

Cabarrus County Government

Cabarrus County Planning and Zoning Commission Meeting
June 18, 2009
7:00 P.M.
Board of Commissioners Chamber
Cabarrus County Governmental Center

Agenda

1. Roll Call
2. Approval of Minutes
3. Oath of Office for Newly Appointed Member
4. New Business – Board of Adjustment Function:
 - A. Conditional Use Permit - Case # CUSE2009-00004 – Mr. Edward V. and Ms. Ethel Little

Request: The applicant is requesting a Conditional Use Permit to replace existing dwelling located at 6845 Sandusky Boulevard, Concord, NC 28027.
 - B. Variance Application – VARN2009-00002 – Mr. Ronald Overcash

Request: The applicant is requesting the buffer material required along the western boundary (the boundary line adjoining Concord Regional Airport) be waived. The property in question is located at 1190 Ivey Cline Road, Concord, NC.
5. New Business – Planning Board Function:
 - A. Request for Extension of Rustic Canyon Preliminary Plat Approval – Petition #C2009-04 SE (Accela # PLPR2008-00005)

Request: The applicant is requesting an extension for the Rustic Canyon Preliminary Subdivision Plat
 - B. Request for Extension of Rocky Glen Preliminary Plat Approval - Petition #C2009-03 SE - Petitioner Mr. Randall T. Scribner

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

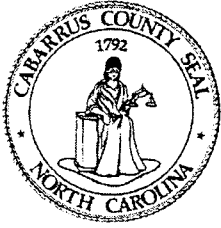
- C. Vested Rights Request – Petition #C2009-02-VR (PLVR2009-00001) –
Petitioner Mr. Randall T. Scribner

The purpose of this petition is to establish vested rights for approximately 35.99 acres at the intersection of Archibald Road and Rocky River Road zoned Low Density Residential (LDR).

6. Directors Report

7. Adjournment

CASE#: CUSE2009-00004
APPLICANT: EDWARD & ETHEL LITTLE
DATE: JUNE 18, 2009
EXHIBIT: 1



Cabarrus County Zoning Department

CUSE2009-00004

June 4, 2009

Findings of Fact

Applicant-	James E. Craddock (on behalf of Edward & Ethel Little) P.O. Box 268 Concord, N.C. 28025
Property Owner-	Edward & Ethel Little 5650 Sandusky Boulevard Concord, N.C. 28027
Property Location-	6845 Sandusky Boulevard (formerly 5650 Sandusky Boulevard) Concord, N.C. 28027
PIN-	4598-57-7645
Property Zoning-	GC – General Commercial
Property Size-	+/- 1.180
Request-	The applicant is requesting a Conditional Use Permit to allow the demolition of the existing house and replace it with a new single family dwelling.
Additional Facts-	

Final Decision

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

1. The applicant has provided documentation compliant with Section 8-3, Petitioning for a Conditional Use.
2. The applicant has submitted a complete application which includes the "Findings of Fact" sheet along with a site plan showing the proposed house.
3. A Public hearing notice has been published in the Independent Tribune on June 3rd and June 10th, 2009.
4. Adjacent property owners have been notified by US Mail.
5. A sign has been placed on the property stating the time, date, and location of the public hearing.
6. Site plan review and approval will be required subsequent to Board of Adjustment approval to ensure compliance with all applicable development requirements.
7. Additional agencies are part of the review process. Each respective agency reviewed the request and found the proposal to be in compliance. No additional comments were offered.

8. A copy of the Granting Order will need to be recorded with the property deed prior to development.



CABARRUS COUNTY
 PO BOX 707
 CONCORD, NC 28025
 704-920-2137
 www.co.cabarrus.nc.us

Application Number

Date

<u>CONDITIONAL USE APPLICATION FORM</u>			
Circle Jurisdiction That Applies:			
<u>Cabarrus County</u>	<u>Town of Midland</u>	<u>Town of Mt. Pleasant</u>	<u>Town of Harrisburg</u>

The Conditional Use Process:

A conditional use is necessary when a proposed land use may have some consequences that may warrant review by the Board of Adjustment. This review is to insure there will be no detrimental effects to surrounding properties nor will it be contrary to the public interest.

In order to apply for a for a conditional use a completed application along with the application fee is required to be turned in to the Zoning Office, 30 days prior to the scheduled public hearing. In order for the Board of Adjustment to grant approval of the conditional use, the applicant must provide the requested information in the following application.

If the Board finds that all approval criteria have been met, they may impose reasonable conditions upon the granting of any conditional use to insure public health, safety, and general welfare. If the application is approved the applicant then may proceed with securing all required local and state permits necessary for the endeavor. Failure to follow conditions set in the approval process would result in a violation of the Zoning Ordinance.

If there are additional questions concerning this process, please call the Zoning Office at (704) 920-2137.

TO THE BOARD OF ADJUSTMENT:

I, HEREBY PETITION THE BOARD OF ADJUSTMENT TO GRANT THE ZONING ADMINISTRATOR THE AUTHORITY TO ISSUE A CONDITIONAL USE PERMIT FOR THE USE OF THE PROPERTY AS DESCRIBED BELOW.

Applicant's Name
JAMES E. CRADDOCK
 Applicant's Address
P.O. BOX 268
CONCORD, NC 28025
 Applicants Telephone Number

Property Owner's Name
Edward V. & Ethel G. Little
 Property Owner's Address
5650 SANDUSKY BLVD.
CONCORD, NC 28027

Parcel Information

Existing Use of Property
 Proposed Use of Property
 Existing Zoning

SINGLE FAMILY DETACHED RESIDENTIAL
SINGLE FAMILY DETACHED RESIDENTIAL
GC

Property Location

5650 SANDUSKY RD. CONCORD, NC

Property Acreage

1.18 ACRES

Tax Map and Parcel Number (PIN)

4598-58-31760000

Land Use of Adjacent Properties

(Provide Plat Map if Available)

NORTH	<u>SINGLE FAMILY DETACHED RESIDENTIAL</u>
SOUTH	<u>UNDEVELOPED - TEMP. CAMPING / SFDR</u>
EAST	<u>UNDEVELOPED - TEMP. CAMPING / SFDR</u>
WEST	<u>TEMP. CAMPING - SUPPORT / SFDR</u>

General Requirements

1. The Zoning Ordinance imposes the following general requirements on the use requested by the applicant. Under each requirement, the applicant should explain, with reference to the attached plans, where applicable, how the proposed use satisfies these requirements.

The Board must find that the uses(s) as proposed "are not detrimental to the public health, safety or general welfare."

PROPOSED NO CHANGE IN USAGE WILL NOT BE
DETRIMENTAL.

The Board must find that the use(s) as proposed "are appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, etc."

EXIST. & PROPOSED SFDR IS CURRENTLY SERVED
BY ADEQUATE PUBLIC FACILITIES & SERVICES.

The Board must find that the use(s) as proposed "will not violate neighborhood character nor adversely affect surrounding land uses."

EXIST. & PROPOSED SFDR IN KEEPING WITH
SURROUNDING USAGE.

The Board must find that the use(s) as proposed "will comply with the general plans for the physical development of the County or Town, as embodied in the Zoning Ordinance or in the area development plans that have been adopted."

NO CHANGE IN EXISTING USAGE.

2. The Zoning Ordinance also imposes SPECIFIC REQUIREMENTS on the use(s) requested by the applicant. The applicant should be prepared to demonstrate that, if the land is used in a manner consistent with the plans, specifications, and other information presented to the Board, the proposed use(s) will comply with specific requirements concerning the following:

Nature of use (type, number of units, and/or area):

SFDR WILL HAVE ADEQUATE SETBACKS AS
DICTATED BY USE

Accessory uses (if any):

TRADITIONAL RESIDENTIAL ACC. USAGE WILL MAINTAIN
PROPOSED SETBACK.

Setback provisions:

Principle Use

Front: 40 Side: 10 Rear: 20

Accessory Use

Front: 40 Side: 10 Rear: 20

Height provisions:

Principle Use NO CHANGE

Accessory Use NO CHANGE

Off street parking and loading provisions: (include calculations)

N/A

Sign provisions: (include sketch drawing with dimensions)

N/A

Provisions for screening landscaping and buffering: (if required add to site plan)

SCREENING / BUFFERING WILL BE PROVIDED BASED
ON 400

Provisions for vehicular circulation and access to streets: (provide NCDOT permit if necessary)

EXISTING PRIVATE ROAD SYSTEM WITH APPLICABLE
EASEMENT ACCESS TO PUBLIC ROAD SYSTEM

Adequate and safe design for grades, paved curbs and gutters, drainage systems, and treatment or turf to handle storm waters, prevent erosion, subdue dust:

DEVELOPMENT LIMITED AS SHOWN ON ATTACHED MAP

An adequate amount and safe location of play areas for children and other recreational uses according to the concentration of residential property:

SFDR REUSE ONLY

Compliance with overlay zones including but not limited to the Thoroughfare Overlay and the River/Stream Overlay Zones:

YES

Compliance with the Flood Damage Prevention Ordinance:

YES

Other requirements may be requested by the applicant or specified by the Board for protection of the public health, safety, welfare, and convenience:

EXISTING STRUCTURE IS SINGLE STORY WITH BASEMENT RESULTING IN OWNER LIVING ON TWO LEVELS. OWNER DESIRES TO BUILD A DWELLING WITH ALL LIVING AREAS ON ONE LEVEL

Predefined Standards

Each individual Conditional Use listed in the Zoning Ordinance may have specific standards imposed. Refer to the Conditional Use section of the Zoning Ordinance for these requirements. Each standard should be addressed in the site plan submitted along with this application.

Required Attachments/Submittals

1. Printout of names and addresses of all immediately adjacent property owner, including any directly across the street.
2. Scaled site plan containing all requested information above on legal or ledger sized paper. Larger sized copies will be accepted if copies for each Board Member is provided for distribution.

Certification

I hereby confirm that the information contained herein and herewith is true and that this application shall not be scheduled for official consideration until all of the required contents are to the Zoning Department.

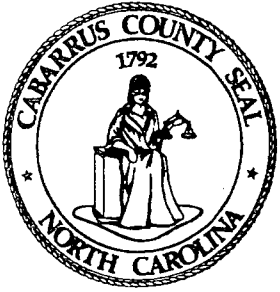
Signature of Applicant

J. E. Little
Edward V. Little

Date 20 May 09

Signature of Owner

Date May 20, 2009



June 2, 2009

Dear Adjacent Property Owners:

This letter is to inform you that Jim Craddock, on behalf of Edward V. and Ethel Little, has petitioned the Cabarrus County Board of Adjustment for a Conditional Use Permit. If granted, the Little family would demolish their existing dwelling and replace it with a new one.

The property in question is located at 6845 Sandusky Boulevard (formerly 5650 Sandusky Boulevard), Concord, N.C. 28027 (PIN#4598-57-7645).

There will be a public meeting to discuss this matter on June 18, 2009. The meeting will take place at the Cabarrus County Governmental center (2nd floor), located at 65 Church Street, Concord, N.C. 28026 and will begin at 7:00 p.m.

The application is on file at the Cabarrus County Zoning office for your convenience. Please contact Jay Lowe (Zoning Inspector) at 704/920-2140 if you have any questions.

Thank you,

Jay Lowe
Zoning Officer

JL/mpf

ADJACENT PROPERTY OWNER LIST –
CUSE 2009-00004 EDWARD LITTLE

ADJACENT PROPERTY OWNERS:

Edward V. & Ethel Little
5650 Sandusky Boulevard
Concord, N.C. 28027
4598-58-3176

Mantra Little & Michael Kluttz
6851 Sandusky Boulevard
Concord, N.C. 28027
4598-57-5808



Applicant: James E. Craddock
 (on behalf of Edward
 & Ethel Little)
Petition: CUSE2009-00004
Zoning: GC- General Commercial
Parcel ID#: 4598-57-7645

Legend
 Subject Property



Cabarrus County shall not be held liable for any
 commission, errors, omissions, or inaccuracies
 in the data, and relative and positional accuracy of the data.
 These data cannot be construed to be a legal
 document. Primary sources from the information
 contained within the data
 Map Prepared by Cabarrus County Planning Services
 June 2009



Applicant: James E. Craddock
 (on behalf of Edward
 & Ethel Little)
Petition: CUSE2009-00004
Zoning: GC- General Commercial
Parcel ID#: 4598-57-7645

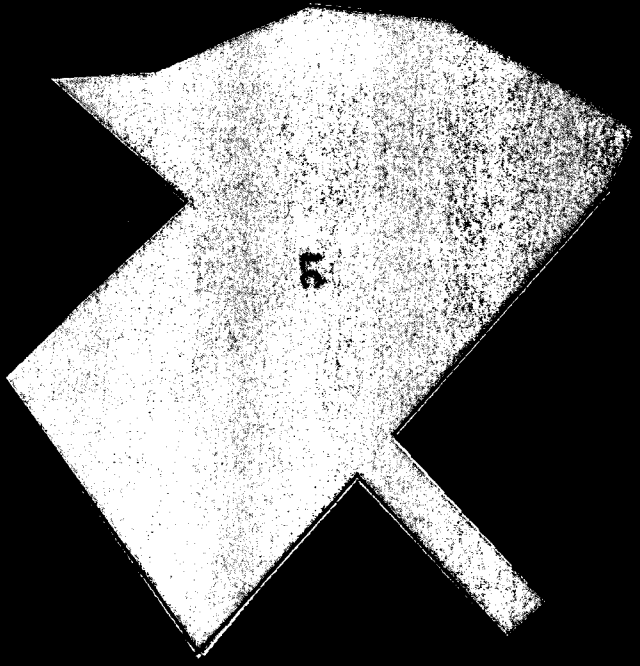
Legend

 **Subject Property**



OF CONCORD

CITY OF CONCORD



Cabarrus County shall not be held liable for any
 errors, omissions, or inaccuracies in the
 data, and relative and positional accuracy of the data.
 These data cannot be construed to be a legal
 document. Primary sources from which these data
 were derived are indicated within the data
 information contained within the data.
 Map Prepared by Cabarrus County Planning Services,
 June 2009

8733
0173

FILED
CABARRUS COUNTY NC
LINDA F. McABEE
REGISTER OF DEEDS

FILED May 19, 2009
AT 03:28 pm
BOOK 08733
START PAGE 0173
END PAGE 0176
INSTRUMENT # 12766
EXCISE TAX \$0.00

NORTH CAROLINA GENERAL WARRANTY DEED

No title opinion rendered unless stated on separate written certificate.

Excise Tax -0-

Recording Time, Book and Page

Tax Lot No. P/O 02-46-3.000

Parcel Identifier No.

Verified by _____ County on the _____ day of _____
by _____

Mail after recording to Grantee: E. Vernon Little, 5650 Sandusky Blvd., Concord, North Carolina 28027

This instrument was prepared by Steve L. Medlin, MEDLIN & MEDLIN, P.A., 43 Union Street South, Concord, NC 28025

Brief description for the Index

1.180 ACRES

THIS DEED made this 18th day of May, 2009, by and between

GRANTOR

GRANTEE

EDWARD VERNON LITTLE
AND WIFE,
ETHEL G. LITTLE

EDWARD VERNON LITTLE
AND WIFE,
ETHEL G. LITTLE

5650 Sandusky Blvd.
Concord, North Carolina 28027

Enter in appropriate block for each party: name, address, and, if appropriate, character of entity, e.q. corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of

The property herein above described was acquired by Grantor by instrument recorded in _____

A map showing the above described property is recorded in Plat Book _____ 13 _____ page _____ 71 _____

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated. Title to the property hereinabove described is subject to the following exceptions:

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

USE BLACK INK ONLY

(Corporate Name)

Edward Vernon Little (SEAL)
EDWARD VERNON LITTLE

By: _____

President

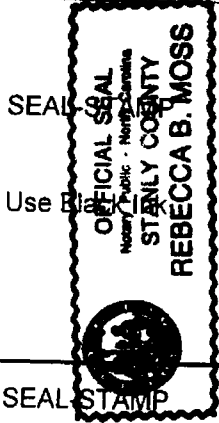
Ethel G. Little (SEAL)
ETHEL G. LITTLE

ATTEST: _____

Secretary (Corporate Seal)

(SEAL)

(SEAL)



NORTH CAROLINA, Cabarrus _____ County.

I, a Notary Public of Stanly County and State aforesaid, certify that Edward Vernon Little and wife, Ethel G. Little _____ Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 19th day of May, 2009.

My commission expires: July 27, 2009 *Rebecca B. Moss* Notary Public

SEAL STAMP

NORTH CAROLINA, _____ County.

I, a Notary Public of the County and State aforesaid, certify that _____ he is _____ Secretary of _____ a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____ President, sealed with its corporate seal and attested by _____ as its _____ Secretary.

Witness my hand and official stamp or seal, this _____ day of _____

My commission expires: _____ Notary Public

The foregoing Certificate(s) of _____

EXHIBIT "A"

Lying and being in Number Two (2) Township, Cabarrus County, North Carolina, and being on the Northwest side of, but not adjoining, U.S. Highway 29 and to the Southwest of, but not adjoining, Sandusky Boulevard, a thirty foot (30') wide right-of-way, as described in Book 590, Page 259.

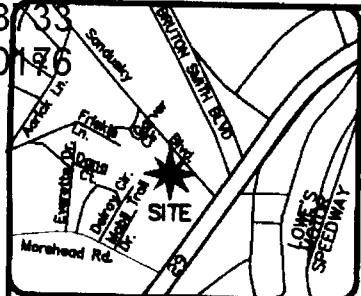
BEGINNING at an existing axle, said point being the Southeastern corner of Mantra Little Kluttz and husband, Michael Keith Kluttz, as described in Book 1327, Page 27, Cabarrus County Registry, and runs thence three (3) new lines as follows: (1st) South 43-40-44 East 239.53 feet to a set iron pin on the Northern edge of a forty-five foot (45') wide private access right-of-way; thence (2nd) partially with said forty-five foot wide private access right-of-way, South 42-07-42 West 203.87 feet to a set iron pin in No. 5 rebar; thence (3rd) North 43-33-35 West 266.60 feet to a point on the Southeastern line of Mantra Little Kluttz and husband, Michael Keith Kluttz, said point being 0.19 feet from an existing axle; thence with the line of Mantra Little Kluttz and husband, Michael Keith Kluttz, North 49-45-09 East 203.13 feet to the point and place of **BEGINNING**, containing 1.180 acres, more or less, according to map and survey by James E. Craddock, P.L.S. of CESI Land Development Services, dated May 18, 2009, to which map and survey reference is hereby made and a copy of which is attached hereto and incorporated herein by reference.

TOGETHER WITH AND INCLUDING a forty-five (45') foot wide private access right-of-way for the purposes of ingress, egress and regress from the above described property to Sandusky Boulevard, said forty-five (45') foot wide private access right-of-way being more particularly described as follows:

BEGINNING at a set iron pin, the Southeastern corner of the above described 1.180 acre tract, and runs thence with said 1.180 acre tract, South 42-07-42 West 45.12 feet to a point; thence South 43-40-44 East 45.12 feet to a point; thence North 42-07-42 East 190.32 feet to a point in the center of Sandusky Boulevard; thence with the center of Sandusky Boulevard, North 43-57-50 West 45.10 feet; thence South 42-07-42 West 144.98 feet to the point and place of **BEGINNING**, according to map and survey by James E. Craddock, P.L.S. of CESI Land Development Services, dated May 18, 2009, to which map and survey reference is hereby made and a copy of which is attached hereto and incorporated herein by reference.

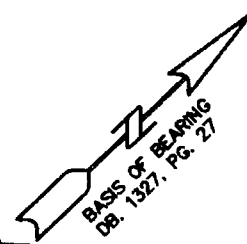
TOGETHER WITH AND INCLUDING a thirty (30') foot wide right-of-way over the above mentioned Sandusky Boulevard from the forty-five (45') foot wide right-of-way described herein to U.S. Highway 29.

For back title reference see Book 3330, Page 316, Cabarrus County Registry. See also Map Book 13, Page 71, Cabarrus County Registry. See also Book 590, Page 259, Book 379, Page 447, Book 453, Page 457 and Book 301, Page 84, Cabarrus County Registry.



