



## CITY OF HENDERSONVILLE BOARD OF ADJUSTMENT

Operations Center - Assembly Room | 305 Williams St. | Hendersonville NC 28792  
Tuesday, September 13, 2022 – 1:30 PM

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### AGENDA

1. **CALL TO ORDER**
2. **APPROVAL OF AGENDA**
3. **APPROVAL OF MINUTES**
  - A. Minutes of August 9, 2022
4. **OLD BUSINESS**
  - A. Approval of Decision B22-70-VAR
5. **NEW BUSINESS**
  - A. Administrative Appeal - Oak Preserve (B22-051-ADMIN)
6. **OTHER BUSINESS**
7. **ADJOURNMENT**

*The City of Hendersonville is committed to providing accessible facilities, programs and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or an accommodation for this meeting please contact the City Clerk no later than 24 hours prior to the meeting at 697-3005.*

## MINUTES OF THE HENDERSONVILLE BOARD OF ADJUSTMENT

Tuesday, August 9, 2022  
1:30 p.m. in the City Operations Center

The Hendersonville Board of Adjustment held its regular monthly meeting on August 9, 2022, at 1:30 p.m. in the Assembly Room in City Operations Center, 305 Williams Street, Hendersonville, North Carolina. Those present were: Melinda Lowrance, Chair, Ernest Mowell, Vice-Chair, Laura Flores, Charles Webb, Kathy Watkins, Stefan Grunwald, Peter Hanley, Fred Nace, Sharon Alexander, Attorney to the Board, Lew Holloway, Community Development Director, Matthew Manley, Planning Manager, Alexandra Hunt, Planner I, Daniel Heyman, Staff Attorney, Tyler Morrow, Planner II and Angela Beeker, City Attorney.

Absent: Michael Edney

Chair called the meeting to order at 1:30 p.m.

Approval of the Agenda: A motion was made by Mr. Hanley to approve the agenda. The motion was seconded by Ms. Watkins and passed unanimously.

Approval of the Minutes of the July 20, 2022 special meeting. A motion was made by Mr. Mowell with one added correction and seconded by Ms. Watkins to approve the minutes as amended. The motion passed unanimously.

Approval of the Decision: **B22-041-SUP** – City of Hendersonville, Special Use Permit. A motion was made by Ms. Watkins to approve the decision as written. Mr. Mowell seconded the motion which passed unanimously.

A motion was made by Mr. Mowell to change the order of business and move the appeal to the second item under New Business and the variance to the first item and to include the approval of the decision. Ms. Watkins seconded the motion to amend the agenda. The motion passed unanimously.

### **Variance – James Walgenbach – 1525 Ridgewood Boulevard (B22-70-VAR).**

Chair stated today we have one public hearing to consider and an appeal. First, a Variance application from James Walgenbach for the property located at 1525 Ridgewood Boulevard. Any persons desiring to testify in these hearings must first be sworn in. Since this is a quasi-judicial hearing, it is very important that we have an accurate record of what goes on here. Therefore, we must ask that you refrain from speaking until recognized by the Chair and, when recognized, that you come forward to the podium and begin by stating your name and address. Anyone present who has knowledge of anything of value that has been given or promised in exchange for a position to be taken on this application should disclose it now.

Chair swore in all persons to give testimony. Those sworn in were Alexandra Hunt, Planner I and James Walgenbach.

Chair opened the public hearing.

Alexandra Hunt, Planner I stated her name and title for the record. She asked that the staff report and presentation be submitted into the record. She stated staff is in receipt of a Variance application from James Walgenbach from Section 5-4-3 Dimensional requirements of the Zoning Ordinance.

Ms. Hunt gave the project background:

The subject property is located at 1525 Ridgewood Boulevard. The PIN for this parcel is 9569-43-0230.

The subject property is zoned R-10, Medium Density Residential. The variance requested is to reduce the side setback from the required 5-feet to 3-feet 3-inches and to reduce the rear setback from the required 5-feet to 2-feet for the purpose of constructing a new detached garage using the same footprint of an existing detached garage.

