



## Cabarrus County Government

**Revised** - Cabarrus County Planning and Zoning Commission Meeting  
September 13, 2016 @ 7:00 P.M.  
Board of Commissioners Meeting Room  
Cabarrus County Governmental Center

### Agenda

1. Oath of Office to Newly Appointed Members
2. Selection of Chair and Vice-Chair, also appoint a member to be Chair of the Board in the absence of the Chair and Vice-Chair
3. Roll Call
4. Approval of August 9, 2016, Planning and Zoning Commission Meeting Minutes
5. Approval of Findings of Fact for VARN2016-00001
6. **New Business – Board of Adjustment Function:**
  1. **APPL2016-00001** – Appeal of Notice of Violation for illegal reception facility in the AO Zoning District. Jim Scarbrough, acting as agent for Thomas E. Porter Jr., Victoria P. Porter and The Farm at Brusharbor, LLC. Located at 7700 Brusharbor Rd (PIN 5567-84-6569) \*REQUEST TO TABLE\*
  2. **Petition VARN2016-00003** – Request for variance from the requirements of Chapter 4 Water Body Buffer Zone and Chapter 9 Landscape Buffers. Cabarrus County is the applicant and owner of the subject property. Located at 13800 Bill McGee Rd (PIN 5544-72-3955)
7. **New Business – Planning Board Function:**

**TEXT2016-00008** - Proposed Text Amendment to Zoning Ordinance, Chapter 9, Landscape and Buffering

**TEXT2016-00009** - Proposed Text Amendment to Zoning Ordinance, Chapter 10, Parking and Loading

**TEXT2016-00010** - Proposed Text Amendment to Zoning Ordinance, Appendix D, Lighting Standards

**TEXT2016-00011** - Proposed Text Amendment to the Zoning Ordinance, Chapter 14, Nonconformities

**TEXT2016-00012** - Proposed Text Amendment to the Zoning Ordinance Chapter 13, Amendments & Changes

**TEXT2016-00013** - Proposed Text Amendment to Zoning Ordinance Chapter 4, Overlay Districts and Zones
8. Directors Report
9. Legal Update



## Cabarrus County Government

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### Planning and Zoning Commission Minutes September 13, 2016

Ms. Susie Morris, Manager, Planning and Zoning, called the meeting to order at 7:00 p.m. Members present Ms. Mary Blakeney, Mr. Jeffrey Corley, Mr. Adam Dagenhart, Ms. Shannon Frye, Mr. Andrew Graham, Mr. Jeff Griffin, Mr. Dane Laney, Mr. James Litaker, Mr. Chris Pinto, Mr. Aaron Ritchie and Mr. Stephen Wise. Attending from the Planning and Zoning Division were, Ms. Susie Morris, Planning and Zoning, Manager, Mr. Jason Earliwine, Sr. Planner, Ms. Arlena Roberts, Clerk to the Board and Mr. Richard Koch, County Attorney.

The Oath of Office was administered to reappointed members Mr. Adam Dagenhart, Mr. Jeff Griffin, and Mr. Chris Pinto.

Mr. Aaron Ritchie nominated Ms. Shannon Frye as the Chair of the Planning and Zoning Commission. There being no other nominations, Ms. Frye was appointed by Acclamation.

Mr. Aaron Ritchie nominated Mr. Chris Pinto as the Vice-Chair of the Planning and Zoning Commission. There being no other nominations, Mr. Pinto was appointed by Acclamation.

Mr. Aaron Ritchie nominated Mr. Richard Price as the Chair of the Planning and Zoning Commission in the absence of both the Chair and Vice-Chair of the Planning and Zoning Commission. There being no other nominations, Mr. Price was appointed by Acclamation.

### Roll Call

Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Mr. Chris Pinto to **APPROVE** the August 9, 2016 meeting minutes. The Vote was unanimous.

Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Ms. Mary Blakeney to **APPROVE** the Findings of Fact for **VARN2016-00001**. The vote was unanimous.

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

### New Business – Board of Adjustment Function:

The Chair introduced Petition APP2016-00001, Appeal of Notice of Violation for illegal reception facility. The Board received a memo indicating that an interpretation is being requested from the Attorney General. In light of that pending matter, we are being asked to make a motion to defer until October.

Planning and Zoning Commission

Minutes

September 13, 2016

Ms. Morris said that is correct. The applicant themselves did not make the request, the Department of Agriculture has made the request to the AG's office. She thinks that the applicants' attorney may be tracking it or keeping up with it and thinks there is a potential that there may be an interpretation before the October meeting. Typically, we allow people to table twice before they have to pay the fees again and then we re-advertise it.

Mr. Koch, County Attorney, was told today by Mr. Scarbrough that they think they may have that opinion as early as today or tomorrow. Mr. Scarbrough is going to send it to Mr. Koch when he receives it, but Mr. Koch has not received it yet.

Ms. Morris believes October would be appropriate and we can revisit it then at the meeting.

The Chair asked if there was a motion to Table until the October meeting.

Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Mr. James Litaker to **TABLE**, APP2016-00001 Appeal of Notice of Violation for illegal reception facility. The vote was unanimous.

The Chair introduced Petition VARN2016-00003 – Request for Variance from the requirements of Chapter 4, WaterBody Buffer Zone and Chapter 9 Landscape Buffers. Cabarrus County is the applicant and owner of the property. Located at 13800 Bill McGee Road, PIN554-72-3955.

Mr. Jason Earliwine addressed the Board presenting the staff report. This is VARN2016-00003, the applicant is Jonathan Marshall, Acting as Agent for Cabarrus County. The parcel is +/- 111 acres and is the subject property, also known as Rob Wallace Park.

The applicant proposes to use the subject property as a Public Use Facility (County owned Rob Wallace Park). A Public Use Facility is permitted in the OI zoning district as a by right use.

The Applicant is seeking relief from Chapter 4, Part II Waterbody Buffer Zone and Chapter 9 Landscaping and Buffer Requirements. The applicant wishes to construct a walking and biking trail around the perimeter of the proposed Rob Wallace Park, which will encroach into the required #2 Level Landscape Buffer, the required Waterbody Buffer Zone, and the Waterbody setback.

We actually have two Variances, the second variance we have broken down into several parts.

- **Variance Request #1, Relief from the Required #2 Level Landscape Buffer**
- **Variance #2, Relief from the Muddy Creek and quarry pond Waterbody Buffers which also includes a 60 foot Waterbody setback**

**Variance Request #1, Relief from the Required #2 Level Landscape Buffer**

Chapter 9 Landscaping and Buffer Requirements requires a #2 level Landscape Buffer between "Institution/Public" uses and any existing Residential uses. This buffer is to be 75 feet wide and requires 11 trees and 40 shrubs per 100 linear feet. Residential uses abut the entire western border of the parcel, continue around the northern border, and stop just north of the quarry pond

Planning and Zoning Commission

Minutes

September 13, 2016

in the southeast corner of the property. The #2 level landscape buffer is required along this entire perimeter of the parcel. Since the southern and southeastern borders of the parcel abut Industrial Uses, no buffer is required.

Mr. Earliwine will go map by map as he goes through each part of variance. He said this is an overall map showing the entire buffer area.

The Applicant is requesting that a trail system be permitted in the required #2 level landscape buffer yard. On the western side of the property, the proposed biking trail would run for approximately 1245.6 linear feet of the landscape buffer length, therefore eliminating approximately 4982.4 square feet of the required landscape buffer, as seen in Sheet 2.1 of the site plan (shown on the overhead, the green section on the western border). The walking trail portion of the western side of the property would affect 63.03 linear feet of the landscape buffer, thus eliminating another +/-504.24 square feet of the required landscape buffer.

(He showed the map of the north central section of the park)

On the north central side of the property, the proposed biking trail would run for approximately 515.49 linear feet of the landscape buffer length, therefore eliminating approximately 2061.96 square feet of the required landscape buffer, as seen in Sheet 2.2 of the site plan. The walking trail portion of the north central side of the property would affect 73.87 linear feet of the landscape buffer, thus eliminating another +/-590.96 square feet of the required landscape buffer. A portion of the landscape buffer will also be encroached upon by both the biking AND walking trails in the same location. This portion accounts for approximately another 762.52 linear feet of the landscape buffer (6100.16 square feet).

Mr. Earliwine said moving now into Variance #2 which is the request for the Waterbody Buffer again, it is broken down into multiple parts that we will ask the Board to vote on individually at the end.

**Variance #2, Relief from the Muddy Creek and quarry pond Waterbody Buffers**

The applicant is requesting that a trail system be permitted in the required Waterbody Buffer Zone. Per Chapter 4 Overlay Districts and Zones, Part II Waterbody Buffer Zone, these buffers are to be retained in a natural, undisturbed state, in an effort to avoid erosion problems and to reduce the velocity of overland flow. Section 4-10, 11 requires a 60 foot setback from the top of the stream bank for any proposed pedestrian, hiking, or biking trails.

On the western portion of the waterbody buffer of Muddy Creek, (He showed the site plan) the proposed biking trail would run for approximately 1570.15 linear feet of the waterbody buffer length, therefore eliminating approximately 6280.6 square feet of the required waterbody buffer, as seen in Sheet 3.1 of the site plan. The walking trail on the western portion of the waterbody buffer for Muddy Creek would affect 219.1 linear feet of the waterbody buffer, thus eliminating another +/-1752.8 square feet of the required waterbody buffer. Additionally, 1488.42 linear feet (5953.68 square feet) of the proposed biking trail and 259.6 linear feet (2076.8 square feet) of the

Planning and Zoning Commission

Minutes

September 13, 2016

proposed walking trail will ALSO lie within the required 60 foot setback from the edge of Muddy Creek. (He showed site plan, 4.1).

Mr. Earliwine said if the Board has any questions as we are going along, please feel free to ask them. He does not want it to get too confusing or over whelming, we can take a break and ask questions as we are looking at each map.

The Chair said looking at this site plan, the trail would be the mustard color with the red dot?

Mr. Earliwine said the biking trail; the walking trail is the pink colored one, and the dotted line represents the 60 foot setback. He showed the portions that lies within the setback on the map.

The Chair said it is where it is coming inside of that dashed line is where it encroaches?

Mr. Earliwine said correct. On each map of the site plan, they should be represented the same way; the pink is the walking trail, the orange color is the biking trail and the dotted line which ever map we are looking at would, represent different things. This one is the 60 foot setback for the waterbody buffer.

On the central portion of the waterbody buffer of Muddy Creek that crosses the center of the property, the proposed biking trail would run for approximately 1507.51 linear feet of the waterbody buffer length, therefore eliminating approximately 6030.04 square feet of the required waterbody buffer, as seen in Sheet 3.2 of the site plan. The walking trail on the central portion of the waterbody buffer for Muddy Creek would affect 30.91 linear feet of the waterbody buffer, thus eliminating another +/-247.28 square feet of the required waterbody buffer. A portion of the required waterbody buffer will also be encroached upon by both the biking AND walking trails in the same location. This portion accounts for approximately 80.61 linear feet of the waterbody buffer (644.88 square feet). Additionally, 1554.04 linear feet (6216.16 square feet) of the proposed biking trail, 162.32 linear feet (1298.56 square feet) of the proposed walking trail, and 119.33 linear feet (954.64 square feet) of BOTH the biking and walking trails will ALSO lie within the required 60 foot setback from the edge of Muddy Creek. (See site plan, 4.2).

Mr. Earliwine said the same guidelines are on this as the last one, with the 60 foot setback.

On the eastern portion of the waterbody buffer of Muddy Creek and the quarry pond, the proposed biking trail would run for approximately 229.44 linear feet of the waterbody buffer length, therefore eliminating approximately 917.76 square feet of the required waterbody buffer, as seen in Sheet 3.3 of the site plan. The walking trail on the eastern portion of the waterbody buffer for Muddy Creek and the quarry pond would affect 538.64 linear feet of the waterbody buffer, thus eliminating another +/-4309.12 square feet of the required waterbody buffer. A portion of the required waterbody buffer will also be encroached upon by both the biking AND walking trails in the same location. This portion accounts for approximately 1091.91 linear feet of the waterbody buffer (4367.64 square feet). Additionally, 232.56 linear feet (930.24 square feet) of the proposed biking trail, 453.06 linear feet (3624.48 square feet) of the proposed walking trail, and 1018.04

Planning and Zoning Commission

Minutes

September 13, 2016

linear feet (8144.32 square feet) of BOTH the biking and walking trails will ALSO lie within the required 60 foot setback from the edge of Muddy Creek. (See site plan, 4.3).

Mr. Earliwine said for a brief site plan description; the property is proposed to be used for Rob Wallace Park, so it is largely undisturbed. It does contain a network of dirt roads throughout and there is a large quarry pond on the southeast corner of the property. There were two berms that were constructed he believes in the 1950's as he was told, that redirect storm water away from Muddy Creek. One of them lies on the southern border of Muddy Creek in the central section and the other lies in the southeast corner on the far side of the large quarry pond. There is also a 3700 square foot utility storage building located on the southern end of the property.

The current land use is vacant and it is the future site of Rob Wallace Park. The adjacent land uses are single family residential and vacant on the northern side and on the eastern and southern side most of it is industrial land or vacant, McGee Brothers own a piece of property and the future Intertape Polymer Group.

Mr. Earliwine was asked to read over the history of the property and any important points to summarize the entire thing.

The subject property has historically been zoned General Industrial. Cabarrus County submitted a rezoning request for the zoning of the property to be changed to Office Institutional and it was approved by the Planning and Zoning Commission on August 9, 2016.

The subject property is approximately 111.8 acres and the proposal is to develop the property as public use facility/County Park. The subject property contains several water features that are subject to the waterbody buffer zone. The subject property is required to maintain a #2 Level landscape buffer on the western, northern and part of the eastern borders of the property, each of which abuts residential uses. The subject property is required to maintain a minimum 60 foot setback from the top of stream banks for all proposed pedestrian hiking and biking trails.

The applicant contends that the perimeter walk and bike trail follow historic pathways used on the park property. In one case the location is dictated by the berm, as he stated previously and the only other available location between the quarry pond and the Muddy Creek.

The applicant contends that the map exhibits show that the intent of the ordinance is met by existing vegetation and topography. In both cases, the path is located where gravel or dirt drives already exists.

The applicant contends that the property may be used with a shorter trail or switchbacks in other locations. The trail, as planned, takes advantage of wooded areas, existing gravel paths, unique vistas, and areas that will be developed in later phases.

Mr. Earliwine said while we have the map up (he showed the quarry pond and one of the trails) you have probably seen on other maps, takes it across a berm that exists between the quarry pond and Muddy Creek and it is a raised elevation with an existing dirt road and there may even be some

Planning and Zoning Commission

Minutes

September 13, 2016

gravel underneath there as well. The other berm that we were talking about is along Muddy Creek on the southern side or southeastern side of Muddy Creek and the proposed trail would be on the far side of that so it would not affect Muddy Creek on the opposite side there.

The Chair said back to that berm, what the proposed variance is going to be on the other side of the berm with the trail. She is trying to understand the relationship between the existence of these berms and what stormwater function they are providing; is that creating the need to put the buffer.

Mr. Jeff Corley thinks the berms are in the buffer and are actually guiding water away from the stream, so he thinks the intent is using that existing berm will not allow that water to drain into the stream.

The Chair said the placement of the trail.

Mr. Corley said the placement of the trail does not immediately impact the stream.

Mr. Earliwine said on this berm here (pointed to map) that is exactly right. The trails would be on the top of the berm which already has a gravel or dirt road. So stormwater really would not be altered as far as he understands it. On the opposite side of the berm, this is the side that has Muddy Creek, the trail would be on this side (pointed to map).

The application states that in the areas where the variances are requested, the County will add new vegetation when the permanent road is constructed as part of the future phases.

The applicant is requesting individual votes for each requested variance from the ordinance which he will explain. A summary of the variance request are as follows.

Mr. Earliwine gave the Board a breakdown of how the applicant wanted this to be voted. For the record there are four votes we are looking for.

The first is for the landscape buffer, only.

1. Request from Variance of Level #2 Landscape Buffer to permit walking and biking trails to be located in the required 75 foot wide plantings bufferyard area.

The other three variance request all fall within the waterbody buffer category.

1. Request for Variance from Muddy Creek and quarry pond waterbody buffer requirement. To use existing dirt roads located in the required buffer area as part of the proposed trail system with no replanting or replacement of buffer for already cleared areas.

Mr. Earliwine said this is just laying trails down where there it is already a cleared road, so they do not have to worry about vegetation there.

Planning and Zoning Commission

Minutes

September 13, 2016

2. Request for a Variance to allow additional clearing for new trails to be placed in the required waterbody buffer natural area including inside the 60 foot setback requirement.

Mr. Earliwine said this request is just for clearing new sections of trail.

3. Request for a Variance to allow the proposed trails system to be located closer than 60 feet to the stream bank.

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

- Site plan review and approval is required subsequent to Board of Adjustment approval to ensure compliance with all applicable development requirements and conditions.
- The Granting Order, stating restrictions and applicable conditions of approval, shall be recorded with the deed of the property.
- The applicant shall procure any and all applicable federal, state, and local permits prior to commencement of projects.
- Applicant shall install landscape as stated in application with future road construction to mitigate any approved variances.

The Board has a right to add conditions as you see fit. Mr. Earliwine will answer any questions the Board may have and Ms. Erin Lineberger from Soil and Water Conservation is also here to answer any questions if you have any environmental type questions.

Mr. Jeff Corley asked Mr. Earliwine to walk him through how these squiggly lines got where they are.

Mr. Earliwine said that might be a question to ask the applicant. We just received the layout and added it into the GIS layer, so we do not really know all of the details. He said Mr. Marshall took him and Mr. Collins out for a site tour. A lot of what they were talking about made sense as to where they wanted to place it but they walked it with some of their own people from environmental and parks and recreation and came up with the site plan.

The Chair asked if there were any additional questions specific to staff before we hear the applicants presentation.

Mr. Dagenhart said on the Intertape site plan, what type of buffer did they put along that stream? Because previously that property, the park property was not zoned Office Institutional (OI). What was required for them?

Ms. Morris said if she remembers correctly, it followed the streamline. That property at that time was General Institutional (GI). It would have been GI to GI, but they maintain the required stream

Planning and Zoning Commission

Minutes

September 13, 2016

buffer on their side. So, it ended up being a de facto buffer, even though they did not have to have it.

Mr. Jonathan Marshall, Deputy County Manager, addressed the Board giving the Board handouts. He stated that the Clerk has already been given these items.

Mr. Marshall has worked for the County since 1988, beginning as a land use planner, worked his way through as the Planning Director and administrator and now Deputy County Manager.

With him this evening is Mr. Bryon Haigler, Parks Program Manager and he will speak directly to the bike trails. We are going to talk about the walk/bike paths, so we will call that the path and then we will call the trails, which are bike only trails. So he is going to talk about the bike trails how they are constructed and how they will be located within those areas.

Mr. Marshall will be using, as a primary source of information, the aerial maps that the County maintains, as well as the LIDAR technology we use to do topography, to show the Board some parts of the topography that affect this and whether or not these actually meet the intent of the Ordinance. He said to do that he will rely heavily on the intent statements in both those chapters. He will start and then Mr. Haigler will discuss the bike trails.

Starting with some history of the property (showing the site plan) zooming in he shows the parcel lines. This is Bethel School Road to the north, the parcel with two small lakes on it is actually Phase I of this park and is located with the Midland zoning district and has all of its permitting through the Midland zoning office. That particular phase is under construction now. South of that is the larger parcel, which is 110 acres in total that includes a smaller piece, a three acre parcel, but then the main body that runs all the way to the rock quarry itself.

He is going to start with an aerial that dates back to 1950. As he stated, as a source, the County maintains these aerials and they are available to the public. We use them often times to see what something was in prior years. He is zooming in on the rock quarry and it is a little hard to orient. He shows the railroad and said the disturbed area is the rock quarry.

One of the pieces of information that he has given to the Board is from the previous owner, Mr. Wallace. Mr. Wallace purchased this property in the 1970's, but the rock quarry itself was built beginning the 1940's and closed sometime in the 1950's.

In this picture you will note that Muddy Creek itself passes along to an area north of where it is currently located. As we go through this you will see that the creek itself was in a different location at that location running through what is now being quarried.

By 1956, that same creek had been moved. As you can see it is now located further to the northwest and the berm was actually constructed. So, prior to that it ran through the quarry area. It ran through what was being quarried, but the creek was rerouted to go north and west of that and they used stone from the rock quarry itself as well as soil to build a berm to keep that creek in place. At that point, just to the east and south of the creek the flow was now back to the quarry and not

Planning and Zoning Commission

Minutes

September 13, 2016

into the creek itself. There was also a berm constructed along the eastern edge of the property which became the eastern edge of the rock quarry and ultimately the impoundment that did the same thing. It formed a berm that was both somewhere for them to put material but also allowed them buffer it from the creek.

This next aerial was actually taken in 1983 and one of the important pieces of this. We will take aerial shots and typically with this technology we would take them sometimes two years in advance of when they were published. 1983 is a published date, but these aerial photographs would have been shot in the winter of 1981 or 1982. It is important because zoning was initially enacted in Cabarrus County in 1982. All of the activity prior to that was before there was any zoning in Cabarrus County.

By this point there is water in the rock quarry. He wants to point out that you can see that the access roads have all been built. The main access off of Highway 601 to get into the property and some of that road still exists. There is also access along the southern edge of the rock quarry. As he zooms in you can see the road despite the tree cover that had built up over that berm, you can actually still see the road that comes down between Muddy Creek and the rock quarry itself.

Then in addition, you can see that access road continued up along, because this was a separate borrow area that was still active so there was actually another access road that ran just below the crown of the berm along Muddy Creek.

In 2001, by this point, the aerial photography gets a little clearer, but you can continue to see the access road in 2001, that ran along the side and also the activity on the southern part of the rock quarry and then also the access road that ran to the west.

Mr. Marshall said the northern part of the property is the second area of the variance that we will discuss. The property that he is showing here is owned by a separate property owner, the county does not control that. We do control this oddly shaped parcel and everything to the west here.

When you go back to the 1956 aerial, you can see there was a home on the property. The access came off of Bethel School Road through that oddly shaped parcel.

When we switched to the 1983, aerial when zoning was enacted, you can clearly see that there were access roads along that property line. That property line has a fence in there and you have a heavily wooded area on the other side of the property line along the fence line and not surprisingly you have a row of cedar trees. That road was already in existence and it remains today. (Shows photograph)

He said this first photograph is on the east side of the rock quarry and this is where you get to the lower end of the rock quarry itself and you can see the road beginning to go up the berm. The berm ends on that southeastern corner of the rock quarry. Again, he has sent these photographs to the clerk.

Planning and Zoning Commission

Minutes

September 13, 2016

This photograph is the access road itself going across the top of berm. There is plenty of soil there and like much of Midland, is underlain by a slate belt. A strip of material that forms much of this was the slate itself, but it has also been graveled over the years. As the property owner, Mr. Wallace, ran cattle on this property and then fenced this, there is actually a fence line within these trees. He used this and continued to use this after the rock quarry closed as his way to access that fence line.

This photo shows the southern edge of the quarry itself. The over burden was placed there as they quarried it. You can see the fall is actually away from the quarry itself. The trail is intended to be down towards the toe of this slope. He said these are some water oaks that Mr. Wallace planted along that property line. So the intent is for the trail to be closer to those water oaks and to stay away from the quarry. So, well technically, this would be an area we would be asking for a variance, it really is not necessary, because it falls outside of the buffer itself because it slopes away from the rock quarry. He will discuss that issue further in just a moment.

This photo is on the northern end of the rock quarry, Muddy Creek is off to the left of the picture. That is the top of the berm so Muddy Creek lies well below this. The slope of this goes back to or towards the rock quarry. There is an aspect of that that he will discuss as we go through the variance application.

Mr. Marshall said this is the road that we are asking for the landscape buffer variance. The row of cedars that are along the fence line, just to the other side of that, is actually the other property. So we will be within 75 feet of that property line, but we wish to use this existing road that has been traditionally on the property. Again, just to the left in this picture was the former home site. That actually is where we want to eventually development an educational building. So, we will have an access road that is further into the property and we will maintain that required 75 foot buffer from that property line.

One more thing before he leaves the aerials. He shows current imagery as well as floodplain. The parcel that we are looking to get closer than the 75 feet requirement is a vacant parcel. It is heavily wooded as you can see from this photograph. It has extensive floodplain and it is also in the lower area. The lower area for this township, where you have this type of slate, you get a type of clay that settles there. We actually looked at this property to acquire and to use as an entrance to the park rather than the parcel that we ultimately acquired further up Bethel School Road.

What we found was that the portion closer to Bethel School is more useable. The extensive floodplain, the soil conditions and the small amount of property that is actually on the west side of the property, made it financially unfeasible to actually cross that. The soils would require that you start bridging before you get to the 100 year floodplain. While this is heavily wooded and could be logged, which would remove our buffer, the floodplain area itself would not be within that. We feel that there is some existing buffer that stays on the other side of the fence line, in addition to what we have on the fence line itself.

Mr. Marshall will speak now about the intent of the Waterbody Buffer.

Planning and Zoning Commission

Minutes

September 13, 2016

In the handout, he listed the three parts of the intent, both talking about the overall intent, the effect on bona fide farms, as well as impoundments for agricultural purposes.

There are many areas that Mr. Earliwine went through where we will not need those variances. He is only going to go through those areas where we feel that we need to request those variances.

Where there is a 75 foot buffer for the walking and biking path, we will adhere to that 75 foot separation. He will show some of those areas as he goes through this.

There are going to be some areas that we do need to request with the water body buffer with the walking and bike trails that we be able to encroach on what is the water body buffer. On Muddy Creek, north of the IPG property, there are some areas that Mr. Earliwine showed where there has been a sewer line construction where it looks like our trail would do some meanders, get within that water body buffer, we will not need that variance. We will hold, and they have notes for the contractor to hold that required distance and will not be requesting a variance there. There are two areas where we are requesting a variance and why are:

The first is the berm that lies between the rock quarry itself and the adjacent industrial properties to the east. To use that traditional road that lies on top of the berm there. There are a couple of things that he feels are findings of fact that would be in favor of that. One is an existing road that has been there historically. Second, we are as far from the stream as we can get and stay on a flat area. He would argue that the impoundment for the rock quarry itself should not be part of the waterbody buffer and that gets back to this impoundments for agriculture purposes.

When this rock quarry began to fill up with water it was because of springs or a water table that they hit in the area rather than being stream fed. This rock quarry is not stream fed. The stream to the north, which is along the tree line has been separated by the berm. What little water does flow in from the north, comes from sheet flow in this open area that was also part of the quarry at one point. But, in order to separate out any sediment, Mr. Wallace, the former property owner, constructed a basin on this northwestern edge of the rock quarry to collect that sediment. This is a shallow sediment basin that he constructed using some topsoil from elsewhere on the property. The flow is all from the top of the berm to the northwest, down southeast, to that basin. The remainder of the quarry, the only water gain or loss, is by direct rainfall or evaporation.

Again, the stream on the east side does not have any flow into it. There is if it gets additional water, there is an out flow from it that joins back to the creek, but south of that property. Again, an area he showed in an aerial photograph where there is a slope actually away from the rock quarry itself also gathers to some part of that.

Mr. Marshall said this has all been used as agricultural purposes and if this were a farm and we were looking at it he would say that exemption that we show in our intent is valid. But this is not part of the overall drainage system.

There is some concern that Ms. Morris has expressed to him, that the waterbody buffer itself, is a part of our ordinance that came about when we created the Coddle Creek Reservoir. It was in the

Planning and Zoning Commission

Minutes

September 13, 2016

mid 1990's when we enacted our first waterbody buffer. This parcel has been used as a rock quarry since the mid 1940's. It was closed in the 1950's, and has had water as the Board saw from the aerial photographs, since at least those mid 1950's and on. He would say that it clearly predates the imposition of that ordinance.

In addition, we are not looking at an area that causes any detriment to the streams, because the real waterbody that we are intruding upon is for the rock quarry itself which is not part of the overall stream system.

The final finding that Mr. Marshall would offer is that because the gravel road always existed, there is not any greater affect or detrimental affect even if it does or where it does flow to the creek has already existed. The same is going to be true for where we intrude upon the strict buffer of 60 feet on this northwestern edge, you have the berm at the top that separates the creek from the rock quarry. We are actually down slope from the crown of that berm. So any water flowing off of the trail in that location does not go to Muddy Creek it goes towards that sediment basin and flows through what is now an open and grassed field for filtration.

Mr. Marshall said the second area with the walk and bike trail where we are requesting the variance, is from the Landscaping and Distance Standards of Chapter 9.

We had an old homestead that was located on the property as well as access roads as this was used for farming and those access roads continue to exist. The intent statements for landscaping and bufferyards is to maintain natural landscape, provide screening, prevent or lessen erosion and sediment pollution and to maintain or enhance the benefits of natural areas.

What he will offer for findings is that the natural landscape remains as it has since before the County purchased the property. Although we do not own the heavily wooded area, it does act as a buffer and that is a vacant parcel including all of that floodplain all the way to Bethel School Road. By locating where the trail of the road actually exists, we will not be disturbing any additional area, we will be using the existing road along that property line enhancing it with gravel and stone fines to give it some solidity.

The overall development of this property he thinks lends credence to what they are asking. This will be a passive park that enhances the natural landscape and more than meets the intent statements of this chapter. This is not a park where we will be developing ball fields. There will be an educational center that is built in a future phase, so the open area will be used primarily for classes and will remain as it is. Currently, we actually have a person who cuts hay on this property and he believes just finished doing that for this year.

Mr. Marshall said they will continue to maintain the existing tree stands, particularly as we get to this western edge. That is what he was saying, although in some cases on the map it showed the meanders might get into that 75 foot landscape, we will by note and by flagging of the trail itself in the field, make sure that the contractor meets that requirement to ordinance.

Planning and Zoning Commission

Minutes

September 13, 2016

He also went through and they are listed and he will not read through all of them. He went back through the findings of fact and offered based on the information he just provided how they feel they meet findings for each one of these. We have some facts that support each one of the findings that the Board will need to make.

One other area he wants to address is the Soil and Water Division comments. One of them is when constructing the mountain bike trails, they recommend following the contours, especially in the areas nearest the streams, in order to reduce erosion off the trail into the stream.

Mr. Byron Haigler will address this better, but that is also the intent of the construction of the trails, to follow the contours. Other than having to go up and down in places, they will bench those in to provide as much stability for those so that they are easier for us to maintain and will not increase erosion in those areas.

Mr. Marshall said Soil and Water recommended keeping the walking trail entirely out of the buffer since the eight foot trail would require more clearing than the bike trail and will not be covered with gravel. Again, the areas where we are asking to get within the buffer are already a gravel road or have been used historically as roads. We will not be disturbing any area outside of what already has been traditionally disturbed.

The Chair asked Mr. Marshall if he is on the portion that is adjacent to the single family with what he just described.

Mr. Marshall said no. On that part, there is not an existing road, there we will hold the 75 feet and there is not a waterbody buffer issue, so there they are not requesting a variance.

Mr. Marshall said the third issue Soil and Water brought fourth is that it looks like the biking trail and even some of the walking trails may enter into jurisdictional wetlands along the southern edge. We recommend moving the trail outside of this area as it will make maintenance difficult.

Mr. Marshall said we do not disagree with this at all. We will hold that buffer for the walk/bike path along that southern edge to stay out of any wetlands, which are primarily the floodplain along Muddy Creek. There had been a sewer line constructed there and we were not terribly happy with some of the way they restored the land. We actually feel like if we put this trail in, we will be able to do a better job of stabilizing some of those areas and restoring that.

We do have a 90 degree crossing, that particular sewer line is both a utility, as well as pedestrian easement. It provides the access so when the Town of Midland bought that they actually extended it to the road network of the single family development next to this. We will actually go 90 degrees across the landscape buffer, but only to provide access to that neighborhood into the park.

Finally, Soil and Water noted that the center section of the property has a shallow water table which would cause issues with standing water and they referenced the soil map. That is an area that they are leaving open for education. It is possible in future phases that we will do things like we have at Frank Liske Park. There will be disc golf or something a little less passive. But, there

Planning and Zoning Commission

Minutes

September 13, 2016

will not be ball fields in there, those will be maintained in their natural state. But certainly if we did anything there we would be cognizant of the conditions and the soil characteristics.

Mr. Marshall said the two areas in which they are requesting a variance for the walk and bike path, the landscape buffer along what is the western edge of the private property and the eastern edge where the existing road is and those two areas he discussed extensively around the rock quarry itself.

Mr. Marshall said the next part of this he will ask Mr. Byron Haigler to come forth and give his background and expertise as well as explain how they intend to construct the bike trails.

Mr. Byron Haigler, Parks Program Manager, Active Living and Parks Department, addressed the Board. He has worked for Cabarrus County since 2009. He came in as a part-time Park Ranger and has moved up to the Program Manager and will be on this wonderful piece of property once it opens. He is a graduate of Appalachian State University with a Bachelor of Science in Ecology and Environmental Biology with a concentration in Geography and Landscape Ecology.

Since that time, he has earned multiple certifications in just trail maintenance, trail design and trail planning. One of the ones he has worked heavily with is the Trail Masters certification with the Carolina Thread Trail. That is a week-long, very intensive training, hands on going over the overall plan design implementation of trails systems and what it takes to make a sustainable natural surface trail. That is our goal with the mountain bike trail.

The contractor that is going to be in place for the installation of mountain bike trail sees our vision for what we would like to see for this park. They have talked with Mr. Haigler and have agreed to not cut or remove any substantial trees to have this trail system go in place. It made him very happy. Pretty much the only thing that will be removed are the lower lying shrubs or vegetation in a 36 inch window to make this trails system to go through. The only thing that will be removed is a clearing above head. Obviously we have to clear about eight feet high to make sure that the bike riders do not encounter any limbs or anything else like that. Very minor clearing going through that system.

He said this is going to be a meandering trail where it is going to be fun to enjoy and go through this park. It will very much follow the land itself. It will follow the contours of that property. It is not going to drop down fall lines or anything along those line so that it would encourage erosion or anything along those lines.

As far as the trail system itself, it will be a natural surface trail itself, so we are going to remove the duff layer for that just to get to a more compacted soil surface, so it will not be dispersed as easy and can be compacted for that. We are going to leave all the vegetation and duff layer on the out skirts of that 36 inch wide window so it will help ease any type of erosion for that activity on top it. One of the main things we have learned going through the trail system is controlling the user and controlling the water. If we do those two things, we have very very minor maintenance issues with our trail systems. Trail systems in the past have slowly, but they are evolving to being more maintainable. Actually, not following existing logging roads or following the easier or

Planning and Zoning Commission

Minutes

September 13, 2016

more cost effective avenues of building trails; to now let's plan it right and let's do it right the first time.

We are really going to be able to show case this with this trail system. We have some people in place and he and many others will be there flagging these trails and moving these trails, to make sure that the users are going to be able to go where they are going to go, period. We have to know that users are going where they want to go, but also pull them away and protect areas that we want to protect as well; to have that and to justify that.

Mr. Jeff Corley asked if what they are looking at is a planned design of where those things are really going to go or is this a conceptual, we want to go in and out and in and out.

Mr. Haigler said it is a conceptual design that will for the most part that is where the trail system will go but obviously it is going to be able to move as needed based on the topography of the land, the grade of the land, the vegetation of the land. It is not going to be locked in place, we need to remove this section of vegetation to make this trail go through this particular spot.

Mr. Jeff Griffin asked if the trails will be created to accommodate horseback riding. He noticed there was a notation on one of these about horseback riding.

Mr. Haigler said they will not be utilized for equestrian use. Equestrian is not a high of demand as just general hiking and biking right now and they are not sustainable. He would love to offer those but this property is not the right property for equestrian use.

The Chair has a question about the water buffer impact. Have you looked at any opportunity to maybe stay out of that in areas where you are not following that existing road bed to maybe go to 20 feet? In Charlotte we use 20 feet for the Cross Charlotte Trails.

She understands that you are doing a bike and walking trail, but if there is any opportunity to go to a joint shared use facility that keeps you out of that buffer, just the analysis on that being a solution over doing a variance and having the environmental impact. She is trying to understand that scenario.

Mr. Haigler said the reason for the location of that shared use, that trail system there, is really to not impact honestly, anymore vegetation removal. But also in the other areas that are more just open field. They are more low lying flat topography that are not sustainable trails. They are very hard to build but also to maintain. Where the trail systems are, they actually follow the topography of the crowns of the land to really help with the actual move of the water itself to get it off of the trail system. To help that impact, to where we are not going to create these gullies, these low lying impact areas and to make it as flowing in design as possible for ease of users as well. To make this trail system make sense and ease of users as well had to come into play, of why it all came in the way it is and also looking at the vegetation itself. Having shade on the trails system is definitely desirable.

