



**Board of Adjustment
Regular Meeting Agenda
Tuesday
August 8, 2017 - 6:30 PM
Town Hall**

- A. Roll Call, Determination of Quorum**
- B. Approval of Minutes of Previous Meeting**
 - 1. Consider approval of the June 13, 2017 Regular Meeting Minutes
- C. Hearing of Cases**
 - 1. V17-07: The applicant, Loy Homes of the Carolinas, is requesting a variance from Article 3.2.3(d)(3) to reduce the minimum front and rear yard setback of the General Residential Zoning District.
- D. Other Business**
- E. Adjourn**

Town of Huntersville
BOARD OF ADJUSTMENT
8/8/2017

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

Consider approval of the June 13, 2017 Regular Meeting Minutes

ACTION RECOMMENDED:

FINANCIAL IMPLICATIONS:

ATTACHMENTS:

	Description	Type
□	Draft Minutes	Backup Material



**Board of Adjustment
Regular Meeting Minutes
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

A Motion was made by Wilbur Smith and seconded by Jeff Pugliese, Motion to approve. The Motion Carried by a vote of 7 Ayes and 0 Nays. Board Members voting Ayes: Kluttz, Welch, Brewer, Pugliese, Rowell, Smith, Cecil

Absent: Primiano

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).

A Motion was made by Jeff Pugliese and seconded by Wilbur Smith, Motion to Deny. The Motion Carried by a vote of 6 Ayes and 1 Nays. Board Members voting Ayes: Kluttz, Brewer, Primiano, Pugliese, Rowell, Cecil

Nays: Smith

Meredith Nesbitt, Planner I, presented and entered the Staff Report into the record, a copy of which is attached hereto as Exhibit A, and incorporated herein by reference. Under oath, staff testified as to the background, staff's findings and staff's conclusions. The applicant, under oath, testified and presented their argument in support of their application. Having heard all of the evidence and testimony presented at the hearing, the Board of Adjustment makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

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.

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.

A Motion was made by Edward Cecil and seconded by Jeff Pugliese, Motion to Deny. The Motion Carried by a vote of 6 Ayes and 1 Nays. Board Members voting Ayes: Kluttz, Brewer, Primiano, Pugliese, Rowell, Cecil

Nays: Smith

Meredith Nesbitt, Planner I, presented and entered the Staff Report into the record, a copy of which is attached hereto as Exhibit B, and incorporated herein by reference. Under oath, staff testified as to the background, staff's findings and staff's conclusions. The applicant, under oath, testified and presented their argument in support of their application. Having heard all of the evidence and testimony presented at the hearing, the Board of Adjustment makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

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. 8703 McIlwaine Road has unrestricted access to McIlwaine Road.
3. The subject property was designated as open space in 2007 in accordance with the Transitional Residential farmhouse cluster development standards.
4. All farmhouse cluster developments in the Town of Huntersville are subject to the same six residential lot maximum development standard.
5. 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.
6. 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.
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. Allowing 8703 McIlwaine Road to access Treasure Cove would add a seventh residential lot.
8. The applicant has alternatives, other than a variance, to achieve zoning compliance.

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.

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

David Peete, Principal Planner, presented and entered the Staff Report into the record, a copy of which is attached hereto as Exhibit C, and incorporated herein by reference. Under

oath, staff testified as to the background, staff's findings and staff's conclusions. The applicant, under oath, testified and presented their argument in support of their application. Having heard all of the evidence and testimony presented at the hearing, the Board of Adjustment makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

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.
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.

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

Brian Richards, GIS Administrator, presented and entered the Staff Report into the record, a copy of which is attached hereto as Exhibit D, and incorporated herein by reference. Under oath, staff testified as to the background, staff's findings and staff's conclusions. The applicant, under oath, testified and present their argument in support of their application. Having heard all of the evidence and testimony presented at the hearing, the Board of Adjustment makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

1. The applicant met Standard #1, because of the timing, which is the impact and is relevant;
2. The applicant met Standard #3, because of the process and because it was the County that misrepresented the plan to which they did not conform. There has been no factual evidence that the architect or the homeowner verified or misrepresented being in compliance; and it is incorrect to say this is by their own action.
3. Standard #4, that in fact given the existing approved deck, the addition of an approved plan for a screened porch, that the spirit, purpose and intent were met and that substantial justice is achieved by granting the variance.

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
8/8/2017

To: Board of Adjustment Members
From: Meredith Nesbitt, Planner I
Subject: V17-07, 6320/6324 Pamela Street

V17-07: The applicant, Loy Homes of the Carolinas, is requesting a variance from Article 3.2.3(d)(3) to reduce the minimum front and rear yard setback of the General Residential Zoning District.

ACTION RECOMMENDED:

Hold a hearing and take action on the variance request.

FINANCIAL IMPLICATIONS:

ATTACHMENTS:

Description	Type
☐ V17-07: Staff Report	Staff Report
☐ Exhibit 1 - Variance Application	Exhibit
☐ Exhibit 2 - Biltmore Park Plat	Exhibit
☐ Exhibit 3 - June 1999 Annexation Plat	Exhibit
☐ Exhibit 4 - Biltmore Park Declaration of Restrictions	Exhibit

