

Board of Adjustment
Thursday, October 3, 2013
7:00 PM
Hood Room, Matthews Town Hall

AGENDA

- I. CALL TO ORDER
- II. INVOCATION
- III. APPROVAL OF MINUTES
- IV. VARIANCE REQUEST: Parcel 19320416, Sam Newell Rd
- V. REVIEW AND ADOPTION: Text updates to Rules of Procedure
- VI. ADJOURNMENT

**MINUTES
BOARD OF ADJUSTMENT
THURSDAY, SEPTEMBER 5, 2013
HOOD ROOM, MATTHEWS TOWN HALL**

PRESENT: Chairman Eric Welsh, Vice Chairman, Members, Walter Monestere, Jim Mortimer, and Cecil Sumners; Alternate Members, Jeanne Moore, and Peter Tuz; Planning Director Kathi Ingrish; Senior Planner Jay Camp and Zoning Technician/Deputy Town Clerk Mary Jo Gollnitz

ABSENT: Attorney Robert Blythe; Member Jim Jiles and Alternate Member Jerry Meek

CALL TO ORDER/INVOCATION:

Chairman Eric Welsh called the meeting to order at 7:04 pm. and gave the invocation.

APPROVAL OF THE MINUTES:

Cecil Sumners motioned to approve the minutes of the April 4, 2013 meeting. Walter Monestere seconded the motion and they were adopted unanimously.

Peter Tuz was appointed to act as a voting member.

VARIANCE REQUEST: 316 E. Matthews Street

SWEARING IN

The following were sworn in: Jay Camp and Jeff Fuller

STAFF REPORT:

Senior Planner Jay Camp explained that the petitioner is requesting variances for the historic Funderburk Plaxco House. There is currently a rezoning request for the property that has a scheduled decision date of September 9th. In order for the rezoning to move forward the project must meet all applicable zoning requirements. Staff has identified several areas where variances are necessary.

Mr. Camp continued that the house dates back to the 1880's, making it one of the oldest houses in Matthews. The Historic Landmarks Commission purchased the house last year. The property is under contract to Fuller CPA.

Staff has identified several variances that are vital to the overall project. Mr. Camp noted that staff has separated the request into three individual variances. Variance A is a request to eliminate screening requirements from the northwest property line and use existing vegetation for other location on the property. Variance B is the request to reduce side yard requirements from six feet to approximately one point two feet for a distance of approximately 20.6 feet. This is to allow the structure to remain in its current location. Variance C is a request to reduce screen plant material requirements along the internal zoning line and use existing vegetation.

Mr. Camp showed the Board an overview of the property with the location of Variance A and B on the property. He noted that there is an addition on the house and where it comes close to the property line. With Variance A there would be no screening required in a section of the property.

The reasoning for this request is because Matthews screening beds are ten to fifteen feet wide. The main portion of the house only is approximately twelve feet from the property line. To place new planting with the existing vegetation on the property would not look good and could possibly damaged the existing plant material. The intent is to leave this portion as is and transition from residential to office. Additionally, there is vegetation along with a chain link fence, on the back portion of the property and there is no plan to disturb that portion of the property. Again, leave as is and have the least amount of impact on the neighboring property.

Mr. Camp continued saying that there are no changes planned for that side of the property. All parking and access will be opposite this property line. There will be no change in the appearance of the house.

Variance B is the request to reduce the side yard requirement from six feet to one point two feet. The O-9 District regulations require a six foot side yard on one side and an eight foot side yard on the other side. Staff has applied the eight foot separation to the other side of the property. Mr. Camp showed the Board the 20.6 foot along the house that is 1.2 feet off the property line. The alternates to the variance would be to move the house or demolish this portion of the house.

Ms. Moore asked if this was added onto the house. Mr. Camp said yes it was and staff is not sure when it was constructed, however it was not added within the last five or ten years. It appears it may have been a keeping room that could have been added in the early 20th century. It is an essential part of the structure.

Mr. Camp showed the Board the new landscape plan that the applicant had provided after the agenda was set. It shows a reduction of the screening material. Mr. Camp clarified that the property is split zoned and Mr. Fuller is only utilizing the portion of the property that has the house on it. As part of the conditions of the plan, no construction can occur on the portion next to KP Park. In conjunction with the Downtown Master Plan, the vacant portion may be a building lot in the future.

Since the property has a split zone, there normally would be screening requirements. The request is to reduce the screening requirements of vegetation from the front of the property to the back of the property. The petitioner will use some existing trees and some new plantings. There will not be a solid hedge row. The request for Variance C is to have screening on part of the internal zoning line.

Ms. Moore asked if the vacant portion of land belonged to Historic Landmarks. Mr. Camp explained that the property is one parcel with a split zoning. Ms. Moore asked if the property would have to be subdivided to be sold and developed. Mr. Camp stated that the entire parcel will all be conveyed to Mr. Fuller and any development options would be his decision.

Mr. Tuz asked if there are any structures on the lower right portion of the property. Mr. Camp stated that there are two structures and both are scheduled to be removed. The Historic Landmark Commission has issued certificates of appropriateness for those buildings indicating that neither structure has historic value.

Mr. Fuller addressed the Board. He stated that he is trying to purchase this property. He is asking for the variances in order to make the property something Matthews can be proud of.

Mr. Mortimer asked Mr. Fuller if he was going to do any changes to the exterior of the house. Mr. Fuller said that he was going to fix the roof but no additions to the exterior.

Mr. Welsh said that it is helpful that staff has separated the request into three areas; however it is different from the application. Does the applicant need to adopt the specifics of Variances A, B, and C requests? The variance request is more detailed. Mr. Camp stated that reviewing the site

plan required changing the applications in order for the intent of Mr. Fuller rezoning is met. Mr. Fuller needs to affirm for the record that he agrees with the staff report.

Mr. Camp explained to Mr. Fuller that the application and the way that staff has presented it before the Board are slightly different. Staff structured the request in order for the site plan to get approval. Mr. Fuller asked to see exactly what has been changed. Mr. Camp explained and showed Mr. Fuller that he separated the two screening areas for the Board in order for it to be clear on what they were deciding on.

Mr. Fuller agreed that he agreed with the change.

DELIBERATION:

Mr. Mortimer asked if the Board will be making one vote or three separate votes. Chairman Welsh stated that the Board will make three separate votes.

Mr. Welsh said that there is a legitimate need for the variance request because the request is the result of the rezoning. The applicant is trying to come into compliance and the issues were not brought on by his own doing. The plans will keep existing foliage along the side yard while adding more plantings and they will not be moving or demolishing the house.

Mr. Mortimer concurred with Mr. Welsh. Mr. Sumner also agreed that leaving the area as it currently exists is the best course of action.

Ms. Moore asked Mr. Camp how close the property line is in case the neighboring property owner wants to remove the trees. She wanted to make sure the neighboring house is far enough away. Mr. Camp informed the Board that it was approximately 80 feet from the adjoining house to the property line.

