



Rowan County Department of Planning & Development
402 North Main Street – Suite 204 – Salisbury, NC 28144
Phone: (704) 216-8588 rowancountync.gov/planning

MEMORANDUM

TO: Rowan County Board of Adjustment
FROM: Shane Stewart, Assistant Planning Director
DATE: August 13, 2024
RE: **BOA 03-24: Tripp Reed**

BOARD OF ADJUSTMENT ACTION

- Sworn oath for those testifying Receive staff report Petitioner comments Testimony from others Close hearing and discuss Motion to adopt findings of fact Approve / Deny / Table **BOA 03-24**

BACKGROUND On May 10, 2024, Charles “Tripp” Reed obtained zoning permit ZP-021340-2024 for a single-family dwelling at 1005 Osprey Ln., further referenced as Tax Parcel 222B-051 and Lot 31 in Phase II of Eagle Landing subdivision. Permit approval was conditioned on a property survey, which depicted the proposed home location outside an adjacent floodplain area. Within a few hours of permit issuance, Planning Staff (staff) noticed the proposed location did not appear to meet the front setback and contacted Mr. Reed to confirm before construction. Mr. Reed indicated his surveyor noted a similar concern and, in response, he adjusted the proposed southwest house corner accordingly.

On June 12th, staff received an updated survey, which indicated the home’s foundation perimeter at 14.87 feet from the front property line. Based on the property’s Rural Agricultural (RA) zoning designation, the home is subject to a front setback of thirty (30) feet as measured from the property line / road right of way. Staff contacted Mr. Reed on the 12th to inform him of the setback violation and to cease further construction on the completed crawl space foundation (see enclosed images). Options to remedy the violation included deconstruction of the approximate fifteen (15) foot projection into the setback or apply for a variance. On June 25th, staff received a revised survey indicating a previous error in calculation and noting a front setback measuring 15.00’ from the property line.

REQUEST On behalf of property owner KEAG Homes, LLC. member Tripp Reed is requesting a fifteen (15) foot front setback variance from the required

thirty (30) foot front setback from section 21-84 of the Zoning Ordinance (see enclosed ordinance excerpt) for Tax Parcel 222B-051.

VARIANCE CRITERIA

In accordance with section 21-332(2) of the Zoning Ordinance, “*A variance shall be granted by the BOA if it concludes that strict enforcement of this chapter would result in unnecessary hardships for the applicant. The board may reach these conclusions if it makes the following findings:*”

Variance criteria are listed in bold black text followed by staff comments in regular text. Refer to the enclosed application for applicant responses.

For additional guidance in making a decision, see two (2) enclosed articles from professors of Public Law and Government at the University of North Carolina at Chapel Hill Adam Lovelady and David Ownes, entitled:

- *Variance Standards: What is hardship? And when is it unnecessary?*
- *Planning and Development Regulation Variance: Application of Unnecessary Hardship Standard.*

- 1. Unnecessary hardship would result from the strict application of the ordinance. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;**
 - On December 13, 2002, staff approved Phase II of the Eagle Landing subdivision – establishing a twenty (20) lot expansion of the residential development which included subject lot 31. All required lot dimensional requirements and principal structure setbacks required by the zoning and subdivision ordinance on that date remain unchanged in current ordinances.
 - Mr. Reed obtained zoning permit ZP-021340-2024 indicating a required thirty (30) foot front setback.
 - Licensed Soil Scientist Steve Cannon’s septic system Construction Authorization (CA) map and form indicate a proposed structure setback of thirty (30) feet from the property line. The CA approval package also included an excerpt from the recorded plat.
- 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. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability;**

- The setback violation was discovered early in the development process as the crawl space foundation passed building inspection on June 27th. No additional improvements have been made since.
- Three (3) other lots in Eagle Landing are similar in lot depth / area between the road and Colonial pipeline right of way as subject lot 31: Lot 35 in Phase II and 58 & 59 in Phase III (see enclosed GIS maps *).

*Note: GIS depicts a one hundred (100) foot right of way for Colonial pipeline in comparison to the “not to be more than 70’ in width” referenced on plats. Regardless of the actual width, these maps are merely intended to illustrate other lots with similar characteristics.

- Mr. Reed referenced the lot’s steep slope in his application but, for this section, must demonstrate a hardship resulting from the topography that is not common to the neighborhood. This may a bit obscured by the foundation extending into the setback, which the board will need to define either as a factor in the decision or if the hardship is based on topography.

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 is not a self-created hardship;

- “Exhibit A” referenced in Deed Book 1443 Page 591 indicate the property is “*...subject to building and setback lines as shown on the recorded plat.*”
- On June 12th, staff received the foundation survey indicating a setback of 14.87’, which was later revised to 15.00’ due to a surveying error. Staff contacted Mr. Reed on the 12th informing him of the setback violation and to halt further construction. It became apparent Mr. Reed measured from the back of curb, which is located approximately 12 +/- feet within the right of way for Osprey Lane (see survey).

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;

- In staff’s opinion, three (3) similar lots referenced in Section 2 have similar characteristics and perhaps warrant similar decisions. Lot 58 contains a dwelling while lots 35 and 59 are undeveloped.

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

N/A. This request is not a use variance.

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.

According to the latest survey, the applicant is requesting the maximum setback reduction of fifteen (15) feet.

PROCEDURE The BOA shall determine the contested facts and make its decision based on competent, material, and substantial evidence. Prior to granting a variance, the BOA must vote affirmatively on all six (6) above criteria with a four-fifths (4/5) vote providing specific reasons or findings supporting the motions. 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 BOA is subject to review by superior court if appealed within thirty (30) days of the signed decision filed in the office of the Clerk to the Board of Commissioners.

PUBLIC NOTICE August 14th – Letters mailed to seven (7) adjoining property owners.

August 14th – Sign posted on property.

August 16th – Request posted on department website.



STAFF COMMENTS This request is the result of an apparent and unfortunate mis calculation on the front property line. Fortunately, the violation was captured relatively early in the phase of construction to remedy by reconstruction to meet required setback.

Staff suggest board members consider the enclosed UNC article and referenced similar lots in the development when evaluating the criteria.

ENCLOSURES

- Attachment A: Application
- Attachment B: Site Pictures
- Attachment C: Zoning Permit
- Attachment D: Section 21-84 excerpt

- Attachment E: GIS Map
- Attachment F: Eagle Landing Phase I, II, & III plats
- Attachment G: Lots 31, 35, 58, and 59
- Attachment H: Property Deed
- Attachment I: Property Deed
- Attachment J: Foundation Survey

Attachment A



Rowan County Planning & Development Department

402 North Main Street, Suite 204, Salisbury, NC 28144

Phone: (704) 216-8588 Fax: (704) 638-3130

<http://www.rowancountync.gov>

ZONING PERMIT

Plan Case #
ZP-021340-2024

Parcel ID
222B051

Project

Application Date
05/10/2024

Proposed Use
Single Family Dwelling

Previous Use
Vacant

Sq. Ft.
1,840

Physical Address
1005 OSPREY Ln
China Grove, NC 28023

Applicant
Charles & Jessica Reed

Address
1005 OSPREY Ln
China Grove, NC 28023

Phone
7047938346

Principle Structure Setbacks

Front 30 Side 10
Side Street 20 Rear 10

Owner
Charles & Jessica Reed

Address
1005 OSPREY Ln
China Grove, NC 28023

Phone
7047938346

Accessory Structure Setbacks

Front Side
Side Street Rear

Contractor
Charles & Jessica Reed

Address
1005 OSPREY Ln
China Grove, NC 28023

Phone
7047938346

Issued by:
Pamela Ealey

Updated by & Date:

Zoning District
RA

Overlay District

Flood Zone
AE

FIRM Panel
3710561700

Lot Size
2.35

Subdivision
EAGLE LANDING

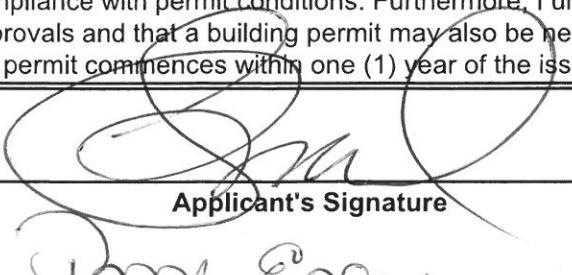
Water Supply
Indiv Well

Sewage Disposal
Septic System

Additional Requirements / Comments:

1840 sqft single family dwelling including attached porches/decks/garage. Floodplain development permit complete.

