Board of Adjustment
Case Report

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

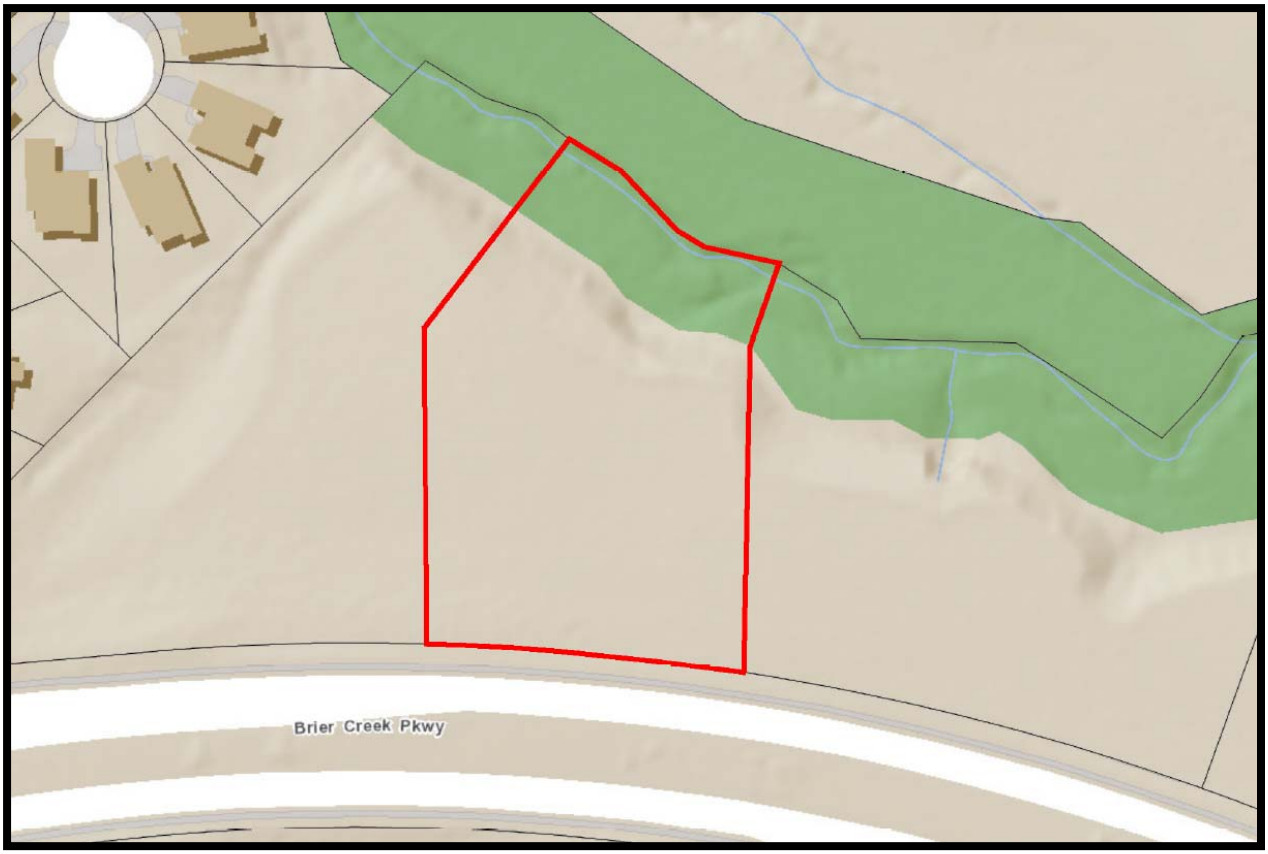
Case File: **A-105-17**

Property Address: 9550 Brier Creek Parkway

Property Owner: BCRD Holdings, LLC

Project Contact: Michael Birch

Nature of Case: A request for requests a 25' variance to reduce the width of the Parkway frontage standards of Sections 3.4.3.c and 3.4.3.E. of the Unified Development Ordinance that results in a 25' building and parking setback and a 25'protective yard. Additionally, the petitioner requests a complete variance to UDO sections 9.1.4.A.2 and 9.1.4.A.8., and UDO section 9.1.4.E. as it relates to the standards applicable to the portion of the property subject to the Parkway frontage and area along a major thoroughfare, resulting in no requirement for tree conservation or affirmative tree planting within the area otherwise subject to the Parkway frontage or otherwise subject to the requirement for an undisturbed buffer within 100 feet of a major thoroughfare. The subject property is a 3.85 acre parcel zoned Commercial Mixed-Use-3 Parkway and located at 9550 Brier Creek Parkway.

