



Board of Adjustment Case Report

City of Raleigh
Department of City Planning
One Exchange Plaza
Raleigh, NC 27601
(919) 996-2626
www.raleighnc.gov

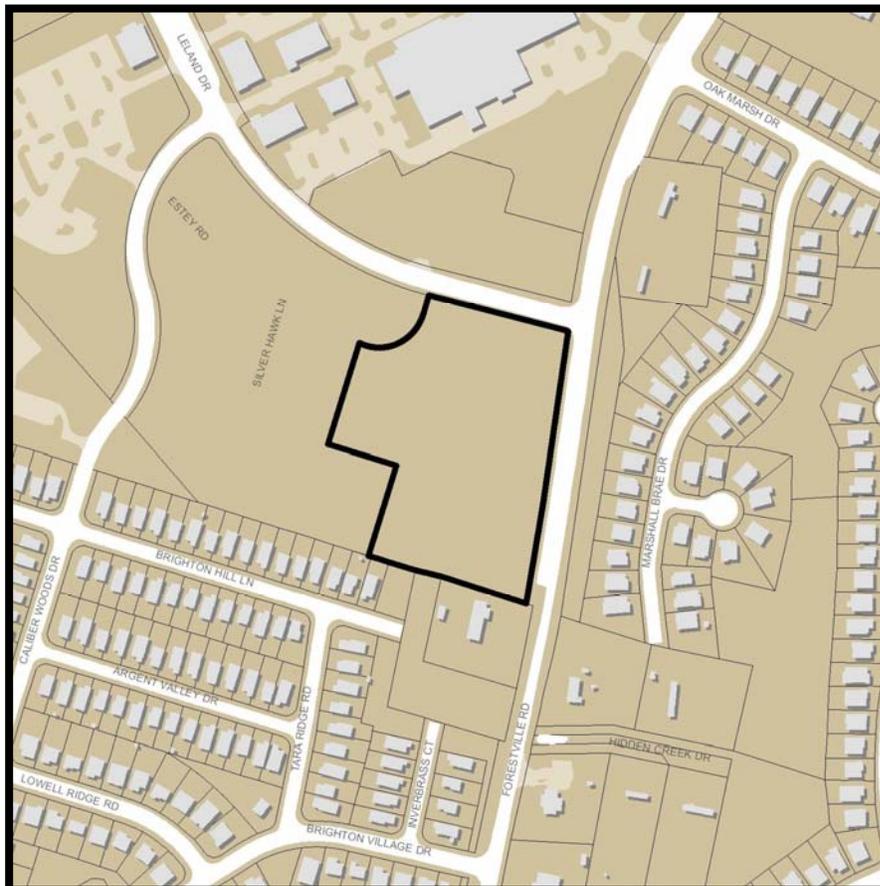
Case File: A-58-14

Property Address: 3140 Leland Drive

Property Owner: Brighton Pointe LP, a NC Limited Partnership

Project Contact: Isabel Worthy Mattox

Nature of Case: Request for a 12-month time extension to the following request which was approved by the BOA on 8-11-14. The request was for a 40' variance in the maximum 75 foot setback requirement along Forestville Road contained in Zoning Condition (D), Zoning Ordinance (2004) 648ZC550 for a multi-family development on property zoned Thoroughfare District – Conditional Use District and Residential-6-Conditional Use District and located at 3140 Leland Drive.

