

Board of Adjustment

Thursday, December 7, 2017

7:00 PM

Hood Room, Matthews Town Hall

**AGENDA**

- I. CALL TO ORDER
- II. INVOCATION
- III. APPROVAL OF MINUTES
- IV. VARIANCE REQUEST: BA 2017-7 Rear Yard Variance at 115 Matthews Township
- V. ADJOURNMENT

**MINUTES  
BOARD OF ADJUSTMENT  
THURSDAY, October 5, 2017  
HOOD ROOM, MATTHEWS TOWN HALL**

**PRESENT:** Members Jeanne Moore, Jim Mortimer, and Cecil Sumners; Alternate Members Peter Tuz, and Steven Lee; Attorney Robert Blythe; Senior Planner Jay Camp; Administrative Assistant/Deputy Town Clerk Shana Robertson

**ABSENT:** Chairman Jim Jiles; Vice Chairman Jerry Meek; Alternate Member Gary Smith

Mr. Cecile Sumners chaired the night's meeting with the absence of the Board Chairman and Vice Chairman. He designated Peter Tuz and Steve Lee as voting members.

**CALL TO ORDER/INVOCATION:**

Mr. Sumners called the meeting to order at 7:00 pm.

Mr. Jim Mortimer gave the invocation.

**APPROVAL OF THE MINUTES:**

Jeanne Moore made a motion to approve the minutes of the September 7, 2017 meeting. Mr. Lee seconded and the motion passed unanimously.

**SWEARING IN:**

Senior Planner Jay Camp, Robert Turner, and Haytham Kasem were sworn in by Mr. Sumners.

**VARIANCE REQUEST: BA 2017-6 Monument Sign at Circle K, 3424 Matthews-Mint Hill Road**

**STAFF REPORT:**

Senior Planner Jay Camp reviewed the applicants request to allow a ten foot tall, ground mounted monument sign, located six feet from the curb location. Town code, adopted in 2014, allows for a ten foot distance from a sidewalk. Mr. Camp reviewed the change of conditions in a 2012 rezoning and said that one of the approved conditions was the removal of the nonconforming pylon sign. He added that this action was approved two years prior to the construction of the roundabout.

Mr. Camps said that now that construction is complete on the roundabout and the road has been reopened, the applicant wanted to install a permanent price sign. Mr. Camp said that several site meeting were held with the applicant. He added that discussions with construction crews about relocating the curb line were also had. Mr. Camp said that a four foot variance was agreed the best option. He continued to review the site area, location, and proposed sign placement outside of the sight triangle with the Board members. Mr. Camp said the sign proposed would be ten feet tall with a four foot base and a 6x10 sign area or a total of sixty square feet. He continued by saying that this would be smaller than the hundred square feet that the Town code allowed for monument signs.

Ms. Moore asked if the original sign had to come down because of the roundabout or because of the rezoning. Mr. Camp said that the sign came down because of the conditional zoning notes. The applicant agreed to the Town Board's request to remove the nonconforming pylon sign during the 2012 rezoning. Ms. Moore then asked if a variance was needed because of the site location. Mr. Camp reviewed the curb line and said that much of the property was lost to right-of-way during construction. Ms. Moore asked if there would be any visibility issues for drivers or pedestrians and Mr. Camp said there would not. Mr. Camp added that the location, due to the roundabout, was a right in, right out and the sign would be located outside the sight triangle.

Mr. Sumners asked what the height of the sign would be and Mr. Camp said it was proposed to be ten feet total, which was a maximum height under Town code, with a four foot base and six feet of sign area.

Mr. Mortimer asked how far the sign would sit from the sidewalk and Mr. Camp said it would be six feet from the edge of the sidewalk.

Ms. Moore asked if it was possible to make it smaller to get the sign to comply with the ten foot distance and Mr. Camp that signs could be designed smaller but it would reduce the sign area.

