

TA 21-09 – Strategic Capital Partners SWIM Buffer Amendment

PART 1: DESCRIPTION

TA21-09 is a text amendment request made by Strategic Capital Partners allowing small SWIM Buffers to be impacted in the Corporate Business district with a conditional district rezoning.

PART 2: BACKGROUND

Under current standards, the only way to impact SWIM Buffers is by being one of the 8 exceptions listed in Section 8.25.10 **OR** by variance in accordance with Section 11.3 and implementing one of the nine mitigation options listed in Section 8.25.11(b).

The applicant is requesting an additional option to impact small SWIM Buffers (intermittent streams & perennial streams draining less than 50 acres) through a conditional district rezoning. The applicant's reason for the amendment and proposed language can be found in Attachment 2. The applicant proposed allowing impacts permitted by the Army Corps of Engineers (ACE) provided mitigation allowed by the ACE occurs within the corporate limits of the Town of Huntersville.

Huntersville Planning Department supports a text amendment providing an additional option to impact small SWIM Buffers through conditional rezoning because it is difficult for large footprint flex space buildings to design around them. Planning staff proposed alternative amendment language (Attachment 3) that provides for mitigating impacts using one of the nine options listed in Section 8.25.11(b). THE APPLICANT INDICATED THEY CAN SUPPORT THE STAFF'S PROPOSED LANGUAGE.

Staff also supports amending Section 11.25.11(b)(5) clarifying the mitigation option for bottom land hardwood preservation shall not include minimum tree preservation otherwise required by these regulations (i.e. required buffers, required tree preservation of Section 7.4) but shall include any bottom land hardwood preserved beyond the minimums established.

PART 3: RELEVANT SECTIONS OF THE HUNTERSVILLE 2040 COMMUNITY PLAN**Policy LU-8: Emphasize form and flexibility in Mixed-Use Centers, Employment Centers, the Town Core, and Activity Centers.**

Comment: Proposed amendment provides flexibility in the employment center where development options are limited for large footprint flex space buildings. Conditional zoning process and mitigation per Section 8.25(11)(b) allows town to consider impact on SWIM buffer on the merits of each case.

Policy EV-1: Support a balanced economy through job growth in target industry sectors.

EV 1.4: Review development standards to support business growth.

- Support efforts to improve efficiency and responsiveness of the development review process for development proposals. Regularly review the market to ensure that standards are in line with current demand.

Comment: Staff finds providing another option for minor SWIM buffer impacts through conditional zoning in the CB district reflects a proper balance of environmental protection and economic development.

Policy EOS-1: Support the preservation and enhancement of the natural environment, along with its scenic and cultural assets.

Comment: While the amendment allows impacts to intermittent streams and perennial streams draining under 50 acres, mitigation per Section 8.25.11(b) would be required.

PART 4: STAFF RECOMMENDATION

Staff recommends approval of alternative text amendment language (Attachment 3).

PART 5: HUNTERSVILLE ORDINANCE ADVISORY BOARD

The Huntersville Ordinances Advisory Board (HOAB) recommended approval of the proposed text amendment 8-1 on August 5, 2021.

PART 6: PUBLIC HEARING

August 16, 2021

PART 7: PLANNING BOARD RECOMMENDATION

August 24, 2021

PART 8: ATTACHMENTS

1. Applicant's Text Amendment Application
2. Applicant's Text Amendment Language
3. Staff's Alternate Text Amendment Language

PART 9: STATEMENT OF CONSISTENCY – TA20-01

Planning Department	Planning Board	Board of Commissioners
<p>APPROVAL: In considering the proposed amendment TA21-09, Planning Staff recommends approval based on consistency with LU-8, EV-1 and EOS-1 of the Huntersville 2040 Community Plan.</p> <p>It is reasonable and in the public interest to amend the Zoning Ordinance because the amendment allows an additional option to impact SWIM buffers subject to a conditional rezoning and mitigation.</p>	<p>APPROVAL: In considering the proposed amendment TA21-09, Planning Board recommends approval based on the amendment being consistent with <u>(insert applicable plan reference)</u></p> <p>It is reasonable and in the public interest to amend the Zoning Ordinance because... <i>(Explain)</i></p>	<p>APPROVAL: In considering the proposed amendment TA21-09, the Town Board recommends approval based on the amendment being consistent with <u>(insert applicable plan reference)</u></p> <p>It is reasonable and in the public interest to amend the Zoning Ordinance because...<i>(Explain)</i></p>
<p>DENIAL: N/A</p>	<p>DENIAL: N/A In considering the proposed amendment TA20-09, the Planning Board recommends denial based on the amendment being <u>(consistent OR inconsistent)</u> with <u>(insert applicable plan reference)</u>.</p> <p>It is not reasonable and in the public interest to amend the Zoning Ordinance because.... <i>(Explain)</i></p>	<p>DENIAL: In considering the proposed amendment TA20-09, the Town Board recommends denial based on the amendment being <u>(consistent OR inconsistent)</u> with <u>(insert applicable plan reference)</u>.</p> <p>It is not reasonable and in the public interest to amend the Zoning Ordinance because.... <i>(Explain)</i></p>



Text Amendment Application

Date of Application July 14, 2021

Fee

See Current Town of Huntersville Fee Schedule for Text Amendment to the Zoning/Subdivision Ordinance

Type of Change

New Addition to text of Zoning Ordinance / Subdivision Ordinance / Other

Revision/Modification to text of Zoning Ordinance / Subdivision Ordinance / Other

Description of Change

Proposed text amendment will affect the following:

Ordinance(s): Zoning Article(s): 8 Section(s): 8.25, 9, 10, 11

See Attached

Current Ordinance

See Attached

Proposed Text

See Attached

Reason for Proposed Change

Attach additional pages if needed.