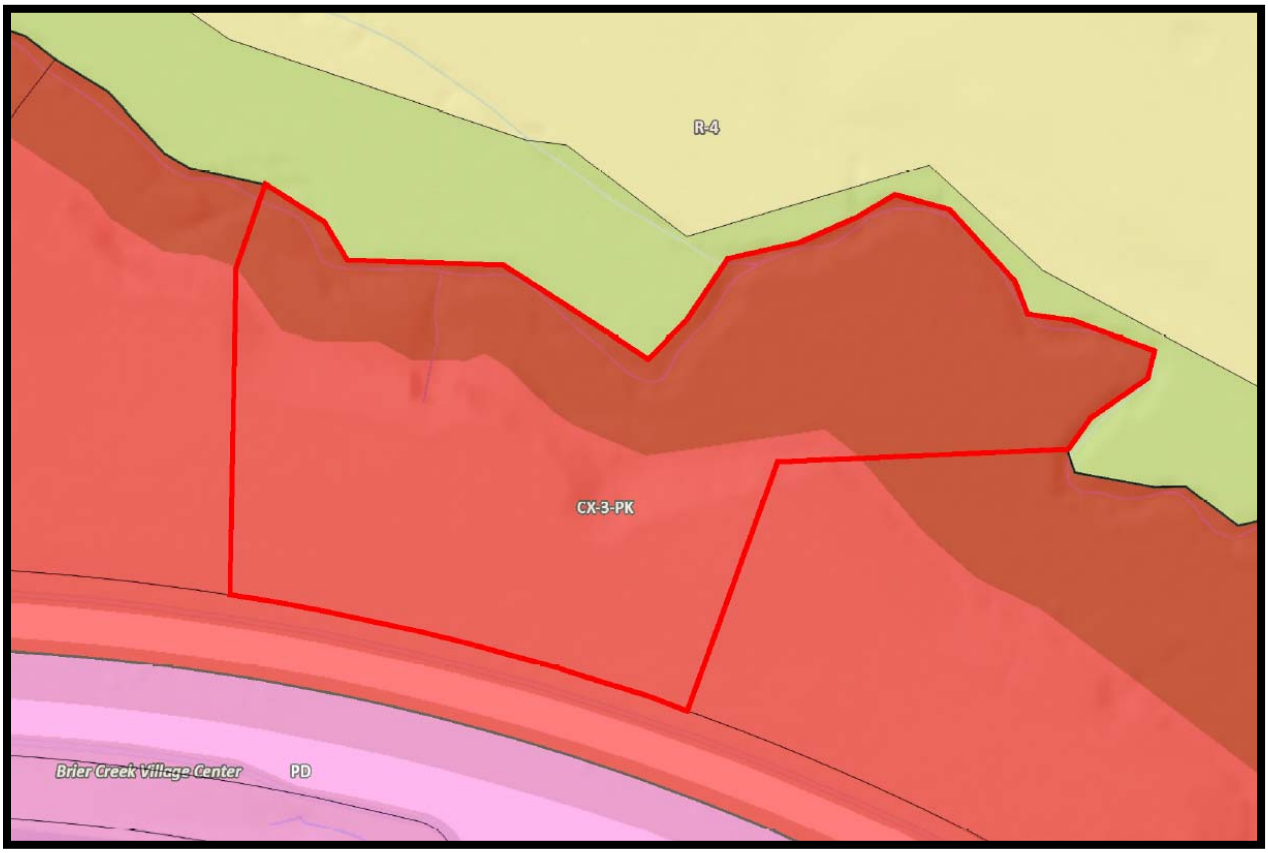


9550 Brier Creek Parkway – Location Map

To BOA: 8-14-17

Staff Coordinator: Eric S. Hodge, AICP

ZONING DISTRICTS: Commercial Mixed-Use-3 Parkway



9550 Brier Creek Parkway – 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.

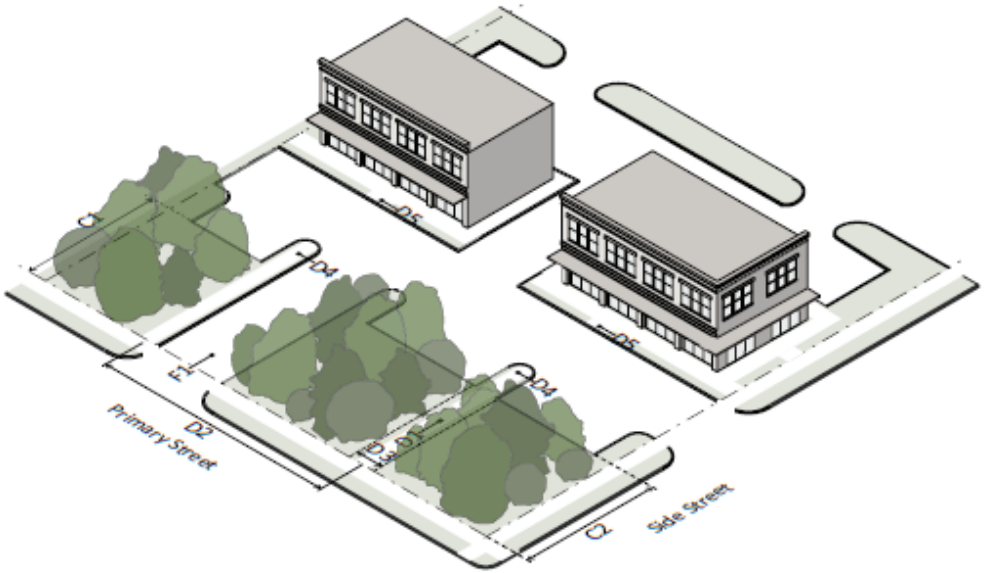
2. The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions

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.**

Sec. 3.4.3. Parkway (-PK)



A. Description

Provides for a heavily landscaped buffer between the roadway and adjacent development to ensure a continuous green corridor along the street right-of-way.

B. Building Types Allowed

Detached house (see *Sec. 3.2.1.*)	General building (see *Sec. 3.2.5.*)
Attached house (see *Sec. 3.2.2.*)	Mixed use building (see *Sec. 3.2.6.*)
Townhouse (see *Sec. 3.2.3.*)	Civic building (see *Sec. 3.2.7.*)
Apartment (see *Sec. 3.2.4.*)	Open lot (see *Sec. 3.2.8.*)

C. Additional Setbacks

C1	Building setback from primary street (min)	50'
C2	Parking setback from primary street (min)	50'

D. Pedestrian Access

D1	Pedestrian access required (minimum of 1 per lot)	yes
D2	Pedestrian access way spacing (max)	300'
D3	Width of pedestrian access way (min/max)	10'/20'
D4	A road or driveway with a sidewalk at least 6 feet in width may substitute for a required pedestrian access way	
D5	Direct pedestrian access is required from the public sidewalk to the primary entrance of the building	

E. Protective Yard Landscaping

E1	The 50-foot protective yard must be landscaped in accordance with *Sec. 5.3.1.F.* (SHOD-1 requirements) or Sec. 5.3.1.H. for expansions and additions.

F. Protective Yard Encroachments

F1	Driveways	see *Sec. 8.3.5.*
F2	Ground signs	see *Article 7.3.*
F3	Pedestrian access way	

G. Streetcape Requirement

	Sidewalk & tree lawn	see *Sec. 8.5.2.G.*

Article 9.1. Tree Conservation

Sec. 9.1.1. Intent

The intent of the tree conservation regulations is to preserve tree coverage, mature trees and natural resource buffers, and lessen the impact of development on the surrounding properties. The most significant trees, greater basal area tree stands and healthy trees in the most appropriate locations, should be considered when granting an alternate.

