

Cabarrus County Government – Planning and Development



Planning and Zoning Commission Minutes
April 14, 2026

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

Call to Order

Mr. Michael Bywaletz, Chair, called the meeting to order at 6:30 p.m.

Roll Call

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

Approval of March 10, 2026 Meeting Minutes

Ms. Holly Edwards **MOTIONED, SECOND** by Mr. Brent Rockett, to **APPROVE** the meeting minutes for March 10, 2026. The vote was unanimous to **APPROVE**.

Approval of Granting Order & Findings for VARN2026-00001

Variance request for relief from the restriction of the cul-de-sac-length, Joseph G. Untz is the applicant, and Michael Foster is the owner. The address associated with the subject property is 4471 Trinity Church Road (PIN: 4693-2-1831).

Ms. Holly Edwards **MOTIONED, SECOND** by Mr. Brent Rockett to **APPROVE** the Granting Order. The vote was unanimous to **APPROVE**.

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**.

The Chair reminded the audience that anyone wishing to speak needs to fill out a blue card.

Ms. Lisa Johnson, Clerk to the Commission, swore in members of the audience that wished to speak.

Old Business Board of Adjustment

Petition VARN2025-00007- Variance request for relief from the restriction of the cul-de-sac length, the requirement to connect to adjacent properties and the road design standards. Pavel A Shchetinin is the applicant and King Carolina Homes LLC is the owner. The addresses associated with the subject property are 2575 Shiloh Church Road, 11295, 11280, 11250, 11220, and 11145 Aubrey Elena Court (PIN's: 4672-43-0198, 4672-33-0198, 4009, 0565, 3332 & 4672-33-4395, 8027, 8206, 8554).

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

Staff Report

A variance request was submitted to the Board at the December 2025 meeting. The request was from the road design standards, the pavement schedule, the road length and the adjacent property connection requirements. At the December meeting, the Board agreed to grant relief from the length and connection requirements. After a lengthy discussion regarding the other items, the Board recommended the matter be tabled until the February 2026 meeting, so that the Applicant and his engineer could explore other options. The Applicant requested the case be moved to the January 2026 meeting because the engineer was available to answer questions. The Applicant's engineer attended the meeting, however, no updated plan was provided showing the standards that could or could not be met. The Board requested the Applicant and his engineer work together to address comments and provide an updated exhibit.

The Applicant and engineer have submitted an updated exhibit addressing the Board's concern related to the request for relief from Appendix A, Rural Residential Cross Section and Pavement Schedule Table. A summary of updates to the variance request are as follows:

- Road width – The existing road will be widened from the originally shown 20 feet to 22 feet. It is the Applicant's contention that widening to the full 24-foot width would require more extensive grading that may require reinstallation of utilities. The updated information states that access for emergency vehicles is feasible as the road width is greater than 30' in width at the sharp turns. A variance is still needed for the road with to be reduced from 24 feet to 22 feet.

o A firetruck turn template has been added to the site plan exhibit to show access is still feasible for emergency vehicles. The road width at the two sharp turns is shown greater than 30 feet on the revised exhibit.

- Shoulder Width- The shoulder width will be widened to meet the 6-foot-wide standard in the Ordinance. This eliminates the need for the original variance request related to the shoulder width.
- Right-of-way width- The right-of-way width will be widened to the required 30 feet. This eliminates the need for the original variance related to the right-of-way width for a majority of the road.
- Centerline Radius- The right-of-way width at the existing driveway is too narrow and cannot be widened. A variance is still needed for relief from the right-of-way width and the pavement width. There was some discussion about moving it over to the other side. It is the Applicant's contention that it is not wide enough. The Ordinance does not have a curve radius. We had the NCDOT look at it and they did not have any concerns because it's a private road. We had the Fire Marshal look at it and they were okay with it.
- Asphalt Pavement- The road currently has 6" ABC stone rather than the minimum 8" stone. To make up for this, an additional 2" of surface course asphalt will be applied. The application is proposing this as a means for meeting the intent of the Ordinance to avoid complete demolition of the existing road. A variance is still needed for the alternate construction standard that is proposed.

I will try to answer any questions you may have. The applicant and his engineer are here as well.

There being no questions, the Chair 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 of 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 created 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 public health, safety and general welfare shall be protected and substantial justice done. Violation of such conditions shall be a violation of this Ordinance.

Mr. Michael Bywaletz, Chair, read the summary of requests for reference:

Request for relief from the restriction of the cul-de-sac length, the requirement to connect to adjacent properties and required road design standards.

Requests #1 & 2 were approved with conditions at the December meeting. Request #3 remains outstanding which is the road width, centerline radius and asphalt pavement. We will move into discussion to consider each of these separately.

Road Width: The existing road will be widened from 20 to 22 feet. It is the applicant's contention that widening to the full 24-foot width would require more extensive grading that may require reinstallation of utilities.

Mr. Charles Paxton said, we asked the applicant and engineer to make some changes and do the best they could to make some changes and it appears they have done that. Is it adequate enough to suit our needs and uses?

Mr. Brent Rockett said, It did give me some relief that Fire and other entities do not see any issue with the proposal. I know that will come up with several of these other items as well. I feel more comfortable with the work that has been done to get to the 22 feet.

Mr. Michael Bywaletz said, I appreciate the additional work that was done, especially for the fire trucks and the turning radius to show they can actually get in and out of the cul-de-sac and make the turns.

Mr. Brent Rockett said, I would add that it would create a significant hardship to have to relocate the utilities to widen to the 24 feet. That alone would probably make this project not feasible as a whole.

Mr. Michael Bywaletz said, I remember some of the discussion we had about some of the utilities that were really close along the side. That truly would be a hardship to have to do that.

Ms. Holly Edwards said, I think they've made some really good strides to address the Board's issues.

