

MEMORANDUM

TO: Chapel Hill Board of Adjustment

FROM: Ben Hitchings, Director, Planning and Development Services
Jake Lowman, Senior Planner

SUBJECT: 817 Tinkerbell Road: Resource Conservation District Variance, Jordan Riparian Buffer Variance, and Dimensional Variance
(PIN 9799-61-6438, Project #18-124)

DATE: March 7, 2019

INTRODUCTION

Town Staff recommends that the Board of Adjustment review these requests for variances to construct a single family residence.

The subject property is located at 817 Tinkerbell Road, south of the intersection with Leclair Street (Attachment 5). The property is in the Residential-1 (R-1) zoning district, and the Orange County Property Identifier Number is 9799-61-6438.

The applicant, Conrad Mock, is presenting three options for the Board's review:

- A) A variance from
 - a. Resource Conservation District (RCD) regulations in, Section 3.6.3 of the Chapel Hill Land Use Management Ordinance; and
 - b. Jordan Riparian Buffer regulations in Section 5.18, and
 - c. Dimensional regulations in Section 3.8, or
- B) A variance from
 - a. RCD regulations; and
 - b. Jordan Riparian Buffer regulations, or
- C) A variance from
 - a. RCD regulations (less than Option B);
 - b. Jordan Riparian Buffer regulations (less than Option B); and,
 - c. Dimensional regulations (less than Option A).

The Board may also choose to approve a lesser extent for the requested variances or fewer than the total number of requested variances.

EXISTING CONDITIONS

The 0.44-acre subject lot is in the Residential-1 zoning district. The vacant lot slopes downhill from east to west towards Tinkerbell Road, and is vegetated mostly with hardwood trees of various sizes. The lot contains a perennial stream, Tracy Branch, with associated RCD, Jordan Riparian Buffer, and floodplain, which limit the buildable area on the lot. The lot is also within the Jordan

Lake Watershed Protection District. The variance options requested pertain to the RCD area, the Jordan Riparian Buffer area, and the side setback limits, based on the site plans presented to the Board of Adjustment.

The lot has variable-width RCD associated with it, measured as a 3-foot elevation above the 100-year floodplain base flood elevation (BFE) on the western portion of the lot, which transitions to a 100' width stream-based RCD (50' on either side of the perennial stream channel) and also has a 100' width Jordan Riparian Buffer (50' on either side of the perennial stream channel).

Approximately 65.3% of the lot (12,605 square feet of the 19,288 square foot lot) is located within RCD. Within this area, approximately 50.6% of the lot (9,767 square feet of the 19,288 square foot lot) is located within Jordan Riparian Buffer.

A total of 15,282 square feet of the lot (79.2%) is in a protected area, including RCD, Jordan Riparian Buffer, and the Tracy Branch stream corridor. Section 3.6.3 of the Land Use Management Ordinance does not allow new development inside the RCD boundary, section 5.18 does not allow development within the Jordan Riparian Buffer, and section 3.8 does not allow structures inside of the setbacks, without variances for any of these activities.

BACKGROUND

November 2, 2012: Subject property acquired by property owners, Ashley and Guy Monitor.

April 24, 2018: Subject property placed under contract between the applicant, Conrad Mock, and current owners, Ashley and Guy Monitor, contingent upon receiving variance.

November 29, 2018: Application submitted for a Resource Conservation District Variance, Jordan Buffer Riparian Variance, and Dimensional Variance, by Conrad Mock.

DESCRIPTION OF VARIANCE REQUESTS

The applicant is presenting three variance request options with varying amounts of impact to the RCD, Jordan Riparian Buffer, and side setbacks, as summarized in the table below; the applicant is requesting that the Board approve one of these three options so they may move forward with the construction of a single-family residence. The applicant's materials are attached, and include an application form, narrative, statement of justification, site plan, and related materials for the Board's consideration (Attachment 4).

