

Cabarrus County Government – Planning and Development



**Planning and Zoning Commission Minutes
November 12, 2024**

Mr. Charles Paxton, Chair, called the meeting to order at 6:30 p.m. Members present, in addition to the Chair, were Mr. Jeff Corley, Mr. Adam Dagenhart, Ms. Holly Edwards, Mr. Chris Pinto, Mr. Brent Rockett, Mr. Stephen Wise, Mr. Michael Bywaletz, Ms. Ingrid Nurse and Mr. Mohammed Idlibi. Attending from the Planning Department were, Mr. Phil Collins, Senior Planner, Ms. Susie Morris, Planning Director, Ms. Lauren Linker, Clerk to the Board of Commissioners. Also, in attendance was Mr. Richard Koch, County Attorney and Mr. Evan Lee, Poyner Spruill, LLP. Absent from the meeting was Mr. Andrew Nance.

Roll Call

Ms. Susie Morris, Planning & Development Director, called the roll.

APPROVAL OF RULES OF PROCEDURE

The Chair said, our first item is to consider the Rules of Procedure. At this time, I'm going to read the document so everybody can understand:

The Cabarrus County Planning & Zoning Staff shall first present the Staff report and answer questions from the Commission. There will be no time limit on this presentation. The applicant may make a presentation to the Board and will then answer questions from the Commission. There will be a fifteen-minute time limit on the presentation. If the applicant chooses to make a formal presentation, there will be no time limit on questions from the Board following the presentation. When the Board is ready to proceed, the proponents, those generally speaking in favor of the case, will have a total of fifteen minutes to speak and/or present documents in support of their position. The fifteen minute time limit does not include questions directed to the proponents by the Commission. After the proponents are finished, the opponents, generally speaking against the case, will have a total of fifteen minutes to speak or present documents in

support of the opposition. The fifteen minute time limit does not include questions directed to the opponents by the Commission. Each side will then have three minutes for rebuttal, with the proponents going first. Again, questions directed to the speaker from the Board, will not count against the time limit. This will conclude the public hearing portion of the meeting, and the Commission will proceed to deliberation. Each side is strongly encouraged to use a spokesperson to present the positions commonly held by each. Each side is also strongly encouraged to organize their speakers and presentation to ensure that all persons wanting to speak shall have time to do so. If a speaker has questions for a person on the other side, such questions shall be addressed to the Commission members or to be directed to the person to be asked. There will be no questioning from one speaker to another, except through the Commission. Public demonstrations of support for a speaker's comments should be limited to clapping. Any other type of audible support shall be out of order and shall be subject to the offender being removed from the building. Anyone speaking out of order shall likewise be subject to removal. These rules are designed to have a full and fair hearing that is orderly and expeditious and to avoid unnecessary, repetitious presentation.

The Chair called on the Board for a motion to Adopt the Rules. Mr. Adam Dagenhart **MOTIONED, SECOND** by Mr. Chris Pinto to **APPROVE** the Rules of Procedure. The vote was unanimous to **APPROVE**.

The Chair said, anyone wishing to speak tonight shall stand and we'll have the swearing in.

Ms. Susie Morris said, if there's a remote chance you're going to speak, you need to stand to be sworn in.

BOARD OF ADJUSTMENT CASE SWEARING IN

The Chair gave the oath to the audience members wishing to speak.

NEW BUSINESS BOARD OF ADJUSTMENT

VARN2024-00003-Variance Request for Setback Requirements in Chapter 5 to Allow a Residence to Encroach into the Front Setback

Mr. Charles Paxton, Chair, stated we will now proceed to case number one: Variance 2024-00003. It is a Variance request for setback requirements in Chapter 5 to allow a

residence to encroach into the front setback. Douglas Summer is the applicant and owner. The address associated with the subject property is 1100 Oak Trail Circle.

The Chair stated if there are any board members that have a conflict of interest or information related to the Variance, it should be disclosed at this time. There being none, the Chair called on Mr. Phil Collins, Senior Planner, to present the case.

STAFF REPORT

Mr. Collins said, the purpose of this request is to seek relief from the 50-foot front setback requirement of the Agriculture Open Space District located in Chapter 5-District Development Standards- Section 5-5(b) Dimensional Standards. The applicant was issued permits to build a residence on the subject property in March of this year. That is in your packet as Exhibit E. A plot plan was submitted to zoning for permitting showing the residence outside of the 50-foot front setback. The applicant subsequently proceeded with construction and the contractor began installation of the footings. The Zoning Compliance Officer visited the site on September 10th to confirm that the residence was being constructed as shown on the zoning permit. It was determined at that time that the residence footing was encroaching into the front setback.

A perennial stream traverses the rear of the subject property from north to south and a water body buffer is required along that stream. There is special flood hazard area on the property. The footing of the dwelling under construction is on the outside of the special flood hazard area and the water body buffer. Adjacent land use consists of residential and vacant properties. The current zoning of the property is Agriculture Open Space District and is currently surrounded by AO properties on all sides. During the review process of this request, the Cabarrus Health Alliance submitted the following comments:

The Health Alliance has issued a construction authorization for this lot. Changes from the original design can result in revocation of the construction authorization.

That is also in your packet, part of Exhibit E, I believe. Regarding the history of the subject property, it has been vacant until construction of the residence began earlier this year. The applicant submitted a survey for permitting that confirmed the residence is located outside both the regulated special flood housing area and the water body buffer. It also showed the house located outside the 50-foot front setback. Oak Trail

Circle is not listed on the Cabarrus-Rowan MPO CTP index. Therefore, widening the facility is not scheduled for the foreseeable future.

The application states that the reason for the Variance request is the footing of the house was not poured per the instructions given. The footing is constructed correctly, but is not in the location or dimensions desired. The main body of the house was originally supposed to be 40 feet by 30 feet. It currently measures 39 feet by 31 feet and 9 inches. The footing was misplaced by 10 feet, which results in a portion of the garage being too close to the right-of-way. The application states that in order to correct the mistake made by the contractor, the entire foundation would have to be dug up, removed and soil recompacted. The application further states that the entire building process would have to start over, which is not economically possible and would result in a loss of monies already spent on construction. The applicant states that the location of the house on the subject property is driven by significant drop off to the rear of the lot, approximately 30 feet.

It is the applicant's belief that the contractor was trying to provide as much space as possible between the drop off and the rear of the house, which ultimately caused the setback encroachment. The application states the move was not necessary. However, had the unique topography not been present, the mistake would not have been made. The plans provided to the foundation contractor called for the house to be 40 by 30, but the foundation in fact measures 39 by 31 feet and 9 inches, as it is currently. The corners of the house weren't correctly marked. The contractor miscalculated the size and the location of the house. The applicant contends that the property is on a half-mile loop. There is no thru-traffic and residents are the only consistent users. It is the applicant's opinion that it is highly unlikely Oak Trail Circle would be widened or used as a thoroughfare. It is also the applicant's opinion that the Variance would not change the character of the neighborhood, nor have any negative effect on the immediate area or plans for the county. Should the Board of Adjustment grant approval of the Variance, the following conditions should be considered as part of the case record:

The Granting Order stating restrictions and applicable conditions of approval shall be recorded with the deed of the property.

With that, I'll try to answer any questions you might have.

Mr. Bywaletz asked, what is the impact of the current foundation for the proposed houses, not the same size as the house that is supposed to be built as?

Mr. Collins said, I will let the applicant address that one. He is here.

The Chair asked if there were any other questions.

Mr. Idlibi asked, do you have a footprint of where the foundation is and how far has it encroached?