Mr. Tuz said he was concerned about the house location in case the adjacent property is rezoned to office and may need additional parking. The parking could possibly be up to the Plaxco House.

Mr. Mortimer said that the adjoining property is currently R-20 and then any changes would have to be made if a change is requested.

Mr. Tuz asked if the small portion that is so close to the property line, is it possible to remove that addition from the house.

Mr. Welsh asked Mr. Camp if that portion of the house were to be demolished, would the main part of the house be compliant

Mr. Camp stated that such action would meet the side yard requirement. Then a ten foot wide screen with privacy fence would be possible on that side. Mr. Camp showed the Board the Town's Master Plan and how it is believed the area will develop. The Master Plan shows preservation of the home, with infill development on the vacant lot and potential parking structure encompassing the neighboring property and existing Japanese Restaurant.

Mr. Camp said the variance to screen the side yard would not be required if the neighboring property is no longer zoned residential. Extra space could be allocated at the time of rezoning to make sure there is sufficient separation between structures.

Mr. Welsh asked the applicant what the current use is on the section that encroaches the property line. Mr. Fuller stated that it is a sunroom. Mr. Welsh said that it would be a big deal to demolish it. Mr. Fuller said that it was added to the house without any place to cut it off; yes it would be and could potentially damage the house.

FINDINGS:

Mr. Sumner motioned to accept Variance A. Mr. Mortimer seconded the motion. Mr. Welsh clarified that this is the variance that Mr. Camp presented and the applicant has accepted.

Mr. Welsh said that this variance request with respect to hardship, the applicant has met its burden because the house was placed on the site long before the current requirements came into being. This is not a hardship that was brought on by the applicant. There are no other feasible options for addressing this other than coming before the Board, if the rezoning request is to be granted. The Board heard the applicant give evidence that trying to do anything to the side portion of the house would be prohibitively expensive and dangerous to the structure of the historic house. There is no option of relocating the house and in order for the rezoning to go forward this variance would need to be obtained in order to be compliant. Evidence and testimony was presented that the variance is consistent with the overall harmony and purpose of the Town of Matthews plans. The changes would be the least possible deviation from those plans. There is a benefit to the general public of the preservation of one of the oldest homes in Matthews. The applicant cannot move forward with the rezoning unless the variance is approved. The applicant wishes to use the property for commercial purposes.

Chairman Welsh called for the vote on Variance A. The motion carried unanimously.

The Board held the same findings for Variance B as those presented for Variance A.

Mr. Sumner motioned to accept Variance B as presented by the Town and adopted by the applicant and represented in the map. Mr. Mortimer seconded the motion which was approved unanimously.

Mr. Mortimer motioned to approve Variance C as presented by the Town, adopted by the applicant, presented in the map and landscape plan. Chairman Welsh asked that Variance C be tied to the landscaping plan. Mr. Camp stated that staff will note such in the permanent record. Town Council may request that the site plan be changed; the Council could alter the site plan.

Mr. Camp stated that the preferred layout was presented this evening. There has been some discussion from Council that they would like to see all the parking towards the rear of the property. No matter what motion the Board makes, conditioning it on the exact layout presented may be difficult.

Mr. Welsh stated that the screening portion is what this Board is focused on not the parking. Is it possible to condition it on the screening being substantially compliant as presented on the map? Mr. Fuller showed the Board which trees exist and what will be planted in the future. Mr. Welsh asked if they could make the motion to include substantially compliant with the planting and screening that exists on the presented map. He did not believe the parking would impact the plantings. This gives some latitude without the Board being completely ignored.

Mr. Welsh modified the motion to approve Variance C as presented by the Town, adopted by the applicant, contingent upon the screening being substantially compliant with the planting map presented this evening. Mr. Monestere seconded the motion.

Mr. Welsh suggested that the Board adopt the prior findings for Variance C as those presented in Variance A. The Board consented to the findings.

Mr. Welsh noted that the information showing the planting and screening provides a good accommodation for the town and applicant.

The vote carried unanimously.

REVIEW AND DISCUSSION: New Statutes affecting Board of Adjustment actions

Planning Director Kathi Ingrish briefed the Board on the revisions to the new statutes adopted by the State Legislature regarding Board of Adjustment actions. Many of the changes Matthews currently has in place. The new requirements will not be placed in the Zoning Ordinance. Staff is completing the UDO to be presented to the Town Council in the upcoming month, which will have the new requirements. However, the Board is still bound by the new requirements that go into effect on October 1, 2013.

Ms. Ingrish mentioned that a notice to adjacent property owners must be sent between 10 to 25 days before the hearing and a sign posted on the property. Appealing a decision of the Zoning Administrator has to be filed concurrently with the clerk and planning office.

She continued explaining that instead of three findings of facts there are now four. The Board no longer has to say "no return" if the variance is not approved. Zoning variances will still need to have a four fifths majority vote, where appeals and interpretations will be a simple majority vote.

Ms. Ingrish went into depth noting text changes and provided clarification of how this will affect the Board. She also mentioned that a written decision must be sent and must be signed by the Board chairperson or authorized board member. It can be sent by email, first class mail or hand delivered. The thirty day appeal time does not start until the letter is sent to the property owner and/or applicant. This will have to be determined how this will be handled.

Ms. Ingrish reminded the Board that the requirements will go into affect October 1st and the Board will need to do written decisions and use the new findings at that time.

REVIEW AND ADOPTION: Changes to Rules of Procedure

Ms. Ingrish presented the revised Board of Adjustment Rules of Procedure to the Board. She explained that a majority of the changes are due to the new legislation. One particular item that staff revised was the application deadline to the Board. Staff has changed the time from fifteen days to twenty business days. This will allow enough time for staff to do the report and verify the application.

Mr. Welsh asked if the rest of the changes we based on the new law in order to be compliant with the legislation. Ms. Ingrish said yes and changing the verbiage from Zoning Ordinance to UDO, which will be completed after the UDO is adopted.

Ms. Ingrish continued stating that notices will have to be completed by mail and staff will need to post the property with signage. The Board may require a written explanation from the applicant if there is a purposeful delay or stalling of a decision. When a hearing involves a determination from the zoning administrator, they must be witness at the appeal hearing.

Mr. Welsh asked what would happen if the zoning administrator doesn't appear. Ms. Ingrish stated that the Board must continue the case.

She further clarified that the written decision requirement in the Rules of Procedure now states that the chairman or any board member can sign the document. This will be helpful in the event the chairman is not present at the meeting, one of the members who was present for the decision can sign the decision.

There is a time limit for variances to begin of six months. If there is a request for more time in getting started, then the zoning administrator can authorize an extension; as long as there is no

change in conditions. There was discussion about how the extension currently is handled and how this will be handled in the future.

Mr. Sumner questioned the four-fifths vote going to simple majority. Mr. Ingrish noted that this is now state law and all actions will be simple majority except variances which will still be four-fifths.

