



Cabarrus County Government

Cabarrus County Planning and Zoning Commission Meeting

August 8, 2017 @ 7:00 P.M.

**Board of Commissioners Meeting Room
Cabarrus County Governmental Center**

Agenda

- 1. Roll Call**
- 2. Oath of Office to Newly Appointed Member**
- 3. Approval of July 11, 2017, Planning and Zoning Commission Meeting Minutes**
- 4. New Business – Planning Board Function:**

Petition RZON2017-00001 – Request to rezone property from Office/Institutional (OI) to Limited Industrial (LI). Mulberry Industrial Park, LLC is the applicant and property owner. The subject property is located at 2173 Mulberry Rd (PIN: 5517-98-5443).

- 5. New Business – Board of Adjustment:**

Petition VARN2017-00001 – Request for variance from the requirements of landscape buffers. WSACC is the applicant and Cabarrus County is property owner. The subject property is located at 14655 Hopewell Church Rd (PIN: 5553-44-0212).

- 6. Directors Report and Recognition of outgoing Board Members**
- 7. Legal Update**



Cabarrus County Government - Planning and Development

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Arlena Robert, Clerk to the Board, administered the Oath of Office to newly appointed member Mr. Charles Paxton.

Ms. Shannon Frye, Chair, called the meeting to order at 7:04 p.m. Members present in addition to the Chair, were Ms. Mary Blakeney, Mr. Jeffrey Corley, Mr. Adam Dagenhart, Mr. Andrew Graham, Mr. James Litaker, Mr. Chris Pinto, Mr. Richard Price, Mr. Aaron Ritchie and Mr. Brent Rockett. Attending from the Planning and Zoning Division were, Ms. Susie Morris, Planning and Zoning, Manager, Mr. Jason Earliwine, Sr. Planner, Ms. Arlena Roberts, Clerk to the Board and Mr. Richard Koch, County Attorney.

Roll Call

Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Ms. Mary Blakeney to **APPROVE** the July 11, 2017, meeting minutes. The Vote was unanimous.

The Ms. Shannon Frye, Chair, asked all persons speaking for any of the Board of Adjustment cases or who plan to testify during the public hearings, to stand to be sworn in and to complete a blue card. The Chair administered the oath.

The Chair read the following suggested rules of procedures for this meeting:

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. After staff presents, the applicant will have the opportunity to make a presentation and answer questions from the Commission. There will be a 20 minute time limit on this presentation.
3. After the presentations and questions, the proponents (those speaking generally in favor of the case) will have a total of 20 minutes to speak and/or present documents in support of their position. At the conclusion of the presentation, the Commission has the option to ask questions of the proponents.
4. After the proponents finish, the opponents (those speaking generally against the case) will have a total of 20 minutes to speak and/or present documents in support of their position. At the conclusion of the presentation, the Commission has the option to ask questions of the opponents.

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5. Each side will then have 5 minutes for rebuttal, with the proponents going first. Again the Commission may direct questions to the speaker. 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. Aaron Ritchie **MOTIONED, SECONDED** by Mr. James Litaker to **APPROVE** the Rules of Procedures. The vote was unanimous.

New Business – Planning Board Function:

The Chair introduced Petition RZON2017-00001 - Request to rezone property from Office Institutional (OI) to Limited Industrial (LI). Mulberry Industrial Park, LLC.

Mr. Jason Earliwine, Sr. Planner, addressed the Board presenting Petition RZON2017-00001, The applicant and owner is Mulberry Industrial Park, LLC.

The existing zoning is Office Institutional (OI) and the applicant would like to propose rezoning to Limited Industrial (LI). All uses permitted in the Limited Industrial (LI) zoning district would be permitted on the subject property. This site is currently used as single family residential, for agriculture/farming and is in the forestry program. The property is approximately 132.79 acres. The site includes several acres of floodplain to the south and west.

The site is mostly vacant, wooded, single family residential to the east. Vacant, wooded and agricultural to the south. On the north and west side there are industrial uses. On the west there are also some single family residential and wooded property.

The application states that the subject property will be served by well and septic. If development of the property requires utilities, the utility provider for the subject property is the Town of Harrisburg.

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Comments from the Town of Harrisburg:

The applicant has attempted to annex into [the] town [of Harrisburg] twice, once to operate a granite quarry, and a second time to open an industrial park with associated “removal of materials”. Both of these requests were turned down by the Town Council. Josh Watkins, Town of Harrisburg Planning Director

The Cabarrus County Development Ordinance district description and rationale states that Limited Industrial districts are typically located in areas of the county with infrastructure available, including higher volume roadways, water and sewer. It also states that Limited Industrial districts may border the higher density residential districts only when an effective buffer exists. For example, a natural structural feature such as a sharp break in topography, strips of vegetation or traffic arteries.

- The application states that the subject property will be served by well and septic. As Mr. Earliwine stated earlier it would have to come from Harrisburg and they would have to approve that.
- The areas to the east and southwest are predominantly lower-density residential areas.

The proposed rezoning to the Limited Industrial zoning district is consistent with the intent of the Harrisburg Area Land Use Plan as the subject property is designated Light Industrial. The light industrial land use classification allows predominantly light industrial, office, and multi-tenant flex space. The Limited Industrial zoning district permits both large and small scale industrial and office development. The Harrisburg Land Use Plan states, however, that light industrial areas should be:

- Located in areas where infrastructure can support it (more intense than other land use categories).
- Typically, four-lane highways and wide collectors designed for truck traffic are primarily forms of access, supplemented by railroad service, and curb and gutter which is more widely used.

The Chair said the last statement you made with respect to infrastructure, Mulberry Road is existing two lane?

Mr. Earliwine said that is correct.

The Chair said the most adjacent or closest thoroughfare?

Mr. Earliwine said Pharr Mill Road, but it is also a two lane road. He read the NCDOT comments.

The developer will be responsible for coring Mulberry and Pharr Mill Roads to determine the course of strengthening that will be required to preserve the integrity of the roadways due to the impacts of the proposed development. Leah Wagner, NCDOT District Engineer

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He said NCDOT recognizes that there will be structural repairs that will have to take place to support any type of industrial use.

Mr. Charles Paxton said this well and septic tank, the Town of Harrisburg obviously is not going to provide either the well or the septic; correct?

Mr. Earliwine said correct.

Mr. Paxton said now his question is, if he builds these buildings, which he assumes he is going to build building.

Mr. Earliwine said yes.

Mr. Paxton said they are going to be serviced by a well, they are going to need a certain amount of fire suppressing material in them. Is this well going to be sufficient in the event of any catastrophic event? Will there be a problem with them having enough water?

Mr. Earliwine said the Fire Marshal would make that determination; whether or not it needs to be sprinkled. Typically industrial uses do need water instead of well water. The Cabarrus County Ordinance, does require that if you are going to build an industrial use, that water and sewer are provided.

He said there is a conflict of interest as far as well and septic, which is what the applicant is proposing. To our knowledge, Harrisburg is denying annexation, which typically, means that they are not going to provide utilities. So, there could potentially be a conflict of interest as far as well and septic verses water and sewer.

Mr. Paxton said due to the proximity of the Rocky River there, in the event there was some situation going on, what about the sediment going into the Rocky River?

Mr. Earliwine said honestly, he cannot answer that question. That is a question we would have to present to the Department of Environmental Quality.

Ms. Morris said it is obviously a large site, if they disturb more than one acre, they would be required to have a Soil and Erosion Control Permit from the State, which would be in place during construction but not after the construction.

She said with the fire suppression, there are some options. They could require a separate tower to get the pressure that they need. Typically, they are looking for a looped system which requires you to have utilities and not be on well and septic. It would depend on the classification of the use that went into the building.

Mr. Paxton said has the applicant stated that he intends to develop all 132 acres or what part of the 132 acres is he going to develop?

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Ms. Morris said the applicant is asking for a straight rezoning. We only have as much information as was in the application. The applicant will make a presentation and you are more than welcome to ask those questions of the applicant.

Mr. Earliwine put up the aerial map. He said there is an amount of floodplain on the property that would have to be addressed. Industrial uses will not be allowed in the floodplain.

He said going along with Mr. Paxton's question about runoff, DEQ would get involved and they would be able to determine whether or not there would be any runoff from development there and if it would affect the Rocky River. The floodplain kind of shows how far on to the property the affected area could be.

The Chair said where Mr. Earliwine just pointed out those single family lots where the flood plain is adjacent.

Mr. Earliwine said across the Rocky River near Pharr Mill Road?

The Chair said yes. If that is west and if she goes east, over to Homestead, those are single-family lots?

Mr. Earliwine said correct. He showed the zoning map. He said all of the green properties are Agriculture Open (AO) and are in the County. The Pharr Mill side would be the Town of Harrisburg and to the west it is zoned Low Density Residential (LDR).

The Chair said the lots on Pharr Mill are low density residential?

Mr. Earliwine said yes and it is zoned AO to the east.

The Chair said when we have reference to the limited industrial per the Development Ordinance, may border high density residential districts only when the effective buffer exists. In this situation we do not have high density residential districts adjoining either side of the proposed boundary which is subject to this rezoning.

She said independent from that, back to the aerial, where we would or would not have buffer, she sees again the floodplain where that provides that protection, but along those lots, without knowing the areas to be developed, is there a width of buffer that is required on this site that would give any of those lots protection?

Mr. Earliwine said there is not a specific width listed in the Ordinance. He thinks that would be up to the interpretation of the Board. But, as listed here, it would need to be a significant division. Typically, in planning we do not like to see residential zoning abutting industrial zoning. There has to be some sort of transition.

He said the applicant can probably verify this, but he thinks there is about a 60 foot wide strip of land that they subdivided out sometime ago.

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The Chair said is that what we can see; the narrow strip that looks like a spite strip of property that wraps around it?

Mr. Earliwine said yes, exactly. That is the only buffer that is existing and it is a separate parcel.

The Chair said when we look at this zoning map, and the hatched areas, the portion being rezoned; what is the balance of that purple area?

Mr. Earliwine said it would remain Office Institutional (OI).

Mr. Jeff Corley said if they determine later on, whatever use they decide on in that new zoning, that they do need water and sewer, they would have to repeat Harrisburg for annexation again is that correct?

Mr. Earliwine said that is correct. He said very rarely does a city provide utilities without them annexing the property in. Harrisburg has turned them down twice now.

There being no questions from the Board for staff the chair asked the applicant to come forward.

Mr. Jerry Meade, Mulberry Industrial Park, LLC, 1415 S. Church Street, Charlotte NC, addressed the Board. He said this is challenged property, considering there is residential surrounding a couple of areas and the industrial district has been brought in over time. We initially started planning this property by donating some buffer areas. It originally started as a 200 acre tract. we separated out 70 acres to separate from any impacts, future development, cut out the floodplain; this map can be a little bit deceiving; the distance on it. You have 700 feet, you have areas in the floodplain that is 1000 feet across. This property does not touch any residential property. Our intention is to develop some property in compliance of any rules and not cause any nonconformities.

He said it is connected to a good infrastructure. You have Highway 49 to the west and a new bridge that is constructed there that really opens up this area for traffic where you could support jobs and you could have industrial activity. We are not really looking for any heavy use; we are looking for very light use, low density. That is why they are proposing well and septic.

We do have fire protection. He said the map does not really show the pond there. We have a pond that contains 250,000 gallons of water plus, which would meet the requirements for fire protection. We would put a hydrant there. We have plenty of water there for the development and as the development progresses, we would submit plans and the plans would show the need for water, the need for sewer and the grading. The protection of the sediment runoff, we would obviously have to get erosion control plans.

It is not that we would come in and just do anything that is not unpermitted; everything would be obviously permitted. We would provide natural berms and buffers. The regulations does not require that.

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We are asking for a straight rezoning and there is a lot of different uses you could put in this area. It could be just a grain location, there is a list of different businesses that is permitted for light industrial. The reason is because they are not really that much of an environmental impact, if any.

We have also taken this property a step further. We went to negotiations with adjoining property owners and we also evaluated it for residential. We thought well, we get a good turnout a good crowd, people live here and they like being in an area that they have lived all their lives. He agrees and thinks that is a great thing. We have no intentions of trying to impact the comfort of living.

So, we entered into an agreement with a developer in Winston-Salem to come in and look at a residential development. We cannot really find an interested party because of the entrance road along Mulberry Road. It is an industrial district and it has been labeled industrial district for years. He said to attract new residential development in this area, we do not find it to be feasible.

We even went a step further and contacted an adjoining owner who we would access the property from Phar Mill Road, which is more of an entrance that you would want into a residential development where it is a direct connection to other residential properties. We talked to that property owner several times and they are not interested.

As a matter of fact, their property is up for sale and listed as light industrial or limited industrial. His opinion is why, would he down grade the property to residential when it is already in the long term plan as being limited industrial.

We have actually looked at the opportunity of doing residential here. We would offer to put a collector road through the property, tie into the back side of the property or the east side of the property, but we are yet to find any economics or any people that believe they could sell houses in there.

We are seeking out the best and the least impact that this property could produce verses just sitting here doing nothing. If it sits and stays the same zoning, it will be very detrimental and a loss to this property owner; being himself and some other group of people.

He said basically, the property is currently zoned office institutional. He is not sure if you could put a banquet hall there or a school. If the school system is interested in needing another location we will be glad to sell it to the school system.

He said it has been on the market for ten years and there has been no success. This property is a victim of planning that has come along over time just like everybody else. You have to call it one thing or call it another. It was called office institutional probably as a transitional zone if you want to hold some area between the heavy industrial to the residential areas. But there has just not been any market. There is no office opportunities there, no hospital opportunities, and no group care facilities there. He said as a matter of fact, the property to the north often produces

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and industrial odor you might say. He is not sure how you can get someone in there under office institutional.

This property is in dire need for correction on zoning. He knows the Board corrected the zoning to the east of the property and rezoned it to agricultural farming and residential to be suited for all the residents in that area so they could expand and get building permits. He thinks that was a good idea in hindsight. He thinks it was really beneficial.

He said as a matter of fact, it was not his understanding that you could not get residential building permit and now he thinks their property has been corrected. The group of property to the Homestead Road they liked the property not to be office institutional either. It was just a bad call, or is a piece of a puzzle that has landed in the middle of a triangle that you have to figure out how to push something one way or push something the other way.

We can offer buffers, we have cut out 70 acres, and we can add berms. As a matter of fact we offer a 100 foot non-buildable berm around the property and with the current rezoning we are asking for, we are not even asking for utilities, so you cannot have high density development; that would be impossible. We are going to do something very low density and it would just meet some of the conditions or it would be what is permitted in the limited industrial areas.

He has the list of items that are allowed in limited industrial. He said permitted uses is basically anything simple as a bulk grain storage area or just a simple manufacturing building that is contained inside where you do not really have outside storage. You can have a concrete production distribution storage facility and they are glad to put that out front if that happens to be the case.

What we are asking for is a straight rezoning verse any kind of conditions, but we are looking to do something to this property for jobs, for manufacturing and we can offer up what the Board would like for buffers with the regulations and go a step further if they we need to.

Mr. Charles Paxton said you are saying of all of these permitted uses you have not identified one specific use that you would like to proceed with?

Mr. Meade say no, we are basically looking for rezoning so we can identify it. Until we get on the market, until we get the rezoning to get a specific business in there they do not even look; they just go on down the road and look.

Mr. Paxton asked if it were Mr. Meade's intention when you develop this property to start at the front, the back or the rear. Where on the property are you going to start?

Mr. Meade said we will definitely start at the front. We are looking and our mind is open, we would sell the entire property to one industrial user; Amazon or whoever. We would subdivide it into maybe up to four lots, is what they are thinking, but they do not really want to go to do anything smaller than 20 or 30 acre lots.

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Mr. Paxton asked what is going to become of this excavated material that previously you were going to mine. What is going to happen that?

Mr. Meade said they are not going to do anything with it.

Mr. Paxton said you are just going to leave it sitting there?

Mr. Meade said we are just going to grade it. It is dirt, we are going to grade the site. We are not doing anything with it.

Mr. Paxton said previously it was valuable, but now it is not valuable?

Mr. Meade said it is always valuable but we obviously did not get the approvals of it so, we go to another plan.

The Chair said to recap Mr. Meade's last statement that you could possibly have up to four lots assigned roughly 20 to 30 acres per lot with any of the permitted uses of this district.

Mr. Meade said that is correct.

The Chair asked Mr. Meade if he wanted to try to address what we previously asked of staff as it relates to the infrastructure to serve those uses. Whether that be the existing road improvements to that or the capacity for a private system to serve those uses.

Mr. Meade said basically we would have to get a permit from NCDOT for a driveway entrance and they would control that. They have already stated they wanted the road to be reviewed and evaluated and if necessary, improved. We would absolutely have to follow the NCDOT guidelines in order to get a driveway permit.

He said if we had a potential user that wanted utilities then we would talk with Harrisburg. We would design private onsite utilities or we could have an option again, if the new user wanted to be annexed into Harrisburg, then they would go into Harrisburg and get the other utilities.

The Chair asked Mr. Meade to explain what the basis for the denial of the annexations was.

Mr. Meade said it was related to the mining; related to removing the dirt and hauling it off. We thought it was a good idea economically, as a Plan B, obviously. We were looking initially as a rock quarry and that is not the right location. Then we were looking at having the dirt available for sale, as we grade the site to develop the buildings on, to pay for the grading and make an economical development out of it. He said that was turned down and we have axed that also. We are not interested in selling any of the dirt.

Mr. Aaron Ritchie said you are not interested in selling the dirt?

Mr. Meade said no sir.

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Mr. Chris Pinto asked if they had identified any of the sites for the septic.

Mr. Meade said yes, we have done quite a bit of geotechnical work on it. On a map he could show the areas for the septic. He said pretty much the site has good soils, perc-able soils, except to the very low corner where there is some red clay, but, we have some stuff in the lower end in the southern part of the property that has good soils.

Mr. Pinto said what is the yellow line again?

Mr. Meade said it is the property line.

Mr. Pinto said the 60 foot wide?

Mr. Meade said no, that is an easement that is sort of to the right of it; you cannot really see it very well.

Mr. Pinto is curious why it is not just a straight up property line drawing like the other ones there.

Mr. Meade said that is an easement back into the other 70 acres. He shows on the map where it comes in and accesses the property for future development; as office institutional. We will keep it as it is with no intention of selling it right now.

Mr. Pinto asked Mr. Meade what adjoining property owners did he spoke to that were surrounded by that.

Mr. Meade said Mr. Gordy Titcomb. (He showed the adjoining property owner on the map).

Mr. Pinto asked if that was the only one he talked with.

Mr. Meade said that is the only access you can have and avoid Mulberry Road. The rest of it, you have the Rocky River, which you cannot cross economically. We do not think it is feasible to try to do a residential development driving down Mulberry Road.

Mr. Paxton asked if Mr. Meade had a neighborhood meeting on this request.

Mr. Meade said no. He was not aware that they were required to have one.

Mr. Paxton said in Harrisburg you did have one?

Mr. Meade said yes because that was a conditional use.

The Chair said the Harrisburg petition was a conditional use for the quarry and what you were referring to previously?

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Mr. Meade said exactly, as a conditional use. We were looking for I-2, which is heavy industrial and that would include the conditional use of hauling off dirt. He said this is totally different, this is a straight rezoning.

The Chair said you are going straight up for all the allowed uses that are in the district.

Mr. Meade said exactly. He said as far as the buffer requirements go, he is sure that during the reviewing process, the County could ask for a buffer. He has not really looked at the regulations to see what the buffering requirements are but we are glad to give a buffer.

There being no further questions the Chair opened the Public Hearing.

The Chair said this is the portion of the meeting where we went over the rules. To recap, we gave each side twenty minutes to do their presentation. We have several folks signed up to speak against the rezoning.

The Chair asked those persons who completed a card to state their name when they come forward. This is the part where you organize yourself so that you do not run out of time.

Mr. Richard Koch, County Attorney, asked the Chair to ask if there were any proponents for the case.

The Chair asked if there was any one present who wanted to speak in favor of the petition.

There being no one speaking in favor of the rezoning, the Chair asked who would like to speak first in opposition to the petition to come forward.

Mr. Bobby Measmer, Jr, 6251 Homestead Drive, Concord NC addressed the Board. He said Jerry Meade, Meade Gunnell, Hard Rock Aggregates, Red River Group and now Mulberry Road Industrial.

He lives off of Homestead Drive which is near and dear to his heart. He said let's get real, Mr. Meade is a miner. He has found some candy, he has found what he wants. He is not a land developer, he is not a real estate agent; he is a miner.

This guy started out on the wrong foot, there is that perimeter he keeps calling a buffer. He cut that buffer out for a reason. You brought up a neighborhood meeting. There is supposed to be letters that go out to adjacent property owners.

Well, when he had his "neighborhood" meeting, the original neighborhood meeting in the Town of Harrisburg, that buffer was put there for a reason; to cut us all out. None of us received letters. We just got lucky and caught wind of it, we forgot about a lot down in there but Mr. Meade has found out that we are pretty strong.

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Mr. Meade says that the ground that is underneath is not worth anything to him anymore. Guess what? If you go to Hard Rocks webpage the property is still listed requesting investors with what has been found there, how much can be produced, you name it.

He said RedRiverGoup.com is where you can get to Hard Rocks Aggregates. It is kind of a puzzle you have to put together; it is hard to keep up with them.

Our fear is if he ends up with this rezoning, it is just one more step that he has his foot in the door to get what he ultimately wants to get and that is what is under that ground. He has been turned down by Harrisburg and our fear is that he is going to go one step further if he gets approved by the County.

Ms. Jennifer Hill, 6340 Homestead Drive, Concord, NC, addressed the Board. She had the pleasure of speaking to a couple of the Board members back in the fall when she petitioned to have their zoning changed to Agriculture Open Space.

This evening she wants to speak for all the residents in the Mulberry, Homestead and Phar Mill area. We are passionate about our lifestyles, our investments, our heritage and our homes. She showed the Mulberry Homestead Community on the map and stated that it was established in the 1940's when her grandfather Doolan purchased the homestead with money that he had saved from working at Roberta Mill.

At that time he moved his family, which was her mother and she was one of nine siblings. They all lived and worked the farm. When each of the nine children were married, they were each given two acres to build their homes for their families and so that is how all of the lots are subdivided out.

When her grandparents passed away, the remaining land was purchased by three of the siblings, one of them being her mother. Thankfully so, because that land has now become her home and her siblings' home. We have continued the farming traditions and hope to continue to pass these down to the younger generations. We currently have four generations living on the land and ten of us have never lived anywhere else. You can sort of see why we are so passionate about what is going to go in our backyards.

We know that there have been changes in our community. Obviously, all the industrial stuff was not there when we were originally there. She can remember driving past the cow pastures at the end of the road and now it is industrial, it is there and we are aware of that. We cannot always control what changes and what goes on. But just so you know, we are there to stay. The last home purchase was made in 2002; no one else has moved in or moved out. We love our community, we love that we can garden, we have honey bees, we do livestock and we hunt.

We want to plea with the Board to hear why we are opposed to Mr. Meade and his new petition. When he first started this process, the choices he made did make us question his true intentions and we continue to question his true intentions.

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Mr. Measmer brought up the buffer and that was the first thing that threw us off. Tonight, one of his statements was that he really does not have a plan for what he is definitely going to do. He wants the zoning but he is not bringing a plan to us.

When Mr. Meade presented to Harrisburg, the last presentation he did there was for an industrial park. He had a plan at that point, so she is not sure why that has gone away. Someone very wise told her that if you failed to plan, then you plan to fail. And so that is very scary to her.

She said Mr. Meade was told no by Harrisburg. The Board is aware that the Harrisburg Land Use Plan was adopted by Harrisburg from Cabarrus County and it was last revised in 2010. We would like to see that that is revised because we are in their plan even though we are not in Harrisburg. But our new AO zoning has not been adopted into that yet. We would like for that to be reviewed as well.

We are currently adjacent to the OI and there is LI at the end of the road. Mulberry is not a lined road. It is a two lane road, but it is barely a two lane road.

She said the businesses that are at the end of the road are great to work with them as a community. Mr. Meade has shown that he is not willing to work with them. He excluded them from the first neighborhood meeting. He held a neighborhood meeting, it was his investors and Mr. Titcomb, the other landowner that he has mentioned. At that meeting, Mr. Titcomb asked Mr. Meade where the other property owners were; we were excluded from that.

She said Mr. Meade was denied multiple times by Harrisburg in regards to his mining and his annexation.

We would wonder why he would want to open an industrial park with no water and sewer. Her fear and our community's fear is that Mr. Meade has petitioned this zoning to change only to get one step closer to his ultimate goal; a mine. We all know that he is a miner and as residents, we are requesting that the Board honor the "no's" that the Harrisburg Planning and Zoning Board and Harrisburg Town Council gave him.

She said please say no this evening to let us keep Mr. Meade and his mining and sketchy business practices out of Cabarrus County. Harrisburg has no annexation for him, they said no to his mining and they said no to his industrial park. She said now is the Board's turn to say no to him as well. We are okay with the office institutional, he stated that we are not.

We think that if it is going to be industrial that is the perfect transition, because it is going from the LI to OI to the residential. We just request that you say no to the LI. We just think that the transition is not well with the residential use that we have.

Mr. Rex Measmer, 6300 Homestead Drive, Concord, NC, addressed the Board. He is a Cabarrus County resident and has owned this property since 1959. He thanked the Board for letting him speak on behalf of their neighborhood and his honeybees.

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He said the life of a honeybee has been at risk for some time now. In the neighborhood, there are three beekeepers and we have about 350,000 honeybees. That sounds impressive, but that is really just peanuts. In fact, out of a 195,000 Cabarrus County residents, there are only 130 beekeepers. He belongs to the Cabarrus County Beekeeper Association. That is less than one percent of the population in Cabarrus County.

Without honeybees, we would not have local farmers markets. The honeybee plays an important role in our pollination of flowers, the garden and in a part of our community. Please consider our health in your decision of rezoning this property on Mulberry Road. He said planning an invasive operation on this property would have a harmful effect on our honeybees and our community.

He has a well, as do all of us in the neighborhood. If he starts digging a big commercial well, what is that going to do to our well? Hits a rock table, we are all out of luck; we will not have water.

Ms. Shelly Collins, 6270 Homestead Drive, Concord, NC, addressed the Board. She also had the opportunity to speak to the Board when they were rezoned AO.

She said it is very hard not to get personal. She married into the family that has been on this property for over 40 years now. She came from the big city and married the country boy. To be honest, she loves it.

Like Jennifer said, we already have the industrial that has crept in, but has worked with us so well. Yes, we have to go down that road every day and we have made it work. But it is not what she knows is in this man's plan. He is a miner by trade and she thinks if he gets this then he will move just one step further; he is just one step closer.

She read his site and it says that they take great pride in their quality of their work. Her concern as a nurse is quality of life that is going to happen there.

Again, you try not to make this personal because you do not want people to get bored with you but, we all live there and love it there and love to be outside and love to be together. There are some of us there who do not have any health issues and concerns and so forth.

But, there are some of us who do have health issues and things that have risen through the years; one being her daughter. She is here tonight, she is 21 years old and she has cystic fibrosis. You may not know anything about that but mainly her lungs are affected. We fight daily for her to be healthy. Just looking at the industrial in itself, if he were to come in and do a rock quarry or cement manufacturing, anything that is on that list, the things that can happen, as far as the dust and the particulate matter that comes over.

She has done so much research that she could talk for days about what she has researched on this and she has three minutes to try to make this work. People who live miles from places like this

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complain of dust daily that just sits on their property and sits in there house and they have to take care of that.

She said stuff like mercury, lead and asbestos and things like that, that come up from the ground and everyone is having to breathe it in. She is a well person and she does not want to breathe that in and she certainly does not want her daughter breathing that in or all the other people in our neighborhood who already have asthma.

Her other concern is their well water. We are on the upscale of his property, so if he starts digging down like she know he wants to do, what if he taps into the vein of our wells and our water just naturally goes downward. What if we lose our water supply? We are all on well water, we do not have city water. What if his waste disposal is not of the greatest and utmost of regulations and he contaminates our water?

These are all things that concern her just as a normal everyday person. But then, if it was just her looking into other people and what is going on with them. But she is the one living there and these people are living there and we all are family and we love each other and she does not want him creeping into her personal space.

That little bitty buffer that he supposedly has created; you could put miles between us and we are still going to have issues. There is not a big enough berm, there is not a big enough thing that he can put up that is going to protect her from the particulate matter that he is going to dig up. The foundation of her home if he goes any further digging and the blasting that she know he wants to do.

She just feels like, because she know the business man that he is and she knows this is about his pocketbook. She knows this is going to make him one step closer to his ultimate goal and our quality of life means nothing. However, it means everything to me and my family and those other people that live on the other side of Rocky River.

She asked that the Board please think about that when making a decision tonight.

Ms. Bryce Goebel, 6434 Pharr Mill Road, Harrisburg, NC, addressed the Board. Her concerns are the Pharr Mill property that has been mentioned owned by Mr. Titcomb. Which Mr. Titcomb previously mentioned would be sold to Mr. Meade if Mr. Meade got his zoning request when this was happening in Harrisburg.

