

Cabarrus County Government

Cabarrus County Planning and Zoning Commission Meeting
January 15, 2009
7:00 P.M.
Board of Commissioners Chamber
Cabarrus County Governmental Center

Agenda

1. Roll Call
2. Approval/Correction of December 18, 2008 Minutes
3. Old Business – Board of Adjustment Function:

- A. Conditional Use Application - Case# CUSE2008-00009
Cabarrus County Schools

Request: The applicant is seeking permission to allow construction of an Elementary School on property owned by Archie and Mary Ellen Barringer, located at 3845 Abilene Road, Concord NC

4. New Business – Planning Board Function:

- A. Request for Vested Rights – Petition #2009-01(VR) – Greathorn Properties LLC
(Accela# PLVR2008-00001)

Request: The applicant is requesting vested rights for properties located off Highway 601 South, identified as parcel numbers 5547-86-4896, 5547-87-8815 and 5547-87-8815, currently approved as the Riverbend subdivision.

- B. Request for Extension of Riverbend Preliminary Plat Approval –
Petition #C2009- 01 (SE) – Greathorn Properties LLC
(Accela# PLPR2008-00231)

Request: The applicant is requesting an extension for the Riverbend preliminary subdivision plat.

C. Zoning Atlas Amendment:

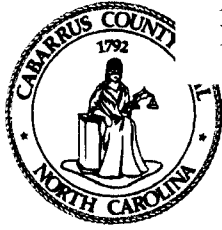
1. Rezoning Petition C2009-01 (R), Glenn Benton
(Accela# RZON2008-00231)

Request: Change from Limited Commercial (LC) to Light Industrial (LI)

5. Directors Report

6. Adjournment

CASE #: CUSE2008-00009
APPLICANT: CABARRUS CTY SCHOOLS
DATE: 1/15/2009
EXHIBIT: J



Cabarrus County Zoning Department

CUSE2008-00009

January 15, 2009

Findings of Fact

Applicant- Cabarrus County Schools
4425 Old Airport Rd
Concord, NC 28026

Property Owner- Archie Eugene Barringer
2271 Jenna Shane Drive
Fayetteville, NC 28306

Property Location- 3939 Abilene Road
Concord, NC 28025

PIN- 55498074420000

Property Zoning- CR Countryside Residential

Property Size- +/-28 Acres

Request- The applicant is requesting to construct an Elementary School.

Final Decision

Motion	To Grant	To Deny
Vote	For	Against
	_____	_____
Granted		Denied

Additional Facts-

1. The applicant has provided documentation compliant with Section 8-3, Petitioning for a Conditional Use.
2. The applicant has submitted a complete application which includes the "Findings of Fact" sheet along with a site plan showing the proposed school.
3. Building renderings have been provided to show the proposed architectural design.
4. A Public hearing notice has been published in the Independent Tribune on December 4th and 11th, 2008.
5. Adjacent property owners have been notified by US Mail.
6. A sign has been placed on the property stating the time, date, and location of the public hearing.
7. Additional agencies are part of this review process. Comments from each respective agency are provided for your review.
8. Site plan review and approval will be required subsequent to Board of Adjustment approval to ensure compliance with all applicable development requirements.
9. Proposed conditions of approval are attached.

Nonresidential Development Agency Review Comments:

Fire Review

1. No comments at this time for conditional use site plan. Future comments will come with building and site plan review subsequent board approval.

Steve Langer, Cabarrus County Fire Marshal

Engineering Review

City of Concord Engineering Comments:

1. Approved with Conditions

Pam Parker CZO, City of Concord Development Services Department

County Engineering Review

1. Site plan compliance with NCDOT regulations will meet County Engineering requirements.

Jeff Moody, Cabarrus County Engineer

Soil-Water Conservation Review

1. Cabarrus County Schools has agreed to meet with Cabarrus County Soil and Water Conservation to discuss riparian buffer dedication subsequent board approval and property acquisition.

Dennis Testerman, Cabarrus County Soil and Water Conservation

Erosion Control Review

1. An Erosion Control plan is required prior to construction.

NCDENR

NCDOT Review

Comments for AT Allen Replacement School site plan are as follows:

1. R/W to replace the existing Yancey 50' r/w should be shown on the north end of the site.
2. It would appear as though the existing 50' r/w to the Yancey tract is included within the school's property boundary and buffer yard. Is that accurate?
3. The TIA has not currently been accepted and is under revision. There are however, two intersections that are being impacted by the school's relocation and planned redistricting. The intersection of US 601 and Miami Church Road will require signal modification at a minimum. The intersection of Miami Church Road and Cold Springs Road South may require mitigation as well. Right turn lane storage of 150' minimum from Miami Church Road to Abilene should be provided.
4. The site plan must be revised to show the new 50' r/w and right turn lane storage length.
5. Once I have reviewed the revised traffic study, I should be able to provide roadway improvements that may be able to be considered conditions of approval for the proposed rezoning.

If I need to provide additional information or clarification, please advise.

**Leah Wagner, NCDOT
704-982-0104**

EMS Review

1. Robbie No issues from an EMS standpoint.

David Hampton, Director Cabarrus County

Health Alliance Review

1. The area is currently not served by sanitary sewer and any plans for food service and licensed child care must be approved by this department before any building permits are issued.

David Troutman, Cabarrus County Health Alliance

Sheriff Review

1. Reviewed the map for the elementary school and I have no comments.

Lt. Ray Gilleland Cabarrus County Sheriff's Office

Storm Water Review - State

1. Approved

NCDENR DWQ**Utility Review**

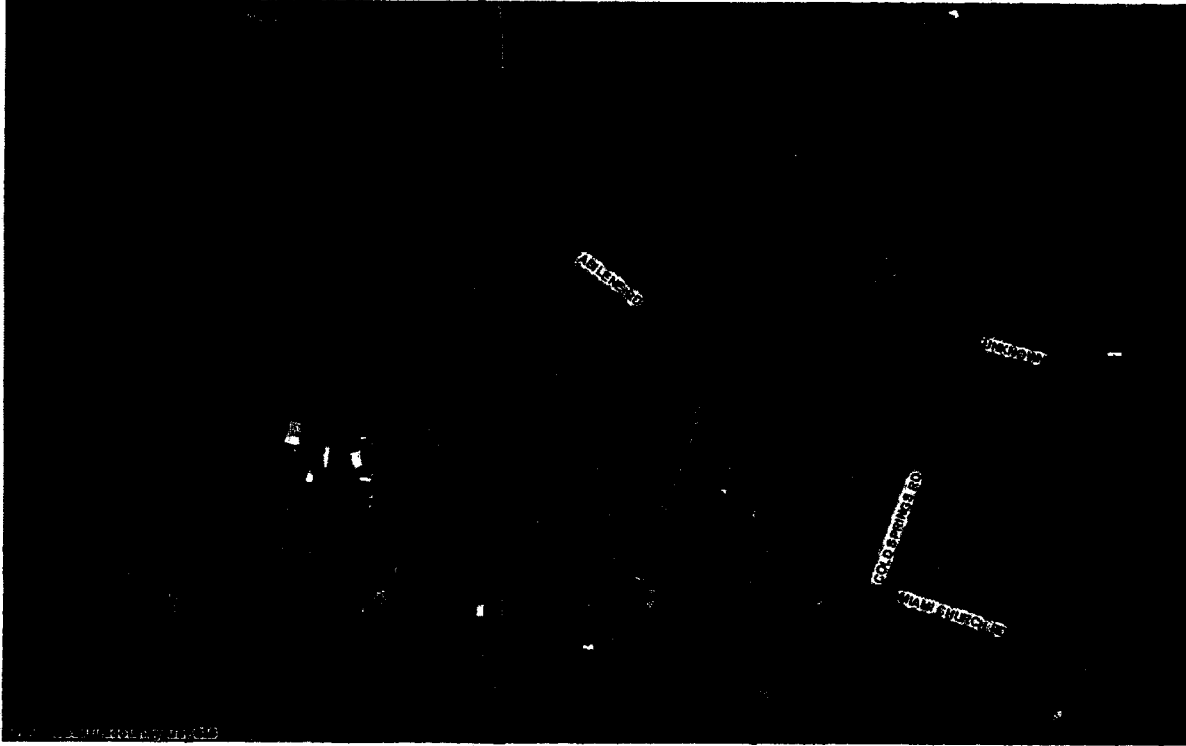
1. Approved with Conditions

City of Concord**Proposed Conditions:**

1. Site plan review and approval will be required subsequent to Board of Adjustment approval to ensure compliance with all applicable development requirements included but not limited to Cabarrus County Zoning and any other Local, State, or Federal Review Agency. (Zoning)
2. Applicant shall meet with Cabarrus County Soil and Water Conservation to discuss conservation easement feasibility. (CSWCD)
3. Applicant shall meet all requirements established by NCDOT. (Engineering)
4. Applicant shall revise site plan to accommodate Avett-Yancy right-of-way as stated in the NCDOT comments. (NCDOT, APF)
5. Applicant shall revise plan to show 50' right-of-way and right turn lane storage length. (NCDOT, APF)
6. Applicant shall agree to install needed improvements as determined by the Traffic Impact Study Review by NCDOT. (NCDOT, APF)
7. Applicant shall provide a copy of the finalized sealed TIA to Cabarrus County Zoning Division. (Zoning)
8. Applicant shall procure all necessary Local, State and Federal permits and/or approval certificates (NCDOT, NCDNR DWQ, FEMA) if necessary and provide copies to the Cabarrus County Zoning Division prior to construction. (Zoning)

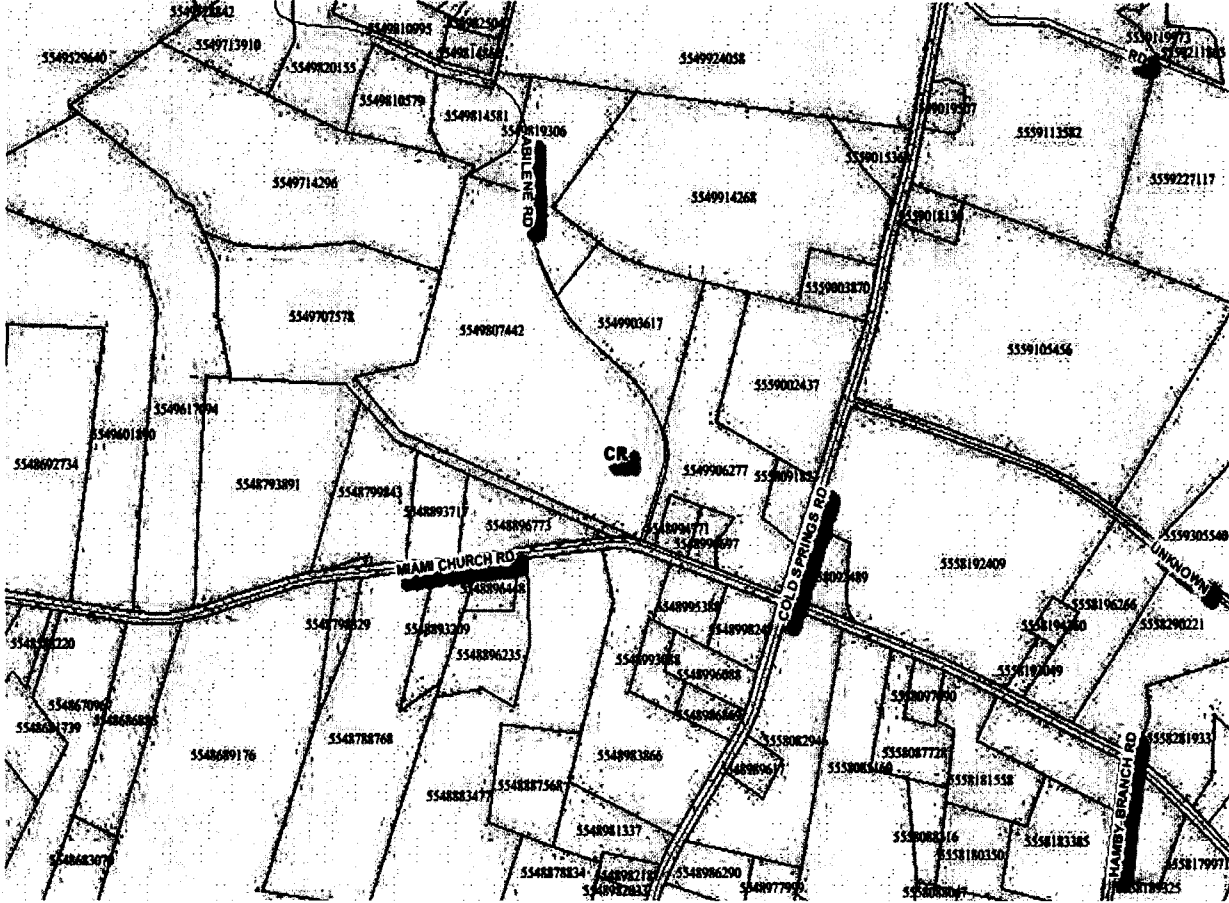
Aerial Map

Proposed AT Allen School



Zoning Map

Proposed AT Allen School



Susie Morris

From: Wagner, Leah P [lwagner@ncdot.gov]
Sent: Thursday, January 15, 2009 4:06 PM
To: Susie Morris
Cc: Wagner, Leah P
Subject: RE: Staff Report

Susie,

Upon further review of the AT Allen Conditional Use Permit request, NCDOT requests the following conditions be made a part of any approvals issued by Cabarrus County:

1. Remove "NCDOT" from the "60' DEDICATED NCDOT R/W" statement at the northern end of the property that connects to the Yancey tract. The statement should indicate that the r/w is for access to the Yancey tract and can be phrased as "Potential future NCDOT R/W". The school system should continue to pursue acquiring the existing 50' Yancey r/w.
2. The school system shall be responsible to obtain any and all rights of way necessary to accommodate required roadway improvements along Miami Church Road, including construction easement(s). The plan currently shows 50' which may not be adequate as the roadway improvement plans have not been reviewed.

If additional information is required, please advise.

Leah

-----Original Message-----

From: Susie Morris [mailto:SAMorris@cabarruscounty.us]
Sent: Thursday, January 15, 2009 3:42 PM
To: Wagner, Leah P
Subject: Staff Report

-----Original Message-----

From: ccprinter@cabarruscounty.us [mailto:ccprinter@cabarruscounty.us]
Sent: Thursday, January 15, 2009 3:40 PM
To: Susie Morris
Subject:

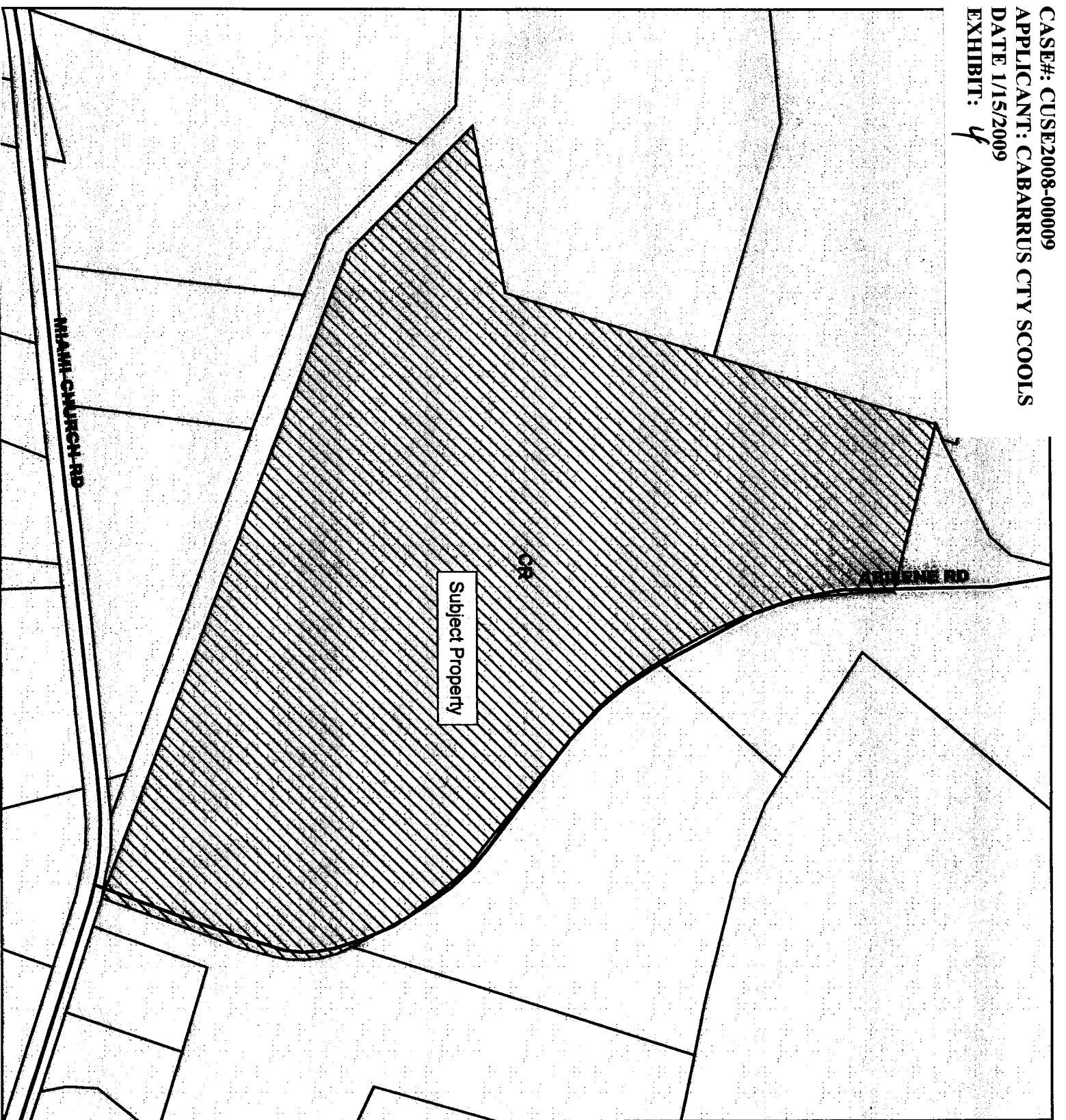
This E-mail was sent from "PLNADMGCC1" (Aficio MP C5000).

