



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

**Agenda
August 12, 2019
6:30 PM
Assembly Room**

- 1. Call To Order**
- 2. Determination of Quorum**
- 3. Approval of Minutes**
 - A. July 08, 2019 Minutes**
- 4. Public Hearing and Consideration of Approval**
 - A. SUP 01-19 Chase Bank**
- 5. Old Business**
 - A. Land Use Plan Discussion - Westmoreland Road**
- 6. New Business**
- 7. Election Of Chair & Vice Chair**
- 8. Next Meeting**
- 9. Adjournment**

REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: August 12, 2019

To: Chair and Planning Board Minutes

From: Summer Smigelski, Planning Admin.

Action Requested:

Review Approval of Minutes

Manager's Recommendation:

Approval

ATTACHMENTS:

Name:	Description:	Type:
 Minutes_07082019_Draft - Copy.docx	July 08, 2019	Backup Material

Minutes

TOWN OF CORNELIUS PLANNING BOARD

Assembly Room

July 08, 2019

6:30 p.m.

Members Present

Keith Eicher, Chair
Phil Bechtold, Alternate
Edward Marxen, Alternate
Michael Osborne
Cameron Bearder, Alternate
Joseph Dean
Susan Johnson
Hardy McConnell

Members Absent

Lee Peterson, Vice Chair
Danielle Miller

Staff Present

Summer Smigelski, Admin. Assistant
Gary Fournier, Planner
Aaron Tucker, Planning Director

VISITORS

See Sign-In Sheet

DETERMINATION OF QUORUM

Vice Chair Peterson called the Planning Board meeting to order at 6:29 pm and noted there was a quorum present.

APPROVAL OF MINUTES

Mr. Osborne made a motion of approval for the June 10th, 2019 Minutes. Mr. Dean seconded. All in favor, motion approved.

In Favor: Mr. McConnell, Mr. Dean, Mr. Eicher
Ms. Johnson, Mr. Bechtold, Mr. Bearder
Mr. Osborne

Opposed: None

VAR 02-19 Baltic Drive

Staff provided a brief overview of the changes made by the applicant. Staff asked that the board make a motion to hear or deny hearing case VAR 02-19 Baltic Drive based on evidence of substantial changes in the conditions or circumstances of the matter.

Mr. McConnell made a motion to hear VAR 02-19 Baltic Drive. Ms. Johnson seconded. All in favor, motion approved.

In Favor: Mr. McConnell, Mr. Dean, Mr. Eicher
Ms. Johnson, Mr. Bechtold, Mr. Bearder
Mr. Osborne

Opposed: None

Ms. Johnson made a motion to open the public hearing. Mr. Bechtold seconded. All in favor, motion approved.

In Favor: Mr. McConnell, Mr. Dean, Mr. Eicher
Ms. Johnson, Mr. Bechtold, Mr. Bearder
Mr. Osborne

Opposed: None

Chair Eicher Reads:

What is a Variance

A variance is a request to deviate from current zoning requirements. If granted, it permits the owner to use his land in a way that is ordinarily not permitted by the zoning ordinance. It is not a change in the zoning law, but a waiver from the requirements of the zoning ordinance.

This hearing is a quasi-judicial evidentiary hearing. That means it is like a court hearing. State law sets specific procedures and rules concerning how this board must make its decision. These rules are different from other types of land use decisions like rezoning cases.

The board's discretion is limited. The board must base its decision upon competent, relevant, and substantial evidence in the record. A quasi-judicial decision is not a popularity contest. It is a decision constrained by the standards in the ordinance and based on the facts presented. If you will be speaking as a witness, please focus on the facts and standards, not personal preference or opinion.

Participation is limited. This meeting is open to the public. Everyone is welcome to watch. Parties with standing have rights to participate fully. Parties may present evidence, call witnesses, and make legal arguments. Parties are limited to the applicant, the local government, and individuals who can show they will suffer special damages. Other individuals may serve as witnesses when called by the board. General witness testimony is limited to facts, not opinions. For certain topics, this board needs to hear opinion testimony from expert witnesses. These topics include projections about impacts on property values and projections about impacts of increased traffic. Individuals providing expert opinion must be qualified as experts and provide the factual evidence upon which they base their expert opinion.

Witnesses must swear or affirm their testimony. At this time, we will administer the oath for all individuals who intend to provide witness testimony.

Chair Eicher called forward anyone wishing to testify to be sworn in by the Board Secretary.

Ms. Smigelski swore in applicant's and Town staff.

How Voting Works

State law requires a four-fifths majority of the board to grant a variance.

Chair Eicher recognized Town staff to present VAR 02-19 Baltic Drive

Mr. Fournier: "Chairman and members of the Board. My name is Gary Fournier and I will be presenting VAR 02-19 Baltic Drive. The proposed property is located at 21529 Baltic Drive. The Applicant is seeking a variance from the 40' Lake Norman Watershed buffer per Town of Cornelius Ordinance number 91-00039. The applicant is asking for relief in the way of an encroachment into the 40' Lake Norman Watershed buffer to allow for the placement of a driveway and walkway. Staff will present testimony at the hearing that covers the following basic facts and will introduce the Town exhibits into evidence. The subject property is within the Town of Cornelius Zoning jurisdiction and is zoned General Residential (GR). The property is shown on the Zoning Map as Exhibit A, Aerial Vicinity Map as Exhibit B, and Aerial Property Map as Exhibit C. Town Ordinance 91-00039 was adopted by the Town Board on 1/18/1991 to amend the zoning map and establish 22 conditions. Parcel number 001-78-117 is subject to these conditions. Condition number 19 states that "A forty (40) foot setback shall be maintained from Lake Norman for all single-family, parking, and amenity structures." A driveway is considered a parking structure. This buffer is defined as a watershed buffer. Therefore, in accordance with section 16.1, the Planning Board shall serve as the Watershed Review Board. Town Ordinance 91-00039 shown as Exhibit D. The Applicant has submitted a Town of Cornelius Variance Application, a property survey, and two site plans of the proposed driveway and walkway encroachment. The Variance Application is shown as Exhibit F, the survey as Exhibit G, and the two site plans as Exhibits H and I. Staff visited the property and took two pictures which are shown as Exhibits J and K. Staff has also provided a birdseye view photo of the property which is shown as Exhibit L. That concludes staff presentation.