Sec. 9.1.2. Applicability

Prior to approval of any subdivision of any tract 2 acres or greater in size or site plan for a parcel 2 acres or greater, tree conservation areas must be provided in accordance with the requirements of this UDO, provided that delineation of tree conservation areas for a site subject to either condemnation or the threat of condemnation shall be delayed until a site plan or further subdivision of the parcel first occurs.

Sec. 9.1.3. Tree Conservation Required

A. Tree Conservation

1. Tree conservation area requirements by district are set forth below. The eligibility for tree conservation is based on the gross site area. The amount of conservation area required is calculated as a percentage of the net site area.

District	Conservation Area Required (min)
R-1, R-2	15%
All other districts	10%

2. Any eligible tree conservation priority in conflict with a build-to requirement is not required to be protected.

Sec. 9.1.4. Tree Conservation Area Allocation

A. Primary Tree Conservation Areas

The following are primary tree conservation areas and must be the first areas saved to meet the tree conservation requirement. All primary tree conservation areas on the site must be established even if doing so exceeds the minimum required percentage.

1. -SHOD-1 and -SHOD-2 protective yards (see *Sec. 5.3.1.*).
2. Parkway Frontage protective yards (see *Sec. 3.4.3.*)
3. CM primary tree conservation areas (see *Article 4.2. Conservation Management (CM)*).
4. -MPOD protective yards (see *Sec. 5.2.2.*).
5. A healthy, champion tree and its critical root zone.
6. Zone 2 of Neuse River Riparian Buffers, as established in title 15A of the North Carolina Administrative Code Subarticle 2B Section .0233.
7. Areas with a gradient of 45% or greater that are adjacent to or within floodways.
8. An undisturbed area adjoining a Thoroughfare varying in width between 0 and 100 feet; provided that the total undisturbed area is equal to an area measured 50 feet perpendicular to the Thoroughfare.

B. Secondary Tree Conservation Areas

1. The following secondary tree conservation areas, listed in priority order from highest to lowest, must be included once the primary tree conservation areas are exhausted.
   a. A minimum 65-foot wide perimeter buffer when the adjoining or adjacent property is not a Thoroughfare or is not vacant.
   b. A minimum 32-foot wide perimeter buffer when the adjoining or adjacent property is vacant.
   c. The critical root zone of any tree 10 inches or greater in DBH that is located within 50 feet of a Thoroughfare or within 65 feet of any non-vacant property boundary or roadway that is not a Thoroughfare.
   d. The critical root zone of any tree 10 inches or greater in DBH that is located within 32 feet of a vacant property boundary.
2. Secondary tree conservation areas described in h. through *Sec. 9.1.4.B.1.b.* above must be at least 32 feet in all directions and be a minimum of 4,000 square feet in area, excluding external boundaries.
3. The critical root zone of a saved tree in *Sec. 9.1.4.B.1.c.* or *Sec. 9.1.4.B.1.d.* above must be preserved in entirety even if it extends beyond 65 feet or 32 feet. When a landscape easement is obtained from the adjoining land that prohibits all tree disturbing activity, off-site areas for protected critical root

zones may be included as tree conservation areas provided that such areas are not under any circumstances to be counted as tree conservation area on both properties.

4. As an alternative to *Sec. 9.1.4.B.1.a.* and *Sec. 9.1.4.B.1.b.* above, secondary tree conservation areas of undisturbed areas are allowed elsewhere on the site provided that the square footage of the substituted areas is at least 4,000 square feet. No portion of Zone 1 of Neuse River Riparian Buffers as established in Title 15A of the North Carolina Administrative Code, Subarticle 2B Section .0233, shall be designated an alternate undisturbed area.
5. As an alternate means of compliance with *Sec. 9.1.4.B.1.c.* or *Sec. 9.1.4.B.1.d.* above, secondary tree conservation areas of individual trees 10 inches or greater in DBH and their critical root zones are allowed anywhere on the site that is not otherwise tree conservation area provided that the critical root zone area in the alternate locations is not less than the critical root zone area that would have been required for priorities in *Sec. 9.1.4.B.1.c.* or *Sec. 9.1.4.B.1.d.* above and that no alternate saved tree is less than 10 inches in DBH.

C. Excluded Areas

Tree conservation areas must exclude the following.

1. Sight triangles.
2. Slope easements.
3. Drainage easements.
4. Cross access easements.
5. Governmental and utility easements that prohibit trees.
6. Any easement that authorizes tree disturbing activities.
7. Any area devoted or to be devoted to streets, future right-of-way reservation, sidewalks, driveways, walkways, storm drainage facilities, including without limitation, pipes, energy dissipaters and stormwater control measures which require the removal of vegetation.
8. Water-related activity areas located in, over, under or adjacent to a lake or natural watercourse shown on the site plan may not be included as Zone 2 areas of Neuse River Riparian Buffers.
9. Any tree 10 inches DBH and larger that has 30% or more of its critical root zone traversed in part or in entirety by any of the excluded areas in *Sec. 9.1.4.C.1.* through *Sec. 9.1.4.C.7.* above, by impervious surface or by any adjacent property.

D. General Conservation Area Requirements

1. Size

The minimum dimension of a primary tree conservation area is 20 feet, measured in all directions.

2. Greenways

a. City of Raleigh greenways may be included as tree conservation areas, provided that an area of 25 feet multiplied by the length of the greenway is excluded as tree conservation for trail construction.

b. Greenways can only be established as tree conservation areas after establishment of primary tree conservation areas.

3. Tree Quality

No tree may be used to meet the requirements of this Article if it is unhealthy or a hazardous tree.