Scan Date: 01.15.2009 15:39:39 (-0500)
Queries to: ccprinter@cabarruscounty.us


DISCLAIMER:

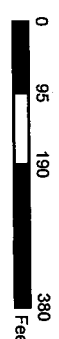
E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

CASE#: CUSE2008-00009
 APPLICANT: CABARRUS CTY SCHOOLS
 DATE 1/15/2009
 EXHIBIT: 4



Proposed School Site
 Applicant: Cabarrus County Schools
 Zoning: CR
 Parcel ID#: 5549-80-7442

Legend
 Subject Property



Cabarrus County shall not be held liable for any errors in this data. This includes errors of content, form, or omission. The user assumes all responsibility for 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 derived are: aerial photography, ground truthing, and other data contained within the data. Map Prepared by Cabarrus County Planning Services December 2008


CASE#: CU5E2008-00009
 APPLICANT: CABARRUS CTY SCHOOLS
 DATE 1/15/2009
 EXHIBIT: 5



Subject Property

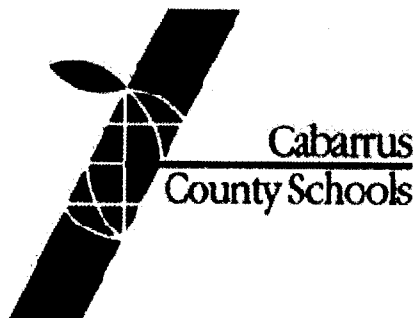


Proposed School Site
 Applicant: Cabarrus County Schools
 Zoning: CR
 Parcel ID#: 5549-80-7442

Legend
 Subject Property



Caltrans County shall not be held liable for any errors or omissions. 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 right or warranty of any kind. The user of these data is advised that the data were compiled and are intended for verification of information contained within the data. Data Prepared by Caltrans County Planning Services, Durham



4401 Old Airport Road
PO Box 388
Concord, NC 28026.0388

(704) 262-6219
(704) 262-6141 Fax

Meeting Minutes

Date: 1/8/2009

Time: 6:30 p.m.

Location: AT Allen Elementary School, Concord, NC

Subject: AT Allen Replacement Elementary School – Pre-Conditional Use Meeting

Attendees:

Jim Amendum

Andy Rathke

Samuel Masters

Hilda Batts

Neighbors

CCS School Staff

James Golightly

Grace Wallace

Sandra Turnbull

Jeff Page

Parents

A pre-conditional use meeting was held at the existing AT Allen Elementary School on Thursday evening (1/8/09) to explain the project to the public and respond to questions and any concerns they might have.

The most common comments follow with our responses:

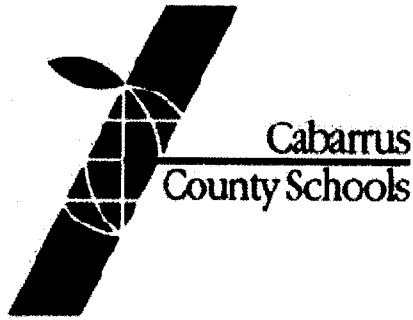
- Why not build the school somewhere else?
 - The school. System looked at several sites before settling on this one. Based upon topography, availability of utilities, required roadway improvements and location within the attendance district, this was the best site available at the time the decision was made.
- Other sites have come available recently, why not stop the purchase of this site and see if these other sites are better suited for this school?
 - If the purchase is delayed now, the new school will not open in time for the 2010 school year. Funding for this project maybe delayed several years. There is no guarantee that the other site will be better or less costly than this site. Typically sites where sewer and water are already available cost more to purchase.
- Concerns over the traffic on Miami Church Rd. Will Miami Church Rd be widened?
 - Miami Church Road will be widened for left & right turn lanes at Abilene Rd, but not for the length of the road from Hwy 601 to Cold Springs Rd.
- Concerns about the condition of the bridges on Miami Church Rd.
 - The narrow bridge on Miami Church Rd. will be replaced by NCDOT . This is scheduled to occur before the school will open in August of 2010. However, this is dependent on the availability of DOT funds.
- What improvements will be made to Abilene Rd?

CASE#: CUSE2008-00009

APPLICANT: CABARRUS CTY SCOOOLS

DATE 1/15/2009

EXHIBIT: 6



4401 Old Airport Road
PO Box 388
Concord, NC 28026.0388

(704) 262-6219
(704) 262-6141 Fax

- Abilene road will be widened to 3 lanes from the intersection of Miami Church Rd to past the 3rd entrance to the school (at the bus parking lot). This will allow for one full traffic lane in each direction and a center lane. It will also be realigned for a more gradual curve. NCDOT will complete the paving for the balance of the road.
- How will utilities be run to the site?
 - Utilities (sewer & water) will be run to the site along Miami Church Rd from County Home Rd to Abilene Rd. Sewer will be a force main and residents along Miami Church rd will not be able to tie into the sewer line. Residents maybe allowed to tie into the water line with a single $\frac{3}{4}$ inch tap along the length of the new line. Final decision will be by the city and county.
- The cost of running the utilities to the site?
 - Estimated at \$800,000. However, people were reminded that land with utilities already in place typically costs more than land like this site where utilities were not available.
- Concerns about the intersection of Miami Church Rd and Cold Springs Rd.
 - NCDOT will require us to do some improvements to this intersection, but the extent of the improvements have not been finalized yet.
- Concerns by neighbors who have ponds on their property and their potential liability.
 - Neighbors were reminded that these are Elementary School Children (grades K-5) not middle and high school children. These children are supervised from the time they get off the school bus or out of their parent's cars until they leave school. Likewise, as this is not a typical neighborhood school there should be few if any children walking to this school. Similarly, the water detention pond on the school site will be fenced off to protect the children.
- Concerns by neighbors about drainage.
 - Our site is designed to retain water in our detention pond and not let water flood neighboring properties. This is strictly regulated by state laws which our design must comply with.

Submitted by Samuel Masters, Director of Construction – Cabarrus County Schools.

CASE#: CUSE2008-00009
APPLICANT: CABARRUS CTY SCHOOLS
DATE 1/15/2009
EXHIBIT: 7

Eugene Lane
3875 Abilene Road
Concord, NC 28025
704-791-1291

Members of the Cabarrus County Planning and Zoning Commission.

I want to address the proposed location of the new A.T. Allen Elementary School. When I first learned of the proposed school site at the corner of Miami Church Road and Abilene Road several concerns came to mind. These concerns included the increased traffic and narrow bridge on Miami Church Road, the misalignment of the proposal with the County's proposed new Central Area Zoning Plan and the lack of utilities at the proposed site. This location was poorly chosen for locating a new elementary school to service the A.T. Allen school district.

The first thing I did was to locate a map of the existing elementary school districts to see where the proposed site was within the district. The proposed location is on the Eastern side of Highway 601, near the edge of the district, and farther away from the population center of the district than the current school. If one has been following the proposed Cabarrus County Central Area Plan placing a school on this site does not fall in line with this plan. This leads one to wonder why the meeting to grant a zoning variance for this purpose comes 5 days before the Cabarrus County Commissioners meet to adopt the new Central Area Plan.

I then started researching the process of locating school sites and came across a document entitled "Guiding Principles for School Development" on the Cabarrus County Commissioner's website. Having read the document it seemed well thought out and logical in establishing guidelines for placing a new school. On the first page of the document it lays out who was involved in creating these guidelines and divides the principles into three categories, the first addressing site location. It reads as follows;

"The staffs from Cabarrus County and the school systems have worked collaboratively to create the following set of Guiding Principles for School Development. These principles will allow the school systems to provide the needed facilities to accommodate student population growth while ensuring that school locations and designs are environmentally sound and work well with the existing communities. The principles are divided into three categories: site location, site design, and implementation."

"1. Site Location: These principles provide guidance for locating schools in areas that are served by existing public facilities and that provide amenities for existing communities. The overall purpose is to ensure that school placement does not encourage new growth in locations where governmental agencies are not prepared to provide necessary services. Furthermore, this principle encourages schools to serve as multi-use community centers."

The first section of this document titled "Principles for School Site Location" outlines six principles for locating school sites. The proposed location on Abilene Road disregards all six principles in their entirety. The two most prominent violations are;

- 1) Place schools adjacent to or within communities
 - a) Adjacent to existing neighborhood areas
 - i) Find sites that can be connected by street or pedestrian connection
 - ii) May differentiate by school type
 - b) Within new neighborhoods on donated sites
 - i) Place at the center of a community

ii) Emphasis on location in mixed use developments (i.e. Afton Village)

5) Ensure adequate and available utility service

a) Utilities should be in place

i) No utility extensions that will encourage new growth areas

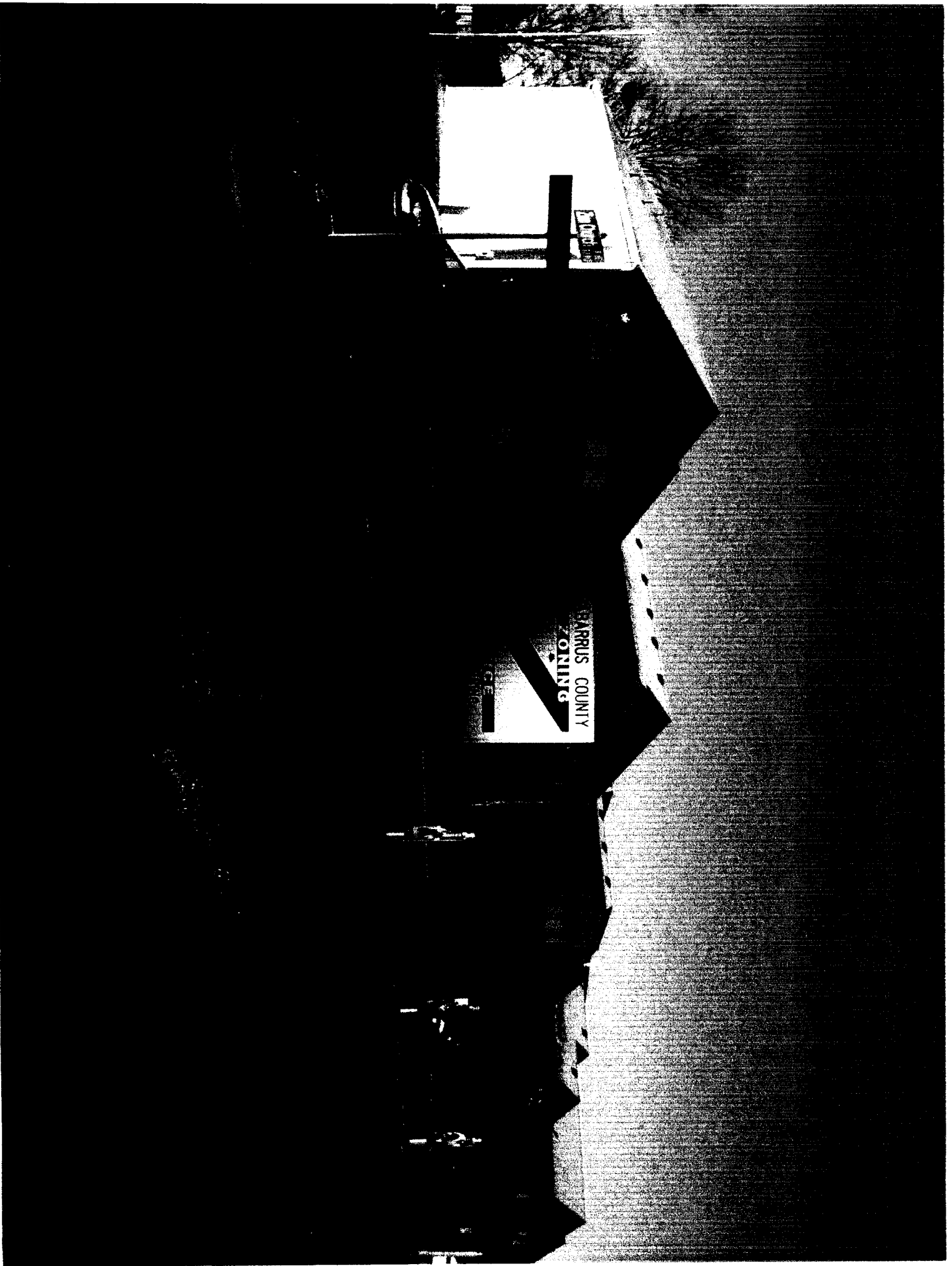
b) Reduced construction cost due to utility extensions

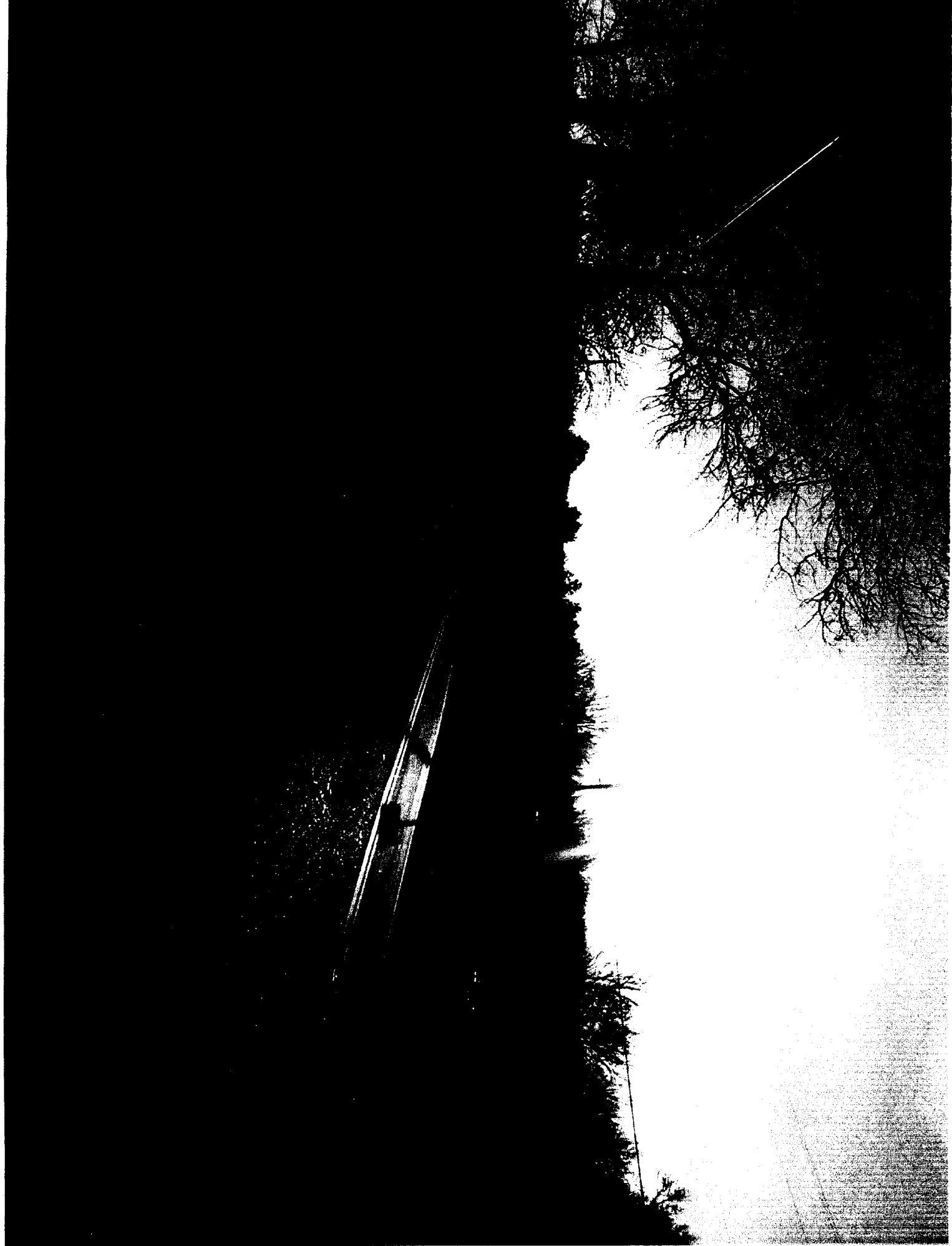
I attended the meeting held by the County Board of Education on 8 January, 2009 at the existing A.T. Allen Elementary School. When I brought up the obvious disparities between the proposed location and this planning document my concern was answered with the document was never adopted and was not relevant in this matter. If this is true then the staff from Cabarrus County and the school system have wasted their time and efforts.

Another concern addressed at the meeting was the distance the proposed site is from major community centers in the school district. By placing the new school away from community centers it will increase the distance travelled by school buses which will unnecessarily increase fuel costs not only in the short term but for the life span of the school. This increased daily mileage will also have a negative impact on the environment at a time when most school districts are looking at ways to reduce their environmental footprint. Placing a school in an area which is mostly zoned very low density residential and rural residential places it outside planned areas of future growth. There is also the issue of greatly increased traffic on a narrow and winding road with a questionable bridge. The traffic concern and its impact on safety was voiced by many people at the meeting. Their concerns were loudly rebuffed by Board of Education representatives who made it clear the Board of Education's job was to educate children, not to be concerned with traffic, road conditions and bridges. Their response to locating the school so far from current community (population) centers was there really are no true neighborhoods anymore so this is not really a concern.

Finally the issue of adequate utilities at the proposed location was brought up. The current plan is to extend water and sewer along Miami Church road. There seems to be some confusion as to whether residents along Miami Church will be able to tap into the water line. Board of Education representatives clearly explained there would be no tapping into the sewer line. I made some phone calls to inquire about the cost of extending utilities and I am told the costs run from \$60 to \$80 a foot for a water line and about the same for a sewer line, and a sewer lift station on the school site would cost approximately \$50,000 to \$60,000. Also, there was much concern from local farmers about the handling of storm water runoff from the site. A review of the study in the Central Cabarrus land use plan indicates many portions of the study area have limited water and sewer service and indicates one of the most pressing utility infrastructure issues is stormwater.

Placing a school farther away from the community centers they draw from and in a area where the land use plan is to limit growth while increasing school seats by 500+ students is not a common sense approach to planning. When the above issues (and many more not mentioned) are taken into consideration it becomes apparent the proposed site is was poorly chosen. This was supported at the meeting by Board of Education representatives when they admitted this was not the best site and better sites have become available yet, they will not consider any other site. A zoning variance should not be granted to place a school in the lot on the corner of Abilene Road and Miami Church Road! Like Lee Iacocca, I have to ask "Where have all the leaders gone"?





CABARRUS COUNTY
Post Office Box 707
Concord, North Carolina 28026

Application Number Case # Cuse2008-00009

COUNTY OF CABARRUS
STATE OF NORTH CAROLINA

ORDER GRANTING A CONDITIONAL USE PERMIT

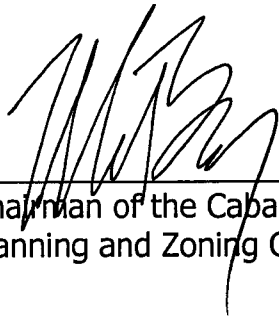
The Board of Adjustment for the County of Cabarrus, having held a public hearing on January 15, 2009 to consider application number CUSE2008-00009, submitted by Cabarrus County Schools, a request for a conditional use permit to construct an elementary school at 3845 Abilene Road, Concord, NC., and having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

1. The Board makes and adopts the Findings of Fact contained in the attached Exhibit 1 labeled Findings of Fact.
2. It is the Board's CONCLUSION that the proposed use does satisfy the first General Standard listed in Section 8.3 of the Cabarrus County Zoning Ordinance ("Ordinance"); namely, that the use will promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted.
3. It is the Board's CONCLUSION that the proposed use does satisfy the second General Standard listed in the Ordinance; namely, that the use will maintain or enhance the value of contiguous property.
4. It is the Board's Conclusion that the proposed use does satisfy the third General Standard listed in the Ordinance; namely, the use assumes the adequacy of sewage disposal facilities, solid waste and water, police, fire and rescue, equal protection, schools, transportation systems (in and around the site) and other public facilities.