Mr. McConnell: "Because of the driveway in this impervious surface, is there a requirement for erosion control for water runoff?"

Mr. Fournier: "That we handle during the construction phase. That is enforced by Mecklenburg County."

Mr. McConnell: "I mean any permanent type of material that would have to be put there to control any erosion?"

Mr. Fournier: "Just grass."

Chair Eicher thanked staff and asked for the applicant to please come forward.

Applicant: "My name is David Murray. I'm an attorney with the Odom Firm at 1109 Greenwood Cliff, Charlotte, North Carolina 28204. Thank you for being here tonight and thank you for hearing from me. I was not involved with this first hearing. This is the first time I have appeared for a variance in Cornelius. I have been practicing zoning and land use for approximately 11 years, so I am very familiar with the process. I have represented for owners in the city of Charlotte. However, its different because in the city of Charlotte they ask for footage you want to pull back. If you have forty feet you ask for a variance that's maybe a ten-foot reduction. Here we are looking at square footage. When I was first brought in to work on this situation what I looked at was, how do we reach the minimum encroachment to develop this site? It was platted in 1996 or 1997. Clearly the intent of the plat and the Town and the County was that there would be a house on this property. The problem is though there is literally no way to get a driveway from Baltic Drive to a house on this property without going through the buffer. When I was looking at this the first thing I said was I need an expert to assist me on this. I hired Ann Scott at DBR Associates, which is a landscape, architecture, civil engineering firm in Charlotte. To prepare this site plan and the Ariel plan here. I think what's really important when you look at this site is the property line comes in substantially, however, there is a lot of buffer between the property line and the lake. When you look at where this encroachment is, it's almost in the middle of the Peninsula that (Inaudible) on this property. This driveway is not directly against the lake, it runs toward the middle. Another thing that is very important to remember here is that the encroachment is basically begins beyond the neighbor's properties. We have a right to put a

driveway all the way down to where the red begins without a variance and so that driveway will go between the adjacent properties. The variance and the encroachment does not begin until we are beyond the adjacent properties. Its only once we are fully into our parcel not in between as you can see the lake is on both sides where the variance is need, that is important because regardless of whether there's a variance or not the neighbors would have a driveway between the two properties, however, we can't get to the house without a variance. What we are here to talk about and really focus on is a hardship because that is what a variance seeking. The hardship is you cannot get a driveway from Baltic Drive to the buildable envelope on this property without going through the buffer and so if a variance is not granted then no driveway can get from Baltic Drive to the house that's on this property. Ann Scott, who I will call up in just a second, when she was hired to look at this we looked at how we balance the encroachment versus the ability to develop this site because on all the adjacent properties that surround this property including outside of this subdivision, all those properties because of the standard nature of their property shape the driveway and sidewalk is in the front setback but we do not have that ability here. We must be able to get around a right angle to get to this property and then figure out how we develop a house and minimize the encroachment because we needed a driveway and also a way to get to the front door because a sidewalk is also encroachment. Whether this is gravel or asphalt or whatever it is, gravel is an impervious surface in Mecklenburg County, so its not something we can simply put down gravel to get away with not having to have a variance. A variance is required whether there are pavers, gravel, any of those types of uses. Mr. McConnell, I believe you asked about during construction, the Mecklenburg County requirement is that there is silk fencing and other actions that the developer must make when doing construction. On top of that if there is any vegetation that is removed as part of the variance the county requires what is called a remediation plan that must be submitted at the time of the permit. An example, we had one in Charlotte recently when a tree is removed another tree must be planted between where that tree was removed and the lake. Those would be requirements that the County would require if this variance is granted. As far as other issues I will call Ann up to have her answer some questions I put together.

Ms. Scott: "Hello, my name is Ann Scott. I'm a resident of Waxhaw, North Carolina but I do extensive work in Charlotte.

Mr. Murray: "Can you tell the board about your employment, education, and license."

Ms. Scott: "I'm a landscape architect and I'm registered in the state of North Carolina. I have been practicing for almost forty years now with DBR Associates. We are landscape architect and planners. We do a lot of residential and commercial development in Charlotte and all the surrounding counties."

Mr. Murray: "The first time I came in contact with a landscape architect, I did not know exactly what they do, can you explain to the board just incase they do not know?"

Ms. Scott: "There is a lot of different avenues you can take with the profession. What I do in my field is I experience is more land planning, we do all the site planning where buildings, roads, and parking all come together even to the engineering part of the topo and the drainage. That is basically what I do."

Mr. Murray: "So you have previous experience dealing with watershed buffers (Inaudible)?"

Ms. Scott: "Yes, Lake Norman, Lake Wylie, Catawba River, we are currently working with a couple large residential developments in Mount Holly on Mount Island Lake, and I have recently done a park along the Catawba River where we had to go through the buffer permit for that."

Mr. Murray: "On the variance I referenced for the City of Charlotte, did you do the site planning on that?"

Ms. Scott: "Yes."

Mr. Murray: "Can you explain to the board what you did here on this plan or I can go the previous plan."

Ms. Scott: "Just looked at how to bring the driveway down through the neck and around the corner and how to put the garage on the side to minimize the driveway. I think the previous plan had a little skinny ribbon going through that wasn't to the dimension that a driveway would need to be, so we looked at the width of the drive and tapered it out more where we have the three-car garage (inaudible)."

Mr. Murray: "As a procedural matter I need to tender Ms. Scott to the board as an expert in landscape architecture and site planning."

Chair Eicher: "How much of the area here will remain vegetation?"

Ms. Scott: "That depends on the final footprint, but the intent would be as much as possible. It would probably need to be at least a five or ten foot clearing just for construction."

Chair Eicher: "In this area, which is all beyond the property line, will not be touched at all?"

Ms. Scott: "Yes, that is beyond the beyond the property line, so they are not supposed to."