Mr. Tuz asked if instead of appearance by the zoning official; can the Board accept a letter of written determination. Ms. Ingrish said that staff currently sends a letter of determination before something goes to hearing; however, the zoning official now must appear at the hearing to be in compliance with State law.

Discussion was held as to whether the Board should wait to adopt the updated Rules of Procedure or adopt this evening.

Mr. Welsh moved to approve the Rules of Procedure as presented and revised as of September 5, 2013 seconded by Mr. Monestere and carried unanimously.

Mr. Mortimer asked that each Board member receive a hard copy of the adopted Rules of Procedure.

ADJOURNMENT:

Mr. Sumner moved for adjournment. Mr. Monestere seconded the motion and the meeting adjourned at 8:20 pm.

Respectfully submitted,

Mary Jo Gollnitz
Zoning Technician/Deputy Town Clerk

Matthews Board Of Adjustment

Case 2013-04

Type of Request: Variance

October 3, 2013

Summary of Request

The applicant requests a variance of 25' to the required 55' rear yard requirement in the R-15 district to allow for the construction of a single family dwelling.

Background

The property on Sam Newell Rd (pid 19320416) is owned by Mr. Francisco Roggerio and was purchased in 2011 according to tax records. The long and slender 1.8 acre parcel is currently unbuildable for the home the owner intends to construct due to its size and shape. Some portions of the lot are only about 10' wide with the northernmost portion of the lot the widest at about 116' feet. The current, buildable footprint of the lot would yield a single family structure of about 188 square feet in size.

The site is impacted significantly by the future realignment and construction of Northeast Parkway (see attached map). Northeast Parkway will branch off of Sam Newell Rd and connect the road to an existing portion in Charlotte. Northeast Parkway will eventually be a continuous minor thoroughfare from Margaret Wallace Rd in Charlotte to Matthews-Mint Hill Rd in Matthews. The exact alignment of the roadway has not been determined and may not be known until design is underway for the road.

As requested, the variance is for a reduction of the required 55' rear yard in the R-15 district down to a 30' rear yard. The applicant has submitted a drawing that shows the possible footprint of the dwelling incorporating the variance.

It is important to note that the lot has existed in its current state for many decades according to tax records. The lot has long been determined to be unbuildable with the only likely solution being the acquisition of additional land or the recombination of this lot with an adjacent lot.

Zoning Code Provisions That Apply to This Request

Section 153.054 Yard, area and height restrictions, minimum rear yard: 55'

Board of Adjustment Worksheet

Findings of Fact

This form can be used by the Matthews Board of Adjustment during deliberations on zoning variance cases to assist in developing required findings of fact to support approval for, or denial of, a variance request. Staff comments are provided here for each finding listed in the state statute. Board members may choose to use the information provided by staff, the applicant, other sworn testimony, and personal observations mentioned in the hearing in making their determinations on these findings.

1. If the applicant complies with the provisions of the ordinance he can/cannot secure a reasonable return from, or make reasonable use of, his property. (It is not sufficient that failure to grant a variance simply makes the property less valuable.)

The owner may elect to acquire additional land or sell this parcel to the adjacent owner.

2. The hardship of which the applicant complains does/does not result from unique circumstance related to the applicant's land. (Hardship common to an entire group of properties resulting in overly restrictive regulations should be referred to the Planning Board. Unique personal or family hardships cannot be considered since a variance applies to, and runs with, the land.)

The property is only unique in the fact that it is long and narrow in dimension.

3. The hardship is/is not the result of the applicant's own actions.

The property has existed in its current state for many decades

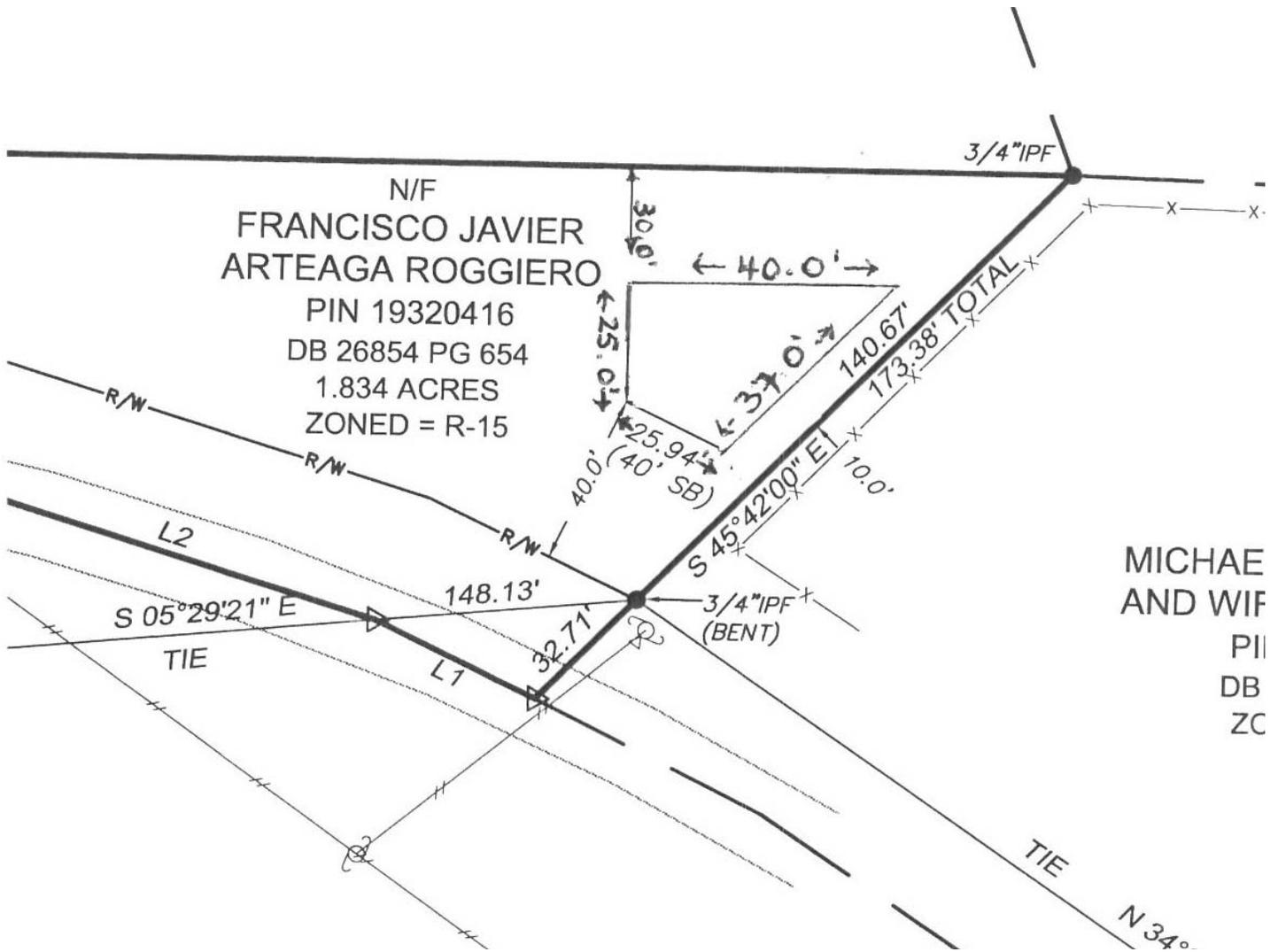
4. The variance will/will not be in harmony with the general purpose and intent of the ordinance and will/will not preserve its spirit. (Any variance granted should be the least possible deviation from the ordinance standards that will allow a reasonable use of the land without sustainability detracting from the character of the neighborhood.)

