



Board of Appeals Meeting

700 Doug Davis Drive
Hapeville, GA 30354

February 24, 2022 6:00 PM

AGENDA

1. Call to Order

2. Roll Call

Michael Simpson, Chairman
John Stalvey, Vice Chairman
Jason Morris
Richard Neal
Charlotte Rentz
Melanie Williams

3. Approval of Minutes

3.I. Minutes of January 27, 2022

4. Public Hearing

4.I. 3636-3654 Union Ave., 511-579 Chestnut Street (Pod F) Variance Request

Background:

D.R. Horton, Inc. is requesting a variance to reduce the required 15' buffer at 3636 Union Avenue, 0 Union Avenue, 3644 Union Avenue, 3650 Union Avenue, 3654 Union Avenue, 579 Chestnut Street, 0 Chestnut Street, 573 Chestnut Street, 511 or 573 Chestnut Street, 569 Chestnut Street, 567 Chestnut Street, 565 Chestnut Street, Parcel Identification Numbers 14-0096-0002-026-9, 14-0096-0002-025-1, 14-0096-0002-024-4, 14-0096-0002-023-6, 14-0096-0002-022-8, 14-0096-0002-032-7, 14-0096-0002-020-2, 14-0096-0002-016-0, 14-0096-0002-015-2, 14-0096-0002-045-5, 14-0096-0002-013-7, 14-0096-0002-012-9. The properties are zoned RMU, Residential Single Family and are subject to the zoning regulations under 93-11.5.6 of the City of Hapeville Zoning Ordinance. *This item was tabled at the January 27, 2022 meeting.*

Staff Comments:

Applicant Comments:

Public Comments:

Documents:

1. Application - 3636-3654 Union Ave., 511-579 Chestnut St._Buffer Variance_Redacted
2. Plans - 3636-3654 Union, 511-579 Chestnut_Variance (1)
3. Planner's Report -3636-3654 Union, 511-579 Chestnut_POD F_Buffer Variance

5. Old Business

5.I. 609-627 College Street (Pod B) Variance Request

Background:

D.R. Horton, Inc. is requesting a variance to reduce the required 15' buffer at 627 College Street, 609 College Street, 613 College Street, and 623 College Street, Parcel Identification

Numbers 14-0098-0020-036-4, 14-0098-0020-037-2, 14-0098-0020-038-0, 14-0098-0020-052-1. The properties are zoned RMU, Residential Mixed Use and are subject to the zoning regulations under 93-11.5.6 of the City of Hapeville Zoning Ordinance. *This item was tabled at the January 27, 2022 meeting. The applicant has withdrawn the variance request application.*

- 5.II. 3608-3622 Georgia Ave., 3619- 3637 Union Ave (Pod D) Variance Request

Background:

D. R. Horton, Inc. is requesting a variance to reduce the required 15' buffer at 3608 Georgia Avenue, 3614 Georgia Avenue, 3618 Georgia Avenue, 3622 Georgia Avenue, 3637 Union Avenue, 3627 Union Avenue, 3618 Union Avenue, Parcel Identification Numbers 14-0097-0008-011-4, 14-0097-0008-010-6, 14-0097-0008-009-8, 14-0097-0008-008-0, 14-0097-0008-0004-9, 14-0097-0008-003-1, 14-0097-0008-002-3. The properties are zoned RMU, Residential Single Family and are subject to the zoning regulations under 93-11.5.6 of the City of Hapeville Zoning Ordinance. *This application was tabled at the January 27, 2022 meeting. The applicant has withdrawn the variance request application.*

6. **Next Meeting Date - March 24, 2022 at 6:00 PM**
7. **Adjourn**



Michael Simpson, Chairman
John Stalvey, Vice Chairman
Rod Mack
Jason Morris
Melanie Williams

Board of Appeals Meeting

**700 Doug Davis Drive
Hapeville, Georgia 30354
January 27, 2022 6:00 PM**

MINUTES

1. Called to Order at 6:01 PM.

2. Roll Call

Michael Simpson, Chairman
John Stalvey, Vice Chairman
Rod Mack
Jason Morris
Melanie Williams - Absent

3. Election of Officers

3.I. Election of Chairman

MOTION ITEM: John Stalvey made a motion, Rod Mack seconded to re-elect Michael Simpson as Chairman of the Board of Appeals. Motion Carried: 3-0.