Mr. Adam Dagenhart said, I agree, but there is something we also need to consider. Fire had a comment that they are okay with this as long as they sprinkle. If we move forward with approval, we need to make sure that condition is on there.

Mr. Charles Paxton said, what is that condition?

Mr. Adam Dagenhart said, if the sprinkler doesn't work out, I'm assuming Fire is not good with the variance request.

Ms. Susie Morris, Planning and Development Director, said, Fire will look at it again. They have already restricted some of the lots out there. Fire will make them place a note on the plat stating which houses have to be sprinkled and which houses do not.

Mr. Brent Rockett said, is it not all of the homes that need to be sprinkled?

Ms. Susie Morris said, currently, with the minor subdivision, it does not have to be all of the lots. They have to come back to you for the plat approval. That is when Fire will make their official comments and tell them what statements need to be on that plat.

Mr. Brent Rockett said, this would mean that the additional condition at this point is unnecessary?

Ms. Susie Morris said, I think you can reference it. What we see as standard practice is they typically make them put a note on the plat so that whoever buys that property will be on notice that they are required to have a residential sprinkler system.

Vote #1

Mr. Brent Rockett **MOTIONED, SECOND** by Ms. Ingrid Nurse to **APPROVE** the request for Road Width to be reduced from 24 feet to 22 feet. The vote was unanimous to **APPROVE**.

Mr. Michael Bywaletz, Chair, said, request #2 is the Centerline Radius, which we have somewhat addressed in regard to Fire being able to make their turns. NCDOT did not have any concerns with it either.

Mr. Brent Rockett said, I think you're talking about very significant changes that would create a hardship to address. It's not feasible with the way the property is currently set up.

Mr. Adam Dagenhart said, I would also add that the additional 2 feet of pavement they added, helped significantly.

Vote#2

Mr. Brent Rockett **MOTIONED, SECOND** by Ms. Holly Edwards to **APPROVE** request from Relief from the Right-of-Way Width and Pavement Width. The vote was unanimous to **APPROVE**.

Mr. Michael Bywaletz, Chair, said, request #3 is the Pavement Schedule, which requires 8 inches and there is currently 6 inches. They are going to add 2 inches of asphalt to lift that up.

Mr. Brent Rockett said, having to completely demolish the existing road and start over is a hardship and not feasible for this project. The added 2 inches of asphalt is sufficient for me.

Vote #3

Mr. Stephen Wise **MOTIONED, SECOND** by Ms. Ingrid Nurse to **APPROVE** the Pavement Schedule Deviation. The vote was unanimous to **APPROVE**.

Mr. Michael Bywaletz said, we need a motion to approve the proposed conditions of approval. There are conditions proposed by Staff in the Staff Report. Does anyone wish to add any additional conditions to the approval?

Mr. Brent Rockett said, Adam, will you add your statement?

Mr. Adam Dagenhart said, I would like to add that the conditions of The Fire Marshal's Office, related to the sprinklers, are met during plat review.

Mr. Adam Dagenhart **MOTIONED, SECOND** by Mr. Charles Paxton to **APPROVE** the Conditions of Approval. The vote was unanimous to **APPROVE**.

New Business Board of Adjustment

SUSE2025-00028- Request for a Special Use Permit for a Public Service Facility. Remington Jackson (agent for Duke Energy) is the applicant, and the owner of the subject property is Duke Energy Carolinas LLC. Subject property is located at 9001 Mooresville Road (PIN: 4683-44-0538).

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

Staff Report

The purpose of this request is to construct a Public Service Facility at 9001 Mooresville Road which is currently zoned AO. Electrical substations within the AO zoning district require the issuance of a Special Use Permit and are subject to additional design standards listed in Chapter 8.

The subject property is located approximately 1,500 feet to the south and west of the intersection of Windy and Mooresville Roads. The subject property has two sections that extend to the public right-of-way. One section extends to Windy Road to the east and the other extends to Mooresville Road to the north. These two sections are also referred to as the "arms" of the property.

A perennial stream crosses the section of the subject property that extends to Mooresville Road. There are 100-year floodplain and floodway areas along the stream. The subject property is bisected by the Coddle Creek Watershed. The eastern portion of the property is within the Critical Area of the Coddle Creek watershed, and the western portion of the property is within the Protected Area of the watershed.

There are two abandoned structures on the subject property that will be removed. A gravel drive provides access to the subject property from Mooresville Road. The section of the subject property that extends to Windy Road is vacant and supports existing distribution lines.

The subject property is surrounded by residential and agricultural uses. A natural gas facility and a small electrical substation are located to the northwest of the subject property. The property is zoned Agricultural/Open Space and surrounded by properties zoned AO.

If you will look in the comments section, NCDEQ made a comment about the Soil and Erosion permit being modified. That has been addressed and I added a letter in Exhibit H.

The subject property is zoned AO and the proposal is to construct an electrical substation on the subject property. Electrical substations are permitted in the AO district only with the issuance of a Special Use Permit.

There is an existing gravel driveway that extends from Mooresville Road to the proposed facility. The drive extends across an existing perennial stream that includes Special Flood Hazard Area and required stream buffer zone areas.

A floodplain permit was issued for the driveway in November 2019. Subsequently, a Letter of Map Revision changing the boundaries of the flood plain on the work from the previous flood development permit, was issued in 2022.

A variance was submitted in 2025 and approved at the December meeting of the Board of Adjustment for perimeter buffer modifications along the narrow "arm" areas extending to Windy and Mooresville Roads. The areas are not wide enough to accommodate the required perimeter buffer widths.

The Applicant has proposed, as part of the variance approval, modified perimeter landscaping along the driveway within the area extending to Mooresville Road. Some of the plantings will be planted within the flood plain and the required stream buffer. Because of the disturbances to these areas, the Applicant applied for new floodplain development and stream buffer disturbance permits. The permits were approved and issued in March 2026.