LINE TABLE		
LINE	LENGTH	BEARING
L1	0.31	S67°17'38"W

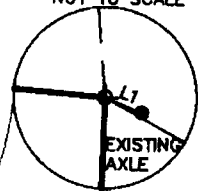
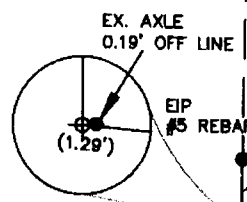
SETBACKS
 FRONT YARD = 40
 SIDE YARD (SINGLE) = 10
 SIDE YARD (TOTAL) = 30
 REAR YARD = 20



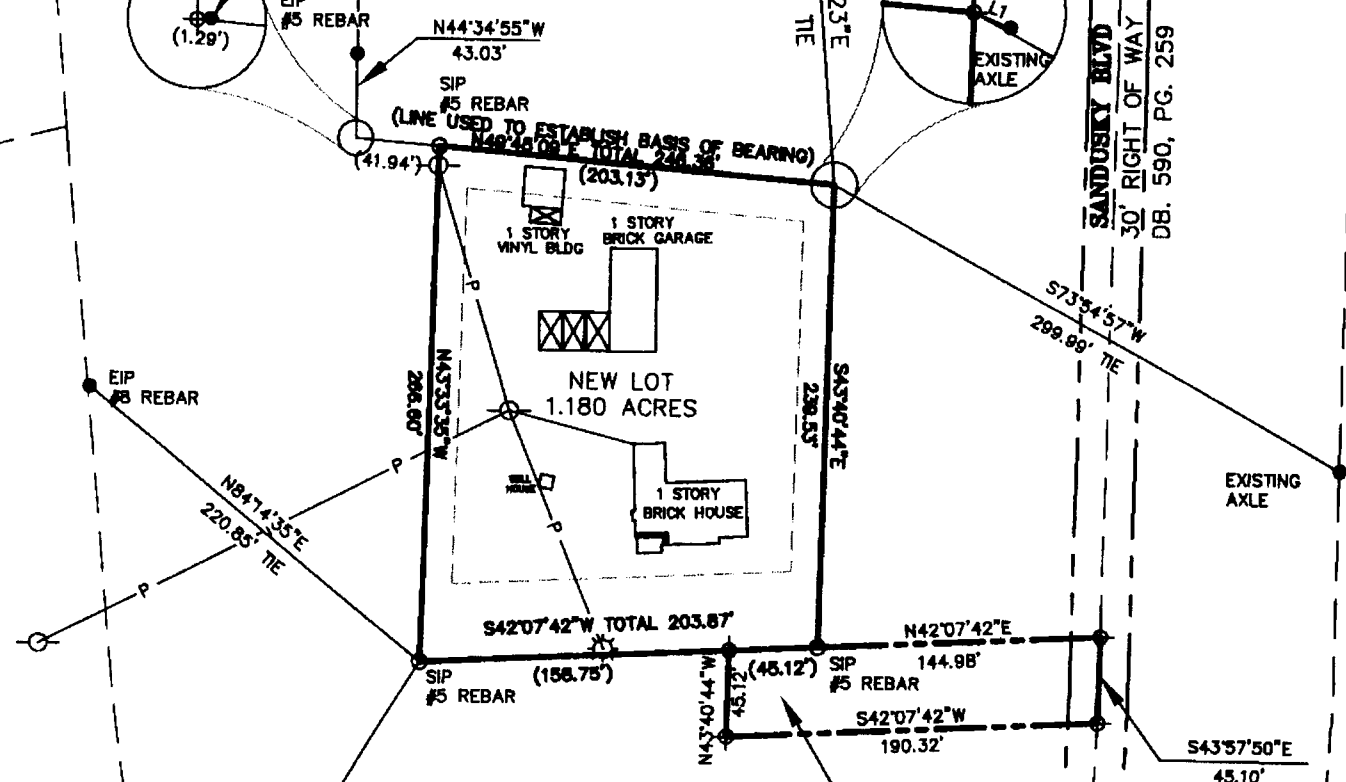
VICINITY MAP

MANTRA LITTLE KLUTTZ AND HUSBAND, MICHAEL KEITH KLUTTZ
 PIN: 4598-57-5808
 DB. 1327, PG. 27
 MB. 13, PG. 71
 LOT 6
 ZONE: LC

DETAIL NOT TO SCALE



SANDUSKY BLVD
 30' RIGHT OF WAY
 DB. 590, PG. 259



EDWARD V LITTLE AND WIFE ETHEL LITTLE
 PIN: 4598-58-3176
 DB. 3330, PG. 316
 MB. 13, PG. 71
 LOT 6
 ZONE: GC

45' PRIVATE ACCESS RIGHT OF WAY
 0.198 ACRES
 STATE OF NORTH CAROLINA
 COUNTY OF CABARRUS

LEGEND

- ⊠ NO POINT SET
- SET IRON PIN (#5 REBAR)
- EXISTING IRON PIN (AS DESCRIBED)
- ⊕ POWER POLE
- ⊙ LIGHT POLE
- TIE LINE
- BOUNDARY AS SURVEYED
- BOUNDARY BY DEED OR PLAT
- RIGHT OF WAY
- EASEMENT
- X-X-X- FENCE
- OVERHEAD POWER LINE
- SETBACK

I, Jonathan Marshall, REVIEW OFFICER OF THE CABARRUS COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS OF NORTH CAROLINA GENERAL STATUTES FOR RECORDING.

DATE: 5/18/09
 REVIEW OFFICER: Jonathan Marshall
 by: Kessie Wally

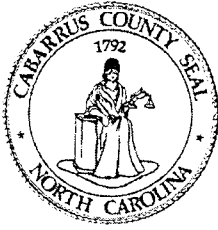
- REFERENCES:
- ALL DEEDS AND MAPS SHOWN HEREON.
 - CABARRUS COUNTY ON-LINE G.I.S. TAX MAP.

- NOTES:
- TRAVERSE ADJUSTED BY LEAST SQUARES ADJUSTMENT METHOD; RAW ERROR OF CLOSURE 1:10,000+.
 - AREA COMPUTED BY COORDINATE COMPUTATIONS.
 - NO NCGS MONUMENTS LOCATED WITHIN 2000' OF PROPERTY SHOWN HEREON AT THE TIME OF THIS SURVEY.
 - ALL DISTANCES SHOWN ARE HORIZONTAL GROUND DISTANCES UNLESS OTHERWISE NOTED.
 - SUBJECT PROPERTY LOCATED IN ZONE X (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN) AS PER F.I.R.M. MAP NUMBER 3710459800 K, EFFECTIVE DATE MARCH 2, 2009.
 - THE OWNER WILL BE RESPONSIBLE FOR THE MAINTENANCE OF THE 45' RIGHT OF WAY.

IRENE P LITTLE AND BILLY JACK LITTLE
 PIN: 4598-57-7108
 DB. 1177, PG. 170
 MB. 13, PG. 71
 LOT 5
 ZONE: GC

EXISTING AXLE

CASE#: VARN2009-00002
APPLICANT: RONALD OVERCASH
DATE: JUNE 18, 2009
EXHIBIT: /



Cabarrus County Zoning Department

VARN-2009-00002

June 4, 2009

Findings of Fact

Applicant- Ronald Overcash (on behalf of Utility Precast Concrete)
P.O. Box 5030
Concord, N.C. 28027

Property Owner- Poplar Park LLC/ A Limited Liability Company
P.O. Box 5030
Concord, N.C. 28027-5030

Property Location- 1190 Ivey Cline Road
Concord, N.C. 28027

PIN- 4690-23-2362

Property Zoning- GI-General Industrial

Property Size- +/- 33.974

Request- The applicant is requesting a Variance to provide relief from the required plantings of Table 4, Page 9-18 of the Zoning Ordinance.

Additional Facts-

<u>Final Decision</u>		
Motion	To Grant	To Deny
Vote	For	Against
	_____	_____
Granted		Denied

1. The applicant has provided documentation compliant with Section 12-20, Petitioning for a Variance.
2. The applicant has submitted a complete application which includes the "Findings of Fact" sheet along with a site plan showing the proposed Facility.
3. A Public hearing notice has been published in the Independent Tribune on June 3rd and June 10th, 2009.
4. Adjacent property owners have been notified by US Mail.
5. A sign has been placed on the property stating the time, date, and location of the public hearing.

Additional Facts

Mr. Overcash has secured a Zoning permit to construct the Utility Precast Concrete plant on the subject property. The property is zoned General Industrial (GI) and the permitted use falls under the category of Industrial.

The western boundary of the subject property adjoins the Concord Regional Airport. Concord Regional Airport is owned by the City of Concord and is also zoned Industrial (I-1).

The Cabarrus County Zoning Ordinance requires that when adjoining properties are zoned Industrial, a buffer must be installed along the property line for the property that is developing. In this particular case, a Level 2, 75ft. buffer is required.

Eleven trees and forty shrubs are required for every 100 linear feet within the Level 2, 75ft buffer. An evergreen (opaque) vegetative hedge, if used, would reduce the required buffer yard width by one half and eliminate the need for required shrubbery and/or trees (See Table 4, page 9-18).

It is the applicant's contention that, due to the location of his property, next to the airport, that planting trees and/or shrubs along the western boundary line may create a bird sanctuary; thus, creating a hazard to air traffic.

Therefore, the applicant is seeking a variance for the required planting along the boundary that adjoins the Concord Regional Airport to be waived entirely.



CABARRUS COUNTY
 PO BOX 707
 CONCORD, NC 28025
 704-920-2137
 www.co.cabarrus.nc.us

3550-132

\$ Pd-566.50
 5/20/09

Application Number <u>VARN 2009-00002</u>
Date <u>5-20-09</u>

VARIANCE APPLICATION FORM
 Circle Jurisdiction That Applies:

<u>Cabarrus County</u>	<u>Town of Midland</u>	<u>Town of Mt. Pleasant</u>	<u>Town of Harrisburg</u>
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The Variance Process:

A variance is considered a relaxation of the terms of the Ordinance where such variance will not be contrary to the public interest. Generally, a variance should be considered when the literal enforcement of the Ordinance would result in unnecessary and undue hardship to the property owner.

In order to apply for a for a variance a completed application along with the application fee is required to be turned in to the Zoning Office, 30 days prior to the scheduled public hearing. In order for the Board of Adjustment to grant approval of the variance, the applicant must provide proof of five specific standards spelled out in the Ordinance and in the following application.

If the Board finds that all approval criteria have been met, they may impose reasonable conditions upon the granting of any variance to insure public health, safety, and general welfare. If the application is approved the applicant then may proceed with securing all required local and state permits necessary for the endeavor. Failure to follow conditions set in the approval process would result in a violation of the Zoning Ordinance.

If there are additional questions concerning this process, please call the Zoning Office at (704) 920-2137.

1190 Inez Cline Road
 4690-24-5108

Application Information

Applicant's Name <u>Ronald Overcash</u>	Property Owner's Name <u>Poplar Park LLC</u>
Applicant's Address <u>PO Box 5030</u> <u>Concord NC 28027</u>	Property Owner's Address <u>PO Box 5030</u> <u>Concord NC 28027</u>
Applicant's Telephone Number <u>(704) 905-2425</u>	Property Owner's Telephone Number <u>(704) 905-2425</u>

Legal Relationship of Applicant to Property Owner <u>President</u>
Existing Use of Property <u>Industrial/Commercial</u>
Existing Zoning <u>G-I</u>
Property Location <u>Inez Cline Rd</u>

Tax Map and Parcel Number (PIN)	<u>4690-24-7281</u> <u>4690-24-5108</u>
	<u>4690-24-1130</u> <u>4690-23-5395</u>
	<u>4690-23-5753</u> <u>4690-23-5518</u>
	<u>4690-23-2351</u> <u>4690-23-2170</u>
	<u>4690-23-2231</u>

TO THE BOARD OF ADJUSTMENT

I, Ronald Overcash, HEREBY PETITION THE BOARD OF ADJUSTMENT FOR A VARIANCE FROM THE LITERAL PROVISIONS OF THE ZONING ORDINANCE. UNDER THE INTERPRETATION GIVEN TO ME BY THE ZONING ADMINISTRATOR, I AM PROHIBITED FROM USING THE AFOREMENTIONED PARCEL OF LAND. I REQUEST A VARIANCE FROM THE FOLLOWING PROVISION(S) OF THE ORDINANCE.

The following information shall be completed by applicant(s) seeking a variance:

1. Variance Sought Including Related Zoning Ordinance Section(s)

Section: 9-6

Request to have buffer requirement removed

2. Reason(s) for Seeking a Variance

Subject property adjoins Concord Airport. See attached email from Jim Green (City of Concord Deputy City Manager) to Steve Osborne and copied to Boyd Stanley, Margaret Pearson and Rich Lewis; requesting that No trees be planted along the airport

Requests for variance shall be accompanied by a list of adjoining property owners and their addresses and a sketch plan. Said plan shall show, the location and size of:

- 1- The boundaries of the lot(s) in question.
- 2- The size, shape and location of all existing buildings.
- 3- The size, shape and location of all proposed buildings, parking facilities and accessory uses.
- 4- The location and type of screening and buffering proposed.
- 5- Other information deemed by the Zoning Officer to be necessary to consider this application.

Signature of Owner Ronald Overcash Date 5/29/09
Signature of Applicant Ronald Overcash Date 5/29/09

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Direction is received by both state legislation and local ordinance. Under the state enabling act, the Board is required to reach three (3) conclusions as a prerequisite to the issuance of a variance:

- 1- That there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance.

- 2- That the variance is in harmony with the general purposes and intent of the ordinance and preserves its spirit.
- 3- That in the granting of the variance the public safety and welfare have been assured and substantial justice has been done.

In order to make it's determination the Board will review the evidence submitted in this application as well as receive public comment during the scheduled public hearing. This application will be entered into the official record of the public hearing. It is the responsibility of the applicant to present evidence to support a variance not the Planning, Zoning and Building Inspection departments nor the Board of Adjustment. The departmental staff will review and the Board will render a decision.

FINDING OF FACT CHECKLIST

Please provide an explanation to each point in the space provided.

1. The alleged hardships or practical difficulties are unique and singular to the property of the person requesting the variance and are not those suffered in common with other property similarly located.

(The problem must be unique to the property and not a public hardship and must apply to the property, not the property owner).

Due to the unique location of this parcel (adjoining the airport) the planting of trees along the property line may create a bird sanctuary. Which would create a hazard to air traffic

2. The alleged hardships and practical difficulties, which will result from failure to grant the variance, extend to the inability to use the land in question for any use in conformity with the provisions of the ordinance and include substantially more than mere inconvenience and inability to attain a higher financial return.

(This often will be the most difficult area in which to make a determination. The issue, as established by court decisions, deals with the nebulous term of "reasonableness." Generally, if the variance is sought to make a greater profit on this property at the expense of others in the area, this point cannot be met. This item is best reviewed with the concept of, "is the property barred from a reasonable use if the strict terms of the ordinance are adhered to"?)

The requested variance is a public safety concern

3. The variance, if allowed, will not substantially interfere with or injure the rights of others whose property would be affected by allowance of the variance.

(This is a second way to address reasonableness. This is also where the issue of "where did the hardship originate from?" should be addressed. Self-inflicted hardships should be carefully reviewed for reasonableness.)

The buffer yard is required along the airport parcel. They are requesting that no landscaping be placed in the area

4. The variance is in harmony with and serves the general intent and purpose of the ordinance.

(If a variance is granted, is the overall "spirit" of the zoning ordinance still intact? While difficult to explain, some types of variance are usually not in accord with the general intent and purpose of the ordinance and therefore must be cautiously reviewed. These often include extending a non-conforming use in scope, a use variance (clearly not allowed), and modifying a dimensional standard so as to the detriment of a neighborhood or area.

The second part relates to the question, if granted will the spirit of the adopted plan for proper development of the neighborhood or area be compromised?)

Both parcels would be used for a commercial/ industrial use no buffering should be needed

5. The variance will result in substantial justice being done, considering both the public benefits intended to be secured by this ordinance and the individual hardships that will be suffered by a failure of the Board to grant a variance.

(This is the final way to address reasonableness via common sense. Simply put, does the variance make sense? Will its approval or denial endanger any one? Will the essential character of the area be altered if approved or denied?)

If this variance were to be denied the potential for a bird sanctuary exist and there for would endanger air traffic at Concord Airport

Possible Conditions, suggested by the applicant

If the Board of Adjustment finds that a variance may be in order but the Board still has concerns in granting the variance, reasonable conditions can be imposed to assure that any of the five points will continue to be met and not violated. In your review of the five points, are there any conditions that you believe would clarify the justification of a variance? If so, suggest these conditions in the space below.

This variance is unique in that it neither benefits nor harms the subject parcel. It is instead requested to protect the general public from a potential safety issue.

I CERTIFY THAT ALL OF THE INFORMATION PRESENTED BY ME IN THIS APPLICATION IS ACCURATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

SIGNATURE: _____

DATE: _____

STAFF USE ONLY:

Jurisdiction <i>(circle jurisdiction that applies)</i>			
<u>Cabarrus County</u>	<u>Town of Midland</u>	<u>Town of Mt. Pleasant</u>	<u>Town of Harrisburg</u>

Application Fee Collected Yes _____ No _____

Posted Database Yes _____ No _____

Site Plan Attached Yes _____ No _____

Public Hearing Date _____ Notice of Public Hearing Published On _____

Notices to Applicant(s) and Adjoining Property Owners Mailed On _____

Signs Posted On _____

Process Record

Record of Decision:

Motion to: Approve _____ Deny _____

Board of Adjustment Recommendation: Approve _____ Deny _____

Action Taken by Board of Adjustment:

Date Notification of Action Mailed to Applicant(s):

Signature of Zoning Official

Chairman-Board of Adjustment


Date

Secretary-Board of Adjustment

Date

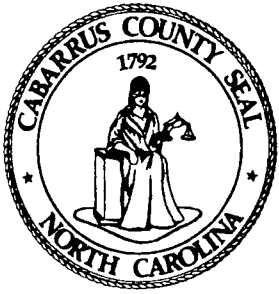
TABLE FOUR: Bufferyard Levels.

How to use the following chart: Determine the acreage of the property to be buffered by reading the first row across. Then, look to the first vertical column on the left. Within this column, three differing levels of bufferyard are presented. Find the bufferyard level required. Read across until you have located the acreage column. Bufferyard requirements appear vertically under the acreage column. For example, a parcel over three acres but less than 3.5 requiring a level one bufferyard would need a yard of at least 58 feet wide with 10 trees per every 100 linear feet and 60 shrubs per every 100 linear feet.

Acreage:  Less than	.5	1	1.5	2	2.5	3	3.5	4	4.5	5	5.5	6	6.5	7	7.5	8	8.5	9	9.5	10 or more acres		
Bufferyard # 1 -Width of yard	43'	46'	49'	52'	55'	58'	61'	64'	67'	70'	73'	76'	79'	82'	85'	88'	91'	94'	97'	100'		
-Trees per 100'	9 trees									10 trees						11 trees					12 trees	
-Shrubs per 100'	60 shrubs																					
Bufferyard # 2 -Width of yard	25'	27'	30'	33'	36'	38'	41'	43'	46'	49'	51'	54'	57'	59'	62'	65'	67'	70'	72'	75'		
-Trees per 100'	6 trees						7 trees					8 trees				9 trees			10 trees			11 trees
-Shrubs per 100'	40 shrubs																					
Bufferyard # 3 -Width of yard	12'	14'	16'	18'	20'	22'	24'	26'	28'	30'	32'	34'	36'	38'	40'	42'	44'	46'	48'	50'		
-Trees per 100'	3 trees			4 trees				5 trees			6 trees			7 trees			8 trees			9 trees		
-Shrubs per 100'	20 shrubs																					

EXCEPTIONS:

1. The minimum width of a buffer may be reduced by 25 percent if a fence or wall is constructed. See Appendix for fencing standards.
2. Shrubs are not required if a fence or wall is constructed. See fencing standards.
3. An evergreen (opaque) vegetative hedge if used will reduce the bufferyard width by one half and eliminate the need for required shrubby and/or trees.
4. A berm with a minimum height of six feet will reduce the bufferyard width by one half and the otherwise required planting materials by one half. The resulting berm must be sown with fescue grass and maintained.



June 2, 2009

Dear Adjacent Property Owners:

This letter is to inform you that Mr. Ronald Overcash has petitioned the Cabarrus County Board of Adjustment for a Variance. To be more specific, Mr. Overcash (on behalf of Utility Precast Concrete), is requesting that the buffer material that is required along the western boundary (the boundary line that adjoins Concord Regional Airport) be waived.

The property in question is located at 1190 Ivey Cline Road, Concord, N.C. 28027 (PIN# 4690-23-2362).

There will be a public meeting to discuss this matter on June 18, 2009. The meeting will take place at the Cabarrus County Governmental center (2nd floor), located at 65 Church Street, Concord, N.C. 28026 and will begin at 7:00 p.m.

The application is on file at the Cabarrus County Zoning office for your convenience. Please contact Jay Lowe (Zoning Inspector) at 704/920-2140 if you have any questions.

Thank you,

Jay Lowe
Zoning Officer

JL/mpf



ADJACENT PROPERTY OWNER LIST –
VARN2009-00002 UTILITY PRECAST

OWNER:

Poplar Park LLC
P.O. Box 5030
Concord, N.C. 28027-5030
4690-23-2362

ADJACENT PROPERTY OWNERS:

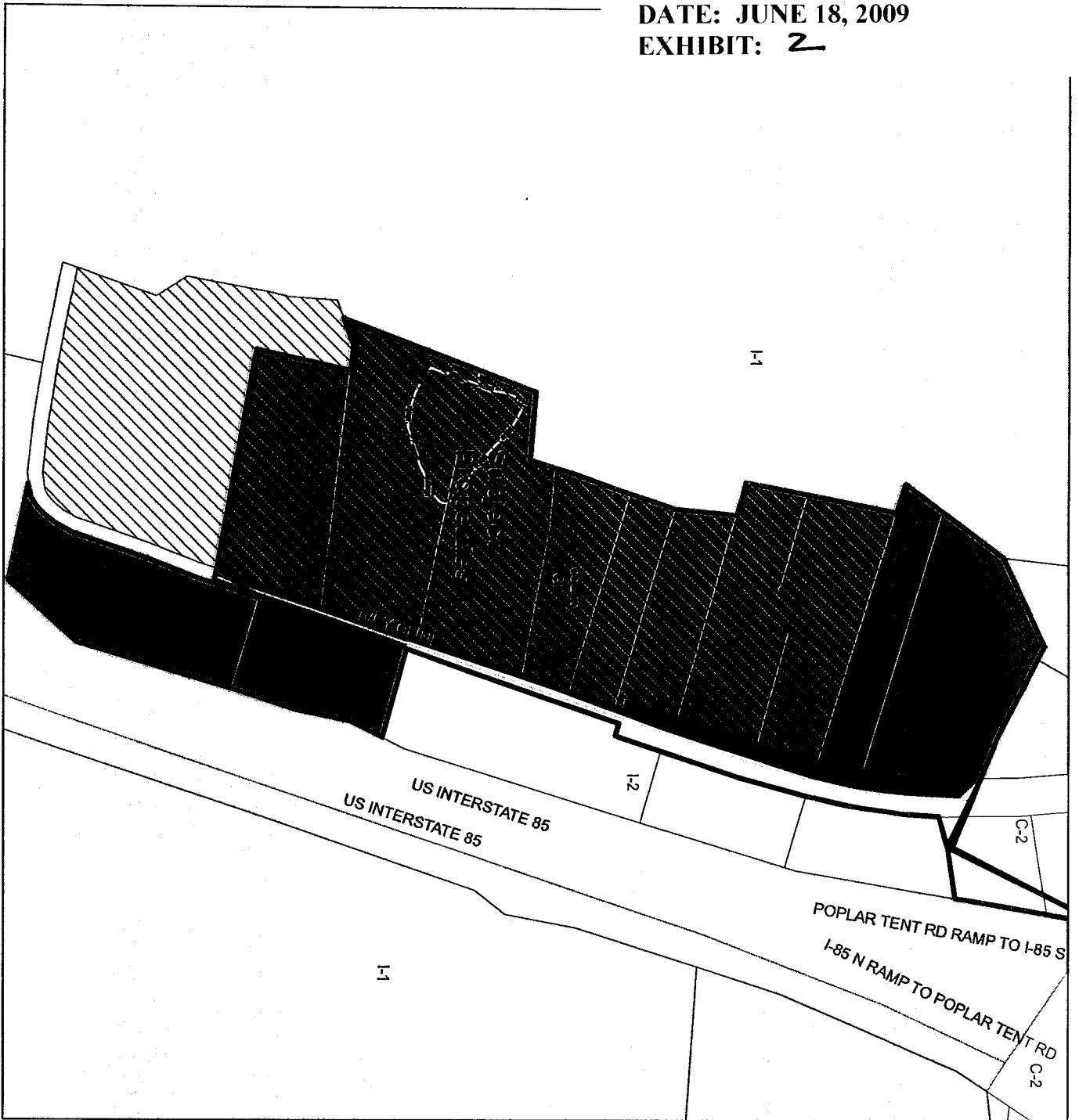
Gary V. Belk
712 Sedgefield St. NW
Concord, N.C. 28025
4690-22-7926

