

Cabarrus County Government – Planning and Development



Planning and Zoning Commission Minutes October 14, 2025

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

ROLL CALL

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

Oath of Office

Ms. Lisa Johnson administered the oath to a re-appointed member, Mr. Charles Paxton.

APPROVAL OF AUGUST 12, 2025 MEETING MINUTES

Mr. Brent Rockett **MOTIONED, SECOND** by Adam Dagenhart, to **APPROVE** the meeting minutes for August 12, 2025. The vote was unanimous to **APPROVE**.

Approval of Granting Order and Findings for RZON2025-00003

Request to apply Mobile Home Overlay (MH-2 to CR zoned property. Chloe and Tanner Small are the applicants. The address is 4130 Shiloh Church Road (PIN: 4673-70-6545).

Mr. Michael Bywaletz **MOTIONED, SECOND** by Ms. Ingrid Nurse. The vote was unanimous to **APPROVE**.

Approval of Granting Order and Findings for VARN2025-00004

Request for variances from the open space requirements of the Cabarrus County Subdivision Ordinance(Chapter 15) as found in Chapter 5, Sections 1 (Parks Required), 2 (Park Standards) and 6(Timing of recreation improvements). The Fieldstone HOA is the applicant and the Fieldstone HOA and Donald and Windy Starnes are the owners of the subject properties. The addresses associated with the subject properties are 3075 Cold Springs Rd. S, 3240 Fairmead Drive., 5244 Ivy Spring Ln. and 5350 Fieldstone Drive (PIN's: 5559-54-3678, 5559-54-3993 & 5559-65-9591).

Mr. Brent Rockett **MOTIONED, SECOND** by Ms. Ingrid Nurse to **APPROVE**. The vote was unanimous to **APPROVE**.

Mr. Charles Paxton, Chair, said, since we do not have a full board tonight, I want to make sure the applicants are willing to accept the verdict. We only have 7 and we are going to need a vote of 6 out of 7 to approve.

Mr. Brian Hayes, attorney representing applicant for VARN2025-00005, said, I think we are ready to proceed.

A member of the audience asked, is this a supermajority vote?

Ms. Susie Morris, Planning and Development Director said, variances in North Carolina require a high vote. You would need 80 percent, so you would need 6 out of 7 to be successful. If the 9 were here, you would need 8 out of 9. We have two people absent this evening.

Mr. Charles Paxton, Chair, reminded everyone who wished to speak to fill out a blue card.

Mr. Michael Bywaletz read the Rules of Procedure:

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 or Appellant 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 or Appellant choses 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 or present evidence 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 or present evidence 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. Brent Rockett **MOTIONED, SECOND** by Mr. Adam Dagenhart to **APPROVE** the Rules of Procedure. The vote was unanimous to **APPROVE**.

Mr. Charles Paxton, Chair, administered the oath to members of the audience that wished to speak.

Petition VARN2025-00005-Variance request for relief from the setback requirements from County Line and the dimensional requirements of the AO district

Gary and Kathy Almond are the applicants/owners. The address associated with the subject property is 3077 Pickens Road (PIN: 5589-95-0742).

Mr. Charles Paxton asked if any of the board members had a conflict of interest. There being none, Mr. Phil Collins, Planning Supervisor, was called to present the Staff Report.

STAFF REPORT

Mr. Phil Collins said, the applicant is proposing construction of a new residence near the county line. The applicant is seeking relief from Chapter 6, Sections 6.18 and Chapter 5, Section 5-5. B of the Cabarrus Development Ordinance. Section 6.18 designates that the County line be treated as a property line. Section 5-5.B requires a rear setback of 30 feet for parcels in the Agricultural Open (AO) zoning district.

The subject property is divided by a flag lot traversing the west side of the property and divides it near the center of the property. An intermittent stream traverses the subject property from west to east near the proposed site of construction. A barn and a carport currently occupy the subject property. The subject property is accessed by Pickens Road. The subject property is currently occupied by a barn and a carport and is surrounded by agricultural residential and vacant properties. AO properties surround the property to the north and West. Stanly County Residential Agriculture (RA) surround the property to the East and south.

The Sheriff's Department reviewed the request and had the following comment:

"Routing of 911 calls is handled through GIS, so the physical location that is reported as part of that process would determine where 911 calls get routed to. Just need to make sure that the 911 call location gets reported to the correct county."

NCDEQ had the following comment:

"Depending on the extent of the project, it may need a post-construction permit from us. The Cabarrus County portion would be considered a Phase II area, so if the built

upon area is being added and the project is over 1 acre in disturbed area, we would need to permit.”

As stated earlier, the subject property is approximately 39.39 acres in size. However, pursuant to the legal description in the deed, the entire tract is approximately 77.591 acres with the remaining acreage located in Stanly County. Pursuant to Chapter 6, Section 6.18, Effect of County Line and Municipal ETJ Boundary, the Cabarrus County line must be treated as a property line. The applicant wishes to construct a new home near the county line, in the required rear setback for the AO zoning district, which is 30 feet. The setback is established from the county line. The requested encroachment into the required setback is 28 feet.

The application states that the reason for seeking the variance is that the desired construction location is within 30 feet of the county line due to the location of existing structures. The home would be placed within the required setback due to the locations of the existing structures and suitable soils in the area.

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

1. The Granting Order, stating restrictions and applicable conditions of approval, shall be recorded with the deed of the property.
2. The applicant shall build the residence entirely on the Cabarrus County side of the subject property.
3. County line must be delineated in the field, and clearly marked before, and during construction of the new home.

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

Mr. Michael Bywaletz said, regarding the property, has the county line ever gone around the property or has the county line always been through it?

Mr. Phil Collins said, it was recently surveyed, but I think it has always gone through it and split it in half.

Mr. Brent Rockett said, did you say they were going to be two feet off the property line?

Mr. Phil Collins, replied, yes.

Mr. Charles Paxton called upon the applicant to speak.

The applicant stated, my name is Brian Hayes with Ferguson, Hayes & Hawkins, 45 Church Street South, Concord, NC 28025. I am acting as attorney for the property owners. To answer the question regarding the county line (as far as I'm aware), the county line has always bisected the property equally. This was inherited property that's been in the family for quite a while. One of the elements in the variance application is, did the owner acquire the property under circumstances that would create an equitable estoppel effectively? As indicated, this was an inherited property. There was a division with the sister, and they inherited what the family had.

