



TOWN *of* WAKE FOREST

Board of Adjustment Meeting Agenda September 15, 2022 at 6:00 PM

Notice

In accordance with the requirements of Title II of the Americans with Disability Act of 1990 (ADA), the Town of Wake Forest will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities. For individuals with impaired hearing, special equipment is available for use during meetings in the Town Hall Board Chambers. Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of the Town of Wake Forest should contact the office of ADA Coordinator [Mickey Rochelle](#) at 919-435-9455 or Town Clerk [Terry Savary](#) at 919-435-9432 as soon as possible, but no later than 48 hours before the scheduled event.

Public Hearing

Those wishing to speak must first register to speak no later than 3pm the day of the meeting at <https://www.wakeforestnc.gov/public-meetings-portal>.

At the appropriate time, the Board of Adjustment Chair will acknowledge those persons who have registered to speak. They will be called upon in the order registered. Speakers will address the Board as a whole, from the podium at the front of the room, and begin their remarks by stating their name and address. While not required, the Chair may ask staff or the applicant to respond. Speakers needing additional information or questions answered will be contacted by the Deputy Town Clerk and provided contact information for the appropriate staff person.

Unless otherwise indicated by the Chair, individual comments shall be limited to three minutes. Groups are encouraged to designate a lead speaker on their behalf, and when addressing the Board, the speaker must first identify the group they are representing and will be given no more than ten minutes to give comments. Once comments have been made, speakers cannot speak again, unless specifically called upon by the Chair. The Chair may, at his/her discretion, interrupt public comment and elect to continue it to another meeting due to, among other reasons, the lateness of the hour or to allow consideration of other items on the agenda.

When public hearings are continued from previous meetings, previous individuals that have spoken, either representing themselves or a group, cannot speak at a continued public hearing, unless specifically called upon by the Chair. Additionally, speakers cannot both represent themselves individually and speak on behalf of a group throughout public hearings, even if held over multiple sessions.

1.Call to Order

2.Adoption of Agenda

3.Approval of Minutes

3.A. Approval of Minutes

[BOA_DraftMinutesJun202216.pdf](#)

4.Old Business

5.New Business

5.A. Public Hearing on BOA-22-02 Foundation Drive Apartments Variance

[BOA-22-02 STAFF REPORT.pdf](#)

[Exhibit A - Variance Application.pdf](#)

[Exhibit B - Site Plan Submittal.pdf](#)

[Exhibit C - Aerial Photograph.jpg](#)

[Exhibit D - Zoning Map.jpg](#)

[Exhibit E - Land Use Plan.jpg](#)

[Exhibit F - Recorded Plat.pdf](#)

[Exhibit G - UDO Sections 2.2.3 and 17.4 excerpt.pdf](#)

6.Staff Comments

7.Board of Adjustment Comments

8.Adjournment



Board of Adjustment Agenda Item Report

Agenda Item No.: 2021-654-

Submitted by: Terry Savary

Submitting Department: Administration

Meeting Date: September 15, 2022

SUBJECT

Approval of Minutes

Recommendation:

Item Summary:

ATTACHMENTS

- [BOA_DraftMinutesJun202216.pdf](#)



Wake Forest Board of Adjustment Minutes

The Wake Forest Board of Adjustment met on **Thursday, June 16, 2022 at 6:00 p.m.** in the Board Room at Wake Forest Town Hall, 301 S Brooks Street.

Board of Adjustment Members present: William Hedrick, Jonathan Bivens, Bryan Lange, Rick Porter, and Mark Williams

Board of Adjustment Members absent: Michael Schietzelt

Staff Members present: Planning Director Courtney Tanner, Assistant Planning Director Jennifer Currin, Senior Planner Patrick Reidy, Zoning Enforcement Officer Ben Coleman, Town Attorney Hassan Kingsberry, and Town Clerk Theresa Savary

1. Call to Order

William Hedrick called the June 16, 2022 meeting of the Wake Forest Board of Adjustment to order at 6:00 p.m.

2. Adoption of Agenda

ACTION:

Mover: Mark Williams moved to approve the June 16, 2022 agenda as presented.

Seconder: Jonathan Bivens.

Vote: Motion carried 5-0.

3. Approval of Minutes

3.A. Minutes from February 17, 2022 Meeting

ACTION:

Mover: Mark William moved to approve the February 17, 2022 meeting minutes with the following correction made to the action in Item 6.A.:

- Amend motion carried "6-0" to motion carried "4-0".

Seconded: Jonathan Bivens.

Vote: Motion carried 5-0.

4. Old Business

No old business.

5. New Business

**5.A. Public Hearing and Consideration on QAUSI-JUDICIAL ITEM BOA-22-01
Variance Requests for 11915 Retail Drive**

Senior Planner Patrick Reidy was sworn in and submitted the staff report and all associated documentation into the record as evidence. Mr. Reidy stated this is Item BOA-22-01, a variance request for 11915 Retail Dr. The applicant is Scott Mommer, and the property owner is HD Development of Maryland, Inc. The parcel acreage is 14.90 and the existing zoning is Conditional Use Highway Business (CU HB) (RZ-99-18 Exhibit D), US 1 Special Highway Overlay (SH1-O), Richland Creek Watershed Management Area District (RC-WMA). The applicant is requesting relief from Sections 4.6.2 (Exhibit I) and 5.2.3.C.2 (Exhibit J) of the Wake Forest Unified Development Ordinance (UDO), which applies to 1) the location of an allowed Accessory Use on a lot, and 2) the maximum allowance of the use of spandrel glass to meet glazing requirements (Exhibit A).