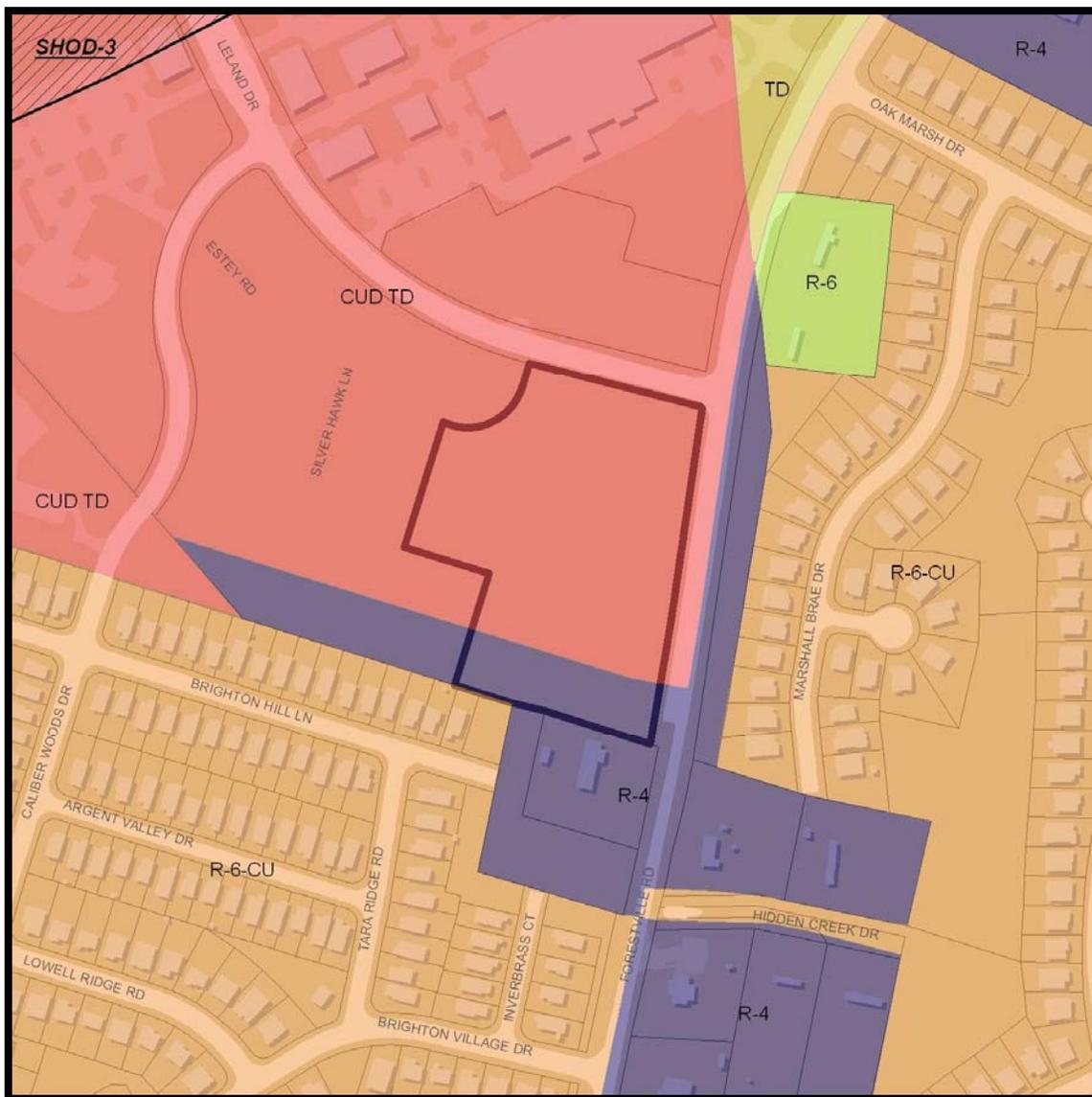


3140 Leland Drive – Location Map

To BOA: 8-11-14

Staff Coordinator: Eric S. Hodge, AICP

ZONING DISTRICTS: Residential-10



3140 Leland Drive – Zoning Map

VARIANCE STANDARDS: In accordance with UDO [§10.2.10 Variance](#), before a variance request is granted, the Board of Adjustment shall show all of the following:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

Apartment Building Type

Setback Standards: The subject property is zoned Residential-10

<u>Yard Type</u>	<u>Minimum Setback</u>
Primary Street	10'
Side Street	10'
Side	0' or 6'
Rear	20'

Zoning Conditions on the property

Z-36-03– Louisburg Road and Forestville Road intersection being Wake County PINs 1748.03-21-8062 and 1748.03-42-5047. Approximately 42.5 acres rezoned to Thoroughfare District Conditional Use with Special Highway Overlay District-3.

Conditions: 5/19/04

- A. All Thoroughfare District uses shall be permitted except as follows:
1. bar, nightclub, tavern, lounge
 2. riding stable
 3. mini-warehouse storage facility
 4. emergency shelter type A and B
 5. landfill (debris from on-site)
 6. adult establishment
 7. airfield, landing strip, and heliport
 8. correction/penal facility (governmental)
 9. manufacturing – custom, general, restricted and sp
 10. hotel/motel
- B. All free-standing exterior lighting located outside transitional protective yards shall not be more than thirty (30) feet in height, provided however, that all free-standing exterior lighting within the portion of the property described in Condition C shall be not more than twenty (20) feet in height.
- C. The southernmost portion of the property which is adjacent to the 120-foot width R-4 strip and as shown upon the attached Concept Plan prepared by Chance & Associates, dated the 29th day of March, 2004 (hereinafter the "Concept Plan"), which is bounded by the east right of way line of Connector Street B, i.e. Caliber Woods Drive (a public street) and the south right of way line of that proposed public street referred to as Connector Street A and the west right of way line of Forestville Road, an area of not less than 9.33 acres, shall be restricted to office uses and/or residential uses to a density not to exceed R-14 (with the majority of this area to be developed for residential uses), together with streets, sidewalks, stormwater facilities and utilities and infrastructure necessary for the development of the Property.

Within the above-described area the maximum building height of buildings constructed within two hundred fifty (250') feet of common property lines of the Brighton Village Subdivision residential lots identified in Condition N shall not exceed two (2) occupied stories, i.e. a maximum of twenty-eight (28') feet in height. Within the remainder of the above-described property no building shall exceed three (3) occupied stories, i.e. thirty-eight (38') feet in height.

- (i.) As indicated upon the Concept Plan Connector Street A shall be located within a right of way with a minimum width of sixty (60) feet with sidewalks (minimum width of six [6] feet), located on both sides of Connector Street A, with its location to be determined by the subdivision and/or site plan process subsequent to the rezoning of the Property.

The Secondary Pedestrian Way standards of Figure 14b. of the City's "Streets, Sidewalks and Driveway Access Handbook" as revised May, 2002, shall be applied to both sides of Connector Street A; however, if the 9.33± acre area south of Connector Street A between Connector Street B and Forestville Road is developed entirely for residential uses, the Transition Pedestrian Way Standards of Figure 14a shall apply along its frontage on Connector Street A.