The variance would be a significant reduction to rear yard requirements that would not be allowed for other area homeowners.

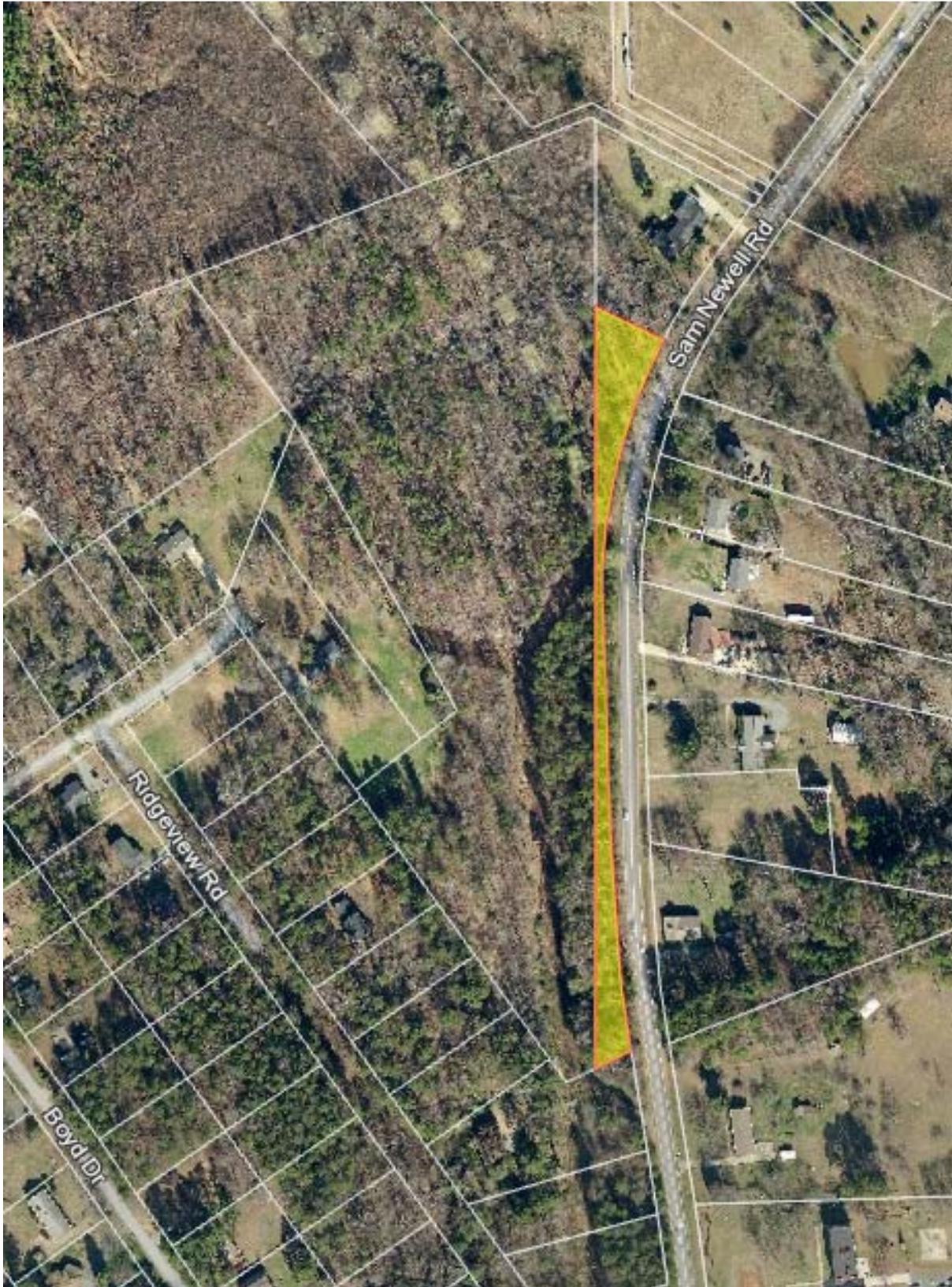
5. The variance will/will not secure the public safety and welfare and will/will not do substantial justice. (Any decision on a variance request should consider that the benefit to the public will be substantially outweighed by the harm suffered by the applicant.)

The dimensions of this lot are not ideal for a home constructed to meet the dimensional requirements of the R-15 zoning district

