TOWN OF WAXHAW

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Hours: Monday-Friday 8:00 a.m. to 5:00 p.m.

MAYOR
DAUNE GARDNER

TOWN COMMISSIONERS
MICHAEL STEWART (Mayor Pro-Tem)
PAUL FITZGERALD
JOHN HUNT
STEPHEN MAHER
JAMES WARNER

TOWN MANAGER
WARREN WOOD

TOWN CLERK
MELODY SHULER

June 29, 2015
Board of Adjustment Agenda
Waxhaw Police Department Community Meeting Room, 6:30 pm

Special Called Meeting

1. Call to Order

2. Oath of Office

3. Roll Call and Determination of Quorum

4. Public Hearing

   A. VA-003450-2015 - A request by Lisa Noel, for a variance from Section 11.3.77.A.3.7 of the Waxhaw UDO (Unified Development Ordinance) to allow a fireplace encroachment of approximately 1.8 feet into the minimum 10 foot building separation requirement for the Lawson subdivision. The property is located at 2101 Bluestone Court (tax parcel #06-108-484) and zoned CU-R3-PRD (Conditional Use – Single-Family – Planned Residential Development).

5. New Business

   A. VA-003450-2015 - A request by Lisa Noel, for a variance from Section 11.3.77.A.3.7 of the Waxhaw UDO (Unified Development Ordinance) to allow a fireplace encroachment of approximately 1.8 feet into the minimum 10 foot building separation requirement for the Lawson subdivision. The property is located at 2101 Bluestone Court (tax parcel #06-108-484) and zoned CU-R3-PRD (Conditional Use – Single-Family – Planned Residential Development).

6. Minutes for correction and approval: November 3, 2014 Special Called Meeting

7. Adjournment

Public comment (up to 3 minutes) is allowed on any item on the agenda and is limited to residents of the Town or persons having a material interest in the Town.

November 3, 2014
Board of Adjustment Agenda
Waxhaw Police Department Community Meeting Room, 6:30 pm

Special Called Board Meeting

1. Call to Order

   The meeting was called to order at 6:30 PM by Chairman Steere.

2. Oath of Office

   Tracy Wesolek took the oath of office given by Marion Morton. Michael Downing took the oath of office given by Marion Morton.

3. Roll Call and Determination of Quorum

   A roll call and determination of quorum were made.

   Present: Chairman Robert Steere, Michael Downing, Guyton James, Dustin Williams, Tracy Wesolek, Anthony Marquart (not seated), Art Meyer (not seated), Staff Oliver, Staff Oakley, and Interim Recording Secretary McCarter.

   Absent: N/A

4. Election of Chairman/Vice-Chairman

   Chairman Robert Steere made a motion to nominate Guyton James as Vice-Chairman. Dustin Williams seconded. The motion passed unanimously, (5-0).

   Guyton James made a motion to nominate Robert Steere as Chairman. Dustin Williams seconded. The motion passed unanimously, (5-0).

   Dustin Williams made a motion to open the public hearing VA-002811-2014. Guyton James seconded. The motion passed unanimously, (5-0).

   Staff Oakley, Staff Oliver, Karen Partee and Gabriel Massa were sworn in by Chairman Steere.

5. Public Hearing

   A. VA-002811-2014 - A request by Gabriel J Massa of the Massa Montalto Architects, PC on behalf of Cuthbertson Road I, LLC for a variance from Section 13.3.2.C.2 and 13.7.2 of the Waxhaw Unified Development Ordinance to exceed the maximum size of an

attached wall sign allowed on a single tenant building in the C-3 zoning district at the Walmart Neighborhood Market located at 2520 Cuthbertson Road (tax parcel 06-162-023). The proposed attached wall sign is 188.3 Square Feet.

Staff Oliver gave a presentation on VA-002811-2014 (see attached). He stated that all UDO (Waxhaw Unified Development Ordinance) and state statute requirements were met for this public hearing and he entered his staff report and presentation into the record.

Chairman Steere asked what specifically the variance request was in laymen's terms. Staff Oliver stated that Section 13.3.2.C.2 was typically referred to as the master sign plan option which describes the criteria to have an increased sign size of 25% and Section 13.7.2 is a table that shows that the maximum area of wall signs is 64 sq. ft. in the C-3 district. So, therefore, with a 25% increase the UDO allows for a maximum of 80 sq. ft.

Mr. Gabriel Massa, of Montalto Architects, PC, gave a presentation. He handed out information booklets (attached). He said that he was asking for a variance from the sign ordinance for two signs and he knew he had to keep the presentations separate. He read the first paragraph of the Sign Ordinance in the UDO.

> *"It is the purpose of this chapter to authorize the use of signs whose size, type, and location are compatible with their surroundings; to ensure signs do not become a public hazard or nuisance or traffic hazard; to preserve the characteristics of each district; to provide direction to visitors; and to protect and enhance the overall appearance of the community."*

He described the site and said that the building was in a low spot of the development and it was blocked by buildings. He showed where the other buildings were located on the site. He said that the Lowe's was in the same shopping center. He said that the UDO allows for a wall sign up to 80 sq. ft. and he showed examples of what the sign would look like at 80 sq. ft. vs. the requested 188.3 sq. ft. He showed renderings of what the building looks like from the road.

He said that in regards to the finding of facts in the UDO that the first finding was that "*unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property."* He stated that the building was located over 500 feet from the entrance to the site and over 700 feet from the intersection. He said that the building was set down and there wasn't going to be signage on three sides of the building. He said that based on the line of site there was unnecessary hardship resulting in the strict application of the ordinance because you can't see the sign from Cuthbertson Road or Providence Road. He said that their requested sign was smaller than the Lowe's, Walgreen's and CVS.

He said that the variance won't create any safety issues on the site and will be helpful in finding the building. He said that he felt that the variance was a minimal request.

Mr. Willliams asked how far the elevation dropped between the intersection of Providence Road and the building location. Mr. Massa said the elevation decrease can be seen in photographs and that it was about eight feet.

Mr. Williams asked if Walmart had a standard sign size. Mr. Massa said that their standard sign size was the requested 188 sq. ft. for the neighborhood markets. He said that the sign measurement was a box around all the logo and writing and included blank spaces because of the way the UDO measures sign size. Chairman Steere asked if they were going to take advantage of the monument sign for the development. Mr. Massa said that they were.

Mr. Williams asked to see a photo from the Cuthbertson Road side and Mr. Massa showed a photo. Mr. James asked if the front page of the handout was just to show what size sign Lowe's was allowed. Mr. Massa said that his requested sign was in the scale of existing signs in the area. Staff Oliver said that the UDO allows a sign up to 80 sq. ft. Mr. Massa said that the requested sign area would still be smaller than the signs on the buildings surrounding it.

Mr. Downing asked what Mr. Massa thought the hardship was. Mr. Massa said that the difficulty was that the building was so far from the road and they were not visible which put them at an economic disadvantage. The other businesses were closer to the road and had signs on three sides. Chairman Steere said that he had a hard time understanding what the difficulty was. He understood that the building was set back further from other buildings but there wasn't a hardship. Mr. Massa said that it was an economic hardship and that the intent of the sign ordinance was to be consistent with surrounding structures. He said that they were not asking for a lot and that the Sign Ordinance regulations left the building with wasted space.

Attorney Spencer asked if there were other commercial developments in Waxhaw that had inner and outer parcels. Staff Oliver said yes there was Cureton Town Center and Olde Hickory Shopping Center. Mr. Williams asked if there were any variances for the signage at those developments. Staff Oakley said there were not.

Mr. Downing asked what the square footage of the lit sign was and Mr. Massa said it was about 122 sq. ft. Mr. Downing asked if that included the dead space. Mr. Massa said he didn't have that calculation. Staff Oakley said that the reason he gave 188 sq. ft. was because of the way sign area is calculated in the UDO which includes background space.

Ms. Wesolek asked if anything was going in on the vacant parcel behind McDonald's. Staff Oakley said that no plans had been submitted to staff for the parcel. Ms. Partee said that there will eventually be a building there. Mr. Downing asked about the retail

building that was going in on the Walmart parking lot parcel. Staff Oakley said it was approved for 4,200 sq. ft. of retail. Mr. Downing said that that building would block the sign as well.

Mr. James said that he was vision impaired and for him a smaller sign would be a hardship. He said when he's driving down a 4 lane highway it's hard to see everything in time to turn. He said he has almost hit the back of people, and having to change lanes at the last minute is dangerous. Chairman Steere said that the monument sign close to the road would be visible. Mr. James said that he would not be able to see the monument sign well either.

Staff Oakley stated when the application came in the parcel number was different and Union County is in the process of reassigning a parcel number from a recombination. She asked if that was an issue. Attorney Spencer stated that the variance runs with the land and they can specify that the variance only applies to the portion of the parcel that the Walmart is sited on. He said it wouldn't make a difference. Ms. Partee explained how the lot line was moved recently by plat.

Mr. Williams asked if the signs in the elevations the applicant provided were to scale. Mr. Massa said that they were.

Ms. Partee spoke to the hardship of the site and said that other grocery stores are typically built first in a development so that they can develop a customer base prior to the other buildings on the site being constructed. She said that Walmart was not able to do this but ideally that would have been the best situation.

Mr. Williams made a motion to close the public hearing. Mr. James seconded and it passed unanimously, (5-0).

Mr. James made a motion to open the public hearing on VA-002812-2014. Mr. Downing seconded and it passed unanimously, (5-0).

Ms. Partee, Mr. Massa, Staff Oliver and Staff Oakley were sworn in.

B. VA-002812-2014 - A request by Gabriel J Massa of the Massa Montalto Architects, PC on behalf of Cuthbertson Road I, LLC for a variance from Section 13.7.2 of the Waxhaw Unified Development Ordinance to exceed the maximum number of attached wall signs allowed on a single elevation of a single tenant building in the C-3 zoning district at the Walmart Neighborhood Market located at 2520 Cuthbertson Road (tax parcel 06-162-023). The applicant is proposing two signs on the front façade of the building and the second sign is proposed to be 62.68 square feet in size.

Staff Oliver gave a presentation on VA-002812-2014 (see attached). He stated that all UDO and state statute requirements had been met. He admitted his staff report and presentation into the record.

Mr. Williams asked if the sign for the applicant was considered a wall sign and not a directional sign. Staff Oliver said that was correct, it was considered a wall sign. Chairman Steere said that this variance was asking for more than one sign on the front when the ordinance only allows one. Staff Oliver said that was correct, they were asking for two and the UDO allows one.