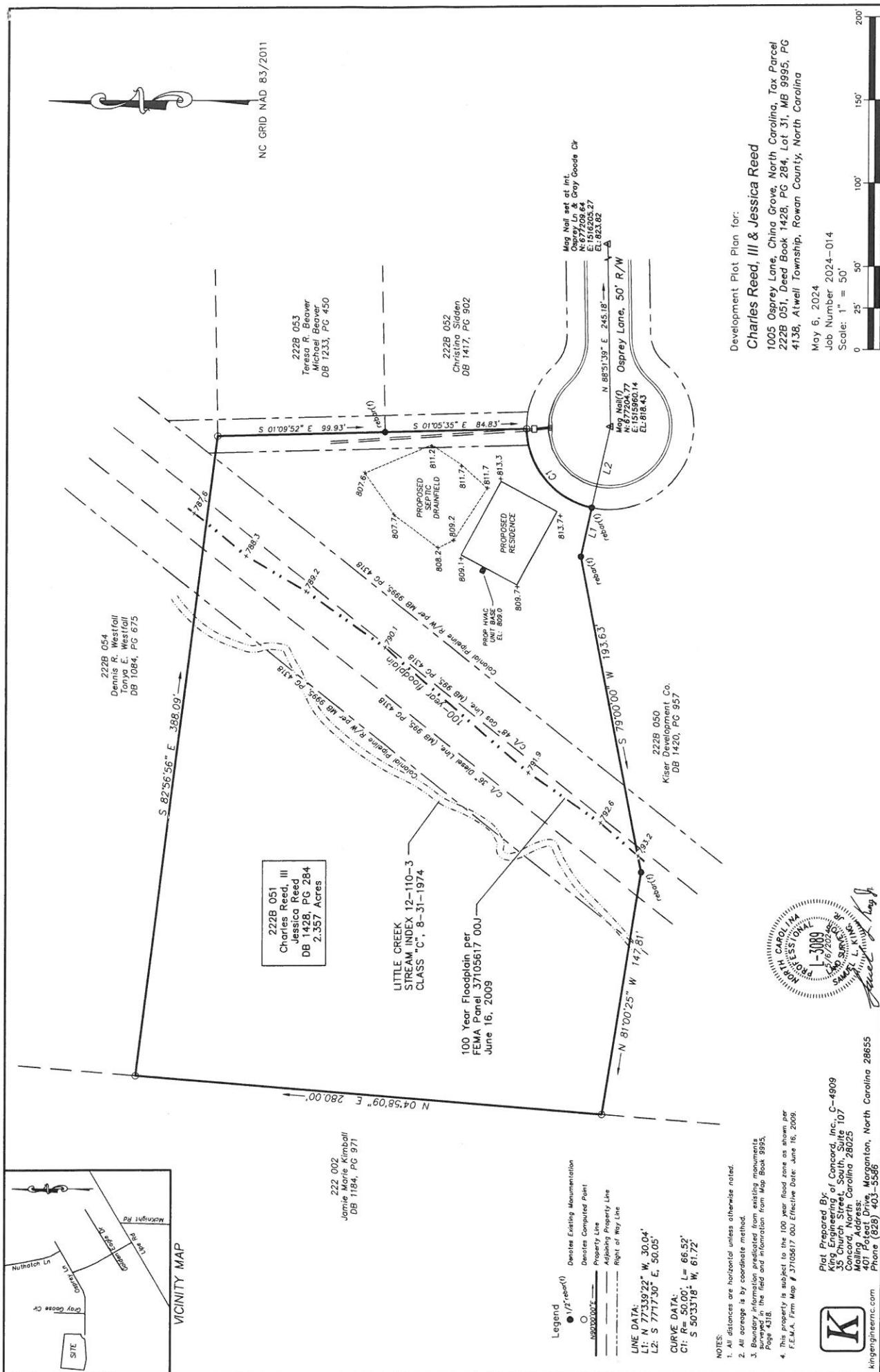
I hereby certify that I am aware of and will comply with the conditions indicated on this permit, the approved site plan (if any), an applicable provisions of the Zoning Ordinance. Structures or land authorized by this permit will only be used or occupied in compliance with permit conditions. Furthermore, I understand that any changes made to this project may require additional approvals and that a building permit may also be necessary for project approval. This permit remains valid if the work authorized by the permit commences within one (1) year of the issuance date and all other required permits are obtained.


Applicant's Signature


Date


Authorized Zoning Signature


Date



Ealey, Pamela C

From: tripp Reed <tripp@c3builders.net>
Sent: Friday, May 10, 2024 4:37 PM
To: Ealey, Pamela C
Subject: Re: 1005 Osprey In China Grove
Attachments: image001.png

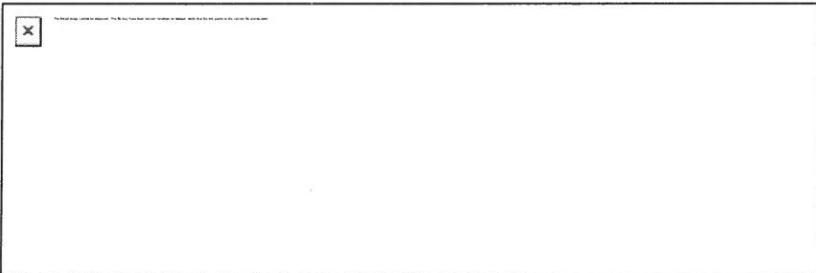
Thanks Pam.

The surveyor pointed that out and we backed the front left corner of the foundation back .

On Fri, May 10, 2024, 4:09 PM Ealey, Pamela C <Pamela.Ealey@rowancountync.gov> wrote:

Mr. Reed,

Our floodplain administrator was reviewing the survey you submitted for 1005 Osprey Lane, in doing so he questioned whether the dwelling will meet the front setback of 30' from the road right of way. You may want to check this with the surveyor prior to starting construction. Let me know if you have any questions.



From: tripp Reed <tripp@c3builders.net>
Sent: Monday, May 6, 2024 3:48 PM
To: Ealey, Pamela C <Pamela.Ealey@rowancountync.gov>
Subject: Fwd: 1005 Osprey In China Grove

You don't often get email from tripp@c3builders.net. [Learn why this is important](#)

Pam see Plat with elevations attached.

----- Forwarded message -----

From: Sam King <sam@kingengineernc.com>
Date: Mon, May 6, 2024 at 3:31 PM
Subject: Re: 1005 Osprey In China Grove
To: tripp Reed <tripp@c3builders.net>

Here you go. See if it looks OK.

On Mon, May 6, 2024 at 3:18 PM tripp Reed <tripp@c3builders.net> wrote:

If you can then go ahead and add the 809 for the HVAC elevation pls.

Then I can just forward to county.

On Mon, May 6, 2024 at 3:17 PM Sam King <sam@kingengineernc.com> wrote:

OK,

I'll send you a PDF with the "Preliminary" removed and stamp it.

On Mon, May 6, 2024 at 3:15 PM tripp Reed <tripp@c3builders.net> wrote:

I'll just input 809 for the HVAC location.

This should be just to get our zoning for our permit.

Once foundation is complete you will have to reshoot for a asbuilt to get my foundation inspection done.

Thanks

On Mon, May 6, 2024 at 3:10 PM Sam King <sam@kingengineernc.com> wrote:

Yes, that should work. I wasn't sure about the house location. I shot the four wood stakes with the orange flags. I put pink surveyors ribbon on them as well. It appears the front may be encroaching the 30' front setback.

If you want, I'll show and label the proposed HVAC unit with an elevation.

Sam

On Mon, May 6, 2024 at 2:53 PM tripp Reed <tripp@c3builders.net> wrote:

Looks ok to me Sam.

I guess HVAC system would be at an elevation of 809, if installed at the back of the house?

On Mon, May 6, 2024 at 1:25 PM Sam King <sam@kingengineernc.com> wrote:

Tripp,

Attached, please find a preliminary PDF of the floodplain development plot plan and application for your review.

Please call or email with any questions or comments.

Thanks,

Sam

On Mon, Apr 29, 2024 at 10:45 AM tripp Reed <tripp@c3builders.net> wrote:

Sam see attached.

The Lot is cleared and house site is staked.

Let me know how soon we can shoot elevations PLease.

Attachment B

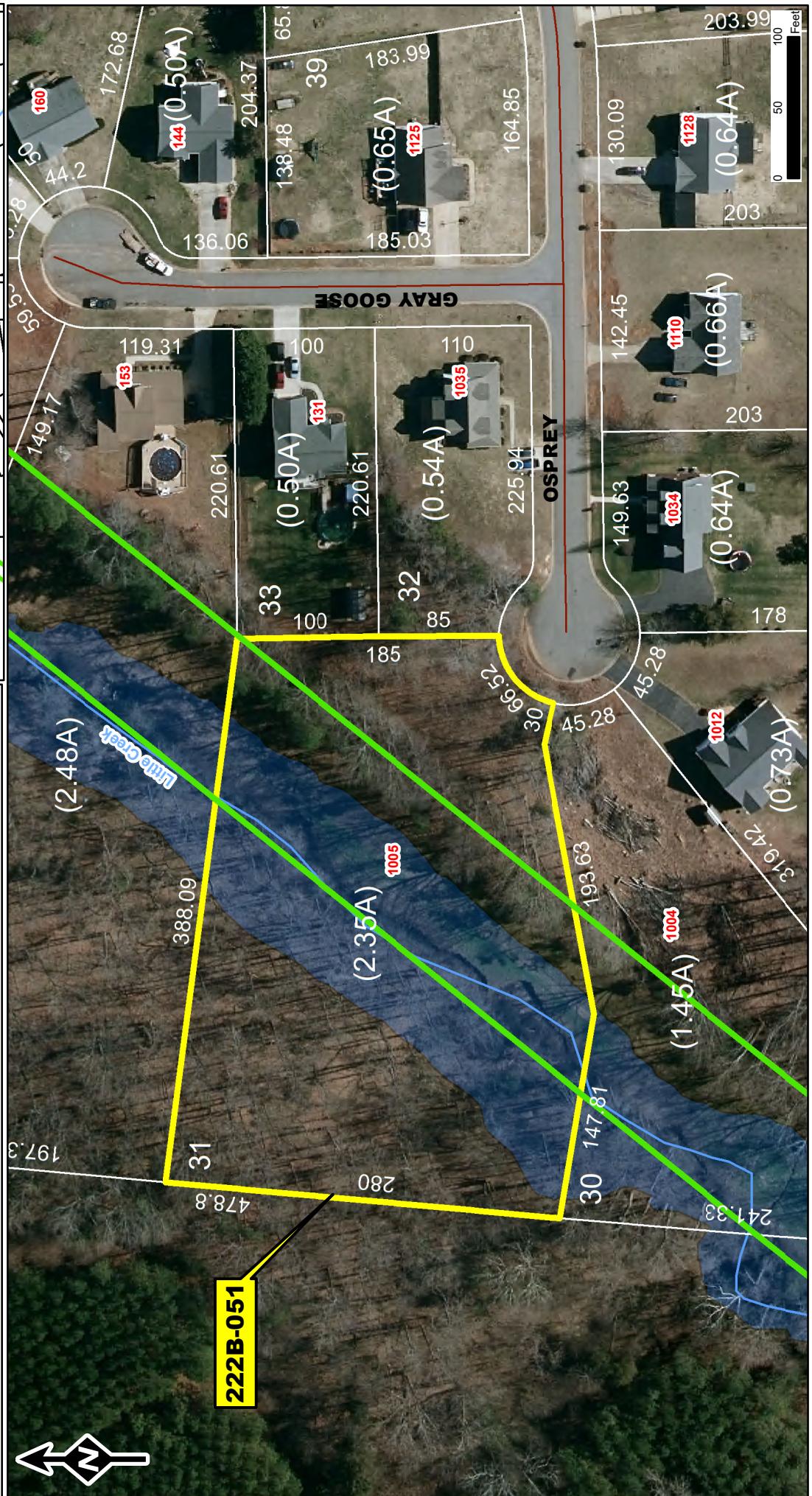
BOA 03-24:Reed



Legend

<input type="checkbox"/> Parcels	<input type="checkbox"/> Subject Parcel	 Floodplain	 Eagle Landing
<input type="checkbox"/> Colonial Pipeline RW	 Roads	 Streams	 Address
			 Feb / Mar 22 Aerials

Prepared by: Bowan County Planning Dept 8/7/24



Attachment C



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

BOA

03-24

Case #

7-9-2024

Date Filed

Shane Stewart

Received By

\$200.00 CR# 3946

Amount Paid

Office Use Only

VARIANCE APPLICATION

OWNERSHIP INFORMATION:

Name: KEAG LLC

Signature: Chad Blanton

Phone: 704-793-8346 Email: tripp@c3builders.net

Address: _____

APPLICANT / AGENT INFORMATION:

Name: Tripp Reed / C3 Builders, LLC

Signature: Tripp Reed

Phone: 704-793-8346 Email: tripp@c3builders.net

Address: 4230 Lower Stone Church Rd
Rockwell NC 28138

PROPERTY DETAILS:

Variance Requested on Property Located at: 1005 Osprey Ln China Grove

Tax Parcel: 5617-02-57-7344 Zoning District: _____

TO THE ROWAN COUNTY ZONING BOARD OF ADJUSTMENT:

I Tripp Reed, 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.):

Chapter 21, Article IV, Section 21-84 which states a Front Yard Principle Structure Setback for RA zoning is to be 30'. I request a variance to provide a front yard principle structure setback of 15' from Right of Way.