Request #1: Findings of Fact: 4.6.2 (accessory uses location)

1. Carrying out the strict letter of the ordinance would result in an unnecessary hardship (it shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property).

Staff Analysis: UDO Section 4.6.2 requires commercial accessory uses to locate in the side or rear yard setbacks only. There is existing vegetation, as shown on the approved Landscape Plan between Retail Drive and the northern parking area. The property owner could make site modifications to locate the parking for the accessory use equipment in the rear yard while maintaining delivery operations within the same area. The property owner could also expand the building to put the

equipment inside or build a brick wall around the fenced in area, which would comply with the UDO. A reasonable use of the property, home improvement and garden center, can continue when complying with the side or rear yard location requirements for accessory uses.

Therefore, carrying out the strict letter of the ordinance would not result in an unnecessary hardship.

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).

Staff Analysis: There is no hardship peculiar to the property for this request. The business desires to store equipment/tools and vehicular rental adjacent to the proposed Tool Rental Center.

3. The hardship did not result from actions taken by the applicant of 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).

Staff Analysis: The applicant is desiring to 1) locate equipment rental pick-up and drop-off between the building and Retail Drive, 2) add an open-air storage area that is delineated by black vinyl coated mesh fencing, and 3) locate rental spaces in the front setback between the lumber canopy and Retail Drive. The applicant can make modifications to their proposal that would comply with the UDO.

Therefore, the hardship is self-created.

4. The requested variance is consistent with the spirit, purpose, and intent of this ordinance, such that the public safety is secured, and substantial justice is achieved.

Staff Analysis: The requested variance is inconsistent with the spirit, purpose, and intent of the UDO. The UDO's accessory use regulations are meant to allow for uses associated with the principal use, so long as those uses are located in the side or rear yards.

Request #2: Findings of Fact: 5.2.3.C.2 (spandrel glass to exceed 15%)

1. Carrying out the strict letter of the ordinance would result in an unnecessary hardship (it shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property).

Staff Analysis: Carrying out the strict letter of the ordinance would result in an unnecessary hardship. The proposed expansion for the Tool Rental Center is still providing the required amount of glazing, however it is not transparent due to the use and security needs of the proposed Tool Rental Center.

The existing façade where the expansion is proposed does not provide any glazing and none was required at the time of the development of the site.

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).

Staff Analysis: The hardship does not result from conditions that are peculiar to the property. The parcel is bounded by Retail Drive on two sides of the building, creating two street facades that must meet the 40% transparency requirement, which is not uncommon. The proposed use, not the glazing requirement, is the reason the applicant is proposing to use all spandrel glass.

3. The hardship did not result from actions taken by the applicant of 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).

Staff Analysis: The hardship results from actions taken by the property owner by proposing the Tool Rental Center use in this location. The applicant could use transparent glass and meet the glazing requirements without the need for a variance.

4. The requested variance is consistent with the spirit, purpose, and intent of this ordinance, such that the public safety is secured, and substantial justice is achieved.

Staff Analysis: The requested variance is consistent with the spirit, purpose, and intent of the UDO. The UDO's regulations are meant for commercial buildings greater than 100,000 SF to provide at least 40% glazing within the transparency zone. The UDO recognizes that there are some instances where spandrel glass is an appropriate alternate to storefront windows, but limits spandrel glass to 15% of the requirement. The applicant is proposing to provide 40% glazing, but 100% in the form of spandrel glass instead of transparent windows.

Mr. Reidy stated staff recommends that if the Board of Adjustment reaches positive conclusions on all the required findings of fact, the following conditions be required:

1. The applicant shall construct a 4-foot-tall brick wall (to match the proposed elevation) to screen the equipment rental parking from Retail Drive to protect the intent of the accessory use location standards of Section 4.6.2.
2. That the following note shall be shown on a final plat for Parcel B and recorded at the Wake County Register of Deeds: "A variance (BOA-22-01) was granted by the Wake Forest Board of Adjustment on June 16, 2022. The variance from Section 4.6.2 of the UDO is to allow 10 equipment rental stalls and an open-air storage area

delineated by black vinyl coated mesh fencing within the secondary front/street side yard. A 4-foot-tall brick wall (to match the proposed elevation) shall be constructed to screen the rental stalls from Retail Drive.”

3. That the following note shall be shown on a final plat for Parcel B and recorded at the Wake County Register of Deeds: “A variance (BOA-22-01) was granted by the Wake Forest Board of Adjustment on June 16, 2022. The variance from Section 4.6.2 of the UDO is to allow 8 rental stalls within the front setback between Retail Drive and the lumber canopy as shown on Exhibit B.
4. That the following note shall be shown on a final plat for Parcel B and recorded at the Wake County Register of Deeds: “A variance (BOA-22-01) was granted by the Wake Forest Board of Adjustment on June 16, 2022. The variance from Section 5.2.3.C.2 allows spandrel glass to satisfy the requirement for glazing within the transparency zone for the northern elevation”.

