

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

BEFORE THE BUNCOMBE COUNTY
BOARD OF ADJUSTMENT
ZPH2022-00019

In the Matter of:)
)
An Application for a Special Use Permit to)
Establish a Planned Unit Development (Level)
1) Consisting of a 120-unit residential)
development on tax lot PIN 9633-66-8510)
(824 Glenn Bridge Road).)
_____)

ORDER ON SPECIAL USE PERMIT
APPLICATION

THIS MATTER having come on for hearing before the Buncombe County Board of Adjustment (hereinafter the "Board") at its October 12, 2022, meeting upon application for a Special Use Permit ("SUP") (hereinafter the "Application") to establish a Planned Unit Development (Level 1) for a 120-unit residential development on tax lot PIN 9633-66-8510 (824 Glenn Bridge Road) (the "Property") by: John Boniface and Matt Cotton of TR 35 Glenn Bridge Rd, LLC, on behalf of Mills Gap Associates, LLC, owner (the "Applicant"). The Applicant was represented by attorney Derek Allen of the Allen Stahl + Kilbourne Law Firm.

Having considered the evidence presented to this Board, including the Application, the submitted development plan, the GIS maps, the staff report, the testimony presented, and the arguments advanced by the Parties, the Board hereby finds as follows:

FINDINGS OF FACT

1. That this matter was properly noticed and advertised, is within this Board's jurisdiction, and is ripe for its consideration.
2. That the Applicant applied for a Special Use Permit to establish a Planned Unit Development (Level 1) for a 120-unit residential development on the Property pursuant to the Zoning Ordinance of Buncombe County.
3. That the Applicant and all other parties with standing were given the opportunity to participate in the duly advertised and noticed hearing referenced above.
4. That, pursuant to the Buncombe County Zoning Ordinance, the Board finds as follows regarding the Special Use proposed in the Application:
 - A. Planned Unit Development Level I (PUDI) Standards (Sec. 78-678(b)(6)):
 - i) That the land within the PUD will be will not be under single ownership or management by the Applicant(s) before final approval and/or construction, or

proper assurances (legal title or execution of a binding sales agreement) have been provided, such that the development can be successfully completed by the applicant.

- ii) That the density is **consistent** **inconsistent** with the intent of the district in which it is located and conforms to that permitted in the district in which the development is located.
- iii) That the land uses **are** **are not** compatible with and do not violate the intent of the zoning district and do not disrupt the character of the community.
- iv) That the proposed land use **meets** **does not meet** minimum requirements for land development as follows:
 - a. the minimum lot size and requirements for interior setbacks **do** **do not** preserve the spirit and intent of this section and does comply with the density requirements for the zoning district with respect to the total development plan.
 - b. Proposed heights set forth in the applications **do** **do not** comply with the spirit and intent of this section with respect to the total development plan. Where building heights exceed the maximum allowed by the ordinance, this Board finds that unique elements of the development impose requirements for additional height that are not universal throughout the zoning district.
 - c. This Board finds that the minimum distance between buildings **will** **will not** ensure adequate air, light, privacy, and space for emergency vehicles.
- v) That the development **does** **does not** provide reasonable visual and acoustical privacy for all dwelling units. Fences, insulation, walls, barriers, and landscaping will be used for the protection and aesthetic enhancement of property and the privacy of its occupants, screening of objectionable views or uses, and reduction of noise. Multilevel buildings are located in such a way as to dissipate any adverse impact on adjoining low-rise buildings and do not invade the privacy of the occupants of such low-rise buildings.
- vi) That the structures located on the perimeter of the development **will** **will not** be set back from property lines and rights-of-way of abutting streets in accordance with the provisions of the zoning ordinance controlling the district.
- vii) This Board finds that the proposed parking **does** **does not** comply with the spirit and intent of this section.

viii) This Board finds that the conveyance and maintenance of open space, recreational areas and communally owned facilities are are not in accordance with G.S. 47-1 et seq. the Unit Ownership Act and/or any other appropriate mechanisms as specified.

ix) This Board finds that the building envelopes are are not shown in the submitted plans and depict the maximum expanse of the proposed footprint of the structure.

5. That, pursuant to 78-677(g) of the Buncombe County Zoning Ordinance, satisfactory provision and arrangement have been made for at least the following as it relates to:

A. The proposed use will not will adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use.

B. The proposed use will not will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood.

C. The proposed use will not will not cause or have adverse effects on surrounding properties due to noise, vibration, odor, or glare effects.

D. Satisfactory ingress and egress for the proposed use of the property and proposed structures has has not been provided. Particular attention has been paid to automotive and pedestrian safety and convenience, traffic flow and control.

E. Provision off-street parking and loading areas where required, with particular attention to the items in section 78-658 of the Buncombe County Zoning Ordinance have have not been arranged for.

F. Provision of adequate and proper utilities, with reference to locations, availability, and compatibility have have not been arranged for.

