



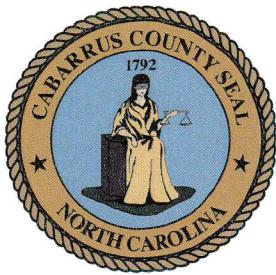
Cabarrus County Government

Cabarrus County Planning and Zoning Commission Meeting
February 10, 2015
7:00 P.M.

Board of Commissioners Meeting Room
Cabarrus County Governmental Center

Agenda

1. Roll Call
2. Approval January 13, 2015 Minutes
3. New Business - Board of Adjustment Function:
 - A. Petition CUSE2014-00004 - Request for Conditional Use Permit for Public Service Facility. Agent is Thomas Terrell, Jr. on behalf of Howell Midland Farm, LLC. Located on the west side of Bethel Avenue Extension (PIN#:5534-80-9905)
❖ Request to Table
 - B. Petition VARN2015-00001 - Request for Variance from standards for Reception Facilities in Chapter 8 of Zoning Ordinance. Agent is Virginia Moore, on behalf of Todd & Tamara Fulk. Located at 2831 Lambert Road (PIN#:5589-46-2219).
4. Directors Report
5. Legal Update



Cabarrus County Government - Planning and Development

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Mr. Richard Price, Vice-Chair (Acting as Chair), called the meeting to order at 7:05 p.m. Members present in addition to the Vice-Chair were Ms. Mary Blakeney, Mr. Adam Dagenhart, Mr. Andrew Deal, Mr. Andrew Graham, Mr. Jeff Griffin, Mr. Chris Pinto, and Mr. Aaron Ritchie. Attending from the Planning and Zoning Division were Ms. Susie Morris, Planning and Zoning Manager, Mr. Phillip Collins, Sr. Planner, Ms. Arlena Roberts, Clerk to the Board and Mr. Richard Koch, County Attorney.

Roll Call

Approval of the January 13, 2015 Planning and Zoning Commission Minutes

Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Ms. Mary Blakeney to **APPROVE** the January 13, 2015 meeting minutes. The vote was unanimous.

New Business – Board of Adjustment Function:

Mr. Jonathan Rett requests to be recused from Petition CUSE2014-00004 and Petition VARN2015-00001 due to a conflict of interest.

Mr. Aaron Ritchie, **Motioned, Seconded** by Ms. Mary Blakeney to recuse Mr. Jonathan Rett from both Petitions on the agenda. The vote was unanimous.

Mr. Koch said for clarification, Mr. Rett has a conflict of interest from having been involved on the Strata matter with another project that they have and on the reception facility matter because he has actually worked on that project.

The Chair introduced Petition CUSE2014-00004, Request for Conditional Use Permit for Public Service Facility. The Agent is Thomas Terrell, Jr. on behalf of Howell Midland Farm, LLC. The property is located on the west side of Bethel Avenue Extension (PIN#5534-80-9905).

The Chair stated there has been a request to Table this request.

Ms. Susie Morris, Planning Manager addressed the Board, stating, that staff has been working with Strata Solar on this project for quite some time. Once we submitted the project for review, there were comments from the reviewers that the applicant was not able to address within the very short time frame listed on the 30 day schedule. The applicant is requesting that it be tabled until the March meeting. It has already been advertised and the letters have been mailed. She said that is why we are requesting for it to be tabled here at the public meeting until March, and if

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they can't make that then April. We will come back and probably do the same thing until they have those comments addressed, since it has already been advertised and noticed.

She said the Commission will need to vote to Table until the March meeting (the anticipated time to come back).

There being no further discussion, Mr. Aaron Ritchie, **Motioned, Seconded** by Jeff Griffin to **Table CUSE2014-00004**, Request for Conditional Use Permit for Public Service Facility until the March 10, 2015 (or as soon thereafter), Planning and Zoning Commission meeting. The vote was unanimous.

Ms. Morris asked the Chair to see if there was anyone present for the Conditional Use since we are not having the public hearing.

Mr. Price said he had one card from Ms. Brenda Barbee.

Ms. Barbee stated from the audience that she will come back in March when it is on the agenda.

New Business – Board of Adjustment Function:

The Chair introduced **Petition VARN2015-00001** – Request for Variance from standards for Reception Facilities in Chapter 8 of the Zoning Ordinance. The Agent is Ms. Virginia Moore, on behalf of Todd & Tamara Fulk. The property is located at 2831 Lambert Road (PIN#:5589-46-2219).

The Chair asked that anyone who will be addressing the Board, stand to be sworn in. The Chair sworn in Ms. Virginia Moore, Ms. Susie Morris and Mr. Phil Collins.

Mr. Phillip Collins, Senior Planner, addressed the Board, stating that this is a Variance request from Carlos Moore Architects. The property is located at 2831 Lambert Road, Mt. Pleasant. The subject property is currently 17.5 acres in size occupied by a single family residence, a barn and an out building. The property also includes water bodies that are subject to the Waterbody Overlay District in Chapter 4 of the Zoning Ordinance. Adjacent land uses consist of vacant property and agricultural and residential uses. The subject property is currently zoned Agriculture Open (AO), as are the surrounding properties.

The applicant is proposing to use the subject property as a reception facility. Pursuant to Chapter 8 of the Cabarrus County Zoning Ordinance, reception facilities are permitted as a conditional use and include additional review standards. If the variance request is approved, the applicant intends to return to the Board of Adjustment at some point in the future to apply for a conditional use permit for a reception facility.

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The variance request is for four sections of the Ordinance:

- Section 8-4.21.d, Relief from the required setbacks for reception facilities
- Section 8-4.21.g Relief from the landscaping/buffering requirements for reception facilities
- Appendix B: Relief from the commercial design requirements
- Section 14-6: Expansion of a non-conforming structure

The applicant also requests that the Board of Adjustment consider issuing a Certificate of Non-Conformity Adjustment (CONA) if the project is allowed to move forward with the use of the existing structures on the site. The applicant is requesting individual votes for each requested variance.

Mr. Collins said he will give an explanation and attempt to point them out with the assistance of the current Site Plan that was given to the Board tonight. He requests that the Site Plan be entered into the record as Exhibit H.

The first Variance is in regard to the required setbacks. Structures used for reception facilities are required to maintain a 100 foot setback, shown in light green on the site plan that was distributed; all of the property lines. He said Barn#1 and Barn# 3 are within that setback shown on the site plan in yellow. Barn #1 encroaches 58.5 linear feet into the setback and Barn #3 encroaches 41.2 linear feet.

The second Variance is in regard to the landscape buffer. The type two landscape buffer, which is show in dark green on the site plan, is required for reception facilities. In this case, the required buffer width is 59 feet. There are three encroachments of this requirement show on the site plan; Barn #1 and #3 encroach 781 square feet and 255 square feet respectively, and is shown in the hatched yellow area. Also, the future septic field shown in yellow for a planned bathroom addition to Barn #1, which is shown in red. It encroaches for a length 212.56 linear feet or approximately, 9,300 square feet in size.

The third Variance is in regard to a nonconformance situation. Barn #1 would be considered a non-conforming feature as defined by Section 14-3, on the subject property, if it is used as a reception facility and additions to a nonconforming structure that are prohibited by Section 14-6 of the Zoning Ordinance.

Mr. Collins said the site plan shows that the applicant is proposing the aforementioned addition to Barn #1 for the bathrooms, increasing the overall size of Barn #1 by 400 square feet (shown in red). The applicant, additionally requests, that the Board of Adjustment consider issuance of a CONA for the 400 square feet expansion for Barn #1, if the variance is granted for the barn to be used at its current location.

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The fourth Variance is in regard to Appendix B, Commercial Design Standards. Section 8-21C of the Zoning Ordinance requires that the proposed addition to Barn #1 meet the Commercial Design Standards of Appendix B and Barns #3 and #4 be updated to meet the design standards.

Therefore, the applicant is requesting relief from Appendix B for Barn #1 and Barn #3 and for the proposed 400 square foot addition to Barn #1.

Should the Board decide to approve the Variance, staff recommends the following conditions:

1. Conditional Use Permit is required for this use in AO zoning district
2. Conditional Use Permit site plan shall meet the required waterbody buffers.
3. Conditional Use Permit site plan shall include No Parking Fire Lane signs every 20 feet along "T" fire access turn around.
4. NCDOT driveway permit shall be included with the Conditional Use Permit Site Plan.
5. A Subdivision plat subdividing the property showing the site plan prior to commercial site plan approval. This plat shall also show the required waterbody buffers.

The Chair asked when Barns #1 and #3 were placed on the property were.

Mr. Collins is not sure, he stated that the applicant is here tonight and may have some insight on that.

Mr. Andrew Graham said the 20 x 20 addition structure is for a bathroom, a 400 square foot bathroom?

Mr. Collins said yes.

Mr. Adam Dagenhart asked if the area shown for the septic field was the only area that would percolate.

Mr. Collins will have the applicant address that.

Ms. Virginia Moore, Agent, Carlos Moore Architect, PA, 222 Church Street N. Concord, NC, addressed the board. She said Barn #1 was built in 1999, and Barn #3 was existing when the applicant purchased the property. She said the area shown for the septic field was the only area that would percolate in that area. What she was trying to do within the property line was to stay away from the waterbody as much as absolutely possible. She has experienced a lot with the waterbody buffers within the last year and she tries to run from it as best possible. She said the new property line was strategically placed.

We would like to plant the required number of plantings for the entire project, but we would just distribute them in different areas. Most specifically, behind the areas. Behind Barn #1, we would put in a little extra there to make up for that encroachment. We would put a little extra along Buffer Yard #2 as well, and a little bit of extra along this line as well (showed on map). All of

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the structures are existing; the 20 x 20 addition, most commonly, will be used for dressing rooms and ready rooms. She said there is no kitchen facility planned here, just warming. We believed we tried our best to adhere to the Ordinance, to redistribute, and to do the best they could with that.