4. Heritage Trees

A heritage tree and its critical root zone may be established as an optional tree conservation area after establishment of primary tree conservation areas. The area of critical root zone for a heritage tree conservation area shall be double credited toward the tree conservation requirement only when all of the following conditions are met.

a. The critical root zone shall be protected in entirety by, either being entirely on the developing property or the property owner shall obtain a landscape easement that prohibits all tree disturbing activity for the portion of the critical root zone on an adjacent property. The off-site area for protected critical root zone may be included as tree conservation area provided that such area shall not under any circumstances be counted as tree conservation area on both properties.

b. Any portion of the critical root zone within another tree conservation area shall not be eligible for double credit.

c. The condition of the heritage tree shall be a rating of "Good" or higher as determined by an arborist certified by the International Society of Arboriculture using the Guide for Plant Appraisal, latest edition, published by the International Society of Arboriculture and verified by the Planning and Development Officer.

d. A report of the tree condition shall be prepared on an evaluation form provided by the City and it shall be provided to the Planning and Development Officer.

e. An active tree preservation plan prepared by an arboorist, certified by the International Society of Arboriculture, must be approved by the Planning and Development Officer and implemented by the developer under the supervision of the certified arborist.

E. Tree Cover Required

1. Tree conservation areas proposed for -SHOD-1, -SHOD-2, Parkway Frontage, and undisturbed areas adjoining a Major or Minor Thoroughfare protective yard (*Sec. 9.1.4.A.1.*, *Sec. 9.1.4.A.2.* and *Sec. 9.1.4.A.8.*) and secondary priority areas (*Sec. 9.1.4.B.1.a.* and *Sec. 9.1.4.B.1.b.*) and their alternates, must contain a basal area of at least 30 square feet per acre as measured in increments of 50 lineal feet.

2. Any required protective yard for a -SHOD 1, -SHOD-2 or Parkway Frontage that does not contain a basal area of at least 30 square feet shall be planted in accordance with the overlay district landscaping standards and portions of the protective yard cannot be established as a tree conservation area.

3. For those developments that fulfill any of their tree conservation area requirement using a -SHOD-1, -SHOD-2, Parkway Frontage or undisturbed areas adjoining a Major or Minor Thoroughfare protective yard or with secondary tree conservation areas from *Sec. 9.1.4.B.1.a.* or *Sec. 9.1.4.B.1.b.*and their alternates, the following must be submitted:

   a. Photo panoramic panels of the intended area to be conserved. The photo panel shall equal 50 feet of the length of the tree conservation area to be saved;

   b. A tree cover report prepared by a North Carolina registered forester or North Carolina licensed landscape architect or Certified Arborist that, inventories each 50-foot length of proposed tree conservation area, to identify all eligible trees 3 inches DBH and larger, by species, DBH, with basal area calculations and a determination of the general health of the tree stand; and

   c. The most recent aerial photograph of the subject tract.

4. A survey of all eligible trees and computation of basal area may be substituted in lieu of *Sec. 9.1.4.E.3.a.* and *Sec. 9.1.4.E.3.c.* above, provided that no dead, unhealthy or hazardous tree is included in the survey.

5. An optional method to determine basal area for tree conservation areas is allowed when a North Carolina registered forester certifies in writing that the basal area is 60 square feet per acre or greater, provided all the following conditions are met:

   a. The contiguous tree conservation area that can consist of primary and secondary is at least 8,700 square feet in size, excluding easements and consists of undisturbed wooded areas with a basal area of 60 square feet per acre or greater comprised of trees 3 inches DBH and larger;

   b. All dimensions of tree conservation areas are at least 65 feet in all directions;

   c. Land area that does not contain trees must be excluded unless it contains critical root zones of trees being preserved;

   d. Any area of tree disturbing activity is excluded as a tree conservation area; and

   e. A legible copy of the latest Wake County/City of Raleigh aerial photograph must be included with the registered forester's certification.

6. Within each 50-foot linear increment of Zone 2 of Neuse River Riparian Buffers, MPOD natural resource buffer yards or greenway tree conservation areas that do not contain trees, a minimum of 2 shade trees to enhance the riparian buffer must be planted prior to issuance of a certificate of occupancy. Planted shade trees must be at least 10 gallon container size and free of circling roots at time of planting. If the area without trees will be used as shown on the approved site plan for either a tree disturbing activity allowed by *Sec. 9.1.6.* or a water-related activity located in, over, under or adjacent a lake or natural watercourse, no planting of new trees shall be required.

7. Within each 50 linear feet of watercourse buffer of the -MPOD that does not contain trees, a minimum of two 10 gallon container size shade trees, free of circling roots, must be planted to enhance the riparian buffer prior to the issuance of a certificate of occupancy.
8. Alternatively, areas that do not contain trees in Neuse Zone 2, greenways or -MPOD watercourse buffers may be established as permanently undisturbed primary tree conservation areas to allow natural regeneration of trees, provided such areas are not located on individual lots developed for single-unit living. Permanently undisturbed primary tree conservation areas shall not be cleared of any vegetation or subjected to any tree disturbing activity and shall be delineated with signs as specified by the City. Required signs must remain in place for a period of 7 years. Unlawful disturbance of any permanently undisturbed primary tree conservation area shall subject the violator to a civil penalty of a minimum of $1,000 plus 35 cents for every square foot of disturbed area and unlawfully disturbed areas shall be planted with twice the number of 10 gallon container shade trees as described above. Unlawful removal of any required signs shall subject the violator to a civil penalty of $100 for each removed sign and each removed sign shall be replaced. Civil penalties shall be processed as set forth in *Sec. 10.4.2.*

Sec. 9.1.5. Documentation of Tree Conservation Areas

A. Tree Conservation Permit Required

1. After the tree conservation areas have been determined and prior to any tree disturbing activity, a map with metes and bounds descriptions of all tree conservation areas must be given to Planning and Development and a tree conservation permit must be obtained from the City and tree protective fencing placed on the site.
2. After the tree conservation areas have been determined and a tree conservation permit has been obtained and prior to or concurrent to any subdividing of the property and prior to issuance of a building permit, the landowners shall record with the local County Register of Deeds the following:
   a. A plat with metes and bounds descriptions of all tree conservation areas;
   b. An easement that allows current and future lot owners access to otherwise inaccessible tree conservation areas to perform tree maintenance activities including required replacement plantings;
   c. A homeowners' association declaration prepared in conformity with N.C. Gen. Stat., Chapter 47F for the maintenance and protection of the trees within recorded tree conservation areas; and
   d. One or more deeds conveying all tree conservation areas in fee or in easement to the homeowners' association.