Option A

The first, Option A, is requesting variances from Resource Conservation District regulations in Section 3.6.3 of the Land Use Management Ordinance and Jordan Buffer Riparian regulations in Section 5.18 of the Land Use Management Ordinance, as well as a variance from dimensional

regulations, which are regulated by section 3.8 of the Land Use Management Ordinance. The applicant is requesting a dimensional variance to encroach 13 feet into the 14-foot side setback, on the southern property line. Additionally, the applicant is requesting a variance to permit 52 square feet of land disturbance in the RCD (0.4%) and the same 52 square feet of land disturbance in the Jordan Riparian Buffer (0.5%). This option will accommodate a proposed single family residence while minimizing land disturbance and keeping all impervious surface outside of the RCD and Jordan Riparian Buffer. These improvements are shown on the attached site plan (Attachment 4).

Option B

The second option, Option B, is requesting variances from Resource Conservation District regulations in Section 3.6.3 of the Land Use Management Ordinance and Jordan Buffer Riparian regulations in Section 5.18 of the Land Use Management Ordinance for land disturbance associated with the construction of a new single family home. The applicant is requesting a variance to permit the disturbance of 525 square feet of the RCD (4.2%), and 185 square feet of this disturbance would consist of impervious surface (1.5% of the RCD area). This variance request also includes the same 525 square feet of disturbance of the Jordan Riparian Buffer (5.4%), and the same 185 square feet of this disturbance consists of impervious surface area (1.9%). These improvements are shown on the attached site plan (Attachment 4).

Option C

The third option, Option C, is requesting variances from Resource Conservation District regulations in Section 3.6.3 of the Land Use Management Ordinance and Jordan Buffer Riparian regulations in Section 5.18 of the Land Use Management Ordinance, as well as a variance from dimensional regulations, which are regulated by section 3.8 of the Land Use Management Ordinance. The applicant is requesting a dimensional variance to encroach 6 feet into the 14-foot side setback, on the southern property line. Additionally, the applicant is requesting a variance to permit the disturbance of 235 square feet of the RCD (1.9%), and 58 square feet of this disturbance would consist of impervious surface (0.4% of the RCD area). This variance request also includes the same 235 square feet of disturbance of the Jordan Riparian Buffer (2.4%), and the same 58 square feet of this disturbance consists of impervious surface area (0.6%). These improvements are shown on the attached site plan (Attachment 4).

817 Tinkerbell Road Variance Request Summary

Variance Requests	Option A	Option B	Option C
Resource Conservation District*	LD: 52 sf (0.4%) IS: 0 sf (0%)*	LD: 525 sf (4.2%) IS: 185 sf (1.5%)	LD: 235 sf (1.9%) IS: 58 sf (0.4%)
Jordan Riparian Buffer**	LD: 52 sf (0.5%) IS: 0 sf (0%)	LD: 525 sf (5.4%) IS: 185 sf (1.9%)	LD: 235 sf (2.4%) IS: 58 sf (0.6%)
14' Side Setback	13' encroachment	0' encroachment	6' encroachment

*Resource Conservation District: 12,605 square feet total on the lot

**Jordan Riparian Buffer: 9,767 square feet total on the lot

***LD: Land Disturbance; IS: Impervious Surface

The proposed driveway, and associated land disturbance and impervious surface, is not included in the variance requests. Within the RCD, driveways are a permitted use when there is a practical necessity. Similarly, within the Jordan Buffer, driveway impacts are allowable with mitigation. These activities will require additional documentation and permitting if any of the variance requests are approved.

DISCUSSION

If a variance is granted by the Board of Adjustment for the proposed construction, the applicant would be required to obtain a Jordan Buffer Authorization approval, a Resource Conservation Encroachment approval, and a Residential Zoning-Building Permit from the Town prior to beginning construction. The approved site plan would be required during the plan review process to verify that the extent of construction is congruent with the variance granted. In addition, an as-built survey would be a prerequisite to a receiving a Certificate of Occupancy, to verify that the limits of construction do not 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 applicants 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 one of the three requested variances, 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.

ATTACHMENTS

1. Resolution A, approving the variance requests.
2. Alternative Resolution A (without chair summary), approving the variance requests.
3. Resolution B, denying the variance requests.
4. Applicant's materials including application form, narrative, statement of justification, site plan and related materials.
5. Area map of subject lot.