Mr. Massa said that the extra sign for the pharmacy was for navigational purposes so that mothers driving with children could see where the pharmacy is. He said that the CVS had an appendage that showed where the pharmacy was. He said that if you are entering the development from Providence Rd. it would make the pharmacy easy to locate. He said that they had considered a monument sign but it would be so hard to see due to the decreased elevation. Mr. Downing asked if there was an awning over the pharmacy window. Mr. Massa said there was a very shallow awning. Mr. Williams asked where the 64 sq. ft. came from. Mr. Massa said that it was standard and it came from their sign companies and traffic engineers. Mr. Williams asked if it changed depending on the size of the building. He said older Walmart's had more signage and this building was not going to have a lot of signage and it didn't have to be illuminated. Mr. Massa said there was only going to be one illuminated sign on the building which was the main wall sign.

Ms. Wesolek asked if there was a pharmacy sign on the side as well as the requested pharmacy sign for the front. Mr. Massa said that there would also be a pharmacy sign on the side of the building. Mr. Massa showed the architectural rendering of the side. He said you wouldn't be able to see the side signage from Providence Road. Mr. James said that for someone coming from Highway 16 this would show where the pharmacy is. Mr. Massa agreed and said it was to help customers. Ms. Partee said that people might not even know the store has a pharmacy without the requested sign.

Mr. Downing asked if any other directional signs on the ground would have to be approved later. Staff Oakley said that they would have to submit a master sign plan and that directional signs didn't require a permit.

Mr. James asked what the square footage allowed for awning signs. Staff Oliver said it could be 12 sq. ft. Ms. Wesolek asked if there was a maximum size for the pharmacy sign. Mr. Massa said it would be 64 sq. ft. Ms. Wesolek asked if it had to be a percentage of the main sign. Staff Oakley said that size requirement only applied to a second sign on the side of the building. Mr. Steere said that if they were to grant that variance they need to put a maximum sq. ft. of the pharmacy sign.

Mr. James made a motion to close the public hearing. Mr. James seconded. The motion passed unanimously, (5-0).

6. <u>New Business</u>

A. VA-002811-2014 - A request by Gabriel J Massa of the Massa Montalto Architects, PC on behalf of Cuthbertson Road I, LLC for a variance from Section 13.3.2.C.2 and 13.7.2 of the Waxhaw Unified Development Ordinance to exceed the maximum size of an attached wall sign allowed on a single tenant building in the C-3 zoning district at the Walmart Neighborhood Market located at 2520 Cuthbertson Road (tax parcel 06-162-023). The proposed attached wall sign is 188.3 Square Feet.

Chairman Steere stated that they needed to go through the four findings of fact. He stated **finding of fact # 2: "That the hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or general public may not be the basis for granting a variance."**

Chairman Steere said that the applicant stated that due to the location of the building and the position of the roads around it, due to the other buildings surrounding it and topography there are conditions that cause a hardship. Mr. James said that due to the fact that it is an end parcel, and the topography and location of other buildings he feels like there is a hardship. Chairman Steere asked if he thought those conditions were unique to the parcel. Mr. James said he did feel they were unique conditions.

Mr. Williams made a motion that this finding of fact was met due to the elevation drop and distance from thoroughfares. Ms. Wesolek seconded the motion.

Mr. James said that due to the traffic on Providence Road, being a four lane highway, you may only get a one second glimpse at the property and the monument sign would not make a difference. He said that the topography drops off and it is on the back of the property. Chairman Steere said he was struggling with the uniqueness there because there are other developments with buildings in the back. Mr. Downing said that he agreed that it did meet that finding due to the distance from Cuthbertson Road and Providence Road and the elevation drop.

The motion passed 4:1. Ms. Wesolek opposed.

Chairman Steere read **finding of fact #1: "Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property." Mr. James made a motion that there are practical difficulties carrying out the strict letter of the ordinance.** He said it's hard to see signs from a distance, and there were a lot of people with vision impairment. He said that if he was new to the area, he would have a hard time finding it the first time and would pass it and have to turn around. He said there were a lot of hardships hindering visibility. Chairman Steere said he believed that was more about public safety and Mr. James said it was about both of them.

Draft

Due to a discrepancy with the variance application and the ordinance language due to a recent text amendment required by a change of state statute, Chairman Steere read finding of fact #2 that "the hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance." Chairman Steere asked if there was a hardship resulting from conditions of the property. Mr. Downing said he didn't believe it was a hardship on the applicant whether they put up a 10 foot sign or a 1,000 foot sign. He said it was not a hardship but there were practical difficulties due to location, other buildings and sign size.

Ms. Wesolek seconded Mr. James earlier motion. Mr. James said he agreed it wasn't a hardship but it was a practical difficulty in drawing customers in. Chairman Steere said that he doesn't think there is a hardship preventing them from complying with signage requirements the UDO. He said he didn't believe building location or topography presented a hardship. He said that there may be a hardship for customers trying to find the building but the UDO allows for other signage that would help direct customers in. He believed the main sign size was limited because there were other signage options to draw customers in.

Mr. James asked if there were trees being planted. Mr. Downing said that between the trees and the building you wouldn't be able to see any of the signs on the interior of the shopping center, so from Cuthbertson Road it was a wash. He said he struggles with hardship as well but there was a practical difficulty. Chairman Steere said that he thought staff would have taken any trees or buildings into account during their review.

Attorney Spencer read finding of fact #2 (as written above) and members of the Board of Adjustment said that that was actually finding of fact #1 (as written above). Staff Oakley explained the discrepancy that existed between the findings of fact listed in the application and those in the UDO. She said that this was finding of fact #1 as found in the UDO. She said it was the same four findings but in different order for finding #1 and finding #2. Staff Oakley said that they had considered finding of fact #2 from the UDO first which states "the hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance." She said they were now considering finding of fact #1 which states "unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property."

Mr. Downing said that it seems that finding #2 feeds off #1 so if they found a hardship in one there was a hardship in the other. Staff Oakley confirmed with Attorney Spencer that the Finding of Fact #2 on the application was the same as Finding of Fact #1 in the UDO, and that also Finding of Fact #1 on the application was the same as the Finding of

Fact #2 in the UDO. Attorney Spenser said that the finding could be found on page 5 of the staff analysis.

Mr. Downing said that since they are discussing Finding of Fact #1 that the hardship would result from a strict application of the ordinance, we have determined that there is a hardship with visibility of the sign due to distance, location, buildings and topography.

Attorney Spencer said that each finding is different and that is why you need to make different motions for each of them. He said that one is the hardship from the strict application of the ordinance and the other is that the hardship results from the property itself. He said that if they were the same the state legislature would have combined them. He said this one was if the UDO makes it a hardship, and an economic hardship alone isn't enough to consider it a hardship.

Ms. Wesolek said she thinks there is a topography hardship but that there were other shopping centers where there are different shops that can't be seen from the street and you have to drive around to find them. She said she doesn't see how not having this larger sign is a hardship. Chairman Steere said that he agreed that it isn't any different from any other shopping center where you have some buildings behind others and you have to drive through to find things. He said that businesses change and this use may not be there next week. He said he doesn't see any hardship preventing the applicant from erecting a sign compliant with the UDO.

Mr. Williams said that the applicant said that his hardship was an economic hardship, and the public doesn't have the hardship but it is a hardship on the applicant. He said that their hardship is an economic disadvantage and not a hardship for the public. He said the applicant was at an economic disadvantage of not being able to have my larger sign. Mr. Steere asked if they could consider an economic hardship. Attorney Spencer said it could be considered but can't be the sole basis. Chairman Steere said that the applicant knew the property location and constraints when they built the building and purchased it. Mr. Williams said he felt the hardship is that they had to vary from the Walmart standard signage.

The motion failed 2:3 with Chairman Steere, Ms. Wesolek and Mr. Downing opposed.

Chairman Steere said that the reason he opposed was because he doesn't think there was a hardship carrying out the strict letter of the ordinance and the applicant could install a sign that meets UDO requirements and there is nothing about the building or site that would prevent this.

Chairman Steere read finding of fact #3: "The hardship did not result from actions taken by the applicant or the property owner. The fact of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship."

Staff Oakley asked if the chairman could read finding of fact #4 from the UDO to be in keeping with the new state statute requirements and not what is shown as finding of fact #3 on the application. Chairman Steere asked Staff Oakley to read what should be finding of fact #3. Staff Oakley stated **finding of fact #3: "The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved."**

Ms. Wesolek made a motion that the granting of the variance does ensure public safety and welfare. Mr. Williams seconded the motion. Chairman Steere stated that the public safety and welfare would be assured because it would be a larger sign and you could see it coming down the street so it would be easier for people to see when they need to turn in. **The motion passed unanimously, (5-0).**

Chairman Steer stated **finding of fact #4: "The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship."**

Mr. Williams asked if they already agreed that there was not a hardship how could they determine if the applicant created the hardship. Attorney Spencer said that these findings of fact follow state law and they must vote on each. He said that the UDO governed the application, and the application was just a way for the applicant to state their position. **Mr. Williams motioned to confirm that the hardship didn't result from the actions of the applicant. Mr. James seconded the motion. The motion passed unanimously, (5-0).**

Chairman Steere said that they now needed to vote on whether to deny or grant the variance based on meeting all of the finding of fact. He said that they voted that it met 3 of the 4 findings of fact. Attorney Spencer said it would be cleaner to make a motion to deny because it did not meet all the required findings of fact.

Mr. Downing made a motion to deny the variance because it did not meet all the findings of fact. Ms. Wesolek seconded. The motion passed unanimously, (5-0).

B. VA-002812-2014 - A request by Gabriel J Massa of the Massa Montalto Architects, PC on behalf of Cuthbertson Road I, LLC for a variance from Section 13.7.2 of the Waxhaw Unified Development Ordinance to exceed the maximum number of attached wall signs allowed on a single elevation of a single tenant building in the C-3 zoning district at the Walmart Neighborhood Market located at 2520 Cuthbertson Road (tax parcel 06-162-023). The applicant is proposing two signs on the front façade of the building and the second sign is proposed to be 62.68 square feet in size.

Chairman Steere gave a summary of the second request. He said that since the UDO only allows and has restrictions for one sign on the front of the building, he suggested that if they do decide to grant the request they put a size limitation on the sign.

Chairman Steere read **finding of fact #1 as found in the UDO: "Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property."**

Chairman Steere said that the sign was characterized as directional by the applicant but the UDO defined it as a wall sign because of its location. He said he thought there was a sign that was in compliance with the UDO that the applicant could use in place of this sign. Ms. Wesolek said that it was being advertised as a market so people would not know there was a pharmacy there. She said it may be a hardship that they didn't know about the pharmacy. Mr. Steere said there were other options for signage for the pharmacy and other businesses that had pharmacy have and didn't advertise them on the outside. Mr. Downing said that he was aware that they were not going to take in other stores into consideration but there were other stores with multiple signs on the buildings. He said that the hardship is penalizing this building when other buildings were doing the same thing. Mr. Williams said that a strict interpretation of unnecessary hardship made it hard for anyone to meet that finding. Mr. Williams said that not having the sign to direct traffic is a hardship but a literal interpretation of the UDO would say that there is not a hardship. He said a hardship could be driving into a building location and not knowing where to go and all that is needed is to put a sign up so that makes it an unnecessary hardship. He said they just wanted to advertise to the parking lot side where they have direct traffic. Ms. Wesolek said that she thinks that it is because they have a drive thru that there needs to be something on the front of the building saying that there is a drive thru.

