



**Town of Cornelius  
Planning Board/Board of Adjustment**

**Agenda  
January 9, 2017  
6:30 PM  
CANCELLED**

- 1. Call To Order**
- 2. Determination of Quorum**
- 3. Approval of Minutes**
- 4. Public Hearing and Consideration of Approval**
  - A. VAR 06-16 18727 Coachman's Trace**
- 5. Old Business**
- 6. New Business**
  - A. Arts District Joint Meeting - January 30th @ 6:30pm**
- 7. Next Meeting**
- 8. Adjournment**

## REQUEST FOR BOARD ACTION

 **Print**

**Date of Meeting:** January 9, 2017

**To:** Board of Adjustment Members

**From:** Gary Fournier, CZO - Code Enforcement Officer/Permit Technician
















**Action Requested:**

The applicants are requesting a variance on their right setback at 18727 Coachman's Trace due to a bay window on the right side of their house that encroaches into the right setback.

**Manager's Recommendation:**

Hear evidence and render a decision

**ATTACHMENTS:**

Name:	Description:	Type:
 <a href="#">VAR_06-16_Staff_Report.docx</a>	VAR 06-16 Staff Report	Cover Memo
 <a href="#">Exhibit_A_Zoning_Map.jpg</a>	Exhibit A Zoning Map	Cover Memo
 <a href="#">Exhibit_B_Vicinity_Map.jpg</a>	Exhibit B Vicinity Map	Cover Memo
 <a href="#">Exhibit_C_Property_Map.jpg</a>	Exhibit C Property Map	Cover Memo
 <a href="#">Exhibit_D_Recorded_Plat_Mb_37_Pg_535.jpg</a>	Exhibit D Recorded Plat Mb 37 Pg 535	Cover Memo
 <a href="#">Exhibit_D_Recorded_Plat_Mb_37_Pg_535_(Zoomed_In).JPG</a>	Exhibit D Recorded Plat Mb 37 Pg 535 (Zoomed In)	Cover Memo
 <a href="#">VAR_06-16_Variance_Application.pdf</a>	Exhibit E Variance Application	Cover Memo
 <a href="#">Exhibit_F_Property_Survey.jpg</a>	Exhibit F Property Survey	Cover Memo
 <a href="#">Exhibit_F_Property_Survey_(Zoomed_In).jpg</a>	Exhibit F Property Survey (Zoomed In)	Cover Memo
 <a href="#">Exhibit_G_11-12-2007_Planning_Board_Agenda.jpg</a>	Exhibit G 11-12-2007 Planning Board Agenda	Cover Memo
 <a href="#">VAR_06-16_11-12-2007_Planning_Board_Minutes.pdf</a>	Exhibit H 11-12-2007 Planning Board Minutes	Cover Memo
 <a href="#">Exhibit_I_Property_Photo.JPG</a>	Exhibit I Property Photo	Cover Memo
 <a href="#">Exhibit_J_Property_Photo.JPG</a>	Exhibit J Property Photo	Cover Memo
 <a href="#">Exhibit_K_Property_Photo.JPG</a>	Exhibit K Property Photo	Cover Memo
 <a href="#">VAR_06-16_FoF.docx</a>	VAR 06-16 FoF	Cover Memo



**VAR 06-16  
18727 Coachman's Trace  
Staff Analysis**

**January 9, 2017**

**Applicant:** Alexis & Justin Blackford  
18727 Coachman's Trace  
Cornelius, NC 28031

**Tax Parcel Reference:** 005-382-77

**Location:** 18727 Coachman's Trace

**Variance Request:** The applicants are requesting a variance on their right setback due to a bay window on the right side of their house that encroaches into the right setback.

**Zoning:** Neighborhood Residential (NR)

**Hearing Date:** January 9, 2017

**Staff Commentary:**

The applicants are requesting a variance from the 8 foot minimum side setback on the recorded plat due to a bay window on the right side of their house that encroaches into the right setback. The applicants are requesting a 6.3 foot right side setback.

Staff will present testimony at the hearing that covers the following basic facts and will introduce the Town exhibits into evidence:

1. The subject property is within the Town of Cornelius Zoning jurisdiction and is zoned Neighborhood Residential (NR). The property is shown on the Zoning Map as Exhibit A, on an Aerial Vicinity Map as Exhibit B, and on an Aerial Property Map as Exhibit C.
2. The Cornelius Planning Department's common practice on a development permit is to use the setbacks from the recorded plat and to use the Land Development Code for any setbacks that are not on the recorded plat.
3. The subject property is recorded on a plat with the Mecklenburg County Register of Deeds Office in Map Book 37 Page 535. The side setbacks on the plat for the subject property are 8 feet. The recorded plat is shown as Exhibit D.
4. The Applicants have submitted a Town of Cornelius Variance Application, a property survey, and a Cornelius Planning Board agenda and minutes for a meeting on November 12, 2007. The Variance Application is shown as Exhibit E, the property survey is shown as Exhibit F, the agenda is shown as Exhibit G, and the minutes are shown as Exhibit H.
5. I visited the property and took three pictures which are shown as Exhibits I, J, and K.

The Board of Adjustment shall receive and consider all relevant evidence in the hearing and make its decision based on the competent, material and substantial evidence.

**Exhibits:**

- Exhibit A:* Zoning Map
- Exhibit B:* Aerial Vicinity Map
- Exhibit C:* Aerial Property Map
- Exhibit D:* Recorded Plat, Map Book 37 Page 535
- Exhibit E:* Variance Application
- Exhibit F:* Property Survey
- Exhibit G:* Cornelius Planning Board agenda
- Exhibit H:* Cornelius Planning Board minutes
- Exhibit I:* Property Photo
- Exhibit J:* Property Photo
- Exhibit K:* Property Photo



