



Cabarrus County Government

Cabarrus County Planning and Zoning Commission Meeting
July 10, 2018 @ 7:00 P.M.
Board of Commissioners Meeting Room
Cabarrus County Governmental Center

Agenda

1. Roll Call
2. Approval of June 12, 2018 Planning and Zoning Commission Meeting Minutes
3. **New Business – Board of Adjustment Function:**

Petition VARN2018-00001 – Request for relief from landscape buffers and reduction of the required driveway width for a public use facility. Applicant is Cabarrus County. Property is 12900 Bethel School Road (PIN: 5544-72-3955).

4. Directors Report
5. Legal Update



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Mr. Chris Pinto, Chair, called the meeting to order at 7:05 p.m. Members present in addition to the Chair, were Ms. Mary Blakeney, Mr. Jeffrey Corley, Mr. Adam Dagenhart, Mr. James Litaker, Mr. Andrew Nance, Mr. Charles Paxton, Mr. Richard Price, Mr. Brent Rockett, Mr. Stephen Wise and Mr. Jerry Wood. Attending from the Planning and Zoning Division were, Ms. Susie Morris, Planning and Zoning Manager, Mr. Phillip Collins, Sr. Planner, Ms. Arlena Roberts, Clerk to the Board and Ms. Catherine Barr, Acting County Attorney.

Roll Call

Mr. James Litaker **MOTIONED, SECONDED** by Ms. Mary Blakeney to **APPROVE** the June 12, 2018, meeting minutes. The Vote was unanimous.

The Chair asked those persons who will be speaking on the Board of Adjustment case, or testifying during the public hearing, to stand to be sworn in. The Chair administered the oath.

The Chair read the following:

SUGGESTED RULES OF PROCEDURE FOR CABARRUS COUNTY PLANNING AND ZONING COMMISSION

1. The Cabarrus County planning staff person(s) shall first present the staff report and answer questions from the Commission. There will be no time limit on this presentation.
2. After the staff report and questions, the proponents (those speaking generally in favor of the case) will have a total of 15 minutes to speak and/or present documents in support of their position. The 15 minute time limit does not include questions directed to the proponents by the Commission.
3. After the proponents finish, the opponents (those speaking generally against the case) will have a total of 15 minutes to speak and/or present documents in support of their position. The 15 minute time limit does not include questions directed to the opponents by the Commission.
4. Each side will then have 3 minutes for rebuttal, with the proponents going first. Again questions directed to the speaker will not count against the time limit. This will conclude the public hearing portion of the meeting and the Commission will proceed to deliberation.
5. Each side is strongly encouraged to use a spokesperson to present the positions commonly held by each. Each side is also strongly encouraged to organize their speakers

and presentations to ensure that all persons wanting to speak will have time to do so.

6. If a speaker has questions of a person on the other side, such questions shall be addressed to the Commission members to be redirected to the person to be asked. There will be no direct questioning of one speaker by another except through the Commission.
7. Public demonstrations of support for a speaker's comments should be limited to clapping. Any other type of audible support shall be out of order and subject the offender to being removed from the building. Anyone speaking out of order shall likewise be subject to removal.
8. These rules are designed to have a full and fair hearing that is orderly and expeditious and avoid unnecessarily repetitious presentations.

Mr. Jeffrey Corley, **MOTIONED, SECONDED** by Mr. Brent Rockett to **APPROVE** the Rules of Procedure. The vote was unanimous.

New Business Board of Adjustment Function:

Petition VARN2018-00001 – Request for relief from landscape buffers and reduction of the required driveway width for a public use facility. Applicant is Cabarrus County. Property is 12900 Bethel School Road (PIN 5544-72-3955).

The Chair asked if there were any Board members that have any conflicts of interest or any information related to the case that needs to be disclosed at this time. There being none, he called on Mr. Collins to present the staff report.

Mr. Phillip Collins, Senior Planner, addressed the Board presenting the staff report for VARN2018-00001.

The applicant is in the process of developing the subject property as a Public Use Facility (Rob Wallace Park), which is permitted by right within the Office Institutional (OI) zoning district. The Applicant is seeking relief from the perimeter landscape buffering requirement of Chapter 9 and the driveway width requirement of Chapter 10.

The landscaping and buffering standards of the Cabarrus County Development Ordinance are located in Chapter 9. Section 9-6.1.D requires that development taking place on an existing site must meet the required perimeter buffer yard standards. Per Table 5 and Table 4 in Chapter 9, developing institutional uses are required to provide a buffer yard Level 2, when adjacent to residential properties. Based on the size of the parcel the required buffer yard is 75 feet.

The proposed location of the access road encroaches into the required 75 foot buffer area for a depth of approximately 47 feet, along the area that is common to PIN 5544-83-3637. Perimeter Landscape Buffers are required to be vegetated and undisturbed.

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Driveway width requirements are found in Chapter 10. Section 10-5.D requires that Aisle Widths (and driveways) be 24 feet wide. The applicant is requesting that the 24 foot requirement be reduced to 20 feet for the entire length of the access road, the part of the project that is located within the unincorporated area of the County.

The subject property is approximately 181.15 acres and is currently being developed as a Public Use Facility (County Park). The first phase which is primarily located in the Town of Midland is open to the public. The property has a network of bike and walking trails throughout, a large quarry pond is located in the southeast corner of the property. There is a 3700 square foot utility storage building located on the southern end of the property.

The subject parcel contains several water features that are subject to compliance with the Waterbody Buffer Zone.

The subject property is surrounded by residential, industrial and vacant properties and general industrial zoning and Midland zoning district, single family residential and industrial.

The subject property was originally zoned General Industrial (GI). Cabarrus County submitted a rezoning request for the zoning of the property to be changed to Office/Institutional (OI) and it was approved by the Planning and Zoning Commission on August 9, 2016.

The subject property is required to contain a #2 level Perimeter Landscape Buffer on the western, northern, and part of the eastern borders of the property, each of which abut residential uses.

The applicant contends that the proposed access road will follow existing dirt paths historically used on the park property (aerial photos are included).

The Board of Adjustment approved a variance at its September 2016 meeting for the subject property. The request was for multiple variances and included relief to allow for walking and biking trails to encroach in to the required 75 foot perimeter buffer.

The applicant is proposing to install landscape as shown in the typical submitted within the application with future road construction to mitigate the variance request if approved.

Should the Board of Adjustment grant approval of these variances, the following conditions should be considered as part of the approval and case record:

- Site plan review and approval is required subsequent to Board of Adjustment approval to ensure compliance with all applicable development requirements and conditions.
- The Granting Order, stating restrictions and applicable conditions of approval, shall be recorded with the deed of the property.
- The applicant shall procure any and all applicable federal, state, and local permits

prior to commencement of the project.

- Applicant shall install landscape as shown in the typical submitted with the application with future road construction to mitigate variance request.

Mr. Jonathan Marshall, Deputy County Manager, Cabarrus County, 65 Church Street S. Concord, NC, addressed the Board. He has been employed by Cabarrus County for 30 years as Land Use Planner, Planning Director, Development Services Director and now Deputy County Manager. He still deals with land use and development projects for Cabarrus County.

The variance they are requesting this evening is much like the one they requested in 2016. It is an attempt to use this land as wisely as we can and continue to use it in the way that it has been historically and to take advantage of some of those roads that were built dating back to when this was a farm in the 1940's and 1950's.

He said there are some numbers on this Master Plan (1 through 5), which are some pictures he will go through. He showed the Master Plan along Bethel School Road. He said where the first pond is, is the area that was developed primarily as Phase I and is the most active part of the park. There is a perimeter trail that has been developed all along the property lines, down around the rock quarry, and much of that was the subject of the variance that they requested in 2016. We built that trail to the standards that we promised at that time.

We did not feel like, when we were coming back to develop Phase II, which is going to be an extension of the access road, down towards the quarry and then a parking lot for people that were using the quarry and the trails in that area, that we would need a variance for the access road. But, as we began to look at it and the future development of the primary building in the center of the park, as well as the additional development of the primary open space in the park, it makes the most sense to the keep road in its historic location.

What we proposed is that the trail is already in place along that property line where they are requesting the variance. We would landscape between the trail and the road, but the road would be just interior from that, allowing the maximum use again of that rise in the park, so that you have the building constructed on the most prominent point and the maximum amount of open space in the park for future amenities.

Mr. Marshall said that Londa Strong, Active Living and Parks Director, as well as Byron Haigler, Assistant Active Living and Parks Director, are here tonight if the Board has any questions about the master plan and how that relates to what we are requesting to do here.

(He showed a series of pictures).

Picture #1, is showing that access road. We have improved it, but this is the historic location of the access road. From the master plan, this road is actually the correct distance from the property line; actually a little further. There is coming out of the woods, the trail that follows along the

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property line. It is about the point where the trail comes out of the woods that we begin getting next to the property line and following that variance that the Board granted previously.

Picture #2, is also looking south along the access road. But, in this case, you see the area in between the trail and the developed path that we would install landscaping as we built the access road. We are following the property line here. That land that is to the east (since we are looking south here), all this land that is wooded, is a parcel that fronts on Bethel School Road, but it is divided from the main parcel by Muddy Creek itself. This part is all heavily wooded and mature forest.

Picture #3, is really the path itself that has been developed. He is looking south, you can see the access road and the strip in between where there is some landscaping that we preserved and that is the landscaping we would accentuate.

Looking north you are seeing the same thing. The trees that are actually on the right side of this Picture #4 that is the highest point. That was the homestead sight on this property, so you see the path as well as the existing access road which we would improve and pave.

Finally, this is getting back to the northern most point where the trail emerges from the woods and where we begin to get next to the property line. Our purpose in this is to show how heavily wooded that is when we come out and that wooded area remains all along the trail. It follows along that wooded line.

Mr. Marshall said the second part of their variance request is to have the access road itself be 20 feet wide. He knows that has been a debate as the Board has gone through different development proposals. The fire code allows a 20 foot wide road, but the enforcement from our ordinance has been 24 feet. The reason they want a 20 foot access road is because we do not allow parking on either side and is enforced by the ranger staff as well as Sheriff Deputies if necessary.

In addition to that, the 20 foot wide access road slows speeds. If you look at Frank Liske Park you find that the majority of our access roads throughout Frank Liske Park is 20 feet or less in width. Even with that in place we have had to put in speed bumps and other traffic calming measures. The smaller width road slows traffic and people naturally want to go slower because it is less width and in this case where we have a trail there, where we have an active park throughout the open space, we want to slow speeds in any way that we can.

He said going back to the master plan, ultimately this access road does lead to a larger parking area; this is just a generalized design. We understand that the floodplain maps are being revised and we are going to need to do some revision to this parking area to comply with the floodplain maps. It will be adjusted as necessary and meet the standards of the ordinance once that is done.

Mr. Adam Dagenhart asked if the only reason they want to keep the road where it is, is for historic purposes; i.e. it could move. Obviously, you would have to tweak the site a little bit as far as the items inside.

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Mr. Marshall said it is both for its historic location. It was below the rise, so when you get to the site where the homestead was located, it was below that, because that is the prominent piece of land. By keeping the road in this location, that leaves that open to develop what will be the focal point to the park eventually, which is a nature science center, multipurpose building to be built in the center of the park. We will build that at that highest point. That allows us to put that on that high point, so that you have the vistas that we purchased this land to preserve and still have the access road over to the other side.

Mr. Dagenhart said the bullet point four on your drawing, does any of that parking lot encroach into the 75 foot buffer?