- (ii.) As indicated upon the Concept Plan, public sidewalks (minimum width of six [6] feet) shall be located on both sides of Connector Street B, i.e. Caliber Woods Drive stubbed to the south line of the Property extending from said south line, to its intersection with Connector Street A as will be determined by the subdivision and/or site plan process subsequent to the rezoning.

The Transition Pedestrian Way Standards of Figure 14a of the City's "Streets, Sidewalks and Driveway Access Handbook" as revised May, 2002, shall be applied to at least eight (80%) percent of both sides of Connector Street B; however, if any portion of the area adjacent to Connector Street B is developed for non-residential uses, the Secondary Pedestrian Way Standards of Figure 14b shall apply along its frontage on Connector Street B.

D. The site plan(s) for the property shall provide sidewalks to connect any adjacent public sidewalks where stubbed from adjacent public streets; furthermore, these sidewalks will be connected to sidewalks within the development in order to link residential, office, retail and other permitted uses within the development.

Site Plan(s) for the property shall further provide building orientations as follows:

At the intersection of Connector Street A with Forestville Road buildings which frame this entry shall be located not more than seventy-five (75') feet from the curbs forming the corners of this intersection [NOTE: Seventy-five feet (75') includes the fifty foot (50') buffer provided adjacent to Forestville Road as shown upon the Concept Plan]. Buildings located at the four corners forming the intersection of Connector Street A and Connector Street B shall be located not more than twenty-five (25') from the curbs forming the corners of this intersection. Additionally as regards the placement of other buildings adjacent to Connector Streets A and B the guidelines of Subsection 3.1 "Building Placement" of Section 3.0 "Site Design" of the Urban Design Guidelines shall apply.

The Key Elements of the Urban Design Guidelines and those elements specified upon Exhibit A are incorporated by reference into this Condition D and shall be incorporated into Site Plan(s) for the Property. Additionally, Site Plan(s) shall include other Urban Design Guideline elements when practicable.

- E. Any required transitional protective yards shall remain undisturbed until site plan(s) are approved, subject to any utility and infrastructure installation(s) approved by the City of Raleigh.
- F. A landscaped yard a minimum of fifty (50) feet in width shall be provided along the portion of the property adjacent to Forestville Road (S.R. 2049), subject to the installation of streets/drives, sidewalks and utilities serving the property from Forestville Road and subject to public facilities, if any, such as a bus-stop and shelter and access thereto.
- G. Prior to development provision for one (1) transit easement twenty (20) feet in width and fifteen (15) feet in depth for a bus-stop and shelter shall be provided adjoining either the right of way of Louisburg Road (U.S. Highway No. 401) or the right of way of Forestville Road or the Connector Street A. The City's Transit Division shall timely review and approve the location of the transit easement as part of the site plan or subdivision approval process and prior to building permit issuance the transit instrument approved by the City Attorney or his designee shall be recorded in the Wake Registry.
- H. Reimbursement values for additional right-of-way for Louisburg Road (U.S. Highway No. 401) and Forestville Road shall remain at R-4.
- I. Open-Air Stormwater Facilities will be designed as site amenities and landscaped with appropriate vegetation to SHOD-4 standards, with or without fences.

Stormwater facilities shall be designed to meet predevelopment stormwater runoff rates for the 2 year and 10 year storm events; therefore the peak stormwater runoff leaving the site for the 2-year and 10-year storm events shall be no greater for the post-development conditions than for the pre-development conditions. The same methodologies used to calculate stormwater runoff must be used for both pre-development and post-development conditions.

J. Non-Residential Square Footage Limitations (Floor Area Gross):

- (i.) Retail - retail square footage shall not exceed a floor area gross of one hundred fifty thousand (150,000) square feet with no single retail use being greater than sixty thousand (60,000) square feet.
- (ii.) Office - office square footage shall not exceed a floor area gross of thirty-eight thousand two hundred (38,200) square feet.

Prior to subdividing or any other division of land of the rezoned Property, there shall be recorded in the Wake Registry a Declaration for Retail and Office Uses, in form approved by the Office of the City Attorney, which Declaration shall initially establish and through future modifications (also approved by the Office of the City Attorney) thereafter track the allocation of retail and office square footage upon the Property.

K. The maximum number of dwelling units within the Property shall not exceed 176 dwelling units, provided, however, that a maximum of fifteen (15) additional dwelling units may be constructed if the maximum office square footage cap of 38,200 square feet is reduced to 27,700 square feet (floor area gross).

L High and medium profile ground signs are prohibited; free-standing signs shall be low profile ground signs, limited as to size and quantity as provided in the City Code.

M. In conjunction with initial subdivision approval for non residential structures upon the Property unity of development criteria shall be established and approved by the Planning Department of the City.

N. No dumpster facilities shall be located within Two Hundred (200') feet of the common property lines with the Brighton Village Subdivision residential lots identified by Wake County Tax PIN Nos. as follows: 1747394425, 1747495422, 1747495470, 1747496309, 1747496348, 1747496387, 1747497325, 1747497364, 1747498303, 1747498342, 1747498381, 1747499229, 1747499268, 1747590207, 1747590246, 1747590284, 1747591223, 1747591271, 1747593161, 1747582999.

