

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

**Quasi- Judicial Public Hearing
on an Application for a Variance from the
Henderson County Subdivision Ordinance
For Pinnacle Falls**

MEETING DATE: April 20, 2005

- ATTACHMENTS:**
1. Memorandum to the Board of Commissioners
 2. Variance Request Application
 3. Narrative by Luther E. Smith & Associates, P.A.
 4. Vicinity Map
 5. Excerpt Discussing Variances from § 170-48 of the Henderson County Subdivision Ordinance
 6. Excerpt of Road Standards from § 170-21, Table 1, from the Henderson County Subdivision Ordinance
 7. Letter from Deputy Fire Marshal for Henderson County
 8. Development Plan Approved by the Planning Board
 9. Alternate Road Plan
 10. Copy of Public Hearing Notice
 11. Excerpt from Draft Minutes of the Planning Board's March 15, 2005 Meeting

SUMMARY OF REQUEST:

The Board of Commissioners scheduled for this date a quasi-judicial proceeding on an application for a variance from the Henderson County Subdivision Ordinance for an approved major subdivision known as Pinnacle Falls. The owner of the property on which Pinnacle Falls is being developed is Pinnacle Falls, LLC ("Applicant").

The Master Plan for Pinnacle Falls was presented to the Planning Board and approved with conditions at the November 16, 2004 meeting. The Phase I Development Plan was approved by the Planning Board at its February 15, 2005 meeting. Pinnacle Falls is a proposed 110-lot subdivision on approximately 290 acres of land located on the south side of Pinnacle Mountain Road, between Pinnacle Mountain Road and Cabin Creek Road.

The Applicant is requesting a variance from road standards as provided in Section 170-21C-Table 1 of the Henderson County Subdivision Ordinance. The variance application (see attached) requests that a portion of the private residential collector road, Pinnacle Falls Lane, be modified

to meet private local residential road standards. The Applicant is asking for a reduction on three of those standards. The sight distance, maximum road grade and the ditch slope. If granted, the variance would allow the sight distance to be 110 feet instead of 150 feet, the maximum road grade to be 18% instead of 16%, and the ditch slope to be 3 to 1 instead of 4 to 1. Section 170-48 of the Henderson County Subdivision Ordinance (copy attached) discusses variances.

The Planning Board's Subdivision Issues Subcommittee attempted to meet on Tuesday, February 22, 2005, at 3:00 pm in the Land Development Building to discuss the Pinnacle Falls Road Alternate Plan and Variance Request and to visit the project site. Not all the Subcommittee members could attend and therefore the subcommittee meeting could not be convened due to a lack of a quorum. However, the subcommittee members present decided to proceed with a site visit. At the Planning Board's March 15, 2005 meeting, the Board voted to send a favorable recommendation on the variance request to the Board of Commissioners. Additional information is included in the attached materials. Staff will also present information, including the Planning Board's recommendation, during the hearing.

In accordance with the Board of Commissioners' Rules of Procedure for Quasi-Judicial Proceedings notice of the hearing was sent by certified mail to the Applicant. In addition, the Planning Department sent notices by certified mail to adjacent property owners of the Pinnacle Falls subdivision. The Planning Department also had the Times-News publish a legal ad on April 7, 2005 and a display ad on April 13, 2005, to advertise the hearing on the Variance Request for the Pinnacle Falls subdivision.

COUNTY MANAGER'S RECOMMENDATION/BOARD ACTION REQUESTED:

Since the matter requires a quasi-judicial public hearing, the Board of Commissioners must consider the evidence presented during the hearing and make findings of fact based on that evidence in order to take action on the variance application.

HENDERSON COUNTY
Planning Department

101 East Allen Street • Hendersonville, NC 28792
Phone 828-697-4819 • Fax 828-697-4533**Memorandum**

TO: Henderson County Board of Commissioners

FROM: Matt Card, Planner

DATE: April 12, 2005

SUBJECT: Variance Request from Certain Henderson County Subdivision Ordinance Road Standards for Pinnacle Falls (Subdivision File #2005-M03)

Project Background

Luther Smith on behalf of Pinnacle Falls, LLC, (“Applicant”) submitted an application for a variance from certain Henderson County Subdivision Ordinance Road Standards for a portion of Pinnacle Falls Lane within a subdivision called Pinnacle Falls. The Applicant is requesting a variance from road standards as provided in Section 170-21, C-Table1 of the Henderson County Subdivision Ordinance. The variance application (see attached) requests that a portion of the private residential collector road, Pinnacle Falls Lane, be modified to meet local road standards. The Applicant is asking for a reduction for three of those road standards. The sight distance on vertical curves, maximum road grade and the ditch slope. This would allow the sight distance to be 110 feet instead of 150 feet, the maximum road grade to be 18% instead of 16%, and the ditch slope to be 3 to 1 instead of 4 to 1. The changes to the road design if constructed to the reduced standards are shown on the attached Road Alternate Plan.

Pinnacle Falls is a proposed 110-lot subdivision on approximately 290 acres of land located on the south side of Pinnacle Mountain Road, between Pinnacle Mountain Road and Cabin Creek Road. According to the Master Plan, approximately 190 – 200 acres of land will be placed in a conservation easement. The project site contains two creeks which merge on the property to form Cabin Creek. According to the original subdivision application, there are several waterfalls on the property and it is also home to old stands of timber and rock outcroppings. The middle portion of the property has some steep slopes. The subdivision is proposed to be built in multiple phases based on market demand. The Applicant has proposed to build cottage sites, cabin sites and single-family residential sites which will be clustered throughout the property. Private paved roads will serve the subdivision. The project area is located in an Open Use zoning district, which does not regulate the residential use of land. Pinnacle Falls is not located in a water supply watershed district.

The Master Plan for Pinnacle Falls was presented to the Planning Board and approved with conditions at the November 16, 2004 meeting. The Phase I Development Plan for Pinnacle Falls was approved by the Planning Board on February 15, 2005. Submitted with the Phase I Development Plan on January 18, 2005, was a Road Alternate Plan and variance application. The section of road for which the Applicant is asking for a variance, was approved as part of the Phase I Development Plan and on that plan, was shown as meeting all of the private residential collector road standards. The Road Alternate Plan and variance application requests to change

approximately 3,900 feet of the collector road (Pinnacle Falls Lane) to meet the three local road standards discussed above. Luther Smith has written in a narrative to the Planning Department, dated March 4, 2005, that the requested variance will only apply to the portion of road (Pinnacle Falls Lane) that traverses the escarpment and that the requested maximum percent grade of 18 percent for local roads is limited to specific sections, not to exceed 400 feet, within the 3,900 feet (see attached narrative). Mr. Smith also wrote that the variance would reduce the length of road by approximately 500 feet, which would lower the amount of disturbed area by up to 5 acres. The attached narrative also further discusses the reasons for the requested variance.

The Planning Board's Subdivision Issues Subcommittee attempted to meet on Tuesday, February 22, 2005, at 3:00 pm., in the Land Development Building to discuss the Pinnacle Falls Road Alternate Plan and variance application and visit the project site. Not all the Subcommittee members could attend and therefore the subcommittee meeting could not be convened due to a lack of a quorum. However, the subcommittee members present decided to proceed with a site visit. At the project site a tour was given of the proposed section of road to which the variance application applies. The Subcommittee members learned that Pinnacle Falls, LLC, will possibly obtain a small parcel to the west of the property which has a pond that could be used for fire protection. Wally Hollis, the Deputy Fire Marshal for Henderson County, who was present for the site visit, later submitted a letter saying that he and Chief Todd McCrain of the Green River Fire and Rescue Department approve of the Road Alternate Plan and variance application. He stated that the 18% grade increase would not affect emergency vehicles from accessing the subdivision and that the reduction in travel distance and sharp curves improves the plan (see attached letter).