Election of Vice Chairman

MOTION ITEM: Rod Mack made a motion, Jason Morris seconded to re-elect John Stalvey as Vice Chairman of the Board of Appeals. Motion Carried: 3-0.

4. Approval of Minutes³⁶⁰

4.I. Minutes of December 16, 2021

MOTION ITEM: John Stalvey made a motion, Rod Mack seconded to approve the minutes of December 16, 2021, as submitted. Motion Carried: 3-0.

5. Public Hearing

5.I. 816 South Central Avenue

Variance Requests

Background:

David Hewitt requested approval of a variance to increase the square footage of two wall signs at 816 South Central Avenue, Parcel Identification Numbers 14 0098 0008 034 5. The property is zoned V, Village and is subject to the zoning regulations under Section 93-3.3-17 (Sign standards by sign district) of the City of Hapeville Zoning Ordinance.

Wall Sign 1

The east facing façade is shown as 54' wide. The east facing wall sign including all elements is proposed at 72 SF (96" x 108"). This exceeds the allowable 54 SF per Code by 33.3%. The width of all sign elements is 260" or 21.6', is allowable.

Wall Sign 2

The north facing façade is shown as 55' 6". The north facing wall sign is shown in the application as including all elements to be 59.31 SF (90" x 90" + 23" x 7" + 40" x 7"). This exceeds the allowable 55.5 SF per Code by 6%. The wide of all sign elements is 19.67', which is allowable.

Recommendation:

As the applicant has not provided justification based upon the Code requirements to support a variance for the increased square footage for both signs, Staff cannot recommend approval of the variance request.

Applicant Comments:

Mr. Hewitt stated this it is his interpretation of the code that the canopy slats are connected to the primary structure this area was included in the total square footage calculations. Mr. Hewitt stated the variances are needed to properly advertise the business. He stated there are conditions peculiar to the property that would warrants a hardship due to the positioning of the land and structure.

Rod Mack asked if the plans could be revised to meet the requirements in the ordinance. Mr. Hewitt stated that he could revise the plans, but it would drastically affect the design, placement, and scale of the sign and overall marketing of the business.

Jason Morris stated the vegetation that was planted within the greenspace area could possibly affect the overall view of the sign. Mr. Hewitt agreed.

Public Comments:

Melvin Traynum, 3550 Atlanta Avenue, supported the variance request.

Carol Cahill, 3532 S. Fulton Avenue, supported the variance request.

End of public comments.

MOTION ITEM: Jason Morris made a motion, Rod Mack seconded to approve the variance request for the east facing wall sign at 816 South Central Avenue. Motion Carried: 2-1, John Stalvey opposed.

MOTION ITEM: Jason Morris made a motion, John Stalvey seconded to approve the variance request for the north facing wall sign at 816 South Central Avenue. Motion Carried: 3-0.

5.II. 781-816 South Central Avenue

Variance Requests

Background:

Matt Vyerberg of North & Central Venture Partners, LLC requested a variance to reduce the right of way setback on Stillwood Drive from 15' to 10' for the properties located at 781 North Central Avenue, 789 North Central Avenue, 0 North Central Avenue, 803 North Central Avenue, 809 North Central Avenue, 813 North Central Avenue and 819 North Central Avenue, Parcel Identification Numbers 14-0098-0011-011-8, 14-0098-0011-012-6, 14-0098-0011-013-4, 14-0098-0011-014-2, 14-0098-0011-015-9, 14-0098-0011-018-3. The properties are zoned V, Village and are subject to the zoning regulations under Sections 93-22.1-1 and 93-11.5 of the City of Hapeville Zoning Ordinance.

During the lot consolidation process, the City required an additional 5' right of way along Stillwood Drive be dedicated to the City in conformance with the desire to achieve a 50' right of way on Stillwood Drive per Subdivision Standards Sec. 90-1-3. - General requirements and minimum standards of design.

The project is a 68-unit townhome development along North Central Avenue comprising a portion of the western gateway of the LCI Plan (2017).

The applicant received conditional approval for the Site Plan from the Planning Commission on January 11, 2022 and conditional approval from the Design Review Committee on January 19, 2022 with a recommendation to grant the requested variances as the City has created the hardship.

