



Planning, Development & Inspections

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A Division of Community Services
P.O. Box 550 • Raleigh, NC 27602
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SUBDIVISION HARDSHIP VARIANCE APPLICATION

Subdivision Ordinance Regulation(s) Proposed to be Varied - cite each section(s) and identify requirement from which the variance(s) is (are) being requested; quantify variance - i.e. if this is a variance to allow an encroachment into a setback, give depth of encroachment and total square feet of area proposed to encroach into setback: The Applicant is requesting a variance from the requirement that construction & plat plans for all phases be submitted and approved within 7 years of the date of preliminary plan approval as required by Section 19-33-10(C) of the Unified Development Ordinance (UDO).

Property

Parcel Identification Number (PIN): 1812-90-1052; 1812-81-9103; 1812-90-5877; 1812-91-5195; and 1822-01-1008

Address: 0 Sandybrook Lane; 0 Hasentree Way; and 0, 7801, and 7805 Hinton Road

Total site area in square feet and acres: 3,922,578 square feet 90.05 acres

Zoning District(s) and Overlay Districts (if any) and land area within each: R-40W

List Conditions of any Conditional Use Zoning Districts:

Current land use(s): Vacant

Property Owner (list all property owners - use back or additional sheet if needed)

Name: Branaman, Inc

Address: 8310 Bandford Way

City: Raleigh State: NC Zip Code: 27615

E-mail Address: Fax:

Property Owner's Telephone Number:

Consultant (surveyor, engineer, etc. person to whom all correspondence will be sent)

Name: Mack Paul - Attorney for Applicant/Property Owner

Address: 421 Fayetteville St | Ste 530

City: Raleigh State: NC Zip Code: 27601

E-mail Address: mpaul@morningstarlawgroup.com Fax:

Applicant's Telephone Number: 919-590-0377 Relationship to Owner: Attorney

STATEMENT OF VARIANCE

In order to avoid extraordinary or unnecessary hardship, Section 19-36 of the UDO authorizes the Planning Board to modify or waive any provision of the UDO where it finds that because of extraordinary conditions or circumstances peculiar to the land, strict application of that provision would prohibit a subdivision which otherwise is in accordance with the spirit and intent of the UDO, provided that the waiver or modification will not result in a detriment to the public interest. The UDO, however, does not set forth a process by which to pursue such a modification. After consulting with the Planning Director and Office of County Attorney, we were advised to submit the Section 19-36 request as a variance pursuant to N.C.G.S. § 160A-388(d), which is made applicable to the County pursuant to N.C.G.S. § 153A-345.1. Consequently, this justification statement addresses the variance criteria, which are similar to the Section 19-36 criteria save for subtle nuances.

The Applicant, Branaman, Inc. (Branaman), seeks to modify the sunset provision in Section 19-33-10(C) of the UDO as applied to the preliminary approval of case S-07-06, entitled Hasentree Open Space Subdivision (Hasentree). After approval of a subdivision plan, Section 19-33-10 of the UDO confers upon the applicant the right to have subsequent final subdivision plans considered and approved under the provisions of the UDO as constituted at the time of preliminary plan approval. From the date of preliminary plan approval, Subsection C, the provision for which a variance is sought, gives an applicant two (2) years to submit for construction plan or plat approval for the initial phase of development and seven (7) years to submit construction and plat plans for all phases of the development. As the largest residential development under construction in Wake County with 672 lots permitted shortly before the economic downturn, Hasentree still has three undeveloped phases consisting of a total of 66 more lots. Based on the current absorption rate, Branaman will not be in a position to submit final plans for the remaining phases of Hasentree by the expiration date of June 2, 2018. As described below, a modification should be granted due to the extraordinary amount of infrastructure required to be installed at the outset of Hasentree's development that is unique to this property.

Unnecessary Hardship

To support a cutting-edge, environmentally sustainable development plan, Wake County required the developer of Hasentree to install state-of-the-art infrastructure and set aside significant open space prior to pulling any development permits. In addition, utilities were appropriately sized for all of the proposed Hasentree lots before the issuance of the building permit for the first home. As a result, the infrastructure for Hasentree already has been installed in a manner to serve the entire development to the UDO standards applicable at the time of preliminary plan approval. Specifically, the state-of-the-art water system consisting of more than 20 wells on and off site which provides water for all the proposed lots within Hasentree has already been installed. Additionally, the \$1.2 Million sewage treatment plant for the entirety of Hasentree has already been installed. The outdoor amenity, golf course, pool, and clubhouse for all of Hasentree has already been installed. To be clear, the only infrastructure remaining for Hasentree is that which will serve only the undeveloped portions such as extensions of water and sewer lines (but not upsizing of the system) and new residential roads.

