

## Cabarrus County Government

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Cabarrus County Planning and Zoning Commission Meeting  
February 19, 2009  
7:00 P.M.  
Board of Commissioners Chamber  
Cabarrus County Governmental Center

### Agenda

1. Roll Call
2. Approval of Minutes
3. New Business – Board of Adjustment Function:

- ③ A. Appeal - Case# APPL2009-0002  
Appellant: Ben Small

Request: The applicant is appealing an interpretation regarding the Cabarrus County Zoning Ordinance

4. New Business – Planning Board Function:

- ① A. Request for Extension of Roycroft Preliminary Plat Approval –  
Petition #C2009- 02 (SE) – TDW Holdings, LLC  
(Accela# PLEX2009-0003)

Request: The applicant is requesting an extension for the Roycroft Preliminary Subdivision Plat.

- ② B. Proposed Text Amendment - C2009-01-ZT – Chapter 9 Landscape and Buffering Requirements

5. Directors Report
6. Adjournment

# Memo

**To:** Cabarrus County Planning and Zoning Commission  
**From:** Kassie G. Watts, AICP, Senior Planner  
**Date:** February 12, 2009  
**Case#:** C2009-02(SE)  
**Accela#:** PLEX2009-00003  
**Re:** Request for Extension of Roycroft Preliminary Plat Approval

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

Pursuant to the Cabarrus County Subdivision Ordinance Chapter 3, Section 5A, a preliminary plat approval is valid for a period of 24 months from its approval date.

This project is subject to a consent agreement that also expires two years from the preliminary plat approval date. The plat was originally approved by the Cabarrus County Planning and Zoning Commission on March 15, 2007.

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

**City of Concord Engineering Department – Adam Dagenhart:** Engineering's comments are same as before, the developer's agreement needs to be taken care of. It is in the developer's hands. Other than that, we have no comments on the actual plat or the extension.

**Cabarrus Health Alliance – David Troutman:** No comments. The subdivision is being developed with municipal water and sewer.

**City of Concord Development Services – Boyd Stanley:** No comments.

**Alley, Williams, Carmen & King – Jeff Moody:** Since this is a time extension for an approved preliminary plat I have no comments.

**Cabarrus County Sheriff's Department – Ray Gilleland:** No comments.

**Cabarrus County Emergency Services – Bobby Smith:** No comments.

**WSACC – Tom Bach:** See attached memo.

**Cabarrus County Soil and Water Conservation – Thomas Smith:** Neither the owner nor the developer has contacted this office in reference to the project noted above. If the size of the project is greater than one acre, an erosion and sedimentation control plan must be submitted to this office for review and approval prior to the commencement of any land disturbing activities.

The subject property was included in the Central Area Plan mass rezoning adopted on January 20, 2009. At that time the property was rezoned from LDR – Low Density Residential to CR – Countryside Residential. Since the project had an approved preliminary plat based on LDR densities, the project may continue as currently designed and approved. The project is located within the Utility Service Boundary area established by the Interlocal Agreement.

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

1. The developer be granted a one year extension for the development of this project. The new expiration date would be March 15, 2010.
2. The extension is conditioned upon the Cabarrus County Board of Commissioners reaffirming or renegotiating the terms of the original Consent Agreement for the Roycroft subdivision project.

#### Original Conditions of Preliminary Plat Approval

1. The developer shall install left turn lanes at both proposed entrances, leaving a two-way turn lane (three lane section) between the entrances. In addition to the left turn lanes, right turn lanes at both entrances must be constructed. (NCDOT/APFO)
2. The developer agrees to pay Capital Recovery Fees that are collected on behalf of WSACC. (WSACC/APFO)
3. Prior to any permit for construction being issued, the developer agrees to enter into a developer agreement with the City of Concord and obtain utility construction plan approval. (CONCORD/APFO)
4. The developer agrees to fund and install all necessary water and sewer lines to serve the property. (CONCORD/APFO)
5. Developer agrees to meet anti-monotony and architectural standards and shall submit sample elevations and drawings of proposed homes prior to commencement of the final platting process. In addition, applicant will work with Planning Services to provide an architectural inventory for permitting purposes. (PLANNING)
6. The developer agrees to build Covered Bridge Way as a split travelway at the crossing of the intermittent stream. (APFO/FIRE)
7. The project shall comply with all Phase 2 Stormwater regulations. (CONCORD/APFO)
8. The developer shall design and build all streets according to City of Concord design specifications as defined in the City of Concord UDO. (CONCORD/APFO)
9. Neither the owner nor the developer has contacted this office in reference to the project noted above. If the size of the project is greater than one acre, an erosion and sedimentation control plan must be submitted to this office for review and approval prior to the commencement of any land disturbing activities. (SOIL & EROSION CONTROL)

# PROVIDENT DEVELOPMENT GROUP, INC.

TO: Cabarrus County Planning and Zoning Board  
FROM: TDW Holdings, LLC  
RE: Extension Request for Roycroft Subdivision  
DATE: February 5, 2009

RECEIVED  
2/11/09

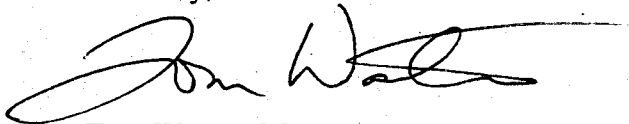
This letter is to request an extension for our approved subdivision, Roycroft, which is located on Flowes Store Road in Cabarrus County. The subdivision is approximately 262.42 acres, (PIN #'s 5537-43-9533 and 5537-42-3527). There are 361 single family lots in the approved subdivision, for a density of 1.38 units per acre.

We have invested significantly in initial site development plans. The sewer pump station to serve this community is being completed now under the direction of the City of Concord in conjunction with other developments in the area and this development. All wetlands mitigation work is complete as part of the development plans.

We are requesting the extension due to the current downturn in the real estate market, and the significant investment that has been made in obtaining the approved subdivision plat. While we remain very positive about this development, we are concerned that bringing any new lots to market at this time would not be good for the community.

We are requesting that a one year extension be granted. Thank you for your consideration.

Sincerely,



Tom Waters, Manager  
TDW Holdings, LLC  
Land Owner

## Kassie Goodson Watts

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**From:** Thomas Bach [TBach@WSACC.org]  
**Sent:** Wednesday, February 11, 2009 3:20 PM  
**To:** Kassie Goodson Watts  
**Cc:** Chad VonCannon; Coleman Keeter; Jan Sellers; Mark Lomax; Van Rowell; moores@ci.concord.nc.us  
**Subject:** [html] Preliminary Plat Review For Roycroft Subdivision Along Flowes Store Road - Provident Development Group, Inc.

Hi Kassie,

This is in response to your request for comments outlined in a memorandum dated February 6, 2009, regarding the preliminary plat review for the proposed Roycroft Subdivision development, which is located along Flowes Store Road just south of the intersection with Zion Church Road.

For most of this proposed residential development, the existing topography on the site drains north towards Rocky River, where there is an existing 30" gravity sewer interceptor line that is owned and operated by WSACC. Even though this proposed subdivision is located within the Midland Utility Service Area, the proposed gravity sewer infrastructure serving this residential development will be owned and operated by the City of Concord, and will flow downstream into the existing 30" gravity sewer interceptor line referenced above which has adequate capacity.

For water service availability to this subdivision development, the developer will have to contact the City of Concord's Development Services Department to determine where existing water lines are located along Flowes Store Road. The developer will also be required to complete an application in accordance with the City of Concord's Code of Ordinance (Chapter 62) in order to obtain water service to the site. Information provided for the proposed development does not give projected water demand, even though the plat map shows 361 proposed lots (262.42 total acres) included in this residential development. This information will be helpful in determining the adequacy of the existing water line infrastructure.


The followings comments are provided for your information and consideration:

- As stated previously, the proposed development is located within the existing Midland Utility Service Area; however, the City of Concord will own and operate the water and sewer infrastructure serving this development. Consideration should be given to insuring that the proposed water/sewer lines will be designed to City of Concord requirements.
- If the developer proposes to install sewer infrastructure for this site in coordination with the City of Concord, actual wastewater "flow acceptance" will not be considered by WSACC until approval of final site/civil construction plans by the applicable Jurisdiction (City of Concord). Flow acceptance must be requested by the Jurisdiction providing the retail sewer service. In addition, flow acceptance is granted in the order that they are received, provided that sufficient wastewater treatment and transportation capacity is available or is reasonably expected to be available.
- Please note that the WSACC Capital Recovery Fee (CRF) is required for each service to the development if sewer service is requested. The fee is collected at the time the building permit is issued, and is separate and not a part of any connection or tap fees required by the Jurisdictional retail sewer provider.

Please let me know if you have any questions regarding this information.

Thanks!

Tom

 Thomas A. Bach, P.E.  
Utility Systems Engineer  
Water & Sewer Authority of Cabarrus County

P.O. Box 428

Concord, NC 28026

Telephone: (704) 786-1783, Ext. 228

Fax: (704) 795-1564

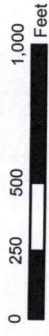
E-Mail: [tbach@wsacc.org](mailto:tbach@wsacc.org)

*"Pursuant to the Freedom of Information-Privacy Acts (FOIPA) and North Carolina General Statutes Chapter 132, Public Records, this electronic mail message and any attachments hereto, as well as any electronic mail message(s) sent in response to it may be considered public record and as such subject to request and review by anyone at any time."*

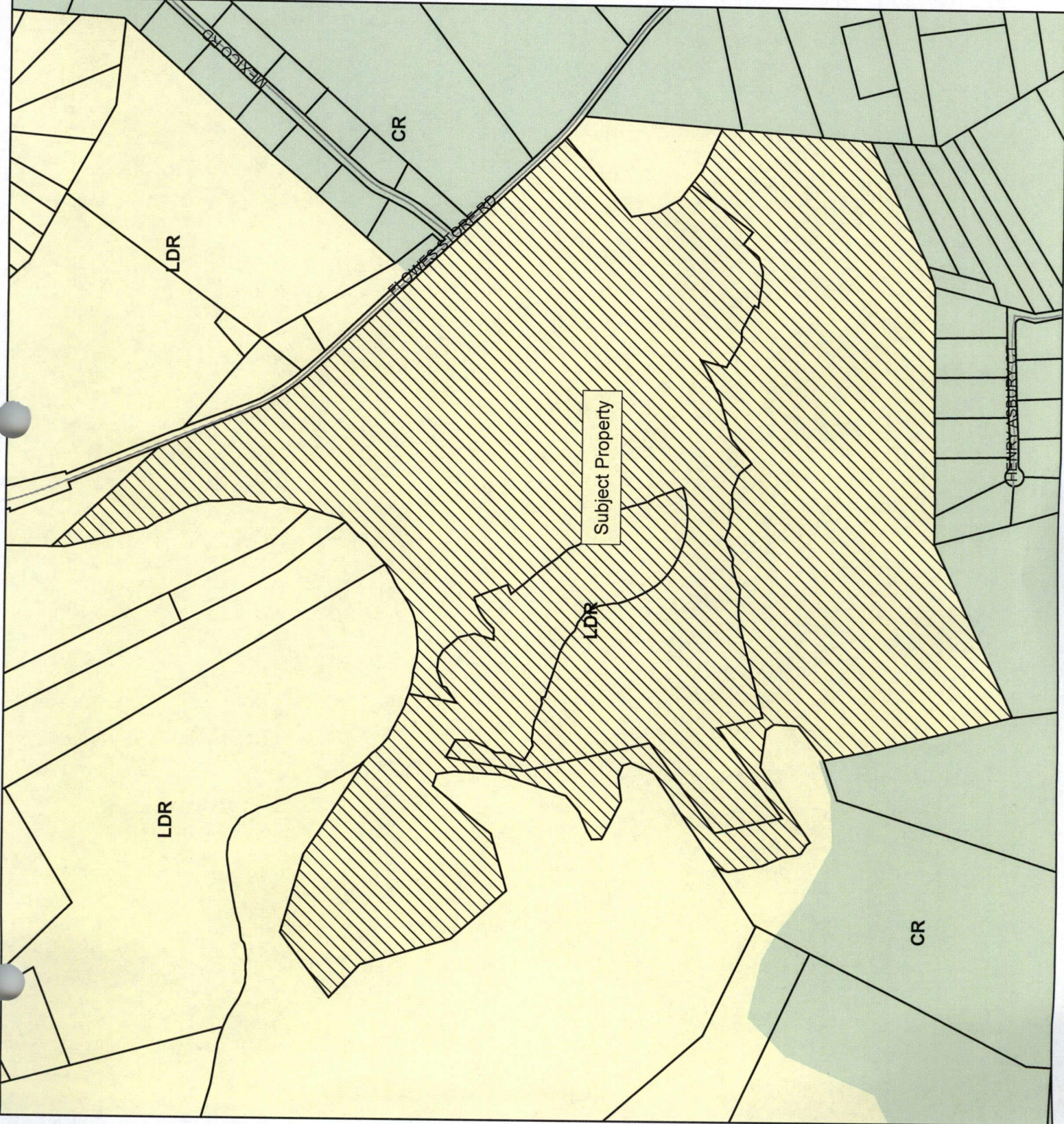


Applicant: TDW Holdings, LLC  
Case #: C2009-02 (SE)  
Accella #: PLEX2009-00003  
Parcel ID#: 5537-43-9533  
&  
5537-42-3527

**Legend**  
▨ Subject Properties  
— Streets



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## PART IV. LANDSCAPE PLANS.

