

Cabarrus County Government – Planning and Development



**Planning and Zoning Commission Minutes
August 12, 2025**

Mr. Charles Paxton, Chair, called the meeting to order at 6:30 p.m. Members present, in addition to the Chair, were Mr. Adam Dagenhart, Ms. Holly Edwards, Mr. Chris Pinto, Mr. Jeff Corley, Mr. Brent Rockett, Mr. Stephen Wise, Mr. Michael Bywaletz, Ms. Ingrid Nurse and Mr. Mohammed Idlibi. Attending from the Planning & Development Department were, Mr. Phil Collins, Planning Supervisor, Ms. Susie Morris, Planning & Development Director, Mr. Michael Johnson, Zoning Enforcement Officer and Ms. Lisa Johnson, Clerk to the Commission. Also, in attendance was Mr. Douglas Hall, General Counsel. Absent from the meeting was Mr. Andrew Nance.

Roll Call

Ms. Lisa Johnson, Clerk to the Commission, called the roll.

Approval of June 10, 2025 Meeting Minutes

Mr. Michael Bywaletz **MOTIONED, SECOND** by Mr. Adam Dagenhart to **APPROVE** the minutes. The vote was unanimous to **APPROVE**.

Approval of Granting Order

VARN2025-00003 Variance request related to zoning district setback and impervious area requirements in Chapter 5. John Tretow & Ellen Carnes are applicants/owners. The address associated with the subject property is 5139 Navion Place (PIN: 5559-67-0264).

Mr. Michael Bywaletz **MOTIONED, SECOND** by Mr. Adam Dagenhart to **APPROVE** the Granting Order. The vote was unanimous to **APPROVE**.

Mr. Charles Paxton, Chair, reminded anyone wishing to speak should fill out a blue card.

Approval of Rules of Procedure

Mr. Michael Bywaletz **MOTIONED, SECOND** by Mr. Brent Rockett to **APPROVE** the Rules of Procedure. The vote was unanimous to **APPROVE**.

RZON2025-00003 Request to Apply Mobile Home Overlay (MH-2) to CR Zoned Property

Chloe and Tanner Small are the applicants. The address is 4130 Shiloh Church Road (PIN: 4673-70-6545).

The Chair called on Mr. Phil Collins, Planning Supervisor, to present the Staff Report.

Staff Report

The subject property is approximately 1.27 acres in size. The subject property is currently vacant and partially wooded and is surrounded by residential and agricultural uses and CR (Countryside Residential) zoned properties. The purpose of the MH-2 district is to provide for the principal use of land developed in harmony with the underlying zoning district regulations; however, permitting the substitution of a manufactured home as a principal building, provided the specific design and/or installation regulations appearing in section 4-28 are met.

The ordinance states that lands in this district have a strong rural, pastoral feel. Natural environmental elements such as pasture fencing are to be retained, if at all possible. Although the area is capable of handling higher densities of development, development is kept at very low overall densities. Development includes only the standard, single family detached dwelling.

The subject property is located within the boundaries of the Western Area Land Use (Plan). The Plan recommends development of residential uses at densities between one and three dwelling units per acre.

While the Plan recommends a certain density, this request is intended to allow the applicant to place a multi-section manufactured home on an existing lot of record where manufactured homes are currently not permitted as a building type. Therefore, this request would not have any effect on the application of the Plan.

In conclusion, the subject property is approximately 1.27 acres in size. The subject property is an existing lot of record within the Countryside Residential (CR) zoning district. The request is not to allow for any further increases to density. The request only proposes allowing the substitution of a manufactured home for a stick built or modular home on the property.

The request is for the MH-2 Overlay to be applied, which restricts the use of manufactured homes to multi-section. The property adjacent to the subject property to the east has MH-2 Overlay on its eastern half. The overlay is approximately 1,000 feet from the subject property.

The existing right-of-way of Shiloh Church Road in this area has a 40-foot right-of-way. However, the future right-of-way of this section of Shiloh Church Road is listed as 60 feet in the Cabarrus-Rowan MPO's Comprehensive Transportation Plan. There are existing mobile homes within the vicinity of this proposal along Shiloh Church Road, listed in Exhibit I, which have existed in this area for quite some time. The applicant is requesting to apply the overlay to the subject property to allow a new manufactured home on the property.

This is a conventional rezoning request. Therefore, all uses permitted within the underlying CR zoning district and the proposed MH-2 Overlay would be allowed on the subject property if approved. The Planning and Zoning Commission should consider all the information provided and determine if the proposed rezoning is consistent with the Commission's vision for this area of Cabarrus County.

With that, I will answer any questions you may have.

The Chair asked if there were any questions.

Mr. Jeff Corley said, so the existing overlays, those are all MH-2, except for the one at the bottom (referring to map)?

Mr. Phil Collins said, yes, the overlay is approximately 1,000 feet from the subject property.

Mr. Charles Paxton, Chair, asked if there were any other questions.

There being none, the Chair called on the applicant to speak.

The applicant said, I am Chloe Small, and this is my husband, Tanner. We are the petitioners for the request to apply MH-2 to our property at 4130 Shiloh Church Road. We are both hard working, full-time employees juggling multiple jobs between us. We are also the proud parents of one-year old twin boys. Our days are full, our hearts are full and like many families, right now our wallets are stretched. We are deeply committed to giving our sons a strong, stable future. One rooted in the land we own and the community we love. This request isn't about a business venture or development project, it's about our family's future. We're not asking to change the character of the

area, just to live on our land in a way that is affordable and sustainable. The Mobile Home Overlay gives us a realistic, responsible path to do that.

