



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

**Agenda  
June 13, 2022  
6:30 PM  
Assembly Room**

- 1. Call To Order**
- 2. Determination of Quorum**
- 3. Approval of Minutes**
  - A.** Approval of May 9th Minutes
  - B.** Approval of Special Meeting Minutes
- 4. Public Hearing and Consideration of Approval**
  - A.** VAR 03-22 17714 Mesa Range Dr
- 5. Consideration of Approval**
  - A.** Built Upon Area Averaging Certificate Application
- 6. Old Business**
- 7. New Business**
- 8. Next Meeting**
- 9. Adjournment**

## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: June 13, 2022

**To:** Chair Eicher and Planning Board Members

**From:** Wayne Herron, Deputy Manager

**Action Requested:**

Review the May 9th minutes.

**Manager's Recommendation:**

Approve the minutes.

**ATTACHMENTS:**

Name:	Description:	Type:
 <a href="#">PB_Minutes_05092022_Draft_-_Copy.docx</a>	May 09, 2022 Minutes	Backup Material

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Minutes

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**TOWN OF CORNELIUS PLANNING BOARD  
MEETING**

Assembly Room  
May 09<sup>th</sup>, 2022  
6:30 p.m.

**Members Present**

Keith Eicher, Chair  
Susan Johnson  
Lee Peterson, Vice Chair  
Danielle Miller  
George Searle, Alternate  
Hardy McConnell  
Phil Bechtold  
Joseph Dean

**Members Absent**

Jaime Rauscher, Alternate  
Sean Herndon, Alternate

**Staff Present**

Wayne Herron, Deputy Town Manager/  
Planning Director, Interim  
Summer Smigelski, *Admin. Assistant*  
Gary Fournier, Planner

**VISITORS**

See Sign-In Sheets

**DETERMINATION OF QUORUM**

Chair Eicher called the Planning Board meeting to order at 6:30 pm and noted there was a quorum present.

**APPROVAL OF MINUTES**

Ms. Johnson made a motion of approval for the March 14<sup>th</sup>, 2022 Minutes. Mr. Bechtold seconded. All in favor, motion approved.

**In Favor:** Mr. Dean, Mr. Peterson, Ms. Johnson,  
Mr. Eicher, Mr. Bechtold, Ms. Miller,  
Mr. McConnell

**Opposed:** None

**VAR 02-22 Mikki & Donald Lindstrom, 17101 Claret Ct.**

Chair Eicher asked for a motion to close the planning board and open the board of adjustment..

Mr. Dean made a motion to close the planning board and open as the board of adjustment. Mr. Bechtold seconded. All in favor, motion approved.

**In Favor:** Mr. Dean, Mr. Peterson, Ms. Johnson,  
Mr. Eicher, Mr. Bechtold, Ms. Miller,  
Mr. McConnell

**Opposed:** None

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

**In Favor:** Mr. Dean, Mr. Peterson, Ms. Johnson,  
Mr. Eicher, Mr. Bechtold, Ms. Miller,  
Mr. McConnell

**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.

Chair Eicher asked for board members to disclose if they have been by the property. Ms. Johnson disclosed she has been to the property.

Mr. Fournier: "Good evening Chair and members of the board. My name is Gary Fournier and I will present Variance 02-22 Mikki & Donald Lindstrom, 17101 Claret Ct. The property is located at 17101 Claret Court. The applicant is requesting a setback variance to allow for a roof over their deck. The current deck is legal non-conforming since it was built when open decks were allowed to encroach into the rear setback, however, current code does not allow for encroachments. 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. Aerial Property Map as Exhibit C. Section 5.5.4 of the Town of Cornelius Land Development Code (LDC) shows a 25-foot rear setback for properties in the General Residential zoning district. LDC Section 5.5.4 is shown as Exhibit D. Section 15.3 (C) of the Town of Cornelius Land Development Code (LDC) states that nonconforming principal structures may not, under any circumstances, be enlarged or altered in a way which increases its nonconformity. LDC Section 15.3 (C) is shown as Exhibit E. Section 15.3: Nonconforming Principal Structures. C. A nonconforming structure may not, under any circumstances be enlarged or altered in a way which increases its nonconformity. The Applicant has submitted a Town of Cornelius Variance Application, a building plan, and a property survey. The Variance Application is shown as Exhibit F, the building plan as Exhibit G, and the property survey as Exhibit H. Staff visited the property and took two pictures, which are shown as Exhibits I and J. That completes staff presentation. Any questions?"

Mr. Peterson: "This backs up to Waterview and Waterview is kind of a wide street, right! Then on the other side Waterview, down towards the lake, that's a large couple hundred I'm guessing?"

Mr. Fournier: "Yes, there is a distance as you can see in the satellite photo. The closes house is probably this one. The one directly behind it, its way back here. If I had to estimate it would be a couple hundred yards at least. When I was standing on Waterview to take photos it wasn't like the houses were right there."

Mr. Herron: "As required, we did notify all the surrounding property owners. We only had one question and there was not opposition."

Ms. Johnson: "Are they asking for the roof to extend the entire width of the deck, from left to, right?"

Mr. Fournier: "Correct!"

No further questions for staff.

Chair Eicher asked for the applicant to come forward and address the board.

Applicant: "Good Evening, My Chairman and members of the board. My name is Jim Surane, I'm an attorney here in Cornelius. I have been here for about 30years. I have been in this room many times. I was going to follow up with Wayne's presentation and get a little more into the weeds, if I may. What we are seeking is a Variance for a 4.2 foot. The existing deck has encroached for over 20 years, closer to 25years. The Lindstrom's family purchased the property back in March of 98. That's how long they have lived in the house and the deck was there before they moved in. What they are asking for, I will just touch on that step issue. This new deck has one set of stairs coming off the back. The old deck that would be the non-conforming deck had two sets of stairs that kind of spiral off. There was a platform and two sets of stairs that came off that, that was in the center of the actual deck. We would think that also would be a non-conforming."

The board asked Mr. Surane to show the location of where the stairs were.

Mr. Surane and the board discussed the details of the location. The stairs were encroaching since the beginning. The stairs have been modified to reduce from two to one platform of stairs.

Mr. Surane: "Part of what we have to address, and I think we are pretty clear on what we are seeking here today. We want to step through why it would be an unnecessary hardship if we were to have a strict application of the ordinance. Thank you, Wayne for your comments about staff's position with respect to going vertical when you already have a horizontal encroachment and what the Town's vision has been in the past. What's happened here is this property faces dead west and I'm sure you all know what that mean in terms of the summer months and the sun. It had a pergola, the grey area that someone referenced earlier, it was a pergola and they planted it so that they could drive some shade using that pergola and that has already been there for years. So, there was already a vertical structure on the deck. What's happened over the years, the deck, because of that sun it rotted the deck boards, it rotted the deck. It rotted a lot of the back of the house. The windows had to be replaced. All the hardware had to be replaced. Where that property is located is on Waterview Drive and there is a significant right of way there, its sixty feet. The edge of pavement is probably twenty feet. So, there is twenty feet between the edge of the pavement before you get to the property line itself. As you noted there is no houses behind it so if you look at this, well if you look at the vertical improvement or if you look at the horizontal encroachment, you would have to have a surveyor to determine that. You are not going to be able to see that visually just from your eye looking down Waterview. Here is a little story about what has happened; this particular backyard its got a lot of topography. It's a very steep slope down to what's called a PSDE and its an open rip rap PSDE. My clients are getting older and they have been there for that many years it makes it a real challenge to walk down the backyard. The open rip rap is on the left, looking at that photo, there is a circle you can see where they put. Then the PSDE runs all the way across the back and its all rip rapped. What happens when it rains heavily for one reason or another the water ponds in the back yard to make things worse and it doesn't dry up for several days. So, they have gotten to the point where they really cannot use the small little strip of grass that they have in their backyard. So, they are seeking to put this roof on to try and gain some relief from the sun. What has happened to Mr. Lindstrom just recently he had a heart attack. I do have a doctor note to enter into record about why he cannot go out on that deck during any of the months where the heat is going to be that intense due to the medication he is on, pacemaker and what they note in the letter. The hardship that would result is that they would be deprived of using that deck for probably at lease six months out of the year. That is what we are addressing with respect to the hardship. Under B, under the application itself that the hardships results that are peculiar to the property and again the peculiarity of the conditions of the property as it relates to the properties anywhere around it or any where its got this steep topo right into a V shaped wide rip rap PSDE and the builder when he built the property, pushed this one back enough to where it made it really hard to fit a deck in your backyard. So, this particular lot is peculiar to the extent that its situated further back then the other houses and its got that public drainage easement back with the rip rap on the side as well across the back. Because of their age and health, they are seeking to limit themselves to the use of the backyard through their occupation on the deck."

Mr. Peterson: "Is the front setback still 50-feet or is it further?"

Mr. Surane: "It's 27-foot setback."

Mr. Herron: "Just a little history, I think this subdivision was actually built under Mecklenburg County rules before it came into the town. In Mecklenburg County you could do 27-foot setback."

Ms. Johnson: "You are referencing the yard and the grassy area. Is that shaded?"

Mr. Surane: "No ma'am. That shaded area you see that consists of a 15-foot public sanitary sewer easement."

Ms. Johnson: "I understand. I was trying to find out what was the correlation between not being able to use the yard then the deck if it wasn't shaded. That was my questions."

Mr. Surane: "You can use the area except where it is rip rap. With an open rip rap even, someone younger would have trouble. Again, it floods and ponds in there and then there is mud for days after it rains which makes it even more difficult. If you look from where the stairs project back to sanitary easement. Part of the problem in addition to the other problems I mentioned is, you can't plant large trees right around that sanitary sewer easement that are later going to grow roots that affect (inaudible) easement in the pipe. They can't put real mature trees to gain shade all the way up as you see."

Ms. Johnson: "Based on this picture it is shady there. Did they use the yard at one time instead of the deck?"

Mr. Surane: "I'm sure, they have been there for twenty some odd years. When they were younger probably did use the yard to the extent that they could."

Ms. Johnson: "My comment is the use of the deck and use of the yard are two different things so not sure outside of "we use the originally because its shaded and now we no longer can do that, so we are now wanting to use the deck. Which is also not shaded. I'm just trying to understand where the yard aspect of it comes into play because using the deck and using the yard are two very different things."

Mr. Surane: "Then again, I think it relates to the topography, the fact that they can't plant trees. They have been using the deck now since he has had a heart attack and without the benefit of having coverage over that deck. Without increasing the encroachment even one inch, either the stairs or the actual deck, they just won't be able to use their back yard."

Mr. McConnell: "Total width of the deck is fourteen feet, correct?"

Mr. Surane: "Yes, sir. That is what it says."

Mr. McConnell: "You are four-feet over the encroachment, correct?"

Mr. Surane: "four-feet two inches."

Mr. McConnell: "This is a question for the town. If the applicant just said, I want a ten-foot roof and not a four-teen foot roof, would they still be in compliance of putting a roof on it?"

Mr. Fournier: "Yes, they could do a ten-foot. They could keep the ten-foot mark and have an eighteen-inch overhang."

Mr. Surane: "They have had the architect draw the plans and what it shows now is at least a portion of the deck that goes out all the way to the fourteen-feet and from what I'm told it would just be really difficult that they tried to stop it at the teen-foot and still design a deck where you have railings and that it all looks esthetically the way it should."

Mr. McConnell: "Wouldn't they lose some shade by having that open a frame?"

Mr. Surane: "Just my own opinion, yes, I would think so. I'm not sure what the architect has in mind with respect to that. I would assume they could put something in that gable."

The board and Mr. Surane discussed the location of the tree and the shade the tree provides in the backyard.

Mr. Surane: "The hardship did not result from the action taken by the applicant or the property owner. Again, the deck was built by the original owner, so they did not create the original

encroachment. I think C is satisfied to the extent that they didn't create the hardship. As Wayne noted, the towns position is going vertical is okay as long as you are not pushing the scope of that encroachment any further. What the law would provide is there is a difference in intensity increase and scope increase. A scope would be more of you pushing that envelope out and making it further into the encroachment. The intensity would be more of going up instead of going out. That is not what they are seeking to do. They are not trying to increase the scope. One would argue that they are increasing the intensity of the uses intensified but according to Mr. Herron indicated that, that's something they found acceptable. I believe we satisfied C to the extent that my clients didn't create the hardship, it was something there when they purchased the property twenty odd years ago. That brings us down to D. As you as you all know one of the main reasons for imposing specific setbacks requirements in any jurisdiction on a lot or on a subdivision is to prevent the disruption of natural lighting, clear ventilation, increased sound insulation as well as establishing a neighborhoods character within the community and then in the case at hand. What we are talking about doing in no way jeopardizes or compromises any of the general reasons for setback requirements. We would respectfully insert that, that the request is consistent with the spirit, purpose, and intent of the ordinance. Ordinance being setback requirements in the rear setback."

Mr. Surane entered the doctors letter and other documents into the record.

Mr. Surane informed the board that there has been HOA approval.

The board and Mr. Surane discuss how much shade the roof would provide at certain times of the day.

Mikki Lindstrom: "To address your point about having the roof may not apply shade because of the layout of the home, I can just tell you that when we had our pergola on there, that was very cool, and it did have shade coming down. It extended far enough so that when we were under it, it was at least 15 degrees cooler under there then the rest of the deck. It did provide shade. To comment on the temperature, we made our windows smaller along the back of the house. We took the opportunity to change out the windows because they needed to be replaced and we made them smaller because it gets so hot. The back side of that house just cooks starting in April, May and cooks right in to October. We made the four windows at the top smaller so that less sun would come in."