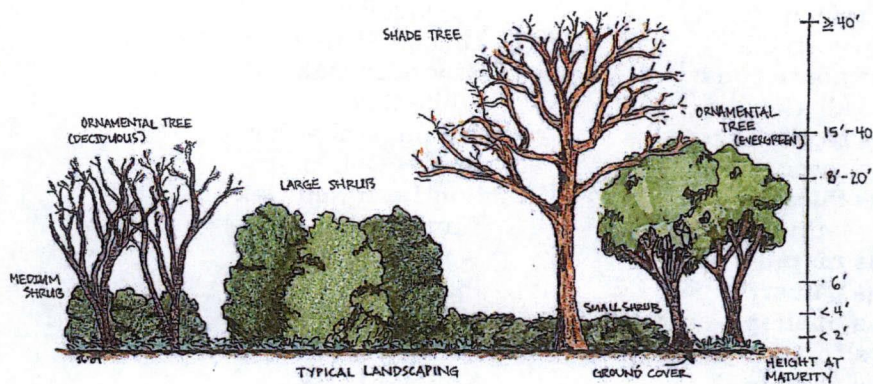
### Section 9-12. Submission of landscape plans.

Landscape plans must be submitted along with development site plans and may be superimposed upon the development plan as space permits. Landscape plans are considered to be an integral part of any submitted development plan and will be subject to the same approval process. The plan shall include:

- 1) Project information including the total square footage of the property, the square footage of the building areas, parking and other vehicular use areas.
- 2) Each project's calculations, i.e., dimensional attributes and resulting amount of planted areas.
- 3) Location, size and type of planting material, both existing and proposed.

### Section 9-13. Unavoidable delays in the installation of landscaping.

Installation of landscaping must be completed in accordance with an approved landscape plan. Unusual environmental conditions such as drought or ice may occur or the appropriate planting season may not parallel that of the development's. In such cases, a temporary Certificate of Occupancy for a specified period may be issued based on a performance guarantee. Performance guarantees shall be accompanied by a description of the factor(s) hindering installation of landscaping and a written estimate of materials and installation from a licensed landscaping contractor. Such guarantee may be in the form of a letter of credit, a bond, a certified check or cash and shall be in the amount of 125 percent of the total price reflected in the estimate. The amount shall be reviewed and approved by the Zoning Administrator. The performance guarantee will be released after landscaping is installed in accordance with the landscaping plan.





♦Chapter Nine Landscaping and Buffering

Spirea cantoniensis

Taxus cuspidate

**Ternstroemia gymnathera**

**Viburnum lantana**

**Viburnum opulus**

**Viburnum plicatum var. tomentosum** Doublefile Viburnum

Viburnum rhytidophyllum

Viburnum tinus

Reves spirea

Japanese Yew

**Cleyera**

**Wayfaringtree Viburnum**

**European Cranberrybush Viburnum**

Leatherleaf Viburnum

Laurestinus Viburnum

**Medium Shrubs:**

Botanical Name

Common Name

**Abelia x grandiflora**

**Glossy Abelia**

**Aucuba japonica**

**Japanese aucuba**

**Berberis julianae**

**Wintergreen Barberry**

**Buxus microphylla japonica**

**Japanese Boxwood**

**Cytissus scoparius**

**Scotch Broom**

**Forsythia intermedia**

**Forsythia**

Hydrangea macrophylla

Bigleaf Hydrangea

Hydrangea quercifolia

Oakleaf Hydrangea

Ilex cornuta burfordi nana

Dwarf Burford Holly

Ilex glabra

Inkberry Holly

Kalmia latifolia

Mountain Laurel

**Lespedeza thunbergii**

**Thunberg Lespedeza**

**Mahonia bealei**

**Leatherleaf Mahonia**

**Nandina domestica**

**Nandina**

**Rhododendron Ericaceae**

**Southern Indian Azalea**

**Spirea prunifolia plena**

**Bridalwreath Spirea**

**Spirea vanhouttei**

**Vanhoutte Spirea**

**Yucca filamentosa**

**Adam's Needle Yucca**

**Small Shrubs:**

Botanical Name

Common Name

**Aucubajaponica**

**Dwarf Aucuba Rhododendron**

**Azaleas**

**Berberis thunbergii**

**Japanese Barberry**

**Deutzia gracilis**

**Slender Deutzia**

**Gardenia radicans**

**Creeping Gardenia**

**Hydrangea arborescens**

**Annabelle Smooth Hydrangea**

**Ilex cornuta 'carissa'**

**Carissa Holly**

**Ilex cornuta 'rotunda'**

**Chinese Holly**

**Ilex crenata 'compacta'**

**Compact Holly**

**Ilex crenata 'green lustre'**

**Green Luster Holly**

**Ilex crenata 'helleri'**

**Heller Japanese Holly**

**Ilex crenata 'hetzi'**

**Hetzi Japanese Holly**

**Ilex vomitoria 'nana'**

**Dwarf Yaupon Holly**

**Itea virginica**

**Virginia Sweetspire**

**Jasminum floridum**

**Showy Jasmine**

**Jasminum nudiflorum**

**Winter Jasmine**

**Juniperus davurica 'expansa'**

**Parsons Juniper**

**Juniperus horizontalis 'plumosa'**

**Andorra Juniper**

**Kerria japonica**

**Japanese Kerria**

**Lonicera pileata**

**Privet Honeysuckle**

**Nandina domestica 'harbor dwarf'**

**Gulf Stream Nandina**

**Pittosporum tobira 'nana'**

**Dwarf Pittosporum**

**Pyracantha koidzumii 'santa cruz'**

**Santa Cruz Pyracantha**

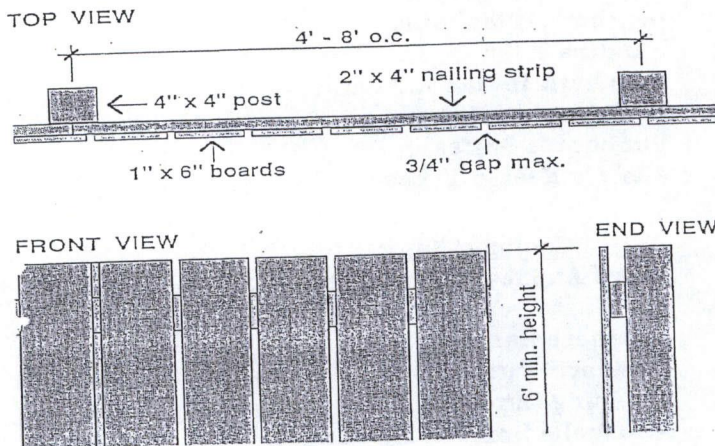
*Cabarrus County Zoning Ordinance*

- Rhaphiolepis indica**
- Spirea x burmalda**
- Spirea nipponica 'snowmound'**
- Spirea thunbergi**

- India Hawthorn**
- Bumald Spirea**
- Snowmound Spirea**
- Thunberg Spirea**

**Ground covers:**

Botanical Name	Common Name
<b>Ajugareptans</b>	<b>Carpet Bugle</b>
<b>Euonymus fortunei</b>	<b>Wintercreeper Euonymus</b>
<b>Hadra helix</b>	<b>English Ivy</b>
<b>Hedera canariensis</b>	<b>Algerian Ivy</b>
<b>Hypericum calycum</b>	<b>Aaronsbeard (St. Johnswort)</b>
<b>Juniperus conferta</b>	<b>Blue Pacific Shore Juniper</b>
<b>Juniperus horizontalis</b>	<b>Creeping Juniper</b>
<b>Juniperus scopulorum</b>	<b>Blue Creeper Juniper</b>
<b>Liriope muscarii</b>	<b>Liriope</b>
<b>Liriope spicata</b>	<b>Creeping Lilyturf</b>
<b>Ophiopogon japonicus</b>	<b>Dwarf Lilyturf or Mondo Grass</b>
<b>Phlox subulata</b>	<b>Moss Phlox or Thrift</b>
<b>Pachysandra terminalis</b>	<b>Pachysandra</b>
<b>Vinca major</b>	<b>Large Periwinkle</b>
<b>Vinca minor</b>	<b>Common Periwinkle</b>



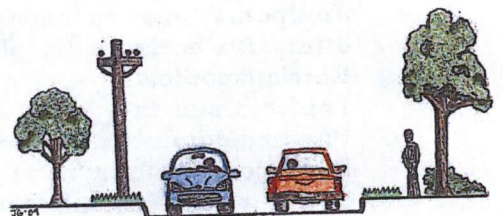
**Section 9-15. Standards for wooden fencing for compliance with landscaping/buffer requirements.**

- Lumber type options:** pressure treated lumber, redwood, or cedar
- Fasteners** are to be galvanized only.
- Nailing strips.** Three strips or rails are required.

•**Spacing.** The gap between the ground and the bottom of the fence boards is to be not more than six inches. Designs other than the one in the illustration may be used with prior approval of the Zoning Administrator as long as the general standards of the illustration are met.

**Landscape and Utilities**

Understory trees should be used where overhead utilities exist. Caution should also be used when designing plantings for installation near or within underground utility rights-of-ways. Consult with utility provider for additional information.









01.29.2009 10:43



01.29.2009 10:44



Applicant: Ben Small  
Petition: APPL2009-0002  
Zoning: AO  
Parcel ID#: 5652-21-5630

**Legend**

- Street Centerline
- ▭ Subject Properties



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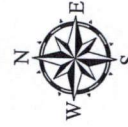




Applicant: Ben Small  
Petition: APPL2009-0002  
Zoning: AO  
Parcel ID#: 5652-21-5630