6. It is the Board's CONCLUSION that the proposed use does satisfy the specific standards listed in the Ordinance for this use.

Therefore, because the Board concludes that all of the general and specific conditions precedent to the issuance of a CONDITIONAL USE PERMIT has been satisfied, it is ORDERED that the application for the issuance of a CONDITIONAL USE PERMIT be GRANTED, subject to the conditions contained in the attached Exhibit 2. The applicant shall fully comply with all the applicable, specific requirements in the Ordinance and must develop the property in accordance with the site plan submitted and approved. If any of the conditions shall be held invalid, this permit shall become void and of no effect.

Ordered this 15th day of January 2009.



Chairman of the Cabarrus County
Planning and Zoning Commission



Secretary

NOTE: If you are dissatisfied with the decision of this Board, an appeal may be taken to the Superior Court of Cabarrus County within thirty (30) days after the date of this order. See Section 12-25 of the Ordinance.

**EXHIBIT 1
FINDINGS OF FACT
CASE NO. CUSE 2008-00009
CABARRUS COUNTY SCHOOLS, APPLICANT
28 +/- ACRES, ABILENE ROAD
CONCORD, NC**

1. Those "Additional Facts" as contained in the staff report.
2. Those responses to the General Requirements contained in the Applicant's conditional use application.
3. The Central Area Plan being adopted by the City of Concord and Cabarrus County, which is based on an interlocal agreement between Concord and the County contemplates location of schools in this zoning district and permits extension of utilities to this school site.
4. The Cabarrus County Planning and Zoning Commission is not permitted to consider evidence of whether another site for this school may be preferable.
5. The statements of the opponents to this application were primarily inadmissible opinion testimony relating to the opponents' belief that a better site for the school was available elsewhere.
6. The roads adjacent to the site will be upgraded and improved.

EXHIBIT 2
CONDITIONS
APPLICATION Case #CUSE2008-00009

1. That the site plan review and approval will be required subsequent to Board of Adjustment approval to ensure compliance with all applicable development requirements included but not limited to Cabarrus County Zoning and any other Local, State or Federal Review Agency.
2. That the applicant shall meet with Cabarrus County Soil and Water Conservation to discuss conservation easement feasibility.
3. That the applicant will meet all requirements established by NCDOT.
4. That the applicant shall revise site plan to accommodate Avett-Yancy right-of-way as stated in the NCDOT comments.
5. That the applicant shall revise plan to show 50' right-of-way and right turn lane storage length.
6. That the applicant shall agree to install needed improvements as determined by the Traffic Impact Study review by NCDOT.
7. That the applicant shall provide a copy of the finalized sealed Traffic Impact Analysis (TIA) to Cabarrus County Zoning Division.
8. That the applicant shall procure all necessary Local, State and Federal permits and/or approval certificates (NCDOT, DWQ, FEMA) if necessary and provide copies to the Cabarrus County Zoning Division prior to construction.
9. That the applicant shall remove the term NCDOT from the 60 foot dedicated NCDOT right-of-way statement at the northern end of the property that connects to the Yancey tract. The statement should indicate that the right of way is for access to the Yancey tract and can be phrased as "Potential future NCDOT right of way. The school system should continue to pursue acquiring the existing 50 foot Yancey right-of-way.
10. That the Cabarrus County Schools shall be responsible for obtaining any and all rights of way necessary to accommodate required roadway improvements along Miami Church Road, including construction easement(s). The plan currently shows 50 foot which may not be adequate as the roadway improvement plans have not been reviewed.

Memo

To: Cabarrus County Planning and Zoning Commission
From: Kassie G. Watts, AICP, Senior Planner
Date: January 6, 2009
Petition#: 2009-01(VR)
Accela#: PLVR2008-00001
Re: Request for Vested Rights

Pursuant to North Carolina General Statute §153A-344.1 (a) the General Assembly finds and declares that it is necessary and desirable, as a matter of public policy, to provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability, and fairness in the land-use planning process, secure the reasonable expectations of landowners, and foster cooperation between public and private sectors in the area of land-use planning. Furthermore, the General Assembly recognizes that county approval of land-use development typically follows significant landowner investment in site evaluation, planning, development costs, consultant fees and related expenses.

The ability of a landowner to obtain a vested right after county approval of a site specific development plan or a phased development plan will preserve the prerogatives and authority of local elected officials with respect to land-use matters. There will be ample opportunities for public participation and the public interest will be served. These provisions will strike an appropriate balance between private expectations and the public interest, while scrupulously protecting the public health, safety and welfare.

The statute further defines "vested right" as the right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development or an approved phased development plan.

Developer Greathorn Properties, LLC is requesting vested rights for properties located off Highway 601 South, identified as parcel numbers 5547-86-4896, 5547-87-8815 & 5547-87-8815, currently approved as the Riverbend subdivision. Attached you will find a Site Specific Development Plan (Preliminary Plat) for the project and a letter from Mr. John Robbins outlining the request.

Pursuant to the Cabarrus County Zoning Ordinance Chapter 13, Part 6, a developer/owner may establish a vested right to complete a development project by making a formal request to the Planning and Zoning Commission. The request must include:

1. A description with reasonable certainty, the type and intensity of a use for a specified parcel(s) of land.
2. A "Site Specific Plan" or "Phased Development Plan" which shall be in the form of a subdivision plat drawn in accordance with the Cabarrus County Subdivision Regulations or a site development plan drawn in accordance with Chapter Twelve of the Cabarrus County Zoning Ordinance.

Upon receiving a request for vested rights, the Planning and Zoning Commission shall hold a public hearing to review the submitted plans. If the plans are approved; the vested rights shall run with the

land for a period of two (2) years, beginning from the date of approval. Any variations from the original plan must have the consent of the Planning and Zoning Commission.

The applicant is requesting that vested rights be applied for a period of two years. Should the Board approve the vested rights request, the duration of the vested rights approval would run with the land for a period of two years beginning January 15, 2009 and expiring on January 15, 2011.

Staff recommends the Board consider the information submitted and render a decision accordingly.

GREATHORN



Greathorn Properties, Inc.
1255 Odell School Rd
Concord, NC 28027
704-906-3808/fax 704-721-5905

TO: Cabarrus County Planning and Zoning Board
FROM: Greathorn Properties, Inc.
RE: Vesting request for Riverbend Subdivision
DATE: November 24, 2008

This letter is to request vesting approval for our approved subdivision, Riverbend, which is located on Rt. 601 South, on the Rocky River. The subdivision is situated on three parcels totaling 79.75 acres (PIN #'s: 5547864896, 5547858671, and 5547878815). There are 28 single family lots in the approved subdivision, for a density of .351 units per acre. The minimum lot size is two acres, with the average lot being 2.85 acres.

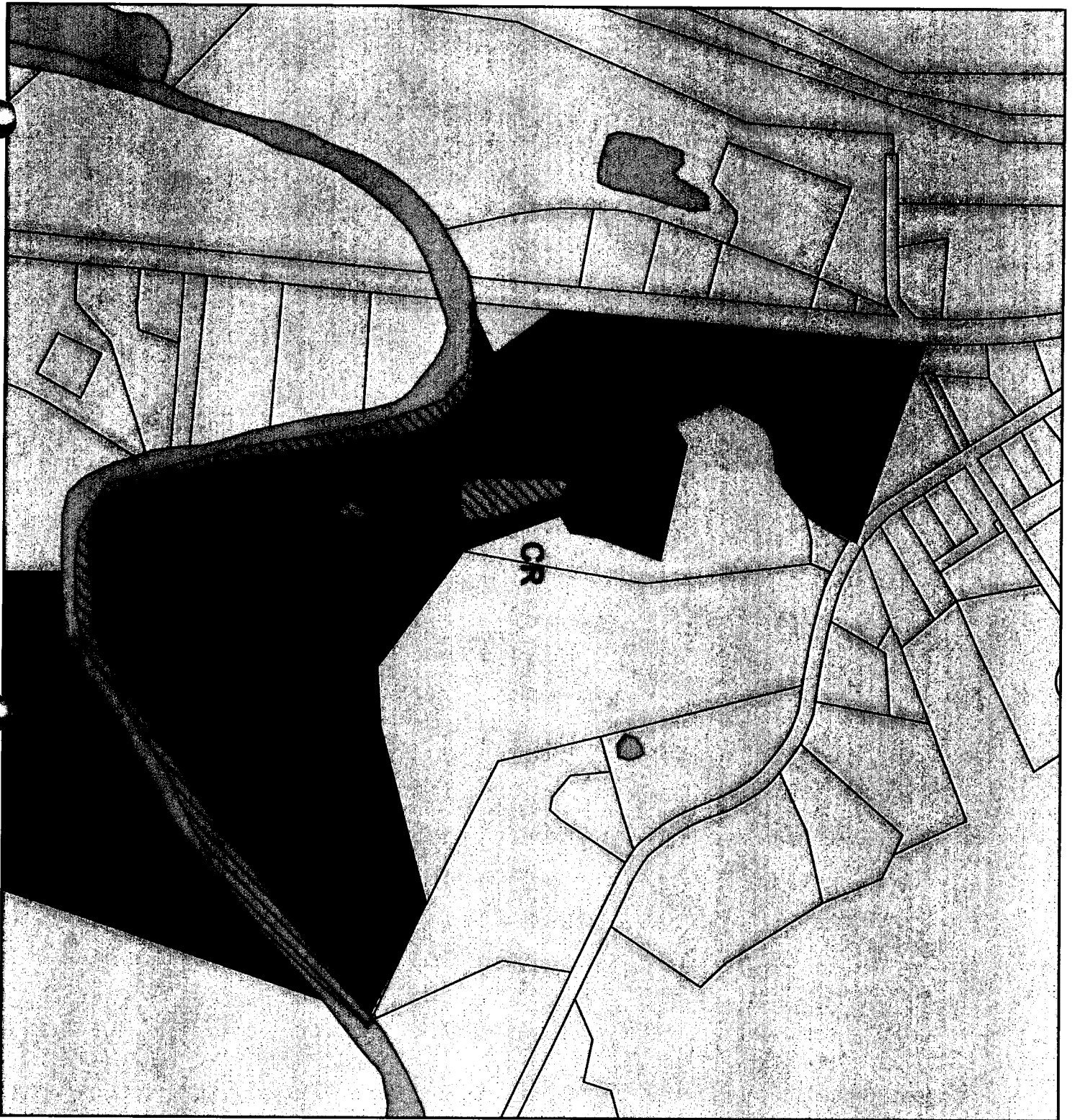
We have invested significantly in initial site improvements. These improvements would be wasted if the subdivision approval was forfeited. The soils have been tested and septic primary and repair areas for each lot have been designed and approved the County Health Alliance, with fees paid for each lot. The interior road has been graded and roughed in and culverts installed in drainage areas. All wetlands mitigation work is complete per the Corps of Engineers permit. We have invested in entrance design and marketing materials as well. DOT and erosion control approvals have also been obtained.

We are requesting the vesting due to the current downturn in the real estate market, and significant investment that has been made based on the approved subdivision plat. While we remain very positive about this development, we are concerned that bringing the lots to market in the near term would be a serious mistake, and not good either for us or the current marketplace in Cabarrus County.

We are requesting that the two year vesting be granted.

Thank you for your consideration on this matter –

John B. Robbins
Greathorn Properties, Inc.



Vested Rights Request
Petition#: C2009-01 (VR)
Accela#: PL VR2008-00001
Petitioner: Greathorn Properties
Zoning: CR
Conventional Subdivision
28 lots Approved
Approximately +/- 79.754 acres



0 245 490 980 Feet



Memo

To: Cabarrus County Planning and Zoning Commission
From: Kassie G. Watts, AICP, Senior Planner
Date: January 6, 2009
Petition#: C2009-01(SE)
Accela#: PLPR2008-00231
Re: Request for Extension of Riverbend Preliminary Plat Approval

Attached, is a letter requesting an extension of the Riverbend preliminary subdivision plat. A copy of the plat map is also enclosed.

Per the Cabarrus County Subdivision Ordinance Chapter 3, Section 5A, a preliminary plat approval is valid for a period of 24 months from its approval date. In addition, this project is subject to a consent agreement that also expires two years from the preliminary plat approval date. The plat was originally approved by the Cabarrus County Planning and Zoning Commission on December 20, 2007.

The extension request was reviewed by all service providers for comments. The comments received are as follows:

Health Alliance-Mark Thompson: Our department has evaluated the proposed lots 1-28 in the proposed Riverbend subdivision located on Highway 601 S. just before Rocky River. Based upon what John Robbins and/or his agents submitted, an area of provisionally suitable soil is available for each lot. Some of the areas are located off-site and will require pumps. Some of the sites will require the residence to be located in a very specific location and will also require a pump. The number of bedrooms is also limited due to the amount of available space.

City of Concord-Boyd Stanley: No Comments.

NCDOT-Leah Wagner: At this time, we have no comments for an extension to the preliminary plat.

Soil & Erosion Control-Thomas Smith: An erosion and sedimentation control plan has been submitted to this Office and was approved on January 29, 2008.

Cabarrus County Schools-Robert Klutz: The parcels for Riverbend are in the A.T. Allen attendance area. The BOE will continue to send students from new subdivisions in the A.T. Allen attendance area to Bethel Elementary until the new A.T. Allen replacement school opens.

Cabarrus County Fire Marshal-Steven Langer: No Comments.

WSACC-Tom Bach: This is in response to your request for comments outlined in your memorandum dated December 17, 2008, regarding the preliminary plat for the Riverbend subdivision (PIN#5547-86-4896, 5547-87-8815 & 5547-87-8815) along Highway 601 near the intersection with Riverbend Road in southern Cabarrus County. Since the subject site will be served by a private well and septic system, we do not have any specific comments and/or information to give you at this time. It should be noted that the City of Concord owns the entire existing retail water and sewer infrastructure in this area.

Please note that if this development includes a privately owned community wastewater collection/treatment system, the WSACC Capital Recovery Fee (CRF) is required for each service to the development if sewer service is requested. The fee is collected at the time the building permit is issued, and is separate and not a part of any connection or tap fees required by the Jurisdictional retail sewer provider. The CRF does not apply to lots using individual septic tanks, which is probably the case here.

Soil Conservation-Dennis Testerman: See attached memo.

The board should determine if the applicant has acted in good faith to develop the project in a timely manner. This might include discussion of whether the applicant has prepared construction drawings and received any necessary grading, utility, road, and other applicable approvals for the project. If the board finds that the developer has acted in good faith to develop the project, Staff recommends the following conditions be placed on the extension:

1. The developer be granted a one year extension for the development of this project. The new expiration date would be December 20, 2010.
2. The extension be conditioned upon the Cabarrus County Board of Commissioners reaffirming or renegotiating the terms of the original Consent Agreement for the Riverbend subdivision project.

GREATHORN



**Greathorn Properties, Inc.
1255 Odell School Rd
Concord, NC 28027
704-906-3808/fax 704-721-5905**

TO: Cabarrus County Planning and Zoning Board
FROM: Greathorn Properties, Inc.
RE: Extension request for Riverbend Subdivision
DATE: December 4, 2008

This letter is to request an extension for our approved subdivision, Riverbend, which is located on Rt. 601 South, on the Rocky River. The subdivision is situated on three parcels totaling 79.75 acres (PIN #'s: 5547864896, 5547858671, and 5547878815). There are 28 single family lots in the approved subdivision, for a density of .351 units per acre. The minimum lot size is two acres, with the average lot being 2.85 acres.

We have invested significantly in initial site improvements. These improvements would be wasted if the subdivision approval was forfeited. The soils have been tested and septic primary and repair areas for each lot have been designed and approved the County Health Alliance, with fees paid for each lot. The interior road has been graded and roughed in and culverts installed in drainage areas. All wetlands mitigation work is complete per the Corps of Engineers permit. We have invested in entrance design and marketing materials as well. DOT and erosion control approvals have also been obtained.

We are requesting the extension due to the current downturn in the real estate market, and the significant investment that has been made based on the approved subdivision plat. While we remain very positive about this development, we are concerned that bringing the lots to market in the near term would be a serious mistake, and not good either for us or the current marketplace in Cabarrus County.

We are requesting that a one year extension be granted. I am unable to attend the meeting on the 15th as I have a previous commitment I cannot cancel out of town that night. However, Matt Weiss, our engineer, will attend the meeting in my place.

Thank you for your consideration on this matter –

John B. Robbins
Greathorn Properties, Inc.

Kassie Goodson Watts

From: Dennis Testerman
Sent: Monday, December 29, 2008 4:59 PM
To: Kassie Goodson Watts
Subject: Riverbend Plat Extension
Attachments: RiverbendExtension12-17-08.doc

Kassie-

A number of comments/recommendations made a year ago during our last plan review have still not been addressed, including:

THE FOLLOWING CHECKED ITEMS ARE MISSING FROM OUR COPY OF THE PLAN—PLEASE SUBMIT:

Location of existing structures and trees	Open space covenant document
Start & Completion Dates	Environmental reviews
Soil Type(s)	401/404 wetland permits

- Pre-submittal meeting between developer and/or designer and reviewers is highly recommended, preferably onsite.
- Platting of individual lots to edge of stream is discouraged. River Stream Overlay Zone and floodplain should be managed as one common land unit under a conservation plan. See additional comments below about conservation easements.
- Impacts of stormwater from this proposed project on water quality and water quantity have not been assessed. Cities of Concord and Kannapolis have applied to the NC Div. of Water Resources for an interbasin transfer of water certificate. Other jurisdictions receiving water from these municipalities are bound by the conditions of IBT certificate's drought management plan. Under this certificate, stream buffers will be determined by a qualified professional to ensure proper application of stream buffer rules.
- The proposed site drains to a stream—Rocky River—which is included on the federal Clean Water Act (CWA) Section 303(d) list of waters not meeting water quality standards or which have impaired uses. This impairment is likely the result in part of development activities that have already taken place in the Rocky River watershed.
- This project is within a hydrological unit (HU) included in the North Carolina Ecosystem Enhancement Program's Upper Rocky River Watershed Plan area. Every effort should be made to use best management practices to prevent water quality impairment. The erosion and sedimentation control plan for this site should be followed closely once it has been submitted and approved.
- The following prime farmland soils will be removed from production: AaB, CuB2 and HwB. Part or all of the building envelopes on lots 8, 9, 14, 21, and 26-28 are shown on these prime farmland soils. Farmland Conversion Impact Rating form (AD-1006) must be filed if federal funds are involved. Redesign of plan to provide for more open space protection of this soil is encouraged. In accordance with the current policy of the North Carolina Association of Soil & Water Conservation Districts, "Any taker of important farm or forest land must prove an overriding public need exists—without a reasonable or prudent alternative—before public funds could be invested for roads, streets, water or sewer facilities, and similar items. In addition, this public need must be proven if actions taken were to decrease the productivity or adversely affect the remaining or adjacent farm and forestland." Redesign of plan to provide for more open space protection of these soils is encouraged.
- The following soils are classified as an important state farmland soils and will be removed from production: Ch, HwD and MeD.
- Development of site will remove existing forestland from production, result in loss of environmental services from forest land cover, and accelerate the rate of loss of green infrastructure in the county.
- A conservation easement on all open space is requested by Cabarrus Soil and Water Conservation District as part of the countywide open space initiative supported by the City of Concord. See brochure "This Land is Our Land. . . A Guide for Preserving Your Land for Generations to Come. "

This project could be so much better with a more systematic approach to conservation. I'm seeing more and more examples where developers in our region are going above and beyond the minimum requirements when it comes to open space.