NOTE: If the proposed text amendment effects property located along Hwy 73; is 2000 feet from an adjoining municipality, and/or the Mountain Island and Lake Norman Watersheds, additional peer review is required.

Applicant

Printed Name Richard Horn

Corporation Limited Liability Company Trust Partnership Other: _____

Signature  Date 7-14-21

Title CEO Email rhorn@strategiccapitalpartners.com

Address of Applicant 280 E. 96th Street Suite 250 Indianapolis, IN 46240

Property Owner (if different than applicant)

* Printed Name _____

Corporation Limited Liability Company Trust Partnership Other: _____

Signature _____ Date _____

Title _____ Email _____

Address of Property Owner _____

* Property owner hereby grants permission to the Town of Huntersville personnel to enter the subject property for any purpose required in processing this application.

Every owner of each parcel included in this application, or the owner (s) duly authorized agent, must sign this application. If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION. If additional space is needed for signatures, attach the Town of Huntersville Signature Addendum Form.

Contact Information

Town of Huntersville	Phone:	704-875-7000
Planning Department	Fax:	704-875-6546
PO Box 664	Physical Address:	105 Gilead Road, Third Floor, Huntersville, NC 28078
Huntersville, NC 28070	Website:	https://www.huntersville.org/228/Planning-Department

Date Received By Planning Department: _____

Staff Initials: _____

8.25 ATTACHMENT TO TEXT AMENDMENT

ORDINANCE: Huntersville Zoning Ordinance

Sections:

Section 8.25.9 Buffer Delineation

Section 8.25.10 Buffer Impacts Permitted Under Section 8.25, S.W.I.M.

Section 8.25.11 Appeals and Variances

Party Proposing the Amendment: Strategic Capital Partners

Reason for Requested Change:

1. The proposed amendment is consistent with the Purposes of the Huntersville Zoning Ordinance (the “Ordinance”) as set forth in Article 1.2 which states that the purpose of the zoning regulations is to encourage the most appropriate use of land throughout the corporate area in accordance with the Huntersville Community Plan and other adopted long range plans for the Town of Huntersville.
2. The proposed amendment is consistent with the Vision Statement, 2040 Town of Huntersville Community Plan, by, among other things, helping to provide meaningful economic development, balance the tax base, attract target industries, and provide more opportunities for people to work in Huntersville due to expansion of the industrial and commercial base.
3. The proposed amendment is consistent with the Policy Recommendations, 2040 Town of Huntersville Community Plan, by facilitating industrial and commercial growth in areas that are suitable for business and industrial development.
4. The proposed amendment is consistent with the Policy Recommendations, 2040 Town of Huntersville Community Plan, because the amendment improves a development standard that supports business growth.
5. The proposed amendment does not allow modification of S.W.I.M. Stream Buffers delineated by Mecklenburg County through its geographic information system (“GIS”), but only allows modification of intermittent streams, and perennial tributaries which drain less than 50 acres, that may be shown on an independent environmental study prepared by the applicant. This allows for industrial and commercial buildings to be built in areas preserved for industrial and commercial businesses without being required to reduce the size of the building, or not build at all, due to an intermittent or perennial tributary. Intermittent streams are those tributaries that hold water only intermittently, such as part of a year, or seasonally, during normal precipitation. They are often dry streams. Perennial tributaries hold naturally occurring surface water year- round. The proposed text amendment only allows modification for smaller, perennial tributaries that drain less than 50 acres, and that are not shown on Mecklenburg County GIS.

Proposed Changes to the Ordinance:

In order to accomplish this purpose, the Applicant proposes the following changes to the Ordinance:

1. Amend Section 8.25.9 Buffer Delineation, by adding the underlined section to .9 a):

a) Buffer boundaries including all buffer zones must be clearly delineated on all site-specific plans for Board of Commissioner approval, on all construction plans, including grading and clearing plans, erosion and sediment control plans, and site plans.

- As part of an approved conditional zoning, the Board of Commissioners may approve a modification of a stream buffer delineation as to:

- (i) intermittent streams that are shown in an environmental study prepared by the applicant,

- (ii) perennial streams that are not shown on Mecklenburg County GIS, drain less than 50 acres and that are shown in an environmental study prepared by the applicant

2. Amend Section 8.25.10 Buffer Impacts Permitted under Section 8.25, S.W.I.M., by adding the underlined section to .10:

The following buffer impacts are permitted, but design and construction shall comply with the specifications provided in the Charlotte-Mecklenburg Buffer Implementation Guidelines for stabilization of disturbed areas to minimize negative effects on the quality of surface waters.