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 absence of a variance, no reasonable use can be made of the property);

~~If house was placed at 30' setback, house would have to be constructed in existing steep slope. Current house placement aims to keep construction out of slope that is the bank for Little Creek Stream and also contains a 70' Gas Easement.~~

- 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);

~~This hardship is unique to this location, existing lot has a steep slope that is the bank for a floodplain located at the rear of the site. Lot also is cut in half by a 70' Colonial Pipeline easement which contains a 36" diesel line and a 48" gas line.~~

- 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);

~~Due to conditions at rear of site, providing 30' setback is challenging.~~

- 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;

~~Proposed location of house is 27' from existing back of curb and ensures public safety by avoiding grading in existing slope and closer to gas easement.~~

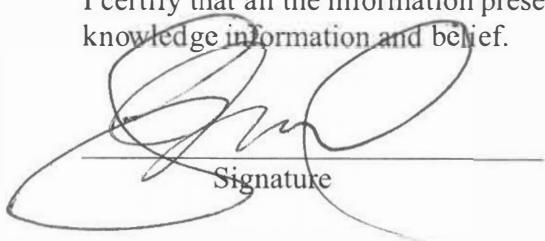
5) The variance will not result in a land use otherwise not permitted in the applicable zoning district nor authorize the extension of a nonconforming situation in violation of article VI, or other applicable provisions of this chapter;

Land use is residential in keeping with existing residential zoning. The site is currently vacant so no proposed extension of a non conforming situation.

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.

Requested setback reduction is 50% of required setback. (15' provided out of 30' required.) Structure is 36.95' from eastern property line and 16.53' from southwestern property line.

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



Signature

7/9/24

Date

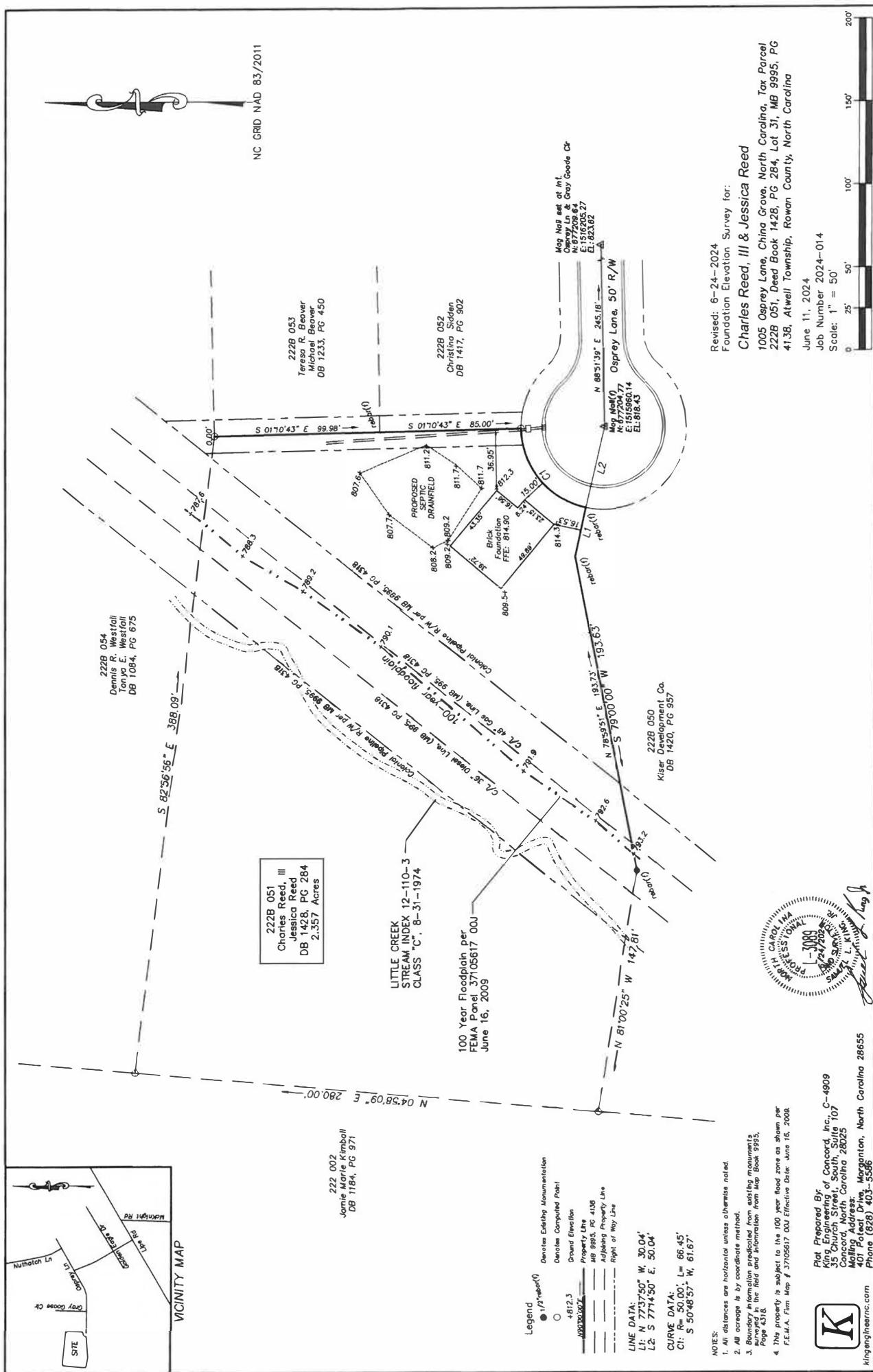
* Includes administrators and enforcement officers with the Department of Planning and Development.

OFFICIAL USE ONLY

1. Signature of Coordinator:  2. ZBA Hearing: 8 / 26 / 24

3. Notifications Mailed: 8 / 14 / 24 4. Property Posted: 8 / 14 / 24 5. ZBA Action: Approved

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





tripp Reed <tripp@c3builders.net>

1005 Osprey Lane China Grove

13 messages

Sam King <sam@kingengineernc.com>

To: tripp Reed <tripp@c3builders.net>

Mon, Jun 24, 2024 at 9:09 AM

Tripp,

Attached, please find a revised PDF of the survey map. The shots taken on Friday checked out with the previous survey; however, I realized that the missing front corner was not calculated correctly. With all that said, the critical foundation corner is now 15.00' off the front property line as shown on the revised surve map.

Please call or email with any questions or comments.

Thanks,
Sam

 2024 014 - 1005 Osprey Ln China Grove Foundation Elevatio As-Built Rev 6-24-2024.pdf
151K

tripp Reed <tripp@c3builders.net>

To: "Stewart, Shane A." <Shane.Stewart@rowancountync.gov>

Tue, Jun 25, 2024 at 3:37 PM

Shane please see attached revised plot map of 1005 Osprey In.

I will have Variance request to you by Thursday this week.

Thanks
[Quoted text hidden]

 2024 014 - 1005 Osprey Ln China Grove Foundation Elevatio As-Built Rev 6-24-2024.pdf
151K

tripp Reed <tripp@c3builders.net>

To: Sam King <sam@kingengineernc.com>

Tue, Jun 25, 2024 at 3:37 PM

Thanks Sam
[Quoted text hidden]

tripp Reed <tripp@c3builders.net>

To: susan@dogwoodengineering.com

Thu, Jun 27, 2024 at 6:13 PM

Second surve from King.

----- Forwarded message -----

From: **Sam King** <sam@kingengineernc.com>

Date: Mon, Jun 24, 2024 at 9:10 AM

Subject: 1005 Osprey Lane China Grove

To: tripp Reed <tripp@c3builders.net>

[Quoted text hidden]

Attachment D

Sec. 21-84. Table of dimensional requirements.