Chairman Steere said that a directional sign could accomplish what this request was trying to accomplish to direct people to where the pharmacy is and still be in compliance with the UDO. Mr. Downing said that he struggles with this sign and wonders with this sign being high does it help with traffic flow. He said a directional sign is lower and you may not see it until after you make your movement out of the shopping center.

Mr. Williams made a motion to affirm that the strict application of the UDO would create an unnecessary hardship. He said that based upon intent on getting consumers where they need to be and he does not think other sign options in the UDO were sufficient. He said he didn't think a three foot sign at the corner of the parking lot would help people find the pharmacy. **Ms. Wesolek seconded and the motion passed 4:1 with Chairman Steere opposed.**

Chairman Steere read **finding of fact #2 from the UDO: "The hardship results from conditions that are peculiar to the property, such as location, size, or topography.**

Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance."

Chairman Steere said that due to location, distance from Cuthbertson Road, and topography there is a hardship peculiar to the property. **Mr. Downing made a motion that the location of the building and topography create hardships which are peculiar to the location. Mr. James seconded the motion.** Mr. Williams said that when you look at the property if the driver doesn't have a sign there then a hardship is created. He said that that sign assists the driver. Mr. James said that if you are coming off Highway 16 there is no immediate visibility to the pharmacy without the sign. Chairman Steere said you won't be able to see the proposed sign because of the gas station location. Mr. Williams said you can actually see it. Mr. James said that you cannot see the side pharmacy sign coming down Highway 16 so that is what makes the pharmacy sign on the front of the building necessary.

The motion passed 4:1 with Chairman Steere opposed.

Chairman Steere read **finding of fact #3 from the UDO: "The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship."**

Mr. Williams made a motion that the hardship did not result from any action of property owner. Mr. Downing seconded and the motion passed 4:1 with Chairman Steere opposed.

Mr. Steere read **finding of fact #4 from the UDO: "The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved."**

Mr. Williams made a motion that the variance is consistent with the spirit, purpose and intent of the ordinance such that public safety is secured and substantial justice is achieved. Mr. Downing seconded. Mr. Steere said he struggled how they were being consistent with the spirit, purpose and intent of the ordinance. He said that the spirit and intent is one side on the front of the building. Mr. Williams said the intent is not just one sign on the front of the building, but that is the definition of the ordinance. He asked if the intent was to create uniformity in the town or prevent gaudy or too many signs. Attorney Spencer said there wasn't a straight answer but if you look at 13.1 of the UDO you have to decide which should be the dominant reason. Mr. Downing read Section 13.1 of the UDO as previously stated during the public hearings. He said that he believes it does meet the intent of this section.

The motion passed unanimously, (5-0).

Chairman Steere said that they needed to vote on whether to grant or deny the variance itself. Mr. Williams said they need to impose conditions and could they put a condition on the size of the sign. Chairman Steere said that they can't take anything for granted so they need to put a condition that it is the existing building on the property, the size of the sign and maybe even the lighting on the sign. He said there are no regulations on this secondary sign. Mr. Downing asked if they could put a condition that it is a pharmacy sign. Attorney Spencer stated that they could say as proposed.

Mr. Williams says that if they put a condition that it only exists to that building on that property as it exists today and as proposed and a condition on the size. He asked what would be the reason to put a condition on the size if they say as proposed. Attorney Spencer said they could put as proposed or smaller.

Mr. Williams said that he sees two conditions: this sign on this particular building as it exists today and as proposed. Ms. Partee asked if goose neck down lighting was permissible so it could be seen at night. Mr. Massa said there was no illumination planned for this sign. He said that they didn't need direct goosenecks because the site will be lit so you will be able to see it indirectly. Attorney Spencer said that he believed that it should say no direct lighting and no internal illumination. Mr. Massa said that it could say no direct lighting specifically for the sign because they would have lighting for the building.

Mr. Steere stated the granting of the variance is contingent on the conditions as follows:

1. **That the variance only applies to the existing building and that portion of the property containing the existing building for the planned Walmart Neighborhood Market.**
2. **That the sign comply with the proposed design and be 62.68 square feet or smaller.**
3. **That the sign have no internal illumination or direct lighting specifically for the sign.**

Mr. Downing motioned to grant the variance with the three conditions. Ms. Wesolek seconded and the motion passed unanimously, (5-0).

C. Amendment to the Board of Adjustment Rules and Procedure

Staff Oakley went over the proposed chances to the rules of procedure. She said she also added additional changes to the copies that were at their desks and went over those changes. Chairman Steer asked if it was necessary to name a permanent meeting location. Attorney Spencer said that that is so the public will know where to go in general but you can always change it.

Mr. Williams motioned to approve the proposed changes to the rules of procedure. Ms. Wesolek seconded. The motion passed unanimously, (5-0).

6. Minutes for correction and approval: February 18, 2014 Special Called Meeting

   Mr. Williams made a motion to approve the February 18, 2014 meeting. Ms. Wesolek seconded. The motion passed unanimously, (5-0).

7. Adjournment

   Mr. Wiliams made a motion to adjourn the meeting at 8:50PM. Ms. Wesolek seconded. The motion passed unanimously, (5-0).

Respectfully Submitted,

_____

Chairman, Robert Steere

_____

Interim Recording Secretary, Lisa McCarter

Draft

Variance Case VA-003450-2015
2101 Bluestone Court
Building Separation

EXPLANATION OF THE REQUEST

A request by Lisa Noel, for a variance from Section 11.3.77.A.3.7 of the Waxhaw UDO (Unified Development Ordinance) to allow a fireplace encroachment of approximately 1.8 feet into the minimum 10 foot building separation requirement for the Lawson subdivision. The property is located at 2101 Bluestone Court (tax parcel #06-108-484) and zoned CU-R3-PRD (Conditional Use – Single-Family – Planned Residential Development).

LOCATION AND LAND USE

- The property is located in the Lawson subdivision and is currently in use as a single-family residence.
  - Condition and land use of the surrounding properties.

  The adjoining and surrounding properties on all sides are single-family residential properties located in the Lawson subdivision zoned CU-R3-PRD (Conditional Use – Single-Family – Planned Residential Development).

REASON FOR VARIANCE REQUEST

The applicant, Lisa Noel, is requesting a variance from Section 11.3.77.A.3.7 of the Waxhaw UDO (Unified Development Ordinance) to allow a fireplace encroachment of approximately 1.8 feet into the minimum 10 foot building separation requirement for the Lawson subdivision.

In the application, the applicant states the following regarding the finding of facts:

Finding #1: Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

> **Applicant response:** *The home is already built with the fireplace. The home cannot be moved and the fireplace cannot be taken out.*

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

> **Applicant response:** *We did not add the fireplace. It was approved by zoning to be built that way and since we are not original owners we were not a part of that approval.*

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

> **Applicant response:** *This is not a self-created hardship.*

Finding #4: The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

> **Applicant response:** *It does meet the spirit of the ordinance because it's allowing an existing single-family home to remain.*

PLANNING STAFF ANALYSIS

The property is lot 163 in Phase 1 of the Lawson subdivision, which was approved on October 20, 2004 (see Exhibit 1: Approved Subdivision Plan for Lawson Phase 1). The subdivision was approved as a PRD (Planned Residential Development) through a conditional use rezoning.

UDO Section 11.3.77.A.3.7 *Yard and setback requirements for a PRD* shows the typical interior side yard setbacks for detached dwellings as follows:

> Side Yard - An aggregate side yard width on each lot of fifteen (15) feet. The minimum side yard width shall be five (5) feet.

This Section further states:

> Notwithstanding the above, the minimum lot width and the minimum front yard, rear yard and side yard setbacks on lots in a Planned Residential Development district may vary and shall be subject to the approval by the Town Board (in association with the approval of a Conditional Use Permit or a Conditional Zoning) on a case-by-case basis.

The Board of Commissioners approved the setbacks in Lawson on a case by case basis and the side setback required for the subject property is a 10 foot minimum building separation between the houses. The following is the setback chart shown on the approved plan:

TYPICAL LOT & YARD DIMENSIONS

WIDTH	120'	100'	90'	80'	70'	60'	50'
DEPTH	150'	150'	140'	140'	130'	120'	120'
FRONT SETBACK	35'	35'	30'	30'	25'	20'	20'
REAR SETBACK	30'	30'	30'	30'	20'	15'	15'
SIDEYARD	6'	6'	6'	6'	10' MIN. BUILDING SEPARATION		3'

The home was built in December of 2006 on a 64 foot wide lot which required a minimum 10 foot building separation and the fireplace was part of the original home construction. The applicant purchased the property August 2013 and had a property survey done at the time of purchase (see Exhibit 2: 2013 Property Survey). The survey showed the fireplace encroachment into the 10 foot minimum building separation, but did not depict the non-compliance with the 10 foot minimum building separation from the house on the adjacent lot. The 2013 survey shows the fireplace encroaching 1.7 feet into the 10 foot minimum building separation.

Currently, the applicant is in the process of selling the property and the potential buyer purchased a new survey on May 8, 2015 (see Exhibit 3: 2015 Property Survey). The new survey denotes the minimum required building separation of 10 feet and denotes the 8.4 foot building separation as non-compliant. The survey references the minimum 10 foot separation as shown on the approved plat J-230 Lawson Phase 1 Map 8 (see Exhibit 4: Lawson P1 M8 Plat). The 2015 survey shows the fireplace encroaching 1.8 feet into the 10 foot minimum building separation.

The applicant is requesting a variance to Section 11.3.77.A.3.7 of the Waxhaw Unified Development Ordinance to allow a 1.8 foot fireplace encroachment into the minimum 10 foot required building separation. The 2013 survey shows the encroachment as 1.7 feet, but the 2015 survey shows the

encroachment as 1.8 feet. Due to the inconsistency of the fireplace measurements, the variance is for an encroachment of 1.8 feet, which is the greater of the two measurements.