Mr. Peterson: "I face east on my house and its really weird but as the weeks and months go by the sun comes in a different angle. Right now, we have to have our shades completely drawn but a month ago we just left them open."

Donald Linstrom: "I had a heart attack in December and all the drugs I'm on are light sensitive so I'm just looking for place to stay in the shade and be able to be outside in the backyard. As you can see from the paperwork that the medication is light sensitive. We are trying to improve our backyard. We have been here since 98. We hope its our forever home, we don't want to leave the area. First thing we did was HOA approval."

Chair Eicher thanked the applicants and asked if anyone who wished to speak.

No public comments were made.

Chair Eicher asked for a motion to close as the Board of Adjustment and open as the Planning Board.

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

**In Favor:** Mr. Dean, Mr. Peterson, Ms. Johnson,  
Mr. Eicher, Mr. Bechtold, Ms. Miller,  
Mr. McConnell

**Opposed:** None

Board Deliberation

**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.

Ms. Johnson made a motion that Finding of Fact #1 has not been met. Ms. Miller seconded. Two in favor, Five opposed.”

**In Favor:** Ms. Johnson, Ms. Miller

**Opposed:** Mr. Dean, Mr. Peterson, Mr. McConnell  
Mr. Eicher, Mr. Bechtold

Mr. Herron asked that the board restate the motion

**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. Peterson made a motion that Finding of Fact #1 has been met. Mr. Dean seconded. Five in favor, two opposed, Motion approved.

**In Favor:** Mr. Dean, Mr. Peterson,  
Mr. Eicher, Mr. Bechtold,  
Mr. McConnell

**Opposed:** Ms. Johnson, Ms. Miller

**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 public, may not be the basis for granting a variance.

Mr. Bechtold made a motion that Finding of Fact #2 has been met. Mr. Peterson seconded. All in favor motion, motion approved.”

**In Favor:** Mr. Dean, Mr. Peterson, Ms. Johnson,  
Mr. Eicher, Mr. Bechtold, Ms. Miller,  
Mr. McConnell

**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 made a motion Finding of Fact #3 has been met. Mr. Bechtold seconded. All in favor, Motion approved."

**In Favor:** Mr. Dean, Mr. Peterson, Ms. Johnson,  
Mr. Eicher, Mr. Bechtold, Ms. Miller,  
Mr. McConnell

**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. Jonson made a motion that Finding of Fact #4 has been met. Mr. dean seconded. All in favor, motion approved."

**In Favor:** Mr. Dean, Mr. Peterson, Ms. Johnson,  
Mr. Eicher, Mr. Bechtold, Ms. Miller,  
Mr. McConnell

**Opposed:** None

Mr. McConnell made a motion to approve VAR 02-22 Mikki & Donald Lindstrom, 17101 Claret Ct.. Mr. Bechtold seconded. All in favor, motion approved.

**In Favor:** Mr. Dean, Mr. Peterson, Ms. Johnson,  
Mr. Eicher, Mr. Bechtold, Ms. Miller,  
Mr. McConnell

**Opposed:** None

Mr. Dean made a motion to close the planning board and open as the board of adjustment. Mr. Bechtold seconded. All in favor, motion approved.

**In Favor:** Mr. Dean, Mr. Peterson, Ms. Johnson,  
Mr. Eicher, Mr. Bechtold, Ms. Miller,  
Mr. McConnell

**Opposed:** None

Ms. Johnson made a motion to close the board of adjustment and open as the planning board. Mr. Dean seconded. All in favor, motion approved.

**In Favor:** Mr. Dean, Mr. Peterson, Ms. Johnson,  
Mr. Eicher, Mr. Bechtold, Ms. Miller,  
Mr. McConnell

**Opposed:** None

### **ANNOUNCEMENT**

Mr. McConnell announced that he will be resigning. He is selling his property located on Mayes Road and plans to find property in Mooresville. Mr. McConnell has served the planning board for thirteen years.



Mr. Herron announced that Ms. Smigelski, board secretary and planning administrative assistant has also resigned.

Mr. Herron also mentioned that the planning department is looking to fill the following two positions at this time, Administrative Assistant and Planner.

**ADJOURNMENT**

Mr. McConnell made a motion to adjourn the meeting at 8:07 p.m. Mr. Dean second. All in favor and motion approved.

**In Favor:** Mr. Dean, Mr. Peterson, Ms. Johnson,  
Mr. Eicher, Mr. Bechtold, Ms. Miller,  
Mr. McConnell

**Opposed:** None

Respectfully Submitted:

\_\_\_\_\_  
Keith Eicher  
Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
Summer Smigelski  
Secretary

\_\_\_\_\_  
Date

## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: June 13, 2022

**To:** Chair Eicher and Planning Board Members

**From:** Wayne Herron, Deputy Manager


**Action Requested:**

Review minutes.

**Manager's Recommendation:**

Approve minutes.

**ATTACHMENTS:**

Name:	Description:	Type:
 <a href="#">Special_PB_Minutes_05162022_Draft_-_Copy.docx</a>	May 16, 2022 Minutes	Backup Material

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Minutes

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**TOWN OF CORNELIUS SPECIAL PLANNING BOARD  
MEETING**

Assembly Room  
May 16<sup>th</sup>, 2022  
12:00 p.m.

**Members Present**

Keith Eicher, Chair  
Susan Johnson  
Lee Peterson, Vice Chair  
Phil Bechtold  
Joseph Dean  
Sean Herndon, Alternate  
Jaime Rauscher, Alternate

**Members Absent**

Hardy McConnell  
George Searle, Alternate  
Danielle Miller

**Staff Present**

Wayne Herron, Deputy Town Manager/  
Planning Director, Interim  
Summer Smigelski, *Admin. Assistant*  
Gary Fournier, Planner  
Becky Partin, Senior Planner

**VISITORS**

See Sign-In Sheets

**DETERMINATION OF QUORUM**

Chair Eicher called the Special Planning Board meeting to order at 12:01 pm and noted there was a quorum present.

**REZ 03-22 Alexander Farms Amendment**

Mr. Tucker presented Alexander Farms amendment to the board. The request is to amend a previously approved rezoning plan for approximately 55 acres located at the NE corner of West Catawba Avenue and Westmoreland Road. The proposed amendment will increase the unit count for the independent senior living unit count from 130 to 143. The plan also includes the preservation of the historic Tenant House building at the corner of West Catawba Avenue and Westmoreland Road.

Staff recommends approval of this project subject to the following conditions:

- Town approval is contingent on review and approval by other applicable local, state and federal agencies.
- The development shall comply with all other applicable requirements of the Town of Cornelius Land Development Code.
- Town approval incorporates and shall comply with any and all submittals in the case file and correspondence presented to the board in support of this application, including, but not limited to the following: The site/sketch plan, architectural elevations, and any other information related to this case or improvements recommended by the Town and/or other agencies.
- The Memorandum of Agreement between the United States Army Corps of Engineering, the North Carolina State Historic Preservation Office, Alexander Farms, MU, LLC, and Preserve Mecklenburg, Inc. (Executed MOA attached, as modified from time to time) shall become a development condition.

- In addition to the terms and conditions detailed in the MOA, Alexander Farms MU, LLC (AF) agrees to the following development conditions in preservation of the Tenant House:
  - a) AF assumes full responsibility for moving the Tenant House from its present location to the parcel which it owns on the southwestern corner of West Catawba Avenue and Westmoreland Road per the revised site plan.
  - b) AF assumes full responsibility for providing security fencing of the Tenant House until such time the new site location is ready to receive the structure. In the event the structure has to be relocated temporally based on site excavation, AF assumes full responsibility.
  - c) AF assumes full responsibility for construction and providing the necessary infrastructure, including foundation and utilities, making all necessary repairs to bring the Tenant House up to historical preservation standards, and into compliance with current building codes.
  - d) AF assumes full responsibility for making necessary arrangement for regular and routine maintenance of the Tenant House as referenced in the MOA.
- AF shall either cause a preservation easement to be granted to Preservation Mecklenburg, Inc. (PMI) on the new Tenant House Location or cause the new Tenant House Location to be deeded to PMI to prevent demolition in perpetuity. The applicant shall provide a copy of the easement or deed, as applicable, to the Town.
- The Applicant shall coordinate with Duke Energy and Piedmont Natural Gas to ensure the Town of Cornelius will be permitted a driveway to access the future park property. Access driveway must be a minimum 30' in width.
- In addition to the above conditions, the applicant is still subject to all conditions from the previous rezoning approval (REZ 08-17), except as modified herein.

Chair Eicher asked for the applicant to come forward.

Susan Irvin, Attorney, presented the discussed details of the presented changes.

Brian Jenest with Cole Jenest & Stone Bolton & Menk, Inc. presented the tenant house relocation and the elevations to the board.

Chair Eicher asked for public comment

Dan Morrill, 139 Middleton Drive. Mr. Morrill responded to the boards question about the main house not being preserved. The main farm house is not in an area that the Army Corps of Engineers would consider to be historic. However, the tenant house was determined.

Mike Miltich, 18021 Nantz Road. Mr. Miltich mentioned that traffic is a major item of discussion and his concern is that there are not enough amenities included in the independent senior living units.

After discussion the board made a motion to recommend approval

Mr. Dean made a motion recommend approval of REZ 03-22 Alexander Farms Amendment. Mr. Bechtold seconded. All in favor, motion approved.

**In Favor:** Ms. Johnson, Mr. Herndon, Mr. Bechtold,  
Mr. Eicher, Ms. Rauscher, Mr. Peterson,  
Mr. Dean

**Opposed:** None

Mr. Dean reads the consistency statement for REZ 03-22

Mr. Dean made a motion to approve the consistency statement as written. Ms. Johnson seconded. All in favor, motion approved.

**In Favor:** Ms. Johnson, Mr. Herndon, Mr. Bechtold,  
Mr. Eicher, Ms. Rauscher, Mr. Peterson,  
Mr. Dean

**Opposed:** None

**ADJOURNMENT**

Ms. Johnson made a motion to adjourn the meeting at 12:47 p.m. Mr. Dean second. All in favor and motion approved.

**In Favor:** Ms. Johnson, Mr. Herndon, Mr. Bechtold,  
Mr. Eicher, Ms. Rauscher, Mr. Peterson,  
Mr. Dean

**Opposed:** None

Respectfully Submitted:

\_\_\_\_\_  
Keith Eicher  
Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
Summer Smigelski  
Secretary

\_\_\_\_\_  
Date

## REQUEST FOR BOARD ACTION

 **Print**

**Date of Meeting:** June 13, 2022

**To:** Board of Adjustment Members

**From:** Gary Fournier, CZO - Planner














**Action Requested:**

The Applicant is seeking a variance from the 20 foot left side setback shown on the recorded plat, Map Book 27 Page 2. The applicant is asking for the left side setback to be decreased to 10 feet to expand an accessory dwelling unit.

**Manager's Recommendation:**

Hear evidence and render a decision

**ATTACHMENTS:**

Name:	Description:	Type:
 <a href="#">VAR_03-22_Staff_Report.pdf</a>	Staff Report	Backup Material
 <a href="#">Exhibit_A_Zoning_Map.pdf</a>	Exhibit A Zoning Map	Exhibit
 <a href="#">Exhibit_B_Vicinity_Map.pdf</a>	Exhibit B Vicinity Map	Exhibit
 <a href="#">Exhibit_C_Property_Map.pdf</a>	Exhibit C Property Map	Exhibit
 <a href="#">Exhibit_D_Map_Book_27_Page_2.pdf</a>	Exhibit D Map Book 27 Page 2	Exhibit
 <a href="#">Exhibit_D_Map_Book_27_Page_2_(enlarged).pdf</a>	Exhibit D Map Book 27 Page 2 (enlarged)	Exhibit
 <a href="#">Exhibit_E_LDC_Section_5.5.4.pdf</a>	Exhibit E LDC Section 5.5.4	Exhibit
 <a href="#">Exhibit_F_Variance_Application.pdf</a>	Exhibit F Variance Application	Exhibit
 <a href="#">Exhibit_G_Property_Survey.pdf</a>	Exhibit G Property Survey	Exhibit
 <a href="#">Exhibit_H_Site_Plan_with_Proposed_Setback.pdf</a>	Exhibit H Site Plan with Proposed Setback	Exhibit
 <a href="#">Exhibit_I_Property_Photo.pdf</a>	Exhibit I Property Photo	Exhibit
 <a href="#">Exhibit_J_Property_Photo.pdf</a>	Exhibit J Property Photo	Exhibit
 <a href="#">VAR_03-22_FoF.pdf</a>	Findings of Fact	Backup Material



**VAR 03-22**  
**17714 Mesa Range Drive**  
**Staff Analysis**

**June 13, 2022**

**Applicant:** Justin A. Ckezepis  
17714 Mesa Range Drive  
Cornelius, NC 28031

**Tax Parcel Reference:** 00104238

**Location:** 17714 Mesa Range Drive

**Variance Request:** The Applicant is seeking a setback variance

**Zoning:** Neighborhood Residential (NR)

**Hearing Date:** June 13, 2022

**Staff Commentary:**

The Applicant is seeking a variance from the 20 foot left side setback shown on the recorded plat, Map Book 27 Page 2. The applicant is asking for the left side setback to be decreased to 10 feet to expand an accessory dwelling unit.

