



**Board of Adjustment
Regular Meeting Agenda
Tuesday
June 13, 2017 - 6:30 PM
Town Hall**

A. Roll Call, Determination of Quorum

B. Approval of Minutes of Previous Meeting

1. Consider approval of the March 14, 2017 Regular Meeting Minutes

C. Hearing of Cases

1. **V17-02:** The applicant, Jeremy Gibson, is requesting a variance from Article 8.1.3, to allow be allowed to keep a driveway accessing Treasure Cove (privately maintained road).
2. **V17-03:** The applicant, McIlwaine Acres Property Owner's Association, is requesting a variance from Article 8.1.3, to be allowed to keep a driveway accessing Treasure Cove (privately maintained road) constructed over farmhouse cluster designated open space.
3. **V17-04:** The applicant, Eric Groen, is requesting a variance from Article 4 Lot Types/Detached House and Article 8.16.7, to allow to construct a detached garage 18' forward of the established rear yard line.
4. **V17-05:** The applicants, Bryan and Jeanine Edwards, are requesting a variance from Article 8.8.9 (Structures and Uses Limited in Yards), to allow an existing encroachment of a deck and screen porch to remain.

D. Other Business

E. Adjourn

Town of Huntersville
BOARD OF ADJUSTMENT
6/13/2017

To: Board of Adjustment Members
From: Michelle Haines
Subject: Consider approval of Minutes

Consider approval of the March 14, 2017 Regular Meeting Minutes

ACTION RECOMMENDED:

FINANCIAL IMPLICATIONS:

ATTACHMENTS:

	Description	Type
□	Draft Minutes	Backup Material



**Board of Adjustment
Regular Meeting Minutes
Tuesday
March 14, 2017 - 6:30 PM
Town Hall**

A. Roll Call, Determination of Quorum

The Vice Chairman, Bethany Welch, determined quorum, and called the meeting to order. All Regular members were present with the exception of Joseph Kluttz. Ed Cecil, Alternate 2, was seated as a Regular member in the absence of Kluttz. Ed Lowry, Alternate 3, participated.

B. Approval of Minutes of Previous Meeting

1. Consider Approval of Minutes

A Motion was made by Edward Cecil and seconded by Jeff Pugliese, Motion to Approve the January 10, 2017 Regular Meeting Minutes. The Motion Carried by a vote of 7 Ayes and 0 Nays. Board Members voting Ayes: Welch, Brewer, Primiano, Pugliese, Rowell, Smith, Cecil

Absent: Kluttz, Evans

C. Hearing of Cases

1. **V17-01:** The applicant, Elaine Adams, is requesting a variance from Article 3.3.2 B (e), *Built-Upon Area Development Standards*, to allow an additional 196.89 square feet of impervious area over the maximum allowance shown on the approved plat for the subject property.

A Motion was made by Wilbur Smith and seconded by Edward Cecil, Motion to Grant the variance request. The Motion Carried by a vote of 7 Ayes and 0 Nays. Board Members voting Ayes: Welch, Brewer, Primiano, Pugliese, Rowell, Smith, Cecil

Absent: Kluttz, Evans

Testimony:

Meredith Nesbitt, Planner I (also referred to herein as “staff”), entered the Staff Report into the record, a copy of which is attached hereto as Exhibit A, and incorporated herein by reference. Staff presented the variance application, as follows:

BACKGROUND:

1. The 0.264-acre subject property is located at 6855 Colonial Garden Drive in the Carrington Ridge subdivision, and zoned Rural. It is in the Mountain Island Lake Watershed Overlay Protected Area 1 District. The subject property is also identified as lot 97.
2. The Carrington Ridge major subdivision was approved April 4, 2001. In 2001, residential subdivisions were not required to “reserve, at minimum, 1% of the lot area but not less than 150 square feet impervious area per lot to allow for addition of future impervious areas by

homeowner/occupant". Carrington Ridge was approved with a proposed site impervious coverage of 21.5%, which is less than the required 24%.

3. On September 24, 2004, Phase 2, Map 2 of Carrington Ridge was originally platted showing a maximum impervious allowance of 3,000 square feet for the subject property. The subject property has been shown on three plat revisions; February 24, 2005, August 10, 2005, and October 18, 2005. On October 18, 2005, the property's maximum impervious allowance was increased to 3,200 sq. ft.

4. A permit for construction of the home was issued on October 7, 2004. The plot plan shown on the permit shows a 120 sq. ft. deck (considered pervious material). However, the project data section of the permit describes the 120 sq. ft. surface labeled as a patio (considered impervious material).

5. The applicant is the only owner of the property since construction of the single family home. The applicant provided a floor plan from the builder showing the 120 sq. ft. was to be a patio.

6. The applicant provided a survey dated February 14, 2005. The 2005 survey labels the 120 sq. ft. as a deck and notes the total impervious area on the lot is approximately 3,169 sq. ft.

7. In July 2016, the property owner applied for a building permit to be able to screen-in the existing patio. The permit application was rejected because Mecklenburg County environmental data shows the subject property exceeds the recorded maximum impervious allowance.

8. In October 2016, the applicant had a new survey completed to determine exact impervious calculations. The 2016 survey shows a concrete patio and notes the impervious area is 3,396.89 sq. ft.

9. Article 11.3.3 of the Zoning Ordinance authorizes the Zoning Administrator to grant administrative waivers for minor deviations from measurable and quantifiable standards of the ordinance. Staff could administrative waive a 96 sq. ft. (3% deviation) impervious exceedance for the subject property.

10. All governing bodies have jurisdiction within the Mountain Island Lake Watershed and those entities that use Mountain Island Lake as a drinking water source were notified of this variance request. To date, Mecklenburg County Storm Water Services is the only agency who has issued comments. In a letter dated February 27, 2017, Rusty Rozzelle stated that some relief by way of a variance seems appropriate in this case.

STAFF FINDINGS:

1. Staff Findings:

A. According to the applicant, the patio was permitted by Mecklenburg County and installed by the builder when the home was originally constructed.

B. The property currently exceeds the allowed maximum impervious area shown on the approved plat by 196.89 sq. ft.

C. Staff has not found any evidence, though permit searches and historical aerial photography, that additional impervious surface has been added to the property since the original build, completed in 2005.

D. The strict application of the ordinance causes this property to be in violation of the MIL Overlay District regulations.

E. Article 3.3.2 B (e), *Built-Upon Area Development Standards* have not been changed since the subject property was originally platted in 2004.

2. Staff Findings:

A. All properties located in the MIL Overlay District are subject to built-upon area limits.

B. Staff is unaware of any other properties in Carrington Ridge that were permitted showing incorrectly labeled impervious (patio) and pervious (deck) building elements.

3. Staff Findings:

A. According to the application, the patio was installed by the builder prior to closing.

B. Staff has not found any evidence, through permit searches and historical, aerial photography, that additional impervious surface was added to the property after the original build completed in 2005.

4. Staff Findings:

A. The intent of Article 3.3.2-B is to allow development with fewer restrictions in the protected areas 1 and 2 than in the critical areas because the risk of water quality degradation from pollution is less in the protected areas than in the critical areas.

Huntersville is required by the State of North Carolina to protect drinking water supply. As such, Mountain Island Lake Watershed Overlay Distinct requirements are designed to protect water quality.

B. According to the applicant, granting the variance would bring the property into compliance and remove any harm non-compliance may cause (for example: affecting the future sale of the home).

C. Staff finds the subject property exceeded the maximum impervious allowed at the time the Certificate of Occupancy was issued by Mecklenburg County.

-
Staff Conclusions:

The applicant is seeking a variance from Article 3.3.2-B (e), *Built-Up on Area Development Standards*, of the Zoning Ordinance, which states, "For individual buildings or for development projects within Protected Areas 1 and 2, the following impervious area limitations are established on a building or project basis. PA1 and PA2, low density option: 24% B.U. with curb and gutter streets." Based on the summary of findings, staff concludes this request does meet the four Ordinance requirements for granting a variance. Therefore, supports granting a variance for this case.

1) Staff Conclusion of Findings:

The property exceeds the maximum impervious recorded on the plat. However, there is no evidence of additional impervious surface added to the subject property since the original build was completed. The strict application of the ordinance would cause the subject property to be in violation of the Zoning Ordinance, thus creating a cloud of the property title.

The MIL PA-1 built-upon area development standards have not changed since the subject property was platted in 2004. It is unnecessary to find the subject property in violation of the MIL built-upon area development standards since the violation was present at the time the Certificate of Occupancy (CO) for the single-family home was issued.

2) Staff Conclusion of Findings:

The ordinance violation (hardship) is a result of incorrect labeling of impervious surface; staff is unaware of this incorrect labeling on other building permits issued for property in Carrington Ridge.

3) Staff Conclusion of Findings:

Staff finds the hardship did not result from action taken by the applicant. The patio was incorrectly labeled during permitting. There is reason to believe the 2005 survey incorrectly labeled the patio thus causing the impervious calculations to be incorrect. Staff concludes the Certificate of Occupancy was issued in error, because of the as built survey mistake.

4) Staff Conclusion of Findings:

The spirit, purpose, and intent of the ordinance is to protect quality of drinking water. Staff concludes the amount of exceedance is minimal and was allowed because of mistakes on the building permit and 2005 survey. Because the exceedance is minimal and an existing condition staff concludes public safety is not adversely affected by granting this variance.

The Vice Chairman called the applicant to testify, to which she responded from audience that she had nothing additional to add.

Ed Cecil asked for staff to clarify the difference in impervious and pervious materials for a deck and patio. Staff explained an impervious surface such as a concrete patio verses a deck that water can run through slats and can therefore be considered pervious surface.

Jeff Pugliese asked if the 3200 square feet was still under the 24% required for the PA1 District, and staff responded, yes, the 24% is for the Carrington Ridge subdivision. A developer can then allocate individual lots specific impervious allowance.

Wilbur Smith questioned how this was determined to be in violation after twelve years. Staff explained that the applicant wanted to screen-in the patio in 2016, and the building permit was flagged as questionable. A survey as then made to show actual impervious. Ed Cecil commented that the applicant asked for a permit, and staff confirmed and noted that screening in a porch requires a permit because it requires inspections (headers). A patio can be extended at grade without a permit.

Eric Rowell noted the Staff Report states that staff is unaware of any other lots in violation in Carrington Ridge, and asked if staff had pulled plats for each house? Staff responded that they did not know of any other building permits being issued with that inconsistency. To staff's knowledge, she did not know of any other lots being in violation or having this building permit inconsistency on it. There was not a total 100% of every lot. Mr. Rowell expressed his concern if every lot has a similar error and variances would be needed. Jack Simoneau commented that the developer has created storm water ponds with assuming 24%, and if there are a lot more impervious area it would go over the storm water ponds and start some flooding areas, which could start issues. In 2003 when the Code was changed there were a lot of developers putting every square inch allowed into lots, and the Town Board made a conscious decision to have developers preserve at least a new 150 square feet per lot. Since, there has not been any issues.

Jeff Pugliese noted that by screening in a patio and putting a roof over it, that was already considered impervious space, and there is no increase in impervious space on this lot.

There were no further questions or testimony.

Board Conclusions

The period for public discussion was closed by the Chairman, and the Board had no further discussion. Wilbur Smith made a Motion to Grant the variance, V17-01, to allow an additional 196.89 square feet of impervious area over the maximum allowance shown on the approved plat for the subject property. The Board finds the following facts:

1. The building permit, including the patio, was approved by Mecklenburg County in 2004.
2. No impervious surface has been added to the property since the Certificate of Occupancy was issued in 2005.
3. Strict application of the ordinance causes the subject property located at 6855 Colonial Garden Drive to be in violation of the Mountain Island Lake Watershed regulations.
4. There are no other known building permits approved with inconsistent labeling of impervious surface.

5. The impervious surface is existing and does not negatively affect public safety.

D. Other Business

E. Adjourn

Approved this _____ day of _____, 2017.

Chairman or Vice Chairman

Michelle V. Haines, Board Secretary

Town of Huntersville
BOARD OF ADJUSTMENT
6/13/2017

To: Board of Adjustment Members
From: Meredith Nesbitt, Planner I
Subject: V17-02, 8703 McIlwaine Road Driveway

V17-02: The applicant, Jeremy Gibson, is requesting a variance from Article 8.1.3, to allow be allowed to keep a driveway accessing Treasure Cove (privately maintained road).

ACTION RECOMMENDED:

Hold a public hearing and take action on the variance request.

FINANCIAL IMPLICATIONS:

ATTACHMENTS:

Description	Type
❑ V17-02 8703 McIlwaine Road Driveway	Staff Report
❑ Exhibit 1 - Variance Application	Exhibit
❑ Exhibit 2 – 2006 Rezoning Application	Exhibit
❑ Exhibit 3 – 2006 TR Farmhouse Cluster Standards	Exhibit
❑ Exhibit 4 – 2007 Recombination Plat	Exhibit
❑ Exhibit 5 – 2007 Farmhouse Cluster Plat	Exhibit
❑ Exhibit 6 – Approved Residential Plot Plan for Single Family Home at 8703 McIlwaine Road	Exhibit
❑ Exhibit 7 – 2017 Aerial Images from Polaris 3G	Exhibit
❑ Exhibit 8 – Notice of Violation Letter, 8703 McIlwaine Road	Exhibit
❑ Exhibit 9 – Notice of Violation Letter, Farmhouse Cluster HOA	Exhibit
❑ Exhibit 10 – HOA Covenants and Restrictions	Exhibit
❑ Exhibit 11 – NCDOT Driveway Permit	Exhibit
❑ Exhibit 12 – Minutes from 2006 Rezoning Request Public Hearing	Exhibit
❑ Exhibit 13 – 2006 E-mail Correspondence with Jeremy Gibson (applicant)	Exhibit
❑ Exhibit 14 – Design Resource Group Memo	Exhibit

V 17-02
8703 McIlwaine Road Driveway

Case #: V17-02
Address: 8703 McIlwaine Road, Huntersville NC, 28078
Parcel #: 015-111-10
Acreage: +/- 0.482 ac
Property Owner/Applicant: Jeremy Gibson
Staff: Meredith Nesbitt – Planner I

The applicant, Jeremy Gibson, is requesting a variance from **Article 8.1.3** (see below) to be allowed to keep a driveway accessing Treasure Cove (private road). If approved this request would allow seven (7) residential lots service on a private right-of-way designed for a Farmhouse Cluster. See Exhibit 1 for the variance application.

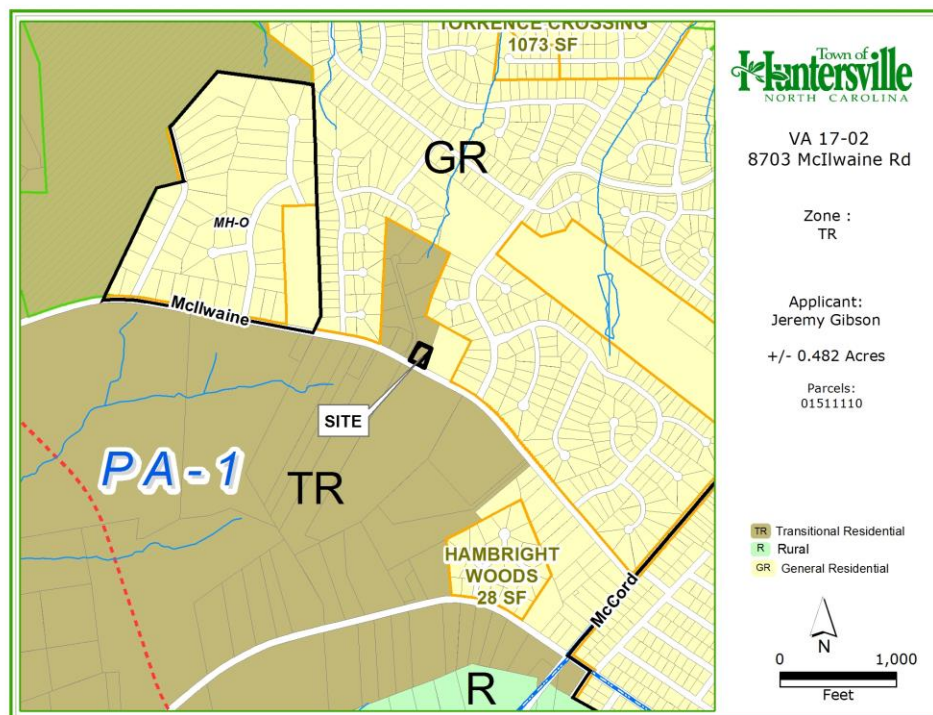
8.1 Street Frontage Required

Any lot on which a building (or buildings) is to be erected or use is to be established shall abut a public street with the following exceptions:

1. Any lot for which a residential use has been legally established prior to the effective date of this ordinance in accordance with provisions permitting establishment of use on a lot served by a private and exclusive recorded easement of at least 15 feet in width connecting said lot to a public street, may be used as if it abutted a street, provided that it is served by a driveway located on said easement. A lot of one (1) acre or more in area created through a division of land not subject to the subdivision ordinance shall be eligible for issuance of a permit to establish a single-family detached house, provided the lot is served by a private and exclusive recorded easement or fee-simple projection of the building lot at least 15 feet in width connecting said lot to a public street. A driveway accessible by emergency equipment must be located on said easement or lot projection. Lots created under these provisions shall be known as "easement-access lots" and "flag lots", respectively.

2. Any lot for which a non-residential use has been legally established prior to the effective date of this ordinance in accordance with provisions permitting establishment of use on a lot served by a private, exclusive recorded easement of at least 15 feet in width connecting said lot to a public street, may be construed in the same manner as a lot abutting a street provided that it is served with a driveway built to appropriate standards located on the permanent, recorded easement.

3. Up to six residential lots may be served by a privately maintained easement with a minimum 20-foot right-of-way if designed according to the specifications of the Rural and Transitional Farmhouse Cluster development or the specifications of the Rural and Transitional Conservation Subdivision.



BACKGROUND:

1. The 0.482 -acre subject property is located at 8703 McIlwaine Road and is not within the boundaries of an approved farmhouse cluster. The subject property is zoned Transitional Rural (TR) and is in the Mountain Island Lake Watershed Overlay Protected Area 1 (MIL PA-1) District.
2. In 2006, the applicant, Jeremy Gibson, petitioned the Town to rezone three lots, which contains the subject lot, under his ownership from General Residential (GR) to Transitional Residential (TR) with the intent to develop a farmhouse cluster, see Exhibit 2 for rezoning application.
3. The TR zoning district (Article 3) contained special requirements for farmhouse cluster developments, which required the dedication of open space and the restriction of uses within the open spaces, see Exhibit 3 for the 2006 TR Farmhouse Cluster Standards.
4. On January 17, 2007, the Town Board voted to approve the rezoning request.
5. On May 30, 2007, Town Staff approved a recombination plat, which reconfigured the three (3) rezoned parcels into a 10 acre track, a "Lot A" 0.630 acre track, and a "Lot B" (the subject property) 0.482 acre track. See Exhibit 4 for the 2007 Recombination Plat.
6. On September 7, 2007, Town Staff approved a farmhouse cluster plat, which subdivided the 10 acres into the six (6) residential lot and designated open space that make up the McIlwaine Acres Farmhouse Cluster. See Exhibit 5 for the Farmhouse Cluster Plat.
7. Zoning approval for a building permit to construct a single-family home on the subject lot was give on September 9, 2015. Written remarks on the permit state the home must face McIlwaine and driveway must access on McIlwaine. See Exhibit 6 for the Approved Residential Plot Plan.
8. A Mecklenburg County Zoning Inspector discovered the drive was not constructed to plan and was accessing off Treasure Cove rather than McIlwaine Road, see Exhibit 7 for 2017 aerial images showing the constructed driveway location. After noting the installed driveway location Notice of Violation letters were sent to the subject property owner, see Exhibit 8, and the McIlwaine Acres HOA, see Exhibit 9.
9. The applicant and the McIlwaine Acres HOA are seeking a variance to allow a seventh (7th) residential lot, not within the boundaries of a farmhouse cluster, access to a privately maintained easement (subject of this variance) and a driveway encroachment into designated farmhouse cluster open space (subject of V17-03).

STAFF FINDINGS (ordinance standards are in italics):

Please see Exhibit 1 for the applicant's responses to the required criteria for granting a variance.

In considering any variance request, the following *Standards for Granting a Variance* (Article 11.3.2.e) must be addressed with findings of fact:

Standards for Granting a Variance. 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 of 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.*

Staff Findings:

- A. According to the applicant, the hardship is a less safe access, see Exhibit 1.
- B. The strict application of the ordinance would limit the number of residential lots serviced by a privately maintained right-of-way designed in accordance with the Transitional Residential (TR) farmhouse cluster standards to no more than six (6). The subject property adds a seventh residential lot being serviced by the privately maintained right-of-way.
- C. The subject property has unrestricted access to a public street, McIlwaine Road.
- D. Town Staff gave zoning approval on a plot plan that showed driveway access on McIlwaine Road, see Exhibit 6 for the Approved Residential Plot Plan.
- E. According to the applicant, the subject property has access to all HOA property per the covenants and restrictions, filed December 2007, see Exhibit 1 and Exhibit 10.
- F. In review of the HOA covenants and restrictions staff finds the owner of 8703 McIlwaine Road does not have explicit assess to HOA property. The Declarant as defined by the covenants as Jeremy Gibson is called out as a member of the HOA. However, that membership is not explicit to the owner of 8703

McIlwaine Road. If Mr. Gibson were to sell the property, the new owner would not have membership rights under the current HOA covenants. See Exhibit 10 for the HOA Covenants and Restrictions.

- G. The Zoning Ordinance does not restrict the number of members a farmhouse cluster HOA can have. The Zoning Ordinance limits how many residential lots can be served by a privately maintained right-of-way in a farmhouse cluster.

- 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.*

Staff Findings:

- A. There are approximately 20 other single-family homes that have driveway access directly on the north side of McIlwaine Road.
- B. All farmhouse cluster developments are subject to the same requirement of a minimum project size of 10 acres subdivided for up to six (6) residential lots.
- C. According to the applicant, the owner of the subject property pays HOA fees, which maintain Treasure Cove, see Exhibit 1.
- D. According to the applicant, the subject property is intended to be part of the HOA community, see Exhibit 1.
- E. The Zoning Ordinance does not restrict the number of members a farmhouse cluster HOA may have. The Zoning Ordinance limits how many residential lots can be served by a privately maintained right-of-way developed in accordance with the farmhouse cluster development standards.
- F. The subject property is outside of the approved boundaries of the farmhouse cluster, see Exhibit 5 for the 2007 Farmhouse Cluster Plat
- G. According to the applicant, Treasure Cove is a DOT access, see Exhibit 1.
- H. NCDOT approved a driveway permit for the Farmhouse Cluster private drive on October 15, 2007. This permit gave permission for the private drive cut on McIlwaine Road (NCDOT maintained road) not permission for Treasure Cove to be a DOT access. See Exhibit 11 for NCDOT Driveway Permit.
- I. According to the applicant, the mailbox for the subject property is located on Treasure Cove, see Exhibit 1.
- J. The US Postal Service now requires cluster mailboxes. Due to the Postal Service requirement, it is common to find (in new residential developments) that a mailbox for a residential home is not located on the same road as the home is addressed to.
- K. Staff does not find any conditions that are peculiar to the property creating a hardship.

- 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.*

Staff Findings:

- A. According to the applicant, it was not understood that the subject property would not be permitted access to Treasure Cove, see Exhibit 1.
- B. In the minutes from the December 18, 2006 (Public Hearing for the rezoning request), Town Board meeting Mr. Gibson is recorded as saying, “the interest is to have the 6 houses, possibly a playground, maintain all the woods that are currently there...” See Exhibit 12 for minutes from the public hearing.
- C. The minutes from the December 18, 2006 (Public Hearing for the rezoning request) Town Board meeting also reflect Town Staff (Whitney Hodges) explaining a farmhouse cluster as “a family house cluster is essentially a minor subdivision that’s allowed a private road. They do not have to meet the underlying zoning district, but they are required to have larger amounts of open space. You have to have at least 10 acres of land and you can get no more than 6 lots on 10 acres.” See Exhibit 12 for minutes from the public hearing.
- D. An email from former Town Staff, Whitney Hodges, dated August 30, 2006 shows Mr. Gibson was sent the Farmhouse Cluster requirements that state, “a farmhouse cluster permits the subdivision of land for up to six house lots accessed by way of a shared private drive”. See Exhibit 13 for 2006 email correspondence.
- E. On September 14, 2015, Jeremy Gibson signed a building permit application for a single-family home located at 8703 McIlwaine Road with a plot plan showing the driveway will access off McIlwaine Road. Before approving the permit, Planning Staff noted in the remark section of the permit application that

the home must face McIlwaine and driveway must be on McIlwaine. See Exhibit 6 for subject property's approved residential plot plan.

- F. Sometime between zoning permit approval on September 14, 2015 and September 2016 the driveway was constructed in its current location accessing Treasure Cove, see Exhibit 7 for aerial image.
- G. The driveway providing the subject property access to Treasure Cove is a violation of the approved residential plot plan associated with the approved building permit and a violation of Zoning Ordinance requirements.

- 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.*

Staff Findings:

- A. Farmhouse clusters are a flexible subdivision option only allowed in the Rural and Transitional Residential zoning districts. The intent of the Transitional Residential for a farmhouse cluster development is to allow for the subdivision of at least ten (10) acres into no more than six (6) residential lots.
- B. Residential lots within the boundaries of an approved farmhouse cluster are exempt from the requirement of abutting a public street (Article 8.1) through the accommodation of allowing the up to six (6) residential lots to be served by a privately maintained right-of-way.
- C. The applicant also owns lot 6 within the boundaries of the farmhouse cluster. There is an option to amend the farmhouse cluster plat, converting lot 6 into open space and adding the subject property into the boundaries of the farmhouse cluster.
- D. The applicant can request a text amendment increasing the farmhouse cluster development standards to allow seven (7) residential lots.
- E. On June 2, 2017, staff received additional application materials from the applicant. See Exhibit 14 for Design Resource Group memo.

STAFF CONCLUSIONS:

The applicant is seeking a variance from **Article 8.1.3** to be allowed to keep a driveway accessing Treasure Cove (private road). Based on the summary of findings, listed below, staff concludes this request does not meet any of the criteria the Zoning Ordinance requires for granting a variance. Therefore, Planning Staff recommends denial of the variance request.

- 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.*

Staff Conclusion of Findings:

The strict application of the ordinance would require only the six (6) lots that make up the approved farmhouse cluster be served by the privately maintained right-of-way, Treasure Cove. There is not an unnecessary hardship resulting from the strict application of the ordinance as the subject property has unrestricted access to a public street, McIlwaine Road.

Staff concludes the membership and/or access rights to HOA property is irrelevant in the determination of access for the subject property.

Staff finds that this criteria for granting a variance is not met.

- 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.*

Staff Conclusion of Findings:

All farmhouse cluster developments in the Town of Huntersville are subject to a maximum of six residential lots. Further any lot on which a building or use is to be established shall abut a public street, except up to six residential lots that are serviced by a privately maintained right-of-way if designed according to the farmhouse cluster development specifications (Article 8.1.3). The subject property is outside of the boundaries of the approved farmhouse cluster, therefore was not developed in accordance with the farmhouse cluster development specifications, regardless of any personal involvement with the farmhouse cluster HOA.

There are no conditions that are peculiar to the property creating a hardship or restricting the subject property's access to McIlwaine Road.

Staff finds that this criteria for granting a variance is not met.

- 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.*

Staff Conclusion of Findings:

Staff does not find there to be a hardship in this situation, however, the zoning violation is a direct result of actions taken by the property owner/applicant.

Staff found sufficient evidence that the farmhouse cluster development standards were explained and given to the applicant in 2006/2007 when the farmhouse cluster subdivision concept was being reviewed and approved.

Additionally, Jeremy Gibson submitted a building permit application with a plot plan showing the subject lot's driveway was to be off McIlwaine Road. Due to discussion, between staff and Mr. Gibson, prior to issuing zoning approval for the building permit staff wrote the following note in the remark section of the approved plot plan, "home must face McIlwaine. Driveway must be on McIlwaine". The intention of this note was to summarize the zoning ordinance clearly required frontage and access on McIlwaine Road.

Staff finds that this criteria for granting a variance is not met.

- 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.*

Staff Conclusion of Findings:

The purpose and intent of a farmhouse cluster development is to allow a minimum of 10 acres to be subdivided for up to six house lots with a shared privately maintained right-of-way connecting the lots to a public street. Allowing the subject property to access the privately maintained right-of-way is not consistent with the intent of farmhouse cluster development standards, as it would add a seventh lot accessing a privately maintained right-of-way.

While, it can be argued that the driveway access for 8703 McIlwaine Road is safer if located on Treasure Cove rather than McIlwaine Road the criteria for granting a variance is not met. Staff concludes the findings of fact in this case prove that the applicant intended to maximum the development potential of the property under his ownership. In doing so, he created a six-lot farmhouse cluster (maxing out the farmhouse cluster development standards) and two additional single family-residential lots (8623 and 8703 McIlwaine Road).

If the intention was to have 8703 McIlwaine Road access on Treasure Cove rather than McIlwaine Road because of safety concern the farmhouse cluster subdivision should have been reconfigured. In 2007, the farmhouse cluster lot configuration was approved for maximize development because 8703 McIlwaine Road has adequate access for single-family residential driveway on McIlwaine Road. The zoning ordinance does not allow for more than six (6) residential lots to be services by a private right-of-way designed for a farmhouse cluster.

The applicant also owns lot number 6, within the approved farmhouse cluster boundary. There is an option to amend the farmhouse cluster plat, converting lot 6 into open space and adding the subject property into the boundaries of the farmhouse cluster. This would satisfy the zoning ordinance criteria for farmhouse cluster development and the applicant's desire to have driveway access on Treasure Cove. Alternatively, the applicant can request to amend the farmhouse cluster development standards through the text amendment process.

Staff finds that this criteria for granting a variance is not met.

ATTACHMENTS:

- Exhibit 1** – Variance Application
- Exhibit 2** – 2006 Rezoning Application
- Exhibit 3** – 2006 TR Farmhouse Cluster Standards
- Exhibit 4** – 2007 Recombination Plat
- Exhibit 5** – 2007 Farmhouse Cluster Plat
- Exhibit 6** – Approved Residential Plot Plan for Single Family Home at 8703 McIlwaine Road
- Exhibit 7** – 2017 Aerial Images from Polaris 3G
- Exhibit 8** – Notice of Violation Letter, 8703 McIlwaine Road
- Exhibit 9** – Notice of Violation Letter, Farmhouse Cluster HOA
- Exhibit 10** – HOA Covenants and Restrictions
- Exhibit 11** – NCDOT Driveway Permit
- Exhibit 12** – Minutes from 2006 Rezoning Request Public Hearing
- Exhibit 13** – 2006 E-mail Correspondence with Jeremy Gibson (applicant)
- Exhibit 14** – Design Resource Group Memo

EXAMPLE DECISION STATEMENT: V17-02, 8703 MCILWAINE ROAD DRIVEWAY

Planning Department	Board of Adjustment
	<p>APPROVAL: In considering the findings of fact for V17-02, a request by Jeremy Gibson for a variance from Article 8.1.3, the Board of Adjustment grants approval of the variance based on a finding that the request meets all four of the criteria outlined in the Zoning Ordinance for granting a variance.</p> <p>The Board of Adjustment finds the request meets the four criteria for granting a variance based on the following findings of fact: <i>(explain findings of fact)</i></p>
<p>DENIAL: In considering the findings of fact for V17-02, a request by Jeremy Gibson for a variance from Article 8.1.3, the Planning Department recommends denial of the variance request based on a finding that the request does not meet criteria 1, 2, 3, or 4 outlined in the Zoning Ordinance for granting a variance.</p> <p>The Planning Department finds the request does not meet any of the four criteria for granting a variance based on the following findings of fact:</p> <ol style="list-style-type: none"> 1. The strict application of the ordinance allows for six lots to be served by a privately maintained right-of-way, developed in accordance with the Rural and Transitional Residential farmhouse cluster standards. 2. The subject property has unrestricted access to a public street, McIlwaine Road. 3. All farmhouse cluster developments in the Town of Huntersville are subject to the same six residential lot maximum development standard. 4. The subject property is outside of the boundaries of the approved farmhouse cluster. 5. The zoning violation is a direct result of actions taken by the property owner in not following the plot plan as approved with the building permit. 6. The applicant and subject property owner was given the farmhouse cluster development standards various times throughout the farmhouse cluster approval process and again during the single-family home building permitting process. 7. The intent of a farmhouse cluster development is to allow a minimum to 10 acres be subdivided into no more than six residential lots. 8. The applicant has alternatives, other than a variance, to achieve zoning compliance. 	<p>DENIAL: In considering the findings of fact for V17-02, a request by Jeremy Gibson for a variance from Article 8.1.3, the Board of Adjustment denies the variance request based on a finding that the request does not meet criteria <i>(name the criteria the Board finds is not met)</i> for granting a variance.</p> <p>The Board of Adjustment finds the request does not meet the criteria for granting a variance based on the following findings of fact: <i>(explain findings of fact)</i></p>



Variance Application

Fee: \$150 (Residential) X
 \$300 (Commercial)

Date: 5/02/17

Property Owner Information

Name: Jeremy Gibson
 Address: 8703 McIlwaine Road
 Huntersville, NC 28078
 Email: Constructionman@gmail.com
 Phone No. 704-907-4674

Applicant Information (if different)

Name:
 Address:

 Email:
 Phone No.

Location of Property/Building

Address: 8703 McIlwaine Road Parcel Size: .482 Acres
 Tax Parcel ID (PIN) Number(s): 01511110

Text of Ordinance to be varied

Ordinance: Zoning Article: 8.1 Section: 3

Up to six residential lots may be served by a privately maintained easement with a minimum —
20-foot right-of-way if designed according to the specifications of the Rural and Transitional —
Farmhouse Cluster development or the specifications of the Rural and Transitional Conservation —
Subdivision —

Submittal Requirements

The following must be submitted with the completed application (signed and dated by the property owner and/or applicant):

- One (1) hard copy and one (1) electronic copy of any applicable map(s), site plans, exhibits, and applications showing exact location of property with respect to existing streets, adjoining lots and other important features on or contiguous to the property. Also, include any maps and/or illustrations (to scale), which are necessary to show the location, number and size of buildings, signs, etc., on the property.
- A list of names, addresses and tax parcel identification numbers of properties that abut the site, are across the street from the site or are otherwise within one hundred feet (100') of the site. (Electronic format is preferred)



Variance Application

Notifications Requirements

Planning Staff will be required to notify in writing each adjoining property owner.

Planning Staff will also be required, if you are seeking a variance from the requirements of the Mountain Island Lake or Lake Norman Watershed Overlay Districts, to notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for consumption as follows:

- * Mountain Island Lake Watershed Overlay. Local governments having jurisdiction in the watershed: Charlotte Mecklenburg, Cornelius and Huntersville. Entities using the water supply for consumption: Mecklenburg County, Gastonia and Mount Holly.
- * Lake Norman Watershed Overlay. Local governments having jurisdiction in the watershed: Davidson, Cornelius and Huntersville. Entities using the water supply for consumption: Mooresville, Mecklenburg County and Lincoln County.

Variance Requirements

STANDARDS FOR GRANTING A VARIANCE (Article 11.3.2.e.):

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.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed by the Board (Article 11.3.1.e.).

In the following spaces, indicate the **FACTS** that demonstrates to the Board of Adjustment that you meet all the standards for granting a variance:

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. The difficulty or hardship would result only from these regulations and from no other cause, including the actions of the owner or previous owners of the property.

Access from 8703 McIlwaine to Treasure Cove then to McIlwaine Road via a double lane DOT approved access is a much safer access than direct to McIlwaine Road. The hardship is a less safe access

8703 has access to all HOA property per the covenants and restrictions, filed 12/17/2007.



Variance Application

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. The difficulty or hardship is peculiar to the property and is not generally shared by other properties classified in the same zoning district and/or use for the same purpose.

8703 McIlwaine borders its HOA owned property that is an easement for the HOA and has a DOT access to McIlwaine Road.

8703 McIlwaine pays HOA fees. Those fees maintain the HOA property which includes Treasure Cove as well as the other 4 acres of shared space, payments have been made since 1/1/09. This property is intended to be part of the HOA community.

Treasure Cove is a DOT access - it is wide and safe. 8703 also has a mailbox on Treasure Cove not McIlwaine Road.

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.

When the property was created it was not understood that it could not access

Treasure Cove. 8703 is responsible to maintain Parcel ID 01511276 as its own - so 8703 is not

a parcel recognized as a corner lot but it does have a responsibility to act as one.

4. The public safety and general welfare have been protected and substantial justice done.

Use of an existing 2 lane access (Treasure Cove) to the property for a way of residence access, delivery vehicles, etc. is safer as a vehicle in either 8703 or Treasure Cove do not block each others site triangles.

Use of Treasure Cove also prevents a vehicle stopped on McIlwaine as a vehicle departs from 8703.

Property Owner / Applicant Certification

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

Property Owner / Applicant

A handwritten signature in blue ink, appearing to be "JB", is written over a horizontal line.

5/2/2017

Date

Properties within 100' of 8703 McIlwaine Road



1. TRUST EMMETT COPELAND HANSON TESTAMENTARY and
DONNA H BAILEY and EUGENIA H SMITH
438 GILFORD RD, ROCK HILL SC 29732
PARCEL ID = 01512108

2. AGUSTIN MEDINA and MELISSA NARANJO-MEDINA
POBOX 1113 HUNTERSVILLE NC 28070
PARCEL ID = 01512143

3. DANIEL L SCURLOCK and LISA K SCURLOCK
8623 MCILWAINE RD, HUNTERSVILLE NC 28078
PARCEL ID = 01511108

4. MCIIWAINE ACRES PROPERTY OWNER`S ASSOCIATION INC
203 SPICER LAKE DR, HOLLY RIDGE NC 28445
PARCEL ID = 01511266

5. RONNY STEVEN WILEY and ASHLEY LYNNE WILEY
12435 TREASURE COVE, HUNTERSVILLE NC 28078
PARCEL ID = 01511268

6. RALPH ERNEST EHRENBURG and THERESA NELSON EHRENBURG
3117 BEECHWOOD LN, FALLS CHURCH VA 22042
PARCEL ID = 01511275

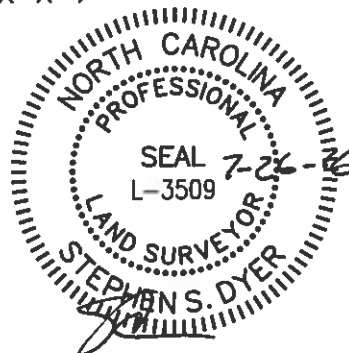
7. MCIIWAINE ACRES PROPERTY OWNER`S ASSOCIATION INC
203 SPICER LAKE DR, HOLLY RIDGE NC 28445
PARCEL ID = 01511276

8. JIMMY D SR WOMACK and FRANCES B WOMACK
8721 MCILWAINE RD, HUNTERSVILLE NC 28078
PARCEL ID = 01511109



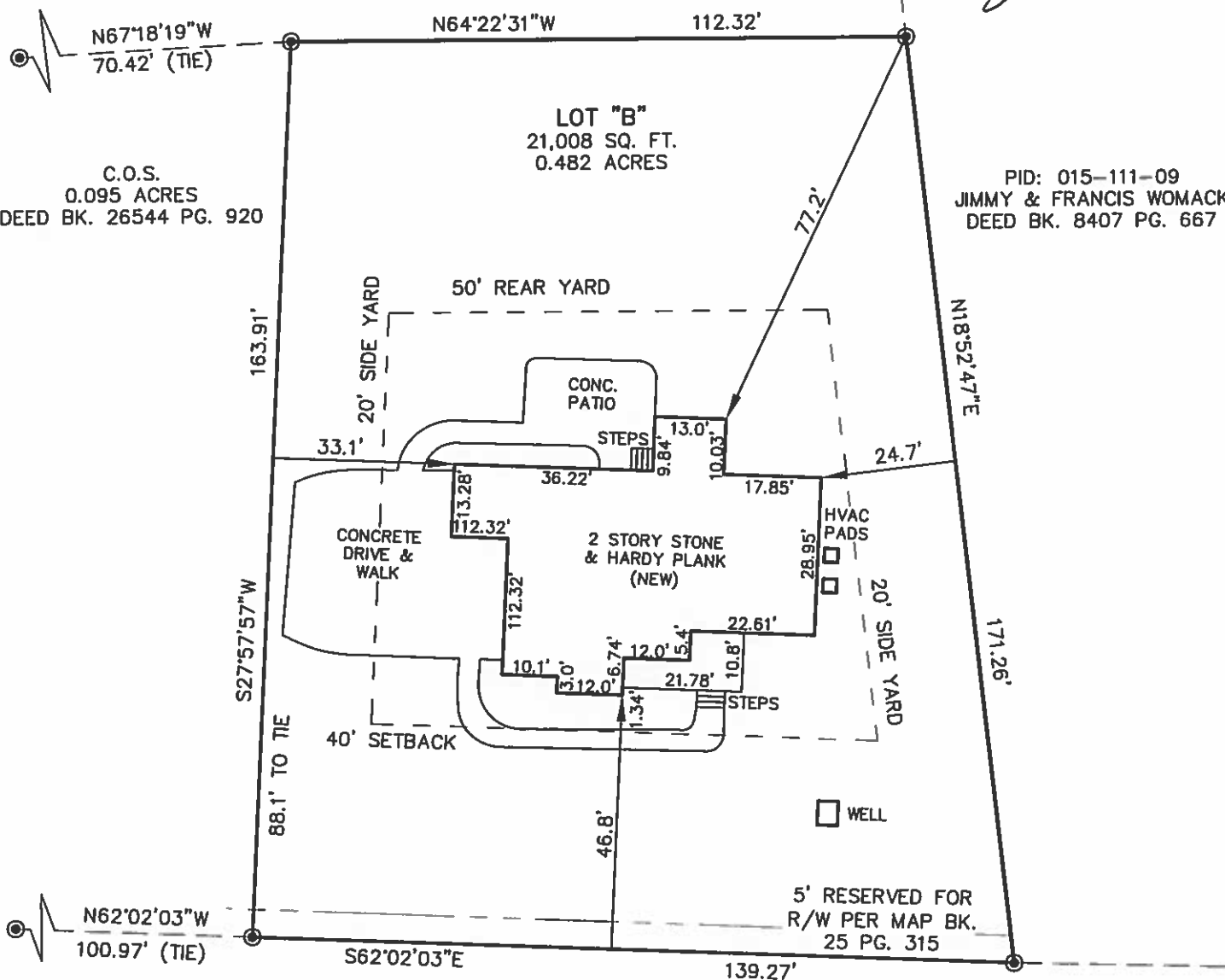
THE MAX ALLOWABLE IMPERVIOUS AREA ESTABLISHED BY THE DEVELOPER OF RECORD FOR THIS LOT IS 5,041 SQUARE FEET. THIS PHYSICAL SURVEY SHALL BE ATTACHED TO IMPERVIOUS AREA DEED RESTRICTION TO BE RECORDED PRIOR TO THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY.

MR 18 PG. 259



N67°18'19"W
70.42' (TIE)

PID: 015-111-09
JIMMY & FRANCIS WOMACK
DEED BK. 8407 PG. 667



MCILWAINE ROAD
60' PUBLIC R/W

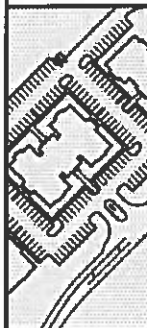
NOTES:

- 1) IRON PINS FOUND OR SET AT ALL CORNERS UNLESS OTHERWISE NOTED.
- 2) NO NEW LOT LINES HAVING BEEN CREATED OR ESTABLISHED.
- 3) NO TITLE SEARCH HAS BEEN PERFORMED BY OR SUPPLIED TO THE ISAACS GROUP; ANY PROPERTIES SHOWN ON THIS SURVEY ARE SUBJECT TO ANY AND ALL EASEMENTS, COVENANTS, RIGHTS OF WAY AND ENCUMBRANCES OF RECORD OR IMPLIED A TRUE TITLE SEARCH MAY DISCLOSE.

☒ EXISTING IRON PIN

R/W__RIGHT OF WAY

1 INCH = 30 FEET



CML ENGINEERING DESIGN AND CONSULTING 
8720 RED OAK BLVD., SUITE 420
CHARLOTTE, N.C. 28217
PH. (704) 527-3440 FAX (704) 527-8335
N.C. LICENSE C-1069 ~ S.C. LICENSE COA #1037

THIS IS TO CERTIFY THAT THE PROPERTY SHOWN ON THIS PLAT IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON MAPS PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION COMMUNITY PANEL NUMBER 370478085 E DATED: FEBRUARY 4, 2004 ZONE X.

OWNER: JEREMY GIBSON

REVISION 0 ENVELOPE A MB. 48 PG. 259

Surveyed By: JBT



APPLICATION FORM

Incomplete submissions will not be accepted. Please check all items carefully.

Town of Huntersville • P.O. Box 664 • Huntersville, NC 28070 • Phone: (704) 875-7000 • Fax: (704) 875-6546

1. APPLICATION TYPE (Check the appropriate item below.)

SUBDIVISION: Per the Huntersville Subdivision Ordinance

Sketch Plan ☒

Preliminary Plan ☐

Final Plat (includes minor and exempt plats) ☐

COMMERCIAL SITE PLAN: ☐

PLAN REVISION: ☐

REZONING: ☒

SPECIAL USE PERMIT: ☐

MASTER SIGNAGE PROGRAM: ☐

TEXT CHANGE TO HUNTERSVILLE ZONING ORDINANCE: ☐

TEXT CHANGE TO HUNTERSVILLE SUBDIVISION ORDINANCE: ☐

CHANGE OF USE: ☐

2. PROJECT DATA.

Date of Application August 28, 2006

Name of Project (if subdivision) _____ Phase #: _____

Location 8623, 8631, 8703 McIlwaine Rd.

Current Zoning District GR Proposed District (for rezonings only): TR

8-Digit Tax Parcel Number(s) 01511108 (8623), 01511107 (8631), 01511110 (8703)

Property Size (acres) 10 Street Frontage (feet) ≈ 120 Current Land Use Field

Proposed Land Use(s) FARM HOUSE CLUSTER

3. SITE PLANS

All submissions must include: Application form, fee, 5 folded copies (unless otherwise stated) of site plans and an 8 1/2 x 11 copy of the map (digital copy if available). Additional materials are needed based on submission type as listed below:

Subdivision Sketch Plans - Per Article 6 (Subdivision Ordinance) and Article 7 (Zoning Ordinance).

SUBDIVISIONS ARE A QUIJSI-JUDICIAL PROCESS IN HUNTERSVILLE AND AS SUCH, NO CONTACT SHOULD BE MADE TO ELECTED OR APPOINTED OFFICIALS EXCEPT AT THE MEETINGS.

Commercial Site Plan and Subdivision Preliminary Plans (Construction Documents): 5 (total) folded sets of zoning site plan, landscape plan, grading plan, utilities plan, stormwater management plan, architectural elevations of building (s), Calculations for Mecklenburg County Engineering Review.

Final Plats – submit 3 paper copies for review by Huntersville Planning and Mecklenburg County Engineering. Once revised, resubmission of plats on Mylar will be accepted.

Rezoning Petitions – Per Article 11.4 (Zoning Ordinance) plus tree survey Section 7.4.2(b). Multiple-Building sites shall meet Subdivision Sketch Plans – per Article 6 (Subdivision Ordinance).

. OUTSIDE AGENCIES INFORMATION:

For major subdivision, proposals and rezoning petitions please enclose a copy of the CMUD study letter for the subject property. The submission of letters of intent or any other information regarding land that may involve Mecklenburg County Park & Recreation Dept., The Trust for Public Lands, The Catawba Land's Conservancy or Huntersville Park and Recreation Department are also appropriate at the time of plan submission.

5. DESCRIPTION OF REQUEST:

Briefly explain the nature of this request.

REZONE FROM GR DN 10 ACRES TO TR. THIS IS TO ALLOW
FOR LOW DENSITY USE OF THE LAND AS A FARM HOUSE CLUSTER

6. SIGNATURES.

If applying for Subdivision or Commercial Site Plan.

Development Firm	Name of contact	Phone
Design Firm	Name of contact	Phone
fee simple property owner	Name of contact	Phone
		Current

If Applying For **Rezoning**:

Name and Address of owner(s) of fee simple title of each parcel that is included in this rezoning petition:

Signature(s) [Signature] Lindsay Gibson
Printed name JEREMY GIBSON + LINDSAY GIBSON
Address 8623 McILwaine Rd,

Signature, name, firm, address, phone number of Duly Authorized Agent by owner needed below:

Every owner of each parcel included in this rezoning petition, or the owner (s) duly authorized agent, must sign this petition. If signed by an agent, this petition MUST be accompanied by a statement signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in filing this petition. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID PETITION.

The following information is also required:

The name and home address of the current owner (s) of the fee simple title (or office address for the corporate owner) and the parcel numbers of each parcel included in the rezoning petition. A digital copy (Microsoft Word) of all adjacent property owners must be submitted, including the tax parcel number, full name (s) of the owner (s) and current mailing address. Adjacent properties include those which share a property line with the subject property or are separated only by a public right-of-way. If additional space is needed for signatures, attach an addendum to this application.

ARTICLE 3

TRANSITIONAL RESIDENTIAL DISTRICT

e) Special Requirements: Farmhouse Cluster Developments

A **Farmhouse Cluster** permits the subdivision of land for up to six house lots accessed by way of a shared private drive when the following conditions have been met:

- 1) Minimum project size and frontage on public road: 10 acres with a minimum of 30 feet of frontage on a public road either by fee simple ownership or by exclusive easement.
- 2) There shall be no more than two farmhouse cluster developments permitted per tract as that tract existed on February 18, 2003.
- 3) A paved or graveled private drive shall be constructed on a recorded easement not less than 20 feet in width serving one farmhouse cluster exclusively. Further, the recorded easement shall have at least 30' of frontage on a public street. In the event two farmhouse clusters are established, the private drive serving those farmhouse clusters may be connected provided:
 - a. The private road is paved at least 18' wide and constructed in accordance with the Charlotte-Mecklenburg Land Development Standards Manual as it applies to Huntersville. Private drive right of way or easement shall be of such width to accommodate drainage/water quality treatment.
 - b. The subdivision plat and associated deeds shall clearly state such drive shall remain private and will not be taken over by a public entity in the future.
 - c. Where feasible, there shall be two means of ingress and egress into the combined farmhouse cluster development. Only in the event the original tract does not have the adequate frontage on a public road to obtain two driveway permits would one private drive be allowed to serve the combined farmhouse cluster development;
- 4) An association of all property owners shall be established for maintenance of all commonly held spaces, if any. Where there are no commonly held spaces except for a shared driveway or private street, a legally binding shared driveway and/or private street use and maintenance agreement shall be filed at the Register of Deeds of Mecklenburg County. Furthermore, the shared driveway or private road shall be shown, along with all appropriate and necessary easements, on a recorded plat and a note shall be attached thereto stipulating the use and maintenance of the driveway and referencing the recorded agreement(s).
- 5) The location of building sites shall be determined through a site analysis which identifies features to be preserved as open space;
- 6) No minimum lot size or width is required, so long as the project meets all other standards of the district;
- 7) At least 50% of the tract shall be designated as open space. Open space preservation shall be irrevocable. A metes and bounds description of the space to be preserved and limits on use shall be recorded on the subdivision plat and on individual deeds when open space lands are not held entirely in common. Open space lands may be part of a deeded lot so long as it reflects an irrevocable conservation or open space easement requiring such portions of individual lots to remain and be used as open space as provided in this section.
- 8) Permitted uses of open space lands to be preserved shall correspond generally to physical conditions at the time of subdivision approval. Restrictive covenants shall limit uses to the continuation of certain agricultural activities (pastureland, crop cultivation) or recreation uses that preserve the view from public streets of rural heritage features to be preserved. For example, fields or pasture land preserved as required open space may continue to support cultivation or grazing; however existing woodlands may not be clear-cut. In order to ensure septic tanks are

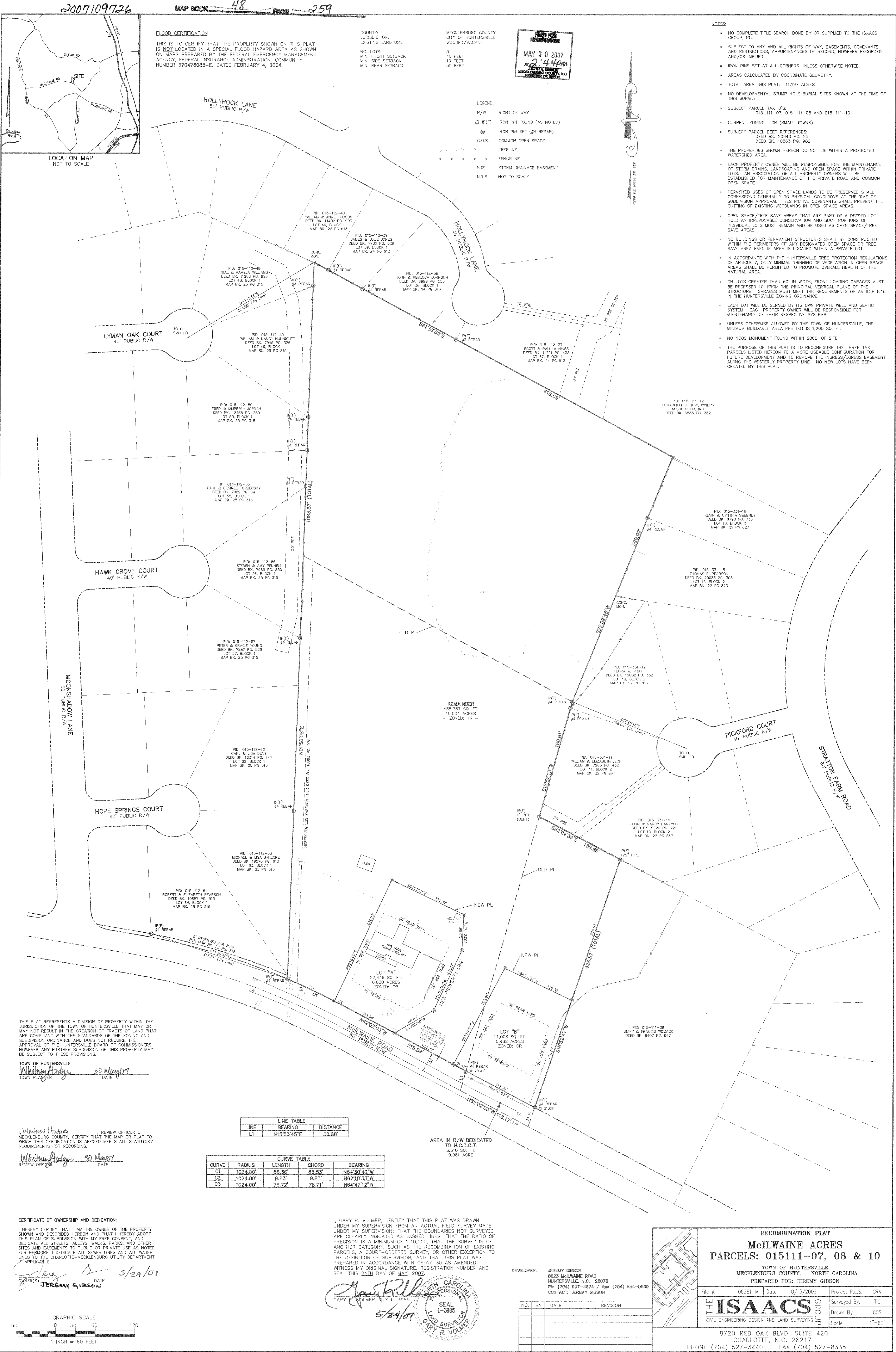
located on the most suitable soils, septic fields may be located in the common open space provided a maintenance easement is established for access.

- 9) The project shall maintain a generally rural appearance from public road(s).
- 10) Where a farmhouse cluster would eliminate a planned street connection or a street connection indicated on a plan adopted by the Town of Huntsville or the Charlotte-Mecklenburg Thoroughfare Plan, and no alternate alignment can reasonably provide the connection, the design of the farmhouse cluster shall provide for said connection by the dedication of right-of-way for streets less than 70 feet in width and by the reservation of right-of-way for streets 70 feet or wider.
- 11) A Farmhouse Cluster requires an approved **Farmhouse Cluster subdivision plan**, according to the requirements of the Huntersville Subdivision Ordinance and shall meet all other requirements for review and approval, which may include preliminary plan approval prior to approval of a final plat.

f) Special Requirements: Conservation Subdivisions

A **Conservation Subdivision** permits single-family building lots to be divided from a parent tract(s) according to a streamlined subdivision approval process. The approval process, coupled with exemption from most zoning and subdivision requirements, is available to owners who voluntarily place conservation easements on their land in favor of an established lands conservancy. A land division can be approved as a Conservation Subdivision when the following conditions are met:

- 1) An irrevocable conservation easement held by a conservation organization (as authorized in U.S.C. 170(h); 2055(a) and N.C.G.S. 124-34 et seq.) is placed upon the tract(s) to be subdivided, and documentation of the conservation easement, including a boundary description of the area subject to the conservation easement is submitted with the subdivision application.
- 2) Limits on location and extent of land disturbance and building construction are set out in the conservation easement(s), which shall at a minimum preserve the rural appearance of the land when viewed from public roads and from abutting properties.
- 3) Treatment of floodplain(s) and required water quality buffers, as described in the conservation easement(s), conform to the minimum standards of the Huntersville Zoning and Subdivision ordinances.
- 4) Minimum project size: 40 acres.
- 5) Maximum gross density: 1 dwelling unit per 20 acres.
- 6) No new public streets are to be created through the development process.
- 7) All parcels within the conservation subdivision will have frontage on an existing public road right-of-way or will be provided access to a permanent 20-foot wide access easement that connects to the public right-of-way. Permanent access easement(s) may be either exclusive or non-exclusive, however landlocked parcel(s) may not be created. Documentation of lot access shall be submitted with the subdivision application.
- 8) The holder of the conservation easement will be held responsible for enforcement of the terms of the conservation easement.
- 9) Where the parent tract(s) abuts or includes a segment of a thoroughfare that is shown on the adopted thoroughfare plan and for which an engineered alignment has been selected, any right of way reservation required by the subdivision regulations shall be made, either by the filing of a deed or the filing of a plat map.



2007186016

FLOOD CERTIFICATION

THIS IS TO CERTIFY THAT THE PROPERTY SHOWN ON THIS PLAT IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON MAPS PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION, COMMUNITY NUMBER 370478085-E, DATED FEBRUARY 4, 2004.