According to section 15 of the Waxhaw Unified Development Ordinance the Board of Adjustment shall issue a Variance if it has evaluated an application and determined that:

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

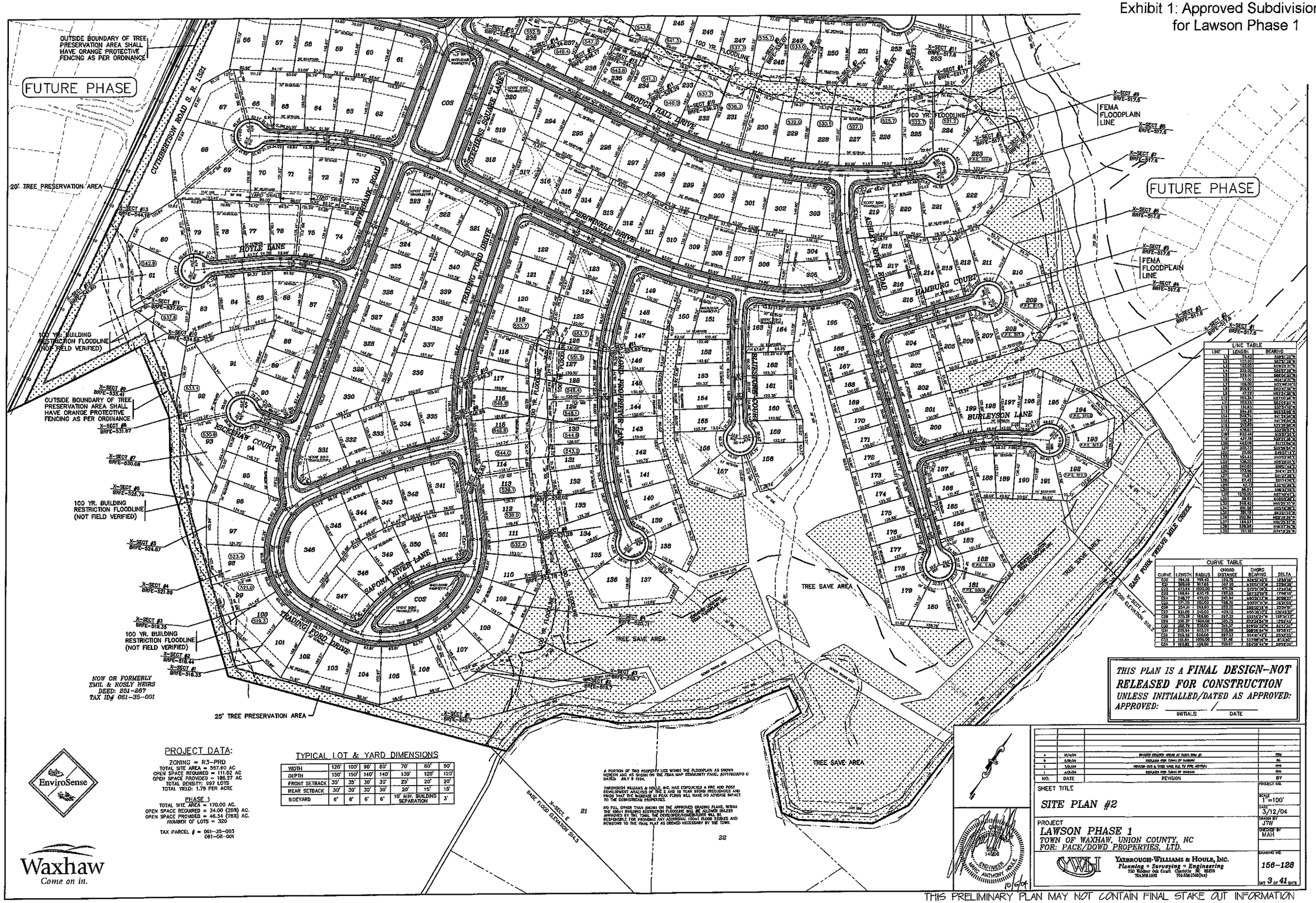
In granting a variance, the Board may attach thereto any conditions and safeguards it deems necessary or desirable in furthering the purposes of this Ordinance.

*****Please refer to the 4 Findings of Fact listed above when making a decision*****

Exhibit 1: Approved Subdivision Plan for Lawson Phase 1
Exhibit 2: 2013 Property Survey
Exhibit 3: 2015 Property Survey
Exhibit 4: Lawson Phase 1 Map 8 Plat

Submitted by: Lisa McCarter

Exhibit 1: Approved Subdivision Plan for Lawson Phase 1



LINE TABLE		
LINE	LENGTH	BEARING
L1	33.43	S39°11'07"W
L2	127.00	S63°31'18"W
L3	15.00	N73°21'17"W
L4	233.00	S84°57'28"W
L5	233.00	S84°57'28"W
L6	77.00	N24°17'41"W
L7	106.00	N51°46'07"E
L8	203.97	N60°41'36"W
L9	47.28	N83°31'28"W
L10	114.34	N87°09'48"W
L11	153.33	S53°03'45"W
L12	114.43	S37°31'02"W
L13	114.48	S13°23'06"W
L14	249.71	S41°29'06"W
L15	158.33	S41°29'06"W
L16	212.00	S53°29'06"W
L17	218.97	S33°09'57"W
L18	632.18	S15°37'41"E
L19	427.11	S33°21'39"W
L20	243.06	S13°11'04"W
L21	202.01	S05°39'54"W
L22	23.90	S49°07'11"W
L23	154.11	N63°37'46"E
L24	138.22	N26°28'00"E
L25	240.61	S80°01'42"E
L26	173.95	S54°11'22"E
L27	15.23	S41°27'28"E
L28	87.42	S31°16'16"E
L29	67.10	S31°07'28"E
L30	84.51	S08°37'19"E
L31	1175.00	S87°49'41"E
L32	38.72	S08°03'06"E
L33	318.43	N65°29'15"W
L34	281.92	N53°18'30"E
L35	301.18	S63°01'13"E
L36	202.84	N52°18'29"E
L37	184.97	N00°25'17"E
L38	139.34	N84°37'19"E
L39	73.18	N74°31'33"E

CURVE TABLE					
CURVE	LENGTH	RADIUS	CHORD DISTANCE	CHORD BEARING	DELTA
C10	194.18	175.42	183.70	N75°37'43"E	127°00'00"
C21	300.68	87.24	172.10	N25°01'10"W	197°41'29"
C22	473.61	1030.00	470.78	S73°31'06"E	27°43'03"
C23	188.64	630.73	187.93	S07°33'06"E	17°08'15"
C24	248.77	475.00	245.94	N80°01'12"W	30°00'27"
C25	171.70	260.00	168.35	S00°31'11"W	37°51'05"
C26	254.21	293.80	253.20	S05°02'18"E	49°34'57"
C27	531.00	245.00	429.12	N50°36'11"E	138°43'32"
C28	373.18	76.00	107.22	S03°16'47"W	281°27'27"
C29	336.37	1500.00	335.73	S73°38'34"W	12°51'45"
C30	358.76	550.00	349.24	S59°19'22"W	37°21'31"
C31	209.91	300.23	205.88	S08°08'54"W	39°36'11"
C32	269.39	600.00	267.03	S14°49'13"E	25°42'55"
C33	181.64	1050.00	181.40	S03°08'18"E	9°54'40"
C34	160.82	450.00	159.97	S61°06'44"W	20°28'26"

THIS PLAN IS A FINAL DESIGN-NOT RELEASED FOR CONSTRUCTION UNLESS INITIALLED/DATED AS APPROVED:
APPROVED: _____ / _____
INITIALS DATE

PROJECT DATA:

ZONING = R3-PRD
TOTAL SITE AREA = 257.60 AC
OPEN SPACE REQUIRED = 111.52 AC
OPEN SPACE PROVIDED = 188.27 AC
TOTAL DENSITY: 997 LOTS
TOTAL YIELD: 1.75 PER ACRE

PHASE 1
TOTAL SITE AREA = 170.00 AC.
OPEN SPACE REQUIRED = 34.00 (20%) AC.
OPEN SPACE PROVIDED = 46.34 (28%) AC.
NUMBER OF LOTS = 320

TAX PARCEL # = 061-35-003
061-08-001

TYPICAL LOT & YARD DIMENSIONS

WIDTH	120'	100'	90'	80'	70'	60'	50'
DEPTH	150'	150'	140'	140'	130'	120'	120'
FRONT SETBACK	35'	35'	30'	30'	25'	20'	20'
REAR SETBACK	30'	30'	30'	30'	20'	15'	15'
SIDEYARD	6'	6'	6'	6'	10' MIN. BUILDING SEPARATION		3'

A PORTION OF THIS PROPERTY LIES WITHIN THE FLOODPLAIN AS SHOWN HEREON AND AS SHOWN ON THE FEMA MAP COMMUNITY PANEL #3077960070 C DATED JULY 5 1994.

YARBROUGH WILLIAMS & HOULE, INC. HAS CONDUCTED A PRE AND POST DEVELOPMENT ANALYSIS OF THE 2 AND 10 YEAR STORM FREQUENCIES AND FINDS THAT THE INCREASE IN PEAK FLOWS WILL HAVE NO ADVERSE IMPACT TO THE COMMERCIAL PROPERTIES.

NO FILL OTHER THAN SHOWN ON THE APPROVED GRADING PLANS, WITHIN THE 100-YR FLOOD RESTRICTION FLOODLINE WILL BE ALLOWED UNLESS APPROVED BY THE TOWN. THE DEVELOPER/HOMEBUILDER WILL BE RESPONSIBLE FOR PROVIDING ANY ADDITIONAL 100-YR FLOOD STUDIES AND REVISIONS TO THE FINAL PLAT AS DEEMED NECESSARY BY THE TOWN.

21

22

EnviroSense

Waxhaw
Come on in.

NO.	DATE	REVISION	BY
A	11/4/04	REVISED PRELIMINARY PLAN AT FLOOD PLAN #1	PDH
B	5/9/04	REVISIONS PER TOWN OF WAXHAW	PC
C	7/2/04	REVISED PER A. TOWN AND DUE TO PPR COMMENTS	PPR
D	8/9/04	REVISIONS PER TOWN OF WAXHAW	PPR

SHEET TITLE
SITE PLAN #2

PROJECT
LAWSON PHASE 1
TOWN OF WAXHAW, UNION COUNTY, NC
FOR: PACE/DOWD PROPERTIES, LTD.