Planning Board Recommendation

The full Planning Board reviewed the variance application for Pinnacle Falls at its March 15, 2005 meeting. During the meeting, the Planning Board discussed various aspects of the variance. Tedd Pearce and Mike Cooper, the two members present at the site visit, shared with the Planning Board their observations and comments. The Planning Board voted 4 to 3 to send the Board of Commissioners a favorable recommendation for the approval of the variance on the section of Pinnacle Lane on the three items (the sight distance on vertical curves, maximum road grade and the ditch slope) to be reduced from private residential collector road standards to private residential local road standards, as requested. The Planning Board stated that strict compliance with the Henderson County Subdivision Ordinance will not only require additional length of road and disturbance of the project site, but will also create a greater difficulty for emergency vehicles to respond to emergencies because they would be farther from the water source that they would need to fight fires within the project. See attached excerpt from the minutes of the March 15, 2005 Planning Board for more information.

Staff Comments

Section 170-48 of the Henderson County Subdivision Ordinance (HCSO) discusses variances (see attached). In this Section of the HCSO it states that the Board of Commissioners may authorize a technical variance from these regulations, in this case the private residential collector road standards. In considering a request for a variance, the Board of Commissioners shall determine that an undue hardship may result from strict compliance with the terms of this chapter as outlined in Section 170-21 of the HCSO for road standards (attached is § 170-21,

Table 1 of the HCSO). Section 170-48 of the HCSO also states, in determining an undue hardship, the Board shall consider unique conditions peculiar to the site and design flexibility to preserve and protect the site's natural features. As staff indicated to the Planning Board, the text of § 170-48 of the HCSO deviates somewhat from the typical findings that must be made in order to grant a variance from the Zoning Ordinance. The HCSO ordinance appears to give the Board of Commissioners some flexibility that is not indicated in the wording of the application for a variance from the Subdivision Ordinance. That application reads more like a variance application.

APPLICATION NO. _____

**COUNTY OF HENDERSON
STATE OF NORTH CAROLINA
APPLICATION FOR A VARIANCE FROM THE
HENDERSON COUNTY SUBDIVISION ORDINANCE**

January 17 2005
MONTH DAY YEAR

Applicant Name: Pinnacle Falls, LLC Phone: 828-698-7890

Address: 419 North Main Street, Hendersonville, NC 28792

Subdivision Name: Pinnacle Falls County File # _____

Location of Property: South side of Pinnacle Mtn. Road (SR 114), ± 0.5 miles west of Mt. Olivette Church Road (SR 1115)

TO THE HENDERSON COUNTY BOARD OF COMMISSIONERS

I, A.J. Ball, Managing Member, hereby petition the Henderson County Board of Commissioners for a VARIANCE from the literal provisions of the Subdivision Ordinance of Henderson County. I request a variance from the following provisions of the ordinance (cite section numbers): As shown - Article IV Section 170-21C, Table 2, Collector Road maximum grade - for paved surface from 16% to 18%; sight distance on vertical curves from 150 ft. to 110 ft., ditch slope from 4 to 1 to 3 to 1 for a portion of Pinnacle Falls Road between station 25+00 through 64+00

The following attachments are submitted herewith: Variance Narrative, Phase I Development Plans

FACTOR RELEVANT TO THE ISSUANCE OF A VARIANCE:

The Henderson County Board of Commissioners does not have unlimited discretion in deciding whether to grant a variance. The Board should reach three conclusions as a prerequisite to the issuance of a variance: (a) that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, (b) that the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, and (c) that in granting the variance, the public safety and welfare have been assured and substantial justice has been done.

The Board shall consider the physical characteristics of the land, adjacent land uses and the intensity of the proposed development. In determining an undue hardship, the Board shall consider the unique conditions peculiar to the site and design flexibility to preserve and protect the site's natural features. In the spaces provided below, indicate the facts that you intend to show and the arguments that you intend to make to convince the Board that it can properly reach the three required conclusions stated above:

(a) THERE ARE PRACTICAL DIFFICULTIES OR UNNECESSARY HARDSHIPS IN THE WAY OF CARRYING OUT THE STRICT LETTER OF THE ORDINANCE IN SIMILAR MATTERS RELATING TO LAND USE. The courts have developed three rules to determine whether in a particular situation "practical difficulties or unnecessary hardships" exist. State facts and arguments in support of each of the following:

- (1) If the Applicant complies with the ordinance, the applicant can secure no reasonable return from or make no reasonable use of his property. (It is not sufficient that failure to grant the variance simply makes the property less valuable).

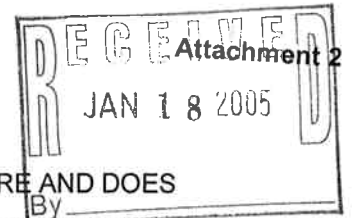
The added expense of 500' of road and associated work will increase infrastructure costs substantially. Additional units and development within the proposed Conservation area may be required in order to generate a reasonable return and insure a stable project.

The hardship of which the applicant complains results from unique circumstances related to the applicant's land. (Note: Hardships suffered by the applicant common with his neighbors do not justify a variance. Also, unique personal or family hardships are irrelevant since a variance, if granted, runs with the land). **Pinnacle Falls is only accessible from Pinnacle**

Mountain Road, forcing the Applicant to traverse portions of the property with 20% to 50% slopes in order to access more than half of the property which lies below the steep slope area.

- (2) The hardship is not the result of the applicant's own actions. **Because of limited access to the property the Applicant has diligently sought to gain additional access to the property without success, forcing the Applicant to access the property from only Pinnacle Mountain Rd.**


(b) THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ORDINANCE AND PRESERVES IT'S SPIRIT. (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood). **The Variance Request addresses only three standards of the Ordinance, and only within a portion of Pinnacle Falls Lane which traverses the steepest terrain on the Property**



(c) THE GRANTING OF THE VARIANCE SECURES THE PUBLIC SAFETY AND WELFARE AND DOES SUBSTANTIAL JUSTICE. (State facts and arguments to show that, on balance, if the variance is denied, the benefit of the public will be substantially outweighed by the harm suffered by the applicant). ____

If denied, the amount of disturbed area within the Cabin Creek Watershed will be increased, negatively impacting the quality of the Watershed. The standards requested will provide for safe and efficient access to the property for emergency services and routine access by residents. in that they conform to the local residential subdivision road standards.

I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information, and belief.



Applicant's Signature
A.J. Ball for Pinnacle Falls, LLC

January 14, 2005

Date

Applicant's Agent (If applicable)

Date

Staff Use Only

Application Received by: K. Scanlan Date: 1/18/05
Application Fee: \$150⁰⁰ Date Paid: 1/18/05 Method: Check # 1130

PINNACLE FALLS

Variance Request Narrative

The Applicant proposes to develop a ±290 acre tract, adjacent to Pinnacle Mountain Road as a 110 unit open space subdivision. Upon completion of development, it is the Applicant's intention to place approximately 190 - 200 acres of the project under a Conservation Easement, which will be held by Carolina Mountain Land Conservancy. Due to the unique topographical and ecological characteristics of the property, both the Applicant and CMLC agree that the placement of an Easement on the property will be of significant long term benefit to the quality of Henderson County.