DISTRICTS	RA	RR	RS	MHP	MFR	AI	CBI	NB	INST	IND
Minimum zone lot size⁽¹⁾⁽³⁾										
Septic tank and individual or multi-connection well	20,000 sq ft	20,000 sq ft	20,000 sq ft	6 acres	2 acre with 3 du/acre ⁽²⁾	N/A	N/A ⁽²⁾	20,000 sq ft	N/A	N/A
Minimum zone lot size⁽¹⁾⁽³⁾										
Public water or community water or Public sewer or approved package treatment plant	15,000 sq ft	15,000 sq ft	15,000 sq ft	6 acres	2 acre with 8 du/acre ⁽²⁾	N/A	N/A ⁽²⁾	15,000 sq ft	N/A	N/A
Minimum zone lot size⁽¹⁾⁽³⁾										
Public water and sewer	10,000 sq ft	10,000 sq ft	10,000 sq ft	6 acres	2 acre with 12 du/acre ⁽²⁾	N/A	N/A ⁽²⁾	10,000 sq ft	N/A	N/A
Minimum lot width at right-of-way	35 ft	35 ft	35 ft	35 ft	35 ft ⁽⁶⁾	35 ft	35 ft	35 ft	35 ft	35 ft
Minimum lot width at Building setback line	70 ft	70 ft	70 ft	70 ft	70 ft ⁽⁶⁾	70 ft	70 ft	50 ft	70 ft	70 ft
Minimum lot depth										
Without public water & sewer	150 ft	150 ft	150 ft	150 ft	150 ft ⁽⁶⁾	100 ft	100 ft ⁽²⁾	100 ft ⁽²⁾	150 ft	150 ft
Public water and sewer	125 ft	125 ft	125 ft	125 ft	125 ft ⁽⁶⁾	100 ft	100 ft	100 ft	125 ft	150 ft
Principal structure setback										
Front Yard ⁽⁴⁾	30 ft	30 ft	50 ft	50 ft	50 ft ⁽⁶⁾	50 ft	50 ft ⁽²⁾	30 ft	30 ft	50 ft
Side street	20 ft	20 ft	25 ft	50 ft	50 ft ⁽⁶⁾	25 ft	30 ft ⁽²⁾	20 ft	20 ft	30 ft
Side yard ⁽⁴⁾	10 ft	10 ft	10 ft	50 ft	50 ft ⁽⁶⁾	10 ft	10 ft or 0 ft ⁽²⁾	10 ft or 0 ft ⁽⁷⁾	10 ft	10 ft or 0 ft
Rear yard ⁽⁴⁾	10 ft	10 ft	20 ft	50 ft	50 ft ⁽⁶⁾	20 ft	10 ft or 0 ft ⁽²⁾	10 ft or 0 ft ⁽²⁾⁽⁷⁾	10 ft	10 ft or 0 ft
Accessory structure setback⁽⁸⁾										
Front	30 ft	30 ft	50 ft	50 ft ⁽⁵⁾	50 ft ⁽⁶⁾	50 ft	10 ft	10 ft	10 ft	10 ft
Any right-of-way	10 ft	10 ft	10 ft	30 ft ⁽⁵⁾	50 ft ⁽⁶⁾	10 ft	10 ft	10 ft	10 ft	10 ft
Side and rear yard	10 ft	10 ft	10 ft	10 ft ⁽⁵⁾	10 ft ⁽⁶⁾	10 ft	10 ft	10 ft	10 ft	10 ft

- (1) May be increased based on location in regulated watershed.
- (2) For single family use standards for RA district.
- (3) For individual lot size/space standards in an MHP district refer to section 21-60(11)n.
- (4) For individual space setbacks in an MHP district refer to section 21-60(11)d.
- (5) From exterior property lines.
- (6) Requirements may be modified or exempted as provided by section 21-60(16). Dimensional criteria for subdivided lots shall be as provided for in the RA district, excluding external boundaries of the development.
- (7) See "special requirements" for NB district for setbacks from residential zoning districts.
- (8) Refer to section 21-285 for additional standards.

(Ord. of 1-19-98, § V; Ord. of 2-1-99(1), § 12; Ord. of 10-18-99(1); Ord. of 6-17-02; Amend. of 3-7-05; Amend. of 11-2-09; Amend. of 3-5-12; Amend. of 1-22-13; Amend. of 4-21-14; Amend. of 1-17-23)

Attachment E

Coates' Canons Blog: Variance Standards: What is hardship? And when is it unnecessary?

By Adam Lovelady

Article: <http://canons.sog.unc.edu/variance-standards-what-is-hardship-and-when-is-it-unnecessary/>

This entry was posted on May 27, 2014 and is filed under Land Use & Code Enforcement, Quasi-Judicial Decisions, Zoning

Generally, development regulations like zoning and subdivision standards apply equally to all properties. But sometimes a particular property is unfairly burdened by the general rules, creating an unnecessary hardship for the owner. The general statutes authorize the local board of adjustment to grant a variance from the rules in those limited circumstances. But what is an unnecessary hardship? Recent amendments to the state statute clarify what can (and what can't) qualify as unnecessary hardship. This blog explores those new standards.

General Statute section [160A-388\(d\)](#) sets forth the standards for granting a zoning variance (The standards also may be applied to subdivision and other development regulation). These mandatory standards apply to zoning variances for all counties and municipalities in the state, and the new standards override any contrary ordinance provisions that may have been in place prior to 2013. For a summary of the other changes to the board of adjustment statute, see this [blog](#) from my colleague David Owens.

Under the new statute a board of adjustment *shall* vary the provisions of the zoning ordinance if strict application of the ordinance would create unnecessary hardship. In order to obtain the variance, the applicant must show all of the following:

- Unnecessary hardship would result from the strict application of the ordinance
- The hardship results from conditions that are peculiar to the property
- The hardship is not a self-created hardship

Additionally, the applicant must show that the variance will

- Be consistent with the intent of the ordinance
- Secure public safety
- Achieve substantial justice

Finally, the statute prohibits any use variance.

To be sure, a variance is not a free pass from regulations or a tool to subvert the zoning ordinances. In order to obtain a variance, the applicant bears the burden of providing competent, substantial and relevant evidence to convince the decision-making board that the property meets all of the statutory standards for a variance. Merely showing some hardship is insufficient.

Let's consider each of the standards in more detail.

Unnecessary Hardship from Strict Application

Whenever there is regulation, there is some level of necessary hardship and inconvenience shared by all of the community. An applicant for a variance must show *unnecessary* hardship. What is enough hardship? Unfortunately, there is no simple formula. It is determined on a case-by-case basis. That is why the board of adjustment holds a quasi-judicial hearing and considers the evidence presented.

The hardship must be more than mere inconvenience or a preference for a more lenient standard. Cost of compliance may be a factor, but cost is not determinative. It is not enough for an applicant to say that development will cost more in order to comply. The applicant must show the substantial and undue nature of that additional cost as compared to others

subject to the same restriction.

Under the old statutes, many jurisdictions applied a standard that the applicant must show that there is no reasonable use of the property without a variance. Under current statutes, that stringent standard is no longer allowed. A property owner can prove unnecessary hardship, even if the owner has some reasonable use of the property without the variance.

Peculiar to the Property

The unnecessary hardship must be peculiar to the property, not general to the neighborhood or community. Such peculiar characteristics might arise, for example, from location of the property, size or shape of the lot, or topography or water features on the site.

Imagine a lot that narrows dramatically toward the front yard and where the side yard setbacks prohibit the property owner from building an addition. The hardship (not being allowed to build an addition) flows from the strict application of the ordinance (the setback) and is peculiar to the property (because of the shape of the lot). A variance may be appropriate if the owner presents evidence to show she meets all of the standards.

By contrast, a variance is not the appropriate remedy for a condition or hardship that is shared by the neighborhood or the community as a whole. Consider that same narrowing lot. If all of the houses on the street shared that hardship, a variance would not be appropriate. Such conditions should be addressed through an ordinance amendment.

Hardships that result from personal circumstances may not be the basis for granting a variance. The board is looking at the nature of the property and the land use ordinances, not the nature of the applicant and their circumstances. Bringing an elderly parent to live with the family, for example, is a change in personal circumstance, not a condition peculiar to the property.

The reverse is also true. An applicant's personal circumstances cannot be the basis for denying a variance. The board should consider the property, not the applicant's bank account and ability to cover the cost of the hardship. Moreover, the fact that the applicant owns property nearby is irrelevant to the consideration of whether this particular property deserves a variance (*Williams v. N.C. Dept. of Env. & Nat. Resources*, 144 N.C. App 479, 548 S.E. 2d 793 (2001))

Not Self-Created Hardship

You can't shoot yourself in the foot and then ask for a variance. The hardship must not result from actions taken by the applicant or property owner.

So what is self-created? Suppose a property owner sells part of a conforming lot and makes the remainder of the lot nonconforming. The hardship (limitations on the non-conforming lot) was self-created (by the owner selling the sliver off the parcel). The owner may not seek a variance for building on the substandard lot. Similarly, where an owner failed to seek zoning and building permits and then incorrectly placed foundation footings in the setback, the hardship is self-created. No variance is allowed. Ignorance of the law is no excuse.

What if the owner relied in good faith on seemingly valid surveys and obtained building permits? After construction began, a neighbor objected, citing a new survey and arguing that the foundation wall is within the setback. Is the owner's hardship self-imposed? Our North Carolina courts have held that hardships resulting from such good faith reliance on surveys and permits are eligible for a variance (*Turik v. Town of Surf City*, 182 N.C. App. 427, 642 S.E.2d 251 (2007)).

An important statutory provision applies here: "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." For example, if the original owner had a legitimate case for a variance, someone buying the lot from that owner would have the same legal position as the original owner. They could seek a variance. This rule aligns with the broader zoning concept that land-use permissions run with the land, and land-use decisions are based on the property and impacts of development, not based on the particular owner. Is this a loophole for an unscrupulous owner to overcome the limit on variances for self-created hardship by selling the property to a spouse or sham LLC? Maybe, but the requirement for substantial justice (discussed below) probably protects from someone gaming the system.

Restrictive covenants and other legal limitations *may* be a factor in determining hardship. Consider a property that has limited development ability due to a privately-imposed covenant for a street setback and a publicly-imposed stream setback. Can the owner seek a variance from the public stream setback? The NC Court of Appeals—interpreting a specific local ordinance—found that the board should consider physical *and* legal conditions of the property, including restrictive covenants (*Chapel Hill Title & Abstract Co., Inc. v. Town of Chapel Hill*, 362 N.C. 649, 669 S.E.2d 286 (2008)).

Let me emphasize that covenants and other legal limitations *may* be a factor. In that case, the decision was based on the local ordinance, and the decision pre-dated the statutory variance standards. A self-imposed legal limitation—like an easement across a property that limits buildable area—that was created after a zoning ordinance limitation became effective, could be viewed as a self-imposed hardship so that no variance should be granted.

Ordinance Purpose, Public Safety, and Substantial Justice

In addition to those standards for “unnecessary hardship,” the statutory standard for granting a variance requires the applicant to show that “[t]he requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.”

Where an ordinance expresses a clear intent, a variance cannot subvert that intent. But, alternatively, a variance may help to give effect to the ordinance intent. In one North Carolina case, an applicant was seeking a variance to allow an additional sign at a secondary entrance. Among other things, the ordinance purpose was to provide “adequate and effective signage,” “prevent driver confusion,” and “allow for flexibility to meet individual needs for business identification.” The purpose, the court found, called for the flexibility that the applicant sought, and the variance was allowed. (*Premier Plastic Surgery Ctr., PLLC v. Bd. of Adjustment for Town of Matthews*, 213 N.C. App. 364, 369, 713 S.E.2d 511, 515 (2011)).