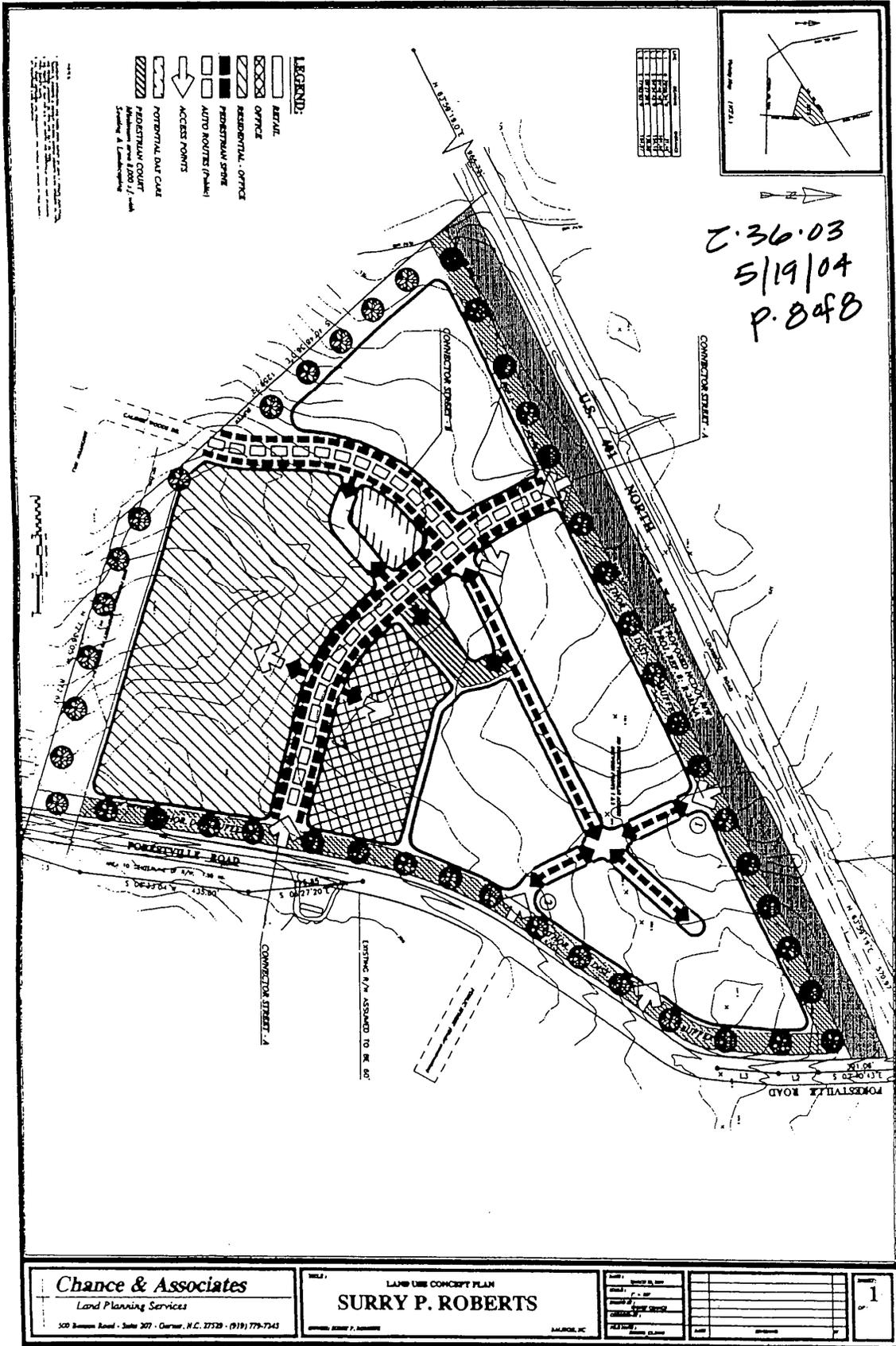
The service openings/doors of all dumpster facilities shall be oriented away from the Brighton Village Subdivision.

- O. There shall be a maximum of two (2) Access Points on U.S. Highway 401 North, subject to approval by NCDOT and the City of Raleigh Transportation Division.

- P. Copies of all subdivision and site plans for the development of the 9.33-acre, more or less, tract described in Condition C or of any portion thereof shall be provided by Certified U.S. Mail to Williams (PIN No. 1747495470) and West (PIN No. 1747591223) or their successors in title simultaneously with their filing for approval with the City of Raleigh.

EXHIBIT A

- Street A extends east off US-401 to Forestville Road and forms the Core Area of the development. Application of the site, street, and building design recommendations of the Urban Design Guidelines is appropriate within the Core with the exception of on-street parking within the first block off US-401.
- Street B extends south from Street A and serves as a transitional street to the adjacent residential neighborhood. While maintaining a strong pedestrian orientation through streetscape design and building placement; a development transition using architectural design, height, and massing should be incorporated as proximity to the neighborhood increases. Housing should also transition in density with the highest in the Core.
- The Urban Design Guidelines do not apply to the frontage of the property on US-401. This area should include thoroughfare yard landscape buffers.
- While Forestville Road is also a major thoroughfare with landscape buffers and minimized building orientation onto the street; application of the Urban Design Guidelines is appropriate in relation to streetscape design, sidewalks, and pedestrian crossings especially at street and driveway intersections leading into the development to provide connectivity to the residential areas east of the street. Buildings should frame the Forestville Road Entry onto street.
- A median is recommended at entry #2 and Street A access points onto Forestville Road as shown on the Concept Plan dated **3/29/04** to provide a safe pedestrian haven in crossing the thoroughfare. Additional right-of-way may be necessary at these locations to provide the median.





