



**Town of Clayton
Board of Adjustment Agenda
Wednesday, May 17, 2023 @ 6:00 PM
Council Chambers**

- 1. CALL TO ORDER**
- 2. ADJUSTMENT OF THE AGENDA**
- 3. APPROVAL OF MINUTES**
 - a. [Board of Adjustment - Apr 19 2023 - Minutes](#)
- 4. APPROVAL OF FINDINGS OF FACT FROM APRIL 19 CASES**
 - a. [FC 2023-07-VAR Clayton Logistics Center](#)
 - b. [FC 2022-192-VAR Summer Glen Subdivision](#)
- 5. OLD BUSINESS**
- 6. NEW BUSINESS**
- 7. ADJOURNMENT**



**Town of Clayton
Board of Adjustment Minutes
Wednesday, April 19, 2023 at 6:00 PM
Council Chambers**

Board Members Present:

Marty Bizzell
Thomas Antoine
Rebecca Berry
Jim Perricone
Richie Wiggins

Board Members Absent:

Ruth Anderson
John Saluppo

Staff Present:

Ben Howell, Planning Director
Bruce Venable, Planner I
Francis Rasberry, Town Attorney
Love Ott, Land Development Specialist

1 CALL TO ORDER

- a) Chair Bizzell called the meeting to order at 6:07pm.

2 ADJUSTMENT OF THE AGENDA

3 APPROVAL OF MINUTES

- a) Board Member Perricone noted that there was nothing on the February agenda, so the board decided not to meet as a result.

Motion: Board Member Perricone
Second: Board Member Wiggins
Result: Approved, Unanimous

4 PUBLIC HEARINGS

- a) 2023-07-VAR Clayton Logistics Landscape Variance
Presenter: Bruce Venable, Planner I

Bruce Venable presented the board with a variance to reduce the number of plantings that are required by the Town's Unified Development Code (UDC).

The subject property is located at 853 Shotwell Rd and the use is industrial.

Venable provided the board with the UDC requirements from section 155.402(D)(1).

Venable provided the approved landscaping plan sheet from 2022, and the new proposed landscape plan sheet.

The new landscape plan reduces the area where the plantings could go and survive.

Venable described the four findings of fact.

Chair Bizzell asked if the site was fully approved, with construction drawings approval?

Venable stated that it was fully approved, construction drawings approved, and administrative amendment approved to address the landscaping issues.

Board Member Berry asked under fact three there are cut slopes on the North and East edges of the property and fill slopes on the South and West side, were the cuts made in development or did they exist when the original site plan was submitted?

Venable stated the topographical issues were present before and the applicator rated where it was possible to the structure.

Those who spoke on the variance were sworn in by Love Ott.

Applicant Comments:

Mark Frederick with Parker, Poe, Adam, and Bernstein
301 Fayetteville Street, Raleigh, NC 27601
Speaking on behalf of the applicant, Landmark Industrial

Mr. Frederick requested that the application, presentation, case report, and the supporting material be accepted into the record.

Chair Bizzell noted.

Mr. Frederick stated that in August of 2021 the subject site was rezoned to the light industrial district.

A rendering of the building was provided to give the board an idea of what the final outcome will be after construction is near completion.

Mr. Frederick stated that although the site plan was approved with the landscape plan, the issue was identified during site plan review of the project and knew that it will likely come back for a variance request and an amended site plan.

Mr. Frederick asked Mr. Davidson for his experience and education.

Mike Davidson
Registered Landscape Architect

Civil engineering work and landscape architect work in North Carolina for over 20 years.

5410 Trinity Road, Raleigh, NC 27607

Bachelor of Science from the University of Tennessee

Mr. Frederick asked Mr. Davidson what his role was in this project.

Senior Project Manager for the project.

Mr. Frederick asked to tender Mr. Davidson as an expert in the field of landscape engineering.

Chair Bizzell noted.

Mr. Frederick asked Mr. Davidson to go through the factors that drove the layout of the landscape plan and the relief the applicant is seeking.

Mr. Davidson stated interior landscaping requires 20% of interior landscaping for the entire site area, not just the developable regardless of what type of use would have been proposed on this lot, the same number of plant material would have been required.

Mr. Davidson provided the board with the existing conditions plan, which illustrated the steepness of the slopes along Shotwell Road and throughout the property.

Board Member Wiggins asked if there has been any current landscaping done to the property?