# Exhibit A

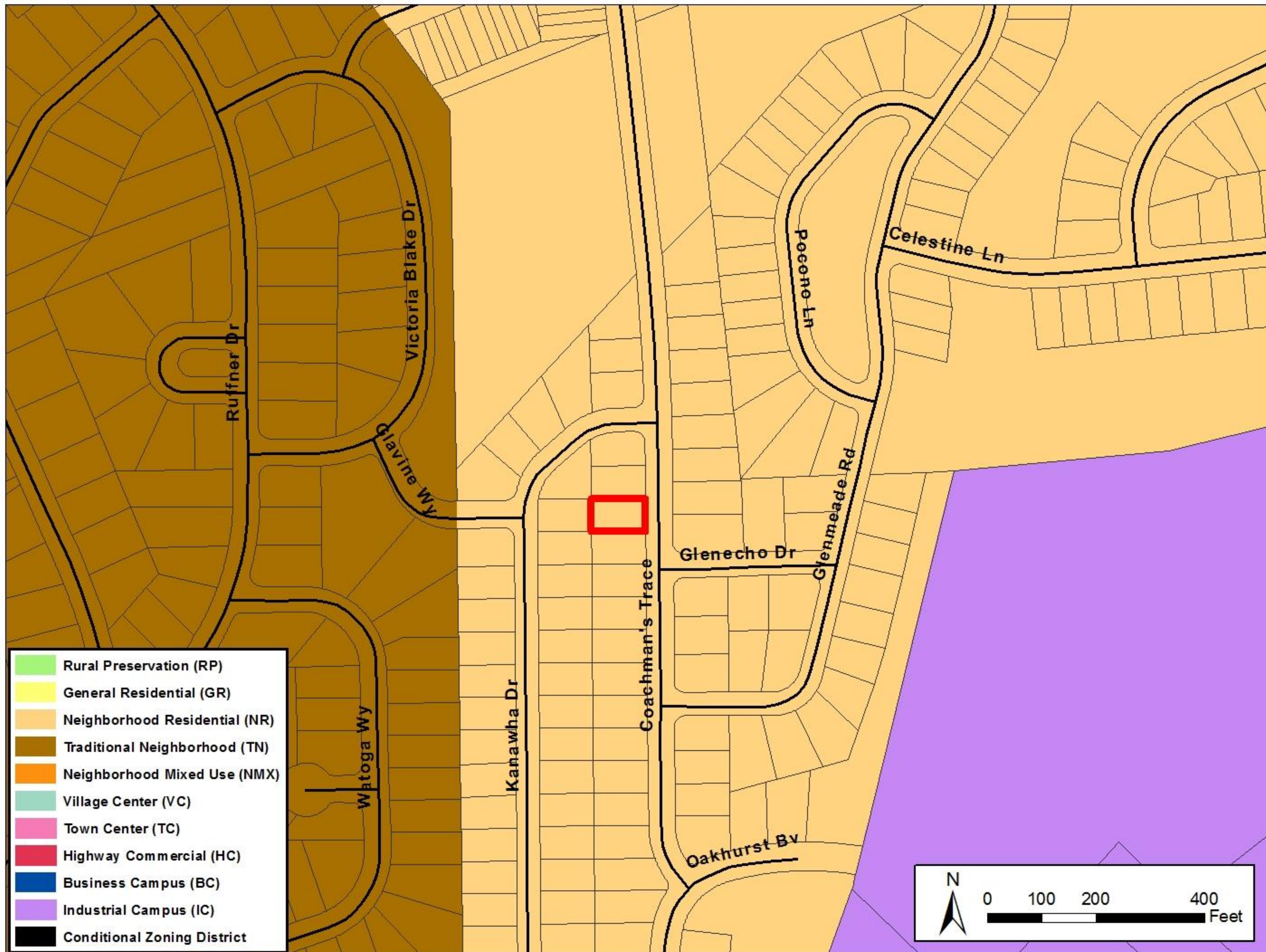




Exhibit B

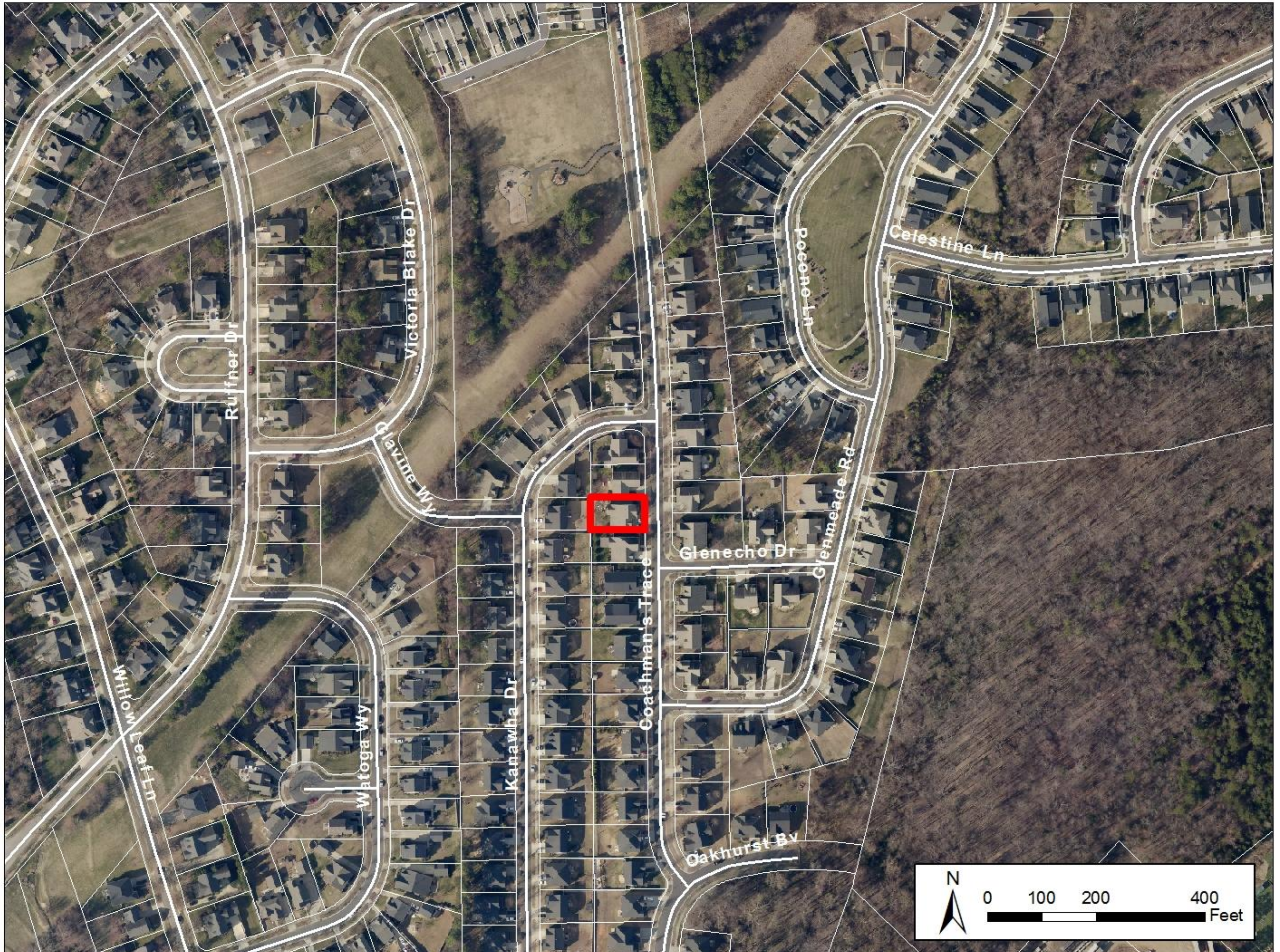
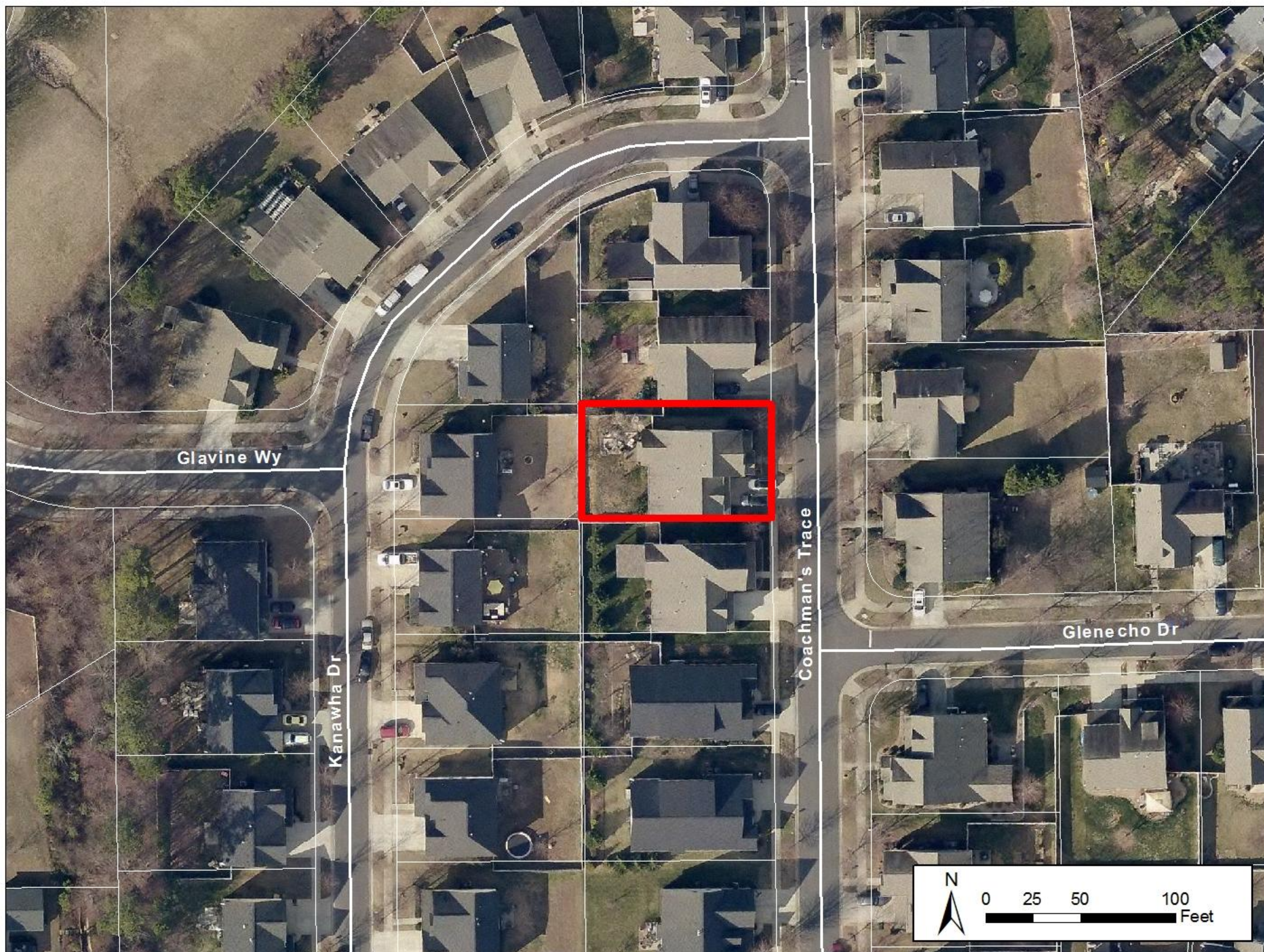
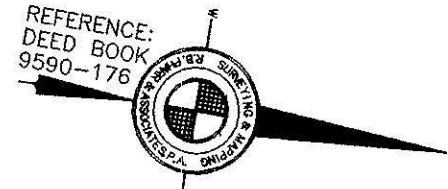
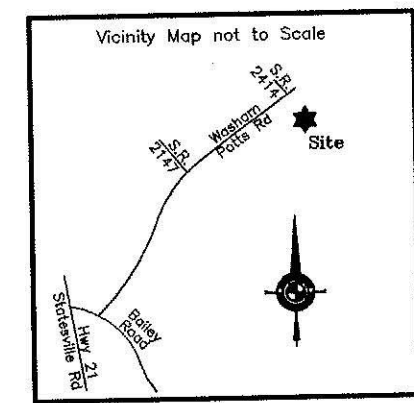




Exhibit C





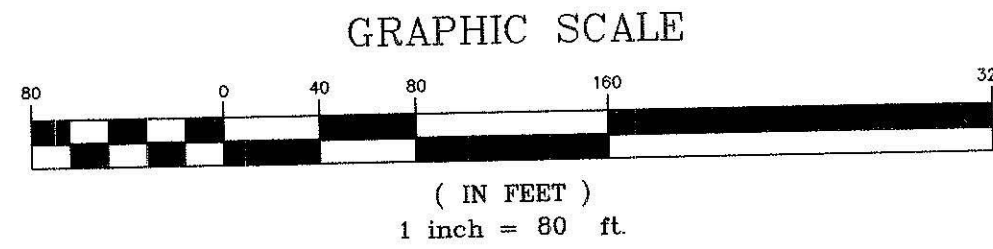


FILED FOR  
REGISTRATION  
MAY 22 2002  
AT 02:36  
JUDITH A. GIBSON  
REGISTERED PLAT  
MECKLENBURG COUNTY, N.C.

# Exhibit D

A MAP SHOWING  
GLENRIDGE, PHASE II  
WP INVESTMENT GROUP, LLC (OWNER)  
CORNELIUS, NORTH CAROLINA  
DEED REFERENCE: 9590-176  
TAX NUMBER: 005-382-99

FLOOD CERTIFICATION  
THIS IS TO CERTIFY THAT THE SUBJECT PROPERTY IS NOT  
LOCATED IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON  
MAPS PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT  
AGENCY, FEDERAL INSURANCE ADMINISTRATION, DATED  
MARCH 4, 1998.  
COMMUNITY #370158 PANEL #00208