She said that is a blind hill for traffic. She goes up and down it every day and she sees many near misses. She see many tire tracks off the road and she has seen people hit the bridge at the bottom of this hill on multiple occasions in the ten years that she has lived here.

There is also on Mulberry, a railroad and for the use of those companies that are there railroad traffic can be stopped on Mulberry ten, fifteen or twenty minutes. Given the fact that we already have concerns about fire safety, because we are not going to have Harrisburg utilities at this moment. What is going to happen if something goes wrong while the railroad has Mulberry

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stopped up? That is a huge safety concern for the residents in our area. The berms, the buffers may not stop fire and it certainly can hurt the lives of people who may be working in this industrial area.

She also wonders as a resident, why when this now LI change came in, it was not taken back to Harrisburg. The last time it was in front of Harrisburg it was an I-2. There was still no attempt to work with the residents and once a seeming attempt begins to happen, why wasn't the LI brought back to Harrisburg to see if we could work out something that was a win win for everyone?

It was mentioned earlier about not having a developer interested. She cannot believe that because we have lines of developers trying to come into Harrisburg. They reach out to Planning and Zoning and to the Town Council on a regular basis. So, she is floored and absolutely cannot believe the idea that that could not be developed and that no developer would be interested.

She said last and very not least, right up where Speedway Drive hits at the end of Mulberry, we have dump trucks and we have eighteen wheelers. It is a very regular occurrence that we have accidents and we have near misses when those vehicles are going slightly up hill and run the stop sign. We do not have the infrastructure to handle them much less any traffic that would be coming from the industrial park and we do not even know what it is.

The Chair stated that there was three minutes left for the proponents, if anyone had an additional thought or if someone who has not spoken and would like to they could do so at this time.

There being no additional speakers the Chair told Mr. Meade he had five minutes for rebuttal.

Mr. Meade said to address the concerns that any one has, first and most it is not a mine. Even if it was it would not apply because the Board would only approve whatever we are asking for, so the mining is totally out.

He said as a Civil Engineer he does land development work. He will correct his website, he is sorry that it still has Hard Rock up there for the Mulberry Road.

He understands their concerns. You live in a residential area and you already drive through an industrial park that affects you daily. We are not going to create any more or any additional impact than is already permitted to this area. We do not have any heavy uses, we are not going to have any chemical odors.

He said right now, this property is also attached to heavy industrial property. There is a landfill and a chemical plant there. He cannot help the railroad. You all cross the railroad every day and we cannot do anything about the railroad.

He said NCDOT will probably ask them to look at the roadway. He believes the railroad crossing is a private crossing and he thinks that if any improvements are done on that that has to be done by the box plant.

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He said there is nothing any different. What we are proposing is already existing and we are asking by right that we have an opportunity as everybody else has an opportunity, to make good use of the property in a good environmental way.

There was a comment made that they could not believe that the property could not be developed as residential. We did reach out and he has the paper. Even if he could get Gordon Titcomb on board to team with us, they still did not want the property because it did not have the access they were looking for and it was not a desirable location for residential.

He does not know what else to do with this property. The light industrial has been studied by planners in the past and they have come up with this area and designated it as limited industrial area and we are asking by right that we are allowed to develop as the current plans exists.

Mr. Paxton asked how much of a drop off in topo it is from the top to the bottom; is it ten feet, thirty feet, fifty feet?

Mr. Meade said approximately forty or fifty. He has maps and could figure it out.

The Chair has a question about the chronology of this. If she understands, Mr. Meade went before Harrisburg with a conditional zoning.

Mr. Meade said that is correct.

The Chair said you are before us with by right. The question she has about that is, when you say that you have tried to market the property unsuccessfully for residential, if you were to go conditional on this, once you have tried to market it with the potential that it could be requested for rezoning, at that point you could come forward for a specific user or specific use that you do not have now. So, that would change what you are asking now for the blanket of all those uses to then come back with a specific use.

She asked Mr. Meade if he understood the difference between what he is asking the Board to consider.

Mr. Meade said he is not asking anything different then what is normally provided in a limited industrial zoning; whatever is allowed there.

The Chair said she hears him loud and clear. But, she is also hearing the concerns of these residents. She is trying to understand if it is an option, to go back to list your property to solicit light industrial users that would then inform some certainty that is not in place with this decision that we are being asked to do, that is straight up and it open back up to any of those uses.

Mr. Meade is not sure he understand the question.

Ms. Susie Morris addressed the Board stating that the applicant was asking for the property to be annexed into the Town. She believes that at the same time, he had submitted for a rezoning

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petition to the Town. But it did not get to that point because first the property had to be annexed. So, neither of those cases were actually heard by the Town. The only thing that was heard by the Town was the petition for annexation which was denied.

The Chair said he gets the denial on the annexation but if she understood what she heard tonight he was intending to go forward with a site specific conditional plan that specified a use, unlike tonight where he is asking for a conventional zoning that would allow any of the uses.

Ms. Morris said correct; but neither of those cases ever made it.

The Chair said ever went forward.

Ms. Morris said correct because the annexation was denied.

The Chair said it is just the background that even though he was denied and he did not get the annexation, he has come forward previously with a conditional plan that she is asking in this case here, would he consider coming back with a conditional plan that would better inform the concerns and lack of certainty that is surrounding him as he is bringing this forward. As she understands from previous rezonings, if you get denied tonight you will have to wait a specific amount of time before reapplying.

Ms. Morris said if it is denied there would have to be a substantial change before it could come back before the Board. Essentially, she thinks what the Chair is asking is if Mr. Meade is willing to change to a conditional use rezoning verses this conventional rezoning that he is asking for.

The Chair said correct.

Mr. Meade said you are looking for a specific user is that correct?

The Chair is not looking for that. she is asking Mr. Meade if he has put that out there based on the zoning that you are seeking if there are indeed developers or uses that would inform what would be and end user on these four lots that would be subdivided out of this that would follow this zoning designation. She said that is more specific than what we are talking about tonight.

Mr. Meade said if he were to go with a conditional use, he would probably end up in Harrisburg because of the utilities. We cannot do a lot without water and sewer.

The Chair said right; she does not see it any different in Cabarrus County.

Mr. Meade said he does not see them coming back and even asking for any kind of special use at all.

The Chair said understood; Mr. Meade has answered the question.

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The Chair said if Mr. Meade does not have any other comments, the other side has five minutes to speak.

Ms. Bryce Gobel addressed the Board. She would like to know exactly what developers have been contacted, since there is information in writing. Because again, she knows within the Town, if you speak to our Town Council or our Planning and Zoning, they are lined up to come in.

Mr. Meade said CBRE was contacted in regards to the development potential.

Mr. Paxton said CB Richard Ellis?

Mr. Meade said yes.

Ms. Shelley Collins said at the top of the property (showed the area on the map) we drive through there every day. It is industrial and there is a railroad track there where they off load there loads that come in. Her husband, one day in the 23 minutes that he waited to cross the track, counted that it takes twelve cars to block Mulberry Road. Because once they cross over Mulberry it takes about twelve of them to cross over.

She said Mr. Meade is right, they would have to go to the box company and say look guys, maybe when you cross over, you could unhitch right there and let them do the unloading and then hitch back up and go. I know it will take a little more time, however, we are kind of trapped. There is no exit, we only have that one way in and out. Yes, we are kind of trapped and just bringing in more is just going to make it worse.

She wants to make sure that we say, yeah, we are aware that we will probably have to go to that box company. She thinks something has already been said to them.

She has been in an emergency situation with her daughter and thank God it was not a heart attack or anything like that. She was on her way to the emergency room with her and she sat at that railroad track for 17 minutes waiting on them to finish unloading at the dock. When they were doing nothing with the cars that were covering Mulberry.

What am I going to do, get out of my car and say move your train? It is what it is, but thank God it is not something that is a stroke or cardiovascular where somebody is going to die in the next five minutes. But that is possibly going to happen one day and she has to make that very clear. Somebody is going to have an emergency, whether it is a worker who works there or somebody in our neighborhood is going to either need to get an EMT in or we are going to have to get out and it is not going to happen because they are sitting there.

She said yes, she wants to make it clear, that we are aware that we are going to need to go to the box company and say something to them. She thinks it is an easy fix that they just unload and unhitch and make that little pathway available to us. She does not see them making that a problem, not at all.

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Ms. Jennifer Hill addressed the Board. She made some notes when Mr. Meade was just speaking. He states that there is heavy industrial. There is but just so the Board is aware it is not touching our properties. It is not adjacent to us, it is in our neighborhood, but it is not up against us.

She said Mr. Meade said his intention is to use the property for the good, for the environment. His original plan was not good for the environment. He wanted to come in and extract the natural resources. He says the OI is not really appropriate for the area that it is in. But that was established by the County when they established the Land Use Plan. They rezoned it; we did not come to the County and ask for that zoning. We were all changed to the OI and that was established by the County, not by the land owners. So the County obviously felt at that point that it was appropriate.

He would not have railroad service for that property and if the Board were to consider his petition, we definitely would love to see conditions put in that, to where there is some type of binding to him, so that he is not just open on that zoning he is requesting.

Ms. Wendy Garfalo addressed the Board after completing a blue card. She wants to reiterate that they are happy with the current zoning be OI, of course we would love for it to be residential. She said it does make it a nice transition from LI to OI then to AO and we would like for it to stay that way. However, we do realize we are in industrial and there is industrial around us and we realize that we cannot control anything.

So, our biggest concern is if the Board were to see that rezoning upgraded we would like for there to be conditions placed on that. We would love to have a binding agreement with him saying that he will not mine the property or extract dirt or any of those types of things because we do not trust his plan. He has been very, very shady with us this whole time.

The Chair asked if there were any questions for staff or the applicant.

Mr. Pinto asked if the buffer had its own Parcel Identification Number (PIN).

Mr. Meade said yes.

Mr. Pinto said who owns it?

Mr. Meade said it is owned by the Trust, Angela Lewis.

Mr. Pinto said the subject property is inside that? The subject property does not include the buffer?

Mr. Meade said right.

Mr. Pinto said earlier Mr. Meade said he was going to talk with Gordon Titcomb as an adjoining property owner.

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Mr. Meade said yes.

Mr. Pinto said basically he is not. It is a separate PIN.

Mr. Meade said Mr. Titcomb being an adjoining property owner?

Mr. Pinto said he is an adjoining property owner to the buffer.

The Chair asked Mr. Meade to show it on the map.

Mr. Meade showed Gordon Titcomb's property on the map. He said it accesses Pharr Mill Road and that is how you bring in the residential development right there.

Ms. Morris said this is the one that has its own PIN number.

Mr. Meade said yes, it has its own PIN number. It is OI and the access is about 60 feet wide. He said the last plan we did put up a buffer there just to show.

Mr. Pinto is wondering if the whole buffer that goes all away around has its own PIN number. The black line that is shown on the plan has its own PIN number?

Mr. Meade said yes.

Mr. Pinto said that is owned by?

Mr. Meade said Lillian and Frank Simpson Arthur Trust.

Mr. Pinto asked if they had any interest in the subject property.

Mr. Meade said yes they do.

Mr. Pinto said therefore when you said earlier that Gordon Titcomb was an adjoining property owner, he was not an adjoining property owner to the subject property; he is an adjoining property owner to the buffer.

Mr. Meade said no, he adjoins the subject property. He showed the property on the map.

Ms. Morris said the mapping that we did is based on what is currently show in GIS, so the subject property is outlined in hatched is the PIN number that they are asking to be rezoned and it has its own PIN number.

Where you see the tiny strip coming down around and it swings back over (she shows it on the map) that is a separate PIN. The two parcels started out as one.

Mr. Price said what is that property that is sort of no man's land, on the west side?

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The Chair said let's call it a flag.

Ms. Morris said a pink zoning designation is what you are seeing, not parcels.

The Chair said it is two zonings on one parcel of land.

Ms. Morris said that is correct.

Mr. Meade said that is Office Institutional, it is a strip of land 60 feet wide for an easement.

Mr. Price said what is the little property just to the west of the hatched property outlined in gray which looks to be a boundary line?

Mr. Meade said that is part of the subject property. He thinks the lines have been misdrawn.

The Chair said no, you are just not rezoning that portion based on what is in limits of this petition.

Ms. Morris said again, we go by the PIN numbers and GIS. She said based on the PIN numbers from the application that is the parcel that was requested to be rezoned.

Mr. Price said who owns that little piece that he just identified?

Mr. Meade said it is owned by Mulberry Industrial Park. He said that was also part of the petition and it just happened to be drawn incorrectly. He said there is a drawing on the GIS system and it should have interpreted the survey correctly.

Ms. Morris said we can reprint the map if you like, but based on the parcel numbers that were submitted to us and what we currently have in our land records data, that is the boundary. We go by PIN numbers, so that is reflective of the PIN numbers.

Mr. Price said that piece has a separate PIN number from the rest of it?

Ms. Morris said again, we can go and pull it back up and see what comes up. But, when staff entered that PIN number into our GIS system this was the boundary that came up. It did not include that.

Mr. Price said are we looking then at three separate parcels or two separate parcels of land, that is owned either totally by Mr. Meade or the Trust or the ownership interest of this property. He said does the ownership interest of this property own two parcels or three parcels?

Mr. Meade said two. The Mulberry Industrial Park, this is the parcel, but it also includes five. He said this parcel (shows on the map the parcel) is owned by Lillian and Frank Simpson Arthur Trust.

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Mr. Price said who has an ownership interest?

Mr. Meade said who has an ownership interest in this also.

Mr. Price said that is kind of a big deal with him, as to what we are being asked to consider.

Ms. Morris said the application that was submitted was only one parcel and that is the parcel number that is reflected on the maps that you have.

Mr. Price said how did it not include that third little no man's land piece. He is still confused as to how it got omitted.

Ms. Morris said based on the parcel number that was submitted to us and the GIS information available to us, that subject property that you see that extends across Mulberry to that little triangle piece, is what comes up when that PIN number is put into GIS. That is what was submitted as the PIN number for the parcel that was under consideration.

Mr. Price said Mr. Meade is saying that is part of that PIN number. Mr. Price tends to believe that the County records are correct.

Mr. Meade asked if he could make a comment.

The Chair said he may, but she will assert that he showed us a survey.

Mr. Meade said exactly.

The Chair said that is one and then two, she has Ms. Morris saying that you submitted an application and we are looking at specific PIN number on this petition, 5517985443, which is approximately 132 acres and she is understanding that that hatched digitized area is that parcel that exists in Cabarrus County Tax information and was the basis that staff used to digitize that.

She understands that Mr. Meade's survey shows that notch being included in this but, it is what they have to refer to and it is what was submitted was that Tax ID and the black boundary is that area and that is the discrepancy that exists.

Mr. Meade said it is a discrepancy. He said the way that GIS was developed, is we did this survey and submitted it to Land Records and they took our information and created the parcel. Apparently, he did not even notice that, but apparently, they made a mistake and digitized that part in the past. The first he noticed it is now actually, but the survey was what was surveyed and it is platted like that and it is filed in the Courthouse. He said apparently the GIS Department missed that one call and bearing when they put that in.

Mr. Price does not know, that is not for us to straighten out.

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Ms. Morris said back to Mr. Pinto's point, if that is included as part of that and it was mis-mapped by Land Records, then your statement is correct, that there is no buffer between those two parcels.

The Chair said if it is indeed an error, and that area is included in his total parcel, then we would also be rezoning that portion that is not cross hatched?

Ms. Morris thinks that would be legal question because at this point our GIS records are reflective that that is the subject property, that it does not include that other piece.

Mr. Koch said his question to Ms. Morris off the record was whether the survey was included with the application. If it wasn't and just the PIN number was included, then even if the PIN number is incorrect and he does not know that we know that for sure. Incorrect in terms of what it encumbers in terms of the area. Even if it is incorrect, he does not know how we can establish that tonight. If the application did not include the survey and it just went with the PIN number, then that is all that is before you and if what you see in these maps tonight is what is associated with that PIN number, albeit perhaps incorrect in terms of the boundaries, he thinks that is all you can consider tonight is what is before you.

Mr. Meade said they did submit a survey with the application.

Ms. Morris said for point of clarification, it looks like the line that is established, again this is a mapping thing, which is not what we do. It looks like that line is the floodplain line, so that could have been interpreted potentially, as a property boundary line. (She showed the survey to the Chair).

The Chair said we will take a short break while staff goes to check this out.

The Chair resumed the meeting stating that staff has pulled the map and will summarize what we have.

Mr. Earliwine said according to the survey that Mr. Meade submitted and we pulled up on GIS, the mapping that we submitted as part of the exhibit was drawn incorrectly. There is no parcel on that side, it is one large parcel with one PIN number. So, the map that is shown up here is the correct map as opposed to what we had drawn.

Ms. Morris showed the property line on the map, to address Mr. Pinto's question. She showed the large part of the parcel and the 60 feet that Mr. Meade talked about that is connected to this parcel. She said this tiny little triangle is also part of this tract as well.

Mr. Koch said so that map that you are looking at now is what the Board is to consider tonight for purposes of rezoning.

The Chair asked if there were any other questions before closing the Public Hearing. There being no further comments, the Chair closed the Public Hearing.

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The Chair reminded the Board that we are considering the Land Use Plan. Whether or not this meets the intent of the zoning district, compatibility with the surrounding area, the change of zoning, the intensification of the land based on its location, any impacts to the character of the surrounding property. The infrastructure is another aspect of this request and she thinks any other information that was presented in the staff report that also gives an overview of the existing district as well as the proposed district.

The Chair asked if there were any comments or information that would be articulated to address how the Board intends to move forward.

Mr. Koch said because of the change in the law, we are required to put more particularity into the consistency statement and we will have to have one of those either way the vote goes. It would be helpful, for purposes of that, if the Board would articulate some of your considerations that would go into any motion, either to approve this rezoning or to deny it, consistent with some of the things that the Chair has just recited as being considerations with reference to this rezoning. It is still a legislative matter, but it is just required for the consistency statement, that we articulate with more specificity than we have been required to do in the past.

Mr. Paxton is concerned over the four lane road that is close by, having to do with Mulberry Road being so crowded all of the time, he has major concerns about the rezoning.

The Chair shares those concerns in that she thinks the proposed district that is being sought here does call for certain infrastructure to be in place with respect to dimensional capacity of the adjoining roads as well as the designation of those road ways.

Ms. Mary Blakeney does not think this is the appropriate purpose for this particular site.

Mr. Aaron Ritchie is concerned about the utilities because any industrial building is going to have to have a fire suppression system; you have to have utilities with water for that. If he develops this land he will have to go into Harrisburg anyway to get the water and sewer. He said a septic tank and well is not going to service this piece of property.

Mr. Jeff Corley also agrees, for him this is an infrastructure issue. He thinks with all of the broad uses included in the requested zoning that the infrastructure that is in place simply is not where it needs to be.

The Chair concurs with those comments specific to infrastructures. Especially the availability of public water and sewer and with what was just mentioned without any specific use being proposed here, it is uncertain what those uses may be such that it is not certain that again the capacity can be provided at build out.

Mr. Price said as far as the compatibility of the limited industrial, in that close proximity to the residential, he thinks that the property is better served by the zoning designation that it has on it now, as opposed to that limited industrial. He thinks the industrial that you see already in that area was attracted more by the railroad and the proximity to Highway 49, than being more

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interior to those properties along Pharr Mill Road. He said you do not have to go very far, as a matter of fact, you can see some of it on some of the pictures that we have looked at tonight, to see that there is some pretty intense residential properties there. There is park property within eye shot across the river there. He thinks the property is fine just like it is.

The Chair agrees with Mr. Price that the current office institutional use as it is described as the district that is appropriate to transition from residential is in a more appropriate land use than going to the limited industrial.

Mr. Pinto said it is an infrastructure thing for him as well. Having gone through the fire problems and fire pump problems that he is having now on one of his buildings, you need water and you need sewer. Anything over 12,000 requires it depending on use. He does not think you can trust a well on something of that nature. He will have to go back to Harrisburg for utilities.

Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Mr. Charles Paxton to **Deny** Petition RZON2017-00001. The vote was unanimous

Consistency Statement:

This proposed rezoning is consistent with the provisions of the Harrisburg Area Land Use Plan but is not reasonable nor in the public interest for the following reasons:

With limited industrial zoning, as proposed, it is typically to be located in areas where the infrastructure can support it. Based on what has been presented to the Board with the road concerns regarding Mulberry Road and the existing industrial and rail considerations with passage along that roadway, with there being no municipal utilities available to this property, that it would appear based on what has come before the Board that the existing infrastructure cannot support this rezoning.

Typically, four lane highways are wide collectors, designed for truck traffic would be what would be typically needed to support this kind of rezoning. In addition, there is an incompatibility of light industrial zoning for this parcel relative to the Low Density Residential, which is actually zoned AO to east of the property, which serves as the residences for a number of long time related residents who have lived there for some time and that as stated in the considerations, the location of light industrial up against that type of residential does not provide much of a transition or does not provide the transition that the existing OI zoning provides.

As such, this location of LI zoning next to the AO zoning creates a situation that could well be too intense for that particular area and detrimental to the character, certainly of the properties to the East.

Mr. Koch asked if there were any other considerations that the Board would like to include as being the reasons that this particular proposed rezoning is not reasonable and not in the Public interest.

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Mr. James Litaker asked if it is reasonable to have video or tape recordings here without our permission.

Mr. Koch does not think that we have any rules about that and he is not aware of anything that would prohibit it. Certainly, these are public hearings and every now and then, we have television crews at these so he does not think there is any real issue about that.

There being no additions to the Consistency Statement, Ms. Mary Blakeney **MOTIONED**, **SECONDED** by Mr. Aaron Ritchie to **APPROVE** the Consistency Statement. The Vote was unanimous.

The Chair asked all persons speaking or testifying on VARN 2017-00001 to complete a blue card and to stand to be sworn in. The Chair administered the Oath.

Mr. Jason Earliwine, Sr. Planner addressed the Board presenting VARN2017-00001. The applicant is the Water and Sewer Authority of Cabarrus County, WSACC. The property owner is Cabarrus County. The address is 14655 Hopewell Church Road and the property consists of approximately 17.94 acres.

The applicant is proposing an expansion of the existing Waste Water Treatment Facility and in doing so, is seeking relief from the Cabarrus County Development Ordinance. Specifically, Chapter 9, Landscape Buffers, which is relief from the requirement to install a 75 foot vegetative buffer along the northern side of the property.

The specifics of the Variance:

Chapter 9, Landscape and Buffering, states that when a public service facility abuts a residentially used or zoned property, Level Two buffering must be implemented. The Landscape Buffer Yard requirements listed in Table Four of Chapter 9, show that a parcel greater than 10 acres requires a 75 foot landscape buffer. Currently, the driveway to enter the facility and the equalization basin are located within the required 75 foot landscape buffer yard.

Again, the property consists of approximately 17.94 acres located off Hopewell Church Road and abuts the Rocky River.

The adjacent land use as you can see in the aerial map shown, is mostly vacant and heavily wooded surrounding the entire thing. But there is also some agricultural uses to the West and to the South.

Mr. Earliwine said the zoning for all of the property surrounding the subject property in Cabarrus County is all CR. Across the river in Stanley County, it is RA which is Residential Agricultural.

The applicant states that relocating the driveway and equalization basin would be “impractical and would be an unnecessary hardship for WSACC and Cabarrus County”.

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The parcel to the north of the wastewater treatment plant property, PIN#5553-35-9990, is subject to an Agricultural Conservation Easement (Deed Book 2850 Page 163) EXHIBIT - I. The applicant contends that “the Conservation Easement preserves the woodland and sufficiently serves as the intended landscape buffer for the County’s property”.

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

- Site plan review and approval is required subsequent to Board of Adjustment approval to ensure compliance with all applicable development requirements and conditions.
- The Granting Order, stating restrictions and applicable conditions of approval, shall be recorded with the deed of the property.
- The applicant shall procure any and all applicable federal, state, and local permits prior to commencement of project.

The Applicant will be able to speak to the site plan but he has copy here. He showed the site plan and said the area to the North that looks like a pinkish color on the overhead, is the area that the applicant is requesting not to have to install a buffer for.

Mr. Earliwine showed on the aerial where the driveway comes in and where the equalization basin is located.

The Chair is understanding that these are existing conditions. Basically, the driveway is in its existing location.

Mr. Earliwine said correct; existing nonconformities to the Ordinance.

The Chair said the proposal is to expand what we see here, to add to what is existing.

Mr. Earliwine said correct. They are requesting some expansions to the existing wastewater facility. In doing so, it breaks the nonconforming statutes. So they would have to meet current Ordinance which requires the 75 foot landscape buffer.

Mr. Koch said since this is a Quasi-Judicial hearing, certainly the parties have an opportunity to ask questions of staff as well. It would be logical to allow them to ask questions of Mr. Earliwine while he is at the podium.

Mr. Jim Scarbrough, Attorney, representing the John Green heirs said Mr. Earliwine just mentioned nonconformity. He ask him to explain nonconformity for the record.

Mr. Earliwine said the parcel, the way that it is actually configured right now, does not meet the requirements of the current Ordinance, so it is considered nonconforming.

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Mr. Scarbrough said in what ways does it not meet the Ordinance?

Mr. Earliwine said that it does not have the 75 foot landscape buffer on the northern side.

Mr. Scarbrough said okay. He said regardless of whether the variance is approved, would it still be a nonconforming use?

Mr. Earliwine said if the variance is not approved and if the site remains as is, it will continue to be a nonconforming use; yes.

Mr. Scarbrough said okay. He asked if the applicant is proposing to increase a nonconforming use.

Mr. Earliwine said technically yes, they are expanding the site. As far as his understanding, they are not expanding any further into what should be the vegetative buffer landscape yard. But they are expanding the site itself.

Mr. Scarbrough said this variance request is not asking to expand a nonconforming use is that correct?

Mr. Earliwine said correct. They are asking to be relieved from the requirements.

Mr. Scarbrough said of a buffer?

Mr. Earliwine said of a buffer.

Mr. Scarbrough said but not the nonconforming use?

Mr. Earliwine said the lack of existence of the buffer is the nonconforming use.

Mr. Scarbrough said okay. Are you saying that even before tonight it was a nonconforming use? It was in violation?

Mr. Earliwine said correct.

Mr. Scarbrough said do you know who created the violation?

Mr. Earliwine said that he does not know.

Mr. Scarbrough said would it be whoever put the driveway in?

Mr. Earliwine said the site was developed he thinks prior to the current Ordinance. So the driveway existence would have been created when the site was created. When the Ordinance was updated it caused the property to become nonconforming.

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Mr. Scarbrough said okay. He said north is at the top of the page is that correct?

Mr. Earliwine said yes.

Mr. Scarbrough asked if to the north is the John Bunyan Green Historic Farm.

Mr. Earliwine said correct.

Mr. Scarbrough said +/- 372 acres?

Mr. Earliwine is not sure of the specifics.

Mr. Scarbrough said okay. He asked if the applicant is proposing to use the fact that it has a conservation easement, to say that it should be excused from the buffer.

Mr. Earliwine said specifically, the quote that he gave to the Board that was listed in the application from the applicant was "the conservation easement preserves the woodland and sufficiently serves as the intended landscape buffer."

Mr. Scarbrough said they want to use the woods on the Green Farm as the intended buffer?

Mr. Earliwine said you probably would want to ask the applicant.

Mr. Scarbrough asked Mr. Earliwine if is familiar with the Forestry Plan on the John Green property.

Mr. Earliwine said yes.

Mr. Scarbrough asked Mr. Earliwine if he had a copy with him tonight.

Mr. Earliwine said no.

Mr. Scarbrough said okay. He said the Forestry Plan requires harvesting of trees is that correct?

Mr. Earliwine said yes, correct.

Mr. Scarbrough said the area that is just over the boundary from the treatment plant is called Area 1 on the Forestry Plan is that right?

Mr. Earliwine said he is not sure of the specifics there.

Mr. Scarbrough said Mr. Earliwine is not aware that the trees are scheduled to be harvested on that side of the boundary?

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Mr. Earliwine said eventually, yes, they will be harvested. If it is in the Forestry Plan that is the intent.

Mr. Scarbrough said alright. He asked Mr. Earliwine if he had been out to the site to see whether those were mature trees or not?

Mr. Earliwine said no.

Mr. Scarbrough said the variance request, what is the hardship again?

Mr. Earliwine said that the driveway and the equalization basin already exist within what should be the 75 foot landscape buffer. He said to relocate them the applicant is stating that it would be inconvenient; their specific words were "impractical and unnecessary hardship" to relocate the driveway and the existing equalization basin.

Mr. Scarbrough said the reason why they are here tonight, is they want to expand the plant capacity, is that right?

Mr. Earliwine said that is correct.

Mr. Scarbrough said that is because Midland wants additional capacity?

Mr. Earliwine said correct.

Mr. Scarbrough said that would not be considered the hardship would it?

Mr. Earliwine is not sure that he understands the question.

Mr. Scarbrough said that Midland needs more capacity?

Mr. Earliwine guesses from Midland's point of view it would be.

Mr. Scarbrough understands that but that has nothing to do with this particular piece of property, is that right?