- LEGEND:
- R/W RIGHT OF WAY
 - (P) IRON PIN FOUND (AS NOTED)
 - IRON PIN SET (#4 REBAR)
 - C.O.S. COMMON OPEN SPACE
 - TREELINE
 - FENCELINE
 - SDE STORM DRAINAGE EASEMENT
 - N.T.S. NOT TO SCALE
 - PRIVATE OPEN SPACE

NOTES:

- NO COMPLETE TITLE SEARCH DONE BY OR SUPPLIED TO THE ISAACS GROUP, P.C.
- SUBJECT TO ANY AND ALL RIGHTS OF WAY, EASEMENTS, COVENANTS AND RESTRICTIONS, APPEARANCES OF RECORD, HOWEVER RECORDED AND/OR IMPLIED.
- NO NCOS MONUMENT FOUND WITHIN 2000' OF SITE.
- IRON PINS SET AT ALL CORNERS UNLESS OTHERWISE NOTED.
- AREAS CALCULATED BY COORDINATE GEOMETRY.
- TOTAL AREA THIS PLAT: 10.004 ACRES
- NO DEVELOPMENTAL STUMP HOLE BURIAL SITES KNOWN AT THE TIME OF THIS SURVEY.
- SUBJECT PARCEL TAX ID: 015-111-07
- CURRENT ZONING: TR
- SUBJECT PARCEL DEED REFERENCES:
 - MAP BK. 48 PG. 259
 - DEED BK. 20940 PG. 25
 - DEED BK. 10863 PG. 978
- THE PROPERTIES SHOWN HEREON LIE WITHIN THE MOUNTAIN ISLAND LAKE PROTECTED WATERSHED AREA (M-PA), BUT HAVE BEEN GRANDFATHERED FROM THIS RESTRICTION BY THE TOWN OF HUNTERVILLE.
- EACH PROPERTY OWNER WILL BE RESPONSIBLE FOR THE MAINTENANCE OF STORM DRAINS, LANDSCAPING AND OPEN SPACE WITHIN PRIVATE LOTS. AN ASSOCIATION OF ALL PROPERTY OWNERS WILL BE ESTABLISHED FOR MAINTENANCE OF THE PRIVATE ROAD AND COMMON OPEN SPACE.
- PERMITTED USES OF OPEN SPACE LANDS TO BE PRESERVED SHALL CORRESPOND GENERALLY TO PHYSICAL CONDITIONS AT THE TIME OF SUBDIVISION APPROVAL. RESTRICTIVE COVENANTS SHALL PREVENT THE CUTTING OF EXISTING WOODLANDS IN OPEN SPACE AREAS.
- OPEN SPACE/TREE SAVE AREAS THAT ARE PART OF A DEEDED LOT HOLD AN IRREVOCABLE CONSERVATION AND SUCH PORTIONS OF INDIVIDUAL LOTS MUST REMAIN AND BE USED AS OPEN SPACE/TREE SAVE AREAS.
- NO BUILDINGS OR PERMANENT STRUCTURES SHALL BE CONSTRUCTED WITHIN THE PERIMETERS OF ANY DESIGNATED OPEN SPACE OR TREE SAVE AREA EVEN IF AREA IS LOCATED WITHIN A PRIVATE LOT.
- IN ACCORDANCE WITH THE HUNTERVILLE TREE PROTECTION REGULATIONS OF ARTICLE 7, ONLY MINIMAL THINNING OF VEGETATION IN OPEN SPACE AREAS SHALL BE PERMITTED TO PROMOTE OVERALL HEALTH OF THE NATURAL AREA.
- ON LOTS GREATER THAN 60' IN WIDTH, FRONT LOADING GARAGES MUST BE RECESSED 10' FROM THE PRINCIPAL VERTICAL PLANE OF THE STRUCTURE. GARAGES MUST MEET THE REQUIREMENTS OF ARTICLE 8.16 IN THE HUNTERVILLE ZONING ORDINANCE.
- EACH LOT WILL BE SERVED BY ITS OWN PRIVATE WELL AND SEPTIC SYSTEM. EACH PROPERTY OWNER WILL BE RESPONSIBLE FOR MAINTENANCE OF THEIR RESPECTIVE SYSTEMS.
- UNLESS OTHERWISE ALLOWED BY THE TOWN OF HUNTERVILLE, THE MINIMUM BUILDABLE AREA PER LOT IS 1,200 SQ. FT.

FARM CLUSTER OPEN SPACE DELINEATION

COMMON OPEN SPACE:	
IN LOTS -	
LOT #1:	13,565 SQ. FT. 0.31 AC.
LOT #2:	17,643 SQ. FT. 0.41 AC.
LOT #3:	11,656 SQ. FT. 0.27 AC.
LOT #4:	11,776 SQ. FT. 0.27 AC.
LOT #5:	15,440 SQ. FT. 0.35 AC.
LOT #6:	18,950 SQ. FT. 0.43 AC.
TOTAL=	90,030 SQ. FT. 2.07 AC.
OPEN SPACE AREA 1: 0.44 AC.	
OPEN SPACE AREA 2: 0.45 AC.	
OPEN SPACE AREA 3: 2.34 AC.	
OPEN SPACE AREA 4: 0.08 AC.	
OPEN SPACE AREA 5: 0.04 AC.	
TOTAL=	3.35 AC.
OPEN SPACE REQUIRED: 5.00 AC. (50%)	
OPEN SPACE PROVIDED: 5.42 AC. (54%)	

CERTIFICATE OF OWNERSHIP AND DEDICATION:

I HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I HEREBY ADOPT THIS PLAN OF SUBDIVISION WITH MY FREE CONSENT, AND DEDICATE ALL STREETS, ALLEYS, WALKS, PARKS, AND OTHER SITES AND EASEMENTS TO PUBLIC OR PRIVATE USE AS NOTED. FURTHERMORE, I DEDICATE ALL SEWER LINES AND ALL WATER LINES TO THE CHARLOTTE-MECKLENBURG UTILITY DEPARTMENT, IF APPLICABLE.

OWNER(S) Whitney Hodges DATE 8/3/07

DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

PROPOSED SUBDIVISION ROAD
CONSTRUCTION STANDARDS CERTIFICATION
APPROVED: Marc Morgan
DISTRICT ENGINEER
DATE: 8/22/07

ROADWAY SUMMARY

PRIVATE DRIVE 941 LF.

AREA SUMMARY

GROSS AREA	10.004 AC ±
AREA IN LOTS	5.898 AC ±
AREA IN OPEN SPACE	3.400 AC ±
AREA IN PRIVATE RIGHT-OF-WAY	0.706 AC ±

APPROVED IN ACCORDANCE WITH THE ENGINEERING REQUIREMENTS OF THE SUBDIVISION ORDINANCE OF THE TOWN OF HUNTERVILLE, MECKLENBURG COUNTY, NORTH CAROLINA.

MECKLENBURG COUNTY LAND USE AND ENVIRONMENTAL SERVICES AGENCY

COUNTY STAFF, MECKLENBURG COUNTY DATE 8/14/07

THIS PLAT REPRESENTS A DIVISION OF PROPERTY WITHIN THE JURISDICTION OF THE TOWN OF HUNTERVILLE THAT MAY OR MAY NOT RESULT IN THE CREATION OF TRACTS OF LAND THAT ARE COMPLIANT WITH THE STANDARDS OF THE ZONING AND SUBDIVISION ORDINANCE AND DOES NOT REQUIRE THE APPROVAL OF THE HUNTERVILLE BOARD OF COMMISSIONERS. HOWEVER ANY FURTHER DIVISION OF THIS PROPERTY MAY BE SUBJECT TO THESE PROVISIONS.

TOWN OF HUNTERVILLE

TOWN PLANNER DATE

THIS PLAT COMPLIES WITH ARTICLE 3 AND THE FARMHOUSE CLUSTER REGULATIONS OF THE TOWN OF HUNTERVILLE ZONING ORDINANCE.

TOWN PLANNER DATE 07 Sept 07

CURVE	RADIUS	LENGTH	CHORD	BEARING
C1	1024.00'	78.72'	78.71'	N64°42'12"W
C2	135.00'	107.15'	104.36'	N08°13'42"E
C3	165.00'	130.86'	127.55'	N06°13'42"E
C4	25.00'	32.10'	28.94'	S22°17'13"W
C5	40.00'	179.13'	62.78'	N89°13'09"W
C6	165.00'	36.81'	36.74'	N21°34'27"E
C7	135.00'	86.30'	84.83'	N08°30'12"E
C8	165.00'	94.15'	92.87'	N01°09'48"W
C9	135.00'	20.85'	20.83'	N13°05'04"W
C10	40.00'	13.58'	13.51'	S07°47'13"E
C11	40.00'	87.82'	71.21'	S64°48'54"W
C12	40.00'	74.47'	64.17'	N01°03'34"E
C13	40.00'	3.27'	3.27'	N56°43'55"E

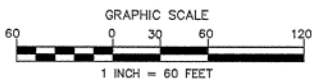
COUNTY JURISDICTION: EXISTING LAND USE:

MECKLENBURG COUNTY CITY OF HUNTERVILLE WOODED/VACANT



DEVELOPER: JEREMY GIBSON
8623 MILLWAINE ROAD
HUNTERVILLE, N.C. 28078
Ph: (704) 907-4674 / fax: (704) 854-0539
CONTACT: JEREMY GIBSON

NO.	BY	DATE	REVISION



Whitney Hodges REVIEW OFFICER
OF MECKLENBURG COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

Whitney Hodges 07 Sept 07
REVIEW OFFICER DATE

I, GARY R. VOLMER, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL FIELD SURVEY MADE UNDER MY SUPERVISION; THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DASHED LINES; THAT THE RATIO OF PRECISION IS A MINIMUM OF 1:10,000, THAT THIS SURVEY CREATES A SUBDIVISION OF LAND WITHIN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND; AND THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH GS-47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 3RD DAY OF AUGUST, 2007.

GARY R. VOLMER, PLS L-3985
8/3/07
NORTH CAROLINA PROFESSIONAL LAND SURVEYOR SEAL

MINOR SUBDIVISION
McILWAINE ACRES
MAP 2
TOWN OF HUNTERVILLE
MECKLENBURG COUNTY, NORTH CAROLINA
OWNER: JEREMY GIBSON

File #: 05281-M2.dwg Date: 10/13/2006 Project P.L.S.: GRV
Surveyed By: TIG
Drawn By: GRV
Scale: 1"=60'

ISAACS GROUP
CIVIL ENGINEERING DESIGN AND LAND SURVEYING
8720 RED OAK BLVD., SUITE 420
CHARLOTTE, N.C. 28217
PHONE (704) 527-3440 FAX (704) 527-8335

THE UNDERSIGNED HEREBY CERTIFIES THAT HE/SHE IS EITHER THE OWNER OR THE AUTHORIZED AGENT OF THE OWNER AND HEREBY MAKES APPLICATION FOR PERMIT AND INSPECTION OF WORK DESCRIBED AND AGREES TO COMPLY WITH ALL APPLICABLE LAWS REGULATING THE WORK.

PLOT PLAN FOR PERMIT APPLICATION ONE/TWO FAMILY, MODULAR, MOBILE HOME OR ZONING USE

LOCATION

STREET # (N,S,E,W) 8703 STREET NAME McIlwaine (AV, RD, ST, etc) Road

PERMIT #

SUITE/UNIT(S):

TAX JURISDICTION:
(Check One)

☐ 0-Mecklenburg
☐ 4-Pineville

☐ 1-Charlotte
☐ 5-Matthews

☐ 2-Davidson
☒ 6-Huntersville

☐ 3-Cornelius
☐ 7-Mint Hill

TAX PARCEL # 0151110

JOB #

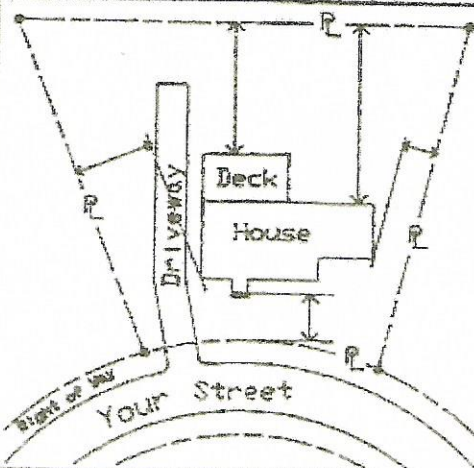
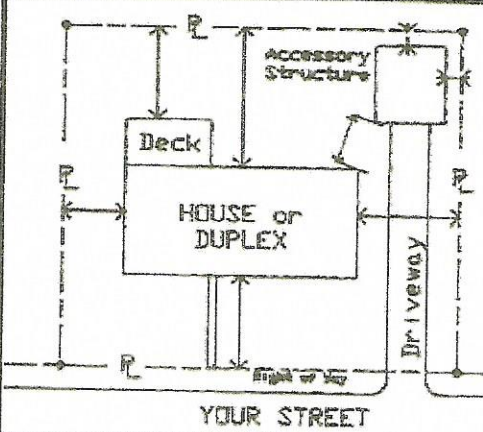
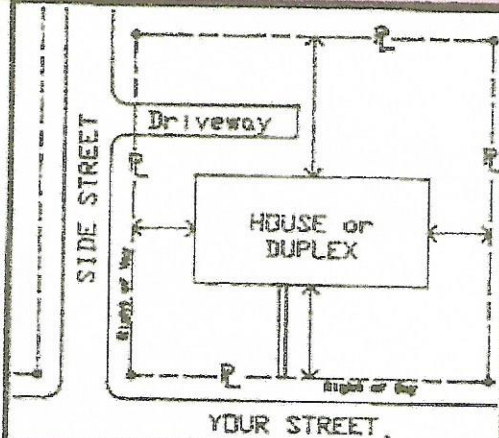
- INSTRUCTIONS -

In the space provided below, draw plot plan as neatly and accurately as possible, from survey if available.

1. Draw street(s) and right-of-way(s).
2. Draw property lines with dimensions.
3. Draw proposed and existing buildings showing any attached porch(es), deck(s), chimney(s), carport(s), or garage(s), etc...
4. Show distances of buildings from property lines or other structures.
5. Separate application and plot plan required for each building.

- PLOT PLAN -

EXAMPLES / PLOT PLAN



ALL EXISTING AND PROPOSED BUILDING(S) ON LOT ARE SHOWN WITH MEASUREMENTS INDICATED

9/14/15 Jeremy Gibson

on 9/14/15





700 North Tryon Street
Charlotte, NC 28202
Fax: 704-336-4391

Notice of Violation

CERTIFIED MAIL

March 30, 2017

Jeremy & Lindsay Gibson
8703 McIlwaine Rd.
Huntersville, NC 28078

ADDRESS:	8703 McIlwaine Rd	ZONING:	GR
MAP NO.:	Huntersville		
PARCEL NO.:	015-111-10	INSPECTION:	3/27/17

The following provision(s) of the Huntersville Zoning Ordinance has/have been violated:

11.2 Enforcement 3. Penalties

The Zoning Administrator may revoke any permit (e.g., building, certificate of occupancy) by written notification to the permit holder when violations of this ordinance have occurred. Permits may be revoked when false statements or misrepresentations were made in securing the permit, work is being or has been done in substantial departure from the approved application or plan, there has been a failure to comply with the requirements of this ordinance, or a permit has been mistakenly issued in violation of this ordinance.

IMMEDIATELY CORRECT THE VIOLATION The property is in violation of the approved building permit. The site plan that is approved indicates the driveway will access McIlwaine Rd. The portion of the drive that accesses from Treasure Cove is not permitted and must be removed. A Notice of Violation has also been sent to the McIlwaine Acres Property Owner's Association relating to this violation. Each day of violation shall be deemed a separate offense, provided that the violation of this Ordinance is not corrected within thirty (10) working days after notice is given. The Department reserves the right to exercise any one of the following **REMEDIES**: issuing a **CITATION**, action for **INJUNCTION**, or **MANDAMUS**, or other appropriate action or proceeding to prevent such violation.



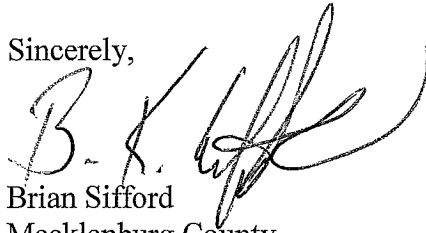
To report pollution or drainage problems call: 311
<http://stormwater.charmeck.org>



The Huntersville Board of Adjustment is empowered to rule on the interpretation of the Zoning Ordinance and to grant variances when a difficulty or hardship exists. The Board will not hear appeals unless applications are properly filed in the Town Manager's office **within thirty (30) working days of the date of this Notice of Violation**. Once the deadline has passed, your right of appeal is forfeited. Forms are available at the Huntersville Town Center.

If you have any questions as to what is required by this Notice, please contact me at 980-721-0924.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Sifford", with a large, sweeping flourish extending to the right.

Brian Sifford
Mecklenburg County
Storm Water Services
Zoning Administrator
980-721-0924

Enclosures

cc: Town of Huntersville Planning Department
Corey Priddy, Don Ceccarelli – Mecklenburg County Permitting and Compliance Program



2145 Suttle Ave
Charlotte, NC 28202
Fax: 704-336-4391

Notice of Violation

CERTIFIED MAIL

March 30, 2017

McIlwaine Acres Property Owner's
Association, Inc.
203 Spicer Lake Dr.
Holly Ridge, NC 28445

McIlwaine Acres Property Owner's
Association, Inc.
12515 Treasure Cove
Huntersville, NC 28078

ADDRESS:	McIlwaine Rd & Treasure Cv	ZONING:	TR
MAP NO.:	Huntersville		
PARCEL NO.:	015-112-76	INSPECTION:	03/27/17

The home located at 8703 McIlwaine Rd has violated the approved Farm House Cluster recorded plat for McIlwaine Acres by paving a portion of the common open space and adding a 7th driveway to a development that is limited to 6 driveways.

The following provision(s) of the Huntersville Zoning Ordinance has/have been violated:

ARTICLE 3.1: ZONING DISTRICTS ESTABLISHED

e) Special Requirements: Farmhouse Cluster Developments

A **Farmhouse Cluster** permits the subdivision of land for up to six house lots accessed by way of a shared private drive when the following conditions have been met:

3) Private drives shall be paved in accordance with the Town of Huntersville construction standards. The private street right-of-way or easement shall be of sufficient width to accommodate drainage/water quality treatment associated with the private drive. Gates are prohibited for farmhouse cluster private drives. Further, the recorded easement shall have at least 30' of frontage on a public street. In the event two farmhouse clusters are established, the private drive serving those farmhouse clusters may be connected provided:

- a. The subdivision plat and associated deeds shall clearly state such drive shall remain private and will not be taken over by a public entity in the future unless such street complies with the construction standards of that public entity.
- b. Where feasible, there shall be two means of ingress and egress into the combined farmhouse cluster development. Only in the event the original tract does not have the adequate frontage on a public road to obtain two driveway permits would one private drive be allowed to serve the combined farmhouse cluster development;



To report pollution or drainage problems call: 311
<http://stormwater.charmeck.org>



8.1 Street Frontage Required

Any lot on which a building (or buildings) is to be erected or use is to be established shall abut a public street with the following exceptions:

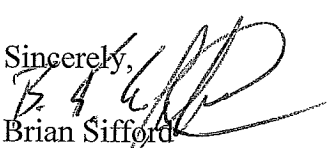
3. Up to six residential lots may be served by a privately maintained easement with a minimum 20-foot right-of-way if designed according to the specifications of the Rural and Transitional Farmhouse Cluster development or the specifications of the Rural and Transitional Conservation Subdivision.

IMMEDIATELY CORRECT THE VIOLATION by removing the concrete that has been poured onto Common Open Space located McIlwaine Acres. A notice of violation has been sent to the property owners at 8703 McIlwaine Rd. for the driveway violation. Each day of violation shall be deemed a separate offense, provided that the violation of this Ordinance is not corrected within ten (10) working days after notice is given. The Department reserves the right to exercise any one of the following **REMEDIES**: issuing a **CITATION**, action for **INJUNCTION**, or **MANDAMUS**, or other appropriate action or proceeding to prevent such violation.

The Huntersville Board of Adjustment is empowered to rule on the interpretation of the Zoning Ordinance and to grant variances when a difficulty or hardship exists. The Board will not hear appeals unless applications are properly filed in the Town Manager's office **within thirty (30) working days of the date of this Notice of Violation**. Once the deadline has passed, your right of appeal is forfeited. Forms are available at the Huntersville Town Hall.

If you have any questions as to what is required by this Notice, please contact me at 980-721-0924.

Sincerely,



Brian Sifford
Mecklenburg County
Storm Water Services
Zoning Administrator
980-721-0924

Enclosures

cc: Town of Huntersville Planning Department
Corey Priddy, Don Ceccarelli – Mecklenburg County Permitting and Compliance Program



Prepared by and return to: Baker & Baker, PLLC
9620 Holly Point Drive Ste 102
Huntersville, NC 28078

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

DECLARATION OF COVENANTS AND RESTRICTIONS FOR
MCLLWAINE ACRES SUBDIVISION

WITNESSETH:

WHEREAS, Jeremy G. Gibson, herein called the "Declarant", is the fee simple owner of certain real property located near the City of Huntersville, Mecklenburg County, North Carolina, and desires to establish on a portion thereof a residential community consisting of single-family residential dwellings to be known as Mcllwaine Acres Subdivision, and further desires that said property be used, developed, maintained and managed for the benefit and welfare of owners of property in Mcllwaine Acres Subdivision; and

WHEREAS, Declarant desires to insure the attractiveness of Mcllwaine Acres Subdivision and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all properties within Mcllwaine Acres Subdivision and to provide for the maintenance and upkeep of all common areas in Mcllwaine Acres Subdivision. To this end the Declarant desires to subject the real property described herein, together with such additions as may hereafter be made thereto, to the covenants, conditions,

restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant further desires to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering the common area in McIlwaine Acres Subdivision, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the assessments and charges hereinafter created in order to efficiently preserve, protect and enhance the values and amenities in McIlwaine Acres Subdivision to insure the residents' enjoyment of the specific rights, privileges and easements in the common area, and to provide for the maintenance and upkeep of the common area.

NOW, THEREFORE, in consideration of the premises, the Declarant hereby declares that all of the property hereafter described on Exhibit A hereto annexed or that property that hereafter may be made subject to this Declaration of Covenants and Restrictions (hereinafter called the "Restrictions") is and shall be held, transferred, sold, conveyed, and occupied and used subject to the restrictions and matters hereinafter set forth, said Restrictions and matters to be construed as covenants running with the land which shall be binding on all parties having or acquiring any right, title or interest in the described property, or any part thereof, and which shall insure to the benefit of each owner thereof, for and during the time hereinafter specified. Every party hereafter acquiring any Lot, or portion thereof, in the described properties, by acceptance of a deed conveying title thereto or by execution of a contract for the purchase thereof, whether from the Declarant or a subsequent owner of such Lot, shall accept such deed or contract subject to each and all of the covenants, restrictions and agreements contained within these Restrictions, as well as any additions or amendments hereto, and also subject to the jurisdiction, rights and powers of the Declarant, McIlwaine Acres Subdivision Property Owners Association, Inc., and their successors and assigns. Each grantee of any Lot subject to these Restrictions, by accepting the deed or contract thereto, shall for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with the Declarant, the Association, and with grantees and subsequent owners of each of the Lots within the Subdivision to keep, observe, comply with and perform said Restrictions and agreements.

ARTICLE I

DEFINITIONS

1. "Association" shall mean and refer to the McIlwaine Acres Subdivision Property Owners Association, Inc., a non-profit corporation organized under the laws of the State of North Carolina, its successors and assigns.

2. "Builder" shall mean and refer to a licensed contractor who engages in the construction of houses and other Improvements on a Lot.
3. "Common Areas" shall mean and refer to any and all real property owned or held by the Association (if any) and other common areas located within the Development which are designated on the Plat as Common Areas or which are designated in the recorded instruments as Common Areas.
4. "Declarant" shall mean and refer to the Declarant herein, Jeremy G. Gibson, its successors or designated assigns.
5. "Development" or "McIlwaine Acres Subdivision" shall mean the Property described on Exhibit A hereto annexed, and any additional land which is made subject to these Restrictions by amendment or supplemental filing, divided or to be divided into Lots, roads and Common Areas.
6. "Entrance Monument Easements" shall mean and refer to the easements reserved by the Declarant and granted to the Association, across and under certain areas of the Property, for the installation and maintenance of entrance monuments, landscaping and related improvements for the Development.
7. "Lot" shall mean and refer to (a) any plot of land identified as a Lot on Exhibit A attached hereto, or on any deed or contract of conveyance of any portion of the Property from the Declarant; and (b) any numbered plot of land shown on the Plat or any part thereof.
8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot as herein defined, excluding however, those parties having such interest merely as a security interest for the performance of an obligation.
9. "Plat" shall mean the recorded subdivision map of the Property or any portion thereof.
10. "Property" shall mean that real property described on Exhibit A hereto annexed, together with any additional real property which is made subject to these Restrictions.
11. "Private Easement" shall mean the 30' wide right of way and easement for access to the Lots in the Development.
12. "Septic Easement" or "Septic Easements" shall mean and refer to the septic easement or septic easements reserved over the Septic Easement Areas for the benefit of certain Lot Owners.

13. "Septic Easement Areas" shall mean and refer to those certain strips of land described on the plats as "Septic Easement Area" or other similar designation.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located near the Town of Huntersville, Mecklenburg County, North Carolina, and is more particularly described on Exhibit A hereto annexed.
2. Additional Property. The Declarant reserves the absolute right, exercisable in its sole discretion from time to time, to add other property to the Development, and to subject such additional property to the terms of these Restrictions. Such additions shall be made in order to extend the scheme of these Restrictions to other real property that may be developed as part of the Development, and to bring such additional property within the jurisdiction of the Association's expenses. Such additions shall be made by filing of record a Supplemental Declaration of Covenants and Restrictions, which shall identify the real property to be included and shall incorporate these Restrictions by reference.
3. Excluded Property. No property of Declarant shall be subject to these restrictions except that property made subject thereto as herein provided. No property of Declarant shall be subject to any restrictions by implication arising from Declarant imposing these restrictions on the property herein identified.

ARTICLE III

COMMON AREA & EASEMENT AREA PROPERTY RIGHTS

1. Private Areas. Every Common Area and/or Easement Area within the Development is a private area, and neither the execution nor recording of any plat nor any other act of the Declarant or Declarant's successor in title to all or any portion of the Development is, or is intended to be, or shall be construed as, a dedication to the public of any Common Areas, except those that hereafter may be dedicated by a specific written and recorded deed or agreement of dedication.
2. Reservation of Easements. So long as Declarant owns fee simple title to such, the Declarant reserves for itself the right to dedicate or transfer any

streets or other part of the Common Area to any public agency, authority or utility if it so desires. The Declarant also reserves for itself and, subsequent to the conveyance of the Common Area to the Association, for the Association, the right to grant and reserve easements and rights of way through, under, over and across the Development for the installation, maintenance and inspection of the lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone, cable vision and other utilities. This reservation shall not apply to Lots in the Development except in easements within such Lots shown on any recorded plat of the Development or any part hereof or as reserved in Article IX and Article X hereof or as created or reserved by subsequent written agreement.

3. Ownership of Common Areas. The ownership of all Common Areas within the Development shall be in the Declarant until such time as the Declarant may convey such area or areas to the Association or some other party.
4. Usage of Common Areas. Common space designated as .452 acres adjacent to 8623 McIlwaine Road and 12435 Treasure Cove may be used for the storage of recreational equipment, gardening and playing area. Common space designated as 2.338 acres between 12530 and 12506 Treasure Cove may be used for family events and recreation. Common space designated as .435 acres between 12515 and 12533 Treasure Cove may be used for family events, playground, family events and fruit and or but bearing plants and or trees. All plantings in the common space must be approved by the HOA in respect to allergies, or concern for creating a nuisance (with the intent to prevent poison ivy, poison oak, and or sumac, vines, briars or thorny plants, bad odorous plants, etc.). The individual that plants is responsible for the maintenance of such plantings.
5. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the provisions of this Declaration and the Charter and Bylaws of the Association as to the following provisions:
 - a. The right of the Association to limit use of the Common Areas to Owners, their families and guests and to adopt reasonable rules and regulations governing the use of the Common Areas, which may include prohibiting any use which may constitute a nuisance or annoyance to the Owners.
 - b. The right of the Association to suspend the use of the Common Areas (except the roads) by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

- c. The right of the Association to grant an easement in, dedicate or transfer all or any part of the roads or Common Areas to any public agency, authority, or utility for such purposes, subject to such conditions as may be agreed to by the members.

ARTICLE IV

HOMEOWNER'S ASSOCIATION

ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

1. Administration of Common Areas and Easement Areas. The administration of the Common Areas (if any), Private Easement, Entrance Monument Easements, and Septic Easement Areas (to the extent the Lot Owners and Septic Easement Area Owners fail to exercise their responsibility to maintain the same) including maintenance, repair and upkeep of the same, including the acts required by the Declaration, the Bylaws, and Articles of Incorporation of the Association, shall be performed by the Association. Any road which is wholly within a Lot, and which does not serve as access to another Lot, shall not be maintained by the Association.
2. Rules and Regulations. The Association may also adopt and enforce rules and regulations not inconsistent with these Restrictions, the Articles of Incorporation or Bylaws of the Association, for the operation and administration of the Association and its property.
3. Membership. Every Owner, including Declarant, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and shall be transferred automatically when the Owner conveys, devises, gives or otherwise transfer his Lot, even though such conveyance, devise or gift does not make mention of the membership rights of the Association. Such membership is not intended to apply to those persons or entities who hold an interest in any Lot merely as security for the performance of an obligation to pay money, e.g., mortgages or deeds of trust; however, if such secured party should realize upon his security and become the fee owner of a Lot, he and his assigns of the Lot will then be subject to all the requirements and limitations imposed in these Restrictions on owners of Lots within the Development and on members of the Association, including those provisions with respect to payment of annual charges.
4. Voting Rights and Classes of Voting Members. The Association shall have two (2) classes of voting membership:

(a) Class I. The Class I Association Members shall be all Association Members with the exception of Declarant. Class I Association Members shall be entitled to one (1) vote for each Lot owned by such Association Member. When more than one person or entity owns an interest (other than a leasehold or security interest) in any Lot, all such person shall be Members and the voting rights appurtenant to the Lot shall be exercised as they among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Class I Lot.

(b) Class II. The Class II Association Member shall be Declarant. The Class II Association Member shall be entitled to (1) votes for each Lot owned by Declarant.

(c) Termination of Class II Association Membership. Class II Association Membership shall cease and be converted to the Class I Association Membership upon the earliest to occur of (a) the date on which Declarant no longer owns any part of the Property; (b) the date Declarant shall elect, in its sole discretion, that the Class II membership shall cease and be converted to Class I membership (which election may be made by giving written notice at its choice, to the Board; or (c) December 31, 2032.

5. Borrowing. The Association shall possess the right, as provided in the Bylaws, to borrow money for the purpose of improving the Common Areas and to mortgage any portions of the Common Areas necessary to secure loans for such improvements; provided, however, that no such borrowing or mortgaging shall be done without a prior vote of approval by two-thirds (2/3) of the members present in person or by proxy at a meeting duly called for such purpose, in accordance with the Bylaws.
6. Default by Member. During any period in which a member shall be in default in the payment of any annual, special or other assessment levied by the Association, his rights to vote and all other rights and incidents of membership in the Association may be suspended by the Board of Directors until such assessment is paid. A member's voting and use rights may also be suspended for violation of the Association's published rules and regulations; provided, that prior to any suspension for such violation, the Board of Directors (or a committee thereof) shall conduct a hearing regarding the alleged violation after giving the accused member at least ten (10) days prior written notice specifying each alleged violation and setting the time, place and date of the hearing. At the hearing, the accused member shall have the right to call and question his own witnesses as well as any opposing witnesses. A determination of violation as well as the terms of any suspension shall be made only by a majority vote of the Board or its duly appointed committee.

7. Entry by Association. The Association also reserves the right to direct its agents and employees to enter upon the Lot of any Association member for the purpose of repairing, maintaining or restoring the Lot or exteriors of any buildings or improvements thereon, including the removal of unsightly weeds, underbrush, or other items; provided, however, that the Association may exercise such right only when the Lot to be entered has not been maintained in a manner satisfactory to the Declarant, or the Architectural Review Committee established in Article VI, and after approval of such action by two-thirds (2/3) vote of the Association's Board of Directors. No entry may be made under this subsection without first providing the Owner of the Lot to be entered at least ten (10) days prior written notice requesting him to properly repair or maintain his Lot; any entry by the Association for the foregoing purposes shall be only between the hours of 7:00 a.m. and 6:00 p.m. on any day except Sunday. Such entry as herein provided shall not constitute a trespass, and the Association shall bear no liability for performing any acts reasonably necessary or appropriate in connection with the execution of these provisions. All costs of such exterior maintenance shall be added to and become part of the annual assessment applicable to such Lot, and shall constitute a permanent lien upon such Lot until paid. In addition, the Owner shall be personally liable to the Association for all such costs, as provided in Article V.

ARTICLE V

COVENANTS FOR MAINTENANCE ASSESSMENTS

1. Creation of Lien and Personal Obligation for Assessments. The Owner of each Lot in the Development, by acceptance of a deed therefore, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges; and (b) special assessments for capital improvements. Such covenant will be deemed to arise whether or not it is expressly stated in the deed or other conveyance to the Owner. The annual and special assessments, together with interest, costs and reasonable attorney's fees, as well as any charges imposed under Section 7 of Article IV above, shall be a charge on the land and shall constitute a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was Owner of such Lot at the time when the assessment was made and shall not pass to his successors in title (other than as the continuing lien on the land) unless expressly assumed by such successor.

2. Purpose of Assessments. All assessments levied by the Association shall be used to provide funds for such purposes as are specifically set out herein for the benefit of its members. Such purposes may include: maintenance, landscaping and beautification of the Common Areas; construction, repair and replacement of improvements upon the Common Areas, including the maintenance and repair of the streets (but not the installation of the final layer of asphalt which is the Declarant's responsibility) prior to acceptance by a public body; the costs of labor, equipment, materials, management and supervision thereof; the payment of taxes assessed against the Common Areas; the procurement and maintenance of insurance; the employment of attorneys, accountants and other professionals to represent the Association when necessary or useful; and the provision of other services intended to promote the health, safety and welfare of the members.
3. Determination of Assessment Amount. Prior to annual meeting each year the Board of Directors shall prepare a budget for the next fiscal year and based upon such budget, the Board shall fix one assessment amount for all Lots in the Development.
4. Payment of Assessments. All annual and special assessments provided for herein shall commence as to all Lots on the first day of the month following the transfer of title from Declarant to Owner. The annual assessment shall be adjusted according to the number of months remaining in the calendar year. Thereafter, payment of assessments shall be made annually to the Association or its designee, on or before the due date established by the Board; provided, however, that the Board may elect to receive payments on a quarterly basis. The Board of Directors shall fix the amount of the annual assessment at least thirty (30) days before the due date and written notice of the charge so fixed shall be sent to each member. Dues will commence for all lots starting 1-1-2009 and not earlier.
5. Special Assessments. In addition to the annual assessment authorized above, the Association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of acquisition of, and any construction, reconstruction, repair or replacement of, a capital improvement upon Common Areas. Prior to the imposition of any such special assessment, two-thirds (2/3) of the members present in person or by proxy at a meeting called to consider such assessment and at which a quorum was present must vote their assent to its imposition.
6. Notice of Quorum. Except for a vote to amend the Restrictions, which vote shall be conducted pursuant to Section 1 of Article XI below, the

notice and quorum required for any actions of the Association authorized by Article IV and V of these Restrictions or as otherwise in the Articles of Incorporation, the Bylaws or by law provided, shall be as follows:

- a. Written notice of any meeting called for the purpose of taking any action authorized under Articles IV and V of these Restrictions shall be sent to all members not less than ten (10) days nor more than sixty (60) days in advance of the meeting.
 - b. Members may attend and may vote in person or by proxy executed in writing by a member. No proxy shall be valid after eleven (11) months from the date of its execution, or after conveyance by the member of his Lot.
 - c. At any meeting called for the purpose of taking some action by the Association membership the presence in person or by proxy of members entitled to cast fifty percent (50%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and any number of members attending such subsequent meeting, so long as such number represents at least thirty percent (30%) of all the outstanding votes shall constitute a quorum. No such subsequent meeting shall be held more than six (6) months following the scheduled date of the preceding meeting.
7. Exempt Property. Any Lot which the Declarant may hereafter designate for common use as part of the Common Areas, as well as all Lots dedicated to and accepted by a local public authority, shall be exempt from the assessments, both general and special, and charges created herein. In addition, the lien of a mortgage or deed of trust representing a first lien placed upon any Lot for the purpose of purchasing the Lot or for permanent financing and/or constructing a residence or other improvement therein recorded in accordance with the applicable state laws from the date of recordation shall be superior to any and all liens provided for herein. The sale or transfer of any Lot by foreclosure of any first mortgage or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments due subsequent to recordation thereof and prior to such sale or transfer, provided such transfer shall not have been made for the purpose of defeating the lien. All Lots owned by the Declarant shall be exempt from any special assessment not consented to by the Declarant.

8. Continuance of Lien.

- a. The assessments and charges created herein shall constitute a continuing lien upon all Lots in the Development and no Owner may waive or in any way reduce his liability for the assessment by non-use of the Common Areas or abandonment of his Lot.
- b. With the exception of sales pursuant to foreclosure proceedings as described in Section 7 above, no sale or transfer of a Lot shall relieve that Lot from liability for any assessments previously due or from the lien thereof.
- c. In the event that any charges or assessment created in these Restrictions remains unpaid by an Association member for thirty (30) days after the due date announced by the Board of Directors, the Association, through its agents and employees, may record with the Mecklenburg County Clerk of Court a notice of the lien created by this Declaration.

9. Effect of Nonpayment of Assessments: Remedies of the Association. In the event that any assessment or charge created herein remains unpaid for thirty (30) days after the due date announced by the Board of Directors, such unpaid assessment shall bear interest from the date of delinquency, said interest rate shall be ten percent (10%) and may hereafter be changed by the Board of Directors from time to time, but in no event shall it exceed the maximum interest rate allowed by law. The Association, its agent or representative, may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot subject to the unpaid assessment. In either case, interest, costs and reasonable attorney's fees shall be added to the amount of such assessment to the extent allowed by law. Any foreclosure conducted pursuant to this section shall comply fully with the North Carolina procedure for judicial foreclosure.

10. Certificate of Payment. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association certifying that the charges on a specified Lot have been paid or that certain charges against said Lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any charges therein stated to have been paid. For purposes of obtaining a certificate, interested parties should contact the Association at its address.

ARTICLE VI

ARCHITECTURAL CONTROL

Architectural Review Committee. There is hereby established an Architectural Review Committee. Initially the Declarant shall serve as the Architectural Review Committee for undeveloped lots without a dwelling. The Declarant relinquishes control of the review and approval process to the Board of Directors of the Association when a dwelling has had its certificate of occupancy for thirty (30) days. The Board shall determine the number of members of the Architectural Review Committee and shall appoint the members. The Board may decide to also serve as the Architectural Review Committee. The Architectural Guidelines for McIlwaine Acres are attached hereto as Exhibit B and are incorporated herein in full by reference.

ARTICLE VII

RESTRICTIONS AND PROHIBITIONS

1. No Clothes Lines. No clothes lines of any description or type, or the outside drying of clothes shall be allowed on the outside of the dwelling unit on any Lot unless approved by the HOA.
2. Signs. No signs or other advertising devices shall be displayed upon any lot except for temporary signs for the purpose "For Sale", "For Rent", or "Yard/Garage Sale" of the residence, or during the construction period of a dwelling, addition, or other construction requiring a permit. In any case signs may not exceed 2 feet by 2 feet. A lot owner may propose a larger size sign that can be approved for use by the HOA for a set period of time. Signs may be used on or in the common areas for the purposes of an event by may not be posted for longer than three (3) calendar days unless agreed upon by the HOA.
3. Garbage Disposal. Unless otherwise provided herein, all garbage shall be stored within the dwelling or garage, on the side of a dwelling of each Owner or completely screened from view. It is provided, however, that if the public health authorities, or other public agency, shall require a specific method of garbage disposal, nothing herein contained shall prevent the compliance by Owners with public rules and regulations. All garbage and recycle containers shall be removed from the curbside to their customary location on the same day that the garbage and recycled materials are picked up.

4. **Maintenance.** The Owner is responsible for maintaining the exterior of the residential improvements thereon as well as the Lot itself. All Lots, except those owned by Declarant, shall be kept free of all tall grass, undergrowth, dead, diseased or decaying trees, and weeds within the improved areas of the Lot (improved area to include by way of explanation and not limitation: driveways, parking areas, buildings, structures, and fences.). Declarant is to maintain all his lots in a manner to prevent promoting any nuisance of wildlife such as rodents, snakes, etc; thus, Declarant will "maintain" said lots but to a lesser standard than the Owner. All Lots shall be kept free of trash, rubbish and debris, and in a neat and attractive condition understanding the preservation of the rural and wooded nature of the Lots. All dwellings and improvements shall be maintained in a clean, neat and orderly condition and in a good state of maintenance and repair.
5. **Vehicles and Parking.** Owner shall provide on site parking for all domiciled vehicles. No trucks (except private use sports utility vehicles and pick-up trucks), commercial vehicles, boats, 4-wheeler's, motor home, trailers, travel trailers or other recreational vehicle, and no inoperable vehicle, shall be allowed to be stored in a driveway or on a Lot for more than three months in any twelve month period. No consecutive parking periods are allowed.
6. **Nuisance.** No noxious or offensive activity shall be conducted upon a Lot or in any dwelling nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Nuisance as defined by local law or as voted on by majority vote of the HOA. Note: HOA must comply with all legal guidelines.
7. **Animals.** No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any Lot except that horses, ponies, dogs, cats and other common household pets may be kept or maintained provided they are not kept or maintained for commercial purposes. Animals must be properly restrained, kenneled or kept on a Lot and not allowed to wander over the Development. Owners shall ensure that animal wastes are disposed of in a non-offensive manner to minimize pet and pet waste odors. No exotic animals that could be defined as aggressive (tigers, bears, etc) are permissible by owners, inhabitants, or visitor of the property. Any exotic animal must be accepted by vote from the HOA on an annual basis for habitation in the Treasure Cove Community. Any animal as allowed by local law may be owned or maintained on the property or on the lot as long as the animal(s) are not considered a nuisance by sound, odor, law, or majority vote of the HOA officers. Should any animal(s) be in violation of the restrictions then the property owner must remove the animal from the property within ten (10) calendar days or as agreed upon by the HOA, whichever is longer.

8. Temporary Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot unless and until permission for the same has been granted by the HOA. Anything notes as a concern as a temporary structure is to be addressed and voted on by the HOA.
9. Leasing. No dwelling on any Lot may be leased, unless the entire property is leased, except in accordance with rules and regulations promulgated by the Association.
10. Hazardous Activities. Nothing shall be done or kept on any Lot which will increase the rate of insurance on any other Lot without the prior written consent of the Architectural Review Committee. No Owner shall permit anything to be done or kept on his Lot which would result in the cancellation of insurance or which would be in violation of the law.
11. Subdivision of Lots. No lot may be subdivided or its boundary lines changed without the written consent of the HOA. The power to grant waivers and change boundaries shall be the responsibility of the HOA. Homeowners may grant easements without the approval of the HOA. Homeowners may sell a portion of their property to an adjoining neighbor as long as all legal and code requirements are met.
12. Governmental Requirements. Nothing herein contained shall be deemed to constitute a waiver of any governmental requirements applicable to any Lot and all applicable governmental requirements or restrictions relative to the construction of improvements on and/or use and utilization of any Lot shall continue to be applicable and shall be complied with in regard to the Lots.
13. Utilities. All utilities and utility connections shall be located underground, including electrical and telephone cable and wires. Transformers, electric, gas or other meters of any type, or other apparatus shall be located at the rear of the buildings constructed on Lots or, if approved by the Architectural Review Committee in writing, located elsewhere on the Lot provided they are adequately screened as required by the Architectural Review Committee in accordance with the provisions of this Declaration.
14. Residential Restrictions. Each Lot shall be used exclusively for single family, non-transient residential purposes; provided, however, Declarant shall have the right to use the Lots designated from time to time by Declarant for the purpose of construction and operation of construction offices and sales/marketing offices (and for related uses) for the Development. No trade, business or business activity of any kind shall be conducted upon a Lot or any part thereof except by Declarant as described hereinabove or except with the written approval of the Association. Provided, however, the Association may permit a business

or business activity to be conducted on a Lot so long as such business, in the sole discretion of the Association, does not otherwise violate the provisions of this Declaration, does not create a disturbance and does not unduly increase traffic flow or parking congestion in the Development. The Board may issue rules regarding permitted business activities. However, no sign, advertisement or icon may be placed on any Lot designating or referencing a business or business activity is occurring on any Lot.

ARTICLE VIII

EASEMENTS

1. The Declarant reserves for itself, its successors and assigns, for purposes incident to its development of the real property subject to these Restriction, the following easements and/or rights of way:
 - a. A ten (10) foot strip along the rear and a five (5) foot strip along the front line and side lines of each Lot for the purpose of installing, operating and maintaining utility lines and mains, radio and television transmission cables and surface water drainage ditches or lines; and
 - b. The right to trim, cut and remove any tree and brush and to locate guy wires and braces within the road rights of way, and rear and side line easement areas for the installation, operation, and maintenance, together with the right to install, operate and maintain, gas, water and sewer mains and other services for the convenience of the property Owners.
2. Declarant reserves unto itself, its successors and assigns, and for the benefit of all Lot Owners in the Development, the street and road rights of way shown on the plats now or hereafter recorded of the Development for construction, repair and maintenance of utility lines and mains and for drainage, and no Owner may interfere with such rights of way or such uses therein.
3. On each Lot the rights of way and the easement areas reserved by the Declarant shall be maintained continuously by the Lot Owner; but no structures, plantings or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with the installation or maintenance of the road, or utilities, which may change the direction or flow of drainage channels in the easements, which may obstruct or retard the flow of water through drainage channels in the easements, or interfere with established slope ratios or create erosion or

sliding problems, provided, however, that the existing location of a drainage channel may be relocated, as long as such relocation does not cause an encroachment on any other Lot in the Development. Improvements within such areas shall also be maintained by the respective Lot Owner except for those for which a public authority or utility is responsible.

ARTICLE IX

PRIVATE ROAD & COMMON EASEMENT MAINTENANCE

1. The Private Easement shall be a right of way and easement which is appurtenant to and runs with the title to each Lot. The roadway on and the Private Easement shall be maintained by the Association. Maintenance assessments for the road shall be included in the dues payable by the Lot owners to the Association. However, the Association may have special assessments for the maintenance, improvement, and re-building of the road, any and all such maintenance assessments shall be divided equally between each Lot. No Lot shall pay a higher assessment for road maintenance than any other Lot.
2. The roadway and the Private Easement shall be maintained in good condition and repair.
3. The Private Easement may be used for the installation of utilities, septic lines going from Lots to Septic Easements, and for other like purposes.
4. The Private Easement shall not be used for the following purposes: no gates, speed bumps, archways, or other structures that would limit the use of the roadway.

ARTICLE X

SEWER EASEMENTS & SEWER EASEMENT AREAS

Sewage Disposal/Septic Easements. Every Lot shall either be served by a septic system for the disposal of sewage or connected to a private or public sewage disposal system. Declarant makes no representations regarding the future availability of municipal sewer service. All septic systems or other private sewage disposal systems shall be approved by, and constructed and maintained in accordance with all the regulations and requirements of the Association, and all governmental authorities and regulatory agencies having jurisdiction. All Owners, by purchasing property subject to this Declaration, acknowledge that

any governmental approval or permit allowing for the construction and operation of a septic system or other private sewage disposal system may be limited in duration in accordance with the terms thereof, and neither the Declarant, nor the Association, nor the officers, member, employees or directors thereof shall have any liability arising directly or indirectly out of the inability of an Owner to obtain any such permit or approval (including an extension or continuation) following the initial expiration thereof.

Non-exclusive easements for the purposes of providing septic service and for use as septic drainage fields (the "Septic Easements") are hereby reserved by Declarant and granted, over, across and under the Septic Easement Areas to and for the benefit of the Association and the Septic Lot Owners, as more specifically provided herein. Each of the Septic Easements shall be an appurtenance to and run with the title to the Lot it services and for which it is reserved. Any deed, deed of trust, mortgage, transfer or other conveyance of any said Lots shall also transfer or convey the Septic Easement appurtenant to such Lot, even if not expressly included therein. Each Lot which beneficially owns a Septic Easement shall have the responsibility to construct, install, excavate, dig, build, maintain, operate, remove and reinstall a septic system and related lines, equipment and apparatus in and upon the Septic Easement Area. The beneficial owner of the Septic Easement shall also have the right to clear trees, brush and other plants to assure the proper working order of the septic facility. The owner who owns a Lot subject to a Septic Easement shall have the right to use that portion of their property in common with the owner of the Septic Easement, however, the owners use cannot interfere with the Septic Easement Owner's right to use, install and maintain the septic facility.

Declarant hereby reserves unto itself, its successors and assigns, and grants to the Association, a non-exclusive easement burdening each Lot to which a Septic Easement is appurtenant for the purpose of connecting any residence upon such Lot to any public or private sewer line providing service accessible to such Lot, including access across such Lot and the right to install pipes and apparatus as may be necessary to connect any such residence(s) to such sewer line (the "Sewer Connection Easement"). By reserving the Sewer Connection Easement, Declarant has not obligated itself, its successor or assigns, or the Association, to connect any public or private sewer line to the above-described Lots and the exercise of such rights under the Sewer Connection Easement shall be at the sole discretion of the Declarant, its successors or assigns, or the Association, as the case may be.

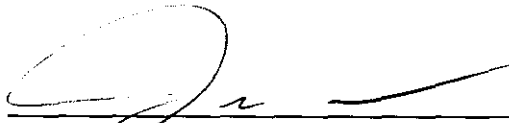
ARTICLE XI

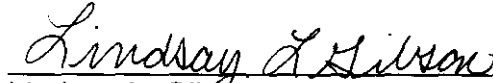
GENERAL PROVISIONS

1. Term. These Restrictions shall affect and run with the land and shall exist and be binding upon all parties and all persons claiming under them until December 31, 2029. By accepting a deed to a Lot subject to these Restriction, the Lot Owners agree that after July 1, 2029, these Restrictions shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by the members holding more than sixty percent (60%) of the voting rights in the Association has been recorded, agreeing to change the covenants in whole or in part. Notwithstanding any provision hereof to the contrary, no amendment to these restrictions shall be made, nor shall any attempted amendment be effective, without the written consent (either on the face of the amendment or in a separate recorded instrument) of (i) Declarant, if at the time of such proposed amendment the Declarant is the owner of any portion of the Property, and/or (ii) any of the following holders of an ownership interest in Declarant, if at the time of such proposed amendment such person is the owner of a Lot or other portion of the Property: John B Robbins or Holly H. Robbins.
2. Mutuality of Benefit and Obligation. The Restrictions and agreements set forth herein are made for the mutual and reciprocal benefit of each and every Lot in the Development and are intended to create mutual, equitable servitudes upon each Lot in favor of each and all of the other Lots therein; to create a privity of contract and estate between the grantees of said Lots, their heirs, successors and assigns, and to the Association, and shall as to the Owner of each Lot, his heirs, successors and assigns, operate as covenants running with the land for the benefit of each and all other Lots in the Development and their respective Owners. Declarant, so long as it shall own a Lot or any Common Area in its own name, any Lot Owner or the Association shall have the right to enforce these Restrictions.
3. Fines. In addition to any other rights and remedies available for the enforcement of the provisions of this Article XI, the Association may after delivery of notice meeting the requirements set out herein to the Owner of the Lot on which the violation is occurring impose a fine against such Owner for each day the violation continues. The fine shall not exceed Ten Dollars (\$10.00) per day. Such fine shall constitute a lien against such Lot in the same manner as an assessment under Article V. The notice to the Lot Owner shall state the Owner's name, the Lot number, the specific violation which is occurring, a reasonable time period for correction of such violation before the imposition of a fine (which shall be determined based upon the nature of the violation, but shall be no less that three (3) days), the amount of the fine and the fact that it will be imposed daily until the violation is cured. Delivery of notice shall be sufficient if either mailed by registered or certified mail, return receipt requested or posted in a prominent location on the Lot.

4. Severability. Every part of these Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability, or "running" quality of any other one of the Restrictions.
5. Captions. The captions preceding the various paragraphs and subparagraphs of these Restrictions are for convenience or reference only, and none of them shall be used as an aid to construction of any provision of these Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

IN WITNESS WHEREOF, Declarant has caused this instrument to be duly executed, this 20 day of December, 20 07.


_____(SEAL)
Jeremy G. Gibson


_____(SEAL)
Lindsay L. Gibson

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Marcia K. Long, a Notary Public of ^{Cladell} the County and State aforesaid, certify that Jeremy G. Gibson and Lindsay L. Gibson, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this 20th day of December, 20 07.

Notary Public Marcia K. Long
My commission expires: 11-6-08

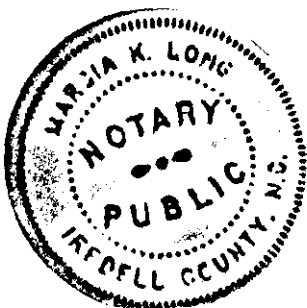


EXHIBIT A

Being all of the property, including number Lots, easement areas, common areas, and streets, shown on a map of McIlwaine Acres Subdivision recorded in Map Book 48 at Page 886 Mecklenburg County Public Registry.

EXHIBIT B

ARCHITECTURAL GUIDELINES

MCILWAINE ACRES

RECITAL OF INTENT: ARCHITECTURAL STYLES

It is the intent of these guidelines to create a community of custom homes with well planned architectural details.

The goal of these guidelines is to encourage a community of individual outstanding architectural statements that when viewed together produce an equally outstanding community environment. The architectural designs should be customized for each Lot to maximize the natural features that exist.

ARTICLE I

PRINCIPLES OF GOOD DESIGN

It is desirable for the homes of our community to exhibit the individuality of their owners as well as adhere to the guidelines of their selected architectural style. However, it is also important that they observe basic design principles inherent in good architecture. Following are some of the questions that the property owner and design team should consider when developing the design for the homesite:

- Is the residence located on the site in a sensitive manner with minimum disruption to the natural topography, vegetation, and unique site features?
- Is there a consistency in the site planning, architecture and landscaping?
- Are the specific features of the architectural style well developed and carefully detailed? Have the features been researched to resemble a certain degree of authenticity?
- Is there an intelligent selection of details related to a well designed floor plan?
- Is there a consistent scale used throughout the design of the residence? Each element should be designed in proportion to the other design elements.
- Will the various building materials allow for a pleasing and harmonious exterior appearance to the residence? Are the building materials used logically?
- Are the colors appropriate and used with restraint?

ARTICLE II

ARCHITECTURAL REVIEW BACKGROUND

Great care has been taken in the planning, design and construction phases to insure aesthetic harmony within McIlwaine Acres. To this end it is of the utmost importance that this special character not be compromised by housing designs which are improperly conceived, unresolved or poorly executed.

For this reason, an Architectural Review Committee (the "Committee") will review all construction, designs and plans for:

- consideration of primary site design issues,
- sensitivity to the special landscape potential of the area,
- excellence in traditional architectural design.

The Architectural Guidelines have been established to provide property owners, architects and contractors with a set of parameters for the preparation of their drawings and specifications.

By encouraging quality and attention to detail throughout the community, the aesthetic harmony, natural tranquility and overall property values at McIlwaine Acres will be enhanced and preserved through the Architectural Review Committee and Architectural Guidelines.

The Architectural Review Committee must approve plans for any building, residence, or other structure, including but not limited to: fences, pools, walls, landscaping, ponds, water features, copies of trees and other improvements prior to construction or installation.

ARTICLE III

APPLICATION AND REVIEW PROCESS

1. Municipal Jurisdiction. The City of Huntersville and Mecklenburg County and its planning department have jurisdiction over the community at McIlwaine Acres. They should be contacted at the beginning of the planning and design process to ensure compliance with their regulations. It should not be assumed, however, that compliance with the City of Huntersville standards is acceptable to the Architectural Review Committee. Certain City of Huntersville and Mecklenburg County requirements may be enhanced to create a better overall community appearance.

2. Procedure/Approval of Plans. No Improvements of any kind or nature shall be erected, remodeled or placed on any Lot until all plans and specifications thereof and a site plan have been submitted to and approved in writing by the Architectural Review Committee, as to:

- a. location with respect to topography and finished grade elevation and effect of location and use on neighboring Lot;
- b. quality of workmanship and materials, adequacy of Lot dimensions and alignment of main elevations with respect to nearby streets;
- c. conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping; and
- d. other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within bulletins promulgated by the Architectural Review Committee, or matters in which the Architectural Review Committee has been vested with the authority to render a final interpretation and decision.

Two sets of identical plans must be submitted for each review. Final plans and specifications for all Improvements proposed to be constructed on a Lot shall be submitted in duplicate to the Architectural Review Committee for approval or disapproval. The Architectural Review Committee is authorized to request the submission of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the Architectural Review Committee, one (1) complete set of plans and specifications will be marked "Approved" and returned to the Owner or his designated representative and the remaining set will be filed in the office of the Architectural Review Committee. If found not to be in compliance with these covenants, conditions and restrictions or if found to be otherwise unacceptable to the Architectural Review Committee pursuant hereto, one (1) set of plans and specifications shall be returned to the Owner marked "Disapproved," accompanied by the reasonable statement of items found not to be in compliance with these covenants, conditions and restrictions or otherwise being so unacceptable. Owners thereafter shall resubmit, in accordance with the provisions of this Section 2, such plans and specifications setting forth the required changes to the Architectural Review Committee for its approval.

Any modification or change to the Approved set of plans and specifications must again be submitted in duplicate to the Architectural Review Committee for its inspection and approval.

The Architectural Review Committee's approval or disapproval, as required herein, shall be in writing. Once the Architectural Review Committee has

approved the plans and specifications for the Improvements, the construction of such Improvements must be promptly commenced and diligently pursued to completion.

The Architectural review Committee may also approve plans as “Approved as Noted”. This approval, if properly followed as Noted on the plans, shall be deemed “Approved” once the notations have been followed.

3. Plan Specifications. The final plans and specifications as referred to in the preceding paragraph shall mean the following:

- a. Final site plan which shows topography at two foot (2') contours (at a scale of one inch (1'') equals twenty feet (20') or at a larger scale); and shall include the following information:
 - (1) Precise dimensioned location of the dwelling and garage, and all other buildings showing orientation on the Lot, and indicating all doors at grade and foundation elevations at all corners.
 - (2) Location of driveways, walkways, etc.
 - (3) Location of all trees over eight inches (8'') caliper at three feet (3') above grade and groups of trees with those to be retained so marked in the area to be improved (including by way of explanation and not limitation: driveways, landscaping, buildings, outbuildings).
 - (4) Grading plan showing existing and new contours and proposed pattern of surface drainage.
 - (5) Location of mechanical equipment and other utility related apparatus.
- b. Final floor plans for all structures, at a scale of one-fourth inch (1/4'') equal one foot (1'); and shall include the following information:
 - (1) Square footage calculated per floor.
 - (2) All floor plans with accurate dimensions and orientation including but not to basement, first floor, upper floors, decks, patios, stoops, chimneys, etc.

