



## **Cabarrus County Government**

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Cabarrus County Planning and Zoning Commission  
Tuesday, June 14, 2022 @ 6:30 p.m.  
Board of Commissioners Meeting Room  
Cabarrus County Governmental Center

### Agenda

1. Roll Call
2. Approval of March 8, 2022, March 30, 2022, and April 12, 2022 meeting minutes
3. New Business Planning Board Function:
  - A. RZON2022-00001 – Request to rezone from Countryside Residential (CR) district to Office / Institutional (OI) district. Owner/Applicant is Gilwood Presbyterian Church. Address is 2993 Odell School Rd. (PIN: 4682-34-5893).
  - B. RZON2022-00002 – Request to rezone from Agriculture Open Space (AO) district to Office / Institutional (OI) district. Owner/Applicant is Cross of Christ. Address is 4500 Rimer Rd. (PIN: 5653-92-4591).
4. Old Business Board of Adjustment Function:
  - A. Petition VARN2022-00001 – Request for relief from the following: Chapter 5, impervious area maximum for non-residential districts, Chapter 7, setbacks for swim clubs, Chapter 9, landscape buffers and parking lot buffers. Evolution Recreation & Aquatics is the applicant. Ethan & Austin Properties is the owner. Address is 11202 Harris Road (PIN: 4670-45-1661).
5. Legal Update
6. Director's Report
7. Adjourn

Planning and Zoning Commission Minutes

March 8, 2022

Mr. Adam Dagenhart, Chair, called the meeting to order at 6:35 p.m. Members present, in addition to the Chair, were Mr. Jeffrey Corley, Mr. Kevin Crutchfield, Ms. Holly Grimsley, Mr. David Hudspeth, Mr. Andrew Nance, Ms. Ingrid Nurse, Mr. Charles Paxton, Mr. Chris Pinto and Mr. Stephen Wise. Attending from the Planning and Zoning Division were, Ms. Susie Morris, Planning and Zoning Manager, Ms. Sandy Howell, Planner, Mr. Jay Lowe, Sr. Zoning Enforcement Officer, Mr. Brett Hicks, Zoning Enforcement Officer, Ms. Martha Hernandez, Sr. Zoning Permit Associate, Ms. Arlena Roberts, Clerk to the Board, Mr. Richard Koch, County Attorney and Mr. David Goldberg, Deputy County Attorney.

Attending from the Tax Administration Office was Mr. David Thrift, Tax Administrator, Ms. Leslie Rimer, Exempt Property Analyst.

Attending from Construction Standards Office was Mr. Matt Love, Chief Codes Enforcement Officer and Ms. Theresa Wilkerson, Permit Associate.

Ms. Arlena Roberts, Clerk to the Board, administered the oath to new Planning and Zoning Commission member Mr. Kevin Crutchfield

**Roll Call**

Approval of February 8, 2022, Planning and Zoning Commission Meeting Minutes

There being no corrections or additions to the minutes, Ms. Holly Grimsley **MOTIONED, SECONDED** by Mr. Jeffrey Corley to **APPROVE** the February 8, 2022, meeting minutes. The vote was unanimous.

The Chair said anyone in the audience wishing to speak on any of the agenda items tonight will need to complete a blue card and provide it to the Clerk.

The Chair read the suggested rules of procedures:

1. The Cabarrus County planning staff person(s) shall first present the staff report and answer questions from the Commission. There will be no time limit on this presentation.
2. The Applicant may make a presentation to the Board (optional) and will then answer questions from the Commission. There will be a 30-minute time limit on the presentation

if the Applicant chooses to make a formal presentation. There will be no time limit on questions from the Board following the presentation.

3. When the Board is ready to proceed, the proponents (those speaking generally in favor of the case) will have a total of 15 minutes to speak and/or present documents in support of their position. The 15-minute time limit does not include questions directed to the proponents by the Commission.
4. After the proponents finish, the opponents (those speaking generally against the case) will have a total of 15 minutes to speak and/or present documents in support of their position. The 15-minute time limit does not include questions directed to the opponents by the Commission.
5. Each side will then have 3 minutes for rebuttal, with the proponents going first. Again, questions directed to the speaker will not count against the time limit. This will conclude the public hearing portion of the meeting and the Commission will proceed to deliberation.
6. Each side is strongly encouraged to use a spokesperson to present the positions commonly held by each. Each side is also strongly encouraged to organize their speakers and presentations to ensure that all persons wanting to speak will have time to do so.
7. If a speaker has questions of a person on the other side, such questions shall be addressed to the Commission members to be redirected to the person to be asked. There will be no direct questioning of one speaker by another except through the Commission.
8. Public demonstrations of support for a speaker's comments should be limited to clapping. Any other type of audible support shall be out of order and subject the offender to being removed from the building. Anyone speaking out of order shall likewise be subject to removal.
9. These rules are designed to have a full and fair hearing that is orderly and expeditious and avoid unnecessarily repetitious presentations.

Mr. Jeff Corley **MOTIONED, SECONDED** by Mr. Andrew Nance to **ADOPT** the Rules of Procedures. The vote was unanimous.

The Chair introduced Petition RZON2021-00005 – Request to apply Mobile Home Overlay (MH-2) LDR zoned property. Owner/Applicant is Larry Hamrick, 5952 Yale Avenue, PIN:5603-49-9885.

The Chair asked if there were any Board members with a conflict of interest or any information related to this case that needs to be disclosed at this time. There being none, the Chair called on Ms. Sandy Howell to present the staff report.

Ms. Sandy Howell, Planner, addressed the Board presenting the staff report for RZON2021-00005 stating that the subject property is an existing lot of record with LDR zoning and is approximately a quarter acre. The conventional lot in the LDR district requires a two-acre lot or a one-acre lot, if the minor subdivision option is used.

Based on historical aerials it appears the subject parcel was originally developed with a single-wide manufactured home in the early 1970's. (She showed GIS from 1986)

Then it was replaced by a double-wide manufactured home (she showed an aerial view from 2001). She said that double wide was removed somewhere between 2017 and 2019. (She showed aerial of what the property looks like today). It is surrounded by other residential uses and LDR.

Pursuant to Chapter 14, Section 14-6, B, if the existing non-conforming use ceases for more than 6 months, subsequent use or development of the land must conform to district regulations. The subject property has been vacant for years, therefore replacing the removed doublewide is not an option.

The subject property is located within the boundary of the Northwest Area Future Land Use (Plan). The Plan recommends the area be developed with residential uses of two to four units per acre.

While the Plan recommends a certain density, this request is intended to allow the applicant to place a double-wide manufactured home on an existing lot of record where manufactured homes currently are not permitted as a building type. Therefore, this request would not have any effect on the application of the Land Use Plan. The area is already developed within the range that is recommended by the Plan.

This is a conventional rezoning request; therefore, all uses permitted within the underlying LDR zoning district and the proposed MH-2 Overlay would be allowed on the subject property if approved.

The subject property is served by Kannapolis water and it has a septic system.

The original septic layout and permit for 3 bedrooms was issued on August 29, 1972. The hand drawn plot plan on the original permit does not accurately show the location of the existing septic system and the viability of that system is not guaranteed, which may also restrict the building area.

The Planning and Zoning Commission should consider all the information provided and

determine if the proposed rezoning is consistent with the Commission's vision for this area of Cabarrus County.

Ms. Howell said that the applicant, Mr. Hamric, is also here to answer any question the Board may have.

The Chair asked if there were any questions for Staff. There being none, he called on Mr. Hamrick.

Mr. Larry Hamrick, 305 Rolling Green Avenue, New Castle, DE., addressed the Board stating he is looking to regain the prior zoning that was on the property when his grandmother lived there almost 50 years ago.

He said the property fell into disrepair, so they removed the mobile home from the property and cleaned up the lot. They did not realize that they had a certain period of time to put something else there, so therefore, they lost the zoning. We are seeking to regain the initial zoning to give us more than one option. As opposed to just building a manufactured home, we thought about a doublewide, but we wanted to have multiple options to see what was most cost effective.

The Chair asked if there were any questions for Mr. Hamrick.

Ms. Holly Grimsley asked if the septic system was the original.

Mr. Hamrick said yes, they are in the process of having it reassessed so we can determine what we could put there. It was in working use before and it has only been idle for about a year and a half or two years.

Ms. Grimsley said so, there has not been any improvements to that going from that to a larger structure? Have you had any assessment of that septic system at all?

Mr. Hamrick said it is already approved for a three bedroom, two bath. We were only going to go to that same spec. We were not going to exceed that, and if we did, we know we would have to install a new system. We are trying to see which is most cost effective.

He is trying to help a family member, get them a place to stay and help them out. The property has been in our family for over 50 years. The system is already there intact, and we probably will not go outside of that. If we did go outside of that, we know we would have to put in a new system.

Ms. Grimsley said you answered her question.

Mr. Charles Paxton said pending rezoning, are you intending to develop this shortly or are you going to wait a period of time?

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Mr. Hamrick said we are looking to move rapidly. Considering the cost, and the way things are now, we are trying to see how things are going to go, we are looking to move pretty fast. But, from what he understood, once the zoning was there, he did not know if there was timeline or if it was permanent.

Mr. Paxton said this will not be for your personal use, just a family member?

Mr. Hamrick said it could be for his personal use as well; he owns it.

Mr. Paxton said you are going to come down south, come back home?

Mr. Hamrick said he grew up here. He joined the military and retired from the military and stayed up there. He has been coming home pretty often and he likes a lot of stuff that everyone is doing down here, it looks good.

The main thing like she said, which is very important, we are more than likely going to stick with the three bedrooms, two bath and if we didn't, we know that we would have to expand.

The Chair opened the public hearing.

The Chair asked the Board if there were any questions.

Mr. Kevin Crutchfield asked if Staff had any recommendations.

Ms. Howell said no, Staff just presents the facts.

Mr. Jeffrey Corley said just to clarify, there is no time limit, once the right zoning is on there, he can proceed at his pace?

Ms. Howell said that is correct.

Mr. Hamrick said one other thing he would like to add is that it is going to be professional. It is not going to be something slapped in there. We are going to do it the right way and try to enhance the area and bring it back to what he remembers it as being. It will not be anything shoddy, it is going to be something very professional.

There being no other comments or anyone speaking for or against the rezoning, the Chair closed the public hearing.

The Chair said we need to consider the request and the general question that needs to be answered is should this rezoning be approved, why or why not? Is it reasonable and in the public interest?

The Chair opened the floor for discussion.

Mr. Paxton said if he was hearing Staff correctly, he understands that it is not inconsistent with the area plan, but if it were allowed, it would be conforming with the area plan; is that correct?

Ms. Howell said for the area plan, the only thing that is a restriction is the two to four units per acre. It does not have a building type within the Land Use Plan.

The Chair asked Staff to correct him if he is wrong, but to do a mobile home, it has to have an overlay district?

Ms. Howell said yes.

The Chair said it is not like a straight zoning.

Ms. Howell said it is an overlay versus a straight zoning district.

The Chair asked for thoughts and comments.

Mr. Corley said in reading some of the discussion points, the fact that this does not change the underlying zoning, which would allow for changes in use and changes in density. The fact that we are simply overlaying the manufactured housing overlay on this one property. Typically, he is not in favor of things like this however, he does feel like the applicant appears to have the best of intentions, while using an alternate housing product potentially, it appears he does care about the character of the surrounding area, the fact that a manufactured home was there for so long, the fact that we have no one here tonight against it, and no neighbors that appear to have any concerns.

His points are that it will not take away from the character of neighborhood and it will allow the applicant to have more flexibility on how he uses his property.

The Chair said if we do approve this, remember that the MH2 District does not allow a single wide, it would have to be doublewide or larger.

Ms. Holly Grimsley said the applicant does recognize the infrastructure issue and the ability not to go outside of what it was originally permitted for.

Mr. Paxton said this is enhancing the adjoining property by adding a more suitable housing product and it is an improvement of the area.

The Chair called for a motion and reminded the Board that they would need reasons for consistency.

Mr. Charles Paxton, **MOTIONED, SECONDED** by Jeffrey Corley to **APPROVE** RZON2021-00005 – Request to apply Mobile Home Overlay (MH-2) LDR zoned property. He said it would be improving the area and the applicant has presented his facts knowledgeably.

The vote was unanimous.

**Consistency Statement:**

The Manufactured Home 2 Overlay is consistent and is not a change in zoning and the applicant has agreed to not go outside of the bounds of the sewer and it is reasonable and in the public interest.

Mr. Charles Paxton **MOTIONED, SECONDED** by Holly Grimsley to approve the consistency statement. The vote was unanimous.

The Chair introduced Petition VARN2022-00001 – Request for relief from the following: Chapter 5, impervious area maximum for non-residential districts, Chapter 7, setbacks for swim clubs, Chapter 9, landscape buffers and parking lot buffers. Applicant is Evolution Recreation and Aquatics. Ethan and Austin Properties is the owner. Address is 11202 Harris Road (PIN: 4670-45-1661) **Request to Table**.

Ms. Susie Morris, Planning and Zoning Manager, addressed the Board stating that the Applicant has requested again to table the Variance until the April 12, 2022, meeting. She said they had comments come back and were not able to work out the details with NCDOT and the Fire Marshal's Office in enough time to have a resubmittal for us to put the case before you this evening. So, they are asking for an additional month.

Ms. Morris does not know if the Chair has any cards of anybody that was here tonight. The request is to the April meeting.

The Chair said he did not.

The Chair asked if there were any questions for Ms. Morris. There being none, he asked for a motion to table this request until the April 12, 2022, Planning and Zoning Commission meeting.

Ms. Holly Grimsley **MOTIONED, SECONDED**, by Mr. Steve Wise to **TABLE, VARN2022-00001** – Request for relief from the following: Chapter 5, impervious area maximum for non-residential districts, Chapter 7, setbacks for swim clubs, Chapter 9, landscape buffers and parking lot buffers. Applicant is Evolution Recreation and Aquatics. Ethan and Austin Properties is the owner until the April 12, 2022, Planning and Zoning Commission meeting. The vote was unanimous.

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

The Chair asked those wishing to speak tonight to stand and raise their right hand if you will be

testifying or if you think you may need to approach the Board of Adjustment to speak this evening.

The Chair administered the oath.

The Chair introduced APPL2021-00002 – Appeal of a Notice of Violation of the illegal operation of a sawmill without proper permits. The address associated with the subject property is 8667 Flowes Store Road (PIN: 5536-56-0806).

Mr. David Goldberg, Deputy County Attorney, address the Board stating that Attorney Richard Yeoman, representing the appellant, will address the Board and will have an action for the Board to consider.

Attorney Richard D. Yeoman, Grimes Yeoman, PLLC, 179 Gasoline Alley, Mooresville, NC, addressed the Board stating that he is here on behalf of the Radford's, which is the second item under number six on the agenda. We have decided to withdraw our appeal at this time.

The Chair said the applicant is requesting to table?

Mr. Goldberg said no, in this case he is asking for the Board to accept his withdrawal.

It was the consensus of the Board to accept the **Withdrawal of APPL2021-00002** – Appeal of a Notice of Violation of the illegal operation of a sawmill without proper permits.

The Chair introduced APPL2021-00001 – Appeal of a Notice of Violation for construction of structure without permits, disturbances of the required water body buffers and wetland disturbance. The address associated with the subject property is 3233 Hahn Scott Road (PIN: 5589-24-3362).

Ms. Holly Grimsley said, for full disclosure, she received several phones regarding this and several months passed, there was really no discussion had. She did contact the County Attorney and told him that she had receive some phone calls and that she had told them because of her position on the Board she could not have any conversations.

The Chair thanked Ms. Grimsley and asked if any other Board members had any conflict of interest regarding this case. He asked if any Board member had any issue with what Ms. Grimsley stated. There being none, he called on Ms. Morris to present the staff report.

Ms. Susie Morris, Planning and Zoning Manager addressed the Board presenting the staff report. She said what is before the Board tonight is an Appeal of a Notice of Violation. The appellant is Connie Arstark, and the property location is 3233 Hahn Scott Road, Mount Pleasant, NC.

The request is that the Appellant is contesting a Notice of Violation issued for construction of a

structure without permits, disturbances of the required water body buffers and wetland disturbance.

The Board will see that there is extensive history with this, and she will hit some of the highlights. If you have any questions as she goes along, please feel free to ask. She is sure that the Board has read all of this, so she does not want to read everything back.

On 7/7/2020, Senior Enforcement Officer James Lowe (from here on will be referred to as Officer Lowe) visited the site to discuss the setbacks for the house with the property owner. An accessory structure was located on the property at that time. Permits were not issued for the structure. At that time, Officer Lowe advised the Appellant that permits would be needed for the structure.

On 9/25/2020, a complaint was filed with Planning and Development regarding a building being constructed without permits. When Officer Lowe visited the site that same day, it was determined that an accessory structure had been constructed without the proper permits. He also observed grading and tree removal in the required Waterbody Buffer. It also appeared that the newly constructed structure was encroaching into that buffer area.

Per the Cabarrus County Development Ordinance (CCDO), accessory structures are not permitted unless there is a primary structure on site and undisturbed buffers are required on all perennial streams as well as any ponds located along those streams. Wetlands also must be buffered.

Officer Lowe talked with the property owner and suggested that work be stopped pending a survey of the site and required buffer areas to determine the level of encroachment and where additional structures could be located on the site in the future. The property owner stated that a survey of the property was available and that it would be provided to Officer Lowe.

A survey dated 11/1/2020, was provided by the Appellant to Staff. The survey did not show the required buffers on the stream, or the wetlands located on the property. Only the standard setbacks were noted for the property.

Officer Lowe again advised Appellant the minimum requirement for the stream buffer was 50 feet. The survey determined that a violation of the ordinance existed and that the accessory structure was in the required buffer area. Additionally, based on the survey provided, clearing and grading had occurred in the buffer area as well. A Notice of Violation was issued on 1/14/2021.

On 1/26/2021, Officer Lowe visited the site for a follow up. At that time, it was determined that the property owner had placed two additional structures on the property without permits. The new structures also appeared to be in the waterbody buffer zone. Additionally, there was an RV on the site that had been placed in the buffer and it appeared that it was being used as a dwelling.

The Appellant appealed the Notice of Violation on 2/12/2021. Filing an Appeal stays further enforcement action for that specific violation issued on the site.

On 3/1/2021, Officer Lowe visited the site and observed continued and possibly new violations of the ordinance.

On 5/7/2021, Office Lower and Deputy County Attorney, David Goldberg, visited the subject site to observe conditions. Officer Lowe and Attorney Goldberg observed, and determined, that additional land disturbing and clearing was conducted on the site.

On 5/10/2021, Deputy County Attorney David Goldberg and Susie Morris, Planning and Zoning Manager, met with the property owner to discuss options for compliance.

A survey dated May 10, 2021, was provided by the Appellant which shows the calculations and delineations for the required Waterbody Buffer Zone. It also includes the proposed placement of the house and pool on the subject property. The survey confirms the accessory structure is in the buffer zone, along with the two additional structures and the RV. The area has also been graded, riprap and gravel placed in the buffer areas, and vegetation removed.

On 5/11/2021, a second Notice of Violation was issued for the subject property for new clearing related to identified wetlands on the site. A Stop Work Order was also issued for the entire site to prevent additional clearing or development in the required buffers.

Prior to the site visits by Officer Lowe in July and then in September, the Appellant was in contact with multiple staff members in Planning and Development about the requirements for the road right-of-way, soil suitability testing application submittal requirements, permitting requirements for a new home, pool, and an accessory structure to be located on the property after the new home was built.

She said the Board can see there are dates there listed: February 25, 2020, April 14, 2020, June 12, 2020, through June 25, 2020. So again, there were multiple communications with Staff during these times. The Board has that information in your packets.

She said the findings for the case are:

1. An accessory structure was constructed on the subject property some time prior to July 7, 2021.
2. The accessory structure was constructed without proper permits in place.
3. The accessory structure was constructed without a primary structure or use located on the site.

4. The stream on the subject property is identified and classified as a perennial stream per USGS maps. There are also identified wetlands on the site. (The Board has a copy straight from the USGS maps in your packet)
5. An accessory structure has been built in the required buffer.
6. Grading has occurred in the required buffer.
7. The wetland area on the subject property has been disturbed.
8. Survey provided by Applicant for structure in question clearly shows that it is in the required buffer area.
9. Grading has occurred in the required buffer areas. Gravel and riprap have been placed in the required buffer area.
10. A structure is in the required buffer area.
11. Grading has occurred in the required buffer area.
12. Gravel and riprap have been placed in the required buffer area.
13. The property is subject to Cabarrus County Zoning and Construction Standards permitting.

Ms. Morris said along with all those findings, the Board also has the applicable sections of the Ordinance that relates to that particular finding. If the Board has any questions about those, we can go over them. But those are the specific areas of the Ordinance that were used when the notice of violation was issued.

In the Board packet you had the application materials provided by the Appellant, the Staff report and exhibits, adjacent parcels owner list, the letter that was sent to the adjacent parcel owners, and the letter that was sent to the applicant and a picture of the sign that was posted; everything related to the noticing on the property.

As you see in your staff report, there are a lot of different exhibits. All of those exhibits relate back to something specific on the site. Any staff that provided documentation, or that were in communication with Ms. Arstark, are here this evening if the Board has any questions about those specific exhibits.

Ms. Morris said the things the Board is looking at are that the building was constructed without permits, the building is in the stream buffer that is required on perennial streams. There were also some additional violations observed: those two buildings and the encroachments into the wetland

areas, which also requires a buffer on it according to Chapter 4. Those are the primary things, and if you looked at the violations, you see that all those items were listed out. Mr. Lowe is here this evening, and he is the Zoning Enforcement Officer working this case, and again, the other staff for building permitting, and zoning permitting. Cabarrus Health Alliance, zoning takes that information in. If the Board has any questions about any of the documents that were included in your packet, they are here to answer those questions for you.

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

Mr. Paxton did not hear Ms. Morris say how many feet inside were the encroachment.

Ms. Morris said there is a survey in the Board packet that shows the building sits squarely in between. The minimum is 50 feet, and the maximum is 120 feet, and is based on a calculation. When the surveyor went back and applied those calculations, you can see that the barn is in the buffer area.

Ms. Morris (showed the diagram) and said that is the 30-foot setback which is the zoning setback that is depicted on there.

The Chair asked Mr. Goldberg to use his finger and point on the diagram.

Ms. Morris showed the 30-foot setback line, this is the standard zoning setback (30 feet), but because there is a perennial stream here, those setbacks change. She showed the calculated buffer area. This is the undisturbed area, and on top of that there is a 20 foot no build area, so minor disturbances are allowed in that particular area, but no structures are allowed. The first part next to the stream is to remain undisturbed, and then there is that additional 20 feet, so that no buildings are there, and no structures are there. This is all related to the 404 Permit we have for the reservoir and is intended to help water quality.

Mr. Goldberg said and to be clear, this was submitted by the Appellant.

Mr. Kevin Crutchfield asked if there had been any changes to the property since this was brought forward. Is everything still built the way it is shows on this that you are aware of?

Ms. Morris said as far as she knows, yes.

Mr. Goldberg said if it would be helpful, Mr. Lowe has been out there recently and can speak on the condition of the property if the Board would like.

Mr. James Lowe, Sr. Zoning Officer, addressed the Board stating that he has ridden by the property, and it did seem that they have gotten started on the house that was originally permitted. But, as far as the violation goes, it does not seem that any other violations have occurred.

Mr. Crutchfield asked Mr. Lowe if what was in the Board packet is currently what is out there.

Mr. Lowe said he would say so.

Mr. Crutchfield asked if the barn is still erected and are the other buildings still onsite?

Mr. Lowe is not sure about the other buildings, the barn is though. He said due to the topography, the buildings are a little hard to see. But you can see the barn, he thinks it is from Bowman Barrier Road, pretty well. It has been about a month and a half since he has been there, maybe two months.

Mr. Paxton said when the applicant was notified there was an issue here, was there any comment or they just accepted it or took it under advisement?

Mr. Goldberg asked Mr. Lowe to come forward to answer since he had the first conversations.

Mr. Lowe thinks the first conversation we had was when he was out at the property to inspect something else; the setbacks on the house. He noticed that there was a barn constructed on the property. He realized that there was some type of stream close to that barn which brought concern to him. He was not sure what type of stream it was, typically we have perennial streams, and intermittent streams. He said with intermittent streams there really is no setbacks involved with those.

He did raise concern with the applicant at that time, that they did need to get permits. To the best of his knowledge, he thinks she said she was working on that, or she knew that she needed to get them, and that she had a survey turned in by a local surveyor that he was familiar with and has done work in the County quite often and has done good work. When he was told that his concerns sort of lighten somewhat because he thought well that is good, they got that done, it is probably just an intermittent stream, and everything is fine. She just needs to get the permits.

Later on, we realized that maybe there had been a mistake made and that that was a perennial stream, which did require setbacks.

Mr. Paxton said did they ever apply for a permit?

Mr. Lowe said they did.

Mr. David Hudspeth asked if they got a permit?

Mr. Lowe said they did.

The Chair asked if the information provided for the permit accurate.

Mr. Lowe said to the best of his knowledge it was not accurate. He did not issue the permit, but he has seen what was submitted and it did not seem accurate to him.

Mr. Paxton asked if the person who issued the permit here tonight?

Mr. Lowe said they are. When he says not accurate, to him it did not seem like the stream was denoted on there accurately and the wetlands and so forth.

Mr. Crutchfield said does the issue move from not being permitted to just because it is in the buffer area? Is that the primary concern for the barn?

Mr. Lowe said that is correct. He said doing this for as long as he has, there are a plenty of people you see that create violations by building without permits and so basically if the setbacks are okay, they can simply come in and they will get a double fee on those for building illegally but in this situation, that could have happened but since they are in the waterbody buffer it created more of a problem and remains a problem.

Mr. Goldberg said to clarify from the legal standpoint, it is the position of the County that because of the nature of the application not being representative of the facts on the ground in compliance with the directions provided to the applicant at the time. The permit was not properly granted and at this point applicable. You cannot issue an illegal permit and it is also noteworthy to be clear that the appellant did not rely upon the permit being issued to build the steel building. It existed and then was permitted.

A lot of times you will see it where if the permit happens and then it should not have happened, then they rely upon it and they construct. That is a completely different case. Here, the structure existed then it was permitted.

Mr. Hudspeth sees that this permit was issued on 9/28/2020. When was the structure built?

Mr. Goldberg asked Mr. Lowe to testify the first time that he saw it person.

Mr. Lowe said it was around July 7, 2020. It was constructed before then. That seems to be the first time that he was at the property.

Mr. Goldberg called Ms. Martha Hernandez to come forward and introduce herself.

Martha Hernandez, Sr. Permit Associate for Zoning, introduced herself.

Mr. Goldberg asked Ms. Hernandez if part of her job responsibilities were to answer questions to the public regarding the permit processes.

Ms. Hernandez said yes, to answer questions for the zoning permits process.

Mr. Goldberg said do you issue you them as appropriate.

Ms. Hernandez said yes.

Mr. Goldberg asked Ms. Hernandez if she had any interaction with Ms. Arstark in regard to this project?

Ms. Hernandez said yes.

Mr. Goldberg said what he has here is a series of emails dated June 23, 2020, between you and Ms. Arstark. Does this look familiar to you?

Ms. Hernandez said yes.

Mr. Goldberg said on page 4 of the emails that were in the packet, who is this email from?

Ms. Hernandez said Ms. Connie Arstark.

Mr. Goldberg shows the email on the overhead and asks Ms. Hernandez who the email was to.

Ms. Hernandez said to me.

Mr. Goldberg asked Ms. Hernandez to read the email out loud.

Ms. Hernandez read the following: I have 43x30 metal barn installed on the property. Do I need a permit for that as well?

Mr. Goldberg said based off that, is it reasonable to conclude that the Appellant agrees that the barn existed at least on or before that day?

Ms. Hernandez said yes.

Mr. Goldberg said did she have a permit at that time?

Ms. Hernandez said no.

Mr. Goldberg asked if there were questions.

The Chair asked if there were any questions.

Mr. Crutchfield asked if this property was zoned AO.

Ms. Hernandez said she believes so.

Mr. Crutchfield asked if on any AO property, a permit is required to erect a barn anywhere in the county?

Ms. Hernandez said anytime you want to erect a structure, such as a barn, an accessory building

onto a piece of property that is vacant, one, you must have a primary house or primary dwelling. Unless, it is a bona fide farm, but even then, there is a zoning permit that they must acquire. It is at no cost, but there is still a zoning permit that would be required.

Mr. Crutchfield said just for clarity, if a farmer wants to build a barn on his property and it is designated as a farm, they are required to get building and zoning permits?

Ms. Hernandez said zoning.

Mr. Crutchfield said zoning only.

Mr. Goldberg said that calls into question a legal dispute that we can talk through. He said there are two separate issues. One is, is this property AO and what are the uses in that property? Separate and apart from that is the question of is what is referred as a bona fide farm exemption and if it is a bona fide farm, what applies and what does not apply. Those are two very separate questions. The question here is in the AO can you possibly build this structure? The answer is yes, under the proper conditions and properties you can.

The question is can you do it in the wetland buffer? Do you have to do it with a zoning permit? And those answers are yes, even in the AO or anywhere else; that is standard course. The next question then becomes if you do have questions about this, is whether this is a bona fide farm at the time all this occurred and until this day. Separately, there is a question of even if it is a bona fide farm, does that apply to the wetlands, waterbody boundary buffer. Those are legal questions that we can get into and have an opportunity to dispute if appropriate.

Mr. Paxton asked if someone who has been out there describe exactly what this barn looks like. We keep referring to it as a barn.

Mr. Goldberg said it is in the packet. We can talk through some pictures if you like that were provided. (Mr. Goldberg showed some pictures of the barn) He said this is one of many. He asked Mr. Lowe to say what date is on this picture.

Mr. Lowe said March 1, 2021.

Mr. Goldberg asked Mr. Lowe if he took that picture.

Mr. Lowe said he did.

Mr. Goldberg said that is one of the earlier interactions is that correct?

Mr. Lowe said he believes so.

Mr. Goldberg said that is what we are referring to as the barn on that date, is that correct?

Mr. Lowe said correct.

Mr. Goldberg asked Mr. Lowe what the date is on the next picture.

Mr. Lowe said it is March 1, 2021.

Mr. Goldberg asked Mr. Lowe if he took that picture.

Mr. Lowe said he did.

Mr. Goldberg asked Mr. Lowe what he sees there.

Mr. Lowe said a barn, an RV and two accessory buildings.

Mr. Goldberg asked Mr. Lowe to point to the barn.

Mr. Lowe pointed to the barn, the RV and the two accessory buildings.

Mr. Goldberg said we can do a couple more if the Board would like. There are a couple different angles across the way.

The Chair said Mr. Paxton said he is good.

Mr. Goldberg said we also have interior photos if they would be helpful as well.

Mr. Hudspeth said if this is a bona fide farm, what about the buffer?

Mr. Goldberg said if it would be helpful, he put together a small packet of legal opinion. On behalf of Staff, he can explain that question. He passed out the packet to the Board. He will summarize this so we can go into more detail, and he will walk the Board through.

The question in that regard is if this is a bona fide farm, does the waterbody buffer which is considered a local environmental regulation, is that exempt? His answer to the Board is no, and he will tell you why.

The Farm exemption Statute, which is 160D-903, in the back of the packet, second page from the back. (He also put it on the overhead) It refers to agricultural uses: County zoning regulations may not affect property used for bona fide farm purposes; provided, however this section...He said then there is a series of exceptions and explanations on how you qualify as a bona fide farm. We can talk about that more as applicable. There are many ways to kind of get there.

The question he wants to emphasize here is County Zoning regulations. That is a term of art. That is a defined term. If you go to third page you have the definitions applicable to Chapter

160D-102. That is the law right now. If you go to item 35 at the end, Zoning regulation – a zoning regulation authorized by Article 7 of this Chapter; that is the definition.

A zoning regulation authorized by Article 7 of this Chapter, by this chapter, referring to Chapter 160D of the NC General Statutes (showed on the overhead). He said Article 7 refers to zoning regulations. The main authority here is:

“A local government may adopt zoning regulations. Except as provide in subsections b and c of this section, a zoning regulation may regulate and restrict the height, number of stories, and size of buildings and other structures; the percentage of lots that may be occupied; the size of yards, courts, and other open spaces; the density of population; the location and use of buildings, structures, and land.”

Mr. Goldberg said to be clear this is the source of authority. This is what lets you the County do what it does, which is enact zoning ordinance.

He said there is a serious case law mentioned in this memo on top from Lanvale vs Cabarrus County that talks about what is a zoning ordinance. It emphasizes, and we are talking about placement of districts and the appropriate uses and placement of building within them, districts.

So, separately there is a separate source of authority in our statutes for local environmental regulations. If you look at General Statute 160D-920, Local Environmental Regulations:

Local governments are authorized to exercise the powers conferred by Article 8 of Chapter 106A of the General Statutes and Article 6 of Chapter 153A of the General Statutes (Mr. Goldberg said to be clear, that is the County’s authorization to use the authorities in Chapter 160D to adopt land use regulations) to adopt and enforce local ordinances pursuant to this Part to the extent necessary to comply with State and federal law, rules and regulations or permits consistent with the interpretations and directions of the State or Federal agency issuing the permit.

Mr. Goldberg wants to emphasize a permit, here, so that is the difference there.

He said a little more information about this Waterbody Buffer Zone. In 1994, as a condition for approval of the Coddle Creek Reservoir, as a condition of the adoption, the Federal Government, through the Army Corp of Engineers, required as a special condition of the permit for the County to adopt and enforce a regulation. Essentially, the Water Body Buffer Zone Regulation. The details are here on the first page (an excerpt), and the full permit is included in the packet that he just passed out.

To be clear, none of what you see in the Ordinance is our idea, in the sense that it all draws entirely from the conditioning of this permit.

He will emphasize here: It must be in full force and effect before the permitted action will be allowed. The buffer zone shall be established as that area which extends 50 feet from the stream

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bank perpendicular to the center line of the stream. If the buffer strip is presently wooded, it cannot be disturbed. Perennial streams are defined as those which are illustrated as solid blue lines on the USGS Quadrangle topographic maps for the county. He said that is the main emphasis there.

The thing he also wants to point out here is another excerpt: Failure to adequately implement or enforce the zoning amendment or unacceptable modification of the zoning amendment will require alternative mitigation measures to be implemented. The alternative mitigation requirement will include the restoration or creation of approximately 300 acres of forested wetlands as per a plan developed in conjunction with the N.C. Wildlife Resources Commission, the U.S. Fish and Wildlife Service, the EPA, and the Corps of Engineers.

He said the short end of it is, it is common practice as a condition for permits like this to ameliorate the effects of the permitted activity by doing other things. It will impact water over here, but we will have to do mitigating measures over here. This is one of those mitigating measures. It specifically authorizes at a local environmental regulation. So, yes this is in the Development Ordinance, but it is not a Zoning Ordinance. It is a local environmental regulation that is a result of a permit required. It is also important to point out, as you can see, if we do not adopt and enforce this requirement; we do not have the discretion, the consequences are prohibitive. Normally, we have a little more discretion in how we administer and a little more flexibility. Here, anything we do, we have to make sure that we are in compliance with the Corps expectations.

He said long story short is whether or not this is a bona fide farm is immaterial. It is the County's legal position (you may hear something else on this) that the Legislature created a comprehensive statutory scheme. They knew that this was out there, and they knew these permits exist and they knew that you would look in this permit. This is also the same authority for floodplain management requirements, the NFIP. There are no exceptions for bona fide farms and if we were to apply that, it would be in violation of these permits.

We think it is unlikely that the General Assembly constructed statute knowing that in all likelihood, that it would violate various local and environmental regulations and the conditions that are attached to them.

Mr. Goldberg said he stands ready for more questions or discussions.

Mr. Hudspeth asked if there was a remedy for this?

Mr. Goldberg said this is the difficult part. In some ways the answer is binary. If we believe there is a violation, it going to keep being a violation. Unfortunately, we have discussed with the appellant previously about a variance, but we do not believe that they would be eligible for a variance for a number of reasons. Ultimately, we cannot ignore this. If we ignore this, we are no longer adequately enforcing the waterbody permit that we agreed to, and it is giving jeopardy to the county.

Our theory is, if we had a situation where if the appellant were to get a very thorough environmental consultant engineer report that acknowledged the violation, acknowledge the extent of it and the loss, and what the net effect is, and then offered ways to mitigate that. We have had some discussions with the Corp, that they could possibly be amiable towards that as a solution.

We have been in contact with the appellant and today, they did provide us with a report from a consultant, a very preliminary one and they can speak to it more. We did not find that it was sufficient to meet that middle ground. It did not adequately address the existence of the waterbody buffer and how it applied to the structures. But we will note that that has happened today.

The Chair asked if there were any more questions for staff.

Mr. Zach Moretz has some questions, he is the Attorney for the Appellant and would like the opportunity to cross examine the witnesses.

The Chair said he can ask his questions through the Board, and he will pass them on to Mr. Goldberg.

Mr. Goldberg said Mr. Moretz will be entitled to anybody that we have had come to talk here. He has the right to question anybody who was offered there. If it is amiable to the Chair, he would be okay with him directing questions directly to the witness if it is expedient and if you are conducive to it. Just for the attorney who is representing the Appellant if you would like and if supported by counsel.

Mr. Koch, County Attorney, said it is up to the Chair, if you are willing to allow him to ask questions directly to the witness that is fine.

The Chair does not have a problem with it.

Mr. Zach Moretz, Attorney, Moretz Law Group, Concord, NC addressed the Board stating that he is representing the Arstark's, the Appellant here.

He would like to ask a few questions and try not to make this too judicial or formal, but he would like to ask a few questions and if you do not mind, he would like to start with Mr. Goldberg.

Mr. Goldberg said of course.

Mr. Moretz would like to understand about the permit that was referenced; was that a state law, that is the permit for the Coddle Creek Reservoir or what is that exactly?

Mr. Goldberg said we have a copy of that here.

Mr. Moretz said I see it here. He asked if that is an agreement between the County and the Corp of Engineers or what is it.

Mr. Goldberg said it is a condition on the permit issued to the County for Coddle Creek.

Mr. Moretz said would it be fair to characterize that as an agreement between the County and the Army Corp of Engineers?

Mr. Goldberg would not necessarily consider it a contractor agreement, but rather if you do this, we will allow you to do this, if you don't do this you will not be able to do this.

Mr. Moretz said fair enough, does it reference farms at all. Does the permit reference farm in anyway or agriculture?

Mr. Goldberg said he would have to look at that, are you talking in general or just the condition? Are you talking about just the condition that we are speaking about or the permit altogether?

Mr. Moretz said the permit altogether; it is pretty lengthy.

Mr. Goldberg said the best way to do this since he is not a witness to this, is to ask Ms. Morris to testify as to the nature of the permit.

Ms. Morris said as far as the actual permit, she does not believe that it has any reference in it to farms. It was specific that the County needed to adopt an ordinance and it set forth those buffers that we talked about earlier and how they would be calculated and then the penalties of that was not followed.

Mr. Moretz said the permit required that the ordinance be adopted?

Ms. Morris said correct.

Mr. Moretz said that we are arguing about today?

Ms. Morris said correct.

Mr. Moretz said alright fair enough. He thinks it is safe to say that the bona fide farm exemption from planning and zoning existed prior to the 1990 permit that was issued.

Mr. Goldberg said how so?

Mr. Moretz said in the General Statutes.

Mr. Goldberg said under what condition?

Mr. Moretz said which came first, the permit or the exemption in the statutes for bona fide farms from planning and zoning?

Mr. Goldberg thinks you can look at the statutory history.

Mr. Moretz said would it surprise you if I stated that I think the exemption existed prior to 1990.

Mr. Goldberg said if you offered something to the Board to that affect.

Mr. Moretz is asking if Mr. Goldberg or Ms. Morris knows.

Ms. Morris said no.

Mr. Moretz asked to ask a question to Ms. Hernandez. He asked Ms. Hernandez if she had a great deal of communication with Ms. Arstark regarding the permitting process or the approval of the various structures out there, correct?

Ms. Hernandez said she spoke to her about the process of getting permits.

Mr. Moretz said right. You testified that a zoning compliance permit is required to build a barn on a bona fide farm?

Ms. Hernandez said she stated that any time you wanted to build something, yes you would need a permit; one for which we have an exemption for a bona fide farm. If it is a bona fide farm, there would be an exemption zoning permit required.

Mr. Moretz said you are not required to get a zoning compliance permit to build a barn on a bona fide farm or you are?

Ms. Hernandez said you are.

Mr. Moretz said what is the exemption?

Ms. Hernandez said it is just the name of the permit. It is either a zoning permit, a traditional one or there is a zoning permit exemption, which is still a permit.

Mr. Moretz said it just states that yes, you are a farm, so you are exempt from the requirement?

Ms. Hernandez said essentially, she does not recall exactly what it looks like.

Mr. Moretz said what about a building permit for a barn.

Ms. Hernandez cannot speak for building, she does zoning.

Mr. Moretz said he can ask somebody else about building permits. He asked Ms. Hernandez if she issued a zoning compliance permit for this barn.

Ms. Hernandez said yes, she did after the fact.

Mr. Moretz said the barn was in existence at the time that the zoning compliance permit was issued?

Ms. Hernandez said yes.

Mr. Moretz said correct. In your colloquy with Ms. Arstark in your emails, she asked you what the setbacks were required to build the barn.

Ms. Hernandez said zoning setbacks, those are different

Mr. Moretz said did she ask you about those?

Ms. Hernandez said the zoning setbacks, yes.

Mr. Moretz said did you provide those to her?

Ms. Hernandez believes so.

Mr. Moretz asked if the barn is built in the proper respect as to the setbacks? In other words, outside the setbacks, does it respect the setbacks?

Ms. Hernandez said in reference to the plot plan that she submitted, the setbacks, yes.

Mr. Moretz said it does?

Ms. Hernandez said zoning setbacks, yes.

Mr. Moretz asked if later they were required to get a septic permit as well?

Ms. Hernandez said you have to get a septic inspection and approval prior to the construction of anything.

Mr. Moretz said because there was a bathroom inside the barn, correct?

Ms. Hernandez does not know. She is not aware of that.

Mr. Moretz said was that issued as well?

Ms. Hernandez said was what issued?

Mr. Moretz said the septic permit for the barn.

Ms. Hernandez said the Health Department had to provide a letter of authorization before zoning could provide their approval. She issued her approval based off information she assumed to be accurate when she receive it. That is how she issued her permits.

Mr. Moretz asked if she received a copy of the septic permit from the Cabarrus Health Alliance?

Ms. Hernandez said she received a letter that states they have gone out and inspected for septic approval, not for anything else.

Mr. Moretz said which was granted, correct, the septic approval?

Ms. Hernandez said yes.

Mr. Moretz asked if there were any other zoning compliance permits issued for this property?

Ms. Hernandez does not understand his question.

Mr. Moretz said they are constructing a house as well, correct?

Ms. Hernandez said yes.

Mr. Moretz asked if a zoning compliance permit issued by you for that?

Ms. Hernandez said yes, prior to this inquiry on the barn.

Mr. Moretz said he is referring to the house now.

Ms. Hernandez said yes, that is what she is saying. They did inquire about a permit for the house, but this was prior to this barn.

Mr. Moretz said prior to the barn situation?

Ms. Hernandez said yes.

Mr. Moretz said they had also provided the application and a little drawing and everything to you for that and they got a zoning compliance permit for that as well?

Ms. Hernandez said yes.

Mr. Moretz said and a building permit? You are not going to testify for the building permit.

Ms. Hernandez said she cannot speak for building.

Mr. Moretz said is that reasonable that they do not have a building permit?

Ms. Hernandez does not know when they got their building permit.

Mr. Moretz asked who could testify that they have their building permits? Can we stipulate that they have their building permits? He has copies of them here.

Mr. Goldberg said there are permutations on that. If you want to talk about that, Mr. Matt Love is the Building Manager.

Mr. Moretz said he is just trying to cross examine, he is not trying to belabor it or anything. He thanked Ms. Hernandez.

Mr. Goldberg said before we do that, he would like the opportunity to redirect on that.

Mr. Moretz said to Ms. Hernandez?

Mr. Goldberg said yes.

Mr. Moretz said yes of course.

Mr. Goldberg said let's take a look at the application that you looked at to make sure we know what we are talking about. He showed a document and asked Ms. Hernandez what we are looking at here

Ms. Hernandez said it is the permit that she issued.

Mr. Goldberg said that is important setback information, was that also signed by her?

Ms. Hernandez said yes.

Mr. Goldberg said that was referenced there?

Ms. Hernandez said yes.

Mr. Goldberg said this is issued as a standard course in-line for a permit like this, correct?

Ms. Hernandez said yes.

Mr. Goldberg said a zoning permit type requested is checked right there?

Ms. Hernandez said yes, accessory building.

Mr. Goldberg said do you recognize that as Ms. Arstark's signature there?

Ms. Hernandez said yes.

Mr. Moretz asked for the page number.

The Chair said it starts on page 54 and he is on page 57 now.

Mr. Goldberg said appreciates that, he does not have the numbers on his.

Mr. Goldberg said this is for the accessory building?

Ms. Hernandez said yes.

Mr. Goldberg asked Ms. Hernandez to walk them through what she is looking at (shown on the overhead). To be clear, about when was this submitted, this is dated September 17, 2020. Where were you working at the time?

Ms. Hernandez said working from home.

Mr. Goldberg said why were you working from home?

Ms. Hernandez said because this was during Covid.

Mr. Goldberg said do you normally have all the resources you normally have if you were at your desk?

Ms. Hernandez said yes.

Mr. Goldberg asked Ms. Hernandez to talk us through what she is looking at here (showed a diagram). What did she see at the time?

Ms. Hernandez said at the time she saw that there was a house in the front that she had issued a zoning permit for. In the back there is a barn that is 30 feet away from the rear, 43' x 30' and at the top there is an arrow that points in a direction that says to the creek. It does not provide anything related.

Mr. Goldberg said that arrow goes to the creek? That is not the creek?

Ms. Hernandez said yeah, and it also says 375 feet from creek.

Mr. Goldberg said what are we looking at here (showed memo)?

Ms. Hernandez said this is the letter that the Health Department has to issue prior to any construction of any project on the property that is serviced by a septic system.

Mr. Goldberg said does this proposed barn have a bathroom?

Ms. Hernandez said yes, she thinks it states it there.

Mr. Goldberg said what are we looking at here?

Ms. Hernandez said this is a zoning application that she gives to everyone when they come in and are proposing to obtain a zoning permit. She also has this same writing in a body of an email that she sends to everybody automatically when they want to do a zoning permit.

Mr. Goldberg said this site plot plan, this is in lieu of a full survey for single family home, correct?

Ms. Hernandez said yes.

Mr. Goldberg said instead of having someone go to the expense of getting a survey they can do this kind of hand plan here.

Ms. Hernandez said yes.

Mr. Goldberg asked Ms. Hernandez to read what it says under the fourth box (on the zoning application the fourth box under site/plot plan section).

Ms. Hernandez read the following: location and dimensions of any bodies of water or water channels, ponds, streams, swales, etc.

Mr. Goldberg said looking at that drawing, do you believe that she adequately identified a waterbody as required by that application?

Ms. Hernandez said no.

Mr. Goldberg said what are we looking at here (showed building permit)?

Ms. Hernandez said that is actually the building permit. She thinks he is looking for a different page.

Mr. Goldberg said what are we looking at here (page 2 of zoning application)

Ms. Hernandez said that is page 2 of our zoning application that provides us with the construction that is going to be done, and at the bottom of that form, it states that whatever they are submitting is accurate and correct.

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Mr. Goldberg said affirm that the above information is accurate and correct to the best of my knowledge?

Ms. Hernandez said yes.

Mr. Goldberg said and understand that deviations from the plan submitted may be cause for a zoning violation or a stop work order. He said that is standard course there, right?

Ms. Hernandez said yes.

Mr. Goldberg said it says new construction. What are we new constructing here?

Ms. Hernandez said the accessory building.

Mr. Goldberg said this is dated June 12, 2020.

Ms. Hernandez thinks that is the one for the house.

Mr. Goldberg said and that is where it indicates a septic there?

Ms. Hernandez said yes.

Mr. Goldberg said what are we looking at here?

Ms. Hernandez said a Building Permit.

Mr. Goldberg said what are we looking at here?

Ms. Hernandez said the plot plan that they submitted.

Mr. Goldberg said as part of the single-family home plan.

Ms. Hernandez said yes.

Mr. Goldberg asked Ms. Hernandez to indicate where the waterbody was indicated on this plot plan.

Ms. Hernandez said there was not one indicated.

Mr. Goldberg said knowing what you know now, do you believe this is an accurate reflection of what is on there?

Ms. Hernandez said no.

Mr. Zac Moretz has a few more questions. He said Ms. Hernandez you testified that this is a plot plan for what?

Ms. Hernandez said that was for when they did house. When they did the permit application for the house.

Mr. Moretz asked if the house was built in any type of buffer area or wetlands or violates any setbacks?

Ms. Hernandez does not think that is a question for her, she does not go out in the field.

Mr. Moretz said he is asking her, you do the zoning permits.

Ms. Hernandez said based off of this information, no it is not in any of those areas.

Mr. Moretz said again, this is for the house?

Ms. Hernandez said yes.

Mr. Moretz is turning back to what should be page 30 in the packet he believes. Let's try page 28.

Mr. Goldberg gave Mr. Crutchfield a hard copy of the staff report because his computer was not working.

Mr. Moretz asked if that was familiar to Ms. Hernandez as far as the Cabarrus Health Alliance.

Ms. Hernandez said it is the soil evaluation,

Mr. Moretz said for the septic?

Ms. Hernandez said yes.

Mr. Moretz asked if this drawing provided for that purpose.

Ms. Hernandez said that is the site plan they provided to get the soil tested.

Mr. Moretz said does that not reference a pond down in the lower right and a pond in the middle area.

Ms. Hernandez said it says proposed pond or well.

Mr. Moretz said a suggested waterbody there. He said go to the next page. Is that not an aerial from Cabarrus County GIS?

Ms. Hernandez said no that is not an aerial from Cabarrus County GIS. She is not sure where that is from. She thinks a soil scientist did that.

Mr. Moretz asked if that shows the property?

Ms. Hernandez said yes.

Mr. Moretz asked if that was the creek running along on the right side that we are arguing about today. There are a couple of different lines there.

Ms. Hernandez said yeah, she guesses.

Mr. Moretz said you testified that you received this septic information in order to provide the zoning compliance permit.

Ms. Hernandez said that is not for a zoning compliance, that is for a soil evaluation request. She does that for the whole county. It is not until someone is actually going to build, that they submit an application for zoning.

Mr. Moretz said got you.

Ms. Hernandez said she does soil evaluation requests for Kannapolis, Concord, everywhere, so everybody just submits the information to her, so that she can upload it to the Health Department for them to decide.

Mr. Moretz said when in the process would that have occurred; the couple of pages we are looking at here?

Ms. Hernandez said those occurred in February.

Mr. Moretz said what year would that be?

Ms. Hernandez said 2020.

Mr. Moretz said 2020, pretty early in the process.

Ms. Hernandez said yes.

Mr. Moretz said no more questions for Ms. Hernandez. He has a few questions for Mr. Lowe.

Mr. Moretz said Mr. Lowe testified that he had been out to the property a number of times?

Mr. Lowe said correct.

Mr. Moretz does not recall when Mr. Lowe said the first time was.

Mr. Lowe said July 7, 2020.

Mr. Moretz said alright, yes, that sounds right. A zoning compliance permit was issued not too long after that, correct?

Mr. Lowe said it seems it was two to three months later, maybe sometime in September.

Mr. Moretz said September was your testimony.

Mr. Lowe said that is correct.

Mr. Moretz said you had been out there by that time, what did you do when you went out there?

Mr. Lowe said the first time he went out there, he was inspecting a house. There had been permits issued for a house and pool. He was actually out there inspecting the setbacks for the house and of course, the house, nor the pool, were under construction yet, and that is when he saw the barn.

Mr. Moretz said there is no issues with pool or the house, right?

Mr. Lowe said there is not now, he thinks later on there was some discovery of the house perhaps being in some of that waterbody buffer, and they may have moved it. He is not totally sure about that. He thinks Ms. Morris and some other folks met with Ms. Arstark about that. He cannot remember if they actually had to move it or not but there was some discussion about that.

Mr. Moretz said you mean before they started construction? We are not here about that, that is not in dispute or anything like that.

Mr. Lowe said that is correct.

Mr. Moretz said when you went out there on July 7, 2020, you actually measured. There was a picture he thinks, somewhere that he saw, of Mr. Lowe measuring how far that barn is from that creek.

Mr. Lowe does not think there was a picture of that, but he did try to measure it. He just did not have the equipment to be able to do that and there was a slope and there was riprap there and he could not make an accurate measurement. But when Ms. Arstark told him that she did have a survey done, that did ease his mind a little bit because he thought we are probably looking at an intermittent stream, so he felt better about it.

Mr. Moretz asked Mr. Lowe if he saw the stream while he was there.

Mr. Lowe said he did.

Mr. Moretz said it is pretty obvious.

Mr. Lowe said yeah, but again, it was wooded, and he cannot recall seeing the actual water because it was heavily wooded down through there and he could not climb over the riprap

Mr. Moretz said there was a barn 30 feet from the stream. It is not that heavily wooded, is it?

Mr. Lowe said it seemed to be at the time.

Mr. Moretz said a building permit was issued right after the zoning compliance permit, right?

Mr. Lowe cannot attest to that, he is not a building inspector. He does not know about the building inspector.

Mr. Moretz said you do not know if a building permit was issued?

Mr. Lowe cannot say for sure, he would assume it was.

Mr. Moretz said there is one in the record.

Mr. Lowe said that seems reasonable.

Mr. Moretz said there are no more questions for Mr. Lowe.

The Chair said the floor is still yours Mr. Goldberg.

Mr. Goldberg said at this point he would like to reserve an opportunity. He thinks this is a great time if Mr. Moretz has a case in chief that he would like to present and make a presentation. Mr. Goldberg ask for the opportunity to cross examine any witnesses that he offers and to provide any kind of rebuttal as appropriate with additional witnesses based on his defenses to what we have proposed. That would be his plan if amiable.

The Chair asked if there were any more questions before Mr. Goldberg sits down. There being none, he called on the applicant to make a presentation.

Mr. Moretz has some materials to handout. He does not mind proceeding but asked if anyone needed a break.

The Chair said this seems like a good stopping point and called for a five-minute break.

The Chair called the meeting back to order and called on Mr. Moretz to make a presentation.