In today's housing market, even modest homes can be unattainable for young families. The average price of a home in Cabarrus County is now over \$350,000. For a family like ours, mobile homes offer a safe and budget conscious option. We believe that families who work hard shouldn't be priced out of living on the land they've invested in. We're not looking to destruct anything, just for a chance to build our home and raise our kids with the kind of stability every child deserves. Thank you for considering our petition.

Mr. Charles Paxton, the Chair, asked if there were any questions for the applicant. There being none, the public hearing was opened with those generally speaking in favor being asked to speak.

Mr. Kevin Cook said, my address is 13826 Windmau Lane, Huntersville, NC 28078. I am here to support my family and answer any questions that you may have.

Mr. Charles Paxton, Chair, asked if anyone had any questions for Mr. Cook. There being none, the Chair asked if there was anyone speaking against the petition.

There being none, the Chair closed the public hearing and opened the discussion among the board members for the rezoning request.

Mr. Jeff Corley said, I'm going to read what is in the applicant's application. "The requested zoning is consistent with the general goals of the Cabarrus County land use plan, which encourages flexible, affordable housing options that meet the needs of local residents. The surrounding areas include both residential and undeveloped parcels and the proposed use as a mobile home would be compatible with existing nearby land uses. This rezoning would allow for productive residential use of the property while preserving the character and intent of the area as outlined in the land use plan."

Mr. Jeff Corley said, I could not have written that better myself.

Mr. Brent Rockett said, I agree with Mr. Corley. The application was very well done and hit on many points of the reasons why this would be an appropriate use for this property.

Mr. Charles Paxton, the Chair, said, I would like to add that the adjacent property is also similar and is zoned MH-2 and I don't have any objections to this one going that way also.

The Chair asked if there were any other questions. There being none, the Chair said, at this time we will entertain a motion to apply MH-2 to the property.

Mr. Brent Rockett **MOTIONED, SECOND** by Mr. Jeff Corley to **APPROVE** the request to apply MH-2 to the property. The vote was unanimous to **APPROVE**.

Mr. Charles Paxton, the Chair said, we also need to create a consistency statement provide the reasons why we are approving or denying the request.

Mr. Brent Rockett said, if Ms. Small wrote this, then I'd like to hire her to do them in the future.

Mr. Jeff Corley once again read the comments made by the applicant in the original application. "The requested zoning is consistent with the general goals of the Cabarrus County land use plan, which encourages flexible, affordable housing options that meet the needs of local residents. The surrounding areas include both residential and undeveloped parcels and the proposed use as a mobile home would be compatible with existing nearby land uses. This rezoning would allow for productive residential use of the property while preserving the character and intent of the area as outlined in the land use plan."

The Chair asked if there were any other comments. There being none, the Chair asked if there was a motion to approve the consistency statement.

Mr. Brent Rockett **MOTIONED, SECOND** by Mr. Adam Dagenhart to **APPROVE** the consistency statement. The vote was unanimous to **APPROVE**.

The Chair told the applicants they were free to leave.

The Chair proceeded to administer the oath to members of the audience that wished to speak in the next case.

VARN2025-00004 Request for Variances from the Open Space Requirements of the Cabarrus County Subdivision Ordinance (Chapter 15) as Found in Chapter 5, Sections 1 (Parks Required), 2 (Park Standards) and 6 (Timing of Recreation Improvements).

The Fieldstone HOA is the applicant and the Fieldstone HOA and Donald and Windy Starnes are the owners of the subject properties. The addresses associated with the subject properties are 3075 Cold Springs Road. S, 3240 Fairmead Drive, 5244 Ivy Spring Lane and 5350 Fieldstone Drive. (PINs: 5559-54-3678, 5559-54-3993 & 5559-65-9591).

The Chair asked the board members if there were any members that had any conflicts with the case that needed to be disclosed. There were none and the Chair called on Mr. Phil Collins, Planning Supervisor, to present the Staff Report.

Mr. Phil Collins said, the purpose of this request is to seek relief from the Common Open Space requirement for the Fieldstone subdivision. There are two requests, and we will cover those shortly.

Subject properties are surrounded by vacant properties with residential and agricultural uses. The subject properties are currently zoned LDR (Low-Density Residential) and are surrounded by CR, AO and LDR zoned properties.

With regards to the history of this request, the following points provide a timeline of the relative platting and permitting history of the request:

Original Preliminary Plat of the Fieldstone Subdivision approved on March 19, 1998, dedicating a 0.662-acre playground lot.

Final plat of Phase 2 of the Fieldstone Subdivision was recorded on June 23, 2000, showing 0.662-acre Common Area (previously shown as playground lot).

Preliminary plat of Phase 3 of the Fieldstone Subdivision was approved on May 12, 2006, dedicating 2.89 acres of common open space with 0.73 acres intended for installation of a walking trail and 0.84 acres intended for installation of a minipark with playground equipment.

Revision of final plat of Phase 2 of the Fieldstone Subdivision was recorded on November 13, 2006, shifting the property line between the well lot and the common area and removing the common area status of the common area lot, creating 5350 Fieldstone Drive.

Permit issued for a residence at 5350 Fieldstone Drive on November 27, 2006.

Final plats of Phase 3, Maps 3 and 4 of the Fieldstone Subdivision were recorded on October 18, 2007, and dedicated the open space areas for the walking trail and the minipark.

Upon inspection of the site on October 11, 2023, it was found that open space requirements for Phase 2 and Phase 3 of the Fieldstone Subdivision were not met. The requirements included the installation of a minipark and trail in Phase 3 and a tot lot in Phase 2.

A Notice of Violation letter was subsequently sent to the developers of record notifying them of the violations. In response to the NOV, the original developers stated that all interest in the development had been transferred to the new developer of Phase 3, Mike McGee. Shortly after receiving the NOV, the new developer contacted the Planning & Development Department asking how to rectify the non-compliance items identified in the NOV. Since that time, Mr. McGee has been working with staff and the Fieldstone HOA to determine options and a path forward for compliance.