City of Concord
P.O. Box 308
Concord, N.C. 28026
4690-10-8518 & 4690-00-2253

Jenstar of Winslow LLC/NJLLC
P.O. Box 1400
Vorhees, N.J. 80430
4690-24-6440, 4690-33-0959 & 4690-22-5466

Clark H. & Gina Kuhr
4804 Poplar Grove Drive
Charlotte, N.C. 28269
4690-34-1460

1 inch equals 370 feet



VARN-2009-00002
 Required Planting Buffers




Ronald Overcash/Utility Precast
 Concrete

Property Owner-Poplar Park LLC/
 A Limited Liability

Property Location- 1190 Ivey
 Cline Road

PIN- 4690-23-2362

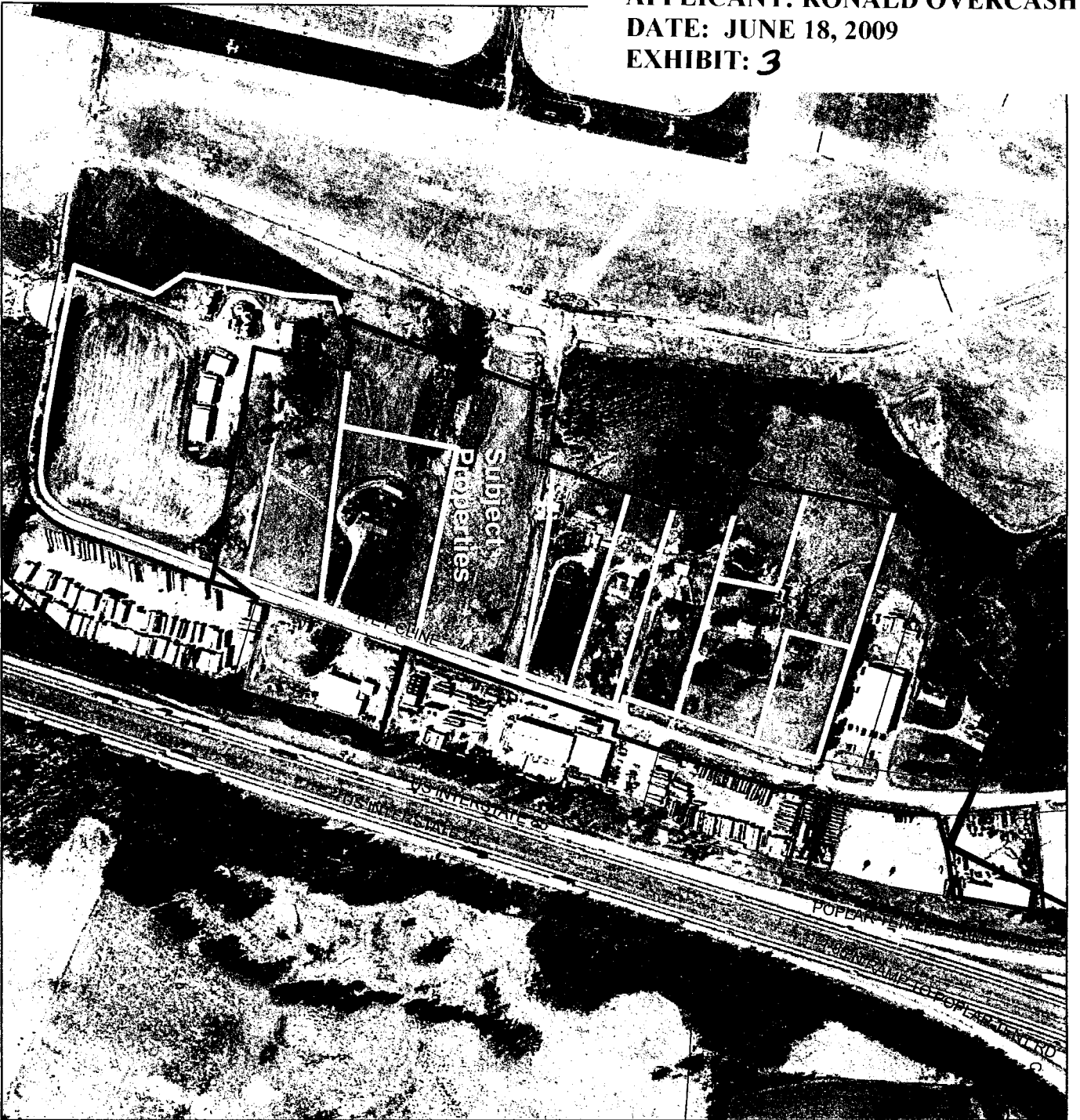
Legend

-  CITY OF CONCORD
-  subject properties
-  StreetCenterline

Cabarrus County shall not be held liable for any errors in these data. This includes errors of omission, commission, errors concerning the content of the data, and relative and positional accuracy of the data. These data cannot be construed to be a legal document. Primary sources from which these data were compiled must be consulted for verification of information contained within the data.
 Map Prepared by Cabarrus County Planning Services, 6/2009



CASE#: VARN2009-00002
APPLICANT: RONALD OVERCASH
DATE: JUNE 18, 2009
EXHIBIT: 3



1 inch equals 370 feet



VARN-2009-00002
 Required Planting Buffers

Ronald Overcash/Utility Precast
 Concrete

Property Owner-Poplar Park LLC/
 A Limited Liability

Property Location- 1190 Ivey
 Cline Road

PIN- 4690-23-2362

Legend

StreetCenterline

 CITY OF CONCORD

Cabarrus County shall not be held liable for any errors in these data. This includes errors of omission, commission, errors concerning the content of the data, and relative and positional accuracy of the data. These data cannot be construed to be a legal document. Primary sources from which these data were compiled must be consulted for verification of information contained within the data.

Map Prepared by Cabarrus County Planning Services. 6/2009



CABARRUS COUNTY

Post Office Box 707
Concord, North Carolina 28026

Variance Application
VARN2009-00002

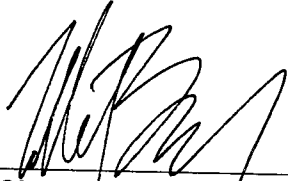
COUNTY OF CABARRUS
STATE OF NORTH CAROLINA

ORDER DENYING A VARIANCE

The Board of Adjustment for the County of Cabarrus, having held a public hearing on June 18, 2009, to consider application number VARN2009-00002, submitted by Mr. Ronald Overcash, a request for a VARIANCE to waive the requirement of the buffer material required along the western boundary of the property located at 1190 Ivey Cline Road, Concord, N.C. in a manner not permissible under the literal terms of the Ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the FINDINGS OF FACT and draws the CONCLUSIONS of Law contained in the attached sheet:

Therefore, based on the foregoing Findings of Fact and Conclusions of Law, IT IS ORDERED that application number VARN2009-00002 is DENIED.

This 16 day of July, 2009.



TODD BERG
Chair, Cabarrus County
Board of Adjustment

FINDINGS OF FACT
and
CONCLUSIONS OF LAW

1. The alleged hardship or practical difficulties are unique and singular to the property of the person requesting the variance and are not those suffered in common with other property similarly located.

Although the planting of trees and shrubs in the buffer may create a bird hazard for the adjacent airport, the problem is not unique to the applicant's property.

2. The alleged hardships and practical difficulties, which will result from failure to grant the variance, extend to the inability to use the land in question for any use in conformity with the provisions of the ordinance and include substantially more than mere inconvenience and inability to attain a higher financial return.

The alleged hardships and practical difficulties which will result from failure to grant the variance will not prevent the applicant from using the property as the applicant intends.

3. The variance, if allowed, will not substantially interfere with or injure the rights of others whose property would be affected by allowance of the variance.

If the variance were allowed, it would not interfere with or injure the rights of others whose property would be affected, except those other property owners who have been required to comply with the same provisions of the Ordinance.

4. The variance is in harmony with and serves the general intent and purpose of the ordinance.

The proposed variance is not in harmony with nor does it serve the general intent of the ordinance, which requires buffering and screening between different uses.

5. The variance will result in substantial justice being done, considering both the public benefits intended to be secured by this ordinance and the individual hardships that will be suffered by a failure of the Board to grant a variance.

The applicant has other options to obtain the relief it seeks; namely, to seek an amendment to the ordinance or to apply for voluntary annexation into the City of Concord.

Memo

To: Cabarrus County Planning and Zoning Commission
From: Jessica L. Gladwin, Planner
Date: 6/18/2009
Re: Rustic Canyon – Preliminary Plat Extension Request Withdrawal

Attached is a letter from Shea Homes, LLC, requesting that Petition# C2009-04 (SE) be removed from the agenda as a preliminary plat extension for Rustic Canyon is no longer needed.

SheaHomes®

Caring since 1881

June 17, 2009

Cabarrus County Planning & Zoning Board
65 Church Street SE.
Concord, NC 28026

RE: Rustic Canyon Agenda Removal

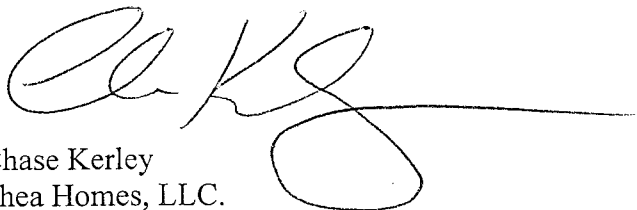
Dear Planning Board,

Shea Home has previously requested to be heard by the Planning and Zoning Board on June 18th and the Board of Commissioners on July 20th regarding Rustic Canyon. The intent was to request an extension of both the Preliminary Plat and Consent Agreement for the Rustic Canyon neighborhood. Both of these would have expired on June 21st had a final plat not been recorded, to include at least one lot, by June 21st.

Fortunately we have been able to record the one lot by this deadline and therefore no longer wish to be heard by the Planning and Zoning or Board of Commissioners. Please remove our position from the approaching meeting agendas. We appreciate all the time and service the Cabarrus County Planning & Zoning Department provided Shea Homes thru this endeavor and wish to give the staff our utmost respect and appreciation.

I am always available to discuss this matter with the staff or Board members should any questions or concerns arise. Please feel free to reach me at 704-319-5000 or chase.kerley@sheahomes.com anytime.

Respectfully,



Chase Kerley
Shea Homes, LLC.

3436 Toringdon Way, Suite 100
Charlotte, North Carolina 28277

704.319.5000 T
704.543.6327 F

www.SheaHomes.com

Memo

To: Cabarrus County Planning and Zoning Commission
From: Jessica L. Gladwin, Planner
Date: June 10, 2009
Case#: C2009-04 (SE)
Accela#: PLPR2008-00005
Re: Request for Extension of Rustic Canyon Preliminary Plat Approval

Attached, is a letter requesting an extension of the Rustic Canyon preliminary subdivision plat. A copy of the approved preliminary plat is also enclosed.

Persuant 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. In addition, this project is subject to a consent agreement that also expires two years from the preliminary plat approval date. The plat was originally approved by the Cabarrus County Planning and Zoning Commission on June 21, 2007.

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

Health Alliance-David Troutman: No comments. The subdivision is served by municipal water and sewer.

City of Concord-Engineering: (1) As noted on preliminary plat, developer will be required to enter into a developers agreement with the City of Concord. This agreement will lay out requirements for water and sewer; (2) Developer has met with the City regarding the pump station and the fire station site. We are still working on both issues. Regional lift station could be a part of this plat somewhere in the area behind Lots 227-230. Fire Station site possible on east side of Zion Church Road which is currently labeled as Secondary C.O.S.; (3) Regarding Note #7: NCDOT and City of Concord have been working together for Division 10 to recognize the City of Concord roadway standards in Concord's 5-year annexation area. Standards will probably meet City of Concord's minimum standards.

NCDOT-Leah Wagner: All previous comments/requirements remain in place.

Soil & Erosion Control-Thomas Smith: An erosion and sedimentation control plan has been submitted to this Office and was approved on July 13, 2007.

Cabarrus County Schools-Robert Kluttz: The percent of stated capacity is very similar to the previous APFW. Land has been secured for the elementary school (Lower Rocky River now named Patriots Elementary School). The issue now is if and when this elementary school and Hickory Ridge Middle School are going to be funded. That will be the determining factor for relief at C.C. Griffin Middle School, Rocky River Elementary School, and Harrisburg Elementary School.

Cabarrus County Sheriff –Ray Gilleland: No comments.

Cabarrus County Fire Marshal-Steven Langer: No comments.

WSACC-Tom Bach: This is in response to your request for comments outlined in a memorandum dated April 24, 2009, regarding the preliminary plat review for the proposed Rustic Canyon Subdivision development, which is located on Zion Church Road near the intersection with Flowes Store Road. For most of this proposed subdivision development, the existing topography on the site drains towards Rocky River where there is an existing 30" gravity sewer interceptor line owned and operated by WSACC. IT should be noted that Mark Lomax with WSACC must review and approve all direct service connections to this existing gravity sewer interceptor line that are submitted by the developer's engineer.

The following comments are provided for your information and consideration: (1) The proposed development is located within the existing utility service area of the City of Concord. Consideration should be given to insuring that the proposed water/sewer lines will be designed to City of Concord requirements; (2) 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 provided 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; (3) 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.

Soil Conservation-Dennis Testerman: I do not think continued extensions of this plan are in the county's best interest. This plan does not do enough to contribute to the quality of life. Given recent sustainability initiatives and the adoption of the Central Area Plan, the proposed development does not seem to be what the public desires. I would prefer that a new plan be submitted for this property that reflects current values. See attached memo.

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

1. The developer be granted a one year extension for the development of this project. The new expiration date would be June 21, 2010.
2. The extension be conditioned upon the Cabarrus County Board of Commissioners reaffirming or renegotiating the terms of the original Consent Agreement for the Rustic Canyon subdivision project.
3. All applicable conditions related to the original preliminary plat approval (June 21, 2007) shall be incorporated into this approval by reference.

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

MEMORANDUM

TO: Jessica Gladwin, Cabarrus County Commerce Dept.

THROUGH: Ned Y. Hudson, Chair Darrell Furr, Vice-Chair
Board of Supervisors Watershed Improvement Commission

FROM: Dennis Testerman, Resource Conservation Specialist

COPIES: Susie Zakraisek, Cabarrus County Commerce Department—Planning
 Tony Johnson, Cabarrus County Commerce Department—Environmental Protection
 Robbie Foxx, Cabarrus County Commerce Department—Zoning
 Doug Miller, City of Concord Environmental Services Department
 Boyd Stanley, City of Concord Development Services Department
 Jason Walser, Land Trust for Central North Carolina
 Robert Ward, County Ranger, NCDENR Div. of Forest Resources
 Peggy Finley, NCDENR, Div. Water Quality—Groundwater Sect., Mooresville Regional Office
 Alan Johnson, NCDENR Div. of Water Quality, Mooresville Regional Office
 Cyndi Karoly, NCDENR, Div. of Water Quality, Wetlands Unit, Raleigh
 Ron Linville, NCDENR, Wildlife Resources Commission-Habitat Conservation Prog., W-S Reg. Office
 Robin Dolin, Project Manager, NCDENR, Ecosystem Enhancement Program
 Steve Lund,, US Army Corps of Engineers, Asheville Regulatory Field Office
 Nancy White, USDA-FSA, Cabarrus-Mecklenburg Service Center Office
 Shawn Smith, USDA-NRCS

NAME OF PRELIM PLAT: Rustic Canyon Rev. (former Bella Vista) **LOCATION:** Zion Church Road **JURISDICTION:** County

PLAN TYPE: Residential --Amenity S/D **ZONING:** Low Density Residential

OWNERS: Carolina Land partners, Inc., 3436 Toringdon Way, Ste 100, Charlotte, NC 28277; 704-319-5000
Jerry C. Deese 4220 Cheshire Glen Dr., Monroe, NC 28110-7697
Shea Homes, LLC/NC LLC Shea Homes, 3436 Toringdon Way, Ste 100, Charlotte, NC 28277; 704-319-5000

DESIGN CONSULTANT: Turbull Sigmon Design, 1001 Morehead Sq. Dr., Ste. 530., Charlotte, NC 28203; 704-529-6500

DEVELOPER: Shea Homes, 3436 Toringdon Way, Ste 100, Charlotte, NC 28277; 704-319-5000

DATE SUBMITTED: 8/25/08 (previous 2/22/07 & 11-2-05) **DATE REVIEWED:** 9/24/08 (previous 3/5/07 & 11-10-05)

PARCEL #'s: 5527-85-2944, -98-2161, 5537-07-4142, -25-7611, -16-7713, -26-4666, -26-0991 (5527-88-5125 no longer included)

TRACT#: 90351 (former 4840) **ACRES:** 421.6 (previous 488.1)

USGS TOPO QUAD MAP: Concord S.E. **LATITUDE/LONGITUDE:** 35° 19' 27"N, 80° 34' 29"W

RECEIVING WATERS: Jones Branch and other Rocky River tributaries **WATERSHED:** HU 03040105020010 (CC-4)

PERENNIAL OR INTERMITTENT STREAMS PRESENT: Yes No

SOIL TYPE(S): Altavista sandy loam (AaB), Chewacla sandy loam (Ch), Coronaca clay loam (CoB, CoD), Cullen clay loam (CuB2, CuD2), Enon sandy loam (EnB, EnD), Hiwassee clay loam (HwB), Iredell loam (IdB), Mecklenburg loam (MeB, MeD), Poindexter loam (PoF)

HYDRIC SOILS: Yes * as possible inclusions in Altavista & Chewacla No

ONSITE INSPECTION: Yes No

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

- | | |
|--|---|
| <input checked="" type="checkbox"/> Soil Type(s) | <input checked="" type="checkbox"/> Open space covenant document |
| <input checked="" type="checkbox"/> Start & Completion Dates | <input checked="" type="checkbox"/> Phase 1-3 environmental site assessment |
| <input checked="" type="checkbox"/> 401/404 wetland permits | <input checked="" type="checkbox"/> Location of existing structures and trees |

PLAN COMMENTS:

- A conservation easement on all non-active open space was previously requested by Cabarrus Soil and Water Conservation District, the lead agency in the countywide open space initiative. See brochure “This Land is Our Land. . . A Guide to Preserving Your Land for Generations to Come.” Cabarrus Soil and Water Conservation District is the primary custodian of open space per Cabarrus Co. Zoning Ordinance, Sect. 5-8, A. 7. a. i). Section Sect. 5-8, A. 8. a. in this Ordinance designates Cabarrus Soil and Water Conservation as the primary holder of conservation easements. On the contrary, General Note # 22 on page 1.1 of the plan calls for the homeowners association to be responsible for maintenance of all open space.
- Some of the proposed lots in Phases 4, 10 and 12 are sited on Altavista soils, which are hydric. Residential use of these soils is rated as very limited due to flooding and depth to the saturated zone. A majority of the proposed lots in Parcel 8 are sited on Iredell soils. Residential use of these soils is also rated as very limited due to depth to the saturated zone. Cullen, Iredell, Mecklenburg soils are also rated as very limited due to expansive (shrink-swell) clay soils and/or low strength.
- County River Stream Overlay Zone on Rocky River and tributaries is required by the county ordinance and permit CESAW-CO88-N-013-0061 issued under Section 404 of the U. S. Clean Water Act (33 U.S.C. 1413) by the US Army Corps of Engineers. The developer should check with Cabarrus County Commerce—Planning. County River Stream Overlay Zone should be outside the 100-year floodplain to filter pollutants from stormwater runoff during 100-year flood events. Paved trails (plan note # 49) are not permitted inside water quality buffers per directive from the state Division of Water Quality.
- The proposed site drains to a stream included on the federal Clean Water Act (CWA) Section 303(d) list of waters not meeting water quality standards or which have impaired uses. Further degradation of the stream by the proposed project should be prevented.
- Unless developer has prior authorization from appropriate federal and state authorities to impact waters or wetlands, the proposed project will be in violation federal and/or state law. Permits for disturbance of streams and other wetlands must be requested from N. C. Division of Water Quality and U. S. Army Corps of Engineers prior to any impacts. Two ponds exist on this site. Please provide copies of all applicable permits to Cabarrus SWCD.
- This project is within a hydrological unit (HU) included in the North Carolina Ecosystem Enhancement Program’s Upper Rocky River Watershed Plan area. Every effort should be made to use best management practices to prevent water quality impairment. The erosion and sedimentation control plan for this site should be followed closely once it has been submitted and approved. The proposed developer has previously been cited for violations of the county Sedimentation and Erosion Control Ordinance on other projects.
- Impacts of stormwater from this proposed project on water quality and water quantity have not been assessed. Cities of Concord and Kannapolis have received an interbasin transfer of water certificate from the NC Div. of Water Resources. As a condition of this permit, all jurisdictions in Cabarrus County have agreed to the conditions of IBT certificate’s drought management plan. Under this certificate, stream buffers will be determined by a qualified professional to ensure proper application of water quality stream buffer rules.
- Cumulative and secondary impacts associated with this proposed development are not known and should be assessed prior to final plan approval.
- Development of site will remove existing forestland from production, result in loss of environmental services from forest land cover, and accelerate the rate of loss of green infrastructure in the county. Forestland qualifies as primary open space (≥ 10 ac. per Cabarrus Co. Zoning Ordinance, Sect. 5-8, A. 2. h) and should be conserved. **Mature forest on this site predates 1938 aerial photograph.** Specimen trees and mature forest should be incorporated into a conservation subdivision design. General Note # 33 on page 1.1 of the plan states “It is the intent of the developer that specimen trees and mature forest shall be incorporated into subdivision design.” **In spite of this assertion, the developer submitted a “Tree Harvesting Plan” on February 7, 2007 on 59.3 acres in phases 1, 2, 7, and 8. Redesign of plan to provide for more open space protection of forestland is encouraged.** Revised plan General Note 33 states “It is the intent of the developer that specimen trees and mature forest shall be incorporated into subdivision plan.
- Private well was possibly associated with abandoned/existing homesteads. [Location of historic homestead on former Jones Farm is approx. Lat. N35° 19.457 and Long. W80° 34.403, in the vicinity of proposed lots 353-359 and 377-381. Another farmstead exists in or near Phase 13.] NC form GW-30 must be filed with the Groundwater Section of the N.C. Dept. of Environment and Natural Resources when abandoning a well. Revised plan General Note 41 states “Existing on-site wastewater system and private well associated with abandoned homestead are required to be decommissioned according to procedures recommended by the Cabarrus Health Alliance.”
- On-site wastewater system possibly associated with abandoned homestead is required to be decommissioned according to procedures recommended by Cabarrus Health Alliance (see attachment). Revised plan General Note 41 states “Existing on-site wastewater system and private well associated with abandoned homestead are required to be decommissioned according to procedures recommended by the Cabarrus Health Alliance.”