- c. Final elevations, showing all sides, and accurate grade at a scale of one fourth inch (1/4') equals one foot (1');
 - d. All elevations are to articulate material, color, finish, window types, trims and fascia details. The proposed finish grades against the elevations must be indicated, along with A/C condensing and trash screens, decks, and strains.
 - e. The elevations should indicate maximum height from first floor finished grade to the uppermost roof peak.
 - f. Roof plan (bird's eye view), including roof areas, slopes, materials, colors, roof vents, projections, skylights, solar collectors and any other structures protruding from the roof's surface.
 - g. All exterior materials selections and color selections, construction materials, and sample boards showing actual samples of major materials, finishes and colors.
 - h. Landscape plan at two (2) foot interval showing the location of all proposed new landscaping, describing type and size of planting; and the design, location and materials of outdoor living spaces such as patios, fences, walls, screens, decks, paving materials, swimming pools, tennis courts and their shelters, etc.
4. Preliminary Review Option. In addition to the procedure described in this section, and in recognition of the cost involved in producing the final plans and specifications, the Owner may request a preliminary review of the design of the Improvements upon the submission of the following:
- a. Schematic site plan showing proposed location of dwelling, and other Improvements including garage, barns, fences, etc.;
 - b. Schematic floor plans;
 - c. All elevations and accurate grade;

The Architectural Review Committee shall be responsive to technological advances and general changes in architectural design and materials and related conditions in future years and use its best efforts to balance the equities between matters of taste and design (on the one hand) and use of private property (on the

other hand). The Architectural Review Committee may refuse approval of plans, locations, exterior color or finish or specifications for any reason, including purely aesthetic reasons, which in the sole discretion of the Architectural Review Committee shall be deemed sufficient.

ARTICLE IV

CONSTRUCTION PROCESS

After final plan approval, the Lot owner or agent shall request the Architectural Review Committee to make a site inspection prior to Lot clearing and construction. The owner or agent should clearly stake the proposed house, and any other structures, and property lines, drive, patio, walk and if applicable, pool location. Staking shall be with a continuous ribbon encircling the area to be cleared and any additional trees to be cleared located outside the encircled area shall be ribboned individually or in groups. The purpose of the site inspection is to insure compliance with the approved plans and to prevent any unnecessary damage to specimen trees, public utilities and other unique site features. Authorization to proceed with clearing and construction will be issued immediately after the inspection.

1. Procedure/Review of Construction. During the Construction Activity and again upon completion of approved construction, the Architectural Review Committee shall inspect the construction to insure that the approved plans and samples are complied with by the Owner. No structure may be occupied or used until the issuance by the Architectural Review Committee of a letter of compliance. The letter of compliance shall be issued by the Architectural Review Committee without fee. All fees previously payable to the Architectural Review Committee shall be paid in full before the letter of compliance shall be issued.
2. Jurisdiction. The Architectural Review Committee is authorized and empowered to consider and review any and all aspects of the construction of any improvements on a Lot which may, in the reasonable opinion of the Architectural Review Committee, adversely affect the living enjoyment of one or more Owners or the general value of the Property or the Development.
3. Enforcement.
 - a. The Association shall have the specific right (but not obligation) to enforce the provisions contained in this Article IV of the Architectural Guidelines and/or to prevent any violations of the provisions contained in the Declaration or this Article by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained in this Article or the Declaration.

- b. As to nonconforming or unapproved improvements, the Association may require any Owner to restore such Owner's Improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and remove of any unapproved improvements) if such Improvements were commenced or constructed in violation of this Article. In addition, the Association may, but has no obligation to do so, cause such restoration, demolition and removal and levy the amount of the cost thereof as a special individual assessment against the Lot upon which such Improvements were commenced or constructed.

ARTICLE V

FINAL INSPECTION

Immediately upon completion of the construction (excluding landscaping) the Architectural Review Committee shall be notified in order to make a final inspection to confirm compliance of all approved plans and inspect the condition of the public utilities. The owner will receive a letter listing any items that need attention to bring the home into compliance with the approved plans. If these items are not corrected within (sixty) 60 days, the construction deposit will be forfeited. The owner will remain obligated to correct the improvements, site work, landscaping or other items in order to conform to the approved plans (as set forth in greater detail herein below in Article VI, Section 8 and 9).

ARTICLE VI

SPECIFIC REQUIREMENTS, DISCLAIMERS, AND OTHER CONSIDERATIONS

1. No approval of plans, materials, location or specifications and no publication of architectural standards or recommendations shall be construed as representing or implying that any such plans, specifications or standards will, if followed, result in a properly constructed residence. Such approvals and standards shall in no event be construed as representing, warranting or guaranteeing that any residence or improvement thereto will be built in a good and workmanlike manner or that the plans and specifications with respect thereto shall result in a residence of any particular quality, or that the plans and specifications comply with building codes or zoning ordinances. Inspections are not made to determine quality or suitability of construction. Neither the Declarant nor the Committee shall be responsible or liable for any defects in any plans or specifications submitted, revised or approved under the restrictive covenants or under the architectural review board procedures, nor for any inspections made during the construction process, nor shall the developer or the Committee have any responsibility for defects in construction pursuant to any such plans and specification. Each property owner shall have sole responsibility for compliance with the plans as approved by the Committee and agrees to hold the

developer and the Committee harmless from any failure thereof caused by the property owners, architect or builder.

2. Failure of the Architectural Review Committee to Act. If the Architectural Review Committee fails to approve or disapprove any plans and specifications and other submittals which conform (and which relate to Improvements which will conform) with the requirements hereof or to reject them as being inadequate or unacceptable within twenty (20) days after receipt thereof, and provided such submittal was a full and complete submittal of all items that were to have been submitted to the Architectural Review Committee, and provided the Architectural Review Committee shall again fail to approve or disapprove of such plans, specifications and other submittals within fifteen (15) days after additional written request to act on such items is delivered to the Architectural Review Committee following the passage of such first above described twenty (20) day period, it shall be conclusively presumed that the Architectural Review Committee has approved such conforming plans and specifications and other submittals, except that the Architectural Review Committee has no right or power, either by action or failure to act, to waive or grant any variances relating to any mandatory requirements specified in this Declaration, except where variances shall be expressly permitted herein. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Architectural Review Committee may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject the balance.
3. Limitation of Liability. Neither the Architectural Review Committee nor the members thereof nor the Association nor Declarant shall be liable in damages or otherwise to any Lot owner or any other person by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with any submittal for approval or disapproval or failure to approve or disapprove any plans or specifications, Every person who submits plans or specifications, and every Lot owner agrees that he will not bring any action or suit against Declarant, the Association, the Architectural Review Committee, the Board of Directors, or the officers, directors, members, employees and agents of any of them, to recover any such damages and hereby releases, remises and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

In the event that Declarant is or becomes liable to any person with respect to any claim, demand or obligation arising under these Restrictions or arising as a result of the development of the Property, the sale of Lots, the use or conveyance of the Common Areas or any other cause relating to the Property, the claimant shall look solely to the assets of Declarant to satisfy such claim.

4. Design Guidelines. The Architectural Review Committee may, from time to time, publish and promulgate Design Guidelines (herein so called), and such Design Guidelines shall be explanatory and illustrative of the general intent of the development of the Property and are intended as a guide to assist the Architectural Review Committee in reviewing plans and specifications. In any event, such Design Guidelines shall not be binding upon the Architectural Review Committee and shall not constitute the basis for approval or disapproval of plans, specifications and other materials submitted to the Architectural Review Committee for approval.
5. Variances. Upon submission of a written request for same, the Architectural Review Committee may, from time to time, in its sole discretion, permit Owners to construct, erect or install Improvements which are in variance with the architectural standards or similar provisions of this Declaration or the Master Declaration or Supplemental Declarations which may be promulgated in the future. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community and shall not materially change the scheme of restrictions herein set forth. Written request for variances shall be deemed to be disapproved in the event the Architectural Review Committee has not expressly and in writing, approved such request within thirty (30) days of the submission of such requests. No member of the Architectural Review Committee shall be liable to any Owner for any claims, causes of action or damages arising out of the grant or denial of any variance to any Owner. Each request for a variance submittal hereunder shall be reviewed separately and apart from other such request and the grant of a variance to any Owner shall not constitute a waiver of the Architectural Review Committee's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder, against any other Owner.
6. Review and Inspection Fee. At the time of the submission of the Final Plans and Specifications, the Owners shall submit an initial review fee of \$500.00 for expenses incurred in reviewing the Final Plans and Construction Activity and performing up to four site inspections (which shall include foundation staking and tree removal, rough framing including all roof rafters, exterior trim completion, and final) by a representative of the Architectural Review Committee during the construction of the Improvements and the installation of the landscaping. Following the initial review and disapproval (if applicable) a review fee of \$50.00 will be charged for each resubmission of plans and specifications to the Architectural Review Committee. If the Owner chooses a preliminary review of the proposed plans, there shall be no fee for the initial preliminary plan review, but a review fee of \$100.00 shall be charged for each preliminary plan submitted after the initial plan. If the Owner fails to construct the Improvements or install the landscaping in accordance with the approved plans, or if changes to the plans are approved during the construction process, and as a result of either such events a representative of the Architectural Review Committee deems it necessary to make more than four site inspections, the Owner shall pay to the Architectural Review

Committee a site inspection fee in the amount of \$100.00 for each addition site inspection.

The address of the Architectural Review Committee shall be the principal place of business of the McIlwaine Acres Home Owners Association from time to time designated in writing to its Board of Directors. Such address shall be the place of the submission of any plans and specifications and the place where the current rules and regulations, if any, of the Architectural Review Committee shall be kept. Any additional Improvements will be reviewed as stipulated herein. The fee for such review will be determined by the Architectural Review Committee.

7. No Liability for Design or Materials Defect. Plans and specifications, and materials, are not approved for engineering or structural design or for quality or suitability and by approving such plans and specification neither Declarant, the Architectural Review Committee, the members thereof, nor the Association assumes liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications, or materials.
8. Construction Deposit. Owner shall deposit with an attorney selected by Declarant or, if Declarant is not then performing the architectural review function, the Architectural Review Committee, prior to the commencement of any construction activity on the Lot, including clearing and grading, a Construction Deposit in the amount of One Thousand Dollars (\$1,000.00). The Construction Deposit shall be held in the attorney's trust account and shall not bear interest. The attorney shall make payments of the Construction Deposit based solely upon the instructions of the Declarant, or the Architectural Review Committee. If Owner or his Builder fails to correct a violation of these Restrictions within five (5) days after receipt of written notice thereof, or if such violation cannot reasonably be corrected in such time period, if Owner has not commenced the correction of such violation within five (5) days after receipt of such notice and does not proceed thereafter diligently and in good faith to correct such violation, Declarant or the Architectural Review Committee without further notice may correct such violation and charge the cost thereof to Owner. Declarant or the Architectural Review Committee, its employees, agents or contractors, may enter upon the Lot, if necessary, in order to correct such violation, without such entry constituting a trespass; nor such Declarant or the Architectural Review Committee, its employees, agents or contractors be liable for any damage caused by such entry or the correction of such violation unless such damage was caused by their negligence or willful act. If Owner fails to pay to Declarant or the Architectural Review Committee the costs incurred in the correction of such violation within thirty (30) days after receipt of notice thereof by Owner, the amount thereof may be paid out of the Construction Deposit. Owner shall promptly deposit with Declarant or the Architectural Review Committee such additional amounts as are necessary to replace any monies paid out of the Construction Deposit pursuant to the provisions hereof. No construction activity of any type may be conducted on a Lot by or for the Owner until any required funds are added to the Construction Deposit. If the cost paid by Declarant

or the Architectural Review Committee to correct any violation or a series of violations shall exceed the amount of the Construction Deposit, including any additional deposits made by Owner, the amount of such excess, if not paid within thirty (30) days after it is due, shall constitute a lien upon the Lot, enforceable in the same manner as set out in Article V, Section 8 for assessments of the Restrictions. The construction deposit shall not be returned until a certificate of occupancy is issued, the requirements of subsection 9 directly herein below have been met and all outstanding Architectural Review Committee violations have been corrected. Once the conditions have been met the Construction Deposit will be returned in a reasonable time.

9. Landscaping Deposit. There shall not be a separate landscaping deposit: the Construction Deposit shall be held even after issuance of a certificate of occupancy until the landscaping has been completed according to, and in conformity with, the approved landscape plan. In the event the Owner fails to install the landscaping in accordance with the approved plan, the Architectural Review Committee may install all or any portion of the landscaping shown on the approved plan and pay the cost thereof from the Construction Deposit. The Owner shall be responsible for any expenses incurred by the Architectural Review Committee in the installation of the landscaping material in excess of the Construction Deposit.

ARTICLE VII

CONSTRUCTION STANDARDS

1. Approval Required. Notwithstanding anything contained within the Declaration to the contrary, no Owner shall undertake, or permit to be undertaken, on any Lot prior to approval in writing by the Architectural Review Committee any of the following:
 - a. the construction of any Improvement(s), which shall include in addition to the actual erection of a dwelling and its appurtenances, clearing, excavation, grading or other site work;
 - b. any modification, change or alteration of any Lot or dwelling or Improvement thereon, whether functional or decorative.

The procedure to be followed by an Owner in obtaining approval from the Architectural Review Committee is set forth in Article III hereinabove.

2. Construction Requirements. Homes must be substantially built of brick, stucco, clapboard (including shake or shingles), aluminum siding, vinyl siding, material of cementitious make up, or stone construction built with roof lines consistent with the Design Guidelines as may be established by the Architectural Review Committee from time to time. Unique designs such as log will be considered and accepted if otherwise conforming to quality and appealing design concepts. No pressed board or other man-made material, (such as Masonite) will be allowed. Homes shall be

constructed on a crawl space or slab on grade. Roofing material shall be approved colors of asphalt shingles (at least 280 lb. weight of composition type), cedar shakes, tile, slate, copper or similar permanent roofing material approved by the Architectural Review Committee. The Architectural Review Committee may approve other materials which in its sole discretion provide similar high quality aesthetic appeal and long term value both in utility and appearance. The Architectural Review Committee may refuse approval of plans, location, exterior color or finish or specifications for any reason, including purely aesthetic reasons, which in the sole discretion of the Architectural Review Committee shall be deemed sufficient.

3. Improvements. The term "Improvement(s)" as used throughout this Declaration shall mean and include all building, storage sheds or areas, roofed structures, parking areas, loading areas, trackage, fences, walls, hedges, mass plantings, poles, driveways, ponds, lakes, changes in grade or slope, site preparation, swimming pools, tennis courts, tree houses, children's playhouses, basketball goals, signs, exterior illumination, exterior antennae, earth satellite stations, microwave dishes, solar panels or other similar receiving, transmission or energy generating equipment, changes in any exterior color or shape. The definition of Improvements(s) does not include garden shrub or tree replacement or any other replacement or repair of any magnitude which ordinarily would be expensed in accounting practice and which does not change exterior colors or exterior appearances. The definition of Improvements does include both original Improvements and all later changes, repairs to Improvements and any additional Improvements.
4. Floor Areas, Stories. Dwellings must meet each of the following: (a) Minimum heated square footage of main or ground floor of any principal residence is 1600 square feet, not including any basement or garage size; (b) Minimum total heated square footage of 2100 square feet with at least 500 additional square feet of space available and prepped for future upfit (prepped by means of electrical and mechanical trades) or a total of 2600 heated square feet with at least 1600 square feet on the first floor. The Architectural Review Committee may allow at its discretion a minimum variance from this listed square footage; (c) Minimum of a two car attached garage; and (d) No residence may exceed three stories above the ground without acceptance by the HOA prior to construction.
5. Building Setback Lines. Setbacks are as required by Mecklenburg County zoning ordinance and other municipalities having zoning control over the property. No dwelling shall be within 5 feet of any property line excepting only fences.
6. New Construction. Construction of new stick built buildings only shall be permitted on a Lot, it being the intent of this covenant to prohibit the moving of any existing building onto a Lot and remodeling or converting the same into a dwelling.

7. Diligent Construction. All construction, landscaping or other work which has been commenced on any Lot located within the Property must be continued with reasonable diligence to completion and no partially completed houses or other Improvements shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. Maximum construction duration shall be no longer than eighteen (18) consecutive months from the placement of footings unless approved by the Architectural Review Committee. Prior to commencement of construction on any Lot, the Owner shall provide a gravel driveway with a minimum base of five inches (5") of #5 crushed stone from the paved street to the site of the actual house construction area. No construction materials of any kind may be stored within the road right of way. Any damage to the street, curb or to any part of any Common Area or utility system caused by the Owner or Owner's builder shall be repaired by such responsible Owner. The Owner of each Lot shall at all times keep adjacent public and private areas free from any dirt, mud, garbage, trash or other debris which is occasioned by construction of Improvements. Declarant may provide for the cleaning of public and private areas due to the activities of the Owner or Owner's builder and may assess the Owner a reasonable charge not to exceed the actual cost for such cleaning. Every Builder constructing Improvements within the Lot, consistent with standard construction practices, shall keep all portions of the Lot free of unsightly construction debris and shall at all times during construction either provide dumpsters for the containment of garbage, trash or other debris which is occasioned by construction of Improvements or take other measures consistent with standard construction practices necessary to keep the Lot free of garbage, trash or other debris which is occasioned by the construction of Owner's Improvements. All Owners and Owners' Builders shall comply with such rules of the Declarant or the Association as are from time to time adopted with respect to construction of Improvements. All Owners shall be responsible to insure that any Builder employed by it complies with all Builders' Rules adopted by the Declarant or the Association from time to time. The initial Builder's Rules of the Association are attached hereto as EXHIBIT C GENERAL RULES FOR CONTRACTORS AND SERVICE PEOPLE (and are incorporated herein by reference).
8. Location of Improvements. In order to assure that buildings and other Improvements will be located and staggered so that the maximum view, privacy, sunlight and breeze will be available to each building or structure within the confines of each Lot, and to assure that structures will be located with regard to the topography of each Lot, taking into consideration the location of large trees and other aesthetic and environmental considerations, the Architectural Review Committee shall have the right to control absolutely, (subject to the provisions of zoning ordinances of the appropriate governmental authorities), the precise site and location of any building or Improvement on any Lot for reasons which may in the sole and uncontrolled discretion and judgment of the Architectural Review Committee be sufficient. Such location shall be determined only after reasonable opportunity is afforded the Owner of the Lot in question to recommend a specific site. The provisions of this Section shall in no way be construed as a representation,

covenant or warranty that the view, privacy, sunlight or breeze available to a building or structure on a given Lot shall not be affected by the location of a building or structure on an adjacent Lot.

9. Landscaping; Driveways.

- a. General. Except for the building pad, driveways, and other improvements on each Lot, the surface of each Lot shall be of grass or other live foliage and/or ground cover and such grass, foliage and ground cover shall be neatly maintained at all times.
- b. Statement of Purpose. The community of McIlwaine Acres has been planned utilizing the natural elements as much as possible. Various hardwoods, dogwoods and pine trees are quite prolific within the community, and it is the intent of the Architectural Review Committee to maintain this landscape integrity. The determining factor of good landscape design should always be the architecture and location of the residence. The Architectural Review Committee will take into account various relationships of house to site, house to house, views, prevailing breeze and solar orientation in making decisions regarding specific landscape plans. To insure that the overall beauty of the community is preserved and enhanced, the Architectural Review Committee has the authority to approve or disapprove landscape plans for individual residences. A fundamental portion of the design criteria is the need for gardens and lawns to harmonize with the native vegetation, terrain and natural beauty of the community. Throughout McIlwaine Acres many fine native, mature specimen trees exist. Many are in prominent view from the streets giving them special significance. In order to take a positive step toward the recognition and protection of such trees the Architectural Review Committee requires approval to remove any tree on any home site with a trunk diameter of eight (8) inches or greater at three (3) feet above natural grade. Owners will be encouraged to landscape their Lots with plant material which is indigenous to the area and leave untouched as much as possible the existing vegetation and natural amenities.
- c. Driveways. All driveways, turning areas and parking areas shall be surfaced with asphalt, concrete or brick. If asphalt is used, it must be of a thickness at least equal to the required asphalt surface of the streets in the Development. The driveway must be completed prior to the occupancy of any dwelling on the Lot. If any driveway is to cross a drainage ditch, the Owner will be required to install, at his own expense, all necessary culverts and coverings prior to the commencement of any other construction on the Lot. The installation of the culvert and any covering must be approved by the Committee. The owner of each Lot shall be responsible for the connection of the driveway to the private easement and roadway. Any repairs or corrections to such driveway connection

required by the Association shall be performed by and at the expense of the Lot Owner.

- d. **Landscape Guidelines.** The Architectural Review Committee reserves the right to promulgate and amend from time to time Landscape Guidelines (referred to hereinafter as the "Landscape Guidelines") which shall establish approved standards, methods and procedures for Landscape Management on the Property and such authorized standards, methods and approval by the Architectural Review Committee. McIlwaine Acres Subdivision is a heavily wooded subdivision and it is the desire of the Architectural Review Committee that a maximum number of trees remain after construction has been completed. No trees measuring eight inches (8") or more in diameter at a point three feet (3') above ground level may be removed without the prior written approval of the Association. In addition to the removal of trees in areas designated on the approved plans for construction of Improvements, approval may be granted for the removal of trees (i) located within ten feet (10') of the main dwelling or accessory building, or within ten feet (10') of the approved site for such building, unless such removal will substantially decrease the attractiveness of the Property, (ii) that are dead or diseased, and (iii) as part of a thinning process in order to increase air flow, maximize views, and permit sun light penetration to facilitate the approved landscaping plan without reducing substantially the wooded character of the Property.
10. **Swimming Pools; Tennis Courts.** No swimming pool, hot tub, Jacuzzi, garages, outbuilding or tennis court shall be installed erected on any Lot until the plans and specifications for same showing the nature, kind, shape, materials, height and location of the sale shall have been approved by the Architectural Review Committee. No swimming pool shall be constructed on a Lot in front of a dwelling or so that any portion of such pool protrudes above the finish grade of the adjoining ground as found prior to such construction; provided, however, that when the average slope of a Lot exceeds twenty-five percent (25%), the Architectural Review Committee may approve an exception. The pool itself and pool equipment shall be screened, housed or stored underground so as to be screened from any road.
11. **Fences and Hedges.** The erection or installation of all fences must be maintained and kept in orderly fashion and at no time may exceed six feet in height. The erection or installation of all hedges must be maintained and kept in orderly fashion and at no time may exceed six feet in height. No fences or hedges over five feet are allowed on any street side of any lot, and any fence so built must be in character with the color, quality and character of the residence and is subject to approval by the Architectural Review Board. No chain link fences will be permitted. A chain link "pet pen" may be allowed after approval of the HOA. HOA may restrict the location of the "pet pen" to meet general aesthetics of the community.
12. **Garages and Utility Buildings.** Each Lot will be required to have a garage, either attached or detached, accompanying the dwelling. All buildings must be approved

by the HOA except utility buildings having a full car garage. All utility buildings will be constructed to the rear of the principal dwelling. This requirement does not have to be met by a utility building having a full car garage. Any utility building and or garage shall be built with wood, brick or other man made material such as concrete board or vinyl, which is designed to approximate the texture and quality of the dwelling. Wood buildings must be painted or stained to match or compliment the house colors as approved by the Architectural Review Board. The utility building must be of the same character and quality as the house. Any tin, metal, rubber or plastic buildings or temporary structures must be approved by the HOA. The intent is to prevent a "tacky" or overly cluttered appearance.

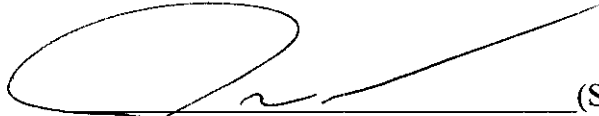
13. **Sight Line Limitation.** No fence, wall, hedge, shrub, or structure planting which obstructs sight lines at elevations between two (2) and six (6) feet above roadways shall be placed or permitted to remain adjacent to a rounded street property line so that it adversely affects visions of a motorist and safe motoring. Standards of the North Carolina Department of Transportation shall be used to determine proper and safe sight line parameters.
14. **Air-Conditioning Equipment.** No air-conditioning or heating apparatus shall be installed on the ground in front of any residence on a Lot. No air-conditioning or heating apparatus shall be attached to any front wall of a residence on a Lot. No air-conditioning or heating apparatus shall be installed on the side wall of a residence on a Lot unless the same shall be screened from view from the street abutting such Lot and any adjacent Lot.
15. **Antennas.** No radio or television aerial or antenna or any other external electronic equipment or devises may be installed or maintained on any exterior of any structure if it exceeds 60 inches in diameter or length. Any satellite dishes must be mounted on the rear half of the house and must be placed so they are not visible from the road from the entrance side or as approved by the HOA.
16. **Gas Meters.** No gas meters shall be set in the front of a residence on a Lot unless such meter is of an underground type.
17. **Mail Boxes and Newspaper or News Box** will be located up at the Treasure Cove entrance and will be maintained by the HOA.
18. **Trash haul off** is the responsibility of each lot owner. A concrete pad for trash disposal will be made available at McIlwaine Road for Town of Huntersville trash pick up. This pad is to be maintained by the HOA.
19. **Jeremy and/or Lindsay Gibson** will be the "Architectural Review Committee" for any lot not having a dwelling that has received a certificate of occupancy. If the Architectural Review Committee becomes deceased prior to the expiration of their term the language within this document will govern the requirements of McIlwaine Acres and may be modified by a majority vote of at least 5 – 2 of the HOA. The

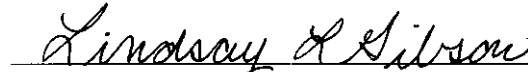
HOA will govern and enforce as the Architectural review committee for a lot thirty (30) days after it has received a certificate of occupancy from the local jurisdiction.

20. The above language is for the general protection of the interest of McIlwaine Acres. The Architectural Review Committee has the authority to modify the language of the Architectural Guidelines as is legal and it deems appropriate and reasonable by a majority vote of at least 5 – 2.

Declarant for the furtherance of the community and consistence with the rights reserved by Declarant in the Declaration, adopts this instrument as its Architectural Guideline for McIlwaine Acres.

IN WITNESS WHEREOF, Declarant has caused this instrument to be duly executed, this 20 day of December, 2007.


_____(SEAL)
Jeremy G. Gibson


_____(SEAL)
Lindsay L. Gibson

State of North Carolina

County of Mecklenburg

I Marcia K. Long, a Notary Public of ^{Clarendell} ~~the~~ County and State aforesaid, certify that Jeremy G. Gibson and Lindsay L. Gibson personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness by hand and official stamp or seal, this 20th day of December 2007, 20 .

Notary Public Marcia K. Long

My Commission expires: 11-6-08

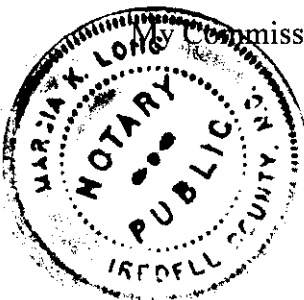


EXHIBIT C
GENERAL RULES FOR CONTRACTORS AND SERVICE PERSONNEL

McIlwaine Acres intends to enforce the regulations listed below. Notification of violation will be sent to the responsible party and property owner listing those items not in compliance with the rules and regulations. Upon receipt of the notification, the involved parties shall have five working days (unless a different time period is specified) to correct the situation or the Architectural Review Committee will take the necessary actions to correct the violation. Those actions could include charging the property owner for the corrections done by the Architectural Review Committee, withholding architectural review until the violations are amended, or, in certain cases, denying entry to contractors or personnel thereby preventing work within the community.

The following rules apply to all contractor and service personnel while on McIlwaine Acres premises. Any questions or concerns may be directed to the Architectural Review Committee.

1. Contractors are required to keep the job sites as neat and clean as possible. Trash and discarded materials, such as lunch bags, cans and odd materials must be removed daily. All debris stockpiled for removal should try to be located in the rear of the residence. Stockpiling of trash or any material on adjacent Lots or streets is not permitted. If trash and debris on the job site becomes a noticeable problem, notification to the responsible party will be given by the Architectural Review Committee to clean up the site within two (2) working days. If after the two (2) day period the site has not been cleaned up, the Committee will remove the debris and charge the property owner.
2. Proper erosion control is the responsibility of the contractor. Adequate silt fencing and gravel at the entry drive must be properly installed and maintained. The streets shall be kept free of mud, silt and debris from erosion and construction traffic.
3. Contractors will use only the utilities provided on the immediate site on which they are working unless granted use permission by another lot owner.
4. Portable toilets are required and are the responsibility of the contractors. They should be located off the right of way and sanitized weekly.
5. Vehicles are to be parked on the immediate site on which the contractor is working. No vehicles (cars, trucks, vans, etc.) may be left in the subdivision overnight. Construction equipment may be left on the site while needed but must be kept off the street.

6. Washing of any truck or vehicle on the street is not permitted. Any washing of concrete delivery trucks must be on the construction site.
7. Operators of vehicles are required to see that they do not spill any damaging materials while in the community. Objects shall not be thrown out of cars or trucks. If spillage does occur, it is the responsibility of the operator to clean up the spillage. Cleanups done by McIlwaine Acres personnel will be charged to the responsible party. Please report any spills as soon as possible.
8. The established speed limit within the community is 25 miles per hour for all vehicles.
9. Any damage to street and curbs, drainage inlets, street lights, street markers, mailboxes, walls, fences, etc. will be repaired by the Committee and such costs billed to the responsible contractor. This amount will be deducted from the Construction Deposit. If not sufficient, the additional amount will be charged to the property owner.
10. If any telephone, cable TV, electrical, water, or other utility lines are cut, it is the responsible party's obligation to report such an accident to the Committee and to repair the damage.
11. Loud radios or noise will not be allowed within the community. Normal radio levels are acceptable. Do not mount speakers on vehicles or outside of homes under construction.
12. Only bona fide workers are allowed on the property. Spouses may drive workers to the site and pick them up, but must not remain on the property unless they are employees of the contractor. No children will be permitted on the property unless they are bona fide workers.
13. No contractor or service personnel will be permitted to bring pets on the property.
14. Building permits are the only sign or document to be posted at a homesite during construction. Business signs or other forms of advertisement shall be on uniform signs prescribed by the Architectural Review Committee. Permits are to be attached to a post in a manner protected from the elements. Trees are to be kept free of all permits and signage.
15. No alcoholic beverages or controlled substances shall be consumed or in the possession of any construction or service personnel.
16. All Builder personnel, subcontractors and material deliveries are subject to these Restrictions while on the Property. The only signs permitted on the Lot during construction will be one sign that bears the Builder's name.

17. Each Builder and Owner is required to keep the Lot and surrounding areas clean and free from mud, silt, rubbish, and debris at all times. Trash and discarded materials must be removed on a daily basis, or deposited daily in a receptacle approved by the Architectural Review Committee. Trash not removed may be removed by the Declarant or the Association and billed to the owner of the Lot. Adjacent streets should be cleaned when necessary after heavy rains or frequent construction use. Silt fences for sedimentation control are required as provided for hereinabove.
18. Any damage caused by Builders to streets, curbs, amenities, adjacent property or common areas will be billed to the Owner of the Lot. The Builder shall not at any time discard any trash or construction debris on any Lot or Common Area within McIlwaine Acres Subdivision. Builder shall pay particular attention to redi-mix concrete delivered to the Lot. Absolutely no cleaning of concrete truck will be allowed on any Lot other than the Lot under Construction.
19. No vehicles (trucks, vans, cars, trailers, etc.) may be left parked on the subdivision's streets overnight. Declarant shall have the right to tow away at the owner's expense any vehicle which remains overnight on the subdivision streets. Construction vehicles may be left in driveways or in other appropriate areas on a Lot.
20. No construction activities will be permitted after 7:30 p.m. unless approved by the Architectural Review Committee. No loud radios or distracting noise will be permitted during any construction unless required by normal industry standards to complete a construction oriented scope of work.
21. Builders should be aware that certain areas of the property exist as natural woodlands and cannot be disturbed. Additionally, the roads and Common Areas have been constructed for the long-term and unique benefit of the Owners and must be maintained and protected in a high quality manner. Special construction requirements unique to McIlwaine Acres Subdivision may be established and all contractors must cooperate with the Association in enforcing these rules.
22. Failure to abide by any of the above rules may result in the loss of a Builder's privilege to enter the subdivision on a temporary or permanent basis.



JUDITH A. GIBSON
REGISTER OF DEEDS, MECKLENBURG
COUNTY & COURTS OFFICE BUILDING
720 EAST FOURTH STREET
CHARLOTTE, NC 28202

PLEASE RETAIN YELLOW TRAILER PAGE

It is part of the recorded document, and must be submitted with original for re-recording
and/or cancellation.

Filed For Registration: 12/20/2007 03:23 PM
Book: RE 23192 **Page:** 423-465
Document No.: 2007252926
RESTR 43 PGS \$137.00
Recorder: LYVANH PHETSARATH



2007252926



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
October 15, 2007

MICHAEL F. EASLEY
GOVERNOR

LYNDO TIPPETT
SECRETARY

Division 10
District 2

Juan Blue
8720 Red Oak Blvd.
Suite 420
Charlotte NC. 28217

SUBJECT: REGULAR COMMERCIAL DRIVEWAY PERMIT- Gibson Farmhouse Cluster- Drive Entrance onto SR 21309Mc Ilwaine Rd.) in Mecklenburg County.

Permit Number: 07156-M

Dear Sir:

A review of the subject driveway permit application has been completed by the appropriate staff agencies of the Division of Highways.

The approval is subject to drive being constructed as shown on the approved plans.

Adequate required sight **distance of 450 feet** shall be reserved and maintained at the proposed entrance in **both directions** from the edge of the pavement.

All materials and workmanship should conform to the N.C. Department of Transportation's Specification Manual for other work performed within State Right of Way.

Proper traffic control devices, signs, etc., shall be installed to ensure public's safety, (when working within the State R/W), in accordance with **The Manual on Uniform Traffic Control Devices** and any supplements thereto.

The North Carolina Department of Transportation does not guarantee the right-of-way of the road nor will it be responsible for any claims for damages brought by any property owner.

All subcontractors doing work within the State's Right of Way are to have a copy of these plans and/or Special Provisions also on the job site.

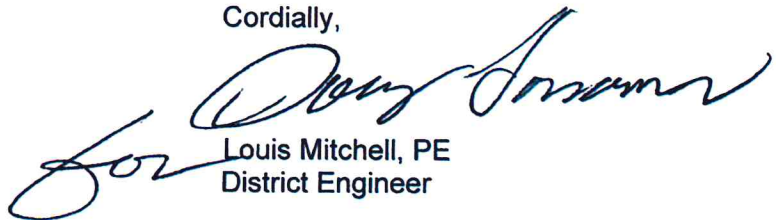


Please notify Ms. Rose Mary Mathis with the North Carolina Department of Transportation at (704) 596-6900 48 hours prior to the beginning of your work for a pre construction meeting..

Driveway permit will become void if driveway is not completed within 1 year beginning at approval date of permit.

If you have any questions, or need additional information, please contact Doug Sossamon at our office at (704) 596-6900.

Cordially,

A handwritten signature in blue ink, appearing to read "Louis Mitchell", is written over the printed name and title.

Louis Mitchell, PE
District Engineer

LLM/DS/ds

Enclosure

cc: Mr. Barry Moose, PE, Division Engineer
Tom Hodge PE MCED
File

LOCATION OF PROPERTY:

County Mecklenburg Access to Route No. S.R. 2130

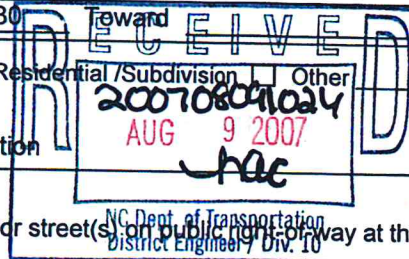
Exact Distance 2,824 ☐ Miles ☒ Feet N ☒ S ☐ E ☐ W

From the Intersection of Route No. S.R. 2120 and Route No. S.R. 2130 Toward

N.C. DEPARTMENT OF TRANSPORTATION

STREET AND DRIVEWAY ACCESS PERMIT APPLICATION

PROPERTY WILL BE USED FOR: ☐ Special Commercial ☐ Regular Commercial ☒ Residential/Subdivision ☐ Other
PROPERTY ☐ is ☒ is not within Charlotte City Zoning Area.
PROPERTY IS LOCATED IN: ☒ Rural ☐ Urban Development Classification



AGREEMENT

I, the undersigned property owner, request access and permission to construct driveway(s) or street(s) on public right-of-way at the above location.

I agree to construct and maintain driveway(s) or street entrance(s) in absolute conformance with the current "Policy on Street and Driveway Access to North Carolina Highways" as adopted by the North Carolina Department of Transportation.

I agree that no signs or objects will be placed on or over the public right-of-way.

I agree that the driveway(s) or street(s) will be constructed as shown on the sketch on (the reverse side) (the attached plans).

I agree that that driveway(s) or street(s) as used in this agreement include any approach tapers, storage lanes or speed change lanes as deemed necessary.

I agree that if any future improvements to the roadway become necessary, the portion of driveway(s) or street(s) located on public right-of-way will be considered the property of the North Carolina Department of Transportation, and I will not be entitled to reimbursement or have any claim for present expenditures for driveway or street construction.

I agree that this permit becomes void if construction of driveway(s) or street(s) is not completed within the time specified by the "Policy on Street and Driveway Access to North Carolina Highways".

I agree to pay an installation fee for pipe installed by the Division of Highways or pay a \$50 inspection fee for installation by others. Make checks payable to NCDOT. The inspection fee will be reimbursed if application is denied.

I agree to construct and maintain the driveway(s) or street(s) in a safe manner so as not to interfere with or endanger the public travel.

I agree to provide during construction proper signs, signal lights, flaggers and other warning devices for the protection of traffic in conformance with the current "Manual on Uniform Traffic Control Devices for Streets and Highways" and Amendments or Supplements thereto. Information as to the above rules and regulations may be obtained for the Division Engineer.

I agree to indemnify and save harmless the North Carolina Department of Transportation from all damages and claims for damage that may arise by reason of this construction.

I agree that the North Carolina Department of Transportation will assume no responsibility for any damages that may be caused to such facilities, within the highway right-of-way limits, in carrying out its construction.

I agree to provide a Performance Bond in the amount specified by the Division of Highways for any construction proposed on the State Highway system.

I AGREE TO NOTIFY THE DISTRICT ENGINEER WHEN THE PROPOSED WORK BEGINS AND WHEN IT IS COMPLETED.

Entrance Width(s)	Pipe Size	Pipe Length	Pipe installation Costs	Inspection Satisfactory (Yes/No)	AMOUNT RECEIVED	INSTALLATION BY: <input type="checkbox"/> NCDOT <input type="checkbox"/> OTHERS
1. _____	_____	_____	\$ _____	_____	_____	
2. _____	_____	_____	\$ _____	_____	_____	
3. _____	_____	_____	\$ _____	_____	_____	

PROPERTY OWNER

NAME JEREMY GIBSON
SIGNATURE _____
ADDRESS 8623 McILWAINE ROAD Hunterville NC 28078
Phone No. 704-9074674

NAME PATRICK WATKINS
SIGNATURE _____
ADDRESS 8720 Red Oak Blvd., Ste. 420, Charlotte
NC 28217

APPLICANT

NAME Juan Blue
SIGNATURE _____
ADDRESS 8720 Red Oak Blvd., Ste. 420, Charlotte, NC 28217
Phone No. 704-2279422

WITNESS

NAME PATRICK WATKINS
SIGNATURE _____
ADDRESS 8720 Red Oak Blvd., Ste. 420, Charlotte
NC 28217

07-156-M

APPROVALS

APPROVAL BY: Local Governmental Authority (when required)

Tom Hodge

SIGNATURE

MECK. COUNTY
PROJECT MANAGER

TITLE

09/20/07

DATE

APPLICATION RECEIVED BY DISTRICT ENGINEER

[Signature]

SIGNATURE

9-15-07

DATE

APPLICATION APPROVED BY DISTRICT ENGINEER

Louis Mitchell

SIGNATURE

11-15-07

DATE

COMMENTS:

SHOW:

1. LOCATION OF DRIVEWAYS
2. DETAILS OF WORK, INCLUDING PIPES
3. EXISTING BUILDING, WALL, ETC. OR DRIVEWAYS
4. PROPOSED BUILDING, WALL, ETC.
5. HIGHWAY FEATURES

PROPOSED PLANS

DRAW OR SKETCH BELOW, OR ATTACH
CONSTRUCTION PLANS FOR STREETS

INDICATE
NORTH

Commissioner Leonhardt asked on the garage that's underground, could it be four stories high abutting to single-story residential?

Mr. Simoneau said yes. If you look at Building 4, that's the rear of the property where it gets to its lowest point, so it could be close to four stories at that location. The property immediately adjacent to it is zoned Corporate Business. It's a small tract. We actually had one of the property owners, Mr. Lowrance, rezone his property to Neighborhood Center which could accommodate offices. That way he's able to have retail or offices and not have to deal with an 80' buffer issue that comes into play for the Corporate Business.

Commissioner Swain asked will there be gates?

Mr. Simoneau said no. They had initially talked about some, but they realized they are all public streets.

Veronica Westendorff said we are looking at utilizing this site in a more friendly manner than what was originally approved. We will have underground parking, trying to keep it at street level, three stories. With Buildings 2 and 3, it's very easy to have that fourth floor with the parking completely below grade. It will be open-air parking.

Mayor Phillips requested petitioner provide a schematic before the next meeting.

Robbie Lowrance said my family owns the piece of property we had rezoned. The only thing we are concerned about is drainage. We also asked the applicant to send us some information as to the projects that he has done before and we didn't get any feedback. We talked about possibly utilizing the water quality pond to catch the run-off coming from the highway that comes down between the two properties and nobody ever contacted me about that. We also have a turn-lane that hasn't been finished on Highway 115.

David Jarrett, Town Engineer/Public Works Director, said Kia with Mecklenburg County e-mailed me today and said that they have the storm water drainage easement that was needed to do that. They have secured that now and should be doing that in the next week or two.

There being no further comments, Mayor Phillips closed the public hearing.

Petition #R06-16. Mayor Phillips called to order public hearing on Petition #R06-16, a request by Jeremy Gibson for a general rezoning from General Residential to Transitional Residential on approximately 10 acres located on Mcllwaine Road.

Whitney Hodges, Senior Planner, reviewed Staff Analysis. *Staff Analysis and other related documents attached hereto as Attachment No. 3.*

Jeremy Gibson addressed the Board. Mr. Gibson said I currently reside on the property. I'm looking at two options for the road. One would be to the right side of the current house - it would go to the left back corner and then turn and go to the back of the property and then possibly entering on the left side of the house that's currently there going straight back with the property so the houses would not back up to any other lots. It would back up to the natural wooded area. The interest is to have the six houses, possibly a playground, maintain all the woods that are currently there, possibly a picnic shelter, and with the farmhouse 50 percent has to be designated open space so we would like to have a playing field or general recreational area.

Commissioner Leonhardt asked what would the average size of the lots be?

Mr. Gibson said approximately $\frac{3}{4}$ acre. There may be some that would be larger.

Commissioner McAulay asked are they combining three pieces of property into this farmhouse?

Ms. Hodges said yes.

Commissioner McAulay said I didn't think that you could combine property for farmhouse clusters after a certain date. I thought we changed that in the ordinance.

Mr. Simoneau said we didn't include that. We limited it to two farmhouse clusters.

Commissioner McAulay asked why would you do a farmhouse cluster rather than a small subdivision?

Mr. Gibson said from looking at the code and in consultation with Planning Staff, that seemed to be the best option.

Commissioner McAulay asked are you saying that Staff suggested that you apply for farmhouse cluster?

Mr. Gibson said yes.

Commissioner Leonhardt said with a small subdivision you have curb and gutter and entrance, where with a farmhouse cluster you can go dirt and gravel. Is that correct?

Mr. Simoneau said that is correct.

Commissioner McAulay said and no public road.

Commissioner Jeter said the school buses and garbage trucks wouldn't be able to go down that road.

Ms. Hodges said no they would not, because it would be a private road.

Commissioner McAulay said I wonder if police and fire go down private roads.

Commissioner Jeter said I guess they do if there's an emergency.

Gracie Young, 8512 Hawk Grove Court, said I back up to this. I am not clear on what a farmhouse cluster is.

Ms. Hodges said a farmhouse cluster is essentially a minor subdivision that's allowed a private road. They do have to meet the underlying zoning district, but they are required to have larger amounts of open space. You have to have at least 10 acres of land and you can get no more than 6 lots on 10 acres.

Ms. Young said there's already been quite a bit of excavation going on that land. The question us neighbors were wondering about is if this hasn't even been rezoned, the owner of the land still can go in and do all of this excavating and berm-building, and what happens to those berms if this rezoning doesn't go through? Already a lot of natural vegetation at the property line is gone. Instead there's this large berm of soil. As the owner of the land he can do what he wants to do with it, but what if this rezoning is not approved? Then us who border that land live with this berm and we've lost that natural vegetation that has been there all those years?

Commissioner Leonhardt said as long as he doesn't throw water on you or change the run-off.

Ms. Young asked what about the run-off? Is that going to be addressed to where it doesn't come into our yards?

Commissioner Jeter said everything that is built in Huntersville has to meet our water quality standards, as well as the State's. Whatever developer would have to meet whatever our standards are, but as far as his use of that property, other than that, there's very little we can tell him about what he can and can't do on his private property beyond whether or not he can build a neighborhood.

Bob Blythe, Town Attorney, said unless his clearing is such of a large nature that it violates some type of sedimentation laws or something of that nature. There are some restrictions on clearing too large a piece of property without the sedimentation controls.

Commissioner Leonhardt said the intent of the farmhouse cluster is to leave as much natural and undisturbed area as possible.

Commissioner Jeter asked what would he be able to build by-right now?

Mr. Simoneau said he could build 20,000 sq. ft. lots.

Ms. Hodges said I did the math and at most, it's about 19 units – more likely about 15.

Commissioner McAulay said but he would have to put in public roads and water and sewer. He'd have to put in curb and gutter. He'd have to put in water retention.

Ms. Hodges said when the activity started on this property, Mecklenburg County was notified. Heather Davis has been working with Mr. Gibson as far as meeting the State requirements, as well as requirements of Mecklenburg County and the Town for water quality, land disturbance, and erosion control.

Nancy Parzych, 12509 Pickford Court, said the property never looked better. We will also say from our little group on Pickford Court that we are pleased that there will only be six homes built here rather than 3,000. Our only concern, which has already been stated, is related to the drainage. We did have some minor flooding when the berms were first put in. Mr. Gibson did address that. We will continue to state our concern until we know a formal plan has been made to address drainage in the area.

Bill Lech, 12512 Pickford Court, said just to elaborate on the drainage issue, we did have some problems with the initial installation of the berm, but we talked to Mr. Gibson and someone from the County was involved and they took care of the main thing. We have a little more issue directly behind my property that I haven't had the opportunity to address Mr. Gibson. It's something minor, but nevertheless it's a matter of irregular grade behind the berm which does cause ponding of water with rainfall. Some simple grading would address that issue. The property looks very good. If you ever finish the garage, that will be a feat in itself because I've been looking at brick pillars for 17 years. As my neighbor Nancy stated, it would be nice to see a final plan. A road coming close to my property naturally would concern me. As long as it was done with careful consideration, it is Mr. Gibson's property and I don't want to be a thorn in his side.

There being no further comments, Mayor Phillips closed the public hearing.

Petition #TA06-16. Mayor Phillips called to order public hearing on Petition #TA06-16, a request by Dick Brolin to amend Section 9.45 Hotels and Motels by requiring special use permits, allowing five-story buildings and reduced separation distance between hotels/motels from residential/mixed use zones and other hotels/motels.

Staff Analysis/other related documents attached hereto as Attachment No. 4.

Mr. Simoneau said we received a letter from Mr. Brolin on Friday (*refer to Attachment No. 5*). Initially the request that came in was to increase the height of the buildings for hotels to five stories and to reduce the setback requirement that is 750' from property line to property line of any hotel from any residential or mixed-use zoning district. Also, the law states that you shall be 750' from any other hotel. That law came about based on a Town Board request in 1999. There was concern from the Town Board at the time that there were too many hotels going up haphazardly at the interchanges is the notes that I found in the record. There was a task force, two Planning Board members and two Town Board members, that formed a committee. They came up with the recommendation, which is basically what we have today. Those code changes for the spacing from residential and mixed-use zones and 750' from any other motel and hotel were the major part of that change that occurred in 1999. It was adopted by the Board on January 18, 2000. At the time there was concern that the hotel sites were all jamming up at the intersection, so these standards were established. When they came to us they were initially talking about a five-story building. Naturally that raised concern

Exhibit 13 – 2006 E-mail Correspondence with Jeremy Gibson (applicant)

Whitney Hodges

From: Whitney Hodges [whodges@huntersville.org]
Sent: Tuesday, September 05, 2006 2:10 PM
To: 'Jeremy Gibson'
Subject: RE: Gibson Farmhouse Cluster

Jeremy,

We have discussed your whether your farmhouse cluster is minor or major and it will still be considered a minor. I will have Beverly refund your fees for major subdivision review.

From: Jeremy Gibson [mailto:JGibson@RJGriffin.com]
Sent: Wednesday, August 30, 2006 12:21 PM
To: Whitney Hodges
Subject: RE: Gibson Farmhouse Cluster

Yes ma'am. I was only going to do this on the sides – My intent is to provide some additional sound and sight buffer as well as beatification on the interior of the project. I will dive into some details and present the plan to insure it meets requirements.

Thanks,

JGG

From: Whitney Hodges [mailto:whodges@huntersville.org]
Sent: Wednesday, August 30, 2006 11:26 AM
To: Jeremy Gibson
Subject: RE: Gibson Farmhouse Cluster

There are slope issues to address for the height of the berm. Your berm must meet all of the requirements (that apply) in the section that I sent you. Are you only proposing berms on the sides?

From: Jeremy Gibson [mailto:JGibson@RJGriffin.com]
Sent: Wednesday, August 30, 2006 9:43 AM
To: Whitney Hodges
Cc: constructionman@gmail.com
Subject: RE: Gibson Farmhouse Cluster

Whitney,

Thanks for the response. I will review the 2 items from the farmhouse cluster and await to hear from you.

In regards to the Berm I contacted a Mr. Priddy as directed by Beverly. He noted that as long as I did not disturb more than 1 acre I would not have to pull a permit, etc. which is as you noted. He also noted I would need to control any runoff that would affect areas other than the property. I have reviewed this and all appears to be fine. I will especially evaluate it as we receive waterfall from Ernesto – again, all appears fine.

I was not aware of specifications/guidelines for the berm. I started reviewing what you provided and it is quite extensive. Put in simple words – Am I fine to have a berm that is 4' high and less than 20' wide with natural plants/trees to the area ever so often on the berm.

Thanks,

JGG

12/27/2007

From: Whitney Hodges [mailto:whodges@huntersville.org]
Sent: Wednesday, August 30, 2006 9:23 AM
To: Jeremy Gibson
Subject: Gibson Farmhouse Cluster

Jeremy,

I received your rezoning application on Monday. I will be getting back in touch with you by next Monday about the subdivision. I am going to take your issue to our staff meeting. Last Friday you requested information regarding what is needed for a farmhouse cluster. I am sending you two items that are used to evaluate farmhouse clusters. The first is from the zoning ordinance. The second is a final plat checklist. This checklist would not apply until after initial approval of the farmhouse cluster and you were ready to get the plat recorded.

The third thing is that I have become aware that you are installing what looks like a berm along the sides of the farmhouse cluster. The Town of Huntersville has standards for berms and they can be found at this link http://www.huntersville.org/interactive%20ordinance/ZONING_TOCA7.html. Please get in touch with Heather Davis with Mecklenburg County Water Quality. If you disturb more than an acre of land you will need a permit. Her number is 980-721-3571.

Again, I'll be in touch next week.

Whitney Hodges
Senior Planner

Town of Huntersville
P.O. Box 664
Huntersville, NC 28070

Ph: 704-875-7000
Fax: 704-875-6546
Direct: 704-766-2212

www.huntersville.org

A Farmhouse Cluster permits the subdivision of land for up to six house lots accessed by way of a shared private drive when the following conditions have been met:

- 1) Minimum project size and frontage on public road: 10 acres with a minimum of 30 feet of frontage on a public road either by fee simple ownership or by exclusive easement.
- 2) There shall be no more than two farmhouse cluster developments permitted per tract as that tract existed on February 18, 2003.
- 3) A paved or graveled private drive shall be constructed on a recorded easement not less than 20 feet in width serving one farmhouse cluster exclusively. Further, the recorded easement shall have at least 30' of frontage on a public street.
- 4) An association of all property owners shall be established for maintenance of all commonly held spaces, if any. Where there are no commonly held spaces except for a shared driveway or private street, a legally binding shared driveway and/or private street use and maintenance agreement shall be filed at the Register of Deeds of Mecklenburg County. Furthermore, the shared driveway or private road shall be shown, along with all appropriate and necessary easements, on a recorded plat and a note shall be attached thereto stipulating the use and maintenance of the driveway and referencing the recorded agreement(s).
- 5) The location of building sites shall be determined through a site analysis which identifies features to be preserved as open space.
- 6) No minimum lot size or width is required, so long as the project meets all other standards of the district.
- 7) At least 50% of the tract shall be designated as open space. Open space preservation shall be irrevocable. A metes and bounds description of the space to be preserved and limits on use shall be recorded on the subdivision plat and on individual deeds when open space lands are not held entirely in common. Open space lands may be part of a deeded lot so long as it reflects an irrevocable conservation or open space easement requiring such portions of individual lots to remain and be used as open space as provided in this section.
- 8) Permitted uses of open space lands to be preserved shall correspond generally to physical conditions at the time of subdivision approval. Restrictive covenants shall limit uses to the continuation of certain agricultural activities (pastureland, crop cultivation) or recreation uses that preserve the view from public streets of rural heritage features to be preserved. For example, fields or pasture land preserved as required open space may continue to support cultivation or grazing; however existing woodlands may not be clear-cut.
- 9) The project shall maintain a generally rural appearance from public road(s).
- 10) Where a farmhouse cluster would eliminate a planned street connection or a street connection indicated on a plan adopted by the Town of Huntersville or the Charlotte-Mecklenburg Thoroughfare Plan, and no alternate alignment can reasonably provide the connection, the design of the farmhouse cluster shall provide for said connection by the dedication of right-of-way for streets less than 70 feet in width and by the reservation of right-of-way for streets 70 feet or wider.
- 11) A Farmhouse Cluster requires an approved Farmhouse Cluster subdivision plan, according to the requirements of the Huntersville Subdivision Ordinance and shall meet all other requirements for review and approval, which may include preliminary plan approval prior to approval of a final plat.

This email has been scanned by the MessageLabs Email Security System for R.J Griffin & Company.
For more information please visit <http://www.messagelabs.com>

This email has been scanned by the MessageLabs Email Security System for R.J Griffin & Company.
For more information please visit <http://www.messagelabs.com>

ACCESS EVALUATION MEMORANDUM

Date: May 26, 2017

To: Jeremy Gibson
8703 McIlwaine Road
Huntersville, NC 28078

From: Randy E. Goddard, P.E.
Managing Principal
Design Resource Group, PA (C02370)

Subject: **Treasure Cove Access Evaluation** (708-001)



Background/Land Use:

The owner of 8703 McIlwaine Road in Huntersville, NC is requesting a variance to the approved farmhouse cluster plan for the site to allow 7 driveway locations on Treasure Cove (currently 6 allowed). The 7th driveway in question is approximately 30 feet wide and is located on a 0.48-acre lot roughly 70 feet north of McIlwaine Road (see Figure 1 – Aerial Map).

Per discussions with the property owner, an access evaluation memorandum was prepared in support of a variance allowing 8703 McIlwaine Road to access Treasure Cove and includes the following:



**Treasure Cove Facing South
Toward Existing Driveway**

- Study Area/Site Information
 - Roadway Classifications
 - Lane Widths
 - Sight Distance
- Traffic Counts/Trip Generation
 - Annual Average Daily Traffic (AADT)
 - Approved Plan Trip Generation
 - Requested Variance Trip Generation
- Safety Considerations
 - Potential Safety Concerns
- Recommendations/Conclusions



Study Area/Site Information:

Mcllwaine Road is a state-maintained, two-lane major collector roadway with a posted speed limit of 45 mph. No curb/gutter, planting strip, or sidewalk is present on Mcllwaine Road. The road is approximately 20-feet wide (10-foot wide travel lanes) with no shoulders on either side of the roadway. Sight distances in both directions at the residential development appear adequate (verified on site), meeting or exceeding normal requirements for a 45-mph posted roadway (50 mph design speed – North Carolina Department of Transportation [NCDOT] = 500 feet of sight distance).



**Mcllwaine Road Facing East
to Treasure Cove**

Treasure Cove is a privately maintained, two-lane residential street with no posted speed limit. The road is approximately 20-feet wide (10-foot wide lanes) with no curb/gutter, planting strip, or sidewalk present on either side of the street. Due to the narrow roadway width and residential nature of the street, the assumed travel speed is 15 mph. There is no stop sign installed on Treasure Cove at Mcllwaine Road. Sight distances in both directions at the residential development appear adequate (verified on site), meeting or exceeding normal requirements for a 15-mph posted roadway (20 mph design speed - NCDOT = 200 feet of sight distance). Based on the minimal existing traffic volumes, it is in our professional opinion that these lane and shoulder widths are acceptable.

The current driveway location for 8703 Mcllwaine Road is located on Treasure Cove approximately 70 feet north of Mcllwaine Road (edge of Mcllwaine Road to nearest edge of the existing driveway). See Preliminary Site Plan for development layout.

Traffic Counts/Trip Generation:

NCDOT is the source for average annual two-way daily traffic (AADT) volumes within the area. The latest (2014) AADT volume for Mcllwaine Road west of McCoy Road (the nearest volume to the proposed site) is 5,300 vehicles per day (vpd).

The daily and peak-hour-trip-generation data for the existing and future single family homes is presented in Table 1. The values for the trips generated by the single family land use are obtained from the Institute of Transportation Engineers (ITE), Trip Generation Manual, 9th Edition, 2012.

Table 1: Site Trip Generation

Land Use 210			Weekday Total Daily Trips
Homes Allowed per Cluster Development Plan on Treasure Cove			
Single Family Homes	6	Dwelling Units	57 Trips
Homes Proposed on Treasure Cove (Requested Variance)			
Single Family Homes	7	Dwelling Units	67 Trips
Difference Between Allowed Homes and Proposed Homes			10 Trips

The approved Cluster Development Plan allows for 6 single family homes on Treasure Cove, which is expected to generate a total of 57 trips per day.



The proposed variance to the Cluster Development Plan will allow 7 single family homes (one additional home) to use Treasure Cove for access and is expected to generate a total of 67 trips per day, which equates to 10 additional daily trips utilizing Treasure Cove.

Safety Considerations:

Per the Achieving Traffic Safety in Residential Subdivisions Design section of ITE's 1988 Transportation and Land Development book, *"Corner lots should be required to take access to the lesser street (i.e., to the local instead of the collector or to the minor collector rather than the major collector)."*

There are multiple public health, safety, and general welfare concerns to consider when determining the best location for 8703 McIlwaine's driveway position, which include the following:

- It is much safer for the drivers on McIlwaine Road as well as the residents of 8703 McIlwaine Road if the driveway stays at its existing location. You should always try to achieve access design where you can maximize safety by minimizing the number of conflicts, therefore minimizing the potential of accidents.
 - There would be a total of 18 conflict points on McIlwaine Road (9 new additional conflict points created) due to the relocation of 8703 McIlwaine Road's driveway from Treasure Cove to McIlwaine Road (see Figure 2 for conflict point diagrams).
- Exiting/backing onto a major collector roadway (McIlwaine Road) with a speed limit of 45 mph and an AADT of 5,300 vpd vs. exiting/backing onto a residential street (Treasure Cove) with a typical travel speed of 15 mph and an expected AADT of 57 vpd.
- Sight distance issues could be created for Treasure Cove and the existing residential driveways along McIlwaine Road due to potential driveway usage at 8703 McIlwaine Road (i.e. if the driveway is completely full or if vehicles park near the roadway sight distances can be reduced due to the obstruction of the parked vehicles). Why introduce a driveway that could impact the Treasure Cove driver safety and sight distance?