V 17-07
6320/6324 Pamela Street

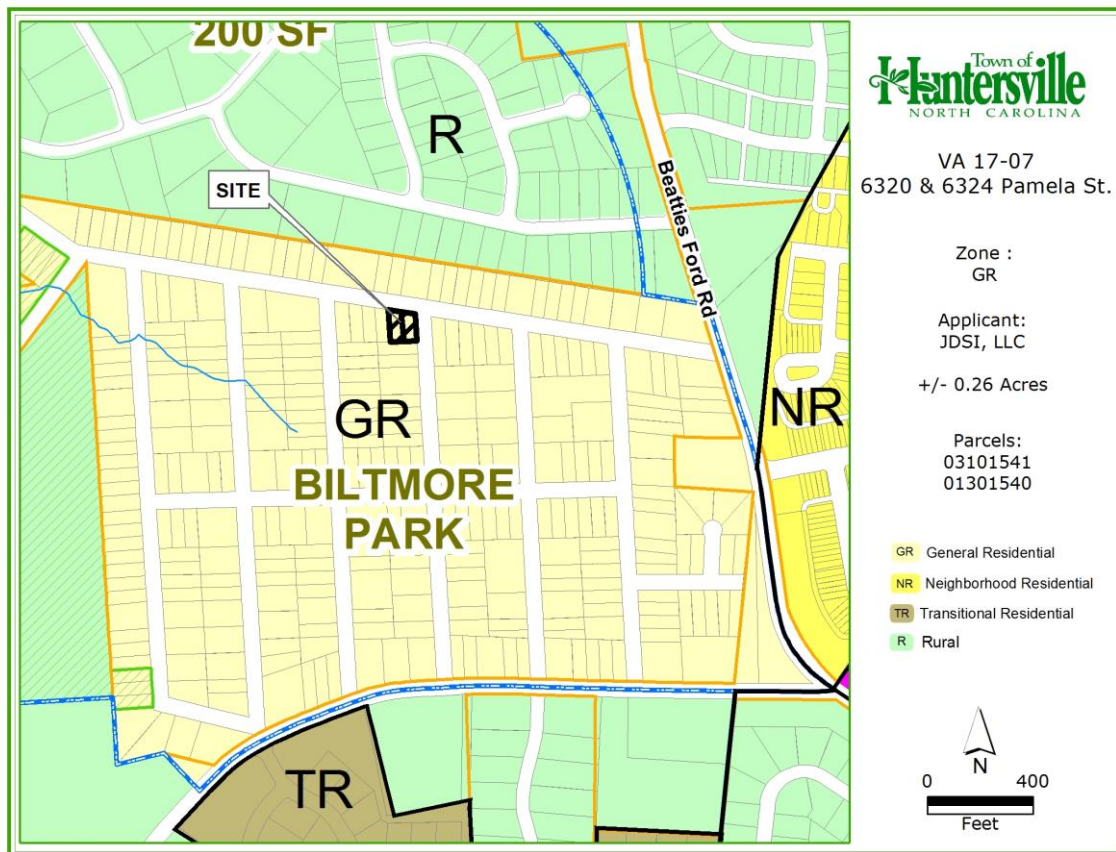
Case #: V17-07
Address: 6320/6324 Pamela Street, Huntersville NC, 28078
Parcel #: 031-015-41 and 013-015-40
Acreage: +/- 0.26
Property Owner/Applicant: Loy Homes of the Carolinas, Inc.
Staff: Meredith Nesbitt – Planner I

The applicant, Loy Homes of the Carolinas, is requesting a variance from **Article 3.2.3(d)(3)** (see text below) to reduce the minimum front and rear yard setback of the General Residential Zoning District. See Exhibit 1 for the variance application.

General Residential (GR) District General Requirements – Article 3.2.3(d)

- 3) In the absence of a subdivision sketch or preliminary plan approved prior to the effective date of this ordinance, the following lot dimensions shall apply:

Minimum Lot Size	Minimum Lot Width	Minimum Front Yard	Minimum Rear Yard	Minimum Side Yards	Minimum Corner Lot Side Yard
20,000	90'	40'	50'	10'	20'



BACKGROUND:

1. The subject property is made up of two contiguous parcels at 6320 and 6324 Pamela Street in the Biltmore Park subdivision and totals +/- 0.26 acres. The property is zoned General Residential (GR) and is in the Mountain Island Lake Watershed Overlay Critical Area 3 (MIL-O CA-3) District.
2. The subject property is currently vacant. If the variance is approved the applicant intends to construct a single-family dwelling on the subject property.
3. Biltmore Park was subdivided in 1964. The subject property is labeled as lot 5 and lot 6 of Block-H on the 1964 recorded plat. See Exhibit 2: Biltmore Park Plat.
4. The 1964 Biltmore Park plat does not contain setback or zoning classification information. At the time of writing this report, staff has not been able to determine the zoning classification of the property in 1964.
5. Biltmore Park was annexed into the Town of Huntersville corporate limits on June 30, 1999 by way of Senate Bill 390. This is known as a legislative annexation. See Exhibit 3: June 1999 Annexation Plat. At the time of writing this report, staff has not been able to verify the zoning classification of Biltmore Park prior to annexation into the Town Limits. Since annexation in 1999, Biltmore Park (and the subject property) has been zoned GR.
6. On November 19, 1996, the Town of Huntersville adopted a major Zoning Ordinance rewrite. The 1996 Zoning Ordinance created the General Residential (GR) Zoning District. The intent of the GR zoning district is:

“The General Residential District is coded to permit the completion and conformity of conventional residential subdivisions already existing or approved in sketch plan form by the Huntersville Board of Commissioners prior to the effective date of these regulations or by the Charlotte-Mecklenburg Planning Commission under the prior jurisdiction of Mecklenburg County. The application of the General Residential District is not intended for development projects in the Huntersville jurisdiction which are initiated after the effective date of this ordinance (November 19, 1996).”

7. The Zoning Ordinance establishes vesting of Development Rights in Article 2.2. The applicant references Article 2.2.2 (see language below) and states that these vested development rights apply “if a final plat was recorded prior to October 1, 1991”, see Exhibit 1 for applicant’s statements. However, the Zoning Ordinance clearly states vested rights established in Article 2.2 apply to approvals made on or AFTER October 1, 1991, meaning 1991 to present.

*“.2 Procedures for Establishing Vested Rights Pursuant to G.S. 160A-385.1. **On or after October 1, 1991**, a vested right to commence the development and use of property according to a site specific development plan is established upon approval of any one of the plans listed in a) through e) below. The vested right thus established is subject to the terms and conditions of the site plan; it shall remain in force for three years from date of approval (unless otherwise specified).*

- a. a special use permit;*
- b. any overlay district for which a site specific development plan is required under the provisions of this ordinance;*
- c. a conditional zoning district; or*
- d. a subdivision sketch plan or a preliminary plan when required by the subdivision ordinance*
- e. a final plat when no sketch plan or preliminary plan is required.”*

8. Vested Development Rights are further discussed in the Zoning Ordinance Article 2.2.4 and .5 (see language below). The applicant also references these sections in the variance application found in Exhibit 1. Planning Staff finds that Biltmore Park does not meet the requirements of 2.2.4 or .5 for vesting since the subdivision was not approved or platted on or after October 1991 (reference 2.2.4 which references 2.2.2), and has not been given sketch plan approval (reference 2.2.5).

“.4 Right to complete subdivisions: Subject to the provisions of Section 2.2.5, subdivisions not subject to a site specific development plan as defined in Section 2.2.2 above, shall be built to completion according to the zoning and subdivision regulations in force at the time and in the jurisdiction of approval unless a revised subdivision plan is subsequently submitted and approved according to the standards of these regulations.

.5 Any subdivision having been given sketch plan approval which has not obtained preliminary plat approval for one or more sections and made improvements costing more than 5% of the total project costs shall be deemed void except as provided by law (vested rights) after three years from date of approval.”

