



## **Cabarrus County Government**

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Cabarrus County Planning and Zoning Commission Meeting  
November 13, 2018 @ 7:00 P.M.  
Board of Commissioners Meeting Room  
Cabarrus County Governmental Center

### **Agenda**

1. Oath of Office to Newly Appointed Member
2. Roll Call
3. Recognition of Richard Price
4. Approval of September 11, 2018, Planning and Zoning Commission Meeting Minutes
5. Approval of Granting Order for VARN2018-00001 - Cabarrus County, property located at 12,900 Bethel School Road
6. Directors Report: HALUP Discussion
7. Legal Update

Planning and Zoning Commission Minutes  
September 11, 2018

Ms. Susie Morris, Planning and Zoning Manager, called the meeting to order at 7:00 p.m. Members present were Mr. Jeffrey Corley, Mr. Adam Dagenhart, Mr. James Litaker, Mr. Andrew Nance, Mr. Charles Paxton, Mr. Chris Pinto, Mr. Brent Rockett, Mr. Stephen Wise and Mr. Jerry Wood, Jr. Attending from the Planning and Zoning Division were, Ms. Susie Morris, Planning and Zoning Manager, Ms. Arlena Roberts, Clerk to the Board and Mr. Richard Koch, County Attorney.

The Oath of Office was administered to reappointed members Mr. Adam Dagenhart, Mr. Andrew Nance, Mr. Stephen Wise and Mr. Jerry Wood, Jr.

Mr. Jeff Corley, **Nominated** Mr. Chris Pinto as the Chair of the Planning and Zoning Commission, **Seconded** by Mr. Brent Rockett. There being no other nominations, Mr. Pinto was appointed by Acclamation.

Mr. Adam Dagenhart, **Nominated**, Mr. Jeff Corley as the Vice-Chair of the Planning and Zoning Commission, **Seconded** by Mr. Stephen Wise. There being no other nominations, Mr. Corley was appointed by Affirmation.

Mr. Jeff Corley **Nominated**, Mr. Brent Rockett as the Chair of the Planning and Zoning Commission in the absence of both the Chair and Vice-Chair of the Planning and Zoning Commission, **Seconded** by Mr. James Litaker. There being no other nominations, Mr. Rockett was appointed by Affirmation.

### **Roll Call**

Mr. James Litaker **MOTIONED**, **SECONDED** by Mr. Brent Rockett to **Approve** the May 16, 2018, HALUP Cabarrus Planning and Zoning Commission and Harrisburg Planning and Zoning Advisory Board joint meeting minutes. The Vote was unanimous

Mr. James Litaker **MOTIONED**, **SECONDED** by Mr. Stephen Wise to **Approve** the July 10, 2018, Planning and Zoning Commission meeting minutes. The Vote was unanimous.

### **New Business – Planning Board Function:**

The Chair introduced the proposed text amendments to the Cabarrus County Development Ordinance.

**Proposed Text Amendment to Cabarrus County Development Ordinance Text2018-00002 – Chapter 16, Model Floodplain Ordinance**

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Ms. Susie Morris, Planning and Zoning Manager, addressed the Board stating that we have a series of text amendments this evening. The flood text is the most important that we have.

She said this process started back in 2016. She thinks it was in January 2017, the State had a meeting for the general public where they could come and make comments on the maps or if they thought there were errors on maps. We have been through that process and we have also been through the noticing process and through the formal 90 day appeal process.

Our maps are now ready to go with an effective date of November 18, 2018. Along with that, the State has pushed out a new model floodplain ordinance. If the Board remembers, Cabarrus County adopted the 2015 Model Ordinance that they pushed out, with the understanding that that was going to be the model ordinance that needed to be adopted with our 2016 maps.

If the Board had a chance to look at the information, you will see that not a lot of it has changed from what we had in 2015. So, a lot of people are going from the 2008 version now to a 2016 version. We were ahead of the curve, but behind the curve because the directions that they gave were how to go from 2008 to 2016.

Our freeboard is remaining the same at two feet. We had some discussions about whether or not to try to raise that for our CRS program. Our CRS auditors suggested that we try to raise the freeboard and then do some different things related to fill. But, from an engineering standpoint and with what we see in the county, it did not make a lot of sense to do that because it would pretty much render parcels that we have unusable and it would cost a lot of money for people to go through the process with FEMA to take care of that to be able to develop the parcel.