The applicant also must show that the variance does not harm public safety. Even if an applicant met the standard for unnecessary hardship, a variance may be denied for public safety concerns. A property owner may prove an unnecessary hardship exists from limitations on on-site drives and parking for a commercial use. But, if neighbors presented expert evidence that the increased traffic and stormwater effects will harm public safety, the board may be justified in denying the variance.

Additionally, the statute requires the applicant to show that through the variance “substantial justice is achieved.” The concept of substantial justice raises issue of fairness for the community and neighbors. This concept echoes the requirement that hardship must be peculiar to the property—not shared by the community. If everyone bears this hardship, then one lucky person should not be relieved through a variance. Similarly, the justice standard draws upon a notion of precedence. Suppose Joe sought a variance last year and was denied. If Karl is seeking variance this year that is essentially the same request for a similar property, then the variance outcome should be the same.

The substantial justice standard also can play in favor of the applicant. If an applicant relies in good faith on a city permit, and that permit turned out to be wrongly issued, the applicant would have no vested rights in that mistakenly issued permit. Substantial justice might argue for allowing a variance for the applicant.

No Use Variance

North Carolina courts long ago established that use variances are not permitted, and that rule is now part of the statutory standards. If a land use is not permitted on the property, a variance cannot be used to, in effect, amend the ordinance and allow the use. If only single family residences are permitted in a district, a variance cannot permit a duplex (*Sherrill v. Town of Wrightsville Beach*, 76 N.C. App. 646, 334 S.E.2d 103 (1985)).

If the use is already permitted on the property, a variance to allow the expansion of the permitted use is permissible. So, for example, if a sign is permitted for a commercial property, a variance to permit an additional sign is allowable. It is an area variance, not a use variance. (*Premier Plastic Surgery Ctr., PLLC v. Bd. of Adjustment for Town of Matthews*, 213 N.C. App. 364, 369, 713 S.E.2d 511 (2011)).

Conclusion

Making decisions about variances is a hard job. How much hardship is enough hardship? Is justice being served? Does the variance preserve the spirit of the ordinance? Rarely are there clear answers for these questions. Seeking those answers is the hard task of the board of adjustment. The applicant must present competent, material, and substantial evidence that they meet all of the standards. And the board must consider the issues on a case-by-case basis; they must weigh the evidence, apply the required statutory standards, and decide if a variance is warranted.

Links

- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-388

Planning and Development Regulation

Variance: Application of Unnecessary Hardship Standard

David W. Owens

[Adapted from Owens, Land Use Law in North Carolina (4th ed. 2023)]

Statutory Standard

The standards and limits for variances are set out in G.S. 160D-705(d). That statute provides:

When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the board of adjustment shall vary any of the provisions of the zoning regulation upon a showing of all of the following:

1. Unnecessary hardship would result from the strict application of the regulation. 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. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
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 is not a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

Notably, this statute establishes an entitlement to a variance upon showing the standards are met. It states that the local government “shall vary” the regulations upon a showing that “all” of the standards are met.

Degree of Hardship Required

As historically interpreted by the courts, the most significant limitation on the variance power is the requirement that a petitioner establish that compliance with the strict terms of the ordinance would cause *unnecessary* hardship.

There is broad legal consensus that to be “unnecessary,” this requisite burden must be substantial. Inherent in any regulatory scheme is the understanding that some burdens shared by all do not rise to the level of qualifying the owner for variance consideration. The courts have held with near uniformity that even though more profitable uses are available or that the cost of compliance increases the cost of development,

these factors do not constitute undue hardship. However, what constitutes the minimum reasonable use that must be allowed or when the additional costs imposed to develop in strict compliance with zoning standards become unduly excessive are the most difficult issues of judgment and discretion to be determined in variance decisions.

The first major North Carolina case on zoning variances, *Lee v. Board of Adjustment*,^[1] involved a request to build a grocery store/service station in Rocky Mount in a district zoned exclusively for residential use. This case addressed the “undue” hardship required to qualify for variance consideration. Because the applicant only held an option to purchase the land, the court ruled, he would suffer no undue hardship.^[2] The court noted that the applicant could simply not execute the option, thereby avoiding any hardship at all. The court also noted that there was no hardship based on the contention that the proposed use would be more profitable:

It is erroneous to base a conclusion that the denial of an application would work an unnecessary hardship because the applicant could earn a better income from the type of building proposed.

The financial situation or pecuniary hardship of a single owner affords no adequate grounds for putting forth this extraordinary power affecting other property owners as well as the public.^[3]

The court in *Williams v. North Carolina Department of Environment & Natural Resources* further explored the requirement for unnecessary hardship.^[4] It held that the owner’s possession of other developable property nearby was irrelevant, as the variance must be considered strictly in relation to the property, not the owner of the property. The critical inquiry, the court held, was whether the property could be put to some reasonable use without a variance.

The court in *Showcase Realty & Construction Co. v. City of Fayetteville Board of Adjustment*^[5] likewise held that the petitioner for a variance must present substantial evidence regarding the impact of the ordinance on the owner’s ability to make reasonable use of the property. The court noted that the board could not simply rely on a conclusory statement and that the financial cost of compliance alone (in this case the relocation of an improperly placed concrete slab for a building under construction) was insufficient to establish the requisite unnecessary hardship.

In contrast, the court found sufficient hardship to justify a variance in *Turik v. Town of Surf City*.^[6] The town issued a building permit, and construction was under way in accordance with that permit. The adjoining property owner then objected and submitted a new survey that, if accurate, would have resulted in the pilings of the permitted building being 7.2 inches inside the mandated setback. While not explicitly addressing the degree of hardship involved, the court noted that the hardship was real (it would require demolition or substantial alteration of the existing partially completed building) and emphasized that it was not self-created, as the owner made good-faith reliance on what appeared to be a valid survey prepared by a licensed surveyor.^[7]

The General Assembly clarified the zoning-variance standard in 2013 to address the issue of whether retention of any reasonable use was disqualifying for a variance. G.S. 160D-705(d)(1) was amended to explicitly provide that a showing of no reasonable use of the property without a variance is not required.^[8]

Related Blog Posts

Variance Standards: What is hardship? And when is it unnecessary? - Coates' Canons NC Local Government Law (unc.edu) (May, 2014)

Hardship, Reasonable Use of Land, and Zoning Variances - Coates' Canons NC Local Government Law (unc.edu) (Nov., 2010)

[1]. 226 N.C. 107, 37 S.E.2d 128 (1946).

[2]. "He possesses no present right to erect a building on the lot described in his contract. To withhold from him a building permit to do what he has no present right to do cannot, in law, impose an 'undue and unnecessary hardship' upon him." *Id.* at 110, 37 S.E.2d at 131.

[3]. *Id.* (citations omitted).

[4]. 144 N.C. App. 479, 548 S.E.2d 793 (2001). The case involved judicial review of the denial of a Coastal Area Management Act variance. The terms of the variance standard in this statute are similar to those for zoning variances. This statute was amended in 2002 to delete the reference to "practical difficulties" as a variance standard, retaining only the requirement for a showing of "unnecessary hardships." S.L. 2002-68. That same amendment was later made for the zoning-variance statute. S.L. 2013-126.

[5]. 155 N.C. App. 516, 573 S.E.2d 737 (2002).

[6]. 182 N.C. App. 427, 642 S.E.2d 251 (2007).

[7]. The minimal amount of the dimensional variance sought was also of clear importance to the court, which concluded that such a small variation did not conflict with the purpose of the ordinance and would have minimal, if any, harm to the neighbor. *See also Stealth Props., LLC v. Town of Pinebluff Bd. of Adjustment*, 183 N.C. 461, 645 S.E.2d 144, *review denied*, 361 N.C. 703, 653 S.E.2d 153 (2007). This case involved a variance necessitated by a misunderstanding about which zoning district applied to the property on which the petitioner placed a modular home. The petitioner erroneously thought the property was in a zoning district that required a fifteen-foot setback. The property was actually in a district requiring a twenty-five-foot setback. The petitioner's application noted a sixteen-foot setback, but the permit (a certificate of zoning compliance) noted a twenty-five-foot setback. The petitioner built at the sixteen-foot setback, and the error was not caught until construction was complete. When the certificate of occupancy was denied, a variance was sought and denied. The court held that the variance denial was not supported by substantial, competent, and material evidence since a malfunction of the recording equipment and a disagreement about the minutes led to no transcript or detailed record of the evidence being a part of the record on appeal. The court, however, held the setback requirement to be ambiguous and ordered the variance issued on remand.

[8]. This provision was added by S.L. 2013-126.

[Accessibility](#)

[UNC Privacy Policy](#)

Attachment F

CONSTRUCTION AUTHORIZATION FOR G.S. 130A-335(a2)

County: Rowan

Pre-Construction Conference Required: Yes No

PIN/Lot Identifier: 5617-02-57-7344

Issued To: Tripp Reed

Property Location: 1005 Osprey Lane China Grove, NC 28023

AOWE/PE Plans/Evaluations Provided: Yes No If yes, name and license number of AOWE/PE: Steven R. Cannon #10047E

Facility Type: House

Number of bedrooms: 3 Number of Occupants: 6 Other: _____

New Expansion Repair System Relocation Change of Use

Basement? Yes No Basement Fixtures? Yes No

Crawl Space? Yes No Slab Foundation? Yes No

Type of Wastewater System* Vertical PPBPS IIIe (Initial) Vertical PPBPS IIIe (Repair)

*Please include system classification for proposed wastewater system types in accordance with Rule .1301 Table XXXII

Design Daily Flow: 360 GPD Wastewater Strength: Domestic High Strength Industrial Process WW

Session Law 2014-120 Section 53, Engineering Design Utilizing Low-flow Fixtures and Low-flow Technologies? Yes No
(if yes, please provide engineering documentation)

Effluent Standard: DSE HSE NSF/ANSI 40 TS-I TS-II RCW

Type of Water Supply: Private well Public well Shared well Municipal Supply Spring Other: _____

Installation Requirements/Conditions

Septic Tank Size: 1,000 gallons Total Trench/Bed Length: 200 feet Trench/Bed Spacing: 6 feet on center

Trench/Bed Width: 24 inches LTAR: .3 gpd/ft² Usable Depth to LC (Initial): 46 *Limiting condition

Soil Cover: 12 inches Slope Corrected Maximum Trench/Bed Depth[‡]: 34 inches *Measured on the downhill side of the trench

Pump Tank Size (if applicable): _____ gallons Requires more than 1 pump? Yes No

Pump Requirements: _____ ft. TDH vs. _____ GPM Grease Trap Size (if applicable): _____ gallons

Distribution Method: Serial D-Box or Parallel Pressure Manifold(s) LPP Other: _____

Artificial Drainage Required: Yes No If yes, please specify details: _____

Legal Agreements (If the answer is "Yes" to any type of legal agreements, please attach a copy of the agreement.)