Mr. Moretz appreciates everybody's understanding with the cross-examination process.

Again, my name is Mr. Zach Moretz, Attorney here in town and has been practicing here going on 24 years. He is a certified specialist in commercial real estate law, so we do this kind of stuff pretty regularly. He has not been before this Board in a long time though, thank you for your time tonight.

Mr. Moretz is briefly going to introduce what we are going to talk about, and then he is going to let Ms. Arstark give you sort of the story from her perspective and then he is going to get into all this legal stuff.

First of all, he wants to say we have great staff here, we are very fortunate, Mr. Koch and Mr. Goldberg, fantastic. We have a great planning staff, everybody has been great, and we are lucky to have the people that we have. We do have a fundamental, serious dispute and disagreement with them. But that does not mean that we do not respect them and enjoy working with them.

He said this is a farm and he thinks it was glossed over a little bit on the presentation by the County. This is a farm, and it has always been a farm. It has been a farm for generations and generations. First by the Hahn family which the road is named after and more recently the Arstark's bought the farm. They always wanted a little farm, and they are continuing to farm it.

As was mentioned, farms are exempt from planning and zoning and subdivision and building permitting ordinances. It is in the state law, long time state law; it is also in the Cabarrus County Planning and Zoning Ordinance. It says very specifically that farms are exempt.

Our basic theory here is, not only is it a farm but even if it were somehow subject to this additional overlay process or overlay that Mr. Goldberg has claimed is somehow outside of the zoning ordinance, there is no way that you will ever find this buffer anywhere in any public records. It is not shown on the GIS, the surveyor could not find it. It is not showing on any public documents other than if you know to go look for this USGS map somewhere and you can figure out what you are looking at on the USGS map. You can try to determine if that is your property because it does not have tax parcel on it or anything. It would be impossible for Ms. Arstark to have known that existed there anyway.

No survey is required when you apply for a zoning compliance permit. All you have to do is do a little drawing. You have the different drawings there that were provided at different times during the process, and you will see a squiggly line across the top that denotes a stream.

He said that is our basic case that we want the Board to be aware of. He is going to let Ms. Arstark come up and give the Board the basic background, so you will know who she is and what they are trying to do out there and how she views it, and then he will come back up if he can.

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The Board should have a packet that has all of our documents in it and also some photos that Ms. Arstark provided of the farm and the farm animals and things. We will reference those to you.

Ms. Connie Arstark, 3233 Hahn Scott Road, Mt. Pleasant, NC 28124, addressed the Board stating that she was born and raised here in Cabarrus County, family was the Blackwelder.

She bought the farm, a group owned farm from Steve McMath. She knows the Board has heard a lot of legal stuff today, but she thinks you need to hear the story from her how this all happened.

She is an average citizen in Cabarrus County. When we bought the farm and started building on this property, you all were in a pandemic in the county. So, you were having to work with people who were working from home, and it was a very difficult process, very difficult process. But she was diligent in trying to make sure that she got all of the information that she needed in order to be able to start her farm.

So, I did contact the County and we were able to get the building permit and the zoning permit for the house. We did so as well for the pool, and we also got a building permit and the zoning permit for the barn. Even after numerous times of the County visiting and approving, inspecting electrical, inspecting septic for the barn, inspecting power for the barn. The barn had always been there.

She knows Mr. Lowe referenced something about doing an inspection on July 7th. The barn was not built on July 7<sup>th</sup> the barn was built she thinks after July 17<sup>th</sup>. We did all of that trying to do that correctly and when they referenced the email they showed you, there are 20 pages in that email, and they only showed you one section.

When she asked Ms. Hernandez, do we need a permit, we were talking about septic because she does take the applications for the septic, and everything goes through her. You contact Tyler and he comes out and does the soil inspection and then in goes through Ms. Hernandez. She processes it, she is the one that takes the application, and she is the one that does the payments. That is when the ranch and the barn would have gone through the County; that is when it first started. That yes was to the septic, we were not talking about the barn at that time.

Ms. Arstark said it can get really convoluted and confusing, but the barn had a building permit issued. They came out to the property, they saw the barn and they approve the barn. After Mr. Jay Lowe came and met her on the farm, they went out there with a measuring tape and we measured it. She looked at him and asked if we are good and he said yes ma'am I think we are. She asked him if she could get her zoning permit. He said I'll tell you what, I am leaving to go on vacation, and it will be about a week before he would be back and for me to get him the survey. We got the survey in about almost a week and a half or two weeks, and they issued the zoning permit for the barn.

As a citizen of Cabarrus County, she is asking the Board to think about something. How would it ever be possible for any average person to go in there when your own building permit tells you to

use GIS. The application tells you to use GIS and if your GIS is not up to date and it is not correct, and this perennial creek is that important, do you know how many other farmers are going to be affected by this? There are streams everywhere, everywhere in Mount Pleasant. The average person would not be able to know this, and to affect a family the way this has affected my family for two years, the financial hardship, attorney fees, engineers.

She had an engineer, and they threw this bone out to get another engineer. She has had two attorneys, engineers, she has had all of it. She has jumped through every hoop they asked me to do. I have now spent more money than the barn cost me.

But you know what? It is faith, it is God, and she is about principle. She did everything she could do as a person to follow the rules, to follow the protocol and do what she was expected to do to put the information that was provided to her from this county, and she did that.

Here we are today, this could happen to you, it could happen to your family. Someone coming into your farm and saying you have to tear your barn down. They ordered me to tear my barn down back in October, this has been over a year. She has horses, goats, chickens, and rabbits. I am a farm, I do crops, I have a farmer that farms my property with me. She does not understand how we got here.

Mr. Moretz said take a minute and describe the farm in a little more detail on how it works and the animals that you have there. He thinks Ms. Arstark has a picture.

Ms. Arstark said we have chickens that produce eggs. We also have goats that we use to clean the property and graze the property to keep some of the grass retained back. We have horses, we have a Clydesdale on the property. It is a farm, we have crops, we plant wheat, we plant hay, we plant corn, we have rabbits, we raise rabbits, and we sell rabbits. That is what we do on the farm.

She purchased this property because it was already in the farming program. It was already a farm. It is zoned agricultural for a farm. My adjacent neighbors that are here today want it to remain a farm. They made that very clear when she moved out there, and she let them know that it was her intention to keep her promise, that it is going to be a farm and we are going to farm this property. That is what we have done.

Mr. Moretz asked Ms. Arstark if she had 10 or more acres in farm use.

Ms. Arstark said yes sir. That has been another confusion. The GIS again was wrong, it had her only at ten acres. She had to contact the GIS, she had to take the survey down there. She told them they have 11.54 acres. She went down there to ask them to change it. They said they would change it and took 3 or 4 months before they got it changed. The GIS is not reliable, it does have errors in it, it does have errors in it.

So, we got that changed and so she thought okay here we go, now we are okay. Then another

incident happened. During all of this she was approved for the PUV program, the tax program because I am a bona fide farm.

Mr. Moretz asked Ms. Arstark to explain what that is because people do not know.

Ms. Arstark said it is the tax-exempt program. When you are farm, and you get in the PUV, it is a tax exemption for the farm. So, they came out and did a site evaluation, checked out the barn, and checked out the property and I was approved.

Mr. Moretz asked who came out.

Ms. Arstark believes her name was Leslie, she is the analyst.

Mr. Moretz said Leslie Rimer with the County?

Ms. Arstark said yes, Leslie Rimer with the County Tax office. She came out we met, we looked at the property. I had already sent in the application she had all the information she had asked for. She got a letter in the mail that she had been approved.

It got back to the County that her farm had been approved for the program and withing 40 days while she was “disturbing property”, we were cleaning up debris ready to plant corps and they put a Stop Work order on so we could not farm our property that year. We have lost money over this. We have lost money trying to make a living. We are in a pandemic folks, this is not the time to stop farmers from being able to profit on their farms and may their money and live. So that was rescinded.

She had a question that she asked them, how often have you ever gone out into the County approved them after a site evaluation for this program and rescinded it? They responded with highly unlikely that we would do that.

Mr. Goldberg is very sorry but has to object, as to hearsay.

Ms. Arstark said it is in an email, I have the email here for you.

Mr. Goldberg came to the microphone and stated that he made an objection as to hearsay meaning she is testifying to what some else said. He said we will want that document.

Mr. Moretz said we can withdraw that statement for now, it is not crucial.

Ms. Arstark said she will find it at the end, she does not want to take up your time. She is sorry.

Mr. Moretz asked Ms. Arstark to finish her summary on how this has affected her and what she is doing on the farm.

Ms. Arstark said at that point then they rescinded it. Once they rescinded it you have to go to a hearing, and you do this process. Again, they argued that there was not enough production in acreage it was just another process that we kept going through. Then, we discover the farm is being denied now, because it is tied in with this situation here. That is unfair guys, and it is unreasonable.

Mr. Moretz asked Ms. Arstark how is it is tied to this situation?

Ms. Arstark said because they viewed that PUV would be taking the County's position as that it is a bona fide farm. It is already a bona fide farm. The State has already issue me, we have insurance on the property as a farm. We are listed with USDA as a farm. We are not subject to these zoning ordinances.

Mr. Moretz asked Ms. Arstark if she had her state sales tax exemption?

Ms. Arstark said yes, we have met all the criteria for a farm through the state. We submitted everything they asked us to do. We have it in email, and you have it in your packet. Also, that email from Mr. Thrift is in the packet as well. It is underlined, that sentence.

We are a bona fide farm. She asks tonight, that you guys please use the reasonable consideration to consider what is happening to my family, over a mistake that an employee made at the County. Listen, we are all human and we make mistakes, and she gets that. She does not hold any hard will to them, but you cannot hold my family hostage because you made an error with issuing a zoning permit that you should not have done. That should not be her burden to carry and certainly not worthy of tearing down her barn and uprooting her family from our farm. Because that is really what would happen, with this buffer overlay, and everything you are talking about tonight, you would cause us to be basically homeless. She does not think that is reasonable.

Mr. Moretz asked how much of the buffer if it were enforced; how much of your farmable property would it take away?

Ms. Arstark said according to the State, we do not have any buffers, according to what is in that packet from the Army Corps of Engineers. She also spoke with them yesterday and she is dealing with the Chief of the Army Corps of Engineers.

Mr. Goldberg said I'm sorry.

Mr. Moretz told Ms. Arstark that she has to focus on what he asks her, you cannot talk about other people or what other people said.

Mr. Goldberg said his objection is that she was making a hearsay statement. She was speaking what someone else said. We would ask that person be here to speak and for cross examination.

Ms. Arstark said if you would do the buffer overlay, it looks like it could be 50 feet from the back. The County has not been able to officially, even calculate their own formula, so they are relying on me to use my surveyor to do that.

So, as far as we can tell it would potentially put a 50-foot buffer from the rear property. There is a 75-foot buffer from the front of the property so, this is a narrow skinny little section of property. It goes in and out because of the Branch; it follows that. So, that means that that property could go in and out in certain distances. So, at some point you are right, if you had a home there, and that little branch went this way and then went back out this way, all that land is no longer usable; it is not usable. That is why this is so important, that we make sure.

There it is, (shown on overhead) that is what she was telling you about, that little line there is what they are saying I did not put on there; you see it. Every time you do a permit, every different permit that you ask for you have to do another drawing, and you have to add that item to it. So, there won't be just one plot plan that you send it in, there will be four or five because we did so many with building the house, the barn and the pool and those things.

They have had ample time to know, and if you look on the top there, it says parcel ID. When that was first given to them, the County had the obligation to the citizens of Cabarrus County to pull up that parcel and when they pull it up at their desk if it is a perineal creek, they would have known it at that moment because they do have access to that information. The general public, we do not have access to that information, so it is critical.

Mr. Moretz said, let's not belabor it. He asked if anyone had questions for Ms. Arstark.

Mr. Goldberg said at the appropriate time he would like the option to cross examine Ms. Arstark.

Mr. Jeff Corley said we have talked about a lot of dates and sequences and his head is spinning with all these dates but is it your assertion that when this barn was built, that you had the permits that you were required to have or is your assertion that you knew you were not required to have permits.

Ms. Arstark said yes sir, it was her understanding that she did not need to have permits. Because she called Boyd Stanley with the building department, and I said I am building a barn on the property.

Mr. Goldberg is very sorry but objects to the hearsay.

Ms. Arstark does not know how to answer your question then. The County told me that I did not have to have a permit for a barn.

Mr. Charles Paxton said Ms. Arstark did not specifically say, is this a type of farm you go to on the weekend, do you live there, are you only farming?

Ms. Arstark said it is her permanent residence, she is building her home there. She is living there in an RV on her farm.

Mr. Paxton asked if she only did farming?

Ms. Arstark said yes on the farm, yes that is correct.

Mr. Corley said to follow up to his first question, you were aware then that at the time the barn was built that you did not have permits because you did not feel you had to have them, is that correct?

Ms. Arstark did not feel, she was told that she did not need a permit.

Mr. Corley said but you were aware that you did not?

Ms. Arstark said yes, she did not have a building permit at the time, yes.

The Chair said did you not state earlier that you had inspections on the barn.

Ms. Arstark said yes, we did have inspections on the barn, it was electrical.

The Chair asked how she got inspections if she did not have a permit?

Ms. Arstark said that is a great question.

Mr. Moretz said we have a permit.

Ms. Arstark said we have an issued zoning permit now.

The Chair said let's clarify. There are zoning permits, and there are building permits. They are two separate items, two different departments within the County.

Ms. Arstark said the date that you are talking about before, we did not have a building permit when the barn was built. It was not discovered until after the barn was built that we needed a building permit. Boyd Stanley worked at the County at that time he issued the building permit. They came out and checked the barn out, we were putting electrical in, it was inspected. So that was another time the county came out and inspected the barn.

Then Mr. Lowe came out, met her at the property because he was in conflict about a set back at the front of the house. We have that in an email, and it is in the Board packet.

Then he asked her about the stream, and we went down the creek, we measured it and at that time is that is when the zoning permit was issued. So, he had an opportunity to see the barn, inspect it there and they still issued the zoning permit to her.

The Chair asked if she is stating that was his first onsite visit?

Ms. Arstark said he claims that he had been there many times before hand. She is saying the time he met her there.

Mr. Corley said the reason you applied for that zoning permit afterwards was why?

Ms. Arstark said because once you get a building permit, they tell you that you need to get a zoning permit. It is kind of like a double edge sword. Most people in agriculture do not get permits for barns

Mr. Corley said you needed the building permit for the electrical which causes a need for a zoning permit.

Ms. Arstark said yes that is her understanding.

Mr. Paxton asked Mr. Moretz for a little more detail on this thing you submitted to the County today; there was some additional engineering.

Mr. Moretz said that was in the Board packet. It is number 6 in the packet towards the back. It is a letter we receive today from a licensed engineer who came out to the property. As you see there, he stated in his opinion no permits were required and that it was a farm and further did not perceive any significant impacts to the stream. The areas closest to the stream remain vegetated with native trees, shrubs, saplings, and herbaceous plants. There was not any observed physical evidence that land disturbance, sediment, or any water quality impacts resulting from the agricultural development of your parcel have impacted the stream.

That was his opinion, but we also asked him, if we wanted to in good faith, put in some buffer, put in some plantings to try to work this out with the County, could he draw something up. He said certainly that he could not do it today. We talked to him about drawing up some buffer plantings that would still allow them to use it as farm but also try to achieve any water quality that might satisfy the County even though they are not required to do that.

Mr. Paxton asked if the County had time to respond to that?

Mr. Moretz said yes. He spoke with Mr. Goldberg about it this morning.

Mr. Goldberg said we did have a brief opportunity to review this. He appreciates the Appellants submitting it, this is a step in the right direction and something we hoped would have started happening about a year ago, but we are here.

Everything you see (showed memo) from up until here we believe is not within the purview. Up until the second last paragraph is not within the purview of this person. This is a PG, Joel Lenk is

a Professional Geologist, and if he was here, Mr. Goldberg would say he is probably a credible witness. He does speak to environmental consultancy and he that is appropriate, and he would concede that.

Everything before that letter, is it a farm, is it not a farm, whether it qualifies, that really calls for a legal conclusion. Here we appreciate the fact that he is starting to talk about that he did not discern an impact on his brief visit. Our main concern is what we are hoping here is a report that says the buffer is there, the building is in the buffer, and that the buffer was designed to do X and because the building is in that buffer it is now doing less than X and in order to mitigate that buffer being in affect, propose some sort of alternative.

He said this is not ideal. If you look in the permit there is not ability for us to wave or vary this nor is there one in the ordinance. This would be working with the Corp, to see if they would allow us to exercise some level of discretion to get us to where we want to be which is not providing a hardship on Ms. Arstark, while also being in compliance with the Corps expectations and maintaining the environmental integrity.

He said the problem here is if you look for any reference to the waterbody buffer, it is not mentioned here, it is not considered in this report. It speaks entirely to the 30-foot setback that applies to any property of this zone that does not take into account the waterbody buffer.

As he has said before if the Appellant came back with a report that acknowledged the illegal violation. He would not go that far, but say this is the buffer, and the building is in this buffer, this is the effect, and this is how we can mitigate it. That may be enough that we can take back to the Corp to say this is not right and we get it this is a violation, but we think the net effect is de-minimis.

He said the other thing is that we would not want any further encroachment or violation of the buffer. So, it is about dealing with the issue that we have right now, not opening the door up wide. We are trying to stop the damage from happening and that goes to what the Stop Work Order is in your packet.

The idea is stop taking down trees, stop taking down trees because that is just going to be more, do not build the house until we get that survey, and it is clearly delineated in accordance with the buffer.

In sum, one of the reasons this has gone so long is because we have been trying to find a solution, from a very, very difficult solution. There are no guarantees when we are dealing with the Federal Government, but this is probably our best hope going forward. The other way to try to mitigate this is if there was something that said that this was not a perennial stream, other than GIS that would at least modify the buffer requirements, but we do not have that.

We are not able to exercise the level of enforcement discretion we would normally do because of this and unfortunately this does not give us what we need to even consider moving that forward.

Mr. Paxton asked Mr. Moretz if he had a problem trying to help him solve his problem?

Mr. Moretz enjoys working with Mr. Goldberg and the County. But yes, the reason this Engineer or Professional Geologist, who is very respected in this field did not say it is because it does not apply to farms. That is why it does not say it in here and he does reference that down on the bottom of page one. He says it is not shown on any North Carolina Department of Environmental Quality, Surface Water Quality Classification Map, the State does not show any buffers.

Mr. Moretz thinks that he does say that and gives his opinion. You all can take it upon yourselves as evidentiary fact finders whether you think this gentlemen's letter is creditable or not. But I think the reason he says it is because he does not believe it applies which is the same as our belief.

Mr. Goldberg said very briefly since we are talking about our position. Before we move forward on this, just to be clear, is the statement that indicates that USACE, the United State Army Corps of Engineers (first page, second last paragraph) has no jurisdiction of stream buffers on the subject property.

We are not talking about the waters in the United States here, that would not be there. That would be in itself subject to the Clean Water Act. Also, a review of the North Carolina Department of Environmental Quality (NCDEQ), Surface Water Quality Classifications Map, it may or may not be on there, we are not talking about something subject to State regulations. This is a local ordinance that specifically incorporates the US Geological Survey Topographical Map as delineation of the extent of these perennials, waterbodies and to extent of the property.

All of this though, is unrelated to the legal question that we are having right now. Ultimately, it is a legal question, you take the facts, there is a law and there are the facts, and you have to decide how does that turn into reality. That is the Board's job, this is not a legal professional to opine upon.

Mr. Crutchfield thinks Mr. Lowe testified that when he was out there observing the property with Ms. Arstark, that he relayed to her that it was not a perennial creek or did not appear to be a perennial creek, is that correct?

Mr. Goldberg said the best he can do is offer Mr. Lowe to speak to that. He told Mr. Moretz that this is not eating his time.

Mr. Moretz appreciates it, we have not been very respectful of the time limits, he apologized and said we will try to speed it up.

Mr. Goldberg said this is good work.

Mr. Lowe said no, he did not indicate that because at that time he did not know what type of creek it was, he did not know. But, when Ms. Arstark told him that she did have a survey, he

actually, knew the surveyor, and again he had done work in the county for many, many years. It did ease his mind a little bit in hopes that it was an intermittent stream. But at that time, he did not tell her either way because he did not know.

Mr. Crutchfield understands he is just trying to figure out how she is supposed to know if we do know and we run the County, how is she supposed to know?

Mr. Lowe said right, that is a good question, but again, her surveyor he does not think actually knew either to be honest with you.

Mr. Crutchfield said it sounds like there were a lot of people that did not know.

Mr. Lowe said right, correct.

Mr. Goldberg thinks there is something he can clarify on that. He is going into the zoning ordinance regarding the waterbody buffer zone.

Mr. Moretz said this my Case in Chief, so make it quick.

Mr. Goldberg said of course, he appreciates it.

The Chair said do not worry Mr. Moretz the clock is not running, you are good.

Mr. Moretz said you had your chance.

Mr. Goldberg said you are absolutely right, but he just wants to be clear about this.

Mr. Moretz said read the part at the beginning where it says it does not apply to farms if you are going to read the ordinance.

Mr. Goldberg said pardon.

Mr. Moretz said read the part at the beginning that says it does not apply to farms

Mr. Goldberg will leave that up to Mr. Moretz. He said if there is a waterbody present on the property it is required that the person obtain a survey that would indicate the extent of the water buffer boundary. So, the normal course of action would be if the staff during the permitting process had a waterbody indicated in there, that is the time that you are no longer eligible for the hand drawing and that would require a survey that would delineate that and that came much later.

Mr. Goldberg told Mr. Moretz he appreciates his deference.

Mr. Moretz said no problem. He said we are jumping around a lot, and he wanted to be a lot more organized, but sometimes this is how it works.

He said looking at your packet there that he presented, page 5 has the drawing of one of the plot plans that was provided, and you can see a curvy line right up there at the top along with the Tax ID number at the top. He thinks those of us in the real estate industry, generally know when you see a really wavy line there is a creek there. When you see kind of a square line those are platted lots, or survey lines or roads. That curvy line there is clearly indicative of a creek and the tax Parcel ID is right there. So, just go look it up on the GIS, which he assumes Ms. Hernandez does and she can see there is a creek there.

You have a copy, turning back in your packet, of the permit that was issued, both the zoning compliance permit and the building permit, saying nothing about any waterbody buffer.

Mr. Corley said just to clarify, there are a lot of labels on that drawing. Your assertion is that an unlabeled wavy line is to be assumed to be a stream?

Mr. Moretz said with the additional information that you have there, which is the tax parcel ID among other things, he thinks is enough notice for a person that does this for a living to tell you what your setbacks and things that you have to comply with are and are going to issue a legally binding permit, that is enough information, yes.

Mr. Moretz said this is what this is about. This water quality buffer is something that the County agreed to in apparently 1990, when they did the Coddle Creek Reservoir and agreed that there would be an overlay upon all perennial streams of 50 to 120 feet or whatever it is. It depends on the slope of the stream bank and apparently, you have to do some calculations to figure actually how much the distance is. It is not shown anywhere on the GIS maps or anything that is readily available to a regular person. Nor did our surveyor, who Mr. Lowe just stated is well known here in town, Sam King, was not aware of it either. It is not shown on any of the surveys that were prepared for this until it became an issue.

Mr. Goldberg objected to the hearsay statement regarding Sam King's position on that.

The Chair asked if Sam King was here?

Mr. Moretz said you have the surveys with his seal on it in your packet. So, you do not need him here.

The Chair asked Mr. Moretz to tell him what number it is so he does not have to keep flipping.

Mr. Moretz said there were multiple surveys that were prepared. In the Board packet on page 64 and 65.

The Chair said that plat shows the buffer and the no build.

Mr. Moretz said page 64 would be an earlier one that showed before this buffer became in dispute because you see the barn there that is outside of 30-foot setback from the property line, and the house is 75 feet from the road and that the total acreage is 11.545 including 1.002 in the road right of way which would leave you in excess of 10 acres by the way for cultivation and farm use. You can see there is no water quality buffer shown there.

He said the next one is on page 65. Once all of this occurred, he was asked to research it further, and the County gave him the information that he needed, it was his understanding, and then he provided these other calculations.

Mr. Moretz wants to try to summarize what is in this packet so we can wrap up. Our first point is there is no violation here. Look at the building permit and the zoning compliance permit. There is nothing in there that we violated, okay? It says we are entitled to build this barn, gives us setbacks. Everybody's agreed we are within the setbacks, the building permit is the same. Nothing in there has been violated. He does not know how you can find a violation if there is nothing in those documents that have been violated.

The second thing, Arstark provided all the information that was required of them. Ms. Hernandez does this for a living. She tells people what they need to provide to get the permits, we provided it. No survey is required, a plot plan is all that is required. A plot plan was provided with the tax parcel id number, with the wavy lines, with the multiple versions, with the multiple visits of various folks coming out there. Everybody knew there was a stream there, the County missed it, the County missed it, that is what happened here. If it was something you could easily find yourself, it would not be a big deal. But this is not shown anywhere on any GIS document, and remember, they did have the septic application documents as well, which did have an aerial photo that did show the stream.

Second point, farms are exempt from zoning, planning, subdivisions, building permitting ordinances. That is State law, and it is clearly stated in the Cabarrus County Zoning Ordinance. You have to abide by your own ordinance.

Mr. Moretz said if you turn to page 25 in our packet. We provided copies of the zoning ordinance exemption. There are your provisions of the Cabarrus County Development Ordinance which we are here to interpret and to make a decision on.

Bona fide farms are exempt. It does not say other than certain parts, it is exempt from the entire ordinance. What is a bona fide farm? You can read down below we have included the definition of a bona fide farm. This is a bona fide farm.

If you go to page 26 in the information they have provided. The provision that we are here to argue about and are spending all this time on, down at the bottom of the page he has put a star beside it. Waterbody Buffer Zone, it talks about what the purpose of it is, Section 4.9, Effect upon bona fide farms. This is very important, and he hopes everybody is looking at this: while

North Carolina law exempts bona fide farms from local zoning regulations, the County strongly encourages the use of best management practices in farming. He said it looks like this (showed on overhead) and asked if everyone had this.

He said the Board is the decision makers here. As Attorneys, we do a lot of statutory construction when we have too which means trying to figure out what the legislators meant when they wrote something or the County Commission. When they use the word "shall" that means you have to do it. This says strongly encourages. He does not know any other way you can read that other than it is not mandatory, but it is strongly encouraged. We are here to interpret this ordinance and apply it to this situation. This is a farm, and it is exempt.

The next page in the Board packet is the State Statute, 160D-903, farms are exempt from local, county zoning, land use development, subdivision and permitting ordinances. There are no ifs, ands, or buts about that, and it has been on books for many, many, many years. That section even tells you what constitutes a bona fide farm, you do not have to go out there and count the animals.

If we included all that detail; right there one, two, three and four, what establishes you as a bona fide farm.

1. A farm sales tax exemption certificate issued by the Department of revenue.

Mr. Moretz said we have that, the next page in your packet.

The Chair asked what was the date of that?

Mr. Moretz said August 25, 2021, is the date listed on there.

The Chair said thank you. He asked if that was yearly, how does that work? Is that a onetime issuance?

Mr. Moretz is not sure. He asked someone if they had to do that every year.

Someone in the audience said no, one time.

Mr. Moretz said one time, there are some farmers in the room.

2. A copy of the property tax listing showing that the proper is eligible for participation the preset-use value program.

You heard Ms. Arstark testify that she submitted that application last year and it was granted, and then it was withdrawn, and they had a hearing, and there was further quibbling about how much acreage there was and now it is under appeal to the State Property Tax Commission

because the County has continued to deny her the exemption. It has had that exemption as long as the exemption has been in existence. But all of a sudden, now the County is trying to delay it. Let's put it that way.

He said the last item in the Board packet is number 7, it is the current exemption application that currently has been provided to the County, but as of yet has not been acted upon. We feel the County has somewhat a conflict of interest on that because once they act on this which by all rights it should be granted. All the information is there to show you that it should be granted. Well, that will declare them as clearly a bona fide farm and then it would be very hard for them to argue that this ordinance applies when the ordinances and the law clearly says it does not apply to bona fide farms.

The next thing that you can provide that indicates that you are a bona fide farm exempt from development and zoning ordinances is a copy of the farm owners Schedule F, for their tax return. You have that also, as part of Item #7, that is Item F, from the tax return.

A good portion of this, the part that is cultivated, is leased to Mr. Britt, he farms that part of it. But that does not matter, it does not have to be farmed by the owner as long as it is farmed. So, you see, those are his Schedule F's to his tax returns because he is the one that farms that part of it and can provide those historical tax returns. They just moved on to it last year, so they do not have those yet.

Finally, a forest management plan. We do not have any forest on here. We are not claiming that, but any of those three, you can choose one of those, we have all three of them. You are going to hear a testimony from a few of the witnesses that this has been in the farm program forever and has always been a farm.

Mr. Moretz said we have some historic photos in that same section of the packet. If you want to look at those, you can see that it has been cultivated as farm land going back to at least the 1960's. It is great that the GIS now has these really old aerials photos so you can kind of see how land use changes over time but this one has not changed, going back to 1964.

There is no way to know these buffers were required. It is not shown on the GIS anywhere. We have some different pictures from the GIS, printouts. You can see where he went through and turned on all the things for water and stuff, and nothing appears. You have the line there that shows the creek.

He is at Section #4 now.

Mr. Corley said just to be clear, when you say nothing appears, the stream is obviously there. You mean there is no buffer shown?

Mr. Moretz said yes.

Mr. Moretz said that did not make it into the Board packet. It is in Section 4 of the printed packet. This one was in color, they made an extra effort to print this out in color. He asked if everyone had that in their packet. He could pull it up on here, but you would not be able to see it anyway. He said, let me draw your attention to that. He asked if everyone had that or everyone that wants it anyway. He showed the Board what it looked like.

He thinks Mr. Corley is correct. There are multiple lines shown there, do you see that. He does not know what that is. See, there is a blue line, but there is another smaller blue line. So, what is that? He does not know, it is confusing, and he thinks that is kind of why we are here. You are supposed to show if there is a waterbody and you are supposed to show this waterbody buffer, but the waterbody buffer does not:

- a) appear in the GIS anywhere
- b) you have multiple streams shown on here that are not really defined

So, the first two pages there are just showing you the bottom part of the property and top part of the property. The next page he clicked on all the water related things and nothing further comes up. What does come up is a UT. If you look closely, you see the letters down there says UT, which he believes stand for unnamed tributary. He thinks that is right.

So, you can see the larger blue line and then the unnamed tributary and they sort of cross each other. He would say that is either wrong or very confusing on the GIS, to know what our property line is. What waterbody are we supposed to reference? Even if there was a buffer that you could turn on in the GIS, which you cannot, would it be 50 feet from which one of those, the small one or big one?

Finally, the bottom part of that page is what was provided to us as the actual USGS map. He said is that correct? Is that the USGS map that we are going by on this?

The Chair believes he is pointing to the correct USGS map that was in our packet.

Mr. Moretz said it should be just a screen shot from that.

The Chair showed Mr. Moretz the bottom of the page that was included in the Board packet and asked him if that is what he is referring to.

Mr. Moretz said that is correct. So, that blue line is what we are arguing about here, that is understanding, and they should have aware of. Again, this is a USGS map that you either have to contact the County and they will send it to you, or he does not know how you find it. He guesses you could contact the US Geology Survey somehow. But the point of these different maps, is to show the GIS does not show any sort of buffer and further it shows multiple different creeks along there. At least one of which does not exist. The actual creek has that big bend in it up towards the top. What this unnamed tributary is, nothing, there is no waterbody there.

Mr. Crutchfield said you stated earlier that the farm use to be recognized as a bona fide farm and it was changed by the County. Is that correct?

Mr. Moretz said the property changed hands and he believes, the did not do this closing, but he believes they made a mistake at closing and did not renew it closing. So, when you do not renew it at closing when you buy the property, within he thinks 60 days, then you have to reapply.

Ms. Arstark speaking from the audience said that was for the PUV program not for the bona fide farm, it has always been a farm, that was for the PUV tax.

Mr. Moretz said right.

Mr. Crutchfield said so, the PUV program was revoked at one point, and the County did that?

Mr. Moretz said they did not issue it to her. They did issue it to her and then they revoked it.

The Chair asked Mr. Moretz if he just stated that when the transaction from a previous owner to the Arstark's took place, that they did not transfer the bona fide farm from the State. Is that what you just stated?

Mr. Moretz said no. He stated that they did not get their Present Use Value tax exemption application in within the 60 days period.

The Chair said because Mr. Crutchfield was asking about the tax exemption for a farm. The Chair just wants to be clear about what Mr. Moretz was referring to.

Mr. Crutchfield said he was really trying to figure out how the PUV was revoked and who did that and why they did it.

Mr. Moretz said yeah. We do not really know why either, but we think it is related to this because that is one of the four things that establishes you as a bona fide farm, if you have that exemption and it was granted then we ran into this disagreement that we are into now and it was revoked.

Mr. David Hudspeth asked how many acres are in the farm? When you sell it and you resurvey, evidently, they take out the right of way, right? He said from the center of the road, it recalculates the acreage, is that right?

Mr. Moretz said that is the position that the County took at the Board of Equalization and Review. He said that was news.

Mr. Hudspeth said that is what is causing your problem with the PUV, right?

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Mr. Moretz said no, we just did not have a survey that showed the differentiated between how much was in the house, how much was in the right of way and how much was left in farm use.

Mr. Hudspeth said they take the right of way out, don't they? The original survey, the eleven something acres included the right of way.

Mr. Moretz said correct, that is the total acres of the property. There is a survey here he believes in that item number 7, which is our current PUV application, that shows he believes the actual acreage broken down by right of way.

The Chair said 10.954 acres for farm use, took out .552 acres for roadways and the proposed dwelling is .057 acres.

Mr. Hudspeth said so they still have their 10 acres?

Mr. Moretz said yes, they have 10.954 acres. They take out for the house and the right of way for the roads.

Mr. Hudspeth asked if they take out for the stream?

Mr. Moretz said no.

The Chair does not think they would take that out, that would still be considered a part of your property.

Mr. Moretz said unfortunately, the position was taken that this was not provided in time for the Board of Equalization and Review hearing, so they did not have this at their disposal and made a ruling that appeared to them that there was not 10 acres.

Mr. Moretz said I am sorry he will have to object. He said there could be records but he does not think that you can speak to what the Board said at the time.

Mr. Moretz said the denial was based on acreage, and they did not have this map at their disposal.

Mr. Goldberg said if it would be helpful, we do have the Tax Administrator here who could speak to that.

The Chair asked when was the property acquired?

Ms. Arstark from the audience said June 11, 2020.

Mr. Moretz said let me try to finish getting through here, if there are no more questions on that topic, he knows it seems like it is being belabored. He wants to point out that there are no wetlands on the property that we are aware.

The Chair advised Mr. Moretz that his 30 minutes are up and to try and wrap it up.

Mr. Moretz said there is no wetlands on this property, there is no floodplains on this property, and there is no water quality buffer that we are aware, shown anywhere on this property.

Mr. Corley said quick question, and hate to interrupt, but no wetlands on the property? Did a professional make that determination?

Mr. Moretz said there has not been a wetlands delineation expert come out there but there is nothing shown on the survey or GIS.

Mr. Stephen Wise said on the zoning permit it says it is no wetlands.

Mr. Moretz said yes, on the zoning permit, as well as the building permit, if you look back on part one of the packet.

Mr. Wise said it says no floodplain or watershed within property.

Mr. Moretz appreciates Mr. Wise pointing that out. He said it is on the zoning compliance permit which is basically in the first part of the packet after the summary. You will see it says no floodplain or watershed within property. You can also flip a couple of pages more and you will see the building permit for the house which again, the house is not in dispute, but he believes we have in there the details from that as well. You will have to go through all the long emails with Ms. Hernandez. He showed item from the packet he said is from the County accel system (second page) that says no floodplain or watershed within property.

Mr. Corley said would you mind him asking the County for a clarifying answer?

Mr. Moretz said of course.

Mr. Corley is making an assumption that when it says no watershed, we are talking about the water supply watershed areas, is that correct?

Mr. Goldberg said that is correct, it is not speaking to the watershed zone nor the floodplain. Those are separate delineations.

Mr. Moretz said it says floodplain doesn't it.

Mr. Goldbergs said a waterbody buffer is not a floodplain.

The Chair does not think anybody has brought up floodplain but you guys.

Mr. Moretz is just saying that nothing is mentioned about all these other things and the waterbody buffer is not even listed on there at all, where it can say yes or no. If it was listed and they say no, it is not even listed for it to say yes or no. How are you supposed to know is our whole point on this?

He said there is no proceeding, or anything threatened by the Army Corps of Engineers or the State against Cabarrus County. You have an email from Allen Johnson with NCDNR and you have an email from Steve Jones with the Army Corps of Engineers stating we have not been in communication with Cabarrus County about this property nor about any violation of their 1990 Coddle Creek Reservoir permit. The County may be concerned about it, but the Feds and the State are not at this point.

He said wrapping up, we talked about number six on our summary about the Engineer that was there yesterday. Number seven is showing the packet that was supplied to the Tax Office for our Present Use Valuation which we have not received yet.

Mr. Corley said can I interrupt you one more time? You keep saying the word Engineer.

Mr. Moretz said yes, he is a geologist, he is sorry.

Mr. Corley would like to clarify.

Mr. Moretz said Professional Geologist.

Mr. Corley said Professional Geologist.

Mr. Moretz said correct. Finally, Arstark has a common law right to build here. They relied on the permit they got. First, they had the word from Boyd Stanley, that no permit of any kind is required to build a barn on a farm.

Mr. Goldberg is very sorry, but he will have to object to hearsay.

Mr. Moretz said you can object but he is going to state it and we can let the fact finders decide whether they want to allow it or not.

Mr. Koch said you cannot consider hearsay evidence.

Mr. Moretz said you heard from the applicant that she was told by the County that she did not require a permit for building or zoning.

The Chair said Mr. Moretz you cannot enter that.

Mr. Moretz said you can listen to what she said.

The Chair said that is hearsay.

Mr. Moretz said she testified to what she was told, what she understood, whether she was required to have permit.

Mr. Koch said that is classic hearsay.

Mr. Moretz said classic hearsay is saying somebody else said it. What she understood is she did not have to have a permit, that is not hearsay. The Ordinance says you do not have to have a permit, okay? We gave you the Ordinance and the State Law, you do not have to have permit; she relied on that. When you rely on that you get common law zoning vested rights that you can proceed there under.

Was the barn built prior to the permit being officially given them, yes. It was under construction based on the understanding under the law that it was not required. The only reason it was required was so they could get electrical which they got. It was provided and it is order.

The bottom line is there is no way for a lay person or even a professional surveyor apparently to know there is this water buffer thing. If it is so important and it has been around since 1990, why is it not on the GIS? All kinds of other stuff on GIS, you can look at an aerial photo from 1934, but this water buffer thing is not on there, why not? They have the data and the ability to do that.

This is news to folks that farm in this County, which he thinks you are going to hear from some of the people who signed up to speak, that there are these buffers. They farm up to the edges of the creeks and streams in this county. If there are 50-to-120-foot buffers on every stream in the County and Mount Pleasant and every place else. That is going to make a huge difference on your airable land that you can farm. There is going to be a sea change in this county and if that is the position that is being taken just because there is just one little barn, we need to think about the repercussion that is going to have.

He will wrap it up here because he is already overtime. He will be happy to answer any questions the Board may have.

Mr. Goldberg would like an opportunity to cross examine Ms. Arstark.

The Chair asked the Board if there were any objections to Mr. Goldberg cross examining Ms. Arstark. There were no objections.

Mr. Goldberg asked Ms. Arstark come forward.

Mr. Kevin Crutchfield has a question on conflict. As he is a farmer in Cabarrus County that

abuts up to a river, he just wants to go on the record as stating that he has that experience and make sure that is not a conflict on what you are trying to do.

Mr. Koch said the fact that you own land and a farm he does not see that as a conflict. Different members of this Board have different backgrounds, and some of them might be similar to what is in front of you and some of them might not, that is not a conflict.

Mr. Crutchfield just wanted to make sure, thank you.

Mr. Goldberg said good evening Ms. Arstark.

Ms. Arstark said good evening.

Mr. Goldberg said before her he has in Chapter 160D-903 of the North Carolina General Statutes, Subsection A. He asked her to read on the second line beginning at however through the end of that sentence.

Ms. Arstark read the following: However, that this section does not limit zoning regulation with respect to the use of farm property for nonfarm purposes.

Mr. Goldberg asked Ms. Arstark if she has a Facebook page.

Ms. Arstark said I do.

Mr. Goldberg said do you recognized this Facebook photo page?

Ms. Arstark said I do, that is when the barn was built.

Mr. Goldberg said excellent. He said members, this will be key, and he has copies that would like to pass out. He passed out the copies to the Board.

Mr. Goldberg asked Ms. Arstark to read the statement on her post and the date.

Ms. Arstark read the following: a lot of people have asked me what the barn looks like on the inside. There really isn't much to see at the moment, but here you go. It is still a work in progress.

Mr. Goldberg said can you tell me what the lighting on the top of that is?

Ms. Arstark said I love this story. The inspector that came to the farm...

Mr. Goldberg said I am sorry very sorry ma'am, I asked you to tell me what the light is there. Is it a chandelier?

Ms. Arstark said it is a chandelier.

Mr. Goldberg said yes ma'am. He said later on the post, Heather H. Brown said (he pointed to the post) what are you going to do in the barn. He asked Ms. Arstark what did you say?

Ms. Arstark said, I don't really know yet.

Mr. Goldberg said please go on.

Ms. Arstark said, playhouse for me and the Huskies? Ha, Ha, Ha.

Mr. Goldberg asked what Huskies are she referring too?

Ms. Arstark said to my puppies.

Mr. Moretz from the audience objected, that is hearsay, she is not here to testify.

Ms. Arstark thinks you see a lot of joking, smiley faces, and weird quirk faces, don't you?

Mr. Goldberg said playhouse for me and my huskies. So, that is your statement? Connie Arstark, playhouse for me and my huskies.

Outburst from audience. The Chair said if there are any more outburst, he will ask you to leave the room.

Ms. Arstark said yes, that is me talking. Playhouse for me and the Huskies, ha, ha, ha, ha, hee, hee, hee, yes.

Mr. Goldberg said later on you were prompted; are you planning on moving to the barn to live? How did you respond.

Ms. Arstark said, I said no, we have an RV.

Mr. Goldberg asked Ms. Arstark where she lives now.

Ms. Arstark said in the RV on the farm.

Mr. Goldberg asked under the Development Ordinance are you allow to occupy a residence as a RV on that lot?

Ms. Arstark asked if she could ask Mr. Goldberg a question.

Mr. Goldberg said I am very sorry.

Ms. Arstark said if you are under oath, and I am under oath, we met in private.

Mr. Moretz said you have to answer the question if you don't know.

Ms. Arstark said I don't know I live in an RV on the farm.

Mr. Goldberg said he understands, thank you.

He said this is a bigger packet and he will make sure that it gets entered into the record. He asked Ms. Arstark what she sees on the big screen here.

Ms. Arstark said that is the Royal Huskies of the Carolinas.

Mr. Goldberg asked Ms. Arstark if she owns or operates the Royal Huskies of the Carolinas?

Ms. Arstark said yes.

Mr. Goldberg said what do you do with the Royal Huskies of the Carolinas?

Ms. Arstark said that is her families puppies. She raises long hair royal puppies, and she breeds then once a year.

Mr. Goldberg said this indicates the price as \$1500 per puppy.

Ms. Arstark said yes, that is correct.

Mr. Goldberg said is that the price you charge?

Mr. Arstark said, well some of them could be a little more but yes, the base price is \$1500 a puppy.

Mr. Goldberg said this indicates that there are two males and four females.

Mr. Moretz objects.

Mr. Goldberg said to the Board if I may.

The Chair said yes please, he would like to see where she's going.

Mr. Goldberg said the point here that we are going to be working toward is that even if there is a farm at some point or other, this barn that we are talking about today is not being used for farm purposes; we are not farming dogs. If I may continue?

The Chair said you may.

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Ms. Arstark said you came to the farm and took pictures. Don't you have the pictures you took inside the barn sir.

Mr. Moretz said he has to ask you a question.

Ms. Arstark said I am sorry what did you want me to answer?

Mr. Goldberg said it indicates on the posting, two males and four females, is that correct?

Ms. Arstark said yes.

Mr. Goldberg said right now if we go to the farm, if we go to the property, forgive me. We will find two Siberian Huskies, two males and four females for sale?

Ms. Arstark said no sir. They are at the rental house now, they are gone. The puppies that were there on that site were sold.

Mr. Goldberg said okay.

Ms. Arstark said you will find three adult females.

Mr. Goldberg said three adult females.

Ms. Arstark said yes sir.

Mr. Goldberg said in the last six months, how many dogs have been born and sold under the Royal Huskies?

Ms. Arstark said there are three mothers, one had four puppies, one had six puppies and one had five puppies, total of 16 or 17.

Mr. Goldberg said at \$1500 per puppy?

Ms. Arstark said at \$1500 per puppy that were sold, but not all were sold.

Mr. Goldberg said okay. He said this is a Facebook page of the Royal Huskies of the Carolinas. He asked Ms. Arstark if she controls this page.

Ms. Arstark said yes, she does.

Mr. Goldberg asked if that 704 number was Ms. Arstark's phone number.

Ms. Arstark said yes, it is.

Mr. Goldberg asked Ms. Arstark when this post was made.

Ms. Arstark said she is sorry, she does not know. Is there a date on there that you can see it?

Mr. Goldberg will say that this was printed out today, so it does indicate three hours. Does that sound appropriate.

Ms. Arstark does not know. She does not know when that was, but she knows who that puppy is. Is that what you are asking me, or do you want to know what day I put that picture in there?

Mr. Goldberg said let me ask you this.

Ms. Arstark said okay.

Mr. Goldberg said I see that cage there, is that at the property in question?

Ms. Arstark said yes, it is outside of the Husky Hut.

Mr. Goldberg said the Husky Hut, thank you. All these are more pictures of the Husky's that you were selling.

Ms. Arstark said yes, that is correct.

Mr. Goldberg said these are more pictures?

Ms. Arstark say yes sir.

Mr. Goldberg said okay. He asked what we are looking at in this picture.

Ms. Arstark said that is outside door of the Husky Hut, outside.

Mr. Goldberg said what wall is that?

Ms. Arstark said that is the runs along the side of the barn. The barn is here, and it runs along the side on this side of the barn.

Mr. Goldberg said is this coming towards the waterbody, the stream?

Ms. Arstark said it is beside the barn.

Mr. Goldberg said yeah so that is coming towards it, it is coming closer to it?

Ms. Arstark said, well when you still measure it, it still the same distance.

Mr. Goldberg said I am sorry ma'am. It is coming closer to the waterbody, correct?

Ms. Arstark said you want me to say something that she cannot say. It is on the side of the barn. If that is what you me to say.

Mr. Goldberg said yes.

The Chair thinks he wants you to say which side of the barn.

Ms. Arstark said oh okay, facing the barn it would be on the right side of the barn.

The Chair going towards the creek or towards the road.

Ms. Arstark said toward the creek, towards the boundary.

Mr. Goldberg said can you tell me about the picture here, what are we looking at?

Ms. Arstark said that is the Husky Hut.

Mr. Goldberg said okay, how many dogs are we looking at there?

Ms. Arstark said seven.

Mr. Goldberg said okay, from three females, correct? At one point or the other?

Ms. Arstark said at different times.

Mr. Goldberg said you had three litters this season?

Ms. Arstark said we only breed them once a year. One dog had one litter, one dog had one litter and one dog had one litter.

Mr. Goldberg said okay, at \$1500 a piece?

Ms. Arstark said yes.

Mr. Goldberg said or more, you give some away?

Ms. Arstark said some we placed. We do not sell all the puppies. We do it for the purpose of seeing how they evolve.

Mr. Goldberg said okay, of course. He said in this picture here, what are those stones there?

Ms. Arstark said that is the rocks.

Mr. Goldberg said these are all the different dogs here, correct?

Ms. Arstark said those are the same puppies just over the pictures. The puppies were born in November and that is Bentley.

Mr. Goldberg said that is another one of what you refer to as a Husky Hut.

Ms. Arstark said yes that is a Husky Hut.

Mr. Goldberg asked Ms. Arstark is it were true that she is a license realtor in the states of North Carolina and South Carolina?

Ms. Arstark said yes, that is correct.

Mr. Goldberg said as part of your responsibilities, training, and experience, are you familiar with the requirements of zoning regulations in North Carolina and South Carolina?

Ms. Arstark said not South Carolina just North Carolina.

Mr. Goldberg said South Carolina does not train you.

Ms. Arstark said she is not licensed in South Carolina, so she would not know.

Mr. Goldberg said you are not in South Carolina?

Ms. Arstark said no sir.

Mr. Goldberg said in North Carolina though you are familiar with existence of zoning laws?

Ms. Arstark said we are not trained in zoning.

Mr. Goldberg said what are you trained in.

Ms. Arstark said you are selling property and real estate, housing, inspections, those types of things. But you are not trained in zoning.

Mr. Goldberg said do you receive information about any kind of information on this training through zoning or about zoning.

Ms. Arstark said the only thing she can rely on as a real estate agent is the GIS. She would rely on the County for that information, you would be my resource.

Mr. Goldberg asked how many transactions Ms. Arstark has done in her career in North Carolina and Cabarrus County in general?

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Ms. Arstark has no idea.

Mr. Goldberg said more than ten?

Ms. Arstark said more than ten, yes.

Mr. Goldberg said more than 100?

Ms. Arstark does not know.

Mr. Goldberg said is this another depiction near the Husky?

Ms. Arstark said the Husky Hut, yes.

Mr. Goldberg asked Ms. Arstark what is the date on there?

Ms. Arstark said November 15<sup>th</sup>.

Mr. Goldberg said what does it say on there?

Ms. Arstark said the farm is ready for the holiday season.

Mr. Goldberg said I am sorry.

Ms. Arstark said Holiday Husky's.

Mr. Goldberg asked Ms. Arstark if she built the barn, the building in reliance on any permits being issued.

Ms. Arstark said that question, what are you asking me?

Mr. Goldberg said I am asking you were there any permits issued prior to you building the barn, the building?

Ms. Arstark said were any permits issued before the barn was built, is that correct?

Mr. Goldberg said yes.

Ms. Arstark said there were no permits issued before the barn was built. They were issued after the barn was built. After they came and did a site evaluation.

Mr. Goldberg said at that point what would you have done if Ms. Hernandez identified and said we think this is in violation of the waterbody buffer prior to the issuance of the permit.

Ms. Arstark said I have no idea. That is like asking a crystal ball or something. I don't know.

Mr. Goldberg said so, you did not rely upon any permits being issued. You didn't think you were the clear and then you built it and the County pulled it back?

Ms. Arstark did not think I was in the clear?

Mr. Goldberg said you did not rely upon any permits being issued. Nothing in the County said it in writing?

Ms. Arstark does not remember Boyd Stanley telling her she needed a permit because she was building a barn.

Mr. Goldberg said that should end the cross examination at this time. If there is an opportunity to offer rebuttal information, he would like that opportunity.

Mr. Moretz said it is not illegal to breed dogs.

The Chair said wait a minute Mr. Moretz.

Mr. Moretz said he is entitled to follow up on those questions. If you do not mind, he will keep it brief

Mr. Koch is not sure what he is doing.

Mr. Moretz said she can explain her answers and that is what he is giving her the chance to do.

Mr. Koch said are you giving her a redirect, is that what you are doing?

Mr. Moretz said sure. He asked Ms. Arstark if she would like to explain any of her answers to Mr. Goldberg. You can say no.

Ms. Arstark said yes.

Mr. Moretz asked if the Huskies were still there.

Ms. Arstark said there are three puppies there, yes.

Mr. Moretz said have you had Husky's for long time?

Ms. Arstark said yes.

Mr. Moretz said you do you have a house to live in currently with you Husky's.

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Ms. Arstark said yes, we have a rental house.

Mr. Moretz said are they at the rental house?

Ms. Arstark said yes, they are at the rental house, they go back and forth.

Mr. Moretz said do you live on the farm?

Ms. Arstark said I live on the farm

Mr. Moretz said Jim lives at the rental house?

Ms. Arstark said yes, that is correct.

Mr. Moretz said you just breed them once a year?

Ms. Arstark said breed them once a year.

Mr. Moretz said farms have dogs do they not?

Ms. Arstark said I hope so.

Mr. Moretz said what other animals does she have on the farm?

Ms. Arstark said she has a registered Clyde's Dale horse, four goats, three chickens, and four rabbits, and she is getting ready to add another horse to the program

Mr. Moretz said is a large part of the property also cultivated?

Ms. Arstark said oh yes, everything is for the crops and cultivated.

Mr. Moretz said the part that is not used for those animals and your house?

Ms. Arstark said that is right, correct.

Mr. Moretz said there was a discussion about Mr. Thrift and what he had stated as far as your application, did he send you an email?

Ms. Arstark said yes sir.

Mr. Moretz showed the email and asked Ms. Arstark if that was the email you were referring to?

Ms. Arstark said yes.

Mr. Moretz said there was some controversy about whether it was admissible, but that is the email you received?

The Chair asked Mr. Moretz if that had been entered into the record? He does not believe that is part of your original packet. You will need to provide that to the Clerk.

Mr. Moretz said that is the only copy he has, and he will give to the Clerk

Mr. Goldberg is fine with that and will make sure that it gets on the record.

Mr. Moretz asked Ms. Arstark if there is a chandelier in your barn.

Ms. Arstark said yes, the day that the inspector came to inspect the barn.

Mr. Moretz said which inspector.

Ms. Arstark said the electrical inspector. It was an old light that we had laying in the back of the barn that we had for whatever various reasons. He said you cannot get it approved if you don't turn the light on. So, the poor guy had to go out there and get that light and hang it to get the power and approval for the inspection. So, that is why that ugly light is hanging there, that is the only reason.

She would like to say that the County has been out, and they asked me for a personal meeting to come out to ensure that the barn is being used for agriculture purposes and Mr. Goldberg knows that because he is the one who came out and took pictures of her barn. There is hay in there, there was a Clyde's Dale horse in there, there is feed in there, there is seed in there, there is farming equipment in there. So, it is being used for a barn and it will always be used as a barn, and it has been.

Mr. Paxton has seen several barns with chandeliers, so he is not upset by that. The second thing is, you said that you were not sure exactly what you were going to use the barn for. What was that comment about?

