

PETITION FOR: VARIANCE REQUEST FROM ROAD REQUIREMENTS OF SECTIONS 8-32-3, 8-32-4, 8-32-5, AND 5-11-2 OF THE WAKE COUNTY UNIFIED DEVELOPMENT ORDINANCE.

STAFF REPORT TO THE WAKE COUNTY PLANNING BOARD
October 4, 2017 Meeting Date

Planning Staff
Adam Cook

I. REQUEST:

The applicant is requesting a variance to allow for a new residential lot to be created without providing road frontage to the lot. The applicant is proposing to provide access to the lot with a private access easement instead of a private or public road (see attached site plan).

II. PROJECT LOCATION

The subject property is located at 6409 Bissette Road. The property is on the north side of Bissette Road between Smithfield Road and the Wake County / Johnston County line.

III. PROJECT PROFILE

WAKE COUNTY PIN: 1772-22-1009

ZONING DISTRICT: Residential-30 (R-30)

LAND USE CLASSIFICATION: Town of Wendell Long Range Urban Services Area

WATERSHED: Marks Creek

CROSS REFERENCE FILES: S-131-16

APPLICANT: Curk Lane, True Line Surveying

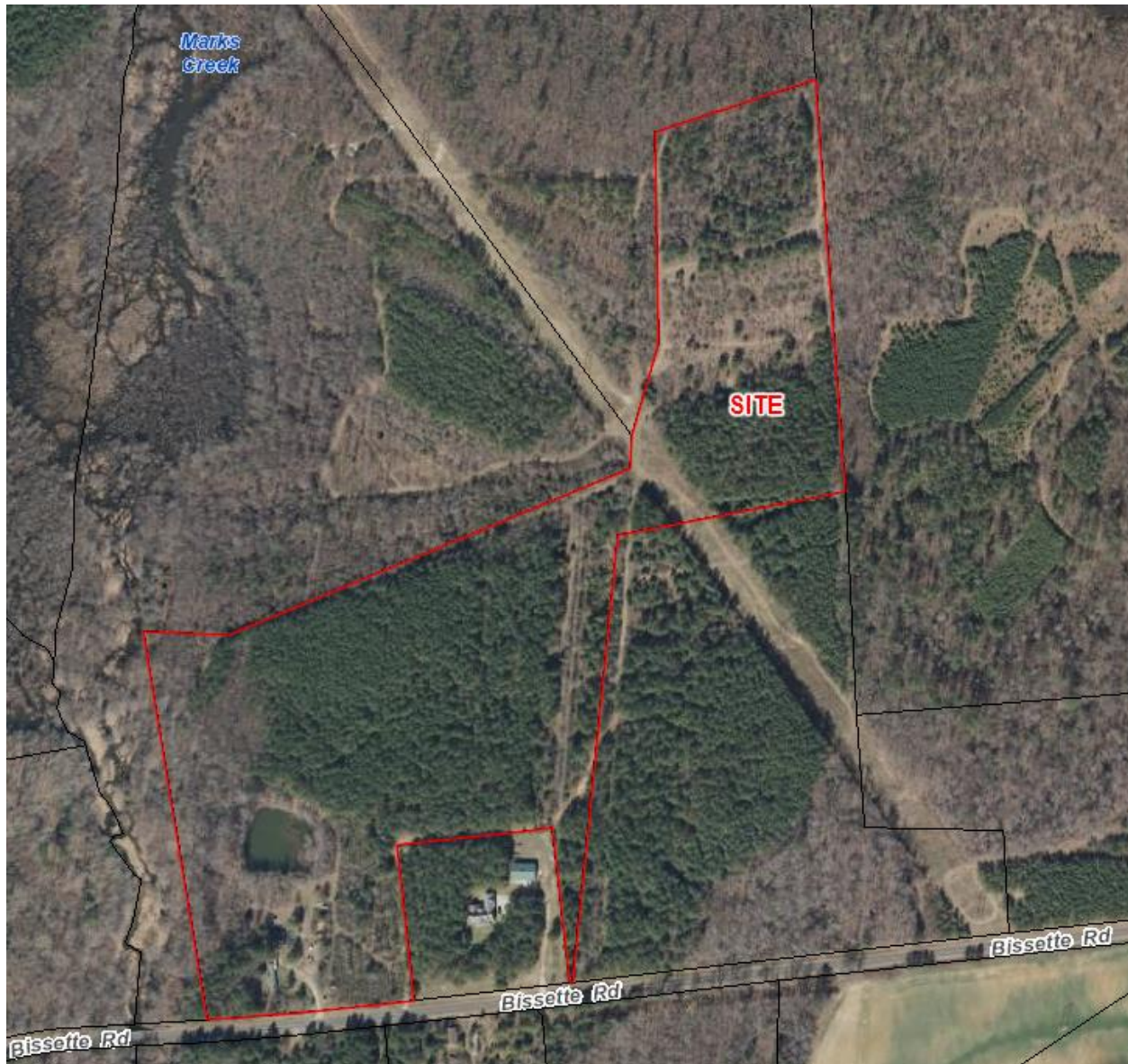
PROPERTY OWNER: Deborah L. Beach

CURRENT LAND USE: Vacant

IV. PROJECT SETTING – SURROUNDING ZONING DISTRICTS AND LAND USES

DIRECTION	LAND USE	ZONING
North	Vacant	Residential-30 (W.C.)
East	Vacant	Residential-30 (W.C.)
South	Vacant / Residential	Residential-30 (W.C.)
West	Vacant	Residential-30 (W.C.)

V. 2013 ORTHO MAP



VI. SUBDIVISION STANDARDS

This is a request for a variance from the road standards of Article 8 specifically sections 8-32-3, 8-32-4, & 8-32-5 and the minimum lot frontage standards of *section 5-11-2*.

8-32-3 Road Frontage Required

- (A) Each new lot within a subdivision must abut and have access to an existing or proposed public or private road that complies with all applicable standards of this ordinance.

- (B)** Residential subdivisions involving more than 3 lots must be served by internal road systems rather than relying on state roads for direct access to lots.
- (C)** If direct driveway access to state roads is allowed, the Planning Director and Planning Board are authorized to require shared access drives and other mitigation measures to reduce the number of access points on to state roads and thereby promote public safety and efficient movement of traffic.
- (D)** Each road within, abutting, or adjacent to a proposed subdivision must be designated as either public or private.

8-32-4 Public Roads