Topographically, the property is divided into three sections. The northern portion of the property, adjacent to Pinnacle Mountain Road is a broad rolling ridge top. The southern portion of the property is a rolling valley bottom, dissected by a number of streams which join to form Cabin Creek. Cabin Creek is classified as trout waters. The northern and southern portions of the property are connected by a steep escarpment, a portion of the southern face of Pinnacle Mountain. The average slopes along the escarpment range from 20 - 50%. This area includes a number of waterfalls, of varying sizes, in the streams which eventually form Cabin Creek. Due to the steep slopes along the escarpment, soils tend to be less stable, increasing the potential for slides when large areas are disturbed.

Due to the topographic and ecological uniqueness of the property, the Applicant has worked to minimize the impact of development throughout the entire property. To that end, lot sizes have been reduced to the minimum required, and each unit location will be defined by the Applicant to minimize impact on the individual lots. Structure sizes will be restricted, and access roads will be located and built to minimize the disturbed area throughout the property.

Section 170-21-C(1) of the Henderson County Subdivision Ordinance establishes standards for "Private Residential Collector Roads". Generally, collector roads are required when more than 25 residential lots are being served. Additionally, the HCSO establishes a wider pavement width and shoulders, a maximum vertical grade of 16%, minimum horizontal curve radii of 110 feet, and other standards for collector roads, which are generally based on anticipated high volumes of traffic that may be generated from larger development projects. Traditionally, the establishment of road standards is not intended to consider the physical character of the land, but primarily the characteristics of motorized vehicles in the traditional urban or suburban situation.

The essence of the development program for Pinnacle Falls is to maintain and protect the land. The ecological diversity, the varied topographic features, and the quality of waters originating in the property are not only an asset to be enjoyed by future property owners, but are equally important to maintaining the unique character of Henderson County. To that end, the Applicant has determined that the HCSO Collector Road standards, when applied literally pose a substantial and unnecessary negative environmental impact to the property, specifically within the escarpment area.

Therefore, the Applicant hereby requests that the HCSO standards for the proposed collector road identified as Pinnacle Falls Lane be modified to meet local road standards as indicated below. The requested Variance will apply to that portion of the road that traverses the escarpment and comprises approximately 3900 (station 23+00 – station 64+00) feet of the total \pm 10,000 foot road length. Additionally, the requested maximum percent grade of 18% is not anticipated or proposed to be used for the entire 3900 feet, but shall be limited to specific sections and lengths not to exceed 400 feet, where existing grade conditions make it impractical to achieve 16% maximum grade.

As proposed, the requested standards will, in the opinion of the Applicant, continue to protect the public health and safety by providing safe access for emergency services and quality access for the volume of anticipated traffic. Further, by modifying standards as requested, the reduction in the physical impact (area of disturbance) on the land and the reduction of impervious surface will benefit the community by lessening the potential negative impact of storm water and potential degradation to streams. Additionally, application of the requested standards will reduce the length of road within the escarpment area by approximately 500 feet, and will reduce the disturbed area by up to 5 acres.

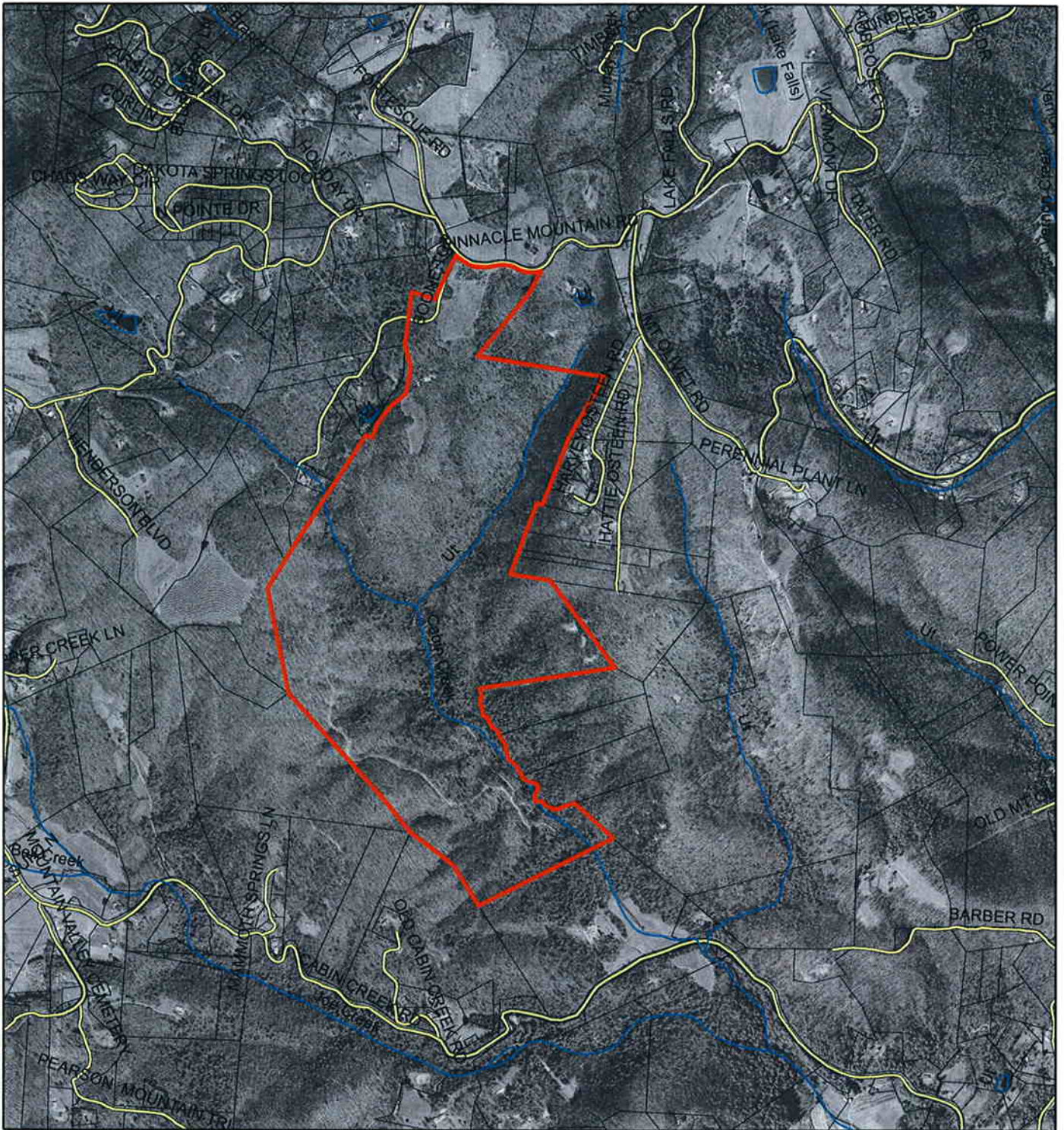
Collector Road Standards – Variance for Pinnacle Falls Lane

(Sta. 23+00 to Sta. 64+00)

<u>Item</u>	<u>Standard</u>	<u>Variance</u>
Sight distance on vertical curves	150 feet	110 feet*
Maximum grade (paved)	16%	18%*
Ditch slope	4 to 1	3 to 1*





* HCSO Standards for local residential subdivision street

Based on the forgoing information, the Applicant respectfully requests that the Board of Commissioners approve the attached Variance to the Henderson County Subdivision Ordinance for that portion of Pinnacle Falls Road (proposed) as indicated above.



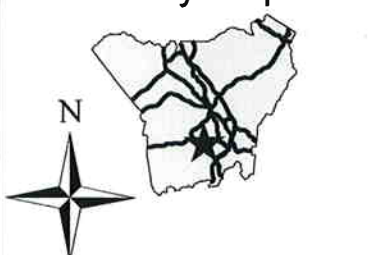
Pinnacle Falls

Legend

-  Pinnacle Falls
-  Official Blue Line Streams
-  Streets
-  Parcels

Property Owner: Pinnacle Falls, LLC
Agent: A.J. Ball
PIN: 00956505747055
Zoning: Open Use
Watershed: None

Vicinity Map



A small map of Henderson County, North Carolina, with a red outline indicating the location of Pinnacle Falls. A north arrow is located to the left of the map.