Multi-party Agreement Required [.0204(g)]: Yes No Declaration of Restrictive Covenants: Yes No

Easement, Right-of-Way, or Encroachment Agreement Required [.0301(b)]: Yes No

Management Entity Required: Yes No Minimum O&M Requirements: N/A

Permit conditions:

The requirements of 15A NCAC 18E are incorporated by reference into this permit and shall be met. Systems shall be installed in accordance with the attached site sketch. **This Construction Authorization is subject to revocation if the site plan, plat, or the intended use changes.** The Construction Authorization shall not be affected by a change in ownership of the site. This Construction Authorization is subject to compliance with the provisions of 15A NCAC 18E, or 15A NCAC 18A .1900, as applicable, and to the conditions of this permit.

AOWE/PE Print Name: Steven R. Cannon

AOWE/PE Signature: Steve R. Cannon

Date: April 8, 2024

This AOWE/PE submittal is pursuant to and meets the requirements of G.S. 130A-335(a2) and (a5).

See attached site sketch

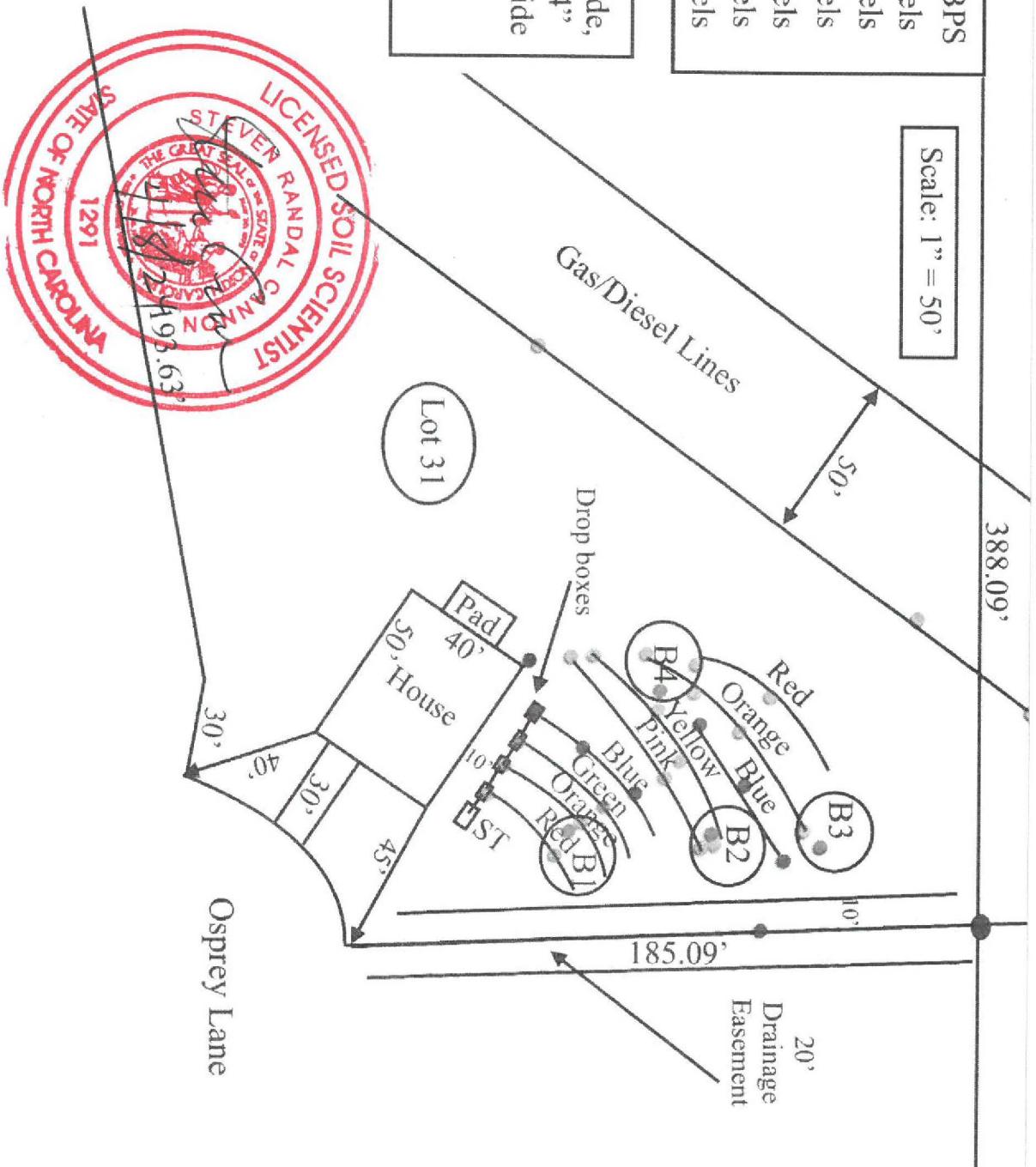
Initial System: Vertical PPBPS

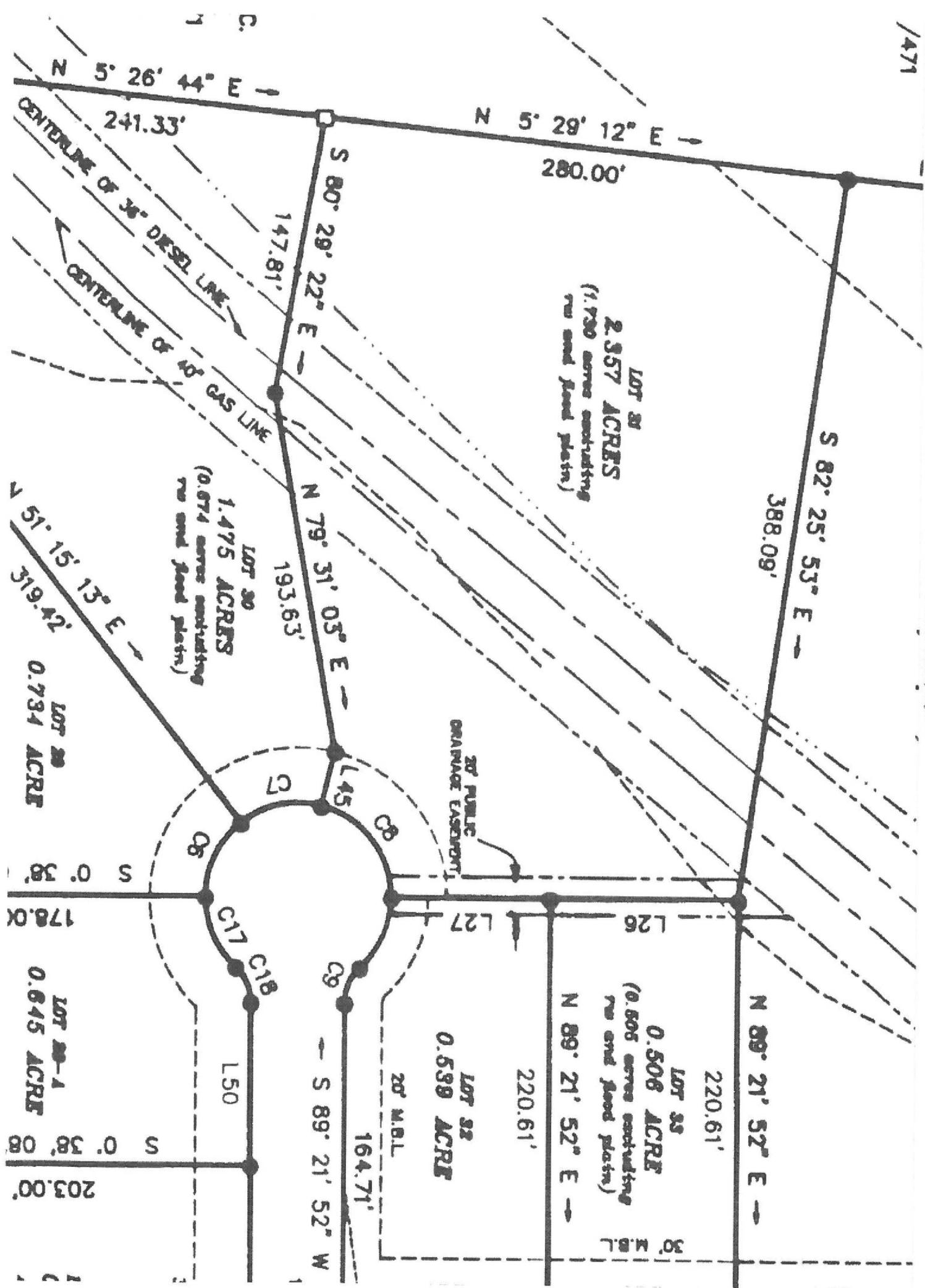
Red	40'	9 Panels
Orange	40'	9 Panels
Green	40'	9 Panels
White	40'	9 Panels
Pink	40'	10 Panels
	200'	46 Panels

Scale: 1" = 50'

Install vertical panels on grade, level, on 6 feet centers at 34", trench bottom on downhill side

Do not grade or cut soil.
Remove trees as needed.