Mr. Bechtold: "Can you go back to the Ariel view? I maybe not reading this correctly but how is this property line going through this house?"

Ms. Scott: "It doesn't, if you look at the survey."

Mr. Bechtold: "So the difference between where the driveway is, and their physical house is what dimension? It has to be ten feet, right?"

Ms. Scott: "Yes, so we are respecting the side setbacks."

Mr. Tucker: "For driveways, since they are a structure that grade and flat, driveways actually do not have to meet any setback at all and they can be on the property. In Cornelius driveways can go on the property line, its only structures that are I believe at two feet grade or above that have to meet the accessory structure or side setbacks."

Mr. Murray: "There is a wall on the adjacent property line, it shows up on the survey. The problem with GIS sometimes the lines get shifted over just a little so actually is you took that line and moved it, it's probably even over to your left a little more which actually puts this encroachment even further to the middle."

Mr. Bechtold: "The site plan should clearly state that."

Mr. Murray: "The site plan clearly states that, that's why I got Ann to do a site plan based on the survey, so we would actually get accurate readings and accurate numbers."

Mr. Murray: "I think that the board would have to except her as an expert. As procedure I would like to make sure there are no objections."

The board agreed to except Ms. Scott as an expert.

Mr. Murray: "I want to go to this plan. There is a proposed three car garage that is on the site, if that was a two-car garage would the encroachment change at all?"

Ms. Scott: "It could be minimized the part that's in front of the third garage."

Mr. Murray: "When a vehicle backs out they would have to back out beyond that area. I believe we have discussed before that three-car garage was basically about the same area as a two car because the back out, turn around area."

Ms. Scott: "Yes."

Mr. Murray: "The reason why the driveway is not in the ten-foot side yard to the north is because the garage cannot be in the side yard."

Ms. Scott: "Right, that's a structure."

Mr. Murray: "That goes back to what we were talking about. The driveway can be in the side yard and the problem we have is that we can't put the driveway in the side yard (Inaudible) structure in the side yard. We are having to balance those two."

Ms. Scott: "(Inaudible)"

Mr. Murray: "Other than the way the driveway is shown on the site plan, is there another way to get a driveway to the buildable area on this site?"

Ms. Scott: "(Inaudible)"

Mr. Murray: "Some of these questions, I apologize, are basic but for the record does the ordinance prevent the driveway from being built through the buffer without a variance?"

Ms. Scott: "No."

Mr. Murray: "Are you aware of another house in that area that do not have a driveway to connect their garage to the property?"

Ms. Scott: "(Inaudible)"

Mr. Murray: "Would construction vehicles or emergency vehicles be able to get to the buildable area on the property without a driveway being built into the property?"

Ms. Scott: "No."

Mr. Murray: "Does the location of the driveway next to Lake Norman cause the need for a buffer?"

Ms. Scott: "Yes."

Mr. Murray: "Does the size and shape of the lot, is that unique to the area where its located?"

Ms. Scott: "Definitely."

Mr. Murray: "Does the topography on the site play a factor in the need for a variance?"

Ms. Scott: "The survey use (Inaudible) elevation potentially curves out a little on the property line so that's what determines the forty-foot setback."

Mr. Murray: "Will there still be a buffer area between the driveway and the lake if its built as shown on the plat?"

Ms. Scott: "Yes."

Mr. Murray: "Is it your understanding that intent of the watershed buffer is to preserve the buffer closest to the lake?"

Ms. Scott: "Yes."

Mr. Murray: "Does this plan do that?"

Ms. Scott: "Yes."

Mr. Murray: "Is it your understanding that the Town and County require mediation in the form plant new trees and bushes for any disturbance in the buffer?"

Ms. Scott: "Yes. (Inaudible)"

Mr. Murray: "Is there anything you are aware of in land development code that would prevent this driveway other than the watershed?"

Ms. Scott: "No."

Mr. Murray: "That is all the questions I have. Members of the board, there was some discussion and I believe on the record last time there is restricted covenants on this property that makes it a little unique situation. If you are going to have a garage the restricted covenant requires that the paved driveway, so this is not going to be a gravel driveway it will be a paved driveway because of the restricted covenants. Boats and trailers under the restrictions must be parked in a closed garage and also other vehicles that are parked on the property have to be in an enclosed garage or a concrete driveway that was originally constructed so there is not one on this property so vehicles that would be on this property under the restrictions would have to be parked in a garage. That's the trigger for why we are looking at a three-car garage here, on this property. I have a copy of the covenant that I will tender into the record and that it is identified for the record. I have copies of proposed findings of fact and conclusions that I would like to review with you."

Mr. Murray reads the SMDA Development 1, LLC proposed findings of fact and conclusions of law.

When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all the following:

(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.

SMDA Proposed Findings:

- The hardship is that a single-family residential house cannot be accessed with an improved driveway and/or walkway under the existing ordinance because it would encroach into and cause disturbance of the buffer.*
- The variance is necessary to allow a driveway and walkway within the buffer area to provide access to the single-family structure to be built.*

- *The reasonable use of the property is for single-family residential with an improved driveway access to the house.*
- *If the watershed ordinance is strictly applied, the proposed driveway and walkway cannot be built.*
- *No configuration of any driveway or walkway built to connect Baltic Drive to the buildable area on the property can fully avoid the buffer.*

SMDA Proposed Conclusion: A showing of evidence on element 1 has been made that is sufficient to grant the variance.

(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.

SMDA Proposed Findings:

- *The property is an extremely unique shape.*
- *The property is located adjacent to Lake Norman which causes the watershed rules to apply.*
- *The 760' topographical measure exists on the property to cause the 40' setback to encroach fully over where a driveway would be located.*
- *The size of the width of the "arm" to Baltic Drive to provide vehicular/pedestrian access is narrow and passes through the buffer.*
- *The property shape is not normal for the neighborhood.*
- *The hardship of not having a driveway access to the buildable area on the lot is not a personal circumstance to SMDA but runs with the land and would be an issue for subsequent owners.*

SMDA Proposed Conclusion: A showing of evidence on element 2 has been made that is sufficient to grant the 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.

