# Rowan County Planning and Development Department

402 North Main Street, Suite 204 • Salisbury, N.C. 28144-4341
Planning: 704-216-8588 Fax: 704-638-3130


## MEMORANDUM

TO: Rowan County Zoning Board of Adjustment Members
FROM: Shane Stewart, Senior Planner
DATE: April 13, 2015
RE: **ZBA 01-15**

**SUGGESTED ZONING BOARD OF ADJUSTMENT ACTION**

❒ Sworn oath for those testifying ❒ Receive staff report
❒ Petitioner comments ❒ Conduct quasi-judicial hearing
❒ Close hearing and discuss ❒ Separate motions to adopt findings of fact (6) ❒ Motion to Approve / Deny / Table **ZBA 01-15**

**REQUEST**

Duke Brown Sr. is requesting a twelve (12) foot variance from the required thirty (30) foot front setback referenced in sections 21-84 and 285 (3) of the Rowan County Zoning Ordinance to allow construction of a 32' x 26' detached garage located eighteen (18) feet from the front property line at 360 Tamarac Shores Dr. (tax parcel 644A-044; see Exhibit A).

In Exhibit B, Mr. Brown details site constraints on his .458 acre Rural Agricultural (RA) zoned parcel as *"a power pole, 3 trees, a sidewalk, and underground utilities"* which hinder the placement of the detached garage "in the one area that is suitable to build". Mr. Brown also referenced the future septic repair area required by the Rowan County Environmental Health Office, which is located within the circle drive, as further justification for this being the only suitable location (see Exhibit C). The structure is proposed on the northeast side of his property identified on a survey by Norman Ribelin, PLS, noted as Exhibit D.

**VARIANCE CRITERIA**

In accordance with section 21-332 of the Zoning Ordinance, "*A variance may be granted by the ZBA if it concludes that strict enforcement of this chapter would result in unnecessary hardships for the applicant. The ZBA, in granting a variance, shall ensure that the*

*spirit of this chapter is maintained, public welfare and safety ensured, and substantial justice done. The board may reach these conclusions if it makes the following findings:"*

See Exhibit A for Mr. Brown's responses to the below criteria.

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 and / or conditions common to the neighborhood or general public may not be the basis for granting a variance;**

3. **The hardship is not the result of the property owner or applicant's own actions. 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;**

5. **The variance will not result in a land use otherwise not permitted in the applicable zoning district nor authorize the extension of a nonconforming situation in violation of article VI, or other applicable provisions of this chapter; and**

6. **If applicable, the setback reduction is no more than fifty (50) percent of that required and the resulting setback is no less than five (5) feet from any property line or right-of-way.**

**PROCESS & PROCEDURES**

The variance process provides the ZBA authority to vary required standards from the Zoning Ordinance for a specific request when an unnecessary hardship would result from carrying out the strict letter of the ordinance. Since ordinances are not able to foresee all possible implications related to its application, this option is provided to address unique situations without amending ordinances to address each circumstance. However, strict criteria are required to ensure the variance process is not abused.

As indicated by Section 21-315 (2) (b), a ZBA member shall not participate or vote on any quasi-judicial matter when said member has a fixed opinion prior to hearing the matter and is not susceptible to change, has undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's

participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

The ZBA shall determine the contested facts and make its decision based on competent, material, and substantial evidence. Prior to granting a variance, the ZBA must vote affirmatively on all six (6) above criteria with a four-fifths (4/5) vote providing specific reasons or findings supporting the motions. The ZBA may impose appropriate conditions reasonably related to the variance request. A motion to deny the variance request may be made on the basis that one (1) or more of the criteria are not satisfied and shall include specific reasons or findings supporting the denial.

Each decision of the ZBA is subject to review by the superior court filed within thirty (30) days the decision is filed in the office of the Clerk to the Board of Commissioners.

**PUBLIC NOTICE**

As required by Section 21-315, Planning Staff provided mailed notice to properties within 100 feet of the subject parcel and posted a public notice sign on April 13, 2015.

**STAFF COMMENTS**

Additional information in the form of site pictures and maps will be provided at the meeting.