Mr. Davidson stated no

Board Member Berry asked since Bermuda grass requires so many hours of sunlight is it Mr. Davidson's testimony that other shade tolerant grasses cannot be planted there?

Mr. Davidson stated since Bermuda grass is a warm season grass, an aggressive, fast grower would do better in this region. Other grasses could not perform in this environment.

Board Member Berry asked if Mr. Davidson was consulted when the original site plan was created?

Mr. Davidson stated he was consulted.

Board Member Berry asked that the plantings could be made when the original site plan was created and submitted?

Mr. Davidson stated in order to close on the property the applicant needed site plan approval and the intent was to come back to request relief on the landscaping standard.

Chair Bizzell asked Mr. Davidson that the 20% interior planting is strictly internal site not the perimeter buffer or street yard?

Mr. Davidson stated yes.

Chair Bizzell asked what percentage of planting is the applicant proposing?

Mr. Davidson stated he is not sure of the exact percentage.

Mr. Frederick stated that under the proposed calculations, it will be reduced to just over half an acre or 24,000 square feet.

Board Member Antoine stated that the area to the East of the larger retention pond looks flat, why is there no planting there?

Mr. Davidson stated that is outdoor storage and it will be gravel.

Board Member Antoine stated that to the north of the westernmost building, the revised plan has an absence of any plantings.

Mr. Davidson stated that area was identified as future vehicular parking in the approved civil drawings.

Board Member Antoine stated that Chair Bizzell noticed that the area showed as planted area not parking on the approved plans.

Mr. Davidson stated there have been tenants that indicated the desire to use that area as parking.

Board Member Antoine asked what is the acreage of that spot?

Mr. Davidson stated maybe 4,000 square feet.

Chair Bizzell asked if that spot was noted on the approved site plan as future parking?

Mr. Davidson stated yes.

Board Member Perricone asked if that spot does become parking there would have to islands added with plantings and the applicant is holding back with the intent if it does become parking there will be additional planting as part of the island?

Mr. Davidson stated yes.

Mr. Frederick summarized the evidence the board heard.

Board Member Perricone asked in the event that the applicant does pursue the additional parking, are there any requirements that will change the storm water control

measure, the retention pond that would have an impact on the landscaping being discussed?

Mr. Frederick stated that because the applicant showed it as future parking on the original site plan the stormwater control devices were designed to handle in the event of future parking.

Board Member Antoine stated that instead of 20% interior planting it is closer to 3.4% after the adjustment.

Mr. Davidson stated the existing site area which is closer to 25 acres, some of that area is within a public right-of-way and 50-foot wide NCDOT easement so they took that out of netwide area was 23.72 Acres. Then at that point they identified all the areas that were physically not able to be planted and so that's where it's 16.6 acres so remaining plantable area was 7.1 acres. Then they identified the areas that we estimated could not be plantable so they identified those and then they took the 20 percent of that remaining plantable area to status or to use for the landscape calculations which were 1.4 acres. They obtained credit from the Conservation Area Retention; with that credit the remaining was 0.55 acres or 24,000 square feet.

Board Member Antoine asked if the new calculation complies with what the UDO requires?

Mr. Davidson stated in his opinion it does.

Board Member Antoine asked what the variance is asking for is a variance upon the approved plans not the UDO?

Mr. Frederick stated the variance is not a variance from the approved plans but from the specific UDC section that requires the 20% landscaping. The applicant has come up with a modified calculation that gets down to 24,000 square feet of interior landscaping compared to the 124,000 square feet under the UDC requirements.

Chair Bizzell asked if staff could confirm that the area was being discussed that had plantings was shown as future parking?

Venable stated an administrative amendment that was filed and requested moved plantings from the southeast portion to the new location in order to meet the interior landscaping planting requirement. The new area includes 0.85 acres of the conservation resource area which is about 37,000 square feet in addition to the 24,000 square feet come to 61,000 square feet or 5.9% of the overall site.

Chair Bizzell asked if the amended plan or the original site plan note the area as future parking?

Venable stated if the approved site plan did show it as future parking the amendment removed it, which is the governing document.

Board Member Perricone stated that because of the confusion on the parking portion of this a time limit be considered if it is not pursued as future parking it be considered as part of the plantable area and the 20% be applied.

Chair Bizzell asked Town Attorney Rasberry if the board can add conditions upon the decision?