*Henderson County
PC/Codebook for Windows*

§ 170-48. Variances.

The Board of Commissioners may authorize a technical variance from these regulations. An application for a variance must be made in conjunction with an application for subdivision approval. In considering a request for a variance, the Board of Commissioners shall determine that an undue hardship may result from strict compliance with the terms of this chapter. The Board shall consider the physical characteristics of the land, adjacent land uses and the intensity of the proposed development. In determining an undue hardship, the Board shall consider unique conditions peculiar to the site and design flexibility to preserve and protect the site's natural features. The variance shall constitute the minimum variance necessary to mitigate the hardship and shall not violate the intent of this chapter, nor shall it constitute a detriment to the health, safety and welfare of other properties within and adjacent to the subdivision. Any modifications thus authorized must be entered, in writing, in the minutes of the Board of Commissioners and on the face of the final plat. In addition, a written decision must be prepared and delivered to the applicant stating the reasons on which the departure from the terms of the chapter was justified.

*Henderson County
PC/Codebook for Windows*

- (d) Serves a nonresidential facility located within a residential development, such as a frequently used recreation area, club house, golf course, public utility site, etc. (NOTE: See Table 1, "Collector" column.)
- (2) "Private local residential subdivision road" is a road or group of roads which abuts less than 25 residential lots or serves less than 25 existing or proposed residential dwelling units and does not connect thoroughfares. (NOTE: See Table 1, "Local" column.)
- (3) "Private limited local residential subdivision road" is a road which abuts no more than 3 residential lots, each containing or to contain no more than one existing or proposed residential dwelling unit and its associated driveway and which does not connect thoroughfares. (NOTE: See Table 1, "Limited Local" column.)

TABLE 1
[Amended 11-4-2002]

Item	Road Classification		
	Collector	Local	Limited Local
Number of residential units served	25 +	1 to 24 ¹	1 to 3 ¹
Right-of-way width			
Roads	50 feet	45 feet	30 feet
Cul-de-sac (radius)	N/A	50 feet ²	50 feet ²
Sight distance on vertical curves	150 feet	110 feet	110 feet
Centerline radius	110 feet ³	90 feet ³	90 feet ³
Maximum grade			
Stone only	12%	15%	15%
Paved surface	16%	18%	18%
Road construction			
Minimum travelway width (two-way road)	18 feet	16 feet	14 feet
Minimum travelway width (one-way road)	12 feet	12 feet	12 feet
Minimum travelway (cul-de-sac)	N/A ² feet	N/A ² feet	N/A ² feet
Shoulder width (each side,	6 feet ⁴	4 feet ⁴	2 feet

*Henderson County
PC/Codebook for Windows*

two-way road)

Shoulder width (each side, one-way road)	2 feet	2 feet	2 feet
Stone base (ABC) compacted	8 inches	6 inches	6 inches
Asphalt ⁵	1 1/2 inches of I-2 or BST		
Cut and fill slope	2 to 1 ⁶	1.5 to 1 ⁶	1.5 to 1 ⁶
Ditch slope	4 to 1	3 to 1	3 to 1
Vertical clearance	13 feet, 6 inches	13 feet, 6 inches	13 feet 6 inches

NOTES:

¹Except for right-of-way width, required standards do not apply to minor subdivisions of fewer than four lots. [See § 170-13A(5).]

²See also § 170-21H. Alternative culs-de-sac may be approved by the Planning Board (or the Subdivision Administrator for minor subdivisions or for approved major subdivisions if such alternative cul-de-sac does not constitute a substantial change) based on sound engineering design and public safety concerns.

³Reductions in the centerline radius are permitted under specific circumstances. (See § 170-21F.)

⁴On private local residential roads, in cases where the existing cross slope is 20% or greater, a two-foot minimum shoulder width shall be permitted. (See also § 170-22.)

On private collector roads, in cases where the existing cross slope is greater than 10% but less than 20%, a four-foot minimum shoulder width shall be permitted. (See also § 170-22.)

On private collector roads, in cases where the existing cross slope is 20% or greater, a two-foot minimum shoulder width shall be permitted. (See also § 170-22.)

⁵Asphalt or other similar hard surface material is optional except where the Planning Board requires such material on steep grades, subdivision entrances or road intersections.

⁶In cases where the existing cross slope is 20% or greater, 1 to 1 cut-and-fill slopes shall be permitted. (See also § 170-22.)

Definitions:

ABC - Aggregate base course

I-2 - Asphalt

BST - Bituminous surface treatment (tar and gravel)

- (4) If not specifically listed in Table 1 above or elsewhere in this chapter, design and subsequent construction of private roads shall be reviewed by the Planning Board based



HENDERSON COUNTY FIRE MARSHAL'S OFFICE

101 East Allen Street
Hendersonville, NC 28792
(828) 697-4728 FAX (828) 697-4533

Rocky D. Hyder
Fire Marshall

February 23, 2005

Mr. Matt Card
Henderson County Planning Dept.
101 E. Allen St.
Hendersonville, N.C. 29792

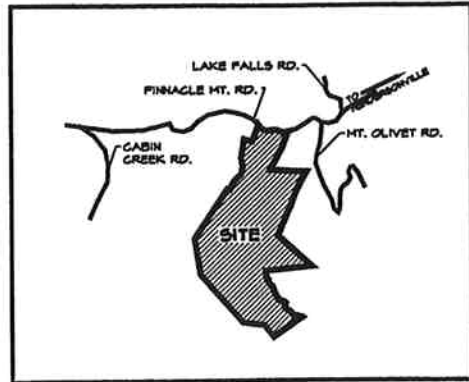
Mr. Card:

I have reviewed the variance application for Pinnacle Falls Phase I and discussed the proposed changes with Chief Todd McCrain of the Green River Fire and Rescue Department. We both agree that the proposed 18% grade will not hinder the access for emergency vehicles to any great degree, and the reduction in travel distance to the most remote home sites along with fewer sharp curves in the roadway actually improve the plan. The acquisition of an emergency water supply, not mentioned in the application, but referred to in our meeting with Pinnacle Falls personnel on Tuesday, Feb. 23, 2005, will also enhance fire suppression efforts in the subdivision.

Sincerely,

A handwritten signature in black ink that reads "W. H. Hollis".