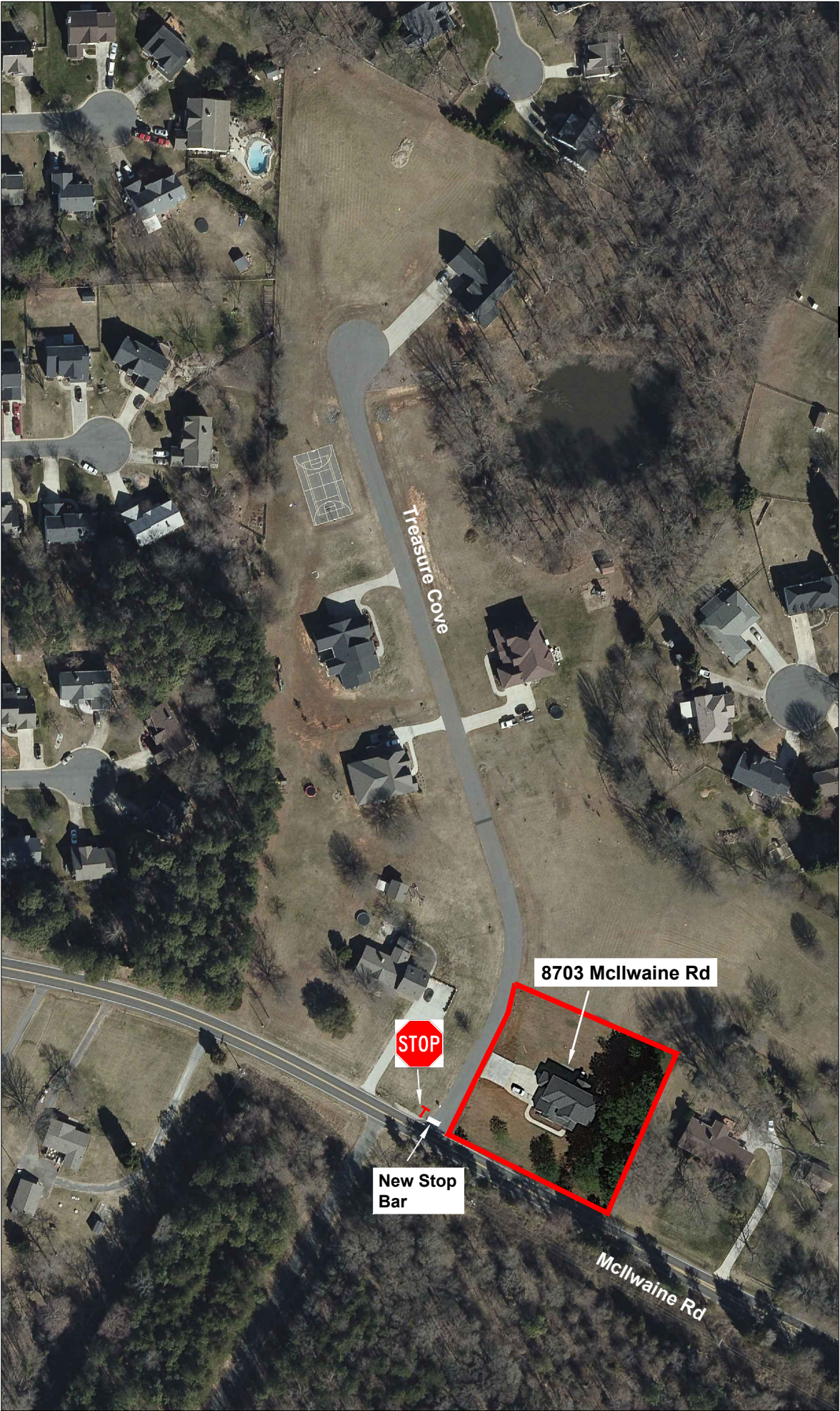
Recommendations/Conclusion:

Even though the Approved Cluster Plan for the McIlwaine Acres development only allows six single family homes to access Treasure Cove, it is our opinion 8703 McIlwaine Road should be granted a variance to access Treasure Cove via the current driveway location. The current location of the driveway is not expected to significantly affect the adjacent intersections/roadway corridors. Therefore, we recommend 8703 McIlwaine's current driveway layout and location since this is the safest and most logical driveway location. We would also like to recommend the installation of a typical stop sign and stop bar on Treasure Cove at McIlwaine Road to improve overall safety conditions.

Please contact us should you need any additional information.

Attachments: Figure 1 Aerial Map
 Preliminary Site Plan for Gibson Farmhouse Cluster Dev.
 Figure 2 AADTs & Potential Conflict Points

cc: File

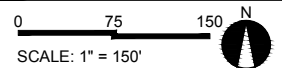


**TREASURE COVE ACCESS
EVALUATION**

HUNTERSVILLE, NC

JEREMY GIBSON
8703 MCILWAINE ROAD
HUNTERSVILLE, NC 28078

AERIAL MAP

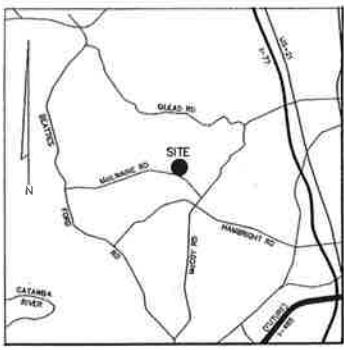


PROJECT #: 708-001
DRAWN BY: MWW
CHECKED BY: REG

MAY 2017

REVISIONS:

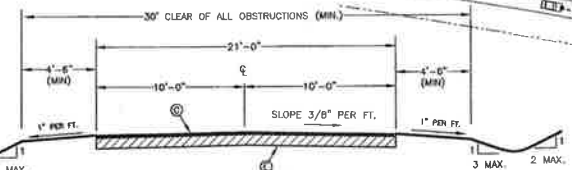
GIBSON FARMHOUSE CLUSTER DEVELOPMENT HUNTERSVILLE, NORTH CAROLINA



VICINITY MAP
NOT TO SCALE

LAND DEVELOPMENT NOTES

1. LAND DEVELOPMENT ENGINEER SHALL BE GIVEN 24 HOURS NOTICE PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION WORK.
2. APPROVAL OF THIS PLAN IS NOT AN AUTHORIZATION TO GRADE ON ADJACENT PROPERTIES. WHEN FIELD CONDITIONS WARRANT OFF-SITE GRADING, PERMISSION MUST BE OBTAINED FROM THE AFFECTED PROPERTY OWNERS.
3. DEVELOPER WILL PROVIDE STREET SIGNS.
4. THE DEVELOPER SHALL MAINTAIN EACH STREAM, CREEK, OR BACKWASH CHANNEL IN AN UNOBTSTRUCTED STATE AND SHALL REMOVE FROM THE CHANNEL AND BANKS OF THE STREAM ALL DEBRIS, LOGS, TIMBER, JUNK AND OTHER ACCUMULATIONS.
5. THE PURPOSE OF THE STORM DRAINAGE EASEMENTS ARE TO PROVIDE STORM WATER CONVEYANCE AND FOR ANY STORM SEWER STRUCTURES. OBSTRUCTIONS TO STORM WATER FLOW IS PROHIBITED.
6. THIS PROJECT WILL NOT BE IMPACTED BY ANY KNOWN FUTURE ROAD IMPROVEMENTS.
7. EACH LOT WILL BE SERVED BY A PRIVATE WELL AND SEPTIC SYSTEM. EACH PROPERTY OWNER WILL BE RESPONSIBLE FOR MAINTENANCE OF THEIR RESPECTIVE SYSTEMS.
8. SEPTIC FIELDS DEPICTED ON THIS PLAN ARE ONLY TO SHOW THE INTENT THAT EACH LOT WILL BE SERVED BY A PROPRIETARY SYSTEM. INSTALLATION OF A PRIVATE WELL OR A WASTEWATER SYSTEM REQUIRES AN IMPROVEMENT PERMIT. FINAL WELL, SEPTIC FIELD LOCATIONS, & SIZE SHALL BE DETERMINED BY MECKLENBURG COUNTY GROUNDWATER & WASTEWATER SERVICES PRIOR TO ISSUANCE OF THE BUILDING PERMIT.
9. TO ENSURE SEPTIC TANKS ARE LOCATED ON THE MOST SUITABLE SOILS, SEPTIC FIELDS MAY BE LOCATED IN COMMON OPEN SPACE PROVIDED A MAINTENANCE EASEMENT IS ESTABLISHED FOR ACCESS.
10. AN ASSOCIATION OF ALL PROPERTY OWNERS SHALL BE ESTABLISHED FOR MAINTENANCE OF ALL COMMONLY HELD SPACES.
11. ALL AREAS OF THE PROJECT NOT CONVEYED AS PART OF THE SALE OF A SINGLE FAMILY RESIDENTIAL LOT WILL BE RETAINED AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION OF THIS PROJECT AS COMMON OPEN SPACE.
12. THE PURPOSE OF THE PRIVATE ROADWAY IS TO PROVIDE ACCESS TO THIS DEVELOPMENT. UPON COMPLETION THE PRIVATE ROADWAY WILL NOT BE ADOPTED, MAINTAINED, NOR SERVICED BY ANY PUBLIC MUNICIPALITY, WHICH INCLUDES BUT NOT LIMITED TO TRASH PICKUP OR SCHOOL BUS ROUTES. FURTHERMORE, THE PRIVATE ROADWAY SHALL BE OWNED AND MAINTAINED SOLELY BY THE HOMEOWNERS ASSOCIATION OF THIS DEVELOPMENT.
13. ALL OPEN SPACE PRESERVATION SHALL BE IRREVOCABLE.
14. OPEN SPACE/TREE SAVE AREAS THAT ARE PART OF A DEEDED LOT HOLD AN IRREVOCABLE CONSERVATION AND SUCH PORTIONS OF INDIVIDUAL LOTS MUST REMAIN AND BE USED AS OPEN SPACE/TREE SAVE AREAS.
15. A METES AND BOUNDS DESCRIPTION OF THE OPEN SPACE AND LIMITS ON ITS USE SHALL BE RECORDED ON THE SUBDIVISION PLAT AND ON INDIVIDUAL LOT DEEDS. WHEN OPEN SPACE LANDS ARE NOT HELD ENTIRELY IN COMMON.
16. PERMITTED USES OF OPEN SPACE SHALL CORRESPOND GENERALLY TO PHYSICAL CONDITIONS AT THE TIME OF SUBDIVISION APPROVAL. HOA RESTRICTIVE COVENANCES SHALL PREVENT THE CUTTING OF EXISTING WOODLANDS IN ALL OPEN SPACE AREAS.
17. NO BUILDINGS OR PERMANENT STRUCTURES SHALL BE CONSTRUCTED WITHIN THE PERIMETERS OF ANY DESIGNATED OPEN SPACE OR TREE SAVE AREA EVEN IF PART OF A DEEDED LOT.
18. IN ACCORDANCE WITH THE HUNTERSVILLE TREE PROTECTION REGULATIONS OF ARTICLE 7, ONLY MINIMAL THINNING OF VEGETATION IN OPEN SPACE AREAS SHALL BE PERMITTED TO PROMOTE OVERALL HEALTH OF THE NATURAL AREA.
19. SETBACK LINES AND ALL YARD REQUIREMENTS ARE PER ARTICLE 4, TYPE "A" OF THE TOWN OF HUNTERSVILLE ZONING ORDINANCE.
20. NO NORTH CAROLINA STATE PLANE GRID CONTROL LOCATED WITHIN 2000 FEET OF SUBJECT PROPERTY.
21. AREAS CALCULATED BY COORDINATE GEOMETRY.
22. THE STREET NAME AND SUBDIVISION NAME MUST BE APPROVED BY MECKLENBURG COUNTY ES11 FOR PLAT RECDORATION AND CONSTRUCTION APPROVAL.
23. THE PROPERTY OWNER WILL BE RESPONSIBLE FOR THE MAINTENANCE OF STORM DRAINS, LANDSCAPING AND OPEN SPACE WITHIN PRIVATE LOTS. AN ASSOCIATION OF ALL PROPERTY OWNERS WILL BE ESTABLISHED FOR MAINTENANCE OF THE PRIVATE ROAD AND COMMON OPEN SPACE.
24. THE PURPOSE OF THIS PLAN IS TO SUBDIVIDE THIS PARCEL INTO EIGHT LOTS, OF WHICH TWO SHALL CONFORM TO GR(SMALL TOWNS) AND THE REMAINING SIX SHALL CONFORM TO TR(TRANSITIONAL RESIDENTIAL) ZONING DISTRICT SET FORTH BY THE TOWN OF HUNTERSVILLE ZONING ORDINANCE.
25. UNLESS OTHERWISE ALLOWED BY THE TOWN OF HUNTERSVILLE, THE MINIMUM BUILDABLE AREA PER LOT IS 1,200 SQ. FT.
26. ON LOTS GREATER THAN 60' IN WIDTH, FRONT LOADING GARAGES MUST BE RECESSED 10' FROM THE PRINCIPAL VERTICAL PLANE OF THE STRUCTURE. GARAGES MUST MEET THE REQUIREMENTS OF ARTICLE 8.16 IN THE HUNTERSVILLE ZONING ORDINANCE.
27. REFERENCE THE CHARLOTTE MECKLENBURG LAND DEVELOPMENT STANDARDS MANUAL AND/OR THE FOLLOWING DETAILS:
THE PROPERTIES SHOWN HEREON DO NOT LIE WITHIN A PROTECTED WATERSHED AREA.



TYPICAL SECTION (A-A)
PRIVATE RESIDENTIAL ROAD
N.T.S.

NOTES:

1. INTERNAL STREET ALIGNMENT:
MAXIMUM GRADE: 10%
MINIMUM VERTICAL CURVE "K" VALUES: 10/20 (CREST)/SAD
MINIMUM HORIZONTAL CURVE CENTERLINE RADIUS: 50 FT.
SAME AS FOR PUBLIC STREET, SEE GENERAL NOTES, SECTION 1B.2.
2. INTERSECTION WITH PUBLIC STREET:
5% MAXIMUM GRADE WITHIN 40 FEET OF PUBLIC STREET INTERSECTION BEGINNING FROM EDGE OF PAVEMENT LINE.
3. DETAILS SHOWN SHALL BE CONSTRUCTED IN ACCORDANCE WITH CITY STANDARDS.

*VARIATIONS ON THESE GUIDELINES WILL BE REVIEWED ON A CASE BY CASE BASIS BY CITY STAFF.

- PAVEMENT SCHEDULE**
- 1. 1.5" BITUMINOUS CONCRETE SURFACE COURSE, TYPE SF9.5A
 - 2. 1.5" BITUMINOUS CONCRETE SURFACE COURSE, TYPE 1-2
 - 3. 6" COMPACTED AGGREGATE BASE COURSE OR 4" BITUMINOUS CONCRETE BASE COURSE, TYPE 625.08
 - 4. 4" CBCC TYPE HB.

Only North Carolina Department of Transportation (NCDOT) approved for construction



DEVELOPMENT DATA	
COUNTY:	MECKLENBURG COUNTY
JURISDICTION:	CITY OF HUNTERSVILLE
TOWNSHIP:	CRAIGHED
SUBJECT PARCEL TAX ID'S:	015-111-07 015-111-08 015-111-10
TOTAL SITE ACREAGE:	11.197 AC.
PER REZONING APPROVED JANUARY 2007, THIS SITE WAS DIVIDED AND HOLDS MULTIPLE ZONING AND IS AS FOLLOWS:	
SITE ACREAGE:	1.197
EXISTING ZONING:	GR (SMALL TOWNS)
NO. LOTS:	2
MIN. LOT WIDTH:	90 FT.
MIN. FRONT SETBACK:	50 FT.
MIN. REAR YARD:	40 FT.
MIN. SIDE YARD:	10 FT.
MIN. CORNER YARD:	20 FT.
SITE ACREAGE:	10.00 AC.
PROPOSED ZONING:	TR (TRANSITIONAL RESIDENTIAL)
NO. LOTS:	6
MIN. FRONT SETBACK:	35 FT.
MIN. REAR YARD:	40 FT.
MIN. SIDE YARD:	15 FT.

OPEN SPACE CALCULATIONS

MIN. OPEN SPACE REQUIRED = 50% OF PROJECT (PER FARM CLUSTER ZONING)
TOTAL SITE AREA (FARM CLUSTER) = 10.00 AC.
TOTAL OPEN SPACE REQUIRED = 0.50 x (10.00 ac.) = 5.00 ac.

FARM CLUSTER OPEN SPACE DELINEATION

COMMON OPEN SPACE IN LOTS	
LOT #1:	13,565 SQ. FT. 0.31 AC.
LOT #2:	17,643 SQ. FT. 0.41 AC.
LOT #3:	11,556 SQ. FT. 0.27 AC.
LOT #4:	11,776 SQ. FT. 0.27 AC.
LOT #5:	15,440 SQ. FT. 0.35 AC.
LOT #6:	19,950 SQ. FT. 0.46 AC.
TOTAL:	90,030 SQ. FT. 2.07 AC.
OPEN SPACE AREA 1:	0.44 AC.
OPEN SPACE AREA 2:	0.45 AC.
OPEN SPACE AREA 3:	2.34 AC.
OPEN SPACE AREA 4:	0.08 AC.
OPEN SPACE AREA 5:	0.04 AC.
TOTAL:	3.35 AC.
SPACE REQUIRED:	5.00 AC. (50%)
SPACE PROVIDED:	5.42 AC. (54%)

MECKLENBURG COUNTY
DRIVEWAY PERMIT
Number 07-33
Approved 9/20/07
By Tom Hodge

NOTE: OPEN SPACE MAY BE PART OF A DEEDED LOT (NOT LAND DEVELOPMENT NOTES)

UTILITIES:
N.C. Dept. of Transportation
District Engineer / Div. 10

ENGINEER/SURVEYOR/PLANNER:

PRIVATE WATER & PRIVATE SEPTIC
JEREMY GIBSON
8623 McILWAINE ROAD
HUNTERSVILLE, N.C. 28078
Ph: (704) 807-4674 / Fax: (704) 554-0539
CONTACT: JEREMY GIBSON
THE ISAACS GROUP, P.C.
8720 RED OAK BLVD., STE. 420
CHARLOTTE, NC 28217
Ph: 704-527-3440 / Fax: 704-527-8335

NOTES:

1. THIS MAP IS NOT A CERTIFIED SURVEY. BOUNDARY INFORMATION PROVIDED BY THE ISAACS GROUP, TOPOGRAPHIC INFORMATION PROVIDED BY MECKLENBURG GIS AND THE ISAACS GROUP.
2. THE UTILITIES SHOWN ARE FOR THE CONTRACTOR'S CONVENIENCE ONLY. THERE MAY BE OTHER UTILITIES NOT SHOWN ON THIS PLAN. THE ENGINEER ASSUMES NO RESPONSIBILITY FOR THE LOCATIONS SHOWN. THE CONTRACTOR IS RESPONSIBLE FOR LOCATING ALL EXISTING UTILITIES PRIOR TO COMMENCEMENT OF CONSTRUCTION. CONFLICTS BETWEEN EXISTING UTILITIES AND PROPOSED EXCAVATION SHALL BE REPORTED TO THE ENGINEER IMMEDIATELY.
3. PROVIDE MINIMUM OF 48 HOUR NOTICE TO OWNER OR REPRESENTATIVE PRIOR TO INTERRUPTION OF ANY EXISTING UTILITY, IF BEING UTILIZED.
4. THE CONTRACTOR IS RESPONSIBLE FOR REPAIR AND/OR REPLACEMENT OF ANY UTILITIES DAMAGED DURING CONSTRUCTION.
5. THE CONTRACTOR SHALL USE EXTREME CARE WHEN WORKING NEAR ALL UNDERGROUND AND OVERHEAD UTILITIES.
6. ALL DIMENSIONS ARE TO BACK OF CURB UNLESS OTHERWISE NOTED.
7. THE CONTRACTOR IS RESPONSIBLE FOR ENSURING THAT ALL NECESSARY PERMITS AND APPROVALS HAVE BEEN OBTAINED PRIOR TO CONSTRUCTION. THESE PERMITS AND APPROVALS MAY INCLUDE BUT ARE NOT LIMITED TO GRADING, DEMOLITION, ZONING, BUILDING, DRIVEWAY, DETENTION, SUBDIVISION, SPECIAL USE, SEWER AND WATER.
8. DEVELOPER WILL PROVIDE STREET SIGNS PER CALDS 50.05 (9" SIGNS ONLY).
9. SIGHT TRIANGLES SHOWN ARE THE MINIMUM REQUIRED.
10. PIPE SYSTEMS AND/OR CHANNELS LOCATED WITHIN AREAS CONVEYED AS LOTS ARE THE MAINTENANCE RESPONSIBILITY OF THE INDIVIDUAL PROPERTY OWNER UNLESS OTHERWISE NOTED.
11. ON-SITE BURIAL/TOPSOIL DISPOSAL WILL BE ALLOWED ONLY IN AREAS SHOWN ON THESE PLANS AS "TOPSOIL DISPOSAL BERM". ON-SITE DISPOSAL OUTSIDE OF THESE DESIGNATED AREAS WILL REQUIRE PLAN APPROVAL FROM MECKLENBURG COUNTY. ANY MATERIAL REMOVED FROM SITE WILL REQUIRE DOCUMENTATION FROM THE CONTRACTOR FOR AN APPROVED WASTE FACILITY.

CURVE	RADIUS	LENGTH	CHORD	BEARING
G1	1024.00'	88.56'	88.53'	N64°30'42"W

LEGEND

- EXISTING UTILITY PEDESTAL
- EXISTING GUY WIRE
- PERMANENT STORM DRAINAGE EASEMENT
- EXISTING OVERHEAD UTILITY
- EXISTING STORM PIPE
- EXISTING FENCE LINE
- EXISTING UTILITY POLE
- PROP. PERMANENT OPEN SPACE AREA
- PROP. PERMANENT OPEN SPACE AREA IN LOTS
- EXISTING EARTHEN BERM

FLOOD CERTIFICATION
THIS IS TO CERTIFY THAT THE PROPERTY SHOWN ON THIS PLAT IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON MAPS PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION, COMMUNITY NUMBER 37047005-E, DATED FEBRUARY 4, 2004.

ADDITIONAL NOTES:

1. A GRADING PLAN MUST BE SUBMITTED TO MECKLENBURG COUNTY ENGINEERING FOR ANY LOT GRADING EXCEEDING ONE ACRE THAT WAS NOT PREVIOUSLY APPROVED ON THESE PLANS.
2. HOUSE BUILDER MAY NOT REDIRECT EXISTING DRAINAGE PATTERNS. ANY GRADING ASSOCIATED WITH HOUSE CONSTRUCTION THAT REDIRECTS DRAINAGE MAY REQUIRE SUBMITTAL OF PLANS TO MECKLENBURG COUNTY ENGINEERING FOR APPROVAL.



PRELIMINARY FOR REVIEW PURPOSES ONLY

GIBSON FARMHOUSE CLUSTER DEVELOPMENT
HUNTERSVILLE, NORTH CAROLINA

PRELIMINARY SITE PLAN

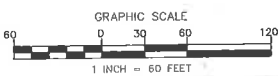
File: 06281-Sketch Planning Date: 02/20/07 Project Egr: BTU

ISAACS
CIVIL ENGINEERING DESIGN AND LAND SURVEYING

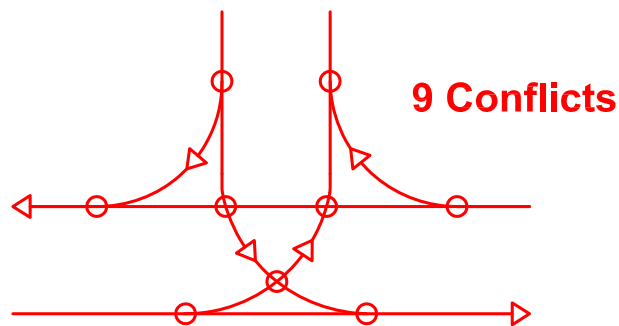
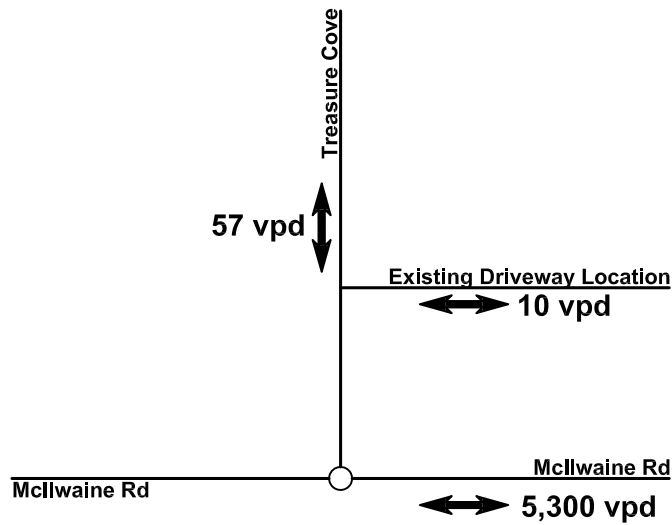
8720 RED OAK BOULEVARD, SUITE 420
CHARLOTTE, N.C. 28217
PHONE (704) 527-3440 FAX (704) 527-8335

C1.0

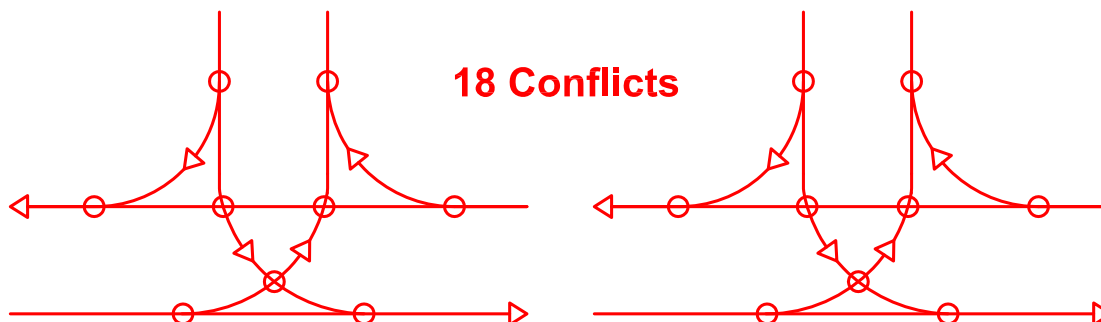
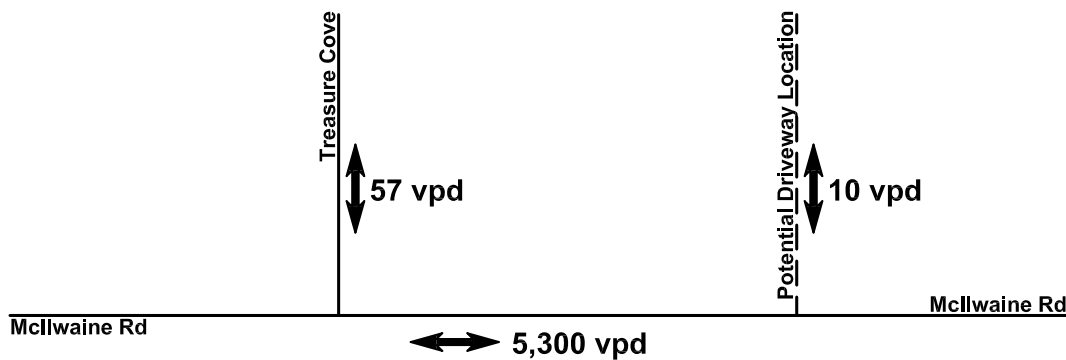
NO.	BY	DATE	REVISION
1	JAB	4/02/07	REVS. PER HUNTERSVILLE COMMENTS
2	JAB	08/22/07	REVS. PER MECK-CO. COMMENTS



EXISTING LAYOUT TYPICAL CONFLICT POINTS AND AADTS



POTENTIAL LAYOUT TYPICAL CONFLICT POINTS AND AADTS



LANDSCAPE ARCHITECTURE
CIVIL ENGINEERING
TRANSPORTATION PLANNING

2459 Wilkinson Blvd, Ste 200 Charlotte, NC 28208
704.343.0608
www.drggrp.com

TREASURE COVE ACCESS EVALUATION

HUNTERSVILLE, NC

JEREMY GIBSON
8703 MCILWAINE ROAD
HUNTERSVILLE, NC 28078

CONFLICT POINT AND AADTS BY LAYOUT

0 NTS N
SCALE: NTS

PROJECT #: 708-001
DRAWN BY: MWW
CHECKED BY: REG

MAY 2017

REVISIONS:

Town of Huntersville
BOARD OF ADJUSTMENT
6/13/2017

To: Board of Adjustment Members
From: Meredith Nesbitt, Planner I
Subject: V17-03, McIlwaine Acres Farmhouse Cluster Driveway

V17-03: The applicant, McIlwaine Acres Property Owner's Association, is requesting a variance from Article 8.1.3, to be allowed to keep a driveway accessing Treasure Cove (privately maintained road) constructed over farmhouse cluster designated open space.

ACTION RECOMMENDED:

Hold a public hearing and take action on the variance request.

FINANCIAL IMPLICATIONS:

ATTACHMENTS:

Description	Type
☐ V17-03 HOA Driveway Variance	Staff Report
☐ Exhibit 1 - Variance Application	Exhibit
☐ Exhibit 2 – 2006 Rezoning Application	Exhibit
☐ Exhibit 3 – 2006 TR Farmhouse Cluster Standards	Exhibit
☐ Exhibit 4 – 2007 Recombination Plat	Exhibit
☐ Exhibit 5 – 2007 Farmhouse Cluster Plat	Exhibit
☐ Exhibit 6 – Approved Residential Plot Plan for Single Family Home at 8703 McIlwaine Road	Exhibit
☐ Exhibit 7 – 2017 Aerial Images from Polaris 3G	Exhibit
☐ Exhibit 8 – Notice of Violation Letter, 8703 McIlwaine Road	Exhibit
☐ Exhibit 9 – Notice of Violation Letter, Farmhouse Cluster HOA	Exhibit
☐ Exhibit 10 – HOA Covenants and Restrictions	Exhibit
☐ Exhibit 11 – NCDOT Driveway Permit	Exhibit
☐ Exhibit 12 – Minutes from 2006 Rezoning Request Public Hearing	Exhibit
☐ Exhibit 13 – 2006 E-mail Correspondence with Jeremy Gibson (applicant)	Exhibit
☐ Exhibit 14 – Design Resource Group Memo	Exhibit

V 17-03

McIlwaine Acres HOA Property

Case #: V17-03
Address: Farmhouse Cluster Open Space – Not Addressed
Parcel #: 015-112-76
Acreage: +/- 0.095 ac
Property Owner/Applicant: McIlwaine Acres Property Owner's Association, Inc./Jeremy Gibson
Staff: Meredith Nesbitt – Planner I

The applicant, McIlwaine Acres Property Owner's Association, is requesting a variance from **Article 8.1.3** (see below) to be allowed to keep a driveway accessing Treasure Cove (private road) constructed over farmhouse cluster designated open space. If approved this request would allow seven (7) residential lots service on a private right-of-way designed for a Farmhouse Cluster. See Exhibit 1 for the variance application.

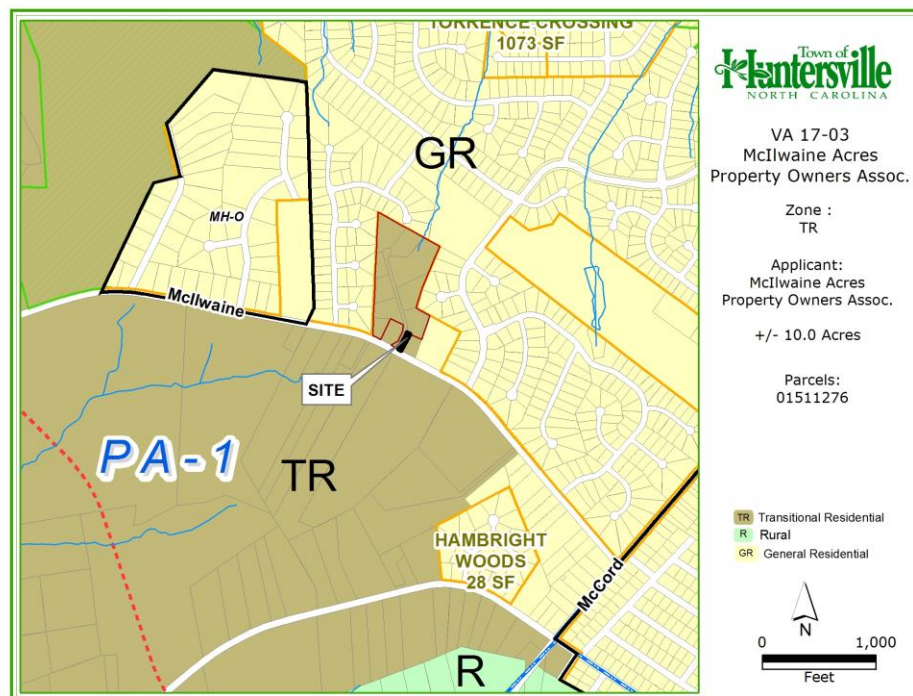
8.1 Street Frontage Required

Any lot on which a building (or buildings) is to be erected or use is to be established shall abut a public street with the following exceptions:

1. Any lot for which a residential use has been legally established prior to the effective date of this ordinance in accordance with provisions permitting establishment of use on a lot served by a private and exclusive recorded easement of at least 15 feet in width connecting said lot to a public street, may be used as if it abutted a street, provided that it is served by a driveway located on said easement. A lot of one (1) acre or more in area created through a division of land not subject to the subdivision ordinance shall be eligible for issuance of a permit to establish a single-family detached house, provided the lot is served by a private and exclusive recorded easement or fee-simple projection of the building lot at least 15 feet in width connecting said lot to a public street. A driveway accessible by emergency equipment must be located on said easement or lot projection. Lots created under these provisions shall be known as "easement-access lots" and "flag lots", respectively.

2. Any lot for which a non-residential use has been legally established prior to the effective date of this ordinance in accordance with provisions permitting establishment of use on a lot served by a private, exclusive recorded easement of at least 15 feet in width connecting said lot to a public street, may be construed in the same manner as a lot abutting a street provided that it is served with a driveway built to appropriate standards located on the permanent, recorded easement.

3. Up to six residential lots may be served by a privately maintained easement with a minimum 20-foot right-of-way if designed according to the specifications of the Rural and Transitional Farmhouse Cluster development or the specifications of the Rural and Transitional Conservation Subdivision.



BACKGROUND:

1. The 0.095-acre subject property is located at the intersection of Treasure Cove Drive and McIlwaine Road and is designated open space for a farmhouse cluster. The subject property is zoned Transitional Rural (TR) and is in the Mountain Island Lake Watershed Overlay Protected Area 1 (MIL PA-1) District. The subject property in common ownership and is not a buildable lot.
2. In 2006, Jeremy Gibson petitioned the Town to rezone three lots, which contains the subject lot, under his ownership from General Residential (GR) to Transitional Residential (TR) with the intent to develop a farmhouse cluster, see Exhibit 2 for rezoning application.
3. The TR zoning district (Article 3) contained special requirements for farmhouse cluster developments, which required the dedication of open space and the restriction of uses within the open spaces, see Exhibit 3 for the 2006 TR Farmhouse Cluster Standards.
4. On January 17, 2007, the Town Board voted to approve the rezoning request.
5. On May 30, 2007, Town Staff approved a recombination plat, which reconfigured the three (3) rezoned parcels into a 10 acre track (containing the subject lot), a "Lot A" 0.630 acre track, and a "Lot B" 0.482 acre track. See Exhibit 4 for the 2007 Recombination Plat.
6. On September 7, 2007, Town Staff approved a farmhouse cluster plat (creating the subject lot), which subdivided the 10 acres into the six (6) lots that make up the McIlwaine Acres Farmhouse Cluster. See Exhibit 5 for the 2007 Farmhouse Cluster Plat.
7. Zoning approval for a building permit to construct a single-family home on the adjacent property (outside of the farmhouse cluster boundary) 8703 McIlwaine Road was given on September 9, 2015. Written remarks on the permit state the home must face McIlwaine and Driveway must access on McIlwaine. See Exhibit 6 for the Approved Residential Plot Plan.
8. A Mecklenburg County Zoning Inspector discovered the drive at 8703 McIlwaine Road was not constructed to plan and was accessing off Treasure Cove rather than McIlwaine Road, see Exhibit 7 for 2017 aerial images showing the constructed driveway location. After noting the installed driveway location Notice of Violation letters were sent to the subject property owner, see Exhibit 8, and the McIlwaine Acres HOA, see Exhibit 9.
9. The owner of 8703 McIlwaine Road, Jeremy Gibson, and the McIlwaine Acres HOA are seeking a variance to allow a seventh (7th) residential lot, not within the boundaries of a farmhouse cluster, access to a privately maintained easement (subject of V17-02) and a driveway encroachment into designated farmhouse cluster open space (subject of this variance).

STAFF FINDINGS (ordinance standards are in italics):

Please see Exhibit 1 for the applicant's responses to the required criteria for granting a variance.

In considering any variance request, the following *Standards for Granting a Variance* (Article 11.3.2.e) must be addressed with findings of fact:

Standards for Granting a Variance. 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 of 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.*

Staff Findings:

- A. According to the applicant, the hardship is a less safe access, see Exhibit 1.
- B. The strict application of the ordinance would limit the number of residential lots serviced by a privately maintained right-of-way designed in accordance with the Transitional Residential (TR) farmhouse cluster standards to no more than six (6). The driveway access of 8703 McIlwaine Road to Treasure Cove adds a seventh residential lot being serviced by the privately maintained right-of-way.
- C. The subject property was platted as common open space; see Exhibit 5 for the Farmhouse Cluster Plat.
- D. According to the applicant, 8703 McIlwaine Road has access to all HOA property per the covenants and restrictions, filed December 2007, see Exhibit 1 and Exhibit 10.

- E. The Zoning Ordinance does not restrict the number of members a farmhouse cluster HOA can have. The Zoning Ordinance limits how many residential lots can be served by a recorded privately maintained right-of-way in a farmhouse cluster.
- F. In review of the HOA covenants and restrictions staff finds the owner of 8703 McIlwaine Road does not have explicit access to HOA property. The Declarant as defined by the covenants as Jeremy Gibson is called out as a member of the HOA. However, that membership is not explicit to the owner of 8703 McIlwaine Road. If Mr. Gibson were to sell the property, the new owner would not have membership rights under the current HOA covenants. See Exhibit 10 for the HOA covenants and restrictions.

- 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.*

Staff Findings:

- A. All farmhouse cluster developments are subject to the same requirement of a minimum project size of 10 acres subdivided for up to six (6) residential lots.
- B. According to the applicant, the owner 8703 McIlwaine Road pays HOA fees, which maintain Treasure Cove, see Exhibit 1.
- C. According to the applicant, 8703 McIlwaine Road is intended to be part of the HOA community, see Exhibit 1.
- D. The Zoning Ordinance does not restrict the number of members a farmhouse cluster HOA may have. The Zoning Ordinance limits how many residential lots can be served by a recorded privately maintained right-of-way developed in accordance with the farmhouse cluster development standards.
- E. According to the applicant, Treasure Cove is a DOT access, see Exhibit 1.
- F. NCDOT approved a driveway permit for the Farmhouse Cluster private drive on October 15, 2007. This permit gave permission for the private drive cut on McIlwaine Road (NCDOT maintained road) not permission for Treasure Cove to be a DOT access. See Exhibit 11 for NCDOT Driveway Permit.
- G. According to the applicant, the mailbox for the subject property is located on Treasure Cove, see Exhibit 1.
- H. The US Postal Service now requires cluster mailboxes. Due to the Postal Service requirement, it is common to find (in new residential developments) that a mailbox for a residential home is not located on the same road as the home is addressed to.
- I. Staff does not find any conditions that are peculiar to the property creating a hardship.

- 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.*

Staff Findings:

- A. According to the applicant, it was not understood that when the farmhouse cluster was created 8703 McIlwaine Road would not have access to Treasure Cove, see Exhibit 1.
- B. In the minutes from the December 18, 2006 (Public Hearing for the rezoning request), Town Board meeting Mr. Gibson is recorded as saying, “the interest is to have the 6 houses, possibly a playground, maintain all the woods that are currently there...”. See Exhibit 12 for minutes from the public hearing.
- C. The minutes from the December 18, 2006 (Public Hearing for the rezoning request) Town Board meeting also reflect Town Staff (Whitney Hodges) explaining a farmhouse cluster as “a family house cluster is essentially a minor subdivision that’s allowed a private road. They do not have to meet the underlying zoning district, but they are required to have larger amounts of open space. You have to have at least 10 acres of land and you can get no more than 6 lots on 10 acres.” See Exhibit 12 for minutes from the public hearing.
- D. An email from former Town Staff, Whitney Hodges, dated August 30, 2006 shows Mr. Gibson was sent the Farmhouse Cluster requirements that state “a farmhouse cluster permits the subdivision of land for up to six house lots accessed by way of a shared private drive”. See Exhibit 13 for 2006 email correspondence.
- E. On September 14, 2015, Jeremy Gibson signed a building permit application for a single-family home located at 8703 McIlwaine Road that has a plot plan showing the driveway will access off McIlwaine Road. Before approving the permit, Planning Staff noted in the remark section of the permit application that the home must face McIlwaine and driveway must be on McIlwaine. See Exhibit 6 for the approved residential plot plan.

- F. Sometime between zoning permit approval on September 14, 2015 and September 2016 the driveway was constructed in its current location accessing Treasure Cove, see Exhibit 7 for aerial image.
 - G. The driveway providing 8703 McIlwaine Road access to Treasure Cove is a violation of the approved residential plot plan associated with the approved building permit and a violation of Zoning Ordinance requirements.
- 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.*

Staff Findings:

- A. Farmhouse clusters are a flexible subdivision option only allowed in the Rural and Transitional Residential zoning districts. The intent of the Transitional Residential for a farmhouse cluster development is to allow for the subdivision of at least ten (10) acres into no more than six (6) residential lots.
- B. Farmhouse Clusters are required to dedicate at least 50% of the tract as open space.
- C. Residential lots within the boundaries of an approved farmhouse cluster are exempt from the requirement of abutting a public street (Article 8.1) through the accommodation of allowing the up to six (6) residential lots to be served by a privately maintained right-of-way.
- D. There is an option to amend the farmhouse cluster plat, converting lot 6 into open space, removing the subject property's classification as open space, and adding the adjacent property, 8703 McIlwaine Road, into the boundaries of the farmhouse cluster.
- E. The applicant can request a text amendment increasing the farmhouse cluster development standards to allow seven (7) residential lots.
- F. On June 2, 2017, staff received additional application materials from the applicant. See Exhibit 14 for Design Resource Group memo.

STAFF CONCLUSIONS:

The applicant is seeking a variance from **Article 8.1.3** to be allowed to keep a driveway constructed over designated open space, accessing Treasure Cove (private road). Based on the summary of findings, listed below, staff concludes this request does not meet the criteria required by the Zoning Ordinance for granting a variance. Therefore, Planning Staff recommends denial of the variance request.

- 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.*

Staff Conclusion of Findings:

The strict application of the ordinance would require only the six (6) lots that make up the approved farmhouse cluster could be served by the privately maintained right-of-way, Treasure Cove. There is no an unnecessary hardship resulting from the strict application of the ordinance as the subject property was designated as open space in 2007 and 8703 McIlwaine Road has unrestricted access to a public street, McIlwaine Road.

Staff concludes the membership and/or access rights to HOA property is irrelevant in the determination of access for the subject property.

Staff finds that this criteria for granting a variance is not met.

- 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.*

Staff Conclusion of Findings:

All farmhouse cluster developments in the Town of Huntersville are subject to a maximum of six residential lots. Further any lot on which a building or use is to be established shall abut a public street, except up to six residential lots that are serviced by a privately maintained right-of-way if designed according to the farmhouse cluster development specifications (Article 8.1.3). The subject property was designated as open space in 2007 and 8703 McIlwaine Road is outside of the boundaries of the approved farmhouse cluster, therefore was not developed in accordance with the farmhouse

cluster development specifications, regardless of any personal involvement with the farmhouse cluster HOA.

There are no conditions that are peculiar to the subject property creating a hardship or restricting 8703 McIlwaine Road from accessing McIlwaine Road.

Staff finds that this criteria for granting a variance is not met.

- 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.*

Staff Conclusion of Findings:

Staff does not find there to be a hardship in this situation, however, the zoning violation is a direct result of actions taken by the property owner of 8703 McIlwaine Road.

Staff found sufficient evidence that the farmhouse cluster development standards were explained and given to the applicant in 2006/2007 when the farmhouse cluster subdivision concept was being reviewed and approved.

Additionally, Jeremy Gibson (property owner of 8703 McIlwaine Road) submitted a building permit application with a plot plan showing the subject lot's driveway was to be off McIlwaine Road. Due to discussion, between staff and Mr. Gibson, prior to issuing zoning approval for the building permit staff wrote the following note in the remark section of the approved plot plan, "home must face McIlwaine. Driveway must be on McIlwaine". The intention of this note was to summarize the zoning ordinance clearly required frontage and access on McIlwaine Road.

Staff finds that this criteria for granting a variance is not met.

- 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.*

Staff Conclusion of Findings:

The purpose and intent of a farmhouse cluster development is to allow a minimum of 10 acres to be subdivided for up to six house lots with a shared privately maintained right-of-way connecting the lots to a public street. Farmhouse cluster developments are also intended to protect and preserve open space, which is why farmhouse cluster developments must desiccate at least 50% of the tract as open space. Allowing the 8703 McIlwaine Road to access the privately maintained right-of-way is not consistent with the intent of farmhouse cluster development standards.

While, it can be argued that the driveway access for 8703 McIlwaine Road is safer if located on Treasure Cove rather than McIlwaine Road the criteria for granting a variance is not met. Staff concludes the findings of fact in this case prove that the applicant intended to maximum the development potential of the property under his ownership. In doing so, he created a six-lot farmhouse cluster (maxing out the farmhouse cluster development standards) and two additional single family-residential lots (8623 and 8703 McIlwaine Road).

If the intention was to have 8703 McIlwaine Road access on Treasure Cove rather than McIlwaine Road because of safety concern the farmhouse cluster subdivision should have been reconfigured. In 2007, the farmhouse cluster lot configuration was approved for maximize development because 8703 McIlwaine Road has adequate access for single-family residential driveway on McIlwaine Road. The zoning ordinance does not allow for more than six (6) residential lots to be services by a private right-of-way designed for a farmhouse cluster.

The developer, Jeremy Gibson also owns lot number 6, within the approved farmhouse cluster boundary. There is an option to amend the farmhouse cluster plat, converting lot 6 into open space, removing the subject property's classification as open space, and adding the adjacent property, 8703 McIlwaine Road, into the boundaries of the farmhouse cluster. This would satisfy the Zoning Ordinance criteria for farmhouse cluster development and the desire to have driveway access on

Treasure Cove. Alternatively, the applicant can request to amend the farmhouse cluster development standards through the text amendment process.

Staff finds that this criteria for granting a variance is not met.

ATTACHMENTS:

- Exhibit 1** – Variance Application
- Exhibit 2** – 2006 Rezoning Application
- Exhibit 3** – 2006 TR Farmhouse Cluster Standards
- Exhibit 4** – 2007 Recombination Plat
- Exhibit 5** – 2007 Farmhouse Cluster Plat
- Exhibit 6** – Approved Residential Plot Plan for Single Family Home at 8703 McIlwaine Road
- Exhibit 7** – 2017 Aerial Images from Polaris 3G
- Exhibit 8** – Notice of Violation Letter, 8703 McIlwaine Road
- Exhibit 9** – Notice of Violation Letter, Farmhouse Cluster HOA
- Exhibit 10** – HOA Covenants and Restrictions
- Exhibit 11** – NCDOT Driveway Permit
- Exhibit 12** – Minutes from 2006 Rezoning Request Public Hearing
- Exhibit 13** – 2006 E-mail Correspondence with Jeremy Gibson (applicant)
- Exhibit 14** – Design Resource Group Memo

STATEMENT OF CONSISTENCY: V17-03, MCILWAINE ACRES HOA PROPERTY

Planning Department	Board of Adjustment
	<p>APPROVAL: In considering the findings of fact for V17-03, a request by the McIlwaine Acres Property Owners Association for a variance from Article 8.1.3, the Board of Adjustment grants approval of the variance based on a finding that the request meets all four of the criteria outlined in the Zoning Ordinance for granting a variance.</p> <p>The Board of Adjustment finds the request meets the four criteria for granting a variance based on the following findings of fact: <i>(explain findings of fact)</i></p>
<p>DENIAL: In considering the findings of fact for V17-03, a request by the McIlwaine Acres Property Owners Association for a variance from Article 8.1.3, the Planning Department recommends denial of the variance request based on a finding that the request does not meet criteria 1, 2, 3, or 4 outlined in the Zoning Ordinance for granting a variance.</p> <p>The Planning Department finds the request does not meet any of the four criteria for granting a variance based on the following findings of fact:</p> <ol style="list-style-type: none"> 1. The strict application of the ordinance allows for six lots to be served by a privately maintained right-of-way, developed in accordance with the Rural and Transitional Residential farmhouse cluster standards. 2. The subject property was designated as open space in 2007 in accordance with the Transitional Residential farmhouse cluster development standards. 3. All farmhouse cluster developments in the Town of Huntersville are subject to the same six residential lot maximum development standard. 4. The zoning violation is a direct result of actions taken by the property owner of 8703 McIlwaine Road by not following the plot plan as approved with the building permit. 5. The developer/member of the HOA, Jeremy Gibson, was given the farmhouse cluster development standards various times throughout the farmhouse cluster approval process and again during the single-family home building permitting process. 6. The intent of a farmhouse cluster development is to allow a minimum to 10 acres be subdivided into no more than six residential lots. Allowing 8703 McIlwaine Road to access Treasure Cove would add a seventh residential lot. 7. The applicant has alternatives, other than a variance, to achieve zoning compliance. 	<p>DENIAL: In considering the findings of fact for V17-03, a request by the McIlwaine Acres Property Owners Association for a variance from Article 8.1.3, Board of Adjustment denies the variance request based on a finding that the request does not meet criteria <i>(name the criteria the Board finds is not met)</i> for granting a variance.</p> <p>The Board of Adjustment finds the request does not meet the criteria for granting a variance based on the following findings of fact: <i>(explain findings of fact)</i></p>

Fee: \$150 (Residential) X
\$300 (Commercial)

Page 1 of 3



Variance Application

Notifications Requirements

Planning Staff will be required to notify in writing each adjoining property owner.

Planning Staff will also be required, if you are seeking a variance from the requirements of the Mountain Island Lake or Lake Norman Watershed Overlay Districts, to notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for consumption as follows:

- * Mountain Island Lake Watershed Overlay. Local governments having jurisdiction in the watershed: Charlotte Mecklenburg, Cornelius and Huntersville. Entities using the water supply for consumption: Mecklenburg County, Gastonia and Mount Holly.
- * Lake Norman Watershed Overlay. Local governments having jurisdiction in the watershed: Davidson, Cornelius and Huntersville. Entities using the water supply for consumption: Mooresville, Mecklenburg County and Lincoln County.

Variance Requirements

STANDARDS FOR GRANTING A VARIANCE (Article 11.3.2.e.):

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.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed by the Board (Article 11.3.1.e.).

In the following spaces, indicate the **FACTS** that demonstrates to the Board of Adjustment that you meet all the standards for granting a variance:

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. The difficulty or hardship would result only from these regulations and from no other cause, including the actions of the owner or previous owners of the property.

Access from 8703 McIlwaine to Treasure Cove then to McIlwaine Road via a double lane DOT approved access is a much safer access than direct to McIlwaine Road. The hardship is a less safe access

8703 has access to all HOA property per the covenants and restrictions, filed 12/17/2007.



Variance Application

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. The difficulty or hardship is peculiar to the property and is not generally shared by other properties classified in the same zoning district and/or use for the same purpose.

8703 McIlwaine borders its HOA owned property that is an easement for the HOA and has a DOT access to McIlwaine Road.

8703 McIlwaine pays HOA fees. Those fees maintain the HOA property which includes Treasure Cove as well as the other 4 acres of shared space, payments have been made since 1/1/09. This property is intended to be part of the HOA community.

Treasure Cove is a DOT access - it is wide and safe. 8703 also has a mailbox on Treasure Cove not McIlwaine Road.

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.

When the property was created it was not understood that it could not access

Treasure Cove. 8703 is responsible to maintain Parcel ID 01511276 as its own - so 8703 is not

a parcel recognized as a corner lot but it does have a responsibility to act as one.

4. The public safety and general welfare have been protected and substantial justice done.

Use of an existing 2 lane access (Treasure Cove) to the property for a way of residence access, delivery

vehicles, etc. is safer as a vehicle in either 8703 or Treasure Cove do not block each others site triangles.

Use of Treasure Cove also prevents a vehicle stopped on McIlwaine as a vehicle departs from 8703.

Property Owner / Applicant Certification

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

Property Owner / Applicant

A handwritten signature in blue ink, appearing to be "JB", is written over a horizontal line.

5/2/2017

Date

Properties within 100' of 8703 McIlwaine Road



1. TRUST EMMETT COPELAND HANSON TESTAMENTARY and
DONNA H BAILEY and EUGENIA H SMITH
438 GILFORD RD, ROCK HILL SC 29732
PARCEL ID = 01512108

2. AGUSTIN MEDINA and MELISSA NARANJO-MEDINA
POBOX 1113 HUNTERSVILLE NC 28070
PARCEL ID = 01512143

3. DANIEL L SCURLOCK and LISA K SCURLOCK
8623 MCILWAINE RD, HUNTERSVILLE NC 28078
PARCEL ID = 01511108

4. MCILWAINE ACRES PROPERTY OWNER`S ASSOCIATION INC
203 SPICER LAKE DR, HOLLY RIDGE NC 28445
PARCEL ID = 01511266

5. RONNY STEVEN WILEY and ASHLEY LYNNE WILEY
12435 TREASURE COVE, HUNTERSVILLE NC 28078
PARCEL ID = 01511268

6. RALPH ERNEST EHRENBURG and THERESA NELSON EHRENBURG
3117 BEECHWOOD LN, FALLS CHURCH VA 22042
PARCEL ID = 01511275

7. JEREMY G GIBSON AND LINDSAY L GIBSON
8703 MCILWAINE ROAD, HUNTERSVILLE, NC 28078
PARCEL ID = 01511110

8. JIMMY D SR WOMACK and FRANCES B WOMACK
8721 MCILWAINE RD, HUNTERSVILLE NC 28078
PARCEL ID = 01511109



APPLICATION FORM

Incomplete submissions will not be accepted. Please check all items carefully.

Town of Huntersville • P.O. Box 664 • Huntersville, NC 28070 • Phone: (704) 875-7000 • Fax: (704) 875-6546

1. APPLICATION TYPE (Check the appropriate item below.)

SUBDIVISION: Per the Huntersville Subdivision Ordinance

Sketch Plan ☒

Preliminary Plan ☐

Final Plat (includes minor and exempt plats) ☐

COMMERCIAL SITE PLAN: ☐

PLAN REVISION: ☐

REZONING: ☒

SPECIAL USE PERMIT: ☐

MASTER SIGNAGE PROGRAM: ☐

TEXT CHANGE TO HUNTERSVILLE ZONING ORDINANCE: ☐

TEXT CHANGE TO HUNTERSVILLE SUBDIVISION ORDINANCE: ☐

CHANGE OF USE: ☐

2. PROJECT DATA.

Date of Application August 28, 2006

Name of Project (if subdivision) _____ Phase #: _____

Location 8623, 8631, 8703 McIlwaine Rd.

Current Zoning District GR Proposed District (for rezonings only): TR

8-Digit Tax Parcel Number(s) 01511108 (8623), 01511107 (8631), 01511110 (8703)

Property Size (acres) 10 Street Frontage (feet) ≈ 120 Current Land Use Field

Proposed Land Use(s) FARM HOUSE CLUSTER

3. SITE PLANS

All submissions must include: Application form, fee, 5 folded copies (unless otherwise stated) of site plans and an 8 1/2 x 11 copy of the map (digital copy if available). Additional materials are needed based on submission type as listed below:

Subdivision Sketch Plans - Per Article 6 (Subdivision Ordinance) and Article 7 (Zoning Ordinance).

SUBDIVISIONS ARE A QUISI-JUDICIAL PROCESS IN HUNTERSVILLE AND AS SUCH, NO CONTACT SHOULD BE MADE TO ELECTED OR APPOINTED OFFICIALS EXCEPT AT THE MEETINGS.

Commercial Site Plan and Subdivision Preliminary Plans (Construction Documents): 5 (total) folded sets of zoning site plan, landscape plan, grading plan, utilities plan, stormwater management plan, architectural elevations of building (s), Calculations for Mecklenburg County Engineering Review.

Final Plats – submit 3 paper copies for review by Huntersville Planning and Mecklenburg County Engineering. Once revised, resubmission of plats on Mylar will be accepted.

Rezoning Petitions – Per Article 11.4 (Zoning Ordinance) plus tree survey Section 7.4.2(b). Multiple-Building sites shall meet Subdivision Sketch Plans – per Article 6 (Subdivision Ordinance).

. OUTSIDE AGENCIES INFORMATION:

For major subdivision, proposals and rezoning petitions please enclose a copy of the CMUD study letter for the subject property. The submission of letters of intent or any other information regarding land that may involve Mecklenburg County Park & Recreation Dept., The Trust for Public Lands, The Catawba Land's Conservancy or Huntersville Park and Recreation Department are also appropriate at the time of plan submission.

5. DESCRIPTION OF REQUEST:

Briefly explain the nature of this request.

REZONE FROM GR DN 10 ACRES TO TR. THIS IS TO ALLOW
FOR LOW DENSITY USE OF THE LAND AS A FARM HOUSE CLUSTER

6. SIGNATURES.

If applying for Subdivision or Commercial Site Plan.

Development Firm	Name of contact	Phone
Design Firm	Name of contact	Phone
fee simple property owner	Name of contact	Phone
		Current

If Applying For **Rezoning**:

Name and Address of owner(s) of fee simple title of each parcel that is included in this rezoning petition:

Signature(s) [Signature] Lindsay Gibson
Printed name JEREMY GIBSON + LINDSAY GIBSON
Address 8623 McILwaine Rd,

Signature, name, firm, address, phone number of Duly Authorized Agent by owner needed below:

Every owner of each parcel included in this rezoning petition, or the owner (s) duly authorized agent, must sign this petition. If signed by an agent, this petition MUST be accompanied by a statement signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in filing this petition. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID PETITION.