The infrastructure and open space for Hasentree was designed comprehensively to support the build-out of the development in its current configuration. Moreover, the system is fully integrated such that the wastewater system supports the open space plan which supports the water system. If Branaman were required to resubmit the remaining phases for preliminary subdivision approval in isolation, it would present challenges both to County staff for processing as well as Hasentree from a code standpoint. Since the initial approval of Hasentree, there have been several changes to the UDO with respect to open space requirements, storm and waste water requirements, and other infrastructure. Strict application of the UDO to Hasentree would require the developer to meet these new infrastructure rules on previously approved lots for which the developer has already provided infrastructure. This is in direct contradiction to the premise behind the initial condition of approval, requiring the infrastructure to be installed upfront. Having already provided adequate infrastructure for all of Hasentree pursuant to the original condition of approval, an unnecessary

hardship would result by decoupling the infrastructure for the remaining phases from the comprehensive system already in place and subjecting new development within Hasentree to a new set of infrastructure rules which were enacted after the infrastructure for Hasentree had been completed.

Peculiar Condition

The hardship results from a condition peculiar to the specific preliminary plan approval for Hasentree. Generally, the utilities for a multi-phased subdivision may be installed in phases; however, a peculiar condition for the Hasentree approval prevented the developer from doing that. Unlike other residential subdivisions, the Hasentree approval was conditioned on the developer installing utilities that were appropriately sized for all the lots proposed in the entirety of Hasentree before even the issuance of a building permit for the first home.

As previously mentioned, the specific infrastructure for Hasentree is fully integrated to provide a state-of-the-art sustainable community. For example, the high-tech, sewage treatment plant has been designed to treat wastewater to a standard where the product can be reused for irrigation of the open space amenities. It avoids the environmental hazards posed by septic systems, which are prevalent with residential development in the Falls Lake watershed. This fully integrated system was designed specifically to perform optimally with the number of approved lots within Hasentree. Indeed, this aspect of the overall infrastructure is peculiar to the Hasentree subdivision in that if the total number of lots is compromised, whether more or less, the system could be at risk.

Not the Result of Actions Taken by Property Owner

This hardship is not the result of any action taken by the Applicant. The County imposed this hardship when it required this infrastructure as part of the initial phase without assurance of sufficient time to complete the development. In doing so, the County ensured that adequate infrastructure would be in place for the entire development regardless of how long the build-out took. As a condition of the approval, the developer did not have an option to avoid the initial infrastructure outlay. Further, the County received the benefit of a cutting edge, environmentally sustainable project that avoided the use of hundreds of individual septic tanks and other types of infrastructure with less protection for the environment.

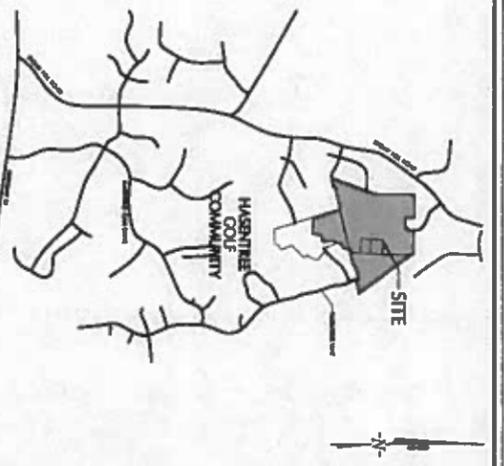
Consistent with Spirit, Purpose, and Intent

The requested variance is consistent with the spirit, purpose, and intent of the UDO. Specifically, development regulations throughout the UDO are aimed at ensuring that each development provides adequate infrastructure to serve it and mitigate its impacts. The Hasentree development has provided adequate infrastructure to serve all of the proposed lots within Hasentree as well as mitigate the impacts from those same lots. Providing infrastructure and mitigating impacts are hallmarks of public safety. Given that Hasentree has already provided adequate infrastructure and mitigated its impacts, granting the variance would secure public safety and achieve substantial justice by giving the developers credit for what they already have installed.

