



Agenda Abstract

Department: Planning

Authorizing Signature: _____

Submitting Official: Jason Sullivan, Planning Director

Meeting Date:	November 21, 2011
Subject:	Request by Ricky Spoon for a variance from the Subdivision Regulations, Section 7.4 B (3) to allow a fifth (5 th) lot on a private perpetual easement within Henry's Ridge Subdivision, specifically for Lot 8, parcel #83686, to be allowed to use Henry's Watch Lane for access to Henry's Ridge Road versus constructing a separate driveway.
Action Requested:	See Recommendations
Attachments: (List Individually)	<ol style="list-style-type: none">1. Variance Request Application with findings2. Copy of Plat Slide 2010-1333. Copy of Plat Slide 2006-1424. Section 7.4 B (3), Arrangement, of the Subdivision Regulations5. Section 1.13 A, Variances, of the Subdivision Regulations6. Section 7.2 D (2), Private Roads & (3) Design and Construction Standards for private Roads

Introduction& Background:	<p>Lot 8 was created when Henry's Ridge, Phase 1 (Lots 6—40), was approved by the Board of County Commissioners as a major subdivision in 2006. See attachment #3. On June 7, 2010 staff approved a minor subdivision for the applicant consisting of five (5) lots, Lots 41—45. Lots 41-44 are served by a private, perpetual easement off a public road, Henry's Ridge Road and Lot 45 has direct frontage on Mt Gilead Road, SR-1700. Mr. Spoon obtained a commercial driveway permit from NCDOT for the private easement connection to the public road, Henry's Ridge Road. Staff has spoken with Jennifer Britt, with NCDOT in Asheboro, and confirmed that the addition of one lot to the easement will not require another review or permit from NCDOT. The minor subdivision plat is recorded in Plat Slide 2010, Page 133, see attachment # 2. As shown on Plat Slide, 2006-142 and 2010-133, Lot 8 was proposed to have its own individual driveway out to Henry's Ridge Road. When the minor subdivision was approved in 2010, the survey map included a revision of lot lines to existing Lots 8 & 9 to accommodate the new perpetual easement serving Lots 41 - 44. The applicant has made a</p>
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	<p>request to NCDOT for road maintenance of Henry's Ridge Road. The road has not yet been accepted by NCDOT for maintenance. The initial and repair area for Lot 8 is off-site and is located on the adjacent Lot 41. This request will not affect the septic area.</p>
Discussion & Analysis:	<p>Section 7.4 B (3) of the Subdivision Regulations states in part "Three (3) subdivision lots may be allowed provided that every lot has frontage on a perpetual easement not less than thirty (30) feet in width that meets a public road. If found to be desirable to the road design, up to four (4) lots may be served by the thirty (30) foot easement, provided a portion of the easement is built to county private road standards (16 foot wide travelway with four inches of crush and run stone).....If additional subdivision lots are to be created and served by the easement, it shall be sixty (60) feet in width and meet other standards required unless a variance is granted...." See attachment #4 for the complete language. When an applicant proposes to have four (4) lots served by a perpetual easement, the roadway is required to be built to the higher standard of a 16 foot wide travelway with 4 inches crush and run stone and certified by a licensed surveyor, engineer, etc., prior to approval and recordation of the minor subdivision plat. Mr. Spoon constructed the private easement to the required standards and Van Finch, Land Surveys, P. A. certified that the road was constructed to the standard. Mr. Spoon later paved the roadway. As stated above, no additional review is required from NCDOT to add one (1) lot to the easement.</p> <p>The request before the Board now is to allow Lot 8 to use Henry's Watch Lane, paved private easement, for access instead of constructing a separate driveway out to the public road. Aesthetically and for safety reasons, limiting driveway connections onto the public road may be a better situation, however, the Subdivision Regulations only allows four (4) lots to be served by a private easement without a variance request being granted or the roadway being upgraded to a higher standard. Per the Regulations, a private roadway that serves more than four lots would have to be reviewed as a major subdivision, and the road would be required to</p>



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meet the county private road standards which includes a 60 foot wide right-of-way, a 16 foot wide travelway with four inches of crush and run stone, 4 foot wide shoulders, a road maintenance agreement, etc. and would require a three (3) acre minimum with a five (5) acre average lot size, or the road would have to be upgraded to a public road and meet NCDOT standards. See attachment #6 for the complete design standards for private roads.