On the front of the property, there is a small cemetery that the road going through it, leads through. (Showing on map). This area is actually the cemetery. The Stanly County property runs through this area. That tract is the Almonds' son, who had a minor subdivision in there. The Almonds are looking to build here. As Phil mentioned, there are existing historic structures that have always been part of the property. One of them is a dilapidated house, a usable barn and carport. There's also a lake area on the property that is dried out but will be filled in seasonally.

Trying to avoid an encroachment on the pond area, is one factor. The other factor is that all the other areas are existing fields that are in use. Despite the size of the property, their options effectively come down to either building within the buffer area (30 feet) or going to Stanly County. The issue with building in Stanly County, as you can see from the map, the only roads and access to the property are in Cabarrus County. This goes through other owner's property in Stanly County. There are no roads in Stanly County that would give reasonable access to the property. If they built in Stanly County and called for emergency services, those providers would have to enter in Cabarrus County and go all the way around to get to the residence. In addition to well and septic, the other major concern is access to emergency services. If they are building in Cabarrus County, this service would be provided by Mount Pleasant Fire and Cabarrus County EMS services.

(Showing on map) There were two plans set out. The preference would be this version, which has the house splitting the line because that would be consistent with the historic usage. Based upon the feedback from Planning and Zoning, we recognize there's concerns about how that would be taxed and other issues from a construction standpoint. It doesn't seem that Stanly County would be concerned with it splitting. We recognize Cabarrus County's concern; hence we have this other plan that has the house approximately two feet off the line.

For the design of the septic plan, there needs to be both an initial tank, which is marked as 1,000 gallons. There also needs to be a backup tank and auxiliary tank that's accessible. Again, if they start moving out from where the house was going to be, the systems are going to begin to encroach upon the pond and field areas.

Pushing this back two feet, if allowed, creates a better situation for multiple reasons. It provides them better access to emergency services and permits them to use existing structures that were historically there. The old house actually did bisect the line. From a septic water standpoint, that gives them the best position that doesn't create dangerous encroachments onto other uses of the property.

I have notebooks that have been divided up. In looking at the staff report, the information I have has already been provided to you. We have the land records information in there and both GIS maps. As far as neighborhood meeting and involvement, we included that as exhibit B-9. We have signatures from all but one of the neighbors. It looks like his wife signed, but we weren't able to get a signature from "a Mr. Almond". As indicated, one of the neighbors is Mr. Almond's sister and the nearest is his son. As to the others, we've not heard any opposition. I think that is all I have; I am happy to answer any questions the Board may have.

Mr. Michael Bywaletz asked, what are the little green boxes?

Mr. Adam Dagenhart said, it looks like there's multiple septic fields.

Mr. Michael Bywaletz said, regarding the other house, which is the son's house. There was a concern about being serviced by emergency services. Is he being serviced by Stanly County?

Mr. Brian Hayes said, that was the easiest way for him to proceed as far as construction because it didn't require a variance. He was in a position to be able to build and move there. Given his relative age, he had less concern or forethought about emergency services than his parents. Given their age and significant conditions, that is more of a concern.

Mr. Michael Bywaletz asked, is the cemetery onsite a family cemetery?

Mr. Gary Almond said, yes.

Mr. Brian Hayes, I remember doing the estate 16 years ago, but did not remember who all was involved in the cemetery. That is parceled out and is separate. The blue lines represent separate easements that access different parts of the property.

Mr. Adam Dagenhart asked, do you have an approved septic permit?

Mr. Brian Hayes, they haven't had it approved. They were waiting for this.

Mr. Adam Dagenhart said, have they submitted it because looking at your drawing, I don't understand what all these lines are in front of the house. Is that septic field?

Mr. Brian Hayes said, they are drain fields.

Mr. Adam Dagenhart said, where do they tie to the tank?

Mr. Michael Bywaletz said, they come to the box and they distribute out.

Mr. Adam Dagenhart said, yes, but there's no lines connecting them.

Mr. Brian Hayes said, this would be the designed auxiliary system. The plan system is here and they are connected to that box. This was the plan as designed by Soil & Forestry Services. I'm trusting their judgment as far as the utilization of that system.

Mr. Adam Dagenhart said, is the well in Stanly County?

Mr. Brian Hayes said, yes, that is across the line.

Mr. Adam Dagenhart said, do you know if Soil & Forestry looked at any other location for the septic? Or was that driven by the house location?

Mr. Brian Hayes said, it was somewhat both. The best area for them when they did sample drilling was here. As I recall, there may have been some possibilities of other areas where there are fields. That started getting into forested areas and it becomes a little more complicated. I won't say this is the only location but given the historic structures and everything else in tandem, this is the most logical location for the house. Given what's necessary to be on this section of the parcel, this is the best plan they were able to develop.

Mr. Adam Dagenhart said, I'm just curious if you're going to get approved because your well location looks to be less than 100 feet from the septic field.

Mr. Brian Hayes said, judging by the house, I would speculate that is probably right at 100 feet. I'm going to rely upon the folks that do that for a living to make that work.

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

Mr. Brian Hayes said, to help answer that, when we start looking at the actual plan we would be using, based on the house sizing, would appear to be more than 100 feet.

Mr. Charles Paxton, Chair, opened the public hearing and asked if there were any speaking in favor of the variance. There being none, the Chair asked if there were any speaking against the variance. There being none, the Chair closed the public hearing.

Mr. Charles Paxton read the 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 asked if there were any questions for staff or legal. There being none, the Chair opened the discussion for the variance.

Mr. Adam Dagenhart said, I understand the constraints with the existing structures and fields and also access for EMS. I am struggling with the location. It seems they could explore the possibility of flipping the house. Then we would have the 30-feet and there would be minimal change for repair area in the future. Plus, I'm concerned that they don't have a septic permit. If they don't get a septic permit, do they have to come back before us if we approve this?

Mr. Douglas Hall, County Attorney said, if they have to relocate the house, they would have to come back.

Mr. Michael Bywaletz said, we're saying if they go for a septic permit and it isn't approved, we are going to have to go through this process again?

Mr. Douglas Hall said, if they have to relocate the house, they would have to come back, but you're approving a variance for the location of the house, not the location of the septic.

Mr. Adam Dagenhart said, if they meet the requirement of the setback, they won't have to come back before us.

Mr. Charles Paxton said, are there any concerns with the well being in Stanly and the rest of the property in another county?