The applicant is proposing to utilize existing vegetation along sections of the perimeter of the main portion of the property. Additional landscaping is provided in areas where there is no existing vegetation or where gaps exist. The Applicant has provided photos of the existing vegetated areas. Please see the Site Development Landscape Plan.

The existing driveway into the site will be extended to access the substation. The substation and driveway extension will be gravel. A new transmission tower will be installed on the south side of the site and on an existing transmission line. The applicant submitted a complete application including a site plan and other supporting documentation as required in Section 8-4.17 of the Development Ordinance. The site plan submitted is consistent with the terms of approval established in VARN2025-00008.

Should the Board of Adjustment grant approval of the Special Use Permit, Staff requests the following conditions become part of the approval and case record:

1. Zoning site plan review and approval is required subsequent to Board of Adjustment approval in order to ensure compliance with all applicable development requirement and conditions.
2. The Granting Order, stating restrictions and applicable conditions of approval shall be recorded with the deed of the property and prior to zoning permitting.
3. The applicant shall procure any and all applicable federal, state and local permits prior to zoning permitting.

4. Any proposed future expansion of the property, as well as modifications or changes to approved site specific development plan, must receive Board of Adjustment approval in the form of an amendment to the Special Use. Permit.
5. The Applicant shall provide copies of all state, local and federal permits for the permanent project file prior to zoning permitting.
6. Project must comply with terms of Driveway Permit C-1758-Windy Road Retail Substation.
7. Project must comply with terms of all environmental permits secured for the project including the following:
 - a. NCDEQ DEMLR Permits CABAR-2025-0201 & CABAR-2025-0187
 - b. USACE SAW-2023-01556
 - c. NCDEQ DWR WQC007812

Permits that expired in March 2026 must also be renewed and copies provided prior to the work starting on the site.

I will answer any questions you may have and the applicant has come with a team that can answer questions if I can't answer them.

The Chair called on the Applicant to speak: Remington Jackson, 620 South Tryon Street, Charlotte, NC 28202 of Parker, Poe, Adams & Bernstein (representative of Duke Energy).

Mr. Remington Jackson said, there will be others that can answer your questions. If I repeat some of the things Mr. Phil Collins said, it is just for the record.

Duke Energy is requesting approval for a Special Use Permit for a new Electric Substation in Cabarrus County. I came before you a couple months ago requesting a variance; this is the same location. The substation will occupy approximately 2 acres of a 15.15-acre Duke Energy parcel. It is west of the Windy Road and Mooresville Road intersection.

This is a breakdown as to why a substation is necessary in this location:

- Increases electrical capacity available to the community.
- Increases reliability by situating the substation closer to where the customer demand is located.
- Increases the resiliency of the electrical system by increasing switching capacity between various substations that serve the area allowing for repair and maintenance of the facilities without causing lengthy service disruptions to the community.

There are also several other points there; if you want me to go through each one, I can. If you've never seen a substation and why we need a substation, there will be time for questions if you don't understand.

This is a breakdown of where the substation is located as well as all of the surrounding uses. All of the parcels around the Duke Energy parcel also have zoning of AO. We've made efforts to reach out to surrounding property owners to alert them of the variance and Special Use Permit. We haven't received any negative feedback; we have received several questions. We've had a virtual community meeting in which 2-3 attended. They were simply asking questions but we didn't receive any negative feedback to my knowledge.

With the anticipated western Cabarrus County growth, establishing a definitive site for the Windy Road substation will offer effective, long-range power capacity planning to proceed. (The applicant showed the Board a picture of an example of a substation).

How does Duke Energy select locations for new substations? Engineers use forecasting models and data to plan for growth and development while looking at current infrastructure capacities and aging equipment. Lack of planning and foresight results in capacity failures which will impact reliability for citizens, businesses, infrastructure, etc. This can prevent growth and economic development. Load center is determined based on growth forecasting and ideal location. This is a perfect location for a substation, which is why Duke Energy has been pushing for this project.

This is a conceptual site plan; it will not be the exact one, but it's generally what it will look like. (Showing on map) These are the property line and the northern entrance and the southern "arm". The substation site design complies with all of Cabarrus County's standards for parcel zoning, land use, public health & safety, zoning setbacks, buffer

requirements and tree preservation. We will have our engineer speak in case you have any questions regarding those items.

I will go over the Special Use Permit requirements. There are four prongs within your code, which are requirements for issuing a Special Use Permit:

1. The Board must find that the uses as proposed "are not detrimental to the public health, safety or general welfare." Our response is:

No adverse effect on environmental features.

This site will be secured by fencing, have adequate warning signage, and no public access.

Duke Energy will abide by the guidelines issued by the state during grading to prevent sediment from exiting the property and entering local streams and reservoirs.

Duke Energy will install an intensive secondary oil containment system that will collect all spills in the rare event of infrastructure failure.

Substation construction will comply with the National Electrical Safety Code.

2. The Board must find that uses as proposed "are appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, etc." Our response is:

The proposed substation has been designed to meet County setback, tree preservation, landscaping, buffering, and screening requirements, along with previously approved variances.

The proposed substation meets County requirements concerning parking, circulation, ingress and egress, lighting and service entrances.

Construction will adhere to all state environmental guidelines with respect to water quality, erosion control, wetlands and wildlife.

The substation site will not have sewer or water services.

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

Mr. Remington Jackson called on Mr. Mike Elwell to speak.

Mr. Mike Elwell: 333 2nd Street NW, Hickory, NC 28601/404 Topwater Lane, Greensboro, NC.

Mr. Remington Jackson: What is your profession?

Mr. Mike Elwell: I'm a real estate appraiser.

Mr. Remington Jackson: How long have you done that?

Mr. Mike Elwell: About 20 years.

Mr. Remington Jackson: How many substation projects have you completed?