Mr. Earliwine said it is not a hardship for the applicant; no.

Mr. Scarbrough said okay. He asked Mr. Earliwine if he knew what a self-created hardship is.

Mr. Earliwine said yes.

Mr. Scarbrough asked Mr. Earliwine to explain it to the Board.

Mr. Earliwine said quite simply, it is a hardship that was created by the applicant.

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Mr. Scarbrough said isn't this such a hardship? He said for the applicant, the County?

Mr. Earliwine said the County is not the applicant.

Mr. Scarbrough said the County is the Owner?

Mr. Earliwine said correct; the applicant is WSACC.

Mr. Scarbrough said before WSACC the County operated this plant.

Mr. Earliwine does not know.

Mr. Scarbrough said you haven't been here long enough.

Mr. Charles Paxton asked Mr. Scarbrough his affiliation with this.

Mr. Scarbrough is representing the heirs for the John Green Farm.

The Chair asked if there were any provision in the Zoning Ordinance, like in Charlotte, there is a provision for an alternate buffer requirement, where the adjoining site has the buffer that could count toward meeting that.

Mr. Earliwine said we actually looked into that. There is an alternative where the applicant can receive an easement from the neighboring parcel if the neighboring parcel was willing to grant that easement. But there is already a conservation easement on that adjoining property so that might be a legal question for our Attorney, if you can have two easements on top of each other?

The Chair was asking about any provision that would establish that an alternative buffer could be established using the vegetation on the property. Then Mr. Earliwine saying there is already a conservation easement on that property. Does that establish that that area could be used to meet this buffer, if that was consented too?

Mr. Koch said to have an agreement concerning that type of buffer, would require not only the record owner of the property, but also the holder or owner of the conservation easement; which he believes is Land Trust of North Carolina or Central North Carolina. That would be something that he supposed could be possible but he is not in a position to fully interpret that conservation easement; what is allowed and what is not allowed. It is a fairly long document and pretty extensive. He thinks it is actually in the Board packet. He said to do something like that would require both parties to consent to that from what he has seen.

The Chair said the only reason she asking that question, is because of the standard that exist in the conservation easement, typically contemplates preservation of existing canopy and it not being graded, but it holds it in perpetuity to stay that way. If that relationship exists here and the applicant can indeed satisfy and meet the requirement for that buffer by doing that she is not sure

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why the Board would be approving a variance to not have them meet the standards if they can indeed use that alternate buffer section to do that.

Ms. Morris asked if the Board remembers the Solar Farm that came before the Board. On that particular project they did pursue that option. Staff did have discussions with the applicant in this case and the applicant did not want to pursue that at this time. The applicant, she believes and she is not speaking for the applicant they can tell you on their own. She believes they wanted to first approach the Board about the wholesale variance of not installing the landscape.

Mr. Scarbrough, Concord Attorney, representing the property to the North, which is the Heirs of the John Green Farm, LLC. He asked for a continuance, prior to tonight and it was denied. He did not come here tonight to ask the Board directly, because he actually forgot about it.

He said this a complex thing here and his client only got involved in this about two to three weeks ago and she is now out of the country; Dr. Malone-Trahey here in Concord. He said the rest of the family are scattered around and we actually wanted some time to talk about the forestry plan and to talk about some of these other issues and he is the only one here tonight for the John Green heirs.

He said you brought up a point there about if we have discussed it; no we have not discussed any of this.

The Chair respects what Mr. Scarbrough has said, but she understood from Ms. Morris that the applicant is pursuing this variance on the property and the subject property independent of consideration for that. She guesses we are proceeding in the box that we are looking at without that being part.

Mr. Scarbrough said that is the first he has heard of it. He has not talked with the applicant or the County.

Mr. Koch said just as a point of clarification on what Mr. Scarbrough had to say. He had written a letter asking if the County who is the owner of the property and WSACC who is the applicant, would agree to a continuance. The County Staff and he is not talking about Planning and Zoning. He is talking about Executive Staff was not in agreement to a continuance, neither was the Applicant, WSACC because of their position.

Mr. Koch wrote Mr. Scarbrough back and told him that they would not agree to it, they did not rule on it, obviously that is within the providence of this Board to rule on continuances and that they would have to bring that motion to the Board this evening. That was the content of that letter.

Mr. Koch also pointed out that Mr. Scarbrough on behalf of the John Bunyan Green Heirs and I as County Attorney, had exchanged correspondence a year ago, in which we at the County, had invited having a discussion about some of the relative interest and concerns of adjacent property

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owners out there at this plant and that they had declined to do so at that time. So there had not been any discussion up to this point about any issues. Now admittedly, it did not concern in that correspondence, this application for a variance, but it did concern other matters between the adjacent property owners relative to the ownership and operation of that Wastewater Treatment Plant. He said just as a point of clarification on that.

Mr. Scarbrough said what Mr. Koch has said is true, but for the record he would like to renew a Motion for Continuance just so the Board could have it before you if you want to grant it or if you don't. He said it is up to the Board.

Mr. Koch thinks that Mr. Isenhour, who represents WSACC in this proceeding, has stepped to the podium so he imagines he has something to say in regards to that.

Mr. William Isenhour, Attorney for WSACC, said he could go ahead and address the continuance and if there are no more questions go ahead and get started with the applicants presentation.

Mr. Koch said maybe we ought to deal with this matter of the request for a continuance before we go too much further. He said if Mr. Isenhour would do that first and let the Board consider that now that it has been raised.

Mr. William Isenhour introduced himself. He is an Attorney with Johnston, Allison and Hord, Charlotte, North Carolina. His address is 1268 Giverny Court, Concord, North Carolina. He is here tonight because his firm serves as General Counsel to the Water and Sewer Authority of Cabarrus County.

Also here tonight is Mr. Michael Wilson, Executive Director, WSACC, Mr. Thomas Hahn, Utility System Engineer with WSACC and Mr. Greg Wells, Engineer with Willis Engineering and he will be presenting their application tonight.

He said with respect to just the continuance that Mr. Scarbrough requested, WSACC is running into some time considerations here. We have already sent out and requested bids which are due back on August 31, 2017, so at the end of this month, to get working on the capacity expansion at this plant. He said that has been brought up by the fact that the flow to this plant is nearing North Carolina limits, which Mr. Wells can speak to more particularly from the engineering side. We are running up to a real time crunch and that is why we respectfully wanted to deny the request for continuance.

Mr. Paxton said if we were to grant a continuance Mr. Scarbrough and Mr. Isenhour, do you think something could be worked out in the next two to three weeks or would it be a longer process than that?

Mr. Scarbrough has no idea. He said we have not discussed any of the issues. He said to be honest, the heirs of John Green II; there are a lot of them. That is why they had to form a corporation to put this title into.

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Mr. Paxton said their main objections would be what?

Mr. Scarbrough said their objections are that this is a temporary plant, always has been and the interceptor line runs through the farm and even the interceptor line is on leased property. It terminates at a certain point in time; the lease ends.

He said the Regional Plant is supposed to be downstream. We have opposed any expansion of this plant for that reason. He opposed it last year and that is what Mr. Koch was alluding to; when we discussed it.

We have a historic designation on our property and if the trees are harvested then that hurts our property and the sale of our property as a historic farm.

Mr. Isenhour would like to address just as far as the temporary nature. He said that is not the plan. In 1994, when the County actually constructed this plant and acquired the property, at that time, there was a proposal among several counties including Cabarrus, Mecklenburg, Union and others to build down river from this plant, a very large regional wastewater facility. Subsequent to that, that proposed site had environmental issues. It became untenable, other counties have gone and built their own plants and so there is no longer a contemplated regional facility with a multicounty jurisdiction. So, the plan is to continue operating this.

He said this is a relatively small plant. Right now, it does 150,000 million gallons a day; our proposed expansion is up to 300,000. This plant is actually permitted up to 1.8 million, so we are not anywhere near what we are permitted to do here. We are just really responding to the growth in Midland, as the Board probably knows, the population growth out there has been high and we are just running where we are going to max out on our 150,000 gallons a day.

Mr. Paxton said at what time frame?

Mr. Isenhour cannot speak to that, but one of our Engineers can speak to the immediacy of that. Also, because Mr. Scarbrough brought it up, we do lease a piece of property from his client. There is a pump station, you can see it (he shows it on the aerial map). We do have a 40 year lease that runs through 2034. We are only about half way through that lease at this time. The property itself is fee simple owned by the County and WSACC operates the site and has done so for many years. He said the County developed the site and put the driveway back in 1994, somewhere around there. So, that is the same driveway that has been there the whole time.

The expansion of the plant, he will get into this more when we go through our proposal, but it is actually on the other side. He said what is on the plan in blue is actually the expansion. You can see that it is outside the 75 foot buffer and most of it is actually on the other side of the plant from where this buffer is located. We are not planning to do anything additional within the 75 foot buffer.

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The Chair said she is not inclined to grant the request for the continuance, because she suspects that there has been time to at least process that this was going to occur. She thinks the applicant is here this evening to make their case for this variance, with no real guarantee that the Board will approve or deny it in either outcome. It seems to her to extend the time period which you are discussing is pressing up against other deadlines. She is not inclined to grant that.

There being no further discussion, Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Ms. Mary Blakeney to Deny the request for a Continuance. The vote was unanimous.

Mr. Corley said Mr. Earliwine answered this question for Mr. Scarbrough. He asked Mr. Earliwine to explain it as simply as he could, what caused that nonconformity. What event happened that all of a sudden it was not?

Mr. Earliwine said his suspicion would be that the Ordinance changed in 2008 significantly. He said the site has been there for a while and as we have said we cannot really tell you how long. He said WSACC might be able to answer that more clearly. When the Ordinance changed it would have caused the nonconformity to come into play because the driveway and the equalization basin existed.

There being no further questions for staff, the Chair said the applicant can make their presentation.

Mr. Isenhour thanked the Commissioners for their time tonight and he very much appreciates it. He also thanked Mr. Earliwine for his presentation and Ms. Morris and her team for helping to navigate this process so far.

He said as Mr. Earliwine indicated, as we have talked about, this site is owned by Cabarrus County and it is operated by WSACC. Cabarrus County acquired this property around 1994, and that is when the plant was built, including the driveway that is now in the buffer.

One interesting thing about this property is, it is completely landlocked. It is a landlocked property that backs up to Rocky River. The only access is up where the easement comes through (he showed it on the plan), you will see where the easement feeds into our property. It is directly into the 75 foot buffer.

As Mr. Earliwine indicated, at the time it was constructed, we have no reason to believe that it was in violation of any kind of setback requirement. That those have changed over time and the reason this came up is we came before the County about an expansion of capacity.

When we talk about expansion, we can show you what we are proposing but it is not what you think of, adding on a lot of different buildings. It is really an expansion of capacity, which will necessitate some additional equipment and some modest changes to the site. We are not really, substantially in his opinion, growing our footprint. He said as the Board can see, we are completely landlocked. We only have access over ingress, egress easement over the adjoining property to the West; that is our sole access at this point.

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Mr. Greg Wells, Engineer with Willis Engineers, 10700 Sikes Place, Charlotte NC 28277, addressed the Board stating he is one of the Consultant Engineers for the expansion job. He has been asked to come and give some background on the project. He said a lot of that has already been covered so he thought he would reiterate that and thanked Mr. Isenhour and Mr. Earliwine for providing some of the background for him

He said this figure (he showed the diagram) was also part of our application that was the boundary survey for the property that kind of further illustrates the situation that is conveyed.

He said back in 1994, when the county decided to build this plant, they secured this piece of property from this property owner. They parceled out a portioned of that property, 17.9 acres for the Wastewater Treatment Plant and with that, they also secured an ingress and egress easement that Mr. Isenhour indicated goes to the corner of that property and then provides access out to Hopewell Church Road for access.

So, that is, as Mr. Earliwine had indicated, really the only access into and out of the property otherwise landlocked. It has Rocky River to the East and then the Green Property to the North and it is surrounded by the property on which it was acquired.

The original construction in 1994 was for 75,000 gallons a day. It got a conditional use permit at that time for 1.8 million gallons per day. The County owns the property and WSSAC does maintain and operate the facilities. In 2010, the plant was expanded from 75,000 gallons a day to 150,000 gallons a day as growth continues to expand and grow in that area of the County as we all know.

He said the question about what is the additional flow into the plant, it is somewhere around on average 100,000 gallon a day. It currently has a permitted capacity of 150,000. You are at that stage where you really have to start planning and looking ahead. You cannot wait until you get to 150,000 gallons and decide to design and build and construct and place into operation a plant expansion. So, we were brought on board to look at that expansion.

Mr. Wells showed another figure he thinks was also in the Board packet without the aerial on it that highlights what they are really talking about as far as our expansion. When we looked at it, we really tried to work with as much of the existing infrastructure that was already there. The lighter items, like the current administration building and then these larger rectangular pieces of structures are the existing treatment modules. It is a packaged treatment plant and it has a lot of the different components that are needed for a traditional treatment of wastewater in it.

He said as a way to expand our actual treatment capacity, we are reconfiguring those rectangular structures and using them as full aeration basins without building extra basins for that, we are trying to be cognizant of what we can do with what we have as best we can.

He said the things that are highlighted (on diagram), like these big circular clarifiers that are part of the settling and the treatment process, the new treatment process and the expanded filtration

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and UV disinfection process are part of the existing expansion. But these units (on diagram) here are replacing or supplementing what is already there. He said the items that are in bold are the new items or new footprint to the site. If you are looking at those, they are two new clarifiers that help provide the additional treatment. We are reconfiguring, reusing and repurposing a lot of the existing infrastructure that is there. This larger bold item, which is new gravel drive is really just refreshing the gravel drive that is already there. We understand during construction we are going to be tearing up a good portion of it and so we are really just refreshing that portion of it. The existing part that really has us here tonight is the existing access drive and the EQ Basin.

As Mr. Scarbrough indicated, the flow from the Midland area comes down stream on Muddy Creek and there is an existing pump station off the property. It is on the Green property and is part of a lease agreement that Mr. Scarbrough mentioned before, that pumps that wastewater up to the treatment plant, down from the creek level, up to the treatment plant for treatment.

He said the equalization basin that was put in there is just that. It is a means to help provide times during the peak flow to pump into it. It is a wide spot on the line if you will, to help handle and address those peak flows and then they can put a more steady consistent flow into the treatment units from that equalization basin and that helps the treatment process as much as possible. He said it is really a nice safeguard to have.

The equalization basin is about a 38 foot diameter concrete structure that liquid gets pumped into it and then it gets pumped back out. We are changing some of the mechanical equipment at that structure but not really changing the foot print of the structure within the existing area. We are not proposing to make any changes to the existing access drive that then goes to ingress and egress easement. All of the new construction is inside the boundaries of the property outside the buffer yards and what not.

Mr. Wells could speak onto more of it but he thinks it handles the technical part of it and really what the components are and what is being done. A lot of these new structures, even the rectangular structures, is for the new electrical service and standby generator that will be needed and required. The electrical equipment will sit under an aluminum canopy type system that stands about eight or ten feet tall; not really an obstruction.

He said the larger tanks, down below for the clarification units are really the only new significant structure going on the job. The rest of it we really tried to repurpose as much as we can to maximize what we have without getting into a large expansion project.

The Chair said what is that portion he was describing, that it all stays on the parcel, but there is just that little portion up there in the driveway that does encroach into what would be the 75 foot buffer.

Mr. Wells said as he mentioned we are going to be refreshing the existing gravel drive, post construction.

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The Chair said that is not really anything new that impacts the existing condition you are just putting more in.

Mr. Wells said correct, we are just refreshing it.

The Chair said such that the proposed expansion does not impact or alter any of the existing conditions that existed prior to the requirement for that landscape buffer to be there. So you built the plant and you had the driveway and the Ordinance adds the buffer and that creates the nonconformity.

Mr. Wells said yes.

The Chair asked if there were any questions for the Applicant. There were no questions from the Board.

Mr. Jim Scarbrough asked if it is correct to say that the purpose for this variance is to expand the capacity of the plant.

Mr. Isenhour said the purpose is to get a variance for the 75 foot vegetation landscape buffer. We are already approved for our expansion. We have a conditional use permit that allows for up to 1.8 million gallons per day, we are at 150,000 gallons and going up to 350,000. As part of that we are modifying slightly, some existing facilities on the property. As part of that, that triggered County review and the County then noticed the nonconforming use.

Mr. Scarbrough said what he is driving at is we would not be here tonight if you were not expanding the capacity of the plant. He said is that true?

Mr. Isenhour said it is true in that, that is what triggered their review and notice that it was not in compliance; nonconformance.

Mr. Scarbrough said if you do not get a variance tonight you could still use this as wastewater treatment plant, is that correct?

Mr. Isenhour said that is correct, we could continue to use it for 150,000 gallons a day. But as Mr. Wells indicated, we are at 150,000 now. On peak days we are going up above that. We will run into a real hardship and we are trying to get ahead of it and that is why we are here today.

Mr. Scarbrough asked what created that hardship.

Mr. Isenhour said the hardship in fact was created by the County when they acquired the site and built the facility with the driveway within the buffer. Obviously, at that time there was no buffer requirement. WSACC operates the site but we did not create the nonconforming use. The driveway was on the site when we started operating it.

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Mr. Scarbrough understands. He said can you do anything to take the load off of the farm? Can you put any buffer on your side of the boundary line?

Mr. Isenhour said yes. We have some capacity but we do not have capacity to meet the whole 75 feet, but as you can see, closer to the plant the existing driveway does have some existing buffer to the Green property.

He said WSACC is prepared to be a good neighbor and to assist with some; whatever staff feels would be appropriate, vegetation along that property line.

Mr. Scarbrough said what about moving the driveway down to the southern part of that 75 foot buffer.

Mr. Isenhour said to us, that is an undue hardship. That driveway has existed since 1994, and no one has ever objected, to our knowledge, to that driveway location, never raised an issue about it before. So now, we feel a little bit like, that it is not as if someone did not know that driveway was there, it has been on the ground for 23 years.

Mr. Scarbrough asked Mr. Isenhour if he had gotten any estimates on how much it would cost to move it.

Mr. Isenhour said he does not have any estimates of cost.

Mr. Wells said given the existing ingress and egress that would be our exit point out of the property without having to get an easement from that adjoining property. So you are still going to have those impacts and provide a road sufficient for the type of maintenance trucks that need to be able to use it; to put a good turn in there.

Mr. Scarbrough said he is talking about moving this down to here so that you share some of the buffer requirement.

Mr. Paxton asked if the driveway is gravel.

Mr. Wells said it is gravel.

Mr. Scarbrough had no further questions.

Mr. Isenhour said our point to that would be that right now, as Mr. Scarbrough will sure indicate, his property is subject to conservation easement. We are not trying to base our variance on that. But that is a fact that that is a heavily wooded property right now that will have to stay agricultural in use. We understand that there is a forestry plan and the trees on there will be harvested and maybe sooner rather than later. He said WSACC would never stand in the way of what is in their approved forestry plan. We do think that just moving the driveway for the sake of doing that is an undue hardship to us and it is unnecessary.

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The Chair asked if anyone else who is going to present anything else on the request.

Mr. Isenhour said Mr. Michael Wilson, the Executive Director of WSACC, and Mr. Thomas Hahn, Engineer with WSACC, are available if the Board has any specific questions about the plants operations or the future.

The Chair asked to look back at the aerial in what Mr. Isenhour was referring to that could possibly be supplemented with vegetation on the northern side of the driveway. Did she understand a moment ago, that where it kind of meanders back in towards the Plant away from that property line, any portion that is within this boundary that could be planted?

Mr. Isenhour thinks so. We are the applicant and WSACC operates the site. Cabarrus County does own the site. He thinks WSACC would be willing to do some kind of vegetation there consistent with the area. We would have to look into that a little further because Cabarrus County does own that site and we will operate the facility.

The Chair said to Mr. Koch, even though the County owns the property, if that condition limits or addresses the amount of variance that we are granting, that they could indeed establish some planted materials that would satisfy any portion of compliance.

Mr. Koch has not had any specific conversations with anyone at the County concerning some sort of supplement to the buffer in that area. He said it is the County's intention to convey this plant to WSACC for them to not only operate it but also to own it. We have been in the process of attempting to do that and it has not been concluded yet but that has been the County's intention.

He does not know that he could speak for anyone else other than what he knows about the situation. He is not aware of anybody that would have any objection at the County to WSACC being willing to buffer that area. He cannot say with absolute certainty, other than that the County is trying to convey it and not have either ownership or operation of it going forward.

Mr. Isenhour said that is correct. The intent for this site will be at some point for the County to transfer ownership of the plant and we have been long time operators of the plant but have not owned the actual real estate. We obviously did not construct the original plant.

He thinks if the Board had that condition, he thinks WSACC would agree to some kind of vegetation on that site within the area between the existing driveway and the Green property line.

Mr. Pinto can understand Mr. Scarbrough's point of view from his client. You guys are kind of like tenants. You might have to put trees that match what he has already, maybe evergreens of some sort.

Mr. Isenhour said in the conversations they have had and they have been very preliminary; internally. It would be some kind of evergreen trees, add some kind of line of trees there.

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Mr. Pinto said some kind of agreeable amount he thinks everybody would be happy with that situation. You would have to make the offer he guesses of what you would put in.

Mr. Isenhour said right. Obviously, we would have to talk about that further but he does think that is something WSACC would agree to.

Mr. Pinto said we would need to kind of know.

Mr. Isenhour said sure.

Mr. Mike Wilson, Executive Director, WSACC, addressed the Board stating that they have discussed planting any kind of vegetative barrier that we can get in between our driveway and the Green property. We are open to whatever the requirements are and we try to be good neighbors with all the folks that we have plants around. Whatever the Board recommends we plant, we will put there.

Mr. Pinto does not know what kind of trees, a two inch caliper or something greater than that.

Mr. Wilson said basically the property adjacent to us is hardwood trees.

Mr. Pinto said if he cuts those down, he is going to want something to block that view of the plant.

Mr. Wilson said under their Forestry Agreement they will have to replant the forest.

Mr. Pinto said they will throw in pines probably.

Mr. Corley asked Mr. Earliwine if this is still subject to site plan approval. So, any conditions we put on would be shown on the site plan for technical review?

Mr. Earliwine said correct.

The Chair said for this buffer, 75 foot landscape buffer, in the absence of the existing vegetation, what are the required plantings?

Mr. Earliwine thinks that would be up to the Board because if we are not going with required 75 foot buffer, than whatever you all agree to with the Applicant, as long as the opposition to the variance agrees as well. If they put one strip of evergreen trees, if they fill in all of the space around the driveway, he thinks that is something we really don't have anywhere to go with, as far as staff is concerned.

Mr. Price said it seems to him that we would treat that area, if they do plant some sort of vegetative buffer in there, it would simply come off of the landscape plants that are available anyway and be planted to whatever density is practical.

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Obviously, you have a driveway there and you do have to get equipment in and out of there. You cannot just come right up to the driveway but he does not know what that dimension is.

Mr. Earliwine said right, there isn't a defined dimension because the dimension is 75 feet.

The Chair is thinking that in the Ordinance there exist probably a standard that says for so many linear feet there is ten mature trees. Ms. Morris would have that and it would say what you could meet up to that based on the width that you have there.

Mr. Price said right out of the landscape plan.

Ms. Morris said between an institutional and civic use in a residential use, it would be a Type 2 buffer which would be the 75 feet. Because that property is over ten acres and it would be two shade trees or four ornamental for every 50 feet and ten shrubs for every 50 feet. She said that is the standard requirement for the buffer

Mr. Wells said the buffer yard, those requirements for the trees are based on the full buffer yard width of 75 feet being developed. If the existing driveway is to be maintained then we could not meet that density. We would need some variance on that.

The Chair thinks what they would go with a condition, she does not know what the dimension is, but where it is practical for you to install in that linear distance, maybe not like you are saying, meeting the full intent, but where it is practical for you to plant a combination of trees and shrubs, that best satisfies that standard, that that would be what we would be looking to achieve.

Ms. Morris said just to clarify what Madame Chair is talking about, is in this area (showed on map) on this side of the drive, is the 75 feet and in this area closer to the Green property where there is some space.

The Chair said where we are looking to fill in, would supplement, that give you the ability to demonstrate some compliance with this expansion you are seeking, versus us granting the full variance where it is clear that you have areas that you could meet this Ordinance requirement, that that is where we are asking you to consider.

Mr. Wells understands. He said there are some power utilities that comes along that access drive too that would have to be considered.

Mr. Price said overhead or underground?

Mr. Wells believes it is overhead. He said along with that ingress, egress easement he thinks there was a power easement as well through there. He would have to double check. He thinks we all are talking the same thing. If there is a need to provide some sort of landscaping, to keep with the proportion of what is being defined in Table 4 for that Type 2 Buffer to the extent possible.

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Ms. Morris said we do allow the substitutions for the under story if there are some type of overhead power lines.

The Chair asked what the red hatched line is delineating.

Ms. Morris said (showed on the map) this the 20 foot setback and then this is the 75 foot buffer yard.

Mr. Isenhour said it is a little unclear on this, but under the red, there is some tree cover that looks like it is red there but actually there are some trees. We have another aerial that maybe shows that more so. He said there is vegetation on that side of the road. (He showed the area with the tree line on the aerial). We already have it on that side and if we were going to do trees it would be on the other side of driveway along the Green property.

Mr. Koch thinks that was what he understood to be the discussion, was north of the driveway; correct?

The Chair said yes, on the external boundary of the site.

Mr. Isenhour said yes, on the external boundary. He thinks that they do have some tree cover in that area and it goes up pretty close to the driveway you see. He thinks what we are talking about is adding landscaping along there.

Mr. Paxton asked Mr. Scarbrough if he thinks his client might be amicable to that situation.

Mr. Scarbrough has no idea.

Mr. Isenhour said it is a little hard to see on here (he showed their property on the aerial). He said to give the Board some perspective, that the Green property is over 300 acres and there is a homestead on that property. He does not know the exact distance, but it is substantial distance away from this plant. There is not house that sits right on that line. The farmstead is located in the center of that property and as part of that conservation easement, they have the right to use that farmstead and build three additional single family homes, but just in the area of the farmstead. There would never be a chance that there would be any residential or any use toward that boundary line on that property.

Mr. Koch said the conservation easement that is in the packet indicates that the farmstead area is 35 acres along Garmon Mill Road, so it is at the other end of the property of the John Bunyan Green property that we are discussing here.

The Chair said her consideration for what we are discussing now is the fact that a variance follows a piece of property and we heard earlier that you all have an expected life expectancy on this site.

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Mr. Isenhour would not say that, there is a lease that is offsite that runs till 2034, seventeen more years. He does not think that is correct all to say that we have an expected life expectancy for this project.

He said like Mr. Koch indicated, the intent is that WSACC is going to take ownership of this property.

Mr. Koch said as a point of clarification, he probably should have said this earlier; the Board of Commissioners has approved the transfer of this property. That is something that has already been approved by the Board; it just has not been completed yet.

Mr. Pinto said when you do go forward you are going to have to stay with that 75 foot buffer when you take control if you make it any bigger.

Mr. Isenhour understands, their plan would not be to build.

Mr. Pinto said or stay in the hardship by trying to cut down with the driveway, have to get another easement, cut the trees down. That is a hardship, but as you move forward consider that 75 foot.

Mr. Isenhour thanked the Board for their time.

The Chair asked if there were any additional questions from the Board for the applicant or staff.

Mr. Koch said that the John Bunyan Greene heirs still want to present.

Mr. Jim Scarbrough, representing the heirs of the John Bunyan Green II, LLC, which is a limited liability company, addressed the Board. (His son, John Scarbrough, Attorney passed out documents that Mr. Jim Scarbrough wants to have in the record). He said we have been talking about a lot of these already and his remarks come from these documents; a lot of the points that he is going to make here.

The first tab is a letter of opposition that he sent to the County. We sort of summarized the points that he wants to make. You can see here that we contend that the variance cannot meet the County requirements for a variance and there are requirements. We contend that the use of the farm or heavily wooded land to excuse a buffer is improper and is actually in breach of the terms of the 1994 pump station lease and interceptor line lease in which the farm is the Lessor and the County is the Lessee. We also contend that the actions of the County and WSACC amount to an interference with our forestry plans. Because, we have to harvest those trees right next to that buffer (Area 1 on the Forestry Plan). It is now that we have to harvest the trees.

If you look on Page 2 of his letter, he has the standards that are actually in the application. He is answering them just like he was the applicant except he is the opposition.

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It says the alleged hardships or practical difficulties are unique to this property and are not those suffered in common with other properties. He said the hardships are not unique to this property and they are in common with other properties. They are in common with anybody that puts their driveway to close the boundary line; that is what happened here. There is nothing unique about this property and it was a self-created hardship; the County put the driveway in. So, they have to fix the problem if they are going to comply with Ordinance, which is to create a 75 foot buffer. That is what you call a self-created hardship. If the Board is familiar with that, you do not normally grant a variance when the hardship is self-created.

Number 2: The alleged hardships and practical difficulties which will result from failure to grant the variance extend to the inability to use the land for any use in conformity with the provisions of the ordinance.