# EXHIBIT A

**Rowan County Department**
**of Planning & Development**
**402 N. Main Street Ste 204**
**Salisbury, NC 28144**
**Phone (704) 216-8588**
**Fax (704) 638-3130**
**www.rowancountync.gov**

Case # ZBA 01-15
Date Filed 2/10/15
Received By RB
Amount Paid $100 ck # 12017
**Office Use Only**

## VARIANCE APPLICATION

OWNERSHIP INFORMATION:

Name: Duke C. Brown, Sr
Signature: Duke C Brown Sr.
Phone: 704-633-3584 Email: dukecbrownsrfamily@yahoo.com
Address: 360 Tamarac Shores Drive
Salisbury, NC 28146

APPLICANT / AGENT INFORMATION:

Name: Same as Above
Signature: _____
Phone: _____ Email: _____
Address: _____

PROPERTY DETAILS:

Variance Requested on Property Located at: 360 Tamarac Shores Dr. Salisbury N.C.
Tax Parcel: 644 A 044 Zoning District: RA

## TO THE ROWAN COUNTY ZONING BOARD OF ADJUSTMENT:

I Duke C. Brown, Sr, hereby petition the Board of Adjustment for a ***VARIANCE*** from the provisions of the Rowan County Zoning Ordinance because, under the interpretation given to me by the Administrator*, I am prohibited from using the parcel of land described above in a manner shown by the Plot Plan attached to this form. I request a variance form the following provisions of the ordinance (cite Section & Code req.):

Section 21-84 21-285 Item 3

## FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE:

The Board of Adjustment may grant a variance if it concludes that strict enforcement of this ordinance would result in unnecessary hardships for the applicant. The Zoning Board of Adjustment, in granting, shall ensure that the spirit of this ordinance is maintained, public welfare and safety ensured, and substantial justice done. In the following spaces, indicate the **facts** and **argument** you plan to render, in order to convince the Board, to properly determine that their conclusions or findings of fact are applicable.

1) Unncessary hardship would result from the strict application of the ordinance. (It shall not be necessary to demonstrate that, in the absense of a variance, no reasonable use can be made of the property);

I wish to build a detached garage. My Lot slopes at the rear plus I have 3 large trees, a power pole, underground utilities and I am on a cul-de-sac lot. I need to move 12 feet closer to the road.

2) The hardship results from conditions that are peculiar to the property such as location, size, or topography. Hardships resulting from personal circumstances and / or conditions common to the neighborhood or general public may not be the basis for granting a variance;

I am on a cul-desac lot. I only have one area where I can build my garage. If I stay with the current set back my garage goes back to a sharp slope, 3 trees, a power pole and underground utilitie

3) The hardship is not the result of the property owner or applicant's own actions. (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 have owned the property for approximately 4 years. Now I wish to build a garage

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;

I just need to move 12 feet closer to the road.

5) The variance will not result in a land use otherwise not permitted in the applicable zoning district nor authorize the extension of a nonconforming situation in violation of article VI, or other applicable provisions of this chapter;

Not to my knowledge.

6) If applicable, the setback reduction is no more than fifty (50) percent of that required and the resulting setback is no less than five (5) feet from any property line or right-of-way.

I do not need to go closer to my adjoining neighbors property. I just need to go closer to the road I will fall below the 50% rule. As I am seeking 12 feet and the current set back is 30 feet.

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

Signature

2-22-2015
Date

* Includes administrators and enforcement officers with the Department of Planning and Development.

**OFFICIAL USE ONLY**

1. Signature of Coordinator: _____ 2. ZBA Hearing: 04.30.15

3. Notifications Mailed: 04.13.15 4. Property Posted: 04.13.15 5. ZBA Action: Approved _____

Denied _____ 6. Date Applicant Notified: ___/___/___ 7. Date CMO Notified: ___/___/___

# EXHIBIT B

**Mr. and Mrs. Duke C. Brown, Sr.**
**360 Tamarac Shores Drive**
**Salisbury, NC 28146**
**Phone (704) 633-3584**
**Fax (704) 636-9461**

February 10, 2015

My Wife and I live at 360 Tamarac Shores Drive, Salisbury, NC 28146 and we wish to build a detached garage on our property. We live in a small development with only seven homes and we are at the end of the road adjoining the Cul-De-Sac. We get very little traffic down our road to the end where we live. We only have one area on our property that is suitable to build the garage on and due to the set-back requirements from the Cul-De-Sac it will be impossible to get what we want. We have a power pole, 3 trees, a sidewalk and underground utilities that come into play if we are held to the current setbacks which would essentially deny us the right to build a garage on our property. If we could build just 12 feet closer to the road we would be okay. This will still leave plenty of room from the road to our new garage. We respectfully ask for your permission to grant us the right to move our new garage 12 feet closer to the road. We have had Norman Ribelin survey our lot and we have included a copy of that survey showing the current guidelines and the proposed location closer to the road.

