

Cabarrus County Government – Planning and Development  
Planning and Zoning Commission Minutes  
August 13<sup>th</sup>, 2024

Mr. Charles Paxton, Chair, called the meeting to order at 6:30 p.m. Members present, in addition to the Chair, were Ms. Holly Edwards, Mr. David Hudspeth, Ms. Ingrid Nurse, Mr. Adam Dagenhart, Mr. Mohammed Idlibi, Mr. Michael Bywaletz, Mr. Jeff Corley and Mr. Chris Pinto. Attending from the Planning Department were, Mr. Phil Collins, Senior Planner, Ms. Susie Morris, Planning Director, Ms. Kendall Bolton, Clerk to the Commission, and Mr. Richard Koch, County Attorney. Mr. Brent Rockett, Mr. Stephen Wise, and Mr. Andrew Nance were absent from the meeting.

**Roll Call**

Ms. Kendall Bolton, Clerk to the Commission, called the roll.

**Oath of Office was administered to the following members for re-appointment:** Mr. Adam Dagenhart, Mr. Michael Bywaletz, Mr. Mohammed Idlibi, Ms. Ingrid Nurse and Ms. Holly Edwards.

**Approval of Minutes**

The Chair asked if there were any corrections or additions to the minutes for the April 9<sup>th</sup>, 2024, Planning and Zoning Commission Meeting.

There being no corrections or additions to the minutes, Ms. Holly Edwards **MOTIONED, SECOND** by Mr. Adam Dagenhart to **APPROVE** the April 9<sup>th</sup>, 2024, meeting minutes. The vote was unanimous.

The Chair said, I will take a minute to remind the audience, if you have not done so already and wish to address the Board tonight, please fill out a blue card. Is there anyone out there that wishes to do so that has not already? There being none, the Chair proceeded with the meeting.

**New Business Planning Board Function:**

**RZON2024-00004** - Request to place AO zoning on 25.93 acres removed from Kannapolis city limits per SL 2024-20. PINs 4692-86-0988 and 4692-76-7813. Owner is Michael Wallace.

The Chair asked the Board if anyone had any conflicts or information that needed to be disclosed related to the case. There being none, the Chair called upon Susie Morris to present the staff report.

Ms. Morris said, this is a rezoning request based on a de-annexation. So, this is something that you all have not seen before. The applicant is Mr. Michael Wallace. The address for the primary property is 3429 Trinity Church Road. The existing zoning is currently Kannapolis R1. Based on

the statutory requirements, the County has to place zoning on this particular property. The proposed zoning is Cabarrus County AO, which is Agricultural/Open Space. The existing permitted uses would be anything currently listed in the Kannapolis R1 zoning district. The proposed uses are all uses allowed in the AO zoning district, which is the county district. As stated, there are two parcels that are part of this request and the approximate acreage for both of those is 25.93 acres. The subject property is currently used as residential and vacant; it is also farmed, part of it, they grow hay on it. The subject properties are surrounded by single family residential homes and a large vacant tract of land that is heavily wooded to the West. Properties to the South and East of the subject property are in the City of Kannapolis. Properties to the North and West are in the unincorporated area of the county (showing map on screen).

The subject property is currently served by governmental water by the City of Kannapolis and an on-site wastewater disposal system. We did send this out for review. We did not receive any comments on it. There is no proposal currently. It will remain residential and agricultural (showing on map). This parcel is where the house is located, and this is the vacant parcel. This vacant parcel currently does not have an address. This other parcel is where Mr. Wallace's home is located.

The proposed district is the AO district. This district is comprised mostly of lands usually found in the eastern side of the county which, due to physical characteristics such as soil type, topography, etc., should remain agrarian. Those of you who are familiar with this area will know that it is not that far from the watershed for the reservoir. The watershed crosses this property. There are larger tracts out there. That is why AO zoning exists in this area.

Again, it is Kannapolis R1. The Fire Marshal did have one comment. As a result of all of this, the County is having to figure out how to apply different services, tax rate, zoning, and fire districts. All of that is coming into play. The Fire Marshal's office is working on that. They are currently unofficially covered by the City of Kannapolis. They will work on placing them in a fire district and mapping because apparently there are some statutory requirements as far as when those maps can be amended. I believe that happens once a year.

The subject properties are discussed in the Northwest Cabarrus Small Area Plan and are designated as low density residential. Low density residential areas are characterized by low- to moderate-density residential development of .5 acres up to 1.5 units per acre if additional development standards are met. That would be our open space subdivision standards. Again, the subject properties are in the Protected Area of the Coddle Creek Watershed. Densities are limited per Chapter 4. There is no proposed development at this time.

As far as the conclusions, I will go ahead and read this for the record. North Carolina General Statute 160D-202 H Relinquishment of Jurisdiction states that when a city relinquishes jurisdiction over an area that it is regulating under this Chapter to a county, the city development regulations and powers of enforcement shall remain in effect until 1) the county has adopted such development regulation or 2) a period of 60 days has elapsed following the action by which the city relinquished jurisdiction, whichever is sooner. Prior to the transfer of

jurisdiction, the county may hold hearings and take other measures consistent with G.S. 160D-204 that may be required to adopt and apply its development regulations for the area at the same time it assumes jurisdiction.

Again, these properties were removed based on a session law and the statute clearly says that the County now must apply zoning within 60 days of that action. The subject properties are in the Kannapolis annexation and utility service area. When we asked them if they were going to maintain this property in their ETJ area, they said they were not. Any long-range planning that we do will now have to include this particular property.

PIN 4692-86-0988 is approximately 21.47 acres, currently supports a single-family dwelling and is in the Present Use Value Program. PIN 4692-76-7813 is approximately 4.46 acres, is currently vacant, and is in the Present Use Value Program. Surrounding unincorporated properties in the area have AO zoning. There are other agriculturally used and larger lot properties in the area surrounding the subject property. (Showing on Map) You can see a lot of these are the larger tracts, which is consistent with our AO zoning and the watershed because the reservoir is very close by this particular property.