Mr. Marshall said this is just a generalized path. Ms. Morris felt like there may be a portion of it that does. So, we have already asked Benesch, who is doing our master planning, to adjust the final plans for that so that it would not. Jeff Ashbaugh is the landscape architect who is drawing this and he has indicated he has made those revisions.

The Chair opened the public hearing.

Ms. Londa Strong, Director, Active Living and Parks, 331 Corban Avenue, Concord, NC, addressed the Board, stating she is here to answer any questions the Board may have. We felt like this would be a better opportunity to utilize the pasturable vistas that are there already that use to be farm land. It is a beautiful site if you have not been down there and those trails have been used every day. The first two months we had over 10,000 people in there and that was in January and February. It is a heavily used park to be in that location and we would like to make it even better.

She has been working for Cabarrus County for 36 years. She said Frank Liske was being built when she came, so she had a little bit of input on that, but the rest of the parks she has been involved with.

Mr. Byron Haigler, Assistant Director, Active Living and Parks, 331 Corban Avenue, Concord, NC, addressed the Board stating that he is in favor of the variance and is happy to answer any questions the Board may have. We are definitely in favor of protecting those natural areas as much as possible and providing as much access as we can without having to provide the infrastructure in the middle of the property.

There being no further questions or discussion for staff or the applicant the Chair reminded the Board of the Variance Power:

1. Unnecessary hardship would result from the strict application of the ordinance.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography.
3. The hardship did not result from actions taken by the applicant or the property owner.

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance.

Mr. Charles Paxton said this request seems to be reasonable and some of the request are peculiar to this property. He recommends that the Board moves forward.

Mr. Dagenhart reminded the Board that not too long ago they denied a request for a road for a substation within the buffer and that was not even a hard surface; it was just a gravel access.

Mr. Jeffrey Corley understands the applicant's desire to be able to minimize the impact and maximize the open space. Those are all goals that we share he believes as a Board. We have shown that over time however, given the sheer size of this property and going through these four items (variance power) he struggles with most of them. If we had a real skinny spot in this property where we there wasn't a really another alternative to develop the site, he would feel a lot different. But as a Board, we have these four item here and if you read what they say, they are hard to accomplish for a reason. In his personal opinion in this case we are pushing a little too far on a large piece of land, but at the same time he certainly recognize the applicant's desire. He thinks we are little to close.

Mr. Richard Price disagrees with that. Looking at each one of the items, he thinks the applicant has clearly demonstrated that they meet each one. There is some leeway for us as Board in each one of those.

He said unnecessary hardship, certainly it is unnecessary with the strict application. The road is already there, so a strict application of the parameters that we have here is going to make them build a road somewhere else. He said that is an unnecessary hardship. He said in all four of those he can see where the applicant meets the criteria that we have in front of us.

Mr. Dagenhart would argue that they are not going to use that road, they are going to use the location. They are going to dig that road and undercut it and put all new sub-base and asphalt. They are not going to use anything existing there.

Mr. Price said that has not been presented to us in the application. We have only talked about location, not construction of the road.

Mr. Dagenhart will remind Mr. Price that few months ago we denied a variance request.

Mr. Price said we did and he was not in favor of that.

The Chair said as far a public safety goes, narrowing the road slows the traffic down. He has been to Frank Liske Park for soccer games and people go through the parking lot where there is no speed bumps to get around the 20 foot wide road. He does feel that it meets number four; consistent with the spirit, purpose, and intent of the ordinance.

Mr. Dagenhart said personally, with the width he has no qualm with the reduction from 24 to 20

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feet; that is fine if fire is okay with it. We have roads out there that are less than 20 feet that the public travels; he does not have an issue with that. He has an issue with encroaching 27 feet into a 75 foot buffer with a hard surface. It is not a pinch point, there is not topography, there is not stream buffers and there is not a body of water that is restricting them from being outside that buffer.

He said the adjacent property, he does not know if the County has looked at it. It is basically, landlocked by Muddy Creek and it is probably not developable. The County could potentially buy it or they could get a landscape easement, because the County does not control that property. There is nothing to stop that property owner from clearing every piece of landscaping that is there and that buffer is gone and then essentially, all you have is an eight foot landscape buffer.

Mr. Marshall said they have been negotiating for two plus years on that property. Primarily, the difficulty in acquiring it has been that they want to sell the entire piece out to Bethel School Road. This is undevelopable for them, but allows them possibly some additional density on the front portion. He won't say it is inaccessible, with enough engineering and enough money you are going to be able to access it, but the floodplain width is greater there, you are at the tow of the slope there so the soils are of a different type and with the shrink swell they are going to have a really difficult time accessing that.

He said they are very interested in selling it to us, but it has been a difficult process. We are also proposing to them to use a parks and recreation trust fund grant, where we will pay fifty percent of value and the trust fund would pay fifty percent of value, or in lieu of that, they would donate fifty percent and the trust fund would provide that. They really need the entire sale for that to make sense for them.

He does not disagree with Mr. Dagenhart that that could be in back, clear cut whether they access it or not and then we would lose that. We would be willing to expand the eight feet; the trail is already there.

He said the Board granted that variance to us and we have constructed it. We put it against that tree line for a reason, because it makes sense and it does shade the trail for much of the day. But, we could expand the eight foot between the road. He thinks that was just a minimum that their landscape architect had shown. If additional landscaping next to the trail between it and the access road would make a difference, we would be willing to except that as a condition.

Mr. Dagenhart is fine with where the trail is, it's just that hard surface. He asked if anyone had considered doing a landscape easement from the property owner, if the purchase cannot be worked out.

Mr. Marshall said they have not talked to them about an easement because we really would like to purchase the property. We just don't feel like it is going to be developed. We acquired another three acre piece, that again, allows us to have this access road and meet that buffer that minimized where we needed to ask for this variance. They have acquired some additional property over time and it is really just a matter of working out the timing to acquire that piece.

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The Chair asked how often the Muddy Creek runs. Is it a half an inch, a quarter inch, one inch of rain? Is it running all the time?

Mr. Marshall said it is a constant flow. There are beaver colonies on Muddy Creek, but Muddy Creek in this case, is not a first order stream, but it is getting close to some of the head waters. He is sure that when they had those rains last week this went up very rapidly and does flow into the flood plain and the people who live near there experienced that.

Mr. Marshall showed the yellow area on the map. He said that is the area where they would prefer not to adhere to the 75 feet of distance, because they feel it affects the rest of the property. There is a parking lot shown with that main building. Where you have the property line where we are requesting the variance, it's moving to the northwest and it goes almost due north from there. He said that is the three acre parcel that they acquired to get some greater distance there and also to acquire some of that hardwood forest. As you go down the trail there what appears to have been the original spring head for the house is down that trail going back toward the creek.

Mr. Dagenhart has a problem granting a variance on a master plan. He said what is the percentage on your master plan?

Mr. Marshall showed the area on the map and said this the last phase and is another piece of property that they acquired. We granted lifetime rights to the owner, Mrs. Thompson, who is in her upper 90's. Mrs. Thompson very fortunately, is still living and exercising her lifetime rights.

He said that is the last phase they would develop. This is really Phase II and unfortunately without a lot of amenities when you are first building a park, you are building spine roads and parking lots and bathrooms. We will be building as much of this spine road as possible, down toward the rock quarry, as well as the parking lot down towards the rock quarry, because the fishing amenity has been one of the most popular. He said if the money allows, we will also need to build a bathroom down that way, which then allows us to begin on another phase which is amenities surrounding the rock quarry itself.

He does not think they are much more than 10 to 15 percent into what ultimately is the development of this park. That said, this spine road is extremely important because it allows them to begin putting in shelters, additional playgrounds, other parking areas; allows us to maximize the amenities that they have.

It doesn't seem like a huge thing that the road has always been there, but one of the things that they have found with this land and the rock that you find when you are getting into this part of the slate belt, is that farmers put roads in a location for a reason.

When they accessed this, the original plan off of Bethel School Road did not show the road where it was, but ultimately we went back to aerial photographs and back to the property itself and found the original driveways and found that where we constructed the road followed that route pretty precisely. He said it is the same way with this road. It follows below this upper ridge

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line for a reason. Because of the topography and because that is naturally where it stayed the most stable over the years.

Mr. Dagenhart said 99 percent of the time a farmer is going to put his road on the outside edge of his property to maximize a field.

Mr. Marshall said historic aerials show that what was in cultivation on this property actually extended into these adjacent properties. It is a little difficult to tell in some cases, but he thinks it was also there because some of those trees were the homestead and the road was put there to access the homestead.

Mr. Dagenhart assumes it is a correct assumption, that there will be no access off Wallace Road for the park, except for maintenance; no public access?

Mr. Marshall said that is correct. There was an access point on the other side of the quarry that came off of Highway 601 and because of trespassing they removed that access also. We have a maintenance access that comes off of Bill McGee Road, which is off of Wallace Road. But, there will be no public access there unless it is pedestrian. We are still working with the business parks, with IPG which was recently developed, as well as Corning, to allow trails along Bill McGee Road and then ultimately pedestrian access there.

Mr. Dagenhart assumes emergency access vehicles can use it too.

Mr. Marshall said yes they can. It is gated, but the road that was built there has remained. Mr. Collins noted there was a storage shed; that is our maintenance shed that we use for this property.

Mr. Corley said he would personally love to hear some more discussion from the Board. He is stuck in his head.

The Chair was thinking about the easement on the outside for a buffer. He said did we run into that problem?

Mr. Dagenhart said we ran into that down at the WSACC Muddy Creek Treatment Plant, the same situation.

The Chair said their hardship is they do not have the land to make the proper buffer on land that is going to be taken if it gets cleared and grow back in pine or something.

Mr. Dagenhart said they have the land to make the buffer if they bring it in.

The Chair said if they bring it down the hill so all the water runs to it. He said in his opinion that is like an unnecessary hardship from the strict application of the ordinance. It is a park road and they are probably not going to do stuff where they are going to have wash outs; he would hope. That is why he asked the question about Muddy Creek.

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Mr. Brent Rockett understands the reasoning behind why they want to apply and leave that road where it is. Obviously, it adds to the features of that property, he will admit. In his own mind he is held up a little bit on the unnecessary hardship portion of this, while he thinks logically, there is a plan here that makes a great deal of sense in my mind, he struggles with as to whether or not it is truly an unnecessary hardship to not build that road differently. That is not him stating a stance necessarily, just in his own mind where he is stuck. Agreeing with Mr. Corley, he would like to hear if others have thoughts on that.

Mr. Price's opinion is that the road is already there. He has been a resident of that area for forty years. He has used that park many times, that road is exactly where it needs to be. It is very scenic going out through there. There is no need to go up the hill and bust another road in just to bust another road in. So he does think there is an unnecessary hardship when you already have the road there that is always been there. Why move the road just to move the road. It just does not make sense to him.

Mr. Dagenhart said because when you develop a piece of property, regardless of what was there before you are required to meet current ordinances.

Mr. Price understands that.

Mr. Dagenhart said just because it is a park and it is a county project does not mean it should.

Mr. Price would feel the same if it were Martians making the application for that piece of property. He said if you go down there and walk that road, it is where it should be. It is very pastoral back through there and he does not see the need to go cutting that hill down.

Mr. Stephen Wise said his biggest thing is the cost. Moving a road and spending maybe a couple hundred thousand dollars where they could get another amenity to this park. He said that is just common sense. Leave the road where it is and save the money on creating a new road. He has been there before, it is a very nice place and it could have great potential for that part of the county.

Mr. Litaker agrees and he is torn. We have rules that we have to abide by, no matter who, what, when, how, my brother, my mother, my best friend or somebody I don't even know. But, then he agrees, do we want to spend the extra money in the County, our tax dollars just to reposition it. He is cut in the middle too.