- (A)** Public roads must be designed in accordance with the Minimum Construction Standards for Subdivision Roads established by the North Carolina Department of Transportation, Division of Highways. When other Wake County regulations impose higher or more restrictive standards, the higher or more restrictive standard governs.
- (B)** Within the Short-Range Urban Services Area, the Planning Director and Planning Board are authorized to require that roads serving 12 or more lots be designed and constructed in accordance with applicable municipal standards.
- (C)** Designation of any road on a plat as public will be conclusively presumed to be an offer of dedication to the public.

8-32-5 Private Roads

- (A) Intent**
The private road standards of this section establish private road design and construction standards that vary based on the number of lots such roads will serve. These standards are intended to ensure public safety and the long-term durability of private roads while keeping public improvement costs as low as possible for the smallest of subdivisions.
- (B) Designation**
Private roads must be designated on subdivision plats as either “existing,” “new,” or “extended,” in accordance with the standards of this subsection (§§8-32-5).

(1) Existing Private Roads

- (a)** Private access easements or roads, the existence of which as of September 21, 1989 can be established by documentary evidence, aerial photograph, or judicial decree, will be considered existing private roads.
- (b)** All other private roads are either new private roads or extensions of existing private roads.
- (c)** When no new private road or extensions of existing private road is proposed, then that portion of the existing private road that serves as frontage for lots in the subdivision must meet or exceed all applicable private road standards.

(2) New or Extended Private Roads

- (a) New or extended private roads that serve as frontage for lots must meet or exceed private road standards.
- (b) Where an extension of an existing private road is proposed, thereby increasing the potential for additional traffic, the Planning Director or Planning Board are authorized to require that the connecting private road, if any, be upgraded to comply with the private road standards of this article.

(C) Class A and Class B Private Roads

Two types of private roads are allowed, depending on the number of lots to be served.