Ms. Arstark said in the beginning she did not know what all she could put into the barn what was going to fit in there because it is a metal barn, and it is not built by wood. So, one of the main problems we had was getting it designed so we could measure the metal structs to put the door frames in to fit a Clyde's Dale. We started with that process because this is very new.

She really wanted to build a wooden barn, she did not want to build a metal barn. But with the pandemic and the cost of lumber and the prices it did not give her any choices, she had to do for that purpose. So that is what she was talking about, how am I going to use the inside of this barn. It was weird in the beginning, the way it looked, but we have been able to figure that out.

Mr. Paxton said several people have used these barns as wedding venues and stuff like that. He said that was never your intention.

Ms. Arstark said no, that was never. You will hear the people speaking. That is a family farm out there and it was made very clear to her what the farm was and that was her intentions and to keep her promise to continue farming it and that is exactly what we have has done. That was the whole intention from the beginning.

She grew up on a farm, she wanted to go back to the farm. Her children did not get an opportunity to experience growing up on a farm, but she did, it is something she thinks every kid should experience, just going back to her roots is all she was doing.

Mr. Moretz said pictures were provided that show the interior.

The Chair said the County packet had inside pictures your packet only had one or two.

Mr. Paxton said several minutes ago he asked a question, Mr. Goldberg has a problem, and your definition was I don't have to worry about his problem because I don't have to answer to that. What is your position on making his problem go away? With regard to the request that he has, so that we can move this process along. He is trying to solve a problem here.

Mr. Moretz thinks we would be happy to plant some buffer along that creek, but it would be in the 30-foot setback area. If you look at the map and you had to do 50 to 80 feet, this is a long skinny piece of property, you would have no property left.

The Chair said staff, correct me if I am wrong, but that is not what is before us? It is whether the appeal is valid or not, it is not to work out any issues. That is something we can be looked at once we have made our decision.

Mr. Koch said the Board would have the option to table it if you want to have discussion.

The Chair said for those who did not hear, Mr. Koch said, if the Appellant and the County want to try work through this, we could table this if you want to try to work toward something. But here today, we are here to determine if the violation is valid or not.

Mr. Corley asked if there are violations accruing? Are there any fines or anything that are accruing at the moment, and if we do table do those pause or do those continue?

Mr. Goldberg said the enforcement is stayed during the pendency of the appeal. So, we are stuck right now, but if we table it, they will not continue to accrue. He will say that he is not optimistic.

We explained the County's position, and what we would need in this report, and he is not optimistic that we would get there, to the point of where we would be aligned, where we would have an acknowledgement of a buffer. But a mediation plan, an acknowledgment of a violation.

A remediation plan, and a condition to no longer, further, violate the buffer. He said it does appear that we are far apart on that, unfortunately.

Mr. Hudspeth said wouldn't it be pretty important to try to resolve this? We do not want to make a decision tonight that would require them to tear that barn down yet, would we?

Mr. Goldberg said what you see here has been going on for more than a year. This has been a good step, but he has not seen a strong indication that we are going to reach an agreement on remediation. He thinks that is us assuming that we can get the court to agree, that they will look the other way, that they will exercise enforcement discretion. He said Mr. Moretz could speak to that otherwise, but we are far away and have been far away since more than a year now unfortunately with ongoing discussions.

Mr. Corley said you do not have to answer this if you do not want to. If we were to vote tonight, to uphold this, the county would still be amenable to a resolution?

Mr. Goldberg would say absolutely. The enforcement would proceed in accordance with the ordinance, but just like we did not bring this here after the second violation happened, the second appeal this kept going, trying to work toward a solution. So, as long as we are talking in good faith. We do not take barns down, we do not like that. We are in a tough spot because of the nature of this permit, and we really bent over backward looking for a solution.

Mr. Crutchfield said Mr. Moretz testified that these wetlands and buffers are not defined anywhere on county maps for anyone to get, is that correct?

Mr. Goldberg said that is correct, the reason is because they vary. If you look at the formula it depends on the slope of the bank. So, there is no GIS capability that we are aware of, at least in the platform that we use, that would be able to automatically calculate that. It is not technologically possible to delineate the extent of the buffer in there.

Mr. Corley will add that on some of those stream maps that were presented, the reason there are two different lines is because those are two different data sources. Really, the only way to ever portray that buffer in an enforceable place, everywhere for all to see, would be to legitimately survey those entire areas of perineal streams to be able to display them. To that point, these streams move overtime, right? So, ten years later that thing may have moved 15 feet one way or the another, so the buffer went with it, right?

Mr. Goldberg said to that point, that is why as part of the ordinance, if there is a waterbody on the property being developed, it requires a survey and that you actually stake out the extent of it. That is what got the house moving forward, was we finally got that November 10, 2021, King survey that delineated the waterbody buffer. If you look at the delineated plan, the pool and the house went right up to that no build buffer but did not cross that, he staked that out. That one was great. We were not going to question that, that is exactly what we needed. The problem is it also delineated with the steel building inside the waterbody buffer.

Ultimately, these tools that are available online are tools, they are not the law, they are not the ordinance, and they are helpful, and we rely upon them, but they are not definitive. The ordinance specifically speaks to the USGS topographic maps in this instance are what are being referenced for the purposes of the waterbody buffer and that is in accordance with the 1994 permit.

Ms. Holly Grimsley asked if the county has had any conversation with the Corps of Engineers regarding any type of mitigation or any response to any of this without her having to go through the packet and look?

Mr. Goldberg said we have had discussions subsequently with the Corps of Engineers. Initially, we are hoping for an opportunity to do a variance. We attested to whether they would be amiable to do a variance. Ultimately, we figured out that it would not be eligible for a variance. He said without going into detail, you have to have a hardship and the hardship is she violated the law and that is not a valid reason for a variance. He could not bring that to the Board, and you would not be able to approve it.

In that discussion we also talked about minor violations and that is where they kind of opened the door. He could not get them to commit to any specific thing.

Ms. Grimsley said her question is if we do not have a definitive answer from them, how would we be able to say that you could go back to the table with them and work on it, any type of mitigation plan.

Mr. Goldberg said unfortunately he cannot, in the sense that he is optimistic under the right circumstances that they would be able to say we are not going to exercise enforcement discretion. But they have been unwilling to commit themselves to that until they see what is in front of them.

Ms. Grimsley said is there an answer from them that there has been a true violation. She knows the interpretation but their response, from the Corps of Engineers. Do we have anything definitive from them stating what the actual infraction is and what their response would be to it? Since it is them that we are actually talking about that has the problem.

Mr. Goldberg said to be clear, we have a problem, this is our ordinance that has been adopted. So, there problem would be if we did not enforce this.

Ms. Grimsley said do we have that from them? I hear you say it is the county's problem.

The Chair said it is the permit from 1990 states.

Ms. Grimley said right, but now we are here and as they have all moved and could have done that, and now that might look a little different from where that map was originally done. How

would we be able to use something that long ago to state that it is still enforceable by that same area?

Mr. Goldberg said their position he cannot speak for them, but their permit states that wherever that USGS map depicts that blue line, they require us to adopt and enforce a buffer emanating from that. The map shows that and that is our commitment to follow that permit and they are unwilling to commit to not enforcing that permit condition on us.

Ms. Grimsley guesses that is her question. If we are saying the two of you would be able to go back and work this out, how would you do that if they are not willing to commit to anything definitive?

Mr. Goldberg said how best case hope he thinks, is if we came with that engineering plan and from a credentialed expert that did the comprehensive review. We would essentially say, Corps everyone admits that there is a violation, but it is not that bad, and we have made the best of it we can. Can you exercise a level of enforcement discretion? They will not exercise that enforcement discretion proactively, unfortunately.

Mr. Moretz would like to reference Section 5, of the packet that was provided to you, we have recent emails from the Corps stating they were not contemplating any action with regard to this or with regard to Cabarrus County at all.

He said the application for a permit says you may use the GIS to print out the subject parcel and create a plot plan if a survey of the property is not available. The County specifically tells you to go to the GIS system when you are applying for these permits. He does not know how you cannot rely on that.

The Chair said she did not do that, you just did a hand drawn map.

Mr. Moretz said there was a GIS photo provided, there was a GIS Tax Parcel ID number there.

The Chair asked Mr. Moretz to show him the GIS map that Ms. Arstark provided with her permit application.

Mr. Moretz said it is there with the septic application.

The Chair said septic, Cabarrus Health Alliance is not Cabarrus Zoning.

Mr. Moretz said Ms. Hernandez stated that she handles that.

Mr. Goldberg said at the appropriate time we would offer a rebuttal.

Mr. Moretz said he is just pointing that out. We are going to conclude it on that. He needs to register a couple of objections for the record since this could go to Superior Court.

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He wants to object for the record, just get this on the record, that first of all, case law provides that the County is subject to the same appeal guide lines as property owners are, so they had 60 days to appeal the issuance of the permit, the zoning compliance permit. They did not do that, that 60 days has long passed, so they have missed their opportunity to appeal the issuance of the permit, probably why they are setting this up as a violation, which again, if you look back at it there is nothing that has been violated within that permit. We would object to that.

Also, he objects to the introduction in the County's packet of the USGS map. It was not certified by the County Clerk. State Law provides that any maps used for evidence by the County must be certified by the County Clerk, that map has not been certified by the County Clerk. So, the USGS Map that is in the packet provided to you by the County should not be considered by the Board. It is not admissible in this proceeding. He thanked the Board for its time.

The Chair has a question for Mr. Moretz since you entered more evidence. He asked if anyone from the Tax Office here?

Mr. Moretz said yes, he thinks so.

The Chair wants to ask his question first. Ms. Arstark stated the property was purchased in June of 2020, is that correct. This evidence you provided here says the lot was created in 2019, is that correct?

Mr. Moretz asked what the Chair was referring to.

The Chair said the document you just gave us, the email from the Tax Office. The parcel existed now as it was created in 2019. Was this a part of a larger tract and it was subdivided?

Mr. Moretz said no.

The Chair if there was anyone from the Tax Office that could answer that?

Mr. Moretz said Mr. Thrift is here, that is his email.

Mr. Goldberg said maybe the best way to do this is, he was going to bring him up for rebuttal and have him kind of walk through the events.

The Chair that is okay.

Mr. Goldberg called on Mr. Thrift.

The Chair said before we get started does anyone need a quick, quick, quick break? If not, we will charge on.

Ms. Morris reminded the Board that they lock the building, and we have to be out of here preferably by 10:30 so everyone can vacate the building.

The Chair said we will move forward and if we get close on time, we may have to find a stopping point and table. But we will address it as we get closer.

Mr. Goldberg asked Mr. Thrift to state his name for the record.

Mr. David Thrift, Tax Administrator for Cabarrus County, appointed as the County Assessor and the County Tax Collector.

Mr. Goldberg said pursuant to those job duties, do you normally oversee the issuance of Present Use Value determinations?

Mr. Thrift said yes sir.

Mr. Goldberg asked if Mr. Thrift was familiar with the Arstark case and the handling and taxation of it?

Mr. Thrift said yes sir.

Mr. Goldberg asked Mr. Thrift to take us through the sequence of events, the status of the property, when it was PUV, when it was out of the PUV program. Just very briefly, because ultimately, our contention is that this does not necessarily change anything. We think it is appropriate to address.

Mr. Thrift said all the way to the present?

Mr. Goldberg said please.

Mr. Thrift said our tax year and the assessment starts on January 1 of each year. January 1, 2019, this parcel was part of 24.523-acre tract owned by Mr. Paul Stephen McMath. In December 2019, he recorded a Deed 13870, page 165, that transferred about 14.5 acres to Leslie Couch. That transfer left a remaining portion and our records at that point had just over ten acres that was remaining from that property. That property as the remaining ten acres, did not have enough acreage actually in production, in agriculture, to continue qualification in Present Use Value. So, we do what we call a rollback of the property taxes. They had to pay the deferred taxes for the current, plus the previous three years.

Mr. Goldberg said to be clear, he really does not want to get into the nitty gritty of it but, we are talking about actual production. So, not necessarily the lot size, but the area of actual production, growing and raising things.

Mr. Thrift said that is correct. He said it was over ten acres even at that point, but there was not ten acres in actual production. So, it was disqualified, we created the roll back bills, Mr. McMath paid those bills.

Mr. Goldberg asked what was taking up the space within the ten acres at the time?

Mr. Thrift said of the ten acres, in addition to the right of way from the center of the road, which has been discussed, there were two distinct fields that were in production in agriculture. His measurements indicated it was about 7.5 acres, give or take, those are not exact measurements. The rest of the area was wooded or not farmed, by his imagery. So, that left a large portion of the property, even though there was ten acres, it was not in production from an agriculture standpoint and that was not disputed by Mr. McMath who paid the rollback bills on that.

The Chair asked if any of that was in the forestry program?

Mr. Thrift said no sir. He said the rollback bills were paid. January 1, 2020, Mr. McMath still owned the property, it was no longer in Present Use Value at that time, so we had an assessed value at market value. The property transferred, the deed he sees recorded was 14293, page 108 to Connie and James Arstark, June 30, 2020.

At that point, the property was not in the Present Use Value Program so, there was no opportunity to continue the use, which was described earlier as they missed an opportunity. But that did not exist as an opportunity so, it really was not a missed opportunity. The property was not in Present Use at that time.

January 13, 2021, an AV5 application was filed by Connie and James Arstark. That is when it was signed, requesting Present Use Value Deferral Program for tax year 2021.

Mr. Goldberg asked Mr. Thrift if this is a copy of that (showed AV5 application).

Mr. Thrift said yes. He said based on the information provided in the application and our staff discussed that with Ms. Arstark, actually took a site visit to look at the property and saw that there was agriculture taking place, and she approved the application based on that and it was done on February 25th.

Mr. Goldberg said briefly, the parcel ID, open land not in production (showed the AV5 application). He asked Mr. Thrift what is that number right there?

Mr. Thrift said 11.54 is not in production.

Mr. Goldberg said homesite there?

Mr. Thrift said .6.

Mr. Goldberg said that would not apply towards.

Mr. Thrift said that would be extracted out of the calculation.

Mr. Goldberg said that would be a nonfarm purpose. It does mention farm activities, soybeans, and corn?

Mr. Thrift said that is correct.

Mr. Goldberg said and then here 2020, 2019, 2018, soybeans and corn.

Mr. Thrift said that is correct.

Mr. Goldberg said that is ten acres each?

Mr. Thrift said that is what is presented in the application.

Mr. Goldberg asked if it was Ms. Arstark's signature?

Mr. Thrift said based on our information, it seems so.

Mr. Goldberg said it is dated January 13, 2021?

Mr. Thrift said that is correct.

Mr. Goldberg said continue.

Mr. Thrift said our staff initially, approved that application based on the numbers provided there. After the fact, he actually reviewed that property looking at our information, and identified as he mentioned earlier the areas based on just an aerial calculation, areas that were not in production. On March 19, 2021, he sent a letter to Mr. and Mrs. Arstark rescinding our approval of that PUV application.

Mr. Goldberg showed the letter and asked Mr. Thrift if that was the letter?

Mr. Thrift said yes.

Mr. Crutchfield said just for clarification, would the footprint of the barn be concluded in that area of production.

Mr. Thrift said if barn is used for agricultural purposes, the land underneath it does qualify for that program. If it is not, then it would not.

Mr. Crutchfield said the house parcel would be deducted because farmers do not have the homeplace listed.

Mr. Thrift said the homesite is not included in that calculation of the acreage in production.

Mr. Goldberg asked Mr. Thrift if in his opinion, was raising and breeding of dogs considered agricultural purpose?

Mr. Thrift said that portion of the property probably would not qualify. So, we sent the letter rescinding the Present Use Value. The reason sited there was the lack of acreage in actual production. Ms. Arstark appealed that within a timely appeal to the Board of Equalization and Review, there was an initial hearing, information was presented, and the Board asked for a follow-up meeting with Ms. Arstark.

He and Ms. Arstark met to discuss what was taking place at the property. I explained our position was looking at January 1, 2021, was an application for 2021 taxes and the deferment of those. We had a subsequent final hearing on September 30<sup>th</sup>, the Board of Equalization and Review denied the application and her appeal of that. She presented a letter to the PTC, that was November 5, and December 2 was a response letter from the PTC acknowledging her initial request to appeal, explaining what she needed to do and the lack of timely AV14 and what that could potentially result in, and we have not heard anything beyond that. Her submission to the PTC in our opinion, is not a validate appeal but that is not his decision to make.

Mr. Goldberg (showed an application) asked Mr. Thrift what are we looking at here?

Mr. Thrift said she has also submitted a 2022 AV5 application for Present Use Deferment for the Tax year 2022.

Mr. Goldberg said so now in the homesite is how much?

Mr. Thrift said it is now listed as .4 on the application with 11.14 in open land production.

Mr. Goldberg said in 2021, we are seeing corn and hay. Hay and soybeans in previous years?

Mr. Thrift said that is what the application reads, yes.

Mr. Goldberg said showed tax forms and said this was submitted?

Mr. Thrift said yes, as part of the application.

Mr. Goldberg said that is for, it is tough to make out, but that is a 2019 tax return for John Britt?

Mr. Thrift said yes, sir.

Mr. Goldberg said and subsequently, most recently John Britt 2020.

Mr. Thrift said yes, sir.

Mr. Goldberg said there is no numbers on there?

Mr. Thrift said it is an IRS form that looks like it was submitted everything blacked out for only us to see.

Mr. Goldberg said at what point was this property in the PUV? What was the most recent time that it was in the PUV?

Mr. Thrifts said for tax year 2019. It was initially part of a larger tract that was in Present Use, those taxes were deferred. By December that year it was disqualified, and the roll back taxes took place, so those deferments were paid in December 2019.

Mr. Goldberg said based on that, it was not in the Present Use Value Program at the time the building was constructed?

Mr. Thrift said that is correct.

Mr. Goldberg said, and it is not right now?

Mr. Thrift said, that is correct.

Mr. Goldberg said there was a few days period where it was initially, and then you revoked it?

Mr. Thrift said that is correct, officially from February 25 to March 19, was his letter of rescinding that.

The Chair asked if there were any questions for Mr. Goldberg.

Mr. Crutchfield asked if it were required to be in the program to have a barn?

Mr. Goldberg said there are multiple different ways to get there. There are three safe harbors: if you show a PUV, you get it. If you have a state sales tax exemption, which we have not seen yet unfortunately, you get it, at the time especially. He believes there is a third qualification. There are safe harbors. He said separately, if it meets the definition in Statute of farm or agricultural, then separately, you can be considered a bona fide farm. But remember, it also has to be a farm use for that particular structure.

Mr. Crutchfield thought they presented a certificate of sales tax exemption.

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The Chair said they did, dated August 25, 2021. It's in the packet. He said while they are looking do you know if the state tax exemption from the state revenue is yearly or a onetime thing?

Mr. Thrift said that is an income tax exemption that he is not an expert on.

Mr. Crutchfield said it is a one-time thing, subject to audit.

Mr. Goldberg said looking at this, he believes this is a certificate of registration, in the sense that you have a certificate that you collect sales tax. If you go online, he did it today and ask for farm tax exemption, he was not able to find on associated with the property. We can double check that, but he has not seen anything to that affect. This he believes means she is able to collect sales tax, and he has not seen anything that says she qualifies for the farm sales tax exemption.

Mr. Paxton said she stated that she has hay in the barn. If that hay was for sale, would that be considered an agricultural use?

Mr. Thrift thinks hay certainly is a product of agriculture, from our prospective. If that barn stored hay, we would suggest that. Just to be clear, we have not made a determination within our discussion, that the property did not meet the required acres within production. We did not make the calculation to remove that portion of the barn. So, at that time we did not dispute that the barn was being used for agricultural purposes. Our dispute was that the acreage that was being farmed, soybeans and corn that we could identify, was just over seven acres. That was the reason, we were not at the ten and therefore not in...

Mr. Goldberg said to be clear about this though, it has the testimony of Ms. Arstark that she is not farming this land, the crops. She is having someone else do it. We have not seen anything that says that metal structure, the hay is being collected from there, it is being used to farm that. She has testified previously that the neighbor is doing it and we have not seen anything that testifies that says it is being used for that crop raising purpose.

Mr. Crutchfield said it is not necessary. He has a farm, and he hires people to crop his farm but that does not exempt the rest of the farm from being in the farm program.

Mr. Goldberg said no, but as far as applying the barn, the metal structures footage towards the ten or more acres of active production if it is an agriculture structure. If it is being used for these agriculture purposes, you get the building, you get the curtilage towards that acreage. If it is not being used for that purpose, and it is being used for a nonagricultural or nonfarm purpose then that it would not be.

Our position would be, is we are not really sure that this structure is being used. Like the hay, we have not had evidence one way or the other that that was collected from the field and being there and sold. It may just as well have been placed there, bought off farm and placed there. We have not had that in evidence either way. He wants to be clear about that nuance.

The Chair said is it a correct statement that whether the barn is farm use or not, it does not get enough acreage to get you over the ten acres based upon your calculations?

Mr. Thrift said yes, the land directly underneath the barn for or against was not part of our calculation for actual production, it did not meet that.

The Chair said adding hypothetical, a half an acre is not going to get you over ten when you are a little over seven.

Mr. Thrift said that is correct.

Mr. Goldberg said if there are no more questions for Mr. Thrift, he would like to get Ms. Hernandez back up very briefly.

Mr. Moretz would like to question Mr. Thrift.

Mr. Zac Moretz asked Mr. Thrift how he determined that it was not up to ten acres when he revoked it.

Mr. Thrift said his initial review was based on a number of different aerial photography, Pictometry, which is ortho-aerial imagery, as well as GIS.

Mr. Moretz asked if those were the same aerials that is on the GIS that he can look at or anybody can look at that you are referring to?

Mr. Thrift said the aerials on the GIS are one piece of that, the Pictometry, ortho-imagery is internal. He said that was presented to our Board of Equalization and Review, that evidence was presented to them. They used that to make their determination.

Mr. Moretz said you used the GIS in a large way to make that determination?

Mr. Thrift said GIS was one of the applications we used.

Mr. Moretz asked if anyone went out there and measure?

Mr. Thrift has not physically gone and measured the property, that is not something he would do.

Mr. Moretz said you do it by using the GIS or aerial topography.

Mr. Thrift said right.

Mr. Moretz said when you do these, do you subtract out the buffer, the water buffer we are talking about?

Mr. Thrift said we typically do not try to subtract out water buffer, if it can be shown as in this case, it is kind of the edge of the property line. We have not made a calculation to subtract that out from looking at the calculation of Present Use Value, what is in production.

Mr. Moretz said as far as you are concerned it can be used in production.

Mr. Thrift said we do not make an effort to extract that in our calculation.

Mr. Moretz said as far as you are concerned it can be used for production and counted towards it.

Mr. Thrift said that portion would be part of our calculation of acreage and production that the fields go up to, that is correct.

Mr. Moretz said you have been provided a survey now, that shows the different acreage and things.

Mr. Thrift has seen a number of surveys that would provide that.

Mr. Moretz said there was one that was the latest and greatest one that was provided for the current application does show the amount for the house and shows the amount in the road right of way and the amount devoted to farm use.

Mr. Thrift thinks the most recent that was submitted with the 2022 application had some breakdown of what is in road right of way and what remaining land that is not in the homesite. He said that is not consistent with our calculation, what is actually in production. That has never been part of the determination. The survey did not measure the fields that were agriculture production versus the wooded areas that is not.

Mr. Moretz said, it does not all have to be in production, does it?

Mr. Thrift said there has to be ten acres in production to make the standard.

Mr. Moretz said isn't it correct to say in farm use, so it can be used for livestock or barns or storage of farm equipment for example, right?

Mr. Thrift said in order to meet the qualifications for Present Use Value deferment, which is a property tax deferment, there has to be ten acres in actual production in that initial ten acres. There can be other acreage beyond that but the initial ten acres in actual production has to be in place.

Mr. Moretz asked if livestock count?

Mr. Thrift said if livestock were part of the use of property that could be considered a part of actual production.

Mr. Moretz said and a barn as well in that case?

Mr. Thrift said if the barn is being used for that, the land underneath would be part of the calculation.

Mr. Crutchfield said just for clarification, if you have a ten-acre parcel and you have a chicken house in the middle of it, the only thing that is really producing anything is the chicken house but there is an allowance for the property around the chicken house because you have to be able to get a tractor around that chicken house or some way by which to service that chicken house. How do you determine what part of that is production and what part is not?

Mr. Thrift said if the structure itself is used as part of the agricultural product, then the land underneath is considered such and the appropriate use around it as well. In an instance where there is ten acres, the only structure on the property is a chicken house, if that is part of the production in the actual calculation, then the land underneath that counts as part of those ten acres and that property could qualify.

Mr. Crutchfield said given that ten acres, if it is a one-acre chicken house, nine acres around it would still be considered in production because of the chicken house existing on it?

Mr. Thrift said if the chicken house was separate from the agricultural use of the property, we would subtract that out. If it was part of the agricultural use of the property it would be part of the ten-acre calculation. We would not subtract out the use of a building that was used for agricultural purposes.

Mr. Crutchfield is trying to get to what the other nine acres is considered, because you do not have chickens on all ten acres, you only have it on one, but you still have to get to the chicken house to service it. You have to be able to get tractors around it and deal with maintaining it. How do we decide how much of the ten acres is really in production?

Mr. Thrift said if nine acres surrounding the chicken house was not being used for agriculture purposes, it would not be in actual production, and therefore the whole property would not qualify.

Mr. Crutchfield said you have to realize that is kind of unrealistic. Even when you have a barn, there is an area around the barn that is used in the movement of equipment and hay and tractors, so on and so forth, that is not actually producing anything, but it is necessary for the operation of a farm.

You said, you used aerial maps to determine what the production was. He is not sure what

time of year those aerial maps were taken but it is really hard from an aerial map to tell what is being produced on a farm.

Mr. Goldberg is concerned about getting relevance at this point. In the since that whether it is in the PUV or not in the PUV, and whether that was handled appropriately by the Board of Equalization, that is a complete separate process.

Mr. Thrift's testimony mainly consisted of what the PUV status as we go, as an indicator of a bona fide farm for use exemption for this. He does not want to cut any one short, but he wants to make sure that we are clear that you do not have the authority to question the Board of Equalization's determination.

Mr. Crutchfield said he understands, but it just feels, and pardon him if he is wrong, that what we are trying to do is to determine that the property is not a bona fide farm and therefore has no exemption from the building requirements for permits for barns. That is what it feels like to him that we are headed. He is trying to make sure, that if that is true, that we are being fair and clear about how we define that it is or is not production.

Mr. Goldberg said the acreage is just for the PUV status and so if PUV, then bona fide farm and then we can have the legal discussions. So separately, if not PUV or one of those safe harbors that we talked about substantively whether it is, he would argue though, that if you have a ten-acre lot and you put a goat on there you are not a goat farmer, you have pet.

The key about actual production is whether you are using the land as an economic driver, you are producing on it. For ten acres, we would expect to see not one chicken coop, we would need a lot of chicken coops, correct him if he is wrong, to justify using that entire ten acres.

Mr. Hudspeth said even if we decide this is a bona fide farm, it still does not resolve the problem we have in front of us.

Mr. Goldberg said that would be the County's position.

Mr. Moretz said you mentioned that a lot of that was blacked out on the tax returns. Isn't it typical for most folks to take out the financial information? All the statute requires is that they actually file a Schedule F for their tax return. Isn't that pretty typical for people to redact out their financials?

Mr. Thrift thinks it is typical to redact out financials if you are just wanting to show that Mr. Britt, in this case filed a Schedule F. This gives no indication that, that Schedule F was related to that property in anyway. He is not sure they are using that for declaration of actual income.

Mr. Moretz when they can expect to know if you are going to approve it or not. It was sent in early January.

Mr. Thrift said we are in the process of review those now, so that will be shortly.

Mr. Goldberg would like to have Ms. Hernandez clarify her process. He asked her if she reviews the septic permitting applications, is that part of your job function?

Ms. Hernandez said she intakes the information that the Health Department has requested of her to intake. She does not review it to whether it is appropriate or what is needed for their process.

Mr. Goldberg said in the normal course of your business do you use the submissions for the septic permits that you forward over to the Health Department, do you use that for your permitting decisions?

Mr. Hernandez said no, never because the changes happen after the Health Department has come out there. She wanted to add one thing. They mentioned that there were several site plans submitted. Well, anytime you change a property, you would be expected to reflect the current situation, that is the reason why you see several plot plans.

Mr. Goldberg asked Ms. Hernandez if she is authorized to issue permits that are not in accordance with the law.

Ms. Hernandez said no.

Mr. Goldberg said special exemptions, waivers, do you have that authority?

Ms. Hernandez said no.

Mr. Goldberg said to be clear, you issued that permit for the accessory building after it was built.

Ms. Hernandez said yes.

Mr. Goldberg said what would have happened if at that point it had been identified as being in the waterbody buffer.

Ms. Hernandez said it would have been denied.

Mr. Goldberg called Mr. Love to come forward to very briefly, clarify the building permit time line.

Mr. Matt Love, Chief Building Inspector introduced himself.

Mr. Goldberg said as part of your duties and responsibilities are you familiar with the issuance of permits on the subject property?

Mr. Love said yes, sir.

Mr. Goldberg said based on the information that you have, explain the history of the permitting process.

Mr. Love said any permit?

Mr. Goldberg said no, in this case. At what point did the permitting happen for the accessory building?

Mr. Love said the permit was issued after the building was erected. We were notified that there was an accessory building on the property so, after they got there zoning permit, we issued a building permit.

Mr. Goldberg said the accessory building was built prior to an application for a building permit?

Mr. Love said that is correct.

Mr. Goldberg asked if there was anything Mr. Love wanted to add on his testimony on that or anything the Board wanted to ask?

Mr. Crutchfield asked if the permit was for the building or for the electrical work in the building?

Mr. Love said we actually have a permit for both the building and the electrical. We have done electrical inspections on the building.

Mr. Goldberg said are there any plumbing permitting for the accessory structure?

Mr. Love said no.

Mr. Goldberg asked if there had been any permits for the pool?

Mr. Love said we have an application for a pool permit and they have paid the permit fees for the pool, but it has not been issued at the time.

Ms. Holly Grimsley asked what is the holdup is on the pool permit?

Mr. Love said just ready to be issued.

Ms. Grimsley said would there have been any red flags for you to deny that building permit or the electrical permit if the zoning permit had been permitted?

Mr. Love said if we have a zoning permit, we cannot hold it up.

The Chair asked Mr. Moretz if he had any questions.

Mr. Moretz said no, thank you.

Mr. Goldberg would like to take a minute to summate. The fact of the matter is we would have loved to have caught this early. Unfortunately, we have not had that opportunity. There has been back and forth and back and forth. This has been anything but ordinary unfortunately. There has been this back and forth, and we do not usually find ourselves at this point for a number of reasons, and a lot of it hinges on the communication from the applicant. We rely heavily on that, rather than having to spend the time necessarily doing every single permit, going out there doing a full survey and we balance that risk, expediency versus accuracy and with knowledge that sometimes it has to be corrected on the back end.

Keep in mind this is not that, the building was built, regardless of permitting. There is no indication here, that she relied on anything that said you are exempt. Our position is it would not be exempt and even if it was exempt from County zoning regulations, it would not be exempt from local and environmental regulations like the ones we are talking about here today on the waterbody buffer.

He said ultimately this is a fairly straight forward issue, and he hopes that the Board will focus on the issues before you which is: did she build a structure with out a permit, yes or no? Did she enter the waterbody buffer, yes or no? Did it apply, yes or no?

our County, that we are required by law to enforce appropriately, and in this case being overseen by the Corps of Engineers, and ultimately here we are. The reason this has been going on for a year, in part, is because we have been looking for every single out that we can find, and we have not found it yet. Here we are coming to a head.

He invites the public to voice that and he thinks that is appropriate and he stands ready for any questions that might come up.

The Chair said number three and four of the rules states that there will be 15 minutes for the opponents and the proponents. We are approaching 10:25, would it be a correct assumption to not open the public hearing and table this because we are not going to get through this before they close the building.

Mr. Koch thinks they should finish the public hearing. He asked how many cards the Chair had.

The Chair said that is the thing, he has four, and this is the confusing part, people put in favor. He does not know if they mean in favor of approving the appeal or in favor of the violation. So, he has four and one. He thinks they know what they meant.

The Chair said how does the rest of the Board feel, should we do the public portion?

Mr. Wise makes a motion to table it. It will be fresher to hear the other side. He hates to delay it another month but that is his thoughts.

Mr. Koch asked if that was a motion?

The Chair asked if anyone else had anything to add.

Mr. Corley said just to be clear, according to the cards, I know we are confused but there appears to be four on one side and one on the other?

The Chair said correct.

Mr. Corley said the reason he would side with Mr. Wise would be that he is very concerned with beginning and potentially hearing one side and then coming back and only hearing a second side. He does have a fundamental issue with that.

Mr. Goldberg asked if there is anyone here to speak on the County's position. There was no response.

He asked if there was anyone here to speak on the appellant's position? There were five hands.

The Chair said there is five to nothing. He said they have fifteen minutes and that is it. They can talk or we can come back, or we can come back, and they can talk.

Mr. Charles Paxton made a motion to table the appeal process for APPL2021-00001 until the April 12, 2022, meeting.

Ms. Holly Grimsley said do we feel like we can get through the speakers? She feels like if all the speakers are here for them.

Mr. Corley said just to clarify, the reason that we are considering tabling is so we can hear everything you have to say. He just wants to make that clear. We are not kicking this can, to have to have to come back. What we do not want to have to do is cut you off in mid-sentence and all get out of here. He said he could go either way, and there is a motion on the floor. But it is going to be up to the five presenters.

Mr. Koch said if they can keep from being repeating what has already been stated.

Mr. Paxton withdraws his motion.

The Chair opened the public hearing. He will call on those speaking generally in favor of this request. He called Mr. Tim Hahn.

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Mr. Tim Hahn, 3475 Hahn-Scott Road, Mt. Pleasant, NC, addressed the Board. He lives just above Connie and Jim. his family has owned this property, all of his ancestors. He knows this wetland, so called creek very well. He played there his whole life, in the summertime there is not a drop of water in it. There is no wetland, he does not see any problem with what is going on. It is his just his opinion, this is not a perennial creek. It is not much more than an ephemeral, it catches water from storm runoff.

The Chair called Ms. Melanie Lawrence.

Melanie Lawrence, 3475 Hahn Scott Road, Mt. Pleasant, NC addressed the Board stating that she lives 2.2 miles from the Arstark's. She said the barn is used for her horse. She has personally gone over and helped her halter her Clydesdale in the barn, and it is not just used for the puppies. Just know that was Facebook, and yes that is her dogs at the moment, but her horse has been there. She does not know the specifics of how long she has had the horse, but she has a 60-foot round pen, she has a horse, the horse goes in the stall. There is stall for the horse, there is hay, there is grain, there is everything for the horse in the barn.

Also, she lives on this so-called perennial creek that as Tim mentioned, there is not a lot of water in this creek. I run across to the neighbors and my feet are not getting wet. Our property, since they have moved in, is actually draining better than it has drained in the three years that she has lived there.

She has also lived on Bowman Barrier since 1980 off and on. She has been on this property as well for many, many years, and it is draining better than it ever has with them just cleaning things out, not taking bushes down, they just cleaned the property. She said they are a farm.

One thing that she saw that was interesting, that is by your Zoning Board, is to protect farmland, to protect water, to protect pastures. Part of this property that they are saying is not in use for crops, may not be in use for crops, but it is housing a horse. She does not know how that can be not considered a farm when you have a horse, you have goats, you have feed, you have everything.

The Chair called Mr. Steve McMath.

Mr. Steve McMath, 3215 Woodchuck Drive, Kannapolis, NC addressed the Board stating that he is the former owner of that property. It was in the Hahn family, he and his late wife inherited it. Her father who inherited it from his father, who inherited it from his father. It has been in farm production ever since. He moved there in 1989, went into the farm program and farmed all of this property since 1989. Part of the time he had animals on there. He raised sheep and they used wooded parts of his property to bed down in the hot summer days. Even though it is a little bit of wooded area it is used for animals to survey the heat.

The perennial stream is a stream. He looked it up. It is a stream that always has water in it. He

lived there for 20 years, he owned the property for 30 years, he was a tenant(?) with the property for another 10 years. He has been around that property for 40 years. He has spent many, many times in the summer walking in that creek with no water. That is an intermittent creek. He knows how it is classified but it is not, and nobody would have ever thought that it was anything other than an intermittent creek and there are no wetlands there. There have never been any wetlands other than one time when beavers built a dam on property downstream and backed up on to our property and finally the state came in and broke the dam out.

The Chair called Mr. Robbie Britt.

Mr. Robbie Britt, 10701 Bowman-Barrier Road, Mt. Pleasant, NC addressed the Board stating that his legal name is John Britt and those were his tax returns. It is going to be hard to cover it all three minutes. He is also subject to USDA, FSA, Soil and Water regulations and rules. He has not been notified of any wetland disturbance or that there were any wetlands on the property. As Mr. McMath said, I have farmed it for 20 years after he quit farming it; I was his tenant. My tax returns are there, and that Schedule F includes every piece of parcel that he farms. It is not just for that. That is why those numbers are blacked out. All he has to provide is that he filed the form.

He said the creek is intermittent. In the summertime it is going to be dry. He has lived there for 20 years and there is no basis for it being a perennial creek.

As far as the barn, the barn stores hay and feed and farm implements, and tools. He has seen it and knows what it is used for. They even call it a barn.

The Chair asked if there were any other questions or comments for staff before closing the public hearing? There being none the Chair closed the public hearing.

Mr. Charles Paxton, **MOTIONED, SECONDED** by Ms. Holley Grimsley to **TABLE** APPL2021-00001 until April 12, 2022, meeting.

Mr. Rich Koch reminded the Board not to discuss the case outside of the meeting and wait to discuss it next month between the Board.

Mr. Corley said just for the audience sake, there will be no additional public hearing.

Mr. Koch said that is correct, it has been closed.

The Chair said you are welcome to come but will not be able to speak.

**No Legal Update**

**No Directors Report**

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There being no further discussion, Ms. Holly Grimsley **MOTIONED, SECONDED** by Mr. Andrew Nance, to adjourn the meeting at 10:36 p.m. The vote was unanimous.

**APPROVED BY:**

Mr. Adam Dagenhart

**SUBMITTED BY:**

Arlena B. Roberts

**ATTEST BY:**

Susie Morris, Planning and Zoning Manager

DRAFT

Planning and Zoning Commission Minutes

March 30, 2022, Special Meeting

Mr. Adam Dagenhart, Chair, called the meeting to order at 6:35 p.m. Members present, in addition to the Chair, were Mr. Jeffrey Corley, Mr. Kevin Crutchfield, Mr. David Hudspeth, Mr. Andrew Nance, Ms. Ingrid Nurse, Mr. Charles Paxton, Mr. Chris Pinto, Mr. Brent Rockett and Mr. Stephen Wise. Attending from the Planning and Zoning Division were, Ms. Susie Morris, Planning and Zoning Manager, Mr. Jay Lowe, Sr. Zoning Enforcement Officer, Ms. Martha Hernandez, Sr. Zoning Permit Associate, Ms. Arlena Roberts, Clerk to the Board, Mr. Richard Koch, County Attorney and Mr. David Goldberg, Deputy County Attorney.

Attending from the Tax Administration Office was Mr. David Thrift, Tax Administrator, Ms. Leslie Rimer, Exempt Property Analyst.

Attending from Construction Standards Office was Mr. Matt Love, Chief Codes Enforcement Officer and Ms. Theresa Wilkerson, Permit Associate.

**Roll Call**

The Chair said the purpose of this meeting is to resume the meeting from March 8, 2022, APPL2021-00001 – Appeal of a Notice of Violation for construction of structure without permits, disturbances of the required waterbody buffers and wetland disturbance. The address associated with the subject property is 3233 Hahn Scott Road (PIN: 5589-24-3362).

The Chair said at the last meeting, we concluded with the closing of the public hearing. At this time, the Board will need to consider whether Staff properly issued a Notice of Violation for construction of a structure without permits, disturbances of the waterbody buffers and wetland disturbances.

Previously, both parties concluded submission of evidence. During deliberations, we are able to ask questions if we have any, from either side. At this time, in the event that there are any questions, he will need to swear in all of the parties again. If you were not here last time and you think you might speak, you need to stand with the group and fill out a blue card and give it to the Clerk.

Mr. Richard Koch, County Attorney, stated that we have seated Ms. Ingrid Nurse and we need to make that a matter of the record. Ms. Grimsley sat last time and she is not here. Ms. Nurse was here in the room during the whole hearing, and she heard everything, so she has been seated.

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He said the law on that is that she was here and even though she was not part the panel originally, she is allowed to be seated because she did hear the evidence, and if she had not been here, she could still sit if she had reviewed everything before she came to the meeting tonight. So, she is allowed to be seated. He just wanted to point that out to the Board and to the people that are here.

The Chair administered the oath.

Mr. Zack Moretz said before we get started, he requests that the Board hear a matter of introducing two new pieces of evidence that were not available at the hearing. That is up to the Board's discretion, but they are pieces of evidence that were not available at that time, that have just become available since then and is highly relevant. We would like the chance to request the Board will admit them or at least hear them and give them whatever weight they desire.

The Chair asked Mr. Goldberg if he had any input before the Board discuss it.

Mr. David Goldberg, Deputy County Attorney, said the County's position is we had ample time to bring the evidence to light. This has been going on for years

Ms. Arstark spoke out from the audience.

The Chair reminded the audience that the rules still apply from the last meeting. If anyone speaks out, you will be asked to leave.

Mr. Goldberg continued. He said if they were to enter more evidence, we would come with more evidence as well.

We got notice of this yesterday, and we have not had a reasonable opportunity to consider it. It would just be overall prejudicial. We have examined it and do not think it would be helpful, in our opinion. We would oppose this but defer to the Board's judgment on it.

Mr. Moretz said if he could respond to that, the one is a set of emails between Mr. Goldberg and the Corps of Engineers that was in existence in 2021, which we did not have access to until a couple of days ago, when pursuant to a Freedom of Information Act request where we received about 1500 documents which we have not been through all those yet. But this is a very relevant document that we did not have until yesterday or the day before yesterday.

The other is a little more information from the Geologist, that we had presented information from him previously. There were some questions about his credentials and his opinions, and this is a further letter from him, as well as his credentials attached to the letter. We think those are very relevant for your understanding.

He said the first letter that was introduced, was part of the evidence in providing the professional

credentials of that gentleman and that was just received by us on the 29<sup>th</sup> of March, pursuant to trying to work this out with the County, which we were trying to do prior to tonight.

So, these are both new and nothing that we would have been able to present, and they have been shared with Mr. Goldberg. One of them is a string of emails from him that he provided to me so that is certainly not prejudicial to him and the other is something that we only received ourselves a couple of days ago and he provided to him that same day.

We would suggest as it would be in a court of law, you accept them and each individual Board member can give them whatever credence, or lack of credence, they believe they deserve. If some individual believes they should not have been admitted, do not look at it. But you do us a disservice by not allowing us to get all of the evidence in front of you. Why not put it in front of you and if you think it is not relevant or should not have been allowed, you do not have to look at it. But, if you do not look at it, it could never be considered by you, and we would object strongly, and it would be grounds for appeal of your decision if you are not looking at all of the evidence.

The Chair said you are just wanting to hand us a piece of paper. You are not wanting to get up here and explain anything? Because you were given ample time, both sides last time.

Mr. Moretz said we could do that. Ms. Arstark would like a chance to summarize in three minutes her opinion, that is up to the Board. As far as these pieces of papers, yes, he would just pass them up.

Mr. Jeff Corley does not know what the process is, whether this is a vote or whether you just want comment. He is very uncomfortable with adding additional evidence into consideration. This case would have been over with had we not had the time limits last meeting. On principle, he feels this late in the process, allowing new evidence without the other side being prepared to also provide new evidence, he is uncomfortable. He is uncomfortable even hearing what the content was, the description of what those things are, because he feels that was an opportunity that should have occurred. But personally, he is not comfortable, and that has nothing to do with the case or the applicant. He wants to make that clear. He thinks that it is just a procedural issue that he has a little bit of hardship with.

Mr. Paxton would like more guidance from Mr. Koch.

Mr. Koch said as was pointed out just a minute ago, it is up to the Board to vote on whether you want to take more evidence. But as it was also pointed out, it is at your discretion and is something that you can do. He thinks that some of what has been discussed goes beyond what the law is. It is not necessarily a point of appeal that you did not consider it because the public hearing was closed last time.

This case has been going on for about a year and a half and if there has been a problem with time here at the end, it is something that is on the part of one party or the other not having their case

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ready and be able to present it to you when the original hearing was held. So, it is up to the Board to decide whether you want to hear something else, but it is not fair to the other side to have someone come in the day before and say that they want to open the case again and have you hear, because it does not give the other side an opportunity to deal with that in anyway, with enough time to be able to deal with it fairly.

It is in the Board's discretion as to what you want to do. He thinks the Board needs to vote on whether to allow more evidence or not.

Mr. Moretz said if the time to respond to it is an issue, which again he thinks that is a disingenuous statement to make, given that one is a set of emails between Mr. Goldberg and the Army Corps of Engineers from a year ago, that he just received, and one is something he only received two days ago and he provided a copy to him.

We would move that the hearing be reconvened to a later time to give the County time to review these and respond to them if that is necessary.

The Chair asked if anyone had anything to ask or input.

Mr. Kevin Crutchfield is personally inclined to allow the evidence. If we are going to do this thing and it affect somebody's livelihood and their house, he thinks we should take every opportunity to get it right. That his position on it.

The Chair said the problem that he has allowing evidence that Staff or the Board has looked at before this meeting is how do we digest it and process it for any discussions we are going to have?

The last meeting, their attorney entered into the record a packet that was not a part of our packet and Staff had only seen it the day before. He is not sure that anything is going to be resolved if he enters this evidence. He does not think there was any question other than the term Geologist versus Engineer, which his email did not state that he was a professional engineer. He does not know why that is even relevant. He does not know why you even brought that up. You should not have even told us that in your discussion. He feels like you just slid that in there so you could....

Mr. Moretz said put it to a vote. Mr. Dagenhart you are against it, so is Mr. Corley, it is obvious. Why don't you put it to a vote and just decide what you want to do? I am sorry to put such a fine point on it, but everybody in the room knows you are voting against it and as is Mr. Corley. So, if they want to hear the evidence, let them hear the evidence. If they don't.

The Chair reminded Mr. Moretz that the public hearing is closed, and presentations have been completed.

Mr. Moretz said he is aware of that.

Mr. Paxton said his position is that he does not mind hearing the evidence if it is short and sweet. What can you do, to do that?

Mr. Moretz has highlighted the letters and he will just hand them to the Board, and I have said we will not do any testimony.

Mr. Paxton **MOTIONED, SECONDED** by Mr. Kevin Crutchfield to accept the additional information with no comments from the appellant. The vote was 5 to 4 to Deny.

Mr. Moretz objects to the refusal to accept the additional documents because they are very relevant. If this does go to Superior Court, it is noted for the record.

Also, we made a motion to reconvene and give the County time to review these. Has that been denied also?

Mr. Goldberg said can we be heard on that?

The Chair said sure.

Mr. Goldberg said, it has to end at some point. The issue is less what is in our ability to respond to this, but there are things that coming out of that last meeting, that we had a couple of weeks to digest that we could try to re-present and bring new evidence in, and we could do this forever. The record exists and we are prepared to move forward with it, and we are all here to do that.

The Chair asked for discussion or a motion.

Mr. Corley said if we are not admitting any more evidence into the record then we have what we have.

The Chair agrees, he asked if anyone else had comments.

Mr. Paxton said do we need a motion?

The Chair believes we do, to accept or deny the appellants request to reconvene.

Mr. Jeff Corley **MOTIONED, SECONDED** by Mr. Charles Paxton to **Deny** the request to reconvene. The vote was 8 to 1 to Deny with Mr. Crutchfield voting for.

Mr. Moretz said if he could ask Ms. Nurse, since she was not here before, if she read all of the record and everything from before, and she feel like you understand everything, and you can make a wise and impartial decision based on the information you reviewed?

Ms. Nurse said yes.

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He asked if she were actually here at the last meeting?

Ms. Nurse said yes, all night.

Mr. Moretz said great, welcome to this circus, thank you.

The Chair said let's not make comments please.

The Chair said moving forward, at this time we will need to discuss and come up with a proposed motion whether to approve or deny the appeal.

A vote to deny the appeal means the violation should have been issued. A vote to uphold the appeal means that the violation should not have been issued. This is a quasi-judicial matter, so the Board needs to consider facts and evidence presented, not opinion or hearsay. Then we need to consider as part of our review, is the evidence or testimony provided competent and relevant to the Notice of Violation that was issued.

As he stated earlier, we are able to ask questions from either side. If you have legal questions, you may ask Mr. Koch. The Chair opened the floor for discussion.

Mr. Crutchfield said evidence was presented last week as to whether this creek bed is perennial or not. Correct?

Mr. Corley believes there was some personal opinion. He does not know that there was actually a determination made that it was or was not.

Mr. Crutchfield said right, and that is part of the problem because part of zoning violation is based on it is one or the other. He does not think we ever got clear definition as to what it is.

The Chair thought there was USGS map that showed the blue line.

Mr. Corley said read the river stream language, which he did a lot of research on. If it is on the USGS map, it is, until a qualified professional and the State or the Corps agree that it is not. So, the default is there are published USGS maps that say what is perennial and what is intermittent. Regardless of whether it is dry half the time. It is what is on the map is what the definition is. But then the Ordinance allows a qualified professional (he is reading it) with concurrence with DNER (who is not really DNER anymore I guess) and US Army Corps of Engineers. So, a professional can go do an evaluation and say there is no way this is a perennial, the State can concur and magically that stream is no longer, has changed classification. There is a process, but where it starts is what is on the map. If that makes sense. So, if a professional said yes, it is just an intermittent, the State had concurred, or the Corp had concurred then this river stream buffer would essentially not exist.

Mr. Paxton said his question is, what is on the GIS?

The Chair said GIS is not what the Ordinance refers too, it is the USGS.

Mr. Paxton said but in the permitting process does it not say consult the GIS?

The Chair said the thing that jumped at him last time was that the surveyor did not pick this up. We had the original property owner here, who subdivided the property. Subdividing the property, especially a property of that size, you have a survey done.

Mr. Paxton said did Chad, do it? Who did the surveying? He has a question and would like Chad to approach the microphone.

Ms. Arstark made a comment from the audience.

The Chair asked her not to make comments. If we want to ask questions, we will ask you to come to the microphone.

The Chair said Chad is not here.

Mr. Paxton said who did the survey?

The Chair said it has a Sam King seal. Whether Sam did it or someone else, he does not know who actually did the work.

Mr. Moretz, speaking from the audience, said Sam King is here and he did the work.

The Chair is aware of who Sam King is, anymore outburst you will be asked to leave.

The Chair said the surveyor is here, but he should know better. My point is it was surveyed multiple times and they know you do not just look at GIS. GIS is just basic information. He knows a blue line, if it shows a blue line on GIS, he should know to go back to the USGS map to determine if that is a solid blue line.

Mr. Paxton said Mr. Chairman you are saying that on the GIS in the permitting process, which they ask you to consult the GIS that it does show that it is a stream or water buffer or whatever?

The Chair said it shows it as a stream. He asked if anyone else had anything to say or any questions.

Mr. Hudspeth said on the zoning compliance certificate it is dated 9/23/2020, and the applicant signed it on 10/02/2020. In red is a notice that says important setback information. Down at the bottom it says all setbacks should be measured from the existing or proposed right of way of record. Is it telling the applicant that they need to do something other than go with this zoning certificate? Do they need other information beyond this?

The Chair said for a building permit.

Mr. Hudspeth said this is a zoning permit, the building permit took place later. It took place on 9/28.

The Chair asked Staff to correct him if he is wrong. To get a zoning clearance you still have to submit a plot plan. He said Staff is shaking their head yes. You cannot get a building permit without a zoning clearance permit. To get a zoning clearance permit you have to submit a plot plan. The plot plan that was submitted is page 57 of our packet. That is not very clear what the applicant submitted. There are two lines there that do not label what those lines are.

Mr. Paxton said did the County Staff ask about that?

The Chair said it is back to the application. The applicant signs the application that they verify that the information on the here is correct. He does not know if staff looked at it and said yeah there is a line. The way it is drawn on here, he does not know which line is the stream, so I do not know which is 30 feet.

Mr. Paxton said does the County not bear some responsibility in asking questions?

Mr. Corley is not responding to Mr. Paxton, but he is just commenting because his head has been in that exact place for a little while, of what a damn mess, right? Has been kind of stuck there. But he has had to narrow down to the question that we are being asked to answer. It is not how we got here, not what the fix is. Is there a violation, was the violation issued correctly? Regardless of all the cloudiness, gosh it just seems really messy, the whole thing of the timing, when it was built and when we tried to catch up and permit it later and how, and the only reason we know about it is because we were out there for the house. It is just a procedural, just a mess.

He hates that it got that way and shares some of those same feelings and he has had to try to compartmentalize that, my confusion of how we got here with what is really out there and is it a violation or not. It is not really a response, he just shares those comments.

Mr. Paxton said he is with Mr. Corley on that. The question before us is this is a violation because an accessory building was built in the stream buffer. That is the question?

The Chair said that is correct.

Mr. Paxton said but you are also telling me that it does not show on the GIS.

The Chair said it does show as a line on the GIS. The County GIS does not show water buffers period. That is correct, Staff? (He said staff answered from the audience Yes) They only show solid blue lines and dashed blue lines.

Mr. Paxton said then it is up to the applicant?

The Chair said that is correct. It is up to the applicant to do the research. That would be his assumption. There is no water body buffer.

Mr. Corley thinks he mentioned last time that the buffer is a calculated buffer based on topography. He is not defending the fact that there is nothing there because that is a fact that he has on his list that the buffer is not shown, but he does think it would be impossible for the County to display buffers that they don't even know the width of until something is surveyed and actually presented.

The Chair said like Mr. Corley said last meeting, these buffers change, just like floodplains change. So, that would be something that would be a constant thing that has to change and is probably why they do not show it.

Mr. Paxton said, his problem is if you ask somebody to look here for this and they look there for that and they do not see it, how do you expect them to pull a rabbit out of hat?

The Chair said that is back to his comment earlier, that there was a surveyor, his responsibility.