He has seen many times that we make a variance and the next thing you know it bites us in the butt; very quickly. Then all of a sudden they go strip the whole property on the other side. If you have to think, what would it be like if there were residents living there? That would be a whole different mentality.

Mr. Price said if they move the road to satisfy the ordinance, and then the neighboring landowner strips that, the movement of that road is not going to save the view.

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Mr. Dagenhart asked staff if the applicant is required to landscape that buffer.

Ms. Susie Morris, Planning Manager, said what is being proposed is that as the road comes in (she showed the three acres that they were talking on the map), they have moved the road; relocated it. Where the yellow is currently, as best as we can tell as staff, is where the encroachment would be. It currently does not have much landscape at all. It is pretty much crossed the property line. What they were proposing, was if the Board allowed the encroachment, they would come back and put that eight foot buffer in, which they talked about briefly at the last meeting when they were here. That was also put in as a condition, but it did not state any type of width or anything like that. It was just hey, when we come back, we are going to put a buffer in. She believes, like Mr. Marshall said, that they would be willing to try to accommodate some of that buffer.

Ms. Morris showed the actual trail that is there now. This pictometry is from January and you can see where the existing trail is. Where they are proposing the road, would be this dirt road that you see here. You have a couple of screen shots that show how that happens along there. You see the road kind of meanders and she believes that was the path that they wanted to take. There is some additional room in there besides the eight feet, which is what she thinks Mr. Marshall was trying to offer up. Where, if the Board did allow the road, they could put in additional landscaping. But, you can see this red line is the property line, there really is no landscape there.

Previously, when the Board considered the variance, there wasn't any talk of having to place any landscape back in that buffer, when the trails were allowed.

Mr. Dagenhart said at the time it was a passive park; this is not a passive park. This is probably the most intense use park that the county will have. He said not necessarily the volume of people, but the amenities that are offered. There is not one single park that has all this stuff.

Mr. Price said how is moving that road going to change that.

Mr. Dagenhart is sitting here reading these four items, and not one item in here says financial hardship.

Mr. Price disagrees, he thinks all four of them are addressed.

Mr. Dagenhart said where does it say that financial is a hardship?

Mr. Price has not contended yet, that it is a financial hardship.

Mr. Dagenhart said the discussion through the Board was why we should make the county spend the money, as if that was a financial reason that we shouldn't.

The Chair read the summary of the variance request.

Request #1, the applicant is requesting that they be allowed to install an access road in the required 75 foot perimeter landscape buffer.

Mr. Price does not have a problem with it in this particular case.

Request #2, the applicant is requesting that the width of the proposed access road be reduced from 24 to 20 foot.

The Chair likes the idea of 20 feet. It is a little bit safer, put some humps. It meet meets the fire code. The Sheriff's department says they can get in there.

Ms. Morris reminded the Chair that the applicant would like the Board to vote separately on those two items.

Mr. Dagenhart said in the application you have variance 1 and 2, but under each item it says paving in the landscape buffer. The buffer and the driveway width. You want us to break it into 1A and 1B, 2A and 2B?

Ms. Morris said correct. She said there are two overall things, one is the landscape buffer and the second is the driveway width.

When the last variance was granted, they were not required to go back in and plant and entire 75 foot buffer. They offered up some type of buffering in between the trails and the proposed road when it was developed, but there were no specifics to that; so that is number 1. Number 2, is whether or not they should be allowed to go down to the 20 foot that the fire code permits.

There being no further discussion, Mr. Richard Price **MOTIONED, SECONDED** by Mr. Charles Paxton, to **APPROVE** the variance request to install an access road in the required 75 foot perimeter landscape buffer, with the condition, that the buffer be established to its maximum, practical ability. The vote was 6 to 3 with Mr. Dagenhart, Mr. Corley and Mr. Litaker voting against. **MOTION DENIED.**

There being no further discussion, Mr. Adam Dagenhart **MOTIONED, SECONDED** by Mr. Brent Rockett to **APPROVE** the variance request to reduce the width of the proposed access road from 24 to 20 feet. The vote was unanimous. **APPROVED.**

Directors Report

Ms. Susie Morris introduced a new staff member, Mr. Josh Jurius, Planner. He comes to us from the City of Wilson, NC, where he worked for about six years.

The Harrisburg Land Use Plan went to the Board of Commissioners work session this past Monday and it is on the agenda for their regular meeting. The meeting will be the third Tuesday this month, not the third Monday, if anyone would like to attend.

Planning and Zoning Commission

Minutes

July 10, 2018

We will still have to go through that (HALUP) with a fine tooth comb, since things were kind of being presented at the last minute. We will have to work on that and then hopefully, have it posted for the general public. There weren't a lot of questions at the work session and she feels like it will be approved.

We will take a look at the land use plan that Mt. Pleasant has adopted. It is part of our overall Eastern Area Plan. We will take a look at that and see if we feel like it is worth us adopting that as well. There are some areas that it calls for outside of the Town limits, but it is mostly inside the Town limits and where their utilities are located or will be located.

Based on the School of Government session that we went to, she asked them what they thought would be the best way for us to proceed, with kind of pulling the plans off the shelf and then also in light of the new legislation that was passed, where essentially if you adopt a rezoning that is not consistent with the plan, that essentially you are amending the land use plan at that time.

She talked with Adam Lovelady (School of Government) and his suggestion was pretty much that right now, the statutes do not particularly say how you have to do that. She thinks what we will do is end up adding an appendices to the back of the document that says this is the rezoning, this is the date, have the Board approved it, have it incorporated and then when we go to update that plan that list will already be there.

The Board members whose terms are set to expire in August, should have received an email from Ms. Morris. Mr. Price, Ms. Blakeney, Mr. Wise and Mr. Nance, some of you have maxed out your time and some of you have not, so if you would like to hang around with us on Tuesday evenings, we would love to have you stay.

Legal Update

Ms. Catherine Barr, introduced herself stating that she has been working with Richard Koch, County Attorney for six years. She is filling in for him.

Phillip Little update: he has failed to pay the fines associated with the sign violations. She has filed a Motion for Contempt of Court. It was originally scheduled in June. Mr. Little did not appear, but he did get served with the Motion. Therefore, we have rescheduled that hearing for that Motion she believes it is July 22nd.

Canadian Solar NOV update: it is her understanding that they submitted a new application today. That will go through the process of being looked at. It is Canadian Solar's plan, as she understands it, to be in front of the Board at the August meeting. To try to get the Board's approval on the amended/new plan, so that we can get them back on track and get those NOV's secured and hopefully satisfy the neighbors in the process.

Planning and Zoning Commission

Minutes

July 10, 2018

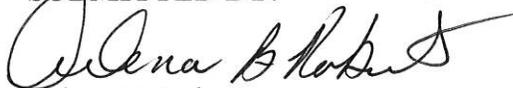
There being no further business, Mr. Richard Price, **MOTIONED, SECONDED** by Mr. Brent Rockett to Adjourn the meeting. The vote was unanimous. Meeting adjourn at 7:58 p.m.

APPROVED BY:



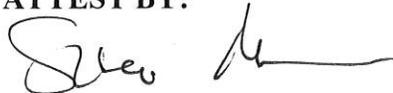
Mr. Chris Pinto, Chair

SUBMITTED BY:



Arlena B. Roberts

ATTEST BY:



Susie Morris, Planning and Zoning Manager

Memo

To: Jonathan Marshall, Agent
Cc: Phillip Collins, Sr. Planner, Londa Strong, Active Living and Parks
From: Lynn Roberts, Clerk to the Planning and Zoning Commission
Date: November 14, 2018
Re: Granting Order for Variance VARN2018-00001

Attached please find the recorded Granting Order for part of Variance, VARN2018-00001. On July 10, 2018, the Board of Adjustment granted the variance for the width of the access road and denied the variance for the location of part of the access road in the perimeter landscape buffer.

A condition of approval for your proposed project is that the Granting Order, stating restrictions and applicable conditions of approval, must be recorded with the deed to the property so that it appears during a due diligence search. The Granting Order has been submitted to the Register of Deeds Office for recordation.

Also attached is a copy of the paid receipt for the fees associated with recording documents with the Register of Deeds.

If you have any questions, please call our office at 704-920-2141.

FILED
CABARRUS COUNTY NC
WAYNE NIXON
REGISTER OF DEEDS

FILED Nov 14, 2018
AT 11:53 am
BOOK 13265
START PAGE 0231
END PAGE 0236
INSTRUMENT # 28476
EXCISE TAX \$0.00

BJW

STATE OF NORTH CAROLINA

COUNTY OF CABARRUS

CABARRUS COUNTY PLANNING
AND ZONING COMMISSION
BOARD OF ADJUSTMENT
VARN 2018-00001

In re

CABARRUS COUNTY)
VARIANCE APPLICATION)
(Jonathan Marshall, Agent-Applicant))

ORDER GRANTING
VARIANCES

THIS MATTER came before the Cabarrus County Planning and Zoning Commission, sitting as the Board of Adjustment, on July 10, 2018 on the application of Cabarrus County (the "County") for two variances on the "Property" of the County located at 12900 Bethel School Road, Cabarrus County, North Carolina and designated PIN 5544-72-3955.

Notice was given to the County and to adjacent property owners as required by law.

A full complement of nine Board member was present to hear this variance application. All of the witnesses were duly sworn and documents were received in evidence. There were no witnesses in opposition to the variance application.

After hearing and receiving the evidence, the Board makes the following

FINDINGS OF FACT

1. The County is in the process of developing the Property as a Public Use Facility (Rob Wallace Park), which is permitted by right within the Office Institutional ("OI") zoning district,
2. The County is seeking relief from the perimeter landscape buffering requirement of Chapter 9 and the driveway width requirement of Chapter 10 of the Cabarrus County Development Ordinance.

BJW

3. The landscaping and buffering standards of the Cabarrus County Development Ordinance are located in Chapter 9.
4. Section 9-6.1.D. requires that development taking place on an existing site must meet the required perimeter buffer yard standards.
5. Per Table 5 and Table 4 of Chapter 9, developing institutional uses are required to provide a buffer yard #2 adjacent to residential properties.
6. Based on the size of the parcel, which is 181.15 acres, the required buffer yard is 75 feet.
7. The proposed location of the access road encroaches into the required 75 foot buffer area for a depth of approximately 47 feet along the area that is common to PIN 5544-83-3637.
8. Perimeter landscape buffers are required to be vegetated and undisturbed.
9. Driveway width requirement found in Chapter 10, Section 10-5.D require that Aisle Widths (and driveways) be 24 feet.
10. The County is requesting that the 24 foot requirements be reduced to 20 feet for the entire length of the access road (project located in unincorporated Cabarrus County).
11. The Board of Adjustment approved a variance for the Property at the July, 2017 meeting. The request was for multiple variances and included relief to allow for walking and biking trails to encroach in to the required 75 foot perimeter buffer.
12. County is proposing to install landscape as shown in the typical submitted with the application with future road construction to mitigate variance requests if approved.
13. The alleged hardships or practical difficulties are unique and singular to the Property of the person requesting the variance and are not those suffered in common with other property similarly located.
14. The proposed interior access road follows historic pathways used on the park Property and the location allows the Property owner to maximize use of the unique features of the Property.
15. The requirement of a 24-foot wide driveway could potentially encourage speeds that are not complementary to the type of pedestrian use that would be expected of a public park.
16. A 20-foot driveway would encourage slower speeds for vehicular traffic using the facility.

17. The alleged hardships and practical difficulties, which will result from failure to grant the variances, do not extend to the inability to use the land in question for any use in conformity with the provisions of the ordinance and include substantially more than mere inconvenience and inability to attain a higher financial return.