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. Map Book 27 Page 2 recorded with the Mecklenburg County Register of Deeds shows a 20 foot left side setback and a 0 foot right side setback for 17714 Mesa Range Drive. Map Book 27 Page 2 is shown as Exhibit D.
4. Section 5.5.4 of the Town of Cornelius Land Development Code (LDC) shows 10 foot side setbacks for properties in the Neighborhood Residential zoning district. LDC Section 5.5.4 is shown as Exhibit E.
5. The Applicant has submitted a Town of Cornelius Variance Application, a Property Survey, and a Site Plan with the proposed left setback line. The Variance Application is shown as Exhibit F, the Property Survey as Exhibit G, and the Site Plan as Exhibit H.

6. Staff visited the property and took two pictures, which are shown as Exhibits I and J.

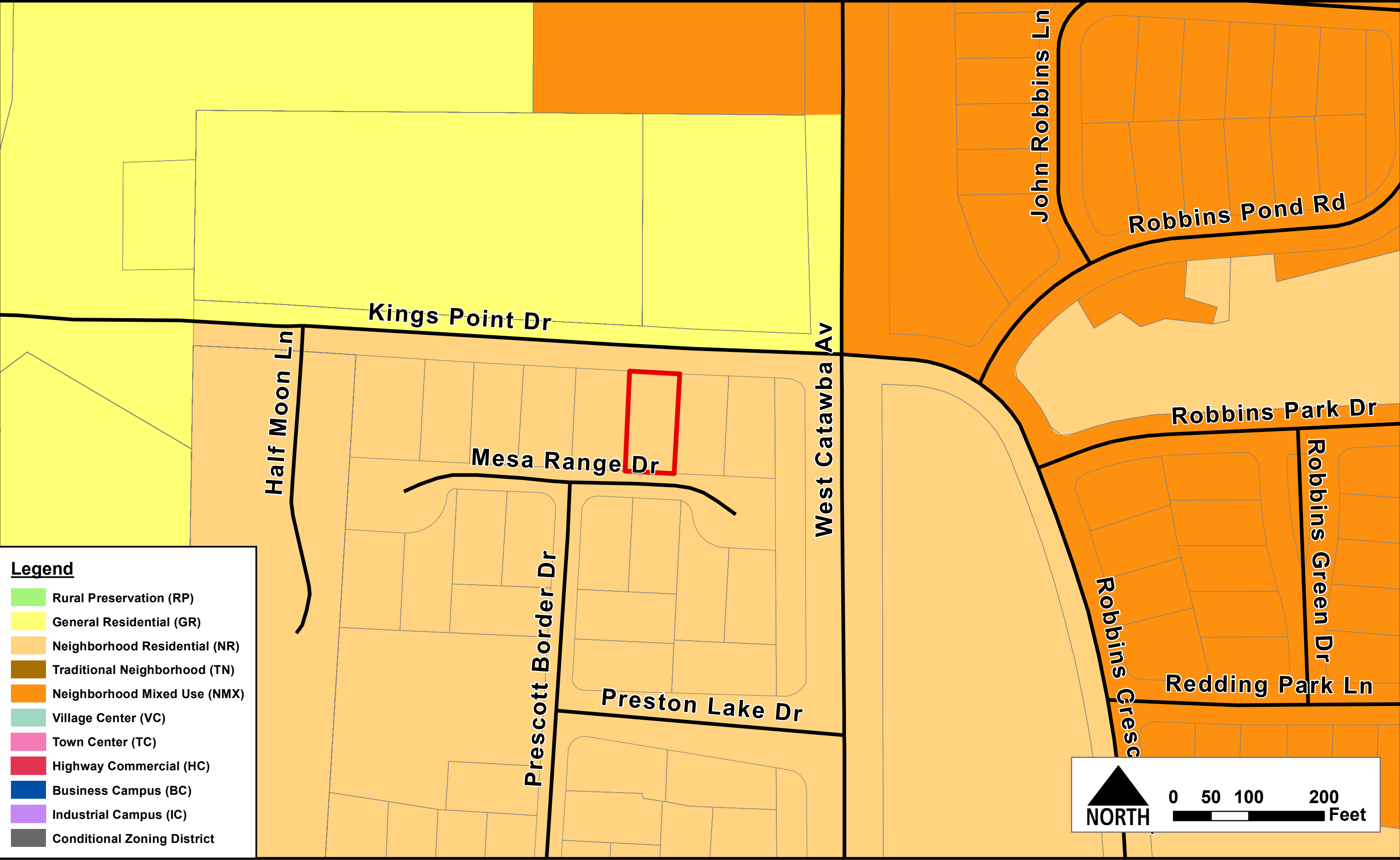
The Board of Adjustment shall receive and consider all relevant evidence in the hearing and make its decision based on the competent, material, and substantial evidence.

**Exhibits:**

<i>Exhibit A:</i>	Zoning Map
<i>Exhibit B:</i>	Aerial Vicinity Map
<i>Exhibit C:</i>	Aerial Property Map
<i>Exhibit D:</i>	Map Book 27 Page 2
<i>Exhibit E:</i>	LDC Section 5.5.4
<i>Exhibit F:</i>	Variance Application
<i>Exhibit G:</i>	Property Survey
<i>Exhibit H:</i>	Site Plan with Proposed Setback
<i>Exhibit I:</i>	Property Photo
<i>Exhibit J:</i>	Property Photo



# Exhibit A Zoning Map





# Exhibit B Vicinity Map





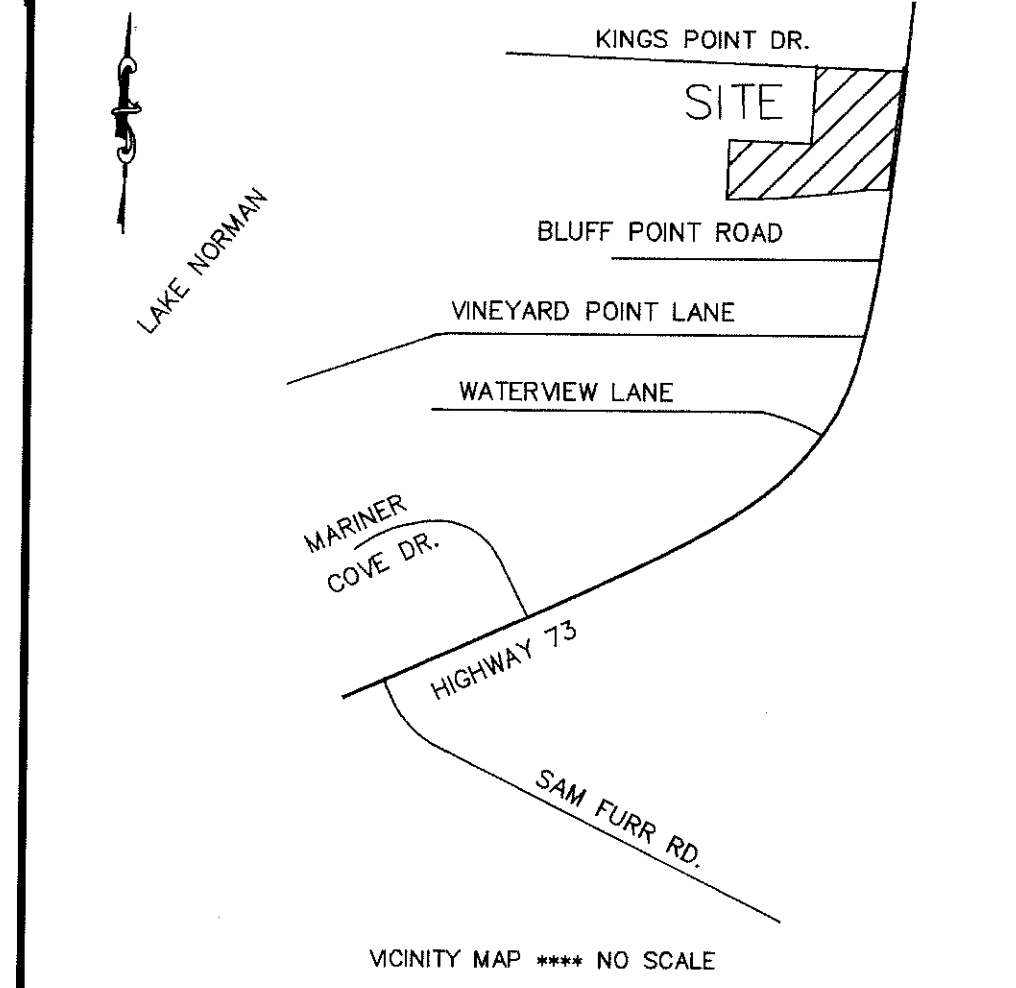
Exhibit C Property Map





# 95099766

map book 21 Page 2



APPROVED IN ACCORDANCE WITH THE PROVISIONS OF THE SUBDIVISION ORDINANCE OF MECKLENBURG COUNTY, NORTH CAROLINA. MECKLENBURG PLANNING COMMISSION.  
*Rick B. Helms* 9/20/95  
PLANNING COMMISSION STAFF DATE

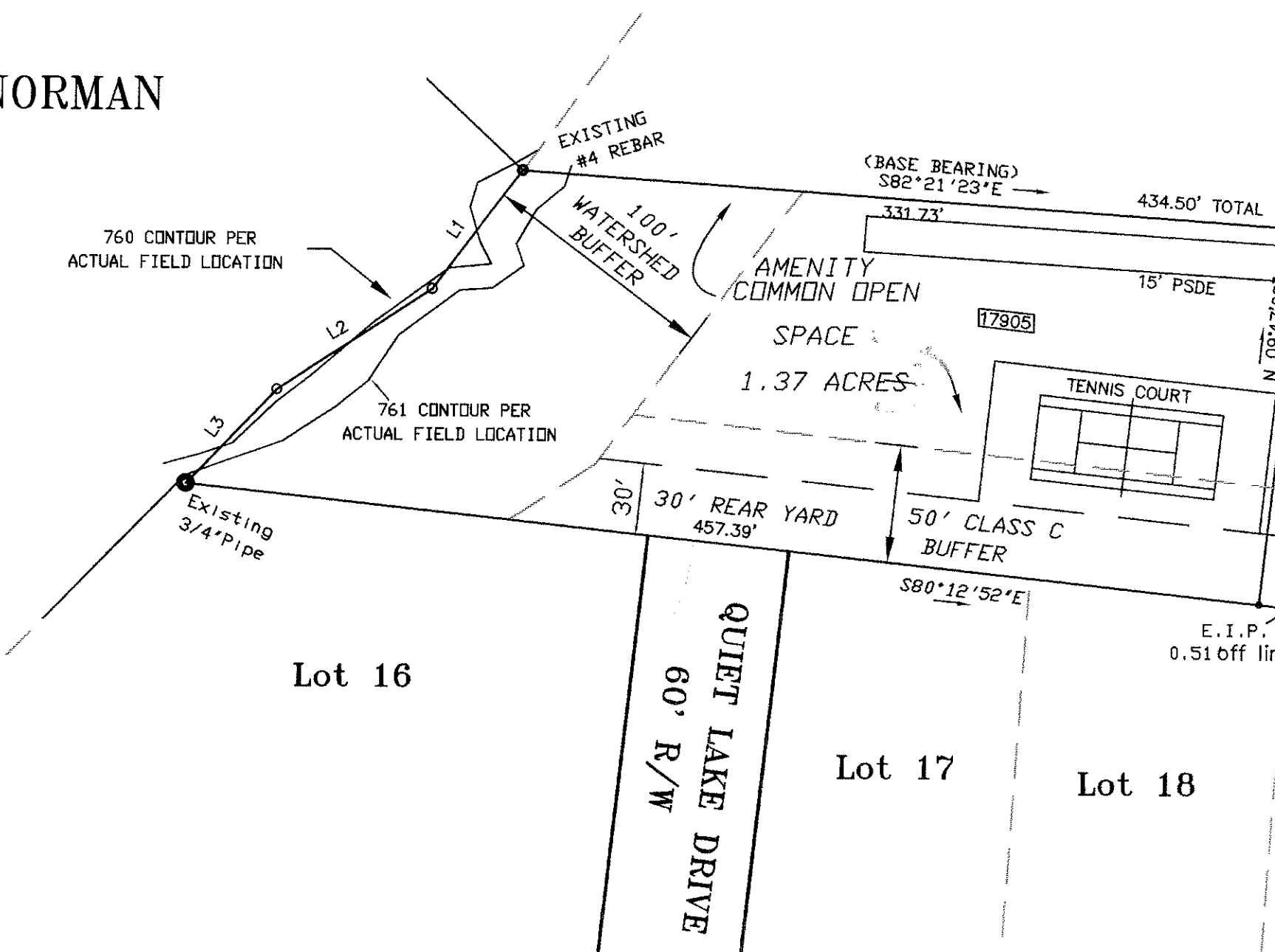
APPROVED IN ACCORDANCE WITH THE ENGINEERING REQUIREMENTS OF THE SUBDIVISION ORDINANCE OF MECKLENBURG COUNTY, NORTH CAROLINA. MECKLENBURG COUNTY ENGINEERING DEPARTMENT.  
*Bobbie Shields* 9/15/95  
(COUNTY ENGINEER) DATE