- (1) “Class A” private roads are allowed only when the proposed private road will provide or have the potential to provide access to an area with an ultimate development potential of 7 or more lots.
- (2) “Class B” private roads are allowed only when the proposed road will provide or have the potential to provide access to an area with an ultimate development potential of 6 or fewer lots. No extension of a “Class B” private road will be allowed if such extension will provide or have the potential to provide access to an area with an ultimate development potential of more than 6 lots. Extensions of such roads that will result in the provision of more than 6 lots may be allowed only if the entire length of the road is brought up to applicable “Class A” private or public road standards (depending on the number of lots to be served).
- (3) For the purpose of determining “ultimate development potential,” the Planning Director and Planning Board must consider the number of lots within the subject subdivision that will have access to the proposed road and to the likelihood that the proposed road will or could be extended to adjoining property.
- (4) No subdivision plat that shows lots served by private roads may be recorded unless the record plat contains the following notation: “further subdivision of any lot shown on this plat may be prohibited unless the private road is improved in accordance with applicable standards.”
- (5) Within the Short-Range Urban Services Area, the Planning Director and Planning Board are authorized to require that all roads be designed and constructed in accordance with applicable municipal standards.

(D) Design and Construction Standards

The following design and construction standards apply to Class A and Class B private roads.

Private Roads	Class A	Class B
Eligibility/Applicability	Ultimate development/service potential of 7 or more lots (6 or fewer lots may elect to use Class B standards)	Ultimate development/service potential of 6 or fewer lots
Minimum Easement Width (feet)		
Curb and Gutter Section [1]	40	40

Private Roads	Class A	Class B
Shoulder Section	45	45
Utility Easements	In easement	In easement
Minimum Road Width (ft)		
Curb and Gutter Section	26	18
Shoulder Section	18	16
Road Construction		
Base Course	8" ABC	Crusher-run or NCDOT-approved
Pavement Surface	2" I-2 (or as otherwise approved by NCDOT)	ABC stone compacted to a minimum of 8 inches or base + pavement surface per NCDOT manual
Minimum Shoulder Width (ft)	4-6	4
Maximum Cut & Fill Slopes	1.1:1; must be seeded or otherwise stabilized	1.5:1; must be seeded or otherwise stabilized
Design Speed	20 mph	None
Minimum Sight Distance on Vertical Curves	110	110
Maximum Rate of Vertical Curvature (for minimum sight distance)		
Crest	10	10
Sag	10	10
Min. Centerline Radius (feet)	90	90
Maximum Grade	18%	15% for gravel or stone; 18% if paved
Drainage Design	10-25-year	25-year
Culvert Diameter (interior)	25Y Cross=18"; Drive=15"	15 inches
Cul-de-sacs		
Turnaround Types	Bulb-end design, T-type or Loop Road	Bulb-end design, T-type or Loop Road]
Minimum ROW Radius (feet)		
Curb & Gutter Section	45	45
Shoulder Section	50	50
Minimum Pavement Radius		
Curb & Gutter Section	37	35
Shoulder Section	35	35
Maximum Length (feet)	2,500	2,500
Intersections		
Minimum Spacing (feet)	135	135
Min. Sight Distance (feet)	10/70 (110 from VC crest)	10/70
Minimum Angle (degrees)	60-90	60-90
Minimum Radius (feet)	Private roads with private roads: 20; all other situations: 25 (edge of pavement)	Private roads with private roads: 20; all other situations: 25 (edge of pavement)
Certification of Compliance	Licensed P.E.	Licensed Professional Surveyor or Licensed P.E.

[1] Curb and gutter are limited in water supply watersheds.

(E) Disclosure

The Record Plat for a subdivision containing private roads must include the following disclosure statement:

This disclosure is given in accordance with North Carolina General Statutes 136-102.6.

This statement is to advise that the roads serving this subdivision are designated as private roads, not public roads. All owners of property within the subdivision have easements with one another to travel over and across such roads. The responsibility for maintenance of such private roads falls solely upon the property owners within the subdivision. No representation is made that the private roads within this subdivision meet the minimum requirements necessary to allow such roads to be included in the state secondary road system or that the North Carolina Department of Transportation will eventually assume maintenance such roads. Moreover, if such private roads are not adequately constructed and maintained, emergency service providers and public service vehicles may be unable to provide adequate service to the residents of the subdivision.