18. The access road could be shifted to a new location outside of the perimeter landscape buffer.

19. That location would move the access road from its exiting/historic location and would shift all elements further in the Property and reduce interior open space.

20. The interior roadway width requirement of 24 feet is more characteristic of an urban environment.

21. The reduced width is more characteristic of a rural road through a natural environment.

22. Other parks throughout the County have used a similar design for interior access roads.

23. The variances, if allowed, will not substantially interfere with or injure the rights of others whose property would be affected by allowance of the variances.

24. The proposed location of the access road driveway is where gravel or dirt drives already exist.

25. A wider driveway may encourage speeds that are less pedestrian friendly.

26. The variance for the width of the access road is in harmony with and serves the general intent and purpose of the ordinance but the location of the parts of the access road in the perimeter landscape buffer is not in harmony with the purpose and intent of the ordinance.

27. The variance for the perimeter landscape buffer is requested in an area where a variance for the walking path has already, by been granted and where the access road has existed historically.

28. The adjacent property is heavily wooded with access from Bethel School Road severely limited due to the creek crossing required, the width of the flood plain and soil conditions.

29. The intent of the 24-foot driveway requirement is to safely allow the passage of vehicles traveling in opposite directions.

30. A 20-foot driveway would allow for the passage of vehicles in a more controlled fashion and is the minimum requirement of the Fire Code.

31. The variance for the width of the access road will result in substantial justice being done, considering both the public benefits intended to be secured by this ordinance and the individual hardships that will be suffered by a failure of the Board to grant a variance, but the variance for the location of the access road in the perimeter landscape buffer will not result in substantial justice being done.

32. Exhibits and testimony were provided to show how the character would be maintained by locating the paved access road on the historic location of the dirt road.

Based on the foregoing Findings of Fact, the Board makes the following

CONCLUSIONS OF LAW

1. Unnecessary hardship would result from the strict application of the ordinance. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the Property.

2. The Board adopts and incorporates by reference the above Findings of Fact.

3. 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.

4. The Board adopts and incorporates by reference the above Findings of Fact.

5. The hardship did not result from actions taken by the County as 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.

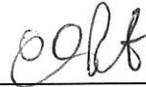
6. The Board adopts and incorporates by reference the above Findings of Fact.

7. The requested variance for the width of the access road is consistent with the spirit, purpose, and intent of the Ordinance such that public safety is secured and substantial justice is achieved, but the requested variance for the location of part of the road in the perimeter landscape buffer is not consistent with the spirit, purpose and intent of the Ordinance.

8. The Board adopts and incorporates by reference the above Findings of Fact.

Based on the foregoing Findings of Fact and Conclusions of Law, the Cabarrus County Planning and Zoning Commission sitting as the Board of Adjustment hereby grants the variance for the width of the access road and denies the variance for the location of part of the access road in the perimeter landscape buffer. The special conditions of approval are attached as Exhibit A and incorporated by reference. This variance Order shall run with the land with reference to the Property and shall be recorded in the Cabarrus County Public Registry.

This 13 day of November, 2018, *nunc pro tunc* to July 10, 2018.



Chris Pinto
Chair
Cabarrus County Board of Adjustment

ATTEST:

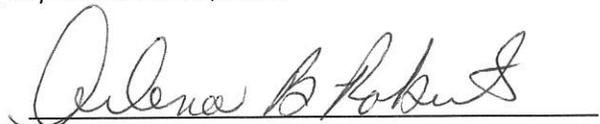


Arlena Roberts
Clerk to the Board of Adjustment

STATE OF NORTH CAROLINA
COUNTY OF CABARRUS

I, Arlena B. Roberts, a Notary Public in and for said County and State, do hereby certify that Chris Pinto, Chair of the Cabarrus County Board of Adjustment, personally appeared before me this day and acknowledged the due execution of the foregoing Order.

Witness my hand and notarial seal, this 13 day of November, 2018.



Notary Public

My commission expires: March 21 2022

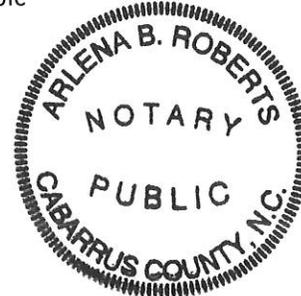


EXHIBIT A

Conditions of Approval

1. Site plan review and approval is required subsequent to Board of Adjustment approval to ensure compliance with all applicable development requirements and conditions.
2. The Granting Order, stating restrictions and applicable conditions of approval, shall be recorded with the deed of the Property.
3. County shall procure any and all applicable federal, state and local permits prior to commencement of the project.
4. County will install landscape as shown in the typical submitted with the application with future road construction to mitigate variance requests.



Received By:
Jewel Williamson

**Cabarrus County
Register of Deeds**

P.O. Box 707
Concord, NC 28026
(704)920-2112

Wayne Nixon, Register of Deeds

Receipt For : CABARRUS COUNTY ZONING DIVISION

Instrument Type : ORD
Instrument # : 28476
Book/Page : 13265 / 0231-00236 Pages : 6
1st Grantor : CABARRUS COUNTY PLANNING AND ZONING COMMISSION
1st Grantee : JONATHAN MARSHALL AGT
Description: ORDER GRANTING VARIANCES

Receipt # : 2018-400178
Date : 11/14/2018 11:53am
Document : 1 of 1

Description	Qty	Unit Cost	Extended
Miscellaneous document - first 15 pages	1	26.00	26.00
	Document 1		26.00
	Grand Total		26.00
	Voucher		-26.00
	Balance		0.00

Zoning Division
Cabarrus County
Fee Transfer for Recording Documents

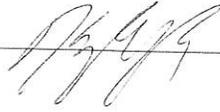
Variance Granting Order – VARN2018-00001 – Cabarrus County

Amount: \$26.00

Date: 11/14/2018

Account number to be paid from: 00191952-9607

Authorized Signature: _____

A handwritten signature in black ink, appearing to be 'D. B. Jean', written over a horizontal line.

This instrument has been pre-audited in the manner
Required by the Local Government Budget and
Fiscal Control Act.

By: Dusan B. Jean
Finance Director, Cabarrus County, NC

Date: 11-14-18

PLANNING STAFF REPORT
 CABARRUS COUNTY PLANNING AND ZONING COMMISSION
 07/10/2018

Staff Use Only:
 Approved: _____
 Denied: _____
 Tabled: _____

Variance: VARN2018-00001

Applicant Information: Jonathan Marshall, Deputy County Manager
 Acting as Agent for Cabarrus County Government
 PO Box 707
 Concord, NC 28027

Owner Information: Cabarrus County
 PO Box 707
 Concord, NC 28026

PIN: 5544-72-3955

Area in Acres: +/- 181.15

Purpose of Request: The applicant is in the process of developing the subject property as a Public Use Facility (Rob Wallace Park), which is permitted by right within the Office Institutional (OI) zoning district. The Applicant is seeking relief from the perimeter landscape buffering requirement of Chapter 9 and the driveway width requirement of Chapter 10.

Perimeter Landscape Buffer

The landscaping and buffering standards of the Cabarrus County Development Ordinance are located in Chapter 9. Section 9-6.1.D requires that development taking place on an existing site must meet the required perimeter buffer yard standards. Per table Five and Table Four in Chapter 9, developing institutional uses are required to provide a buffer yard #2 when adjacent to residential properties. Based on the size of the parcel, the required buffer yard is 75 feet.

The proposed location of the access road encroaches into the required 75 foot buffer area for a depth of approximately 47 feet along the area that is common to PIN 5544-83-3637. Perimeter landscape buffers are required to be vegetated and undisturbed.

Driveway

Driveway width requirements are found in Chapter 10. Section 10-5.D requires that Aisle Widths (and driveways) be 24 feet. The applicant is requesting that the 24 foot requirement be reduced to

20 feet for the entire length of the access road (project located in unincorporated Cabarrus County.)

Site Description:	The subject property is approximately 181 acres and currently being developed as a Public Use Facility (County owned Rob Wallace Park). The first phase which is primarily located in the Town of Midland, is open to the public. The property has a network of bike and walking trails throughout. A large quarry pond is located in the southeast corner of the property. There is a 3,700 SF utility/storage building located on the southern end of the property. The subject parcel contains several water features subject to compliance with the Waterbody Buffer Zone
Current Land Uses:	Public Use Facility (Rob Wallace Park)
Adjacent Land Uses:	North – Single Family Residential & Vacant East – Industrial, Vacant, Single Family Residential South – Industrial (McGee Brothers Company & Intertape Polymer Group plant) & Vacant West – Single Family Residential
Permitted Uses:	All uses permitted within the Office Institutional zoning district are allowed on the subject property
Existing Zoning:	OI (Office Institutional)
Surrounding Zoning:	North: SFR (Midland Single Family Residential) East: SFR (Midland Single Family Residential), IND (Midland Industrial), GI (General Industrial) South: GI (General Industrial) West: GI (General Industrial), SFR (Midland Single Family Residential)
Signs Posted:	06/22/2018
Newspaper Notification 1:	06/27/2018
Newspaper Notification 2:	07/04/2018
Notification Letters:	06/22/2018

Exhibits

- Exhibit A – Staff Report
- Exhibit B – Application
- Exhibit C – Proposed Site Plan
- Exhibit D – Pictometry Photos
- Exhibit E – Property Maps
- Exhibit F – Adjacent Parcel Letter & List
- Exhibit G – Variance Signs

Agency Review Comments

Emergency Services Review:

I see no issues that would impact EMS response (per Justin Brines, EMS Assistant Director).

Fire Review: Approved

We have no issue with the reduction in driveway width from 24' to 20' and no issue with the encroachment of the landscape buffer. (per Steven Langer, Fire Marshal).

NCDOT Review: N/A

Request is internal and connection to Bethel School Road right of way is in the Town of Midland.

Sherriff's Department Review:

I don't see anything here that would disrupt our services here at the sheriff's office. (per Ray Gilleland, Lieutenant Sherriff).

Soil & Water Conservation Review:

I see no problem with the landscape buffer encroachment. Also, Muddy Creek that runs beside the proposed parking lot is a perennial stream that would require the buffer. (per Daniel McClellan, Sr. Resource Conservation Specialist)

Zoning Review: Approved

See staff report (per Phillip Collins, Sr. Planner)

History / Other Information

- The subject property was originally zoned General Industrial (GI). Cabarrus County submitted a rezoning request for the zoning of the property to be changed to Office/Institutional (OI) and it was approved by the Planning and Zoning Commission on August 9, 2016.
- The subject property is approximately 181 acres and is currently being developed as a Public Use Facility (County Park). Phase one of the park is currently open.

- The subject property contains several water features that are subject to the Waterbody Buffer Zone.
- The subject property is required to have a #2 level Perimeter Landscape Buffer on the western, northern, and part of the eastern borders of the property, each of which abut residential uses.
- The applicant contends that that the proposed access road will follow existing dirt pathways historically used on the park property.
- The Board of Adjustment approved a variance at its September 2016 meeting for the subject property. The request was for multiple variances and included relief to allow for walking and biking trails to encroach in to the required 75 foot perimeter buffer.
- Applicant is proposing to install landscape as shown in the typical submitted with the application with future road construction to mitigate variance requests if approved.

Conditions of Approval

Should the Board of Adjustment grant approval of the variances, the following conditions should be considered as part of the approval and case record:

- Site plan review and approval is required subsequent to Board of Adjustment approval to ensure compliance with all applicable development requirements and conditions.
- The Granting Order, stating restrictions and applicable conditions of approval, shall be recorded with the deed of the property.
- The applicant shall procure any and all applicable federal, state, and local permits prior to commencement of project.