LINE	DIRECTION	DISTANCE
L1	S40°26'24"W	62.95'
L2	N60°19'52"E	78.00'
L3	N47°09'52"E	55.30'
L4	N 80°12'50"W	30.19'
L5	N 80°13'59"W	2.59'
L6	N 80°12'51"W	27.60'
L7	N 03°20'35"E	3.60'
L8	N 86°19'49"W	102.54'

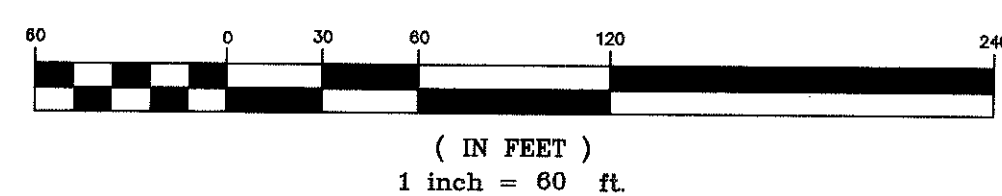
CURVE	RADIUS	LENGTH	CHORD	BEARING
C1	30.00'	94.25'	60.00'	N09°47'08"E
C2	30.00'	47.12'	42.43'	S54°47'08"W
C3	30.00'	93.75'	60.00'	S03°33'54"W
C4	30.00'	47.12'	42.43'	N41°39'22"E
C5	30.00'	94.25'	60.00'	S03°20'25"W
C6	30.00'	47.12'	42.43'	N48°20'26"E
C7	47.50'	73.08'	66.08'	N 48°15'38"E
C8	14.50'	22.31'	20.11'	N 49°15'40"E
C9	20.00'	31.53'	28.36'	S 41°29'45"E
C10	25.00'	39.95'	35.83'	N 42°06'51"W
C11	20.00'	31.30'	28.20'	N 48°30'15"E
C12	20.00'	51.14'	6.12'	S 79°18'08"E
C13	20.00'	24.05'	22.63'	S 37°29'33"E
C14	47.50'	69.33'	63.34'	S 44°51'11"E
C15	25.00'	41.92'	37.19'	N 51°42'19"E
C16	30.00'	41.99'	38.64'	S 40°09'46"E
C17	30.00'	69.63'	63.58'	S 54°11'14"W
C18	14.50'	22.22'	20.11'	S 56°05'47"W
C19	20.00'	28.37'	26.80'	N 38°24'30"W
C20	20.00'	33.55'	29.75'	S 51°43'35"W
C21	30.00'	48.26'	43.22'	S 46°01'03"W
C22	47.50'	2.99'	2.99'	S 82°38'18"E
C23	20.00'	30.23'	27.43'	S 43°21'50"E
C24	20.00'	30.23'	27.43'	S 43°21'50"E

Kennerly Development Co., LLC  
7856/191

LAKE NORMAN



GRAPHIC SCALE



KINGS POINT DRIVE (60' PUBLIC R/W)

MESA RANGE DR. (PRIVATE DR.)

PRESTON LAKE DR. (PRIVATE DR.)

SEDONA WAY (PRIVATE DR.)

Ellen B. Gibby  
By Will

FILED FOR  
REGISTRATION  
95 SEP 21 PM 1:22

REGISTERED LAND SURVEYORS  
MECKLENBURG CO., NC

DEED BK 7856 PG. 191  
DATED 7/18/94

N.C. HWY 73 (60' PUBLIC R/W)

SURVEYORS CERTIFICATION

#338

I, Douglas L. Duvall, do hereby certify that this map was drawn under my supervision from an actual survey made under my supervision and that the ratio of precision as calculated by latitudes and departures is 1:10,000. (That the boundaries not surveyed are shown as broken lines plotted from information found in book \_\_\_\_\_ page \_\_\_\_\_.) THAT THIS MAP WAS PREPARED IN ACCORDANCE WITH G.S. 47-30, AS AMENDED.

WITNESS MY HAND AND SEAL THIS 12 DAY OF SEP 1995.

REGISTERED LAND SURVEYORS  
L-3508  
REGISTRATION NUMBER

NORTH CAROLINA  
FEDERAL COUNTY  
NOTARY PUBLIC OF THE COUNTY AND STATE A-FORESAID, CERTIFY THAT DOUGLAS L. DUVALL, JR., A REGISTERED LAND SURVEYOR, PERSONALLY APPEARED BEFORE ME THIS DAY AND ACKNOWLEDGED THE EXECUTION OF THE FOREGOING INSTRUMENT. WITNESS MY HAND AND OFFICIAL PUBLISHED SEAL, THIS 12 DAY OF SEP 1995.  
NOTARY PUBLIC  
MY COMMISSION EXPIRES: 6/17/97

SURVEYORS NOTES

- 1) THIS PROPERTY MAY BE SUBJECT TO ANY EASEMENT AND/OR RIGHTS-OF-WAYS OF RECORD.
- 2) AREA COMPUTED BY THE COORDINATE METHOD.
- 3) Zoning: Mx-1 (Petition No. 94-5C)
- 4) Total Site Area: 15.97 acres
- 5) Tax Parcel No: 001-042-01
- 6) Total No. of Lots = 43
- 7) Minimum Lot Area = 4000 SF  
Minimum Lot Width = 40 FT  
Minimum Flaglot Width = 25 FT  
Minimum Building Setback (From public St.) = 20 FT  
Minimum Building Setback (From private St.) = 20 FT  
Minimum Sideyard Width (Chute) = 8 FT and 10 FT  
Minimum Sideyard Width (Zero lot line) = 0 FT and 20 FT  
Minimum Rearyard (interior lots) = 20 FT  
Minimum Rearyard (exterior lots) = 30 FT
- 8) 35' by 35' triangles apply to all intersections.
- 9) No Geodetic monument located within 2,000' of property
- 10) This survey creates a subdivision of land within the area of a county or municipality that has an ordinance that regulates parcels of land.
- 11) All lots within the Preston at the Lake subdivision to the best of my knowledge lie within the WS-IV, critical area of the Lake Norman/Catawba watershed basin as designated by the North Carolina Division of Environmental Management and as appears on the watershed protection map of Town of Cornelius.
- 12) See lot 24 for typical setbacks
- 13) Iron set at all corners unless otherwise notes as Concrete Monument
- 14) Each lot is allowed 5924 sq. ft. of impervious area.
- 15) J. Gilley in recording this plat as a portion of Preston at the Lake has designated certain parts as 'common open space' for the use by the homeowners or tenants of Preston at the Lake not for use by the general public, but for parking, recreational and other related activities as more fully provided for the declaration of covenants, conditions, and restrictions applicable to Preston at the Lake which declarations will be recorded in the Mecklenburg County Registrar of Deeds before any lots are sold and which said declaration is hereby made a part of this plat and incorporated herein.
- 16) Private streets & medians will be maintained by owner or assigns.

LEGEND  
A = 10'X70' SIGHT TRIANGLE  
B = 35'X35' SIGHT TRIANGLE  
R/W = RIGHT-OF-WAY  
PSDE = PUBLIC STORM DRAINAGE EASEMENT  
O - I.P.S. = #4 SOLID IRON SET  
Δ = CONCRETE MONUMENT  
② = LOT NUMBER  
00000 = ADDRESS

State of North Carolina, County of Mecklenburg  
The foregoing certificate(s) of  
*Antonia B. Allen*  
a Notary Public (is) Public (is) (are) certified  
to be correct  
This 21st day of September 1995  
Judith A. Gibson, Register of Deeds  
By: *Antonia B. Allen* Deputy

RECORDED PLAT  
OF  
SURVEY  
PRESTON AT THE LAKE  
LEMLEY WSP, MECK CO., NC.

J. GILLEY CO.  
P.O. BOX 1085  
DAVIDSON, NC 28036  
(704) 892-1484

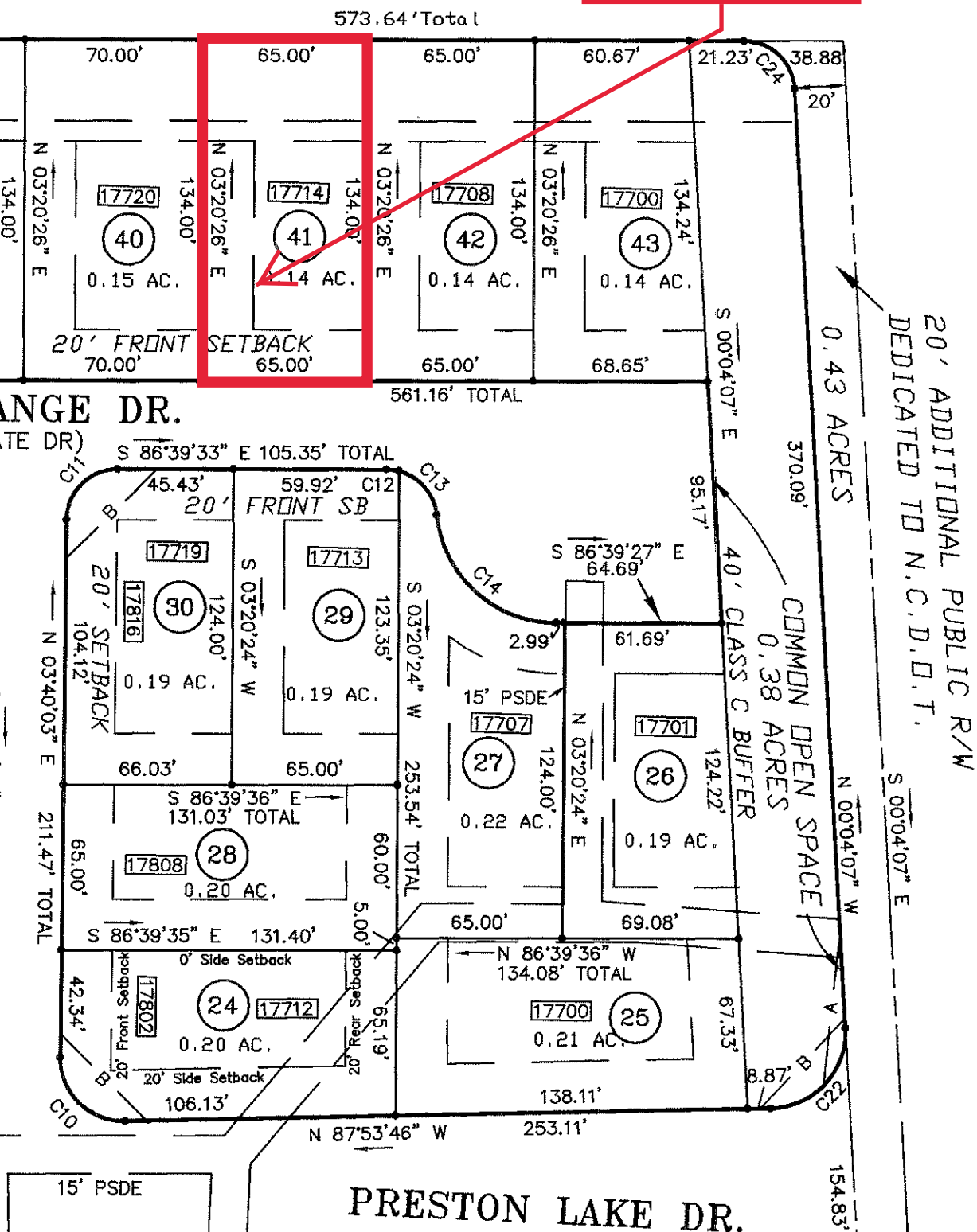
OWNER:

DON ALLEN ASSOCIATES P.A.  
Engineering & Surveying • Planning  
933 Bradley School Rd • Mooresville • NC 28115  
(704) 664-7029 (704) 664-8041 Fax



(60' PUBLIC R/W)

20 ft. left  
setback line



95 SEP 21 PM 1:22  
REGISTERED OF DEEDS  
MECKLENBURG CO., NC

DEED BK. 7856 PG. 191  
DATED 7/18/94

N.C. HWY 73

SEPARATES IS 1:10000, (THAT THE BOUNDARIES NOT  
SURVEYED ARE SHOWN AS BROKEN LINES PLOTTED FROM  
INFORMATION FOUND IN BOOK \_\_\_\_\_, PAGE \_\_\_\_\_);  
THAT THIS MAP WAS PREPARED IN ACCORDANCE WITH  
G.S. 47-30, AS AMENDED.

WITNESS MY HAND AND SEAL THIS 12 DAY OF  
SEPT, A.D. 1995.

Douglas L. Dowell, Jr.  
REGISTERED LAND SURVEYORS

L-3508  
REGISTRATION NUMBER

NORTH CAROLINA  
IREDELL COUNTY

A NOTARY PUBLIC OF THE COUNTY AND STATE A-  
FORESAID, CERTIFY THAT DOUGLAS L. DOWELL, JR., A REGISTERED  
LAND SURVEYOR, PERSONALLY APPEARED BEFORE ME THIS  
DAY AND ACKNOWLEDGE THE EXECUTION OF THE FORE-  
GOING INSTRUMENT. WITNESS MY HAND AND OFFICIAL  
STAMP OF SEAL, THIS 12 DAY OF SEPT, 1994.

