

**LINCOLN TON BOARD OF ADJUSTMENT
AGENDA**

July 18, 2023

At 4:00 P.M. in City Council Chambers

1. Roll Call
2. Call to Order
3. Approval of minutes from the June 20, 2023, meeting
4. BOA-4-2023-Application from Wesley Shane Huss requesting a variance of section 153.050 of the Unified Development Ordinance, Lots to Abut a Dedicated Street (Parcel ID 25846).
5. Adjournment



CITY OF LINCOLNTON BOARD OF ADJUSTMENT MINUTES

PO DRAWER 617, LINCOLNTON, NC 28093

www.lincolntonnc.org

BOARD MEMBERS: Greg McBryde, Chair, Gregory.McBryde@gmail.com; Becky Shaw, Vice-Chair beckygreer82@gmail.com; Trent Mason, trentonbmason@gmail.com; Monte Tyson, monte@cbdeastmain.com; Kristin Radebaugh, kradebaugh6r6@gmail.com; John Waters, jh2osk@aol.com; Steve Lackey, stevelackey88@gmail.com

Tuesday, June 20, 2023

Present: Greg McBryde, Trent Mason, Monte Tyson, Kristin Radebaugh, John Waters

Absent: Becky Shaw

Call to Order

Chair Greg McBryde called the meeting to order and recognized that Becky Shaw was absent.

Approval of Minutes

Chair Greg McBryde asked the Board if there were any additions or corrections to the minutes of the May 16, 2023, meeting.

*Motion: Monte Tyson made a motion to approve the minutes.
Members voted 5-0 in favor of the motion.*

Chair Greg McBryde asked the Board if there was any other business to be addressed, to which there was none.

Adjournment

*Motion: John Waters made a motion to adjourn.
Members voted 5-0 in favor of the motion.*

Ashley Jones

MEMO TO: Lincolnnton Board of Adjustment
FROM: City of Lincolnnton Planning Department
DATE: July 18, 2023
SUBJECT: BOA-4-2023 –Shane Huss

Property Information

- Property Location – 1946 Indian Trail (PID 25846)
- Current Zoning – Residential-25 (R-25)
- Property Size - 14.8 acres
- Current Use of Property – Single Family Dwelling
- Adjacent Properties – Residential and Atrium Health

Variance Request

Application from Wesley Shane Huss requesting a variance of section 153.050 of the Unified Development Ordinance, Lots to Abut a Dedicated Street. The variance would allow the creation of a new residential lot which does not have access to a dedicated street but would be served by a 45 foot private access easement. The subject property is located at 1946 Indian Trail (Parcel ID 25846).

Relevant UDO Requirement

153.050 LOT TO ABUT A DEDICATED STREET.

No lots may be created after the effective date of this chapter that do not have at least 35 feet of dedicated street right-of-way frontage except as follows.

(A) A lot not having 35 feet of dedicated street right-of-way frontage may be created if located entirely within a planned shopping center or office park.

(B) A one-family residence may be constructed on a lot which existed at the effective date of this chapter which does not abut a dedicated street right-of-way provided the lot is given access to a dedicated street by an easement at least 12 feet in width for the use of the dwelling established on the lot and further provided that the easement is maintained in a condition passable for automobiles and service and emergency vehicles. This easement may not be extended to provide access to any other lots or to any other residence not having frontage on a dedicated street.

Background Information

The applicant is requesting a variance to add one additional three (3) acre lot from the existing 14.8 acre tract. In June of 2021 the property, 22 acres, was subdivided into three vacant lots using the following section of the UDO:

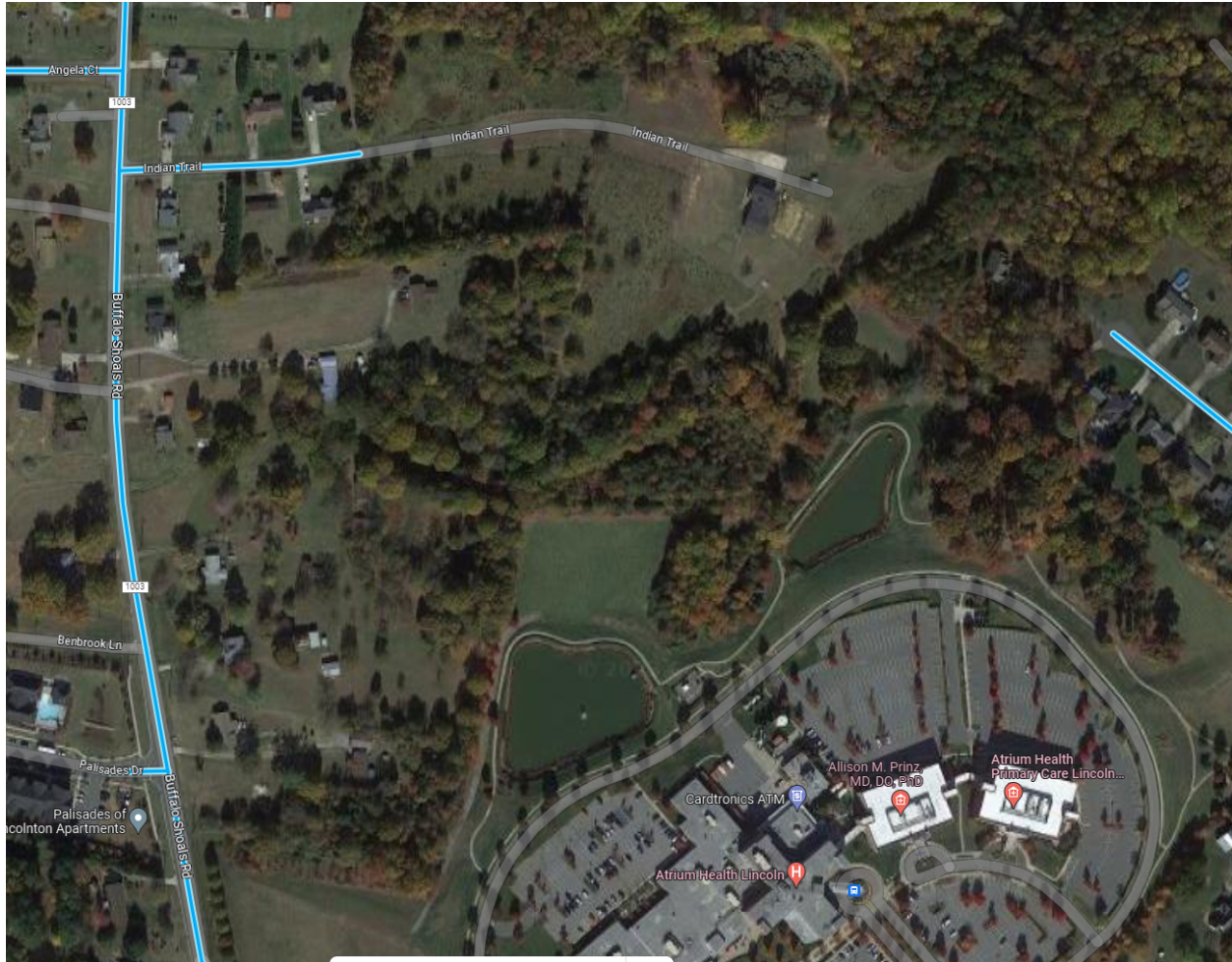
3. The entire area of the tract or parcel to be divided is greater than five acres;
4. After division, no more than three lots result from the division; and
5. After division, all resultant lots comply with all of the following:
 - A. Any lot dimension size requirements of the applicable land use regulations, if any;
 - B. The use of the lots is in conformity with the applicable zoning requirements, if any; and
 - C. A permanent means of ingress and egress is recorded for each lot.

This section of the ordinance only allows three (3) lots to be created without having 35 feet of dedicated street frontage. The applicant wants to divide a fourth lot for a family subdivision. The lot will be served by a 45 foot private easement. Currently there is a single family dwelling on the property.









Additional Applicant Statements (See Attached Application)

- Three (3) lots were granted per the ordinance, the maximum number that could be done. I have four kids and an additional lot is needed so that each one can have a parcel of land.
- The 14 acre parent lot was subdivided through the county ordinance prior to City Zoning in the area.
- Large lots are not typical in the City
- The variance would not create any harm, threat, or danger to the public. The purpose is to provide one additional lot so each family member will have a place to build.

Findings of Fact

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.

Staff Comments

- The applicant's request should not affect the neighborhood negatively in any way. The variance request should be consistent with the spirit, purpose, and intent of the ordinance.
- The applicant will need to address, at the meeting, how the four findings of fact are met in order for the Board of Adjustment to grant the variance.

BGA-4-23

PLANNING DEPARTMENT

Laura Elam – Planning Director
Mark Carpenter – Zoning Administrator
Jean Derby – Planning Assistant



TELEPHONE 704-736-8930
FAX 704-736-8939

Application for Variance

Description of request: Add an additional 3 acre +/- lot from the 14.8 acre parent tract of Tomahawk Estates. I subdivided the 22 acres in June of 2021 into 3 vacant lots and left the 14.8 parent tract that goes along with the existing house where we currently reside for a total of 4 lots in Tomahawk Estates (Plat Book 21 Page 96).
THE PROPOSED LOT FOR THIS VARIANCE IS TRACT #4 ON THE PROVIDED SURVEY.