Town Attorney Rasberry stated yes, a four-fifths vote is required to approve. It may be approved as it or it may be approved subject to supplemental conditions that the board may set.

Board Member Berry stated the time limit exclusion does not seem appropriate because we do not know what the future use is.

Board Member Antoine stated that he agrees with Board Member Berry. The town approved a landscape plan that included plantings in a proposed theoretical parking area. The town approved the landscaping plan assuming that it would be plantings not a parking space. That is what made the project move forward to come later and exclude it as not plantable area and a lower percentage than what would be obtained if it were used as planting per the submitted and approved landscaping drawings. The time limit exclusion does not seem appropriate. That also follows what the Council stated in that the board is supposed to take the drawings as they are regardless of what stage the construction is in.

Board Member Berry stated that for developers to come in and submit plans that will eventually be changing is a slippery slope. The town needs to have a good idea of what they are approving and that it will be consistent.

Chair Bizzell stated that the staff confirming that the approved site plan does not call for this to be future parking makes it difficult to meet the findings of fact.

The board went through the finding of facts one by one.

Motion to Deny: Board Member Antoine

Second: Board Member Berry

Result: Denied, Unanimous

b) 2022-192-Summer Glen Subdivision Variance

Presenter: Ben Howell, Planning Director

Planning Director Howell presented the board with a variance request from the requirement to install roadway and associated improvements along the frontage of the proposed development by the Town's Unified Development Code (UDC).

The subject property is vacant and is located along Glen Laurel Road and Vinson Road.

Planning Director Howell provided the UDC Requirement section 155.602 (B), and the variance request.

Planning Director Howell provided the proposed roadway improvements recommended by NCDOT which are 100-foot-long left turn lanes at the entrance on Glen Laurel Road and a 100-foot-long left turn land on Vinson Road at the proposed entrance.

Planning Director Howell provides the finding of facts and summarizes the staff commentary on each finding of facts.

Town Attorney Rasberry recused himself, due to the Town's involvement. He can provide legal suggestions for the board.

Chair Bizzell asked if the curb gutter sidewalk is in addition to anything the TIA may have required or NCDOT may have approved?

Planning Director Howell stated yes.

Chair Bizzell asked if the subdivision has been approved by the Town yet, is it still under review?

Planning Director Howell stated that is correct.

Those who were speaking on the variance were sworn in by Love Ott.

Applicant Comments

Sam Morris with Longleaf Law Partners
4509 Creedmoor Road Suite 302
Speaking on behalf of the applicant and the development team.

Mr. Morris requested that the application, presentation, and other supporting material be accepted into the record.

Chair Bizzell noted.

Mr. Morris comments on the finding of facts for the subject property.

Mr. Morris asked Mr. Stocks for his experience and education.

Andrew Stocks, Licensed Professional Engineer in the state of North Carolina with Stocks Engineering.
801 E Washington Street, Nashville, NC 27856
Graduated from North State University with a degree in civil engineering.
Practicing since 2016 and licensed since 2020.

Mr. Morris asked to tender Mr. Stocks as an expert in the field of engineering.

Chair Bizzell noted.

Mr. Stocks stated that the proposed development is around 138 lots and is going through a conditional rezoning. The property is currently not within the Town of Clayton limits, the applicant is going through an annexation. The project will have town water, sewer, and electric. It is proposed that there are two full access to Glen Laurel that are across from each other and one access on Vinson Road.

Mr. Morris asked Ms. Chase for his experience and education.

Brittany Chase, Licensed Professional Engineer in the state of North Carolina with Exalt Engineering.
304 West Millbrook Road, Raleigh, NC 27609
Worked on the TIA for the proposed development.
Graduated from Vanderbilt University with a civil engineering degree.
Performing TIA's since 2003.

Mr. Morris asked to tender Ms. Chase as an expert in traffic engineering.

Chair Bizzell noted.

Ms. Chase provided the board with information on roadway frontage widening requirements that would be associated with satisfying UDO requirements. The side the 3C cross section for Glen Laurel and Vision requires 8- feet of right-of-way which would include three lanes on in each direction and a center to a left turn lane.

Ms. Chase provided the board with the impact of the frontage widening requirements. The applicant worked with NCDOT and the town to prepare the traffic impact analysis to determine improvements needed to mitigate the impact of the proposed site. The study looked at the intersections of Glen Laurel and Powhatan Road, Glen Laurel and Vinson Road, and the proposed site driveways on Glen Laurel and Vinson Road. The traffic has minimal impact on the projected delay experienced at each study intersection.

