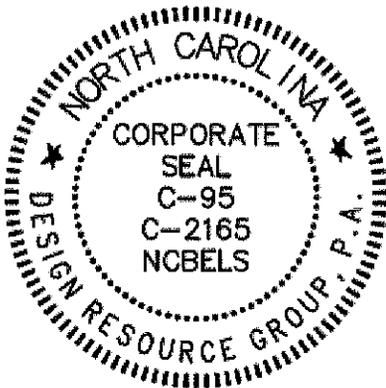
Area of Trees to be planted = 32,171 SF

*Total Treesave Area Provided = 65,500 SF (1.50 AC)*

A handwritten signature in black ink, appearing to read 'M. Van Dine', is written over a circular professional seal.

Marc R. Van Dine, PLS, PE

Design Resource Group, PA



Adjoining Property Owners:

1. Mount Harmony Baptist Church  
2817 Mount Harmony Church Road  
Matthews, NC 28105-4133  
Parcel ID: 21521106
  
2. Joseph W Todd & Angela D Todd  
2832 Mount Harmony Church Road  
Matthews, NC 28105  
Parcel ID: 21512303
  
3. Parns LLC  
236 S. Laurel Ave  
Charlotte, NC 28207  
Parcel ID: 21512307
  
4. Mount Harmony Baptist Church of Mecklenburg County NC  
2817 Mount Harmony Church Road  
Matthews, NC 28105-4133  
Parcel ID: 21521104
  
5. Mount Harmony Baptist Church of Mecklenburg County NC  
2817 Mount Harmony Church Road  
Matthews, NC 28105-4133  
Parcel ID: 21521105
  
6. Team Church  
2301 Stevens Mill Rd  
Matthews, NC 28014  
Parcel ID: 21512110