Thank you for your help.

Sincerely,

Duke and Gerry Brown

***Owner*: PROFESSIONAL SERVICES UNLIMITED**
**41 years construction and real estate related experience**
**N.C. Licensed Home Inspector #107**
**N.C. Licensed Home Inspectors Association - Member**
**N.C. Licensed General Contractor #17608**
**Proudly serving Rowan County and surrounding counties since 1980**
**59-year resident of Rowan County**
**Member - Home Builders Association**
**Member – Better Business Bureau**
**Member – Salisbury/Rowan Board of Realtors**
**Member – Salisbury/Rowan Chamber of Commerce**
**Notary Public**

**Gerry K. Brown**
**61 year resident of Rowan County**
**19 Year Employee of Salisbury / Rowan School System**
**Notary Pubic**

# EXHIBIT C

## Stewart, Shane A.

**From:** Helmstetler, Tad
**Sent:** Tuesday, March 03, 2015 3:42 PM
**To:** Stewart, Shane A.
**Subject:** Duke Brown

Hi Shane,

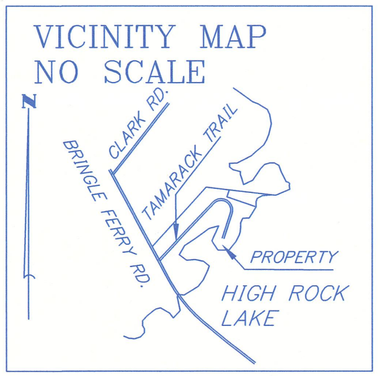
I was talking with Duke Brown about his home in Tamarac Shores. The lot was platted and house constructed before the state required repair area for septic systems. We have already performed a substantial repair to the system in 1988. The only place left on the lot for further repair is in the middle of the circle drive. No accessory structures should be placed inside the circle drive to allow future system repair. If you have any questions, please email me.

Tad

Tad W. Helmstetler REHS, MPA
Environmental Health Supervisor
(704) 216-8533
Tad.helmstetler@rowancountync.gov