9. Staff does not know of an approved subdivision sketch or preliminary plan for Biltmore Park. Since there are no known approved plans and the recorded subdivision plat does not establish setbacks, the zoning district (GR) setbacks are applied. See page 1 of this report for GR setbacks.
10. Staff is aware that a front and side setback were established in Declarations of Restrictions for Biltmore Park recorded in 1964. See Exhibit 4: Biltmore Park Declarations of Restrictions. However, because neighborhood restrictions are not publicly enforced legal documents, and provide no vesting, staff must apply the GR setbacks.

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. The strict application of the Zoning Ordinance would require a single-family dwelling built on the subject property be within the GR zoning district minimum setbacks.
- B. Applying the GR setbacks to the dimensions of the subject property creates the “building envelope”. Building envelope is a term that describes the area in which a single-family dwelling can be legally placed. The table below describes this concept:

GR Setbacks	Subject Property Lot Dimensions	Building Envelope Dimensions
Front: 40’	107.1’	77.01’ (wide)
Rear: 50’	100’	70’ (wide)
Side: 10’	121.69’	26.6’ (deep)
Corn Lot (Street side): 20’	102’	19.5’ (deep)

- C. The strict application of the Ordinance to the subject property would create a building envelope of 19.5’ deep at its narrowest and 26.6’ deep at its widest measurement.

- 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 lots located in Biltmore Park are subject to the GR setbacks.
- B. The subject property is the shallowest lot in Biltmore Park, with an average lot depth of 111.5’.
- C. The typical depth of property in Biltmore Park is 150’.
- D. The subject property is +/- 38.5’ shallower than the typical Biltmore Park lot.

- 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. The subject property was created in 1964.
- B. The lot dimensions have not been altered by any property owner since the original subdivision in 1964.

- 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 applicant is requesting a variance of 10' from the GR front setback and 4.9' from the GR rear setback so that staff can approve a building permit for a single-family dwelling.
- B. The proposed single-family dwelling is of similar size to existing development in Biltmore Park.
- C. Alternative to a variance, the application can seek to amend the GR zoning district requirements.

STAFF CONCLUSIONS:

The applicant is seeking a variance from **Article 3.2.3(d)(3)** to reduce the GR minimum front and rear yard setback. Based on the findings of fact, listed above, staff concludes, listed below, this request meets the four Ordinance requirements for granting a variance. Therefore, staff recommends granting a variance for this case.

However, staff does not agree with the applicant's claim that Biltmore Park has a vested development right to be built in accordance with previous zoning and subdivision regulation of Mecklenburg County. The interpretation of vested development rights should be evaluated through the appeal process not through the variance process. The merits of staff's recommendation to grant this variance are strictly related to the criteria for granting a variance being applied to the subject property. Staff does not recommend granting a variance based on claims of vested development rights.

- 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 the construction of a single-family dwelling outside the minimum setbacks established by the GR zoning district. In this context, the GR front and rear yard setbacks applied to the lot dimensions of the subject property create a narrow building envelope.

Staff finds that the narrow building envelope restrict the applicant from being able to construct a similarly sized home to the existing development in Biltmore Park. Staff would conclude the narrow building envelope creates an unnecessary hardship on development of a single-family dwelling on the subject property.

Staff finds that this criteria for granting a variance is 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:

A hardship is a result of the size of the subject property. If the depth of the subject property were the typical 150', the GR setbacks would not create a narrow building envelope restricting the development of an typical sized house, in relation to existing development in Biltmore Park.

Staff finds that this criteria for granting a variance is 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:

The lot dimensions of the subject property have not been modified since 1964 subdivision creating the subject property.

Staff finds that this criteria for granting a variance is 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:

In this case, considering the subject property lot dimensions, varying the front and rear yard setback would not violate the spirit and intent of the ordinance. Staff finds that it would not be reasonable or appropriate to amend the GR zoning district requirements found in the Zoning Ordinance to meet the subject properties development needs. Therefore, would not recommend the text amendment option.

Staff concludes public safety is not adversely affected by granting this variance.

Staff finds that this criteria for granting a variance is met.

ATTACHMENTS:

Exhibit 1 - Variance Application

Exhibit 2 - Biltmore Park Plat

Exhibit 3 - June 1999 Annexation Plat

Exhibit 4 - Biltmore Park Declaration of Restrictions

EXAMPLE DECISION STATEMENT: V 17-07, 6320/6324 PAMELA STREET

Planning Department	Board of Adjustment
<p>APPROVAL: In considering the findings of fact for V17-07, a request by Loy Homes of the Carolinas, Inc for a variance from Article 3.2.3(d)(3) the Planning Staff recommends approval of a 10' variance from the GR front setback and 4.9' variance from the GR rear setback. Planning staff bases the recommendation of approve 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. The strict application of the Zoning Ordinance required setbacks to the subject property would create a building envelope of 19.5' deep at its narrowest and 26.6' deep at its widest measurement. 2. The subject property is the shallowest lot in Biltmore Park, with an average lot depth of 111.5'. 3. The typical depth of property in Biltmore Park is 150'. 4. The subject property is +/- 38.5' shallower than the typical Biltmore Park lot. 5. The lot dimensions have not been altered by any property owner since the original subdivision in 1964. 6. In considering the subject property lot demotions, the requested variance is consistent with the spirit and intent of the Zoning Ordinance. 7. Public safety is not adversely affected by granting this variance. 	<p>APPROVAL: In considering the findings of fact for V17-07, a request by Loy Homes of the Carolinas, Inc for a variance from Article 3.2.3(d)(3), the Board of Adjustment grants approval of a 10' variance from the GR front setback and 4.9' variance from the GR rear setback 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 V17-07, a request by Loy Homes of the Carolinas, Inc for a variance from Article 3.2.3(d)(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 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: June 26, 2017

Property Owner Information

Name: JDSI, LLC
Address: 17537 Jetton Rd
Cornelius, NC 28031
Email: Judsonstringfellow@gmail.com
Phone No. 704-361-7777

Applicant Information (if different)

Name: Loy Homes of the Carolinas, Inc
Address: 12704 Cumberland Crest Dr
Huntersville, NC 28078
Email: loyhomes@yahoo.com
Phone No. 704-622-7499

Location of Property/Building

Address: 6320/6324 Pamela St Parcel Size: 11,400 SF
Tax Parcel ID (PIN) Number(s): 03101541, 01301540

Text of Ordinance to be varied

Ordinance: Zoning Article: 3 Section: 3.2.3.(d)(3)

"In the absence of a subdivision sketch or preliminary plat approved prior to the effective date of this ordinance, the following dimensions shall apply: Minimum Front Yard Setback: 40', Minimum Rear Yard Setback : 50'." Note: Biltmore Park plats were approved & recorded in 1964.

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.

See attached explanation & plot plan - Petitioner requests use of setbacks that were in place at time of involuntary annex of Biltmore Park
subdivision by Town of Huntersville so that a reasonable sized home will fit on the property



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.