I would be happy to answer any questions you all may have since this is a little different. I will try my best to answer but we may need Rich's expertise to answer them. Mr. Wallace is here this evening. His preference is to be here to answer questions. He does not have a formal presentation.

The Chair asked the Board if anyone had any questions.

Mr. Bywaletz said, you said there is onsite sewer, is that septic?

Ms. Morris said, correct. That is city water and there is a septic system that supports the house.

Mr. Bywaletz said, looking at the zoning, I don't want to say it is down grading, but it looks like compared to the Kannapolis zoning where you can develop large residential spaces, this is more farmland or single-family houses right now. So that is kind of where the AO zoning is.

Ms. Morris said, the AO zoning has a 3-acre minimum lot size. We do have an open space option subdivision that would allow down to a one-acre size lot. Again, each lot would have to be supported by individual well and septic.

The Chair asked if there were any further questions. There being none, he called upon Mr. Wallace to introduce himself.

Mr. Michael Wallace 3429 Trinity Church Rd. Concord NC 28027. Mr. Wallace said, this piece of property is mine. It has been explained what has happened, it is being de-annexed from the City of Kannapolis. The de-annexation is done, it went through the NC legislative branch. It is entitled here to have zoning. To be honest with you, I asked when we applied for this I said, I



was in the county before, just put me back in that same zoning. That is what I bought the property under. We are going through this process; it is very simple. I am not going to develop the property. I am going to keep it exactly the way it is. You all will not see anything different; I will just see the difference from not being in the City of Kannapolis. That process is already done. I thank you all for your time. I hope there is no objections to it. Not that I think there would be, because this is a zoning meeting, not an objection meeting. We have worked really hard to keep a nice piece of property. It looks good when you go by there. We own that property and when we started on our house, it was not in the City of Kannapolis. We were in the county before, so we just want to be there again. I like the county better than the city. Thank you.

The Chair asked if there were any questions or comments. There being none, the Chair opened the Public Hearing. There being no one wishing to speak in favor or against, the Chair closed the public hearing. The Chair then opened the floor for discussion.

Mr. Corley said, the word that comes to mind is consistency. It is consistent with the surrounding Cabarrus zoned properties. It appears to be consistent with the existing Kannapolis R1. It appears to be consistent with the Northwest Cabarrus Small Area Plan, as well as general surrounding uses in the area. Also, the density appears to be consistent with watershed rules. All of that being said, I feel that this is an appropriate rezoning of AO.

There being no further discussion, the Chair explained to the Board that they would be taking two votes.

Ms. Holly Edwards **MOTIONED, SECOND** by Mr. Mohammed Idlibi to **APPROVE** the request to place AO zoning on the subject property. The vote was unanimous.

The Chair said, up next is the consistency statement. We will need to build the record for that. We need comments on why this is or is not consistent.

Mr. Corley said, this rezoning is reasonable and in the public interest. It is consistent with the Northwest Cabarrus small area plan. It is consistent with uses in the area as well as surrounding Cabarrus properties. It is consistent with the Kannapolis R1 as well as the watershed densities. With all the information provided by Staff in the Staff report.

Ms. Holly Edwards **MOTIONED, SECOND** by Mr. Adam Dagenhart to **APPROVE** the consistency statement. The vote was unanimous.

The Chair excused Mr. Wallace.

Mr. Wallace said, I would like to thank you all and if you drive by my property, I think you will be happy with it.

The Chair said, I will take a minute to remind the audience, if you have not done so already and wish to address the Board tonight, please fill out a blue card.

**Old Business Board of Adjustment:**

**VARN2024-00001** –Variance request for thoroughfare buffer requirements in Chapter 4 and perimeter buffer in Chapter 9. PRESPRO, LLC is the applicant. Journey Investment Group, LLC is the owner. Address is 2339 Odell School Road (PIN 4682-41-7025).

The Chair asked the Board if anyone had any conflicts or information that needed to be disclosed related to the case. There were none.

The Chair said, anyone wishing to speak for the following Board of Adjustment cases or to testify during the public hearings for these cases must be sworn in. If you wish to speak, we need to have a completed blue card from you.

The Chair said (speaking to audience), please stand and raise your right hand if you will be testifying or if you think you may need to approach the Board of Adjustment to speak this evening. Those standing, please respond “I do” after the following oath is administered: Do you swear [or affirm] that the evidence you shall give to the Board in this action shall be the truth, the whole truth, and nothing but the truth, so help you God?

Crowd responded.

The Chair called on Mr. Phil Collins to present the staff report.

Mr. Collins said, I do not think it is necessary to go through the whole staff report again so I will just highlight the things that have been updated. Going back to what the variance request was for, the applicant is seeking relief from the following standards of the ordinance in Chapter 9 Section 9-4.1 Perimeter Landscape Buffer Yard. The existing driveway is located within the required landscape buffer. It encroaches into the required perimeter buffer yard on the south site of the property for approximately 275 feet from the future right of way. That is the way it is measured.

The existing structure was originally constructed in 1960, prior to zoning in Cabarrus County. The original driveway made a loop and had two entrances on to Odell School Road. There is one access point proposed for the site using the current driveway location. The buffer width required for this area of the site is 24 feet. The new plan shows removal of portions of the driveway creating a twelve-foot buffer along the southern property line. I will show you the map in just a moment along with a quick presentation. The plan shows landscaping along the southern property line that is consistent with the calculations and requirements of a level 3 buffer yard. Again, we will look at that in just a second.

The applicant is also seeking relief from Chapter 9, Section 9-5 A Perimeter Parking Area Landscape. The Ordinance requires an eight-foot-wide landscape buffer yard around parking areas that are adjacent to public rights-of-way or residentially used property. Because this property is adjacent to a major thoroughfare, a 15-foot Thoroughfare Overlay Yard is required.