Mark Williams asked if they’ll remove landscaping and install new spaces where the applicant is proposing to store equipment. Mr. Reidy replied, no.

Town Attorney Hassan Kingsberry asked Board members if anyone had any partialities to disclose and a recusal to offer. The Board members had no partialities to disclose. Town Attorney Hassan Kingsberry asked if anyone had any ex parte communications they’d like to disclose. The Board members had no ex parte communications to disclose.

Applicant Scott Mommer was sworn in. Mr. Mommer, Home Depot Site Development Coordinator, brought before the Board a new program called Tool Rental Center (TRC). He spoke about the location of a new rental center and the importance of having it in a convenient and customary location. Mr. Mommer stated they’d offer online servicing and pick-up in the parking lot. He said screening of the area would be natural with heavily screened vegetation rather than a block wall.

Mr. Bivens asked if they currently rent box trucks in the front parking lot. Mr. Mommer replied, yes. Mr. Bivens asked if there’ll be some type of enclosure or are they just designating parking spaces for the rental trucks. Mr. Mommer replied, they would provide parking spaces for the rental trucks, no enclosures.

Mr. Williams asked if the designated area would be for the trucks they currently have. Mr. Mommer replied, correct.

Rick Porter asked if there are any plans to expand their fleet. Mr. Mommer replied, no. Mr. Porter asked if they're proposing ten parking spaces for rental trucks. Mr. Mommer stated they're requesting ten spaces to widen the spaces they already have.

Chair Hedrick asked what qualifies this as an accessory use. Mr. Reidy replied, anything that isn't within the actual building.

Mr. Bivens asked how far away would Retail Dr. have to be for the side of the building not to be considered the side street. Mr. Reidy replied, from a front yard standpoint it's the space between the road and the building. Mr. Bivens asked if Home Depot owns the landscaped area between the parking and the road. Mr. Reidy replied, yes.

Mr. Porter asked if there are any applicable operational restriction easement agreements with Target or Staples. Mr. Reidy stated he's not aware of any covenants. Mr. Mommer stated the legal department checks for any consents needed.

Chair Hedrick asked if there's room behind the building to permit an accessory use. Mr. Reidy replied he hasn't seen a compliant version. He said there could be some changes to the site that would allow for potential expansion.

Mr. Bivens understands the security concerns with having transparent glass. Mr. Bivens asked if there was ever consideration for spandrel glass. Mr. Mommer stated it wasn't a consideration and the challenge is the racking up against the wall.

Mr. Bivens would like to see what staff would consider as conditions. Mr. Reidy replied, a consideration staff put forth is a 4 foot brick wall to help hide the equipment if parking was allowed.

Chair Hedrick asked if there's any concern whether the rear of the building can meet the needs of the Unified Development Ordinance. Mr. Reidy replied, it would be up to the applicant to produce the site plan to show it can be compliant.

Planning Director Courtney Tanner was sworn in. Ms. Tanner stated there's existing parking along the rear of the site that could be utilized to meet the outdoor parking of all their vehicles and equipment but it's currently being used for non-permanent storage. They are currently working on clearing out the outdoor storage and will then have available space to be utilized for vehicles and equipment. She said instead of

having a fence they could extend the wall the entirety and there would be no outdoor storage visible from Retail Dr.

Chair Hedrick believes the Board hasn't been presented with enough information. He said the applicant may want to continue the proceedings and come back with more options and additional information for further consideration at a later date. Mr. Reidy replied, the Board could ask the applicant if that's an option they'd like to consider.

Mr. Williams stated it's up to the applicant to satisfy the findings of fact with information and if they don't it's our responsibility to deny the request and they could come back with an alternative if they desire.

Chair Hedrick asked if there's anyone present that would like to speak.

Mike Faas, 1433 Loghouse St. was sworn in. He stated there are already issues with the noise produced in the rear of the facility and would be concerned with any additional operations added to the rear of the building. He remarked it's a very narrow area and doesn't believe it would be beneficial to have anything at the back of the building.

Mr. Porter asked if their rentals are geared towards consumer rentals or commercial rentals. Mr. Mommer replied, a combination of both.

ACTION:

Mover: Rick Porter moved to close the public hearing.

Seconder: Bryan Lange.

Vote: Motion carried 5-0.

Chair Hedrick declared the public hearing closed at 6:57 p.m.

Findings of Fact #1: 4.6.2 (accessory uses location)

1. Carrying out the strict letter of the ordinance would result in an unnecessary hardship. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - Mark Williams stated there's not enough evidence presented to demonstrate it's an unnecessary hardship.
 - Will Hedrick is not seeing sufficient evidence to demonstrate that this is causing a hardship.
 - Jonathan Bivens believes there are alternatives that can be looked at.