He said what that is saying is, if you deny the variance, they cannot use the property for anything; any reasonable use. Well that is not true, they are going to continue to use it as a treatment plant; that is obvious. That is why he was asking, you are going to continue to use it as a treatment plant; you just cannot use the capacity. You cannot increase the capacity, unless you put that 75 foot buffer in there. That is why he was saying the hardship is the capacity, it is not that 75 foot. What is driving this is the expansion of the plant. They are going to make money by expanding the plant but they do not want to put in the 75 foot buffer; that is the bottom line. All they have to do is move the driveway and put the trees in.

Number 3: The variance if allowed will not substantially interfere with or injure the rights of others whose property is affected.

He said it will affect us, it will decrease our value. We are a historic farm and now we have an expanding wastewater treatment plant on our southern border.

Number 4: The variance is in harmony and it serves the general intent and purpose of the ordinance.

He said no it doesn't. There is not going to be a buffer. How can that serve the general intent and purpose of the ordinance?

Number 5: The variance will result in substantial justice being done, considering the public benefits.

He said the Muddy Creek Treatment Plant is a temporary facility until a regional facility is built downstream. He will show those documents in just a second.

According to the 1996, consent judgment in court signed by the County, the County is vested with the leasehold interest in a pump station and the interceptor lines located on the Green Farm.

He is quoting from the Court Order, "commencing October 20, 1994, and expiring on the first to occur of October 20, 2034 or earlier if the date on which the regional or local waste water

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treatment plant in which plaintiff (County) is a participant is located downstream on Rocky River and it becomes operational". He said this was temporary plant just like he told the Board.

Also, they are putting the entire buffer over on us and saying they have such great trees over there this excuses us from having to put in a buffer and they should not be able to control our property like that.

Mr. Green fought this treatment plant when it was first done in 1994 or 1992 he thinks it was. Anyway, that is why his heirs are taking up the fight for him.

He said Tab #2 is the map that we have all been looking at.

Tab #3 that is the John Bunyan Green Farm out of Wikipedia which summarizes the facts. The house was built in 1880, it is on 371 acres, it is architectural type Italianate, it has a half-dovetail log cabin, built by ax. It is the site of the Garmon Mill. It was added to the National Registry of Historic properties on June 2, 1988. He said this was long before any treatment plant was envisioned for that site.

Tab#4 is actually our Memorandum of Agreement in 1992, with the County. Under item E it says the Muddy Creek Wastewater Treatment Plan is contemplated as interim facility which will be replaced by a regional facility. Downstream just like it said.

Mr. Green was afraid that this would happen with the expansion of the plant; that is what he was worried about.

He said on the next page it says in the agreement it says: no part of the Project shall be constructed upon the John Bunyan Green Farm, except the sewer interceptor line on the west side of Muddy Creek, terminating at the raw sewage pump station (the Pump Station). He said that is the only part that can be on the farm.

He said on the next page, the lease, he said this is by the way a lease. The lease shall terminate on the first to occur of 40 years from the date of the lease or the date on which the regional or local wastewater treatment facility in which the County is participating is located downstream on Rocky River. He said again downstream.

Tab #5 is the Judgment of the Court and it says basically the same thing, but he wanted the Board to see that it is a 1996 Superior Court Judgment signed by the Judge. If you turn over three pages he has highlighted some places there.

Exhibit A is attached and says the County has condemned and has been and shall be vested with a leasehold interest (Mr. Scarbrough said and that is all) commencing on October 20, 1994, and expiring on the first to occur (Mr. Scarbrough said here we go again) 2034 or the date when the regional or local wastewater treatment facility is operating downstream on Rocky River.

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Mr. Scarbrough said if you go to Tab #6, this is something we have not talked about tonight. He is not sure he knows what it means but maybe somebody here does. It is Chapter 6 of the Cabarrus County Development Ordinance. Section 6-3 – Buffer area shall not be encroached upon or mutually claimed.

As he reads that language there, buffer areas required for one structure shall not be encroached upon by another nor shall it be claimed by a second structure as fulfilling its buffer requirement. He reads that to say that everybody has to have their own buffer. You cannot use me for your buffer. He may be wrong but that is his first reading of it.

On the next page the last tab (Tab 7) is a Court Case and on the third page he highlighted at the top what this case stands for. Pecuniary loss alone is not enough to show an unnecessary hardship requiring a grant of a variance.

That is why he was asking WSACC, were they going to increase capacity. They are going to make more money, the plant is going to be bigger and more capacity. If they do not get the variance, you have a pecuniary loss, but you are still in business. That is not enough to grant, to say he has an unnecessary hardship.

He has to put in a buffer, there is no way around it; they can move the driveway. We are not trying to be impossible about it but they did not try to do anything.

Mr. Isenhour said just a few counters to what Mr. Scarbrough just said. Going back to the whole temporary facility, that is right that was contemplated and it even uses the word in the 1994 memorandum that it was “contemplated”. It was contemplated to be an interim facility. That went away when the regional facility was no longer feasible because of environmental issues at that site. It had some kind of endangered species and they were not able to develop it.

In the meantime, Union County and others went ahead and built their own facilities. So, that regional facility is no longer an option. We do not have plans to have this be a temporary facility at this time. He said that was contemplated at the time, but it is not the case anymore.

He said regarding the 2034 date, just to be absolutely clear, that is just for the lease on the Green property. That does not have anything to do with the subject property that we are getting a variance on tonight; just to make that clear. The Greens were compensated for that lease in that final judgment back in 1996.

He said to briefly rehash everything, the first thing Mr. Scarbrough pointed out were the requirements for a variance. What we are claiming undue hardship is not just the cost of relocating a driveway, and not just the lack of ability to go from 150,000 to 300,000 gallons a day. It is really that if we hit the max, we cannot take anymore wastewater at this facility.

We have actually gone ahead and done preliminary studies, to see how we can route around this plant. The first numbers that came up were that it would cost 18 million dollars for WSACC to

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have lines that would not feed into the Muddy Creek Facility, but go to another wastewater facility that WSACC operates and owns.

We are not talking about the cost of a little driveway, we are talking about a major pipe project that would have to happen. At this point, development in Midland would have to get delayed at some point if this facility cannot get expanded further. So going through the requirements for a variance that is kind of number one. Is that we really do think we have a hardship here.

He said just to point out again, WSACC did not create this hardship. It has been on the ground since 1994. If people were building this site today and they knew about the 75 foot buffer you would have never structured the site as it was, but that is what we are living with now.

The second requirement for a variance is that it does not substantially interfere with or enter the rights of others. Our contention here is we are not putting in a new driveway, we are not putting in anything within that 75 foot buffer that is not already there. So, we would dispute that we are in anyway adversely affecting the value of the Green property, by this 75 foot variance.

We understand that they might be looking to sell the property in the future and he is sure they have concerns relative to that, but the plan and the driveway are already on the ground out there. He does not think anything we are talking about today would adversely affect the value of that property.

The third point kind of going along with that, our expansion. We are keeping the expansion, and when he says expansion to him it is more a capacity expansion. There are some facilities getting built but we are really talking about the expansion of capacity from 150,000 to 300,000. It is located predominately on the other side of the property from the Green property. We have not had any issues, notice went out to all the other landowners out there. None of the other landowners have had any issue with this expansion.

The fourth point is, we are willing to plant some trees as we talked about. A line of trees along that property line so that we share in this buffer.

The fifth point is, if this plant expansion cannot go through, Mr. Scarbrough is right, we can operate the facility at 150,000 gallons as is now. But if it doesn't, we are going to get to the point where we cannot take on any more wastewater. He said that ultimately ends up endangering the public and then also limiting future expansion in that area.

Mr. Paxton said you state that this is not a temporary situation; that went away. He said did you ever convey that to the Green family?

Mr. Isenhour is not sure, he cannot say if the Green family knew that one way or another.

Mr. Paxton said because in his mind they are thinking that this is a temporary situation.

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Mr. Isenhour said well, they might be thinking that based on their lease. But, he thinks it has been public knowledge that that regional facility went away a long time ago, so that is not a recent change and so we have been operating it in concert with the County who owns it without the intention of it being temporary.

He said even at the time there were no commitments. To be abundantly clear on that, there were no commitments to be, it was just contemplated; that is true. He thinks the County at the time it was built did contemplate joining in this regional group. Which is not uncommon in other jurisdictions, but that is just not feasible at this time.

Mr. Koch does not know if the Green heirs have any further evidence. He asked Mr. Scarbrough if that is all that he has.

Mr. Scarbrough said that is all that he has. He does not really have a closing argument but the heirs of John Bunyan Green have always feared that this was going to become a permanent plant; that is there fear. They never knew that it was going to be a permanent plant, but they know now.

The Chair will read what the Board should be considering as the standards for a variance request to be granted. She said this is straight out of the Zoning Ordinance, Section 12-20:

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.

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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.

Variance Request #1 – Applicant is requesting relief from the 75 foot landscape buffer requirement. The applicant is asking that the site remain in its current condition and that the requirement to install the plantings in the buffer be waived. They are also asking that the existing driveway and equalization basin remain in the landscape buffer.

The Chair said we will go through each of the criteria that she read in review to seek an affirmative vote in order to approve this. We are going to look at each of these specific findings and as she summarized, we would need to have substantial material evidence to support our position on each of the four standards.

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.

She asked if there were any comments or statements from anyone on the Board specific to that finding.

Mr. Brent Rockett said the existing easement for the drive from the adjacent property in this case, in his opinion, serves as part of that hardship. Because there is no way with the existing easement that you could come on to that property without entering that 75 foot buffer zone. Being that the easement immediately enters the property from that section. That, to him, exists as pre-existing hardship beyond any that have been mentioned here today.

The Chair thinks that she also understood that that driveway easement existed prior to the Ordinance update that instituted the requirement for the buffer.

Mr. Rockett said yes, that is the way he understood it as well.

The Chair asked if there was anything else specific to that item that anyone else would like to add.

There being no additional comments, the Chair moved to the next finding:

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.

Mr. Aaron Ritchie said this particular piece of property is landlocked and it has a right-a-way or easement with that driveway and if you move that, you are on someone else's land and you cannot do that.

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The Chair said excepting the comment that the parcel is landlocked without any other means of ingress except for the existing easement.

She asked if there was anything else. There being no further comment, the Chair moved to the next finding:

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing the property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

Mr. Price said when that property was purchased, there is no way of knowing that this hardship was going to develop later on. There was not a problem there when it was purchased. The hardship came along after the Ordinance was changed.

Mr. Ritchie said the County changed the Ordinance so the plant did not do this on its own, it was done to them.

There being no further comment, the Chair moved to the next finding:

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.

Mr. Price thinks that is self-explanatory and he thinks it answered its own statement in a way. He thinks substantial justice is achieved by WSACC's willingness to go as far as they can toward mitigating the loss of buffer there.

The Chair said understanding from the evidence that was presented, it seems that the applicant is amiable to accepting a condition that they would supplement, on the northern section of the driveway, planting of the trees and shrubs for that section of the zoning Ordinance.

If we have gone through each of these items and established the criteria for our position on each of them, at this time we can she thinks, come up with a motion. She said that motion would need to include any of these conditions of approval that staff has provided as well as any conditions that we are going to establish as a part of our motion. She said that needs to be included in the motion.

Mr. Brent Rockett said for clarification, if there is any further work done on this property, any additional expansion in the future, his assumption is that it would come back to this Board because of the nonconformity again or would this mean that they can expand without having a similar hearing in the future?

Mr. Koch said the answer to that question is, if there is a variance granted for the driveway as it presently exist, with any condition that the Board imposes in connection with that variance, that that would run with the land and be there unless they made some other change in connection

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with the plant capacity or any other change to the property in that area that would require that they would need to get a variance. But that one would continue in existence.

It would seem to him that if an additional increase in capacity along the lines of what they are talking about here, with just equipment that does not change what is already in their existing conditional use, would not require them to come back to the Board.

Mr. Koch asked if that answered Mr. Rockett's question.

Mr. Rockett said yes.

The Chair thinks notable to Mr. Rockett's question, what they are proposing in this expansion, in no way is further impacting or expanding the nonconformity with the specific buffer requirement. She said that was also noted.

The Chair said with what we have summarized, we need to have a motion to approve or deny the request based on the discussion and our findings that were stated. The Chair asked if there was a motion.

Mr. Aaron Ritchie **MOTIONED, SECONDED** by Mr. Rick Price to **APPROVE** Petition **VARN2017-00001**, with the conditions discussed prior to the motion, to add additional shrubs and trees to the north side of the driveway (Level 2 Buffering) within practical means and with the conditions recommended by staff in the staff report. The vote was unanimous.

Mr. Koch asked if the Board would like for him to prepare the Findings of Fact consistent with their discussion and their vote.

It was the consensus on the Board to have Mr. Koch prepare the Findings of Fact.

Mr. Koch asked if it would be the pleasure of the Board, once he prepares the Findings and the appropriate Granting Order and that they are satisfactory to the Chair, such that she is willing to sign them and that it could be done before the next meeting.

It was the consensus on the Board to have the Chair approve the Findings of Fact and sign the Granting Order prior to the next meeting. (See Findings of Attached)

VARN 2017-00001
FINDINGS OF FACT

FINDINGS OF FACT

1. Cabarrus County (“County”) is the owner of the Property. By written agreement between WSACC and the County, WSACC operates the Facility, which is a wastewater treatment plant.

2. In 1994, the County constructed the Facility on the Property in order to provide wastewater service to the Midland area. The Property consists of 17.942 acres with Countryside Residential (“CR”) zoning.

3. A conditional use permit was issued by the Cabarrus County Planning and Zoning Commission, sitting as the Board of Adjustment, for the Facility to process up to 1.8 million gallons per day (“mgd”).

4. The Property is landlocked, but has ingress and egress to Hopewell Road through a dedicated access easement across property owned by BA. AM. IV, Inc. (PIN 5553-24-9675).

5. In 2010, the Facility was expanded from 75 mgd to 150 mgd. This expansion included additional treatment facilities as well as an equalization basin to provide sufficient storage capacity during peak flow events.

6. The equalization basin, which is strategically located in the Facility relative to the overall treatment process, consists of a 38 foot diameter concrete basin with adjoining support structures for mechanical equipment.

7. Due to increased growth in the Midland area and resultant increased wastewater demand, WSACC plans to expand the Facility to 300 mgd. While planning for the expansion, it was determined that part of the existing gravel access drive and the equalization basin are located within the Level 2 landscape buffer yard required with CR zoning, along the northeast boundary of the Property.

8. The Level 2 landscape buffer yard requires a 75 foot setback from the adjacent property. All the proposed improvements for the Facility expansion are located outside of the setbacks and meet the zoning requirements, so this variance relates to the portion of the access drive and the equalization basin within the setback.

9. The adjoining parcel to the north of the Property is owned by the John Bunyan Green heirs (PIN 5553-35-9990). Most of that parcel is wooded and is subject to a recorded agricultural conservation easement. This conservation easement preserves the woodland in accordance with a forestry management plan which would require replanting in the event of any timber harvesting.

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10. The hardships or practical difficulties are unique and singular to the Property and are not suffered in common with other property similarly located in that:

a) The Property is used as a wastewater treatment plant for the entire Midland area. No other parcel in that area of Cabarrus County has these characteristics.

b) The location of the access drive to the Facility is determined principally by the configuration of the access easement to the Property, which necessitates that part of the access drive be within the setback.

c) There has been no prior objection to the existing placement of either the access drive or the equalization basin. The equalization basin is necessary for the treatment process and would be extremely impractical to relocate, given its size and configuration.

11. The hardships and practical difficulties which will result from failure to grant the variance extend to the inability to use the Property in question for any use in conformity with the provisions of the Cabarrus County Development Ordinance and include substantially more than mere inconvenience and inability to attain a higher financial return in that:

a) The prior findings in Paragraph 10 (a), (b) and (c) are restated and incorporated by reference.

b) Expansion of the Facility is required for the continued orderly growth of the Midland area.

12. The variance will not substantially interfere with or injure the rights of others whose property would be affected by allowance of the variance in that:

a) The prior findings in Paragraphs 8, 9 and 10 (c) are restated and incorporated by reference.

b) The John Bunyan Green heirs' parcel is approximately 317 acres in size. The improvements or "farmstead" area is approximately 35 acres and is located at the opposite end of that parcel from the Property. In between is a dense woodland of mature trees that effectively visually screens and buffers the Facility from any of the historic improvements on the Green parcel.

c) Despite the presentation by counsel for the John Bunyan Green heirs, there is no evidence that the granting of this variance would interfere or injure the rights of those property owners or any other nearby property owners.

d) There are areas on the Property within the required 75 foot landscape buffer in which landscaping could be planted to provide additional screening.

13. The variance is in harmony with and serves the general intent and purpose of the Cabarrus County Development Ordinance in that:

Planning and Zoning Commission
Minutes
August 8, 2017

a) The prior findings of Paragraphs 8, 10(a), 10(c) and 11(b) are restated and incorporated by reference.

b) The Cabarrus County Development Ordinance attempts to balance orderly growth with preservation of property rights of neighboring parcels.

c) The intent of a landscape buffer is to preserve the appearance, character and value of a property relative to the neighboring parcel.

d) The grant of a variance in this situation would not change the present condition of the Property or the neighboring parcels.

14. The variance will result in substantial justice being done, considering the public benefit to be secured by the Cabarrus County Development Ordinance and the individual hardships that will be suffered by a failure of the Board of Adjustment to grant a variance in that:

a) The prior findings in Paragraphs 8, 10(a), 10(b), 10(c), 11(b), 12(b), 12(c) and 13(a) are restated and incorporated by reference.

b) It is a benefit critical to the public that wastewater treatment services be available to the Midland area and be of sufficient capacity to accommodate the growth in that area.

Based on the foregoing Findings of Fact, the Board makes the following

CONCLUSIONS OF LAW

1. The foregoing Findings of Fact are incorporated by reference as Conclusions of Law so as to give full effect to the provisions of this Order Granting a Variance.

2. Unnecessary hardship would result from the strict application of the Cabarrus County Ordinance (“Ordinance”). It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the Property.

3. The hardship results from conditions that are peculiar to the Property, such as location, size and topography.

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.

5. Granting the variance in this situation is consistent with the spirit, purpose and intent of the Ordinance.

6. The variance request is modified, with the consent of the County and WSACC, to require WSACC to plant trees and shrubbery consistent with the requirements of the Level 2 buffer

Planning and Zoning Commission

Minutes

August 8, 2017

in those areas of the 75 foot setback north of the access drive, except for the area of the equalization basin.

Conditions of Approval

- Site plan review and approval is required subsequent to Board of Adjustment approval to ensure compliance with all applicable development requirements and conditions.
- The Granting Order, stating restrictions and applicable conditions of approval, shall be recorded with the deed of the property.
- The applicant shall procure any and all applicable federal, state, and local permits prior to commencement of project.
- The applicant shall supplement the Level 2 Buffering on the northern section of the driveway with practical trees and shrubs.

Planning and Zoning Commission

Minutes

August 8, 2017

Directors Report

Ms. Susie Morris, addressed the Board. She said those Board members who volunteered to work on the Harrisburg Land Use Plan, we had the kick off meeting last Thursday. She will be in touch about the meeting dates. The first meeting is probably going to be in September. Their board folks will need to meet probably early evening around six or seven.

She acknowledge the three new alternate Board members who were in the audience; Ms. Holly Grimsley, Mr. Jerry Wood, Jr. and Mr. Andrew Nance.

Ms. Morris said Mr. Andrew Graham had to leave, he was given his plaque. She thank Mr. Aaron Ritchie for his service and presented him with his plaque.

She said for the new folks, she will get the information to them that they talked about, so that they can look at the videos.

Ms. Morris said since we have some people rolling off of the Board next month, be thinking about the Chair, Vice Chair the second Vice Chair positions. Once the Chair and two Vice Chairs are established, we will then reconvene the Text Amendment Committee and start working on our subdivision chapter and also some amendments.

She said there may be a Text Amendment coming next month to move along with our River Stream Overlay District.

Ms. Morris thanked the Board members who are rolling off of the Board. We really appreciate your service to the citizens of Cabarrus County. She knows that it is not always easy to sit up here for three or four hours and have attorneys drilling you.

Ms. Morris introduced Mr. Wayne Krimminger, Senior Zoning Enforcement Officer. He is coming to us by way of Harrisburg. He has about 15 years of zoning experience, and he was the Zoning Enforcement Officer for Harrisburg. He is with us now as a Senior CZO handling the Midland area.

Ms. Morris introduced Ms. Martha Hernandez, Permit Associate. She is handling all of our zoning permitting as well as soil suitability applications, on behalf of the Cabarrus County Health Alliance, through the zoning division.

She said we are very happy to have both of them on board. We are fully staff and hopefully will stay that way for a while.

No Legal Report

Planning and Zoning Commission
Minutes
August 8, 2017

There being no further discussion, Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Ms. Mary Blakeney to **ADJOURN** the meeting. The vote was unanimous. The meeting ended at 10:36 p.m.

APPROVED BY:



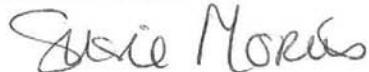
Mr. Chris Pinto, Chair

SUBMITTED BY:



Arlena B. Roberts

ATTEST BY:



Susie Morris, Planning and Zoning Manager

EXHIBIT A

Staff Use Only:

Approved: _____

Denied: _____

Tabled _____

PLANNING STAFF REPORT
CABARRUS COUNTY PLANNING AND ZONING COMMISSION
8/8/2017

Petition: RZON2017-00001 Rezoning

Applicant Information:	Mulberry Industrial Park, LLC PO Box 790 Cornelius, NC 28031
Owner Information:	Mulberry Industrial Park, LLC PO Box 790 Cornelius, NC 28031
Existing Zoning:	OI (Office/Institutional)
Proposed Zoning:	LI (Limited Industrial)
Permitted Uses:	All uses permitted in the Limited Industrial (LI) zoning district would be permitted on the subject property.
PIN#:	5517-98-5443
Area in Acres:	+/-132.792
Site Description:	This site is currently used as single-family residential, for agriculture/farming and is in the forestry program. The site includes several acres of floodplain to the south and west.
Adjacent Land Use:	North -Industrial East - Vacant/Wooded/Single Family Residential South - Vacant/Wooded/Agricultural/County Park West – Industrial/Single Family Residential/Wooded
Surrounding Zoning:	North: I-2 Heavy Industrial, CUI-2 Conditional Zoning Heavy Industrial (Town of Harrisburg Zoning Designations), and GI General Industrial (Cabarrus County) East: OI Office/Institutional and AO Agriculture/Open Space South: OI Office/Institutional and RL Residential Low Density (Town of Harrisburg Zoning) West: RL Residential Low Density (Town of Harrisburg Zoning) and LI Limited Industrial (Cabarrus County)
Utility Service Provider:	The application states that the subject property will be served by well and septic. If development of the property requires utilities, the utility provider for the subject property is the Town of Harrisburg.

Exhibits

- EXHIBIT A – Staff Report
- EXHIBIT B – Application
- EXHIBIT C – Zoning Maps
- EXHIBIT D – Aerial Maps
- EXHIBIT E – Future Land Use Map
- EXHIBIT F – Adjacent Property Owner Letter and Mailing List, & Property Owner Letter
- EXHIBIT G – List of Permitted Uses in OI and LI
- EXHIBIT H – Zoning Sign

Intent of Zoning Districts

EXISTING DISTRICT: OFFICE/INSTITUTIONAL (OI):

This district is intended to accommodate relatively low intensity office and institutional uses at intensities complementary to residential land use. This district serves as a transitional district between residential land uses and higher intensity non-residential land uses.

This district is used to provide for low intensity office and institutional uses that can be complementary to adjacent residential land use. This district features employment options and essential services which require a moderate number of average daily trips. These uses will have a minimum impact on the surrounding area because these trips will generally occur during regular business hours, thus, not competing with residential traffic at peak hours or on weekends. This district should be located adjacent to residential districts or in areas where its use would serve as a transition between residential land uses and higher intensity non-residential land uses. Higher intensity non-residential land uses may include commercial districts, light industrial or mixed use districts. When bordering residential districts or residential developments, care should be taken to assure natural or manmade buffering and architectural compatibility so that the nonresidential activities are not a nuisance to residential use.

PROPOSED DISTRICT: LIMITED INDUSTRIAL (LI):

This district provides for both large and small scale industrial and office development. The primary distinguishing feature of this district is that it is geared to indoor industrial activities which do not generate high levels of noise, soot, odors or other potential nuisances/pollutants for impacting adjoining properties. It is typically located in areas of the county with infrastructure available, including higher volume roadways, water and sewer. Light industrial districts may border the higher density residential districts only when an effective buffer exists. For example, a natural structural feature such as a sharp break in topography, strips of vegetation or traffic arteries. In no case, would a limited industrial district be located where the result is industrial or commercial traffic penetrating a residential neighborhood.

This district provides a location for light industrial land uses such as assembly operations, storage and warehousing facilities, offices and other light manufacturing operations.

Agency Review Comments

Planning Review:

See Staff Report. Jason Earliwine, Senior Planner Cabarrus County

NCDOT Review:

The developer will be responsible for coring Mulberry and Pharr Mill Roads to determine the course of strengthening that will be required to preserve the integrity of the roadways due to the impacts of the proposed development. Leah Wagner, NCDOT District Engineer

Addressing Review:

No comments. Lee Snuggs, E-911 Addressing Coordinator

Fire Marshal Review:

No comments. Matthew Hopkins, Assistant County Fire Marshal

Harrisburg Planning Review:

The applicant has attempted to annex into [the] town [of Harrisburg] twice, once to operate a granite quarry, and a second time to open an industrial park with associated “removal of materials”. Both of these requests were turned down by the Town Council. Josh Watkins, Town of Harrisburg Planning Director

EMS Review:

No comments. Alan Thompson, Cabarrus County EMS Director

Sheriff's Office Review:

No comments. Ray Gilleland, Cabarrus County Sheriff's Lieutenant

Cabarrus County Schools Review:

Since this zoning change does not involve potential student growth, we have no comments. Robert Kluttz, Cabarrus County Schools Planning Services Staff

Land Use Plan Analysis

The Harrisburg Area Land Use Plan designates this area as Light Industrial (LI). The LI designation is intended to provide for light industrial and office uses. The predominant use(s) for the district are light industrial, office, and multi-tenant flex space.

Characteristics of the Light Industrial land use classification:

- Externalities of industrial processes – light, noise, odor, vibration – are confined to the site.

- Architecture is the dominant feature of the landscape, but is enhanced by landscaping (existing or planted) to soften the hard edges.
- Located in areas where infrastructure can support it (more intense than other land use categories).
- Typically, four-lane highways and wide collectors designed for truck traffic are primary forms of access, supplemented by railroad service, and curb and gutter is more widely used.

Conclusions

The Cabarrus County Development Ordinance district description and rationale states that Limited Industrial districts are typically located in areas of the county with infrastructure available, including higher volume roadways, water and sewer. It also states that Limited Industrial districts may border the higher density residential districts only when an effective buffer exists. For example, a natural structural feature such as a sharp break in topography, strips of vegetation or traffic arteries.

- The application states that the subject property will be served by well and septic.
- The areas to the east and southwest are predominantly lower-density residential areas.

The proposed rezoning to the Limited Industrial zoning district is consistent with the intent of the Harrisburg Area Land Use Plan as the subject property is designated Light Industrial. The light industrial land use classification allows predominantly light industrial, office, and multi-tenant flex space. The Limited Industrial zoning district permits both large and small scale industrial and office development. The Harrisburg Land Use Plan states, however, that light industrial areas should be:

- Located in areas where infrastructure can support it (more intense than other land use categories).
- Typically, four-lane highways and wide collectors designed for truck traffic are primary forms of access, supplemented by railroad service, and curb and gutter is more widely used.

This is a conventional rezoning request, therefore all uses permitted in the LI zoning district would be allowed on the subject property if approved. The Planning and Zoning Commission should consider all of the information provided and determine if the proposed rezoning is consistent with the Commission's vision for this area of Cabarrus County.

**CABARRUS COUNTY
REZONING
APPLICATION**



STAFF USE ONLY:
 Application Acct#:RZon2017-00001
 Received By: JRE
 Date Filed: 07/10/17
 Amount Paid: \$ 1251.45

Instructions

1. Schedule a pre-application meeting with Staff to discuss the procedures and requirements for a zoning map amendment request.
2. Submit a complete application for an amendment to the official zoning map to the Planning Division. All applications must include the following:
 - Cabarrus County Land Records printout of all adjacent property owners. This includes properties located across the right-of-way and all on-site easement holders. The list must include owner name, address, and Parcel Identification Number.
 - A recent survey or legal description of the property or area of the property to be considered for rezoning.
 - Any additional documents essential for the application to be considered complete. (Determined as part of the pre-application meeting)
3. Submit cash, check, or money order made payable to Cabarrus County.

Fees:

 - Residential rezoning request less than 5 acres = \$400
 - Residential rezoning request greater than 5 acres = \$400 + \$5 per acre over 5 acres
 - Non-residential rezoning request = \$550 + \$5/acre
 - +3% technology fee based on total application fee
4. The deadline for submittal is always the same day as the Planning and Zoning Commission Meeting which is the second Tuesday of the month. Applications must be submitted before 2:00 PM that day for consideration on the next available agenda.