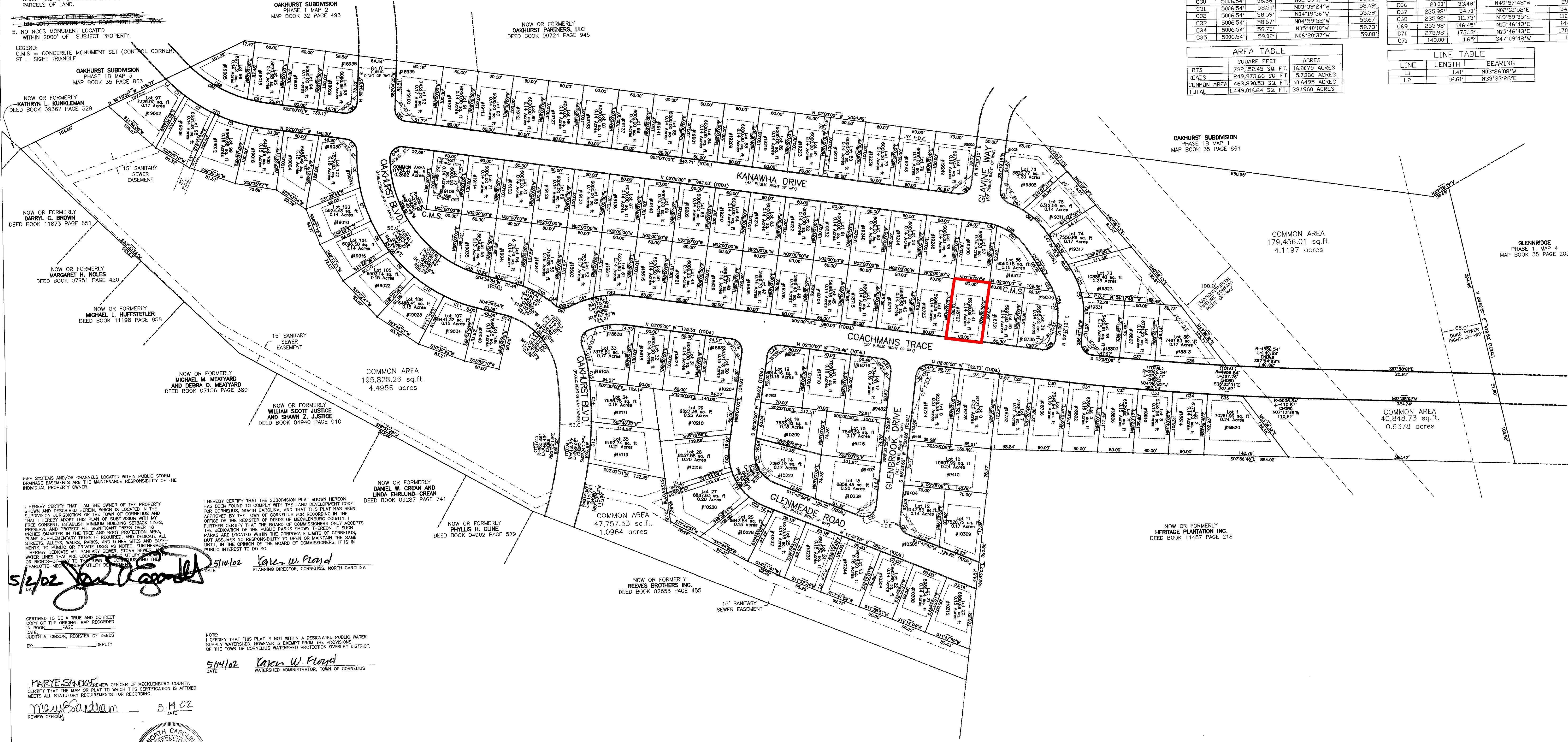


R.B. PHARR & ASSOCIATES, P.A.  
PO BOX 1234  
19801 S. MAIN STREET  
CORNELIUS, N.C. 28031  
TEL. (704) 895-1730

- NOTES:
- IRON PINS AT ALL CORNERS UNLESS OTHERWISE NOTED.
  - SUBJECT PROPERTY ZONED NEIGHBORHOOD RESIDENTIAL (NR)
    - \* THE FOLLOWING SETBACKS APPLY:
      - FRONT YARD.....10 feet
      - SIDE YARD.....8 feet
      - REAR YARD.....25 feet
      - ACCESSORY STRUCTURE.....5 feet
    - \* CORNER SETBACKS FOLLOW THE SIGHT TRIANGLE AT ALL INTERSECTIONS WITH A MINIMUM OF 10'.
  - THIS SURVEY CREATES A SUBDIVISION OF LAND WITHIN THE AREA OF MECKLENBURG COUNTY WHICH HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND.

THIS MAP SUPERSEDES MAP BOOK 37 AT PAGE 233  
THE PURPOSE OF THIS MAP IS TO ADD ADDITIONAL  
SANITARY SEWER EASEMENTS NOT SHOWN ON MAP BOOK  
37 PAGE 233, ACROSS COMMON AREA, LOTS 97,  
98, AND LOTS 20-28.

LEGEND:  
C.M.S. = CONCRETE MONUMENT SET (CONTROL CORNER)  
ST = SIGHT TRIANGLE



CURVE TABLE				
CURVE	RADIUS	LENGTH	CHORD DIRECTION	CHORD
C1	278.98'	26.27'	N30°51'36"E	26.26'
C2	278.98'	60.12'	N21°59'22"E	60.00'
C3	278.98'	60.12'	N09°58'35"E	60.00'
C4	278.98'	26.27'	N00°44'05"E	26.26'
C5	200.00'	29.28'	S39°56'46"W	26.74'
C6	265.92'	61.63'	N75°15'12"E	61.49'
C7	265.92'	60.13'	N62°08'12"E	60.00'
C8	265.92'	60.13'	N49°10'53"E	60.00'
C9	265.92'	60.13'	N36°13'34"E	60.00'
C10	265.92'	60.13'	N23°16'15"E	55.03'
C11	265.92'	55.13'	N10°51'15"E	55.03'
C12	119.50'	11.65'	S07°42'29"W	11.65'
C13	614.60'	69.96'	S84°24'30"W	69.92'
C14	614.60'	70.83'	S77°50'45"W	70.79'
C15	614.60'	16.52'	S73°46'27"W	16.52'
C16	172.50'	43.27'	S65°49'07"W	43.15'
C17	20.00'	31.14'	S76°46'01"E	28.09'
C18	125.00'	65.81'	S17°05'00"E	65.86'
C19	20.00'	31.42'	S43°00'00"W	28.28'
C20	96.50'	43.60'	N75°03'19"E	43.23'
C21	96.50'	53.40'	N46°15'26"E	51.20'
C22	96.50'	31.33'	N21°06'07"E	24.29'
C23	20.00'	26.10'	N49°10'55"E	26.64'
C24	20.00'	31.92'	S47°43'04"E	27.93'
C25	20.00'	30.91'	S42°16'56"W	27.93'
C26	20.00'	36.73'	N40°49'05"W	31.78'
C27	53.50'	71.15'	N49°53'59"E	66.02'
C28	20.00'	31.42'	S47°00'00"E	28.28'
C29	5006.54'	37.13'	N02°19'37"W	57.13'
C30	5006.54'	58.38'	N02°59'17"W	58.38'
C31	5006.54'	58.50'	N03°39'24"W	58.49'
C32	5006.54'	58.59'	N04°19'36"W	58.59'
C33	5006.54'	58.67'	N04°59'52"W	58.67'
C34	5006.54'	58.73'	N05°40'10"W	58.73'
C35	5006.54'	59.80'	N06°20'37"W	59.80'

CURVE TABLE				
CURVE	RADIUS	LENGTH	CHORD DIRECTION	CHORD
C36	4956.54'	119.56'	N05°57'42"W	119.59'
C37	4956.54'	60.00'	N04°35'18"W	60.00'
C38	20.00'	31.59'	N41°32'45"E	28.40'
C39	20.00'	31.59'	N47°58'21"W	28.40'
C40	175.00'	61.37'	S12°40'37"E	61.06'
C41	175.00'	33.49'	S28°12'20"E	33.44'
C42	175.00'	11.02'	S35°29'29"E	11.02'
C43	20.00'	21.94'	N05°51'50"W	20.86'
C44	20.00'	1.99'	N28°24'39"E	1.98'
C45	181.50'	63.74'	S21°11'36"W	63.41'
C46	181.50'	19.70'	S08°01'26"W	19.65'
C47	20.00'	23.93'	N03°01'14"W	22.53'
C48	209.92'	51.13'	N11°53'46"E	51.03'
C49	20.00'	34.63'	S11°36'31"E	30.47'
C50	100.00'	20.17'	S03°46'38"W	20.13'
C51	100.00'	66.22'	S28°31'25"W	65.01'
C52	100.00'	18.08'	S52°40'21"W	18.06'
C53	100.00'	50.50'	S72°19'10"W	49.97'
C54	100.00'	68.58'	S67°08'23"W	67.24'
C55	143.00'	45.36'	S77°42'00"W	45.17'
C56	143.00'	32.71'	S59°03'11"W	32.41'
C57	143.00'	98.07'	S67°08'23"W	96.16'
C58	100.00'	86.38'	S22°44'47"W	83.78'
C59	4956.54'	43.77'	N02°28'43"W	43.77'
C60	143.00'	60.45'	S34°43'26"W	60.00'
C61	143.00'	28.01'	S17°00'05"W	27.97'
C62	20.00'	26.51'	N49°21'18"E	24.61'
C63	143.00'	90.11'	S29°26'28"W	88.63'
C64	20.00'	31.65'	N47°20'23"W	28.45'
C65	20.00'	29.35'	N40°02'12"E	26.78'
C66	20.00'	33.48'	N49°57'45"W	29.71'
C67	235.98'	34.71'	N02°12'32"E	34.68'
C68	235.98'	111.73'	N19°59'35"E	110.69'
C69	235.98'	146.45'	N15°46'43"E	144.11'
C70	278.98'	173.13'	N15°46'43"E	170.37'
C71	143.00'	1.65'	S47°09'48"W	1.65'

AREA TABLE		
LOTS	SQUARE FEET	ACRES
ROADS	732,152.45 SQ. FT.	16.8079 ACRES
COMMON AREA	249,973.66 SQ. FT.	5.7386 ACRES
TOTAL	1,449,016.64 SQ. FT.	33.1960 ACRES

LINE TABLE		
LINE	LENGTH	BEARING
L1	141'	N03°26'08"W
L2	16.61'	N33°33'26"E

I HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREIN, WHICH IS LOCATED IN THE SUBDIVISION JURISDICTION OF THE TOWN OF CORNELIUS, AND THAT THIS PLAT HAS BEEN APPROVED BY THE TOWN OF CORNELIUS FOR RECORDING IN THE OFFICE OF THE REGISTER OF DEEDS OF MECKLENBURG COUNTY. I FURTHER CERTIFY THAT THE BOARD OF COMMISSIONERS ONLY ACCEPTS THE DEDICATION OF THE PUBLIC PARKS SHOW THEREON, IF SUCH PARKS ARE LOCATED WITHIN THE CORPORATE LIMITS OF CORNELIUS, UNTIL, IN THE OPINION OF THE BOARD OF COMMISSIONERS, IT IS IN PUBLIC INTEREST TO DO SO.

I HEREBY CERTIFY THAT THE SUBDIVISION PLAT SHOWN HEREON HAS BEEN FOUND TO COMPLY WITH THE LAND DEVELOPMENT CODE FOR CORNELIUS, NORTH CAROLINA, AND THAT THIS PLAT HAS BEEN APPROVED BY THE TOWN OF CORNELIUS FOR RECORDING IN THE OFFICE OF THE REGISTER OF DEEDS OF MECKLENBURG COUNTY. I FURTHER CERTIFY THAT THE BOARD OF COMMISSIONERS ONLY ACCEPTS THE DEDICATION OF THE PUBLIC PARKS SHOW THEREON, IF SUCH PARKS ARE LOCATED WITHIN THE CORPORATE LIMITS OF CORNELIUS, UNTIL, IN THE OPINION OF THE BOARD OF COMMISSIONERS, IT IS IN PUBLIC INTEREST TO DO SO.