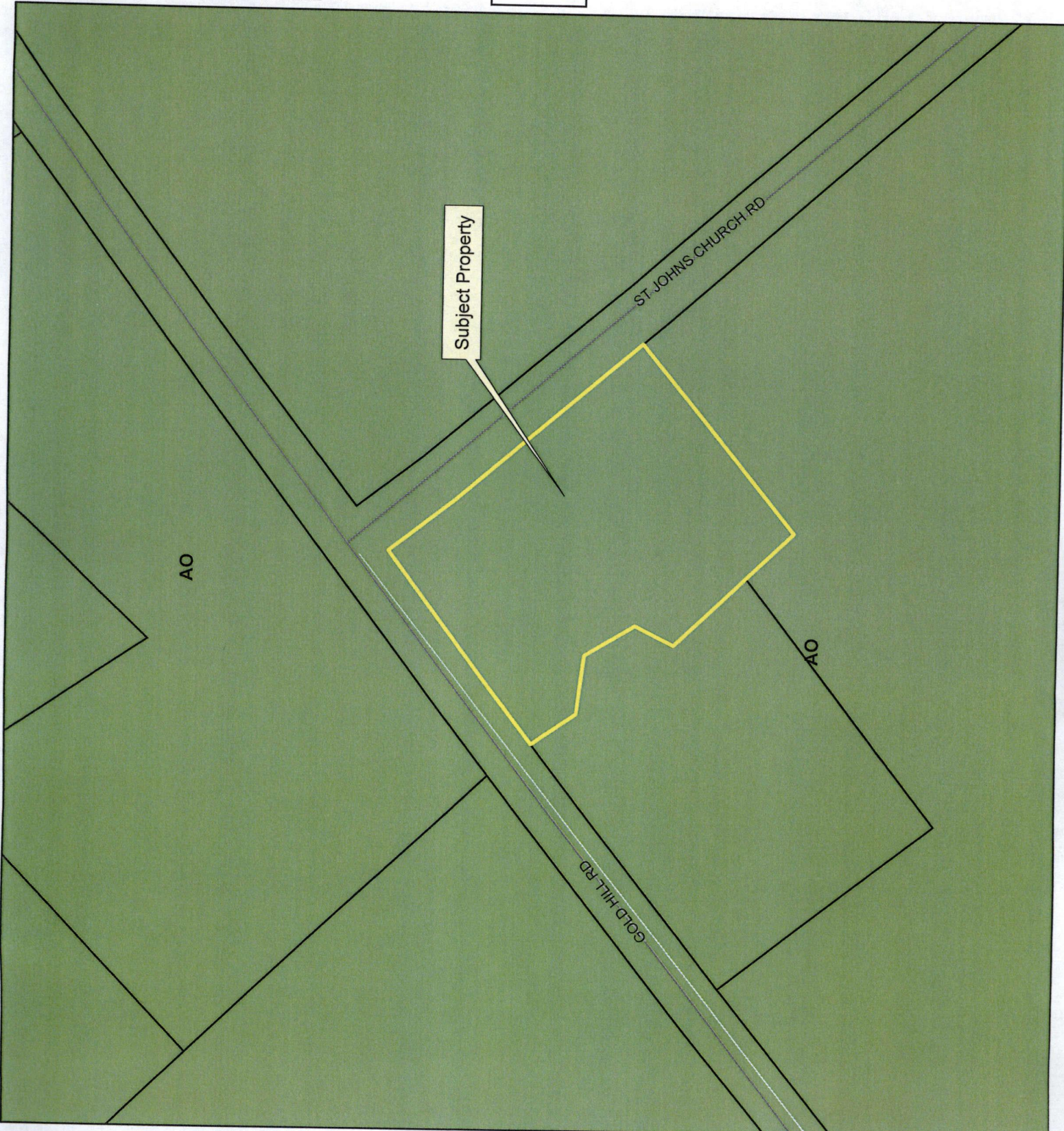
**Legend**

- Street Centerline
- ▭ Subject Properties

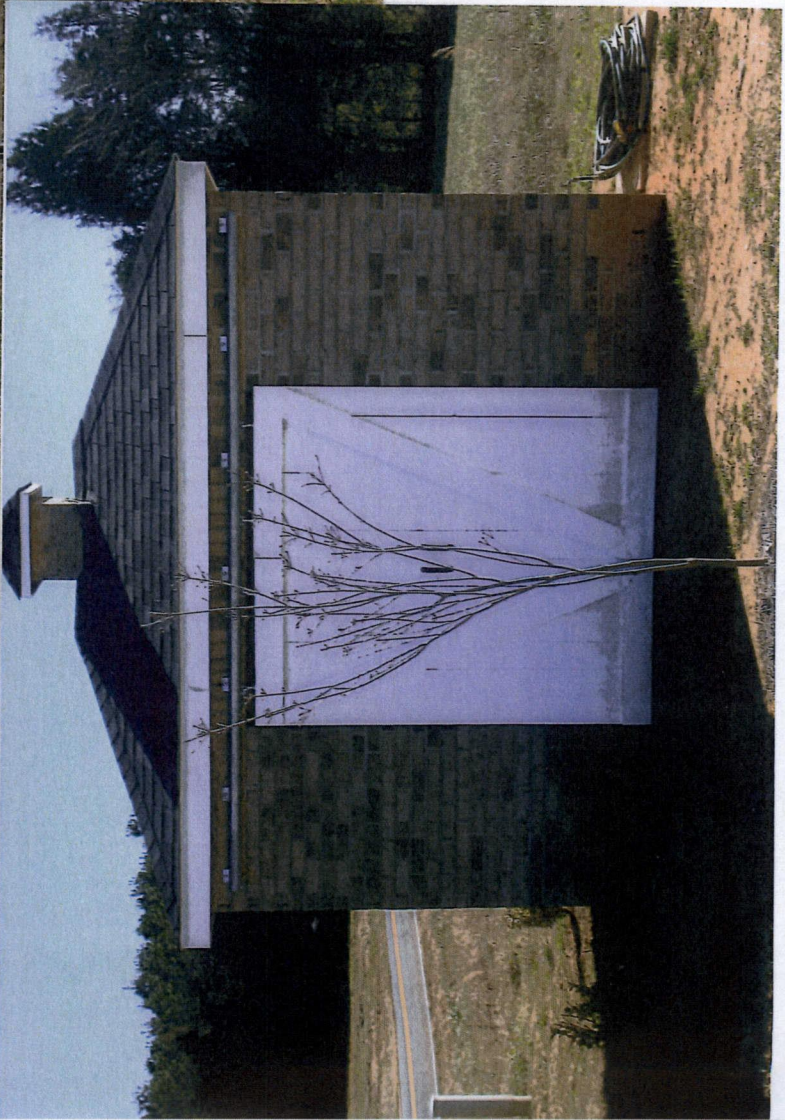
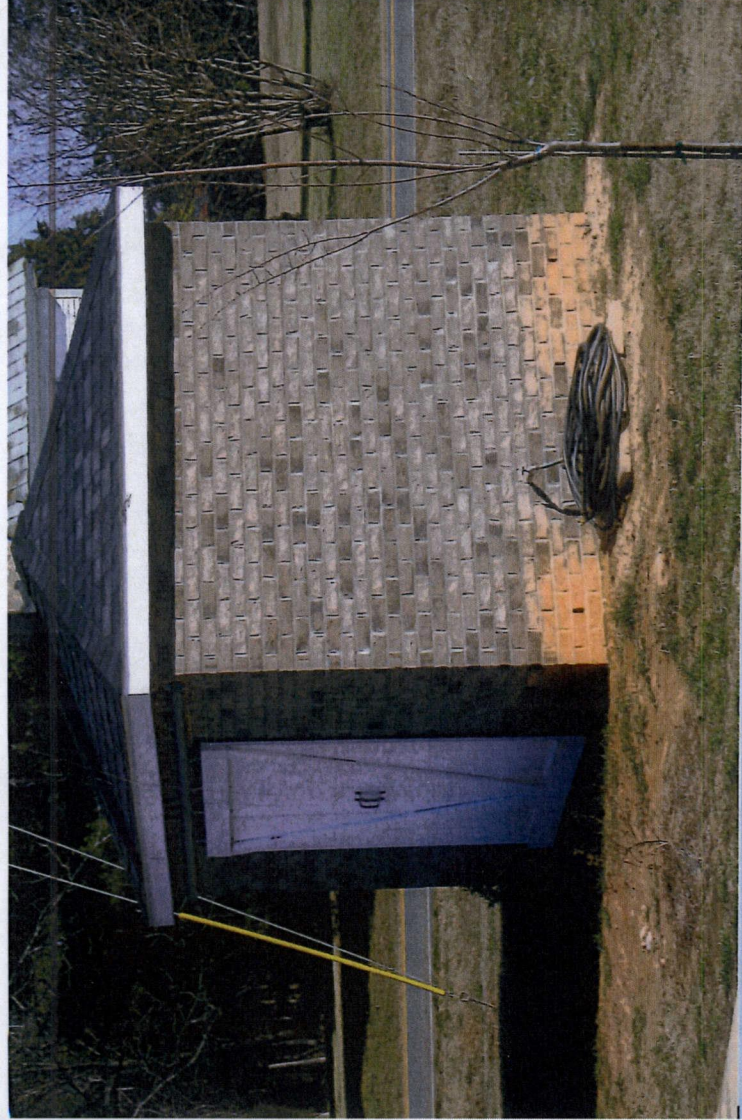


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Map Prepared by Cabarrus County Planning Services, February 2009.

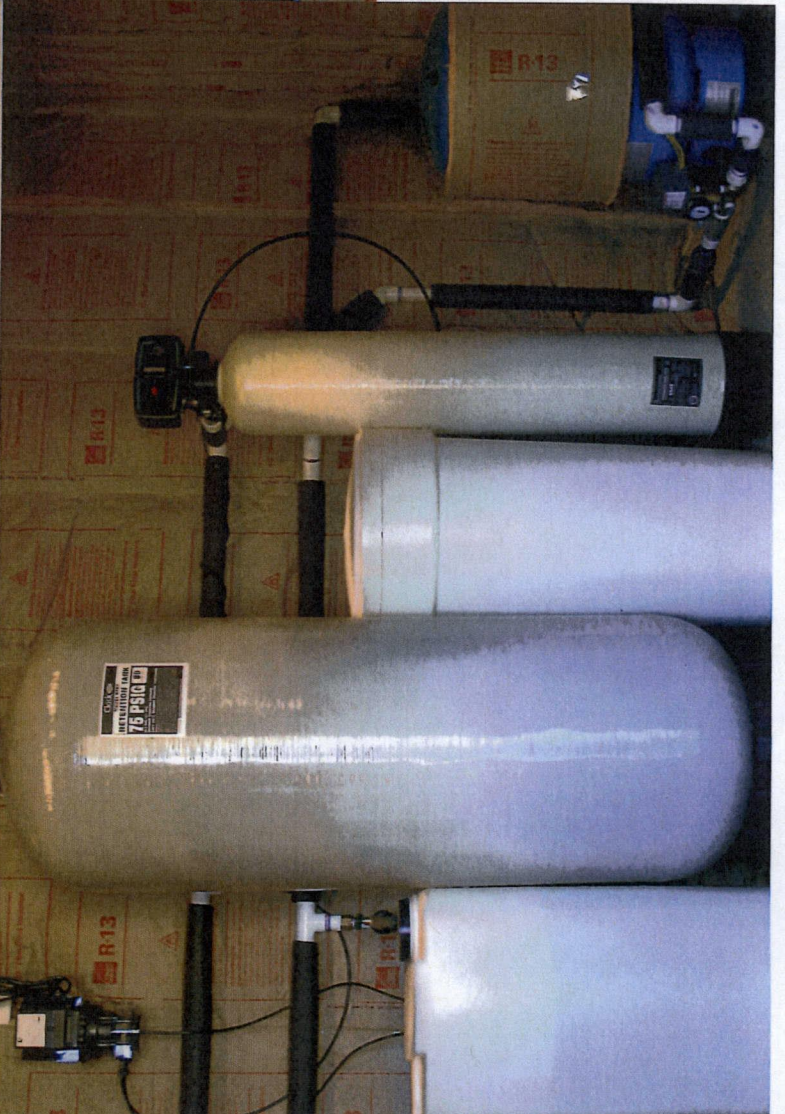












CASE #: APPL2009-0002  
APPLICANT: BEN SMALL  
DATE: 2/19/2009  
EXHIBIT: 3

# PRIVATE WELL WATER FILTRATION

JOB SITE :  
2239 ST.JOHNS CHURCH ROAD  
CONCORD, N.C. 28025

CLIENT : Mr. Ben Small

# **CONTENTS**

## **SECTION 1**

**U.S. Environmental Protection Agency  
[ Private Wells ]**

## **SECTION 2**

- **Water Analysis**
- **Equipment Recommendations**
  - **Cost**
- **Dates of Installation**

## **SECTION 3**

- **Electrical Contractors Cost**
- **Total Cost Including Equipment**

## **SECTION 4**

- **Hydrogen Sulfide and Sulfate**

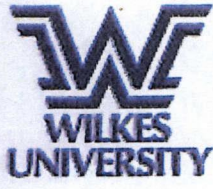
## **SECTION 5**

**Correspondence Regarding Frozen And Broken  
Water Lines**

# SECTION 1

# SECTION 4



	<p style="text-align: center;"><b>Wilkes University</b> <b>Center for Environmental Quality</b> <b>Environmental Engineering and</b> <b>Earth Sciences</b> <b>Search Our Site</b></p>
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**Water Quality and Pathogenic Disease Laboratories**  
**The Drinking Water Testing Laboratory and Resource Center**

The Center for Environmental Quality at Wilkes University operates and maintains a series of state-of-the-art water quality and drinking water testing laboratories. The facility, a non-profit/ equal opportunity employer, is operated and managed, within the Environmental Engineering and Earth Sciences under the auspices of the Center for Environmental Quality. Currently, the laboratory is PADEP/EPA approved for drinking water analysis for regulated water supplies for microbiological agents, but has the capability to conduct analysis for macronutrients, general water quality parameters, and toxic metals. We have a special online water testing program for private water supplies - [known as the Homeowner Outreach Program](#).

**Search Our Website**

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	<input type="button" value="Find!"/> <input type="button" value="Site Map"/>
<input checked="" type="radio"/> Site search <input type="radio"/> Web search	

Sulfate may have a laxative effect that can lead to dehydration and is of special concern for infants. With time, people and young livestock will become acclimated to the sulfate and the symptoms disappear. Sulfur-oxidizing bacteria pose no known human health risk. The Maximum contaminant level is 250 mg/L.

### Hydrogen Sulfide

Hydrogen sulfide is flammable and poisonous. Usually it is not a health risk at concentrations present in household water, except in very high concentrations. While such concentrations are rare, hydrogen sulfide's presence in drinking water when released in confined areas has been known to cause nausea, illness and, in extreme cases, death.

Water with hydrogen sulfide alone does not cause disease. *In rare cases, however, hydrogen sulfide odor may be from sewage pollution which can contain disease-producing contaminants.* **Therefore, testing for bacterial contamination and Sulfate Reducing Bacteria is highly recommended.**

## Water Testing

### Sulfate

The Option 1 testing kit includes the sulfate test, but for sulfur problems the laboratory must be notified to provide a special container that has a chemical preservative. The testing kits include the sampling instructions, a questionnaire, and information on returning the sample.