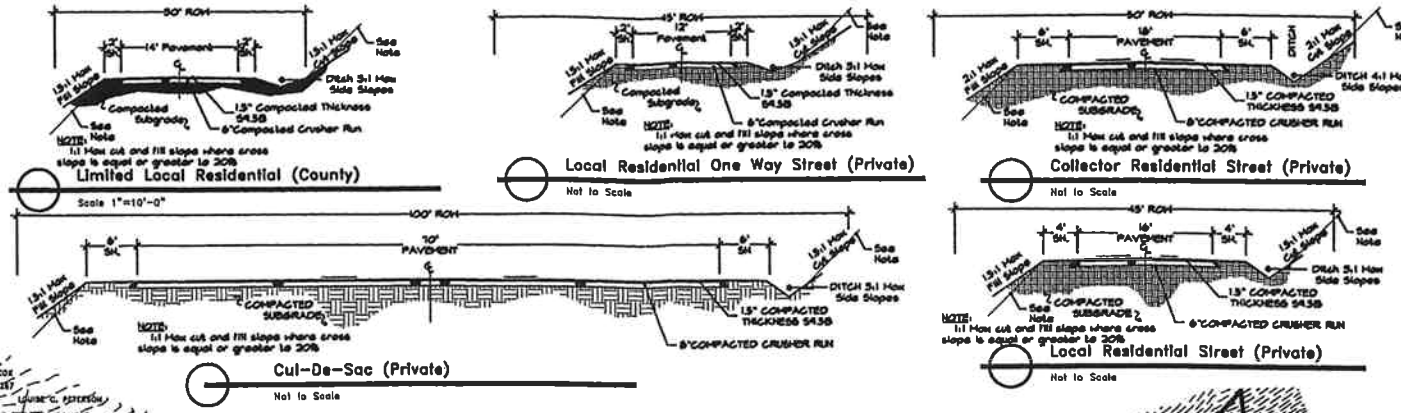
W. H. Hollis
Deputy Fire Marshal



VICINITY MAP Not to Scale



PROJECT MAP Not to Scale



PROJECT SUMMARY -PHASE I	
Total Project Area	1290.90Ac.
PIN No.	4565-05-7470
Existing Zoning	OU
Proposed No. Lots	43
Section One (The Meadow)	12
Section Two (The Forest)	20
Section Three (The Ridges)	11
Min Lot Size	0.1 A.C.
Max Lot Size	1.6 A.C.
Avg. Lot Size	0.6 A.C.
Max Building Height	35'
Fire District	Green River Community/Individual
Water	Community/Individual
Water Supply Watershed	N/A
Sewer	Community/Individual
Distance To Public Water Supply	6.5 Miles
Distance To Fire Water Supply	2.1 Miles
Length of Private Road	20,126 ft

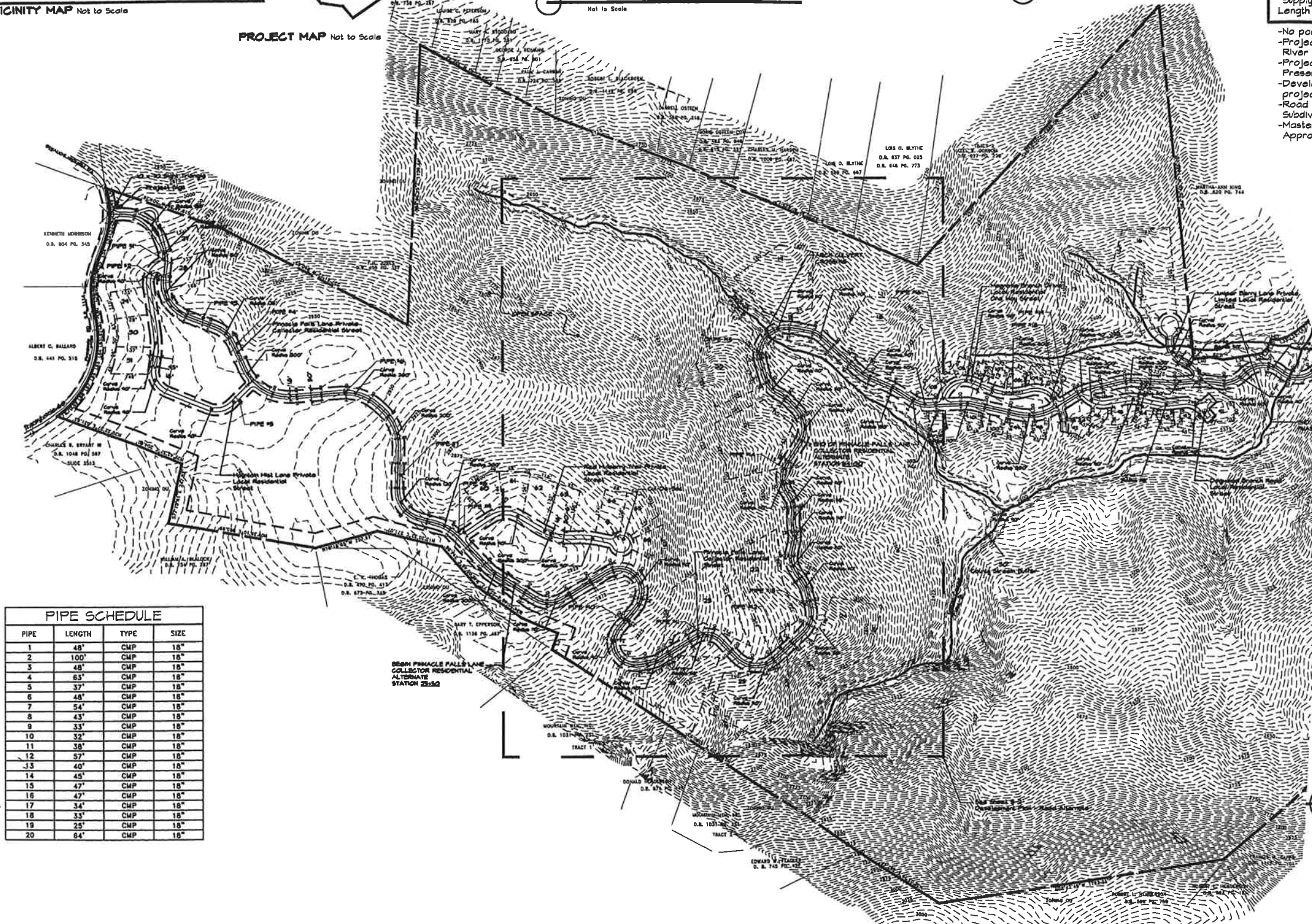
-No portion of the site is within the 100 yr Floodplain.
 -Project is located within one half mile of the Green River Farmland Preservation District.
 -Project is a portion of Green River Farmland Preservation District
 -Development Plan approval will be requested for each project phase.
 -Road construction shall meet Henderson County Subdivision Ordinance Design Standards.
 -Master Plan submitted to Henderson County for Approval 15 October 2004.



Luther E. Smith & Associates, P.A.
 LAND PLANNING & LANDSCAPE ARCHITECTURE
 121 Third Avenue West Suite 1
 Hendersonville, NC 28756
 Phone (828) 877-8277
 Fax (828) 877-8408
 E-mail: luther@lutherpa.com

Development Plan
Pinnacle Falls - Phase I
 NORTH CAROLINA
 HENDERSON COUNTY

DATE	BY	DESCRIPTION
01/15/2005	LES	Check
01/15/2005	LES	Check
01/15/2005	LES	Check
01/15/2005	LES	Check
01/15/2005	LES	Check



LEGEND	
--- (dashed line)	SETBACK LINE
--- (solid line)	STREET R.O.W.
--- (dotted line)	STREET CENTERLINE
--- (dashed line)	PROPOSED CULVERT
--- (dotted line)	PROPOSED LOT LINES
--- (solid line)	PROPERTY LINE
○ (circle)	STREET LIGHT
— (line with cross-ticks)	PROPOSED SEWER LINE
— (line with cross-ticks)	PROPOSED WATER LINE
⊕ (circle with cross)	MANHOLE MARKING
⊕ (circle with cross)	FIRE HYDRANT

RECEIVED
 FEB - 3 2005

PIPE SCHEDULE			
PIPE	LENGTH	TYPE	SIZE
1	48"	CMP	18"
2	100"	CMP	18"
3	48"	CMP	18"
4	63"	CMP	18"
5	37"	CMP	18"
6	48"	CMP	18"
7	54"	CMP	18"
8	43"	CMP	18"
9	33"	CMP	18"
10	32"	CMP	18"
11	38"	CMP	18"
12	37"	CMP	18"
13	40"	CMP	18"
14	45"	CMP	18"
15	47"	CMP	18"
16	47"	CMP	18"
17	34"	CMP	18"
18	33"	CMP	18"
19	25"	CMP	18"
20	64"	CMP	18"