YARBROUGH-WILLIAMS & HOULE, INC.
Planning • Surveying • Engineering
700 Kinder Oak Court Charlotte NC 28226
704.558.1900 704.558.0560(fax)

PROJECT NO.
SCALE 1"=100'
DATE 5/12/04
DRAWN BY JTW
REVIEWED BY MAH
DRAWING NO. 156-128
SHT 3 OF 41 SHTS

THIS PRELIMINARY PLAN MAY NOT CONTAIN FINAL STAKE OUT INFORMATION

PHYSICAL SURVEY

LOT 163, LAWSON, PHASE 1, MAP 8 (& REV. LOT 123 PHASE 1 MAP 5)
TOWN OF WAXHAW, UNION COUNTY, NORTH CAROLINA
CABINET J FILE 229

PREPARED FOR TIMOTHY M. & LISA B NOEL

LEGEND

EIR	EXISTING IRON ROD
SIR	SET IRON ROD
EIR	EXISTING IRON ROD
SIR	SET IRON ROD
MBL	MINIMUM BUILDING LINE
PDE	PUBLIC DRAINAGE EASEMENT
CAB	CABINET
PG	PAGE
MH	MANHOLE
NTS	NOT TO SCALE
CDS	CUL-DE-SAC
EB	ELECTRICAL BOX
AC	AIR CONDITIONER
TB	TELEPHONE BOX
OH	OVERHANG
ICV	IRRIGATION CONTROL VALVE
ICB	IRRIGATION CONTROL BOX
FH	FIRE HYDRANT

PROPERTY IS SUBJECT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS EITHER RECORDED OR UNRECORDED

THIS PLAT IS SUBJECT TO ANY EASEMENTS, OR RIGHTS-OF-WAY OF RECORD PRIOR TO DATE OF THIS PLAT, WHICH WAS NOT VISIBLE AT THE TIME OF OUR INSPECTION

AREA DETERMINED BY COORDINATE COMPUTATION

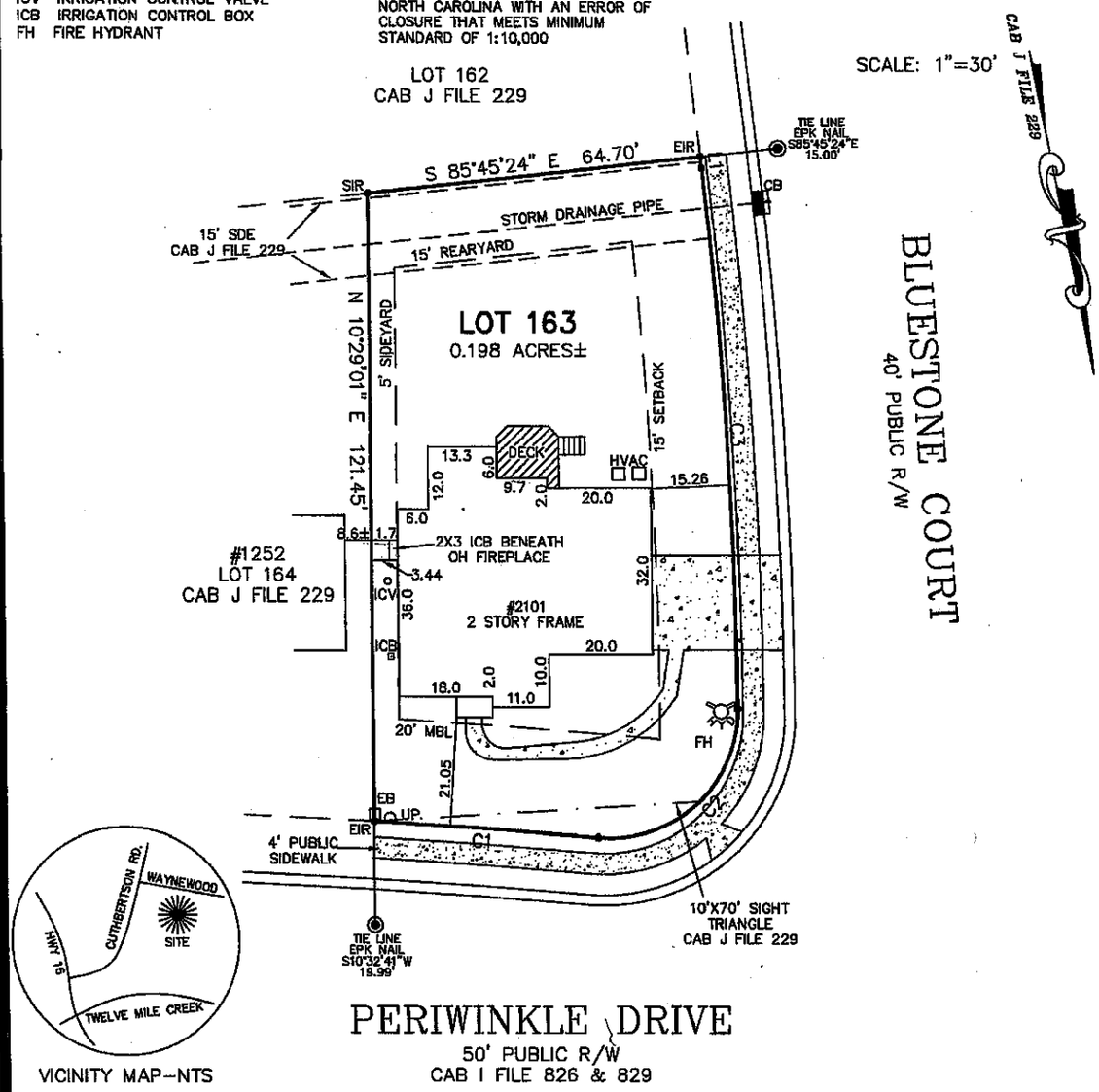
THIS SURVEY IS NOT INTENDED TO MEET GS 47-30 REQUIREMENTS. THIS SURVEY WAS PERFORMED PER THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA WITH AN ERROR OF CLOSURE THAT MEETS MINIMUM STANDARD OF 1:10,000

ALL EIRS & SIRS ARE FLUSH WITH EXISTING GROUND LEVEL UNLESS OTHERWISE NOTED.

THIS PROPERTY IS NOT GRAPHICALLY LOCATED IN ANY FEMA DESIGNATED SPECIAL FLOOD HAZARD AREA AS IDENTIFIED ON COMMUNITY AND PANEL # 370473-3710447400J DATED 10-16-08

DATE OF FIELD SURVEY: 07-25-13

OWNER OF PROPERTY AT TIME OF SURVEY: NVR INC DEED BOOK 10455 PAGE 140



VICINITY MAP-NTS

LINE TABLE		
LINE	LENGTH	BEARING
L1	2.18	S04°14'36"W

CURVE TABLE					
CURVE	LENGTH	RADIUS	CHORD	BEARING	DELTA
C1	43.33	1555.00	43.33	S75°23'35"E	1°35'47"
C2	41.47	25.00	36.88	N57°53'04"E	95°02'30"
C3	104.68	980.00	104.63	N07°18'12"E	6°07'13"

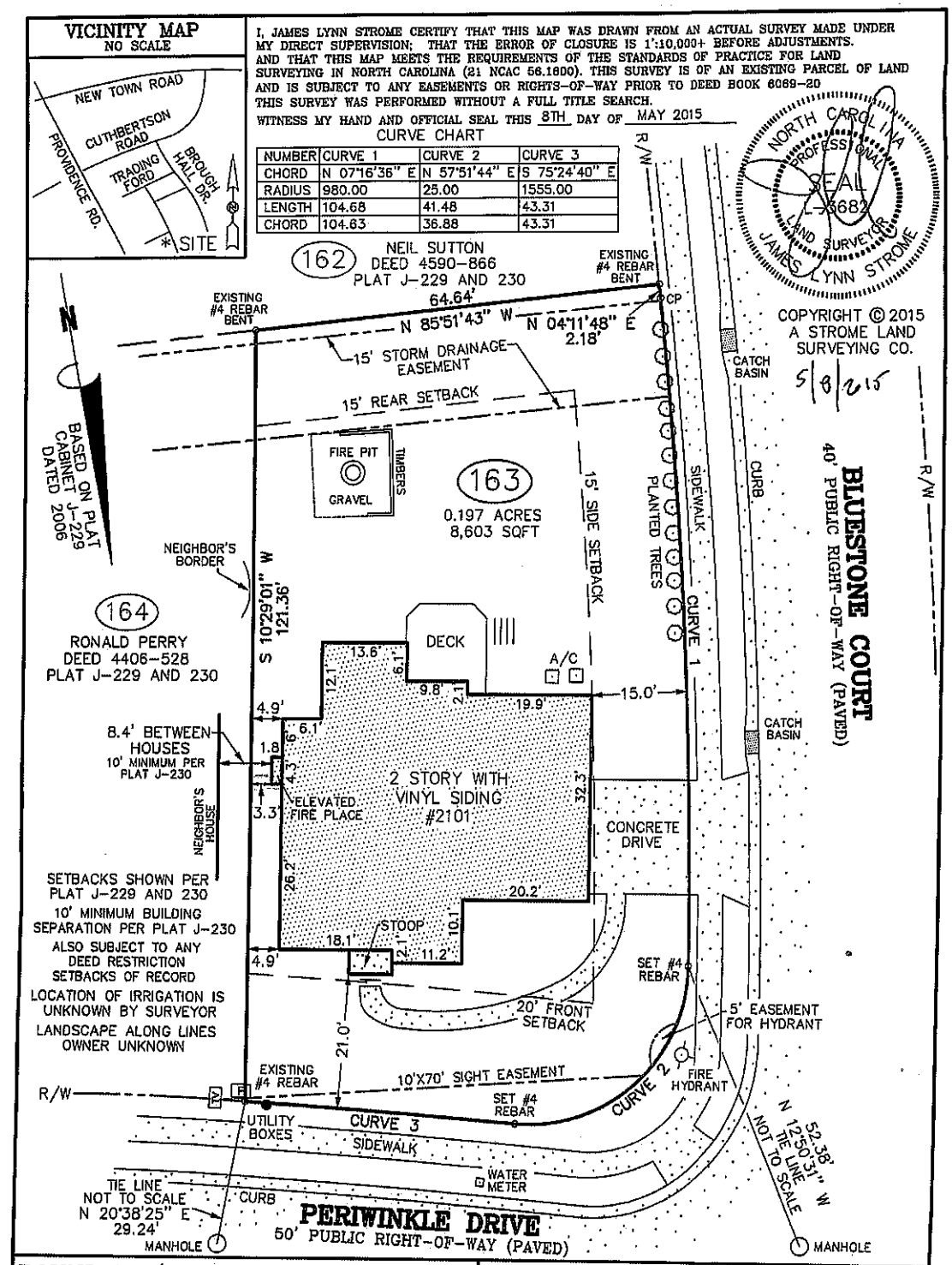
PREPARED BY:
DELTA LAND SERVICES, INC.
Firm License # C-735
608-G MATTHEWS MINTHILL ROAD
MATTHEWS, NORTH CAROLINA 28105
(704) 847-4700

ORIGNAL SURVEY WILL CONTAIN A CRIMP SEAL IF THIS CRIMP SEAL DOES NOT APPEAR ON THE SURVEY, THE SURVEY COULD CONTAIN CHANGES NOT CERTIFIED TO BY THE SIGNING SURVEYOR.