Mr. Collins (showing on map) said the dashed line on the survey represents the 50-foot setback. Then it's showing right there, 9 feet and 9 inches.

The Chair asked if there were any other questions. There being none, the Chair called on the applicant to make his presentation. The Chair asked the applicant to please state his name and address for the record.

The applicant said, my name is Douglas Summer. My address is 1045 Oak Trail Circle, Concord, NC 28025. Thank you for hearing me tonight and I appreciate your time and consideration. As Phil stated, the house was originally correctly marked dimensionally and within variance of the zoning ordinance requirements. Again, I think the contractor was trying to do a good thing because there's a significant drop-off at the rear of the lot and I think he was trying to avoid that. There was no need to do it, there was plenty of room. It was set up and everything was marked correctly and that was our intention, to be in full compliance with all zoning requirements. When they came out and looked at it and started inspecting, we had a surveyor come out and survey it. The house was dimensionally incorrect. Nobody builds a house that's 39-feet wide. It was supposed to be 40-feet wide and setback where it would be within the requirements set forth by the Zoning Commission, but here we are. So, we are requesting a zoning Variance to allow us to afford building our house, my son's house.

When we first moved to Oak Trail Circle in 1980, it was dirt. They came through and put tar gravel on it. So, it's a tar gravel road. It's a loop off of Penninger Road. There's no thru traffic, and if you pull the county map up, my wife and I own most of what is left undeveloped on Oak Trail Circle. There's not going to be any more houses there, so it is what it is, at this point. I would appreciate and ask for your condolences in granting a variance to allow us to afford building his house, so that he can live on Oak Trail Circle, just like we have. Thank you, any questions?

The Chair asked if anyone had any questions.

Ms. Edwards asked, who was it that pinned and staked your corners, the contractor or the surveyor?

Mr. Summer said, we had a surveyor come out.

Mr. Wise asked, what's in the ground, just the concrete footings or is it foundation?

Mr. Summer said, footings and foundation. Yes, right now, it's just block, foundation and block. We didn't want to go any further until we had permission.

The Chair asked if there were any other questions.

Mr. Bywaletz asked, are you having to do architectural changes then?

Mr. Summers said, yes, we are. We originally planned for the house to be brick. We're trying to build it for him, so it's like a lifetime house. Because of the structure of the foundation, I mean of the footings; in order to make it all work, there's room to put the block, but there's not room to put the brick in front of the block at different points. At one point, the brick would've had a two-inch ledge to sit on if you wanted a straight wall, which we do. Instead of being brick, we were going to go with vinyl siding. So, we've had to change our plans due to the nature of what we've got.

The Board asked if there were any other questions.

Mr. Summer said, thank you very much for your consideration.

Mr. Charles Paxton, the Chair, said, we will open up the public hearing. The first will be those generally speaking in favor.

The Chair asked Mr. Walter to come forward and state his name and address for the record.

Mr. Walter said, Gary Walter, I live at 2301 Penninger Road. I really don't have much of a need to speak other than I do agree that Oak Trail is never going to be through traffic. It's never going to be widened. It's very rural, as Mr. Summer pointed out. I've been out there since 1964 on Penninger with my family. I moved away for a few years, but I've been there now for forty-two years. I'm speaking in favor of making this one exception for them and hope the Board will consider that. Thank you very much.

The Chair asked Mr. Summer if he had any other comments. There being none, the Chair said, at this point, we will have anyone speaking against the Variance.

There were none speaking against the Variance. The Chair asked if there any comments or questions for the applicant or the staff. There being none, the Chair proceeded with the meeting.

The Chair said, before we consider, I'm going to read the Variance request; the issue that we need to have under consideration:

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 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 resulted from conditions peculiar to the property, such as location, size or topography. Hardship resulting from personal circumstances, as well as hardship resulting from the conditions that are common to the neighborhood, or the general public, may not be the basis of granting a Variance.
3. The hardship did not result from the actions taken by the applicant for 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 the intent of the Ordinance, 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 proceedings 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 condition shall be a violation of this Ordinance.

The Chair said, here is a summary of the requests from the Staff Report:

The Variance request is for relief from the 50-foot setback on Agriculture Open Space Zoning District. The applicant was issued permits to build a residence in March of this year. A plot plan was submitted showing the residence outside of the 50-foot setback. The applicant subsequently proceeded with construction and the contractor began installation of the footings. The zoning officer noticed the footing looked too close to the road; that was confirmed. Footing is constructed correctly but is not in the location or dimension desired or as stated in the plot plan. The main body of the house was originally supposed to be 40 feet by 30 feet. It was dug and poured and currently measures 39 feet by 31.9 feet. The footing was misplaced on the site by 10 feet. This results in an encroachment and the garage part of the home being too close to the right-of-way. The front setback is supposed to be 50 feet.

At this time, we shall go through each of these and review or affirm any votes by the members to the approval. The Variance is supported by 4/5 or 80 percent of the vote.

The Chair asked if any of the Board members would like to start discussion.

Mr. Dagenhart said, I do have a question for the property owner. Is there any living space above the garage?

Mr. Summer replied, no sir. It's just a garage, single story, no living space.

The Chair asked if there were any other comments. There being none, the Chair proceeded to say, I would like to say that based on what I've heard, that it's definitely created a hardship and certainly was not on the part of the homeowner. That's a pretty, important point I'd like to make.

The Chair asked if there were any other questions.

Mr. Bywaletz said, it is true this will most likely not be widened to any kind of thoroughfare. This is a loop road. It will always be an independent area and not connect as a thoroughfare through anywhere. I hate to see the hardship that's caused by a surveyor. I've been through that on a roadway project that was a significant impact. The surveyor had to pay.

The Chair asked if there was any other discussion needed. There being none, the Chair said, I will entertain the motion to approve this.

Mr. Dagenhart said, I think we need to go through each one of these individually. We can't just approve or deny this. We probably need to discuss it more.

The Chair said, the first one is the unnecessary hardship would result from the strict application of the Ordinance and shall not be necessary to demonstrate that in the absence of the Variance, no reasonable use can be made of the property.

Mr. Bywaletz said, I do believe it is unnecessary hardship looking at the location of it. It would take the strict application of the 50-feet going back to 40-feet. Is it unnecessary for that to happen?

Mr. Dagenhart said, yes, but it states it would not make the property reasonable to be used if the Variance or Ordinance was applied.

Ms. Susie Morris addressed the Chair and reminded the board members to turn their microphones on when they are speaking so that it can be recorded.

Mr. Brent Rockett said, I think my struggle with this is it is not the Ordinance that has created the issue. I believe based on what I've heard it was not the surveyor. Based on Ms. Grimsley's question earlier, for clarification. It was clearly the contractor who was employed by the property owner. I am not a contractor so it's not my place to say this, but it appears multiple errors have been made here. One of which has created a hardship for the Ordinance. The Ordinance did not create the hardship. That's very unfortunate, but it's matter of fact.

The Chair asked, any other comments before we move on from number one. There being none, the Chair proceeded with number two.

The hardship resulted from a condition peculiar to the property, such as location, size or topography. Hardship resulting from personal circumstances, as well as hardship resulting from the conditions that are common to the neighborhood, or the general public may not be the basis of granting a variance.

The Chair asked if there were any comments.

Mr. Bywaletz said, I believe it was stated that even though the topography on the lot drops off in the back, there was additional room in the back in order to build the home in the correct location based on what was permitted. That hardship is really not there.

The Chair asked if there were any additional comments.

Mr. Dagenhart said, I would agree with that statement.

The Chair said, we will move on with number three.

The hardship did not result from the actions taken by the applicant for 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.

The Chair asked for any comments.