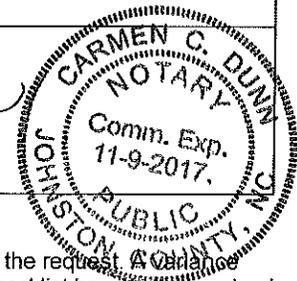
Planning & Development

**Development Services
Customer Service Center**
One Exchange Plaza
1 Exchange Plaza, Suite 400
Raleigh, North Carolina 27601
Phone 919-996-2495
Fax 919-516-2685

Variance Application

		OFFICE USE ONLY
Nature of variance request (Submit addendum on separate sheet, if more space is needed.) To request a 12 month extension for case A-58-2014 due to hardship. The applicant applied for funding of the 88 bed affordable senior center through the North Carolina Housing and Finance Agency Tax Credit Program in the spring of 2014 but was a runner up for funding. The applicant applied again in 2015 but must have the approved variance in place to be awarded the Tax Credit. If the extension is approved and the funding is awarded, the permits for the project will be pulled by the summer of 2016 before the sunset date of the requested extension.		Transaction Number
Provide all previous transaction numbers for Coordinated Team Reviews, Due Diligence Sessions or Pre-Submittal Conferences. If this property was the subject of a previous variance request, provide the case number. A-58-2014		

GENERAL INFORMATION		
Property Address 3140 Leland Drive, Raleigh NC	Date 8/12/15	
Property PIN 1747593514	Current Zoning TD-CUD and R-6 CUD	
Nearest Intersection Leland Drive and Forestville Road	Property size (in acres) 5.73	
Property Owner Brighton Pointe LP, a NC Limited Partnership 9104 Falls of Neuse Road, Suite 300 Raleigh NC 27615	Phone	Fax
	Email	
Project Contact Person Ken Thompson	Phone 919-612-9667	Fax 919-835-1510
	Email kent@jdavisarchitects.com	
Property Owner Signature Brighton Pointe LP by its general partner*	Email	
Notary <i>Carmen C. Dunn</i> Sworn and subscribed before me this <u>13th</u> day of <u>August</u> , 20 <u>15</u>	Notary Signature and Seal <i>Carmen C. Dunn</i>	



It is improper to contact any member of the Board of Adjustment prior to the disposition of a case to discuss the request. A variance application will not be considered complete until all required submittal components listed on the Variance Checklist have been received and approved.

*Carolina Project Equities, LLC
 By: *Mark E. Tipton*
 Mark E. Tipton, Member / Manager

[Home](#)

Wake County Real Estate Data Account Summary

[iMaps](#)
[Tax Bills](#)
Real Estate ID **0416510** PIN # **1747593514**
[Account Search](#)

 Location Address
3140 LELAND DR

 Property Description
LO2 BRIGHTON POINTE BM2013-00939
[Pin/Parcel History](#) [Search Results](#) [New Search](#)
[NORTH CAROLINA](#) [Account](#) | [Buildings](#) | [Land](#) | [Deeds](#) | [Notes](#) | [Sales](#) | [Photos](#) | [Tax Bill](#) | [Map](#)


For real estate accounts created or new construction built after January 1, 2015: Property values are under review for tax year 2016. Land and building values on these properties will reflect an assessment based on the January 1, 2008 Schedule of Values until late 2015 or early 2016 at which time the January 1, 2016 revaluation values for both land and buildings will be available.

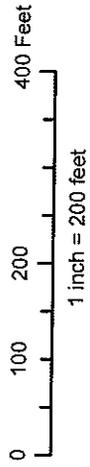
Property Owner BRIGHTON POINTE LP (Use the Deeds link to view any additional owners)		Owner's Mailing Address 5309 TRANSPORTATION BLVD CLEVELAND OH 44125-5333		Property Location Address 3140 LELAND DR RALEIGH NC 27616-5902	
Administrative Data Old Map # 308-- Map/Scale 1747 02 VCS ANERA01 City RALEIGH Fire District Township WAKE FOREST Land Class VACANT ETJ RA Spec Dist(s) Zoning CUD TD History ID 1 History ID 2 Acreage 5.73 Permit Date 10/18/2013 Permit # 0000109348		Transfer Information Deed Date 5/31/2013 Book & Page 15297 0308 Revenue Stamps Pkg Sale Date Pkg Sale Price Land Sale Date Land Sale Price Improvement Summary Total Units 0 Recycle Units 0 Apt/SC Sqft Heated Area		Assessed Value Land Value Assessed \$588,000 Bldg. Value Assessed Tax Relief Land Use Value Use Value Deferment Historic Deferment Total Deferred Value Use/Hist/Tax Relief Assessed Total Value \$588,000 Assessed*	

*Wake County assessed building and land values reflect the market value as of January 1, 2008, which is the date of the last county-wide revaluation. Any inflation, deflation or other economic changes occurring after this date does not affect the assessed value of the property and cannot be lawfully considered when reviewing the value for adjustment.

The January 1, 2008 values will remain in effect until the next county-wide revaluation, which begins January 1, 2016. Until that time, any real estate accounts created or new construction built is assessed according to the 2008 Schedule of Values.