See attached explanation & plot plan - Due to imposition of Town of Huntersville after involuntary annexation of larger "GR" setbacks, a

typical size home will not fit on the property. Only something shallow and wide, similar to a double-wide mobile home, will fit using the GR

setbacks imposed after annexation by Town of Huntersville.

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 hardship was created by Town of Huntersville by imposing larger setbacks as part of involuntary annexation of Biltmore Park subdivision

and not acknowledging the front setbacks in place at that time both in the CCR's recorded by developer in conjunction with the record plats

& Mecklenburg Co R-3 Zoning, nor the rear setback in place at that time under Mecklenburg Co R-3 Zoning.

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

Public safety and general welfare will not be harmed in any way, and justice will be served by allowing the property to be built upon under

same parameters as if it were still in county and zoned R-3 prior to annexation by Huntersville.

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.

JDSI, LLC by Judson Stringfellow, Manager Member:

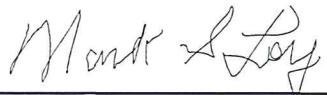


 Property Owner / Applicant

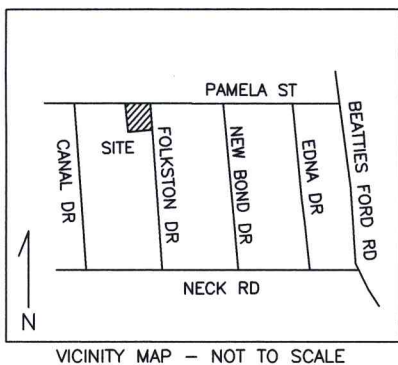
June 26, 2017

 Date

Loy Homes of the Carolinas, Inc by Mark Loy, President:



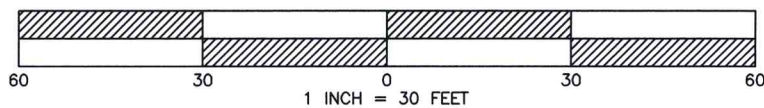
June 26, 2017



VICINITY MAP - NOT TO SCALE

BOUNDARY SURVEY OF
**LOT 5 & LOT 6, BLOCK H,
BILTMORE PARK, MAP #2**

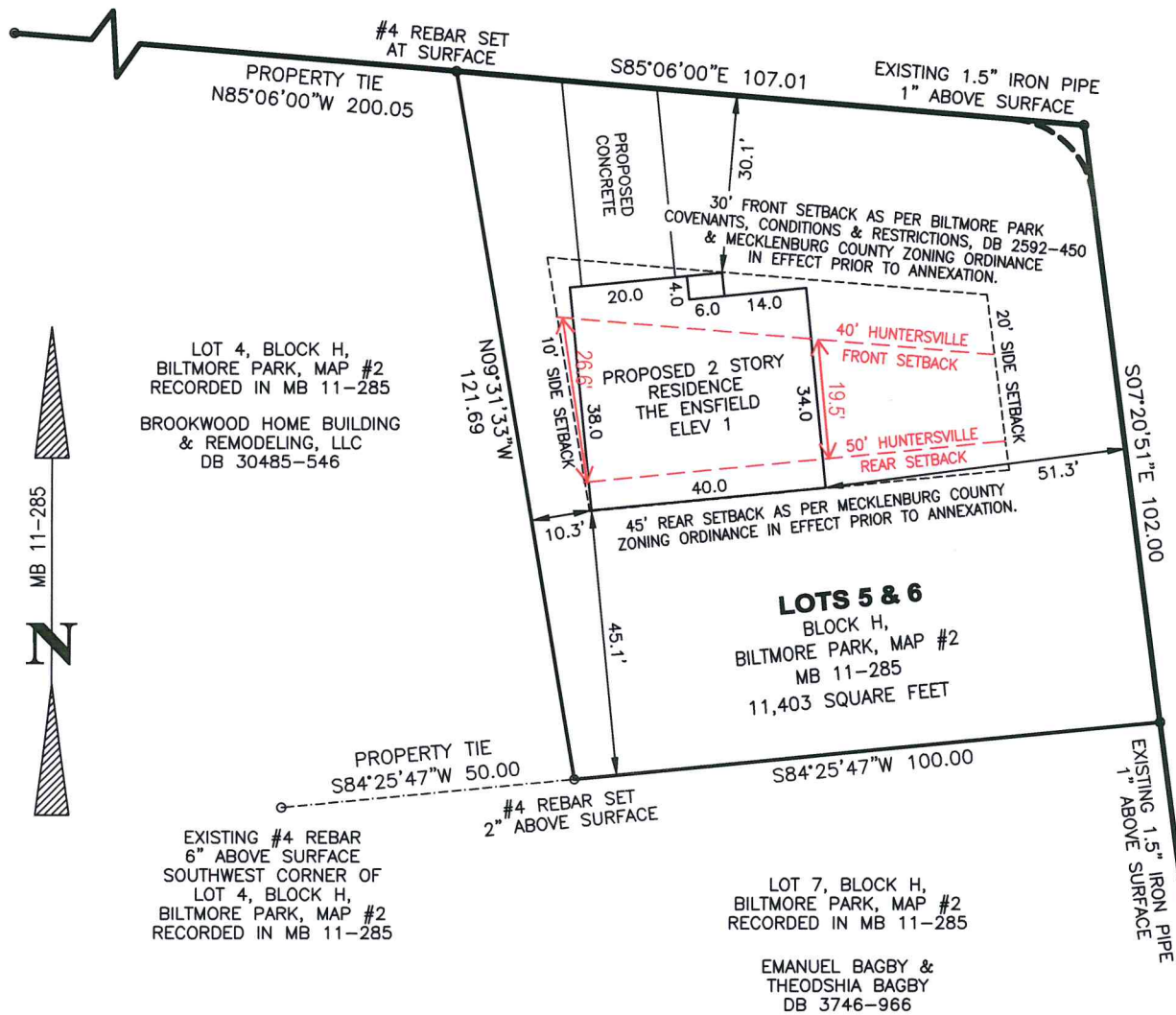
LOCATED IN THE TOWN OF HUNTERSVILLE,
MECKLENBURG COUNTY, NORTH CAROLINA
REFERENCE: DB 30910-825 & MB 11-285
TAX PARCELS: 013-015-41 & 013-015-40
DATE: JANUARY 24, 2017



SURVEY PREPARED FOR: JDSI, LLC

REVISED JUNE 19, 2017 TO SHOW PROPOSED HOUSE.
REVISED JUNE 26, 2017 TO SHOW HUNTERSVILLE SETBACKS.