Mr. Douglas Hall, County Attorney, said, that is probably a CHA (Cabarrus Health Alliance) question. I don't know if they would have any issue with that. I don't think that raises any concerns as far as what's before you tonight.

Mr. Adam Dagenhart said, I would feel better if there were a septic permit. It's not like we're trying to relocate a septic field. I would like some input from the CHA.

Mr. Michael Bywaletz said, it sounded like this was going to be the best area for the septic based on where the house is going to be.

Mr. Brent Rockett said, that's according to Soil and Forestry, that's not taking into account what CHA's opinion of it is, but that's a fair point.

Mr. Adam Dagenhart said, unless the soil is drastically changed, I can't see the repair area not working. You're not going to be able to put anything there other than grass. You're going to have to leave it open unless you have to make a repair. If you put the repair where the house is, it's right beside the tank. There are too many unknowns here. I'd feel a lot more comfortable if he had a septic permit. Has CHA seen this document?

Mr. Brian Hayes said, I know at one point they approached Stanly County and had a permit there. Knowing that we would have a variance before we could conceive of construction here, we wanted to know if we can build before getting a septic permit.

Mr. Michael Bywaletz said, does it matter which one goes first, in regard to granting the two-foot offset. I understand the buffer piece.

Mr. Adam Dagenhart said, what if they have to go to Stanly County for their septic?

Mr. Brian Hayes said, the Stanly County septic field would require the house being in another location, which gets us back to a residence in Stanly County.

Mr. Adam Dagenhart said, emergency services will get to you if they have to cross into Cabarrus County and vice versa.

Mr. Brian Hayes said, access is better from Mount Pleasant.

Mr. Adam Dagenhart said, both fire departments are coming down the highway to get there.

Mr. Brian Hayes said, we've spoken with the departments and our expectation and belief is that opportunities and service are going to be better coming from the Cabarrus County side. The lack of access from the Stanly County side becomes a little more complicated. Frankly, we think Cabarrus County may provide better emergency services.

Mr. Charles Paxton said, I have a question for legal. If we approve this and they can't get their septic permit, do they have to come back before the board?

Mr. Douglas Hall, County Attorney, said, the only reason they would have to come back before the board is if they were going to move the house. If CHA says, we want all this septic-related infrastructure shifted 50 feet to the right, the house is not moving. That doesn't affect your decision. You're just looking into issuance of a variance for the location of the house. You don't have the wherewithal to approve the location of the septic infrastructure unless they're coming before you for a specific variance about that.

Mr. Charles Paxton asked if there were any other comments?

Mr. Adam Dagenhart said, people are entitled to ask for variances. When you come in and ask for a 95 percent variance relief, that's a struggle for me. I understand that existing structures limit you, but you can move that drive around a little. You could potentially rotate the house, or you could move the repair area. This is all designed off of what the septic guy said, and we don't even know if it's going to be approved. I don't know what detailed review they did for this meeting from CHA. Did they do any testing?

Mr. Michael Bywaletz said, I was wondering if all the rectangles were pits that were dug on site?

Mr. Adam Dagenhart said, that's what I thought, too.

Mr. Brian Hayes said, I do know that Soil & Forestry did a soil test leading up to this plan throughout the property. I can't say that the green rectangles are that. Just from the GIS maps, the condition of the soil does vary on the property.

Mr. Adam Dagenhart said, it looks like in the area they're proposing the house and septic, it's all the same soils. I'm looking at the County GIS as well, with an aerial.

Mr. Brian Hayes, that was a factor in moving to this area on the property, as opposed to others. With the contours and flat areas on the property, that was a consideration as far as the location of the house.

Mr. Charles Paxton said, Adam, as far as the four points for granting a variance, which one do you think you have a problem with?

Mr. Adam Dagenhart said, I haven't got that far yet. It appears that the property is predominantly used for agricultural or farming. Not being able to build a house, doesn't make the property unusable. You'd love to live there, I understand that.

Mr. Michael Bywaletz said, it's unfortunate that the county line runs through the property.

Mr. Adam Dagenhart said, I would make the suggestion to ask the applicant to table this until we can get more information from Cabarrus Health Alliance (CHA).

Mr. Charles Paxton asked if the applicant would like to respond?

Mr. Brian Hayes said, I understand the concerns. If we have the septic permitted, that removes one. Having a septic permit for a variance that's not going to be allowed doesn't help very much, either. So, we're back to which one do we get first.

Mr. Adam Dagenhart said, what I would like to see is you go back to your consultant to see if you can flip the house and the repair field. Then you won't need a variance. That's what I would like to see you explore, as well as getting information from CHA.

Mr. Brian Hayes said, my recollection in speaking with Soil & Forestry, is that flipping the house does not work.

Mr. Adam Dagenhart said, based on the information provided, that is not enough for me to make a decision. You're trying to recollect a conversation that you don't have the information for. It's hard to make a judgment one way or the other when I don't have all the facts.

Mr. Brian Hayes said, if we need a permit first, then we can table it.

Mr. Adam Dagenhart said, I'll be honest with you, even if you get a septic permit, I'm still on the fence on whether I would approve it. You've got 35 acres in Cabarrus County. Where in Stanly would the septic be?

Mr. Brian Hayes said, the house would be somewhat over the line.

Mr. Adam Dagenhart said, there's not a large area that you could potentially put a house? That's why I'm asking. I don't have a Stanly County GIS.

Mr. Brian Hayes said, this is the Stanly County GIS (showing on map). We've got trees in the area and we're back to the concern about emergency services.

Mr. Michael Bywaletz said, I couldn't read what was on one of the maps. Are those existing structures that are on the line being removed?

Mr. Brian Hayes said, the old barn and house are being removed. The carport is in use and would continue to be used.

Mr. Brent Rockett said, in regard to the emergency services, do we know the exact travel time from the service location to this home? Did anyone time that out as proof of proximity and time of response?

Mr. Gary Almond, owner and applicant, said, yes, I've traveled both of the areas. Millingport is 8 miles and Mount Pleasant is 4 miles.

Mr. Brent Rockett said, travel miles or as the crow flies?

Mr. Gary Almond said, it's less than half the time from Mount Pleasant than it is from Millingport. Most of these reasons are medical reasons. I've had heart attacks, and I've got Parkinson's and it's imperative to me to get the closest emergency services I can get. The way the leech field is laid out, if the house was turned around and comes within 2 feet of the line, I think the leech field would all work out. We thought we had that covered but particularly my health condition is what's driving this.

