Buncombe County Board of Adjustment
Meeting Minutes
June 11, 2025 – 12:00 P.M.
Commissioners' Chambers – 200 College St, Asheville, NC

Members Present

- **Andy Ball**, Regular Member – Chair
- **Katherine Morosani**, Regular Member – Vice Chair
- **Paul Wilczynski**, Regular Member
- **Joel Mazelis**, Regular Member
- **Craig Allen**, Regular Member
- **Carol McCrory**, Alternate Member
- **Jeff Giltenboth**, Alternate Member

Staff Present

- **Savannah Glance**, Principal Planner
- **Victoria Hoyland**, Stormwater Administrator
- **Curt Euler**, Staff Attorney
- **Griffin Kearns**, Clerk to Board

A. Call to Order & Welcome – Chair

- The meeting was called to order at 12:07 P.M.

B. Announcements

- **Curt Euler** announced that a writ of certiorari had been granted for an appeal of the Board's decision in ZPH2024-00026 Emma Road Townhomes SUP.

C. Roll Call of Board Members

1. **Joel Mazelis** – Present
2. **Paul Wilczynski** – Present
3. **Craig Allen** – Present
4. **Andy Ball** – Present
5. **Katherine Morosani** – Present
6. **Carol McCrory** – Present
7. **Jeff Giltenboth** – Present

D. Approval of Meeting Minutes

Motion to approve the minutes from the Board's special meeting on April 28, 2025, and regular meeting on May 14, 2025:
Made by: **Craig Allen**
Seconded by: **Katherine Morosani**
Result: **PASS** (7-0)

1. **Joel Mazelis** – Yes
2. **Paul Wilczynski** – Yes
3. **Craig Allen** – Yes
4. **Andy Ball** – Yes
5. **Katherine Morosani** – Yes
6. **Carol McCrory** – Yes
7. **Jeff Giltenboth** – Yes

E. Disclosure of Ex-Parte Communications/Conflicts of Interest

- None

F. Public Hearings

1. ZPH2025-00017 Gonzalez Variance

Description:

Jorge Antonio Gonzalez has applied for a Variance pursuant to the Zoning Ordinance of Buncombe County; Sec. 78-621(4) and Sec. 78-642, Table 2, Dimensional Requirements; for a reduction to the front setback for a manufactured home on tax lot PIN 9639-22-7811 (2 Hazelwood Road). Planner coordinating review: Savannah Glance.

Summary of Exhibits:

Ex #	Description	Submitted by	Record
	Application	Applicant	**Admitted**
	Site Plan	Applicant	**Admitted**
	Staff GIS Maps	Staff	**Admitted**
	Staff Report	Staff	**Admitted**

Staff Presentation:

- **Savannah Glance** presented the staff analysis of the application and offered the above listed exhibits into the record; Chairperson Ball admitted the exhibits. In response to questions from the Board, Ms. Glance confirmed that the need for the variance arose from an erroneous approval on the part of County staff, and that staff had no objections or concerns pertaining to the requested variance.

Applicant Presentation:

- **Jorge Antonio Gonzalez** stated that he had purchased the property and received the required zoning and building permits to install his manufactured home, and that he was not informed that the building did not comply with minimum setbacks until he had requested his certificate of occupancy.
    - **Ms. Glance** confirmed that Mr. Gonzalez's placement of the home was in accordance with what had been presented on his approved site plan.

Board Discussion, Deliberation, and Motions:

- **Vice Chairperson Morosani** stated that the applicant did everything required of him; **Mr. Allen** concurred.
- **Chairperson Ball** stated that the County was responsible for this error and that correction of the error would pose an undue burden on the applicant.

Motion to adopt the following Findings of Fact:

1. *That this matter was properly advertised, is within this Board's jurisdiction and is ripe for its consideration.*
2. *That this application, together with the conditions proposed by staff and/or this Board and agreed to by the Applicant, if any, DOES meet the requirements for granting a Variance contained in Buncombe County Code of Ordinances Sec. 78-621(4).*

Made by: **Katherine Morosani**
Seconded by: **Craig Allen**
Result: **PASS** (7-0)

1. **Joel Mazelis** – Yes
2. **Paul Wilczynski** – Yes
3. **Craig Allen** – Yes
4. **Andy Ball** – Yes
5. **Katherine Morosani** – Yes
6. **Carol McCrory** – Yes
7. **Jeff Giltenboth** – Yes

Motion to approve the Variance and that staff be instructed to draft an order consistent with this motion approving the permit with any agreed upon conditions for review and execution by the Chair, Acting Chair, or such person's designee, on behalf of this Board:
Made by: **Katherine Morosani**
Seconded by: **Craig Allen**
Result: **PASS** (7-0)

1. **Joel Mazelis** – Yes
2. **Paul Wilczynski** – Yes
3. **Craig Allen** – Yes
4. **Andy Ball** – Yes
5. **Katherine Morosani** – Yes
6. **Carol McCrory** – Yes
7. **Jeff Giltenboth** – Yes

<u>Presentation of Order:</u>

- **Curt Euler** presented a draft order.