Mr. Morris provided the board with information on unintended consequences.

Chair Bizzell asked for the applicant to state the specific request, is it for all road improvements to be waived or is it the town's requirements for curb gutter and sidewalk section?

Mr. Morris stated that it is limited specifically to just the outer edge along Vinson and Glen Laurel.

Chair Bizzell stated that it would not be a variance to request no curb gutter, sidewalk, or additional widening.

Mr. Morris stated yes, a lot of sidewalks and bike lanes would be reduced.

Mr. Stokes stated that the request would be to reduce the requirement to the NCDOT's approved turn lanes.

Public Comment

Johnathan Jacobs, Licensed Professional Engineer in the state of North Carolina, with the Town of Clayton
111 East Second Street
Ten years of professional engineering experience

Mr. Jacobs spoke specifically on finding of fact number four. Proposed improvements of the variances approved would eliminate the multi-purpose as the code defines streets the proposed improvements would not provide a safe and convenient passageway for pedestrian traffic. The applicant defined the area as rural; the town's comprehensive plan does not define the area as rural and there is no evidence that supports that there are no multimodal needs in the area. If approved the proposed roadway improvements would only provide the minimum required safe ingress and egress to the subdivision by motor vehicle only. On September 16, 2021, a 16-year-old girl was struck while attempting to cross Glen Laurel Road about one mile from the proposed location of the variance. Mr. Jacobs does not believe that the applicant was able to meet the finding of fact number four.

Jack McDougall
3 Vista Court, Clayton, NC 27527 Glen Laurel Subdivision

Mr. McDougall is in favor of the variance, because Glen Laurel subdivision sees motor vehicles cutting through the subdivision in the morning and evening from the elementary school.

Derek Eberwein
President of the Glen Laurel HOA
200 Hein Drive, Clayton, NC 27527 Glen Laurel Subdivision

Mr. Eberwein stated that the residents were not notified about the variance until a week prior to the meeting nor the zoom meeting held on January 24th, because of that Mr. Eberwein believes that the process should start over again. The HOA of Glen Laurel is opposed to the proposed variance and turns the intersection into a four-way intersection and locate the cul-de-sac at the other end of the subdivision, which would eliminate the need for a left turn lane. Mr. Eberwein asked why the applicant is not tapping into Tanner Way? Mr. Eberwein is also concerned that the variance would eliminate the connection to the Mountain to Sea Trail.

Sharon Whitley
317 Hertford Drive, Clayton, NC 27527

Ms. Whitley stated that with the added asphalt that the widening would create, it would make the intersection safer. Ms. Whitley mailbox and deck has been damaged because of the vehicles not seeing the stop sign when coming down Vinson Road.

Planning Director Howell presented the board with copies of an email from a concerned resident. The resident did not mention any professional credentials.

Mr. Morris objected due to the evidence being hearsay and would not be given the opportunity to cross examine the witness.

Mr. Morris stated that under NCGS 160D.1402 layman opinions on traffic impacts and results are generally not permissible competent material substantial evidence and rejects the opposition evidence regarding negative impacts on traffic.

Mr. Morris cross examined the Town. Mr. Morris asked Mr. Jacobs if he contests the results or finding of the approved TIA?

Mr. Jacobs stated regarding motor vehicles no.

Mr. Morris asked the roadway improvement requirements are resulting only from the designation of the green lines on the map where the 3C requirements are deriving?

Mr. Jacobs stated deriving from particular to the curb and gutter sidewalk potential storm drainage and the additional asphalt winding would occur outside of the tapers and the appropriate turn line that were proposed.

Mr. Morris asked if Mr. Jacobs analyzed any recently approved subdivisions in the area that do not fall on the green lines shown on the map?

Mr. Jacobs asked for an elaboration on analyzation of those developments.

Mr. Morris asked if Mr. Jacobs looked at developments in the area that are similar in size and scale that did not fall along the green line or the 3C requirements?

Mr. Jacobs stated not in the immediate vicinity because there are none that have been recently reviewed or approved since this ordinance has been adopted by the Town Council, however, can provide a list of projects that have performed the same frontage improvements that would result in similar lots and density.

Chair Bizzell closes the public hearing.