Mr. Dagenhart said, I think Mr. Rockett alluded to that in the first one. That it was a condition created by the surveyor/contractor, not necessarily the property owner. The definition of hardship was not appropriate. Unfortunately, it sounds like a private party issue.

The Chair asked for any additional comments. There being none, the Chair proceeded with number four.

The requested Variance is consistent with the spirit, purpose and the intent of the Ordinance, that public safety is secure and substantial justice is achieved.

The Chair asked for any comments.

Mr. Charles Paxton, the Chair stated, in my opinion since it wasn't an issue that the owner did, I think substantial justice can be achieved by a vote of this Commission.

The Chair asked for any other comments. There being none, the Chair stated, we will entertain a motion to approve or deny the request.

Mr. Bywaletz asked, do we need to do each one individually.

Mr. Evan Lee, General Counsel, stated, just whether to approve the Variance or not to approve it. Then whatever conditions you want to put on that can be a part of the motion or part of the discussion on the motion.

The Chair asked, did everyone hear that? The request is to approve or deny the Variance with any conditions you may or may not want to put on it.

The Chair asked if there was a motion in favor?

Mr. Mohammed Idlibi **MOTIONED, SECOND** by Ms. Ingrid Nurse to **APPROVE** the Variance Request. The majority was in **FAVOR** with Mr. Adam Dagenhart **AGAINST**. The motion to **APPROVE** was carried.

The Chair stated, this case has been adjudicated. We will move on.

The Chair told the applicant that he was free to leave.

VARN2024-00004-Variance Request for Setback Requirements in Chapter 5 for Setback Encroachments of Existing Accessory Structures and Impervious Area that Exceeds the Limit for the Zoning District

Variance request for setback requirements in Chapter 5 for setback encroachments of existing accessory structures and impervious area that exceeds the limit for the zoning district. Frank and Lisa LaRoche are applicants and owners. The address associated with the subject property is 2945 Parks Lafferty Road (PIN: 5547-44-875).

Mr. Charles Paxton, the Chair, stated, we will now take up case number two, which is Variance 2024-00004. A Variance request for setback requirements in Chapter Five for setback encroachments of an existing ancillary structure and impervious area that exceeds the limit for the zoning district. Frank and Lisa LaRoche are the applicants. The address is 2945 Parks Lafferty Road.

The Chair asked, are there any Board members that have information or conflicts in this case? There being none, Mr. Phil Collins, Senior Planner, was called upon to speak.

STAFF REPORT

Mr. Collins stated, the purpose of this request is to seek relief from the setback requirements and the maximum impervious area allowed in the Agricultural Open Space District located in section 5-5b Dimensional Standards of the Development Ordinance. The applicant was engaged in the sale of the subject property. A survey of the property was done showing setback encroachments and excessive impervious area. You can find all of that in Exhibit C in your packets. The applicant then requested a zoning verification letter, and the violations became known to Staff. The applicant was instructed at that time to request variances for these violations.

Therefore, the applicant is before you tonight, requesting the setback encroachments as follows:

Residence: (showing on map) The residence would be this section. According to the appraisal card in Exhibit E, the residence was built in 1997. The property was zoned Medium Density Residential (MDR) district. The home was within the allowable setbacks. The property is zoned Agricultural/Open Space (AO), and the side setback requirement is 20 feet. According to the survey of the property, the residence is 11.59 feet from the western property line.

Accessory Structure #1: (Showing on map) Accessory Structure 1, which is in the back corner. A permit was issued for the accessory building in the right rear corner of the subject property on November 26, 2002. Subject property was zoned MDR at the time. The structure was permitted as a 16'x24' structure. According to the permit, the right-side setback was 5 to 20 feet, and the rear setback was 5 feet. Rear setback requirement for AO zoning is 30 feet now. The survey submitted showed that the structure is 9.03 feet away from the rear property line.

Accessory Structure #2: (Showing on map) Accessory Structure 2 is in the back left-hand corner and the well house is towards the middle. According to the aerial photography, a well house was built around the well and a small, prefabricated storage shed was placed on the subject property sometime between 2010 and 2013. No permits were found in the system for these structures. Sometime between 2015 and 2017, the small, prefabricated storage shed was moved from the rear center of the property over to the left-hand side of the property into the side setback. The survey submitted shows that the structure is 8.85 feet away from the western property line. The side setback requirement in the AO is 20 feet.

Accessory Structure #3: (Showing on Map) Accessory Structure 3 is closer to the house. An application for a zoning permit for a 20'x24' accessory building was submitted on May 16, 2017. It is assumed this was intended for the structure located closest to the residence known as Accessory Structure #3. The zoning permit process for this structure was never completed. The survey submitted shows that this structure is 12.43 feet away from the western property line. The side setback requirement in the AO district is 20 feet.

Accessory Structure #4: (Showing on map) Accessory structure 4 is the largest building in the back center. A permit was issued for a 30'x60' accessory building to be in the center of the property near the rear property line on January 14, 2019. The permit specified that the property was zoned AO, and the rear setback was 30 feet. The survey submitted shows that the structure is 19.54 feet away from the rear property line.

Accessory Structure #5: (Showing on map) Accessory Structure 5 is to the right-hand side of the property. A permit was issued for a 20'x32' accessory building to be located along the eastern property line in front of the existing, accessory structure on June 25, 2020. A permit specifies that the property was zoned Agricultural/Open Space, and the side setback was 20 feet. The survey submitted shows that this structure is 19.32 feet away from the right-side property line.

The applicant is also requesting relief from the maximum impervious area restriction. That information is also in the survey. I have highlighted that information in yellow and outlined in red. The AO zoning district restricts the amount of impervious area to fifteen percent of the parcel. The survey submitted shows that the subject property is 1.14 acres in size. The maximum allowable impermeable area for this size parcel is 7,448.76 feet. The current total impermeable area is 13,607 square feet, which will be a difference of 6,158.25 square feet over the maximum. Two driveways access the property from Parks Lafferty Road. One driveway accesses the principal residence. The other driveway accesses the accessory structures to the rear. The subject property is surrounded by residential and vacant properties. The subject property is surrounded by AO zoning to the east, west and north. There are also CR properties to the south and west.

During the review of these requests, the Fire Marshall submitted the following comments:

Fire would have little or no impact on this Variance. Our only request is that the structures on this property continue to be used for accessory use only. No commercial use unless the proper change of use process is pursued with Construction Standards.

The Cabarrus Health Alliance also submitted the following comments:

The Health Alliance has received applications and issued approvals for accessory structures on this lot. Please see the attached record for details.

That was included in Exhibit H.

Regarding the property's history and in conclusion, the subject property was zoned MDR when the original residence was built and remained MDR until sometime between 2003 and 2005, when it was rezoned to Countryside Residential. The property was rezoned from CR to AO sometime between 2008 and 2009. Subject property has been used for residential purposes since 1997. Subject property is approximately 1.14 acres in size. The recent survey identified the setback encroachments and excess impervious area. The applicant is seeking relief for these violations so that the sale process can be completed.

The application submitted by the applicant states the following:

Zoning regulation, while intending to serve the public good, would unreasonably and negatively affect this property and would not provide any benefit to the surrounding community if adhered to. In the case of the large shop, referred to as Accessory Structure 4, a permit was pulled by a contractor and the building inspector signed off that the locations of the accessory buildings on the property were placed in such a way to both take advantage of the flatter areas of the sloped plot as well as impending water flow during heavy rains. The zoning issues arose during the sales process and prior to that, there was no indication that the property had any violations. The overall spirit of the zoning ordinance will remain intact if this Variance is approved. It is the applicant's belief that these requests should be considered minor, and an approval would not be contrary to the public interest of the community and will not have any effects on the public's safety or welfare.