B. Neuse River Riparian

1. Metes and bounds descriptions of Neuse River Riparian Zone 2 shall include only the outer boundary of Zone 2 with a notation that the inner boundary is 20 feet parallel to the outer boundary.
2. The outer boundary of Zone 2 may optionally be surveyed as a series of tangents that shall be no more than 5 feet from the actual Zone 2 boundary.
3. When the tangent survey is used, metes and bounds descriptions of the tangent lines and the actual outer boundary of Neuse River Riparian Zone 2 (without metes and bounds) shall be shown on the recorded plat. Tree disturbing activities are prohibited and unlawful in the area between the tangent Zone 2 boundary and the actual Zone 2 boundary to the same extent as tree disturbing activities are within Zone 2 areas, but these areas shall not count toward the percentage tree conservation requirements of *Sec. 9.1.3.*, *Sec. 9.1.4.A.* and *Sec. 9.1.4.B.* as demonstrated to the Planning and Development Officer.

C. Secondary Conservation Areas

1. Where secondary tree conservation areas (*Sec. 9.1.4.B.1.a.* and *Sec. 9.1.4.B.1.b.*) abut one another, metes and bounds descriptions shall not be required for the boundary line between abutting tree conservation areas.
2. Previously recorded tree conservation areas and greenways may be shown without metes and bounds provided that the correct Book of Maps is referenced and greenways are re-recorded as greenway tree conservation areas.

D. Replacement by Condemnor

Whenever any condemnor acquires property through eminent domain it shall be the responsibility of the condemnor to replace, in accordance with the provisions of this UDO, those complying elements which were removed unless a less stringent standard is required.

E. Payment In Lieu of Compliance

1. Requests for fee-in-lieu payments will be considered, but not limited to, the following cases:
   a. Site condtions caused by man-made or natural topography that would require use of a retaining wall where the cost of wall construction would be greater than the fee-in-lieu for the area being relieved from compliance. In such cases, justification must be provided to demonstrate there are no alternate methods of construction other than use of a retaining wall. Quotes from 3 independent design firms or contractors must be provided to estimate the construction cost of the retaining wall; and
   b. Site conditions where the existence of priority areas under *Sec. 9.1.4.B.1.c.* and *Sec. 9.1.4.B.1.d.* render a site undevelopable.
2. General conditions for all fee-in-lieu requests.
   a. No primary tree conservation area is eligible for a fee-in-lieu payment.
   b. Fee-in-lieu payments for tree conservation area will not be considered when the objective is to develop the site without regard for the tree conservation priorities of *Sec. 9.1.4*.
   c. Fee-in-lieu payments for tree conservation area will not be considered when the objective is to achieve increased site visibility at the expense of tree conservation.
   d. Prior to requesting a monetary payment in lieu of compliance, the applicant must examine alternate methods to preserve the required tree conservation priority areas. Upon submittal of a fee-in-lieu request, the applicant must provide proof of consideration of alternatives and justification why the alternatives are not feasible. The City may require that additional alternate methods be examined.
   e. Alternative methods to preserve tree conservation areas include but are not limited to: re-design of the subdivision or site plan, use of retaining walls, alternate methods of construction (such as trex decking in place of concrete sidewalk) and arboricultural practices that include active tree preservation (such as root pruning of no more than 30% of the root zone with active tree preservation aftercare) performed under supervision of a certified arborist.
   f. Secondary tree conservation areas approved for a fee-in-lieu payment shall be paid at a rate equal to the tax value of the land.
   g. All fee-in-lieu payments shall be adjusted on an annual basis using the percent change Dec-Dec column of the Consumer Price Index chart available through the US Department of Labor.
3. All collected monies, including any income derived from such monies, shall be spent either for acquisition of lands where trees will be preserved or for tree planting. The City Council shall set forth specific eligible activities for tree preservation and tree plantings. All collected monies must be spent within the same open space fee zones from which the payments were collected.

Sec. 9.1.6. Permitted Tree Disturbing Activities

No tree disturbing activity shall take place in designated tree conservation areas except in conformity with the following.

A. Within Zone 2 of Neuse River Riparian Buffers and in watercourse buffers in a -MPOD, permitted tree disturbing activities are allowed for:
   1. Any work that is ancillary to activities allowed by the North Carolina Division of Water Quality in Zone 1 that is approved by the City;
   2. Any sanitary sewer installation when an existing permanent structure or any part of an existing permanent structure that is to remain on the site is within the width of the proposed permanent and temporary construction sanitary sewer easement plus 10 feet; and
   3. More than 50% of a reach of sanitary sewer main will be over 12 feet deep.

B. Within primary tree conservation areas and secondary tree conservation areas tree disturbing activities are allowed when all of the following are met.
   1. A tree conservation permit is obtained from the Planning and Development Officer. Tree conservation permits may be issued for one or more of the following:
      a. A certified arborist, registered forester or a licensed landscape architect certifies to the City in writing that the tree is either unsafe or is unhealthy. No certification is required if it can be shown that the tree died of natural causes and the dead tree is replaced in accordance with the replacement standards of this Article.

b. Tree removal or grading is being done to remove a visual obstruction from a sight triangle as set forth in the North Carolina Department of Transportation's Policy on Street and Driveway Access to North Carolina Highways Manual and all subsequent amendments.

c. The removal or grading is being done to install public improvements made pursuant to this UDO.

d. Where existing vegetation meets the minimum applicable tree conservation requirements for an applicable district or meets applicable transitional yard requirements, a tree conservation permit may be issued for wooded area clean-up of shade trees less than 2 inches DBH and understory trees less than 1 inch in DBH.

e. No permit for such removal may be issued until a plan is submitted showing the nature and extent of all tree work, how the work will be undertaken without compacting soils and damaging preserved trees and maintaining minimum applicable requirements.