SMDA Proposed Findings:

- *The property owner, SMDA Development 1, LLC, did not create the hardships on the property.*
- *The lot was platted in 1997, prior to its ownership in 2006.*
- *The property lines have not changed.*
- *The hardship is not personal but runs with the land.*

SMDA Proposed Conclusion: A showing of evidence on element 3 has been made that is sufficient to grant the variance.

(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.

SMDA Proposed Findings:

- The Land Development Code watershed ordinance allows for a variance to be granted to allow encroachment into the required buffer.*
- The applicant has prepared a plan showing an encroachment that is considered minor under the Land Development Code.*
- Having driveways and walkways connecting the houses to the public street are typical for the neighborhood.*
- The plan minimizes the encroachment into the buffer to less than 5%.*
- A buffer will remain between the improved driveway and walkway and Lake Norman.*
- Denial of improved access impairs the ability of the property to be developed for single-family residential uses and blocks vehicle access.*
- Providing a driveway that emergency vehicles can use to access a single-family residential house on the property secures public safety.*
- The property is zoned GR zoning which allows single-family residential houses to be built and the plan is consistent with the LDC.*
- Substantial justice is achieved by providing a buffer encroachment for a driveway and walkway to allow development of the property.*

SMDA Proposed Conclusion: A showing of evidence on element 4 has been made that is sufficient to grant the variance.

Mr. Murray: "I would ask that you please grant this variance. If you have any questions or concerns I'm happy to answer. Thank you."

Ms. Johnson: "With the house and the driveway and the walkway, it still does not exceed the maximum impervious allowable for that lot, correct?"

Mr. Murray: "No. If you didn't have the forty-foot setback and you just had the ten-foot general residential setback, I think you would see a bigger development on this site. You have multiple layers but the most restrictive is the lake watershed buffer."

Chair Eicher: "Any other questions? Mr. Murray, I would like to thank you for your thoroughness of preparation. Any public comments? Comments are limited to three minutes."

Citizen: "My name is Anette Powell. I own the property adjacent to this property. This is the second time I am appearing before you. We have the same issue at that time both hardship and the issue to my land were deemed not solved so the variance was not granted. I see nothing that has changed that with this presentation today. I have been attempting to work with the owner of this. It is not a hardship because he developed this entire strip at one point that was all

woods. He developed 20 something homes. This land was like this when he bought that land it was known to have an issue of not having access because of the setbacks, so there is no hardship here what so ever. In addition, there is no hardship because that's my point that goes into the area that is part of the buffer zone. I am trying to work with him to swap land. As you can see this section up here jets into my land and my house is up here, my beach, my dock is down here. This is his land. If we were to swap out some land this area here has an elevation issue, it is not double with down here, it is stair stepping down significantly. If I remember correctly its about thirty or forty feet. In the process of straightening this out so that we can have a driveway that should also get straightened out, graded, and level so that the erosion issues from off my land onto the land down here. We have gone through five attorneys; this gentleman is number five that I am aware of. We have come to an agreement, and just like with this today a year later the land owner comes back. We already had an agreement. I feel like I'm being ignored as a neighbor, I feel like the neighborhood is being ignored for what we want to have done to make it beautiful. I am worried about damage to my property. There is no three-car garage in Captains Point, so that would not be allowed. I ask for you not to grant this variance, there is another way around this besides putting a driveway into a buffer zone. If he would just cooperate. I don't understand why but I get the feeling he wants to do it his way, for whatever reason."

Chair Eicher: "Your time is up ma'am. Thank you."

Ms. Powell: "Thank you. When I came in it was 6:30, was there some notice that I did not get that this was starting earlier. Because there was a gentleman speaking up here with the map of my property up and I did not hear what he said before 6:30."

Chair Eicher: "We were just trying to decide whether we would hear the variance or not, if there has been substantial change in the one we denied a year ago. We decided at that point to hear the variance."

Ms. Powell: "If anything he has moved the chance of the driveway close to my property (Inaudible). Thank you."

Chair Eicher: "Any questions? Anyone else wish to speak?"

Mr. Murray: "Members of the board, just a brief rebuttal just because this is a quasi-judicial hearing. I do have to object to the testimony that was provided by Ms. Powell as it is speculation in material and irrelevant. There is nothing in the restrictive covenants in regards anything about three-car garages. There is no burden on property owner. I was not involved in that, so I don't know what previous discussion were had, I am not aware of any previous discussions that have taken place since the last time. There is no burden on the property owner to purchase property from the adjacent land owner. The problem again would be, like discussed before, even if you are able to cut out a corner here, it doesn't solve all your problems. You can do a driveway beyond Ms. Powell's property and beyond the adjacent property owners, were we get into problems is when we come into the property. So, our forty-foot buffer doesn't move if you move the corner property line there, it doesn't solve the problem. It would have to be a substantial amount of property from the adjacent property owner to fix that problem. That's my rebuttal, please consider my objection and I thank you for your time."

Ms. Powell: "Can I respond to it?"

Chair Eicher: "Briefly. It is not our responsibility as a board to suggest that he buy property from you or exchange property with you. That is completely up to you and them."

Ms. Powell: "I understand. The point is hardship is not an issue here. We, from my attorney Susan Irvin who could not be here today, we were working with easements to make this happen and protect lots. Thank you."

Chair Eicher asked if no further question he would entertain a motion to close the public hearing.

Mr. Bechtold made a motion to close the public hearing. Mr. McConnell seconded. All in favor, motion approved.

In Favor: Mr. McConnell, Mr. Dean, Mr. Eicher
Ms. Johnson, Mr. Bechtold, Mr. Bearder
Mr. Osborne

Opposed: None

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.

Mr. McConnell: "I was here with the first request for the variance. I have to say that the applicant took it to heart as to what we were suggesting. It seems that they tried to follow through with the suggestions we made to have as minimal impact on it as possible and I think that they demonstrated it. In my finding I'm saying that yes we should allow the variance."

Mr. McConnell made a motion to approve Finding of Fact #1. Ms. Johnson seconded. All in favor, motion approved."