Mr. Mike Elwell: I think maybe 5 or 6.

Mr. Remington Jackson: How did you become familiar with this particular project?

Mr. Mike Elwell: Duke Energy reached out to me about taking a look at the project and doing a study on the impact of these types of facilities on neighbors.

Mr. Michael Bywaletz addressed the Board, Mr. Elwell would like to be an expert witness. Do we see any reason to not allow this?

The Board had no objections, so Mr. Remington Jackson continued questioning Mr. Elwell.

Mr. Remington Jackson: Once you were contacted by Duke Energy, what did you find based upon your investigation?

Mr. Mike Elwell: I usually start these types of projects looking at peer-reviewed research on these types of facilities. There's been a lot of that type of research out there. Most of it is focused on power lines, but there is some research focused on substations. I look through that information to find out what my peers and people in the appraisal business are running into. For the most part, the findings are that these do not have an impact when properly designed and developed.

Once I was finished with that, I looked at the market to try to find power substations that are in the area. I was directed to one in Cabarrus County and one in Iredell County. I took a look at both of those and found sales that happened around those properties and tried to relate those to market transactions. After that was complete, I found three different transactions that happened. Once I looked at the market and what the properties were transacted at, there was no impact to any of the values or pricing of the properties that were surrounding the substations.

Mr. Remington Jackson asked the Board if there were any questions for Mr. Elwell. There were none and the presentation was continued.

Mr. Remington Jackson: In terms of neighborhood character, the substation will be built to the Cabarrus County standard. We are also reporting that it will not have an effect on the neighborhood character.

Mr. Remington Jackson continued with the four requirements for having a Special Use Permit:

4. The Board must find that the uses as proposed "will comply with the general plans for the physical development of the County or Town, as embodied in Zoning Ordinance or in the area development plans have been adopted." Our response is:

The proposed use of the substation will conform with the Cabarrus County Development Ordinance and will not have an adverse effect on the City of Concord 2030 Land Use Plan.

Those are the four points that we must meet and it is our position that we have met them. At this point, we are open to any questions you may have.

The Chair opened the public hearing, calling on those generally speaking in favor of the request. There were none and the Chair called upon those generally speaking against the request. There were none and the Chair closed the public hearing.

Mr. Michael Bywaletz, Chair, said, looking at the plan for the landscaping that was provided along the roads, I'm not seeing anything that is sticking out to me.

Mr. Brent Rockett, said, it seems that in many ways this is going to be beneficial to those living in the surrounding area with very little, to any, negative impact. I think the expert

witness was helpful in this scenario. It seems they've met all that I would need to hear to think this is well thought out and prepared.

Mr. Michael Bywaletz said, I appreciate the expert witness coming forward to show that there was no hindrance on surrounding property values.

Ms. Holly Edwards said, that was a great presentation; thank you for addressing all four points. We do not usually get all of that information, so thank you.

Ms. Heather James said, I have a question about the landscape buffering and making sure it is adequate for what they've presented.

Mr. Phil Collins, Planning Supervisor, said, yes.

Ms. Heather James said, I also have a question for the expert witness. During your testimony, you talked about the value of the surrounding properties for other substations. You indicated that you looked at two to five other substations; were those all provided by Duke Energy or other energy providers?

Mr. Mike Elwell said, the two that I looked into are Duke Energy owned properties.

Ms. Heather James said, you also noted that if they were properly designed, you didn't see a change in the surrounding property values. Can you tell me more about that?

Mr. Mike Elwell said, the more modern way in which these substations are now being designed includes a lot of buffering. I find that even when I study the older ones, they have a lot of reception in the market. Once people get used to these in their neighborhoods, they start to blend in with the vegetation surrounding it. They tend not to have any issues even with the older substations. I always find that if there are any issues, they are in the planning and development stages, due to the work going on.

When I do studies, I'm studying properties that have been around for quite a while and there have been several transactions around that I can study.

Ms. Heather James said, regarding the ones that you've studied, did they have mature landscape buffering around them or were they newer substation that may not have had mature landscape buffering?

Mr. Mike Elwell said, for this particular one, I focused on large acreage types of uses. For the ones that I looked at, they are mature substations that have been there for a while. They have similar wooded buffer that is around them already.

Mr. Heather James said, my only concern is if there is enough buffering. You can see where the site is located from Highway 3. If there is going to be an adverse effect on property values, a lot of that is going to be determined by inadequate buffering. My concern is if what they've presented is enough.

Mr. Adam Dagenhart said, that is a valid question, but what we also have to consider is the operation of the substation. They're going to have parameters that require landscape buffers can only be so close to the equipment. I don't know if you were here when we did the variance for the driveways.

Ms. Heather James said, I was.

Mr. Adam Dagenhart said, they have existing lines that come in now, so they are kind of limited on what else they can add.

Ms. Heather James said, I think we added some additional buffering.

Mr. Adam Dagenhart said, we did along the road, but not around the substation site.

Mr. Michael Bywaletz, Chair, said, is there a limit as to how close the vegetation can be to the equipment?

Mr. Phil Collins, Planning Supervisor, said our ordinance doesn't address that specifically.

Mr. Remington Jackson said, it might be better if I have Mr. Eddie Moore come up.

Mr. Remington Jackson called on Mr. Eddie Moore to speak.

Mr. Eddie Moore: McAdams & Co., 2100 South Tryon Street, Suite 400, Charlotte, NC 28203.

Mr. Remington Jackson: How long have you been doing this work?

Mr. Eddie Moore: I have been doing this type of work for 32 years.

Mr. Remington Jackson: How did you get involved with this project?

Mr. Eddie Moore: Duke Energy is one of our clients. We are a Civil Design firm that helps them out with these facilities.

Mr. Remington Jackson: I would like to enter him as an expert engineer.

The Chair asked if there was any disapproval for this from the Board. There was none.