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I HEREBY CERTIFY THAT ALL STREETS, UTILITIES, AND OTHER REQUIRED IMPROVEMENTS HAVE BEEN INSTALLED IN AN ACCEPTABLE MANNER AND ACCORDING TO TOWN SPECIFICATIONS AND STANDARDS, OR THAT GUARANTEES OF THE INSTALLATION OF THE REQUIRED IMPROVEMENTS IN AN ACCEPTABLE MANNER SATISFACTORY TO THE TOWN OF CORNELIUS HAS BEEN RECEIVED.

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**TOWN OF CORNELIUS  
VARIANCE APPLICATION**

Date Filed: <u>12/12/2016</u>	Case #: <u>VAR 06-16</u>
Fee Paid: \$ <u>250.00</u>	Public Hearing: <u>01/09/2017</u>
Applicant: <u>Alexis &amp; Justin Blackford</u>	Tax Parcel: <u>005-382-77</u>
Location of Variance: <u>18727 Coachmans Trc.</u>	Zoning: <u>NR</u>

I, Alexis & Justin Blackford, hereby petition the Board of Adjustment for a **VARIANCE** from the literal provisions of the Town of Cornelius Land Development Code because, under the interpretation given to me by the Zoning Administrator, I am prohibited from using the parcel of land described above in a manner shown by the Plot Plan attached to this form. I request a variance from the following provisions of the Zoning Ordinance (cite Section and numbers) \_\_\_\_\_

A variance of the setbacks as noted on the recorded plat for Glenridge Phase II at Page 535 in Map Book 37 of the Mecklenburg County Register of Deeds. (Specifically for Lot 41, 18727 Coachmans Trace)

Describe the variance being requested on the above referenced property: \_\_\_\_\_

A variance of the front and side setback as noted on the recorded plat for Glenridge Phase II in Map Book 37 at Page 535. Survey of the subject property is attached to this application as Exhibit A. A copy of the above referenced plat is attached hereto as Exhibit B.

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

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under the state enabling act (G.S. 160A-388), the Board is required to reach the following conclusions as a prerequisite to the issuance of a variance:

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

- C. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- D. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

**Please State Facts & Arguments in Support of EACH of the Following Statements:**

- A. 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

We are the fourth owners of record of this home since its construction in 2003 and we never aware of this setback issue. In order to meet the setbacks, we would have to tear down the home. Such action would require substantial and undue cost creating an unnecessary hardship to us.

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

The conditions necessitating the requested variance are peculiar to this lot and the adjacent lot to the North (18731 Coachmans Trace) and are not common to the neighborhood or general public. The builder clearly designed the house slightly too big for this particular lot.

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

We had no knowledge of this setback issue at time of purchase. It is unclear how the builder obtained building permits or a certificate of occupancy upon completion. As the fourth owner of record, the hardship clearly did not result from our actions.



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

The variance is consistent with the spirit, purpose and intent of the ordinance. The placement of the house with minor setback encroachments has not caused any public safety issues since being constructed in 2003; this BOA granted a similar variance to the adjacent lot owner in 2007.

Therefore, based upon the hardship and all facts listed  
I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information and belief.

\_\_\_\_\_  
Name of Appellant (if any)

\_\_\_\_\_  
Appellant's Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Date

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Signature

Alexis and Justin Blackford  
Name of Owner

18727 Coachman's Trace  
Owner's Address

Cornelius, NC 28031  
City, State, Zip Code

December 10, 2016  
Date

(804) 536-4656 / (704) 682-1278  
Telephone Number

\_\_\_\_\_  
Fax Number

aberkowi@vt.edu / justin.blackford@bldr.com  
Email Address

Alexis K. Blackford  
Signature

→ above, Substantial justice can only be achieved by this Board's granting of our variance request.



**NAMES AND ADDRESSES OF ALL ABUTTING PROPERTY OWNERS**

The following are individuals, firms, or corporations owning property adjoining (including those properties across the street) the property described in this application. Type or print the complete names and addresses including zip code and tax parcel number. These persons will be notified in writing of the time and place of the hearing.

Name	Address/City/State/Zip	Tax Parcel Number
Lena Marie Turbeville	18723 Coachman's Trace Cornelius, NC 28031	005-382-76
Noel J. Michalski	18731 Coachman's Trace Cornelius, NC 28031	005-382-78
Rex and Kimberly Stump	19300 Kanawha Drive Cornelius, NC 28031	005-382-81
Laura and Eldad Azran	18728 Coachman's Trace Cornelius, NC 28031	005-388-12 005-388-13
Terry and Veronica Byers	18724 Coachman's Trace Cornelius, NC 28031	

Submit or draw a Site Plan below describing property and variance request.  
Give all appropriate dimensions, buildings/structures and their distance to property lines, right-of-ways, etc.

Please see attached survey which shows the front and side setback distances.

Also attached is the Planning Board Agenda from November 12, 2007. At this meeting and Public Hearing, the adjacent property owner at 18731 Coachman's Trace was granted a similar variance from the approved plan for Glenridge, Phase II.

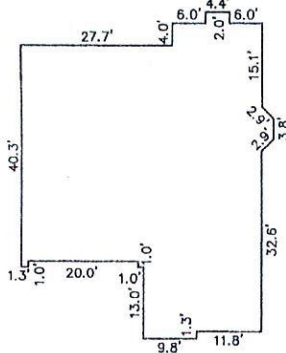
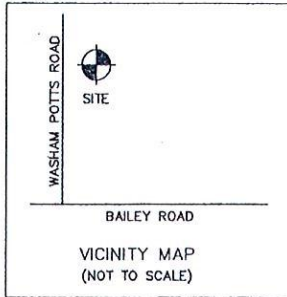
THIS IS TO CERTIFY THAT ON THE 3rd DAY OF DECEMBER, 2007 I SURVEYED THE PROPERTY SHOWN ON THIS PLAT, AND THAT THE TITLE LINES AND THE WALLS OF THE BUILDINGS, IF ANY, ARE SHOWN HEREON.

SIGNED

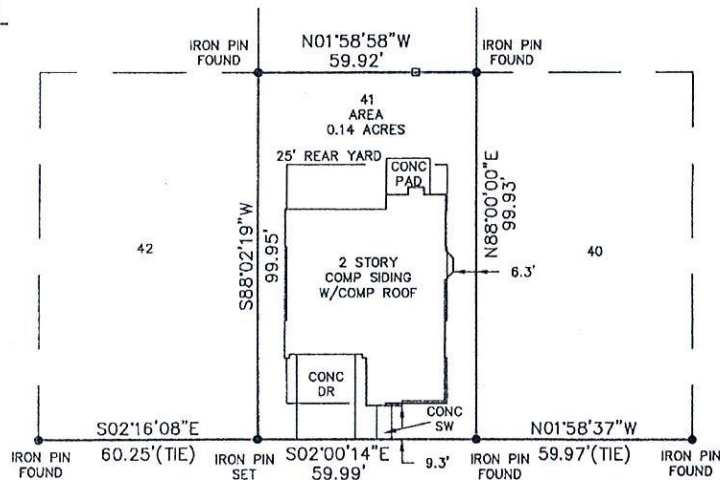
JOHN D. SKIDMORE III, NCPLS

NOTES:

- AREA BY COORDINATE METHOD
- ERROR OF CLOSURE 1:10,000
- THIS IS A SURVEY OF AN EXISTING PARCEL OR PARCELS OF LAND AND DOES NOT CREATE A NEW STREET OR CHANGE AN EXISTING STREET
- THIS MAP IS NOT INTENDED TO MEET G.S. 47-30 AND IS NOT TO BE RECORDED AS A PLAT
- SUBJECT PROPERTY MAY BE SUBJECT TO RECORDED OR UNRECORDED EASEMENTS, RIGHT OF WAYS, SETBACKS AND/OR RESTRICTIVE COVENANTS NOT SHOWN HEREON
- IRON PINS AT ALL CORNERS UNLESS OTHERWISE NOTED
- 10' SETBACK, 8' SIDE YARD



HOUSE DETAIL  
NOT TO SCALE

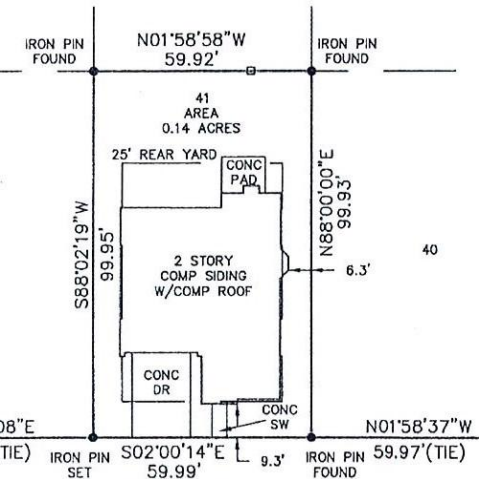


COACHMANS TRACE  
50' PUBLIC R/W



PHYSICAL SURVEY		SCALE 1" = 40'	D.B.	PG.
18727 COACHMANS TRACE		TAX No.	DRAWN BY: BDS	
LOT 41		MAP BOOK 37 PAGE 535	DRAWING 07-392	
GLENRIDGE		<i>SKIDMORE SURVEYING, INC.</i> 5343 HIGHWAY 74 WEST MONROE, N.C. 704-289-4855		
TOWN OF CORNELIUS, MECKLENBURG COUNTY, NORTH CAROLINA				
TO BE DEEDED TO:	ALEXIS BERKOWITZ			

# Exhibit F



COACHMANS TRACE  
50' PUBLIC R/W



# Exhibit G



PO Box 399  
Cornelius, NC 28031  
P. 704 892-6031  
F. 704 896-2462  
[www.cornelius.org](http://www.cornelius.org)  
<http://www.corneliusplanning.org>

## Town of Cornelius Planning Board

November 12, 2007

6:00 PM

Cornelius Town Hall  
21445 Catawba Avenue

### AGENDA

- 1) CALL TO ORDER
- 2) DETERMINATION OF QUORUM
- 3) APPROVAL OF SEPTEMBER MINUTES AND OCTOBER WORKSHOP MINUTES
- 4) REVIEW AND RECOMMENDATION ON AGENDA ITEMS

**\*SITE 30-07 WESTMORELAND MINI-STORAGE CUP MINOR AMENDMENT:** Request by owner/developer CARP III, LLC to remove the retail component and reduce parking on the previously approved plan. Zoning: *Highway Commercial*. Acreage: 2.29 acres. Location: 9225 Westmoreland. **\*THIS IS A PUBLIC HEARING.**

**\*VAR 04-07 18731 COACHMAN'S TRACE SETBACK VARIANCE:** Request by owner, Paul Whitehead, to modify setbacks from the approved plan for Glenridge, Phase II Lot 40. **\*THIS IS A PUBLIC HEARING.**

**\*VAR 05-07 20125 COACHMAN'S WOOD LANE SETBACK VARIANCE:** Request by applicant Gandy Properties to modify setbacks from the approved plan for Weatherstone Manor Lot 47. **\*THIS IS A PUBLIC HEARING.**

**TA 11-07 PARKING:** Proposed Text Amendment to Chapter 7 of the *Land Development Code* to increase required parking for commercial uses.

