



## Cabarrus County Government

Cabarrus County Planning and Zoning Commission  
Tuesday, November 14<sup>th</sup>, 2023 @ 6:30 p.m.  
Board of Commissioners Meeting Room  
Cabarrus County Governmental Center

### Agenda

1. Roll Call
2. Approval of October 10<sup>th</sup>, 2023, PZ Meeting Minutes
3. New Business Board of Adjustment Function:
  - APPL2023-00001 Appeal of Interpretation of Chapter 15, Sections 15.9 and 15.11 of the Development Ordinance. Owner/Applicant is Anthony Giordano. Address(s) are 10300 and 10400 Fink Road. (PIN:5682-42-0811 & 5682-33-2208).
4. Legal Update
5. Director's Report
6. Adjourn



Cabarrus County Government - Planning and Development  
Planning and Zoning Commission Minutes  
November 14<sup>th</sup>, 2023

Ms. Holly Grimsley, Chair, called the meeting to order at 6:30 p.m. Members present, in addition to the Chair, were Mr. Jeff Corley, Mr. Adam Dagenhart, Mr. David Hudspeth, Ms. Ingrid Nurse, Mr. Charles Paxton, Mr. Chris Pinto, Mr. Mohammad Idlibi and Mr. Stephen Wise. Attending from the Planning Department were, Mr. Phillip Collins, Sr. Planner, Ms. Sandy Howell, Planner, Mr. Wayne Krimminger, Senior Enforcement Officer, Ms. Kendall Bolton, Clerk to the Board, Mrs. Susie Morris, Planning and Zoning Director, Mr. Evan Lee, General Council, and Mr. Rich Koch, County Attorney.

### **Roll Call**

### **Approval of Minutes**

Approval of October 10th, 2023, Planning and Zoning Commission Meeting Minutes.

There being no corrections or additions to the minutes, Mr. Adam Dagenhart **MOTIONED**, **SECONDED** by Mr. Jeff Corley to **APPROVE** the October 10th, 2023, meeting minutes. The vote was unanimous.

The Chair stated, if anyone wishes to speak before the Board tonight, please fill out a blue card.

The Chair said, all that are going to be speaking, in favor or against, we will need to swear you in. If you will please stand and raise your right hand.

### **Oath given to audience.**

The Chair said, I will now need a motion to adopt the Rules.

Mr. Charles Paxton **MOTIONED**, **SECONDED** by Mr. Mohammad Idlibi to **ADOPT** the Rules of Procedures. The vote was unanimous.

### **New Business Planning Board Function:**

APPL2023-00001 Appeal of Interpretation of Chapter 15, Sections 15.9 and 15.11 of the Development Ordinance. Owner/Appellant is Anthony Giordano. Address(s) are 10300 and 10400 Fink Road. (PIN:5682-42-0811 & 5682-33-2208).

The Chair asked if there were any conflicts of interest or any questions before getting started. There being none, the Chair called on Staff to present the staff report.

Ms. Susie Morris said, you have before you an Appeal of Interpretation as stated in the title. It is an appeal of Chapter 15 Subdivision Regulations. The Appellant is Anthony Giordano, the

zoning for the property is AO. The two addresses are 10300 and 10400 Fink Road for the subject property. Applicable dates for this, letters were sent out on the 19<sup>th</sup> of October, sign was posted 23<sup>rd</sup> of October and two newspaper ads ran November 1<sup>st</sup> and November 8<sup>th</sup> of 2023. Current request is the Appellant is contesting the interpretation of the Cabarrus County Development Ordinance related to subdivision standards outlined in Chapter 15, Subdivisions. Appellant contends that Staff, and County Attorney, are not interpreting the Cabarrus County Development Ordinance correctly as it relates to a proposed 7-lot major subdivision. The proposed development requires an internal connected road network and a connection to an adjacent 93-acre tract of land. Appellant contends that interpretation is not correct because heading controls over the content of the Ordinance provision.

There is some history of the project included to get you to the point we are at now. In May of 2022, the Appellant submitted a sketch plat, and an application for sketch plat review. That submittal was sent out to the other reviewing agencies. Those reviews were compiled and sent to the Appellant to be addressed. The copy of the sketch plat that was submitted is in your packet, under Exhibit Sketch Plat Review Comments May 31<sup>st</sup>, 2022.

In June 2022, the revised sketch plan was submitted as a preliminary plat. The Appellant was instructed that NCDEQ Soil and Erosion Control and Phase II Post-Construction Stormwater Control permits were required to complete the application for the preliminary plat.

In April of 2023, Appellant submitted a copy of the NCDEQ Soil and Erosion Control permit that was required.

In June 2023, Appellant met with Senior Planner, Phil Collins. Mr. Collins will be documented as Senior Planner. Planner, Sandy Howell will be documented further as Planner, to discuss next steps towards preliminary plat approval.

The Appellant was advised that the NCDEQ Phase II Post-Construction Stormwater permit, needed to be obtained, That permit was provided in September of 2023.

In September 2023, the preliminary plat application was sent out by the Senior Planner for review and comment. As part of that plat review, the Senior Planner asked the Planning Director, Susie Morris, what level of permitting would be required from the Cabarrus Health Appliance (CHA) for the subdivision to be presented to the Planning and Zoning Commission. Planning Director responded that level of permitting would be Improvement Permit.

Senior Planner informed the Appellant of the CHA requirements and provided a list of additional review comments that needed to be addressed. Senior Planner also let Appellant know about variance process to ask for exceptions to the Ordinance as some of the design standards outlined in the Cabarrus County Development Ordinance were not being met with the proposed project design. You do have in your packet a September 27<sup>th</sup> email as well as an October 2<sup>nd</sup> email with that information.

Upon receiving the September 27<sup>th</sup> email and additional comments, Appellant requested a meeting with the Planning Director and Senior Planner. Appellant did not agree with comments provided and what is needed to be addressed in order to comply to the Cabarrus County Development Ordinance. That is the October 2<sup>nd</sup>, 2023, email.

October 3<sup>rd</sup>, 2023, Appellant met with Planning Director and Senior Planner to discuss the proposed project, including the requirements of internal connected road system and the Improvement Permits from CHA. Appellant was advised that Staff had consulted with the County Attorney previously on the proposed subdivision and the application of the Cabarrus County Development Ordinance to the proposed development.

Options available to the appellant to proceed were communicated as follows: Option 1, submit a variance application for the proposed project design to the Board of Adjustment for the Board of Adjustment to consider granting relief from the design standards that were not being met. Option 2, design a proper major subdivision to comply with the Ordinance. Option 3, reduce number of lots for the proposed development to 5 lots or less. Option 4, file an Appeal with Board of Adjustment regarding the interpretation of the Cabarrus County Development Ordinance.

After options were provided and discussed, Appellant maintained that Staff and County Attorney were not interpreting the Ordinance properly. He requested a meeting with the Planning Director's Supervisor and County Attorney directly to discuss the application and interpretation of the Cabarrus County Development Ordinance in relation to the proposed project.

On October 4<sup>th</sup>, 2023, the Appellant met with County Attorney, Rich Koch, and Assistant County Manager, Kelly Sifford, to discuss the Ordinance requirements for the proposed development. During that meeting, Appellant again reported that Staff and County Attorney were not interpreting the Ordinance correctly. The Appellant also inquired if a Variance request and an Appeal of the interpretation of the Ordinance could both be submitted regarding the proposed project. The Appellant was advised there was nothing to prevent submitting both, if that was the Appellant's desire.

Following the October 4th meeting, the Appellant communicated by email to the County Attorney, Assistant County Manager, and Planning Director on October 5<sup>th</sup>, 2023, regarding his positions and interpretation of the Cabarrus County Development Ordinance. The County Attorney responded by email on October 6<sup>th</sup>, that is your exhibit titled Legal Response to Appellant Email.

October 10<sup>th</sup>, 2023, the Appellant submitted an Appeal application and Variance application to the Planning Department. The information submitted included the Appellant's interpretation of the Ordinance. The information also includes what the Appellant considers to be relevant case law. That is in your packet titled Appeal Application.

As far as the relevant findings, number 1, the proposed development contains 7 lots. The proposed development is considered a major subdivision due to the number of lots proposed. Pursuant to Chapter 2, Rules of Construction and Definitions, Chapter 5, District Development

Standards and Chapter 15, Subdivisions. The Ordinance defines a major subdivision as all lands subdivided that are not exempted by State Statute or previously described under the minor subdivision procedures shall be processed as a major subdivision. A minor plat from Chapter 2 is defined as a plat that may be used for the transfer of land qualifying as a minor subdivision as defined in the Cabarrus County Development Ordinance.

The section from Chapter 5, Minor Subdivision, goes on to describe that in the AO, CR, LDR, MDR, HDR districts, applications meeting the standards for a minor subdivision as defined by the subdivision ordinance, may create no more than one conventional minor subdivision out of each parent tract existing as of June 20, 2005, with lots at least one acre in size, provided that each lot meets any minimum area requirements for public health purposes. The property may be further divided. However, any additional divisions shall be deemed major subdivisions and shall be processed as such and subject to all Ordinances and policies related to major subdivisions.

**Minor Subdivisions per Chapter 15,** Minor subdivisions are divisions of property that include up to five lots in the project design. **Major Subdivisions per Chapter 15,** major subdivisions are divisions of property that include more than five lots in the project design.

Finding number 2, major subdivisions are subject to the design standards outlined in Chapter 5, District Development Standards, as well as the design and permitting standards outlined in Chapter 15, Subdivisions. Chapter 15, Section 1, Purpose; Subdivision regulations provide for the orderly growth and development of Cabarrus County; for the coordination of transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that substantially promote public health, safety, and general welfare.

Pursuant to Chapter 15, Section 4, Applicability and types of divisions. For the purpose of this Chapter, these regulations shall apply to all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development, whether immediate or future, and shall include all divisions of land involving the dedication of a new street or a change in existing streets.

No subdivision shall be recorded until it has been submitted, reviewed, and approved by the appropriate authorities and until the approval is entered on the face of the plat in writing by an authorized representative of Cabarrus County. The review officer, pursuant to G.S. 47-30.2, shall not certify a subdivision plat that has not been approved in accordance with these provisions, nor shall the Clerk of Superior Court order or direct the recording of a plat if the recording would be in conflict with this section.

Pursuant to Chapter 15, Preliminary Plat submittal Process Step 3, Filing the Application. The Appellant must file a complete application with the Planning and Development Department, along with the appropriate fees, for the submittal to be processed. Applicable materials required for a complete submittal will be determined at the preapplication meeting. Incomplete

applications will not be accepted and will not be scheduled for consideration by the Planning and Zoning Commission.

When the complete application is received, Planning Staff and other appropriate agents will review the application and the proposed preliminary plat. Review comments will be forwarded to the Appellant. The Appellant will need to address the comments in writing, revise the preliminary plat accordingly and submit the corrections to the Planning Division. Once directed that the preliminary plat is in compliance with the Ordinance and ready to be presented to the Planning and Zoning Commission, the Appellant will work with Staff to submit the appropriate number of copies of the applicable documents and preliminary plat for the Planning and Zoning Commission meeting.

Finding number 3, the proposed division of the subject property includes more than 5 lots. Because the development is more than 5 lots, an internal, connected road system is required.

The proposed development does not include a public or private road right-of-way on the preliminary plat. It shows two shared driveways labeled as access easements. Pursuant to Chapter 15, Section 8 Legal Access, Road Types and Transportation Impact Analysis, Road types and classification, the arrangement, character, extent, width, grade, and location of all roads shall be reviewed in relation to existing and proposed transportation patterns, topographical and other natural features, public convenience, and safety, proposed uses of lands to be served by such roads and existing or potential uses in adjoining areas. Roads shall be classified and designed in accordance with the typical details outlined in Appendix A of this Ordinance. Roads on a proposed subdivision plat shall be classified and labeled as either public or private. The proposed road right-of-way and typical shall also be provided on the plat.

Pursuant to Chapter 15, Section 8, Private roads serving more than 5 lots; new roads serving 5 or more lots may be permanently designated as a private road. These roads shall be built to the North Carolina Department of Transportation public standard for the appropriate type of road or street. Additionally, a road maintenance agreement shall be recorded in the office of the register of deeds to ensure that proper maintenance of the private road is provided by property owners gaining access from the road or street and for emergency service response.

Finding 5, the proposed subdivision is located off Fink Road. A tract of land adjacent to the subject parcel is approximately 93 acres. Pursuant to Cabarrus County Development Ordinance Chapter 15, Section 5-9, connections to adjacent properties where necessary to provide access or to permit the reasonable future subdivision or development of adjacent land, rights-of-way and improvements shall be extended to the boundary of a development. Connections shall be placed at locations where future connection can be made at a reasonable cost and shall not be directed into wetlands, creeks, steep slopes, or other locations that would make the future extension of the road impractical. A temporary turnaround may be required where the dead end exceeds 250 feet in length. Where such a connection has been established on adjacent property, each new subdivision shall be required to extend the connection as a link in the proposed subdivision street network.

Finding Number 6, the information provided in the Appeal application is the same information provided by the Appellant in the October 4<sup>th</sup>, 2023, email to the County Attorney.

Again, we went through the exhibits and that is the competition of the staff report. I would be happy to answer any questions you may have for Staff. Mr. Collins, Mrs. Howell, and our County Attorney, Mr. Koch are here to answer any questions that you may have related to the staff report or to Staff interpretation related to this particular project.

The Chair asked, does anyone have any questions for Ms. Morris, Mr. Koch, or any of the other Staff members?

Mr. Corley said, stubbing out to the adjacent parcel, is that road required to be built to the property line or does legal access have to be shown all the way to that adjacent parcel?

Ms. Morris said, typically that road is actually constructed to that adjacent property line.

Mr. Corley said, NCDOT, are they typically aware of the County zoning requirements when they are having discussions with property owners or developers about potential driveways? Do you feel they are knowledgeable of what the county requires from the development standards?

Ms. Morris said, they are not. They would have to know, who knows how many, Ordinances at that point. They are specifically looking at NCDOT regulations and what those regulations would or would not allow.

Mr. Corley said, it wouldn't be uncommon for a developer to get an answer from NCDOT that would be inconsistent with the Cabarrus County Development Ordinance?

Ms. Morris said, correct. If someone approaches NCDOT in general terms, there is a good likelihood that they may get a different answer because again, NCDOT is not familiar with Municipal or County Ordinances. A lot of times, Staff is asked when they get a request, is this something that can be done under your Ordinance or not, especially if we have the thoroughfare overlay zone. They are not going to know all of the ins and outs of a county's or city's development ordinance.

The Chair asked if anyone else had any comments. There being none, the Chair called upon the Appellant, Mr. Giordano.

Anthony Giordano, 3027 Pebble Creek Drive. Mr. Giordano said, I have a couple questions about how this goes. Do I speak and then other people get a chance to speak?

The Chair said, my apologies, I did not read through the rules before we got started.

Mr. Giordano asked, has everyone received a copy of the proposal? Has everyone read through the case law that I presented?

The Chair said, the Board has the packet.

Mr. Giordano said, the Board has the packet, okay good. How long do I get?

Mr. Lee said, a point of procedure is if we could go through the Rules and Procedure. I know we voted on those but if we could just read those out loud and then make sure everyone knows where we are going.

The Chair read the suggested Rules of Procedures

1. The Cabarrus County planning staff person(s) shall first present the staff report and answer questions from the Commission. There will be no time limit on this presentation.
2. The Applicant may make a presentation to the Board (optional) and will then answer questions from the Commission. There will be a 15-minute time limit on the presentation if the Applicant chooses to make a formal presentation. There will be no time limit on questions from the Board following the presentation.
3. When the Board is ready to proceed, the proponents (those speaking generally in favor of the case) will have a total of 15 minutes to speak and/or present documents in support of their position. The 15-minute time limit does not include questions directed to the proponents by the Commission.
4. After the proponents finish, the opponents (those speaking generally against the case) will have a total of 15 minutes to speak and/or present documents in support of their position. The 15-minute time limit does not include questions directed to the opponents by the Commission.
5. Each side will then have 3 minutes for rebuttal, with the proponents going first. Again, questions directed to the speaker will not count against the time limit. This will conclude the public hearing portion of the meeting and the Commission will proceed to deliberation.
6. Each side is strongly encouraged to use a spokesperson to present the positions commonly held by each. Each side is also strongly encouraged to organize their speakers and presentations to ensure that all persons wanting to speak will have time to do so.
7. If a speaker has questions of a person on the other side, such questions shall be addressed to the Commission members to be redirected to the person to be asked. There will be no direct questioning of one speaker by another except through the Commission.
8. Public demonstrations of support for a speaker's comments should be limited to clapping. Any other type of audible support shall be out of order and subject the offender to being removed from the building. Anyone speaking out of order shall likewise be subject to removal.
9. These rules are designed to have a full and fair hearing that is orderly and expeditious and avoid unnecessarily repetitious presentations.

Mr. Giordano said, some of the case law did not have the case law numbers attached to them. Can I pass that out, or no?

The Chair said, I will defer this to Mr. Lee.

Mr. Lee said, there shouldn't be any problem with that.

Mr. Giordano said, when I was talking with Mr. Koch, he had mentioned that there should be some case law attached to it. I just wanted to provide the supporting evidence, so it doesn't look like I just typed it up.

Mr. Lee said, yes. You can pass that out to the Board.

Appellant passed out case laws to the Board.

Ms. Morris asked the Appellant if he had any additional copies.

Mr. Giordano said, I only printed out nine. It is just the numbers from the case law.

The Board offered a copy to the Staff.

Mr. Giordano said, I live in Stanly County. I just started developing probably about a year and a half ago. One of the many things I do is I have a couple businesses in Stanley County. We do inspections for insurance carriers. Believer, lover of Jesus.

This is kind of new, some of these procedures. Typically, I wouldn't make an issue if I didn't believe what I was doing was right. If you look at Section 11, in the English language, when we are reading things, how we assess what we are reading is by the headings. I think everyone would agree. When we look at for what it says for a commercially zoned property, how do we know if we are in commercial zoning? The heading tells us we are in commercial zoning because the heading says so.

When we look at headings, headings guide us to what we are reading. We can't take an agriculture heading and start reading what is required and what is allowed in agriculture zoning and then apply that to commercial zoning. Why not? What guides us? The headings. That is really my main point here.

With the design, all 7 lots touch the main road. The comment we have made about NCDOT, yes, I did get approval for my design with NCDOT. They had said that lots 1-4 can have shared access. Lots 5-6 can have shared access. Then lot 7 has its own access. They probably don't know every zoning regulation of Cabarrus County. If you look before you in Chapter 15, that coincides with the access management. NCDOT may say that we only need one access point. If we were only allowed one access point and I had to put a private road in, then this would come into account under access management. We read about accessing public roads and shared access. I am sorry, it's here in Access Public Roads, if you read that in line 1, it says direct access to public roads is governed by the classification of the road and is determined by NCDOT, so access is determined by NCDOT.