# EXHIBIT D

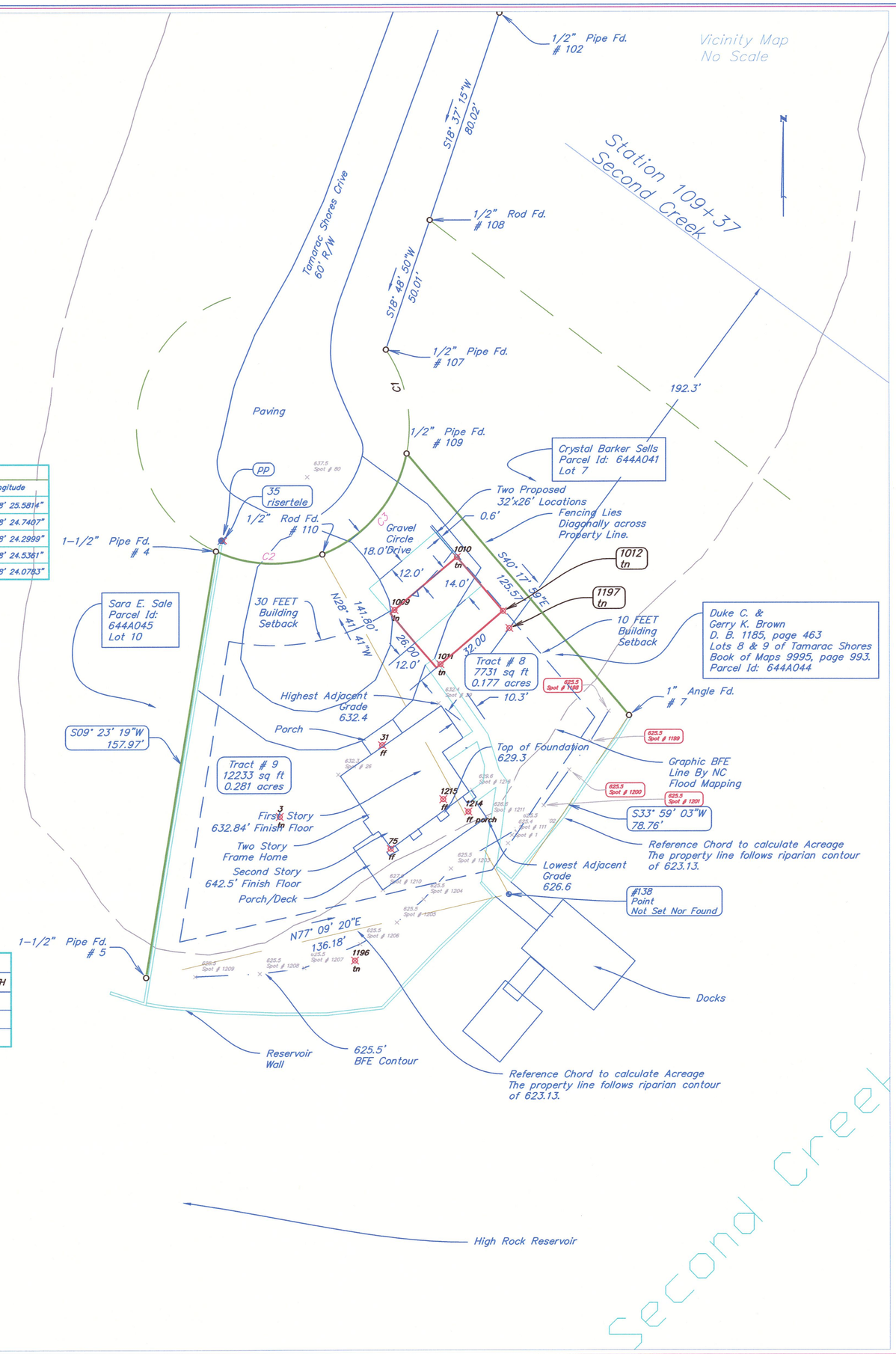
# VICINITY MAP
NO SCALE




| Point Table | | | | | | |
|---|---|---|---|---|---|---|
| Point # | Northing | Easting | Elevation | Description | Latitude | Longitude |
| 5 | 679940.45 | 1611506.54 | 625.06 | 1-1/2" pipe Fd. | N035° 36' 40.3854" | W080° 18' 25.5814" |
| 26 | 680014.48 | 1611576.93 | 632.29 | grd | N035° 36' 41.1267" | W080° 18' 24.7407" |
| 29 | 680040.44 | 1611613.67 | 632.42 | grd | N035° 36' 41.3882" | W080° 18' 24.2999" |
| 1210 | 679972.39 | 1611593.28 | 627.03 | grd | N035° 36' 40.7125" | W080° 18' 24.5361" |
| 1211 | 679998.70 | 1611631.42 | 626.58 | grd | N035° 36' 40.9777" | W080° 18' 24.0783" |

| Point Table | | | | |
|---|---|---|---|---|
| Point # | Northing | Easting | Elevation | Description |
| 4 | 680096.30 | 1611532.31 | 636.61 | 1-1/2" pipe Fd. |
| 5 | 679940.45 | 1611506.54 | 625.06 | 1-1/2" pipe Fd. |
| 6 | 678964.08 | 1611730.67 | 632.90 | Monument Found |
| 7 | 680036.03 | 1611683.34 | 0.00 | 1" angle Fd. |
| 8 | 678964.07 | 1611730.60 | 632.97 | Monument Found |
| 102 | 680293.00 | 1611636.21 | 638.48 | 1/2" pipe Fd. |
| 107 | 680169.83 | 1611594.53 | 640.48 | 1/2" pipe Fd. |
| 108 | 680217.17 | 1611610.66 | 639.19 | 1/2" rod Fd. |
| 109 | 680131.80 | 1611602.13 | 639.90 | 1/2" pipe Fd. |
| 110 | 680095.11 | 1611571.23 | 637.65 | 1/2" rod Fd. |
| 137 | 680368.50 | 1611661.92 | 0.00 | 1/2" rod Fd. |
| 1000 | 716979.90 | 1574849.72 | 676.68 | CORS NCSA |

| PARCEL CURVE TABLE | | | | | |
|---|---|---|---|---|---|
| CURVE # | LENGTH | RADIUS | DELTA | CHORD DIRECTION | CHORD LENGTH |
| C1 | 39.83' | 50.00' | 45°38'34" | N11° 17' 33"W | 38.79' |
| C2 | 40.00' | 49.93' | 45°53'57" | N88° 14' 56"W | 38.94' |
| C3 | 50.03' | 49.93' | 57°24'02" | N40° 06' 04"E | 47.96' |




Note:
All distances given are reduced to the Grid Plan. Surface distances can be obtained by dividing by combined scale factor.