Our office has been contacted about flooding problems and/or stream bank stability concerns along the Rocky River this year alone, both before and after the flooding in August. Private homeowners and homeowners associations are ill-equipped to deal with water quantity and quality issues.

suggest that more conservation planning be incorporated into this plan before approval is extended.

Dennis E. Testerman, CEE
Resource Conservation Specialist
Cabarrus S&W Conservation District

The accomplishments . . . are impressive, but the challenges ahead seem equally awesome. The public is more concerned about resource management than at any time since the 1930's. There are more activists involved, more organizations, more technical studies, and more "experts" on . . . conservation than ever before. To many, the challenge seems to be primarily a technical one. The history of the conservation movement suggests, however, that such is not the case. The challenge is one of moving people to constructive action.

R. Neil Sampson. For Love of the Land: A History of the National Association of Conservation Districts. 1985.

Cabarrus Soil and Water Conservation District
715 Cabarrus Avenue, West
Concord, N. C. 28027-6214
(704) 920-3300

MEMORANDUM

TO: Kassie Goodson Watts, Cabarrus Co. Commerce Dept.

THROUGH: Ned Y. Hudson, Chair David Settlemyer, Chair
Board of Supervisors Watershed Improvement Commission

FROM: Dennis Testerman, Resource Conservation Specialist

COPIES:

- Susie Morris, Cabarrus County Commerce Department—Planning
- Thomas Smith, Cabarrus County Commerce Department—Erosion Control
- Tony Johnson, Cabarrus County Commerce Department—Erosion Control
- Robbie Foxx, Cabarrus County Commerce Department—Zoning
- Jay Lowe, Cabarrus County Commerce Department—Zoning
- Rick Payne, Cabarrus County—Solid Waste
- Robert Ward, County Ranger, NCDENR Div. of Forest Resources
- Theresa Bradford, NCDENR Div. of Solid Waste, Mooresville Regional Office
- Peggy Finley, NCDENR, DWQ—Aquifer Protection Sect./Groundwater, Mooresville Regional Office
- Alan Johnson, NCDENR, Div. of Water Quality, Mooresville Regional Office
- Cyndi Karoly, NCDENR, Div. of Water Quality, Wetlands Unit, Raleigh
- Robin Dolin, NCDENR, Ecosystem Enhancement Program
- Ron Linville, NCDENR, Wildlife Resources Commission-Habitat Conservation Prog., W-S Reg. Office
- Steve Lund, US Army Corps of Engineers, Asheville Regulatory Field Office
- Nancy White, USDA-FSA, Cabarrus-Mecklenburg Service Center Office
- Nathan Lowder, USDA-NRCS, Concord Field Office

NAME OF PRELIMINARY PLAT: Riverbend Subdivision **PLAN TYPE:** Residential **JURISDICTION:** County

LOCATION: NC 200 & US 601 S **ZONING:** CR

OWNER: John Robbins, Greathorn Properties, Inc., 1255 Odell School Road, Concord, NC 28027

DEVELOPER: John Robbins, Greathorn Properties, Inc., 1255 Odell School Road, Concord, NC 28027

DESIGN CONSULTANT: Northeast Engineering, PO Box 931, 37 Union St. S, Ste D, Concord, NC 28026-0931; 704-788-6372

DATE SUBMITTED: 11/17/07 (orig. 4/24/2007; ESC Plan on 7/31/07) **DATE REVIEWED:** 12/11/07 (orig. 5/2/07; ESC plan on 8/8/07)

PARCEL #: 5547858671, 5547864896, 5547878815 **TRACT#:** 2007-50 **ACRES:** 79.8

USGS TOPO QUAD MAP: Concord **LATITUDE/LONGITUDE:** 35° 19.38'N, 80° 30.73'W

RECEIVING WATERS: Rocky River **WATERSHED:** HU 03040105020020 (DB-3)

PERENNIAL OR INTERMITTENT STREAMS PRESENT: Yes No

SOIL TYPE(S): Altavista sandy loam (AaB), Chewacla sandy loam (Ch), Cullen clay loam (CuB2), Hiwassee clay loam (HwB, HwD), Mecklenburg loam (MeB, MeD), Poindexter loam (PoF)

HYDRIC SOILS: Yes *as possible inclusions in AaB & Ch No

THE FOLLOWING CHECKED ITEMS ARE MISSING FROM OUR COPY OF THE PLAN—PLEASE SUBMIT:

- Location of existing structures and trees
- Start & Completion Dates
- Soil Type(s)
- Open space covenant document
- Environmental reviews
- 401/404 wetland permits

ONSITE INSPECTION: Yes (5/2/07) No

PLAN COMMENTS:

- Pre-submittal meeting between developer and/or designer and reviewers is highly recommended, preferably onsite.
- River Stream Overlay District Zone on Rocky River is marked as required by Cabarrus County Ordinance and permit CESA-W-CO88-N-013-0061 issued under Section 404 of the U. S. Clean Water Act (33 U.S.C. 1413) by the US Army Corps of Engineers. However, the RSOZ is inside the 100-year floodplain and therefore will not filter pollutants from stormwater runoff during 100-year flood events. The developer should check with Cabarrus County Commerce Department—Planning.
- Platting of individual lots to edge of stream is discouraged. River Stream Overlay Zone and floodplain should be managed as one common land unit under a conservation plan. See additional comments below about conservation easements.
- Impacts of stormwater from this proposed project on water quality and water quantity have not been assessed. Cities of Concord and Kannapolis have applied to the NC Div. of Water Resources for an interbasin transfer of water certificate. Other jurisdictions receiving water from these municipalities are bound by the conditions of IBT certificate's drought management plan. Under this certificate, stream buffers will be determined by a qualified professional to ensure proper application of stream buffer rules.
- Unless developer has prior authorization from appropriate federal and state authorities to impact jurisdictional waters or wetlands, the proposed project will be in violation federal and/or state law. Permits for disturbance of streams and other wetlands must be requested from N. C. Division of Water Quality and U. S. Army Corps of Engineers prior to any impacts.
- The proposed site drains to a stream—Rocky River—which is included on the federal Clean Water Act (CWA) Section 303(d) list of waters not meeting water quality standards or which have impaired uses. This impairment is likely the result in part of development activities that have already taken place in the Rocky River watershed.
- This project is within a hydrological unit (HU) included in the North Carolina Ecosystem Enhancement Program's Upper Rocky River Watershed Plan area. Every effort should be made to use best management practices to prevent water quality impairment. The erosion and sedimentation control plan for this site should be followed closely once it has been submitted and approved.
- Cumulative and secondary impacts associated with this proposed development are not known and should be assessed prior to final plan approval.
- The information in this table indicates the dominant soil condition, but does not eliminate the need for onsite investigation. The numbers in the value column range from 0.01 to 1.00. The larger the value, the greater the potential limitation. Limiting features in this report are limited to the top 5 limitations. Additional limitations may exist.

Map Symbol	Soil Name	Dwellings without Basements	Dwellings with Basements	Small Commercial Buildings	Local Roads and Streets	Shallow Excavations	Lawns and Landscaping
		Rating Class and Limiting Features - Value	Rating Class and Limiting Features - Value	Rating Class and Limiting Features - Value	Rating Class and Limiting Features - Value	Rating Class and Limiting Features - Value	Rating Class and Limiting Features - Value
AaB	Altavista	Very limited Flooding - 1 Depth to saturated zone - 0.39	Very limited Flooding - 1 Depth to saturated zone - 1	Very limited Flooding - 1 Depth to saturated zone - 0.39	Somewhat limited Low strength - 0.78 Flooding - 0.4 Depth to saturated zone - 0.19	Very limited Depth to saturated zone - 1 Cutbanks cave - 1	Somewhat limited Depth to saturated zone - 0.19
Ch	Chewacla	Very limited Flooding - 1 Depth to saturated zone - 1	Very limited Flooding - 1 Depth to saturated zone - 1	Very limited Flooding - 1 Depth to saturated zone - 1	Very limited Flooding - 1 Depth to saturated zone - 0.94	Very limited Depth to saturated zone - 1 Flooding - 0.8 Cutbanks cave - 0.1	Very limited Flooding - 1 Depth to saturated zone - 0.94
CuB2	Cullen	Somewhat limited Shrink-swell - 0.5	Somewhat limited Shrink-swell - 0.5	Somewhat limited Shrink-swell - 0.5 Slope - 0.13	Somewhat limited Shrink-swell - 0.5 Low strength - 0	Somewhat limited Too clayey - 0.72 Cutbanks cave - 0.1	Not limited
HwB	Hiwassee	Not limited	Not limited	Somewhat limited Slope - 0.13	Somewhat limited Low strength - 0	Somewhat limited Too clayey - 0.28 Cutbanks cave - 0.1	Not limited
HwD	Hiwassee	Somewhat limited Slope - 0.63	Somewhat limited Slope - 0.63	Very limited Slope - 1	Somewhat limited Slope - 0.63 Low strength - 0	Somewhat limited Slope - 0.63 Too clayey - 0.28 Cutbanks cave - 0.1	Somewhat limited Slope - 0.63
MeD	Mecklenburg	Somewhat limited Slope - 0.63 Shrink-swell - 0.5	Somewhat limited Slope - 0.63 Shrink-swell - 0.5	Very limited Slope - 1 Shrink-swell - 0.5	Very limited Low strength - 1 Slope - 0.63 Shrink-swell - 0.5	Somewhat limited Slope - 0.63 Too clayey - 0.5 Cutbanks cave - 0.1	Somewhat limited Slope - 0.63
PoF	Poindexter	Very limited Slope - 1	Very limited Slope - 1 Depth to soft bedrock - 0.46	Very limited Slope - 1	Very limited Slope - 1 Low strength - 0.22	Very limited Slope - 1 Depth to soft bedrock - 0.46 Cutbanks cave - 0.1	Very limited Slope - 1 Depth to bedrock - 0.46

Disclaimer: Small areas of contrasting soils with different interpretations may not be shown on the soil maps due to the scale of the mapping. Soil surveys seldom contain detailed site specific information. This data set is not designed for use as primary regulatory tools in permitting or siting decisions, but may be used as a reference source. These data and their interpretations are intended for planning purposes only. This is public information and may be interpreted by organizations, agencies, units of government and others based on needs; however, these entities are responsible for the appropriate use and application of these data. Digital data files are periodically updated. Reports are dated and users are responsible for obtaining the latest version of the data.

- ❑ The following prime farmland soils will be removed from production: AaB, CuB2 and HwB. Part or all of the building envelopes on lots 8, 9, 14, 21, and 26-28 are shown on these prime farmland soils. Farmland Conversion Impact Rating form (AD-1006) must be filed if federal funds are involved. Redesign of plan to provide for more open space protection of this soil is encouraged. In accordance with the current policy of the North Carolina Association of Soil & Water Conservation Districts, "Any taker of important farm or forest land must prove an overriding public need exists—without a reasonable or prudent alternative—before public funds could be invested for roads, streets, water or sewer facilities, and similar items. In addition, this public need must be proven if actions taken were to decrease the productivity or adversely affect the remaining or adjacent farm and forestland." Redesign of plan to provide for more open space protection of these soils is encouraged.
- ❑ The following soils are classified as an important state farmland soils and will be removed from production: Ch, HwD and MeD.
- ❑ Development of site will remove existing forestland from production, result in loss of environmental services from forest land cover, and accelerate the rate of loss of green infrastructure in the county.
- ❑ A conservation easement on all open space is requested by Cabarrus Soil and Water Conservation District as part of the countywide open space initiative supported by the City of Concord. See brochure "This Land is Our Land. . . A Guide for Preserving Your Land for Generations to Come."
- ❑ Private well was likely associated with abandoned homestead. **NC form GW-30 must be filed with the Groundwater Section of the N.C. Dept. of Environment and Natural Resources when abandoning a well.**
- ❑ On-site wastewater system associated with abandoned homestead is required to be decommissioned according to procedures recommended by Cabarrus Health Alliance (see attachment).
- ❑ Illegal solid waste has been deposited on this site, including household items. All waste must be recycled or disposed of in an approved landfill.
- ❑ Underground utilities including, but not limited, communications, electricity, natural gas and/or petroleum, wastewater and water may exist on site. Verify status before disturbing site by observation and by calling the NC One Call Center, 1-800-632-4949. Unmarked graves, underground mine shafts and historic Native American sites are not uncommon in Cabarrus County. Construction crews should be vigilant for the presence of these cultural and historical sites. Construction must be halted and appropriate authorities notified when any of these sites are uncovered.
- ❑ Additional field visits by Cabarrus SWCD and/or its conservation partners may be required, including but not limited to sedimentation and erosion control plan review.

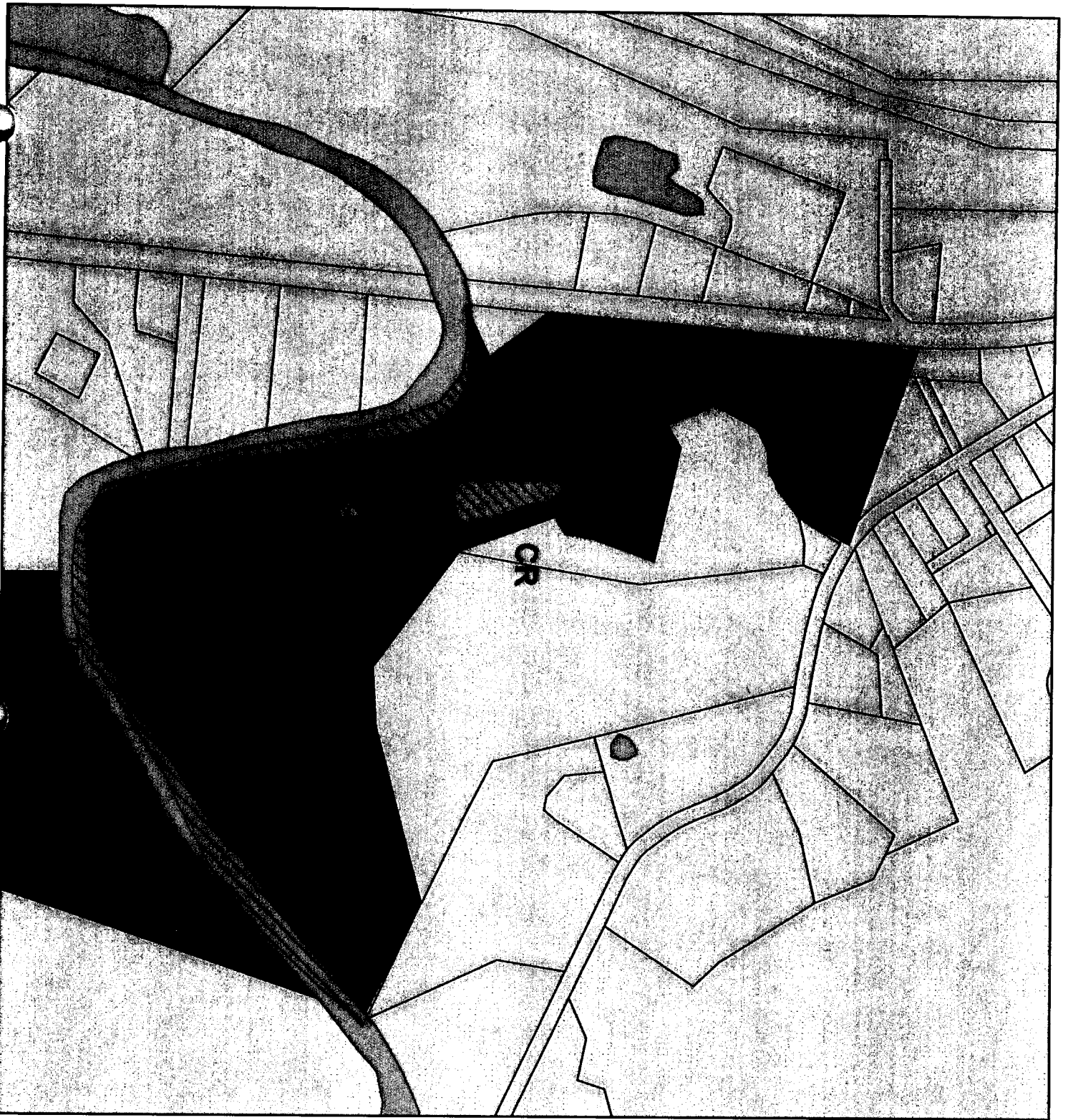
Please provide copies of approval notice and any revisions to this plan to the Cabarrus Soil and Water Conservation District.