RECOMMENDATION

The Planning Commission and staff recommended approval for the reduced setback, as requested.

John Stalvey stated the application list a request for a height variance. Dr. Patterson stated the variance request to increase the allowable height was granted by the Planning Commission.

Jason Morris asked for clarification regarding the requested setback variance. Dr. Patterson stated the city needed the additional 5' right of way which created the need for the setback variance.

Rod Mack commented regarding the ownership of the requested property. Dr. Patterson stated the additional right of way would not impact ownership.

Public Comment: None.

MOTION ITEM: John Stalvey made a motion, Jason Morris seconded to grant the variance requests to reduce the right of way setback on Stillwood Drive from 15' to 10' for the properties located at 781-816 North Central Avenue. Motion Carried: 3-0.

5.III. 609-627 College Street (Pod B)

Variance Request

Background:

Tiffany Hogan of D.R. Horton, Inc. requested a variance to reduce the required 15' buffer at 627 College Street, 609 College Street, 613 College Street, and 623 College Street, Parcel Identification Numbers 14-0098-0020-036-4, 14-0098-0020-037-2, 14-0098-0020-038-0, 14-0098-0020-052-1. The properties are zoned RMU, Residential Mixed Use and are subject to the zoning regulations under 93-11.5.6 of the City of Hapeville Zoning Ordinance.

APPEALS CODE

Sec. 87-3-3. - Powers and duties.

(2) Variances. To authorize, upon appeal in specific cases, those variances from the provisions of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will, in an individual case, result in unnecessary hardship, so that the spirit of this chapter shall be observed, public safety and welfare secured and substantial justice done. A variance may be granted in any individual cases of practical difficulty or unnecessary hardship only upon a finding by the board of appeals that:

a. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography;

The applicant wishes to site 14 townhomes on the property. There is nothing extraordinary or exception regarding the size, shape, or topography of the subject property. The property does narrow slightly, however, the encroachment exists along the entire west edge of the property.

b. The application of this chapter to this particular piece of property would create an unnecessary hardship;

If the adjacent properties were commercial, this requirement would not be required, however, the impacted properties are historical, residential single-family dwellings. The application of this chapter does not create an unnecessary hardship.

c. Such conditions are peculiar to the particular piece of property involved; and
RMU requires buffers between all other uses than a single family detached dwelling. The RMU district is both a commercial and a residential district.

*The Fire Marshal has required a 26' mountable surface
The distance from the encroachment to the property line should be provided.
The distance from the encroachment to the neighboring dwellings should be provided.
Details regarding alternate but equivalent screening should be presented.*

d. Relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of this chapter.

The visual and auditory impact of the townhomes and related activity may be considered a detriment to the adjacent properties. The Board of Appeals should consider the level of detriment in their decision.

The landscape buffer requirement for any other use than a single family detached dwelling for properties within the RMU district is intended to provide significant relief to the adjacent neighbors from light, noise, odor, dust, unsightly appearances and intrusive activity. There are a mix of commercial and residential uses in the district. The siting of 14 townhomes maximizes the site from a development perspective but creates the need for a variance. The wider driveway surrounding the townhomes is required by the fire marshal to accommodate the fire department equipment. The Board of Appeals should consider the impact to the adjacent neighbors and any alternate mitigation offered that might serve a similar purpose. The proposed development has sited the driveway within the buffer zone and did not accommodate the minimum 15' landscaped buffer.

Public Comments:

Dana Stevens, 3548 South Fulton Avenue, not in favor of variance request.

Carol Cahill 3532 South Fulton Avenue, not in favor of variance request.

Al Dellinger, 3538 South Fulton Avenue, not in favor of variance request.

Melvin Traynum, 3550 Atlanta Avenue, suggested installation of an aesthetically pleasing fence.

End of public comments.

Jason Morris asked regarding reducing the space between each townhome unit. Dr. Patterson commented that each unit is developed with a 2-car driveway to and reducing the space between each unit would impact each driveway.

Ms. Hogan stated they will submit the landscaping plant materials to the City for approval.

John Stalvey inquired regarding an alternate plan if the variance is not granted. Ms. Hogan stated that the plan, if changed, would require the application process to start over again.

MOTION ITEM: Rod Mack made a motion to table the application pending additional review. Motion died for lack of second.