NORTH CAROLINA PROFESSIONAL SEAL L-4673 LAND SURVEYOR EDWARD HUGH DALRYMPLE

7-26-13

REVISED: DWN: EHD CKD: DATE: 07/25/13



NUMBER	CURVE 1	CURVE 2	CURVE 3
CHORD	N 07°16'36" E	N 57°51'44" E	S 75°24'40" E
RADIUS	980.00	25.00	1555.00
LENGTH	104.68	41.48	43.31
CHORD	104.63	36.88	43.31

BOUNDARY/PHYSICAL SURVEY FOR:

ERIC SCHMIDHAUSLER AND JOANNE SCHMIDHAUSLER

NOW OR FORMERLY THE PROPERTY OF:
TIMOTHY M. NOEL AND LISA R. NOEL
2101 BLUESTONE COURT: LOT 163, PHASE 1
MAP 8 OF LAWSON, PLAT J-229 AND 230
DEED BOOK 6069-201, TAX ID 06-108-484
SANDY RIDGE TOWNSHIP, UNION COUNTY
WAXHAW, NORTH CAROLINA
MAY 8, 2015
File name: C:\EPWIN13\BLUE2101 JOB# 2150104
Scale 1" = 20'
20 0 20 40

NOTES:

1. THIS PROPERTY IS NOT LOCATED IN A DESIGNATED FLOOD ZONE PER THE UNION COUNTY GIS WEB SITE, ALSO SEE FIRM MAP #3710-4474J DATED 10/16/2008.
2. AREA DETERMINED BY COORDINATE COMPUTATION.
3. CP DENOTES COMPUTED POINT, NO MONUMENT FOUND OR SET.
4. UNDERGROUND UTILITIES NOT LOCATED AS OF THIS DATE.
5. PROPERTY IS SUBJECT TO ANY SETBACKS, EASEMENTS RIGHT-OF-WAYS AND RESTRICTIONS OF RECORD.
6. A FULL TITLE SEARCH WAS NOT PERFORMED BY LAND SURVEYOR.
7. NO GRID MONUMENTS APPEAR TO BE WITHIN 2000' OF PROPERTY.

LEGEND

PROPERTY LINE — R/W RIGHT-OF-WAY
TIE LINE — CONC. CONCRETE
CURB LINE — WV WATER VALVE
SETBACK LINE — BFV BACK FLOW VALVE
UNSURVEYED LINE PER DEEDS OR MAPS

CP COMPUTED POINT — A/C AIR CONDITIONER — NBR'S NEIGHBOR'S
LP LIGHT POLE — PDE PUBLIC STORM DRAINAGE EASEMENT

A STROME LAND SURVEYING COMPANY
1383 SARANDON DRIVE, MATTHEWS NC. 28104
(704)321-4484 FIRM #0-647

General Title Insurance Form

SURVEYOR'S REPORT

I _____ (Registered Land Surveyor) hereby report that I have made an accurate survey of the premises situated at:

5/8/2015

known as street numbers:

and shown on the accompanying map or plat of survey. In connection with such survey I made a careful inspection of said premises on:

At the time of inspection I found to be in the possession of said premises:

I made a specific examination with respect to the following items and report the existence of evidence of the following:

1. Rights of way, including those for roads, lanes, driveways or walks across said premises serving other property:

2. Streams, ponds, or lakes located, bordering on or running through said premises:

3. Telephone, telegraph or electric power poles or wires overhanging or crossing said premises and serving other property or properties:

4. Underground installations such as sewers, water pipes, gas or oil pipe lines, conduits, across said premises:

5. Drainage ditches or underground drain tile across said premises:

6. Joint driveways or walkways; party or curtain walls, beam rights, porches, steps, or roofs used in common or joint garages:

7. Encroachments, or overhanging projections (If our building or its eaves, fire escapes, bay windows, doors, flue pipes, stoops, or areaways, or signs affixed thereto, or our fences, walks, drives, gates or entrances encroach upon or overhang adjoining properties, or similar adjoining structures encroach upon or overhead our premises, specify same and if buildings are substantially on property lines indicate if walls are plumb and if foundations and footing are within lines):

8. Physical evidence of boundary lines on all sides (Be specific as to how boundary lines are evidenced; that is by fences, plantings, etc. Indicate whether same differ from deed lines and whether there is evidence of disagreement as to boundaries

9. Any unusual elements of use or possession affecting said premises: (cemeteries, parks, etc.)

10. Evidence of contemplated, commenced or newly completed construction (be specific as to what has been done and indicate the names of any parties who may have or will supply either labor or materials)

City: *Waxhaw*
County: *Union*
State: *North Carolina*

2101 Bluestone Court; Lot 163, Phase 1 Map 8 of Lawson, Plat Cabinet J-229 and 230

May 8, 2015

Timothy M. Noel and Lisa R. Noel (Now or formerly owners)

10'x70' sight easement on north: 15' storm drainage easement on south Easement on north west for fire hydrant

None Observed

Utility boxes on north along road

Easement on north west for fire hydrant

15' storm drainage easement on south

None Observed

Plat J-230 states, Minimum building separation is 10'. Distance from fireplace to neighbor's house is 8.4'

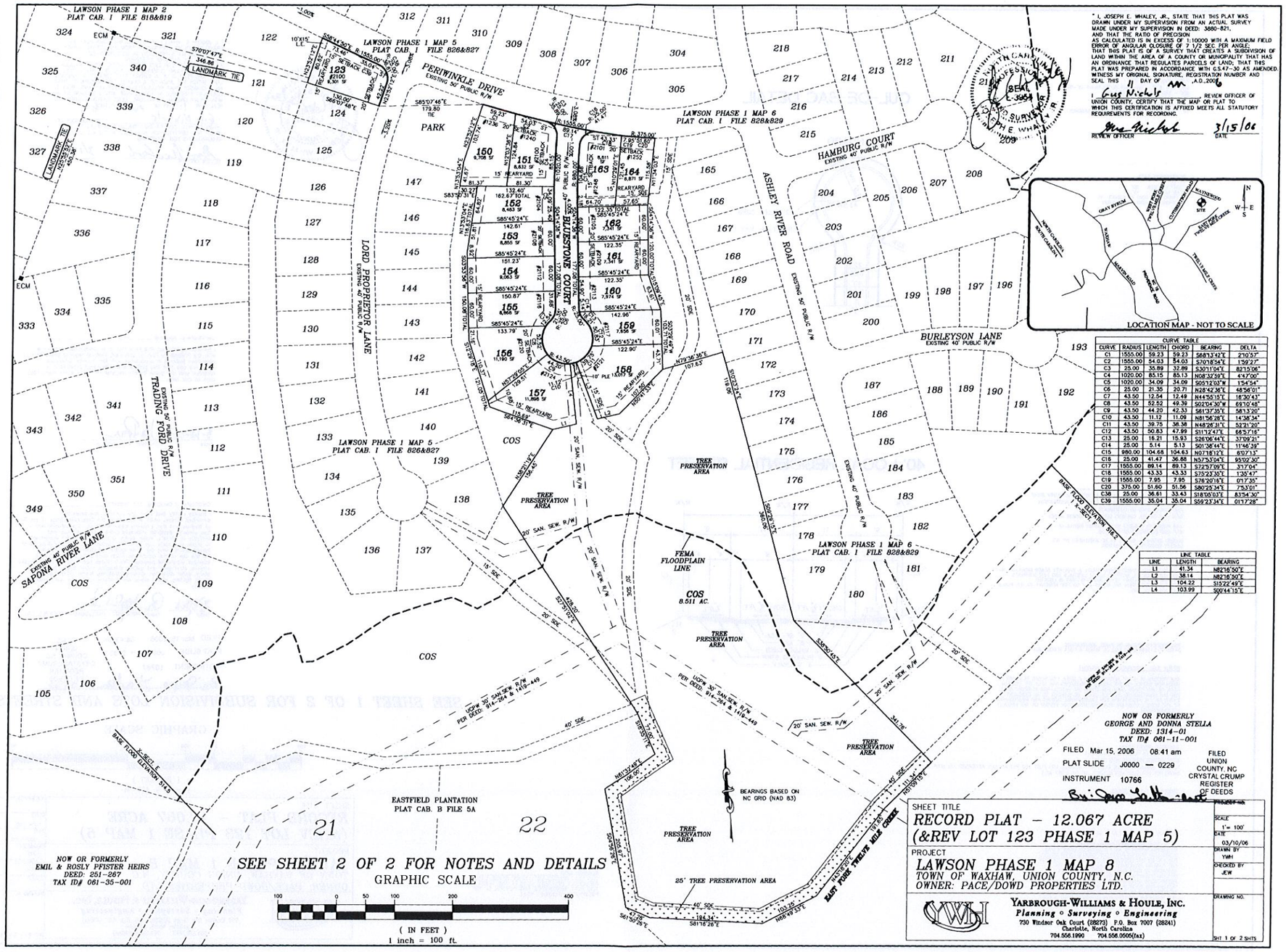
Monuments found or set at corners

None Observed

None Observed

J-229

Exhibit 4: Lawson Phase 1 Map 8 Plat



" I, JOSEPH E. WHALEY, JR., STATE THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION IN DEED: 3680-821, AND THAT THE RATIO OF PRECISION AS CALCULATED IS IN EXCESS OF 1:10000 WITH A MAXIMUM FIELD ERROR OF ANGULAR CLOSURE OF 7 1/2 SEC. PER ANGLE. THAT THIS PLAT IS OF A SURVEY THAT CREATES A SUBDIVISION OF LAND WITHIN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S.47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 11 DAY OF MAR, A.D., 2006

NORTH CAROLINA PROFESSIONAL SEAL L-3954 LAND SURVEYOR JOSEPH E. WHALEY, JR.