**TA 13-07 DIGITAL FILES:** Proposed Text Amendment to Chapter 13 of the *Land Development Code* to require submission of digital files for all approved plans.

**REZ 02-07 THE VILLAGE AT LAKE NORMAN:** Request by owner, Joe Cooke and developer, Bromont Investments, LLC to rezone 104.699 acres on the southwest corner of Westmoreland @ Statesville Rd. from *Highway Commercial* and *Neighborhood Residential* to *Highway Commercial Conditional District* and *Village Center Conditional District* to construct a mixed-use retail/residential development.

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**Minutes**  
**TOWN OF CORNELIUS PLANNING BOARD**

November 12, 2007

6:00 PM

**Members Present**

Parker Black, Chairman  
Ronnie Rash, Vice Chairman  
Tracey Howell  
John Hettwer  
Chuck Travis  
Kevin Creighton  
Norris Woody  
Fred Berta, alternate (not seated)  
Qian Wang, alternate (not seated)

**Members Absent**

**Staff Present**

Karen Floyd, Planning Director  
Jason Abernethy, Senior Planner  
Jordan Cook, Planner  
Bill Brown, Town Attorney  
Lori Pearson, Admin. Asst.

**VISITORS**

SEE MEETING SIGN-IN SHEET

**DETERMINATION OF QUORUM**

Chairman Black called the meeting to order at 6:04 PM after it was determined that a quorum was present.

**APPROVAL OF PREVIOUS MINUTES**

Mr. Hettwer suggested that Staff conditions be listed for reference when modifications are made by the Planning Board.

Mr. Hettwer asked that the word “feel” on Page 9 of the September minutes be changed to “felt”

Mr. Travis stated that at the bottom of Page 2 of the September minutes, Mr. Little should be corrected to read Mr. Balke (who works for Little Architecture).

Chairman Black called for a motion to approve the September and October minutes.

Mr. Hettwer made a motion to approve minutes as amended. Ms. Howell seconded the motion and it passed unanimously.

**In Favor:** Chairman Black, Mr. Hettwer, Mr. Rash,  
Ms. Howell, Mr. Travis, Mr. Creighton, Mr. Woody

**Opposed:** None

## **REVIEW AND RECOMMENDATION ON AGENDA ITEMS**

Mr. Woody made a motion to approve the agenda. Mr. Hettwer seconded the motion and it passed unanimously.

**In Favor:** Chairman Black, Mr. Hettwer, Mr. Rash,  
Ms. Howell, Mr. Travis, Mr. Creighton, Mr. Woody

**Opposed:** None

Mr. Hettwer made a motion to open the public hearing. Ms. Howell seconded the motion and it passed unanimously.

**In Favor:** Chairman Black, Mr. Hettwer, Mr. Rash,  
Ms. Howell, Mr. Travis, Mr. Creighton, Mr. Woody

**Opposed:** None

All those testifying were sworn in.

**\*SITE 30-07 WESTMORELAND MINI-STORAGE CUP MINOR AMENDMENT:** Request by owner/developer CARP III, LLC to remove the retail component and reduce parking on the previously approved plan. Zoning: *Highway Commercial*. Acreage: 2.29 acres. Location: 9225 Westmoreland. **\*THIS IS A PUBLIC HEARING.**

Mr. Surane testified that the minor amendment to the previously approved *Conditional Use Permit* is to remove a portion of the retail component on the plan, reduce the parking, and increase the detention pond at the rear of the facility. The original approved *Conditional Use Permit* allowed 9,722 square feet of retail and the proposed amendment will allow 500 square feet. The reduction of trips per day to the site will reduce the parking spaces from 51 to 26 spaces. Architectural elevations approved by Staff will stay the same.

Chairman Black asked if the front elevation will remain the same. Mr. Surane testified that the elevations presented were approved by Staff and will not change by way of the *Conditional Use Permit* amendment. Chairman Black asked about the parking of moving trucks and their location. Ms. Floyd testified that the client has proposed there to be no rental truck parking for the site. Chairman Black asked that the minutes reflect that there will be no vehicles parked out front to display advertising.

Mr. Travis asked for clarification of the store front elevations. Mr. Surane testified that the elevations used for the original *Conditional Use Permit* have changed through the submittal process with Staff and the elevations currently presented are what Staff has approved.

Mr. Creighton asked if any outdoor storage was proposed. Mr. Surane testified that he was not requesting any outdoor storage and nothing beyond what was originally approved.

Mr. Hettwer asked if the building will have the appearance of store front. Ms. Floyd testified that store front glass has been proposed. Mr. Hettwer asked what type of glass will be used.

Mr. James Bennett, Budget Self Storage, was sworn in to give testimony.

Mr. Bennett, Budget Self Storage, testified his family has been in the business for 25 years. Retail glass will be used on the store front in order to display boxes and packing supplies that are available for purchase. No storage units will back up to the retail glass.

Mr. Woody asked if there are any roll doors on the exterior of the building. Mr. Bennett testified that there are no roll doors facing the exterior of the building. There will be roll doors inside the facility along the corridors. Mr. Woody asked if double door width is the largest width for taking items in. Mr. Bennett testified that was correct.

Mr. Travis asked if the facility will be operated as a two story facility and will the glass on the second floor be treated in the same manner as the first. Mr. Bennett testified that it will have a retail type of environment and will present as a retail business from the street.

Mr. Hettwer asked Mr. Surane if he was comfortable with removing the rental trucks completely from the plan. Mr. Surane testified that the moving trucks will only be at the site for purposes of loading and unloading. Mr. Bennett testified it is not a requirement to do business.

Mr. Hettwer asked if the tax parcel correction listed as Condition 5 had been taken care of. Ms. Floyd testified that the parcel identification number was incorrectly noted on the plan.

Chairman Black asked Ms. Floyd if the retail look had been addressed in the Staff conditions. Ms. Floyd testified that the Board could add it as a condition but that the applicant portrayed the glass to be store front glass. Chairman Black asked Mr. Travis to state a Condition 16.

Mr. Travis asked that **Condition 16** read as follows:

*All store front glass indicated on the plan shall be clear glass for all fenestrations and the view beyond the store front will be to hallways or areas for retail purposes.*

Chairman Black asked Mr. Surane if all 16 conditions were acceptable. Mr. Surane testified that they were.

There were no other witnesses to testify.

Mr. Hettwer made a motion to close the public hearing. Ms. Howell seconded the motion and it passed unanimously.

**In Favor:** Chairman Black, Mr. Hettwer, Mr. Rash,  
Ms. Howell, Mr. Travis, Mr. Creighton, Mr. Woody

**Opposed:** None

Mr. Hettwer made a motion to approve SITE 30-07 CUP minor amendment with the 16 conditions as stated. Mr. Creighton seconded the motion and it passed unanimously.

**In Favor:** Chairman Black, Mr. Hettwer, Mr. Rash,  
Ms. Howell, Mr. Travis, Mr. Creighton, Mr. Woody

**Opposed:** None

Chairman Black asked Mr. Travis to present the Findings of Fact for the Board to vote on.

1. The proposed *Conditional Use* is reasonably consistent with the intent, function, and requirements of applicable provisions of the Land Development Code; and,

**YES**, the project maintains the retail use and reduces the parking. 7 in favor, 0 opposed.

2. The proposed *Conditional Use* if developed according to the plan submitted and approved will be visually and functionally compatible to the surrounding area. See *Chapter 4* for additional specifications regarding *Spatial Definition* and *Architectural Compatibility*; and,

**YES**, the project meets all of the prior Staff approvals. 7 in favor, 0 opposed.

3. The proposed *Conditional Use* does not materially endanger the public health or safety and will not substantially injure the value of adjoining property if located where proposed; and,

**YES**, the project meets the Code requirements and does not devalue any adjacent property. 7 in favor, 0 opposed.

4. Adequate provisions and design have been made or will be made to ensure automotive and pedestrian safety and convenience, street connectivity, traffic flow and control, emergency vehicle access, and adequate ingress and egress; and,

**YES**, there is a reduction in car trips per day for the overall development. 7 in favor, 0 opposed.

5. The proposed *Conditional Use* will not adversely impair or substantially overburden the public facilities and infrastructure within the Town and adequate provisions have been or will be made to reasonably address such impacts.

**YES**, there has been a reduction in the overall retail square footage. 7 in favor, 0 opposed.

6. \*The proposed *Conditional Use Permit* for multifamily residences meets the purposes and intent for such development in Section 5.4.1 of the Land Development Code. \*(*only applies to multi-family in the NMX District outside the TDO*).

**N/A**, not applicable.

Mr. Woody made a motion to recess the Planning Board segment of the agenda and open the Board of Adjustment segment. Mr. Hettwer seconded the motion and it passed unanimously.

**In Favor:** Chairman Black, Mr. Hettwer, Mr. Rash,  
Ms. Howell, Mr. Travis, Mr. Creighton, Mr. Woody

**Opposed:** None

Mr. Hettwer made a motion to open the public hearing for Variance 04-07. Ms. Howell seconded the motion and it passed unanimously.

**In Favor:** Chairman Black, Mr. Hettwer, Mr. Rash,  
Ms. Howell, Mr. Travis, Mr. Creighton, Mr. Woody

**Opposed:** None

All those testifying were sworn in.



**\*VAR 04-07 18731 COACHMAN'S TRACE SETBACK VARIANCE:** Request by owner, Paul Whitehead, to modify setbacks from the approved plan for Glenridge, Phase II Lot 40.  
**\*THIS IS A PUBLIC HEARING.**

Mr. Paul Whitehead, 18731 Coachman's Trace resident, testified that he is asking for a variance for his property that was purchased in 2004 from a builder which is no longer in business. The setback violation was brought to his attention when an interested buyer had a survey conducted as a requirement by their lender. Chairman Black asked Mr. Whitehead how the error was found. Mr. Whitehead testified through the survey that was done.

Chairman Black asked Mr. Abernethy to locate the violations on the presented plat. Mr. Abernethy testified that the applicant originally applied for a front yard and right side yard variance. However, the applicant is allowed to encroach into the front yard up to 10 feet and he does comply so a variance is not required for the front yard. Additionally, the right side is allowed to encroach with mechanical equipment (ex. Chimneys) and also meets the setback requirements. The only violation is in the left side yard setback by 7 inches. The required side yard setback is 8 feet.