The subject property possesses a PIN of 9569-43-0230 and is zoned as R-10 Medium Density Residential. Based on Henderson County records, the lot size is approximately 0.29 acres or 12,632.4 square feet. The accessory structure setbacks for R-10 are: Front: 25', Side: 5', Rear: 5'. Based on Henderson County records, the existing 20' x 26' detached garage was constructed in 1926. Based on the variance application, the applicant is proposing to construct a new garage using the same 20' x 26' footprint of the existing detached garage.

Section 5-4-3 of the City of Hendersonville Zoning Ordinance was shown and is included in the staff report.

Site photos were show of the property and are included in the staff report.

Photos submitted by the applicant along with a drawing of the layout and a digital rendering of the new garage was shown and is included in the staff report.

Section 10-9 pertaining to Variances was shown and is included in the staff report.

Staff suggested motions were presented to the Board.

Ms. Hunt stated the applicant is present.

Chair asked if there were any questions for staff. There were no questions for staff.

Jim Walgenbach, 1525 Ridgewood Boulevard stated his name for the record. He stated the current garage is an eyesore and they would like to replace it in the existing footprint that is there now. It does keep in character with the neighborhood. It is an old neighborhood. There are other accessory structures in the area with less than a 5-foot setback.

Chair asked if there were any questions for the applicant.

Mr. Grunwald asked what the height difference would be for the garage today and the one they plan to construct. Mr. Walgenbach stated the existing garage is between 12 and 15 feet, and the new garage would be 22 to 23 feet tall.

Mr. Mowell stated the existing garage is on a slab. Mr. Walgenbach stated correct. Mr. Mowell stated he will use the same slab for the new construction. Mr. Walgenbach stated correct.

Chair asked if there were any further questions for the applicant. There were no further questions.

Chair asked if anyone would like to speak in favor or against the application. No one spoke.

Ms. Watkins asked if they would not be adding plumbing to the garage. Mr. Walgenbach stated they would be adding plumbing to put a bathroom upstairs. It will be in the front of the garage and going into their drainage system.

Chair stated to the applicant that in order to approve the variance, it will require a minimum of seven affirmative votes.

When no one else spoke, Chair closed the public hearing for Board discussion.

The Board was in favor of using the existing slab and discussed how old the structure was.

Mr. Mowell made the following motion: *With regard to the request by James Walgenbach for a variance from Section 5-4-3: Dimensional Requirements: to reduce the side setback requirement from 5' to 3'3" and to reduce the rear setback requirement from 5' to 2'. I move the Board to find that (a) strict enforcement of the regulations would result in practical difficulties or unnecessary hardship to the applicant, (b) the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, and (c) in the granting of the variance the public safety and welfare have been secured and substantial justice has been done. The motion was seconded by Mr. Nace.*

Chair called for the vote. The following vote was taken by a show of hands.

Mr. Hanley	Yes
Mr. Mowell	Yes
Mr. Webb	Yes
Ms. Lowrance	Yes
Mr. Grunwald	Yes
Ms. Flores	Yes
Ms. Watkins	Yes
Mr. Nace	Yes

The vote was unanimous. Motion approved.

**Administrative Appeal – Oak Preserve (B22-051-ADMIN).**

Lew Holloway, Community Development Director stated staff has identified an issue with the noticing for this appeal, so they will not be able to hear the Administrative Appeal today. Staff will re-notice and this will reconvene at the next Board of Adjustment meeting.

Meeting adjourned at 1:44 p.m.

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Melinda Lowrance, Chair

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Terri Swann, Secretary

# NOTICE OF APPEAL



ATTN: City Clerk

I, TROY LEE,

Pursuant to Article 10 of the Zoning Ordinance I am appealing the violation dated May 4, 2022 for the Oak Preserve Development Project located at 2201 Old Spartanburg Rd., Hendersonville, NC. As required by §10-7(a) the grounds for appeal are as follows:

- 1.) Many of the trees removed were not viable and posed safety hazards. Some had blown over onto the neighbors' adjacent property causing damage. We spoke to the neighboring HOA president and were asked to remove several trees that were safety hazards.
  - 2.) Several trees were in direct conflict w/ storm water structures.
  - 3.) Tree survey failed to acknowledge the condition of the trees.
  - 4.) Several trees requiring protection pursuant to §15-4(c) of the zoning code were in the envelope of a building or too close to a structure to allow for the protective measures required.
  - 5.) The count of removed trees is incorrect.
  - 6.) The amount of time given to remedy the violation is unreasonable.
  - 7.) The fine being assessed is incorrectly calculated and unconscionable.
  - 8.) All the above conditions / ~~were~~ <sup>concerns</sup> were raised at the on site pre construction meeting.
- ① Please contact me at 828-435-2216 or by email at [Troy@DarkHorseBuilds.com](mailto:Troy@DarkHorseBuilds.com).
- Troy Lee* TROY LEE

# Notice to Remedy Code Violation

CITY OF HENDERSONVILLE, NORTH CAROLINA

Date: MAY 4, 2022

**Name:** OP MANAGEMENT LLC  
**Mailing Address:** 707 BROOKLYN AVE  
 HENDERSONVILLE, NC 2879

**YOU ARE HEREBY NOTIFIED** that at or on property owned or occupied by you is located at: **The Oak Preserve located at 2201 Old Spartanburg Rd. Hendersonville NC**

There exists Violations of the Code of Ordinances of the City of Hendersonville.

Upon investigation, your property is in violation of: **Conditional Rezoning Ordinance**

In accordance with Section 1-6 of said Code and rezoning Ordinance #0-21-31, which states the following:

2. Development of the parcel shall occur in accordance with the final site plan requirements of Article VII of the Zoning Ordinance of the City of Hendersonville, North Carolina, and shall be based on the site plan submitted by the applicant and subject to the following.

b. Conditions that shall be satisfied prior to final site plan approval include:

- i. Trees slated for preservation as shown on the site plan must be protected in accordance with section 15-4 of the Zoning Code prior to construction: and

And in accordance with Section 15-4-c) Protection of existing trees during construction, of said code which states the following:

- (1) No grading or other land-disturbing activity can occur on a site with existing trees which are designated to be preserved in order to meet landscaping requirements until protective barriers are installed by the developer and approved by the community development director or a designee appointed by the community development director. Trees designated for preservation which are counted toward the landscape requirements must be protected by barriers, while trees designated for preservation which do not count toward the landscape requirements are encouraged to be protected by barriers. The diameter of the preserved trees and the location of protective barriers must be shown on landscape and grading plans with the dimension between the tree trunk and barrier indicated.

Barricades shall be placed around the critical root zone of preserved trees that are within 50 feet of any grading or construction activity. The critical root zone is a circle extending around the tree with a one-foot radius for every one inch of tree diameter. For example, a ten-inch diameter tree would have a barricade surrounding it, erected ten feet away from the trunk. All protective barriers must be maintained throughout the building construction process.

City of Hendersonville Planning Staff identified 53 trees slated for preservation per the approved site plan dated April 22, 2021 were removed without approval. There was no evidence that the trees subject to preservation requirements were properly protected in accordance with Section 15-4-c) of the Zoning Code as agreed upon in the signed List of Conditions dated June 3, 2021. Additionally, 16 trees that were preserved were not properly protected according to the aforementioned Existing Vegetation protection measures.

You are hereby directed to remedy the violations by the end of day on: **MAY 20, 2022**

**A Revegetation Plan shall be submitted to the Community Development Director for approval and shall be compliant with the City's approved species list and best practices. As derived from Section 15-4,**

**Removed trees which measured between 13"-18" in caliper will be replaced by 3 canopy trees.**

**Removed trees which measured between 19"-24" in caliper will be replaced by 4 canopy trees.**

**Removed trees which measured greater than +25" caliper will be replaced by 5 canopy trees.**

**All new plantings shall measure at least 1.5"-2" in caliper.**

**Should the violator refuse to remedy the violation with an approved revegetation plan as specified above, the City of Hendersonville will assess the following fines against OP Management LLC.:**

**Unlawful removal of 53 trees ordered to be preserved at \$500.00 per occurrence.**

**Failure to protect 53 trees slated for preservation as shown on the site plan must be protected in accordance with section 15-4 of the Zoning Code prior to construction at \$500.00 per occurrence.**

**Failure to protect 16 trees that were ordered to be preserved at \$500.00 per occurrence.**

**OP Management LLC is so ordered and shall submit a revegetation plan according to the specifications above or pay a fine in the amount of \$61,000.00 (Sixty-One Thousand Dollars)**

or the City shall cause the same to be remedied and assess the cost to you in addition to any fines associated with said violations in accordance with the Ordinance, a copy is enclosed for your information.