MOTION ITEM: Jason Morris made a motion to approve the variance, as requested. Motion died for lack of second.

MOTION ITEM: John Stalvey made a motion to deny the variance request, Rod Mack seconded. Motion Carried: 2-1, Jason Morris opposed.

MOTION ITEM: John Stalvey made a motion, Jason Morris seconded to enter into a recess at 7:20 p.m. Motion Carried: 3-0.

MOTION ITEM: John Stalvey made a motion, Rod Mack seconded to reopen the meeting at 7:26 p.m. Motion Carried: 3-0.

After brief discussion, Tiffany Hogan representative for items 5.IV and 5.V., requested to table the applications pending further review.

5.IV. 3608-3622 Georgia Ave., 3619-3637 Union Ave. (Pod D) Variance Request

D. R. Horton, Inc. requested a variance to reduce the required 15' buffer at 3608 Georgia Avenue, 3614 Georgia Avenue, 3618 Georgia Avenue, 3622 Georgia Avenue, 3637 Union Avenue, 3627 Union Avenue, 3618 Union Avenue, Parcel Identification Numbers 14-0097-0008-011-4, 14-0097-0008-010-6, 14-0097-0008-009-8, 14-0097-0008-008-0, 14-0097-0008-0004-9, 14-0097-0008-003-1, 14-0097-0008-002-3. The properties are zoned RMU, Residential Single Family and are subject to the zoning regulations under 93-11.5.6 of the City of Hapeville Zoning Ordinance.

MOTION ITEM: John Stalvey made a motion, Rod Mack seconded to table the variance request application for 3608-3622 Georgia Avenue, 3619-3637 Union Avenue.

Motion Carried: 3-0.

5.V. 3636-3654 Union Ave., 511-579 Chestnut Street (Pod F) Variance Request

D.R. Horton, Inc. requested a variance to reduce the required 15' buffer at 3636 Union Avenue, 0 Union Avenue, 3644 Union Avenue, 3650 Union Avenue, 3654 Union Avenue, 579 Chestnut Street, 0 Chestnut Street, 573 Chestnut Street, 511 or 573 Chestnut Street, 569 Chestnut Street, 567 Chestnut Street, 565 Chestnut Street, Parcel Identification Numbers 14- 0096-0002-026-9, 14-0096-0002-025-1, 14-0096-0002-024-4, 14-0096-0002-023-6, 14-0096- 0002-022-8, 14-0096-0002-032-7, 14-0096-0002-020-2, 14-0096-0002-016-0, 14-0096-0002- 015-2, 14-0096-0002-045-5, 14-0096-0002-013-7, 14-0096-0002-012-9. The properties are zoned RMU, Residential Single Family and are subject to the zoning regulations under 93-11.5.6 of the City of Hapeville Zoning Ordinance.

MOTION ITEM: John Stalvey made a motion, Rod Mack seconded to table the variance request application for 3636-3654 Union Avenue and 511-579 Chestnut Street.

Motion Carried: 3-0.

6. Next Meeting Date – February 24, 2022 at 6:00 p.m.

7. Adjourn

MOTION ITEM: Rod Mack made a motion, John Stalvey seconded to adjourn the meeting at 7:28 p.m. Motion Carried: 3-0.

Respectfully submitted by,

Michael Simpson, Chairman

Adrienne Senter, Secretary

PDF

22-BOA-01-05

**CITY OF HAPEVILLE
ECONOMIC DEVELOPMENT DEPARTMENT
VARIANCE APPLICATION**

Name of Applicant D.R. Horton, Inc.

Mailing Address 1371 Dogwood Drive, Conyers, GA 30012

Telephone _____ Mobile # _____ Email tdhogan@drhorton.com

Property Owner (s) CML Hapeville LLC

Mailing Address 3 Northside Pky, NW, Bldg. 400-100, Atlanta, GA 30327

Telephone 404-846-4010 Mobile # _____

Property Address/Location: 567, 569, 511, 579 Chestnut St., 3650, 3644, 3636 Union Ave., 3654 Union

Parcel I.D. # (INFORMATION MUST BE PROVIDED) 14009600020269, 14009600020251, 14009600020244, 14009600020236, 14009600020228, 14009600020202, 14009600020327, 14009600020160, 14009600020152, 14009600020145, 14009600020137, 14009600020095

Square Foot of Property 55,283 Building Size _____ Zoning RMU

Present Land Use Raw Land

Variance Requested Applicant requests 932 SF and 281 SF for a transitional buffer variance as required for properties abutting properties zoned for single family use.