This is shown on the site plan. The current right of way of Odell School Road is 40 feet. The CTP Index shows a future right-of-way width of 110 feet. Although the site design was changed, the proximity of the front edge of the proposed parking area in relation to the Thoroughfare Overlay Yard and future right-of-way width still does not allow for the required eight-foot perimeter yard or landscaping to be installed. The applicant intends to provide the required plantings for the perimeter parking yard in other areas on site to mitigate not being able to accommodate this buffer around the front parking area. The plantings provided are consistent with the calculations and requirements of the parking lot perimeter buffer yard.

I would like to skip over to the history and other information towards the end. The site plan is showing a portion of the existing driveway being removed and landscaping installed on the southern property line. The proposed landscape material and number of plantings in the 12-foot buffer area is consistent with the requirements of a level 3 buffer yard. Since the applicant cannot provide the parking lot perimeter yard along the Odell School Road frontage due to the future right of way and the required thoroughfare yard, the required landscaping has been distributed around the building as a mitigation measure for the variance being requested for this area. The original plans provided 70 parking spaces. The updated site design accommodates removal of part of the driveway and a detention basin at the front parking lot. The new plan provides 51 parking spaces, which still within the required range of 17 to 84 parking spaces.

The subject property is located within the protected area of the Coddle Creek Watershed. Nonresidential development within the watershed is limited to 12% impervious area per site. Chapter 4, Part 1, Section 4-6.2 of the Development Ordinance grandfathers existing impervious area of developed sites prior to the adoption of the Ordinance on December 20, 1993. 35,914 square feet of impervious area exists on site and existed prior to December 20, 1993. The permitted impervious area for the site is 11,899 square feet and the applicant is proposing 11,485 square feet of new impervious area. They are right within that threshold. With that, I would like to move to a quick presentation to show on the site plan if you all can look at the screen.

I basically took the site plan, the one from March that you saw previously, and highlighted in blue the parking and driveway areas. Moving on to the current, those markings are in red and overlaid them both so you can see those changes. Basically, this new plan added 980 square feet of paving in the rear parking area and lost 5 parking spaces to accommodate for fire turn around (showing Board those changes on screen). If it is in red, it means it is an addition. If it is in blue, that means that is being removed. Added width on the North side of the driveway (showing in red area). All of it is to accommodate the fire lane. They removed paved area on the south side of existing driveway to accommodate for a fire lane and a buffer area along southern property line. That is kind of what was mentioned in the March meeting.

The required width on the southern property line is 24 feet. Therefore, their variance request is to allow a 12-foot buffer along the 275 feet. This plan removed approximately 1,350 square feet of front parking area and lost 8 parking spaces to accommodate for a dry storage area (showing



in green on map). To better manage the stormwater, they removed 5 spaces from the side of the building.

Looking at landscaping that is shaded in blue on the March plan, the red is what is current. This plan shifted the landscaping around the new dry storage area and removed some of it for the site triangle (showing location on map). They increased the length of the southern property line buffer from 81.96 feet to 405 feet adding 7 shade trees and 52 shrubs which is an addition as to what was there before. There is an increase of length to the Northern property line buffer from 150 feet to 171 feet adding one shade tree and removing one shrub. That is the slight shift on the North side (showing on map). There is an increased length of the thoroughfare yard from 231.82 feet to 306 feet, removing two understory trees and adding 20 shrubs. I mentioned that it still meets the ordinance requirements for the thoroughfare buffer yard. Increased the length of the parking lot perimeter yard, 135 feet to 211 feet, adding 9 understory trees and 18 shrubs. Again, that parking lot perimeter yard is kind of distributed around the building (showing on map). Other areas just don't allow enough room. They have also added one tree to the front parking area as well.

Again, the variance request is relief from the level 3 perimeter buffer yard and relief from the parking lot perimeter buffer yard. As a reminder we had 6 conditions, we are adding one. The applicant is proposing to use existing landscape for perimeter buffers. However, in the event the existing landscape is not sufficient to meet the requirements of the Ordinance, the applicant shall supplement and install plantings to meet the Ordinance. That is basically in those areas where there is existing landscaping found to not be good enough so they will have to supplement some more there to make it meet the minimum. With that, please let me know if you have any questions.

Mr. Dagenhart said that last part, can you point on the map where that is?

Mr. Collins pulled up the map and pointed to those areas.

There being no further questions for Mr. Collins, the Chair called upon the applicant to present. Please state your name and address for the record.

Mr. Mark Frederick with Parker Poe Adams & Bernstein, LLP. Office address is 301 Fayetteville Street Raleigh, NC 27601. Mr. Frederick said, I am here on behalf of the applicant; I am also joined tonight by Seth Mullis and John Lambert with Prespro as well as Jeff Mangas our civil engineer with Acro, and my colleague Anna-Bryce Hobson. We are here tonight to request two variances. You heard this case back in March so I would like to briefly walk through some updates to the case and kind of reset the facts so we can keep this streamlined.

The existing structure on the site was originally built in the 1960's and used as an assisted living facility until around 2017. That structure fell into disrepair, it really did not look great going down that street. Prespro decided to step in, and they are seeking to turn this building into their home office, for their home office uses. Instead of tearing down the building they have

decided to repurpose the site for that office use. What this entails is to bring the site and structure into compliance with the more modern county ordinance as well as various departments regulations. There are two UDO requirements that we can't quite meet because of the existing infrastructure and existing structure. That is why we are here tonight.

Since that March meeting, I was not involved in this case until recently, but I think I can accurately summarize it. That hearing was tabled just so that the site plan could go through additional review and flush out any additional issues before the variances could be heard and decided. Since that March meeting, the plans have gone under review and been approved by Emergency Services, Sheriff's Department, the Fire Department. Cabarrus Health Alliance also approved the plans. We have received a driveway permit from NCDOT. One of the big issues was the drainage. We have revised the site plan to include a dry storage area in front of the site to help with the stormwater runoff before it goes into the street.

With that, because this is a quasi-judicial setting, we do have our project engineer here tonight who will walk you through these approval criteria, and the variance requests that are four findings of fact that we will prove to you. At this time, I would like to ask that Mr. Mangas introduce himself, his background and role in the project.