**STEPHEN CALVERLEY**

Code Enforcement Officer

100 N. King Street, Hendersonville, NC 28712

Community Development Dept. – Planning Division Phone: 828-697-3010

Attached References / Evidence :

Signed 0-21-31\_Conditional\_Rezoning\_ordinance; C6(1) -Oak Preserve Tree Preservation Plan; Photos

Ordinance #O-21-31

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO  
AMEND THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE  
FOR PARCEL NUMBER 9577-88-3870 BY CHANGING THE ZONING  
DESIGNATION FROM COUNTY R1 TO PRD-CZD PLANNED RESIDENTIAL  
DEVELOPMENT - CONDITIONAL ZONING DISTRICT**

IN RE: Parcel Number: 9577-88-3870 – 2201 Old Spartanburg Rd. (Oak Preserve)  
(File # P21-11-CZD)

**WHEREAS**, the City is in receipt of a Conditional Rezoning application from applicant OP Management / Troy Lee (owner) for the development of 30 Residential Units / 15 Duplexes on approximately 5.6 acres; and

**WHEREAS**, the Planning Board took up this application at its regular meeting on May 10th, 2021; voting 5-0 to recommend City Council adopt an ordinance amending the official zoning map of the City of Hendersonville; and

**WHEREAS**, City Council took up this application at its regular meeting on June 3rd, 2021, and

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Hendersonville, North Carolina as follows:

1. Pursuant to Article XI of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of the following: Parcel number 9577-88-3870 from County R1 to PRD-CZD (Planned Residential Development - Conditional Zoning District)
2. Development of the parcel shall occur in accordance with the final site plan requirements of Article VII of the Zoning Ordinance of the City of Hendersonville, North Carolina, and shall be based on the site plan submitted by the applicant and subject to the following.
  - a. Permitted uses shall include:
    - i. Residential Dwellings, Two-Family.
  - b. Conditions that shall be satisfied prior to final site plan approval include:
    - i. Trees slated for preservation as shown on the site plan must be protected in accordance with Section 15-4 © of the Zoning Code prior to construction; and
    - ii. The developer shall work with staff to extend the driveways to increase parking for each unit; and



With their signatures below, the undersigned applicant(s) and property owner(s) consent to and agree to the imposition of all conditions stated.

Applicant: TMFL Consultants, LLC

Signature: \_\_\_\_\_



Printed Name: \_\_\_\_\_


Troy A. Lee

Title: \_\_\_\_\_

Member Manager

Property Owner: OP Management, LLC

Signature: \_\_\_\_\_



Printed Name: \_\_\_\_\_

Troy A. Lee

Title: \_\_\_\_\_

Member Manager



LANDSCAPING SHALL BE DESIGNED IN SUCH A MANNER AS TO IMPART ITS AESTHETIC CHARACTER WHEN VIEWED FROM ANY AREA ACCESSIBLE TO THE PUBLIC OR FROM ADJACENT PROPERTIES.

WHEN CARRYING OUT THE TREE SURVEY, THE PROPERTY LINES WERE NOT WELL MARKED SO ALL TREES THAT WERE ON THE PROPERTY LINES OR JUST A FEW FEET INTO THE NEIGHBORING PROPERTY, WERE LOCATED OUTSIDE OF THE PROPERTY LINES HAVE BEEN REMOVED BUT THE TREE SCHEDULE DOESN'T REFLECT THE TREES REMOVED.

LEGEND	
HARDWOOD	
PINE	
TREES TO BE PRESENTED	
TREES TO BE REMOVED	

**PRESERVED**   
**TRIES TO BE** 

(81 HARDWOODS, 40 PINE)

1/4 mile

1/4 mile

1/4 mile

1/4 mile

1/4 mile

1/4 mile

1/4 mile

1/4 mile

1 mile

{ 1/4 mile }

1 inch = 80 feet

[illegible]PESTERFIELD  
CIVIL ENGINEERING

99