Mr. Crutchfield said excuse him if he is out of line, but it seems like the information that got us here is somewhat ambiguous. Like where does the buffer start, where doesn't it start, does it move, does it change. He understands what you are saying about the surveyor, but he is trying to figure out how we hang that around the person who hired the surveyors and make them responsible for a mistake on the surveyor's part, when they would not know any better to ask for them to do it anyway.

One of the things that keep getting stuck in his head is what would a reasonable person do? He is trying to figure out how to balance that.

The Chair said obviously we have more than one violation to talk about. He thinks what Mr. Corley was saying is that we are not here to try to figure it out. We are here to figure out if it is a violation or not, not to try and fix it, what went wrong, is it a violation?

Mr. Crutchfield said agreed, but if the information that got us here is not right and the violation was written with improper information, then how do you make that determination? He is just asking, not meaning to be difficult.

Mr. Corley appreciates the conversation. His question would be does that lead you to believe that there is not a violation?

Mr. Crutchfield believes that the information that is the cause of the violation is the problem. How they got there.

Mr. Corley said right, and he guess to Mr. Paxton's point, he shares some of that. The burden here is everywhere possibly, right? But again, he feels that what we are being tasked with, as

much as he shares that belief, he feels that that is not a part of what we are here to decide. That is what he feels, and he is not saying that everyone has to take that position, but is there a violation?

If the County bears some blame in that then maybe the resolution will acknowledge the County being willing to negotiate if you will, on a resolution that is practical. He would hope that would enter in to there.

Mr. Paxton would like to ask legal if we could some way vote that there was a violation but at the same time say hey, this could be resolved?

Mr. Koch said the Board is asked to do different things in different types of cases. He thinks you may be thinking about some of the other kinds of cases that you hear like, special use permits and variances where you can do conditions in some cases, and you can kind of craft a response or a decision based on those. But, on this particular one, where you are deciding whether the decision by the Staff is to be upheld or not, is a straight up or down decision. You cannot put conditions on it, you cannot craft something new. You have to either say there was a violation, and the Notice of Violation was properly issued or not.

The way it has been worded, he thinks in the documentation that you have, is to either vote to uphold the appeal or to deny appeal. It is the same thing, just the other way of saying it. That is really all you can do. He understands with all the evidence that you have heard, why you might want to try to craft something, but he thinks you have to leave that to the County and to applicant to work on that. So, your decision is just up or down on the appeal.

The Chair said we have three violations, is it three separate appeals or is it one appeal or can we break it down?

Mr. Koch supposed you could. You could break it down because the Notice of Violation did cover different things. If you feel the Notice of Violation was not to be sustained on one of those or maybe two of them, then you can break them down separately. But if you want to take them altogether and you find that at least one of them constitute a violation then he thinks that you would have to vote that the appeal would be denied.

The Chair said with that in mind, our three violations are structures without permits, disturbances of the required waterbody buffers and wetland disturbance. He thinks the first one we can easily agree that there was a violation.

Mr. Corley asked where it was in our packet.

The Chair said it is on the first page.

Mr. Hudspeth said we have two Notice of Violations here. The first one was on January 14th,

and it has the three listed on it. But the second one was on May 11th, and it only has one violation and that is for the water buffer zone. That is a little bit of confusion to him.

The Chair said that is on page 76 of the packet, that is the water buffer zone violation. He is looking through to see if it covered the wetlands. He asked staff if they know where that is briefly, that would be beneficial at this time

Ms. Morris said if you would scroll the staff report you will see that the applicable sections of the Ordinance are clearly outlined, as far as how the Notice of Violations were issued and those particular sections of the Ordinance.

The Chair found the other violation from January 14, 2021, waterbody buffer zone. Zoning affects every structure in use which would probably be the legal term for structure without permits and zoning compliance. (We have 144 pages in our packet, so it is a lot to look through).

Ms. Morris said there are bookmarks to the side, if you will open up the bookmarks, that should take you to where you need to be.

Mr. Goldberg has the first Notice of Violation marked as page 72 and the next one is on page 76.

The Chair said for Mr. Paxton's question earlier, the USGS map is on page 66. He said do we want to look at all three of them together or do we want to break them out? He feels like that might make it a little bit easier to break them out.

It was the consensus of the Board to break them out.

The Chair said, like he said earlier, the structure without permits is pretty cut and dry. We obviously have the permits, and we have the site visits that predated an actual permit being pulled for the accessory structure. He asked if there were any discussions.

Mr. Crutchfield said vote on whether it was really properly issued. We have no input to a resolution of that, correct?

The Chair said the violation was the structure was built without a permit.

Mr. Crutchfield said correct, that is all that is on the table.

The Chair said for right now.

Mr. Hudspeth said it would seem the rationale from the owner's point of view was that this was a bona fide farm. So, they did not need, is that true?

The Chair said that is what they presented but he believes the Tax Office established the last time

it is not a bona fide farm. As well as the applicant never presented in their presentation last time that they had a bona fide farm from the State. They submitted a receipt, but we do not have confirmation that they are a farm.

Mr. Paxton said can I ask the applicant that?

The Chair said they were given an opportunity, you can but what they presented is their....

Mr. Paxton asked Ms. Arstark what she had to say she has a bona fide farm?

Ms. Connie Arstark lives at 3233 Hahn Scott Road, and that is where her farm is. She went through the three criteria; above ten acres as a farm, tax revenue stamps certificate, she also has livestock, animals, chickens, and rabbits. She raises all those animals on the farm and sells eggs. With all those requirements which was in your previous package, the State verified that she was a bona fide farm. She has 11.45 acres.

The Chair said the document you provided was just a receipt. It wasn't a formal...

Ms. Arstark said it was a copy of their certificate that they asked me for, plus she put a copy of the email from the Department of Revenue. It was in the package that she presented in the previous. Because she has been acting as a farm and working as a farm with the USDA, who has a farm number, selling crops since she purchased the property. That information was in your packet Mr. Dagenhart.

Mr. Paxton said you had all of this before you started the permitting process?

Ms. Arstark said yes, sir. The property, if you know Hahn Scott Road, it is the Hahn farm, it has been a farm for generations. She bought it as a working farm, it was already being farmed.

Mr. Goldberg said at the appropriate time he would like to clarify on that if we are going to have this discussion.

The Chair said if we are going to start talking about that we might have to bring Staff up to go over some points from the last meeting.

Mr. Pinto asked Ms. Arstark if she is a general contractor?

Ms. Arstark said no sir.

Mr. Pinto asked Ms. Arstark if she were ever a general contractor?

Ms. Arstark said no sir.

Mr. Pinto asked if Arstark Building Concepts is her?

Ms. Arstark said yes.

Mr. Pinto said it has you down as Connie Arstark Custom Builders, your number was 42146, it is archived on 1999, on Weddington Road.

Ms. Arstark said Weddington Road, yep.

Mr. Pinto said so you were a contractor?

Ms. Arstark said she has never been a practicing contractor. Her husband was a licensed contractor. He held a license, but we never were a contractor. She thinks you are asking if we ever build houses as a contractor.

Mr. Pinto is trying to quantify if you were a general contractor.

Ms. Arstark said she has never taken a contractor general board license, class, course of any kind. Maybe I am listed as a member on that, whatever you are talking about, as an owner or something? That could be possible.

Mr. Pinto does not know about that. It says North Carolina Board of General Contractors and it says that you are a contractor.

Ms. Arstark said can you just ask me the question you would like to ask me?

Mr. Pinto was just trying to see if you were a contractor.

Ms. Arstark said no sir, I have never been a contractor. I don't have a license, I never took a course for it, none of that.

Mr. Pinto said that is kind of weird. He was just trying to ask because if you were a general contractor, you probably would have known about the water buffers and stuff like that.

Ms. Arstark said no sir, I apologize, she has never taken the course, I have never been a contractor, I never, and as indicated before on the GIS there is nothing about a water buffer and surveyors could not find it.

Mr. Pinto said he ran into the same thing with his. He had to go through zoning permit, he had to go locate his septic and everything like that. He is a bona fide farm, 50 acres, own his own cow, grow his own hay. He thinks the biggest thing he could build was 143 square feet without a permit. He asked Mr. Love if that was correct?

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Mr. Matt Love said basically anything that exceeds 12 foot in any dimension will require a building permit if it is an accessory structure.

Mr. Pinto said are you saying 12 feet by 100 feet?

Mr. Love said no, like if you are building 11 feet by 11 feet. Actually, if you are building 12 feet by 12 feet, and it is an accessory building it does not require a building permit. But if it exceeds 12-foot in any dimension it will require it. If it is 12 foot and one inch by 8 foot it will require a building permit because it exceeds 12 feet in any dimension.

Mr. Pinto said even on a bona fide farm?

Mr. Love said building code if it is a bona fide farm, the only permit that is required is electrical.

The Chair said, lets clarify this farm thing because the packet that you submitted last time showed a certificate of registration of August 25, 2021, which was just a receipt, and then your email from Department of Revenue was from August 18, 2021. The violations started in the summer of 2020.

Ms. Arstark said yes, sir.

The Chair said you have not provided.... this email reads, applications are received and begin processing upon information verification. You have not provided, that you are a bona fide farm in your packet.

Ms. Arstark said yes sir I did. The one that you just pointed out, and let me also say this, there is also an Arstark and Company Inc. umbrella that she works under the farm that she can sell and buy tractor equipment and you get a tax exemption for, so it is also that, so she has two and she has always had it.

Mr. Pinto asked if that is the one that was \$10,000.00 or more and you do not pay tax on?

Ms. Arstark said yes, so she can buy a tractor and she can go buy some heavy-duty farm equipment and those types of things. Yes, sir that is what it is for.

Mr. Pinto said that you have to have matching revenue for that, that you made \$10,000.00 on that farm to generate that?

Ms. Arstark said yes, sir.

Mr. Pinto asked her if she did that?

Ms. Arstark said she is learning, and she has a really good farming partner that is teaching her quite a bit.

Mr. Pinto said, so you have made that revenue already?

Ms. Arstark has not made all the revenue just yet, not from the crops and the farm that we have done so far, because of the stop work order. They put my farm out of business half way through the year with the stop work order. She has been struggling financially to meet all her guidelines, because of this situation that has happened. It has put her farm and her family in a very financial hardship crisis. This is a working farm, this is what this is. It has always been a working farm.

The Chair does not think anybody is questioning whether you do farm work. It is a question of whether you are a bona fide farm for the Tax Office or that you have the certificates and information from the Department of Revenue that you have not provided to us at this time.

Ms. Arstark said yes sir she did it is in your package. She was approved for the PUV the first time after a site visit.

The Chair said then why didn't you provide it last meeting?

Ms. Arstark said it is in you packet.

The Chair said this is Mr. Moretz packet from the last time.

Ms. Arstark the approved PUV is in there, is that correct Zack? It was in there because Mr. Thrift came up and spoke about it, we went back and forth.

Mr. Goldberg said the question is, in the summer of 2020, what was the status of the building? He has not seen any evidence in 2020, at the time this building was built that this land was in the PUV Program. As Mr. Thrift testified previously, that when this property was subdivided, they paid the deferred the taxes, that parcel left the PUV program in 2020.

Ms. Arstark applied for the PUV in 2021, and that is where you saw the initial approval and then the rescission based on further evidence and that has been subject to discussions at the PTC.

The other thing he would point out is Mr. Arstark is a joint applicant, joint owner, and he is party to this appeal as well and he is for the purposes of discussing who was responsible. If you do look in your packet, there are plenty discussions with Mr. Arstark as well, regarding this property. He has been involved in the process too, to go to your point on that.

Ultimately though, he wants to make sure that we are clear, is that before we can get to far into whether this is a bona fide farm, we have to also ask the legal question, of does it matter?

Mr. Moretz wants to object to this. This is argumentation, you asked her a question, you said you would clarify.

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The Chair would argue that Staff came and gave the rules for building a structure if it is a bona fide farm. It is 12 x 12, anything larger than that you have to have a permit.

Ms. Arstark said not on a bona fide farm, and she called and that is in your packet and the email that Mr. Boyd provided.

The Chair said where does that information come from because Building Standards is telling me based upon the zoning regulations and the building standards that anything larger than 12 x 12 requires a permit whether it is a farm or not. Is that not correct what you said Mr. Love?

Mr. Love said if it is a bona fide farm, the building would not require a building permit, but we would require an electrical permit.

The Chair said okay, sorry.

Mr. Arstark speaking from the audience is inaudible.

The Chair said he does not believe Mr. Arstark signed a card, you are not able to speak.

Ms. Arstark said that is okay, she is fine.

Mr. Moretz said can I just read the Ordinance regarding a bona fide farm, because there is more to it than that. You either, have the exemption certificate which we provided.

The Chair said it says a certificate of registration.

Mr. Moretz said you have to have any of the four things above. The exemption certificate, which we provided, a copy of the property tax listing showing that we are eligible for participation in the PUV Program. We are eligible, it was not in the one year, we would argue due to all this mess. Because, if they grant us the PUV, then we will say it is a bona fide farm and they won't have this basis to deny us our permit. We should have had that by now, but it is being held up by the County just for this reason.

He said C - A copy of the farm owner or operators Schedule F from the owner/operator most recent Federal Income Tax return, we have provided that. A forest management plan is the fourth one which we do not have that. But we provided pictures of lots of farm animals and fields and hay, and all that stuff and it is over ten acres in cultivation and there was sworn testimony to that affect

The Chair said there was also sworn testimony from Staff that it was not ten acres.

Ms. Arstark is glad you brought that up. They asked us to get an official survey and they had to go back to the surveyor and get an official survey because they said their GIS calculations were

incorrect and if I brought them an official survey, they would accept that document as a viable document, as an authority and they would have to accept it, I did that. I provided them with that, and you do have that in your packet as well.

The Chair said he does not know about showing...

Ms. Arstark said it shows the acreage of 10.54.

The Chair said one more person speaks out of turn you are going to leave. Thank you.

Ms. Arstark also needs to clarify a mistake or a correction with Mr. Goldberg that he just made about the PUV and the previous owner, about the taxes. Mr. McMath who was in the PUV program did not pay his taxes in 2009, he only paid the taxes at the closing when she bought the property in 2020 and that was June, and it was in the PUV as of that day of closing. It is her own mistake that day, the closing attorney did not say all you had to do was fill out the form. Mr. Thrift is the one who enlightened her about that. He said all you would have had to do was fill out this form, and we would have transferred the farm straight into the PUV. Because it has always been in the PUV with the previous owners and the farm, because it has always been a farm.

The Chair thinks we are getting to caught up in....

Ms. Arstark is just trying to answer your questions and clarify some things because it is confusing, she knows.

Mr. Corley wants to interject here, this is his understanding of why we are here. The violation that we have considered separating these apart is construction of a structure with no permits. So, whether they are a bona fide farm, should have been, could have been, mistakenly weren't. Whatever those circumstances are, that is why we have so much conversation. It is about the circumstance, and again for him, was a building constructed with no permits? If they should not have had permits, to him that will all play out, we will figure that out. But we are being asked was there construction of a structure without a permit? To him it is that simple.

He understands it is confusing when you allow the circumstances to come in and he feels that is where the passion of audience...none of this makes sense really, right? So, to him we are being asked to dig through these very complicated differences and circumstances and timing and opinions and answer the question of, was there construction of a structure with no permits.

Ms. Arstark said Mr. Corley she would like to answer that comment that you made.

Mr. Corley said he did not ask a question, he appreciates you... he did not intend for that to be as rash as it sounded. But he does not have a question and he will defer to the Chairman.

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The Chair reminded everyone that the public meeting is over, the presentations are completed. Any dialogue with the audience will be answering questions. Both sides have had ample opportunity to submit their case.

Mr. Paxton said if we are here tonight to vote on was there a violation, then doesn't it play into that decision, was it a bona fide farm or not?

Mr. Corley said it could definitely weigh in to your vote, absolutely. But the question you are not here to answer, again in his opinion is, is this a bona fide farm? We are asking a lot of questions about the question before the question, right? He understands that is seemingly important to get there but he would suggest from what he has heard and digested, we are going to have a hard time getting past the circumstantial first question. Which if you need the first question to answer the second question, we are going to get stuck and we are going to be here back and forth the next month and the month after that.

Ms. Arstark asked Mr. Dagenhart if she can ask him a question.

The Chair said sure.

Ms. Arstark said she has a building permit and zoning permit for the barn. Is that what is in question, that she has one?

The Chair said your violations was from 2020. The photos are dated September 25, 2020, from Mr. Lowe. You did not get a building permit until 2021, you did not submit the information for what you are contesting as a farm until 2021.

Ms. Arstark said you are saying because they came out and saw the barn and issued the permit and the zoning permit after they saw it, that is the violation? She is asking because she does not understand what you are saying.

The Chair said the way he understands it is you build a structure before you had a permit.

Ms. Arstark said but they came out to see the barn and issued the building permit and the zoning permit after they came out and investigated and saw the barn.

The Chair said they were out there to check the setbacks on your house and noticed the accessory structure and that is what started this entire process.

Ms. Arstark said there is a building permit and a zoning permit in your package.

The Chair said you built the accessory structure before you had a permit based upon the evidence that has been provided.

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Ms. Arstark said yes, sir she understands that. But she is hearing him say in return to that that it is a violation. But they came out and saw the barn, saw that it was being used for agricultural and gave her a building permit and a zoning permit. They issued it to her, and she paid for it. She is asking the Chair what you are saying when you say the violation of not having a permit, because I do have a permit. She has a current building permit and a zoning permit on that barn.

Mr. Stephen Wise said Mr. Lowe went out there on July 7, 2020, the permit is dated 9/28. Was the building totally complete when Mr. Lowe made his first trip?

Ms. Arstark said yes, sir.

Mr. Wise said after that you came here and got a permit?

Ms. Arstark said when they were calling for the power for the electrical, that is when Boyd came back and said hey, I did not know you were going to put power, because he originally told me I did not have to have a building permit. But then Boyd said no, if you are going to put power to it you will need a building permit. So, that is when they issued me the building permit and they came out and did the power, inspected it, and approved it. Then they sent zoning out, and zoning came out and we measured it and looked at the building to make sure everything was there that they needed. He left and then the following week they issued the zoning permit for the barn, so she has both of those.

Mr. Wise said but really what was required was an electrical permit, is that correct?

Ms. Arstark said yes that is correct, that is the only thing that she would have had to have done.

Mr. Wise said it was issued to get the power company to hook up that building.

Ms. Arstark said yes sir, because across the street from where we are at this moment, there is a barn that just got built and it has no power and no permits, and no nothing and they do not have to have it and it is bigger than mine, but they do not have to have it if you do not do power.

Mr. Wise said but the building was completely done on July 7, 2020?

Ms. Arstark said yes, sir.

The Chair said so, the applicant admits that she built a structure before she had a permit.

Mr. Hudspeth said we are still working on construction with no permit, right?

The Chair said correct. If there no further discussion, then we need a motion.

Mr. Crutchfield said it seems to him as though this person here had direction that they might

need a permit and moved forward with it. This is his assessment of the information given. He would say that this probably not the first time in Cabarrus County that someone got a permit after a building was built. But they did remedy it by getting a permit later, so he is not sure. He guesses the violation was written before the permit was issued. Was the permit being issued the remedy for the violation within the County.

The Chair said his understanding is, and correct me if I am wrong staff, that part of fixing the violation would be issuing the permit. Is that correct?

Ms. Morris said when Officer Lowe went to the site, the building was there, it was already constructed. Typically, what happens is then they are advised. He is here and he can tell you about the conversation. That person is advised that they need to get a permit. That does not always mean that you can obtain a permit. So, depending on where that structure is located, does it meet the Ordinance, all of these things come into play.

At that point there was some back and forth about it. This information is in your Staff report. It explains to you the violations that are there and the encroachments. So, what you are looking at, you have is a violation issued for construction without permits, construction in the required water body buffers and then wetlands disturbance. So yes, to answer your question there are two violations in there because there were two different site visits and out of that second one, there was a Stop Work Order because there was too much happening on the site. We were still at that point where we did not have a survey.

If you look in your packets, you have the first survey that was submitted, which does not show the buffers. Ms. Arstark then had her surveyor go back out, locate the building, locate those buffers, and then also locate some proposed places for the house and the pool that she wanted to build. As we worked through that process, that survey was refined. So, her house and her pool were moved a little bit to the west. That survey that you have in your packet shows the location of that building. That building should not be in that buffer area. Did we issue a permit? Yes. Was it issued on good information? No.

The Chair said the day of the survey with the accurate river stream is dated November 1, 2020?

Ms. Morris said it is the May 10th date. That is the one where the surveyor went out and did what they needed to do to figure out what the topography was to do that actual calculation based on field conditions and that is where we landed at that time.

The second violation, you had in your information there were some additional buildings placed by the barn, there was an RV. We have not even pursued any of those. The river stream overlay and the construction of that building without permits in that overlay really is the primary focus because it is tied to that 404 permit that we discussed at the last meeting.

Mr. Paxton has a question for legal. What are the legal ramifications if he votes one way on one of the violations and another way on one of the other violations?

Mr. Koch said if you feel the violation existed, as in the Notice of Violation, on one of the violations in there, if you feel it did exist then you would vote presumedly in favor of that. If you think one of the others should not have been issued, then you could vote that you do not think that one should have been issued. It does not have any legal ramification, it is whatever your vote is. You could vote either way on any of them.

Mr. Paxton said but are they going to be taken in totality?

The Chair thought we discussed that we were going to break them out.

Mr. Paxton said yeah, but after all this has been done.

The Chair said that is not for us to worry about.

Mr. Corley thinks the question Mr. Paxton is asking is if the Board voted to except the appeal on one of the four. Let's just use a number. The three would still stand and would have to be addressed. That is his understanding.

Mr. Paxton said yes.

The Chair thought Mr. Corley was about to make a motion. Are there any other discussions?

Mr. Crutchfield thinks he understands what we are here to do. He just doesn't really know that he understands what the real benefit to everybody here is, talking about Planning and the County. To him we have to do what is reasonable for all parties involved. If we are where we are, how do we move forward.

The Chair does not think that is for us to determine but he believes Staff last time.... obviously, the concern is the 404 permit and how that affects our permit.

Mr. Corley said and if this is completely off base and not helpful for the discussion, but we all know why a lot of this evidence has been submitted that really does not have anything to do with.... we know where this could go and that is importation that those legal steps are in place. But he thinks to your point, to him the reasonableness is what should come next, and that is his confidence he thinks, when he votes. He is hoping that given the big pile of steaming whatever that we have sort of been handed, that maybe that reasonableness shows up when we look at what is the remedy. Right? And that the reasonableness of the remedy is not really part of whether it is a violation, right? He is crossing his fingers and hoping that if we under the circumstances, if we leave all or any of these in place, that the next step is reasonable solutions to making those violations go away.

Again, that is just where he sort of landed, because it is so hard not to take in all this stuff. Right? I mean, was there one percent screw up by the County? Was there 99 percent screw up by.... it depends on who you ask. Right? He thinks at the end of the day, it is, or it is not, and then what comes after us he hopes is the...if there is a legal remedy then so be it. If all of this is wrong, maybe we will find out. But he is hoping that the next is a reasonable conclusion that both parties feel comfortable with where ever they land. But again, he cannot guarantee that sitting up here, so that is the scary part.

The Chair said normally when you have a violation, obviously, there has got to be a middle ground to try to meet the violation. He thinks that is what Mr. Corley is trying to say, how that is met is between them, whether it is individually or the next higher step, whatever that may be.

He said it seems like we have had ample discussion on the violation of structure without permits. He asked if anyone wants to entertain a motion, if you do make a motion, please in your verbiage, make sure your stance is what you want in your appeal.

The Chair reminded the Board that a vote to deny the violation means the violation should have been issued, and a vote to uphold the appeals means the violation should not have been issued. He said that is a little backward from how we normally do things. He just wants to clarify that so there is no confusion.

Mr. Jeff Corley **MOTIONED, SECONDED** by Ms. Ingrid Nurse to Deny the Appeal for the construction of the building without a permit. (The Chair reminded the Board if they vote yay, you are voting to deny the appeal and if you vote no, you are voting to uphold the appeal) The vote was 8 to 1, to Deny with Mr. Crutchfield voting against.

The Chair said we still have two violations to discuss. We have the disturbance of the required waterbody buffer and the wetlands disturbance. He would imagine that those two, kind of go hand in hand. We may be able to do those together or if you want to do them separate that is fine. He opened the floor for discussion.

Mr. Hudspeth said it seems to him that we could combine those two, couldn't we.

The Chair thinks we probably could.

Mr. Crutchfield as the Chair to restate those (violations) please.

Mr. Paxton made a motion to vote on them separately.

The Chair does not think we need a motion.

Mr. Koch said you will need a motion.

The Chair said you can make a motion for one or make a motion for both when we get to that point, when we are ready.

The Chair said we have disturbances of required waterbody buffers and a wetlands disturbance.

The disturbance of the required waterbody buffers would be the structures within the water body buffer. The wetlands disturbance would be the clearing, the removal of vegetation and riprap.

Mr. Crutchfield said these wetlands are on that map as well?

The Chair does not see them on the map that was provided by the surveyor.

Mr. Crutchfield said are they not on the USGS map as defined wetlands?

Mr. Hudspeth said it is on page 66.

Mr. Paxton said of the original staff report?

The Chair said page 66 is the USGS map and page 65 is the most recent survey provided. He is not seeing wetlands delineated on this.

Ms. Morris said Mr. Chair, if you look at that map, you will see there are some green shaded areas. It is difficult probably to see, those of you that have the touch screen, well it does not seem that any of you have the touch screen. But when you zoom in it kind of looks like a plant. That is where the wetlands are identified on those maps.

Mr. Paxton asked what page that was.

Ms. Morris said it is the USGS map.

The Chair asked Ms. Morris to put it up on the screen.

Ms. Morris said it looks like little green plants on there.

Mr. Paxton said this is not on the GIS, correct?

Ms. Morris said GIS does have a wetlands layer on it. It also has what is called the Yadkin Hydro Layer. That is the shapefile that Mr. Dagenhart was referring too, where when you look at the County's GIS information it will identify a feature which is either a stream or a wetland. Then you have to cross reference with the other maps.

Mr. Pinto asked if the dotted lines on the USGS, is that different from intermittent and perennial?

Ms. Morris said yes, on that map if it is what is called a blue line stream, which is just a straight blue line, those are the streams that are required to be buffered. Ponds are also required to be buffered if they are located along or on those types of streams, and that is all done by the calculation that Mr. Corley referenced earlier. If it is a dotted line, you do not have to have a buffer on those, per the County Ordinance but there are some state regulations that come into play with those particular types of streams if you are developing a property.

Mr. Pinto said so, the dotted ones do not flow all the time.

Ms. Morris said the dotted ones would be considered intermittent, so there would be water sometime and then sometimes not. But depending on the situation or what is happening upstream that classification could potentially be different, based on field conditions. She thinks Mr. Corley mentioned that earlier as well.

The Chair asked Mr. Corley if he still had that handy to read again.

Mr. Corley read: the determination that a waterbody or stream indicated on a USGS map or NRCS Soil Survey map does not exist, must be concurred with by NCDNR, Division of Water Quality and/or US Army Corps of Engineers.

He said again, by definition, it is what is in the one before it, it references the USGS Quadrangular Map. That is an actual official published document by USGS or NRCS Soil Survey Map. We get a lot of intermittent that are listed on NRCS that sometimes are not, so it is what it is unless you concur that it is not. If that makes sense.

Mr. Pinto said so, if you had that straight blue line with the little dashes coming off it, it is like four of them there. What is that?

Mr. Corley said again, if this is the USGS Quadrangular Map, the solid blue line would be a USGS perennial, and the dotted blue line would be a USGS intermittent. Now, there is also NRCS intermittent, it is just another map source that uses the soil survey maps that basically identifies the hydric soils that likely have the characteristics of an intermittent. If that makes sense.

So, that is the definition, of where do we start, and then there are professional processes to go away from that. It could also go the other way. You may have an intermittent on your property that is not identified on the map, and you have an obligation under the rules potentially, if the conditions exist, to have a professional say whether it is or is not. He does not know if that makes if more confusing. He deals with those a lot, so he happens to know quite a lot about them.

Mr. Crutchfield said, for him he is just trying to make sure that he understands that they knew when they disturbed that wetland area, that it was wetlands and that they could not disturb it and how would they know that and how would we communicate that to them. He realizes that

ignorance is no excuse for the law but at some point, we have to figure out did we give them the resources to know that was something they should not touch. That is his point, and he appreciates the explanation.

Mr. Corley said in his mind, he can go rent a bulldozer and I can grade my whole lot, without asking permission. If I lucked out and did not destroy a wetland, then I would not get fined for destroying a wetland. If I did not luck out and I took care of an acre worth of wetlands than I would be in violation whether I knew it or not, I guess.

Mr. Hudspeth said on this map on page 65, the last survey. It shows that barn completely in that buffer. Is that right, the whole thing is in it?

The Chair believes that is correct. That is what their surveyor submitted so he would say yes.

The Chair asked if there were any other discussion, questions, or comments? He asked if anybody wanted to make a motion. Again, if you want to split this one you can if not that is fine too.

Ms. Nurse asked a question, but it was not audible.

The Chair said, as far as what needs to be done, that is not this Board's responsibility. Our objective here is to determine if the violation should have been issued or not. Again, the vote to deny the appeal means the violations should have been issued. The vote to uphold the appeal means the violation should not have been issued.

He knows it is hard because we are always trying to, like Mr. Koch said, work through Special Use or Conditional Use and we are trying to figure out how to make it work, but we are here just to say if it is a violation or not.

Mr. Kevin Crutchfield **MOTIONED, SECONDED** by Mr. Charles Paxton to Uphold the Appeal as it relates to the wetlands disturbance.

The Chair said the motion on the floor is to Uphold the appeal, meaning the violation should not have been issued.

Mr. Crutchfield said correct that is his motion.

The Chair said if you vote yes to uphold the appeal, then you are voting that the violation should not have been issued. If you vote no to deny the appeal, then you are voting that the violation should have been issued.

The vote was 4 to 5 to Uphold the Appeal with Mr. Stephen Wise, Mr. Ingrid Nurse, Mr. Charles Paxton, and Mr. Kevin Crutchfield voting to Uphold. Mr. Adam Dagenhart, Mr. Jeff Corley,

Mr. David Hudspeth, Mr. Andrew Nance and Mr. Chris Pinto voting No. **MOTION DENIED**, the violation should have been issued.

The Chair said the last one is the violation on the disturbance of the required waterbody buffers. He opened the floor for discussion, comments, or questions. There being none he asked for a motion.

Mr. Charles Paxton **MOTIONED, SECONDED** by Mr. Kevin Crutchfield to Uphold the Appeal. He does not think the County gave them enough resources to solve this problem.

The Chair said again, if you vote yes, you are upholding the appeal, meaning the violation should not have been issued as it relates to the disturbances of the required waterbody buffer. If you vote no, then you are voting to deny the appeal meaning that the violation should have been issued.

The vote was 3 to 6 to Uphold the Appeal with Mr. Stephen Wise, Mr. Charles Paxton and Mr. Kevin Crutchfield voting to uphold. Mr. Adam Dagenhart, Mr. Jeff Corley, Mr. David Hudspeth, Ms. Ingrid Nurse, Mr. Andrew Nance, and Mr. Chris Pinto voting No. **MOTION DENIED**, violation should have been issued.

The Chair said that concludes that case. He said thank you for your time.

**No Legal Update**

**No Directors Report**

There being no further discussion, Ms. Ingrid Nurse **MOTIONED, SECONDED** by Mr. Kevin Crutchfield, to adjourn the meeting at 8:05 p.m. The vote was unanimous.

**APPROVED BY:**

Mr. Adam Dagenhart

**SUBMITTED BY:**

Arlena B. Roberts

**ATTEST BY:**

Susie Morris, Planning and Zoning Manager

Planning and Zoning Commission Minutes

April 12, 2022

Mr. Adam Dagenhart, Chair, called the meeting to order at 6:34 p.m. Members present, in addition to the Chair, were Mr. Andrew Nance, Ms. Ingrid Nurse, Mr. Charles Paxton, Mr. Chris Pinto, Mr. Brent Rockett, and Mr. Stephen Wise. Attending from the Planning and Zoning Division were, Ms. Susie Morris, Planning and Zoning Manager, Mr. Phillip Collins, Sr. Planner, Ms. Arlena Roberts, Clerk to the Board, Mr. Richard Koch, County Attorney and Mr. David Goldberg, Deputy County Attorney.

**Roll Call**

The Chair read the suggested rules of procedure:

1. The Cabarrus County planning staff person(s) shall first present the staff report and answer questions from the Commission. There will be no time limit on this presentation.
2. The Applicant may make a presentation to the Board (optional) and will then answer questions from the Commission. There will be a 15-minute time limit on the presentation if the Applicant chooses to make a formal presentation. There will be no time limit on questions from the Board following the presentation.
3. When the Board is ready to proceed, the proponents (those speaking generally in favor of the case) will have a total of 10 minutes to speak and/or present documents in support of their position. The 10-minute time limit does not include questions directed to the proponents by the Commission.
4. After the proponents finish, the opponents (those speaking generally against the case) will have a total of 10 minutes to speak and/or present documents in support of their position. The 10-minute time limit does not include questions directed to the opponents by the Commission.
5. Each side will then have 3 minutes for rebuttal, with the proponents going first. Again, questions directed to the speaker will not count against the time limit. This will conclude the public hearing portion of the meeting and the Commission will proceed to deliberation.
6. Each side is strongly encouraged to use a spokesperson to present the positions commonly held by each. Each side is also strongly encouraged to organize their speakers and presentations to ensure that all persons wanting to speak will have time to do so.
7. If a speaker has questions of a person on the other side, such questions shall be addressed to the Commission members to be redirected to the person to be asked. There will be no direct questioning of one speaker by another except through the Commission.
8. Public demonstrations of support for a speaker's comments should be limited to clapping. Any other type of audible support shall be out of order and subject the offender to being

removed from the building. Anyone speaking out of order shall likewise be subject to removal.

9. These rules are designed to have a full and fair hearing that is orderly and expeditious and avoid unnecessarily repetitious presentations.

Mr. Charles Paxton, **MOTIONED, SECONDED** by Mr. Steve Wise to **ADOPT** the Rules of Procedures. The vote was unanimous.

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

The Chair asked anyone wishing to speak or to testify, to stand and he administered the oath.

**Old Business Board of Adjustment Function:**

The Chair introduced Petition VARN2022-00001 – Request for relief from the following: Chapter 5, impervious area maximum for non-residential districts, Chapter 7, setbacks for swim clubs, Chapter 9, landscape buffers and parking lot buffers. Applicant is Evolution Recreation and Aquatics is the Applicant. Ethan and Austin Properties is the owner. Address is 11202 Harris Road (PIN: 4670-45-1661)

The Chair asked if there are any Board Members that have any conflicts of interest, or any information related to the case that needs to be disclosed at tht time.

Mr. Brent Rockett said his employer is the YMCA and is in direct competition with many of the same services and programs that this business offers. While as an employer of that, he is not in direct conflict of interest in this particular matter, he believes it is best from the perception, and the possibility of there being a perceived conflict of interest, that he be recused from this particular matter.

The Chair asked if there was a motion to recuse Mr. Rockett.

Mr. Charles Paxton **MOTIONED, SECONDED** by Mr. Andrew Nance to recuse Mr. Brent Rockett from Petition VARN2022-00001. The vote was unanimous.

The Chair called on Mr. Phillip Collins to present staff report.

Mr. Phillip Collins, Sr. Planner, addressed the Board presenting the staff report for VARN2022-00001. He said the purpose of this request as stated before is to seek relief from Chapter 7 and Chapter 9, more specifically Chapter 7, Section 7-3.59.c. The existing facility was approved in 2005, as an indoor recreational facility and it was zoned OI-SU at the time. The site was developed using the standards in place at the time.

The Chair asked Mr. Collins to pause for a moment.

Mr. Koch said understands that Ms. Morris has talked with the Chair about the situation concerning the number of members we have tonight. We have a Variance, and we have a high vote requirement, and of course not having a full Board changes the percentages. He and Ms. Morris talked about it on the phone, and he understands that she has talked to the applicant about this. Mr. Koch thinks it should be put on the record that they are in favor of proceeding tonight instead of waiting and having the matter continued until we have full complement of members.

The Chair wants the applicant to understand that that means they will have to have five out of six for anything to pass tonight in favor.

Mr. Auggie Wong, CES Group Engineers, 3525 Whitehall Park Drive, Charlotte, NC addressed the Board stating that they confirm that.

Mr. Koch said ordinarily, we have nine members on this Board and for a variance like you are asking for tonight it would take eight of nine for a full board to pass it. When we have a lesser number, we have to figure it out under the Statute as to what it would be and since we have six members on the Board now that one is recused you will need five out of six.

He asked if Mr. Wong understood that.

Mr. Wong said yes.

Mr. Koch said to go forward tonight, typically when we do not have a full Board, we allow the applicant to continue the matter until we do have a full Board. But you have decided you want to go forward tonight?

Mr. Wong said yes, we understand that sir.

Mr. Collins continued with the Staff report stating that since the site was originally developed additional line items have been added to the Use Table of Chapter 3 and defined in Chapter 2, including the line items swim club, tennis club and country club.

The applicant is proposing to add outdoor amenities and features to the site which is consistent with the swim club line item. Development standards for this type of use requires a 200-foot setback for any accessory buildings, swimming pools, tennis courts, parking areas, or any amenity areas and adjacent residentially used or zoned property.

There are existing encroachments of the primary building and parking areas into the 200-foot setback as the site is currently configured. Proposed improvements and features will also encroach into the required 200-foot setback. The proposed features include, future parking areas, a playground, swimming pools and a walking trail.

He said Chapter 9, Table 4 Perimeter Landscape Buffers - The existing facility does not encroach

into the required perimeter landscaping buffers. However, the applicant is proposing new outdoor amenities that would encroach into the required perimeter landscape buffers. The encroachments include features such as, reconfigured parking areas, a playground, swimming pools, a 6-foot walking trail and a 7-foot berm.

The applicant is also requesting relief from the required landscaping plantings for the following:

- 164.5 feet of relief from the required landscaping along the southwestern property line where a 6-foot-tall opaque screening fence will be located
- 313.5 feet of relief from the required perimeter parking area along the eastern property line

The subject property is currently occupied by an indoor recreation facility. The main building is approximately 28,000 square feet in size and sits in the center of the property. Parking areas surround the main building in three sides. An access easement crosses the subject property (through the existing parking lot) on its east side. The access easement provides access to an existing Wireless Telecommunications Tower located to the north of the subject property. A 15-foot utility easement (Charlotte Water) also straddles the eastern property line.

Adjacent land uses consist of residential, vacant and Wireless Telecommunications Tower as mentioned. Due to the current zoning designation of Office Institutional and Conditional Use, the only permitted uses for the subject property are Indoor Recreational Facility and Office uses.

Surrounding zoning consists of Low Density Residential, OI-SU, City of Charlotte Single Family R3 and Town of Huntersville Rural Residential.

He would like to address the comments from the Fire Marshal, and NCDOT. He spoke with the Fire Marshal, and they clarified that there may be some issues with the sprinkler system, and if it is insufficient in any way, that they would have to add on to some of the area where the fire truck could get back in the proposed grasscrete area.

If you look on the screen (showed diagram on overhead), it is an addition to this area here, if they find that the sprinkler heads are not sufficient. If they do find that they are sufficient, obviously they will not have to do that. It is already covered in the variance request. Basically, that is an encroachment into the 200-foot setback.

Although the applicant did not show a line indicating the sight triangle requested by the NCDOT, the plantings are shown outside the sight triangle, so it would be expected whenever they come back with the zoning site plan review that they would show that line. They did show the landscaping outside of the sight triangle as you can see here (showed on diagram on overhead) it kind of goes at an angle to meet the sight triangle.

With regards to the history and other information section of the Staff report:

The subject property is located on Harris Road adjacent to the Cabarrus County line.

The current development proposal is classified under the Swim Club line item listed in Table 3-8 and the definition in Chapter 2.

The subject property was rezoned from Medium Density Residential (MDR) to Office Institutional – Conditional Use (OI-CU) in 2005. The rezoning limited the uses permitted on site to Indoor Recreational Facility and Office Use. The zoning of the subject property is still OI-CU. The site has been used as an indoor recreational facility since it was rezoned. If the variance requests are approved by the Board of Adjustment, the applicant intends to proceed with submitting a rezoning request for OI, which permits a swim club as a by right, PBS, use. He said those standards are listed in the Staff report.

Both Indoor Recreational Facilities and Swim Clubs are permitted based on the ability to comply with supplemental standards found in Chapter 7 of the Ordinance. Indoor Recreational Facilities and Swim Clubs, however, have different development standards. A different setback standard is required due to the change in the use of the property which includes a 200-foot setback between any accessory buildings, swimming pool, parking area or any amenity area and adjacent residentially zoned or used property.

The applicant is requesting relief from the required 200-foot setback of Section 7-3.59. He pointed out on the site plan that the 200-foot setback is represented by the white dash line. Basically, the entire site is almost entirely within that.

The applicant is requesting relief for the existing facility, existing and proposed parking areas, proposed walking trail, proposed outdoor pools, proposed playground, proposed accessory buildings and the fire access road

Harris Road is listed within the Cabarrus-Rowan Metropolitan Planning Organization's (CRMPO) Comprehensive Transportation Plan (CTP). The future right-of-way is listed as 110 feet and the current width of the right of way is around 80 feet. The applicant understands that the appropriate amount of right-of-way to allow for the NCDOT facility to be expanded will need to be dedicated at the time of site plan review and they have allotted for that in this site plan.

The application states that the reasons for seeking a variance are that the site has space limitations, and it is oddly shaped. Further, the application states that there are existing mature evergreen plantings along the adjacent residential property line to the east and the vacant properties to the west and north.

The applicant contends that if the required 32 and 51-foot buffers are imposed, the proposed improvements would not be possible, and the site would be limited to only providing indoor amenities.

The applicant is requesting relief from the required buffers as follows: (he will try to point them out as we go)

They are asking to allow encroachments into the required 51-foot level 2 buffer along the eastern property line.

Relief from the existing paved parking area which will encroach 1 to 7 feet into the required buffer, on the eastern property line. The proposed dumpster pad encroaches 15 feet into the required buffer. The proposed parking/driveway encroaches 31 feet into the required buffer, the proposed 6-foot walking trail encroaches 37 feet into the required buffer. You will notice in the other ones he will say so many feet to so many feet, that is because it undulates in and out. It is not constant in that buffer.

Relief from the required landscaping for the perimeter parking lot yard along the eastern property line. This buffer is approximately 313.5 feet in length, landscape that would be required for that area is 16 canopy or 32 understory trees and 48 shrubs.

This is also the location, if you noticed in the comment section, that Charlotte Water looked over these plans and they pointed out that there is an easement, it right along this property and they are outside of that. Charlotte Water okayed the plans but ask that if there are any possibility of grading into to that in the future to let them know and that will be part of their approval process.

They are asking to allow encroachments into the required 51-foot buffer along the northern property line:

- the proposed 6-foot walking trail encroaches 20 to 42 feet (this is undulating) into the required buffer,
- the proposed paved parking/driveway encroaches 5 to 15 feet into the required buffer,
- the corner of the proposed dumpster pad encroaches 3.3 feet into the required buffer.

With regards to the Western property line, he wants to point out that that property was actually OI when it was in the City, but it was annexed and rezoned, so there is residential zoning there. Staff recommends that the 51-foot buffer, level 2 be what we use there. Obviously, the plans have not been updated. That is what we would say there it needs to be. The staff report would be changed to basically add 19 feet to all those encroachments that are listed, so it would read:

- the existing parking area encroaches 20 to 33 feet into the required buffer,
- the proposed 6-foot walking trail encroaches 49 feet into the required buffer, and
- the proposed safety fence encroaches 31 feet into the required buffer
- the proposed decking for the outdoor Olympic size pool encroaches 3 feet into the required buffer.

The applicant is also asking to allow encroachments into the required 51-foot level 2 buffer along the southwestern property line:

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- the existing gravel parking area encroaches 1 to 17 feet into the required buffer,
- the existing paved parking area encroaches 1 to 12 feet into the required buffer,
- the proposed walking trail encroaches 1 to 30 feet into the required buffer,
- the proposed opaque screening fence encroaches 32 feet into the required buffer,
- the proposed shade structure encroaches 23 feet into the required buffer,
- the proposed splash pad with pool deck & slide encroaches 29 feet into the required buffer, and
- the proposed safety fence encroaches 32 feet into the required buffer.

(Mr. Collins pointed it out on the overhead and said that out it is a dashed line along this section here)

The applicant is asking to allow for relief from the required landscaping for the perimeter buffer yard along the southwestern property line, where the opaque fence is, which measures to be about 164.5 feet in length. The landscaping for that portion would include 7 shade or 14 ornamental trees and 33 shrubs).

The application states that with a combination of landscaping and fencing as screening, and safety fencing along the pool area; the safety of the public is maintained. Internal activities will be screened except at the entrance of the facility. The adjacent neighbors will also be screened from the outdoor noise. With new onsite plantings and outdoor amenities, the current aesthetics for the overall site will be greatly improved.

Additionally, the application states that existing mature evergreen trees provide buffering to the multi-family development along the eastern side of the property.

A berm with screening fence is proposed within the 20-foot buffer along the western property line.

A 20-foot buffer is shown at the perimeter of the property on the site plan that contains the required perimeter plantings. He said that is identified by the yellow dashed line going around the entire site.

The applicant understands that the next step in the approval process is to request a rezoning of the subject property. If the rezoning request to OI is successful, the next step would be to move forward with the commercial zoning site plan review and permitting process for a swim club. He said that is where all of these changes would be reflected on the site plan.

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

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

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- The applicant shall submit a site plan, along with the subsequent rezoning request, that is in compliance with the findings/conclusions of this variance request.
- Approved variances must be reflected on site plan submittals moving forward. Any changes thereto would require review and approval from the Board of Adjustment.
- The applicant shall provide 10'x70' sight distance triangles along the ROW line on both sides of the access. These triangles shall be shown on the zoning site plan and no plantings shall be within them.
- The applicant shall provide the pool plans to the Cabarrus Health Alliance for review and approval prior to construction.
- The applicant shall provide plans to Charlotte Water for review and approval prior to construction if grading within the easement (along the eastern property line) is needed.

The Chair asked if there were any questions for Staff. There being none he called on the applicant to make a presentation. The applicant did not make a presentation. The Chair asked if anyone had any questions for the applicant.

Mr. Paxton said it appears over these years you were an indoor swim club. It looks like to him all this work is being done outside. He asked if they were changing their business model or why are you doing all this work outside?

Mr. Mark Minier, 11202 Harris Road, Huntersville, NC., addressed the Board stating that before the pandemic, we were primarily an indoor fitness facility. As with most small businesses, we have had to repivot during the pandemic, to figure out a way to basically stay in business. That was a pivot to more of a childcare kind of business. We pick kids up after school, they come and do activities at the facilities, so that is our pivot. This design represents installing a playground for those children to play on, walking trails for their parents when they come to pick them up to get outdoor exercise. Also, the only 50-meter pool in the County will be installed, which will allow us to expand our youth sports program and host larger swim competitions which will bring an additional revenue into the County.

The Chair asked what is the current pool length?

Mr. Minier said the inside pool is a 25 yard by 25-meter pool and the pool being added is a 50-meter Olympic size pool.

Mr. Stephen Wise asked if the building existed when they purchased it, or has it always been there, or did you develop this building?

Mr. Minier said they purchased the building in 2016.

Mr. Wise asked if it always had a pool inside?

Mr. Minier said yes, sir.

Ms. Ingrid Nurse asked if the neighbors wanted the addition, or did you want the addition?

Mr. Minier said we are proposing the addition. We only have neighbors to the right side, there are some townhomes there to the west, and the north side is just fields.

Mr. Paxton asked if all these, he is asking a variance for essential, or are they luxuries you think you need to stay alive economically?

Mr. Minier said they are essential.

The Chair asked if there were any more questions. He said you are asking for parking spaces within the buffer, how many spaces are you required for this expansion versus what you are actually showing.

Mr. Minier will have Mr. Wong come up and answer your question.

Mr. Auggie Wong, CES Group Engineers, 3525 Whitehall Park Drive, Charlotte, NC addressed the Board stating the existing parking is showing at 97 and additional parking is 21 for a total of 118.

The Chair said usually when you add square footage, you have a required parking number associated with that. Are you saying 21 spaces is what is required per zoning requirements or what you are requesting? He is trying to figure out how much you need for zoning, total spaces for the entire site. He does not know if 97 that you originally had, did zoning only required 75 and you got extra. That is what he is trying to figure out.

Mr. Wong said we have not looked at the parking count. We realized that because of the outdoor facilities, they will potentially be using that area. We would have to look at other parking offsite, whether that is bringing in buses during peak hours or during swim meets. We will have to look at the parking count for that.

The Chair said basically, you are telling me your parking, that you are proposing will not meet the fire occupancy load for indoor and outdoor facility?

Mr. Wong said we have not looked at that but potentially you are right about that.

The Chair asked Mr. Wong for some insight on the opaque fence material. He knows you have a cross section, but it does not really show him what it is.

Mr. Wong said there is an image here and that is just an image.

The Chair said it looks to be like a chain link fence.

Mr. Wong said no. He does not think we want to look at a chain link fence. He said it could be a combination of both with decorative chain link fence or even a metal fence or any kind that is like an opaque.

The Chair said like a galvanized?

Mr. Wong said yes, galvanized fence. There are a lot of different products out there and we could certainly look at that during the site plan review. But the intent is to have an opaque fence, whether that is galvanized, chain link fence with one of those opaque slats or one of those, he guesses you could call it plastic. But it is more of what you see in the market out there.

The Chair is not for sure if there is a staff review on the fencing requirements or if we have any.

The Chair said it looks like in your rendering here, that you are showing the galvanized fencing around the pool, and it looks there is a fence on the northern property line, is that correct? It looks like a different material. He does not see it on the plan view.

The Chair said for those on the Board it is on page 26 if you want to look at it. We are talking about the area on the north side of the walking trail versus the fence around the pool. It looks to be two different materials.

Mr. Russ Angelo, Angelo Architects, 6525 Gaywind Drive, Charlotte, NC, addressed the Board stating that his office prepared these renderings and he felt like he would be more in tune to answer your questions.

He said the question was about the fencing material. What we envisioned by an opaque fence is maybe a vinyl or something esthetic that is easily maintained and certainly high enough to create the privacy. But there was never an intent to use chain link.

The Chair asked if that is different material than what he is seeing on the northern property line?

Mr. Angelo said Mr. Collins had this question and he answered as best as he could. These renderings were prepared about a month ago. As we pulled our drawings together for the variance request. There is a note on these renderings that says these are conceptual only.

In terms of the fence material, we did not get specific because at the time we were trying to emphasize the outdoor facilities which are the pools, the splash pad, and the playground.

The Chair said right, but you are also asking us to include the fence as part of your screening because of your request for reduction of the buffer. So, that is pretty valid information to know.

Mr. Angelo said we welcome any input from the planning department on what they recommend.

But again, something like vinyl from his experience can be very acceptable and aesthetic. You see it almost looks like blanks, run vertically with some rails and a cap on the top. We are not envisioning any masonry or anything like you would see around a nice subdivision. It was not to that extent, but it was again, an aesthetically pleasing fence.

The Chair said right. The other issue with the fence is on the southwestern property line, you are not really proposing any additional landscaping especially in the area around the covered area, the splash pads, pool/slide. His understanding is that is a 15-foot buffer, previously what was allowed at the time it was developed. He is trying to understand, you are not proposing anything, and you are wanting to put an opaque fence.

Mr. Angelo said the reason as presented by Mr. Collins, the site is very tight, it is only 5.5 acres, and the existing building sits right in the middle. What that does from a planning standpoint, it limits all the sides of it. If this building was over on one side of the site, which it is not, we would have all kind of room to do other facilities. But it being in the middle, from when it was built in 2005 or 2006, limits our ability to put other facilities where they need to be. These facilities come in sizes like Mr. Minier said, the 50-meter pool is what it is, we cannot really make it half that size or it does not perform the right function. Similarly, with the splash pad and slide, to reduce the size of those means they are not going to function as intended. He is not trying to make it to where it cannot be done, but our preference is to size it accordingly, and to request that the opaque fence be the buffer.

The Chair asked if anyone else had any questions.

Mr. Chris Pinto said are the amount of parking spaces being driven by amount and curb and gutter, is that a part of the reason why we have the base the amount and another 22 or 23 to get to that number?

Mr. Angelo said quite honestly, because the building was there, and the parking was there, and going back to 2005 what was required, we wanted to look at these buffers because as you can see, from our drawings and details the variance is the first step. If the variance goes through, which we all hope it does. the next step is to get into more particular challenges with the site.

He will say his experience with pools, the way we would present the parking is the outdoor pool would be in use or the indoor pool. They are not being used at the same. It is not like we are going to have thousands of people there that require cars everywhere. The parking is dependent on the number of people, and the people is dependent on the area of deck space and pool water space, from his previous experience with kind of facility.

Mr. Pinto said half the year the outside stuff would be used, even the walking trails. He said the walking trails will be all year probably.

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Mr. Angelo said the outdoor pool, let's face it, if it is not going to be heated or if it is going to be heated, it is still going to be challenging to use a lot of the months out of the year. It is more of an outdoor feature.

Mr. Pinto said all of them, the splash pad and everything.

Mr. Paxton said with the increase of stuff going on, on the outside, how will your inside building be utilized?

Mr. Angelo said the inside pool, like a lot of pools is an exercise pool and it is a swim lesson pool. He said Mr. Minier is the owner and would be more qualified to answer that.

Mr. Minier said as you stated, a lot of the months of the year our programming is indoors. During the summer months the indoor pool will probably be used less and the outdoor pools more. As the winter months take over, we would be indoors. He does not know that we would have a huge increase in the number of people using it. Our design is not to increase our team size to thousand swimmers. We are trying to keep our team size pretty small and manageable, but we also want to offer amenities. There are several neighborhoods in the area that have no amenities and we would like to be able to provide them with the opportunities to have some outdoor amenities in the summertime. Also increasing our water safety programs for children in the area. We would be able to offer more space for those water safety programs.

Mr. Pinto said for younger children that could become prospective customers down the line. Family situations, three kids, four kids, some of them are in the big pool and some of them are in the small pool.

He said you have your walk going around, is there any way to plant the trees around the walk? Some of it is 20 to 33 feet into the required buffer. Is there any way to hide it somehow?

Mr. Minier said our optimal vision of it is to make it as natural as possible. So, the more trees and plantings we can put in, that is what our vision would be.

Mr. Pinto said are most of them evergreen?