Jeff Mangas with Acro Development Services. Registered PE in the state of North Carolina. My address is 601 S Cedar Street, suite 101 Charlotte, NC.

Mr. Frederick said, I would like to tender Mr. Mangas as an expert witness in the field of civil engineering and site design if the Board will accept him.

The Chair asked does anyone have any questions about his expertise? There being none, the Board accepted Mr. Mangas as an expert witness.

Mr. Frederick said, the first variance we are requesting relief from relates to the buffer yard requirements along the southern boundary. The UDO requires a 24-foot-wide level 3 buffer with certain planning standards. We are requesting to modify that standard to be a 12-foot-wide buffer while still meeting those planning standards. Mr. Mangas, can you please describe the conditions of the site when it was purchased?

Mr. Mangas said, certainly. As Mr. Collins had indicated, there is an existing building. A particular note related to these variances is the relationship of that building to the front right of way. We are putting new parking there. There is some paved parking in the back. Another area of interest is the driveway on the southern property line because that relates to the variance request as well.

Mr. Frederick said, can you explain why the strict application of the UDO standards for the buffer yard would result in unnecessary hardship.



Mr. Mangas said, yes. This is specific to the driveway on the southern portion of the site that is adjacent to the property line. That buffer, at 24-foot width, would render that drive as useless. They would not be able to use that or use it for fire purposes. This means it would have to be relocated and that would not function for the site. What we have done is try to, to the best of our ability and what is available on site, is to provide that buffer in that location.

Mr. Frederick said, turning to the second variance. This is a parking perimeter buffer yard that is required between the parking area and the street. There are a few other UDO requirements that make this challenging with the existing building where it is. Mr. Mangas, could you please explain how the strict application in the ordinance creates an unnecessary hardship?

Mr. Mangas said, this now applies to the area between the building and the existing roadway. There are three ordinance requirements that comes into effect here. The first one is there is additional right of way that needs to be added to the existing 40-foot right of way. That is accommodated with our site plan and its entirety, so we have met that requirement. Beyond that requirement there is an additional landscape buffer and a buffer yard. When you add those two buffer yards together there is not adequate space between the existing building and the future right of way to provide all those plantings. That is, in fact, the hardship, it is providing the full width of that buffer.

Mr. Frederick asked, will we still be meeting the planning requirements for that parking perimeter buffer yard?

Mr. Mangas said, yes. Even though the width is not accommodated with the site plan because of the hardship, the number of plantings is being accommodated to the maximum that is practical in that buffer area but then distributed throughout the site.

Mr. Frederick said, I would like to briefly summarize the findings of fact that Mr. Mangas described to you before I wrap this up. With respect to the first findings of fact that Mr. Mangas explained to the Board, that the strict application of the southern buffer yard as well as the perimeter parking buffer yard requirements creates an unnecessary hardship when applied to the existing conditions of the site. More specifically the existing driveway along the southern portion of the site restricts the ability to meet the full width of the perimeter landscape buffer yard requirements. The existing structure restricts the ability to meet the perimeter parking area landscape requirements.

With respect to the second findings of fact, Mr. Mangas explained that the hardship results from the existing conditions on the site. Which again, are peculiar to this specific parcel with the reuse of the existing structure and infrastructure on the site. With respect to the third finding of fact, Mr. Mangas explained that the hardship did not result from actions taken by the applicant. The site was developed in the 1960's, well before the applicant purchased the site. With respect to the fourth finding of fact Mr. Mangas explained the request for variances are consistent with the spirit, purpose, and intent of the UDO. We cannot necessarily provide the full width of both buffer yards. We are providing the required number of plantings within the

shorter width of the southern boundary or in other locations when it comes to the perimeter parking requirements.

There is one condition that we are going to request be removed from this approval. That is condition number 6 which states that; no additional impervious area may be added to the site. The reason for this is the watershed overlay district does restrict the site to 12% impervious. We are right at 11.6% right now. We would like to retain that .4% just in case there is anything that Prespro wants to add to the site that is minor, something like a shed. We would like to remove that condition as a blanket restriction on adding any additional impervious. Other than that, our team is here and available to answer any questions.

The Chair asked if anyone had any questions.

Mr. Dagenhart asked, what was your previous impervious? I think it was 11,000 something. For what was allowed.

Mr. Frederick said, we are allowed 12%.

Mr. Mangas said, the maximum we are allowed with this project is 11,889 square feet. We are proposing 11,485 square feet.

Mr. Frederick said, we are still going to be required to conform to the watershed protection overlay standards. That is the 12% maximum. We would just like to remove the condition that restricts us to what we are currently proposing. So just that little additional flexibility to still conform to the UDO standards.

Mr. Dagenhart said, I do not think that that percentage is based on watershed, that was based on impervious area.

Mr. Frederick said, yes, the impervious area. The percentage of impervious area is restricted to 12% by that watershed overlay district. Which we still need to conform to. The proposed condition would restrict impervious area to exactly what we are proposing.

Mr. Dagenhart said, (asking staff) is it based on watershed restrictions or stormwater restrictions?

Ms. Morris said, as you may recall, with this project is a high-density project. Cabarrus County does not have a high-density ordinance. When the applicant was told to talk to the State about obtaining the stormwater permit, they deferred it back to the county based on their mapping and that we have a watershed requirement. This whole entire property is not in the watershed. Part of it should have been reviewed by the State, and part of it should have been reviewed by the County, but the State referred it back to the County. The condition that you have up for approval is based on our engineer's recommendation and based on the current site design, the capacities, and the way that the stormwater is being handled. I was looking in my folder to see

if I had a copy of the comments from him but that was the recommendation based on everything happening on the site. Again, this is a high-density project, and it is in the watershed. That is not something that is typically allowed. Essentially it was already there, this is the best way for us to deal with it.

Mr. Corley said, related to stormwater, have you accounted for the additional max impervious in the design or how are you going to that with expanding later?