The Chair asked if the remainder of the property was the applicant's residence.

Ms. Moore said yes. Currently, it is all one parcel and they live in house. We wanted to go for the Variance first, before they subdivided everything, and if this moves forward they will fully comply with the conditions set forth.

The Chair opened the Public Hearing.

There being no further questions, or citizen comments, the Chair closed the Public Hearing.

The Chair asked staff and Mr. Koch to help guide the Board through this. There is a whole list of things that we are going to consider. He said there is a set of criteria that the Board has to use to grant a Variance and each request will have to meet the full criteria.

Mr. Koch supposes the best way to go about it is to look at those four requirements from the Ordinance and the Statute. The first one starts with; determine unnecessary hardship. He said look at that, and then you will need to apply each of those four standards to each of these situations. The first one being setback encroachments. He said it might be good to entertain some general comments with reference to those encroachments. Whether you believe that under these circumstances, and based on what you have heard and seen, in the staff report, and heard from Ms. Moore, and seen from the site plan, whether you think that the variance requirements are met with reference to each of those set back encroachments.

Mr. Koch reminded the Board, that a couple of years ago, the statute, regarding Variances, was changed to take out the requirement that use to be there for many, many years, where the Board would have to make a finding that no other reasonable use of the property could be made. He said that is gone now, so, it does make it a little easier to deal with situations where the site plan or what is being requested does not fit neatly into our Ordinance. Which is pretty much what we have here; it is just that we have multiple circumstances with reference to this particular one.

Mr. Koch said it is really up to the Board if you want to deal with each of the Variances collectively and not go through each of the requirements. If you want to do it that way, that is fine with him. Typically, he would offer to prepare the specifics findings after the vote, to support the vote, based on these requirements and based on the evidence. It may be good to get some general comments from the Board members as to how they feel about this thing overall, or if they have particular issues with one or another of these.

You might want to solicit that early on, because, if there is somebody that has a particular problem with all of the variance requests, or maybe with one in particular, either with reference

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to the requirements or just because of some other reason. You may want to solicit those kind of comments first. It may be that nobody really has a problem with any of them. If so, we might as well find that out early on and then we can kind of work backward, perhaps. But, if not, then we can move through it pretty easily and he could prepare the Findings, ultimately. But, if there is

anyone on the Board that is troubled by one or more of these as they have been proposed, it might be good to take that up.

The Chair asked if there were any comments, questions or concerns on any of the items requested for the Variance request as presented by staff.

Ms. Blakeney has no objections to any of the request. She said it seems like things have been worked out fairly well.

The Chair said he is not proposing this necessarily as a condition, but it may be something that the Board may want to consider. That is, we put something in the record that says, if we do approve this, there will be no additional encroachment into either one of those areas. He said later on down the road, if it is working well and one of those barns needs to be expanded in some sort of way, they could not expand into that part of the property, into anyone of those buffers or setbacks.

Mr. Koch thinks any additional encroachment, would first of all, be a violation because it would not have been approved. They would need to come back and apply for it, before they did it. He thinks that would practically be difficult to impose that on the front end.

The Chair guesses it is already imposed by the Ordinance.

Mr. Koch said that is correct.

The Chair said we are dealing with rather substantial improvements; as it is. It is not like a corner of a building got placed into a buffer or setback it is pretty much the whole building, with Barn #1 and the other one as well. Not to mention the septic field; to him that is what it is. If you are going to place a facility there, it is quite obvious that you are going to have to have restrooms facilities. He said knowing what he knows about that area, you are probably pretty fortunate that you found a septic site at all.

The Chair asked if there were any more questions or concerns on any one of the four request. What we can do, as Mr. Koch has suggested, is hold all four of these variances up to the four standards listed. To approve we will need to go through each one of those standards individually.

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.

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The Chair thinks in order for the applicant to move ahead with what they are proposing, that there is a hardship. The buildings were existing and they are in the setbacks and landscape buffer.

Mr. Ritchie agrees, he sees no problem with any of them being where they are and the conditions around it.

There were no other comments or discussion.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

The Chair said it is peculiar to the property because the barns are already there. It is not reasonable, in his opinion, to ask anyone to either tear down the barn, or tear down the part that is encroaching, or to move the barns. In his opinion, once again, the hardship is there.

Mr. Graham said from the overhead view of the map, the only property owner he thinks will be affected is the one who owns it; the applicant himself. He does not see any problem with it. It is surrounded by trees and thick vegetation, practically, all around the property.

There were no other comments or discussion.

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

The Chair thinks the barn has been there quite a while and predates the restrictions that are now on the property.

There were no other comments or discussion.

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.

The Chair said that sort of stands on its own.

There being no further discussion, the Board voted on each request for VARN2015-00001 separately.

Ms. Mary Blakeney **Motioned, Seconded** by Mr. Aaron Ritchie to **Approve** the relief of the setback encroachments. The vote was unanimous.

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Mr. Aaron Ritchie **Motioned, Seconded** by Ms. Mary Blakeney to **Approve** the Building Encroachment into the required landscape buffer. The vote was unanimous.

Ms. Mary Blakeney **Motioned, Seconded** by Mr. Aaron Ritchie to **Approve** the Addition to a Non-Conforming Structure. The vote was unanimous.

Mr. Aaron Ritchie **Motioned, Seconded** by Ms. Mary Blakeney to **Approve** the relief of Appendix B, Commercial Design Standards. The vote was unanimous.

Mr. Koch said you may need to entertain a motion to impose the conditions contained in the staff report. He does not think that has been articulated up to this point.

Mr. Aaron Ritchie **Motioned, Seconded** by Mr. Andrew Graham that the following conditions recommended by staff be a condition to these Variances:

1. Conditional Use Permit is required for this use in AO zoning district
2. Conditional Use Permit site plan shall meet the required waterbody buffers.
3. Conditional Use Permit site plan shall include No Parking Fire Lane signs every 20 feet along "T" fire access turn around.
4. NCDOT driveway permit shall be included with the Conditional Use Permit Site Plan.
5. A Subdivision plat subdividing the property showing the site plan prior to commercial site plan approval. This plat shall also show the required waterbody buffers.

The vote was unanimous.

Mr. Aaron Ritchie **Motioned, Seconded** by Ms. Mary Blakeney to **Approve** the Certificate of Non-Conformity Adjustment. The vote was unanimous.

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

Directors Report

Ms. Morris said our favorite House Bill has a new number, House Bill 36 (HB36) - Aesthetic Controls has been resubmitted. For our new members, that bill says, essentially, if you are a governmental agency, you cannot apply any type of design standards to one or two-family dwellings. Our Ordinance does contain language that talks about eaves and anti-monotony and the different items that are related to aesthetics dealing with controls. The bill still allows for historic districts and for mobile home design standards, which we also have.

We will be tracking this as it moves forward. Most of the bills from last year are still out there and are just now starting to get back into the hopper. She will let the Board know as they come in. If HB36 does pass, our Ordinance will have to be amended accordingly.

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The Chair asked if HB36 was coming up in the next session.

Ms. Morris said yes. It has been out there for two or three years now. It got really close the last time and she expects that something will happen in this session.

The Chair asked who was sponsoring it and if it were any one local.

Ms. Morris said the primary sponsors are Dollar, Brawley, Jordan and Glazier.

The Chair asked if Brawley was from Mecklenburg County.

Mr. Koch thinks he is from Iredell.

Ms. Morris said it would still allow us to impose the construction standards based on the National Register of Historic Places, the National Flood Insurance Program (NFIP) and the Community Rating System Program (CRS), other than that, it is very limited but it does only include residential at this time.

Ms. Morris said House Bill 61 (HB61) was also introduced. It is a local bill introduced by Representative Pittman. She said some Board members have asked questions about the biosolids application, the articles you have seen in the paper as well as at some of the Commissioners meetings. Currently, the County is preempted by the State on that type of permitting, as well as the application; as to where it happens and how it happens. The State sets up the rules and guidelines that have to be followed. They also do the inspections and issue the permits.

She said the bill that is proposed, would actually request, that if a county had a processing facility or an incinerator, which Cabarrus County does at the Rocky River Treatment Plant, it currently takes in sludge. For those of you who were on the Board when we went through that process, that project is up and running. They take in the sludge and then they get it to the form that it needs to be in and then put it in the incinerator. Currently, they are putting some power back on the grid for their building. It is not something that they (biosolids permit applicants) have to do.

The language in the bill says if you live in a County where that (incineration) is available, then that has to be the first priority. She is not exactly sure how that works out since Mecklenburg County was the one asking for the permits or that the Commission has to look at it before they give the permit. We will have to see how that shakes out and if it makes its way through the process. It was just introduced late last week. It is intended to try to put some options out there, but again, it is very limited because of the State pretty much handling that process.

Ms. Morris said hopefully, there will be some training available in March or April provided by the School of Government. It is her understanding that it will be a late afternoon training. Hopefully, the Board members that would like to go will get to go. She thinks there are some

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funds available; she is not sure of the cost. She believes it will be held in Iredell County; usually when they do the training they use the Charles Mack Citizen Center in downtown. She will let the Board know when she gets more information.

She said things are cranking in Raleigh and we will see what the end result is to our Ordinance.

Legal Updates

Mr. Rich Koch, County Attorney, addressed the Board stating that he did not have much of a legal update.

The Chair asked if there was any information on the Speedway.

Mr. Koch said the last time we talked, with reference to the economic development lawsuit, the 80 million dollar lawsuit, we reported that the Supreme Court had come back and reversed their decision about granting discretionary review and had decided that they did so, as they term it, improvidently.

It is interesting that they use that term because it has the same root as the word providence. So, it is almost like they take sort of a godly view of their duties with reference to this. Nonetheless, when they grant a petition for discretionary review, they can then go back and look at it and change their mind that they should have taken it in the first place.

The Chair said a do over.

