

# **REQUEST FOR BOARD ACTION**

## **HENDERSON COUNTY**

### **BOARD OF COMMISSIONERS**

**MEETING DATE:** 2 May 2005

**SUBJECT:** Adoption of Order on Variance Request of  
Pinnacle Falls, L.L.C.

**ATTACHMENT(S):** Draft order

**SUMMARY OF REQUEST:**

On 20 April 2005, after a quasi-judicial hearing the Board of Commissioners voted unanimously to grant the request of Pinnacle Falls, L.L.C., for a variance from the requirements of the Henderson County Subdivision Ordinance. The variance sought was to be relieved of three requirements of the Subdivision Ordinance regarding design and construction of a portion of a road within the subdivision "Pinnacle Falls".

Attached is a proposed order which, if approved by the Board of Commissioners, makes findings fact and conclusions from the hearing, and grants the variance request.

**COUNTY MANAGER RECOMMENDATION/BOARD ACTION REQUESTED:**

The County manager supports this proposal.

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

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In the Matter of the Application of PINNACLE FALLS, L.L.C.,  
Applicant

to the

**File Number: SUB-05-M03**

HENDERSON COUNTY BOARD OF COMMISSIONERS,  
Permit Authority

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**ORDER GRANTING APPLICATION FOR VARIANCE**

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The HENDERSON COUNTY BOARD OF COMMISSIONERS held a quasi-judicial public hearing on 20 April 2005 to consider an application for a Variance submitted by Pinnacle Falls, L.L.C., Applicant, and without objection made the following persons parties to the proceeding:

- Luther Smith, agent for Pinnacle Falls, L.L.C., Applicant
- A. J. Ball, agent for Pinnacle Falls, L.L.C., Applicant
- Karen Smith, Henderson County Planning Director
- Matt Card, Henderson County Planner
- Pat Osteen, adjacent property owner
- Vera Pace, adjacent property owner
- Bill Ponder, adjacent property owner
- John Bell, adjacent property owner

The Board of Commissioners heard all of the evidence and arguments presented at the hearing, and now makes the following findings of facts, and draws the following conclusions.

**FINDINGS OF FACT**

1. The Applicant, Pinnacle Falls, L.L.C., seeks a variance from the requirements of the Henderson County Subdivision Ordinance (“the Ordinance”), Chapter 170 of the Henderson County Code. The provisions for a variance from the requirements of the Ordinance are found in §170-48 of the Henderson County Code. §170-48 provides as follows:

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

*In the Matter of the Applications of Pinnacle Falls, L.L.C.*  
Before the Board of Commissioners of Henderson County  
File Number SUB-05-M03

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.

2. The Applicant has received approval to subdivide certain real estate owned by the Applicant and located in Henderson County, North Carolina, creating a new major subdivision under the Ordinance called Pinnacle Falls Subdivision (“the subdivision”).

3. The variance sought by the Applicant seeks three instances of relief from the Ordinance in the design and construction of a portion of Pinnacle Falls Lane, a proposed private residential “collector road” under the terms of the Ordinance which lies within the subdivision, as follows: (1) a reduction in the requirements for the sight distances for vertical curves on a portion of the road (as shown on the Applicant’s application for a variance and accompanying documents, all of which are incorporated herein by reference) from 150 feet, as required by the Ordinance, to 110 feet, which is the standard for private residential “local roads” under the Ordinance; (2) an increase in the maximum road grade on a portion of the said road (as shown on the Applicant’s application for a variance and accompanying documents, all of which are incorporated herein by reference) from 16% to 18%; and (3) a change in the ditch slope adjacent to a portion of the said road (as shown on the Applicant’s application for a variance and accompanying documents, all of which are incorporated herein by reference) from a ratio of 4:1 to 3:1.

4. Karen Smith is the Planning Director for Henderson County, and Matt Card is a Planner for Henderson County, both having an address of 101 East Allen Street, Hendersonville, NC 28792. As agents for Henderson County, Ms. Smith and Mr. Card have standing to participate in the proceeding and were made parties.

5. Luther Smith is the land planner for the Applicant, which is a North Carolina limited liability partnership with an address of 419 North Main Street, Hendersonville, North Carolina. A. J. Ball is the managing director for the Applicant. As agents for the Applicant, Mr. Smith and Mr. Ball have standing to participate in the proceeding and were made parties.

6. Pat Osteen is an adjacent or nearby property owner to the subject property. As such, Ms. Osteen has standing to participate in this proceeding, and was made a party to it.

7. Vera Pace is an adjacent or nearby property owner to the subject property. As such, Ms. Pace has standing to participate in this proceeding, and was made a party to it.