- The information in this table indicates the dominant soil condition, but does not eliminate the need for onsite investigation. The numbers in the value column range from 0.01 to 1.00. The larger the value, the greater the potential limitation. Limiting features in this report are limited to the top 5 limitations. Additional limitations may exist.

Map Symbol	Soil Name	Dwellings without Basements	Dwellings with Basements	Small Commercial Buildings	Local Roads and Streets	Shallow Excavations	Lawns and Landscaping
		Rating Class and Limiting Features - Value	Rating Class and Limiting Features - Value	Rating Class and Limiting Features - Value	Rating Class and Limiting Features - Value	Rating Class and Limiting Features - Value	Rating Class and Limiting Features - Value
AaB	Altavista	Very limited Flooding - 1 Depth to saturated zone - 0.39	Very limited Flooding - 1 Depth to saturated zone - 1	Very limited Flooding - 1 Depth to saturated zone - 0.39	Somewhat limited Low strength - 0.78 Flooding - 0.4 Depth to saturated zone - 0.19	Very limited Depth to saturated zone - 1 Cutbanks cave - 1	Somewhat limited Depth to saturated zone - 0.19
Ch	Chewacla	Very limited Flooding - 1 Depth to saturated zone - 1	Very limited Flooding - 1 Depth to saturated zone - 1	Very limited Flooding - 1 Depth to saturated zone - 1	Very limited Flooding - 1 Depth to saturated zone - 0.94	Very limited Depth to saturated zone - 1 Flooding - 0.8 Cutbanks cave - 0.1	Very limited Flooding - 1 Depth to saturated zone - 0.94
CoB	Coronaca	Not limited	Not limited	Somewhat limited Slope - 0.13	Somewhat limited Slope - 0.63 Low strength - 0	Somewhat limited Too clayey - 0.72 Slope - 0.63 Cutbanks cave - 0.1	Not limited
CoD	Coronaca	Somewhat limited Slope - 0.63	Somewhat limited Slope - 0.63	Very limited Slope - 1	Somewhat limited Low strength - 0	Somewhat limited Too clayey - 0.72 Cutbanks cave - 0.1	Somewhat limited Slope - 0.
CuB2	Cullen	Somewhat limited Shrink-swell - 0.5	Somewhat limited Shrink-swell - 0.5	Somewhat limited Shrink-swell - 0.5 Slope - 0.13	Somewhat limited Shrink-swell - 0.5 Low strength - 0	Somewhat limited Too clayey - 0.72 Cutbanks cave - 0.1	Not limited
CuD2	Cullen	Somewhat limited Slope - 0.63 Shrink-swell - 0.5	Somewhat limited Slope - 0.63 Shrink-swell - 0.5	Very limited Slope - 1 Shrink-swell - 0.5	Somewhat limited Slope - 0.63 Shrink-swell - 0.5 Low strength - 0	Somewhat limited Too clayey - 0.72 Slope - 0.63 Cutbanks cave - 0.1	Somewhat limited Slope - 0.63
EnB	Enon	Very limited Shrink-swell - 1	Not limited	Very limited Shrink-swell - 1 Slope - 0.13	Very limited Low strength - 1 Shrink-swell - 1	Somewhat limited Too clayey - 0.28 Cutbanks cave - 0.1	Not limited
EnD	Enon	Very limited Shrink-swell - 1 Slope - 0.63	Somewhat limited Slope - 0.63	Very limited Slope - 1 Shrink-swell - 1	Very limited Low strength - 1 Shrink-swell - 1 Slope - 0.63	Somewhat limited Slope - 0.63 Too clayey - 0.28 Cutbanks cave - 0.1	Somewhat limited Slope - 0.63
HwB	Hiwassee	Not limited	Not limited	Somewhat limited Slope - 0.13	Somewhat limited Low strength - 0	Somewhat limited Too clayey - 0.28 Cutbanks cave - 0.1	Not limited
IdB	Iredell	Very limited Shrink-swell - 1 Depth to saturated zone - 0.98	Very limited Depth to saturated zone - 1	Very limited Shrink-swell - 1 Depth to saturated zone - 0.98	Very limited Shrink-swell - 1 Low strength - 1 Depth to saturated zone - 0.75	Very limited Depth to saturated zone - 1 Too clayey - 0.5 Cutbanks cave - 0.1	Somewhat limited Depth to saturated zone - 0.75
MeB	Mecklenburg	Somewhat limited Shrink-swell - 0.5	Somewhat limited Shrink-swell - 0.5	Somewhat limited Shrink-swell - 0.5 Slope - 0.13	Very limited Low strength - 1 Shrink-swell - 0.5	Somewhat limited Too clayey - 0.5 Cutbanks cave - 0.1	Not limited
MeD	Mecklenburg	Somewhat limited Slope - 0.63 Shrink-swell - 0.5	Somewhat limited Slope - 0.63 Shrink-swell - 0.5	Very limited Slope - 1 Shrink-swell - 0.5	Very limited Low strength - 1 Slope - 0.63 Shrink-swell - 0.5	Somewhat limited Slope - 0.63 Too clayey - 0.5 Cutbanks cave - 0.1	Somewhat limited Slope - 0.63
PoF	Poindexter	Very limited Slope - 1	Very limited Slope - 1 Depth to soft bedrock - 0.46	Very limited Slope - 1	Very limited Slope - 1 Low strength - 0.22	Very limited Slope - 1 Depth to soft bedrock - 0.46 Cutbanks cave - 0.1	Very limited Slope - 1 Depth to bedrock - 0.46

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

- ❑ The following **prime farmland** soils will be removed from production: AaB, Ch, CoB, CuB2, HwB & MeB. Agricultural lands qualified as primary open space (≥ 20 contiguous ac. w/ 25 % prime farmland soils per Cabarrus Co. Zoning Ordinance, Sect. 5-8, A. 2. i) should be conserved. Lots 1 and 73-94 should be located on existing pasture on prime farmland soils. The entrance on Rustic Canyon Blvd. extends across this prime farmland soil to the vicinity of Lot 368. Consideration should be given to conservation of more of these soils as open space to 1) preserve the historic viewshed on the west side of Zion Church Road, and 2) preserve the future opportunity to manage the soils as private working lands. **Redesign of plan to provide for more open space protection of these soils is encouraged.** Farmland Conversion Impact Rating form (AD-1006) must be filed if federal funds are involved, such as for roads or utilities.
- ❑ The following soils are classified as an important state farmland soils and will be removed from production: CoD, CuD2, EnB, EnD, IdB & MeD.
- ❑ Illegal solid waste has been deposited on this site, including household items. All waste must be recycled or disposed of in an approved landfill.
- ❑ Underground utilities including, but not limited, communications, electricity, natural gas and/or petroleum, wastewater and water may exist on site. Verify status before disturbing site by observation and by calling the NC One Call Center, 1-800-632-4949. Unmarked graves, underground mine shafts and historic Native American sites are not uncommon in Cabarrus County. According to local lore, a grist mill existed on this farm at one time and mining placer pits were also dug. Construction crews should be vigilant for the presence of cultural and historical sites. Construction must be halted and appropriate authorities notified when any of these sites are uncovered.
- ❑ Additional field visits by Cabarrus SWCD and/or its conservation partners may be required, including but not limited to sedimentation and erosion control plan review.

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

CONTACT(S):

Cabarrus County Commerce Department—Zoning, Robbie Foxx, 704-920-2138

Cabarrus County, Commerce Department, Susie Zakraisek, 704-920-2858

Cabarrus Health Alliance, Environmental Health, David Troutman, 704-920-1207

Cabarrus SWCD & Watershed Improvement Commission, Dennis Testerman, 704-920-3303

City of Concord Development Services, Boyd Stanley, 704-920-5155

City of Concord Environmental Services Department, Doug Miller, 704-920-5376

Land Trust for Central North Carolina, Jason Walser, 704-647-0302

NC DENR Div. of Forest Resources, Robert Ward, 704-782-6371

NC DENR-Mooresville Regional Office, Groundwater Section, Peggy Finley, 704-663-1699

NC DENR, Div. of Water Quality, Mooresville Reg. Office, Alan Johnson, 704-663-1699

NC DENR, Div. of Water Quality, Raleigh, Cyndi Karoly, 919-733-9721

NC DENR, Ecosystem Enhancement Program, Robin Dolin, 919-715-5836

NC DENR, Wildlife Resources Commission-Habitat Conservation Prog., W-S Reg. Office, Ron Linville, 336-769-9453

U. S. Army Corps of Engineers, Asheville Regulatory Field Office, Steve Lund, 828-271-7980 x223

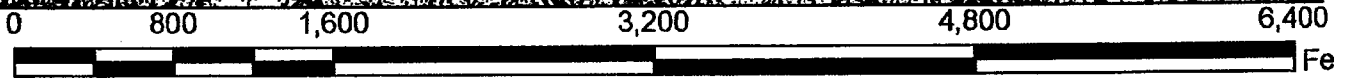
USDA-FSA, Cabarrus-Mecklenburg Service Center Office, Nancy White, 704-782-2107

USDA-NRCS, Concord Field Office, Shawn Smith, 704-788-2107

REFERENCES:

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

Rustic Canyon



Legend

- STREETCENTERLINE --- YadkinHydro
- Soils
- esc_zones9
- FloodPlain
- Wetlands
- ZONE
- A
- AE
- X
- X500

CABARRUS

Soil & Water

Conservation

DISTRICT

SheaHomes®

Caring since 1881

April 29, 2009

Cabarrus County Planning & Zoning Board
P.O. Box 707
Concord, NC 28026

RE: Rustic Canyon Preliminary Plat Extension

Dear Planning Board,

Shea Home's is requesting to be on the June 18th Planning and Zoning agenda for consideration of a one year extension to the Preliminary Plat for the Rustic Canyon subdivision located off Zion Church Rd.

Rustic Canyon was approved on June 21st, 2007 for a preliminary plat consisting of 735 lots on 488 acres with a density not to exceed 1.51 residential lots. I have enclosed a copy of the preliminary plat for your review. At this time we have not recorded any lots and therefore the preliminary plat, Consent Agreement, and the engineering efforts made with Cabarrus County, City of Concord, NCDOT, Army Core of Engineers, WSACC, and NCDENR, will all expire without recording one lot by June 21st, 2009 -2 years from the preliminary plat approval date.

It is not thru a lack of planning or the large financial expenses incurred to date in the design and engineering of Rustic Canyon that will cause Shea Homes to miss this deadline, but a foresight back in April of 2007 to delay the development schedule until a time where the market will accept such an investment. Due to such large upfront indirect and direct development costs this community will incur once broken ground, the sales pace required to reach target benchmarks could not suffer such lags we are experiencing today. We feel that our market studies are projecting a turn around in the real estate market very soon and we feel that this community along with our investment and the County's support will be a success if given the ability to breathe just a while longer.

However, Rustic Canyon cannot start over from scratch and with the possibility of losing the preliminary plat and the fact that 90% of the project is engineered to accommodate the preliminary plat, we cannot foresee, what we had plans as a flagship community much like Winding Walk, bringing this community to fruition at anytime in the near or far future.

3436 Toringdon Way, Suite 100
Charlotte, North Carolina 28277

704.319.5000 T
704.543.6327 F

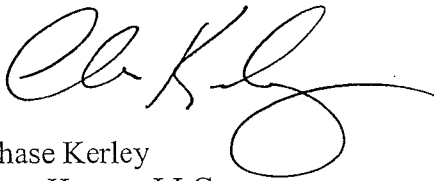
SheaHomes®

Caring since 1881

It is with our greatest respect and humble request that the Rustic Canyon preliminary plat be granted a one year extension by the Cabarrus County Planning and Zoning Board.

I will be available to discuss our project's history and answer any questions the Cabarrus County staff or Board members may have prior to the Planning & Zoning Board meeting on June 18th. Please feel free to reach me at 704-319-5000 or chase.kerley@sheahomes.com anytime.

Respectfully,



Chase Kerley
Shea Homes, LLC.

3436 Toringdon Way, Suite 100
Charlotte, North Carolina 28277

704.319.5000 T
704.543.6327 F

**CABARRUS COUNTY
PRELIMINARY SUBDIVISION
APPROVAL APPLICATION**



INSTRUCTIONS:

1. Complete sketch plan review with planning staff.
2. Complete this application and the attached checklist as accurately as possible (print or type information).
3. Return both forms with ten (10) copies of your preliminary plat.
4. Attach an application fee of \$450 for subdivisions of less than 50 lots, or \$500 plus \$5 per lot (for each lot over 50) for subdivisions with greater 50 lots. If you have any questions, please call the Cabarrus County Planning Services Division at (704) 920-2141.
5. Your signature on this form indicates that you understand all the requirements for the submission of a preliminary plat and the requirements to construct the project if approved.
6. Incomplete applications will be returned to the applicant and will not be processed.

Proposed Subdivision Name: Rustic Canyon

Project Type: Residential Commercial Industrial Mobile Home

PIN(s): 5537-25-7611
5527-88-5125 (10 digit parcel identification number)
5527-85-2944 | 5527-07-4142, 5537-26-0991
5527-98-2161 | 5537-26-4666, 5537-16-8236
5537-16-7713

Existing Zoning: LDR Amenity Subdivision Area in Acres: 488.14

Will the project be completed in phases? YES NO If yes, Number of Phases: 21

Number of Lots: Total 735 Phase 1 35 Phase 2 42 Phase 3 1-amenity Phase 4-48
4-48,

Existing Roads Providing Access to Subdivision: Zion Church Rd. Phase 5-31

Proposed Road Names: **Please complete and submit the Street Name Review and Confirmation form.** Phase 6-39

Contacts:	Property Owner/Developer	Surveyor/Engineer	
Name	<u>Shea Homes LLC</u>	<u>Turnbull Metzler Design</u>	Phase 7-32
Address	<u>Michael Shea</u>	<u>1001 Morehead Square Dr., Suite 500</u>	Phase 8-38
City/State/Zip	<u>3436 Torington Way, LLC</u>	<u>Charlotte, NC 28203</u>	Phase 9-14
Phone Number	<u>Charlotte, NC 28277</u>	<u>704-529-6500</u>	Phase 10-34
	<u>704-319-5000</u>		Phase 11-34

Water Supply: Well(s) or Service Provider: City of Concord Phase 12-30

Wastewater Treatment: Septic Tank(s) or Service Provider: City of Concord Phase 13-25

For a public service provider, please attach a will serve letter to this application.

Signature of Owner/Developer: Michael Shea Date: 9-22-09 Phase 14-56

Phase 15-41
 Phase 16-34
 Phase 17-41
 Phase 18-45
 Phase 19-39
 Phase 20-37
 Phase 21-35
735

Thank you!
 Shirley Herson
 704/602-3321

**CABARRUS COUNTY
 PRELIMINARY SUBDIVISION
 APPROVAL APPLICATION**

STREET NAME REVIEW AND CONFIRMATION

Cabarrus County Code
 Section 66-69. Name of subdivision and its roads.
 The name of a subdivision or its roads shall not duplicate nor closely approximate either phonetically or by spelling, the name of an existing subdivision or roads within the County, within any municipality within the County, or in an adjacent county or municipality (if the development is in close proximity to another jurisdiction). All names must be approved by the County planning division.
 (Ord. Of 7-22-91, 4.4)
 Cross reference - Road names and address display, 62.36 et seq.

RESPONSE WILL BE BY FAX
 PLEASE FAX TO: 704-920-2019

AREA:

Date:	3/15/06	Parcel Identification Number (PIN):	55278671374552798201		
Existing Road Providing Access to Area:	Zion Church Rd.				
Zoning District*:	<input checked="" type="radio"/> Residential	<input type="radio"/> Commercial	<input type="radio"/> Industrial	<input type="radio"/> Manufactured Home	

(*Circle One)

APPLICANT:

Developer/Owner:	Shea Homes, LLC
Contact Name:	Michael P. Shea
Telephone Number:	704/319-5000
Fax Number:	704/540-0534

PROPOSED PROJECT:

Project Name:	Belvedere	<input checked="" type="radio"/> Approved / <input type="radio"/> Denied
Alternate Project Name:	Bella Vista	<input checked="" type="radio"/> Approved / <input type="radio"/> Denied

PROPOSED STREET(S):

Street Name:	Silverado Trail	<input checked="" type="radio"/> Approved / <input type="radio"/> Denied
Street Name:	Dry Creek Road	<input checked="" type="radio"/> Approved / <input type="radio"/> Denied
Street Name:	Black Wolf Drive	<input checked="" type="radio"/> Approved / <input type="radio"/> Denied
Street Name:	Kings Road	<input checked="" type="radio"/> Approved / <input type="radio"/> Denied
Street Name:	Nayaka Way	<input checked="" type="radio"/> Approved / <input type="radio"/> Denied
Street Name:	MoanFeathers Court	<input checked="" type="radio"/> Approved / <input type="radio"/> Denied
Street Name:	Moonrise Cay	<input checked="" type="radio"/> Approved / <input type="radio"/> Denied
Street Name:	Sanctuary Lane	<input checked="" type="radio"/> Approved / <input type="radio"/> Denied

EMS 911 COUNTY COORDINATOR: Les Moore DATE: 3/16/06

Cont'd.

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**CABARRUS COUNTY
PRELIMINARY SUBDIVISION
APPROVAL APPLICATION**

STREET NAME REVIEW AND CONFIRMATION

Cabarrus County Code

Section 66-59. Name of subdivision and its roads.

The name of a subdivision or its roads shall not duplicate nor closely approximate, either phonetically or by spelling, the name of an existing subdivision or roads within the County, within any municipality within the County, or in an adjacent county or municipality (if the development is in close proximity to another jurisdiction). All names must be approved by the County planning division.

(Ord. 017-22-91, 4,6)

Cross references - Road names and address display, 62-36 et seq.

RESPONSE WILL BE BY FAX
PLEASE FAX TO: 704-920-2019

AREA:

Date: 3/15/06	Parcel Identification Number (PIN): 5527867137 & 552778216
Existing Road Providing Access to Area:	Zion Church Rd.
Zoning District:	<input checked="" type="radio"/> Residential <input type="radio"/> Commercial <input type="radio"/> Industrial <input type="radio"/> Manufactured Home

(*Circle One)

APPLICANT:

Developer/Owner:	Shea Homes LLC
Contact Name:	Michael P. Shea
Telephone Number:	704/319-5000
Fax Number:	704/540-0534

PROPOSED PROJECT:

Project Name:	Relvedere	Approved / Denied
Alternate Project Name:		Approved / Denied

PROPOSED STREET(S):

Street Name:	Stonefield Place	Approved / Denied
Street Name:	Woodmill Drive	Approved / Denied
Street Name:	Blue Ridge Trail	Approved / Denied
Street Name:	Bella Piazza Way	Approved / Denied
Street Name:	Monterina Court	Approved / Denied
Street Name:	Sutter Ridge	Approved / Denied
Street Name:	Willamette Valley Drive	Approved / Denied
Street Name:	Adora Way	Approved / Denied

EMS 911 COUNTY COORDINATOR: G Moore DATE: 3/16/06

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**CABARRUS COUNTY
PRELIMINARY SUBDIVISION
APPROVAL APPLICATION**

STREET NAME REVIEW AND CONFIRMATION

Cabarrus County Code
Section 66-69. Name of subdivision and its roads.
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(Ord. Of 7-22-91, 4.4)
Cross reference - Road names and address display, 62-36 et seq.

RESPONSE WILL BE BY FAX
PLEASE FAX TO: 704-920-2019

AREA:

Date: <u>3/15/06</u>	Parcel Identification Number (PIN): <u>5527867137 + 5527982161</u>			
Existing Road Providing Access to Acre: <u>3rd Church Rd</u>				
Zoning District: <u>Residential</u>	Commercial	Industrial	Manufactured Home	

(*Circle One)

APPLICANT:

Developer/Owner: <u>Shea Homes, LLC</u>
Contact Name: <u>Michael P. Shea</u>
Telephone Number: <u>704/319-5000</u>
Fax Number: <u>704/540-0534</u>

PROPOSED PROJECT:

Project Name: <u>Belvedere</u>	Approved / Denied
Alternate Project Name: <u>Bella Vista</u>	<u>Approved</u> / Denied

PROPOSED STREET(S):

Street Name: <u>Bella Vista</u>	<u>Approved</u> / Denied
Street Name: <u>Chalan Court</u>	<u>Approved</u> / Denied
Street Name: <u>Ardenta Street</u>	Approved / Denied
Street Name: <u>Castle Back Boulevard</u>	Approved / <u>Denied</u>
Street Name: <u>Arroyo Place</u>	<u>Approved</u> / Denied
Street Name: <u>Bencassane Drive</u>	<u>Approved</u> / Denied
Street Name: <u>Morning Bay Drive</u>	<u>Approved</u> / Denied
Street Name: <u>Calona Court</u>	<u>Approved</u> / Denied

EMS 911 COUNTY COORDINATOR: B Moore DATE: 3/16/06

Page 4 - Cont'd.

**CABARRUS COUNTY
PRELIMINARY SUBDIVISION
APPROVAL APPLICATION**

STREET NAME REVIEW AND CONFIRMATION

Cabarrus County Code

Section 66-69. Name of subdivision and its roads.

The name of a subdivision or its roads shall not duplicate nor closely approximate, either phonetically or by spelling, the name of an existing subdivision or roads within the County, within any municipality within the County, or in an adjacent county or municipality (if the development is in close proximity to another jurisdiction). All names must be approved by the County planning division.

(Ord. Of 7-22-91, 4.4)

Cross reference - Road names and address display, 62-16 et seq.