Subdivider

Date

(See NCGS 136-102.6(f) for subdivision street disclosure statement requirements)

(F) Maintenance; Property Owners Associations

- (1) A property owners association is required to own and maintain all private roads.
- (2) The subdivider must submit to the Planning Director proposed agreements or covenants ensuring continued use and maintenance of any existing, platted or proposed private roads by property owners served by such roads. These agreements will require that proposed private roads be adequately maintained to provide safe passage for public service and emergency vehicles, will specify how responsibility for road maintenance will be apportioned among the landowners served, and will provide enforcement rights for the maintenance agreement. The adequacy of such agreements must be demonstrated to the reasonable satisfaction of the Planning Director.

5-11-2 Non-Watershed Residential Districts

The following standards apply in the non-watershed residential watershed districts unless otherwise expressly stated. Special standards apply, for example, to approved cluster or open space developments, attached houses and lot line houses. See Part 3 of this article for rules governing measurement of and exceptions to these standards.

	R-80	R-40	R-30	R-20	R-15	R-10	R-5	HD	RHC
Minimum Lot Area per Dwelling Unit [1] (square feet)	80,000	40,000	30,000	20,000	15,000	10,000	5,000	30,000	30,000
Minimum Lot Width (feet)	150	110	95	75	65	55	55	95	95
Minimum Lot Frontage (feet)	30	30	30	30	30	30	30	30	30
Minimum Required Setbacks (feet)									
Front and Corner	40	30	30	30	20	20	20	30	30
Side	20	15	10	10	10	10	10	10	10
Rear	30	30	30	30	30	30	30	30	30
Maximum Impervious Coverage (% of lot)									
Residential Development [1] [2] [3]	30	30	30	30	30	30	30	30	30
Nonresidential Development [1] [2] [3] [5]	30	30	30	30	30	30	30	30	30
Maximum Building Height (feet)	35	35	35	35	35	35	[4]	35	35
Minimum Building Separation (feet)	NA	NA	NA	NA	NA	NA	20	NA	NA

[1] In some cases, more restrictive standards may apply to lots within the Swift Creek, Little River and Smith Creek Water Supply Watersheds.

[2] Lots created after 7/01/2001 are subject to Wake County stormwater management regulations.

[3] Nitrogen export check required and is limited to 3.6 lbs./ac./yr. without best management practices or payments made to the N.C. Ecosystem Enhancement Program. Does not apply to nonresidential development in R-80W and R-40W districts.

[4] Maximum height in R-5 = 35 feet or 1 foot of building height for each 3 feet that the building is set back from front, side and rear property lines, whichever allows the greater height.

[5] Nonresidential Development in HD may exceed 30 percent maximum impervious.

VII. VARIANCE

A. REQUEST

The applicant is requesting a variance to allow for a new residential lot to be created without providing road frontage to the lot. The applicant is proposing to provide access to the lot with a private access easement instead of a private or public road.

VIII. BACKGROUND

In February 2016, a minor subdivision plat was submitted to subdivide an approximately 5 acre parcel from a 38.57 acre tract. During the review of the minor subdivision it was determined that the subdivision could not be completed as submitted because the proposed tract 2 did not have the minimum 30 foot road frontage required by Article 5-11-12 of the Unified Development Ordinance and the applicant was not proposing to construct a private road as required by Article 8-32 of the UDO.

To provide for frontage to the proposed tract 2, either a private road would need to be constructed to serve as frontage, or tract 2 would need to have direct frontage onto Bissette Road. The applicant is requesting a variance from the requirements of Sections 8-32-3, 8-32-4, 8-32-5 and 5-11-2 of the UDO to provide a 45' access and utility easement to the proposed tract 2 and to construct a driveway within the easement instead of providing road frontage on to Bissette Road or constructing a new private road as required by the UDO.

IX. REQUIRED CONCLUSIONS/FINDINGS

The Planning Board shall not approve a petition for a variance unless it first reaches each of the following conclusions based on findings of fact supported by competent, substantial, and material evidence.

The Planning Board must make positive findings on **All** of the following findings of fact from G.S. 160A-188 in order to approve this variance request:

- (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.

X. RECOMMENDATION

Staff recommends that if the Planning Board reaches positive conclusions on **all** of the required findings of fact, the following condition be required:

- (1) The petitioner/landowner must record the notarized form pertaining to the order of the Board in the Wake County Register of Deeds and return a copy to Planning, Development and Inspections Division of Community Services.
- (2) Obtain a land use permit for the construction of the proposed 12 foot gravel driveway.