I want to point out that the subject properties combined are approximately 3.552 acres in size and were designated as open space for the development. The Staff Report had a different number and was incorrect. The actual acreage is 3.552.

The open space associated with 5350 Fieldstone Drive is 0.662 acres. The open space associated with 3240 Fairmead Drive and 5244 Ivy Spring Lane is 0.84 acres. 3075 Cold Springs Road is actually 2.05 acres in size. The Staff Report said 1.881, so there was a slight change there.

In summary, the applicant is seeking relief from the common open space and recreational area requirements of the Subdivision Ordinance in effect at the time the preliminary plats were approved for the following:

5350 Fieldstone Drive located in Phase 2: This lot was approved as common open space with playground equipment or tot lot. A permit was issued for a residence in 2006, which has been constructed and currently occupies the open space lot.

3075 Cold Springs Road S, located in Phase 3: This lot was approved as common space with a neighborhood walking trail. The walking trail was never constructed and now the HOA wishes to dissolve the open space, divide it, and combine it with adjoining properties. The application states that access to the open space is not adequate and installing a walking trail would cause unsafe conditions.

3240 Fairmead Drive & 5244 Ivy Springs Lane located in Phase 3: This lot was approved as common open space for the development and designated as a minipark with playground equipment. The playground equipment was never installed, and the HOA now wishes to dissolve the open space, divide it, and combine it with adjoining properties. The application states that the minipark is not necessary. All home lots have adequate size to accommodate their own play areas. Additionally, there is no parking area or lights at or near the proposed site. There are also drainage issues with the lot where the play area was proposed.

In conclusion, should the Board of Adjustment grant 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 for the subdivision.
2. The applicant shall submit an overall preliminary plat and revised final plats for phases 2 and 3, showing revised open space calculations with notes referencing this variance case information and Granting Order.
3. Once the new final plats are recorded removing the open space and open space calculations updated, the applicant shall submit recombination plats showing the new lot alignments, which represent dissolving the open space lots in Phase 3 and combining them with adjoining properties as shown in Exhibit 4 of the application.

I know that is a lot of information. If you have any questions, I'll be glad to answer those now.

Mr. Michael Bywaletz said, can you walk through that on the map?

Mr. Phil Collins said, (showing on map) 5350 Fieldstone Drive is in this corner. 3075 Cold Springs Road is this area right here. The walking trail came around through here. 3240 Fairmead Drive and 5244 Ivy Spring Lane is this lot in the middle.

Mr. Jeff Corley said, at the time these were approved, the open space would have been calculated based on the area. Is that right?

Ms. Susie Morris, Planning & Development Director said, this was actually done under the old subdivision ordinance. The requirement was based on the number of lots. Depending on what the number of lots was, a certain amount of open space had to be provided. Based on that number, it had to be either active or passive. In this particular development, the one that looks like the hourglass, that was intended to be a tot lot or a playground. Then the developer proposed to have the walking trail, but they have sidewalk. We can move to the aerial if you need us to.

The lot to the north of the one that was developed as a house; that is actually the well lot. That trigger in the old ordinance is the same and is consistent, as it is now. It was supposed to be at 50 percent. So, once 50 percent of the permits were pulled, that

should've been installed. You all know that typically developers will install the recreational improvements first, such as the pool and clubhouse; all the things to try to entice people to move to that neighborhood. In this case, that is not what happened.

Mr. Jeff Corley said, the open space there was simply to comply with the Ordinance at the time?

Ms. Susie Morris said, that is correct. With the one that is the house, staff at the time was presented with an exemption. There was no replacement open space. They were just presented with an exemption. Back in the day, if were presented with an exemption, you had to sign that exemption. That is kind of how we got into this situation. Back then we had staff that were assigned to different areas. The staff member that processed this would not have been familiar with that particular subdivision.

Mr. Adam Dagenhart said, do you know if there were any conditions put on that open space or was that just something the developer offered?

Ms. Susie Morris said, that was proposed to be the play area. The reason you have two is that they were intended to be within walking distance of "x" amount of lots. Most of the developments back then had a single lot where the tot lots were to be developed instead of doing one amenity area with a playground and a pool.

Mr. Jeff Corley said, with the open space we're being asked to do away with, is there any other open space in this development or is this 100 percent?

Mr. Phil Collins said, that gets rid of all of it.

Ms. Susie Morris said, one thing to note is there is not an HOA that covers this entire development. I'm sure they will explain that to you. Due to the different builders and being done in phases, and because all the open space ended up being in one phase, there is only one HOA. It does not cover the entire neighborhood.

Mr. Michael Bywaletz said, there was a permit for a house that went in. Was that approved to be a house lot and not just open space?

Ms. Susie Morris said, when that exemption plat was recorded, it did not officially take away the open space. Back then, you didn't have to present any type of a plot plan. You just came in and pulled a permit. In this case, it would've been whatever was under that address. You didn't necessarily have to have a lot number. That is how they ended up being able to get a permit. Staff didn't necessarily check to see if there was open space because theoretically, the developer should've known where buildable lots were and where they were not.

Mr. Stephen Wise said, so the developer built that house and then sold it?

Ms. Susie Morris said, (showing on map) what is up there now is the exemption plat. There are certain state statutes that apply and when these plats were presented at the counter, staff was obligated to sign it as long as they met certain criteria.

Mr. Michael Bywaletz said, so I guess this house has been kind of grandfathered in?

Ms. Susie Morris said, yes, I think it's been around 20 years that house has been there.

Mr. Adam Dagenhart said, so we just need to clean that one up?