Mr. Adam Dagenhart said, I think what would be beneficial for us all is if you had the septic areas on the plot plan. It's on page 124 of our packet; I think that might help a little bit. You get a little disoriented trying to flip back from these aerials and this map.

Mr. Charles Paxton, Chair, said I have a question. Was this plan done by Soil & Forestry or someone else?

Mr. Brian Hayes said, it was designed from the start by Soil & Forestry.

Mr. Gary Almond said, Wendell Overby did the whole property. He's the soil scientist that did the layout.

Mr. Adam Dagenhart said, if you took the house and put it where the driveway and turned it 90 degrees. Yes, you might have to run it longer to get to your tank, but that would probably appease our concerns.

Mr. Brian Hayes said, you're suggesting we move the house where?

Mr. Adam Dagenhart said, the problem is the drawing in your hand does not show the carport. On the drawing in your hand, it looks like the carport is right on top of the house.

Mr. Brian Hayes said, I'm certain we could have the plan redrawn to show more of those elements. If we do have to install a pump to the system or do other things, that becomes more complicated. Going too far into a field is going to create some complications.

Mr. Adam Dagenhart said, we're not talking about an acre lot here. Topography is kind of out the window for me. You have 35 acres. My suggestion would be to table it and talk to CHA and your consultant. You may not even need to come back before us or maybe a reduction from 28 feet. Let's go the other direction.

Mr. Brian Hayes said, it is unfortunate that we have nearly 40 acres on both sides of the county. It didn't really matter back when they were building it decades ago. If we were to table it and present a new plan, are you saying we may not need to come back before you if we get it outside the buffer?

Mr. Adam Dagenhart said, if you can get outside the buffer, you don't need to come back before us.

Mr. Brian Hayes said, I understand that. I just didn't know if the intention was that we have another presentation.

Mr. Adam Dagenhart said, if you're still in the buffer, then you would still have to come back before us. We can schedule that for the next available meeting. I don't know when that would be because I don't know what's coming down the pipe. We can table it and if you don't need us, they'll just remove the case.

Mr. Brian Hayes said, what I anticipate is that we'll be coming back to you with a better explanation as to why it doesn't work. We certainly can get some information from CHA. Without the consideration of the variance, it doesn't matter what they say.

Mr. Adam Dagenhart said, I'd rather table it than have it get denied and we can keep working through it to see if we can come to a resolution to where you can get something approved.

Mr. Charles Paxton said, Susie, what kind of timeline would that be?

Ms. Susie Morris, Planning & Development Director, said, ultimately it would be as long as it would take them to establish where the buildings are or get CHA out.

Mr. Adam Dagenhart said, based upon your due dates for submittals, what are we looking at? Probably at least 60 days?

Ms. Susie Morris said, 60 or maybe 90 days. There wasn't anyone here to speak in opposition or in favor, besides the property owners. I don't think it would be a noticing issue like we sometimes have. I would prefer for us to pick a timeframe.

Mr. Adam Dagenhart said, I would recommend 60 days. If we need more time, we could push it back another 30 days.

Ms. Susie Morris said, they can table twice without having to start over.

Mr. Charles Paxton said, do we need to vote on that in the form of a motion?

Mr. Adam Dagenhart said, we can vote on it, but in the best interest of what they're trying to achieve, I think we should table it until they can get more information.

Mr. Brian Hayes said, if acceptable, let's plan for the December date and we can communicate if for some reason that doesn't work. Based upon the response of both Norstar and Soil & Forestry, that shouldn't be a problem.

Mr. Adam Dagenhart said, before we make a motion, are you clear on what we're looking for?

Mr. Brian Hayes said, yes.

Mr. Michael Bywaletz said, the mapping is probably one of the bigger things as to getting all the pieces, so they're not everywhere.

Brent Rockett said, Mrs. Almond was indicating that she would like to speak.

Ms. Kathy Almond, applicant and owner, said he was asking earlier about moving the house closer to the barn. If we move the house where the road is, we're going to be really close to the barn and that really won't work. The barn would be from me to you.

Mr. Adam Dagenhart said, I think the best solution is to try to see if you can flip the repair area and the house with minimal grade differences. I'm assuming you're going to do a crawlspace. It's cheaper to add dirt than it is to add brick.

Mr. Brian Hayes said, we will have to explore that. As requested, having the additional structures showing to put everything to scale will probably make it easier to understand without being at the site.

Mr. Brent Rockett said, any guesses as to why the carport isn't showing?

Mr. Brian Hayes said, for whatever reason, it's not there, but yes, they did survey the property.

Mr. Brian Hayes said, we are content with tabling it tentatively if it pleases the Board.

Mr. Adam Dagenhart **MOTIONED, SECOND** by Mr. Charles Paxton to **TABLE** the request until the December 9, 2025 meeting. The vote was unanimous to **TABLE** the request.

Petition VARN2025-00006-Variance Request for Relief from the Arterial Street Buffer Standards, the Restriction of the Cul-de-sac Length and the Requirement to Connect to Adjacent Properties

Sherwood Morris Investments LLC is the applicant and the Harry T. Morris Trust is the owner. The address associated with the subject property is 6950 Stirewalt Road (PIN's: 4693-44-8805 & 4693-55-3301).

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

STAFF REPORT

The applicant is proposing an AO open space design major subdivision project for the subject property and is currently in the preliminary development review process. The proposed design of the development, as is currently drawn, does not meet the identified standards of the Ordinance. Variances will be needed for the project to proceed, or a redesign of the proposed development will be required. The applicant is seeking relief from the following standards of the Cabarrus County Development Ordinance:

- o Chapter 5, Section 5-7.D.2.C, Arterial Street Buffer Required
- o Chapter 15, Section 15-9 Cul-de-sac Length
- o Chapter 15, Section 15-9 Connections to Adjacent Properties

The subject property is located within the protected area of the Coddle Creek watershed. Most of the subject property is currently vacant and undeveloped. A residence and accessory structure occupy a small area in the middle of the subject property. Mill Creek traverses the subject property from north to south along the western boundary. Regulated Special Flood Hazard Area (SFHA) and wetlands are located on the subject property along and near Mill Creek. An unnamed intermittent

stream feeds into Mill Creek traversing the subject property from east to west through its northern half.

There are two Duke Power rights of way on the subject property. A 200-foot Duke Power Transmission Line right of way traverses the western side of the subject property from southeast to northwest and contains two power lines. The second, smaller right of way, is to the western side of the larger Duke Power right of way. It turns westward, exiting the larger right of way, proceeds west towards the SFHA and exits the subject property. A Town of Midland 30-foot utility easement for the Monroe-Midland Gas Line runs concurrently next to the transmission line, along with a fiber optic line.