Planning and Zoning Commission

Minutes

September 13, 2016

Mr. Marshall said Ms. Morris asked him a question and he thinks we do need to clear up some confusion. Mr. Earliwine has gone through with the conceptual plans that we created and shown you areas where really looking at a worst case scenario all those areas where we would intrude into either a landscape or waterbody buffer. Other than the areas that we have highlighted though, we will use, based on the notes and the requirements, the instructions for the contractor we will use all of that in order to flag it and construct it outside those areas. He noted the areas that they cannot avoid that, particularly with the walk/bike bath. The trail itself, the bike trail, there are some areas within the landscape buffer on the western edge where he shows some meanders going into that buffer. But those again, we are limbing up trees but not removing vegetation. The meanders they are showing there and why it is an exact is because we are going to move around those trees so we can maintain that landscape buffer but have the bike path that can meander in and out of that, staying off of the walking path. We do have them in separate locations to avoid some of those conflicts between the users.

As you get to the creek where the creek forms a border between us and the IPG property, we will hold the required buffer staying outside the floodplain with our walk and bike path. We will also hold the 60 feet required distance for the bike trail itself, because of the sensitive nature of those areas.

We are asking for a variance in some areas from the waterbody buffer where we do not feel that it really comes into play. He has gone through those reasons. We are also asking for that variance from the landscaping along that one property line, again, because we are trying to stay in the location that has already been disturbed and feel like that is a traditional part of the property.

He said all of this is movable, so based on the Board's decision, we will finalize those trails before we actually construct them. Mr. Haigler will be going with both of the trails and will be very busy flagging those with the contractor. The property lines are very clearly marked and again, the contractor in this case will be the previous property owner. So he knows those property lines very well.

We actually feel, pulling those distances from the stream banks, to make sure we are staying outside that buffer, as well as from the property line, staying the proper distance off those property lines; with the exception of those areas that we have noted.

Mr. Marshall said hopes that clears up some of the confusion. He said Mr. Earliwine went through a very detailed mapping of that, based on what we had shown him. Some of that pointed out to us areas where we know we need to make adjustments because we can move outside those buffers, adhere to the ordinance in those locations. The ones we have highlighted, we do not feel that we can do that and use the property the way we would like too.

The Chair said to restate back what she heard. For instance, the landscape buffer that would be applicable adjacent to that single family on the western side. She is understanding that you are just doing minor, underbrush clearing, to create the trail with really no tree removal or grading that takes the buffer away, as much as just the disturbance to create a path.

Planning and Zoning Commission

Minutes

September 13, 2016

Mr. Marshall said that is right. The walk/bike path will actually meet the 75 foot or greater. We will not get into that landscape buffer. There is enough existing landscaping we feel to meet the ordinance standards. The bike trail itself will meander in some cases into that 75 feet but all they will be doing there is going around existing vegetation and up limbing it so we are not knocking bike riders off.

There being no further discussion or any one speaking for or against the variance, the Chair closed the Public Hearing.

The Chair said at this time the Board will discuss what has been presented.

The Chair read the standards for 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.

The Chair said there are five separate variances that are being sought and it is proposed that we will take them one section at a time. The other consideration that we need to think about is tradeoffs that may be provided with our recommendation for approval of a variance. When she says tradeoff does that mean a condition or consideration that would follow our approval of that; is she understanding that correctly?

Ms. Morris said that is correct. In the past, the Board sometimes has requested, if we allow X then we would like you to do Y or we prefer that this landscaping stays, but we are okay with you doing this over here.

So, as presented to our Chair and Vice-Chair some of those potential motions may need to be tweaked based on the applicant's presentation. Because they have found, based on field conditions, that they may not necessarily need some of those variances for both types of trails. It may only be the one type of trail now, that would extend into, for example, the landscape buffer area and into the 60 foot waterbody buffer area.

Planning and Zoning Commission

Minutes

September 13, 2016

Our ordinance does allow trails to be located in a buffer in waterbody buffer, but they are supposed to be located a minimum of that 60 foot off of the stream bank; preferably outside of it so that there is not clearing. But in this case, they are asking to go inside of that 60 foot buffer. She believes with some of the combined trails, where they would be up on the berm.

Ms. Morris asked Mr. Marshall if that is correct.

Mr. Marshal said between the rock quarry and the creek beds.

The Chair said right, you can see where the rock quarry exists, where that overlap is occurring in that buffer, based on the berm in the quarry, that it is pushing it into it.

Ms. Morris said that is correct.

The Chair said the other thing she understood also, was that it is a portion where you have existing road bed. That you are going within not to create any additional grading or clearing. You are using existing condition to locate the trail in that portion where you are encroaching.

Ms. Morris said right, so based on the question about where do the lines fall, at this point the lines will fall somewhere within there and that is the anticipated placement. So, you have very general variances in front of you, as the proposal. Some of those maybe could be split out or reworded, but in reality it is only the mountain bike type trail that would be going there not the shared walking/biking trail, if you wanted to clarify what you are actually considering or what you consider approving since it sounds like they now have a better idea of what they can accommodate or not accommodate on the site based on the topography.

Mr. Corley said the landscape buffer that we are talking about, if we denied that and thinking ahead they would move the trail further over outside of that zone. What happens to that existing path? Can that be mowed and maintained just as it is today; are plantings required? What happens to that existing landscape buffer if they move that trail?

Ms. Morris said at this point, they would get credit for any existing vegetation that is there. But they may need to supplement into that. If the path was not allowed there; if they were not granted the variance, the expectation would be that it would kind of stay as is, but it would grow up or if those additional plantings needed to fall within that area that they would plant them.

The Chair said for more clarification, Ms. Morris said that the ordinance does provide for trails in landscape buffers?

Ms. Morris said it does apply in the waterbody overlay. But typically, it would run concurrent with say a sewer easement or something that is already there; the easement is coming through, it is already there and it has already been disturbed.

Planning and Zoning Commission

Minutes

September 13, 2016

In this case, they are trying to use some areas that have previously been disturbed; not necessarily for what we would typically see, like a sewer easement, to do the multi-purpose easement coming through, but to use something that is already there and to not have to go back in.

Typically, if you are coming in with a trail you would only get approval for whatever that amount is; if it is ten feet, it is ten feet.

The Chair said limited dimension.

Ms. Morris said in this case they may have some areas that are wider. But typically, when that area is disturbed or if you go past what that is you are required to replant. That one is proposed that they could use the existing and not have to replant if it is wider than what the trail system ends up being.

The Chair said just for clarification, the landscape and the waterbody buffers, she guess it is for the Board to determine. But are we making it for the overall site or are we going to tailor possibly a certain condition around the landscape buffer for the portion that is the quarry and that property line that is adjacent to the area that has floodplain and then go back over to the landscape buffer? Are we holistically looking at this or are we taking it in pieces; those are the options that we have to decide?

Ms. Morris said yes, the site plan is a little misleading at this point, because they both encroach in to it. It was kind of proposed as a blanket; if you allow it, you allow it. But, if there are certain areas where the Board does not particularly feel that you want to permit that, then you can always break it down; on the western side we will allow this and on the eastern side, based on these findings we will permit this. Permit it to be there or not be there, that is completely up to the Board. These are kind of broad brush and she thinks based on the presentation, some of those have somewhat been determined in the field now, which was undetermined at the time that the application was submitted.

She asked Mr. Marshall if he thought that was accurate. Mr. Marshall responded yes.

The Chair said her proposal it to go with the general and if there are concerns, the Board discuss those and then tailor it to what they may need to be.

Request for variance from the required Level#2 landscape buffer to permit walking and biking trails to be located in the required 75 foot wide planting buffer yard area.

The Chair asked if there was any discussion or modification to this or a motion to approve or deny.

Mr. Adam Dagenhart said his concern is that that existing vegetation is not controlled by the property owner. So, if we allow them to put it in there, in that landscape buffer and that adjacent property timbers, develops, or whatever, there is no buffer.

Planning and Zoning Commission

Minutes

September 13, 2016

The Chair said her understanding during the presentation was that portion that we are talking about is where they are proposing to use the existing road bed.

Mr. Dagenhart said yes, he thinks that was Mr. Marshall's picture, it had the fence line of cedar trees. That is some buffer, but it is showing 25 feet off the property line, that is not much of a buffer. It is less than half of what is required.

Mr. Earliwine thinks what they are referring to the buffer on the site plan Page 2.2 and it is a combined walking/biking trail along existing gravel dirt road.

Mr. Dagenhart understands trying to utilize the existing road bed. But, we also have to remember that we sit up here and make decisions that the next applicant could come in and say well, you let them to do this; would we let anyone else do this?

Mr. Aaron Ritchie said the way he sees it, the property next door has floodplain. It is very limited what you will be able to do with that piece of property.

Mr. Dagenhart said you can timber it and you can cut every tree down that you want.

Mr. Ritchie understands that and you will plant trees back. That is part of the program, you cut trees and then plant them back.

The Chair thinks another consideration she has about the buffer, is that this is a passive recreational use and not one of intensity or land use. It is a land use, but the relationship between a buffer being present for provisional protection and separation and the uniqueness of this bed being in place that is not creating excessive grading or clearing, than what would be required for them to offset it or recreate it. That is what she sees is kind of situational and unique about it; separate from a repeat of someone comes in and we have granted a buffer exception. Then we are saying, well you had this use or this is what is different about that one, versus kind of being put to the mat on why we are doing this here. She sees kind of that separability with these facts, but that is her perspective.

Mr. Dagenhart said it will take 20 to 30 years to re-establish that buffer once it is timbered.

The Chair honestly thinks that nobody is going to go through the expense of constructing a bridge across a regulated floodplain for what the yield of development would be. She said that is only speculation.

Mr. Dagenhart said unfortunately, they do not make more land.

Mr. Ritchie said the only thing it is going to buffer is people riding bicycles and walking. It is not like we are going to build buildings or other stuff.

Mr. Dagenhart understands that, but again you are giving a variance. You need to be able to justify it to any developer or anybody from the public. It has to be justifiable and be able to defend it.

Planning and Zoning Commission

Minutes

September 13, 2016

Mr. Corley thinks the conditions are that we have a maximum with the trail like they have proposed. We have a type of surface treatment at an existing location. He thinks the alternative is worse than utilizing an existing, in that specific location. He had some concerns about the west side and he is glad we got past that one. From practicality, he thinks it would be ridiculous not to allow the use of an existing trail to be used as trail.

The Chair concurs with what was just said and sort of thinks that they can get to what is unusual about this condition; that it is peculiar to the property. What those facts will be, she feels satisfied that the Board recommending a variance is not doing anything that is discretionary, but is very specific to existing conditions. Especially again, what we said about what is a trail and what we have seen was existing on the property for over 50 plus years and just the consideration and the facts about the property.

That piece of property that we are talking about was going to be purchased but even in the presentation, why it was not purchased. She thinks that all leads into when it is redeveloped or being developed in the future that is all information relevant to how we are evaluating letting them have some relief from the buffer.

Ms. Morris said in light of Mr. Corley's comments about the other side kind of being handled, just so everyone is clear, the mountain biking trail is still going to go into that particular area. Just so we are all on the same page about what the motion is and what it will mean to us for site plan review.

The Chair asked that the picture be shown on the screen. She is looking at page 17 in the packet. She is really saying for what she is speaking to for the impact for this portion of the buffer and she has no objection if we want to look at this as one and this two. Not to make it blanket but take each area.

The Chair **MOTIONED**, that a variance be granted for the portion of the trail that would be made on the eastern portion of the site.

Mr. Earliwine said we are talking about Page 2.2 on the site plan, the eastern portion along the property that we were discussing that has all of the trees and the floodplain.

Mr. Dagenhart said that is a joint trail, correct?

Mr. Marshall said it is.

Mr. Dagenhart asked if they were going to grade that out and get rid of the fluff in that section.

Mr. Marshall said it is actually going to share the path. It is going to be the combined path and trail in that particular location.

Mr. Haigler said that is for the bike trail

Planning and Zoning Commission

Minutes

September 13, 2016

Mr. Dagenhart said when Mr. Haigler was giving the details about the bike trail, he said he was going to go in there and grade it and fluff it out. So you are going to disturb that existing road bed.

Mr. Haigler said that is for the mountain bike specific trail, this is going to be the shared trail.

Mr. Dagenhart said that was his question.

Mr. Marshall said on this one we will not, but yes, on the western part you were talking about he would be doing that.

The Chair said lets handle that one to Mr. Dagenharts' point. That portion that we just made the exception for is exclusive of a shared use trail, not a separate bike/walking trail, but one single trail that is joint use and the exception is being granted for that.

The Chair MOTIONED to approve the request for a variance from the required level 2 landscape buffer to permit a joint use trail to be located in the required 75 foot wide planted bufferyard area for the portion to that is adjacent to the eastern side of the site as depicted on area 5.

The Chair asked if anyone besides her that understands before she takes a vote.

Mr. Koch suggested that Mr. Marshall come up and help go through this since he is the applicant.

Mr. Marshall said you want this to be an exclusive shared trail, but you are offering a variance on this particular property line, the Area 5.

The Chair asked if there was a motion to approve or deny this variance.

Ms. Mary Blakeney **MOTIONED, SECONDED** by Mr. Aaron Ritchie to **APPROVE** the request for a variance from the required Level 2 Landscape Buffer to permit a joint use trail to be located in the required 75 foot wide planting bufferyard area for Area 5 on the site plan. The vote was unanimous.

The Chair said moving to Area 2 for the landscape buffer. This would be the same request. Are there any conditions that would be proposed to be added to this portion of the variance?

Mr. Koch said this one is just the bike trail.

The Chair said it is in the landscape buffer for the entire property line.

Mr. Ritchie said they are just going around existing trees and are not tearing anything down.

The Chair said that is what we heard in the presentation. The Chair asked if there was a motion to approve or deny this variance.

Planning and Zoning Commission

Minutes

September 13, 2016

Mr. Aaron Ritchie **MOTIONED, SECONDED** by Ms. Mary Blakeney to **APPROVE** the request for a variance from the required Level 2 Landscape Buffer to permit a mountain bike trail to be located in the required 75 foot wide planting bufferyard area for Area 2 on the site plan. The vote was unanimous.

The Chair this is a request for a variance from the Muddy Creek and quarry pond water body buffer requirement to use the existing dirt roads located in the required buffer area as part of the proposed trail system with no replanting or replacement of buffer for already cleared areas.

The Chair said the water buffer area goes all the way around the quarry back around and then down the property on the western side.

Mr. Dagenhart said are we looking at Area 13?

The Chair said Area 13. She asked if there was any concern before we break it out. Do we look at the entire water body buffer, is there a preference that we look at area 12 and 13 separate and apart from the other area?

Mr. Ritchie said do the whole thing.

Mr. Corley said just to confirm, the areas bordering the industrial site 6 and 7, remind him what the intent is there.

Mr. Marshall said that we will hold the required 60 foot buffer there, this was conceptual in field and they will pull out of that.

Mr. Morris asked if that was for both trails.

Mr. Marshall said yes, both.

The Chair said does that mean we do not need to do a variance on this portion.

Mr. Dagenhart said that is correct. The only areas that he is asking for a variance now is around the quarry pond.

The Chair asked if there was a motion to approve the variance request for the waterbody buffer that is adjacent to the quarry, referenced as Areas 12 and 13.

Mr. Aaron Ritchie **MOTIONED, SECONDED** by Mr. James Litaker to **APPROVE** the request for a variance from for the Waterbody Buffer that is adjacent to the quarry, referenced as Areas 12 and 13. The vote was unanimous

Mr. Earliwine said we had another section of the waterbody buffer that was not addressed. We had three individual sections, one was the western portion which they have agreed to keep out of

Planning and Zoning Commission

Minutes

September 13, 2016

the waterbody buffer, one was around the quarry pond and the third section was in the center of the property along the berm on Muddy Creek that separates the property.

The Chair said Areas 9 and 10.

Mr. Earliwine said yes.

Mr. Marshall hopes to offer some clarity here. On what is the southeastern edge, where number 8 is, both the path and the trail he believes is outside of that buffer. We would ask for a variance although they do not believe it is really a variance. We will make sure we are below the crown of the berm, so water does not flow back to Muddy Creek. He does not believe there really is a buffer there and thinks they have proven that factually.

On the northwestern edge, where number 9 is, we would move that outside the 60 foot buffer. We would not request a variance there, we would adjust and get outside the 60 foot requirement for Muddy Creek.

The Chair said one point of clarification, she follows what Mr. Marshall said about modifications outside the waterbody, but back to it being a waterbody that required a buffer is there not a way just to get an interpretation that the buffer requirements would not be applicable since this existed prior to the adoption of that buffer?

Mr. Marshall said actually in this case, he feels factually, the berm itself by the time you get to the edge of creek bank to the top of the berm, there is not 60 feet of separation there.

The Chair said that you could establish based on that distance.

Mr. Marshall said yes that distance, whatever that is, whether it is 40 feet, 30 feet from top of bank to the top of the berm we will not disturb. Anything that we disturb will be over the crown of that berm and actually the water, that sheet that flows off of that will go back to that sediment basin north of the rock quarry will not go to Muddy Creek. We will locate below the crown of the berm so that we are not violating a waterbody buffer.

He wishes he could have taken the Board on the field trip to see it. It is a lot easier to see where the crown of that berm is and that our trails will be below that. Any water hitting them will then flow back toward the rock quarry, through an open field and ultimately to a sediment collection area before it gets to the rock quarry.

He said on the other side they will adjust this trail to be outside the 60 foot required buffer. On the other side where it is labeled #9 they will not request a variance. They will change the trail design there.

Mr. Corley said what we have left is a variance on the southeast side, which is really just a formality to let you in that 60 feet with maybe a condition that it is just below the crown.

Planning and Zoning Commission

Minutes

September 13, 2016

Mr. Marshall said yes.

Mr. Jeffrey Corley **MOTIONED, SECONDED** by Mr. Aaron Ritchie to **APPROVE** the bike trail encroaching in the waterbody buffer on the southeast side with the condition that the path be constructed on the downhill side of the berm opposite the stream. The vote was unanimous.

The Chair asked for staff clarification based on what is before her. Where she had a vote 3 and a vote 4, one of those was eliminated when there was submission to take it out of the stream for what is Area 9, such that we do not need to do?

Ms. Morris said these were set up as kind of general conditions. One was to allow additional clearing in the waterbody buffer inside of the 60 feet and the other would be to actually allow the trails to be located inside of that 60 feet as well. Which could be combined into one if you wanted too. But there are still areas where the trails, be it the walking trail or the bike trail, are going to encroach into that 60 feet; overall on the project.

The Chair said we have just be going around the box and so now based on what you said Area 6 and 7.

Mr. Earliwine said we have maps with the 60 foot waterbody setback if you would like to refer to those.

Ms. Morris said it meanders in and out of it.

Mr. Dagenhart thought that Mr. Marshall said that those areas would be outside the 60 foot.

Ms. Morris said unless everything is located out of that 60, they are going to need that encroachment. It would all have to be out of the 60, but in some places it is still within that 60 and there might be new trail going in that 60.

Mr. Marshall thinks that all of the variances that the Board has addressed have addressed those concerns. Otherwise, they can adjust and get outside the 60 foot buffer. He does not see any other areas where they would need a variance. He said they do have one 90 degree crossing that they would make.

The Chair said to the neighborhood?

Mr. Marshall said the 90 degree crossing to the neighborhood and there is one 90 degree crossing of Muddy Creek. He thinks those are permitted. He does not think there is anywhere else they would need a variance we would just make the adjustment to the design to get outside the 60 foot buffer.

The Chair said compliance without needed exception.

Mr. Marshall said they would make adjustments based on what they are granted.

Planning and Zoning Commission

Minutes

September 13, 2016

Mr. Koch said the only other thing he thinks the Board needs to do that he can see is vote on the general conditions at were in the staff report that apply to all the variances you just approved.

Ms. Morris said the last condition was one that the applicant had proposed. She does not know if the Board would like for them to address what their condition was, as far as, where they plan to put that landscaping back in; so that it is on the record. They themselves have proposed, that once they were done and when the new road was constructed they would go back in and put some landscape in.

The Chair asked if they incorporate that as a condition.

Mr. Koch thinks the condition would be to require those conditions for all the variances that have been approved; they are general to all the variances.

Mr. Marshall said Ms. Morris asked that they acknowledge the condition where you granted a variance in Area #5. We will be constructing an access road in future phases that will be outside that 75 feet, but we will add landscaping (He showed on the map where they will add the landscaping). Where we construct the access road, they will add landscaping and they do agree to the condition to add landscaping to the side of the access road, between it and the trail itself and between it and the adjacent property.

The Chair said we need a motion to accept the applicant's request to establish planted material to supplement what is graded or cleared.

Ms. Morris said it was already proposed as one of the conditions of approval. So that the Board is aware of where they are talking about that trade off. In this particular area, once that final road is constructed they will come back in and replant.

The Chair said we have that as a condition and we also need to go back into the staff report and pick up the conditions that were provided by soil and water conservation review?

Ms. Morris believes that based on the fact that the trails have been moved, their comments have been cleared at this point. She does not think that they are requesting any conditions of approval at this time. It would be just those general conditions that we had for approval, which are standard conditions. Plus, the one condition where the applicant proposed in the application that they would put landscaping back once that final road is built, because that would be something specific to the granting of the variance.

Mr. Koch said the page is not numbered but it is the last page of the staff report.

The Chair said it is page 10 on the pdf document.

Mr. Koch said there are four and Mr. Marshall just addressed the last one.

The Chair said the conditions in the staff report are part of the variances that we have granted.

Planning and Zoning Commission

Minutes

September 13, 2016

Mr. Koch said they were not articulated in the motion. That is why he is saying you can do that as a separate motion generally and say that it applies to all of the variances you just approved. You do not have to do it separately.

The Chair **MOTIONED, SECONDED** by Mr. James Litaker, that the conditions included in the staff report are also applied with the granting of the variances. The vote was unanimous.

It was the consensus of the Board to have Mr. Koch prepare the Findings of Fact. (See attached Finding of Fact)

Planning and Zoning Commission

Minutes

September 13, 2016

**FINDINGS OF FACT**

1. The County is the owner of the Property, which is an approximate 111.8 acre parcel that is presently undeveloped, except for the remains of an old quarry operation.

2. The County desires to develop the Property as a public park, already named Rob Wallace. The County owns some adjacent property along Bethel School Road, which is currently being developed as the entrance and first phase of the Park.

3. The general plan for development of Rob Wallace Park calls for it to be developed as a passive park, taking advantage of the natural viewscapes existing on the Property and of the changes made to the Property by the former quarry operation.

4. Some of those changes consist of an excavation pit that has partially filled with water, creating a quarry pond; an earthen berm around one side of the pond with an old roadbed still existing; and another berm that directs surface water away from Muddy Creek, which runs through the Property.

5. The County has developed plans for a walking trail and a bike trail that generally would course along the perimeter of the Property. The proposed location of the walking trail and the bike trail in places impacts the landscape buffer and the Waterbody Zone buffer requirements for the Cabarrus County Zoning Ordinance (the “Ordinance”).

6. The Property is zoned Office/Institutional (“OI”), which is the zoning district the Ordinance requires for a public park.

7. The Ordinance requires a Level #2 landscape buffer on the western, northern and part of the eastern borders of the Property where the Property abuts residential uses.

8. The Ordinance requires a minimum sixty (60) foot setback from the top of stream banks for all proposed pedestrian, hiking or biking trails.

9. For the proposed location of the walking trail and the bike trail, the County is unable to fully meet the requirements of the Level #2 landscape buffer and the Waterbody Zone buffer.

10. Since the application for the variance was submitted, the County has been able to reconfigure the location of the walking trail and the bike trail so as to eliminate the need for a variance in some of the areas for which a variance was originally requested. These areas are along the western and southern boundaries of the Property.

11. The existence of the quarry pond predates the Waterbody Zone requirements, which were enacted in connection with the creation of the County’s Coddle Creek Reservoir.

12. Immediately adjacent to the quarry pond is a sediment basin that was created by the prior owners to capture surface water runoff so as not to flow into the quarry pond or Muddy Creek.

Planning and Zoning Commission

Minutes

September 13, 2016

13. Both the walking trail and the bike trail are to be constructed of natural permeable materials and are to follow the existing contours of the Property. They also are designed to follow the existing roads constructed in connection with the quarrying operation, which are of dirt and gravel.

14. To the extent that either trail is within the landscape buffer or Waterbody Zone buffer, a trail will be routed around existing trees, which will be "limbed up" for the safety of users of the two trails.

15. Part of the northern side of the Property abuts a vacant parcel which is heavily forested on the other side of the boundary line. There is also a row of trees on the Property along that boundary line. That other parcel has a significant amount of flood plain and because of these considerations the parcel was rejected by the County as suitable additional property for the Rob Wallace Park. This is one area where the County still requests a variance as the walking and bike trails are combined as a single trail in that location, which is within the required landscape buffer.

16. In the center of the Property where Muddy Creek crosses the Property the bike trail and walking trail will be located on the side of the existing berm opposite from Muddy Creek, so that any sediment or runoff from either trail will flow to the existing sedimentation basin and not into the Creek. Notwithstanding, the trails will be located within the sixty (60) foot required setback in that area.

17. In order to utilize the existing roadbed and the berm adjacent to the quarry road for the walking and bike trails, the trails will be located within the sixty (60) foot required setbacks in that area.

18. Utilization of the existing conditions of the Property, where available, for location of the bike trail and the walking trail creates no greater detriment to the Property than the existing circumstances without the trails.

19. In its application, the County indicates that it will replace or augment vegetation in the areas in which variances are requested.

20. There is no evidence that any variance requested by the County will result in a detriment to the Property or to adjacent parcels.

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

**CONCLUSIONS OF LAW  
(For Each Variance Element)**

A. Unnecessary hardship would result from the strict application of the Ordinance. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the Property.

Planning and Zoning Commission

Minutes

September 13, 2016

1. The Board adopts and incorporates by reference the above Findings of Fact.
2. The County has proved by substantial, material and competent evidence that unnecessary hardship would result from the strict application of the Ordinance.
3. The present condition of the Property, with its contours and vistas and remaining elements of the old quarrying operation, lends itself to the creation of a passive park with a bike trail and a walking trail.
4. Location of the bike trail and the walking trail in the selected places within the Level #2 landscape buffer and within the Waterbody Zone buffer will not adversely impact the immediate environment or adversely impact any of the neighboring properties.

B. 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.

1. The Board adopts and incorporates by reference the above Findings of Fact.
2. The County has proved by substantial, material and competent evidence that unnecessary hardship would result from the strict application of the Ordinance.
3. The present condition of the Property, with its contours and vistas and remaining elements of the old quarrying operation, lends itself to the creation of a passive park with a bike trail and a walking trail.
4. Location of the bike trail and the walking trail in the selected places within the Level #2 landscape buffer and within the Waterbody Zone buffer will not adversely impact the immediate environment or adversely impact any of the neighboring properties.

C. 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.

1. The Board adopts and incorporates by reference the above Findings of Fact.
2. The County has proved by substantial, material and competent evidence that unnecessary hardship would result from the strict application of the Ordinance.
3. The present condition of the Property, with its contours and vistas and remaining elements of the old quarrying operation, lends itself to the creation of a passive park with a bike trail and a walking trail.
4. Location of the bike trail and the walking trail in the selected places within the Level

Planning and Zoning Commission

Minutes

September 13, 2016

#2 landscape buffer and within the Waterbody Zone buffer will not adversely impact the immediate environment or adversely impact any of the neighboring properties.

D. 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.

1. The Board adopts and incorporates by reference the above Findings of Fact.

2. The County has proved by substantial, material and competent evidence that unnecessary hardship would result from the strict application of the Ordinance.

3. The present condition of the Property, with its contours and vistas and remaining elements of the old quarrying operation, lends itself to the creation of a passive park with a bike trail and a walking trail.

4. Location of the bike trail and the walking trail in the selected places within the Level #2 landscape buffer and within the Waterbody Zone buffer will not adversely impact the immediate environment or adversely impact any of the neighboring properties.

Planning and Zoning Commission

Minutes

September 13, 2016

**New Business – Planning Board Function:**

The Chair introduced proposed text amendments to Zoning Ordinance.

**Proposed Text Amendment to Zoning Ordinance Text2016-00008 – Chapter 9, Landscape and Buffering**

Ms. Susie Morris, Planning and Zoning Manager addressed the Board presenting Text2016-00008, Chapter 9, Landscape and Buffering.

The proposed changes clarify the requirements and make the tables easier for the general public to understand and they also reduce the number of required plantings.

As we are working through these chapters, we are trying to make it easier for the general public to use and to understand. If I pick up this book and I want to build a parking lot, do I understand what I need to do?

As you can see there are a lot of changes, clarifications and hopefully now it is clear that we have something called a perimeter bufferyard. Which is essentially the one that the Board was just talking about. We have a thoroughfare bufferyard or a streetyard that would be required and then we have a parking area. An exterior perimeter buffer for the parking area and then some interior landscape.

If the Board remembers, a long time ago, we had some feedback coming back from the Sustainable Local Economy Committee, as well as our Text Amendment Committee/PZ. We had members from both those groups working on text amendments. One of the things that came out of that was that this was a pretty big business expense for people when they come in and that we needed to look at doing something about this. A lot of times people tend to get city regulations and county regulations confused; our Ordinances are different.

One of the things that was recommended was to take a look at the parking lot landscape, because people build these parking lots and then people are walking through the shrubs or the shrubs die and are not replaced. If they do make it, they end up being tall and when people are trying to pull out they cannot see in the parking area and it ends up being a hazard or females walking at night, it is something for someone to hide behind.

We tried to address those concerns. If it is a new use you will have to put the landscape in. We already had an allowance in there that if you were doing a new project, buffers were only installed at a 90 degree angle to where the new area is. She said that is still in here and it would stay the same. It then clarifies, that if you are adding a new building or new parking area that kind of loops you back to number one, as a new use.

We also took a look at the Table, to try to figure out how we can make this easier for people to understand. We also added some diagrams to show people that this is what an exterior bufferyard looks like, this is what a parking lot looks like, and this is what a large landscape island looks like

Planning and Zoning Commission

Minutes

September 13, 2016

and clarified, because some of the stuff was tucked away in other chapters; that if you are going to do an island you need 300 or 600 or whatever the square footage is to support a tree actually growing there, not some little strip where you are going to put a tree in there and it is going to die anyway. All of that was clarified, adding in the illustrations.

We did not change anything about the plant list. If the Board remembers, in about 2008, we were having a drought. We went in and revamped the landscape to try to get people to do little bit of the zero-scaping or use species that would be more drought tolerant and also things that were known to also thrive in this area. It was also clarified that if you are doing a planting plan that you probably need to use more than one type of tree or more than one type of shrub so that you do not lose everything if they end up with disease.

We had talked about fences. The fence standard was something that some of our previous members felt very adamant about. Why are we telling someone what kind of fence they need to have, now there are so many options; you have wood, trex, decking and plastic, let's get out of the fence business. This proposes that we would no longer regulate that.

The current Table would actually be deleted and it would be replaced with the Table the Board received that was the Excel table (show Excel table). The table does a couple of things:

It takes the amount of landscaping that is required and it pretty much cuts IT in some cases in half. The trees would still be there but the shrubs for example on a bufferyard type 1, originally you would have been looking at 40 shrubs for every 100 linear feet. That number is now 15 for every 50 feet, which equates to 30; so we are roughly at half of where we were.

Ours operates a little differently. If you are looking at the UDO's that a lot of the jurisdictions use, if your X next to Y, there is a set buffer period. It does not matter if your property is .5 acres or if you have 100 acres; that is the buffer that you put in.

Our Ordinance is a little bit different whereas, the property gets bigger, the setback gets bigger. It also was previous that as that setback widened, the amount of plantings required in there also widened. So what the text amendment committee talked about was do we really need this amount of plantings in this buffer.

Table 4 landscape perimeter bufferyards, proposes to keep that width of the yard, but THE amount of plantings that have to go in that yard would be a lot less. Everything will be based on 50 and there is a note at the bottom that states that you can count existing vegetation and that if there is existing vegetation you are encouraged to keep it and supplement. Do not go in there and clear cut. Keep what you have and count it toward your buffer.

Table 5 clarifies that if you are this type of use and you are next to this type of zoning or if you are this type of use next to this type of use adjacent to you, either way it tells you what your buffer is. For example, if I am developing a gas station and I am next to an AO zoning district, then I am going to have to do a Level 2 type buffer. Keep in mind that we allow some commercial in

Planning and Zoning Commission

Minutes

September 13, 2016

residential districts. Or if I am that gas station coming in next to a residential use, I am going to have to do that type 2 buffer.

Hopefully, this will clarify it. She said it had one word there and it was not clear. Again, trying to relate things, as we have been doing, as we work through this, back to the Table in Chapter 3, so back to the Permitted Use Table. So, if someone looks at that list, they want to propose something, they can look at what they need for their landscaping and then one of the next amendments that the Board will see they will be able to look at what they will need for their parking. Hopefully everything now relates back to the Permitted Use Table and those categories. It clarifies that you do not have to have anything if you are industrial next to industrial. The ordinance did not speak to any of that it was just not in there.

You will see any type of use next to residential they will have a bigger buffer versus commercial next to commercial or industrial next to commercial. So hopefully, in the end it evens out, because you are still going to have that width, but you are not necessarily going to have that intensity of plantings. She said like the solar farm that we did, you would not have that intensity of plantings any more adjacent to that property. You would still have the distance but not all of the plantings.

The Chair said when we had the joint meeting, this was a specific area of concern that was articulated, about if we were looking at zoning changes, about how the economic impact was being an area of concern because of this.

She said highlight, what you said tonight, that it has been substantially reduced so that that cost should be less. Just to let the Commissioners see and connect. She does not know how they hear this, when it is presented to them or if they just say that the Planning Commission sent this to you and they support it; vote on the change. She thinks that because that was part of our discussion it might be relevant for them to understand that it just happened a month after they discussed it and it is right here, going to change.

Ms. Morris said a lot of this we have been working on. She asked Mr. Pinto how long it had been, two or three years.

Mr. Pinto said yes.

Ms. Morris said getting the feedback, figuring out where we need to go, what is the happy medium, because you cannot just say okay, we just want to be business friendly and take everything away you have to figure out where the happy medium is. She thinks a lot of the comments that people hear is that it takes so long or why do I have to do this or why do I have to do that. It is not the coming through the County.

This past year, this Board has seen probably 80 percent of what has come through the County. We are not over run with new commercial sites coming in because we have had the discussions before and it goes back to water and sewer. So the things that we are getting are the Mom and Pop's that are potentially going into existing facilities, moving in, doing upgrades and those types of things.

Planning and Zoning Commission

Minutes

September 13, 2016

We will give it a try, you never know. Just like with the solar farm, we did not know what it would look like until somebody built one. So we will not know what it looks like and at that point somebody might say why you are not requiring enough landscape. The pendulum can go either way.

She said this would keep the width, at least hopefully the separation, but it would reduce the number of plantings.

There being no further discussion, Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Ms. Mary Blakeney to recommend **APPROVAL** of Text2016-00008– Chapter 9, Landscape and Buffering to the Board of Commissioners. The vote was unanimous.

**Proposed Text Amendment to Zoning Ordinance Text2016-00009 – Chapter 10, Parking and Loading**

Ms. Morris said these changes will clarify the parking requirements. The Table is easier for the general public to understand since the proposed parking table more closely corresponds back to that Chapter 3.

There were some changes to the text and some minor clarifications, but again the bulk of the change to this section is to the Table. The word Table would be replaced with an excel Table that relates back to, here is your residential use, here is your commercial, here is your institutional; so that it is more clear. Some of this was the same standards that were already in the Ordinance. Some of it is proposed for things that maybe different, instead of saying we are going to base it on one for every 3,000 or every 300 square feet of the building there are things that did not have a building for example the golf course or the automobile and boat sales. Things where the expectation is you have a display area and probably minimum parking for patrons coming to look at the boat or the cars or what have you. It lines up the proposed parking with Chapter 3, so she can look in 3 and I know that if I am an institutional and civic use and I am not specifically listed here then I go with that general standard.

She said a lot of these uses, unless the policies change related to water and sewer, or if it is an economic development project where there can be that exception, we probably will not see the bigger projects. It is going to be the ones and twos and the reuse and the upgrading and potentially some new industrial. We still have some industrial properties in Midland. If somebody comes in with a convention center they are probably going to need utilities.