Mr. Eddie Moore: Regarding the question concerning landscape buffering, we will be preserving existing trees and also supplementing with shrubs. The planting ratio that is required is either 2 large shade trees or 4 understory trees and 10 shrubs per 50 feet. Once that vegetation starts to grow, it will be very robust in the landscape perimeter. The level is 75 feet in width so it will be staggered for survivability of the vegetation.

Mr. Michael Bywaletz: Are there limitations as to how close landscaping can be to certain pieces of the facility?

Mr. Eddie Moore: We try to keep it out of the main area. It will be along the perimeter so that it does not impact the internal operations of the facility.

Mr. Adam Dagenhart: What is a rough estimate of the height of the equipment?

Mr. Eddie Moore: The new tower will be the tallest.

Mr. Remington Jackson called upon Mr. Brandon Lewis to speak.

Brandon Lewis: 525 South Tryon Street, Department 39-C, Charlotte, NC 28202.

Mr. Remington Jackson: What is your profession?

Mr. Brandon Lewis: Civil engineer, with Duke Energy.

Mr. Remington Jackson: I would like to enter Mr. Lewis as an expert to answer your question.

By affirmation and nods, the Board agreed.

Mr. Brandon Lewis: The bays and the substations are double stacked and the maximum height should be around 35 feet.

Mr. Michael Bywaletz: How tall would the surrounding vegetation be?

Mr. Brandon Lewis: The maturing trees would be in buffer standards. Eddie Moore would be able to answer questions about specific heights.

Mr. Eddie Moore: They will be your typical deciduous tree, which is around 60 feet.

Ms. Heather James: Are the trees going to be surrounding the whole substation or just the road frontage?

Mr. Eddie Moore: It will be around all four sides. The substation will be in the center so the 75-foot buffer will be around the exterior of the compound area.

Ms. Heather James: When the trees are maturing, it is the intent the substation will be hidden?

Mr. Eddie Moore: Yes, and the 10 shrubs per 50 feet will be spaced appropriately and will cover the surface level of the compound itself.

Ms. Heather James: I think they've addressed my question. There is another substation close by and it's a terrible eyesore in that part of the county. I just want to be sure the vegetation and landscape buffer are going to hide what's back there.

Mr. Eddie Moore: I think that's the reason behind having both the trees and the shrubs. The shrubs will have more of a medium impact. As the trees mature, they will cover the compound area.

Mr. Michael Bywaletz: How long is the entrance area before it doglegs into the site, approximately?

Mr. Eddie Moore: 300 feet, I'm not sure if we have it scaled out.

Mr. Adam Dagenhart: We have had other facilities that are similar and they have not done trees. Having trees would definitely make an impact on screening versus just having bushes.

Mr. Eddie Moore: (showing on screen) You can see the 0 to 100 and it's 200 scale.

Mr. Michael Bywaletz: It's about 2 football fields away from the roadway.

The Chair asked if there were any additional questions. There were none, so the Chair proceeded to ask the Board if anyone would like to make a motion.

Mr. Charles Paxton **MOTIONED, SECOND** by Ms. Holly Edwards to **APPROVE** the request for a Special Use Permit. The vote was unanimous to **APPROVE**.

VARN2026-00002- Variance request for relief from the active open space requirements of Chapter 15. Valley Development is the applicant, and Cedarvale Farm Homeowners is the owner. The address associated with the subject property is 11238 Serenity Farm Drive (PIN's: 5525-55-9176, 5525-66-9388 & 5525-73-1082).

The Chair asked the Board members if anyone had any conflicts of interest related to the case. Mr. Michael Bywaletz, Chair, disclosed that he needed to recuse himself from the case.

Mr. Brent Rockett **MOTIONED, SECOND** by Ms. Holly Edwards to **APPROVE** Mr. Michael Bywaletz's Request to Recuse himself from the from the case. The vote was unanimous to **APPROVE**.

Mr. Brent Rockett took over the duties of the Chair at this point in the meeting.

Mr. Brent Rockett, Chair, said, I wanted to make the applicant aware that they would need an 8-0 vote.

Mr. Douglas Hall, County Attorney, said, since that was a recusal, they would only need a 4/5 vote. They would need 7 of 8 votes.

Ms. Susie Morris, Planning & Development Director, said, the Applicants are okay with proceeding.

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

STAFF REPORT

The purpose of this request is to seek relief from the Active Open Common Open Space requirements. Three tot lots were approved on the Preliminary Plat in 2008. One tot lot has been installed in the section of Cedarvale Farm and on the south side of Morrison Road.

The developer and HOA wish to reconsider the development of the other two designated tot lots on the preliminary plat as play areas. The Applicant is requesting relief from the following sections of the Ordinance:

- Chapter 15, Subdivision Standards, Chapter 5, Section 2, Park Standards: Failure to complete recreational site improvements.
- Section 15-5.6 Park Standards for failure to complete required recreational improvements for designated recreation improvements when 50% of the lots have been completed.

The Applicant is proposing to install one tot lot (playground area) and a basketball/pickleball court near the existing pool and clubhouse area instead of developing the two smaller tot lots.

The subject properties consist of three different common open space tracts with the Cedarvale Farm subdivision and are approximately 59.254 acres in size. One is already developed with a pool, club house, and parking areas. The remaining tracts are, by nature, vacant and wooded. The wooded tracts are the two that were to be developed as the tot lots/play areas.

In general, the largest open space area where the two tot lots were to be located includes a perennial stream that crosses the parcel on its western side. There is a large wetland area located along the stream and both floodplain and floodway located on the northwest corner of the subject property. The stream and pond on the tract are both subject to buffering per Chapter 4, Waterbody Buffer Zone. The smaller, triangular shaped site located west of Sunset Ridge Court, remains wooded and has a 15-foot flagpole to access the site from the street.