In order for a variance request to be granted, the applicant must be able to meet the four findings as required in Section 1.13. See attachment # 5. This section states in part “Where the Planning Board finds that extraordinary hardships or practical difficulties may result from strict compliance with these regulations and/or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may recommend variances to these subdivision regulation to the Board of County Commissioners.....” See attachment # 5 for the complete language. The applicant has addressed the findings in his application. Section 1.13 B, Conditions, states “In approving variances, the Board of Commissioners may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements of these regulations.” If the Board is inclined to grant the variance, staff recommends the following: (1) that the five lots served by the private easement have a recorded road maintenance agreement to meet the standards set out in Section 7.2 D [2], see attachment #6 for standards, and that staff review and approved said agreement prior to recordation, (2) that a deed restriction be placed on Lot 8 stating that the access to Lot 8 is by Henry’s Watch Lane only and that no additional driveway is allowed to be constructed within the flag portion of Lot 8 out to Henry’s Ridge Road, (3) that a building permit for Lot 8 not be issued until the road maintenance agreement and deed restriction have been recorded with the Office of the Register of Deeds.

Letters were mailed out to notify the adjacent property owners of the requested variance. Staff has heard from the owners of Lots 7



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	<p>and 9. Both owners are in favor of the variance request. The only concern expressed was that if the flag portion of Lot 8 was not to be used for a driveway, that it be maintained by the lot owner. Mr. Spoon is aware of this concern.</p> <p><i>The Planning Board discussed the issue. Mr. Spoon was at the meeting to answer questions. The owners of Lot 7, Mr. and Mrs. Henry Gordon, attended the meeting and stated that they were in favor of the variance and thought that if an additional driveway were constructed between Lot 9's driveway and Henry's Watch Lane, that it would be a safety hazard. The Board asked Mr. Spoon if he would be willing to deed the flag portion of Lot 8 to the adjoining Lot 9. Mr. Spoon said he would as long as Lot 8 would still retain the required amount of useable lot area of 1.50 acres and if the owners of Lot 9 were agreeable.</i></p>
Budgetary Impact:	
Recommendation:	<p>The Planning Department does not think the four findings have been met and does not recommend approval of the variance request based on not meeting the findings of fact. If the Planning Board recommended granting approval of the variance request, staff recommended the following conditions:</p> <ol style="list-style-type: none">1. The five lots served by the private easement have a road maintenance agreement to meet the standards set out in Section 7.2 D (2) of the Subdivision Regulations, see attachment #6 for standards, and that staff review and approved said agreement prior to recordation.2. A deed restriction shall be placed on Lot 8 stating that the access to Lot 8 is by Henry's Watch Lane only and that no additional driveway is allowed to be constructed within the flag portion of Lot 8 out to Henry's Ridge Road.3. A building permit for Lot 8 not be issued until the road maintenance agreement and deed restriction have been recorded with the Office of the Register of Deeds.



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The Planning Board by unanimous vote, voted to approved the variance request with the addition of the following condition:

- 4. The 30 foot strip be recombined with Lot 9 as long as Lot 8 retains the required amount of useable area of 1.50 acres and if the owners of Lot 9 are agreeable. If the owners of Lot 9 are not agreeable, the issue shall be reviewed again by the Planning Board.*

The Planning Department recommends revised language for condition # 4 as follows:

4. The 30 foot strip be recombined with Lot 9 as long as Lot 8 retains the required amount of useable area of 1.50 acres and if the owners of Lot 9 are agreeable. If the owners of Lot 9 are not agreeable, then Condition # 2 shall apply or other such measures that will insure that an additional driveway is not constructed within the flag portion of Lot 8.

The Planning Department also recommends that Condition # 3 above, be revised to read as follows and that Conditions 1 & 2 remain:

3. A building permit for Lot 8 not be issued until the road maintenance agreement and deed restriction or other such measures that will insure that an additional driveway is not constructed within the flag portion of Lot 8 have been recorded with the Office of the Register of Deeds.