Applicable Code Section Sec. 93-11.5.6

I hereby make application to the City of Hapeville, Georgia for the above referenced property. I do hereby swear or affirm that the information provided here and above is true, complete and accurate, and I understand that any inaccuracies may be considered just cause for invalidation of this application and any action taken on this application. I understand that the City of Hapeville, Georgia, reserves the right to enforce any and all ordinances regardless of any action or approval on this application. I further understand that it is my/our responsibility to conform with all of City of Hapeville's Ordinances in full. I hereby acknowledge that all requirements of the City of Hapeville shall be adhered to. I can read and write the English language and/or this document has been read and explained to me and I have full and voluntarily completed this application. I understand that it is a felony to make false statements or writings to the City of Hapeville, Georgia pursuant to O.C.G.A. 16-10-20 and I may be prosecuted for a violation thereof.

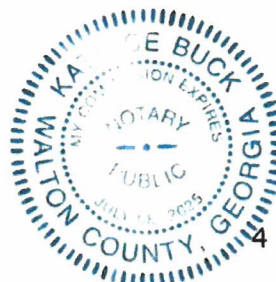
Applicant's signature

Date: 12/16/2021

Sworn to and subscribed before me

This 16th day of December, 2021.

Notary Public



POD F - Address and Parcel ID

- 3636 Union Ave - 14 009600020269
- 0 Union Ave - 14 009600020251
- 3644 Union Ave - 14 009600020244
- 3650 Union Ave - 14 009600020236
- 3654 Union Ave - 14 009600020228
- 579 Chestnut Street - 14 009600020327
- 0 Chestnut Street - 14 009600020202
- 573 Chestnut Street - 14 009600020160
- 511 AKA 573 Chestnut Street - 14 009600020152
- 569 Chestnut Street - 14 009600020145
- 567 Chestnut Street - 14 009600020137
- 565 Chestnut Street - 14 009600020129

**CITY OF HAPEVILLE
ECONOMIC DEVELOPMENT DEPARTMENT
VARIANCE APPLICATION**

WRITTEN SUMMARY

In detail, explain any extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that would qualify for a variance.

Pod F is a part of an assemblage of pods creating a townhome community. As designed, the community abuts property that is zoned for single family residential. The development has sidewalks that allow for connectivity not only through the pod, but also connectivity to areas of the Hapeville Community. Applicant will plant a landscaped vegetative buffer to screen the side unit from the single family property.

Explain how the application of the ordinance to this particular piece of property would create an unnecessary hardship.

The application of the ordinance to this piece of property would create an unnecessary hardship. The developer would have to decrease the number of units and adjust the location of the sidewalks.

Explain how these conditions are peculiar to the particular piece of property involved.

These conditions are not peculiar to the particular piece of property involved.

What, if any, detriment to the public good would the proposed project have if a variance was granted?

There will be no detriment to the public good if this variance is granted. As a way to further provide screening for adjacent property owners applicant agrees to landscape the area with a vegetative buffer.

**CITY OF HAPEVILLE
ECONOMIC DEVELOPMENT DEPARTMENT
VARIANCE APPLICATION**

AUTHORIZATION OF PROPERTY OWNER

I CERTIFY THAT I AM THE OWNER OF THE PROPERTY LOCATED AT:

609, 613, 623, and 627 College St., 3608 Georgia Ave., 3614 Georgia Ave., 3619 Union Ave., 3627 Union Ave., 3637 Union Ave.

567, 569, 511, 579 Chestnut St., 3650, 3644, 3636 Union Ave., and all parcels located within Pods B, D, and F of the Townhome Development.

City of Hapeville, County of Fulton, State of Georgia

WHICH IS THE SUBJECT MATTER OF THIS APPLICATION. I AUTHORIZE THE APPLICANT NAMED BELOW TO ACT AS THE APPLICANT IN THE PURSUIT OF A VARIANCE FOR THE PROPERTY.

