

**VARIANCE REQUEST
ZONING BOARD OF ADJUSTMENT
November 10, 2020**

CASE: ZBA-951

PETITIONER: Design Solutions, applicant, on behalf of CWEST, LLC, property owner.

REQUEST: Variance of 10' from the 20' minimum transitional buffer width requirement per Section 5.4.4.C of the New Hanover County Unified Development Ordinance.

LOCATION: 9515 River Road
PID: R08800-001-007-000

ZONING: R-15, Residential District

ACREAGE: 4.2 Acres

PETITIONER'S REQUEST:

Cindee Wolf of Design Solutions, on behalf of CWEST, LLC, property owner, is requesting a variance from the minimum transitional buffer width of 20' required when a nonresidential use is adjacent to undeveloped, residentially zoned property. Currently, the property is zoned R-15, and the 4.2 acres is intended to be developed as an expansion of the existing Snows Cut RV Park. A Special Use Permit for this expansion has been submitted for the December 3 Planning Board meeting. The applicant is proposing this variance on two of the southwestern boundaries of the property, in an area where an access road from the proposed RV park to River Road would be aligned. Initially, the variance was requested on one segment of the southwestern boundary, and the applicant has revised the initial application to extend the portion of this boundary for which the variance would apply (see Figure 1). The Board of Adjustment granted a continuance at the October 27, 2020 meeting in order to allow adequate time to process the amended variance request.

The applicant contends that the variance is necessary in order to provide essential site improvements such as the access drive, RV spaces, and septic fields on a portion of the tract which is limited in width and contains soil characteristics which require the septic fields to be placed in specific locations.

BACKGROUND AND ORDINANCE CONSIDERATIONS:

The applicant intends to apply for a Special Use Permit to develop the property as an expansion of Snows Cut RV Park, which lies directly to the east of the subject property. The applicant is proposing a 28-space RV park on the 4.2-acre site, which is a "T" shaped parcel with the southern portion fronting River Road. Should the Special Use Permit for the proposed RV park be approved, transitional buffers would be required on the western and southeastern boundaries per Section 5.4.4 of the UDO:

5.4.4. TRANSITIONAL BUFFERS

- A.** *Transitional buffers are intended to protect adjoining land uses, particularly residential, from the noise, heat, dust, lights, threats to privacy, and aesthetic impacts of more intensive land uses.*
- B.** *Transitional buffers shall be provided in accordance with Table 5.4.4.B: Transitional Buffer Standards.*

Table 5.4.4.B: Transitional Buffer Standards

New Development on Subject Site	Adjacent Property
<ul style="list-style-type: none"> • Nonresidential uses • Attached residential developments • Mobile home parks • Development with Additional Dwelling Allowance • Planned Developments 	<ul style="list-style-type: none"> • Detached or duplex residential structure • Undeveloped land in Residential zoning district • Platted residential lots • Proposed residential lots included within an approved and valid preliminary plat for a major subdivision

- C. *Transitional buffers shall have a base width equal to at least 50 percent of the required setback, with a minimum width of 20 feet. The applicant may choose to increase the required buffer width to receive an equivalent reduction in a building's setback.*

Table 5.4.4.D: Transitional Buffer Types and Specifications

Type	Specifications
Planted Buffer Strip	<ul style="list-style-type: none"> • Planted materials shall be a minimum of six feet in height and provide approximately 100 percent opacity within one year of planting. • Three rows of planted material are required.
Combination Planted Buffer Strip and Fencing	<ul style="list-style-type: none"> • Fencing shall be between six and ten feet in height • Planted materials shall be located between the fence and the common property line. • If solid fencing is used, two rows of planted materials a minimum of three feet in height and providing approximately 50 percent visual opacity at initial planting shall be required. • If permeable fencing is used, two rows of planted materials giving approximately 100 percent of visual opacity within one year of planting shall be required.
Combination Berm and Vegetation	<ul style="list-style-type: none"> • The combined height of the berm and planted vegetation shall be a minimum of six feet and provide approximately 100 percent opacity within one year of planting. • The slope of the berm shall be stabilized with vegetation. The slope shall be no steeper than 3:1. • The height of the berm shall be six feet or less with a level or rounded area on top. • The berm shall be constructed of compacted earth.

The proposed RV park is considered a nonresidential use, and thus the transitional buffers would be required adjacent to parcels south and west of the subject property, which are undeveloped lands zoned R-15, Residential. Where a transitional buffer is required, it may be installed using either a planted buffer strip, a buffer strip with fencing, or a berm supplemented with vegetation.



Figure 1: Transitional buffers are required on boundaries adjacent to undeveloped land in residential zoning districts.

When applying the ordinance language from this section, the minimum buffer widths where required on this site would be 20'. The proposed conceptual plan incorporates these minimum widths with the exception of the southwestern property boundaries, where a 10' wide transitional buffer is proposed in order to accommodate an access point to River Road, 5 spaces, and 3 septic fields. The applicant is proposing to supplement this buffer with an 8' high wooden fence and 2 rows of 3' tall evergreen shrubs.



Figure 2: Conceptual plan with area of proposed transitional buffer variance.

The proposed variance dimension is consistent with a proposed amendment to the UDO's transitional buffer standards that has received a recommendation for approval by the Planning Board, and will proceed to the Board of Commissioners for consideration and possible adoption at their November 16, 2020 meeting. This amendment proposes a reduction in minimum buffer width to 10' when utilizing a combination of buffering with fencing ranging in height from 6' to 10'.

In summary, the applicant is requesting a variance of 10' from the 20' minimum transitional buffer width requirement on the southwestern property boundaries to account for site improvements on this portion of the subject property.

BOARD OF ADJUSTMENT POWER AND DUTY:

The Board of Adjustment has the authority to authorize variances from the terms of the Unified Development 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 Unified Development 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.**