Ms. Susie Morris said, yes, unless you're going to tell them to take the house down, you really can't fix that. That would also be helpful to them moving forward if they decided to sell the house. Really, this discussion is primarily on those other two areas, and what happens with them and based on your decision, how they move forward as a Homeowner's Association.

Mr. Mohammed Idlibi said, if someone was going to develop this subdivision today, what would be the common space requirement?

Ms. Susie Morris said, we didn't really look at that. What I can tell you is there is a common open space requirement. Part of it is active and part of it is passive and the improvements are supposed to be installed before 50 percent of the permits are pulled for that neighborhood.

Mr. Mohammed Idlibi said, in other words, if someone were to develop something similar to this subdivision, there would still be a common space requirement?

Ms. Susie Morris said, correct. During the great recession we had projects that stalled, came back and then stalled. We had multiple builders in and out of these developments. We used to have a way to track the permits when we had an APF Ordinance. Once that APF Ordinance went away, that tracking mechanism stopped. We literally would lock it down and they would have to put the improvements in. Because of the multiple builders, that was not the case.

Mr. Mohammed Idlibi said, is there an intended use for this land once it gets divided up.

Mr. Phil Collins said, all they specified is that they're just going to divide it up to the adjacent property owners.

Ms. Susie Morris said, I believe they are going to do a presentation for you all.

Mr. Charles Paxton, the Chair, asked if there were any other questions. There being none, the Chair called on the applicant to speak.

Ms. Shannon Bonds said, I live at 3215 Fairmead Drive, Concord, NC 28025. I am with the Phase 3 HOA. I'm actually the person that did a majority of the paperwork, so I'm here to answer any questions. There are only 59 homes that are part of Phase 3. Phases 1 and 2 were done well before most of us ever moved in. When it was turned over, there was never any park, just the open space and the walking trail. The walking trail is behind my house as well. It covers several homes. We filed this for the fact we just want to leave this as open space. No one is going to build anything on it because you really can't. It's not a good piece of property; it's multiple levels. The drainage is bad; there are storm drains on the top and bottom. Today, it is heavily flooded. I have video if you need to see that. The homeowner in Phase 1 is actually here with us, as well. He's aware of what's going on and had no idea, either. The lots are not cleared for the walking trail or park. All 59 of the homes stated "no" to the walking trail and the park. Mike McGee is the builder for Phase 3. He is the 3rd or 4th builder.

Mr. Mike McGee said, my address is 4524 Carriker Road, Monroe, NC 28110. We were involved in Phase 3. We didn't have anything to do with Phase 1 and 2. We purchased that from Mr. McDonald. We developed this in 2007 or 2008 when the crash came, and it sat there for 10 years. We started building again around 2017, and we would be asked about the park. Most of the people there didn't have any children. There are very few children in that whole subdivision. They were basically saying we don't want that because we don't want the responsibility of keeping it up. We have sidewalks around the subdivision, along all the streets in Phase 3.

People were asking when they were buying the homes if we were going to put the walking trail in. We told them we won't put it in if you don't want it, unless it's something the County requires us to do. I wouldn't want people having access to the back of my house, either. Remember, this was designed around 25 years ago. I don't think anyone would design anything today that has a walking trail behind homes. Basically, they would just like to leave it as open space and not have to put the park or walking trail in. The walking trail was designed to have the entrance that came in right where there was a drainage feature. It just wasn't feasible to do that. The homeowners did not want it. It wasn't something that was monetary to me. I told the homeowners that if it wasn't required, I would give the money the Homeowner's Association so they can use it to keep the subdivision looking good.

Unless something has changed, there is still an HOA for Phase 1. There was an HOA that covered that entire subdivision, Phase 1, 2 and 3. When we got ready to turn the property over to the HOA, Phases 1 and 2 did not want to be a part of the Phase 3 HOA. We have curb gutters, lights and sidewalks in our part, and they didn't. So, they didn't want to have anything to do with that. We had meetings and they voted that Phase 3 would have their own HOA and Phase 1 would have theirs, but they weren't going to pay any attention to it, is basically what they were saying. That's where we are with that. There are some very nice homes out there; they're all brick. People really take care of that subdivision. Does anyone have any questions?

There being none, the Chair opened the public hearing with those generally speaking in favor.

Mr. Dwight Crawford said, my address is 3273 Fairmead Drive, Concord, NC 28025. Everything that Shannon Bonds said, I concur. The only thing I will say is, I don't think it is right to have 59 homes to pay for an area that's going to be occupied by everyone else in the entire subdivision. You can't stop them from using the playground or walking trail. Does anyone have any questions, comments or concerns?

There being none, the Chair called on Mr. Jeff Marus to speak.

Mr. Jeff Marus said, my address is 3232 Fairmead Drive, Concord NC 28025. I actually live next to the proposed park. I would like to say that Dwight, Mr. McGee and Shannon summed everything up perfectly. As of right now, that field back there is saturated. To have a park over there doesn't make sense. We don't want it, and I don't think anyone does.

The Chair asked if there was anyone speaking against the petition. There being none, the public hearing was closed.

Mr. Mohammed Idlibi said, I just wanted to reiterate my question. Is there any intended use other than leaving it as open space?

The Chair asked who that was addressed to.

Mr. Phil Collins, Planning Supervisor, said, I think the intention was to divide it up to the surrounding properties. They provided on their application how they plan to split it up and I can show you (showing on map). This section all the way down to Cold Springs Road goes with this property. These are all different properties, but one property owner. From this point down, it all goes with this property owner here.

Mr. Mohammed Idlibi said, will it remain open space?

Mr. Phil Collins said, no. It will become part of the other property. They will lose the open space, and it will be privately owned.