Incomplete applications will be returned to the applicant and will not be processed.

Process Summary:

1. Hold a pre-application meeting with Staff to discuss your rezoning request and the map amendment process.
2. Submit a complete Zoning Map Amendment application with the appropriate fees to the Cabarrus County Planning Division.

Staff will review your complete application, prepare a staff report, schedule a public meeting date and notify adjacent property owners of the public meeting/public hearing date. A sign advertising the public hearing will also be placed on the property being considered for rezoning.

Meeting Information: Meetings are held the second Tuesday of each month at 7:00 PM in the Cabarrus County Governmental Center located in downtown Concord at 65 Church Street, SE.

Expedited Vote: A vote of $\frac{3}{4}$ or more of the members of the Planning and Zoning Commission is considered an Expedited Vote and will constitute a final decision. If approval or denial of a rezoning request is by a vote of less than $\frac{3}{4}$ of the members, or if an appeal of the decision is filed within 15 days of the date of the decision, the application will automatically be forwarded to the Board of Commissioners for final consideration at a *de novo* hearing.

Questions: Any questions related to rezoning your property or to the rezoning process may be directed to the Planning Division at 704-920-2141, between 8 AM and 5 PM, Monday through Friday.

Subject Property Information

Street Address 2173 MULBERRY RD.
PIN(s) (10 digit #) 5517-98-5443; - -
Deed Reference Book 12557 Page 0226
Township # 1

Description of Subject Property

Size (square feet or acres) 132.792
Street Frontage (feet) 500
Current Land Use of Property AGRICULTURE FARMING
Surrounding Land Use North INDUSTRIAL
South RESIDENTIAL - AGRICULTURE
East RESIDENTIAL
West INDUSTRIAL

Request

Change Zoning From OI To CI
Purpose for Request CREATE INDUSTRIAL PARK

Utility Service

Water Supply Well or Service Provider _____
Wastewater Treatment Septic Tank(s) or Service Provider _____

Property Owner/Agent/Applicant Information

It is understood by all parties hereto including owner, petitioner, and/or agents that while this application will be carefully considered and reviewed, the burden of proving its need rests with the below named petitioner(s).

I do hereby certify that the information that I have provided for this application is, to the best of my knowledge, true and correct.

Property Owner

MULBERRY INDUSTRIAL PARK, LLC
P.O. Box 790, CORNELIUS, NC 28031
859-537-5530

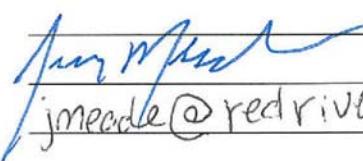
Address

Phone

Fax

Signature

E-mail Address


jmcade@redrivengroup.com

Agent (if any)

SAME

Address

Phone

Fax

Signature

E-mail Address

Applicant (if any)

SAME

Address

Phone

Fax

Signature

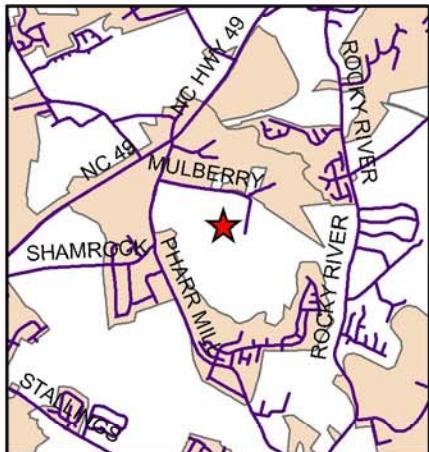
E-mail Address

EXHIBIT C(1)

Zoning Map
Cabarrus County



Applicant: Mulberry Industrial Park, LLC
Case: RZON2017-00001
Address: 2173 Mulberry Road
Purpose: Rezoning from OI to LI
PIN: 5517-98-5443



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

Map Prepared by Cabarrus County Planning & Development
July 28, 2017

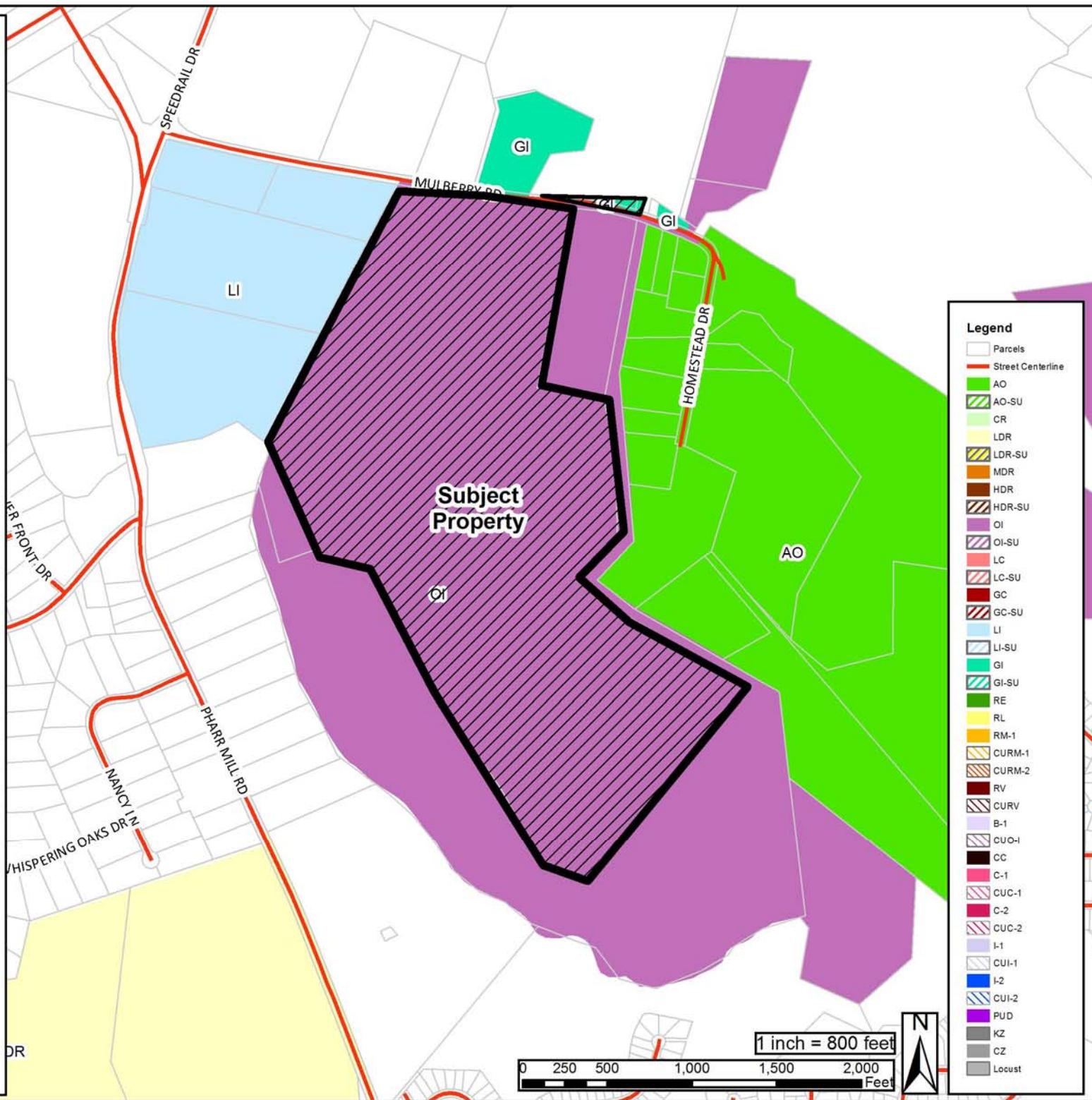
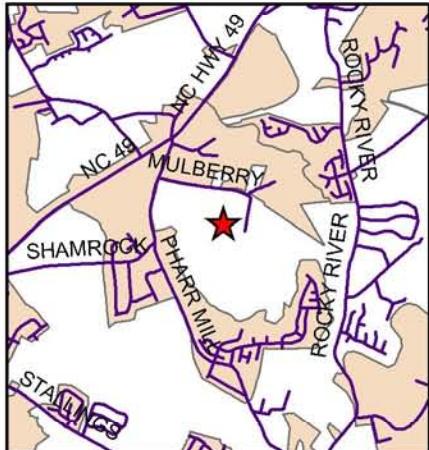


EXHIBIT C(2)

Zoning Map
Town of Harrisburg

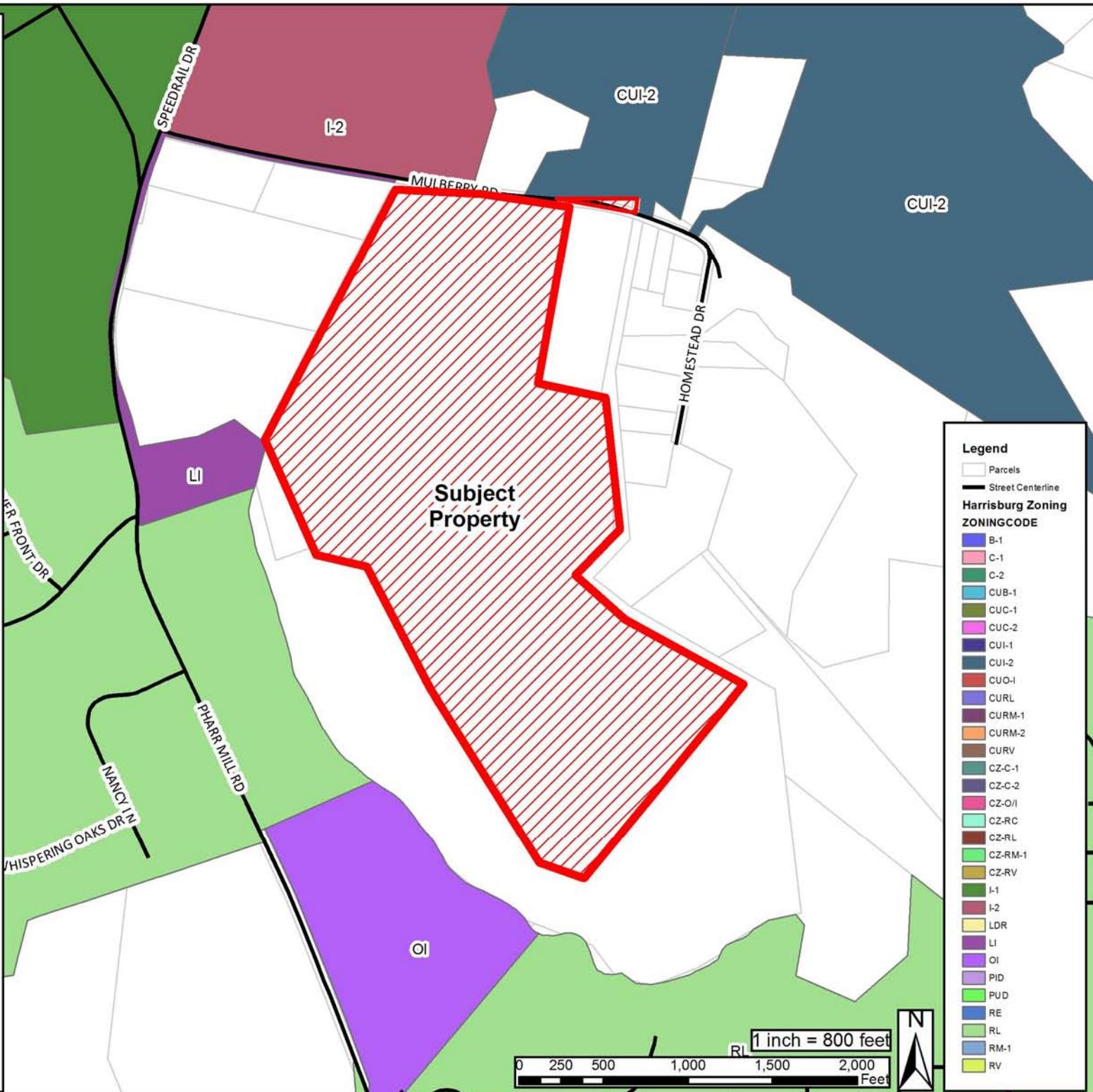


Applicant: Mulberry Industrial Park, LLC
Case: RZON2017-00001
Address: 2173 Mulberry Road
Purpose: Rezoning from OI to LI
PIN: 5517-98-5443



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Map Prepared by Cabarrus County Planning & Development
July 28, 2017



1 inch = 800 feet
0 250 500 1,000 1,500 2,000
Feet

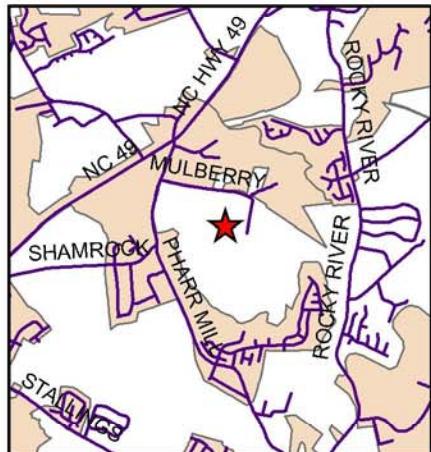
Legend	
■	Parcels
—	Street Centerline
Harrisburg Zoning	
ZONINGCODE	
B-1	
C-1	
C-2	
CUB-1	
CUC-1	
CUC-2	
CUI-1	
CUI-2	
CUO-I	
CURL	
CURM-1	
CURM-2	
CURV	
CZ-C-1	
CZ-C-2	
CZ-O/I	
CZ-RC	
CZ-RL	
CZ-RM-1	
CZ-RV	
I-1	
I-2	
LDR	
OID	
PID	
PUD	
RE	
RL	
RM-1	
RV	

EXHIBIT D(1)

Aerial Map



Applicant: Mulberry Industrial Park, LLC
Case: RZON2017-00001
Address: 2173 Mulberry Road
Purpose: Rezoning from OI to LI
PIN: 5517-98-5443



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July 28, 2017

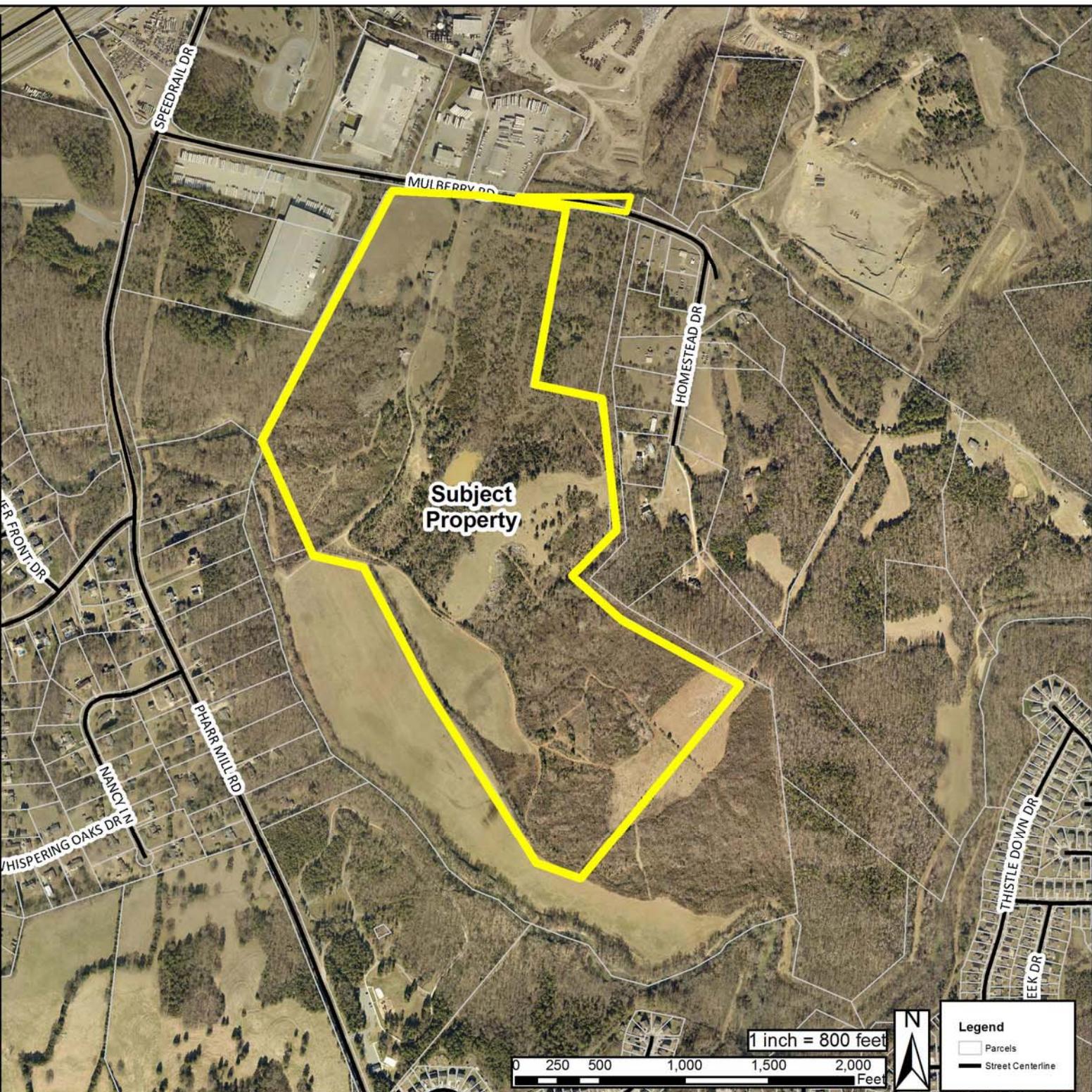
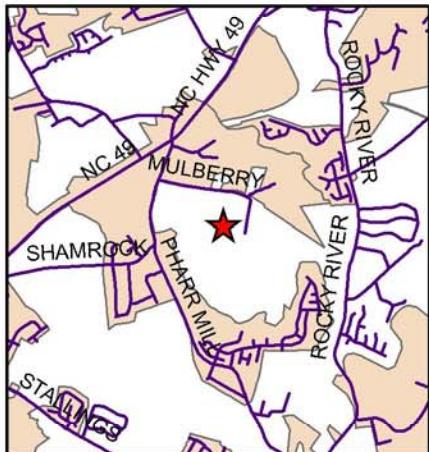


EXHIBIT D(2)

Aerial Map with Flood Zones



Applicant: Mulberry Industrial Park, LLC
Case: RZON2017-00001
Address: 2173 Mulberry Road
Purpose: Rezoning from OI to LI
PIN: 5517-98-5443



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July 28, 2017

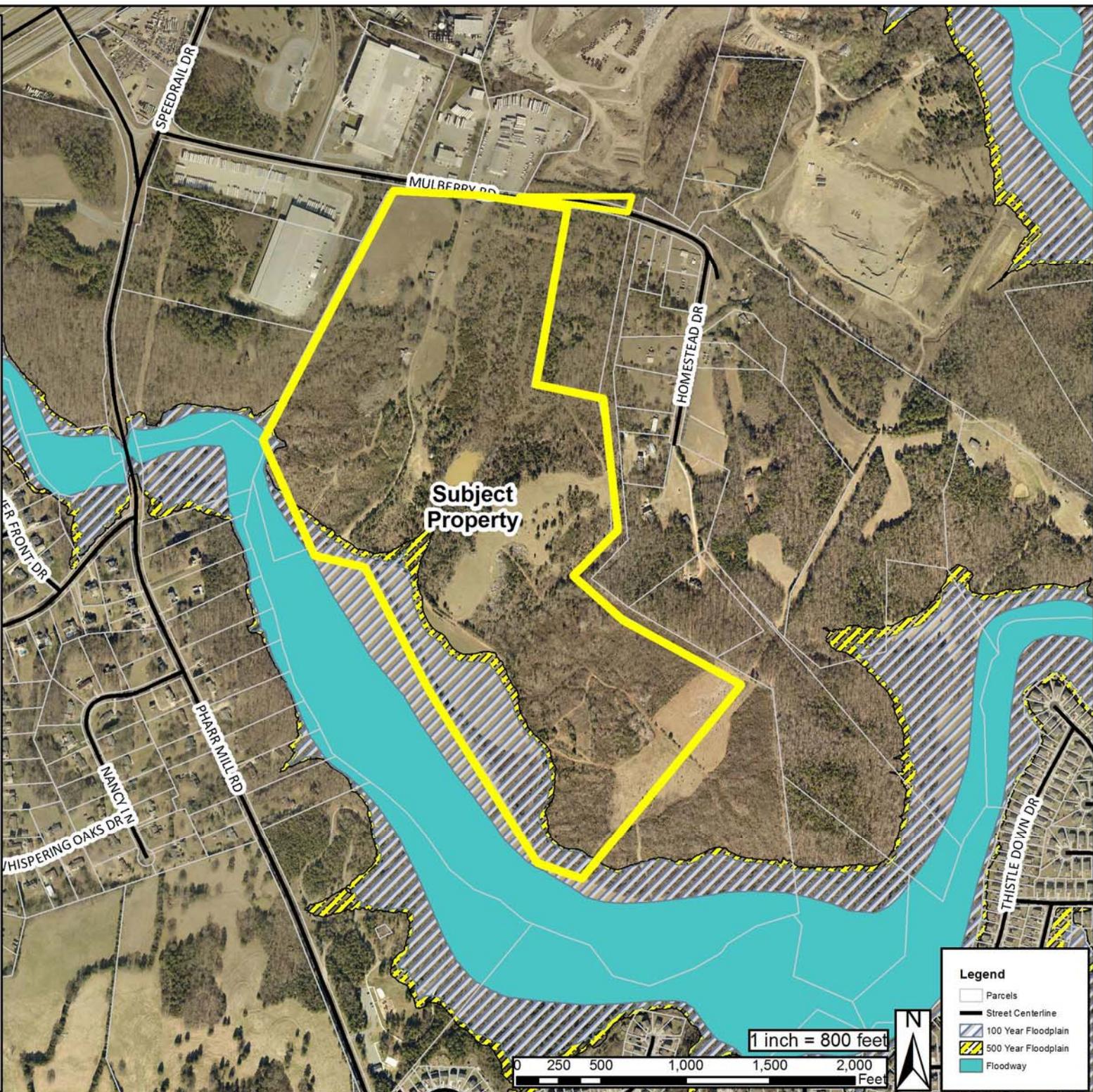
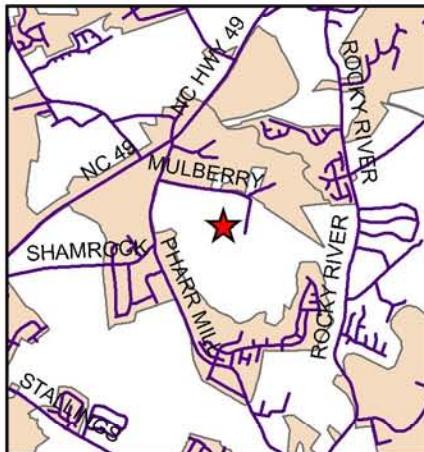


EXHIBIT E

Future Land Use Map

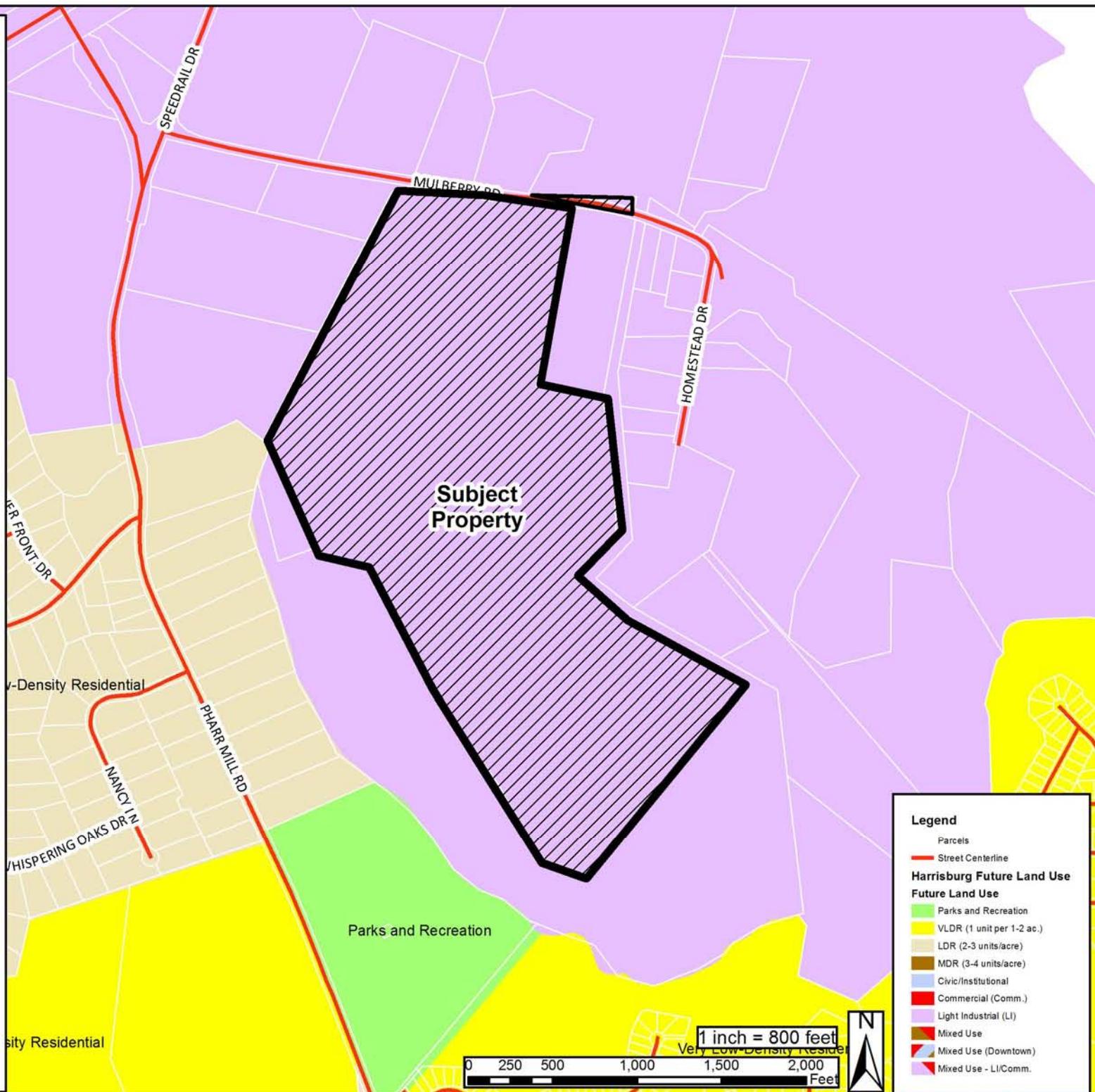


Applicant: Mulberry Industrial Park, LLC
Case: RZON2017-00001
Address: 2173 Mulberry Road
Purpose: Rezoning from OI to LI
PIN: 5517-98-5443



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Map Prepared by Cabarrus County Planning & Development
July 28, 2017



Legend

Parcels
Street Centerline

Harrisburg Future Land Use

Future Land Use

- Parks and Recreation
- VLDR (1 unit per 1-2 ac.)
- LDR (2-3 units/acre)
- MDR (3-4 units/acre)
- Civic/Institutional
- Commercial (Comm.)
- Light Industrial (LI)
- Mixed Use
- Mixed Use (Downtown)
- Mixed Use - LI/Comm.



July 20, 2017

Dear Cabarrus County Property Owner:

The Cabarrus County Planning and Development Department has received a request for a **Rezoning** for property located **adjacent** to your property. The specifics of the request are listed below.

The Cabarrus County Planning and Zoning Commission will consider the **Rezoning** request on Tuesday, August 8, 2017 at 7:00 PM. This meeting will be held in the Commissioners Meeting Room located on the second floor of the Governmental Center at 65 Church Street SE, Concord, NC 28025. A Public Hearing will be conducted as part of the consideration of the request and public input will be received during that time. If you have any comments or questions related to the request, you should plan to attend the meeting.

APPLICANT:	Mulberry Industrial Park, LLC
CASE NUMBER:	RZON2017-00001
PROPERTY ADDRESS:	2173 Mulberry Rd
PARCEL NUMBERS:	5517-98-5443
EXISTING ZONING:	Office/Institutional (OI)
PROPOSED ZONING:	Limited Industrial (LI)
DESCRIPTION:	Applicant wishes to rezone the parcel to LI in order to build an industrial park.

If you have any questions regarding this request or the public hearing process please feel free to contact me at **(704) 920-2149**.

Sincerely,

A handwritten signature in cursive ink that reads "Jason Earliwine".