No lots may directly access a road classified as a major thoroughfare. These lots must be served by an internal road system. Access may be limited where lots abut minor thoroughfares and

major collector roads. NCDOT may require shared access points when access is limited to the public facility. So, who governs that? NCDOT. It says right in the stipulations here. Connections to, or though, may be required when access points are limited. I already have permission to do this approved plan that I proposed to them. If that is the case, we have 5 or more lots that required shared access then that's what we would be doing. Then we would have an internal road system because we have 5 or more lots. We have this diagram here (showing Board diagram) this is an example of what it could look like, but this is not the only situation that we have.

When I read the rules as written, I go okay, shared access, 5 or more lots, that require shared access because it is under the shared access heading. How do I know I am reading the right rules? Because the heading says Shared Access. That is what I am reading.

Instead of belaboring the point, I think you all get it. It has already been approved. The access that is required on this particular piece of property, by NCDOT. I do not fall under this heading of Shared Access because I do not have 5 or more lots, regardless of what this says. When more than 5 lots are proposed for new subdivision projects, an internal connected road system shall be provided. If the purpose of this is to require every major subdivision to have an internal road system, it should be written like that. Why isn't this under a major subdivision heading. Why is this under Shared Access?

This is what I got back when I talked with Mr. Koch and Ms. Morris, this is how they have always done it, and this is how it is meant to be. If that's the case, then we need to change this. This needs to be a different heading, not under Access Management in section 11, it should be somewhere else. It should say, regardless of the design, even though every single lot touches the road, where would I even put a road in here. You know what I mean? A road to nowhere? Split the lots in half? That's all I am saying.

I really firmly believe that this is not a misinterpretation, I am not saying this is wrong in what this says. I am saying the application is wrong. I should not have to put in an internal road system. I do not have 5 or more lots that require access. This isn't wrong, I think if I needed access, if we had all 7 lots and only one touched the main road. I would say oh yes, shared access there it is. When 5 or more lots share access, you need an internal road system. It is just a misapplication to what is written.

Mr. Corley said, so you are not denying that you fall under the major subdivision.

Mr. Giordano said, no.

Mr. Corley said, okay, I just want to make that clear. I am not trying to oversimplify your point. I appreciate your thorough presentation. Bear with me as I wrap my brain around what your stance is. You are using a NCDOT determination of access to a certain number of these lots. To then claim that you only have 5 that need shared access. So, you are leveraging a NCDOT decision, with or without them understanding the zoning requirements of the County, to get yourself to this 5 or less. Is that correct?

Mr. Giordano said, no that is incorrect. This is what I am saying. In your Ordinance, it says direct access to public roads is governed by the classification of the road is determined by NCDOT. No lots may directly access roads classified as a major thoroughfare. These lots must be served by an internal road system. Access may be limited where lots abut minor throughfares and major collector roads. NCDOT may require shared access points when access is not limited to a public facility. So, when I read that, the proper interpretation is access to the major road. NCDOT owns the road, correct? So, access to the road is determined by NCDOT. I am not saying I am falling under the 5-lot stipulation; I am falling under the 5 lot of shared access. Who is that determined by? Your rules and regulations, state is determined by NCDOT.

Mr. Corley said, let me restate that a little bit. You get to 5 lots needing shared access because you feel that NCDOT's approval of the other access to the other lots gets you down, is that a better way to state that?

Mr. Giordano said, so my plan submitted, I only have 4 lots that require shared access.

Mr. Corley said, because you feel that NCDOT has already granted you access to those other lots, correct?

Mr. Giordano said, correct yes. NCDOT has already approved the plan for the access points, this is why we are under Access Management heading because it's access to the plan. Who controls that access to the road, who makes that determination, NCDOT, it's not Planning. It says that right here. If it is meant to be different, lets write it different. You know what I mean?

Also, all of these case laws, if you actually take the time and read the case laws. These are ones that Wake County v. Board of Transportation, City of Greensboro v. Simkins, Craig County v. Chatham, Town of Chapel Hill v. Chatham County, Decker v. Coleman. All of these were decided based off of what is written in the headings, not just because it says the verbiage underneath it. If that were the case, we would take whatever verbiage we wanted and misappropriate it into something else. We can not do that. It's not only the English language it is, how they structure law. You have to figure out where you are at based off the heading. If I am doing agricultural zoning, I can't take commercial zoning and apply it to this one. It is misappropriation.

Mr. Corley said, one follow up. In our packet, there is a diagram. There is text and a picture that shows 7 lots, I think it is just a demonstration of it. There is a comment and text that says Shared Access. When more than 5 lots are proposed for a new subdivision project, an internal connected road shall be provided. I don't see anything there that talks about 5 lots requiring shared access. I read when more than 5 lots are proposed for a new subdivision project. It doesn't say through technicalities of additional access points. Explain to me why that is not clear.

Mr. Giordano said, sure, access to public roads, the heading above it, talks about direct access. It says access may be limited where lots abut minor throughfares and major collector roads. NCDOT may require shared access points. So, when I read that I go, okay, who is requiring this? NCDOT. If I have approval from NCDOT on the access points, why are we even here? I think

that's why we are here because someone read this and it says 5 or more lots, so I guess we would have to make them put an internal road system in there.

If you read who determines that, it is NCDOT. NCDOT may require a shared access when access is limited to the public facility. I don't have limited access. I don't have 30 lots where I need a road because those roads in the back don't have access. I understand you would have to put in a road for that. We don't have this situation applied to the design I proposed. I am not putting in 30 lots, I am putting in 7 lots that have access to the main road. This is crazy.

The Chair asked if anyone else had any further questions.

Mr. Wise said, so you have the shared driveways for the first 3 lots, then you skip and have another access point?

Mr. Giordano said, it's actually 4 lots.

Mr. Wise said, to me, could the two points of access be off of Fink Road? Then make like a cul-de-sac. What is the reason not to connect the road with the others.

Mr. Giordano said, first off it would be the cost, if I put a NCDOT spec road, what would be the point of putting it next to another NCDOT spec road.

Mr. Wise said, it doesn't have to be a NCDOT spec road.

Mr. Giordano said, yes it does.

Mr. Wise, not County specs?

Ms. Morris said, the County has adopted typicals in the back, some of them are hybrid between County spec and NCDOT because it is more of a hybrid which our Ordinance does have a standard. Again, this is more about the application and interpretation of the Ordinance as it specifically relates to this project.

The Chair said, any other comments or questions for the Appellant? There being none, she called on Mr. Evan Lee to address the Board.

Mr. Lee said, briefly, the Chair asked before we open the public hearing, the roles are a little bit flipped because Mr. Koch advised Staff on this. This is an Appeal of an Administrative Decision. You all have before you an outline of what that looks like. It is a quasi-judicial proceeding. You are to consider the evidence given by the Staff and Mr. Giordano. Your ultimate question is if this was applied correctly. If you have any procedural questions, you can ask them to me. Make sure that the deliberations are done in open session. That should be all from the procedural standpoint.

The Chair asked the Board if they had any comments or questions.

Mr. Pinto said, how can we have 7 lots and say there are 5? You have 5 lots, and anything over that is considered a major subdivision. Correct? Shouldn't the rules be followed? You could have 6 or 7, it doesn't matter. You still have 7 lots.

Mr. Lee asked if that was a question for Staff?

Mr. Pinto said, yes that is a question for Staff. I am trying to figure out if you have 7 lots, that is a major subdivision? Is that correct, yes, or no?

Ms. Morris said, yes.

Mr. Pinto said, then he should be following our Ordinance for that. If you have 7, you have to have an internal road. I did read that correct, right?

Ms. Morris said, correct. If it's a major subdivision, then you are subject to the standards of the Ordinance that apply to major subdivisions. A major subdivision is considered anything over 5 lots.

Mr. Pinto said, I am thinking that's the whole subdivision. NCDOT said that's fine, but this Ordinance says different. I am not sure how to say this.

Mr. Paxton said, the County's Ordinance can be more restrictive than the state, correct?

Ms. Morris said, correct.

Mr. Paxton said, just like a homeowner association can be more restrictive than the county or city. That is kind of what is happening here right? We are just being more restrictive in our Ordinance than the state would be, if it was left up to them.

Ms. Morris said, we are not being more restrictive. The County has a set of design standards that need to be followed for major subdivisions. The question before you this evening is, if those design standards that are required were applied appropriately to the proposed project.

Mr. Pinto said, we are deciding if it's a major subdivision, 7 or 5 is basically what it is. You clearly have 7 lots not 5. Five is not 7 and 7 is not 5.

Mr. Paxton asked if Ms. Morris could restate her comment.

Ms. Morris said, the question before you is whether or not the Ordinance was applied correctly. To Mr. Pinto's point, based on the information before you, if this particular subdivision is classified as a major subdivision, then were the standards applied appropriately. Again, that boils down to a yes or no question.

Mr. Paxton said, I think the Appellant would like to respond.

Mr. Giordano said, what we have here is a failure to communicate. That is not the question at hand, that whether it is a minor or major. I think someone has already asked that. Hands down, it is a major subdivision. My intent is whether or not the access management, access to public roads was applied correctly. I am not saying it is not 7 lots. That is very obvious as the design goes. What I am saying is the only access point with what is put in your Cabarrus County stipulations is the access points are determined by NCDOT. The question is whether or not the shared access, already determined, I have 4 lots with shared access. Those do not fall under 5 or more lots.

The question is, was this appropriately determined that I need to put in an internal road system? No where else in the code, that you have written, does it talk about that. This is the only spot where it talks about shared access. No other spot does it talk about internal road systems. I looked.

Mr. Paxton addressed Mr. Koch, what did you respond to as a part of these issues.

Mr. Koch said, it is in my email. Actually, we had I think, a Teams meeting with Mr. Giordano and Kelly Sifford and me. We talked through this; he had talked through this with Ms. Morris and Mr. Collins previously, but he did not accept their explanation. He wanted to talk to Ms. Morris' Supervisor which is Kelly Sifford and me as County Attorney. So, then we got onto a Teams conference, we explained the same thing that you see in the staff report. It is 7 lots, NCDOT can determine how they want to see the access go out to their public road. That is a separate issue on what our Ordinance provides about major and minor subdivisions.

The way he is reading that one section, does not say that NCDOT determines everything with reference to access in our Ordinance because we have our own requirements that deal with major and minor subdivisions. That is what the discussion was about. If you look on page 11 of the staff report under finding number 3, which I think that Mr. Corley was reading, that's the section that really applies.

The Appellant believes that since it says Shared Access in the heading, you don't look at the text under the heading. He says that those cases support that and they don't support that. The law in this state, pretty much across the Country, you look at the text of the Ordinance. That's what controls. That text is pretty straight forward as to what it requires. If you have 7 lots, you will have to follow major subdivision rules, that also requires an internal road. That has a lot to do with safety and other issues.

That is why the Ordinance is written that way, so that we have that many lots and it is not a minor subdivision that you would have to have the access be off the main road. That is why we told Mr. Giordano that he would be better off to apply for a variance to the Ordinance because he only has 7 lots and NCDOT has worked out something with him to allow him to use the shared access for the lots. He would then come before this Board, ask for a variance from that provision of the Ordinance, and maybe one for the stub out as well that we have not really talked about. That might be something the Board could look favorably on. That would be a variance from the

Ordinance because of the circumstances in this case. That is really what he needs in my opinion. Instead, he believes his reading of the Ordinance is correct, and the reading that we give, not only Ms. Morris and Mr. Collins, but Ms. Sifford and I gave is incorrect. So that is why we are here.

The Chair said, at this time, I will go ahead and open the public hearing. First, we will hear from those who are in favor. The Chair asked Mr. Giordano if he would like to add any additional comments.

Mr. Giordano said, Mr. Koch said that he read all the case law that was presented, he disagrees with it but unfortunately, I do not think that is accurate. All of those cases, 7 of many cases, that talked about the headings. If you just think about it in the English language, headings guide us. That is how we know what chapter we are in in the book, what book of the Bible we are reading. All of that stuff, right?

As it comes to case law, that is important too. I hope no one is believing that it is just something that is written there. That we don't actually pay attention to it. The access management, this is what we are talking about. I don't think we are talking about major vs. minor. We are talking access management. This is the only place in here where it talks about 5 or more lots and doing internal road systems. Why? Because it is under the Access Management heading. It is all about access management. Thank you.

The Chair said, since we do not have another blue card, I would assume no one else would like to speak. The Chair then asked the Board if there were any further questions or comments.

Mr. Koch said, when it comes to Appellate Court cases, which is what he is talking about, you provide an actual opinion, you don't provide annotations which is what he has given you. If you look at my email that I sent to him afterward, I asked him for the citations to those cases so I could look them up. All he provided was what I believe to be, head notes. I am familiar with some of those cases just because we have been in this area of law for so long. They do not say what he claims they say in these headnotes. You actually have to have an opinion from the Court of Appeals or Supreme Court. That is what you provide. What I think he just provided, which I have not seen, may be some of the citations. You don't have the cases, if you read the cases, you would realize they do not say what he claims they do.

The Chair said, thank you Mr. Koch. Are there any further comments or questions?

Mr. Pinto said, I recall access management is 1 point, not 7. Say you are going down the road and you are the fire guy, which house are you looking for? Are they going to go to you? If you have 7 and you have a road in there, they will know where to go, that is access management. Access for fire, access for EMS, that is access management. Not so much 7 places, you know? That is one thing, now the other thing is still between the 5 and the 7 for me. Anyone can go out and get a DOT thing, that's why they are all over the place. It's kind of crazy, that's why I am saying access management. It starts at 5 and then goes up, that's just how it works in my opinion.

Mr. Giordano said, very good thoughts but it's under Access Management. NCDOT in the regulation, this is written by Cabarrus County.

Mr. Pinto said, did you get them out there and then say you are doing 7?

Mr. Giordano said, I submitted my plan, and they told me how many access points it needs to have. Then we revised the plan, sent it back to them, they said here you go, this is where you can have access, and this is where you can't. So based off the stipulations that Cabarrus County has, that is what is considered access. I can't just make this up. I can't just say, well there are 7 lots here, I have 7 access points.

Mr. Pinto said, well you can't make up the 7 lots when it's 5.

Mr. Giordano said, nobody said, this says access. I understand what you are saying. This says shared access, when more than 5 lots are proposed in a new subdivision under the shared access heading. I don't have 5 or more lots.

Mr. Pinto said, you have 7 lots.

Mr. Giordano said, do I have 5 or more that have shared access? We are not talking about major or minor. You are missing the point. Do we have shared access of more than 5 lots? Show me in my design where we have that. This is why we are in this position; you can't just say well we have 7 lots that's a major subdivision. You have to go by what this says. These are your rules, these are not mine. I didn't make these up.

Mr. Pinto said, these are not my rules either, I am just looking at it as 7 to 5.

Mr. Giordano said, but you can read this right? I have repeated this 10 times or more. I don't understand.

The Chair said, we have to call time for discussion. At this time, I am going to close the public hearing unless there are any final questions. There were none.

Now directing the Board, this is an absolute yes or no. That the Staff either applied the rules to the Ordinance or they did not.

The Chair asked if there were any comments or questions.

Mr. Dagenhart asked, is this something we would need to discuss or if it was just a straightforward answer?

The Chair said, if we need discussion, we can absolutely do that.

Mr. Lee said, for the record, there does need to be discussion. The answer is either a yes or no, if it was applied correctly, and then we need to have a discussion of how we got there.

The Chair asked if anyone would like to start the discussion of those findings.

Mr. Idlibi said, I think the text is pretty clear. It says, when more than 5 lots are proposed for a new subdivision project, an internal connected road system shall be provided. It is very silent on access points, but I believe it is very clear that the number of lots is what decides.

Mr. Corley said, some of the discussion that Mr. Pinto had. You have to comply with both, you have to comply with NCDOT and the County. That is somewhere in between where we are and where we need to be. I think complying with the discussion that NCDOT approved some driveways does not supersede, they have to also comply with the Cabarrus County Development Ordinance. It appears that Cabarrus County will require a different access scheme than NCDOT may have considered. Now that is okay, but you have to comply with both.

Ms. Nurse said, I am seeing that it is being accessed by a cul-de-sac. Is that it?

Mr. Giordano said, it's a shared driveway. Lots 1-4 have shared access, lots 5-6 have a shared driveway and lot 7 is on its own.

Mr. Paxton asked, the ones with shared access, do they drop directly into the road?

Mr. Giordano said, correct.

The Chair asked if there were any other comments or questions. There being none she asked if there was a motion.

Mr. Corley said, I will just echo and support those comments made. It is very clear that the County Staff has done a very good job in explaining their decision and I concur with those findings that this should apply with this project.

The Chair asked if there was a motion.

Mr. Jeff Corley **MOTIONED, SECONDED** by Mr. Adam Dagenhart to **Affirm** the County's interpretation of the Development Ordinance in this case. Vote was Unanimous.

### **Legal Update**

Mr. Lee said, something that is ongoing but will not be back in front of this Board, we do have a hearing set in the Arstark matter in January.

Ms. Morris asked for an update on the sawmill matter.

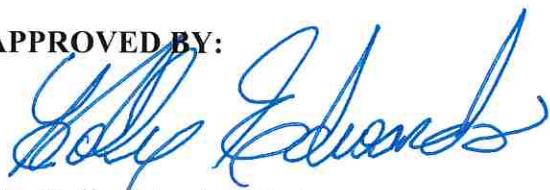
Mr. Lee said, Dwight Radford, the sawmill on Flowes Store Road. There was a mediation in that case back in the summer. There was another Consent Order. It has not gotten quite there yet so we filed a Motion for Contempt. We had a hearing, and he was given additional time. He has

been doing some work, but I believe Wayne Krimminger (Senior Zoning Enforcement Officer) can give a better update on that.

Mr. Krimminger said, all of the split wood is gone, he had a mountain of that. All he has left is where he knocked the old sawmill down, it is all timber. He does have it all piled up and he is taking some loads out. With all the split wood there, he has about 50 cords split, and it is all gone. He is getting there slowly. When I see him there, I stop in and talk to him. He has until the end of November I think, but I believe he will get it done. The Judge was very direct with him last time we went to court. I think he will get it done.

Mr. Adam Dagenhart **MOTIONED, SECONDED** by Ms. Ingrid Nurse to adjourn the meeting. There being no further discussion, the meeting adjourned at 7:39 p.m. The vote was unanimous.

**APPROVED BY:**



Ms. Holly Grimsley Chair

**SUBMITTED BY:**



Kendall Bolton, Clerk to the Board

**ATTEST BY:**



Susie Morris, Planning Director

**Petition: APPL2023-00001****Appeal of Interpretation of Cabarrus County Development Ordinance**

Appellant Information: Anthony Giordano

Zoning: Agriculture Open (AO)

Property Location: 10300 & 10400 Fink Road  
Mount Pleasant NC 28124

PIN#: 5682-42-0811 & 5682-33-2208

Request: Appellant is contesting an interpretation of the Cabarrus County Development Ordinance related to subdivision standards outlined in Chapter 15, Subdivisions.