Ms. Shannon Bonds said, that section is walking trail; it's fully wooded.

Mr. Mike McGee said, the part coming off the road, there's a right-of-way for a driveway. The walking trail starts about where the curve is in the street. There is actually a deeded right-of-way there.

Ms. Shannon Bonds said, Mr. Ross was supposed to be here tonight but couldn't make it. He owns all those pieces of property around that and those are all rental properties. We wanted to take all of that space and just deed it to him.

Mr. Mike McGee said, on the lot where the park was supposed to be, there's an AT&T right-of-way that goes down through it. It's not conducive to doing anything other than being open space.

Mr. Adam Dagenhart said, it looks like that driveway has been on that property since at least the mid 1990's.

Mr. Michael Bywaletz said, you mentioned there was a deeded right-of-way to get to the trail.

Mr. Mike McGee said, there's a driveway that comes through there.

Mr. Michael Bywaletz said, from the right-of-way, not the subdivision?

Mr. Adam Dagenhart said, he owns multiple properties that have frontage on Cold Springs Road. That's a private property issue I would say.

The Chair asked if there were any additional comments.

Ms. Susie Morris said, for this particular piece of property, there is no frontage. It is currently landlocked. He's using that right-of-way to access it. If we were to pull up the GIS, you can see that the road clearly comes in from Cold Springs and those people are using it as a parking area.

Mr. Adam Dagenhart said, he has three or four parcels there. Two of his parcels have frontage and they're all contiguous to each other. Access could go through those properties.

Ms. Susie Morris said, but the right-of-way itself comes across this property.

The Chair asked if there were any other questions. There being none, the Chair proceeded to read the requirements for granting a variance.

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variances 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.

The Chair said, I will read request one for you. We have two votes to take.

Request #1

A lot that was originally shown as common open space on the preliminary and final plat for Phase 1 was removed from the required overall open space for the development. A residence was developed on the property. The HOA is seeking formal recognition of this lot as a buildable lot and for it to be removed from the open space for Phase 2.

Mr. Adam Dagenhart said, should we attack that one first before we start on the other one and get confused?

Mr. Charles Paxton, the Chair, said, okay. Does anyone have questions about request #1?

Mr. Adam Dagenhart said, we've already established that it was a lot of record by the exemption plat. I don't know if it was done properly or not, but the house has been there for 20 plus years. That would be a significant hardship for anyone. I don't see how we cannot approve this one. I don't think it was the intent of the current property owner, and the builder is not here to speak.

Mr. Michael Bywaletz said, in reference to #4, the variance is consistent with the spirit. It's in line with the subdivision. How this happened is neither here nor there. This would be a significant hardship for this to be anything other than a house on a lot.

The Chair asked if there were any other comments. There being none, the Chair asked if there was a motion.

Mr. Adam Dagenhart **MOTIONED, SECOND** by Mohammed Idlibi to **APPROVE** the request to remove the house from the open space requirement. The vote was unanimous to **APPROVE**.

The Chair proceeded to read request #2.

Request # 2

Part #1: Two open space lots were shown on the approved preliminary plat for phase 3 and recorded on the final plats. The lots were to be developed as a play area and a walking trail. The HOA is seeking relief from installing the equipment and the trail.

Part #2: The Homeowner's Association is requesting that the common open space shown on the plat be dissolved so that it can be deeded to adjacent property owners.

Mr. Jeff Corley said, regarding part #1 of the request, I think the installation of the trail and the amenities within the open space, I think I can understand that. Regarding part #2 of the request, I have a hard time understanding how I can justify dissolving property that was required to be there. Even under the ordinance today, the open space has always been required. That would be a tough one for me; to understand how I could support that.

Mr. Adam Dagenhart said, I agree with Jeff. I can understand the hardship to take on the upkeep when no one wanted it or budgeted it. However, the open space is there for a reason. There is no zoning that allows 100% to be developed. You're always going to have open space. I can approve #1, but I can't sign off on #2.

The Chair asked if there were any other comments.

Mr. Michael Bywaletz said, I agree. I can understand the hardship of putting that in, especially in the wooded area. I don't know about dissolving the open space and deeding it to the adjacent property owners.

Mr. Charles Paxton, Chair, said I have a question. If we deny that, what becomes of the property? Is it still open space? Can anyone answer that question?

Multiple members of the audience said, it currently belongs to the HOA. The HOA would still own it.

Mr. Adam Dagenhart said, the problem is that you can't have open space that's deeded to individuals. It has to be in the name of a developer or association. I know the intent is not to do anything with it, but to keep it as open space, it has to stay in one entity.

Mr. Brent Rockett said, does it have to be developed as originally intended if it's left as open space? Can the original plan be dissolved and just be left as undeveloped, wooded property?

Mr. Adam Dagenhart said, we can approve part #1 and deny part #2. Then, we can put a stipulation with part #1. The stipulation being that it remains passive. Active open space would be what has a tot lot or walking trail. I think we could put that trade off on there.

Mr. Charles Paxton, Chair, asked if there were any other comments.

Mr. Michael Bywaletz said, I have a question. Instead of putting the burden on the homeowners to maintain, now the burden is on the HOA to maintain it? I don't know what it takes to maintain it.

Mr. Brent Rockett said, according to the aerial, two-thirds of it are wooded.

Mr. Stephen Wise asked, is there much maintenance done to it now?

Ms. Shannon Bonds said, it's mowed regularly by a landscaper. It stays flooded. There's a storm drain at the top so most of it goes downhill. The main reason we wanted to give it to the homeowners is also that it is wooded. The trees would all be a part of what the HOA is responsible for. So now, we take on the burden of trees. That was one of the reasons for us to try to not own the property. Leaving it as an open space, exactly as it was intended, is also fine.