Ronald Turner, 210 Water Street, Hillsville VA and Haytham Kasem 1759 Withers Drive, Denver, NC addressed the Board. Mr. Turner reviewed the current right-of-way and said that Circle K did lose a considerable amount of real estate with the NCDOT's construction of the roundabout. Mr. Turner said they are asking for a sixty square foot sign to replace the previous eighty four square foot sign and that they will ensure that the sign is out of the sight triangle. Mr. Turner added that he did not see any traffic issues regarding the placement of the sign.

Mr. Kasem said that they are in a convenience business and are wanting to advertise branding and prices to future customers clearly. He added that a smaller sign could be constructed but it would further hurt their business.

Mr. Sumners asked how their business was hurt as the new roundabout slowed drivers down in front of his business. Mr. Kasem clarified that during construction the road was closed. He also added that a smaller sign would be worse visibility.

Mr. Lee asked if there was ever any discussion to bring the sign down to a four foot height and make it closer to grade. Mr. Turner said that had not been discussed and it was an option but it could lower the line of sight for a motorist. Mr. Tuz said that a driver may not be able to see the sign in traffic until closer to the entrance.

## **DELIBERATION**

Mr. Lee said that the way that the Town's zoning is written and the way this variance is proposed, he feels the Board would need to go with this type of variance. He added that it does make him think about the Town's zoning and the sign ordinance.

Mr. Tuz said that he sees a hardship created by the loss of land during the first design and then the loss of more land during the building of the roundabout. He added that the 2014 sign code that allowed a ten foot separation from the sidewalk to the sign added another degree that he felt was unfair.

Ms. Moore said that things like this needed to be looked at in the future and Mr. Sumners said he sees more roundabouts coming to the area.

Ms. Moore motioned to approve Variance BA2017-6 and Mr. Lee seconded the Motion. The motion carried unanimously.

## **FINDINGS OF FACT**

1. Unnecessary hardship would result from the strict application of this Title. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

Right-of-way extended more than planned created the hardship for the applicant.

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

The hardship was caused by the widening of the existing right of way.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

While the applicant agreed to the removal of the pylon sign, the construction of the sidewalk and roadwork were not actions taken by the property owner. By the extension of the right-of-way, a hardship was presented to the property owner.

4. The requested variance is consistent with the spirit, purpose, and intent of the Title, because public safety is secured and justice is achieved.

The intent of the UDO requirement is to create separation between public sidewalks and large monument signs.

Ms. Moore Motioned to approve the finding of facts. Mr. Mortimer seconded the motion and it passed unanimously.

Ms. Moore made a motion to adjourn the meeting at 7:33 pm. Mr. Lee seconded the motion and the motion passed unanimously.

Respectfully submitted,

Shana Robertson  
Administrative Assistant/Deputy Town Clerk

**Matthews Board of Adjustment  
Variance Request for 3424 Matthews-Mint Hill Road  
BA2017-07  
December 7, 2017**

**Summary of Request**

The applicant requests a variance of approximately 5' to allow the rear of an existing home to encroach into the required rear yard.

**Background**

The property owner at tax parcel 21302169, 115 Matthews Township Parkway, requests a variance that would allow the existing home on the site to remain with an encroachment of about 5' into the rear yard. The home was constructed by a different property owner in 2006. The current owner purchased the home in 2012.

The home is part of an R-VS single family development called Meadows at Matthews that was approved in 2005. The seven lot development features homes that front along Matthews Township Parkway with a shared private driveway along the back of the properties that connects to Sardis Road.

A survey was submitted with the variance request. It appears that the home was squared up with the front property line. However, the rear property line is skewed and not at a right angle.

**Matthews Board of Adjustment  
Variance Request for 4425 Lindsay Lane  
BA2017-06  
December 7, 2017**

**Unified Development Ordinance Definitions and Requirements**

155.604.4 Table of dimensional standards for R-VS District

Minimum Rear Yard: 25'



### Example Findings of Fact

***In reaching a decision on a variance request, the Board shall make findings upholding all of the following criteria:***

1. Unnecessary hardship would result from the strict application of this Title. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

**Without a variance, the owner would have to demolish a portion of the home.**

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.)