Mr. Magas said, we are currently allowed to go up to that 12% threshold so to meet that, what is under the current ordinance, we are accommodating all of that impervious with our current design. That BMP out in front is specific to the water that is running off to the NCDOT right of way. We would not be increasing or modifying that there.

Mr. Bywaletz said, so is your detention up to that 12%?

Mr. Magas said, it is kind of two separate issues. We meet our site requirements just by staying under that 12% threshold. We technically do not need to provide detention for the site to be in conformance with the ordinance. The reason for the detention device is to make sure we don't push more water to the DOT right of way.

The Chair asked if there were any questions or comments. There being none, the Chair opened the Public Hearing. There being no one wishing to speak in favor or against, the Chair closed the public hearing. The Chair then opened the floor for discussion.

The Chair said, at this time I will read the application of the variance power. A variance may only be allowed by the Commission in cases involving practical difficulties or unnecessary hardships when substantial evidence in the official record of the application supports all the following findings:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

All of these findings of fact shall be made in the indicated order by the Commission, which is not empowered to grant a variance without an affirmative finding of fact on all four categories



above. Each finding of fact shall be supported by substantial, material, and competent evidence in the record of the proceeding before the Commission.

The Commission may impose reasonable conditions upon the granting of any variance to ensure that the public health, safety, and general welfare shall be protected, and substantial justice done. Violation of such conditions shall be a violation of this Ordinance.

There are two variance requests outlined in the application: Variance request # 1 Chapter 9, Section 9-4.1 Perimeter Landscape Buffer Yard at Property Line. The existing driveway is located within the required landscape buffer. It encroaches into the required perimeter buffer yard on the south side of the property for approximately 275 feet from the future right of way. Variance request # 2, Chapter 9, Section 9-5 A Perimeter Parking Area Landscape. The Ordinance requires an eight-foot-wide landscape buffer yard around parking areas that are adjacent to public rights-of-way or residentially used property.

At this time, the Board members will need to discuss the proposed request and come up with the proposed motion to approve or deny the request.

Mr. Koch said, Mr. Chair, before the Commission speaks about this, can I say a few words about it?

The Chair said, yes, go ahead.

Mr. Koch said, I don't know if any of you had a chance to read the minutes from that meeting, but I think what has occurred here is they tried to meet a lot of the comments that were made in that meeting. Typically, the preference is they reference the variance that deals with driveway. I think you can recall that discussion. There was that discussion about coming up with a 12-foot perimeter buffer. That was not voted on by the Commission but that is kind of what was indicated, I think. I am not saying you are bound by that, but that is what was talked about. With what was presented back in March, the other variance in the front was approved. Now it has changed a little from what they had presented tonight. So, you all are going to vote on it separately again. It appeared to me from the meeting in March to the meeting tonight, what they have tried to do is answer the questions that the Board raised during that previous meeting. It would be up to you to decide if they have answered all of those questions. Those changes came from what they thought was the direction that they should take.

The other thing I wanted to say was, when Mark was talking about the impervious, the recommendation from Wes Webb, our engineer, about the deed restrictions. Mark, Anna-Bryce, and I have had a lot of discussion on that. There is a lot of different ways to deal with that. I will say, it does not have to be a deed restriction. I will draw up the granting order so if you approve these, that will be dealt with in there. Those granting orders are a part of public record, so anything you decide would be something that would be within the title work with the property, so it doesn't have to be a deed restriction. What they have mentioned tonight really is to give themselves a little bit of leeway.

As you recall., this property was first developed in 1960's before we had all of these other requirements that now apply to it. Some of those requirements are because of the distance to the building and where it is. With what is on the property, it is grandfathered in regarding to that part. We can deal with that part with what was presented tonight and certainly given them a little bit of leeway in case there is any change they want to make to the property that still meets the requirements. That is something that can be delt with from the legal perspective. I don't know if you really need to worry about that too much. If you want that to still be a restriction, just tell me and we can work out the language, so it reflects the intentions of the Commission. That is really all I wanted to say was to remind you what occurred back in March. Seems like a long time ago. From what I have seen with what they have submitted and what we have gotten to tonight is their attempt at trying to meet all the issues that the Board raised. Which were legitimate issues. I am not trying to suggest how to vote, I am just saying that is what has occurred here.

Mr. Corley said, Rich, if we were to allow them that wiggle room, up to that 12%. Simply removing that condition would accomplish that naturally, right? Or would we need something specifically in the conditions?

Mr. Koch said, well I think there is still ways to attack that. Certainly, you are right, and you would just remove that condition because it may still be bound by what the ordinance says. If you want something that just points it out and says that is the amount that would apply to this property, that can be put in the granting order.

The Chair said, with regards to that, I will go over the requests. Request #1, does anyone have any comments or questions?

Mr. Corley said, Mr. Chairman I would like to say that I think the applicant's testimony handled all four of these items well. We have a very interesting site with an existing building that was placed there long before this project came around, so we are trying to apply multiple different ordinances. We are providing future right of way for the road; we are trying to utilize an existing building, utilize an existing driveway, and still allow fire trucks to get back where they need to be. I think this is one of those cases where if we plop all of that down on this piece of property, it just doesn't work. At the end of the day, this is a building that sat vacant for quite a long time and in various states of disrepair, I guess for lack of a better word. I will say I was not at the first hearing, but I did get to read all the record and I think this is fantastic in my mind. We have gotten to a point that I see they have done probably all that they can to meet the intent of the ordinance in these two areas. Even when they couldn't, they took the number of bushes that would have gone there and put them in other places. Personally, I am really pleased with what you have brought back after reading the minutes from last time. Again, I would just like to sum up, I think the applicant did a great job at explaining why these four items on these two variance items would certainly be allowed.

Mr. Bywaletz said, based on their previous site plan they did a great job re-manipulating the driveway. I know it was existing and to get an actual buffer in place, I know it narrowed it in a lot based on the conversations we have had and went around and around. Then to add the detention up front for the DOT requirements of reducing the volume and discharge off the side to the right of way. Those are beyond perfect, I think, from what I expected you to come back with.