She said, the changes are mainly more related to a section that has been added in so that people understand that a tiny house is treated just like a RV, unless it is on a permanent foundation. If it is on a permanent foundation then it has to be elevated just like anything else would; it is also related to tanks.

We also had some discussions with the State and also with the assigned NFIP representative in Raleigh. The State was putting out some different definitions and saying if you are in the CRS Program you can do this and you can do that. But, when we were talking to the people that are actually the NFIP staff, they were like why are you doing that, this is going to cause a problem.

One of the things that the State said was, in the definition of substantial damage, it is 50 percent and it is one year. They said well, you can get more points if you either extend the number of years or lessen that percentage.

But, when we talked with our NFIP contact he said, I do not think you want to do that because then you are going to cause people to have to come into compliance a lot sooner and they are going to kind of be penalized for that and then when you talk about the increased cost of compliance, they would only get the 30 percent.

After a lot of back and forth with the State, we feel like this is the version of the Model Ordinance

that is best tailored to the situations that we see in Cabarrus County.

Our County Engineer was involved in those conversations and Ms. Morris also reached out to some of the Board members that have engineering backgrounds and that do this type of work on a daily basis for their opinions.

We will still allow fill in the floodplain as long as they follow the proper process. Freeboard is not changing, it is two feet and we are going with the standard definitions that FEMA put out, not the stuff that the State was suggesting to try to get a higher point rating classification for the CRS Program; so we are currently an eight.

If you are in our office please stop by to see our new plaque that we have finally acquired. Since 2007, we never received a new plaque, we now have our nice new plaque from FEMA.

Hopefully, we can get down to a seven when the County adopts the new building code, which is one of the things our auditor has been hung up on. The State has not adopted the right building code for us to get credit. Once we can get that credit, we feel like we can probably get to a seven which would then be a 15 percent discount for people with flood insurance.

She said if the Board is paying attention to what is happening in other parts of the state, when you have landslides and things like that, they are consider flood related and insurance does not cover that. We do have several properties here in Cabarrus County, we have about 165 policy holders, but overall impact is only about eight thousand dollars, which equates to about fifty dollars per policy. Once you look at it across the board to what our CRS Program discount is for those people, because we are not at the coast and we do not have thousands of policies.

We do what we can and they keep changing the program and we will see if we stay in the program. Regardless of our participation in CRS, to get funding if we do have a disaster, at a minimum we do have to participate in the NFIP Program and this gets us to those minimums and in some cases above the minimums. We may pick up some points, but again, that is not really the priority. The priority is to make sure we are doing what we need to do so that if we have a significant weather event we can apply for grant funding to help those folks that are impacted.

Ms. Morris said along with the Model Ordinance, you will see that that November 16, 2018, date is in here and it has to be adopted prior to the map date. It will be going to the Board of Commissioners next month for consideration so that we are on track and nobody loses insurance coverage. It could ultimately impact the whole County if we do not follow the right steps.

She said the maps now, are in that FRIS system that we have talked about. They do not give us paper copies of maps anymore, everything is digital. A prime example; today we were trying to get into the system and the system is down because everybody is trying to download information prior to this flooding event from the hurricane. It puts us at a little bit of a disadvantage, so we will have to kind of work through that because this is the first time that they have not rolled out paper copies of the maps. She thinks we can probably get them and we probably will, but for now, there is no set of maps in front of you or anything like that to adopt.

The Chair said who is the Floodplain Administrator?

Mrs. Morris said she is.

The Chair said can you make a designee?

Ms. Morris believes it says designee in there, so whoever she decides to appoint to help can also help.

Mr. Jeff Corley said he knows enough about this to know that it is not an easy or fun process. Every five years, it really is not fun to go through this. He said a lot of hard work went into this he knows that.

There being no further discussion, Mr. Jeff Corley **MOTIONED, SECONDED** by Mr. Brent Rockett, to recommend **APPROVAL** of TEXT2018-00002 – Chapter 16, Model Floodplain Ordinance as presented by staff to the Board of Commissioners. The vote was unanimous

**Proposed Text Amendment to Zoning Ordinance Text2018-00003 – Chapter 10, Parking and Loading and Chapter 14, Nonconformities**

Ms. Morris said this amendment includes two different chapters of Ordinance. The first is Chapter 10, Parking and Loading. The purpose is to include language related to interior access roads in the NC Fire Code requirements. The text has been reviewed by the Fire Marshal's Office and Emergency Management both. It has also been reviewed by the Text Amendment Committee.