CONTACT(S):

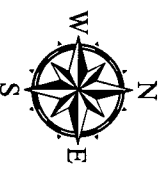
Cabarrus County Commerce Department—Zoning, Robbie Foxx, 704-920-2138
Cabarrus County, Commerce Department, Susie Morris, 704-920-2858
Cabarrus County Commerce Department—Erosion Control, Thomas Smith, 704-920-2411
Cabarrus County Commerce Department—Erosion Control, Tony Johnson, 704-920-2835
Cabarrus County Commerce Department—Zoning, Robbie Foxx, 704-920-2138
Cabarrus County Commerce Department—Zoning, Jay Lowe, 704-920-2140
Cabarrus County, Solid Waste, Rick Payne, 704-920-9255
Cabarrus Health Alliance, Environmental Health, David Troutman, 704-920-1207
Cabarrus SWCD & Watershed Improvement Commission, Dennis Testerman, 704-920-3303
NC DENR Div. of Forest Resources, Robert Ward, 704-782-6371
NCDENR-Mooresville Regional Office, Groundwater Section, Peggy Finley, 704-663-1699
NCDENR Div. of Solid Waste, Mooresville Regional Office, Theresa Bradford, 704-663-1699
NCDENR, Div. of Water Quality, Mooresville Reg. Office, Alan Johnson, 704-663-1699
NCDENR, Div. of Water Quality, Raleigh, Cyndi Karoly, 919-733-9721
NCDENR, Ecosystem Enhancement Program, Robin Dolin, 919-715-5836
NCDENR, Wildlife Resources Commission-Habitat Conservation Prog., W-S Reg. Office, Ron Linville, 336-769-9453
U. S. Army Corps of Engineers, Asheville Regulatory Field Office, Steve Lund, 828-271-7980 x223
USDA-FSA, Cabarrus-Mecklenburg Service Center Office, Nancy White, 704-782-2107
USDA-NRCS, Concord Field Office, Nathan Lowder, 704-788-2107

REFERENCES:

- “Avoiding Tree Damage During Construction.” Consumer Information Program Fact Sheet. International Society of Arboriculture. [http://www.isa-arbor.com/consumer/avoiding.html]
- Conservation-Based Subdivision Design: Protecting Water Quality and Scenic Resources in NC Mountains.” Conservation Trust for North Carolina. 1997
- “Erosion and Sedimentation on Construction Sites.” Soil Quality—Urban Technical Note No. 1. USDA, NRCS. [http://www.statlab.iastate.edu/survey/SQI/pdf/u01d.pdf]
- “401 Water Quality Certification Program – The Basics.” N.C. DENR. Div. of Water Quality, Wetlands Section. [http://h2o.enr.state.nc.us/ncwetlands/basic401.html]
- “North Carolina Ecosystem Enhancement Program’s Upper Rocky River Watershed Plan.” [http://www.nceep.net/services/lwps/Clarke_Creek/Upper_Rocky.pdf]
- “Protecting Urban Soil Quality: Examples for Landscape Codes and Specifications.” [http://soils.usda.gov/sqi/files/UrbanSQ.pdf]
- “Recognizing Wetlands.” Informational Pamphlet. US Army Corps of Engineers [http://www.usace.army.mil/inet/functions/cw/cecwo/reg/rw-bro.htm]
- “Seeding Specifications.” Sect. 6.10 & 6.11 in Erosion and Sediment Control Planning and Design Manual. N. C. NRCD.
- “Soil Sampling for Home Lawns & Gardens.” N.C. Dept. of Agriculture & Consumer Services. [http://www.ncagr.com/agronomi/samhome.htm]
- “This Land is Our Land. . . A Guide to Preserving Your Land for Generations to Come.” [http://www.cabarruscounty.us/Easements/]
- “Topsoiling Specifications.” Sect. 6.04 in Erosion and Sediment Control Planning and Design Manual. N. C. NRCD.
- Urban Soil Compaction.” Soil Quality—Urban Technical Note No. 2. USDA, Natural Resources Conservation Service. [http://www.statlab.iastate.edu/survey/SQI/pdf/u02d.pdf]
- “Well Abandonment.” Brochure. N.C. DENR. Div. of Water Quality, Groundwater Section. [http://h2o.enr.state.nc.us/documents/Bro-WellAbandon.pdf]
- “Well Decommissioning.” Field Office Tech. Guide, USDA, Natural Resources Conservation Service. [http://h2o.enr.state.nc.us/aps/gpu/documents/Well_decom.pdf]
- “Yadkin-Pee Dee River Basinwide Water Quality Plan.” N.C. DENR. Div. of Water Quality—Planning Sect., Basinwide Planning Prog. 2003. [http://h2o.enr.state.nc.us/basinwide/yadkin/YadkinPD_wq_dt_management_plan0103.htm]
- “Watershed Management Plans & Recommendations: Lower Yadkin / Upper Rocky River Basin Local Watershed Planning (Phase Two). NCDENR, Ecosystem Enhancement Program. 2004. [http://www.ces.ncsu.edu/depts/agecon/WECO/rocky_river/URR2_WMP.pdf]



Riverbend
Preliminary Plat Extension Request
Petition#: C2009-01(SE)
Accel#: PLPR2008-00231
Petitioner: Greathon Properties
Zoning: CR
Conventional Subdivision
28 lots Approved
Approximately +/- 79.754 acres



PLANNING STAFF REPORT
TO CABARRUS COUNTY PLANNING AND ZONING BOARD
January 15, 2009

Petition: **C2009-01(R) Zoning Atlas Amendment**
RZON2008-00286

Applicant: Glenn Benton
6851 Log Cabin Trail
Midland, NC 28107

Existing Zoning: LC – Limited Commercial

Proposed Zoning: LI – Light Industrial

Township: Number 1 – Midland

PIN#: 5534-09-4150

Area: +/- 1.14 acres

Site Description: A wild game/meat processing facility and taxidermy service currently leases space at the subject property.

Zoning History: 2005 - the subject property was rezoned from LC – Limited Commercial to OI – Office/Institutional

2007 – the subject property was rezoned from OI – Office/Institutional to LC – Limited Commercial

Surrounding Zoning: North: OI – Office/Institutional
South: OI – Office/Institutional
East: LC – Limited Commercial (Town of Midland)
West: OI – Office/Institutional

Adjacent Land Uses: With the exception of a glass repair business directly east, the subject property is surrounded by vacant property.

Infrastructure: This property is served by public water and private septic.

Exhibits:

1. Zoning Map – Submitted by Staff
2. List of Permitted Uses in LC – Submitted by Staff
3. List of Permitted Uses in LI – Submitted by Staff
4. List of Adjacent Property Owners – Submitted by Staff
5. Aerial Map – Submitted by Staff
6. Future Land Use Map – Submitted by Staff

7. Leak-Goforth Study Information (Site L Map) –
Submitted by Staff

Intent of Zoning:

Limited Commercial: The intent of limited commercial zoning is to accommodate relatively small scale commercial and office development at an intensity complementary to residential land use. This district should be located near municipal boundary lines or areas of commercial growth and may border general commercial zones, light industrial or high density residential mixed use zones.

Light Industrial: The intent of light industrial zoning is to accommodate large and small scale industrial and office development. The primary distinguishing feature is that it is geared to indoor industrial activities which do not generate high levels of noise, soot, odors or other potential nuisances/pollutants. This district should be located within the county where proper infrastructure is provided.

Additional Considerations:

The subject property is west of the Midland municipal boundary and fronts NC 24-27. The Hwy 24-27 corridor is largely zoned LC – Limited Commercial, which is reflective of the existing commercial uses in Midland.

A wild game/meat processing facility and taxidermy service currently operates on the subject property as an existing use. However, this use is not permitted in the LC - Limited Commercial zoning district. A slaughterhouse/meat packing facility is permitted by right in the LI – Light Industrial zoning district.

According to the Midland Proposed Future Land Use Plan, this property lies within a Future Employment district. Future Employment district areas are reserved for the development of industrial, research, large office, and warehouse/distribution uses. This designation allows for some flexibility to account for market demand. On a limited basis, this district may be used for the development of mixed use residential and employment developments.

According to the *Strategic Plan for Economic Development* by Leak-Goforth, the subject property lies just outside a proposed site for development, identified as Site L. According to the study, this site has the potential to become a large-scale rail-served distribution park. It also suggests

zoning of the site should be changed to LI – Limited Industrial or GI – General Industrial to accommodate such development.

Comments:

Alley, Williams, Carmen & King Engineering – Jeff Moody: Additions or modifications to the building would be required to go through site plan review. Water and sewer volume needs would be required at that time, as part of the site plan review process.

Cabarrus County Emergency Services – David Hampton: No issues with the rezoning.

Cabarrus County Fire Marshall – Steve Langer: I see no issue with the rezoning request recommend approval.

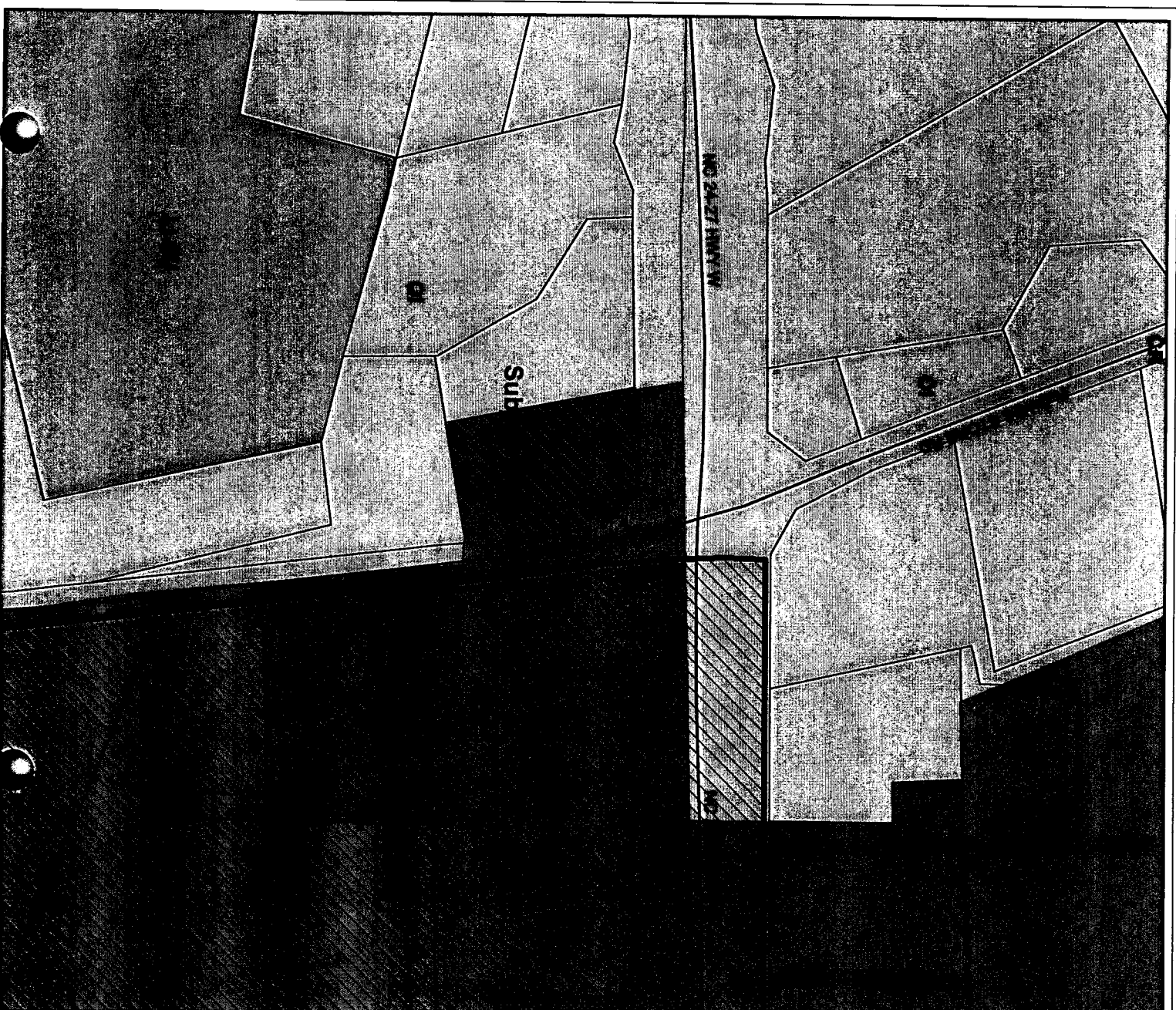
Cabarrus County Sheriff – Ray Gilleland: No issues with the rezoning.

NCDOT – Leah Wagner: NCDOT will be required to review any future expansion/building construction or change of use.

Staff Analysis:

The proposed rezoning is a conventional rezoning request. Therefore, no conditions may be attached to the rezoning request. All uses permitted in the LI district would be permitted on the subject property.

Therefore, the Planning and Zoning Commission should review the information and facts presented to determine if the proposed zoning map amendment is consistent with the Commission's goals and vision for this area of Cabarrus County.



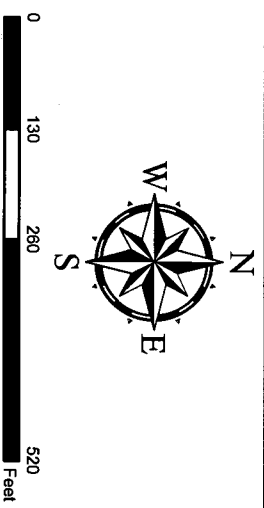
Applicant: Glenn Benton
Petition: C2009-01(R) Zoning Map Amendment
Acela Case: RZON2008-00286
Existing Zoning: LC-Limited Commercial
Proposed Zoning: LI - Light Industrial
Parcel ID#: 5534-09-4150

Legend

- Subject Property
- Tax Parcels
- Streets
- Midland, NC

Zoning Designations

- LC - Limited Commercial
- LDR - Low Density Residential
- LI-SU - Light Industrial (Special Use)
- OI - Office Institutional



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Map Prepared by Cabarrus County Planning Services,
 December 2008.

Permitted Uses: Limited Commercial - LC (Existing Zoning)

Permitted

Automobile supplies
Bank/financial institution/ATM
Barber & beauty shops
Car wash
Civic organization facility
Colleges & universities
Convenience store with petroleum sales
Convenience store without petroleum sales
Drug store
Dry cleaning/pick up station
Family care home
Funeral home
Group care facility
Hospitals/medical facilities
Hotels, motels, inns
Laundromat
Locksmith/gunsmith

Mobile home retail sales
Movie Theater
Nursery/Greenhouse
Office, professional
Parking lot, commercial or private
Pet shop/grooming (enclosed)
Photographic studio
Public cultural facility
Public use facility
Religious institution (350 or less)
Religious institution (351 or more)
Restaurant, excluding drive-thru
Retail sales (10,000 sq. ft. or less)
Retail sales (10,000 – 50,000 sq. ft.)
Single family residential detached
Taxi stand

Permitted Based on Standards (PBS)

Accessory apartment
Automobile rental
Automobile sales, new and used
Bed & breakfast
Catering service
Contractor and trade shops
Home occupation
Landfill, demolition (one acre or less)
Mobile office, temporary
Multi-family residential

Nursery/daycare center
Printing & reprographic facility
Recreational facility, indoor
Recyclable materials drop-off
Repair garage, auto
Repair garage, small engine
Restaurant, including drive-thru
Self-service storage facilities
Townhouses

Conditional

Public service facility
Recreational facility, outdoor
Trade & vocational schools
Veterinarian/animal hospital/commercial kennel

Permitted Uses: Light Industrial - LI (Proposed Zoning)

Permitted

Automobile rental
Automobile supplies
Bank/financial institution/ATM
Boat works and sales
Bottling works
Building equipment sales/indoor storage
Building equipment sales/open storage
Bulk grain storage
Bus terminal
Car wash
Catering service
Contractor's storage yard
Convenience store with petroleum sales
Convenience store without petroleum sales
Dairy processing
Dry cleaning/laundry plant
Farm machinery repair
Freezer/ice plant
Gas station
Hatchery
Hotels, motels, & inns
Machine welding shop
Manufacturing/processing
Multimedia production & distribution
complex
Nursery/greenhouse
Office, professional
Parking lot, commercial or private
Printing and reprographic facilities
Public use facility
Race shop/complex
Radio and TV studios
Railroad station and storage yard
Recreational facility, indoor
Repair garage, automobile
Repair shop, farm machinery
Repair shop, small engine
Restaurant, excluding drive-thru
Sawmill
Slaughter house/meat packing
Tire recapping
Warehouse, enclosed

Permitted Based on Standards (PBS)

Accessory apartment
Communications tower
Landfill, demolition (one acre or less)
Mobile office, temporary
Recyclable materials drop-off
Restaurant with drive-thru facility
Self-storage facilities
Warehouse, open storage

Conditional

Airport, commercial
Airstrip
Coliseum/stadium
Landfill, demolition (more than one acre)
Landfill, sanitary
Mobile Home, Class I
Nursery/daycare center
Race track, animal & mechanical
Recreational facility, outdoor
Single-family detached residential
Trade & vocational school
Trucking and heavy equipment, sales &
service
Truck stop/truck terminal
Veterinarian/animal hospital/commercial
kennel

Adjacent & Surrounding Property Owners

PIN# 5534-08-4854

Jennifer Leah Thompson
Whitney C. Griffin
300 Hwy 49 South
Concord, NC 28025

PIN# 5534-09-3630

Vance M. Wood
12100 Flowes Store Road
Midland, NC 28107

PIN# 5534-09-2099

Marshall Scott Thompson
P.O. Box 157
Midland, NC 28107-0157

PIN# 5535-01-9030

Mary Lee C. Abernathy
125 Hwy 24-27 East
Midland, NC 28107

PIN# 5534-09-0024

Ann Kelly Thompson Edwards
41 Albemarle Road West
Midland, NC 28107

PIN# 5534-09-8494

H&R Mullis Machine Inc.
3520 Fieldstone Trail
Midland, NC 28107

PIN# 5524-97-8018

William E. Price
4875 Sherwood Forest Drive
Delray Beach, FL 33445-3887

PIN# 5534-08-8786

Wellon C. Morrison
12257 Old Camden Road
Midland, NC 28107

PIN# 5524-98-2226

William Dale Smith, Jr.
Wife, Sheila H. Smith
215 E. Brief Road
Midland, NC 28107

PIN# 5534-08-8546

Ethel Lynn McMurray
12333 Old Camden Road
Midland, NC 28107

PIN# 5534-09-3481

PIN# 5534-09-6099
Charlotte Printing Company, Inc.
P.O. Box 25285
Charlotte, NC 28229-5285

PIN# 5534-09-6099

PIN# 5534-09-7074
PIN# 5534-19-0130
George Long & Wife, Anne
124 Hwy 27
Midland, NC 28107

PIN# 5534-09-1570

Niles Henry Robinson
Wife, Dorothy Robinson
4820 Hadrian Way
Charlotte, NC 28211-3074

PIN# 5524-99-0900


Benjamin H. Flowe, Jr.
John L. & Sally Ann Flowe
13720 Canal Vista Court
Potomac, MD 20854-1024



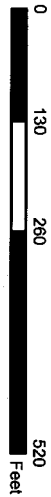
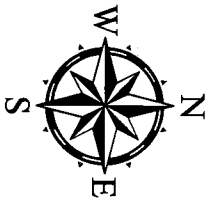
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Legend



Midland, NC



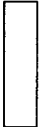



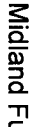


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Map Prepared by Cabarrus County Planning Services, December 2008.