I Guy Nichols, REVIEW OFFICER OF UNION COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

REVIEW OFFICER — DATE 3/15/06

LOCATION MAP - NOT TO SCALE

CURVE TABLE					
CURVE	RADIUS	LENGTH	CHORD	BEARING	DELTA
C1	1555.00	59.23	59.23	S68°13'42"E	2°10'57"
C2	1555.00	54.03	54.03	S70°18'54"E	1°59'27"
C3	25.00	35.89	32.89	S30°11'04"E	82°15'06"
C4	1020.00	85.15	85.13	N08°32'59"E	4°47'00"
C5	1020.00	34.09	34.09	S05°12'55"W	1°54'54"
C6	25.00	21.35	20.71	N28°42'36"E	48°56'01"
C7	43.50	12.54	12.49	N44°55'15"E	16°30'43"
C8	43.50	52.52	49.39	S02°04'30"W	69°10'48"
C9	43.50	44.20	42.33	S61°37'35"E	58°13'20"
C10	43.50	11.12	11.09	N81°56'28"E	14°38'34"
C11	43.50	39.75	38.38	N48°26'31"E	52°21'20"
C12	43.50	50.83	47.99	S11°12'47"E	66°57'16"
C13	25.00	16.21	15.93	S26°06'44"E	37°09'21"
C14	25.00	5.14	5.13	S01°36'44"E	11°46'39"
C15	960.00	104.68	104.63	N07°18'12"E	6°07'13"
C16	25.00	41.47	36.68	N57°33'04"E	95°02'30"
C17	1555.00	89.14	89.13	S72°37'09"E	3°17'04"
C18	1555.00	43.33	43.33	S75°23'30"E	1°35'47"
C19	1555.00	7.95	7.95	S78°20'16"E	0°17'35"
C20	375.00	51.60	51.56	S80°25'34"E	7°53'01"
C38	25.00	36.61	33.43	S18°05'03"E	83°54'30"
C39	1555.00	35.04	35.04	S59°23'34"E	01°17'28"

LINE TABLE		
LINE	LENGTH	BEARING
L1	41.34	N82°16'50"E
L2	38.14	N82°16'50"E
L3	104.22	S15°22'49"E
L4	103.99	S00°44'15"E

FILED Mar 15, 2006 08:41 am
PLAT SLIDE J0000 — 0229
INSTRUMENT 10766

FILED UNION COUNTY, NC CRYSTAL CRUMP REGISTER OF DEEDS

By: Gaye Lattimore

SHEET TITLE
RECORD PLAT - 12.067 ACRE
(&REV LOT 123 PHASE 1 MAP 5)

PROJECT
LAWSON PHASE 1 MAP 8
TOWN OF WAXHAW, UNION COUNTY, N.C.
OWNER: PACE/DOWD PROPERTIES LTD.

YARBROUGH-WILLIAMS & HOULE, INC.
Planning ○ Surveying ○ Engineering
730 Windsor Oak Court (28273) P.O. Box 7007 (28241)
Charlotte, North Carolina
704.556.1990 704.556.0505(fax)

PROJECT NO.
SCALE 1"= 100'
DATE 03/10/06
DRAWN BY YWH
CHECKED BY JEW
DRAWING NO.
SHT 1 OF 2 SHTS

CAB J File 229

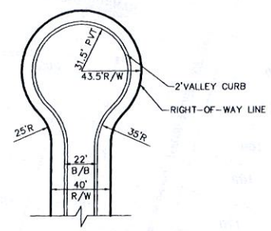
J-230

LEGEND
AC. – ACRE
COS – COMMON OPEN SPACE
CM – CONTROL MONUMENT
ECM – EXISTING CONTROL MONUMENT
PLAT CAB. – PLAT CABINET
R/W – RIGHT-OF-WAY
SAN. SEW. R/W – SANITARY SEWER RIGHT-OF-WAY
SDE – STORM DRAINAGE EASEMENT
SF – SQUARE FEET
ST – 10'X70' SIGHT TRIANGLE
10' PLE – 10' PRIVATE SEWER LATERAL EASEMENT

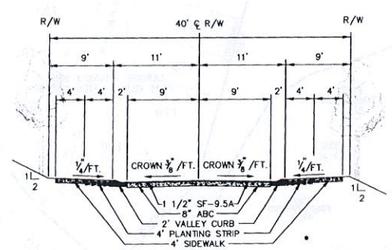
DEVELOPMENT DATA:
60' LOTS
FRONT SETBACK 20'
REAR YARD 15'
SIDEYARD ADJACENT TO STREET 15'
10' MINIMUM BUILDING SEPARATION

CUL-DE-SAC DETAIL

STANDARD



40' LOCAL RESIDENTIAL STREET



NOTES
NO NCGS TRAVERSE STATION WAS FOUND TO BE WITHIN 2000'
BUILDER TO VERIFY SEWER DEPTH PRIOR TO CONSTRUCTION.
AREA CALCULATED BY COORDINATE METHOD
IRON PINS ON ALL CORNERS UNLESS OTHERWISE NOTED

THIS PROPERTY SUBJECT TO ALL OTHER RIGHTS-OF-WAY AND EASEMENTS OF RECORDS.

DIVIDED ENTRANCE MEDIAN TO BE MAINTAINED BY THE LAWSON COMMUNITY ASSOCIATION.

NOTE:
A UNION COUNTY PUBLIC WORKS UTILITY & SANITARY SEWER RIGHT-OF-WAY SHALL EXIST ON ALL SANITARY SEWER LATERALS AND FIRE HYDRANTS. THE UTILITY & SANITARY SEWER RIGHT-OF-WAY IS LOCATED 5 FEET ALL SIDES FROM THE CLEAN-OUT OR FIRE HYDRANT TO THE PUBLIC ROAD RIGHT-OF-WAY.

THIS PROPERTY SHOWN ON PANEL 3717910080C DATED 7-5-1994 DOES NOT LIE WITHIN A FEMA FLOODPLAIN.

BERM AND LANDSCAPE EASEMENT

ANY PORTION OF A LOT WHICH SHARES A BERM, LANDSCAPE PLANTING, IRRIGATION SYSTEM OR THE PROJECT MONUMENTATION WITH THE COMMON AREA OR ANY OTHER AREA FOR WHICH THE ASSOCIATION IS RESPONSIBLE FOR THE MAINTENANCE THEREOF, SHALL BE SUBJECT TO AN EASEMENT IN FAVOR OF THE ASSOCIATION FOR LANDSCAPING, MOWING AND MAINTENANCE OF THE BERM, LANDSCAPE PLANTING, IRRIGATION SYSTEM OR THE PROJECT MONUMENTATION.

PROJECT INFORMATION
12.067 ACRES TOTAL ON THIS PLAT
8.511 ACRES COS ON THIS PLAT
15 LOTS SHOWN ON THIS PLAT + 1 REVISED LOT (LOT 143 PREVIOUSLY RECORDED ON MAP 6)
SMALLEST LOT (LOT 164 @ 6,871 SF OR 0.157 AC.)

LINEAR FEET OF STREETS
BLUESTONE COURT – 390.36

DEDICATION OF COMMON OPEN SPACE

THE LAWSON COMMUNITY ASSOCIATION IN RECORDING THIS PLAT AS A PORTION OF LAWSON HAS DESIGNATED CERTAIN PARTS AS "COMMON OPEN SPACES" FOR USE BY THE HOMEOWNERS OR TENANTS OF LAWSON FOR PARKING RECREATIONAL AND OTHER RELATED ACTIVITIES AS MORE FULLY PROVIDED FOR IN THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS APPLICABLE TO LAWSON DECLARATION TO BE RECORDED IN THE UNION COUNTY REGISTRY PRIOR TO THE SALE OF ANY LOTS AND WHICH SAID DECLARATION IS HEREBY MADE A PART OF THIS PLAT AND INCORPORATED HEREIN.

REVISION NOTE
THIS PLAT REVISES LOT 123 OF PHASE 1 MAP 5 PREVIOUSLY RECORDED IN PLAT CAB. I-826
THIS PLAT SUPERCEDES THIS PORTION OF THE PREVIOUSLY RECORDED PLAT.

NORTH CAROLINA PROFESSIONAL SEAL L-3964 LAND SURVEYOR JOSEPH E. WHALEY, JR.

" I, JOSEPH E. WHALEY, JR., STATE THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION IN DEED 3880-821, AND THAT THE RATIO OF PRECISION AS CALCULATED IS IN EXCESS OF 1:10000 WITH A MAXIMUM FIELD ERROR OF ANGULAR CLOSURE OF 7 1/2 SEC. PER ANGLE; THAT THIS PLAT IS OF A SURVEY THAT CREATES A SUBDIVISION OF LAND WITHIN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND. THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S.47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 11 DAY OF MAR, A.D., 2006

I, Gus Nichols, REVIEW OFFICER OF UNION COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

REVIEW OFFICER 3/15/06 DATE

Certificate of Approval

I hereby certify that this Final Plat is in substantial compliance with the Preliminary Plan as approved, that all required improvements have been installed in accordance with the Waxhaw Subdivision Ordinance and that this plat is finally approved provided it is recorded with the Union County Register Of Deeds within thirty (30) days of this date.

3-14-06 Date — Jim Prue, Subdivision Administrator

Certificate of Ownership and Dedication

I hereby certify that I am the owner of the property described hereon, which is located in the Corporate Limits of the Town of Waxhaw and that I hereby adopt this plan of subdivision with my free consent, establish minimum building setback lines, and dedicate all streets, walks, parks, and other sites and easements to public or private use as noted. Furthermore, I hereby dedicate all infrastructure being the whole system of improvements required for the use of the subdivision which allow it to be used for its intended subdivided purpose. This includes but is not limited to public streets, strat curb and gutter, sidewalks, public sewer, public water, storm water detention, drainage features, traffic control devices, street lighting, street signs, and landscaping to the appropriate agency.

3/10/06 Date — Owner PRESIDENT– PACE/DOWD PROPERTIES, LTD.

FILED Mar 15, 2006 08:43 am
PLAT SLIDE J0000 — 0230
INSTRUMENT 10767

FILED UNION COUNTY, NC CRYSTAL CRUMP REGISTER OF DEEDS
By: Joyce Walton – Asst.

SEE SHEET 1 OF 2 FOR SUBDIVISION LOTS AND STREETS

GRAPHIC SCALE
100 0 50 100 200 400
(IN FEET)
1 inch = 100 ft.

SHEET TITLE RECORD PLAT – 12.067 ACRE (&REV LOT 123 PHASE 1 MAP 5)	PROJECT NO.
	SCALE 1"= 100'
	DATE 03/10/06
PROJECT LAWSON PHASE 1 MAP 8 TOWN OF WAXHAW, UNION COUNTY, N.C. OWNER: PACE/DOWD PROPERTIES LTD.	DRAWN BY JRB
	CHECKED BY JEW
	ZONED
YARBROUGH-WILLIAMS & HOULE, INC. Planning ◦ Surveying ◦ Engineering 730 Windsor Oak Court (28273) P.O. Box 7007 (28241) Charlotte, North Carolina 704.556.1990 704.556.0505(fax)	DRAWING NO. SHT 2 OF 2 SHTS

CAB J File 230

Town of Waxhaw
Planning & Community Development
PO Box 617
Waxhaw, NC 28173
704-843-2195 (Phone)
704-243-3276 (Fax)
www.waxhaw.com

Date Received: 6-2-2015
Received By: DC
Fee: Waived per G. Mahar

VARIANCE AND APPEAL APPLICATION

Date of Application: 5-29-15 Case Number: VA-003450-2015
(to be filled out by staff)

Applicant Information

Applicant Name: Lisa Noel Telephone: (262) 501-3844

Applicant Mailing Address: 2101 Bluestone Ct.