There being no further discussion, Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Mr. Adam Dagenhart to recommend **APPROVAL** of Text2016-00009– Chapter 10, Parking and Loading to the Board of Commissioners. The vote was unanimous.

Planning and Zoning Commission

Minutes

September 13, 2016

**Proposed Text Amendment to Zoning Ordinance - Text2016-000010, Appendix D, Lighting Standards**

Ms. Morris said the proposal is to add an Appendix D to the Ordinance. It would cover lighting standards and currently we do not have anything in our Ordinance that covers lighting.

We go with industry standards; for example they did an upgrade to the lighting in Frank Liske Park and they extended some of the fields and we used the industry standard. If the lights are actually cut off at night they can have a 1.5. If there is any kind of lighting that is going to stay on it needs to be a .4 preferably at a zero by the time they get to the property line; this kind of codifies that.

The Musco systems that are just so bright and you can see it from a mile away as you are driving down the road, those get cut off at 11 or 12 o'clock. If it were for security lighting or something like that we would be looking for that .4.

If it is outdoor recreation it would not necessarily be subject to the height restriction of the 40 feet that is proposed. They actually have to turn in a photometric plan, so that we can see as they move from that parking lot out to the property line what that projection is.

The Text Amendment Committee had some discussion about trying to make sure that when someone is putting in lighting that their landscape is not then growing up into the lighting and now the path is not lit or the parking area is not lit because the trees are blocking the light. It also talks about it in Chapter 9, use avoidance conflict, to let enough room for the trees to grow in between the light fixtures.

She said again this is all pretty much industry standard. If you do a general search on the internet you are going to find that most people use that 1.5 and the .4. She said it kind of codifies what we have been telling people.

There being no further discussion, Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Mr. James Litaker to recommend **APPROVAL of Text2016-000010– Appendix D, Lighting Standards** to the Board of Commissioners. The vote was unanimous.

**Proposed Text Amendment to the Zoning Ordinance –Text2016-00011, Chapter 14, Nonconformities**

Ms. Morris said the next amendment is an amendment to Chapter 14. We currently have what we as staff call the over 10,000 under 10,000 rule; it is very confusing. If you have a parcel currently that is over 10,000 square feet you can use the MDR open space standard to develop. If it is under 10,000 square feet you are supposed to combine them together or figure out a way to make it work.

What we are finding is that there are a lot of nonconforming lots out in the County. Whether somebody went out and did a one acre subdivision back in the 1950's or like currently, the Cedardale Project is actually still in Unincorporated County. The City ran utilities to it and it

Planning and Zoning Commission

Minutes

September 13, 2016

developed under county standards, but they were part of the mass rezoning. It is a CR lot now which is a two acre lot and they are not two acre lots. So we do have a lot of nonconformities out there. Our fall back typically is the MDR Open Space district.

The amendment is proposing to remove the over 10,000 under 10,000 language and to replace it with if you are in AO, CR or LDR and you do not meet the width requirement or you do not meet the acreage requirement for that particular district, we can then apply that MDR setback and also the impervious area.

To us it is pretty straight forward, so that people understand this is how it works and it would allow us to use that section. If we issue a permit, we always note that they are nonconforming. We also have the conversation with them about what it means to be nonconforming as far as what the banks look for in a mortgage or things like that and that sometimes they do not like that. So that they can be informed as they move through the process. If they want to continue with that project and they are okay with being classified as nonconforming or if they are trying to get a loan document or something and it becomes a problem, they do not end up moving forward with something and then having problems later.

She said it boils down to allowing them to use the MDR standards; simplifying it.

There being no further discussion, Ms. Mary Blakeney, **MOTIONED, SECONDED** by Mr. Aaron Ritchie to recommend **APPROVAL of Text2016-000011 Chapter 14, Nonconformities** to the Board of Commissioners. The vote was unanimous.

**Proposed Text Amendment to Zoning Ordinance - Text2016-00012,  
Chapter 13, Amendments and Changes**

Ms. Morris said this amendment is to Chapter 13. This amendment talks about rezonings and vested rights and some administrative actions. This would remove the CD Conditional District rezoning option. This is the option that Charlotte has used for years and the State approved it as an option for us.

When it came down the pike, Cabarrus County added all three options into the Ordinance. The School of Government advises that you pick one or the other. Either you do the conditional district or you do the conditional use rezoning process.

Conditional district stays within the legislative hearing parameters. Conditional use is where as long as they meet the site plan the Planning Commission is the extra level of review and it allows you to add those conditions to it. With the conditional district, there is a lot more room for negotiation, but there is also a lot more room for uncertainty for the applicant. Most of our applicants have chosen to use the conditional use rezoning process. We had one project that tried the conditional district when we first adopted it and it did not work out well and no one has tried it since then. The proposal is to remove that and it would also clarify that the SU rezoning process is our conditional use process.

Planning and Zoning Commission

Minutes

September 13, 2016

She said the pending legislation that is out there for the revamp of the planning and zoning enabling statutes, proposes that it be called a special use rezoning and if they need a special use permit, you call it a special use permit instead of conditional like we do now. This is kind of getting ahead of that because that is probably coming down the pike in the next session.

It also speaks to the vesting of the development rights versus common law vested rights and adds some language to address that Session Law 2016-111. She said the Board had that definition at the last meeting for the multi-phase development. The part of the language talking about the multi-phase development came directly from the Statute.

As far as the vesting of the development rights, we need to explain because a court case came down two years ago maybe that said Planning and Zoning Boards no longer had the authority to decide if somebody had common law vested rights.

She said the Board considered the Mill Bridge project. If you remember the developer came in and he wanted an extension but he was basing it on common law vested rights more so because the plat was expired and not vested rights under our Ordinance. This clarifies, if they are asking for a site specific development plan, vested rights under the Ordinance, you can do that. But if you are asking for common law vested rights you have to go to a Judge and the Judge decides that now.

This is clarifying and addressing the statute changes that have happened and addressing some of these court cases that have come down the pike. We might as well put it in the book that we cannot help you out with common law vested rights; that goes to court.

We tried to simplify so that people understand; here is how the rezoning process works, here is the conditional use process and lay it out. This follows pretty much verbatim. We have a little description on our applications for people to walk them through the process. This very closely mimics what is on application. They do a pre-application meeting, they submit a complete application, we schedule it, the Board hears it, and they take action on it.

There being no further discussion, Ms. Shannon Frye, **MOTIONED, SECONDED** by Mr. James Litaker to recommend **APPROVAL of Text2016-000012 Chapter 13, Amendments and Changes** to the Board of Commissioners. The vote was unanimous.

**Proposed Text Amendment to Zoning Ordinance - Text2016-00013,  
Chapter 4, Overlay Districts and Zones**

Ms. Morris said we had two people asking us questions about things they wanted to do on existing properties in the watershed. When she approached the State with the questions they said that our Ordinance needs to be fixed because we are not in compliance with the model ordinance.

She worked with the State to try to get the sections in there that we needed to add. For example one of the things that their model ordinance says is that you are supposed to have a watershed board that hears variances on the watershed. Her proposal was to keep it the same and that the Board would still consider those variances since you would have the technical expertise and you

Planning and Zoning Commission

Minutes

September 13, 2016

are going to be more familiar with how those things kind of work. But there is a different set of standards that you have to use for that type variance.

Our process that we had in the ordinance is a process that does not exist anymore. She sent it off to the State, she gave her blessing and we are good to move forward. She thinks everything that needed to be addressed, for now, until the model ordinance changes again has been addressed.

Once the board of Commissioners approves it, then we have to send it back to the State and they will send us a letter saying okay, your changes are good and we have this on file. They field citizen inquiries so they keep copies of our ordinances on file.

It would also make an allowance for people who had properties that existed and were developed prior to the adoption of the Ordinance. If you had a chance to kind of look at the details of the different sections. It would make an allowance for them, kind of like how we are tipped in with the State for stormwater, that magic date we have of July 1, 2007, the magic date for our watershed would be December 20, 1993 or whatever it was. Anything before that would not count against them for that 12 percent. We would start looking at it after that for permitting.

Ms. Morris said no one has asked for a mobile home park since new ordinance was adopted and so the language was carried over from the original mobile home park ordinance that we had which was a separate ordinance. It allowed community systems for well and septic and we do not permit that anymore. Either you do well or septic on individual lots or you would have City water and sewer service. It just clarifies and takes the community option out.

There being no further discussion, Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Mr. James Litaker to recommend **APPROVAL of Text2016-000013 Chapter 4, Overlay District and Zones** to the Board of Commissioners. The vote was unanimous.

### **Directors Report**

Ms. Morris said the School of Government is going to be offering a Subdivision Workshop on November 16, 2016, in Mt. Holly. We do not see a lot of subdivisions of a large scale, but if that it is something you would like to have in your toolbox as far as when something does come to you, you know kind of what the State Statute say and how we look those, your are more than welcome to attend. If any of you are interested let Ms. Morris know and she will send the information.

It is based on a subdivision book that the School of Government put out and she thinks they simplify that and break it down for the training. It is a half day workshop.

We are currently working on the Morehead Road Small Area Plan. As we were going through the process we had discussion about do we have a joint planning meeting and try to get both of the Boards together. Do we have Chair, Vice-Chair, so we can get feedback and they know what is going on and it is on the radar? Nothing has been schedule yet. She plans on next month doing a presentation for the Board so that you are up to speed on where we are and what is happening

Planning and Zoning Commission

Minutes

September 13, 2016

because the goal she thinks is either January or February that the plan would come to you and then go to the Board of Commissioners.

There has been two public meetings so far. The last one was a week ago, about 30 people showed up. Every single recurring theme, like what do you want? Everybody says restaurants. The roof tops are not there to support the restaurants and they do not want any more houses.

It is interesting as far as what the citizens are saying and what the consultants are saying and what planning staff knows has been approved out there and what can move forward; knowing the topography out there.

She thinks that might be the best way for us to handle it. She can get some feedback from you and pass it along to the consultants. It is the area from Highway 29, south down to Highway 49 and it extends down to Caldwell Business Park.

At this point there are big bubble areas with part of it where it would make sense to be residential and connect through projects that have happened in Mecklenburg.

We need another north south connector over there, so how does that all happen and shake out, knowing that it is going to cost a lot of money. Because no matter which way you go you will have to cross a creek and one of them is Mallard Creek and it is very wide.

It includes a lot of Speedway property that they own now. It also includes if you have been down Morehead, the borrow pit area.

It is kind of shaking out to be the large areas where one says motorsports related, one says recreation related; is it an ATV path. A lot of these borrow pits are recreation sites, so is it mountain biking, bike trails or does the Speedway even want to do something like that? Then some commercial down towards Highway 49 and then back up towards Highway 29 more of what would be motorsports related but probably a light industrial district.

She may give the board the whole 160 slides but we will not go through all of them. Just so it is on your radar because you will be asked to make a recommendation or not recommend it. It is a 30 year plan but some of it could happen sooner rather than later when we are talking about Highway 49 and 29, Hudspeth Road. Because the topography does not start to get bad until you start getting back behind Eldorado Hills.

If they decide to move forward with a Chair, Vic-Chair meeting she will contact you to see when you will be available. Do we try to get everybody together with their schedules, do we go a separate path and bring the comments back? At this point she thinks it is just going to be more beneficial for us to have a discussion and then take it back to the consultants.

Planning and Zoning Commission

Minutes

September 13, 2016

**Legal Update**

Mr. Koch said not much has happened. He wants to ask Mr. Dagenhart if he has been by the DeComo residence lately.

Mr. Adam Dagenhart said yes, he is moving along pretty good.

Mr. Koch asked if there was a roof on it yet.

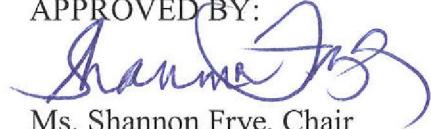
Mr. Dagenhart said he had not been by in a week or so but he was close.

Mr. Koch said it is back in court on September 26<sup>th</sup> for status. He will take a look a day before to see how far along they are. Their deadline is the end of the year. It is not that big of a house, so they should be able to still meet it. They have not been very forth coming with the interior deadlines that they were supposed to provide to us as to the benchmarks they would reach with certain amount of completion.

The other thing is on Mr. Phillip Little, some of you may have noticed going down either Morehead Road or Highway 29 that he moved that trailer back to sort of the back end of his property close to the Morehead side, but you can still see the sign. He wrote his Lawyer a letter at the end of last week and told him since Mr. Koch is out of town a good bit of this week that if something is not done on it by next Monday, he is going to file a motion for contempt.

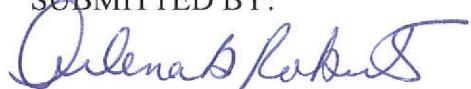
There being no further discussion, Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Ms. Mary Blakeney to **ADJOURN** the meeting. The vote was unanimous. The meeting ended at 8:45 p.m.

APPROVED BY:



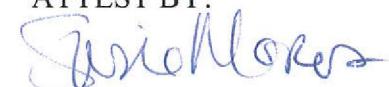
Ms. Shannon Frye, Chair

SUBMITTED BY:



Arlena B. Roberts

ATTEST BY:



Susie Morris, Planning and Zoning Manager

# Memo

**To:** Cabarrus County Planning and Zoning Commission  
**From:** Susie Morris, AICP, CZO, Planning and Zoning Manager  
**CC:** File  
**Date:** 9/9/2016  
**Re:** APPL2016-0001 Appeal of Notice of Violation for illegal reception facility

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The Department of Agriculture has requested an interpretation from the Attorney General's Office as it relates to the definition of Agritourism.

The applicant is requesting that the case be tabled until the October Planning and Zoning Commission meeting to allow the AG's office additional time to make the interpretation.

## PLANNING STAFF REPORT

## CABARRUS COUNTY PLANNING AND ZONING COMMISSION

09/13/2016

Staff Use Only:

Approved: \_\_\_\_\_

Denied: \_\_\_\_\_

Tabled \_\_\_\_\_

**Variance: VARN2016-00003**

Applicant Information: Jonathan Marshall, Deputy County Manager  
Acting as Agent for Cabarrus County Government  
PO Box 707  
Concord, NC 28027

Owner Information: Cabarrus County  
P O BOX 707  
Concord, NC 28026

PIN#: 5544-72-3955

Area in Acres: +/-111.8

Purpose of Request: The applicant proposes to use the subject property as a Public Use Facility (County owned Rob Wallace Park). A Public Use Facility is permitted in the OI zoning district as a by right use.

The Applicant is seeking relief from Chapter 4, Part II Waterbody Buffer Zone and Chapter 9 Landscaping and Buffer Requirements. The applicant wishes to construct a walking and bike trail around the perimeter of the proposed Rob Wallace Park, which will encroach into the required #2 Level Landscape Buffer, the required Waterbody Buffer Zone, and the Waterbody setback.

This variance request includes three individual variances from the Cabarrus County Zoning Ordinance:

- **Variance Request #1, Relief from the Required #2 Level Landscape Buffer**
- **Variance #2, Relief from the Muddy Creek and quarry pond Waterbody Buffers**

**Variance Request #1, Relief from the Required #2 Level Landscape Buffer**

Chapter 9 Landscaping and Buffer Requirements requires a #2 level Landscape Buffer between “Institution/Public” uses and any existing Residential uses. This buffer is to be 75 feet wide and requires 11 trees and 40 shrubs per 100 linear feet. Residential uses abut the entire western border of the parcel, continue around the northern border, and stop just north of the quarry pond in the

PLANNING STAFF REPORT

CABARRUS COUNTY PLANNING AND ZONING COMMISSION

09/13/2016

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Denied: \_\_\_\_\_

Tabled \_\_\_\_\_

southeast corner of the property. The #2 level landscape buffer is required along this entire perimeter of the parcel. Since the southern and southeastern borders of the parcel abut Industrial Uses, no buffer is required.

Applicant is requesting that a trail system be permitted in the required #2 level landscape buffer yard. On the western side of the property, the proposed biking trail would run for approximately 1245.6 linear feet of the landscape buffer length, therefore eliminating approximately 4982.4 sqft of the required landscape buffer, as seen in Sheet 2.1 of the site plan. The walking trail portion of the western side of the property would affect 63.03 linear feet of the landscape buffer, thus eliminating another +/- 504.24 sqft of the required landscape buffer.

On the north central side of the property, the proposed biking trail would run for approximately 515.49 linear feet of the landscape buffer length, therefore eliminating approximately 2061.96 sqft of the required landscape buffer, as seen in Sheet 2.2 of the site plan. The walking trail portion of the north central side of the property would affect 73.87 linear feet of the landscape buffer, thus eliminating another +/- 590.96 sqft of the required landscape buffer. A portion of the landscape buffer will also be encroached upon by both the biking AND walking trails in the same location. This portion accounts for approximately 762.52 linear feet of the landscape buffer (6100.16 sqft).

**Variance #2, Relief from the Muddy Creek and quarry pond Waterbody Buffers**

Applicant is requesting that a trail system be permitted in the required Waterbody Buffer Zone. Per Chapter 4 Overlay Districts and Zones, Part II Waterbody Buffer Zone, these buffers are to be retained in a natural, undisturbed state, in an effort to avoid erosion problems and to reduce the velocity of overland flow. Section 4-10, 11 requires a 60 foot setback from the top of the stream bank for any proposed pedestrian, hiking, or biking trails.

On the western portion of the waterbody buffer of Muddy Creek, the proposed biking trail would run for approximately 1570.15 linear feet of the waterbody buffer length, therefore eliminating approximately 6280.6 sqft of the required waterbody buffer, as seen in Sheet 3.1 of the site plan. The walking trail on the western portion of the waterbody buffer for Muddy Creek would affect 219.1 linear feet of the waterbody buffer, thus eliminating another

PLANNING STAFF REPORT

CABARRUS COUNTY PLANNING AND ZONING COMMISSION

09/13/2016

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+/-1752.8 sqft of the required waterbody buffer. Additionally, 1488.42 linear feet (5953.68 sqft) of the proposed biking trail and 259.6 linear feet (2076.8 sqft) of the proposed walking trail will ALSO lie within the required 60 foot setback from the edge of Muddy Creek. (See site plan, 4.1).

On the central portion of the waterbody buffer of Muddy Creek that crosses the center of the property, the proposed biking trail would run for approximately 1507.51 linear feet of the waterbody buffer length, therefore eliminating approximately 6030.04 sqft of the required waterbody buffer, as seen in Sheet 3.2 of the site plan. The walking trail on the central portion of the waterbody buffer for Muddy Creek would affect 30.91 linear feet of the waterbody buffer, thus eliminating another +/-247.28 sqft of the required waterbody buffer. A portion of the required waterbody buffer will also be encroached upon by both the biking AND walking trails in the same location. This portion accounts for approximately 80.61 linear feet of the waterbody buffer (644.88 sqft). Additionally, 1554.04 linear feet (6216.16 sqft) of the proposed biking trail, 162.32 linear feet (1298.56 sqft) of the proposed walking trail, and 119.33 linear feet (954.64 sqft) of BOTH the biking and walking trails will ALSO lie within the required 60 foot setback from the edge of Muddy Creek. (See site plan, 4.2).

On the eastern portion of the waterbody buffer of Muddy Creek and the quarry pond, the proposed biking trail would run for approximately 229.44 linear feet of the waterbody buffer length, therefore eliminating approximately 917.76 sqft of the required waterbody buffer, as seen in Sheet 3.3 of the site plan. The walking trail on the eastern portion of the waterbody buffer for Muddy Creek and the quarry pond would affect 538.64 linear feet of the waterbody buffer, thus eliminating another +/-4309.12 sqft of the required waterbody buffer. A portion of the required waterbody buffer will also be encroached upon by both the biking AND walking trails in the same location. This portion accounts for approximately 1091.91 linear feet of the waterbody buffer (4367.64 sqft). Additionally, 232.56 linear feet (930.24 sqft) of the proposed biking trail, 453.06 linear feet (3624.48 sqft) of the proposed walking trail, and 1018.04 linear feet (8144.32 sqft) of BOTH the biking and walking trails will ALSO lie within the required 60 foot setback from the edge of Muddy Creek. (See site plan, 4.3).

Site Description:

The subject property is largely undisturbed and the plan is for it to be developed as Public Use Facility (County owned Rob Wallace

**PLANNING STAFF REPORT****CABARRUS COUNTY PLANNING AND ZONING COMMISSION**

09/13/2016

Staff Use Only:

Approved: \_\_\_\_\_

Denied: \_\_\_\_\_

Tabled \_\_\_\_\_

Park). The property has a network of dirt roads throughout and a large quarry pond in the southeast corner of the property. Two berms located on the subject property, constructed in the 1950's, redirect storm water away from Muddy Creek, which flows from the southwest corner of the parcel, along the southern border and across the center of the property flowing north and then around the quarry pond to the southeast corner of the parcel. The first berm cuts across the center of the property between Muddy Creek and the upper quarry pond. The trails will be developed on the side of the berm opposite Muddy Creek. The second berm lies in the southeast corner of the parcel between the eastern side of the large quarry pond and Muddy Creek. This berm currently contains a dirt road on which the proposed trails will lie. There is also a 3700 SF utility/storage building located on the southern end of the property. The subject parcel contains several water features subject to compliance with the Waterbody Buffer Zone.

**Current Land Uses:**

Vacant (Future site of Wallace Park)

**Adjacent Land Uses:**

North – Single Family Residential &amp; Vacant

East – Industrial, Vacant, Single Family Residential

South – Industrial (McGee Brothers Company &amp; the future

Intertape Polymer Group plant) &amp; Vacant

West – Single Family Residential

**Permitted Uses:**

All uses permitted within the Office Institutional zoning district

**Existing Zoning:**

OI (Office Institutional)

**Surrounding Zoning:**

North: SFR (Single Family Residential) - Midland Zoning

East: SFR (Single Family Residential) and IND (Industrial) - Midland Zoning AND GI (General Industrial) – County Zoning

South: GI (General Industrial) – County Zoning

West: SFR (Single Family Residential) – Midland Zoning

**Signs Posted:**

08/24/2016

**Newspaper Notification 1:**

08/31/2016

**Newspaper Notification 2:**

09/07/2016

**Notification Letters:**

08/24/2016

## Exhibits

EXHIBIT A – STAFF REPORT  
EXHIBIT B – APPLICATION  
EXHIBIT C – SITE PLAN  
EXHIBIT D – AERIAL MAP  
EXHIBIT E – ZONING MAP  
EXHIBIT F – FUTURE LAND USE MAP  
EXHIBIT G – ADJACENT PARCEL LETTER & LIST  
EXHIBIT H-1&2 – VARIANCE SIGNS  
EXHIBIT I – SOIL MAP

## Agency Review Comments

### **Zoning Review :**

*Staff review of the plans shows that the proposed project does not meet the standards for landscape buffering and Water Body Zone buffering as required, therefore, the applicant is seeking a variance from the required level #2 landscape buffer, the required water body buffer, and the required 60 foot setback in the Waterbody Buffer zone.*

### **Fire Review :**

*No fire code related concerns (per Steve Langer, Fire Marshal).*

### **NCDOT Review :**

- If any part of the proposed walking biking trail falls within Ncdot r/w then an approved encroachment will be required for those areas.*
- No access to the park will be allowed from Bill Mcgee Road extension (per Marc Morgan, NCDOT). A new address will be assigned to the County portion of the park and will be addressed off of the main entrance on Bethel School Road.*

### **Health Alliance Review:**

*No Health Alliance related comments (per David Troutman, Environmental Health Director).*

### **Sherriff's Department Review:**

*No Sherriff's Department related comments (per Ray Gilleland, Lieutenant Sherriff).*

### **Soil and Water Conservation Review:**

- When constructing the mountain bike trails, we recommend following the contours especially in areas nearest the stream in order to reduce erosion off the trail into the stream.*
- We recommend keeping the walking trail entirely out of the buffer, since the 8' trail will require more clearing than the bike trail and will be covered with gravel.*
- It looks like the biking trial and even some of the walking trail may enter into jurisdictional wetlands along the southern edge. We recommend moving the trail outside of this area, as it will make maintenance difficult.*

PLANNING STAFF REPORT

CABARRUS COUNTY PLANNING AND ZONING COMMISSION

09/13/2016

Staff Use Only:

Approved:

Denied:

Tabled

- *The center section of the property has a shallow water table, which could cause issues of standing water. See attached soil map. (EXHIBIT I)*

**Emergency Services Review:**

*No EMS related concerns (per James Lentz, EMS Assistant Director).*

**History / Other Information**

The subject property has historically been zoned General Industrial (GI). Cabarrus County submitted a rezoning request for the zoning of the property to be changed to Office/Institutional (OI) and it was approved by the Planning and Zoning Commission on August 9, 2016.

The subject property is approximately 111.8 acres and the proposal is to develop the property as Public Use Facility (County Park).

The subject property contains several water features that are subject to the Waterbody Buffer Zone.

The subject property is required to contain a #2 level Landscape Buffer on the western, northern, and part of the eastern borders of the property, each of which abut residential uses.

The subject property is required to maintain a minimum 60 foot setback from the top of stream banks for all proposed pedestrian, hiking, or biking trails.

Applicant contends that the perimeter walk and bike trail follow historic pathways used on the park property. In one case, the location is dictated by the berm stated previously and in another, the only available location between a quarry pond and the stream.

Applicant contends that the map exhibits show that the intent of the ordinance is met by existing vegetation and topography. In both cases, the path is located where gravel or dirt drives already exist.

Applicant contends that the property may be used with a shorter trail or switchbacks in other locations. The trail, as planned, takes advantage of wooded areas, existing gravel paths, unique vistas, and areas that will be developed in later phases.

Application states that in the areas where the variances are requested, the County will add new vegetation when the permanent road is constructed as part of future phases.

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

**Variance #1 Summary**

Relief from the #2 level Landscape Buffer along the entire western border of the parcel, continuing around the northern border, and stopping just north of the quarry pond in the

PLANNING STAFF REPORT  
CABARRUS COUNTY PLANNING AND ZONING COMMISSION  
09/13/2016  
southeast corner of the property

Staff Use Only: \_\_\_\_\_  
Approved: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Tabled: \_\_\_\_\_

On the western side of the property:

- the proposed biking trail would run for approximately 1245.6 linear feet of the landscape buffer length, therefore eliminating approximately 4982.4 sqft of the required landscape buffer
- the proposed walking trail portion would affect 63.03 linear feet of the landscape buffer, thus eliminating another +/- 504.24 sqft of the required landscape buffer

On the north central side of the property:

- the proposed biking trail would run for approximately 515.49 linear feet of the landscape buffer length, therefore eliminating approximately 2061.96 sqft of the required landscape buffer
- the proposed walking trail portion would affect 73.87 linear feet of the landscape buffer, thus eliminating another +/- 590.96 sqft of the required landscape buffer.
- a portion of the landscape buffer will also be encroached upon by both the biking AND walking trails in the same location. This portion accounts for approximately 762.52 linear feet of the landscape buffer (6100.16 sqft)

### **Variance #2 Summary**

Relief from the required Waterbody Buffer Zone and 60 foot setback along various portions of Muddy Creek

On the western portion of the waterbody buffer of Muddy Creek that crosses the center of the property:

- the proposed biking trail would run for approximately 1570.15 linear feet of the waterbody buffer length, therefore eliminating approximately 6280.6 sqft of the required waterbody buffer
- the proposed walking trail would affect 248.56 linear feet of the waterbody buffer, thus eliminating another +/- 1988.48 sqft of the required waterbody buffer
- approximately 1488.42 linear feet (5953.68 sqft) of the proposed biking trail and 259.6 linear feet (2076.8 sqft) of the proposed walking trail will ALSO lie within the required 60 foot setback

On the central portion of the waterbody buffer of Muddy Creek that crosses the center of the property:

- the proposed biking trail would run for approximately 1507.51 linear feet of the waterbody buffer length, therefore eliminating approximately 6030.04 sqft of the required waterbody buffer
- the proposed walking trail would affect 30.91 linear feet of the waterbody buffer, thus eliminating another +/- 247.28 sqft of the required waterbody buffer

**PLANNING STAFF REPORT****CABARRUS COUNTY PLANNING AND ZONING COMMISSION**

09/13/2016

Staff Use Only:

Approved: \_\_\_\_\_

Denied: \_\_\_\_\_

Tabled \_\_\_\_\_

- a portion of the required waterbody buffer will also be encroached upon by both the biking AND walking trails in the same location. This portion accounts for approximately 80.61 linear feet of the waterbody buffer (644.88 sqft)
- approximately 1554.04 linear feet (6216.16 sqft) of the proposed biking trail, 162.32 linear feet (1298.56 sqft) of the proposed walking trail, and 119.33 linear feet (954.64 sqft) of BOTH the biking and walking trails will ALSO lie within the required 60 foot setback

On the eastern portion of the waterbody buffer of Muddy Creek that crosses the center of the property:

- the proposed biking trail would run for approximately 229.44 linear feet of the waterbody buffer length, therefore eliminating approximately 917.76 sqft of the required waterbody buffer
- the proposed walking trail would affect 538.64 linear feet of the waterbody buffer, thus eliminating another +/- 4309.12 sqft of the required waterbody buffer
- a portion of the required waterbody buffer will also be encroached upon by both the biking AND walking trails in the same location. This portion accounts for approximately 1091.91 linear feet of the waterbody buffer (4367.64 sqft)
- approximately 232.56 linear feet (930.24 sqft) of the proposed biking trail, 453.06 linear feet (3624.48 sqft) of the proposed walking trail, and 1018.04 linear feet (8144.32 sqft) of BOTH the biking and walking trails will ALSO lie within the required 60 foot setback

**Conditions of Approval**

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

- Site plan review and approval is required subsequent to Board of Adjustment approval to ensure compliance with all applicable development requirements and conditions.
- The Granting Order, stating restrictions and applicable conditions of approval, shall be recorded with the deed of the property.
- The applicant shall procure any and all applicable federal, state, and local permits prior to commencement of project.
- Applicant shall install landscape as stated in application with future road construction to mitigate any approved variances.

**CABARRUS COUNTY  
VARIANCE APPLICATION**



STAFF USE ONLY:

Application/Case#: VAR 2016-00003  
 Received By: JRE  
 Date Filed: 08/17/16  
 Amount Paid: \$618.00

**Instructions**

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

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

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

**Process Summary:**

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

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

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

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

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

#### Application Information

Applicant's Name

Jonathan Marshall

Applicant's Address

PO Box 707

Concord NC 28027-0707

Applicant's Telephone Number

704 920-2145

Property Owner's Name

Cabarrus County

Property Owner's Address

same

Property Owner's Telephone Number

\_\_\_\_\_

Legal Relationship of Applicant to Property Owner

Employee

Existing Use of Property

Agriculture / Park

Existing Zoning

O-I

Property Location

Bethel School Rd. - Midland

Tax Map and Parcel Identification Number (PIN)

5544-72-3955

#### TO THE BOARD OF ADJUSTMENT

I, Jonathan Marshall, 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: 4-10.11 and 9 part II and III

Waterbody Buffer Zone

Buffers and Landscaping

2. Reason(s) for Seeking a Variance

The perimeter walk and bike trail complies with the Zoning Ordinance for most of its 2 mile length. There are two areas where a variance from the Waterbody Buffer and general Buffer requirements is requested to maximize use of unique features of the property.

**FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE**

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

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

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

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

**FINDING OF FACT CHECKLIST**

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

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

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

*The perimeter walk and bike trail follows historic pathways used on the park property. In one case the location is dictated by a constructed berm (1950's) and in another the only available location between a quarry pond and stream.*

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"?)*

*The property may be used with a shorter trail or switchbacks in other locations. The trail as planned takes advantage of wooded areas, existing gravel paths, unique vistas and areas that will be developed in later phases.*

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

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

*The attached maps show that the intent of the ordinance is met by existing vegetation and topography. In both cases, the path is located where gravel or dirt drives already exist.*

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?)*

The variance for the Waterbody Buffer is requested in one area where a berm causes stormwater to flow away from the stream and in another where a drive has always existed. The variance from buffer standards meets all purpose statements at the beginning of Chapter 9 which will be shown on the exhibits.

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?)*

Exhibits and testimony will be provided to show how this standard is met by locating the trail on the historic location of access roads and through unique conditions of the property.

**Possible Conditions, suggested by the applicant**

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

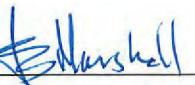
In the area where the buffer and landscape variance is requested, the County will add new vegetation where a permanent road is built as part of later phases.