Appellant contends that Staff and the County Attorney are not interpreting the Cabarrus County Development Ordinance correctly as it relates to a proposed 7 lot major subdivision. The proposed development requires an internal, connected road network and a connection to an adjacent 93-acre tract of land. Appellant contends that interpretation is not correct because heading controls over the content of the ordinance provision.

**History**

- In May of 2022 the Appellant submitted the sketch plat and application for the initial sketch plan review. (See Sketch Plat Application)
  - The initial submittal was sent out to other reviewing agencies for sketch plan review.
  - Comments from the sketch plan review were compiled and sent to Appellant to be addressed. (See Sketch Plat Review Comments May 31, 2022)
- In June of 2022, a revised sketch plan was submitted as a preliminary plat. The Appellant was instructed that NCDEQ Soil & Erosion Control and Phase II Post-Construction Stormwater permits were required to complete the application for a preliminary plat.
  - In April of 2023, Appellant submitted a copy of the NCDEQ Soil & Erosion Control permit that was required.
- In June of 2023 – Appellant met with Senior Planner, Phil Collins (Senior Planner) and Planner, Sandy Howell (Planner), to discuss next steps towards preliminary plat approval.

- The Appellant was advised that the NCDEQ Phase II Post-Construction Stormwater Permit needed to be obtained. The permit was provided in September of 2023.
- In September of 2023, the preliminary plat application was sent out by the Senior Planner for review and comment.
  - As part of the plat review, the Senior Planner asked the Planning Director, Susie Morris (Planning Director) what level of permitting would be required from the Cabarrus Health Alliance (CHA) for the subdivision to be presented to the Planning and Zoning Commission. Planning Director responded that level of permitting would be Improvement Permit.
  - Senior Planner informed Appellant of CHA requirements and provided a list of additional review comments that needed to be addressed. Senior Planner also let Appellant know about variance process to ask for exceptions to the ordinance as some of the design standards outlined in the CCDO were not being met with the proposed project design. (See September 27, 2023 – Email & See October 2, 2023 - Email)
    - Upon receipt of the September 27 email and the additional comments, Appellant requested a meeting with the Planning Director and the Senior Planner. Appellant did not agree with comments provided and what needed to be addressed for the preliminary plat to comply with the CCDO. (See October 2, 2023 - Email)
- October 3, 2023 – Appellant met with Planning Director and Senior Planner to discuss the proposed project, including the requirement of the internal, connected road system and the Improvement Permits from CHA.
  - Appellant was advised Staff had consulted with County Attorney previously on the proposed subdivision and the application of the CCDO standards to the proposed development.
  - Options available to the Appellant to proceed were communicated as follows:
    - Option 1: Submit a variance application for the proposed project design to the Board of Adjustment (BOA) for the BOA to consider granting relief from the design standards that were not being met.
    - Option 2: Design the proposed major subdivision to comply with the CCDO.
    - Option 3: Reduce the number of lots for the proposed development to 5 lots or less.
    - Option 4: File an Appeal with the BOA regarding the interpretation of the CCDO
  - After options were provided and discussed, Appellant maintained that Staff and County Attorney were not interpreting the CCDO properly and requested to meet with Planning Director's Supervisor and County Attorney directly to discuss the application and interpretation of the CCDO in relation to the proposed project.

- October 4, 2023 – Appellant met with the County Attorney, Rich Koch (County Attorney), and Assistant County Manager, Kelly Sifford (Assistant County Manager) to discuss the CCDO requirements for the proposed development. During that meeting, Appellant again purported that Staff and County Attorney were not interpreting the CCDO correctly. The applicant also inquired if a variance request and appeal of the interpretation of the CCDO could both be submitted regarding the proposed project. Appellant was advised that there was nothing to prevent submitting both if that was Appellant's desire.
  - Following the October 4, 2023, meeting, the Appellant communicated by email with the County Attorney, Assistant County Manager and Planning Director on October 5, 2023, regarding his position and interpretation of the CCDO. The County Attorney responded to the Appellant by email on October 6, 2023. (See Legal Response to Appellant's Email)
- October 10, 2023 – Appellant submitted an appeal application and a variance application to the Planning Department. The information submitted includes the Appellant's interpretation of the CCDO. The information also includes what Appellant considers relevant case law. (See Appeal Application)

## Findings

1. The proposed development contains seven (7) lots. The proposed development is considered a major subdivision due to the number of lots proposed.

Pursuant to Chapter 2, Rules of Construction and Definitions, Chapter 5, District Development Standards and Chapter 15, Subdivisions, the CCDO defines a major subdivision as:

**MAJOR SUBDIVISION (Chapter 2)**

*All land subdivisions that are not exempted by state statute or previously described under the minor subdivision procedures shall be processed as a major subdivision.*

**MINOR PLAT (Chapter 2)**

*A plat that may be used for the transfer of land qualifying as a minor subdivision as defined in the Cabarrus County Subdivision Ordinance.*

**Minor Subdivision (Chapter 5)**

*In the AO, CR, LDR, MDR and HDR Districts, applications meeting the standards for a minor subdivision as defined by the subdivision ordinance may create no more than one conventional minor subdivision out of each parent tract existing as of June 20, 2005, with lots at least one acre in size, provided that each lot meets any minimum area requirements for public health purposes. The property may be further divided. However, any additional divisions shall be deemed major subdivisions and shall be processed as such and subject to all ordinances and policies related to major subdivisions.*

**Minor subdivision (Chapter 15)**

*Minor subdivisions are divisions of property that include up to five lots in the project design. Lots are served by frontage on an existing public road or by a new public or private road that is created during the design and review process for the minor subdivision. New private roads are subject to a recorded maintenance agreement.*

*Major subdivision (Chapter 15)*

*Major subdivisions are divisions of property that include more than five lots in the project design. Lots are served by frontage on existing public roads or by a new public or private roads that are created during the design, review, and approval process for the project. New private roads are subject to a recorded road maintenance agreement.*

2. Major subdivisions are subject to the design standards outlined in Chapter 5, District Development Standards, as well as the design and permitting standards outlined in Chapter 15, Subdivisions.

*Chapter 15, Section 1 Purpose*

*Subdivision regulations provide for the orderly growth and development of Cabarrus County; for the coordination of transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that substantially promote public health, safety, and general welfare.*

*Chapter 15, Section 4 Applicability and types of divisions*

*For the purpose of this Chapter, these regulations shall apply to all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development, whether immediate or future, and shall include all divisions of land involving the dedication of a new street or a change in existing streets.*

*No subdivision shall be recorded until it has been submitted, reviewed, and approved by the appropriate authorities and until the approval is entered on the face of the plat in writing by an authorized representative of Cabarrus County.*

*The review officer pursuant to G.S. 47-30.2, shall not certify a subdivision plat that has not been approved in accordance with these provisions nor shall the Clerk of Superior Court order or direct the recording of a plat if the recording would be in conflict with this section.*

*Chapter 15, Preliminary Plat submittal Process*

*Step 3 Filing the Application*

*The applicant must file a complete application with the Planning and Development Department, along with the appropriate fees, for the submittal to be processed.*

*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.*

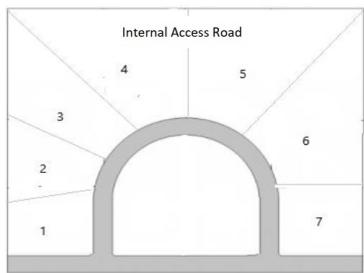
*When the complete application is received, Planning Staff and other appropriate agents will review the application and the proposed preliminary plat. Review comments will be forwarded to the applicant. The applicant will need to address the comments in writing, revise the preliminary plat accordingly and submit the corrections to the Planning Division.*

*Once directed that the preliminary plat is in compliance with the ordinance and ready to be presented to the Planning and Zoning Commission, the applicant will work with staff to submit the appropriate number of copies of the applicable documents and preliminary plat for the Planning and Zoning Commission meeting.*

3. The proposed division of the subject property includes more than 5 lots. Because the development is more than 5 lots, an internal, connected road system is required.

Pursuant to Chapter 15, Section 11, Shared Access

*When more than 5 lots are proposed for a new subdivision project, an internal, connected road system shall be provided. (A diagram also accompanies the text.)*



4. The proposed development does not include a public or private road right-of-way on the preliminary plat. It shows two shared driveways labeled as access easements. (See Preliminary Plat Submittal)

Pursuant to Chapter 15, Section 8 Legal access, road types and Transportation Impact Analysis, Road types and classification

*The arrangement, character, extent, width, grade, and location of all roads shall be reviewed in relation to existing and proposed transportation patterns, topographical and other natural features, public convenience, and safety, proposed uses of lands to be served by such roads and existing or potential uses in adjoining areas.*

*Roads shall be classified and designed in accordance with the typical details outlined in Appendix A of this Ordinance.*

*Roads on a proposed subdivision plat shall be classified and labeled as either public or private. The proposed road right-of-way and typical shall also be provided on the plat.*

Pursuant to Chapter 15, Section 8, Private roads serving more than five lots

*New roads serving five or more lots may be permanently designated as a private road. These roads shall be built to the North Carolina Department of Transportation public standard for the appropriate type of road or street. Additionally, a road maintenance agreement shall be recorded in the office of the register of deeds to ensure that proper maintenance of the private road is provided by property owners gaining access from the road or street and for emergency service response. See Appendix A for road design standards.*

5. The proposed subdivision is located off Fink Road. A tract of land adjacent to the subject parcel is approximately 93 acres.

Pursuant to CCDO Chapter 15, Section 5-9, Connections to adjacent properties

*Where necessary to provide access or to permit the reasonable future subdivision or development of adjacent land, rights-of-way and improvements shall be extended to the boundary of a development.*

*Connections shall be placed at locations where future connection can be made at a reasonable cost and shall not be directed into wetlands, creeks, steep slopes, or other locations that would make the future extension of the road impractical.*

*A temporary turnaround may be required where the dead end exceeds 250 feet in length. Where such a connection has been established on adjacent property, each new subdivision shall be required to extend the connection as a link in the proposed subdivision street network.*

6. The information provided in the Appeal application is the same information provided by the Appellant in the October 4, 2023, email to the County Attorney.

## Exhibits

1. Appeal Application
2. Staff Maps
3. Neighboring Property Information
4. Noticing Letters & Sign
5. Sketch Plat Application
6. Sketch Plat Review Comments May 31, 2022
7. Preliminary Plat Application
8. Preliminary Plat Request for Comments Email
9. September 27, 2023 - Email
10. October 2, 2023 - Email
11. Legal Response to Appellant's Email



**APPEAL OF ADMINISTRATIVE  
DECISION, INTERPRETATION  
OR NOTICE OF VIOLATION**

STAFF USE ONLY:

Application/Accela#

Reviewed by \_\_\_\_\_

Date \_\_\_\_\_

Amount Paid: \_\_\_\_\_

In order to request an appeal from an interpretation or administrative decision made by the Zoning Administrator, the applicant must submit the following:

1. Complete application
2. Fee of \$450.00 for the first acre, \$15.00 per each additional acre plus cost of advertising and engineering fees if applicable. \$945
3. Copies of any documentation to be submitted to the Board of Adjustment as evidence. (If large format copies are included in the documentation, applicant must submit 18 copies.)

If there are additional questions concerning this process, please call the Planning and Development Department at (704) 920-2141, Monday through Friday, 8:00 am to 5:00 pm.

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

To the Cabarrus County Board of Adjustment:

I Anthony Giordano, hereby appeal the following decision of the Zoning Administrator to the Board of Adjustment: The interpretation of Section 15.11 Shared access. It was determined I need an internal road system even though I don't have shared access.  
You may attach additional sheet(s) if needed. Also 15.9 if roads are not needed this section will be redundant.

I request an interpretation of:

The Zoning Atlas (Zoning classification of subject property)

The following section(s) of the Zoning Ordinance:

15.11 Shared Access

15.9 Connections to adjacent Properties

*You may attach additional sheet(s) if needed.*

As it relates to the use of the property located at:

ADDRESS: 10300 Fink Rd, Mt. Pleasant, NC 28124

PARCEL IDENTIFICATION NUMBER (PIN): 56824208110000

PROPERTY OWNER: Anthony Giordano

In the space provided below, present your interpretation of the Zoning Atlas or Zoning Ordinance provision(s) in question and state what reasons you have for believing that your interpretation is the correct one. In addition, state the facts you are prepared to present to the Board of Adjustment to show that the decision was erroneous.

Please See attached 5 pages

You may attach additional sheet(s) if needed.

**Required Vote:** The vote requirement for an appeal of the Administrator's decision or interpretation to be upheld or overturned is a simple majority.

**APPLICATION CERTIFICATION:**

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 APPLICANT

3027 Pebble Creek Dr  
ADDRESS

Stanfield, NC 28163  
CITY, STATE, ZIP CODE

704-219-4665  
PHONE NUMBER

N/A  
FAX NUMBER

Aggiordano 7705@gmail.com  
E-MAIL ADDRESS

Same  
REPRESENTED BY

11  
ADDRESS

11  
CITY, STATE, ZIP CODE

11  
PHONE NUMBER

11  
FAX NUMBER

11  
E-MAIL ADDRESS

## **Section 11 Access Management Access to Public Roads**

1. Direct access to public roads is governed by the classification of the road and is determined by the NCDOT. No lots may directly access a road classified as a major thoroughfare. These lots must be served by an internal road system. **(notice the qualifier here. If we are connecting to a major thoroughfare and NCDOT doesn't allow access we would be required to put in an internal road system. This is not the case, NCDOT has already determined our access points and it is not more than 5 lots that need a shared access.)**
2. Access may be limited where lots abut minor thoroughfares and major collector roads. NCDOT may require shared access points when access is limited to the public facility. **(This is what has happened in our situation. NCDOT has allowed shared access for the first 4 lots.)**
3. Connections to, or through, adjacent properties may be required when access points to public roads are limited. **(As you can see from our design this is not necessary except on the shared driveway portion.)**

### **Shared Access**

When more than 5 lots are proposed for a new subdivision project, an internal, connected road system shall be provided. **(Now we have to keep in mind what we just read about needing shared access. We are not required by NCDOT for an internal access road therefore this is a mute point. We also don't have more than 5 lots that require shared access)**

Case law supporting headings are important to the construction of laws, rules and regulations.

### **Case # 1**

**\*\*Wake County v. North Carolina Board of Transportation (2013)\*\***

In this case, Wake County appealed a decision by the North Carolina Board of Transportation (NCDOT) to approve a plan to construct a new highway through the county. Wake County argued that the NCDOT did not have the authority to approve the plan because the plan violated the county's zoning ordinance.

The North Carolina Supreme Court held that the NCDOT did have the authority to approve the plan and that the plan did not violate the county's zoning ordinance.

In reaching its decision, the Court relied on the headings of the North Carolina General Statutes that deal with zoning and transportation. The heading of the section that deals with zoning said "Zoning." The heading of the section that deals with transportation said "Department of Transportation." The Court held that these headings made it clear that the General Statutes give the NCDOT the authority to construct highways even if the highways violate local zoning ordinances.

The Court also relied on the heading of the section of the General Statutes that deals with the specific type of highway that was at issue in the case. The heading of that section said "Interstate Highways." The Court held that this heading made it clear that the General Statutes authorize the NCDOT to construct interstate highways through counties even if the highways violate the counties' zoning ordinances.

### **Case # 2**

**\*\*City of Greensboro v. Simkins (1968)\*\***

In this case, the City of Greensboro appealed a decision by the Guilford County Superior Court which reversed the City Council's revocation of a building permit for the construction of a multi-family apartment building in a single-family residential district.

The City of Greensboro argued that the Superior Court erred in reversing the City Council's decision because the City Council had the authority to revoke the building permit and because the City Council's decision was supported by the evidence.

The North Carolina Supreme Court held that the Superior Court did not err in reversing the City Council's decision. The Court noted that the City Council did not have the authority to revoke the building permit once it had been issued and that the City Council's decision was not supported by the evidence.

In reaching its decision, the Court relied on the headings of the zoning ordinance and the North Carolina General Statutes that deal with building permits. The heading of the section of the zoning ordinance that dealt with building permits said "Building Permits." The heading of the section of the General Statutes that dealt with building permits said "Building Permits." The Court held that these headings made it clear that building permits are only to be revoked if there is a violation of the zoning ordinance or if the building permit was issued in error.

### **Case # 3**

**\*\*City of Raleigh v. Exxon Company, U.S.A. (1974)\*\***

In this case, the City of Raleigh appealed a decision by the Wake County Superior Court which reversed the City Council's denial of a special use permit for the construction of a gasoline service station in a residential district.

The City of Raleigh argued that the Superior Court erred in reversing the City Council's decision because the City Council's decision was supported by the evidence and because the City Council had the authority to deny the special use permit.

The North Carolina Supreme Court held that the Superior Court did not err in reversing the City Council's decision. The Court noted that the City Council's decision was not supported by the evidence and that the City Council did not have the authority to deny the special use permit.

In reaching its decision, the Court relied on the headings of the zoning ordinance and the North Carolina General Statutes that deal with special use permits. The heading of the section of the zoning ordinance that dealt with special use permits said "Special Use Permits." The heading of the section of the General Statutes that dealt with special use permits said "Special Use Permits." The Court held that these headings made it clear that special use permits are only to be denied if the proposed use is inconsistent with the zoning ordinance or if the proposed use would have a negative impact on the public health, safety, or welfare.

#### **Case # 4**

**\*\*Craig v. County of Chatham (2002)\*\***

In this case, the plaintiff challenged the Chatham County Board of Commissioners' adoption of three ordinances regulating swine farms. The ordinances were adopted under the county's general police powers, as board of health rules, and as zoning regulations.

The plaintiff argued that the ordinances were preempted by state law. The plaintiff also argued that the ordinances were unconstitutional.

The North Carolina Court of Appeals held that the ordinances were not preempted by state law and that they were constitutional.

In reaching its decision, the Court of Appeals relied on the headings of the North Carolina General Statutes that deal with zoning and swine farms. The heading of the section that deals with zoning said "Zoning." The heading of the section that deals with swine farms said "Swine Farms." The Court held that these headings made it clear that the General Statutes authorize counties to zone swine farms.

The Court of Appeals also relied on the heading of the section of the General Statutes that deals with the preemption of local zoning ordinances. The heading of that section said "Preemption of Local Zoning Ordinances by State Law." The Court held that this heading made it clear that the General Statutes only preempt local zoning ordinances if the state law explicitly says that it preempts local zoning ordinances.

#### **Case # 5**

\*\*Town of Chapel Hill v. Chatham County (2014)\*\*

In this case, the Town of Chapel Hill challenged a decision by the Chatham County Board of Commissioners to approve a rezoning request for a parcel of land located in the unincorporated area of Chatham County. The rezoning request was for a mixed-use development that would include residential and commercial uses.

The Town of Chapel Hill argued that the Chatham County Board of Commissioners did not have the authority to approve the rezoning request because the parcel of land was located within the Town of Chapel Hill's planning jurisdiction. The Town of Chapel Hill also argued that the rezoning request was inconsistent with the Town of Chapel Hill's comprehensive plan.