EXISTING 1" IRON PIPE
7" BELOW SURFACE
NORTHWEST CORNER OF
LOT 1, BLOCK H,
BILTMORE PARK, MAP #2
RECORDED IN MB 11-285



LEGEND:

MB - MAP BOOK
DB - DEED BOOK
R/W - RIGHT OF WAY
GR - GENERAL RESIDENTIAL ZONING

NOTES:

1. THIS IS A SURVEY OF THE EXTERIOR BOUNDARY OF THE TWO TAX PARCELS REFERENCED ABOVE.
2. PROPERTY SHOWN MAY BE SUBJECT TO RECORDED OR UNRECORDED RIGHTS OF WAYS OR EASEMENTS NOT SHOWN HEREON.
3. PROPERTY IS NOT LOCATED IN A FEMA FLOOD HAZARD AREA.
4. PER MB 11-285, THERE IS A 15' RADIUS AT STREET INTERSECTIONS. (NO ROAD OR R/W DEDICATION IS MENTIONED ON THE PLAT).

"SURVEY CERTIFICATION"

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, AND IN MY PROFESSIONAL OPINION, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE MINIMUM STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A "CLASS A" SURVEY AS SPECIFIED IN NCAC 21, CHAPTER 56

Jason Lee Wylie

JASON LEE WYLIE, NORTH CAROLINA PLS L-4366



FROM THE OFFICE OF
JASON LEE WYLIE
PROFESSIONAL LAND SURVEYOR
501 FORNEY AVENUE
LINCOLNTON, N.C. 28092
PHONE: 704-763-5926

6320/6324 Pamela St Town Revised Setback Hardship:

When Biltmore Park subdivision was developed and plats recorded in 1964, as was often done at that time, the developer chose to show setbacks in the Declarations of Restrictions (Deed Book 2592 Pg 450) rather than on the record plats, front setback: 30 feet, side setback: 10'. No rear setback was declared by developer, but per Mecklenburg County R-3 zoning prior to annexation by Huntersville in 1999 the rear was 45 feet. Had these setbacks been shown on the record plat, then these setbacks would still be recognized by Huntersville as per Huntersville Subdivision Ordinance Section 6.700 *"Plats already established by survey and recorded in the Mecklenburg County Register of Deeds prior to the effective date of this ordinance will be eligible for development and other administrative permits without complying with the requirements of this ordinance, but must be developed in accordance with the provisions of the subdivision ordinance in effect at the time of the approval."*

Huntersville Zoning Ordinance 3.2.3 General Residential District (GR) states *"Intent: The General Residential District is coded to permit the completion and conformity of conventional residential subdivisions already existing or approved in sketch plan form by the Huntersville Board of Commissioners prior to the effective date of these regulations or by the Charlotte-Mecklenburg Planning Commission under the prior jurisdiction of Mecklenburg County."* Section 3.2.3(d)(3) states *"In the absence of a subdivision sketch or preliminary plan approved prior to the effective date of this ordinance, the following lot dimensions shall apply:*

Minimum Lot Size	Minimum Lot Width	Minimum Front Yard Setback	Minimum Rear Yard Setback	Minimum Side Yard Setback	Minimum Corner Lot Side Yard Setback
20,000 sq. ft.	90'	40'	50'	10'	20'

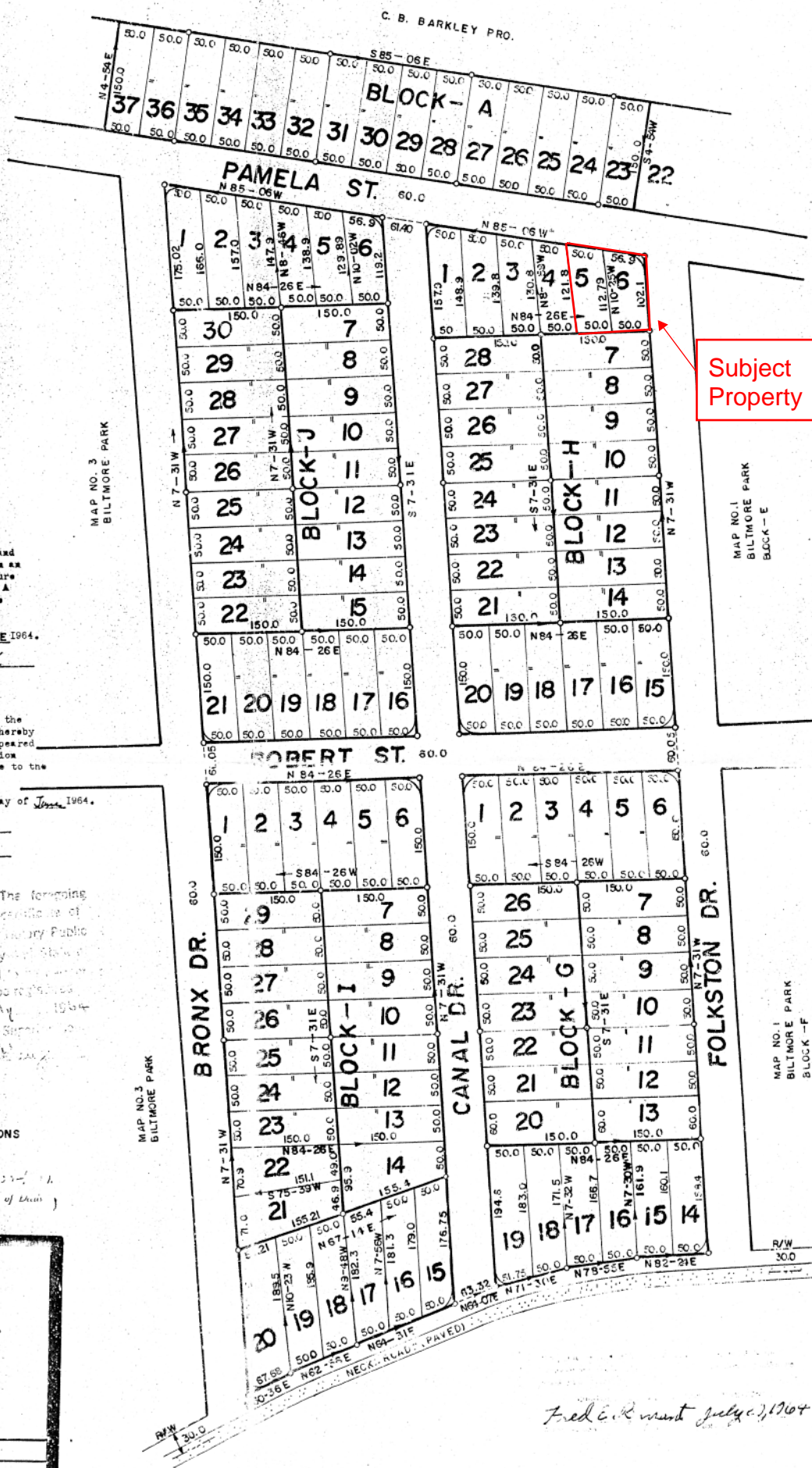
Huntersville Zoning Ordinance Section 2.2(2) & (4) state that if a final plat was recorded prior to October 1, 1991, the subdivision property has vested development rights and *"shall be built to completion according to the zoning and subdivision regulations in force at the time and in the jurisdiction of approval unless a revised subdivision plan is subsequently submitted and approved according to the standards of these regulations"*. Again at the time the Biltmore Park plats were recorded, per Mecklenburg Co zoning regulations, the front setback was 30' and the rear setback was 45'.