Attorney Brown asked Mr. Whitehead when he purchased the residence from the builder was it financed through a bank. Mr. Whitehead testified that he did finance through a bank. Attorney Brown asked if a survey was performed at the time of purchase. Mr. Whitehead testified that a survey was not required and he was under the impression that the residence met all of the requirements needed. Because the lender did not require a survey, Mr. Whitehead did not purchase a survey himself. Attorney Brown asked if the builder provided any documents or survey at the time of purchase. Mr. Whitehead testified that the builder provided what was originally recorded and nothing was brought to his attention until the new buyer had a survey done.

Mr. Hettwer asked for confirmation that Mr. Whitehead had no knowledge of the setback violation and that the builder gave the setbacks listed on the original plot plan. Mr. Whitehead testified that was correct.

Mr. Abernethy testified that the building permit was issued on June 5, 2003 and the setbacks listed on permit were 8 feet (left side), 10 (front), and 8 (right side). Mr. Hettwer asked for confirmation that the house was built and now encroaches 7 inches on the left side yard. Mr. Abernethy testified that was correct.

Chairman Black asked if there was a disagreement between two surveyors. Mr. Abernethy testified that only one survey had been conducted. Chairman Black asked if the builder had the property surveyed before the building permit was issued. Mr. Abernethy testified that the plot plan was provided and a survey is not required in order to issue a building permit. Mecklenburg County does not require an as-built survey once completed. Chairman Black stated that primarily it is the mistake of the builder. Chairman Black asked Mr. Whitehead if he has consulted an attorney. Mr. Whitehead testified that he had not.

Ms. Howell asked if there is any way of checking setbacks after the permit is issued. Mr. Abernethy testified that the permits are issued through Mecklenburg County. Staff verifies the zoning and applies the setbacks which are listed on the recorded plat. The burden is then placed on the builder to ensure that the setbacks are met. At this point, the Town does not require an as-

built survey but are considering such requirement due to the recent situations. Ms. Howell stated that surveys are not required and she has run into similar situations in her business.

Mr. Travis made the observation that the builder may have set the house up wrong on the property when looking at the survey and the variance is due to a builder error.

Mr. Woody asked if Staff had looked at the other homes in the neighborhood to see if there may be other variances. Mr. Abernethy testified that Staff had not looked at other potential violations and that the aerial provided in the packet shows that the house as it exists is consistent with the surrounding homes.

Chairman Black stated that additional surveys should be required by the Town in order to prevent these types of errors from occurring.

Mr. Hettwer asked what the setback for the adjacent house was and if there was adequate spacing between the homes. Ms. Howell stated the distance between the houses should be 16 feet as the recorded plat lists side setbacks of each building envelope be 8 feet. Mr. Whitehead testified that he did not know the exact distance between his home and his neighbors. Attorney Brown stated that there is no survey or documentation in the evidence of record that indicates the exact distance.

Mr. Hettwer asked if there was any liability or dangerous precedent being set by allowing this type of variance. Attorney Brown explained that each case is unique and is based on the evidence heard during that particular hearing. Meeting the Findings of Fact is a safeguard to show that there is a hardship beyond the applicant's control and other factors.

Chairman Black asked if the survey provided was the latest survey and accurate. Mr. Abernethy testified that the survey was provided by the applicant as part of the application.

Mr. Hettwer asked Mr. Whitehead how much of an inconvenience would be placed on him if the variance was denied. Mr. Whitehead testified that the entire side of the house would have to be destroyed and reconstructed to be within the guidelines.

Chairman Black asked if there was any other testimony. There was not.

Mr. Rash made a motion to close the public hearing. Ms. Howell seconded the motion and it passed unanimously.

**In Favor:** Chairman Black, Mr. Hettwer, Mr. Rash,  
Ms. Howell, Mr. Travis, Mr. Creighton, Mr. Woody

**Opposed:** None

Mr. Rash stated that in the past there have been similar situations that were not the fault of the owners and were approved.

Mr. Creighton stated the house is still consistent with surrounding neighborhood and with no objections from the neighbors it seems that approving 7 inches should not be a problem, however the owner is partially responsible for not doing his due diligence at the time of purchase.

Chairman Black asked Mr. Hettwer to present the Findings of Fact for the Board to vote on.

1. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance;

**YES**, major reconstruction would have to take place in order to be in compliance. 7 in favor, 0 opposed.

2. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit;

**YES**, the owner was not at fault and was not aware of the violation at the time of purchase and residence is consistent with the rest of the neighborhood. 7 in favor, 0 opposed.

3. In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done;

**YES**, there are no public safety issues and the welfare has been assured. 7 in favor, 0 opposed.

4. That the reasons set forth in the application justify the granting of a variance, and that the variance is a minimum one that will make possible the reasonable use of land or structures.

**YES**, it is not practical to ask the applicant to remove the home. 7 in favor, 0 opposed.

Mr. Woody made a motion to approve Variance 04-07 for 7 inches on the left side setback. Mr. Rash seconded the motion and it passed unanimously.

**In Favor:** Chairman Black, Mr. Hettwer, Mr. Rash,  
Ms. Howell, Mr. Travis, Mr. Creighton, Mr. Woody

**Opposed:** None

Mr. Hettwer made a motion to open the public hearing for Variance 05-07. Ms. Howell seconded the motion and it passed unanimously.

**In Favor:** Chairman Black, Mr. Hettwer, Mr. Rash,  
Ms. Howell, Mr. Travis, Mr. Creighton, Mr. Woody

**Opposed:** None

All those testifying were sworn in.

**\*VAR 05-07 20125 COACHMAN'S WOOD LANE SETBACK VARIANCE:** Request by applicant Gandy Properties to modify setbacks from the approved plan for Weatherstone Manor Lot 47. **\*THIS IS A PUBLIC HEARING.**

Mr. John Carmichael, attorney for the applicant, and also sworn as a witness, introduced the Gandy Properties staff that will testify during the public hearing. Gandy Properties is the owner of property at 20125 Coachman's Wood Lane in Cornelius. Gandy Properties did construct the home located on the lot. The home is currently under contract for sale to a third party. The closing was to occur on October 25, 2007 but has been pushed back to November 15, 2007 because of the setback violations listed on the Variance application. Since the home was completed, Gandy

Properties discovered that portions of the home encroach into the required 20 foot front setback and into the required 8 foot side yard setback located on both the eastern and western sides of the property. As a result, Gandy Properties is requesting four separate Variances. The first variance is a .6 feet into the front setback, which is about 7.2 inches that represents a 3 percent deviation from the required 20 foot front setback and there is only a portion of the home that actually encroaches into the front setback, it is not the entire front setback, just the southeastern tip of the home as you look at the survey. The second variance is .4 foot on the western side yard setback that represents a 5 percent deviation from the requirement, which is about 4.8 inches. The third variance is a .8 foot eastern side yard setback, which is about a 10 percent deviation, of 9.6 inches. Finally, the northeastern corner of the survey where it states “covered patio”, is the fourth requested variance, which is 6.7 feet into the 8 foot required side yard setback. Exhibit E (*Attachment 5*) shows the property to the east is owned by the home owners association. Mr. Carmichael asked Ms. Lisa Valdez of Gandy Property to discuss the timeline, three surveys, construction of the home, and clarify the variances being requested.

Ms. Lisa Valdez, Gandy Communities, testified that she manages the Land Acquisition Development Department for Gandy. Back in March after the house was completed, an as-built survey was done. Prior to that, a plot plan is done that sits the house on the property to make sure that everything is within the setbacks. Mr. Gandy will testify later to the different stages at which the surveying is done; where the house is rough staked, the corners are pinned, and then the last step being the final survey. Eagle Engineering prepared the final survey and provided a copy on March 30<sup>th</sup>, 2007. Exhibit A (*Attachment 1*) is a copy of that survey showing no encroachments. The Certificate of Occupancy was issued on April 12, 2007 at which point the house was put on the market and listed. On October 6, 2007, Mr. and Mrs. Patel submitted a contract and the property was put under contract for them to purchase the home with a closing date scheduled for October 25, 2007. The buyer had a second party survey done, Exhibit B (*Attachment 2*), prepared by Craig Long which showed encroachments on the western, eastern, and front setbacks of the property. Mr. Carmichael asked Ms. Valdez to describe the encroachments. Ms. Valdez testified that on Craig Long’s survey, the western side of the property shows a 2.4 inch encroachment, on the front left side there shows a 2.4 inch encroachment, the rear left side shows a 4.8 inch encroachment, and the front shows a 7.2 inch encroachment on the front right corner of the house. Neither survey done by Eagle Engineering or Craig Long showed the cover porch as an encroachment. Because there were two different surveys that did not agree, a third surveyor, James Kovacs, prepared a third survey, Exhibit C (*Attachment 3*). On the third survey, there were no encroachments shown on the front left side but the rear left side showed a 3.6 inch encroachment. Ms. Howell interrupted Ms. Valdez because the exhibits being referenced were not part of the packet. Mr. Carmichael asked Ms. Tonya Harris to distribute copies to each board member. Attorney Brown stated that the numbers being used did not match with the numbers listed in the packet. Ms. Valdez testified that the numbers listed in the packet should match those on Craig Long’s survey. Mr. Carmichael testified that the most conservative number between the surveys is what is being requested. On Exhibit C, the rear left corner of the house had an encroachment of 3.6 inches and 6 inches on the front in the same area which differed from Mr. Long’s survey. The back right rear corner of the house shows a 9.6 inch encroachment and that the covered porch encroached by 6.7 feet into the side yard setback. Exhibit D (*Attachment 4*) introduced by Ms. Valdez was photographs depicting each setback violation. The closing has been rescheduled for November 15<sup>th</sup>. The buyer currently lives in Virginia and needs to move prior to November 20<sup>th</sup>, as they are leaving the country for several months. Mr. Carmichael asked Ms. Valdez if a conversation with Eagle Engineering took place after the setback violations were

discovered. Ms. Valdez testified that a call was made to Eagle inquiring why their survey showed no encroachments. The explanation given by Eagle was that they round up on the measurements and that was standard practice to the degree that the Town ordinance allows it. This lead Gandy Properties to believe they had a house built within the required setbacks and were not aware of the violations until Craig Long's survey showed the discrepancies. Mr. Carmichael asked Ms. Valdez if the Variance were granted as to the front setback, would there be any impact on the streetscape or how the homes appear. Ms. Valdez testified that the encroachment is not obvious to the naked eye and referenced back to the pictures shown in Exhibit D.