Mr. Koch said more like maybe we should not have done this type of response. So when they make that decision, and they do not do it in public, it is done when they discuss cases. When they make that decision, they will issue an order that has one sentence in it that says; discretionary review, improvidently granted. That basically means that they have changed their mind, they are essentially denying it now and the case is over. He said that case is over and there is no appeal. He supposed, technically, you could try to appeal it to the United States Supreme Court, but there is not a chance they would take a case of that sort. Because it does not involve any sort of federal question or anything that would affect the country as whole. So, it is over.

Mr. Koch said we have also resolved virtually all issues with the Speedway concerning their assessed value. He knows that is aside from the area that this Board deals with, it is not a land use or a zoning matter. We have resolved those issues as to the assess value of the Speedway.

The chair asked what is the assess value of the Speedway.

Mr. Koch said it changes every year if they make some improvements to the property. The main disputes were on 2008 and 2009 assessments. If he recalls correctly, 2008, was \$236 million and that is inclusive of the dirt track and some of the other improvements there that are actually owned by the speedway. They started construction of the drag way in 2008, and of course that

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was part of the reason we had this other case. But the drag way was completed by September of 2008, and came on for purposes of taxation beginning in 2009. So the total of those two, beginning in 2009, is \$289 million and there have been some other changes since and are working through some other issues out there.

Some of the things you see out there are actually personal property as opposed to real property. For example, the big screen that is there is considered personal property. He said there are some definitions that control that. They are always doing improvements there, so when they pick up those improvements it might change. He said there are other times when they take things out. You may have seen in the paper that they were going to remove 40 thousand seats. They are going to replace them with some other type of amenities, so once that is constructed there will be an adjustment for that beginning in the next tax year.

Mr. Koch said there will be two interpretation appeals coming up next month for the Board of Adjustment.

The Vice-Chair asked if they have been able to serve the subpoena on the 53 foot trailer on Highway 29 near the Speedway.

Mr. Koch said we have initiated the process for serving that by publication. If you recall, the normal method of service when you are serving a law suit, you try to serve it either by the sheriff, or by certified mail, or you can use an approved courier type of service like Fed-Ex, UPS or DASH, or even some of the local ones that are approved for purposes of that. We tried all of those methods and were not able to achieve service. This individual was ducking the sheriff. They are well familiar with him and have tried to serve papers on him.

We tried to serve him by certified mail and he did not pick it up. Also tried using UPS to make it look like a Christmas gift, but he did not pick that one up either. Inside of it was the summons of complaint; that did not work either. Once we tried those without success, then we are allowed to serve by publication. Which means we have to prepare a notice that describes the lawsuit in a very summary way and then file that and get a new summons issued. Then have that notice advertised in a paper of general circulation in the county for three successive weeks.

We have initiated that process, and they will get additional time because of the publication notice beyond the normal period of time to respond. So, the deadline for him to respond is March 23, 2015. If he does not respond, Mr. Koch can default him and then schedule it for trial. If he does not show up then we will get the Judge to order it to be removed.

Mr. Koch thinks the gentleman is playing games with us. He had hired a lawyer, and Mr. Koch tried to get the lawyer to accept service but he says this individual is not communicating with him either. So he did not feel that he was authorized to accept service.

Mr. Koch said you can only use private process servers in this state under very, very limited circumstances.

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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 7:55 p.m.

APPROVED BY:



Richard Price, Vice Chairman acting as Chair

SUBMITTED BY:



Arlena B. Roberts

ATTEST BY:



Susie Morris, Planning and Zoning Manager

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**CONDITIONS
APPLICATION VARN2015-00001**

1. Conditional Use Permit is required for this use in AO zoning district.
2. Conditional Use Permit site plan shall meet the required waterbody buffers.
3. Conditional Use Permit site plan shall include No Parking Fire Lane signs every 20 feet along "T" fire access turn around.
4. NCDOT driveway permit shall be included with the Conditional Use Permit Site Plan.
5. A Subdivision plat subdividing the property showing the site plan prior to commercial site plan approval. This plat shall also show the required waterbody buffers.

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FINDINGS OF FACT

1. The Fulks are the owners of the Property. They desire to create a wedding and reception facility on approximately 7.3 acres of the 17.537 acre parcel.

2. An existing barn (Barn #1) encroaches into the required 100 foot setback and to the extent of approximately 781 square feet into the required 59 foot buffer yard.

3. A second existing barn (Barn #3) encroaches into the required 100 foot setback and to the extent of approximately 255 square feet into the required 59 foot buffer yard.

4. The proposed septic area is located in the 100 foot buffer and the 59 foot buffer yard. Vegetation is required to exist or to be placed in the buffer yard, but the Fulks want to preserve a vista of an existing pond from the wedding and reception area across the proposed septic area and planting of vegetation in the septic area is counterproductive.

5. The Fulks desire to construct a 20 foot addition to Barn #1 on the side away from the buffer in order to add bathrooms and dressing areas for the wedding and reception facility.

6. The overall site currently contains a single family residence, two barns and water bodies. It is currently zoned Agricultural Open (“AO”) and is used as a residence. The adjacent uses are vacant, residential and agricultural.

7. The Fulks also seek a variance from the Appendix B Commercial Design Standards of the Cabarrus County Zoning Ordinance (“Ordinance”), which requires that any new construction to a residential structure used as a reception facility shall meet commercial design standards.

8. A strict application of the Ordinance would create practical difficulties and unnecessary hardship relative to the Fulks’ proposed use of the Property as a wedding and reception facility for the following reasons:

a) The two barns already exist on the Property and have been in their present locations for many years.

b) There exist heavy to moderate tree lines along the perimeter of the Property to be used as the wedding and reception facility, such that there already exists a substantial buffer from adjacent properties.

c) In order to make reasonable use of the parcel proposed for the wedding and reception facility, the septic field needs to be located in the buffer. The adjacent property on that side of the proposed parcel is also owned by the Fulks and used as part of their residence parcel.

d) On the west side of the parcel proposed for the wedding and reception facility, a landscape buffer would interfere with the proposed location of the septic field and obscure the viewshed of the pond.

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9. These practical difficulties and hardships result from conditions peculiar to the Property.

a) The two barns already exist on the Property and have been in their present locations for many years.

b) There exist heavy to moderate tree lines along the perimeter of the property to be used as the wedding and reception facility, such that there already exists a substantial buffer from adjacent properties.

c) In order to make reasonable use of the parcel proposed for the wedding and reception facility, the septic field needs to be located in the buffer. The adjacent property on that side of the proposed parcel is also owned by the Fulks and used as part of their residence parcel.

d) On the west side of the parcel proposed for the wedding and reception facility, a landscape buffer would interfere with the proposed location of the septic field and obscure the viewshed of the pond.

10. These practical difficulties and hardships did not result from actions taken by the Fulks.

a) The two barns already exist on the Property and have been in their present locations for many years.

b) There exist heavy to moderate tree lines along the perimeter of the property to be used as the wedding and reception facility, such that there already exists a substantial buffer from adjacent properties.

c) In order to make reasonable use of the parcel proposed for the wedding and reception facility, the septic field needs to be located in the buffer. The adjacent property on that side of the proposed parcel is also owned by the Fulks and used as part of their residence parcel.

d) On the west side of the parcel proposed for the wedding and reception facility, a landscape buffer would interfere with the proposed location of the septic field and obscure the view shed of the pond.

11. The requested variances are consistent with the spirit, purpose and intent of the Ordinance, such that public safety is secured and substantial justice is achieved.

a) The variances collectively do not adversely impact adjacent property owners as the status quo of the condition of the common boundaries will not change.

b) No property owner adjacent to this property has expressed any objection to this application for the variances.

Memo

To: Cabarrus County Planning and Zoning Commission

From: Susie Morris, AICP, CZO, Planning and Zoning Manager

CC: File

Date: 2/4/2015

Re: CUSE2014-00004 Howell Midland Farm, LLC/Strata Solar-Request to Table

- On January 30, 2015, Mr. Tom Terrell, acting attorney/agent for Howell Midland Farm, LLC/Strata Solar, requested that CUSE2014-00004 be continued to allow time to address comments received from review agencies.
- Mr. Terrell believes that the comments can be addressed in time for the case to be heard at the March Planning and Zoning Commission meeting.
- The Planning and Zoning Commission will need to make a motion and vote to continue the case to the March 10, 2015 meeting.

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Ms. Shannon Frye, Chair, called the meeting to order at 7:12 p.m. Members present in addition to the Chair were Ms. Mary Blakeney, Mr. Adam Dagenhart, Mr. Andrew Deal, Mr. Andrew Graham, Mr. Jeff Griffin, Mr. Chris Pinto, Mr. Richard Price, Mr. Jonathan Rett and Mr. Aaron Ritchie. Attending from the Planning and Zoning Division were Ms. Susie Morris, Planning and Zoning Manager, Mr. Phillip Collins, Sr. Planner, Ms. Arlena Roberts, Clerk to the Board and Mr. Richard Koch, County Attorney.

The Oath of Office was administered to newly appointed member Mr. Adam Dagenhart.

Roll Call

Approval of the November 12, 2014, Planning and Zoning Commission Minutes

Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Ms. Mary Blakeney to **APPROVE** the November 12, 2014, minutes. The vote was unanimous.

The Chair introduced Petition: RZON2014-00002, Proposed rezoning request, Applicant, Georgeville Volunteer Fire Department.

The Chair stated that Mr. Aaron Ritchie and Mr. Jonathan Rett have worked on this petition with the Georgeville Fire Department and have asked to be recused.

Mr. Richard Price, **Motioned, Seconded** by Ms. Mary Blakeney to recuse Mr. Aaron Ritchie and Mr. Jonathan Rett. The vote was unanimous.

New Business – Planning Board Function:

The Chair introduced **Petition RZON2014-00002** – Applicant is Georgeville Volunteer Fire Department. Property located at 6916 Highway 200. PIN#5567415898.