- Rick Porter stated it's not compliant with the intent and believes there's other options.
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.
 - Will Hedrick stated there's been no demonstration of a hardship.
 - Jonathan Bivens stated there's no available parking on the opposite end of the building and there is no parking beyond the fenced in garden center area.
 - Will Hedrick said Target and other businesses have also suffered from the frontage.
 3. The hardship did not result from actions taken by the applicant of 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.
 - Will Hedrick stated there's no demonstration of a hardship.
 4. The requested variance is consistent with the spirit, purpose, and intent of this ordinance, such that the public safety is secured, and substantial justice is achieved.
 - Will Hedrick stated there's no demonstration of a hardship.

ACTION:

Mover: Rick Porter made a motion to deny findings of fact Request #1: 4.6.2 (accessory uses location).

Seconder: Mark Williams

Vote: Motion carried 5-0.

Findings of Fact #2: 5.2.3.C.2 (spandrel glass to exceed 15%)

1. Carrying out the strict letter of the ordinance would result in an unnecessary hardship. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - Bryan Lange believes it's a hardship.
 - Mark Williams stated while it's not an unnecessary hardship it creates an unnecessary hardship because it exposes theft.
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.

- Jonathan Bivens stated there's currently zero percent transparent glass and he doesn't think it's making anything detrimental to the neighborhood by putting up the addition with no transparency.
3. The hardship did not result from actions taken by the applicant of 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.
- Mark William asked if there was excess glass being presented. Mr. Reidy stated it was slightly over the amount required. Mr. Reidy stated the transparency zone is a wider zone than what's required.
Planning Director Courtney Tanner reminded the Board they cannot ask any additional questions and will have to deliberate amongst themselves.
 - Will Hedrick stated there's a high likelihood of damage such as broken windows that needs to be factored in. The Board will have to decide if it's creating an unnecessary hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of this ordinance, such that the public safety is secured, and substantial justice is achieved.
- Jonathan Bivens said the regulations are meant for commercial buildings greater than 100,000 s.f. and the addition is not greater than 100,000 s.f. but the existing building is. Jonathan Bivens stated it's an attractive building comparatively to other buildings being built at the time.
 - Rick Porter stated it would enhance the appearance of the building. He believes it's consistent with the spirit and intent. Will Hedrick agreed.
 - Mark Williams stated he doesn't have a problem with this particular finding and it's consistent with the spirit.

ACTION:

Mover: Bryan Lange made a motion to approve findings of fact Request #2: 5.2.3.C.2 (spandrel glass to exceed 15%) subject to condition proposed by town staff.

Secunder: Jonathan Bivens.

Vote: Motion carried 4-1.

Aye

Bryan Lange

Jonathan Bivens

Nay

Mark Williams

Will Hedrick
Rick Porter

Condition:

1. That the following note shall be shown on a final plat for Parcel B and recorded at the Wake County Register of Deeds: "A variance (BOA-22-01) was granted by the Wake Forest Board of Adjustment on June 16, 2022. The variance from Section 5.2.3.C.2 allows spandrel glass to satisfy the requirement for glazing within the transparency zone for the northern elevation".

5. Staff Comments

Mr. Reidy stated he does not anticipate a Board of Adjustment meeting next month.

6. Adjournment

Chair Hedrick adjourned the meeting at 7:30 p.m.

Duly approved in open session this 15th day of September 2022.

Theresa Savary
Town Clerk

William Hedrick, Chair
Board of Adjustment



Board of Adjustment Agenda Item Report

Agenda Item No.: 2021-636-
Submitted by: Timothy Richards
Submitting Department: Planning
Meeting Date: September 15, 2022

SUBJECT

Public Hearing on BOA-22-02 Foundation Drive Apartments Variance

Recommendation:

Hold hearing, make a determination on each required finding.

Item Summary:

ATTACHMENTS

- [BOA-22-02 STAFF REPORT.pdf](#)
- [Exhibit A - Variance Application.pdf](#)
- [Exhibit B - Site Plan Submittal.pdf](#)
- [Exhibit C - Aerial Photograph.jpg](#)
- [Exhibit D - Zoning Map.jpg](#)
- [Exhibit E - Land Use Plan.jpg](#)
- [Exhibit F - Recorded Plat.pdf](#)
- [Exhibit G - UDO Sections 2.2.3 and 17.4 excerpt.pdf](#)



Staff Report

Case BOA-22-02: Foundation Drive Apartments Variance Application

Meeting Date	September 15, 2022
Requested Actions	Consideration of the following item related to Variance application for 0 Foundation Drive (PIN 1749593299): 1. Request to exceed maximum front setback of 18 feet.
Case Manager	Tim Richards, Senior Planner

CASE INFORMATION

Applicant	The Nau Company C/O Brian O'Kane PO Box 810 Rolesville, NC 27571	
Property Owner	Heritage RMX, LLC C/O Robert Defeo 1017 Exeter Field Circle Raleigh, NC 27614	
Location	Across Foundation Drive from Heritage High School, behind the Shoppes at Heritage Village.	
Address	0 Foundation Drive	
Wake County Tax PIN(s)	1749593299	
Acreage	5.15 acres	
Zoning	Residential Mixed-Use (RMX)	
Special Use Permit	N/A	
Setbacks	Front	18 feet maximum
	Street Side/ Secondary	5 feet minimum
	Side	0 feet

	Rear	5 feet minimum
Land Use	Undeveloped/Vacant	
Community Plan (2022)	Corridor Commercial	
Corporate Limits	This application is in the Town’s corporate limits.	
Book of Maps/ Page Number	Book BM 2015, page 1907 – Recorded November 10, 2015	
See Exhibit A for a copy of the application, Exhibit C for an aerial photograph, and Exhibit F for a copy of the recorded plat.		