Mr. Dagenhart said, as Rich said, we could take that condition out and handle it. I would feel more comfortable to put a condition to not exceed the watershed. That way you don't have to worry about it. It is already on the record at that point.

The Chair said, if there are no more questions or discussion, we will move on to Request #2, does anyone have any comments or questions?

Mr. Koch said, Mr. Chairman, would you like to go ahead and make a vote on the first one?

Mr. Jeff Corley **MOTIONED, SECOND** by Mr. Michael Bywaletz to **APPROVE** the variance request # 1 Chapter 9, Section 9-4.1 Perimeter Landscape Buffer Yard at Property Line. The vote was unanimous.

Mr. Koch said, when I draw up the granting order, I can provide the evidence to support each of those elements.

The Chair said, now moving on to variance request number 2 Chapter 9, Section 9-5 A Perimeter Parking Area Landscape. The Ordinance requires an eight-foot-wide landscape buffer yard around parking areas that are adjacent to public rights-of-way or residentially used property.

Mr. Corley said, yes, I will just restate that I think the applicant did a wonderful job in the testimony and why those 4 items were met for this variance as well. Mainly being that the future right of way dedication. The width may be narrower, but they have thrown those equal number of bushes in other places to accommodate as much landscaping as they can. I thank them for getting us to where we are.

Mr. Mohammed Idlibi **MOTIONED, SECOND** by Mr. Adam Dagenhart to **APPROVE** the variance request #2 Chapter 9, Section 9-5. A Perimeter Parking Area Landscape. The vote was unanimous.

The Chair said, now we will move on to motion number 3 which is the conditions of approval. There is a note here that one of the conditions has been dropped.

Ms. Morris said, Mr. Chairman, it was not dropped. Number 3 and number 5 are the same condition.



The Chair read the following conditions:

1. The Granting Order, stating restrictions and applicable conditions of approval, shall be recorded with the deed to the property.
2. The applicant shall submit a site plan for review and approval that complies with the findings and conclusions of this variance request.
3. Approved variances must be reflected on all site plan submittals moving forward. Any changes thereto would require additional review and approval from the Board of Adjustment.
4. Applicant is proposing to use existing landscape for perimeter buffers. In the event the existing landscape is not sufficient to meet the requirements of the Ordinance, applicant agrees to supplement and install plantings to meet the Ordinance.
5. The stormwater detention basin shall be constructed as shown on the Site Plans dated 7-23-24.
6. The design storage volume, embankment, and outlet structure shown on the site plans shall be maintained by the landowner in perpetuity.
7. No additional impervious area may be added to the site.

The Chair said, are there any questions or anything we need to discuss?

Mr. Corley said, I would like to point out the change Mr. Dagenhart suggested on the impervious area item. Just to make that modification to reflect the maximum pervious allowed by the 12%.

Mr. Adam Dagenhart **MOTIONED, SECOND** by Ms. Holly Edwards to **APPROVE** the Conditions of Approval. The vote was unanimous.

**Planning and Zoning Commission Acting as Design Review Committee:**

**ARCH2024-00001** – Architectural Design Review for address 2339 Odell School Road. Applicant/ Agent is John Lambert. Purpose is to convert the existing structure into office use. (PIN 4682-41-7025).

The Chair asked the Board if anyone had any conflicts or information that needed to be disclosed related to the case. There being none, the Chair called upon Susie Morris to present the staff report.

Ms. Morris said, like what Phil did for the variance, we are going to go through Architectural Review and Design Review Committee for this project. Even though the variances were

approved, this design review item is not approved. You must sit as the Design Review Committee and give the final blessing to the site plan and the architectural drawings. You had a memo as a cover to the new updated staff report. Since the last meeting, the proposed plan was submitted to the commercial site review team as requested by the Commission. The applicant's engineer has been working to address comments related to site development standards and ordinance compliance. The updated plan is ready to be presented to the Board of Adjustment and to the DRC for consideration. You just sat as Board of Adjustment. Now those considerations need to be incorporated into this review.

The building design has not changed. No additional action is needed on the items related to the building design. The site design and plan dated August 1, 2024, has changed since the last meeting. The key to the updated staff report is below. Items on the staff report that say "item addressed" in blue were considered initially and do not need to be reconsidered by the DRC. We will just go down through those. Items on the staff report that say "plan change" in green need to be considered by the DRC. Plan changes are discussed and outlined in green text. Those are the ones we will be going over (showing revised plans on screen).

Again, this is a proposed adaptive reuse of an assisted living facility that is located on PIN number 4682-41-7025. The owner is 2301 Odell School Road Property LLC with an address of 6549 Morehead Road Harrisburg, NC 28075. John Lambert is acting as the agent. I am assuming at this point the attorneys will be acting as agents this evening if there are any questions. The site design was reconfigured and upgraded. As you heard in the previous staff report, there have been some changes to the proposal, and they are the changes that we need to walk through in relation to Appendix B since this is a commercial project in OI zoning designation.

As far as the setback information, nothing for that has changed, so that item is addressed. As far as the amenity area, there was a plan changes noted. I did talk to the engineer working on the project about this because I needed clarification myself. The Commission had a lot of discussion about that amenity area, what it looked like, what was happening there. When this item was originally considered, questions about the materials being used in the amenity area were raised in relation to the stormwater. The area that was shown as gravel is no longer on the site plan. If that area was to develop and gravel be used, it would have to be developed using the standards set forth in the North Carolina general statutes for it to be considered pervious. That statutory reference is how gravel could potentially be used. The design professional that I spoke with felt certain that that was no longer proposed for this area and is aware if they do attempt to put the gravel down like they were talking about, that it would have to be designed in accordance with the state statute to be considered pervious. You will see that is also proposed as a condition of this approval. Do you all have any questions about that item? As you may recall, that was this area here (showing on map) which you can't really see now because of the notes.