Mr. Hettwer asked if every house was to be built on the setback, why did Gandy Properties not make sure that was correct. Mr. Carmichael testified that their presentation was not finished and Mr. Quinton Gandy, the general contractor will testify to the procedures that are followed for locating each house on the lots. Mr. Hettwer stated that if each house is built to the setback, eventually it will come back to bite them. Ms. Valdez testified they believed they were within the setbacks and had checks and balances in place to avoid problems such as this particular case.

Mr. Quinton Gandy, the president of Gandy Communities and a member of Gandy Properties LLC, testified that the procedures followed is to construction stake the house twice to ensure it is within the building envelope and then survey when the house is complete. Each home is surveyed three separate times and on no occasion did there seem to be any issues according to the surveyor. The surveyor is a registered surveyor with the state of North Carolina and was trusted for accuracy. There was no indication that the house was outside the building envelope until the buyer had their own survey done. Mr. Hettwer asked if Craig Long was bonded by the state as well. Mr. Gandy testified that he was sure he was.

Chairman Black asked who stakes the house and how it is done. Mr. Gandy testified that the surveyor stakes the corners of the house, the foundation of the house is built to the stakes, then the surveyor pins the house. The metal pins are more precise and that is what is used to build the house.

Ms. Howell asked if there have been previous problems with Eagle Engineering. Mr. Gandy testified that mistakes have been made but have been minimal. Approximately 300 homes a year are constructed and maybe a problem will occur every other year. Ms. Howell asked if Eagle Engineering is bonded. Mr. Gandy testified that we was not sure but assumed that they were.

Mr. Travis asked if the pins are pinned to the framing or brick veneer. Mr. Gandy testified that the homes are pinned to the brick veneer. Mr. Travis asked at the time the house was pinned if the house was within the required setbacks. Mr. Gandy testified that to be correct. Mr. Travis asked if the this was a field error. Mr. Gandy testified the house was built to what was surveyed and what was actually built was according to the original pinning. Mr. Gandy testified that in his opinion the error was a surveying error.

Mr. Woody asked about the differences in photographs and surveys of the wooden deck and which was correct. Ms. Valdez testified that as of today none were correct. The first survey was done as Gandy Properties installed the deck. The buyer, as part of the contract, asked for the deck to be extended which is reflected in Mr. Long's survey. As of today, portions of the deck have been removed to get in line with the setback requirements. Mr. Woody asked if the deck is on a 3 foot or 5 foot setback. Ms. Valdez testified the deck to be on a 3 foot side setback. Ms. Howell stated

that encroachments are allowed for decks on side and rear setbacks and then asked for clarification. Mr. Abernethy testified that the pictures taken were dated November 2<sup>nd</sup> and that Staff had done a site visit earlier in the day and a portion of the deck had been removed. The plat specifies the side yard setback for accessory structures not attached to the house to be 3 feet on the side yard and 5 foot on the rear yard. Ms. Valdez testified that the third survey done did reflect the correct placement of the deck as it exists.

Mr. Black asked if the setback measurements are measured to the drip line of the roof or to the foundation. Mr. Abernethy testified that the *Code* specifies it to be the shortest horizontal distance from the property line or right-of-way to the nearest point or leading edge of the structure or supporting member, whichever is nearest to the property line or right-of-way. Chairman Black asked if that meant to the footprint of the house or the drip line. Mr. Abernethy testified it to mean the footprint of the house.

Mr. Travis asked for clarification for the covered patio area that is attached to the house. Mr. Abernethy testified that Section 5.2.4 defines open decks and patios are permitted to encroach into the rear setback within 5 feet of the property boundary and further defines the open deck or patios as permanent uncovered accessory structures that project from the existing principle use. That leaves the area covered as encroaching and is not allowed.

Mr. Carmichael asked Mr. Gandy to testify as to the difficulty of bringing the home into compliance. Mr. Gandy testified that the house would have to be rebuilt. The exterior walls would have to be moved and portions of the foundation would have to be removed. Mr. Carmichael asked if the modifications would impair the aesthetics of the house. Mr. Gandy testified that it would impair the aesthetics of the house and porch. The porch is currently covered and does encroach but to uncover the porch would also impair the aesthetics, as well as, the intended buyer desires the porch remain covered.

Mr. Creighton asked if any effort had been made to talk to the surrounding land owners in order to purchase some land and bring the home into compliance. Ms. Valdez testified they had just spoken with Mr. Lambert who lives on the western side of the property and explained what the encroachment was. When looking at his survey, which was also done by Eagle Engineering, and based on the survey his side yard setback is listed at 8.5 feet, so there is 5 inches of leeway on Mr. Lamberts survey. No formal discussions or offers of purchase have taken place. There have been some discussions between brokers and attorneys, of the property owned by the homeowners associations, however, it is listed as common open space and their declaration requires 80% of the property owners would need to agree or convey any of the property. Chairman Black asked who controls the HOA. Ms. Valdez testified to her understanding the residents control the HOA.

Mr. Rash asked which survey is being asked to be approved, Exhibit B or Exhibit C. Mr. Carmichael testified it to be a combination between the two. Attorney Brown asked if the request is for the most conservative, most encroaching violation of any of the three surveys to compile the four encroachments in need of the four Variances. Mr. Carmichael testified that to be correct. Attorney Brown asked what the specific encroachment inches were. Mr. Carmichael testified that the front setback variance is for 7.2 inches, the western setback variance is for 4.8 inches, the western corner is for 9.6 inches, and the side rear covered patio area is for 6.7 feet. Mr. Carmichael further testified that the practical difficulties or unnecessary hardships would be to reconstruct a major portion of the home. There would be no public safety or welfare issues and no

negative impact on the surrounding area. Three of the variances are minor and the fourth variance is much more than the others but is located next to the property owned by the homeowner's association.

Mr. Hettwer asked if the root of the error was that the surveyor was rounding the numbers. Mr. Carmichael testified that there was a pinning error. Mr. Gandy testified that they went back to Eagle Engineering after the buyer's survey showed discrepancies, at that time Eagle Engineering explained the reason for the differences was because they round up to the nearest foot. Mr. Hettwer asked for clarification on who has control of the HOA, the home owners or developer. Mr. Gandy testified that they are not the developer of the subdivision but just a builder within the subdivision. Ms. Valdez testified that Gandy Properties had purchased three lots in the community. The error on the pinning of the house would have been caught a lot sooner if Eagle Engineering had not rounded up.

Mr. Woody asked how much additional square footage is gained. Mr. Gandy testified he had not calculated it out but it will be minimal.

Attorney Brown asked Mr. Gandy how many of the 300 homes a year are surveyed by Eagle Engineering. Mr. Gandy testified most of them. Attorney Brown asked who placed the construction stakes. Mr. Gandy testified Eagle. Attorney Brown asked who placed the pins. Mr. Gandy testified Eagle. Attorney Brown asked if Eagle did the measurements off the stakes, the pinning, and the as-built survey. Mr. Gandy testified yes. Attorney Brown asked if any notice of claim, demand, or notice been made against Eagle or any of the other surveyors for professional liability and damages. Mr. Gandy testified no. Attorney Brown asked if any legal action has been taken against Eagle Engineering. Mr. Gandy testified no. Attorney Brown asked if Eagle Engineering had liability insurance that would cover the loss of the construction and the profit from the sale. Mr. Gandy testified that he was not sure if they did but assumed they did. Attorney Brown asked what the intended course of action was going to be if the Variance was denied. Mr. Gandy testified that he had not decided. Attorney Brown stated he was trying to determine if Gandy Properties had any financial hardship or whether it would be covered by the liability of the surveyor. Mr. Gandy testified that there is definitely a hardship for someone. Mr. Carmichael testified that the first party impacted would be Gandy Properties not the surveyor. If the Variance is denied, Gandy Properties will be making the corrections, lose a sale, and then would have to file a lawsuit against the surveyor and wait to go through the court system. Attorney Brown asked if Mr. Carmichael was denying there to be a remedy that could make them whole. Mr. Carmichael testified he was unsure if they could be made whole but it's possible.

Attorney Brown asked why there are differences between the second and third surveys. Ms. Valdez testified that after speaking to the third surveyor about the differences it was explained that the call lines for each surveyor will rarely match up. The numbers will be close but not exact.

Mr. Creighton asked what type of checks and balances have been put in place to avoid these types of issues. Mr. Gandy testified that staking the house twice was a good way to ensure the homes are built within the building envelope.

Chairman Black asked if Eagle Engineering still works for Gandy Properties. Mr. Gandy testified that they do.

Mr. Travis asked how it is determined that a house will fit on a particular site. Mr. Gandy testified that the surveyor does a plot plan by actually setting the house on the plat. Mr. Travis questioned how the covered patio was considered encroaching. Ms. Valdez testified that after the second survey was done she spoke to Mr. Abernethy who defined what a covered porch was and that it was also an encroachment.

Mr. Carmichael testified that it is an imperfect world and that Variances are for when mistakes are made and are fairly minimal. A lot of things should have been different, however, there is not much of an impact on the adjoining property owners and would not set a dangerous precedent.

Chairman Black asked if there was any other testimony.

Mr. Robert Lambert, 20115 Coachman's Wood Lane, testified that he lives to the immediate left of property being discussed. The three lots of Gandy Properties are side-by-side, Lots 46, 47, and 48. As a homeowner, he is concerned with his own property because Eagle Engineering did the surveying for that as well. Also, his last home in Oakhurst which was purchased from Gandy Properties and surveyed by Eagle Engineering had a surveying error. The survey received at the time of purchase was one way and then when the house to the immediate right was built he questioned an encroachment at which time a different survey was produced with the explanation that a mistake had been made on the original survey. The new survey showed they stole about 8 inches from the right side of his property without going through the Board of Adjustment. Mr. Lambert testified that he is very concerned that Gandy Properties is still using Eagle Engineering and where his property stands with the ability to sell it in the future. The three homes built on the property available have made things very tight.

Mr. Hettwer made a motion to close the public hearing. Ms. Howell seconded the motion and it passed unanimously.

**In Favor:** Chairman Black, Mr. Hettwer, Mr. Rash,  
Ms. Howell, Mr. Travis, Mr. Creighton, Mr. Woody

**Opposed:** None

Mr. Rash clarified that when referring to "build to the Lot line" it should be referred to as building to the building envelope line.

Mr. Rash clarified that there are 4 items of consideration for the Variance not three. Mr. Abernethy testified that Staff looks at setbacks from the front to the rear of the property and if they encroach, the shortest distance is what is considered as the setback.

Ms. Howell commended Gandy Properties for doing multiple surveys because it is rarity. The clear problem is with Eagle Engineering and there is a concern when considering this case. The builder is not at fault.

Chairman Black questioned why the error would not have shown immediately when the building envelope is outlined with dotted lines.