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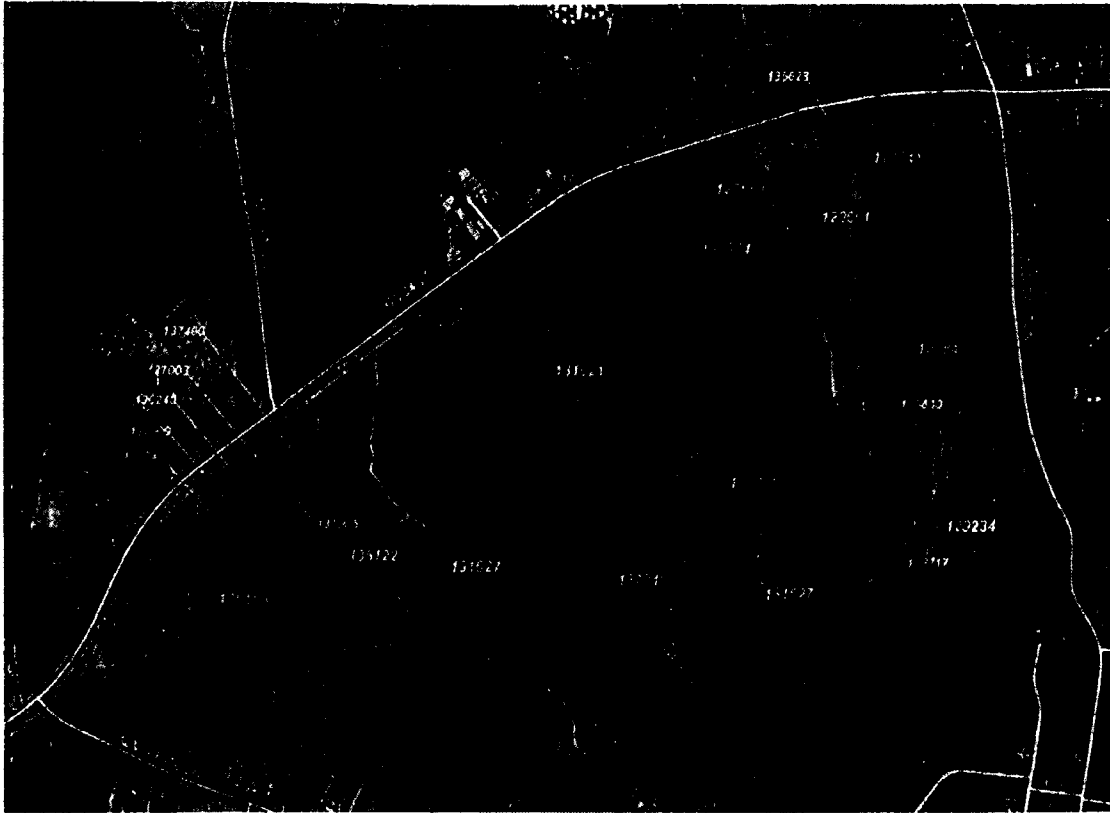
-  Tax Parcels
-  Streets
-  Midland, NC
-  Subject Property
-  Midland Future Land Use Plan
-  Future Employment
-  Limited Commercial



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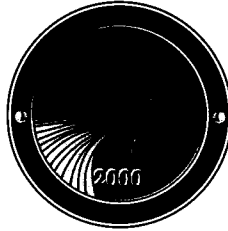
Map Prepared by Cabarrus County Planning Services,
December 2008.

Subject Property



Site L - NC24-27/Midland Area/County Line

- Location:** South side of NC 24-27; County line to Flowes Store Road; distance to I-485 interchange B approximately three miles
- Size:** 700 acres
- Character:** Comparatively flat open rural land
- Jurisdiction:** Cabarrus County
- Zoning:** LC (limited commercial);
North side of NC24-27 zoned GC (general commercial)
- Potential:** Large-scale rail-served distribution park
- Other:** Rail served (Aberdeen Carolina & Western);
Designated FE (future employment) on Midland area land use plan;
Zoning should be changed to LI (limited industrial) or GI (general industrial)



TOWN OF MIDLAND

P.O. Box 589 • 4293-B HWY 24/27E • MIDLAND, NC 28107
TOWN OFFICE: 704.888.2232 • TOWN FAX: 704.888.2234
townofmidland@carolina.rr.com • www.townofmidland.us

January 7, 2009

To: The Cabarrus County Planning and Zoning Commission

Re: **Cabarrus County Zoning Case**
RZ2008-00234

The applicant is seeking to rezone approximately 1.14 acres from current zoning classification (LC) Limited Commercial to (LI) Limited Industrial. By unanimous vote, the Planning and Zoning Commission for the Town of Midland strongly objects to approval of this request for the following reasons:

1. The proposed zoning is inconsistent with the Midland Area Land Use Plan approved by the Cabarrus County Board of Commissioners.
2. The proposed zoning is inconsistent with surrounding zoning.
3. The application is for a straight rezone which would allow any approved use within the (LI) classification.

Additionally, the property adjoins the Town of Midland corporate limit and will without doubt come under the Town of Midland's corporate authority at a point in the future.

Thank you for your consideration.

Sincerely,

Rick Price
Chairman,
Town of Midland
Planning and Zoning Commission

Dear Sir / Madam:

I am writing to inform you of why I believe my Processing and Taxidermy facility is of benefit to your community. First I would like to apologize for any trouble I have caused and to anybody I have offended. I am an avid hunter and fishermen. I was introduced to the sport by my father as a boy. I and many others enjoy going hunting, becoming one with nature, feeling the excitement from going out in the woods and hunting an animal that God has put on this land for me to seek and hunt to provide food for my family. The book of **Proverbs** deals with many practical subjects as well as spiritual ones. In this verse we are given advice on hunting. It is not wrong to hunt; however, Proverbs 12:27 says that the man who hunts for game and just kills it, and does not take possession of it for eating is a slothful man. The diligent hunter takes his game for food (roasting) and considers it a precious possession, as he has food for his family's table. I am providing a place for hunters to bring their game to be processed and packaged so that they have many meals to provide for them and their families. The deer population has skyrocketed in the past few years. Deer are running out of room due to the city growing and new developments taking over their home. Many drivers are having collisions with them. Since I have been open I have had a number of people stop at my shop and tell me they either hit a deer down the road or witnessed one being hit. I have driven to the site of the accident and removed deer several times, processed the deer and given it to families in need of food. I honestly did not think skinning the deer outside would bother anybody. The deer are considered trophy's to the hunter. They are proud of their game they hunted and we did not realize others thought it was inhumane. I am asking that you please reconsider your decision on closing our doors. I am willing to fully cooperate with your demands. I can move my skinning area inside and would be more than happy to put up a privacy fence around any area required. I thank you for your time and await your decision.



North Carolina Wildlife Resources Commission

Gordon Myers, Executive Director

10 December 2008

44392 Dennis Rd
Albemarle, NC 28001

Cabarrus County, Commerce Department, Planning Division
65 Church Street SE
PO Box 707
Concord, NC

To Whom It May Concern:

Deer are an important resource to Cabarrus Co. Hunting provides an outdoor family activity for many people in NC, and the overwhelming majority (81%) of the general public approve of hunting. For most, the tradition and recreational aspects of hunting are understood, but the economic importance of hunting is often overlooked. Hunting generates over \$430 million annually to NC's economy. Deer processors, taxidermists, sporting good stores, land lessors, and hunt guides benefit directly from hunting activities, while additional money is generated for retail, transportation, restaurants, and lodging.

Deer/vehicle collisions and damage to shrubbery, gardens, and crops are complaints I commonly receive from residents of Cabarrus Co. Hunting still remains as the most effective method to deal with overabundant deer populations. Hunting is not only used as a tool to reduce deer/human conflicts, but it also helps keep deer and their habitat healthy by reducing deer numbers. Deer processors play an important role in facilitating deer harvest. Without their services, it is conceivable that deer hunters may reduce the number of deer they harvest.

Venison and other wild game meat is a lean and healthy food source. Many hunters not only provide meat for their families through hunting, but often donate meat to less fortunate families. Organizations like Hunters for the Hungry work directly with deer processors to provide this service.

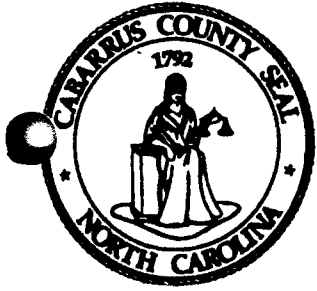
For these reasons, I support Brandon Grant's All Game Processing and Taxidermy business located at Building 25, Hwy 24/27 Midland, NC. The location is convenient for hunters of Cabarrus Co. and those traveling through Cabarrus Co. Many hunters likely travel by this place of business from their hunt leases in Cabarrus, Richmond, Anson, Union, Stanly, and Montgomery Counties as they return to their home in or around Charlotte and Concord.

Sincerely,

Jonathan Shaw, PhD
District Wildlife Biologist

Mailing Address: N.C. Wildlife Resources Commission • 44392 Dennis Rd • Albemarle, NC 28001

Telephone: (704) 474-7202



Planning and Zoning Commission Minutes
January 15, 2009
7:00 P.M.

Mr. Todd Berg, Chair, called the meeting to order at 7:02 p.m. Members present, in addition to the Chair, were, Mr. David Baucom, Ms. Brenda Cook, Mr. Eugene Divine, Mr. Larry Ensley, Mr. Danny Fesperman, Mr. Larry Griffin, Mr. Tommy Porter, Mr. Ian Prince and Mr. Barry Shoemaker. Attending from the Planning and Zoning Division were, Ms. Susie Morris, Planning and Zoning Manager, Ms. Kassie Watts, Planner, Mr. Jeff Huss, Planner, Mr. Jay Lowe, Zoning Officer, Ms. Arlena Roberts, Clerk to the Board, and Mr. Richard Koch, County Attorney.

Roll Call

Approval of Minutes

Mr. Ian Prince, **MOTIONED, SECONDED** by Mr. Larry Griffin to **APPROVE** the December 18, 2008, meeting minutes. The vote was unanimous.

The Chair asked to be recused from the Conditional Use Application Case# CUSE 2008-00009, because his firm does business with the school system and that could potentially be considered a conflict of interest.

Mr. Larry Griffin, **MOTIONED, SECONDED** by Mr. Fesperman to recuse Mr. Berg from the Conditional Use Application Case# CUSE 2008-00009. The vote was Unanimous. Mr. Divine was seated on the Board.

Old Business – Board of Adjustment:

The Chair, introduced Conditional Use Application Case# CUSE 2008-00009, Cabarrus County Schools.

The Vice-Chair swore in Ms. Susie Morris, Mr. Jay Lowe, Mr. Sam Masters, Mr. Jeffrey Page, Mr. Rob Johnson, Ms. Susan Avett, Mr. Jim Avett, Mr. Scott Avett, Mr. Henry Kivett, Mr. Darrell Furr, Mr. Eugene Lane, Mr. Steven Warner, and Mr. Archie Barringer.

Mr. Jay Lowe, Zoning Officer, addressed the Board stating this is Case #CUSE2008-00009; the applicant is Cabarrus County Schools, the property owner is Mr. Archie Eugene Barringer of Fayetteville, North Carolina. The property in question is located at 3939 Abilene Road, Concord, NC and is zoned Countryside Residential (CR). The property size is approximately 28 acres.

He said the applicant has provided documentation compliant with Section 8-3, Petitioning for a Conditional Use permit. The applicant has submitted a complete application which

includes the Findings of Fact sheet along with a site plan showing the proposed school. Building renderings have been provided to show the proposed architectural design. A Public Hearing notice was published in the Independent Tribune on December 4th and 11th, 2008. Adjacent property owners were notified by mail. A sign was posted on the property stating the time, date, and location of the public hearing. Additional agencies are part of this review process; comments from each respective agency were provided for review. Site plan review and approval will be required subsequent to Board of Adjustment approval to ensure compliance with all applicable development requirements. Proposed conditions of approval are attached.

Mr. Lowe said he passed to the Board two additional conditions. He said there were several comments by several different agencies, but in particular NCDOT. He said there are some issues to be worked out with NCDOT at this time. He said if the Board chooses to approve this Conditional Use, staff recommends that they include these conditions as part of the approval process.

Proposed Conditions:

1. Site plan review and approval will be required subsequent to the Board of Adjustment approval to ensure compliance with all applicable development requirements included but not limited to Cabarrus County Zoning and other Local, State, or Federal Review Agency.
2. Applicant shall meet with Cabarrus County Soil and Water Conservation to discuss conservation easement feasibility.
3. Applicant shall meet all requirements established by NCDOT.
4. Applicant shall revise the site plan to accommodate Avett-Yancy right-of-way as stated in the NCDOT comments.
5. Applicant shall revise plan to show 50' right-of-way and right turn lane storage length.
6. Applicant shall agree to install needed improvements as determined by the Traffic Impact Study Review by NCDOT.
7. Applicant shall provide a copy of the finalized sealed Traffic Impact Analysis (TIA) to Cabarrus County Zoning Division.
8. Applicant shall procure all necessary Local, State and Federal permits and/or approval certificates (NCDOT, NCDNR DWQ, FEMA) if necessary and provide copies to the Cabarrus County Zoning Division prior to construction.

Mr. Lowe said there are two more conditions that were not included in the Board packet. He said there are eight conditions that we request the Board put upon the applicant, but in addition to those eight there are two more:

9. Remove NCDOT from the 60' Dedicated NCDOT Right of Way statement at the northern end of the property that connects to the Yancey tract. The statement should indicate that the right of way is for access to the Yancey tract and can be phrased as "Potential future NCDOT Right of way". The school system should continue to pursue acquiring the existing 50' Yancey right of way.
10. The school system shall be responsible to obtain any and all rights of way necessary to accommodate required roadway improvements along Miami Church Road, including construction easement(s). The plan currently shows 50' which may not be adequate as the roadway improvement plans have not been reviewed.

Mr. Lowe said it is his understanding that a traffic impact analysis has been done but not finalized yet. He said the applicant has been made aware of most of these conditions. He said at this point, we do not have final approval from NCDOT and it looks like they are requiring many changes.

He said if the Board chooses to approve this, staff recommends the conditions be added. We will review them as they turn them into NCDOT and we would get NCDOT's feedback. He said the applicant is here along with several members of the community.

The Vice-Chair asked if there were any questions for Mr. Lowe. He asked the applicant to come forward.

Mr. Sam Masters, Jr., Director of Construction for Cabarrus County Schools addressed the Board. He said this is a replacement school for the old A.T. Allen Elementary School on Highway 601. He said with the age and location of the school, it definitely needs to be replaced.

Mr. Ensley said looking at the minutes from the community meeting, it states "the narrow bridge on Miami Church Road will be replaced by NCDOT, this is scheduled to occur before school opens in August 2010, however, this is dependent on the availability of NCDOT funds". He asked what would happen if the NCDOT funds do not become available. He said he visited the site and that is a very narrow bridge; it is very difficult for two cars to pass, let alone a school bus.

Mr. Masters said we are talking about the bridge over Cold Water Creek; it is his understanding that it is local funding that NCDOT has to do this; it is not part of their state funding. He cannot truly answer that question; he does not know all of their funding mechanisms. Mr. Masters said they are not anticipating the school opening until fall of 2010.

Mr. Fesperman said concerning NCDOT; the school system should continue to pursue acquiring the existing 50' Yancey right of way. He asked how that was moving along with the residents or whom ever Mr. Masters is talking to; as far as acquiring the right of way.

Mr. Masters said he is still waiting on a reply from Steve Medlin, the attorney for one of the neighbors. He said our attorney has sent them a letter requesting an exchange or swap of property to give them another right of way onto Abilene Road; at this time, there has been no response.

The Vice-Chair asked if the widening or replacement of the bridge in question is a NCDOT recommendation or a school recommendation.

Mr. Masters said it is a NCDOT recommendation and it is his understanding that it has been on NCDOT's project list for a while but will get moved up because the school will be coming to that area. It will be a NCDOT project; they are actually doing the replacement.

Mr. Ensley said if it is coming out of NCDOT local funding not state funding, will NCDOT have the possibility of moving funds around within the county to accommodate the bridge?

Mr. Masters said that is his understanding. He read a portion of a letter from Garland Haywood, NCDOT, "the work to widen the bridge will begin after March and should require six weeks to complete and may conclude before if weather permits". He said they are looking for a geo-technical survey on it to move forward.

The Vice-Chair said he assumes that would be March 2009.

Mr. Masters said it does not say March 2009, but in the tone of the letter it indicates it is this March.

Mr. Shoemaker asked what the indications were of how long he thought the bridge project would last.

Mr. Masters said the project should require six weeks to complete and may conclude before if weather permits. He said Mr. Haywood is looking at six weeks.

The Vice-Chair opened the floor for the public hearing.

Mr. Jeffrey Page, Civil Engineer, Turnbull-Sigman Design, addressed the Board. He said the project is a one thousand student elementary school that will front Abilene Road roughly the center of the property from Miami Church Road to the end of the property. He said there will be road improvements; it is currently a gravel road. He said road improvements will continue up to the current fiber optic line which runs horizontally through the property. The bridge that was discussed is west of the property, more than a

mile down the road, beyond the actual road improvements for the elementary school. He said there are three separate accesses off Abilene Road; there is no frontage on Miami Church Road, car access and queue will be maintained on the site. He said there is over 1600 feet which meets the state requirements for queue on the site; water quality per state requirements will be handled through three separate measures on site, a wet pond and two other measures, all of which will be constructed within the state requirements for water quality and detention. He said buffering will be provided along the southern boundary of the property, there are existing woods on the western boundary of the property and will meet all the criteria requirements of the Cabarrus County Ordinance.

Mr. Ensley said the original plan included a baseball/softball field. He said the revised plan has eliminated it; is there a reason for that?

Mr. Page said trying to accommodate all the state requirements for the elementary school, parking, access, orientation and playfields, the site got limited to let utilities as well as topography.

Mr. Ensley said he hates to see it go.

Mr. Rob Johnson, MBJA Architects, addressed the Board. He wanted to be on hand to offer any clarification or answer any questions. He said the design originated with Cox Mill, a single story building and then the Board elected to do it at Bethel and then Pitt and more recently at Furr and Boger. The one story class room wing turned into a two story wing and that is the prototype that is being utilized.

Ms. Susan Avett, 3550 Miami Church Road, Concord, NC, addressed the Board. She said that land is perfect the way it is and there is no way you can improve that road.