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

1. The Granting Order stating restrictions and applicable conditions of approval shall be recorded with the deed of the property.
2. The structures of the subject property, once sold, shall continue to be used for residential accessory purposes only. No commercial use is allowed unless the proper change of use process is pursued with Fire, Zoning and Construction Standards.

Mr. Collins stated, I will answer any questions that you might have.

Mr. Dagenhart asked, concerning Accessory Structure 4, the permit was pulled, but I don't see the date. Do we know the date?

Mr. Collins replied, January 14, 2019.

The Chair asked if there were any other questions for Phil.

Mr. Bywaletz said, this may be a general question because there's also involvedness in the impervious area. Are those reviewed at the time the permit is applied for?

Mr. Collins said, I'm not sure what happened there. We don't permit an impermeable area. Sometimes they'll submit it and it's on the applicant to know that, but a lot of times they don't. It just kind of builds up over time.

Mr. Dagenhart asked, do you know when that became a part of the Ordinance.

Mr. Collins said, that's always been a part of the Ordinance.

Ms. Susie Morris said, we have always had in one way or another, either a structural requirement maximum or a general impervious. Now the Ordinance only has the impervious maximum. Back when some of these were issued, there would have been a maximum on buildings and a maximum on the impervious. It was a percentage of the lot.

Mr. Bywaletz asked, when they got their permits, that would have been viewed at that time?

Ms. Morris replied, I can't give you an exact date, but what I can tell you is at some point people did not actually have to have plot plans that they turned in. It was all speculative; here's what I plan to do; here are the setbacks I plan to meet. Then during construction, things didn't really end up being what they should have been. The more recent buildings would have required a minimum GIS plot plan using their GIS information. Prior to probably 2010, you didn't have to turn in anything like that. It was just all on your honor and people were given permits in good faith that they would actually do what they needed to do.

The Chair asked if there were any other questions for Ms. Morris.

Mr. Dagenhart asked, for Accessory Structure 1, was it Agricultural/Open Space (AO) in 2002 when they went in for the permit.

Mr. Collins replied, I think it was Medium Density Residential (MDR) at the time.

Mr. Dagenhart asked, what was the setback for that?

Mr. Collins said, it would be listed on the permit that's included.

The Chair asked if there were any other questions.

Mr. Dagenhart said, we have already seen a discrepancy based on the zoning. At the time of these permits, do we know what these setbacks were?

Mr. Collins said, it should be listed on the permits. I think the only one that was good was Accessory Structure 1. By the time we got the third accessory structure it was 2017. It was zoned AO at that time.

The Chair asked if there were any other questions.

Mr. Collins said Mr. LaRoche is here, too. He can fill you in on some information as well.

The Chair called on the applicant, Frank LaRoche IV, to speak.

The Chair asked the applicant to state his name and address.

Mr. LaRoche replied, Frank LaRoche IV, 237 Jefferson Avenue NE, Concord, NC 28025. I'm the son of Frank and Lisa LaRoche. They are in Florida and have already been down there for a few months. I guess I should read their statement for the record since they can't be here. They typed this up a day or so ago:

To the Cabarrus County Zoning Board:

With Frank on the organ transplant list, we cannot be at the meeting in person. Our son has agreed to represent us, read this statement, and provide any evidence or help in the process.

We ask that you approve our Variance request because we did what we felt was within our responsibility as property owners. We hired professional builders and required them to get permits and inspections. Mr. Phil Collins informed us that not all buildings were permitted or that one was permitted and did not have a final inspection. Please do not punish us for the failings of contractors we trusted. As for the buildings that passed all inspections, I don't understand why these buildings were approved if there was a square footage on the property and were not within the codes of the county. We have tried to contact the builders but have only been able to track down one. The one who built the largest shop and cover over the container. These were inspected and passed by Cabarrus County.

As for the driveway, there is no barrier, so the water runs right into the ground. We asked that this not be included in the "impervious area" calculation.

Our house sits on a hill, so when it rains, it flows down our backyard. Our son has pictures of how the water flowed prior to the new shop going up. Frank walked Bill Oros around their property when they purchased it and let him know that the property always got a

lot of water, and the previous owners had put in a sump pump and humidifier in the crawl space to help with the water and dampness. Frank also gave Bill concrete blocks to raise his generator off grade level due to the water flow.

We've had no one complain about our property in the 23 years we lived there. I really hope you can see it within your hearts to approve the Variances.

Sincerely,

Mr. & Mrs. Frank LaRoche.

Mr. LaRoche IV continued, I told her hearts don't really have a lot to do with it, but she's my mom. These are the points I hope will help their argument. The first one:

1) In general:

A) In general, just basically to show they did everything in good faith. They hired people they got good references for. They told them they wanted permits; they go by the book. My dad was in the Army and a Sheriff's Deputy here so he's big on going with the rules. Not every homeowner or officer knows all the rules or ordinances in their county. I can tell you that from personal experience with the city and cops just don't know all that stuff. We know ignorance is no excuse from the law, but to further illustrate they always acted in good faith; I was an electrician in Virginia and hadn't got my license yet. I was teaching at the time. So, my dad hired another electrician to wire his shop. Instead of getting me to do it for free, he went by the books and got a permit because he's a rule follower. I just put that in there, so you know they didn't know there was anything wrong with the property until they got a survey from the potential home buyers.

B) Also, complaints anonymous or otherwise, can be called in to the zoning department. They could have been expressed informally to the property owner. No complaints have ever been filed or expressed. Property values were recently re-evaluated as they are often, and no neighbors contested their values based on the buildings on my parents' property.

Furthermore, since the latest neighbors, Bill and Joan Oros arrived in December of 2021, no changes have occurred since they moved in. With the way the neighborhood is now, it's been that way. The last shop was built in 2019 and that's the largest building in the back. That's just in general.

2) Concerning setbacks:

A) This is probably my misunderstanding as far as rights-of-way. I guess rights-of-way are just probably just borders. It might just be the zoning word for borders. Under Frequently Asked Questions, on the Zoning Enforcements page, it states: *Setbacks are determined from the existing or proposed road right-of-way for the property.* The only road that borders the property is Parks Lafferty.

B) Building plans were approved, submitted and passed. The biggest surprise for me came from Exhibit E, page 14. You can see where the plan drawn by the contractor has a setback of only 20 feet on his drawing for that proposed building. The permit was still issued without revision to that plan. The permit I did see does specify there's a 30-foot setback to the rear border. To me, this was an oversight by someone, either the permit issuer or the contractor.

C) No zoning inspector has ever been to the site because if they were, they would have caught a lot of stuff before the latest shop was built.

D) In Exhibit A, the Purpose of the Request states "the applicant then requested a zoning verification letter, and the violations became known to Staff." This must mean that the staff is also aware of the setback zoning violations of the properties adjacent to 2945 Parks Lafferty Road. After reviewing satellite images, any remediations would probably have to be applied to them as well, which would be a hardship on a lot of people.

3) Concerning impervious space, this one caught us all by surprise, as we had never heard of that.

A) To keep things in perspective, we heard that it was Medium Density Residential before. It's not now, but it was. That stands to reason that at some point on this land, it was okay to cover 40 percent. Now it's only okay to cover it 15 percent. We're not sure why it changed, but it did. That's just to keep things in perspective.

B) Right now, the impervious limit is 7,451 square feet. That's 15 percent of 49,673 square feet. Current impervious area on the property is 13,600 (plus). It calculates out to 27.39 percent. So, 12.39 percent more impervious space than it should be.