Mr. Jeff Corley said, outside of what has been proposed, is there any private ownership easement capabilities to protect that property while also giving that property to the underlying property owner?

Ms. Susie Morris said, I figured that's where this was headed and that is what I was just asking our attorney. Is there a way for this to potentially be deeded to these homeowners, so that would it remove the HOA. Then, it would be on the property owners to maintain it. I don't know if that triangle piece is going to put a liability on someone because you now have activity related to another property happening on that property. I think that was potentially one of the reasons they were trying to have that back part go away.

Mr. Jeff Corley said, my thought was to go ahead and give that property away to whoever they planned on giving it to. Then protect that geographical area with some sort of conservation overlay easement that would allow the ownership to change but protect it. I think that's the difference between HOA open space and calling it open space once it's privately owned. We will have lost all control of that area. Just looking for another way to try to accomplish both tasks at the same time.

Mr. Adam Dagenhart said, I think what Jeff is saying is that it also protects the County. If you give it to the adjacent property owners, they could all just decide to sell it. I'm not saying anyone is going to do that, but we don't know what's going to happen 20 years from now.

Mr. Douglas Hall, General Counsel, said, what I think you all are considering is allowing the HOA to deed out the various lots. You can condition your variance when they do that deed so that it is restricted to never be built upon. You can impose conditions on your variance. You can put the condition on it at the time the HOA deeds out all these various lots.

Mr. Michael Bywaletz said, how does that work with the triangle piece if they're using that as a driveway and they want to come in and pour a driveway?

Mr. Douglas Hall said, I don't know if that means "built upon." The fact of the matter is there's already a driveway there and there's an easement there. They have a right to do certain things. Typically, you can't alter the servient land. They could gravel or pour a concrete driveway, but they couldn't put a gate up.

Mr. Adam Dagenhart said, what you're saying makes sense for the open space in the rear. However, if the triangle piece is deeded to the property owners, I don't want to create a situation where years down the road, someone comes in and tries to build a shed and Building Standards tell them the property line is five feet off.

Mr. Douglas Hall said, I don't know exactly what the HOA has in mind. They're going to have to get a surveyor out there to divide this up.

Mr. Adam Dagenhart said, if you're lot got bigger, your setbacks would effectively be off the property line, right? How do you keep someone from building in this area we're trying to conserve? We've learned on this board that not every landowner does their research.

Ms. Susie Morris said, it would have to be noted on the plat. We have gone round and round over the years with these neighbors because everybody already thinks that's their property. They don't understand why it's not their backyard. They turn their plot plans in to us with that additional space. We had to say, you can't do that because there's a trail there. That line may or may not be correct because we're looking at GIS. That's why as staff we proposed they would have to get that surveyor. If the board would like to see what that looks like, I think that is an option. Maybe the HOA and Mr. McGee can find an attorney to work with them on suitable language for our attorney to review, on what the board would like to see, and that it is actually being implemented.

The Chair asked if there were any other questions.

Mr. Mike McGee said, the lot lines on the walking trail are not included.

Mr. Brent Rockett said, it appears to be that the triangle has a rat tail that runs all around the edge of that property. It's not just the triangle; it continues on around all of those properties. If you're transferring ownership to this other property owner on the Cold Springs side, what does the property owner of the large parcel there think about that? Is that not all one lot?

Mr. Michael Bywaletz said, they're only giving away the triangle portion that's adjacent to that lot.

Ms. Susie Morris said, (showing on map) there's this piece and then there's the piece where the trail was supposed to be. That corner was intended to be the access off of the sidewalks. Unfortunately, we cannot get to pictometry to give you a better look at what's happening on those parcels. The best we can do is the aerial you have in your packet.

Mr. Adam Dagenhart said, you can go to the website. That's what I did.

Ms. Susie Morris said, this is the same thing that's in your packet. The pictometry has more detail, but we can't get to that through the portal.

Mr. Charles Paxton, Chair, said, are there any homeowner's that have this additional land here tonight?

A few members of the audience responded that they were present, but did not wish to speak.

Mr. Adam Dagenhart said, I know the homeowners that are adjacent are in favor of this, but what does the rest of the neighborhood think of them getting property for nothing?

Ms. Shannon Bonds said, there's a berm in the back of most of our yards. I have the larger lot; this is my lot. Behind that is a steep hill, no one can build back there. We've all lived there long enough that we all have storage buildings, and no one is going to be re-building.

Mr. Adam Dagenhart said, I was referring to the lot behind Mr. Marus. We don't want to be in a situation where we allow this and the whole neighborhood is not on board. I assume everyone has paid HOA dues. I don't know if we need to create something without knowing 100% that everyone is okay with it being done.

Mr. Michael Bywaletz said, I think they all said no to the park.

Mr. Adam Dagenhart said, there was actually one that said yes.

Mr. Mohammed Idlibi said, what exactly is the hardship here? Is it financial?

Ms. Shannon Bonds said, yes and no. 59 homes don't want to be responsible for what 107 should've been responsible for. Due to the fact we are completely separated 100%, we are taking on the burden of the whole thing. The other neighbors are not. They don't have sidewalks or curb and gutter. We're maintaining our entrance and they're not. We are maintaining all of that. The walking trail doesn't exist, no one can even see it. It just looks like trees behind our house.

In the center piece, there's zero chance anyone could build anything. It couldn't be sold to be a put a home on. It's too tiny and narrow and stays flooded.

Mr. Mohammed Idlibi said, just to clarify, it's a financial burden?

Ms. Shannon Bonds said, we don't want to have to pay for a park.

Mr. Stephen Wise said, I know you don't want to pay for a park, but are the neighbors that are going to get this willing to maintain it? You said someone was mowing it, right?