The adjacent land uses are Residential and Vacant. Upon inspection of the site 2021, it was found that active open space requirements for the Cedarvale Farm Subdivision were not met. The requirements included two tot lots in Phase 2 that were not installed. A Notice of Violation letter was subsequently sent to the developer of record in February 2021 notifying them of the non-compliance related to the open space areas, along with several other items that needed to be addressed in the development. The open space non-compliance items included:

- Section 15-5.2 Park Standards & 2018 NC Building Code Chapter 11, 2009 ICC Code A117.1 for failure to complete recreational site improvements and failure to provide access to a recreational facility.
- Section 15-5.6 Park Standards, failure to complete required recreational improvements for designated recreational areas when 50% of the lots have been completed.

The subject properties combined are approximately 4.18 acres in size and were designated as open space for the development. To clarify, that is just the amenity areas. What was in the application was the entire parcel, that's why those numbers are different.

The active open space requirement for Cedarvale Farm when it was originally approved was to provide .0050 acres per person per unit. The original required amount was 4.61 acres. The original submittal provided 4.94 acres. The requested relief would reduce the amount of active open space to 3.11 and leave the original proposed tot lot areas as passive open space.

The following timeline shows the relative history of the development leading to the variance requests:

- Revised Preliminary Plat of the Cedarvale Farm Subdivision approved on June 3, 2008, dedicating total lots,
- Final plat of Phase 1 of the Cedarvale Farm Subdivision was recorded on May 16, 2008, showing 2.35-acre Future Development Area,
- Final plat of Phase 2, Map 4 of the Cedarvale Farm Subdivision was approved on November 29, 2016 dedicating 0.93 acres intended to be a future tot lot at the end of Iron Horse Lane,
- Final phase of Phase 2, Map 7 of the Cedarvale Farm Subdivision was recorded on July 9, 2018, dedicating 0.9 acres intended to be a future tot lot area at the end of Sunset Ridge Court, and
- Notice of Violation Letter was issued in February 2021

The Applicant is now requesting relief from the requirement to install the individual tot lots as originally proposed and is proposing to relocate the equipment from the two tot lots to the existing amenity center area and reclassify these areas to passive common open space.

As part of the application, the Applicant is proposing conditions of approval, in addition to the proposed conditions by Staff, for the Board of Adjustment to consider:

- The two original tot-lot areas as shown on the approved subdivision plat shall remain designated as passive open space only, with no playground equipment or future active development.
- All playground equipment originally intended for the two platted tot-lot areas shall be relocated to and consolidated within the approved amenity area adjacent to the community pool.
- The consolidated amenity area shall be owned and maintained by the Homeowners Association in accordance with its governing documents.
- Common open space acreage and calculations approved with the original subdivision shall remain unchanged.

Should the Board of Adjustment grant approval of the 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 for the subdivision.
- The Applicant shall submit a revised preliminary plat and revised final plats (Phase 1 Map 1, Phase 2 Map 4 and Phase 2 Map 7), showing revised open space areas with notes referencing this Variance Case information and Granting Order.
- The site plan submitted for commercial plan review and approval must be consistent with any terms of approval established by the Board as part of the variance request.
- The Applicant must submit for commercial site plan review and approval within 60 days of the recordation date of the Granting Order.

Applicant proposed Conditions of Approval:

- The two original tot-lot areas shown on the approved subdivision plat shall remain designated as passive open space only, with no playground equipment or future active development.
- All playground equipment originally intended for two platted tot-lot areas shall be relocated to and consolidated with the approved amenity area adjacent to the community pool.
- The consolidated amenity area shall be owned and maintained by the Homeowners Association in accordance with its governing documents.
- Common open space acreage and calculations approved with the original subdivisions shall remain unchanged.

Mr. Phil Collins asked the Board if there were any specific questions for him. There being none, Mr. Brent Rockett, Chair, called on the Applicant to make their presentation.

Mr. Tim Foley, Engineer for Applicant: W & A Engineering, 121 Gilead Road, Huntersville, NC 28078.

Mr. Tim Foley said, the original plat was done back in 2008; I have been involved with the design since its inception. Back then, the surveys were centerline surveys. We got the roads designed and we did not design lot grading for each individual lot as you see in today's design world. The roads were graded and lots were sold to builders. It was left to the builders to grade the lots how they saw fit to get the houses in.

Over the course of Phase 2 being built, I don't think the developer had those tot lots in mind. The grading for the houses created some situations for the one off of Sunset Ridge Court; it is so far uphill with large banks behind the houses. It's really tough to get up there to do anything. The developer had a meeting with the playground installer and the installer said they were having trouble figuring out how to install the playgrounds.

Concerning the lot off of Ironhorse Road, they had a history of beavers. We were contracted back then to trap some beavers, but they kept coming back from what I understand. The headwaters are constantly moving and the beavers have interacted in such a way that the access to the tot lot is not feasible to build on. We tried to figure out another area in the subdivision where it could be moved, but there were challenges. You've got the Duke Energy easement; we can't put equipment under there. Then there

were some other open spaces, with the large beaver wetland in the center. On the front corner, there is some open space, but it's over mine shafts.

Then we had the idea to go to where the existing pool is located. They have the pool and there is a lot of open space behind it. We discussed the option of moving the equipment there; it's a centralized area with parking. That was an idea, but we wanted to get the HOA involved. The developer and the HOA had several meetings and discussed what they needed to work out. They worked through the better part of last year trying to come to an agreement. The current plan we have is for playground equipment, pickleball court and a covered shelter. The HOA sent out a letter to the neighborhood and it was 93% in favor. We did this to move forward and get it done. I hope you will consider it and I'm available for any questions.

Mr. Brent Rockett said, it's your contention is that the development as it occurred is essentially what reduced the acreage to meet the original requirement?