C) If you look at Exhibit C, the gravel driveway is calculated to have 5,460.92 square feet of impervious area. We all know that rain can percolate through a gravel layer. As you can see in the image, the grass has grown over the entire first part of the driveway. You can still see some gravel in the back part, and you'll see pictures of that later. We're asking that it not be included. That's a huge chunk of the overage, over 5,400 square feet. There is nothing underneath the gravel. It is just compacted gravel.

That would do away with a lot of the impervious area. We could just let the grass grow over it. We could remove the rocks, but this would probably cause more erosion, and the next steady rain would cause mud to wash down to the Honeycutt's and the Oros's.

I started to do calculations on the document called "Layers", which I included at the end of this document that was given to us kindly by Mr. Collins, done with GIS. Obviously, the survey is more accurate. All these numbers are actually based on the survey.

- 4) Yesterday morning, when I went to take some pictures for you guys, I found Mr. Oros on my parents' property measuring the shed. When I asked him what he was doing, he told me why. That's how I learned that they would be here opposing the Variance.

There is a sump pump in their crawlspace that was installed two owners ago. Ira Kneepel owned the home from 2004-2019. He installed a sump pump that currently sits under the living room. I have been under that house.

Bob Beasley installed a dehumidifier in the crawl space. He was the last owner. Bill actually had me go in there to do some work, as I've been down in their house. I have seen that it was not a great encapsulation job. There is black plastic there. This is just basically to show they've always had water coming onto that property.

In this image that I included, it shows there's a 30-foot drop and it's quite fast, behind the house straight down to the Honeycutt and Oros property. The Honeycutts are the ones at the bottom right of that corner. They also wrote a letter that they're fine with whatever the property is like right now; they're not contesting.

When the new shop was built, it actually diverted a little bit of water towards the front of the shop. The big shop in the back of the property actually takes some of the water to the

front of it now. There's a low point between the old shop and the two-story building in the corner. In front of that is the conex container with the carports on each side of the carport. When I get to the pictures, that might help you see it a little better.

There's the conex with the carports on it. Right in between those two buildings and a little behind it in front of the fence, is a low spot. That's the Huneycutt's fence right there. To the back of that two-story building, there's a line of trees that go all the way to the road. Historically, that's where the water goes down to the road.

I took this picture to show because I heard the height of the building matters. This is the 30x60 shop at the back of the property. That's 15 feet to the ground from that peak. I think the issue arises when you get to the other side of the building. It's really high because they leveled it out on the foundation. At grade level on the left side, it's 15 feet. Obviously, the builder seems to have ignored some stuff when he built the place.

(Plays video) Mr. LaRoche IV continues, this is what we call the cook shed. I believe they got a permit, but never finalized it. They never went through the inspections. I can't remember what kind of builder they call them. The people who make the cheese and the peg-built stuff. They found this guy and he was supposed to be really good. He got the permit, but I guess he never got the inspection.

That's the building they call the cook shed and that's the back of the house. The water is flowing off the horse field because that's what water does. It comes down by the grapevines. Here's a shot looking down the hill and going back to the little shed that sits on the back left of the property. Here is a shot of the water where it finally sits down there. Where you see all the water sitting is kind of where the new shop is now. There's a hump they put right here. I guess so water doesn't go in the front door of the new shop. As all the water comes down the hill, most of it starts flowing in front of that shop now. It still flows underneath the two-story shop and goes down that tree line.

Here's a video my mom took. It must have been 2018 or 2019 before the new shop was built. You can see that the water pools by the Oros building, it's kind of in front right where the new shop sits. You notice there's no water going over there because it runs straight up under that two-story shop and goes down that tree line and alongside the Huneycutt driveway.

That's about all the evidence I have for you and all the points I wanted to make.

Mr. Charles Paxton, Chair, asked if anyone had any questions for the applicant.

Mr. Dagenhart asked, the 30x60 building that's on the middle rear, on the survey, it says 42x24. Is that just a typo? On the Staff Report, it's page 52.

Mr. LaRoche replied, yes, it's 42.14 feet across the front and 24.09 along the side.

Mr. Idlibi asked, is that the building you're calling 30'x60'?

Mr. LaRoche replied, yes, I guess that's because of what I saw on the permit. Maybe the actual building is 30'x60' and the right-hand side is sort of a carport. It's still roofed area so that's probably where that extra footage came in.

Mr. Dagenhart said, I can see where it might be a carport. Is there anything on the front of the building?

Mr. LaRoche replied, you're right, so I don't know.

The Chair asked if there were any other questions.

Mr. Dagenhart said, looking at your pictures it looks like some of these structures are on skids. How many are actual structures that have permanent foundations?

Mr. LaRoche IV replied, the house, obviously I'm just being thorough, and the cook shed right here.

Mr. Dagenhart said, so that would be Accessory Structure 2?

Mr. LaRoche IV replied, this thing right here in the middle of the yard, for some reason my dad thought it would be fun to build my mom a swing area. So that's a huge slab of concrete so she could sit on the swing and watch him work in the shops or something. That's a patio, so that's concrete. That's a foundation without anything on top of it but a swing.

We got a pump house behind the cook shed and that's just concrete blocks with a dirt floor that covers the well and the big, main shop. The conex is just sitting on top of six blocks, three on each side. But then it does have roofing and the pillars that come down from those roofs are concreted into the ground.

Mr. Dagenhart asked, the cook shed is that Accessory 3? It's the one on the left side in the middle of the back yard. So, the cook shed is structure 3?

Mr. LaRoche IV replied, yes sir. Amish builder, that's what it's called. That's what I was thinking it was.

The Chair asked for any additional comments or questions. There being none, the public hearing was opened.

The Chair stated that those speaking "in favor" would go first and invited Mr. Steven Irminger to speak.

Mr. Steven Irminger said, I'm Steve Irminger and I live at 7015 Erinbrook Drive, Concord, NC 28025. I am the neighbor immediately to the left of the LaRoche property. My wife and I have no objection to the Variance request. I think it's important to understand that the land to the west of the LaRoche property is moderately sloped for a long way. I own six acres west of the LaRoche property and to the northwest. All that land is sloped toward this area. You saw from the pictures it's an awful lot of water that winds up going across the property. I looked closely at the GIS for the amount of impervious area.

I would agree with Frank that the impervious area is in excess only by the gravel driveway. If you look at the gravel driveway, I think you could make the argument that it is not truly impervious. It is not packed gravel. It's not maintained, and I think within a year or two it would disappear.

So, it behaves much like impervious or just pervious ground would act. Then finally, I agree, there are some big stormwater issues with this area. But as I understand it, Cabarrus County recognizes the Reasonable Use Act. The LaRoche's have clearly used their property reasonable, and they've not modified the original drainages, except to install buildings that they saw fit. So, I don't see how that should be an issue. That's all I have.

The Chair asked if there were any comments.

The Chair stated that next would be those speaking "against" and invited Ms. Laura Peets to speak.

Ms. Laura Peets stated, Laura Peets, 6980 Erinbrook Drive, Concord, NC 28025. I live on the road that basically runs alongside where Steve Irminger is and then Frank is down below. I'm not against the Variance. I'm against any sort of zoning that would allow this to happen going forward. It's not Frank LaRoche that failed because Frank LaRoche is absolutely by the book as it gets. It's zoning and planning that failed.

Frank LaRoche and the rest of us, we live in open space. We can't have a crap ton of buildings and a tiny piece of land. The new motto that I've come up with in Cabarrus

County is if you can fit it, we'll permit it. So, I'm not against the Variance. I'm against moving forward with this type of thing continuing, without any oversight.