Applicant information:

Name: Wesley Shane Huss
Address: 1946 Indian Trail
City: Lincolnton State: NC Zip: 28092
Telephone: 980-429-0461 Email: shane.huss@duke-energy.com

Property owner information (if different from applicant)

Name: Same as above
Address:
City: State: Zip:
Telephone: Email:

Property location and description

Address: 1946 Indian Trail Lincolnton, NC 28092
Tax parcel no. (five-digit): 25846 Current zoning classification: R-25/R-SF

A sketch of the property including the following information shall accompany this application: lot dimensions, setback dimensions for existing structures, location of all existing structures, other topographical features (bodies of water, significant stands of trees, etc.). Based on the nature of the application, the Zoning Administrator shall have the authority to request additional necessary information and/or waive one or more of these items.

Variance Request Description

Section(s) of the Unified Development Code requesting relief from: Section 153 - Subdivision Ordinance

Applicant's description of why a variance from the terms of these provisions is needed: _____

My wife and I are both natives of Lincoln County, NC and have lived here all of our lives. We bought this property

a little over 2 years ago with the hopes to subdivide and raise our family as this is a beautiful place to raise kids. This will

provide them with a place to start their own family in the near future. We deeply desire to be able to get this last lot so

each sibling will have a place of their own and to get a head start on land in our home City/County. Our 2 daughters are soon

to be graduating college and they have plans to build on these lots and this last lot is the last piece of our family subdivision.

All of these lots are large (larger than all other lots on Indian Trail) and would not create any nuisance, danger or threat

to the public. We greatly appreciate the consideration and thoughtfulness of granting this variance of an additional lot.

The Board of Adjustment, after having held a public hearing to consider the variance request, will address each of the following findings of fact and draw the following conclusions in order to render their decision:

1. Unnecessary hardship would result from the strict application of the ordinance. (NOTE: 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 the conditions that are peculiar to the property, such as location, size or topography. (NOTE: 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. (NOTE: 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); and,
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.

The applicant is asked to address each of these findings as they pertain to their variance request. Please use additional sheets if necessary. In order to grant a variance, each of the findings must be found in the affirmative by the Board of Adjustment by a 4/5 majority of the Board's membership.

Request for Variance

1) Unnecessary hardship would result from the strict application of the ordinance. (NOTE: It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. This statement is based upon the following reason(s):

Mark Carpenter did an awesome job working with me in the past to get the initial 3 lots that we were granted. At the time, those were the maximum number of lots that I could subdivide and with having 4 kids we are in need of an additional lot to provide land for all of our children. There is plenty of additional room to add this lot and the location where this lot is to be placed is just leftover land of the 14 acre parent tract.

2) The hardship results from the conditions that are peculiar to the property, such as location, size or topography. (NOTE: 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.); This statement is based upon the following reason(s):

Most land/lots/tracts are not this large within City Limits/Zoning. Being that this parent tract, and the previous subdivided lots, are larger in size, this is a hardship since we are held to the same restrictions as smaller tracts in the City. The 14 acre parent tract is also split within County zoning as well so it is very close to County ordinances. The size of this additional lot will be approximately 130,680 sq. feet (3 acres), where only 25,000 sq. feet is required.

3) The hardship did not result from actions taken by the applicant or the property owner. (NOTE: 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. This statement is based upon the following reason(s):

There was nothing that no one done to create a a hardhsip for this variance. The only hardship is that, this was an abnormal large piece of land held to City Limits/Planning requirements which limit the amount of lots to be placed.

It is too much of an financial burden to have to put in roads that meet State/Local standards for a family subdivision.

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. This statement is based upon the following reason(s):

This variance would cause no harm, threat or danger to the public. The purpose and intent of this variance is to provide one additional lot so our entire family will have a place to build, grow and allow or everyone to be on family land for future.

Signatures

W. Shane

Digitally signed by W.
Shane Huss

Applicant
Huss

Date: 2023.06.16
10:08:53 -04'00'