Patricia B. Allen  
NOTARY PUBLIC

MY COMMISSION EXPIRES: 6/17/97

### SURVEYOR'S NOTES

- 1) THIS PROPERTY MAY BE SUBJECT TO ANY EASEMENT AND/OR RIGHTS-OF WAYS OF RECORD.
- 2) AREA COMPUTED BY THE COORDINATE METHOD.
- 3) Zoning: Mx-1 (Petition No. 94-5C)
- 4) Total Site Area: 15.97 acres
- 5) Tax Parcel No: 001-042-01
- 6) Total No. of Lots = 43
- 7) Minimum Lot Area = 4000 SF  
Minimum Lot Width = 40 FT  
Minimum Flaglot Width = 25 FT  
Minimum Building Setback (From public St.) = 20 FT  
Minimum Building Setback (From private St.) = 20 FT  
Minimum Sideyard Width (Cluster) = 8 FT and 10 FT  
**Minimum Sideyard Width (Zero lot line) = 0 FT and 20 FT**  
~~Corner Lot Minimum sideyard width = 20 FT~~  
Minimum Rearyard (interior lots) = 20 FT  
Minimum Rearyard (exterior lots) = 30 FT
- 8) 35' by 35' sight triangles apply to all intersections.
- 9) No Geodetic monument located within 2,000' of property
- 10) This survey creates a subdivision of land within the area of a county or municipality that has an ordinance that regulates parcels of land.

Douglas L. Dowell, Jr.

11) All lots within the Preston at the Lake subdivision to the best of my

#### 5.5.4: Table of Dimensional Requirements

		ZONING DISTRICTS										
Measure	Unit	RP	GR	NR	NMX	WMX	TC	VC	HC	BC	CO	IC
<b>SETBACKS</b>												
Setback - Front Min	Feet	50 <sup>4</sup>	25 <sup>4</sup>	10 <sup>4</sup>	-	10	-	-	25	-	-	70 <sup>5</sup>
Setback - Front Max	Feet	N/A	N/A	20	15	25	10	-	-	-	-	-
Setback – State Roads	Feet	N/A	25	25	25	25	-	25	25	25	25	25
Setback - Westmoreland Rd. (West of 77)	Feet			170	170							
2nd & 3rd Story ROW Encroachment	Feet	-	-	-	-	5	5	5	-	-	-	-
Setback – Sides	Feet	15	10	10	-	-	-	-	-	-	-	-
Setback – Rear	Feet	50	25	25	25	-	-	25	30	-	-	-



## TOWN OF CORNELIUS VARIANCE APPLICATION

Date Filed:        /        /	Case #: <b>VAR</b>
Fee Paid: \$	Public Hearing:        /        /
Applicant: Justin A. Ckezepis	Tax Parcel: 00104238
Location of Variance: Side Yard Setback	Zoning: NR

I, Justin A. Ckezepis, 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 Land Development Code (cite Section and numbers):

Plat Map 27 - 2 (UDC Section 4.2.1(D) and Table 5.5.4)

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

Sideyard setback to be altered from 20' (per Plat Map 27 - 2) to 10' (matching Table 5.5.4)

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We are looking to expand the footprint of the Accessory Dwelling Unit that is currently on  
our property.

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### 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 a multi-generational household. With the current market (both pricing and  
inventory) an unnecessary hardship would be created if our family was required to  
locate to different propert(ies) that fit the needs of our family.

- 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.

Setback lines listed within the plat map do not match current setback standards within  
the UDC. While it may have been the standard at one point, they are not the current  
standard. Neighborhood contains varying buffers and setback requirements.

- 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.

The hardship did not result from actions taken by the applicant.



- 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.

Given current market conditions and all wanting to find ways to improve housing  
conditions for all, altering current platted sideyard setback allows us to maximize  
the use of our property while simultaneously minimizing negative impact to our family.

**I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information and belief.**

Justin A. Ckezepis

Name of Appellant

17714 Mesa Range Drive

Appellant's Mailing Address

Cornelius, NC 28031

City, State, Zip Code

5/9/2022

Date

980-553-1159

Telephone Number

JC@SkadooshProperties.com

Email Address

*Justin A. Ckezepis*

Appellant Signature

**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.**



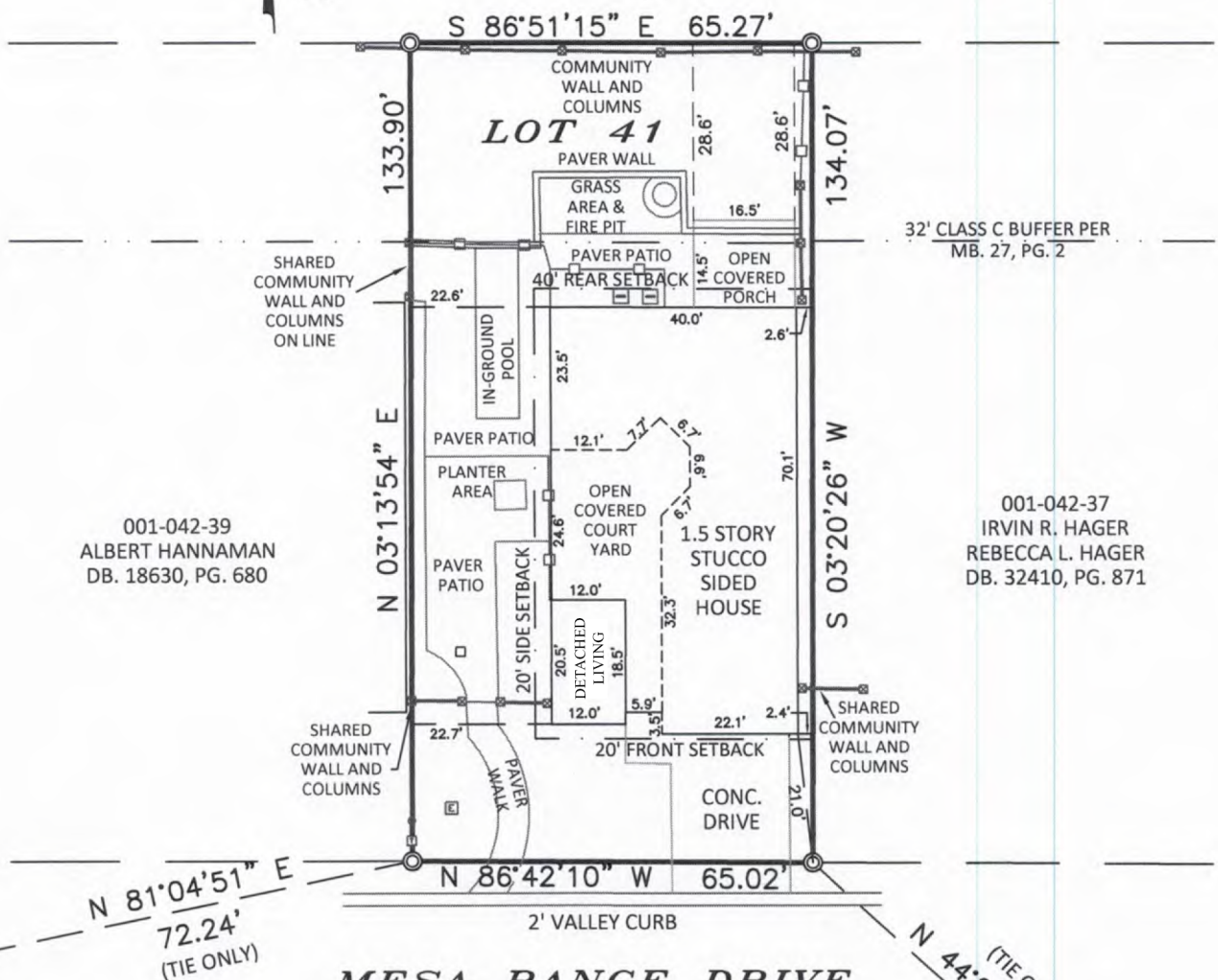
NORTH PER MAP BOOK 27, PAGE 2

*J. E. Clemmer*  
J. ERIC CLEMMER, P.L.S.  
18335 OLD STATESVILLE ROAD  
SUITE A  
CORNELIUS, N.C. 28031  
(704) 765-5134



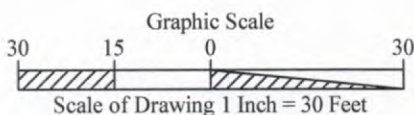
### KINGS POINT DRIVE

60' PUBLIC R/W  
(MB.27, PG. 2)



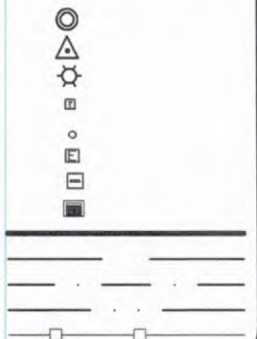
#### NOTES:

1. NO NCGS MONUMENT FOUND WITHIN 2000'
2. PROPERTY MAY BE SUBJECT TO OTHER COVENANTS, RESTRICTIONS, EASEMENTS OR RIGHTS-OF-WAY THAT MAY BE OF RECORD.
3. THE TOTAL AREA OF LOT 41 IS 8,728 SQ. FT. OR 0.200 ACRE.
4. THE MAXIMUM ALLOWABLE IMPERVIOUS AREA PER FOR LOT 41 M.B. 27, PG. 2 IS 5,924 SQ. FT. CALCULATED IMPERVIOUS AREA AT TIME OF SURVEY IS 5,378 SQ. FT.
5. CONSULT WITH GOVERNING AGENCY FOR PREVAILING LAND DEVELOPMENT AND ZONING REQUIREMENTS PRIOR TO DESIGN OR CONSTRUCTION OF ANY IMPROVEMENTS.



#### LEGEND:

- #4 REBAR FOUND
- MAG NAIL FOUND
- LIGHT POLE
- TELEPHONE PEDESTAL
- UTILITY PEDESTAL
- TRANSFORMER BOX
- HVAC UNIT & PAD
- DROP INLET (STORM)
- SUBJECT PROPERTY LINE
- ADJOINER PROPERTY LINE
- BUILDING SETBACK
- 32' CLASS C BUFFER LINE
- 4' ALUMINUM FENCE LINE



## PHYSICAL SURVEY OF LOT 41 OF PRESTON AT THE LAKE



Professional  
Property  
Surveyors, Inc.  
18335 Old Statesville Road Ste. A  
Cornelius, N.C. 28031  
704-765-5134 Phone/Fax  
Firm License: C-3666

Property of:  
JUSTIN A. CKEZEPIS  
DEMI R. CKEZEPIS  
JILL B. ANTHONY

As Recorded in:  
MB. 27, PG. 2  
DB. 31965, PG. 374

Site Address:  
17714 MESA RANGE DRIVE  
CORNELIUS, NC 28031  
MECKLENBURG COUNTY

120219-02/062520-02  
Job No.

JEC  
Prepared By

≥ 1:10,000  
Error of Closure

1"=30'  
Drawing Scale

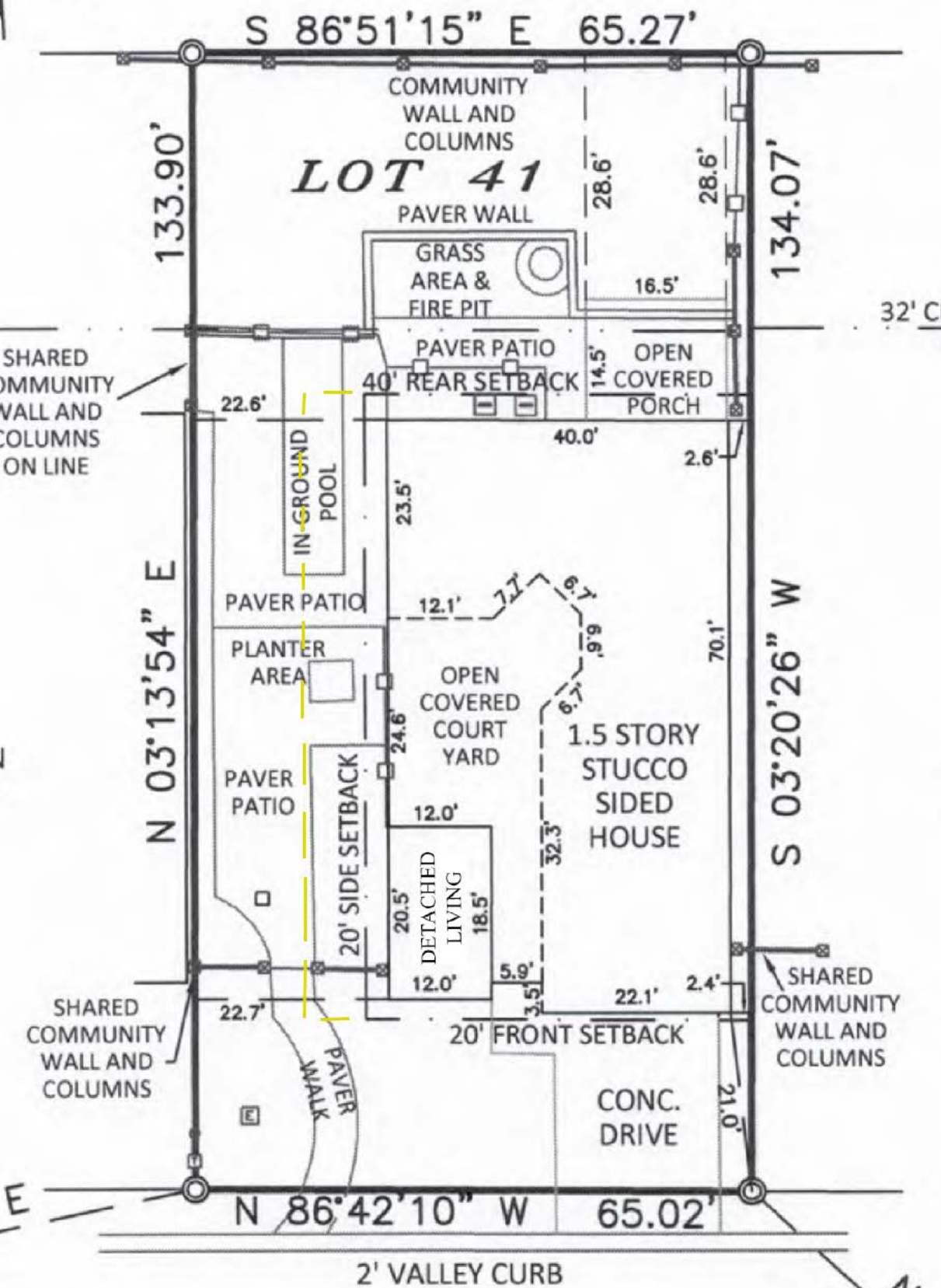
001-042-38  
Tax Parcel Number

17701 MESA  
Drawing File Name

1 of 1  
Sheet Number

07/02/2019  
Date





**MESA RANGE DRIVE**

Private R/W













TOWN OF CORNELIUS

Variance  
FINDINGS OF FACT

Owner/Project: Justin A. Ckezepis	Case #: VAR 03-22
Acreage: 0.14	Tax Parcel(s): 00104238

