

**VARIANCE REQUEST
ZONING BOARD OF ADJUSTMENT
JUNE 25, 2019**

CASE: ZBA-936

PETITIONER: Cameron Management, on behalf of Dry Pond Partners, LLC, property owner

REQUEST: 5' variance from the 40' structure height maximum per Section 72-43(11) of the Zoning Ordinance for one structure within a development proposal

LOCATION: 4429 S College Road
PID: R07100-004-004-000

ZONING: R-15, Residential District. The applicant proposes rezoning the entire property to (CUD) R-10 in order to develop a portion of a mixed-use project

ACREAGE: Portion of a 64.28-acre tract

PETITIONER'S REQUEST:

Cameron Management, applicant, on behalf of Dry Pond Partners, LLC, property owner, is requesting a 5' variance from the 40' structure height maximum required per Section 72-43(11) of the Zoning Ordinance. The variance request is for one structure in a larger proposed development shown as "Building A" on Exhibit A-1 provided by the applicant.

BACKGROUND AND ORDINANCE CONSIDERATIONS:

Whiskey Branch is proposed as a High Density Development project under the Zoning Ordinance, and a Conditional Use District application to rezone the property from R-15 to (CUD) R-10 received a recommendation for approval from the New Hanover County Planning Board at the June 6, 2019 meeting. The request is scheduled to be heard at the July 1, 2019 Board of Commissioners meeting. Prior to the Planning Board and Board of Commissioners' consideration of the request, a conceptual site plan for the project was reviewed by the County's Technical Review Committee on February 6, 2019.

Per the submitted Conditional Use District application, "Building A" is proposed as a multi-family building consisting of 60 units with 75,000 square feet of gross floor area. The overall project consists of 324 total apartment units in 12 buildings, with a clubhouse, pool, and other associated amenities. The variance request is only applicable to "Building A", which is located in the interior of the site approximately 475' south of the nearest properties in Fox Run Farm. All other buildings proposed will not exceed the 40' height requirement.

Section 72-43 of the Zoning Ordinance contains requirements for High Density Development projects, including subsection (11) that creates maximum building height allowances:

Maximum allowable height for structures shall be 40 feet. However, the maximum allowable height for piling supported primary structures which are located in "Coastal High Hazard Areas, V-Zones" and/or Ocean Hazard Areas as defined by the Coastal Resources Commission shall be 44 feet. (10/5/92)

Because the subject property is not located in a coastal high hazard area or ocean hazard area, the building heights are limited to 40' in the proposed development.



Figure 1: Applicant's exhibit A-1 showing the structure subject to the variance request.

The calculation of a building height is described in the definition for Building Height in the Zoning Ordinance:

Building Height - The vertical distance measured from the average elevation of the proposed finished grade at the front of the structure to the mean level of the slope of the main roof.

Although the building heights for Whiskey Branch are limited to 40' per Section 72-43(11) of the Zoning Ordinance, structures may exceed 40' in other situations as prescribed in the county's zoning regulations. Structures in coastal high hazard areas or V-zones as designated by FEMA, or in Ocean Hazard Areas as defined by the NC Coastal Resources Commission, may reach up to 44'. Building heights in the Office and Institutional zoning district are limited to 40'. In the B-2, Highway Business, and I-1, Light Industrial zoning districts, buildings are limited to 40', however, buildings in areas located within the Employment Center, Community Mixed Use, Urban Mixed Use, or Commerce Zone place types in the county's Comprehensive Land Use Plan and fronting along a collector, minor arterial, or principal arterial road may exceed 40' in height so long as certain floor area ratio criteria are met per Section 52.2-4(4) of the Zoning Ordinance. Additionally, the zoning ordinance does not limit building heights in the I-2, Heavy Industrial zoning district.

The applicant contends that a variance is necessary due to the presence of certain features related to the site and proposed development such as parcel shape, preservation of open space, commercial and stormwater management areas, Comprehensive Plan place type, and building design. These factors are detailed further in the application narrative.

In summary, the applicant is requesting a 5' variance from the 40' structure height maximum per Section 72-43(11) of the Zoning Ordinance for one structure within a larger development proposal, which will be considered at future Planning Board and Board of Commissioners meetings.

BOARD OF ADJUSTMENT POWER AND DUTY:

The Board of Adjustment has the authority to authorize variances from the terms of the Zoning Ordinance where, due to special conditions, a literal enforcement of the regulations would result in unnecessary hardship. In

granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with the Zoning Ordinance. A concurring vote of four-fifths (4/5) of the voting members of the Board shall be necessary to grant a variance. A variance shall not be granted by the Board unless and until the following findings are made:

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.

ACTION NEEDED (Choose one):

1. **Motion to approve the variance request based on the findings of fact (with or without conditions)**
2. **Motion to table the item in order to receive additional information or documentation (Specify).**
3. **Motion to deny the variance request based on specific negative findings in any of the 4 categories above.**