In Favor: Mr. McConnell, Mr. Dean, Mr. Eicher
Ms. Johnson, Mr. Bechtold, Mr. Bearder
Mr. Osborne

Opposed: None

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.

Mr. Osborne: "The lot is obviously a uniquely shaped lot and I think they did a good job demonstrating that specifically."

Mr. Osborne made a motion that Finding of Fact #2 has been met. Mr. McConnell seconded. All in favor motion approved."

In Favor: Mr. McConnell, Mr. Dean, Mr. Eicher
Ms. Johnson, Mr. Bechtold, Mr. Bearder
Mr. Osborne

Opposed: None

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.

Mr. Dean: "I believe this finding has been met. There was nothing taken by the applicant that resulted in this hardship."

Mr. Dean made a motion Finding of Fact #3 has been met. Mr. Osborne seconded. All in favor motion approved."

In Favor: Mr. McConnell, Mr. Dean, Mr. Eicher
Ms. Johnson, Mr. Bechtold, Mr. Bearder
Mr. Osborne

Opposed: None

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.

Ms. Johnson: "I think it was a really good point about the emergency vehicles. We have to make sure that public safety is first and foremost. I think that finding four has been met and the requested variance is constant."

Ms. Johnson made a motion to approve Finding of Fact #4. Mr. Dean seconded. All in favor motion approved."

In Favor: Mr. McConnell, Mr. Dean, Mr. Eicher
Ms. Johnson, Mr. Bechtold, Mr. Bearder
Mr. Osborne

Opposed: None

Mr. Bechtold made a motion to approve VAR 02-19. Mr. Dean seconded. All in favor motion approved.

In Favor: Mr. McConnell, Mr. Dean, Mr. Eicher
Ms. Johnson, Mr. Bechtold, Mr. Bearder
Mr. Osborne

Opposed: None

Land Use Plan Discussion

Mr. Tucker presented the proposed Land Use Plan changes in the Westmoreland/Highway 21 vicinity from low density single family to neighborhood commercial. The proposed Land Use Plan changes would allow a better transition between highway commercial to the single-family neighborhoods that are in the area. The proposed changes do not include J.V. Washam.

See attached Presentation

After discussion the board agreed they would like to get some feedback from the residents.

NEXT MEETING

Monday, August 12th, 2019

ADJOURNMENT

Ms. Johnson made a motion to adjourn the meeting at 7:53 p.m. Mr. Dean second. All in favor and motion approved.

In Favor: Mr. McConnell, Mr. Dean, Mr. Eicher
Ms. Johnson, Mr. Bechtold, Mr. Bearder
Mr. Osborne

Opposed: None

Respectfully Submitted:

Keith Eicher
Chair

Date

Summer Smigelski
Secretary

Date

REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: August 12, 2019

To: Planning Board Members
From: Monterai Adams, MPA- Planner








Action Requested:

Haley Yeager, on behalf of JPMorgan Chase Bank, is requesting a special use permit for the property located at 19400 West Catawba Avenue to increase the allowable parking for future Chase Bank and commercial and/or retail use. Both buildings as shown on the site plan will total 7,528sf upon completion. The requested parking ratio is 7.3/1,000sf (55 spaces), which is 3.3 more than the Land Development Code maximum requirement of 4/1,000sf (30 spaces).

Manager's Recommendation:

Hear evidence and render a decision regarding the appropriate parking for the development.

ATTACHMENTS:

Name:	Description:	Type:
 SUP_Application.pdf	Application	Backup Material
 19400_W_Catawba_Ave_Zoning.jpg	Zoning Map	Backup Material
 19400_West_Catawba_Ave_LU.jpg	Land Use Map	Backup Material
 19400_W_Catawba_Ave_Vicinity.jpg	Vicinity Map	Backup Material
 19400_W_Catawba_Property.jpg	Property Map	Backup Material
 SUP_01-19(PB)_Chase_Bank_Staff_Report.pdf	Staff Report	Backup Material
 Charlotte_NC_(19400_Catawba_Ave)_JPM-25673-SketchPlan-_20190705.pdf	Site Plan	Backup Material



TOWN OF CORNELIUS

Planning Department

PO Box 399 | Cornelius, NC 28031 | Phone: 704-896-2461 | Fax: 704-896-2462

LAND DEVELOPMENT APPLICATION FORM

Staff Only:

Date Rec'd: _____

Rec'd by: _____

Case #: _____

1. Application Type

- | | <input checked="" type="checkbox"/> | Fee |
|---------------------------------|-------------------------------------|-------|
| • Sketch Plan/Plat (Major Sub): | <input type="checkbox"/> | _____ |
| • Preliminary Plat (Major Sub): | <input type="checkbox"/> | _____ |
| • Final Plat (Major Sub): | <input type="checkbox"/> | _____ |
| • Construction Documents: | <input type="checkbox"/> | _____ |
| • General Rezoning | <input type="checkbox"/> | _____ |

- | | <input checked="" type="checkbox"/> | Fee |
|---------------------------------|-------------------------------------|----------|
| • Conditional Zoning (CZ) | <input type="checkbox"/> | _____ |
| • Special Use Permit (SUP) | <input checked="" type="checkbox"/> | \$500.00 |
| • Major Architectural Variation | <input type="checkbox"/> | _____ |
| • Minor Architectural Variation | <input type="checkbox"/> | _____ |
| • Other: _____ | <input type="checkbox"/> | _____ |

Fee Total: \$500.00

2. Project Information

Date of Application: 7/2/2019 Name of Project: Chase Bank - 19400 W. Catawba Ave.

Location: 19400 W. Catawba Ave. Property Size (acres): 1.50 # of Units/Lots: 1

Current Zoning: VC-Village Center Proposed Zoning: VC-Village Center

Current Land Use: Vacant Rite Aide Proposed Land Use: Bank with Drive-Thru

Tax Parcel Number(s): 00512312

3. Contact Information

Haley Yeager

Owner, Applicant, or Developer

4201 Congress Street

Address

Charlotte, NC 28209

City, State Zip

251-680-5867

N/A

Telephone

Fax

Haley Yeager 7/3/19

Signature

Print Name

Date

Email - hayley.yeager@jpmchase.com

David Parry, P.E.