SURROUNDING LAND USES AND ZONING

	Land Use	Zoning
Northwest	Greenway (Smith Creek Greenway)	Open Space (OS)
Northeast	Multi-building shopping center, including General Commercial, Restaurant, Personal Services, and Medical Clinic uses	Neighborhood Business Conditional District (NB-CD)
Southwest	Stormwater detention pond, otherwise Undeveloped/Vacant	General Residential (GR3)
Southeast	Undeveloped/Vacant	Neighborhood Business Conditional District (NB-CD)
<i>See Exhibit C for an aerial photograph and Exhibit D for a zoning map.</i>		

VARIANCE REQUEST

The applicant is requesting relief from the RMX district maximum front setback in Section 2.2.3 of the Wake Forest Unified Development Ordinance (UDO). Specifically, Section 2.2.3 establishes a maximum front setback of 18 feet in the RMX district. Section 17.4 of the UDO defines "Setback, Maximum" as follows: "A line parallel to the lot line at or in front of which a building shall be erected. Maximum setbacks shall be figured from the right-of-way line. At least 50% of the building frontage shall meet the maximum setback."

The variance application states that the subject parcel has 22.71 feet of frontage on Foundation Drive, which precludes the construction of a building on the parcel within 18 feet of Foundation Drive. The applicant therefore requests that the maximum principal building setback of 18 feet be made not applicable to the parcel.

FINDINGS REQUIRED TO GRANT VARIANCE

In granting any variance, the Board of Adjustment must have a concurring vote of four-fifths of its members in accordance with Section 15.13.3 of the Wake Forest Unified Development Ordinance and N.C.G.S. § 160D-406. The Board shall not grant a variance unless and until written findings are made based on all the following conclusions and findings of fact in Section 15.13.3.B of the UDO.

15.13.3.B.1	Finding of Fact: Carrying out the strict letter of the ordinance would result in an unnecessary hardship. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. Staff Analysis: UDO Section 2.2.3 (Exhibit G) requires that the principal structure on the subject parcel have at least 50 percent of its building frontage within 18 feet of the right-of-way. The parcel's only street frontage extends for approximately 23 feet on Foundation Drive, and the narrow "flagpole" portion of the parcel continues at a width of approximately 15 feet for a distance of approximately 450 feet back from that frontage. Were the land to be developed in accordance with the Section 2.2.3 setback standards, the principal building would be required to have its front within 18 feet of the right-of-way and would be limited to a width of approximately 15 feet extending back the remaining 400-plus feet of the "flagpole" portion of the lot. The master site plan application that was submitted for the parcel (see Exhibit B) shows access to the parcel from Foundation Drive not from the parcel's frontage but from a new private access road in an existing 60-foot-wide access easement, shown on the recorded plat (see Exhibit F), extending across the abutting parcel to the south from the right-of-way to the subject parcel over a length of approximately 300 feet. Even with this access to the parcel, the building frontage location requirement in combination with the shape of the lot suggest that carrying out the strict letter of the ordinance would result in an unnecessary hardship.
15.13.3.B.2	Finding of Fact: 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. Staff Analysis: The hardship arises from the shape of the subject parcel, which has approximately 23 feet of street frontage connected to the bulk of the parcel by an approximately 15-foot-wide and 450-foot-long strip of land. Even though access may be provided by a means other than the parcel's frontage on Foundation Drive, the shape of the parcel would result in a hardship if a principal building were required to be constructed within the 15-foot-wide "flagpole" portion of the lot within 18 feet of the right-of-way. In addition, the topography of the site and the stream shown on the proposed master site plan (see

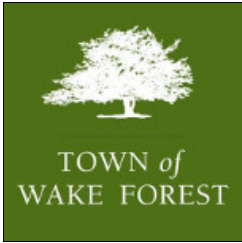
	Exhibit B) complicate alternative configurations including stormwater infrastructure that could serve a building located in the “flagpole” portion of the lot or additional access to the parcel from abutting properties to the north.
15.13.3.B.3	Finding of Fact: The hardship did not result from actions taken by the applicant of 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. Staff Analysis: The subject parcel was created by a plat recorded in Book BM 2015, page 1907 on November 10, 2015 (see Exhibit F). The deed on record transferring ownership to the current owner is dated September 2nd, 2020, approximately five years after the plat was recorded.
15.13.3.B.4	Finding of Fact: The requested variance is consistent with the spirit, purpose, and intent of this ordinance, such that the public safety is secured, and substantial justice is achieved. Staff Analysis: The RMX district is intended to support a variety of housing types in relatively high-density neighborhoods within walking or biking distance from mixed-use centers, as well as some limited commercial uses in pedestrian-scaled, residential-style structures. The maximum setback standard in Section 2.2.3 requiring that principal buildings be brought forward toward the street serves to frame the public area of the street, sidewalk, and building frontages so as to make the area more comfortable for humans to walk and linger in. However, this form of development cannot be realized on the subject parcel because of its shape and configuration relative to the street, nor is this form of development supported by the current zoning and patterns of development in the area.