Summary:

The plat for Biltmore Park and Restrictions were recorded in 1964 and the setbacks established and in effect at the time of the 1999 involuntary annexation by Huntersville were 30' front, 10' side and 45' rear. Because the setbacks for Biltmore Park at time of the 1999 involuntary annexation by Huntersville were not shown on the zoning plat, per the town Planning Department's interpretation of the Zoning Ordinances, the larger setbacks noted above are being mandated. If the setbacks in effect in Biltmore Park at the time of the annexation had been shown on the record plat instead of the Declaration of Restrictions & Mecklenburg County Zoning Ordinance, then as per Huntersville Zoning Ordinances noted above, those setbacks would still apply, this property would not be harmed or negatively impacted such that a typical size home will not fit on this property, there would be no town imposed hardship nor taking by the town of the right to build as per the property setback rights prior to the annexation.

Property Owners Within 100' of 6320-6324 Pamela St:

Emanuel & Thodisha Bagby, 901 Bobbly Ln, Charlotte, NC 28211
Brookwood Home Building LLC, 2208 Duxback Ln, Waxhaw, NC 28173
Wilson & Oguriette Mitchell, 2922 Casona Way, Raeligh, NC 27216
Tina & Stephen Schultze, 6321 Pamel St, Huntersville NC, 28078
Richard Burke, 6329 Pamela St, Hunterville, NC, 28078
Dixie Ambrose, 6401 Pamela St, Huntersville 28078
Eileen Lampro, 6307 Pamela St, Huntersville 28078



Subject Property

CATAWBA COUNTY
NEWTON, N.C.
I, Sam Rowe Jr., Reg. Surveyor hereby certify and declare that the map as shown hereon was drawn from an actual field survey by me. That the Error Of Closure as calculated by latitude and departure for Block A is One to 10,000. For Blocks G, H, I, & J is One to 7,245. This map was prepared in accordance with G.S. 47-30 as amended. Witness my Hand and Seal this the 20 day of JUNE 1964.
Signed *Sam Rowe Jr.*
Sam Rowe Jr.

CATAWBA COUNTY
NORTH CAROLINA
I, Joe F. Robinson a Notary Public in and for the county of Catawba and state of North Carolina, do hereby certify that Sam Rowe Jr., Surveyor personally appeared before me this day and acknowledged the due execution of the foregoing certificate upon his oath sworn to the truth of the statement set forth herein.
Witness my Hand and Notarial Seal this the 20 day of June 1964.
Signed *Joe F. Robinson*
Joe F. Robinson
My Comm. Expires 6/26/68

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG
I, Joe F. Robinson, Notary Public, do hereby certify that the foregoing plat of Block A, Block J, Block I, and Block B of Biltmore Park, Long Creek Township, Mecklenburg County, North Carolina, was duly filed for record in the Office of the Register of Deeds on this 20th day of June, 1964, and that the same is a true and correct copy of the original as filed for record.
JOE F. ROBINSON, Notary Public
My Comm. Expires 6/26/68

- NOTE
- 1. IRON PIN
 - 2. 15.0 RADIUS AT STREET INTERSECTIONS

EDGAR SMITH, Register of Deeds

MAP NO.- 2
BILTMORE PARK
LONG CREEK TSHR
MECKLENBURG COUNTY

SAM ROWE JR. — REG. SURVEYOR — NEWTON, N.C.
SCALE 1"=100.0 DATE — JUNE 20, 1964
SURVEY BY — S.R. JR. DR. BY — S.R. JR.

Fred C. R. Smith July 2, 1964

I, the undersigned mayor of the Town of Huntersville, hereby certify that this map reflects the territory annexed into the Town of Huntersville by Senate Bill 390 which was ratified on the 3rd day of July, 1997 (designated as 96-A-II), the territory annexed into the Town of Huntersville by Ordinance #9702 which was adopted on the 20th day of May, 1997, and the Huntersville municipal limits which correspond to the effective date for this document but not to any other municipal limit changes subsequent to March 4, 1997.

The provisions of G.S. 47-30 do not apply to this plat as set forth in paragraph J of G.S. 47-30 and this plat is not subject to review by the Charlotte-Mecklenberg Planning Commission. The Town of Huntersville does not require that this plat meet the provisions described in Section 1600, Title 21, Chapter 56 of the North Carolina Administrative Code (Standards of Practice for Land Surveying in North Carolina).

Randy A. Quillen 4-5-99
Randy A. Quillen, Mayor Date
Town of Huntersville

Janet Pierson 4-5-99
Janet Pierson, Town Clerk Date

North Carolina, Mecklenburg County
I, a Notary Public of the county and state aforesaid, certify that Randy A. Quillen, Mayor of the Town of Huntersville, and Janet Pierson, Clerk for the Town of Huntersville, personally appeared before me this day and acknowledged the execution of the foregoing instrument, witness my hand and official stamp of seal, this 3 day of April, 1999.
Blair H. Thompson
Notary Public
My commission expires 3-31-2004

SURVEYOR'S CERTIFICATE
I certify that the annexation limits and the municipal boundaries for the Town of Huntersville were derived from Mecklenburg County Tax Maps dated 1994 and from a property survey map supplied by Duke Power Company. No field work has been done at this time.