The North Carolina Court of Appeals held that the Chatham County Board of Commissioners had the authority to approve the rezoning request and that the rezoning request was not inconsistent with the Town of Chapel Hill's comprehensive plan.

In reaching its decision, the Court of Appeals relied on the heading of the section of the North Carolina General Statutes that deals with zoning. The heading of that section said "Zoning in Unincorporated Areas." The Court held that this heading made it clear that the General Statutes authorize counties to zone unincorporated areas within their jurisdiction.

The Court of Appeals also relied on the heading of the section of the General Statutes that deals with the review of zoning decisions by municipalities. The heading of that section said "Review of County Zoning Decisions by Municipalities." The Court held that this heading made it clear that the General Statutes authorize municipalities to review zoning decisions made by counties, but that municipalities do not have the authority to veto zoning decisions made by counties.

## **Case # 6**

\*\*Decker v. Coleman (1979)\*\*

In this case, the plaintiff, who owned a parcel of land zoned for commercial use, sought to rezone the land for residential use. The City Council of Asheville approved the rezoning request, but subject to a condition that the plaintiff maintain a 50-foot buffer between the proposed residential development and the adjacent commercial development. The plaintiff appealed to the Superior Court, which upheld the City Council's decision. The plaintiff appealed to the North Carolina Supreme Court.

The Supreme Court held that the condition imposed by the City Council was invalid. The Court noted that the zoning ordinance did not authorize the City Council to impose conditions on rezoning requests. The Court also noted that the condition was not necessary to protect the public health, safety, or welfare.

In reaching its decision, the Court relied on the heading of the zoning ordinance, which said "Zoning Districts." The Court held that this heading was "helpful" in understanding the purpose of the zoning ordinance. The Court said that the heading made it clear that the purpose of the zoning ordinance was to divide the city into different districts and to establish regulations for each district.

The Court also relied on the heading of the section of the zoning ordinance that dealt with rezoning requests. The heading of that section said "Rezoning Procedure." The Court held that this heading made it clear that the zoning ordinance established a specific procedure for rezoning requests and that the City Council did not have the authority to impose conditions on rezoning requests that were not authorized by the zoning ordinance.

### **Case # 7**

**\*\*Atkins v. Zoning Board of Adjustment of Union County (1981)\*\***

In this case, the plaintiffs, who owned a parcel of land zoned for agricultural use, sought to use the land for the storage and sale of grain, fertilizer, and lime. The Zoning Board of Adjustment denied the plaintiffs' request for a special use permit. The plaintiffs appealed to the Superior Court, which reversed the Zoning Board's decision. The Zoning Board appealed to the North Carolina Court of Appeals.

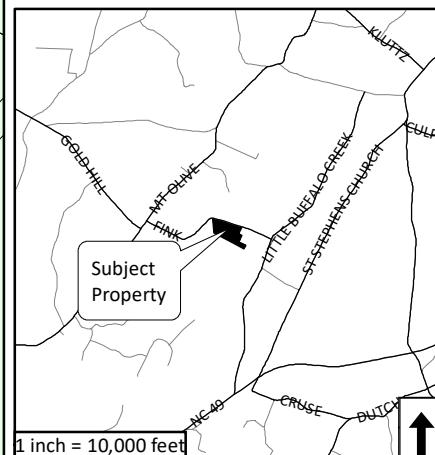
The Court of Appeals held that the Zoning Board's decision was supported by the evidence. The Court noted that the plaintiffs' proposed use of the land was not compatible with the surrounding area, which was zoned for residential use. The Court also noted that the plaintiffs' proposed use of the land would generate noise and traffic, which would have a negative impact on the surrounding area.

In reaching its decision, the Court relied on the heading of the zoning ordinance, which said "Zoning Districts." The Court held that this heading was "helpful" in understanding the purpose of the zoning ordinance. The Court said that the heading made it clear that the purpose of the zoning ordinance was to protect the character of different neighborhoods.

Eastern Planning Area  
Existing Zoning



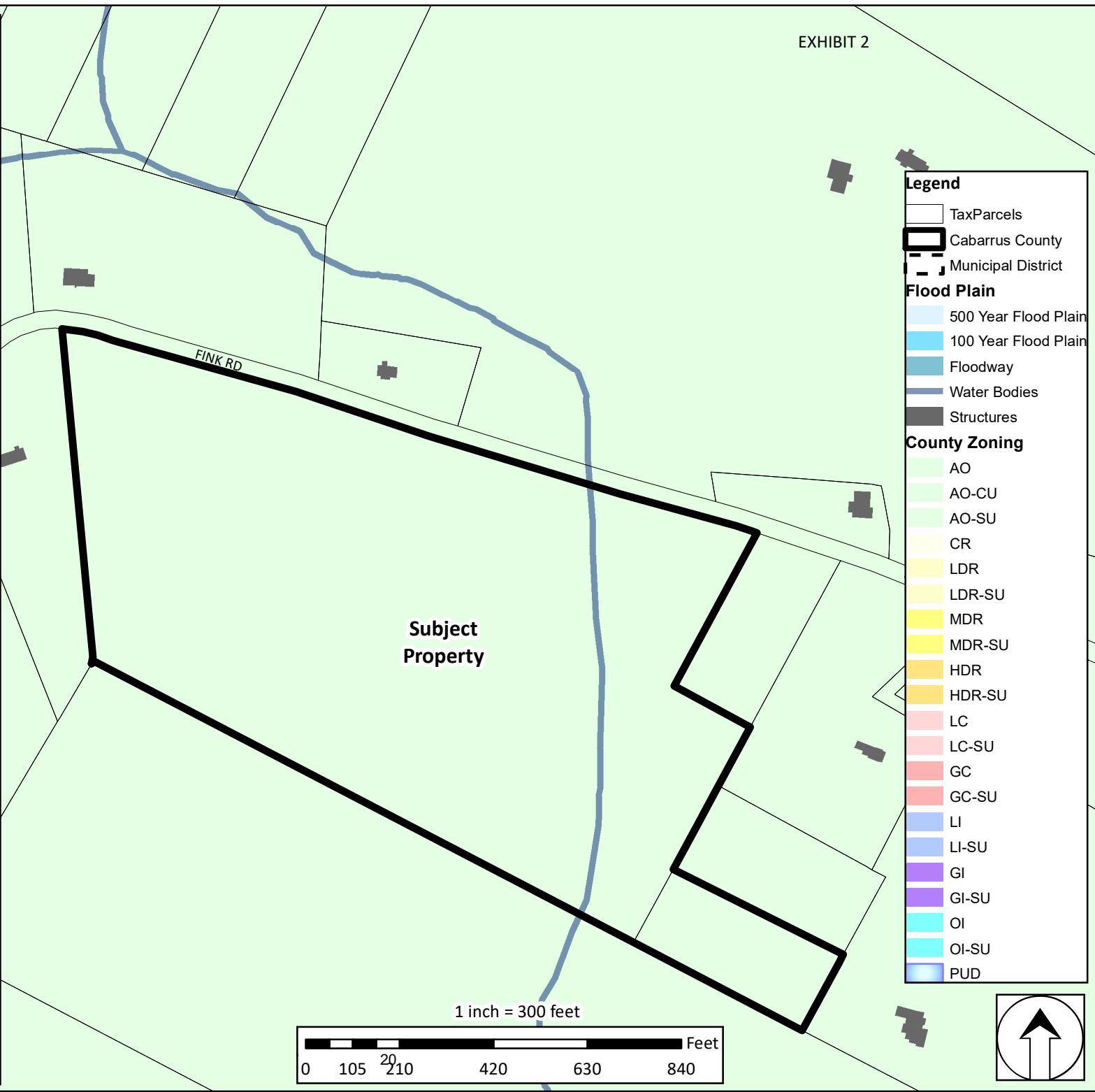
Applicant: Anthony Giordano  
Owner: Anthony & Marie Giordano  
Case: APPL2023-00001  
Address: 10300 Fink Road  
Purpose: Appeal  
PINs: 5682-42-0811 & 5682-33-2208



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 - November 2023

EXHIBIT 2



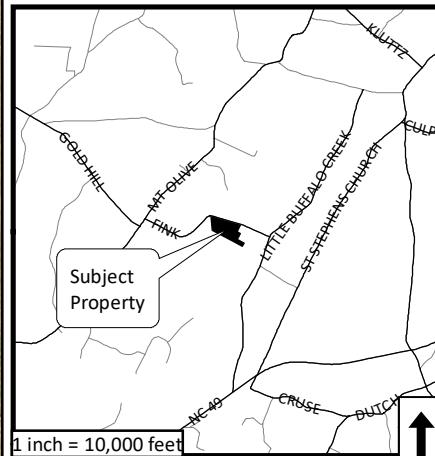
## Eastern Planning Area

### Aerial Map



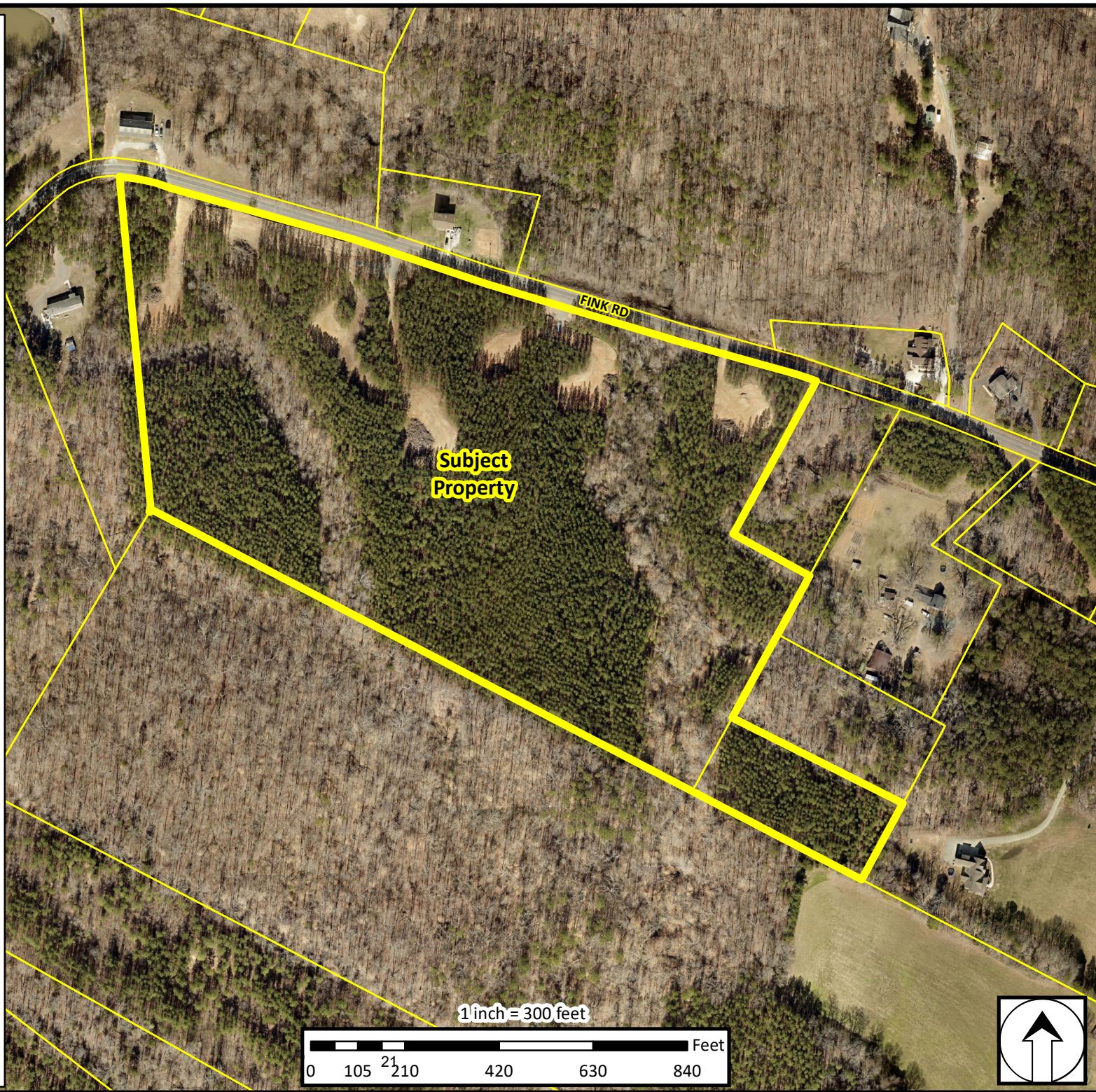
Applicant: Anthony Giordano  
Owner: Anthony & Marie Giordano  
Case: APPL2023-00001  
Address: 10300 Fink Road  
Purpose: Appeal  
PINs: 5682-42-0811 & 5682-33-2208

- Cabarrus County
- Municipal District
- Tax Parcels



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.

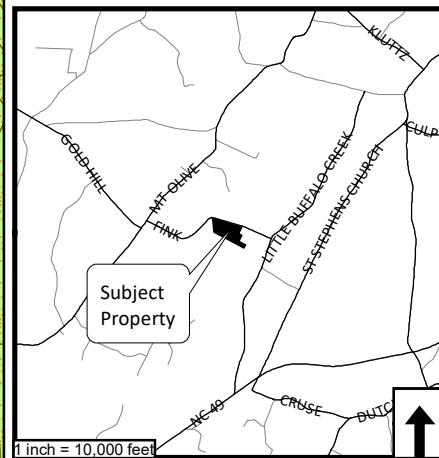
Map Prepared by Cabarrus County Planning & Development - November 2023



Eastern Planning Area  
Future Land Use

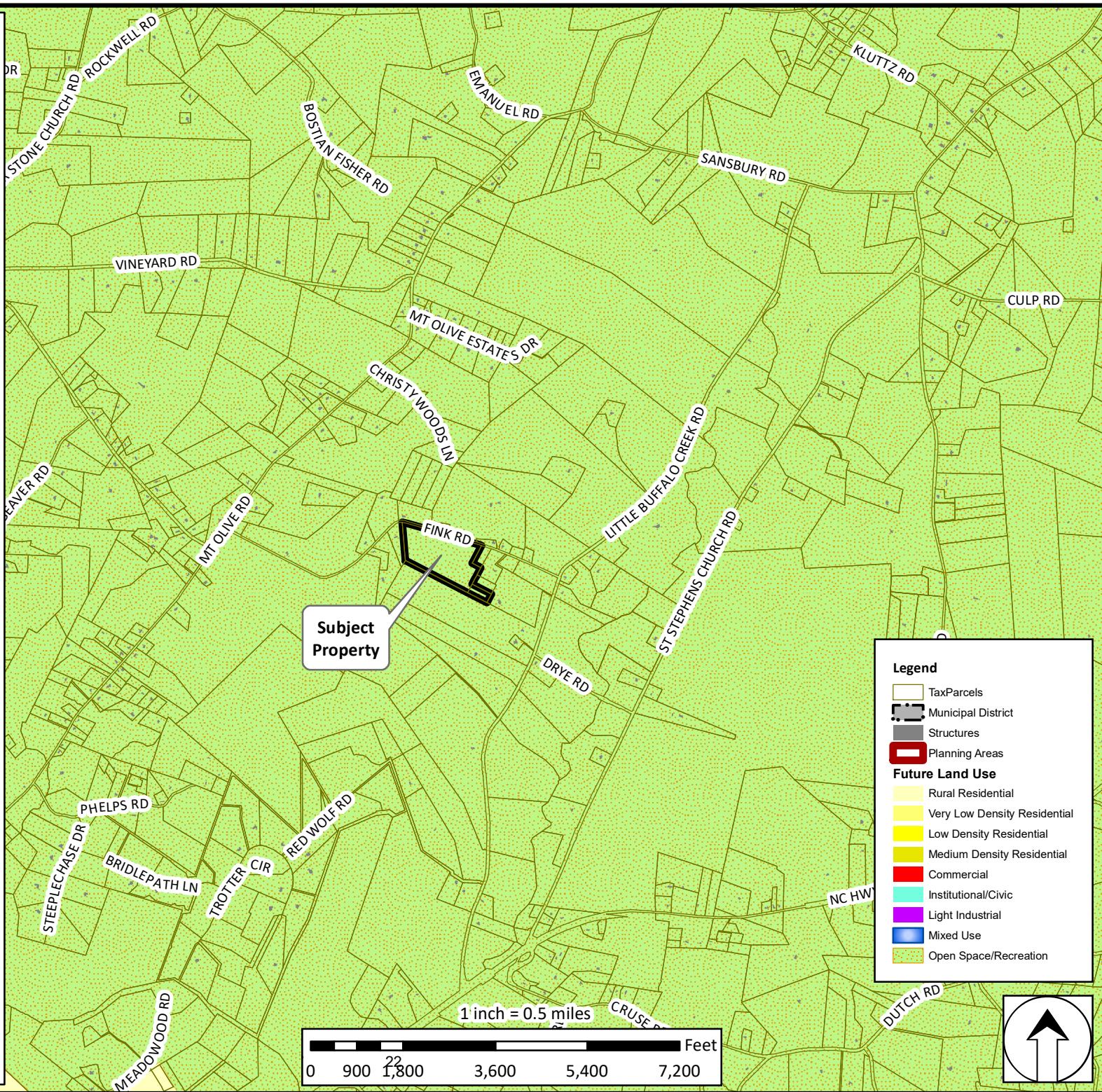


Applicant: Anthony Giordano  
Owner: Anthony & Marie Giordano  
Case: APPL2023-00001  
Address: 10300 Fink Road  
Purpose: Appeal  
PINs: 5682-42-0811 & 5682-33-2208



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 - November 2023



**Giordano Surrounding Properties**

5682-33-2485 & 5682-33-9222 MEREDITH LEE TREXLER KRIEG 2551 LITTLE BUFFALO CREEK RD MT PLEASANT, NC 28124	5682-14-6374 JIMMY FRANKLIN JR & MICHELLE SUGGS 10260 FINK RD MT PLEASANT, NC 28124	5682-34-3239 CHANDLER & ELIZABETH POTTS 10617 FINK RD MT PLEASANT, NC 28124
5682-14-9835 MATTHEW & MELISSA ELBERSON 10301 FINK ROAD MT PLEASANT, NC 28124	5682-32-9450 JERRY LAMAR DRYE SR LF EST 2345 LITTLE BUFFALO CREEK RD MT PLEASANT, NC 28124	5682-33-4735 DAVID & AMANDA ANDERSON 10620 FINK RD MT PLEASANT, NC 28124
5682-34-2902 JOSEPH & AMANDA PATRICK 10555 FINK RD MT PLEASANT, NC 28124	5682-24-5545 TONY R BENTON 10351 FINK RD MT PLEASANT, NC 28124	5682-34-2043 BETTY RIDENHOUR MILLER P O BOX 184 CONCORD, NC 28026

**Subject Property**

5682-33-2208 & 5682-42-0811  
ANTHONY & MARIE GIORDANO  
3027 PEBBLE CREEK DR  
STANFIELD, NC 28163



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

---

October 19, 2023

Dear Property Owner:

An appeal of an Interpretation has been filed in our office for property **adjacent** to your property. The specifics of the request are listed below. The Cabarrus County Board of Adjustment will consider this petition on Tuesday November 14, 2023, at 6:30 PM in the 2<sup>nd</sup> floor Commissioner's Chambers of the Cabarrus County Governmental Center, located at 65 Church Street S Concord, NC 28025. A Public Hearing will be conducted, and public input will be allowed during that time. If you have any comments about this request, I encourage you to attend this meeting.