The wedding facilities, the parks and multiple people who have asked for variances for interior roads, to go down to the actual Fire Marshal's requirement of 20 feet. This would actually codify that to where they would not have to seek variances anymore, as long as the Fire Marshal's Office is good with whatever it is. They were very clear with her, in the language that it needed to say that the Fire Marshal's Office could require it to go up or down.

On the table on page three, you see that it says additional width maybe required, where the isle serves as a principal access and that they have to meet emergency access standards. If it has to be more than that 24 feet, then they are going to require more and if they can accommodate the 20 feet and the applicant could show that it is still safe, then they could make that modification. It is only for interior access roads where they are connecting parking lots.

If it is a parking lot, they still have to do the 24 feet for people backing in and out. If it is a parking lot and then you are kind of going into the site and another parking lot, it would be that travel lane that they could ask for that reduction on.

Mr. Corley said the applicant would still have to ask for that reduction is that correct, regardless? They could not just come in and say 20 feet?

Ms. Morris said correct. It says the burden shall be on the applicant to show the Fire Marshal that

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the fire code requirements for life safety and access are being met. It would not be a given, they would have to show that based on traffic counts, access points and collection of traffic; that it could be reduced to that 20 foot and still be safe for traffic and emergency vehicles.

There being no further discussion, Mr. James Litaker, **MOTIONED, SECONDED** by Mr. Brent Rockett, to recommend **APPROVAL** of Text2018-00003– Chapter 10, Parking and Loading to the Board of Commissioners. The vote was unanimous.

Ms. Morris said several people asked after the meeting if we could go back and take a look at nonconforming structures, based on the case the Board had about the church and how it took them a lot longer to try to build back. The Text Amendment Committee had some discussion back and forth on this.

The proposed language says as long as they pull a building permit within one year, instead of having the construction completed at the end of that one year, as long as they pulled a building permit then they could build back. The way, that building permitting looks at it is, as long as you do one inspection per year, they consider it an active permit. The zoning permit is good for six months, with the option to renew it, but as long as they are showing that they are getting those inspections done periodically, then we will renew the zoning permit. We backed it into the building permit and away from construction being completed.

She said some other jurisdictions has six months or less. When she asked some of the local jurisdictions they said they did not have a time limit and that they probably need to do something about that. There may be some text amendments in the other jurisdictions based on the questions she was asking.

As long as they pull the building permit within a year, which would mean they would have to go through plan review or building review. Then they would still be able to build back on that foundation in that spot, whatever it is, as long as it was from natural causes and they did not demolish the building on their own or something like that.

Mr. Andrew Nance thinks that one year, even for building permits, can be tough at times. If it is an older structure, like we saw before, they may not have actual drawings or site plans showing exactly what was there. He thinks it may be really tough to try to go through and get all of the drawings done, get a building permit in a years' time stamp. He personally would suggest bumping it up to maybe two or three years.

The Chair sees some of that point; we do need some kind of cap. It is mainly going to be churches in the County. Those are the people who are not going to have that and they probably don't even have the stuff in a fire safe.

Mr. Steve Wise is trying to understand. The church burned completely to the ground and you have twelve months to call your first inspection in?

Ms. Morris said to pull a building permit; twelve months after that, to have your first inspection.

The Chair said that could be for grading.

Mr. Wise knows what Mr. Nance is saying it is tough. In a facility like that you would not have to submit too many site drawings. You would just have to do building plans.

Mr. Corley said is it worth discussing briefly, what the other options that were considered were?

Ms. Morris said what she presented is what the Text Amendment Committee came to a consensus on. Based on the research, there were three different options. We could keep what we have and maybe push it out eighteen months or we could do two years to where it has to be fully reconstructed. Then we went with the option of the building permit; is it one year, is it eighteen months or is two years. That is what we looked at and then keeping it that it had to be reconstructed within those same time frames. Keeping the language the same, but extending the time. After we talked about it from the building inspection side and being able to keep that alive, that is where the Committee came to a decision to go with pulling the building permit in the one year.

She said that is the point of having a meeting, to have additional discussion. If the Board feels differently, or if there is consensus for some other change, we can certainly amend this before it goes to the Board of Commissioners.