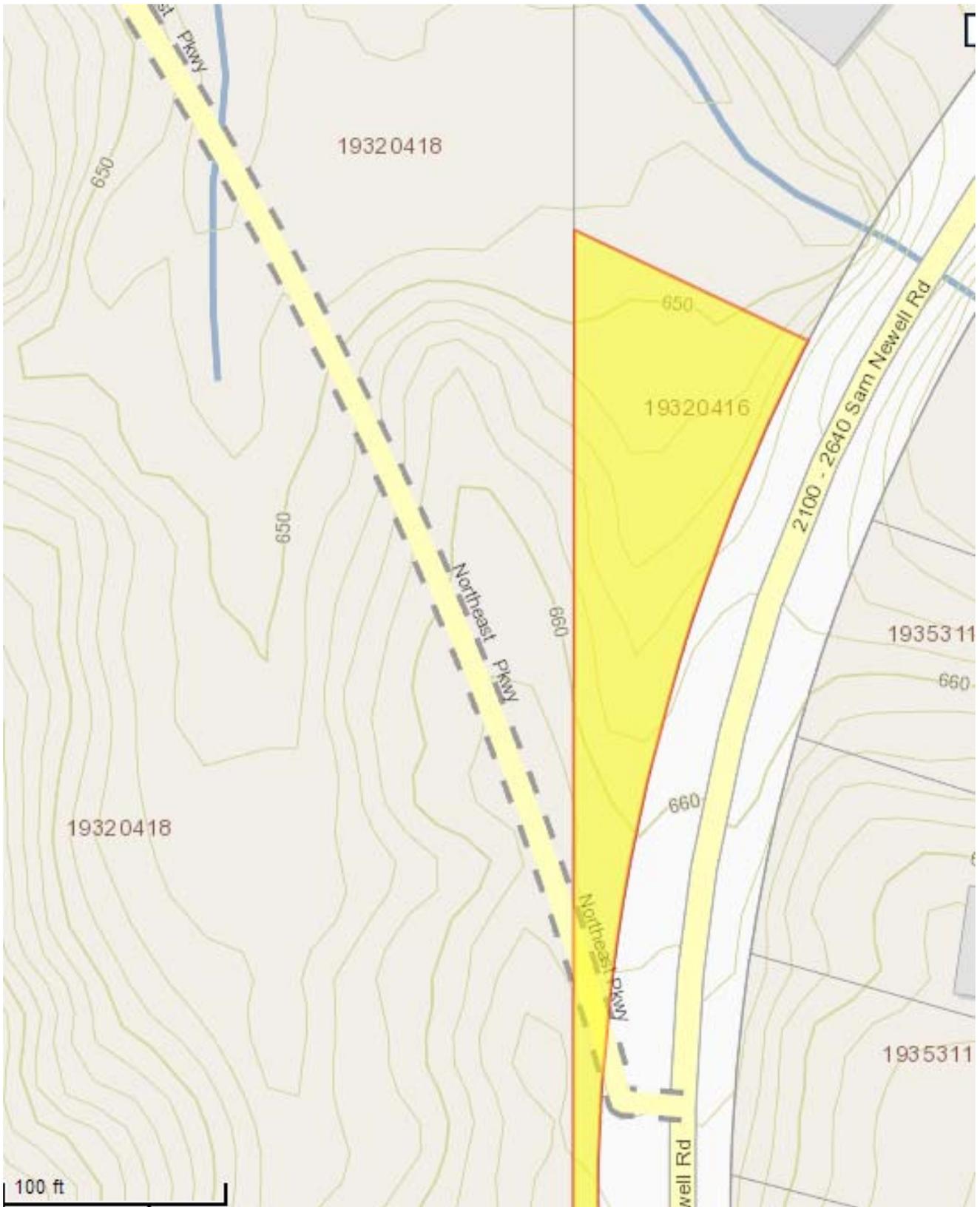
Proposed Buildable Area



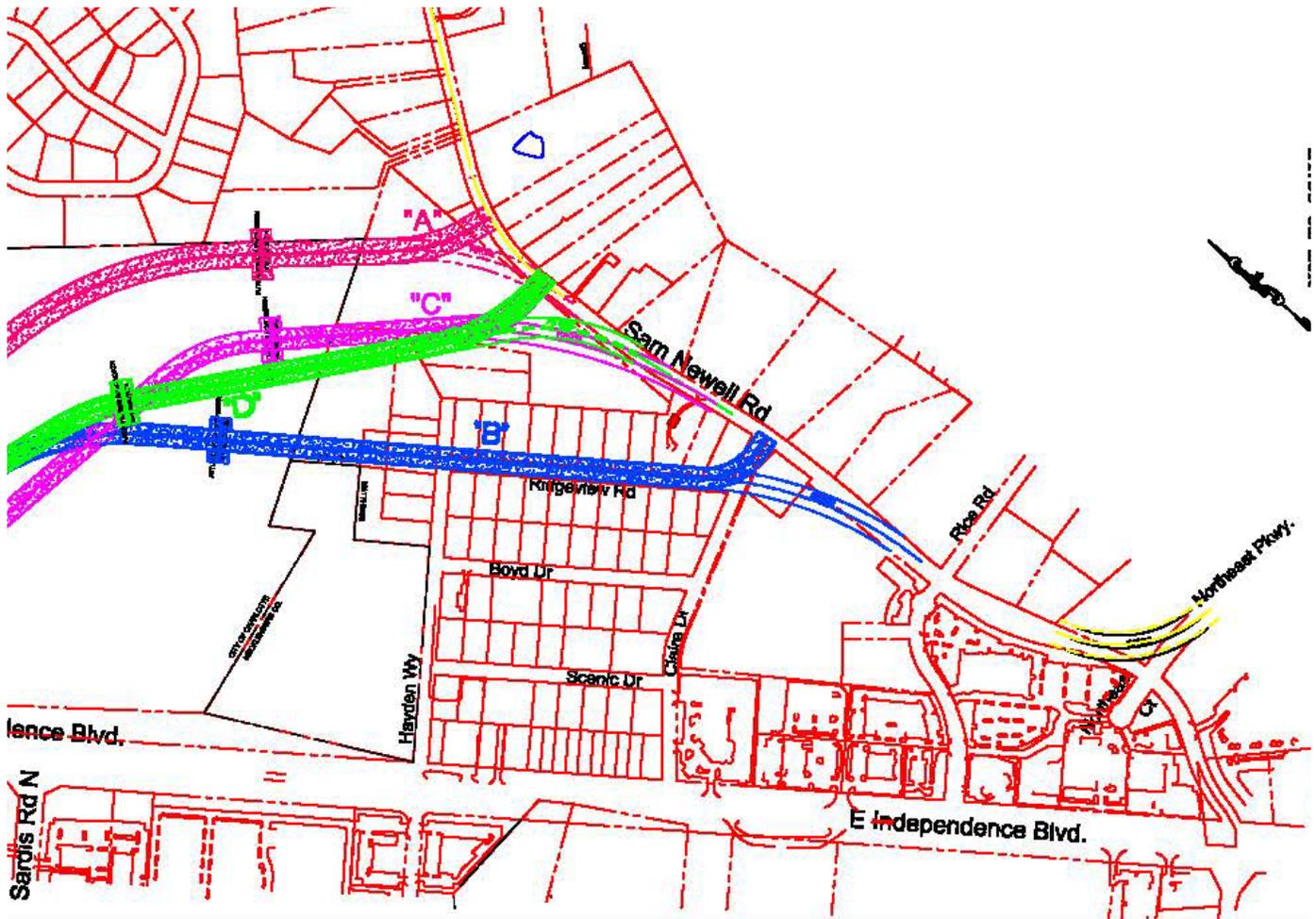
Aerial Photo Showing Property Boundary



Northeast Parkway Alignment



Northeast Parkway Alternatives





232 Matthews Station Street
Matthews, NC 28105
704.847.4411

APPLICATION FOR A ZONING VARIANCE

DATE FILED 8-16-2013

HEARING DATE Sept. 5, 2013 TIME 7 pm

LOCATION: Hood Road, Matthews Town Hall, 232 Matthews Station Street, Matthews, NC 28105

To the Matthews Board of Adjustment:

I, FRANCISCO JAVIER ARTEAGA ROGGIERO (print name), hereby petition the Board of Adjustment of the Town of Matthews for a VARIANCE from the literal provisions of the MATTHEWS ZONING ORDINANCE because I am prohibited from using the parcel of land described below in the following manner:

Reduction of REAR YARD REQUIREMENT
to 25 feet, please

The property is located at SAM NEWELL RD MATTHEWS (address)
and is shown on the Mecklenburg County tax map as parcel number(s) 19320416

The section(s) of the Zoning Ordinance which affect this ruling is/are 153.054 (E)
YARDS AND SETBACKS IN RESIDENTIAL

The present zoning of the property is R 15

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. By law, the Board is required to reach three conclusions as a prerequisite to issuing a variance: (1) that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance; (2) that the variance is in harmony with the general purposes and intent of the ordinance and preserves its spirit; and, (3) that in the granting of the variance the public safety and welfare have been assured and substantial justice has been done. In the spaces provided below, indicate the facts that you intend to show and the arguments that you intend to make to convince the Board that it can properly reach these three required conclusions. IT WILL BE YOUR RESPONSIBILITY TO PRESENT THESE FACTS BY SWORN TESTIMONY AND COMPETENT EVIDENCE.