Board Member Antoine asked for clarification from Mr. Morris because Mr. Morris stated that the applicant got NCDOT and TIA approved. However, in the record it was a recommendation.

Chair Bizzell re-opens the public hearing.

Ms. Chase stated that the requirements shown came from the traffic study review.

Mr. Morris stated that the NCDOT reviewed the TIA to ensure that the numbers are legitimate, and the traffic counts are accurate.

Board Member Antoine asked to provide evidence of the hardship between what is being proposed and what the UDO is requiring.

Mr. Stocks stated the maximum widening would be a center turn lane with lanes in each direction six feet on each side to add a 12-foot turn lane in the middle. The UDO required a full center turn lane which would be about 36 feet, and an eight-foot bike lane, and a 26-inch curb and gutter.

Board Member Antoine asked what is the current right of way?

Mr. Stocks stated 60 feet and the 3C requirement requests to bring it to an 80 foot right of way.

Board Member Antoine asked what the economic value that determined it to be a hardship?

Mr. Morris stated about \$1.2 million.

Board Member Berry stated since it will be annexed into the town it will be using town utilities it will no longer be rural.

Mr. Stocks stated yes and was not aware that the road connected to the Mountain to Sea Trail.

Board Member Antoine asked what the plan of the dead outlets are?

Mr. Stocks stated it is required to connect to adjacent properties.

Chair Bizzell closed the public hearing.

Board Discussion

Board Member Wiggins stated that based on the 1.2 million given and the 138 units, that breaks down to \$8,600. Before the homeowner buys a home, they also must pay \$8,600 to move into the neighborhood.

Board Member Antoine stated that if the variance is granted there is a possibility that another variance will be requested on the Southern portion of the subdivision. Board Member Perricone suggested an option for a fee-in-lieu.

Chair Bizzell stated that UDO allows the staff to accept a fee-on-lieu at the staff's discretion. However, Chair Bizzell does not believe a fee-in-lieu is appropriate due to incorporating the Transportation Plan and the improvements. Also, the improvements start with the intersection and then development follows, and cost is not considered a hardship in terms of development.

Board Member Berry stated that the partial reason is for safety and additional sidewalks will aid in the safety of the children walking to school. Board Member Berry cannot think of a reason to grant this variance.

The board went through the finding of facts one by one.

Motion to Deny: Board Member Perricone
Second: Board Member Wiggins
Result: Denied, Unanimous

5 OLD BUSINESS

- a) Planning Director Howell stated that the Planner II job has been posted. Also, the Planning Department will be hosting a summer intern.

6 NEW BUSINESS

7 ADJOURNMENT

- a) Motion: Board Member Antione
Second: Board Member Perricone
Result: Approved, Unanimous

Chair Bizzell adjourned the meeting at 8:23pm

853 SHOTWELL ROAD, CLAYTON
VARIANCE APPLICATION
CASE BOA 2023-07-VAR

TOWN OF CLAYTON BOARD OF ADJUSTMENT
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

This application for a variance from Sections 155.402 (D) (1) (a) – (b) of the Town of Clayton Unified Development Code (the “UDC”) came before the Clayton Board of Adjustment (the “BOA”, or “Board”) on April 19, 2023, for an evidentiary hearing. Upon consideration of the testimony of witnesses, documentary evidence received at the hearing, the variance application with attachments and related materials, exhibits, arguments of counsel for the Applicant, and all other evidence presented at the hearing, the BOA, by unanimous vote, finds that the Variance should be Denied. In support thereof, the Board makes the following Findings of Fact and Conclusions of Law, and Decides as follows:

FINDINGS OF FACT

1. The property at issue (the “property”) consists of a tract of approximately 23.72 acres in size, being currently developed for industrial use with two warehouse buildings, and associated areas for driveways, parking, stormwater retention, utilities, and associated site features. The property is located at 853 Shotwell Road, in Clayton.
2. The property is zoned Industrial-1 (Industrial Light).
3. Mr. Mark Frederick, attorney, appeared at the hearing and represented the Applicant, Dave Williams, Landmark Industrial.
4. The property is owned by NBPIII CLAYTON, LLC.
5. The Applicant has requested a Variance from the requirements of UDC Section 155.402(D) (1)(a) - (b) (“Interior Landscaping”), requiring that 20% of the total lot area be planted with a combination of shade trees, understory trees, and shrub material. In accordance with UDC requirements, the 20% planting requirement must be satisfied separately from other planting requirements including those for street yards, perimeter buffers, and parking area planting requirements.
6. The application for Variance was summarized by Mr. Bruce Venable, Planner I with the Town of Clayton. Mr. Venable noted that a development plan, with an approved landscape sheet (shown as Figure 1 in the staff report) had been officially reviewed and approved for the property. Pursuant to UDC Section 155.402, the approved development plan included plantings on 20% of the total lot area, consisting of 125 canopy trees (124 required); 125 understory trees (124 required); and 250 shrubs (as required). The Applicant’s New Proposed Landscape Plan Sheet was shown as Figure 2 in the staff report, and Applicant’s Exhibit A. Mr. Venable summarized the Applicant’s statement of