**There are no hardships at the property that are peculiar in nature.**

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

**The applicants did not create the hardship.**

4. The requested variance is consistent with the spirit, purpose, and intent of this Title, public safety is secured, and substantial justice is achieved.

**The private driveway and yard for the home are set back 35' from the common shared driveway, giving the appears of a rear yard greater than 25'.**

### Findings of Fact Standards for Zoning Variances

***In granting any zoning variance, the Board of Adjustment shall make findings that the spirit of the ordinance shall be observed, public safety and welfare shall be secured, and substantial justice shall be done. To reach these findings, the Board of Adjustment shall consider the following 7 standards:***

1. That special or unique circumstances or conditions or practical difficulties exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts.
2. That the special conditions or circumstances or practical difficulties do not result from the actions of the property owner or applicant, their agent, employee, or contractor. Errors made by such persons in the development, construction, siting or marketing process shall not be grounds for a variance except in cases where a foundation survey submitted to the Planning Director, or designee, before a contractor proceeds beyond the foundation stage has not revealed an error which is discovered later.
3. That the unique hardship situations cited by the applicant are not hardships resulting from personal or household members' circumstances which would no longer be applicable to the location if the applicant or household was no longer present at the property.
4. That the strict enforcement of this Title would deprive the owner or applicant of reasonable use of the property that is substantially consistent with the intent of this Title.
5. That the granting of a variance will not result in advantages or special privileges to the applicant or property owner that this Title denies to other land, structures, or uses in the same district, and it is the minimum variance necessary to provide relief.
6. That the proposed use and the appearance of any proposed addition or alteration will be compatible with, and not negatively impact, nearby properties.
7. That the variance shall not be materially detrimental to the health, safety or welfare of persons residing or working in the neighborhood. Consideration of the effects of the variance shall include but not be limited to, increases in activity, noise, or traffic resulting from any expansion of uses allowed by the variance.

**APPLICATION FOR A ZONING VARIANCE**

Date Filed: 11-14-2017

Hearing Date: 12-7-2017 Hearing Time: 7pm

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

Property Owner Name(s): Oleg Kio, Catherine Lucille Kio

Subject Property Street Address: 115 Matthews Township Pkwy, Matthews, NC 28105

Subject Property Tax Parcel ID: 21302169

Current Zoning District of Subject Property: RVS

Subject Property is Concurrently Seeking a Change in Zoning Classification To: N/A

Property Owner is Applicant Appearing Before Board of Adjustment: Yes

Applicant Appearing Before Board of Adjustment is Purchasor\*/ Lessee\*/Other\* N/A

\*Written explanation is required \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the Town of Matthews Zoning Board of Adjustment:

This Application for a Zoning Variance is being submitted because the property identified above cannot be used in the following manner: as a single family residential property with attached garage

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Without relief from one or more specific provisions of the Unified Development Ordinance (UDO). UDO section(s) which affect this ruling is/are: 155.604.4 (Minimum rear yard)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**APPLICATION FOR A ZONING VARIANCE, CONTINUED**

**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 four (4) conclusions as a prerequisite to issuing a variance: (i) that unnecessary hardship would result from the strict application of the ordinance; (ii) that the hardship results from conditions that are peculiar to the property; (iii) that the hardship does not result from actions taken by the applicant or the property owner; and, (iv) that the variance is consistent with the spirit, purpose, and intent of the zoning code, public safety is secured, and substantial justice is achieved. 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 four required conclusions. IT WILL BE YOUR RESPONSIBILITY TO PRESENT THESE FACTS BY SWORN TESTIMONY AND COMPETENT EVIDENCE.

- (i) UNNECESSARY HARDSHIP WOULD RESULT FROM THE STRICT APPLICATION OF THE ORDINANCE. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. (State facts and arguments to show that the variance will not result in advantages or special privileges to the applicant or property owner that the ordinance denies to other land, structures, or uses in the same district, and it is the minimum variance necessary to provide relief.):

Because of the unusual lot shape, house was built in a way that one corner of the house complies with the minimum rear yard requirement but the other corner does not.