Mr. Tim Foley said, it was probably not realizing in the beginning how bad the topography might be. As the development happened, it really evolved and became more obvious.

Mr. Charles Paxton said, are you saying at this point that the developer and HOA are in agreement that this plan suits both parties?

Mr. Tim Foley said, yes.

The Chair asked if there were any further questions. There were none and the Chair opened the public hearing calling on those generally speaking in favor of the request.

Mr. Peter Sabo: 474 Iron Horse Lane, Midland, NC 28104

Mr. Peter Sabo said, I am the immediate past president for the HOA. My term expired March 26th and I came off the Board at that time. Since I have been part of this for the past two years, I am speaking on behalf of the HOA. We have two Board members that are here as well (Jessica and Sharon). For the past year, we have been trying to work with the developer and engineer to come up with what is best. We agree that the two locations are not viable anymore. We currently have a beaver in the pond that the Board has been trying to deal with the last couple months. The area on top of Sunset Ridge Court is a steep area and you're not going to want kids around there.

We decided that if we were going to bring something to the pool area, we didn't just want a double-sized tot lot. We said let's create something for the entire community. We asked the developer to put in the tot lot, pickleball/basketball area, and the pavilion. There's an area for the kids, the basketball/pickleball court for teenagers and the pavilion for the families. It's right by the pool and we have parking available. Last year I was approached by the Fire Marshal's Office regarding putting out notice for people parking in the cul-de-sacs. That was something that was fresh in our minds when we started working with the developer. In the other two areas, it would have caused people to park in the cul-de-sac and it would prevent fire trucks from turning around. In January, we put a poll out to the community and had 109 responses. 102 were positive and 7 were either "no" or non-responsive. Those 7 people did not come to our March 26th annual meeting. They did not give us any feedback. We looked at this and tried to do what was best for the community. I think the developer is spending more money than just the two original tot lots. At the end of the day, the community is going to get what is best for them.

Throughout the entire history of the development, we've had 37 people install playgrounds in their backyard; that's 10 percent of our community. That's more than actually show up at our annual meeting. We've found that for the younger kids, parents prefer to keep them in their yard. As they get older, they come to the playgrounds with picnic tables so the parents can sit and watch. For the last year, we have thought this is what is best for the community. We ask that you support and approve this measure. Are there any questions for me?

There were no questions and the Chair called on others speaking generally in favor of the request.

Mr. Mack McMillan: 10961 Sparkle Creek Drive, Midland, NC 28107

Thank you for hearing us out and I'd like to thank the HOA and the developer for coming together with this plan that I am in favor of. I am one of the residents residing at the bottom of the cliff where they wanted to put a playground. It is not safe; there's a 90-degree berm that leads up to that space. When we bought our home, the developer had to put out rocks to stop the erosion. There's also the issue of the point in the turn that you can't see around. If someone is coming around a car that is parked; they're not going to be able to see it. That would be an issue if they put this playground where they originally wanted. The community as a whole would benefit from this project if it's allowed to go through.

The Chair asked if there were any questions. There were none and the Chair called on those speaking generally in favor of the request.

Steve Chatt: 10010 Sunset Ridge Court, Midland, NC 28107

I live on the hill that everyone talks about. The sidewalk to go back to what was going to be the tot lot goes between my house and the neighbor on the right. Back in 2020, I had several conversations with Brett Hicks and also Lindy Stevens, the developer. As he just stated, my backyard goes out and drops down. They put in stone between our houses to keep it from eroding. If you look at the plat, Lindy Stevens thought that was flat; she didn't know it was a hill. All they were looking at was a flat piece of paper. I had the landscaper out and he told her it was not flat, but she still said it was flat. We've had these conversations for a long time and the fact that they are now willing to make some changes is fantastic. There is no room for parking in our cul-de-sac. Having this in an area where there's parking would be a great addition to the subdivision. Any questions?

There were no questions so the Chair called on others speaking generally in favor of the request.

Mr. Michael Bywaletz: 11045 Double Knot Court, Midland, NC 28107

I got pulled into this because the developer was working with Kuester, our management company, and getting nowhere. I coordinated with Susie Morris and brought myself in to get this going.

One lot is on top of a hill and the other lot is a wetland. The pictures in your packet show the path it goes by. The neighbor had to buffer their driveway so that it wouldn't wash away. Understanding the parking constraints we've had, getting this down to one lot is probably for the best. I enjoyed working with Lindy; she has been very cooperative in getting the equipment the HOA wanted out there. It wasn't to build a double-sized tot lot. They wanted something for everybody. We did a lot of leg work for her; we found someone to build the tot lot, pickleball court and also the pavilion. The company that did the grading for our subdivision is going to do the grading for the pickleball/basketball court. I appreciate the Board's time to look at the variance and hopefully, approve the variance for the needs of the community.

The Chair asked if there were any questions.

Ms. Holly Edwards said, kudos to everyone that came together for this. I do this for a living so I see a lot of the challenges. For everyone to come together; that is a model project.

Mr. Michael Bywaletz said, thank you.

The Chair asked if there were any speaking in opposition of the request. There were none and the Chair closed the public hearing and asked if there were any additional questions.

Mr. Adam Dagenhart said, I have questions for Staff. I assume they will have to do a site plan?

Mr. Phil Collins, Planning Supervisor, said, yes, they will have to come back with a preliminary plat.

Mr. Adam Dagenhart said, if we approve this, will it require additional parking?

Ms. Susie Morris, Planning & Development Director, said, with the amenities area, it's up to them how many spaces they want to provide. They would have to meet the accessible space requirement, whatever that number ends up being. We don't have anything specific for an amenity center.

Mr. Brent Rockett said, they just have to meet the percentage for ADA if they don't already.

Ms. Susie Morris said, that's correct.