John A. McHenry 3/26/99
John A. McHenry, RLS Date
L-3676

**Areas Annexed
effective June 30, 1999**

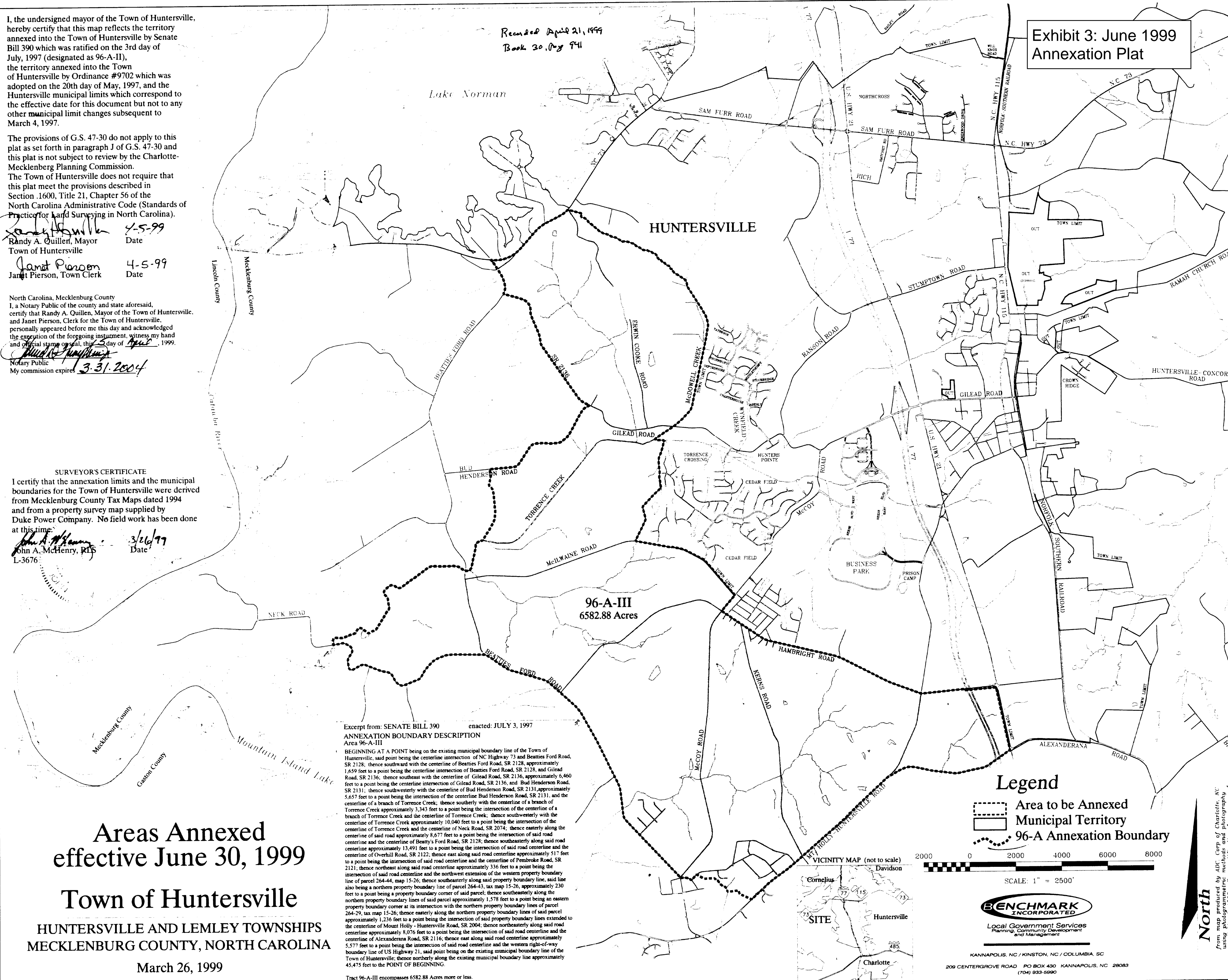
Town of Huntersville

**HUNTERSVILLE AND LEMLEY TOWNSHIPS
MECKLENBURG COUNTY, NORTH CAROLINA**

March 26, 1999

Recorded April 21, 1999
Book 30, Page 941

**Exhibit 3: June 1999
Annexation Plat**



Excerpt from: SENATE BILL 390 enacted: JULY 3, 1997
ANNEXATION BOUNDARY DESCRIPTION
Area 96-A-III
BEGINNING AT A POINT being on the existing municipal boundary line of the Town of Huntersville, said point being the centerline intersection of NC Highway 73 and Beatties Ford Road, SR 2128; thence southward with the centerline of Beatties Ford Road, SR 2128, approximately 1,659 feet to a point being the centerline intersection of Beatties Ford Road, SR 2128, and Gilead Road, SR 2136; thence southeast with the centerline of Gilead Road, SR 2136, approximately 6,460 feet to a point being the centerline intersection of Gilead Road, SR 2136, and Bud Henderson Road, SR 2131; thence southwesterly with the centerline of Bud Henderson Road, SR 2131, approximately 5,657 feet to a point being the intersection of the centerline Bud Henderson Road, SR 2131, and the centerline of a branch of Torrence Creek; thence southerly with the centerline of a branch of Torrence Creek and the centerline of Torrence Creek; thence southwesterly with the centerline of Torrence Creek approximately 10,040 feet to a point being the intersection of the centerline of Torrence Creek and the centerline of Neck Road, SR 2074; thence easterly along the centerline of said road approximately 8,677 feet to a point being the intersection of said road centerline and the centerline of Beatty's Ford Road, SR 2128; thence southeasterly along said road centerline approximately 13,491 feet to a point being the intersection of said road centerline and the centerline of Overhill Road, SR 2122; thence east along said road centerline approximately 517 feet to a point being the intersection of said road centerline and the centerline of Pembroke Road, SR 2121; thence northeast along said road centerline approximately 336 feet to a point being the intersection of said road centerline and the northwest extension of the western property boundary line of parcel 264-44, map 15-26; thence southeasterly along said property boundary line, said line also being a northern property boundary line of parcel 264-43, tax map 15-26, approximately 230 feet to a point being a property boundary corner of said parcel; thence southeasterly along the northern property boundary lines of said parcel approximately 1,578 feet to a point being an eastern property boundary corner at its intersection with the northern property boundary lines of parcel 264-39, tax map 15-26; thence easterly along the northern property boundary lines of said parcel approximately 1,236 feet to a point being the intersection of said property boundary lines extended to the centerline of Mount Holly - Huntersville Road, SR 2004; thence northeasterly along said road centerline approximately 8,076 feet to a point being the intersection of said road centerline and the centerline of Alexanderana Road, SR 2116; thence east along said road centerline approximately 5,577 feet to a point being the intersection of said road centerline and the western right-of-way boundary line of US Highway 21, said point being on the existing municipal boundary line of the Town of Huntersville; thence northerly along the existing municipal boundary line approximately 45,475 feet to the POINT OF BEGINNING.

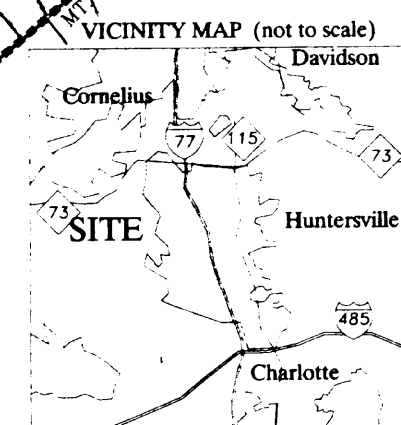
Tract 96-A-III encompasses 6582.88 Acres more or less.