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: \_\_\_\_\_

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- 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: \_\_\_\_\_

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---

---

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: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



## REQUEST FOR BOARD ACTION

 **Print**

**Date of Meeting:** June 13, 2022

**To:** Watershed Review Board Members

**From:** Gary Fournier, CZO - Planner

**Action Requested:**

Review a Built Upon Area (BUA) Averaging Certificate Application and associated plat for the following property:

20221 Sloop Court (recipient)

**Manager's Recommendation:**

Approve BUA Averaging Certificate

**ATTACHMENTS:**

Name:	Description:	Type:
 <a href="#">BUA_Application.pdf</a>	Application	Backup Material
 <a href="#">Staff_Approved_Plat.pdf</a>	BUA Plat	Backup Material
 <a href="#">20221_Sloop_Ct_(Recipient).pdf</a>	BUA Recipient Aerial Photo	Backup Material
 <a href="#">18632_Nantz_Road_(donor).pdf</a>	BUA Donor Aerial Photo	Backup Material
 <a href="#">18632_Nantz_Rd_Deed.pdf</a>	BUA Donor Deed	Backup Material



# TOWN OF CORNELIUS

## Planning Department

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

**Staff Only:**

Date Rec'd: \_\_\_\_\_

Fee Rec'd: \_\_\_\_\_

### BUILT-UPON AREA (BUA) AVERAGING CERTIFICATE APPLICATION

#### 1. Project Description

Impervious Reallocation

#### 2. Receiving Parcel Information

Property Owner's Name(s): Desyers LLC

Property Owner's Mailing Address: 20221 Sloop Ct.

Phone Number: 336-279-0213 Email Address: Rebecca@desyers.com

Tax Parcel Number(s): 00149161 Property Size (acres): .386

Zoning District: GR Watershed Overlay District: CA

Existing Impervious Coverage: 4556 (sq.ft.) Amount Receiving from Donor Parcel: 1000 (sq.ft.)

Has a watershed variance ever been granted for this parcel? Yes ☒ No ☐

Property Owner's Signature(s): [Signature]

4/28/2022

DocuSigned by: CACF0A5A19AE413...

#### 3. Donor Parcel Information

Property Owner's Name(s): John Bradford

Property Owner's Mailing Address: 18632 Nant2 Rd Cornelius NC

Phone Number: 704-453-9348 Email Address: JBradford@parklaneproperties.com

Tax Parcel Number(s): 00186161 Property Size (acres): 2.239

Zoning District: GR Watershed Overlay District: CA

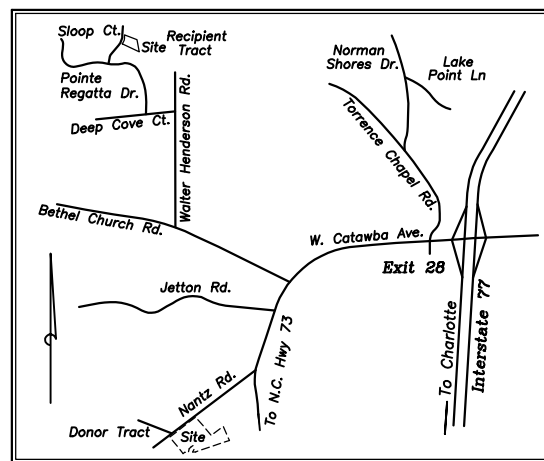
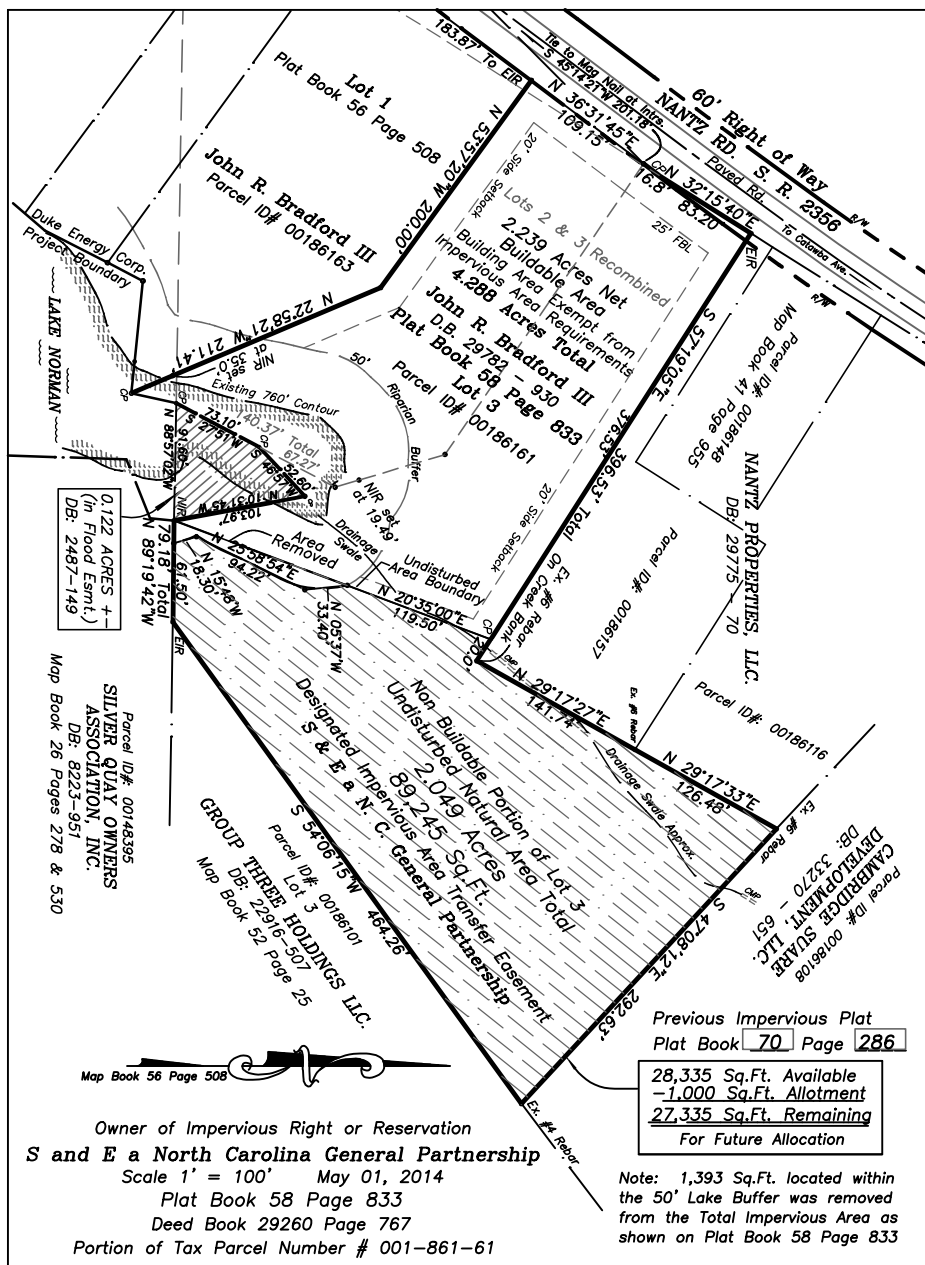
Existing Impervious Coverage: 0 (sq.ft.)

Has a watershed variance ever been granted for this parcel? Yes ☐ No ☒

Property Owner's Signature(s): [Signature]

DocuSigned by: FB905802D2C941A...

**\*\*\*Built-Upon Area Averaging Plats must be reviewed by Town of Cornelius Planning Department staff and approved by the Watershed Review Board.**



I Hereby Certify that the Subdivision Plat shown hereon is exempt from the Subdivision Provisions of the Land Development Code of the Town of Cornelius and therefore is exempt from its provisions. This Plat has been found to comply with the Zoning Regulations of the Land Development Code and has been approved by the Town of Cornelius, N. C. for recording in the Office of the Register of Deeds of Mecklenburg County, N. C.

Date Planning Director, Town of Cornelius, N. C.

Certificates of Approval for Recording  
This property is located within a Public Water Supply Watershed. Development restrictions may apply. I Certify that the Plat shown hereon complies with the Watershed Protection Ordinance and is approved by the Town of Cornelius for recording at the Mecklenburg County Register of Deeds Office.

Date Watershed Administrator, Town of Cornelius

State of North Carolina, County of \_\_\_\_\_  
I, \_\_\_\_\_, Review Officer of \_\_\_\_\_ County,  
Certify that the Map or Plat to which this certification is affixed meets all statutory requirements for recording.

Date Review Officer

**Built-Up Area Transfer Plat**  
This Plat represents a transfer of Built-Up Area through preservation of a dedicated, undisturbed natural area for properties within the Jurisdiction of the Town of Cornelius. The resulting action may or may not create tracts of land that are compliant with the Cornelius Land Development Code (LDC). This Parcel is subject to the (LDC) built-upon averaging standards: Any change to the development proposal affecting the approved built-upon area allowance requires amendment to the existing Built-Upon Area Averaging Certificate and approval by the Cornelius Watershed Review Board. The Planning Director reserves the right to make periodic site inspections to ensure compliance with these conditions.

Date Planning Director, Town of Cornelius, N. C.

**Descriptive Notes**  
Donor Tract - Lot # 3 Contains 4.288 Acres Total Area  
Impervious Right or Reservation Owned by S & E a North Carolina General Partnership  
Plat Book 58 Page 833 Zoned: General Residential  
with 89,245 Sq.Ft. - 2.049 Acres of Designated Impervious Area  
Previous allotments 60,910 Sq.Ft., Leaving 28,335 Sq.Ft. Remaining  
from previous record Plat found in Plat Book 70 Page 286  
This allotment 1,000 Sq.Ft., Leaving 27,335 Sq.Ft. for future Allocation  
Recipient Tract - Lot # 1 of The Pointe Regatta, Map 1  
Plat Book 68 Page 563 Parcel # 001-491-61  
Contains 0.388 Acres ± Zoned - General Residential  
**General Notes**  
Minimum Building Setback For Lot # 3 on Nantz Rd.  
25' Front, 10% of Lot Width on Side (8' Min.), 25' Rear  
50' Riparian Buffer along Lake Frontage  
5' Setback Side and 50' Rear for Accessory Structures  
Minimum Building Setbacks For Lot # 1 on Sloop Court  
25' Front, 10' Side, 25' Rear  
All Restrictions shown on Noted Record Plats and Plats Previous  
to those Apply except the Restriction being remediated hereon  
The Parcels of Land as shown on this Plat are located in the  
W.S. IV C.A. of the Lake Norman Critical Watershed Area  
Portion of Property is located within a Special Flood Hazard Area  
according to the FEMA-FIRM Community Panel # 3710463 300J for  
Lot # 3, effective date March 02, 2009, and FEMA-FIRM Panel #  
3710463 300J for Lot # 1, Effective date March 02, 2009  
Any Construction or Use within the areas delineated as Floodway  
are subject to the restrictions imposed by the Cornelius Flood  
Damage Prevention Ordinance  
The Natural Area shown above shall remain Undisturbed in perpetuity  
No N. C. Geodetic Survey Markers found within 2000'  
Property is subject to any Easements or Rights of Way on record  
and any unrecorded written or implied Easements that may exist  
but were not apparent as of the date of this Survey  
New Iron Rods set at Corners of Lot 3 unless noted otherwise  
Survey Date of Lot 3 shown to the above April 25, 2014

**Mets and Bounds Description of the Undisturbed Natural Area**  
Beginning at a #6 Rebar, Thence N 29°17'27" E 141.74' to a #6 Rebar, Thence N 29°17'33" E 126.48' to a #6 Rebar, Thence S 47°08'12" E 292.63' to a #4 Rebar, Thence S 54°06'15" W 464.26' to an EIR, Thence N 89°19'42" W 61.50' to a computed point at the 50' Lake Buffer, Thence, with the Lake Buffer Line, to computed points the following three calls (1) N 15°48' W 18.30', (2) N 25°58'54" E 94.22', (3) N 5°37' W 33.40' to a computed point at the western limit of the Undisturbed Area, Thence with the western line of the Undisturbed Area, N 20°35'00" E 119.50' to a computed point, Thence S 57°19'05" E 20.00' to the beginning point. Containing 2.049 Acres (89,245 Sq.Ft.) more or less.