**Hydrogen Sulfide- If this is a problem that laboratory must be told in advance to provide the necessary sampling container with preservatives.**

Since hydrogen sulfide is a gas that is dissolved in water and can vaporize (escape) from it, laboratory analysis of hydrogen sulfide in water requires the sample be stabilized immediately following collection. Since the odor may be caused by a number of factors, it is critical that the questionnaire be completed and it is highly recommended that both the Option 1 and Option 3 water testing packages are conducted..

## Interpreting Sulfate and Hydrogen Sulfide Test Results

### Sulfate

The Environmental Protection Agency (EPA) standards for drinking water fall into two categories -- Primary Standards and Secondary Standards. Primary Standards are based on health considerations and are designed to protect people from three classes of toxic pollutants -- pathogens, radioactive elements and toxic chemicals.

Secondary Standards are based on taste, odor, color, corrosivity, foaming and staining properties of water. Sulfate is classified under the secondary maximum contaminant level (SMCL) standards. The SMCL for sulfate in drinking water is 250 milligrams per liter (mg/l), sometimes expressed as 250 parts per million (ppm).

### Hydrogen Sulfide

<http://www.water-research.net/sulfur.htm>

2/6/2009

# SECTION 5

# *Affordable Water Conditioning Inc.*

---

*Post Office Box 1134*

*704/788-4442*



*Concord, NC 28026*

*800/663-9130*

*FreeWaterTest.Com*

January 19, 2009

Mr. Ben Small  
2239 St. Johns Church Road  
Concord, NC 28025

Dear Mr. Small,

We repaired the broken water pipes in your well house. It was a result of freezing. Having a well house is not enough protection on these cold nights. You may consider buying a small space heater. I put one in my irrigation well house after having the same problem. Any hardware store has the small space heaters from \$40.00 to \$100.00.

Due to the enormity and cost of your equipment, you need to take measures to protect it from freezing. The manufacturer will not replace due to freezing as indicated in your warranty.

Please feel free to contact me if I can assist any further.

Sincerely,

*Affordable Water Conditioning, Inc.*

A handwritten signature in cursive script, appearing to read 'Scott Sinclair', written in dark ink.

Scott Sinclair

# Affordable Water Conditioning Inc.

Post Office Box 1134

704/788-4442



Concord, NC 28026

800/663-9130

*FreeWaterTest.Com*

INVOICE

01/19/09

Mr. Ben Small  
2239 St. Johns Church Road  
Concord, NC 28025

Item	Total
Repaired Broken Pipe	\$ 85.00
	No Charge

Thank You!



Planning and Zoning Commission Minutes  
February 19, 2009  
7:00 P.M.

Mr. Todd Berg, Chair, called the meeting to order at 7:05 p.m. Members present, in addition to the Chair, were, Mr. David Baucom, Ms. Brenda Cook, Mr. Eugene Divine, Mr. Danny Fesperman, Mr. Tommy Porter, Mr. Ian Prince and Mr. Ted Kluttz. Attending from the Planning and Zoning Division were, Ms. Susie Morris, Planning and Zoning Manager, Ms. Kassie Watts, Planner, Mr. Jay Lowe, Zoning Officer, Ms. Arlena Roberts, Clerk to the Board, and Mr. Richard Koch, County Attorney.

### Roll Call

### Approval of Minutes

Mr. Danny Fesperman, **MOTIONED, SECONDED** by Mr. Ted Kluttz to **APPROVE** the February 19, 2009, meeting minutes with the following corrections:

Page 13, Tommy Porter voted against Conditional Use Application Case#CUSE2008-00009, Cabarrus County Schools, it was not Barry Shoemaker.

Page 17, add the statement - The vote was unanimous for the Extension of Riverbend Preliminary Plat Approval C2009-01(SE) – Greathorn Properties LLC.

The vote was unanimous.

The Chair said we are going to shuffle the agenda and cover the Planning Board functions cases first.

### New Business – Planning Board Function:

The Chair introduced the Request for Extension of Roycroft Preliminary Plat Approval – Petition #C2009-02 (SE) – RDW Holdings, LLC

The Chair said Ms. Brenda Cook has asked to be recused from Petition #C2009-02 (SE) because of a conflict of interest.

Mr. Danny Fesperman, **MOTIONED, SECONDED** by Mr. Baucom to **recuse** Ms. Brenda Cook from Petition #C2009-02 (SE) because of a conflict of interest.  
The vote was unanimous.

Ms. Kassie Watts, Planner, addressed the Board stating this is a request for the extension of the Roycroft Preliminary Plat. The applicant/developer, Mr. Tom Waters is here this evening if there are any questions for him. She said a copy of the map was included in the Board's packet and it is identical to what was approved in March 2007. The project is subject to a consent agreement that will expire March 15, 2009. She said the plat was

sent out for comments and she received a few comments back. The City of Concord Engineering Department comments were the same comments as before; that the developer agreement needs to be taken care of. She has a copy of it and it appears to have been taken care of; signed and executed.

Ms. Watts said there were no comments from the Cabarrus Health Alliance, City of Concord Development Services, Jeff Moody, Contract Engineer, Cabarrus County Sheriff's Department, and Cabarrus County Emergency Services.

She said Mr. Tom Bach, Water Sewer Authority of Cabarrus County (WSACC), submitted his standard comments. (see Board packet). Soil and Water Conservation has not received an erosion and sedimentation control plan as of yet. She said that is something that will be submitted as the project moves forward.

Ms. Watts said the subject property was included in the Central Area Plan mass rezoning adopted on January 20, 2009. At that time, the property was rezoned from Low Density Residential (LDR) to Countryside Residential (CR). Since the project had a preliminary plat based on LDR densities, the project may continue as currently designed and approved. The project is located within the Utility Service Boundary area established by the Inter-local Agreement. (Concord Service Utility Boundary)

Ms. Watts said the Board should determine if the applicant has acted in good faith to develop the project in a timely manner. This might include discussion of whether the applicant has prepared construction drawings and received any necessary grading, utility, road, and other applicable approvals for the project. Ms. Watts said there were several conditions that were apart of the original approval, the first two are conditions that staff is recommending in addition to the original nine conditions. If the Board finds that the developer has acted in good faith to develop the project, Staff recommends the following conditions of approval be placed on the extension:

Additional Conditions:

1. The developer be granted a one year extension for the development of this project. The new expiration date would be March 15, 2010.
2. The extension is conditioned upon the Cabarrus County Board of Commissioners reaffirming or renegotiating the terms of the original Consent Agreement for the Roycroft subdivision project.

Original Conditions of Preliminary Plat Approval:

1. The developer shall install left turn lanes at both proposed entrances, leaving a two-way turn lane (three lane section) between the entrances. In addition to the left turn lanes, right turn lanes at both entrances must be constructed.
2. The developer agrees to pay Capital Recovery Fees that are collected on behalf of WSACC.

3. Prior to any permit for construction being issued, the developer agrees to enter into a developer agreement with the City of Concord and obtain utility construction plan approval.
4. The developer agrees to fund and install all necessary water and sewer lines to serve the property.
5. Developer agrees to meet anti-monotony and architectural standards and shall submit sample elevations and drawings of proposed homes prior to commencement of the final platting process. In addition, applicant will work with Planning Services to provide an architectural inventory for permitting purposes.
6. The developer agrees to build Covered Bridge Way as a split travel way at the crossing of the intermittent stream.
7. The project shall comply with all Phase 2 Stormwater regulations.
8. The developer shall design and build all streets according to City of Concord design specifications as defined in the City of Concord UDO.
9. Neither the owner nor the developer has contacted the Soil and Erosion office in reference to the project noted above. If the size of the project is greater than one acre, an erosion and sedimentation control plan must be submitted to this office for review and approval prior to the commencement of any land disturbing activities.

Ms. Watts said the letter from Mr. Tom Waters requesting the extension was included in the Board packet. She said Mr. Waters is here tonight if the Board has any questions. She said the letter from Mr. Thomas Bach was also included in the packet.

Mr. Tom Waters, Provident Development Group, Inc., 6707 Fairview Road, Charlotte NC, addressed the Board. He said the circumstances in the market place have delayed the execution of their development plan. They are also waiting for the completion of the pump station; which is a coordinated effort.

Mr. Fesperman asked Mr. Waters if he was granted the extension, did he feel that in the coming year he could tidy things up and get some of the other conditions completed.

Mr. Waters said that is the thought based on the market coming back. We are hopeful.

The Chair asked Mr. Waters if in addition to the pump station, had he done any wetlands work.

Mr. Waters said they did the wetlands analysis and have all the engineered production plans for the first half of the project completed.



Mr. Fesperman said we all understand what is going on right now with the economic environment that we find our developers and builders in. He said it is a hard time we are all dealing with right now.

There being no further discussion, Mr. Danny Fesperman, **MOTIONED, SECONDED** by Mr. Ted Kluttz, to **Approve** Petition #C2009-02 (SE) - Request for Extension of Roycroft Preliminary Plat Approval with two new conditions and the nine original conditions recommended by staff. The vote was unanimous.

There being no further discussion, it was the consensus of the Board that Ms. Cook returned to the Board.

### **The Chair introduced C2009-01-ZT – Proposed Text Amendment – Chapter 9 Landscape and Buffering Requirements**

Ms. Susie Morris, Planning and Zoning Manager addressed the Board stating that this text amendment accomplishes a couple of things: it cleans up some typos, misspellings or missing words and it also expands the plant list. She said the current list is very short, and at the County Manager's request, and based on some research, this will expand the list and give folks more choices. She said the plants that were added are drought resistant type plants; so now there is an option of using either/or and letting people know that depending on the soil types and the climate, there are some additional options; it also expands the list for ground cover. This is based on a list we received from NC State that they put out as far as the types of landscape that are drought resistant for the Carolinas.

When the zoning designation of Office Institutional (OI) was added a few years back, it was not addressed in the buffering table; so this adds Office Institutional (OI) to that table and also puts it into the general zoning list. It was never listed in at the bottom so we had to make interpretations, as far as what applied and what did not apply, when it came to the Office Institutional (OI) zoning district.

She said we added a couple of diagrams to try to help folks out; one to illustrate what a sight triangle is and the fact that you should not be planting anything in the sight triangle that is going to block someone's visibility; that is on page 9-10. We currently do not have any type of illustrations except for one page showing how a fence should be built. She said hopefully this will help folks when they are designing to understand that they need to keep the sight triangle clear. We are trying to help folks out a little bit with a visual if they need it.

She said the next illustration added illustrates different trees and sizes of trees. The last illustration is for a fence; to show that if you are trying to use a fence in relation to the landscaping regulations or to get reductions, this is how the fence would need to be constructed. She said there is also landscape and utilities, which is something that has come up recently. We wanted to get something codified to let folks know that if they are near utilities easements or planting on utility easements, they need to check with the utility providers; as far as electric, and if it is overhead lines, they do not want anything

that is going to grow more than 30 feet, and if you have a sewer line or something like that they typically do not want canopy trees on top of those because of the roots. She said just to remind people that if they are near an easement, make sure to do what you need to do or check with the provider to see what they will allow or what their recommendations are.

She said we would take the existing Chapter 9 and replace it with this Chapter 9.

There being no further discussion, Mr. Ian Prince, **MOTIONED, SECONDED** by Mr. Tommy Porter, to recommend **Approval** of the Proposed Text Amendment C2009-01ZT to the Board of Commissioners. The vote was unanimous.

### **New Business – Board of Adjustment:**

#### **The Chair, introduced Appeal Case #APPL2009-0002 – Ben Small**

The Chair swore in Ms. Susie Morris, Mr. Jay Lowe, Ms. Christy Wilhelm, and Mr. Scott Sinclair.

Mr. Koch said before Mr. Lowe gets started, he would like to explain what they have been up to for the past 10 minutes. He's had discussions with Ms. Morris and Ms. Wilhelm relating to the matter about to be considered. He said about two years ago there was a change in the law concerning Board of Adjustments that affected the voting. He said there was sort of a short hand description of the change; being that if we had a situation where we did not have a full complement of board members, that is considered a board of adjustment function, under certain circumstances we can proceed with eight members and still be able to render a decision and meet the 80% super majority voting requirements of Board of Adjustment functions. He said in the past, prior to that change if we only had eight members or if we had less than eight members, we could not proceed to consider one it at all. But, if we had eight members then we usually gave the applicant the option of either letting the matter be continued so they could have a full complement of board members or going ahead and considering it that night. He said the reason being, that if they considered it on a night that we only had eight board members they would have to have all eight vote in their favor. The change actually only relates to three specific situations:

1. If there is a situation where we have a member that has had to be recused from consideration
2. When we do not have a full complement of board members because there is a vacancy in an appointment that has not been made
3. Would be a combination of the two.