Jason Earliwine
Cabarrus County Senior Planner

Adjacent Parcels List

Owner Name	Parcel	Mailing Address	City	ST	Zip	Physical Address
CORRCHOICE LLC/DE LLC	5518-80-9980	425 WINTER RD	DELAWARE	OH	43015	2200 MULBERRY RD
JB HUNT TRANSPORT INC	5518-90-4717	705 B NORTH BLOOMINGTON PO BOX 130	LOWELL	AZ	72745	2170 MULBERRY RD
JB HUNT TRANSPORT INC	5518-90-7646	706 B NORTH BLOOMINGTON PO BOX 130	LOWELL	AZ	72745	2020 MULBERRY RD
GREENWAY WASTE SOLUTIONS OF HARRISBURG INC	5528-01-3537	19109 W CATAWBA AVE STE 200	CORNELIUS	NC	28031	2105 SPEEDRAIL DR
POTTS & BURRIS LLC	5527-09-1740	143 LONG COVE	NEW LONDON	NC	28127	1967 MULBERRY RD
BOBBY LEE MEASMER JR	5527-09-4992	6139 HOMESTEAD PL	CONCORD	NC	28025	1899 MULBERRY RD
SHELBY D CHILDRESS	5527-09-5970	1887 MULBERRY RD	CONCORD	NC	28025	1887 MULBERRY RD
MICHAEL CHARLES MACHADO	5527-09-7958	1855 MULBERRY RD	CONCORD	NC	28025	1855 MULBERRY RD
JD & MARTHA CHAVIS	5527-09-7725	6000 HOMESTEAD DR	CONCORD	NC	28025	6000 HOMESTEAD DR
JOSEPH L ASHTON	5527-09-5620	6100 HOMESTEAD DR	CONCORD	NC	28025	6100 HOMESTEAD DR
LAURA P MORRIS	5527-09-5348	6140 HOMESTEAD DR	CONCORD	NC	28025	6140 HOMESTEAD DR
MERLE & GERALDINE RADFORD	5527-09-5117	6150 HOMESTEAD DR	CONCORD	NC	28025	6150 HOMESTEAD DR
JESSICA HAGETER	5527-08-5907	6210 HOMESTEAD DR	CONCORD	NC	28025	6210 HOMESTEAD DR
MICHAEL & SHELLEY COLLINS	5527-08-4796	6270 HOMESTEAD DR	CONCORD	NC	28025	6270 HOMESTEAD DR
REX & MOLLY MEASMER	5527-08-6338	6300 HOMESTEAD DR	CONCORD	NC	28025	6290 HOMESTEAD DR
ROBERT HILL & JENNIFER MEASMER	5527-07-8920	6340 HOMESTEAD DR	CONCORD	NC	28025	6340 HOMESTEAD DR
BOBBY LEE & REX MEASMER AND SHELBY CHILDRESS	5527-16-6928	1887 MULBERRY RD	CONCORD	NC	28025	6356 HOMESTEAD DR
ARTHUR LILLIAN FRANK SIMPSON TRUST C/O ANGELA LEWIS	5517-96-9945	2173 MULBERRY RD	CONCORD	NC	28025	NO PHYSICAL ADDRESS
VICTOR & DARLENE COGBURN	5517-78-8634	6305 PHARR MILL RD	HARRISBURG	NC	28075	6305 PHARR MILL RD
GORDON TITCOMB	5517-79-9930	6016 AUSTIN GROVE CHURCH RD	MARSHVILLE	NC	28103	6205 PHARR MILL RD
CORRCHOICE LLC/DE LLC	5517-89-0994	425 WINTER RD	DELAWARE	OH	43015	NO PHYSICAL ADDRESS
CORRCHOICE LLC/DE LLC	5518-80-5249	425 WINTER RD	DELAWARE	OH	43015	2215 MULBERRY RD
Property Owner						
MULBERRY INDUSTRIAL PARK LLC	5517-98-5443	PO BOX 790	CORNELIUS	NC	28031	2173 MULBERRY RD



July 20, 2017

Dear Cabarrus County Property Owner:

The Cabarrus County Planning and Development Department has received a request for a **Rezoning** for your property. The specifics of the request are listed below.

The Cabarrus County Planning and Zoning Commission will consider the **Rezoning** request on Tuesday, August 8, 2017 at 7:00 PM. This meeting will be held in the Commissioners Meeting Room located on the second floor of the Governmental Center at 65 Church Street SE, Concord, NC 28025. A Public Hearing will be conducted as part of the consideration of the request and public input will be received during that time. If you have any comments or questions related to the request, you should plan to attend the meeting.

APPLICANT:	Mulberry Industrial Park, LLC
CASE NUMBER:	RZON2017-00001
PROPERTY ADDRESS:	2173 Mulberry Rd
PARCEL NUMBERS:	5517-98-5443
EXISTING ZONING:	Office/Institutional (OI)
PROPOSED ZONING:	Limited Industrial (LI)
DESCRIPTION:	Applicant wishes to rezone the parcel to LI in order build an industrial park.

If you have any questions regarding this request or the public hearing process please feel free to contact me at **(704) 920-2149**.

Sincerely,

A handwritten signature in black ink that reads "Jason Earliwine".

Jason Earliwine
Cabarrus County Senior Planner

EXHIBIT G

OFFICE/INSTITUTIONAL DISTRICT:

OFFICE/INSTITUTIONAL

This district is intended to accommodate relatively low intensity office and institutional uses at intensities complementary to residential land use. This district serves as a transitional district between residential land uses and higher intensity non-residential land uses.

RATIONALE

This district is used to provide for low intensity office and institutional uses that can be complementary to adjacent residential land use. This district features employment options and essential services which require a moderate number of average daily trips. These uses will have a minimum impact on the surrounding area because these trips will generally occur during regular business hours, thus, not competing with residential traffic at peak hours or on weekends. This district should be located adjacent to residential districts or in areas where its use would serve as a transition between residential land uses and higher intensity non-residential land uses. Higher intensity non-residential land uses may include commercial districts, light industrial or mixed use districts. When bordering residential districts or residential developments, care should be taken to assure natural or manmade buffering and architectural compatibility so that the nonresidential activities are not a nuisance to residential use.

OFFICE/INSTITUTIONAL USES

OI Permitted (P) Uses

Banquet Hall	College, University	Hospital, Ambulatory Surgical Care Facility
Barber, Beauty, Tanning, Nail or Skin Care Salon	Farmer's Market	Office, Professional Less Than 30,000 Square Feet
Civic Organization Facility	Funeral Home	
	Group Care Facility	

OI Permitted (P) Uses Continued

Parking Lot, Parking Garage, Commercial or Private	Public Cultural Facility	Services, Stealth Antennae, 65 Feet or Less
Printing and Reprographic Facility	Public Use Facility	
	Wireless Telecommunications	

OI Permitted Based on Standards (PBS) Uses

Accessory Building	FEMA Trailers, Natural Disaster or Significant Weather Event, Temporary Use	Recreational Trail, Greenway, or Blueway Connector
Auction, Estate or Asset Liquidation, Temporary Use	For Profit Temporary Sign, Temporary Use	Recyclable Materials Drop Off
Automated Teller Machine as Accessory	Golf Course, Public or Private	Religious Institution with Total Seating Capacity of 350 or Less
Bank, Financial Institution, Automated Teller Machine	Mobile Personal Storage Unit, Renovation, Temporary Use	Rest Home, Convalescent Home with 10 Beds or Less
Catering Service	Mobile Personal Storage Unit, Vacate or Occupy Premises, Temporary Use	Seasonal Sale of Agriculture Products, Includes Christmas Trees and Pumpkins, Temporary Use
Community Garden, Accessory Use	Nursery, Daycare Center	Scientific Research and Development
Contractor Office, Construction Equipment Storage, Temporary Use	Promotional Activities Involving the Display of Goods or Merchandise, Temporary Use at Existing Business	Swim Club, Tennis Club, Country Club
Country Club with Golf Course	Real Estate Office in Construction Trailer or Modular Unit, Commercial or Mixed Use Projects, Temporary Use	Temporary Amusement Enterprise, Temporary Use
Dumpsters, Commercial Waste Containers, Temporary Use	Recreational Facility, Indoor	
Duplex, Commercial Use, Individual Lots		
Event, Tent or Temporary Structure, Temporary Use		

OI Permitted Based on Standards (PBS) Uses Continued

Temporary Construction Sign, Temporary Use	Trail Head, Accessory Use	Wireless Telecommunications Services, Co-location
Temporary Dwelling for Large Construction Projects, Temporary Use	Trail Head, Primary Use Site	

OI Conditional (C) Uses

Communications Tower, 911
Communications Tower

Convention Center Facility

Elementary, Middle and High
Schools

Public Service Facility

Recreational Facility,
Outdoor

Religious Institution with
Total Seating Capacity of
351 or More

Religious Institution with
School

Rest Home, Convalescent
Home with More Than 10
Beds

Trade and Vocational
Schools

Wireless Telecommunication
Services

LIMITED INDUSTRIAL

This district provides for both large and small scale industrial and office development. The primary distinguishing feature of this district is that it is geared to indoor industrial activities which do not generate high levels of noise, soot, odors or other potential nuisances/pollutants for impacting adjoining properties. It is typically located in areas of the county with infrastructure available, including higher volume roadways, water and sewer. Light industrial districts may border the higher density residential districts only when an effective buffer exists. For example, a natural structural feature such as a sharp break in topography, strips of vegetation or traffic arteries. In no case, would a limited industrial district be located where the result is industrial or commercial traffic penetrating a residential neighborhood.

RATIONALE

This district provides a location for light industrial land uses such as assembly operations, storage and warehousing facilities, offices and other light manufacturing operations.

USES IN THE LIMITED INDUSTRIAL ZONE:

LI Permitted (P) Uses

Automobile Rental	Building and Contractor Supply	Cast Concrete Production, Distribution and Storage
Automobile Parts, Tires, Accessories	Building and Contractor Supply, with Outdoor Storage	Catering Service
Boat Works and Sales, with Sales Lot	Bulk Grain Storage	Convenience Store with Petroleum Sales
Bottling Works		

LI Permitted (P) Uses Continued

Convenience Store without Petroleum Sales	Equipment Sales and Service	Freezer, Ice Plant
Contractor's Storage Yard	Equipment Sales and Service, with Outdoor Storage	Gas Station
Dairy Processing Dry Cleaning, Laundry Plant	Farm Supply Sales with Outdoor Storage	Hatchery
		Machine Shop
		Manufacturing

Metal Works, Metal Processing, Fabrication	Recreational Facility, Indoor	Tour Bus Company, Travel Agency with On Site Bus Storage
Multimedia Production and Distribution Complex	Recreational Vehicle Sales and Service with Outdoor Storage or Sales Lot	Towing Service, with Towed Vehicle Storage Yard, No Salvage or Parts Sales
Nursery, Greenhouse	Repair Garage, Automobile	Towing Service, No Towed Vehicle Storage Lot, Office Only, Storage of Tow Trucks and Car Haulers Permitted On Site
Office, Professional, 30,000 Square Feet or Less	Repair Shop, Farm Machinery	Trucking Equipment, Heavy Equipment, Sales and Service with Sales Lot
Office, Professional, 30,000 Square Feet or More	Repair Shop, Small Engine	Warehouse, Enclosed Storage
Parking Lot, Parking Garage, Commercial or Private	Restaurant, Excluding Drive-Thru	Welding Shop
Printing and Reprographic Facilities	Sawmill	Wireless
Public Use Facility	Slaughter House, Meat Packing	Telecommunications Services, Stealth Antennae, 65 Feet or Less
Race Shop, Race Team Complex	Taxi Service, Dispatch and Taxi Storage	
Radio and Television Studios	Taxidermy Studio, No Outdoor Processing	
Rail Storage Yard	Tire Recapping	

LI Permitted Based on Standards (PBS) Uses

Accessory Dwelling Unit	Contractor Office, Construction Equipment Storage, Temporary Use	FEMA Trailers, Natural Disaster or Significant Weather Event, Temporary Use
Accessory Building	Dumpsters, Commercial Waste Containers, Temporary Use	For Profit Temporary Sign, Temporary Use
Auction, Estate or Asset Liquidation, Temporary Use	Event, Tent or Temporary Structure, Temporary Use	Government Buildings, Storage Only
Communications Tower, 911 Communications Tower		

Government Buildings, Storage Only, Outdoor Only	Temporary Use at Existing Business	Sports and Recreation Instruction or Camp
Ice Production, Dispensing, Accessory to Convenience Store	Real Estate Office in Construction Trailer or Modular Unit, Commercial /Mixed Use Projects, Temporary Use	Storage Building Sales, with Display Area
Ice Production, Dispensing, Accessory to Gas Stations	Recreational Trail, Greenway or Blueway, Connector	Temporary Amusement Enterprise, Temporary Use
Landfill, Demolition-Less Than One Acre	Recyclable Materials Drop Off	Temporary Construction Sign, Temporary Use
Mobile Personal Storage Unit, Renovation, Temporary Use	Restaurant with Drive- Thru Facility	Temporary Dwelling for Large Construction Projects, Temporary Use
Mobile Personal Storage Unit, Vacate or Occupy Premise, Temporary Use	Scientific Research and Development	Towing Service, Accessory to Automobile Repair
Moving Van, Truck or Trailer Rental	Seasonal Sale of Agriculture Products, Includes Christmas Trees and Pumpkins, Temporary Use	Trail Head, Accessory
Moving Van, Truck or Trailer Rental, Accessory to Self Service Storage	Self-Service Storage Facilities	Trail Head, Primary Use Site
Promotional Activities Involving the Display of Goods or Merchandise,	Shooting Range, Indoor	Warehouse with Outside Storage
		Wireless Telecommunications Services, Co-location

LI Conditional (C) Uses

Airport, Commercial	Kennel, Commercial	Public Service Facility
Airstrip, as Accessory Use	Landfill, Demolition- One Acre or More	Race Track, Animal, Automobile or Other
Animal Hospital	Landfill, Sanitary	Recreational Facility, Outdoor
Animal Shelter	Manufactured Home, Single Section	Shooting Range with Outdoor Target Practice
Coliseum, Stadium	Nursery, Daycare Center	
Correctional Facility		

Single-Family Detached Residential

Trade and Vocational Schools

Trucking Company, Heavy Equipment Dispatch Facility with Storage

Truck Stop, Truck Terminal

Veterinarian

Wireless Telecommunications Services

EXHIBIT H



**CABARRUS COUNTY
VARIANCE APPLICATION**


STAFF USE ONLY:

 Application/Accela#: VARN2017-00001
 Received By: JRE
 Date Filed: 07/11/17
 Amount Paid: \$618
Instructions

1. Schedule a pre-application meeting with Staff. During this meeting, Staff will assess the proposed variance request to evaluate options that may be available to you through the zoning ordinance. If it is necessary to proceed with the request, Staff will explain the procedures and requirements, including the thresholds of consideration for Variance requests.
2. Submit a complete application to the Planning Division. All applications must include the following:
 - Cabarrus County Land Records printout of all adjacent property owners. This includes properties located across the right-of-way and all on-site easement holders. The list must include owner name, address, and Parcel Identification Number.
 - A recent survey or legal description of the property.
 - 18 folded copies of the proposed site plan. At a minimum, the site plan shall show the following:
 - The subject property and any adjacent properties.
 - All existing buildings, including setbacks from property lines.
 - All proposed buildings, parking facilities and accessory uses, including setbacks from property lines (if applicable).
 - The location and type of screening and buffering proposed (if applicable).
 - Impervious surface ratio (if applicable).
 - Waterbody buffers (if applicable).
 - Delineation of the proposed Variance on the site plan so that type of variance the applicant is seeking is clear. (This may be accomplished by submitting two site plans. One to show the requirements of the ordinance and a second to show what the variance request will achieve.)
 - Any additional item(s) that should be illustrated on the plan as determined during the pre-application meeting.
 - Any additional documents essential for the application to be considered complete. (Determined at pre-application meeting)
3. Submit cash, check, or money order made payable to Cabarrus County.
 Fees: Residential Variance request = \$500.00 or Non-residential Variance request = \$600.00
 +3% technology fee based on total application fee

The deadline for submittal is always the same day as the Planning and Zoning Commission Meeting which is the second Tuesday of the month. Applications must be submitted before 2:00 PM that day for consideration on the next available agenda.

Incomplete applications will be returned to the applicant and will not be processed.

Process Summary:

1. Hold a pre-application meeting with Staff to discuss your request and the variance process.

2. Submit a complete application with the appropriate fees to the Cabarrus County Planning Division.
3. When the complete application is received, Staff and appropriate agents will review the application and site plan and will make comments on the proposed request.
4. Staff will begin to prepare a staff report, schedule a public meeting date and notify adjacent property owners of the public meeting/public hearing date. A sign advertising the public hearing will also be placed on the property being considered for the Variance request.

Meeting Information: Meetings are held the second Tuesday of each month at 7:00 PM in the Cabarrus County Governmental Center located in downtown Concord at 65 Church Street, SE.

Variance: Variance requests are considered by the Board of Adjustment during a quasi-judicial hearing. This means that anyone wishing to speak regarding the application must be sworn in. The vote requirement for the Variance request to pass is 80% or greater. Additional conditions may be added as part of the Variance approval process.

Questions: Any questions related to the Variance process may be directed to the Planning Division at 704-920-2141, between 8 AM and 5 PM, Monday through Friday.

Application Information

Water and Sewer Authority of Cabarrus County
Cabarrus County (WSACC)

Applicant's Address	Property Owner's Address
<u>232 Davidson Hwy.</u>	<u>Post Office Box 707</u>
Concord, NC 28026	Concord, NC 28026

Applicant's Telephone Number	Property Owner's Telephone Number
704.788.4164	704.920.2145

Legal Relationship of Applicant to Property Owner WSACC operates and maintains wastewater facilities owned by the County

Existing Use of Property Wastewater Treatment Facilities

Existing Zoning

Property Location 14655 Hopewell Church Road,
Midland, NC 28107

Tax Map and Parcel Identification Number (PIN) 55534402120000

TO THE BOARD OF ADJUSTMENT

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

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

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

Section: 9-6.1 Perimeter Landscape Buffer Yard

Based on Table Four in Chapter 9 of the Cabarrus County Development Ordinance for a property acreage of 17.942 acres and a CR Zoning, a Level 2 Landscape Buffer Yard with a 75-foot setback is required. Components of the existing facilities, namely the gravel access drive and equalization basin, however are located within this setback along the northeast property boundary as shown on the Proposed Site Plan and Aerial View of Site Plan.

2. Reason(s) for Seeking a Variance

In 1994, Cabarrus County constructed the Muddy Creek Wastewater Treatment Plant (Plant) on the subject property to provide wastewater service to the Midland area. A Conditional Use Permit for the property was issued for up to 1.8 million gallons per day (MGD). The Plant property (PIN: 55534402120000) is landlocked with access through a dedicated Ingress/Egress Easement on the adjacent property (BA.AM.IV., Inc.; PIN: 55532496750000) extending to Hopewell Church Road as shown on the Boundary Survey.

The Water and Sewer Authority of Cabarrus County (WSACC) operates and maintains the Plant. In 2010, the Plant was expanded from 0.075 MGD to 0.150 MGD. This expansion included additional treatment facilities as well as an equalization basin to provide sufficient storage capacity during peak flow events. The equalization basin, which is strategically located in the overall treatment process, consists of a 38-foot diameter concrete basin with adjoining support structures for mechanical equipment.

The Midland area continues to experience growth resulting in increased wastewater demands at the Plant. As a result, WSACC is planning to expand the facilities to 0.300 MGD to help ensure orderly growth within the area. While preparing the necessary documents for the Cabarrus County Zoning Site Plan Application, it was determined that a portion of the existing Plant components, namely the existing gravel access drive and the existing equalization basin, are located within the prescribed Landscape Buffer Yard along the northeast boundary of the

County's property. All of the new facilities for the planned expansion will be outside of the setbacks and meet the zoning requirements.

Relocating these existing facilities outside of the buffer yard is impractical and would be an unnecessary hardship for WSACC and Cabarrus County. Moreover, the adjoining property along this property boundary (Owner: John Bunyan Green, II; PIN: 55533599900000), which is currently wooded, is governed by an Agricultural Conservation Easement (Deed Book 2850; Page 163). The Conservation Easement preserves the woodland and sufficiently serves as the intended landscape buffer for the County's property. WSACC (Applicant) and Cabarrus County (Owner) therefore respectfully request a variance related to the Landscaping Buffer Yard requirement.

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a Variance. Direction is received by both state legislation and local ordinance. Under the state enabling act, the Board is required to reach four (4) conclusions as a prerequisite to the issuance of a Variance:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

In order to make its determination, the Board will review the evidence submitted in this application as well as receive public comment during the scheduled public hearing. This application will be entered into the official record of the public hearing.

The responsibility for presenting evidence to support the Variance request, as described during the meeting and to the Board of Adjustment, lies completely with the Applicant.

FINDING OF FACT CHECKLIST

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

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

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

The property use is unique in that it provides wastewater treatment for residents and businesses in the Midland area. The location of the existing equalization basin is necessary for the treatment process and would be impractical to move. Likewise, given the location of the ingress/egress easement for access to the property, relocating the existing access drive to avoid impacts in the landscape buffer yard is not practical.

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

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

Expansion of the wastewater treatment plant is imperative for the continued orderly growth in the Midland area. If expansion of the facilities is not possible due to the non-conformity of the existing facilities in relation to the landscape buffer yard requirements, then development in the Midland area will be impacted.

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

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

The hardship for the current Plant expansion is a result of the original construction in 1994 and the previous expansion in 2010. The new facilities for the current expansion will be outside of the required setbacks and will meet the zoning requirements. Therefore, the planned expansion will not impact the current conditions of the nearby properties.

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

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

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

As noted in the Ordinance, the intent of the landscape buffer is to "preserve the appearance, character and value of the property". Given the conservation easement on the adjoining property, it is believed that the "spirit" and purpose of the ordinance is maintained.

5. The variance will result in substantial justice being done, considering both the

- public benefits intended to be secured by this ordinance and the individual hardships that will be suffered by a failure of the Board to grant a variance.**

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

The public benefits from reliable wastewater service and expansion of the Plant is critical for the continued orderly growth in the Midland area. If the variance is not granted and the existing facilities must be relocated out of the landscape buffer yard, the cost of the Plant expansion will increase substantially, ultimately resulting in higher rates to the member jurisdictions, including Cabarrus County.

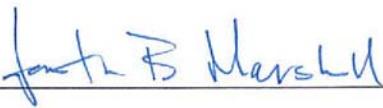
Possible Conditions, suggested by the applicant

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

In our view, the conditions above for granting the variance are adequately addressed.

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

SIGNATURE OF OWNER:



DATE: 7-7-2017

Jonathan Marshall, Cabarrus County

SIGNATURE OF APPLICANT:



DATE: 7-10-17

Timothy R. Kiser, WSACC

EXHIBIT B

PLANNING STAFF REPORT
CABARRUS COUNTY PLANNING AND ZONING COMMISSION
AUGUST 8, 2017

Staff Use Only:
Approved: _____
Denied: _____

Variance: VARN2017-00001

Applicant Information:	Water and Sewer Authority of Cabarrus County (WSACC) 232 Davidson Highway Concord, NC 28026
Owner Information:	Cabarrus County PO Box 707 Concord, NC 28026
PIN#:	5553-44-0212
Property Address:	14655 Hopewell Church Rd Midland, NC 28107
Area in Acres:	+/-17.94
Purpose of Request:	<p>The applicant is proposing an expansion of the existing wastewater treatment facility.</p> <p>The applicant is seeking relief from the Cabarrus County Development Ordinance (Ordinance), specifically from Chapter 9 Landscape Buffers.</p>
	<p>The variance request includes:</p> <ul style="list-style-type: none">• Relief from the requirement to install a 75 foot vegetative buffer along the northern side of the property
	<p>Variance Request -Request for relief from the required 75 foot landscape buffer yard</p> <p>The applicant is requesting relief from Chapter 9, Landscape and Buffering, which states that when a public service facility abuts a residentially used or zoned property, Level Two buffering must be implemented. The Landscape Perimeter Buffer Yard requirements listed in Table Four of Chapter 9, Landscape and Buffering, show that a parcel greater than 10 acres requires a 75 foot landscape buffer yard. Currently, the driveway to enter the facility and the equalization basin are located within the required 75 foot landscape buffer yard.</p>

PLANNING STAFF REPORT
CABARRUS COUNTY PLANNING AND ZONING COMMISSION
AUGUST 8, 2017

Staff Use Only:
Approved: _____
Denied: _____

Site Description: The subject property is a +/-17.94 acre tract located off Hopewell Church Road and abuts the Rocky River. The property contains an existing wastewater treatment facility.

Current Land Uses: Existing Public Service Facility (wastewater treatment)

Adjacent Land Uses: North – Vacant, Heavily Wooded
East – Vacant, Heavily Wooded
South – Vacant, Agriculture, Wooded
West – Agriculture

Permitted Uses: All uses permitted within the Countryside Residential zoning district.

Existing Zoning: CR (Countryside Residential)

Surrounding Zoning: North – CR (Countryside Residential)
East – RA (Stanly County - Residential Agricultural)
South – CR (Countryside Residential) and RA (Stanly County - Residential Agricultural)
West – CR (Countryside Residential)

Signs Posted: July 20, 2017

Newspaper Notification: July 26, 2017

Newspaper Notification 2: August 2, 2017

Notification Letters: July 20, 2017

Exhibits

EXHIBIT A – APPLICATION
EXHIBIT B – STAFF REPORT
EXHIBIT C – SITE PLAN
EXHIBIT D – ZONING MAP
EXHIBIT E – FUTURE LAND USE MAP
EXHIBIT F – AERIAL MAP
EXHIBIT G1, G2, & G3 – ADJACENT PARCEL LETTER & LIST, AND PROPERTY OWNER LETTER
EXHIBIT H – VARIANCE SIGN
EXHIBIT I – DEED OF AGRICULTURAL CONSERVATION EASEMENT

PLANNING STAFF REPORT
CABARRUS COUNTY PLANNING AND ZONING COMMISSION
AUGUST 8, 2017

Staff Use Only:
Approved: _____
Denied: _____

Agency Review Comments

Zoning Review:

Staff review of the plans shows that the Landscape Buffer has not been met on the northern property line. Please see full staff report. (Jason Earliwine, Senior Planner)

Fire Review:

No comments. (Steve Langer, Fire Marshal)

NCDOT Review:

No comments. (Leah Wagner, Field Services Engineer, NCDOT)

Midland Review:

No comments. (Kassie Watts, Town of Midland Planner)

Sheriff's Department Review:

No comments. (Ray Gilleland, Lieutenant Sheriff).

E-911 Review:

No comments. (Lee Snuggs, E-911 Addressing Coordinator)

Emergency Services Review:

No comments. (Alan Thompson, EMS Director)

History / Other Information

The subject property is located off Hopewell Church Road and abuts the Rocky River.

The subject property is approximately 17.94 acres and is currently used as a wastewater treatment facility.

The subject property is required to support a Level Two Landscape Buffer on the northern border of the property, which abuts a residentially zoned and used property.

The applicant states that relocating the driveway and equalization basin would be "impractical and would be an unnecessary hardship for WSACC and Cabarrus County".

The parcel to the north of the wastewater treatment plant property, PIN#5553-35-9990, is subject to an Agricultural Conservation Easement (Deed Book 2850 Page 163) EXHIBIT - I. The applicant contends that "the Conservation Easement preserves the woodland and sufficiently serves as the intended landscape buffer for the County's property". (See application, Page 4).