I, Dale B. Hilderbran, Hereby Certify that this Plat was drawn from an actual survey made under my direct supervision ( Deed Description recorded in Deed Book 19520 Page 869 and Deed Book 29260 Page 767 ); that the Ratio Precision is 1 : 20,000 ± as calculated, that the boundaries not surveyed are shown as broken lines plotted from information as referenced hereon; that this Plat was prepared in accordance with General Statute 47-30 as amended.  
Witness my Hand and Official Seal this the 29th day of April, 2022 a.d.

**Preliminary Plat - Not For Recordation Conveyances or Sales**  
N. C. Professional Land Surveyor L-2861

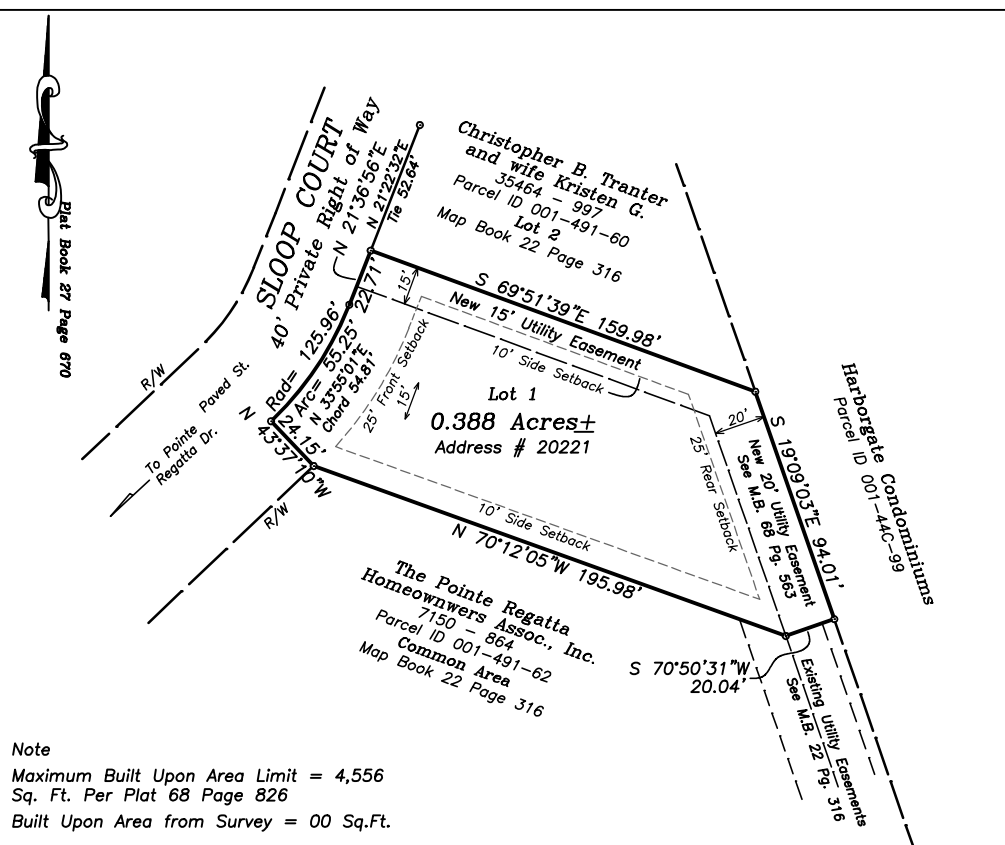
I Hereby Certify that this Survey is of an Existing Parcel or Parcels of Land

N. C. Professional Land Surveyor L-2861

I (We) Hereby Certify that: I am (We are) the Owner(s) of the property shown and described hereon, which is located in the Jurisdiction of the Town of Cornelius, that I (We) do hereby adopt this plan with my(our) free consent, establish minimum building setback lines, preserve and protect all significant trees over 18 inches in diameter in the tree and root protection area, plant supplementary trees if required, and dedicate all Streets, alleys, walks, parks and other sites and easements to public or private uses as noted. Once the Streets have been accepted by the Town or the State, street trees shall be maintained and cared for by the Owner adjacent to the tree, except in Subdivisions where the Property Owners Association provides maintenance and care. Prior to Street acceptance the developer shall be responsible for ensuring maintenance and care. Maintenance shall include replacement and trimming as necessary. Furthermore I (We) do hereby dedicate all sanitary sewer, storm sewer, and water that are located in public utility easements or rights of way to the Town of Cornelius and Charlotte Water.

Owner	Date
Owner	Date
Owner	Date

For Review Purposes Only



Note  
Maximum Built Upon Area Limit = 4,556  
Sq. Ft. Per Plat 68 Page 826  
Built Upon Area from Survey = 00 Sq.Ft.

**Lot Receiving Impervious Area Allotment**

**DESYERS, LLC**

Lot 1 of The Pointe Regatta Map 1  
Reference  
Map Book 68 Page 563 Parcel ID 001-491-61  
Scale 1" = 50' March 17, 2021

The Purpose of this Plat is for Allocating Impervious Rights  
Not a Certified Survey - This Plat was drawn from a Survey  
Plat made by Allen Geomatics P.C. dated March 4, 2021

The Purpose of this Plat is to Allocate 1,000 Square Feet  
of allowable built-upon area from PID # 001-861-61  
(donor parcel) to PID # 001-491-61 (recipient parcel).  
Each parcel is located in the same watershed.

Site Data Table	Donor Parcel	Recipient Parcel
Parcel ID	001-861-61	001-491-61
Total Site Area	4.288 Ac.	0.388 Acres
Current Allowed Built Upon Area	28,335 Sq.Ft.	4,556 Sq.Ft.
Built Upon Area Allocated	-1,000 Sq.Ft.	+1,000 Sq.Ft.
New Allowed Built Upon Area	27,335 Sq.Ft.	5,556 Sq.Ft.
Existing Surveyed Built Upon Area	00 Sq.Ft.	00 Sq.Ft.
Remaining Allowed Built Upon Area	00 Sq.Ft.	5,556 Sq.Ft.

**IMPERVIOUS ALLOCATION PLAT FOR LOT # 1 OF THE POINTE REGATTA, MAP 1**

**DESYERS, LLC**

Town of Cornelius - Lemley Township - Mecklenburg County - North Carolina  
Scale 1" = 50' & 100' Platted April 29, 2022

Reference

Deed Book 35842 Page 441 Parcel ID # 001-491-61

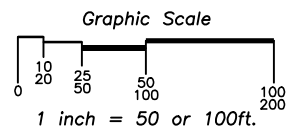
Owner of Record of  
Lot 3 on Nantz Rd.

John R. Bradford III  
18632 Nantz Rd.  
Cornelius, N. C. 28031

Owners of Record of Lot # 1 of  
The Pointe Regatta, Map 1

Desyers, LLC  
P. O. Box 1457  
Wells, Maine 04090

**DALE B. HILDERBRAN, PLS.**  
**LAND SURVEYING AND SUBDIVISION PLANNING**  
2389 Kens Drive Sherrills Ford, N. C. 28673  
Phone (828) 478-3234 Mobile (980) 721-5025



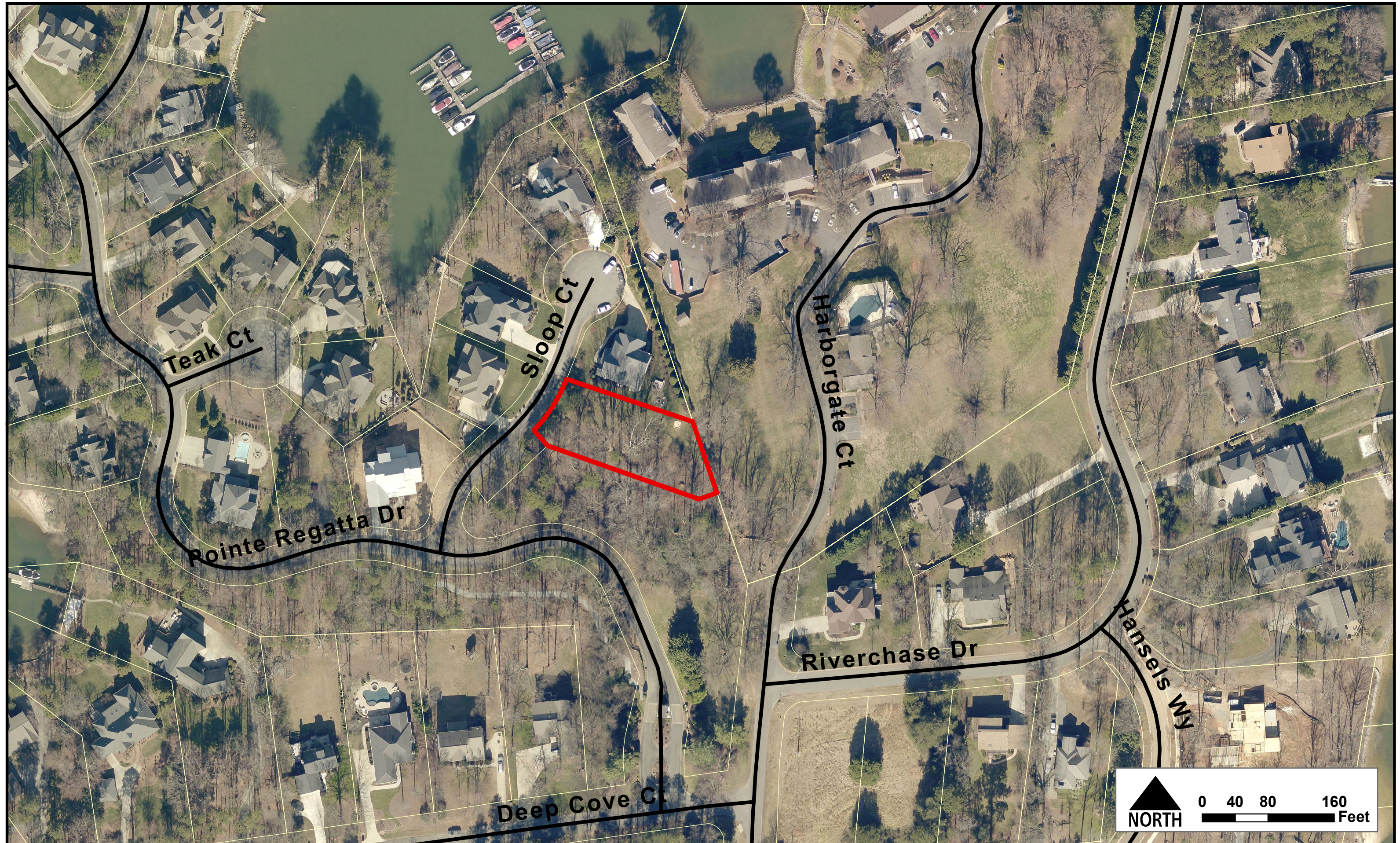
**Legend**

EIP.....Existing Iron Pipe  
EIR.....Existing Iron Rod  
NIR.....New Iron Rod  
C.M.....Concrete Monument  
R/W.....Right of Way