2. When a tree conservation permit is issued in accordance with *Sec. 9.1.6.B.1.*, the property owner must install replacement trees for any tree situated within the limits of the tree disturbing activities in one of the following ways:

a. One or more undisturbed areas of equal size containing vegetation similar in size and quantity as that which is being removed is preserved in alternate undisturbed areas meeting the requirements of *Sec. 9.1.4.B.* through *Sec. 9.1.4.E.* for priority areas *Sec. 9.1.4.B.1.a.* and *Sec. 9.1.4.B.1.b.*

b. For each 200 square feet of tree disturbed land area, a 2-inch caliper tree is either planted between the principal building and the roadway or is planted in approved alternate areas of the site.

c. Whenever a tree of priority area under *Sec. 9.1.4.B.1.c.* and *Sec. 9.1.4.B.1.d.* is removed after being certified as a hazardous tree, unhealthy or dead; it shall be replaced with 10 caliper inches of new shade trees. Any replacement tree shall be planted within the tree conservation area previously recorded for the removed tree. The minimum size of any replacement tree shall be 2 caliper inches.

d. All substituted natural areas and newly planted areas must be designated as tree conservation areas on plats with metes and bounds descriptions recorded with the Wake County Register of Deeds.

3. All portions of critical root zones of trees situated inside a designated tree conservation area that adjoin proposed tree disturbing activities shall remain undisturbed areas for trees with 10 inches or greater DBH.

4. Prior to commencing any tree disturbing activity, the boundaries of such activities shall be delineated by a protective fence in the field.

Sec. 9.1.7. Penalties

A. A violation of this Article, where unlawful tree disturbing activity has occurred and trees and stumps are absent, shall subject the violator to a civil penalty of a minimum of $1,000 for the first tree plus 35 cents of every foot of unlawful tree disturbing activity.

B. Where trees or stumps are present after unlawful tree disturbing activity has occurred, the civil penalty shall instead be calculated as $1,000 for the first tree plus $100 per diameter inch for any other tree or stump 3 inches diameter and larger. Civil penalties shall be processed as set forth in *Sec. 10.4.2*.

Sec. 9.1.8. Restoration

A. In addition to the civil penalty of *Sec. 9.1.7.*, the owner of real property, where a violation has occurred, shall remove each unlawfully disturbed tree and replace with a tree or trees of equal caliper.

B. Prior to any replanting, the Planning and Development Officer shall first approve a replacement planting and maintenance plan. Replacement trees shall be 2 inches in caliper and no replacement tree shall be located in those portions of a tree conservation area with a basal area of over 80 square feet per acre.

C. All replacement trees shall be planted in a planting area of at least 200 square feet in area with minimum dimensions of 8 feet.

D. If the tree conservation area where the violation has occurred fails to contain sufficient land area to replant the required replacement trees and replacement trees can not be planted on other portions of the property, then in lieu of such replacement trees, a replacement fee equal to $100 per caliper inch of replacement trees shall be paid to the City.

Sec. 9.1.9. Watershed Protection Overlay Districts

A. Except as otherwise provided below, every lot located within a -UWPOD, -FWPOD or -SWPOD must provide and maintain an area set aside for trees equal to at least 40% of the lot area. Within this area, trees must either be preserved or planted in accordance with the following:

1. Tree areas may be 1 contiguous area or scattered areas throughout the lot, but no required tree area may be less than ⅓ of the total gross land area required to be set aside for trees;
2. All areas required to be set aside for trees shall be maintained as wooded areas;
3. Wooded areas may consist of either areas where active tree preservation is observed or tree planting areas;
4. Each active tree preservation area must contain a minimum of 2 inches of tree caliper per every 100 square feet and within such areas, active tree preservation shall be followed;
5. Areas that are set aside for trees that do not meet the standards for active tree protection areas must be planted with shade trees; and
6. The minimum size and planting rate of new tree plantings used to fulfill this requirement shall be either 1 bare-root seedling at least 14 inches tall planted per 100 square feet (10 feet by 10 feet centers) or one 2-inch caliper tree planted per 200 square feet.

B. After wooded areas have been determined and prior to or concurrent to any subdividing of the property or issuance of building permit, the landowner shall record with the local County Register of Deeds a plat with metes and bounds descriptions of all wooded areas.

C. For lots located within areas designated "New Urban" by the Swift Creek Land Management Plan, the regulations of *Sec. 9.1.9.A.* above apply with the exception that only 25% of each lot must contain an area set aside for trees.

D. For lots located within a conservation development, areas set aside for trees may in lieu of being situated on the individual dwelling lots may instead be located within the required open space, provided that the overall acreage set aside for trees is not diminished.

E. The requirements of this section do not apply to lots devoted exclusively to stormwater control measures or to those lots located in those areas of the Comprehensive Plan designated for impervious surfaces in excess of 30%.

Sec. 9.1.10. Lots Without Recorded Tree Conservation Areas

A. Applicability

1. Any tree disturbing activity, except a minor tree removal activity, on sites 2 acres and larger in size that do not have an established or recorded tree conservation area shall meet the requirements of this section.
2. Nothing in this section shall prevent the otherwise lawful grading and installation of streets, utilities or other improvements shown on an approved subdivision plan or site plan.
3. All applicable laws, including soil erosion and sedimentation control and tree protection regulations, must be obeyed. No champion tree, including its critical root zone, is subjected to any tree disturbing activity.

B. Tree Protection Plan Required

1. A tree protection plan must be approved by the Planning and Development Officer for all applicable tree protected areas.
2. Tree protection fences must be in place prior to the issuance of any City permit and prior to engaging in any tree disturbing activity.