Applicant Email Address: tlnanoel@sbcglobal.net

Property Owner Name: Lisa Noel Telephone: (262) 501-3844

Property Owner Mailing Address: 2101 Bluestone Ct.

Applicant is requesting (check one): ☐ Appeal ☒ Variance

The following shall be completed by applicants seeking an appeal of a decision made by the Zoning Administrator:

Date of Zoning Administrator's Decision: _____

Summary of Decision: _____

Reason for Appeal of Decision (attach additional paper if necessary): _____

The following shall be completed by applicants seeking a variance:

Property Information

Address/Location of Property: 2101 Bluestone Ct. Waxhaw

Tax Parcel Number(s): 06-108-484

Existing Use of Property: single family Zoning: _____

Variance Sought: Unified development ordinance

Related Section(s) of Zoning Ordinance: 11.3.77 A37

Reason(s) for Seeking Variance (attached additional paper if necessary):

does not meet minimum building seperation

FINDING OF FACTS CHECKLIST (Must be Filled Out by Applicant for a Variance Request)

Please provide an explanation for each finding of fact on which the Board of Adjustment will make its decision.

Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

The home is already built with the fireplace. The home cannot be moved and the fireplace cannot be taken out.

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

We did not add the fireplace. It was approved by zoning to be built that way and since we are not original owners we were not a part of that approval.

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

This is not a self-created hardship.

The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

It does meet the spirit of the ordinance because it's allowing an existing family home remain.

Requests for variances shall be accompanied by a list of adjoining property owners and a sketch plan. The sketch plan must show in scaled form the location and size of:

- The boundaries of the lot(s) in question.
- The size, shape and location of all existing and proposed buildings, parking facilities and accessory

CERTIFICATIONS

I hereby certify that all of the information provided for this application is, to the best of my knowledge, accurate and complete.

Lisa Noel	Lisa Noel
Signature of Applicant	Signature of Property Owner
Lisa Noel	Lisa Noel
Printed Name of Applicant	Printed Name of Property Owner
5-29-15	5-29-15
Date	Date

This application is accepted, and to the best of my knowledge, deemed to be complete.

Lori Oakley	5-29-15
Signature of Zoning Administrator	Date

TO BE FILLED OUT BY THE ZONING ADMINISTRATOR

Sketch Plan Attached: ☐ Yes ☐ No

Public Hearing Date: June 29, 2015

Notices to Applicant and Adjoining Property Owners Mailed On: _____

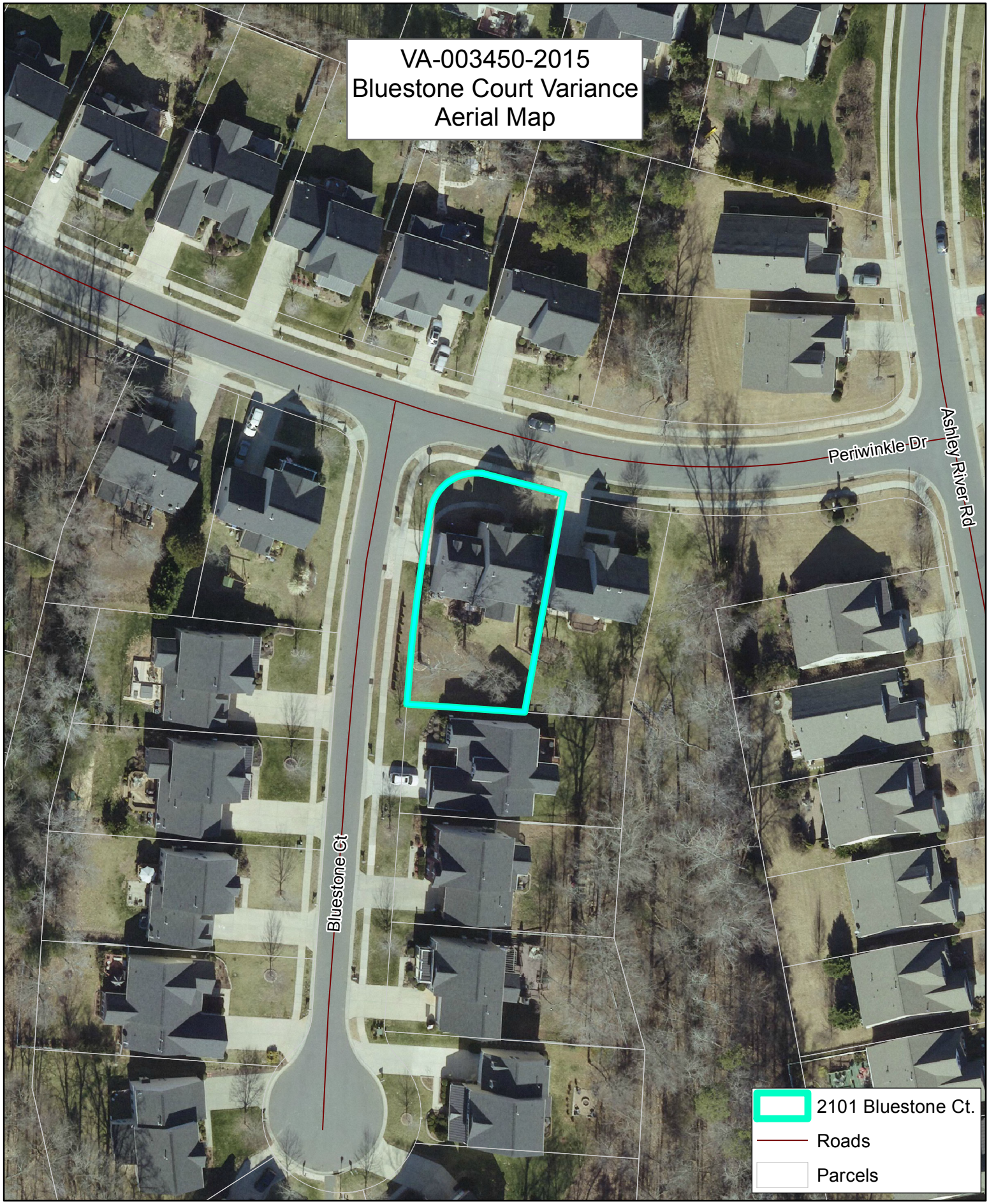
Public Hearing Notice Filed in _____ on _____
Name of Newspaper Date Notice Published

Variance "Findings of Facts" Checklist Attached: ☐ Yes ☐ No

Action Taken by Board of Adjustment: _____

Date Decision of Board of Adjustment Filed: _____

VA-003450-2015
Bluestone Court Variance
Aerial Map

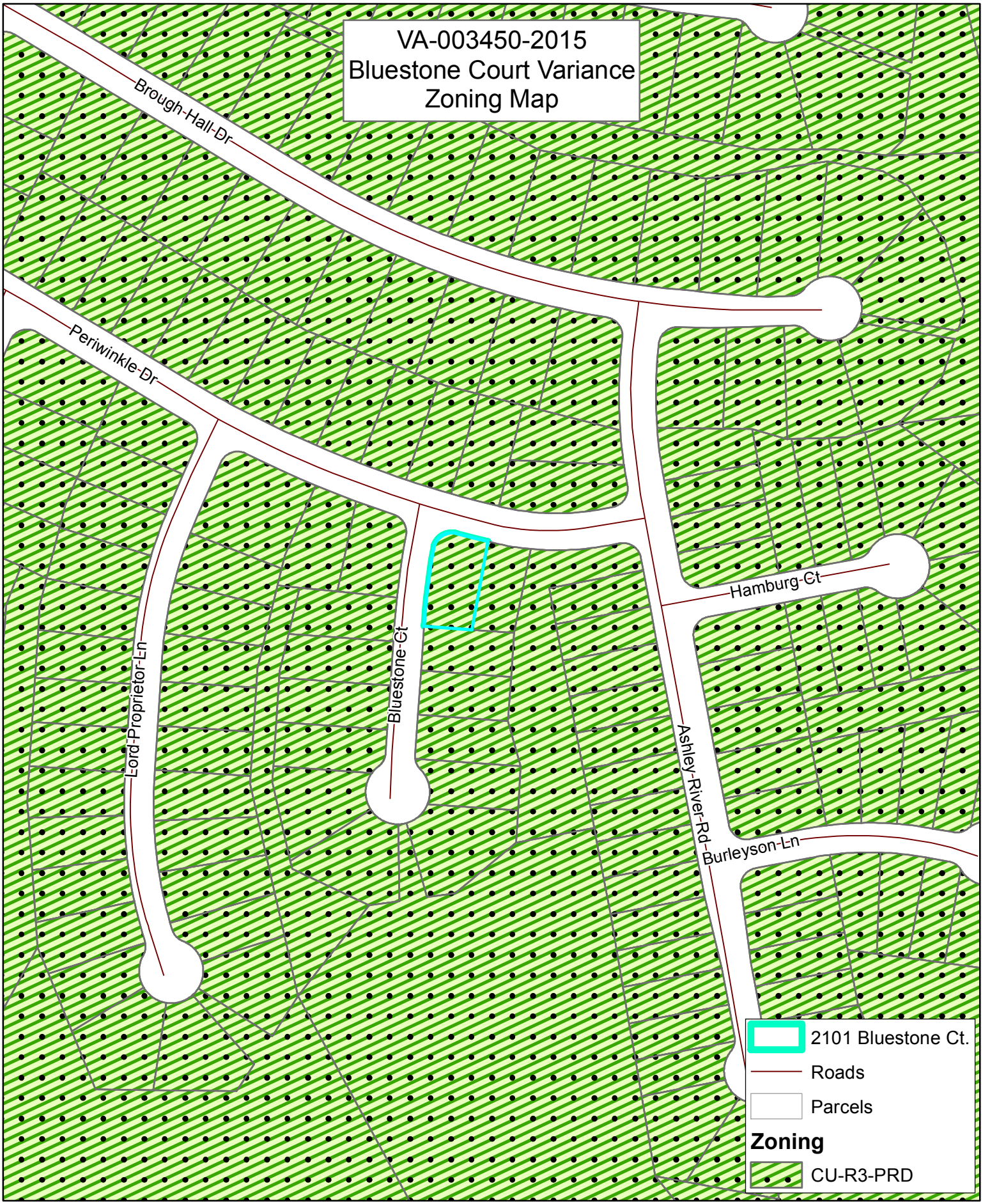


N

0 20 40 80 120 160 Feet

Data Source & Disclaimer
Data provided by Union County GIS and Town of Waxhaw GIS. The Town of Waxhaw does not guarantee the accuracy of the information displayed. Map created June 2015.

VA-003450-2015
Bluestone Court Variance
Zoning Map



N

0 55 110 220 330 440 Feet

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