Mr. Angelo said most of trees are pines out there.

Mr. Pinto said the existing, like loblolly or are you talking stuff on the ground or holly or something?

Mr. Angelo said they are not hollies. If we can see photos that would be perfect. (Scrolling through the staff report on the overhead) There are trees there, but of course any required trees as part of the landscaping are what needs to be there for screening and would be evergreen, he would think.

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The Chair said can you explain the large volume of firewood in the back? It looks a sawmill is going on back there.

Mr. Minier said the previous owners used an outdoor furnace boiler system to augment the pool heating which we do not use any more. That portion of the property obviously is going to become a parking lot and all that firewood and stuff will be removed. It is going to be removed one way or another. But we are sort of holding off on removing it until we know exactly what our purpose in removing it is going to be. But yes, it is unsightly.

The Chair asked if anyone else had any questions. He then asked if this is the only iteration or layout that you guys worked on.

Mr. Angelo said as he mentioned, there are not many ways to do this, the amenities that Mr. Minier is asking for because the space is so limited. The reason that Olympic pool is there straddling the main building, is because it has access, better access to the bathrooms inside and other things. The outdoor pool works with functions inside so that kind of determined that. The splash pad, you want to be in the front ideally for visibility. Even though there is screening, it is not going to be totally visible. He said it was like pieces to a puzzle.

The Chair played with the design and the pool could go in the back and not even encroach into the buffer.

Mr. Minier said, the issue with the pool in the back is the existing pump house. That would have to be moved or removed which would cause excessive down time in the indoor facility, to replumb and move the mechanicals to a different part of the property. His original vision of this was the 50-meter pool in the back, but because it adds excessive cost in redesigning the indoor mechanicals.

Mr. Pinto asked what the 200-setback thing is, what is that? Explain that to me.

The Chair will try and asked Staff to correct him if he is wrong. Because of the way it is zoned, in the Residential, it is required to have the 200-foot setback because you are OI versus Residential.

Mr. Pinto asked what the Industrial setback is. If he were to have I1, what would it be?

Ms. Susie Morris, Planning and Zoning Manager addressed the Board.

Mr. Pinto said let's say I was to get something that was already zoned I1, and I was going to build a metal building.

Ms. Morris said let me answer your first question. She said country club, swim club and golf course, are three things listed on one line item. It kind of assumes that you have a vacant piece of

property, and that 200-foot setback would be established at that time. Similar, to what we have for the wedding facilities, where it is 200 feet before any of those parking areas or any of the amenity areas, accessory buildings, any of that stuff starts happening, so that there is a distance requirement and then within that distance requirement you have that landscape buffering requirement.

The Chair said, so, it is more of the special use of property not necessarily the OI designation? It is a special use.

Ms. Morris said correct, so in the OI the setbacks are less. The building itself meets the OI requirements. But when you look at the swim club requirements, which really is the best place that they fit in our Ordinance, that is where that comes from. As far as Industrial to Residential, that is going to be the highest buffer and that is going to depend on what size the property is. So, if it was a five-acre lot like this, she thinks it would probably bump then up to a 100-foot buffer versus what the OI does. Because the OI is supposed to be our Office and Institutional, which is supposed to be that transitional district between Residential and Commercial.

Mr. Pinto said okay, he was just wondering.

The Chair asked if anyone had questions for the applicant. There being none the Chair opened the Public Hearing. The Chair said he has four cards speaking in favor of the variance. Mr. Auggie Wong, Mr. Mark Minier, Mr. Russ Angelo, and Ms. Leigh Hinson. He asked if any of them wanted to make any comments, they all declined.

There was one card in opposition of the variance, Mr. Jeff Gray. The Chair asked Mr. Gray to come forward and reminded him that if he has any questions for the applicant to address them to the Board.

Mr. Jeff Gray, Attorney, 209 Delburg Street, Davidson, NC., addressed the Board stating that he understands that. He is here on behalf of the Billings, they own the property to the north and to the west. They are currently under contract with Skybrook to redevelop that property, who is the developer to the east. This would be the second phase of that Skybrook development out there.

Their objections fall basically in two categories: 1) equity and 2) impact. The equity arguments are that they were having to comply with the setback requirements, and they are losing lots and developable property because they are complying. They have no problems with compliance, they knew it going in, they just object to the fact that across the line. a variance is being entertained when their plans were based on that buffer being there, which gets to the impact. When you look at where these trails are running on that northern property line, you are going to be having trails that are within 30 feet of bedroom windows and with that kind of activity going on behind a building that is what removed from the street you have a lot of issues. Obviously, those lots are not going to be as desirable, and they will probably be impacted because of the folks just not wanting to be next door to a facility that was permitted and constructed and built for an indoor facility and now this expansion to an outdoor facility that puts a very nice pool. No one can

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argue that it is not a great pool. This, just is not the place for this kind of pool, given how it has been zoned and how it has been developed and what the setbacks are. So, they asked him, unfortunately, they cannot be here tonight. They were planning on being here in March, they had a trip planned so they asked him to show up in their absence.

The Chair asked if there were any questions.

Mr. Stephen Wise asked if that part of Skybrook in Mecklenburg County.

Mr. Gray said yes and no. It cuts, that line is really funny out there. He thinks on the backside somewhere along the line the Town of Huntersville was delegated the responsibility.

The Chair (showed on diagram) thinks this line here represents the County line. This line here is Mecklenburg County and this one is the Town of Huntersville.

Mr. Gray said there is some property to the west that is involved in this Skybrook development. But the overwhelming majority, he would say is in Cabarrus County. He thinks the main entrances are going to be off of the Huntersville side of Harris which is another reason why he thinks the jurisdiction on the site plan approval was delegated to the Town of Huntersville.

The Chair would assume that was the case because of the utilities, water, and sewer. Because the County does not have water and sewer, so that is probably why it went to that jurisdiction.

Ms. Morris said if you look at the overall site plan, as the Chair pointed out, if you look at these pictures, this is the townhomes that are to the right of the project. What is shown, the grayed-out lines, this area has all been annexed into the Town of Huntersville. She said this is the County line and as the Board knows, we can only recognize what is on the Cabarrus side of the line. The product type and the design that Skybrook preferred is more comparable to Huntersville type project versus an unincorporated Cabarrus County no utility type project. So, the area around that particular property, it is completely surrounded now, by the Town of Huntersville. It is not Mecklenburg County, it is the Town of Huntersville. The house that is in the back, and the Cell Tower that is in the back that some of you all are familiar with, that property was all annexed in May 2021.

Mr. Gray was speaking to Ms. Morris off the microphone about the Billings property.

Ms. Morris explained and showed him what all was in Huntersville now and that the County has no jurisdiction.

Mr. Gray said one of the questions was, how does was the Mecklenburg County line....

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Ms. Morris explained that it was not the Mecklenburg County line and showed him Cabarrus County line, but this property does not back up to the County line. She showed him the line they were talking about. The Billings property itself actually comes around this property. She said this is the site plan from Huntersville and we have imposed it as part of this.

The Chair asked if there were any additional comments or questions for the applicant or staff?

The Chair has a question for Staff. He said obviously this site was probably developed before Phase 2. Are they having to meet any stormwater requirements?

Ms. Morris said the County standard is one acre or more developed. The State will look at what is existing and then what is proposed, anything that is there before 2007. She asked the applicant if they had already talked with the State and if they are going to have to get a permit, right?

Mr. Wong answered yes from the audience.

Ms. Morris said if you look, she thinks to the rear, you will see that they had....

The Chair knows they showed a drawing that showed the existing versus proposed impervious to kind of overlay it. By my calculations, he is about 1.66 acres on new impervious and he was not sure if he was going to get into over an acre of disturbance. Obviously, walking trails and stuff that are outside, everything is not all compact.

Ms. Morris said if you look at this drawing, this was the comparison between the two, as far as what is there and what is going to be there. She thinks in the end it is over an acre and they would have to get a permit from the State if it is over an acre.

The Chair said for erosion, sediment?

Ms. Morris said both.

The Chair said stormwater?

Ms. Morris said both.

Mr. Wise said it will probably take 12 months.

The Chair is curious how they are going to meet the Phase 2 requirements.

Ms. Morris would let them speak to that, from the engineer.

The Chair said do you have any insight on how you are going to address any stormwater from the State?

Mr. Wong said he is a landscape architect, and our engineers are looking at an underground cistern, and looking in the back to do a linear retention basin to meet that requirement. We are looking at different options, underground cistern and permeable pavers might be another option to that.

The Chair said is that a cistern that will be in these buffers? That would be considered another infraction on the buffer if you are going with a permeable paver.

Mr. Wong said it would be within the parking areas.

Mr. Wise said underground.

The Chair said underground would be but not necessarily with permeable pavers.

There being no further comments or questions the Chair closed the Public Hearing.

The Chair read the Section 12-20 Application of the Variance of Power:

**Section 12-20 Application of the variance power**

A variance may only be allowed by the Commission in cases involving practical difficulties or unnecessary hardships when substantial evidence in the official record of the application supports all the following findings:

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

All of these findings of fact shall be made in the indicated order by the Commission, which is not empowered to grant a variance without an affirmative finding of fact on all four categories above. Each finding of fact shall be supported by substantial, material, and competent evidence in the record of the proceeding before the Commission.

The Commission may impose reasonable conditions upon the granting of any variance to ensure

that the public health, safety, and general welfare shall be protected, and substantial justice done. Violation of such conditions shall be a violation of this Ordinance.

The Chair said the Board will need to go through these and have a discussion. He reminded the Board that the variance requires 80 percent to pass, so that would be five out of six votes to pass. He said we can add conditions, we can request tradeoffs, we can approve some and maybe not all and we can also approve it without any type of trade off. He opened the floor for discussion.

Ms. Morris said it has been brought to our attention that the rebuttal period was not offered.

The Chair apologized and reopened the Public Hearing. He asked if there was a rebuttal from the applicant.

Mr. Mark Minier said when they purchased the property in 2016, the owners, the Billings represented by Mr. Gray, had plans and aspirations to build an outdoor facility such as we are presenting. So, we were kind of questioning why they are no longer in favor of it. When we did our address to the neighbors, they had no opposition. So, that is his question, what is the opposition.

Mr. Jeff Gray said a contract with a third party, Skybrook.

The Chair asked Mr. Minier if that answered his question.

Mr. Minier said yes.

The Chair asked if anyone else had any comments before he closes the Public Hearing.

Ms. Leigh Hinson, 14228 Eastfield Road, Huntersville, NC., addressed the Board stating that she has worked at this location since February 2008. She worked for the Billings, and she now works for Mr. Minier. She was aware of the Billings goals and plans to build an outside facility. She too is also surprised by their opposition to this. It is also her understanding that the contract with the third party, the plans for that has not been approved, that they are not in the Skybrook HOA. So, she feels like our plans should take precedence over something that is not approved or is not moving forward yet.

There being no further questions or comments the Chair closed the Public Hearing.

The Chair said essentially, we have two major ones. We have the setbacks, and we have the buffers. We can start with the setbacks. He said obviously, pretty much the entire site is within the 200-foot setback. We will be discussing the pool, the playground, the slide, the covered area, dumpsters as well as parking. He does not know if parking classifies as a structure, but it is within the setbacks.

Mr. Collins said setback section under item C, there shall be a 200-foot minimum setback between any accessory building, swimming pool, lighted tennis court, or parking area.

The Chair said essentially everything they are asking for is in the setbacks. The walking trail is pretty self-explanatory, he does not have any hardships on that, but obviously the rest of it is pretty major.

Mr. Wise said there is just a lot going on with these setbacks. He is not sure if all of this will work at the end and if we don't need more engineered drawings. We do not know what the stormwater, fire truck access, there is a lot of stuff going on and he would hate to grant all of these variances and they don't work. It is kind of tough because everything is going into the setback.

The Chair said basically, the comment made earlier about who is first, it does not really matter because the properties are zoned what they are. It is based on zoning, not particular use. The particular use yes, for this applicant, yes. They are having to buffer from zoning, not actual what is on the ground.

Mr. Paxton said due to Covid, it certainly has increased an economic hardship on the applicant. Therefore, he is a little more lenient on some things that might keep him to survive. Exactly what those are he guesses we will have to take up on an individual basis or if you have any suggestions.

The Chair said it is an existing business. He does not know that hardships cover that, it is not like it is a vacant property, and he does not know that we can count that as a hardship.

Mr. Paxton said what about the personal circumstances as well as hardship resulting from the conditions there? He is just throwing that out for discussion. He is not going to be hard and fast, but he does think we should give some consideration to the hardship because of the Covid. Everybody has to adapt and change, exactly how much of an adaptation or change he guesses is a tough question.

Mr. Pinto said what kind of relief would they be able to get on the 313.5-foot buffer, with the canopy of trees and 48 shrubs and a water easement from Charlotte Water. How does that work? Do they plant oak trees or whatever and then Charlotte Water has to come in and maintain something or if they bring a line? How do you make somebody put something on top of that and then if something happens and Charlotte Water comes in there?

The Chair said they were not proposing anything over the easement. The easement has to stay clear. His concern is we have some buffers with some pretty substantial encroachments. It is hard for him, if it is one or two things, but the only side of this property that is not affected by this variance request is along Harris Road. Every other inch of this perimeter is impacted by what

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they are wanting to develop, whether it be a setback or the buffers. We are talking a pool, a slide, covered areas, parking and a dumpster. The walking trail, that is not uncommon, he does not see

an issue with that request. They are only requesting 20-foot buffer with a six-foot trail that is actually landscaped.

Ms. Morris said one of ways maybe to think about this in reverse would be that #1 yes, there is the 200-foot setback issue. This particular site, that type of use did not exist back then. It either had to be indoor recreation or outdoor recreation, there wasn't anything like that. This particular site also was zoned to an OI zoning designation before we even had that designation in the Ordinance, so it was a little different.

She said in terms of the buffer, she does not think it has been stated yet and it was in your staff report. There is a consisted 20-feet around the edge, except for where that fence is proposed. But the applicant did have in their application, that they intended to install all of the plantings that would be required of the 50-foot buffer or the 30-foot buffer within those particular areas. She thinks some of that is what Mr. Collins provided as the calculations to those areas that may be short those plantings. She said that might be an easier way to approach if you kind of work backwards from that if that makes sense.

The Chair said he always gets stuck in landscape points which is the old way. You are saying in some areas they are not going to meet their points requirement for those areas but in other areas they are going too.

Ms. Morris said it is her understanding, and Mr. Collins can correct her if she is wrong, that the 20-foot that is proposed, they would meet the plantings in those areas. The only areas where they they would not be able to meet the plantings, she thinks is in the northeast corner and then southwest property line. She said Mr. Collins can answer any more of those details for you.

Mr. Collins said there actually is additional on the eastern property line. They are meeting the perimeter buffer, but it is the parking lot perimeter buffer that they are asking for relief from on that. Which would be additional to the perimeter buffer.

The Chair said so they are asking for relief on the eastern parking lot buffer with the parking in the required buffer.

Ms. Morris said there are three primary things: #1 is the buffers, #2 is some sections of the perimeter landscape, and #3 is the parking lot landscape. The Ordinance requires that outside that parking area there should be a 10-foot buffer where it is adjacent to residential. They are requesting not to install that because it would be a buffer up against a buffer. The exterior buffer that you see there that is a consist 20 feet around the perimeter. So, if you take it each side, we can help you with the variances that are needed on each side.

The Chair asked Ms. Morris to put the map up that shows the yellow line. He said the yellow line represents the 20-foot buffer that they are proposing.

Ms. Morris said correct, and it is our understanding that they are proposing that whatever the required plantings would be for the overall buffer that they would be accommodated in that buffer. She asked the applicant if that was correct.

The Chair said the applicant stated yes from the audience.

Mr. Andrew Nance knows we have had cases in the past where people claim they are going to try to squeeze 50-feet worth of buffer into a much smaller area, and we have had issues with that because the plants are going to fight for nutrients, they are not going to live. So technically, you are not really providing the buffer that you are claiming you are going to provide.

The Chair asked Staff if this would require any type of landscape bond?

Ms. Morris said unless it was to not install it, but as stated previously, the Board can add conditions as long as the Applicant understands and agrees to those conditions. She asked if the Chair was speaking about a maintenance bond like we have done in the past or a maintenance contract?

The Chair said yes.

Ms. Morris said yes.

The Chair is really struggling with this. It is like taking 50-pounds of flour and putting it in a 10-pound bag. He kind of agrees with Mr. Wise, that we do not really have all the information. The stormwater could really impact this site, obviously, sediment and erosion would go away, but to not know what type of stormwater mechanism they are going to use is very difficult especially if they do not do underground.

Mr. Nance said Mr. Wise's point earlier, we have not been given enough information he feels like, and the parking is a good example of that. We do not know how much they are required. We are being told how much they plan to add, but do not know if their current parking meets their requirements, if the additional parking will meet those requirements. Another point was brought up, we were told that the indoor and outdoor facilities will not be used at the same time, but it is hard for him to believe that the applicant will not try to utilize both areas at the same time.

The Chair said he counted 32 parking spaces that are in the buffer, obviously not all completely but impacting the buffer one way or the other. There adding 21 and we have 11 existing that are already creating an issue.

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Ms. Morris said one of the other things that was not brought up during the discussion about this that was in your Staff report, there is actually an easement that travels across that right side of the property to the cell tower in the back.

The Chair would assume that it just follows the drive by on up into the gravel path.

Ms. Morris said yes. It is her understanding, that is why they were trying to place the parking spaces on the exterior side where you would normally see like a row in between there, to try to accommodate that easement, because you cannot block that easement.

The Chair agrees with Mr. Nance on the concern about the parking. You cannot tell me how many you are required to have. You stated you are probably going to have to do offsite parking.

Mr. Paxton said, since we obviously have some concerns, now his question is, is the applicant willing to maybe defer any definitive action and go back to the drawing board and bring us back some more finite answers to these questions.

Mr. Angelo thinks it is unfortunate we do not have all the answers for you because you are asking obviously some very good questions of our group and of the property owners. But, in working with Mr. Wong, he is landscape, he has civil designers and Mr. Angelo is doing a project now, where underground detention is kind of the way to do it because obviously there is not room on this site to put a pond, so that becomes the answer. So, whether we have to say that, or wait some time from now to say that. We can say it right now probably if that helps resolve some unknowns.

In terms of the parking count, he thinks again, this variance from his understanding is focused on the setbacks and buffers. Parking is going to be an issue. We feel like we can address that in our next round of agency reviews. He does not know if it is a deal breaker for the variance.

The Chair has a question for legal. If we do table this and request additional information, would it be only the six that are up here are would it be whoever is at the next meeting?

Mr. Richard Koch, County Attorney said the same rules still apply. If we have those that are not here become familiar with what was discussed in this hearing through the minutes or through some other way where they can get up to speed, and they feel that they are up to speed, then they could sit. That is what the law is.

Mr. Koch told the applicant if the hearing is deferred, there may be a different group up here. We usually try to keep it the same if we can, but that is usually more when we have a full Board anyway and now, we have six tonight. But we can supplement it with other people that could hear it if it is not finished tonight at a subsequent time. The law does allow that, but they do have to have made themselves familiar with what went on at the hearing that they were not present for.

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Mr. Angelo said thank you.

Mr. Wise said if the variance for the setbacks is voted on or whatever, then they come for the rezoning for OI next month maybe? What is the process on that?

The Chair really does not know why we did not do all of that at once.

Ms. Morris said because the applicant wanted to see the results of the variances.

The Chair said to whether or not they want to rezone it?

Ms. Morris said to figure out if they needed to potentially look at some other type of design or what they needed to do. You all know, typically if we have a variance, if they have to do something else with the project, we typically advise them to split those up into two separate meetings because they may have to go back and they may have to revise the site plan based on what the determination was. They would be asking for just a straight OI so that does not involve any type of a site plan. She believes they bought their application today, but it is pending what happens this evening.

Ms. Morris was just asking the Applicant if they would be amenable to doing a Conditional Use Rezoning with the OI, to limit it to the swim club to the indoor recreation and then the associated site plan. If it was to go that route, they would have to have either their stormwater permit in place or have something from the State that said that it would not be required. She was just asking, she did not know if that potentially would give the Board a different comfort level. Regardless, we still have to deal with the variances.

Mr. Paxton said in his opinion, given all the unanswered questions that are here tonight, he makes a Motion that we Table this Variance request until some point in the future, either the next meeting or when they are able to provide more definitive answers.

Ms. Morris said if this motion moves forward if the Board could provide some direction to the Applicant has far as what the Board would like to see.

The Chair thinks he can speak for Mr. Paxton and correct him if he is wrong, the concerns are the parking, the stormwater, what is required versus what is requested. Obviously, the fire occupancy load may have some impact on that because obviously they cannot have but so many occupants indoor, outdoor period. He does not know if that will drive the parking, but obviously the stormwater what type of measure they are going to use and where it might to be. He thinks those are two biggest things.

The Chair would like more information on the fencing. You are asking us to include the fencing as a part of your buffer. He would like to see more information on those areas.

The Chair said we have a motion and Ms. Nurse said she will second it.

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Mr. Wise would like to discuss something.

The Chair said sure, we do not have to vote yet.

Mr. Wise said Ms. Morris asked us to give them more direction on what we are looking for. Can they come back, and we do the Conditional Use and the Variances all in the same meeting just to save time, if we are happy with what they present to us, or does it have to be the same variance again when they come back?

Ms. Morris will not answer on behalf of the Applicant, but she thinks that they wanted to try to work their way through this process so that they knew what they had to work with moving forward.

The Chair said obviously if the variance is not approved and they did the conditional use at the same time, then they are stuck to that conditional use requirement.

Ms. Morris said they have to have their stormwater in place. They have to have their soil and erosion control in place because that plan moves forward.

Mr. Wise said for permitting?

Ms. Morris said correct. She thinks we probably need to deal with the variances first. If they stick with just OI, then they could go that route because that would not impact the site. That is just the zoning and then continue to work on the variances.

We will have that discussion with the applicant. We did have a lot of discussion about, do we break it up into two meetings, do you try to do it together, just because some of these are difficult decisions and sometimes it does take some time to work through them.

The Chair said another thing to add would be the revision of the buffer requirement on the western boundary from the 32 to 51-feet, to show that, so we would have a representation of what that would look like. Those three things.

There being no further discussion, the Chair said we have a **MOTION** and a **SECOND** on the floor to **TABLE VARN2022- 0001**, Request for relief from the following: Chapter 5, impervious area maximum for non-residential districts, Chapter 7, setbacks for swim clubs, Chapter 9, landscape buffers and parking lot buffers. The vote was unanimous.

The Chair asked the Applicant was clear on what the Board is asking moving forward.

The applicant responded from the audience, and it was inaudible.

The Chair told the Applicant to work with Staff.

Planning and Zoning Commission  
Minutes  
April 12, 2022  
**Legal Update**

Mr. David Goldberg addressed the Board that we received a partial judgement payment for the McClain RV Case that we had a judgment on, \$514 down, about \$3200 left, so the checks are

coming in. He drove by there on Sunday and the RV is now gone. He has moved into the Apollo Park by the Speedway, he found out today that he was back over there. We will keep pursuing that and we have some plans as far as how best to clean up that property.

He knows last meeting was a lot, just know this is not done, in the sense that you will have the opportunity to vote on the findings and conclusions to formalize your decision from last time. You will approve the minutes, approve the record and vote on that. At that point the Applicant will have an opportunity to appeal within 30 days to Superior Court. There are a lot of conclusions that could come from that, including sending the case back to this Board for further action.

So, the same thing goes as before, he knows we all want to talk about it, we all have opinions, but the best approach would be to limit to what is on the record and to treat this as an ongoing matter. If you do have any questions or any contacts from anyone, please let us know and we can handle it from there. We are still working with the other side of this towards the next steps in resolution if possible.

**No Directors Report**

There being no further discussion, Ms. Ingrid Nurse **MOTIONED, SECONDED** by Mr. Andrew Nance to adjourn the meeting at 8:14 p.m. The vote was unanimous.

**APPROVED BY:**

Mr. Adam Dagenhart

**SUBMITTED BY:**

Arlena B. Roberts

**ATTEST BY:**

Susie Morris, Planning and Zoning Manager

**Petition: RZON2022-00001 Rezoning**

**Applicant Information:** Gilwood Presbyterian Church  
Matthew Love, Trustee  
2993 Odell School Road  
Concord, NC 28027

**Owner Information:** Gilwood Presbyterian Church  
Matthew Love, Trustee  
2993 Odell School Road  
Concord, NC 28027

**Existing Zoning:** CR (Countryside Residential)

**Proposed Zoning:** OI (Office/Institutional)

**Existing Permitted Uses:** All uses permitted in the CR zoning district are permitted on the subject property.

**Proposed Uses:** All uses allowed in OI zoning district.

**Parcel ID Numbers:** 4682-34-5893

**Property Addresses:** 2993 Odell School Road

**Area in Acres:** ± 11.08 ac

**Site Description:** The subject property is currently occupied by Gilwood Presbyterian Church. The church has occupied the site since 1887, well before zoning was originally adopted.

**Adjacent Land Use:** North: Residential  
East: Residential  
South: Vacant  
West: Residential

**Surrounding Zoning:** North: CR (Countryside Residential)  
East: CR (Countryside Residential)  
South: CR (Countryside Residential)  
West: CR (Countryside Residential)

**Utility Service Provider:** Currently, the subject property is served by private well and septic.

## Exhibits

- EXHIBIT A – Staff Report
- EXHIBIT B – Application
- EXHIBIT C – Property Deed
- EXHIBIT D – Property Maps
- EXHIBIT E – Adjacent Property Owner & Property Owner Letters
- EXHIBIT F – Neighborhood Meeting Information
- EXHIBIT G – Use Comparison Table

## Intent of Zoning Districts

### **PROPOSED DISTRICT: OFFICE/INSTITUTIONAL (OI)**

This district is intended to accommodate relatively low intensity office and institutional uses at intensities complementary to residential land use. This district serves as a transitional district between residential land uses and higher intensity non-residential land uses.

### **RATIONALE**

This district is used to provide for low intensity office and institutional uses that can be complementary to adjacent residential land use. This district features employment options and essential services which require a moderate number of average daily trips. These uses will have a minimum impact on the surrounding area because these trips will generally occur during regular church business hours, thus, not competing with residential traffic at peak hours. This district should be located adjacent to residential districts or in areas where its use would serve as a transition between residential land uses and higher intensity non-residential land uses. Higher intensity non-residential land uses may include commercial districts, light industrial or mixed use districts. When bordering residential districts or residential developments, care should be taken to assure natural or manmade buffering and architectural compatibility so that the nonresidential activities are not a nuisance to residential use.

### **EXISTING DISTRICT: COUNTRYSIDE RESIDENTIAL**

Lands in this district have a strong rural, pastoral feel. Natural environmental elements such as tree lines, small ponds, rock formations, and manmade elements such as pasture fencing are to be retained, if at all possible. Although the area is capable of handling higher densities of development, development is kept at very low overall densities. Development includes only the standard single family detached dwelling.

### **RATIONALE**

This land use district was created as a direct result of the County's systematic area planning process. As a reaction to the growth of the past decade (as much as 80% in some townships) many residents are anxious to see their areas retain the appeal that inspired the resident to make his or her original investment. This district helps implement a growth management philosophy before the fact, rather than after. In summary, the principle purpose of this district is to provide some land area in the County for a permanent country, rural residential life style.

## Agency Review Comments

### **Planning Review:**

*Staff Report, Sandy Howell, Planner, Cabarrus County*

### **NCDOT Review:**

We have no issues with the proposed, as long as any proposed expansions and/or addition meets all local ordinances, not in the right of way, not in any sight distance and it stays on premise.

*Marc Morgan, NCDOT*

### **Fire Marshal Review:**

*No comments, Matthew Hopkins, County Fire Marshal*

### **EMS Review:**

*No comments. Justin Brines, Cabarrus County EMS Director*

### **Sheriff's Office Review:**

*No comments. Ray Gilleland, Cabarrus County Sheriff's Lieutenant*

### **Health Alliance Review:**

*No comments. Chrystal Swinger, Cabarrus Health Alliance*

## Land Use Plan Analysis

The subject property is located within the boundary of the Northwest Cabarrus Land Use Plan (Plan) and is designated medium density residential. The residential designation of the Plan emphasizes a strong rural, pastoral feel. Natural environmental elements should be retained if at all possible. In these areas density will be kept very low. Development will include standard single family detached dwellings, other more intense forms of residential settlement such as townhouses are permitted as long as site sensitive design occurs. Cluster development standards are required.

Although the recommendation of the Plan is for residential uses, the subject property is currently developed with a religious institution, Gilwood Presbyterian Church, which has occupied the site since 1887, well before zoning was adopted. The rationale of the OI district states that the OI district is for low intensity office and institutional uses that can be complementary to adjacent residential land use.

## Conclusions

- The proposed rezoning is not consistent with the Northwest Cabarrus Area Plan. However, the subject property supports an existing religious institution which was constructed prior to county zoning. The property currently has a residential zoning designation of CR. Rezoning from CR to OI would not affect ordinance compliance.
  
- The front portion of the subject property is located within the Coddle Creek WS-II watershed protected area. The following requirements may affect future development of the site. Rezoning would allow the current institutional use to expand up to the 75% impervious coverage (OI requirement) rather than the 20% (CR requirement) within the watershed protected area.
  - All other residential and non-residential development shall not exceed twelve (12%) percent built-upon area for the site in addition to meeting the applicable minimum lot size, density, and zoning district requirements.
  - Lots that were developed prior to the adoption of the watershed regulations on December 20, 1993 are considered grandfathered lots. Built-upon area, for purposes of complying with the Watershed Overlay Zone standards, shall be determined by using additions to the site occurring after the adoption date of this section of the ordinance. Historical survey data, Cabarrus County Geographic Information Systems data and land records data shall be used to determine the base built-upon area for Watershed Overlay Zone compliance and for permitting purposes. In no case, however, shall the overall built-upon area for a property exceed the impervious or structural coverage allowed for the underlying zoning district.

|  | Current Zoning CR    | Proposed Zoning OI | Site Conditions  |
|--|----------------------|--------------------|--|
| Minimum Lot Size                         | 2 acres conventional | 10,000 sq ft       | ± 11.08 ac (170,772.95 sq ft in watershed)   |
| Density                                  | .50 max units/acre   |                    | Church, Parsonage, Accessory Structure, Playground, Cemetery   |
| Impervious Coverage                      | 20%                  | 75%                | 25,260.91 sq ft within watershed area  |
| Impervious Coverage prior to 12/20/93    |                      |                    | 18,805.31 sq ft within watershed area  |
| Impervious Coverage Added after 12/20/93 |                      |                    | 6,455.78 sq ft within watershed area   |
| Protected Watershed Impervious Coverage  | 12%                  | 12%                | Coverage minus pre 12/20/93 built upon area = 3.78%<br>Total Current Coverage in watershed area = 14.79%<br>(5.21% available in CR and 65.21% in OI) |

- A church is considered a religious institution and is classified in the institutional, civic and public uses category. Institutional uses are permitted in residential zoning districts if supplemental design and development standards are met. These standards are determined based on seating capacity and zoning designation. If the seating capacity is 350 or less, additional design standards must be met. A special use permit is required in residential districts where the proposed total seating capacity is 351 or more. Gilwood Presbyterian Church has a seating capacity of 350 or less and is therefore permitted based on additional design standards being met. A Special Use Permit is not required.
- For both CR and OI zoning jurisdictions design standards for religious institutions with less than 351 seats include the following:
  - Front on an arterial or collector road
    - The current site fronts on Odell School Road which is a major thoroughfare.
  - The required setbacks of each zone shall be doubled in residential districts.
    - Currently the site meets the double setback requirement.
- The OI zoning district serves as a transitional district between residential and commercial districts. It is also the more appropriate district for institutional uses, like churches and schools.
- The proposed zoning change to OI would provide greater flexibility for future use of the site, including allowing additional impervious area and additional signage to be permitted on the site.

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



## CABARRUS COUNTY REZONING APPLICATION

STAFF USE ONLY:

Application/Accela#: RZON 2022-00001  
Reviewed by: SDWH  
Date: 5/16/2022  
Amount Paid: 830.00

### INSTRUCTIONS/PROCEDURES:

1. Schedule a pre-application meeting with Staff to discuss the procedures and requirements for a zoning map amendment request.
2. Submit a complete application for an amendment to the official zoning map to the Planning Division. All applications must include the following:
  - Cabarrus County Land Records printout of all adjacent property owners. This includes properties located across the right-of-way and all on-site easement holders. The list must include owner name, address, and Parcel Identification Number.
  - A recent survey or legal description of the property or area of the property to be considered for rezoning.
  - Any additional documents essential for the application to be considered complete. (Determined as part of the pre-application meeting)
3. Submit cash, check, or money order made payable to Cabarrus County.  
Fees: Residential rezoning request 1 acre or less = \$400.00  
Residential rezoning request greater than 1 acre = \$400.00 *plus* \$15 per acre  
Non-residential rezoning request = \$650.00 *plus* \$15 acre  
(Plus, cost of advertising and engineering fees if applicable)  
(if a 3<sup>rd</sup> submittal is required, an additional review fee will be assessed)

The deadline for submittal is always the same day as the Planning and Zoning Commission Meeting which is the second Tuesday of the month. Applications must be submitted before 2:00 PM that day for consideration on the next available agenda.

**Incomplete applications will be returned to the applicant and will not be processed.**

### PROCESS SUMMARY:

1. Hold a pre-application meeting with Staff to discuss your rezoning request and the map amendment process.
2. Submit a complete application with the appropriate fees to the Cabarrus County Planning Division.

Staff will review your complete application, prepare a staff report, schedule a public meeting date and notify adjacent property owners of the public meeting/public hearing date. A sign advertising the public hearing will also be placed on the property being considered for rezoning.

**Meeting Information:** Meetings are held the second Tuesday of each month at 6:30 PM in the Cabarrus County Governmental Center located in downtown Concord at 65 Church Street, SE.

**Expedited Vote:** A vote of  $\frac{3}{4}$  or more of the members of the Planning and Zoning Commission is considered an Expedited Vote and will constitute a final decision. If approval or denial of a rezoning request is by a vote of less than  $\frac{3}{4}$  of the members, or if an appeal of the decision is filed within 15 days of the date of the decision, the application will automatically be forwarded to the Board of Commissioners for final consideration at a *de novo* hearing.

**Questions:** Any questions related to rezoning your property or to the rezoning process may be directed to the Planning Division at 704-920-2141, between 8 AM and 5 PM, Monday through Friday.

**SUBJECT PROPERTY INFORMATION:**

Street Address 2993 Odell School Rd

PIN(s) (10 digit #) 4682--34--5893

Deed Reference Book 2894 Page 287

Township # 10

**DESCRIPTION OF SUBJECT PROPERTY:**

Size (square feet or acres) 11.08 Acre

Street Frontage (feet) 480 ft.

Current Land Use of Property Non-Residential Religious

Surrounding Land Use North Residential

South Residential

East Vacant

West Residential

**REQUEST:**

Change Zoning From CR To OI

Purpose for Request:

The purpose for this request is for a zoning district more fitting of the current use and its future endeavors. Also, the church also plans to incorporate signage which is allowed in the OI district.

**PROPERTY OWNER/AGENT/APPLICANT INFORMATION:**

It is understood by all parties hereto including owner, petitioner, and/or agents that while this application will be carefully considered and reviewed, the burden of proving its need rests with the below named petitioner(s).

I do hereby certify that the information that I have provided for this application is, to the best of my knowledge, true and correct.

**PROPERTY OWNER**

**AGENT/APPLICANT**

Matt Love

NAME

Matt Love

NAME

2993 Odell School Rd

ADDRESS

2993 Odell School Rd

ADDRESS

Concord, NC 28027

CITY, STATE, ZIP CODE

Concord NC 28027

CITY, STATE, ZIP CODE

704-361-8979

PHONE NUMBER

704 361-8979

PHONE NUMBER

FAX NUMBER

FAX NUMBER

tmlove@cabarruscounty.us

E-MAIL ADDRESS

tmlove@cabarruscounty.us

E-MAIL ADDRESS

Signature of Property Owner: \_\_\_\_\_

Matt Love

Date: \_\_\_\_\_

5-5-2022

Signature of Property Agent/Applicant: \_\_\_\_\_

Matt Love

Date: \_\_\_\_\_

5-5-2022

**LAND USE PLAN CONSISTENCY STATEMENT**

Describe how the proposed rezoning meets the land use plan(s) for the subject parcel(s):

The subject property is located within the Northwest Cabarrus County Small Area Plan. Although the recommendation of the Plan is for residential uses, the request is for a zoning district more fitting of the current use.

**UTILITY SERVICE:**

Water Supply     Well            or             Service Provider \_\_\_\_\_

Wastewater Treatment     Septic Tank(s)    or             Service Provider \_\_\_\_\_

**Gilwood Presbyterian Church**



Planning and Development Department  
Cabarrus County  
65 Church St. SE, Concord, NC 28025  
P.O. Box 707, Concord, NC 28026

June 3, 2022

Dear Members of the Planning and Development Department,

Gilwood Presbyterian Church has authorized Matt Love to act on the church's behalf to apply for a change in zoning. Matt is an active ruling elder and a member of the Session of the church. He is also Vice-president of the church's Board of Trustees.

Sincerely,

A handwritten signature in cursive script that reads "Tracy Bridgers".

Tracy Bridgers  
Clerk of Session  
Gilwood Presbyterian Church

Prepared by and Mail to After Recording:  
Rosenman & Colin LLP  
Suite 3601  
101 South Tryon Street  
Charlotte, NC 28280-0008  
Attention: Cindy Christ

JAN 15 12 04 PM '00

LINDA F. MCADEE  
REGISTER OF DEEDS  
CABARRUS COUNTY

NORTH CAROLINA )  
COUNTY OF CABARRUS )

AMENDMENT OF  
RIGHT-OF-WAY AGREEMENT

THIS AMENDMENT OF RIGHT-OF-WAY AGREEMENT, made as of the 13<sup>th</sup> day of May, 2000 by Mac M. Goodnight (widow) and Ronald Lynn Goodnight (unmarried) (collectively hereinafter referred to as "Goodnight"), Jean A. Johnson (widow) and William Timothy Johnson and wife, Shawne Marie Johnson (collectively hereinafter referred to as "Johnson"), and Gilwood Presbyterian Church, Inc., a North Carolina corporation (hereinafter referred to as "Gilwood");

WITNESSETH:

WHEREAS, a RIGHT-OF-WAY AGREEMENT (hereinafter referred to as the "ROW Agreement") was executed by Goodnight on or about April 11, 1999 and was recorded in the Register of Deeds office for Cabarrus County at Book 2514, Page 263; and

WHEREAS, Goodnight and Gilwood have exchanged deminimis parcels of land along their joint boundary; and

WHEREAS, the ROW Agreement referenced the joint boundary between Goodnight and Gilwood for part of the easement description; and

WHEREAS, Goodnight, Johnson, and Gilwood now desire that Gilwood should have access to and use of the right-of-way conveyed by the ROW Agreement.

NOW, THEREFORE, the undersigned, for valuable consideration in hand paid, the receipt of which is hereby acknowledged, agree as follows:

1. The right-of-way description contained in the ROW Agreement is deleted therefrom and the description attached hereto as Exhibit "A" is substituted in its place and stead (the "Right-of-Way");
2. Goodnight and Johnson hereby grant, bargain, sell and convey to Gilwood, its heirs, successors and assigns, a permanent, nonexclusive easement over and across that portion of the Right-of-Way that lies between Odell School Road (SR# 1601) and the Gate (hereinafter defined) in the fence between Goodnight's and Gilwood's properties (the "Easement Area") for the purposes set forth in the ROW Agreement as hereby amended;
3. Gilwood's use of the easement shall be limited to maintenance of all of Gilwood's property which shall include, but not limited to, the digging of graves and the movement of Gilwood's personal property;
4. Gilwood shall have access between the Easement Area and Gilwood's property by way of an existing gate in the fence (the "Gate"), said fence being referenced in condition number 3 of the ROW Agreement;
5. Gilwood is to keep the Gate padlocked at all times and Gilwood shall solely control all access or use of the Gate;
6. Maintenance of the Gate shall be the sole responsibility of Gilwood, its heirs, successors and assigns and any damage to the fence caused by Gilwood shall be repaired by Gilwood;
7. Any damage caused to the fence by trees or limbs shall be repaired by the party upon whose property the tree existed immediately prior to the damage occurring;

20-

\* 8. Conditions number 1 and 2 of the ROW Agreement are hereby deleted in as much as they (a) restrict the use of the right-of-way by William Timothy Johnson or any house built on the land owned by William Timothy Johnson as of the date of the execution of this Amendment and (b) require or prohibit William Timothy Johnson and his descendants from improving the right-of-way; and

9. Goodnight represents, warrants and covenants that it is seized of the Easement Area in fee simple and has the right to grant, bargain, sell and convey the easement described herein; that the Easement Area is free from any lien, judgement, or encumbrance, and that it warrants the title to the Easement Area against any claim of anyone whatsoever, except others using the Easement Area for the purposes set forth in the ROW Agreement as amended.

Except as specifically amended by this Amendment, the ROW Agreement shall remain in full force and effect and is incorporated in this Amendment as if fully set forth herein.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the undersigned have duly executed or have caused this instrument to be duly executed under seal as of the day and year first above written.

*Mae M. Goodnight*  
(Attorney-in-Fact) by: *Ronald Lynn Goodnight* (SEAL)  
MAE M. GOODNIGHT

*Ronald Lynn Goodnight* (SEAL)  
RONALD LYNN GOODNIGHT

*Jean A. Johnson* (SEAL)  
JEAN A. JOHNSON

*William Timothy Johnson* (SEAL)  
WILLIAM TIMOTHY JOHNSON

*Stawne Marie Johnson* (SEAL)

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

NORTH CAROLINA  
CABARRUS COUNTY

I, Barbara J. Smith, a Notary Public for Cabarrus  
County, North Carolina, do hereby acknowledge that Mac M. Goodnight personally appeared before  
me this day and acknowledged the due execution of the foregoing instrument. Ronald Lynn Goodnight,  
Attorney In Fact For

This the 13<sup>th</sup> day of May, 2000.

Barbara J. Smith  
Notary Public



My Commission Expires: November 2, 2002

NORTH CAROLINA  
CABARRUS COUNTY

I, Barbara J. Smith, a Notary Public for Cabarrus  
County, North Carolina, do hereby acknowledge that Ronald Lynn Goodnight personally appeared  
before me this day and acknowledged the due execution of the foregoing instrument.

This the 13<sup>th</sup> day of May, 2000.

Barbara J. Smith  
Notary Public



My Commission Expires: November 2, 2002

NORTH CAROLINA  
CABARRUS COUNTY

I, Barbara J. Smith, a Notary Public for Cabarrus  
County, North Carolina, do hereby acknowledge that Jean A. Johnson personally appeared before me  
this day and acknowledged the due execution of the foregoing instrument.

This the 13<sup>th</sup> day of May, 2000.

Barbara J. Smith  
Notary Public



My Commission Expires: November 2, 2002

NORTH CAROLINA  
CABARRUS COUNTY

I, Barbara J. Smith, a Notary Public for Cabarrus  
County, North Carolina, do hereby acknowledge that William Timothy Johnson and \_\_\_\_\_  
personally appeared before me this day and acknowledged the due execution  
of the foregoing instrument.

This the 13<sup>th</sup> day of May, 2000.

Barbara J. Smith  
Notary Public



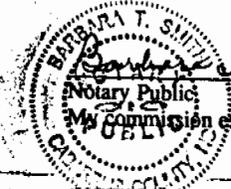
My Commission Expires: November 2, 2002

STATE OF NORTH CAROLINA

COUNTY OF Calhoun

I, a Notary Public of the County and State aforesaid, certify that Shawn Marie Johnson personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 13<sup>th</sup> day of May, 2000.



Barbara T. Smith  
Notary Public  
My commission expires: November 2, 2002

(NOTARY SEAL)

NORTH CAROLINA

CABARRUS COUNTY

I, Barbara T. Smith, Notary Public, do hereby certify that Ronald Lynn Goodnight, attorney-in-fact for Mae M. Goodnight, personally appeared before me this day, and being by me duly sworn, says that (s)he executed the foregoing and annexed instrument for and in behalf of the said Mae M. Goodnight, and that his/her authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged, and recorded at Book 2766, Page 143 in the office of the Register of Deeds for Cabarrus County, North Carolina on the 14th day of January, 2000, and that this instrument was executed under and by virtue of the authority given by said instrument granting him/her power of attorney.

I do further certify that the said Ronald Lynn Goodnight acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of the said Mae M. Goodnight.

Witness my hand and seal, this the 13<sup>th</sup> day of May, 2000.



Barbara T. Smith  
Barbara T. Smith  
Notary Public

My commission expires: November 2, 2002

NORTH CAROLINA - CABARRUS COUNTY

The foregoing (or annexed) certificate(s) of Barbara T. Smith, a notary public,  
(are) certified to be correct. This the 15<sup>th</sup> day of June, 2000.

LINDA E. McABEE, REGISTER OF DEEDS  
Linda E. McAbee Asst. Deputy

## EXHIBIT A

COMMENCING at NCGS "Gilwood" (N 624,955.24', E 1,484,213.48'); thence S 15° 39' 07" W 237.43' to a 2 ½-inch pipe; thence S 72° 48' 03" E 125.53' to a computed point in the center line of Odell School Road (SR# 1601), the point and place of BEGINNING; thence along the centerline of Odell School Road along an arc to the left (Radius = 6,509.33', Tangent = 24.99', Chord Length = 49.97', Bearing = S 08° 10' 52" E, and Delta = 00° 26' 24") a distance of 49.97'; thence N 72° 38' 59" W 139.92' to a computed point; thence S 89° 01' 35" W 319.97' to a computed point; thence S 83° 11' 26" W 295.32' to a computed point; thence S 81° 03' 30" W 569.22' to a computed point; thence N 19° 54' 36" W 192.96' to a computed point; thence N 36° 48' 02" E 108.00' to a set 5/8-inch rebar; thence N 34° 49' 13" W 248.09' to a 5/8-inch rebar; thence N 39° 30' 12" W 156.17' to a 5/8-inch rebar in the new line of William Timothy Johnson; thence along William Timothy Johnson's line N 34° 20' 14" E 305.32' to a 5/8-inch rebar; thence S 55° 24' 38" E 45.00' to a computed point; thence S 34° 20' 14" W 270.96' to a computed point; thence S 39° 52' 49" E 109.11' to a computed point; thence S 34° 49' 13" E 250.27 feet to a computed point; thence N 36° 48' 02" E 129.85' to a computed point; thence S 55° 24' 38" E 45.03' to a computed point; thence S 36° 48' 02" W 262.72' to a stone; thence S 19° 54' 36" E 131.56' to a 2 ½-inch pipe; thence N 81° 03' 30" E 531.63' to a 2 ½-inch pipe; thence N 83° 11' 26" E 298.48' to a 5/8-inch rebar; thence N 89° 01' 35" E 329.71' to a 2 ½-inch pipe; thence S 72° 48' 03" E 125.53' to the point and place of BEGINNING.

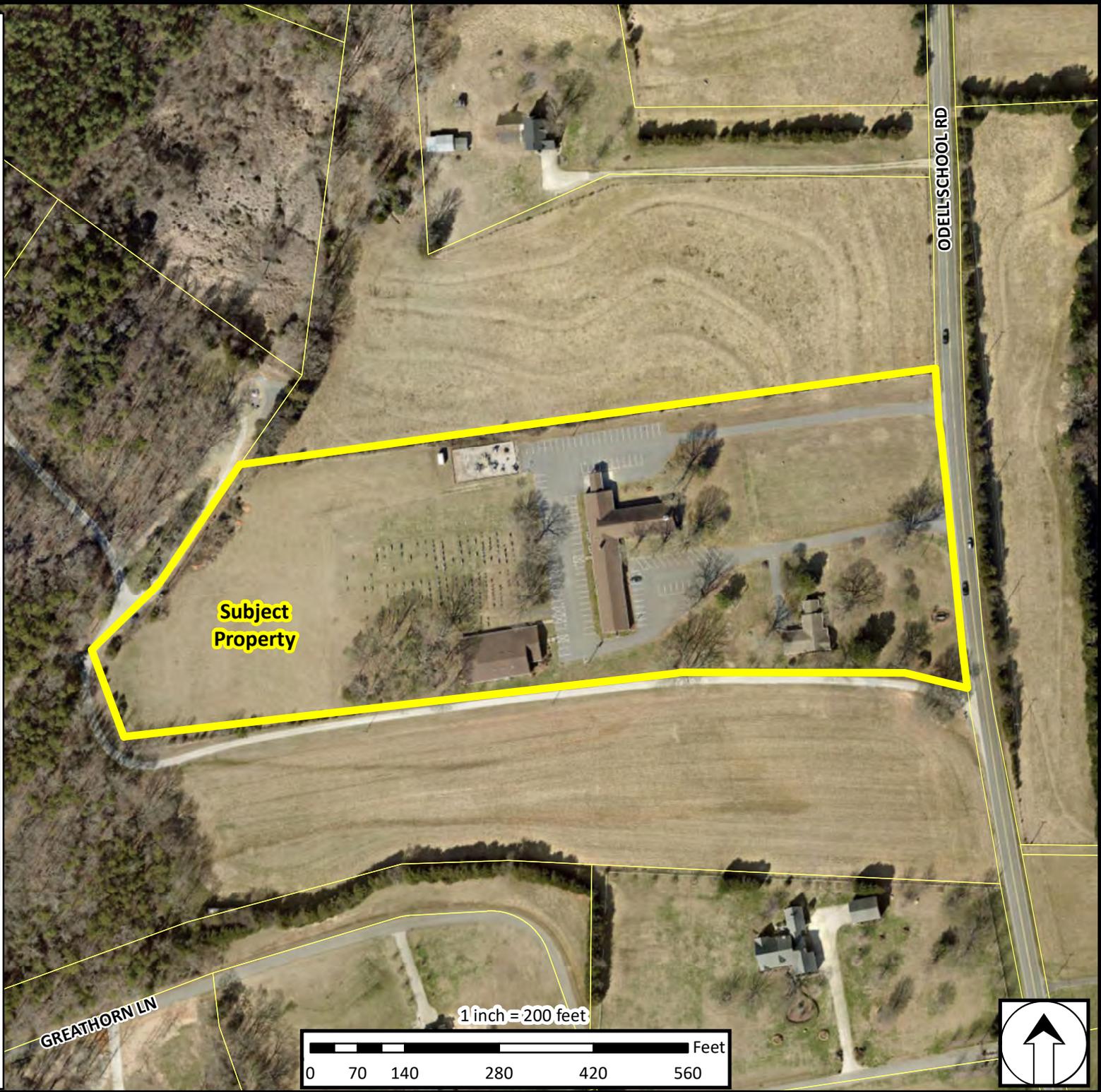
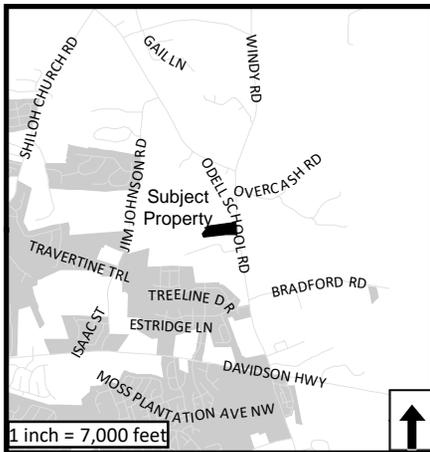
This description is based on a survey by Meridian Land Company dated June 4, 1999 (job number 99285) and the RIGHT-OF-WAY AGREEMENT between Mae M. Goodnight, Ronald Lynn Goodnight, Jean A. Johnson, and William Timothy Johnson dated on or about April 11, 1999.

**Northwestern Planning Area  
Aerial Map**

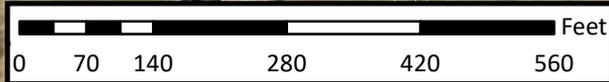


Applicant: Matthew Love, Trustee  
 Owner: Gilwood Presbyterian  
 Case: RZON2022-00001  
 Address: 2993 Odell School Road  
 Purpose: CR to OI  
 PINs: 4682-34-5893

- CabarrusCounty
- MunicipalDistrict
- Tax Parcels



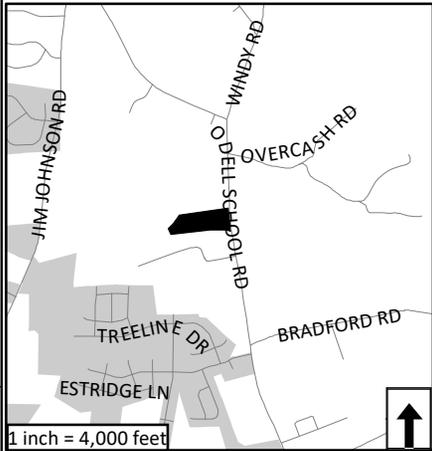
Cabarrus County shall not be held liable for any errors in this data. This includes errors of omission, commission, errors concerning the content of the data, and relative and positional accuracy of the data. These data cannot be construed to be a legal document. Primary sources from which these data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



**Northwestern Planning Area  
Existing Zoning**

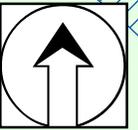
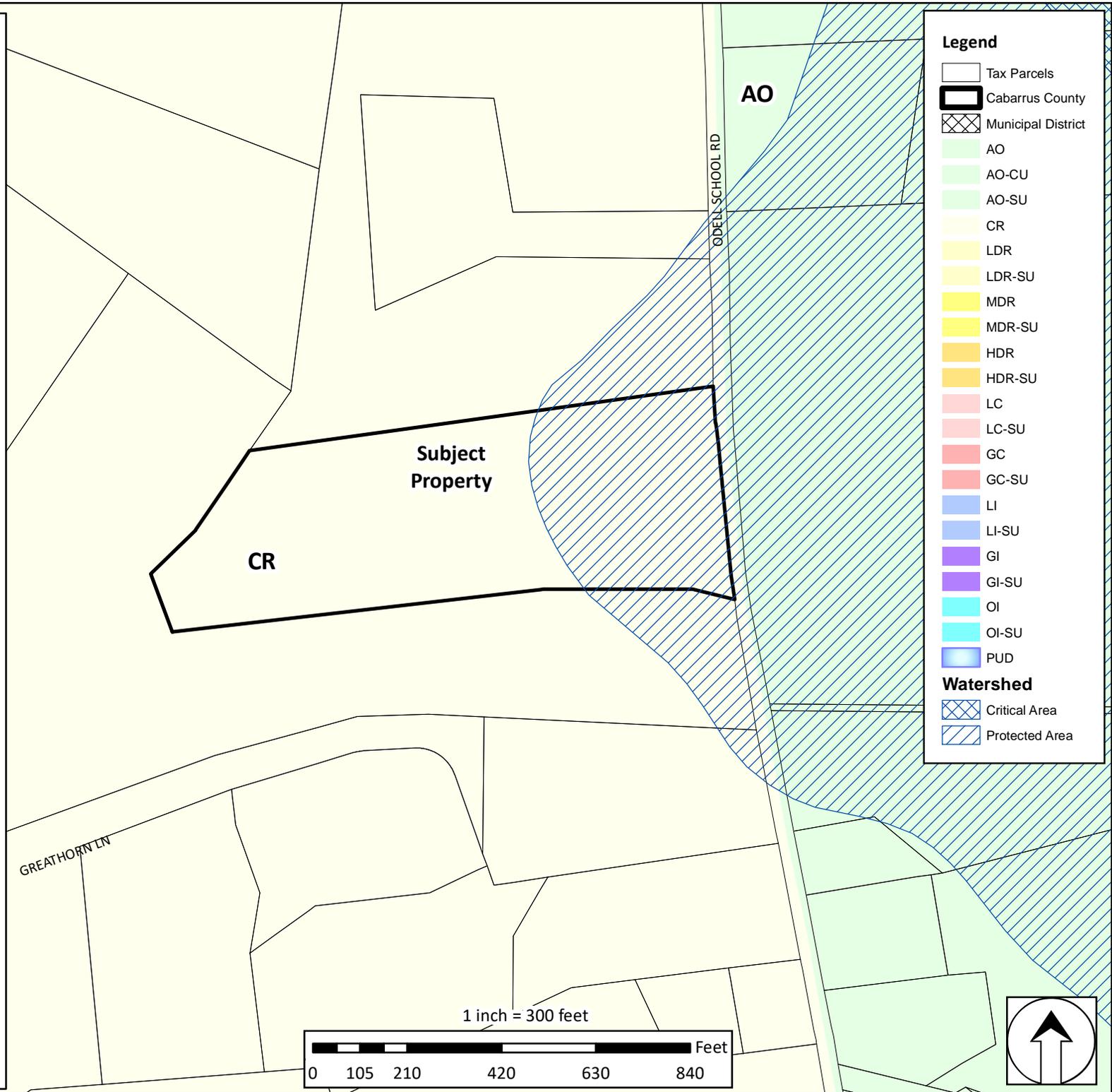


Applicant: Matthew Love, Trustee  
 Owner: Gilwood Presbyterian  
 Case: RZON2022-00001  
 Address: 2993 Odell School Rd  
 Purpose: CR to OI  
 PINs: 4682-34-5893



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.