Legend
Area to be Annexed
Municipal Territory
96-A Annexation Boundary

2000 0 2000 4000 6000 8000
SCALE: 1" = 2500'

**BENCHMARK
INCORPORATED**
Local Government Services
Planning, Community Development
and Management

KANNAPOLIS, NC / KINSTON, NC / COLUMBIA, SC
208 CENTERGROVE ROAD PO BOX 430 KANNAPOLIS, NC 28083
(704) 933-5990



North
from map produced by ADC, Corp of Charlotte, NC
using photogrammetric methods and photography

FILED

1964 Dec 15 PM 3 11

J. EDWARD STUKES C.S.C.

STATE OF NORTH CAROLINA : BY _____ DE DECLARATION OF RESTRICTIONS
COUNTY OF MECKLENBURG : 450

WHEREAS, LAKESIDE ESTATES, INC., a North Carolina corporation with its principal office and place of business in the City of Charlotte, caused to be recorded in Map Book 11 at Page(s) 282, 285 in the office of the Register of Deeds for Mecklenburg County a map of certain lots of land lying in Mecklenburg County and owned by the Corporation, and commonly called Biltmore Park; and

WHEREAS, LAKESIDE ESTATES, INC. desires now for the use and benefit of itself, its successors and assigns, and its future grantees to place and impose certain conditions and restrictions on all of the lots of land shown on said map;

NOW, THEREFORE, in consideration of the premises, LAKESIDE ESTATES, INC. for itself, its successors and assigns, and for its future grantees does place and impose hereby on all of the lots of land shown on that certain map recorded in the office of the Register of Deeds for Mecklenburg County, North Carolina, in Map Book 11, at page(s) 282, 285 the following conditions and restrictions:

- (a) All lots shall be used for residence purposes only and no buildings shall be erected, placed, or permitted to remain on any lot other than a single family dwelling not to exceed two stories in height and other out buildings incidental to residential use of the lot.
- (b) There shall be a minimum of two continuous lots to constitute one building lot. No residence or other structure shall be located near the margin of the street on which it fronts or to the front lot line of the lot on which it is situated than 30 feet, nor nearer than 10 feet to the side lot line. Two or more lots in combination shall be considered as one lot in determining side line restrictions.
- (c) No residence shall contain less than 900 square feet of livable ground floor area on one story homes, exclusive of porches, garages car ports, etc.
- (d) No structure of a temporary nature shall be erected or be allowed to remain on any lot, and no trailer, shack, tent, garage, barn, or any other structure of a similar nature shall be used as a residence either temporarily or permanently.
- (e) No sign of any kind shall be displayed to the public view except a sign of not more than 5 square feet area advertising the property for sale or rent. No lot shall be used as a dumping ground for rubbish. All trash or other waste shall be kept in sanitary containers approved by the Health Department of Mecklenburg County, and in accordance with the laws of the State of North Carolina.
- (f) Noxious or offensive trades or activities shall not be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.
- (g) No animals, live stock, or poultry of any kind shall be raised, bred, or kept on any lot, except that household pets may be kept provided they are not involved in any commercial purpose and they do not constitute a nuisance.
- (h) All structures erected on any lot shall be of new materials

except that old brick may be used. The exteriors of all structures shall be of stone or brick or combination stone or brick and wood, and no residence shall be occupied until the interior shall have been fully completed.

(i) No outside toilets shall be permitted on any lot and any residence erected shall contain inside toilets with sewage disposal systems in accordance with the laws of the State of North Carolina and regulations of the Health Department of Mecklenburg County.

(j) No fences or other artificial obstructions exceeding three feet in height shall be nearer the front than the building set back line.

(k) Lakeside Estates, Inc. reserves an easement in and right at any time in the future to grant 10 foot right of way over, under, and along the rear or side line of each lot for the installation and maintenance of poles, lines, conduits, pipes, and other equipment necessary, or useful for furnishing power, gas, electricity, telephone service, or other utilities including water and sewage services.

(l) In the event of unintentional violation of any of the building line restrictions herein set forth, Lakeside Estates, Inc. reserves the right by and with the mutual written consent of the owner or owners for the time being of such lot to change the building line restrictions set forth in this instrument, provided, however, that such change shall not exceed 10% of the marginal requirements of such building line restriction.

(m) Invalidity of any one of these covenants by judgment, court order, or statute shall not affect any of the other provisions hereof which shall remain in full force and effect.


(n) The covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty years from the date these covenants are recorded and after that time, these covenants shall be extended, automatically for successive periods of 10 years unless an instrument signed by a simple majority of the then owner or owners of the lots of Lakeside Estates, Inc. has been recorded, agreeing to change said covenants in whole or in part.

(o) Nothing herein contained shall be held or construed to impose any restrictions on or easements in any land owned by Lakeside Estates, Inc., other than Biltmore Park Subdivision as shown on the map referred to hereinbefore.

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IN WITNESS WHEREOF, LAKE SIDE ESTATES, INC. has by the authority of its Board of Directors, caused this annexed instrument to be executed by its president, attested by its secretary, and its corporate seal affixed this ____ day of July, 1964.

By *J. Stukes*
President

 (Corporate Seal)
Attested *[Signature]*
Secretary

STATE OF NORTH CAROLINA :
COUNTY OF MECKLENBURG :

This the 10th day of July, 1964, personally came before me *J. Stukes* who, being by me duly sworn, says he is the President of LAKE SIDE ESTATES, INC. and that the seal affixed to the foregoing instrument in writing is the corporate seal of the Company, and that said writing was signed and sealed by him, in behalf of said Corporation, by its authority duly given. And the said *J. Stukes* acknowledged the said writing to be the act and deed of said Corporation.

John L. Drolsbaugh
Notary Public

My Commission Expires: My Commission Expires May 20, 1964

REGISTER OF DEEDS OFFICE MECKLENBURG COUNTY, N.C. FILED FOR RECORD ON THE DAY OF <u>December</u> 1964 AT <u>5:11</u> O'CLOCK P.M. RECORDED IN BOOK _____ PAGE _____ EDGAR SMITH, Register of Deeds By <u><i>Edgar Smith</i></u> Deputy

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG
John L. Drolsbaugh
of Mecklenburg County and State of North Carolina,
The foregoing certificate of _____ a Notary Public
is adjudged to be correct.
Let the instrument and the certificate be registered.
Witness my hand, this 15th day December 1964.
J. Edward Stukes, Clerk of Superior Court
By *John L. Drolsbaugh*
Deputy