Mr. Nance said along with what he said before, like the small church we saw, you are backing them in a corner saying that they have to have a grading plan. That they have to have something permitted in that year time frame and it is a financial hardship. Once again, if it is a small church they may not have those funds set aside because they were not expecting this flood or fire or whatever it might be. He would be happier if this became a year and six months liked we talked about or possibly two years.

Ms. Morris said we do not actually issue the grading permit; this would be the actual building permit. They would go through the plan review for the new building and then getting a building permit within that year.

Mr. Wise asked if it would be the date from the catastrophic event.

Ms. Morris said yes.

Mr. Wise said by the time insurance settles, plans get done and we have to give Building Standards two months for plan review; that is really tight. He agrees with Mr. Nance and he would like to see eighteen months.

Mr. James Litaker said eighteen months is very reasonable because you cannot get anything done. You cannot even drive across town; everything now takes longer, much longer. He knows from being on other Boards that you have to ask this group and you have ask another group and it is not simple just to go get it done, approve and move on. He thinks eighteen months is still going to be troublesome for some people.

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Mr. Brent Rockett really likes the change to the permit as opposed to construction within a particular time frame. He thinks for a lot of reasons, including those that have been discussed here already. It is really difficult to have full construction complete. He said if eighteen months is the consensus, he thinks that is a fair and reasonable change to this to make it more feasible for the property owners.

Mr. Charles Paxton asked how many occurrences we have had like this in the past year or year and a half.

Ms. Morris said one that we have had to deal with.

Mr. Adam Dagenhart said this will be mostly for commercial not for residential structures?

Ms. Morris said it is only if it is a nonconforming structure; so something that is older. If it was a house, they would still have to get a building permit within whatever that time frame is; so it works the same for both.

Mr. Dagenhart said the only thing they would have to worry about is setbacks and lot size.

Ms. Morris said right. She thinks that this does not contemplate a total loss, it could, but she doesn't think it really does. She thinks it is more like part of the structure is damaged, not a hundred percent of it is damaged. Something that is damaged enough so that you have to remove the structure and start over.

She said based on the Fire Marshal's records, the church fire was undetermined. The Church thinks it was from lightning, but based on the official record it is undetermined. This would be if they know for sure it was a fire or a flood or something like that. Because the next part talks about if it is not of natural origin and it is more than seventy five percent, then they have to come into compliance. This is more geared toward a significant weather event like we are getting ready to experience and if we had a lot of damage and loss.

Mr. Rockett asked if a historical designation would change this whatsoever? Does that designation have any impact on the nonconforming structure ordinance?

Ms. Morris said Cabarrus County has some historic structures, but Cabarrus County does not have any type of local ordinance that regulates those structures. So, if it is something that is on the National Register it would be up to that property owner to build back into compliance with the National Register if they wanted to maintain that designation.

She said this is more for things that were there prior to us having a zoning ordinance or it could be something that was built without proper permits that just happens to be out there that is now on the books. We have a lot of that kind of stuff.

There being no further discussion, Mr. Brent Rockett, **MOTIONED, SECONDED** by Mr. James Litaker, to recommend **APPROVAL** of Text2018-00003–Chapter 14, Nonconformities to the

Board of Commissioners and with the change to eighteen months from date of event to get the building permit and to adopt the other language as stated. The vote was unanimous.

Ms. Morris asked the Board if they were okay with her making the minor change and moving it to the Commissioners or if they wanted to see it back. It would read: and used as it was before the event provided that a building permit is issued for reconstruction within eighteen months of the date of the event.

It was the Consensus of the Board to allow Ms. Morris make the change and to move the text change forward to the Commissioners for approval.

**Proposed Text Amendment to Zoning Ordinance Text2018-00004 – Chapter 2, Accessory Structure and Accessory Dwelling Unit definition and Chapter 7, Accessory Structure Standards**

Ms. Morris said this is a proposed amendment to change our regulations related to accessory structures and accessory dwelling units. One change would be to Chapter 2, to change the actual definitions. It currently says that an accessory structure needs to be subordinate to the primary structure.

The Chapter 7 amendment is related to accessory dwelling units. She said there was some analysis done by the Tax Office, and at that time the average square footage of a house in Cabarrus County was 2,200 square feet, so we went with half of that.

That has significantly increased and we have people coming in now asking for accessory buildings that are 6,000 square feet, so that they can put their car collection in them or guest houses that are 1,500 square feet for Mom and Dad to live in now.