As far as the parking lot requirements or parking requirements, there was a plan change on this. Originally, they had 70 parking spaces with 3 ADA spaces submitted. The new plan shows a revised parking lot configuration which reduces the number of spaces from the original

proposal. The current number of spaces proposed is 51 total spaces with 3 of those spaces proposed as ADA spaces. The proposed number of spaces falls within the range of spaces allowed by the ordinance. Again, some of the parking was lost here (showing on map) in the back to the fire lane. Originally, they had some parking proposed in this area (showing on map). Again, it is a little difficult to see. There is a conflict between the table they proposed and what is shown but there are 3 spaces. Any questions on that item or how that looks at this point?

The next item is where you all, as the DRC, there are certain things you can look at and you have to come up with findings as far as why they are appropriate or not appropriate as far as the proposed design. With this configuration, Appendix B says to the greatest extent possible, parking should be located to the rear of the building. You had the applicant's information from the last time. I believe they included some photos and some examples where they said "hey, we understand what your ordinance says, however there are other commercial type uses (churches) in this particular area where there was parking in the front." If you all are okay with the proposed design, you will need to note that under consideration of this particular item.

The proposed parking configuration now meets the required setback in Chapter 10 for being located at least 10 feet off the property line. That was not in compliance prior to this new design. Although the parking lot design has changed from the configuration on the last plan, parking is still proposed, and located, in front of the building. You will need to have some discussion as to whether that is appropriate and provide some findings for that. Would you like to have that discussion now or later?

Mr. Bywaletz said, I think now would be good now since we are going through these items one by one.

The Chair agreed and asked Mr. Bywaletz if he would like to start the discussion.

Mr. Bywaletz said, sure. Looking at the layout and understanding what is on the site, I think it is appropriate to have the parking spaces as shown with some up front. Majority of them are in the rear the way the site plan is done. Some of the spaces were taken by the detention facility. I wouldn't call it an amenity up front, but it is a green space. There is more green space up front than there was before.

Mr. Idlibi said, just for clarification, why was the parking put in the front and not in the back? Was that due to the septic or?

Ms. Morris said, the septic drain field is this area (showing on map).

Mr. Idlibi said, thank you.

Ms. Morris said, are you all in agreeance on that item, that it can be approved in that form?

The Chair asked if the Board needed to take a vote on that.



Ms. Morris said, I think that would be good since it is a deviation from the requirements that you do have to provide findings for.

Mr. Michael Bywaletz **MOTIONED, SECOND** by Mr. Adam Dagenhart to **APPROVE** the parking lot and requirements. The vote was unanimous.

Ms. Morris said, as far as the landscaping, there was a plan change there. In response to the Board of Adjustment's comments related to the southern landscape perimeter buffer, additional landscape has been added along the property line. It now extends along the length of the parcel. The width of the buffer, however, still does not meet the requirement due to the driveway and fire lane being in the buffer. The proposed buffer is a 12ft buffer and the requirement is a 24ft buffer. Per the new plan and calculations, the buffer area does include the number of plantings required for level 3 yard. The applicant requested a formal variance for relief from the width of the buffer which was granted by the Board of Adjustment. Are you all okay with the new landscape plan for the perimeter buffers?

The Board nodded in agreement.

Ms. Morris said, one of the things we did not talk about was they did enhance this buffer (showing on map). As you may recall, there is some question as to whether this area in the back is suitable. Also, with the Board of Adjustment's conditions that were part of the Variance, a condition was added that if that is inadequate, it must be supplemented. We have had conversations with design staff, as well as with the attorney/ If this is the plan that is submitted and approved, this is what needs to be constructed and installed, and they are aware of that.

The Chair said, do we need to take a vote on that one?

Ms. Morris said, with that one the Variance was already approved. If you all are okay with that, I think we can move on to the next one. The applicant requested a formal variance for the parking lot landscaping, which is part 2 of this. You have the perimeter buffer and then you have the parking lot landscape buffer. Again, the BOA did approve that formal request, that relief. As a proposed tradeoff for the variance request with the width of the buffer, like the first plan, this plan also reflects those plantings being placed throughout the project area and other parking areas to compensate for that trade off. Again, the variance for that was approved. I do not think that you would have to make a formal recommendation on that since that plan was approved by the Board of Adjustment.

As far as lighting, there were some questions about that. That item was addressed at the last meeting, they have not shown that anything is changing as far as that goes. Loading and unloading areas, they said they didn't think they would need any of that. None of that is included in this plan. Loading docks, no need for that so no need to address that. The solid waste storage areas, again that area in the back, that is in the same place. You all didn't really address that the last time. It was supposed to be split face block I believe, with black either

wooden or corrugated, I think wooden, closures. We would need to take a vote on that. So yes, using split face block and black wood swinging gates. It is located to the rear of the site which is a preference for that type of facility.

Mr. Jeff Corley **MOTIONED, SECOND** by Mr. Adam Dagenhart to **APPROVE** the split face block and wooden gates. The vote was unanimous.

Ms. Morris said, they did locate it outside of the planting yard. Inside of the variance area but also not adjacent to any residential properties. As far as the mechanical, the Commission addressed that item at the last meeting. That is still being screened in the new landscape plan. So that is everything to do with the actual site. As far as the architectural design standards, again none of that changed. You took care of those at the last meeting. If you all want to take a vote on it, there are a couple of proposed conditions. First, being that if they do anything with adding the amenity area moving forward, it will need to meet the state standards for pervious coverage. Second, if anything was to change out there, it does have to come back before the Commission as DRC for those changes to be approved. If they were to try a use that extra 400 square feet, they would be looking at site plan review, in addition to a formal DRC review.

The Chair asked if that would need to be a motion.

Ms. Morris said, yes, that would be the proposed conditions for a motion if you are going to approve it.

Mr. Adam Dagenhart **MOTIONED, SECOND** by Ms. Holly Edwards to **APPROVE** the conditions listed. The vote was unanimous.

The Chair called on the Applicant to speak before the Board.

Mr. Frederick said, we do not have a presentation, we really do not have much to add. Susie covered it well. We appreciate your support with this.

The Chair asked if there were any questions or comments. There being none, the Chair opened the Public Hearing. There being no one wishing to speak in favor or against, the Chair closed the public hearing. At this time, we would need to take vote for the approval.