contentions in the application for variance form. In summarizing the Applicant's contention that the 20% planting requirement should be applied only to the areas "available for planting", Mr. Venable noted that the Applicant was seeking a variance to allow a revised site plan with provision for 32 canopy trees; 24 understory trees; and 48 shrubs.

7. Mr. Mark Frederick introduced and summarized his client's case, based upon the claim that unnecessary hardship results from the 20% planting requirement being calculated upon the total lot area, rather than the areas of the site available for planting.
8. Mr. Mike Davidson a landscape architect with the Timmons Group, LLC, testified in support of the application. After being qualified as an expert witness in the field of landscape engineering, Mr. Davidson testified that the property, and the approved development plan, together with features of the site, including topography, regulatory limitations, easements, the flood retention facilities, buildings, and parking and vehicular areas resulted in relatively small areas being available to meet the 20% planting requirement. Mr. Davidson further testified that, considering such site features, it would be appropriate to re-calculate the planting requirement, based upon 20% of the "land areas available for planting".
9. Mr. Davidson testified that the officially approved site plan, showing required plantings on 20% of the total lot area, was submitted for approval with the recognition that relief from the full planting requirement would be sought at a later time.
10. Mr. Davidson further testified that the trees and other plant material required under the approved development plan were excessively crowded, and that the amount of such material should be reduced in number to improve the health and survivability of the trees and plants.
11. In response to a Board member question regarding an area on the revised planting plan where no trees were shown being planted, Mr. Davidson testified these areas were set aside for Bermuda grass, which would not do well in a tree-shaded setting.
12. In response to a Board member question, Mr. Davidson testified that an approximately 200 x 200 ft. area shown on the proposed revised plan without plantings, was being reserved by the developer for future parking to serve the development and its tenants. While the Applicant represented in its testimony that the area would be landscaped in the future if not devoted to parking, this area was counted as not available for planting in the Applicant's re-calculation of plantings in its proposed revised landscaping plan.
13. The Applicant was aware of the Town's landscaping requirements during the approval process, and developed the site, including grading changes, the size and location of buildings, driveway and parking areas, reservation of the future parking area, and other development improvements, in such a way that it has now become difficult to achieve the required interior landscaping.

14. The Applicant's request for a Variance-based approval of its proposed, revised landscaping plan would represent a variance from the Town's landscaping requirements of over 75%.

FURTHER FINDINGS AND CONCLUSIONS OF LAW

Pursuant to the foregoing and UDC Sections 155.716 (F), the Board of Adjustment makes the following further Findings and Conclusions, and renders its Decision, as follows:

The Application/Property Owner **has not** produced competent, material, and substantial evidence to show that:

1. *Unnecessary hardship would result from the strict application of the ordinance.*

Based upon all the evidence in the record, and the further conclusions set forth below, strict application of the Town's ordinance will not result in unnecessary hardship under the law.

2. *The hardship results from conditions that are peculiar to the property, such as location, size, or topography.*

While certain pre-existing features of the property such as topography were relevant in the designation of areas suitable for landscaping, the design of the development, including grading changes, the size and location of buildings, driveway and parking areas, reservation of the future parking area, and other designed improvements were significant in limiting areas which might have otherwise been available for planting.

3. *The hardship did not result from actions taken by the applicant or the property owner.*

While certain pre-existing features of the property such as topography were relevant in the designation of areas suitable for landscaping, the design of the development, including grading changes, the size and location of buildings, driveway and parking areas, reservation of the future parking area, and other development improvements were significant in limiting areas otherwise available for planting. The Applicant was aware of the Town's requirement for planting 20% of the total lot area, as these design decisions were being made. Accordingly, actions taken by the applicant resulted in, or significantly contributed to, the claimed unnecessary 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.*

The requested reduction in the Town's landscaping requirements is over 75%. In accord with Conclusions 1-3 above, the requested variance is not consistent with the spirit, purpose, and intent of the ordinance.