Name of Applicant

D.R. Horton, Inc.,-Tiffany Hogan

Address of Applicant

1371 Dogwood Drive, SW, Conyers, GA 30012

Telephone of Applicant

[REDACTED]

[Signature]

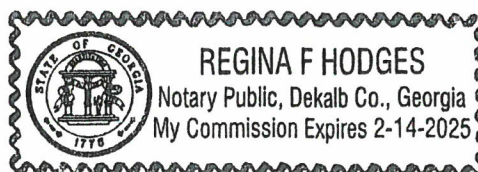
Signature of Owner

CMC Hapeville LLC

Print Name of Owner

Personally Appeared Before Me this 20th day of December, 2021.

Regina F. Hodges
Notary Public



POD F

All that tract or parcel of land lying and being in the City of Hapeville, Land Lot 96 of the 14th District of Fulton County, Georgia, containing 96535 square feet (2.216 acres), more or less, and being more particularly described as follows:

Commencing at the intersection of the northern right-of-way of Chestnut Street and the western right-of-way of Elm Street; thence along the right-of-way of Chestnut Street North 87 degrees 58 minutes 40 seconds West, 135.00 feet to a point; thence North 87 degrees 58 minutes 40 seconds West, 10.01 feet to a point; thence North 87 degrees 58 minutes 40 seconds West, 51.30 feet to the TRUE POINT OF BEGINNING; thence continuing along the right-of-way of Chestnut Street North 87 degrees 58 minutes 40 seconds West, 265.15 feet to a point; thence North 01 degrees 22 minutes 18 seconds East, 100.45 feet to a point; thence South 87 degrees 35 minutes 07 seconds East, 65.00 feet to a 1/2" open top pipe; thence North 00 degrees 52 minutes 17 seconds East, 49.90 feet to a point; thence North 87 degrees 33 minutes 06 seconds West, 201.58 feet to an iron pin; thence North 01 degrees 17 minutes 27 seconds East, 250.41 feet to a 1/2" open top pipe; thence South 87 degrees 25 minutes 21 seconds East, 199.76 feet to a point; thence South 00 degrees 52 minutes 17 seconds West, 200.00 feet to a point; thence South 87 degrees 52 minutes 53 seconds East, 199.15 feet to a capped rebar; thence South 00 degrees 49 minutes 46 seconds West, 199.59 feet to the TRUE POINT OF BEGINNING.

Said property being a combination of Fulton County Georgia Parcels 14 0096000 20269, 14 0096000 20251, 14 0096000 20244, 14 0096000 20236, 14 0096000 20228, 14 0096000 20160, 14 0096000 20152, 14 0096000 20145, 14 0096000 20137, 14 0096000 20202, 14 0096000 20327, as shown on a plat of survey by Atwell, LLC, dated 10/12/2021, and certified by John Mark Dunlap, Georgia RLS #3142.



Department of Planning & Zoning
PLANNER'S REPORT

DATE: February 17, 2022
TO: Adrienne Senter
FROM: Lynn Patterson
RE: Variance application for 3636 Union Avenue, 0 Union Avenue, 3644 Union Avenue, 3650 Union Avenue, 3654 Union Avenue, 579 Chestnut Street, 0 Chestnut Street, 573 Chestnut Street, 511 or 573 Chestnut Street, 569 Chestnut Street, 567 Chestnut Street, 565 Chestnut Street
Parcel Identification Numbers 14-0096-0002-026-9, 14-0096-0002-025-1, 14-0096-0002-024-4, 14-0096-0002-023-6, 14-0096-0002-022-8, 14-0096-0002-032-7, 14-0096-0002-020-2, 14-0096-0002-016-0, 14-0096-0002-015-2, 14-0096-0002-045-5, 14-0096-0002-013-7, 14-0096-0002-012-9

BACKGROUND

The City of Hapeville has received a variance application from DR Horton Inc to allow for a reduction in the required 15' buffer for a 30 unit townhome development to be located at 3636 Union Avenue, 0 Union Avenue, 3644 Union Avenue, 3650 Union Avenue, 3654 Union Avenue, 579 Chestnut Street, 0 Chestnut Street, 573 Chestnut Street, 511 or 573 Chestnut Street, 569 Chestnut Street, 567 Chestnut Street, 565 Chestnut Street, Parcel Identification Numbers 14-0096-0002-026-9, 14-0096-0002-025-1, 14-0096-0002-024-4, 14-0096-0002-023-6, 14-0096-0002-022-8, 14-0096-0002-032-7, 14-0096-0002-020-2, 14-0096-0002-016-0, 14-0096-0002-015-2, 14-0096-0002-045-5, 14-0096-0002-013-7, 14-0096-0002-012-9.