The following information is also required:

The name and home address of the current owner (s) of the fee simple title (or office address for the corporate owner) and the parcel numbers of each parcel included in the rezoning petition. A digital copy (Microsoft Word) of all adjacent property owners must be submitted, including the tax parcel number, full name (s) of the owner (s) and current mailing address. Adjacent properties include those which share a property line with the subject property or are separated only by a public right-of-way. If additional space is needed for signatures, attach an addendum to this application.

ARTICLE 3

TRANSITIONAL RESIDENTIAL DISTRICT

e) Special Requirements: Farmhouse Cluster Developments

A **Farmhouse Cluster** permits the subdivision of land for up to six house lots accessed by way of a shared private drive when the following conditions have been met:

- 1) Minimum project size and frontage on public road: 10 acres with a minimum of 30 feet of frontage on a public road either by fee simple ownership or by exclusive easement.
- 2) There shall be no more than two farmhouse cluster developments permitted per tract as that tract existed on February 18, 2003.
- 3) A paved or graveled private drive shall be constructed on a recorded easement not less than 20 feet in width serving one farmhouse cluster exclusively. Further, the recorded easement shall have at least 30' of frontage on a public street. In the event two farmhouse clusters are established, the private drive serving those farmhouse clusters may be connected provided:
 - a. The private road is paved at least 18' wide and constructed in accordance with the Charlotte-Mecklenburg Land Development Standards Manual as it applies to Huntersville. Private drive right of way or easement shall be of such width to accommodate drainage/water quality treatment.
 - b. The subdivision plat and associated deeds shall clearly state such drive shall remain private and will not be taken over by a public entity in the future.
 - c. Where feasible, there shall be two means of ingress and egress into the combined farmhouse cluster development. Only in the event the original tract does not have the adequate frontage on a public road to obtain two driveway permits would one private drive be allowed to serve the combined farmhouse cluster development;
- 4) An association of all property owners shall be established for maintenance of all commonly held spaces, if any. Where there are no commonly held spaces except for a shared driveway or private street, a legally binding shared driveway and/or private street use and maintenance agreement shall be filed at the Register of Deeds of Mecklenburg County. Furthermore, the shared driveway or private road shall be shown, along with all appropriate and necessary easements, on a recorded plat and a note shall be attached thereto stipulating the use and maintenance of the driveway and referencing the recorded agreement(s).
- 5) The location of building sites shall be determined through a site analysis which identifies features to be preserved as open space;
- 6) No minimum lot size or width is required, so long as the project meets all other standards of the district;
- 7) At least 50% of the tract shall be designated as open space. Open space preservation shall be irrevocable. A metes and bounds description of the space to be preserved and limits on use shall be recorded on the subdivision plat and on individual deeds when open space lands are not held entirely in common. Open space lands may be part of a deeded lot so long as it reflects an irrevocable conservation or open space easement requiring such portions of individual lots to remain and be used as open space as provided in this section.
- 8) Permitted uses of open space lands to be preserved shall correspond generally to physical conditions at the time of subdivision approval. Restrictive covenants shall limit uses to the continuation of certain agricultural activities (pastureland, crop cultivation) or recreation uses that preserve the view from public streets of rural heritage features to be preserved. For example, fields or pasture land preserved as required open space may continue to support cultivation or grazing; however existing woodlands may not be clear-cut. In order to ensure septic tanks are

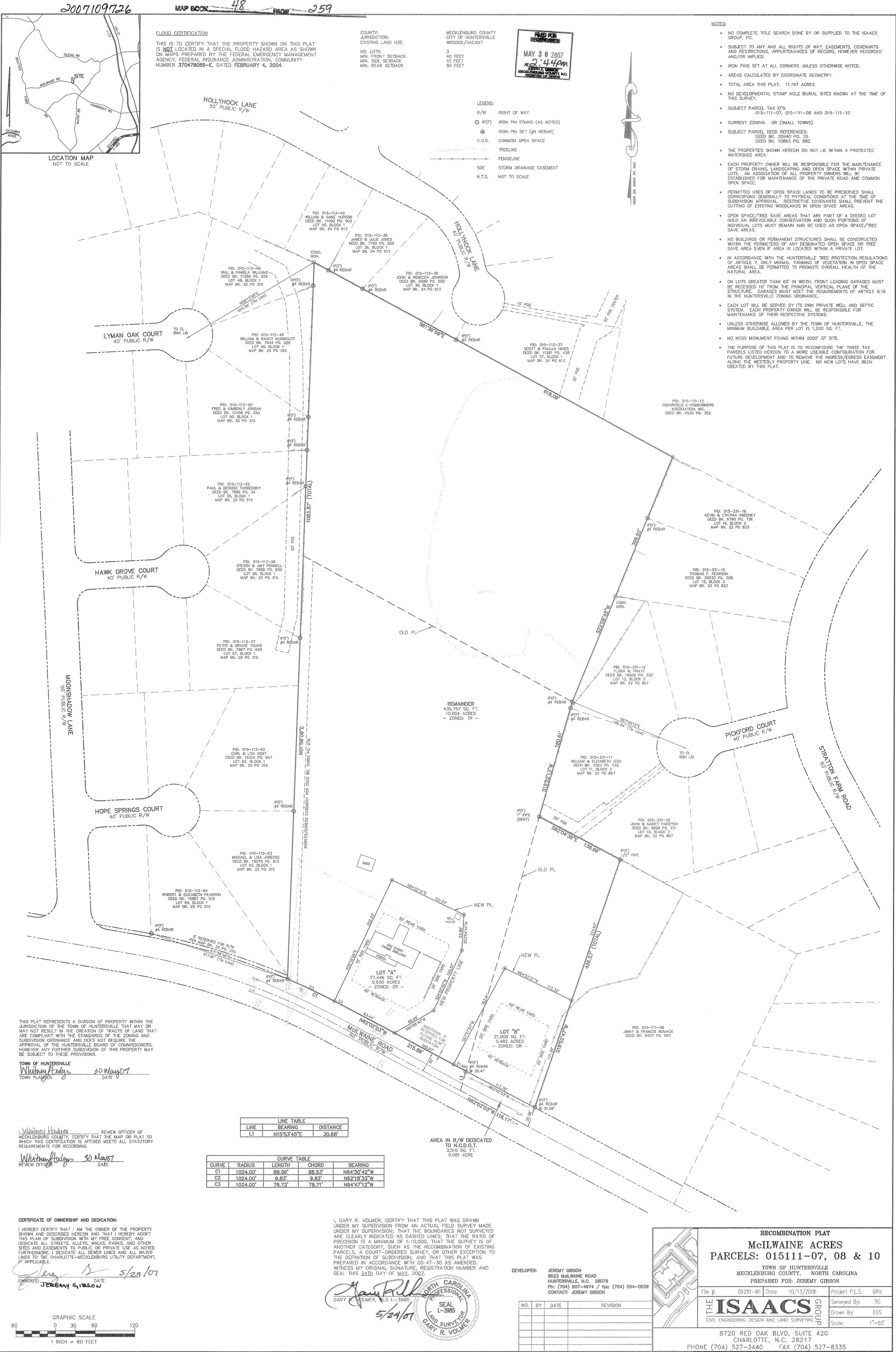
located on the most suitable soils, septic fields may be located in the common open space provided a maintenance easement is established for access.

- 9) The project shall maintain a generally rural appearance from public road(s).
- 10) Where a farmhouse cluster would eliminate a planned street connection or a street connection indicated on a plan adopted by the Town of Huntsville or the Charlotte-Mecklenburg Thoroughfare Plan, and no alternate alignment can reasonably provide the connection, the design of the farmhouse cluster shall provide for said connection by the dedication of right-of-way for streets less than 70 feet in width and by the reservation of right-of-way for streets 70 feet or wider.
- 11) A Farmhouse Cluster requires an approved **Farmhouse Cluster subdivision plan**, according to the requirements of the Huntersville Subdivision Ordinance and shall meet all other requirements for review and approval, which may include preliminary plan approval prior to approval of a final plat.

f) Special Requirements: Conservation Subdivisions

A **Conservation Subdivision** permits single-family building lots to be divided from a parent tract(s) according to a streamlined subdivision approval process. The approval process, coupled with exemption from most zoning and subdivision requirements, is available to owners who voluntarily place conservation easements on their land in favor of an established lands conservancy. A land division can be approved as a Conservation Subdivision when the following conditions are met:

- 1) An irrevocable conservation easement held by a conservation organization (as authorized in U.S.C. 170(h); 2055(a) and N.C.G.S. 124-34 et seq.) is placed upon the tract(s) to be subdivided, and documentation of the conservation easement, including a boundary description of the area subject to the conservation easement is submitted with the subdivision application.
- 2) Limits on location and extent of land disturbance and building construction are set out in the conservation easement(s), which shall at a minimum preserve the rural appearance of the land when viewed from public roads and from abutting properties.
- 3) Treatment of floodplain(s) and required water quality buffers, as described in the conservation easement(s), conform to the minimum standards of the Huntersville Zoning and Subdivision ordinances.
- 4) Minimum project size: 40 acres.
- 5) Maximum gross density: 1 dwelling unit per 20 acres.
- 6) No new public streets are to be created through the development process.
- 7) All parcels within the conservation subdivision will have frontage on an existing public road right-of-way or will be provided access to a permanent 20-foot wide access easement that connects to the public right-of-way. Permanent access easement(s) may be either exclusive or non-exclusive, however landlocked parcel(s) may not be created. Documentation of lot access shall be submitted with the subdivision application.
- 8) The holder of the conservation easement will be held responsible for enforcement of the terms of the conservation easement.
- 9) Where the parent tract(s) abuts or includes a segment of a thoroughfare that is shown on the adopted thoroughfare plan and for which an engineered alignment has been selected, any right of way reservation required by the subdivision regulations shall be made, either by the filing of a deed or the filing of a plat map.



APPLICATION FOR BUILDING PERMIT

TYPE PERMIT ☒ Single Family ☐ Two Family ☐ Commercial ☐ Mobile Home ☐ Modular

PERMIT #

ADDRESS

STREET # (N,S,E,W) STREET NAME (AV,RD,ST etc)
 8703 McIlwaine Road
 SUITE/UNIT(S):

TAX JURISDICTION: (Check One)

☐ 0 - Mecklenburg ☐ 1 - Charlotte ☐ 2 - Davidson ☐ 3 - Cornelius
☐ 4 - Pineville ☐ 5 - Matthews ☒ 6 - Huntersville ☐ 7 - Mint Hill

SITE

PROJECT/SUBDIVISION NAME McIlwaine Acres PHASE SECTION PROJECT #

OWNER Jeremy and Lindsay Gibson ADDRESS 8703 McIlwaine Road

CITY Huntersville STATE NC ZIP 28078 PHONE # 704-907-4674

DATA

TAX PARCEL # CENSUS LOT # BLOCK # LAND AREA (sq. ft.) 20996

ZONING GR (MIL-0-PA-1) JURIS MAP # R/W

SPECIAL (Circle) C D N P S FLOOD PLAIN ☐ Yes FLOOD ELEV FIRE DIST. ☐ Yes APR'D

LOT ☐ CORNER ☐ THROUGH FRONT STREET (if different)

MINIMUM SETBACKS: FRONT 40' LEFT SIDE 20' RIGHT SIDE 20' REAR 50' REQ. PARK'G *See 9/14/15*

PURPOSE

JOB # TYPE WORK: ☒ New ☐ Addition ☐ Accessory ☐ Upfit ☐ Shelf ☐ Demolish Other

USDC # PROJECT DESCRIPTION (Residence, Office, etc.) Personal Residence

PURPOSE AREA (sq. ft.): Heated 3003 Unheated 1059 Deck(s) No # STORIES 2 BASEMENT ☐ Yes

OCC. TYPE ONE/TWO FAMILY, MODULAR, OR MOBILE HOME, TOTAL # ROOMS 19 # BEDROOMS 5 # BATHS 3.5

CONST Work includes: ☐ Attached Carport ☒ Attached Garage ☐ Masonry Fireplace(s)

SPRINKLERS ☐ Yes # UNITS MULTI-FAMILY # HANDICAP UNITS

SERVICES

ELECTRICAL Power Company Energy United Service: ☒ New Existing Total Amps 200 # Circuits 20

MECHANICAL Gas Company Piedmont Natural Gas # Gas Conn. 2 # Appliances 1 ☐ Heat Only ☐ Central A/C Only ☐ Heat and A/C

PLUMBING # of Fixtures (Sink, Water Closet, etc.) # of Appliances (Dishwasher, Water Heater, etc.)

UTILITIES: ☒ New Existing Public 1-Individual Meter/Connection ☐ Water ☒ Sewer Private 3-Individual ☒ Well ☐ Septic

CONTRACTORS

ACCT # CONTRACTOR(S): (Name/Address as appears on license) CONTRACT COST APR'D

X41704 Bldg and Construction Phone 7049074674 Lic # 74826 Bldg Nearest \$100 FEES \$

X33789 Add 10017 Janeiro Drive City/St Huntersville NC Zip 28078 \$ 254,500

X46090 Elect Republic Electric Phone 704-634-0180 Lic # 28552 Elect. \$ 16,000

P13870 Add 11122 Downs Road City/St Pineville, NC Zip 28134 Mech. \$ 15,000

Add 9815 Sam Furr Road City/St Huntersville, NC Zip 28078 Pibg. \$ 15,500

Add 4088 Hwy 16 N City/St Denver, NC Zip 28037 Total Const. Cost

Arch./Eng Rettew Engineering Company Phone 864-979-3588 Lic # 11819 \$ 301,000

Add 3616 Brushy Creek Road City/St Greer, SC Zip 29650

OTHER

FT ☐ TOTAL ESTIMATED PROJECT COST FOR FAST TRACK OR MODULAR \$

REMARKS: MB48 Page 259. Home must face McIlwaine Driveway must be on McIlwaine. Max impervious 36%.

FT FEE \$

OTHER FEES \$

TOTAL FEE \$

PLOT PLAN FOR PERMIT APPLICATION ONE/TWO FAMILY, MODULAR, MOBILE HOME OR ZONING USE

LOCATION

STREET # (N,S,E,W) 8703 STREET NAME McIlwaine (AV, RD, ST, etc) Road

PERMIT #

SUITE/UNIT(S):

TAX JURISDICTION:
(Check One)

☐ 0-Mecklenburg
☐ 4-Pineville

☐ 1-Charlotte
☐ 5-Matthews

☐ 2-Davidson
☒ 6-Huntersville

☐ 3-Cornelius
☐ 7-Mint Hill

TAX PARCEL # 0151110

JOB #

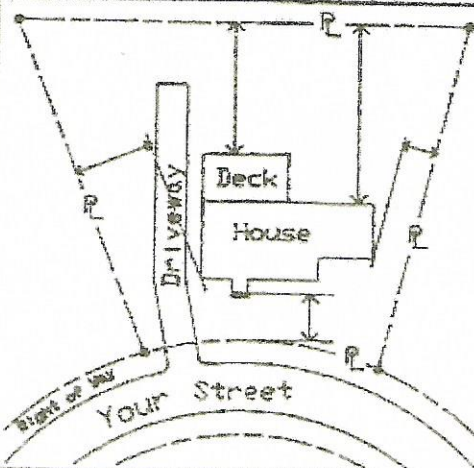
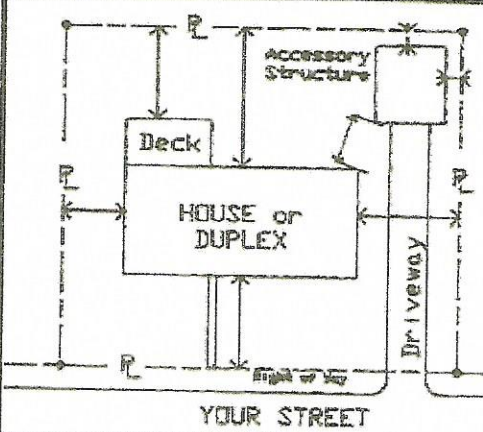
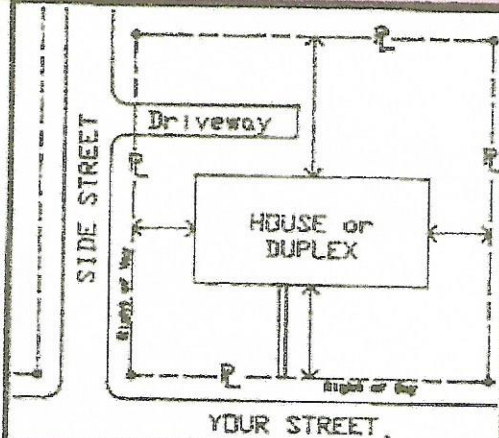
- INSTRUCTIONS -

In the space provided below, draw plot plan as neatly and accurately as possible, from survey if available.

1. Draw street(s) and right-of-way(s).
2. Draw property lines with dimensions.
3. Draw proposed and existing buildings showing any attached porch(es), deck(s), chimney(s), carport(s), or garage(s), etc...
4. Show distances of buildings from property lines or other structures.
5. Separate application and plot plan required for each building.

- PLOT PLAN -

EXAMPLES / PLOT PLAN



ALL EXISTING AND PROPOSED BUILDING(S) ON LOT ARE SHOWN WITH MEASUREMENTS INDICATED

9/14/15 Jeremy Gibson

on 9/14/15





700 North Tryon Street
Charlotte, NC 28202
Fax: 704-336-4391

Notice of Violation

CERTIFIED MAIL

March 30, 2017

Jeremy & Lindsay Gibson
8703 McIlwaine Rd.
Huntersville, NC 28078

ADDRESS:	8703 McIlwaine Rd	ZONING:	GR
MAP NO.:	Huntersville		
PARCEL NO.:	015-111-10	INSPECTION:	3/27/17

The following provision(s) of the Huntersville Zoning Ordinance has/have been violated:

11.2 Enforcement 3. Penalties

The Zoning Administrator may revoke any permit (e.g., building, certificate of occupancy) by written notification to the permit holder when violations of this ordinance have occurred. Permits may be revoked when false statements or misrepresentations were made in securing the permit, work is being or has been done in substantial departure from the approved application or plan, there has been a failure to comply with the requirements of this ordinance, or a permit has been mistakenly issued in violation of this ordinance.

IMMEDIATELY CORRECT THE VIOLATION The property is in violation of the approved building permit. The site plan that is approved indicates the driveway will access McIlwaine Rd. The portion of the drive that accesses from Treasure Cove is not permitted and must be removed. A Notice of Violation has also been sent to the McIlwaine Acres Property Owner's Association relating to this violation. Each day of violation shall be deemed a separate offense, provided that the violation of this Ordinance is not corrected within thirty (10) working days after notice is given. The Department reserves the right to exercise any one of the following **REMEDIES**: issuing a **CITATION**, action for **INJUNCTION**, or **MANDAMUS**, or other appropriate action or proceeding to prevent such violation.



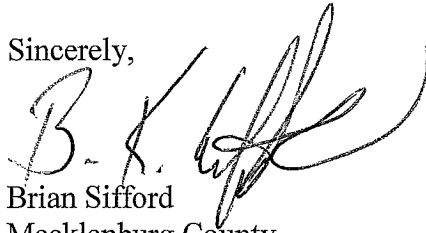
To report pollution or drainage problems call: 311
<http://stormwater.charmeck.org>



The Huntersville Board of Adjustment is empowered to rule on the interpretation of the Zoning Ordinance and to grant variances when a difficulty or hardship exists. The Board will not hear appeals unless applications are properly filed in the Town Manager's office **within thirty (30) working days of the date of this Notice of Violation**. Once the deadline has passed, your right of appeal is forfeited. Forms are available at the Huntersville Town Center.

If you have any questions as to what is required by this Notice, please contact me at 980-721-0924.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Sifford", with a large, sweeping flourish extending to the right.

Brian Sifford
Mecklenburg County
Storm Water Services
Zoning Administrator
980-721-0924

Enclosures

cc: Town of Huntersville Planning Department
Corey Priddy, Don Ceccarelli – Mecklenburg County Permitting and Compliance Program



2145 Suttle Ave
Charlotte, NC 28202
Fax: 704-336-4391

Notice of Violation

CERTIFIED MAIL

March 30, 2017

McIlwaine Acres Property Owner's
Association, Inc.
203 Spicer Lake Dr.
Holly Ridge, NC 28445

McIlwaine Acres Property Owner's
Association, Inc.
12515 Treasure Cove
Huntersville, NC 28078

ADDRESS:	McIlwaine Rd & Treasure Cv	ZONING:	TR
MAP NO.:	Huntersville		
PARCEL NO.:	015-112-76	INSPECTION:	03/27/17

The home located at 8703 McIlwaine Rd has violated the approved Farm House Cluster recorded plat for McIlwaine Acres by paving a portion of the common open space and adding a 7th driveway to a development that is limited to 6 driveways.

The following provision(s) of the Huntersville Zoning Ordinance has/have been violated:

ARTICLE 3.1: ZONING DISTRICTS ESTABLISHED

e) Special Requirements: Farmhouse Cluster Developments

A **Farmhouse Cluster** permits the subdivision of land for up to six house lots accessed by way of a shared private drive when the following conditions have been met:

3) Private drives shall be paved in accordance with the Town of Huntersville construction standards. The private street right-of-way or easement shall be of sufficient width to accommodate drainage/water quality treatment associated with the private drive. Gates are prohibited for farmhouse cluster private drives. Further, the recorded easement shall have at least 30' of frontage on a public street. In the event two farmhouse clusters are established, the private drive serving those farmhouse clusters may be connected provided:

a. The subdivision plat and associated deeds shall clearly state such drive shall remain private and will not be taken over by a public entity in the future unless such street complies with the construction standards of that public entity.

b. Where feasible, there shall be two means of ingress and egress into the combined farmhouse cluster development. Only in the event the original tract does not have the adequate frontage on a public road to obtain two driveway permits would one private drive be allowed to serve the combined farmhouse cluster development;



To report pollution or drainage problems call: 311
<http://stormwater.charmeck.org>



8.1 Street Frontage Required

Any lot on which a building (or buildings) is to be erected or use is to be established shall abut a public street with the following exceptions:

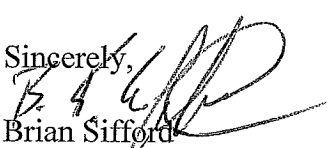
3. Up to six residential lots may be served by a privately maintained easement with a minimum 20-foot right-of-way if designed according to the specifications of the Rural and Transitional Farmhouse Cluster development or the specifications of the Rural and Transitional Conservation Subdivision.

IMMEDIATELY CORRECT THE VIOLATION by removing the concrete that has been poured onto Common Open Space located McIlwaine Acres. A notice of violation has been sent to the property owners at 8703 McIlwaine Rd. for the driveway violation. Each day of violation shall be deemed a separate offense, provided that the violation of this Ordinance is not corrected within ten (10) working days after notice is given. The Department reserves the right to exercise any one of the following **REMEDIES**: issuing a **CITATION**, action for **INJUNCTION**, or **MANDAMUS**, or other appropriate action or proceeding to prevent such violation.

The Huntersville Board of Adjustment is empowered to rule on the interpretation of the Zoning Ordinance and to grant variances when a difficulty or hardship exists. The Board will not hear appeals unless applications are properly filed in the Town Manager's office **within thirty (30) working days of the date of this Notice of Violation**. Once the deadline has passed, your right of appeal is forfeited. Forms are available at the Huntersville Town Hall.

If you have any questions as to what is required by this Notice, please contact me at 980-721-0924.

Sincerely,



Brian Sifford
Mecklenburg County
Storm Water Services
Zoning Administrator
980-721-0924

Enclosures

cc: Town of Huntersville Planning Department
Corey Priddy, Don Ceccarelli – Mecklenburg County Permitting and Compliance Program



Prepared by and return to: Baker & Baker, PLLC
9620 Holly Point Drive Ste 102
Huntersville, NC 28078

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

DECLARATION OF COVENANTS AND RESTRICTIONS FOR
MCLLWAINE ACRES SUBDIVISION

WITNESSETH:

WHEREAS, Jeremy G. Gibson, herein called the "Declarant", is the fee simple owner of certain real property located near the City of Huntersville, Mecklenburg County, North Carolina, and desires to establish on a portion thereof a residential community consisting of single-family residential dwellings to be known as McIlwaine Acres Subdivision, and further desires that said property be used, developed, maintained and managed for the benefit and welfare of owners of property in McIlwaine Acres Subdivision; and

WHEREAS, Declarant desires to insure the attractiveness of McIlwaine Acres Subdivision and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all properties within McIlwaine Acres Subdivision and to provide for the maintenance and upkeep of all common areas in McIlwaine Acres Subdivision. To this end the Declarant desires to subject the real property described herein, together with such additions as may hereafter be made thereto, to the covenants, conditions,

restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant further desires to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering the common area in McIlwaine Acres Subdivision, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the assessments and charges hereinafter created in order to efficiently preserve, protect and enhance the values and amenities in McIlwaine Acres Subdivision to insure the residents' enjoyment of the specific rights, privileges and easements in the common area, and to provide for the maintenance and upkeep of the common area.

NOW, THEREFORE, in consideration of the premises, the Declarant hereby declares that all of the property hereafter described on Exhibit A hereto annexed or that property that hereafter may be made subject to this Declaration of Covenants and Restrictions (hereinafter called the "Restrictions") is and shall be held, transferred, sold, conveyed, and occupied and used subject to the restrictions and matters hereinafter set forth, said Restrictions and matters to be construed as covenants running with the land which shall be binding on all parties having or acquiring any right, title or interest in the described property, or any part thereof, and which shall insure to the benefit of each owner thereof, for and during the time hereinafter specified. Every party hereafter acquiring any Lot, or portion thereof, in the described properties, by acceptance of a deed conveying title thereto or by execution of a contract for the purchase thereof, whether from the Declarant or a subsequent owner of such Lot, shall accept such deed or contract subject to each and all of the covenants, restrictions and agreements contained within these Restrictions, as well as any additions or amendments hereto, and also subject to the jurisdiction, rights and powers of the Declarant, McIlwaine Acres Subdivision Property Owners Association, Inc., and their successors and assigns. Each grantee of any Lot subject to these Restrictions, by accepting the deed or contract thereto, shall for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with the Declarant, the Association, and with grantees and subsequent owners of each of the Lots within the Subdivision to keep, observe, comply with and perform said Restrictions and agreements.

ARTICLE I

DEFINITIONS

1. "Association" shall mean and refer to the McIlwaine Acres Subdivision Property Owners Association, Inc., a non-profit corporation organized under the laws of the State of North Carolina, its successors and assigns.

2. "Builder" shall mean and refer to a licensed contractor who engages in the construction of houses and other Improvements on a Lot.
3. "Common Areas" shall mean and refer to any and all real property owned or held by the Association (if any) and other common areas located within the Development which are designated on the Plat as Common Areas or which are designated in the recorded instruments as Common Areas.
4. "Declarant" shall mean and refer to the Declarant herein, Jeremy G. Gibson, its successors or designated assigns.
5. "Development" or "McIlwaine Acres Subdivision" shall mean the Property described on Exhibit A hereto annexed, and any additional land which is made subject to these Restrictions by amendment or supplemental filing, divided or to be divided into Lots, roads and Common Areas.
6. "Entrance Monument Easements" shall mean and refer to the easements reserved by the Declarant and granted to the Association, across and under certain areas of the Property, for the installation and maintenance of entrance monuments, landscaping and related improvements for the Development.
7. "Lot" shall mean and refer to (a) any plot of land identified as a Lot on Exhibit A attached hereto, or on any deed or contract of conveyance of any portion of the Property from the Declarant; and (b) any numbered plot of land shown on the Plat or any part thereof.
8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot as herein defined, excluding however, those parties having such interest merely as a security interest for the performance of an obligation.
9. "Plat" shall mean the recorded subdivision map of the Property or any portion thereof.
10. "Property" shall mean that real property described on Exhibit A hereto annexed, together with any additional real property which is made subject to these Restrictions.
11. "Private Easement" shall mean the 30' wide right of way and easement for access to the Lots in the Development.
12. "Septic Easement" or "Septic Easements" shall mean and refer to the septic easement or septic easements reserved over the Septic Easement Areas for the benefit of certain Lot Owners.

13. "Septic Easement Areas" shall mean and refer to those certain strips of land described on the plats as "Septic Easement Area" or other similar designation.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located near the Town of Huntersville, Mecklenburg County, North Carolina, and is more particularly described on Exhibit A hereto annexed.
2. Additional Property. The Declarant reserves the absolute right, exercisable in its sole discretion from time to time, to add other property to the Development, and to subject such additional property to the terms of these Restrictions. Such additions shall be made in order to extend the scheme of these Restrictions to other real property that may be developed as part of the Development, and to bring such additional property within the jurisdiction of the Association's expenses. Such additions shall be made by filing of record a Supplemental Declaration of Covenants and Restrictions, which shall identify the real property to be included and shall incorporate these Restrictions by reference.
3. Excluded Property. No property of Declarant shall be subject to these restrictions except that property made subject thereto as herein provided. No property of Declarant shall be subject to any restrictions by implication arising from Declarant imposing these restrictions on the property herein identified.

ARTICLE III

COMMON AREA & EASEMENT AREA PROPERTY RIGHTS

1. Private Areas. Every Common Area and/or Easement Area within the Development is a private area, and neither the execution nor recording of any plat nor any other act of the Declarant or Declarant's successor in title to all or any portion of the Development is, or is intended to be, or shall be construed as, a dedication to the public of any Common Areas, except those that hereafter may be dedicated by a specific written and recorded deed or agreement of dedication.
2. Reservation of Easements. So long as Declarant owns fee simple title to such, the Declarant reserves for itself the right to dedicate or transfer any

streets or other part of the Common Area to any public agency, authority or utility if it so desires. The Declarant also reserves for itself and, subsequent to the conveyance of the Common Area to the Association, for the Association, the right to grant and reserve easements and rights of way through, under, over and across the Development for the installation, maintenance and inspection of the lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone, cable vision and other utilities. This reservation shall not apply to Lots in the Development except in easements within such Lots shown on any recorded plat of the Development or any part hereof or as reserved in Article IX and Article X hereof or as created or reserved by subsequent written agreement.

3. Ownership of Common Areas. The ownership of all Common Areas within the Development shall be in the Declarant until such time as the Declarant may convey such area or areas to the Association or some other party.
4. Usage of Common Areas. Common space designated as .452 acres adjacent to 8623 McIlwaine Road and 12435 Treasure Cove may be used for the storage of recreational equipment, gardening and playing area. Common space designated as 2.338 acres between 12530 and 12506 Treasure Cove may be used for family events and recreation. Common space designated as .435 acres between 12515 and 12533 Treasure Cove may be used for family events, playground, family events and fruit and or but bearing plants and or trees. All plantings in the common space must be approved by the HOA in respect to allergies, or concern for creating a nuisance (with the intent to prevent poison ivy, poison oak, and or sumac, vines, briars or thorny plants, bad odorous plants, etc.). The individual that plants is responsible for the maintenance of such plantings.
5. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the provisions of this Declaration and the Charter and Bylaws of the Association as to the following provisions:
 - a. The right of the Association to limit use of the Common Areas to Owners, their families and guests and to adopt reasonable rules and regulations governing the use of the Common Areas, which may include prohibiting any use which may constitute a nuisance or annoyance to the Owners.
 - b. The right of the Association to suspend the use of the Common Areas (except the roads) by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

- c. The right of the Association to grant an easement in, dedicate or transfer all or any part of the roads or Common Areas to any public agency, authority, or utility for such purposes, subject to such conditions as may be agreed to by the members.

ARTICLE IV

HOMEOWNER'S ASSOCIATION

ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

1. Administration of Common Areas and Easement Areas. The administration of the Common Areas (if any), Private Easement, Entrance Monument Easements, and Septic Easement Areas (to the extent the Lot Owners and Septic Easement Area Owners fail to exercise their responsibility to maintain the same) including maintenance, repair and upkeep of the same, including the acts required by the Declaration, the Bylaws, and Articles of Incorporation of the Association, shall be performed by the Association. Any road which is wholly within a Lot, and which does not serve as access to another Lot, shall not be maintained by the Association.
2. Rules and Regulations. The Association may also adopt and enforce rules and regulations not inconsistent with these Restrictions, the Articles of Incorporation or Bylaws of the Association, for the operation and administration of the Association and its property.
3. Membership. Every Owner, including Declarant, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and shall be transferred automatically when the Owner conveys, devises, gives or otherwise transfer his Lot, even though such conveyance, devise or gift does not make mention of the membership rights of the Association. Such membership is not intended to apply to those persons or entities who hold an interest in any Lot merely as security for the performance of an obligation to pay money, e.g., mortgages or deeds of trust; however, if such secured party should realize upon his security and become the fee owner of a Lot, he and his assigns of the Lot will then be subject to all the requirements and limitations imposed in these Restrictions on owners of Lots within the Development and on members of the Association, including those provisions with respect to payment of annual charges.
4. Voting Rights and Classes of Voting Members. The Association shall have two (2) classes of voting membership:

(a) Class I. The Class I Association Members shall be all Association Members with the exception of Declarant. Class I Association Members shall be entitled to one (1) vote for each Lot owned by such Association Member. When more than one person or entity owns an interest (other than a leasehold or security interest) in any Lot, all such person shall be Members and the voting rights appurtenant to the Lot shall be exercised as they among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Class I Lot.

(b) Class II. The Class II Association Member shall be Declarant. The Class II Association Member shall be entitled to (1) votes for each Lot owned by Declarant.

(c) Termination of Class II Association Membership. Class II Association Membership shall cease and be converted to the Class I Association Membership upon the earliest to occur of (a) the date on which Declarant no longer owns any part of the Property; (b) the date Declarant shall elect, in its sole discretion, that the Class II membership shall cease and be converted to Class I membership (which election may be made by giving written notice at its choice, to the Board; or (c) December 31, 2032.

5. Borrowing. The Association shall possess the right, as provided in the Bylaws, to borrow money for the purpose of improving the Common Areas and to mortgage any portions of the Common Areas necessary to secure loans for such improvements; provided, however, that no such borrowing or mortgaging shall be done without a prior vote of approval by two-thirds (2/3) of the members present in person or by proxy at a meeting duly called for such purpose, in accordance with the Bylaws.
6. Default by Member. During any period in which a member shall be in default in the payment of any annual, special or other assessment levied by the Association, his rights to vote and all other rights and incidents of membership in the Association may be suspended by the Board of Directors until such assessment is paid. A member's voting and use rights may also be suspended for violation of the Association's published rules and regulations; provided, that prior to any suspension for such violation, the Board of Directors (or a committee thereof) shall conduct a hearing regarding the alleged violation after giving the accused member at least ten (10) days prior written notice specifying each alleged violation and setting the time, place and date of the hearing. At the hearing, the accused member shall have the right to call and question his own witnesses as well as any opposing witnesses. A determination of violation as well as the terms of any suspension shall be made only by a majority vote of the Board or its duly appointed committee.

7. Entry by Association. The Association also reserves the right to direct its agents and employees to enter upon the Lot of any Association member for the purpose of repairing, maintaining or restoring the Lot or exteriors of any buildings or improvements thereon, including the removal of unsightly weeds, underbrush, or other items; provided, however, that the Association may exercise such right only when the Lot to be entered has not been maintained in a manner satisfactory to the Declarant, or the Architectural Review Committee established in Article VI, and after approval of such action by two-thirds (2/3) vote of the Association's Board of Directors. No entry may be made under this subsection without first providing the Owner of the Lot to be entered at least ten (10) days prior written notice requesting him to properly repair or maintain his Lot; any entry by the Association for the foregoing purposes shall be only between the hours of 7:00 a.m. and 6:00 p.m. on any day except Sunday. Such entry as herein provided shall not constitute a trespass, and the Association shall bear no liability for performing any acts reasonably necessary or appropriate in connection with the execution of these provisions. All costs of such exterior maintenance shall be added to and become part of the annual assessment applicable to such Lot, and shall constitute a permanent lien upon such Lot until paid. In addition, the Owner shall be personally liable to the Association for all such costs, as provided in Article V.

ARTICLE V

COVENANTS FOR MAINTENANCE ASSESSMENTS

1. Creation of Lien and Personal Obligation for Assessments. The Owner of each Lot in the Development, by acceptance of a deed therefore, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges; and (b) special assessments for capital improvements. Such covenant will be deemed to arise whether or not it is expressly stated in the deed or other conveyance to the Owner. The annual and special assessments, together with interest, costs and reasonable attorney's fees, as well as any charges imposed under Section 7 of Article IV above, shall be a charge on the land and shall constitute a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was Owner of such Lot at the time when the assessment was made and shall not pass to his successors in title (other than as the continuing lien on the land) unless expressly assumed by such successor.

2. Purpose of Assessments. All assessments levied by the Association shall be used to provide funds for such purposes as are specifically set out herein for the benefit of its members. Such purposes may include: maintenance, landscaping and beautification of the Common Areas; construction, repair and replacement of improvements upon the Common Areas, including the maintenance and repair of the streets (but not the installation of the final layer of asphalt which is the Declarant's responsibility) prior to acceptance by a public body; the costs of labor, equipment, materials, management and supervision thereof; the payment of taxes assessed against the Common Areas; the procurement and maintenance of insurance; the employment of attorneys, accountants and other professionals to represent the Association when necessary or useful; and the provision of other services intended to promote the health, safety and welfare of the members.
3. Determination of Assessment Amount. Prior to annual meeting each year the Board of Directors shall prepare a budget for the next fiscal year and based upon such budget, the Board shall fix one assessment amount for all Lots in the Development.
4. Payment of Assessments. All annual and special assessments provided for herein shall commence as to all Lots on the first day of the month following the transfer of title from Declarant to Owner. The annual assessment shall be adjusted according to the number of months remaining in the calendar year. Thereafter, payment of assessments shall be made annually to the Association or its designee, on or before the due date established by the Board; provided, however, that the Board may elect to receive payments on a quarterly basis. The Board of Directors shall fix the amount of the annual assessment at least thirty (30) days before the due date and written notice of the charge so fixed shall be sent to each member. Dues will commence for all lots starting 1-1-2009 and not earlier.
5. Special Assessments. In addition to the annual assessment authorized above, the Association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of acquisition of, and any construction, reconstruction, repair or replacement of, a capital improvement upon Common Areas. Prior to the imposition of any such special assessment, two-thirds (2/3) of the members present in person or by proxy at a meeting called to consider such assessment and at which a quorum was present must vote their assent to its imposition.
6. Notice of Quorum. Except for a vote to amend the Restrictions, which vote shall be conducted pursuant to Section 1 of Article XI below, the

notice and quorum required for any actions of the Association authorized by Article IV and V of these Restrictions or as otherwise in the Articles of Incorporation, the Bylaws or by law provided, shall be as follows:

- a. Written notice of any meeting called for the purpose of taking any action authorized under Articles IV and V of these Restrictions shall be sent to all members not less than ten (10) days nor more than sixty (60) days in advance of the meeting.
 - b. Members may attend and may vote in person or by proxy executed in writing by a member. No proxy shall be valid after eleven (11) months from the date of its execution, or after conveyance by the member of his Lot.
 - c. At any meeting called for the purpose of taking some action by the Association membership the presence in person or by proxy of members entitled to cast fifty percent (50%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and any number of members attending such subsequent meeting, so long as such number represents at least thirty percent (30%) of all the outstanding votes shall constitute a quorum. No such subsequent meeting shall be held more than six (6) months following the scheduled date of the preceding meeting.
7. Exempt Property. Any Lot which the Declarant may hereafter designate for common use as part of the Common Areas, as well as all Lots dedicated to and accepted by a local public authority, shall be exempt from the assessments, both general and special, and charges created herein. In addition, the lien of a mortgage or deed of trust representing a first lien placed upon any Lot for the purpose of purchasing the Lot or for permanent financing and/or constructing a residence or other improvement therein recorded in accordance with the applicable state laws from the date of recordation shall be superior to any and all liens provided for herein. The sale or transfer of any Lot by foreclosure of any first mortgage or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments due subsequent to recordation thereof and prior to such sale or transfer, provided such transfer shall not have been made for the purpose of defeating the lien. All Lots owned by the Declarant shall be exempt from any special assessment not consented to by the Declarant.

8. Continuance of Lien.

- a. The assessments and charges created herein shall constitute a continuing lien upon all Lots in the Development and no Owner may waive or in any way reduce his liability for the assessment by non-use of the Common Areas or abandonment of his Lot.
- b. With the exception of sales pursuant to foreclosure proceedings as described in Section 7 above, no sale or transfer of a Lot shall relieve that Lot from liability for any assessments previously due or from the lien thereof.
- c. In the event that any charges or assessment created in these Restrictions remains unpaid by an Association member for thirty (30) days after the due date announced by the Board of Directors, the Association, through its agents and employees, may record with the Mecklenburg County Clerk of Court a notice of the lien created by this Declaration.

9. Effect of Nonpayment of Assessments: Remedies of the Association. In the event that any assessment or charge created herein remains unpaid for thirty (30) days after the due date announced by the Board of Directors, such unpaid assessment shall bear interest from the date of delinquency, said interest rate shall be ten percent (10%) and may hereafter be changed by the Board of Directors from time to time, but in no event shall it exceed the maximum interest rate allowed by law. The Association, its agent or representative, may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot subject to the unpaid assessment. In either case, interest, costs and reasonable attorney's fees shall be added to the amount of such assessment to the extent allowed by law. Any foreclosure conducted pursuant to this section shall comply fully with the North Carolina procedure for judicial foreclosure.

10. Certificate of Payment. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association certifying that the charges on a specified Lot have been paid or that certain charges against said Lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any charges therein stated to have been paid. For purposes of obtaining a certificate, interested parties should contact the Association at its address.

ARTICLE VI

ARCHITECTURAL CONTROL

Architectural Review Committee. There is hereby established an Architectural Review Committee. Initially the Declarant shall serve as the Architectural Review Committee for undeveloped lots without a dwelling. The Declarant relinquishes control of the review and approval process to the Board of Directors of the Association when a dwelling has had its certificate of occupancy for thirty (30) days. The Board shall determine the number of members of the Architectural Review Committee and shall appoint the members. The Board may decide to also serve as the Architectural Review Committee. The Architectural Guidelines for McIlwaine Acres are attached hereto as Exhibit B and are incorporated herein in full by reference.

ARTICLE VII

RESTRICTIONS AND PROHIBITIONS

1. No Clothes Lines. No clothes lines of any description or type, or the outside drying of clothes shall be allowed on the outside of the dwelling unit on any Lot unless approved by the HOA.
2. Signs. No signs or other advertising devices shall be displayed upon any lot except for temporary signs for the purpose "For Sale", "For Rent", or "Yard/Garage Sale" of the residence, or during the construction period of a dwelling, addition, or other construction requiring a permit. In any case signs may not exceed 2 feet by 2 feet. A lot owner may propose a larger size sign that can be approved for use by the HOA for a set period of time. Signs may be used on or in the common areas for the purposes of an event by may not be posted for longer than three (3) calendar days unless agreed upon by the HOA.
3. Garbage Disposal. Unless otherwise provided herein, all garbage shall be stored within the dwelling or garage, on the side of a dwelling of each Owner or completely screened from view. It is provided, however, that if the public health authorities, or other public agency, shall require a specific method of garbage disposal, nothing herein contained shall prevent the compliance by Owners with public rules and regulations. All garbage and recycle containers shall be removed from the curbside to their customary location on the same day that the garbage and recycled materials are picked up.

4. **Maintenance.** The Owner is responsible for maintaining the exterior of the residential improvements thereon as well as the Lot itself. All Lots, except those owned by Declarant, shall be kept free of all tall grass, undergrowth, dead, diseased or decaying trees, and weeds within the improved areas of the Lot (improved area to include by way of explanation and not limitation: driveways, parking areas, buildings, structures, and fences.). Declarant is to maintain all his lots in a manner to prevent promoting any nuisance of wildlife such as rodents, snakes, etc; thus, Declarant will "maintain" said lots but to a lesser standard than the Owner. All Lots shall be kept free of trash, rubbish and debris, and in a neat and attractive condition understanding the preservation of the rural and wooded nature of the Lots. All dwellings and improvements shall be maintained in a clean, neat and orderly condition and in a good state of maintenance and repair.
5. **Vehicles and Parking.** Owner shall provide on site parking for all domiciled vehicles. No trucks (except private use sports utility vehicles and pick-up trucks), commercial vehicles, boats, 4-wheeler's, motor home, trailers, travel trailers or other recreational vehicle, and no inoperable vehicle, shall be allowed to be stored in a driveway or on a Lot for more than three months in any twelve month period. No consecutive parking periods are allowed.
6. **Nuisance.** No noxious or offensive activity shall be conducted upon a Lot or in any dwelling nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Nuisance as defined by local law or as voted on by majority vote of the HOA. Note: HOA must comply with all legal guidelines.
7. **Animals.** No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any Lot except that horses, ponies, dogs, cats and other common household pets may be kept or maintained provided they are not kept or maintained for commercial purposes. Animals must be properly restrained, kenneled or kept on a Lot and not allowed to wander over the Development. Owners shall ensure that animal wastes are disposed of in a non-offensive manner to minimize pet and pet waste odors. No exotic animals that could be defined as aggressive (tigers, bears, etc) are permissible by owners, inhabitants, or visitor of the property. Any exotic animal must be accepted by vote from the HOA on an annual basis for habitation in the Treasure Cove Community. Any animal as allowed by local law may be owned or maintained on the property or on the lot as long as the animal(s) are not considered a nuisance by sound, odor, law, or majority vote of the HOA officers. Should any animal(s) be in violation of the restrictions then the property owner must remove the animal from the property within ten (10) calendar days or as agreed upon by the HOA, whichever is longer.

8. Temporary Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot unless and until permission for the same has been granted by the HOA. Anything notes as a concern as a temporary structure is to be addressed and voted on by the HOA.
9. Leasing. No dwelling on any Lot may be leased, unless the entire property is leased, except in accordance with rules and regulations promulgated by the Association.
10. Hazardous Activities. Nothing shall be done or kept on any Lot which will increase the rate of insurance on any other Lot without the prior written consent of the Architectural Review Committee. No Owner shall permit anything to be done or kept on his Lot which would result in the cancellation of insurance or which would be in violation of the law.
11. Subdivision of Lots. No lot may be subdivided or its boundary lines changed without the written consent of the HOA. The power to grant waivers and change boundaries shall be the responsibility of the HOA. Homeowners may grant easements without the approval of the HOA. Homeowners may sell a portion of their property to an adjoining neighbor as long as all legal and code requirements are met.
12. Governmental Requirements. Nothing herein contained shall be deemed to constitute a waiver of any governmental requirements applicable to any Lot and all applicable governmental requirements or restrictions relative to the construction of improvements on and/or use and utilization of any Lot shall continue to be applicable and shall be complied with in regard to the Lots.
13. Utilities. All utilities and utility connections shall be located underground, including electrical and telephone cable and wires. Transformers, electric, gas or other meters of any type, or other apparatus shall be located at the rear of the buildings constructed on Lots or, if approved by the Architectural Review Committee in writing, located elsewhere on the Lot provided they are adequately screened as required by the Architectural Review Committee in accordance with the provisions of this Declaration.
14. Residential Restrictions. Each Lot shall be used exclusively for single family, non-transient residential purposes; provided, however, Declarant shall have the right to use the Lots designated from time to time by Declarant for the purpose of construction and operation of construction offices and sales/marketing offices (and for related uses) for the Development. No trade, business or business activity of any kind shall be conducted upon a Lot or any part thereof except by Declarant as described hereinabove or except with the written approval of the Association. Provided, however, the Association may permit a business

or business activity to be conducted on a Lot so long as such business, in the sole discretion of the Association, does not otherwise violate the provisions of this Declaration, does not create a disturbance and does not unduly increase traffic flow or parking congestion in the Development. The Board may issue rules regarding permitted business activities. However, no sign, advertisement or icon may be placed on any Lot designating or referencing a business or business activity is occurring on any Lot.

ARTICLE VIII

EASEMENTS

1. The Declarant reserves for itself, its successors and assigns, for purposes incident to its development of the real property subject to these Restriction, the following easements and/or rights of way:
 - a. A ten (10) foot strip along the rear and a five (5) foot strip along the front line and side lines of each Lot for the purpose of installing, operating and maintaining utility lines and mains, radio and television transmission cables and surface water drainage ditches or lines; and
 - b. The right to trim, cut and remove any tree and brush and to locate guy wires and braces within the road rights of way, and rear and side line easement areas for the installation, operation, and maintenance, together with the right to install, operate and maintain, gas, water and sewer mains and other services for the convenience of the property Owners.
2. Declarant reserves unto itself, its successors and assigns, and for the benefit of all Lot Owners in the Development, the street and road rights of way shown on the plats now or hereafter recorded of the Development for construction, repair and maintenance of utility lines and mains and for drainage, and no Owner may interfere with such rights of way or such uses therein.
3. On each Lot the rights of way and the easement areas reserved by the Declarant shall be maintained continuously by the Lot Owner; but no structures, plantings or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with the installation or maintenance of the road, or utilities, which may change the direction or flow of drainage channels in the easements, which may obstruct or retard the flow of water through drainage channels in the easements, or interfere with established slope ratios or create erosion or

sliding problems, provided, however, that the existing location of a drainage channel may be relocated, as long as such relocation does not cause an encroachment on any other Lot in the Development. Improvements within such areas shall also be maintained by the respective Lot Owner except for those for which a public authority or utility is responsible.

ARTICLE IX

PRIVATE ROAD & COMMON EASEMENT MAINTENANCE

1. The Private Easement shall be a right of way and easement which is appurtenant to and runs with the title to each Lot. The roadway on and the Private Easement shall be maintained by the Association. Maintenance assessments for the road shall be included in the dues payable by the Lot owners to the Association. However, the Association may have special assessments for the maintenance, improvement, and re-building of the road, any and all such maintenance assessments shall be divided equally between each Lot. No Lot shall pay a higher assessment for road maintenance than any other Lot.
2. The roadway and the Private Easement shall be maintained in good condition and repair.
3. The Private Easement may be used for the installation of utilities, septic lines going from Lots to Septic Easements, and for other like purposes.
4. The Private Easement shall not be used for the following purposes: no gates, speed bumps, archways, or other structures that would limit the use of the roadway.

ARTICLE X

SEWER EASEMENTS & SEWER EASEMENT AREAS

Sewage Disposal/Septic Easements. Every Lot shall either be served by a septic system for the disposal of sewage or connected to a private or public sewage disposal system. Declarant makes no representations regarding the future availability of municipal sewer service. All septic systems or other private sewage disposal systems shall be approved by, and constructed and maintained in accordance with all the regulations and requirements of the Association, and all governmental authorities and regulatory agencies having jurisdiction. All Owners, by purchasing property subject to this Declaration, acknowledge that

any governmental approval or permit allowing for the construction and operation of a septic system or other private sewage disposal system may be limited in duration in accordance with the terms thereof, and neither the Declarant, nor the Association, nor the officers, member, employees or directors thereof shall have any liability arising directly or indirectly out of the inability of an Owner to obtain any such permit or approval (including an extension or continuation) following the initial expiration thereof.

Non-exclusive easements for the purposes of providing septic service and for use as septic drainage fields (the "Septic Easements") are hereby reserved by Declarant and granted, over, across and under the Septic Easement Areas to and for the benefit of the Association and the Septic Lot Owners, as more specifically provided herein. Each of the Septic Easements shall be an appurtenance to and run with the title to the Lot it services and for which it is reserved. Any deed, deed of trust, mortgage, transfer or other conveyance of any said Lots shall also transfer or convey the Septic Easement appurtenant to such Lot, even if not expressly included therein. Each Lot which beneficially owns a Septic Easement shall have the responsibility to construct, install, excavate, dig, build, maintain, operate, remove and reinstall a septic system and related lines, equipment and apparatus in and upon the Septic Easement Area. The beneficial owner of the Septic Easement shall also have the right to clear trees, brush and other plants to assure the proper working order of the septic facility. The owner who owns a Lot subject to a Septic Easement shall have the right to use that portion of their property in common with the owner of the Septic Easement, however, the owners use cannot interfere with the Septic Easement Owner's right to use, install and maintain the septic facility.

Declarant hereby reserves unto itself, its successors and assigns, and grants to the Association, a non-exclusive easement burdening each Lot to which a Septic Easement is appurtenant for the purpose of connecting any residence upon such Lot to any public or private sewer line providing service accessible to such Lot, including access across such Lot and the right to install pipes and apparatus as may be necessary to connect any such residence(s) to such sewer line (the "Sewer Connection Easement"). By reserving the Sewer Connection Easement, Declarant has not obligated itself, its successor or assigns, or the Association, to connect any public or private sewer line to the above-described Lots and the exercise of such rights under the Sewer Connection Easement shall be at the sole discretion of the Declarant, its successors or assigns, or the Association, as the case may be.

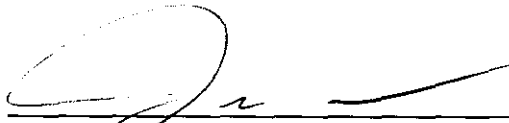
ARTICLE XI

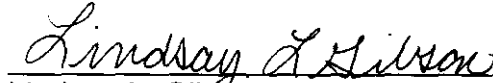
GENERAL PROVISIONS

1. Term. These Restrictions shall affect and run with the land and shall exist and be binding upon all parties and all persons claiming under them until December 31, 2029. By accepting a deed to a Lot subject to these Restriction, the Lot Owners agree that after July 1, 2029, these Restrictions shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by the members holding more than sixty percent (60%) of the voting rights in the Association has been recorded, agreeing to change the covenants in whole or in part. Notwithstanding any provision hereof to the contrary, no amendment to these restrictions shall be made, nor shall any attempted amendment be effective, without the written consent (either on the face of the amendment or in a separate recorded instrument) of (i) Declarant, if at the time of such proposed amendment the Declarant is the owner of any portion of the Property, and/or (ii) any of the following holders of an ownership interest in Declarant, if at the time of such proposed amendment such person is the owner of a Lot or other portion of the Property: John B Robbins or Holly H. Robbins.
2. Mutuality of Benefit and Obligation. The Restrictions and agreements set forth herein are made for the mutual and reciprocal benefit of each and every Lot in the Development and are intended to create mutual, equitable servitudes upon each Lot in favor of each and all of the other Lots therein; to create a privity of contract and estate between the grantees of said Lots, their heirs, successors and assigns, and to the Association, and shall as to the Owner of each Lot, his heirs, successors and assigns, operate as covenants running with the land for the benefit of each and all other Lots in the Development and their respective Owners. Declarant, so long as it shall own a Lot or any Common Area in its own name, any Lot Owner or the Association shall have the right to enforce these Restrictions.
3. Fines. In addition to any other rights and remedies available for the enforcement of the provisions of this Article XI, the Association may after delivery of notice meeting the requirements set out herein to the Owner of the Lot on which the violation is occurring impose a fine against such Owner for each day the violation continues. The fine shall not exceed Ten Dollars (\$10.00) per day. Such fine shall constitute a lien against such Lot in the same manner as an assessment under Article V. The notice to the Lot Owner shall state the Owner's name, the Lot number, the specific violation which is occurring, a reasonable time period for correction of such violation before the imposition of a fine (which shall be determined based upon the nature of the violation, but shall be no less that three (3) days), the amount of the fine and the fact that it will be imposed daily until the violation is cured. Delivery of notice shall be sufficient if either mailed by registered or certified mail, return receipt requested or posted in a prominent location on the Lot.

4. Severability. Every part of these Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability, or "running" quality of any other one of the Restrictions.
5. Captions. The captions preceding the various paragraphs and subparagraphs of these Restrictions are for convenience or reference only, and none of them shall be used as an aid to construction of any provision of these Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

IN WITNESS WHEREOF, Declarant has caused this instrument to be duly executed, this 20 day of December, 20 07.


_____(SEAL)
Jeremy G. Gibson


_____(SEAL)
Lindsay L. Gibson

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Marcia K. Long, a Notary Public of ^{Cladell} the County and State aforesaid, certify that Jeremy G. Gibson and Lindsay L. Gibson, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this 20th day of December, 20 07.

Notary Public Marcia K. Long
My commission expires: 11-6-08

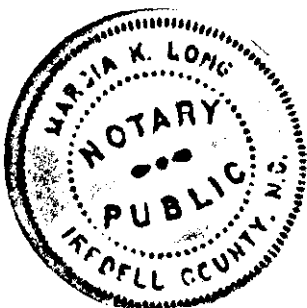


EXHIBIT A

Being all of the property, including number Lots, easement areas, common areas, and streets, shown on a map of McIlwaine Acres Subdivision recorded in Map Book 48 at Page 886 Mecklenburg County Public Registry.

EXHIBIT B

ARCHITECTURAL GUIDELINES

MCILWAINE ACRES

RECITAL OF INTENT: ARCHITECTURAL STYLES

It is the intent of these guidelines to create a community of custom homes with well planned architectural details.

The goal of these guidelines is to encourage a community of individual outstanding architectural statements that when viewed together produce an equally outstanding community environment. The architectural designs should be customized for each Lot to maximize the natural features that exist.

ARTICLE I

PRINCIPLES OF GOOD DESIGN

It is desirable for the homes of our community to exhibit the individuality of their owners as well as adhere to the guidelines of their selected architectural style. However, it is also important that they observe basic design principles inherent in good architecture. Following are some of the questions that the property owner and design team should consider when developing the design for the homesite:

- Is the residence located on the site in a sensitive manner with minimum disruption to the natural topography, vegetation, and unique site features?
- Is there a consistency in the site planning, architecture and landscaping?
- Are the specific features of the architectural style well developed and carefully detailed? Have the features been researched to resemble a certain degree of authenticity?
- Is there an intelligent selection of details related to a well designed floor plan?
- Is there a consistent scale used throughout the design of the residence? Each element should be designed in proportion to the other design elements.
- Will the various building materials allow for a pleasing and harmonious exterior appearance to the residence? Are the building materials used logically?
- Are the colors appropriate and used with restraint?

ARTICLE II

ARCHITECTURAL REVIEW BACKGROUND

Great care has been taken in the planning, design and construction phases to insure aesthetic harmony within McIlwaine Acres. To this end it is of the utmost importance that this special character not be compromised by housing designs which are improperly conceived, unresolved or poorly executed.

For this reason, an Architectural Review Committee (the "Committee") will review all construction, designs and plans for:

- consideration of primary site design issues,
- sensitivity to the special landscape potential of the area,
- excellence in traditional architectural design.

The Architectural Guidelines have been established to provide property owners, architects and contractors with a set of parameters for the preparation of their drawings and specifications.

By encouraging quality and attention to detail throughout the community, the aesthetic harmony, natural tranquility and overall property values at McIlwaine Acres will be enhanced and preserved through the Architectural Review Committee and Architectural Guidelines.

The Architectural Review Committee must approve plans for any building, residence, or other structure, including but not limited to: fences, pools, walls, landscaping, ponds, water features, copies of trees and other improvements prior to construction or installation.

ARTICLE III

APPLICATION AND REVIEW PROCESS

1. Municipal Jurisdiction. The City of Huntersville and Mecklenburg County and its planning department have jurisdiction over the community at McIlwaine Acres. They should be contacted at the beginning of the planning and design process to ensure compliance with their regulations. It should not be assumed, however, that compliance with the City of Huntersville standards is acceptable to the Architectural Review Committee. Certain City of Huntersville and Mecklenburg County requirements may be enhanced to create a better overall community appearance.