DECISION

BASED ON THE FORGOING, by unanimous vote of the Board of Adjustment, Variance Request 2023-07-VAR is hereby Denied.

This is 17th day of May 2023.

Marty Bizzell
Chairman, Town of Clayton Board of Adjustment

PROPOSED SUMMER GLEN SUBDIVISION
VARIANCE APPLICATION
CASE BOA 2022-192-VAR

TOWN OF CLAYTON BOARD OF ADJUSTMENT
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

This application for a variance from Sections 155.602(2)(B) of the Town of Clayton Unified Development Code (the “UDC”) came before the Clayton Board of Adjustment (the “BOA”, or “Board”) on April 19, 2023, for an evidentiary hearing. Upon consideration of the testimony of witnesses, documentary evidence received at the hearing, the variance application with attachments and related materials, exhibits, arguments of counsel for the Applicant, and all other evidence presented at the hearing, the BOA, by unanimous vote, finds that the Variance should be Denied. In support thereof, the Board makes the following Findings of Fact and Conclusions of Law, and Decides, as follows:

FINDINGS OF FACT

1. The property at issue (the “property”) consists of a vacant tract generally located at the intersection of Glen Laurel Road and Vinson Road, in the ETJ area of the Town. The property is currently vacant. The Applicant has proposed to construct a 136-lot residential development to known as the Summer Glen Subdivision. The development is intended to be served by all Town of Clayton public utilities. Pending development approvals, the property is to be petitioned for, and annexed into, the corporate limits of the Town.
2. The property, comprising approximately 53 acres, is currently zoned R-E; however, the developer has submitted for approval by the Town a proposed Conditional Rezoning with Master Plan (2022-125-CZM), to accommodate the proposed residential subdivision.
3. Mr. Sam Morris, attorney with the firm of Longleaf Law Partners in Raleigh, appeared at the hearing and represented the Applicant, Wakefield Development, LLC.
4. The property is owned by TGS Properties, LLC, and Charles B. Gordon, Jr.
5. The Applicant has requested a Variance from the requirements of UDC Section 155.602(2)(B), that the subdivision applicant be responsible for cost and installation of all right of way improvements designated on the Clayton Transportation Plan, being the 2045 Comprehensive Growth Plan Roadway Systems Map.
6. The property has frontage along both sides of Glen Laurel Road and along one side of Vinson Road, as shown on Figure 1, “Layout of the Site” in the Staff Analysis and Commentary.
7. As stated in the Applicant’s Response #1 (*unnecessary hardship from strict application of ordinance*), through testimony of Mr. Andrew Stock, and as argued by its legal

counsel, the Applicant contends the size and shape of the individual parcels in the site and the assemblage as a whole are unique, and the required roadway frontage improvements, and their cost, outweigh the size and scale of the development, representing unnecessary hardship.

8. Staff Commentary to the Applicant's Response #1 has stated that the alleged hardship is related to the Applicant's specific subdivision proposal and the layout of the proposed development.
9. As stated in the Applicant's Response #2 (*hardship resulting from conditions peculiar to the property*), by testimony of Mr. Stock, and as argued by its legal counsel, the Applicant contends that the unique shape of the property, including the long and narrow area along the western line of Glen Laurel Drive with limited development options, represents an unnecessary hardship, should all roadway frontage improvements be required.
10. Staff Commentary to the Applicant's Response#2 has stated that the size and scope of the required improvements are solely related to the project being proposed and the corresponding use, layout, and density of the proposed development.
11. Mr. Andrew Stocks, P.E., being duly qualified as an expert in civil engineering, testified that the Town-required roadway improvements, which were in addition to the turn lanes with flairs as addressed in the TIA, were excessive in scope and scale relative to the proposed residential development. This resulted in additional development costs of approximately \$1.2 million, which were impractical to absorb in a highest-and-best development of this size and represented a hardship.
12. Mr. Stock further testified that the nature of the Glen Laurel and Vinson Road corridors in the vicinity of the property was currently rural in character, and that requiring construction of the additional roadway improvements, other than intersectional improvements, would be unusual in appearance and function.
13. Ms. Brittainy Chase, P.E., being duly qualified as an expert in traffic engineering, testified with respect to her firm's Traffic Impact Analysis ("TIA") of the Applicant's proposed development. As testified to by Ms. Chase, the TIA examined the requirements for turn lane vehicular storage at the intersections providing access to the development. The TIA-recommended improvements consisted of 100 foot long turning lanes, with transitions onto the thru-travel sections of Glen Laurel and Vinson Roads.
14. Ms. Chase further testified that the Town's required roadway improvements would comprise an 80' right of way cross section, with a total of three lanes for thru traffic, a bike lane, a utility strip, curb and gutter, and sidewalk. Should the variance be granted, roadway improvements would be limited to the turn lanes with flairs as described in the TIA. Additional paved road width, curb and gutter, bike lane, and sidewalk improvements would not be required.