G. Provision of buffering, if deemed necessary, with reference to type, location, and dimensions have have not been arranged for.

H. Signs, if any, and proposed exterior lighting, with reference to glare, traffic safety, economic effect, and compatibility are are not in harmony with properties in the district.

I. Playgrounds, open spaces, yards, landscaping, access ways, and pedestrian ways, with reference to location, size, and suitability have have not been arranged for.

- J. Buildings and structures, with reference to location, size, and use are are not acceptable.
 - K. Hours of operation, with particular reference to protecting and maintaining the character of the neighborhood are are not acceptable.
6. That the following conditions are necessary to ensure that the proposed use will conform to the requirements and spirit of the Buncombe County Zoning Ordinance:
- A. A NCDOT Driveway Permit is required as part of the Site Plan Review permit.
 - B. Project must be constructed as depicted in the site plan.
 - C. Prior to commencement of land disturbance and construction activity the applicant shall submit a Site Plan Development permit for the entire project, indicating the following information:
 - i) exact location of all buildings and accessory structures
 - ii) commercial lighting plan (demonstrating it meets the standards of the Buncombe Zoning Ordinance)
 - iii) buffering, landscaping, and parking lot landscaping (if required)
 - iv) retaining walls (demonstrating they meet the standards of the Buncombe Retaining Wall Ordinance)
 - v) easements and rights-of-ways on the property
 - vi) approved E-911 road names (names to be approved by the Addressing Coordinator before submittal)
 - vii) any other conditions of site development approved by the Board of Adjustment.
 - viii) copy of approved permits from the US Army Corps of Engineers, the NC Department of Transportation, and the NC Department of Environmental Quality, where applicable.
 - ix) This Master Site Plan Permit approval shall not replace the requirement of pulling an individual Site Plan Permit for each building or structure within the development.
 - D. Applicant agrees to provide a second fire apparatus access point to the development on the Property before the first 100 dwelling units are completed, or to prohibit parking on the water main and/or hydrant side of every street within the development on the Property and to install appropriate signage and striping clearly indicating such restrictions, or to take other steps necessary to comply with Section D107 of the North Carolina Fire Code, as approved by the Fire Marshal.
 - E. Applicant shall install a solid fence at least six (6) feet in height along the Western and Eastern boundaries of the Property.
 - F. Applicant shall plant at least a fifteen (15) foot vegetative buffer along the Western and Eastern boundaries of the Property consisting of at least two rows of evergreen trees, which at the time of planting shall be at least five feet in height, and which at maturity shall be at least ten feet in height. In each row the trees shall be spaced no more than eight feet apart (from base of tree to base of tree) at time of planting, with trees in adjacent rows offset (staggered) four feet. The rows shall be no more than eight feet apart in a 20-foot buffer strip and seven feet apart in a 15-foot buffer strip and centered within

the buffer strip. Applicant may propose alternative species and spacing to meet the buffering intent with the approval of the zoning administrator.

G. Applicant must agree in writing to these conditions prior to commencement of site work.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Board makes the following conclusions of law:

The Applicant's request for a Special Use Permit, together with the imposition of conditions found necessary above, which are incorporated herein as is fully set forth, **meets** **do not meet** each applicable requirement of the Buncombe County Zoning Ordinance.

ORDER

Now therefore, based on the foregoing Findings of Fact and Conclusions of Law, the Buncombe County Board of Adjustment Orders as follows:

That the Applicant is hereby granted a Special Use Permit to establish a Planned Unit Development on the Property as requested, subject to the conditions referenced above, which are incorporated herein as if fully set forth.


That the Applicant's request for a Special Use Permit is hereby denied.

This the 12th day of October, 2022.

Buncombe County Board of Adjustment

By: 

Martin Moore, Chair

Attest: 

Jason Payne, Clerk

APPROVED AS TO FORM



J. Brandon Freeman
County Staff Attorney

CERTIFICATE OF SERVICE

I, the undersigned hereby certify proper notice has been made by the delivery of copy of the forgoing to the parties in this matter including the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective by:

personal delivery

electronic mail, or

first-class mail

to the following addresses:

Counsel of Record for the Applicant:

Derek J. Allen
Allen Stahl + Kilbourne
dja@asklawnc.com

Applicant:

TR 35 Glenn Bridge Rd. LLC
c/o Matthew Cotton and John Boniface
matt@trilogyc.com
john@trilogyc.com

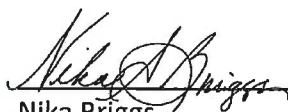
Landowners:

Mills Gap Associates LLC
1944 Hendersonville Rd, Suite E
Asheville, NC 28803

Mills Gap Associates LLC
PO Box 1083
Arden, NC 28704

Mills Gap Associates LLC
c/o John Simpson
johnsimpson2018@gmail.com

This the 18th day of October, 2022.



Nika Briggs