Somebody coming out to inspect, like Frank Jr. said, they did everything they were supposed to do. So, I'm not against the Variance. I'm against up and coming and this continuing.

The Chair stated that the next speaker is Joan Oros.

Ms. Oros stated my name is Joan M. Oros. My husband is William M. Oros. We are the neighbors and have adjacent property. Two of the structures that are adjacent to our property are on our border. They are specifically Structure 4 and Structure 1 and that's what I'll be addressing.

I'm sorry, my address is 7050 Palafox Drive, Concord, NC 28025.

I have a packet for you so that you can follow along with everything I've said. I'll be doing the speaking for the two of us. As was mentioned, we moved here in December of 2021. We have been in residence at the home, and we have noticed water as an issue since we moved in. We have been trying to deal with it.

As far as the structures encroaching on our border, we had no knowledge prior to moving in. We thought everything was in accordance with the rules and the regulations that were set forth by the county. As of October 1st, I was notified by Ms. LaRoche that they had violations. She asked if I would send a letter saying everything was fine. My question back was, would you just tell me what the violations are before asking me to sign off? I did not get a response, so we took it upon ourselves to come here. The building department and the zoning department were very helpful in providing us with the information I have here. We can't ignore these because of the impact on our property.

I provided you with some documentation to show you there was a referral that we had to move our generator up this past March of 2024. We had to get the company to come in and lift it. That meant not only blocking up the generator, but also moving the gas line to accommodate it.

You'll see on the invoice that I provided to you that they did say that it was due to water. We've also noticed water in our crawl space. We've been trying to deal with it because we don't want to deal with mold because that's not something we can live with. We're trying to keep the water away from the house. You'll see the 60x30 building, I gave you some

pictures. If you'll look through there, you'll see the gutters come right at our property. It has a metal roof that runs the water right toward us. You'll also see the same thing with the pictures that we included for the two-story building. Those are the two; Accessory Building 4 and I think it's Accessory Building 1 that are encroaching on our line and providing all the excess water.

I gave you some pictures showing what's happening in the basement as far as water lines where water has been getting into the basement. We're going forward to have that remediated at our expense. As you can see, I gave you a dollar amount as to what it's costing us. Without any remediation on this issue, I don't know that we've done enough. My husband is a gardener. He keeps plants and trees. They help absorb some of the water and yes, the house gets some water from the backyard, but we've been able to divert that.

What we're getting from the side yard, you'll see is even running down to the road where you see a sand river down there. I ask that what I've read as a statement be wrote into your minutes as it is. I want to thank you for your attention and allowing me to provide testimony. If you have any questions, I will make every attempt to answer them.

The Chair asked if there were any questions.

Ms. Oros asked, is there anything with the pictures you have issue with?

Mr. Bywaletz asked, when was the generator initially installed? Was it before you occupied.

Ms. Oros replied, yes it was. I think when I talked to her, she said it went in, in 2019.

The Chair asked if there were any other questions.

Mr. Idlibi said, Ms. Oros, thank you for speaking tonight. When you bought your home in 2021, did you get a survey done for this building?

Ms. Oros replied, no, these buildings were already built. Actually, we have a metal shed that comes along our property line and there was a question that was raised by the neighbor at the time we came over to the county to check things out.

Bill and I figured at this time, we might as well look at our records while we're looking at everybody else's records, to make sure that we were in compliance. I believe the building that was put there, a quonset hut, was dropped on the property sometime in 2017 or thereafter. At the time, because of the size, they said the setback was fine.

Mr. Paxton asked, I don't think I heard. Did you have a survey done when you moved in?

Ms. Oros replied, no.

The Chair asked if there were any other questions before the public hearing was closed.

Mr. Idlibi asked, do we know the square footage of the gravel driveway.

Mr. Collins replied, it should be on the survey.

The Chair asked if there were any other questions. There being none, the public hearing was closed.

Mr. Charles Paxton, Chair, reminded the board that the standards of review that were read and outlined for the last case are the same for this case and they have a copy at their seat.

The Chair read a summary of Variance requests from the Staff Report:

According to the appraisal card, the residence was built in 1997.

Ms. Susie Morris said, I believe the applicant needs more time.

Mr. LaRoche IV said, thank you for reminding me. So, I guess my rebuttal is number one; they have a crawlspace not a basement, it is different. We hate that they get water down there, but they've always gotten water down there. When my dad helped build the blocks to get that generator lifted, Bill never said anything about it being the fault of his buildings. Like I said before, no one has ever complained about anything that's gone on at my parents' house.

Ira Neeple is the one who got that building on their property, and it was about 2016. Okay, that's it.

The Chair asked if there were any other questions.

Ms. Oros said, it was noted there was a sump pump and a dehumidifier in the basement, we've had a lot of work done in the basement. There's no dehumidifier, never was one since we've been there and there is no sump pump. We've had people doing air conditioning, ducting. We've had other basement work done.

Plus, like I said, the paperwork you have in front of you talking about the job that's going to be done to encapsulate, that's when they'll add a sump pump and dehumidifier. There's never been anything since we were there and there's no indication that it had been there prior to our purchase. So, I'm not aware of that being there before us. I apologize I meant to comment on that earlier. Any questions of me?

Ms. Oros said, thank you. I appreciate that.

Mr. Charles Paxton, Chair stated at this time I will review the Staff Report:

According to the appraisal card, the residence was built in 1997. The property was zoned Medium Density Residential (MDR). The property is current zoned Agricultural Open Space (AO), and the side setback is 20 feet. According to the survey of the property, the residence is 11.59 feet from the Western property line.

STANDARDS OF REVIEW FOR THE REQUEST

The Chair stated, at this time we will take up individually, the Standards of Review for the Request:

Unnecessary hardship would result from the strict application of the Ordinance. The Chair asked if there were any comments.

Mr. Bywaletz said, yes, the house is in a location. You're not going to move the house. It was put there per the residential. It was located correctly. We're just talking about the residence right now. It was located correctly at the time it was built. You can't move the house; it's on foundation. I think that would be an undue hardship for sure.

Mr. Dagenhart said, I concur. I pulled the plat for these lots, and it only showed a front setback. Whether or not there were zoning standards at that time, I'm not sure. According to the plat, there's no side setbacks. I think we can approve a variance for the house.

The Chair proceeded to read the second Standard of Review for the Request:

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.

The Chair asked if there were any comments.

Mr. Bywaletz asked, how are we doing this? We have multiple structures that are in noncompliance and impervious.

The Chair said, we can take one vote at a time.

Mr. Dagenhart asked, should we do them structure by structure?

Mr. Bywaletz said, Variance #1 was for the residence is what I'm seeing. And then Variance #2, is for the Accessory Structures, if I'm reading that correctly.

Ms. Susie Morris stated, in order to help you make your way through this, it is split out that the first one would be specifically discussion about the residence, then the accessory buildings, which you can either take up as a group or individually. Then finally, the impervious area because it is a lot. It is up to the Board how you want to make your way through all of those.

The Chair asked if there were any comments.

Mr. Adam Dagenhart stated, I think we kind of started with Variance 1, which was the residence. The discussion started there. It may have stopped, but let's clarify what our thoughts are.

Mr. Charles Paxton, the Chair, asked would you rather vote on that?

Mr. Idlibi replied, I think that is probably the best thing. Does everybody agree?

Mr. Idlibi said, Adam, do you want to make a motion?

Mr. Dagenhart replied, we probably need to build the record in each of these.

Ms. Morris, said, correct, you'll need to build the record. Also, keep in mind there were some Conditions of Approval in the Staff Report that would need to be included in at least one of your motions, or you can wait until the end to approve that as a separate motion along with the conditions of approval that were listed.