15. The NCDOT has reviewed and approved the Glen Laurel and Vinson Road intersection improvements, constituting the proposed turn lanes, with flairs. The NCDOT has not, and customarily does not, review and approve or disapprove any additional roadway improvement requirements of the Town.
16. Mr. Jonathan Jacobs, P.E., and Assistant Engineering Director for the Town of Clayton, testified in opposition to the proposed Variance, stating that granting the variance would be inconsistent with the purpose and intent of the Town's ordinance. Mr. Jacobs testified that the Town's Transportation Plan specifically addressed and established goals for multi-modal transportation needs, including use by bicycles and pedestrians. He testified that by granting the requested variance, right of way and roadway improvements, including curb and gutter, additional paving for bikeway, and sidewalks for pedestrian use, would be eliminated. In his testimony, Mr. Jacobs noted that, consistent with the goals of the Town's adopted Transportation Plan, dedication and construction of roadway improvements accommodating bicycle and pedestrian use should be required and consistently enforced under the applicable Town ordinances, particularly considering the nearby existing elementary school.
17. Mr. Jacobs testified that the UDC and Town Transportation Plan requirements are regularly and consistently imposed on other developments comparable to the subject property.
18. Mr. Derek J. Eberwein, a resident of the immediate neighborhood and president of the Glen Laurel Homeowners' Association, testified in support of the project, noting what he felt was the need for the required sidewalk and bikeway improvements, particularly considering the nearby elementary school site (which he noted might be expanded to include a middle school).

FURTHER FINDINGS AND CONCLUSIONS OF LAW

Pursuant to the foregoing and UDC Sections 155.716 (F), the Board of Adjustment makes the following further Findings and Conclusions, and renders its Decision, as follows:

The Application/Property Owner **has not** produced competent, material, and substantial evidence to show that:

1. *Unnecessary hardship would result from the strict application of the ordinance.*

Based upon all the evidence in the record, and the further conclusions set forth below, strict application of the Town's ordinance will not result in unnecessary hardship under the law.

2. *The hardship results from conditions that are peculiar to the property, such as location, size, or topography.*

While the property is located adjacent to and has substantial frontage along two roadways at their intersection, this in itself is not so unusual or peculiar as to constitute unnecessary hardship. The alleged hardship is related to the Applicant's specific subdivision proposal, assemblage of multiple parcels, and the layout of the proposed development, not attributes of the property itself. The cost burden of UDC-required roadway improvements may not be a principal consideration in determining unnecessary hardship.

3. *The hardship did not result from actions taken by the applicant or the property owner.*

The alleged hardship is related to the Applicant's specific subdivision proposal, assemblage of multiple parcels, and the layout of the proposed development, not attributes of the property itself. To this extent, the claim of hardship is in part self-imposed.

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.*

The UDC-required roadway improvements are intended to address future, as well as existing, transportation needs of motorists. Following development of the subdivision, the property will be annexed in the Town, and receive urban services. In addition, the Town's adopted Transportation Plan calls for the dedication and construction of pedestrian and bicycle improvements to accompany new development, which improvements would not be provided for if the Variance were granted. The spirit, purpose and intent of the Town's ordinance is that, absent a compelling showing of unnecessary hardship under applicable laws, the Town's ordinance should be applied consistently and uniformly.

DECISION

BASED ON THE FORGOING, Variance Request 2022-192-VAR, by unanimous vote of the Board of Adjustment, is hereby Denied.

This is 17th day of May 2023.

Marty Bizzell
Chairman, Town of Clayton Board of Adjustment