  Motion to approve the order:
  Made by: **Katherine Morosani**
  Seconded by: **Craig Allen**
  Result: **PASS** (7-0)

  1. **Joel Mazelis** – Yes
  2. **Paul Wilczynski** – Yes
  3. **Craig Allen** – Yes
  4. **Andy Ball** – Yes
  5. **Katherine Morosani** – Yes
  6. **Carol McCrory** – Yes
  7. **Jeff Giltenboth** – Yes

2. ZPH2025-00004 Stern Stormwater Variance

Description:

Alan and Betsy Stern have applied for a Variance pursuant to the Stormwater Management Ordinance of Buncombe County; Sec. 26-362(b)(9) and Sec 26-362(b)(1)(d); for the construction of built-upon area within a surface water buffer zone on tax lot PIN 0607-71-9996 (an unaddressed parcel off Old Fort Road). Staff coordinating review: Savannah Glance, Victoria Hoyland.

Summary of Exhibits:

Ex #	Description	Submitted by	Record
	Application	Applicant	**Admitted**
	Variance Plan Exhibit	Applicant	**Admitted**
	Full Plan Set	Applicant	**Admitted**
APP 1	Subdivision Plat for Jon and Elizabeth Finstrom – Dove's Landing (Plat Book 122, Page 55)	Applicant	**Admitted**
APP 2	Survey for James K. Hart, Jr. (Plat Book 46, Page 182)	Applicant	**Admitted**
APP 3	Plat of Revised Right-of-Way for James K. Hart, Jr. (Plat Book 46, Page 195)	Applicant	**Admitted**
	Staff GIS Maps	Staff	**Admitted**
	Staff Report	Staff	**Admitted**

Staff Presentation:

- **Savannah Glance** presented the staff analysis of the application and offered the above listed exhibits, except for *APP 1*, *APP 2*, and *APP 3*, into the record; Chairperson Ball admitted the exhibits. In response to questions from the Board, Ms. Glance stated her understanding that the applicant had no other choice to access the property than to use a deeded right-of-way, and that she did not know when that right-of-way had been granted.
- **Victoria Hoyland**, in response to additional questions from the Board, stated that the variance may not necessarily be the only option, deferring to the applicant's design professional; and that she had not received evidence from the applicant of other options having been considered and eliminated. Ms. Hoyland clarified that for a stormwater permit under the low-density water quality requirements, no built-upon area such as a driveway is allowable within a 30-foot vegetated setback surrounding a stream bank except for perpendicular crossings. She stated that topography would dictate the driveway location as proposed by the applicant to be the most economical, but may or may not be the only feasible option.

Standing Hearings:

- **Gina Miceli** stated that her home at 1419 Old Fort Road would be affected due to the neighborhood having unique geography, and that erosion from the Stern property had resulted

in sediment collecting in her yard with her being quoted $20,000 for it to be removed. Ms. Miceli claimed negligence on the part of the applicant for the development activity and erosion control issues on the property and expressed fear of a landslide occurring from the Stern property across hers and into Echo Lake. In response to questions from **Brian Gulden**, the applicant's counsel, Ms. Miceli confirmed that her property was not immediately adjacent to that of the applicant, and that she had no education or background in engineering and did not have an expert witness prepared to present evidence in support of her claims. In response to questions from the Board, Ms. Miceli stated that other property owners in the neighborhood had the same stream running across their property to Echo Lake.