Ms. Morris said, yes. The approval would be to approve the overall project plan and architectural drawings along with those conditions that you voted on a little bit ago.

Ms. Holly Edwards **MOTIONED, SECOND** by Mr. Mohammed Idlibi to **APPROVE** the overall project plans, architectural drawings along with the conditions listed. The vote was unanimous.

The Chair called on Ms. Morris to address Leadership Elections.

Ms. Morris said, it is that time of year again. We must elect Leadership. I will begin by soliciting nominations for Chair for 2024-2025. Regular members are eligible for leadership. Our 3 alternates are seated, that being Mr. Hudspeth, Ms. Edwards, and Mr. Idlibi.

Mr. Jeff Corley **MOTIONED, SECOND** by Mr. Mohammed Idlibi to **APPROVE** Mr. Charles Paxton as the Chair for the Board. The vote was unanimous.

Mr. Paxton agreed to the Chair position.

The Chair said, now we will need to nominate a Vice Chair for the 2024-2025 year.

Mr. Michael Bywaletz nominated himself as Vice Chair.

Mr. Jeff Corley **MOTIONED, SECOND** by Mr. Adam Dagenhart to **APPROVE** Mr. Michael Bywaletz as the Vice Chair for the Board. The vote was unanimous.

The Chair said, now we will need to nominate a Second Vice Chair for the 2024-2025 year.

Mr. Corley nominated Mr. Adam Dagenhart as Second Vice Chair.

Mr. Dagenhart agreed to the position.

Mr. Jeff Corley **MOTIONED, SECOND** by Ms. Ingrid Nurse to **APPROVE** Mr. Adam Dagenhart as the Second Vice Chair for the Board. The vote was unanimous.

The Chair called upon Mr. Koch to present the Legal update.

Mr. Koch said, I really don't have much of one. Although, I will report on the Shelly case you have heard about over the years. We are still dealing with this after 12 years. It is interesting as to what has occurred in the last couple of months. The case was supposed to be over a year and a half ago. Dismissal had been taken from all sides, from all the people that were involved with that aside from the Homeowner's Association. We thought that all had ended this case. About 2-3 months ago, Shelly filed a motion with the court to get his attorney fees back out of the county. He claims he spent \$600,000 which he probably did given all the litigation he brought up in that case. Most of that wasn't against us, some of it was. He claimed that the county was the one who kind of perpetuated all of that, which wasn't true. When we got that in and looked at the statute. The way attorney fees work is if you are going to try and collect that out of the party, that is one of those things that didn't make it over the Atlantic, I believe England, the rule over there is if you lose you pay everybody's' attorney fees. That is the British rule. The American rule is you have to pay your own.

That is what is typically the case here, except if there is a special statute that allows you to recover your attorney fees out of the other party. We have several of those in North Carolina for different things. There is a couple that would be arguably applicable here but basically it has



to mean that you win in court with the hearings and trial, which he did not win anything. We won all of those hearings and all of those appeals. Basically, he didn't have a claim to get attorney fees out of us. We had filed a cross claim for attorney's fees against him and the amount we would have had to spend on fighting the cross claims he made against the county.

That was all submitted to the Judge. We thought he would just end the matter, but he made the decision of denying Shelly's, but he granted ours for almost \$60,000. It does not cover everything that was spent on that case. It was basically for the last part of it. Now the Judge is in the process of signing the order. So now, Shelly has been approaching the Commissioners to get him out of that and telling them he shouldn't have to pay. That is kind of where that matter stands. It is a bit interesting result given we have been through 12 years of him basically trying to blame everything on his property on the county.

If he was going to blame it on anybody, he should have blamed it on the city. The deal is the city has a 5ft setback in that neighborhood and he built his wall right on the property line. That was part of the issue. They have escaped being a defendant. Since we do building inspections, they have tried to claim the county didn't inspect his wall correctly. That is not true either. The deal turned out kind of sweet for us given all the bs we put up with through that period of time out of that case. Just thought I would report on that because you have heard me talk about it from time to time. Evan handles a lot of the more recent stuff. There is an appeal in the Arstark case. She basically lost it after this Board decided on it. She then went to Superior Court, and she lost there, so your decision was affirmed. Then she decided to appeal to the Court of Appeals, so that case is still going on.

Mr. Corley said, we knew after that case was done that the county and her would come together for a resolution to the issue. Is all of that just held up until then?

Mr. Koch said, well, we tried. She basically backed away from doing that. We were willing to compromise on a lot of points to try and allow her to use her property. It kind of became an all or nothing thing with her. The problem is she just doesn't have enough acreage to do everything she wants to do. You may recall there is one stream that goes down the side of her property, if you look at the maps, there are two streams that go across the middle of it over to her neighbor's pond on the other property. We never made her do anything about those. There was actually more to it. She does have present use status, but I am not sure she really qualifies for that. That is not my decision. That is just one of those ones where we just can't do anything to satisfy her unless she gets her own way on everything. Evan handles some of that stuff so I am not sure where it stands.

There being no questions, the Chair called upon Ms. Morris.

Ms. Morris said, back to Rich's point, we still have appeals that are out there from the pandemic. People who haven't followed through with their appeal or their plan or people who think it is going to go away. Complaints are up because more people are working from home and spending time at home. Having said that, if you know anyone who is looking for a position,

we have an Enforcement Officer opening. It can be hired either as a senior or entry level with the right fit. For a senior they do have to have their CZO and preferably their CFM. If you know anyone wishing to make a change, let them know we are hiring.

There being no further discussion, Mr. Mohammed Idlibi **MOTIONED, SECONDED** by Mr. Michael Bywaletz, to adjourn the meeting at 8:07 p.m. The vote was unanimous.

**APPROVED BY:** Charles Paxton, Chair

*Charles Paxton*

**SUBMITTED BY:** Susie Morris, Planning Director

*Susie Morris*

**ATTEST BY:** Phil Collins, Senior Planner

*Phil Collins*