Mr. Phillip Collins, Senior Planner, addressed the Board, stating that this is a rezoning request from the Georgeville Volunteer Fire Department, they are also the owner of the subject property. The subject property is located at 6916 Highway 200, Concord NC. The property is approximately 2.19 acres and is currently developed as a volunteer fire department. The adjacent land use is Residential and vacant property. The surrounding zoning is Agriculture Open (AO).

The applicant is proposing the subject property be rezoned from Agriculture Open (AO) to Office Institutional (OI). This district is intended to accommodate relatively low

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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.

The subject property is located within the boundary of the Midland Area Future Land Use Plan and is planned for agricultural uses and open space. The Agricultural/Open Space District features residential uses that support those working on and/or owning the land, home occupations allied with existing residences, and very limited business endeavors. Public utilities are not planned for this area. The primary activity is agricultural/housing and businesses are typically related to, and supportive of, the practice of modern day agriculture. Manmade uses must take care to enhance and not detract from the essential character of the area. This district is proposed for areas within the Midland Plan Area that feature significant natural resources and should remain protected from over development by encouraging agrarian and residential uses on larger lots.

The proposed rezoning is not consistent with the Midland Area Plan. However, the subject property supports an existing non-conforming volunteer fire department which was constructed in 1981, prior to county zoning. The property currently has a residential zoning designation.

A volunteer fire department is considered a public use facility. Public use facilities are permitted in the residential AO, CR, LDR, MDR and HDR districts as a conditional use and are permitted by right in the OI, LC, GC, LI and GI districts.

The proposed zoning change to OI supports the by right use of the property as a volunteer fire department and allows the existing non-conforming use to better comply with the zoning ordinance.

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

There being no questions for staff, the Chair opened the Public Hearing.

Mr. Aaron Ritchie, President, Board of Directors for the Georgeville Fire Department, addressed the Board. He said the Georgeville Community Association owns the parcel on the corner, it is an abandoned ball field. The fire department has been there since 1970 and officially opened in 1971. The building is in a floodway.

He said the state put in a twisty trail on Rocky River, and we have two miles of trail along Rocky River that we have to be able to access. We purchased an All-Terrain Vehicle (ATV) and we are building a stretcher cart for it. If someone gets hurt on the trail, we cannot carry them two miles; we need some way to access them. We need a building for storing the ATV and cart. It will be a 30 foot by 40 foot metal building, with no power and no plumbing.

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Mr. Andrew Graham asked if it was going to be on the adjacent parcel.

Mr. Ritchie said no, it is on our parcel. He said since the fire department is in the existing floodway, we would like to get this piece of property from the Georgeville Community Association and one day build a fire department where it is not in the floodplain. But, right now, no one uses that parcel and the fire department cuts the grass on it.

Mr. Andrew Graham asked if they would have to get the adjacent property rezoned as well.

Mr. Ritchie said yes.

Mr. Graham said what about the other side

Mr. Ritchie said nothing is ever going to change out there and nothing will ever be built on that corner, because it is in the floodway. He said the only thing that will ever change out there is the metal building they are going to put up for a storage house. It will always be a fire department.

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

Mr. Graham said looking at the aerial map, to the right of it, on the road frontage of Highway 200 is woods; is it a private landowner and is the Fire Department associated with that lot.

Mr. Ritchie said it is woods and private.

There being no further discussion, Ms. Mary Blakeney **Motioned, Seconded** by Mr. Richard Price to **APPROVE, Petition, RZON2014-00002**. The vote was unanimous.

Consistency Statement

As the staff report in the presentation indicates, this rezoning is not consistent with the Midland Area Land Use Plan. However, the present use of the property is non-conforming and the rezoning will make it more conforming, and this particular use, a public use facility, is by right in the rezoned district. For those reasons, although it is not consistent with the area plan, it is reasonable and in the public interest.

There being no further discussion, Mr. Richard Price, **MOTIONED, SECONDED** by Mr. Jeff Griffin to **APPROVE** the **Consistency Statement**. The vote was unanimous

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New Business – Planning Board Function:

The Chair introduced **Proposed Text Amendment -TEXT2015-00001**, Chapter 7, of the Cabarrus County Zoning Ordinance (clarification of the number of clients allowed to visit a home occupation).

Ms. Susie Morris, Planning Manager, addressed the Board stating the proposed text amendment is to Chapter 7 of the Zoning Ordinance to clarify the number of clients that may visit home occupations.

If the Board remembers, we have two different types of home occupations; one is a General Home Occupation which is in the residential structure, the other is a Rural Home Occupation which allows an out building separate from the home residence for business.

We are proposing that a limit to visits be placed on the home occupations. A situation came up, in which she had to speak with our Attorney on how to determine what the number would be, based on the fact that what they were asking was how many groups of people that would be coming to the house. So based on the number 8, which would be consistent with the number of children that someone is allowed to keep in a daycare based on the State Statutes; and also if that person worked for 8 hours a day, even if they would have 1 client per hour for a full work day, we are recommending that each home occupation be limited to 8 clients per day.

The Chair asked if there were questions.

Mr. Price said how will you know?

Ms. Morris said typically, we do not know unless we get complaints; that is when it would mostly come into play. Most people that apply for home occupations are very up front and honest about what they are going to do. Occasionally, we get the folks who have a home occupation that was not permitted, so they do not really understand the rules. But, those that go through the process understand the rules for the most part.

Mr. Price said if you get a complaint, how will you investigate it?

Ms. Morris said we would talk to the person to find out if the business has expanded and if it has, they may need to find another location. It would be a zoning violation case or a complaint case. We would start working through that process with an investigation and follow up with a warning letter and then the notice of violation process.

Mr. Koch said a lot of the time the neighbors help out with that.

Mr. Price can see a scenario where they are working with one client, but there may be a steady stream of people that represent that client that would get the neighbors saying that

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there is a ton of people coming and going. He asked if she is talking about visits or clients.

Ms. Morris said we can always change it to visits if you think that clarifies it.

Mr. Price does not know, he is playing the devil's advocate.

Ms. Morris said that is one of things Mr. Koch and I discussed. When it came up, there was a potential for five or six people to be coming at one time and that would translate to five or six cars. We can do clients and visits or we can keep it client. The attempt is really one car per visit, though, with some of them it may be more.

Mr. Graham said it would be hard to say they had more than 8 visits in one day, if you put it down to that number per se. Someone could complain and say they saw ten people, ten different visits. I could say no, that is not right. It could become a gray area if you did it to the number of visits versus the number of clients. In his opinion, it would be easier to manage that versus the number of cars in and out.

The Chair thinks you could do and/or, whichever is the greatest or whichever is the least. You could give the flexibility; like two visits per client and add some other options. She does not know what conversation was held that spurred several visits. It seems like that could be at least an either/or, depending on the occupation, if two visits has four clients a piece. But, she understands the parking dilemma that comes with doing what we do; the decisions that we try to mitigate.

Mr. Ritchie recommends clients verse visits, because if someone from the family comes that would be consider a visit.

Mr. Griffin asked would you consider a client, like a mother that brings in 2 children to the visits, would it be considered as 3 clients. He asked how that would be looked at. Is the concern a head count, vehicles, amount of traffic that comes in?

Ms. Morris said yes.

Mr. Griffin said you could have one person in a van, with the client, that arrives at the site and everybody unloads, and then you are mixing that in with the family members that maybe coming and going through the course of the day.

Mr. Graham said maybe we should say paying clients.

Ms. Morris said the Ordinance says that all parking needs have to be met through off street parking arrangements, including customer parking. Theoretically, they should be in the drive way.

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She said a client comes with the car and it is a Mom with her children for music lessons; which is something that is allowed. The Mom is coming because she has 2 children and they may have a lesson at the same time or back to back and Mom is there for 2 hours. So, she could lessen the number of people who are actually there, because she had more passengers in her car. It all gets very much into a gray area. Again, people who are going to follow the rules hopefully will follow the rules.

Mr. Griffin said the 8 clients and the 8 different vehicles, along with family members that maybe there at the same time is something we would not want either. He thinks it is more appropriate to try to limit the number of people that are there at the same time; cannot have more than 2 or 3 clients at a time.

He said the 8 could be at one time, one event with multiple cars.

Ms. Morris said which the one that came up is and what prompted the discussion. It would be one event with who knows how many clients.

Mr. Price thinks if someone is that busy, then their home is not the place to be running a business at that point.

Ms. Morris said we could say client visits, client, or 8 customers per day.

Mr. Ritchie said clients is fine with him.

Ms. Morris said the Ordinance does say including customer parking, so if we said no more than 8 customers per day that would be consistent.

The Chair said could we say customer/client?

Ms. Morris said yes.

Mr. Griffin said is it per day, is it 8 to 5 or is there consideration or concern for after hours or is it structured that way?

Ms. Morris said there is an assumption that it is going to be from 8 to 5 or 9 to 6 or 10 to 7; nothing later in the evening. But, again we do not have anything in the Ordinance that addresses that.

Mr. Koch said any enforcement of this is going to be problematic. He thinks everyone understands that and that is why the questions are coming up. He thinks what Ms. Morris is saying is, by putting this in there, for those who are looking at the Ordinance to see what you are allowed to do with a home occupation, this is going to put kind of a top end limit on it, so that they will understand that if they are going to get something fairly intense, or a lot of customers, that this is not going to work and that you could conceivably be in violation of the Ordinance if you are going to have a lot of traffic.

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He thinks it will serve that purpose on the front end for people looking at it. But on the back side of it, enforcement will be troublesome; usually it is the neighbors. Most of our zoning violations are complaint driven and most of them also have to do with something other than the actual violation of the ordinance. It just comes up as a way to get even with their neighbor. That is what we kind of contend with and if we get one of these, then we will have to figure out a way to deal with it and Ms. Morris may have to make an interpretation of the Ordinance in that event. This is really more for trying to deal with things on the front end then it is on the back end.