This evening we have eight members present, including two alternates that are seated; so we have one person who is not here, and it would appear that since we do have a full appointed complement of board members and we technically do have an alternate that is available, we do not meet any of those requirements of the statute. Therefore, if the

matter is to be considered tonight, in order for the applicant to prevail, they are going to have to have the affirmative vote of all eight members.

Mr. Koch has explained this to Ms. Christy Wilhelm, Counsel for the applicant. He said for the record, they have agreed to waive their option to have the matter continued to a time when we have a full board; we can go ahead and proceed. He said in order for the application to be approved, technically it is an appeal of Jay Lowes' interpretation of the Zoning Ordinance and in order for his interpretation to be reversed, they are going to need eight out of eight members voting that way.

Mr. Koch said another issue discussed is that the applicant may want to qualify one of their witnesses as an expert. In North Carolina an expert, technically, is someone who has more specialized knowledge in a particular area than your average person. They do not have to necessarily have any particular qualifications, other than that they can demonstrate to the Board's satisfaction that they have more specialized knowledge about that area than your average person. Mr. Koch thinks what Ms. Wilhelm will probably do is have this one person, who they want to testify, go through his qualifications and maybe some education training experience, whatever he has with reference to the issue that he is going to testify to. He said it will be up to the Board to decide if it is satisfactory to qualify that person as an expert. When she does that, we usually in court have what they call a voir dire, where the other side gets an opportunity to examine the person about their qualifications and so on; to determine if they really are an expert.

Mr. Koch said this situation is slightly different and it would be up to the Board to determine, as judges in this case, whether the person is qualified. He does not know that the County particularly has an interest in that. He said at the point and time that Ms. Wilhelm is finished asking questions about qualifications, there will be time for the Board to ask that witness questions, if you have any, about their qualifications. He said then we probably should have a vote at that point on the part of the Board to determine whether the person can be qualified as an expert in the discipline or in the area that they are being tendered for.

He said this is the first time we have done this in the 15 years that he has been serving the Board as Attorney. He said that is generally how it is done. He said if the Board has any questions along the way we will stop and answer them and try to work our way through it.

Mr. Koch said the appeal is handled just like variances and conditional use permits; with sworn testimony, the high vote requirement, make the decision based on substantial material and competent evidence. He said we will need finding of fact and will deal with that at the end. You are acting as judges in this case just like you do on the conditional use permits and on variances.

Mr. Koch said the first thing that needs to be done, is for Ms. Wilhelm to state for the record that on behalf of the applicant, she is willing to proceed tonight, understanding that under our typical protocol or procedure they would be entitled to have a continuance

until we have nine members present, but that you are willing to proceed tonight with eight members, understanding that in order to prevail, you will need concurrence of all eight members.

Ms. Christy Wilhelm, Counsel for the applicant, stated that she elects to proceed with the appeal tonight.

Mr. Jay Lowe, Senior Zoning Officer, addressed the Board stating, this is Appeal Case#APPL2009-0002, and the Appellant is Mr. Ben Small of 2239 St. John's Church Road, Concord, NC. The applicant is being represented tonight by Ms. Christy Wilhelm, Attorney, Hartsell and Williams, PA.

Mr. Lowe said the zoning on the property in question is Agricultural/Open (AO) and the location of the property is the residence of Mr. Small at 2239 St. John's Church Road Concord, NC. The size of the property in question is ½ acres and the size of the building in question is 8 foot x 10 foot; a total of 80 square feet. He said the applicant is appealing an interpretation regarding the Cabarrus County Zoning Ordinance.

Mr. Lowe said in August 2008, the Zoning office received a complaint, probably from a neighbor, concerning a possible illegal building that Mr. Small was building in his front yard. Mr. Lowe later found out that Mr. Small and his neighbor had been arguing. He said that is irrelevant because the zoning office does not get into why or how the complaint comes in. We go out and make an interpretation on whether it is a violation or not. Mr. Lowe drove by the site and saw the building and he felt like it was a violation at that time. He later called Mr. Small and met with him on the site. He said they looked at the building and he told Mr. Small at that time that he felt like it was a violation; he gave Mr. Small some options and told him that he would be glad to work with him in any way possible to rectify the violation.

He said the first thing to come to his mind was a variance. He did not know what Mr. Small's hardship was but it would be up to Mr. Small to bring it before the Board. He said another option would have been to tear down the building and remove it, and the third option was to appeal his decision, and that is the route Mr. Small decided to go. Mr. Lowe wrote Mr. Small a letter of violation; it was a warning citing the different violations that were seen on the property. He said the violations had to do with the text according to the Ordinance. He again told Mr. Small that he would be willing to work with him.

Mr. Lowe said one of the violations he saw on the property or that Mr. Small did not abide by the Ordinance was:

- **Section 12-3. Certificates of Zoning Compliance Permit required.**  
A Zoning Compliance permit must be obtained from the Cabarrus County Zoning Administrator prior to the use or occupancy of any building or premises, or both, hereinafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure.

Mr. Lowe said our office could not find any record of a Zoning permit ever being secured. He also stated in the letter, Section 5-5- which has to do with setbacks as they pertain to accessory structures. He said those setbacks are 20 feet on each side and 5 feet off the rear for detached accessory structures in this case. He said it was clear that the building did not meet the standards established for the Agriculture Open (AO) zoning designation for accessory buildings. He said it was to close to an adjacent property line and the public street right of way. He said both of those were not being met.

Mr. Lowe also stated in the letter that he felt that Mr. Small was in violation of Section 7-4 - Accessory buildings on lots less than 2 acres. He said when you get into that section there are four parts; Part B is the section he was most concerned with. He said it talks about the placement of accessory units:

b) Placement of Unit: Accessory buildings shall not be located closer to an adjacent road than the principal structure.

Mr. Lowe said you can see by the pictures in your packets that the building is closer to the road than the primary residence. He said there is more to that section but that is the gist of what he was saying.

He said although not mentioned in the original warning letter, when the representative for Mr. Small filed the application for appeal, she mentioned that they were appealing Section 2-2 which is the definition of Accessory Building. He did not mention it in the warning letter because he did not think it had any relevance in this case; but since she brought it up, he figured he would mention it and put it in the Board packets. He said basically it is a definition and it has four parts, it says:

**SECTION 2-2 -Accessory building or use**

A building or use which is incidental and:

- 1) is subordinate to and serves a principal building or principal use,
- 2) is subordinate in extent or purpose to the principal building or principal use served,
- 3) contributes to the comfort, convenience, or necessity of occupants of the principal building or principal use, and,
- 4) is located on the same zoning lot as the principal building or principal use.

Mr. Lowe's opinion is that this building meets all of those criteria; therefore, it must be an accessory building.

He said also not mention in the original letter but mentioned in the Board packet to substantiate the importance of meeting setbacks on accessory structures and so forth, is Chapter 5, Section G. He said there are three parts, but the main part talks about setbacks:

***Setbacks.***

- a. Accessory structures up to 15 feet in height shall meet the front and side setback requirements of the principal structure. The rear setback shall be no less than five feet.

Mr. Lowe said once again it is talking about setbacks and accessory structures; and he felt that Mr. Small was in violation. He said in order to remain consistent; we have always followed the interpretation of the zoning administrator and the application of the ordinance, related to accessory structures and well houses. He has been with the county for 17 years and has dealt with these cases before and the Zoning Administrator has always interpreted that if a structure was big enough for storage, then it fit the definition of a storage building. He said the building in question is 10 foot X 8 foot for a total of 80 square feet. We contend that all zoning regulations related to accessory buildings and storage buildings should apply in this case.

Mr. Lowe said there are two zoning officers for Cabarrus County, and he estimates that two to three times a year we get calls on the placement of accessory buildings. He said sometimes the caller maybe comical and sometimes they are serious. He said whenever someone may want to put a building in front of the house, or if it does not meet the setbacks, they will often say they will build the building around their well and call it a well house. He said the caller or the citizen that walks in might contend he is going to build a 30 x 30 square foot building; again, for 17 years, we have remained consistent with telling them that, regardless of whether you want o call it a well house or not, regardless of what you put in it, it is still an accessory structure if it is big enough for storage.

Mr. Lowe said all additions in Cabarrus County, whether attached or detached; it could be a living room addition, it could be a detached storage building or in a lot of cases, it may be a simple deck. He said when an applicant is on a private well and septic, we are required by the Cabarrus County Health Alliance (Health Department) to get a letter from them. He said the Health Department goes out to the property to see where they are going to build the new structure, to make sure that they are not interfering with the septic tank in any way shape or form. He said Mr. Small did not get a permit in this case so we did not receive a letter from the Health Department.

Mr. Lowe does not think Mr. Small is interfering with the septic tank but he has no way of knowing for sure; again, it is about consistency. We make every other citizen do that.

Mr. Lowe said in 1992, the Zoning Administrator, Mike Downs, who is now the Deputy County Manager, was his supervisor. There was a similar situation like this one back in

1992; Mr. Down always told him that if it is big enough to put a lawn mower in, then it is an accessory building. He said that is the interpretation that he follows to this day.

Mr. Lowe advised Mr. Small in August 2008, to discontinue work on his building. He said the building was constructed at that time and had some brick on the building. He said as you can see from the pictures, there are now doors on the building and the soffit material has been put in place. He advised Mr. Small at that time not to continue work on that building until the matter was resolved. Mr. Lowe took the pictures from the right of way; he did not go on to Mr. Small's property. He said it looks like Mr. Small has completed the building, and he did that on his own.

Mr. Lowe said he informed Mr. Small in August 2008, that he had the right to apply for a Variance if he felt like he had a hardship; apparently, he did not, and he applied for the appeal instead.

Mr. Lowe is a big believer in team work and so is the staff. He very seldom makes critical decisions like this without talking it over with co-workers. In this case at least four other staff members were asked, including the current Zoning Administrator. He said they all interpreted the ordinance as written, and as it is written one would have to say that it is an accessory building and all setbacks should apply.

Mr. Fesperman asked if this had been permitted properly, would it have received a zoning permit.

Mr. Lowe said no. He said if it had been permitted, the setbacks would have been on the permit and he would have known at that time that the building would have to meet those setbacks; so we could not permit it as it is right now.

The Chair asked Mr. Lowe to describe a little more about the extent of the construction when he first visited the property in August 2008.

Mr. Lowe believes the building was bricked, he does not believe it had the soffit material around it and he knows it did not have the doors in it. He said at the time he was on site, along with Mr. Small, they went into the building and there was nothing in the building at that time. He said the well looked to be on the very edge of the building, what he perceived to be the well and it had a spigot on it going out of the building.

The Chair asked if there was a floor.

Mr. Lowe said yes, it was cemented at that time.

Mr. Porter asked if the building is housing a well and if there was a water tank in it.

Mr. Lowe believes it is housing a well and at that time, there was no water tank in it. He said Mr. Small had been living there, and he does not know if there were changes to his

well and needed some other tank in there or not. He said there was nothing else in there but the well and it came up about a foot out of the cement and had a spigot on it.

Mr. Porter assumes it was legal for the well to be drilled, there are no set backs except for septic systems.

Mr. Lowe said the only setbacks Mr. Small would have to follow would be from the Health Department; we do not regulate wells through zoning. He does not know if it could have been placed some where else or not; there was nothing in the well house when he met with Mr. Small that day.

Mr. Porter said if it is the well and the pump, or the well and the tank, and he wants a protective building over that; it is obvious he cannot move the building and it still be over the well. He asked what the regulations are if it is a well house?

Mr. Lowe said a smaller building where it is evident that you could not store any thing in the building would be 2 x 2, or 3 x 2, something of that nature. He said this is an 8 x 10 building and is big enough for storage.

The Chair asked if Mr. Lowe knew when the principle house was constructed.

Mr. Lowe said he does not know, but it is fairly new. He would say within 1 to 2 years.

The Chair asked if any actual measurements were taken of the distance of the structure to side property line or right of way.

Mr. Lowe said he did not; it was evident that Mr. Small was in violation of the ordinance by the building sitting in front of the principle structure. There was a telephone pole there and typically that is the property line, not always but typically it is and he was very close to that.

Ms. Christy Wilhelm, 71 Mccachern Blvd. Concord, NC, addressed the Board stating she is here on behalf of Mr. Small, who is the appellant in this particular matter. Ms. Wilhelm passed out photographs of the well house to the Board and staff. Ms. Wilhelm showed photographs taken by Mr. Small of the outside of the well house and the tanks inside of the building. She said not to contradict Mr. Lowe, but eventually, she does not know when Mr. Lowe came out to originally inspect. She said Mr. Small had to install a water filtration system, which went right beside his well tank and is part of that system. She said Mr. Sinclair will explain a little bit more about the particular system.