<b>Petitioner</b>	<b>Anthony Giordano</b>
<b>Petition Number</b>	<b>APPL2023-00001</b>
<b>Property Location</b>	<b>10300 &amp; 10400 Fink Road</b>
<b>Parcel ID Number</b>	<b>5682-42-0811 &amp; 5682-33-2208</b>
<b>Existing Zoning</b>	<b>Agriculture / Open Space (AO)</b>
<b>Appeal of Notice of Violation</b>	<b>Section 15.9 Connections to Adjacent Properties and Section 15.11 Shared Access</b>

If you have any questions regarding this petition, or the hearing process, please contact me at Cabarrus County Planning and Development at 704.920.2181.

Sincerely,

A handwritten signature in black ink that reads "Phillip Collins".

Phillip Collins, AICP  
 Senior Planner  
 Cabarrus County Planning and Development  
 704.920.2181



## Cabarrus County Government – Planning and Development Department

---

October 19, 2023

Dear Property Owner:

An appeal of an Interpretation has been filed in our office for your property. The specifics of the request are listed below. The Cabarrus County Board of Adjustment will consider this petition on Tuesday November 14, 2023, at 6:30 PM in the 2<sup>nd</sup> floor Commissioner's Chambers of the Cabarrus County Governmental Center, located at 65 Church Street S Concord, NC 28025. A Public Hearing will be conducted, and public input will be allowed during that time. If you have any comments about this request, I encourage you to attend this meeting.

<b>Petitioner</b>	<b>Anthony Giordano</b>
<b>Petition Number</b>	<b>APPL2023-00001</b>
<b>Property Location</b>	<b>10300 &amp; 10400 Fink Road</b>
<b>Parcel ID Number</b>	<b>5682-42-0811 &amp; 5682-33-2208</b>
<b>Existing Zoning</b>	<b>Agriculture / Open Space (AO)</b>
<b>Appeal of Interpretation</b>	<b>Section 15.9 Connections to Adjacent Properties and Section 15.11 Shared Access</b>

If you have any questions regarding this petition, or the hearing process, please contact me at Cabarrus County Planning and Development at 704.920.2141.

Sincerely,

A handwritten signature in black ink that reads "Phillip Collins".

Phillip Collins, AICP  
Senior Planner  
Cabarrus County Planning and Development  
704.920.2181

10/23/23, 11:08 AM  
Fink Rd, Cabarrus County



**CABARRUS COUNTY  
SKETCH PLAT APPLICATION****STAFF USE ONLY:**

Application/Accela#: \_\_\_\_\_

Reviewed by: \_\_\_\_\_

Date: \_\_\_\_\_

Amount Paid: \_\_\_\_\_

**INSTRUCTIONS/PROCEDURES:**

1. The *Cabarrus County Development Ordinance* is available on the Cabarrus County Web Site. A check list to guide you through the requirements is available from the Planning Division.
2. Schedule a pre-application meeting with Staff to discuss the procedures and requirements for a sketch plat review.
3. Submit a complete application to the Planning Division. All applications must include the following:
  - o Six (6) copies of the sketch plan drawn in accordance with Chapter 3, Section 2 of the Cabarrus County Subdivision Regulations.
  - o Any additional documents essential for the application to be considered complete. (Determined at the pre-application meeting.)
4. Submit cash, check or money order made payable to Cabarrus County.  
Fees: Sketch Plat review \$100.00 plus engineering fees if applicable

The initial submittal will be reviewed and comments will be forwarded to you. All comments should be addressed and/or incorporated into the preliminary plat design that is formally submitted for Planning and Zoning Commission consideration.

If you have any questions about the sketch plat process, please reference the Cabarrus County Major Subdivision Process Guide or call the Cabarrus County Planning Division at (704) 920-2141, between 8 AM and 5 PM, Monday through Friday.

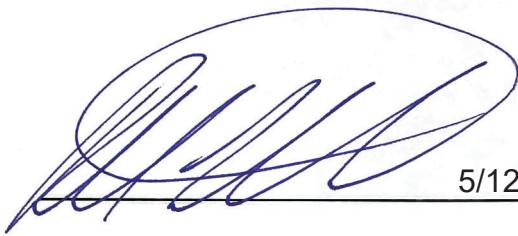
**Incomplete applications will be returned to the applicant and will not be processed**

Proposed Subdivision Name: Fink EstatesProject Type:  Residential  Commercial  Industrial  Mobile HomePIN(s): 5 6 8 2 ... 4 2 ... 0 8 1 1 (10 digit Parcel Identification Number)5 6 8 2 ... 3 3 ... 2 2 0 8Existing Zoning: AO Area in Acres: 33.3Will the project be completed in phases?  YES  NO If yes, list Number of Phases:Number of Lots: 7 Total \_\_\_\_\_ Phase 1 \_\_\_\_\_ Phase 2 \_\_\_\_\_ Phase 3 \_\_\_\_\_List Existing Roads Providing Access to Proposed Subdivision: Fink RdWater Supply:  Well(s) or  Service Provider: \_\_\_\_\_Wastewater Treatment:  Septic Tank(s) or  Service Provider: \_\_\_\_\_



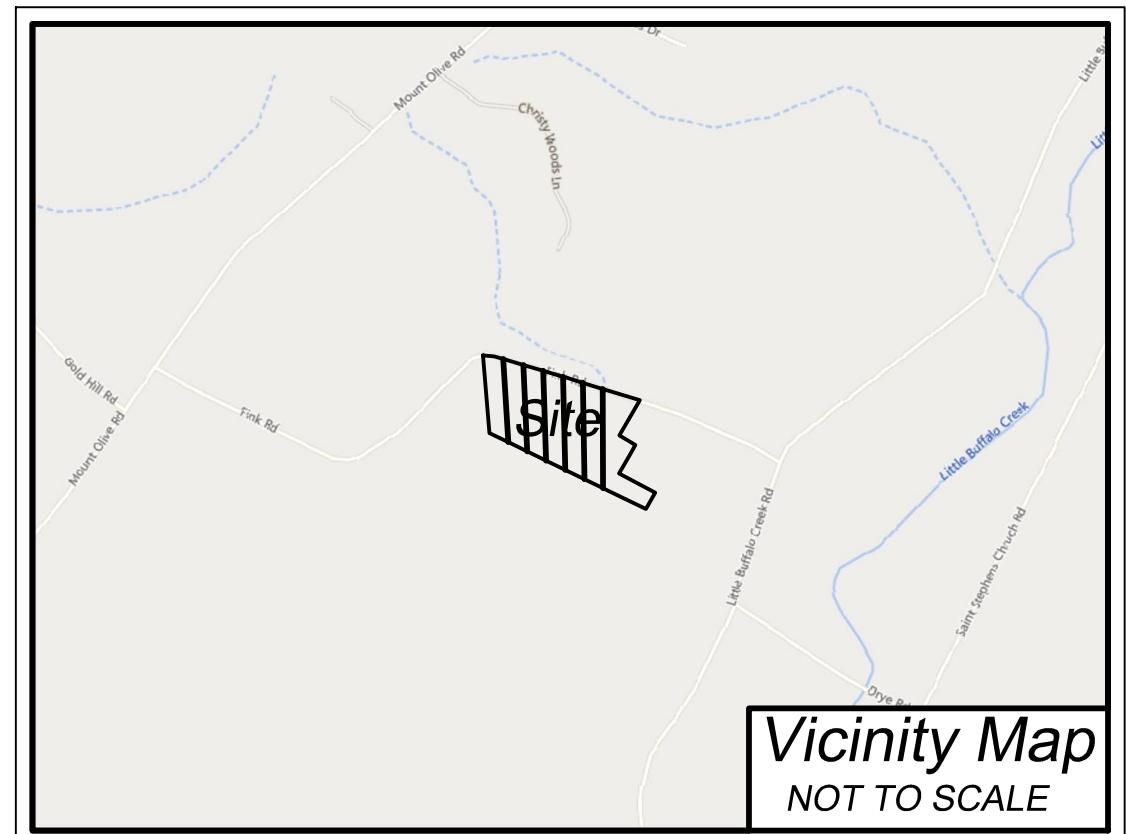
Signature \_\_\_\_\_ of

Surveyor/Engineer:



5/12/22

Date:



### UTILITY NOTES

THE LOCATION OF UTILITIES SHOWN HEREON ARE FROM OBSERVED EVIDENCE OF ABOVE GROUND APPURTENANCES ONLY. THE SURVEYOR WAS NOT PROVIDED WITH UNDERGROUND PLANS TO DETERMINE THE LOCATION OF ANY SUBTERRANEAN USES. THIS SURVEYOR MAKES NO GUARANTEE THAT THE UTILITIES SHOWN HEREON COMprise ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THERE IS NO CERTAINTY OF THE ACCURACY OF THE INFORMATION AND SURVEYOR IS NOT RESPONSIBLE FOR THE LOCATION OF THESE UTILITIES. UTILITIES AND STRUCTURES NOT SHOWN MAY BE ENCOUNTERED. THE OWNER, HIS CONSULTANTS AND HIS CONTRACTORS SHALL HEREBY DISTINCTLY UNDERSTAND THAT THIS SURVEYOR IS NOT RESPONSIBLE FOR THE SUFFICIENCY OF THE UNDERGROUND UTILITY INFORMATION PROVIDED HEREON, ALTHOUGH HE DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM THE INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES.

### DIVISION OF HIGHWAYS DISTRICT ENGINEER CERTIFICATE

I HEREBY CERTIFY THAT THE RIGHT OF WAY DEDICATION ALONG THE EXISTING STATE MAINTAINED ROADWAY(S) SHOWN ON THIS PLAT IS APPROVED AND ACCEPTED AS PUBLIC RIGHT OF WAY BY THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS.

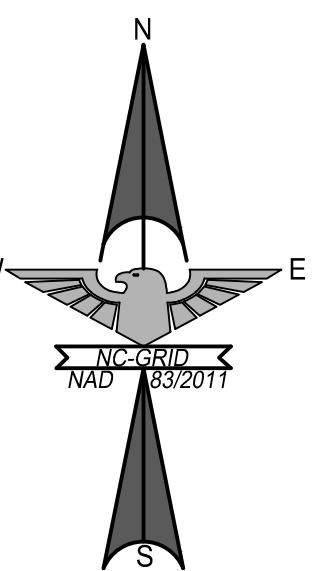
#### DISTRICT ENGINEER

#### DATE

ONLY NORTH CAROLINA DEPARTMENT OF TRANSPORTATION APPROVED STRUCTURES ARE TO BE CONSTRUCTED ON PUBLIC RIGHT OF WAY.

### ZONING INFORMATION

ACCORDING TO THE CABARRUS COUNTY GEOGRAPHIC INFORMATION SYSTEM (GIS) WEBSITE ADDRESS ON APRIL 1, 2022, THE SUBJECT PROPERTY IS ZONED "AO". BECAUSE THERE MAY BE A NEED FOR INTERPRETATION OF THE APPLICABLE ZONING CODES, WE REFER YOU TO THE CITY OF MT. PLEASANT, AND THE APPLICABLE ZONING CODES.



### MISCELLANEOUS NOTES

NO USGS MONUMENTATION WITHIN 2000' OF SITE. GRID POSITIONS WERE DETERMINED USING A TRIMBLE 5800 GNSS GPS RECEIVER UTILIZING THE NORTH CAROLINA GEODETIC SURVEY VRS NETWORK. ALL COORDINATES AND BEARING SHOWN ARE BASED ON NAD 83/2011.

AREAS COMPUTED USING COORDINATE GEOMETRY.

DEED REFERENCE: AS SHOWN.

ALL ADJOINING PROPERTY OWNER INFORMATION IS TAKEN FROM CURRENT DEEDS AND TAX RECORDS AND ARE CONSIDERED "NOW OR FORMERLY".

OTHER UNDERGROUND UTILITIES MAY EXIST BUT THEIR LOCATIONS ARE NOT KNOWN.

THIS MAP REPRESENTS A SUBDIVISION OF LAND IN AN AREA OF A MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND.

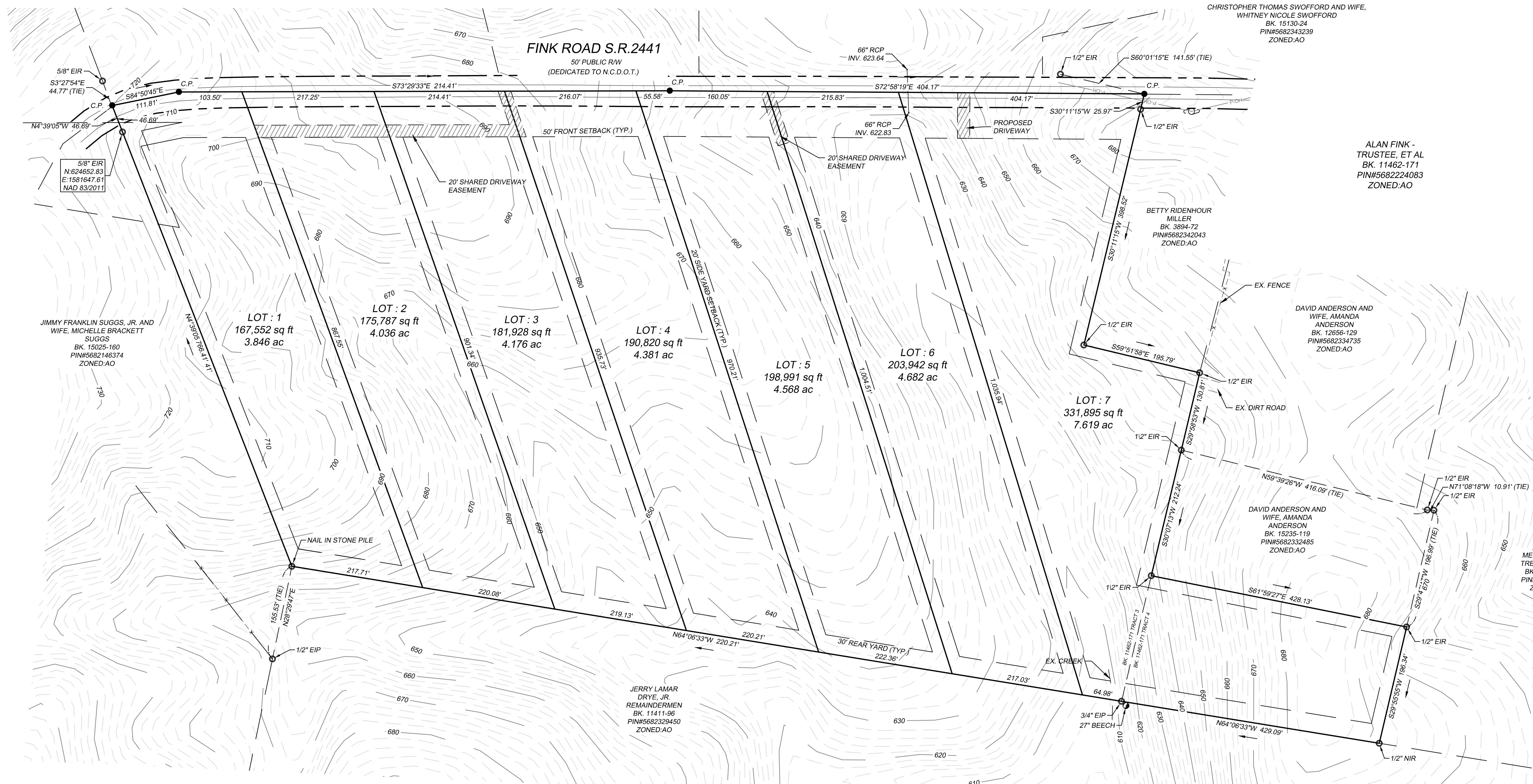
TOPOGRAPHIC DATA SHOWN WAS TAKEN FROM THE CABARRUS COUNTY GIS.

ALL DISTANCES SHOWN ARE HORIZONTAL GROUND DISTANCES.

COMBINED GRID FACTOR = 0.999852729

THE PROPERTY SHOWN HEREON IS NOT LOCATED WITHIN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON F.E.M.A. FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 3710568200J, EFFECTIVE DATE 11/5/2008.

BEFORE ANY DRIVE IS CONSTRUCTED A PRECONSTRUCTION MEETING SHALL BE HELD ON SITE WITH NCDOT. SCHEDULE BY CONTACTING 704-983-4360. DRAINAGE PIPES WILL BE INSTALLED ON ALL DRIVEWAYS AS NEEDED AND INSTRUCTED BY NCDOT.



### LEGEND OF SYMBOLS & ABBREVIATIONS

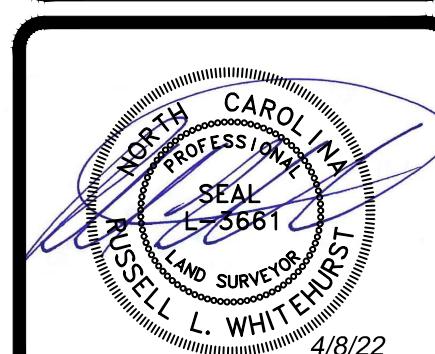
- EIP - EXISTING IRON PIPE
- EIR - EXISTING IRON REBAR
- NIR - NEW IRON REBAR
- ST - NEIGHBOR TRIANGLE
- M.B.S. - MINIMUM BUILDING SETBACK
- P.S.D.E. - PUBLIC STORM DRAINAGE EASEMENT
- S.S.E. - SANITARY SEWER EASEMENT
- SSM - SANITARY SEWER MANHOLE
- RW - RIGHT OF WAY
- P.S.S.E. - PRIVATE SANITARY SEWER EASEMENT
- GPUE - GENERAL PUBLIC UTILITY EASEMENT
- C.P. - COMPUTED POINT
- ECM - EXISTING CONCRETE MONUMENT
- E.P.K. - EXISTING P.K. NAIL
- HC - HANDICAPPED PARKING
- TT - TRANSMISSION TOWER
- UP - UTILITY POLE
- UGS - UNDERGROUND GASLINE
- P-OH - OVERHEAD UTILITY LINE
- SS - SANITARY SEWER LINE
- SM - SANITARY SEWER MANHOLE
- WH - FIRE HYDRANT
- WV - WATER VALVE
- W - WATER WELL
- YI - YARD INLET / AREA DRAIN
- MW - MONITORING WELL
- EBT - ELECTRIC BOX/TRANSFORMER
- CIN - CURB INLET
- SD - STORM DRAIN
- W - WATER LINE
- X - FENCE LINE
- ZL - ZONING LINE
- 186 - UNDERGROUND TELEPHONE

GRAPHIC SCALE  
0 100' 200'  
( IN FEET )  
1 inch = 100 ft.