For questions regarding the information displayed on this site, please contact the Revenue Department at RevHelp@wakegov.com or call 919-856-5400.

PIN: 1747593514
 Real Estate ID: 0416510
 Map Name: 1747 02
 Owner: BRIGHTON POINTE LP
 Mailing Address 1: 5309 TRANSPORTATION BLVD
 Mailing Address 2: CLEVELAND OH 44125-5333
 Deed Book: 015297
 Deed Page: 00308
 Deed Date: 05/31/2013
 Deeded Acreage: 5.73
 Assessed Building Value: \$0
 Assessed Land Value: \$588,000
 Total Assessed Value: \$588,000
 Billing Class: Business
 Property Description: LO2 BRIGHTON POINTE
 BM2013 -00939
 Heated Area: 0
 Site Address: 3140 LELAND DR
 City: RALEIGH
 Township: Wake Forest
 Year Built: 0
 Total Sale Price: \$0
 Land Class: VACANT
 Old Parcel Number: --

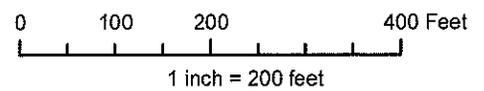


Disclaimer
 Maps makes every effort to produce and publish the most current and accurate information possible. However, the maps are produced for information purposes and are NOT surveys. No warranties, expressed or implied, are provided for the data therein, its use, or its interpretation.





Brighton Pointe II (1747-59-3514) 100 ft buffer



Disclaimer
iMaps makes every effort to produce and publish the most current and accurate information possible. However, the maps are produced for information purposes, and are NOT surveys. No warranties, expressed or implied, are provided for the data therein, its use, or its interpretation.

11. By moving the stadium closer to the school, and erecting improvements to Jaguar Park Drive, access to emergency medical vehicles will be improved.
12. The maximum height of proposed structures will be 22 feet 4 inches.
13. The proposed use complies with all applicable provisions of this UDO.
14. The proposed use is allowed as a special use in the respective zoning district.
15. The proposed use complies with any specific use standard listed in Chapter 6, Use Regulations without the granting of any variance to the specific use standard.
16. The proposed use is compatible with adjacent uses in terms of location, scale, site design, hours of operation and operating characteristics.
17. Any adverse impacts resulting from the proposed use in the affected area will be effectively mitigated or offset.
18. Access with respect to pedestrian, bicycle and automotive safety, traffic flow and emergency service is adequate.
19. Any appropriate dedications of streets and utilities to the public will be made prior to the issuance of the building permit.
20. Based on the application, including the plot plan, and the testimony at the hearing, Applicant has satisfied the requirements of UDO §§10.2.9 and 6.9.3E.

Conclusions of Law

1. Applicant has met the requirements of UDO §§10.2.9 and 6.9.3E, and the special use permit for the Outdoor Sports or Entertainment Facility should be issued.
2. The decision is subject to review for fraud, material misrepresentation, or other misconduct at the proceeding or for violations on the subject property of either any provision of §6.9.3E of the UDO or an imposed limiting condition, and if such a determination is made by the Board, its prior decision may be reversed, modified, or affirmed.

Motion

Chairman Coble moved to approve the Special Use Permit as requested. His motion was seconded by Mr. McLamb and received the following vote: Ayes – 5 (Coble, McLamb, Jeffreys, Figgins, Shear); Noes – 0. Chairman Coble ruled the motion adopted and the Special Use Permit granted.

A-58-14 – 8/11/14

DECISION: Approved the variances with the condition there be no parking spaces located between the building and Leland Drive.

WHEREAS, Brighton Pointe LP, property owners, request a 40 foot variance to the maximum setback requirement along Forestville Road contained in Zoning Condition (D), Zoning Ordinance (2004) 648 ZC 550 for a multi-family development on property zoned Thoroughfare



Planning & Development

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 Customer Service Center
 One Exchange Plaza
 1 Exchange Plaza, Suite 400
 Raleigh, North Carolina 27601
 Phone 919-996-2495
 Fax 919-516-2685

Variance Application

	OFFICE USE ONLY
Nature of variance request (Submit addendum on separate sheet, if more space is needed.) A 40 foot variance in the maximum 75 foot setback requirement along Forestville Road contained in zoning condition (D), Zoning Ordinance (2004) 648ZC550 See attached Exhibit A	Transaction Number
Provide all previous transaction numbers for Coordinated Team Reviews, Due Diligence Sessions or Pre-Submittal Conferences. If this property was the subject of a previous variance request, provide the case number.	

GENERAL INFORMATION			
Property Address 3140 Leland Drive, Raleigh, NC		Date July 11, 2014	
Property PIN 1747593514	Current Zoning TD-CUD and R-6 CUD		
Nearest Intersection Leland Drive and Forestville Road		Property size (In acres) 5.73 acres	
Property Owner Brighton Pointe LP, a NC Limited Partnership 9104 Falls of Neuse Road, Suite 300 Raleigh, NC 27615	Phone	Fax	
	Email		
Project Contact Person Isabel Worthy Mattox	Phone 919-828-7171	Fax 919-831-1205	
	Email Isabel@mattoxfirm.com		
Property Owner Signature Brighton Pointe LP by its General Partner*	Email		
Notary Sworn and subscribed before me this <u>11th</u> day of <u>July</u> , 2014	Notary Signature and Seal <i>Carmen C. Dunn</i>		

It is improper to contact any member of the Board of Adjustment prior to the disposition of a case to discuss the request. A variance application will not be considered complete until all required submittal components listed on the Variance Checklist have been received and approved.