Mr. Hettwer stated that he prides himself on bringing common sense, being business friendly, and what is fair for the citizens. His struggle is with messing up four different items. It was missed in every direction. The other concern is that if a developer is sitting in the audience, by granting this



variance, it says encroachments don't mean anything, build it the way you want, and then ask for forgiveness. It is a dangerous precedent even though a precedent is not being set.

Mr. Creighton stated if you are in the business of development, it is your job as the developer to make sure that everything complies with the local ordinance and he is having hard time not thinking this case is an issue between business to business.

Ms. Howell asked if the Board would consider granting one or two the Variances and denying one or two. Chairman Black stated that they have been presented as one. Attorney Brown explained there is a request for four Variances and in theory they could be divided but the same evidentiary base will apply for each separate Variance and it will be difficult to make distinctions or variations among the four just based on the evidence heard. Ms. Howell stated that each Variance is very different, one is an entire side of a house, a cover porch, and the other two are front setback issues. Attorney Brown stated that he does not disagree that they are varying in where they are and how big or small but how they got there and why they are in place does not vary.

Chairman Black asked Mr. Rash to present the Findings of Fact for the Board to vote on.

1. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance;

**YES**, because part of the building would have to be reconstructed, torn down, and foundation removed at a great expense and inconvenience. The builder did try to make sure that things were correct by doing several surveys.

Mr. Rash made a motion for "YES" on Findings No.1. Ms. Howell seconded the motion. The motion failed – 2 Yes/5 No.

**In Favor:** Mr. Rash, Ms. Howell

**Opposed:** Chairman Black, Mr. Hettwer, Mr. Travis, Mr. Creighton, Mr. Woody

Mr. Creighton then made motion for "NO" on Findings No.1.

**NO**, there is no quantified hardship for the developer and little effort has been made to meet the proper setbacks.

Mr. Hettwer seconded the motion and the motion passed, 5 Yes/2 No.

**In Favor:** Chairman Black, Mr. Hettwer, Mr. Travis, Mr. Creighton, Mr. Woody

**Opposed:** Mr. Rash, Ms. Howell

As Findings No. 1 failed, Mr. Hettwer made a motion to deny the Variance. Mr. Creighton seconded the motion and the motion passed, 5 Yes/2 No.

**In Favor:** Chairman Black, Mr. Hettwer, Mr. Travis, Mr. Creighton, Mr. Woody

**Opposed:** Mr. Rash, Ms. Howell

Ms. Howell asked if there was a time limit preventing an applicant from applying for another Variance with a different plan. Attorney Brown said there is no sunset but if it is a request for the exact same Variance there could be some legal issues. Mr. Abernethy stated there is nothing in the *Code* that would prevent them from reapplying with a different plan for a variance.

Mr. Hettwer made a motion to close the Board of Adjustment segment and reconvene the remainder of the Planning Board agenda segment. Mr. Creighton seconded the motion and it passed unanimously.

**In Favor:** Chairman Black, Mr. Hettwer, Mr. Rash,  
Ms. Howell, Mr. Travis, Mr. Creighton, Mr. Woody

**Opposed:** None

**TA 11-07 PARKING:** Proposed Text Amendment to Chapter 7 of the *Land Development Code* to increase required parking for commercial uses.

Chairman Black explained the text amendment would allow for a stricter standard for commercial parking. It applies more parking spaces per square foot. Staff and the Town have had complaints about the parking requirements in commercial uses.

Mr. Abernethy stated the text amendment is a direct result of direction given by the Planning Board and the Board of Commissioners to evaluate the parking requirements to ensure adequate parking in all situations. The text amendment was presented to the Land Development Code Review Committee and the text as written has been recommended.

Mr. Hettwer asked when the change would go into effect if approved. Mr. Abernethy stated that any existing approved site plan would not be subject to the changes but everything submitted after Town Board approval would be.

Mr. Rash asked how wide the spaces are required to be. Mr. Abernethy stated 9'x19'.

Mr. Creighton asked if there are specific sites for reference. Mr. Abernethy stated that St. Andrews Place is the biggest where McAllister's Deli is located.

Mr. Travis asked what the standards are for the neighboring towns. Mr. Abernethy consulted Huntersville, Davidson, Charlotte and Concord as well as the standard ITE practices for parking requirements and this is in line but still pretty conservative.

Mr. Hettwer stated that 1 space per 400 square feet is not enough and disclosed that he will be voting against himself for a future project but it is the right thing to do.

Mr. Woody made a motion to recommend approval of the text amendment. Mr. Creighton seconded the motion and it passed unanimously.

**In Favor:** Chairman Black, Mr. Hettwer, Mr. Rash,  
Ms. Howell, Mr. Travis, Mr. Creighton, Mr. Woody

**Opposed:** None

**TA 13-07 DIGITAL FILES:** Proposed Text Amendment to Chapter 13 of the *Land Development Code* to require submission of digital files for all approved plans.

Mr. Abernethy explained the text amendment is simply to modernize the Planning processes and make sure there are digital files readily available. The cost is insignificant to the developer by submitting on a CD that will then be downloaded to the Planning server.

Mr. Creighton asked if there are any developers that are not able to provide digital files. Mr. Abernethy stated he didn't know of any that could not provide digital copies.

Mr. Mark Puckett, resident on Floral Lane, commented on the posted site plan for Village at Lake Norman and it not being legible. Mr. Abernethy stated that particular file was scanned from Town Hall and not the fault of developer.

Mr. Hettwer made a motion to recommend approval of the text amendment. Mr. Travis seconded the motion and it passed unanimously.

**In Favor:** Chairman Black, Mr. Hettwer, Mr. Rash,  
Ms. Howell, Mr. Travis, Mr. Creighton, Mr. Woody

**Opposed:** None

**REZ 02-07 THE VILLAGE AT LAKE NORMAN:** Request by owner, Joe Cooke and developer, Bromont Investments, LLC to rezone 104.699 acres on the southwest corner of Westmoreland @ Statesville Rd. from *Highway Commercial* and *Neighborhood Residential* to *Highway Commercial Conditional District* and *Village Center Conditional District* to construct a mixed-use retail/residential development.

Chairman Black gave a brief introduction to the project and explained it is a work in progress. Staff has been working with principle developer for over a year. The Applicant will unveil the project and Staff will give background on progress to date. Next month at the regular Planning Board meeting a workshop type meeting will be held to take public comment.

Mr. Travis disclosed that he had a potential client for the multi-family portion of the development. Mr. Hettwer stated that he is confident that Mr. Travis will look to the best interest of the Town. The Board did not see a need to excuse Mr. Travis.

Ms. Susan Irvin, representing Bromont Investments, LLC, introduced Mr. Josh Rector of Bromont Investments, LLC and Mr. Brian Jenest, of Cole Jenest and Stone. Mr. Rector further introduced traffic experts from Kimley Horn, technical experts from Cole Jenest and Stone who can answer design issues, and experts from Butler Associates to answer any architectural questions. Also, a website [www.corneliusbromont.com](http://www.corneliusbromont.com) has been created for any comments, questions, or suggestions.

Mr. Brian Jenest, a landscape architect of Cole Jenest and Stone, gave an introduction presentation of the project (*Attachment 6*). The process started in June 2006. The site is approximately 100 acres and is bound by I-77 to the west, Hwy 21 to the east, Westmoreland Road to the north, and Grace Covenant Church to the south. The existing zoning map shows Highway Commercial approximately 18 acres, Highway Commercial Conditional District of 16 acres, Neighborhood Residential of 54 acres with approximately 110 single family lots.

Mr. Steve Blakely, Kimley-Horn Associates, has been working with developer, the Town, NCDOT, and Federal Highway Administration on transportation as it relates to the project. A presentation was given to show the elements involved for review and approval (*Attachment 6*) and what the development components will be for transportation and improvements.

Chairman Black asked the Board members and the public to pose a list of questions and concerns to Staff in order to avoid redundancy at the December workshop. Mr. Creighton asked what email address should be used. Ms. Floyd stated that all emails should go to her at [kfloyd@cornelius.org](mailto:kfloyd@cornelius.org) with the subject line as Village at Lake Norman.

Mr. Hettwer stated that for every project his concern is always preserving the quality of life for the citizens and knows that the applicant is working diligently to ensure that is the case.

Mr. Travis applauded the design team on the presentation given, the overview was a great start. Ms. Floyd announced that copies of the illustrative design were on the back table and also available in the Planning Department at any time.

Ms. Irvin stated that the developer does consent to the approval process that has been set in place for the project exceeding Code review time limits and will confirm this in writing.

Mr. Hettwer made a motion to continue consideration of REZ 02-07 Village at Lake Norman to the December 10<sup>th</sup> meeting. Ms. Howell seconded the motion and it passed unanimously.

**In Favor:** Chairman Black, Mr. Hettwer, Mr. Rash,  
Ms. Howell, Mr. Travis, Mr. Creighton, Mr. Woody

**Opposed:** None

### **NEW BUSINESS**

No new business.

### **ADJOURNMENT**

Mr. Woody made a motion to adjourn the meeting at 9:30PM. Mr. Hettwer seconded the motion and it passed unanimously.

**In Favor:** Chairman Black, Mr. Hettwer, Mr. Rash,  
Ms. Howell, Mr. Travis, Mr. Creighton, Mr. Woody

**Opposed:** None

Respectfully Submitted:

\_\_\_\_\_  
Parker Black  
Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
Lori Pearson  
Secretary

\_\_\_\_\_  
Date









18727

VIRGINIA TECH  
COOKIES

CPI

Exhibit J





Exhibit K





## TOWN OF CORNELIUS

### Variance FINDINGS OF FACT

<b>Owner/Project: Alexis &amp; Justin Blackford</b>	<b>Case #: VAR 06-16</b>
<b>Acreage: .14</b>	<b>Tax Parcel(s): 005-382-77</b>

The Planning Board, in considering an application for a variance, shall give due consideration to the following:

- The citing of other nonconforming or conforming uses of land or structures in the same or other districts, shall not be considered grounds for the granting of a variance.
- The request for a variance for a particular use expressly, or by inference, prohibited in the district involved, shall not be granted.

The Planning Board may only grant a variance, having first held a public hearing on the matter and having made the following determinations:

- A. There are unnecessary hardships resulting 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.

☐ YES

☐ NO

The decision to make this finding is based on the following facts: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

☐ YES

☐ NO

The decision to make this finding is based on the following facts: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



- C. The hardship does 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.

☐ YES

☐ NO

The decision to make this finding is based on the following facts: \_\_\_\_\_

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

☐ YES

☐ NO

The decision to make this finding is based on the following facts: \_\_\_\_\_

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## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: January 9, 2017

To: Planning Board Members

From:

Action Requested:

Manager's Recommendation:

<b><u>ATTACHMENTS:</u></b>		
Name:	Description:	Type:
No Attachments Available		