(1) THERE ARE PRACTICAL DIFFICULTIES OR UNNECESSARY HARDSHIPS IN THE WAY OF CARRYING OUT THE STRICT LETTER OF THE ORDINANCE. The courts have developed three rules to determine whether in a particular situation "practical difficulties or unnecessary hardships" exist. State facts and arguments in support of each of the following:

- (a) If he/she complies with the provisions of the ordinance, the property owner can secure no reasonable return from, or make no reasonable use of his/her property. (It is not sufficient that failure to grant the variance simply makes the property less valuable.)

I CAN'T MAKE NO USE OF THE PROPERTY DUE TO THE SHAPE OF THE LAND AND SET BACKS FOR BUILDING

- (b) The hardship of which the applicant complains results from unique circumstances related to the applicant's land. (Note: Hardships common to an entire neighborhood resulting from overly restrictive zoning regulations should be referred to the Planning Board. Also, unique personal or family hardships are irrelevant since a variance, if granted, runs with the land.)

THE SHAPE OF THE LAND IS IRREGULAR

- (c) The hardship is not the result of the applicant's own actions.

IS JUST THE WAY I PURCHASE THE LOT, THE LAND IS TOO NARROW

(2) THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ORDINANCE AND PRESERVES ITS SPIRIT. (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood.)

REQUEST IS TO BUILD A SMALL HOUSE WITH LEAST POSSIBLE VARIANCE AND ALSO EVERYTHING AROUND IS RESIDENTIAL

(3) THE GRANTING OF THE VARIANCE SECURES THE PUBLIC SAFETY AND WELFARE AND DOES SUBSTANTIAL JUSTICE. (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.)

I will preserve all the ^{possible} things in the property including a rear yard of 35 LINEAR FEET of UNDISTURB BUFFER

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

FRANCISCO JAVIER ARTEAGA ROGGIERO

Print applicant name

980-475-2255

Telephone number of applicant

Signature of applicant

5109 POTTERS RD

Mailing address of applicant

MATTHEWS

28104

Telephone number of representative

Signature of representative

Print representative's name

Mailing address of representative

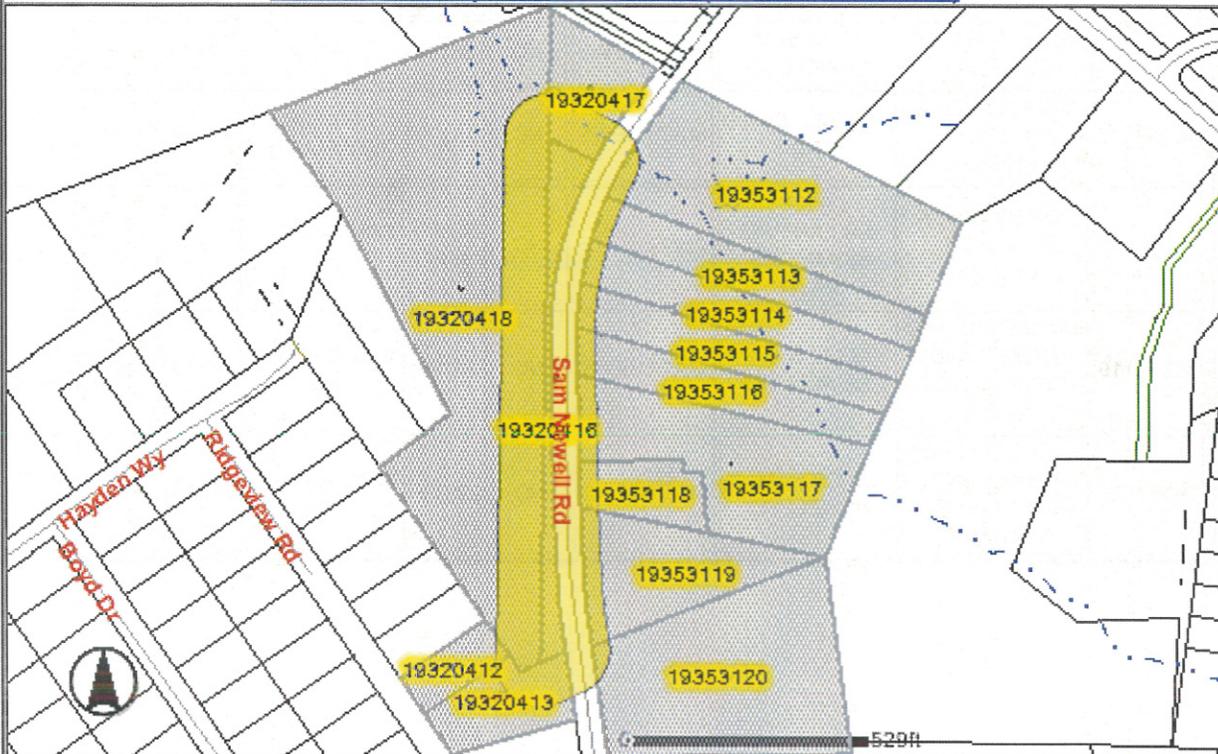
Date

Date

Mecklenburg County, NC POLARIS
Property Ownership Land Records Information System
Adjoining Owner's Report

Buffer Distance: 100 Feet
 8/13/2013 12:58:43 PM

[Click Here to Open Owner's List \(Comma-Delimited\)](#)



This map is prepared for the inventory of real property within Mecklenburg County and is compiled from recorded deeds, plats, tax maps, surveys, planimetric maps, and other public records and data. Users of this map are hereby notified that the aforementioned public primary information sources should be consulted for verification. Mecklenburg County and its mapping contractors assume no legal responsibility for the information contained herein.