*Carolina Project Equities, LLC

By: *Mark E. Tipton*
 Mark E. Tipton, Member/Manager

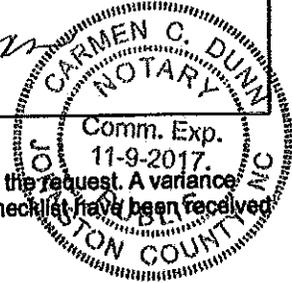


EXHIBIT A

is requested for the subject property to accommodate the Site Plan attached hereto as Exhibit A-2 on the basis of the following.

1. Unnecessary hardship will result from the strict enforcement of Zoning Condition D of Zoning Ordinance (2004) 648ZC550 because without the variance, the building(s) would be required to be located within storm drainage and/or sanitary sewer easements, neither of which is not permitted by the sanitary sewer easement City.
2. The hardship results from the following conditions on the property as shown as Exhibit A-1 attached hereto:
 - a. The presence of a 50-foot wide recorded tree conservation area ("TCA") along Forestville Road;
 - b. The prior installation of sanitary sewer pipes within a 20-foot wide sanitary sewer easement to the City of Raleigh located adjacent to the above described TCA;
 - c. The prior installation of stormwater drainage pipes within a 20-foot wide drainage easement to the City of Raleigh located adjacent to the above described sanitary sewer easement;
 - d. The topography of the site which requires the storm drainage pipes and sanitary sewer pipes to be located as currently placed;
 - e. The existing location of off-site City of Raleigh drainage and sewer lines to which the lines on the subject property must be connected
3. The hardship did not result from the actions of the Applicant. The locations of the sanitary sewer and storm drainage lines were dictated by the City of Raleigh.
4. The requested variance is consistent with the spirit and purpose and intent of the ordinance. The intent of the ordinance was to place buildings close to the pedestrian street while buffering Forestville Road with the 50-foot TCA, in keeping with the Urban Design Guidelines. If the requested variance is approved, the building will be located close to Leland Drive, the primary pedestrian street, and will provide a substantial buffer along the heavily traveled Forestville Road, which will buffer both the proposed affordable housing development on the subject property as well as the single family detached neighborhood on the opposite side of Forestville. Furthermore, since the above noted rezoning cases were approved, the City has also proposed in the Citywide remapping that the subject property be rezoned with a Parkway Frontage along Forestville, strongly suggesting that a buffer along Forestville is more important than close proximity of the buildings to Forestville.

EX LELAND DRIVE

87' PUBLIC ROW

SIDEWALK EASEMENT
(BM 2013, PG 0039)

EXISTING LOT LINE
(BM 2013, PG 0039)

CROSS ACCESS EASEMENT
(BM 2013, PG 0039)

FORESTVILLE ROAD (NCSR 2049)
75' PUBLIC ROW

EX ROW LINE

PRIVATE DRAINAGE EASEMENT
BM 2007, PG. 358

20' CITY OF RALEIGH
SANITARY SEWER EASEMENT
(BM 2013, PG 0039)

PRIVATE DRAINAGE EASEMENT
BM 2007, PG. 358

20' 3 STORY BUILDING SETBACK

20' CITY OF RALEIGH SANITARY SEWER EASEMENT
BM 2007, PG. 358

PRIMARY TREE CONSERVATION AREA
90' WIDE THOROUGHFARE DISTRICT YARD
BM 2006, PG. 1789

50' THOROUGHFARE PROTECTIVE YARD

ZONING LINE

OLD TD
R4

20' CITY OF RALEIGH SANITARY SEWER EASEMENT
BM 2007, PG. 358

25' TRANSITIONAL PROTECTIVE YARD

ALTERNATE COMPLIANCE
SECONDARY TREE
CONSERVATION AREA
85' PERIMETER YARD
BM 2005, PG. 1789

0' SETBACK

0' SETBACK

0' SETBACK

0' SETBACK

15' STREET PROTECTIVE YARD

30' 15' 0' 30'



District – Conditional Use District and Residential-6-Conditional Use District and located at 3140 Leland Drive.

Planning Administrator Eric Hodge (sworn) stated the subject condition pre-dates the existing zoning as it was established in a 2004 from a 2003 rezoning case, and also pre-dates the City's Tree Conservation Ordinance. He explained the issue is the number of existing easements along Forestville Road, and stated Staff is not opposed to this request as it is believed to be a textbook example of hardship.

Applicant

Attorney Isabel Worthy Mattox, 227 West Hargett Street (sworn), representing the Applicant, submitted a packet of information in support of the request, and confirmed the subject condition came from a 2004 ordinance of a 2003 rezoning case. She went on to talk about how the stacking of the easements along Forestville Road created the hardship.

Ken Thompson, JDavis Architects (sworn), explained the proposed project is an 88-unit senior residence complex and talked about the issue where the Urban Design Guidelines encourages closer setbacks to streets. He stated he can address this issue on the Leland Road side of the property as he can place the buildings as close as 35 feet to the property line; however, there is close to 100 feet of easements and buffers stacked along the Forestville Road side of the property. He pointed out Forestville Road has been widened to its maximum width.