Mr. Ritchie said you cannot have a law for every little thing people do. He said leave it as clients.

Ms. Morris said since the Ordinance does say home occupation will allow clients or customers. We could change it to that language and in letter e, change it to improving client or customer parking; so that it is consistent.

If these folk are going to allow people into their homes, they are now subject to accessibility regulations, ADA regulations, paved parking and all of those kind of things. A lot of people opt to have the business run out of the house and use the address but they do not bring customers or clients to their home because they do not want to have to do those types of improvements. Especially, if it is a more rural area and not located in a subdivision.

The Chair said the last thing she understood Ms. Morris to say, is that we would be recommending in Letter e, the options to say including customer or client parking consistent with Letter f, that says clients or customers, and then also adding customer to Letter g, so that all three of those sections have consistent references to client or customer.

Ms. Morris said yes, under the Home Occupation, General, the last three bullet points should be consistent with clients or customers. The last two are actually the same language, but stating the different types of home occupation. It would also change Letter i, in the Rural Home Occupation, to clients or customers duplicating the General Home Occupation.

Mr. Griffin said is there still a concern though, that there should be different language that limits to a certain number at a given point in time. He said we have 8 a day, but do you want all 8 at one time or should it be no more than 2 customers at a time. Is there a concern with that?

Ms. Morris said there could be an issue with that.

Mr. Ritchie does not see how we can tell people how to run their business. In his opinion, if it is a home business, they are not going to have 8 people there at one time. It is like Mr. Koch said, if it becomes a problem, the neighbors will let us know.

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The Chair said Ms. Morris pointed out when she introduced the proposed text amendment that it was based on the number 8, which would be consistent with the number of children that someone is allowed to keep in daycare, based on the state statutes. This is mirroring that, in terms of how the home occupancy is treated. This cap matches home occupation and she thinks it is those types of comparisons that she is hearing that are coming from Ms. Morris as to how they are applying the standards and sort of creating consistency.

Mr. Price said using the day care example, they tend to all get there at one time and then you have the whole day when no one is there and they pick them all up at one time. He does not have a problem with it.

Ms. Morris asked if the Board would like her to change it to client or customer for consistency.

The Chair asked if there were any other comments or questions about the text.

Ms. Morris summarized the proposed text changes after the Board discussion. (Changes are indicated in red)

27. Home Occupation, General

Letter e: All parking needs brought about by the operation of the home occupation must be met through an off street parking arrangement, including **client or** customer parking.

Letter f is currently consistent

Letter g: If **clients or** customers are visiting the home occupation, no more than 8 **clients or** customers per day are permitted.

28. Home Occupation, Rural,

Letter i: If clients **or customers** are visiting the rural home occupation, no more than 8 clients **or customer** per day are permitted.

There being no further discussion, Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Ms. Mary Blakeney to recommend **Approval** of Proposed Text Amendment - TEXT2015-00001, to the Board of Commissioners with changes discussed and recommended by staff. The vote was unanimous.

Directors Report

Ms. Morris said we are currently working on some text amendments as well as some subdivision amendments that will be sent to the Text Amendment Committee for review and comment.

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We are also going to tackle the Subdivision Ordinance. We have some recurring issues with it that need to be addressed from a legal stand point. So, you will also be seeing some proposed amendments to the Subdivision Ordinance, as well as combining the Subdivision Ordinance together with our Zoning Ordinance; so that it is all one document.

She said whether that means that the Subdivision Ordinance becomes Chapter 15, or if that means it is a different section or incorporated into the different chapters, we are not sure yet what will happen. We will have to look at it, but more than likely it will be a chapter. That way it is all a part of the same document so that it is there and people know that they both work together and are not separate documents.

Ms. Morris said there will be two Board of Adjustment cases for the February and possibly a case in March. She said things are starting to pick up. There has been lots of interest in solar projects and wedding venues.

Mr. Price said speaking of solar projects, just as a side note. He and wife spent a little time in Newbern, NC, and it is amazing how those things are cropping up down there in that good and flat, farmland. He said everywhere you look somebody is building a solar farm; small ones and big ones. He said it is coming.

Ms. Morris said there may be some training opportunities for the Board next month.

Legal Updates

Mr. Rich Koch, County Attorney, addressed the Board. He said on a statewide level there is an effort underway to rewrite those sections of 153A which are the county government statutes relating to planning and zoning and subdivisions. It is primarily to reorganize it, to write it in maybe a little clearer English, without some of the archaic language that is in some of those statutes and to otherwise make it more user friendly. Particularly for those who do not deal with it every day but want to go to the statute and look it up and sees what it says about different planning and zoning issues.

You may recall that the Board of Adjustment statute was rewritten last year and passed by the General Assembly. And so, this effort is the same type of situation, it is just more extensive. Whether it makes it to the General Assembly this year he does not know, but it is underway.

Pending Cases:

The Ritchie Road case went to court in December and worked out a consent arrangement whereby they are going to bring the road up to compliance by the end of May 2015. That was to give ample time so there would be no excuses for it not being completed; given that there may be some weather issues and other issues that may come up between now and then. That order has been submitted to the Judge.

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We happened to have an out of town Judge from Surry County that was here for that case and Mr. Koch has not gotten it back from him yet but he expects to get it anytime.

We did come up with a resolution; it was a long time in coming, a lot of detours between the start of that to getting it to that point. He said everybody is on board and the money is deposited so that there is sufficient funds for the work to be done. So, there really should be no reason that it does not get done by that deadline.

Phillip Little case involving the 53 foot trailer that is sitting visible on Morehead Road and Highway 29 across from the Speedway. Mr. Little has been rather adept at ducking service. Mr. Koch even tried to send him something that looked like a Christmas gift with a summons of complaint in it. He said that did not work either, so, we are now serving him by publication.

We have a couple of zoning enforcement matters that the interpretation of the Ordinance is being appealed. He will not say much about those because they will be Board of Adjustment cases and a hearing will have to be heard if the appeals are processed. We are trying to work through some issues on it; they may get resolved or may not.

Mr. Ritchie asked about the Lee case.

Mr. Koch said Mr. Lee got to the point of achieving what we would call substantial compliance or completion; which was good enough under the circumstances.

This case involved a double wide manufactured home or mobile home that he stuck on a lot. He got some of the permits but not all of them. He needed to put skirting around the bottom because the Ordinance requires that. He did not do it exactly like the Ordinance says. He took some paver type concrete blocks that look like brick and turned them vertically on their side and stuck them underneath the parameter. So, it kind of, sort of looks like brick.

He was living out there without power and without water and dumping his waste out in the yard and there was a lot of complaining about it. He also tried to build his on septic system. In any event, he got power and septic put in with the help of some family members and some other assistance. He is living out there with his mother and we have not heard anything else about it.

Mr. Koch said the Health Alliance was involved in it in reference to the septic system and there were a lot of complaints from the neighbors out there, not only about Mr. Lee but about other people for other reasons and it pretty much just went away.

Ms. Morris said we received a recommendation from Kannapolis today for the empty Board seat and hopefully will fill it in February or March.

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There being no further discussion, Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Ms. Shannon Frye to **ADJOURN** the meeting. The vote was unanimous. The meeting ended at 7:56 p.m.

APPROVED BY:

Shannon Frye, Chairman

SUBMITTED BY:

Arlena B. Roberts

ATTEST BY:

Susie Morris
Planning and Zoning Manager

Staff Use Only:

PLANNING STAFF REPORT
CABARRUS COUNTY PLANNING AND ZONING COMMISSION
02/10/2015

Approved: _____
Denied: _____
Tabled: _____

Variance: VARN2015-00001

Applicant Information: Ginger Moore, Carlos Moore Architect P.A.
222 Church Street N
Concord, NC 28025

Owner Information: Fulk Todd D
2831 Lambert Road
Mt Pleasant, NC 28124

PIN#: 5589-46-2219

Area in Acres: 17.537

Purpose of Request: The applicant is proposing to use the subject property as a reception facility. Pursuant to Chapter 8 of the Cabarrus County Zoning Ordinance, reception facilities are permitted as a conditional use and include additional review standards. If the variance request is approved, the applicant intends to return to the Board of Adjustment at some point in the future to apply for a conditional use permit for a reception facility.

The variance request is for:

- Relief from the required setbacks for reception facilities
- Relief from the landscaping/buffering requirements for reception facilities
- Relief from the design requirements of Appendix B
- Expansion of a non-conforming structure

The applicant also requests that the Board of Adjustment consider issuing a Certificate of Non-Conformity Adjustment if the project is allowed to move forward with the use of the existing structures on the site.

Use of Existing Structures

Applicant prefers to use existing structures on the site for the reception facility and is requesting that relief be granted from the required 100 foot setback. Pursuant to Chapter 8 Section 8-4.21.d of the zoning ordinance:

All structures, viewing areas, and seating areas shall be set back at least one hundred feet from any street or property line.

1. There is an existing barn (Barn #1 on Site Plan), close to the northern boundary of the subject property. This barn encroaches into the required 100 foot setback by approximately 58.5 linear feet.
2. The second existing structure, located near the eastern boundary of the subject property (Barn #3 on Site Plan), lies completely within the 100 foot setback and would be an encroachment of approximately 41.2 linear feet.

Subsequent to the variance request and prior to conditional use permit review by the Board of Adjustment, the applicant intends to subdivide the subject property, creating a new parcel for the reception facility as required. The applicant is proposing to use approximately 7.3 acres of the subject property for the reception facility. The remaining parcel will be approximately 10.237 acres and will contain the existing residence ([Exhibit C - Site Plan](#)).

Encroachments into Required Landscape Buffers

Chapter 8 Section 8-4.21.g of the Cabarrus County Zoning Ordinance states that:

In the event the facility abuts residentially used or zoned property, Level Two buffering must be implemented. See Chapter 9, Landscaping and Buffer Requirements.