Agent(s) (Engineer, Architect, Etc.)

1900 South Boulevard

Address

Charlotte, NC 28203

City, State Zip

704-247-4907

N/A

Telephone

Fax

David Parry 7/2/2019

Signature

Print Name

Date

Email - dparry@core-states.com

4. The following items may also be required to be considered part of a complete application, please check all that apply on this list:

☒ **Signed "Original" application**

☒ **Project Fee(s)** – See Fee Schedule

☒ **Written Summary/Description of Request** can be on company letterhead. Shall include requested use or uses, sq. feet of non-residential space, or density and number of units/lots for residential, or any other applicable information. For CZ's, must also describe any variations proposed from the Land Development Code

☒ **Property Survey** (at least one copy), including existing buildings, topography, wetlands, streams, vegetation (trees over 18" in diameter), and other natural features.

☒ **Site/sketch plan** (at least one copy), may contain multiple pages and must be drawn to scale by an engineer or landscape architect. Shall include locations of buildings and/or lots, streets, parking, proposed grading, landscaping/screening, open space, watershed/storm water information, associated storm water measures, and proposed utilities and lighting. Shall also include general information from adjoining lots

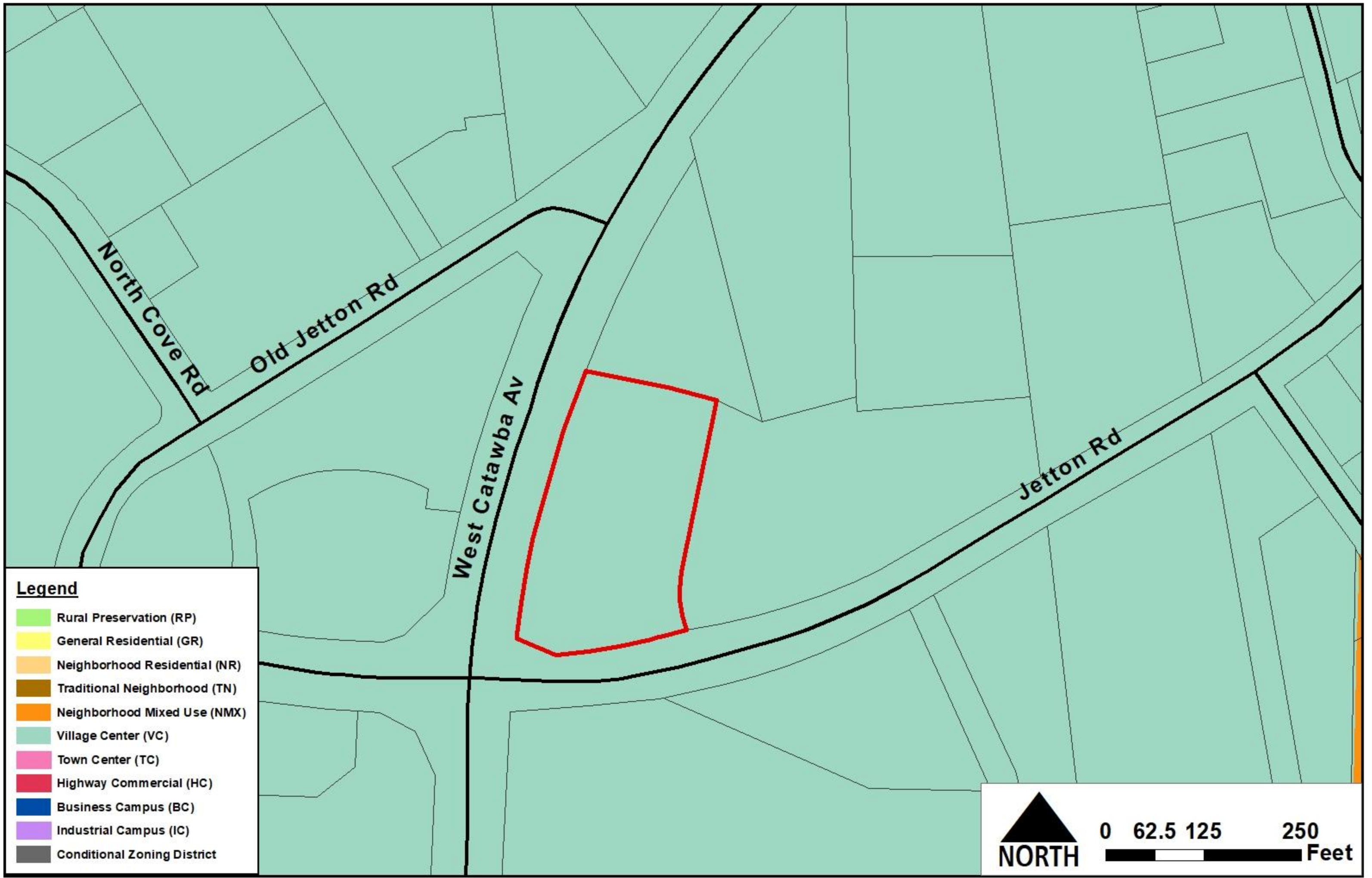
☐ **Illustrative (color) site/sketch plan** for presentation purposes with same layers as described above