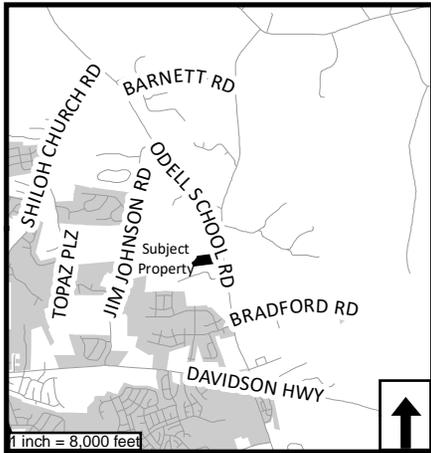
Map Prepared by Cabarrus County Planning & Development - May 2022



**Northwestern Planning Area  
Future Land Use**

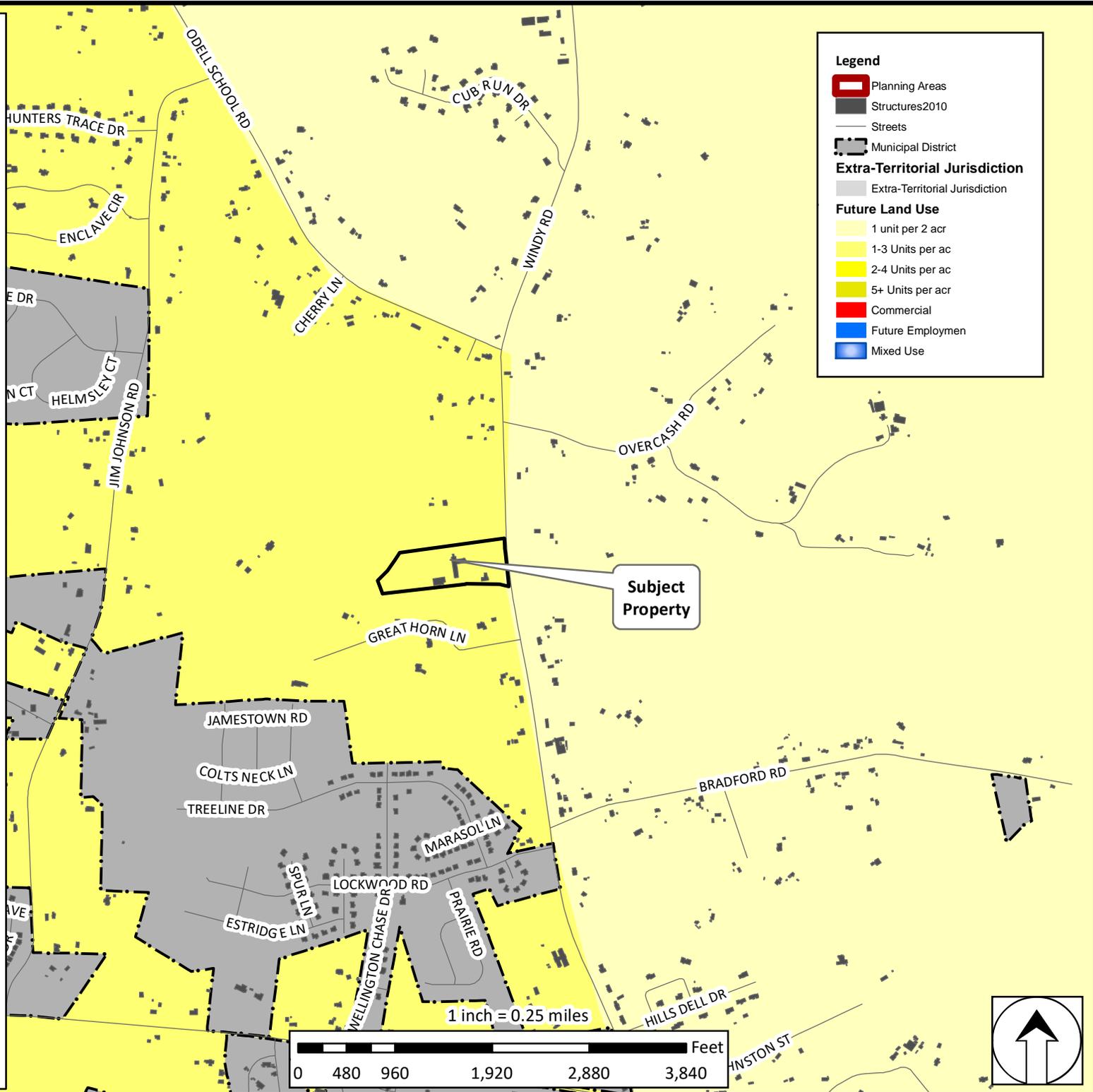


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Map Prepared by Cabarrus County Planning & Development - May 2022



Property Owners list

| Owner                       | Address              | City         | State | Zip   | Parcel                       |
|-----------------------------|----------------------|--------------|-------|-------|------------------------------|
| Gilwood Presbyterian Church | 2993 Odell School Rd | Concord      | NC    | 28027 | 4682-34-5893                 |
| Kenneth Seaford             | 9250 Mt Olive Rd     | Mt. Pleasant | NC    | 28124 | 4682-44-6755<br>4682-35-7855 |
| Ronald Goodnight            | 2929 Odell School Rd | Concord      | NC    | 28027 | 4682-24-7584<br>4682-24-7584 |
| Oscar & Scotty Williams     | 9230 Greathorn Ln    | Concord      | NC    | 28027 | 4682-34-9266                 |
| Ricky & Pamela Seaford      | 3155 Odell School Rd | Concord      | NC    | 28027 | 4682-35-5666                 |



**Cabarrus County Government – Planning and Development Department**

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May 25, 2022

Dear Property Owner:

A Zoning Map Amendment Petition has been filed in our office for your property. The specifics of the request are listed below. The Cabarrus County Planning and Zoning Board will consider this petition on Tuesday, June 14, 2022 at 6:30 PM in the 2<sup>nd</sup> floor Commissioner's Chambers of the Cabarrus County Governmental Center, located at 65 Church Street S Concord, NC 28025. A Public Hearing will be conducted and public input will be allowed during that time. If you have any comments about the rezoning request, I encourage you to attend this meeting.

|                                   |                                     |
|-----------------------------------|-------------------------------------|
| <b>Petitioner</b>                 | <b>Gilwood Presbyterian</b>         |
| <b>Petition Number</b>            | <b>RZON2022-00001</b>               |
| <b>Property Location</b>          | <b>2993 Odell School Rd</b>         |
| <b>Parcel ID Number</b>           | <b>4682-34-5893</b>                 |
| <b>Existing Zoning</b>            | <b>Countryside Residential (CR)</b> |
| <b>Proposed Zoning Map Change</b> | <b>Office/Institutional (OI)</b>    |

If you have any questions regarding this petition, or the hearing process, please contact me at Cabarrus County Planning and Development at 704.920.2181.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandy Howell".

Sandy Howell, CZO  
Planner  
Cabarrus County Planning and Development  
704.920.2181



**Cabarrus County Government – Planning and Development Department**

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May 25, 2022

Dear Property Owner:

A Zoning Map Amendment Petition has been filed in our office for property **adjacent** to yours. The specifics of the request are listed below. The Cabarrus County Planning and Zoning Board will consider this petition on Tuesday, June 14, 2022 at 6:30 PM in the 2<sup>nd</sup> floor Commissioner's Chambers of the Cabarrus County Governmental Center, located at 65 Church Street S Concord, NC 28025. A Public Hearing will be conducted and public input will be allowed during that time. If you have any comments about the rezoning, I encourage you to attend this meeting.

|                                   |                                     |
|-----------------------------------|-------------------------------------|
| <b>Petitioner</b>                 | <b>Gilwood Presbyterian</b>         |
| <b>Petition Number</b>            | <b>RZON2022-00001</b>               |
| <b>Property Location</b>          | <b>2993 Odell School Rd</b>         |
| <b>Parcel ID Number</b>           | <b>4682-34-5893</b>                 |
| <b>Existing Zoning</b>            | <b>Countryside Residential (CR)</b> |
| <b>Proposed Zoning Map Change</b> | <b>Office/Institutional (OI)</b>    |

If you have any questions regarding this petition, or the hearing process, please contact me at Cabarrus County Planning and Development at 704.920.2181.

Sincerely,

A handwritten signature in cursive script that reads "Sandy Howell".

Sandy Howell, CZO  
Planner  
Cabarrus County Planning and Development  
704.920.2181

April 5, 2022

To: Neighboring Property owners

From: Matt Love, Session Member and Board of Trustee

Gilwood Prebyterian Church

2293 Odell School Road

Concord NC 28027

704 361-8979

[slabbymatty@gmail.com](mailto:slabbymatty@gmail.com)

Hey Neighbors,

I am writing this letter to inform you that I, on the behalf of Gilwood Presbyterian Church at 2993 Odell School Road has requested the church's property to be rezoned from CR (Countryside Residential) to OI (Office- Intuitional). We are requesting the rezoning of this property to update our sign to a more modern electronic sign. In order to install a electronic sign, our property must be rezoned. The session has voted, discussed and approved moving forward with this and we are sending out this letter to inform you of our request. If there is any questions or concerns, you can reach me at 704 361-8979 or you can email me at [slabbymatty@gmail.com](mailto:slabbymatty@gmail.com) or Tracy Bridgers, the Clerk of the Session at [gilwoodclerk@gmail.com](mailto:gilwoodclerk@gmail.com). Please contact me no later than May 5, 2022.

Thanks so much!

Matt Love

| <b>PERMITTED USE TABLE</b>  |   |           |
|---|---|-----------|
| <b>"P" - Permitted, "C" – Conditional, "PBS" – Permitted Based on Standards</b> |   |           |
|   | <b>CR</b>   | <b>OI</b> |
| <b>RESIDENTIAL USES</b>   |   |           |
| Family Care Home  | P   |           |
| Group Care Facility   |   | P         |
| Manufactured Home, Single Section or Mobile Home, Multi-Section                 | Permitted in Residential Districts, Manufactured Home Overlay District Required – see Chapter 4 |           |
| Manufactured Home Park (8-4, 14)  |   |           |
| Single Family Detached Residential  | P   |           |
| <b>AGRICULTURAL USES</b>  |   |           |
| Agriculture, Including Livestock (7-3,2A)                                       | P   |           |
| Agriculture Excluding Livestock   | P   |           |
| Agritourism, Accessory to Agriculture   | P   |           |
| Barn, Greenhouse, as Primary Structure (7-3, 7)                                 | PBS   |           |
| Dairy Processing  | P   |           |
| Livestock Sales   | P   |           |
| Nursery, Greenhouse   | P   |           |
| Scientific Research and Development, Accessory to Agriculture (7-3, 52)         | PBS   |           |
| <b>ACCESSORY USES</b>   |   |           |
| Accessory Dwelling Unit (7-3,1)   | PBS   |           |
| Accessory Building, (7-3, 1)  | PBS   | PBS       |
| Automated Teller Machine (7-3, 6, b)  |   | PBS       |
| Community Garden, as Accessory Use (7-3, 13)                                    | PBS   | PBS       |
| Ethanol Fuel Production, Residential District, Private Use Only (7-3, 20)       | PBS   |           |
| Home Occupation, General (7-3, 27)  | PBS   |           |
| Home Occupation, Rural (7-3, 28)  | PBS   |           |
| Ice Production, Dispensing, Accessory to Convenience Store (7-3, 30)            | PBS   |           |
| Ice Production, Dispensing, Accessory to Gas Station (7-3, 29)                  | PBS   |           |
| Kennel, Private (7-3, 31)   | PBS   |           |
| Swimming Pool, Accessory to Single Family Residential (7-3,1)                   | PBS   |           |
| Trail Head, Accessory (7-3, 63)   | PBS   | PBS       |
| Wind Energy Facility, Accessory Use, On Site Use Only (7-3, 66)                 | PBS   |           |
| <b>COMMERCIAL, RETAIL AND OFFICE USES</b>                                       |   |           |
| Animal Hospital (8-4, 39)   | SU  |           |
| Auction House (7-3, 3)  | PBS   |           |
| Bank, Financial Institution, Automated Teller Machine (7-3, 6)                  |   | PBS       |
| Banquet Hall  |   | P         |
| Barber, Beauty, Tanning, Nail or Skin Care Salon                                |   | P         |
| Bed and Breakfast (7-3, 8)  | PBS   |           |
| Catering Service (7-3, 9)   |   | PBS       |
| Convenience Store with Petroleum Sales (7-3, 14)                                | PBS   |           |
| Convenience Store without Petroleum Sales (7-3, 15)                             | PBS   |           |
| Country Club with Golf Course (7-3, 16)   | PBS   | PBS       |
| Crematorium   |   | P         |
| Day Camp, Summer Camp, Civic Group Camp Facility (8-4, 10)                      | SU  |           |

|   |     |     |
|---|-----|-----|
| Duplex, Commercial Use, Individual Lots (7-3, 19)                                 |     | PBS |
| Farmer's Market   |     | P   |
| Funeral Home  |     | P   |
| Gas Service Station (7-3,23)  | PBS |     |
| Golf Course, Public or Private (7-3, 24)  | PBS | PBS |
| Kennel, Commercial (8-4, 37)  | SU  |     |
| Nursery, Daycare Center (7-3, 35)   | PBS | PBS |
| Office professional, 30,000 Square Feet or Less                                   |     | P   |
| Parking Lot, Parking Garage, Commercial or Private                                |     | P   |
| Printing and Reprographic Facility  |     | P   |
| Reception Facilities (8-4, 21)  | SU  |     |
| Recreational Facility, Indoor (7-3, 39)   |     | PBS |
| Recreational Facility, Outdoor (8-4, 22)  | SU  | SU  |
| Recreational Therapy Facility, Rural Setting (8-4, 23)                            | SU  |     |
| Recyclable Materials Drop Off (7-3, 41)   | PBS | PBS |
| Restaurant, Excluding Drive-thru (7-3, 47)  | PBS |     |
| Sawmill (7-3, 51)   | PBS |     |
| Scientific Research and Development (7-3, 53)                                     |     | PBS |
| Shooting Range, with Outdoor Target Practice (8-4, 30)                            | SU  |     |
| Sports and Recreation Instruction or Camp (8-4, 31)                               | SU  |     |
| Stables, Commercial (7-3, 58)   | PBS |     |
| Swim Club, Tennis Club, Country Club (7-3, 59)                                    | PBS | PBS |
| Veterinarian (8-4, 37)  | SU  |     |
| Wellness Retreat, Wellness Spa (8-4, 38)  | SU  |     |
| Wireless Telecommunications Services (8-4, 36)                                    | SU  | SU  |
| Wireless Telecommunications Services, Stealth Antennae, 65 Feet or Less (8-4, 36) | P   | P   |
| Wireless Telecommunications Services – Co-location (7-3, 67)                      | PBS | PBS |
| <b>INSTITUTIONAL, CIVIC AND PUBLIC USES</b>                                       |     |     |
| Animal Shelter (8-4, 37)  | SU  |     |
| Cemetery (7-3, 10)  | PBS |     |
| Civic Organization Facility (7-3,11)  | PBS | P   |
| College, University (8-4, 6)  | SU  |     |
| College, University   |     | P   |
| Communications Tower, 911 Communications Tower (8-4, 7)                           | SU  | SU  |
| Convention Center Facility (8-4, 8)   |     | SU  |
| Elementary, Middle and High Schools (8-4,11)                                      | SU  | SU  |
| Hospital, Ambulatory Surgical Care Facility                                       |     | P   |
| Public Cultural Facility (7-3, 38)  | PBS | P   |
| Public Service Facility (8-4, 17)   | SU  | SU  |
| Public Use Facility (8-4, 18)   | SU  |     |
| Public Use Facility   |     | P   |
| Recreational Trail, Greenway or Blueway, Connector (7-3, 40)                      | PBS | PBS |
| Religious Institution with Total Seating Capacity 351 or More (8-4, 24)           | SU  | SU  |
| Religious Institution with Total Seating Capacity 350 or Less (7-3, 42)           | PBS | PBS |
| Religious Institution with School (8-4, 25)                                       | SU  | SU  |
| Rest Home, Convalescent Home with 10 Beds or Less (7-3, 46)                       | PBS | PBS |

|   |     |     |
|---|-----|-----|
| Rest Home, Convalescent Home with More Than 10 Beds (8-4, 26)                 | SU  | SU  |
| Trade and Vocational Schools (8-4, 33)  |     | SU  |
| Trail Head, Primary Use Site (7-3, 64)  | PBS | PBS |
| <b>INDUSTRIAL</b>   |     |     |
| Landfill, Demolition, Less Than One Acre (7-3, 32)                            | PBS |     |
| Multimedia Production and Distribution Complex (8-4, 15)                      | SU  |     |
| Slaughter House, Meat Packing (8-4, 32)                                       | SU  |     |
| <b>TEMPORARY USES</b>   |     |     |
| Auction, Estate or Asset Liquidation  | PBS | PBS |
| Auction, Livestock  | PBS |     |
| Dumpsters, Commercial Waste Containers  | PBS | PBS |
| FEMA Trailers, Natural Disaster or Significant Weather Event                  | PBS | PBS |
| Mobile Personal Storage Unit, Vacate or Occupy Premise                        | PBS | PBS |
| Mobile Personal Storage Unit, Renovation                                      | PBS | PBS |
| Seasonal Sale of Agriculture Products, Includes Christmas Trees and Pumpkins  |     | PBS |
| Temporary Residence in Mobile Home During Construction of New Home, Same Site | PBS |     |
| Temporary Tent or Temporary Structure, Including Cell on Wheels               |     | PBS |

**Petition: RZON2021-00002 Rezoning**

Applicant Information: Cross of Christ Lutheran Church  
James N. Bailey, Trustee  
6000 Emanuel Rd.  
Rockwell, NC 28138

Owner Information: Cross of Christ Lutheran Church  
Clyde Drye, Trustee  
6050 Kluttz Rd.  
Concord, NC 28025

Existing Zoning: AO (Agricultural/Open Space)

Proposed Zoning: OI (Office Institutional)

Existing Permitted Uses: All uses permitted in the AO zoning district are permitted on the subject property.

Proposed Uses: All uses permitted in OI zoning district.

Parcel ID Numbers: 5653-92-4591

Property Addresses: 4500 Rimer Rd.

Area in Acres: ± 10.48 ac

Site Description: The subject property is currently occupied by Cross of Christ Lutheran Church. The church has occupied the site since 1882, well before zoning was originally adopted.

Adjacent Land Use: North: Agricultural  
East: Residential  
South: Commercial  
West: Residential

Surrounding Zoning: North: AO (Agricultural/Open Space)  
East: AO (Agricultural/Open Space)  
South: AO (Agricultural/Open Space)  
West: AO (Agricultural/Open Space)

Utility Service Provider: Currently, the subject property is served by private well and septic.

## Exhibits

- EXHIBIT A – Staff Report
- EXHIBIT B – Application
- EXHIBIT C – Property Deed
- EXHIBIT D – Property Maps
- EXHIBIT E – Adjacent Property Owner & Property Owner Letters
- EXHIBIT F – Neighborhood Meeting Information
- EXHIBIT G – Use Comparison Table

## Intent of Zoning Districts

### **PROPOSED DISTRICT: OFFICE/INSTITUTIONAL (OI)**

This district is intended to accommodate relatively low intensity office and institutional uses at intensities complementary to residential land use. This district serves as a transitional district between residential land uses and higher intensity non-residential land uses.

### **RATIONALE**

This district is used to provide for low intensity office and institutional uses that can be complementary to adjacent residential land use. This district features employment options and essential services which require a moderate number of average daily trips. These uses will have a minimum impact on the surrounding area because these trips will generally occur during regular church business hours, thus, not competing with residential traffic at peak hours. This district should be located adjacent to residential districts or in areas where its use would serve as a transition between residential land uses and higher intensity non-residential land uses. Higher intensity non-residential land uses may include commercial districts, light industrial or mixed use districts. When bordering residential districts or residential developments, care should be taken to assure natural or manmade buffering and architectural compatibility so that the nonresidential activities are not a nuisance to residential use.

### **EXISTING DISTRICT: AGRICULTURAL/OPEN SPACE (AO)**

This district is comprised mostly of lands usually found on the eastern side of the County which, due to physical characteristics such as soil type, topography, etc., should remain agrarian. To a lesser degree, these are also those lands which are conducive to providing recreationally oriented open space. These land areas should remain the farmland and undeveloped/forested land of the County. Public utilities will not be planned for these areas. Consequently, residential uses that support those working and/or owning the land, home occupations allied with existing residences, and very limited business endeavors are envisioned as complementary to the area. In sum, the primary activity of these lands is agricultural - housing and business are typically related to, and supportive of, the practice of modern day agriculture. It is not, however, improbable that a small hamlet type settlement might evolve in this zoning district. As to those areas constituting open space, manmade uses must take care to enhance and not detract from the essential character of the area.

## **RATIONALE**

Cabarrus County, due largely to its proximity to the Charlotte-Mecklenburg metropolitan area, is in a growth mode which will, in all probability, continue. While the issue of farmland preservation may ultimately be more driven by market economics, it still behooves policy makers to prudently attempt farmland preservation. Less a matter of market economics is the concept of retaining unspoiled, undeveloped lands for future generations to enjoy.

## **Agency Review Comments**

### **Planning Review:**

*Staff Report, Sandy Howell, Planner, Cabarrus County*

### **NCDOT Review:**

We have no issues with the proposed, as long as any proposed expansions and/or addition meets all local ordinances, not in the right of way, not in any sight distance and it stays on premise.

*Marc Morgan, NCDOT*

### **Fire Marshal Review:**

*No comments, Matthew Hopkins, County Fire Marshal*

### **EMS Review:**

*No comments. Justin Brines, Cabarrus County EMS Director*

### **Sheriff's Office Review:**

*No comments. Ray Gilleland, Cabarrus County Sheriff's Lieutenant*

### **Health Alliance Review:**

*No comments. Chrystal Swinger, Cabarrus Health Alliance*

## **Land Use Plan Analysis**

The subject property is located within the boundary of the Eastern Land Use Plan (Plan) and is planned for Agricultural/Open Space uses. The Agricultural/Open Space district of the Plan emphasizes a strong rural, pastoral feel. Compared to more rapidly developing areas of the County, eastern Cabarrus County is a sparsely developed and predominately rural residential and agricultural area.

Although the recommendation of the Plan is for residential uses, the subject property is currently developed with a religious institution, Cross of Christ Lutheran, which has been in existence since 1882, well before zoning was adopted. The rationale of the OI district states that the OI district is for low intensity office and institutional uses that can be complementary to adjacent residential land use.

## Conclusions

- The proposed rezoning is not consistent with the Eastern Area Plan. However, the subject property supports an existing religious institution which was constructed prior to county zoning. The property currently has a residential zoning designation. Rezoning from AO to OI would bring the site into better compliance with the ordinance. The design standards for religious institutions with less than 351 seats include two standards:
  - Front on an arterial or collector road
    - The current site fronts on Rimer Road which is a major thoroughfare.
  - The required setbacks of each zone shall be doubled in residential districts.
    - Currently the site does not conform to the double setback requirement. Rezoning to OI will bring the site into compliance.
  
- The current impervious coverage is currently over the maximum for AO zoning. Rezoning to OI will bring the site into compliance and enable the applicant to expand.
  
- The subject property is located within the Dutch Buffalo WS-II watershed protected area. The following requirements may affect future development of the site. Rezoning would allow the current institutional use to expand up to the 75% impervious coverage (OI requirement) rather than the 15% (AO requirement) within the watershed protected area.
  - All other residential and non-residential development shall not exceed twelve (12%) percent built-upon area for the site in addition to meeting the applicable minimum lot size, density, and zoning district requirements.
  - Lots that were developed prior to the adoption of the watershed regulations on December 20, 1993 are considered grandfathered lots. Built-upon area, for purposes of complying with the Watershed Overlay Zone standards, shall be determined by using additions to the site occurring after the adoption date of this section of the ordinance. Historical survey data, Cabarrus County Geographic Information Systems data and land records data shall be used to determine the base built-upon area for Watershed Overlay Zone compliance and for permitting purposes. In no case, however, shall the overall built-upon area for a property exceed the impervious or structural coverage allowed for the underlying zoning district.

|  | Current Zoning AO    | Proposed Zoning OI | Site Conditions  |
|--|----------------------|--------------------|--|
| Minimum Lot Size                         | 3 acres conventional | 10,000 sq ft       | ± 10.48 acres (100% in the watershed area)   |
| Density                                  | .33 max units/acre   |                    | Church, Accessory Structures, Playground, Cemetery, Sports Area                      |
| Impervious Coverage                      | 15%                  | 75%                | 109,995.82 sq ft   |
| Impervious Coverage prior to 12/20/93    |                      |                    | 109,719.34 sq ft   |
| Impervious Coverage Added after 12/20/93 |                      |                    | 276.48 sq ft   |
| Protected Watershed Impervious Coverage  | 12%                  | 12%                | Total Current Coverage in watershed area = 24%<br>(0% available in AO and 51% in OI) |

- A church is considered a religious institution and is classified in the institutional, civic and public uses category. Institutional uses are permitted in residential zoning districts if supplemental design and development standards are met. These standards are determined based on seating capacity and zoning designation. If the seating capacity is 350 or less, additional design standards must be met. A special use permit is required in residential districts where the proposed total seating capacity is 351 or more. Cross of Christ Church has a seating capacity of 350 or less and is therefore permitted based on additional design standards being met. A Special Use Permit is not required.
- The OI zoning district serves as a transitional district between residential and commercial districts. It is also the more appropriate district for institutional uses, like churches and schools.
- The proposed zoning change to OI would provide greater flexibility for future use of the site, including allowing additional impervious area and additional signage to be permitted on the site.

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



## CABARRUS COUNTY REZONING APPLICATION

STAFF USE ONLY:

Application/Accela#: RZON 2022-00002

Reviewed by: SDUOH

Date: 5/6/2022

Amount Paid: 807.50

### INSTRUCTIONS/PROCEDURES:

1. Schedule a pre-application meeting with Staff to discuss the procedures and requirements for a zoning map amendment request.
2. Submit a complete application for an amendment to the official zoning map to the Planning Division. All applications must include the following:
  - Cabarrus County Land Records printout of all adjacent property owners. This includes properties located across the right-of-way and all on-site easement holders. The list must include owner name, address, and Parcel Identification Number.
  - A recent survey or legal description of the property or area of the property to be considered for rezoning.
  - Any additional documents essential for the application to be considered complete. (Determined as part of the pre-application meeting)
3. Submit cash, check, or money order made payable to Cabarrus County.
  - Fees: Residential rezoning request 1 acre or less = \$400.00
  - Residential rezoning request greater than 1 acre = \$400.00 *plus* \$15 per acre
  - Non-residential rezoning request = \$650.00 *plus* \$15 acre
  - (Plus, cost of advertising and engineering fees if applicable)
  - (if a 3<sup>rd</sup> submittal is required, an additional review fee will be assessed)

The deadline for submittal is always the same day as the Planning and Zoning Commission Meeting which is the second Tuesday of the month. Applications must be submitted before 2:00 PM that day for consideration on the next available agenda.

**Incomplete applications will be returned to the applicant and will not be processed.**

### PROCESS SUMMARY:

1. Hold a pre-application meeting with Staff to discuss your rezoning request and the map amendment process.
2. Submit a complete application with the appropriate fees to the Cabarrus County Planning Division.

Staff will review your complete application, prepare a staff report, schedule a public meeting date and notify adjacent property owners of the public meeting/public hearing date. A sign advertising the public hearing will also be placed on the property being considered for rezoning.

**Meeting Information:** Meetings are held the second Tuesday of each month at 6:30 PM in the Cabarrus County Governmental Center located in downtown Concord at 65 Church Street, SE.

**Expedited Vote:** A vote of  $\frac{3}{4}$  or more of the members of the Planning and Zoning Commission is considered an Expedited Vote and will constitute a final decision. If approval or denial of a rezoning request is by a vote of less than  $\frac{3}{4}$  of the members, or if an appeal of the decision is filed within 15 days of the date of the decision, the application will automatically be forwarded to the Board of Commissioners for final consideration at a *de novo* hearing.

**Questions:** Any questions related to rezoning your property or to the rezoning process may be directed to the Planning Division at 704-920-2141, between 8 AM and 5 PM, Monday through Friday.

**SUBJECT PROPERTY INFORMATION:**

Street Address 4500 Rimer Rd Concord, N.C. 28025  
PIN(s) (10 digit #) 5653-92-4591; \_\_\_\_\_  
Deed Reference Book 13011 Page 0042  
Township # 10

**DESCRIPTION OF SUBJECT PROPERTY:**

Size (square feet or acres) 10.48  
Street Frontage (feet) 504  
Current Land Use of Property Religious  
Surrounding Land Use North Agricultural  
South Residential  
East Commercial  
West Residential

**REQUEST:**

Change Zoning From AO To OI

Purpose for Request:

The purpose for this request is for an improvement in the church's signage which will accommodate a digital sign utilizing the same footprint.

**LAND USE PLAN CONSISTENCY STATEMENT**

Describe how the proposed rezoning meets the land use plan(s) for the subject parcel(s):

This change will not change the current land use plan. The use will remain as religious institution and will only change the plan by enhancing current services.

**UTILITY SERVICE:**

Water Supply  Well or \_\_\_ Service Provider \_\_\_

Wastewater Treatment  Septic Tank(s) or \_\_\_ Service Provider \_\_\_



FILED  
CABARRUS COUNTY NC  
WAYNE NIXON  
REGISTER OF DEEDS

FILED May 23, 2018  
AT 03:02 pm  
BOOK 13011  
START PAGE 0042  
END PAGE 0044  
INSTRUMENT # 12134  
EXCISE TAX \$0.00

MWN

SCANNED AND RETURNED

Tax Parcel No.: 6-6-12.00 & 6-7-31.00  
This instrument prepared by: David C. Williams, Esq.

Excise Tax: \$0.00

NORTH CAROLINA

WARRANTY DEED

CABARRUS COUNTY

THIS DEED made this 23 day of May, 2018, by Clyde Morrison Drye and Larry Wayne Furr, Trustees of Prosperity Lutheran Church a/k/a Cross of Christ Lutheran Church ("Grantor"), to Cross of Christ Lutheran Church, Concord, a North Carolina Non-profit corporation ("Grantee"), whose address is 4500 Rimer Road, Concord, North Carolina 28025.

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 bargained and sold, and by these presents does bargain, sell, and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in No. Six (6) Township, Cabarrus County, North Carolina, and more particularly described as follows:

All real property owned in the name of the Trustees of Prosperity Lutheran Church or in the name of the Trustees of Cross of Christ Lutheran Church located in Cabarrus County, North Carolina, including but not limited to the following parcels:

1. That certain parcel located on the west side of Rimer Road, consisting of 0.9 acres more or less, having PIN Number 5653-82-9652-0000, and being known as the Parsonage Tract.
2. That certain parcel located on the east side of Rimer Road and the south side of Kluttz Road, consisting of 10.48 acres more or less, having PIN Number 5653-92-4591-0000, and containing the Church's Sanctuary, cemetery and recreational areas.

The members of Prosperity Lutheran Church a/k/a Cross of Christ Lutheran Church incorporated the church on January 18, 2011 by filing Articles of Incorporation with the North Carolina Secretary of State. However, the property held by the members in the names of the Trustees of the Church was not transferred to the new corporate entity. The purpose of this Deed is to convey all the property previously owned in the name of the Trustees of Prosperity Lutheran Church a/k/a Cross of Christ Lutheran Church to the corporate entity Cross of Christ Lutheran Church, Concord.

Clyde Morrison Drye and Larry Wayne Furr were appointed as Trustees by the Church on May 6, 2018, for the purpose of transferring title out of the name of the Trustees and into the corporate entity.

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

The Grantor, in the capacity as Trustee, does hereby covenant 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. The title to the property hereinabove described is subject to the following exceptions:

All valid and existing rights of way, easements, and restrictions without reimposing the same.

[Remainder of Page Left Blank]

IN WITNESS WHEREOF, the Grantors have hereunto set their hands and seals, the day and year first above written.

Prosperity Lutheran Church  
a/k/a Cross of Christ Lutheran Church

By: *Clyde Morrison Drye* (SEAL)  
Clyde Morrison Drye, Trustee

By: *Larry Wayne Furr* (SEAL)  
Larry Wayne Furr, Trustee

\*\*\*\*\*

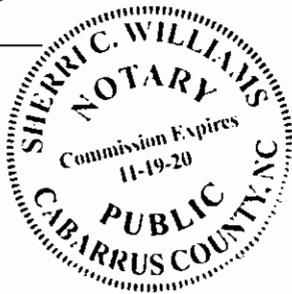
STATE OF NORTH CAROLINA  
COUNTY OF CABARRUS

I certify that the following person personally appeared before me this day, each acknowledging to me that he signed the foregoing document for the purpose stated therein and in the capacity indicated: Clyde Morrison Drye and Larry Wayne Furr, Trustees.

Witness my hand and official stamp or seal, this the 23 day of May, 2018.

*Sherri C. Williams*  
Notary Public  
Name: *Sherri C. Williams*

My commission expires:  
11-19-20

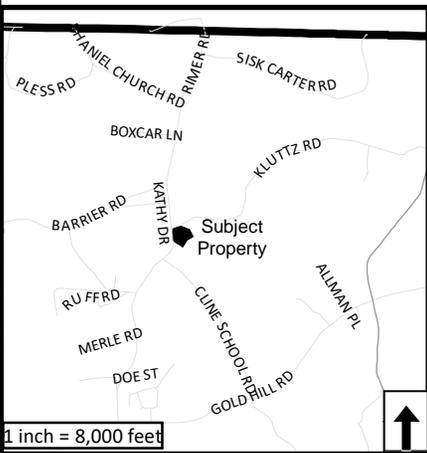


**Eastern Planning Area  
Aerial Map**



Applicant: James Bailey, Trustee  
 Owner: Cross of Christ Lutheran Church  
 Case: RZON2022-00002  
 Address: 4500 Rimer Road  
 Purpose: AO to OI  
 PINs: 5653-92-4591

- CabarrusCounty
- MunicipalDistrict
- Tax Parcels

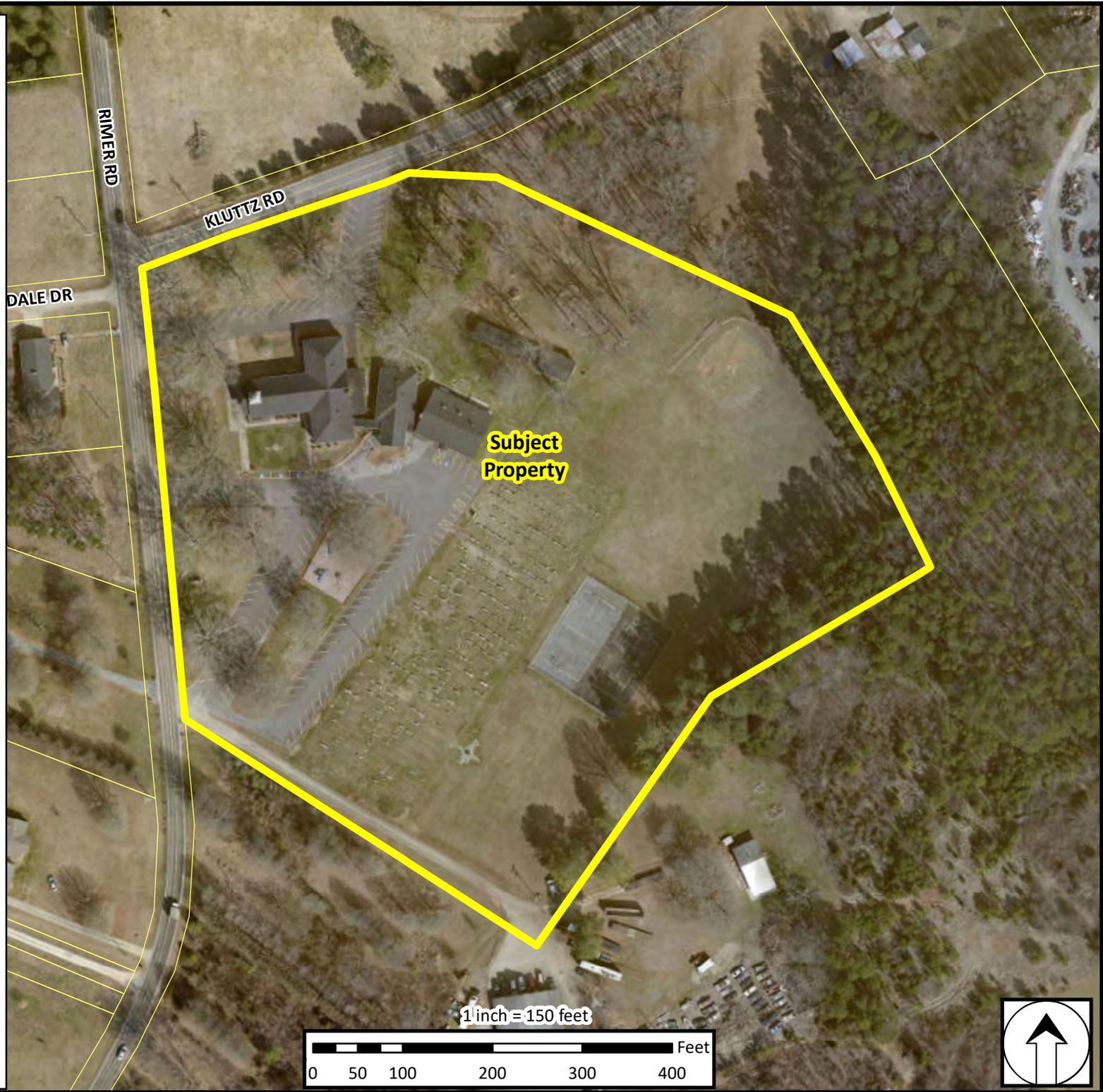


1 inch = 8,000 feet

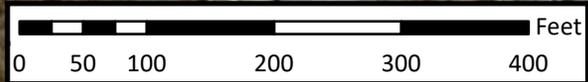


Cabarrus County shall not be held liable for any errors in this data. This includes errors of omission, commission, errors concerning the content of the data, and relative and positional accuracy of the data. These data cannot be construed to be a legal document. Primary sources from which these data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

Map Prepared by Cabarrus County Planning & Development - May 2022



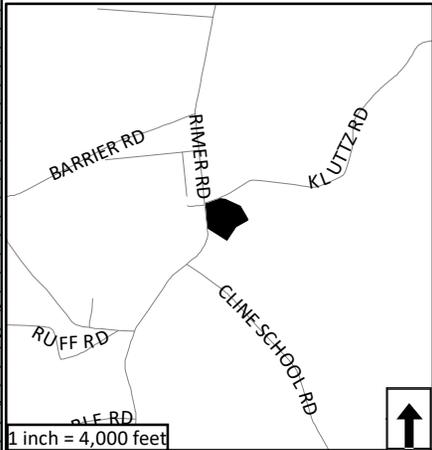
1 inch = 150 feet



**Eastern Planning Area  
Existing Zoning**

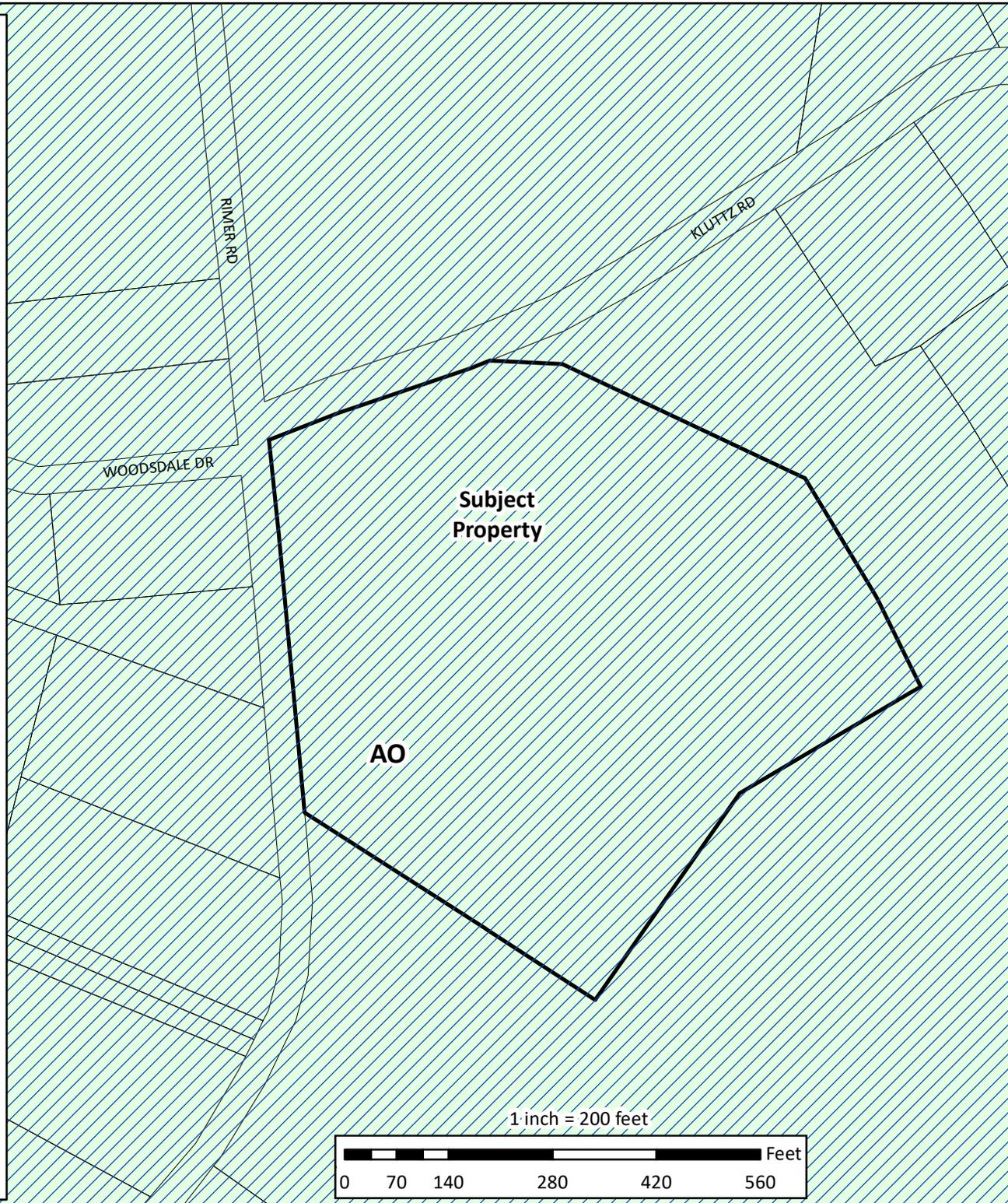


Applicant: James Bailey, Trustee  
 Owner: Cross of Christ Lutheran  
 Case: RZON2022-00002  
 Address: 4500 Rimer Rd  
 Purpose: AO to OI  
 PINs: 5653-92-4591



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Map Prepared by Cabarrus County Planning & Development - May 2022

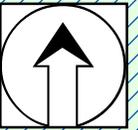
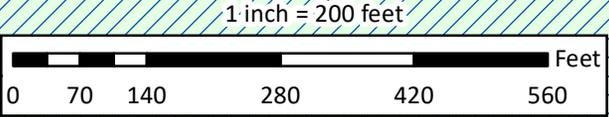


**Legend**

- Tax Parcels
- Cabarrus County
- Municipal District
- AO
- AO-CU
- AO-SU
- CR
- LDR
- LDR-SU
- MDR
- MDR-SU
- HDR
- HDR-SU
- LC
- LC-SU
- GC
- GC-SU
- LI
- LI-SU
- GI
- GI-SU
- OI
- OI-SU
- PUD

**Watershed**

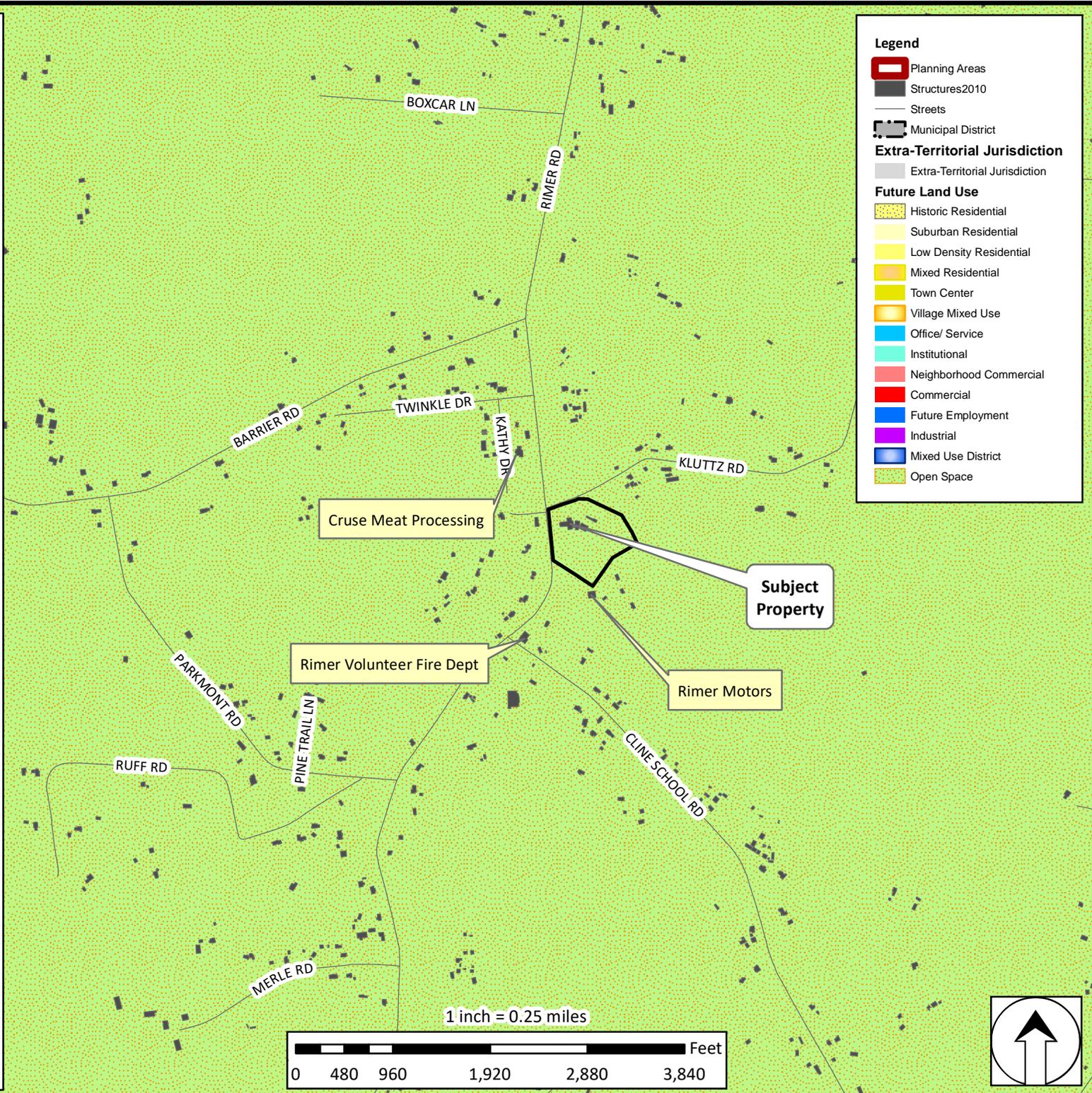
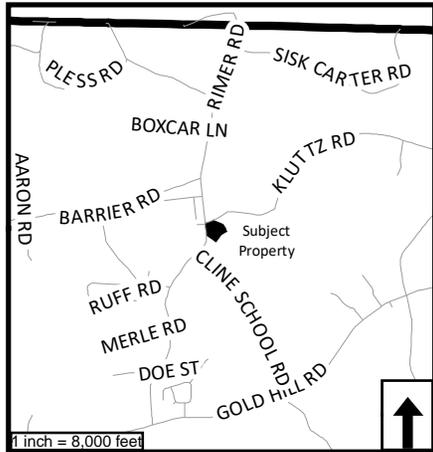
- Critical Area
- Protected Area



**Eastern Planning Area  
Future Land Use**



Applicant: James Bailey, Trustee  
 Owner: Cross of Christ Lutheran  
 Case: RZON2022-00002  
 Address: 4500 Rimer Rd  
 Purpose: AO to OI  
 PINs: 5653-92-4591



**Legend**

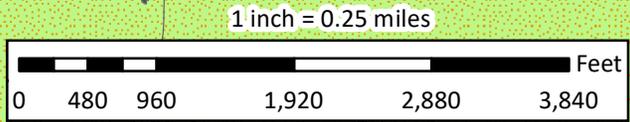
- Planning Areas
- Structures 2010
- Streets
- Municipal District
- Extra-Territorial Jurisdiction

**Future Land Use**

- Historic Residential
- Suburban Residential
- Low Density Residential
- Mixed Residential
- Town Center
- Village Mixed Use
- Office/ Service
- Institutional
- Neighborhood Commercial
- Commercial
- Future Employment
- Industrial
- Mixed Use District
- Open Space

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Map Prepared by Cabarrus County Planning & Development - May 2022



Property Owners list

| Owner                    | Address        | City     | State | Zip   | Parcel       |
|--------------------------|----------------|----------|-------|-------|--------------|
| Cross of Christ Lutheran | 4500 Rimer Rd  | Concord  | NC    | 28025 | 5653-92-4591 |
| Rimer Motors Inc         | 5895 Rimer Rd  | Rockwell | NC    | 28138 | 5653-91-7800 |
| Mark Cruse               | 6031 Kluttz Rd | Concord  | NC    | 28025 | 5653-93-4301 |
| Max Cruse                | 4643 Rimer Rd  | Concord  | NC    | 28025 | 5653-82-9802 |
| John & Cheryl Aruda      | 4385 Rimer Rd  | Concord  | NC    | 28025 | 5653-82-9395 |



**Cabarrus County Government – Planning and Development Department**

October 18, 2021

Dear Property Owner:

A Zoning Map Amendment Petition has been filed in our office for your property. The specifics of the request are listed below. The Cabarrus County Planning and Zoning Board will consider this petition on Tuesday, June 14, 2021 at 6:30 PM in the 2<sup>nd</sup> floor Commissioner's Chambers of the Cabarrus County Governmental Center, located at 65 Church Street S Concord, NC 28025. A Public Hearing will be conducted and public input will be allowed during that time. If you have any comments about the rezoning request, I encourage you to attend this meeting.

|                                   |                                     |
|-----------------------------------|-------------------------------------|
| <b>Petitioner</b>                 | <b>Cross of Christ Lutheran</b>     |
| <b>Petition Number</b>            | <b>RZON2022-00002</b>               |
| <b>Property Location</b>          | <b>4500 Rimer Rd</b>                |
| <b>Parcel ID Number</b>           | <b>5653-92-4591</b>                 |
| <b>Existing Zoning</b>            | <b>Agricultural/Open Space (AO)</b> |
| <b>Proposed Zoning Map Change</b> | <b>Office/Institutional (OI)</b>    |

If you have any questions regarding this petition, or the hearing process, please contact me at Cabarrus County Planning and Development at 704.920.2181.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sandy Howell".