Because a reception facility is proposed on the new parcel, the applicant would be required to provide a level two landscape buffer along property lines abutting residential properties. This buffer would be 59 linear feet from the property line and would include the required plantings as outlined in the ordinance.

A bathroom facility is proposed for the reception facility and a portion of the septic field is proposed to be located within an area of the required landscaped buffer ([Exhibits C & F – Site Plan & Septic Information](#)).

1. The applicant is requesting relief from the landscaping and buffering requirements for a length of approximately 212.56 linear feet in this area. The applicant is proposing that the required trees be relocated to other buffer yard areas (See Buffer Yards #3 and #4). The application also states that installation of the required landscaping would block the view of the pond and rolling terrain to the north and west of the site ([Exhibits E & G – Staff & Applicant Photos](#)).

If the applicant is permitted to use the existing structures, these structures encroach into the required 59 foot landscape buffer.

- a. For Barn #1, there is approximately 781 square feet of encroachment into the required Level 2 landscape buffer (See Site Plan). Applicant proposes to add additional landscaping in the area around the building to lessen the impact of the encroachment. (See notes on plan)

- b. For Barn #3, there is approximately 255 square feet of encroachment into the required Level 2 landscape buffer (See Site Plan). Applicant proposes to install the required plantings throughout the buffer area. (See notes on plan)

Request for Certificate of Non-Conformity Adjustment Related to Barn #1

If the applicant is permitted to use Barn #1 as it exists, the structure is considered a non-conforming structure because it does not meet the required setbacks. This would be considered a non-conforming feature as defined in Section 14-3 of the Zoning Ordinance.

The applicant would like to install a 400 square foot addition to the barn in the future to accommodate bathroom facilities for the reception facility. This expansion would be considered an expansion of an existing non-conforming structure and requires that a Certificate of Non-Conformity Adjustment (CONA) be issued prior to any expansion of the structure.

1. The applicant respectfully requests that, if the variance is granted for the use of Barn #1 in its current location, that a CONA be considered by the Board of Adjustment pursuant to Section 14-7 of the Cabarrus County Zoning Ordinance:

Nonconforming characteristics of use, for example, inadequate parking and loading facilities, inappropriate landscaping, lighting, emissions, etc., may continue to exist, but shall not be expanded, altered, changed or relocated in such a manner as to increase the degree of nonconformity without either a Certificate of Nonconformity Adjustment or approval by the Board of Adjustment.

Appendix B, Commercial Design Standards

If the applicant is allowed to use Barn#1 and if the Board of Adjustment issues the Certificate of Non-Conformity Adjustment for the proposed addition to Barn #1, the applicant requests relief from the design standards of Appendix B for Barn #1, Barn #3 and the proposed addition to Barn #1. Chapter 8, #21-c states:

A residential structure that is used for a reception facility shall not be altered in any way that changes its general residential appearance. Building height and other dimensional requirements for new construction shall be governed by the zoning district in which the property is located. New construction must meet commercial design standards.

Site Description: The site is currently occupied by a single family residence, a barn and an outbuilding. The property also includes water bodies that are subject to the Waterbody Overlay District in Chapter 4.

Current Land Uses: The subject property is currently used as residential.

Adjacent Land Uses: Adjacent uses are vacant, agricultural and residential.

Permitted Uses: All uses permitted in the Agricultural/Open Space District are currently permitted on the subject property.

Existing Zoning: AO (Agriculture Open)

Surrounding Zoning: North: AO (Agriculture Open)
East: AO (Agriculture Open)
South: AO (Agriculture Open)
West: AO (Agriculture Open)

Signs Posted: 01/27/2015

Newspaper Notification: 01/28/2015

Newspaper Notification 2: 02/04/2015

Notification Letters: 01/27/2015

Exhibits

- Exhibit A – Staff Report
- Exhibit B – Application
- Exhibit C – Site Plan
- Exhibit D – Maps
- Exhibit E – Staff Photos
- Exhibit F – Septic Information
- Exhibit G – Applicant Photos

Agency Review Comments

- **Fire Review : Approved**
Steven Langer - No issues related to the variance request. On final plan site plan review business will be required to place "No Parking Fire Lane" signs every 20 feet along "T" fire access turn around.
- **Zoning Review: Approved**
Conditional Use Permit required for this use in AO zoning district.
- **NCDOT Review : Approved**
Leah Wagner - A driveway permit will be required.

History / Other Information

- The subject property is currently zoned AO and has historically been used as a single family residence.
- A single family residence and several outbuildings/barns are currently located on the subject property.
- The subject property includes a pond and streams feeding into and out of it that are subject to the Waterbody Buffer Zone of the Cabarrus County Zoning Ordinance.
- The applicant proposes to use the site as a Reception Facility in the future.
- If the applicant proceeds with the request for a Reception Facility, the property will have to be subdivided. Applicant is aware of this item and has located proposed new parcel boundary on site plan.
- The Applicant will also need to secure a Conditional Use Permit for the proposed use to move forward. Applicant is aware of the need for a Conditional Use Permit.
- The application states that the site will be serviced by well and septic.

The applicant is requesting individual votes for each requested variance from the ordinance. A Summary of the variance requests is as follows:

Setback Encroachments:

- Request for relief from the 100 foot setback for Barn #1 (58.5 linear feet of encroachment)
- Request for relief from the 100 foot setback for Barn #2 (41.2 linear feet of encroachment)

Building Encroachments into Required Landscape Buffers:

- Request for relief for landscape buffer encroachment for Barn #1(781 square feet of encroachment)
- Request for relief for landscape buffer encroachment for Barn #2 (255 square feet of encroachment)

Addition to Non-Conforming Structure:

- Request for addition to non-conforming structure (400 square foot addition to Barn #1 for future bathroom facility)

Relief from Appendix B, Commercial Design Standards

- Request for relief from Appendix B. Commercial Design Standards for Barn #1 (Existing)
- Request for relief from Appendix B. Commercial Design Standards for Barn #2 (Existing)
- Request for relief from Appendix B, Commercial Design Standards for Barn #1 addition if applicant is permitted to use Barn #1 for proposed project (Proposed 400 square foot addition)

Certificate of Non-Conformity Adjustment

The applicant is requesting that the Board of Adjustment consider issuance of a Certificate of Non-Conformity Adjustment for a 400 square foot expansion of Barn #1 if the variance is granted for Barn #1 to be used in its current location.

**CABARRUS COUNTY
VARIANCE APPLICATION**



STAFF USE ONLY:

Application/Account# _____

Received By: _____

Date Filed: _____

Amount Paid: _____

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 = \$450 or Non-residential Variance request = \$550 +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

Applicant's Name

Carlos Moore Architect PA

Applicant's Address

222 Church St N

Concord NC 28025

Applicant's Telephone Number

704 788 8333

Property Owner's Name

Todd + Tamara Fulk

Property Owner's Address

2831 Lambert + Rd

Mt. Pleasant NC 28124

Property Owner's Telephone Number

704 309 8286

Legal Relationship of Applicant to Property Owner

Agent

Existing Use of Property

Agricultural + Residential

Existing Zoning

AO

Property Location

corner Lambert Rd + Hahn Scott.

Tax Map and Parcel Identification Number (PIN)

5589-46-2219

parcel to be divided if variance + CV
is granted

TO THE BOARD OF ADJUSTMENT

I, Carlos Moore Architect 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:

Barn # 1: Section 8-4.21.d – Barn 1 encroaches into required 100' building setback
 Section 8-4.21.g – Barn 1 encroaches into proposed 59' wide landscape buffer
 Section 14-6 – Expansion of non-conforming structure, proposed addition to Barn 1 is an expansion of an existing non-conforming structure

Septic area buffer yard:

 Section 8-4.21.g – Buffer Yard Landscaping – encroachment of required landscaped buffer – septic field is within required buffer and relief from landscaping requirements is requested (do not plant within septic field and preservation of the view shed)

Barn # 3:

 Section 8-4.21.d – Barn 3 encroaches into required building setback
 Section 8-4.21.g – Barn 3 encroaches into required 59' wide landscaped buffer

Appendix B: Existing and proposed structures – relief of required design standards requested for existing barns and proposed addition.

2. Reason(s) for Seeking a Variance

Barn # 1: Section 8-4.21.d – Barn 1 is existing and was a permitted structure prior to this proposed use
 Section 8-4.21.g – Barn 1 is existing with existing buffer.
 Section 14-6 – to add bathrooms in the future and keep in conformance with overall character of area.

Septic area buffer yard:

 Section 8-4.21.g – Buffer Yard Landscaping
(do not plant trees within septic field for protection of septic system and drainfield and preservation of the view shed)

Barn # 3:

 Section 8-4.21.d – Barn 3 is existing
 Section 8-4.21.g – Barn 3 is existing – required amount of plantings shall be planted.

Appendix B: Existing and proposed structures – relief of required design standards requested for existing barns and proposed addition. Both barns are existing are in keeping with the general appeal of the setting. The proposed addition shall be designed in keeping with the vernacular.

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).

Barn # 1: Barn is existing and heavy landscaping behind the barn currently exists. The barn was previously permitted. Variance request regarding the landscaping is for a 42 foot section only.

Septic buffer: The property line is situated between the drainfield and a pond. The intent is to stay away from the pond and out of the drainfield areas. The intent is also to protect the view shed of this area.

Plantings (shrubs) shall be planted outside of the drainfield area. Plantings are detrimental to septic systems.

Barn # 3: Barn is existing and is shielded from public view between 2 tree lines that are existing.

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?")

Barn # 1: It is impractical to move, tear down, or reconstruct the existing structure in another location on the property.

Septic field: It is recommended to plant on top of the leaching septic system. Also, protection of view shed.
Barn # 3: It is impractical to move, tear down, or reconstruct the existing structure in another location on the property.

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.)

Barn # 1 and Barn # 3: Substantial thick vegetation exists.