- Near perpendicular (75° or greater) road crossings for connectivity or transportation links where the Town of Huntersville has granted site plan approval.
- Near perpendicular (75° or greater) utility crossings as approved by Charlotte-Mecklenburg Utilities.
- Parallel water and sewer utility installation as approved by Charlotte-Mecklenburg Utilities, where a logical and appropriate basis for the impact is demonstrated, where disturbance of the Stream Side Zone is minimized to the maximum extent practicable, and where guidelines for restoring vegetation within buffers disturbed as a result of parallel utility installation are met. These guidelines are specified in the Charlotte-Mecklenburg Buffer Implementation Guidelines.
- Public paths and trails parallel to the creek outside the Stream side Zone and near perpendicular stream crossings in any zone. Pathways must use existing and proposed utility alignments or previously cleared areas and minimize tree cutting to the maximum extent practicable. To the extent possible, pathways shall preserve existing drainage patterns and avoid drainage structures that concentrate stormwater.
- Incidental drainage improvements/repairs for maintenance.
- Individual pedestrian paths connecting homeowners to the stream in the form of narrow, pervious footpaths with minimal tree disturbance.
- New domesticated animal trails (farming) where existing trails are lost as a result of action beyond the farmer's control. Stream crossings should be constructed to minimize impacts to the Stream Side Zone and be maintained with fencing perpendicular to and through the buffer to direct animal movement.
- Mitigation approved by a state or federal agency acting pursuant to Sections 401 or 404 of the federal Clean Water Act.
- In the Corporate Business Zoning District, impacts permitted through the U.S. Army Corps of Engineers and/or the State Department of Environmental Quality under Sections 404 and/or 401 of the Clean Water Act (the "Clean Water Act"), so long as such impacts are mitigated in accordance with the Clean Water Act and the mitigation proposed for the site is limited to mitigation within the corporate limits of the Town of Huntersville or a payment in lieu of mitigation as permitted by the Ordinance.

3. Amend Section 8.25.11 of the Ordinance Appeals and Variances by adding the following underlined sentence to .11 b)(5):

b) Special Variance Provisions/Mitigation Techniques.

(5) Bottom Land Hardwood Preservation. On a 2:1 acreage basis for impacted stream and buffer area (2 acres of bottomland hardwood for each acre of disturbed area), the owner may provide a combination of the preservation of existing bottom land hardwood forest or other specifically approved natural heritage area by conservation easement or other legal instrument and the implementation of structural or non-structural BMPs to achieve specific pollutant removal targets within the impacted area. Bottom Land Hardwood Preservation may also include tree preservation areas that are required in Section 7.4 if approved by the Town Board as part of the conditional zoning, or Bottom Land Hardwood Preservation may include tree preservation areas that exceed the tree preservation requirements in Section 7.4.

Attachment 3: AN ORDINANCE TO AMEND ARTICLE 8.25 SW.I.M. (Surface Water Improvement and Management) Stream Buffers and 8.17 Water Quality

Section 1. Be it ordained by the Board of Commissioners of the Town of Huntersville that Article 8.25.10: of the **Zoning Ordinance** is hereby amended by adding the following bullet:

- **In the Corporate Business Zoning District as part of an approved conditional zoning, the Board of Commissioners may approve a modification to an intermittent stream buffer and perennial stream buffer draining under 50 acres without a variance subject to implementing one of the nine mitigation techniques in Subsection 11(b) below.**

Section 2. Be it ordained by the Board of Commissioners of the Town of Huntersville that Article 8.25.11(b)(5): of the **Zoning Ordinance** is hereby amended by adding the following:

- (5) Bottom Land Hardwood Preservation. On a 2:1 acreage basis for impacted stream and buffer area (2 acres of bottomland hardwood for each acre of disturbed area), the owner may provide a combination of the preservation of existing bottom land hardwood forest or other specifically approved natural heritage area by conservation easement or other legal instrument, and the implementation of structural or non-structural BMPs to achieve specific pollutant removal targets within the impacted area. Plan to be approved by Mecklenburg County Land Use and Environmental Services Agency. **Bottom land hardwood preservation shall not include minimum tree preservation otherwise required by these regulations (i.e. required buffers, required tree preservation of Section 7.4) but shall include any bottom land hardwood preserved beyond the minimums established.**

Section 3. Be it ordained by the Board of Commissioners of the Town of Huntersville that Article 8.17.12(b)(1)(b): of the **Zoning Ordinance** is hereby amended by adding the following:

- (b) Based on a Variance issued pursuant to Section 11.3 of this ordinance, unnecessary hardships would result from the strict application of this requirement **or as provided in Section 8.25.10.**

Section 4. That this ordinance shall become effective upon adoption.

HUNTERSVILLE ORDINANCE ADVISORY BOARD: August 5, 2021 (Approval 8-1)

PUBLIC HEARING DATE: 8-16-2021

PLANNING BOARD MEETING: 8-24-2021

TOWN BOARD DECISION: 9-20-2021