The subject property is surrounded by residential and vacant properties. Surrounding zoning districts consist of Agricultural Open Space (AO) and Kannapolis (R-1). All surrounding properties are in either the Coddle Creek Watershed Critical Area or Coddle Creek Watershed Protected Area and are subject to the Watershed Overlay Zone as described in Chapter 4.

NCDOT reviewed the request and submitted the following comment:

"We have not begun reviews on this site or received anything from the engineer about the sight distance or accesses. Until we receive that, we cannot make a determination on turn lanes. We also currently do not have any comments on interior roads until we have a full set of plans."

The applicant has not submitted a preliminary plat for review or approval for Planning and Zoning Commission consideration. The exhibit provided as part of this application is for illustrative purposes only and is conceptual in nature. The applicant is seeking relief from the following standards of the Cabarrus County Development Ordinance:

- o Chapter 5, Section 5-7.D.2.C, Arterial Street Buffer Required
- o Chapter 15, Section 15-9 Cul-de-sac Length
- o Chapter 15, Section 15-9 Connections to Adjacent Properties

With respect to the buffer requirement, the applicant contends that the 50-foot arterial buffer is unreasonable and that the classification of Stirewalt Road does not warrant the required buffer to meet the intent of the code. The applicant would be agreeable to a reduced buffer or enhanced plantings along the frontage to supplement the required street trees.

With regards to the cul-de-sac length, the applicant contends that 1,000-foot maximum is unreasonable for a project proposing lots being one acre or greater in size and that is unreasonable due to the size and shape of the property and the restrictions from the existing utility easements. The applicant further states that if there is a concern for the safety of a dead-end road being blocked for emergency access, applicant would consider modifications requiring an increase in the required pavement width to ensure a potential road blockage could be navigated around, even on the dead-end street.

With regards to the connections to adjacent properties requirement, the applicant contends that the site plan, survey and other exhibits showing the adjacent properties to the north, demonstrate that there is no reason to extend a stub street to the adjacent property. The applicant would be agreeable to requiring all land in the development north of the intermittent stream, as outlined on the proposed site plan, to be required to be dedicated as open space, not available for development, ensuring no reasonable extension to the north is available.

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

1. The Granting Order, stating restrictions and applicable conditions of approval, shall be recorded with the deed of the property.
2. The preliminary plat must accurately reflect any variances approved by the Board of Adjustment as reflected and presented on the illustrative plan to be used as the Exhibit for the Granting Order. Any material deviations from the illustrative plan in the sole judgment of the County staff, will need additional review and approval by the Board of Adjustment.

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

Mr. Adam Dagenhart said, can we go to the drawing? Can you walk through the areas that they want to reduce? Let's start with the first item.

Mr. Phil Collins said, the buffer would be this section (showing on map).

Mr. Michael Bywaletz said, what is that road classification?

Mr. Phil Collins, I think the contention is that the NCDOT looks at it differently than we do.

Ms. Susie Morris said, it's outside of the development and the intent is for those streets to have a buffer alongside them.

Mr. Michael Bywaletz said, we're not going by the NCDOT's classification; we're going by the County's classification.

Ms. Susie Morris said, the county does not classify roads. I will tell you all what I told the applicant. I don't know why they called it Arterial, but I can speak to its intent, which is that there is a buffer next to those outside roads.

Mr. Michael Bywaletz said, does it serve as an arterial or a local road?

Ms. Susie Morris said, it's a thru street. Is it collecting other traffic? It is collecting some, but as far as being arterial with highways and byways, no. Based on the Ordinance, the way we classify streets, if we're looking at setbacks, it's either a local street or it's considered a thoroughfare. Stirewalt would be a thoroughfare. The interior streets we would look at as local because they dead end. When you get back to intent, the buffer is supposed to be the entire way around this development. When we got into the discussion about the street yard, the contention is that we're not classifying the street correctly.

Mr. Charles Paxton said, per the applicant?

Ms. Susie Morris said, yes, per the applicant. Again, there should be a buffer the whole way around that subdivision.

Mr. Adam Dagenhart said, so there's really two buffers?

Ms. Susie Morris said, yes.

Mr. Adam Dagenhart said, there's a road buffer and there's a property buffer.

Ms. Susie Morris said, yes, because the lots proposed are smaller than the adjacent lots. You all haven't seen a major subdivision in a while. The standards in the Ordinance talk about if lots proposed are smaller than what is adjacent to them, they must provide a buffer.

Mr. Adam Dagenhart said, it looks like the neighborhood partially adjacent is an acre and a half.

Ms. Susie Morris said, there is a perimeter buffer, the street buffer and the required open space. Does that answer your question, Mr. Bywaletz?

Mr. Michael Bywaletz said, I come from the NCDOT side of things and arterial roads and local roads. What is the width of the buffer for an arterial?

Mr. Phil Collins said, it's 50 feet.

Mr. Adam Dagenhart said, should we go to the next item which is the cul-de-sac length?

Mr. Phil Collins said, that's the section down here (showing on map). From here to here is more than 1,000 feet.

Ms. Adam Dagenhart said, is that where they have the block length over 1,000 ft? At 1,247?

Mr. Phil Collins said, the last one was connection to adjacent properties. Really, the only place you could do that would be up here. I think their contention was that the topography would make it difficult.

Mr. Michael Bywaletz asked, what is the perimeter buffer?

Mr. Phil Collins said, it's also 50 feet.

Mr. Adam Dagenhart said, it's a unique piece of property. You've got Duke Power, multiple streams, flood plain and watershed.

Mr. Charles Paxton asked the applicant to speak.

Mr. Joe Untz said, I reside at 4200 Maid Marion Lane, Kannapolis, NC 28081. I've been a developer and general contractor here for 31 years. I'm going to keep my part short and sweet and turn it over to Lucas Hanna with Peninsula Civil Design. He's well versed and more capable than me to answer questions. However, I'll be happy to come back and answer any questions you have. Thank you for your time.