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

SIGNATURE OF OWNER:



DATE: 8-9-2016

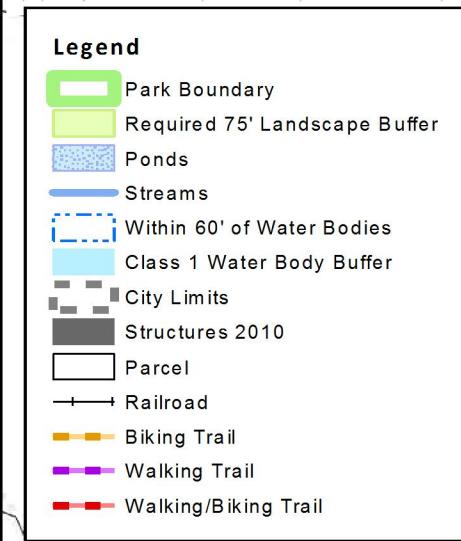
SIGNATURE OF APPLICANT:  DATE: 8-19-2016

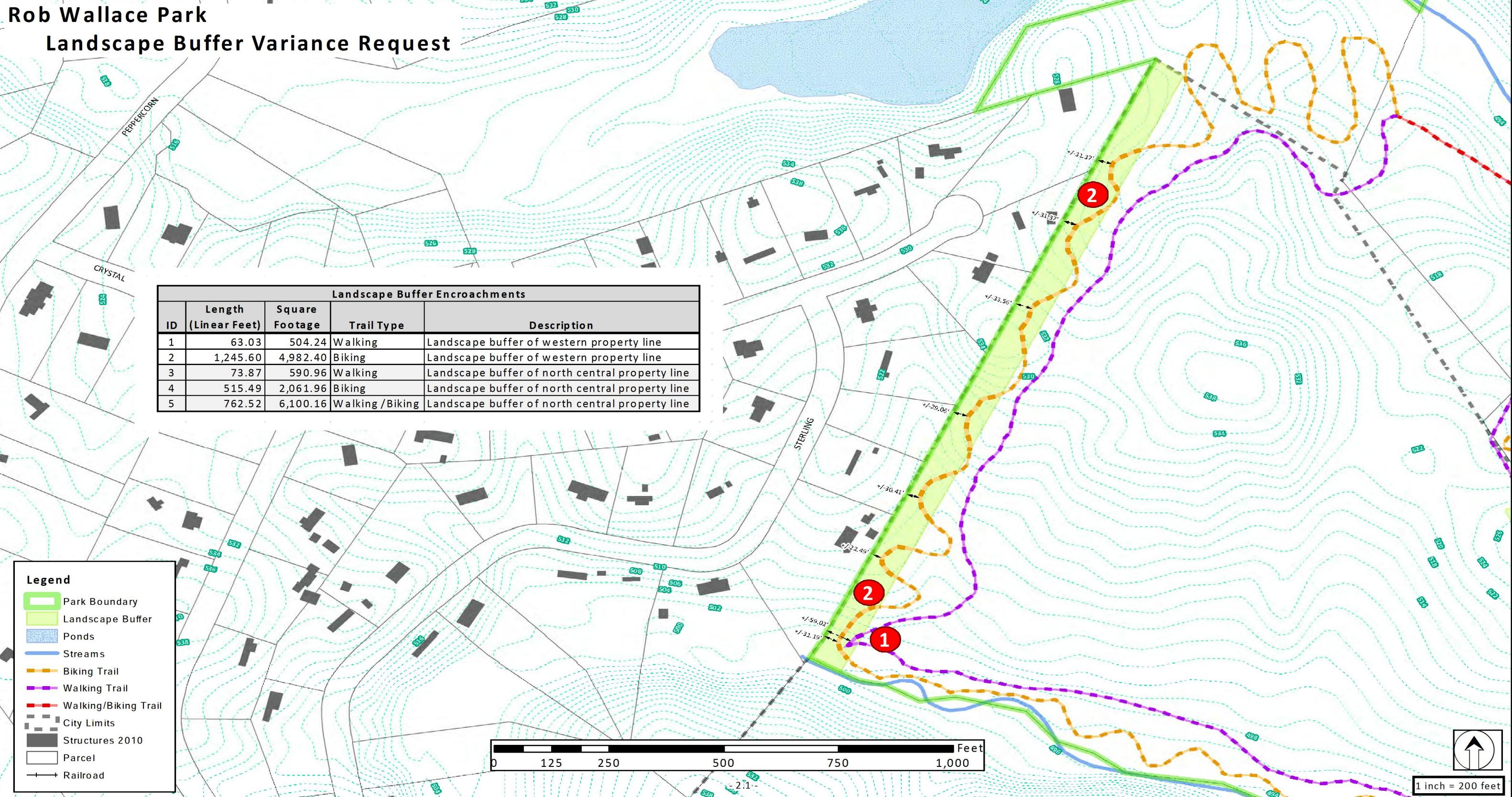
# Rob Wallace Park

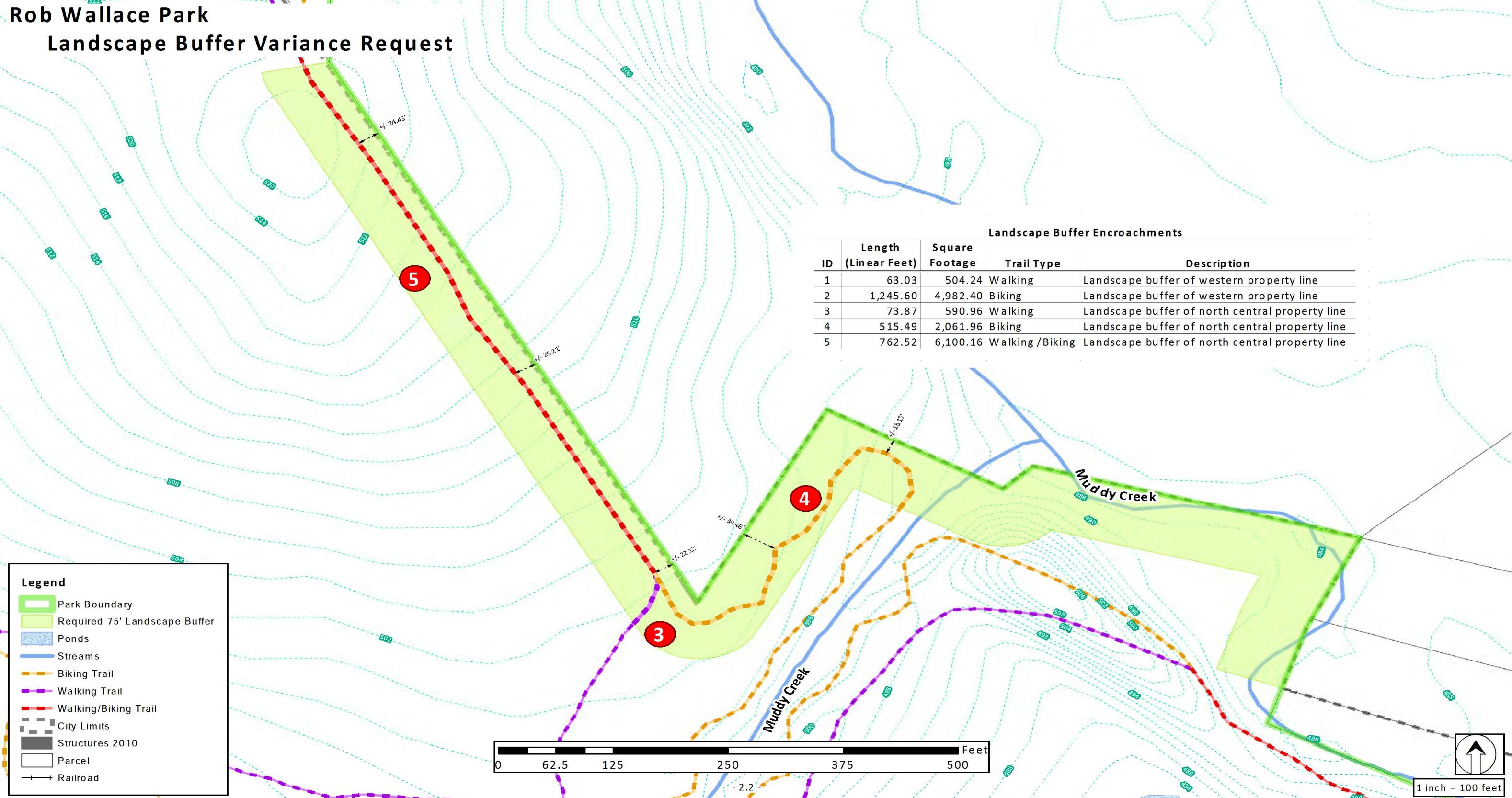
## Overall Variance Request

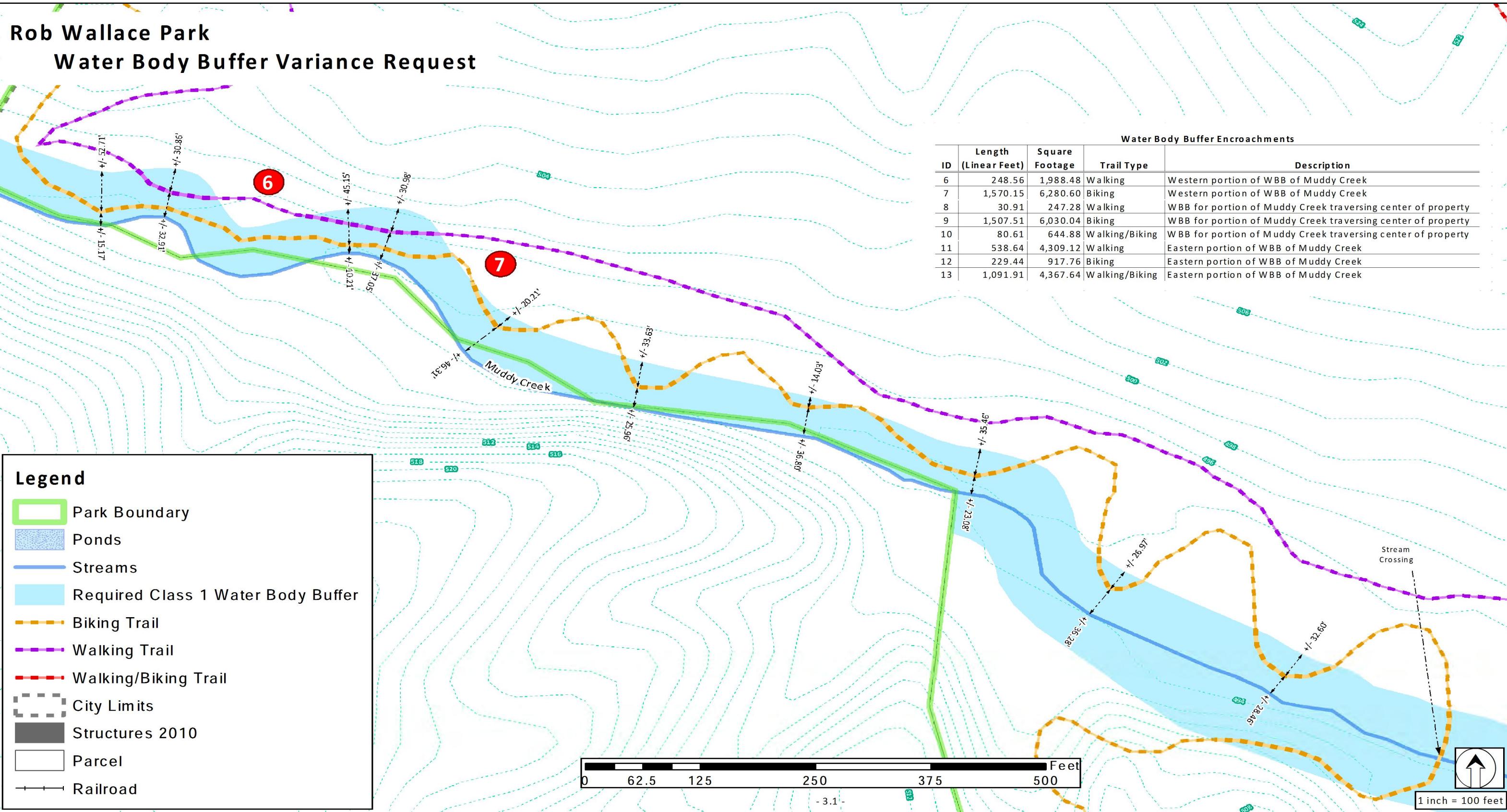
- Sheet 1 - Overall Site Plan
- Sheet 2.1 - Landscape Buffer Encroachments (Western Property Line)
- Sheet 2.2 - Landscape Buffer Encroachments (North Central Property line)
- Sheet 3.1 - Water Body Buffer Encroachments (Southern Property Line)
- Sheet 3.2 - Water Body Buffer Encroachments (Property Center)
- Sheet 3.3 - Water Body Buffer Encroachments (Eastern Property Line)
- Sheet 4.1 - Within 60' of Water Body Buffer (Southern Property Line)
- Sheet 4.2 - Within 60' of Water Body Buffer (Property Center)
- Sheet 4.3 - Within 60' of Water Body Buffer (Eastern Property Line)
- Sheet 5 - Aerial Photo

Total Encroachments				
ID	Length (Linear Feet)	Square Footage	Trail Type	Buffer
1	63.03	504.24	Walking	Landscape buffer
2	1,245.60	4,982.40	Biking	Landscape buffer
3	73.87	590.96	Walking	Landscape buffer
4	515.49	2,061.96	Biking	Landscape buffer
5	762.52	6,100.16	Walking /Biking	Landscape buffer
6	248.56	1,988.48	Walking	Waterbody Buffer
7	1,570.15	6,280.60	Biking	Waterbody Buffer
8	30.91	247.28	Walking	Waterbody Buffer
9	1,507.51	6,030.04	Biking	Waterbody Buffer
10	80.61	644.88	Walking/Biking	Waterbody Buffer
11	538.64	4,309.12	Walking	Waterbody Buffer
12	229.44	917.76	Biking	Waterbody Buffer
13	1,091.91	4,367.64	Walking/Biking	Waterbody Buffer
14	259.60	2,076.80	Walking	60' from Muddy Creek
15	1,488.42	5,953.68	Biking	60' from Muddy Creek
16	162.32	1,298.56	Walking	60' from Muddy Creek
17	1,554.04	6,216.16	Biking	60' from Muddy Creek
18	119.33	954.64	Walking/Biking	60' from Muddy Creek
19	453.06	3,624.48	Walking	60' from Muddy Creek
20	232.56	930.24	Biking	60' from Muddy Creek
21	1,018.04	8,144.32	Walking/Biking	60' from Muddy Creek

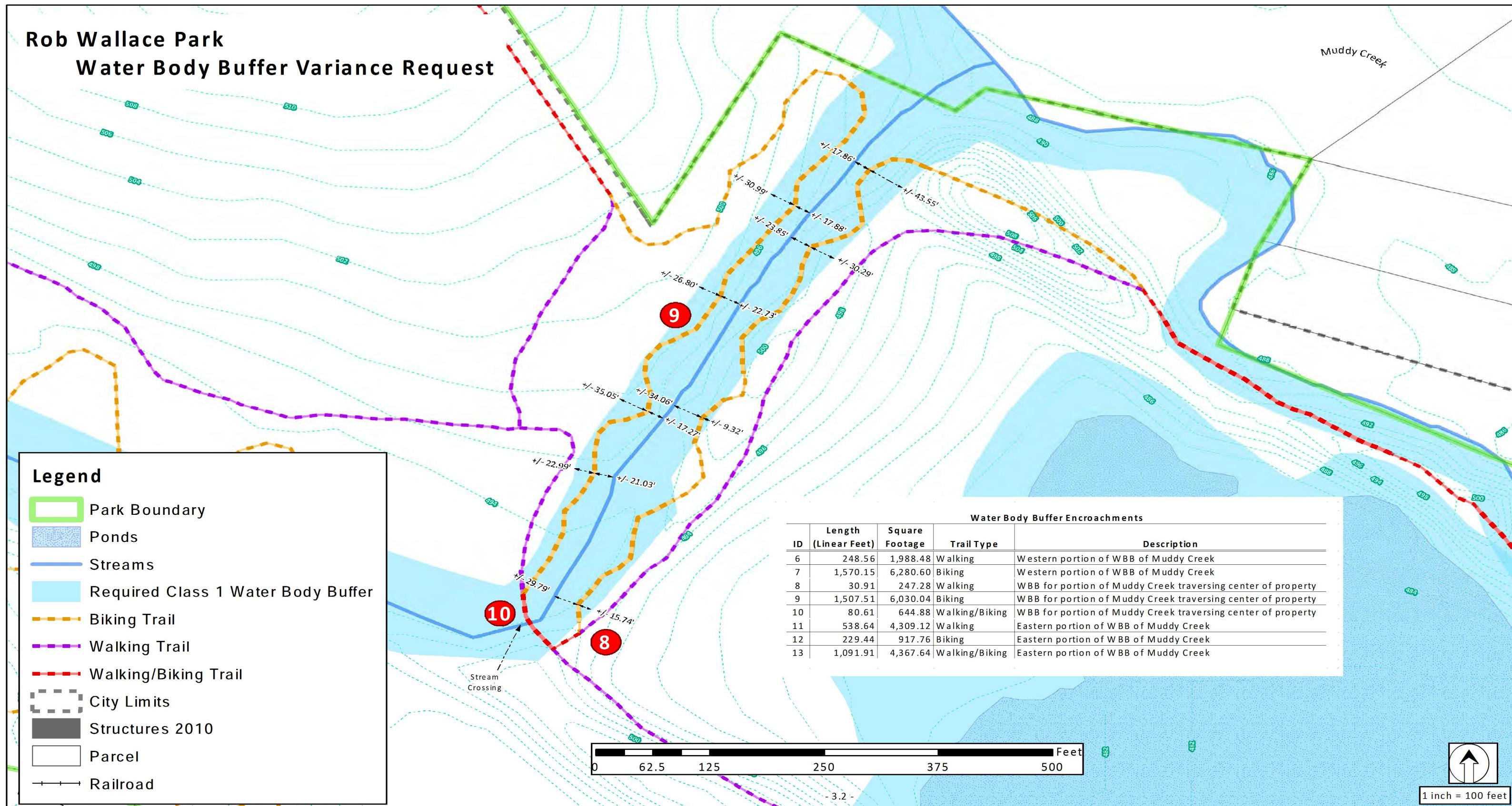


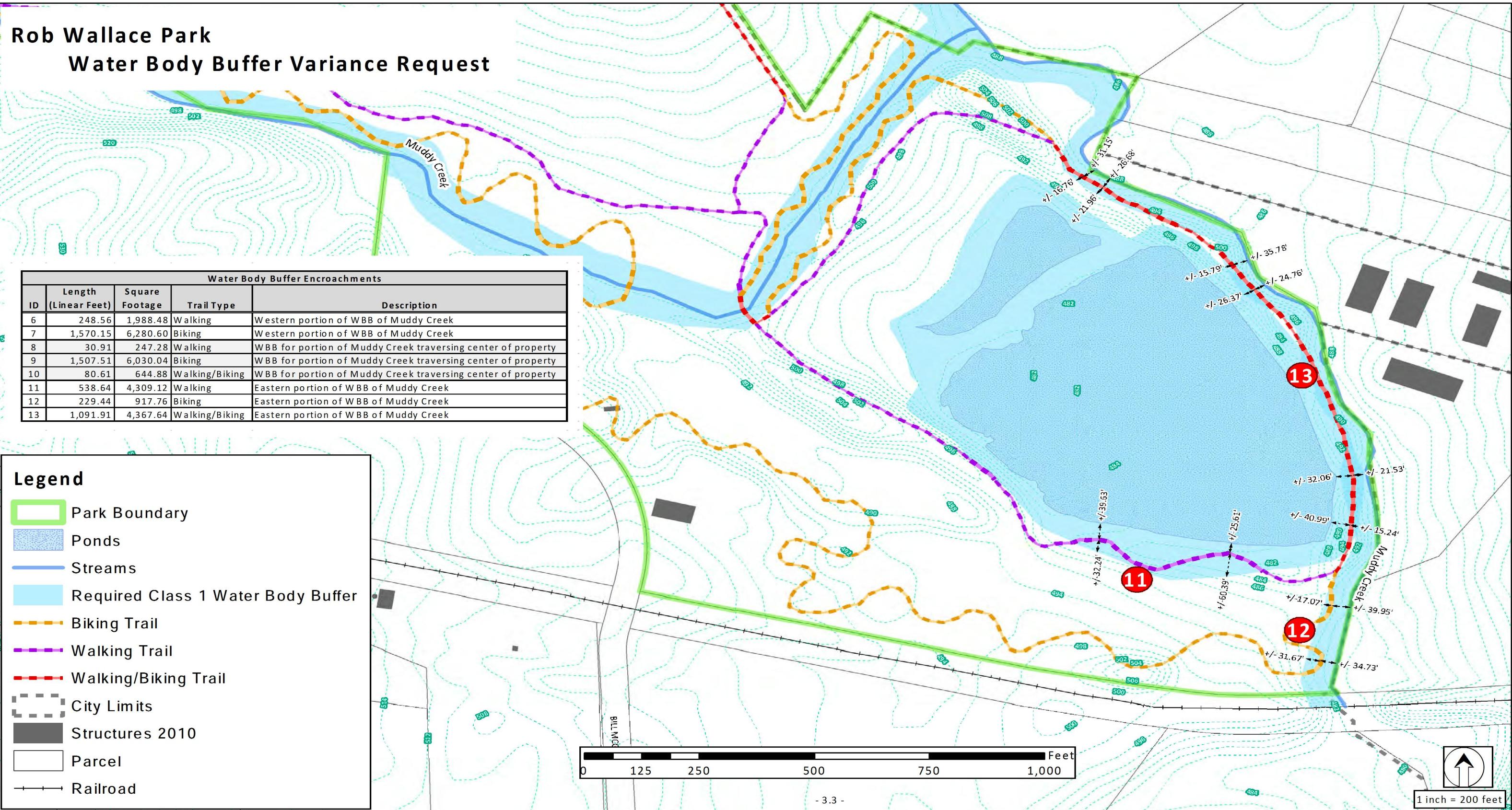




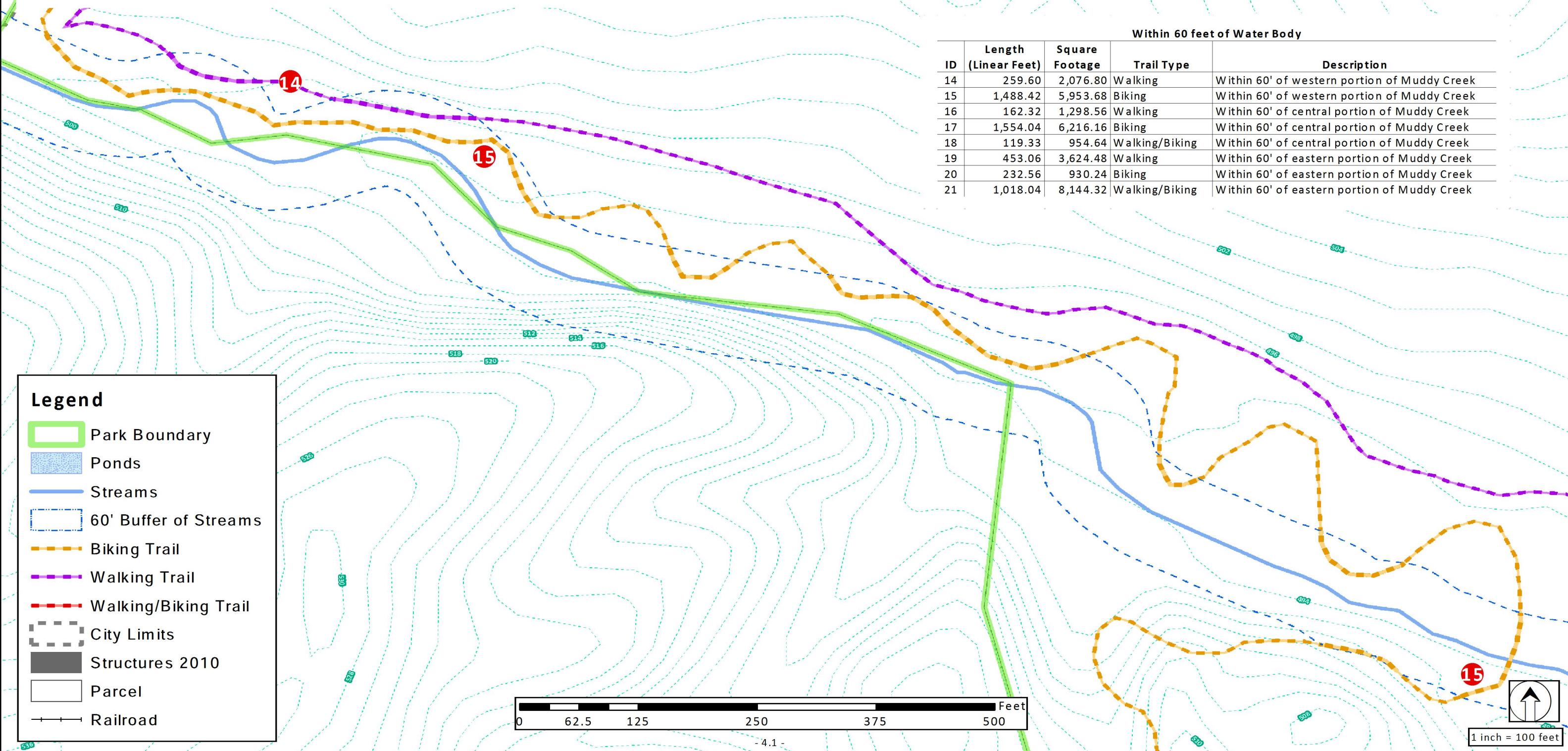


# Rob Wallace Park Water Body Buffer Variance Request





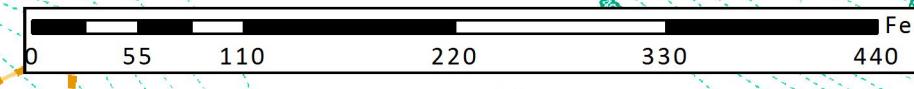
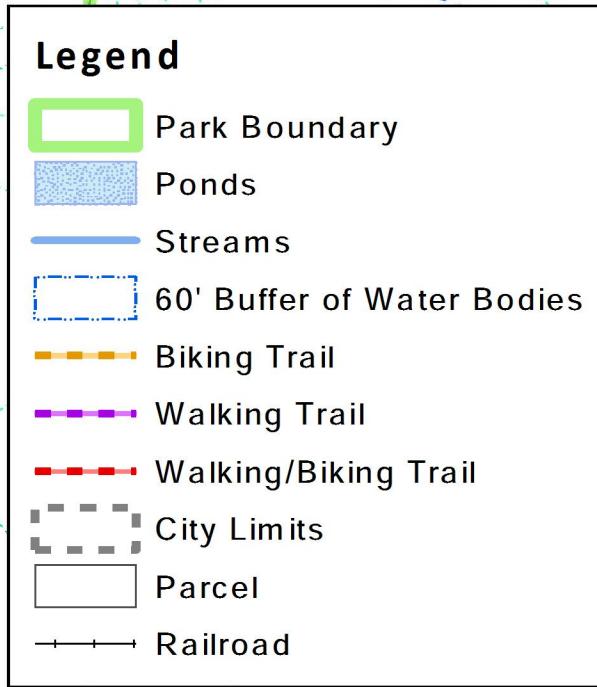
## Rob Wallace Park - Variance Request Trail Encroachments Within 60 feet of Water Bodies



# Rob Wallace Park - Variance Request

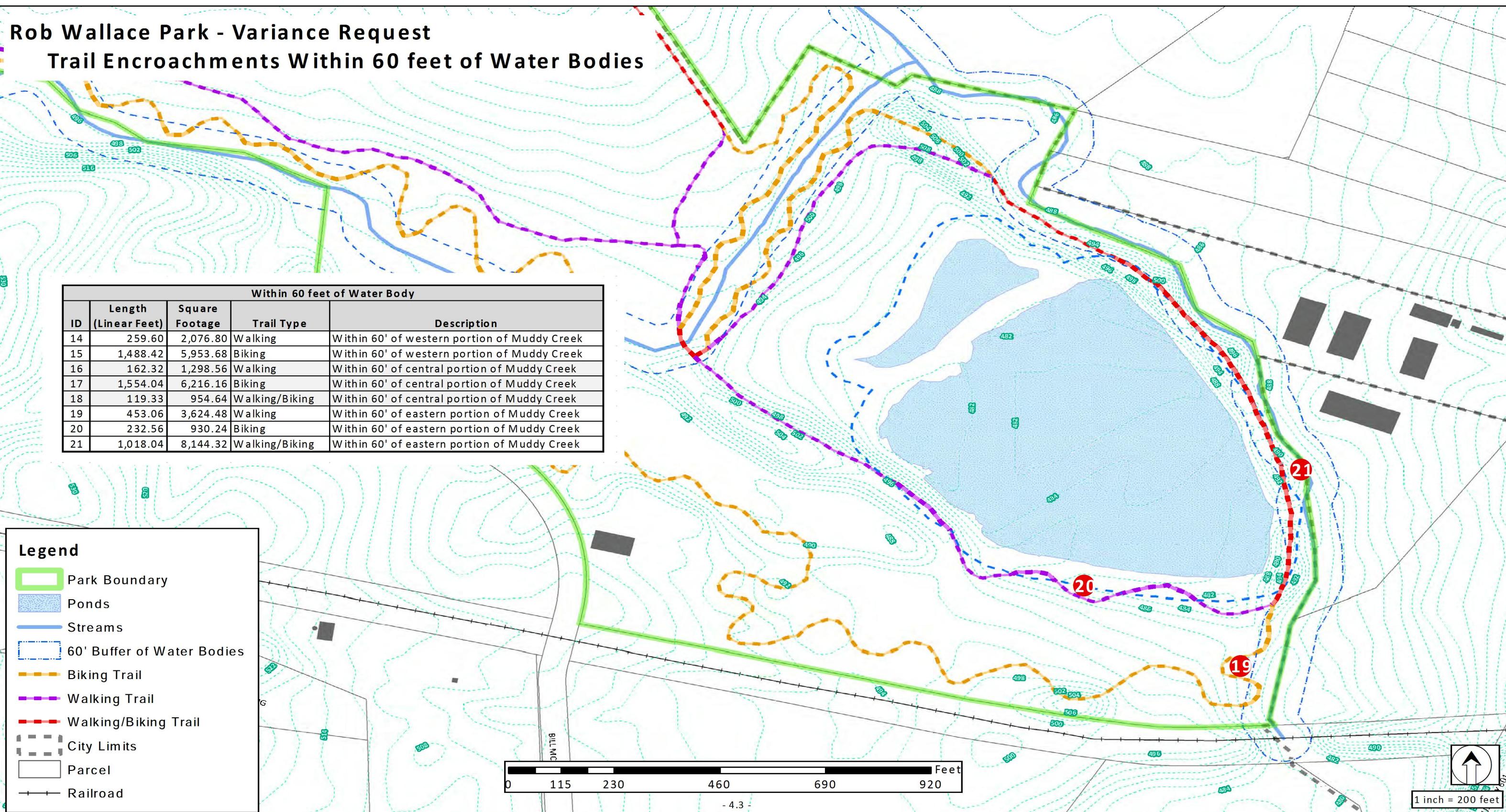
## Trail Encroachments Within 60 feet of Water Bodies

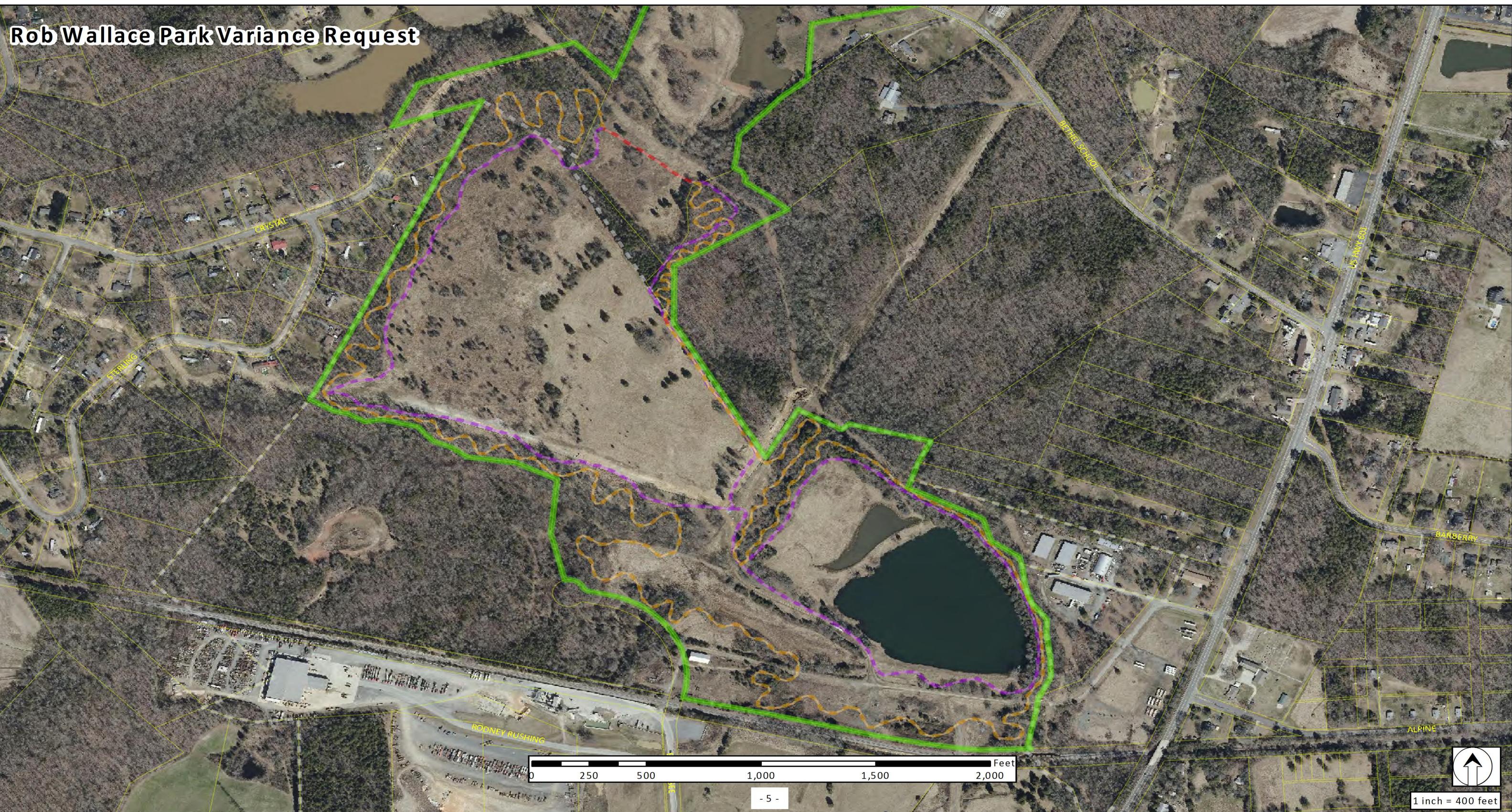
Within 60 feet of Water Body				
ID	Length (Linear Feet)	Square Footage	Trail Type	Description
14	259.60	2,076.80	Walking	Within 60' of western portion of Muddy Creek
15	1,488.42	5,953.68	Biking	Within 60' of western portion of Muddy Creek
16	162.32	1,298.56	Walking	Within 60' of central portion of Muddy Creek
17	1,554.04	6,216.16	Biking	Within 60' of central portion of Muddy Creek
18	119.33	954.64	Walking/Biking	Within 60' of central portion of Muddy Creek
19	453.06	3,624.48	Walking	Within 60' of eastern portion of Muddy Creek
20	232.56	930.24	Biking	Within 60' of eastern portion of Muddy Creek
21	1,018.04	8,144.32	Walking/Biking	Within 60' of eastern portion of Muddy Creek



- 4.2 -





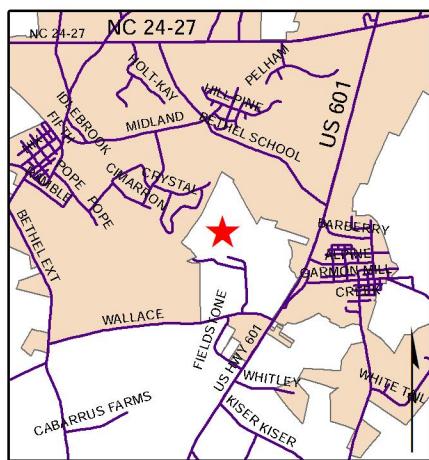


## Aerial Map

Exhibit D

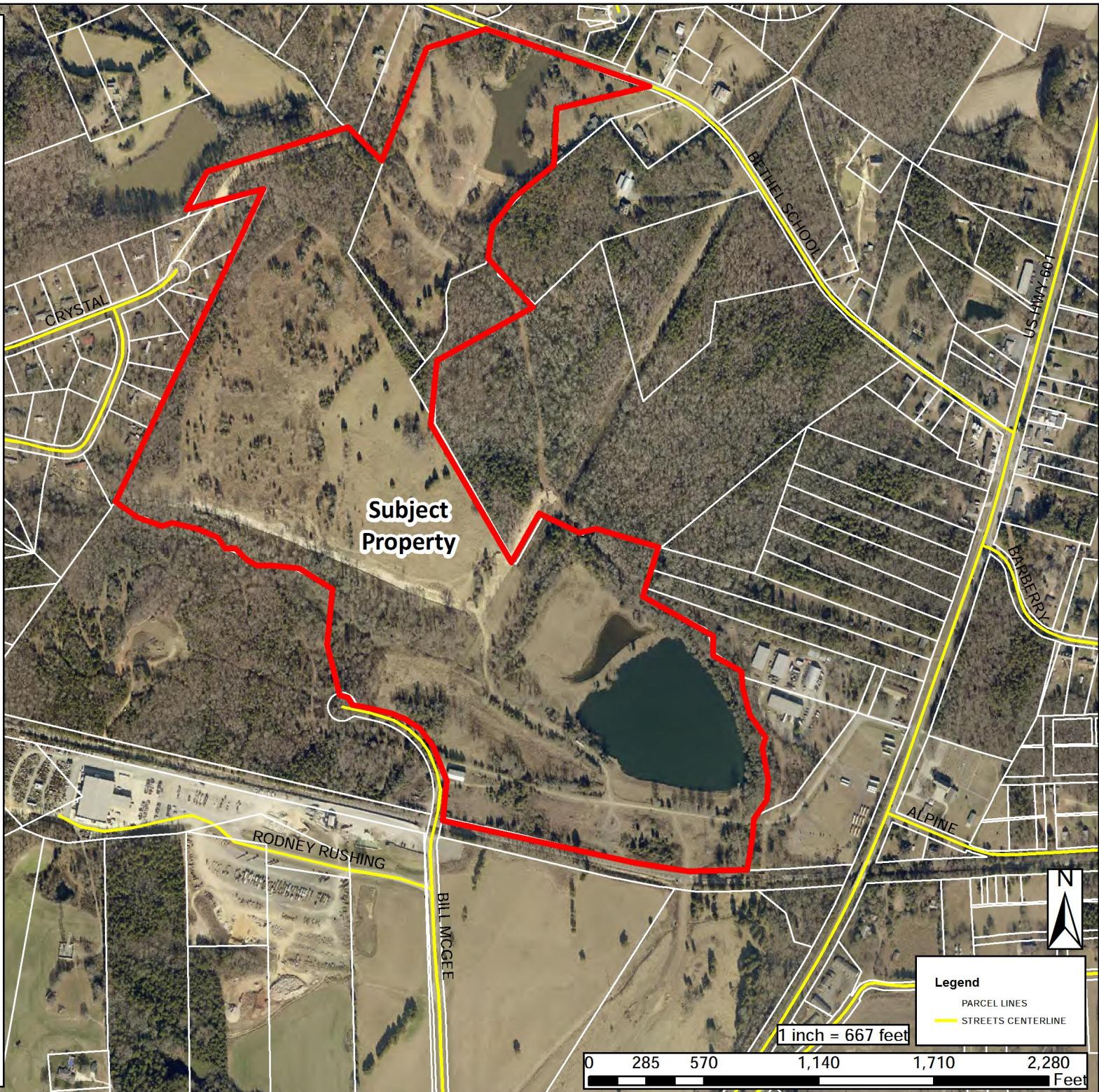


Applicant: Jonathan Marshall  
Owner: Cabarrus County  
Case: VARN2016-00003  
Address: 13800 Bill McGee Road  
Purpose: Requesting a Variance from  
the Waterbody and Landscaping Buffers  
PIN: 5544-72-3955