- **Vice Chairperson Morosani** stated that she would be interested to hear from Ms. Miceli as a witness, but that Ms. Miceli's situation lacked uniqueness to qualify as special damages for standing.
  Motion to deny standing to Gina Miceli:
  Made by: **Katherine Morosani**
  Seconded by: **Jeff Giltenboth**
  Result: **PASS** (6-1)
  1. **Joel Mazelis** – Yes
  2. **Paul Wilczynski** – Yes
  3. **Craig Allen** – Yes
  4. **Andy Ball** – Yes
  5. **Katherine Morosani** – Yes
  6. **Carol McCrory** – No
  7. **Jeff Giltenboth** – Yes

- **William Wilkie** stated that he owned property in the Dove's Landing subdivision adjacent to the subject property on three sides, and that the easement for the driveway access to the subject property crossed his own. Mr. Wilkie stated that water had come through the road cut, that the easement had been used improperly and that it had caused significant erosion into a trout feeding stream. He claimed that damages of greater than $50,000 had occurred downstream of the site, and that the drivable surface of the driveway to his property had been reduced from 14-15 feet to 8 feet. In response to questions from the Board, Mr. Wilkie confirmed that his house was on the parcel to the north of the applicant's property. In response to questions from Mr. Gulden, Mr. Wilkie claimed that he was not trying to prevent Mr. Stern from using the easement, but that he wanted all work to be done properly, and that Mr. Stern was responsible for creating the problem that triggered the variance request.
  - **Vice Chairperson Morosani** stated that she did not believe Mr. Wilkie had presented enough evidence to support him having standing.
  - **Mr. Allen** and **Ms. McCrory** stated that having the shared driveway and easement with Mr. Stern was unique to Mr. Wilkie.
    Motion to grant standing to William Wilkie:
    Made by: **Carol McCrory**
    Seconded by: **Craig Allen**
    Result: **PASS** (6-1)
    1. **Joel Mazelis** – Yes

2. **Paul Wilczynski** – Yes
3. **Craig Allen** – Yes
4. **Andy Ball** – Yes
5. **Katherine Morosani** – No
6. **Carol McCrory** – Yes
7. **Jeff Giltenboth** – Yes

- **Thomas Miceli** stated that he had photographs of damage to his property from Hurricane Helene as well as copies of notices of violation issued to the applicant due to erosion control violations. Mr. Miceli stated that there was visible evidence of erosion on the property. Mr. Miceli In response to questions from Mr. Gulden, Mr. Miceli confirmed that Gina Miceli was his wife, and he argued that the damages he would suffer may not be unique, but that they were nonetheless distinct from the public at large. Mr. Miceli testified that he was not a hydrologist and did not have expertise in dam safety or dam failure. In response to questions from the Board, Mr. Miceli stated that he resided at the same property and that the stream flowed across the properties of Mr. Wilkie, the Ducketts, and him and his wife.
    - **Ms. McCrory** stated she believed Mr. Miceli had standing, and that Ms. Miceli should not have been denied standing earlier as the special damages did not necessarily need to be unique to a single property owner; **Vice Chairperson Morosani** disagreed and stated that Mr. Miceli did not present sufficient evidence for standing.
      Motion to deny standing to Thomas Miceli:
      Made by: **Katherine Morosani**
      Seconded by: **Paul Wilczynski**
      Result: **FAIL** (3-4)
        1. **Joel Mazelis** – Yes
        2. **Paul Wilczynski** – Yes
        3. **Craig Allen** – No
        4. **Andy Ball** – No
        5. **Katherine Morosani** – Yes
        6. **Carol McCrory** – No
        7. **Jeff Giltenboth** – No

      Motion to grant standing to Thomas Miceli:
      Made by: **Craig Allen**
      Seconded by: **Jeff Giltenboth**
      Result: **FAIL** (5-2)
        1. **Joel Mazelis** – Yes
        2. **Paul Wilczynski** – No
        3. **Craig Allen** – Yes
        4. **Andy Ball** – Yes
        5. **Katherine Morosani** – No
        6. **Carol McCrory** – Yes
        7. **Jeff Giltenboth** – Yes

A recess was called at 1:30 p.m.
The meeting was called back to order at 1:42 p.m.

Applicant Presentation:

- **Alan Stern**, the applicant and owner of the subject property along with his wife Betsy, testified that he had submitted the variance application and explained the reasoning for his request. Mr. Stern indicated the location of the property on a plat map of the Dove's Landing subdivision, which was tendered by Mr. Gulden and admitted by Chairperson Ball as *Applicant Exhibit 1*. Mr. Stern stated that the surrounding properties in Dove's Landing were owned by Mr. Wilkie, and that the right-of-way that provides access to his parcel existed since 1981 which was well before he purchased the property. *Applicant Exhibit 2* and *Applicant Exhibit 3*, two plats recorded in 1980 and 1981 respectively, were tendered by Mr. Gulden and admitted by Chairperson Ball. On the set of stormwater plans, Mr. Stern pointed out the location of the stream relative to which the variance was being requested. He testified that he did not create the right-of-way himself, that he bought the property in 2010, and that the only deeded access he had was via the easement across Lot 3 which was owned by Mr. Wilkie. Mr. Stern stated that he had evaluated an alternate access point at the boundary of Lots 3 and 4 to allow for a 90-degree crossing of the stream bed, but that Mr. Wilkie denied the request for the necessary easement. Mr. Stern stated that he had contacted a contractor to develop access to the building site, that the contractor told Mr. Stern that no permit would be needed for the access work and that Mr. Stern believed him, and that the right-of-way easement had been regraded and improved from an existing logging road. Mr. Stern stated he did not do any of the work himself and was not present to oversee any of it. He claimed that he had evaluated the possibility of accessing the property from the southeast corner and that this would not be possible due to the steepness of the grade. Mr. Stern stated that a denial of the variance would result in the lot being undevelopable due to there being no access. In response to questions from Mr. Wilkie, Mr. Stern stated that he did not evaluate the cost of the alternate 90-degree crossing bridge because Mr. Wilkie was unwilling to grant the easement for it, and that Mr. Stern recalled meeting with Keith Florence but did not recall meeting with David Mounts. Mr. Stern stated he did not recall any conversation with Mr. Wilkie or with any grading contractor about an offer of any other right-of-way. In response to questions from Mr. Miceli, Mr. Stern stated that he would need his engineer to determine whether alternate access points were impossible due to topography, that Mr. Stern was not an expert on roadway excavation, and that the excavation had taken place 18 months to two years previously. Mr. Stern claimed responsibility for the work that he contracted and was performed on his property, and that he did receive a notice of violation, that he then directed all work to cease as instructed in the notice, that no other work had been done on the site since then, and did not recall any language in the notice about mitigating work that had been done already. On redirect, Mr. Stern confirmed that he had investigated access from the southeast and determined it to be impossible, and that the only other access would be via the existing right-of-way. In response to questions from the Board, Mr. Stern reaffirmed that he did not believe it would be possible to access the property from the southeast corner due to topography, but that his engineer would need to confirm that; that he had not engaged a hydrologist to evaluate impacts on the stream bank; and that he did not recall meeting with Mr. Wilkie to discuss an alternative access route that Mr. Wilkie stated he had proposed.
- **Wyatt Edsel** was tendered by Mr. Gulden and admitted by Chairperson Ball as an expert in engineering with experience in grading, waterways, stormwater, and erosion control. Mr. Edsel

delivered testimony in support of the application, explaining the stormwater plans that he had prepared for Mr. Stern's project and that had been submitted with the variance application. He stated that access to Mr. Stern's property from the southeast corner would be impossible due to topography. Mr. Edsel claimed that he could prepare a plan that provided the best possible stormwater and erosion control protections, and that additional measures could be provided on the final plans that would go above and beyond minimum requirements. Mr. Edsel stated that the project's erosion control plans were approved, but the stormwater plans were not. He claimed that he had investigated other possible access points to the south of the parcel, but that they would be topographically restrictive, potentially requiring numerous retaining walls to be constructed. Mr. Edsel indicated that the only County stormwater requirement that his plan failed to meet was the encroachment in the stream buffer that was the focus of the variance request. He stated that if the variance were to be denied, the project would need to be redesigned as high-density development which would add additional costs, measures, and time to the project, and that the thresholds for high-density development were not met by the existing scale of Mr. Stern's project. In response to questions from Mr. Wilkie, Mr. Edsel reaffirmed that the only low-density stormwater requirement not met by his plans was the impervious surface in the stream buffer, that Mr. Stern's only other access option as currently configured would not be possible due to topography, and that general grading design guidance would dictate 2:1 fill and 1.5:1 cut, with angles in excess of that requiring geotechnical evaluation for slope stability and erosion prevention, and that greater than 20 vertical feet would necessitate benching of slopes, but that he could not speak to the pitch or heights of existing graded slopes on the site and that that information would be included in the geotechnical report. Mr. Edsel acknowledged that there were other ways the road could have been graded, but that the deeded right-of-way severely limited the location and width, and that the graded areas that Mr. Wilkie was asking about were outside the area of the variance request. In response to questions from Mr. Miceli, Mr. Edsel stated that he was unsure whether any impervious surface had already been added within the stream buffer, as it had been more than a year since his last visit to the site, and that he did not see any erosion control measures present at the time of his visit because erosion control plans had not yet been developed. Mr. Edsel stated that he did not evaluate possible access along the west side of the property because no deeded access existed in this area, and that potential disturbance in the Steep Slope Zoning Overlay presented an additional concern with access from the southeast even though the existing driveway also crossed through the overlay. Mr. Edsel stated that the stream being encroached was a first-tier tributary to a trout stream. In response to questions from the Board, Mr. Edsel stated that any use of the deeded right-of-way would require the encroachment being sought through the variance, that he would need to evaluate the topography to determine whether Mr. Wilkie's proposed right-of-way location would be viable, that Mr. Edsel had not visited the site since Hurricane Helene, and that the geotechnical evaluation performed on the site had been summarized in a report. Mr. Edsel stated that he had prepared erosion control plans to respond to the notice of violation, and that those erosion control plans had been approved by the County but that he could not speak to the actual work done on the site since that approval. Mr. Edsel stated that he understood Ms. Hoyland's sole concern about the stormwater plans to be the parallel encroachment in the stream buffer and that the project otherwise complied with all requirements, and that the only means of addressing the concern