Ms. Wilhelm showed a photo of house further down St. Johns Road that has a storage building in front of the principle structure. She showed a photograph of the back side of the well house that faces toward the property line. She said the remaining photographs are photos of the water filtration system with a salination tank where the water is run through salt crystals to filter through the water. She showed another view of the inside of



the well house and photographs of the water tank and photographs to show the size of the system inside of the well house.

Ms. Wilhelm said as you can tell from the photographs; although she understands Mr. Lowe's interpretation, it appears that the majority of this structure if you call it an accessory structure, or if you call it a well house, is taken up by tanks that are either involved in the filtration process or involved in the actual delivery of water to the house. She said Mr. Lowe mentioned that perhaps this could have been placed in a different area. She said this home was constructed in 2007; the house is on a slab, there is no basement, and there is no location in a hidden area inside of the house where this particular system could be placed. The water filtration system is considered to be necessary for health reasons and for just drinkability purposes of the water.

She lives in the eastern part of the county and can say there is some pretty poor water out there. This particular well system was located on that area of the property, in front of the house before Mr. Small bought the house. It was located there by the general contractor and Mr. Small had nothing to do with the placement of the well. She said after doing a little bit of investigation, we figured out that this particular well system is approximately 12 to 15 feet away from the neighbors' septic line. She said as Mr. Lowe has said, that is not close enough to interfere with the septic line but is certainly close enough to give you some concerns if you are drinking water out of an area that is that close to someone else's septic system. As far as we know and as far as we are aware, all of this, as far as the placement of the well, the placement of the septic system was all cleared by the Cabarrus Health Alliance; all of that was permitted by the contractor as far as we know. Again all of that was done as part of the process of constructing the house.

Ms. Wilhelm said the back yard of this particular residence is on such a slope that there is not really another place on the property where this well or water filtration system could be placed. There is no other place where the filtration system could be located so that it was not in plain site; as Mr. Sinclair will speak to you about later. She said it is very important for these systems that have very intense electrical structures and things like that, to be under cover; it cannot just sit out in the middle of the yard and she does not think anyone would want that either.

Ms. Wilhelm said in looking at this particular case, she would ask the Board to bear in mind that first of all, this is a very recently constructed home. When Mr. Small undertook to buy the house, he knew that it would be on a well system and received information from his contractor that he would probably want to look into a water filtration system because of the quality of water in that area of the county. He went through the process and she believes the general contractor that built his home actually constructed the well house. This was at an expense to him of approximately \$5,000.00 to build this covering/well house, and approximately another \$5,000.00 to put in the water filtration system. She said he endeavored to make it look very much like the principal residence; the brick matches; again, he was attempting to create something that was easy on the eyes and would not look terrible. In addition to this he was also working with his contractor and believed that quite frankly if there were any building permits necessary,

that those had been taken care of. She said in all of this process, Mr. Small was trying to follow the advice of his construction folks and of his water filtration system experts.

Ms. Wilhelm said Mr. Sinclair is going to speak about the necessity for having is equipment covered at all times; but in addition it also has to be insulated. She said what Mr. Lowe spoke to you about is his interpretation of the code, which basically states that he defined this as an accessory building. She said if you look at the code, there is not actually a definition of what an accessory building is. She said Mr. Lowe has been kind enough to explain that the general interpretation that the zoning officers have had for years is that if the building is large enough for storage, it is an accessory building; it is a storage building. She said with all due respect, that maybe the accepted or zoning officer interpretation, but that is not written down anywhere. There is nothing in the code that adequately defines what that is. All of the violations that Mr. Lowe has cited Mr. Small for depend upon this Boards finding that this is an accessory building. It appears to her to be kind of a problem, that there is no definition of what that is within the code. She said Mr. Lowe has said tonight that if it is big enough to park a lawn mower in then it is a storage building; what if it is just a push mower. She said is that a storage building, it could be 4 foot high; 3 foot high. It seems to her that is a little bit difficult for this Board to interpret; but certainly the fact that there is no actual definition of that appears to be a problem. She said that is the basis for all of the violations that Mr. Lowe has sighted. She said the setback requirements and the building permit requirements all depend on this being defined as an accessory building, and its their contention that it is not an accessory building, it is a well house cover that is necessary to protect her clients investment in his property.

Mr. Fesperman asked what the square footage of the house was.

Ms. Wilhelm thinks the square footage of the house is 2000 square feet.

The Chair said for clarification, a lot of what Ms. Wilhelm has concluded with had to do with there being no definition. He said reading from the definition section of ordinance, it says accessory building or use is a building or use which is incidental, and then it lists four points. He asked if Ms. Wilhelm is contending that this is does not comply within all of those points.

Ms. Wilhelm said what she is contending is that on that particular point, there is no definition of what a building is; when does something cease to be just a cover and become a building, that is what is not clear through this whole process. She said Mr. Lowe has stated that the zoning definition that he follows is that a building becomes a building when it is big enough to store something in, and their contention is, that it is not written down, that it is not part of the definitions, and that is not before us.

The Chair asked if any one had any questions for Ms. Wilhelm.

The Chair revisited the issue of Mr. Small not getting a building permit. He asked Ms. Wilhelm if Mr. Small thought the general contractor got the building permit or did he not think one was necessary.

Ms. Wilhelm said yes; what happened was his general contractor was the one who installed this and he was under the impression that he needed no further building permits or that the contractor had taken care of what ever building permits were needed or necessary. She said this happened within probably less than a year of when the construction on the house was started, and is when he was cited for this violation by Mr. Lowe.

Mr. Prince thought Ms. Wilhelm said the house was completed in 2007.

Ms. Wilhelm said it was started in 2007; he moved in 2007.

Mr. Prince said one could assume the house was completed in 2007.

Ms. Wilhelm said the house was completed.

Mr. Fesperman said when you practice law do you feel that the statement you just said is accurate to the stand point that gives him a reason, if he made assumptions.

Ms. Wilhelm said a lot of times when we are in construction, we assume that the folks we rely on to be experts have taken care of any permitting, and she can say that he was not contacted or noticed about any kind of violation until as Mr. Lowe said, this building had brick on it. She said ignorance may not be a defense but in this particular case it is evidence that he was not acting in bad faith.

The Chair said the minute it was called to his attention prior to completion of the construction, why did he not stop at that point?

Ms. Wilhelm said he put doors on.

The Chair asked if it were her contention that the construction was complete with the exception of the doors.

Ms. Wilhelm said that was her understanding; all he did was put sliding doors on that are not locked, they are just sliding doors. She said again, that was for the insulation of the system that he had installed.

Mr. Prince asked if the system was completely installed, all the tanks, all the filtration, all the plumbing was installed?

Ms. Wilhelm said that was her understanding; this is the first time that she has heard that Mr. Lowe did not see that; but that the system has been installed, and it was certainly

installed before this violation, as far as she knows. She said Mr. Sinclair can speak on exactly when it was put in because he did that.

Mr. Prince said again consistency, if they moved into the house in 2007, clearly they must have had a water supply at that point. He said there is a little timing issue.

Ms. Wilhelm said they did have a water supply, they did have a well. The water filtration system is the bulk of these tanks that you see in the photographs and that was installed at a later time.

The Chair asked if there were any sort of covering over the well prior to Mr. Smalls' realizing the need for the filtration system.

Ms. Wilhelm does not know what type of covering was there.

She has an invoice from Mr. Sinclair's company and it indicates that Mr. Small paid for the system on September 19, 2008, and the price was \$4,249.00.

Mr. Porter asked if a building permit is required if the contractor thought he was building a well house.

Ms. Wilhelm would say if it were a well house it would not be required.

Mr. Lowe thinks it has to do with the dollar amount, he does not think it is the use. He said there is a dollar amount where they would not have to get a building permit. He said you are dealing with the building permit office not the zoning office for a building permit. He said that does not mean that he would not need a zoning permit.

The Chair asked if there were any more questions for Ms. Wilhelm.

Ms. Wilhelm said this is where I will ask Mr. Sinclair questions about his credentials and then the Board will have the opportunity to ask questions.

Ms. Wilhelm asked the following questions of Mr. Sinclair:

Ms. Wilhelm: What is your name sir?

Mr. Sinclair: Scott Sinclair

Ms. Wilhelm: What do you do for a living sir?

Mr. Sinclair: I am the owner of Affordable Water Conditioning Inc.

Ms. Wilhelm: What type of business is that?

Mr. Sinclair: Providing filtration on private wells as well as municipalities.

Ms. Wilhelm: How long have you been in that business?

Mr. Sinclair: 19 years

Ms. Wilhelm: Do you have experience in testing water?

Mr. Sinclair: Yes

Ms. Wilhelm: Do you have experience in installing and servicing water filtrations systems?

Mr. Sinclair: Yes

Ms. Wilhelm tenders Mr. Sinclair as an expert in installation of water treatment systems.

The Chair asked if there were questions for Mr. Sinclair.

Mr. Fesperman asked Mr. Sinclair if he physically had hands on experience doing this or if he had crews that do this for him.

Mr. Sinclair said a little of both, it depends on if they are behind or not. He is interactive on most all of the job sites. His chief installer does such a good job he does not usually have to; he has been with us 15 years and he does the bulk of it.

Mr. Fesperman said if you did not have that, you would be a one man operation and could put this system in?

Mr. Sinclair said yes, he did it in the early 90's until he got some growth behind him.

The Chair said you have been in the business 19 years, is that how long you have owned Affordable Water Conditioning?

Mr. Sinclair said yes; he started at 26 years old.

Mr. Fesperman asked how many systems Mr. Sinclair has put in.

Mr. Sinclair said it would have to be in the thousands. He is not sure of the exact number. He has a handout to give to the Board, some of the questions that the Board has he may be able to clear up with some timing and issues of how equipment needs to be installed.

The Chair said before you do that he asked the Board if there were any other questions regarding Mr. Sinclair's expertise and qualifications.

Mr. Baucom asked Mr. Sinclair if in his experience he has ever done this; if he has experience putting in a system in a building such as this, or a structure such as this; or if he has run across this before.

Mr. Sinclair said this is his first experience in being in this situation tonight; but he has put in quite a few systems. He said on many occasions people would actually call them. He said most of his work now through longevity is from referrals; a neighbor who had a system and someone was building a house close by they would call, especially in the Mt. Pleasant area, Barrier Georgeville community. He said that is what he is looking for, he can ride down the road and see well houses that are extremely high, you know then even

if it is not your customer that there's filtration in there and that is why the well house was built the way it was.

Mr. Sinclair said people will call during a construction phase; this was not the case with Mr. Small. He said they would call and say that they know their water is bad; that their neighbor's water has a lot of iron and sediment. They ask him what is needed in the well house or if they need to do any additional wiring while the contractor is there, and he would try to guide them accordingly. He said as far as the zoning of a well house or structure it has never been an issue and he has never really thought about it until the last few weeks.

Mr. Baucom asked Mr. Sinclair if he has put a filtration system in a structure like this in front of a house before.

Mr. Sinclair said he would be hard press to say yes or no. He said that was going through his mind as he was listening to this unfold; whether or not it as actually been in front of a house. He can safely say they have put in many that are in the front to the side of the house, which is what he feels this situation is, kind of at the side. He said most people who have a well that is directly in the front yard, more toward the center; a lot of times there is basement involved and then that pressure tank is in the basement and then the basement provides the area where the system goes.

Mr. Fesperman said the house is over 2000 square feet. He asked if the system could have gone into the house.

The Chair said before we get into the particulars of the case we need to vote to qualify Mr. Sinclair as an expert.

Mr. Fesperman **Motioned, Seconded** by Mr. Kluttz that Mr. Sinclair is qualified to speak as an expert witness. The vote was unanimous.

Mr. Fesperman said this is a large house, could the system have been placed into the house.

Mr. Sinclair said it is hard to say yes or no. He thinks it could go either way, it is up to interpretation. He said not trying to be funny; this could have been installed in the middle of the living room as far as practicality. He said the pressure tank itself was not in the well house. He said the typical protocol is to test the water when they are called, usually people know they have a problem and that is the reason they call us to start with; we just find out exactly what we are dealing with. When he went to look at that before he could actually quote out the job and what it was going take, he saw where the pressure tank was. He said in some cases if it were just a water softer, water conditioner, which makes up one component of this particular application; we have thousands of them under the house, but the enormity of this system and the space that was there, it was not going to be practical. He said it posed another problem for Mr. Small because now, we were going to have to get an electrician out and we were going to do the plumbing to move this

pressure tank into this structure because filtration has to go on the post side of the pressure tank.

The Chair asked where the pressure tank was.

Mr. Sinclair said it was under a small space at the side of the house in a little crawl door.

The Chair said before you installed this system, the way that it was working was that it was being piped from the well to the pressure tank adjacent to the house and then into the house?