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  
August 19, 2016

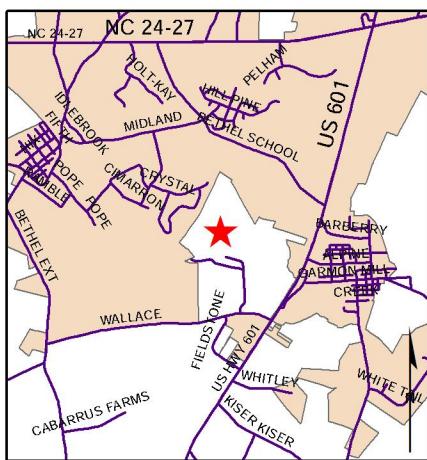


# Zoning Map

Exhibit E

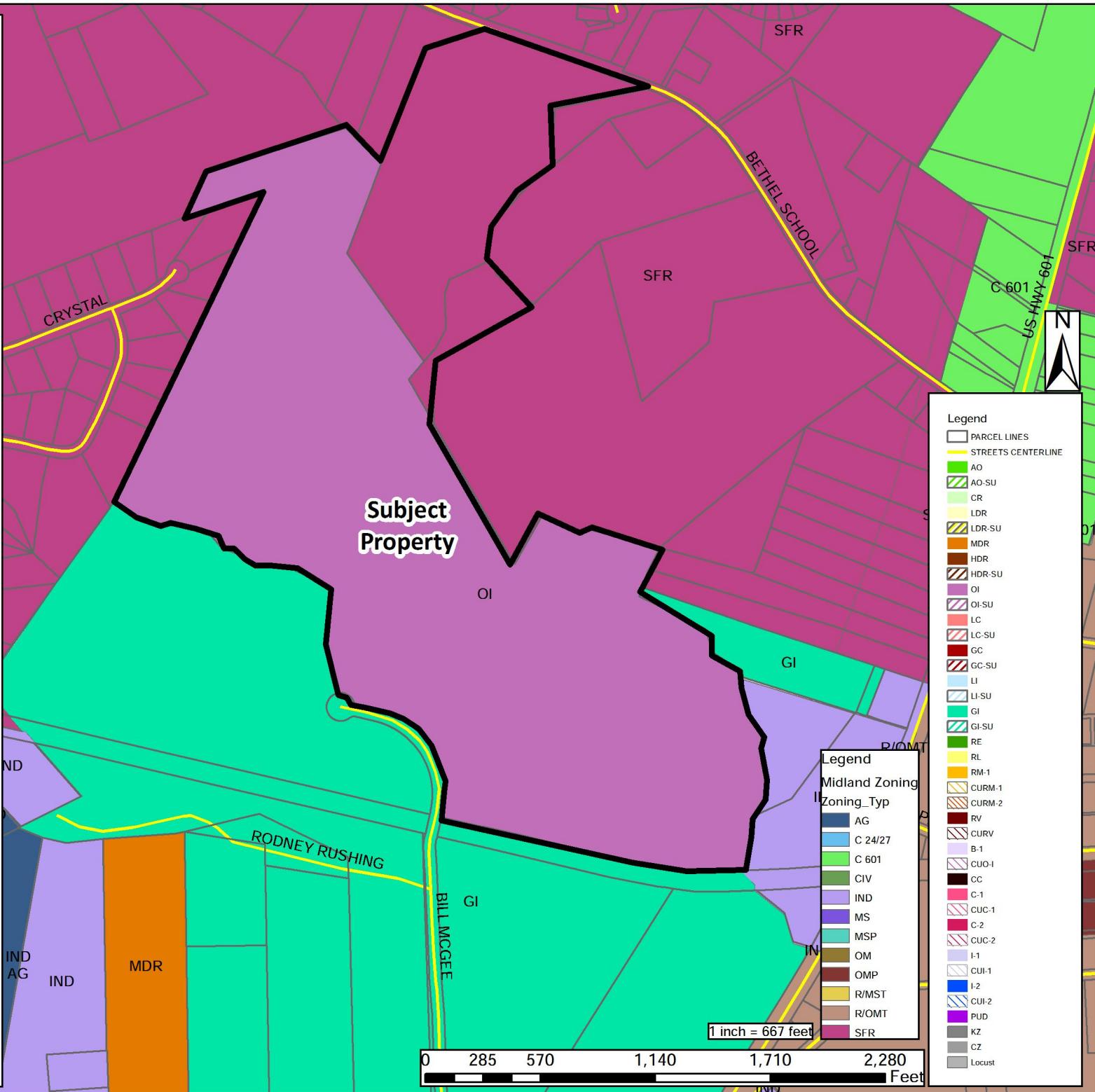


Applicant: Jonathan Marshall  
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Map Prepared by Cabarrus County Planning & Development  
 August 19, 2016

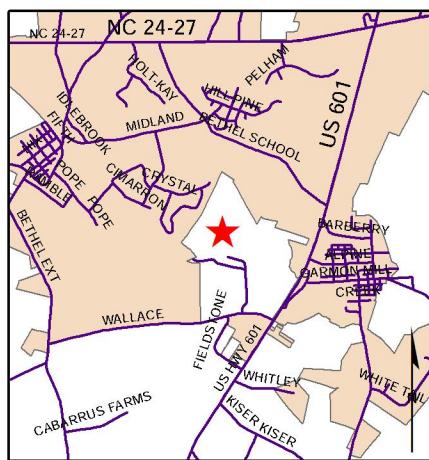


# Future Land Use Map

Exhibit F

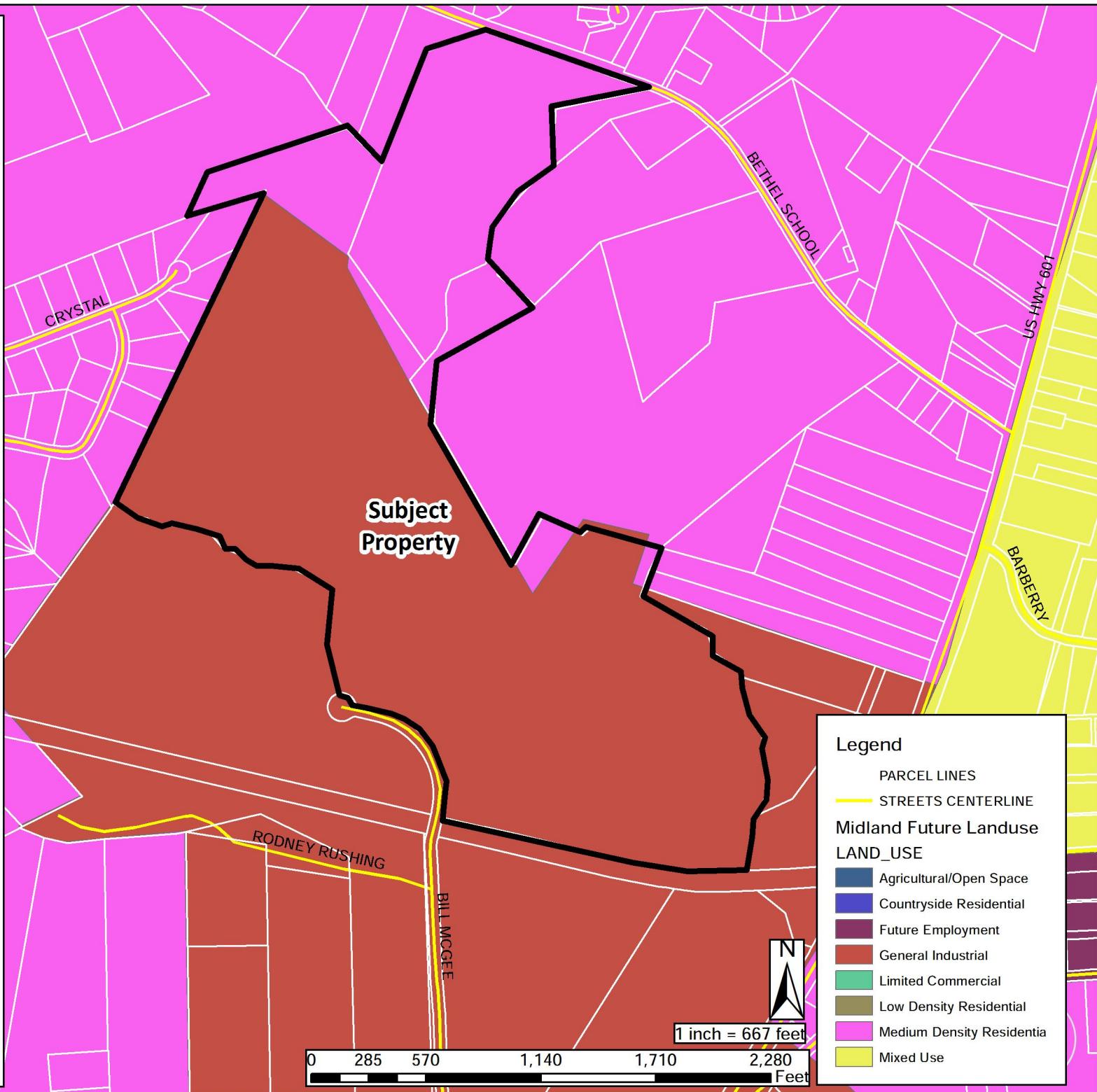


Applicant: Jonathan Marshall  
Owner: Cabarrus County  
Case: VARN2016-00003  
Address: 13800 Bill McGee Road  
Purpose: Requesting a Variance from  
the Waterbody and Landscaping Buffers  
PIN: 5544-72-3955



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  
August 19, 2016



## Legend

PARCEL LINES  
STREETS CENTERLINE

### Midland Future Landuse LAND\_USE

- Agricultural/Open Space
- Countryside Residential
- Future Employment
- General Industrial
- Limited Commercial
- Low Density Residential
- Medium Density Residential
- Mixed Use

**Cabarrus County Government – Planning and Development Department**

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August 24, 2016

Dear Property Owner:

A Variance Application has been filed in our office for property **adjacent** to yours. The property and specifics of the request are listed below. The Cabarrus County Board of Adjustment will consider this petition on Tuesday, September 13, 2016 at 7:00 PM in the 2<sup>nd</sup> floor Commissioner's Chambers of the Cabarrus County Governmental Center, located at 65 Church Street SE, Concord, NC 28026. A Public Hearing will be conducted and public input will be allowed during that time. If you have any comments about this variance request, I encourage you to attend this meeting.

• <b>Petitioner:</b>	<b>Cabarrus County</b>
• <b>Petition Number:</b>	<b>VARN2016-00003</b>
• <b>Property Location:</b>	<b>13800 Bill McGee Road</b>
• <b>Parcel ID Number:</b>	<b>5544-72-3955</b>
• <b>Existing Zoning:</b>	<b>Office / Institutional (OI)</b>
• <b>Variance Request:</b>	<b>Relief from the requirements of Chapter 4 Part II – Water Body Buffer and Chapter 9 – Landscape Buffers to allow a walking trail</b>

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

Sincerely,

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

Jason Earliwine  
Senior Planner  
Cabarrus County Planning and Development  
704.920.2149

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

ADJACENT PARCEL LIST						
Name	Address	City	State	Zip	PIN	
ANDERSON/GRIFFIN PROPERTIES	3322 OLD CAMDEN ROAD	MONROE	NC	28110	55449205880000	55449205880000
ASHE JOHN DAVID	13572 STERLING CIR	MIDLAND	NC	28107	55445375850000	
BROOKS WILLIAM ERSKINE JR	3995 GARMON MILL ROAD, P O BOX 372	MIDLAND	NC	28107	55449160170000	
BROOME GAIL W & ROBINSON WILLIAM G TRUST	2525 KNOLLWOOD RD	CHARLOTTE	NC	28211	55448336370000	
CABARRUS COUNTY	P O BOX 707	CONCORD	NC	28026	55448044240000	
CJMJ LLC A NC LLC, C/O CHARLES S JONES	PO BOX 23226	CHARLOTTE	NC	28227	55449200750000	
FLEENER DON ET UXOR & MARCIA	12800 BETHEL SCHOOL RD	MIDLAND	NC	28107	55447504030000	
FRANSSEN DAVID E	3201 CRYSTAL DRIVE	MIDLAND	NC	28107	55446425630000	
FURR ANNIE E	3200 CRYSTAL DR	MIDLAND	NC	28107	55446413910000	
INTERTAPE POLYMER CORP	100 PARAMOUNT DR STE 300	SRASOTA	FL	34232	55446213790000	
JONES CHARLES S & WIFE MARLENE P	P O BOX 23226	CHARLOTTE	NC	28227	55449147090000	
JOYNER WESLEY JAMES	12576 BARRIER STORE ROAD	LOCUST	NC	28097	55448521160000	
KEPLEY SAMMY J	13590 STERLING CIRCLE	MIDLAND	NC	28107	55445398010000	55445399660000
LYALL BRIAN P	13568 STERLING CIRCLE	MIDLAND	NC	28107	55445362070000	
MCGEE BROTHERS COMPANY INC	4608 CARRIKER ROAD	MONROE	NC	28110	55447067900000	55447111470000
MILEHAM JERRY L	P O BOX 245	MIDLAND	NC	28107	55449216690000	
MORRIS VICTOR ALAN	3112 CRYSTAL DR	MIDLAND	NC	28107	55446401960000	
ORTEGO ISMAEL VALDESPINO & MENDOZA YESENIA MORAN	3113 CRYSTAL DR	MIDLAND	NC	28107	55446404480000	
PEREZ LUIS REYNALDO SANCHEZ & MORALES NORMA V VILLANUEVA	13582 STERLING CIR	MIDLAND	NC	28107	55445386580000	
PIGG KATHRYN H	P O BOX 471	MIDLAND	NC	28107	55448416880000	
SADDLEBROOK HOMEOWNERS ASSOC	2649 BREKONRIDGE CENTRE DR	MONROE	NC	28110	55448524280000	55448576810000
SUTHER JOHN M & BONNIE M	140 PLANTATION POINTE LOOP 204	MOORESVILLE	NC	28117	55448371800000	
THOMPSON FLAVIA B	P O BOX 88	MIDLAND	NC	28107	55446542080000	
WALLACE R L CONSTRUCTION CO	PO BOX 259	MIDLAND	NC	28107	55448294270000	
WALLACE ROBERT L & DONNA F	9750 HERBERT FLOWE RD	CHARLOTTE	NC	28227	55447513480000	
WGH NORTH CAROLINA LLC, A DELAWARE LLC	200 BELLEVUE PKWY STE 210	WILMINGTON	DE	19809	55447556970000	
WRAY BILLY JOE	P O BOX 322	MIDLAND	NC	28107	55448534910000	55448534910000

Subject Property						
CABARRUS COUNTY	P O BOX 707	CONCORD	NC	28026	55447239550000	

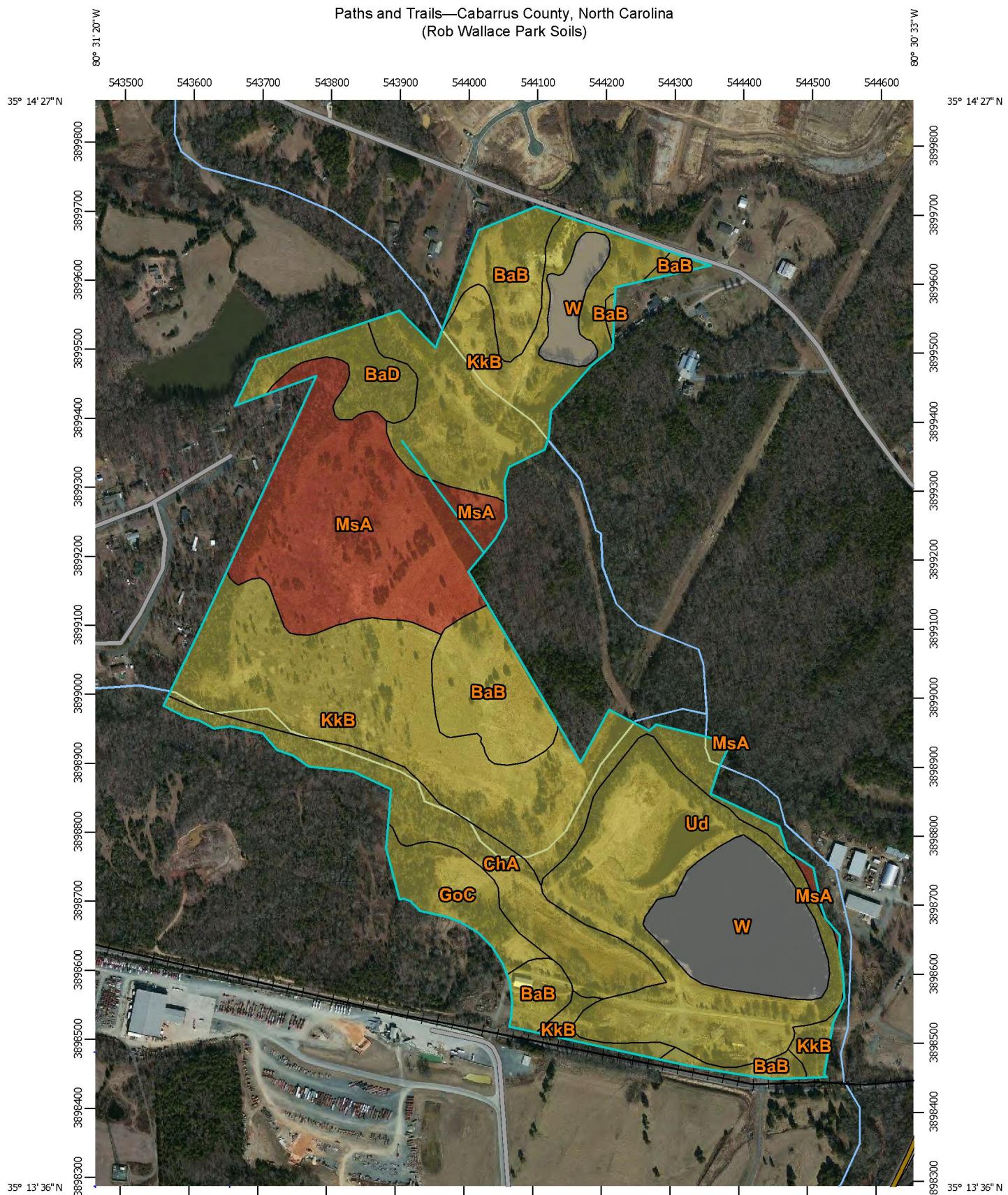
EXHIBIT H-1



EXHIBIT H-2



## Paths and Trails—Cabarrus County, North Carolina (Rob Wallace Park Soils)



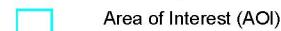
Map Scale: 1:7,680 if printed on A portrait (8.5" x 11") sheet.

A map showing the location of the 2008 transects. The map includes a scale bar from 0 to 600 meters, a north arrow, and a coordinate grid. The transects are labeled T1 through T10.

Map projection: Web Mercator. Corner coordinates: WGS84. Edge ticks: UTM Zone 17N WGS84.

## MAP LEGEND

### Area of Interest (AOI)



Area of Interest (AOI)

### Background



Aerial Photography

### Soils

#### Soil Rating Polygons

-  Very limited
-  Somewhat limited
-  Not limited
-  Not rated or not available

#### Soil Rating Lines

-  Very limited
-  Somewhat limited
-  Not limited
-  Not rated or not available

#### Soil Rating Points

-  Very limited
-  Somewhat limited
-  Not limited
-  Not rated or not available

### Water Features

-  Streams and Canals

### Transportation

-  Rails
-  Interstate Highways
-  US Routes
-  Major Roads
-  Local Roads

## MAP INFORMATION

The soil surveys that comprise your AOI were mapped at 1:24,000.

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service  
Web Soil Survey URL: <http://websoilsurvey.nrcs.usda.gov>  
Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Cabarrus County, North Carolina  
Survey Area Data: Version 14, Sep 9, 2014

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Feb 11, 2011—Feb 13, 2011

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.



## Paths and Trails

Paths and Trails— Summary by Map Unit — Cabarrus County, North Carolina (NC025)						
Map unit symbol	Map unit name	Rating	Component name (percent)	Rating reasons (numeric values)	Acres in AOI	Percent of AOI
BaB	Badin channery silt loam, 2 to 8 percent slopes	Somewhat limited	Badin (90%)	Dusty (0.12)	14.6	10.8%
				Large stones content (0.00)		
			Tatum (5%)	Dusty (0.12)		
			Goldston (5%)	Dusty (0.10)		
				Large stones content (0.00)		
BaD	Badin channery silt loam, 8 to 15 percent slopes	Somewhat limited	Badin (85%)	Dusty (0.12)	4.1	3.1%
ChA	Chewacla sandy loam, 0 to 2 percent slopes, frequently flooded	Somewhat limited	Chewacla, frequently flooded (85%)	Depth to saturated zone (0.86)	10.1	7.5%
				Flooding (0.40)		
				Dusty (0.12)		
			Riverview (3%)	Flooding (0.40)		
				Dusty (0.07)		
GoC	Goldston very channery silt loam, 4 to 15 percent slopes	Somewhat limited	Goldston (85%)	Dusty (0.10)	4.6	3.4%
KkB	Kirksey silt loam, 1 to 6 percent slopes	Somewhat limited	Kirksey (80%)	Dusty (0.12)	45.2	33.5%
MsA	Misenheimer channery silt loam, 0 to 4 percent slopes	Very limited	Misenheimer (80%)	Depth to saturated zone (1.00)	22.8	16.9%
				Dusty (0.11)		
Ud	Udorthents, loamy	Somewhat limited	Udorthents, loamy (85%)	Dusty (0.04)	20.4	15.2%
W	Water	Not rated	Water (100%)		12.9	9.6%
<b>Totals for Area of Interest</b>					<b>134.6</b>	<b>100.0%</b>

Paths and Trails— Summary by Rating Value		
Rating	Acres in AOI	Percent of AOI
Somewhat limited	99.0	73.5%
Very limited	22.8	16.9%



Paths and Trails— Summary by Rating Value		
Rating	Acres in AOI	Percent of AOI
Null or Not Rated	12.9	9.6%
<b>Totals for Area of Interest</b>	<b>134.6</b>	<b>100.0%</b>

## Description

Paths and trails for hiking and horseback riding should require little or no slope modification through cutting and filling.

The ratings are based on the soil properties that affect trafficability and erodibility. These properties are stoniness, depth to a water table, ponding, flooding, slope, and texture of the surface layer.

The ratings are both verbal and numerical. Rating class terms indicate the extent to which the soils are limited by all of the soil features that affect the specified use. "Not limited" indicates that the soil has features that are very favorable for the specified use. Good performance and very low maintenance can be expected. "Somewhat limited" indicates that the soil has features that are moderately favorable for the specified use. The limitations can be overcome or minimized by special planning, design, or installation. Fair performance and moderate maintenance can be expected. "Very limited" indicates that the soil has one or more features that are unfavorable for the specified use. The limitations generally cannot be overcome without major soil reclamation, special design, or expensive installation procedures. Poor performance and high maintenance can be expected.

Numerical ratings indicate the severity of individual limitations. The ratings are shown as decimal fractions ranging from 0.01 to 1.00. They indicate gradations between the point at which a soil feature has the greatest negative impact on the use (1.00) and the point at which the soil feature is not a limitation (0.00).

The map unit components listed for each map unit in the accompanying Summary by Map Unit table in Web Soil Survey or the Aggregation Report in Soil Data Viewer are determined by the aggregation method chosen. An aggregated rating class is shown for each map unit. The components listed for each map unit are only those that have the same rating class as listed for the map unit. The percent composition of each component in a particular map unit is presented to help the user better understand the percentage of each map unit that has the rating presented.

Other components with different ratings may be present in each map unit. The ratings for all components, regardless of the map unit aggregated rating, can be viewed by generating the equivalent report from the Soil Reports tab in Web Soil Survey or from the Soil Data Mart site. Onsite investigation may be needed to validate these interpretations and to confirm the identity of the soil on a given site.

## Rating Options

*Aggregation Method: Dominant Condition*

*Component Percent Cutoff: None Specified*

*Tie-break Rule:* Higher

# Memo

**To:** Cabarrus County Planning and Zoning Commission  
**From:** Susie Morris, AICP, CZO, Planning and Zoning Manager  
**CC:** File  
**Date:** 9/7/2016  
**Re:** Proposed Text Amendment to Zoning Ordinance (TEXT2016-00008)

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- Attached you will find proposed changes to Chapter 9, Landscape and Buffering.
- The proposed changes clarify the requirements and make the tables easier for the general public to understand. It also reduces the number of required plantings.
- Proposed additions are in red. Deletions are in strikethrough text.
- These changes have been reviewed by the Text Amendment Committee.
- Please be prepared to discuss the proposed changes to the ordinance and to make a recommendation to the Board of Commissioners regarding the proposed changes.

## Section 9-1 Purpose

Cabarrus County is a developing and **constantly** changing area. As a result, much of ~~its~~ **the** ~~existing~~ natural landscape could be ~~rearranged if not destroyed~~ in the development process. Landscaping requirements ~~can help provide~~ balance against this loss. ~~In addition to consciously replacing landscape altered during the development process, there are other reasons for the use of landscaping and buffers:~~

Screening between incompatible adjacent land uses

Zoning ~~regulations were~~ ~~was once built~~ **based** on a strict separation of land uses. Today, that is no longer the case. Greater freedom in the use of property and privacy for the landowners ~~can be had~~ **is accomplished by** ~~through~~ **adding a buffering** between land uses ~~that includes~~ **with** vegetation, land forms or distance. ~~Much of the flexibility introduced into this Ordinance with the "PBS" (see Chapter Seven) is tied to the concept of using buffers between land uses that might otherwise be incompatible.~~

Erosion control and water pollution

Trees and plants reduce erosion by binding soil particles with their roots and holding the soils together against the effects of wind and water. When development occurs and impervious surfaces are created, ~~for example asphalt or concrete~~, the flow of water across exposed soils can greatly increase, causing ~~serious~~ water pollution ~~problems~~. **The installation of** vegetation can slow ~~the~~ runoff by acting as a sponge, ~~gradually releasing snow or rain~~, **resulting in less water pollution and stream bed damage**. This results in an improvement of water quality and ~~reduces the need for engineered drainage solutions~~.

Modification of the climate in the immediate vicinity

Landscaping ~~as well as other forms of landform such as berms~~ **can help** improve air quality and moderate ~~daily~~ temperatures ~~s~~ by absorbing pollution, ~~by~~ providing shade and ~~by~~ offering protection from the wind. In addition, trees, grass, leaves, shrubs, even twigs and branches, can absorb and disperse sound energy, reducing overall noise levels.

Aesthetics

~~Often~~ without the softening effect of trees and shrubs, the ~~modern day~~ built environment appears harsh and uninviting.

Cumulatively, the purpose of these requirements is to provide standards that will protect the health, safety and general welfare of the public, ~~and to~~ enhance property values, improve the appearance of the community, and preserve natural resources, **such as** trees and native plants.

*Cabarrus County Zoning Ordinance*  
*Chapter Nine Landscape and Buffering*

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Section 9-2 How to use this Chapter

~~This Chapter has five basic parts:~~

CHAPTER NINE LANDSCAPE <del>ING</del> AND BUFFER REQUIREMENTS:
<del>PART I. APPLICABILITY OF LANDSCAPE<del>ING</del>/BUFFER YARD STANDARDS AND TERMS</del> Explains applicability of standards, sets forth an exceptions and alternate forms of compliance process and defines terms.
<del>PART II. PERIMETER LANDSCAPE BUFFER YARD AREAS: COMPOSITION AND WHEN REQUIRED</del> The composition of each buffer is explained and information on buffering between land uses and/or zones that share common property lines is presented.
<del>PART III. LANDSCAPE<del>ING</del> REQUIREMENTS FOR PARKING AREAS AND STREET YARDS</del> NONRESIDENTIAL USES This part explains parking lot requirements (both interior and perimeter) and general site landscaping requirements.
<del>PART IV. LANDSCAPE PLANS</del> Explains the elements of a landscape plan and the alternatives when landscaping is not immediately practical.
<del>PART V. APPROVED PLANT LIST, FENCING STANDARDS</del>

PART I APPLICABILITY OF LANDSCAPE BUFFER STANDARDS AND TERMS

Section 9-3 Application

Landscaping requirements shall apply to ~~all~~ developing uses and are a condition of development permit approval. ~~Typical landscape buffer area types include:~~

- Perimeter planting yard areas (landscape buffers that separates differing uses)
- Parking perimeter planting yard areas (landscape buffers around paved parking area)
- Interior parking planting area (landscape located interior/throughout the parking area)
- Street yard planting area (landscape buffer located adjacent to street right of ways)

• ~~A buffer requirement may also apply to a developing project if:~~

1. ~~it shares a common boundary line with a different zoning district or significantly different use, or,~~
2. ~~it is required to buffer because it is a PBS (Performance Based Standards) use. See Chapter Seven.~~

~~In the event both buffer and landscaping requirements apply in the same physical location, the buffer requirement is the one requiring compliance.~~

Section 9-4 Exceptions and alternative methods of compliance

~~Ongoing development projects~~

~~Development granted a building permit prior to the date of the adoption of this Ordinance is exempt from the requirements of this Chapter.~~

Where physical features preclude strict compliance

It is recognized that, on occasion, complete compliance with the terms of this Chapter may not be ~~impractical~~. Accordingly, a developer may request approval ~~for of~~ an alternative landscape ~~scheme~~ ~~plan~~ when any one or combination of the ~~conditions~~ below listed conditions exist:

- The site involves space limitations or unusually shaped parcels;
- Topography, soil, vegetation, or other site conditions are such that full compliance is impossible or impractical;
- Natural vegetation on the site, if undisturbed during the development process, can meet or exceed the vegetation which is required; and/or,
- Safety considerations are involved.

In order to ~~have seek a landscape requirements plan modification~~ due to one or a combination more of the above ~~site conditions~~, the applicant ~~should must~~ submit a justification to the office of the Zoning Administrator. As part of ~~Within~~ the justification, the applicant must describe:

1. ~~which of the landscape requirements that~~ will be met with the modifications
2. ~~the landscape requirements that will not be met with the modifications~~
3. ~~which of the conditions set forth above justify using consideration of the proposed alternative plan~~
4. ~~how the proposed alternative plan meets or exceeds what is required by the Ordinance and how it meets the intent of the Ordinance~~

~~Approval of deviation modification~~

Deviations from the requirements of this Chapter ~~as stated above~~ may be approved or disapproved by the Zoning Administrator ~~as long as the deviation does not exceed 30 20 percent of the written requirement~~. A variation greater than ~~30 20~~ percent of any ~~landscaping/buffer regulation must be heard by the Planning & Zoning Commission acting as a Board of Adjustment~~. Deviations granted within the scope of the authority of the Zoning Administrator shall be so noted on the zoning compliance permit along with the reasons for allowing or requiring the deviation. If the proposed deviation or variance from the landscape requirements does not fall into one or more of the categories listed above, the applicant must seek a landscape plan variance from the Board of Adjustment.

Section 9-5 Landscape and Buffering Terms

There are several important key landscape definitions to understand:

*Cabarrus County Zoning Ordinance*  
*Chapter Nine Landscape and Buffering*

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Berm-An earthen mound designed to provide visual interest, screen undesirable views and/or decrease noise.

Buffer or yard -~~Thought of as~~ A buffer or buffer yard is a "transitional space", a buffer can which consists of horizontal space (land) and vertical elements (plants, berms, fences or walls). Its purpose is to physically separate and visually screen adjacent land uses ~~that are not fully compatible~~.

Caliper- A measurement of the diameter of a tree trunk. Caliper measurements are taken six inches above ground for up to four-inch caliper trees. Measurements are taken twelve inches above ground for larger trees.

Deciduous-Plants, ~~shrubs and~~ trees which lose their leaves in the fall.

Developing use-~~This is the use being considered for development. The use may be straight permitted, PBS (permitted based on standards), or conditional. It is typically this use which will require the filing of a site plan (a plan for development) and it is usually this developer who will be responsible for buffering his or her use from an existing adjacent use.~~

Evergreen-Plants, ~~shrubs and~~ trees which retain foliage throughout the year.

Existing adjacent use-~~This is the use of land already in place prior to the development of an adjacent land use.~~

Landscape Planting yard strip or area or buffer yard area-A ground surface free of concrete, asphalt, stone, gravel, brick or other paving materials which is required or used for landscaping purposes.

Shrub-A woody plant, smaller than a tree, consisting of several small stems from the ground or small branches near the ground. May be deciduous or evergreen.

Sight Triangle-The area of visibility required ~~on at-a~~ the corner(s) of intersecting streets to allow for the safety operation of vehicles, trains, pedestrians, and cyclists in the proximity of intersecting streets, rail lines, sidewalks, and bicycle paths.

Tree- Canopy, shade or large maturing tree- Any tree the height of which exceeds 35' at maturity.

Tree- Understory or small maturing tree- Any tree the height of which is less than 35' at maturity.

## PART II. PERIMETER LANDSCAPE BUFFER YARDS COMPOSITION AND WHEN REQUIRED.

### Section 9-6 Purpose

Certain land uses, because of their character and intensity, may create an adverse impact on less intensive and varied adjacent land uses. Accordingly, the following regulations are established to protect and preserve the appearance, character and value of property throughout the County.

~~Table Four (at the end of this Chapter) establishes three levels of landscape buffering yards and describes how each should be constructed. The table explains basic features of the buffer, for example: how wide the buffer must be, the number of trees and/or shrubs per 100 feet, etc.~~

~~The following sections are general regulations governing the establishment of buffers. Again, the table which describes each is found at the end of this Chapter.~~

#### 9-6.1 PERIMETER LANDSCAPE BUFFER YARD

When ~~perimeter landscape buffer yards~~ are required

##### A. New uses

~~Perimeter landscape buffer yards are typically required when certain land uses develop and share a common property line with either a significantly different types of uses in the same zoning district or, in some cases, a between properties with differing zoning districts. Buffer requirements are set forth in Table Five at the end of this Chapter.~~

~~Table Four (at the end of this Chapter) establishes three levels of perimeter landscape buffering yards and describes how each should be constructed. The table explains basic features of the buffer, for example: how wide the buffer must be, the number of trees and/or shrubs per 100 feet, etc.~~

##### B. Expansion of less than 10 percent of existing use or structure or parking facility

~~An expansion of an existing use or structure falling into any of the categories listed below~~

~~The expansion of an existing use can have an adverse impact on adjoining properties. When an expansion is less than 5 10 percent of the existing building floor area or existing parking area, or 1,000 square feet, whichever is less, upgrades to landscape buffers are not required. Additionally, the entirety of the existing use need not be buffered. are required instead as follows:~~

##### C. Expansion of more than 10 percent to existing structure or parking facility

If an expansion of an existing structure or parking areas is more than 10 percent of the existing building floor area or existing parking area. Only the area undergoing expansion must comply with the landscape buffer yard planting area requirements. The buffer should encompass the area along the side and/or rear lot line where construction activity occurs, 90 degrees from the beginning and ending points of construction. When If existing parking or accessory buildings bar prevent the development of a full the newly required buffer areas, the parking or structure they need not be removed to facilitate full compliance. The required landscape may be placed elsewhere on the site.

D. ~~Addition of New buildings or parking areas added to a developed a lot site~~

Any new building or parking lot(s) area(s) added to an already developed lot site are required to meet the landscape buffering yard requirements; the prior development is not.

~~When a use is "PBS" (Permitted Based on Standards). Please see Chapter Seven.~~

#### 9-6.2 Responsibility for developing

The developing land use is completely responsible for the creation of the landscape buffer yard ~~with the following modification~~.