Applicant proposed conditions:

- Applicant will install landscape as shown in the typical submitted with the application with future road construction to mitigate variance requests.

CABARRUS COUNTY VARIANCE



STAFF USE ONLY:

APPLICATION

Application/Accela#: VAR2018-00001
 Received By: PEC
 Date Filed: 6-12-18
 Amount Paid: \$1618

Instructions

1. Schedule a pre-application meeting with Staff. During this meeting, Staff will assess the proposed variance request to evaluate options that may be available to you through the zoning ordinance. If it is necessary to proceed with the request, Staff will explain the procedures and requirements, including the thresholds of consideration for Variance requests.

2. Submit a complete application to the Planning Division. All applications must include the following:
 - Cabarrus County Land Records printout of all adjacent property owners. This includes properties located across the right-of-way and all on-site easement holders. The list must include owner name, address, and Parcel Identification Number.
 - A recent survey or legal description of the property.
 - 18 folded copies of the proposed site plan. At a minimum, the site plan shall show the following:
 - The subject property and any adjacent properties.
 - All existing buildings, including setbacks from property lines.
 - All proposed buildings, parking facilities and accessory uses, including setbacks from property lines (if applicable).
 - The location and type of screening and buffering proposed (if applicable).
 - Impervious surface ratio (if applicable).
 - Waterbody buffers (if applicable).
 - Delineation of the proposed Variance on the site plan so that type of variance the applicant is seeking is clear. (This may be accomplished by submitting two site plans. One to show the requirements of the ordinance and a second to show what the variance request will achieve.)
 - Any additional item(s) that should be illustrated on the plan as determined during the pre-application meeting.
 - Any additional documents essential for the application to be considered complete. (Determined at pre-application meeting)

3. Submit cash, check, or money order made payable to Cabarrus County.
 Fees: Residential Variance request = \$500.00 or Non-residential Variance request = \$600.00
 +3% technology fee based on total application fee

The deadline for submittal is always the same day as the Planning and Zoning Commission Meeting which is the second Tuesday of the month. Applications must be submitted before 2:00 PM that day for consideration on the next available agenda.

Incomplete applications will be returned to the applicant and will not be processed.

Process Summary:

1. Hold a pre-application meeting with Staff to discuss your request and the variance process.
2. Submit a complete application with the appropriate fees to the Cabarrus County Planning Division.
3. When the complete application is received, Staff and appropriate agents will review the application and site plan and will make comments on the proposed request.
4. Staff will begin to prepare a staff report, schedule a public meeting date and notify adjacent property owners of the public meeting/public hearing date. A sign advertising the public hearing will also be placed on the property being considered for the Variance request.

Meeting Information: Meetings are held the second Tuesday of each month at 7:00 PM in the Cabarrus County Governmental Center located in downtown Concord at 65 Church Street, SE.

Variance: Variance requests are considered by the Board of Adjustment during a quasi-judicial hearing. This means that anyone wishing to speak regarding the application must be sworn in. The vote requirement for the Variance request to pass is 80% or greater. Additional conditions may be added as part of the Variance approval process.

Questions: Any questions related to the Variance process may be directed to the Planning Division at 704-920-2141, between 8 AM and 5 PM, Monday through Friday.

Application Information

Applicant's Name	Property Owner's Name
<u>Jonathan Marshall</u>	<u>Cabarrus County</u>
Applicant's Address	Property Owner's Address
<u>PO Box 707</u>	<u>Same</u>
<u>Concord, NC 28026</u>	
Applicant's Telephone Number	Property Owner's Telephone Number
<u>704.920.2100</u>	<u>Same</u>
Legal Relationship of Applicant to Property Owner	<u>Employee</u>
Existing Use of Property	<u>Institutional (Public Park)</u>
Existing Zoning	<u>O-I</u>
Property Location	<u>Bethel School Rd - Midland</u>
Tax Map and Parcel Identification Number (PIN)	<u>5544-72-3955</u>

TO THE BOARD OF ADJUSTMENT

I, Jonathan Marshall, HEREBY PETITION THE BOARD OF ADJUSTMENT FOR A VARIANCE FROM THE LITERAL PROVISIONS OF THE ZONING ORDINANCE. UNDER THE INTERPRETATION GIVEN TO ME BY THE ZONING ADMINISTRATOR, I AM PROHIBITED FROM USING THE AFOREMENTIONED PARCEL OF LAND. I REQUEST A VARIANCE FROM THE FOLLOWING PROVISION(S) OF THE ORDINANCE.

The following information shall be completed by applicant(s) seeking a variance:

1. Variance Request Including Related Zoning Ordinance Section(s)
Section: 9-6.1.D & 10-5.D

-Perimeter landscape buffering requirement, and

-Driveway width requirement

2. Reason(s) for Seeking a Variance

-Requesting relief from installing the 75-foot perimeter buffering requirement along a portion of the eastern property line (Area #5 of VAR2016-00003) to allow for a paved interior access road to encroach into the buffer yard.

-Requesting a reduction in the required access road width from 24 feet to 20 feet.

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a Variance. Direction is received by both state legislation and local ordinance. Under the state enabling act, the Board is required to reach four (4) conclusions as a prerequisite to the issuance of a Variance:

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.

In order to make its determination, the Board will review the evidence submitted in this application as well as receive public comment during the scheduled public hearing. This application will be entered into the official record of the public hearing.

The responsibility for presenting evidence to support the Variance request, as described during the meeting and to the Board of Adjustment, lies completely with the Applicant.

FINDING OF FACT CHECKLIST

Please provide an explanation to each point in the space provided.

1. **The alleged hardships or practical difficulties are unique and singular to the property of the person requesting the variance and are not those suffered in common with other property similarly located.**

(The problem must be unique to the property and not a public hardship and must apply to the property, not the property owner).

-The proposed interior access road follows historic pathways used on the park property and the location allows the property owner to maximize use of the unique features of the property.

-The requirement of a 24-foot wide driveway could potentially encourage speeds that are not complementary to the type of pedestrian use that would be expected of a public park. A 20-foot driveway would encourage slower speeds for vehicular traffic using the facility.

2. The alleged hardships and practical difficulties, which will result from failure to grant the variance, extend to the inability to use the land in question for any use in conformity with the provisions of the ordinance and include substantially more than mere inconvenience and inability to attain a higher financial return.

(This often will be the most difficult area in which to make a determination. The issue, as established by court decisions, deals with the nebulous term of "reasonableness." Generally, if the variance is sought to make a greater profit on this property at the expense of others in the area, this point cannot be met. This item is best reviewed with the concept of, "is the property barred from a reasonable use if the strict terms of the ordinance are adhered to"?)

-A conceptual master plan is attached. The access road could be shifted to a new location outside of the perimeter landscape buffer. That location would move the access road from its existing/historic location and would shift all elements further into the property and reduce interior open space.

-The interior roadway width requirement of 24 feet is more characteristic of an urban environment. The reduced width is more characteristic of a rural road through a natural environment. Other parks throughout the County have used a similar design for interior access roads.

3. The variance, if allowed, will not substantially interfere with or injure the rights of others whose property would be affected by allowance of the variance.

(This is a second way to address reasonableness. This is also where the issue of "where did the hardship originate from?" should be addressed. Self-inflicted hardships should be carefully reviewed for reasonableness.)

-The proposed location of the access road driveway is where gravel or dirt drives already exist.

-A wider driveway may encourage speeds that are less pedestrian friendly.

4. The variance is in harmony with and serves the general intent and purpose of the ordinance.

(If a variance is granted, is the overall "spirit" of the zoning ordinance still intact? While difficult to explain, some types of variance are usually not in accord with the general intent and purpose of the ordinance and therefore must be cautiously reviewed. These often include extending a non-conforming use in scope, a use variance (clearly not allowed), and modifying a dimensional standard so as to the detriment of a neighborhood or area.

The second part relates to the question, if granted will the spirit of the adopted plan for proper development of the neighborhood or area be compromised?)

-The variance for the perimeter landscape buffer is requested in an area where a variance for the walking path has already been granted and where the access road has existed historically. The adjacent property is heavily wooded with access from Bethel

School road severely limited due to the creek crossing required, the width of the flood plain and soil conditions.

-The intent of the 24-foot driveway requirement is to safely allow the passage of vehicles traveling in opposite directions. A 20-foot driveway would allow for the passage of vehicles in a more controlled fashion and is the minimum requirement of the Fire Code.

5. The variance will result in substantial justice being done, considering both the public benefits intended to be secured by this ordinance and the individual hardships that will be suffered by a failure of the Board to grant a variance.

(This is the final way to address reasonableness via common sense. Simply put, does the variance make sense? Will its approval or denial endanger any one? Will the essential character of the area be altered if approved or denied?)

-Exhibits and testimony will be provided to show how the character would be maintained by locating the paved access road on the historic location of the dirt road.

Possible Conditions, suggested by the applicant

If the Board of Adjustment finds that a variance may be in order but the Board still has concerns in granting the variance, reasonable conditions can be imposed to assure that any of the five points will continue to be met and not violated. In your review of the five points, are there any conditions that you believe would clarify the justification of a variance? If so, suggest these conditions in the space below.

In the area where the buffer encroachment and landscape variances are requested, the County is proposing to install a modified (8 foot) planting yard between the trails the and proposed paved access drive. An exhibit showing the proposed typical is included.

I CERTIFY THAT ALL OF THE INFORMATION PRESENTED BY ME IN THIS APPLICATION IS, TO THE BEST OF MY KNOWLEDGE, TRUE AND CORRECT.