Mr. Jim Avett, 3879 Abilene Road, Concord, NC, addressed the Board. He said when he first heard that a school was proposed to be built where it is; his first reaction was why there? He went to the school administration and talked with Mr. Masters and he stated that there were very few places that were available to build a school, that place was available and it was flat. He did not think that was real good criteria for building a school on it. He knows a lot of people in the county and he offered to help find a place; that was back in June. He does have a dog in this fight, his interest made him dig out the pros and cons of this thing. He will let the school system tell the pros and he will tell some of the cons;

There is an AT&T fiber optic line on that property that costs 2.4 million dollars to repair; there are no utilities out there, no water, no sewer and very little asphalt. He said at best, the road is marginal. He worked for 33 years up and down the east coast building bridges. He is not talking about the bridge over little Cold Water Creek; he is talking about Miami Church Road, the curves and the narrowness of it. The fact is it has no shoulder, about 2/3 of the way it has no shoulder. More than anything else there are no students out there; probably 3/4 of the students come from the other side of Highway 601, the Flowe Store side. His understanding of the Zoning Board is that you give direction;

you seek consent use and land, that way we can all plan on what we will be doing next week or next year or 10 years from now. This land has grown corn, soybeans and hay for the last 100 years and it does a real good job of doing that. If the request for conditional use is approved, let's look into the future, there are some things that are going to happen. He said 5 days from now, this Board is going to the County Commissioners for AO zoning, this will make this area less dense, not more dense. He said which means that for the foreseeable future, there will be no housing in this area and that means there will not be any students in this area. Why would you build a school in this area? He said McDonald's does not build where it cannot sell hamburgers.

He said if you add 300 cars or better twice a day on that road, it is going to be bad. He said there will be no more road improvements unless there is compelling reasons from NCDOT, he can tell you that from working with the states up and down the eastern sea board. They do not put money where there is not a compelling reason, and a compelling reason is a great number in population. He said they may do something to the bridge but they will not rebuild shoulders and they will not straighten out the curves.

Mr. Scott Avett, 3879 Abilene Road, Concord, NC addressed the Board. He and his wife do not have any intentions of doing anything right now with the 50 foot right of way; they intend to keep it like it is if they can. He is on the road all the time with his work; he goes all over the country and has seen a lot of counties, they start to look the same. He said the development is over board, the population is growing like crazy everywhere. He has a lot of pride coming home as a citizen of Cabarrus County because of the diversity in this county of open country land and nice development, positive development, which a school is. He realizes, metaphorically speaking a school is a light in a community, it is a positive addition, but so is open countryside

Mr. Henry Kivett, 4808 Fenwick Pl, Concord, NC addressed the Board. He is opposed to the sight for several reasons. We are almost a mile and a half outside of Highway 601, and we do not have any water or sewer. He said to get water and sewer to the schools is going to cost you \$800,000, when 65 acres sits up around the school now with water and sewer already on it. He said the land costs and the utilities; just before you break construction, is going to be 10% of your budget. He said if you budget \$20 million dollars for the school, \$2 million of it is going to get you water and sewer and get you the buying of the land and that is it. He said the fiber optic cable is going to prevent the school from ever expanding, they are not going away, that is a DOD cable it goes to a lot of very special places.

Mr. Kivett said this does not mean that the school doesn't have to be built; it does need to be built, it is 10 years late coming and it is a crime for letting it stand, but there are alternatives. We would like to know where the other sites are that were looked at. What kind of criteria was used to evaluate it; did an engineer look at them, was there an engineering analysis or cost analysis? He said there is a little bit of transparency here that needs to be look at.

He recommends the Board to find some decent sites and to put a committee together with the School Board and go look at the sites and see if they are acceptable. He said they may not be, and this may be the only one you have but at least let us evaluate the rest of them and see if there is something there. He said 90% of our kids are coming across Highway 601 and only about 10%, not even a bus full, coming from the east side of Highway 601, isn't it logical to keep that cost down. He said that does not include the amount of traffic that it will create, and he does not think there is not going to be a stop light there or that NCDOT will put one in. The queue is only going to grow, if you have to expand that school and he cannot believe that you would design a school with no expandability; that would be a sin in itself. He said that area is going to be zoned AO, that is one house per three acres. He said at the current rate of about \$40,000 per acre, if a developer does come in, that means the lot cost is going to be \$120,000 before you even develop it and will put the price of houses at about a half a million dollars.

Mr. Kivett said it is just logical that we stand back and take another look at this and find a decent place; there may not be any but we do not know until we try. He recommends the board put together people in the community on both sides. He said the schools have to pick up students in these subdivisions, why not put some decent covers in these subdivisions for these students to stand in for the buses to pick them up.

He said looking at the 65 acres around A T Allen right now looks awfully good and it is for sale; at least go and talk with them, all they can say is no.

Mr. Darrell Furr, 3800 Cold Springs Road S., Concord, NC, addressed the Board. He said why not have the school over in the area where they are building houses and have water and sewer. He said Miami Church Road is not the best place to put the school, coming out on Miami Church Road, which is looking due east in the morning and you will be turning left to get onto Abilene Road is not a good intersection even if you are creating turning lanes. He said if you go on up to Highway 601 and Flowe Store Road that area does not work out well because you have a lot of traffic coming out of Flowe Store Road. He said you will have backups there, people trying to make a left hand turn from Flowe Store Road onto Highway 601; they are not going to be happy if they have a lot more traffic there and they are trying to make left hand turns.

Mr. Furr said the School Board selected this site because it is flat, not covered with woods, it is not in a floodplain. He said why are they going to run sewer; if they run sewer and water out there and the areas in between there you will open up that area up for developers to come out there because there will water and sewer there. He said by not having water and sewer, you kind of hold them back and keep the developers at bay. He said you would be better off going on the other side of Highway 601 where there is water and sewer. His view is that the School Board is kind of in a hurry to get it done and compounding the problem and you do not want to do that.

Mr. Eugene Lane, 3875 Abilene Road, Concord, NC, addressed the Board. He sent a letter to be distributed to the Board and he received a call this morning and was told that he would have to present the letter to the Board at the meeting.

Mr. Lane said this is not just an issue about placing a school; it is an issue about growth. He thinks that is what a lot of people are trying to say. He has been following a little bit of the Central Area Plan that Cabarrus County has been working on; it sounds like they have put a lot of money into it. He attended a meeting or two and as far as he can tell it looks like they are getting ready to approve it. He said when he reads into the Central Area Plan there are some things that are in there that this proposed place for this school falls into place of. When he looks into the plan, it addresses water and sewer as a concern in the Central Area, there is not a lot of it. The other thing it addresses is stormwater runoff. He said there were several farmers at the meeting that the school held a week or so ago that had a concern about stormwater runoff. He said supposedly there is a pond going in, he thinks there are some legitimate issues there.

Mr. Lane said the only way we can control growth and he does not think you can control it, you can only manage it. He said you put in place a plan and every plan sometimes has to be changed, so every once in a while you have to look at it and say well we need to allow this here, we need to allow that there. He thinks that should be the exception and not the rule. He said the gentleman who just spoke talked about the water and sewer going out on Miami Church Road and a gentleman having 30 acres there. He said if we put water and sewer in front of that, then let's just say he now has something he can sell to a developer. If that gets zoned as Low Density Residential and a developer comes here, are you going to go ahead and offer him a zoning variance or a conditional use? He is not sure what the exact difference is. He said will you go ahead and grant that then too?

He said truthfully, all of us sitting out here that have concerns, the only way that we can get somebody to sit back and listen or to look at the entire growth of the county; he believes are the ladies and gentlemen sitting here. We have to look to the Board to look at what the zoning is and to say is this realistic, do we really need to do this. He is not saying we don't need a school, we do, but he thinks there are a lot of other issues.

Mr. Lane said when we were at the meeting last week he got the impression that during hard times there may not have been many places available but he thinks it was admitted that night that there were more, maybe even better places available, but we have gone too far in the process. He said are we looking at short term construction cost, short term agriculture cost and not really looking at our long term ownership cost. He said if you are not building houses out there and most of the students live on the other side of Highway 601, and you start busing them an extra two miles twice a day or even if you start busing them and extra mile and a half twice a day, it may not be a lot now but what does that cost over the long run.

He does not think it is the best location for a school at this point and time. He honestly believes that there are other areas that need to be looked at. He was talking with some folks the other day and his understanding from reading the Central Land Use Plan is that down Flowe Store Road the County owns 50 acres that they are going to put a park on.

He does not know where that falls into place. He honestly believes it is not the right location and he asks the Board not to grant a conditional use permit for that.

Mr. Steven Warner, 3800 Hempstead Court, Concord, NC, addressed the Board. He said people may have forgotten but there have already been three children killed on that road. He said there was one child on a bicycle that was hit by a car and two children hit at the intersection of Miami Church Road and Cold Springs South. We will have a lot more of that. He does not want the traffic down through there; we had hundreds of people show up at the planning meetings to express that we were going to remain rural. He said there are plenty of other places to put a school. He said 20 million dollars would do a whole lot of fixing up on some of the schools and it would bring in quality education; instead of building buildings put in good quality teachers and put the money where it needs to be.

He remodels houses; he said the schools system should get a little more into the remodeling business, you talk about going green, take what you have and improve on it. He said you have good buildings, put 20 million dollars in it and you can come up with a heck of an idea. He said you don't go down Union Street and tear down the old houses and put new schools in there, you don't require those people to give up their houses and put new houses in there. He said take what you have that is established and you improve on it, you make it the best that you can, if you have money left over, get some better teachers, you put ball fields out there at the school; the kids will not be overweight any more, they can go to school and feel good about themselves. He said there is plenty of land around the current school, one man says it is too hilly, fill the holes in, work with it, take what you need, if you can not use the whole property make it do with what you can.

He said Miami Church Road is a very, very bad road, it can't be improved, and you are not going to take the hill out. When that hill ices up and the traffic is stuck on that hill, he has been on that hill before and it took him 2 ½ hours to get home from work one day. The biggest part of it was 2 hours trying to get up the hill. Once it ices up, those school buses are not going to see it. He drives a dooley down through there and that is a one lane bridge, they are going to improve on it sure; you going to try and get two buses through there at the same time, there are also tractor trailers traveling on that road as well. He said this is going to make it mighty fine for those kids to have to worry about with no seat belts.

Mr. Archie Barringer, 2271 Jenna Shore Drive, Fay NC, addressed the Board stating that they do have a dog in this fight, 28 acres. He knows a number of people that are here tonight from the community. He said some are friends, some are relatives and they went to school together and played together. He knows they have legitimate concerns and he sympathizes and empathizes with those concerns. He said if they are legitimate he would certainly want each of these concerns to be met as the owner of this property. He is not here to make any enemies; he wants everybody here to know that. He and his wife are the only people who have been involved in the decision making process to sell this land to the School Board and they have been very courteous and professional with them. They have been dealing with them for a little over two years now. He cannot ask for a more courteous and professional group of people to deal with. He said even though he

has relatives in the area, selling this land has nothing to do with them. He knows a lot of people felt like maybe his brother and his wife and some others have been involved, that is not the case. He said if there is a bad guy here for people who do not want the school to be built, he is the bad guy.

He said is not going to say anything either for or against, other than the fact that the School Board approached them about two years ago and they have been very courteous and they have been very professional. He said what we have decided to do has been of our own free will and accord in working with them. We have not been coerced or threatened in any way by them to take the land. His understanding concerning the School Board is that they have covered that entire area of Cabarrus County and in their search for land they have deemed this to be the best possible site for the school to be built. He said if they believe that this is the best possible site then he believes that our children deserve the best.

He is 58 years old; he has had his time, most of us here have. We have lived our lives and we have raised our children; we are empty nesters, we have children and grandchildren now. He believes to put the school there is a very noble cause and if this is what you decide to do in working with the School Board, he has no problem with that. We are very honored to be a part of the process.

The Vice Chair said before he turns it over to the Board for discussion, he asks the County Attorney, Mr. Koch, to speak to the applicable laws that we will be working under. He said this is a quasi-judicial hearing and he wants to make sure that everyone on the board is comfortable in speaking and having a healthy discussion about the comments that have been heard this evening. He is asking Mr. Koch to speak to that so that we understand the ground work that we will be operating on.

Mr. Koch, County Attorney, addressed the Board stating this is a quasi-judicial hearing and in that type of hearing the Board is acting as judges adjudicating the application of the School Board for this site. He said as judges, you have to follow certain rules of procedure; you have to observe certain rules of evidence in your deliberations. He said you will also be called upon to make findings of fact that are based on competent substantial and material evidence.

Mr. Koch said you have the application of the School Board before you in your packets. He said there are certain general standards that are contained in that application that are a part of the law concerning conditional use permits. If you find that the School Board has met those general standards, then the burden of proof under law shifts to opponents of that application to show that those standards have not been met. He said they, like the School Board, have to meet this same standard of presenting competent, substantial, and material evidence.

Mr. Koch said competent, substantial and material evidence is evidence that is based on the North Carolina rules of evidence generally, and to give some examples of what that includes: it is typically testimony from witnesses based on their first hand knowledge and

that would have to be first hand knowledge of facts within their knowledge. He said that is why everyone was sworn for this hearing. He said it also can consist of relevant documents that speak to the issue either for it or against.

Mr. Koch said let me tell you what it does not include: substantial material and competent evidence does not include generalized statements that are unsupported by facts; it does not include opinions unless the person expressing the opinion has been qualified by this Board as an expert. He said no one submitted themselves as an expert this evening so we do not have any expert witness opinions to include. He said it also does not include generalized concerns, suppositions, predictions, or anything of that sort. He said it must be based on what we generally call "hard evidence". He said if there is no substantial material and competent evidence to support the denial of the application, then the law says you must approve it.

Mr. Koch said it is not the province of this Board to decide if another site for this school is more suitable. What the Board is tasked with doing is deciding if this application meets the standards that are contained in state law concerning conditional use permit and in our county ordinances.

He said there has been some discussion about utilities concerning this property. He reminds the Board that in the Central Area Plan, and in the Interlocal Agreement on which it is based, the agreement specifically provides that utilities can be extended into this area for governmental usage and that would include a school site. He also reminds the Board that they can only consider what has been presented to them in the hearing, anything that was received in the mail or otherwise outside the hearing cannot be considered. He said the Board can choose to impose conditions, such as the ones that are suggested or recommended by staff and by the different authorities that have had to pass on this application. He reminds the Board that under state law, there is a high vote requirement on this application; so, in order to approve it at least 8 of 9 of you must vote in favor of the application.

The Vice-Chair asked if that would be considered a super majority.

Mr. Koch said yes.

The Vice-Chair said what if that is not achieved?

Mr. Koch said then the application is denied. He said there will need to be findings of fact to support whatever decision the Board makes.

Mr. Fesperman said if it is turned down does it go to the Board of Commissioners or does it go to the courts?

Mr. Koch said it goes directly to Superior Court.

The Vice-Chair opened the floor for discussion.

Mr. Tommy Porter thinks a lot of valid points have been brought up tonight. He said the Central Area Plan with the lower densities where development will not take place in this area and so the students are not in the area where the school is being proposed for the extension of utilities. He is not satisfied that this the best site for this school.

Mr. Larry Griffin thinks Mr. Koch just told us that is not our job. He said that is fundamentally the School Board's job. He said our job is to determine whether or not they have satisfied the requirements in law and regulations; whether they have satisfied those things. Our judgment is whether they have met the requirements for a Conditional Use Permit as that land is currently zoned and by law we have to grant the request.

Mr. Griffin has personally been involved in a case that went to court where the Board decided arbitrarily that a cell tower should not be approved. He said the judge found that so onerous he did not even send it back to us, he just said it is approved. He said it is our job to determine whether there is something that the School Board has not done that is required to grant a Conditional Use Permit. He said the other thing is opinion does not count.

Mr. Porter said he understands that.

Mr. Griffin personally does not see where the School Board has been deficient in satisfying the requirements for a Conditional Use Permit on this piece of property.

Mr. Larry Ensley agrees with Mr. Griffin that the School Board has done their due diligence. He is personally troubled about some of the issues with NCDOT, as far as the bridge and the line of site; particularly looking east on Miami Church Road.

The Vice-Chair thinks Mr. Griffin has recounted what Mr. Koch said very well. He reminds the Board that they have the option to put on additional requirements. He said that is in our tool kit and we can use that if there are some specific things after what has already been proposed.

Mr. Griffin thinks that staff has pretty well covered the requirements; particularly those that relate to satisfying all of the requirements that relate to NCDOT.

There being no further discussion, Mr. Larry Griffin, **MOTIONED, SECONDED** by Mr. Larry Ensley, to **Approve** Conditional Use Application Case# CUSE2008-00009, Cabarrus County Schools with the following 10 conditions:

1. That the site plan review and approval will be required subsequent to Board of Adjustment approval to ensure compliance with all applicable development requirements included but not limited to Cabarrus County Zoning and any other Local, State or Federal Review Agency.

2. That the applicant shall meet with Cabarrus County Soil and Water Conservation to discuss conservation easement feasibility.
3. That the applicant will meet all requirements established by NCDOT.
4. That the applicant shall revise site plan to accommodate Avett-Yancy right-of-way as stated in the NCDOT comments.
5. That the applicant shall revise plan to show 50' right-of-way and right turn lane storage length.
6. That the applicant shall agree to install needed improvements as determined by the Traffic Impact Study review by NCDOT.
7. That the applicant shall provide a copy of the finalized sealed Traffic Impact Analysis (TIA) to Cabarrus County Zoning Division.
8. That the applicant shall procure all necessary Local, State and Federal permits and/or approval certificates (NCDOT, NCDNR, DWQ, FEMA) and all other agencies if necessary and provide copies to the Cabarrus County Zoning Division prior to construction.
9. That the applicant shall remove the term NCDOT from the 60 foot dedicated NCDOT right-of-way statement at the northern end of the property that connects to the Yancey tract. The statement should indicate that the right of way is for access to the Yancey tract and can be phrased as "Potential future NCDOT right of way". The school system should continue to pursue acquiring the existing 50 foot Yancey right-of-way.
10. That the Cabarrus County Schools shall be responsible for obtaining any and all rights of way necessary to accommodate required roadway improvements along Miami Church Road, including construction easement(s). The plan currently shows 50 foot which may not be adequate as the roadway improvement plans have not been reviewed.

The vote was 8 to 1 with Mr. Tommy Porter voting against (Mr. Eugene Divine abstained - an abstaining vote counts as affirmative, the person was not excused from voting).
Conditional Use Application Case# CUSE2008-00009, Cabarrus County Schools,
Approved.

Findings of Fact submitted by Mr. Rich Koch, County Attorney

1. Those "Additional Facts" as contained in the staff report.
2. Those responses to the General Requirements contained in the Applicant's conditional use application.

3. The Central Area Plan being adopted by the City of Concord and Cabarrus County, which is based on an interlocal agreement between Concord and the County contemplates location of schools in this zoning district and permits extension of utilities to this school site.
4. The Cabarrus County Planning and Zoning Commission is not permitted to consider evidence of whether another site for this school may be preferable.
5. The statements of the opponents to this application were primarily inadmissible opinion testimony relating to the opponents' belief that a better site for the school was available elsewhere.
6. The roads adjacent to the site will be upgraded and improved.

Mr. Berg returns to the Board as Chair.