PRELIMINARY  
NOT FOR SALES,  
CONVEYANCE, OR  
RECORDATION

### PRELIMINARY PLAT 33.308 ACRES

DESIGNED BY: n/a DRAWN BY: JWC/ASD CHECKED BY: RLW  
DATE: 04/08/22 JOB NUMBER: 7723  
Scale: 1" = 100'



1 OF 1

**EAGLE ENGINEERING**  
FIRM LICENSE # C-0073  
2013A Van Buren Avenue  
Indian Trail, NC 28079  
www.eaglenonline.net

**THE ALAN FINK - TRUSTEE  
PROPERTY, ET AL**  
MOUNT PLEASANT, TWSP, CABARRUS CO., N.C.  
For the benefit of:  
**TRINITY LAND DEVELOPMENT 1, LLC**  
3027 PEBBLE CREEK DR., STANFIELD, N.C. 28163

**From:** [Phillip Collins](#)  
**To:** [Anthony Giordano](#); [Russell Whitehurst](#)  
**Cc:** [Phillip Collins](#); [Sandy Howell](#)  
**Subject:** RE: Fink rd  
**Date:** Tuesday, May 31, 2022 10:34:02 AM

---

Anthony/Russell,

We have reviewed this plat and have the following comments:

- Planning:
  - Please note whether the properties are going to be served with well and septic or public utilities – if the property is to be served with individual septic systems, the areas for each system needs to be shown on the preliminary plat along with the building envelopes (this can be confirmed by having the lots perc tested or by a private soil scientist).
  - Preliminary plat will need to be sealed by a PE, ASLA or AIA,
  - The scale of the vicinity map will need to be 1:2000 on the preliminary plat,
  - There is an existing 30' easement to backside of lot 7, it is recorded in Deed Book 15235 Page 119, please show,
  - The intermittent stream running roughly along the line between lots 6 & 7 is labeled but not shown. Please show,
  - Please add a note containing the following information:
    - Subdivision Option - Conventional Subdivision
    - Permitted Density per gross acre - 1 Dwelling Unit per 3 acres
    - Proposed Density per gross acre - 1 Dwelling Unit per 4.75 acres
    - Total units proposed - 7 Dwelling Units
    - Zoning and required setbacks (I see them on the map, but it should be noted as well),
  - Front setback for lots on Fink Road is 75'
- Cabarrus Health Alliance: No comments
- Fire Marshal:
  - Plan shows lots with Shared Driveway Easements. Shared 20 foot wide driveways must meet the requirements for a Fire Service Access Roadway.
    - Driveways 150' or more in length must be provided with an approved hammerhead turnaround
    - Driveways must be able to support the weight of a 75,000 pound truck
    - Must have a vertical clearance of 13 feet 6 inches.
  - NCFC 507.1 Required Supply - All homes build in this development must meet the requirements of NFPA1142 pertaining to required fire flow.
    - All homes must have a minimum of a 50 feet separation between structures on each plot and separation for structures on adjoining plots.
    - Size of homes shall not exceed 3,000 Sq. Feet
- Soil and Water Conservation: No Comments

- EMS: No comments
- NCDOT: No comments
- NCDEQ Erosion Control: No comments
- NCDEQ Storm Water: No comments

Please make the appropriate changes and we will move on to the preliminary plat process. Also, the fees have been uploaded and are ready for payment. You can take care of all of the fees or you can just pay the sketch plat fee (\$100), but you will need to pay the preliminary plat fees prior to the preliminary plat review. Click [here](#) to pay the fees.

Thanks,

Phil

---

**From:** Anthony Giordano <agiordano7705@gmail.com>  
**Sent:** Thursday, May 12, 2022 12:42 PM  
**To:** Phillip Collins <PECollins@cabarruscounty.us>  
**Subject:** Fwd: Fink rd

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe!

---

How about now?

----- Forwarded message -----

From: **Russell Whitehurst** <[rwhitehurst@eagleonline.net](mailto:rwhitehurst@eagleonline.net)>  
Date: Thu, May 12, 2022, 11:12 AM  
Subject: Re: Fink rd  
To: Anthony Giordano <[agiordano7705@gmail.com](mailto:agiordano7705@gmail.com)>  
Cc: Jonathan Crowe <[jonathan.crowe@eagleonline.net](mailto:jonathan.crowe@eagleonline.net)>

Sorry for the delay Anthony,

Attached is the application and updated preliminary plat (revised to address checklist items).

Thanks,

RUSSELL L. WHITEHURST, PLS, CFS  
PRINCIPAL - SURVEY DIVISION  
**EAGLE ENGINEERING, INC.**  
2013-A VAN BUREN AVENUE  
INDIAN TRAIL, NC 28079  
DIRECT [\(704\) 893-1259](tel:(704)893-1259)

OFFICE (704) 882-4222 x 229  
FAX (866) 775-0329  
[RWHITEHURST@EAGLEONLINE.NET](mailto:RWHITEHURST@EAGLEONLINE.NET)  
[WWW.EAGLEONLINE.NET](http://WWW.EAGLEONLINE.NET)

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On Thu, May 12, 2022 at 7:09 AM Anthony Giordano <[agiordano7705@gmail.com](mailto:agiordano7705@gmail.com)> wrote:

Russell,  
When do you think you can have the application done?



## PRELIMINARY PLAT APPLICATION

STAFF USE ONLY:

Application/Accela#: \_\_\_\_\_

Reviewed by: \_\_\_\_\_

Date: \_\_\_\_\_

Amount Paid: \_\_\_\_\_

### INSTRUCTIONS/PROCEDURES:

1. Complete and submit the Preliminary Plat Application.
2. Provide a copy of the following:
  - N/A  approved Street Name Review and Confirmation form *1 N/A - No street, all lots have access to Fink Rd*
  - NCDOT Driveway Permit,
  - N/A  stormwater permit,
  - N/A  soil & erosion control permit, *- N/A - under 1 acre of disturbed dirt.*
  - N/A  neighborhood meeting minutes,
  - completed preliminary plat check list (type or print), and
  - N/A  any additional information or documents (determined at the pre-application meeting).
3. Provide 2 paper copies of your preliminary plat and a digital version.
4. Submit fee:
  - Application fee-\$550 for subdivisions of 5 lots, plus \$15.00 for each additional lot, (Plus cost of engineering fees if applicable) *+\$580*
  - Fire Marshal Review \$158.00
5. Staff and appropriate agents will review your complete preliminary plat application and comments will be forwarded to you (approximately 30 days). You will need to address the comments in writing, revise the preliminary plat accordingly and resubmit the revised preliminary plat showing that comments are addressed, and errors corrected. Please note that if a third submittal is required, an additional review fee will be collected.
6. Once advised that the plat is correct and ready to be presented to the Planning and Zoning Commission, you will need to submit hard copies along with electronic files. (Staff will advise of number required)
7. When the copies of the plan are received, Staff will begin to prepare a staff report and schedule a meeting date.

**Meeting Information:** The Cabarrus County Planning and Zoning Commission meets on the second Tuesday of the month at 6:30 PM at the Cabarrus County Governmental Center, located in downtown Concord at 65 Church Street.

**Deadline Information:** Complete applications must be turned in prior to 2:00 PM the second Tuesday of the month to meet the deadline.

**Questions:** If there are additional questions concerning this process, please call the Planning and Development Department at (704) 920-2141, Monday through Friday, 8:00 am to 5:00 pm. Your signature on this form indicates that you understand all the requirements for the submission of a preliminary plat and the requirements to construct the project if approved.

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

Proposed Subdivision Name: FINK E STATES  
(Proposed name must be approved by 911 Coordinator)

Location: (0300) Fink Rd, Mt Pleasant NC 28163

Project Type:  Residential  Commercial  Industrial  Mobile Home

PIN(s): 5 6 8 2 -- 4 2 -- 0 8 1 1 (10 digit parcel identification number)  
5 6 9 2 -- 3 3 -- 2 2 0 8

Existing Zoning: AO Area in Acres: 33.3

Will the project be completed in phases? YES NO If yes, Number of Phases: \_\_\_\_\_

Number of Lots: 7

- Total for project \_\_\_\_\_
- Phase 1 \_\_\_\_\_
- Phase 2 \_\_\_\_\_
- Phase 3 \_\_\_\_\_
- Phase 4 \_\_\_\_\_
- Phase 5 \_\_\_\_\_

Existing Roads Providing Access to Subdivision:

Fink Rd

\*Water Supply:  Well(s) or  Service Provider: \_\_\_\_\_

\*Wastewater Treatment:  Septic Tank(s) or  Service Provider: \_\_\_\_\_

\* If using well and septic, please provide applicable documentation from the Cabarrus County Health Alliance. For a public service provider, please attach Intent to Serve letter to this application.

**PROPERTY OWNER**Anthony Giordano

NAME

3027 Pebble Creek Dr

ADDRESS

Stanfield, NC 28163

CITY, STATE, ZIP CODE

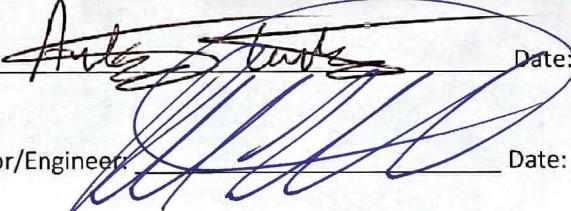
704- 219- 4665

PHONE NUMBER

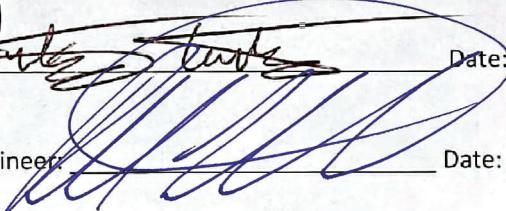
FAX NUMBER

Agiordano 7705@gmail.com

E-MAIL ADDRESS

Signature of Property Owner: 

Date:

4-19-22Signature of Developer/Surveyor/Engineer: Date: 5/12/22**DEVELOPER/SURVEYOR/ENGINEER**Russell Whitehurst, PLS

NAME

2013-A Van Buren Avenue

ADDRESS

Indian Trail, N.C. 28079

CITY, STATE, ZIP CODE

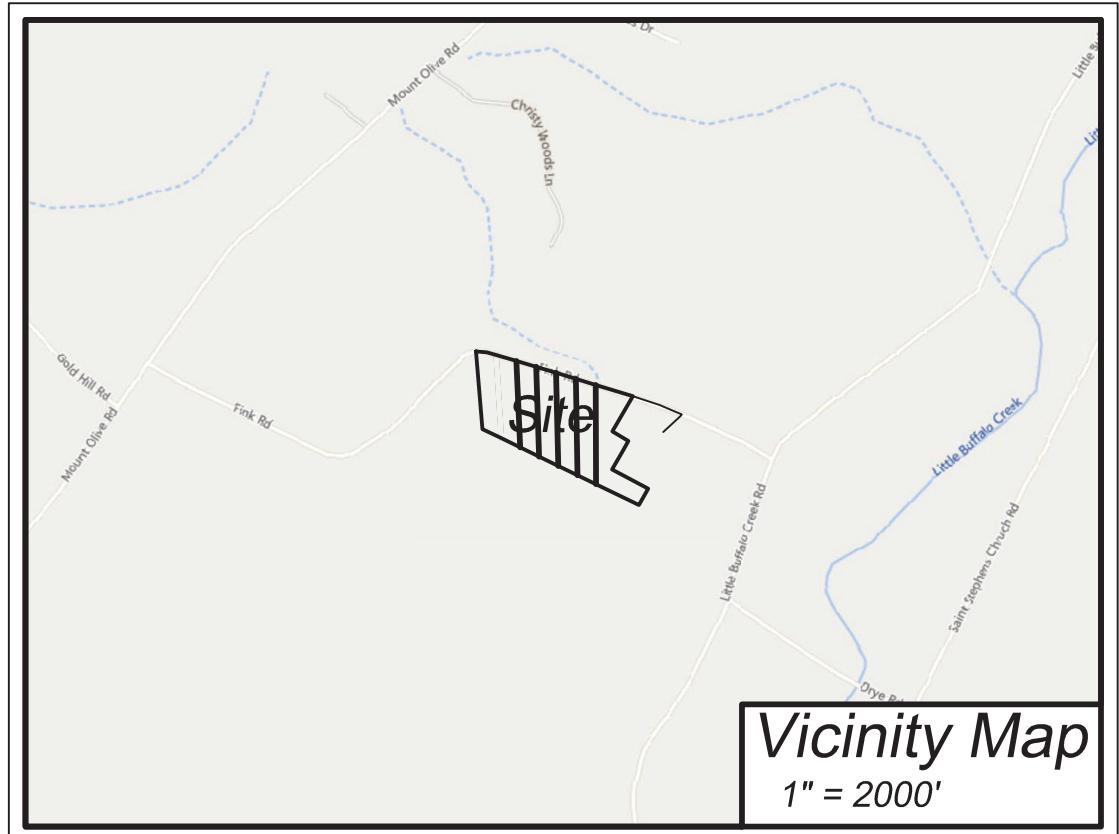
704-893-1259

PHONE NUMBER

FAX NUMBER

rwhitehurst@eagleonline.net

E-MAIL ADDRESS



### UTILITY NOTES

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I HEREBY CERTIFY THAT THE RIGHT OF WAY DEDICATION ALONG THE EXISTING STATE MAINTAINED ROADWAY(S) SHOWN ON THIS PLAT IS APPROVED AND ACCEPTED AS PUBLIC RIGHT OF WAY BY THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS.

#### DISTRICT ENGINEER

#### DATE

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MIN BUILDING SETBACK  
PER "AO" ZONING

FRONT = 75' FROM ROAD RIGHT OF WAY  
SIDEWARD = 20'  
REARWARD = 30'



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AREAS COMPUTED USING COORDINATE GEOMETRY.

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COMBINED GRID FACTOR = 0.999852729

THE PROPERTY SHOWN HEREON IS NOT LOCATED WITHIN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON F.E.M.A. FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 371058200J, EFFECTIVE DATE 11/5/2008.

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- PROPOSED DENSITY PER GROSS ACRE - 1 DWELLING UNIT PER 4.75 ACRES
- TOTAL UNITS PROPOSED - 7 DWELLING UNITS

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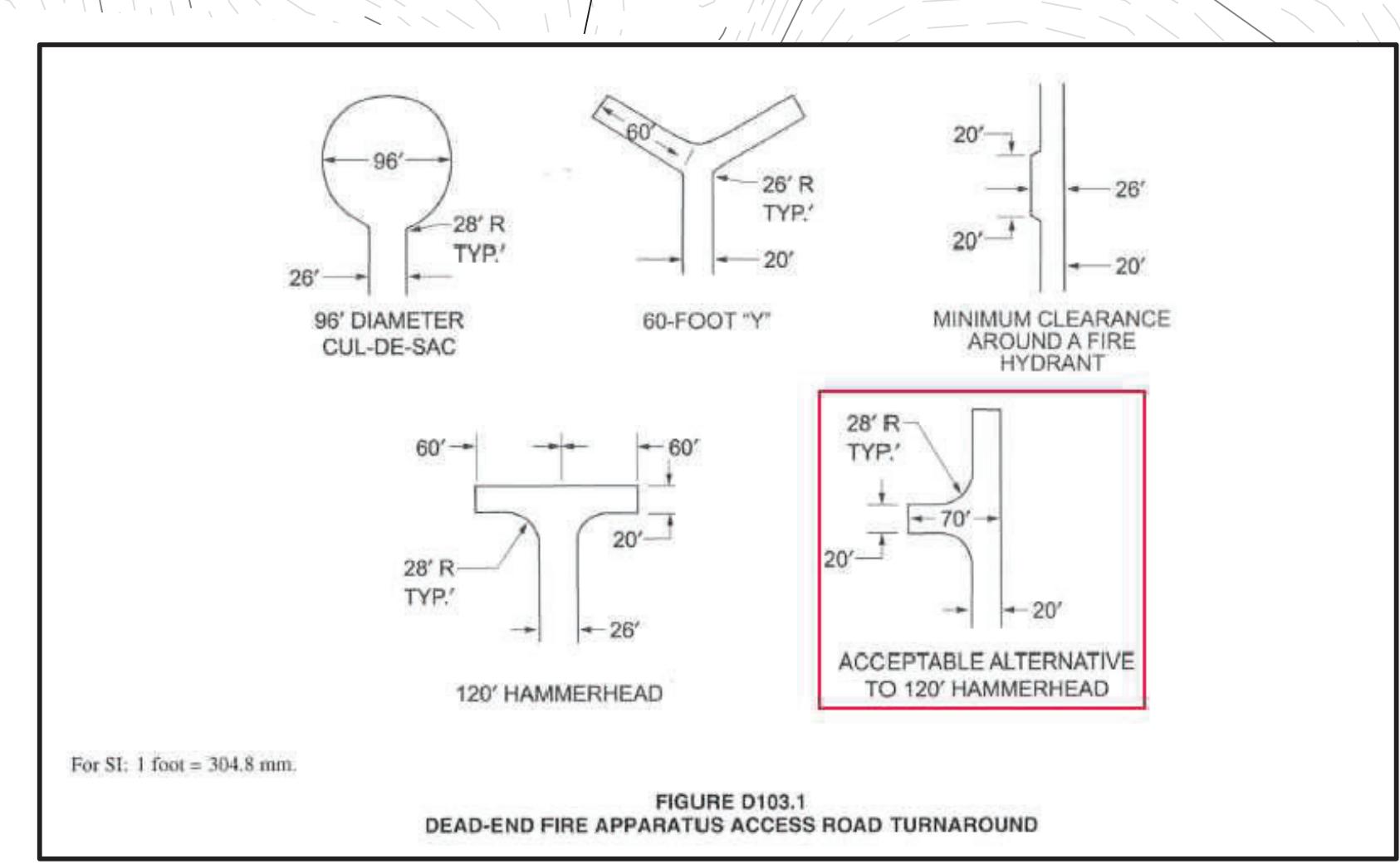
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- SIZE OF HOMES SHALL NOT EXCEED 3,000 SQ. FEET

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For SI: 1 foot = 304.8 mm.

FIGURE D103.1  
DEAD-END FIRE APPARATUS ACCESS ROAD TURNAROUND

GRAPHIC SCALE  
( IN FEET )  
0 100' 200'  
1 inch = 100 ft.