#### 9.6-3 Exceptions and modifications to perimeter buffer yards:

- a. ~~Landscape Buffer Yard Area Easement~~: When an abutting parcel contains a natural vegetative strip comparable to the required landscape buffer yard and a landscape buffer easement ~~for the required buffer area~~ is provided ~~for area~~ on the adjacent parcel, this area may count toward the requirement of the landscape buffer yard.
- b. ~~When a required landscape buffer abuts a public alley, up to one half of the alley width can be used to satisfy the buffer width requirement of these regulations.~~
- c. ~~The width of a required buffer may be reduced by 25 percent if a wall, fence, or berm is provided that meets the following standards:~~

~~•The fence or wall is constructed in a durable fashion of brick, stone, other masonry materials or wood posts and planks or any combination of the aforesaid materials. No more than 25 percent of a fence surface may be left open, open work being distributed equally over the entirety of the fence, and the finished side of the fence faces the abutting property. Please see Part V for fencing standards.~~

- Walls and fences must be a minimum height of 6 feet.
- Berms must be a minimum height of 4 feet with a maximum slope of 3:1 and those exceeding 6 feet in height must have a maximum slope of 4:1. Additionally, they must be stabilized to prevent erosion and landscaped.
- Shrubs may be waived if a fence or wall is built. If a berm is constructed, shrubs are still required but may be reduced by 25%.

d. **Serves no purpose:** buffer requirements may be waived when their requirement would result in buffering between fundamentally compatible land uses for example, when a use has been allowed "permitted by standards" and landscape requirements are included in those standards. Accordingly, the Zoning Administrator is authorized to waive the required landscape buffers yards levels if, and only if, their requirement installation of the landscape buffer would serve no purpose. The waiver must be written and dated on the face of the zoning compliance permit of the developing use. It shall be the responsibility of the applicant to demonstrate that the required landscape buffers would serve no purpose. Any deviations from the required landscape buffer yard requirements will be noted during the site plan review process and maintained as a part of the record for the permanent project file.

#### 9-6.4 General standards for trees and shrubs placed in the required landscape buffer yard areas

- All shrubs and trees for to be planted ~~in~~ within the landscape buffer yards must be on the approved plant list found in Part V. Comparable substitutes may be approved by the Zoning Administrator.
- All specifications for the measurement, quality and installation of trees and shrubs must be in accordance with the American Standards for Nursery Stock published by the American Association of Nurserymen and free of disease.

#### 9-6.5 Specific requirements for **plantings** in the perimeter landscape buffer yard areas are as follows:

- a. **Trees**  
At least forty percent of required trees within a the landscape buffer yard area must be large maturing trees with a minimum caliper of 2 1/2" measured 6" above ground at the time of planting; small maturing trees must have a minimum caliper of 1 1/2" measured 6". Twenty-five percent of the trees in the landscape buffer area must be evergreen.
- b. **Shrubs**

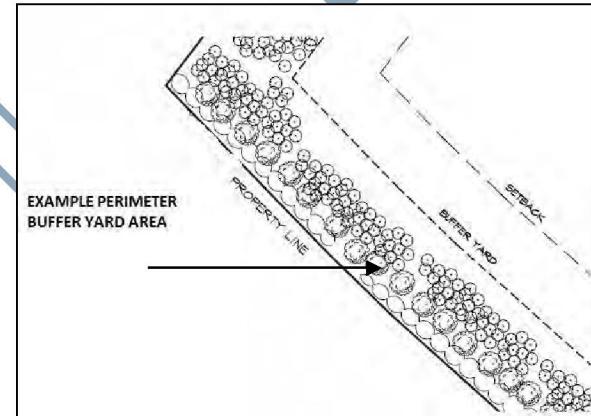
Seventy five percent of the required shrubs must be evergreen and at least 2 1/2 feet tall when planted, with an average height of 5 to 6 feet ~~expected as~~ from normal growth over a four year period.

The remaining twenty-five percent of the required shrubs may ~~vary from the above as follows:~~ be deciduous provided that the shrubs are

- ~~may be~~ two feet tall when planted ~~provided and will grow~~ three to four feet ~~growth is anticipated~~ over a four year period
- if planted on a berm may be of a lesser height provided that combined height of the berm and plantings is at least 6 feet after four years.

A minimum of two ~~different~~ types of trees and ~~two types of~~ shrubs must be used to minimize the effects of disease and/or blight

All trees and shrubs are to be planted in both a visually pleasing fashion and in such a way as to facilitate the creation of a visual screen. Generally, plantings should be spaced ~~equidistant~~ throughout the buffer, ~~allowing appropriate room for growth, with the final design approval~~ ~~approved as part of the overall site plan and landscape plan approval process.~~



### Part III LANDSCAPING REQUIREMENTS FOR ~~NONRESIDENTIAL USES~~ PARKING AREAS AND STREET YARD

#### Section 9-7 Parking lot area ~~landscape buffer~~ requirements

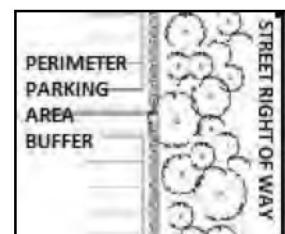
##### APPLICABILITY:

All parking areas in excess of five spaces ~~are subject to the following standards: for all uses except parking areas for single family or two family dwellings.~~

##### ~~TYPES OF LANDSCAPING REQUIRED:~~

~~Two types are required within each parking area as follows:~~

###### A. Perimeter ~~parking area~~ landscaping



*Cabarrus County Zoning Ordinance  
Chapter Nine Landscape and Buffering*

Parking area perimeters which are adjacent either to public rights-of-way or residentially used property must install **a landscape buffer yard area around the perimeters of the parking area with a minimum of eight feet 8'-wide strips of landscaping.**

Both trees and shrubs are required **in the perimeter parking lot yard via the following formula as follows:**

1. Trees

Required at the rate of one canopy or shade tree or **two understory trees for every twenty liner feet of the required planting yard** ~~two hundred square feet of required planting area or one understory tree for every one hundred fifty square feet.~~

2. Shrubs

Shrubs are required in addition to trees and at a rate of **one three shrubs per for every fifty square feet of planting area.** ~~10 linear feet of planting yard.~~

B. **Parking Area Interior Landscape**

Landscaping within the interior of parking areas is important for aesthetics and also functional in that landscaping **helps to** moderates heat, glare, wind and other climatic effects produced by paved areas. **Accordingly,**

Interior parking areas space **is are** to be landscaped as follows:

Trees

Required at a rate of one per sixteen parking spaces. At least forty percent of required trees **must be large maturing trees canopy or shade trees** with a minimum caliper of 2 1/2" measured 6" above ground at the time of planting; **small maturing trees understory trees** must have a minimum caliper of 1 1/2" measured 6". Twenty-five percent of the trees located throughout the parking area ~~lot~~ must be evergreen.

b) Shrubs. Required at a rate of three per sixteen spaces. Must be evergreen and at least 2 1/2 feet tall when planted with an average height of 5 to 6 feet expected as normal growth over a four year period. Twenty five percent of shrubs may vary from the above as follows:

- ~~may be deciduous, or,~~
- ~~may be two feet tall when planted provided three to four feet growth is anticipated over a three year period.~~

Section 9-8 Placement of landscaping throughout the parking area

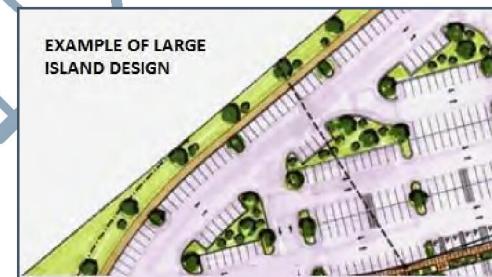
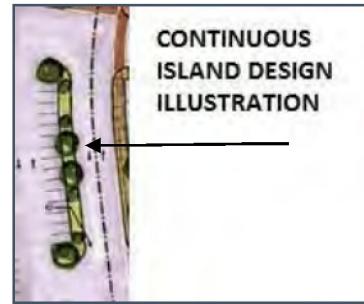
*Cabarrus County Zoning Ordinance*  
*Chapter Nine Landscape and Buffering*

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Trees and shrubs must be placed throughout the parking area to decrease the appearance of a single expanse of pavement and provide shade. ~~Alternatives~~

Parking Area Landscape design options include:

- a. A continuous ~~landscape strip~~ planting island located between every four rows of parking, providing a minimum of nine feet in width with a minimum of 150 SF total of planting area to support each ornamental/understory tree and 300 SF for each canopy/shade tree to be located in the island a minimum of nine feet in width to allow for an adequate planting area, ground cover should be adequate to accommodate both shrubbery and trees
- b. Large Planting Islands, ~~(over 600 square feet)~~ providing a minimum of nine feet in width with a minimum of 150 SF total of planting area to support each ornamental/understory tree and 300 SF for each canopy/shade tree located in the island, dispersed located throughout the parking area lot and planted with shade trees, low shrubs and/or ground cover. They should preferably be located at the ends of parking rows
- c. Standard planting Islands located between every ~~10 to 16~~ ~~12~~ spaces to avoid long rows of parked cars, The size should be a minimum of nine feet wide with to allow for an adequate planting area to support the type of plantings to be located in the island. See above for description of minimum standards for island planting areas. Each planting island should provide at least one large, maturing canopy trees



In general, all ~~trees and shrubs are to landscape materials~~ should be placed in a visually pleasing fashion in and around the parking areas. Additionally, ~~It is recommended that a variety of both trees and shrubs~~ should be used when possible to preclude disease and/or blight from eliminating all of each. ~~Ground cover should be provided in all landscape islands and buffer areas to provide protection from erosion.~~

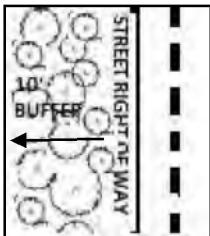
Section 9-9 General site landscaping requirements, Street Yard Landscape Buffer Area

*Cabarrus County Zoning Ordinance  
Chapter Nine Landscape and Buffering*

**APPLICABILITY:**

All commercial, institutional, public, industrial and transportation related uses

**GENERAL REQUIREMENTS:**



**Minimum Street yard landscaped buffer area**

Each site must develop a ~~planting strip~~ **landscape planting area** with a minimum ten foot width along all areas which front public right of ways, **roads and streets**. **However, Additional street yard buffering requirements may apply to the site being developed.** ~~be applicable~~. See Chapter Four, Part III, for Thoroughfare Overlay standards.

Ratio of trees and shrubs ~~to square footage~~.

a. **Trees**

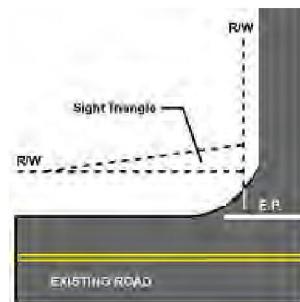
Required at the rate of one canopy **or two understory trees for every thirty linear feet of required planting area**. ~~two hundred square feet of required planting area or one understory tree for every one hundred fifty square feet~~.

b. **Shrubs**

Shrubs are required in addition to trees and at a rate of ~~one per every fifty square feet of planting area~~ **five for every fifteen linear feet of required planting area**.

**Section 9-10 Visibility.**

Nothing in this Chapter shall be construed as permitting any obstruction to view which could constitute a traffic hazard and/or violate the applicable sight triangle requirements.



**Section 9-11 Maintenance of required landscaping**

1. **Responsibility**

Required landscaping must be maintained in a healthy, growing condition at all times. The property owner is responsible for regular weeding, mowing of grass, irrigating, fertilizing, pruning, and other maintenance of all plantings as needed.

2. **Replacement**

Plants damaged, diseased or **that have died** ~~dead~~ must be replaced by the owner within sixty (60) days of the occurrence of such condition ~~and/or~~ a maintenance warning notice will be issued by the office of the Zoning Administrator. If seasonal conditions are such that replacement cannot be accomplished immediately, this requirement ~~can~~ **may** be waived by ~~staff~~ the Zoning Administrator and temporarily delayed.

3. **Nonliving material**

Nonliving buffer materials, **including fencing and decorative walls**, are to be ~~kept~~ maintained, cleaned and repaired by the owner of the property upon which they are located.

4. **Enforcement of Violations for non-compliance**

All provisions of this Chapter are subject to the enforcement proceedings as cited in Chapter Twelve of this Ordinance.

## PART IV LANDSCAPE PLANS

### Section 9-12 Submission of landscape plans

Landscape plans must be submitted along with **site specific** development plans and may be superimposed upon the ~~development~~ **site** plan as space permits. Landscape plans are considered to be an integral part of any **site plan submittal** ~~submitted development plan~~ and will be subject to the same approval process. **At a minimum**, the plan shall include:

1. Project information including the total **square footage acreage** of the property, the square footage of the building areas, **impervious area**, parking and other vehicular use areas.
2. Each project's calculations, **including dimensional** attributes and resulting amount of planted areas.
3. Location, size and type of planting material, both existing (if any) and proposed.
4. **Calculations used to determine the number of plantings required for each type of landscape planting area or buffer yard, in tabular format, including the number of plantings required for each yard, the type of plantings proposed and the location of the plantings.**

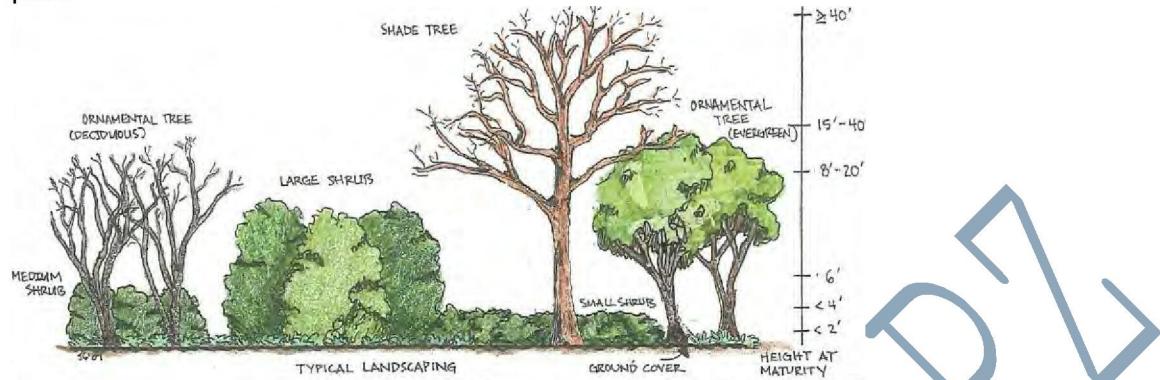
**Landscape plans and proposed lighting plans shall be designed and coordinated to accommodate projected plant growth.**

### Section 9-13 Unavoidable delays in the installation of landscaping

Installation of landscaping must be completed in accordance with an approved landscape plan. Unusual environmental conditions, such as drought or ice, may occur or the appropriate planting season may not parallel ~~that of the development's~~ of the site. In such cases, a ~~temporary Certificate of Occupancy for a specified period may be issued based on a~~ performance guarantee **may be used for the project to move forward**. Performance guarantees shall be accompanied by a description of the factor(s) hindering installation of landscaping and a written estimate of materials and installation from a licensed landscaping contractor. Such guarantee may be in the form of a letter of credit, a bond, a certified check or cash and shall be in the amount of 125 percent of the total price reflected in the estimate. The amount shall be reviewed and approved by the Zoning Administrator. The performance

*Cabarrus County Zoning Ordinance  
Chapter Nine Landscape and Buffering*

guarantee will be released after landscaping is installed in accordance with the landscaping plan.



## PART V LANDSCAPING STANDARDS

### Section 9-14 Approved plant list

The following list of plant species includes the trees, shrubs, and groundcovers which are acceptable landscaping material in Cabarrus County. Plant species in bold type are considered drought tolerant plants for North Carolina landscapes.

#### Canopy trees (large, maturing trees):

Botanical Name	Common Name
<b>Acer floridian</b>	Florida Maple or Southern Sugar Maple
<b>Acer rubrum</b>	Red Maple
<b>Acer saccharum</b>	Sugar Maple
<b>Amelanchier canadensis</b>	Serviceberry
<b>Betula nigra</b>	River Birch
<b>Carya illinoensis</b>	Pecan
<b>Cunninghamia lanceolata</b>	Common Chinafir
<b>Carya ovata</b>	Shagbark Hickory
<b>Carya glabra</b>	Pignut Hickory
<b>Carya cordiformis</b>	Bitternut Hickory
<b>Cedrus deodara</b>	Deodar Cedar
<b>Celtis occidentalis</b>	Hackberry
<b>Cupressocyparis leylandii</b>	Leyland Cypress
<b>Diospyros virginiana</b>	Persimmon
<b>Fagus grandiflora</b>	American Beech
<b>Fraxinus americana</b>	White Ash
<b>Fraxinus pennsylvanica</b>	Green Ash
<b>Ginkgo biloba</b>	Ginkgo or Maiden Tree
<b>Juniperus virginiana</b>	Eastern Red Cedar
<b>Liquidambar styraciflua</b>	American Sweetgum
<b>Liriodendron tulipifera</b>	Tuliptree (Yellow Poplar)
<b>Magnolia grandiflora</b>	Southern Magnolia
<b>Metasequoia glyptostroboides</b>	Dawn Redwood
<b>Nyssa sylvatica</b>	Black Gum

*Cabarrus County Zoning Ordinance*  
*Chapter Nine Landscape and Buffering*

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**Pinus elliotti**  
**Pinus strobus**  
**Pinus echinata**  
**Pinus nigra**  
**Pinus thunbergi**  
**Pinus taeda**  
**Pinus virginiana**  
**Platanus acerifolia**  
**Quercus acutissima**  
**Quercus alba**  
**Quercus bicolor**  
**Quercus coccinea**  
**Quercus falcate**  
**Quercus laurifolia**  
**Quercus nigra**  
**Quercus palustris**  
**Quercus phellos**  
**Quercus borealis**  
**Quercus shumardii**  
**Quercus velutina**  
**Quercus virginiana**  
**Sophora japonica**  
**Taxodium distichum**  
**Tilia Cordata**  
**Ulmus Parvifolia**  
**Ulmus alata**  
**Zelkova serrata**

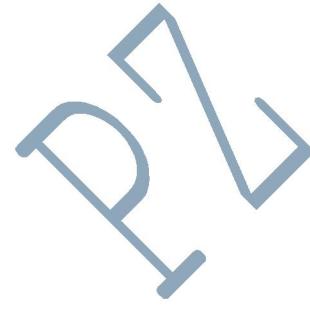
**Slash Pine**  
**White Pine**  
Short Leaf Pine  
Austrian Pine  
Japanese Black Pine  
**Loblolly Pine**  
Virginia Pine  
London Planetree  
**Sawtooth Oak**  
White Oak  
Swamp White Oak  
Scarlet Oak  
**Southern Red Oak**  
Laurel Oak  
**Water Oak**  
Pin Oak  
Willow Oak  
Northern Red Oak  
Shumard Oak  
Black Oak  
Live Oak  
Japanese Pagoda Tree  
Bald Cypress  
Little Leaf Linden  
**True Chinese Elm (Lacebark Elm)**  
Winged Elm  
Japanese Zelkova

**Understory trees/Ornamental Trees (smaller trees):**

<u>Botanical Name</u>	<u>Common Name</u>
<b>Acer buergerianum</b>	<b>Trident Maple</b>
Acer campestre	Hedge Maple
Acer palmatum	Japanese Maple
Carpinus betulus	European Hornbeam
<b>Carpinus caroliniana</b>	<b>American Hornbeam (Ironwood)</b>
Cercis canadensis	Redbud or Judas Tree
Chionanthus virginicus	Fringe Tree or Grancy Graybeard
Continus coggygria	Common Smoketree
Cornus florida	Flowering Dogwood
Cornus kousa	Kousa Dogwood
<b>Cupressocyparis leylandii</b>	<b>Leyland Cypress</b>
Crataegus phaenopyrum	Washington Hawthorne
<b>Eriobotrya Japonica</b>	<b>Loquat</b>
Eleganus angustifolia	Russian Olive
<b>Halesia Carolina</b>	<b>Carolina Silverbell</b>
Hammamelis mollis	Chinese Witch Hazel
Ilex fosteri	Foster Holly
<b>Ilex opaca</b>	<b>American Holly</b>

*Cabarrus County Zoning Ordinance  
Chapter Nine Landscape and Buffering*

<i>Ilex opaca hume</i>	Hume Holly
<i>Ilex x attenuate savannah</i>	Savannah Holly
<i>Ilex decidua</i>	Possumhaw
<i>Ilex latifolia</i>	Lusterleaf Holly
<i>Ilex x Nelli R. Stevens</i>	Nellie Stevens Holly
<i>Koelreutaria paniculata</i>	Golden Rain Tree
<i>Lagerstroemia indica</i>	Crape Myrtle
<i>Maclura pomifera</i>	Osage-Orange
<i>Magnolia soulangiana</i>	Saucer Magnolia
<i>Magnolia stellata</i>	Star Magnolia
<b>Malus species</b>	Flowering Crab
<i>Myrica cerifera</i>	Wax Myrtle
<i>Ostrya virginiana</i>	Ironwood
<b>Oxydendrum arboreum</b>	<b>Sourwood</b>
<i>Photinia x fraseri</i>	Fraser Photinia
<b>Pinus virginiana</b>	<b>Virginia Pine</b>
<i>Prunus cerasifera pissardii</i>	Purpleleaf Plum
<b>Prunus serrulata kwanzan</b>	<b>Kwanzan Cherry</b>
<i>Prunus subhirtella pendula</i>	Weeping Cherry
<i>Prunus yedoensis</i>	Yoshino Cherry
<i>Prunus caroliniana</i>	Carolina Cherry Laurel
<i>Vitex agnus-castus</i>	Chastetree



**Large Shrubs:**

Botanical Name	Common Name
<i>Azalea hybrida</i>	Glenn Dale Azalea
<i>Azalea indica</i>	Indian Azalea
<i>Azalea obtusum kaempferi</i>	Kaempferi Azalea
<i>Bambusa multiplex</i>	Hedge Bamboo
<i>Berberis thunbergii</i>	Japanese Barberry
<b>Buddleia davidii</b>	<b>Butterfly Bush</b>
<i>Calycanthus floridus</i>	Sweetshrub
<i>Camellia japonica</i>	Camellia
<i>Camellia sasanqua</i>	Sasanqua Camellia
<i>Chaenomeles speciosa</i>	Flowering Quince
<i>Cleyera japonica</i>	Cleyera
<b>Euonymus alatus</b>	<b>Winged Euonymus</b>
<i>Euonymus japonicus</i>	Evergreen Euonymus
<i>Eleagnus pungens</i>	Elagnus
<i>Hamamills vernalis</i>	Witch Hazel
<i>Hibiscus syriacus</i>	Shrub Althea (Rose of Sharon)
<b>Ilex attenuate</b>	<b>Foster Holly</b>
<i>Ilex aquifolium</i>	English Holly
<b>Ilex cornuta burfordi</b>	<b>Burford Holly</b>
<i>Ilex cornuta 'rotunda'</i>	Dwarf Horned Holly
<i>Ilex crenata 'convexa'</i>	Convex Japanese Holly
<i>Ilex crenata 'rotundifolis'</i>	Roundleaf Japanese Holly
<i>Ilex "Emily Brunner"</i>	Emily Brunner Holly
<i>Ilex latifolia</i>	Lusterleaf Holly
<i>Ilex pernyi</i>	Perny Holly



*Cabarrus County Zoning Ordinance*  
*Chapter Nine Landscape and Buffering*

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<i>Ilex vomitoria</i>	<b>Yaupon Holly</b>
<i>Juniperus chinensis pfitzeriana</i>	<b>Pfitzer Juniper</b>
<i>Juniperus chinensis hetzi</i>	<b>Hetzi Juniper</b>
<i>Laurus nobilis</i>	<b>Laurel</b>
<i>Leucothoe populifolia</i>	<b>Fetterbrush</b>
<i>Ligustrum japonicum</i>	<b>Japanese Privet</b>
<i>Ligustrum lucidum</i>	<b>Waxleaf (Glossy) Privet</b>
<i>Ligustrum sinense</i>	<b>Chinese Privet</b>
<i>Ligustrum vicaryi</i>	<b>Vicary Golden Privet</b>
<i>Loropetalum Chinese</i>	<b>Lotopetalum</b>
<i>Magnolia stellata</i>	<b>Star Magnolia</b>
<i>Myrica cerifera</i>	<b>Southern Wax Myrtle</b>
<i>Osmanthus fortunei</i>	<b>Fortunes Osmanthus</b>
<i>Osmanthus fragrans</i>	<b>Fragrant Tea Olive</b>
<i>Osmanthus heterophyllus</i>	<b>Holly Osmanthus</b>
<i>Osmanthus heterophyllus rotundifolius</i>	<b>Curly Leaf Tea Olive</b>
<b>Philadelphus coronarius</b>	<b>Sweet Mockorange</b>
<i>Photinia x fraseri</i>	<b>Frazer Photinia (Red Tip)</b>
<i>Pieris floribunda</i>	<b>Mountain Andromeda</b>
<i>Pieris japonica</i>	<b>Japanese Andromeda</b>
<b>Pittosporum tobira</b>	<b>Japanese Pittosporum</b>
<b>Podocarpus macrophyllus var maki</b>	<b>Southern Yew</b>
<i>Prunus laurocerasus</i>	<b>English Laurel</b>
<i>Prunus laurocerasus "Zabel"</i>	<b>"Zabel" Skip Laurel</b>
<i>Prunus laurocerasus angustifolia</i>	<b>Narrow Leafed English Laurel</b>
<b>Pyracantha coccinea</b>	<b>Scarlet Firethorn</b>
<i>Raphiolepis umbellata</i>	<b>Yeddo-Hawthorn</b>
<b>Rhododendron austrinum</b>	<b>Florida Azalea</b>
<b>Rhododendron calendulaceum</b>	<b>Flame Azalea</b>
<b>Rhododendron canescens</b>	<b>Piedmont Azalea</b>
<b>Rhus typhina</b>	<b>Staghorn Sumac</b>
<i>Spirea cantoniensis</i>	<b>Reves spirea</b>
<i>Taxus cuspidate</i>	<b>Japanese Yew</b>
<b>Ternstroemia gymnophylla</b>	<b>Cleyera</b>
<b>Viburnum lantana</b>	<b>Wayfaringtree Viburnum</b>
<b>Viburnum opulus</b>	<b>European Cranberrybush Viburnum</b>
<b>Viburnum plicatum var. tomentosum</b>	<b>Doublefile Viburnum</b>
<i>Viburnum rhytidophyllum</i>	<b>Leatherleaf Viburnum</b>
<i>Viburnum tinus</i>	<b>Laurestinus Viburnum</b>

**Medium Shrubs:**

Botanical Name	Common Name
<i>Abelia x grandiflora</i>	<b>Glossy Abelia</b>
<i>Aucuba japonica</i>	<b>Japanese aucuba</b>
<i>Berberis julianae</i>	<b>Wintergreen Barberry</b>
<i>Buxus microphylla japonica</i>	<b>Japanese Boxwood</b>
<i>Cytisus scoparius</i>	<b>Scotch Broom</b>
<i>Forsythia intermedia</i>	<b>Forsythia</b>

*Cabarrus County Zoning Ordinance  
Chapter Nine Landscape and Buffering*

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Hydrangea macrophylla	Bigleaf Hydrangea
Hydrangea quercifolia	Oakleaf Hydrangea
Ilex cornuta burfordi nana	Dwarf Burford Holly
Ilex glabra	Inkberry Holly
Kalmia latifolia	Mountain Laurel
<b>Lespedeza thunbergii</b>	<b>Thunberg Lespedeza</b>
<b>Mahonia bealei</b>	<b>Leatherleaf Mahonia</b>
<b>Nandina domestica</b>	<b>Nandina</b>
<b>Rhododendron Ericaceae</b>	<b>Southern Indian Azalea</b>
Spirea prunifolia plena	Bridalwreath Spirea
Spirea vanhouttei	Vanhoutte Spirea
Yucca filamentosa	Adam's Needle Yucca

**Small Shrubs:**

<u>Botanical Name</u>	<u>Common Name</u>
Aucubajaponica	Dwarf Aucuba Rhododendron
Azaleas	
Berberis thunbergii	Japanese Barberry
Deutzia gracilis	Slender Deutsia
Gardenia radicans	Creeping Gardenia
Hydrangea arborescens	Annabelle Smooth Hydrangea
Ilex cornuta 'carissa'	Carissa Holly
Ilex cornuta 'rotunda'	Chinese Holly
Ilex crenata 'compacta'	Compact Holly
Ilex crenata 'green lustre'	Green Luster Holly
Ilex crenata 'helleri'	Heller Japanese Holly
Ilex crenata 'hetzi'	Hetzi Japanese Holly
Ilex vomitoria 'nana'	Dwarf Yaupon Holly
Itea virginica	Virginia Sweetspire
Jasminum floridum	Showy Jasmine
Jasminum nudiflorum	Winter Jasmine
Juniperus davurica 'expansa'	Parsons Juniper
Juniperus horizontalis 'plumosa'	Andorra Juniper
Kerria japonica	Japanese Kerria
Lonicera pileata	Privet Honeysuckle
Nandina domestica 'harbor dwarf'	Gulf Stream Nandina
Pittosporum tobira 'nana'	Dwarf Pittosporum
Pyracantha koidzumii 'santa cruz'	Santa Cruz Pyracantha
Rhaphiolepsis indica	India Hawthorn
Spirea x burmalda	Bumald Spirea
Spirea nipponica 'snowmound'	Snowmound Spirea
Spirea thunbergii	Thunberg Spirea

**Ground covers:**

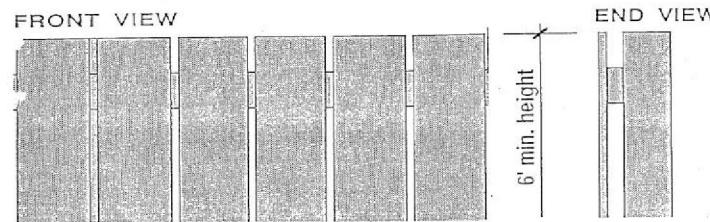
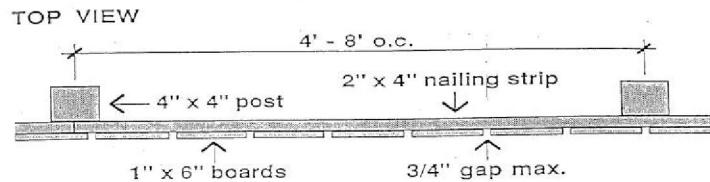
<u>Botanical Name</u>	<u>Common Name</u>
Ajugareptans	Carpet Bugle
Euonymus fortunei	Wintercreeper Euonymus
Hadra helix	English Ivy
Hedera canariensis	Algerian Ivy
Hypericum calycinum	Aaronsbeard (St. Johnswort)

*Cabarrus County Zoning Ordinance*  
*Chapter Nine Landscape and Buffering*

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*Juniperus conferta*  
*Juniperus horizontalis*  
*Juniperus scopulorum*  
*Liriope muscarii*  
*Liriope spicata*  
*Ophiopogon japonicus*  
*Phlox subulata*  
*Pachysandra terminalis*  
*Vinca major*  
*Vinca minor*

*Blue Pacific Shore Juniper*  
*Creeping Juniper*  
*Blue Creeper Juniper*  
*Liriope*  
*Creeping Lilyturf*  
*Dwarf Lilyturf or Mondo Grass*  
*Moss Phlox or Thrift*  
*Pachysandra*  
*Large Periwinkle*  
*Common Periwinkle*



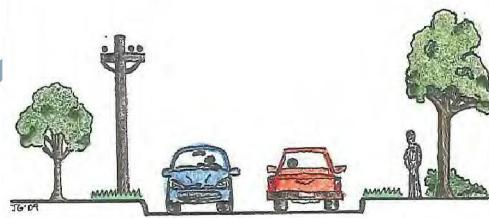
- ~~Fasteners are to be galvanized only.~~
- ~~Nailing strips. Three strips or rails are required.~~
- ~~Spacing. The gap between the ground and the bottom of the fence boards is to be not more than six inches. Designs other than the one in the illustration may be used with prior approval of the Zoning Administrator as long as the general standards of the illustration are met.~~

#### Landscape and Utilities

Understory trees should be used where overhead utilities exist. Caution should also be used when designing plantings for installation near or within underground utility rights-of-ways. Consult with utility provider for additional information.

**Section 9-15. Standards for wooden fencing for compliance with landscaping/buffer requirements.**

- ~~Lumber type options: pressure treated lumber, redwood, or cedar~~



*Cabarrus County Zoning Ordinance  
Chapter Nine Landscape and Buffering*

TABLE FOUR: Buffer yard Levels.

How to use the following chart: Determine the acreage of the property to be buffered by reading the first row across. Then, look to the first vertical column on the left. Within this column, three differing levels of buffer yard are presented. Find the buffer yard level required. Read across until you have located the acreage column. Buffer yard requirements appear vertically under the acreage column. For example, a parcel over three acres but less than 3.5 requiring a level one buffer yard would need a yard of at least 58 feet wide with 10 trees per every 100 linear feet and 60 shrubs per every 100 linear feet.

**THIS TABLE WOULD BE REPLACED WITH NEW EXCEL TABLE**

Acreage: 	.5	1	1.5	2	2.5	3	3.5	4	4.5	5	5.5	6	6.5	7	7.5	8	8.5	9	9.5	10 or more acres	
Bufferyard # 1 -Width of yard	43'	46'	49'	52'	55'	58'	61'	64'	67'	70'	73'	76'	79'	82'	85'	88'	91'	94'	97'	100'	
-Trees per 100'	9 trees				10 trees				11 trees				12 trees								
-Shrubs per 100'	60 shrubs																				
Bufferyard # 2 -Width of yard	25'	27'	30'	33'	36'	38'	41'	43'	46'	49'	51'	54'	57'	59'	62'	65'	67'	70'	72'	75'	
-Trees per 100'	6 trees				7 trees				8 trees				9 trees				10 trees				11 trees
-Shrubs per 100'	40 shrubs																				
Bufferyard # 3 -Width of yard	12'	14'	16'	18'	20'	22'	24'	26'	28'	30'	32'	34'	36'	38'	40'	42'	44'	46'	48'	50'	

*Cabarrus County Zoning Ordinance*  
*Chapter Nine Landscape and Buffering*

-Trees per 100'	3 trees	4 trees	5 trees	6 trees	7 trees	8 trees	9 trees
-Shrubs per 100'	20 shrubs						

**EXCEPTIONS:**

The minimum width of a buffer may be reduced by 25 percent if a fence or wall is constructed. See Appendix for fencing standards. Shrubs are not required if a fence or wall is constructed. See fencing standards.

An evergreen (opaque) vegetative hedge if used will reduce the bufferyard width by one half and eliminate the need for required shrubbery and/or trees.

A berm with a minimum height of six feet will reduce the bufferyard width by one half and the otherwise required planting materials by one half. The resulting berm must be sown with fescue grass and maintained.

**THIS TABLE WOULD BE REPLACED WITH NEW EXCEL TABLE**

TABLE FIVE: Buffer Requirements between Zones and Use

Developing Use:	Adjoining:		Buffer level Required:	Timing of Buffer:
	Zone	Use		
1) All uses listed in the Table of Permitted Uses within the category "Commercial Uses"	CR LDR MDR HDR/MU AO OI	Any residential use	# 2 (See Table Four)	Upon Development
2) All uses listed in the Table of Permitted Uses within the category	CR LDR MDR	Any residential use	# 2 (See Table Four)	Upon Development

*Cabarrus County Zoning Ordinance  
Chapter Nine Landscape and Buffering*

"Institutional/Public"	HDR/MU AO OI			
3) All uses listed in the Table of Permitted Uses within the category "Industrial"	CR LDR MDR HDR/MU AO	Any residential use	# 1 (See Table Four)	Upon Development
	OF/LC GC OI	Any use listed in the Table of Permitted Uses as Industrial, Commercial or Institutional/Public	# 2 (See Table Four)	Upon Development
4) All uses listed in the Table of Permitted Uses within the category "Transportation"	CR LDR MDR HDR/MU AO	Any residential use	# 1 (See Table Four)	Upon Development
	OF/LC GC OI	Any use listed in the Table of Permitted Uses as Industrial, Commercial or Institutional/Public	# 2 (See Table Four)	Upon Development

*Cabarrus County Zoning Ordinance*  
Chapter Nine Landscape and Buffering

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Zone Abbreviations: CR – Countryside Residential, LDR – Low Density Residential, MDR – Medium Density Residential, HDR/MU – High Density Residential/Mixed Use, OF/LC – Office/Limited Commercial, OI- Office/Institutional GC – General Commercial, LI – Limited Industrial, GI – General Industrial.

DRAFT EDITION

TABLE FIVE: Buffer Requirements between Zones and Use (continued).