STAFF RECOMMENDATION

Staff recommends that the Board of Adjustment conduct an evidentiary hearing in accordance with Section 15.13.3 of the UDO and grant or deny a variance in accordance with the standards of review in Section 15.13.3 (see required findings above).

EXHIBITS

- Exhibit A: Variance application
- Exhibit B: Proposed master site plan
- Exhibit C: Aerial photograph
- Exhibit D: Zoning map
- Exhibit E: Land Use Plan designations (map)
- Exhibit F: Recorded plat (BM2015 Page 1907)
- Exhibit G: UDO Section 2.2.3 and 17.4 excerpt (“Setback, Maximum” definition)



Variance Request Application

(Variance Workflow)

Town of Wake Forest, NC

301 S. Brooks St.

Wake Forest, NC 27587-2932

TEL (919) 435-9510 | FAX (919) 435-9539

Project Overview

#784570

Project Title: Foundation Drive Apartments Variance

Jurisdiction: Town of Wake Forest (Wake County)

Application Type: Variance Request

State: NC

Workflow: Variance

County: Wake

Checklist - Variance

A submittal checklist is available to view additional documents which are required to submitted with this application. After answering the application questions, you will be asked to upload the required documents.

[VIEW VARIANCE SUBMITTAL CHECKLIST](#)

Missing items will result in the application being declined and returned to the applicant to resubmit. A revised and complete application including all missing items must be received or the application will be not be deemed complete and routed for review.

Please confirm you have reviewed the associated submitted checklist for this permit and confirm you will submit all documents required on the submittal checklist: Yes

Pre-Application Meeting

Has a pre-application conference been held?: Yes

This type of project requires a pre-application conference be completed prior to official submittal. Please return to the home screen and select **Pre-Application Conference** from the application type drop down list in order to schedule your required meeting.

Pre-Application Conference Date: 05/09/2022

Staff Member Met With: Kari Grace

Project Tracking ID: BOA-22-02

Project Information

Project/Development Name: Foundation Drive Apartments

Project Address or PIN:

- 0 FOUNDATION DR (1749593299)
- WC 1749-59-3299 (Unverified)

Tax PIN:

- 1749593299
- WC 1749-59-3299 (Unverified)

Zoning: Zoning

- 0 FOUNDATION DR: NB

Current Zoning Overlay: NA, Not Applicable to this Project

Town Limits: Inside corporate limits

Projects falling outside the limits of the Town or ETJ will be required to submit an annexation petition in conjunction with their project

submission. Please return to the home screen and select **Annexation Petition** from the application type drop down.

Land Use: Land Use Development

Acreage: 5.15

- 0 FOUNDATION DR: School

GIS Acreage: Parcel

- 0 FOUNDATION DR: 5.15

Project Contacts

Please enter all project contacts related to your application.

This is an important step to ensure all members of the applicant team receive email notifications associated with the project which may include comments, requested revisions, scheduled meetings or hearings, and final decisions. This also informs Town staff of the team members assigned role with the project.

Project Contact - Applicant

Brian O'Kane
The Nau Company
PO Box 810
Rolesville, NC 27571
P:919-435-6395
bokane@thenauco.com

Project Contact - Property Owner

Robert Defeo
Heritage RMX, LLC
1017 Exeter Field Circle
Raleigh, NC 27614
P:919-803-4003
raddevelopment@yahoo.com

Variance

Lot Number(s): 1

Subdivision : N/A

Project/Development Name: Foundation Drive Apartments

Deed Book: 018056

Page: 00651

Number of Variance Requests: 1

UDO Section(s) From Which Applicant is Requesting Relief:

Description of Request:

2.2.3 Table of Urban Development Standards

Due to the shape of the parcel there is only 22.71 feet of frontage on Foundation Drive. Due to the limited amount of frontage, a building cannot be constructed within 18 feet of Foundation drive on this property. This request seeks to remove the 18 foot maximum setback to allow the development of the property.

UDO Section(s) From Which Applicant is Requesting Relief: **Description of Request:**

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Variance Findings

The Board of Adjustment shall not grant a variance unless and until it makes all of the following findings. **Please address compliance with the Findings of Fact:**

Carrying out the strict letter of the ordinance would result in an unnecessary hardship. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property:

Strict compliance with the 18' maximum setback in conjunction with the other building setbacks wouldn't allow for a building to be constructed on the property due to the property only having 21.71

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:

The hardship in a direct result of the size and shape of the

feet of road frontage.

The hardship did not result from actions taken by the applicant of 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:

This property is currently vacant and has not been altered or subdivided by the current owner.

property. The property boundary has been surveyed by a licensed land surveyor.

The requested variance is consistent with the spirit, purpose, and intent of this ordinance, such that the public safety is secured, and substantial justice is achieved:
Public safety is secure by allowing this variance. The variance request seeks a reasonable interpretation and enforcement of the UDO.