RESPONSE WILL BE BY FAX
PLEASE FAX TO: 704-920-2019

AREA:

Date: <u>3/15/06</u>	Parcel Identification Number (PIN): <u>5527867137 + 5527982161</u>			
Existing Road Providing Access to Area:	<u>Zion Church Rd.</u>			
Zoning District:	<input checked="" type="radio"/> Residential	<input type="radio"/> Commercial	<input type="radio"/> Industrial	<input type="radio"/> Manufactured Home

(*Circle One)

APPLICANT:

Developer/Owner:	<u>Shea Homes, LLC</u>
Contact Name:	<u>Michael P. Shea</u>
Telephone Number:	<u>704-319-5000</u>
Fax Number:	<u>704/540-0534</u>

PROPOSED PROJECT:

Project Name:	<u>Belvedere</u>	Approved / <input checked="" type="radio"/> Denied
Alternate Project Name:		Approved / <input type="radio"/> Denied

PROPOSED STREET(S):

Street Name:	<u>D'Angelo Court</u>	Approved / <input checked="" type="radio"/> Denied
Street Name:	<u>Echo Valley Road</u>	<input checked="" type="radio"/> Approved / <input type="radio"/> Denied
Street Name:	<u>Silver Sage Drive</u>	<input checked="" type="radio"/> Approved / <input type="radio"/> Denied
Street Name:	<u>Thornhaven Drive</u>	<input checked="" type="radio"/> Approved / <input type="radio"/> Denied
Street Name:	<u>Greata Ranch Road Greata Ranch</u>	Approved / <input type="radio"/> Denied
Street Name:	<u>Facelli Place</u>	<input checked="" type="radio"/> Approved / <input type="radio"/> Denied
Street Name:	<u>Amavi Way</u>	<input checked="" type="radio"/> Approved / <input type="radio"/> Denied
Street Name:	<u>Spring Valley Road</u>	Approved / <input checked="" type="radio"/> Denied

EMS 911 COUNTY COORDINATOR: Chris Moore

DATE: 3/16/06

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**CABARRUS COUNTY
PRELIMINARY SUBDIVISION
APPROVAL APPLICATION**

STREET NAME REVIEW AND CONFIRMATION

Cabarrus County Code

Section 66-69. Name of subdivision and its roads.

The name of a subdivision or its roads shall not duplicate nor closely approximate, either phonetically or by spelling, the name of an existing subdivision or roads within the County, within any municipality within the County, or in an adjacent county or municipality (if the development is in close proximity to another jurisdiction). All names must be approved by the County planning division.

(Ord. Of 7-22-91, 4.4)

Cross reference - Road names and address display, 62-36 et seq.

**RESPONSE WILL BE BY FAX
PLEASE FAX TO: 704-920-7019**

AREA:

Date:	3/15/06	Parcel Identification Number (PIN):	5507867137 # 0527922161
Existing Road Providing Access to Area:	Iron Church Rd.		
Zoning District*:	<u>Residential</u>	Commercial	Industrial
(*Circle One)			
		Manufactured Home	

APPLICANT:

Developer/Owner:	Shea Homes, LLC
Contact Name:	Michael P. Shea
Telephone Number:	704/319-5000
Fax Number:	704/540-0534

PROPOSED PROJECT:

Project Name:	Belvedere	Approved / Denied
Alternate Project Name:		Approved / Denied

PROPOSED STREET(S):

Street Name:	Sawtooth Drive	<u>Approved</u> / Denied
Street Name:	Del Rio Way	Approved / <u>Denied</u>
Street Name:	Pascal Place	Approved / <u>Denied</u>
Street Name:	St. Chapelle Drive	<u>Approved</u> / Denied
Street Name:	Carmela Drive	<u>Approved</u> / Denied
Street Name:	Galena Summit	<u>Approved</u> / Denied
Street Name:	Timber Port Drive	<u>Approved</u> / Denied
Street Name:	Thousand Springs Boulevard	<u>Approved</u> / Denied

EMS 911 COUNTY COORDINATOR: C Moore DATE: 3/16/06

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**CABARRUS COUNTY
PRELIMINARY SUBDIVISION
APPROVAL APPLICATION**

STREET NAME REVIEW AND CONFIRMATION

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(Ord. Of 7-22-91, 4.4)

Cross reference - Road names and address display, 62-36 et seq.

RESPONSE WILL BE BY FAX

PLEASE FAX TO: 704-920-2017

AREA:

Date: <u>3/15/06</u>	Parcel Identification Number (PIN): <u>5527867187 & 5527982161</u>			
Existing Road Providing Access to Area:	<u> Zion Church Rd. </u>			
Zoning District:	<input checked="" type="radio"/> Residential	<input type="radio"/> Commercial	<input type="radio"/> Industrial	<input type="radio"/> Manufactured Home

(*Circle One)

APPLICANT:

Developer/Owner:	<u> Shea Homes, LLC </u>
Contact Name:	<u> Michael P. Shea </u>
Telephone Number:	<u> 704/319-5000 </u>
Fax Number:	<u> 704/540-0534 </u>

PROPOSED PROJECT:

Project Name:	Approved / <input type="radio"/> Denied
Alternate Project Name:	Approved / <input type="radio"/> Denied

PROPOSED STREET(S):

Street Name:	<u> Summerhill Lane </u>	Approved / <input checked="" type="radio"/> Denied
Street Name:	<u> Banquette Bend </u>	<input checked="" type="radio"/> Approved / Denied
Street Name:	<u> Parma Ridge Lane </u>	<input checked="" type="radio"/> Approved / Denied
Street Name:	<u> Eagle Knoll Court </u>	<input checked="" type="radio"/> Approved / Denied
Street Name:	<u> Echoing Green Drive </u>	<input checked="" type="radio"/> Approved / Denied
Street Name:	<u> Merridale Lane </u>	<input checked="" type="radio"/> Approved / Denied
Street Name:		Approved / <input type="radio"/> Denied
Street Name:		Approved / <input type="radio"/> Denied

EMS 911 COUNTY COORDINATOR: B Moore DATE: 3/16/06

Page 6 - Cont'd

**CABARRUS COUNTY
PRELIMINARY SUBDIVISION
APPROVAL APPLICATION**

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(Ord. Of 7-22-91, 4.4)

Cross reference - Road names and address display, 62-36 et seq.

RESPONSE WILL BE BY FAX
PLEASE FAX TO: 704-920-2019

AREA:

Date: <u>3/15/06</u>	Parcel Identification Number (PIN): <u>5527867187 & 5527982161</u>			
Existing Road Providing Access to Area:	<u>Zion Church Rd.</u>			
Zoning District*:	<input checked="" type="radio"/> Residential	<input type="radio"/> Commercial	<input type="radio"/> Industrial	<input type="radio"/> Manufactured Home

(*Circle One)

APPLICANT:

Developer/Owner:	<u>Shea Homes, LLC</u>
Contact Name:	<u>Michael P. Shea</u>
Telephone Number:	<u>704/319-5000</u>
Fax Number:	<u>704/540-0534</u>

PROPOSED PROJECT:

Project Name:		Approved / Denied
Alternate Project Name:		Approved / Denied

PROPOSED STREET(S):

Street Name:	<u>Summerhill Lane</u>	Approved / Denied
Street Name:	<u>Bona-parte Bend</u>	Approved / Denied
Street Name:	<u>Parma Ridge Lane</u>	Approved / Denied
Street Name:	<u>Eagle Knoll Court</u>	Approved / Denied
Street Name:	<u>Echoing Green Drive</u>	Approved / Denied
Street Name:	<u>Merridale Lane</u>	Approved / Denied
Street Name:		Approved / Denied
Street Name:		Approved / Denied

EMS 911 COUNTY CORRINATOR: _____ DATE: _____



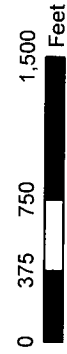
Rustic Canyon Preliminary Plat Extension

Petition#: C2009-04 (SE)
Accela#: PLEX2009-00005
Petitioner: Shea Homes, LLC
Zoning: LDR
Amenity Subdivision
735 Lots Approved
+/- 488.14 acres

Zoning Map

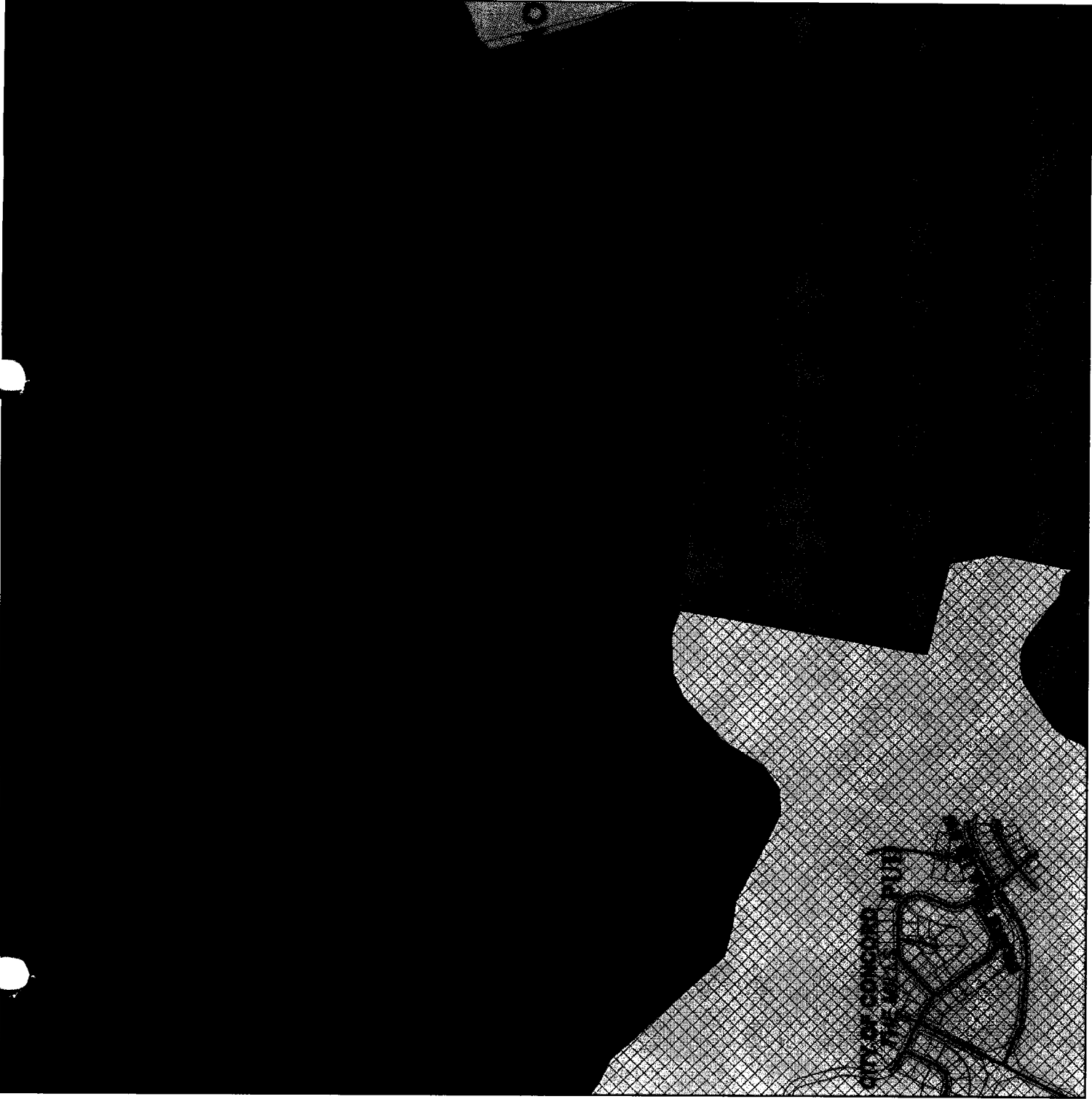
Legend

- TaxParcels
- CITY OF CONCORD
- Concord Zoning
- County Zoning
- AO
- CR
- LDR



Cabarrus County shall not be held liable for any errors in this data. This includes errors of omission, commission, errors in content, errors in data, data and relative and positional accuracy. These data cannot be construed to be a legal document. Primary sources from which these data were compiled must be consulted for verification of information contained within the data.

Map Prepared by Cabarrus County Planning Services
May 2009





Rustic Canyon Preliminary Plat Extension

Petition#: C2009-04 (SE)
 Accela#: PLEX2009-00005
 Petitioner: Shea Homes, LLC
 Amenity Subdivision
 735 Lots Approved
 +/- 488.14 acres

Land Use Plan

Legend

Tax Parcels

Land Use

Rural Residential

Very Low Density Residential

Low Density Residential

Mixed Use



Cabarrus County shall not be held liable for any errors in this data. This includes errors of omission, commission, errors concerning the content of the data, and relative and positional accuracy of the data. These data cannot be construed to be a legal document. Primary sources from which these data were compiled must be consulted for verification of information contained within the data.

Map Prepared by Cabarrus County Planning Services, June 2009



Memo

To: Cabarrus County Planning and Zoning Commission
From: Kassie G. Watts, AICP, Senior Planner
Date: June 11, 2009
Case#: C2009-03(SE)
Accela#: PLEX2009-00004
Re: Request for Extension of Rocky Glen Preliminary Plat Approval

Attached, is a letter requesting an extension of the Rocky Glen preliminary subdivision plat. A copy of the approved preliminary 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. In addition, this project is subject to a Consent Agreement that also expires two years from the preliminary plat approval date. The plat was originally approved by the Cabarrus County Planning and Zoning Commission on July 19, 2007.

From information obtained by staff, it appears that the developer does not own the property, yet he obtained an easement from the owners, which he in turn granted to the City of Midland for the Monroe-Midland gas pipeline. The proposed route of the pipeline is across the open area that he promised to the CCSWCD to be used as a conservation easement. It also apparently goes under the entrance road, into the WBOD for the existing pond, under the play area and also extends into the no build buffer for the intermittent stream. Thus, the plat which the developer is requesting an extension is no longer accurate and will need to be changed.

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

City of Concord- Pam Parker: Developer will be required to enter into a developer's agreement with the City of Concord in order to extend public water and sewer mains. The developer's agreement will cover stormwater standards. Please ensure that your project will be in compliance with Phase II stormwater rules.

Cabarrus County Soil & Water Conservation-Dennis Testerman: See attached memo.

Cabarrus County Schools-Robert Klutz: The subdivision was reviewed for current capacity. Since the original Adequate Public Facilities Worksheet review was completed for this project in 2007, Rocky River Elementary decreased slightly to 112.10%, C.C. Griffin Middle School increased to 129.46%, and Central Cabarrus decreased to 76.09%. These percentages were calculated from the 8th month membership report.

Cabarrus County Health Alliance-David Troutman: No comments.

NCDOT-Leah Wagner: Regarding the Rocky Glen project, there are no additional comments. All previous comments remain in place.

Soil & Erosion Control-Thomas Smith: An erosion and sedimentation control plan has been submitted to this Office and was approved on August 24, 2008. The roadways plan was approved with modifications on November 7, 2008.

WSACC-Tom Bach: See attached memo.

Cabarrus County Fire Marshal-Steven Langer: No comments.

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, or applicable approvals for the project. If the board finds that the developer has acted in good faith to develop the project, Staff recommends the following conditions be placed on the extension:

1. The developer be granted a one year extension for the development of this project. The new expiration date would be July 19, 2010.
2. The extension be conditioned upon the Cabarrus County Board of Commissioners reaffirming or renegotiating the terms of the original Consent Agreement for the Rocky Glen subdivision project.
3. All applicable conditions related to the original preliminary plat approval (July 19, 2007) be incorporated into this approval by reference.

RANDALL T. SCRIBNER

4110 French Fields Lane

Harrisburg, NC 28075

(704) 575-2795

scrib1@ctc.net

04/10/09

Cabarrus County Planning & Zoning Board

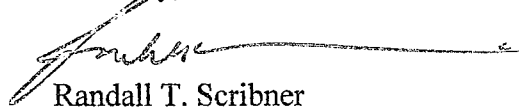
Subject: Extension for Rocky Glen Subdivision

This letter is my request a one year extension for my Rocky Glen Subdivision located at the corner of Rocky River Road and Archibald Road. There are two parcels in this subdivision totaling 35.989 acres with PIN #'s 5528417658 & 5528527326. The subdivision is planned for 49 single family homes with a density of 1.36 per acre.

I have invested significant time and money in this site including soils, environmental, engineering, and surveys as well as various other grading agreements and rights-of-way. Due to the current economic environment and real estate market, I need additional time to complete this project. At the current time it is impractical to bring new lots to the market.

I am requesting that a one year time extension be approved for my approved plat.

Sincerely,



Randall T. Scribner

Kassie Goodson Watts

From: Dennis Testerman
Sent: Wednesday, June 10, 2009 11:03 AM
To: Kassie Goodson Watts
Cc: Richard Koch
Subject: Fw: Rocky Glen Preliminary Plat Extension Comment Request
Attachments: Comment request.docx; Planning2007.pdf

Kassie--

As promised, I'm sending this email to summarize our recent conversations. Below I reference documents I have provided to you and Rich. I plan to attend the P&Z Commission mtg. on 6/18. Prior to that meeting, I anticipate submitting a memo to the P&Z. Comm. after the county attorney has had a chance to review commitments made on this property.

As I already discussed w/ you, I am not sure why the applicant and/or his consultants did not communicate significant changes that have been made to the preliminary plat approved on 7/19/07.

I am requesting a revised plat in order for me to make a more thorough review. I recommend that the P&Z Commission also review a revised plan before voting on the requested extensions. Until I receive a revised plat, the plat review comments I submitted on 4/30/07 still stand.

Also note that the 5/02/07 Rocky Glen Open Space Mgt. plan reflected comments that I submitted which are consistent with other decisions that I am referencing in this email.

The primary concern of Cabarrus SWCD is a utility easement (actually 2 utility easements) recorded on 11/06/07, nearly 4 months after plat approval. The approved plat indicated "4.534 AC. primary open space (to be donated to conservation agency).

The 7/19/07 P&Z Comm. minutes further document the developers commitment to (make this a conservation area with the Conservation District." The SWCD's interest in a conservation easement is to of permanently conserve a wooded riparian buffer on a stream that flows into another stream already protected by a conservation easement held by the state.

During a 3/03/08 meeting with City of Monroe staff and their consultant that I requested, I made known that Cabarrus SWCD had made formal requests during county and municipal plan review processes for conservation easements from Rocky Glen developer Randy Scribner and other prospective developers.

Due to lack of opportunity for public comment on environmental impacts of the proposed City of Monroe gas pipeline, the Cabarrus SWCD board voted on 8/12/08 to convey their opposition to the pipeline to the county BOC based on environmental impacts and soil concerns.

I remain unclear as to why the developer did not exercise legal authority apparently granted to him by the property owner to convey easements by finalizing the conservation easement w/ the SWCD.

One of the legal opinions that I am hoping the county attorney will make is whether a utility easement can be granted--w/o SWCD consultation--when the approved plan included a conservation area unencumbered w/ any other easements.

If the county successfully required a realignment of the proposed pipeline to avoid the Rocky River Elem. Sch. campus on grounds that another public good cannot be imposed where a prior public good exists, the same would seem to apply in the case of the primary open space provided for in the approved preliminary plat.

Furthermore it's unclear what the public good is for the proposed pipeline, which duplicates available gas service.

Dennis

From: Kassie Goodson Watts
To: Ray Gilleland; David M Troutman; Dennis Testerman; Robert Kluttz ; Robert Kluttz ; Thomas Bach ; Dennis Testerman

Cc: Kassie Goodson Watts

Sent: Wed Jun 03 11:14:32 2009

Subject: Rocky Glen Preliminary Plat Extension Comment Request

Please be advised this subdivision is requesting a 1 year preliminary plat extension and a 2 year vested rights request.

Nothing has changed on the preliminary plat. If anyone has comments they would like to provide, please email or fax them to me at 704-920-2227 as soon as possible. By next **Tuesday, June 9th** at the very latest. I've attached a memo for your information. If you have any questions please let me know.

If I do not hear back from you, I will put you down as "NO COMMENTS". Thanks in advance.