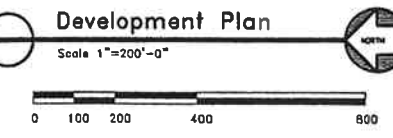
OWNER: RANGE RANGER, LLP
 400 CAROLINA VILLAGE RD, BOX 263
 HENDERSONVILLE, NC 28792
 828 606-3030

DEVELOPER: RENAISSANCE COMMUNITIES LLC
 419 NORTH MAIN STREET
 HENDERSONVILLE, NC 28792
 828 272-0315

LAND PLANNER/ LANDSCAPE ARCHITECT: LUTHER E. SMITH & ASSOCIATES, P.A.
 121 3RD AVENUE WEST SUITE 1
 HENDERSONVILLE, NC 28792
 828 677-2307

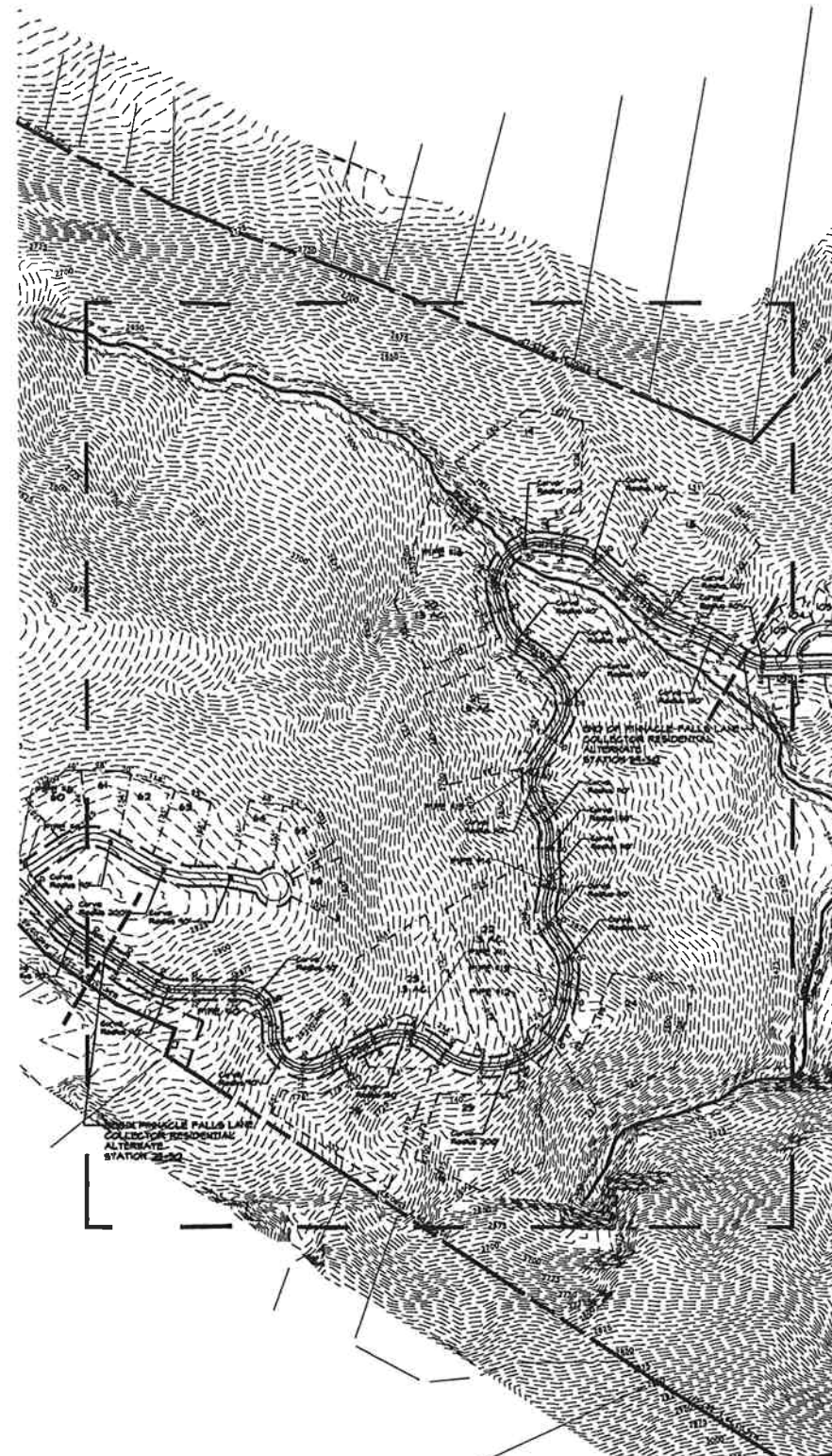
ENGINEER: MOUNTAIN ENGINEERING Co.
 121 THIRD AVENUE WEST SUITE 2
 HENDERSONVILLE, NC 28792
 828 697-2212

SURVEYOR: WAGGONER & RHODES
 545 OLD SPARTANBURG RD.
 HENDERSONVILLE, NC 28792
 828 693-1022

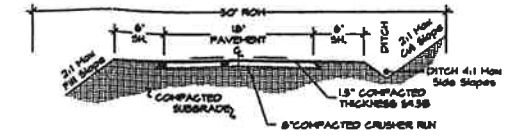
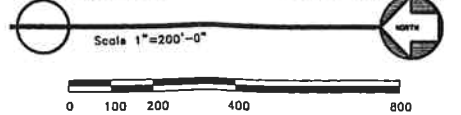


Submitted to Henderson County for Development Plan Approval 17 Jan 2005.

SHEET
S-1
 OF - 2

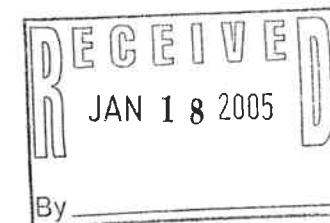


Development Plan - Road Alternate



Collector Residential Street (Private)
Not to Scale

LOT CHART		
LOT #	ACREAGE	NOTE
THE MEADOW		
27	0.3	MODEL LOT
28	0.4	
29	0.3	
30	0.4	
31	0.4	
60	0.4	
61	0.4	
62	0.4	
63	0.4	
64	0.4	
65	0.4	
66	0.3	
THE FOREST		
91	0.2	
92	0.1	
93	0.1	
94	0.1	
95	0.1	
96	0.1	
97	0.1	
98	0.1	
99	0.1	
100	0.1	
101	0.1	
102	0.1	
103	0.1	MODEL LOT
104	0.1	
105	0.1	
106	0.1	
107	0.1	
108	0.1	
109	0.1	
110	0.1	
THE RIDGES		
26	1.6	
25	1.5	
24	1.6	
23	1.5	
22	1.5	
21	1.5	
20	1.5	
19	1.5	
18	1.5	
17	1.5	
16	1.6	



Luther E. Smith & Associates, P.A.
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Development Plan - Road Alternate
Pinnacle Falls - Phase I

NORTH CAROLINA

HENDERSON COUNTY

DTM	Drawn By	JFC	Checked By
01-18-2005	04/1/04	JFC	JFC
Job No.	Project	Drawn	Checked
	Development		

SHEET
S-2
OF - 2

**Notice of Quasi-Judicial Public Hearing
on a Variance Request for Pinnacle Falls
Subdivision (Subdivision File #05-M05)**

The Henderson County Board of Commissioners will hold a public hearing on an application by Pinnacle Falls, LLC, requesting a variance from certain Henderson County Subdivision Ordinance road standards within the Pinnacle Falls subdivision located off of Pinnacle Mountain Road.