2. Procedure/Approval of Plans. No Improvements of any kind or nature shall be erected, remodeled or placed on any Lot until all plans and specifications thereof and a site plan have been submitted to and approved in writing by the Architectural Review Committee, as to:

- a. location with respect to topography and finished grade elevation and effect of location and use on neighboring Lot;
- b. quality of workmanship and materials, adequacy of Lot dimensions and alignment of main elevations with respect to nearby streets;
- c. conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping; and
- d. other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within bulletins promulgated by the Architectural Review Committee, or matters in which the Architectural Review Committee has been vested with the authority to render a final interpretation and decision.

Two sets of identical plans must be submitted for each review. Final plans and specifications for all Improvements proposed to be constructed on a Lot shall be submitted in duplicate to the Architectural Review Committee for approval or disapproval. The Architectural Review Committee is authorized to request the submission of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the Architectural Review Committee, one (1) complete set of plans and specifications will be marked "Approved" and returned to the Owner or his designated representative and the remaining set will be filed in the office of the Architectural Review Committee. If found not to be in compliance with these covenants, conditions and restrictions or if found to be otherwise unacceptable to the Architectural Review Committee pursuant hereto, one (1) set of plans and specifications shall be returned to the Owner marked "Disapproved," accompanied by the reasonable statement of items found not to be in compliance with these covenants, conditions and restrictions or otherwise being so unacceptable. Owners thereafter shall resubmit, in accordance with the provisions of this Section 2, such plans and specifications setting forth the required changes to the Architectural Review Committee for its approval.

Any modification or change to the Approved set of plans and specifications must again be submitted in duplicate to the Architectural Review Committee for its inspection and approval.

The Architectural Review Committee's approval or disapproval, as required herein, shall be in writing. Once the Architectural Review Committee has

approved the plans and specifications for the Improvements, the construction of such Improvements must be promptly commenced and diligently pursued to completion.

The Architectural review Committee may also approve plans as "Approved as Noted". This approval, if properly followed as Noted on the plans, shall be deemed "Approved" once the notations have been followed.

3. Plan Specifications. The final plans and specifications as referred to in the preceding paragraph shall mean the following:

- a. Final site plan which shows topography at two foot (2') contours (at a scale of one inch (1") equals twenty feet (20') or at a larger scale); and shall include the following information:
 - (1) Precise dimensioned location of the dwelling and garage, and all other buildings showing orientation on the Lot, and indicating all doors at grade and foundation elevations at all corners.
 - (2) Location of driveways, walkways, etc.
 - (3) Location of all trees over eight inches (8") caliper at three feet (3') above grade and groups of trees with those to be retained so marked in the area to be improved (including by way of explanation and not limitation: driveways, landscaping, buildings, outbuildings).
 - (4) Grading plan showing existing and new contours and proposed pattern of surface drainage.
 - (5) Location of mechanical equipment and other utility related apparatus.
- b. Final floor plans for all structures, at a scale of one-fourth inch (1/4") equal one foot (1'); and shall include the following information:
 - (1) Square footage calculated per floor.
 - (2) All floor plans with accurate dimensions and orientation including but not to basement, first floor, upper floors, decks, patios, stoops, chimneys, etc.

- c. Final elevations, showing all sides, and accurate grade at a scale of one fourth inch (1/4') equals one foot (1');
 - d. All elevations are to articulate material, color, finish, window types, trims and fascia details. The proposed finish grades against the elevations must be indicated, along with A/C condensing and trash screens, decks, and strains.
 - e. The elevations should indicate maximum height from first floor finished grade to the uppermost roof peak.
 - f. Roof plan (bird's eye view), including roof areas, slopes, materials, colors, roof vents, projections, skylights, solar collectors and any other structures protruding from the roof's surface.
 - g. All exterior materials selections and color selections, construction materials, and sample boards showing actual samples of major materials, finishes and colors.
 - h. Landscape plan at two (2) foot interval showing the location of all proposed new landscaping, describing type and size of planting; and the design, location and materials of outdoor living spaces such as patios, fences, walls, screens, decks, paving materials, swimming pools, tennis courts and their shelters, etc.
4. Preliminary Review Option. In addition to the procedure described in this section, and in recognition of the cost involved in producing the final plans and specifications, the Owner may request a preliminary review of the design of the Improvements upon the submission of the following:
- a. Schematic site plan showing proposed location of dwelling, and other Improvements including garage, barns, fences, etc.;
 - b. Schematic floor plans;
 - c. All elevations and accurate grade;

The Architectural Review Committee shall be responsive to technological advances and general changes in architectural design and materials and related conditions in future years and use its best efforts to balance the equities between matters of taste and design (on the one hand) and use of private property (on the

other hand). The Architectural Review Committee may refuse approval of plans, locations, exterior color or finish or specifications for any reason, including purely aesthetic reasons, which in the sole discretion of the Architectural Review Committee shall be deemed sufficient.

ARTICLE IV

CONSTRUCTION PROCESS

After final plan approval, the Lot owner or agent shall request the Architectural Review Committee to make a site inspection prior to Lot clearing and construction. The owner or agent should clearly stake the proposed house, and any other structures, and property lines, drive, patio, walk and if applicable, pool location. Staking shall be with a continuous ribbon encircling the area to be cleared and any additional trees to be cleared located outside the encircled area shall be ribboned individually or in groups. The purpose of the site inspection is to insure compliance with the approved plans and to prevent any unnecessary damage to specimen trees, public utilities and other unique site features. Authorization to proceed with clearing and construction will be issued immediately after the inspection.

1. Procedure/Review of Construction. During the Construction Activity and again upon completion of approved construction, the Architectural Review Committee shall inspect the construction to insure that the approved plans and samples are complied with by the Owner. No structure may be occupied or used until the issuance by the Architectural Review Committee of a letter of compliance. The letter of compliance shall be issued by the Architectural Review Committee without fee. All fees previously payable to the Architectural Review Committee shall be paid in full before the letter of compliance shall be issued.
2. Jurisdiction. The Architectural Review Committee is authorized and empowered to consider and review any and all aspects of the construction of any improvements on a Lot which may, in the reasonable opinion of the Architectural Review Committee, adversely affect the living enjoyment of one or more Owners or the general value of the Property or the Development.
3. Enforcement.
 - a. The Association shall have the specific right (but not obligation) to enforce the provisions contained in this Article IV of the Architectural Guidelines and/or to prevent any violations of the provisions contained in the Declaration or this Article by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained in this Article or the Declaration.

- b. As to nonconforming or unapproved improvements, the Association may require any Owner to restore such Owner's Improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and remove of any unapproved improvements) if such Improvements were commenced or constructed in violation of this Article. In addition, the Association may, but has no obligation to do so, cause such restoration, demolition and removal and levy the amount of the cost thereof as a special individual assessment against the Lot upon which such Improvements were commenced or constructed.

ARTICLE V

FINAL INSPECTION

Immediately upon completion of the construction (excluding landscaping) the Architectural Review Committee shall be notified in order to make a final inspection to confirm compliance of all approved plans and inspect the condition of the public utilities. The owner will receive a letter listing any items that need attention to bring the home into compliance with the approved plans. If these items are not corrected within (sixty) 60 days, the construction deposit will be forfeited. The owner will remain obligated to correct the improvements, site work, landscaping or other items in order to conform to the approved plans (as set forth in greater detail herein below in Article VI, Section 8 and 9).

ARTICLE VI

SPECIFIC REQUIREMENTS, DISCLAIMERS, AND OTHER CONSIDERATIONS

1. No approval of plans, materials, location or specifications and no publication of architectural standards or recommendations shall be construed as representing or implying that any such plans, specifications or standards will, if followed, result in a properly constructed residence. Such approvals and standards shall in no event be construed as representing, warranting or guaranteeing that any residence or improvement thereto will be built in a good and workmanlike manner or that the plans and specifications with respect thereto shall result in a residence of any particular quality, or that the plans and specifications comply with building codes or zoning ordinances. Inspections are not made to determine quality or suitability of construction. Neither the Declarant nor the Committee shall be responsible or liable for any defects in any plans or specifications submitted, revised or approved under the restrictive covenants or under the architectural review board procedures, nor for any inspections made during the construction process, nor shall the developer or the Committee have any responsibility for defects in construction pursuant to any such plans and specification. Each property owner shall have sole responsibility for compliance with the plans as approved by the Committee and agrees to hold the

developer and the Committee harmless from any failure thereof caused by the property owners, architect or builder.

2. Failure of the Architectural Review Committee to Act. If the Architectural Review Committee fails to approve or disapprove any plans and specifications and other submittals which conform (and which relate to Improvements which will conform) with the requirements hereof or to reject them as being inadequate or unacceptable within twenty (20) days after receipt thereof, and provided such submittal was a full and complete submittal of all items that were to have been submitted to the Architectural Review Committee, and provided the Architectural Review Committee shall again fail to approve or disapprove of such plans, specifications and other submittals within fifteen (15) days after additional written request to act on such items is delivered to the Architectural Review Committee following the passage of such first above described twenty (20) day period, it shall be conclusively presumed that the Architectural Review Committee has approved such conforming plans and specifications and other submittals, except that the Architectural Review Committee has no right or power, either by action or failure to act, to waive or grant any variances relating to any mandatory requirements specified in this Declaration, except where variances shall be expressly permitted herein. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Architectural Review Committee may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject the balance.
3. Limitation of Liability. Neither the Architectural Review Committee nor the members thereof nor the Association nor Declarant shall be liable in damages or otherwise to any Lot owner or any other person by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with any submittal for approval or disapproval or failure to approve or disapprove any plans or specifications, Every person who submits plans or specifications, and every Lot owner agrees that he will not bring any action or suit against Declarant, the Association, the Architectural Review Committee, the Board of Directors, or the officers, directors, members, employees and agents of any of them, to recover any such damages and hereby releases, remises and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

In the event that Declarant is or becomes liable to any person with respect to any claim, demand or obligation arising under these Restrictions or arising as a result of the development of the Property, the sale of Lots, the use or conveyance of the Common Areas or any other cause relating to the Property, the claimant shall look solely to the assets of Declarant to satisfy such claim.

4. Design Guidelines. The Architectural Review Committee may, from time to time, publish and promulgate Design Guidelines (herein so called), and such Design Guidelines shall be explanatory and illustrative of the general intent of the development of the Property and are intended as a guide to assist the Architectural Review Committee in reviewing plans and specifications. In any event, such Design Guidelines shall not be binding upon the Architectural Review Committee and shall not constitute the basis for approval or disapproval of plans, specifications and other materials submitted to the Architectural Review Committee for approval.
5. Variances. Upon submission of a written request for same, the Architectural Review Committee may, from time to time, in its sole discretion, permit Owners to construct, erect or install Improvements which are in variance with the architectural standards or similar provisions of this Declaration or the Master Declaration or Supplemental Declarations which may be promulgated in the future. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community and shall not materially change the scheme of restrictions herein set forth. Written request for variances shall be deemed to be disapproved in the event the Architectural Review Committee has not expressly and in writing, approved such request within thirty (30) days of the submission of such requests. No member of the Architectural Review Committee shall be liable to any Owner for any claims, causes of action or damages arising out of the grant or denial of any variance to any Owner. Each request for a variance submittal hereunder shall be reviewed separately and apart from other such request and the grant of a variance to any Owner shall not constitute a waiver of the Architectural Review Committee's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder, against any other Owner.
6. Review and Inspection Fee. At the time of the submission of the Final Plans and Specifications, the Owners shall submit an initial review fee of \$500.00 for expenses incurred in reviewing the Final Plans and Construction Activity and performing up to four site inspections (which shall include foundation staking and tree removal, rough framing including all roof rafters, exterior trim completion, and final) by a representative of the Architectural Review Committee during the construction of the Improvements and the installation of the landscaping. Following the initial review and disapproval (if applicable) a review fee of \$50.00 will be charged for each resubmission of plans and specifications to the Architectural Review Committee. If the Owner chooses a preliminary review of the proposed plans, there shall be no fee for the initial preliminary plan review, but a review fee of \$100.00 shall be charged for each preliminary plan submitted after the initial plan. If the Owner fails to construct the Improvements or install the landscaping in accordance with the approved plans, or if changes to the plans are approved during the construction process, and as a result of either such events a representative of the Architectural Review Committee deems it necessary to make more than four site inspections, the Owner shall pay to the Architectural Review

Committee a site inspection fee in the amount of \$100.00 for each addition site inspection.

The address of the Architectural Review Committee shall be the principal place of business of the McIlwaine Acres Home Owners Association from time to time designated in writing to its Board of Directors. Such address shall be the place of the submission of any plans and specifications and the place where the current rules and regulations, if any, of the Architectural Review Committee shall be kept. Any additional Improvements will be reviewed as stipulated herein. The fee for such review will be determined by the Architectural Review Committee.

7. No Liability for Design or Materials Defect. Plans and specifications, and materials, are not approved for engineering or structural design or for quality or suitability and by approving such plans and specification neither Declarant, the Architectural Review Committee, the members thereof, nor the Association assumes liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications, or materials.
8. Construction Deposit. Owner shall deposit with an attorney selected by Declarant or, if Declarant is not then performing the architectural review function, the Architectural Review Committee, prior to the commencement of any construction activity on the Lot, including clearing and grading, a Construction Deposit in the amount of One Thousand Dollars (\$1,000.00). The Construction Deposit shall be held in the attorney's trust account and shall not bear interest. The attorney shall make payments of the Construction Deposit based solely upon the instructions of the Declarant, or the Architectural Review Committee. If Owner or his Builder fails to correct a violation of these Restrictions within five (5) days after receipt of written notice thereof, or if such violation cannot reasonably be corrected in such time period, if Owner has not commenced the correction of such violation within five (5) days after receipt of such notice and does not proceed thereafter diligently and in good faith to correct such violation, Declarant or the Architectural Review Committee without further notice may correct such violation and charge the cost thereof to Owner. Declarant or the Architectural Review Committee, its employees, agents or contractors, may enter upon the Lot, if necessary, in order to correct such violation, without such entry constituting a trespass; nor such Declarant or the Architectural Review Committee, its employees, agents or contractors be liable for any damage caused by such entry or the correction of such violation unless such damage was caused by their negligence or willful act. If Owner fails to pay to Declarant or the Architectural Review Committee the costs incurred in the correction of such violation within thirty (30) days after receipt of notice thereof by Owner, the amount thereof may be paid out of the Construction Deposit. Owner shall promptly deposit with Declarant or the Architectural Review Committee such additional amounts as are necessary to replace any monies paid out of the Construction Deposit pursuant to the provisions hereof. No construction activity of any type may be conducted on a Lot by or for the Owner until any required funds are added to the Construction Deposit. If the cost paid by Declarant

or the Architectural Review Committee to correct any violation or a series of violations shall exceed the amount of the Construction Deposit, including any additional deposits made by Owner, the amount of such excess, if not paid within thirty (30) days after it is due, shall constitute a lien upon the Lot, enforceable in the same manner as set out in Article V, Section 8 for assessments of the Restrictions. The construction deposit shall not be returned until a certificate of occupancy is issued, the requirements of subsection 9 directly herein below have been met and all outstanding Architectural Review Committee violations have been corrected. Once the conditions have been met the Construction Deposit will be returned in a reasonable time.

9. Landscaping Deposit. There shall not be a separate landscaping deposit: the Construction Deposit shall be held even after issuance of a certificate of occupancy until the landscaping has been completed according to, and in conformity with, the approved landscape plan. In the event the Owner fails to install the landscaping in accordance with the approved plan, the Architectural Review Committee may install all or any portion of the landscaping shown on the approved plan and pay the cost thereof from the Construction Deposit. The Owner shall be responsible for any expenses incurred by the Architectural Review Committee in the installation of the landscaping material in excess of the Construction Deposit.

ARTICLE VII

CONSTRUCTION STANDARDS

1. Approval Required. Notwithstanding anything contained within the Declaration to the contrary, no Owner shall undertake, or permit to be undertaken, on any Lot prior to approval in writing by the Architectural Review Committee any of the following:
 - a. the construction of any Improvement(s), which shall include in addition to the actual erection of a dwelling and its appurtenances, clearing, excavation, grading or other site work;
 - b. any modification, change or alteration of any Lot or dwelling or Improvement thereon, whether functional or decorative.

The procedure to be followed by an Owner in obtaining approval from the Architectural Review Committee is set forth in Article III hereinabove.

2. Construction Requirements. Homes must be substantially built of brick, stucco, clapboard (including shake or shingles), aluminum siding, vinyl siding, material of cementitious make up, or stone construction built with roof lines consistent with the Design Guidelines as may be established by the Architectural Review Committee from time to time. Unique designs such as log will be considered and accepted if otherwise conforming to quality and appealing design concepts. No pressed board or other man-made material, (such as Masonite) will be allowed. Homes shall be

constructed on a crawl space or slab on grade. Roofing material shall be approved colors of asphalt shingles (at least 280 lb. weight of composition type), cedar shakes, tile, slate, copper or similar permanent roofing material approved by the Architectural Review Committee. The Architectural Review Committee may approve other materials which in its sole discretion provide similar high quality aesthetic appeal and long term value both in utility and appearance. The Architectural Review Committee may refuse approval of plans, location, exterior color or finish or specifications for any reason, including purely aesthetic reasons, which in the sole discretion of the Architectural Review Committee shall be deemed sufficient.

3. Improvements. The term "Improvement(s)" as used throughout this Declaration shall mean and include all building, storage sheds or areas, roofed structures, parking areas, loading areas, trackage, fences, walls, hedges, mass plantings, poles, driveways, ponds, lakes, changes in grade or slope, site preparation, swimming pools, tennis courts, tree houses, children's playhouses, basketball goals, signs, exterior illumination, exterior antennae, earth satellite stations, microwave dishes, solar panels or other similar receiving, transmission or energy generating equipment, changes in any exterior color or shape. The definition of Improvements(s) does not include garden shrub or tree replacement or any other replacement or repair of any magnitude which ordinarily would be expensed in accounting practice and which does not change exterior colors or exterior appearances. The definition of Improvements does include both original Improvements and all later changes, repairs to Improvements and any additional Improvements.
4. Floor Areas, Stories. Dwellings must meet each of the following: (a) Minimum heated square footage of main or ground floor of any principal residence is 1600 square feet, not including any basement or garage size; (b) Minimum total heated square footage of 2100 square feet with at least 500 additional square feet of space available and prepped for future upfit (prepped by means of electrical and mechanical trades) or a total of 2600 heated square feet with at least 1600 square feet on the first floor. The Architectural Review Committee may allow at its discretion a minimum variance from this listed square footage; (c) Minimum of a two car attached garage; and (d) No residence may exceed three stories above the ground without acceptance by the HOA prior to construction.
5. Building Setback Lines. Setbacks are as required by Mecklenburg County zoning ordinance and other municipalities having zoning control over the property. No dwelling shall be within 5 feet of any property line excepting only fences.
6. New Construction. Construction of new stick built buildings only shall be permitted on a Lot, it being the intent of this covenant to prohibit the moving of any existing building onto a Lot and remodeling or converting the same into a dwelling.

7. Diligent Construction. All construction, landscaping or other work which has been commenced on any Lot located within the Property must be continued with reasonable diligence to completion and no partially completed houses or other Improvements shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. Maximum construction duration shall be no longer than eighteen (18) consecutive months from the placement of footings unless approved by the Architectural Review Committee. Prior to commencement of construction on any Lot, the Owner shall provide a gravel driveway with a minimum base of five inches (5") of #5 crushed stone from the paved street to the site of the actual house construction area. No construction materials of any kind may be stored within the road right of way. Any damage to the street, curb or to any part of any Common Area or utility system caused by the Owner or Owner's builder shall be repaired by such responsible Owner. The Owner of each Lot shall at all times keep adjacent public and private areas free from any dirt, mud, garbage, trash or other debris which is occasioned by construction of Improvements. Declarant may provide for the cleaning of public and private areas due to the activities of the Owner or Owner's builder and may assess the Owner a reasonable charge not to exceed the actual cost for such cleaning. Every Builder constructing Improvements within the Lot, consistent with standard construction practices, shall keep all portions of the Lot free of unsightly construction debris and shall at all times during construction either provide dumpsters for the containment of garbage, trash or other debris which is occasioned by construction of Improvements or take other measures consistent with standard construction practices necessary to keep the Lot free of garbage, trash or other debris which is occasioned by the construction of Owner's Improvements. All Owners and Owners' Builders shall comply with such rules of the Declarant or the Association as are from time to time adopted with respect to construction of Improvements. All Owners shall be responsible to insure that any Builder employed by it complies with all Builders' Rules adopted by the Declarant or the Association from time to time. The initial Builder's Rules of the Association are attached hereto as EXHIBIT C GENERAL RULES FOR CONTRACTORS AND SERVICE PEOPLE (and are incorporated herein by reference).
8. Location of Improvements. In order to assure that buildings and other Improvements will be located and staggered so that the maximum view, privacy, sunlight and breeze will be available to each building or structure within the confines of each Lot, and to assure that structures will be located with regard to the topography of each Lot, taking into consideration the location of large trees and other aesthetic and environmental considerations, the Architectural Review Committee shall have the right to control absolutely, (subject to the provisions of zoning ordinances of the appropriate governmental authorities), the precise site and location of any building or Improvement on any Lot for reasons which may in the sole and uncontrolled discretion and judgment of the Architectural Review Committee be sufficient. Such location shall be determined only after reasonable opportunity is afforded the Owner of the Lot in question to recommend a specific site. The provisions of this Section shall in no way be construed as a representation,

covenant or warranty that the view, privacy, sunlight or breeze available to a building or structure on a given Lot shall not be affected by the location of a building or structure on an adjacent Lot.

9. Landscaping; Driveways.

- a. General. Except for the building pad, driveways, and other improvements on each Lot, the surface of each Lot shall be of grass or other live foliage and/or ground cover and such grass, foliage and ground cover shall be neatly maintained at all times.
- b. Statement of Purpose. The community of McIlwaine Acres has been planned utilizing the natural elements as much as possible. Various hardwoods, dogwoods and pine trees are quite prolific within the community, and it is the intent of the Architectural Review Committee to maintain this landscape integrity. The determining factor of good landscape design should always be the architecture and location of the residence. The Architectural Review Committee will take into account various relationships of house to site, house to house, views, prevailing breeze and solar orientation in making decisions regarding specific landscape plans. To insure that the overall beauty of the community is preserved and enhanced, the Architectural Review Committee has the authority to approve or disapprove landscape plans for individual residences. A fundamental portion of the design criteria is the need for gardens and lawns to harmonize with the native vegetation, terrain and natural beauty of the community. Throughout McIlwaine Acres many fine native, mature specimen trees exist. Many are in prominent view from the streets giving them special significance. In order to take a positive step toward the recognition and protection of such trees the Architectural Review Committee requires approval to remove any tree on any home site with a trunk diameter of eight (8) inches or greater at three (3) feet above natural grade. Owners will be encouraged to landscape their Lots with plant material which is indigenous to the area and leave untouched as much as possible the existing vegetation and natural amenities.
- c. Driveways. All driveways, turning areas and parking areas shall be surfaced with asphalt, concrete or brick. If asphalt is used, it must be of a thickness at least equal to the required asphalt surface of the streets in the Development. The driveway must be completed prior to the occupancy of any dwelling on the Lot. If any driveway is to cross a drainage ditch, the Owner will be required to install, at his own expense, all necessary culverts and coverings prior to the commencement of any other construction on the Lot. The installation of the culvert and any covering must be approved by the Committee. The owner of each Lot shall be responsible for the connection of the driveway to the private easement and roadway. Any repairs or corrections to such driveway connection

required by the Association shall be performed by and at the expense of the Lot Owner.

- d. **Landscape Guidelines.** The Architectural Review Committee reserves the right to promulgate and amend from time to time Landscape Guidelines (referred to hereinafter as the "Landscape Guidelines") which shall establish approved standards, methods and procedures for Landscape Management on the Property and such authorized standards, methods and approval by the Architectural Review Committee. McIlwaine Acres Subdivision is a heavily wooded subdivision and it is the desire of the Architectural Review Committee that a maximum number of trees remain after construction has been completed. No trees measuring eight inches (8") or more in diameter at a point three feet (3') above ground level may be removed without the prior written approval of the Association. In addition to the removal of trees in areas designated on the approved plans for construction of Improvements, approval may be granted for the removal of trees (i) located within ten feet (10') of the main dwelling or accessory building, or within ten feet (10') of the approved site for such building, unless such removal will substantially decrease the attractiveness of the Property, (ii) that are dead or diseased, and (iii) as part of a thinning process in order to increase air flow, maximize views, and permit sun light penetration to facilitate the approved landscaping plan without reducing substantially the wooded character of the Property.
10. **Swimming Pools; Tennis Courts.** No swimming pool, hot tub, Jacuzzi, garages, outbuilding or tennis court shall be installed erected on any Lot until the plans and specifications for same showing the nature, kind, shape, materials, height and location of the sale shall have been approved by the Architectural Review Committee. No swimming pool shall be constructed on a Lot in front of a dwelling or so that any portion of such pool protrudes above the finish grade of the adjoining ground as found prior to such construction; provided, however, that when the average slope of a Lot exceeds twenty-five percent (25%), the Architectural Review Committee may approve an exception. The pool itself and pool equipment shall be screened, housed or stored underground so as to be screened from any road.
11. **Fences and Hedges.** The erection or installation of all fences must be maintained and kept in orderly fashion and at no time may exceed six feet in height. The erection or installation of all hedges must be maintained and kept in orderly fashion and at no time may exceed six feet in height. No fences or hedges over five feet are allowed on any street side of any lot, and any fence so built must be in character with the color, quality and character of the residence and is subject to approval by the Architectural Review Board. No chain link fences will be permitted. A chain link "pet pen" may be allowed after approval of the HOA. HOA may restrict the location of the "pet pen" to meet general aesthetics of the community.
12. **Garages and Utility Buildings.** Each Lot will be required to have a garage, either attached or detached, accompanying the dwelling. All buildings must be approved

by the HOA except utility buildings having a full car garage. All utility buildings will be constructed to the rear of the principal dwelling. This requirement does not have to be met by a utility building having a full car garage. Any utility building and or garage shall be built with wood, brick or other man made material such as concrete board or vinyl, which is designed to approximate the texture and quality of the dwelling. Wood buildings must be painted or stained to match or compliment the house colors as approved by the Architectural Review Board. The utility building must be of the same character and quality as the house. Any tin, metal, rubber or plastic buildings or temporary structures must be approved by the HOA. The intent is to prevent a "tacky" or overly cluttered appearance.

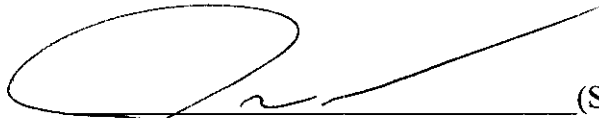
13. **Sight Line Limitation.** No fence, wall, hedge, shrub, or structure planting which obstructs sight lines at elevations between two (2) and six (6) feet above roadways shall be placed or permitted to remain adjacent to a rounded street property line so that it adversely affects visions of a motorist and safe motoring. Standards of the North Carolina Department of Transportation shall be used to determine proper and safe sight line parameters.
14. **Air-Conditioning Equipment.** No air-conditioning or heating apparatus shall be installed on the ground in front of any residence on a Lot. No air-conditioning or heating apparatus shall be attached to any front wall of a residence on a Lot. No air-conditioning or heating apparatus shall be installed on the side wall of a residence on a Lot unless the same shall be screened from view from the street abutting such Lot and any adjacent Lot.
15. **Antennas.** No radio or television aerial or antenna or any other external electronic equipment or devices may be installed or maintained on any exterior of any structure if it exceeds 60 inches in diameter or length. Any satellite dishes must be mounted on the rear half of the house and must be placed so they are not visible from the road from the entrance side or as approved by the HOA.
16. **Gas Meters.** No gas meters shall be set in the front of a residence on a Lot unless such meter is of an underground type.
17. **Mail Boxes and Newspaper or News Box** will be located up at the Treasure Cove entrance and will be maintained by the HOA.
18. **Trash haul off** is the responsibility of each lot owner. A concrete pad for trash disposal will be made available at McIlwaine Road for Town of Huntersville trash pick up. This pad is to be maintained by the HOA.
19. **Jeremy and/or Lindsay Gibson** will be the "Architectural Review Committee" for any lot not having a dwelling that has received a certificate of occupancy. If the Architectural Review Committee becomes deceased prior to the expiration of their term the language within this document will govern the requirements of McIlwaine Acres and may be modified by a majority vote of at least 5 – 2 of the HOA. The

HOA will govern and enforce as the Architectural review committee for a lot thirty (30) days after it has received a certificate of occupancy from the local jurisdiction.

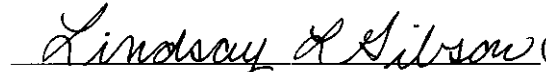
20. The above language is for the general protection of the interest of McIlwaine Acres. The Architectural Review Committee has the authority to modify the language of the Architectural Guidelines as is legal and it deems appropriate and reasonable by a majority vote of at least 5 – 2.

Declarant for the furtherance of the community and consistence with the rights reserved by Declarant in the Declaration, adopts this instrument as its Architectural Guideline for McIlwaine Acres.

IN WITNESS WHEREOF, Declarant has caused this instrument to be duly executed, this 20 day of December, 2007.



Jeremy G. Gibson (SEAL)



Lindsay L. Gibson (SEAL)

State of North Carolina

County of Mecklenburg

I Marcia K. Long, a Notary Public of ^{Clarendell} ~~the~~ County and State aforesaid, certify that Jeremy G. Gibson and Lindsay L. Gibson personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness by hand and official stamp or seal, this 20th day of December 2007, 20____.

Notary Public Marcia K. Long

My Commission expires: 11-6-08

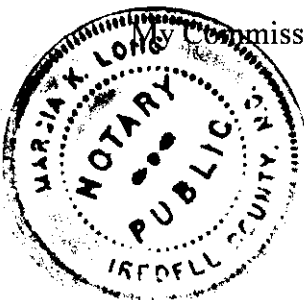


EXHIBIT C
GENERAL RULES FOR CONTRACTORS AND SERVICE PERSONNEL

McIlwaine Acres intends to enforce the regulations listed below. Notification of violation will be sent to the responsible party and property owner listing those items not in compliance with the rules and regulations. Upon receipt of the notification, the involved parties shall have five working days (unless a different time period is specified) to correct the situation or the Architectural Review Committee will take the necessary actions to correct the violation. Those actions could include charging the property owner for the corrections done by the Architectural Review Committee, withholding architectural review until the violations are amended, or, in certain cases, denying entry to contractors or personnel thereby preventing work within the community.

The following rules apply to all contractor and service personnel while on McIlwaine Acres premises. Any questions or concerns may be directed to the Architectural Review Committee.

1. Contractors are required to keep the job sites as neat and clean as possible. Trash and discarded materials, such as lunch bags, cans and odd materials must be removed daily. All debris stockpiled for removal should try to be located in the rear of the residence. Stockpiling of trash or any material on adjacent Lots or streets is not permitted. If trash and debris on the job site becomes a noticeable problem, notification to the responsible party will be given by the Architectural Review Committee to clean up the site within two (2) working days. If after the two (2) day period the site has not been cleaned up, the Committee will remove the debris and charge the property owner.
2. Proper erosion control is the responsibility of the contractor. Adequate silt fencing and gravel at the entry drive must be properly installed and maintained. The streets shall be kept free of mud, silt and debris from erosion and construction traffic.
3. Contractors will use only the utilities provided on the immediate site on which they are working unless granted use permission by another lot owner.
4. Portable toilets are required and are the responsibility of the contractors. They should be located off the right of way and sanitized weekly.
5. Vehicles are to be parked on the immediate site on which the contractor is working. No vehicles (cars, trucks, vans, etc.) may be left in the subdivision overnight. Construction equipment may be left on the site while needed but must be kept off the street.

6. Washing of any truck or vehicle on the street is not permitted. Any washing of concrete delivery trucks must be on the construction site.
7. Operators of vehicles are required to see that they do not spill any damaging materials while in the community. Objects shall not be thrown out of cars or trucks. If spillage does occur, it is the responsibility of the operator to clean up the spillage. Cleanups done by McIlwaine Acres personnel will be charged to the responsible party. Please report any spills as soon as possible.
8. The established speed limit within the community is 25 miles per hour for all vehicles.
9. Any damage to street and curbs, drainage inlets, street lights, street markers, mailboxes, walls, fences, etc. will be repaired by the Committee and such costs billed to the responsible contractor. This amount will be deducted from the Construction Deposit. If not sufficient, the additional amount will be charged to the property owner.
10. If any telephone, cable TV, electrical, water, or other utility lines are cut, it is the responsible party's obligation to report such an accident to the Committee and to repair the damage.
11. Loud radios or noise will not be allowed within the community. Normal radio levels are acceptable. Do not mount speakers on vehicles or outside of homes under construction.
12. Only bona fide workers are allowed on the property. Spouses may drive workers to the site and pick them up, but must not remain on the property unless they are employees of the contractor. No children will be permitted on the property unless they are bona fide workers.
13. No contractor or service personnel will be permitted to bring pets on the property.
14. Building permits are the only sign or document to be posted at a homesite during construction. Business signs or other forms of advertisement shall be on uniform signs prescribed by the Architectural Review Committee. Permits are to be attached to a post in a manner protected from the elements. Trees are to be kept free of all permits and signage.
15. No alcoholic beverages or controlled substances shall be consumed or in the possession of any construction or service personnel.
16. All Builder personnel, subcontractors and material deliveries are subject to these Restrictions while on the Property. The only signs permitted on the Lot during construction will be one sign that bears the Builder's name.

17. Each Builder and Owner is required to keep the Lot and surrounding areas clean and free from mud, silt, rubbish, and debris at all times. Trash and discarded materials must be removed on a daily basis, or deposited daily in a receptacle approved by the Architectural Review Committee. Trash not removed may be removed by the Declarant or the Association and billed to the owner of the Lot. Adjacent streets should be cleaned when necessary after heavy rains or frequent construction use. Silt fences for sedimentation control are required as provided for hereinabove.
18. Any damage caused by Builders to streets, curbs, amenities, adjacent property or common areas will be billed to the Owner of the Lot. The Builder shall not at any time discard any trash or construction debris on any Lot or Common Area within McIlwaine Acres Subdivision. Builder shall pay particular attention to redi-mix concrete delivered to the Lot. Absolutely no cleaning of concrete truck will be allowed on any Lot other than the Lot under Construction.
19. No vehicles (trucks, vans, cars, trailers, etc.) may be left parked on the subdivision's streets overnight. Declarant shall have the right to tow away at the owner's expense any vehicle which remains overnight on the subdivision streets. Construction vehicles may be left in driveways or in other appropriate areas on a Lot.
20. No construction activities will be permitted after 7:30 p.m. unless approved by the Architectural Review Committee. No loud radios or distracting noise will be permitted during any construction unless required by normal industry standards to complete a construction oriented scope of work.
21. Builders should be aware that certain areas of the property exist as natural woodlands and cannot be disturbed. Additionally, the roads and Common Areas have been constructed for the long-term and unique benefit of the Owners and must be maintained and protected in a high quality manner. Special construction requirements unique to McIlwaine Acres Subdivision may be established and all contractors must cooperate with the Association in enforcing these rules.
22. Failure to abide by any of the above rules may result in the loss of a Builder's privilege to enter the subdivision on a temporary or permanent basis.



JUDITH A. GIBSON
REGISTER OF DEEDS, MECKLENBURG
COUNTY & COURTS OFFICE BUILDING
720 EAST FOURTH STREET
CHARLOTTE, NC 28202

PLEASE RETAIN YELLOW TRAILER PAGE

It is part of the recorded document, and must be submitted with original for re-recording
and/or cancellation.

Filed For Registration: 12/20/2007 03:23 PM
Book: RE 23192 **Page:** 423-465
Document No.: 2007252926
RESTR 43 PGS \$137.00
Recorder: LYVANH PHETSARATH



2007252926



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
October 15, 2007

MICHAEL F. EASLEY
GOVERNOR

LYNDO TIPPETT
SECRETARY

Division 10
District 2

Juan Blue
8720 Red Oak Blvd.
Suite 420
Charlotte NC. 28217

SUBJECT: REGULAR COMMERCIAL DRIVEWAY PERMIT- Gibson Farmhouse Cluster- Drive Entrance onto SR 21309Mc Ilwaine Rd.) in Mecklenburg County.

Permit Number: 07156-M

Dear Sir:

A review of the subject driveway permit application has been completed by the appropriate staff agencies of the Division of Highways.

The approval is subject to drive being constructed as shown on the approved plans.

Adequate required sight **distance of 450 feet** shall be reserved and maintained at the proposed entrance in **both directions** from the edge of the pavement.

All materials and workmanship should conform to the N.C. Department of Transportation's Specification Manual for other work performed within State Right of Way.

Proper traffic control devices, signs, etc., shall be installed to ensure public's safety, (when working within the State R/W), in accordance with **The Manual on Uniform Traffic Control Devices** and any supplements thereto.

The North Carolina Department of Transportation does not guarantee the right-of-way of the road nor will it be responsible for any claims for damages brought by any property owner.

All subcontractors doing work within the State's Right of Way are to have a copy of these plans and/or Special Provisions also on the job site.

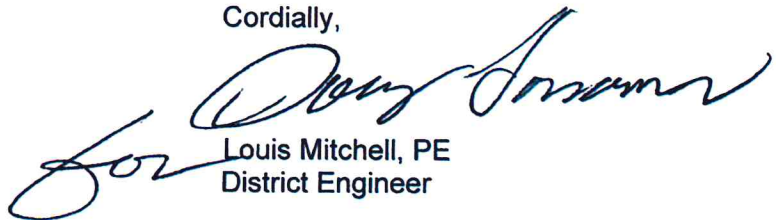


Please notify Ms. Rose Mary Mathis with the North Carolina Department of Transportation at (704) 596-6900 48 hours prior to the beginning of your work for a pre construction meeting..

Driveway permit will become void if driveway is not completed within 1 year beginning at approval date of permit.

If you have any questions, or need additional information, please contact Doug Sossamon at our office at (704) 596-6900.

Cordially,

A handwritten signature in blue ink, appearing to read "Louis Mitchell", is written over the typed name and title.

Louis Mitchell, PE
District Engineer

LLM/DS/ds

Enclosure

cc: Mr. Barry Moose, PE, Division Engineer
Tom Hodge PE MCED
File

LOCATION OF PROPERTY:

County Mecklenburg Access to Route No. S.R. 2130

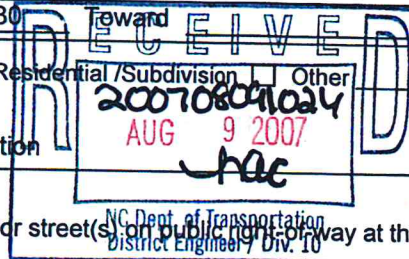
Exact Distance 2,824 ☐ Miles ☒ Feet N ☒ S ☐ E ☐ W

From the Intersection of Route No. S.R. 2120 and Route No. S.R. 2130 Toward

N.C. DEPARTMENT OF TRANSPORTATION

STREET AND DRIVEWAY ACCESS PERMIT APPLICATION

PROPERTY WILL BE USED FOR: ☐ Special Commercial ☐ Regular Commercial ☒ Residential/Subdivision ☐ Other
PROPERTY ☐ is ☒ is not within Charlotte City Zoning Area.
PROPERTY IS LOCATED IN: ☒ Rural ☐ Urban Development Classification



AGREEMENT

I, the undersigned property owner, request access and permission to construct driveway(s) or street(s) on public right-of-way at the above location.

I agree to construct and maintain driveway(s) or street entrance(s) in absolute conformance with the current "Policy on Street and Driveway Access to North Carolina Highways" as adopted by the North Carolina Department of Transportation.

I agree that no signs or objects will be placed on or over the public right-of-way.

I agree that the driveway(s) or street(s) will be constructed as shown on the sketch on (the reverse side) (the attached plans).

I agree that that driveway(s) or street(s) as used in this agreement include any approach tapers, storage lanes or speed change lanes as deemed necessary.

I agree that if any future improvements to the roadway become necessary, the portion of driveway(s) or street(s) located on public right-of-way will be considered the property of the North Carolina Department of Transportation, and I will not be entitled to reimbursement or have any claim for present expenditures for driveway or street construction.

I agree that this permit becomes void if construction of driveway(s) or street(s) is not completed within the time specified by the "Policy on Street and Driveway Access to North Carolina Highways".

I agree to pay an installation fee for pipe installed by the Division of Highways or pay a \$50 inspection fee for installation by others. Make checks payable to NCDOT. The inspection fee will be reimbursed if application is denied.

I agree to construct and maintain the driveway(s) or street(s) in a safe manner so as not to interfere with or endanger the public travel.

I agree to provide during construction proper signs, signal lights, flaggers and other warning devices for the protection of traffic in conformance with the current "Manual on Uniform Traffic Control Devices for Streets and Highways" and Amendments or Supplements thereto. Information as to the above rules and regulations may be obtained for the Division Engineer.

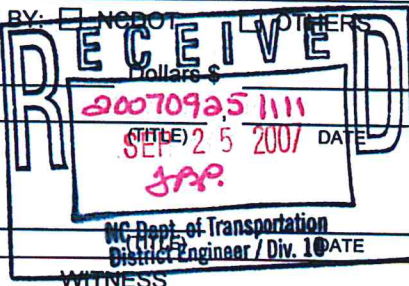
I agree to indemnify and save harmless the North Carolina Department of Transportation from all damages and claims for damage that may arise by reason of this construction.

I agree that the North Carolina Department of Transportation will assume no responsibility for any damages that may be caused to such facilities, within the highway right-of-way limits, in carrying out its construction.

I agree to provide a Performance Bond in the amount specified by the Division of Highways for any construction proposed on the State Highway system.

I AGREE TO NOTIFY THE DISTRICT ENGINEER WHEN THE PROPOSED WORK BEGINS AND WHEN IT IS COMPLETED.

Entrance Width(s)	Pipe Size	Pipe Length	Pipe installation Costs	Inspection Satisfactory (Yes/No)	AMOUNT RECEIVED	INSTALLATION BY: <input type="checkbox"/> NCDOT <input type="checkbox"/> OTHERS
1. _____	_____	_____	\$ _____	_____	_____	_____
2. _____	_____	_____	\$ _____	_____	SIGNATURE _____	_____
3. _____	_____	_____	\$ _____	_____	INSPECTION BY NCDOT _____	_____
					SIGNATURE _____	_____



PROPERTY OWNER

NAME JEREMY GIBSON
SIGNATURE _____
ADDRESS 8623 McILWAINE ROAD Hunterville NC 28078
Phone No. 704-9074674

NAME PATRICK WATKINS
SIGNATURE _____
ADDRESS 8720 Red Oak Blvd., Ste. 420, Charlotte
NC 28217

APPLICANT

NAME Juan Blue
SIGNATURE _____
ADDRESS 8720 Red Oak Blvd., Ste. 420, Charlotte, NC 28217
Phone No. 704-2279422

WITNESS

NAME PATRICK WATKINS
SIGNATURE _____
ADDRESS 8720 Red Oak Blvd., Ste. 420, Charlotte
NC 28217

07-156-M

APPROVALS

APPROVAL BY: Local Governmental Authority (when required)

Tom Hodge

SIGNATURE

MECK. COUNTY
PROJECT MANAGER

TITLE

09/20/07

DATE

APPLICATION RECEIVED BY DISTRICT ENGINEER

[Signature]

SIGNATURE

9-15-07

DATE

APPLICATION APPROVED BY DISTRICT ENGINEER

Louis Mitchell

SIGNATURE

11-15-07

DATE

COMMENTS:

SHOW:

1. LOCATION OF DRIVEWAYS
2. DETAILS OF WORK, INCLUDING PIPES
3. EXISTING BUILDING, WALL, ETC. OR DRIVEWAYS
4. PROPOSED BUILDING, WALL, ETC.
5. HIGHWAY FEATURES

PROPOSED PLANS

DRAW OR SKETCH BELOW, OR ATTACH
CONSTRUCTION PLANS FOR STREETS

INDICATE
NORTH

Commissioner Leonhardt asked on the garage that's underground, could it be four stories high abutting to single-story residential?

Mr. Simoneau said yes. If you look at Building 4, that's the rear of the property where it gets to its lowest point, so it could be close to four stories at that location. The property immediately adjacent to it is zoned Corporate Business. It's a small tract. We actually had one of the property owners, Mr. Lowrance, rezone his property to Neighborhood Center which could accommodate offices. That way he's able to have retail or offices and not have to deal with an 80' buffer issue that comes into play for the Corporate Business.

Commissioner Swain asked will there be gates?

Mr. Simoneau said no. They had initially talked about some, but they realized they are all public streets.

Veronica Westendorff said we are looking at utilizing this site in a more friendly manner than what was originally approved. We will have underground parking, trying to keep it at street level, three stories. With Buildings 2 and 3, it's very easy to have that fourth floor with the parking completely below grade. It will be open-air parking.

Mayor Phillips requested petitioner provide a schematic before the next meeting.

Robbie Lowrance said my family owns the piece of property we had rezoned. The only thing we are concerned about is drainage. We also asked the applicant to send us some information as to the projects that he has done before and we didn't get any feedback. We talked about possibly utilizing the water quality pond to catch the run-off coming from the highway that comes down between the two properties and nobody ever contacted me about that. We also have a turn-lane that hasn't been finished on Highway 115.

David Jarrett, Town Engineer/Public Works Director, said Kia with Mecklenburg County e-mailed me today and said that they have the storm water drainage easement that was needed to do that. They have secured that now and should be doing that in the next week or two.

There being no further comments, Mayor Phillips closed the public hearing.

Petition #R06-16. Mayor Phillips called to order public hearing on Petition #R06-16, a request by Jeremy Gibson for a general rezoning from General Residential to Transitional Residential on approximately 10 acres located on Mcllwaine Road.

Whitney Hodges, Senior Planner, reviewed Staff Analysis. *Staff Analysis and other related documents attached hereto as Attachment No. 3.*

Jeremy Gibson addressed the Board. Mr. Gibson said I currently reside on the property. I'm looking at two options for the road. One would be to the right side of the current house - it would go to the left back corner and then turn and go to the back of the property and then possibly entering on the left side of the house that's currently there going straight back with the property so the houses would not back up to any other lots. It would back up to the natural wooded area. The interest is to have the six houses, possibly a playground, maintain all the woods that are currently there, possibly a picnic shelter, and with the farmhouse 50 percent has to be designated open space so we would like to have a playing field or general recreational area.

Commissioner Leonhardt asked what would the average size of the lots be?

Mr. Gibson said approximately $\frac{3}{4}$ acre. There may be some that would be larger.

Commissioner McAulay asked are they combining three pieces of property into this farmhouse?

Ms. Hodges said yes.

Commissioner McAulay said I didn't think that you could combine property for farmhouse clusters after a certain date. I thought we changed that in the ordinance.

Mr. Simoneau said we didn't include that. We limited it to two farmhouse clusters.

Commissioner McAulay asked why would you do a farmhouse cluster rather than a small subdivision?

Mr. Gibson said from looking at the code and in consultation with Planning Staff, that seemed to be the best option.

Commissioner McAulay asked are you saying that Staff suggested that you apply for farmhouse cluster?

Mr. Gibson said yes.

Commissioner Leonhardt said with a small subdivision you have curb and gutter and entrance, where with a farmhouse cluster you can go dirt and gravel. Is that correct?

Mr. Simoneau said that is correct.

Commissioner McAulay said and no public road.

Commissioner Jeter said the school buses and garbage trucks wouldn't be able to go down that road.

Ms. Hodges said no they would not, because it would be a private road.

Commissioner McAulay said I wonder if police and fire go down private roads.

Commissioner Jeter said I guess they do if there's an emergency.

Gracie Young, 8512 Hawk Grove Court, said I back up to this. I am not clear on what a farmhouse cluster is.

Ms. Hodges said a farmhouse cluster is essentially a minor subdivision that's allowed a private road. They do have to meet the underlying zoning district, but they are required to have larger amounts of open space. You have to have at least 10 acres of land and you can get no more than 6 lots on 10 acres.

Ms. Young said there's already been quite a bit of excavation going on that land. The question us neighbors were wondering about is if this hasn't even been rezoned, the owner of the land still can go in and do all of this excavating and berm-building, and what happens to those berms if this rezoning doesn't go through? Already a lot of natural vegetation at the property line is gone. Instead there's this large berm of soil. As the owner of the land he can do what he wants to do with it, but what if this rezoning is not approved? Then us who border that land live with this berm and we've lost that natural vegetation that has been there all those years?

Commissioner Leonhardt said as long as he doesn't throw water on you or change the run-off.

Ms. Young asked what about the run-off? Is that going to be addressed to where it doesn't come into our yards?

Commissioner Jeter said everything that is built in Huntersville has to meet our water quality standards, as well as the State's. Whatever developer would have to meet whatever our standards are, but as far as his use of that property, other than that, there's very little we can tell him about what he can and can't do on his private property beyond whether or not he can build a neighborhood.

Bob Blythe, Town Attorney, said unless his clearing is such of a large nature that it violates some type of sedimentation laws or something of that nature. There are some restrictions on clearing too large a piece of property without the sedimentation controls.

Commissioner Leonhardt said the intent of the farmhouse cluster is to leave as much natural and undisturbed area as possible.

Commissioner Jeter asked what would he be able to build by-right now?

Mr. Simoneau said he could build 20,000 sq. ft. lots.

Ms. Hodges said I did the math and at most, it's about 19 units – more likely about 15.

Commissioner McAulay said but he would have to put in public roads and water and sewer. He'd have to put in curb and gutter. He'd have to put in water retention.

Ms. Hodges said when the activity started on this property, Mecklenburg County was notified. Heather Davis has been working with Mr. Gibson as far as meeting the State requirements, as well as requirements of Mecklenburg County and the Town for water quality, land disturbance, and erosion control.

Nancy Parzych, 12509 Pickford Court, said the property never looked better. We will also say from our little group on Pickford Court that we are pleased that there will only be six homes built here rather than 3,000. Our only concern, which has already been stated, is related to the drainage. We did have some minor flooding when the berms were first put in. Mr. Gibson did address that. We will continue to state our concern until we know a formal plan has been made to address drainage in the area.

Bill Lech, 12512 Pickford Court, said just to elaborate on the drainage issue, we did have some problems with the initial installation of the berm, but we talked to Mr. Gibson and someone from the County was involved and they took care of the main thing. We have a little more issue directly behind my property that I haven't had the opportunity to address Mr. Gibson. It's something minor, but nevertheless it's a matter of irregular grade behind the berm which does cause ponding of water with rainfall. Some simple grading would address that issue. The property looks very good. If you ever finish the garage, that will be a feat in itself because I've been looking at brick pillars for 17 years. As my neighbor Nancy stated, it would be nice to see a final plan. A road coming close to my property naturally would concern me. As long as it was done with careful consideration, it is Mr. Gibson's property and I don't want to be a thorn in his side.

There being no further comments, Mayor Phillips closed the public hearing.

Petition #TA06-16. Mayor Phillips called to order public hearing on Petition #TA06-16, a request by Dick Brolin to amend Section 9.45 Hotels and Motels by requiring special use permits, allowing five-story buildings and reduced separation distance between hotels/motels from residential/mixed use zones and other hotels/motels.

Staff Analysis/other related documents attached hereto as Attachment No. 4.

Mr. Simoneau said we received a letter from Mr. Brolin on Friday (*refer to Attachment No. 5*). Initially the request that came in was to increase the height of the buildings for hotels to five stories and to reduce the setback requirement that is 750' from property line to property line of any hotel from any residential or mixed-use zoning district. Also, the law states that you shall be 750' from any other hotel. That law came about based on a Town Board request in 1999. There was concern from the Town Board at the time that there were too many hotels going up haphazardly at the interchanges is the notes that I found in the record. There was a task force, two Planning Board members and two Town Board members, that formed a committee. They came up with the recommendation, which is basically what we have today. Those code changes for the spacing from residential and mixed-use zones and 750' from any other motel and hotel were the major part of that change that occurred in 1999. It was adopted by the Board on January 18, 2000. At the time there was concern that the hotel sites were all jamming up at the intersection, so these standards were established. When they came to us they were initially talking about a five-story building. Naturally that raised concern

Exhibit 13 – 2006 E-mail Correspondence
with Jeremy Gibson (applicant)**Whitney Hodges**

From: Whitney Hodges [whodges@huntersville.org]
Sent: Tuesday, September 05, 2006 2:10 PM
To: 'Jeremy Gibson'
Subject: RE: Gibson Farmhouse Cluster

Jeremy,

We have discussed your whether your farmhouse cluster is minor or major and it will still be considered a minor. I will have Beverly refund your fees for major subdivision review.

From: Jeremy Gibson [mailto:JGibson@RJGriffin.com]
Sent: Wednesday, August 30, 2006 12:21 PM
To: Whitney Hodges
Subject: RE: Gibson Farmhouse Cluster

Yes ma'am. I was only going to do this on the sides – My intent is to provide some additional sound and sight buffer as well as beatification on the interior of the project. I will dive into some details and present the plan to insure it meets requirements.

Thanks,

JGG

From: Whitney Hodges [mailto:whodges@huntersville.org]
Sent: Wednesday, August 30, 2006 11:26 AM
To: Jeremy Gibson
Subject: RE: Gibson Farmhouse Cluster

There are slope issues to address for the height of the berm. Your berm must meet all of the requirements (that apply) in the section that I sent you. Are you only proposing berms on the sides?

From: Jeremy Gibson [mailto:JGibson@RJGriffin.com]
Sent: Wednesday, August 30, 2006 9:43 AM
To: Whitney Hodges
Cc: constructionman@gmail.com
Subject: RE: Gibson Farmhouse Cluster

Whitney,

Thanks for the response. I will review the 2 items from the farmhouse cluster and await to hear from you.

In regards to the Berm I contacted a Mr. Priddy as directed by Beverly. He noted that as long as I did not disturb more than 1 acre I would not have to pull a permit, etc. which is as you noted. He also noted I would need to control any runoff that would affect areas other than the property. I have reviewed this and all appears to be fine. I will especially evaluate it as we receive waterfall from Ernesto – again, all appears fine.

I was not aware of specifications/guidelines for the berm. I started reviewing what you provided and it is quite extensive. Put in simple words – Am I fine to have a berm that is 4' high and less than 20' wide with natural plants/trees to the area ever so often on the berm.

Thanks,

JGG

12/27/2007

From: Whitney Hodges [mailto:whodges@huntersville.org]
Sent: Wednesday, August 30, 2006 9:23 AM
To: Jeremy Gibson
Subject: Gibson Farmhouse Cluster

Jeremy,

I received your rezoning application on Monday. I will be getting back in touch with you by next Monday about the subdivision. I am going to take your issue to our staff meeting. Last Friday you requested information regarding what is needed for a farmhouse cluster. I am sending you two items that are used to evaluate farmhouse clusters. The first is from the zoning ordinance. The second is a final plat checklist. This checklist would not apply until after initial approval of the farmhouse cluster and you were ready to get the plat recorded.

The third thing is that I have become aware that you are installing what looks like a berm along the sides of the farmhouse cluster. The Town of Huntersville has standards for berms and they can be found at this link http://www.huntersville.org/interactive%20ordinance/ZONING_TOCA7.html. Please get in touch with Heather Davis with Mecklenburg County Water Quality. If you disturb more than an acre of land you will need a permit. Her number is 980-721-3571.

Again, I'll be in touch next week.

Whitney Hodges
Senior Planner

Town of Huntersville
P.O. Box 664
Huntersville, NC 28070

Ph: 704-875-7000
Fax: 704-875-6546
Direct: 704-766-2212

www.huntersville.org

A Farmhouse Cluster permits the subdivision of land for up to six house lots accessed by way of a shared private drive when the following conditions have been met:

- 1) Minimum project size and frontage on public road: 10 acres with a minimum of 30 feet of frontage on a public road either by fee simple ownership or by exclusive easement.
- 2) There shall be no more than two farmhouse cluster developments permitted per tract as that tract existed on February 18, 2003.
- 3) A paved or graveled private drive shall be constructed on a recorded easement not less than 20 feet in width serving one farmhouse cluster exclusively. Further, the recorded easement shall have at least 30' of frontage on a public street.
- 4) An association of all property owners shall be established for maintenance of all commonly held spaces, if any. Where there are no commonly held spaces except for a shared driveway or private street, a legally binding shared driveway and/or private street use and maintenance agreement shall be filed at the Register of Deeds of Mecklenburg County. Furthermore, the shared driveway or private road shall be shown, along with all appropriate and necessary easements, on a recorded plat and a note shall be attached thereto stipulating the use and maintenance of the driveway and referencing the recorded agreement(s).
- 5) The location of building sites shall be determined through a site analysis which identifies features to be preserved as open space.
- 6) No minimum lot size or width is required, so long as the project meets all other standards of the district.
- 7) At least 50% of the tract shall be designated as open space. Open space preservation shall be irrevocable. A metes and bounds description of the space to be preserved and limits on use shall be recorded on the subdivision plat and on individual deeds when open space lands are not held entirely in common. Open space lands may be part of a deeded lot so long as it reflects an irrevocable conservation or open space easement requiring such portions of individual lots to remain and be used as open space as provided in this section.
- 8) Permitted uses of open space lands to be preserved shall correspond generally to physical conditions at the time of subdivision approval. Restrictive covenants shall limit uses to the continuation of certain agricultural activities (pastureland, crop cultivation) or recreation uses that preserve the view from public streets of rural landscape features to be preserved. For example, fields or pasture land preserved as required open space may continue to support cultivation or grazing; however existing woodlands may not be clear-cut.
- 9) The project shall maintain a generally rural appearance from public road(s).
- 10) Where a farmhouse cluster would eliminate a planned street connection or a street connection indicated on a plan adopted by the Town of Huntersville or the Charlotte-Mecklenburg Thoroughfare Plan, and no alternate alignment can reasonably provide the connection, the design of the farmhouse cluster shall provide for said connection by the dedication of right-of-way for streets less than 70 feet in width and by the reservation of right-of-way for streets 70 feet or wider.
- 11) A Farmhouse Cluster requires an approved Farmhouse Cluster subdivision plan, according to the requirements of the Huntersville Subdivision Ordinance and shall meet all other requirements for review and approval, which may include preliminary plan approval prior to approval of a final plat.

This email has been scanned by the MessageLabs Email Security System for R.J Griffin & Company.
For more information please visit <http://www.messagelabs.com>

This email has been scanned by the MessageLabs Email Security System for R.J Griffin & Company.
For more information please visit <http://www.messagelabs.com>

ACCESS EVALUATION MEMORANDUM

Date: May 26, 2017

To: Jeremy Gibson
8703 McIlwaine Road
Huntersville, NC 28078

From: Randy E. Goddard, P.E.
Managing Principal
Design Resource Group, PA (C02370)

Subject: **Treasure Cove Access Evaluation** (708-001)



Background/Land Use:

The owner of 8703 McIlwaine Road in Huntersville, NC is requesting a variance to the approved farmhouse cluster plan for the site to allow 7 driveway locations on Treasure Cove (currently 6 allowed). The 7th driveway in question is approximately 30 feet wide and is located on a 0.48-acre lot roughly 70 feet north of McIlwaine Road (see Figure 1 – Aerial Map).