Mr. Dagenhart asked, did you say it's possible to do the conditions at the very end as a separate motion, not connected directly to any of the others?

Ms. Morris replied, correct. Just don't forget.

Mr. Evan Lee stated, you can move to adopt the conditions from the Staff Report, like you did on the other one or you can do it piece by piece.

Mr. Dagenhart said, I'll be happy to read them, then proceeded to read the Conditions of Approval:

The Granting Order, stating restrictions and applicable conditions of approval, shall be recorded with the deed of the property.

The structures on the subject property, once zoned, shall be used for residential accessory purposes only. No commercial use is permitted unless the change of use process is pursued with the Fire Marshall, Zoning and Construction Standards.

VARIANCE #1-RESIDENCE IN SETBACKS

Mr. Charles Paxton, the Chair stated, the motion before us, for or against, is for the residence. Adam, do you want to motion?

Mr. Dagenhart replied, let me think for a second on that.

Mr. Brent Rockett said, let me add that dating back to when the home was originally built, it seemed to fit on all applicable things that were in place at the time. I do believe it would be an unnecessary hardship to do anything to rectify the home at this point. I'm not prepared to make a motion at this point for each one of these items. So, I'll start it off with that.

Mr. Dagenhart said, I would like to add that the hardship is not a result of actions by the property owner. I think it was the home builder before he ever built the house.

Mr. Bywaletz said, yes, it could come to that. The zoning changed after the house was built.

Mr. Dagenhart said, I think that's what Brent was alluding to. It's consistent with the spirit of the neighborhood.

Mr. Bywaletz said, there does not appear to be any topography that would result as a hardship as far as location or size.

The Chair asked if there was any other discussion.

Mr. Brent Rockett **MOTIONED, SECOND** by Mr. Adam Dagenhart to **APPROVE** the Variance as it relates to the residence specifically. The vote was unanimous to **APPROVE**.

VARIANCE #2-MULTIPLE NON-COMPLIANT ACCESSORY STRUCTURES

Accessory Structure #1

Mr. Charles Paxton, the Chair stated we shall now move on to the outline.

The permit was issued for accessory building in the right rear corner of the property on November 26, 2002. The subject property was zoned MDR at that time. The rear setback requirement for AO zoning is 30 feet. The survey submitted shows that this structure is 9.03 feet away from the rear property line.

The Chair asked if there were any comments.

Mr. Dagenhart stated my concern is we've got a mixture of buildings. We've got some that are permitted, and we've got some that are not. In my mind, the permitted ones, they are what they are. I have heartburn over an applicant asking for a Variance. There should be a little give and take. I feel like a couple of these structures that are not permitted need to be relocated to be in better compliance with the Ordinance. By my calculations, 3 and 4 can't be moved. 5 is really close to being in compliance, so we could probably support that approval. I think 1 and 2 should be moved.

The Chair said, repeat which ones.

Mr. Dagenhart replied, 1 and 2. There was a well house and an accessory structure. I'm not saying the wellhouse, I'm talking about Accessory Structure 2. I think 1 and 2 kind of remains in the middle.

Mr. Rockett said, just to clarify Accessory Structure 1 is the two story?

Mr. Dagenhart said, correct me if I'm wrong, 4 is the large one with the carport? I think 5 is the two story on skids.

Mr. LaRoche replied, Accessory Structure 5 is the conex. Accessory Structure 1 is the two story, it's on blocks.

Mr. Dagenhart said, it can simply be moved and put back on blocks.

Mr. Bywaletz asked, when did it get permitted?

Mr. Dagenhart replied, with the residence back in 2002.

Mr. Bywaletz said, the residence was built in 1997, so it wasn't permitted with it.

Mr. Dagenhart said, part of the issue is we have multiple structures that were built through many zoning designations. Let me clarify, I think 2 should be moved in compliance. I think 1 we can justify that it was based upon the current zoning when it was permitted.

The Chair said, we need to vote on these individually. We need to vote on Accessory Structure #1.

Mr. Adam Dagenhart **MOTIONED** to **APPROVE** the Variance request for Accessory Structure #1 and stated, when the structure was permitted, it was based upon current zoning. **SECOND** by Mr. Michael Bywaletz to **APPROVE**. The vote was unanimous to **APPROVE**.

Accessory Structure #2 and Well House

Mr. Bywaletz asked, is there a Variance request on the well house?

Ms. Susie Morris replied, it's an actual structure, it's included.

Mr. Dagenhart asked, can you help us understand why Accessory Structure #2 and well house were included in one line?

Mr. Phil Collins replied, it was just that those two weren't permitted, so we threw them in there together. They were built about the same time.

The Chair asked if there were any comments.

Mr. Bywaletz said, I would say the condition would be that the well house would need to get permitted, in order to reside over top of it. Accessory Structure 2 needs to have the correct setback.

Mr. Dagenhart said, the issue of the well is it's not a permanent structure. It's not an encroachment, is it?

Mr. Bywaletz replied, it is not, but it was permitted? Can we request that a permit be required for the well house?

Ms. Edwards said, it should be permitted.

Mr. Wise asked, can we get a little more clarification on what an accessory structure is?

Mr. LaRoche replied I didn't take a picture of the well house because it wasn't close to the line. It's just cinderblocks, maybe three or four high and wooden walls.

Mr. Wise said, so a typical well house?

Mr. LaRoche said, yes and he had the roofer do a little, metal roof on top of it.

Mr. Wise asked, how tall is it? How do you access it? Do you lift the roof off?

Mr. LaRoche replied, there's a door, regular height. I guess it's probably a 6-to-7-foot wall on top of the cinder block. It's wooden walls and a sloping back roof. It's maybe 5 feet wide by 3 or 4 feet deep. Accessory Structure 2 is just a prefab shed some guy rolled in on a trailer and we set it on blocks.

The Chair asked, do we want to take these up individually? Well house and Accessory Structure 2 separate?

Mr. Wise said, Accessory Structure 2 could be moved easily. The well house is over the well, that makes no sense to move that.

The Chair stated, let's start with Accessory Structure 2.

Mr. Michael Bywaletz **MOTIONED** to not allow the existing Variance to the setback requirements. The condition would be that Accessory Structure #2 needs to get moved in compliance with the current setback requirements or removed entirely. **SECOND** by Mr. Adam Dagenhart to **APPROVE** the conditions set forth. The vote was unanimous to **APPROVE**.

WELL HOUSE

The Chair stated that the next item would be the vote concerning the well house.

Ms. Holly Edwards **MOTIONED, SECOND** by Mr. Mohammed Idlibi to **APPROVE** the Variance request for well house and a permit for the well house does not need to be obtained. The vote was unanimous to **APPROVE**.

ACCESSORY STRUCTURE #3

The Chair stated an application for a zoning permit for a 20' x 24' accessory building was submitted on May 16, 2017. It is assumed that this was intended for the structure located closest to the residence.

The zoning permit process was never completed.

The side setback requirement in AO is 20 feet.

The survey submitted shows that this structure is 12.43 feet away from the western property line.

The Chair asked if there were any comments.

Mr. Bywaletz said, I would argue that it would create a financial hardship to relocate it.

Mr. Mohammed Idlibi **MOTIONED, SECOND** by Ms. Holly Edwards to **APPROVE** the Variance request for Accessory Structure #3. The vote was unanimous to **APPROVE**.

ACCESSORY STRUCTURE #4

A permit was issued for a 30'x60' building to be in the center of the property near the rear property line on January 14, 2019.