This quasi-judicial hearing will be held on Wednesday April 20, 2005, at 11:00 A.M., in the Board of Commissioners' meeting room in the County Administration Building, located at 100 North King Street in Hendersonville, NC. Parties demonstrating standing regarding the application for the variance, such as adjacent property owners, may participate in the hearing. All persons are strongly encouraged not to contact members of the Board of Commissioners prior to the hearing due to its quasi-judicial nature. Detailed information about the rules of procedures for quasi-judicial proceedings, the road standards and information about the variance request for Pinnacle Falls is available for review in the Henderson County Planning Department located at 101 East Allen Street, Hendersonville, NC, between 8:00 A.M. and 4:30 P.M., Monday through Friday. For more information call the Planning Department at (828) 697-4819 [TDD (828) 697-4580].

D R A F T
EXCERPT FROM
HENDERSON COUNTY
PLANNING BOARD MINUTES
March 15, 2005

Pinnacle Falls, Phase 1 Road Alternate Development Plan and a Request for a Variance from the Subdivision Ordinance (File # 05-M05) – (43 Lots) – Located on the South Side of Pinnacle Mountain Road – Luther E. Smith, Agent for Pinnacle Falls, LLC, Owner. Mr. Card said that the Subdivision Issues Subcommittee met on Tuesday, February 22, 2005 to discuss the Pinnacle Falls Road alternate plan and variance request. He said that Subcommittee members present were Subcommittee Chairman Mike Cooper and Tedd Pearce. Stacy Rhodes was recused from the meeting and Paul Patterson could not attend. The subcommittee meeting could not be convened due to a lack of a quorum and there was no voting on any recommendations that were made. Mr. Card said that Mr. Cooper and Chairman Pearce decided to report to the Planning Board on what they saw at the project site. He said that during the tour they discussed the reasons for changing the road standards from a collector road to a local road in regards to those three things that Mr. Luther Smith had previously talked about at February's Planning Board meeting. During the Subcommittee meeting, there was also a discussion of the disturbance of the land, the road grade and various other aspects of the project. Mr. Smith indicated that the requested maximum percent grade of 18% is not anticipated or proposed to be used for the entire 3900 feet, but shall be limited to specific sections and lengths not to exceed 400 feet, where existing grade make it impractical to achieve 16% maximum grade. Mr. Smith also stated that the Road Alternate Plan would take out the large switchbacks in the road as proposed in the Phase I Development Plan, which would reduce the total length of road by 500 feet. Mr. Card said that Mr. Ball added that the alternate road would use the existing dirt road bed and said it would put lots in the southern part of the project closer to an adjoining property that would provide closer proximity to water for fire protection. Mr. Card said that by reducing the overall length of the road by 500 feet, this would decrease the disturbed area by 5 acres. Mr. Card said that after the site visit, Wally Hollis, Henderson County Deputy Fire Marshal who was also there at the project site visit, submitted a letter to the Planning Department saying that he and the Chief of the Green River Fire and Rescue Department approves of the road alternate plan and variance request. The letter stated that the 18% road grade increase would not affect emergency vehicles from accessing the subdivision and that the reduction in travel distance and sharp curves improves the plan.

Mr. Cooper said that after touring this project site, he felt that it had very steep terrain. He said that the benefits of that are they can use the existing roadbed and the new road will minimize the disturbance down the hill. Mr. Cooper said that they are talking about a 2% increase in the slope, which is 2 feet more fall for

each 100 feet of road and for the average person it is not very significant. He said that there are benefits in it being straighter, as opposed to having a lot of switch backs, it will make it safer for fire trucks to navigate and will get the fire trucks closer to the water they would need. Mr. Cooper said that this change does make sense and said that he supports recommending a variance. Chairman Pearce said that before he looked at the project site he was very skeptical about the request in giving a variance from the Subdivision Ordinance, but he said that when you see the site it makes more sense to do it this way than to go by the Ordinance. He feels that it is safer for people who are driving and also feels it is much better for emergency vehicles, especially the fire department. He said not only is it a shorter distance, but the switchbacks will slow emergency vehicles down and speed-wise it will affect them getting up and down the hills. He feels there are more negatives in continuing this than going the route of the alternate plan and variance, so he therefore supports, like Mr. Cooper, the variance. Chairman Pearce asked either Mr. Smith or Mr. Ball to come forward and discuss the right-of-way that was not labeled on the Development Plan approved at February's Planning Board meeting. He feels that the Board needs some clarification on it.

Mr. Ball, project manager of Pinnacle Falls, LLC, said that the issue Chairman Pearce has brought up is the right-of-way that exists and was shown on the plat they submitted to the Planning Board. He said he feels they made a mistake when they "toggled off" and indicated that there was an easement there. Chairman Pearce said it was on the original large map, but not on the one the Board has at present. He said that the line is there, but no labeling for it. Mr. Ball said that the right-of-way is a continuation of Boone Top Road, that comes into the property and down through the sixty-foot easement that continues to serve homes outside of the Pinnacle Falls development and also runs an easement to Mr. Thomas into property owned by a group called Mountain Men (two parcels there). He said they have a recorded easement down the corner on the side of the property into accessing their property. Mr. Ball added that it is indicated on the map they have and that the deed has been recorded at the courthouse. He said that the easement is open and that it is not closed and they do not intend to close the easement so they can maintain the easement. He said that there is a change in the road itself that they made, but as far as access to the property, they never intended to close off anyone. Chairman Pearce said, "Who is going to make the changes to the road?" Mr. Ball said that they would. Chairman Pearce asked Ms. Smith whether it would be appropriate for the Board to have a map that is properly labeled? Ms. Smith said that Staff has already asked Mr. Ball to provide one and had informed him that Staff was going to bring the issue up to the Board but since Staff did not have it, it did not put it on the Planning Board's agenda. Chairman Pearce asked Mr. Burrell if there was any problem with this? Mr. Burrell said, "The legal rights are said in whatever that easement is and whatever happens here as they can not take away those rights that gentleman has." He added that the question might occur as to where that road falls on the ground versus the legal right to use a specific described

easement. Mr. Ball said that they would make sure that the easement is open and available to those people as they have a right to use it. Chairman Pearce said that he wanted to make sure it would be properly labeled on the map. Chairman Pearce noted that Stacy Rhodes has recused himself on this item.

Ms. Smith said that in the Subdivision Ordinance, Section 170-48 deals with variances. She said that if the Board recalls from the application for the variance, there are pretty strict tests that you have to meet for the Board of Commissioners to make findings to grant a variance. The Board needs to state why and how the application meets or doesn't meet those tests. Ms. Smith said that one thing that isn't in the application but is in Section 170-48 of the Ordinance is that in determining undo hardship, the Board shall consider unique conditions peculiar to the site and design flexibility to preserve and protect the site's natural features. She said that it is not something that they had to respond to on the application, but it is included in some of their responses. She said that this was discussed on the site visit. She added that if you look at the strict test for a variance, she said it doesn't look like they would get there. Chairman Pearce asked Ms. Smith whether the Board should meet all three rules to determine whether there are hardships or difficulties? Ms. Smith said all three need to be met. Chairman Pearce reviewed all three rules. Chairman Pearce asked Mr. Burrell to define the word "reasonable." Mr. Burrell said that is not a legal word rather it is a fact-finders word. Chairman Pearce, having read the second hardship test which states "results from unique circumstances related to the applicant's land" feels that this is self-evident. He further stated that the next one read, "the hardship is not the result of the applicant's own action" and he believes that it is not the applicant's own actions. Mr. Patterson said that the applicant does not have to develop it and feels that it is the result of his own actions. Chairman Pearce said that it is given for the developer to have the right to develop his own property. Mr. Patterson said that is true, but he has already shown that he can develop it and meet the County's Ordinance, and that is where it becomes difficult. Chairman Pearce said that if it is better for the general public, for the property owners there and for emergency vehicles, sometimes it doesn't work. Mr. Patterson said that there has been a lot of issues discussed such as the switchback curves slowing down the emergency vehicles, but said, he doesn't feel that it is a bad thing. He added that having these roads at 18%, this would increase the speed. He noted that one thing that has not been talked about tonight is the sight distance (reduced from 150' to 110'). Mr. Patterson said that if there is an older community, their reaction time is even slower, so the 150' should be held. These type of issues need to be addressed. Chairman Pearce brought up the question again as to whether the Board needs to meet the three rules. Mr. Burrell said that part of what the Board is working with is an application that doesn't track exactly what the Ordinance says. He said if the Board has a real question as to where to go on this issue, the Board should follow what is said in the Ordinance in Section 170-48. Mr. Burrell said that the Planning Board's recommendation is whether it complies with the standards that have been set out in Section 170-48.