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

MEMORANDUM

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

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

FROM: Dennis Testerman, Resource Conservation Specialist

COPIES: Susie Zakraisek, Cabarrus County Commerce Department—Planning
 Thomas Smith, Cabarrus County Commerce Department—Erosion Control
 Tony Johnson, Cabarrus County Commerce Department—Erosion Control
 Robbie Foxx, Cabarrus County Commerce Department—Zoning
 Jay Lowe, Cabarrus County Commerce Department—Zoning
 Robert Ward, County Ranger, NCDENR Div. of Forest Resources
 Peggy Finley, NCDENR, DWQ—Aquifer Protection Sect./Groundwater, Mooresville Regional Office
 Alan Johnson, NCDENR, Div. of Water Quality, Mooresville Regional Office
 Cyndi Karoly, NCDENR, Div. of Water Quality, Wetlands Unit, Raleigh
 Robin Dolin, NCDENR, Ecosystem Enhancement Program
 Ron Linville, NCDENR, Wildlife Resources Commission-Habitat Conservation Prog., W-S Reg. Office
 Steve Lund, US Army Corps of Engineers, Asheville Regulatory Field Office

NAME OF PLAN: Rocky Canyon Subdivision (formerly Indian Trail) **PLAN TYPE:** Residential **JURISDICTION:** County

LOCATION: Rocky River Road and Archibald Rd. **ZONING:** LRD

OWNER: James/Audrey Furr Living Trust, 4165 Wrangler Dr., Concord, NC 29027

DEVELOPER: Randall T. Scribner, 4110 French Fields Lane, Harrisburg, NC 28075

DESIGN CONSULTANT: Site & Structure, 8621 Fairview Road Ste B1, Mint Hill, NC, 28227-7662; 704-573-7800

DATE SUBMITTED: 4/17/2007 (4/13/06) **DATE REVIEWED:** 4/30/07 (4/18/06)

PARCEL #: 5528-41-7658 **TRACT#:** 2007-46 **ACRES:** 35.989

USGS TOPO QUAD MAP: Concord S.E. **LATITUDE/LONGITUDE:** 35° 20.24'N, 80° 35.58'W

RECEIVING WATERS: Coddle Creek ("Indian Run") tributary **WATERSHED:** HU 03040105020010 (CC-4)

PERENNIAL OR INTERMITTENT STREAMS PRESENT: Yes No

SOIL TYPE(S): Cullen clay loam (CuB2, CuD2), Enon sandy loam (EnB), Poindexter loam (PoF)

HYDRIC SOILS: Yes No

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

<input type="checkbox"/> Location Map	<input checked="" type="checkbox"/> Open space covenant document
<input checked="" type="checkbox"/> Legend	<input type="checkbox"/> River Stream Overlay Zone
<input type="checkbox"/> Start & Completion Dates	<input checked="" type="checkbox"/> Environmental reviews
<input checked="" type="checkbox"/> Soil Type(s)	<input checked="" type="checkbox"/> 401/404 wetland permits
<input type="checkbox"/> Floodplain boundaries	<input checked="" type="checkbox"/> Location of existing structures and trees

ONSITE INSPECTION: Yes No

PLAN COMMENTS:

- ❑ Pre-submittal meeting between developer and/or designer and reviewers is highly recommended, preferably onsite.
- ❑ River Stream Overlay District/Zone on Coddle Creek tributary are marked as required by the county zoning ordinance and permit CESA-W-088-N-013-0061 issued under Section 404 of the U. S. Clean Water Act (33 U.S.C. 1413) by the US Army Corps of Engineers.
- ❑ Unless developer has prior authorization from appropriate federal and state authorities to impact jurisdictional waters or wetlands, the proposed project will be in violation federal and/or state law. Permits for disturbance of streams and other wetlands must be requested from N. C. Division of Water Quality and U. S. Army Corps of Engineers prior to any impacts.
- ❑ This project is within a hydrological unit (HU) included in the North Carolina Ecosystem Enhancement Program’s Upper Rocky River Watershed Plan area and **drains into a restoration project that is in design phase**. Every effort should be made to use best management practices to prevent water quality impairment and follow recommendations in the Watershed Management Plans & Recommendations, Lower Yadkin / Upper Rocky River Basin, Local Watershed Planning—Phase Two. A key recommendation is low impact development techniques patterned on pre-development stormwater runoff conditions. The erosion and sedimentation control plan for this site should be followed closely once it has been submitted and approved.
- ❑ The proposed development is approximately 800 feet upstream from the confluence of Indian Run with Coddle Creek. Coddle Creek received an “Impaired” water quality rating in the 2003 Yadkin-Pee Dee River Basinwide Water Quality Plan. The plan notes that “. . . non-point source pollution, largely from stormwater runoff in and around Concord and Kannapolis, is likely a significant factor.” According to the Plan, “Population is projected to increase . . . 53 percent in Cabarrus County. . . between 2000 and 2020. Growth management within the next five years will be imperative, especially in and around urbanizing areas and along highway corridors, in order to protect or improve water quality in this subbasin. Growth management can be defined as the application of strategies and practices that help achieve sustainable development in harmony with the conservation of environmental qualities and features of an area. On the local level, growth management often involves planning and development reviews that are designed to maintain or improve water quality.”
- ❑ A **conservation easement on all stream buffers** is requested by Cabarrus Soil and Water Conservation District to protect stream restoration project downstream. This request is also part of the countywide open space initiative. See brochure “This Land is Our Land. . . A Guide for Preserving Your Land for Generations to Come.”
- ❑ Impacts of stormwater from this proposed project on water quality and water quantity have not been assessed. Cities of Concord and Kannapolis have applied to the NC Div. of Water Resources for an interbasin transfer of water certificate. Other jurisdictions receiving water from these municipalities are bound by the conditions of IBT certificate’s drought management plan. Under this certificate, stream buffers will be determined by a qualified professional to ensure proper application of stream buffer rules.
- ❑ Cumulative and secondary impacts associated with this proposed development are not known and should be assessed prior to final plan approval.
- ❑ The following prime farmland soil will be removed from production: CuB2. Farmland Conversion Impact Rating form (AD-1006) must be filed if federal funds are involved. Redesign of plan to provide for more open space protection of this soil is encouraged.
- ❑ The following soil are classified as important state farmland soils and will be removed from production: CuD2 and EnB.
- ❑ The information in this table indicates the dominant soil condition, but does not eliminate the need for onsite investigation. The numbers in the value column range from 0.01 to 1.00. The larger the value, the greater the potential limitation. Limiting features in this report are limited to the top 5 limitations. Additional limitations may exist.

Map Symbol	Soil Name	Dwellings without Basements	Dwellings with Basements	Small Commercial Buildings	Local Roads and Streets	Shallow Excavations	Lawns and Landscaping
		Rating Class and Limiting Features - Value	Rating Class and Limiting Features - Value	Rating Class and Limiting Features - Value	Rating Class and Limiting Features - Value	Rating Class and Limiting Features - Value	Rating Class and Limiting Features - Value
CuB2	Cullen	Somewhat limited Shrink-swell - 0.5	Somewhat limited Shrink-swell - 0.5	Somewhat limited Shrink-swell - 0.5 Slope - 0.13	Somewhat limited Shrink-swell - 0.5 Low strength - 0	Somewhat limited Too clayey - 0.72 Cutbanks cave - 0.1	Not limited
CuD2	Cullen	Somewhat limited Slope - 0.63 Shrink-swell - 0.5	Somewhat limited Slope - 0.63 Shrink-swell - 0.5	Very limited Slope - 1 Shrink-swell - 0.5	Somewhat limited Slope - 0.63 Shrink-swell - 0.5 Low strength - 0	Somewhat limited Too clayey - 0.72 Slope - 0.63 Cutbanks cave - 0.1	Somewhat limited Slope - 0.63
EnB	Enon	Very limited Shrink-swell - 1	Not limited	Very limited Shrink-swell - 1 Slope - 0.13	Very limited Low strength - 1 Shrink-swell - 1	Somewhat limited Too clayey - 0.28 Cutbanks cave - 0.1	Not limited
PoF	Poindexter	Very limited Slope - 1	Very limited Slope - 1 Depth to soft bedrock - 0.46	Very limited Slope - 1	Very limited Slope - 1 Low strength - 0.22	Very limited Slope - 1 Depth to soft bedrock - 0.46 Cutbanks cave - 0.1	Very limited Slope - 1 Depth to bedrock - 0.46

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

- ❑ Development of site will remove existing forestland from production, result in loss of environmental services from forest land cover, and accelerate the rate of loss of green infrastructure in the county.
- ❑ Private well is located west of outbuilding on southeast corner of parcel. **NC form GW-30 must be filed with the Groundwater Section of the N.C. Dept. of Environment and Natural Resources when abandoning a well.**
- ❑ Underground utilities including, but not limited, communications, electricity, natural gas and/or petroleum, wastewater and water may exist on site. Verify status before disturbing site by observation and by calling the NC One Call Center, 1-800-632-4949. Unmarked graves, underground mine shafts and historic Native American sites are not uncommon in Cabarrus County. Construction crews should be vigilant for the presence of these cultural and historical sites. Construction must be halted and appropriate authorities notified when any of these sites are uncovered.
- ❑ Additional field visits by Cabarrus SWCD and/or its conservation partners may be required, including but not limited to sedimentation and erosion control plan review.

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

CONTACT(S):

Cabarrus County Commerce Department—Zoning, Robbie Foxx, 704-920-2138
Cabarrus County, Commerce Department, Susie Zakraisek, 704-920-2858
Cabarrus County Commerce Department—Erosion Control, Thomas Smith, 704-920-2411
Cabarrus County Commerce Department—Erosion Control, Tony Johnson, 704-920-2835
Cabarrus County Commerce Department—Zoning, Robbie Foxx, 704-920-2138
Cabarrus County Commerce Department—Zoning, Jay Lowe, 704-920-2140
Cabarrus SWCD & Watershed Improvement Commission, Dennis Testerman, 704-920-3303
NC DENR Div. of Forest Resources, Robert Ward, 704-782-6371
NCDENR-Mooresville Regional Office, Groundwater Section, Peggy Finley, 704-663-1699
NCDENR, Div. of Water Quality, Mooresville Reg. Office, Alan Johnson, 704-663-1699
NCDENR, Div. of Water Quality, Raleigh, Cyndi Karoly, 919-733-9721
NCDENR, Ecosystem Enhancement Program, Robin Dolin, 919-715-5836
NCDENR, Wildlife Resources Commission-Habitat Conservation Prog., W-S Reg. Office, Ron Linville, 336-769-9453
U. S. Army Corps of Engineers, Asheville Regulatory Field Office, Steve Lund, 828-271-7980 x223

REFERENCES:

- “Avoiding Tree Damage During Construction.” Consumer Information Program Fact Sheet. International Society of Arboriculture.
[<http://www.isa-arbor.com/consumer/avoiding.html>]
- “Conservation-Based Subdivision Design: Protecting Water Quality and Scenic Resources in NC Mountains.” Conservation Trust for North Carolina. 1997
- “Erosion and Sedimentation on Construction Sites.” Soil Quality—Urban Technical Note No. 1. USDA, NRCS.
[<http://www.statlab.iastate.edu/survey/SQI/pdf/u01d.pdf>]
- “401 Water Quality Certification Program – The Basics.” N.C. DENR. Div. of Water Quality, Wetlands Section.
[<http://h2o.enr.state.nc.us/ncwetlands/basic401.html>]
- “Protecting Urban Soil Quality: Examples for Landscape Codes and Specifications.” [<http://soils.usda.gov/sqi/files/UrbanSQ.pdf>]
- “Recognizing Wetlands.” Informational Pamphlet. US Army Corps of Engineers
[<http://www.usace.army.mil/inet/functions/cw/cecwo/reg/rw-bro.htm>]
- “Seeding Specifications.” Sect. 6.10 & 6.11 in Erosion and Sediment Control Planning and Design Manual. N. C. NRCD.

“Soil Sampling for Home Lawns & Gardens.” N.C. Dept. of Agriculture & Consumer Serv.
[<http://www.ncagr.com/agronomi/samhome.htm>]

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Two). NCDENR, Ecosystem Enhancement Program. 2004.
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



C2007-05 (S)
Rocky Glen
Preliminary Plat

Petitioner:
Randall Scribner

Zoned LDR

PIN 5528-41-7658
5528-52-7326



Legend	
	Subject Property
	LDR
Concord Zoning ZONINGCODE	
	CURV
	RL



Kassie Goodson Watts

From: Thomas Bach [TBach@WSACC.org]
Sent: Thursday, June 04, 2009 11:29 AM
To: Kassie Goodson Watts
Cc: Chad VonCannon; Coleman Keeter; Jan Sellers; Mark Lomax; Van Rowell; Sherri Moore (moores@ci.concord.nc.us)
Subject: [html] Preliminary Plat Review For Rocky Glen Subdivision Along Archibald Road -

Hi Kassie,

This is in response to your request for comments outlined in your e-mail dated June 3, 2009, regarding the preliminary plat review for the proposed Rocky Glen Subdivision development (PIN #5528-41-7658, 5528-52-7326), which is located along Archibald Road just east of the intersection with Rocky River Road. **Below is a review summary for information purposes only and not suggested plan revisions.**

For most of this proposed subdivision development, the existing topography on the site drains southwest towards Coddle Creek (across Rocky River Road) where there is an existing 30" gravity sewer interceptor line owned and operated by WSACC. The proposed gravity sewer infrastructure for this subdivision development will be connected into the City of Concord's existing sewer system downstream of the proposed development.

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 Rocky River Road and Archibald 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 with the preliminary plat does not give projected water demand, even though the preliminary plat shows approximately 49 new lots are included in this subdivision development. This information will be helpful in determining the adequacy of the existing water line infrastructure.

The following comments are provided for your information and consideration:

- The proposed development is located in the existing utility service area of the City of Concord. 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

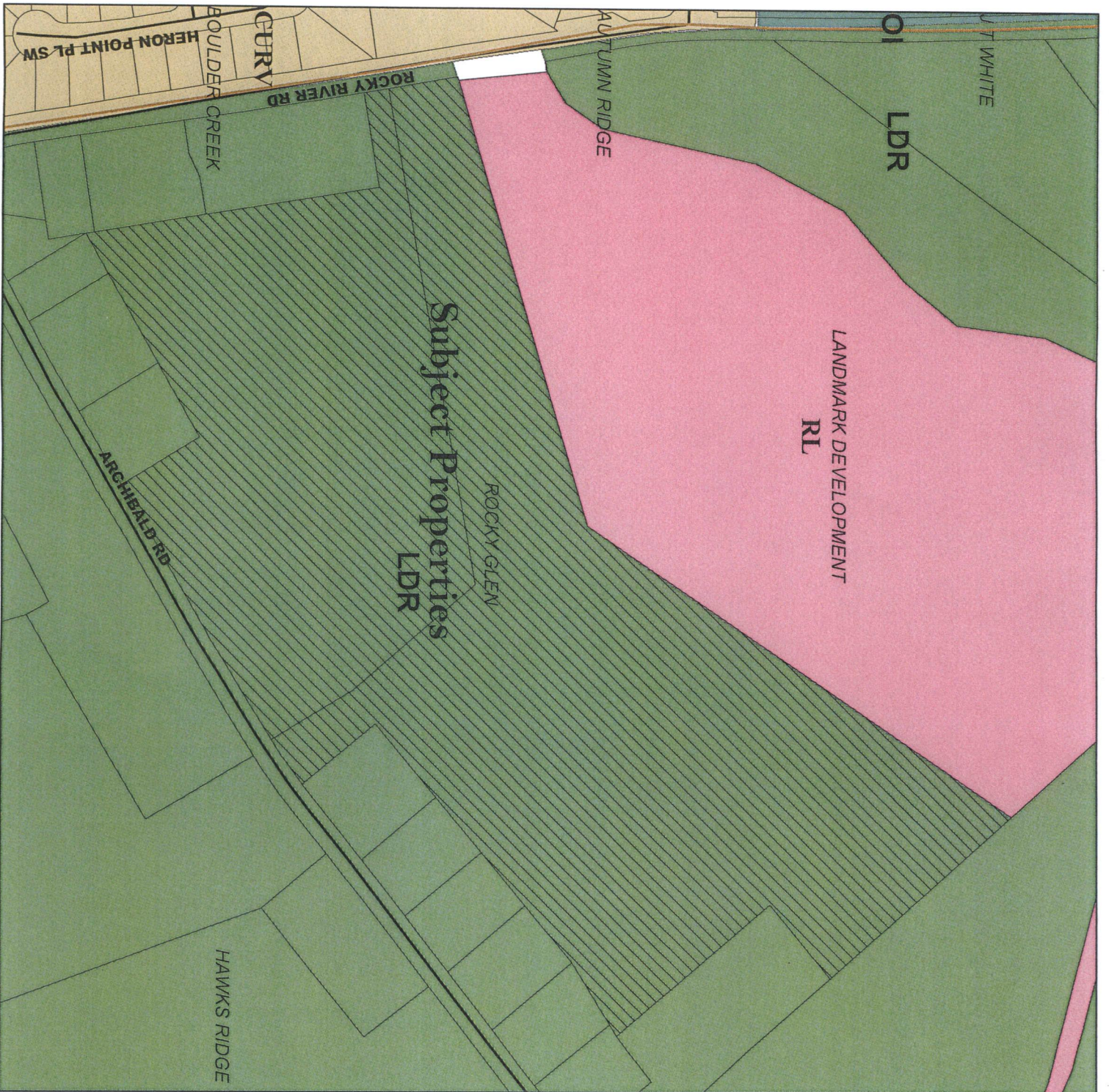
Concord, NC 28026

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

Fax: (704) 795-1564

✉-Mail: tbach@wsacc.org

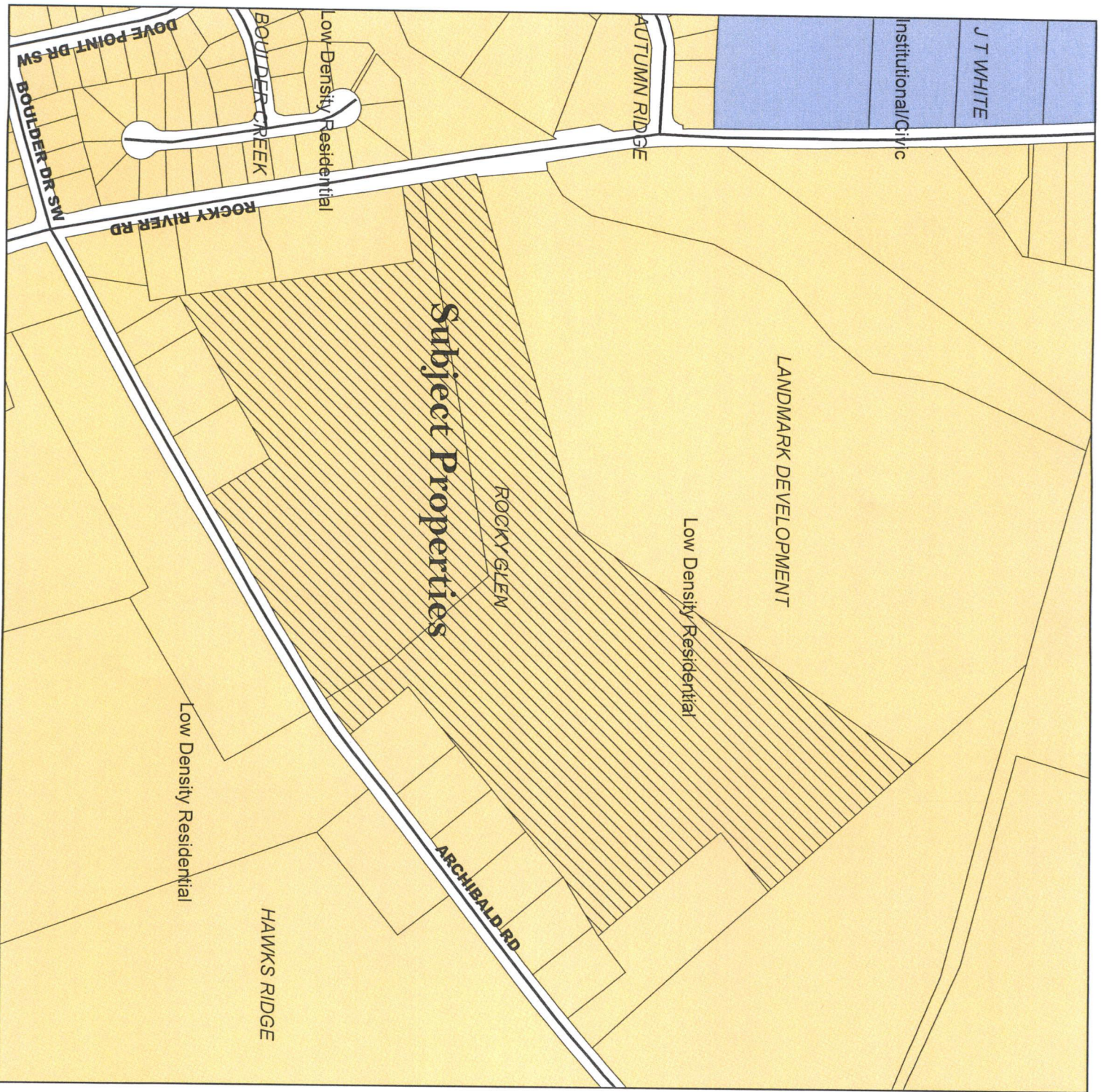
"Pursuant to the Freedom of Information-Privacy Acts (FOIPA) and North Carolina General Statutes Chapter 132, Public Records, this electronic mail message and any attachments hereto, as well as any electronic mail message(s) sent in response to it may be considered public record and as such subject to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



Preliminary Plat Extension
 Petition#: C2009-03 (SE)
 Accela#: PLEX2009-00004
 Petitioner: Randall T. Scribner
 Zoning: LDR
 Open Space Subdivision
 49 lots Approved
 Approximately +/- 35.989 acres



Cabarrus County shall not be held liable for any errors in this data. This includes errors of omission, commission, errors concerning the content of the data, and relative and positional accuracy of the data. These data cannot be construed to be a legal document. Primary sources from which these data were compiled must be consulted for verification of information contained within the data.
 Map Prepared by Cabarrus County Planning Services, April 2009.

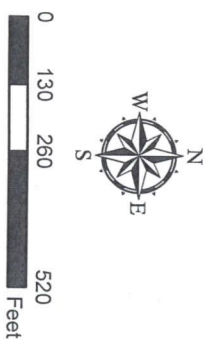


Preliminary Plat Extension
 Petition#: C2009-03 (SE)
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 Petitioner: Randall T. Scribner
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 Open Space Subdivision
 49 lots Approved
 Approximately +/- 35.989 acres

Land Use Plan Map

Legend

- Low Density Residential
- Institutional/Civic

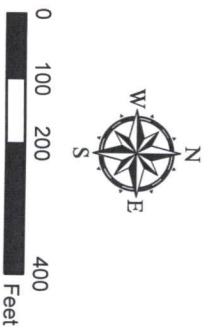


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Map Prepared by Cabarrus County Planning Services, April 2009.



Preliminary Plat Extension
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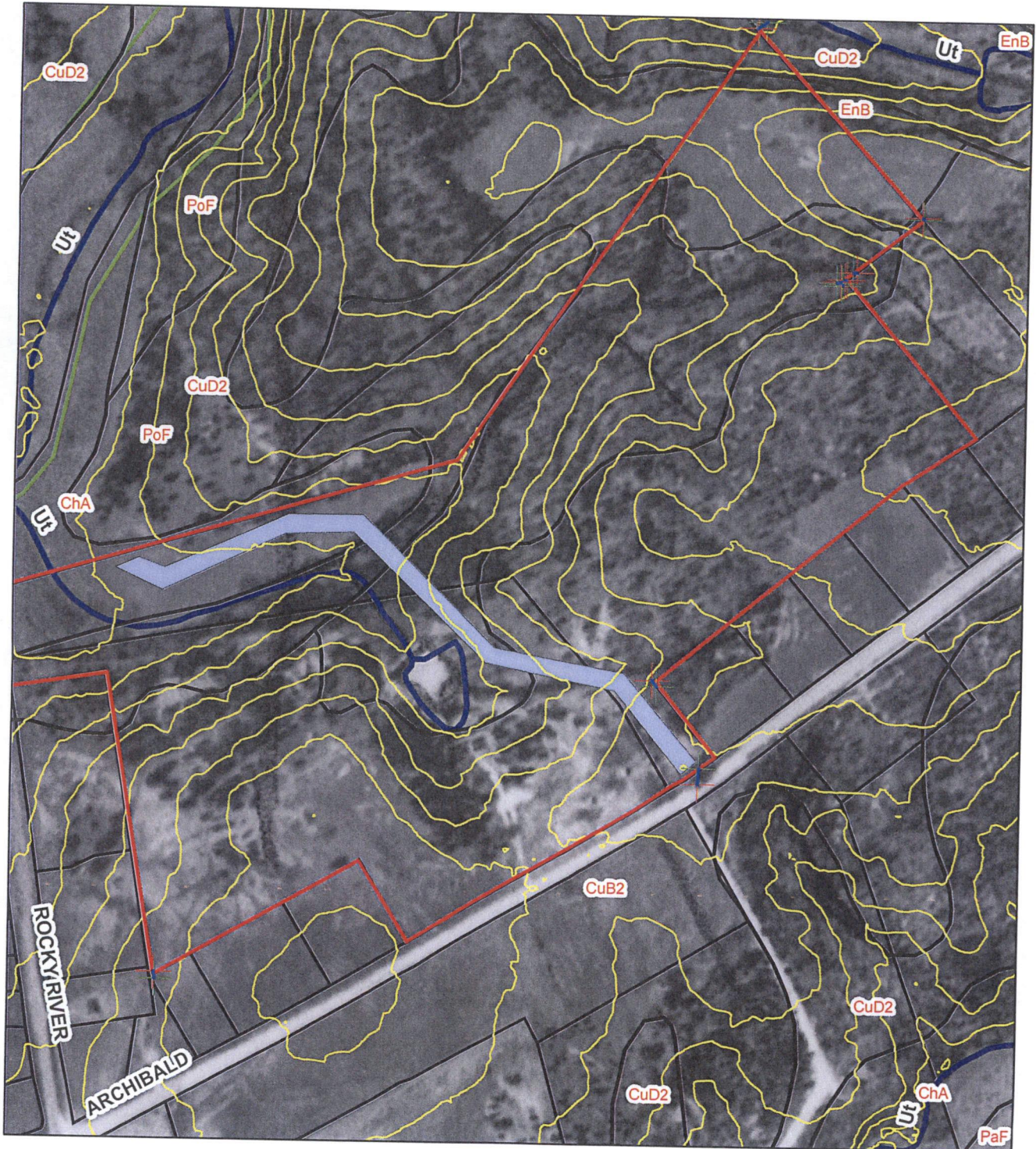
Map Prepared by Cabarrus County Planning Services, April 2009.



