

## **MEMORANDUM**

TO: Chapel Hill Board of Adjustment

FROM: Ben Hitchings, Director, Planning and Development Services  
Phil Mason, Planning Manager

SUBJECT: 104 Boxwood Place: Resource Conservation District and Steep Slopes Variance Requests (PIN 9799-73-0329, Project #18-027)

DATE: April 5, 2018

Attached for your consideration is an application for variance from the Resource Conservation District and Steep Slopes regulations, in Sections 3.6.3 and 5.3.2 respectively, of the Land Use Management Ordinance.

### **INTRODUCTION**

The applicant, Alex Barroso, is requesting variances from Resource Conservation District (RCD) and Steep Slopes regulations. The subject property is located at 104 Boxwood Place near the intersection of Pinehurst Drive (Attachment 5). The property is in the Residential-1A (R-1A) zoning district and Orange County Property Identifier Number 9799-73-0329.

The applicant's materials are attached, including an application form, narrative, site plan, subdivision plat, stream determination, a deed, and related materials for your consideration.

### **EXISTING CONDITIONS**

The subject property is an undeveloped lot (approximately 1.3 acres) located at 104 Boxwood Place. The property is located in the Residential-1A (R-1A) zoning district and meets requirements for the Town's minimum standards for lot size and width. The site is vegetated mostly by hardwood trees of various sizes and species. Most of the site's buildable area is constrained by protected overlay zones.

Overlay districts on the property include, the Resource Conservation District (RCD), Jordan Lake Watershed Protection District, Jordan Lake Riparian Buffer, and 100-year floodplain. Additionally, there are steep slopes, over 25% grade, on the property on the western side of the lot. Overlay zones affecting this proposed residential construction project are the RCD, 100-year floodplain, and steep slopes.

A perennial stream drains from north to south across the eastern part of the lot, which is also the flatter portion of the lot. This stream has a variable-width RCD corridor associated with it, measured as a 2-foot elevation above the 100-year floodplain base flood elevation (BFE). Approximately 57% of the lot is located within the RCD, or a 32,003 square-foot area. Section

3.6.3 of the Land Use Management Ordinance does not allow new construction inside the RCD boundary without a variance. Also, Section 5.3.2 of the Land Use Management Ordinance does not allow disturbance of more than 25% area of the total area of steep slopes greater than 25% grade, without a variance. There is an approximately 5,841 square-foot area of steep slopes on the site or 10% of the lot area.

## **BACKGROUND**

- April 1, 1987: The lot was created.
- October 16, 1991: The lot was acquired by current owners, Giles and Beverly Williams.
- April 19, 2017: The Town of Chapel Hill classified the stream on the lot as perennial, which determines the extent of the Resource Conservation District, as well as lot creation date, size of drainage area and presence of steep slopes.
- March 2, 2018: Alex Barroso submitted an application requesting variances from provisions of the Land Use Management Ordinance, including the Resource Conservation District and steep slopes.

## **DESCRIPTION OF VARIANCE REQUESTS**

### **Resource Conservation District Variance**

The applicant is requesting a variance from Resource Conservation District regulations, Section 3.6.3(j) of the Land Use Management Ordinance, to encroach into the managed use zone<sup>1</sup> of the RCD with a proposed new home at 104 Boxwood Place. A variance is required to construct single-family homes in the Resource Conservation District according to Subsection 3.6.3(j) of the Land Use Management Ordinance. The applicant is proposing to encroach into about 32% (10,388 sq. ft.) of the RCD on the lot.

### **Steep Slopes Variance**

Additionally, the applicant is requesting a variance from the steep slopes regulations, Section 5.3.2(f) of the Land Use Management Ordinance, to encroach into steep slopes on the site. A variance is required from Section 5.3.2(f) of the Land Use Management Ordinance to encroach into more than 25% of the area of the slopes that are greater than 25% grade. The applicant is proposing to disturb 100% (5,841 sq. ft.) of the steep slopes on the lot.

For a detailed graphic of the proposed project, please refer to the site plan, dated March 3, 2018, prepared by Charles Eliason, Registered Land Surveyor (Part of Attachment 5).

## **DISCUSSION**

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<sup>1</sup> The Resource Conservation District is divided into three 50-foot wide zones at its maximum 150-foot wide extent. The three zones beginning at the stream bank are 1) streamside, 2) managed use, and 3) upland. Newer lots typically have wider protected RCD corridors resembling the above description and older lots have narrower RCD corridors, sometimes limited to the portions of the streamside and managed use zones.

If the variances are granted by the Board of Adjustment for the proposed construction, the applicants would be required to obtain a Residential Zoning-Building Permit from the Town, prior to beginning construction. The approved site plan would be required to guide the extent of construction during the plan review process. In addition, an as-built survey would be prerequisite to a receiving a Certificate of Occupancy, to verify that the construction doesn't exceed the variances granted.

## **PROCEDURE**

Section 4.12.2 of the Land Use Management Ordinance addresses variances from dimensional regulations. In order to grant the variances, the Board of Adjustment must make the following findings:

- (a) When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall have the power to vary or modify any of the regulations or provisions of the ordinance so that 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.
  - (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.

If the Board is able to make all the above findings for the requested dimensional variance, based on the evidence presented at the hearing, the Board may approve the variance request for the subject lot. If the Board fails to make one or more of the above findings, the Board must deny the request. The Board may also choose to approve a lesser extent for a requested variance or fewer than total number of requested variances.

## **RECOMMENDATION**

Staff Recommendation: We recommend that the Board of Adjustment hear the variance requests.

Resolution A would approve the Resource Conservation District variance request with conditions.

Alternative Resolution A would approve the Resource Conservation District variance request with conditions, without chair summary.

Resolution B would deny the Resource Conservation District variance request with conditions.

Resolution C would approve the Steep Slopes variance request with conditions.

Alternative Resolution C would approve the Steep Slopes variance request with conditions, without chair summary.

Resolution D would deny the Steep Slopes variance request with conditions.

**Attachments:**

1. Resolution A, approving the Resource Conservation District variance request
  - a. Alternative Resolution A, approving a Resource Conservation District variance request, without chair summary
2. Resolution B, denying the Resource Conservation District variance request
3. Resolution C, approving the Steep Slopes variance request
  - a. Alternative Resolution C, approving a Steep Slopes variance request, without chair summary
4. Resolution D, denying the Steep Slopes variance request
5. Applicant's materials including application form, narrative, site plan, subdivision plat, stream determination, a deed, and related materials
6. Area map of subject lot