Mr. Lucas Hanna said, I'm representing the applicant. The presentation by Phil was thorough. I just want to hit the main points on those specific three things. For the arterial buffer and NCDOT classification, both Cabarrus and Rowan County's MPO, indicate it's a local road. It is not classified as any of their recognized classifications for the counties. This is the Comprehensive Transportation Plan for the two counties as a

whole. The classification that NCDOT assigns to Stirewalt Road is Class 7, which they consider local. Typically, a class 4 arterial recognized in the eyes of the NCDOT would be a road that collects a lot of traffic. Highway 3 just to the north of the property would be considered an arterial road, as far as NCDOT is concerned as well as the way the MPO is written. That's why we're making the justification that we don't really see this as needing an arterial buffer necessary. We're willing to work with Cabarrus County and provide a 25-foot buffer when we don't really think it's necessary at all. We're willing to work with it because we know the intent of it is to protect the development with an arterial street from noise and safety. If this was just a single house being developed on this property, it would still warrant a 50-foot buffer.

The next one was for the cul-de-sac length. This goes back to NCDOT as well. This is going to be an NCDOT road network; it's under their jurisdiction. Their standards are what we're applying to the subdivision and the roads. NCDOT recognizes the local subdivision roads being able to have dead ends up to 2500 feet. We recognize the code is written in a way for public safety. NCDOT only requires 18 feet, which doesn't necessarily meet fire code requirements. That's why we're willing to propose a wider pavement section than what NCDOT typically would require, to address the safety concerns for fire department access to those long dead-end cul-de-sacs. If you look at our site plan, if you were to remove the 1,200-foot length block length, we wouldn't be able to utilize about 30 to 40 percent of the property because we wouldn't be able to cross the Duke Power Transmission Lines. Our 1,200 feet gets us to this intersection, so if we were only capped at 1,000 feet, we would be putting the cul-de-sac somewhere around here. That would result in not being able to utilize the whole rear portion of the property. The property is already restricted by perennial buffers, Duke Transmission Lines and Midland Gas Transmission. We also wanted to reference the soil on site. We had a soil analysis done, these will all be well and septic since they're one acre lots. The purple areas indicate soil that's not usable. So, we can't utilize those areas, either.

The third one, which was the adjacent property connection, it's kind of spelled out in the Ordinance that we're not required to make an adjacent connection if there is an undue hardship of crossing a creek, stream, wetland or anything that would cause substantial cost. There's a slope analysis through here. Anything above red is going to be above the 15 percent, which is the maximum per NCDOT standards for mountainous terrain if they would even permit it. In order to have that cul-de-sac cross this stream, we would have to bring in a substantial amount of fill and cause a lot of impact to these streams. The two properties across the street have direct access to a public road. We don't think there is any warrant or need to have a cross connect to these developments. We're trying to get relief from that requirement, specifically for those two properties. I will be happy to answer any questions you may have.

Mr. Michael Bywaletz said, I wasn't quite sure what was stopping the cul-de-sac. Can you explain that? The layout you've got isn't permissible?

Mr. Lucas Hanna said, the way the code is written is that it's dead-end lengths rather than cul-de-sacs. Our cul-de-sac lengths are less than 1,000 feet but the dead end is greater than 1,000 feet. If we were to do a 1,000-foot maximum dead-end length, our cul-de-sac would have to land somewhere in this area. From this point to this intersection is the 1,200 feet. If we were capped at 1,000 feet from this intersection, our cul-de-sac would land before the Duke Transmission Lines. We wouldn't be able to utilize the back half of the property.

Mr. Adam Dagenhart said, I think 1,000 feet is derived from emergency services. Is that correct, Susie?

Ms. Susie Morris said, there have been some changes to the fire code. This language dovetailed the fire code along with the NCDOT standards. The fire code is now 750 feet, it's now less than 1,000 feet. The Fire Marshal's Office can make allowances for anything over 750 feet, but the road width must bump up to 26 feet versus the standard.

Mr. Adam Dagenhart said, so you're saying if it was 750 feet, it would have to be 26 instead of 24 feet?

Ms. Susie Morris said, typically, once you get over the 750 feet is when that starts happening. Then they have requirements for hydrants and all different kinds of things. The purpose of us having that is to try to get an alternate street network, so that we have multiple entrances and cross connections versus properties being developed with dead ends and also for emergency response.

Mr. Adam Dagenhart said, did you say you have greater than 15 percent out there? The Fire Marshal was good with 15 percent road grade? What are you proposing once you grade your road?

Mr. Lucas Hanna said, it would be less than eight percent per NCDOT standards. We don't have a grading plan, but we've already started working with NCDOT. For NCDOT, you have to show them the existing grade for them to determine the engineering behind the roads. That's why when you have greater than 15 percent, you have to go to mountainous terrain, which would require us to fill in that stream.

Mr. Adam Dagenhart said, you mentioned you were proposing a wider cross section. What were you proposing?

Mr. Lucas Hanna said, we were going to propose 20 which is the National Fire Code's minimum standard, but we are willing to propose 26.

Mr. Adam Dagenhart said, is that edge to edge or face to face?

Ms. Susie Morris said, a 20-foot street would not be permitted under our typicals. Either you pick rural residential, etc. Whatever you pick for that development, that cross section is what would be on the plat. It is not 20 feet, that is the fire code, not the zoning ordinance.

Mr. Adam Dagenhart said, I know sometimes they battle each other. You've got a lot of purple areas here. How are you going to serve those with septic?

Mr. Lucas Hanna said, these are greater than one-acre lots. We're planning to have between 10,000 and 15,000 square feet for septic fields, that is considered the worst-case scenario. There are alternative methods now that you get down to about 6,000 square feet and that includes the repair area. Those are obviously way more expensive. Whenever they did the soil testing, they did these based on a large grid. They didn't hit every lot, necessarily. Once we have a final layout, we can go back and get additional borings per lot to determine what areas are acceptable for septic. That's when we would file for a permit for septic.

Ms. Susie Morris said, Mr. Dagenhart, to answer your question, a rural residential street requires a 60-foot right of way, a 6-foot planting street and 24-foot street width, which would be the pavement.

Mr. Michael Bywaletz said, he's wanting an urban section?

Mr. Lucas Hanna said, we can put in the rural section at 24 feet. We have no issue with that. I may have just misquoted it.

Mr. Adam Dagenhart said, but then you'd have to go to 26 feet to meet the Fire Code.

Mr. Lucas Hanna said, we are okay with that.

Mr. Adam Dagenhart said, where is your right of way? I don't see it labeled.

Mr. Lucas Hanna said, it would be whatever that right of way is, 60 feet.