Per discussions with the property owner, an access evaluation memorandum was prepared in support of a variance allowing 8703 McIlwaine Road to access Treasure Cove and includes the following:



**Treasure Cove Facing South
Toward Existing Driveway**

- Study Area/Site Information
 - Roadway Classifications
 - Lane Widths
 - Sight Distance
- Traffic Counts/Trip Generation
 - Annual Average Daily Traffic (AADT)
 - Approved Plan Trip Generation
 - Requested Variance Trip Generation
- Safety Considerations
 - Potential Safety Concerns
- Recommendations/Conclusions



Study Area/Site Information:

Mcllwaine Road is a state-maintained, two-lane major collector roadway with a posted speed limit of 45 mph. No curb/gutter, planting strip, or sidewalk is present on Mcllwaine Road. The road is approximately 20-feet wide (10-foot wide travel lanes) with no shoulders on either side of the roadway. Sight distances in both directions at the residential development appear adequate (verified on site), meeting or exceeding normal requirements for a 45-mph posted roadway (50 mph design speed – North Carolina Department of Transportation [NCDOT] = 500 feet of sight distance).



**Mcllwaine Road Facing East
to Treasure Cove**

Treasure Cove is a privately maintained, two-lane residential street with no posted speed limit. The road is approximately 20-feet wide (10-foot wide lanes) with no curb/gutter, planting strip, or sidewalk present on either side of the street. Due to the narrow roadway width and residential nature of the street, the assumed travel speed is 15 mph. There is no stop sign installed on Treasure Cove at Mcllwaine Road. Sight distances in both directions at the residential development appear adequate (verified on site), meeting or exceeding normal requirements for a 15-mph posted roadway (20 mph design speed - NCDOT = 200 feet of sight distance). Based on the minimal existing traffic volumes, it is in our professional opinion that these lane and shoulder widths are acceptable.

The current driveway location for 8703 Mcllwaine Road is located on Treasure Cove approximately 70 feet north of Mcllwaine Road (edge of Mcllwaine Road to nearest edge of the existing driveway). See Preliminary Site Plan for development layout.

Traffic Counts/Trip Generation:

NCDOT is the source for average annual two-way daily traffic (AADT) volumes within the area. The latest (2014) AADT volume for Mcllwaine Road west of McCoy Road (the nearest volume to the proposed site) is 5,300 vehicles per day (vpd).

The daily and peak-hour-trip-generation data for the existing and future single family homes is presented in Table 1. The values for the trips generated by the single family land use are obtained from the Institute of Transportation Engineers (ITE), Trip Generation Manual, 9th Edition, 2012.

Table 1: Site Trip Generation

Land Use 210			Weekday Total Daily Trips
Homes Allowed per Cluster Development Plan on Treasure Cove			
Single Family Homes	6	Dwelling Units	57 Trips
Homes Proposed on Treasure Cove (Requested Variance)			
Single Family Homes	7	Dwelling Units	67 Trips
Difference Between Allowed Homes and Proposed Homes			10 Trips

The approved Cluster Development Plan allows for 6 single family homes on Treasure Cove, which is expected to generate a total of 57 trips per day.



The proposed variance to the Cluster Development Plan will allow 7 single family homes (one additional home) to use Treasure Cove for access and is expected to generate a total of 67 trips per day, which equates to 10 additional daily trips utilizing Treasure Cove.

Safety Considerations:

Per the Achieving Traffic Safety in Residential Subdivisions Design section of ITE's 1988 Transportation and Land Development book, *"Corner lots should be required to take access to the lesser street (i.e., to the local instead of the collector or to the minor collector rather than the major collector)."*

There are multiple public health, safety, and general welfare concerns to consider when determining the best location for 8703 McIlwaine's driveway position, which include the following:

- It is much safer for the drivers on McIlwaine Road as well as the residents of 8703 McIlwaine Road if the driveway stays at its existing location. You should always try to achieve access design where you can maximize safety by minimizing the number of conflicts, therefore minimizing the potential of accidents.
 - There would be a total of 18 conflict points on McIlwaine Road (9 new additional conflict points created) due to the relocation of 8703 McIlwaine Road's driveway from Treasure Cove to McIlwaine Road (see Figure 2 for conflict point diagrams).
- Exiting/backing onto a major collector roadway (McIlwaine Road) with a speed limit of 45 mph and an AADT of 5,300 vpd vs. exiting/backing onto a residential street (Treasure Cove) with a typical travel speed of 15 mph and an expected AADT of 57 vpd.
- Sight distance issues could be created for Treasure Cove and the existing residential driveways along McIlwaine Road due to potential driveway usage at 8703 McIlwaine Road (i.e. if the driveway is completely full or if vehicles park near the roadway sight distances can be reduced due to the obstruction of the parked vehicles). Why introduce a driveway that could impact the Treasure Cove driver safety and sight distance?

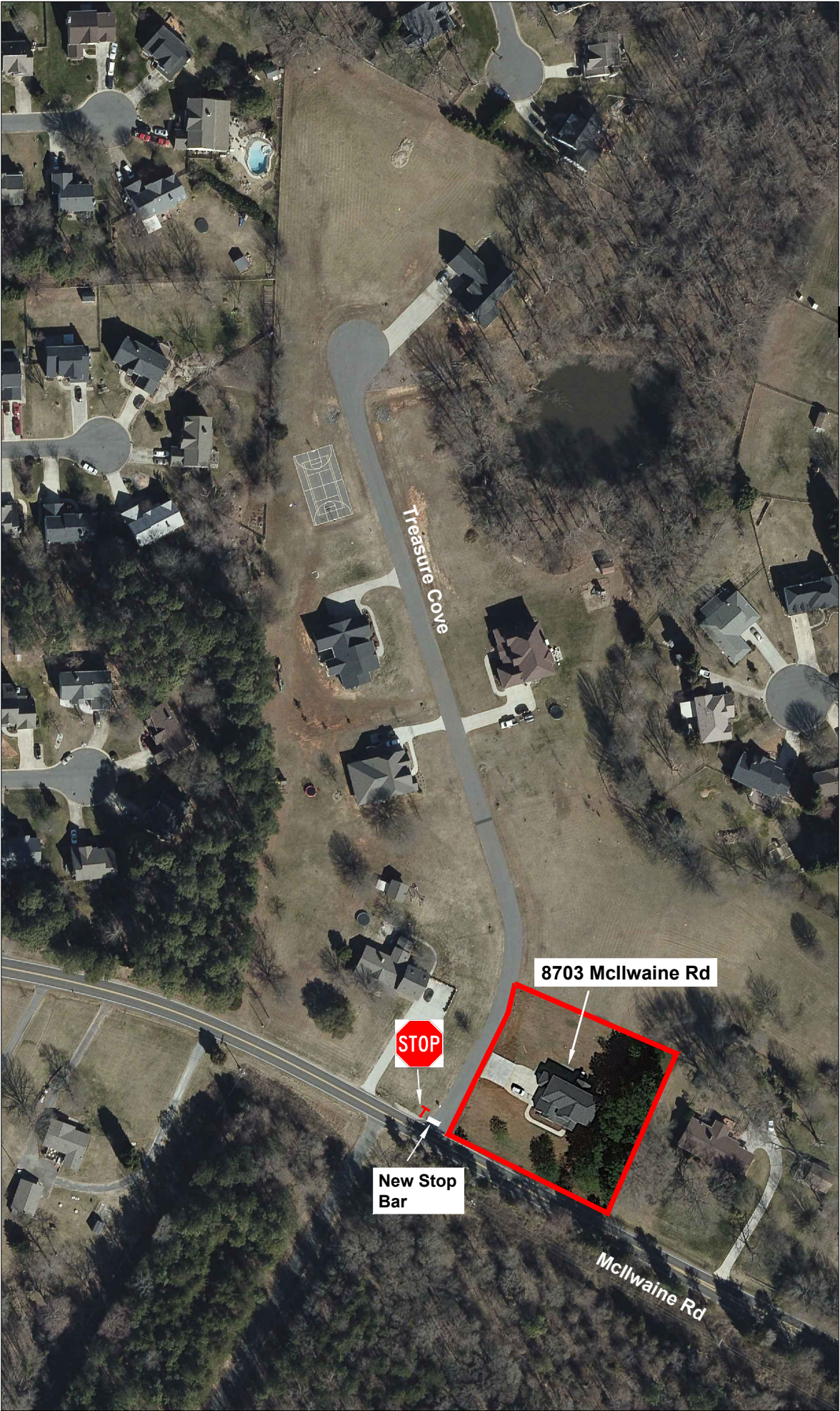
Recommendations/Conclusion:

Even though the Approved Cluster Plan for the McIlwaine Acres development only allows six single family homes to access Treasure Cove, it is our opinion 8703 McIlwaine Road should be granted a variance to access Treasure Cove via the current driveway location. The current location of the driveway is not expected to significantly affect the adjacent intersections/roadway corridors. Therefore, we recommend 8703 McIlwaine's current driveway layout and location since this is the safest and most logical driveway location. We would also like to recommend the installation of a typical stop sign and stop bar on Treasure Cove at McIlwaine Road to improve overall safety conditions.

Please contact us should you need any additional information.

Attachments: Figure 1 Aerial Map
 Preliminary Site Plan for Gibson Farmhouse Cluster Dev.
 Figure 2 AADTs & Potential Conflict Points

cc: File

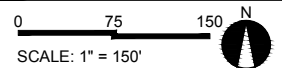


**TREASURE COVE ACCESS
EVALUATION**

HUNTERSVILLE, NC

JEREMY GIBSON
8703 MCILWAINE ROAD
HUNTERSVILLE, NC 28078

AERIAL MAP

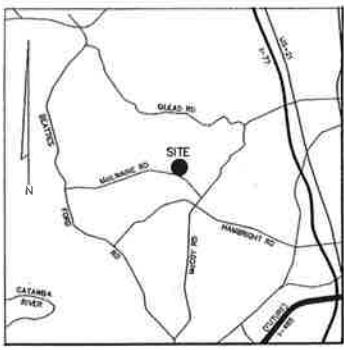


PROJECT #: 708-001
DRAWN BY: MWW
CHECKED BY: REG

MAY 2017

REVISIONS:

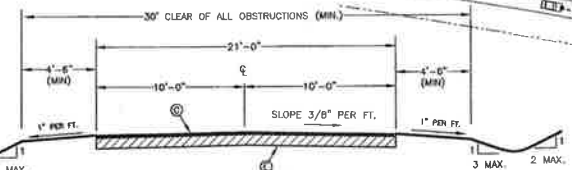
GIBSON FARMHOUSE CLUSTER DEVELOPMENT HUNTERSVILLE, NORTH CAROLINA



VICINITY MAP
NOT TO SCALE

LAND DEVELOPMENT NOTES

1. LAND DEVELOPMENT ENGINEER SHALL BE GIVEN 24 HOURS NOTICE PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION WORK.
2. APPROVAL OF THIS PLAN IS NOT AN AUTHORIZATION TO GRADE ON ADJACENT PROPERTIES. WHEN FIELD CONDITIONS WARRANT OFF-SITE GRADING, PERMISSION MUST BE OBTAINED FROM THE AFFECTED PROPERTY OWNERS.
3. DEVELOPER WILL PROVIDE STREET SIGNS.
4. THE DEVELOPER SHALL MAINTAIN EACH STREAM, CREEK, OR BACKWASH CHANNEL IN AN UNOBTSTRUCTED STATE AND SHALL REMOVE FROM THE CHANNEL AND BANKS OF THE STREAM ALL DEBRIS, LOGS, TIMBER, JUNK AND OTHER ACCUMULATIONS.
5. THE PURPOSE OF THE STORM DRAINAGE EASEMENTS ARE TO PROVIDE STORM WATER CONVEYANCE AND FOR ANY STORM SEWER STRUCTURES. OBSTRUCTIONS TO STORM WATER FLOW IS PROHIBITED.
6. THIS PROJECT WILL NOT BE IMPACTED BY ANY KNOWN FUTURE ROAD IMPROVEMENTS.
7. EACH LOT WILL BE SERVED BY A PRIVATE WELL AND SEPTIC SYSTEM. EACH PROPERTY OWNER WILL BE RESPONSIBLE FOR MAINTENANCE OF THEIR RESPECTIVE SYSTEMS.
8. SEPTIC FIELDS DEPICTED ON THIS PLAN ARE ONLY TO SHOW THE INTENT THAT EACH LOT WILL BE SERVED BY A PROPRIETARY SYSTEM. INSTALLATION OF A PRIVATE WELL OR A WASTEWATER SYSTEM REQUIRES AN IMPROVEMENT PERMIT. FINAL WELL, SEPTIC FIELD LOCATIONS, & SIZE SHALL BE DETERMINED BY MECKLENBURG COUNTY GROUNDWATER & WASTEWATER SERVICES PRIOR TO ISSUANCE OF THE BUILDING PERMIT.
9. TO ENSURE SEPTIC TANKS ARE LOCATED ON THE MOST SUITABLE SOILS, SEPTIC FIELDS MAY BE LOCATED IN COMMON OPEN SPACE PROVIDED A MAINTENANCE EASEMENT IS ESTABLISHED FOR ACCESS.
10. AN ASSOCIATION OF ALL PROPERTY OWNERS SHALL BE ESTABLISHED FOR MAINTENANCE OF ALL COMMONLY HELD SPACES.
11. ALL AREAS OF THE PROJECT NOT CONVEYED AS PART OF THE SALE OF A SINGLE FAMILY RESIDENTIAL LOT WILL BE RETAINED AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION OF THIS PROJECT AS COMMON OPEN SPACE.
12. THE PURPOSE OF THE PRIVATE ROADWAY IS TO PROVIDE ACCESS TO THIS DEVELOPMENT. UPON COMPLETION THE PRIVATE ROADWAY WILL NOT BE ADOPTED, MAINTAINED, NOR SERVICED BY ANY PUBLIC MUNICIPALITY, WHICH INCLUDES BUT NOT LIMITED TO TRASH PICKUP OR SCHOOL BUS ROUTES. FURTHERMORE, THE PRIVATE ROADWAY SHALL BE OWNED AND MAINTAINED SOLELY BY THE HOMEOWNERS ASSOCIATION OF THIS DEVELOPMENT.
13. ALL OPEN SPACE PRESERVATION SHALL BE IRREVOCABLE.
14. OPEN SPACE/TREE SAVE AREAS THAT ARE PART OF A DEEDED LOT HOLD AN IRREVOCABLE CONSERVATION AND SUCH PORTIONS OF INDIVIDUAL LOTS MUST REMAIN AND BE USED AS OPEN SPACE/TREE SAVE AREAS.
15. A METES AND BOUNDS DESCRIPTION OF THE OPEN SPACE AND LIMITS ON ITS USE SHALL BE RECORDED ON THE SUBDIVISION PLAT AND ON INDIVIDUAL LOT DEEDS. WHEN OPEN SPACE LANDS ARE NOT HELD ENTIRELY IN COMMON.
16. PERMITTED USES OF OPEN SPACE SHALL CORRESPOND GENERALLY TO PHYSICAL CONDITIONS AT THE TIME OF SUBDIVISION APPROVAL. HOA RESTRICTIVE COVENANCES SHALL PREVENT THE CUTTING OF EXISTING WOODLANDS IN ALL OPEN SPACE AREAS.
17. NO BUILDINGS OR PERMANENT STRUCTURES SHALL BE CONSTRUCTED WITHIN THE PERIMETERS OF ANY DESIGNATED OPEN SPACE OR TREE SAVE AREA EVEN IF PART OF A DEEDED LOT.
18. IN ACCORDANCE WITH THE HUNTERSVILLE TREE PROTECTION REGULATIONS OF ARTICLE 7, ONLY MINIMAL THINNING OF VEGETATION IN OPEN SPACE AREAS SHALL BE PERMITTED TO PROMOTE OVERALL HEALTH OF THE NATURAL AREA.
19. SETBACK LINES AND ALL YARD REQUIREMENTS ARE PER ARTICLE 4, TYPE "A" OF THE TOWN OF HUNTERSVILLE ZONING ORDINANCE.
20. NO NORTH CAROLINA STATE PLANE GRID CONTROL LOCATED WITHIN 2000 FEET OF SUBJECT PROPERTY.
21. AREAS CALCULATED BY COORDINATE GEOMETRY.
22. THE STREET NAME AND SUBDIVISION NAME MUST BE APPROVED BY MECKLENBURG COUNTY ES11 FOR PLAT RECDORATION AND CONSTRUCTION APPROVAL.
23. THE PROPERTY OWNER WILL BE RESPONSIBLE FOR THE MAINTENANCE OF STORM DRAINS, LANDSCAPING AND OPEN SPACE WITHIN PRIVATE LOTS. AN ASSOCIATION OF ALL PROPERTY OWNERS WILL BE ESTABLISHED FOR MAINTENANCE OF THE PRIVATE ROAD AND COMMON OPEN SPACE.
24. THE PURPOSE OF THIS PLAN IS TO SUBDIVIDE THIS PARCEL INTO EIGHT LOTS, OF WHICH TWO SHALL CONFORM TO GR(SMALL TOWNS) AND THE REMAINING SIX SHALL CONFORM TO TR(TRANSITIONAL RESIDENTIAL) ZONING DISTRICT SET FORTH BY THE TOWN OF HUNTERSVILLE ZONING ORDINANCE.
25. UNLESS OTHERWISE ALLOWED BY THE TOWN OF HUNTERSVILLE, THE MINIMUM BUILDABLE AREA PER LOT IS 1,200 SQ. FT.
26. ON LOTS GREATER THAN 60' IN WIDTH, FRONT LOADING GARAGES MUST BE RECESSED 10' FROM THE PRINCIPAL VERTICAL PLANE OF THE STRUCTURE. GARAGES MUST MEET THE REQUIREMENTS OF ARTICLE 8.16 IN THE HUNTERSVILLE ZONING ORDINANCE.
27. REFERENCE THE CHARLOTTE MECKLENBURG LAND DEVELOPMENT STANDARDS MANUAL AND/OR THE FOLLOWING DETAILS:
THE PROPERTIES SHOWN HEREON DO NOT LIE WITHIN A PROTECTED WATERSHED AREA.



TYPICAL SECTION (A-A)
PRIVATE RESIDENTIAL ROAD
N.T.S.

NOTES:

1. INTERNAL STREET ALIGNMENT:
MAXIMUM GRADE: 10%
MINIMUM VERTICAL CURVE "K" VALUES: 10/20 (CREST)/50 (VALLEY)
MINIMUM HORIZONTAL CURVE CENTERLINE RADIUS: 50 FT.
2. INTERSECTION WITH PUBLIC STREET:
SAME AS FOR PUBLIC STREET, SEE GENERAL NOTES, SECTION 1B.2.
5% MAXIMUM GRADE WITHIN 40 FEET OF PUBLIC STREET INTERSECTION BEGINNING FROM EDGE OF PAVEMENT LINE.
3. DETAILS SHOWN SHALL BE CONSTRUCTED IN ACCORDANCE WITH CITY STANDARDS.

*VARIATIONS ON THESE GUIDELINES WILL BE REVIEWED ON A CASE BY CASE BASIS BY CITY STAFF.

- PAVEMENT SCHEDULE**
- ① 1.5" BITUMINOUS CONCRETE SURFACE COURSE, TYPE SF9.5A
 - ② OR 1.5" BITUMINOUS CONCRETE SURFACE COURSE, TYPE 1-2
 - ③ 6" COMPACTED AGGREGATE BASE COURSE OR 4" BITUMINOUS CONCRETE BASE COURSE, TYPE 625.08
 - ④ 4" CBQC TYPE HB.

Only North Carolina Registered Professional Engineer or Professional Surveyor can certify that this plan complies with all applicable laws and regulations and is to be considered a true and correct copy of the original.

North Carolina Department of Transportation (NCDOT)
APPROVED FOR CONSTRUCTION
DATE: 10-12-07
BY: [Signature]
TELEPHONE: 704-554-0539

DEVELOPMENT DATA	
COUNTY:	MECKLENBURG COUNTY
JURISDICTION:	CITY OF HUNTERSVILLE
TOWNSHIP:	CRAIGHAD
SUBJECT PARCEL TAX ID'S:	015-111-07 015-111-08 015-111-10
TOTAL SITE ACREAGE:	11.197 AC.
PER REZONING APPROVED JANUARY 2007, THIS SITE WAS DIVIDED AND HOLDS MULTIPLE ZONING AND IS AS FOLLOWS:	
SITE ACREAGE:	1.197
EXISTING ZONING:	GR (SMALL TOWNS)
NO. LOTS:	2
MIN. LOT WIDTH:	90 FT.
MIN. FRONT SETBACK:	50 FT.
MIN. REAR YARD:	40 FT.
MIN. SIDE YARD:	10 FT.
MIN. CORNER YARD:	20 FT.
SITE ACREAGE:	10.00 AC.
PROPOSED ZONING:	TR (TRANSITIONAL RESIDENTIAL)
NO. LOTS:	6
MIN. FRONT SETBACK:	35 FT.
MIN. REAR YARD:	40 FT.
MIN. SIDE YARD:	15 FT.

OPEN SPACE CALCULATIONS

MIN. OPEN SPACE REQUIRED = 50% OF PROJECT (PER FARM CLUSTER ZONING)
TOTAL SITE AREA (FARM CLUSTER) = 10.00 AC.
TOTAL OPEN SPACE REQUIRED = 0.50 x (10.00 ac.) = 5.00 ac.

FARM CLUSTER OPEN SPACE DELINEATION

COMMON OPEN SPACE IN LOTS	
LOT #1:	13,565 SQ. FT. 0.31 AC.
LOT #2:	17,643 SQ. FT. 0.41 AC.
LOT #3:	11,556 SQ. FT. 0.27 AC.
LOT #4:	11,776 SQ. FT. 0.27 AC.
LOT #5:	15,440 SQ. FT. 0.35 AC.
LOT #6:	19,950 SQ. FT. 0.46 AC.
TOTAL:	90,030 SQ. FT. 2.07 AC.
OPEN SPACE AREA 1:	0.44 AC.
OPEN SPACE AREA 2:	0.45 AC.
OPEN SPACE AREA 3:	2.34 AC.
OPEN SPACE AREA 4:	0.08 AC.
OPEN SPACE AREA 5:	0.04 AC.
TOTAL:	3.35 AC.
OPEN SPACE REQUIRED:	5.00 AC. (50%)
SPACE PROVIDED:	5.42 AC. (54%)

MECKLENBURG COUNTY
DRIVEWAY PERMIT
Number: 07-33
Approved: 9/20/07
By: [Signature]

*NOTE: OPEN SPACE MAY BE PART OF A DEEDED LOT (NFS, LAND DEVELOPMENT NOTES)



ENGINEER/SURVEYOR/PLANNER:

PRIVATE WATER & PRIVATE SEPTIC
JEREMY GIBSON
8623 McILWAINE ROAD
HUNTERSVILLE, N.C. 28078
Ph: (704) 807-4674 / Fax: (704) 554-0539
CONTACT: JEREMY GIBSON
THE ISAACS GROUP, P.C.
8720 RED OAK BLVD., STE. 420
CHARLOTTE, NC 28217
Ph: 704-527-3440 / Fax: 704-527-8335

NOTES:

1. THIS MAP IS NOT A CERTIFIED SURVEY. BOUNDARY INFORMATION PROVIDED BY THE ISAACS GROUP, TOPOGRAPHIC INFORMATION PROVIDED BY MECKLENBURG GIS AND THE ISAACS GROUP.
2. THE UTILITIES SHOWN ARE FOR THE CONTRACTOR'S CONVENIENCE ONLY. THERE MAY BE OTHER UTILITIES NOT SHOWN ON THIS PLAN. THE ENGINEER ASSUMES NO RESPONSIBILITY FOR THE LOCATIONS SHOWN. THE CONTRACTOR IS RESPONSIBLE FOR LOCATING ALL EXISTING UTILITIES PRIOR TO COMMENCEMENT OF CONSTRUCTION. CONFLICTS BETWEEN EXISTING UTILITIES AND PROPOSED EXCAVATION SHALL BE REPORTED TO THE ENGINEER IMMEDIATELY.
3. PROVIDE MINIMUM OF 48 HOUR NOTICE TO OWNER OR REPRESENTATIVE PRIOR TO INTERRUPTION OF ANY EXISTING UTILITY, IF BEING UTILIZED.
4. THE CONTRACTOR IS RESPONSIBLE FOR REPAIR AND/OR REPLACEMENT OF ANY UTILITIES DAMAGED DURING CONSTRUCTION.
5. THE CONTRACTOR SHALL USE EXTREME CARE WHEN WORKING NEAR ALL UNDERGROUND AND OVERHEAD UTILITIES.
6. ALL DIMENSIONS ARE TO BACK OF CURB UNLESS OTHERWISE NOTED.
7. THE CONTRACTOR IS RESPONSIBLE FOR ENSURING THAT ALL NECESSARY PERMITS AND APPROVALS HAVE BEEN OBTAINED PRIOR TO CONSTRUCTION. THESE PERMITS AND APPROVALS MAY INCLUDE BUT ARE NOT LIMITED TO GRADING, DEMOLITION, ZONING, BUILDING, DRIVEWAY, DETENTION, SUBDIVISION, SPECIAL USE, SEWER AND WATER.
8. DEVELOPER WILL PROVIDE STREET SIGNS PER CALDS 50.05 (9" SIGNS ONLY).
9. SIGHT TRIANGLES SHOWN ARE THE MINIMUM REQUIRED.
10. PIPE SYSTEMS AND/OR CHANNELS LOCATED WITHIN AREAS CONVEYED AS LOTS ARE THE MAINTENANCE RESPONSIBILITY OF THE INDIVIDUAL PROPERTY OWNER UNLESS OTHERWISE NOTED.
11. ON-SITE BURIAL/TOPSOIL DISPOSAL WILL BE ALLOWED ONLY IN AREAS SHOWN ON THESE PLANS AS "TOPSOIL DISPOSAL BERM". ON-SITE DISPOSAL OUTSIDE OF THESE DESIGNATED AREAS WILL REQUIRE PLAN APPROVAL FROM MECKLENBURG COUNTY. ANY MATERIAL REMOVED FROM SITE WILL REQUIRE DOCUMENTATION FROM THE CONTRACTOR FOR AN APPROVED WASTE FACILITY.

CURVE	RADIUS	LENGTH	CHORD	BEARING
G1	1024.00'	88.56'	88.53'	N64°30'42"W

LEGEND

- EXISTING UTILITY PEDESTAL
- EXISTING GUY WIRE
- PERMANENT STORM DRAINAGE EASEMENT
- EXISTING OVERHEAD UTILITY
- EXISTING STORM PIPE
- EXISTING FENCE LINE
- EXISTING UTILITY POLE
- PROP. PERMANENT OPEN SPACE AREA
- PROP. PERMANENT OPEN SPACE AREA IN LOTS
- EXISTING EARTHEN BERM

FLOOD CERTIFICATION
THIS IS TO CERTIFY THAT THE PROPERTY SHOWN ON THIS PLAT IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON MAPS PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION, COMMUNITY NUMBER 37047005-E, DATED FEBRUARY 4, 2004.

ADDITIONAL NOTES:

1. A GRADING PLAN MUST BE SUBMITTED TO MECKLENBURG COUNTY ENGINEERING FOR ANY LOT GRADING EXCEEDING ONE ACRE THAT WAS NOT PREVIOUSLY APPROVED ON THESE PLANS.
2. HOUSE BUILDER MAY NOT REDIRECT EXISTING DRAINAGE PATTERNS. ANY GRADING ASSOCIATED WITH HOUSE CONSTRUCTION THAT REDIRECTS DRAINAGE MAY REQUIRE SUBMITTAL OF PLANS TO MECKLENBURG COUNTY ENGINEERING FOR APPROVAL.



PRELIMINARY FOR REVIEW PURPOSES ONLY

GIBSON FARMHOUSE CLUSTER DEVELOPMENT
HUNTERSVILLE, NORTH CAROLINA

PRELIMINARY SITE PLAN

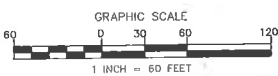
File: 06281-Sketch Planning Date: 02/20/07 Project Egr: BTU

ISAACS
CIVIL ENGINEERING DESIGN AND LAND SURVEYING

8720 RED OAK BOULEVARD, SUITE 420
CHARLOTTE, N.C. 28217
PHONE (704) 527-3440 FAX (704) 527-8335

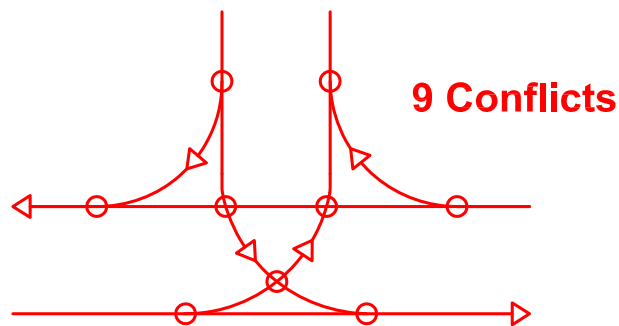
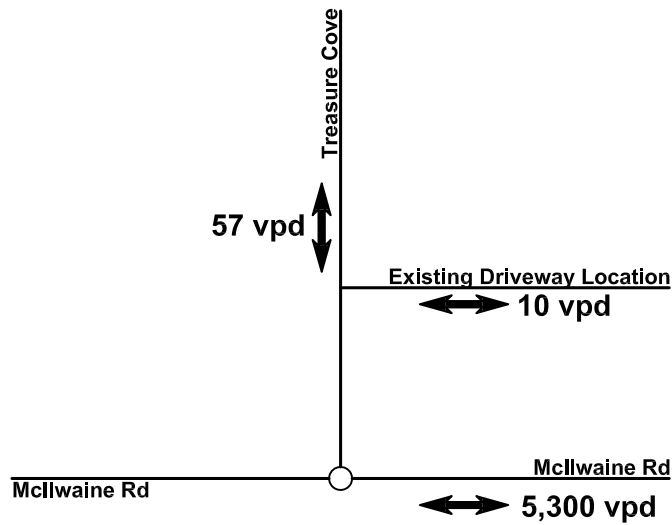
C1.0

NO.	BY	DATE	REVISION
1	JAB	4/22/07	REVS. PER HUNTERSVILLE COMMENTS
2	JAB	08/22/07	REVS. PER MECK-CD. COMMENTS

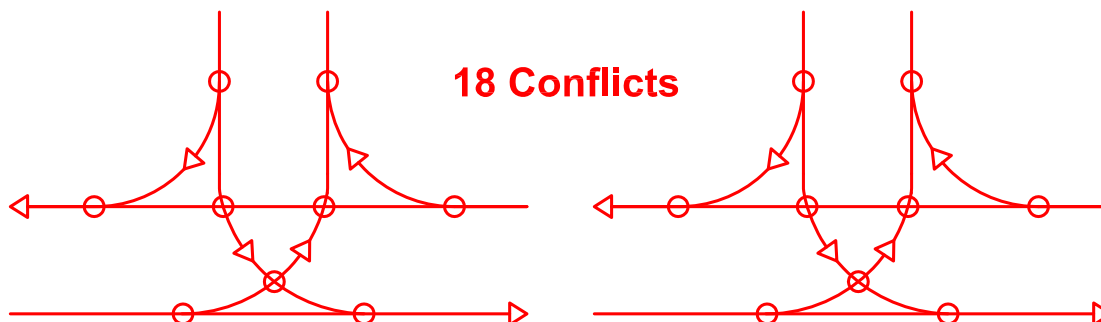
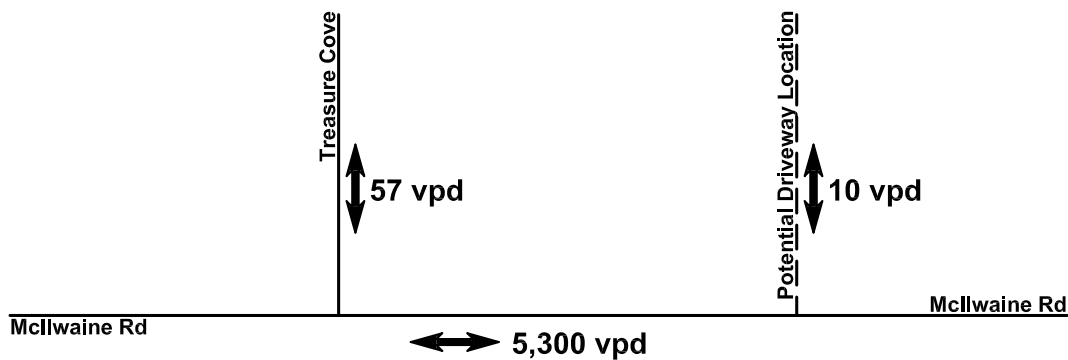


07-156-M

EXISTING LAYOUT TYPICAL CONFLICT POINTS AND AADTS



POTENTIAL LAYOUT TYPICAL CONFLICT POINTS AND AADTS



LANDSCAPE ARCHITECTURE
CIVIL ENGINEERING
TRANSPORTATION PLANNING

2459 Wilkinson Blvd, Ste 200 Charlotte, NC 28208
704.343.0608
www.drggrp.com

TREASURE COVE ACCESS EVALUATION

HUNTERSVILLE, NC

JEREMY GIBSON
8703 MCILWAINE ROAD
HUNTERSVILLE, NC 28078

CONFLICT POINT AND AADTS BY LAYOUT

0 NTS N
SCALE: NTS

PROJECT #: 708-001
DRAWN BY: MWW
CHECKED BY: REG

MAY 2017

REVISIONS:

Town of Huntersville
BOARD OF ADJUSTMENT
6/13/2017

To: Board of Adjustment Members
From: Meredith Nesbitt, Planner I
Subject: V17-04, 5035 Eliza Long Wilkie Drive Garage

V17-04: The applicant, Eric Groen, is requesting a variance from Article 4 Lot Types/Detached House and Article 8.16.7, to allow to construct a detached garage 18' forward of the established rear yard line.

ACTION RECOMMENDED:

Hold a public hearing and take action on the variance request.

FINANCIAL IMPLICATIONS:

ATTACHMENTS:

Description	Type
☐ V17-04 5035 Eliza Long Wilkie Drive	Staff Report
☐ Exhibit 1 - Variance Application	Exhibit
☐ Exhibit 2 – Diagram of Ordinance defined residential yards and setbacks	Exhibit
☐ Exhibit 3 – Mecklenburg County Environmental Health Email	Exhibit

V 17-04
5035 Eliza Long Wilkie Drive

Case #: V17-04
Address: 5035 Eliza Long Wilkie Drive, Huntersville NC, 28078
Parcel #: 013-221-09
Acreage: +/- 1.781 ac
Property Owner/Applicant: Eric Groen
Staff: Meredith Nesbitt – Planner I

The applicant, Eric Groen, is requesting a variance from **Article 4 Lot Types/Detached House and Article 8.16.7** (see text below) to allow a detached garage to encroach 18' forward of the established rear yard line. In the image below the red line represented the established rear yard line as defined by the ordinance, while the blue square represented the proposed detached garage. The detached garage has not been constructed; however, the property owner has applied for a building permit. See Exhibit 1 for the variance application.

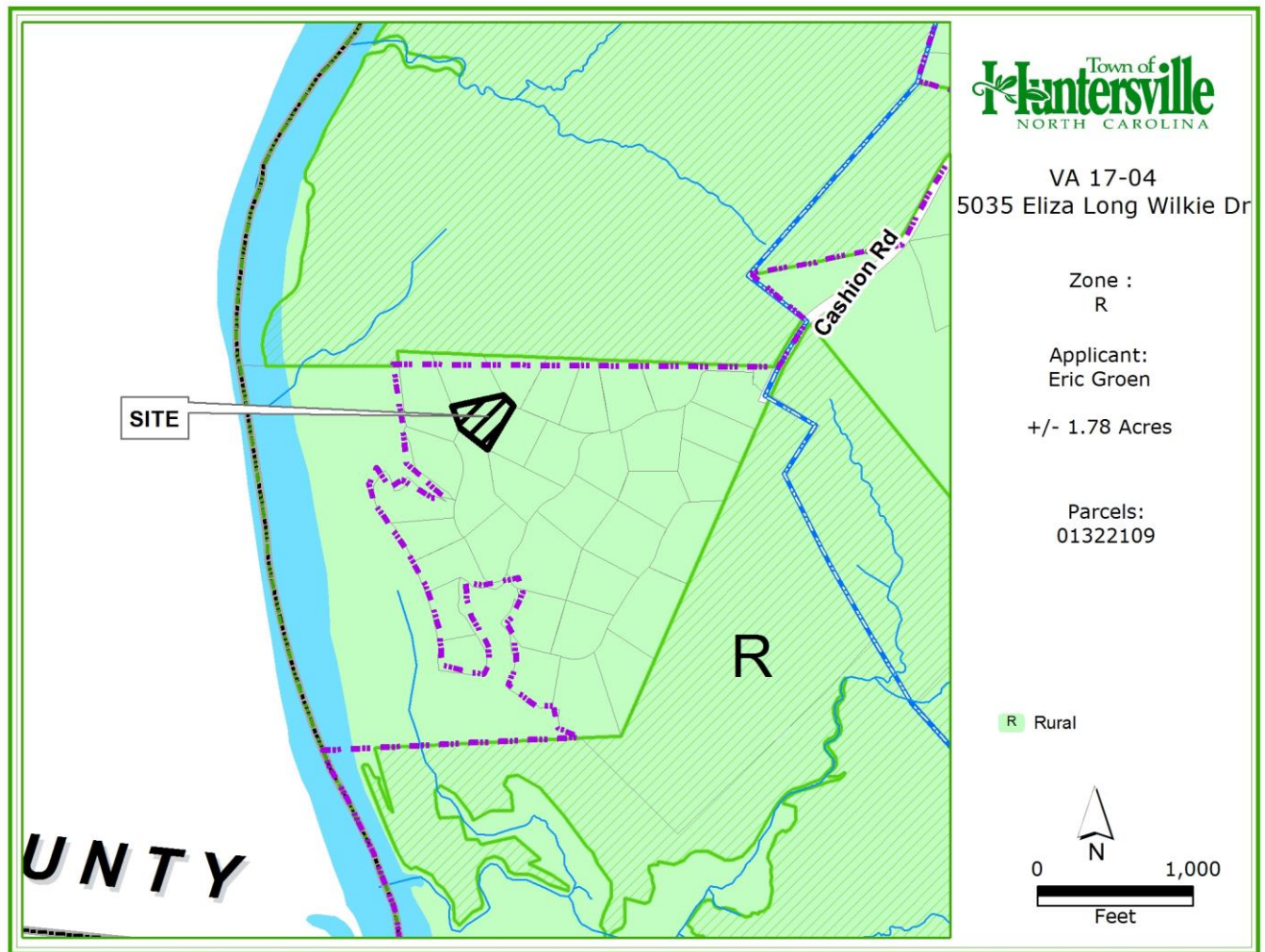
Article 4 Lot Types/Detached House

3. A detached garage may be located only in the rear yard.

Article 8.16.7

- .7 Detached garages may only be placed in the established rear yard. Garages for more than two cars must be detached and located in the established rear yard or be attached side or rear loading,





BACKGROUND:

1. The 1.781-acre subject property is located at 5035 Eliza Long Wilkie Drive in the Stillwell at Cashion Road Farmhouse Cluster #2; is zoned Rural (R) and is in the Mountain Island Lake Watershed Overlay Critical Area 4 (MIL CA-4) District.
2. In April 2017, Eric Groen came to the Town seeking zoning approval for a building permit to construct a detached garage on his lot.
3. The Zoning Ordinance (Article 4 and 8.16.7) requires that detached garages must be located in the established rear yard. The established rear yard is defined in Article 12 as the distance between the rear of a principal building or structure and the lot line farthest from the street fronting the lot, projected to the side line of the lot on which the building or structure is located. See Exhibit 2 for an example depicting defined residential yards and setbacks.
4. Septic lines that are located behind the dwelling serve the single-family house located at 5035 Eliza Long Wilkie Drive.
5. Mecklenburg County Environmental Health requires all structures must be 5' away from any septic line.

STAFF FINDINGS (ordinance standards are in italics):

Please see Exhibit 1 for the applicant's responses to the required criteria for granting a variance.

In considering any variance request, the following *Standards for Granting a Variance* (Article 11.3.2.e) must be addressed with findings of fact:

Standards for Granting a Variance. 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 of 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.*

Staff Findings:

- A. According to the applicant, the strict application of the ordinance (locating the detached garage in the established rear yard) would require relocating the septic lines.
- B. The septic lines were approved by Mecklenburg County in March 2013, see Exhibit 1.

- 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.*

Staff Findings:

- A. All property located in the Town of Huntersville must comply with Article 8.16.7 when locating a detached garage on a residential lot.
- B. Location of septic lines are unique to this property and limit the placement of a detached garage in the rear yard of the subject lot.
- C. The Zoning Ordinance does not require attached garages be located in the established rear yard.
- D. Staff visited the site on May 12, 2017 and determined (from professional judgement) that the existing roofline would make any sort of common roofline or attachment of the garage to the principle dwelling (for example, breezeway) connection difficult to achieve.

- 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.*

Staff Findings:

- A. According to the application, the detached garage cannot be located anywhere else on the property.
- B. Mecklenburg County Staff confirmed that State Law requires a 5' setback from septic lines, see Exhibit 3.

- 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.*

Staff Findings:

- A. The subject property is located at the end privately maintained road in a cluster cul-de-sac.
- B. The applicant is proposing to construct the detached garage as far back (to the established rear yard) as State Health Laws will allow.
- C. According to the applicant, granting the variance would not harm public safety or welfare.

STAFF CONCLUSIONS:

The applicant is seeking a variance from **Article 4 Lot Types/Detached House and Article 8.16.7** to allow a detached garage to encroach 18' forward the established rear yard line. Based on the summary of findings, listed below, staff concludes this request does meet the four Ordinance requirements for granting a variance. Therefore, supports granting a variance for this case.

- 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.*

Staff Conclusion of Findings:

The strict application of the ordinance would not allow staff to permit a detached garage located in front of the established rear yard line. In this context, farmhouse cluster with large lots and ample greenspace, and the location of the septic lines, it is unnecessary to require the property owner to move the septic lines in order to locate the detached garage in the established rear yard.

- 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.*

Staff Conclusion of Findings:

While requiring detached garages in the established rear yard is not peculiar to this property the location of the septic lines are peculiar to this property. The septic lines running behind the dwelling limit where structures can be placed on this property. Staff has determined attaching the garage to the principle dwelling (eliminating the requirement that the garage would have to be located in the rear yard) would be difficult to achieve because of the exiting rooflines of the dwelling.

- 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.*

Staff Conclusion of Findings:

In 2013, Mecklenburg County determined the appropriate location of the septic lines on the subject property. There is no way to construct a detached garage on the subject property in the established rear yard without moving the septic lines.

- 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.*

Staff Conclusion of Findings:

In this case, with the subject lot location at the end of a privately maintained road, allowing this detached garage to project in front of the established rear yard would not violate the spirit and intent of the ordinance. Staff concludes public safety is not adversely affected by granting this variance.

ATTACHMENTS:

Exhibit 1 - Variance Application

Exhibit 2 – Diagram of Ordinance defined residential yards and setbacks

Exhibit 3 – Mecklenburg County Environmental Health Email

STATEMENT OF CONSISTENCY: V17-04, 5035 ELIZA LONG WILKIE DRIVE

Planning Department	Board of Adjustment
<p>APPROVAL: In considering the findings of fact for V17-04, a request by Eric Groen for a variance from Article 4 Lot Type/Detached House Standards and Article 8.16.7, the Planning Staff recommends approval of the variance request based on a finding that the request meets all four of the criteria, outline in the zoning ordinance, for granting a variance.</p> <p>The Planning Department finds the request meets the four criteria for granting a variance based on the following findings of fact:</p> <ol style="list-style-type: none"> 1. Strict application of the ordinance causes Town Staff to deny a permit application showing the location of a detached garage in front of the established rear yard of the subject lot. 2. Attaching the garage to the existing roofline of the principle dwelling would be difficult to achieve. 3. The location of the septic lines was approved by Mecklenburg County in 2013 and are unique to this property. 4. Structures must be located at least 5' away from septic lines in accordance with State Laws 5. The applicant is proposing to construct the detached garage as far back in the established rear yard as allowed by State Law. 6. The subject property is located in a cul-de-sac at the end of a privately maintained road. 7. In this context, public safety is not adversely affected by allowing the detached garage to be located 18' in front of the established rear yard. 	<p>APPROVAL: In considering the findings of fact for V17-04, a request by Eric Groen for a variance from Article 4 Lot Type/Detached House Standards and Article 8.16.7, the Board of Adjustment grants approval of the variance request based on a finding that the request meets all four of the criteria, outline in the zoning ordinance, for granting a variance.</p> <p>The Board of Adjustment finds the request meets the four criteria for granting a variance based on the following findings of fact: <i>(explain findings of fact)</i></p>
	<p>DENIAL: In considering the findings of fact for V17-04, a request by Eric Groen for a variance from Article 4 Lot Type/Detached House Standards and Article 8.16.7, the Board of Adjustment denies the variance request based on a finding that the request does not meet criteria <i>(name the criteria the Board finds is not met)</i> for granting a variance.</p> <p>The Board of Adjustment finds the request does not meet the criteria for granting a variance based on the following findings of fact: <i>(explain findings of fact)</i></p>



Variance Application

Fee: \$150 (Residential) X
 \$300 (Commercial)

Date: 5-1-2017

Property Owner Information

Name: Eric Groen
 Address: 5035 Eliza Long
Wilkie Dr.
 Email: elgroen@hotmail.com
 Phone No. 704-615-7847

Applicant Information (if different)

Name:
 Address: SAME

 Email:
 Phone No.

Location of Property/Building

Address: 5035 Eliza Long Wilkie Dr. Parcel Size: 1.78 Acres

Tax Parcel ID (PIN) Number(s):

Text of Ordinance to be varied

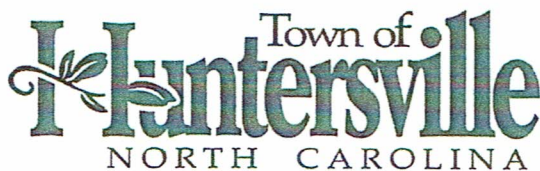
Ordinance: Zoning Article: 8 and 4 Section: 8.16.7 and 4-Detached House

A detached garage may be located only in the rear yard.

Submittal Requirements

The following must be submitted with the completed application (signed and dated by the property owner and/or applicant):

- One (1) hard copy and one (1) electronic copy of any applicable map(s), site plans, exhibits, and applications showing exact location of property with respect to existing streets, adjoining lots and other important features on or contiguous to the property. Also, include any maps and/or illustrations (to scale), which are necessary to show the location, number and size of buildings, signs, etc., on the property.
- A list of names, addresses and tax parcel identification numbers of properties that abut the site, are across the street from the site or are otherwise within one hundred feet (100') of the site. (Electronic format is preferred)



Variance Application

Notifications Requirements

Planning Staff will be required to notify in writing each adjoining property owner.

Planning Staff will also be required, if you are seeking a variance from the requirements of the Mountain Island Lake or Lake Norman Watershed Overlay Districts, to notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for consumption as follows:

- * Mountain Island Lake Watershed Overlay. Local governments having jurisdiction in the watershed: Charlotte Mecklenburg, Cornelius and Huntersville. Entities using the water supply for consumption: Mecklenburg County, Gastonia and Mount Holly.
- * Lake Norman Watershed Overlay. Local governments having jurisdiction in the watershed: Davidson, Cornelius and Huntersville. Entities using the water supply for consumption: Mooresville, Mecklenburg County and Lincoln County.

Variance Requirements

STANDARDS FOR GRANTING A VARIANCE (Article 11.3.2.e.):

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.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed by the Board (Article 11.3.1.e.).

In the following spaces, indicate the **FACTS** that demonstrates to the Board of Adjustment that you meet all the standards for granting a variance:

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. The difficulty or hardship would result only from these regulations and from no other cause, including the actions of the owner or previous owners of the property. Huntersville ordinance states that any garage must not be placed in front of the back wall of the house. Due to the septic lines behind my home, a garage placed behind the back wall would cause me to dig up all my septic lines and move them to a different location, costing \$3,000-7,000 depending where they were moved to.



Variance Application

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. The difficulty or hardship is peculiar to the property and is not generally shared by other properties classified in the same zoning district and/or use for the same purpose.

My home is in a preserve (Stillwell) and cannot cut down any trees past a point on my lot. Mecklenburg Co. told me where the septic lines had to go when this house was built. Without cutting down a lot of trees, it will be very hard to move my septic lines for a garage to be built.

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.

I was told by Mecklenburg Co. where my septic lines were placed on my property. Stillwell Community HOA has approved this location ONLY for this garage. I can not put it anywhere else on my property.

4. The public safety and general welfare have been protected and substantial justice done.

I am asking that the board allow this variance to move this garage 18 feet past the back wall of the home to avoid moving an entire septic system. No public safety or general welfare is harmed. This is located at the end of a cul-de-sac, and no neighbors can see this garage.

Property Owner / Applicant Certification

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

E. Groen / Eric Groen
Property Owner / Applicant

5-1-2017
Date

To whom it may concern:

Jermy Mechelone from Mecklenburg County Environmental Health came and measured the location of the proposed garage on my property. He stated that the garage must be 5' away from any septic lines. Without digging up septic lines and moving them to a different location, the garage must be moved up 18' from the back wall of the house to avoid cutting down many more trees on the property to move the lines. This lot slopes off on the backside of the property, and removing more trees would cause more problems with erosion, as well as cutting down more trees in Stillwell Farms Preserve which is strongly discouraged. This would also add much unneeded costs to the garage addition.

I was told where the location of the septic system was to be placed by Mecklenburg Co. Environmental Health when this home was built. Please consider all the hardships this would cause when making your decision on this variance.

If you would like to contact Jermy Michelone, his number is below. You are also welcome to make a site visit, Jermy has flagged everything off and shows the location of the septic lines and the proposed garage location.

Attached are 3D drawings of the proposed variance I am asking consideration for.

Thanks for your consideration,

Regards,

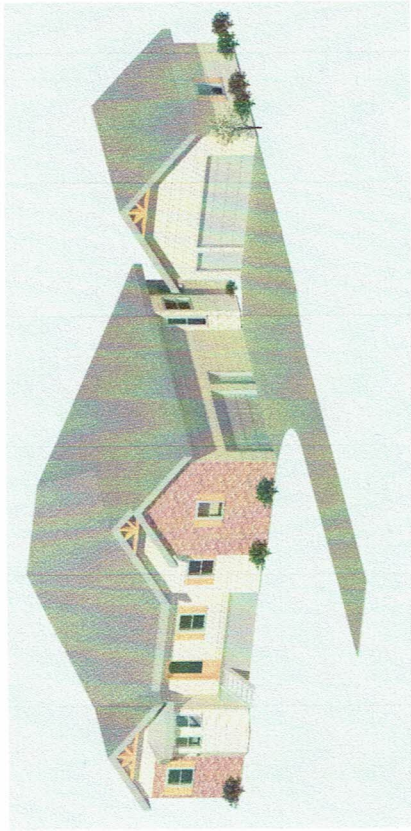


**MECKLENBURG
COUNTY
GOVERNMENT**
♻️

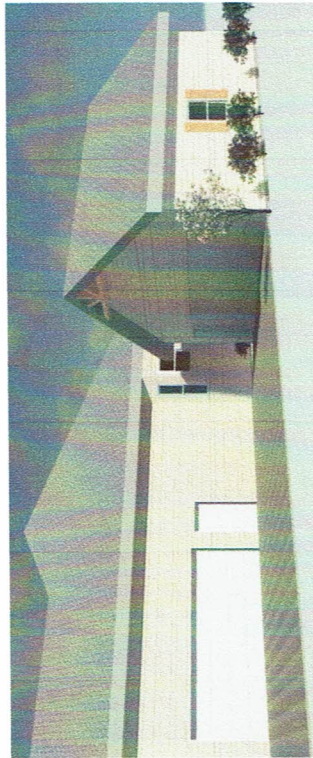
JEREMY P. MICHELONE, REHS
Environmental Specialist
Environmental Health

700 N. Tryon Street, Suite 211
Charlotte, NC 28202-2222
Office: 704-336-5572
Fax: 704-336-6894
Cell: 704-201-7414
Jeremy.Michelone@MecklenburgCountyNC.gov
<http://groundwater.charmeck.org>

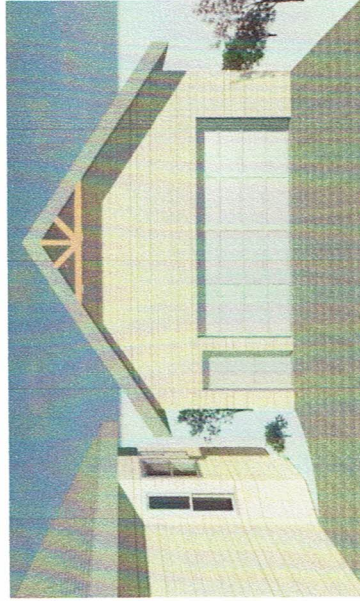
Proposed location of garage.