C. Perimeter Buffers

1. No tree disturbing activity, except a minor tree removal activity, shall occur within a 32-foot wide perimeter buffer when the adjoining or adjacent property is vacant.
2. No tree disturbing activity, except a minor tree removal activity, shall occur within a 65-foot wide perimeter buffer when the adjacent property is a roadway other than a Thoroughfare or is not vacant.
3. No tree disturbing activity, except a minor tree removal activity, shall occur within a 50-foot wide perimeter buffer when the adjoining or adjacent property is a Thoroughfare or higher designation roadway.
4. No trees 10 inches DBH or larger can be removed, with the exception that a maximum of 5 trees between 10 inches and 22 inches DBH may be removed within the 32-foot wide buffer, the 65-foot wide buffer or 50-foot wide

Thoroughfare buffer, within a continuous 5-year period, with a permit issued by the Planning and Development Officer, provided that such tree removal would not diminish future tree conservation areas that may be required, all as shown on a report submitted to Planning and Development.

5. In lieu of protecting perimeter buffers, tree conservation areas may be designated in conjunction with an approved development plan,or an approved forest management plan, provided that all tree conservation areas are shown on recorded plats.

D. Forest Management Activity Allowed

1. Forest management activity is allowed in the perimeter buffers provided that the landowners first record with the local County Register of Deeds a covenant running with and binding the land stating: "That forest management operations were initiated within regulated perimeter buffers of the real property on _____ (date and year) and that pursuant to State Law, no building permit, site plan or subdivision plan will be approved by the local governing authority for a period of 5 years following harvesting completion date."
2. A copy of this covenant recorded with the local County Register of Deeds shall be provided to the to Planning and Development.
3. The allowable hours of operation any given day are between 7 AM and 8:30 PM, other than emergency work for the preservation of public health or safety.
4. Access ways through perimeter buffers shall not exceed 25 feet in width and all construction entrances of the access ways must be constructed in accordance with the latest City "Guidelines for Land-Disturbing Activities" or latest State of North Carolina "Erosion and Sediment Control Planning and Design Manual", whichever is more stringent.
5. At least 1 access way shall be permitted and additional access ways may be allowed provided such additional access ways are justified by a North Carolina registered forester and additional access ways fronting the same roadway are spaced at least 1,000 feet apart.

E. Violations

1. A violation of this section, where unlawful tree disturbing activity has occurred and trees and stumps are absent, shall subject the violator to a civil penalty equal to $1,000 for the first tree plus 35 cents of every square foot of unlawfully disturbed perimeter buffer.
2. Where trees or stumps are present after unlawful tree disturbing activity has occurred, the civil penalty shall instead be calculated as $1,000 for the first tree plus $100 per diameter inch for any other tree or stump 3 inches diameter and larger.
3. No civil penalty shall exceed ⅓ of the current land tax value of the entire site.
4. The penalty shall be processed as set forth in *Sec. 10.4.2*. In addition to this civil penalty, within the unlawfully disturbed perimeter buffer, the land owner shall install one 2-inch caliper tree for each 200 square feet of all of the unlawfully disturbed perimeter buffer; provided that, in R-1 and R-2 no more than 15% of the acreage of the entire tract and no more 10% of the acreage of the entire tract of all other districts shall be planted.
5. Prior to any replanting, the Planning and Development Officer shall first approve a replacement planting and maintenance plan.
6. The replanting areas shall be designated as tree conservation areas on plats with delineated metes and bounds descriptions recorded with the local County Register of Deeds, however, the replacement planting areas shall not count toward the tree conservation percentage requirements of *Sec. 9.1.3*. Following the recording of this plat, no tree disturbing activity shall take place within the designated tree conservation areas.

Application for Variance

RCP RALEIGH DEPARTMENT OF CITY PLANNING

Department of City Planning | 1 Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2626

Submit application to: Development Services Customer Service Center, 1 Exchange Plaza, Suite 400, Raleigh, NC 27601

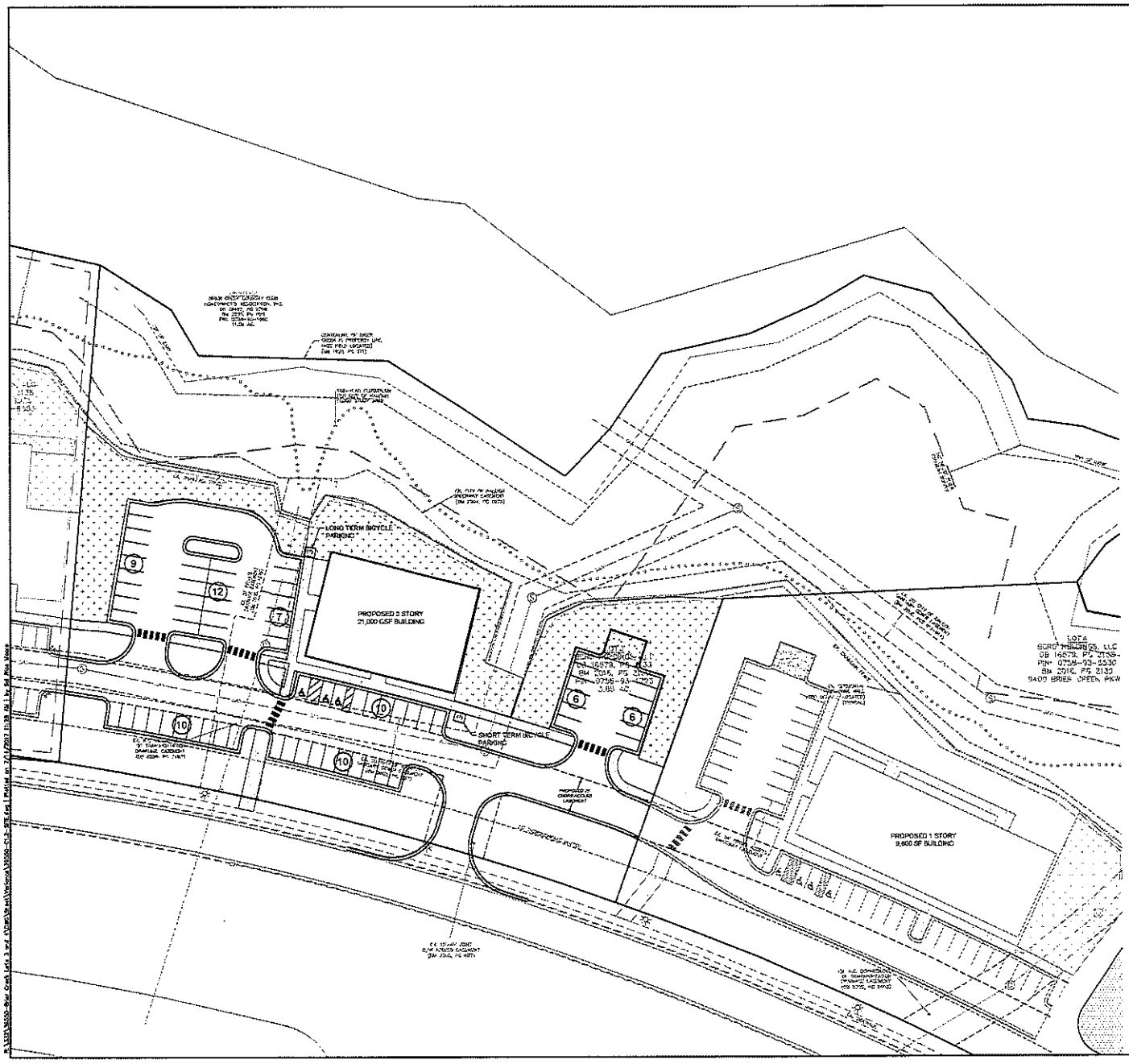
NATURE OF REQUEST	OFFICE USE ONLY
Nature of variance request (if more space is needed, submit addendum on separate sheet): See attached Exhibit A.	**Transaction Number** A-105-17
Provide all previous transaction numbers for Coordinated Team Reviews, Due Diligence Sessions, or Pre-Submittal Conferences. If this property was the subject of a previous variance request, provide the case number.	