Mr. Sinclair said that is correct.

Mr. Divine asked Mr. Sinclair if he was consulted on the size of the building that would be needed before the system was put in.

Mr. Sinclair said not in this particular situation. He said you can have wells 20 yards apart, and it is a phenomenon; it is almost like a finger print, none of them are the same, whether it is pressure, delivery or water quality. He said the water on St. John's Church Road down through that area has a history of iron and sulfur and different things; and that is from years of experience dealing with customers. He is not sure without Mr. Small being here, but he would assume that the well house was being built knowing that he was going to need filtration out there. He said that is the case, especially when you get in certain parts of the county like the Barrier/Georgeville area. He said it is not the case of are you going to have bad water with a well, it is how bad is it going to be.

Mr. Divine asked if it was an ionized system where the brine is flushed back over the beads.

Mr. Sinclair said it is. He said in this case he had hydrogen sulfide, and hydrogen sulfide can be two things, it can be sulfide bacteria, or it can be hydrogen sulfide gas. He said in Mr. Small's case he wanted to get rid of the offensive odor and he wanted to get rid of the water hardness. The first step when you are going to inject chlorine into well water, you have to put an iron exchange system on, or an iron filter, depending on the chemistry of the water; and you have to clean it up first or when you inject the chlorine into it, it will turn the water brown like a weak tea coming out of the faucet. He said that was the first step, it is a cad iron exchange system that regenerates its self, it exchanges sodium ions for calcium ions, and a misconception a lot of time is the water does not run through the salt. The iron exchange media cleans the water and the salt brine cleans the media and then it flushes out.

Mr. Divine asked where the brine goes when you flush it out; is there a drain or a filter.

Mr. Sinclair said there is a drain. He said a lot of those laws are changing now, you have to meet code; if you pipe it into a septic system it has to be P-trapped and routed out, we go a little further than that and actually put an anti-backflow on it. He said the soil

scientists in North Carolina did a study, and he has actually met with the President of the Water Quality Association, which is the environmental department that deals with septic tanks in the rural areas. He said if someone is having a septic tank issue now, and they see that there is some type of back washing filtration going into that septic tank, the first thing that they will tell that home owner now is to get their unit out of the septic tank. He said in North Carolina, in his conversations with Raleigh, they are now stating that discharge water from water conditioners on the top of the ground is considered gray water; so the test or the findings of the soil scientists were not definitive, they could not say that it is going to affect the drainage field. He said what they meant by affecting the drainage field is that in Piedmont, North Carolina clay soil, in 12 to 15 years it could; it did not say that it would. He said armed with that information and talking with the president of the Water Quality Association, all of the systems that he put in now, they give the customer a choice. We tell them what we know and what could happen 12 to 15 years down the road. We try to encourage them to let us get that water away from the edge of property line and discharge it on the ground. He said in Mr. Small's case that water is being discharged out to the drainage ditch on the side of the road that is close to the well house.

Mr. Prince thanked Mr. Sinclair for his testimony and reminded the Board that the Appellant was not cited for installing a water softener system, nor a filtration system.

The Chair asked Mr. Sinclair when he first visited the site to test the water. He is a little confused on the dates.

Mr. Sinclair said it is on the top of the invoice which is also the water test sheet. He said it was on September 19, 2008.

The Chair asked if that was the point that he determined this system was necessary.

Mr. Sinclair said yes sir.

The Chair recalls that Mr. Sinclair said he first visited the site in August 2008.

Mr. Sinclair installed the system in September 2008.

The Chair asked if there was a heat source in the building.

Mr. Sinclair said no, and that there was a situation around January 19, 2009, when Mr. Small called to report a broken water line. He said after evaluating the problem it was damage from being frozen. His warranty clearly states that we are not responsible for freezing; it is the responsibility of the homeowner to protect the equipment. He sent Mr. Small a letter advising him that the structure would not be enough, that he would need some type of heat source in the building to get the temperature up above 32 degrees; he suggested that Mr. Small get a small space heater to put in the building.



The Chair said if he is piecing the photos together correctly he counted eight tanks inside of the building. He asked why that was necessary.

Mr. Sinclair said the first stage is the water conditioner, the tank beside that is a salt tank; the next tank is a retention tank, then a 30 gallon chlorine solution tank with a flow switch and a feeder pump above it. He said every time his water cuts on in the house it will leader a certain amount of chlorine into the water; it goes through a 380 gallon retention tank to build contact time in order to kill the sulfur or sulfide bacteria, what ever is present; then you have the high concentration of chlorine typically higher than what you would have in a municipal water supply coming into the house. He said the other tank is a de-chlorination unit which takes the chlorine back out so it is not offensive and it is drinkable inside the home.

The Chair asked how typical this system is and how many of Mr. Smalls' neighbors Mr. Sinclair would say had a system this complex.

Mr. Sinclair does not know about the neighbors. He said technology has changed. He said we have immediate ones that did not have hydrogen sulfide, but they had bad iron and water hardness problems. He said throughout the community, hypothetically, if he does 15 jobs, one of these applications in the rural areas will require what Mr. Small has.

Mr. Baucom asked how an electrician runs power to a structure like this; does he have to get a permit or something? Could the electrician pull the permit and we would never see this?

Mr. Lowe said he could; for example if you are putting in a new pool and if there is a pump that goes along with that pool, then an electrician is involved with pulling a permit for that.

Mr. Baucom said if that pool is sitting on a setback or something like that and is not suppose to be there, would we catch that?

Mr. Lowe said hopefully, because typically the people in Building Inspections would want to see a zoning permit first. He cannot say that is always the case; for example there could be temporary power poles installed where a zoning permit is not required and zoning would not see that electrician or that permit. He does not know if an electrical permit was pulled on this or not.

The Chair said because this is kind of an unusual case, he would like for Mr. Koch to remind the Board about the how to consider this.

Mr. Koch asked Ms. Wilhelm if she had any other evidence to present.

Ms. Wilhelm said that is all the evidence they have right now, unless there are any further questions.

Mr. Lowe does not disagree with a lot of the testimony that has been heard from Ms. Wilhelm and the so called expert tonight. He said one of the main issues that he cannot illustrate enough is that it looks as though Mr. Small has a unique situation out there with his water. It seems to Mr. Lowe, that the water is hard in that area, and that creates uniqueness to Mr. Small's property. He said perhaps Mr. Small should have sought a Variance in this case. He said you heard a lot of testimony tonight about the use of this building and that is not what this is all about. He said it is the placement of the building. He never got into a lot of the use of the building with Mr. Small at that time. He thinks that perhaps a Variance would have been the better option. He said it was Mr. Small's choice; we discussed it when we met.

Mr. Lowe said Ms. Wilhelm brought up the fact that there was \$5,000 in expenses in this. He does not know if that included the equipment or if that was just in building cost. He said there is a certain dollar amount that if you do not go over it, you will not need to get a building permit. He said that does not mean that you do not have to get a zoning permit. He gets calls everyday about Lennox buildings and he knows there are hundreds of them out there, but there are only two zoning officers and we do not catch all of them. He said if you ask me if you have to get a zoning permit for a Leonard building the answer would be yes, but you may not have to get a building permit if it is under a certain dollar amount. He said there is a dollar amount here of \$5000.00; that is an awful expensive cover for these units; that is a pretty good cost put into a building there. To him that is more than just a cover.

Mr. Lowe said the definition of a structure is found on page 2-20 in the definition section. He read the definition:

**Structure: a combination of material to form a construction for use, occupancy, or ornamentation; whether installed on above or below the surface of land or water.**

He said if you include this with all of the other testimony he has given, it still goes back to where someone filed a complaint, and he did not have a choice but to enforce the Ordinance as he felt it was written.

He is glad we cleared up the installation of the units. He has pretty good eyesight, and he was there in August and the units were not in the building. He said Mr. Small may need these units, he does not know, but that would be a variance situation.

Mr. Fesperman asked Mr. Lowe how much of the building was completed when he was there.

Mr. Lowe can say for a fact that the doors were not on and to his recollection he does not believe the soffit material, the vinyl material was on; he is not 100 percent sure that was not done, but knows the doors were not on. He said Ms. Wilhelm has verified that as well.

Mr. Porter has a question about whether it is a storage building or a well house. He lives in that part of the county and he thinks you would find the majority of the residents would say that this equipment is necessary for drinkable water. He said the size of the building, you have to carry salt in to put in the salt tank, the chlorinator would have to be refilled periodically, salt would not be that bad but you would not want those materials in your garage or in your house, definitely. He knows a water softener could go in the garage, but the chlorinator, you would rather not have that corrosive material even in your garage. He said to service this equipment and to put the necessary materials in it for it to operate properly, he would think that the building is not excessive to house this equipment and service it. Therefore, if it is necessary for the well and the water for the house, is it now a storage building or a necessary building to house the equipment for the water for the house?

Mr. Lowe said it could be both. He is not going to argue the point that it is necessary for this particular piece of property, but he does not think every piece of property in that area of the county needs this elaborate of a system. He said that makes this unique, there again we go back to the uniqueness of this situation. There is no doubt in his mind that every thing you have said is right; he would not want to haul that any distance at all. He said if it is unique, then perhaps the Variance would have been the better option; Mr. Small may have a hardship there.

Mr. Lowe has been around this county quite a while and he does not think he has seen a system quite that elaborate; he does not know a lot about what that system does, but it looks pretty elaborate to him.

Mr. Fesperman said their problem is they are not hearing that side of things; Mr. Small did not go that way and he had that option.

Mr. Lowe said yes he did.

The Chair asked if Mr. Small still has that option.

Mr. Lowe said sure, he does not see why he could not come back before the Board to seek a Variance.

Mr. Koch said that is correct.

Mr. Lowe said Mr. Small chose to appeal his interpretation of the Ordinance; it was not totally about use.

Mr. Fesperman asked if the appeal process goes to Superior Court.

Mr. Koch said that is correct.

Mr. Lowe said Mr. Small could drop that and come back before the Planning and Zoning Board with a completely different application as a Variance. He said you would be serving as Board of Adjustment and have to decide whether he has a hardship here or not.

The Chair asked if there were any other questions.

Ms. Wilhelm said she spoke with Counsel for the Board, and with Mr. Lowe and we determined that we would attempt this appeal, and that would be the best way to go at that time. Certainly, we would be interested in applying for a Variance if that is the suggestion of Counsel and this Board, we would be more than willing to do that.

Mr. Koch said just for clarification, Ms. Wilhelm indicated to him that is what you were going to do. He wrote Mr. Small a letter laying out what his options were, which included appealing the interpretation or seeking a Variance. Those were the options that were laid out to Mr. Small. Mr. Koch did not make a recommendation as to which option he should pursue.

Ms. Wilhelm did not mean to insinuate that Counsel was giving her advice; she just meant that she discussed it with him.

Mr. Koch said we did and that is true.

Mr. Fesperman would not want the parties to think that on a Variance situation that we would be in agreement on that. He said that is not in front of us.

Mr. Koch said that is correct and there are a different set of rules

The Chair said the point he was trying to make is that it is still an option.

Mr. Koch said yes, it is still an option, they are not usually exclusive.

The Chair asked Mr. Koch to discuss how they are to here this.

Mr. Koch read Section 12-22 of the Zoning Ordinance as follow:

**Section 12- 22 - Application of interpretation power.**

An appeal from an order, requirement, decision or determination of the Zoning Administrator shall be decided by the Commission, based upon its findings of fact and to achieve the intent of the Ordinance. In exercising this power, the Board shall act in a prudent manner so that the purposes of the ordinance shall be served. The effect of the decision shall not be to vary the terms of the Ordinance nor add to the list of permitted uses in the districts.

He said in other words, in this context, you are to decide whether the interpretation of the Zoning Administrator was correct or not, based upon the facts as you have heard them in

this hearing tonight. He said you cannot take the situation and say, well, perhaps because of a hardship or some issue of that sort that we should vary the terms of the ordinance to allow this situation to fit within it. He said you cannot do that, nor can you essentially create a new permitted use in that zoning district by saying that yes this particular use can be, as its been presented to you, can occur in the AO zoning; which is what he believes is the zoning here.

Mr. Koch said there are a couple of other comments he would like to make concerning the facts that have been heard tonight. He said the Board heard that this was a complaint inspection. He thinks the majority of the complaints received concerning zoning violations are complaint inspections. The fact that it was a complaint, the reason for the complaint whether it was a good reason or not that someone else complained, is really irrelevant to the issue before you tonight. A lot of the complaints that zoning gets are not really because of the actual zoning violation; that is not really the point, there is some other dispute between neighbors that is driving the issue. For what ever reason that person has, they call up the zoning department and complain about something they think may be a zoning violation. The motive is not relevant or a factor here, you are strictly looking at interpreting the ordinance in view of the facts as they have been presented to you.