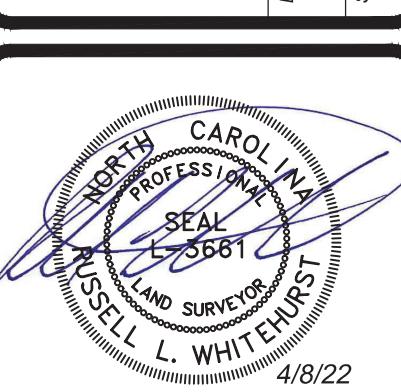
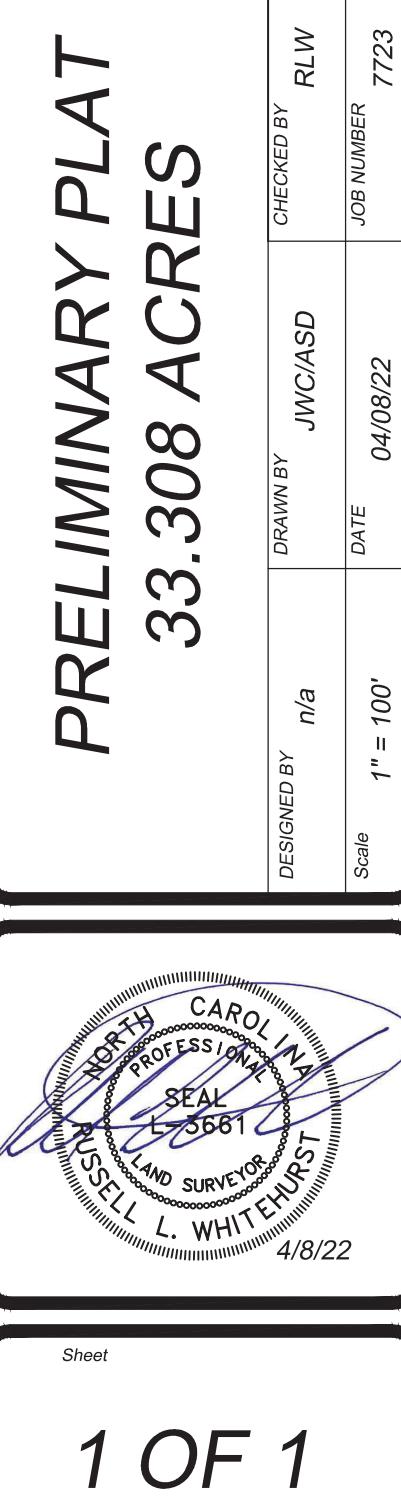
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1 OF 1

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FIRM LICENSE # C-0873  
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www.eaglenonline.net

THE ALAN FINK - TRUSTEE  
PROPERTY, ET AL  
MOUNT PLEASANT, CABARRUS CO., N.C.  
TRINITY LAND DEVELOPMENT 1, LLC  
MOUNT PLEASANT, CABARRUS CO., N.C.  
3027 PEBBLE CREEK DR., STANFIELD, N.C. 28163

PRELIMINARY PLAT  
33.308 ACRES



Sheet

1 OF 1

**From:** [Phillip Collins](#)  
**To:** [Susie Morris](#)  
**Subject:** FW: Proposed Major Subdivision – Peaceful Pines - PLPR2023-00072  
**Date:** Wednesday, November 1, 2023 11:01:28 AM  
**Attachments:** [image001.png](#)  
[7723 - Fink Rd - Preliminary Plat - 20220608 - Signed.pdf](#)  
[Preliminary Plat Application.pdf](#)

---

**From:** Phillip Collins <PECollins@cabarruscounty.us>  
**Sent:** Tuesday, September 19, 2023 3:18 PM  
**To:** mena.awad@deq.nc.gov; Morgan, Marc P <mmorgan@ncdot.gov>; Faulkner, Jason S <jsfaulkner@ncdot.gov>; Justin Brines <jrbrines@cabarruscounty.us>; Travis McGhee <TPMcGhee@cabarruscounty.us>; Jacob Thompson <jathompson@cabarruscounty.us>; Brandy Webster <bewebster@cabarruscounty.us>; chrystral.swinger@cabarrushealth.org  
**Cc:** Phillip Collins <PECollins@cabarruscounty.us>; Sandy Howell <sdhowell@cabarruscounty.us>  
**Subject:** Proposed Major Subdivision – Peaceful Pines - PLPR2023-00072

Good Morning,

Attached you will find a preliminary plat of the proposed Peaceful Pines (FKA Fink Estates – PLPR2022-00035) Subdivision. This plat was distributed last year for initial sketch review. Because there are seven lots proposed, this is a Major Subdivision. This subdivision will be going before the Cabarrus County Planning and Zoning Commission in the near future. Please review the plat and send comments back to me via email (or insert them into Accela) by **Tuesday, September 26**. Please let me know if you have further questions.

Thanks,

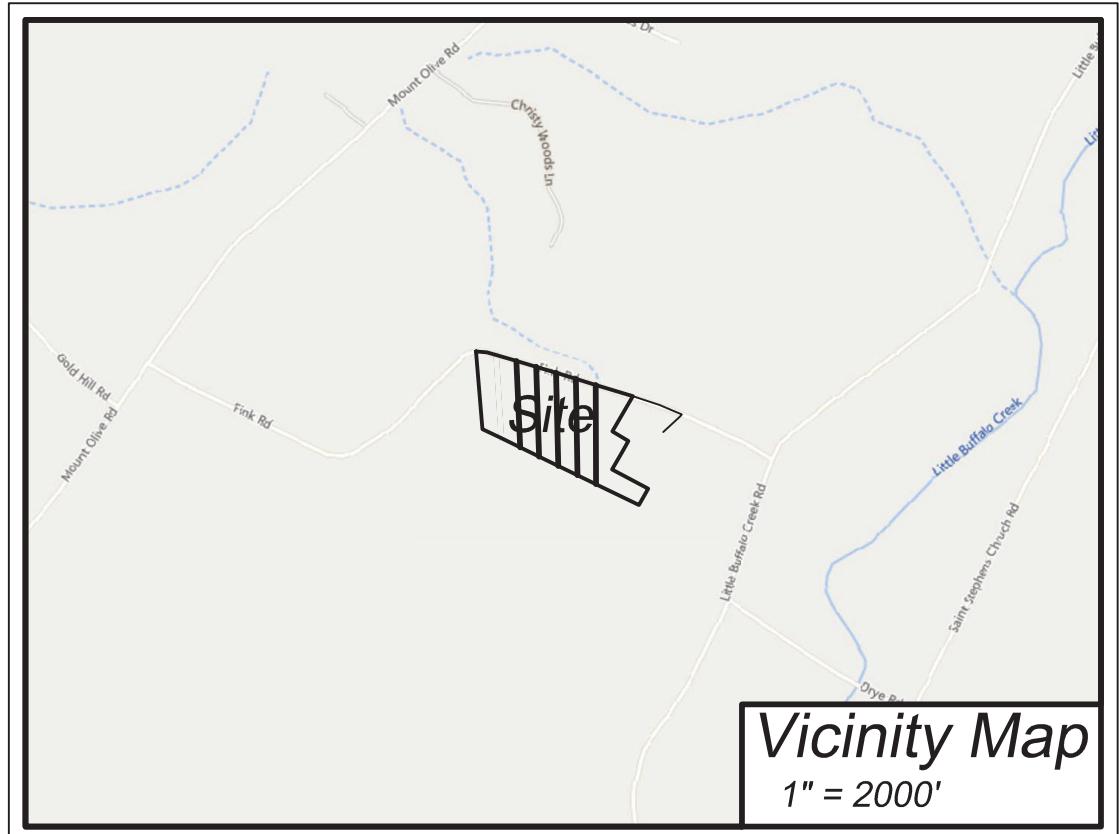
**Phillip Collins, AICP**

Senior Planner

*Planning and Development Department*  
**Cabarrus County**  
**65 Church St. SE, Concord, NC 28025**  
 P.O. Box 707, Concord, NC 28026

O: 704-920-2181  
 F: 704-920-2227  
[www.cabarruscounty.us](http://www.cabarruscounty.us)





### UTILITY NOTES

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#### DISTRICT ENGINEER

#### DATE

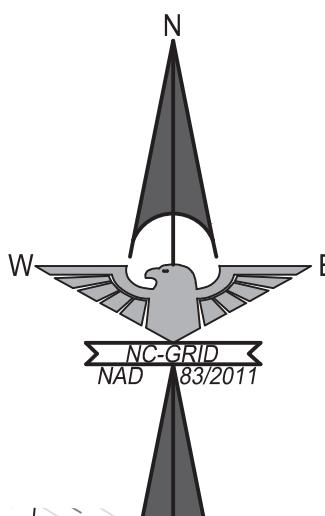
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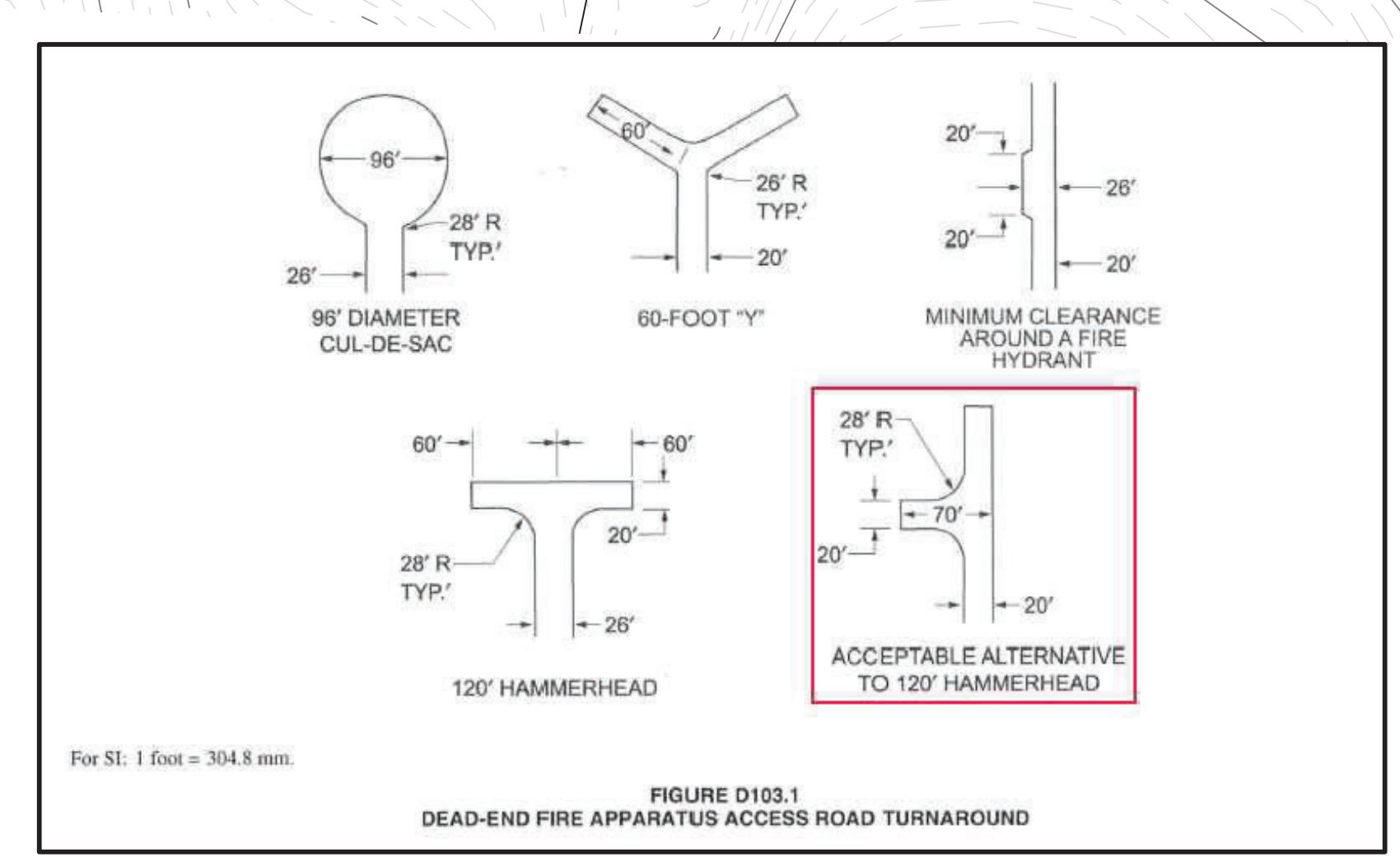
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FIGURE D103.1  
DEAD-END FIRE APPARATUS ACCESS ROAD TURNAROUND

GRAPHIC SCALE  
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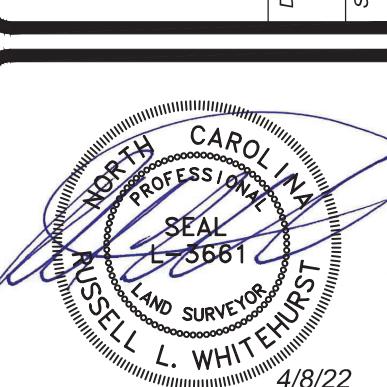
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THE ALAN FINK - TRUSTEE  
PROPERTY, ET AL  
MOUNT PLEASANT, TWSP, CABARRUS CO., N.C.  
For the benefit of:  
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MOUNT PLEASANT, TWSP, CABARRUS CO., N.C.  
3027 PEBBLE CREEK DR., STANFIELD, N.C. 28163

PRELIMINARY PLAT  
33.308 ACRES

DESIGNED BY	n/a	DRAWN BY	JWC/ASD	CHECKED BY	RLW
Scale	1" = 100'	Date	04/08/22	Job Number	7723



Sheet

1 OF 1

**From:** Phillip Collins  
**To:** Anthony Giordano  
**Subject:** RE: Fink rd Septic/Well Evaluations  
**Date:** Wednesday, September 27, 2023 10:26:00 AM  
**Attachments:** Variance Application Updated 2023.pdf  
 image001.png

---

Anthony,

Just heard back on this and we will need the permits in place before the request goes to P&Z.

Also, she pointed out that we would need to request a variance from the shared access standard of Section 15-11 (pasted and highlighted below). I did not think that would apply to your proposed division, but I was incorrect. I have attached the Variance Application for you to fill out and get back to me. Your plat should be all that you need to submit with that. I can help you with questions you might have on the application. Once everyone has responded to the preliminary plat review request, I will get you a list of the changes we need to see on the preliminary plat (hopefully get that to you this afternoon).

**Section 11 Access Management**

**Access to Public Roads**

1. Direct access to public roads is governed by the classification of the road and is determined by the NCDOT. No lots may directly access a road classified as a major thoroughfare. These lots must be served by an internal road system.
2. Access may be limited where lots abut minor thoroughfares and major collector roads. NCDOT may require shared access points when access is limited to the public facility.
3. Connections to, or through, adjacent properties may be required when access points to public roads are limited.

**Shared Access**

When more than 5 lots are proposed for a new subdivision project, an internal, connected road system shall be provided.

**Multiple Entrances Required**

To accommodate emergency service response and to create an alternate road network, the following standards apply to all proposed developments.

1. Any development of 30 lots or more shall include at least two access points.





Also, have you had a chance to update the preliminary plat application, with the new dates and name?

Thanks,

Phil

**From:** Anthony Giordano <agiordano7705@gmail.com>  
**Sent:** Wednesday, September 27, 2023 9:42 AM  
**To:** Phillip Collins <PECollins@cabarruscounty.us>  
**Subject:** Re: Fink rd Septic/Well Evaluations

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe!

Any update on this?

On Fri, Sep 22, 2023, 9:50 AM Anthony Giordano <[agiordano7705@gmail.com](mailto:agiordano7705@gmail.com)> wrote:

That doesn't sound right. Why would we need the permits? The soil that we found was suitable for traditional septic systems. Why would they need to be laid out?

On Tue, Sep 19, 2023, 12:10 PM Phillip Collins <[PECollins@cabarruscounty.us](mailto:PECollins@cabarruscounty.us)> wrote:

Thanks Anthony. Do you know if Kurtis ever completed the improvement permits? Susie said we will need those before going to the Board.

---

**From:** Anthony Giordano <[agiordano7705@gmail.com](mailto:agiordano7705@gmail.com)>  
**Sent:** Monday, September 18, 2023 9:40 PM  
**To:** Phillip Collins <[PECollins@cabarruscounty.us](mailto:PECollins@cabarruscounty.us)>  
**Subject:** Fwd: Fink rd Septic/Well Evaluations

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe!

----- Forwarded message -----

From: **Allison Clark** <[allison@debbieclontzteam.com](mailto:allison@debbieclontzteam.com)>  
Date: Fri, Jul 22, 2022, 6:52 AM  
Subject: Re: Fink rd Septic/Well Evaluations  
To: Anthony Giordano <[agiordano7705@gmail.com](mailto:agiordano7705@gmail.com)>  
Cc: Kurtis D Nelson <[Kurtis.Nelson@cabarrushealth.org](mailto:Kurtis.Nelson@cabarrushealth.org)>

Good morning – Anthony please chime in but Kurtis, we wanted to let you know we need a little more time to get the lots prepared for you to come out for the improvement permits- will be in touch.

On Thu, Jun 16, 2022 at 2:23 PM Anthony Giordano <[agiordano7705@gmail.com](mailto:agiordano7705@gmail.com)> wrote:

Perfect,  
Thanks Kurtis!

On Thu, Jun 16, 2022, 1:21 PM Kurtis D Nelson <[Kurtis.Nelson@cabarrushealth.org](mailto:Kurtis.Nelson@cabarrushealth.org)> wrote:

Allison & Anthony,

I apologize for the confusion with scheduling. For me to issue improvement permits on the lots on Fink Rd I will need to return to design the septic systems. The lots will need to be clearly marked (house sites and property lines) and the proposed areas for the septic systems cleared of underbrush and debris. I have the week of July 25<sup>th</sup>-29<sup>th</sup> blocked off to return. If a week prior to that becomes available (favorable weather and/or scheduling) I will let you know, and we will go out there sooner.

If you have any questions, please let me know.

**Kurtis Nelson, REHS**

Environmental Health Specialist

Environmental Health

**Cabarrus Health Alliance**

<300 Mooresville Rd, Kannapolis, NC 28081>

Office: (704) 920-1223 | Fax: (704) 933-3379

Email: [Kurtis.Nelson@CabarrusHealth.org](mailto:Kurtis.Nelson@CabarrusHealth.org)

[www.cabarrushealth.org](http://www.cabarrushealth.org) | Like us on [Facebook](https://www.facebook.com/cabarrushealth)

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**From:** Phillip Collins  
**To:** Anthony Giordano  
**Subject:** RE: Fink rd Septic/Well Evaluations  
**Date:** Monday, October 2, 2023 12:51:00 PM

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I have set up a teams meeting for 1 tomorrow.