Front of the garage, part of a brick wall and part of the roof would have to be removed and rebuilt, which would create considerable financial hardship.

No tangible or useful advantages will be gained if the variance is granted

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- (ii) 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. (State facts and arguments to show that special and unique circumstances or conditions exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning district.):

Unusual lot shape.

House was built in a way that one corner of the house complies with the minimum rear yard requirement but the other corner does not.

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**APPLICATION FOR A ZONING VARIANCE, CONTINUED**

(iii) THE HARDSHIP DOES NOT RESULT FROM ACTIONS TAKEN BY THE APPLICANT OR THE PROPERTY OWNER. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. (State facts and arguments to show that the hardship did not result from personal circumstances which would no longer be applicable to the location if the applicant or household was no longer present at the property.):

\_\_\_\_\_  
We are 2nd owners and purchased the property in its current condition  
Regardless of who resides on the property, this condition will remain.  
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(iv) THE REQUESTED VARIANCE IS CONSISTENT WITH THE SPIRIT, PUPOSE, AND INTENT OF THE ZONING CODE, PUBLIC SAFETY IS SECURED, AND SUBSTANTIAL JUSTICE IS ACHIEVED. (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.):

\_\_\_\_\_  
House does not go over anyone's property line and does not prevent the use of the public road or any other property in any way.  
If the variance is denied, the public will not benefit in any way but it will create excessive financial hardship for us.  
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**APPLICATION FOR A ZONING VARIANCE, CONTINUED**

The Board of Adjustment may apply the following standards to verify whether sworn testimony and/or submitted documents/exhibits have been provided to satisfactorily justify the required four findings of fact. Please provide any additional documents and statements that will assist the Board in their deliberations:

- A. That special or unique circumstances or conditions exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts.
  - Are there any other parcels in the vicinity of the subject site which have similar size, topographical, dimensional, configuration, or related characteristics.
  - What is the closest nearby parcel that exhibits similar characteristics, and what is that/are those characteristic(s)?
  
- B. That the special conditions or circumstances do not result from the actions of the property owner or applicant, their agent, employee, or contractor. Errors made by such persons in the development, construction, siting or marketing process shall not be grounds for a variance except in cases where a foundation survey submitted to the Planning Director, or designee, before a contractor proceeds beyond the foundation stage has not revealed an error which is discovered later.
  - Was any foundation or other survey done after construction commenced? If so, attach.
  - If the request for variance is due to inaccurate measurements, calculations, or actions by anyone contrary to code requirements, please identify who, what the inaccuracy was, when it occurred, when it was discovered, what work was done after discovery. If development activity continued after discovery of the inaccurate action, why was it necessary to continue prior to review of this variance request?
  
- C. That the unique hardship situations cited by the applicant are not hardships resulting from personal or household members' circumstances which would no longer be applicable to the location if the applicant or household was no longer present at the property.
  - If another person/entity had control of this site, how would that change the need for the specific variance being requested?
  
- D. That the strict enforcement of these zoning requirements would deprive the owner or applicant of reasonable use of the property that is substantially consistent with the intent of the code.
  - How can the property be used if the requested variance is not granted?
  - Could the property be reasonably used if a variance with less deviation from the adopted requirements be issued?
  
- E. That the granting of a variance will not result in advantages or special privileges to the applicant or property owner that are denied to other land, structures, or uses in the same district, and it is the minimum variance necessary to provide relief.
  - Why do nearby parcels not need a similar variance to what is being requested?
  - If granted, how will this site be able to support the same/similar development characteristics as surrounding parcels?
  
- F. That the proposed use and the appearance of any proposed addition or alteration will be compatible with, and not negatively impact, nearby properties.
  - If the requested variance is granted, what appearance changes will take place on this site?
  - Will any visual/appearance changes be visible from any public street?
  
- G. That the variance shall not be materially detrimental to the health, safety or welfare of persons residing or working in the neighborhood. Consideration of the effects of the variance shall include but not be limited to, increases in activity, noise, or traffic resulting from any expansion of uses allowed by the variance.
  - List any and all impacts that may be felt by/on adjacent parcels if this requested variance is approved.