Mr. Joe Untz said, I just wanted to update. I don't know if Luke is aware of how far along I am with the soil scientist and the soil engineer. He's been out there three times. I have a certified letter that he has guaranteed a septic system for all 39 lots for up to 4 bedrooms. To go further than that, once we have the houses staked on the lots, he would have to come back out and set his lasers up to see if any builders want to do a 5 bedroom. That would take more work on his end and would come at the time that the builders were ready to permit, and the builder stakes the house. This is going to be more in line with what I consider an estate subdivision. It will be very high-end homes, and we will have no problems meeting the requirements as far as additional road width, paving, landscaping. We plan to make this a beautiful place, but we do face some unique issues.

Mr. Adam Dagenhart said, with you saying 4 and potentially 5 bedrooms, was there any concern from Fire about fire protection?

Mr. Joe Untz said, I have met with the Fire Marshal, and we've gone over this. The Fire Marshal has given me a letter that states what they require is a minimum under roof, which is not heated square footage. We have to stay under 9,000 square feet under roof. We have an impervious area that we must meet as well for the Watershed. We have calculated all of this into this plan. I wanted to address this up front. One of the first things I did was meet with the Fire Marshal to see if this was something we could do.

Mr. Adam Dagenhart said, I'm assuming you didn't go to Kannapolis because there's no sewer close by.

Mr. Joe Untz said, I didn't go to Kannapolis because there is no sewer, and it doesn't justify the difference in development standards to not have sewer. If there were sewer there, I wouldn't be here tonight. As you're probably aware, it's not a matter of capacity issue, there are no plans in the forecast to get sewer anywhere near this property.

Mr. Adam Dagenhart said, that goes into my question about fire because you don't have any fire protection, even though there's water on Stirewalt.

Mr. Joe Untz said, I did talk to Kannapolis. Jacob's Ridge was approved and was annexed into the City of Kannapolis for water. Jacob's Ridge is beautiful, which is one of the reasons it has me interested in this property. They didn't have to meet the development standards in the City of Kannapolis to get the water. That has all changed so that is the issue at hand.

Mr. Charles Paxton, Chair, said, your contention is that it is a cost issue to join on to the adjacent properties.

Mr. Joe Untz said, as far as the road, it's almost impossible to do. There would probably be army core permitting and things like that. I've been involved with things like that, and the cost of the subdivision would prevent it from taking place.

Mr. Adam Dagenhart said, NCDOT has not seen this?

Mr. Lucas Hanna said, we're currently working on drawings, and we plan on submitting those upon approval of the variance.

Mr. Adam Dagenhart said, I'm just curious why you didn't take that entrance to the West and put it parallel to the Duke easement.

Mr. Lucas Hanna said, it would be a single load road because of the Duke easement. We couldn't build lots in the Duke easement.

Mr. Adam Dagenhart said, I think you can probably massage your plan is what I'm getting at. I'm sure NCDOT is going to have some strong comments that you're going to have to make some revisions.

Mr. Joe Untz said, we have met with them, and this is such a low impact it did not require a Traffic Impact Analysis (TIA).

Mr. Adam Dagenhart said, I'm not talking about a TIA, I'm talking about the mountainous terrain.

Mr. Joe Untz said, the comment about the mountainous terrain was if we had to build the road to the north property.

Mr. Lucas Hanna said, we've had discussions with NCDOT; we haven't done a formal submittal.

Mr. Adam Dagenhart said, in the comments in the Staff Report, they haven't even approved your driveway locations and site distances.

Mr. Lucas Hanna said, that was at the time of the Staff Report, whenever we submitted this, a month or so ago. We've had discussions since then.

Mr. Douglas Hall, County Attorney, said, if it's at the close of the applicant's application, we have a procedural matter that I think Ms. Morris and I need to discuss with the board in closed session. We will probably come back and resume and have your public hearing, but this may be the time we need to take a few moments with the board on a procedural issue.

Mr. Charles Paxton said, do we need to clear the room?

Ms. Susie Morris said, we can just step out and use the conference room.

Mr. Douglas Hall said, this has nothing to do with any of the evidence we've received tonight. This is a legal procedural issue about the board's procedure.

Mr. Brent Rockett **MOTIONED, SECOND** by Mr. Michael Bywaletz for the board to go into closed session. The vote was unanimous.

The board went into closed session.

Mr. Brent Rockett **MOTIONED, SECOND** by Mr. Michael Bywaletz to return to regular session. The vote was unanimous.

The board returned from closed session and Mr. Charles Paxton, Chair, opened the public hearing.

Mr. Charles Paxton asked if there were any others that wanted to speak in favor of the application. There being none, the Chair asked if there were any speaking against the application.

Mr. Craig Clinard said, my address is 7266 Three Sisters Lane, Concord, NC, the Jacob's Ridge neighborhood. I just wanted to speak in opposition to the request for the variance primarily to the arterial buffer. As you're aware, the County Development Ordinance establishes the standard for perimeter compatibility for new developments. This provides protections for existing and proposed developments creating what are called suitable transitions. Part of that suitable transitions is to find in the section 5-7.D.2.C is the minimum arterial street buffer. There has been discussion about whether Stirewalt is an arterial or a local road. I live on the road, and I know it's a very busy and small road. I know the changes that come from changing the standard buffer will possibly negatively impact future development and existing development. You may be aware that Stirewalt Road is a small rural road that connects Highway 3 to Drakestone, both of which are very busy intersections. You also may be aware that this

plot of land directly across from this is an open area that we anticipate could be developed similarly in the future.

I would argue that the cumulative effect of traffic on Stirewalt Road would require that you maintain this as an arterial thoroughfare maintaining the 50-foot buffer. If these are going to be country estates, you're not going to want to have one of the four homes on Stirewalt within 25 feet of a busy road. I ask this board to really consider the interest of current property owners and future property owners. Please continue to provide the protections that we have through the County Ordinance, which includes this arterial buffer of 50 feet.

In conclusion, I ask the board to not approve this variance request, to maintain this buffer requirement and to require that the developer adjust the plans to meet within the standard of your ordinance. Thank you.

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

Ms. Anita Sharma said, my address is 4647 Owl Creek Lane, Concord, NC 28027. I just want to echo the things that Dr. Clinard said. I live off of Stirewalt Road as well. Stirewalt is a busy street and a narrow street with 39 homes at a minimum of two cars, you're looking at a minimum of 78 cars going up and down that road multiple times a day. We have four cars at my house because we have four drivers. I'm sure many people have more than two, I'm just going by the minimum with these estate homes potentially being there. That's a lot more traffic for a very narrow street. Again, I echo what Dr. Clinard said. That 50-foot buffer is very important for the safety of walkers, runner, kids and other drivers on that road

Mr. Charles Paxton, Chair, asked if there were any questions. There being none, the Chair closed the public hearing.