Developing Use:	Adjoining:		Buffer level Required:	Timing of Buffer:
	Zone	Use		
5) All uses listed in the Table of Permitted Uses within the category "Residential"	OF/LC GC OI	Residential or vacant	# 2 (See Table Four)	Upon Development
	LI GI	Any use listed within the Table of Permitted Uses as Commercial, Industrial, or Institutional/Public	# 1 (See Table Four)	Upon Development

*Cabarrus County Zoning Ordinance*  
Chapter Nine Landscape and Buffering

6) Residential development - Multi-family, Townhouse, Condominium or a Mobile Home Park- is required to buffer activity along the property line adjacent to residential. Buffering between the types of residential projects set forth above is not required, except for Mobile Home Parks-see Cabarrus County Mobile Home Ordinance.	CR LDR MDR HDR AO OI	Single family detached residential use or Institutional/Public	# 2 (See Table Four)	Upon Development
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Zone Abbreviations: CR – Countryside Residential, LDR – Low Density Residential, MDR – Medium Density Residential, HDR/MU – High Density Residential/Mixed Use, OF/LC – Office/Limited Commercial, OI-Office/Institutional, GC – General Commercial, LI – Limited Industrial, GI – General Industrial

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TABLE FOUR: Landscape Perimeter Buffer Yards

How to use the following table: First, determine the acreage of the property that is being developed. Then, look to the vertical column on the left that corresponds to the required buffer yard level. Read across until you have located the acreage column. Buffer yard requirements appear vertically under the acreage column. For example, a parcel over three acres but less than 3.5 acres, requiring a level one buffer yard, would need a yard of at least 58 feet wide with 2 shade or 4 ornamental trees per every 50' linear feet and 15 shrubs per every 50' linear feet.

If project acreage is less than:		0.5	1	1.5	2	2.5	3	3.5	4	4.5	5	5.5	6	6.5	7	7.5	8	9	9	9.5	10 or more acres
Landscape Buffer Yard Requirement is:																					
Buffer yard # 1																					
Width of yard		43'	46'	49'	52'	55'	58'	61'	64'	67'	70'	73'	76'	79'	82'	85'	88'	91'	94'	97'	100'
2 shade trees or 4 ornamentals for every 50'																					
15 shrubs for every 50'																					
Buffer yard # 2																					
Width of yard		25'	27'	30'	33'	36'	38'	41'	43'	46'	49'	51'	54'	57'	59'	62'	65'	67'	70'	72'	75'
2 shade trees or 4 ornamentals for every 50'																					
10 shrubs for every 50'																					
Buffer yard # 3																					
Width of yard		12'	14'	16'	18'	20'	22'	24'	26'	28'	30'	32'	34'	36'	38'	40'	42'	44'	46'	48'	50'
1 shade tree or 2 ornamentals for every 50' linear feet																					
8 shrubs for every 50'																					

Applicants are encouraged to retain existing natural vegetative buffers on sites being developed. Existing vegetation located in the required buffer area that meets the standards for plantings as listed in section 9-6.5 may be counted towards the required number of plantings.

# **Memo**

**To:** Cabarrus County Planning and Zoning Commission  
**From:** Susie Morris, AICP, CZO, Planning and Zoning Manager  
**CC:** File  
**Date:** 8/30/2016  
**Re:** Proposed Text Amendment to Zoning Ordinance (TEXT2016-00009)

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- Attached you will find proposed changes to Chapter 10, Parking and Loading.
- The proposed changes clarify the parking requirements and make the tables easier for the general public to understand since the proposed parking table more closely corresponds to the permitted use table to in Chapter 3.
- Proposed additions are in red. Deletions are in strikethrough text.
- These changes have been reviewed and are recommended by the Text Amendment Committee.
- Please be prepared to discuss the proposed changes to the ordinance and to make a recommendation to the Board of Commissioners regarding the proposed changes.

## Section 10-1 Purpose

The intent of these regulations is twofold: ~~one~~,

- to assure the adequacy and safety of parking and loading in all land use situations, ~~and secondly~~,
- to assure that parking for multiple vehicles is accomplished on lots that are both aesthetically pleasing and conducive to ~~both good~~ proper erosion and run-off control practices

## Section 10-2 Compliance

The regulations for parking and loading as set forth in this Chapter ~~shall apply are to be complied with~~ when any structure or building is hereafter erected, structurally altered or placed on a lot or if there is a change of use on a lot.

Failure to comply will result in a denial of a zoning compliance permit.

## Section 10-3 How to use this Chapter

<b>PART I. OFF-STREET PARKING REQUIREMENTS:</b> General and specific design standards, Table of Parking Space Requirements, Satellite Parking, Miscellaneous Parking Requirements.	Sections 10-4 to 10-11.
<b>PART II. OFF-STREET LOADING REQUIREMENTS:</b> Access, Minimum Requirements.	Sections 10-12 to 10-16.

## PART I OFF-STREET PARKING REQUIREMENTS

### Section 10-4 General design standards

Off-street parking shall be developed and arranged so that:

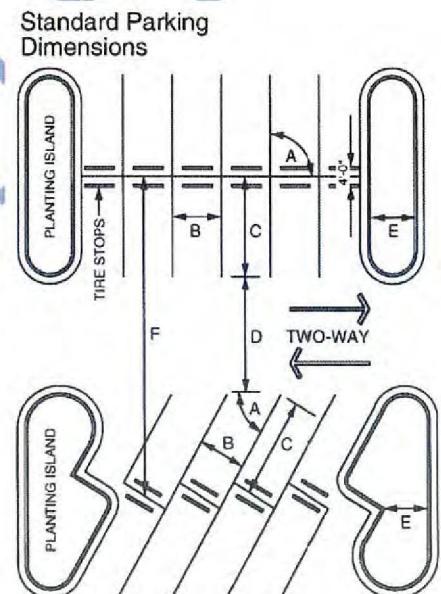
1. Vehicles may exit such areas without backing onto a public street;
2. Sanitation, emergency and other public service vehicles can use them without backing unreasonable distances or making other hazardous turning moves;
3. Vehicles can be moved without the necessity of moving other vehicles (attendant parking situations and single-family dwellings exempt);
4. Vehicles cannot extend beyond the perimeter of a parking area onto adjacent properties or public rights-of-way, nor shall they extend over sidewalks or tend to bump against or damage walls, vegetation, or other structures;

5. Adjacent parking lots connect with each other to eliminate the need to use abutting streets for cross movement; and
6. Lighting sources are shielded or arranged as to not produce glare on rights-of-way nor be a nuisance to neighboring residential properties.

Section 10-5 Specific design standards for off-street parking

Automobile parking spaces for standard vehicles shall adhere to the following design standards. The graphic below and corresponding key illustrate how the dimensional tables should be used for parking area design.

- A. Parking Angle
- B. Stall Width
- C. Stall Depth
- D. Aisle Width
- E. Planting Island Width (minimum)
- F. Parking Bay Width
- G. Bumper Overhang



1. Dimensions of the Standard space

A	B	C	D	E	F*	G
45	9.0'	18'	12.0' One Way	9.0	51	2.0'/4.0'
60	9.0'	18'	18.0' One Way	9.0	58	2.0'/4.0'
90	9.0'	18'	24.0' Two Way	9.0'	60	2.0'/4.0'

\* Additional width may be required where the aisle serves as a principal vehicular access to on-site uses or structures or serves two-way traffic. All travel ways must meet emergency access standards.

**1. Dimensions of the Compact spaces**

Automobile parking spaces for compact cars shall adhere to the following:

A	B	C	D*	E	F	G
45	8.0'	16.0'	12' One Way	9.0'	-	1.5/3.0'
60	8.0'	16.0'	18' One Way	9.0'	-	1.5/3.0'
90	8.0'	16.0'	24' Two Way	9.0'	-	1.5/3.0'

\* Additional width may be required where the aisle serves as a principal vehicular access to on-site uses or structures or serves two-way traffic. All travel ways must meet emergency access standards.

**2. Handicapped accessible spaces**

All parking lots or facilities must provide handicap spaces as a part of the required number of spaces. See the table below for the number of handicap spaces required for the number of regular parking spaces.

Handicapped parking spaces shall be a minimum of 13 feet by 18 feet for a single non-van space (8 feet in width in addition to a 5 foot access aisle); a minimum of 16 feet by 18 feet for a single van space (8 feet in width in addition to an 8 foot access aisle); or 24 feet by 18 feet for a double van space, or a non-van and van double space (8 feet in width for each space with an 8 foot access aisle between spaces).

Parking spaces for handicapped or disabled persons shall comply with **Chapter 4 of the N.C. Accessibility Code. North Carolina State Building Code, Section 1106, Parking and Passenger Loading Facilities.**

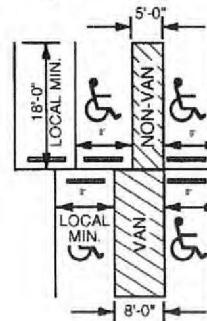
**Location**

Accessible parking spaces shall be located on the shortest accessible route of travel from adjacent parking to an accessible building entrance. Where buildings have multiple

accessible entrances with adjacent parking, accessible parking spaces shall be dispersed and located near the accessible entrances.

~~Handicap spaces shall be sited so as to be the closest spaces to either the building served by the facility or the collection of buildings served.~~

Number of Spaces Required	Accessible	Handicapped Parking Dimensions
1 to 25	1	See North Carolina Accessibility Code
26 to 50	2	
51 to 75	3	
76 to 100	4	
101 to 150	5	
151 to 200	6	
201 to 300	7	
301 to 400	8	
401 to 500	9	
501 or over	2% of total (See NC Accessibility Code)	



#### Required Setbacks for Off-Street Parking and Loading Areas

No parking shall be located within the ~~required landscape~~ buffer yards as required in Chapter 11 of this ordinance. If a buffer yard is not required, no parking shall be located within ten (10) feet of a side or rear property line or within ten (10) feet of the front base setback line. Corner lots shall be measured as to have two front base setback lines. These ten (10) feet areas must be appropriately landscaped as required by this Ordinance. This does not apply to single or two family dwellings. Required parking lot landscaping shall be installed in accordance with Chapter 9.

#### 3. Off-street parking surfaces

Parking lots of four spaces or more must be paved with concrete, asphalt, permeable pavers, permeable pavement or permeable asphalt.

##### Paving Exception:

Exceptions to paving may be granted by the Administrator for the following ~~site~~ conditions:

##### Overflow Parking

Overflow parking areas shall be defined as off-street parking areas in excess of the maximum number of spaces permitted by this Ordinance. Overflow parking areas shall

not be used more than ten (10) times per calendar year. Overflow parking areas shall use turf or gravel. Applicants seeking to use this exception for site design shall provide information in the form of a signed, notarized letter stating the number of times per year that the overflow parking areas will be used. Number of uses per year shall be noted as part of the zoning permit.

#### Low Traffic Storage Yards

Low traffic storage yards may use turf or gravel instead of pavement. A low-traffic storage yard is a storage area generating less than 30 ADT (average daily trips) per day. Applicants seeking to use this exception for site design shall provide information from a Traffic Engineer certifying the ADT based on current trip generation rates established by the Institute of Transportation Engineers.

#### Exemption for Assembly Facilities

Paving of parking areas over four spaces and access ways for assembly uses (sports facilities, fairgrounds, race tracks, parks, special event facilities, etc.) may be waived entirely if evidence is presented to the Administrator that these spaces will not be used on a daily basis. Parking areas for which paving is waived shall maintain a turf or gravel surface. All parking areas for which paving is waived shall meet the minimum requirements of the North Carolina State Building Code for Accessible Parking and for Fire Prevention. All parking lots shall be constructed with proper drainage and stormwater systems.

Applicants must provide requested information for exceptions as part of the site plan review process.

#### Ratio of compact to standard spaces

Parking areas of more than 100 spaces may have up to twenty (20%) percent of the spaces designed to accommodate compact vehicles. These areas shall be designated with signs for compact vehicles.

#### Siting of off-street parking

All off-street parking must be located within three hundred (300) feet from the main entrance of the building(s) it serves. An exception to this rule is satellite parking described in Section 10-8.

#### Section 10-6. Table of required parking spaces by use.

The following table ~~sets for~~ establishes the numbers of parking spaces necessary to safely accommodate vehicles anticipated by use.

Table 10-6 Off street Vehicular Parking Space Requirements

Land Use	Min. Vehicle Spaces	Max. Vehicle Spaces
<b>Residential</b>		
Accessory Dwellings	1 per unit	n/a
Duplex (Two units per lot)	2 per unit	n/a
Family Care Home	2 per parcel	n/a
Multi-Family (3 or more units) and attached Single Family	1.5 per unit	2.5 per unit
Single Family, detached (includes manufactured and modular homes)	2 per parcel	n/a
<b>Institutional and Civic</b>		
Auditorium/Public Assembly	1 per 6 seats or 1 per 50 sf GFA (if no seats)	1 per 4 seats or 1 per 30 sf GFA (if no seats)
Botanical Garden and Nature Preserves	n/a	1 per 125 sf GFA of bldg.
Campground	1 per 6 camp sites, plus 4 per laundry & shower facility	n/a
Child Care Center	1 per 375 sf GFA	1.5 per 375 sf GFA
Civic, Social and Fraternal Organizations	1 per 250 sf GFA	1 per 200 sf GFA
Emergency Service Facilities	1 per employee + 1 per 3 volunteer personnel on normal shift + 1 per 200 sf usable office space	n/a
Golf Course	4 per hole	6 per hole
Golf Driving Range	1 per 2 tees	1 per tee
Governments Buildings	1 per 300 sf GFA	1 per 125 sf GFA
Hospital	1 per 400 sf GFA	1 per 100 sf GFA
Museums and Art Galleries	1 per 1,000 sf GFA	1.5 per 1,000 sf GFA

Cabarrus County Zoning Ordinance  
Chapter 10 Parking and Loading

Park, public	1 per 4 seats	1 per seat
Religious Institutions	1 per 8 seats	1 per 1.5 seats
Residential Care Facilities and Group Homes	0.3 per room	1 per room
Schools - Business, Trade and/or other Vocational	1 per 200 sf GFA	1 per 150 sf GFA
Schools - Elementary and Secondary	1 per classroom	2 per classroom
Schools - University or College	1 per 4 students	1 per 2 students
All other Institutional Uses	1 per 300 sf GFA of bldg.	1 per 125 sf GFA of bldg.

Table 10-6 Off street Vehicular Parking Space Requirements

Land Use	Min. Vehicle Spaces	Max. Vehicle Spaces
<b>Professional Office/Business Services</b>		
Offices, General	1 per 1,000 sf GFA	1 per 200 sf GFA
Banks (with drive through)	1 per 200 sf GFA, plus sufficient stacking spaces to accommodate any drive through lane(s)	1 per 150 sf GFA, plus sufficient stacking spaces to accommodate any drive through lane(s)
Banks (without drive through facilities)	1 per 250 sf GFA	1 per 140 sf GFA
Funeral Home and Services	1 per 4 seats	1 per 2 seats
Personal Services (Dry Cleaners, etc.)	1 per 500 sf GFA	1 per 215 sf GFA
Personal Care Services (Hair, skin, etc.)		
All other Professional Office/Business Service uses	1 per 300 sf GFA	1 per 150 sf GFA
<b>Retail Trade</b>		
Amusement Arcade	1 per game table, video game or other amusement device	n/a

Cabarrus County Zoning Ordinance  
Chapter 10 Parking and Loading

Amusement Park	1 per 600 sf of outdoor recreation area	1 per 500 sf of outdoor recreation area
Automobile Sales, New and Used (see § 5.6)	1.5 per 375 sf GFA of sales area, plus 1 per employee, plus 1 per vehicle stored on site	1 per 375 sf GFA of sales area, plus 1 per employee, plus 1 per vehicle stored on site
Automobile Repair/Body Shop	1 per 500 sf GFA including all service areas, plus 1 per employee	1 per 375 sf GFA including all service areas, plus 1 per employee
Bed and Breakfast Inns (see § 5.7)	1 per guest bedroom, plus 2 for owner/operator	n/a
Bowling Centers	2 per lane	4 per lane
Building Material Supply/Greenhouses/Nurseries/Lawn & Garden Supply	1.5 per 375 sf GFA of sales or service building area	1 per 375 sf GFA of sales or service building area
Car Wash (as a principal use), Truck Stops, and/or Travel Plaza	1 per 500 sf GFA including wash bays/tunnels and retail areas	1 per 375 sf GFA including wash bays/tunnels and retail areas
Table 10-6 Off street Vehicular Parking Space Requirements		
Land Use	Min. Vehicle Spaces	Max. Vehicle Spaces

Retail Trade (cont.)		
Convenience Store	6 per 1,000 GFA, plus sufficient stacking area to accommodate 2 vehicles per each side of pump island	10 per 1,000 GFA, plus sufficient stacking area to accommodate 2 vehicles per each side of pump island
General Merchandise Stores (less than 25,000 sf GFA)	1 per 300 sf GFA	1 per 200 sf GFA

Cabarrus County Zoning Ordinance  
Chapter 10 Parking and Loading

Grocery/Food Stores	1 per 300 sf GFA	1 per 200 sf GFA
Health Clubs and Fitness Centers	1.5 per 1,000 sf GFA	10 per 1,000 GFA
Hotels, Motels and Extended Stay Facilities	1 per room plus 1 per 800 sf of public meeting area and restaurant space	1 per room plus 1 per 400 sf of public meeting area and restaurant space
Manufactured Home Sales	1 per 100 sf GFA of office area, plus 1 per every 2 employees	n/a
Miniature Golf	1 per hole	2 per hole
Mini warehousing/Self storage Leasing (see § 5.15)	1 for every 200 rental spaces (2 required)	n/a
Motion Picture Theater	1 per 6 seats	1 per 4 seats
Motion Picture Theater, drive-in	1 for each viewing space the facility is designed to accommodate	1 for each viewing space the facility is designed to accommodate
Restaurants (with drive through service and/or carry out)	1 per every 3 seating accommodation plus sufficient stacking area to accommodate any drive through lane(s)	1 per 50 sf GFA, plus sufficient stacking area to accommodate any drive through lane(s)
Restaurants (dine in only)	1 per every 3 seating accommodation	1 per 50 sf GFA
Shopping Centers/Superstores (25,000-400,000 sf GFA)	1 per 250 sf GFA	1 per 150 sf GFA
Shopping Centers/Superstores (400,001-600,000 sf GFA)	1 per 225 sf GFA	1 per 150 sf GFA
Shopping Centers/Superstores (over 600,000 sf GFA)	1 per 200 sf GFA	1 per 150 sf GFA
All other Retail uses	1 per 300 sf GFA	1 per 150 sf GFA

Table 10-6 Off street Vehicular Parking Space Requirements

Cabarrus County Zoning Ordinance  
 Chapter 10 Parking and Loading

Land Use	Min. Vehicle Spaces	Max. Vehicle Spaces
<b>Wholesale/Trade uses, Manufacturing and Industrial uses</b>		
Contractor's office	1 per 600 sf GFA	n/a
Junk/Salvage Yard	1 per 2 employees at peak shift, plus 1 per 5,000 sf of land area devoted to material storage, plus 1 for each company vehicle at peak shift	n/a
Manufacturing uses	2 per 3 employees at peak shift, plus 1 per each company vehicle at peak shift	n/a
Mining and Extractive Uses	1 per employee at max. shift, plus 1 per each company vehicle at peak shift	n/a
Wholesale sales and all other Industrial Uses	1 per 400 sf GFA of sales and office area, plus 1 per each company vehicle at peak shift or 2 per 3 employees at peak shift, plus 1 per each company vehicle at peak shift	n/a

(use whichever is greater)		
Transportation, Warehousing and Utility uses		
Land Use	Min. Vehicle Spaces	Max. Vehicle Spaces
<b>Table 10-6 Off street Vehicular Parking Space Requirements</b>		
Air, Rail or Bus Terminal	1 per employee, plus spaces required to satisfy projected peak parking demands	n/a
Communications Tower/Antenna	none (see § 5.21)	n/a
Truck Terminal	1 per employee at peak shift, plus 1 per each company vehicle at peak shift	n/a
Warehouse and Storage	1 per 400 sf GFA of sales and office area, plus 1 per each company vehicle at peak shift or 2 per 3 employees at peak shift, plus 1 per each company vehicle at peak shift (use whichever is greater)	n/a

Cabarrus County Zoning Ordinance  
Chapter 10 Parking and Loading

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Utility uses	1 per employee at peak shift, plus 1 per each company vehicle at peak shift	n/a
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Section 10-7 Administrative flexibility as to parking spaces required

Because the preceding table cannot cover every possible situation that may arise, the Zoning Administrator is authorized to determine parking requirements ~~in~~ for those situations by using the table and similar uses as a guide.

Modifications to Required Number of Spaces

In unusual circumstances, the standard parking requirement may not be appropriate. The Administrator shall have the authority to vary the parking requirement, either upward or downward by up to 10 percent, if one or more of the following circumstances exist:

- Expected automobile ownership or use patterns of employees, tenants, or other users vary from what is typical in the community or typical for the use.
- The parking demand varies throughout the day in relation to parking supply.
- The nature of operational aspects of the use warrants unique parking arrangements.

In no case, however, shall modifications be granted regarding North Carolina State Building Code accessible parking requirements.

Section 10-8 Satellite parking ~~spaces~~

If the number of parking spaces required by this ordinance cannot reasonably be provided on the same lot where the principal use ~~associated with these parking spaces~~ is located, then spaces may be provided on adjacent or nearby lots in accordance with the provisions of this section. These spaces are known as "satellite" parking spaces.

1. All such satellite parking spaces (except spaces intended for employee use) must be located within 400 feet of a public entrance ~~of~~ to the principal building housing the use associated with such parking. Satellite parking spaces intended for employee use may be located within any reasonable distance.
2. A developer wishing to take advantage of the provisions of this section must present satisfactory written evidence that he has the permission of the owner, ~~agent or company or other person in~~ legally responsible for charge of the satellite parking spaces ~~to~~ use of such spaces. The developer must also sign an acknowledgement that the continuing validity of ~~the~~ all permits depends upon ~~his continuing ability to~~ continuity and provision of ~~provide~~ the requisite number of parking spaces.

~~Persons who obtain All satellite parking areas and parking spaces in accordance with this which they obtain their spaces satisfy the shall be designed in accordance with the requirements of this article.~~ Ordinance.

Section 10-9 Required parking spaces not mutually claimed

While one parking facility may fulfill the parking requirements for differing entities, the required space assigned to one use may not be claimed by another. ~~See mitigating circumstances below in Section 10-10.~~

Section 10-10 Shared parking facilities

~~To the extent Developments proposing to use shared parking areas may do so, provided that the are make joint use of the same parking spaces located on a site operated at different times of the day or week is permitted and the same spaces may be credited to both uses. Applicant clearly demonstrates the following to the Zoning Administrator:~~

1. Number of parking spaces that will be assigned to each proposed use
2. Expected hours of operation related to each use to show that shared parking is appropriate
3. Expected traffic generation rate for each use and number of spaces required by the ordinance
4. That the proposed number of spaces is appropriate to support all of the proposed uses on the site

~~For example, if a parking lot is used in connection with an office building on Monday through Friday but is generally 90% vacant on weekends, another development that operates only on weekends could be credited with 90% of the spaces on that lot. Or, if a church parking lot is generally occupied only to 50% of capacity on days other than Sunday, another development could make use of 50% of the church lot's spaces on those other days.~~

Section 10-11 Miscellaneous parking requirements

1. ~~No storage of vehicles in active required parking spaces~~  
~~Required vehicle parking in connection with residential uses must be actively used by the permitted zoning use for which the parking is provided residents, i.e., no Storage of vehicles in active required parking spaces is not permitted.~~
2. ~~Restriction on large vehicle parking in Low Density Residential (LDR), Medium Density Residential (MDR) and High Density/Mixed Use Residential (HDR) Zoning Districts~~
  - a. ~~The parking of vehicles customarily operated as part of a commercial or industrial nature use or with more than two axles, including but not limited to tractor trailers, cargo trucks, box trucks and or other heavy equipment is prohibited. in the Medium Density Residential (MDR) and High Density/Mixed Use Residential (HDR) Zones.~~

This restriction shall not apply to **vehicles associated with** non-residential uses that are Permitted, Permitted Based on Standards, or issued as Conditional Use in these districts.

b. Farm equipment and motorhomes are exempt from these restrictions when parked on the owner's property **in the Low Density Residential (LDR), Medium Density Residential (MDR) and High Density/Mixed Residential (HDR) Zones.** Zoning districts. To the greatest extent possible, these types of vehicles should be stored so as to minimize the visual impact to adjacent properties and from adjacent right-of-ways.

## **PART II OFF-STREET LOADING REQUIREMENTS**

Every industrial and commercial structure shall provide space for off-street loading.

Section 10-12 Off-street loading space in addition to off-street parking space

Requirements for off-street loading spaces are separate from off-street parking. Space designated for compliance with one cannot be claimed for the other and vice versa.

Section 10-13 Off-street loading space defined

An off-street loading space must have **a be a** minimum of twelve (12) feet by forty (40) feet and an overhead clearance of fourteen (14) feet.

Section 10-14 Access to off-street loading space

All loading spaces shall be designed so as to be used by means of one continuous maneuver. Backing motions into streets or rights-of-ways is **not permitted** **prohibited**.

Section 10-15 Minimum off-street loading requirements

Each use shall provide at least one (1) space for each loading/unloading access point.

Section 10-16 Administrative flexibility as to loading requirements.

The Zoning Administrator shall make a determination in the case of uses not listed in the schedule above, of the minimum required off-street loading spaces. In reaching the determination, the Zoning Administrator shall be guided by the requirements for similar uses, the number and kind of vehicles likely to be attached to the proposed use and studies of the loading requirements of such uses in other jurisdictions.

# **Memo**

**To:** Cabarrus County Planning and Zoning Commission  
**From:** Susie Morris, AICP, CZO, Planning and Zoning Manager  
**CC:** File  
**Date:** 8/30/2016  
**Re:** Proposed Text Amendment to Zoning Ordinance (TEXT2016-00010)

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- Attached you will find proposed changes to add Appendix D, Lighting Standards, to the ordinance.
- The proposed change codifies the standards of review for outdoor lighting and spillover. The standards being implemented are common industry standards intended to reduce impacts to adjacent properties.
- These changes have been reviewed and are recommended by the Text Amendment Committee.
- Please be prepared to discuss the proposed changes to the ordinance and to make a recommendation to the Board of Commissioners regarding the proposed changes.

CABARRUS COUNTY DEVELOPMENT ORDINANCE  
APPENDIX D-OUTDOOR LIGHTING STANDARDS

OUTDOOR LIGHTING STANDARDS

All outdoor lighting shall conform to the following standards:

Outdoor lighting shall be designed, located, and mounted at heights no greater than eighteen (18) feet above grade for non-cutoff lights, or thirty five (35) feet above grade for cutoff lights; and located a minimum of 15 feet from property lines.

All outdoor lighting shall be designed and located such that the maximum illumination shall not exceed 1.5 maintained horizontal foot-candles (FC) at the property line for cutoff lights and 0.4 for non-cutoff lights. The average intensity illumination for outdoor lighting shall not exceed 6 foot-candles in intensity as measured at grade. Fixtures should be placed to provide uniform distribution of light and to avoid intense lighting that produces excessive glare.

OUTDOOR RECREATIONAL LIGHTING

Because of the unique requirements for nighttime visibility and limited hours of operation, lighting for active recreation areas, such as for ball fields, soccer fields and tennis courts shall not be subject to the height restrictions located in this section. This type of lighting, however, is subject to the illumination standards listed above.

PHOTOMETRIC PLAN

A photometric plan shall be submitted as part of the zoning site plan review process to show that proposed site lighting meets the standards of this section.

LIGHTING AND LANDSCAPE PLAN CONSIDERATION

Project lighting should be designed to accommodate projected plant growth as required by Chapter 9, Landscape and Buffering.

# Memo

**To:** Cabarrus County Planning and Zoning Commission  
**From:** Susie Morris, AICP, CZO, Planning and Zoning Manager  
**CC:** File  
**Date:** 8/30/2016  
**Re:** Proposed Text Amendment to Zoning Ordinance (TEXT2016-00011)

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- Attached you will find proposed changes to Chapter 14, Nonconformities.
- The proposed change removes the "over 10,000 under 10,000" language and allows existing non-conforming lots to use the MDR development standards for setbacks and impervious when a lot does not meet the acreage or minimum lot width for AO, CR or LDR zoning district.
- Proposed additions are in red. Deletions are in strikethrough text.
- These changes have been reviewed and are recommended by the Text Amendment Committee.
- Please be prepared to discuss the proposed changes to the ordinance and to make a recommendation to the Board of Commissioners regarding the proposed changes.

1. to not arbitrarily require the cessation of all nonconformities but instead, provide a process whereby owners/operators of negligible nonconformities can possibly continue to use and operate including expansions and alterations after review by the Zoning Administrator;
2. to encourage the cessation (stopping) of those nonconformities, the negative effects of which cannot otherwise be mitigated; and,
3. to phase out those nonconformities which must be eliminated in such a manner as to avoid unjust economic hardship for their owners.

#### **Section 14-5 Nonconforming land/ lots**

- Subdivision  
Nonconforming land may not be subdivided except for purposes and in a manner conforming to district regulations.
- Use of single nonconforming lot  
Any lot of record which is nonconforming may become the site of any use permitted within its zoning district as long as it can meet setback requirements and all other zone related development requirements.
- Lots made nonconforming as a result of public taking or court order  
If a lot becomes nonconforming through no fault of the owner, for example, as a result of losing square footage by public taking or court order, while still recognized as nonconforming, it may be used and developed in accordance with the design standards of its district nor will it be required to be combined.
- Existing lots of record in the AO, CR or LDR zoning districts  
Existing lots of record located in the AO, CR or LDR zoning districts that do not meet the dimensional standards for required lot area or required average lot width as established in Chapter 5, District Development Standards, Section 5-5, Conventional Subdivision Standards, B. Dimensional Standards or C. Minor Subdivisions, may develop using the standards established for the MDR Open Space District related to setbacks and lot coverage. This adjustment shall be noted on any plot plan submitted for permitting and any zoning permits issued for the subject property.
- Nonconforming lots of 10,000 square feet or more  
~~Any lot 10,000 square feet or more in area in a platted residential subdivision will be viewed as a conforming lot even if its zoning district requires more square footage. It need not be combined. Instead, it may be used and developed in~~

accordance with the design standards of the medium density open space subdivision option.

- Nonconforming lots of less than 10,000 square feet

~~When lots become undersized as a result of the passage of this Ordinance in zones where the minimum is 10,000 square feet or more and the lot contains less than 10,000 square feet, any lot in common ownership with continuous lot frontage with another undersized lot will be considered a single zoning lot. However, before a zoning compliance permit authorizing their use can be issued, lot area and width requirements for the district in which the lots are located must be satisfied.~~

- Lots with multiple existing primary structures that pre-date zoning ordinance

1. Lots with multiple existing primary structures constructed prior to the adoption of the zoning ordinance (February 1, 1982) may be subdivided to create individual tracts for the primary structures in any district provided that the resulting lots meet or exceed the minimum standards established for the Medium Density Residential Open Space subdivision option in Chapter 5.
2. To the greatest extent possible, the new lot lines shall be established such that the setbacks for the existing structure meets the setbacks for the Medium Density Residential Open Space subdivision. In no case shall a setback of less than 5 feet be established for existing structures.
3. Each resultant lot and primary structure must be served by utilities in the form of an approved individual well and septic system or a combination of existing governmental utilities and an approved individual private well or septic system.
4. A note shall be placed on the plat to be recorded stating that the lots were created using this section of the Zoning Ordinance.

#### **Section 14-6 Nonconforming use of premises (land with or without structures)**

**A. Limitations**

There shall be no enlargement, increase in intensity or changes to the use unless a Certificate of Nonconformity Adjustment is obtained. See Section 14-10.

**B. Cessation of use**

If the use ceases for more than six (6) months, subsequent use of the land must conform to district regulations.

**C. Changing from one nonconforming use to another**

# **Memo**

**To:** Cabarrus County Planning and Zoning Commission  
**From:** Susie Morris, AICP, CZO, Planning and Zoning Manager  
**CC:** File  
**Date:** 9/7/2016  
**Re:** Proposed Text Amendment to Zoning Ordinance (TEXT2016-00012)

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- Attached you will find proposed changes to Chapter 13, Amendments and Changes.
- The proposed change removes the "CD" rezoning option from the ordinance, clarifies the process for the SU rezoning process, vesting of development rights versus common law vested rights and adds language to address SL2016-111, vesting of multi-phase development.
- Proposed additions are in red. Deletions are in strikethrough text.
- These changes have been reviewed by the Text Amendment Committee and Legal.
- Please be prepared to discuss the proposed changes to the ordinance and to make a recommendation to the Board of Commissioners regarding the proposed changes.

## Section 13-1 Introduction

This Chapter sets forth the procedure by which both the ~~ordinance~~ text (~~written~~) and the ~~atlas zoning maps of the Zoning Ordinance~~ may be changed. It also explains the concept of special use rezoning, a form of rezoning which changes a zoning classification from one to another but limits the number of uses in the ~~newly proposed zone and requires that a site specific development plan be filed with the application~~. This is in contrast to a ~~the regular or traditional conventional~~ rezoning, which changes from one ~~general~~ zoning classification to another ~~and includes all of the uses permitted in the district, as long as the proper permits can be issued, but does not specify use~~. ~~Instead, all the uses of the new zone which may be relatively wide ranging, carry over to the new zone.~~

## Section 13-2 How to use this Chapter

Information in this Chapter is organized as follows:

Definitions	Section 13-3
Part I. Amendments to <del>Ordinance</del> Text and <del>Atlas Zoning Maps</del>	Section 13-4 to 13-9 <del>7</del>
Part II. Special Use ("SU") Rezoning District Option	Section 13-10 to 13-12 <del>13-8 to 13-9</del>
Part III. Procedures for Zoning Changes	Section 13-13 10
Part IV. Minor Changes to be Approved <del>considered</del> by the Zoning Administrator, Modifications to be <del>approved</del> considered by <del>Board or Commission</del>	Section 13-14 to 13-17 <del>11</del>
Part V. <del>Changing</del> <del>Amending</del> "SU" development plans, violations, and reapplying.	Section 13-18 to 13-19 <del>13-12 to 13-4</del>
Part VI. Vesting of Development Rights	Section 13-20-15 13-16

## Section 13-3 Definitions

~~The following definitions are set forth to promote clarity:~~

General Zoning District-Any of the basic zoning districts created by Chapter Three of this Ordinance.

**Site Specific** Development Plan- A ~~site specific development plan showing the conceptual design, layout and/or configuration of the site, including existing and proposed conditions. depicting proposed land usage of property. See Chapter 12, Major Site Plan.~~ This plan is used when affixing "SU" zoning district status to a property.

Cabarrus County Zoning Ordinance  
Chapter 13 Amendments and Changes

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Special Use Zoning District ("SU" District)-Considered a "floating" zoning district. **This district is created only at the request of the property owner and is built upon one of the general zoning districts described above and developed as set forth in an the approved site specific development plan.**

Text- Refers to those written rules, requirements, etc. known commonly as The Cabarrus County **Zoning Development** Ordinance.

**Atlas/Zoning Maps**- Refers to the official zoning maps bearing the zoning district categories parcel by parcel throughout the County. Maintained in the office of the Zoning Administrator, Zoning Division, Cabarrus County **Commerce Planning and Development** Department.

~~—(vi) Conditional Zoning District ("CD" District). A floating zoning district created only at the request of a property owner, built upon one of the general districts described above, and developed as set forth in an approved development plan.~~

## **PART I AMENDING THE ZONING-ORDINANCE TEXT AND ATLAS ZONING MAPS**

### Section 13-4 Amending the **Zoning** Ordinance text and **Atlas Zoning Maps**

Amendments may be made to:

- correct an error in text or ~~atlas~~ **Zoning Maps**,
- change the regulations of the text,
- extend the boundary of an existing zoning district because of changed or changing conditions in a particular area, or
- rezone property from one zoning category to another (general or special use district, ~~or conditional district~~).

### Section 13-5 Initiation of amendments

Amendments may be initiated as follows:

#### 1. To the text:

- By the Cabarrus County Board of Commissioners
- By the Cabarrus County Planning and Zoning Commission and Staff

2. To the **zoning maps atlas**:

- By the Cabarrus County Board of Commissioners
- By the Cabarrus County Planning and Zoning Commission and Staff
- By any property owner, citizen, or agent thereof

Section 13-6 Petition for rezoning by non-owner

When a petition to rezone **a property** is initiated by someone other than the property owner or his agent, the Board of Commissioners, the Planning and Zoning Commission or Planning Staff, the petition cannot be accepted without a notarized statement from the owner(s) of the property in question **assenting**—agreeing to the proposed rezoning request.