Revision Table	No.	Date	Description	By



Recipient: 20221 Sloop Ct



Teak Ct

Sloop Ct

Harbortgate Ct

Pointe Regatta Dr

Riverchase Dr

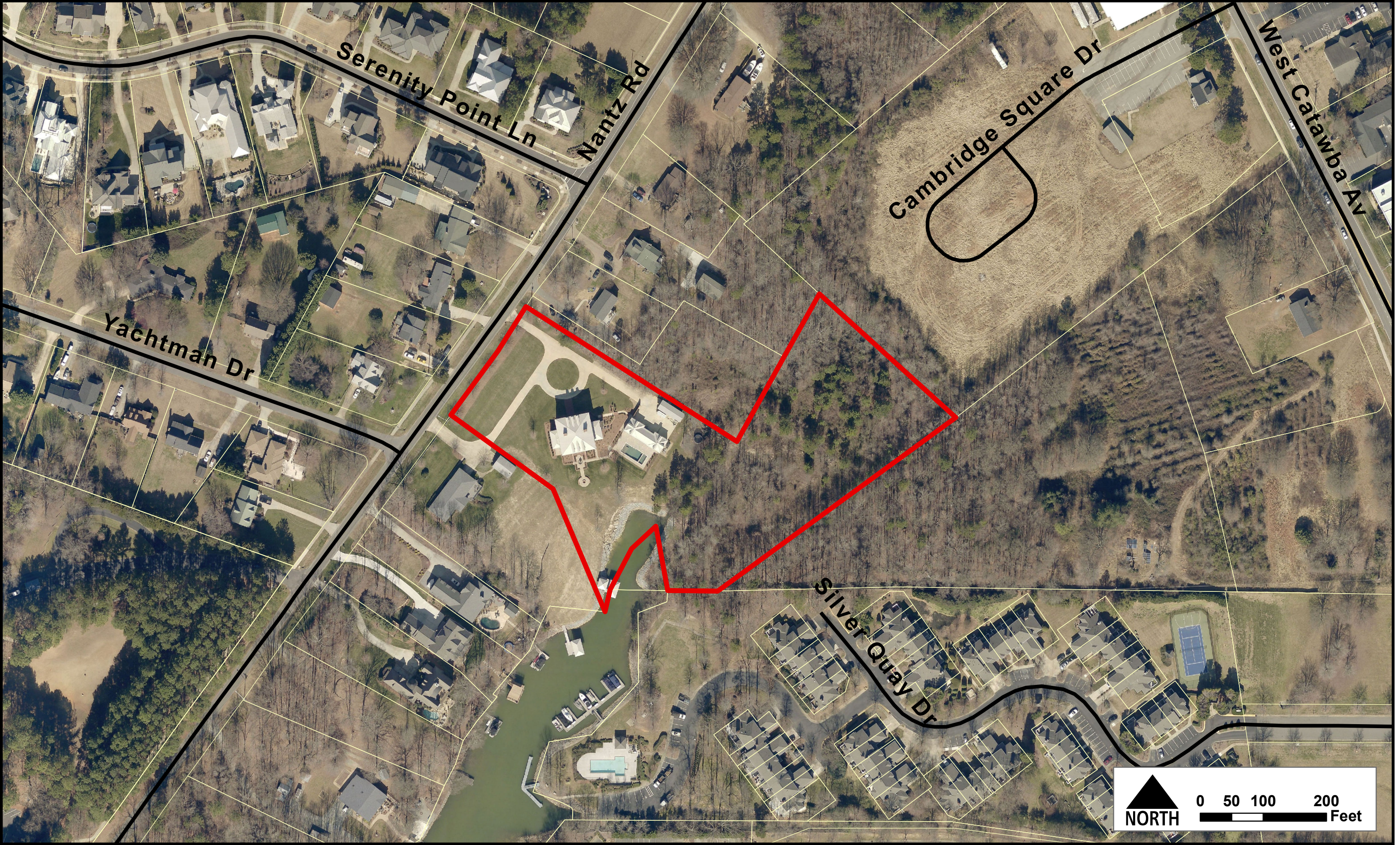
Hansels Wy

Deep Cove Ct





Donor: 18632 Nantz Road





FOR REGISTRATION  
 J. David Granberry  
 REGISTER OF DEEDS  
 Mecklenburg County, NC  
 2014 JUN 20 04:18:29 PM  
 BK:29260 PG:767-772  
 FEE:\$26.00  
 EXCISE TAX: \$550.00  
 INSTRUMENT # 2014069836  
 PHETSL



Excise Tax \$550.00

Tax Lot No. Parcel Identifier No. a portion of 001-861-17

Mail after recording to: Grantee  
 This instrument was prepared by: Yates W. Faison, III, Attorney at Law (Morehead Title)  
 Brief description for the Index:

### NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED made this 20<sup>TH</sup> day of June, 2014, by and between

GRANTOR  
 S and E, a North Carolina  
 General Partnership

19520 W. Catawba Ave., Ste 114  
 Cornelius, NC 28031

(hereinafter Grantor)

GRANTEE  
 JOHN R. BRADFORD, III

21523 Baltic Drive  
 Cornelius, NC 28031

(hereinafter Grantee)

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

**WITNESSETH**, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the Town of Cornelius, Mecklenburg County, North Carolina, and more particularly described as follows:

Tract I:

BEING all of Lot 3, as shown on "Minor Subdivision Plat for S and E, a North Carolina General Partnership" recorded in Map Book 56, Page 508 of the Mecklenburg County Public Registry

Tract II:

BEGINNING at an iron rod in the line of the property of Silver Quay Owners Association, Inc., a corner of Lot 3 on the Plat above-described, the same being located at southernmost point of the "Impervious Area Boundary" shown on said Plat, and running thence with two lines of said Lot 3 as follows: (1) N. 10-31-45 W. 103.97 feet to a point; and (2) S. 46-56-58 W. 52.60 feet to a point in the waters of Lake Norman; thence S. 27-50-58 W. 73.10 feet to a point; thence S. 88-57-02 E. 91.60 feet to an iron rod, the point and place of BEGINNING, and being the parcel denominated "0.122 acres + - (in Flood Esmt.)" on the Plat above-described

Subject, however, to the reservation of certain rights and Deed Restrictions by Grantor as set forth in Exhibit A attached hereto and incorporated herein. Notwithstanding said reservation, however, Grantee shall have the right of first refusal to the last 3,000 square feet of Impervious Allocation Area (or earlier, at Grantee's election) in accordance with the terms of the Offer to Purchase and Contract, dated June 18, 2014, between the parties hereto, which is incorporated herein

Being a portion of the same property conveyed to Grantor by deed recorded in Map Book 29241, Page 835 of the Mecklenburg Public Registry

All or a portion of the property herein conveyed \_\_\_ includes or   x   does not include the primary residence of a Grantor.

**TO HAVE AND TO HOLD** the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And Grantor covenants with Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated. Title to the property hereinabove described is subject to the following exceptions: Restrictions and easements of record, and 2014 ad valorem property taxes, which Grantee agrees to pay as a part of the consideration hereof

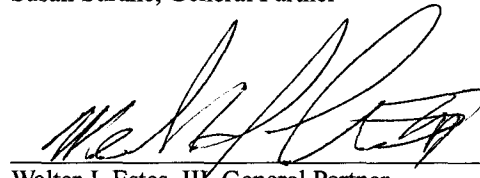
**IN WITNESS WHEREOF**, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officer, this the day and year first above written.

S and E, a North Carolina General Partnership

By:

 (SEAL)  
Susan Surane, General Partner

By:

 (SEAL)  
Walter J. Estes, III, General Partner

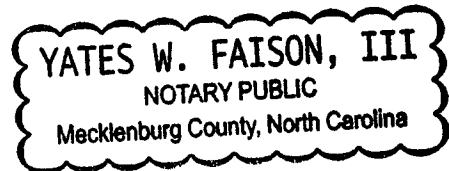
## STATE OF NORTH CAROLINA, MECKLENBURG COUNTY

I, YATES W. FAISON III, a Notary Public for the County and State aforesaid, certify that Susan Surane, either being personally known to me or proven by satisfactory evidence, personally appeared before me this day and acknowledged that she is General Partner of S and E, a North Carolina General Partnership, and that, being authorized to do so, she voluntarily executed the foregoing instrument on behalf of said company for the purposes stated therein. Witness my hand and official stamp or seal, this 20<sup>th</sup> day of June, 2014.

Yates W. Faison, III

Notary Public

My commission expires: 2/20/2018



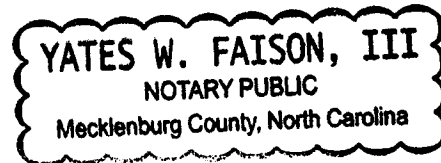
## STATE OF NORTH CAROLINA, MECKLENBURG COUNTY

I, Yates W. Faison, III, a Notary Public for the County and State aforesaid, certify that Walter J. Estes, III, either being personally known to me or proven by satisfactory evidence, personally appeared before me this day and acknowledged that he is General Partner of S and E, a North Carolina General Partnership, and that, being authorized to do so, he voluntarily executed the foregoing instrument on behalf of said company for the purposes stated therein. Witness my hand and official stamp or seal, this 20<sup>th</sup> day of June, 2014.

Yates W. Faison, III

Notary Public

My commission expires: 2/20/2018





## EXHIBIT A

**DEED RESTRICTION**  
**GRANTOR'S RESERVATION OF CERTAIN RIGHTS:**

In addition to the rights and privileges reserved by Grantor elsewhere herein, upon conveyance and acceptance of Deed, Grantor and Grantee specifically acknowledge and agree:

1. That notwithstanding the sale and transfer of the property as described in this General Warranty Deed, Grantor, its designees, and Grantor's agents, employees, contractors, licensees, successors and assigns, shall have and retain the right to re-enter upon and temporarily occupy the property for the purpose of surveying, and performing other similar or related work.

2. Upon Grantor's request(s) and through Grantee's acceptance of this General Warranty Deed, Grantee, his heirs, successors, and/or assigns, (hereinafter referred to as "Grantee") covenant and agree to join with Grantor in the granting, delivery and/or dedication of any impervious allocation(s) to any person, firm, or entity that Grantor directs and authorizes, and to execute any instruments or documents necessary or appropriate thereto. Grantee further agrees that by accepting this General Warranty Deed, Grantee waives and releases any and all rights, interests or claims Grantee might otherwise have in and to the impervious allocation as set forth on that portion of Lot 3 as shown on the cross hatched section entitled "Non Buildable Portion of Lot 3 Designated Impervious Area for Future Allocation" (hereinafter referred to as the "Impervious Allowance") of the recorded Plat Map recorded at Book 56 at Page 508 (hereinafter referred to as the "Plat Map"), whether in law or equity, on account of Grantor's sale and reallocation of the Impervious Allowance shown on the Plat Map.

3. That Grantor, and its successors, designees and assigns, until the reallocation of all of the Impervious Allowance as shown on the portion of Lot 3 entitled "Non Buildable Portion of Lot 3 Designated Impervious Area for Future Allocation" is sold, or the passing of one hundred (100) years from the date of the parties execution of this Deed Restriction, by Grantor and/or reallocated to third parties, Grantor, shall have the right to convey interests in the Impervious Allocation to other persons upon such terms and conditions as Grantor shall deem necessary and/or appropriate.

4. That Grantor reserves the right unto itself, and its successors and assigns, to delete, reallocate, realign and grant to other persons all of Grantor's interest in and to the Impervious Allocation over, under and on the property being purchased by Grantee which Grantor shall determine to be necessary or desirable, and Grantee hereby consents and agrees to execute and deliver such documents and instruments and do such other things as may be necessary to effectuate the same.

5. Grantor's rights and privileges as reserved in this General Warranty Deed shall constitute a burden on and a covenant running with the property and any person who succeeds to Grantee's rights and interest in the property time shall be bound by and observe Grantor's rights and privileges reserved in this General Warranty Deed. Any mortgages, deeds of trusts, or liens of any kind or nature placed upon the property shown on the Plat Map depicting Lot 3, shall be subordinate to Grantor's right, title and interests in an to the Impervious Allocation described herein.

#### **GRANTEE'S COVENANTS:**

By acceptance of this General Warranty Deed, Grantee acknowledges and agrees as follows:

1. That Grantee has read, understands and accepts all of the terms and conditions of this General Warranty Deed, this Deed Restriction, and the Exhibits attached to this General Warranty Deed, all of which are incorporated herein by reference.

2. That the property Grantee is purchasing is subject to and governed by the terms of this Deed Restriction which limits the Grantee's use of that portion of Lot 3 as shown on the Plat Map entitled "Non Buildable Portion of Lot 3 Designated Impervious Area for Future Allocation".

3. Through acceptance of this General Warranty Deed, Grantee, his heirs, successors, and assigns are agreeing to abide by and be bound by the terms and provisions of this Deed Restriction

4. Through acceptance of this General Warranty Deed, Grantee, his heirs, successors, and assigns are agreeing to join in, execute and deliver any dedication or grants as described in this Deed Restriction, and that Grantee shall not be entitled to or receive and profits or proceeds resulting from Grantor's sale of impervious

allocations as described herein. The foregoing covenant of the Grantee shall be a covenant running with the land.

5. That Grantor's reservation of certain rights as described hereinabove, Grantee's promises and agreements contained herein are covenants running with the property and any document of conveyance by which Grantee sells or transfers any interest in the property shall be subject to and describe said reservations, promises and agreements and any and all liens placed upon the property affecting Lot 3 as shown on the Plat Map shall be subordinate to the Grantor's reservation of rights in the Impervious Allocation as described in this Deed Restriction.

6. Grantee further acknowledges that Grantor has reserved various rights, including those enumerated in the foregoing paragraphs, and that by signing below Grantee does hereby agree to promptly execute any and all documents and to do all other things as may be necessary or convenient to confirm or implement the foregoing covenants by Grantee and reservations by Grantor, and Grantee does also hereby specifically and irrevocably appoint Grantor to act on Grantee's as the attorney-in-fact on behalf of Grantee, solely for the limited purpose(s) of effectuating and/or accomplishing the terms, conditions, and covenants set forth in this Deed Restriction. The foregoing powers vested in the Grantor are irrevocable, are intended to be a "power given as security" and a "power coupled with an interest" and shall survive the recordation of this General Warranty Deed.

7. Nothing contained herein shall preclude Grantee from improving any portion of Lot 3, including but not limited to the area described as "Non Buildable Portion of Lot 3 Designated Impervious Area for Future Allocation", subject to Grantee obtaining necessary approvals from local governing authorities.

#### **DEFINITIONS:**

The word "person" includes natural persons, business organizations and any other entity the law allows to own property or conduct business;

The words "Grantor" and "Grantee" include the persons named in this General Warranty Deed and those who take over or succeed to that person's rights or interests, whether by purchase, inheritance, operation of law or otherwise.