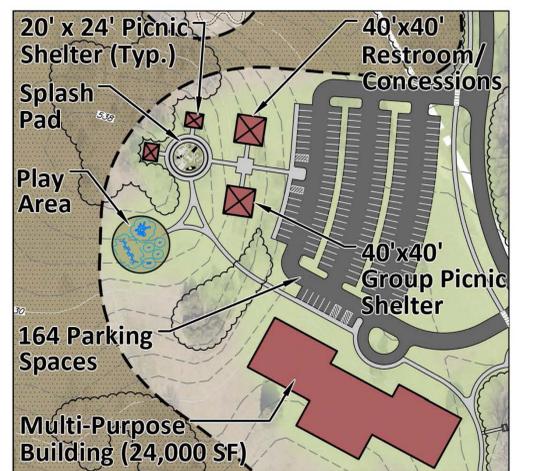
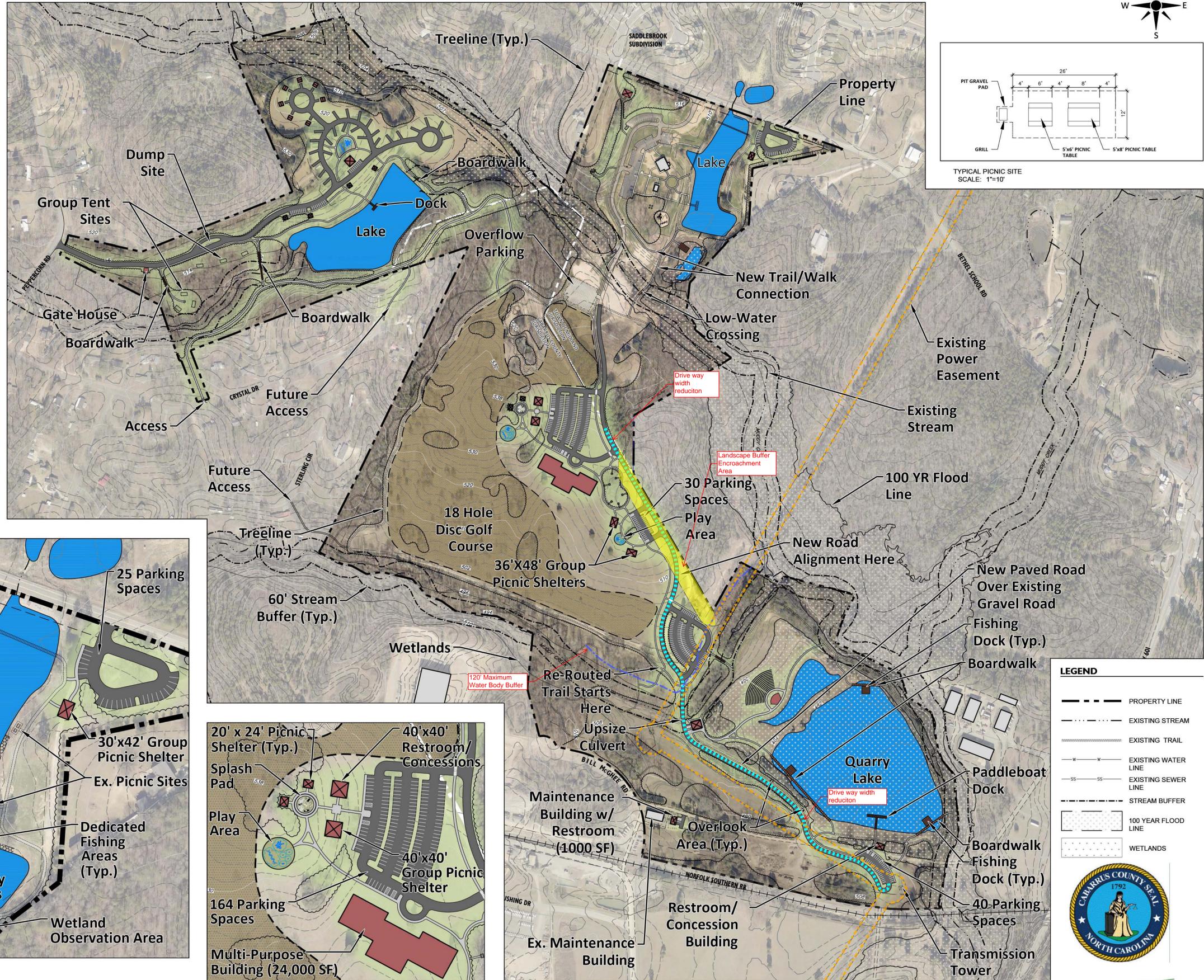
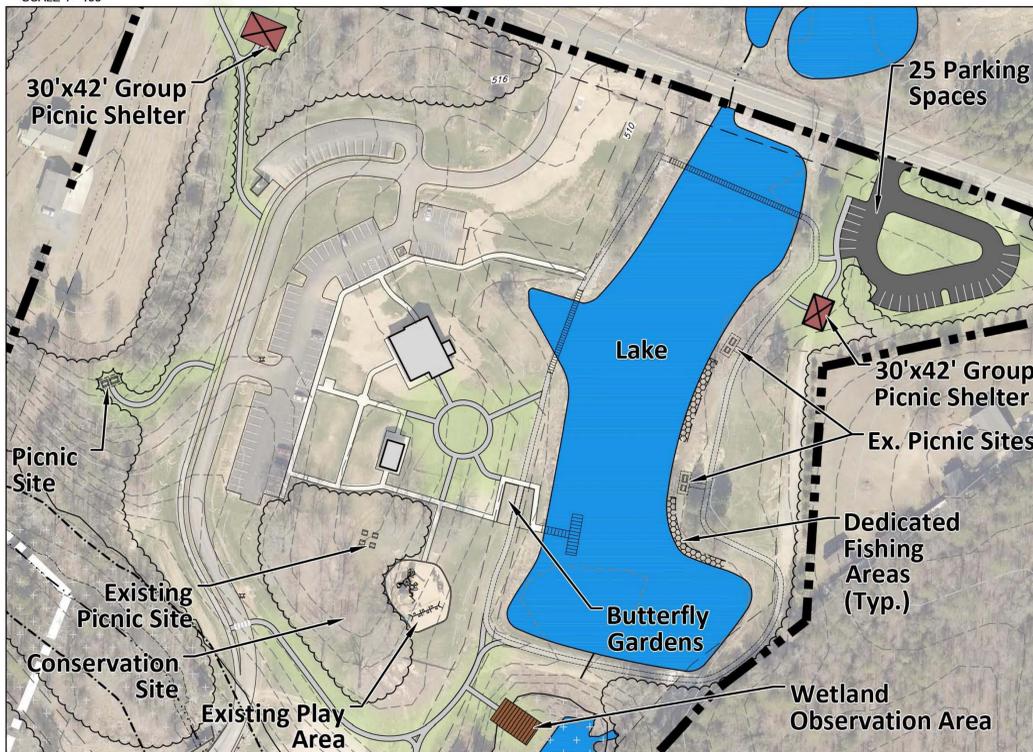
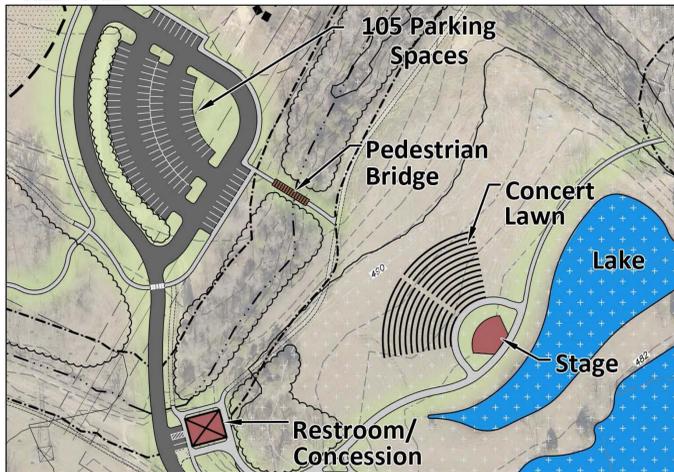
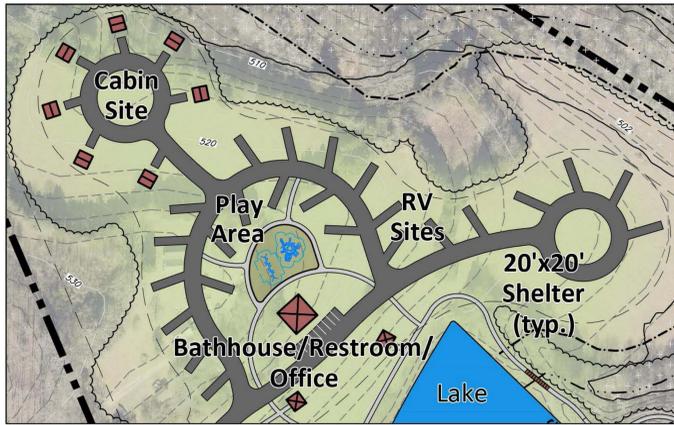
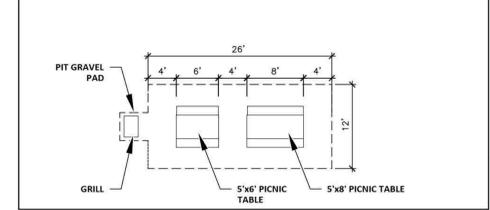
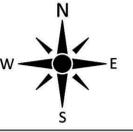
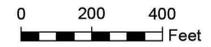
SIGNATURE OF OWNER: Justin B. Marshall DATE: 6.12.2018

SIGNATURE OF APPLICANT: _____ DATE: _____

Rob Wallace Park Master Plan

Midland, NC

Cabarrus County | 1.12.2018

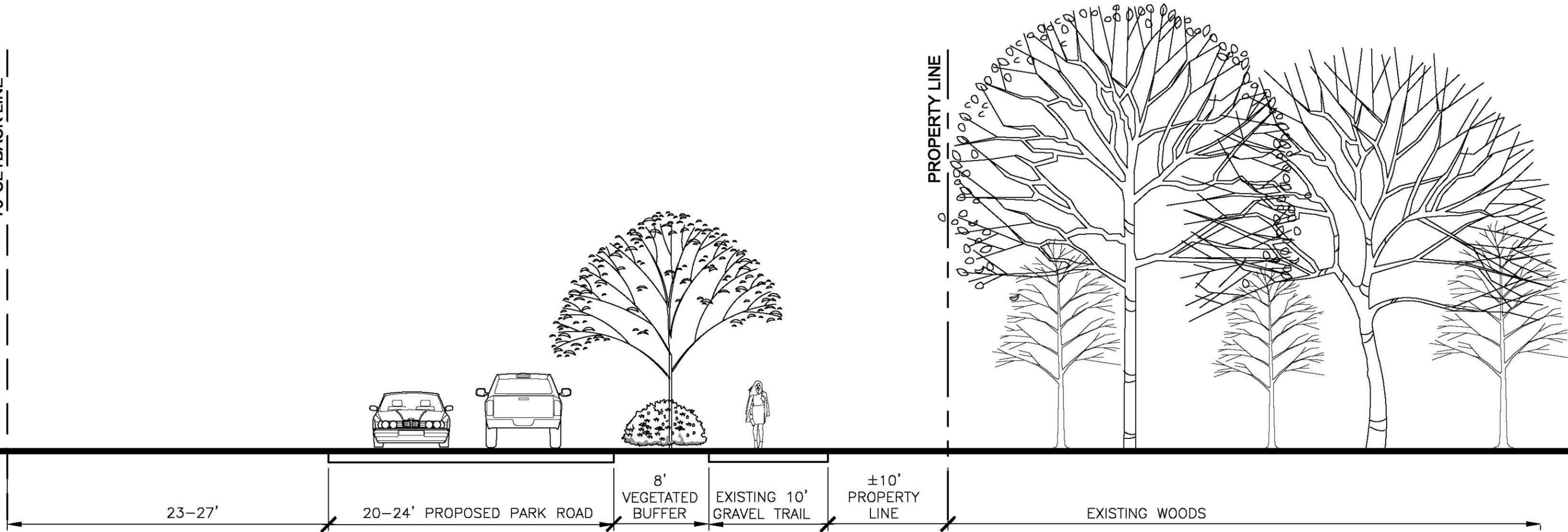


LEGEND

- PROPERTY LINE
- EXISTING STREAM
- EXISTING TRAIL
- EXISTING WATER LINE
- EXISTING SEWER LINE
- STREAM BUFFER
- 100 YEAR FLOOD LINE
- WETLANDS



75' SETBACK LINE



23-27'