Attachment G

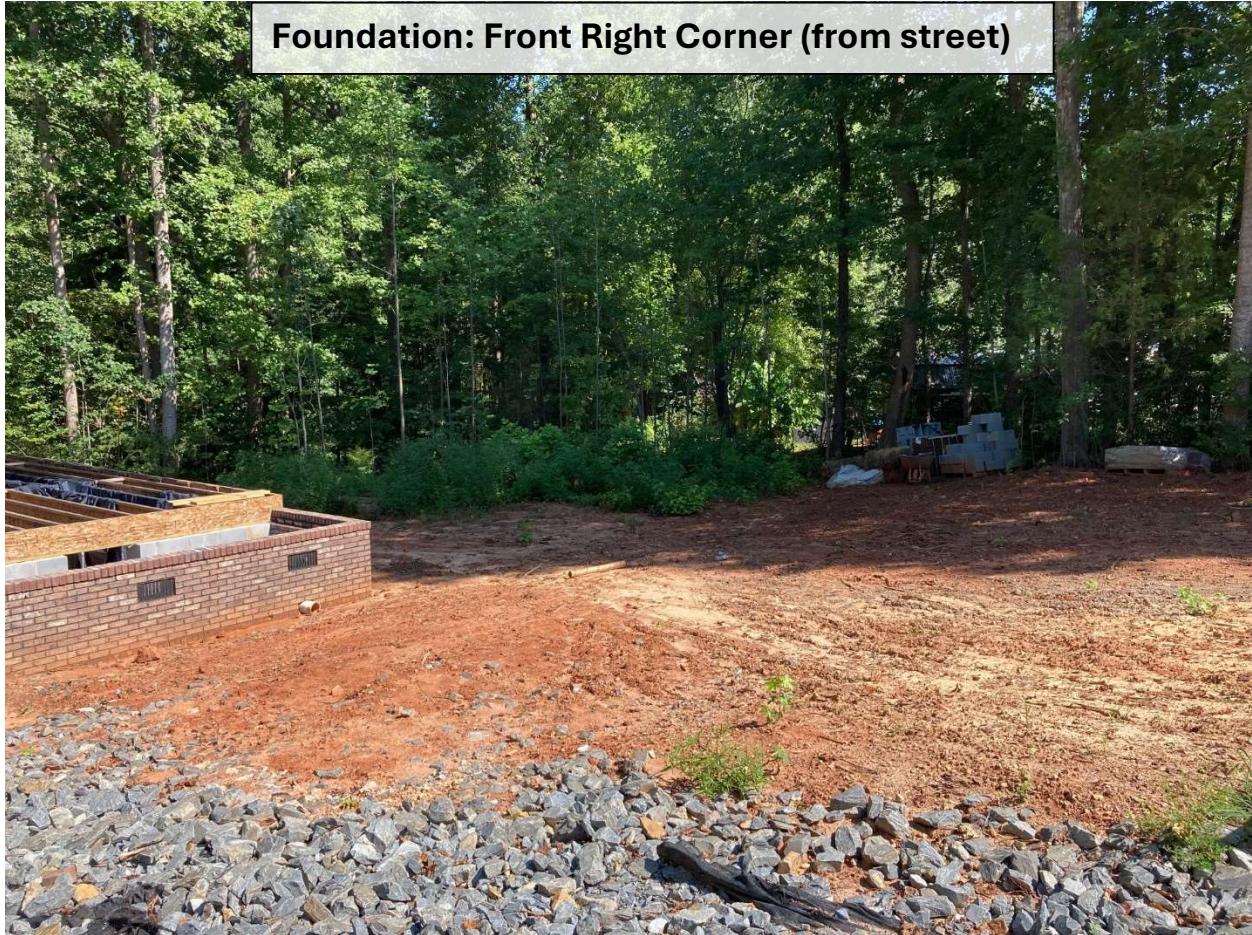
Foundation Front



Foundation Rear



Foundation: Front Right Corner (from street)



Foundation: Front Left Corner (from street)



Attachment H

Certificate of Approval of Final Plat

I have approved in accordance with the provisions of the
General Ordinances of the City of *Montgomery*,
the *Plat* of *Montgomery*, *Montgomery*, *Montgomery*,
as filed by *John C. Clegg*, *Montgomery*, *Montgomery*,
on *March 1, 1911*.

FLOOD BOUNDARY (ZONE A3)
MUNICIPALITY-PANEL NO. 370351 0
KELLY TRAMMELL
847/123

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RW	Right-of-Way	Right-of-Way
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Book 9995 Page 5746

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- 10 -

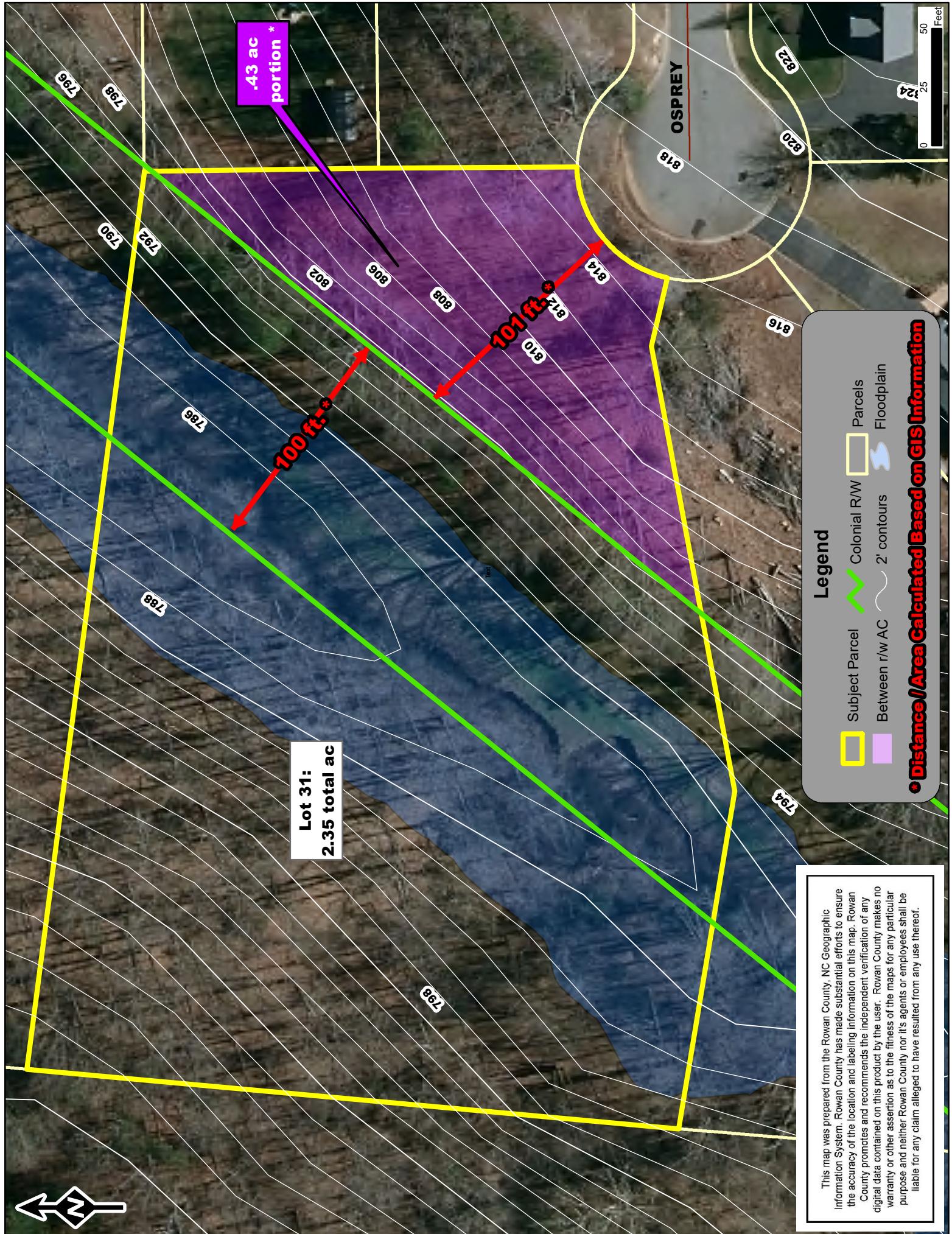
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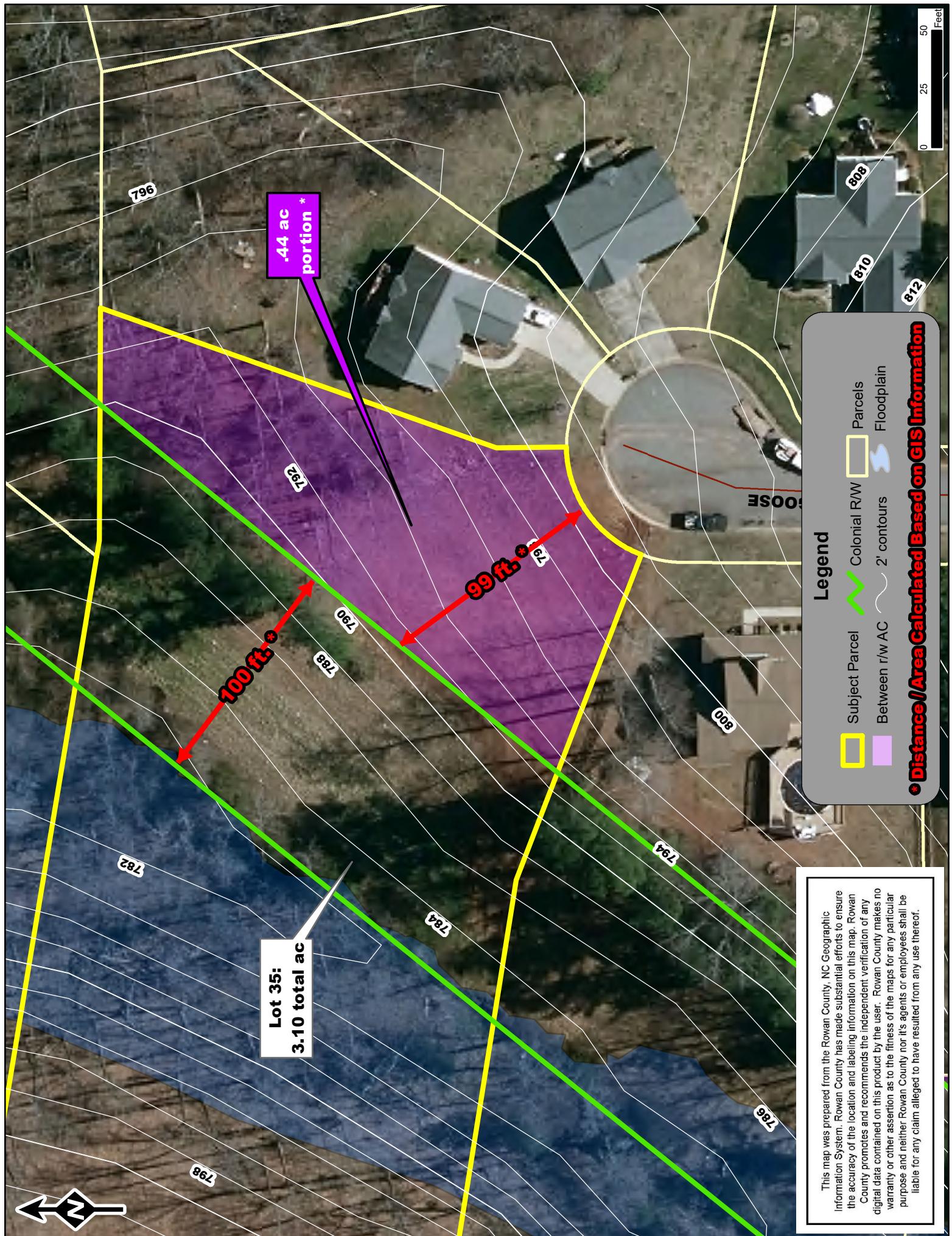
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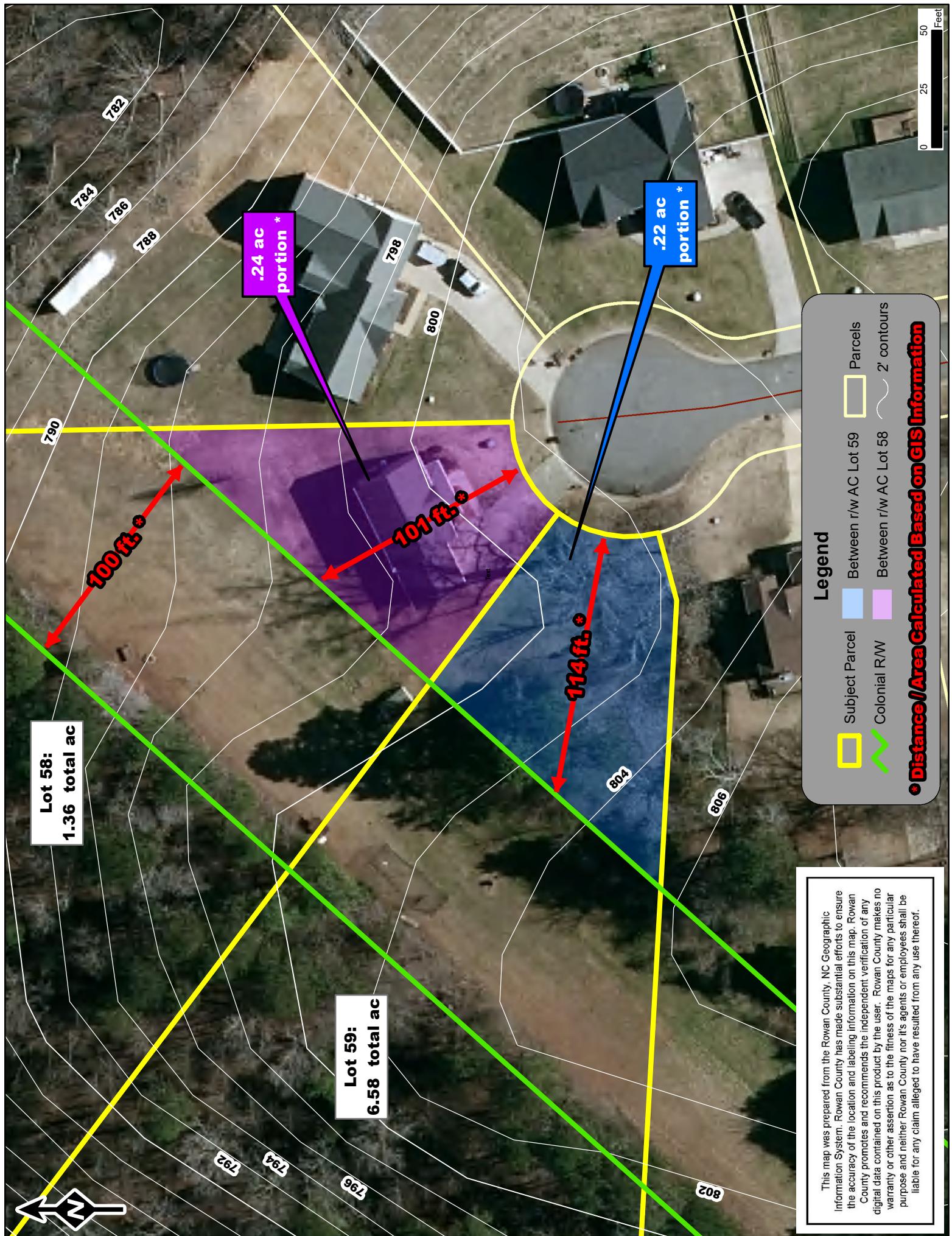
RW