would be to seek the variance or to redesign the project for high-density standards. Mr. Edsel stated he did not know whether the high-density redesign would be technically feasible, and that it would require stormwater control measures to be installed in the right-of-way. He claimed that Mr. Wilkie stated he would not allow those to be installed in the right-of-way and that no language existed in the right-of-way agreement to permit any stormwater control measures.

- **Ms. Hoyland** was recalled by the Board to answer questions about possible conditions to be placed on the variance. Ms. Hoyland expressed concerns over the trout designation of the stream and suggested that permeable pavers may be an option, but that she would not want any conditions to be imposed that were prohibitive to the applicant or that would not be enforceable by the County. Ms. Hoyland confirmed that she was not sure what the final impervious surface material would be, but that any surface material could result in the heating of water that runs into the stream.

Party with Standing Presentation – William Wilkie:

- **Mr. Wilkie** stated that he had previously made an offer to Mr. Stern to grant a new right-of-way. Mr. Wilkie claimed that he had met with Mr. Stern's contractor, Keith Florence, and with Mr. Stern himself to discuss this, but that he had not witnessed any conversations between Mr. Florence and Mr. Stern. Mr. Wilkie stated that Mr. Stern had rejected the newly proposed right-of-way when it was offered to him. Mr. Wilkie stated that his proposal would have resulted in a less steep grade for the driveway and would be far from any stream, and that Mr. Stern had created his own problem by rejecting the offer. In response to questions from Mr. Gulden, Mr. Wilkie confirmed that he had never recorded an easement in the location where he proposed, and that only an offer had been made. He acknowledged that the Board did not have the authority to force Mr. Wilkie to grant an easement to Mr. Stern but stated that the claim in Mr. Stern's application that he was given no other option was untrue. In response to a question from Mr. Miceli, Mr. Wilkie reaffirmed his previous statement of making an offer to Mr. Stern for an alternative right-of-way.

Motion to continue case ZPH2025-00004 to the July 9, 2025 regular meeting of the Board:
Made by: **Katherine Morosani**
Seconded by: **Jeff Giltenboth**
Result: **PASS** (7-0)

1. **Joel Mazelis** – Yes
2. **Paul Wilczynski** – Yes
3. **Craig Allen** – Yes
4. **Andy Ball** – Yes
5. **Katherine Morosani** – Yes
6. **Carol McCrory** – Yes
7. **Jeff Giltenboth** – Yes

3. ZPH2025-00005 AK & RS Investments Variance

Description:

Wes Stroupe of AK & RS Investments, LLC, has applied for a Variance pursuant to the Zoning Ordinance of Buncombe County; Sec. 78-621(4) and Sec. 78-642, Table 2, Dimensional Requirements; for reductions to the front and rear setbacks for a storage building on tax lot PIN 9643-81-9433 (88 Underwood Road). Planner coordinating review: Jason Payne.

Motion to continue case ZPH2025-00005:
Made by: **Katherine Morosani**
Seconded by: **Craig Allen**
Result: **PASS** (7-0)

1. **Joel Mazelis** – Yes
2. **Paul Wilczynski** – Yes
3. **Craig Allen** – Yes
4. **Andy Ball** – Yes
5. **Katherine Morosani** – Yes
6. **Carol McCrory** – Yes
7. **Jeff Giltenboth** – Yes

G. Adjourn

- The meeting was adjourned at 4:05 P.M.