GENERAL INFORMATION			
Property Address 9550 Brier Creek Parkway		**Date** 07/05/2017	
Property PIN 0758-93-1723	**Current Zoning** CX-3-PK		
Nearest Intersection Brier Creek Parkway and Cerny Street		**Property size (in acres)** 3.85	
Property Owner BCRD Holdings LLC	**Phone** 9193486497	**Fax**	
Owner's Mailing Address 9133 Fawn Hill Ct., Raleigh, NC 27617	**Email** tejpanjwani@gmail.com		
Project Contact Person Michael Birch, Morningstar Law Group	**Phone** 919.590.0388	**Fax**	
Contact Person's Mailing Address 421 Fayetteville Street, Ste. 530, Raleigh, NC 27601	**Email** mbirch@morningstarlawgroup.com		
Property Owner Signature	**Email** tejpanjwani @ gmail. com		
Notary Sworn and subscribed before me this 5th day of July, 20 17	**Notary Signature and Seal** Carol K Phillips CAROL K PHILLIPS NOTARY PUBLIC FRANKLIN COUNTY, NC		

Exhibit A

Petitioner requests a variance to the Parkway frontage standards of UDO sections 3.4.3.C. and 3.4.3.E. In lieu of these standards, Petitioner proposes a 25' building and parking setback and a 25' protective yard, as shown on the attached site plan.

LOT 3 - 9550 BRIER CREEK PARKWAY



SITE DATA TABLE

PROJECT NAME:	LOT 3
APPLICANT/ PROPERTY OWNER:	BORD HOLDINGS, LLC VISH PANJWANI 9133 FAWN HILL CT. RALEIGH, NC 27617 (919) 800-1885
PIN:	0758931723
DEED REFERENCE:	DB. 016579 PG.0213B
PLAT REFERENCE:	PB.2016 PG.1925
PROPERTY ADDRESS:	9550 BRIER CREEK PKWY, RALEIGH, NC 27617
TOWNSHIP:	CEDAR FORK
PROPERTY ZONING:	CX-3-PK
CURRENT USE:	VACANT

EASEMENT DATA TABLE

TOTAL LOT AREA	3.85 AC
NCDOT DRAINAGE EASEMENT AREA	0.1220 AC
GREENWAY EASEMENT AREA	1.8843 AC
SANITARY SEWER EASEMENT AREA	0.1654 AC
CROSS ACCESS EASEMENT AREA	0.1533 AC
TOTAL EASEMENT AREA	2.326 AC
TOTAL AMENITY AREA	0.402 AC

HATCHING LEGEND

AMENITY AREA

NORTH

SCALE 1"=30'

0 30' 60'

FOR REVIEW ONLY

THIS DRAWING PREPARED AT THE RALEIGH OFFICE
5410 Trinity Road, Suite 102 | Raleigh, NC 27607
TEL 919.866.4951 FAX 919.833.8126 www.timmons.com

YOUR VISION ACHIEVED THROUGH US.

REVISION DESCRIPTION	DATE

DATE 7/11/2017
DRAWN BY A. MAY
DESIGNED BY S.MOORE
CHECKED BY R.BAKER
SCALE AS NOTED

TIMMONS GROUP
NORTH CAROLINA LICENSE NO. C-1652

BRIER CREEK PARKWAY
BRIER CREEK PARKWAY - WAKE COUNTY - NORTH CAROLINA
LOT 3 - 9550 BRIER CREEK PKWY

JOB NO. 39550
SHEET NO. C1.2

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0758931723
BCRD HOLDINGS LLC
9133 FAWN HILL CT
RALEIGH NC 27617-7769

0758836853
BCRD HOLDINGS LLC
9133 FAWN HILL CT
RALEIGH NC 27617-7769

0758931866
BRIER CREEK COUNTRY CLUB OWNERS ASSOC
2310 T W ALEXANDER DR STE G
RALEIGH NC 27617-7755

0758935530
BCRD HOLDINGS LLC
9133 FAWN HILL CT
RALEIGH NC 27617-7769

0758940138
TOLL AT BRIER CREEK LMTD PRTNSHP
ATTN: CLUB CONTROLLER
9400 CLUB HILL DR
RALEIGH NC 27617-7570