Mr. Michael Bywaletz said, they are not expanding the parking lot but they are going to be re-striping the parking lot once this is done to get the designated spaces. That will help with the parking conditions and designate the ADA spaces. There are ramps already in place and there will be an ADA sidewalk that leads over to the amenity area. I think there is a site plan picture of the proposed site.

Ms. Susie Morris said, they have to go through site plan review and they have to have that third-party inspection for the play equipment because we currently don't have anyone on staff that does that.

Mr. Phil Collins said, they will have two final plats they'll have to come back with.

Mr. Adam Dagenhart said, how are the handicapped spaces calculated?

Ms. Susie Morris said, typically, it ends up being a percentage of how many spaces are provided. If they only do one, it would have to be van accessible.

Mr. Stephen Wise said, those two lots will just be unusable and will never be for sale?

Ms. Susie Morris said, yes, because they were intended to be tot lots and active space. Once you get through the requests, you will see one is about the Park Standard and one is to change from Active to Passive Open Space. Once they do this, they will be short on what the Active Open Space was supposed to be.

The Chair asked if there were any further questions. There being none, the Chair 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 of 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 created 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 public health, safety and general welfare shall be protected and substantial justice done. Violation of such conditions shall be a violation of this Ordinance.

Mr. Brent Rockett, Chair, summarized the requests:

1. The applicant and HOA are proposing to relocate the equipment from the two tot lots to the existing amenity center area.
2. Request to reclassify the two existing tot lot parcels to passive common space.
3. If this is allowed, the active open space areas will end up being less than what was originally proposed and required by the Ordinance.

Mr. Brent Rockett, Chair, said, let's discuss Item #1: Request for Relief from Section 15-5.2 Park Standards, request to relocate the equipment for the two tot lots to the existing amenity area.

Mr. Charles Paxton said, I think the question is, does it better promote public safety? My answer is yes. By moving these, I think public safety is enhanced.

Mr. Adam Dagenhart said, these open areas have already been transferred over to the HOA. They are not the ones that graded the lots, so they're not the ones that created the hardship.

Mr. Brent Rockett said, that could be applied to each of these as we move through.

Mr. Adam Dagenhart said, they worked with the developer and came up with what the developer was willing to do as well as what they were willing to accept. As Holly mentioned, they expanded the proposed uses instead of mirroring what was already there. That is consistent with the intent of the Ordinance.

Mr. Brent Rockett said, I believe they've done a good job indicating the hardship they would have to undergo to place useless tot lots on the designated areas. I believe that is enough to build the record. Is there a motion to approve or deny the request to relocate the equipment?

Vote #1

Ms. Holly Edwards **MOTIONED, SECOND** by Ms. Ingrid Nurse to **APPROVE** Request for Relief from Section 15-5.2 Park Standards. The vote was unanimous to **APPROVE**.

Mr. Brent Rockett said, Item #2 is the request to reclassify the two existing tot lot parcels to passive common open space.

Mr. Adam Dagenhart said, as Susie stated, if we approve this, it will become passive open space. It can never be sold and will stay within the HOA, so it will still be open space; it just won't be active open space.

Mr. Brent Rockett, said, it seems to be consistent with the surrounding properties and does not change the character of the neighborhood. Also, this did not occur due to the actions of the current owner of the property; the HOA has taken over ownership. Do we have a motion to approve or deny the request to reclassify the two lots to passive open space?

Vote #2

Ms. Holly Edwards **MOTIONED, SECOND** by Ms. Ingrid Nurse to **APPROVE** the Request to Reclassify the Two Existing Tot Lot Parcels to Passive Common Open Space. The vote was unanimous to **APPROVE**.

Mr. Brent Rockett said, Item #3 is the request to allow less dedicated active open space than what was originally proposed for the development and required by the Ordinance at that time. The original required amount was 4.61 acres; the original submittal indicated 4.94 acres. With the changes made to this proposal, it would bring the total acreage to 3.11 acres, along with the passive open spaces that were just approved. Do I have any comments or discussion to build the record?

Mr. Adam Dagenhart said, there's no way to create additional open space whether it's active or passive. We can't require them to buy property. As Mr. Foley stated, the survey that was done at the time wasn't exactly accurate, so the acreage could be off. That probably attributes to some of those discrepancies. I don't see an issue with the reduction based on what they've agreed upon.

Ms. Holly Edwards said, I would add that all of that is correct and this is just fundamentally, a better use of the property. To me, they are trading for a better situation.

Mr. Brent Rockett said, is there any additional discussion? Is there a motion to approve or deny?

Vote #3

Mr. Ingrid Nurse **MOTIONED, SECOND** by Ms. Holly Edwards to **APPROVE** Request to Allow Less Active Open Space than Originally Required by the Ordinance. The vote was unanimous to **APPROVE**.

Mr. Brent Rockett said, let's move on to vote # 4, which are conditions of approval. There were conditions proposed by the HOA and developer, as well as Staff. Are there any additional conditions that the Board would like to suggest?

Vote #4

Ms. Holly Edwards **MOTIONED, SECOND** by Mr. Stephen Wise to **APPROVE** the Conditions of Approval. The vote was unanimous to **APPROVE**.

Legal Update

Mr. Douglas Hall, County Attorney, did not have any specific updates at this time.

Director's Report

Ms. Susie Morris, Planning & Development Director, did not have any specific updates at this time.

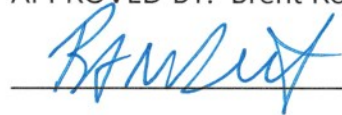
Adjourn

Mr. Brent Rockett **MOTIONED, SECOND** by Ms. Holly Edwards to **ADJOURN** the meeting to 8:14 pm. The vote was unanimous to **ADJOURN**.

APPROVED BY: Michael Bywaletz, Chair



APPROVED BY: Brent Rockett, Chair



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



ATTEST BY: Susie Morris, Planning & Development Director