B.L.000

Attachment I







Attachment J

MAP	S/M	PAR	S/P	U/IN	L/IN	C/C	PART	INT
222	B	051					33	

Rowan County Assessor's Office

Type: CONSOLIDATED REAL PROPERTY
 Recorded: 8/18/2023 1:53:58 PM
 Fee Amt: \$92.00 Page 1 of 3
 Revenue Tax: \$66.00
 Rowan, NC
 J. E. Brindle Register of Deeds

BK 1428 PG 284

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$ 66.00

Parcel Identifier No. 222B051 Verified by _____ County on the _____ day of _____, 20_____
 By: _____

Mail/Box to: The Nixon Firm, PLLC, 403 Gilead Road Suite K, Huntersville, NC 28078This instrument was prepared by: The Nixon Firm, PLLC, 403 Gilead Road Suite K, Huntersville, NC 28078

Brief description for the Index: _____

THIS DEED made this 11th day of August, 2023, by and between

GRANTOR

Charles Brandon Sidden and spouse,
 Christina Sidden
 1035 Osprey Lane
 China Grove, NC 28023

GRANTEE

Charles Reed III and spouse,
 Jessica Reed
 4230 Lower Stone Church Road
 Rockwell, NC 28138
 Property Address:
 1005 Osprey Lane
 China Grove, NC 28023

Enter in appropriate block for each Grantor and Grantee: name, mailing address, and, if appropriate, character of entity, e.g. corporation or partnership.

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

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot, parcel of land or condominium unit situated in the City of China Grove, _____ Township, _____ Rowan _____ County, North Carolina and more particularly described as follows:

See Attached 'Exhibit A'

This instrument prepared by Christopher Nixon, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 1414 page 150.
 All or a portion of the property herein conveyed includes or X does not include the primary residence of a Grantor.

A map showing the above described property is recorded in Plat Book _____ page _____.

Page 1 of 2

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

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

All valid and enforceable restrictions, easements, and conditions of record and ad valorem taxes for the current year and following years, not yet due and payable.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

(Entity Name)

By: _____

Print/Type Name & Title: _____

By: _____

Print/Type Name & Title: _____

By: _____

Print/Type Name & Title: _____

Charles Brandon Sidden _____ (SEAL)

Print/Type Name: Charles Brandon Sidden

Christina Sidden _____ (SEAL)

Print/Type Name: Christina Sidden

(SEAL)

Print/Type Name: _____

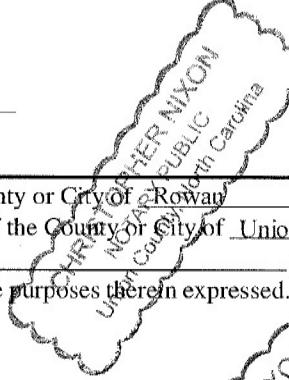
(SEAL)

Print/Type Name: _____

State of North Carolina - County or City of Rowan

I, the undersigned Notary Public of the County or City of Union and State aforesaid, certify that
Charles Brandon Sidden personally appeared before me this day and acknowledged the due
execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 11th day of
August, 20 23.

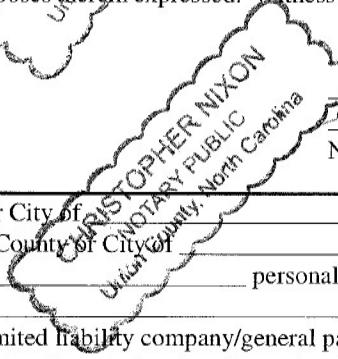
My Commission Expires: April 17, 2025
(Affix Seal)


Christopher Nixon Notary Public
Notary's Printed or Typed Name

State of North Carolina - County or City of Rowan

I, the undersigned Notary Public of the County or City of Union and State aforesaid, certify that
Christina Sidden personally appeared before me this day and acknowledged the due
execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 14th day of
August, 20 23.

My Commission Expires: April 17, 2025
(Affix Seal)


Christopher Nixon Notary Public
Notary's Printed or Typed Name

State of _____ - County or City of _____

I, the undersigned Notary Public of the County or City of _____ and State aforesaid, certify that
he is the _____ of _____, a North Carolina or
corporation/limited liability company/general partnership/limited partnership (strike through the
inapplicable), and that by authority duly given and as the act of such entity, _____ he signed the foregoing instrument in its name on its
behalf as its act and deed. Witness my hand and Notarial stamp or seal, this _____ day of _____, 20 ____.

My Commission Expires: _____
(Affix Seal)

Notary Public
Notary's Printed or Typed Name

Exhibit "A"

Lying and being in Atwell Township of Rowan County, North Carolina, on the South side of Osprey Lane and Being all of Lot No. 31 as shown on that Final Subdivision Plat of EAGLE LANDING, Phase Two (2), as surveyed and platted, a copy of which plat is filed in the Office of the Register of Deeds for Rowan County, in Book of Maps at Page 4318, to which map reference is hereby made for a complete description thereof by metes and bounds.

This conveyance is made and accepted SUBJECT to the Protective Covenants recorded in Book 991 at Page 700 and re-recorded in Book 1012 at Page 767 to correct an error in the index, Rowan County Public Registry; and also, SUBJECT to building and setback lines as shown on the recorded plat.

Parcel Number: 222B051

Property Address: 1005 Osprey Lane China Grove, NC 28023

Attachment K