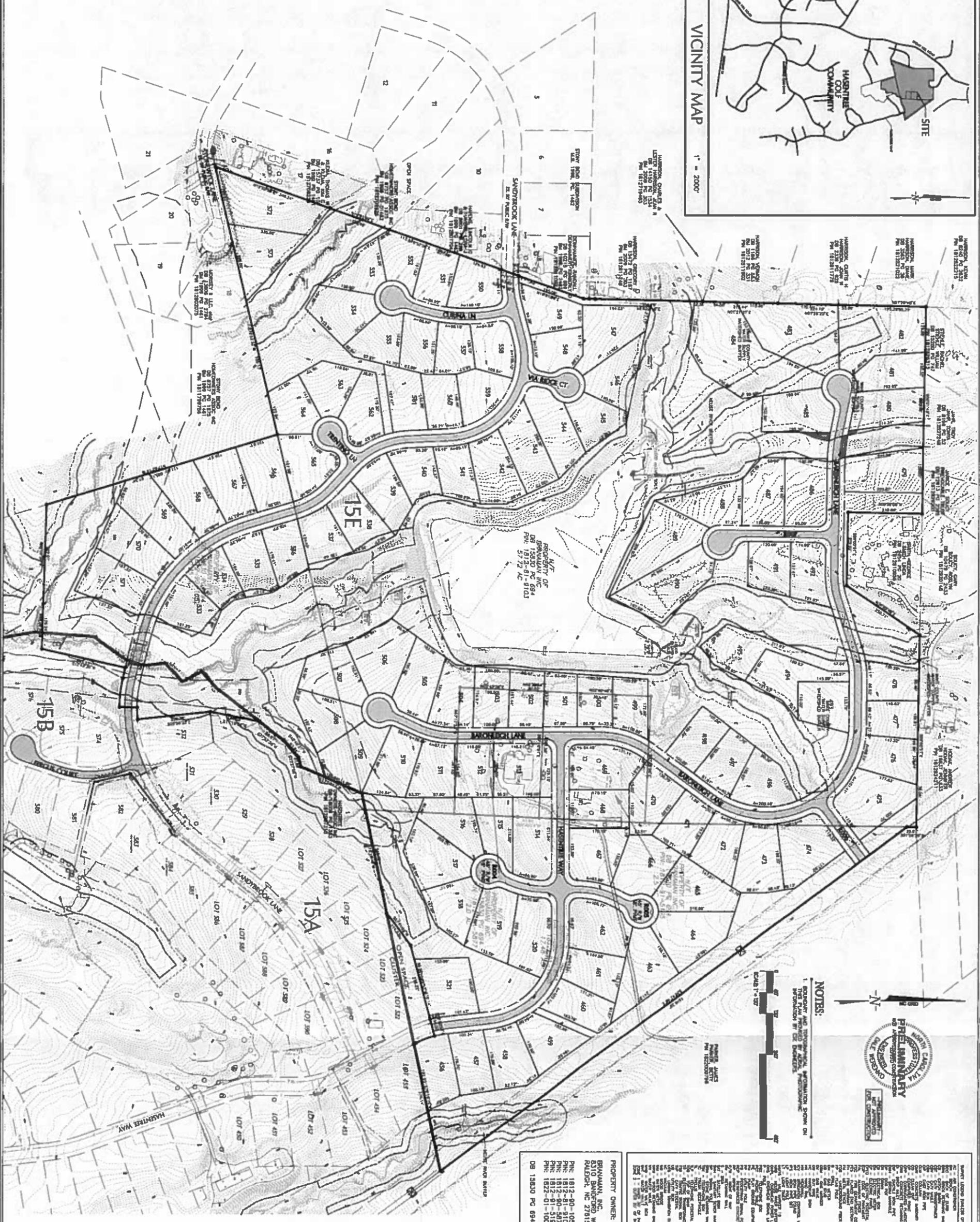
Conclusion

That the hardship is unnecessary is manifest inasmuch as the original condition of approval for Hasentree was meant to ensure that adequate infrastructure would be in place for the entire development. Strict application of the UDO to Hasentree would require the developer to install more infrastructure despite having provided adequate infrastructure already. This is because the UDO has been amended since the original Hasentree approval. It is important to note that all new development since Hasentree was approved took into account the impacts of the entire approved Hasentree subdivision; the infrastructure for which has already been installed. Thus, it stands to reason that new development within Hasentree should be allowed consistent with the preliminary plan approval. This is consistent with the spirit, purpose, and intent of the ordinance. Public safety has already been secured as the infrastructure for Hasentree has long been in

place. Thus, substantial justice can be achieved through grant of the requested variance.



VICINITY MAP
1" = 2000'



NOTES:

1. SUBDIVISION MAP TECHNICAL INFORMATION SHOWN ON THIS MAP IS BASED ON THE RECORD PLAT FOR THIS SUBDIVISION.
2. THE PROPERTY OWNER HAS BEEN ADVISED OF THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND THE REQUIREMENTS OF THE SUBDIVISION MAP ACT.
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10. THE PROPERTY OWNER HAS BEEN ADVISED OF THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND THE REQUIREMENTS OF THE SUBDIVISION MAP ACT.



PROPERTY OWNER:
BRUNNAN, INC.
8310 SANDHURST WAY
RALEIGH, NC 27615
PHN: 1812-80-1092
PHN: 1812-81-8103
PHN: 1812-81-5195
PHN: 1823-01-1008
DB 15830 PC 894

Soil
NORTH CAROLINA
REGISTERED PROFESSIONAL
ENGINEER
WITHERS RAVENEL
INC. LICENSE NO. 1182200796

Revisions

ADO NO. 2100141.10
DRAWN BY: [Name]
CHECKED BY: [Name]
DATE ISSUED: 11/17/2017
SCALE: 1" = 80'
Exhibit
B

HASENTREE WATERFORD
WAKE COUNTY PH 15 NORTH CAROLINA
SUBDIVISION VARIANCE SITE PLAN

WithersRavenel
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