Section 13-7 **Three** Options for rezoning property (Atlas Amendment) in Cabarrus County

~~Property in Cabarrus County may have its zoning classification changed by requesting:~~  
~~Property in Cabarrus County may be considered for rezoning to a different zoning classification by requesting:~~

1. A Conventional Rezoning Request which **proposes** rezoning to a general zoning district
2. A Special Use District Rezoning Request which proposes a unique, and in many cases more restrictive, zoning district that includes a list of permitted uses for the site being considered and a site specific development plan ~~rezoning to a special use zoning district or 3) a rezoning to a conditional district. Each is described below~~

Option 1: **Conventional Rezoning Request** (rezoning from one general zoning district to another general zoning district)

A petitioner may ask that his/her property be rezoned to any of the general zoning districts set forth in Chapter Three of this Ordinance.

To initiate the process, the petitioner must file a **complete** Rezoning Application as ~~provided by~~ with the Cabarrus County **Planning and Development Department** ~~Department of Commerce~~, and submit ~~with~~ the appropriate fees as established by the County Board of Commissioners. ~~The time frame for the processing of the application is set forth in Section 13-12 below.~~

Option 2: Rezoning to the Special Use Zoning District

A petitioner may ask that his/her property be rezoned to a special use zoning district built upon ~~those~~<sup>the</sup> existing general zoning districts set forth by this Ordinance. To initiate the process, the petitioner must file a **complete Special Use Rezoning Application as provided by** with the Cabarrus County **Planning and Development Department of Commerce**. ~~The time frame for the processing of the application and submit the appropriate fees, along with the applicable submittal materials, including a site specific development plan is set forth in Section 13-12.~~

#### **OPTION THREE: Rezoning to a Conditional Zoning District**

~~A petitioner may ask that his/her property be rezoned to a conditional zoning district built upon those existing general zoning districts set forth by this Ordinance. To initiate the process, the petitioner must file a Rezoning Application as provided by the Cabarrus County Department of Commerce. The time frame for the processing of the application with the appropriate fee and development plan is set forth in Section 13-12.~~

### **PART II THE SPECIAL USE AND CONDITIONAL REZONING DISTRICT OPTIONS**

#### **Section 13-8 Using the Special Use District rezoning option**

Because of the refinement of this option, the Planning and Zoning Staff strongly encourages its use. Special use district rezoning affords a degree of certainty in land use decisions not possible when rezoning to a general category allowing many different uses. This option is most beneficial when rezoning land to establish a use **or uses** that requires the issuance of a conditional use permit ~~(for example requesting a zoning change to GI for the establishment of a sanitary landfill)~~.

#### **Section 13-9 Creating the Special Use District**

##### **Choosing the special use district**

Keeping the proposed **actual use or uses** in mind, the Petitioner may choose the desired district from any of the general zoning districts (where the proposed use is permitted either outright or conditionally) as set forth within this Ordinance. Upon selection, the requested zoning district will be known by the name of the general zoning district with the suffix "SU" added to ~~delineate~~ **identify** its special use status. For example, Limited Commercial may be selected and the suffix "SU" added, to create "Limited Commercial-SU".

##### **Land use within the special use district**

The Petitioner will describe the exact land use proposed for the "SU" District **and will provide a complete list of the proposed uses for the site**. Such use(s) may be selected

from any of the uses, whether permitted by right or conditional, allowed in the general zoning district upon which the "SU" district is based.

**Site Specific Development Plan**

Along with the application for special use district status, the Petitioner is requested to furnish a shall provide a major site specific development plan as described in Chapter 12, Section 12-9. At a minimum the development plan will address:

**General site characteristics**

Ownership, topography, soils, drainage, vegetation and other physical characteristics.

**Transportation patterns**

Public and private roads, internal and external circulation patterns, and parking.

**Land use characteristics**

A site plan showing existing and proposed land use(s), structures and buildings, i.e., a description of size, area and height. Cabarrus County Zoning and Subdivision Ordinances and other applicable ordinances and laws.

**Utilities and Infrastructure.** How the site will be served by public and or private utilities and infrastructure and documentation that service to the site is available. If site is to be served by onsite septic then a soils test establishing soil suitability shall be provided.

**Relationship of the Proposed Zone Zoning Change to the Cabarrus County Land Use Plans and Studies Development Guide, appropriate area plan, or other plan.**

Petitioner will provide a narrative of how will the proposed zone change will conflict, conform, complement or otherwise effect impact long range plans for the development of land in the County as well as any other special studies.

**Section 13.10. Using the Conditional District rezoning option.**

Because of the refinement of the option, the Planning and Zoning Staff strongly encourage its use. Conditional District rezoning affords a degree of certainty in land use decisions not possible when rezoning to a general category allowing many different uses. This option is somewhat more flexible than the Special Use option outlined above in that it is an entirely legislative process.

**Section 13.11. Creating the Conditional District.**

1. Choosing the conditional district. Keeping the proposed actual use in mind, the Petitioner may choose the desired district from any of the general zoning districts (where the proposed use is permitted either outright or conditionally) as set forth

~~within this Ordinance. Upon selection, the requested zoning district will be known by the name of the general zoning district with the suffix "CD" added to delineate its conditional district status. For example, Limited Commercial may be selected and the suffix "CD" added, to create "Limited Commercial CD".~~

~~2. Land use within the conditional district. The Petitioner will describe the exact land use proposed for the "CD" District. Such use(s) may be selected from any of the uses, whether permitted by right or conditional, allowed in the general zoning district upon which the "CD" district is based.~~

~~3. Development Plan. Along with the application for conditional district status, the Petitioner is requested to furnish a development plan. At a minimum the development plan will address:~~

~~General site characteristics — ownership, topography, soils, drainage, vegetation and other physical characteristics.~~

~~Transportation patterns — public and private roads, internal and external circulation patterns, and parking.~~

~~Land use characteristics — a site plan showing existing and proposed land uses, structures and buildings, i.e., a description of size, area and height. The plan shall show how the site conforms to the development requirements of the Cabarrus County Zoning and Subdivision Ordinances and other applicable ordinances and laws.~~

~~Utilities and Infrastructure. How the site will be served by public and or private utilities and infrastructure and documentation that service to the site is available. If site is to be served by onsite septic then a soils test establishing soil suitability shall be provided.~~

~~Relationship of the Proposed Zone Change to the Cabarrus County Land Development Guide, appropriate area plan, or other plan. Specifically, how will the proposed zone change conflict, conform, complement or otherwise effect long range plans for the development of land in the County as well as any other special studies.~~

### **PART III PROCEDURES FOR ZONING CHANGES**

#### **Section 13-10 Zone change Filing procedures**

Because ~~all three~~ the options for rezoning have more similarities than differences, one procedure for filing is set forth below **with applicable differences noted**. The few differences are emphasized in bold.

### Step 1 Pre-application Meeting

The Petitioner is required to schedule and attend a pre-application meeting with staff before filing any rezoning petition. At this meeting, staff will discuss the proposed rezoning with the Petitioner along with information related to the rezoning process, water and sewer availability, applicable land use plans, established deadlines for submittal and the format used for the Planning and Zoning Commission meetings.

Design Professionals working on the project with the Petitioner should also attend this meeting as staff will go into detail about the submittal requirements and materials needed for the application to be considered complete.

### Step 2 Filing the Application

The Petitioner must file a ~~complete application for the applicable type of rezoning request with the Planning and Development Department along with the appropriate fees. Applicable materials required for a complete submittal will be determined at the pre-application meeting. Incomplete applications will not be accepted and will not be scheduled for consideration by the Planning and Zoning Commission. the appropriate Cabarrus County Rezoning Application form within the Commerce Department along with a fee as set by the County Board of Commissioners. Applications for amending the atlas must include:~~

- ~~1. Name(s) and address(es) of the owners of the proposed rezoning.~~
- ~~2. Name(s) and address(es) of all abutting property owners, (including those across a right of way), including all on site easement holders.~~
- ~~3. A legal description or survey of the property proposed for rezoning.~~

~~If rezoning to an "SU" or "CD" district is desired, petitioner also submits a development plan as described in Section 13-9 or 13-11, part 3 at this time.~~

### Step 3 Staff and Applicable Agency Review

~~The Commerce Department staff review the submitted application. If the rezoning is to an "SU" or "CD" district, the staff also reviews the proposed development plan. After review, the staff will again meet with the petitioner to discuss its recommendation. The petitioner may refuse or accept staff recommendations.~~

#### Conventional Rezoning

When the complete application is received by Planning Staff, Staff and appropriate agents will review the application. Staff will also begin preparation of the staff report for the Planning and Zoning Commission meeting. Staff will schedule a meeting date and notify adjacent property owners of the meeting and that a public hearing will be conducted at the meeting. A sign advertising the meeting and hearing will also be placed on the property being considered for the change in zoning.

**Special Use Rezoning**

If the proposed rezoning is for a Special Use Rezoning, once the complete application is received, Staff and appropriate agencies will review the application, the proposed site plan and the list of uses. Review comments will be forwarded to the Petitioner. The Petitioner will need to address the comments in writing, revise the site plan accordingly and submit the corrections to the Planning Division.

Once advised that the site plan is in compliance with the ordinance and ready to be presented to the Planning and Zoning Commission, the Petitioner will work with staff to submit the appropriate number of copies of the applicable documents and site plans for the Planning and Zoning Commission meeting.

When the copies of the plan are received, Staff will begin to prepare a staff report, schedule a meeting date and notify adjacent property owners of the meeting and that a public hearing will be conducted regarding the proposal. A sign advertising the public hearing will also be placed on the property being considered for the special use rezoning.

**Step 3: The Planning and Zoning Commission**

The Planning and Zoning Commission ~~shall consider~~ all applications to amend the ~~atlas zoning maps~~ or text of this Ordinance at ~~their~~ its regularly scheduled ~~monthly~~ meetings.

Complete applications shall be filed with the ~~Commerce~~ Planning and Development Department by the submission deadline without exception so that staff evaluations can be accomplished ~~in accordance with established deadlines and applicable state statutes for providing required notice. The Planning and Zoning Commission's current regular monthly meeting date shall serve as the deadline for scheduling an item for consideration by the Commission at its next regularly scheduled monthly meeting. A complete application includes the required application and filing fee as well as a site plan and other supporting documents (when required by this ordinance) such as traffic studies, environmental studies, and similar documents.~~

**Step 4 Planning and Zoning Commission Decision or Recommendations to Board of Commissioners**

~~Within forty five (45) days of hearing the presentation of the application to amend, the Planning and Zoning Commission shall make a decision on the rezoning petition or text amendment.~~

A special use "SU" rezoning decision shall be supported by findings of fact ~~arrived derived~~ from sworn testimony presented at the official public hearing held by the Planning and Zoning Commission, conducted as a quasi-judicial hearing.

Cabarrus County Zoning Ordinance  
Chapter 13 Amendments and Changes

For the "SU" and "CD" rezoning option, conditions may be proposed by the applicant or the county or its agencies. ~~but only those~~ These conditions ~~mutually agreeable to both parties~~ ~~may~~ ~~shall~~ be incorporated into the rezoning regulations and permitting requirements.

The Planning and Zoning Commission decision shall be considered the final action if the vote to approve or deny a rezoning request is of at least three-fourths of the Planning and Zoning Commission members present and not excused from voting and if no appeal of the decision is ~~filed~~ ~~made~~. ~~This action is also referred to as an "expedited" vote.~~

A ~~consistency statement for the proposed rezoning~~ shall be prepared for each ~~rezoning petition for a rezoning to a special use district, conditional district, or other small scale rezoning.~~

Action by the Planning and Zoning Commission on text amendments are recommendations and shall be forwarded to the ~~County~~ ~~Board of~~ Commissioners for ~~their final~~ consideration.

**Step 5 ~~Board of~~ Commissioner's Public Hearing (if needed)**

If an approval or denial of a rezoning request is by a vote of less than three-fourths of the members of the Planning and Zoning Commission or if an appeal is ~~taken, filed~~, then the ~~County~~ ~~Board of~~ Commissioners shall make the final decision on the rezoning petition.

Any person aggrieved by the action of the Planning and Zoning Commission ~~to the County Commissioners~~ shall have the right to appeal the decision to the ~~County~~ ~~Board of~~ Commissioners by giving notice in writing to the Planning and Zoning Commission ~~Secretary Clerk or Zoning Administrator~~ within fifteen (15) days of the action of the ~~Planning and Zoning Commission~~ ~~planning agency~~.

- In the case of an appeal, the ~~Board of~~ County Commissioners shall hear the application *de novo* (anew).

The ~~Board of~~ Commissioners shall hold a public hearing for all proposed text amendments.

**Step 6: Notification (Electronic Publication, Newspaper Advertisements, Mailed Notices and Posting of Signs)**

**Electronic Publication**

Cabarrus County Zoning Ordinance  
Chapter 13 Amendments and Changes

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Prior to the official public hearing, notification shall comply with Cabarrus County Ordinance Number 2004-17 (see Session Law 2003-81). In general, notice will be given by electronic means at least ten (10) days before the date fixed for the public hearing. Alternatively, newspaper advertisements published in accordance with North Carolina General Statute §153A-323 may substituted for the electronic publication.

**First Class Mail**

**Notice by** first class mail shall be ~~mailed sent~~ to the owner of the parcel(s) of land involved in the proposed rezoning. This mail notification shall also be sent to all property owners who have property that abuts the parcel(s) of land under consideration (including ~~the parcels located across any rights-of-ways~~). The first class mail notice shall be sent to the last address listed for such owner(s) as identified on the County tax abstracts.

The person or persons mailing such notices shall certify to the decision making body ~~the date and circumstances of mailing that fact~~ and such certificate shall be deemed conclusive in the absence of fraud. The first class mail notice of this section shall not be required in the following situations:

1. The total rezoning of all property within the boundaries of the County or a zoning area as defined in North Carolina General Statute §153A-342
2. The zoning is an initial zoning of the entire zoning jurisdiction area;
3. The zoning reclassification action directly affects more than fifty (50) ~~parcels properties~~, owned by a total of at least fifty (50) different property owners;
4. The reclassification is an amendment to the zoning text; or
5. The County is adopting a water supply watershed protection program as required by North Carolina General Statute §143-214.5.

In any case where this subsection eliminates the notice required earlier in this section, the County shall publish notice of the hearings required by North Carolina General Statute §153A-323, ~~but~~ provided that each of the advertisements shall not be less than one-half (1/2) of a newspaper page in size. The notice shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the County's jurisdiction or outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by mail pursuant to this section. The person or persons mailing the notices shall certify to the

decision making body ~~the date and circumstances of mailing that fact~~ and the certificates shall be deemed conclusive in the absence of fraud.

**Posting of Signs**

The County shall post one or more prominent signs immediately adjacent to the subject area of a rezoning petition reasonably calculated to give public notice of the proposed rezoning.

**Step 7: Timing of Public Hearing by County Commissioners**

If the Planning and Zoning Commission action is appealed as described in Step 4 above, then the party pursuing the action before the Board of Commissioners shall pay the advertising fee and the action shall be re-advertised.

Within forty-five (45) days of a recommendation by the Planning and Zoning Commission on an application to amend text or ~~atlas~~ ~~the zoning maps~~, or, within the lapse of forty-five (45) days with no recommendation, a public hearing may be scheduled with the ~~County~~ Board of Commissioners to be held at ~~their~~ its next available meeting. Notification of the hearing shall follow the requirements of Step 6 above.

**Step 8: Factors Weighed at Public Hearing**

When evaluating a proposed amendment, both the Planning and Zoning Commission and the Board of Commissioners will consider the following:

1. the amendment application itself and the information presented within;
2. the testimony presented at the public hearing;
3. consistency with County wide planning objectives and how ~~they~~ ~~these~~ would be affected by the proposed change; and,
4. in the case of ~~atlas~~ ~~map~~ changes to a general zoning district, the compatibility of all uses allowed within the proposed zoning classification with uses permitted on other property in the vicinity. When rezoning ~~from AO or CR~~ to a more intensive zoning district, the availability of governmental water and sewer to serve the property shall be considered as well as the ability to provide ~~other~~ required public services. ~~When rezoning from LDR or MDR to a more intensive zoning district, the ability to provide required public services shall be considered.~~

Nothing in this section should be deemed to prohibit the County from using any other applicable criteria in determining whether or not to approve a zoning ~~atlas map~~ amendment.

**Step 9: Board of Commissioners Action on Amendments.**

At the conclusion of the public hearing on a proposed amendment, the Commissioners may proceed to vote on same, refer it to either the Planning and Zoning Commission or Staff for further study, or take any other action consistent with its usual rules of procedure. Voting on amendments to this Ordinance shall proceed in the same manner as other ordinances.

**Action Subsequent to the Commission Action**

The Zoning Administrator shall within seven (7) days cause notice of the disposition of the application to be sent by mail to the applicant and a copy of the decision to be filed in the office of the Zoning Administrator. The Zoning Administrator, in the case of approval or approval with conditions, shall issue the necessary permit in accord with the Commission's action.

**Step 10: The Effect of ~~Atlas~~ Zoning Map Amendment**

A vote to rezone property will result in the appropriate change being made to the ~~atlas zoning maps~~.

In the event of an "SU" district rezoning, the final ~~site specific~~ development plan is itself a condition of the rezoning. Accordingly, the ~~site specific~~ development plan must be filed in the Planning and Zoning Office and will be enforced as part of the Cabarrus County Zoning Ordinance. Also, ~~It is the responsibility of the petitioner to file~~ The ~~site specific~~ development plan ~~will also be filed~~ in the Cabarrus County Register of Deeds Office as a deed restriction (~~runs with the land~~) upon the subject property. It will be ~~perpetually binding in perpetuity~~ on the property upon which it is issued unless another rezoning request is brought ~~forth~~ and approved.

~~Additionally, Where substantial construction has not begun within two (2) years of an "SU" rezoning ~~approval~~, the property in question may be changed to another designation after a public hearing is held in compliance with the required procedure for an ~~atlas zoning map~~ amendment.~~

~~If a petition for a "CD" zoning district is approved, the development and use of the property shall be governed by the predetermined ordinance requirements applicable to the district's category, the approved site plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment~~

~~to these regulations and to the zoning maps. Additionally, where substantial construction has not begun within two (2) years of a "CD" rezoning, the property in question may be rezoned to another designation after a public hearing held in compliance with the required procedure for an atlas amendment.~~

**Step 11: Issuance of Permit**

When an application for rezoning to an "SU" or "CD" district has been approved by the appropriate approving agency as described above, the petitioner must secure a Certificate of Zoning Compliance from the Office of the Zoning Administrator for Cabarrus County prior to the commencement of any development or land disturbing activity.

**PART IV BOARD OR COMMISSION APPROVED SITE PLAN, MINOR CHANGES VERSUS MODIFICATION TO PLAN TO-BE APPROVED BY THE ZONING ADMINISTRATOR,**

**Section 13-11 Minor changes or modifications, action by Zoning Administrator or approving Board or Commission**

The Zoning Administrator is authorized to approve minor changes ~~in to the~~ ~~an~~ approved site development plan, as long as the proposed changes are in harmony with action of the approving Board or Commission, but shall not have the power to approve changes that constitute a modification of the approval. A modification shall require approval of the Board or Commission and shall be handled as a new application.

**Section 13-14. Criteria to be used in determination**

The Zoning Administrator shall use the following criteria ~~standards~~ in determining whether a proposed action is a minor change or a modification:

1. Any change in location by more than 20 feet or any increase in the size or number of signs shall constitute a modification.
2. Any increase in intensity of use shall constitute a modification. An increase in intensity of use shall be considered to be an increase in usable floor area, an increase in number of dwelling or lodging units, and/or an increase in outside land area devoted to sales, displays, or demonstrations.
3. Any change in parking areas resulting in an increase or reduction of ten (10%) percent or more in the number of spaces approved by the approving agency shall constitute a modification. In no case shall the number of spaces be reduced below the minimum required by this Ordinance.

4. Structural alterations significantly affecting the basic size, form, style, ornamentation and the like of the building as shown on the approved plan shall be considered a modification.
5. Substantial change in the location of open space, recreation facilities or landscape screens shall constitute a modification. A decrease in the amount of open space shall be considered a modification.
6. A change in use shall constitute a modification.
7. Substantial changes in pedestrian or vehicular access or circulation shall constitute a modification.

**Section 13-15.** Review of record required

The Zoning Administrator shall, before making a determination as to whether a proposed action is a minor change or a modification, review the record of proceeding on the original application for approval.

**Section 13-16.** Action required on proposed modifications

The Zoning Administrator shall, if it is determined that the proposed action is a modification, require the applicant to file a request for approval of the modification, which shall be submitted to the Commission which approved the original application. The Commission may approve or disapprove the application for approval of a modification and, prior to its action, shall hold a public hearing ~~thereon~~.

**PART V CHANGING AMENDING "SU" or "CD" SITE SPECIFIC DEVELOPMENT PLANS, VIOLATIONS, AND REAPPLYING**

**Section 13-17.** ~~12~~ Minor changes and modifications in approved "SU" District development plans

The Zoning Administrator is authorized to approve minor changes in the implementation of a ~~site specific~~ development plan as long as such changes are in harmony with the overall intent of the rezoning. A proposed change that becomes a modification of the rezoning shall not be within the authorizing scope of the Zoning Administrator but instead, shall be handled as a new application. In determining the degree of change, the Zoning Administrator may refer to those criteria set forth in ~~Section 13-14~~ ~~11~~ of this Ordinance. Administrative decisions on change must be made in writing and kept on file within the Office of the Zoning Administrator.

**Section 13-18. 13** Violation of the terms and conditions of an "SU" or "CD" District rezoning

A violation of a condition of rezoning to an "SU" or "CD" District as set forth in the final **site specific** development plan and other related official paperwork associated with such rezoning shall be treated the same as a violation of this Ordinance, subject to the same remedies and penalties.

Upon determining that such a violation has occurred, the Zoning Administrator shall notify the property owner of **his such** findings either by certified mail or in person, and set a reasonable time for the violation to be corrected or abated. When a violation is not corrected or abated within the time period set by the Zoning Administrator, the Zoning Administrator or any aggrieved person may institute **suit or an** injunction, mandamus **(court order)**, or other appropriate action **in or** proceedings to correct or abate the violation.

**Section 13-19. 14** Effect of denial on subsequent petitions for zoning amendment

An application for a **zoning** amendment that has been denied, in whole or in part, or **has been approved for a more restrictive classification than requested**, shall not again be processed for consideration by the County for a one (1) year period **from the date of denial**.

~~The Commissioners, after considering the advice of the Planning and Zoning Commission, and finding substantial changes in conditions or circumstances bearing on the application, The Zoning Administrator may waive the one (1) year waiting period if it is determined that there are substantial changes to a previously proposed rezoning petition that was considered by the Planning and Zoning Commission and denied.~~

This restriction shall not apply to any amendment or petition submitted by the Planning and Zoning Commission, Planning Staff or the Board of County Commissioners.

**PART VI VESTING OF DEVELOPMENT RIGHTS**

**Section 13-20. 15** Vesting of development rights **under County Ordinance**

A developer/owner may **petition to** establish a vested right under the Ordinance to complete a project by making a formal request to the Planning and Zoning Commission. **Vested rights may only be requested for a previously approved site specific development plan.**

A developer/owner wishing to establish a common law vested right must file a petition in Superior Court as the Planning and Zoning Commission does not have the authority to determine common law vested rights. The Planning and Zoning Commission may only consider vested rights related to County development ordinances.

#### **Step 1 Pre-application Meeting**

The Petitioner is required to schedule and attend a pre-application meeting with staff before filing a Vested Rights Application. At this meeting, staff will discuss the vesting process with the Petitioner along with established deadlines for submittal and the materials that will be required for the Planning and Zoning Commission meeting. Design Professionals working on the project with the Petitioner should also attend this meeting.

#### **Step 2 Filing the Application**

The Petitioner must file a **complete application for the vesting of development rights** with the Planning and Development Department along with the appropriate fees. Applicable materials required for submittal will be determined at the Pre-application meeting. Incomplete applications will not be accepted.

**The request shall contain:**

~~A description with reasonable certainty, the type and intensity of a use for a specified parcel(s) of land.~~

~~"Site Specific Plan" or "Phased Development Plan" which shall be in the form of a subdivision plat drawn in accordance with the Cabarrus County Subdivision Regulations or a site development plan drawn in accordance with Chapter Twelve of this Ordinance.~~

#### **Step 3 Planning and Zoning Commission Consideration**

Upon receiving a request for vested rights, the Planning and Zoning Commission shall consider the application for vested rights and shall hold a public hearing to review the request and the application materials submitted ~~plans~~. If the ~~plans~~ **request** is approved, the vested rights shall run with the land for a period of two (2) years, beginning from the date of approval **by the Planning and Zoning Commission**.

Any variations from the original plan must ~~have the consent of~~ **be approved by** the Planning and Zoning Commission.

**Section 13-16 Multi-Phased Development as defined in North Carolina General Statute § 153A-344.1(b)(7)**

For purposes of this section, Multi-Phased Development means a development containing 100 acres or more that (1) is submitted for site plan approval for construction to occur in more than one phase and (2) is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval

Amendments in the applicable zoning, subdivision, or unified development ordinance shall not be applicable or enforceable without the written consent of the owner with regard to a multi-phased development as defined in North Carolina General Statute §153A-344.1(b)(7).

A multi-phased development shall be vested for the entire development with the applicable zoning, subdivision, and unified development ordinances in place at the time a site plan approval is granted for the initial phase of the multi-phased development.

A right which has been vested as provided for in this subsection shall remain vested for a period of seven years from the time a site specific development plan approval is granted for the initial phase of the multi-phased development.

DRAFT TO PZ

# Memo

**To:** Cabarrus County Planning and Zoning Commission  
**From:** Susie Morris, AICP, CZO, Planning and Zoning Manager  
**CC:** File  
**Date:** 9/9/2016  
**Re:** Proposed Text Amendment to Zoning Ordinance (TEXT2016-00013)

---

- Attached you will find proposed changes to Chapter 4, Overlay Districts and Zones
- The proposed changes incorporate language and standards as provided by the State of North Carolina model ordinance for Watershed regulation.
- The proposed changes also clarify that manufactured homes parks should be supported by governmental water and sewer or well and septic systems.
- Proposed additions are in red. Deletions are in strikethrough text.
- The proposed changes to the watershed regulations have been reviewed and approved by the State of North Carolina Division of Energy, Mineral, and Land Resources Department as administrator of the program.
- Please be prepared to discuss the proposed changes to the ordinance and to make a recommendation to the Board of Commissioners regarding the proposed changes.

## **PART I WATERSHED OVERLAY ZONE**

### **Section 4-3 Application of Zone**

The provisions of this district shall apply within the areas designated as a "Public Water Supply Watershed" by the North Carolina Environmental Management Commission. The designated areas are established on the map entitled "Watershed Protection Map of Cabarrus County, North Carolina" which is adopted simultaneously with this section. Any and all amendments to this overlay district shall take effect and be in force at the date of enactment by the Cabarrus County Board of Commissioners.

### **Section 4-4 Requirements for all lots in the Coddle Creek and Dutch Buffalo Watersheds**

All lots in the following watersheds shall meet the following requirements:

#### WS-II Watershed Areas:

1. Coddle Creek: WS-II Critical Area and WS-II Balance of Watershed Protected Area
2. Dutch Buffalo Creek: WS-II Critical Area and WS-II Balance of Watershed Protected Area
  1. All lots within the drainage basin's critical area, that is land within 1/2 mile of the high water mark or the ridge line of the watershed (whichever comes first) for the reservoirs, shall have a minimum of two (2) acres. If an open space development is approved, the density for the site shall remain one dwelling per two (2) acres for development.
  2. All lots in the balance of the watershed protected area shall have a minimum square footage of one acre, or one dwelling unit per acre, or meet requirements of the *Cabarrus County Zoning Ordinance*, whichever is more stringent.

### **Section 4-5 Additional requirements for property located in a WS-II Critical Area (within 1/2 mile of the high water mark for reservoirs)**

1. No commercial or industrial development shall be permitted **in the WS-II Critical Area**.
2. A 150-foot vegetative buffer shall be maintained from the normal pool level on all property adjoining the reservoir. No permanent structures shall be allowed within this buffer area.
3. Waterbody buffers shall be established as detailed in the Waterbody Buffer Zone section of this Ordinance.
4. All non-single family residential and nonresidential development of lots within the critical area shall have an impermeable area of less than six percent (6%).

Any existing development within the watershed area may be continued, as governed by other sections of the Zoning Ordinance, and is subject to the following provisions:

1. **Existing lot, lot of record:** Platted but non-developed (**vacant**) existing lots of record may be used even if undersized, ~~provided that and to the extent possible, combined or reconfigured to create one or more lots that meet the standards of the Ordinance for the applicable zoning district can be met.~~
2. **Occupied Developed lots:** Lots that were developed prior to the adoption of the watershed regulations on December 20, 1993 ~~Platted and developed lots of record are considered grandfathered lots. Built-upon area, for purposes of complying with the Watershed Overlay Zone standards, shall be determined by using additions to the site occurring after the adoption date of this section of the ordinance. Any additions or new development on these lots shall comply with the density/build-upon standards. The existing non-developed land area of the lot shall constitute the base from which the new development standard is determined. Historical survey data, Cabarrus County Geographic Information Systems data and land records data shall be used to determine the base built-upon area for Watershed Overlay Zone compliance and for permitting purposes. In no case, however, shall the overall built-upon area for a property exceed the impervious or structural coverage allowed for the underlying zoning district.~~

#### **Section 4-7 Appeals and Variances**

##### **Appeal of Zoning Administrator Decision**

As with all enforcement and administration, decisions of the Zoning Administrator may be appealed to the Cabarrus County Planning and Zoning Commission ~~serving~~ **acting** as a Board of Adjustment. Any appeal shall be reviewed by the Board under the standards used in granting a variance (see Chapter 12).

##### **Variance Requests**

The Planning and Zoning Commission, acting as Board of Adjustment, shall have the power to authorize, in specific cases, minor variances from the terms of this Ordinance as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this Ordinance will result in practical difficulties or unnecessary hardship, so that the spirit of this Ordinance shall be observed, public safety and welfare secured, and substantial justice done. In addition, Cabarrus County shall notify and allow a reasonable comment period for all other local governments having jurisdiction in the designated watershed where the variance is being considered.

Applications for a variance shall be made on the proper form obtainable from the Zoning Administrator and shall include the following information:

- v. The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.
  
- b. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit.
- c. In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The Board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety, or general welfare.

In granting the variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this ordinance. If a variance for the construction, alteration or use of property is granted, such construction, alteration or use shall be in accordance with the approved site plan.

The Planning and Zoning Commission, acting as Board of Adjustment shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

A variance issued in accordance with this Section shall be considered a Watershed Protection Permit and shall expire if a Building Permit or Watershed Occupancy Permit for such use is not obtained by the applicant within six (6) months from the date of the decision.

If the application calls for the granting of a major variance, and if the Planning and Zoning Commission, acting as Board of Adjustment, decides in favor of granting the variance, the Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:

- a. The variance application;
- b. The hearing notices;
- c. The evidence presented;
- d. Motions, offers of proof, objections to evidence, and rulings on them;
- e. Proposed findings and exceptions;
- f. The proposed decision, including all conditions proposed to be added to the permit.

The preliminary record shall be sent to the Environmental Management Commission for its review as follows:

~~threat to the water supply, then the item shall be scheduled and heard as a variance request by the Cabarrus County Planning and Zoning Commission serving as a Board of Adjustment.~~

~~Any decision that overturns the Zoning Administrator shall be recorded and submitted to the Supervisor of the Classification and Standards Group, Water Quality Section, Division of Environmental Management on an annual basis. The record shall include the appropriate section of the Board's adopted minutes of the meeting.~~

#### 4-7.1 Rules Governing the Interpretation of Watershed Area Boundaries.

Where uncertainty exists as to the boundaries of the watershed areas, as shown on the Watershed Map, the following rules shall apply:

1. Where area boundaries are indicated as approximately following either street, alley, railroad or highway lines or centerlines thereof, such lines shall be construed to be said boundaries.
2. Where area boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be said boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to Cabarrus County as evidence that one or more properties along these boundaries do not lie within the watershed area.
3. Where the watershed area boundaries lie at a scaled distance more than twenty-five (25) feet from any parallel lot line, the location of watershed area boundaries shall be determined by use of the scale appearing on the watershed map.
4. Where the watershed area boundaries lie at a scaled distance of twenty-five (25) feet or less from any parallel lot line, the location of watershed area boundaries shall be construed to be the lot line.
5. Where other uncertainty exists, the Zoning Administrator shall interpret the Watershed Map as to location of such boundaries. This decision may be appealed to the Planning and Zoning Commission, acting as Board of Adjustment.

#### 4-7.2 Definitions related to administration of Watershed Overlay Zone

Agricultural Use- The use of waters for stock watering, irrigation, and other farm purposes.

Best Management Practices (BMP)- A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

Buffer- An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

area requirement under the high density option; or that results in a relaxation, by a factor of up to ten (10) percent, of any management requirement under the low density option.

**Protected Area**-The area adjoining and upstream of the critical area of WS-IV watersheds. The boundaries of the protected area are defined as within five miles of and draining to the normal pool elevation of the reservoir or to the ridgeline of the watershed; or within 10 miles upstream and draining to the intake located directly in the stream or river or to the ridgeline of the watershed.

**Variance**-A permission to develop or use property granted by the Cabarrus County Planning and Zoning Commission, acting as Board of Adjustment, relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission that is incorporated into this ordinance.

**Watershed**-The entire land area contributing surface drainage to a specific point (e.g. the water supply intake.)

#### 4-7.4 Word Interpretation

For the purpose of this Watershed Overlay Zone, certain words shall be interpreted as follows:

- Words in the present tense include the future tense.
- Words used in the singular number include the plural, and words used in the plural number include the singular, unless the natural construction of the wording indicates otherwise.
- The word "person" includes a firm, association, corporation, trust, and company as well as an individual.
- The word "structure" shall include the word "building."
- The word "lot" shall include the words, "plot," "parcel," or "tract."
- The word "shall" is always mandatory and not merely directory.
- The word "will" is always mandatory and not merely directory.

## PART II WATERBODY BUFFER ZONE

### Section 4-8 Intention of Waterbody Buffer Zone

The purpose of the Waterbody Buffer Zone is to provide protected, vegetated strips of land adjacent to streams, rivers, lakes, ponds, impoundments, or wetlands. These buffers are retained in a natural, undisturbed, state, in an effort to avoid erosion problems and to reduce the velocity of overland flow, thus trapping sediment and soil eroded from cropland or land being developed to limit pollutants from entering the waterway.

### Section 4-9 Effect upon bona fide farms

9. Two paved off-street parking spaces shall be provided for each manufactured home space. Each parking space shall be at least 210 square feet in area and have a minimum width of 10 feet. No parking shall be permitted on the street.
10. Each manufactured home park shall have a minimum of eight percent of the total area set aside and developed for recreational purposes. If a swimming pool is provided, it shall be separated from other uses by a fence having a gate which is capable of remaining closed.
11. Operators of manufactured home parks must provide adequate solid waste refuse and recycling containers. Individual roll-out containers and/or large dumpsters may be used. Dumpsters shall be located at least 40 feet from any manufactured home unit and at least 10 feet away from internal residential streets. Recycling containers shall be emptied on a regular basis and shall be the responsibility of the park operator.
12. A manufactured home park must be served by an approved **community or** public water service **or support an individual well on each lot.** Approved **community or** public sewer **or individual septic systems for each lot** shall be required.
13. Adequate illumination shall be provided to ensure the safe movement of pedestrians and vehicles at night. Permanent buildings designed for and used by park residents shall remain illuminated to at least the level of 40-foot candles at all times.
14. A level 2 buffer yard shall be installed around the perimeter of the Manufactured Home Park (see Chapter 9 for planting requirements).
15. The park owner shall be responsible for the placement of the dwelling unit on the designated space within the park. This responsibility assures the placement of the dwelling unit adheres to the development standards listed below, including setbacks from lot lines and street as stated in this ordinance.

A violation of any section of this section and correction thereof shall be the responsibility of the park owner(s).

- a. Interior lots shall have the building setback for principle structures measured thirty feet from the edge of the pavement
- b. Corner lots shall have the building setback for principle structures measured thirty feet for the edge of the pavement of each right-of-way.
- c. Accessory structures shall not be located closer to any right-of-way than the principle structure.
- d. Accessory structures shall be placed twenty feet minimum from any other dwelling unit, additions to any dwelling unit and other accessory structures.