Sandy Howell, CZO  
Planner  
Cabarrus County Planning and Development  
704.920.2149



**Cabarrus County Government – Planning and Development Department**

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May 25, 2022

Dear Property Owner:

A Zoning Map Amendment Petition has been filed in our office for property **adjacent** to yours. The specifics of the request are listed below. The Cabarrus County Planning and Zoning Board will consider this petition on Tuesday, June 14, 2021 at 6:30 PM in the 2<sup>nd</sup> floor Commissioner's Chambers of the Cabarrus County Governmental Center, located at 65 Church Street S Concord, NC 28025. A Public Hearing will be conducted and public input will be allowed during that time. If you have any comments about the rezoning, I encourage you to attend this meeting.

|                                   |                                     |
|-----------------------------------|-------------------------------------|
| <b>Petitioner</b>                 | <b>Cross of Christ Lutheran</b>     |
| <b>Petition Number</b>            | <b>RZON2022-00002</b>               |
| <b>Property Location</b>          | <b>4500 Rimer Rd</b>                |
| <b>Parcel ID Number</b>           | <b>5653-92-4591</b>                 |
| <b>Existing Zoning</b>            | <b>Agricultural/Open Space (AO)</b> |
| <b>Proposed Zoning Map Change</b> | <b>Office/Institutional (OI)</b>    |

If you have any questions regarding this petition, or the hearing process, please contact me at Cabarrus County Planning and Development at 704.920.2181.

Sincerely,

A handwritten signature in cursive script that reads "Sandy Howell".

Sandy Howell, CZO  
Planner  
Cabarrus County Planning and Development  
704.920.2149

## Zoning Notes from Cross of Christ Rezoning Request

### **Requestor: Cross of Christ Lutheran Church**

**4500 Rimer Rd**

**Concord, N.C. 28025**

May 5<sup>th</sup>, 2022 – I went to 4385 Rimer Rd to speak with John or Cheryl Aruda. They were not home but I did speak to someone house-sitting for them. I was advised they were out of town but would be back next week. I left a copy of a before and after photo of the signage (current and proposed) with my cell number.

May 11<sup>th</sup>, 2022 – Mrs Cheryl Aruda contacted me back via telephone. I told her why I had stopped by their residence and I asked her if she or her husband had any issues with the new sign or any change in the zoning. She stated to me that she had no issues with any of it.

May 16<sup>th</sup>, 2022 – President of Church Council, Rusty Drye, spoke with Eddie Cruse, owner of Cruse Meat Processing and adjacent property owner at 4501 Rimer Rd and advised him of the upcoming zoning request. Mr. Cruse advised Mr. Drye that he was fine with the change.

Mr. Rusty Drye, owner of Rimer Motors, is also an adjacent property owner and is current President of Church Council. He is in support of the changes to zoning and to the sign change.

This completes the follow-up of all necessary contacts which are adjacent to the proposed change in zoning for sign replacement.

- One issue which I wanted to have addressed regarding the sign was if the sign would have a photosensor which allowed it to dim at night. I spoke with Kim Fisher of Casco Signs which is the vendor for this project. She stated to me that the sign will dim during nighttime hours which will reduce any chance of the sign being too bright and causing traffic issues.

A handwritten signature in black ink, appearing to read "James N. Bailey". The signature is fluid and cursive, with the first name "James" written in a larger, more prominent script than the last name "Bailey".

Completed by:

James N. Bailey

Vice-President of Church Council, Cross of Christ Lutheran Church

6000 Emanuel Rd

Rockwell N.C. 28138

(980) 521-8346

| <b>PERMITTED USE TABLE</b>  |   |           |
|---|---|-----------|
| <b>"P" - Permitted, "C" – Conditional, "PBS" – Permitted Based on Standards</b> |   |           |
|   | <b>AO</b>   | <b>OI</b> |
| <b>RESIDENTIAL USES</b>   |   |           |
| Family Care Home  | P   |           |
| Group Care Facility   |   | P         |
| Manufactured Home, Single Section or Mobile Home, Multi-Section                 | Permitted in Residential Districts, Manufactured Home Overlay District Required – see Chapter 4 |           |
| Manufactured Home Park (8-4, 14)  |   |           |
| Single Family Detached Residential  | P   |           |
| <b>AGRICULTURAL USES</b>  |   |           |
| Agriculture, Including Livestock (7-3,2A)                                       | P   |           |
| Agriculture Excluding Livestock   | P   |           |
| Agritourism, Accessory to Agriculture   | P   |           |
| Barn, Greenhouse, as Primary Structure (7-3, 7)                                 | PBS   |           |
| Dairy Processing  | P   |           |
| Hatchery  | P   |           |
| Livestock Sales   | P   |           |
| Nursery, Greenhouse   | P   |           |
| Scientific Research and Development, Accessory to Agriculture (7-3, 52)         | PBS   |           |
| <b>ACCESSORY USES</b>   |   |           |
| Accessory Dwelling Unit (7-3,1)   | PBS   |           |
| Accessory Building, (7-3, 1)  | PBS   | PBS       |
| Airstrip (8-4, 3)   | SU  |           |
| Automated Teller Machine (7-3, 6, b)  |   | PBS       |
| Community Garden, as Accessory Use (7-3, 13)                                    | PBS   | PBS       |
| Ethanol Fuel Production, Residential District, Private Use Only (7-3, 20)       | PBS   |           |
| Home Occupation, General (7-3, 27)  | PBS   |           |
| Home Occupation, Rural (7-3, 28)  | PBS   |           |
| Ice Production, Dispensing, Accessory to Convenience Store (7-3, 30)            | PBS   |           |
| Ice Production, Dispensing, Accessory to Gas Station (7-3, 29)                  | PBS   |           |
| Kennel, Private (7-3, 31)   | PBS   |           |
| Swimming Pool, Accessory to Single Family Residential (7-3,1)                   | PBS   |           |
| Towing Service, Accessory to Automobile Repair (7-3, 60, a-c)                   | PBS   |           |
| Trail Head, Accessory (7-3, 63)   | PBS   | PBS       |
| Wind Energy Facility, Accessory Use, On Site Use Only (7-3, 66)                 | PBS   |           |
| <b>COMMERCIAL, RETAIL AND OFFICE USES</b>                                       |   |           |
| Animal Hospital (8-4, 39)   | SU  |           |
| Auction House (7-3, 3)  | PBS   |           |
| Bank, Financial Institution, Automated Teller Machine (7-3, 6)                  |   | PBS       |
| Banquet Hall  |   | P         |
| Barber, Beauty, Tanning, Nail or Skin Care Salon                                |   | P         |
| Bed and Breakfast (7-3, 8)  | PBS   |           |
| Catering Service (7-3, 9)   |   | PBS       |
| Contractor or Trade Shops (7-3,17)  | PBS   |           |
| Convenience Store with Petroleum Sales (7-3, 14)                                | PBS   |           |

|   |     |     |
|---|-----|-----|
| Convenience Store without Petroleum Sales (7-3, 15)                                 | PBS |     |
| Country Club with Golf Course (7-3, 16)   | PBS | PBS |
| Crematorium   |     | P   |
| Day Camp, Summer Camp, Civic Group Camp Facility (8-4, 10)                          | SU  |     |
| Duplex, Commercial Use, Individual Lots (7-3, 19)                                   |     | PBS |
| Farmer's Market   |     | P   |
| Funeral Home  |     | P   |
| Gas Service Station (7-3,23)  | PBS |     |
| Golf Course, Public or Private (7-3, 24)  | PBS | PBS |
| Kennel, Commercial (8-4, 37)  | SU  |     |
| Nursery, Daycare Center (7-3, 35)   | PBS | PBS |
| Office professional, 30,000 Square Feet or Less                                     |     | P   |
| Parking Lot, Parking Garage, Commercial or Private                                  |     | P   |
| Printing and Reprographic Facility  |     | P   |
| Race Shop, Race Team Complex (8-4, 19)  | SU  |     |
| Reception Facilities (8-4, 21)  | SU  |     |
| Recreational Facility, Indoor (7-3, 39)   |     | PBS |
| Recreational Facility, Outdoor (8-4, 22)  | SU  | SU  |
| Recreational Therapy Facility, Rural Setting (8-4, 23)                              | SU  |     |
| Recyclable Materials Drop Off (7-3, 41)   | PBS | PBS |
| Repair Garage, Automobile (7-3, 43)   | PBS |     |
| Repair Shop, Farm Machinery (7-3, 44)   | PBS |     |
| Repair Shop, Small Engine (7-3, 45)   | PBS |     |
| Restaurant, Excluding Drive-thru (7-3, 47)  | PBS |     |
| Retail Sales, Neighborhood Market 1,000 Square Feet or Less (7-3, 49)               | PBS |     |
| Sawmill (7-3, 51)   | PBS |     |
| Scientific Research and Development (7-3, 53)                                       |     | PBS |
| Shooting Range, with Outdoor Target Practice (8-4, 30)                              | SU  |     |
| Sports and Recreation Instruction or Camp (8-4, 31)                                 | SU  |     |
| Stables, Commercial (7-3, 58)   | P   |     |
| Swim Club, Tennis Club, Country Club (7-3, 59)                                      | PBS | PBS |
| Towing Service, with Towed Vehicle Storage Yard, No Salvage or Part Sales (7-3, 61) | PBS |     |
| Veterinarian (8-4, 37)  | SU  |     |
| Wellness Retreat, Wellness Spa (8-4, 38)  | SU  |     |
| Wireless Telecommunications Services (8-4, 36)                                      | SU  | SU  |
| Wireless Telecommunications Services, Stealth Antennae, 65 Feet or Less (8-4, 36)   | P   | P   |
| Wireless Telecommunications Services – Co-location (7-3, 67)                        | PBS | PBS |
| <b>INSTITUTIONAL, CIVIC AND PUBLIC USES</b>   |     |     |
| Animal Shelter (8-4, 37)  | SU  |     |
| Cemetery (7-3, 10)  | PBS |     |
| Civic Organization Facility (7-3,11)  | PBS | P   |
| College, University (8-4, 6)  | SU  |     |
| College, University   |     | P   |
| Communications Tower, 911 Communications Tower (7-3, 12)                            | PBS |     |
| Communications Tower, 911 Communications Tower (8-4, 7)                             |     | SU  |

|   |     |     |
|---|-----|-----|
| Convention Center Facility (8-4, 8)   |     | SU  |
| Correctional Facility (8-4, 9)  | SU  |     |
| Elementary, Middle and High Schools (8-4,11)                                  | SU  | SU  |
| Hospital, Ambulatory Surgical Care Facility                                   |     | P   |
| Public Cultural Facility (7-3, 38)  | PBS | P   |
| Public Service Facility (8-4, 17)   | SU  | SU  |
| Public Use Facility (8-4, 18)   | SU  |     |
| Public Use Facility   |     | P   |
| Recreational Trail, Greenway or Blueway, Connector (7-3, 40)                  | PBS | PBS |
| Religious Institution with Total Seating Capacity 351 or More (8-4, 24)       | SU  | SU  |
| Religious Institution with Total Seating Capacity 350 or Less (7-3, 42)       | PBS | PBS |
| Religious Institution with School (8-4, 25)                                   | SU  | SU  |
| Rest Home, Convalescent Home with 10 Beds or Less (7-3, 46)                   | PBS | PBS |
| Rest Home, Convalescent Home with More Than 10 Beds (8-4, 26)                 | SU  | SU  |
| Trade and Vocational Schools (8-4, 33)  | SU  | SU  |
| Trail Head, Primary Use Site (7-3, 64)  | PBS | PBS |
| <b>INDUSTRIAL</b>   |     |     |
| Landfill, Demolition, Less Than One Acre (7-3, 32)                            | PBS |     |
| Landfill, Demolition, One Acre or More (8-4, 13)                              | SU  |     |
| Landfill, Sanitary (8-4, 13)  | SU  |     |
| Multimedia Production and Distribution Complex (8-4, 15)                      | SU  |     |
| Slaughter House, Meat Packing (8-4, 32)                                       | SU  |     |
| <b>TEMPORARY USES</b>   |     |     |
| Auction, Estate or Asset Liquidation  | PBS | PBS |
| Auction, Livestock  | PBS |     |
| Dumpsters, Commercial Waste Containers  | PBS | PBS |
| FEMA Trailers, Natural Disaster or Significant Weather Event                  | PBS | PBS |
| Mobile Personal Storage Unit, Vacate or Occupy Premise                        | PBS | PBS |
| Mobile Personal Storage Unit, Renovation                                      | PBS | PBS |
| Seasonal Sale of Agriculture Products, Includes Christmas Trees and Pumpkins  |     | PBS |
| Temporary Dwelling for Large Construction Projects                            | PBS |     |
| Temporary Residence in Mobile Home During Construction of New Home, Same Site | PBS |     |
| Temporary Tent or Temporary Structure, Including Cell on Wheels               |     | PBS |

PLANNING STAFF REPORT  
CABARRUS COUNTY PLANNING AND ZONING COMMISSION  
06/14/2022

Staff Use Only:  
Approved: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Tabled \_\_\_\_\_

**Variance: VARN2022-00001**

Applicant Information: Evolution Recreation & Aquatics  
11202 Harris Road  
Huntersville, NC 28078

Owner Information: Ethan & Austin Properties LLC  
17501 Huntersville-Concord Road  
Huntersville, NC 28078

PIN: 4670-45-1661

Area in Acres: +/- 5.501 acres

Purpose of Request: The purpose of this request is to seek relief from:

**Chapter 7, Section 7-3.59.c**

The existing facility was approved in 2005 as an Indoor Recreational Facility that was zoned OI-SU. The site was developed using the standards in place at that time. Since the site was originally developed, additional line items have been added to the Use Table of Chapter 3 and defined in Chapter 2, including the line item, Swim Club, Tennis Club, Country Club (Swim Club).

The applicant is proposing to add outdoor amenities and features to the site, which is consistent with the Swim Club line item. The development standards for this type of use requires a 200-foot setback for any accessory buildings, swimming pools, tennis courts, parking areas, or any amenity areas and adjacent residentially used or zoned property.

There are existing encroachments of the primary building and parking areas into the 200-foot setback as the site is currently configured. Proposed improvements and features will also encroach in to the required 200-foot setback. The proposed features include, future parking areas, a playground, swimming pools and a walking trail. (See Site Plan)

**Chapter 9, Table 4 Perimeter Landscape Buffers**

The existing facility does not encroach into the required perimeter landscaping buffers. However, the applicant is proposing new outdoor amenities that would encroach into the required perimeter landscape buffers. The encroachments include features such as, reconfigured parking areas, pool decking and a six-foot walking trail. (See Site Plan)

**Chapter 9 Section 9.5 Perimeter Parking Area Buffer**

The applicant is also requesting relief from the required eight-foot width requirement of the perimeter parking area buffer for the six-foot walking trail.

Site Description: The subject property is currently occupied by an indoor recreation facility. The main building is approximately 28,000 square feet in

size and sits in the center of the property. Parking areas surround the main building in three sides. An access easement crosses the subject property (through the existing parking lot) on its east side. The access easement provides access to an existing Wireless Telecommunications Tower located to the north of the subject property. A 15-foot utility easement (Charlotte Water) also straddles the eastern property line.

|                           |   |
|---------------------------|---|
| Current Land Uses:        | Indoor Recreation   |
| Adjacent Land Uses:       | Residential, Wireless Telecommunications Tower and Vacant |
| Permitted Uses:           | Indoor Recreational Facility and Office (only)            |
| Existing Zoning:          | OI-SU (Office and Institutional – Special Use)            |
| Surrounding Zoning:       |   |
| North:                    | R (Town of Huntersville Rural Residential)                |
| East:                     | LDR   |
| South:                    | OI & R-3 (City of Charlotte Single Family)                |
| West:                     | R (Town of Huntersville Rural Residential)                |
| Signs Posted:             | 01/19/2022  |
| Newspaper Notification 1: | 01/26/2022  |
| Newspaper Notification 2: | 02/02/2022  |
| Notification Letters:     | 01/18/2022  |

## Exhibits

- Exhibit A – Staff Report
- Exhibit B – Application
- Exhibit C – Staff Maps
- Exhibit D – Site Plan
- Exhibit E – Adjacent Property Owner Information
- Exhibit F – Original 2005 Rezoning Request Information
- Exhibit G – Neighborhood Meeting Information
- Exhibit H – Aerial & Street Level Photos

## Agency Review Comments

### **Emergency Services Review:**

*No comments. (Justin Brines, Deputy Chief EMS).*

### **Fire Review:**

*Variance Request Approved. Additional requirements may be required in site plan and building plans. (Matthew Hopkins, Fire Marshal's Office).*

### **NCDOT Review:**

*We do not need a driveway permit but do ask that all the plantings currently shown in the sight distance triangles be removed. There should be 10'x70' sight distance triangles shown on the ROW line on both sides of the access. Please show these triangles and remove all the plantings within them. (Jeff Burlison, NCDOT)*

### **Sherriff's Department Review:**

*No comments. (Ray Gilleland, Lieutenant Sherriff).*

### **Cabarrus Health Alliance:**

*No comments regarding variance encroachments. The pool plans would need to be reviewed and approved prior to construction. (Chrystal Swinger, Cabarrus Health Alliance)*

### **Charlotte Water:**

*The plans look good to me, if the applicant ends up needing to grade in the Charlotte Water easement, please let me know. (Nick Stanziale, Interim Division Manager)*

### **Zoning Review:**

*See staff report (Phillip Collins, Sr. Planner)*

## History / Other Information

- The subject property is located on Harris Road adjacent to the Cabarrus County line.
- The subject property is approximately 5.501 acres in size.
- The current development proposal is classified under the Swim Club line item listed in Table 3-8 and the definition in Chapter 2.

*SWIM CLUB, TENNIS CLUB, COUNTRY CLUB - A private club that provides one or more of the following: tennis or swimming facilities, indoor or outdoor exercise facilities, recreation rooms, recreational equipment, tennis or swimming lessons, etc. These types of facilities are restricted to use by members and their guests. Country Clubs may also include golf courses and/or a clubhouse with dining and banquet facilities.*

- The subject property was rezoned from Medium Density Residential (MDR) to Office Institutional – Conditional Use (OI-CU) in 2005. The rezoning limited the uses permitted on site to Indoor Recreational Facility and Office Use. The zoning of the subject property is still OI-CU. The site has been used as an indoor recreational facility since it was rezoned. If the variance requests are approved by the Board of Adjustment, the applicant intends to proceed with submitting a rezoning request for OI, which permits a swim club as a by right, PBS, use. The PBS supplemental development standards are as follows:

*Swim Club, Tennis Club, Country Club*

*Agriculture/Open, Countryside Residential, Low Density Residential, Medium Density Residential, High Density Residential/Mixed Use, Office/Institutional, Limited Commercial and General Commercial districts*

- In any residential district, the minimum area shall be one (1) acre.*
  - Clubhouses shall meet the primary setbacks for the zoning district.*
  - There shall be a 200 foot minimum setback between any accessory buildings, swimming pool, lighted tennis court, parking area or any amenity area and adjacent residentially zoned or used property.*
  - Lighting for amenity areas shall be designed such that it does not spill over onto adjacent properties.*
  - Outdoor swimming pools shall be protected by a fence, a minimum of four (4) feet in height and equipped with a self-closing and positive self-latching gate provided with hardware for permanent locking. See Appendix G, North Carolina Building Code, Swimming Pools, Spas and Hot Tubs for requirements.*
- Both Indoor Recreational Facilities and Swim Clubs are permitted based on the ability to comply with supplemental standards found in Chapter 7 of the Ordinance. Indoor Recreational Facilities and Swim Clubs, however, have different development standards. A different setback standard is required due to the change in the use of the property (adding outdoor features) which includes a 200-foot setback between any accessory buildings, swimming pool, parking area or any amenity area and adjacent residentially zoned or used property.
    - The applicant is requesting relief from the required 200-foot setback of Section 7-3.59 for the following as shown on the proposed site plan:
      - Existing facility
      - Existing and proposed parking areas
      - Proposed walking trail
      - Proposed outdoor pools
      - Proposed playground
      - Proposed accessory buildings
      - Proposed picnic area
      - Fire access road

- Harris Road is listed within the Cabarrus-Rowan Metropolitan Planning Organization's (CRMPO) Comprehensive Transportation Plan (CTP). The future right-of-way is listed as 110 feet and the current width of the right of way is around 80 feet. The applicant understands that the appropriate amount of right-of-way to allow for the NCDOT facility to be expanded will need to be dedicated at the time of site plan review.
- The application states that it is the owner's intention to develop the open and available land surrounding the existing structure on the property. The rules for buffering have changed and surrounding properties have developed since the time the property was initially developed. Requirements have increased, making development of the remainder of the property extremely difficult, if not impossible.
- The application states that if the variance is not granted, the property will be limited to the existing structure and parking area. The setback/buffering rules limit the property to indoor use only, leaving large areas that could be used to amenitize the site vacant.
- The application states that the site is of a unique shape and was developed prior to the imposition of more restrictive setback and buffering requirements.
- The applicant contends that granting the variance will not cause any threat to the surrounding community. The use and proposed outdoor pool expansion are community-centered uses. The applicant has proposed reductions in the required width of the perimeter buffer of:
  - 12 feet along the eastern property line,
  - 22 feet along the eastern portion of the northern property line,
  - 16 feet along the western portion of the northern property line,
  - 6 feet along the northern portion of the western property line, and
  - 12 feet along the southwestern property line.

The applicant further contends that these reductions are reasonable and provide more buffering to the site than what exists today and what was required when the property was initially developed. The proposed site additions and amenities will be screened, and the outdoor pool areas will be fenced.

- The applicant contends that if the required 51-foot (Level 2) buffers are imposed, the proposed improvements would not be possible, and the site will be limited to only providing indoor amenities. Therefore, the applicant is requesting relief from Table 9-4, the required perimeter landscape buffers, as follows:
  - Allow encroachments into the required 51-foot level 2 buffer along the **eastern** property line:
    - the proposed paved parking area encroaches 7 feet into the required buffer, and

- the proposed 6-foot walking trail encroaches 12 feet into the required buffer.
  - Allow encroachments into the required 51-foot level 2 buffer along the **northern** property line:
    - the proposed 6-foot walking trail encroaches 23 feet into the required buffer,
    - the proposed paved parking/driveway encroaches 17 feet into the required buffer, and
    - the decking for the proposed outdoor Olympic size pool encroaches 17 feet into the required buffer.
  - Allow encroachments into the required 51-foot level 2 buffer along the **western** property line:
    - the proposed decking near the splash pad encroaches in six feet into the required buffer,
  - Allow encroachments into the required 51-foot level 2 buffer along the **southwestern** property line:
    - the proposed walking trail encroaches twelve feet into the required buffer, and
    - the proposed parking area encroaches six feet into the required buffer,
- Allow relief from the eight-foot width requirement of the parking area perimeter landscape buffer of Section 9-5 for encroachments by the walking path. Encroachments include:
  - encroachments of approximately six and a half and eight feet into the buffer of the northeastern portion of the parking area,
  - an encroachment of approximately five feet into the buffer of the southeastern portion of the parking area, and
  - an encroachment of approximately eight feet into the buffer of the southwestern portion of the parking area.
- The applicant understands that the next step in the approval process is to request a rezoning of the subject property. If the rezoning request to OI is successful, the next step would be to move forward with the commercial zoning site plan review and permitting process for a swim club.

### Conditions of Approval

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

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

- The applicant shall submit a site plan, along with the subsequent rezoning request, that is in compliance with the findings/conclusions of this variance request.
- Approved variances must be reflected on site plan submittals moving forward. Any changes thereto would require review and approval from the Board of Adjustment.
- The applicant shall provide the pool plans to the Cabarrus Health Alliance for review and approval prior to construction.
- The applicant shall provide plans to Charlotte Water for review and approval prior to construction if grading within the easement (along the eastern property line) is needed.



**CABARRUS COUNTY  
 VARIANCE APPLICATION  
 REVISED 5/19/22**

**STAFF USE ONLY:**

Application/Accela#: \_\_\_\_\_  
 Reviewed by: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Amount Paid: \_\_\_\_\_

**INSTRUCTIONS/PROCEDURES:**

1. Schedule a pre-application meeting with Staff. During this meeting, Staff will assess the proposed variance request to evaluate options that may be available to you through the zoning ordinance. If it is necessary to proceed with the request, Staff will explain the procedures and requirements, including the thresholds of consideration for variance requests.
2. Submit a complete application to the Planning Division. All applications must include the following:
  - Cabarrus County Land Records printout of all adjacent property owners. This includes properties located across the right-of-way and all on-site easement holders. The list must include owner name, address, and Parcel Identification Number.
  - A recent survey or legal description of the property.
  - Required number of copies of the proposed site plan (determined at pre-app meeting). At a minimum, the site plan must show the following:
    - The subject property and any adjacent properties.
    - All existing buildings, including setbacks from property lines.
    - All proposed buildings, parking facilities and accessory uses, including setbacks from property lines (if applicable).
    - The location and type of screening and buffering proposed (if applicable).
    - Impervious surface ratio (if applicable).
    - Waterbody buffers (if applicable).
    - Delineation of the proposed variance on the site plan so that the type and nature of the variance the applicant is seeking is clear. (This may be accomplished by submitting two site plans. One to show the requirements of the ordinance and a second to show what the variance request will achieve.)
    - Any additional item(s) that must be illustrated on the plan as determined during the pre-application meeting.
  - Any additional documents essential for the application to be considered complete. (Determined at pre-application meeting)
3. Submit cash, check, or money order made payable to Cabarrus County.  
 Fees: Residential Variance request = \$500.00 first acre + \$15.00 each additional acre  
 Non-residential Variance request = \$600.00 first acre + \$15.00 each additional acre  
 (Plus cost of advertising and engineering fees if applicable)

The deadline for submittal is always the same day as the Planning and Zoning Commission Meeting which is the second Tuesday of the month. Applications must be submitted before 2:00 p.m. that day.

**Incomplete applications will be returned to the applicant and will not be processed.**

**PROCESS SUMMARY:**

1. Hold a pre-application meeting with Staff to discuss your request and the variance process.
2. Submit a complete application with the appropriate fees to the Cabarrus County Planning Division.
3. When the complete application is received, Staff and appropriate agents will review the application and site plan and will make comments on the proposed request.

- Depending on the comments received, the applicant may be required to address the comments and/or revise the site plan prior to proceeding with the variance process.
4. Staff will begin to prepare a staff report, schedule a public meeting date and notify adjacent property owners of the public meeting/public hearing date. A sign advertising the public hearing will also be placed on the property being considered for the variance request.

**Meeting Information:** Meetings are held the second Tuesday of each month at 6:30 p.m. in the Cabarrus County Governmental Center located in downtown Concord at 65 Church Street, SE or an alternative location as announced.

**Variance:** Variance requests are considered by the Board of Adjustment during a quasi-judicial hearing. This means that anyone wishing to speak regarding the application must be sworn in. The vote requirement for the variance request to pass is 80% or greater. Additional conditions may be added as part of the variance approval process.

**Questions:** Any questions related to the variance process may be directed to the Planning Division at 704-920-2141, between 8 AM and 5 PM, Monday through Friday.

| <b>APPLICANT</b>                                  | <b>PROPERTY OWNER</b>                               |
|---|---|
| <u>Evolution Recreation &amp; Aquatics</u>        | <u>Ethan &amp; Austin Properties LLC</u>            |
| NAME  | NAME  |
| <u>11202 Harris Rd.</u>                           | <u>17501 Huntersville, Concord Rd.</u>              |
| ADDRESS   | ADDRESS   |
| <u>Huntersville, NC 28078</u>                     | <u>Huntersville, NC 28078</u>                       |
| CITY, STATE, ZIP CODE                             | CITY, STATE, ZIP CODE                               |
| <u>404-822-8398</u>                               | <u>954-234-8252</u>                                 |
| PHONE NUMBER                                      | PHONE NUMBER  |
| <u></u>   | <u></u>   |
| FAX NUMBER  | FAX NUMBER  |
| <u>berkowitz.jessica@gmail.com</u>                | <u>ibnsb@me.com</u>                                 |
| E-MAIL ADDRESS                                    | E-MAIL ADDRESS                                      |
| Legal Relationship of Applicant to Property Owner | <u>Consultant/Tenant</u>                            |
| Existing Use of Property                          | <u>Swim Club, Indoor Rec. facility</u>              |
| Existing Zoning                                   | <u>O/I Permitted Based on Std. use</u>              |
| Property Location                                 | <u>11202 Harris Road, Huntersville<br/>NC 28078</u> |

Tax Map and Parcel Identification Number (PIN)

46704516610000

**TO THE BOARD OF ADJUSTMENT**

I, Jessica Berkowitz, 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 Request Including Related Zoning Ordinance Section(s)

Section: Section 7 - 3.59 - Setback Encroachment (allow proposed structures in setback as shown on attached site plan))

Chapter 9, Table 4. Landscaping Buffering Requirement (allow reduced buffers as shown on attached site plan)

Section 9.5 - Parking Lot Area Landscape Buffer Requirements (relief to accommodate trail as shown on attached site plan)

2. Reason(s) for Seeking a Variance

The applicant's intention is to develop the open and available land surrounding the existing structure on the property. However, since the time that the structure was originally developed, adjacent properties in Huntersville have been developed/rezoned and Cabarrus screening and buffering rules have increased, making development of the remainder property impossible.

**FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE:**

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. State law and local ordinance provide strict requirements on standards for granting a variance. Pursuant to G.S. 160D-705(d) and Cabarrus County Development Ordinance § 12-20, the Board must make the following four conclusions before issuing a variance:

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

In order to make its 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.

**THE RESPONSIBILITY FOR PRESENTING EVIDENCE TO SUPPORT THE VARIANCE REQUEST, AS DESCRIBED DURING THE MEETING AND TO THE BOARD OF ADJUSTMENT, LIES COMPLETELY WITH THE APPLICANT.**

**FINDING OF FACT CHECKLIST**

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

- 1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.**

*(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"?)*

If a variance is not granted, the property will be strictly limited to the existing structure which is legally non-conforming as a result of the imposition of a 200' setback from property lines. In addition, new development and rezonings adjacent to the property in Huntersville have caused the imposition of increased buffers on the property that were not in effect when the property was originally developed. The setback/buffer rules limit the property to only indoor use leaving large outdoor areas vacant.

- 2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.**

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

The site is of a unique shape, is located adjacent to Huntersville zoning which is different than Cabarrus County's zoning rules, and was developed prior to the imposition of more pervasive setback and buffer requirements than when the site was originally developed.

- 3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.**

*(The hardship must not be caused by the action or inaction of the applicant, such as failure to exercise reasonable due diligence before buying a property or building without a permit.)*

The adjacent uses brought the more stringent setback and buffer requirements to the site which caused several acres of the site being rendered undevelopable for outdoor uses related to the indoor pool facility. When the site was originally developed and later marketed by the prior owners, who own the adjacent properties which are being sold for residential development, the land around the existing building was not restricted by the existing setback and buffer rules and the land was open for development expansion, including an outdoor pool which was advertised in the marketing materials.

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4. **The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.**

*(If a variance is granted, is the overall "spirit" of the zoning ordinance still intact? While difficult to explain, some types of variance requests are 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 (not allowed), and modifying a dimensional standard to the detriment of a neighborhood or area. Also, 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?)*

Granting the variance will not cause any endangerment to the surrounding community. The use itself

and proposed outdoor pool expansion uses are community-centered uses. The requested buffer

reductions are reasonable and still provide substantially more buffering to the site than what was

required when the property was originally developed. The proposed uses will be screened and the outdoor pool areas fenced. More parking than required is being proposed and provided.

**POSSIBLE CONDITIONS, SUGGESTED BY THE APPLICANT:**

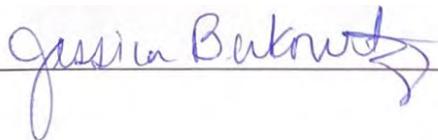
If the Board of Adjustment finds that a variance may be in order but the Board still has concerns in granting the variance, reasonable conditions can be imposed to assure that any of the four points will continue to be met and not violated. In your review of the four points, are there any conditions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

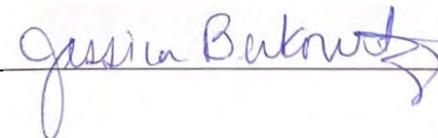
The applicant is willing to discuss and consider fencing, landscaping or other suggestions made by the Board at the hearing.

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

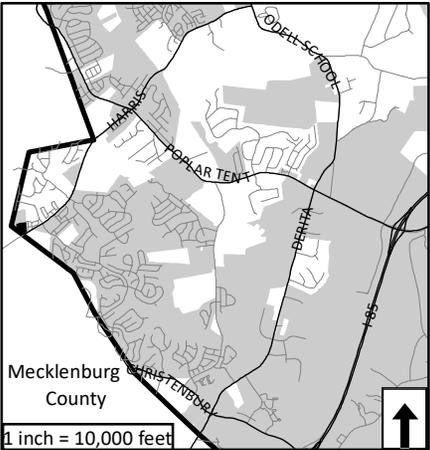
SIGNATURE OF OWNER:  DATE: 5/19/22

SIGNATURE OF APPLICANT:  DATE: 5/19/22

### Western Planning Area Existing Zoning

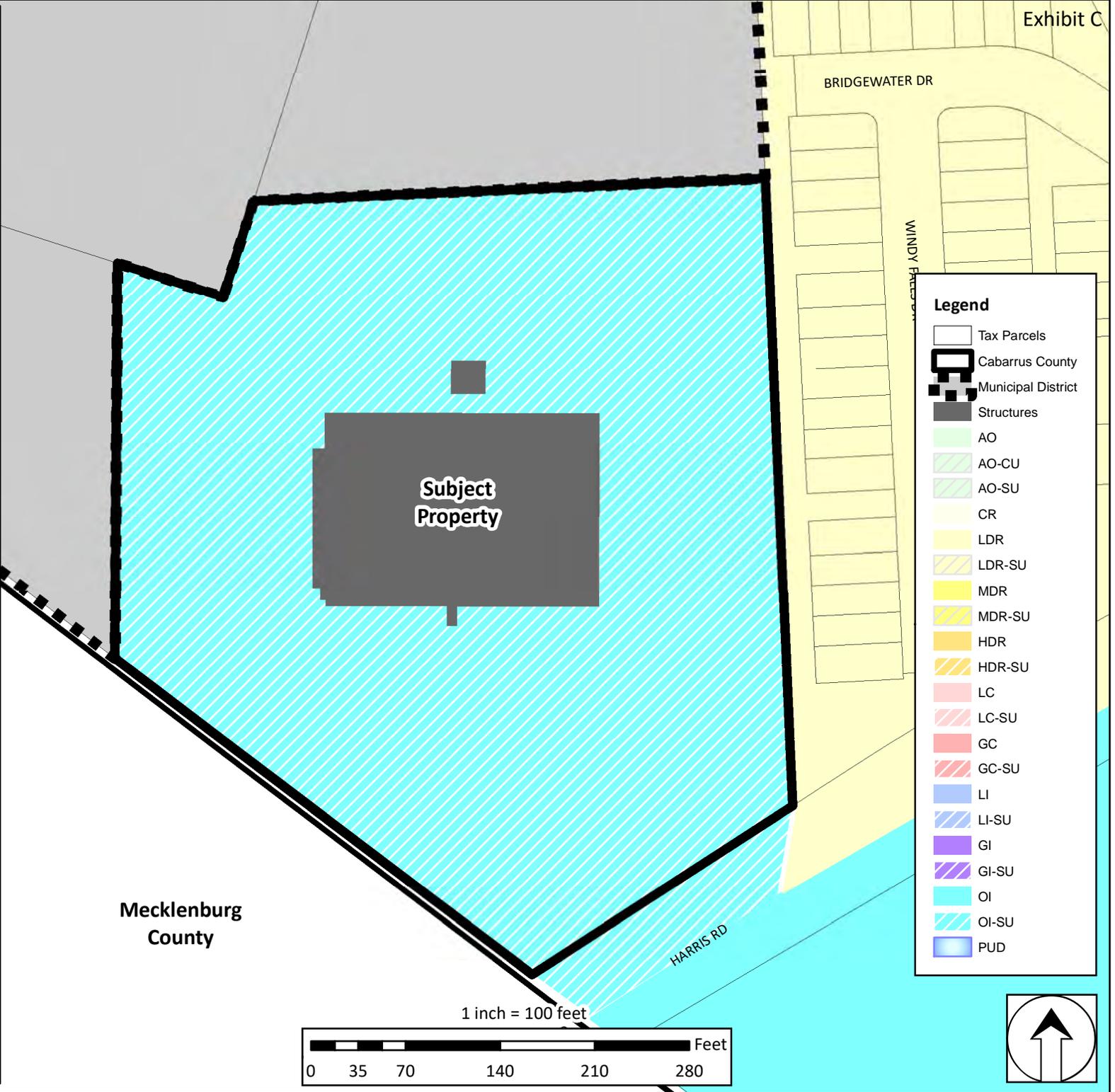


Applicant: Evolution Recreation & Aquatics  
Owner: Ethan & Austin Properties LLC  
Case: VARN2022-00001  
Address: 11202 Harris Road  
Purpose: Relief from setback requirements,  
and landscape buffering requirements  
PIN: 4670-45-1661

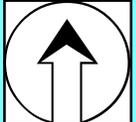
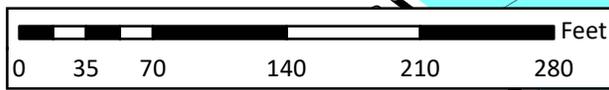


Cabarrus County shall not be held liable for any errors in this data. This includes errors of omission, commission, errors concerning the content of the data, and relative and positional accuracy of the data. These data cannot be construed to be a legal document. Primary sources from which these data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

Map Prepared by Cabarrus County Planning & Development - April 2022



| Legend |                    |
|--------|--------------------|
|        | Tax Parcels        |
|        | Cabarrus County    |
|        | Municipal District |
|        | Structures         |
|        | AO                 |
|        | AO-CU              |
|        | AO-SU              |
|        | CR                 |
|        | LDR                |
|        | LDR-SU             |
|        | MDR                |
|        | MDR-SU             |
|        | HDR                |
|        | HDR-SU             |
|        | LC                 |
|        | LC-SU              |
|        | GC                 |
|        | GC-SU              |
|        | LI                 |
|        | LI-SU              |
|        | GI                 |
|        | GI-SU              |
|        | OI                 |
|        | OI-SU              |
|        | PUD                |

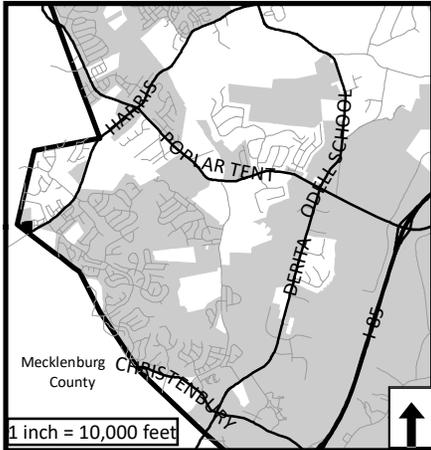


**Western Planning Area  
Aerial Map**



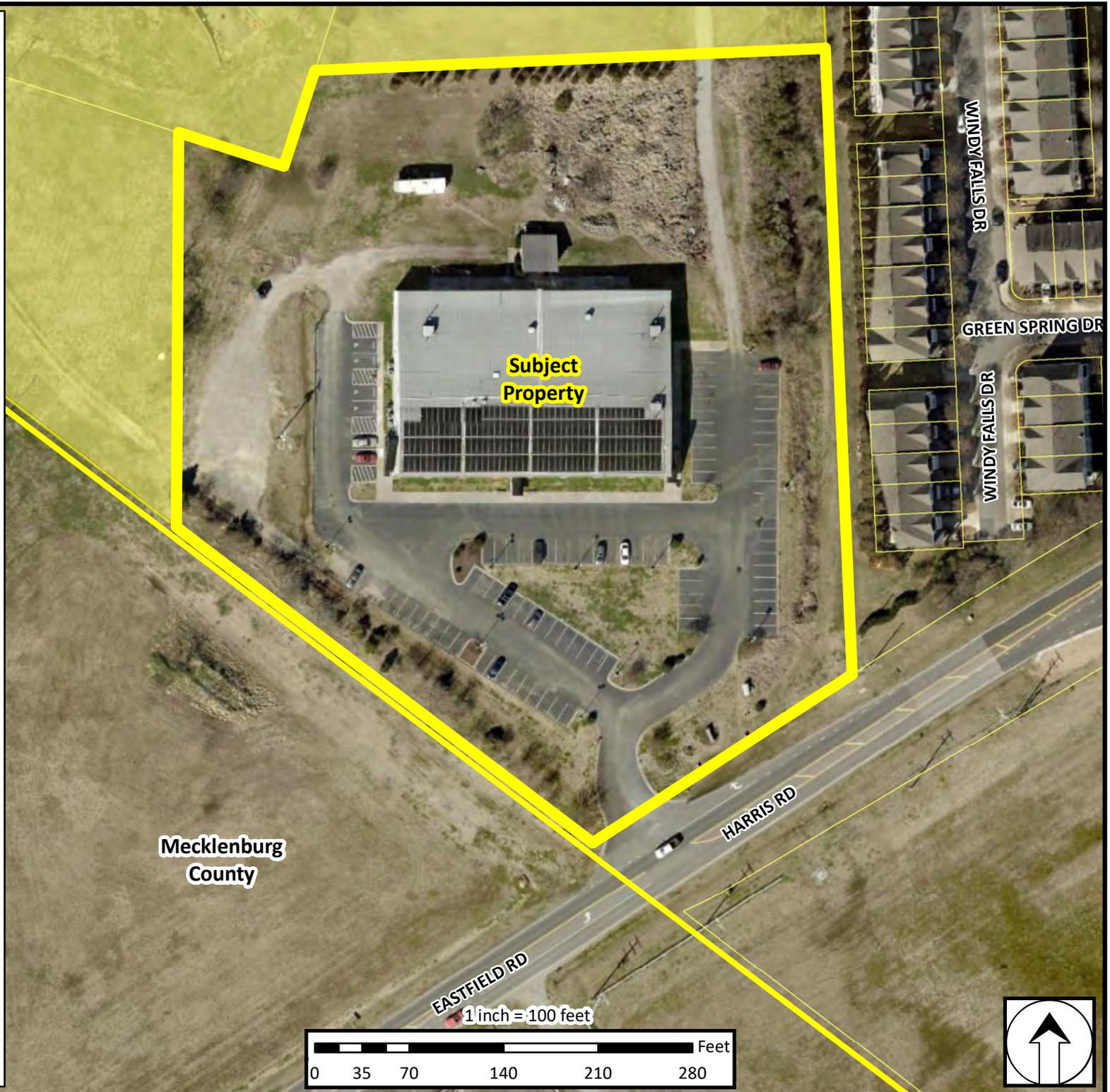
Applicant: Evolution Recreation & Aquatics  
 Owner: Ethan & Austin Properties LLC  
 Case: VARN2022-00001  
 Address: 11202 Harris Road  
 Purpose: Relief from setback requirements,  
 and landscape buffering requirements  
 PIN: 4670-45-1661

- Cabarrus County
- Municipal District
- Tax Parcels



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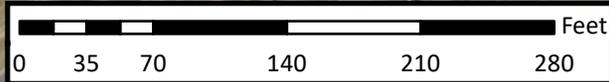
Map Prepared by Cabarrus County Planning & Development - April 2022



**Mecklenburg  
County**

**Subject  
Property**

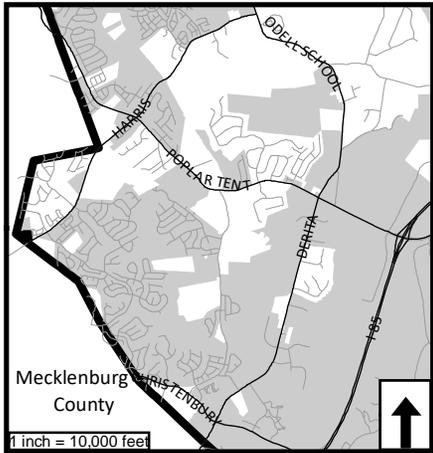
1 inch = 100 feet



**Western Planning Area  
Future Land Use**



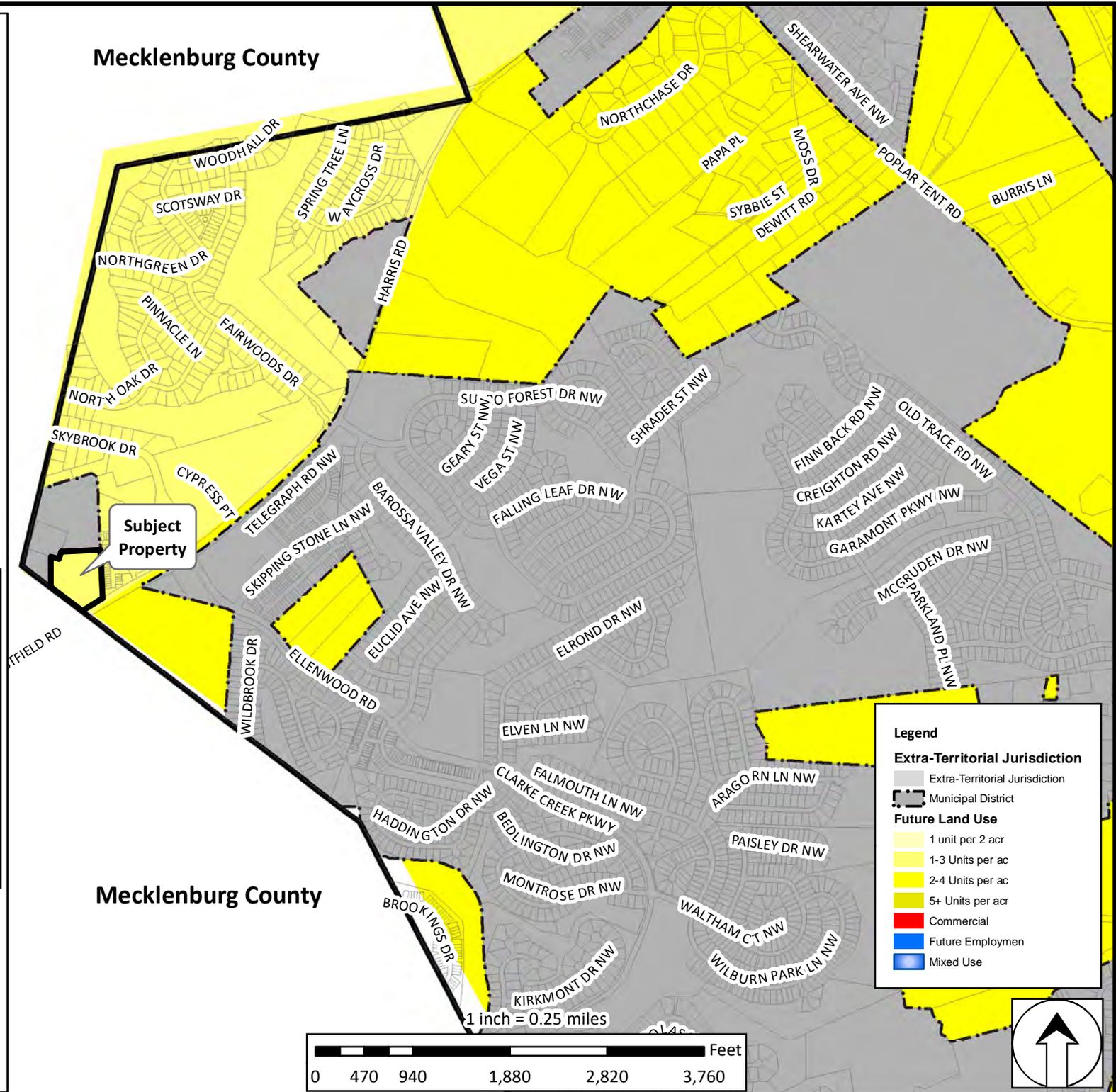
Applicant: Evolution Recreation & Aquatics  
 Owner: Ethan & Austin Properties LLC  
 Case: VARN2022-00001  
 Address: 11202 Harris Road  
 Purpose: Relief from setback requirements,  
 and landscape buffering requirements  
 PIN: 4670-45-1661



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Map Prepared by Cabarrus County Planning & Development - April 2022

**Mecklenburg County**



**Mecklenburg County**

SEAL:

**SUBMITTALS**

DATE: PURPOSE:

1/25/22 INITIAL SUBMITTAL

2/23/22 ADDRESSED COMMENTS

3/25/22 ADDRESSED COMMENTS

5/9/22 REVISED LAYOUT

**EVOLUTION RECREATION & AQUATICS**  
HUNTERSVILLE, NC

OWNER / DEVELOPER  
ETHAN & AUSTIN PROPERTIES, LLC  
17501 HUNTERSVILLE CONCORD RD.  
HUNTERSVILLE, NC 28078  
954-234-8252  
PROJECT DESCRIPTION:  
EVOLUTION RECREATION & AQUATICS  
HUNTERSVILLE, NC  
JANUARY 11, 2022

PROJECT NO:

7719.0821

**DRAWING REVISIONS**

NO. REVISION DESC. DATE:

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DRAWN BY: SNH REVISION BY: SNH

CHECKED BY: ACW ISSUED BY: ACW

DRAWING TITLE:

CONCEPT PLAN

WITH CCDO\*

REQUIREMENTS

(Chapt. 9 Table 4)

DRAWING NUMBER:

EX1.0

\* CABARRUS COUNTY DEVELOPMENT ORDINANCE



**SITE DATA**

**PARKING REQUIRED PER CHAPT. 10, TABLE 10-6:**

|  |      |
|--|------|
| 1 SPACE/ 300 SF GFA (27,850 SF / 300=92.8) | 93   |
| 1 SPACE/ EMPLOYEES PER SHIFT (10)          | +10  |
|  | =103 |

**PARKING PROVIDED:**

|                         |      |
|-------------------------|------|
| EXISTING PARKING:       | 97   |
| ADDITIONAL PARKING:     | +23  |
| TOTAL PROPOSED PARKING: | =120 |

**TOTAL SITE AREA:** (217,800) 5.50 AC

**AREA OF IMPROVEMENTS:** +/- 3.32 AC

**EXIST. PERCENT IMPERVIOUS AREA:**  
2.19 AC / 5.26 AC = 41.6%

**PROP. PERCENT IMPERVIOUS AREA:**  
2.44 AC / 5.50 AC = 44.36%

**IMPERVIOUS PROJECT DENSITY:**

|                                  |          |
|----------------------------------|----------|
| PROP. IMPERVIOUS AREA: (106,079) | 2.44 AC  |
| EXIST. IMPERVIOUS AREA: (95,396) | -2.19 AC |
| DIFF. PROP. & EXIST. IMPERV.     | =0.25 AC |

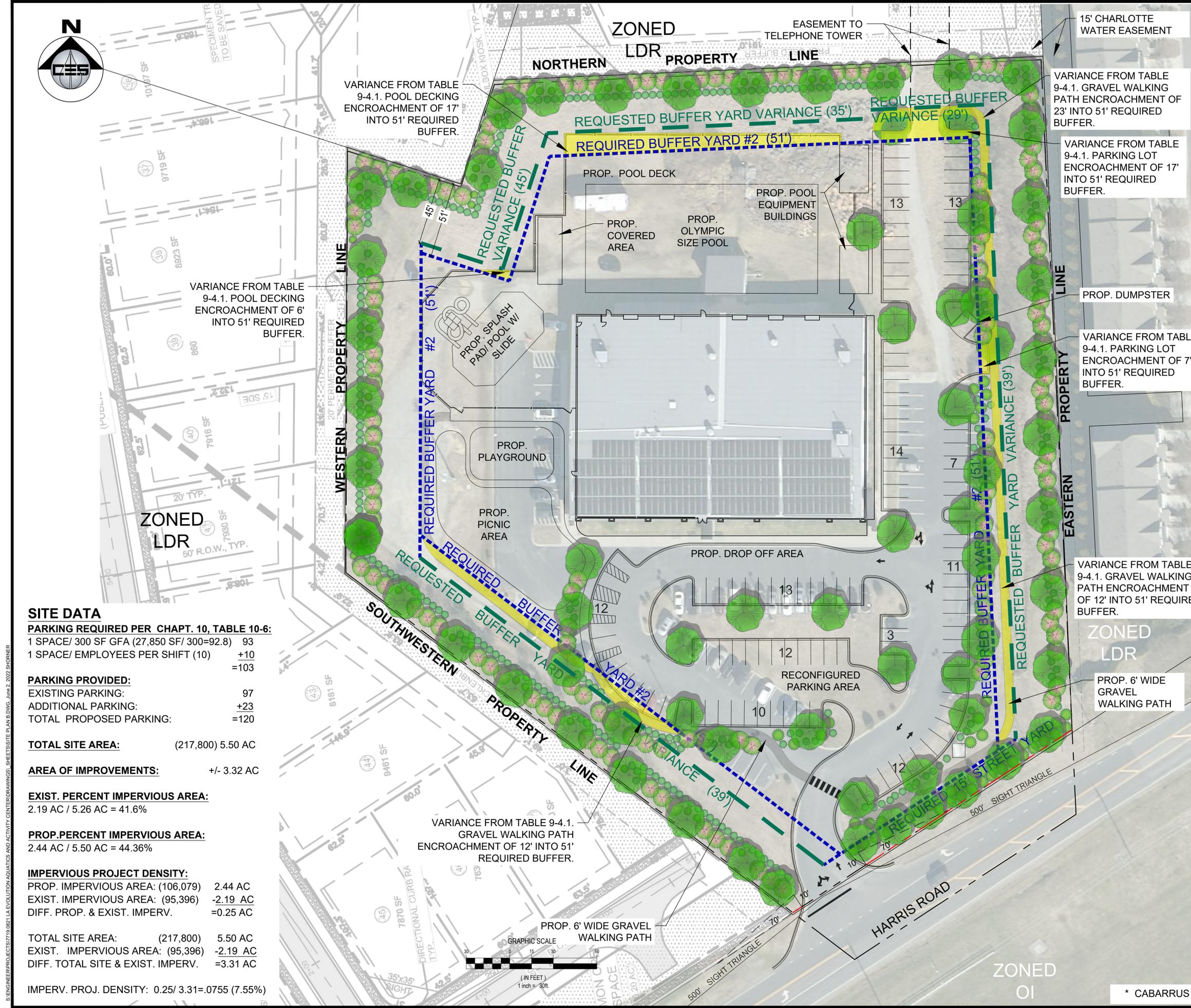
TOTAL SITE AREA: (217,800) 5.50 AC

EXIST. IMPERVIOUS AREA: (95,396) -2.19 AC

DIFF. TOTAL SITE & EXIST. IMPERV. =3.31 AC

IMPERV. PROJ. DENSITY: 0.25/ 3.31=.0755 (7.55%)

S:\ENGINEERING\PROJECTS\71719.0821 LA EVOLUTION AQUATICS AND ACTIVITY CENTER\DRAWINGS\ SHEETS\SITE PLAN\B.DWG. JUN 2, 2022 SHORNER





**SITE DATA**

**PARKING REQUIRED PER CHAPT. 10, TABLE 10-6:**

|  |      |
|--|------|
| 1 SPACE/ 300 SF GFA (27,850 SF / 300=92.8) | 93   |
| 1 SPACE/ EMPLOYEES PER SHIFT (10)          | +10  |
|  | =103 |

**PARKING PROVIDED:**

|                         |      |
|-------------------------|------|
| EXISTING PARKING:       | 97   |
| ADDITIONAL PARKING:     | +23  |
| TOTAL PROPOSED PARKING: | =120 |

**TOTAL SITE AREA:** (217,800) 5.50 AC

**AREA OF IMPROVEMENTS:** +/- 3.32 AC

**EXIST. PERCENT IMPERVIOUS AREA:**

2.19 AC / 5.26 AC = 41.6%

**PROP. PERCENT IMPERVIOUS AREA:**

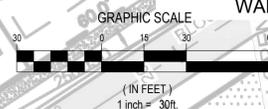
2.44 AC / 5.50 AC = 44.36%

**IMPERVIOUS PROJECT DENSITY:**

|                                  |          |
|----------------------------------|----------|
| PROP. IMPERVIOUS AREA: (106,079) | 2.44 AC  |
| EXIST. IMPERVIOUS AREA: (95,396) | -2.19 AC |
| DIFF. PROP. & EXIST. IMPERV.     | =0.25 AC |

|                                   |          |
|-----------------------------------|----------|
| TOTAL SITE AREA: (217,800)        | 5.50 AC  |
| EXIST. IMPERVIOUS AREA: (95,396)  | -2.19 AC |
| DIFF. TOTAL SITE & EXIST. IMPERV. | =3.31 AC |

IMPERV. PROJ. DENSITY: 0.25/ 3.31=.0755 (7.55%)



ENGINEERS  
PLANNERS  
SURVEYORS  
SCIENTISTS

CES Group Engineers, LLP  
NC FIRM LICENSE #F-1240  
274 N. Hwy. 16, SUITE 300  
DENVER, NC 28037  
T 704.489.1500



SEAL:

| SUBMITTALS |                    |
|------------|--------------------|
| DATE:      | PURPOSE:           |
| 1/25/22    | INITIAL SUBMITTAL  |
| 2/23/22    | ADDRESSED COMMENTS |
| 3/25/22    | ADDRESSED COMMENTS |
| 5/9/22     | REVISED LAYOUT     |
|            |                    |
|            |                    |

OWNER / DEVELOPER  
ETHAN & AUSTIN PROPERTIES, LLC  
17501 HUNTERSVILLE CONCORD RD.  
HUNTERSVILLE, NC 28078  
954-234-8252

PROJECT DESCRIPTION:  
**EVOLUTION RECREATION & AQUATICS**  
HUNTERSVILLE, NC

PROJECT NO: 7719.0821

| DRAWING REVISIONS |                                       |       |
|-------------------|---------------------------------------|-------|
| NO.               | REVISION DESC.                        | DATE: |
| 1                 | DIMS @ FIRE RD. & FENCE GATES 3/18/22 |       |
|                   |                                       |       |
|                   |                                       |       |
|                   |                                       |       |
|                   |                                       |       |
|                   |                                       |       |

DRAWN BY: SNH REVISD BY: \_\_\_\_\_  
CHECKED BY: ACW ISSUED BY: \_\_\_\_\_

DRAWING TITLE:  
**CONCEPT PLAN WITH VARIANCE REQUEST (Section 7-3.59)**

DRAWING NUMBER:  
**EX1.1**





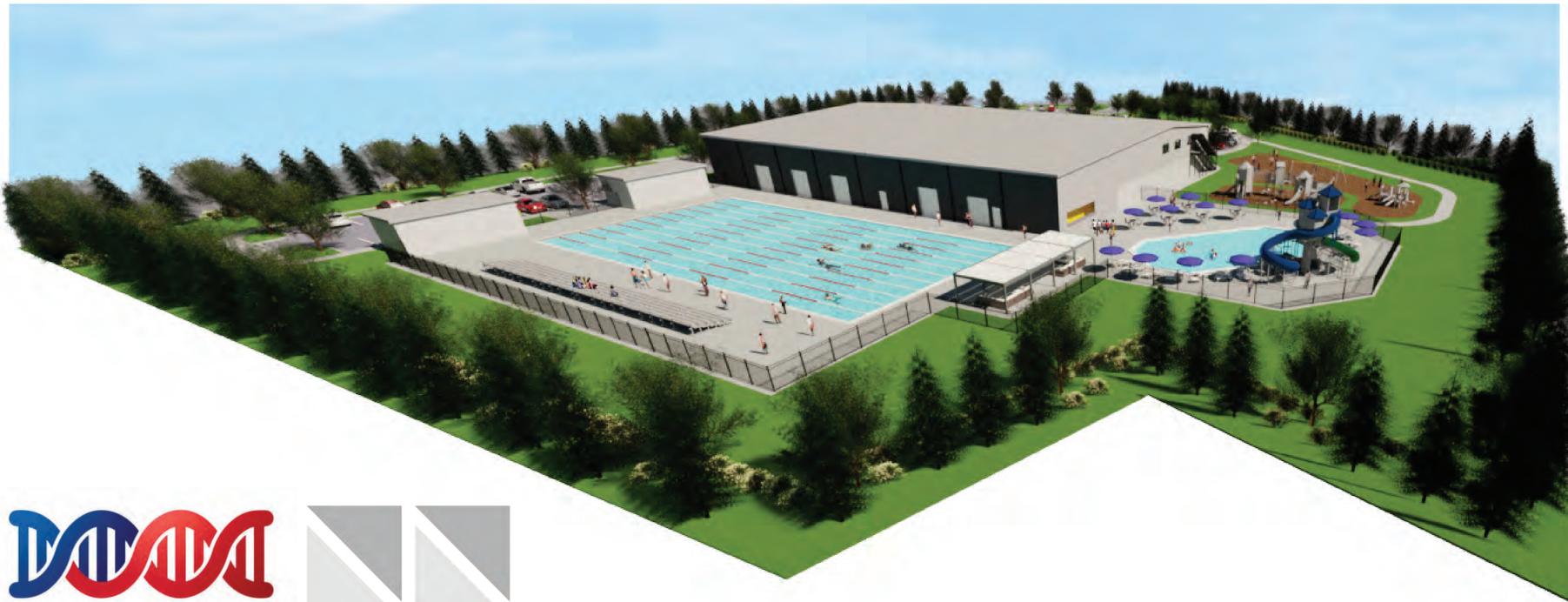


**VIEW 1 - Playground, Picnic Area, Splash Pad & Cabana area**

"These Rendering are conceptual only, refer to civil drawings and other information for specific locations of landscaping, fencing, and other site improvements".