20-24' PROPOSED PARK ROAD

8'
VEGETATED
BUFFER

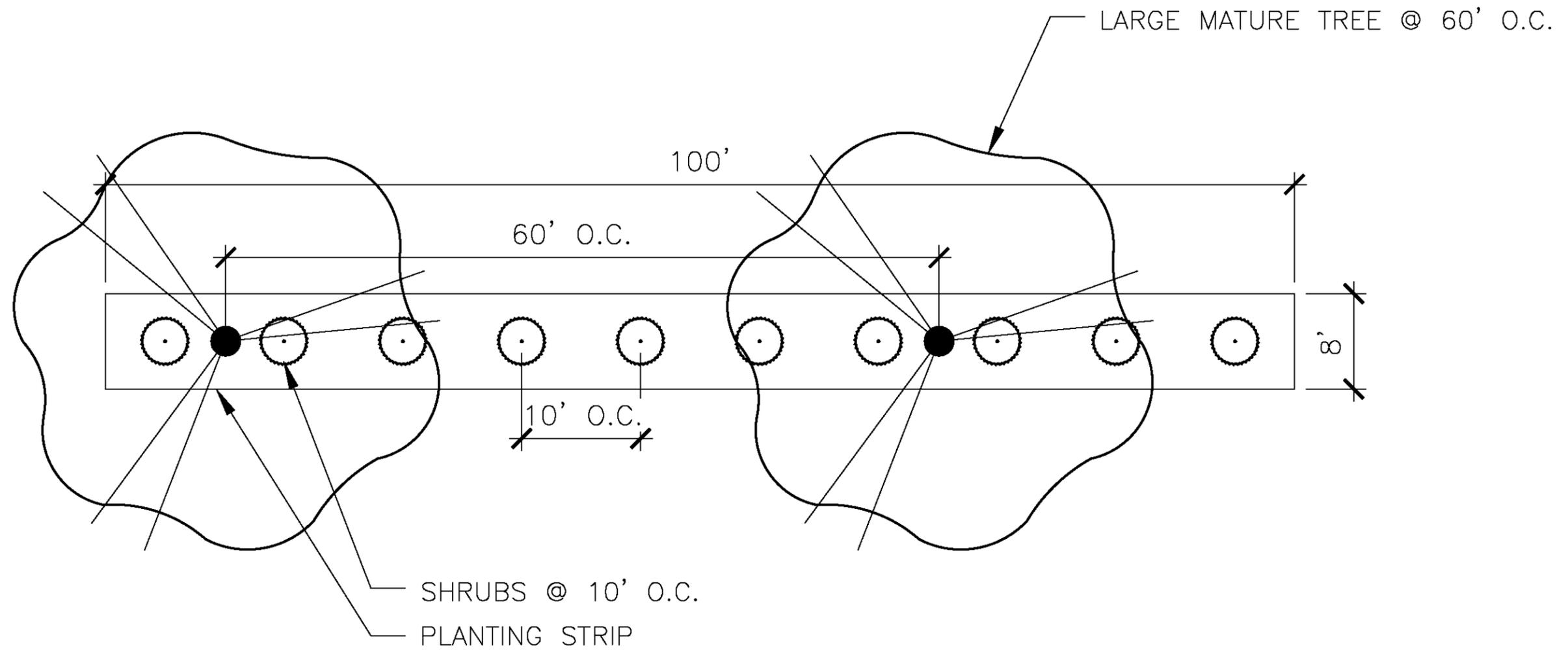
EXISTING 10'
GRAVEL TRAIL

±10'
PROPERTY
LINE

EXISTING WOODS

ROB WALLACE PARK PHASE 2 SECTION

NTS



TYPICAL BUFFER STRIP PLANTING

SCALE 1"=10'

Exhibit D
Pictometry Images 1-26-2018









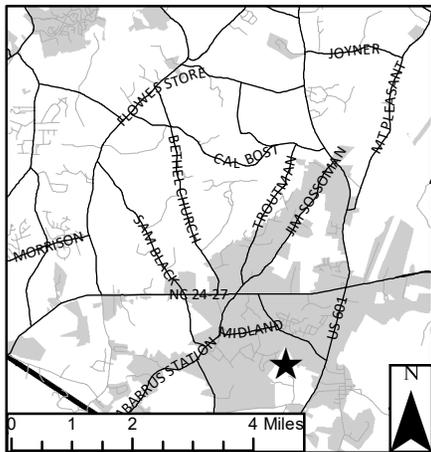


Existing Zoning



Applicant: Jonathan Marshall
 Owner: Cabarrus County
 Case: VARN2018-00001
 Address: 12922 Bethel School Road
 Purpose: Variance Request
 PIN: 5544-72-3955

- Parcels
- Municipal District
- Structures 2010
- Waterbodies
- Flood Way
- 100 Year Flood Plain
- 500 Year Flood Plain



Cabarrus County shall not be held liable for any errors in this data. This includes errors of omission, commission, errors concerning the content of the data, and relative and positional accuracy of the data. These data cannot be construed to be a legal document. Primary sources from which these data were compiled must be consulted for verification of information contained within the data.

Map Prepared by Cabarrus County Planning & Development - June 2018

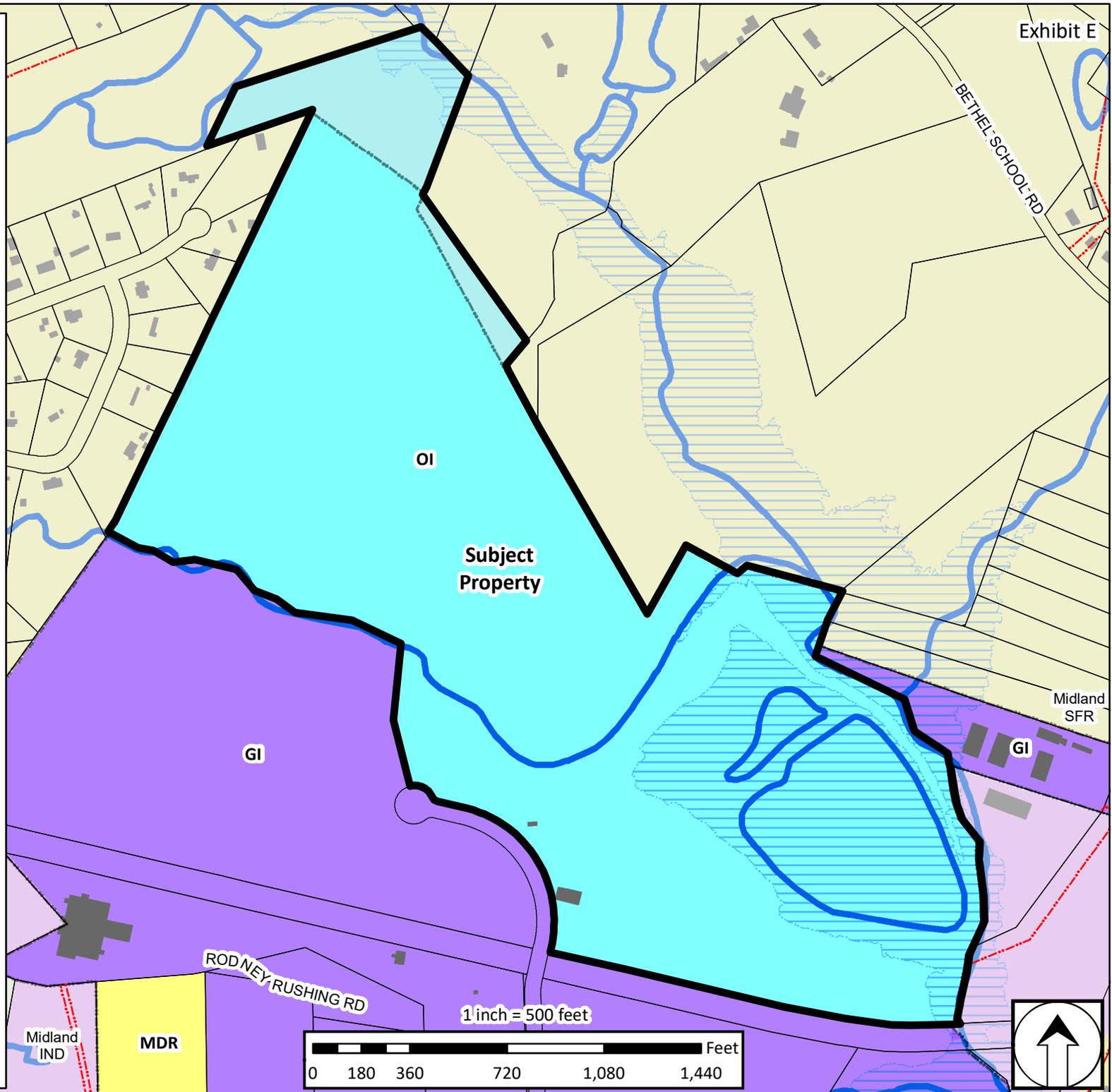
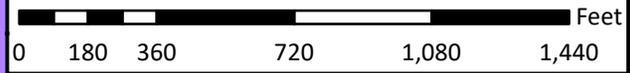


Exhibit E

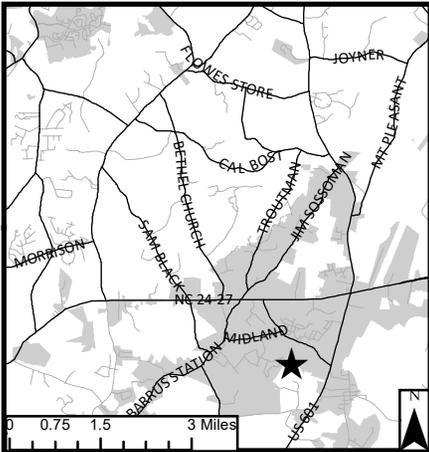


Aerial Map



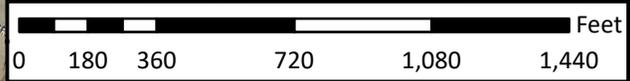
Applicant: Jonathan Marshall
Owner: Cabarrus County
Case: VARN2018-00001
Address: 12922 Bethel School Road
Purpose: Variance Request
PIN: 5544-72-3955

- Cabarrus County
- Municipal District
- Parcels



Subject Property

1 inch = 500 feet



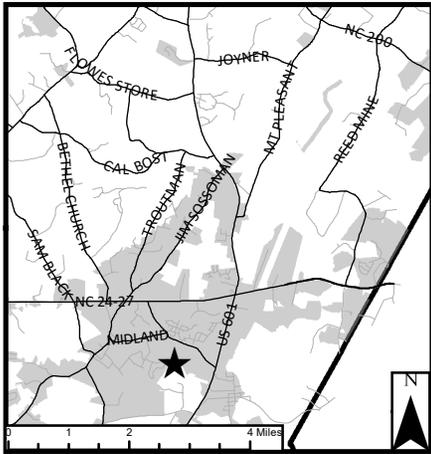
Cabarrus County shall not be held liable for any errors in this data. This includes errors of omission, commission, errors concerning the content of the data, and relative and positional accuracy of the data. These data cannot be construed to be a legal document. Primary sources from which these data were compiled must be consulted for verification of information contained within the data.