Variance Findings for Floodplain, Watershed and Stormwater Regulation

Is the variance request related to standards for Floodplain, Watershed and Stormwater Regulation?: No

Variances from the standards set forth in this ordinance for flood damage prevention, watershed protection and stormwater regulation may be granted subject to the following additional provisions. **Please address compliance with the Findings of Fact:**

Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result or when the variance will make the structure in violation of other federal, state or local laws:

Variances shall only be issued upon:

a. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief:
c. A determination that failure to grant the variance would result in exceptional hardship; and:

b. A showing of good and sufficient cause:
d. A determination that the granting of a variance will not result in a substantial increase in flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing laws or ordinances:

In passing upon variances, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter and:

a. The danger that material may be swept onto other lands to the injury of others:
c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner:
e. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use:
g. The relationship of the proposed use to the land development plan and flood damage prevention program for that area:
i. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site:

b. The danger to life and property due to flooding or erosion damage:
d. The importance of the services provided by the proposed facility to the community:
f. The compatibility of the proposed use with existing and anticipated development:
h. The safety of access to the property in times of flood for ordinary and emergency vehicles:
j. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical

and water systems, and streets and bridges:



7/22/2022



TOWN of
WAKE FOREST

BOA-22-02

Foundation Drive Apartments Variance

PIN: 1749593299



Please note that this map is intended for illustrative purposes only.
For specific inquiries regarding zoning boundaries, contact the
Town of Wake Forest Planning Department at 919-435-8512.

0 500 1,000
Feet





7/22/2022

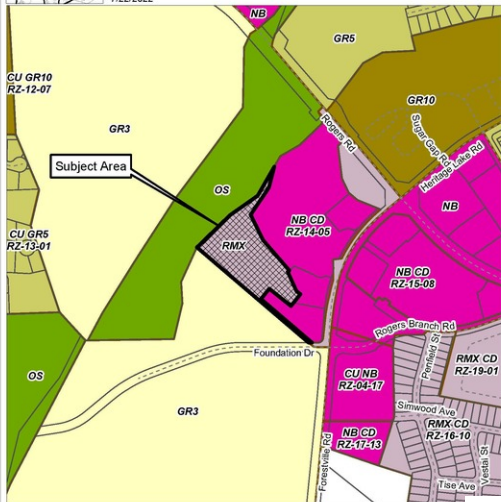


TOWN of
WAKE FOREST

BOA-22-02

Foundation Drive Apartments Variance

PIN: 1749593299



Please note that this map is intended for illustrative purposes only.
For specific inquiries regarding zoning boundaries, contact the
Town Wake Forest Planning Department at 919-435-9510.

0 500 1,000
Feet

25



7/25/2022



TOWN of
WAKE FOREST

BOA-22-02

Foundation Drive Apartments Variance

PIN: 1749593299



Please note that this map is intended for illustrative purposes only.
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0 500 1,000
Feet

26

2.2.3. Table of Urban District Development Standard

Base Districts	UR	RMX	NMX RA-HC	UMX	PUD
A. BUILDING TYPE (Section 5.4 – 5.8)	Civic / Institutional Detached House Townhouse	Civic / Institutional Detached House Townhouse Apartment Commercial	Civic / Institutional Townhouse Apartment Commercial	Civic / Institutional Townhouse Apartment Commercial	Civic / Institutional Detached House Townhouse Apartment Commercial
B. PRIVATE FRONTAGE (Section 5.3)					Refer to Section 2.7
1. Common Lawn	Permitted	Permitted	Prohibited	Prohibited	--
2. Porch & Fence	Permitted	Permitted	Prohibited	Prohibited	--
3. Terrace or Light Court	Permitted	Permitted	Permitted	Permitted	--
4. Forecourt	Permitted	Permitted	Permitted	Permitted	--
5. Stoop	Permitted	Permitted	Permitted	Permitted	--
6. Shopfront/Awning	Prohibited	Permitted	Permitted	Permitted	--
7. Gallery	Prohibited	Prohibited	Permitted	Permitted	--
8. Arcade	Prohibited	Prohibited	Permitted	Permitted	--
C. DEVELOPMENT STANDARDS					
1. Max. Density (Units/Acre)	10 du/ac	24 du/ac	n/a	n/a	n/a
2. Open Space (min) per CH 7	5%	5%	2% for projects 5 acres or greater	2% for projects 5 acres or greater	15%
3. Park Space (min) per CH 7	2%	2%	2% for projects 5 acres or greater	2% for projects 5 acres or greater	2%
4. Minimum and Maximum Development Size if not in TND	80 acres maximum	40 acres maximum	n/a	n/a	10 acres minimum
D. PRINCIPAL BUILDING					
1. Principal Front Setback	20 ft max.	18 ft max.	12 ft max (NMX) 5 ft max. (RA-HC)	6 ft max.	Per UDO Section 2.7
2. Street Side/Secondary Front Setback	5 ft min.	5 ft min.	12 ft max.	6 ft max.	Per UDO Section 2.7
3. Side (from adjacent lot) Setback ^{1,2}	5 ft min.	0 ft min.	0 ft min.	0 ft min.	Per UDO Section 2.7
4. Rear Setback	20 ft min. OR 5ft min. w/ rear alley access	5 ft min.	0 ft min.	0 ft min.	Per UDO Section 2.7
5. Frontage Buildout ³	n/a	n/a	60% min.	70% min.	Per UDO Section 2.7