New Business – Planning Board Function:

The Chair, introduced request for Vested Rights- Petition #2009-01(VR) – Greathorn Properties LLC

Ms. Kassie Watts, Planner, addressed the Board stating that this is a request from Greathorn Properties, LLC. , and the owner is Mr. John Robbins. She said Mr. Robbins is not here this evening but his engineer Mr. Matt Weiss, Northeast Engineering, is here to represent Mr. Robbins. Mr. Robbins is requesting vested rights for his property located off Highway 601. She said in December 2007, the Board approved his conventional subdivision, The Riverbend Subdivision, a 28 lot subdivision off Highway 601. She said per Mr. Robbins's letter, he is requesting to establish vested rights for this property due to the market situation right now. He has invested a significant amount of money in plans, permit approvals, review and those sorts of things, so he is requesting to vest his rights for two years. She said the ordinance outlines the process for that; 1) there are two things that must be submitted; a description with reasonable certainty, the type and intensity of a use for a specified parcel of land, 2) a Site Specific Plan or Phased Development Plan which shall be in the form of a subdivision plat drawn in accordance with Chapter 12 of the Cabarrus County Subdivision Regulations. She said Mr. Robbins has submitted those two items.

She said the vested rights will begin January 15, 2009 and would expire two years from now.

Mr. Griffin asked if there was any one present who could speak on the business aspects associated with this and why the delay.

Mr. Matt Weiss, Northeast Engineering addressed the Board stating that Mr. Robbins chose not to begin construction. He said they received all of their approvals from the Board and Erosion Control. He said they had to satisfy an Army Corp permit by the disturbance of 150 feet. He hired a contractor to go out and install the two crossings to satisfy that permit. He said Mr. Robbins did not want to begin the construction of the subdivision with that great cost with the residential market and the price point for these lots being a little more than the average, and his concern was selling the lots and the additional overhead.

Mr. Griffin said there are bankrupt developments all over the county now because they could not get the money to finish the development.

Mr. Weiss does not know what all Mr. Robbins has going on but his feeling is he does not want to build a road and have that cost and have lots sit there for years. He would rather wait until the market is more available. Mr. Weiss does not want to speculate on Mr. Robbins' finances.

Mr. Griffin said he believes it will take two years?

Mr. Weiss does not know how many years; Mr. Robbins is not going to build it at this point.

Ms. Watts said under the terms of the zoning ordinance, the vested rights must be requested for two years to begin with. She said that is why he is requesting the two years.

Mr. Griffin asked if Mr. Robbins would be satisfied with something less if the ordinance did not require him to ask for two years.

Ms. Watts said he may have been but they did not discuss it because it is not an option.

Mr. Porter asked what happens if this is denied.

Ms. Watts said the state statute clearly defines vested rights criteria. It is her understanding that if they have established that they have put money into the property and that they are moving forward with developing the property under a certain ordinance, the government has to offer them some level of certainty that they are going to be able to develop the project under those standards. She said we would not allow them to have an approval under a certain set of standards and then just change it on them mid stream, there has to be some level of certainty in order for someone to make this sort of investment.

Ms. Susie Morris, Planning and Zoning Manager, addressed the Board. She said if the applicant was not applying for the vested rights, they could apply for an extension just on the subdivision itself. She said with the vested rights, they are trying to determine some level of certainty.

Ms. Morris said the rezoning is coming and this particular development is in the Central Area. She said with the vesting they have a valid current approval, so they are simply asking that the valid current approval based on the state statutes be extended for an additional two years past that expiration date.

Mr. Koch said the reason for this statute is to try and balance the interest of the local government in assuring stability in the land planning process against the rights of the land owner and particularly with reference to substantial expenditures they may have made in reliance on an approval that they previously received from local government. So, the idea typically is to try to define that in a statutory way and that is what they have applied for here. Generally, these kinds of extensions are granted by the Board. He said you do not have to do it. He does not know that this Board has ever turned one down if there were any indication that there were substantial improvements that had been made in reliance on the approval that they previously received; which appears to be the case here.

He said there is also an ability to go through a separate and some what different process to apply for common law vested rights. He said that is a separate issue and is not what is before you, and there is sort of a separate procedure for that. He said the statutory method, which is what you have before you, is an effort by the legislature to try to quantify that in some way that a board could deal with.

Mr. Griffin said he is familiar with that and remembers them approving it. He can't say that anything has really changed or should change that approval. He said the business environment is certainly bad everywhere and he hates to see an individual lose that kind of money because of the timing of this economic problem and particularly on our behalf if we told him that we are not going to extend it.

The Chair asked if there were anyone else present to speak on this case.

Mr. Ensley said let's assume the market did turn around by January 2011, could they come back and ask for another extension?

Ms. Watts said there is a limit on the vested rights, they are allowed two years and they could come back for another two years and then one year after that. She said it is a total of five years. She has not had anyone ask for more than one subdivision plat extension.

Mr. Griffin said it was a long time ago.

Ms. Watts said typically we do not want to draw it out that long.

Mr. Prince agrees with Mr. Koch that this Board has not really had a problem extending these; the results of denying it are far worse for both the county and the applicant.

Mr. Prince **Motioned, Seconded** by Mr. Griffin to Approve Petition #2009-01-(VR) Vested Rights with the recommendations from staff and with the one year limitation that they reaffirm or renegotiate their agreement with the county. The vote was unanimous.

The Chair, introduced request for Extension of Riverbend Preliminary Plat Approval #C2009-01(SE) – Greathorn Properties LLC

Ms. Kassie Watts, Planner, addressed the Board stating that after reviewing this case with Mr. Robbins, we thought the easiest and most efficient way to approach it would be to go make the request for an extension of the subdivision plat to go along with the vested rights. She said Mr. Robbins is requesting a one year extension of the development project, it would expire December 20, 2010 and the vested rights would expire January 20, 2011. That would give him a solid two years to get the project started. If he feels that he can not do it, at that time, he would have to approach the Board again for vested rights extension and or subdivision extension.

There being no further discussion, Mr. Larry Griffin, **MOTIONED, SECONDED** by Mr. Barry Shoemaker to **Approve** the Request for Extension of the Riverbend Preliminary Plat Approval with the following conditions:

1. The developer be granted a one year extension for the development of this project. The new expiration date would be December 20, 2010.
2. The extension be conditioned upon the Cabarrus County board of Commissioners reaffirming or renegotiating the terms of the original Consent Agreement for the Riverbend subdivision project.

The vote was unanimous.

The Chair, introduced Petition C2009-01(R) Zoning Atlas Amendment – Limited Commercial (LC) to Light Industrial (LI)

Mr. Jeff Huss, Planner, addressed the Board stating that this is Petition C2009-01 (R) Zoning Atlas Amendment for the parcel located at Old Cannon Road and Highway 24/27. The applicant is Mr. Glenn Benton, 6851 Log Cabin Trail, Midland, NC. The request is to have the zoning at this parcel changed from Limited Commercial (LC) to Light Industrial (LI). This change will allow a wild game/meat processing facility and taxidermy service at this location. He said prior to the meeting, letters were sent out to adjacent property owners and rezoning signs were posted at the location.

Mr. Huss said the present use is not allowed in the Limited Commercial (LC) district. The applicant is requesting the rezoning to bring the property into compliance. The use as a meat packing facility is permitted by right in Light Industrial (LI). He said the present zoning district adheres to the Leak-Goforth Strategic Plan for Economic Development which suggests the zoning of the site should be changed to Light Industrial (LI). He said the Light Industrial (LI) zoning would adhere to the future employment district of the Midland proposed Future Land Use Plan. However, the letter included in the Board packet from the Town of Midland, shows there were some concerns and objections that arose in the Midland's Planning and Zoning Board meeting last week. He said their main

concern is the nature of the rezoning; since it is a conventional rezoning it would allow not just the use that is presently occupying the location, but that it would cover all Limited Industrial (LI) uses.

Mr. Huss said this is a conventional rezoning request and all of the uses in Limited Industrial (LI) district would be allowed.

The chair said a list of those potential uses were included in the Board packet.

The Chair asked if there were any questions.

Mr. Glenn Benton, Applicant, 6851 Log Cabin Trail, Midland, NC, addressed the Board stating that he was notified that the zoning of his parcel needed to be changed so that his tenant could run his business. He has had several inquiries about leasing the building prior to this and after looking at the permitted uses for Limited Commercial (LC) they were not allowed; that is why he wanted to change the zoning. He is working with Mr. Robbie Foxx, Zoning Officer, to meet the zoning regulations. He said they are absolutely willing to follow the regulations and abide by the community. He was asked what his intentions were 10 years down the road; his dad passed away in June 2008, and right now he is just taking one day at a time. He said all he and his dad did was work and deer hunt together and that is what his dad wanted in that building.

Mr. Benton said the people of Midland should not be too concerned with that corner right now because that particular parcel on that stretch of the road there is no city sewer. He said that little area down through there is not going to grow right now.

He said if something should happen to the current business, changing this to Light Industrial (LI) should open the door for something else. He said there is not much you can do with 1.4 acres. He is trying to stay within the regulations.

Mr. Shoemaker asked how long the facility has been in operation as a meat processing facility.

Mr. Benton said it began leasing in September. Once he found out they were not in compliance, they shut down. Another reason he wanted to have a taxidermy/deer processing in that area is because this was the first year that deer season had been extended in the cities of Midland, Stanfield, and Locust. He said that area has a need for it. He and his dad put up the building and it has been there 22 years. He said they have served and worked with the community and are trying to abide by the law and do what is right.

Mr. Brandon Grant, 10901 Parton Road, Charlotte, NC addressed the Board. He said is the deer processing man. He would first like to apologize to anyone they may have offended, they certainly did not mean too. He said guys that hunt take pride in their possession and are trophies to them. (See attached letter read by Mr. Grant.)

Mr. Grant has people stopping by the shop all the time where a deer has been hit and are ask to come remove it. He said many times they process and donate the animal to Hunters for the Hungry or people that are in need of food. He would be glad to move any of his facilities inside which would be out of site, or put up a privacy fence. He said all of their products are picked up once a week, every Tuesday, by Bio-waste. He said everything is being picked up, recycled or turned back into the environment or chicken feed. (Mr. Grant read a portion of the attached letter from NC Wildlife Resources Commission).

Mr. Grant said hunting is still the most effective way to deal with the over abundance of the deer population today. He said they get a lot of business from guys coming from Charlotte, going to Richmond, Anson and all of the surrounding counties coming back through Highway 24/27. He said they did about 400 plus deer this year, a dozen or so wild hogs and provided a place to work for several people. He would love to keep doing it, and move forward with taking other things like cattle, hogs and also looking into a sport/fishing store with live bait and tackle. He said there is no where on Highway 24/27 to stop and buy fish and bait between Charlotte and all the lakes, Badin, Tillery and Tucker Town. He loves Cabarrus County; his mother moved them here when he was young just to go to the school system. He enjoys it and glad to be a part of it.

Mr. George Long, 124 Highway 27, Midland, NC addressed the Board. He lives 325 feet from the building being talked about. He is in favor of it. He would rather have Mr. Grant in the building than someone who would have dogs and cats running all over your house and cars. He does not think this would be any kind of a disservice to anybody in that community.

Mr. James Frith, 501 Neighbor Drive, Midland, NC, addressed the Board stating that he works with Mr. Grant and he is all for it. He said it has been a good place for people to bring the meat and turn it into food for their families. He said before Mr. Grant opened his facilities the hunters would come down there and throw the portions that they did not want out at the rail road tracks. This year we did not see that, they did not throw stuff out.

Mr. Todd Worley, 13202 Brandywine Lane, Midland, NC, addressed the Board stating that Mr. Grant is a well respected person in the community; he does a great job at processing. He cannot count the number of times that he has been to different processors and you order your meat the way you want it and when you get it its not what you want. He said when you order it from Mr. Grant it comes the way you want it; he does a real good job. It is a clean facility, and he does not see anything bad or wrong with it.

Mr. Rick Smurthwaite, 3075 Heavenly Path, Locust, NC, addressed the Board stating that he did not have plans to show up tonight or intentions on speaking, he is just too busy. He said that was until the morning of January 7th when he was walking by Holly Wind and a voice in side of him he calls the Holy Spirit, saying you are too busy, that is why he is here because he is too busy. He said with more and more demands on our time, church, work, school, children and their activities, modern man has less time than ever to

relax. He said for the most part the days of the week long hunting camps with friends and family are over, unfortunately. He said today's hunter might only have a few hours in the morning to pursue the sport we love before it is back to work. Hunting is done in the country, and most of our jobs are not. He said conveniently located on Highway 24/27, serving southern Cabarrus, Western Stanley, Northern Union and Eastern Mecklenburg County, All Game Processing's location affords many hunters the chance to harvest game in the morning and drop it off on the way to work in Charlotte. He said All Game Processing is needed, some here today might say there are other processors available; not so true. He has been to other places into the city only to be turned away because they were too full. The North Carolina Game Commission is contemplating more liberal hunting season in 2009, if this happens, which it probably will, the we are full scenario will become more common place. All Game Processing is needed. He said all processing is not equal, like any other business some places are better than others. It is vital that game harvested be properly dressed, hung, and processed. If it is not done right it can ruin meat. He said all of the game he's had processed at All Game Processing has been done to perfection. All Game Processing is needed.

Mr. Smurthwaite said until November 2008, he had never met Mr. Grant, he did not ask me to speak, I volunteered. He said it would be a huge disservice to the hunting community if it were closed down, All Game Processing is needed.

The Chair said on the report it says that the property was rezoned in 2005 and again in 2007. He asked if there were any history on the 2007 rezoning, who requested it and why it was rezoned.

Mr. Huss said Mr. Benton's father requested the 2007 rezoning.

Mr. Benton said it is his understanding that every so often the county goes through an area and does a rezoning of an area. He said at the time they had the building up for sale and there were prospect wanting to buy it. They found out it was not zoned the same why it was when he and his father had the camper shop done. He said they did not know way and wondered how it happened. They found out that the county had come through and rezoned the area. His father went through the process and put in an application to have it zoned back to what it was before.

Mr. Griffin said he read Midland's comments and staff's comments. He said according to the proposed plan, staff says that it would be consistent with the use in that area. He asked if this could be construed as spot zoning.

Mr. Koch said he had not considered that in reference to this rezoning. He guesses you could make the argument that it is spot zoning but it may not necessarily be illegal spot zoning. He said not all spot zoning is illegal. He said if you look at the map one could make the argument. According to the staff report, it is consistent with the plan.

Mr. Griffin said the Midland Proposed Land Use Plan, apparently not the one that is in existence right now. He said that is the only way he can rationalize Midland's comments

and staffs', because Midland says it has an approved by the Cabarrus County Board of Commissioners land use plan.

Mr. Koch said looking at the staff report, it says it is consistent with the proposed Future Land Use Plan, calling for the Future Employment District which would include this type of zoning, but also to the strategic plan that was done by Leak-Goforth.

Mr. Griffin could understand if they were rezoning 100 acres there Light Industrial (LI); some of these uses that could be put in there might be onerous, but when you are talking a little over an acre he does not see any significant differences except they do not allow meat processing in Light Commercial (LC) and they do in Light Industrial (LI).

Mr. Koch said sometimes the argument with spot zoning is that you have a small parcel that is rezoned to something different from all the rest surrounding it. He said that is one of the things people look at first; you also look at some other factors such as the compatibility of it with the existing plan whether it fits within that. He said that is a factor that would probably militate the other way and then of course the general benefits and detriments for the owner and the surrounding properties and the relationship of uses that are going to be made of this property relative to the surrounding properties. He said those are generally the things that you look at.

Mr. Prince thinks that Mr. Griffin is right that with only an acre that takes off 99% percent of that list.

Mr. Huss said it is a corner lot and you will have set backs on it.

Mr. Griffin said there is not a whole lot you can do there except something like what they are talking about doing. He said there are a whole lot of other things they can already do.

Mr. Prince asked if there is any other way for them to accomplish this without doing a straight rezoning, is there an opportunity for conditional, or variance, is there any other avenue.

Mr. Huss said no, we contemplated text amendment but rezoning was the way we chose.

There being no further discussion, Mr. Larry Griffin, **MOTIONED, SECONDED** by Mr. Tommy Porter to **Approve** Petition C2009-01(R) Zoning Atlas Amendment – Limited Commercial (LC) to Light Industrial (LI). The vote was unanimous.

Mr. Koch recommends the following consistency statement:

The proposed rezoning is consistent with the Midland Proposed Future Land Use Plan and the Strategic Plan for Economic Development prepared by Leak-Goforth and is reasonable and in the public interest.

Mr. Larry Griffin **Motioned, Seconded** by Mr. Prince to Approve the Consistency Statement. The vote was unanimous.

Directors Report

Ms. Susie Morris, Planning and Zoning Manager, addressed the Board. Ms. Morris informed the Board that the Central Area Rezoning will be heard Tuesday, January 20, 2009 at the Board of Commissioners meeting at 6:30.

Mr. Prince asked if they could attend and speak at the meeting.

Mr. Koch said yes.

Ms. Morris said a while back we talked about the NC3 Plan; we are still working with the Centralina Council of Governments (COG) on that plan. We have some differences of opinion with Kannapolis. She said the different options that have been formulated throughout that process will be presented to the public on January 22, 2009.

She said there will be two different drop in sessions; 4:00 to 5:30 and 6:30 to 8:00 p.m. at Beth Page Presbyterian Church, 6020 Mooresville Road, Kannapolis, NC. Mr. Bill Duston with Centralina will do a brief overview of the options and the information, you will be free to look at the maps and provide comments.

Ms. Morris said the NC73 Council of Planning meeting will be held on January 22, 2009, 5:30 to 8:00 at the Joe Gibbs racing facility. If anyone is interested in attending, let her know.

Ms. Morris said we recently purchased a copy of a training manual called the Citizen Planner, by David Owens and the Institute of Government. She said if anyone is interested in a copy or a particular section related to the Board's duties. She said it is pretty good and has a lot of basic information. If the Board is interested or wants to think about it or talk about it let her know. She said we have not had any training in a long time and we do have some new folks. She said we could do a couple of modules per meeting or something like that to get you the information and go over it as a training session or if we do not have any items we can just have a work session and go over it that way. She said think about it and let her know.

Ms. Morris said we had talked about dovetailing on the Central Area Plan; going to Harrisburg and working on a land use plan with them; a long range plan like we did in the Central Area. She said right now their budget is on hold, so we do not know if we will be going to Harrisburg or we may talk with Midland to see if they are interested.

She said the Alternate At-large position with the Board is still vacant.

There being no further discussion, Mr. Larry Griffin, **MOTIONED, SECONDED** by Mr. Larry Ensley to **Adjourn** the meeting. The vote was unanimous. The meeting ended at 9:00 p.m.

APPROVED BY:



Todd Berg, Chairman

SUBMITTED BY:



Arlena B. Roberts

ATTEST BY:

Susie Morris
Planning and Zoning Manager