Mr. Thompson presented drawings of the proposed layout of the buildings with regard to all easements and setbacks noting copies were included in the submitted packet of information. He stated there will be no parking between the buildings and the streets. In response to questions from Attorney Mattox, Mr. Thompson stated it is his opinion a hardship exists in this case.

Attorney Mattox closed by reviewing all items included in the submitted packet of information and pointed out the inclusion of a sworn affidavit from Attorney Tom Worth, who was the representing attorney in the rezoning case.

Chairman Coble questioned whether the Applicant would approve a condition regarding the prohibition of parking on the Leland Drive side of the property with Attorney Mattox responding in the affirmative.

Opposition

None.

Request for Notification

None.

Findings of Fact

1. Applicant seeks a variance from zoning condition D in zoning ordinance (2004) 648 ZC 550 for a multifamily development.
2. The Board has considered Applicant's verified application and the evidence and testimony adduced at the hearing.
3. In order to comply with the zoning condition, Applicant would have to meet the setbacks required along Forestville Road.
4. There are existing easements along Forestville Road that impact the location of a structure on the property, which is located at the intersection with Leland Drive.
5. Subsequent to the imposition of a zoning condition that requires the structure to be located not more than 75 feet from curbs, easements and buffers along Forestville Road that are almost 100 feet wide were finalized.
6. Applicant cannot erect a building on this site without a variance setback of 40 feet.
7. Strict compliance with the provisions of the ordinance would deprive Applicant from the reasonable use of the property.
8. Applicant's hardship is related to the unique circumstances of the property, namely the existence of easements and buffers that are wider than the required building setback.
9. The Applicant's actions did not create the hardship.
10. The character of surrounding properties would not be adversely affected by the granting of the variance.
11. Denial of the variance would result in insignificant public benefit but would greatly harm Applicant.
12. Pursuant to Raleigh City Code Section 10-2141(b), the Board has considered the following relevant factors:
 - (a) The character and use of buildings and structures adjoining or in the vicinity of the property mentioned in the application.
 - (b) The number of persons residing, studying, working in or otherwise occupying buildings adjoining or in the vicinity of the property mentioned in the application.
 - (c) Traffic conditions in the area and accessibility of the building for fire and police protection.
 - (d) The relation of the proposed application to conditions in the vicinity which have changed since the zoning district was originally determined.

Conclusions of Law

1. Unnecessary hardship would result from the strict application of the ordinance.
2. The hardship results from conditions that are peculiar to the property.
3. The hardship did not result from actions taken by the Applicant or property owner.
4. The variance is consistent with the spirit, intent and purpose of the ordinance such that public safety is secured, and substantial justice is achieved.
5. It is necessary and appropriate to impose the following conditions and safeguards on the issuance of the variance: there will be no parking located between the structure and Leland Drive.

6. This decision is subject to review for fraud, material misrepresentation, or other misconduct at the proceeding or for violations on the subject property of either any provision of Chapter 10 of the Raleigh City Code or an imposed limiting condition, and if such a determination is made by the Board, its prior decision may be reversed, modified, or affirmed.
7. If any of the conditions affixed hereto or any part thereof shall be held invalid or void, then this decision shall be void and of no effect.

Motion

Chairman Coble moved to approve the variance request with the condition that there be no parking located between the building and Leland Drive. His motion was seconded by Mr. Shear and received the following vote. Ayes – 5 (Coble, Shear, McLamb, Jeffreys, Figgins); Noes – 0. Chairman Coble ruled the motion adopted and the variance granted with the condition.

REPORT OF THE BOARD'S ATTORNEY

Mr. Silverstein stated he has not yet received an order regarding the Greene case. He talked about the number of briefs filed in the Euclid Street case noting there were approximately 150 pages of briefs submitted. He stated the matter is scheduled be heard the week of August 25, 2014. Chairman Coble expressed interest in attending part of the Euclid Street hearings and questioned whether there will be any additional evidence taken or just oral arguments. Mr. Silverstein stated the issues are whether the Historic Development Commission interpreted the guidelines correctly and whether Ms. Weisner had standing in this case. He noted Ms. Weisner's attorney filed a motion to amend the record with appraisals showing damage to Ms. Weisner's property value.

MINUTES – JULY 14, 2014 BOARD OF ADJUSTMENT MEETING – AMENDED – TO BE APPROVED BY E-MAIL VOTE BY CLOSE OF BUSINESS FRIDAY, AUGUST 15, 2014

Chairman Coble indicated Board members received copies of the July 14, 2014 meeting. He stated he noticed a discrepancy in the Findings of Fact in Case A-43-14 seem to be identical to the case heard immediately before it. Assistant Deputy Clerk Puccini stated he will check to see if he copied the findings incorrectly and will e-mail the corrected minutes to the Board members. Chairman Coble stated once the Board members receive the corrected minutes, if there are no objections or corrections submitted to the Clerk's office by Friday, August 15, then the minutes will be considered approved.

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1747590207
HARGETT, BARCCO
7549 BRIGHTON HILL LN
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1747591223
WILLIAMS, GLEN
7609 BRIGHTON HILL LN
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1747593514
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1747596255
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BLAND, KECIA THURMAN
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8132 TARA RIDGE RD
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1747596148
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JOHNSON, LEROY JR
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1747597613
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