Parcel ID	Owner Name	Mailing Address	City	State	ZIP	Legal Description	Deed Book	Deed Page	Land Area
19320412	RUSSELL W SR REV/TR WISE AND UTD 7/29/93 R WISE SR TTE	2015 HAYDEN WAY	MATTHEWS	NC	28105- 4559	L74M7-335 RIDGEVIEW RD	07454	650	0 SMAC
19320413	DANIEL JACKSON AND CHRISTOPHER	2321 SAM NEWELL RD	MATTHEWS	NC	28105	L75 & 76 M7- 335	05538	558	0 SMAC
19320416	FRANCISCO JAVIER ARTEAGA ROGGIERO	2601 KEZIAH RD	MATTHEWS	NC	28105	NA	26854	654	1.74 SMAC
19320417	MICHAEL STEVEN SAGE AND CAROL SAGE	2519 SAM NEWELL RD	MATTHEWS	NC	28105	2519 SAM NEWELL RD	06528	838	1.46 SMAC
19320418	TRISTON G STEGALL AND BARBARA C STEGALL AND PAULA O HAIGLER	3541 SAM NEWELL RD	MATTHEWS	NC	28105- 7450	2424 SAM NEWELL RD	14627	471	12.38 AC
19353112	RICHARD E DALE AND DIANN M DALE	2532 NEWELL ROAD	MATTHEWS	NC	28105	L10-12 2532 SAM NEWELL RD	07004	706	4 SMAC

**RULES OF PROCEDURE
BOARD OF ADJUSTMENT
TOWN OF MATTHEWS, NC**

Revised and Adopted 10-3-13 per SL2013-126

I. GENERAL RULES

The Board of Adjustment of the Town of Matthews, North Carolina, hereafter called the Board, shall be governed by the terms of Section 388 of Chapter 160A of the General Statutes of North Carolina, and the Matthews Zoning Ordinance, both as amended.

II. OFFICERS AND DUTIES

Section 1 - Officers

The officers of the Board shall consist of a Chairperson, and a Vice-Chairperson.

Section 2 - Chairperson

The Chairperson shall be elected by majority vote of the membership of the Board from among its members. The term of the Chairperson shall be for one year and until a successor is elected, beginning on the first of February of each year. The Chairperson shall be eligible for reelection.

The Chairperson shall decide upon all points of order and procedure unless otherwise directed by a majority of the Board in session at the time, subject to the provisions of state and local law. **The Chairperson may subpoena witnesses and compel the production of evidence.**

The Chairperson (unless absent or excused), shall chair each meeting of the Board and shall be a full voting member of the Board.

Section 3 - Vice-Chairperson

A Vice-Chairperson shall be elected from among the members in the same manner and for the same term as the Chairperson. The Vice-Chairperson shall serve as Acting Chairperson in the absence of the Chairperson and in such capacity, shall have the same powers and duties as the Chairperson.

III. MEMBERS

Section 1 - Composition

The Board shall be composed of such members as the Zoning Ordinance shall prescribe from time to time.

Section 2 - Attendance of Regular and Alternate Members

Regular and alternate members are expected to attend all regular and called meetings of the Board. When a member or alternate is unable to attend a meeting, that member shall notify the Town Planning Department or the Chairperson in advance whenever possible.

Section 3 - Continuing Members

Faithful attendance at all meetings of the Board and conscientious performance of the duties required of members and alternates shall be considered important factors for continuing membership on the Board and for placing alternates into regular member positions as they become vacant.

Section 4 - Conflict of Interest

No member or alternate member shall participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, 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.

Section 5 - Actual Participation

No member or alternate member shall vote on any matter deciding a variance, interpretation, or appeal unless such member shall have attended the public hearing on that case or shall have read all the minutes of the public hearing and shall have seen the evidence presented in the case.

Section 6 - Confidentiality

No member or alternate member shall discuss any case with any parties thereto prior to the public hearing on that case, provided however a member or alternate member may contact a party for the purpose of viewing property prior to the hearing. Members may, however, receive and/or seek information pertaining to the case from any appropriate Town employee prior to the hearing, limited to Zoning Ordinance text and its past interpretation, any maps, graphics, or other related data generated by or given to Town staff, including the applicants' submissions and any staff report prepared for use by the Board. Members and alternates shall not express individual opinions regarding any case with any parties thereto prior to the determination of such case.

IV. MEETINGS

Section 1 - Regular Meetings

Regular meetings of the Board shall be held on the first Thursday of each month at 7:00 PM at the Town Hall. Notice of such a meeting, with information on cases and items to be heard, shall be supplied at or before each meeting to all regular and alternate members.

Section 2 - Special or Called Meetings

Special meetings of the Board may be called at any time by the Chairperson or by an employee of the Town Planning Department. Notice of the time and place of called meeting shall be given at least forty eight hours prior to the meeting by the Chairperson or appropriate Town employee. The Chairperson or Town staff will attempt to contact each member and alternate member of the Board as soon as possible after a special or called meeting is set.

Section 3 - Cancellation of Meetings

Whenever there are no variance requests, appeals or requests for interpretation received in complete and acceptable form by the Town Planning department twenty calendar days prior to the regular meeting date, or other business of the Board, or whenever it is determined a quorum will not be available, the Chairperson may cancel the scheduled regular or called meeting by giving a written or oral notice to all members and alternates prior to the time set for the meeting.

Section 4 - Quorum

A quorum shall be a minimum of four (4) acting members. Alternate members may be assigned by the Chairperson at each meeting to sit as a regular member to enable the Board to obtain a quorum (4 positions) or a full Board (5 positions). In the event there is a temporary disqualification of a regular member or a vacancy due to a pending appointment of a new regular member, an alternate member may be selected to fill that position in order to obtain the necessary minimum quorum or full Board.

Section 5 - Voting

The concurring vote of a simple majority with quorum present of the members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administration official charged with the enforcement of the Zoning Ordinance, or to decide in favor of the applicant any matter upon which it is required to pass. To grant a variance from the provisions of the Zoning Ordinance, the concurring vote of four-fifths of the members of the Board shall be necessary.

Section 6 - Order of Meetings

All meetings shall be open to the public subject to these rules. The order of business at a regular meeting shall be as follows:

1. Approval of Minutes
2. Hearing and Determination of Cases
3. Reports of Committees
4. Unfinished Business
5. New Business

The Chairperson may alter the order of business as situations so warrant.

V. APPEALS AND REQUESTS FOR INTERPRETATION

Section 1 - Types of Appeals

The Board shall hear and decide all appeals from and review any order, requirement, decision or determination made by any administrative official charged with the enforcement of the Zoning Ordinance. No appeals shall be heard by the Board unless proper petition for appeal has been filed with the Town of Matthews within 30 calendar days of receipt of written notice of the order, requirement, decision or determination.

Section 2 - Types of Interpretation Requests

The Board of Adjustment is responsible for interpreting the provisions of the ordinance if there is a question about the meaning or application of a provision. The Board shall not hear a request for interpretation without having a written interpretation from the Zoning Administrator. Once the Board has made an interpretation on an issue the Zoning Administrator will use that interpretation in the administration of the ordinance. The Board may also ask that the ordinance be amended to clarify a problem with the ordinance that has come to the Board's attention. No petition for interpretation shall be heard by the Board unless proper notice has been filed with the Town Planning Department.