Septic area plantings: by relocating these plantings to other areas on the site does not injure rights of others.

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?)

In general the spirit of the ordinance is intact. Barn # 1 has substantial vegetation along the rear property line. Septic area: a tree line exists perpendicular to this area (above and below). Plantings are being relocated. Barn # 3 Barn is currently screened from view between 2 tree lines.

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?)

It is impractical to tear down and reconstruct, or move the existing barns and it is impractical to plant in the drainfield and on the septic system.

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.

If granted these variances, most specifically the trees along the septic property line, the required amount is shown on plan at other areas of the site to provide additional buffers.

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: Janice W. Fulk DATE: 2-1-15

SIGNATURE OF APPLICANT: V.J.F. DATE: 02.02.2015

Existing Zoning



Applicant: Virginia Moore

Owner: Todd & Tamara Fulk

Case: VARN2015-00001

Address: 2831 Lambert Road

Purpose: Setback/Buffer

Encroachment/Design Standards

PIN: 5589-46-2219

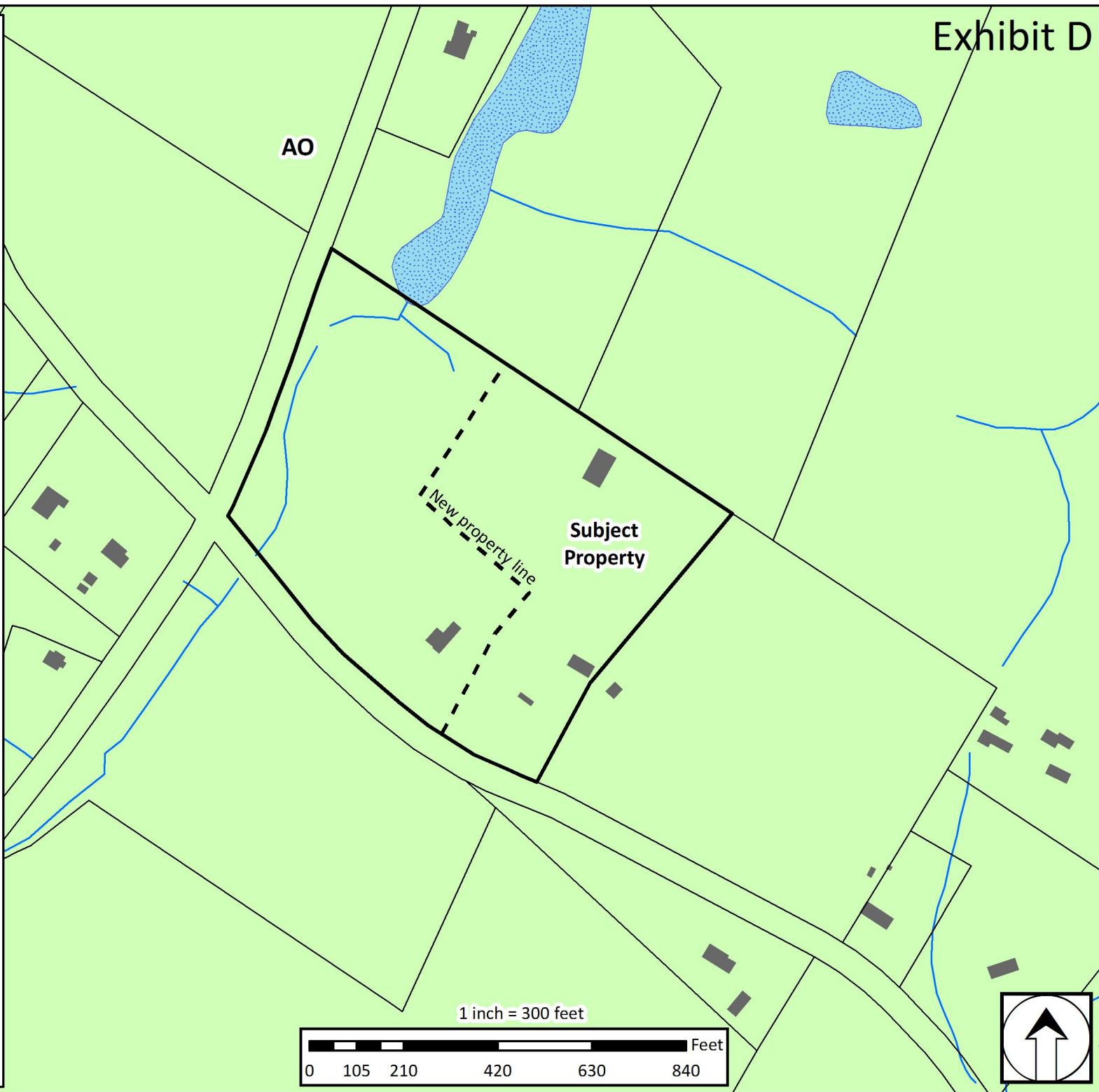
- Parcels
- Ponds
- Water Supply Watershed
- Streams
- Structures



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 - January 2015

Exhibit D



Aerial Map

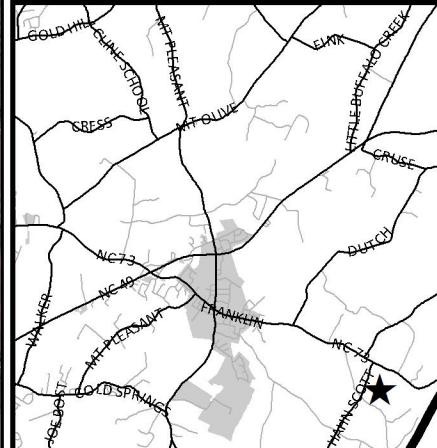


Applicant: Virginia Moore
Owner: Todd & Tamara Fulk
Case: VARN2015-00001
Address: 2831 Lambert Road
Purpose: Setback/Buffer

Encroachment/Design Standards

PIN: 5589-46-2219

- Parcels
- Cabarrus County
- City Limits



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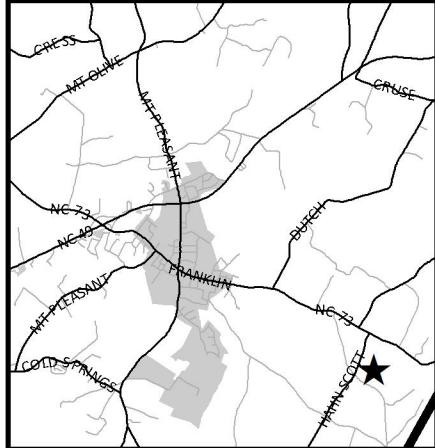
Map Prepared by Cabarrus County Planning & Development - January 2015



Eastern Plan Area Future Land Use

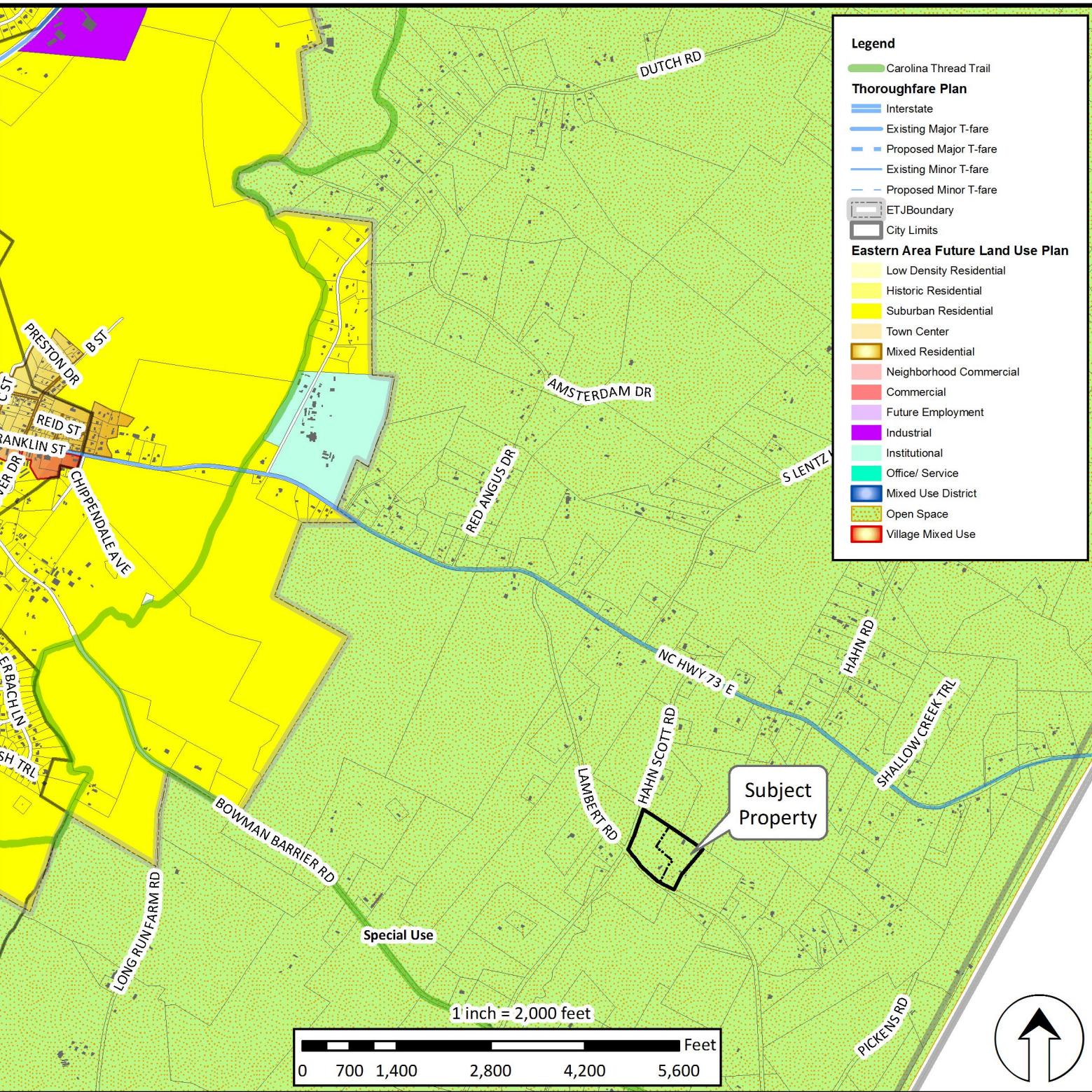


Applicant: Virginia Moore
 Owner: Todd & Tamara Fulk
 Case: VARN2015-00001
 Address: 2831 Lambert Road
 Purpose: Setback/Buffer
 Encroachment/Design Standards
 PIN: 5589-46-2219