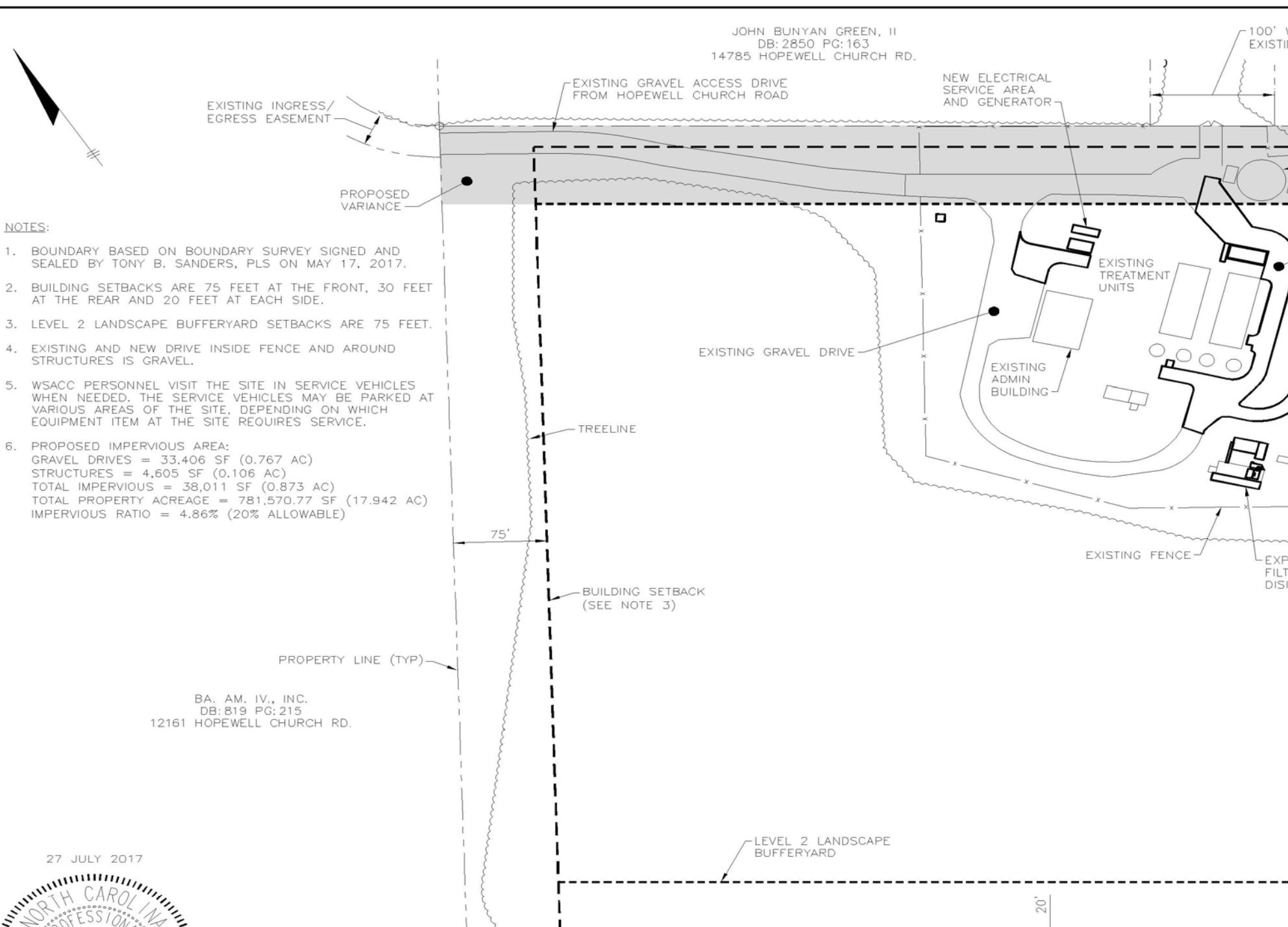
Variance Summary:

The applicant is requesting relief from installation of a 75 foot buffer yard along the northern property line.

Conditions of Approval

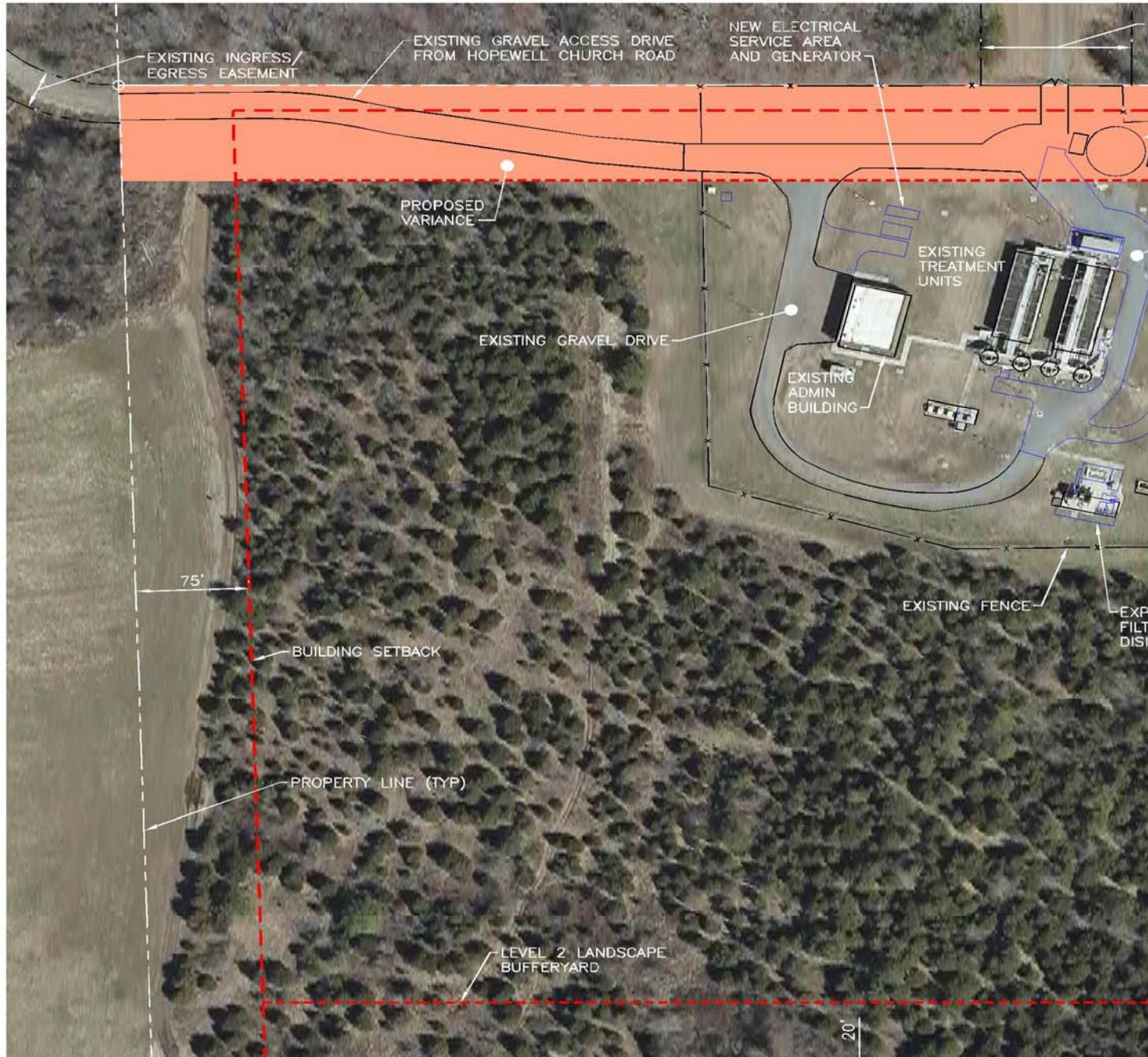
Should the Board of Adjustment grant approval of the variance, the following conditions should be considered as part of the approval and case record:

- Site plan review and approval is required subsequent to Board of Adjustment approval to ensure compliance with all applicable development requirements and conditions.
- The Granting Order, stating restrictions and applicable conditions of approval, shall be recorded with the deed of the property.
- The applicant shall procure any and all applicable federal, state, and local permits prior to commencement of project.





27 JULY 2017

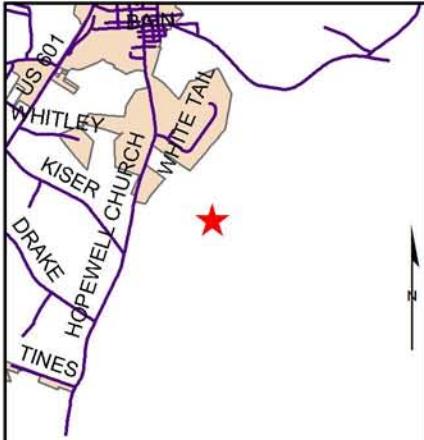


Zoning Map

Exhibit D

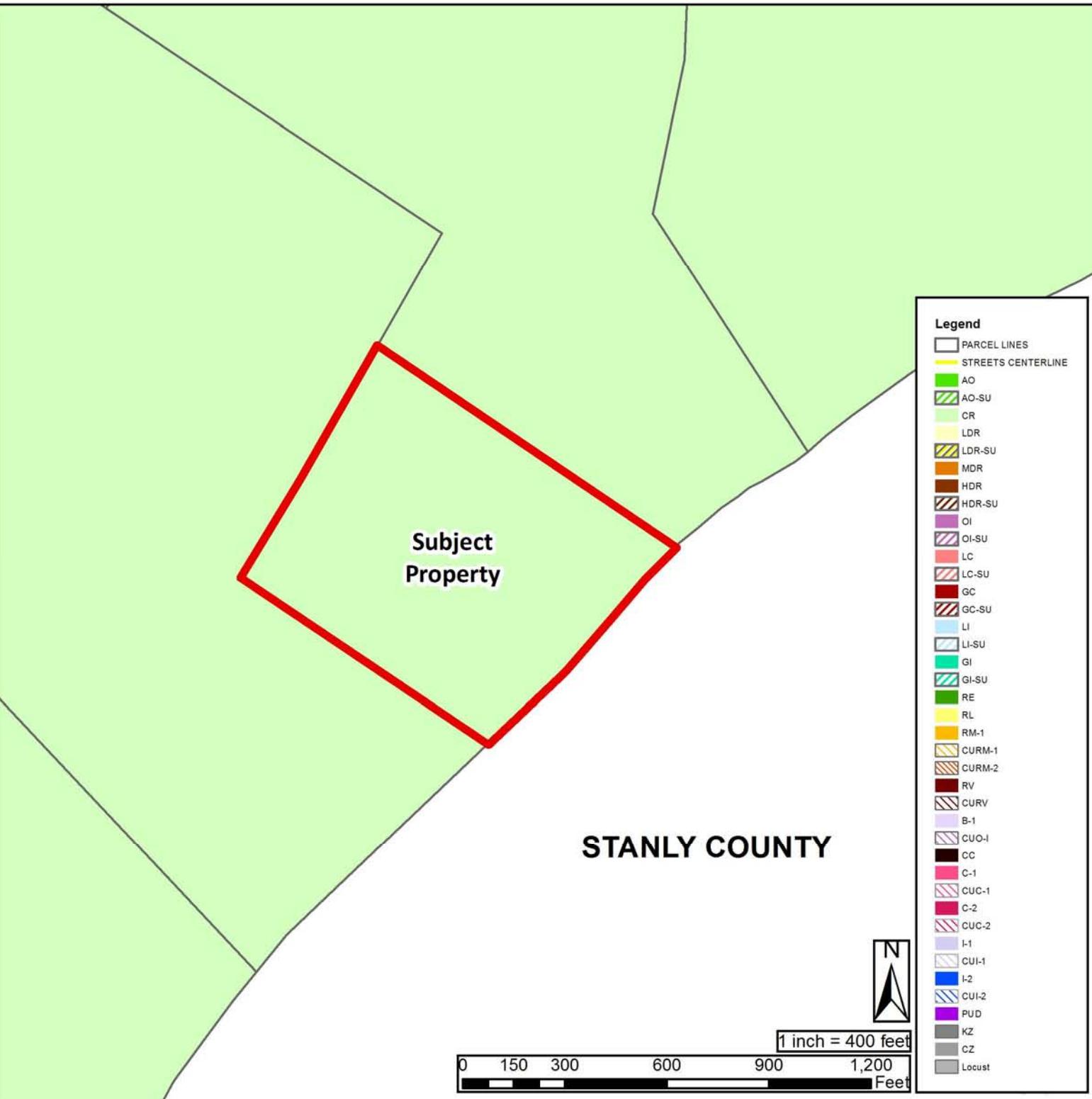


Applicant: Water & Sewer Authority of Cabarrus County (WSACC)
Owner: Cabarrus County
Address: 14655 Hopewell Church Rd
PIN: 5553-44-0212
Case: VARN2017-00001
Purpose: Requesting a Variance from the Cabarrus County Development Ordinance, specifically Chapter 9 Landscape Buffers to expand an existing Wastewater Treatment Plant.



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

Map Prepared by Cabarrus County Planning & Development
July 11, 2017



1 inch = 400 feet

0 150 300 600 900 1,200
Feet

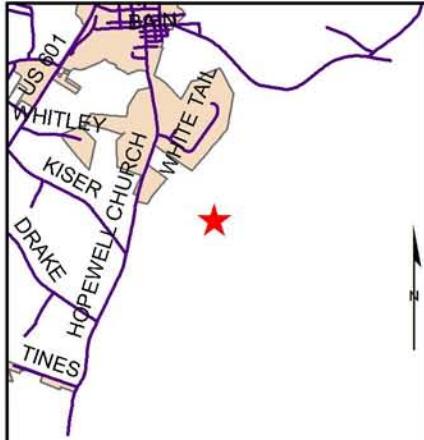
Legend	
PARCEL LINES	
STREETS CENTERLINE	
AO	
AO-SU	
CR	
LDR	
LDR-SU	
MDR	
HDR	
HDR-SU	
OI	
OI-SU	
LC	
LC-SU	
GC	
GC-SU	
LI	
LI-SU	
GI	
GI-SU	
RE	
RL	
RM-1	
CURM-1	
CURM-2	
RV	
CURV	
B-1	
CUO-I	
CC	
C-1	
CUC-1	
C-2	
CUC-2	
I-1	
CUI-1	
I-2	
CUI-2	
PUD	
KZ	
CZ	
Locust	

Future Land Map

Exhibit E



Applicant: Water & Sewer Authority of Cabarrus County (WSACC)
Owner: Cabarrus County
Address: 14655 Hopewell Church Rd
PIN: 5553-44-0212
Case: VARN2017-00001
Purpose: Requesting a Variance from the Cabarrus County Development Ordinance, specifically Chapter 9 Landscape Buffers to expand an existing Wastewater Treatment Plant.

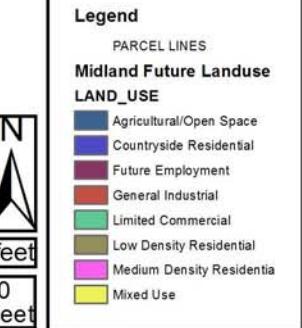


Cabarrus County shall not be held liable for any errors in this data. This includes errors of omission, commission, errors concerning the content of the data, and relative and positional accuracy of the data. These data cannot be construed to be a legal document. Primary sources from which these data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

Map Prepared by Cabarrus County Planning & Development
July 11, 2017

Agricultural/Open Space

Subject
Property



1 inch = 400 feet

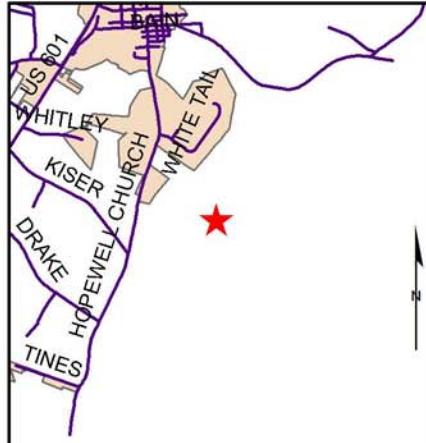
0 150 300 600 900 1,200
Feet

Aerial Map

Exhibit F

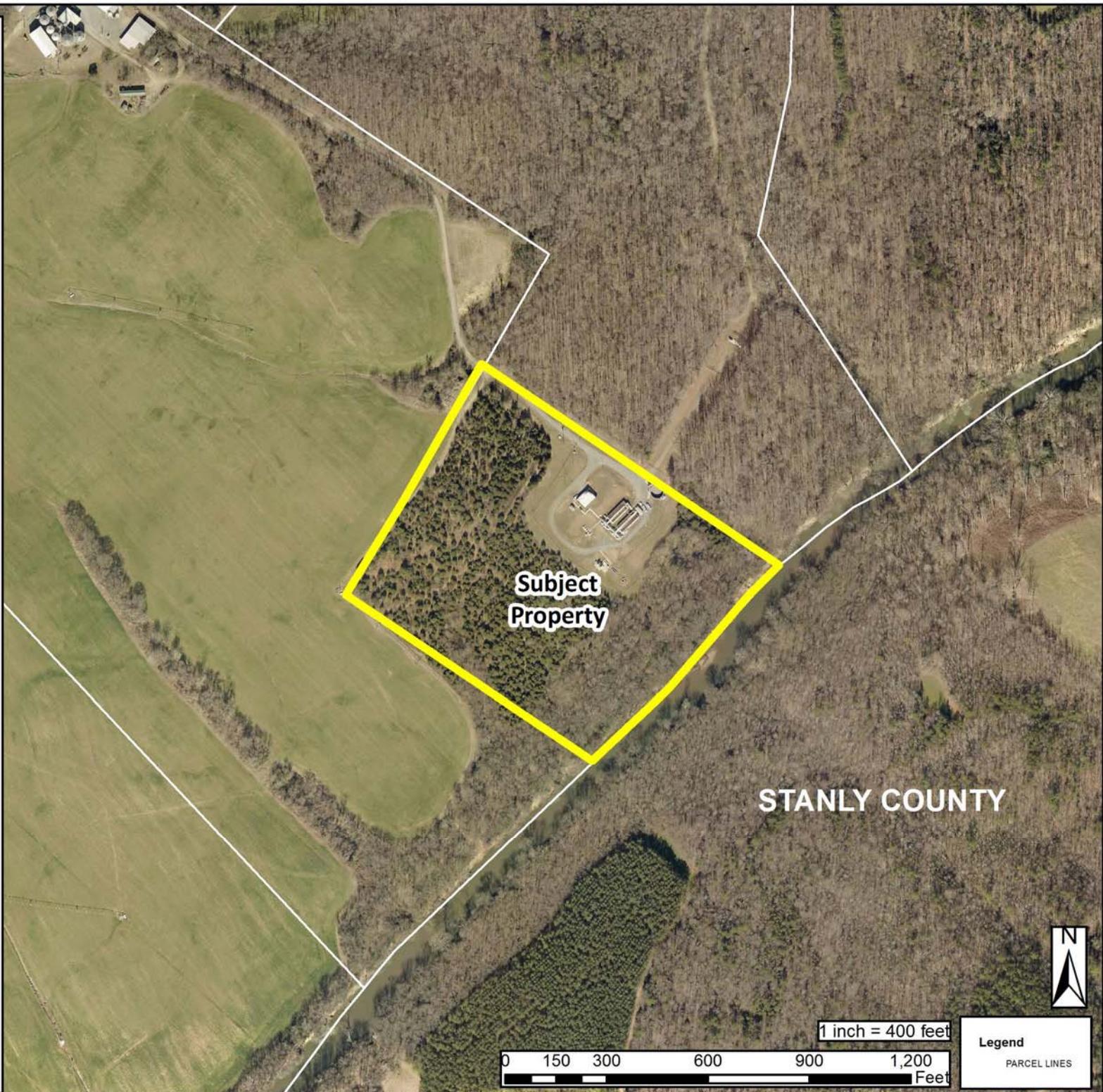


Applicant: Water & Sewer Authority of Cabarrus County (WSACC)
Owner: Cabarrus County
Address: 14655 Hopewell Church Rd
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Map Prepared by Cabarrus County Planning & Development
July 11, 2017





July 20, 2017

Dear Cabarrus County Property Owner:

The Cabarrus County Planning and Development Department has received a request for a **Variance** for property located **adjacent** to your property. The specifics of the request are listed below.

The Cabarrus County Planning and Zoning Commission, acting as Board of Adjustment, will consider the **Variance** request on 08/08/2017 at 7:00 PM. This meeting will be held in the Commissioners Meeting Room located on the second floor of the Governmental Center at 65 Church Street SE, Concord, NC 28025. A Public Hearing will be conducted as part of the consideration of the request and public input will be received during that time. If you have any comments or questions related to the request, you should plan to attend the meeting.

Applicant:	WSACC
Case Number:	VARN2017-00001
Property Address:	14655 HOPEWELL CHURCH RD
Parcel Number:	5553-44-0212
Existing Zoning:	CR (COUNTRYSIDE RESIDENTIAL)

Description:	Applicant is seeking a variance from the Cabarrus County Development Ordinance, specifically Chapter 9 Landscape Buffers. The applicant is requesting relief from the requirement to install a 75 foot vegetative buffer on the northern side of the parcel.
---------------------	--

If you have any questions regarding this request or the public hearing process please feel free to contact me at **(704) 920-2141**.

Sincerely,

A handwritten signature in black ink that reads "Jason Earliwine".

Jason Earliwine, Senior Planner

EXHIBIT G(2)

Adjacent Parcels List						
PROPERTY OWNER	PIN#	MAILING ADDRESS	CITY	ST	ZIP	PHYSICAL ADDRESS
ESTATE OF JOHN BUNYAN GREEN II C/O MALONE-TRAHEY	5553-35-9990	681 ABINGTON DR NE	CONCORD	NC	28025	14785 HOPEWELL CHURCH RD
BA AM IV INC	5553-24-9675	PO BOX 215	MIDLAND	NC	28107	14675 HOPEWELL CHURCH RD
ROMMIE G ALDRIDGE	5553-03-4275-52	414 RUNNING CREEK CHURCH RD	LOCUST	NC	28097	POLK FORK ROAD
Property Owner						
CABARRUS COUNTY	5553-44-0212	PO BOX 707	CONCORD	NC	28026	14655 HOPEWELL CHURCH RD

EXHIBIT G(3)



Cabarrus County Government – Planning and Development Department

July 20, 2017

Dear Property Owner:

A Variance Application has been filed in our office for your property. The specifics of the request are listed below. The Cabarrus County Board of Adjustment will consider this petition on Tuesday, August 8, 2017 at 7:00 PM in the 2nd floor Commissioner's Chambers of the Cabarrus County Governmental Center, located at 65 Church Street SE, Concord, NC 28026. A Public Hearing will be conducted and public input will be allowed during that time. If you have any comments about this variance request, I encourage you to attend this meeting.

• Petitioner	WSACC
• Petition Number	VARN2017-00001
• Property Location	14655 Hopewell Church Rd
• Parcel ID Number	5553-44-0212
• Existing Zoning	CR (Countryside Residential)
• Variance Request	Applicant is seeking a variance from the Cabarrus County Development Ordinance, specifically Chapter 9 Landscape Buffers. Applicant is requesting relief from the requirement to install a 75 foot vegetative buffer along the northern property line.

If you have any questions regarding this petition, or the hearing process, please contact me at Cabarrus County Planning and Development at 704.920.2149.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Earliwine".

Jason Earliwine
Senior Planner

If reasonable accommodations are needed please contact the ADA Coordinator at (704) 920-2100 at least 48 hours prior to the public hearing.

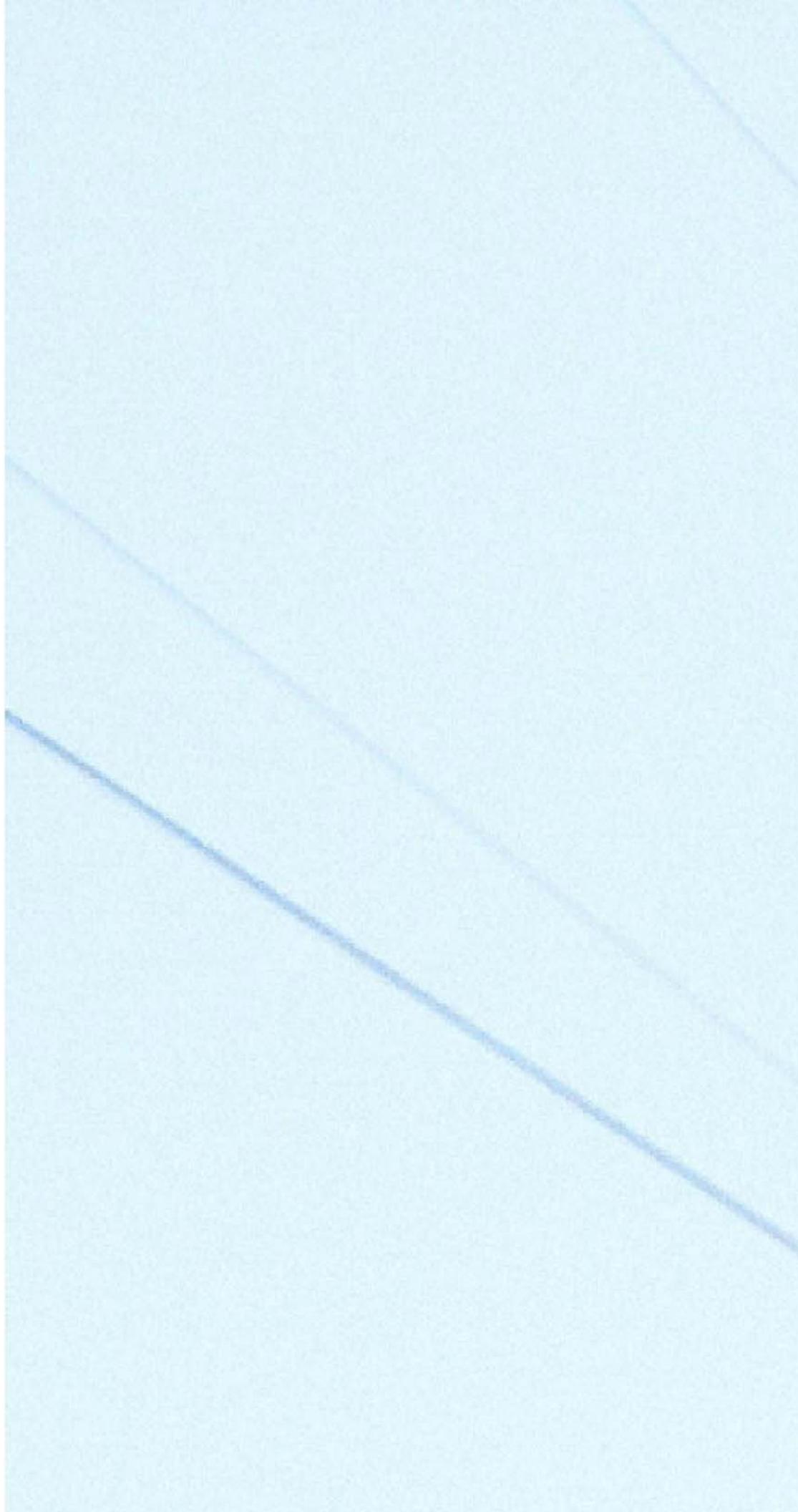


EXHIBIT I

CABARRUS COUNTY NC 04/25/2000
\$250.00
STATE OF NORTH CAROLINA Real Estate
Excise Tax

BOOK 2850 PAGE 163

009949

STATE OF NORTH CAROLINA

APR 25 2 31 PM '00 Tax map 5555 Parcels: 56-4465 &
35-9990

COUNTY OF CABARRUS

LINDA F. MCABEE
REGISTER OF DEEDS
CABARRUS COUNTY, NC

Prepared by on Last Page

DEED OF AGRICULTURAL CONSERVATION EASEMENT

This Deed of Agricultural Conservation Easement ("Easement") is granted on this 25 day of April, 2000, by John Bunyan Green II and Katharin Hartsell Green, mother and son, having an address of 4810 Garmon Mill Rd., Midland, NC 28107 ("Grantors"), to THE LANDTRUST FOR CENTRAL NORTH CAROLINA, a North Carolina non-profit corporation ("Grantee").

WHEREAS:

Grantors are the sole owners in fee simple, of certain farm Property, more particularly described in Exhibit A, attached hereto and incorporated herein (the "Property"), which consists of approximately 317.25 acres of land, located in Number 10 Township, Cabarrus County, North Carolina. This land is comprised of a 257 acre tract held in fee simple in the sole name of John Bunyan Green II and a 60.25 acre tract held in fee simple with a life estate belonging to Katharin Hartsell Green and the remainder interest belonging to John Bunyan Green II. The Property includes buildings and other improvements, which are shown on Exhibit B, attached hereto and incorporated herein.

The Property consists primarily of productive agricultural land. The majority of the soils on the Property have been classified as "prime" farmland of local importance by the Natural Resources Conservation Service, U.S. Department of Agriculture. It is the primary purpose of this Easement to protect the agricultural soils and agricultural viability and productivity of the Property.

The Property also has outstanding historical significance, including the historic John Bunyan Green farmhouse built in 1875. The entire farm has been placed on the National Register of Historic Places, and includes a historic barn, blacksmith shop, tenant house, mill site (foundation and millstone), cotton house, wheat house, corn crib, smoke house, and stable. Many of these structures, including the historic barn, were built in the nineteenth century. Furthermore, the property provides exceptional natural wildlife habitat for a wide variety of both land and aquatic species, many of which being of great importance to the Grantors and the people of North Carolina. Also, this property contains outstanding scenic qualities that can be enjoyed by the general public; namely the views along Garmon Mill road

along the Rocky River and from the Rocky River looking north over the scenic rolling pastures. This property also has tremendous recreational value in its lengthy frontage along the Rocky River. It is a secondary purpose of this Easement to protect these natural, historic, natural habitat, scenic, and recreational resources.

The agricultural, natural, historic, natural habitat, scenic, and recreational resources of the Property are collectively referred to as the "conservation values" of the Property.

The specific conservation values of the Property and its current use and state of improvement are described in a Present Condition Report ("Report") prepared by the Grantee with the cooperation of the Grantors, and acknowledged by both parties to be accurate as of the date of this Easement. This Report may be used by the Grantee to document any future changes in the use or character of the Property in order to ensure the terms and conditions of this Easement are fulfilled. This Report, however, is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use. The Grantors and Grantee have copies of this Report, and said report will remain on file at the main office of The LandTrust for Central North Carolina.

The Grantors and Grantee agree that the current agricultural use of, and improvements to, the Property are consistent with the conservation purposes of this Easement.

The Grantors intend that the conservation values of the Property be preserved and maintained, and further, Grantors intend to convey to the Grantee the right to preserve and protect the agricultural and other conservation values of the Property in perpetuity.