Horizontal Control ± 3 centimeter
Vertical Control ± 3 Centimeters

Elevations are based on NAVD88

Measurements taken from North Carolina Network RTK with Trimble R8 GNSS Dual Frequency GPS Receiver

Conventional Ground Work performed with 3" Trimble S6 Robotic Station.

North
N. C. Grid North
NAD83
(NSRS 2007)
Per NC Network RTK

Vertical Datum
NAVD88

THETA = -00°-45'-16"

30 15 0 30 60 90

Scale 1"=30'  1 centimeter = 3.6 meters  Scale Ratio 1:360

I, Norman Grey Ribelin , certify that this report was produced under my supervision from an actual GPS survey made under my supervision and the following information was used to perform the survey:
(1) Class of survey: "A"
(2) Positional accuracy: 0.03 Meters
(3) Type of GPS field procedure: Network RTK (North Carolina)
(4) Dates of survey: 12/05/2011
(5) Datum/Epoch: NSRS 2007, NAVD88
(6) Published/Fixed-control use: Salisbury CORS NCSA
(7) Geoid model: GEOID09
(8) Combined grid factor(s): 0.999864048
(9) Units: U. S. Survey Feet

CERTIFICATE FOR BOUNDARY SURVEY USING GPS

I, Norman Grey Ribelin, certify that this plat was drawn under my supervision from an actual survey performed under my supervision (deed description recorded in Book 1185 page 463 ; that the boundaries not surveyed are clearly indicated as drawn from information found in Book 9995 page 993; that the ratio of precision as calculated is 1: 10,000+; that the Global Positioning System (GPS) observations were performed to the Geospatial Positioning Accuracy Standards, Part 1: Standards for Geodetic Networks at the 3 centimeter accuracy classification (95% confidence) using RTK Network and that this map meets the requirements of The Standards of Practice for Land Surveying in North Carolina (21 NCAC 56.1600.

Witness my original signature and seal this the 03rd day of March, 2015.

Norman Grey Ribelin , PLS L-2674
Ribelin Land Surveying, Inc. C-1693

3/3/2015
Date

Electronically transmitted drawings.
Drawings that are transmitted electronically to a client or a governmental agency shall have the computer-generated seal removed from the original file. The electronic media shall have the following inserted in lieu of the signature and date: This document originally issued and sealed by (NORMAN GREY RIBELIN), (L-2674), on (03/3/2015). This media shall not be considered a certified document.

NORTH CAROLINA PROFESSIONAL SEAL L-2674 LAND SURVEYOR NORMAN GREY RIBELIN

This survey is conducted by:
Norman Grey Ribelin, PLS, L-2674
dba/
Ribelin Land Surveying, Inc., C-1693
333 Surveyors Drive Salisbury, N. C.
28146-1538 Ph. (704) 633-2995

LEGEND
- Iron Found
- Iron Set
- Stone Found
- Monument Found
- Monument Set
- Nail Found
- Nail Set
- Spike Found
- Spike Set
- Point (not set nor found)
- Power Pole
- R/W — Right-of-way
- E-E-E — Overhead Lines

Sheet 1 of 1

Physical Location Survey for:
FOR: Duke C. Brown

Present Owners: Duke C. & Gerry K. Brown
City/Township: Providence TOWNSHIP,
County: ROWAN COUNTY North Carolina

Parcel Id: 644A044
Pin Number 6618-10-5093

Total Acreage 0.458 Acres  Area by coordinates
Error adjusted by LEAST SQUARES
Field Survey Date Begin: 12/02/2011  Field Survey Date Last: 12/05/2011
Drawing Date: 12/05/2011

COGO/CAD File: fin.dwg  Job Number 2011-1146

Revised 02/09/2015 Added Proposed Garage Sites
Revised 03/03/2015 Proposed Garage width increase to 32' wide.