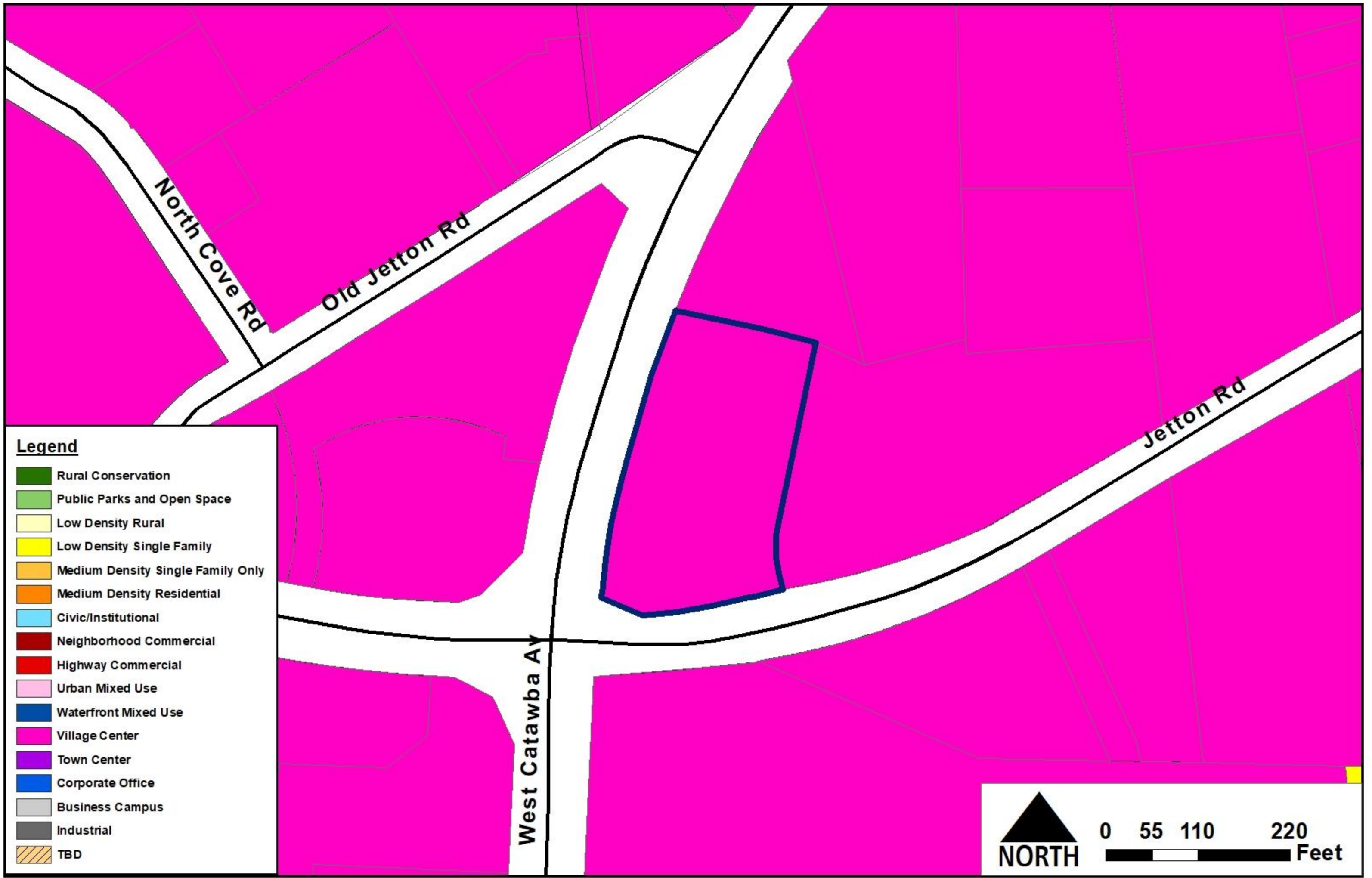
☐ **Architectural elevations, Perspective Renderings, and Architectural Review Board Checklist** may include multiple pages and must be drawn to scale by an architect. Include all primary and accessory buildings (all building sides), an illustrative color package, and black and white w/dimensions. Other architectural elements/features of the site such as gazebos, trellis's, garden walls, retaining walls, or other items over 4-feet in height must also be included (NOT REQUIRED, BUT OPTIONAL FOR SINGLE-FAMILY RESIDENTIAL DEVELOPMENTS).

☐ **Charlotte Water Capacity Assurance Review Application** Provide copy with application, and send original to CW.

☐ **Illustrative (color) elevations** for presentation purposes for all items described above, as well as perspective (3D) renderings and photograph examples

☒ **Digital Files** of all items listed above







North Cove Rd

Old Jetton Rd

Jetton Rd

West Catawba Av

Wells Fargo

Publix



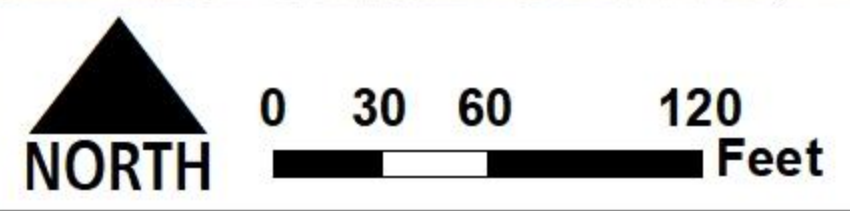
0 62.5 125 250
Feet



Old Jetton Rd

West Catawba Av

Jetton Rd





SUP 01-19
Chase Bank

Special Use Permit Request

Planning Board Meeting
August 12, 2019

OWNER/APPLICANT: Haley Yeager
4201 Congress Street
Charlotte, NC 28209

AGENT: David Perry, P.E.
Core States
1900 South Boulevard
Charlotte, NC 28203

PROPERTY LOCATION: 19400 West Catawba Avenue
(PID#: 00512312)

PROPERTY SIZE: 1.5 acres total

CURRENT LAND USE: Vacant Rite Aid Building

PROPOSED LAND USE: Bank/Commercial Retail

EXISTING ZONING: VC (Village Center)

PROPOSED ZONING: VC (Village Center)

EXISTING CONDITIONS:

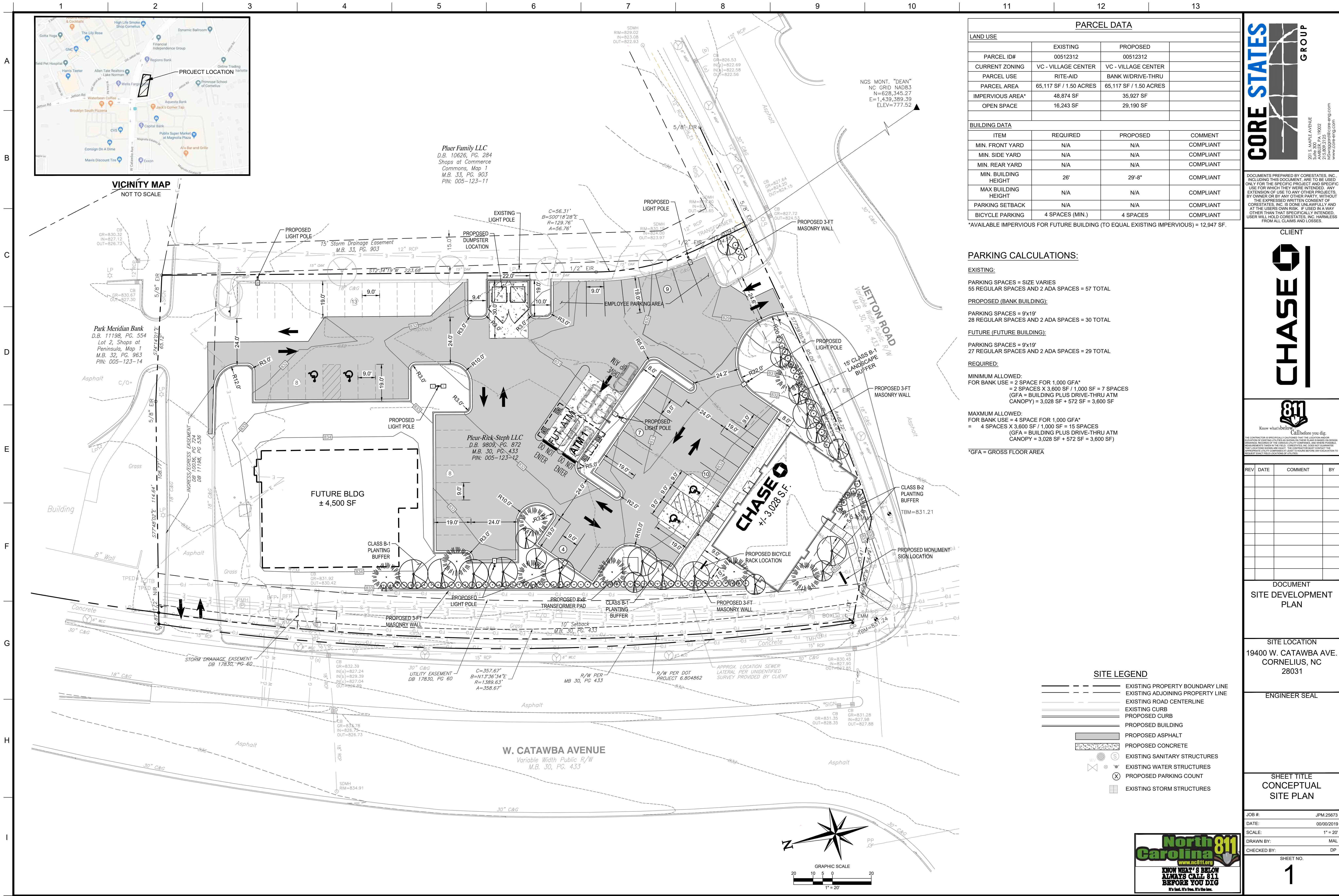
1. Description of Adjoining Zoning and Land Uses – This property has road frontage along West Catawba Avenue as well as Jetton Road. To the north are businesses zoned VC. To the south this parcel is surrounded by more commercial zoned VC. Properties to the East and West are also zoned VC and include commercial retail businesses as well as vacant parcels.
2. Topography – The property is very flat and slopes gently to the Southeast.
3. Vegetation – The parcel currently has a vacant building and parking on site. The only vegetation on site currently is the required parking landscaping, which includes parking lot trees and perimeter shrubbery.
4. Infrastructure – Currently, water and sewer access is available. The site will maintain two access drives; one on West Catawba and one on Jetton Road.

STAFF COMMENTS:

1. *Project Overview* – The applicant is proposing to demolish the current Rite Aid building and construct a Chase Bank with plans to build a second building later. The bank will include a 3,000s.f. building as well as a two lane drive through. The proposed future building may be as large as 4,500sf. The town’s Land Development Code calls for a minimum of 2 parking spaces per 1,000sf and a maximum of 4 parking spaces per 1,000sf. The code maximum for this site plan is 30 parking spaces between both buildings. The request is for 55 parking spaces between both buildings at a parking ratio of 7.3 spaces per 1,000sf.
2. *History* – The existing building was built in 1999 and was a Rite Aid for many years. This building has been vacant for some time.
3. *District Consistency* – The VC Zoning District does not have a minimum lot size, but could be developed with anything that is permitted by right in the VC district, which could include any of the following:
 - Commercial/Office/Service up to 29,999 square feet
 - Animal Hospital, Boarding and Grooming services (no outdoor kennels)
 - Essential services, class IV
 - Miniature golf
 - Greenways and Trails
 - Office
 - Park
 - Recreation Center, Public 0-15,000sf
 - Restaurant, Non-Drive Through
 - Minor Subdivision
4. *Land Use Plan Consistency* – The Land Use Plan adopted by the Town Board on January 6th, 2014 designates this property as “Village Center,” which recommends community services and commercial uses as a primary land use. A bank and future commercial retail uses are consistent with the future Land Use Plan.

STAFF RECOMMENDATIONS:

Hear evidence and render a decision regarding the appropriate parking for the development. The Board of Adjustment may approve the Special Use Permit as presented, may negotiate a different parking ratio with applicant approval, or deny the Special Use Permit request.



REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: August 12, 2019

To: Planning Board Members

From: Aaron Tucker, Assistant Planning Director

Action Requested:

Staff will present information for consideration with regard to the proposed Land Use Plan changes in the Westmoreland Road/Highway 21 vicinity.

Manager's Recommendation:

Hear Presentation.

ATTACHMENTS:

Name:	Description:	Type:
No Attachments Available		