The permit specified that the property was zoned Agricultural/Open Space, and the rear setback was 30 feet.

The survey submitted shows that this structure is 19.54 feet away from the rear property line.

The Chair asked if there was any discussion.

Mr. Dagenhart said, I would say it would be a financial hardship to relocate the building to be in compliance with the Ordinance.

Mr. Stephen Wise **MOTIONED, SECOND** by Mohammed Idlibi to **APPROVE** the Variance request for Accessory Structure 4. The vote was unanimous to **APPROVE**.

ACCESSORY STRUCTURE #5

A permit was issued for a 20'x32' accessory building to be located along the eastern property line in front of the existing accessory structure on June 25, 2020.

The permit specified that property was zoned Agricultural/Open Space, and the side setback was 20 feet.

The survey submitted shows that this structure is 19.32 feet away from the right-side property line.

The Chair asked if there were any comments.

Mr. Michael Bywaletz said, that would be a bit of a hardship to move that one, too, because of the conex roof. Those are mounted in concrete on the sides and it's within six feet of being in compliance of where it should be.

Mr. Brent Rockett **MOTIONED, SECOND** by Mr. Adam Dagenhart to **APPROVE** the Variance request for Accessory Structure #5. The vote was unanimous to **APPROVE**.

VARIANCE REQUEST #2

Conditions of Approval for Granting Order

Mr. Idlibi said, I have a question for Susie or Phil. Do we have any construction materials to make gravel parking lots more or less impervious based on the size of the stone.

Ms. Susie Morris replied, for the stormwater rules, the only time gravel is considered impervious is it has a fabric underneath it and it is a certain depth. A lot of people think that gravel is impervious, but actually it is not because over time it compacts and it's no different than an actual paved road.

Mr. Dagenhart said, just to clarify, how would we define this as impervious?

Ms. Morris replied, it would have to meet the state stormwater requirements, which are specifically in the statutes, as far as how that area is constructed. Prior to moving on to that, you may want to tackle your conditions.

Mr. Dagenhart asked, the conditions are specific to the structures, not the impervious, right?

Mr. Idlibi said I'd like to make a motion to move to adopt the conditions stated in the Staff Report.

Mr. Dagenhart said, I have a question. What if we have additional comments for number three? Impervious area?

Ms. Morris replied, you can add it to that motion.

Mr. Mohammed Idlibi **MOTIONED, SECOND** by Mr. Michael Bywaletz to **APPROVE** the Conditions of Approval for Granting Order.

VARIANCE REQUEST #3

IMPERVIOUS AREA

Mr. Adam Dagenhart said, I think the applicant and the neighbors are getting caught up in impervious when they think of stormwater. I think when the Ordinance talks about impervious, it doesn't mean you need to make all of your property impervious. There's not a limitation to how much impervious you can have, so there's not a case like this where there's a lot of structures on a piece of property. I think that word is tossed

around incorrectly in this application. Obviously, there's a stormwater issue, but this is impervious, and it's allowed.

Mr. Michael Bywaletz said, even though there's a lot of impervious area, regarding the roofs and the gravel, a lot of those buildings are actually elevated. Water flows underneath them on pervious soil, even though you have an impervious area where rainfall hits and fills underneath those buildings. It appears they were constructed intentionally that way. As if there was a runoff issue on the property, based on the pictures I saw.

The Chair asked if there were any other comments.

Mr. Dagenhart said, I think we need to put a condition on this one if we choose to approve it.

The Chair asked, that being what?

Mr. Dagenhart said, that no more impervious be allowed on this property, since it greatly exceeds what is allowed. The only caveat would be if the property owner decides to remove some of those temporary structures.

The Chair asked, do you want to make that in the form of a motion?

Ms. Susie Morris stated, I don't know if you all remember, years ago you had a case that was actually in the watershed. If someone was to come to us, in general, and their property was over on the impervious, they had the option to go in and remove some of that. If you all were to place a condition, that it would have to be current, if they wanted to add another structure, they would have to remove one of the other ones. Then what we would do is make sure that it balances out and we could do that through a certificate of nonconformity adjustment, which is how we handled the one that was in the watershed. They wanted to do an addition to the building, so they took up gravel and did the addition. In the end, it was net.

Mr. Brent Rockett asked, if they went over, they would have to come back for a Variance Request?

Ms. Morris replied, correct. Mr. Rockett said, so essentially upon approval this property would never be able to exceed the current percentage. Ms. Morris said, that is correct, if you place that condition on it, then that is how we would look at it from a permitting standpoint.

Mr. Rockett asked, if they came back and did the gravel driveway in such a way that it did meet the requirements, they could come back and add another structure?

Ms. Morris replied, right, we would have to have the survey. If you place a condition on the impervious, it doesn't matter if it's gravel, it doesn't matter if it's a building. From a permitting standpoint, we look at that as the maximum. We don't look at it differently. It doesn't matter if it's a structure or a concrete parking lot.

Mr. Bywaletz said, if they remove Accessory Structure #2 and reduce their amount of impervious area, can we say that it can't be replaced with additional impervious area? If they decide to remove it later on, they couldn't put it back in?

Ms. Morris replied, you could make that a condition.

Mr. Dagenhart said, I don't know that we should approve them and say, we can accept what you have, but we'll let you change it out. I don't think we need to start doing that. The other thing is if they did the gravel, the staff isn't going to go out. There's no permit.

Mr. Dagenhart continued, there's over 5,400 square feet of gravel on there. If they went back and approved at this percentage and corrected the gravel issue; they could build a 5,400 square foot residence on this property. I don't think it's a good idea to entertain this.

Mr. Adam Dagenhart **MOTIONED, SECOND** by Ms. Ingrid Nurse to **APPROVE** Variance Request #3 with the condition that no more impervious shall be allowed than what is currently shown on the survey. Mr. Brent Rockett added that even if something is removed, impervious cannot be replaced. The vote was unanimous to **APPROVE**.

LEGAL UPDATE

Mr. Evan Lee, General Counsel, stated I don't have anything unless Rich has anything. I don't think we have anything pending.

Mr. Richard Koch, County Attorney, said, the only thing I have is we do have a settlement in the Shelley case for the last motion he filed that had no merit. He's going to pay the county back \$40,000 in legal fees and that should completely end the case, if he pays that money. He's agreed to do it but hasn't done it yet. I thought you might want to hear that since we've been dealing with that for so many years.

DIRECTOR'S REPORT

The Chair called on Ms. Susie Morris, Planning and Development Director, to speak.

Ms. Morris said, I do have one thing. In the back is our new Zoning Compliance Officer. His name is Michael Johnson, and he comes to us by way of Indian Trail. He was a Planning Tech at Indian Trail, and we are so excited to have him. We have one more position that we need to fill. I did make an offer, so hopefully, by January we will have a new Planning & Zoning Clerk.


We are very appreciative of Lauren helping us because she might have to be here in December if we have cases. For the record, just wanted to thank her for all her help. We are hopefully on our way to getting that position staffed up. We are very excited about Chris and Michael. They are going to be great members of our team. They will be presenting staff reports and cases.

Mr. Adam Dagenhart asked, should we have asked the applicant if he would accept those choices?

Ms. Morris said, that's a Special Use Permit, where they have to agree.

Ms. Ingrid Nurse **MOTIONED, SECOND** by Mr. Adam Dagenhart to **ADJOURN** the meeting. The vote was unanimous to **ADJOURN** the meeting at 8:20 p.m.

APPROVED BY:



Charles Paxton, Chair

SUBMITTED BY:



Lisa Johnson, Clerk to Planning & Zoning Commission

ATTEST:



Susie Morris, Planning & Development Director