The conservation purposes of this Easement are recognized by, and the grant of this Easement will serve, the following clearly delineated governmental conservation policies:

The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. Section 4201, *et seq.*, whose purpose is "to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government and private programs and policies to protect farmland;"

North Carolina General Statute 139-2 *et seq.* Which provides that "it is hereby declared ...that the farm, forest and grazing lands of the State of North Carolina are among the basic assets of the State and the preservation of these lands is necessary to protect and promote the health, safety and general welfare of its people... it is hereby declared to be the policy of the legislature to provide for the conservation of the soil and resources of this State;"

North Carolina General Statute 106-583 *et seq.* Which states that "It is declared to be the policy of the State of North Carolina to promote the efficient production and utilization of the products of the soil as essential to the health and welfare of our people and to promote a

sound and prosperous agriculture and rural life as indispensable to the maintenance of maximum prosperity;"

The North Carolina Conservation and Historic Preservation Agreements Act, North Carolina General Statute 121-34 *et. seq.* which permits the creation of conservation easements.

The Grantee is a tax-exempt nonprofit organization and a qualified organization under Sections 501 (c)(3) and 170(h) of the Internal Revenue Code, and is qualified to hold Easements under the applicable laws of the State of North Carolina;

NOW, THEREFORE, for the reasons given, and in consideration of their mutual covenants, terms, conditions and restrictions contained herein, the parties agree as follows.

1. *Grant of Agricultural Easement*

Grantors hereby voluntarily grant and convey to the Grantee, and the Grantee hereby voluntarily accepts, a perpetual Agricultural Conservation Easement, an immediately vested interest in real property the nature and character described herein. Grantors promise that they will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants herein. Grantors authorize the Grantee to enforce these covenants in the manner described below.

2. *Statement of Purpose*

It is the primary purpose of this Agricultural Conservation Easement to enable the Property to remain in agricultural use by preserving and protecting its agricultural soils and agricultural viability and productivity. No activity which shall significantly impair the actual or potential agricultural use of the Property shall be permitted. To the extent that the preservation and protection of the natural, historic, recreational, habitat or scenic values referenced in this Easement are consistent with the primary purpose stated above, it is within the purpose of this Easement to also protect those values, and no activity which shall significantly impair those values shall be permitted.

3. *Rights and Responsibilities Retained by Grantors*

Notwithstanding any provisions of this Easement to the contrary, the Grantors reserve to and for themselves and their successors all customary rights and privileges of ownership, including the rights to sell, lease, and devise the Property, together with any rights not specifically prohibited by or limited by this Easement (such as hunting, etc.), not inconsistent with the Statement of Purpose herein. Unless otherwise specified below, nothing in this Easement shall require the Grantors to take any action to restore the condition of the Property after any Act of God or other event over which they had no control. Grantors understand that nothing in this Deed relieves them of any obligation or restriction on the use of the Property imposed by law.

4. Right to Farm

Grantors retain the right to farm, or to permit others to farm, in accordance with applicable local, state and federal laws and regulations.

5. Right to Privacy

Grantors retain the right to privacy and the right to exclude any member of the public from trespassing on the Property.

6. Right to Use the Property for Customary Rural Enterprises

Grantors retain the right to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to, farm machinery repair, sawmills, firewood distribution, bed and breakfast, or educational programs so long as such uses are confined to locations within the "Farmstead Area" as identified on Exhibit B. Conducting customary rural enterprises on any other part of the Property is not permitted without the advance written permission of the Grantee in each instance. The Grantee shall not give such permission unless the Grantee determines that the proposed use will not substantially diminish or impair the conservation values of the Property.

7. Procedure to Construct Buildings and Other Improvements

The Grantors' rights to construct or reconstruct buildings and other improvements are described in subparagraphs (a) through (f) below. Any construction or reconstruction not permitted below, or not previously approved by Grantee, is prohibited. Before undertaking any construction or reconstruction that requires advance permission, the Grantors shall notify the Grantee and obtain written permission.

(a) *Fences* -- Existing fences may be repaired and replaced, and new fences may be built on the Property for purposes of reasonable and customary management of livestock and wildlife without any further permission of the Grantee.

(b) *Agricultural Structures & Improvements* -- Existing, agricultural structures and improvements may be repaired, reasonably enlarged and replaced at their current locations, as shown on Exhibit B, without further permission from the Grantee. New buildings and other structures and improvements to be used primarily for agricultural purposes, including the processing or sale of farm products predominantly grown or raised on the Property, but not including any dwelling or farm labor housing, may be built on the Property without any further permission of the Grantee provided they are located in the "Farmstead Area" as indicated on Exhibit B. Any new buildings, structures or improvements proposed for locations outside the "Farmstead Area" may be built only with the advance written permission of the Grantee. The Grantee shall give such permission within a reasonable time, unless it determines that the

proposed building, structure or improvement would significantly diminish or impair the conservation values of the Property. Excepted from this requirement of Grantee permission will be the construction of ponds to be used solely for agricultural purposes. Said ponds can be located wherever necessary for the support of farming operations so long as they are constructed so as to preserve the conservation value of the farm. Said ponds shall be limited to a reasonable number and shall be constructed in accordance with the conservation plan referenced in Paragraph 9 herein.

(c) *Farm Support Housing* -- All existing dwellings or structures used to house farm tenants and employees as shown on Exhibit B, may be repaired, reasonably enlarged and replaced at their current location without further permission of the Grantee. New single or multi-family dwellings or structures to be used primarily to house farm tenants, employees or others engaged in agricultural production on the Property may be built on the Property without any further permission of the Grantee, provided they are located within that area identified and marked as "Farmstead Area" on Exhibit B. At the time that construction of such structures is to commence, Grantee shall be notified so that its records can be updated. Any new structures to be used primarily to house farm tenants, employees or others engaged in agricultural production on the Property, proposed for locations outside the area identified as "Farmstead Area" on Exhibit B, may be built only with the advance written permission of the Grantee. The Grantee shall give such permission within a reasonable time, unless it determines that the proposed building, structure or improvement would significantly diminish or impair the conservation values of the Property

(d) *Single-Family Residential Dwellings* -- Grantors reserve the right to use the Historic John Bunyan Green Farm House for residential purposes. Grantors reserve the right to use any Dependencies for all purposes permitted herein. The dependencies currently serving the farm house include a historic barn, blacksmith shop, tenant house, mill site (foundation and millstone), cotton house, wheat house, corn crib, smoke house, and stablet. All of these dependencies shall be more particularly described in the Easement Documentation Report. Notwithstanding any language to the contrary, Grantors and their successors shall maintain the structural soundness and safety of the historic house and historic dependencies. Without the prior written approval of Grantee, Grantors shall not demolish, remove or raze any portion of the Farm House or its historic dependencies. Any permanent alterations to the facade of the Farm House shall be done in accordance with the Secretary of the Interior's Standards for Rehabilitation, attached hereto as Exhibit C.

Grantors reserve the right to construct three (3) new single-family dwellings utilized for residential and/or country inn purposes, together with reasonable appurtenances such as garages and sheds. All appurtenant structures shall be contained within a radius of 250 feet from the residence itself. The location of any new residential construction shall also be limited to the "Farmstead Area" as shown on Exhibit B. The Grantors shall notify Grantee at least thirty (30) days in advance of any work on any new residential construction or the relocation of any existing residential units whether for construction or preparatory to construction. The location of any such residential construction shall be subject to the prior written approval of

Grantee, which shall not be unreasonably withheld. It is understood that Grantor may relinquish its rights to construct the new residential dwellings referred to herein at any time.

(e) *Recreational Improvements* - All existing recreational improvements, built for the exclusive use of the Grantor, his family, friends or employees, may be repaired, reasonably enlarged or replaced at their current locations without further permission of the Grantee. New recreational improvements may be built within the area identified and marked as "Farmstead Area" on Exhibit B without the advance written permission of the Grantee. Any new recreational improvements proposed for locations outside the area identified and marked as "Farmstead Area" on Exhibit B may be built only with the advance written permission of the Grantee. The Grantee shall give such permission within a reasonable time, unless it determines that the proposed building, structure or improvement would significantly diminish or impair the conservation values of the Property. However, under no circumstances shall golf courses or ranges, airstrips or helicopter pads be constructed, placed or permitted to remain on the Property.

(f) *Utility Services and Septic Systems* -- Installation, maintenance, repair, replacement, removal and relocation of electric, gas, and water facilities, sewer lines and/or other public or private utilities, including telephone or other communication services over or under the Property for the purpose of providing electrical, gas, water, sewer, or other utilities to serve improvements permitted herein, and the right to grant Easements over and under the Property for such purposes, is permitted. Maintenance, repair or improvement of a septic system(s) or other underground sanitary system which exists on the Property at the time of this Easement, or the construction of a septic or other underground sanitary system, for the benefit of any of the improvements permitted herein, is permitted.

8. *Subdivision*

The legal subdivision of the Property, recording of a subdivision plan, partition, or any other division of the Property into two or more parcels, is prohibited without the advance written permission of the Grantee, except as provided for in Paragraph 7(d) which pertains to single family residential dwellings. This prohibition applies regardless of how many separately described parcels are contained in the legal description attached as Exhibit A. The Grantee shall not give such permission, unless the Grantee determines that the proposed subdivision will not substantially diminish or impair the agricultural viability or conservation values of the Property. It is understood that notice of this Easement will be recorded on any approved subdivided, partitioned or otherwise divided parcels.

9. *Conservation Practices*

All farming operations shall be conducted in a manner consistent with a farm conservation plan prepared by the U. S. Department of Agriculture, Natural Resources Conservation Service, or its successor, or by another qualified conservation professional approved by the Grantee. This plan shall be updated periodically, and in any event at the time the basic type of agricultural operation on the Property changes or at the time ownership of the

Property changes. All farming operations shall be in accordance with all applicable federal, state and local laws.

The land application storage and placement on the Property of domestic septic effluent and municipal, commercial or industrial sewage sludge or liquid generated from such sources for agricultural purposes may be undertaken only if in accordance with all applicable federal, state and local laws and regulations.

In all events, the Grantors shall set aside and protect a Rocky River buffer area within the boundaries of the property, including that part of the property within 50 feet of the established river bank of the Rocky River, in which said Buffer Area there shall be no cutting, logging, mowing or other disturbance or interference of habitat except 1) to control insects and disease or to prevent personal injury and property damage or 2) for conservation purposes, such as hardwood control practices or practices conducive to the propagation and retention of native plant and wild population of game and non-game species of bird, mammals, and fish if done in accordance with a written Conservation Management Plan agreed to by Grantor and Grantee.

10. Forest Management

Trees may be removed, cut and otherwise managed to control insects and disease, to prevent personal injury and property damage, for firewood and other uses, including construction of permitted improvements and fences on the Property. The cutting, removal or harvesting of trees, including clearing land for cultivation or use of livestock or commercial timber harvesting, may only be undertaken if in accordance with either the conservation plan referenced in Paragraph 9 herein or a forest management plan prepared by a professional forester. It is hereby agreed, however, that all conservation or forest management plans will seek to ensure that a minimum of 10% of the surface area of farm will grow in hardwood timber and 20% of the surface area of the farm will grow as pine timber so long as it is economically and ecologically feasible to do so.

11. Mining

The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance, using any method that disturbs the surface of the land, is prohibited without the advance written permission of the Grantee. The Grantee shall not give such permission, unless the Grantee determines that the proposed mining or extraction will not substantially diminish or impair the conservation values of the Property. Notwithstanding, any other provision of this Easement, not more than two (2) surface acres of the Property may be disturbed by mining or other extractive activities as may be reasonably necessary and incidental to carrying out the improvements and agricultural uses permitted on the property by this Easement. Such activities are permitted only to the extent they are consistent with Internal Revenue Code Sections 170(h)(5) and (6) and Treasury Regulation Section 1.1 70A-14(g)(4).

12. Paving and Road Construction

Construction and maintenance of unpaved farm roads that may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Property by this Easement are permitted. Other than the approved roads and barnyard areas indicated on Exhibit B, no portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material, without the advance written permission of the Grantee. The Grantee shall not give such permission unless the Grantee determines that the proposed paving, or covering of the soil, or the location of any such road, will not substantially diminish or impair the conservation values of the Property.

13. Dumping and Trash

No trash, refuse, vehicle bodies or parts, rubbish, debris, junk, waste, radioactive or hazardous waste, shall be placed, stored, dumped, buried or permitted to remain on the Property, except as reasonably required for the use of the Property for agricultural activities, and except as in accordance with applicable local, state and federal laws and regulations. Materials located in dump sites existing as of the date of this Easement, as indicated on Exhibit B, may remain. The storage of agricultural products, byproducts and agricultural equipment on the Property, so long as such storage is done in accordance with all applicable government laws and regulations, is permitted.

14. Water Rights

Grantors shall retain and reserve the right to use any appurtenant water rights sufficient to maintain the agricultural productivity of the Property. Grantors shall not transfer, encumber, lease, sell or otherwise separate such water rights from title to the Property itself.

15. Ongoing Responsibilities of Grantors and Grantee

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation of the Grantors as owners of the Property. Among other things, this shall apply to:

(a) *Taxes* -- The Grantors shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If the Grantee is ever required to pay any taxes or assessments on its interest in the Property, the Grantor will reimburse the Grantee for the same.

(b) *Upkeep and Maintenance* -- The Grantors shall continue to be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. The Grantees shall have no obligation for the upkeep or maintenance of the Property.

(c) *Liability and Indemnification* -- Grantors agree to indemnify and hold Grantee harmless from any and all costs, claims or liability, including but not limited to reasonable attorneys' fees arising from any personal injury, accidents, negligence or damage relating to the Property, or any claim thereof, unless due to the negligence of Grantee or its agents, in which case liability shall be apportioned accordingly. In addition, Grantors warrant that Grantee is a named insured on Grantors' Property insurance policies covering the Property.

16. Extinguishment of Development Rights

Except as otherwise reserved to the Grantors in this Easement, the parties agree that all development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield of the Property or any other property.

17. Enforcement

With reasonable advance notice to the Grantors, the Grantee shall have the right to enter the Property for the purpose of inspecting for compliance with the terms of this Easement. The Grantee shall have the right to prevent violations and remedy violations of the terms of this Easement through judicial action, which shall include, without limitation, the right to bring proceedings in law or in equity against any party or parties attempting to violate the terms of this Easement. Except when an ongoing, or imminent violation could irreversibly diminish or impair the conservation values of the Property, the Grantee shall give the Grantors written notice of the violation and thirty (30) days to cure the violation, before commencing any legal proceedings. If a court with jurisdiction determines that a violation may exist or has occurred, the Grantee may obtain an injunction to stop the violation, temporarily or permanently. The parties agree that a court may issue an injunction or order requiring the Grantors to restore the Property to its condition prior to the violation as restoration of the property may be the only appropriate remedy. In any case where a court finds that a violation has occurred, the Grantors shall reimburse the Grantee for all its expenses incurred in stopping and correcting the violation, including but not limited to reasonable attorneys' fees. The failure of the Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time. In any case where a court finds no such violation has occurred, each party shall bear its own costs.

19. Transfer of Easement

The Grantee shall have the right to transfer the Easement created by this Deed to any public agency or private nonprofit organization that, at the time of transfer, is a qualified organization under 170(h) of the U.S. Internal Revenue Code, as amended and under NCGS 121-34 et seq., provided the agency or organization expressly agrees to assume the responsibility imposed on the Grantee by this Deed. If the Grantee ever ceases to exist or no longer qualifies under 170(h) of the U.S. Internal Revenue Code, or applicable state law, a

court with jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibility imposed by this Easement.

19. Transfer of Property

The Grantors agree to incorporate by reference the terms of this Easement in any deed or other legal instrument by which they transfer or divest themselves of any interests, including leasehold interests, in all or a portion of the Property. The Grantors shall notify the Grantee in writing at least thirty (30) days before conveying the Property, or any part thereof or interest therein. Failure of Grantors to do so shall not impair the validity of this Easement or limit its enforceability in any way.

20. Amendment of Easement

This Easement may be amended only with the written consent of the Grantee and the Grantors. Any such amendment shall be consistent with the Statement of Purposes of this Easement and with the Grantee's Easement amendment policies, and shall comply with Section 170(h) of the Internal Revenue Code or any regulations promulgated in accordance with that section. Any such amendment shall be duly recorded.

21. Procedure in the Event of Termination of Easement

If it determines that conditions on or surrounding the Property change so much that it becomes impossible to fulfill the conservation purposes of this Easement, a court with jurisdiction may, at the joint request of both the Grantors and the Grantee, terminate or modify the Easement created by this Deed in accordance with applicable state law. If the Easement is terminated and the Property is sold then as required by Section 1.1 70A-14(g)(6) of the IRS regulations, the Grantee shall be entitled to a percentage of the gross sale proceeds equal to the ratio of the appraised value of this Easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Easement, subject to any applicable law which expressly provides for a different disposition of the proceeds. For purposes of this agreement, it will be assumed that the applicable percentage which the Grantee will be entitled to will be 10%. The Grantee shall use its proceeds consistently with the general conservation purposes of this Easement.

All termination related expenses incurred by the Grantors and the Grantee shall be paid out of any recovered proceeds prior to distribution of the net proceeds as described herein.

22. Procedure in the Event of Condemnation or Eminent Domain

If condemnation or a taking by eminent domain of a part of the Property or the entire Property by a public authority renders it impossible to fulfill any of the conservation purposes of this Easement, the Easement may be terminated or modified through condemnation proceedings. If the Easement is terminated and the Property is sold or taken for public use,

then, as required by Section 1.170A-14(g)(6) of the IRS regulations, the Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award equal to the ratio of the appraised value of this Easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Easement, subject to any applicable law which expressly requires for a different disposition of the proceeds. For purposes of this agreement, it will be assumed that the applicable percentage which the Grantee will be entitled to will be 10%. The Grantee shall use its proceeds consistently with the general conservation purposes of this Easement.

All termination-related or condemnation-related expenses incurred by the Grantors and the Grantee shall be paid out of any recovered proceeds prior to distribution of the net proceeds as described herein.

23. *Interpretation*

This Easement shall be interpreted under the laws of the State of North Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

24. *Perpetual Duration; Severability*

The Easement created by this Deed shall be a servitude running with the land in perpetuity. Every provision of this Deed that applies to the Grantors or the Grantee shall also apply to their respective agents, heirs, Executors, administrators, assigns, and all other successors as their interests may appear. Invalidity of any of the covenants, terms or conditions of this Easement, or any part thereof by court order or judgment shall in no way, affect the validity of any of the other provisions hereof which shall remain in full force and effect.

25. *Notices*

Any notices required by this Deed shall be in writing and shall be personally delivered or sent by first class mail to the Grantors and the Grantee respectively at the following addresses, unless a party has been notified in writing by the other of a change of address:

To Grantors:

4810 Garmon Mill Rd.
Midland, NC 28107

To Grantees:

P.O. Box 4284
Salisbury, NC 28145-4284

26. Grantor's Title Warranty

The Grantors warrant that they have good and sufficient title to the Property, free from all encumbrances and hereby promise to defend the same against all claims that may be made against it, except for the following:

- (a) Leasehold interest of Cabarrus County pursuant to Final Judgment by Consent on Commissioners' Award dated October 29, 1996 and filed in the Office of the Clerk of Superior Court under File No. 94 CVS 2114. For further reference, see Memorandum of Action recorded in Book 1321, page 297, Cabarrus County Registry.
- (b) All enforceable easements and rights of way without reimposing the same.

27. Subsequent Liens on Property

No provisions of this Deed of Conservation Easement should be construed as impairing the ability of Grantors to use the Property as collateral for subsequent borrowing.

28. Subsequent Easements/Restrictions on the Property

The grant of any easement or use restrictions that might diminish or impair the agricultural viability of productivity of the Property or otherwise diminish or impair the conservation values of the Property are prohibited, except with the advance written permission of the Grantee.

29. Grantor's Environmental Warranty

The Grantors warrant that they have no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable federal and state law, and hereby promise to defend and indemnify Grantee against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with any release of hazardous waste or violation of federal, state or local environmental laws caused by the negligent or intentional act or omission of the Grantors, unless such release shall have been caused in part by the negligent or intentional act or omission of the Grantee.

IN WITNESS WHEREOF, the Grantors and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

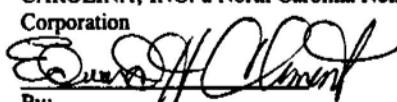
GRANTORS:

John Buryan Green II (Seal)
Kathleen Hartsell Green (Seal)
2

Accepted:

GRANTEE:

THE LANDTRUST FOR CENTRAL NORTH
CAROLINA, INC. a North Carolina Non-profit
Corporation



By: President

Attest:

By: John A. Walser
Secretary



Acknowledgments

NORTH CAROLINA
Gabrius COUNTY

I, John A. Walser, a Notary Public of Henderson County, North Carolina do hereby certify that John Buaya Green II and mother Kathleen Hartsell Green personally appeared before me and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal this the 25th day of April, 2000.

John A. Walser
Notary Public (SEAL)

My commission expires: 11-05-03



NORTH CAROLINA
CABARRUS COUNTY

I, Jason A. Walker, a Notary Public of Henderson County, North Carolina do hereby certify that Lisoty D. Herbert personally appeared before me this day and acknowledged that he is the Secretary of The Land Trust for Central North Carolina, Inc., a non-profit corporation, and that by authority duly given and as an act of the corporation the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by his/herself as its secretary.

Witness my hand and notarial seal this the 24th day of April, 2000

My commission expires: 11-05-03



Jason A. Walker
(Notary Seal)

STATE OF NORTH CAROLINA
Guilford COUNTY

The Foregoing (or annexed) Certificate(s) of Jason A. Walser

Notary(i)s Public (is)(are) Certified to be correct.

This instrument was filed for Registration on the Day and Hour in the Book and Page shown in the First page hereof.

4-25-2000

Sr. Peggy J. DeMone, Deed
LINDA F. MCABEE
REGISTER OF DEEDS

This instrument prepared by and return to:

Jason A. Walser
The LandTrust for Central North Carolina
PO Box 4284
Salisbury, NC 28145-4284

EXHIBIT "A"

PROPERTY DESCRIPTION

All that certain lot or parcel of land situated in Number 10 Township, Cabarrus County, North Carolina, and more particularly described as follows:

Tract 1

LYING and being in No. 10 Township, Cabarrus County, North Carolina, on the West Side of Rocky River and on the East Side of Muddy Creek, adjoining the property of Margaret Elizabeth Green Oktavec and Katharin Hartsell Green, and being a part of the J. B. Green homeplace, and described as follows:

BEGINNING at a stone by a red oak on the northeast side of River Road, corner of my home tract and running thence with the line of my home tract S. 42 W. 594 feet to a post oak; thence S. 31 E. 948 feet to a post oak; thence S. 8 W. 1221 to a point in the center line of Muddy Creek; thence with the center line of Muddy Creek as it meanders in a southerly direction to Rocky River at the mouth of the creek; thence N. 66 E. (passing a maple, Helms' corner on the east side of Rocky River at 1155 feet) 1947 feet to a point on the east bank of the river; thence N. 30 E. 742 feet to a branch, an old corner of Joshua Burris; thence N. 12 W. 1056 feet to a point on the east side of the river; thence N. 24 W. 726 feet to a stone by a hickory on the east side of the river, corner of the Mill tract; thence N. 22 W. about 440 feet to a point on the east side of the river; thence N. 85 E. 264 feet to an iron stake; thence N. 25 W. 181.5 feet to an iron stake; thence S. 85 W., crossing the river to a hickory on the west bank of the river, corner of the old Mill lot; thence N. 12 E. 990 feet to a point in the west side of Rocky River at the mouth of a ditch, an old corner of Jacob Hartsell; thence with three (3) lines of Margaret Elizabeth Green Oktavec as follows: 1st N. 44 W. 1154 feet to a stone by a persimmon tree and a dogwood; 2nd S. 39 W. 677 feet to a pine; and 3rd N. 49 W. 627 feet to a stone by two dogwoods and a W. O.; thence in a southerly direction about 625 feet to the BEGINNING, containing about 257 acres. A three-fourths (3/4) undivided interest in the above described property was devised to John Bunyan Green II and a one-fourth (1/4) undivided interest in the above described property was devised to Katharin Hartsell Green by the will of Worth B. Green recorded in Clerk of Superior Court File No. 84 E. 180 for Cabarrus County, North Carolina. Katharin Hartsell Green conveyed her interest therein to John Bunyan Green II by deeds recorded in Book 679, page 245 and Book 724, page 308, Cabarrus County Registry.

Tract 2

Adjoining the lands of Wesley Sutton and the Hiram Bost Kiser lands:

BEGINNING at a small pine near some pines, Griffith's corner, and runs S. 38 W. 30-3/4 chains to a stone in the center of a small brook and in the old line; thence S. 55 E. 18-1/2 chains to a stone in the old field near a brook; thence S. 35 W. 3 chains to a stone in a branch; thence S. 55 E 16 chains to a birch on the west bank of the river; thence up the river N. 44 E.

7 chains to center of creek; thence N. 14 W. 7 chains; thence N. 3 E. 19 chains to a small willow on the west bank of the creek instead of an overcup (gone); thence N. 66 W. 2 chains to a dead P.O.; thence N. 32 W. 5-1/2 chains to the BEGINNING, containing 60-1/4 acres, more or less.

Katharin Hartsell Green conveyed Tract 2, subject to a life estate retained by her, to John Bunyan Green II by deed recorded in Book 812, page 314, Cabarrus County Registry.

Tract 3

Lying and being in No. 10 Township, Cabarrus County, North Carolina on the West side of Muddy Creek, and being a narrow strip of land adjoining the North side of Tract 2 and the West side of Tract 1, and being described as follows:

BEGINNING at a point in the center of Muddy Creek, corner of Tract 1, and runs thence with the old line S. 8 W. approximately 1221 feet to a point, formerly a small pine near some pines, a corner of Tract 2, (being the Beginning point thereof as described above), and runs thence with two lines to Tract 2, as follows: (1) S. 32 E. 5-1/2 chains to a point (formerly a dead post oak), and (2) S. 66 E. 2 chains more or less to a point in the center of Muddy Creek, a corner of Tract 1; thence with the line of Tract 1 in a Northerly direction up the meanders of Muddy Creek to the point of BEGINNING.

It is intended by the Tract 3 to convey all of the interest of Katharin Hartsell Green in and to any lands owned by her on the West side of the center of Muddy Creek and not included in Tract 1 and Tract 2 as described above.

This Tract 3 was devised to Katharin Hartsell Green by Item VII, the residuary clause, of the will of Worth B. Green.

With regard to the title to the above three tracts, John B. Green is the fee simple owner of Tract 1 and the owner of a remainder, subject to the life estate of Katharin Green, in Tract 2 and Katharin H. Green is the owner of a life estate in Tract 2 and a fee simple interest in Tract 3.

EXHIBIT "C"

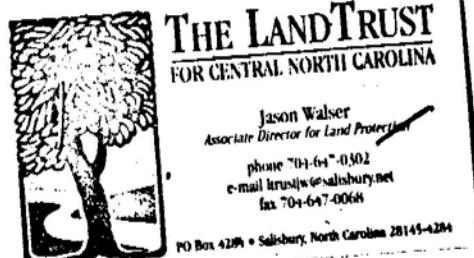
**SECRETARY OF THE INTERIOR'S STANDARDS
FOR REHABILITATION
(as of December 1, 1992)**

1. A property shall be used for its historic propose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that causes damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

EXHIBIT B (WRITTEN SUPPLEMENT)

For purposes of the John Bunyan and Katharin Hartsell Green Conservation Easement, the "Farmstead Area" will be as delineated on the preceding map. It is the Donor's intent to contain the future farming operation structures in the area currently occupied by existing farming structures, both current and historic. It is also the desire of the Donors to limit future housing development to this area as well. For purposes of defining this area, the delineating line will start at Garmon Mill Road due north of the Kiser Ford, near the current location of the mailbox. It will proceed due south to intersect the point just south of Muddy Creek where there is a survey stake near a small pine, which is also near "Griffith's Corner" (at the "call" on the western boundary which proceeded 1221 feet south from a call near the Kiser Ford). The delineating line will extend directly from this point in a northeasterly direction to the ~~southeast~~^{northeast} corner of the Mill Lot in a straight line. It will then follow the outside (western portion) of the mill lot boundary to the intersection with Garmon Mill Road. It will then return to the beginning point at Garmon Mill Road, containing an area of approximately 35 acres. Note that this description of the Farmstead Area is based on existing structures at the time the description is made without benefit of a recent survey. Also, it should be restated that the structures drawn on the attached map are not drawn to scale and are, in fact, all located completely within the boundary designated herein as the Farmstead Area (even though the map suggests otherwise). In all circumstances, it is the desire of the donors that any future interpretation of this development boundary be interpreted to limit such development to the area immediately associated with the structures of the current and former farming operations so as to concentrate all structures to the same area as much as possible.

Prepared by Jason Walser



Book 2850 Page 182

EXHIBIT B

* This map is not a certified survey and no reliance may be placed upon its accuracy 7-11

*see attached Exhibit B
Supplement for clarification