Mr. Jeff Marus said, if we split that land up and all four homeowners are deeded that property, we'll be willing to say we're not going to build anything on it. There's not enough there to build anything. Mike has already alluded to the fact that it's an AT&T right-of-way. All the water rushes down, it stays spongy all the time. If we were deeded

that, we don't have any plans to build on it. We want to leave it as a green space, but we would be responsible for it.

Ms. Ingrid Nurse said, is that a proposal; that all four take on that responsibility?

Ms. Shannon Bonds said, we didn't go that far because we didn't know that was something that was necessary. We absolutely can. We expected the other homeowners to be here. On one side, there's four homes and all have expressed interest in owning whatever needed to be. There are always options, so everybody's open to everything. His side of it is 90% trees. There is some grass there, but it doesn't take our landscaper very long to mow.

Mr. Mike McGee said, the HOA has certain restrictions that every lot has to be maintained. If that becomes a part of their lot, the HOA would be policing whether or not those lots are taken care of.

Mr. Mohammed Idlibi said, Mr. McGee, I have a question for you. Did you say in lieu of building this playground you would fund the HOA?

Mr. McGee said, yes.

Mr. Charles Paxton, Chair, said, for how long?

Mr. Mike McGee said, I've already given them a sum of money equal to what I thought the cost would be to build that.

Mr. Mike McGee said, I gave them part of it. I told them I'm holding the rest until we see how this is going to go.

Mr. Mohammed Idlibi said, can you tell us what that amount is?

Mr. Mike McGee said, \$25,000.

Mr. Brent Rockett said, just to clarify one thing that was mentioned earlier, the point was made that everyone in the neighborhood voted the same way and the point was made that one did not. For clarity, it was lot #52, Chris Joyce at 5335 Fox Meadow that voted opposite of everyone else. It looks like that might be Phase 2?

Ms. Shannon Bonds said, we have actually spoken with everyone, and no one wants a park. There are about 22 homes that also don't have children. Putting in a park is going to be extensive, putting in the grading work and all the drainage. It should've been done prior to homes being put there. The lot is not prepared currently and that would change a tremendous amount of stuff for each homeowner around it. I wish the homeowner at

the bottom of the hill had been here tonight. The grading alone would not be conducive to what's already there.

Mr. Adam Dagenhart said, I don't think we're at a point where we're saying, do we need to build a park. I think we're at a point of what to do with the open space. I think we're at the point that we're not going to require a tot lot or walking trail. We just need to figure out how we're going to handle part #2 of the request.

Mr. Mohammed Idlibi said, Chairman Paxton, can you re-read the rules for meeting the burden of a variance. I think that would be helpful for myself at least to understand that.

Mr. Charles Paxton, Chair, read Section 12-20 Application of the Variance Power:

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 variances 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.

Mr. Mohammed Idlibi said, this is a quasi-judicial board. The question has to be, do we feel like this variance request meets the standard?

Mr. Charles Paxton, Chair, said, with regards to #2?

Mr. Adam Dagenhart said, I would argue that approving that variance doesn't fall in line with the ordinance. If we're saying no open space is required, that is a violation of the ordinance.

Mr. Charles Paxton, Chair, said, my question would be, what would happen if we denied part #2 and it goes back to the homeowner's association, and they use the money Mr. McGee gave them to keep it up. What's the problem there?

Ms. Shannon Bonds said, we're fine with leaving it exactly as it is. Due to the fact that the other half is not in the Homeowner's Association, they would really like to get rid of it. We can't get rid of it if we own property, and we have to pay to maintain it. We're not technically asking for hardship. We just want a resolution so that there's a resolution today and 25 years from today. We just needed the option if the HOA chose to dissolve at some point, then there would be no property owned.

Mr. Charles Paxton, Chair, said, can you just dissolve an HOA?

Mr. Brent Rockett said, yes, but all property owned by the HOA would have to be decided.

Mr. Mohammed Idlibi said, the only comment I'd like to throw in is, if someone were to develop a subdivision similar to this subdivision today, whether it's within the county or any of the five municipalities we have, they would be required to have an open space requirement.

Mr. Charles Paxton said, I suggest we vote on request #2, part #1 and then we'll see where we lie on part #2. Does anyone have a motion to approve or deny?

Mr. Charles Paxton, Chair, said I will make the motion that we approve part #1 of the request.

Mr. Adam Dagenhart said, can I add something to that? Can we change the open space from active to passive? That would alleviate their requirement. Passive open space doesn't require any tot lots, walking trails or anything. It's just land.

Ms. Susie Morris said, Mr. Dagenhart, if you all could handle it in a way that it is clear that on part #1; they do or do not have to install the equipment and walking trail. On part #2, that would be where that new designation would come in.

Mr. Adam Dagenhart said, I would like to remove my comments then.

Mr. Charles Paxton **MOTIONED, SECOND** by Mr. Adam Dagenhart to **APPROVE** the request from the HOA seeking relief from installing the equipment and walking trail. The vote was unanimous to **APPROVE**.

Mr. Charles Paxton, Chair, said, now we move on the part#2 of request #2.

Mr. Jeff Corley said, Susie, if we deny this part and they want to pursue an alternate plan, does denying start some clock for them?

Ms. Susie Morris said, typically that is not the case for a variance, but there would have to be some substantial changes for you to reconsider it. You can't continually bring the same thing back to the board.

Mr. Charles Paxton said, I'm going to make a motion to deny part #2 of request #2. Would now be the time to add the part about passive open space?

Ms. Susie Morris said, that really wasn't part of the request. The request was to not install the equipment and then to dissolve it. I'm going to let legal advise you.

Mr. Jeff Corley said, does that mean they would either have to make a statement that they would have to agree to a condition, or they would have to come back before us with that request?