Mr. Craig Clinard said, I meant to state this. I don't think anyone in our neighborhood of 20 homes are against development. We would like smart development. I don't think it's smart development to try to place 40 homes in this environmentally sensitive area with a lot of growth and a busy road. Perhaps a little bit larger lots or fewer homes. You can make a similar profit by doing that perhaps. It's a tough area, and a beautiful area, but it needs to be developed very carefully.

Mr. Joe Untz said, I do understand these concerns and safety is a major issue. All road improvements for Stirewalt Road will be determined by NCDOT based off the information that will be provided for the subdivision. They do a very thorough job. If

there is road widening, turning lanes that need to be put in, we will be required to do that. I will bring up that there are four lots across Stirewalt Road that this reduction of buffer alludes to from 50 to 25 feet. Jacob's Ridge does not have any buffer, zero. I know of at least three houses that abut Stirewalt Road that has zero buffer. I'm implementing a 25-foot buffer for four lots. When you say increase conditions for public safety based on what's the adjacent subdivision, I feel like we're doing that.

Mr. Douglas Hall, County Attorney, said if it pleases the board, I wanted to update you on the closed session we had a few moments ago and what Ms. Morris and I spoke to you about. I also updated the applicant, Mr. Joe Untz. Under state statute, you must have four-fifths vote of the sitting members. You've got nine members, so you must have eight affirmative votes to grant a variance. There's only seven of you here tonight. We have two absences, and those are not vacant seats and those are not recusals. In either one of those events, it wouldn't count. We currently have no alternates, that's why we don't have two alternates here. Currently, the alternate positions for the Planning and Zoning Commission and Board of Adjustment are vacant, so we didn't have any alternates that we could've asked to be here, either. I would have brought that up in the first hearing if it hadn't have turned into a situation where it was tabled or continued. You actually cannot cast a legal vote on this tonight, and we let the applicant know the situation. What you probably need to do is table or continue this hearing until the next month. You've already had the public hearing and heard comments from anyone who wanted to address the board. Next month we need to have all nine of you here. Of course, everything is recorded. They can review the recording and the packet, and you can pick up your deliberation with the nine of you present. That would be my recommendation for you tonight.

In other words, for the benefit of everyone in the audience, you all would not be deliberating tonight if you took this suggestion. The deliberation is going to occur once you have all nine here. You could do it with eight members, but it would have to be an 8-0 vote. If there are nine of you here, it could be a 9-1 vote and still pass.

The Chair asked if there were any questions and there were none.

Mr. Adam Dagenhart **MOTIONED, SECOND** by Mr. Brent Rockett to **TABLE** the meeting until November 12, 2025. The vote was unanimous.

Mr. Charles Paxton, Chair, told the applicant and members of the audience they were free to leave.

DIRECTOR'S REPORT

Ms. Susie Morris, Planning and Development Director, said, I don't have any updates except, as you just witnessed, we don't have any alternates right now. It is imperative that people are here. We will start working through alternates. We try to choose people that list this board as their first pick. We're not getting volunteers like we used to. After Covid and during Covid, people kind of stopped volunteering. Please make every effort to be here and make every effort during these meetings to build the record. I was talking to someone today about the APF case where we spent nine years on litigation. We really need to make sure we're building the record because what goes to the judge is the packet and the minutes. Make sure you're looking at your packet and have your questions ready. If you have that question, then probably someone else has that question as well. I do appreciate your service and know it is not easy. If you know anyone interested in being on the board, let them know they can submit an application through the portal. There aren't any trainings coming up so we will have to wait. Mr. Hall and I are going prepare some trainings for you regarding ex parte communications, conflicts of interest, etc. If anything comes up and you think you have a conflict, just email us and let us know and we will work through it.

LEADERSHIP ELECTIONS

Ms. Susie Morris said, we need to have leadership elections for 2025-2026, it's a one-year term. I will open the floor and take nominations. We need a Chair, Vice Chair and 2nd Vice Chair. We also have some committees that will be coming once we have leadership established. Are there any nominations for Chair?

Mr. Brent Rockett said, Mr. Bywaletz, would you consider the position as Chair?

Mr. Michael Bywaletz said, we are actually trying to move to Chattanooga to be closer to our daughter. We were hoping it would have happened by now. I will be here until that happens. When that is, I have no idea. It's at least six months out.

Mr. Brent Rockett said, if you're elected that becomes a Vice Chair problem.

Mr. Michael Bywaletz accepted the nomination as Chair.

Mr. Brent Rockett **MOTIONED, SECOND** by Mr. Adam Dagenhart to nominate Mr. Michael Bywaletz for the position of Chair. The vote was unanimous.

Ms. Susie Morris said, please proceed with the nominations. We will need a Vice Chair and a 2nd Vice Chair.

Ms. Ingrid Nurse nominated Mr. Brent Rockett.

Mr. Brent Rockett accepted the nomination as Vice Chair.

Ms. Ingrid Nurse **MOTIONED, SECOND** by Mr. Charles Paxton to nominate Mr. Brent Rockett for the position of Vice Chair. The vote was unanimous.

Mr. Michael Bywaletz said, now we need a 2nd Vice Chair.

Mr. Brent Rockett said, I would like to nominate Mr. Adam Dagenhart as the 2nd Vice Chair.

Mr. Adam Dagenhart accepted the nomination as 2nd Vice Chair.

Mr. Brent Rockett **MOTIONED, SECOND** by Mr. Michael Bywaletz to nominate Adam Dagenhart as 2nd Vice Chair. The vote was unanimous.

LEGAL UPDATE

Mr. Douglas Hall, County Attorney, said, beyond what we've covered tonight, I don't have anything else to add.

Ms. Susie Morris said, just a reminder, no ex parte communications about either of these cases if anyone contacts you because both of these are variances.

Mr. Adam Dagenhart **MOTIONED, SECOND** by Mr. Charles Paxton to **ADJOURN** the meeting at 8:56 pm. The vote was unanimous to **ADJOURN**.

APPROVED BY: Charles Paxton, Chair

Charles Paxton

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

Lisa Johnson

ATTEST BY: Susie Morris, Planning & Development Director

Susie Morris