**VIEW 3 - Splash Pool Area**



**VIEW 2 - Olympic pool, Splash Pad and Cabana Area**



**VIEW 4 - Olympic Pool & Cabana Area**

|  |
|--|
| 4670-45-1661<br>ETHAN AND AUSTIN PROPERTIES LLC<br>17501 HUNTERSVILLE CONCORD RD<br>HUNTERSVILLE, NC 28078 |
|--|

|   |
|---|
| 4670-55-1040, 02924103B &<br>02924103A<br>WOODLEY WALLACE FARMS LLC<br>14842 EASTFIELD RD<br>HUNTERSVILLE, NC 28078 |
|---|

|  |
|--|
| 4670-35-8966<br>STEVEN & MYRA BILLINGS<br>14647 EASTFIELD RD<br>HUNTERSVILLE, NC 28078 |
|--|

|  |
|--|
| 4670-45-6640<br>SKYBROOK SIGNATURE<br>TOWNHOMES OWNERS ASSOC<br>PO BOX 481349<br>CHARLOTTE, NC 28269 |
|--|

|  |
|--|
| 4670-46-0288 & 02111116<br>MYRA'S DREAM LLC A NC LLC<br>14647 EASTFIELD RD<br>HUNTERSVILLE, NC 28078 |
|--|



**Cabarrus County Government – Planning and Development Department**

---

January 18, 2022

Dear Property Owner:

A Variance Application has been filed in our office for your property. The specifics of the request are listed below. The Cabarrus County Board of Adjustment will consider this petition on Tuesday, February 8, 2022 at 6:30 PM in the 2<sup>nd</sup> floor Commissioner's Chambers of the Cabarrus County Governmental Center, located at 65 Church Street S, Concord, NC 28026. A Public Hearing will be conducted and public input will be allowed during that time. If you have any comments about this variance request, I encourage you to attend this meeting.

- |                            |   |
|----------------------------|---|
| • <b>Petitioner</b>        | <b>Evolution Recreation &amp; Aquatics</b>  |
| • <b>Petition Number</b>   | <b>VARN2022-00001</b>   |
| • <b>Property Location</b> | <b>11202 Harris Road</b>  |
| • <b>Parcel ID Number</b>  | <b>4670-45-1661</b>   |
| • <b>Existing Zoning</b>   | <b>Office &amp; Institutional Special Use (OI-SU)</b>   |
| • <b>Variance Request</b>  | <b>Relief from the requirements of; Chapter 5<br/>Section 5-8, Chapter 7 Section 7-3.59.c &amp;<br/>Chapter 9 Table 4</b> |

If you have any questions regarding this petition, or the hearing process, please contact me at Cabarrus County Planning and Development at 704.920.2181.

Sincerely,

A handwritten signature in cursive script that reads "Phillip Collins".

Phillip Collins, AICP  
Senior Planner  
Cabarrus County Planning and Development  
704.920.2181

*If reasonable accommodations are needed please contact the ADA Coordinator at (704) 920-2100 at least 48 hours prior to the public hearing.*



**Cabarrus County Government – Planning and Development Department**

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January 18, 2022

Dear Property Owner:

A Variance Application has been filed in our office for property **adjacent** to yours. The property and specifics of the request are listed below. The Cabarrus County Board of Adjustment will consider this petition on Tuesday, February 8, 2022 at 6:30 PM in the 2<sup>nd</sup> floor Commissioner’s Chambers of the Cabarrus County Governmental Center, located at 65 Church Street S, Concord, NC 28026. A Public Hearing will be conducted and public input will be allowed during that time. If you have any comments about this variance request, I encourage you to attend this meeting.

- |                            |   |
|----------------------------|---|
| • <b>Petitioner</b>        | <b>Evolution Recreation &amp; Aquatics</b>  |
| • <b>Petition Number</b>   | <b>VARN2022-00001</b>   |
| • <b>Property Location</b> | <b>11202 Harris Road</b>  |
| • <b>Parcel ID Number</b>  | <b>4670-45-1661</b>   |
| • <b>Existing Zoning</b>   | <b>Office &amp; Institutional Special Use (OI-SU)</b>   |
| • <b>Variance Request</b>  | <b>Relief from the requirements of; Chapter 5<br/>Section 5-8, Chapter 7 Section 7-3.59.c &amp;<br/>Chapter 9 Table 4</b> |

If you have any questions regarding this petition, or the hearing process, please contact me at Cabarrus County Planning and Development at 704.920.2181.

Sincerely,

A handwritten signature in cursive script that reads "Phillip Collins".

Phillip Collins, AICP  
Senior Planner  
Cabarrus County Planning and Development  
704.920.2181

*If reasonable accommodations are needed please contact the ADA Coordinator at (704) 920-2100 at least 48 hours prior to the public hearing.*

Jan 19, 2022 at 8:54:06 AM  
Cabarrus County

CABARRUS COUNTY  
**ZONING**



**NOTICE**  
VARN2022-00001  
FOR DETAILS CALL  
704-920-2141



Jan 19, 2022 at 8:53:21 AM  
Huntersville, NC 28078

NO  
TRUCK  
TURN  
AROUND

CABARRUS COUNTY  
**ZONING**  
**NOTICE**  
VARN2022-00001  
FOR DETAILS CALL  
704-920-2141



**PLANNING STAFF REPORT**  
**TO CABARRUS COUNTY PLANNING AND ZONING BOARD**  
6-16-05

Staff Use Only: Approved: \_\_\_  
Denied: \_\_\_  
Tabled: \_\_\_

**Petition: C2005-05 (R)**

Petitioner(s) Agent Information: Yarbrough-Williams & Houle, Inc.  
PO Box 7007  
Charlotte, NC 28241

Property Owner Information: Myra's Dream LLC (Myra W. Billings)  
14647 Eastfield Rd.  
Huntersville, NC 28075

Existing Zoning: MDR – Medium Density Residential

Proposed Zoning: OI-CU – Office Institutional Conditional Use

Purpose: The petitioner is seeking a zoning change to permit an indoor recreational facility.

Property Location: 14647 Eastfield Road

PIN: 4670-45-1944 (Portion of – See attached site Plan.)

Area: 5.519 Acres

Site Description: The subject property is vacant.

Zoning History: The subject property is currently zoned MDR, Medium Density Residential. The current zoning classification does not allow indoor recreational facilities as a permitted use.

Area Relationships  
North: Residential (MDR-Medium Density Residential)  
South: Residential (MDR-Medium Density Residential)  
East: Residential/Skybrook Subdivision Swim Club  
(MDR-Medium Density Residential)  
West: Residential (MDR-Medium Density Residential)

Exhibits:  
1 Staff report  
2. Current Zoning Map – submitted by staff  
3. Subject Property Map – submitted by staff  
4. Letter to adjacent property owners

Code Considerations: Per the proposed text change to add the O-I Zone to the Cabarrus County Zoning Ordinance, the O-I district is intended to accommodate relatively low intensity office and institutional uses at an intensity complementary to residential land use. When appropriate, this district can serve as a transition between residential land use and higher intensity non-residential uses.

Site Considerations:

The subject parcel is located in close proximity to individual properties zoned MDR (Medium Density Residential), Skybrook Subdivision and O/I (Office/Institutional) zoned property, contingent subsequent zoning map amendments. The adjacent property uses are primarily residential in nature along with a parcel used by Skybrook Subdivision as their amenity site. The Skybrook amenity site has a pool, cabana, and other outdoor recreational type facilities on the lot.

Per the Draft Northwest Area Plan, the subject property is classified as mixed use. The proposed indoor recreational facility is consistent with appropriate uses allowed in the mixed use area. The proposed indoor recreational facility may be considered complementary to the adjacent and area property owners. The OI-CU zoning designation for the subject property would create a transitional area between single family residential uses and other potentially more intense uses.

Site Plan Considerations:

The applicant has provided a site plan for staff to review. A preliminary review of the site plan shows the following:

- The proposed lot is 5.501 Acres.
- The proposed structure meets the minimum setback requirements for the O-I CU Zoning District.
- The proposed plan shows the required 15' buffer yard along Eastfield Road.
- The proposed plan shows a level 3 buffer yard around the perimeter of the property. The buffer yard has been reduced on the North and East property line by the installation of a six foot berm and vegetation. This meets the screening requirement for an institutional use adjacent to residential property.
- The site plan has been reviewed by the Cabarrus County Zoning Office and is compliant with all development standards per Cabarrus County Zoning Ordinance contingent the rezoning of this parcel.

Conclusion:

The petitioner has requested a rezoning from MDR to O-I CU. Per the Cabarrus County Zoning Ordinance, the proposed rezoning request is in keeping with the intent of the O-I Zone to allow uses that may be complementary to residential uses.

**PLANNING STAFF REPORT**  
**TO CABARRUS COUNTY PLANNING AND ZONING BOARD**  
6-16-05

Staff Use Only: Approved: \_\_\_  
Denied: \_\_\_  
Tabled: \_\_\_

**Planning Staff  
Recommendation:**

*Should the Board consider approval of the rezoning, Planning staff recommends that the following conditions be applied:*

- 1. The subject property shall be required to secure a driveway permit issued by the NCDOT.*
- 2. The proposed project shall meet all of the Performance Based Standards set forth in Chapter Seven of the Cabarrus County Zoning Ordinance for Indoor Recreational Facilities.*
- 3. The proposed project shall be subject to a final site development plan review and approval as stated in Chapter 12, Section 12-8, Site Development Plan.*
- 4. The subject property must acquire all applicable state, local, and federal permits prior to the subject property being developed.*
- 5. Approval of this petition shall be contingent the approval of the O-I Text Amendment by the Cabarrus County Board of Commissioners (public hearing to be held June 20<sup>th</sup>, 2005).*

April 21, 2005  
May 19, 2005  
June 16, 2005

## Cabarrus County Application for a Zoning Map Amendment



### OFFICIAL USE ONLY:

Petition Number: \_\_\_\_\_  
Date Filed: \_\_\_\_\_  
Received By: \_\_\_\_\_  
Amount Paid: \_\_\_\_\_

The following steps are required in order for your application to be considered complete.  
Incomplete applications will be returned to the applicant and will not be processed.

1. Schedule a pre-application meeting with staff.
2. Submit a completed application for an amendment to the official zoning map. All applications must include:
  - A list of all adjacent property owners (include owner name, address, and Parcel Identification Number).
  - A recent survey or legal description of the property or area to be rezoned.
3. Submit cash, check, or money order made payable to Cabarrus County.

Fees: Residential rezoning request less than 5 acres = \$400  
Residential rezoning request greater than 5 acres = \$400 + \$5/acre  
Non-residential rezoning request = \$500 + \$5/acre

### The Rezoning Process:

**Month 1:** Hold a pre-application meeting with staff to discuss your rezoning request and the map amendment process. Submit a Zoning Map Amendment application to Cabarrus County Planning Services. **All applications must be submitted by the third Thursday of the month to have a public hearing set for the following month.** During this month planning staff will review your application, prepare a staff report to the board, and notify all adjacent property owners.

**Month 2:** After your application is submitted and reviewed by staff, your request will be forwarded to the Cabarrus County Planning and Zoning Commission. Commission meetings are held on the third Thursday of every month at 7:00 p.m. At this meeting the Commission will hold a public hearing and may vote on your request. Commission meetings are held at the Cabarrus County Governmental Center located in downtown Concord at 65 Church Street.

A vote of  $\frac{3}{4}$  of the Commission will constitute a final decision unless the decision of Planning and Zoning Commission is appealed to the Cabarrus County Board of Commissioners within 15 days. If appealed, the case will be scheduled for the next available Board of Commissioners meeting.

Questions: **Contact Cabarrus County Planning Services Division, with any questions regarding rezonings in Cabarrus County. Planning Services can be contacted at 704-920-2141.**

County Offices are open from 8am to 5pm Monday through Friday.



**Cabarrus County  
Application for a  
Conditional Use Permit**



Application Number: CO5-05(R)  
Date of Filing: \_\_\_\_\_  
Applicant: \_\_\_\_\_

**Applications for a Conditional Use Permit/District must be accompanied by an application for a Zoning Map Amendment.**

1. Please submit twelve (12) copies of a development plan in conformance with Section 13-11 of the Cabarrus County Zoning Ordinance. (all conditional use applications are encouraged to include a site specific development plan which, if approved, will be binding on the property in question):
2. Please list the specific permitted land use(s) that you are proposing. Land use(s) shall be chosen from Section 3-8 of the Cabarrus County Zoning Ordinance titled "Table of Permitted Uses."

indoor Recreational facility \_\_\_\_\_  
office use \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Please list any specific conditions that you would be willing to impose as part of this application (example: no outside storage permitted on-site, increased buffer width).

see site plan. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Cabarrus County  
Application for a  
Conditional Use Permit**



OFFICIAL USE ONLY  
Parcel Number: \_\_\_\_\_  
Tract #/Lot: \_\_\_\_\_  
Zoning Code: \_\_\_\_\_

**Owner Information**

It is understood by all parties hereto that while this application will be carefully considered and reviewed, the burden of providing its need and providing all required evidence rests with the below named petitioner. In addition, it is understood and acknowledged that if the property is rezoned as requested and the Conditional Use Permit authorized, the property involved in this request will be perpetually bound by the use(s) authorized and subject to such conditions as imposed, unless subsequently changed or amended through the rezoning process. It is further understood and acknowledged that it is the responsibility of the petitioner to file the development plan in the Cabarrus County Register of Deeds Office as a deed restriction upon the subject property.

If, after two years from the date of approval substantial construction has not begun, the property in question may revert to its prior zoning designation after a public hearing is held in compliance with the required procedure for an zoning map amendment.

I do hereby certify that all information which I have provided for this application is, to the best of my/our knowledge, correct.

Property Owner: Myra W. Billings (Myra's Dream LLC)  
Steven G. Billings

Address: 14647 Eastfield Rd  
Huntersville, NC 28078

Phone: (704) 875-9495

Fax: (704) 947-9687

Signature: Myra W. Billings

**Cabarrus County  
Application for a Zoning  
Map Amendment**



OFFICIAL USE ONLY:  
Petition Number: \_\_\_\_\_  
Date Filed: \_\_\_\_\_  
Received By: \_\_\_\_\_  
Amount Paid: \_\_\_\_\_

**Owner/Agent/Applicant Information**

It is understood by all parties hereto including owner, petitioner, and/or agents that while this application will be carefully considered and reviewed, the burden of providing its need rests with the below named petitioner.

I do hereby certify that all information which I have provided for this application is, to the best of my knowledge, correct.

13. Property Owner MYRA'S DREAM LLC (Myra W. Billings, owner)  
Address 14677 EASTFIELD RD. HUNTERSVILLE NC 28075  
Phone (704)875-9495/ (704) 201-4287  
Fax (704)947-9687  
Signature *Myra W. Billings*
14. Agent (if any) YARBROUGH-WILLIAMS & HOULE, INC.  
Address P.O. BOX 7007 CHARLOTTE, NC 28241  
Phone (704) 556-1990 EXT. 105  
Fax (704) 556-0505  
Signature *Jerry*
15. Applicant (if any) \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_  
Fax \_\_\_\_\_  
Signature \_\_\_\_\_

**NOTES**

THIS PROPERTY SUBJECT TO ALL OTHER RIGHTS-OF-WAY AND EASEMENTS OF RECORD NOT OBSERVED IN THE FIELD WHICH WOULD BE DISCLOSED BY A FULL TITLE SEARCH.  
 PER NCDOT IN ALBEMARLE THE RIGHT-OF-WAY OF ALLEN HARRIS ROAD ALSO KNOWN AS EASTFIELD ROAD, IS THAT WHICH IS MAINTAINED BY THE STATE FROM BACK OF DITCH TO BACK OF DITCH AN ASSUMED RIGHT-OF-WAY OF 100' IS SHOWN FOR PICTORIAL PURPOSES ONLY.  
 AREAS CALCULATED BY COORDINATE METHOD.  
 DISTANCES SHOWN ARE GROUND DISTANCES.  
 TO CONVERT TO GRID DISTANCES APPLY THE COMBINED GRID FACTOR OF 0.9998495.

THIS SURVEY IS NOT INTENDED TO MEET GS 47-30 REQUIREMENTS. THIS SURVEY WAS PREPARED PER THE STANDARDS OF PRACTICE FOR LAND SURVEYORS IN NORTH CAROLINA WITH AN ERROR OF CLOSURE IN EXCESS OF 1:10,000.

AT THE TIME OF THIS SURVEY THE OFFICE OF NORTH CAROLINA GEODETIC SURVEY HAS NOT SET THE REVIDED MONUMENTS DEPICTING THE COUNTY LINE BETWEEN MECKLENBURG AND CABARRUS COUNTY.

**15' THOROUGHFARE BUFFER NOTE**  
 FIFTEEN(15) FOOT LANDSCAPE SETBACK SHALL CONTAIN A MIXTURE OF THE FOLLOWING: ONE TREE WHICH WILL REACH A LEVEL OF SIX(6) FEET WITHIN THREE(3) YEARS EVERY THIRTY(30) LINEAR FEET OF FRONTAGE, LOW LEVEL SHRUBS, DECORATIVE TREES (MINIATURE TREES IF LOCATED UNDER POWER LINES), AND GRASS.

**PARKING NOTE:**  
 PARKING REQUIRED (MIN 1.5/1000 SF) = 42 SPACES  
 (MAX 10/1000 SF) = 279 SPACES  
 PARKING PROVIDED = 89 SPACES  
 ± 6 HANDICAPPED SPACES  
 95 TOTAL PARKING SPACES

**LANDSCAPING NOTE:**  
 USE THE APPROVED LANDSCAPING PLANT LIST FOR CABARRUS COUNTY AS SHOWN ON PART V SECT. 9.14

**BUFFER TREES**  
 ALL SHRUBS AND TREES FOR PLANTING WITHIN BUFFERS MUST BE ON THE APPROVED PLANT LIST FOUND IN PART V. COMPARABLE SUBSTITUTES MAY BE APPROVED BY THE ZONING ADMINISTRATOR.  
 A) TREES: AT LEAST FORTY PERCENT OF REQUIRED TREES WITHIN A BUFFER MUST BE LARGE MATURING TREES WITH A MINIMUM CALIPER OF 2 1/2" MEASURED 6" ABOVE GROUND AT THE TIME OF PLANTING; SMALL MATURING TREES MUST HAVE A MINIMUM CALIPER OF 1 1/2" MEASURED 6". TWENTY-FIVE PERCENT OF THE TREES IN THE BUFFER MUST BE EVERGREEN.  
 B) SHRUBS: MUST BE EVERGREEN AND AT LEAST 2 1/2 FEET TALL WHEN PLANTED WITH AN AVERAGE HEIGHT OF 5 OF 6 FEET EXPECTED AS NORMAL GROWTH OVER A FOUR YEAR PERIOD. TWENTY-FIVE PERCENT OF SHRUBS MAY VARY FROM THE ABOVE AS FOLLOWS:  
 -MAY BE DECIDUOUS  
 -MAY BE TWO FEET TALL WHEN PLANTED PROVIDED THREE TO FOUR FEET OF GROWTH IS ANTICIPATED OVER A FOUR YEAR PERIOD  
 -IF PLANTED ON A BERM MAY BE OF A LESSER HEIGHT PROVIDED THAT COMBINED HEIGHT OF THE BERM AND PLANTING IS AT LEAST 6 FEET AFTER FOUR YEARS.

**TREE AND SHRUB REQUIREMENTS:**  
 NORTH BUFFERYARD: \*(SEE NORTH & EAST BUFFERYARD NOTE)  
 -534 LINEAR FEET  
 -54 SHRUBS  
 -16 TREES  
 EAST BUFFERYARD: \*(SEE NORTH & EAST BUFFERYARD NOTE)  
 -518 LINEAR FEET  
 -52 SHRUBS  
 -16 TREES  
 WEST BUFFERYARD:  
 -750 LINEAR FEET  
 -150 SHRUBS  
 -45 TREES  
 SOUTH THROUGHFARE BUFFERYARD:  
 -230 LINEAR FEET (8 TREES) \*(SEE NOTE ABOVE)  
 -ONE TREE WHICH WILL REACH A LEVEL OF SIX(6) FEET WITHIN THREE(3) YEARS EVERY THIRTY(30) LINEAR FEET OF FRONTAGE

**SIGNAGE NOTE:**  
 ENTRANCE SIGNAGE & BUILDING SIGNAGE ARE NOT TO EXCEED 50 SQ.FT. TOTAL

**INTERIOR LANDSCAPING**  
 -TREES  
 REQUIRED AT A RATE OF ONE PER SIXTEEN PARKING SPACES. AT LEAST FORTY PERCENT OF REQUIRED TREES MUST BE LARGE MATURING TREES WITH A MINIMUM CALIPER OF 2 1/2" MEASURED 6" ABOVE GROUND AT THE TIME OF PLANTING; SMALL MATURING TREES MUST HAVE A MINIMUM CALIPER OF 1 1/2" MEASURED 6". TWENTY-FIVE PERCENT OF THE TREES THROUGHOUT THE PARKING LOT MUST BE EVERGREEN.  
 -SHRUBS  
 REQUIRED AT A RATE OF THREE PER SIXTEEN SPACES. MUST BE EVERGREEN AND AT LEAST 2 1/2' TALL WHEN PLANTED WITH AN AVERAGE HEIGHT OF 5 TO 6 FEET EXPECTED AS NORMAL GROWTH OVER A FOUR YEAR PERIOD. TWENTY-FIVE PERCENT OF SHRUBS MAY VARY FROM THE ABOVE AS FOLLOWS:

\*MAY BE DECIDUOUS, OR  
 \*MAY BE TWO FEET TALL WHEN PLANTED PROVIDED THREE TO FOUR FEET OF GROWTH IS ANTICIPATED OVER A FOUR YEAR PERIOD.

**INTERIOR LANDSCAPING TREE AND SHRUB REQUIREMENTS:**  
 TREES:  
 -1 TREE PER 16 PARKING SPACES  
 95 PARKING SPACES = 6 TREES REQUIRED  
 SHRUBS:  
 -3 SHRUBS PER 16 PARKING SPACES  
 95 PARKING SPACES = 18 SHRUBS REQUIRED

CHAPTER 7 SECTION 7.4.29 RECREATION FACILITY INDOOR  
 A) BUFFERYARD ABUTTING RESIDENTIALLY USED PROPERTY MUST PROVIDE SCREENING AT LEVEL 3

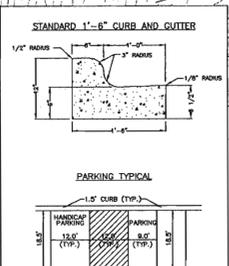
**TABLE FOUR BUFFERYARD LEVELS**

| 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<br>WIDTH OF YARD | 43' | 46' | 49' | 52' | 55' | 58' | 61' | 64' | 67' | 70' | 73' | 76' | 79' | 82' | 85' | 88' | 91' | 94' | 97' | 100'             |
| *SHRUBS PER 100'               | 9   | 10  | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  | 20  | 21  | 22  | 23  | 24  | 25  | 26  | 27  | 28               |
| BUFFERYARD #2<br>WIDTH OF YARD | 25' | 27' | 30' | 33' | 36' | 39' | 41' | 43' | 46' | 49' | 51' | 54' | 57' | 59' | 62' | 65' | 67' | 70' | 72' | 75'              |
| *TREES PER 100'                | 6   | 7   | 8   | 9   | 10  | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  | 20  | 21  | 22  | 23  | 24  | 25               |
| BUFFERYARD #3<br>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   | 4   | 5   | 6   | 7   | 8   | 9   | 10  | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  | 20  | 21  | 22               |
| *SHRUBS PER 100'               | 20  | 22  | 24  | 26  | 28  | 30  | 32  | 34  | 36  | 38  | 40  | 42  | 44  | 46  | 48  | 50  | 52  | 54  | 56  | 58               |

**EXCEPTIONS:**

- 1) THE MINIMUM WIDTH OF A BUFFER MAY BE REDUCED BY 25 PERCENT IF A FENCE OR WALL IS CONSTRUCTED.
- 2) SHRUBS ARE NOT REQUIRED IF A FENCE OR WALL IS CONSTRUCTED.
- 3) AN EVERGREEN (OPAQUE) VEGETATIVE HEDGE IF USED WILL REDUCE THE BUFFERYARD WIDTH BY ONE HALF AND ELIMINATE THE NEED FOR REQUIRED SHRUBBERY 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.

**NORTH & EAST BUFFERYARD NOTE:**  
 THE NORTH & EAST BUFFERYARD HAS BEEN REDUCED BY THE INSTALLATION OF A BERM WITH A MINIMUM HEIGHT OF SIX FEET AND 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.

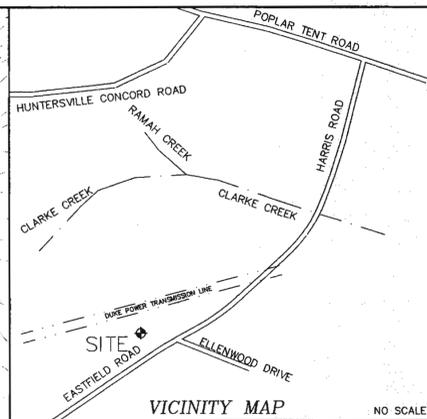
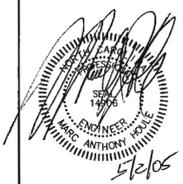


**IMPERVIOUS AREA**  
 PARKING LOT - 53,213 SQ.FT.  
 SIDEWALK - 3,170 SQ.FT.  
 BUILDING - 28,539 SQ.FT.  
 TOTAL - 84,922 SQ.FT.

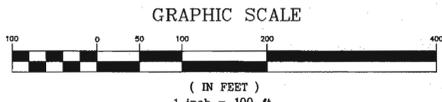
NOW OR FORMERLY  
 MYRA'S DREAM, LLC  
 14447 EASTFIELD RD.  
 HUNTERVILLE NC, 28078  
 DEED: 12597-214  
 ZONING: OPS

**LEGAL DESCRIPTION**  
 BEGINNING AT AN IRON REBAR FOUND IN THE NORTHERN RIGHT OF WAY LINE OF HARRIS ROAD(S.R.#1449), SAID IRON HAVING N.C. GRID COORDINATES(NAD 83) OF N=605,503.2833 E=1,474,644.0084 AND BEING LOCATED S44-40-18W 3714.16' FROM A NORTH CAROLINA GEODETIC CONTROL MONUMENT "MD18 FPH" SAID MONUMENT HAVING N.C. GRID COORDINATES (NAD 83) OF N=608,052.493 E=1,477,032.572. THENCE S02-29-44E 58.04' TO A POINT IN THE CENTERLINE OF HARRIS ROAD(S.R.#1449), THENCE FOLLOWING THE CENTERLINE OF HARRIS ROAD S56-59-05W 182.09' TO A POINT IN THE CENTERLINE, SAID POINT ALSO BEING IN THE CABARRUS & MECKLENBURG COUNTY LINE. THENCE FOLLOWING SAID COUNTY LINE N52-46-44W 53.13' TO AN IRON SET IN THE RIGHT OF WAY LINE OF HARRIS ROAD (A.K.A EASTFIELD ROAD IN MECKLENBURG COUNTY), CONTINUING WITH CABARRUS & MECKLENBURG COUNTY LINE ALSO BEING A COMMON LINE WITH MYRA'S DREAM, LLC. (DEED:3067-102) N52-46-44W 386.19' TO AN IRON SET. THENCE LEAVING COUNTY LINE AND FOLLOWING THE EASTERN MARGIN OF A INGRESS & EGRESS EASEMENT (DEED:765-117) N00-21-27E 289.13' TO AN IRON SET IN THE SOUTHERN PROPERTY LINE OF STEVEN G. & MYRA BILLINGS(DEED:765-115). THENCE TWO CALLS WITH THE BILLINGS PROPERTY(DEED:765-115) (1) S72-00-41E 82.35' TO AN IRON REBAR FOUND (2) N17-47-01E 74.63' TO AN IRON SET IN THE BILLINGS LINE AND BEING A COMMON CORNER WITH MYRA'S DREAM, LLC. (DEED:3067-102). THENCE WITH MYRA'S DREAM, LLC. LINE N67-30-16E 377.39' TO AN IRON SET IN THE LINE OF JORDAN HOLDINGS, LLC. (DEED:3753-232). THENCE S02-29-44E 460.16' TO THE POINT AND PLACE OF BEGINNING CONTAINING 5.501 ACRES AS SHOWN ON A SURVEY PREPARED BY YARBROUGH-WILLIAMS & HOULE, INC. DATED: APRIL 20, 2005.

**OWNER INFORMATION:**  
 MYRA'S DREAM, LLC  
 14324 EASTFIELD ROAD  
 HUNTERVILLE, NC 28078  
 PHONE: 704-201-4287



**APPROVED**  
 DATE 11/16/05  
 DUPLICATE



**THIS PLAN IS A FINAL DESIGN-NOT RELEASED FOR CONSTRUCTION UNLESS INITIALLED/DATED AS APPROVED:**  
 APPROVED: \_\_\_\_\_  
 INITIALS / DATE

|   |                   |
|---|-------------------|
| SHEET TITLE                               | PROJECT NO.       |
| REZONING SITE PLAN                        | SCALE             |
| 5.501 ACRES TOTAL                         | 1"=100'           |
| DATE 4/20/05                              | DRAWN BY          |
| PROJECT                                   | CHECKED BY        |
| NORTH MECKLENBURG AQUATIC CENTER          | JEW               |
| TOWNSHIP #2, CABARRUS COUNTY              | DRAWING NO.       |
| FOR: MYRA BILLINGS                        | 140-71            |
| YARBROUGH-WILLIAMS & HOULE, INC.          | SHT 1 OF 1 SHEETS |
| Planning • Surveying • Engineering        |                   |
| 750 Windsor Oak Court Charlotte, NC 28273 |                   |
| 704.558.1990 704.558.0500(fax)            |                   |



## Meeting Minutes

Applicant: **Evolution Recreation & Aquatics**  
11202 Harris Road,  
Huntersville, NC 28078

Prepared by: Augustine Wong, PLA  
CES Group Engineers, LLP

Date: January 7, 2022

Due to public gathering restrictions resulting from Covid-19, an alternative method to reach adjacent properties and residents were conducted. A door-to-door meeting with each property owner with social distancing imposed.

- A site plan, description of the proposed improvement along with contact information to provide input was provided.
- This information was either left at their door (when occupant was not available) or handed to the occupants.
- A brief overview of the improvements and contact information to submit comments were provided.

The following are comments from the door-to-door meetings.

- 1) Will it increase my HOA fees? – Windy Falls Drive Townhome
- 2) Opening of car door during early morning in parking lot? – Windy Falls Drive Townhome
- 3) I have no opposition to the setback variance and fully support it – Raina Berry, 852 Skybrook Falls Drive (via text on 1/7/2022)

End of Minutes.

Greetings.

My name is Augustine Wong, PLA, a landscape architect with CES Group Engineers in Denver, North Carolina.

CES Group Engineers is assisting Evolution Recreation & Aquatics (Ethan & Austin Properties, LLC) at 11202 Harris Road, Huntersville, NC 28078 with site expansion of their current indoor swimming pool and playground to include outdoor swimming pool, splash pad, changing room and parking lot. This facility has been providing swimming lessons and aquatic safety classes to the community especially to children and seniors for many years and the expanded fitness, and competitive swimming facility will enhance their current services.

Due to land restriction, they are seeking a setback variance of 20 feet from the County which will include a combination of plantings and/or fence on top of a berm to achieve the landscape screening requirement.

If you have comments to support or against this setback variance, please let us know as soon as you are able. Comments can be sent to [awong@ces-group.net](mailto:awong@ces-group.net); or to leave a text or voice message at 803.448.5815

We appreciate your input and thank you for your time.

**Name of Business:**

Evolution Recreation & Aquatics  
11202 Harris Rd  
Huntersville NC 28078

Cullen, Terina  
878 Windy Falls Dr  
Huntersville, NC 28708  
PIN: 46704546650000

**Property Owner:**

Ethan & Austin Properties LLC  
17501 Huntersville-Concord Rd.  
Huntersville, NC 28078

7) Alsop, Michael  
874 Windy Falls Dr  
Huntersville, NC 28078  
PIN: 46704546670000

**Immediate Residential Neighbors:**

- 1) Godwin, Jeffery  
Godwin, Latrise  
898 Windy Falls Dr  
Huntersville, NC 28078  
PIN: 46704545710000
- 2) Sethurahman Sivasamy  
Sethurahman, Sumithra  
894 Windy Falls Dr  
Huntersville, NC 28078  
PIN: 46704545740000
- 3) SN NC LLLC  
890 Windy Falls DR  
Huntersville, NC 28078  
Mailing address: 8390 E Via De Ventura  
Ste F110  
Scottsdale, AZ 85258  
PIN: 4670454660000
- 4) Raam Naveen  
Krishnegowda Anita  
886 Windy Falls Dr  
Huntersville, NC 28078  
PIN: 4670454680000
- 5) Underwood, Clarence  
Underwood, Renee  
882 Windy Falls Dr  
Huntersville, NC 28078  
PIN: 46704546600000
- 6) Cullen, John

- 8) White, Kenneth Corey  
White, Melissa Erin  
10414 Summercrest Court  
Charlotte, NC 28267  
PIN: 46704547600000
- 9) Prince, Adam  
Prince, Margaret  
866 Windy Falls Dr  
Huntersville, NC 28078  
PIN: 46704547620000
- 10) BSMN LLC  
862 Windy Falls Dr  
Huntersville, NC 28708  
Mailing: 10114 Edgecliff Road  
Huntersville, NC 28078  
PIN: 46704547640000
- 11) Bakong, Chrystal  
858 Windy Falls Dr  
Huntersville, NC 28078  
PIN: 46704547560000
- 12) Pagunuran, Gilbert  
Pagunuran, Gina  
854 Windy Falls Dr  
Huntersville, NC 28078  
Mailing address: 2210 Donnington Lane  
NW, Concord, NC 28027  
PIN: 46704547590000
- 13) Sethurahman, Muralitharan  
Aramugadurai Geetha

850 Windy Falls Dr  
Huntersville, NC 28078

Huntersville, NC 28078

Mailing address: 6010 Pipers Glen  
Suwanee, GA 30024  
PIN: 46704548530000

Mailing address: 9412 Owls Nest Dr  
Raleigh, NC 27613  
PIN: 46704549290000

14) Grogan, Terrence  
846 Windy Falls Dr  
Huntersville, NC 28078  
PIN: 46704548560000

20) Carr, Monalita  
11210 Bridgewater Dr  
Huntersville, NC 28078  
PIN: 46704549490000

15) Kankipati, Nitvanand  
Kankipati, Kavitha  
842 Windy Falls Dr  
Huntersville, NC 28078  
Mailing address: 17323 Hampton Trace  
Rd, Huntersville, NC 28078  
PIN: 46704548580000

21) Vecchio, Johnathan  
Vecchio, Debra  
11206 Bridgewater Dr  
Huntersville, NC 28078  
PIN: 46704640600000

16) Salley, John  
838 Windy Falls Dr  
Huntersville, NC 28078  
PIN: 46704549500000

22) Brown, Cecilia  
11202 Bridgewater Dr  
Huntersville, NC 28078  
PIN: 46704640900000

17) Woodley Wallace Farms, LLC  
A NC LLC  
Mailing address: 14842 Eastfield Rd  
Huntersville, NC 28078  
Physical address: 11201 Harris Rd  
Huntersville, NC 28078  
PIN: 46705510400000

23) HPA JV Borrower 2019-1 ATH  
11198 Bridgewater Dr  
Huntersville, NC 28078  
Mailing address: 120 S Riverside Plz  
Suite 2000  
Chicago, IL 60605  
PIN: 46704650200000

18) Skybrook Signature Townhomes  
Owners Association  
852 Windy Falls Dr  
Huntersville, NC 28078  
Mailing address: PO Box 481349  
Charlotte, NC 28269  
PIN: 46704566400000

24) Whiteside, Megan  
11194 Bridgewater Dr  
Huntersville, NC 28078  
PIN: 46704650500000

19) Frahm, Andrew D  
Frahm, Leigh A  
11214 Bridgewater Dr

25) Subramaniam, Sudhakar  
Kannan Shanthy  
11190 Bridgewater Dr  
Huntersville, NC 29078  
Mailing address: 10119 Legolas Ln,  
Charlotte, NC 28269  
PIN: 46704650700000

26) Darren Kemp, William

11186 Bridgewater Dr.  
Huntersville, NC 28078  
PIN: 4670466000000

Wysowski, Richard  
857 Windy Falls Dr  
Huntersville, NC 28078

27) Shuck, Matthew William  
833 Windy Falls Dr  
Huntersville, NC 28078  
Mailing address: Unit 101 Phoenix, AZ  
85048  
PIN: 46704559610000

Mailing address: 967 Upland Dr  
Elmira, NY 14905  
PIN: 46704557670000

28) Dawson, Sean  
837 Windy Falls Dr  
Huntersville, NC 28078  
PIN: 46704558690000

34) Hasan, Cheryl  
883 Windy Falls Dr  
Huntersville, NC 28078  
PIN: 46704556730000

29) Sharma, Ankit  
Sharma, Garima  
841 Windy Falls Dr  
Huntersville, NC 28078  
Mailing address: 10331 Lemmon Ave  
NW, Concord, NC 28027  
PIN: 46704558660000

35) Goetz, Vicki Ann'  
887 Windy Falls Dr  
Huntersville, NC 28078  
PIN: 46704556700000

30) Kasu Batsirai, Neliah  
845 Windy Falls Dr  
Huntersville, NC 28078  
PIN: 46704558640000

36) Sprangler, Tiffany  
891 Windy Falls Dr  
Huntersville, NC 28078  
PIN: 46704555780000

31) Jaligam, Sandhya Rani  
Dornala, Shiva Kumar  
849 Windy Falls Dr  
Huntersville, NC 28078  
PIN: 46704558620000

37) Zotkin, Mikhail  
Zotkin, Oxana  
895 Windy Falls Dr  
Huntersville, NC 28078  
PIN: 46704555750000

32) White, Kenneth  
White, Melissa  
853 Windy Falls Dr  
Huntersville, NC 28078  
Mailing address: 10414 Summercrest Ct  
Charlotte, NC 28269  
PIN: 46704538600000

38) Gettinger, Zachary  
Hopkins, Emily  
112000 Green Spring Dr  
Huntersville, NC 28078  
PIN: 46704557520000

33) Wysowski, Janice

39) Lockett, Janice  
11196 Green Spring Dr  
Huntersville, NC 28078  
PIN: 46704557820000

40) Price, William  
11192 Green Spring Dr  
Huntersville, NC 28078

Mailing address: 24044 Buckingham  
Way PT, Charlotte, FL 33980  
PIN: 46704567020000

848 Skybrook Falls Dr  
Huntersville, NC 28078

41) Allen, Nicole  
11188 Green Spring Dr  
Huntersville, NC 28078  
PIN: 46704567220000

Mailing address: 4401 Brookwood Dr  
Charlotte, NC 28078  
PIN: 46704568400000

42) Aurilia, Christy  
Aurilia, Cheryl  
11184 Green Spring Dr  
Huntersville, NC 28078  
Mailing address: 9894 Legolas Ln  
Charlotte, NC 28269  
PIN: 46704567520000

46) Delgrasso, Christine  
844 Skybrook Falls Dr  
Huntersville, NC 28078  
Mailing address: 608 N Oak Dr  
Huntersville, NC 28078  
PIN: 46704568430000

43) Hoose, Robert  
11180 Green Spring Dr  
Huntersville, NC 28078  
PIN: 46704567720000

47) Golden, Michael  
840 Skybrook Falls Dr  
Huntersville, NC 28078  
PIN: 46704568550000

44) Berry, Raina  
852 Skybrook Falls Dr  
Huntersville, NC 28078  
PIN: 46704567580000

48) Billings, Steven  
Billings, Myra  
14647 Eastfield Rd  
Huntersville, NC 28078  
PIN: 46703589660000

45) Talton, Joseph  
Talton, Lindsey

49) Myra's Dream  
14647 Eastfield Rd  
Huntersville, NC 28078  
PIN: 46704602880000

**Evolution Recreation & Aquatics**

11202 Harris Road,  
Huntersville, NC 28078

Comments received so far from door-to-door meeting with the immediate neighbors.

- 1) Will it increase my HOA fees? – Windy Falls Drive Townhome
- 2) Opening of car door during early morning in parking lot? – Windy Falls Drive Townhome
- 3) I have no opposition to the setback variance and fully support it – Raina Berry, 852 Skybrook Falls Drive

Overhead view of subject property, looking north



Review

Overhead view of subject property, looking east

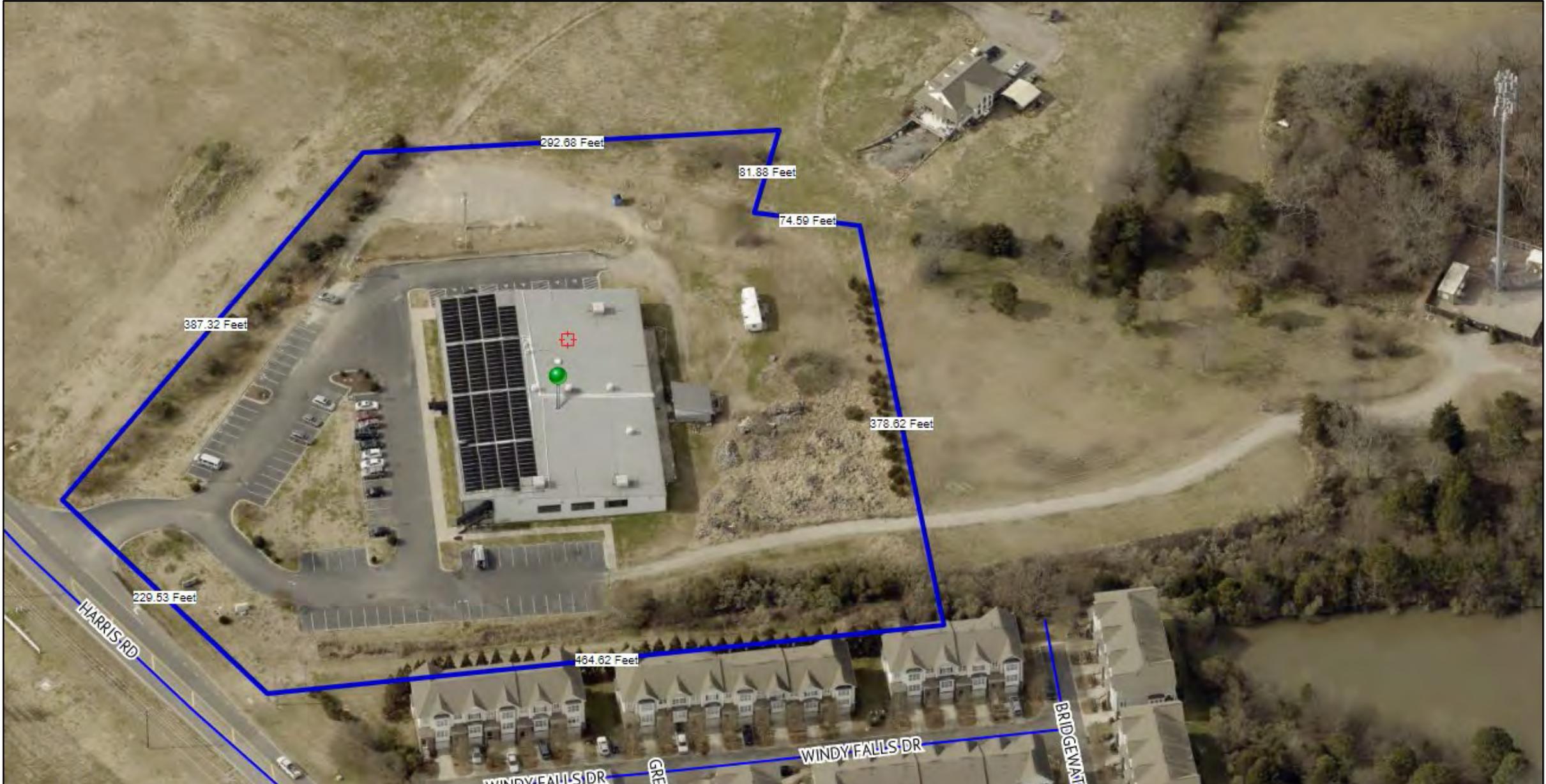


Overhead view of subject property, looking south



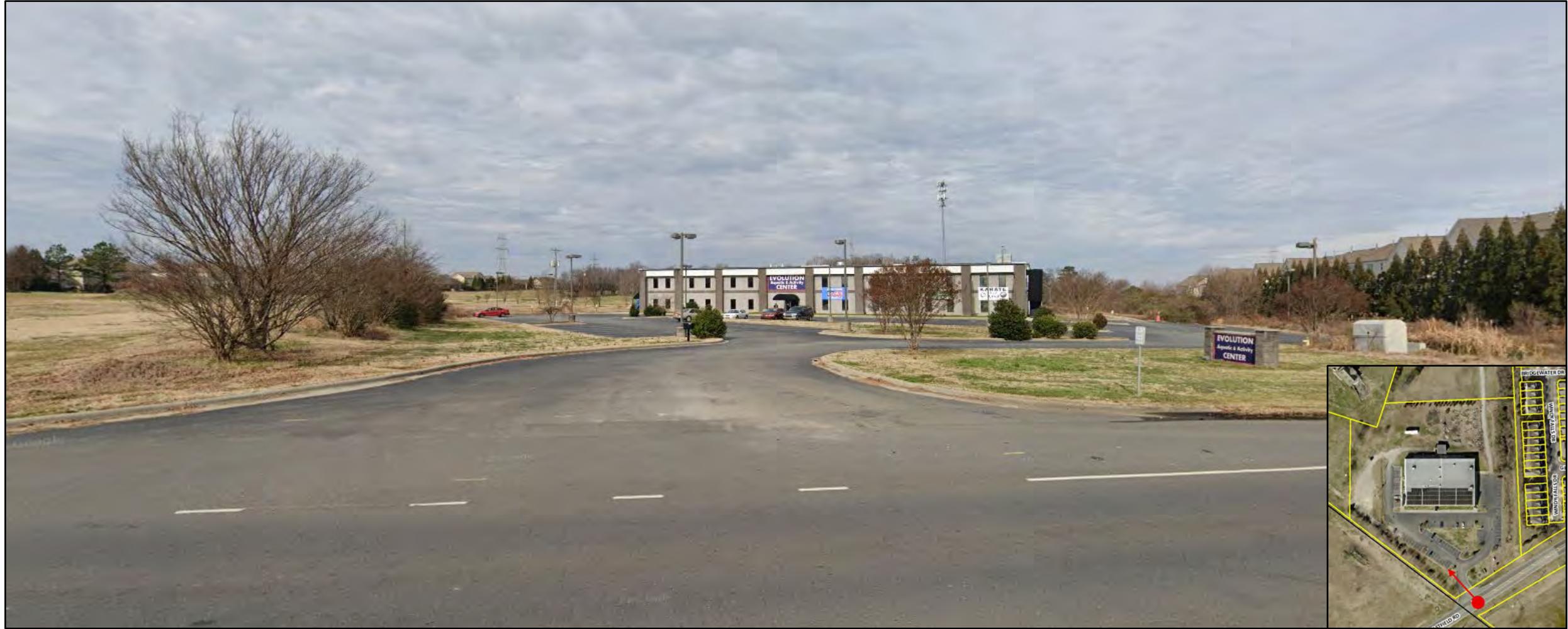
Source: Cabarrus County Pictometry

Overhead view of subject property, looking west



Source: Cabarrus County Pictometry

Northwesterly street level view of subject property (Entrance)



Source: Google Maps

Northeasterly street level view of subject property



Southwesterly street level view of subject property



Source: Google Maps

Northerly street level view of subject property, along eastern property line



Source: Google Maps