Chairman Pearce asked Luther Smith, "Where have they changed the sight distance on the vertical curves?" Mr. Smith said that basically they are looking at it from a standpoint, that all of the other standards that are allowed on the collector road because of the steep topography in terms of the side slope cuts are acceptable. The grade is a key issue and the ditch slope is to help eliminate some of the disturbance. He said they also have the sight distance on the vertical curves, which all of these factors bring it down to a local road standards and he added that he understands what Mr. Patterson mentioned, but theoretically a local road could be 3 ½ miles long and serving only less than 25 units. He said that the older people could be driving it and it would have the 110-foot standard. Mr. Smith said that since all of the other standards can come down to a local road standard and with the variance on the grade, the ditch slope and the vertical sight distance, they would bring that whole section down to what is a local road standard.

Chairman Pearce asked the Board members whether they had any problems with the ditch slope going from the standard of 4 to 1 to 3 to 1? Board members did not have any problems with the ditch slope change. He then asked about the next change for the maximum grade increase from 16% to 18%? Again, the Board members had no problem with that, but the sight distance on vertical curves from 150 to 110 feet was the major problem. Mr. Patterson said that he believes the sight distance only enters into the profiles when the grade changes from 16% to 18%. Chairman Pearce asked Mr. Smith whether that is correct? Mr. Smith said that was correct. Mr. Cooper reiterated that he has always had a hard time with the definition in the Ordinance of a collector road as he feels it is much too stringent and he doesn't know where that magical number that is used (25 units) came from. NCDOT uses a different standard. Mr. Patterson said even though that road would be 3 ½ miles long, some roads still have collector characteristics, which would be 2,500 feet and dead end or some other type of characteristic. He added that most of the County's standards are based on NCDOT information and guidelines. He said that at some point in time, we are overlapping, but he feels he doesn't know how the Board can give them this. If the Board allows the 18% grade, it would mean that you are taking the vertical curves and cutting them in half, which makes them real steep instead of flattening them out at that top portion and he feels that is what is exactly happening. Mr. Patterson said that he could not agree with that. Ms. Kumor said that Mr. Patterson is concerned with the safety of the road and the site distances and what would be created for those people living there. She said that the response that was brought back from Mr. Pearce and Mr. Cooper to the full Board was that the ability to not disturb more earth than what was needed to be disturbed and both of those issues are in the variance application and talked about under the issue regarding safety and welfare. She said that the Board also needs to consider the physical characteristics of the land. Mr. Patterson said that he does not feel that this land is any different than other land in this County. Chairman Pearce said that there is one difference between this one and several

others that the Board has looked at and a lot of it has to do with the proximity of the water source for the fire department in particular, which he feels is the primary emergency vehicle the Board has to address. He said the issues are how the fire department is going to be affected as far as how they are going to get their equipment around and fire safety. Mr. Patterson said that if that is a safety issue there, then the Board needs to consider taking that out of the Subdivision Ordinance now, because we are bringing in something to other developers that is an unsafe issue. Chairman Pearce said they are not saying it is unsafe but that it is better to look outside of the Ordinance and say it is better for this particular site. The emergency people told us, when we looked at both routes and both possibilities, that they would rather have more slope and less sight distance and have the shorter run and the closer proximity to the water source. Mr. Patterson asked whether at any time did they mention it was not an acceptable method? Chairman Pearce said that they mentioned they could do it that way and the developer is willing to go along with this and it is hard to ignore the fire department's recommendations in this matter. After some further discussion, Chairman Pearce said that if the Board is going to do this one based upon the Ordinance, he feels that the variances would have to be primarily the physical characteristics of the land so it would make it easier for this particular variance to be granted and only in this particular part of the subdivision.

Chairman Pearce made a motion to approve the variance from the collector road standards of sight distance, maximum grade and ditch slope to reflect the local road standards on those three items as specified in the application and that the variance be granted because of the physical characteristics of the land and it being better specifically for emergency vehicles referencing the Fire Marshal's Office letter for part of the reason for this motion. Mike Cooper seconded the motion. Tommy Laughter asked whether someone could show him the difference from 150 feet to 110 feet for sight distance. Ms. Smith passed around a picture showing the difference that was provided last month and Mr. Cooper provided a scenario of the difference. Chairman Pearce asked whether it would be appropriate to consider some speed reduction? Mr. Ball said that they could. Mr. Burrell said that he doesn't feel there is anything in the Subdivision Ordinance that says that and asked who would enforce it? Chairman Pearce said that he only meant putting something on the road at certain points to slow the traffic, such as speed bumps. Mr. Burrell said that what a technical variance consists of in this Ordinance doesn't go that far. Mr. McGrady said that under the Ordinance, it says that in considering a request for a variance, the Board of Commissioners shall determine that an undue hardship may result from strict compliance, and asked if that should be part of the Board's motion? Mr. Burrell said that it would be helpful if that were expressed in the motion. Ms. Kumor said that the motion should be amended to state that it is a recommendation to the Board of Commissioners.

Chairman Pearce withdrew his first motion. He restated the motion to read: He moves that the Planning Board recommends to the Board of Commissioners the

approval of the variance request on the three items (site distance on vertical curve, road grade and ditch slope) from the collector road standards to the local road standards as outlined in our packet. The Planning Board finds that strict compliance with the Ordinance will not only require additional length of road and disturbance of the property site but will also create a greater difficulty for emergency vehicles to respond to emergencies, in particular fire fighting equipment, and would then be further from the water source that they would need to fight such fires. Mike Cooper seconded the motion.

Gary Griffin asked, "how much closer are they from the water?" Chairman Pearce said about 500 feet. Mr. Smith said that with the variance, approximately 110 feet from the road where you need to go to the lake. He said that since it is in the switchbacks, it could be 250 – 300 feet or more. Mr. Griffin asked whether time wise, would it be five minutes one way or the other? Mr. Smith said it would be more like five minutes. Mr. Ball said that they would need to build an access road to that pond if they built it to the Subdivision Ordinance's standards. The way they have it approved now, they would have to build another access road to get there, but if they built it with the variance, they could put a dry hydrant on the side of the street and the fire vehicle could stop right there, fill up its tank and go on. Mr. Patterson asked Mr. Ball whether the pond is on their property? Mr. Ball said that they are acquiring the Emerson property. Mr. Patterson asked whether it is part of this subdivision? Mr. Smith said that it now has been added and will be when they come in for Phase III of the project.

Mike Cooper, Tedd Pearce, Renee Kumor and Mark Williams voted in favor of the motion. Tommy Laughter, Gary Griffin and Paul Patterson opposed the motion. The motion carried 4 to 3.