Mr. Koch said the Board has also heard that the decision by the zoning administrator here was consistent with what they have done in the past in similar circumstances. He said consistency of interpretation is something that should be pursued but is not the overall goal here. Each case is different on its facts, so you have to look at the facts of the situation as you have heard them tonight and then make your decision based on whether you think the interpretation of the ordinance is correct or not. Certainly, if the facts are the same or very similar we would want to have the same result and have that kind of consistency that we value. He said while that is relevant in a sense, we are not discussing those past decisions tonight and you do not have any evidence about them. You have the statement that the interpretation here was consistent with what they have done in the past; you have to look the facts here and determine if in fact the interpretation was correct.

We have already talked about the vote requirement, and we need findings of fact. He said typically the Board chooses to allow him to do those, and then he submits them consistent with the Board decision for the Board to vote on at the next meeting. He said if there is sentiment on the Board to reverse the decision of the Zoning Administrator, the motion should be made in that way. He said it is up to the applicant to prove to the Board by substantial material and competent evidence that the decision was wrong. If there is some sentiment in that direction, then the motion should probably be in that way rather than a motion to affirm it. He said it is clear as to what the decision of the Board is if it is in that fashion because on a motion to reverse the decision, if all eight people do not agree with that, then the application fails and the decision ipso facto is affirmed. He said it is easier to understand the decision if it is in that fashion. He said if there is not sentiment that it should be reversed by anyone, he supposes the motion could be the other way. He said that is probably the easiest way to approach something like this because it is not entirely reciprocal each way.

Mr. Porter said if we determine that this structure was built to house this filtration equipment and the well equipment, and we decide it was not built as a storage structure, is that grounds to reverse staffs citation on this?

Mr. Koch said the Board is tasked with deciding tonight whether it is an accessory building, basically yes or no. He said because that is the part of the Ordinance that was interpreted by the Zoning Administrator, and whether it is storage or not is sort of just one factor in that whole analysis. He said you have the definition of an accessory building, and the ordinance makes certain requirements of an accessory building and those requirements flow from whether it is or is not an accessory building. He said your essential issue is to decide that, because that is the interpretation that was made.

Mr. Prince would like to sum up some of the facts that were heard tonight. It is his understanding that the citation was issued in August 2008.

The Chair thinks the citation was actually issued in November 2008 and the initial visit was in August 2008.

Mr. Lowe said that is correct.

Mr. Prince said the appellant knew that there was an issue at that time, in August 2008, and continued on with construction. He knew that he did not have a zoning compliance permit and also did not have a building permit, he knew by interpretation of the staff that the set backs were inappropriate for AO zoning and that the structure was too close to all of the property lines and also that the building of it was to be determined as an accessory use and is not to be located in the front of the principal building.

What we also heard tonight is what happened in this building, and what he believes to be a state of justification for the building, but, we also know that the well and the filtration or water softening system are completely independent. They do not have to be together, it could be in the house, as the installer stated, it could be in the garage, or it could be in a building located in the rear of the property. Mr. Prince said what is really troubling to him is that even though the owner was aware that there were issues here, and without stopping what was going on and figuring out how to handle it, Mr. Prince thinks proceeding without resolving that issue showed a little poor judgment.

Mr. Prince said, more importantly, he would like to point out to everybody that the reason we have building codes, electrical codes, zoning ordinances and such primarily, is for safety. Sometimes we might think there is too much of that. He thinks in this particular case you need to also look at why this is a safety issue. He said it is a very large structure, it is in front of the building, and it is up close to the street. Off the top of his head, cars sliding off hitting this structure, children playing around the structure, dogs running out from behind the structure; there are a bunch of reasons we have ordinances that limit the size and location of these accessory use buildings. He finds that the citation

is correct and he believes that the interpretation of the ordinance that this is an accessory building as defined by our Ordinance is completely accurate in this case.

The Chair said the definition of accessory building was included in the handouts; also in the Zoning Ordinance there are four items there. It appears to him that this building complies with each of those and therefore obviously would be considered an accessory building. The other thing he is troubled by is the construction of the building was started before Mr. Small established a need for this extensive filtration system, the building was being built before the filtration system was sized and the testimony we heard was maybe 1 out of 15 systems is this complex. He does not know how Mr. Small would have known before hand to build a building to house this equipment.

See Attached Findings of Fact submitted by Mr. Koch.

Mr. Prince, **MOTIONED, SECONDED** by Mr. Fesperman to **DENY** the Appeal. The vote was 6 to 2 (Mr. Tommy Porter and Mr. Eugene Divine abstained- an abstaining vote counts as affirmative, the person(s) was not excused from voting) **Appeal Denied.**

### **Directors Report**

Ms. Susie Morris, Planning and Zoning Manger addressed the Board. She is pleased to report that we finally got through the mass zoning process; it was approved. She said the City of Concord took the Central Area Land Use Plan to their Planning and Zoning Board last night and it is her understanding that it is being moved on to the City Council. She is not sure of the motion but it was some type of an affirmative to move it along. She believes they will meet on March 10<sup>th</sup> or 12<sup>th</sup> and hopefully, City Council will be considering it then.

She said as part of that being Light Industrial, the Board did not change anything that was scheduled to go to General Industrial (GI). That was really the one area that they talked about, and since it was not related to densities, they decided to not move forward with rezoning those parcels to General Industrial (GI).

She said the Board of Commissioners did allow 60 days for anybody who was not happy with that decision to come back and file a rezoning petition without paying the fees. The deadline for them to file that is March 19<sup>th</sup>. We will be looking for those cases to come to you in April. She said one person has filed so far.

Ms. Morris talked with the Chairman of the Board of Commissioners, and it is his preference that the rezoning requests come to the Planning and Zoning Commission all in a batch. We are going to wait until March 19<sup>th</sup> and then we will process them all together so that we can do one ad; then if anybody appeals, hopefully, one appeal and then on to the Board of Commissioners. She said right now we just have the one that we will be looking at probably in April.

Ms. Morris said we received an award for the Central Area Land Use Plan from the Centralina Council of Governments (COG). It is a Region of Excellence award for planning and sustainability. She said it was at the Elected Officials meeting. She and Commissioner Poole attended and accepted the award on behalf of Cabarrus County. We received a lot of kudos for getting the public involved and for the different ways that we got the public involved and also for looking at sustainability and green space.

Ms. Morris spoke with Harrisburg, there have been some changes in the town; hopefully we are looking at heading that way again since it was on hold. They had some money in the budget for this year, and if we can get everything worked out, hopefully we can get started before the next fiscal year. We will be looking for the board to participate in that plan. We will probably hire a consultant like we did with the last one, just so that we are consistent, and maintain that model as far as the market study and all of those different elements that went into that plan.

Ms. Morris said the Board of commissioners adopted the new Voluntary Mitigation Payment (VMP) amount on Monday. They adopted the new amount like it says they are supposed to do in the Ordinance, but then they adopted a new resolution that actually lessened the percentage. She said instead of asking for 65% of the amount, the new adjusted amount which adjusted up based on the construction index, the new VMP based on the 65% policy would have been roughly \$9,250 for single family detached, \$4,900 for a town home and \$4,450 for a multi-family or other. They struggled with the adjustment in light of the current economy, so the adjustment to the percentage from the 65% actually went down to 60.572% and essentially that kept it at no change. She said the amount is the same as it was last calendar year; for a single family detached \$8,617, a townhome \$4,571, a multi-family or other \$4,153. That amount will be good for any projects that come in January 1, 2009 through December 31, 2009. We are now going to start taking that amount starting in November, for the last quarter, so that it will be ready to go January 1<sup>st</sup> instead of having them adopted at the first meeting and then it being retroactive for those 20 days.

Ms. Morris said there was a developer who came to several meetings and the Board of Commissioners did end up adjusting the timing of their payment; so we may be going back and looking at that. She does not know if the Board of Commissioners will expect the Planning Commission to chime in on that and give them you opinion of when you think the timing is better or not.

Ms. Morris informed the Board of the regional training session being held at the Kannapolis Train Station, on Thursday, April 9, 2009, 6:00 p.m. – 9:00 p.m., conducted by Bill Duston, Centralina Council of Aging (COG).

There being no further discussion, Mr. Danny Fesperman, **MOTIONED, SECONDED** by Mr. Ian Prince to **Adjourn** the meeting. The vote was unanimous. The meeting ended at 9:07 p.m.



**FINDINGS OF FACT**  
**CASE #APPL 2009-0002**  
**APPLICANT: BEN SMALL**

1. The applicant, through counsel, elected to proceed with the appeal after being advised that applicant would need all 8 votes from the 8 members present in order to reverse the decision of the Zoning Administrator.

2. The Zoning Administrator determined that the applicant had constructed an 8x10 brick building in the front yard of the applicant's residence located at 2239 St. John's Church Road, Concord, North Carolina.

3. The zoning for this property is agricultural open ("AO"). The size of the lot is one-half acre.

4. The applicant did not obtain a zoning compliance permit, in violation of Section 12-3 of the Cabarrus County Zoning Ordinance (the "Ordinance").

5. The building is used to cover the well and to store the components of a water filtration system servicing the residence on the property. The residence is approximately 2000 square feet.

6. Section 2-2 of the Ordinance defines an accessory building as a building which

- a) is subordinate to and serves a principal building or principal use,
- b) is subordinate in extent or purpose to the principal building or principal use served,
- c) contributes to the comfort, convenience, or necessity of occupants of the principal building or principal use, and
- d) is located on the same zoning lot as the principal building or principal use.

7. The building is an accessory building because it houses the water source and purification equipment that serves the principal residence, is smaller than the principal residence and is on the same zoning lot as the principal residence.

8. As such, the building meets all four parts of the definition of an accessory building.

9. This interpretation is consistent with past interpretations of that section of the Ordinance because the building has room for storage apart from simply covering the well head.


10. The location of the building violates the setbacks and location for such a building in AO zoning, pursuant to Sections 5-5 and 7-4 of the Ordinance.

APPROVED BY:

~~Todd Berg, Chairman~~

Ian Prince, Vice Chairman

SUBMITTED BY:

  
Arlena B. Roberts

ATTEST BY:

Susie Morris  
Planning and Zoning Manager

COUNTY OF CABARRUS  
ORDER INTERPRETING THE ZONING ORDINANCE  
CASE # APPL 2009-0002  
Applicant: Ben Small

The Board of Adjustment for the County of Cabarrus held a public hearing on February 19, 2009, to consider application # APPL 2009-0002 submitted by Ben Small, which is an appeal of an interpretation of Section 2-2 of the Cabarrus County Zoning Ordinance by the Planning and Zoning Director, Susie Morris. After having heard all of the evidence and arguments presented at the hearing, the Board of Adjustment made the attached Findings of Fact.

The resolution of this case depends on the interpretation of the Ordinance language as applied to the foregoing facts. It is the Board's Conclusion that Section 2-2 of the Ordinance, as applied to the facts, is interpreted such that applicant's 8x10 brick building is an accessory building as defined in Section 2-2.

IT IS ORDERED that the decision of Zoning Enforcement Officer Jay Lowe is AFFIRMED.

ORDERED this 27<sup>th</sup> day of March, 2009.

  
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TODD BERG  
CHAIR

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

**FINDINGS OF FACT**  
**CASE #APPL 2009-0002**  
**APPLICANT: BEN SMALL**

1. The applicant, through counsel, elected to proceed with the appeal after being advised that applicant would need all 8 votes from the 8 members present in order to reverse the decision of the Zoning Administrator.

2. The Zoning Administrator determined that the applicant had constructed an 8x10 brick building in the front yard of the applicant's residence located at 2239 St. John's Church Road, Concord, North Carolina.

3. The zoning for this property is agricultural open ("AO"). The size of the lot is one-half acre.

4. The applicant did not obtain a zoning compliance permit, in violation of Section 12-3 of the Cabarrus County Zoning Ordinance (the "Ordinance").

5. The building is used to cover the well and to store the components of a water filtration system servicing the residence on the property. The residence is approximately 2000 square feet.

6. Section 2-2 of the Ordinance defines an accessory building as a building which

- a) is subordinate to and serves a principal building or principal use,
- b) is subordinate in extent or purpose to the principal building or principal use served,
- c) contributes to the comfort, convenience, or necessity of occupants of the principal building or principal use, and
- d) is located on the same zoning lot as the principal building or principal use.

7. The building is an accessory building because it houses the water source and purification equipment that serves the principal residence, is smaller than the principal residence and is on the same zoning lot as the principal residence.

8. As such, the building meets all four parts of the definition of an accessory building.

9. This interpretation is consistent with past interpretations of that section of the Ordinance because the building has room for storage apart from simply covering the well head.

10. The location of the building violates the setbacks and location for such a building in AO zoning, pursuant to Sections 5-5 and 7-4 of the Ordinance.