Rocky Glen S/D Area



Rocky Glen S/D 1956 Aerial Photo



Memo

To: Cabarrus County Planning and Zoning Commission
From: Kassie G. Watts, AICP, Senior Planner
Date: May 27, 2009
Petition#: C2009-02(VR)
Accela#: PLVR2009-00001
Re: Request for Vested Rights

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

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

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

Developer Randall T. Scribner is requesting vested rights for properties located at the corner of Rocky River Road and Archibald Road, identified as parcel numbers 5528-41-7658 & 5528-52-7326, currently approved as the Rocky Glen subdivision. Attached you will find the Preliminary Plat for the project and a letter from Mr. Randall T. Scribner outlining the request.

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

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

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

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

The applicant is requesting that vested rights be applied for a period of two years. Should the Board approve the vested rights request, the duration of the vested rights approval would run with the land for a period of two years beginning June 18, 2009 and expiring on June 18, 2011.

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

RANDALL T. SCRIBNER

4110 French Fields Lane

Harrisburg, NC 28075

(704) 575-2795

scrib1@ctc.net

04/10/09

Cabarrus County Planning & Zoning Board

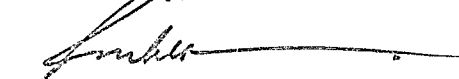
Subject: Vesting Rights for Rocky Glen Subdivision

This letter is my request to approve vesting rights for my Rocky Glen Subdivision located at the corner of Rocky River Road and Archibald Road. There are two parcels in this subdivision totaling 35.989 acres with PIN #'s 5528417658 & 5528527326. The subdivision is planned for 49 single family homes with a density of 1.36 per acre.

I have invested significant time and money in this site including soils, environmental, engineering, and surveys as well as various other grading agreements and rights-of-way. Due to the current economic environment and real estate market, I need additional time to complete this project. At the current time it is impractical to bring new lots to the market.

I am requesting that a two year vesting be approved.

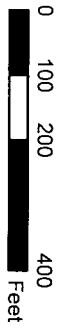
Sincerely,



Randall T. Scribner



Vested Rights Request
Petition#: C2009-02 (VR)
Accela#: PLVR2009-00001
Petitioner: Randall T. Scribner
Zoning: LDR
Open Space Subdivision
49 lots Approved
Approximately +/- 35.989 acres



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Map Prepared by Cabarrus County Planning Services,
April 2009



Planning and Zoning Commission Minutes
June 18, 2009
7:00 P.M.

Mr. Todd Berg, Chair, called the meeting to order at 7:00 p.m. Members present in addition to the Chair were, Mr. David Baucom, Ms. Brenda Cook, Mr. A. Eugene Divine, Mr. Larry Ensley, Mr. Danny Fesperman, Mr. Larry Griffin, Ms. Amy Ma, Mr. Tommy Porter, Mr. Ian Prince and Mr. Barry Shoemaker. Attending from the Planning and Zoning Division were, Ms. Susie Morris, Planning and Zoning Manager, Mr. Jay Lowe, Senior Zoning Officer, Arlena Roberts, Clerk to the Planning and Zoning Commission, and Mr. Richard Koch, County Attorney.

Roll Call

Approval of Minutes

Mr. Thomas Porter, **MOTIONED, SECONDED** by Mr. Larry Ensley to **APPROVE** the May 21, 2009, meeting minutes with the findings of fact attached. The vote was unanimous.

The Oath of Office was administered for Ms. Amy Ma, the newly appointed alternate member.

The Chair said there are two Board of Adjustment cases tonight; anyone speaking for or against either case needs to be sworn in. The following people were sworn in: Ms. Susie Morris, Mr. Jay Lowe, Mr. Jim Craddock, Mr. Willis Spivey, Mr. Russell, Ms. Priscilla Clough, Mr. Gene Choquette and Mr. Richard Lewis.

New Business –Board of Adjustment Function:

The Chair introduced Conditional Use Permit Case #CUSE2009-00004 – Applicant is Mr. James E. Craddock on behalf of Mr. Edward V. and Ms. Ethel Little

Mr. Jay Lowe, Senior Zoning Officer addressed the Board stating that the application is CUSE2009-00004, Conditional Use Permit. The applicant is Mr. James E. Craddock on behalf of Edward and Ethel Little, P.O. Box 268, Concord, NC. The property owners are Edward and Ethel Little of 5650 Sandusky Blvd. Concord, NC. The location of the property in question is at 6845 Sandusky Blvd., formerly 5650 Sandusky Blvd. of Concord, NC. The pin number is 4598-57-7645. The zoning of the property in question is General Commercial (GC) and is approximately 1.180 acres. The applicant has provided documentation compliant with Section 8-3, Petitioning for a Conditional Use. The applicant has submitted a complete application which includes the “Findings of Fact” sheet along with a site plan showing the proposed house. A public hearing notice has been published in the Independent Tribune on June 3rd and June 10th, 2009. The adjacent property owners have been notified by US Mail. Mr. Lowe said there has been no opposition to this point. He said a sign has been placed on the property stating the

time, date, and location of the public hearing. A site plan review and approval will be required subsequent to Board of Adjustment approval to ensure compliance with all applicable development requirements. Additional agencies are part of the review process; each respective agency reviewed the request and found the proposal to be in compliance. No additional comments were offered.

Mr. Lowe said a copy of the Granting Order will need to be recorded with the property deed prior to development if the Board chooses to approve the conditional use.

Mr. Lowe said the applicant has lived on the property over 20 plus years. It was a 30 acre parcel of land. A mobile home park is there along with the applicant's personal residence. The applicant has expressed his wish to demo the existing house, take it off the property, dispose of it in a legal way, and build another single family residential dwelling unit there. The applicant did not want to include the whole 30 acres because the conditional use would have been on the whole 30 acres. We suggested that he cut off approximately an acre of land, which he has done. He cut the acre out approximately where the house is currently; basically he is trading one house for another.

Mr. Lowe said one of the predefined conditions is that the applicant must prove some form of hardship that has brought about the request. The applicant has explained that to Mr. Lowe verbally and he will let the applicant explain; but basically the applicant is swapping out one house for another. The applicant is represented tonight by Mr. Craddock and will probably be answering most of the questions for the property owner.

The Chair said the drawings that were submitted in the packets, on the actual house elevations, there were a number of comments regarding windows and overhangs and things like that. He said to be clear, they are not to be considered with the conditional use and is something that staff would follow up on.

Mr. Lowe said that is what the applicant gave to us as an example of what he is going to do. He thinks the applicant already has his house plan in place.

The Chair said the comments about the windows were not staffs' comments?

Mr. Lowe said no, they were the applicants' comments.

Mr. Jim Craddock, Concord, NC addressed the Board. He said to answer the hardship consideration; the Little's have lived on this property for quite sometime. The house is on two levels now, there is a basement and first story and they live on those two levels. They desire to build a new house in the same place that is more comfortable for them. It will be a single story that they can live in and as they get older and unable to maneuver around, as they can't right now, up and down the stairs; that is the big hardship about that.

Mr. Willis Spivey, 7000 Hyde Street, Sherrills Ford, NC, addressed the Board. Mr. Spivey has been a general contractor for 34 years and is a personal friend of the Little's.

He said the hardship would be accessibility and the general condition of the home. The home was built in 1960, it has aluminum wiring throughout, the basement leaks, the washer and dryer are in the basement level; it has very narrow steep stairs that go down to the lower level. When it rains hard the basement gets water in it and makes it more difficult to get down to the washer and dryer. They have one full bath and a tub, no tub shower combination. What they would like to do is eliminate the basement; compact it and fill it and have everything on one level that is accessible. The insulation is old and they heat with propane. It will be upgraded with a heat pump and spray foam insulation in the walls and ceilings to reduce their heating and cooling bill by two-thirds.

Mr. Spivey said those are the biggest things. He said Mr. Little is 74 years old and gets around well but the older you get the more difficult it is. They are basically looking for a more accessible, energy efficient, comfortable home with a garage attached. He said right now the garage is not attached, so it would be a single level from the garage right into the house. He said that is basically it, more accessible and wheel chair accessible.

Mr. Prince asked Mr. Lowe if he said there were going to be other conditions.

Mr. Lowe said no, there were three or four predefined conditions; he seems to have met all of those. Some involved some screening, which he really did not have to have in this case because he is next to other residential uses. Basically, the one condition he wanted to bring to the Board's attention was the hardship. Mr. Lowe said the applicant seemed to have met all the rest.

There being no further discussion, Mr. Larry Griffin, **MOTIONED, SECONDED** by Mr. Ian Prince, to **Approve Conditional Use Permit Case # CUSE2009-00004**. The vote was unanimous.

Mr. Koch will do the findings of fact and submit at the next meeting for approval. (See attached findings of fact.)

New Business –Board of Adjustment Function:

The Chair introduced Variance Application #VARN2009-00002 – Applicant is Mr. Ronald Overcash

Mr. Jay Lowe, Senior Zoning Officer addressed the Board stating that the application is VARN2009-00002. The applicant is Ronald Overcash on behalf of Utility Precast Concrete of Concord, NC. The property owner is Poplar Park LLC/a Limited Liability Company of Concord, NC. The property location is at 1190 Ivey Cline Road, Concord, NC. The property zoning is General Industrial (GI); the size of the property is approximately 33.974 acres. The applicant has provided documentation compliant with Section 12-20, Petitioning for a Variance. The applicant has submitted a complete application which includes the "Findings of Fact" sheet along with a site plan showing the proposed facility. A public hearing notice has been published in the Independent Tribune on June 3rd and June 10th, 2009. The adjacent property owners have been

notified by US Mail. Mr. Lowe said there has been no opposition to this point. He said a sign has been placed on the property stating the time, date, and location of the public hearing.

Mr. Lowe said Mr. Overcash secured a zoning permit to construct the Utility Precast Concrete plant on the subject property. He said the property is so big that intense screening is required by the ordinance on the property that adjoins the Concord Regional Airport. Mr. Overcash has various reasons that he feels the landscaping is not necessary. He has turned in a plan and we approved the plan and issued the permits based on this plan. We informed Mr. Overcash of his right to go before the Board for a Variance if he felt like that landscaping was not necessary. Mr. Overcash has a representative here tonight to talk about why they feel the landscaping is not necessary there.

Mr. Gene Choquette, 2011 Hamblin Court, Kannapolis, NC, representing Poplar Park, LLC, addressed the Board. He said the desire for the Variance is two fold; first of all it is General Industrial (GI) adjoining an airport and do not see any reason for the screening. The second and more important is the communication from the City of Concord Airport that they do not want the landscaping due to the fear of birds and is what really prompted the variance.

The Chair asked for clarification on the communication with the airport. They do not want landscaping? He understands that the screening that is required is both shrubs and trees. He asked if they do not want any of it or they don't want trees. He asked Mr. Choquette to clarify that.

Mr. Choquette said in order to do what they want to do on the property; they would need to reduce the size of the buffer; which means impervious evergreen hedge. It is his understanding that the airport has no desire for any landscaping at all; again, for fear of the birds.

Mr. Ensley asked if there were copies of the responses of the emails sent to Jim Green, Steve Osborne and Richard Lewis.

Mr. Choquette was told it was not allowed to be included in the packet because it would be considered hearsay.

Mr. Ensley said an email from the Director of the Airport would be considered hear say?

Mr. Choquette said that is what he was told.

Mr. Koch said an email is hearsay in terms of as evidence but he does not know of anything that would prohibit it from being in the packet. Ultimately, the Board is required to follow the rules of evidence and generally certain types of hearsay are allowable under the rules of evidence. It would be up to the Board in evaluating the evidence to determine whether you think that that document is reliable and if it is in fact true in terms of the contents of it. He is not sure what Mr. Choquette is referring to about

it being in the packet or not. He said if no one objects to the introduction of hearsay evidence, then it would come before the Board, but you would still have to evaluate it in terms of its reliability and its veracity.

Mr. Prince said to clarify; he asked Mr. Choquette's if his plan was to go with the half reduction on the buffer, by using the evergreen.

Mr. Choquette said that is correct. That is what they would need in order to do the operation.

Mr. Prince said you have the half reduction of the evergreen but you do not want the evergreen?

Mr. Choquette said they are on a time crunch is what the issue was, otherwise they would have come here first. In order to get the plan approved in a way that they can use the site they have to reduce the buffer. Now that they can move forward on their building it was recommended they come to Planning and Zoning Commission to try and get the Variance that they truly wanted to begin with; which was no landscaping at all. He said they would not wave the landscaping with out this Board doing so. He said they do not have the desire to have the landscaping there to begin with; the plan was not going to be approved without showing it.

Mr. Richard Lewis, 9000 Aviation Blvd. Concord, NC, Aviation Director, for the Concord Regional Airport. He said looking at the buffer requirements and looking at the topography and the vegetation; they have problems with wild life, deer, coyotes, 120 varieties of birds; it is amazing the wild life they do have. He said it is not going to benefit the Airport to be buffered from this project. If you look at the topography, one portion is up a hill and the fence is at the top of the hill. There are some silos out there at the top of the hill and then it roughly goes down probably 10 to 15 feet below our property and back off of our main area and back up the hill; on our side of the fence is a lot of vegetation. Ultimately they would like to take that vegetation down in order to eliminate the habitat on the airport. He said as disorganization has come along it has forced the animals on to the airport. He said they have a wild life program. He said many of you may have seen that wildlife and aircraft do not mix.

Mr. Lewis said expansion of buffers to benefit the airport is not necessary; they would like to reduce the habitat. They also have an eight foot high wildlife fence along there, this buffer would on the other side of this fence and it would not benefit them at all to be buffered. He said his customers are looking down, not across. He said the runway is up and it slopes down, it is significant grade changes from there, to over to where you are talking about the buffer.

Mr. Lowe read the following email Mr. Choquette was referring to for clarification:

From Jim Green: Thank you for working with Mike Downs to resolve issue on Overcash property next to airport and working with Dick and Boyd to clarify that no trees should be planted.

Mr. Lowe said basically that is the email he was referring to. We felt like that was probably hearsay unless they were here to speak in person.

Mr. Lowe said he was right on the buffer; typically, that did call for a 75 foot buffer. He said as you can see on the plan, he did reduce that, and that is perfectly fine, with an evergreen opaque hedge there. He said the applicant has expressed the issue or the concern that he needs to reduce that buffer to the 37.5, but he thinks the applicant still wants to take out the content of the buffer and that is why we are here.

Mr. Larry Griffin said it seems we have both sides of a situation here and neither one of them want it.

The Chair said the thing that is troubling for him is that the legislation on variances is pretty specific and you have to show some practical difficulty or hardship.

Mr. Griffin thinks the folks from the airport said it does present a hardship on operating and airport; at least that is the way he interprets it.

Mr. Koch said the hardship has to be on the property itself not on surrounding properties. How it will affect the airport is not relevant to your consideration.

Mr. Griffin said in this case the law might say it is not, but common sense says it could have an affect on the airport.

There being no further discussion, Mr. Larry Griffin, **MOTIONED, SECONDED** by Mr. Barry Shoemaker, to **Approve the Variance Application VARN2009-00002**. The vote was 6 to 3 with Mr. Berg, Mr. Prince and Mr. Ensley opposed. (Failed)

Mr. Koch will do the findings of fact and submit at the next meeting for approval. (See attached findings of fact.)

Mr. Koch said in tough situations like this the solution maybe to look at a text amendment specific to airport property. This is a situation that is fairly unique and typically you are not worried about these kinds of issues elsewhere. He said the requirements of the variance law have proven tough to get this case factored in.

Mr. Prince said that could just be in the airport overlay district.

The Chair asked if staff could draft a text amendment for the overlay zone.

Ms. Susie Morris, Planning and Zoning Director addressed the Board stating that most of the property around the City of Concord Airport is actually in the city limits. This

happens to be a special case because it adjoins the airport, but it is still county property. She thinks it could be looked at it to see how many parcels are actually affected by that. This property is on Ivy Cline Road and is the last property on that street that is still under the county and everything else is in the City of Concord. This is somewhat of a unique situation.

Mr. Rich said the other option would be to ask for voluntary annexation into the City of Concord. (See attached Findings of Fact and Conclusions of Law)

New Business – Planning Board Function:

The Chair introduced Petition 2009-04 SE (Accela # PLPR2008-00005) - Preliminary Plat Extension Approval Request for of Rustic Canyon

A letter from the applicant, Shea Homes, LLC requesting that the Petition #C2009-04 (SE) Preliminary Plat Extension for Rustic Canyon be removed from the agenda.

Ms. Morris said the applicant was seeking an extension and at the eleventh hour they were able to get a lot recorded, so they no longer need the extension and are asking that it be withdrawn.

There being no further discussion, Mr. Larry Griffin, **MOTIONED, SECONDED** by Mr. Ian Prince, to **Remove** Petition #C2009-04 (SE) Preliminary Plat Extension for Rustic Canyon from the agenda. The vote was unanimous.

The Chair introduced Petition 2009-03 SE (Accela # PLEX2009-00004) - Preliminary Plat Extension Approval Request for Rocky Glen- Randall T. Scribner

Ms. Kassie Watts, Planner addressed the board stating that the applicant is Randall Scribner and he is present tonight to answer any questions. This is a Preliminary Plat Extension Request for the Rocky Glen Subdivision. The extension would be for one year.

The extension request was reviewed and the comments received are as follows:

City of Concord- Developer will be required to enter into a developer's agreement.

Cabarrus County Schools – Robert Kluttz sent revised figures about where the current available capacity figures are.

NCDOT - no comments.

Soil and Erosion sent a revised inspection report after the board packets were mailed, stating that the applicant would need to submit a revised erosion control plan and provide adequate sedimentation and erosion control measures for the proposed grading outside of the river stream overlay zone.

Ms. Watts said if this plat were to be approved, the developer would be granted a one year extension for the development of this project. The new expiration date would be July 19, 2010, the extension would be conditioned upon the Cabarrus County Board of Commissioners reaffirming or renegotiating the terms of the original consent agreement, because that runs with the preliminary plat approval, and all applicable conditions related to the original preliminary plat approval would be a conditions of this approval as well.

Ms. Watts said one thing to note is the third paragraph of the staff report; as we were reviewing the plat, some information came to staff, and it appears that the developer does not own the property; yet he obtain an easement from the owners, which he in turned granted to the City of Midland for the Monroe-Midland gas pipeline. The proposed route of the pipe line is across the open area that he promised to the Cabarrus County Soil and Water Conservation District (CCSWCD), to be used as conservation easement. It also apparently goes under the entrance road into the Water Body Overlay District (WBOD). She said when the plat was approved it was called the River/Stream Overlay District. There have been text amendments since then and it is now called the Water Body Overlay District, for the existing pond below the play area and also extends into the no build buffer for the intermittent stream. Thus the plat which the developer is requesting an extension, is no longer accurate and will need to be changed.

Ms. Watts said that is one of the reasons that Mr. Smith had modified his comments that the soil and erosion plan would need to be changed. We have spoken with Mr. Scribner and he is aware of what is going on. We have also had some dialogue with Mr. Testerman about the conservation easement. She said Mr. Scribner is requesting an extension for one year.

Mr. Randy Scribner, 4110 French Fields Lane, Harrisburg, NC, addressed the Board. Mr. Scribner said he is the current developer on the property. He said there was some concern about the pipeline. He was approached by the pipeline company and the Town of Midland basically said they were going to get this property. He thinks this was before there was any information that he was aware of that there was an issue with the County and this pipeline. They came to him and asked if he could give them permission to go across that particular property and he wanted to make sure it did not interrupt his subdivision; he got mauled in the process because of that.

Mr. Fesperman asked if they told him they would condemn it if he did not go along with it.

Mr. Scribner said basically; they said they had the power of eminent domain and is the direction they would go if they had too. He tried to make sure it stayed in the buffer zones and the open space and that they crossed as fewer lots as they had too. He said that is what they said they would do, and in his agreement it says that it will not affect his subdivision; basically. They said it is not a gravity feed or what ever system, so they can go under sewer lines and go around things and they said they would make sure they did that. So, he made sure he stayed in the lead on it to make sure he was not just left with them condemning something that would completely destroy the project.

The Chair said since the time that this was originally approved in 2007; what work has been done on the project?

Mr. Scribner said they went through the whole process. He was handed the sediment control thing tonight, he was not aware but now he is. He has been fighting the sewer issue forever; they thought they would easily tie it in. He went across the street and purchased additional right of way from the Bolder Creek Subdivision just in case they needed to get to the sewer line that way. They have tried about four different ways to get this, and informed about four months ago that the sewer line is not where they thought it was. He said Autumn Creek Subdivision is actually where the sewer line lies; on that side of the road. They would not let us do the access the simplest way beside the road; they would not let us do an aerial crossing, so they have to go underneath the stream, so you have to go to the opposite side of the road. He has been in correspondence with Autumn Creek; they are not the fastest in the world to get back to you. The last word he received from them was that he should get permission to make the drawing happen on that side of the road and connect with the sewer line. He has been fighting the sewer issue for eight or nine months.

