



## 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: Chairman Morris and Rowan County Zoning Board of Adjustment  
FROM: Shane Stewart, Senior Planner  
DATE: March 3, 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 March 3, 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 \$100.00 #12017  
Office Use Only

**VARIANCE APPLICATION**

**OWNERSHIP INFORMATION:**

Name: Duke C. Brown, Sr  
Signature: Duke C. Brown, Sr.  
Phone: 704-633-3584 Email: dukecbrownsfamily@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 from 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) Unnecessary 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 Cwt-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 cwt-de-sac 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 utilities.

- 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.

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- 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.

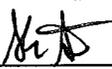
I certify that all the information presented by me in this application is accurate to the best of my knowledge information and belief.

  
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: 02/19/15  
 3. Notifications Mailed: 03/04/15 4. Property Posted: 03/03/15 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 Public**

**EXHIBIT C**

**Stewart, Shane A.**

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

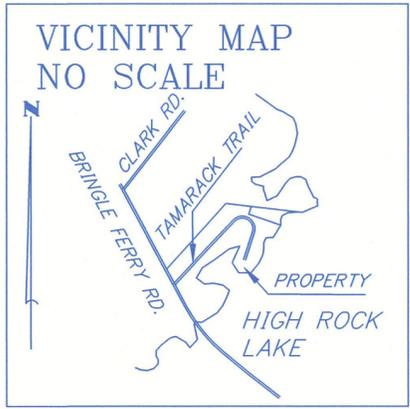
Hi Shane,

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

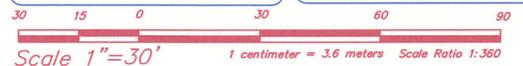
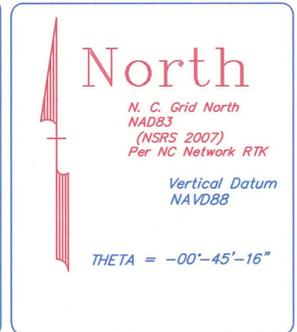
Tad W. Helmstetler REHS, MPA  
Environmental Health Supervisor  
(704) 216-8533  
[Tad.helmstetler@rowcountync.gov](mailto:Tad.helmstetler@rowcountync.gov)

# **EXHIBIT D**



Vicinity Map  
No Scale

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.

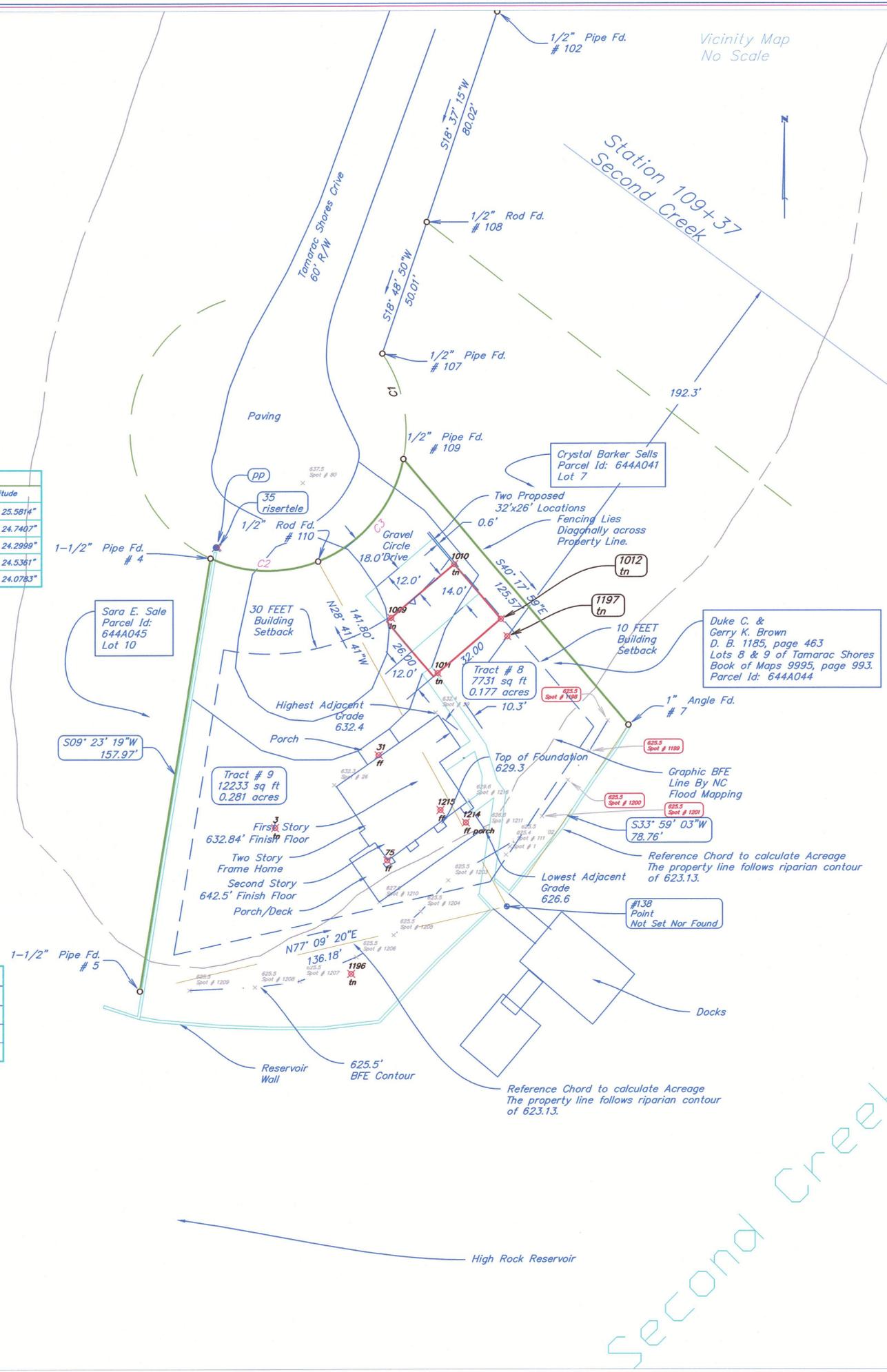


1. Norman Grey Ribelin, certify that this report was produced under my supervision from an actual GPS survey made under my supervision and the following information was used to perform the survey:
- (1) Class of survey:   A
- (2) Positional accuracy:   0.03 Meters
- (3) Type of GPS field procedure:   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

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' 24.2899"
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 #	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" pipe Fd.
1000	716979.90	1574849.72	676.88	CORS NCSA

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'



**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 2: 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 (2) NCAC 56.1600.

Witness my original signature and seal this the 03rd day of March, 2015  
*Norman Grey Ribelin* 3/3/2015  
Norman Grey Ribelin, PLS L-2674  
Ribelin Land Surveying, Inc. C-1693



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.

- 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

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

Physical Location Survey for: Sheet 1 of 1  
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.