8. Bill Ponder is an adjacent or nearby property owner to the subject property. As such, Mr. Ponder has standing to participate in this proceeding, and was made a party to it.

9. John Bell is an adjacent or nearby property owner to the subject property. As such, Mr. Bell has standing to participate in this proceeding, and was made a party to it.

10. All parties and witnesses were sworn in at the proceeding.

11. The variance as requested by the Applicant deals with a 3,900 foot long portion of Pinnacle Falls Lane following and traversing a significant escarpment, with steep elevation changes.

12. Adjacent land uses are harmonious with the subdivision, and would not be in any way harmed by the granting of the variance sought by the Applicant.

13. The proposed development is a significantly less intense use of the land within the subdivision than is allowed by the zoning of such land, which is “Open Use” under the Henderson County Zoning

*In the Matter of the Applications of Pinnacle Falls, L.L.C.*  
Before the Board of Commissioners of Henderson County  
File Number SUB-05-M03

Ordinance. This less intense use of land would be assisted and aided by the granting of the variance sought by the Applicant.

14. In the absence of the variance as requested by the Applicant, Pinnacle Falls Lane can be constructed, albeit with significant negative consequences to the unique conditions peculiar to the land within the subdivision, and the natural features of such land as compared with the consequences of the construction should the variance sought be granted.

15. These negative consequences constitute an “undue hardship” under §170-48 of the Henderson County Code.

16. The variance as requested by the Applicant, if granted, would result in the following:

- a. The shortening of Pinnacle Falls Lane by approximately 500 feet.
- b. A reduction in the amount of earth disturbed as a result of the construction of Pinnacle Falls Lane by approximately five acres or more. Much of the land disturbance which is avoided in the event this variance request is granted is mature forest land, which appears not to have been harvested for timber purposes for a period of at least eighty years.
- c. A lessened impact on the streams found within the subdivision, including streams classified by the State of North Carolina as “trout waters”.
- d. A reduction in impact from stormwater runoff.
- e. Greater public safety, particularly greater fire and other protection for the homes to be located within the subdivision, by shortening and removing “switchback” curves from Pinnacle Falls Lane, effectively easing access to such homes by emergency services equipment, and by shortening the distance to potential water sources for firefighting purposes.

17. The variance as requested by the Applicant, if granted, would constitute the minimum variance from the terms of the Ordinance which would accomplish the results set out in paragraph 16, above, and which would mitigate the undue hardship found in paragraphs 14 and 15, above.

18. The variance as requested by the Applicant, if granted, would not violate the intent of the Ordinance.

19. The variance as requested by the Applicant, if granted, would not constitute a detriment to the health, safety and welfare of other properties within and adjacent to the subdivision. To the contrary, the variance as requested, if granted, would result in greater safety for properties within the subdivision, with no adverse effects on adjacent properties.

CONCLUSIONS

1. All parties were properly before the Board of Commissioners in this Proceeding, and proper notice of this proceeding was given under the Ordinance.

2. The Applicant seeks a variance from the provisions of Chapter 170 of the Henderson County Code, pursuant to Code §170-48.

*In the Matter of the Applications of Pinnacle Falls, L.L.C.*  
Before the Board of Commissioners of Henderson County  
File Number SUB-05-M03

3. In the absence of the variance as requested by the Applicant, the Applicant would suffer “undue hardship” (as that term is defined in §170-48 of the Henderson County Code) from the application of the Ordinance to the subdivision.

4. The variance as requested by the Applicant, if granted, would constitute the minimum variance from the terms of the Ordinance which would accomplish the results set out in finding of fact 16, above, and which would mitigate the undue hardship found in findings of fact 14 and 15, above.

5. The variance as requested by the Applicant, if granted, would not violate the intent of the Ordinance.

6. The variance as requested by the Applicant, if granted, would not constitute a detriment to the health, safety and welfare of other properties within and adjacent to the subdivision. To the contrary, the variance as requested, if granted, would result in greater safety for properties within the subdivision, with no adverse effects on adjacent properties.

**IT IS THEREFORE ORDERED** that the Application for a Variance, Henderson County file SUB-05-M03, is hereby granted. A motion to that effect was made and unanimously agreed to by the Board of Commissioners of Henderson County on 20 April 2005. This order was unanimously approved by the Board of Commissioners of Henderson County on 2 May 2005. The provisions of this variance shall be noted on the face of the final plat for the subdivision.

Signed this the \_\_\_\_ day of May, 2005.

HENDERSON COUNTY BOARD OF COMMISSIONERS

By: \_\_\_\_\_  
WILLIAM L. MOYER, Chairman

Attest:

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Elizabeth W. Corn, Clerk to the Board of Commissioners