The properties are zoned RMU, Residential Mixed Use. Per Sec. 93-11.5-6. - Area, placement, and buffering requirements, a landscaped buffer is required between a non-single family detached use and a residential zone. This buffer is intended to minimize disruptive light, noise, odor, dust, unsightly appearances and intrusive activity relative to the residential zone. The proposed development has sited the driveway within the buffer zone and did not accommodate the minimum 15' landscaped buffer,

Sec. 93-11.5-6. - Area, placement, and buffering requirements.

All buildings or structures erected, converted or structurally altered shall hereafter comply with the following lot area, yard, and building coverage requirements:

(9) Residential buffer. Where any use other than a single-family detached use in this district adjoins a residential zone, all applicable new developments must provide an attractive physical barrier between different zones as necessary to minimize disruptive light, noise, odor, dust, unsightly appearances and intrusive activity relative to the residential zone. A smooth transition to adjacent residential zones shall be ensured by the provision of:

- a. A minimum 15-foot landscaped buffer located within the RMU zone along the district line. Said buffer shall comply with the buffer requirements of chapter 93, article 29. Shrubs, flowers or grasses shall also be provided and maintained to visually screen non-residential areas and provide an attractive boundary that encourages continued investment in the adjacent residential zones.

- b. A permanent opaque wall between six and eight feet in height and faced in wood, stacked stone, brick or hard-coat true stucco. Said wall may be located anywhere within the required landscaped buffer.
- c. The tree spacing and wall placement requirements of subsections a. and b. above may be adjusted by the planning and zoning manager where the applicant wishes to preserve existing specimen trees within the required buffer. This may include alternative arrangements that minimize the impacts of the screening requirements on the health of existing trees.

APPEALS CODE

Sec. 87-3-3. - Powers and duties.

(2) Variances. To authorize, upon appeal in specific cases, those variances from the provisions of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will, in an individual case, result in unnecessary hardship, so that the spirit of this chapter shall be observed, public safety and welfare secured and substantial justice done. A variance may be granted in any individual cases of practical difficulty or unnecessary hardship only upon a finding by the board of appeals that:

- a. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography;

The applicant wishes to site 30 townhomes on the property. The assemblage has an odd shape enfronting Chestnut Street and Union Avenue (see site plan). There are no known or provided extraordinary or exceptional conditions regarding the size or topography of the subject property.

- b. The application of this chapter to this particular piece of property would create an unnecessary hardship;

If the adjacent properties were commercial, this requirement would not be required, however, the impacted properties are residential single family dwellings. The application of this chapter does not create an unnecessary hardship.

- c. Such conditions are peculiar to the particular piece of property involved; and

The proposed development includes a driveway that encroaches up to 10' at the west edge of the subject property and at the rear of the adjacent single family property.

RMU requires buffers between all other uses than a single family detached dwelling.

The Fire Marshal has required a 26' mountable surface

Details regarding a proposed alternate to the encroachment or an equivalent screening should be presented (e.g., reduced number of townhomes or increased landscape density).

No hardship has been presented.

d. Relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of this chapter.

The visual and auditory impact of the townhomes and related activity may be considered a detriment to the adjacent properties. The Board of Appeals should consider the level of detriment in their decision.

FINDINGS

The landscape buffer requirement for any other use than a single family detached dwelling for properties within the RMU district is intended to provide significant relief to the adjacent neighbors from light, noise, odor, dust, unsightly appearances and intrusive activity. There are a mix of commercial and residential uses in the district. The siting of 30 townhomes maximizes the site from a development perspective, but creates the need for a variance. The driveway creates an encroachment up to 10' at the western edge and to the rear of a very deep lot (Parcel 14-0096-0002-0210). The wider driveway surrounding the townhomes is required by the fire marshal to accommodate the fire department equipment, however, it is not clear if an adjustment in the number of townhomes to the south would provide relief.