Date

Property Owner, If Different From Applicant

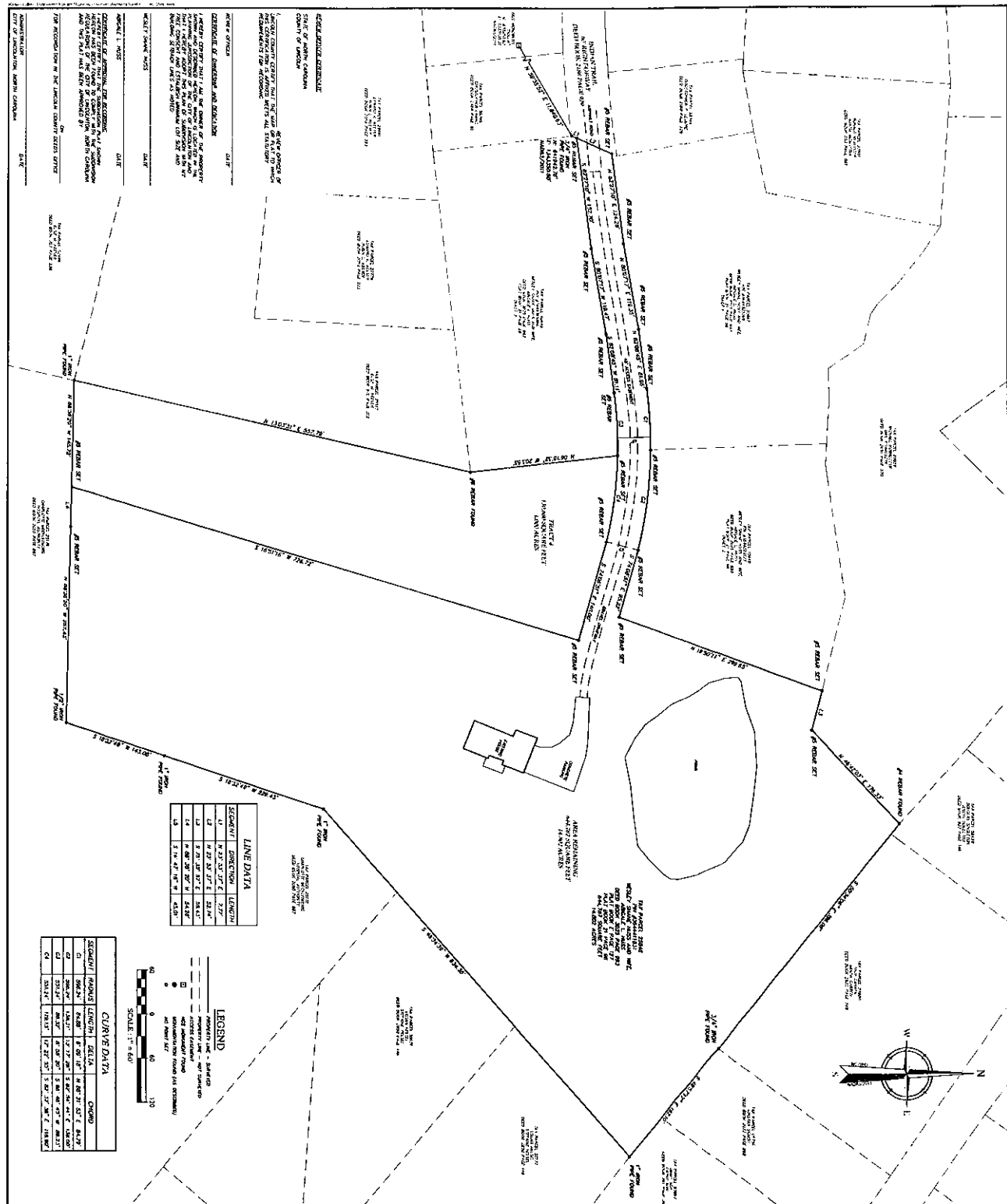
Date



6/20/23

Zoning Administrator

Date



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PRELIMINARY MAP

FOR
TONAHAWK ESTATES
C/O SHANE BUSS

TAX PARCEL 25846
7345 PIN 344/1381

035, PAGE 993
PLAT BOOK 21, PAGE 36
CITY OF LINCOLN
LINCOLN COUNTY
NORTH CAROLINA

NOTICE OF SUBDIVISION

1 of 1

LEGEND

--- EXISTING ROAD

--- PROPOSED ROAD

--- EXISTING EASEMENT

--- PROPOSED EASEMENT

--- EXISTING UTILITY

--- PROPOSED UTILITY

CURVE DATA

STATION	LENGTH	DELTA	CURVE
1+00.00	100.00	90° 00' 00"	C1
1+100.00	100.00	90° 00' 00"	C2
1+200.00	100.00	90° 00' 00"	C3
1+300.00	100.00	90° 00' 00"	C4
1+400.00	100.00	90° 00' 00"	C5
1+500.00	100.00	90° 00' 00"	C6
1+600.00	100.00	90° 00' 00"	C7
1+700.00	100.00	90° 00' 00"	C8
1+800.00	100.00	90° 00' 00"	C9
1+900.00	100.00	90° 00' 00"	C10

NOTES

1. THE PROPERTY SHOWN ON THIS MAP IS THE PROPERTY OF TONAHAWK ESTATES, C/O SHANE BUSS, AND IS BEING OFFERED FOR SALE BY THE CITY OF LINCOLN, NORTH CAROLINA.

2. THE CITY OF LINCOLN, NORTH CAROLINA, HAS REVIEWED THE MAP AND HAS DETERMINED THAT THE MAP IS IN ACCORDANCE WITH THE REQUIREMENTS OF THE NORTH CAROLINA SUBDIVISION MAP ACT.

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