Section 3 - Procedure for Filing Appeals or Petition for Interpretation

An appeal or petition for interpretation shall be filed with the Town of Matthews Planning department at least twenty calendar days in advance of a regular meeting in order to be assured of being placed on the agenda. The applicant must file an application/petition for a hearing on the form furnished by the Town of Matthews for that purpose. The form shall require the applicant to specify the grounds for appeal or interpretation, and all information and required supplementary documentation shall be completed before an appeal or petition for interpretation shall be placed on the Board's agenda for consideration.

Where appropriate, a copy of such completed form shall be filed with the administrative official having previous involvement with the case, and said official shall transmit to the Board all papers constituting the record on the case as may be appropriate.

Section 4 - Notification of Adjoining Property Owners

It shall be the responsibility of the appellant or an applicant for an appeal or petition for interpretation to provide a full copy of the petition form and addressed envelopes for every adjoining property owner to the Town Planning Department at the time the application for appeal, or interpretation when it is tied to a specific site, is submitted. These copies will be mailed by Town Planning Department staff to inform all adjacent property owners of the specifics of the appeal or petition, and of the date of the hearing before the Board of Adjustment. This notice shall be by first class mail, and shall be deposited in the mail at least 10 days, but not more than 25 days prior to the hearing date. The Town Planning staff member who mails the notices shall complete a certification that indicates each intended recipient, their property, their name and address as listed in Mecklenburg County Tax rolls, and shall indicate the date these notices were delivered into the proper receptacle at the US Postal Service. The certification shall become part of the permanent file on the request, and will be available to the Board at the hearing. This mail notification requirement may be waived when a petition for interpretation is obviously general in nature rather than site-specific.

Section 5 - Property Posted

When the request for appeal or interpretation is tied to a geographic location, rather than being general or Town-wide in its effect, then the subject property shall have a sign posted on it stating the date of hearing. Such sign shall be placed on the property no less than 10 days prior to the hearing date.

VI. VARIANCES

Section 1 - Procedures for Filing Applications for Variances

An application for a variance shall be filed with the Town of Matthews Planning Department at least twenty calendar days in advance of a regular meeting in order to be assured of being placed on the agenda. The applicant must file an application for a variance on the form furnished by the

Town of Matthews for that purpose. The form shall request the applicant state why the required findings should be made and a variance granted. All information and required supplementary documentation shall be completed before the variance request shall be placed on the Board's agenda for consideration.

Section 2 - Notification of Adjoining Property Owners

It shall be the responsibility of the applicant for a variance to provide a full copy of the petition form and addressed envelopes for every adjoining property owner to the Town Planning Department at the time the variance application is submitted. These copies will be mailed by Town Planning Department staff to inform all adjacent property owners of the specifics of the petition, and of the date of the hearing before the Board of Adjustment. This notice shall be by first class mail, and shall be deposited in the mail at least 10 days, but not more than 25 days prior to the hearing date. The Town Planning staff member who mails the notices shall complete a certification that indicates each intended recipient, their property, their name and address as listed in Mecklenburg County Tax rolls, and shall indicate the date these notices were delivered into the proper receptacle at the US Postal Service. The certification shall become part of the permanent file on the request, and will be available to the Board at the hearing.

Section 3 - Property Posted

The property subject to the variance request shall have a sign posted on it stating the date of hearing. Such sign shall be placed on the property no less than 10 days prior to the hearing date.

Section 4 - Rules and Findings

The Board shall be guided by the rules and findings of fact set forth in Sections 153.285 - 291 of the Zoning Ordinance. The Board shall hear all testimony, then determine whether the required findings can be made. If all findings are made, the Board can approve the variance as requested, or grant it with appropriate conditions and safeguards added.

VII. HEARINGS

Section 1 - Schedule of Hearings

Hearings for appeals, petitions for interpretation, or variances shall generally be set for the next regular Board meeting as long as the application is filed and determined by Town staff to be complete at least fifteen calendar days before the next regular meeting date. The Chairperson may use his/her discretion to set a hearing date other than at a regular scheduled meeting.

Section 2 - Order of Hearing

Any party may appear in person, by agent, or by attorney, at the hearing. The Board may elect to continue a hearing to a later date if no one is in attendance to present the application/petition. The Board may require documentation of reasons for ongoing delay in conducting and concluding an open case if there may be any perception of purposeful slow-down, and **the Chairperson or Vice-Chairperson** may subpoena witnesses and compel the production of evidence. The Board may also determine it is in their best interest to make findings based on the evidence provided to them in the absence of any party's attendance at a scheduled hearing.

When the hearing involves a request for interpretation or appeal of a determination by a zoning official, then that official, or his/her designee, shall appear at the hearing as a witness.

The order of business for the hearing of each case shall be as follows, unless the Chairperson, for good cause, elects to vary the order of presentation.

- a. The Chairperson, or such person as he/she shall designate, shall introduce the case.
- b. All witnesses shall be sworn in **by the Chair, Vice-Chair, or Clerk to the Board.**
- c. Planning department staff shall give an overview of the application, outline the Zoning Ordinance sections that relate to the case at hand, provide any other documents that may have relevance to the case, and answer any questions from the Board.
- d. The applicant shall present evidence in support of the application and answer any questions from the Board.
- e. Anyone opposed to granting the variance, reversing the decision appealed from, or opposed to the interpretation being presented, shall present evidence against the application.
- f. Both sides shall be permitted to cross examine witnesses.
- g. Both sides shall be permitted to present rebuttals to opposing testimony.
- h. The Board shall discuss the issue, make findings where appropriate, and determine alternatives or additional conditions that could be imposed.

The Board shall reserve the right to make reasonable limitation upon the time allowed the applicant, opposing parties, and/or other persons giving testimony.

VIII. MINUTES

Section 1 - Public Record of Decisions

The decisions of the Board, as recorded in the minutes, shall be a public record, available for inspection at all reasonable times once they are approved by the Board.

Section 2 - Contents

The Board's final decision on each case shall be shown on the record of the case and recorded in the minutes. Each quasi-judicial decision shall be signed by the Chair or other voting member of the Board, and may be included within the minutes or as an attachment to the minutes. Such records shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact made by the Board. When a variance is granted, the minutes shall state in detail what, if any, conditions and safeguards are imposed by the Board in connection with the granting of the variance. The minutes of all cases shall show all important facts, every resolution, and all votes of members of the Board, indicating the names of members absent, abstaining or failing to vote.

Section 3 - Further Record

Minutes shall be kept in a permanent volume at Town Hall. In addition, a recording device shall be used whenever possible, to keep a complete record of the proceedings of each meeting.

IX. EXPIRATION OF DECISION

Section 1 - Time Limit on Variances

Unless otherwise specified, any order or decision of the Board granting a variance shall expire if a Building Permit or Certificate of Occupancy for such is not obtained by the applicant within six months from the date of the decision. If six months have expired, the Zoning Administrator may authorize permits to be issued if he/she can determine that the circumstances leading to the Board's decision, and any related conditions, have not changed and would allow issuance of the permits.