Mr. Douglas Hall said, I'm not sure I understand the question. If we're calling this active open space, but you've just relieved them of their obligation to do anything that would make it passive open space. You just said they don't have to install a trail or playground, which is what the condition was when the plat was approved.

Mr. Adam Dagenhart said, if we deny #2, would it be considered passive automatically?

Mr. Douglas Hall, said, in essence, yes. You've just relieved them of the duty to install the active features.

Mr. Jeff Corley said, or do we deny it with the condition that it will remain passive open space?

Mr. Douglas Hall said, you granted a variance request to relieve them of the obligation to install the active features.

Ms. Susie Morris, said, that part is finished. The conversation now is whether or not they can dissolve it. You do have another proposed consideration and that was the conditions of approval, which we will have to go back and reconsider as to how we address whatever the board's decision is. Some of those may or may not apply or they may need to be amended or changed.

Mr. Charles Paxton said, what is the simplest way to do this?

Mr. Douglas Hall said, I think you already made a motion to deny this. If you do that, I think you're done for the evening because it just sits there, and it's still owned by the HOA. As a practical matter, nothing changes, it's just all legal. You've told them it's fine

to leave it the way it is. It's still going to be owned the way it is. You've relieved them of the legal duty that's been violated for twenty something years; to install these active features.

Mr. Charles Paxton **MOTIONED, SECOND** by Mr. Adam Dagenhart to **DENY** the request that the plat be dissolved so that it can be deeded to adjacent property owners. The vote was unanimous to **DENY**.

Ms. Susie Morris said, the applicant has a question. They would like to know in light of that denial, do they still have the ability to deal with the access? They still own it and it is being used by somebody else.

Ms. Shannon Bonds said, there's people driving and parking on it every day.

Mr. Adam Dagenhart said, I think this is more of a private property issue. They're not really honoring the easement.

Ms. Shannon Bonds said, we're carrying insurance on that.

Mr. Jeff Corley said, they're misusing the property. There's got to be a legal way to address that. I don't think we can address that. I think their question is that is it a misuse of the property using it for something other than a driveway?

Ms. Shannon Bonds said, the whole reason we asked to dissolve anything on the walking trail side was mainly because of him.

Mr. Brent Rockett said, if you believe the property is being misused, that would have to be a separate, legal action that you guys would take. Whether it's active or passive doesn't have any implications on their misusing an easement.

Mr. Adam Dagenhart said, in our packets, there's a vote for conditions of approval. Do we need to vote on that? Do we need to have a granting order for what we approved?

Ms. Susie Morris said, that's what I was saying about needing to amend these. Really, it would just be #1 because the other two would go away. The conditions of approval are applied overall. You had the Granting Order, the revised plats and then you had new final plats. Because it was not dissolved, these don't apply anymore. It's just the recordation of a Granting Order, which is a standard condition. We need to go ahead and make that motion because that was not considered as part of your other motions.

Mr. Charles Paxton, Chair, said are the applicants free to go?

The applicants were free to leave and were dismissed.

LEGAL UPDATE

Mr. Douglas Hall, General Counsel, said, I don't have much of a legal update. I've been taking notes and drawing arrows every which way. I'll be working on the Granting Order for what we just did.

Mr. Jeff Corley, said, Susie, are we waiting on a motion for a granting order?

Mr. Brent Rockett **MOTIONED, SECOND** by Mr. Michael Bywaletz to **APPROVE** the recordation of a Granting Order, stating restrictions and applicable conditions of approval, being recorded for the subdivision. The vote was unanimous to **APPROVE**.

Mr. Adam Dagenhart said, if I can make a recommendation going forward, let's not call things 2-1, let's call them 2-A; let's make it a little easier.

LEGAL UPDATE

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DIRECTOR'S REPORT

Ms. Susie Morris, Planning & Development Director, said, I wanted to give the update that the appointments will be going to the board on Monday. They did change the process and what we are proposing is that our two alternates move up. Then we will come back, and our nominations committee will look at applications and try to fill the alternates positions.

On another note, we have a member who is leaving us. He did not want to be recognized at the Board of Commissioner's meeting so we would like to recognize him here. Mr. Corley, if you will please come to the podium. Mr. Corley has been on the board since 2016, so he has had some tenure with us. He has been in various leadership positions. He has been our Chair, he has been our Vice-Chair, he has been our 2nd Vice-Chair. He has also participated on the Text Amendment Committee and other committees along the way that we needed representation on. A couple years ago, he told me that he needed to look at maybe stepping back and I asked him could he please give me some time. At that point, we were not getting applications in to try to fill his seat. Due to work and family obligations, he has decided he needs to step down. We really appreciate everything he has done.

Mr. Jeff Corley said, thank you, each and every one of you. There's a lot of stuff that goes on in this county that is amazing work by people like you and staff that constantly

goes unnoticed. I want to tell each of you, thank you for the role you fill. We have a tremendous legal record going, which is a good thing. We've been tested a few times here. It wasn't always like this. It was hard way back in the day, to get anybody to say anything. We've come a long way as a group and it's because of each one of you. I appreciate it and you know where I'm at. Most of you will still see me around. I can't believe it's been almost 10 years. Again, I appreciate the opportunity to serve the county and happy to have had this role.

Mr. Charles Paxton **MOTIONED, SECOND** by Mr. Adam Dagenhart to **ADJOURN** the meeting at 8:14 p.m. The vote was unanimous to **ADJOURN**.

APPROVED BY: Charles Paxton, Chair

Charles Paxton

SUBMITTED BY: Lisa Johnson, Clerk to the Planning & Zoning Commission

Lisa Johnson

ATTEST BY: Susie Morris, Planning & Development Director

Susie Morris