Base Districts	UR	RMX	NMX RA-HC	UMX	PUD
E. ACCESSORY STRUCTURE					
1. Side Setback ¹	5 ft min.	5 ft min. OR 0 ft min. for attached structures	5 ft min. OR 0 ft min. for attached structures	0 ft min.	Per UDO Section 2.7
2. Rear Setback ¹	5 ft min.	5 ft min.	5 ft min.	0 ft min.	Per UDO Section 2.7
3. Garage Setback from Alley	15 ft from face of garage to centerline of alley				
4. Other Standards	20 ft min. behind building frontage line		Rear Yard Only		
F. PARKING CONFIGURATION					
1. Parking Requirements	By Use - See Section 9.4				
2. Parking Location	By Building Type - See Section 9.3				
G. HEIGHT					
1. Min. Height	None	None	16 ft	2 stories	Per UDO Section 2.7
2. Max. Height ⁴	3 stories	6 Stories (May Exceed with an SUP)	6 Stories (May Exceed with an SUP) (3 Stories along White Street from Elm to Roosevelt)	6 Stories (May Exceed with an SUP)	6 Stories or 60 feet, whichever is less (may exceed with an SUP)

¹ May be increased subject to building code standards

² Side setback does not apply to interior units of townhome buildings

³ For principal street frontage only; see Section 4.3.3.C for calculations

⁴ When maximum height is express in stories, the allowable height shall be calculated by multiplying the maximum number of stories permitted by the maximum story height outlined in Section 4.5.

2.2.4. Rural and Suburban Districts

In order to maintain existing auto-oriented commercial and industrial areas, and conventionally developed residential subdivisions, there are hereby continued several base districts with the designations and general purposes listed under each and the specifically permitted uses, special uses, and dimensional standards included. It is expected that the expansion or enlargement of these districts will be minimal as more than sufficient area currently exists in accordance with the adopted Community Plan for such single-use categories. Each base district has a corresponding Conditional District designation which shall be administered in accordance with Section 2.4.

of the street pavement then the assumed right-of-way line is parallel to the edge of pavement and setback a minimum of 10 feet from the edge of pavement. This definition is for setback calculation purposes only and does not represent any expressed or implied taking of property.

RIVERINE (FLOODPLAIN DEVELOPMENT)

Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

PARAPET SIGN A building-mounted sign erected upon and completely over any part the roof of a building.

SALVAGE YARD (FLOODPLAIN DEVELOPMENT)

Any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances, and related machinery.

SEDIMENT The solids particulate matter both mineral and organic that has been or is being transported by water, air, gravity, or ice from its site of origin.

SEDIMENTATION The process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.

SEEDING Seed, straw and tack, hydroseed, sod, or other approved seeding method.

SEDIMENT POLLUTION CONTROL ACT (SPCA ACT) North Carolina Sediment Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.

SETBACK The shortest horizontal distance from a lot line of a lot to the nearest point of a structure on the lot.

SETBACK, MAXIMUM A line parallel to the lot line at or in front of which a building shall be erected. Maximum setbacks shall be figured from the right-of-way line. At least 50% of the building frontage shall meet the maximum setback.

SETBACK, MINIMUM A line parallel to the lot line in front of which no building shall be erected. Minimum setbacks shall be figured from the right-of-way line, lot line, or in the case of alley-accessed lots the alley easement.

SETBACK, PRINCIPAL FRONT The shortest horizontal distance from the principal front lot line of a lot to the nearest point of a structure on the lot. Where no right-of-way exists or if the right-of-way is only inclusive of the street pavement then the principal front setback shall be measure from an assumed right-of-way line.

SETBACK, REAR The shortest horizontal distance from the rear lot line of a lot, or in the case of alley-accessed lots the centerline of the alley, to the nearest point of a structure on the lot.

SETBACK, SECONDARY FRONT OR STREET SIDE

The shortest horizontal distance from the secondary front or street side lot line of a lot to the nearest point of a structure on the lot.

SETBACK, SIDE The shortest horizontal distance from the side lot line of a lot to the nearest point of a structure on the lot.

SIGN Any device, fixture, placard, or structure that uses any color, form, graphic, illumination, symbol or writing to advertise, announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public.

SILTATION Sediment resulting from accelerated erosion which can be settled or removed by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.

SINGLE-TIER LOT A lot which backs upon a limited access highway, a railroad, a physical barrier, or another type of land use and to which access from the rear is usually prohibited.

SITE SPECIFIC VESTING PLAN A site-specific development plan that describes with a reasonable certainty the type and intensity of use for a specific parcel or parcels of property and identify boundaries, significant topography, natural features, the approximate location and dimensions (including height) of proposed buildings, and the approximate location of proposed infrastructure, including utilities and street and pedestrian facilities. The following development applications constitute site specific vesting plans: site master plan, site construction plan, subdivision master plan, subdivision construction plan, special use