Also below are comments on the plat that I meant to send over to you last week:

- Please provide the updated name, Peaceful Pines, in the title block,
- Please add a note with the current zoning of the subject property along with the setbacks,
- Please add "Conventional Subdivision" to the title block,
- The front property line needs to run along the right of way of Fink Rd. and that area within the right of way should be dedicated to NCDOT,
- Please note the acreage in lots and the acreage in street right-of-way,
- Please place a note on the plat that states that street trees will be planted at a rate of one large canopy tree per 40 linear feet,
- Please show the 30' vegetated buffer along the stream (as outlined in the Stormwater Permit),
- Please revise the Zoning Information in the upper right corner, it references Mt Pleasant,
- Please provide a north arrow in the vicinity map
- Please note that the impervious area will not exceed the limit as defined in the stormwater permit and that the deed restrictions shall be recorded as required by the stormwater permit.

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**From:** Anthony Giordano <agiordano7705@gmail.com>  
**Sent:** Monday, October 2, 2023 12:21 PM  
**To:** Phillip Collins <PECollins@cabarruscounty.us>  
**Subject:** Re: Fink rd Septic/Well Evaluations

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I just wanted to make sure we were on for 1pm tomorrow

On Fri, Sep 29, 2023, 8:32 AM Anthony Giordano <[agiordano7705@gmail.com](mailto:agiordano7705@gmail.com)> wrote:

Let's do Tuesday at 1pm

On Fri, Sep 29, 2023, 7:50 AM Phillip Collins <[PECollins@cabarruscounty.us](mailto:PECollins@cabarruscounty.us)> wrote:

What is your schedule looking like for Tuesday from 1 – 2 or Wednesday 10 – 12?

---

**From:** Anthony Giordano <[agiordano7705@gmail.com](mailto:agiordano7705@gmail.com)>  
**Sent:** Wednesday, September 27, 2023 11:33 AM  
**To:** Phillip Collins <[PECollins@cabarruscounty.us](mailto:PECollins@cabarruscounty.us)>

**Subject:** Re: Fink rd Septic/Well Evaluations

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Ok thanks

On Wed, Sep 27, 2023, 11:32 AM Phillip Collins <[PECollins@cabarruscounty.us](mailto:PECollins@cabarruscounty.us)> wrote:

I am open for most of the week. I will reach out and see what her schedule looks like.

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**From:** Anthony Giordano <[agiordano7705@gmail.com](mailto:agiordano7705@gmail.com)>

**Sent:** Wednesday, September 27, 2023 11:28 AM

**To:** Phillip Collins <[PECollins@cabarruscounty.us](mailto:PECollins@cabarruscounty.us)>

**Subject:** Re: Fink rd Septic/Well Evaluations

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That would be great. What day works best for you?

On Wed, Sep 27, 2023, 11:23 AM Phillip Collins <[PECollins@cabarruscounty.us](mailto:PECollins@cabarruscounty.us)> wrote:

Susie is out of town and I am not sure when she will be back. I can see if she is open to doing a teams meeting or a zoom call next week. You could come by here and we can use the conference room.

---

**From:** Anthony Giordano <[agiordano7705@gmail.com](mailto:agiordano7705@gmail.com)>

**Sent:** Wednesday, September 27, 2023 10:45 AM

**To:** Phillip Collins <[PECollins@cabarruscounty.us](mailto:PECollins@cabarruscounty.us)>

**Subject:** Re: Fink rd Septic/Well Evaluations

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I would like to request a meeting where I can sit down with you me and Suzie where we can get all this together because I don't think that is accurate on the shared access or the septic permits so I will need a more in depth explanation and I have a lot of questions. Would next week work for you both?

On Wed, Sep 27, 2023, 10:26 AM Phillip Collins <[PECollins@cabarruscounty.us](mailto:PECollins@cabarruscounty.us)> wrote:

Anthony,

Just heard back on this and we will need the permits in place before the request goes to P&Z.

Also, she pointed out that we would need to request a variance from the shared access standard of Section 15-11 (pasted and highlighted below). I did not think that would apply to your proposed division, but I was incorrect. I have attached the Variance Application for you to fill out and get back to me. Your plat should be all that you need to submit with that. I can help you with questions you might have on the application. Once everyone has responded to the preliminary plat review request, I will get you a list of the changes we need to see on the preliminary plat (hopefully get that to you this afternoon).

Also, have you had a chance to update the preliminary plat application, with the new dates and name?

Thanks,

Phil

---

**From:** Anthony Giordano <[agiordano7705@gmail.com](mailto:agiordano7705@gmail.com)>

**Sent:** Wednesday, September 27, 2023 9:42 AM

**To:** Phillip Collins <[PECollins@cabarruscounty.us](mailto:PECollins@cabarruscounty.us)>

**Subject:** Re: Fink rd Septic/Well Evaluations

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Any update on this?

On Fri, Sep 22, 2023, 9:50 AM Anthony Giordano <[agiordano7705@gmail.com](mailto:agiordano7705@gmail.com)> wrote:

That doesn't sound right. Why would we need the permits? The soil that we found was suitable for traditional septic systems. Why would they need to be laid out?

On Tue, Sep 19, 2023, 12:10 PM Phillip Collins <[PECollins@cabarruscounty.us](mailto:PECollins@cabarruscounty.us)> wrote:

Thanks Anthony. Do you know if Kurtis ever completed the improvement permits? Susie said we will need those before going to the Board.

---

**From:** Anthony Giordano <[agiordano7705@gmail.com](mailto:agiordano7705@gmail.com)>

**Sent:** Monday, September 18, 2023 9:40 PM

**To:** Phillip Collins <[PECollins@cabarruscounty.us](mailto:PECollins@cabarruscounty.us)>

**Subject:** Fwd: Fink rd Septic/Well Evaluations

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----- Forwarded message -----

From: **Allison Clark** <[allison@debbieclontzteam.com](mailto:allison@debbieclontzteam.com)>  
Date: Fri, Jul 22, 2022, 6:52 AM  
Subject: Re: Fink rd Septic/Well Evaluations  
To: Anthony Giordano <[agiordano7705@gmail.com](mailto:agiordano7705@gmail.com)>  
Cc: Kurtis D Nelson <[Kurtis.Nelson@cabarrushealth.org](mailto:Kurtis.Nelson@cabarrushealth.org)>

Good morning – Anthony please chime in but Kurtis, we wanted to let you know we need a little more time to get the lots prepared for you to come out for the improvement permits- will be in touch.

On Thu, Jun 16, 2022 at 2:23 PM Anthony Giordano <[agiordano7705@gmail.com](mailto:agiordano7705@gmail.com)> wrote:

Perfect,  
Thanks Kurtis!

On Thu, Jun 16, 2022, 1:21 PM Kurtis D Nelson <[Kurtis.Nelson@cabarrushealth.org](mailto:Kurtis.Nelson@cabarrushealth.org)> wrote:

Allison & Anthony,

I apologize for the confusion with scheduling. For me to issue improvement permits on the lots on Fink Rd I will need to return to design the septic systems. The lots will need to be clearly marked (house sites and property lines) and the proposed areas for the septic systems cleared of underbrush and debris. I have the week of July 25<sup>th</sup>-29<sup>th</sup> blocked off to return. If a week prior to that becomes available (favorable weather and/or scheduling) I will let you know, and we will go out there sooner.

If you have any questions, please let me know.

**Kurtis Nelson, REHS**

Environmental Health Specialist  
Environmental Health

**Cabarrus Health Alliance**

[300 Mooresville Rd, Kannapolis, NC 28081](http://300 Mooresville Rd, Kannapolis, NC 28081)  
[Office: \(704\) 920-1223](tel:(704)920-1223) | [Fax: \(704\) 933-3379](tel:(704)933-3379)  
[Email: Kurtis.Nelson@CabarrusHealth.org](mailto:Kurtis.Nelson@CabarrusHealth.org)  
[www.cabarrushealth.org](http://www.cabarrushealth.org) | [Like us on Facebook](#)

**From:** [Law Office](#)  
**To:** [Anthony Giordano](#); [Susie Morris](#); [Kelly Sifford](#)  
**Subject:** RE: Fink Rd Property  
**Date:** Friday, October 6, 2023 12:39:29 PM

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Mr. Giordano,

I am in receipt of your email of yesterday afternoon.

Whenever reported appellate cases are mentioned, the legal citation to where those cases can be found is provided. I also don't know who provided the analysis, you or somebody else. I can tell you that those cases were not decided simply on the basis of a heading and not the language of the statute or ordinance. I believe they were correctly decided because I understand that area of the law and have dealt with it for many years. The appellate courts do not ignore statutory or ordinance language and just look at the heading. Even the analysis provided shows that. That is all I will say about those cases, until I have the citations.

What you have provided is not 'insurmountable' as you claim and the position of the County is not changing from what we talked about the other day. If your argument really represented the law, we would not need ordinance language but only headings.

Richard M. Koch  
 Cabarrus County Attorney  
 3220-201 Prosperity Church Road  
 Charlotte, North Carolina 28269  
 Tel: 704.503.5700  
 Fax: 704.503.5707  
 Email: [LawOffice@RichardKochLaw.com](mailto:LawOffice@RichardKochLaw.com)

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**From:** Anthony Giordano <[agiordano7705@gmail.com](mailto:agiordano7705@gmail.com)>  
**Sent:** Thursday, October 5, 2023 1:52 PM  
**To:** Susie Morris <[SAMorris@cabarruscounty.us](mailto:SAMorris@cabarruscounty.us)>; [kfsifford@cabarruscounty.us](mailto:kfsifford@cabarruscounty.us); Law Office <[lawoffice@RichardKochLaw.com](mailto:lawoffice@RichardKochLaw.com)>  
**Subject:** Fink Rd Property

Good Afternoon Rich Kelly and Susie,  
 After our meeting yesterday it occurred to me that there were some things that I left out that may have helped the understanding of the situation. Below are my comments on the statutes as they are written.

Also, Rich you had mentioned in our meeting that headings did not bear any weight in the construction of laws and regulations. After the section 11 verbiage below I have listed a small

portion of the case law (in NC) that has been held up in a court of law that states that the verbiage in the heading is what was used to determine the verbiage in the regulations.

I would strongly urge everyone to reconsider this decision, as it seems the evidence is insurmountable.

### **Section 11 Access Management Access to Public Roads**

1. Direct access to public roads is governed by the classification of the road and is determined by the NCDOT. No lots may directly access a road classified as a major thoroughfare. These lots must be served by an internal road system. **(notice the qualifier here. If we are connecting to a major thoroughfare and NCDOT doesn't allow access we would be required to put in an internal road system. This is not the case, NCDOT has already determined our access points and it is not more than 5 lots that need a shared access.)**

2. Access may be limited where lots abut minor thoroughfares and major collector roads. NCDOT may require shared access points when access is limited to the public facility. **(This is what has happened in our situation. NCDOT has allowed shared access for the first 4 lots.)**

3. Connections to, or through, adjacent properties may be required when access points to public roads are limited. **(As you can see from our design this is not necessary except on the shared driveway portion.)**

#### **Shared Access**

When more than 5 lots are proposed for a new subdivision project, an internal, connected road system shall be provided. **(Now we have to keep in mind what we just read about needing shared access. We are not required by NCDOT for an internal access road therefore this is a mute point. We also don't have more than 5 lots that require shared access)**

Case law supporting headings are important to the construction of laws, rules and regulations.

#### **Case # 1**

**\*\*Wake County v. North Carolina Board of Transportation (2013)\*\***

In this case, Wake County appealed a decision by the North Carolina Board of Transportation (NCDOT) to approve a plan to construct a new highway through the county. Wake County argued that the NCDOT did not have the authority to approve the plan because the plan violated the county's zoning ordinance.

The North Carolina Supreme Court held that the NCDOT did have the authority to approve the plan and that the plan did not violate the county's zoning ordinance.

In reaching its decision, the Court relied on the headings of the North Carolina General Statutes that deal with zoning and transportation. The heading of the section that deals with zoning said "Zoning." The heading of the section that deals with transportation said "Department of Transportation." The Court held that these headings made it clear that the General Statutes give the NCDOT the authority to construct highways even if the highways violate local zoning ordinances.

The Court also relied on the heading of the section of the General Statutes that deals with the specific type of highway that was at issue in the case. The heading of that section said "Interstate Highways." The Court held that this heading made it clear that the General Statutes authorize the NCDOT to construct interstate highways through counties even if the highways violate the counties' zoning ordinances.

### **Case # 2**

**\*\*City of Greensboro v. Simkins (1968)\*\***

In this case, the City of Greensboro appealed a decision by the Guilford County Superior Court which reversed the City Council's revocation of a building permit for the construction of a multi-family apartment building in a single-family residential district.

The City of Greensboro argued that the Superior Court erred in reversing the City Council's decision because the City Council had the authority to revoke the building permit and because the City Council's decision was supported by the evidence.

The North Carolina Supreme Court held that the Superior Court did not err in reversing the City Council's decision. The Court noted that the City Council did not have the authority to revoke the building permit once it had been issued and that the City Council's decision was not supported by the evidence.

In reaching its decision, the Court relied on the headings of the zoning ordinance and the North Carolina General Statutes that deal with building permits. The heading of the section of the zoning ordinance that dealt with building permits said "Building Permits." The heading of the section of the General Statutes that dealt with building permits said "Building Permits." The Court held that these headings made it clear that building permits are only to be revoked if there is a violation of the zoning ordinance or if the building permit was issued in error.

### **Case # 3**

**\*\*City of Raleigh v. Exxon Company, U.S.A. (1974)\*\***

In this case, the City of Raleigh appealed a decision by the Wake County Superior Court which reversed the City Council's denial of a special use permit for the construction of a gasoline service station in a residential district.

The City of Raleigh argued that the Superior Court erred in reversing the City Council's decision because the City Council's decision was supported by the evidence and because the City Council had the authority to deny the special use permit.

The North Carolina Supreme Court held that the Superior Court did not err in reversing the City Council's decision. The Court noted that the City Council's decision was not supported by the evidence and that the City Council did not have the authority to deny the special use permit.

In reaching its decision, the Court relied on the headings of the zoning ordinance and the North Carolina General Statutes that deal with special use permits. The heading of the section of the zoning ordinance that dealt with special use permits said "Special Use Permits." The heading of the section of the General Statutes that dealt with special use permits said "Special Use Permits." The Court held that these headings made it clear that special use permits are only to be denied if the proposed use is inconsistent with the zoning ordinance or if the proposed use would have a negative impact on the public health, safety, or welfare.

#### **Case # 4**

\*\*Craig v. County of Chatham (2002)\*\*

In this case, the plaintiff challenged the Chatham County Board of Commissioners' adoption of three ordinances regulating swine farms. The ordinances were adopted under the county's general police powers, as board of health rules, and as zoning regulations.

The plaintiff argued that the ordinances were preempted by state law. The plaintiff also argued that the ordinances were unconstitutional.

The North Carolina Court of Appeals held that the ordinances were not preempted by state law and that they were constitutional.

In reaching its decision, the Court of Appeals relied on the headings of the North Carolina General Statutes that deal with zoning and swine farms. The heading of the section that deals with zoning said "Zoning." The heading of the section that deals with swine farms said "Swine Farms." The Court held that these headings made it clear that the General Statutes authorize counties to zone swine farms.

The Court of Appeals also relied on the heading of the section of the General Statutes that deals with the preemption of local zoning ordinances. The heading of that section said "Preemption of Local Zoning Ordinances by State Law." The Court held that this heading made it clear that the General Statutes only preempt local zoning ordinances if the state law explicitly says that it preempts local zoning ordinances.

#### **Case # 5**

\*\*Town of Chapel Hill v. Chatham County (2014)\*\*

In this case, the Town of Chapel Hill challenged a decision by the Chatham County Board of Commissioners to approve a rezoning request for a parcel of land located in the unincorporated area of Chatham County. The rezoning request was for a mixed-use development that would include residential and commercial uses.

The Town of Chapel Hill argued that the Chatham County Board of Commissioners did not have the authority to approve the rezoning request because the parcel of land was located within the Town of Chapel Hill's planning jurisdiction. The Town of Chapel Hill also argued that the rezoning request was inconsistent with the Town of Chapel Hill's comprehensive plan.

The North Carolina Court of Appeals held that the Chatham County Board of Commissioners had the authority to approve the rezoning request and that the rezoning request was not inconsistent with the Town of Chapel Hill's comprehensive plan.

In reaching its decision, the Court of Appeals relied on the heading of the section of the North Carolina General Statutes that deals with zoning. The heading of that section said "Zoning in Unincorporated Areas." The Court held that this heading made it clear that the General Statutes authorize counties to zone unincorporated areas within their jurisdiction.

The Court of Appeals also relied on the heading of the section of the General Statutes that deals with the review of zoning decisions by municipalities. The heading of that section said "Review of County Zoning Decisions by Municipalities." The Court held that this heading made it clear that the General Statutes authorize municipalities to review zoning decisions made by counties, but that municipalities do not have the authority to veto zoning decisions made by counties.

### **Case # 6**

**\*\*Decker v. Coleman (1979)\*\***

In this case, the plaintiff, who owned a parcel of land zoned for commercial use, sought to rezone the land for residential use. The City Council of Asheville approved the rezoning request, but subject to a condition that the plaintiff maintain a 50-foot buffer between the proposed residential development and the adjacent commercial development. The plaintiff appealed to the Superior Court, which upheld the City Council's decision. The plaintiff appealed to the North Carolina Supreme Court.

The Supreme Court held that the condition imposed by the City Council was invalid. The Court noted that the zoning ordinance did not authorize the City Council to impose conditions on rezoning requests. The Court also noted that the condition was not necessary to protect the public health, safety, or welfare.

In reaching its decision, the Court relied on the heading of the zoning ordinance, which said "Zoning Districts." The Court held that this heading was "helpful" in understanding the purpose of the zoning ordinance. The Court said that the heading made it clear that the purpose of the zoning ordinance

was to divide the city into different districts and to establish regulations for each district.

The Court also relied on the heading of the section of the zoning ordinance that dealt with rezoning requests. The heading of that section said "Rezoning Procedure." The Court held that this heading made it clear that the zoning ordinance established a specific procedure for rezoning requests and that the City Council did not have the authority to impose conditions on rezoning requests that were not authorized by the zoning ordinance.

### **Case # 7**

\*\*Atkins v. Zoning Board of Adjustment of Union County (1981)\*\*

In this case, the plaintiffs, who owned a parcel of land zoned for agricultural use, sought to use the land for the storage and sale of grain, fertilizer, and lime. The Zoning Board of Adjustment denied the plaintiffs' request for a special use permit. The plaintiffs appealed to the Superior Court, which reversed the Zoning Board's decision. The Zoning Board appealed to the North Carolina Court of Appeals.

The Court of Appeals held that the Zoning Board's decision was supported by the evidence. The Court noted that the plaintiffs' proposed use of the land was not compatible with the surrounding area, which was zoned for residential use. The Court also noted that the plaintiffs' proposed use of the land would generate noise and traffic, which would have a negative impact on the surrounding area.

In reaching its decision, the Court relied on the heading of the zoning ordinance, which said "Zoning Districts." The Court held that this heading was "helpful" in understanding the purpose of the zoning ordinance. The Court said that the heading made it clear that the purpose of the zoning ordinance was to protect the character of different neighborhoods.

--

**Anthony Giordano**

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