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Map Prepared by Cabarrus County Planning & Development - January 2015



Photos of 2138 Lambert Road



Figure 1. Aerial view of the subject property from north to south



Figure 2. Aerial view of the subject property from east to west



Figure 3. Aerial view of the subject property from south to north



Figure 4. Aerial view of the subject property from west to east



Figure 5. Barn 1



Figure 6. Barn 1



Figure 7. Barn 1



Figure 8. Barn 3



Figure 9. Barn 3

PIN 55894627190000

Permit Number 14-151

ZI 10-20-14
SE# 2014-00106 FEE \$805¹⁰

CABARRUS HEALTH ALLIANCE
IMPROVEMENT PERMIT/CONSTRUCTION AUTHORIZATION

The construction and installation requirements of Rules .1950, .1952, .1954, .1955, .1956, .1957, .1958, and .1959 are incorporated by reference into this permit and shall be met. Systems shall be installed in accordance with the attached system layout.

ISSUED TO: TODD D. FULK

704 326-6109

PROPERTY LOCATION:

2831 LAMBERT Rd

2731 Hahn-Scott Road MT Pleasant NC 28124

MT Pleasant NC 28124

Facility Type: Wedding Facility New Expansion RepairBasement? Yes NoBasement Fixtures? Yes
with 12" Imported Soil CAP No(135 Persons X 5 GPD)
per personType of Wastewater System**
(See note below, if applicable)AT GRADE INNOVATIVE (Initial)
(pump to repair distribution for distribution)
SAME (Repair)Wastewater Flow: 675 GPD MAX

Maximum number of bedrooms: _____

Installation Requirements/ConditionsSeptic Tank Size: 1500 gallonsNO Kitchen FACILITIES OR FOOD Preparation

Total Trench Length: _____ feet

Trench Spacing: _____ feet on Center

*Pump Tank Size: 1500 gallons
with pressure manifold distribution
for repair onlyTrenches shall be installed on contour at a
Maximum Trench Depth of: _____ inches
(Trench bottoms shall be level to +/- 1/8" in all directions)Soil Cover: _____ inches
(Maximum soil cover shall not exceed
36" above the trench bottom)

Pump Requirements: _____ ft. TDH vs. _____ GPM

S.T. Lines See Design FOR SPECIFICATIONS
Stone depth (if applicable) _____

W.M. Lines _____

Stone depth (if applicable) _____

Conditions: CONSULTANT: Wendell Overby (704 239-2001) Soil Forestry Services of the Carolinas P.A.INSTALLER MUST MEET CONSULTANT ON SITE FOR PRECONSTRUCTION MEETINGPOST INSPECTION BY CONSULTANT & LETTER OF APPROVAL TO CMAINSTALLER TO GIVE CONSULTANT 5 WORKING DAYS NOTICE OF INSTALLATION

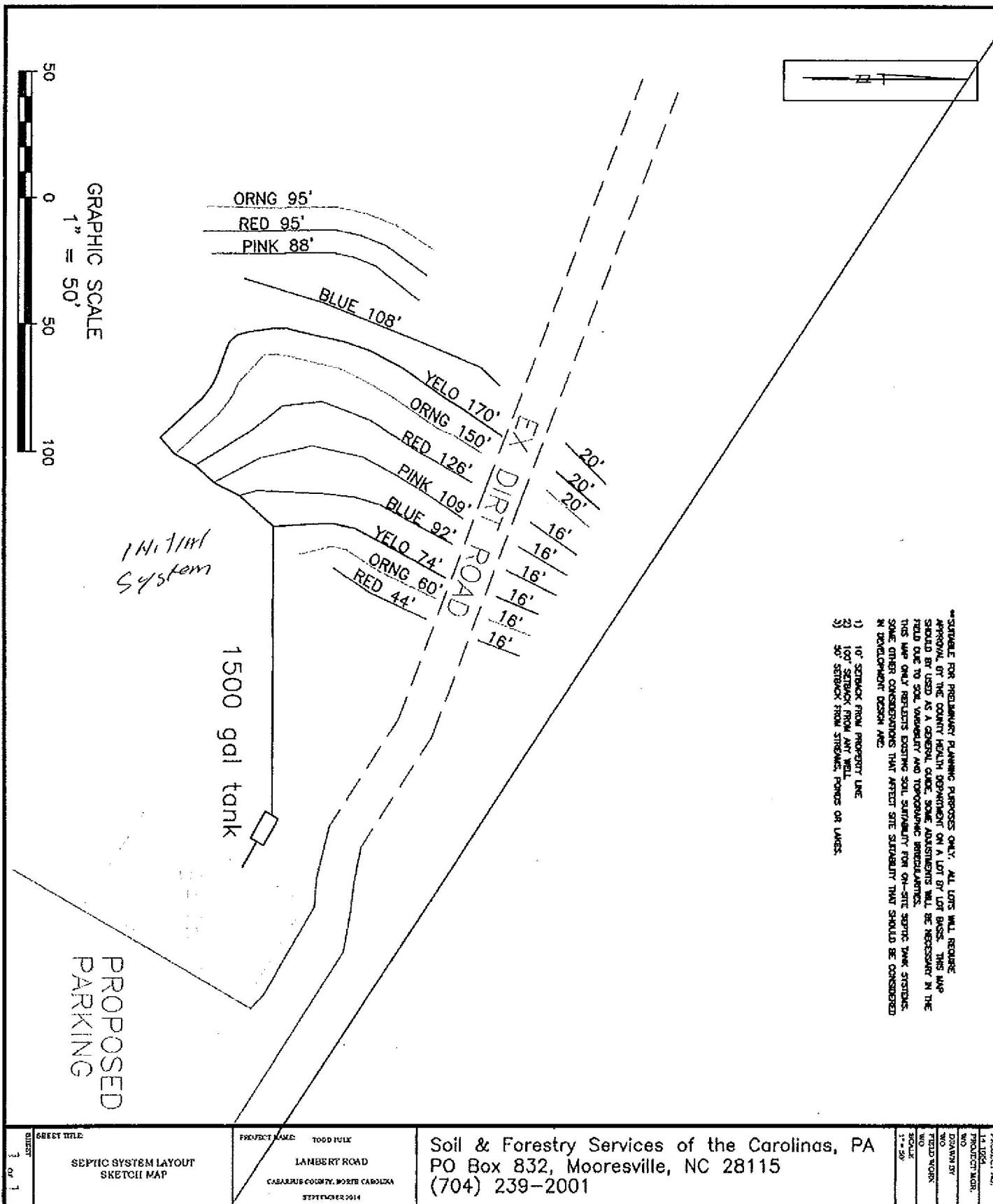
* Repair System required installation of pump tank etc of pressure manifold

This Construction Authorization is subject to revocation if the site plan, plat, or the intended use changes. The Construction Authorization shall not be transferred when there is a change in ownership of the site. This Construction Authorization is subject to compliance with the provisions of the Laws and Rules for Sewage Treatment and Disposal and to the conditions of this permit.

Authorized State Agent: K.W. HinsonDate of Issuance: 10/2/14

See Attached site sketch

Construction Authorization Expiration Date: 10/2/19System Designed by Soil & Forestry Services of the Carolinas P.A.Copy of Design on File AT the Cabarrus Health Alliance ENVIRONMENTALHealth Section



APPROVAL OF THE PRELIMINARY PLANNING PURPOSES ONLY. ALL LOTS WILL REQUIRE APPROVAL OF THE COUNTY HALLING DEPARTMENT ON A LOT BY LOT BASIS. THIS MAP SHOULD BE USED AS A GENERAL GUIDE. SOME ADJUSTMENTS WILL BE NECESSARY IN THE FIELD DUE TO SOIL VARIABILITY AND TOPOGRAPHIC IRREGULARITIES. THIS MAP ONLY REFLECTS EXISTING SOIL SUITABILITY FOR ON-SITE SEPTIC TANK STATIONS. OTHER CONSIDERATIONS THAT AFFECT SITE SUITABILITY THAT SHOULD BE CONSIDERED IN DEVELOPMENT DESIGN ARE:

- 1) 10' SETBACK FROM PROPERTY LINE
- 2) 100' SETBACK FROM ANY WELL
- 3) 100' SETBACK FROM STREAM, FOLDS OR LAKES.

Soil & Forestry Services of the Carolinas, PA
PO Box 832, Mooresville, NC 28115
(704) 239-2001

SHEET TITLE: SEPTIC SYSTEM LAYOUT SKETCH MAP

DEBTOR NAME: TODD HULK
ADDRESS: LAMBERT ROAD
CABARRUS COUNTY, NORTH CAROLINA

12. 1954
PROJECT MGR.
WHO
DRAWN BY
WHO
FIELD WORK
WHO
SCHULK
1" = 30'



ARCHITECT, P.A.

Established 1987

222 Church Street North • Concord, NC 28025 • 704-788-8333 • Fax 704-782-0487 • www.cmoorearch.com

Fulk Reception Facility

2831 Lambert Rd.

Mt Pleasant NC

Site photos



Photo A



Photo B



Photo C – towards septic field



Photo D



Photo E – view shed