It is proposed to react to what product type that we are seeing (for a lack of a better way to explain it). It would allow those property owners flexibility. Right now with the accessory structures themselves, there is no regulation on that for height except for the base district.

As far as the accessory dwelling units, we point to a particular square footage on the tax card so that we have something to say this is what we are basing it on. We are not trying to guess, this is your base square footage, so you get fifty percent of that. Theoretically, it should end up being smaller than the primary structure. But, this one would still maintain that the height needs to be consistent with the primary structure. So, it could not be any taller than the primary structure.

She said with just the accessory piece, if I am building a garage, my garage potentially could be taller than my house. If I only have a one story house and I want a loft or something on top of my garage for storage, it could potentially end up being taller. The accessories structures now, would only have to meet setbacks and placement would not require them to be located behind the house or anything like that. The only one where it has that has that type of requirement still is the actual accessory dwelling unit. So it either goes to the side or it goes to the rear of the primary.

So, pretty much, if you want to put up an accessory structure, you just have to meet the primary setbacks if it is over fifteen feet tall. If it is less than fifteen feet, then you get an adjustment on the rear setback if you are putting it behind your house.

We had the over two acres, and under two acres and as long as you were one hundred feet off of the road. They would only be subject to the actual setbacks now, so they could put it in front of the house if they wanted too or behind the house where ever they think it needs to be.

The Chair said or around the ponds.

Ms. Morris said or around the ponds, maybe some tiny houses around the pond for the view.

Mr. Rockett asked if this includes barn structures as well.

Ms. Morris said if it is on a bona fide farm, they do not have to meet anything.

Mr. Rockett said a barn in the sense of a residence, with a few horses or equipment storage on the property it would? That accessory structure would be considered an accessory structure in that scenario right? If it were not a farm per se?

Ms. Morris said yes, if it did not have the horses. This would now allow you to build a barn and put a loft for storage or if someone wants a three bay garage and they want some space or a party room on top. You could not use it as mother-in-law suite because that puts it back into a dwelling unit.

The Chair said does the structure on Cold Springs Road, coming from Highway 73 on the left where they have a residence on top and a barn below fall under this?

Ms. Morris thinks the case Mr. Pinto is talking about was people who wanted to live on top of their stable. Typically, we would require a house and then we would require the barn, but in talking with the County Attorney, we said do we really care if they live on top of the barn. Our Attorney said we do not really care. It is allowed in both districts so that is how we got the stable with the house kind of on top.

There being no further discussion, Mr. James Litaker, **MOTIONED, SECONDED** by Mr. Andrew Nance, to recommend **APPROVAL** of Text2018-00004 - Chapter 2, Accessory Structure and Accessory Dwelling Unit definition and Chapter 7, Accessory Structure Standards, to the Board of Commissioner. The vote was unanimous

### **Directors Report**

Ms. Susie Morris, Planning Manager addressed the Board stating that they are still working through the violations for the solar farm. She expects that the Board will see that in the next month or two. As of today, we did not have any new cases to come in so, we may or may not have a meeting next month depending on what happens with that particular case.

Mr. Dagenhart said what about a site on Highway 601 where they have gone in and graded.

Ms. Morris said it is her understanding that they have had multiple conversations with Concord about service, because they would need utilities if that were develop and it would be very difficult to get utilities there. When we were asked about that by the Town of Midland, it was communicated to us from Forestry that they had a forestry plan and that they were clearing that property. The only project that the county has in that area is the solar farm and the new substation there on Joyner Road. That is the only thing that we have that is close to that area.

We did get a call that they are now hauling dirt off of that site, which we turned over to the DEQ in Mooresville. She has not personally been out there, but she has heard that they were taking truckloads of dirt out of there. The trees first was the issue and we are getting a lot of calls about a subdivision that Concord has, which is the Campbell Farm site; about trees and everything there.

We did get an email about the other one that they had now started taking dirt out of there. Our enforcement officer is getting in touch with Mooresville about it. Because for us, that would be mining. If that is really what they are doing. They have not come in and talked to us or anything about a mining permit and that would require a conditional use permit for them to that.

Even though it is just dirt, based on our definitions in the Ordinance, it is still earth extraction, which equates to mining. She said no one has approached us about doing anything out there, she does not know if they are going to talk with Concord about developing it or if it will be Midland. It is still unincorporated county right now, but ultimately it will be Midland annexation area, but Concord service area.