① Full House
12" = 1'-0"



② Side View
12" = 1'-0"



③ Garage
12" = 1'-0"

Eric Groen

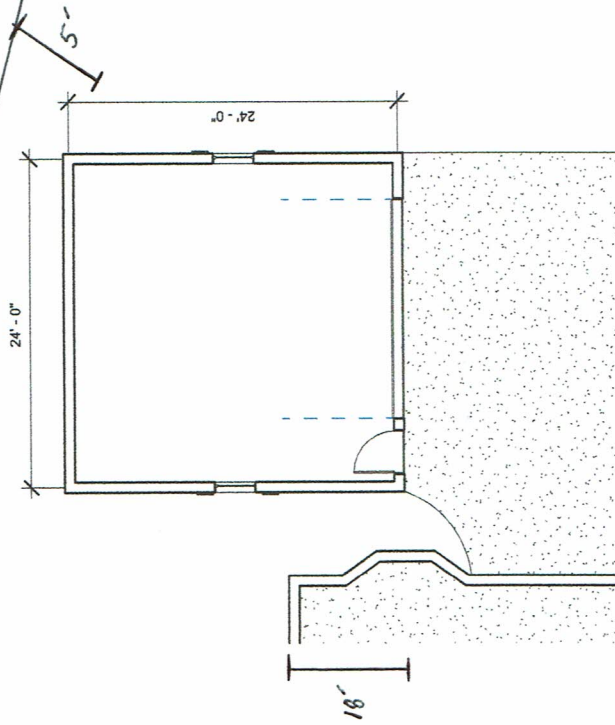
Garage Addition

Notes for Garage:
Siding-Cement Fiber Board
Siding Color-Same as Home
Roof-Architecture Shingles
Door-White Aluminum Door

Rendering

Project number	1005	A104
Date	April 30, 2017	
Drawn by	Ben Hammill	

Septic Lines



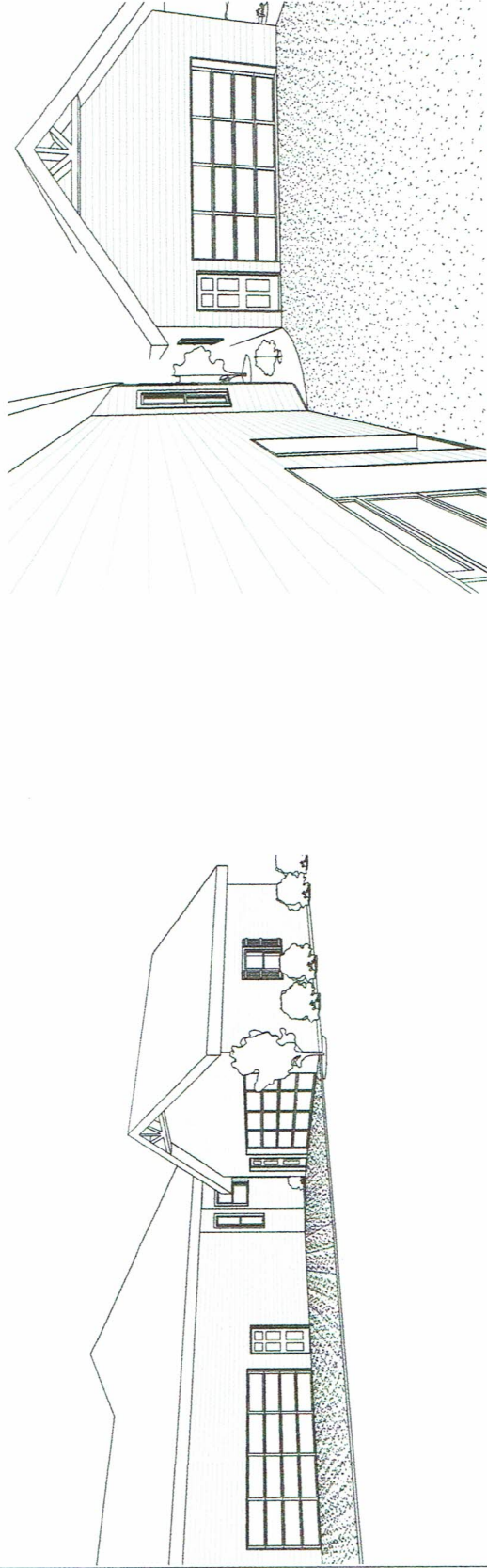
① Level 0
1/8" = 1'-0"

Eric Groen
Garage Addition

Notes for Garage:
Siding-Cement Fiber Board
Siding Color-Same as Home
Roof-Architecture Shingles
Door-White Aluminum Door

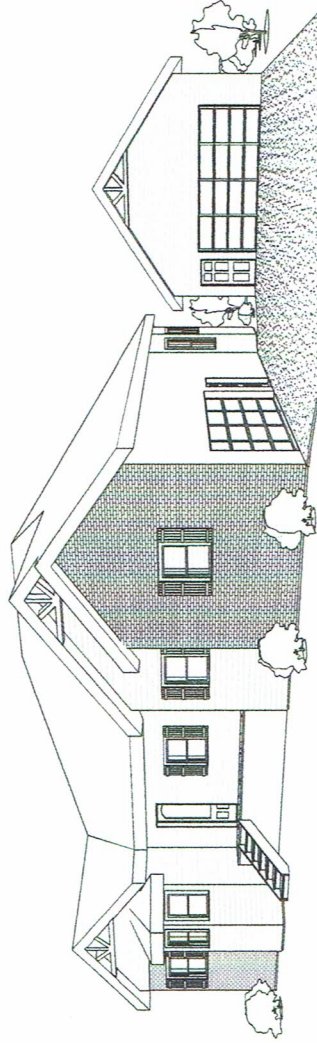
Floor Plan

Project number	1005	A101
Date	April 30, 2017	
Drawn by	Ben Hammill	



① Garage

③ Breeze way



② Full House

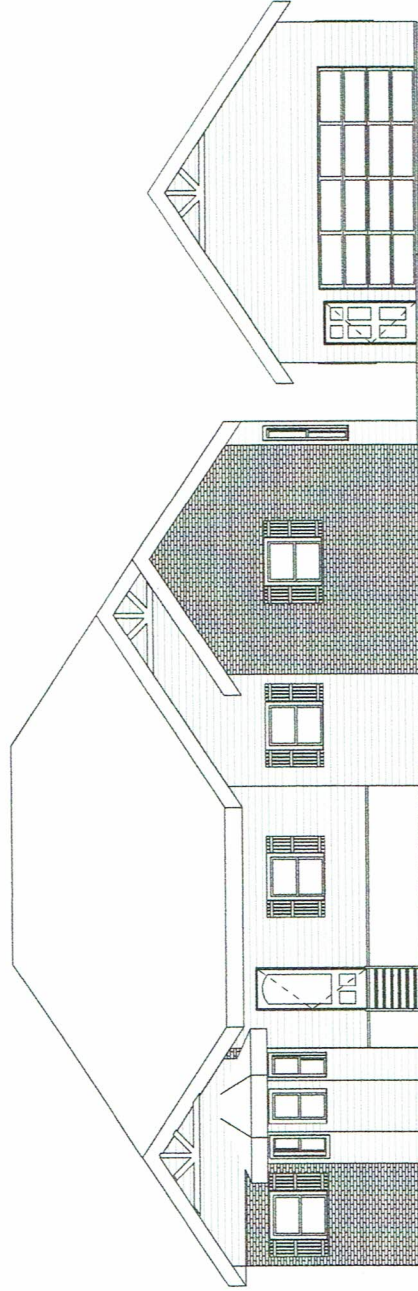
Eric Groen
Garage Addition

Notes for Garage:
Siding-Cement Fiber Board
Siding Color-Same as Home
Roof-Architectural Shingles
Door-White Aluminum Door

3D Views

Project number	1005	A103
Date	April 30, 2017	
Drawn by	Ben Hammill	

Front Elevation from Street



① South
1/8" = 1'-0"

Eric Groen
Garage Addition

Elevation

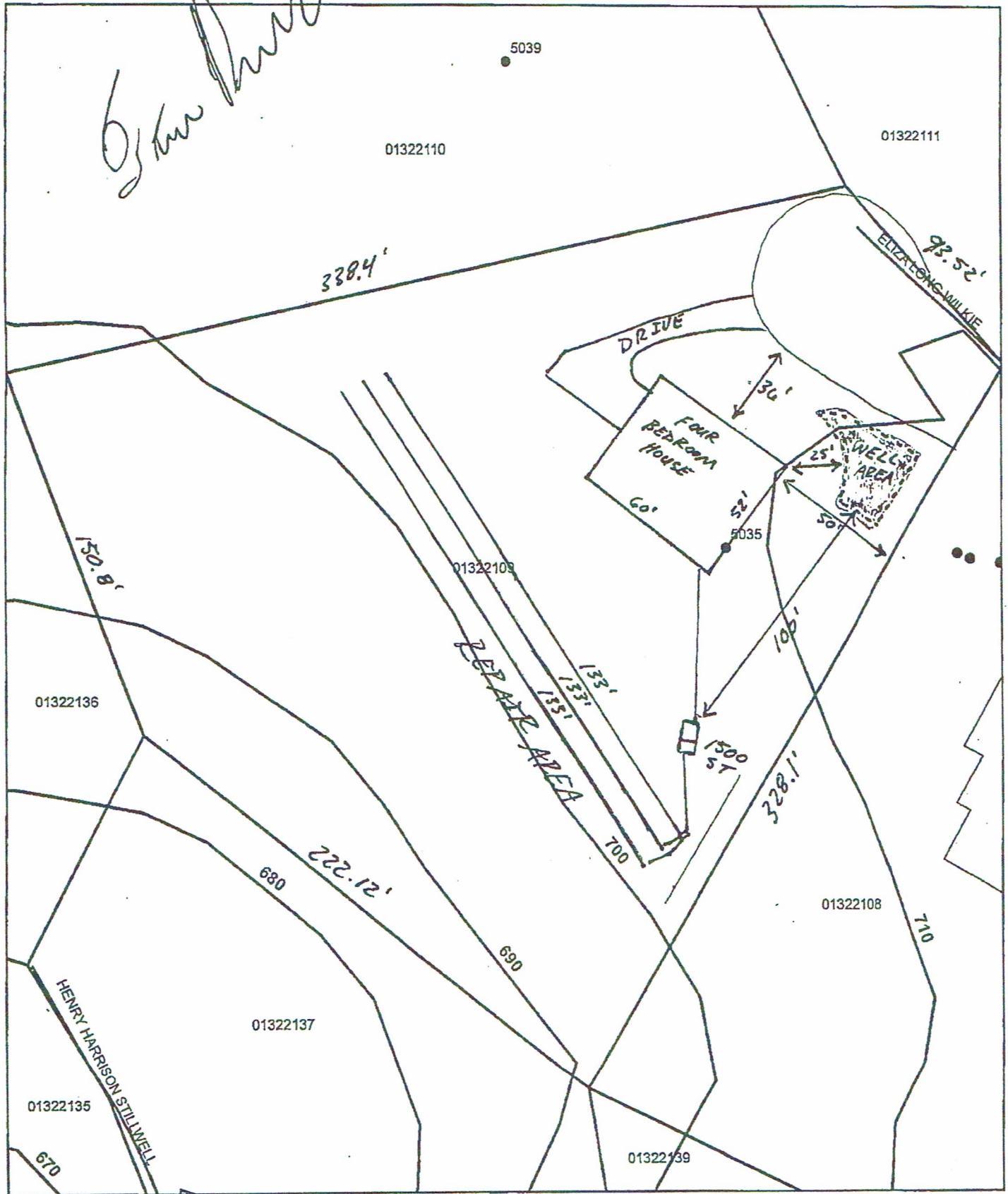
Project number	1005
Date	April 30, 2017
Drawn by	Ben Hammill

A102

Notes for Garage:
Siding-Cement Fiber Board
Siding Color-Same as Home
Roof-Architecture Shingles
Door-White Aluminum Door

SEPTIC PERMIT FOR: 5035 ELIZABETH LONG WILKE DRIVE
PARCEL #: 013-221-09
WAPSPS APPLICATION #: 6092
FILE #: 5318B

Mecklenburg Co.
Septic Permit



Map Created By: Jeremy Michelone, REHS
Map Created On: 04/11/13

Jeremy Michelone, REHS
4/11/13

SCALE = 1" = 50'
0 15 30 60
Feet





5318B

MECKLENBURG COUNTY
HEALTH DEPARTMENT

App # 6093

APPLICATION FOR A RESIDENTIAL SITE IMPROVEMENT PERMIT/ CONSTRUCTION AUTHORIZATION
FOR AN ON-SITE WASTEWATER SYSTEM, NEW WELL INSTALLATION, OR REPAIR OF EXISTING WELL

1. SEPTIC / TYPE APPLICATION: N/A NEW SYSTEM ALTERATION REPAIR MODIFIED PLOT PLAN

2. WELL / TYPE APPLICATION: N/A NEW WELL MAJOR REPAIR ABANDONMENT

3. JOB LOCATION INFORMATION:

TAX PARCEL NUMBER: 01322109

STREET ADDRESS: 5035 Eliza Long Wilkie Dr.

CITY: Huntersville

STATE: NC ZIP: 28078

SUBDIVISION NAME: Stillwell

LOT #: 2 LOT SIZE (acres): 2

TOWNSHIP:

MECKLENBURG	CORNELIUS	<u>HUNTERSVILLE</u>
DAVDSON	CHARLOTTE	PINEVILLE
MATTHEWS	MINT HILL	

4. BUILDING INFORMATION:

BUILDING TYPE:

SINGLE MOBILE HOME	MODULAR HOME
DOUBLE WIDE	MULTIPLE FAMILY
<u>HOUSE</u>	OTHER

HEATED SQUARE FOOTAGE: 3800

NUMBER OF BEDROOMS: 4

NUMBER OF OCCUPANTS: 2

FOUNDATION TYPE:

CONCRETE SLAB	BASEMENT WITH PLUMBING
<u>CRAWL SPACE</u>	BASEMENT WITH NO PLUMBING

6. IF PLANNING TO EXPAND OR ALTER THE EXISTING SEPTIC SYSTEM PLEASE COMPLETE THE FOLLOWING SECTION: N/A

NUMBER OF BEDROOMS TO BE ADDED: _____ NUMBER OF ADDITIONAL OCCUPANTS IN THE RESIDENCE: _____

6. WATER SUPPLY: MUNICIPAL PRIVATE WELL PUBLIC WELL SHARED WELL OTHER _____7. PROPOSED USE OF WELL: N/A IRRIGATION POTABLE (DRINKING WATER) OTHER _____

8. PLEASE INDICATE AND RANK DESIRED SEPTIC SYSTEM TYPE(S) IN ORDER OF PREFERENCE (1-MOST DESIRED 5-LEAST DESIRED):

N/A ANY TYPE CONVENTIONAL ACCEPTED INNOVATIVE ALTERNATIVE OTHER _____

8A. RANK: _____

9. DO ANY OF THE FOLLOWING APPLY TO THE PROPERTY IN QUESTION? IF "YES" PLEASE ATTACH SUPPORTING DOCUMENTATION.

BURIED CABLES, LANDFILLS, STUMPHOLES	YES <u>NO</u>	GRADING/SOIL REMOVAL PERFORMED	YES <u>NO</u>
EXISTING WASTEWATER (SEPTIC) SYSTEMS	YES <u>NO</u>	JURISDICTIONAL WETLANDS	YES <u>NO</u>
WELLS, SPRINGS, OR WATER LINES	YES <u>NO</u>	APPROVAL REQUIRED BY ANY OTHER PUBLIC AGENCY	YES <u>NO</u>
EASEMENTS OR RIGHT-OF-WAYS	YES <u>NO</u>	WASTEWATER OTHER THAN DOMESTIC SEWAGE	YES <u>NO</u>
CHEMICAL/PETROLEUM STORAGE TANKS	YES <u>NO</u>	KNOWN UNDERGROUND CONTAMINATION	YES <u>NO</u>
WASTE STORAGE	YES <u>NO</u>	GROUNDWATER USE RESTRICTIONS/VARIANCES	YES <u>NO</u>

10. WHAT DATE WAS THE PROPERTY ORIGINALLY DEEDED AND RECORDED? _____ UNKNOWN11. WHAT IS THE ANTICIPATED CLOSING DATE FOR THIS PROPERTY? 3-18-13 N/A

12. PROPERTY OWNER:

NAME: Eric Green

ADDRESS: PO Box 1785

CITY: Huntersville

STATE: NC ZIP: 28070

WORK PHONE: _____

MOBILE PHONE: (704) 615-7847

FAX: _____

E-MAIL: _____

13. OWNER'S LEGAL REPRESENTATIVE, IF APPLICABLE:

NAME: IQ Custom Construction

ADDRESS: 840 Edmiston Rd

CITY: MT. Ulla

STATE: NC ZIP: 28125

WORK PHONE: 704-400-6472

MOBILE PHONE: 704-724-3111

FAX: _____

E-MAIL: IQcustomconstruction@gmail.com

* 704-724-3111
Tim Ponczko

14. SEPTIC SYSTEM PERMIT APPLICATION:

If the information in this application is falsified, changed, or the site is altered, then the Improvement Permit and Authorization to Construct shall become invalid. I have read this application and certify that the information provided herein is true, complete and correct. Authorized county and state officials are granted right of entry to conduct necessary inspections to determine compliance with applicable laws and rules. I understand that I am solely responsible for the proper identification and labeling of all property lines and corners and making the site accessible so that a complete site evaluation can be performed. The permit is valid for either six (60) months or is non-expiring depending upon the documentation submitted: complete site plan = 60 months, complete plat = non-expiring.

JS (Initial here for septic system applications)

15. WELL PERMIT APPLICATION:

If the information in this application is falsified, changed, or the site is altered, then the Well Permit shall become invalid. I have read this application and certify that the information provided herein is true, complete and correct. Authorized county and state officials are granted right of entry to conduct necessary inspections to determine compliance with applicable laws and rules. I understand that I am solely responsible for the proper identification and labeling of all property lines and corners and making the site accessible so that a complete site evaluation can be performed. The permit is valid for a period of twelve (12) months from the date of issuance.

JS (Initial here for well applications)

16. APPLICATION SIGNATURE SECTION:

ONLY COMPLETE APPLICATIONS WILL BE PROCESSED. A proper signature is required in order to process your application. Please review the application carefully and sign in the space provided below. A PROPOSED PLOT PLAN is required to be submitted with each application.

[Signature]
Property Owner's or Owner's Legal Representative Signature

3-20-13
Date

OFFICE USE ONLY

SURVEY PLAT TO SCALE SUBMITTED

SCALED SITE PLAN SUBMITTED

UN-SCALED SITE PLAN SUBMITTED

SEPTIC APPLICATION FEE RECEIVED: \$ _____

DATE FEE RECEIVED: _____

WELL APPLICATION FEE RECEIVED: \$ 550DATE FEE RECEIVED: 3/20/13APPLICATION PROCESSED BY: DuraGWS FILE NUMBER ASSIGNED: 5318 BAPPLICATION ID NUMBER ASSIGNED: 6093

COMMENTS:

Architectural Request Form

Name of Community: Stillwell

Name: Eric Groen

Date Form Submitted: 2-24-17

Address: 5035 Eliza Long Wilkie Dr.

Home Phone: 704-615-7847 Work Phone: same

Email: eigroen@hotmail.com

Estimated Start Date: 4-1-17

Estimated Completion Date: 4-20-17

Type of Changes:

☐

☐

☐

☐

Fence

Patio

Exterior Color Change

Other:

☐

☐

☐

Deck

Pool

Play Equipment

☐

☒

☐

Covered Porch

Garage

Roofing

☐

☐

☐

Utility Building

Home Addition

Landscaping

Location: Directly across from existing house garage.

Size: 24'x24'

Color: Sanderling Beige (same as house)

Materials: Cement Fiberboard (same as house)

Contractor Name: IQ Custom Construction

INSTRUCTIONS: Please read and follow carefully.

- Attach a written description of the scope of the proposed changes including the general nature of the work, location of the changes, colors and materials to be used plus any plans, drawings, photos or brochures necessary to illustrate the dimension, size and appearance. Please be sure to include details of any landscaping changes or removals which may be necessary to accomplish the changes proposed.
- Attach a property survey with the location of the proposed changes clearly marked on the survey. This item **MUST** be included so that there is a clear understanding of precisely where the changes will occur in relation to the home, driveway, other structures and any easements or rights of way which may exist on the property.
- COMPLETE requests can be mailed to (your community's name) at P.O. Box 11906, Charlotte, NC 28220 OR requests which can be assembled electronically into a single email with preferably a single PDF attachment (including this form and the items described above) can be sent to arc@hawihome.com with your community's name, your last name and your property address included in the subject line.

IMPORTANT: Please allow up to 3-4 weeks for the community to complete the review and response process. Requests which do not include the items described above will delay the process. The review and response is based on the community's governing documents and the information submitted with this request. The property owner is responsible for investigating and complying with any and all other local requirements, permits or jurisdictions the property is subject to.



Approved



Denied

Committee Use Only

Plans noted March 19, 2017 approved as noted. Landscaping to include evergreen shrubs at corners to be at least 7 gallon with

Comments:

minimum height of 24" and intermediate shrubs to be a minimum of 3 gallon with minimum height of 16"

Adam Getchell

(Name of Committee Member)

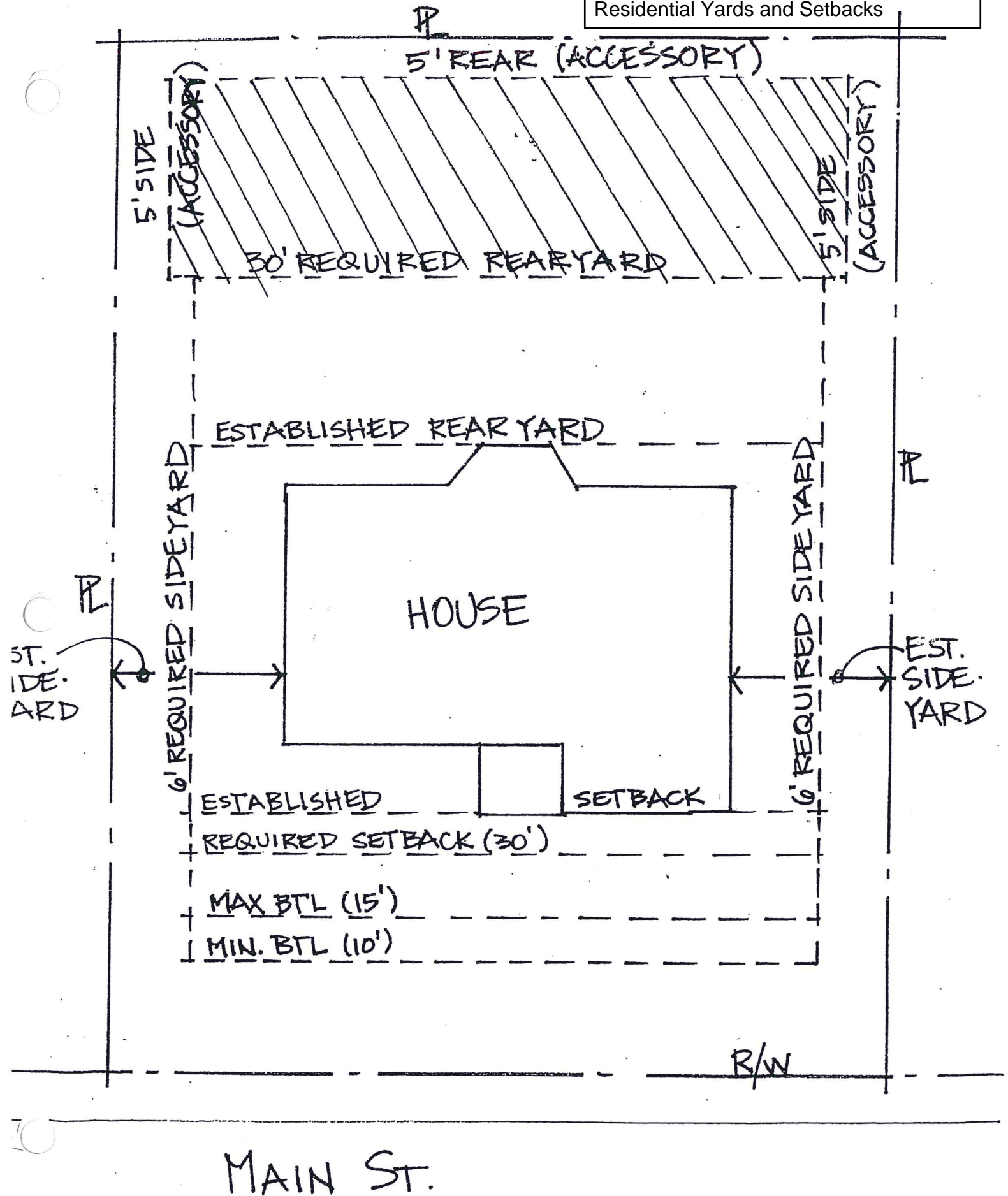
[Signature]

(Signature Of Committee Member)

3/27/17

(Date)

Exhibit 2 – Diagram of Ordinance Defined Residential Yards and Setbacks



From: [Michelone, Jeremy](#)
To: [Meredith Nesbitt](#)
Cc: [Michael, Jeremy](#)
Subject: RE: 5035 Eliza Long Wilkie Drive Septic Lines
Date: Thursday, May 11, 2017 9:52:32 AM

<http://ehs.ncpublichealth.com/oswp/docs/rules/1900-Rules-08-29-2016.pdf>

Good morning Meredith. I have attached NC Laws And Rules For Sewage Treatment, And Disposal Systems for you to read through to understand how we permit septic systems and all the setbacks that we must follow. To answer your questions as simply as possible, yes, we determine the location of every single septic system. There are many factors that come in to play, but would take me a month to explain it all to you. If you would be interested you are more than welcome to join me in permitting a new vacant lot where you could get a hands on experience. The garage setback is located under 15A NCAC 18A.1950(a)(10) in the rules that I attached. I am also in support of the variance being approved. Please feel free to contact me with any other questions.

Thank You,
Jeremy Michelone

From: Meredith Nesbitt [mailto:mnesbitt@huntersville.org]
Sent: Wednesday, May 10, 2017 11:57 AM
To: Michelone, Jeremy <Jeremy.Michelone@mecklenburgcountync.gov>
Subject: 5035 Eliza Long Wilkie Drive Septic Lines

Hi Jeremey,

I am processing a variance request, see attached application, for the property owners of 5035 Eliza Long Wilkie Drive. The applicant provided your contact information regarding the septic lines.

The property owner cannot put his detached garage in the established rear yard (a requirement of Huntersville Zoning Ordinance) because of the location of the septic lines on his property. In his application he states Mecklenburg County Environmental Health told him where the septic lines had to go on him property. I do not know anything about permitting septic lines in the County. Can you answer the following questions?

- Does the County determine the required location of septic lines? If so, how is this determined?
- Where is it established that the garage must be 5' away from the septic line? (The Town is not arguing the requirement I just anticipate in evaluating this request the Board of Adjustment may ask where and why does the County require the garage be 5' from the septic line.)

The Town intends to support the variance request because it is unreasonable for the property owner to have to move septic lines to be able to get a permit for this detached garage. I just need to make sure all the i's are dotted and t's crossed. Thank you for your help with this!

Best regards,

Meredith M. Nesbitt, MSc. Urban Planning

Planner I | Town of Huntersville

105 Gilead Road | Third Floor

P.O. Box 664 | Huntersville, North Carolina 28070

PH: 704-766-2298 | FX: 704-992-5528

Email: mnesbitt@huntersville.org

Web: www.huntersville.org



Email correspondence to and from this sender is subject to the NC Public Records Law and may be disclosed to third parties.

Town of Huntersville
BOARD OF ADJUSTMENT
6/13/2017

To: Board of Adjustment Members
From: Brian Richards, GIS Administrator
Subject: V17-05 9541 Saint Barts Lane

V17-05: The applicants, Bryan and Jeanine Edwards, are requesting a variance from Article 8.8.9 (Structures and Uses Limited in Yards), to allow an existing encroachment of a deck and screen porch to remain.

ACTION RECOMMENDED:

Hold a hearing and take action

FINANCIAL IMPLICATIONS:

ATTACHMENTS:

Description	Type
☐ V17-05 Staff Report	Staff Report
☐ Exhibit 1 Application	Exhibit
☐ Exhibit 2 Building Permit	Exhibit
☐ Exhibit 3 Plot Plan	Exhibit
☐ Exhibit 4 Survey	Exhibit
☐ Exhibit 5 Picture of Deck	Exhibit
☐ Exhibit 6 Bob Blythe Memo	Exhibit

V 17-05

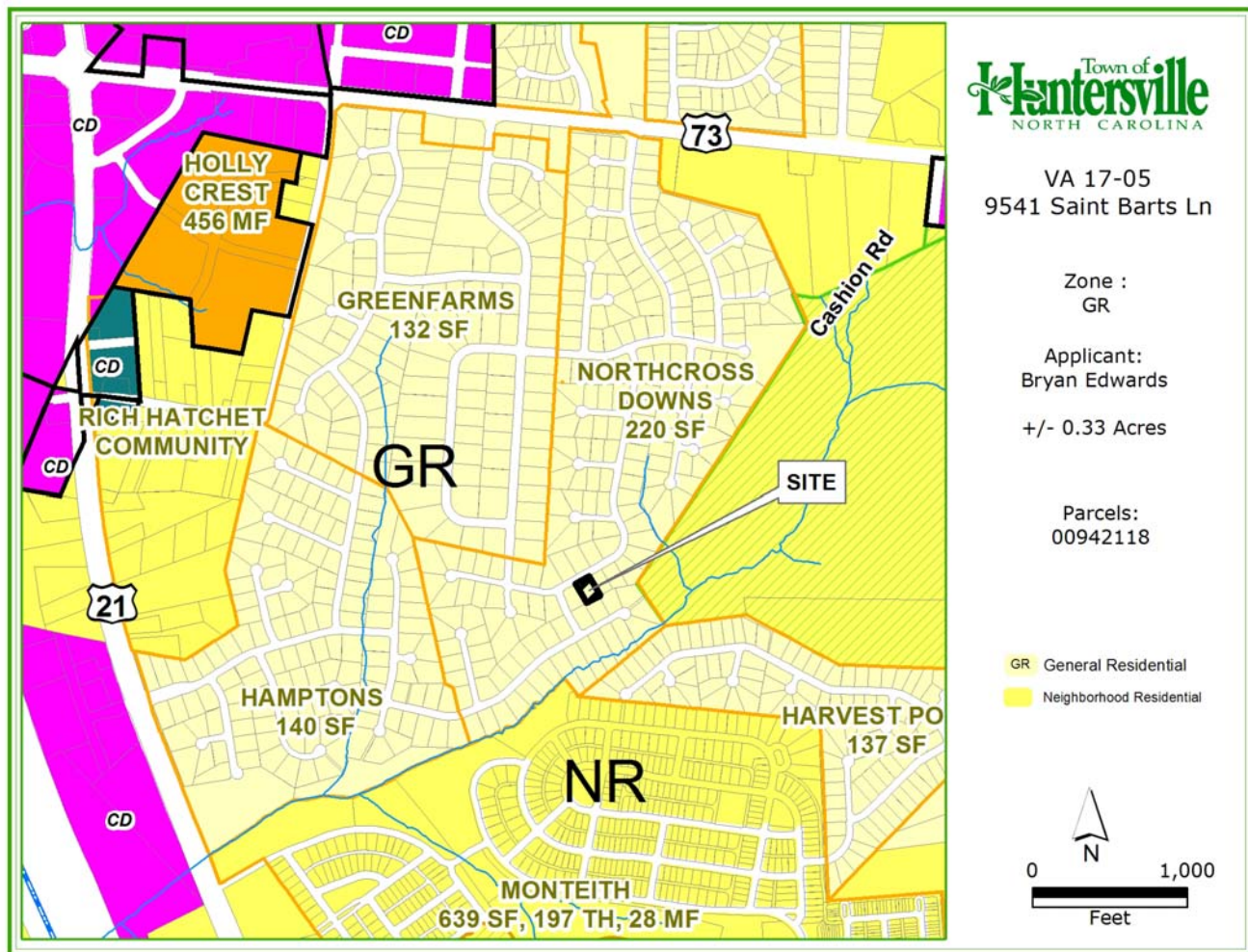
9541 Saint Barts Ln. Setback Encroachment

Case #: V17-05
Address: 9541 Saint Barts Lane, Huntersville NC, 28078
Parcel #: 009-421-08
Acreage: +/- 0.33 ac
Property Owner/Applicant: Bryan and Jeanine Edwards
Staff: Brian Richards – GIS Administrator/Planner

The applicants, Bryan and Jeanine Edwards, are requesting a variance from **Article 8.8.9**, see below, to allow an existing encroachment of a deck and screened porch to remain. If approved this request would allow the encroachment to exceed the maximum width allowed by 3.7' See Exhibit 1 for the variance application.

8.8 Structures and Uses Limited in Yards

.9 Subordinate structures attached to single family homes, such as decks, garages, porches, utility rooms, and similar features may extend into the required rear yard up to 25% of its depth, and may consume up to 20% of its area. Attached garages accessed from rear alleys may extend into the required rear yard to within 3' of the alley right-of-way or easement, and may consume up to 50% of its area. Such extensions may not exceed 50% of the width of the dwelling at the rear building line.



BACKGROUND:

1. The 0.33-acre subject property is located at 9541 Saint Barts Lane in the Hamptons/Northcross Downs Subdivision. The subject property is zoned General Residential (GR).
2. In 2013, Mr. Edwards's contractor applied for and was issued a building permit for a deck and screened porch. See Exhibit 2 for building permit application. The project was inspected by Mecklenburg County and approved in April of 2014.
3. During the permitting process the rear yard setback was not shown on the plot plan prepared on the applicants' behalf (Exhibit 2 page 5). County Staff completed this portion of the application rather than denying the application. Exhibit 3.
4. The Edwards are under contract to sell the home and as part of the closing procedures a survey of the property was performed and revealed an encroachment exists that exceeds the maximum width allowed, as established by Article 8.8.9

STAFF FINDINGS and CONCLUSIONS (ordinance standards are in italics):

Please see Exhibit 1 for the applicant's responses to the required criteria for granting a variance.

In considering any variance request, the following *Standards for Granting a Variance* (Article 11.3.2.e) must be addressed with findings of fact:

Standards for Granting a Variance. 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 of 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.*

Staff Findings:

- A. According to the provided survey (Exhibit 4) the home is 50' wide. Therefore according to section 8.8.9 50% of the subordinate structure or 25' may encroach into the required 45' rear yard up to 11.25'. According to the survey provided the width of the encroachment (deck/enclosed porch) is 28.7'.
- B. The applicant indicated the North Carolina court case (Turik v. Town of Surf City) concludes that hardships resulting from good faith reliance on surveys and permits are eligible for a variance.
- C. According to Bob Blythe Huntersville Town Attorney, the ruling in Turik v. Town of Surf City "does not mean that this reliance requires that a variance be granted, but they must still comply with all of the other requirements for granting a variance, as well as showing that he did rely upon the survey in siting the offending construction." Exhibit 6.
- D. Staff modified the building permit application to show the required 45' rear yard setback prior to issuing the permit. Exhibit 3.

Staff Conclusions:

- A. There is not an unnecessary hardship resulting from the strict application of the ordinance.
- B. The applicant could modify the structure to remove 3.7' of the deck.

Staff finds that this criteria for granting a variance is not met.

- 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.*

Staff Findings:

- A. Maps show there are no conditions that are peculiar at 9541 Saint Barts Lane and that property is similar to other properties in the subdivision.

Staff Conclusions:

- A. There is not an unnecessary hardship resulting from conditions that are particular to the property.

Staff finds that this criteria for granting a variance is not met.

- 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.*

Staff Findings:

- A. According to the applicant “unnecessary and unreasonable hardship would apply if a strict application of the ordinance didn’t take into consideration the facts and circumstances of this particular situation.”
- B. A building permit was applied for and approved by Mecklenburg County see Exhibit 2.
- C. County staff modified the building permit application to show the required 45’ rear setback. Staff’s policy is to write in missing information, if possible, rather than deny permit applications. Exhibit 3.
- D. A survey performed in 2017 revealed an encroachment exists into the rear yard setback and that it exceeds the maximum width allowed (25’), see Exhibit 4.
- E. Bob Blythe Memo Exhibit 6.

Staff Conclusions:

- A. The hardship did result from actions taken by the builder which resulted in the deck being less than 45’ from the rear yard and an encroachment that exceeds the maximum allowed width of a subordinate structure by 3.7’.
- B. The subordinate structure is not built in accordance to the issued building permit indicating a 45’ rear yard setback.

Staff finds that this criteria for granting a variance is not met.

- 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.*

Staff Findings:

- A. The intent of Article 8.8.9 is to allow for flexibility for homeowners to construct subordinate structures and to allow them to encroach into rear yard setbacks but also protect neighboring property owners in that the encroachment is limited to no more than 50% of its area and 50% of the width of the dwelling unit.
- B. The building permit was approved and issued with the correct rear yard setback. The subordinate structure is not built in accordance to the issued building permit
- C. The condition is existing and to date, staff has not received any complaints from adjacent property owners.
- D. There is an alternative available to the property owner other than the granting of a variance, to satisfy the Zoning Ordinance requirements by reducing the deck width by 3.7’.
- E. Public Safety is not harmed by this variance but it is not consistent with the spirit, purpose, and intent of the ordinance to allow an encroachment of more than 50% of the dwellings width.

Staff Conclusions:

Staff finds that this criteria for granting a variance is not met based on findings A, B, and D.

Exhibit 1 - Variance Application

Exhibit 2 – Building Permit

Exhibit 3 – Approved 2013 Plot Plan

Exhibit 4 – Survey

Exhibit 5 – Picture of Deck and Screen Porch

Exhibit 6 – Bob Blythe Memo

EXAMPLE DECISION STATEMENT: V17-5

Planning Department	Board of Adjustment
	<p>APPROVAL: In considering the findings of fact for, a request by Bryan and Jeanine Edwards for V17-05 a variance from Article 8.8.9, the Board of Adjustment grants approval of the variance based on the requested variance meeting the criteria for granting a variance.</p> <p>The Board of Adjustment finds the request meets the criteria for granting a variance based on the following finds of fact: <i>(explain findings of fact)</i></p>
<p>DENIAL: In considering the findings of fact for V17-05, a request by Bryan and Jeanine Edwards for a variance from Article 8.8.9, the Planning Department recommends denial of the variance request based on a finding that the request does not meet the criteria for granting a variance based on the following findings of fact:</p> <p>Standard 1:</p> <ul style="list-style-type: none"> • The ordinance allows extensions to occupy 50% of the width of the dwelling unit (25' for this home). The extension is 28.7' • The issued building permit shows no encroachment at the 45' rear yard setback. • The structure can be modified to come into compliance. <p>Standard 2</p> <ul style="list-style-type: none"> • There are no conditions that are peculiar to the property that create a hardship. <p>Standard 3</p> <ul style="list-style-type: none"> • County Staff modified the building permit application to show the missing 45' rear yard setback. • The structure was not constructed in accordance with the issued building permit. <p>Standard 4</p> <ul style="list-style-type: none"> • The applicant has alternatives, other than a variance, to achieve zoning compliance. 	<p>DENIAL: In considering the findings of fact for V17-5, a request by Bryan and Jeanine Edwards for a variance from Article 8.8.9, the Board of Adjustment denies the variance request based on a finding that the request does not meet the criteria for granting a variance.</p> <p>The Board of Adjustment finds the request does not met the criteria for granting a variance based on the following findings of fact: <i>(explain findings of fact)</i></p>



Variance Application

Fee: \$150 (Residential) X
 \$300 (Commercial)

Date: 5/11/2017

Property Owner Information

Name: Bryan and Jeanine Edwards
 Address: 9541 St. Barts Ln.
Huntersville NC 28078
 Email: bry2640@yahoo.com
 Phone No. 704-609.7979

Applicant Information (if different)

Name:
 Address:

 Email:
 Phone No.

Location of Property/Building

Address: 9541 St. Barts Ln. Huntersville NC Parcel Size: .33
 Tax Parcel ID (PIN) Number(s): 009-421-18

Text of Ordinance to be varied

Ordinance: General Provisions Article: 8.8 Section: .9

Subordinate structures attached to single family homes, such as decks, garages, porches, utility rooms, and similar features may extend into the required rear yard up to 25% of its depth, and may consume up to 20% of its area. Attached garages accessed from rear alleys may extend into the required rear yard to within 3' of the alley right-of-way or easement, and may consume up to 50% of its area. Such extensions may not exceed 50% of the width of the dwelling at the rear building line.

Submittal Requirements

The following must be submitted with the completed application (signed and dated by the property owner and/or applicant):

- One (1) hard copy and one (1) electronic copy of any applicable map(s), site plans, exhibits, and applications showing exact location of property with respect to existing streets, adjoining lots and other important features on or contiguous to the property. Also, include any maps and/or illustrations (to scale), which are necessary to show the location, number and size of buildings, signs, etc., on the property.
- A list of names, addresses and tax parcel identification numbers of properties that abut the site, are across the street from the site or are otherwise within one hundred feet (100') of the site. (Electronic format is preferred)



Variance Application

Notifications Requirements

Planning Staff will be required to notify in writing each adjoining property owner.

Planning Staff will also be required, if you are seeking a variance from the requirements of the Mountain Island Lake or Lake Norman Watershed Overlay Districts, to notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for consumption as follows:

- * Mountain Island Lake Watershed Overlay. Local governments having jurisdiction in the watershed: Charlotte Mecklenburg, Cornelius and Huntersville. Entities using the water supply for consumption: Mecklenburg County, Gastonia and Mount Holly.
- * Lake Norman Watershed Overlay. Local governments having jurisdiction in the watershed: Davidson, Cornelius and Huntersville. Entities using the water supply for consumption: Mooresville, Mecklenburg County and Lincoln County.

Variance Requirements

STANDARDS FOR GRANTING A VARIANCE (Article 11.3.2.e.):

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.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed by the Board (Article 11.3.1.e.).

In the following spaces, indicate the **FACTS** that demonstrates to the Board of Adjustment that you meet all the standards for granting a variance:

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. The difficulty or hardship would result only from these regulations and from no other cause, including the actions of the owner or previous owners of the property.

Unnecessary and unreasonable hardship would apply if a strict application of the ordinance didn't take into consideration the facts and circumstances of this particular situation. Despite securing all required permits and inspections related to the construction of a screened porch, the new structure 3-years after construction was discovered to be in violation of the towns set-back rules, going over 3.7 ft. of the 50% of the width of the residential property. North Carolina courts have held that hardships resulting from such good faith reliance on surveys and permits are eligible for a variance (*Turik v. Town of Surf City*, 182 N.C. App. 427, 642 S.E.2d 251 (2007)). This discovery, though no fault of our own, now has the potential to derail the sales process of our home, putting undue burden on us, and the same on the buyers of our home who are moving from out of state... time-being-of-the-essence.



Variance Application

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. The difficulty or hardship is peculiar to the property and is not generally shared by other properties classified in the same zoning district and/or use for the same purpose.

The difficulty or hardship is peculiar to the property in that we were attempting to maintain the aesthetically pleasing appearance of the property by aligning the new screened porch structure with the existing deck. In doing so, in good faith, we followed best of our ability, the applicable building and permitting process, trusting that all parties involved would do their jobs thoroughly and in a professional and prudent manner.

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.


The violation did not result from actions taken by us. To the contrary, we followed the process we were supposed to only to discover 3- years later after construction and final approval that the County Inspector and the Contractor seemingly did not do the same.

4. The public safety and general welfare have been protected and substantial justice done.

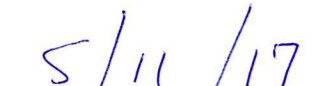
The variance request for the 3.3 ft violation does not pose any danger to public safety or infringe upon anyone's general welfare, nor does it violate the spirit of the ordinance. In regards to justice, we relied in good faith on a permit, and that permit turned out to be wrongly issued/approved. We should not be held accountable following the approved permit and construction.

Property Owner / Applicant Certification

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



 Property Owner / Applicant



 Date

9541

Please post this sign on a window so that it is visible from the street. Failure to do so may delay inspections. For inspections call (704) 336-3830

Mecklenburg County Building Document

Permit No: B2554674	Lien Agent
Issued Date: 11/26/2013	
Contractor: KENTS BACK YARD VISION	
Parcel No: 00942118	
Address: 9541 ST BARTS LN	

Architect

SCOPE OF WORK

Project Name (Description of Work)

Deck and Screen Porch - Deck and Screen Porch 9541 ST BARTS LN
HUNTERSVILLE

EXPANDED SCOPE OF WORK

Construct deck, stairs, install gable style roof and screen porch

Mecklenburg County
Land Use and Environmental Services
P.O. Box 31097
700 N Tryon St
Charlotte, NC 28231-1097
(704) 336-3830

Permit: **B2554674**
Issue Date: November 26, 2013

Building Permit One/Two Family

Property

Address: 9541 ST BARTS LN
Subdivision: NORTHCROSS DOWNS

Parcel: 00942118 Lot: 23 Block: A
Tax Jurisdiction: HUNTERSVILLE

Site Details

Land Area (sq. ft.): Parking Required: Front Street:
Lot

Corner: N Through: N Irregular: N

Minimum Setbacks (ft.)

Front: 0 Left: 10 Right: 10 Rear: 45

Project

Project Number: NR0271267 Occupancy Type: R3 * RESIDENTIAL - SINGLE FAMI
Project Name: Deck and Screen Porch Contract Cost: \$21,272
USDC: 434 - Housekeeping Buildings(additions, chi Type of Work: Addition (expand footprint)
New Heated Area: New Unheated Area 232 sq. ft. Deck Area: 55 sq. ft.
Unhtd to Htd: Renovate Existing: Bdrm Add/Upfit:

Owner

Name: Edwards, Bryan
Phone: (704) 906-0595

Address: 9541 St Barts
Huntersville, NC 28078

Trade Details

Electrical

Total Amps: 120 Number of Circuits: 3 Connections at 120 Volts: 0 Connections Over 120 Volts: 0
Service Type: Existing Utility Company: DUKE ENERGY

Mechanical

No. of Gas Connections: 0 No. of Appliances: 0 Utility Company:
Heating/Cooling:

Plumbing

No. of Fixtures: 0 No. of Appliances: 0

Utilities

Type of Service: Existing

	Public Meter/Connection		Private Service	
	Individual	Master	Individual	Community
Water/Well:	Yes	No	No	No
Sewer/Septic:	Yes	No	No	No

*This permit will expire if work either has not started within 6 months or is discontinued for a period of 12 months.
No credit or refund will be given unless applied for within 120 days after a permit has expired.*

Mecklenburg County
Land Use and Environmental Services
P.O. Box 31097
700 N Tryon St
Charlotte, NC 28231-1097
(704) 336-3830

Permit: **B2554674**
Issue Date: November 26, 2013

Building Permit One/Two Family

Contractors

Building Contractor	KENTS BACK YARD VISION	Contractor ID: X43753
Phone:	(704) 944-1350	License #: 65192
Address:	2311 VILLAGE LAKE DR CHARLOTTE, NC 28212	Contract Cost: \$ 19,522
		Home Owner: No
		Permit Number: B2554674
Electrical Contractor	WEBSTER MICHAEL DEAN	Contractor ID: X43842
Phone:	(980) 245-0943	License #: 28450
Address:	1506 DARLEY DALE CT MATTEWS, NC 28105	Contract Cost: \$ 1,750
		Home Owner: No
		Permit Number: E2557202

Fees

Permit Fee Type:	Construction	Fax Fee:	\$0.00	Fast Track Fee:	\$0.00
Permit Fee:	\$306.62	Home Owner Recovery Fund:	\$0.00	Fee Adjustment:	\$0.00
Zoning Fee	\$15.00	NESHAP Fee:	\$0.00	Total Fee:	\$321.62
Triple Fee:	\$0.00	Paper Application Fee:	\$0.00	Charge To Acct:	Yes
Fire Damage Fee:	\$0.00	HFR Fee:	\$0.00	Vector OK:	
Comrc'l Surcharge Fee:	\$0.00	Paper Plans Conversion Fee:	\$0.00	NESHAP OK:	

Miscellaneous

Entry Date: 11/19/2013 08:42 pm
Issue Date: 11/26/2013
Special Inspections: n/a

Entered By: KENTS BACK YARD VISION
Issued By:

Lien Agent

Archadeck

*This permit will expire if work either has not started within 6 months or is discontinued for a period of 12 months.
No credit or refund will be given unless applied for within 120 days after a permit has expired.*

Mecklenburg County
Land Use and Environmental Services
P.O. Box 31097
700 N Tryon St
Charlotte, NC 28231-1097
(704) 336-3830

Permit: **B2554674**
Issue Date: November 26, 2013

Building Permit One/Two Family

Remarks

Your project has been assigned to the following inspection team for project assistance: North Team @ 980-314-3134.
Construct deck, stairs, install gable style roof and screen porch

*This permit will expire if work either has not started within 6 months or is discontinued for a period of 12 months.
No credit or refund will be given unless applied for within 120 days after a permit has expired.*

**Residential Plot Plan
For Internet Permit Application**

For Department Use

Permit #

Master Plan #

E-Plan #

ENTER SUBMITTAL NUMBER HERE: 805-82-385

LOCATION/SITE DATA

9541 ST BARTS LN
Street # (N,S,E,W) Street Name (Av,Rd,St)
Project / Subdivision Name: NORTHCROSS DOWNS Phase Section
Lot # 23 Block # A Land Area (sq. ft.)

OWNER INFORMATION

Owner: Edwards, Bryan Address: 9541 St Barts
City: Huntersville State: NC Zip: 28078 Phone # (704) 906-0595

FOR DEPARTMENT USE

Tax Parcel # 00942118 Tax Jurisdiction: HUNTERSVILLE HUNT
Zoning: Juris HUNT Map # R/W
Special (Circle) C D N P S Floodplain Yes Flood Elev Fire Dist. Yes
Lot: Corner Through Front Street (if different)
Minimum setbacks: Front Left Side Right Side Rear
Remarks:

PROJECT DATA

Type Work:

New Addition Accessory

Project Description:

Deck and Screen Porch

Area (sq.ft.):

Heated Unheated 232

Deck(s) 55

Utilities: New X Existing

Public:

1-Indiv Meter/Conn. X Water X Sewer

2-Master Meter/Conn. Water Sewer

Private:

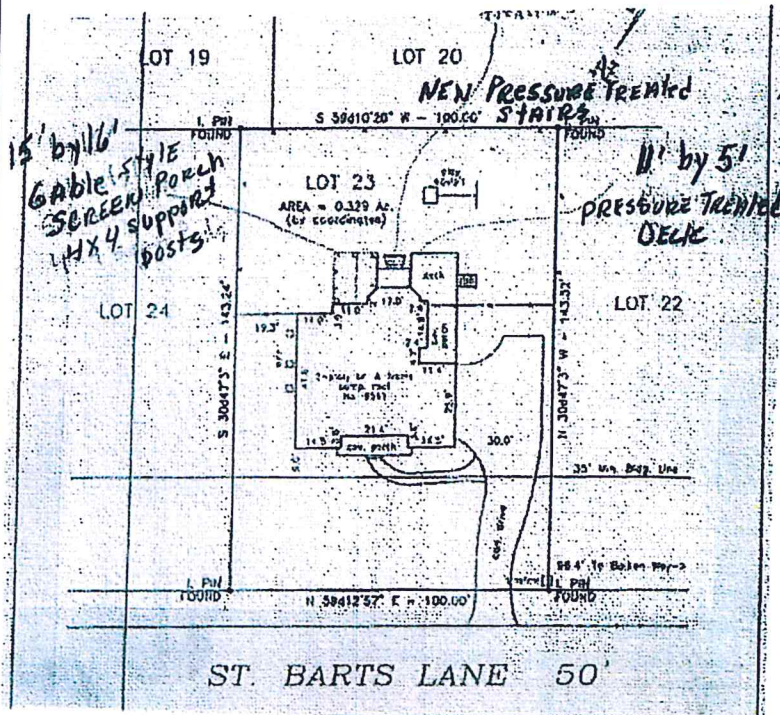
3-Individual Well Septic

4-Community Well Septic

Note: This plot plan must be faxed before your Internet permit will be processed.

Central office: 704-336-3823

DRAW PLOT PLAN- Show what the permit is requesting.



ALL EXISTING AND PROPOSED BUILDING(S) ON LOT ARE SHOWN WITH MEASUREMENTS INDICATED.

Applicant's Signature: Susan Mehall Date: 11/19/201 Print Applicant's Name: Susan Mehall Contact # (704) 944-1350 ext:

Contractor Name: KENTS BACK YARD VISION Contractor Acct #: X43753

Email: smehall@archadeckofcharlotte.com

For Department Use: Zoning Approved by: Initial Date:

Mecklenburg County Code Enforcement Dept.
PO Box 31097 Charlotte, NC 28231-1097
(704) 336-3803, fax (704) 336-3823



Welcome KENTS BACK YARD VISION

WEBPERMIT 7.2

[Permit Application](#) | [Trade Permits](#) | [View Permits](#) | [Links](#) | [Account Info](#) | [Sign In](#) | [Sign Out](#) | [Change Password](#)**Building Permit Inspection Results**Permit # B2554674
Job #Permit Type
Permit Status One/Two Family
Complete**Property**Address 9541 ST BARTS LN
Tax Jurisdiction HUNTERSVILLEParcel # 00942138
PhaseLot 23
Block A**Inspection Requests**

	Confirmation #	Requested Through	Result Date	Requested Tasks	Performed Tasks	Result Overall	Auto Notify Sent
Go	2554674001	WEB	Jan 8, 2014	FT	FT	Failed	
Go	2554674002	WEB	Jan 27, 2014	FR	FR	Passed	JAN 27, 2014 01:06:49
Go	2554674003	WEB	Mar 26, 2014	FI	FI	Cancelled	
Go	2554674004	WEB	Apr 23, 2014	FI	FI	Passed	APR 23, 2014 12:23:52

Special Inspection PreConstruction Meetings

Result Date Requested Tasks Result Overall Notes

[Submit](#) [Cancel](#)

Residential Plot Plan For Internet Permit Application

For Department Use

Permit #

B2554674

ENTER SUBMITTAL NUMBER HERE: 805-82-385

LOCATION/SITE DATA

9541 ST BARTS LN
 Street # (N,S,E,W) Street Name (Av,Rd,St)
 Project / Subdivision Name: NORTECROSS DOWNS Phase Section
 Lot # 23 Block # A Land Area (sq. ft.)

Master Plan #

E-Plan #

OWNER INFORMATION

Owner: Edwards, Bryan

Address: 9541 St Barts

City: Huntersville

State: NC

Zip: 28078

Phone # (704) 906-0595

FOR DEPARTMENT USE

Tax Parcel # 00942118

Tax Jurisdiction: HUNTERSVILLE HUNT

Zoning: GR Juris HUNT Map # R/W

Special (Circle) C D N P S Floodplain Yes Flood Elev Fire Dist. Yes

Lot: Corner Through Front Street (if different)

Minimum setbacks: Front Left Side 10 Right Side 10 Rear 45

Remarks:

PROJECT DATA

Type Work:

New Addition Accessory

Project Description:

Deck and Screen Porch

Area (sq.ft.):

Heated Unheated 232

Deck(s) 55

Utilities: New X Existing

Public:

1-Indiv Meter/Conn. X Water X Sewer

2-Master Meter/Conn. Water Sewer

Private:

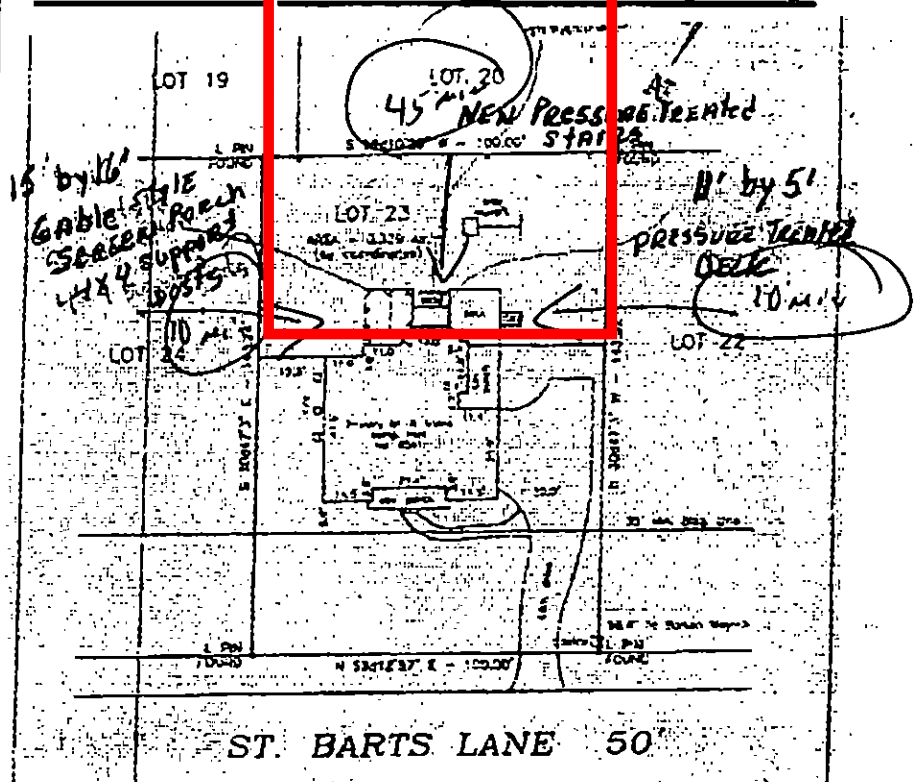
3-Individual Well Septic

4-Community Well Septic

Note: This plot plan must be faxed before your Internet permit will be processed.

Central office: 704-336-3823

DRAW PLOT PLAN- Show what the permit is requesting.



ST. BARTS LANE 50'

ALL EXISTING AND PROPOSED BUILDING(S) ON LOT ARE SHOWN WITH MEASUREMENTS INDICATED.

Applicant's Signature: Susan Mahall

Date: 11/19/201

Print Applicant's Name: Susan Mahall

Contact # (704) 944-1350 ext:

Contractor Name:

KENTS BACK YARD VISION

Contractor Acct #:

X43753

Email:

smahall@archadeckofcharlotte.com

For Department Use: Zoning Approved by: Initial Date: 11/25/13

Mecklenburg County Code Enforcement Dept.

PO Box 31097 Charlotte, NC 28231-1097

(704) 336-3803, fax (704) 336-3823

STATE OF NORTH CAROLINA MECKLENBURG COUNTY

"I, MARK C. CARTER, CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN BOOK 27646, PAGE 122 OR OTHER REFERENCE SOURCE); THAT THE BOUNDARIES NOT SURVEYED ARE INDICATED AS DRAWN FROM INFORMATION IN BOOK 28, PAGE 75 OR OTHER REFERENCE SOURCE; THAT THE RATIO OF PRECISION OR POSITION ACCURACY IS 1:10,000, AND THAT THIS MAP MEETS THE REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA (21 NCAC 56. 1600)." THIS 5th DAY OF MAY, 2017.

Mark C. Carter
PROFESSIONAL LAND SURVEYOR



NOTES

1. AREA CALCULATED BY COORDINATE COMPUTATION.
2. ADJOINING PROPERTY OWNERS NAMES WERE TAKEN FROM MECKLENBURG COUNTY TAX OFFICE RECORDS, AND ARE CONSIDERED AS NOW OR FORMERLY.
3. IRON RODS AT ALL CORNERS UNLESS NOTED.
4. THIS MAP IS SUBJECT TO ANY AND ALL APPLICABLE DEED RESTRICTIONS, EASEMENTS, RIGHT-OF-WAY, UTILITIES AND RESTRICTIVE COVENANTS AND PRELIMINARY PLAN WHICH MAY BE OF RECORD.
5. ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES, MEASURED WITH ELECTRONIC MEASURING DEVICES.
6. LOT SUBJECT TO ALL ZONING ORDINANCES OF THE TOWN OF HUNTERSVILLE. BUILDER/OWNER MUST VERIFY THAT LOT IS IN COMPLIANCE WITH ALL COUNTY AND HOMEOWNERS ASSOCIATION ZONING ORDINANCES PRIOR TO ANY LAND DISTURBANCE OR CONSTRUCTION.
7. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE SEARCH.
8. NO NCOS MONUMENT FOUND WITHIN 2000 FEET.
9. SETBACKS SHOWN ARE per CURRENT ZONING ORDINANCES UNLESS OTHERWISE NOTED.
10. SUBJECT PROPERTY ZONED R-3.

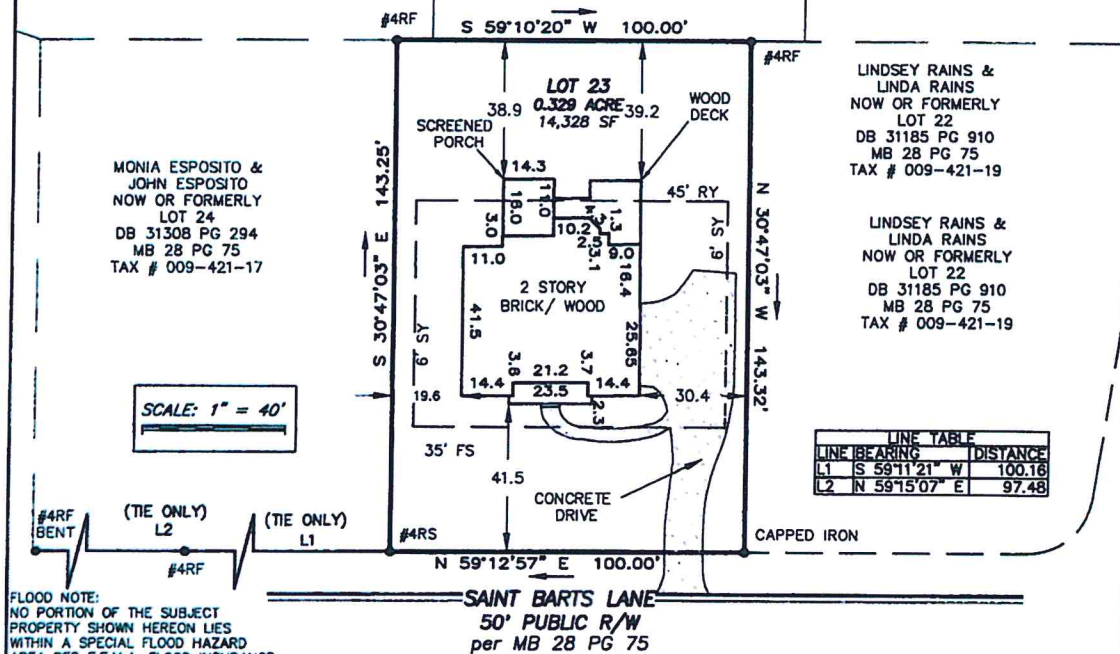
ELIZABETH WENZEL &
RONALD WENZEL
NOW OR FORMERLY
LOT 19
DB 9506 PG 11
MB 28 PG 75
TAX # 009-421-22

JOHNATHAN KING &
BETH KING
NOW OR FORMERLY
LOT 20
DB 29118 PG 80
MB 28 PG 75
TAX # 009-421-21

MONIA ESPOSITO &
JOHN ESPOSITO
NOW OR FORMERLY
LOT 24
DB 31308 PG 294
MB 28 PG 75
TAX # 009-421-17

LEGEND

RF	REBAR FOUND
RS	REBAR SET
R/W	RIGHT-OF-WAY
SF	SQUARE FEET
MB	MAP BOOK
DB	DEED BOOK
PG	PAGE
FS	FRONT SETBACK
RY	REAR YARD
SY	SIDE YARD
—X—	CHAINLINK FENCE
(E)	POWER PAD
(U)	CABLE BOX
(T)	TELEPHONE PEDISTAL
(C)	CLEAN OUT
(M)	WATER METER



SCALE: 1" = 40'

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 59°11'21" W	100.16
L2	N 59°15'07" E	97.48

FLOOD NOTE:
NO PORTION OF THE SUBJECT
PROPERTY SHOWN HEREON LIES
WITHIN A SPECIAL FLOOD HAZARD
AREA PER F.E.M.A. FLOOD INSURANCE
RATE MAP, COMMUNITY PANEL
3710464100K, DATED: SEPTEMBER 2,
2015.



PHYSICAL SURVEY
AT PROPERTY KNOWN AS
9541 SAINT BARTS LANE
LOT 23, BLOCK 1, NORTHCROSS DOWNS, PHASE 3, MAP 1
TAX # 009-421-18, MB 28 PG 75, DB 27646 PG 122
TOWN OF HUNTERSVILLE, MECKLENBURG COUNTY, NC
FOR
JEFF SCHULTZ & DANA SCHULTZ



PHOENIX LAND SURVEYING, INC

3316 OLD MONROE ROAD
STALLINGS, NORTH CAROLINA 28104
PH: (704)-335-1655
EMAIL: INFO@PHOENIX-SURVEYING.COM
FIRM # C-3912



Brian,

Turik relates to the provision in the ordinance (and state statute) that the hardship did not result from actions of the applicant or property owner. The effect of this case is that even though the owner actually caused the construction that violated the ordinance, it would not violate this provision if the owner did so in relying in good faith upon a survey or other permit. It does not mean that this reliance requires that a variance be granted, but he must still comply with all of the other requirements for granting a variance, as well as showing that he did rely upon the survey in siting the offending construction.

Let me know if you need to discuss further.

Bob

Robert B. Blythe
Town Attorney
Town of Huntersville
P.O. Box 664
Huntersville, NC 28070
Direct Line: 704-766-2239