Map Prepared by Cabarrus County Planning & Development - June 2018

Midland Plan Area Future Land Use

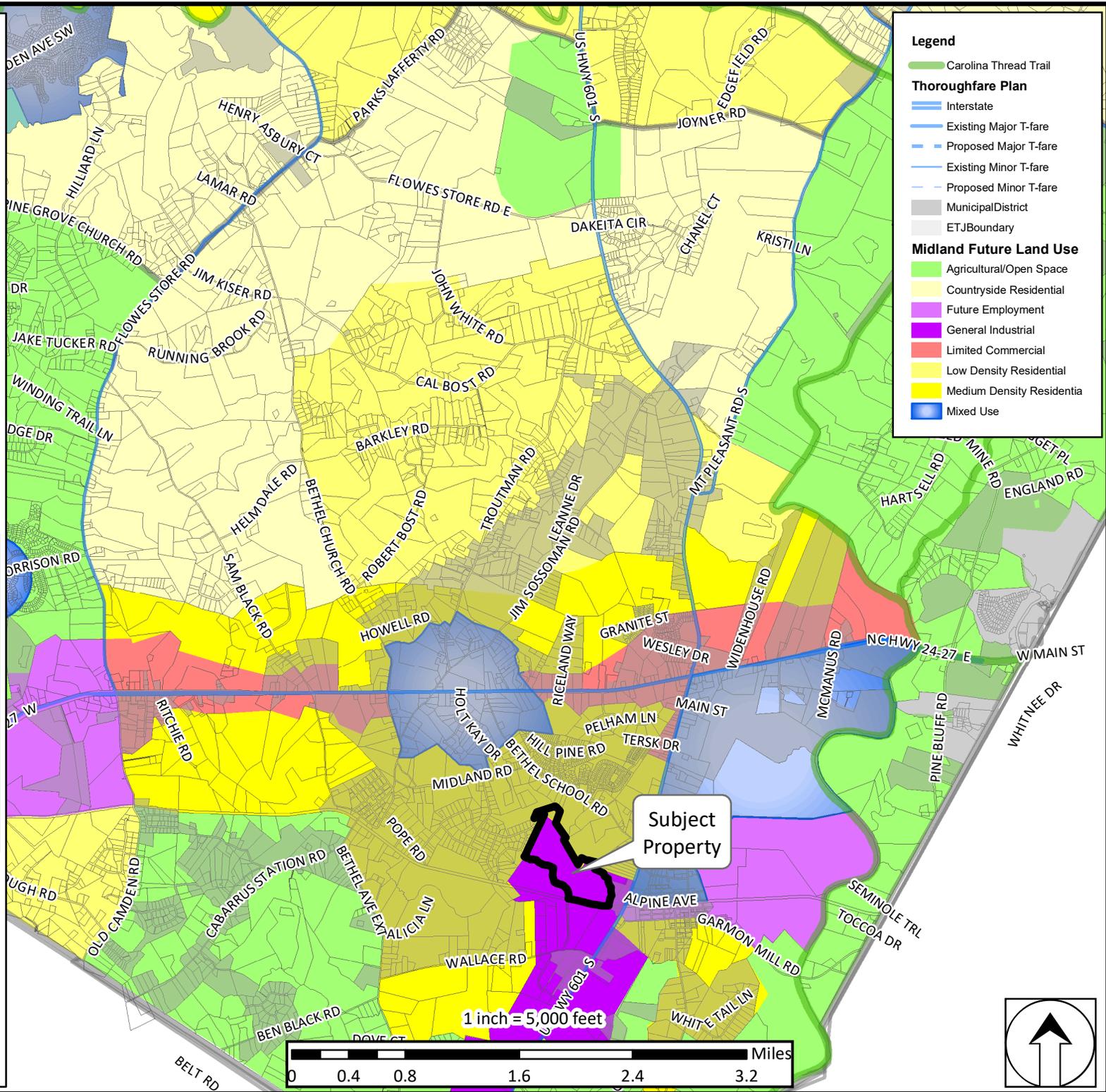


Applicant: Jonathan Marshall
 Owner: Cabarrus County
 Case: VARN2018-00001
 Address: 12922 Bethel School Road
 Purpose: Variance Request
 PIN: 5544-72-3955



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Map Prepared by Cabarrus County Planning & Development - June 2018



PIN	Name	Address	City	State	ZIP
Property Owner					
5544654208, 5544723955, 5544555362, 5544558412, 5544741458, 5544745140, 5544751348	CABARRUS COUNTY	P O BOX 707	CONCORD	NC	28026

Adjacent Property Owners					
5544920588	ANDERSON/GRIFFIN PROPERTIES	3322 OLD CAMDEN ROAD	MONROE	NC	28110
5544537585	ASHE RHONDA L	13572 STERLING CIR	MIDLAND	NC	28107
5544916017	BROOKS WILLIAM ERSKINE JR	3995 GARMON MILL ROAD/PO BOX 372	MIDLAND	NC	28107
5544833637	BROOME GAIL W & WILLIAM G TRUST	2525 KNOLLWOOD RD	CHARLOTTE	NC	28211
5544563163	CARPENTER SCOTT HOWARD & JESSICE TALLENT	3070 MIDLAND RD	MIDLAND	NC	28107
5544750403	FLEENER DON ET UXOR FLEENER MARCIA	PO BOX 397	MIDLAND	NC	28107
5544642563	FRANSSEN DAVID E	3201 CRYSTAL DR	MIDLAND	NC	28107
5544641391	FURR ANNIE E	3200 CRYSTAL DR	MIDLAND	NC	28107
5544446829	HARTIS HAROLD AUGUSTINE JR	13005 PEPPERCORN LN	MIDLAND	NC	28107
5544658517	HOUGH DIANE MORGAN LF EST	12790 BETHEL SCHOOL RD	MIDLAND	NC	28107
5544621379	INTERTAPE POLYMER CORP	100 PARAMOUNT DR STE 300	SRASOTA	FL	34232
5544448259	JAMARI LLC A NC LLC / PALMETTO PROPERTIES	10700 SAM BLACK ROAD	MIDLAND	NC	28107
5544920075	JC MARBLE GRANITE CUSTOM INC	13650 US 601 HWY	MIDLAND	NC	28107
5544533807	JOYNER STACY LEE	3004 CRYSTAL DRIVE	MIDLAND	NC	28107
5544852116	JOYNER WESLEY JAMES	12576 BARRIER STORE ROAD	LOCUST	NC	28097
5544459557	KELLIS KELLY DUANE & PATRICIA WALLACE	185 WYOMING DR	CONCORD	NC	28027
5544539801, 5544539966	KEPLEY SAMMY J	13590 STERLING CIRCLE	MIDLAND	NC	28107
5544660133	KEZIAH MICHAEL A & STEPHANIE L	131 WILLOW CREEK DR	STANFIELD	NC	28163
5544566296	KUNTZ CLYDE DANIEL & SHERON ROBERSON	3102 MIDLAND RD	MIDLAND	NC	28107
5544441685, 5544446542	LITTLE PROPERTIES/MIDLAND LLC	10700 SAM BLACK RD	MIDLAND	NC	28107
5544546206	LOVING BARRY JAMES	4810 ALBEMARLE RD	MIDLAND	NC	28107
5544536207	LYALL BRIAN P	13568 STERLING CIRCLE	MIDLAND	NC	28107
5544544281	MARSHBURN WILLIAM C & DIANE W	PO BOX 1471	DENVER	NC	28037
5544706790, 5544711147	MCGEE BROTHERS COMPANY INC	4608 CARRIKER ROAD	MONROE	NC	28110
5544651846	MCINTOSH ED & ANN	12760 BETHEL SCHOOL RD	MIDLAND	NC	28107
5544921669	MILEHAM JERRY L	P O BOX 245	MIDLAND	NC	28107
5544640196	MORRIS VICTOR ALAN	3112 CRYSTAL DR	MIDLAND	NC	28107
5544640448	ORTEGO ISMAEL VALDESPINO & MENDOZA YESENIA MORAN	3113 CRYSTAL DR	MIDLAND	NC	28107
5544442858	OTTOWAY CLYDE T & WIFE NANCY N	13002 PEPPERCORN LANE	MIDLAND	NC	28107
5544548389	PEREZ INOCENCIO & PATRICIA	13300 STERLING CIR	MIDLAND	NC	28107
5544538658	PEREZ LUIS REYNALDO SANCHEZ & MORALES NORMA V VILLANUEVA	13582 STERLING CIR	MIDLAND	NC	28107

PIN	Name	Address	City	State	ZIP
5544531851	PEREZ TEODORO PEREZ BARCO MARIA ESTHER CALVILLO	2918 CRYSTAL DR	MIDLAND	NC	28107
5544914709	PETER V GUSEV INC	8341 ROLLING FIELDS RD	CHARLOTTE	NC	28227
5544841688	PIGG KATHRYN H	P O BOX 471	MIDLAND	NC	28107
5544542122	RICE HARRY RONALD & JANET S	9113 BROOKGREEN DR	MINT HILL	NC	28227
5544759617, 5544852428, 5544753754, 5544751882	SADDLEBROOK HOMEOWNERS ASSOC	2649 BREKONRIDGE CENTRE DR	MONROE	NC	28110
5544857681	SADDLEBROOK HOMEOWNERS ASSOCIATION OF MIDLAND INC	PO BOX 2427	HUNTERSVILLE	NC	28070
5544547332	SMITH ALFRED E & BERTIE F	13504 STERLING CIR	MIDLAND	NC	28107
5544654716	SNINCHAK EDWARD THOMAS & LINDAY KAY	12780 BETHEL SCHOOL RD	MIDLAND	NC	28107
5544449093	STILLWELL STEVEN DEAN	2913 CRYSTAL DR	MIDLAND	NC	28107
5544829427	WALLACE R L CONSTRUCTION CO	PO BOX 259	MIDLAND	NC	28107
5544804424	WALLACE ROBERT L & DONNA F	9750 HERBERT FLOWE RD	CHARLOTTE	NC	28227
5544755697	WGH NORTH CAROLINA LLC	103 FOULK RD STE 900	WILMINGTON	DE	19803
5544543157	WILLIAMS ROBERT	3009 CRYSTAL DR	MIDLAND	NC	28107
5544853491	WRAY BILLY JOE	P O BOX 322	MIDLAND	NC	28107
5544754689	SUMMERS KRISTINE & CLARKE JOSEPH	12892 BRANDENBURG LN	MIDLAND	NC	28107



Cabarrus County Government – Planning and Development Department

June 22, 2018

Dear Property Owner:

A Variance Application has been filed in our office for property **adjacent** to yours. The property and specifics of the request are listed below. The Cabarrus County Board of Adjustment will consider this petition on Tuesday, July 10, 2018 at 7:00 PM in the 2nd floor Commissioner's Chambers of the Cabarrus County Governmental Center, located at 65 Church Street SE, Concord, NC 28026. A Public Hearing will be conducted and public input will be allowed during that time. If you have any comments about this variance request, I encourage you to attend this meeting.

- **Petitioner:** Cabarrus County
- **Petition Number:** VARN2018-00001
- **Property Location:** 12900 Bethel School Road (Rob Wallace Park)
- **Parcel ID Number:** 5544-72-3955
- **Existing Zoning:** Office / Institutional (OI)
- **Variance Request:** Relief from the requirements of Chapter 9 – to allow portions of an interior driveway within the required landscape buffer & Chapter 10 – reduction of the required driveway width

If you have any questions regarding this petition, or the hearing process, please contact me at Cabarrus County Planning and Development at 704.920.2149.

Sincerely,

Handwritten signature of Phillip Collins in cursive.

Phillip Collins, AICP
Senior Planner
Cabarrus County Planning and Development
704.920.2181

If reasonable accommodations are needed please contact the ADA Coordinator at (704) 920-2100 at least 48 hours prior to the public hearing.



Cabarrus County Government – Planning and Development Department

June 22, 2018

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- | | |
|----------------------------|---|
| • Petitioner | Cabarrus County |
| • Petition Number | VARN2018-00001 |
| • Property Location | 12900 Bethel School Road (Rob Wallace Park) |
| • Parcel ID Number | 5544-72-3955 |
| • Existing Zoning | Office / Institutional (OI) |
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If you have any questions regarding this petition, or the hearing process, please contact me at Cabarrus County Planning and Development at 704.920.2149.

Sincerely,

A handwritten signature in black ink that reads "Phillip Collins".

Phillip Collins, AICP
Senior Planner
Cabarrus County Planning and Development
704.920.2181

If reasonable accommodations are needed please contact the ADA Coordinator at (704) 920-2100 at least 48 hours prior to the public hearing.



2018-06-22 11:25:08

North Carolina

Jun 22, 2018 11:32:16 AM

CABARRUS COUNTY
ZONING



NOTICE
VARN2018—00001
FOR DETAILS CALL
704 - 920 - 2141