### **Legal Update**

Mr. Koch said we are trying to work out a way to get of the Shelly case. There is some movement on that but nothing he can report on as being definite on that.

We have been reporting on the Phillip Little case for years and years. Back in June, we got an order for his arrest for not having paid the penalties and the attorney fees back to the County. Mr. Little has been ducking the Sheriff, a lot of times when they come out to try to serve the Motions for Contempt and the Motion to Show Cause. In this last one, Mr. Koch got the Judge to agree in the order that basically, Mr. Little would have to post bond in the amount that he owes the County. If they did catch him, they would put him under arrest and his bond essentially would be the \$16,000.

He said yesterday, they caught up with him and they were about to arrest him and he went and got the money and gave it to his attorney and they paid it in the Clerk's office. It has been collected in full. We have been talking about this for about four years, now it is finally over. We finally caught up with him and he ended up having to pay.

Mr. Little was talking with Katie Barr, (the other Attorney in Mr. Koch's Office) and Mr. Jim Scarbrough has been representing him lately. They were having conversations back and forth and

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Mr. Little was trying to put it on a payment plan and we were not going to do that with him. He had to pay it full, just like the Order said, and that was the only thing that we were going to accept.

Mr. Koch was tired of dealing with him and having to report that they were not making significant progress. At this point Mr. Little is paid in full; he basically bonded his self out. Fighting the County on that turned out not to be too smart for him; it ended up being pretty expensive.

Mr. Koch has been working on the solar farm from the hospital. There is something happening almost every day. We are trying to get it in the best of shape for when it does come before the Board; so it won't be that much of a problem for the Board to deal with it. There are a lot of issues out there.

Ms. Morris has been working really hard on it. We met with them last week to try to make them aware of what they need to do to get it in the correct format. We are making them do an application amendment to their CUP. In order for them to do that, they need to provide a lot of information and they have got to show what all the violations were and how they are going to deal with them, so the Board will have all the information in front of you when it does come before you. We are trying to get it simplified as much as we can before it comes before the Board and to make sure they have everything that the Board needs to see.

Mr. Jerry Wood, Jr. said back when we were talking about the Harrisburg Land Use Plan, the water commodity and their contract with Concord, did that every get ironed out? He kept an eye out for that and he never saw any details. Do we know what happened with their water contract? He thinks it was up in July and it had not been finalized. It was a critical element in that plan.

Ms. Morris said Katie Barr, the other County Attorney, has been working with the Town and she is not sure where they are with those negotiations. We still have not finalized the land use plan. Yesterday, she provided them the draft that they sent over to us; it needs a lot of work still, including some references in there that the Public Works Director had not seen, in the section that talks about water usage and paying tap fees and waiving tap fees, which was related to economic development, which is not a standard practice; it has to be approved by Town Council.

She is not sure where that is, they have some very controversial projects happening down there, which may become an issue for them sooner rather than later, based on the projects that are currently under consideration.

We received last week, a project down off Lower Rocky River, which would be tapping in off of a WSACC line. She does not know how that would go, because utilities are over here and the project is clearly on the other side.

Ms. Morris does not know if our folks from Concord are comfortable with providing an update.

Mr. Corley thinks it is resolved from a contractual water sale standpoint. We raised their volume allowance a little bit; we did some tweaks. It is not a real complicated rate structure but it is kind

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of too complicated to describe. There were some tweaks to that, as well as some intermediate thresholds for renegotiation.

He said with their continued use and development, we are going to be back at the table very shortly to have those discussions again. He thinks it was a good intermediate step and he truly believes that all parties kind of look at it as an intermediate step. It keeps them going, we are happy with it but again, they clearly understand that when we reach some of the additional thresholds, we are expecting some additional movement on their part.

There being no further discussion, Mr. James Litaker, **MOTIONED, SECONDED** by Mr. Andrew Nance, to **ADJOURN** the meeting. The vote was unanimous. The meeting ended at 7:55 p.m.

APPROVED BY:

Mr. Chris Pinto, Chair

SUBMITTED BY:

Arlena B. Roberts

ATTEST BY:

Susie Morris, Planning and Zoning Manager

STATE OF NORTH CAROLINA

CABARRUS COUNTY PLANNING

AND ZONING COMMISSION

COUNTY OF CABARRUS

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.

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 \_\_\_\_ 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, \_\_\_\_\_, 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 \_\_\_\_ day of November, 2018.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

## 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.