The Chair said since the gas line easement has been added, was it Mr. Scribner's intention to modify the plat?

Mr. Scribner said they promised him, there again it is the gas line company. He asked when he would get the information back from them to know where to put this thing. How do I really draw it, how is it really going to run; because they said there could be some changes and would get back with him with their engineered plans for that area. They have never gotten back to him on anything. He is more than happy to modify the plans for it once he gets some information that says where it is going to go for sure. He said if that is a condition that he needs to put on there, he will be glad to do it once he knows where it is.

Mr. Fesperman asked if Mr. Scribner was being paid for this.

Mr. Scribner said they paid him for the one lot that they had to completely do away with. He said they paid the landowners for the land. The whole idea about him not buying the land; he is not about to go out and spend 1.4 million dollars for land that he does not know will ever be built until he gets the sewer and everything approved. He and the landowners have been very close; they talk all the time, we have meetings all the time; and everybody is good with all of this. He is not going to go out and get way over his head in a project until he knows it is going to work. He has spent a ton of money on it, but they have not transferred the property to him because he does not need 36 acres that cannot be developed.

Mr. Dennis Testerman, Resource Conservation Specialist, 2490 Penninger Road, Concord, NC, addressed the Board. He said Cabarrus Soil and Water Conservation District (CSWCD) have been working out in this area for probably five years. We were first approached by the Kirgan's who own the property identified as Landmark Development; they had some problems with storm water runoff from the school and he was helping them find some solutions to that. Subsequently, the state of North Carolina identified an opportunity for restoring the stream that runs in the conservation easement and the State of North Carolina is going to do a stream restoration project on that and will be starting fairly soon. In light of already having an easement there, as the plans have come through for Rocky Glen and Landmark Development which is in the City of Concord; he went to the City of Concord Planning and Zoning Commission to see if he could get conservation easements on the feeder

streams that go into the stream that already has an easement on it to get some connectivity, and to get better water quality benefits over the long haul. That is how we got into this project.

He showed the Rocky River Elementary School, Boulder Creek, Autumn Ridge and the proposed boundaries for Rocky Glen on the map. He said it takes on two tracks and in the center is a pond and the feeder stream that goes down and comes into another stream that already has an easement on it. The Register of Deeds office has a recorded utility easement for the pipeline that goes down by the pond and down to the point of the property. He said there is another easement across the proposed Landmark Development. He said the pond has been there since 1956; the land was more open then, though you have wood in the general area of the pond and on the steeper slope. The yellow lines are 10 foot interval contour lines; in addition to the stream shown the soils map shows another stream that comes up and would have to be delineated by wetlands specialist under the inter-basin transfer agreement with the city. He said there may actually be more area in there that needs to be buffered than is indicated on the plans that are currently out there.

Mr. Testerman said they were very pleased that this came forth as an open space subdivision. He thinks the inspiration for that, when it was added into the county ordinance, was that it would be a conservation subdivision design concept. He said the conservation subdivision design premise is if you start with the natural features on the land; so the water quality feature there would certainly be one of them and the other one would be prime farmland soil. Most of the upland on Archibald road is prime farmland soil called Cullen.

The City of Concord has told Mr. Testerman that they received comments and submitted comments back about a year ago; July 2008, and they do not have anything on record since then of this dialogue going forward. He tries to go to the development review committee meetings that the City of Concord hosts, which is where all their staff people come in and the developer can come in and meet with them and try to get everybody on the same page. It certainly would be a good opportunity to discuss a project like this. That has been part of the problem; you have the City and County involved and there is really no great way to communicate other than getting people together in the same room or send a lot of emails back and forth. The open space subdivision design, as he understands it is to trade off protecting primary open space and secondary open space and giving higher densities as a result. Personally and professionally, he would like to see a higher level of protection for that primary open space; which is the area surrounding the pond. He has worked with the County Attorney since the Board approved this plan a while back, and drafted up some language for an easement and passed it on to Mr. Scribner and as you have already heard, he has been reluctant to record that given the nature of the project right now and the fact that he does not own it. We do have an easement that is ready to go at whatever time that might be appropriate.

The Chair asked if he would go forth with the easement now that the gas easement goes through what was going to be the conservation easement. He asked how that impacts Mr. Testerman's desire for the easement.

Mr. Testerman said he is a County employee and receives a County salary and benefits, but he serves as well as the county, the Cabarrus County Soil and Water Conservation District Board. It is a board just like the Board of Commissioners or the Board of Education; they are elected officials. They would have to approve the conservation easement that was discussed back when the plan was approved.

Mr. Griffin said as he understood the question, what is the rub between the gas line and easement; because they have the power of eminent domain on their side.

Mr. Testerman said the easement would have to be approved by the Conservation District Board. They are on record right now of opposing the pipeline because of environmental impacts. We have a case in point here where it is running through a stream buffer. He is basically reporting the stance the Board has taken; there has been no public forum for them to express their views; it is on record, they took motion in a meeting a while back.

The Chair is asking about the position on the conservation easement now that the gas easement runs through it.

Mr. Testerman cannot speak for his board and he does not know if they would be interested in an easement that had a pipeline running through it or not. We would have to look at it, but it seems to largely defeat the purpose because it has gone through and impacted the buffer. One of the issues he is dealing with right now is on another property that we actually own, that has a permitted easement on it where WSACC waterway goes through and has a kudzu problem and the same problem behind the jail where we have an easement on part of the county jail property. He said if you go through and open that up and bring through equipment that has seeds and stuff on it, and then open it up to sunlight for the in perpetuity; he thinks it is going to be very hard to maintain that buffer. We are having lots of issues. He said heating up the water is part of the reason for a buffer, you are losing some of your filtering capacity because you are substituting trees for the grass that have growing on the easement, but then you open it up to kudzu. He thinks that would be an issue for the homeowners in there as well; certainly the homeowners off of Union Street are really eager to work with us to try to get rid of the kudzu that is on the jail easement there. It opens up a lot of headaches for us and he is not sure we are prepared to get into for what benefits that might remain in terms of water quality and buffering.

Mr. Russell Clough, 1004 Archibald Road, addressed the Board. His main concern is all the development that is going to take place beside his property. He said number one is traffic flow; everybody already uses Archibald Road as a short cut to Zion Church Road to Highway 601. It takes quite a while to get out of his driveway in the morning as it is, how much more traffic is this going to involve. They are going to have to widen the road and take some of his front yard to make a turn in lane; water quality is an issue. His property is registered with the National Wildlife Federation and he is concerned about the wildlife in that area. There were five deer hit by vehicles this fall right in front of his yard, and they have to be the ones to call animal control and have them removed. There

is a buffer line on the east side of his house, how many of those trees are going to be cut down, and how many are going to be saved are his major concerns.

The Chair said it appears that the preliminary plat that was approved two years ago will have to change; can we grant an extension on something that is not going to be what was originally approved?

Mr. Koch does not think you can, because the request is for an extension of the existing plat. It is obvious that it has changed and it has changed not in just some little incidental way. Obviously, there is one lot that has been removed and he is not sure if that is necessarily that major, but certainly the pipeline. What you have is not something that shows exactly where it is suppose to go or how it affects the buffers. The plat itself actually has a reference on it that there will be a conservation easement granted. That plat was approved and then the easement for the pipeline was granted several months after that; back in 2007. He said what is before the Board really is just a rendering of where the pipeline presumably is going to go. His understanding is that all those drawings have been engineered and should be able to determine exactly how it impacts the buffers and how it impacts the area for the conservation easement and the other open areas; you do not have that before you and it renders the preliminary plat something that is going to be different from what was originally approved.

Mr. Koch said if the Board chooses to approve the extension, he supposes that they can, even with the qualifiers that he has given, or they can turn it down because it is not the same plat. The applicant is asking for an extension on something that is different from what was approved and this other has not been approved, or the Board can put this extension off for a month. He said the Board will have one more meeting before the two years are up.

The Chair said just barely, it was July 19, 2007.

Mr. Koch said the next meeting is July 16, 2009.

Mr. Scribner asked if the problem is the pipeline that is creating this, because the plat has not change and he is not doing anything different than what was approved before. He said a government agency came to him and said they are going to take my land if I did not do this. They have proposed to put something there which they have not given him anything back to say where it goes. He wants clarification of how that is different then what has been approved. He wants to make sure it is the pipeline; that that is the issue.

Mr. Koch thinks the pipeline is the primary issue, but Mr. Scribner granted the easement back in 2007, and the pipeline is going to go across his property in some areas that will change what was originally approved as a part of his plat and there has been no adjustment to the plat in the mean time.

Mr. Scribner is not sure what has changed; he is still going to grant the conservation easement; it stays an all open buffered area to reduce any impact on trees or whatever, to

try and keep it where it does stay away from things; that is exactly what the pipeline company is suppose to do. He is still trying to figure out why that creates an issue when he is not doing anything different. He is doing an open space subdivision with exactly the same plan and with one less lot; to him that is what he is looking at. He said if it is because the pipeline has created an issue, then it looks like it is an issue with the pipeline company that has created it not him.

Mr. Koch said Mr. Scribner voluntarily granted the easement to the pipeline company.

Mr. Scribner said if someone is standing with a gun at your head and says they are going to shoot you if you don't agree to this; he agrees that he did voluntarily do that.

Mr. Koch said that is not completely accurate; the location of the pipeline can vary. It is not just one fixed place because that has occurred in several locations throughout the county, with respect to the pipeline. He said the fact of the matter is you do not know exactly where it is going to go on your property at this point.

Mr. Scribner said that is why he has not drawn anything new because they have not gotten back to him to tell him where it goes.

Mr. Koch does not know; all he can tell Mr. Scribner is according to the lawyer, they have completely designed the pipeline from one end of the county to the other and all of those plans have existed for some period of time and certainly to the extent that they have acquired right of way. He feels pretty confident they have drawn where it is going to be on each parcel that they have acquired it for, not to mention those that they have chosen to condemn. Mr. Koch said what the Board has before them does not show what the present situation is.

Mr. Scribner said he just got from Dennis a note that said that all this is still not fixed; that there are property owners trying to prevent it from going through the property and that there was an issue with Rocky River Elementary School, all the property to the north it may change where it goes. He has been waiting on the pipeline company to send him the documents, other than that that is all the information he has.

Mr. Koch said the County declined to give the pipeline company an easement across the Rocky River School, so they moved the pipeline and ran it around the school instead of running it across school property. Mr. Koch said that is what Mr. Scribner is referring too and that issue came up about two years ago. He said there are several lawsuits that are pending, not only condemnation action but also actions that challenge whether this is a proper public use or public benefit that accrues to the Town of Midland; for it to basically to lease its right of condemnation to the City of Monroe to run the pipeline. He said there is some litigation out there.

Mr. Scribner said if they win, then they do not have the right of condemnation, then the pipeline will not be built; is that correct?

Mr. Koch said yes, he supposes that is possible.

Mr. Scribner said that is why he is saying his subdivision is still the same as it has always been; that is why he is getting caught in this.

Mr. Koch said except you granted an easement voluntarily that basically goes across this property somewhere that affects what your proposed plat indicates. He said Mr. Scribner does not have enough information here, at this point seemingly, to be able to show exactly how it does affect your existing preliminary plat.

Mr. Scribner does not have an engineered drawing from the pipeline company to stick onto it; that is correct. He said they gave him the same type of drawing that Dennis had dropped on his piece of paper that the board has. That is what they gave him and he still has the document with him. He said that is all they have ever given him, in November 2007 or shortly there after. He said they have never been back in contact with him even though he as requested it.

The Chair thinks at this point they are clear on the issue and on the options unless someone has specific questions.

The Chair asked Mr. Testerman to clarify exactly what information he is talking about.

Mr. Testerman said this a Phase I Sediment and Erosion Control Plan dated March 17, 2008; showing that this farm pond which is to be buffered under the River/Stream Overlay Zone, water body buffer, in fact is being converted to an erosion control feed or sediment pond or something of that nature; water going into it. He said this drawing which is a Phase II site grading and drainage plan and in fact shows some fill material being introduced into the buffer area. He also shows where the fill material is on the erosion control plan that was shown earlier.

Mr. Testerman said in terms of where his Board would come down on this, he thinks there would be concerned about having trees removed for grading activities and what that slope gets replanted with and all of that issue. He thinks the impression they had and their hope was that they would be inheriting an area that was an old farm pond and over grown fields that had grown up in timber. He said if you look at the 1956 photo stuff had started coming back in at that point and should have some trees out there that are pushing 50 years old. It looks like we are going to be loosing some of that indigenous to a gas pipeline at some location and other places grading and fill material is being introduced or erosion control features replaced with new vegetation. He said you are loosing part of what he thinks is the value that the Board is looking for in primary open space.

The Chair asked if these drawings have been submitted to NCDENR or to the County Erosion Control Department.

Mr. Scribner said yes, he has an Erosion Control Permit and has already gone through that process. He said the thing Ms. Watts gave him tonight, he just got and has not looked at any of it and does not know what it is.

Mr. Testerman said this does not show that this is a natural area and does not show that it is primary open space and he has not had a chance to consult with Mr. Smith or Mr. Johnson as to what they were seeing on this. As he understands it, the only thing that has been approved so far is less than four acres that is involved in roads; the other stuff has been disapproved. He said one of the comments they made was that the river stream overlay zone needed to be addressed. In looking through the comments that the City of Concord submitted back to Mr. Scribner about a year ago, they also noted the natural features were missing off the plans that they received, and needed to be shown.

Mr. Testerman said trying to coordinate within the County and within the city and then across the boundaries as well, as to what is going on. He is not sure that everybody is sitting down with a full set of drawings that show this is the natural area and this is where the conservation easement is going to go, and then how do you work around that with your roads, your lots, your infrastructure, your utilities; whether it is a pipeline, whether it is water and sewer or what ever it is.

Ms. Watts clarified that Mr. Scribner does have an approved Erosion Control Plan. It had been disapproved and then it was approved. She said Mr. Testerman was right; there were comments about the River/Stream Overlay Zone, that there needed to be some things clarified. It appears that the engineer who resubmitted the drawings indicated that there were areas that been indicated by Soil and Erosion were in fact not in the River/Stream Overlay Zone, which was not correct. She said which is why Mr. Smith went back out into the field this afternoon and did a site assessment and then reissued some additional comments. She said Mr. Smith has not disapproved Mr. Scribner's plan at this time; he has just added additional conditions that his plan will need to be revised. Obviously the areas that show the fill are in the River/Stream Overlay Zone, and that is not allowed. She said turning the farm pond into a sediment basin would certainly not be appropriate. She said there are certainly some things that need to be looked at.

Mr. Griffin said that is part of the normal process, sorting those things out right?

Ms. Watts would think so; we will sort things out.

The Chair thinks her point is not for us to determine whether it is right or wrong. The issue before us is do we grant the preliminary plat extension.

Ms. Watts said we will certainly work things through with Mr. Scribner. He is going through the process, he's turning drawings in. She said this is the typical process and there is always a lot of going back and forth. She said he is requesting a subdivision extension and she does not want that to get lost in everything.

Mr. Baucom said if Mr. Scribner would have started building houses in March 2008, the economy is good, and we are building houses; the gas line was put in. He said what then, what would have happened? He said would any of these concerns be raised then; what did we miss then that we are now seeing.

Ms. Watts said we haven't missed anything. She said there was a conservation easement showing on the map, we had discussions about it and Mr. Scribner had indicated during the preliminary plat process and it is in the minutes that he indicated that he was going to grant that conservation easement to the County, to the Soil and Water Conservation District.

Mr. Prince would venture to guess that if it got past preliminary plat into final plat all of these issues would have come up too.

Ms. Watts said we would not expect that Mr. Testerman would just forget about it, that is what he does.

The Chair said that easement would have been required to be granted before final platting.

Ms. Morris said the preliminary plat that was approved did not contemplate any type of a gas easement on it; that is why we have this issue. That plat would have to be revised in order to accommodate that. She said depending on the extent of those revisions, more than likely it would end up back in the Boards hands to reapprove. It would still have to meet the ordinance; it would still have to meet the open space requirements. She thinks soil and water conservation would still expect the conservation easement would stand, because that was part of the original approval. She said they would have to do a revised preliminary; even if he proceeded with the subdivision if you grant the extension. She said he is still going to have to do a revised preliminary, so, it is not going to look the same any more.

Ms. Morris said what is before the Board is the original subdivision before that gas line became an issue. That is where she thinks Mr. Koch has been saying that it cannot really exist in the form that it is now, it has to be revised at some point if he anticipates proceeding with the project.

Mr. Prince thinks in the same way as in the prior case where we logically did not have an issue so much with the buffer, but there was just more it could not fulfill the requirements of the application because there was no proof of hardship; this kind of falls into the same category. We cannot honestly sit here and approve something that we know is different because there is not enough information to determine how different it is going to be, how much it is going to impact, whether it the conservation easement evens go through is still undetermined.

He said a couple of other things were brought up; the developer has sold the development rights on one lot and profited from the voluntary easement without owning that property and then still going through. He thinks it is wrought with a few problems and he would also probably hesitate to guess that this will not be satisfied within the next 12 month period anyway with the gas pipeline and a 12 month extension would be for naught.

There being no further discussion, Mr. Ian Prince, **MOTIONED, SECONDED** by Mr. Mr. Baucom, to **Deny** Petition #C2009-03 (SE) Preliminary Plat Extension for Rocky Glen. The vote was unanimous

The Chair said with that the Vested Rights request.

Mr. Koch said it sort of falls in the same category. He said with reference to the vested rights, you would have to show that he has some sort of an approved site plan.

The Chair introduced Petition 2009-02 VR (Accela # PLVR 22009-00001) – Vested Rights Request for Rocky Glen- Randall T. Scribner

The Chair asked staff if there was any thing additional on that. He said the Board needs to act on it.

Mr. Scribner said he needs clarification that we are done here.

Ms. Watts addressed the Board stating that this is a request for Vested Rights for the Rocky Glen Subdivision. The developer has requested vested rights, for two years. The requirement for vested rights is: the request must include a description with reasonable certainty, the type and intensity of the use for a specified parcel(s) of land and a site specific plan or phase development plan which shall be in the form of a subdivision plat drawn in accordance with Cabarrus County Subdivision regulations or site development plan drawn in accordance with Chapter Twelve of the Cabarrus County Zoning Ordinance.

Ms. Watts said this would run with the land for a period of two years beginning from the date of approval. Any variations from the original plan must have the consent of the Planning and Zoning Commission. The applicant is requesting that vested rights be applied for a period of two years. Should the Board approve the vested rights request, the duration of the vested rights approval would run with the land for a period of two years, beginning June 18, 2009, and expiring on June 18, 2011. Staff recommends the Board consider the information submitted and render a decision accordingly.

The Chair asked if there were any questions for staff. There being no questions for staff, he asked Mr. Scribner if he had any comments.

Mr. Scribner said no.

The Chair said it seems we don't have a plat that has been approved plat, we can't approve vested rights.

There being no further discussion, Mr. Todd Berg, **MOTIONED, SECONDED** by Mr. Tommy Porter, to **Deny** Petition #C2009-02 (VR) Request for Vested Rights for Rocky Glen. The vote was unanimous

Directors Report

Ms. Susie Morris, Planning and Zoning Manager addressed the Board stating that the text amendment that was discussed last month was approved by the Board of Commissioners and a copy was placed at your seats this evening.

She said the Harrisburg Land Use Plan contract was approved on Monday, June 15, 2009 at the Board of Commissioners meeting and we will be moving forward with that process. Land Design will be the consultants helping us with that along with a couple of subcontractors.

The Chair asked if a date had been set for that meeting.

Ms. Morris will get that information. She said the public meeting part will probably start in early August.

She said there has not been any response back from the APFO litigation. It was heard on June 1st. The judge took in all of the information, the briefs and everything, and stated that he wanted to look it all over to be able to make a decision. It is our understanding that this particular Judge actually enters his own orders, so it may take him a little while to that. He does not go back to the prevailing side and ask them to come up with the order; he actually does it on his own. She is sure that is relatively time consuming with as many cases as he has in front of him.

Ms. Morris introduced Ms. Amy Ma the newly appointed alternate member of the Board representing the Harrisburg area.

Ms. Ma made a few comments from the audience.

There being no further discussion, Mr. Larry Griffin **MOTIONED, SECONDED** by Mr. Tommy Porter to **Adjourn** the meeting. The vote was unanimous. The meeting ended at 8:20 p.m.

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Ronald Overcash
VARN2009-00002 (Variance)

FINDINGS OF FACT
and
CONCLUSIONS OF LAW

1. The alleged hardship or practical difficulties are unique and singular to the property of the person requesting the variance and are not those suffered in common with other property similarly located.

Although the planting of trees and shrubs in the buffer may create a bird hazard for the adjacent airport, the problem is not unique to the applicant's property.

2. The alleged hardships and practical difficulties, which will result from failure to grant the variance, extend to the inability to use the land in question for any use in conformity with the provisions of the ordinance and include substantially more than mere inconvenience and inability to attain a higher financial return.

The alleged hardships and practical difficulties which will result from failure to grant the variance will not prevent the applicant from using the property as the applicant intends.

3. The variance, if allowed, will not substantially interfere with or injure the rights of others whose property would be affected by allowance of the variance.

If the variance were allowed, it would not interfere with or injure the rights of others whose property would be affected, except those other property owners who have been required to comply with the same provisions of the Ordinance.

4. The variance is in harmony with and serves the general intent and purpose of the ordinance.

The proposed variance is not in harmony with nor does it serve the general intent of the ordinance, which requires buffering and screening between different uses.

5. The variance will result in substantial justice being done, considering both the public benefits intended to be secured by this ordinance and the individual hardships that will be suffered by a failure of the Board to grant a variance.

The applicant has other options to obtain the relief it seeks; namely, to seek an amendment to the ordinance or to apply for voluntary annexation into the City of Concord.

**Edward and Ethel Little
6845 Sandusky Boulevard
Application Case # CUSE 2009-00004**

FINDINGS OF FACT

1. The use as proposed is not detrimental to the public health, safety or general welfare.

2. The use as proposed is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, etc.

The location proposed exist and proposed SFDR in keeping with surrounding usage.

3. The use as proposed will not violate neighborhood character nor adversely affect surrounding land uses.

The location proposed exist and proposed SFDR in keeping with surrounding usage.

4. The use as proposed will comply with the general plans for the physical development of the County as embodied in the Zoning Ordinance or in the area development plans that have been adopted.

There is no change in existing usage.

APPROVED BY:



Todd Berg, Chairman

SUBMITTED BY:



Arlena B. Roberts

ATTEST BY:

Susie Morris
Planning and Zoning Manager