APPLICATION FOR A ZONING VARIANCE, CONTINUED

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.

Catherine L. Kio

Print applicant name

Print representative name

*Catherine L. Kio*

Signature of applicant

Signature of representative

115 Matthews Township Pkwy

Mailing address of applicant

Mailing address of representative

Matthews, NC 28105

City, State Zip

City, State Zip

lucykio@gmail.com

Email address of applicant

Email address of representative

11/13/2017

Date

Date

NO REQUEST FOR A ZONING VARIANCE WILL BE CONSIDERED COMPLETE AND PROCESSED PER § 155.403.2.B. UNTIL ALL SECTIONS HAVE RESPONSES, ALL DOCUMENTS AND EXHIBITS ARE ATTACHED, AND THE PROPERTY OWNER HAS SIGNED THE APPLICATION FORM.

IN THE SITUATION THAT THE PROPERTY OWNER IS NOT AN INDIVIDUAL, PLEASE INCLUDE DOCUMENTATION THAT APPLICANT IS AN AUTHORIZED REPRESENTATIVE.

IF THE PROPERTY OWNER IS NOT THE APPLICANT APPEARING TO SPEAK BEFORE THE BOARD OF ADJUSTMENT, SUCH AS LESSEE, PLEASE PROVIDE EXPLANATION OF RELATIONSHIP TO APPLICANT/REPRESENTATIVE. PRESENTING REPRESENTATIVE'S AUTHORITY TO APPEAR SHALL BE VERIFIED BEFORE THE APPLICATION IS CONSIDERED COMPLETE.

**115 Matthews Township Pkwy, Matthews NC 28105**  
**Adjoining Property List**

109 MATTHEWS TOWNSHIP PY MATTHEWS NC 28105

Parcel ID: 21302168

Owner:

JDSI LLC  
17537 JETTON RD  
CORNELIUS NC 28031

119 MATTHEWS TOWNSHIP PY MATTHEWS NC 28105

Parcel ID: 21302170

Owner:

HUSEYIN B OGUZ  
1131 MOURFIELD RD  
KNOXVILLE TN 37922

110 MATTHEWS TOWNSHIP PY MATTHEWS NC 28105

Parcel ID: 22702748

Owner:

PAUL NICHOLAS JR STACK  
PO BOX 2250  
MATTHEWS NC 28105

CYNTHIA WALKER  
PO BOX 2250  
MATTHEWS NC 28105

130 BUBBLING WELL RD MATTHEWS NC 28105

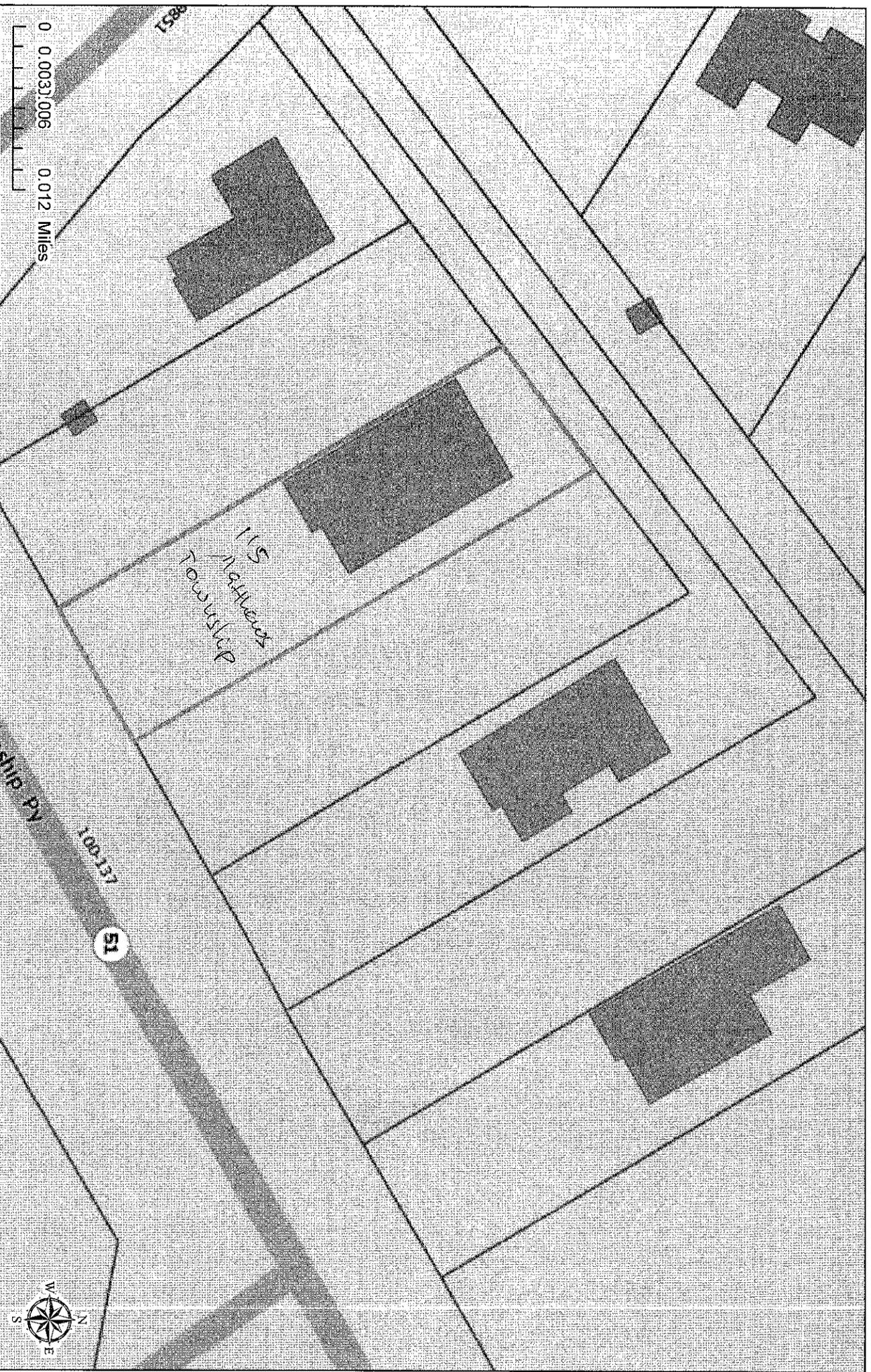
Parcel ID: 22702749

Owner:

FAMILY TRUST GREENE (DENNIS & PATSY GREENE)  
130 BUBBLING WELL RD  
MATTHEWS NC 28105

# Polaris 3G Map – Mecklenburg County, North Carolina 115 Matthews Township Pkwy

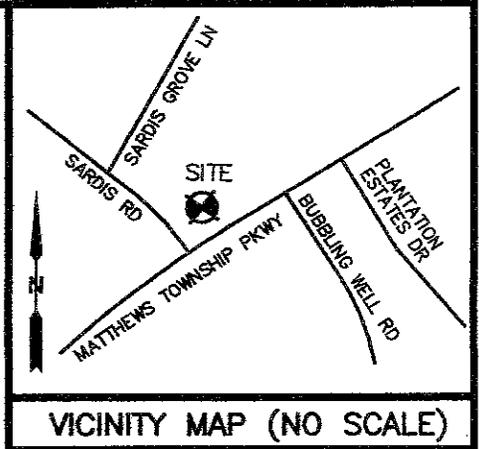
Date Printed: 10/27/2017 12:42:49 PM



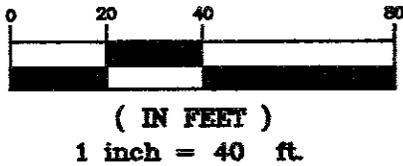
This map or report is prepared for the inventory of real property within Mecklenburg County and is compiled from recorded deeds, plats, tax maps, surveys, planimetric maps, and other public records and data. Users of this map or report are hereby notified that the aforementioned public primary information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

**NOTES:**

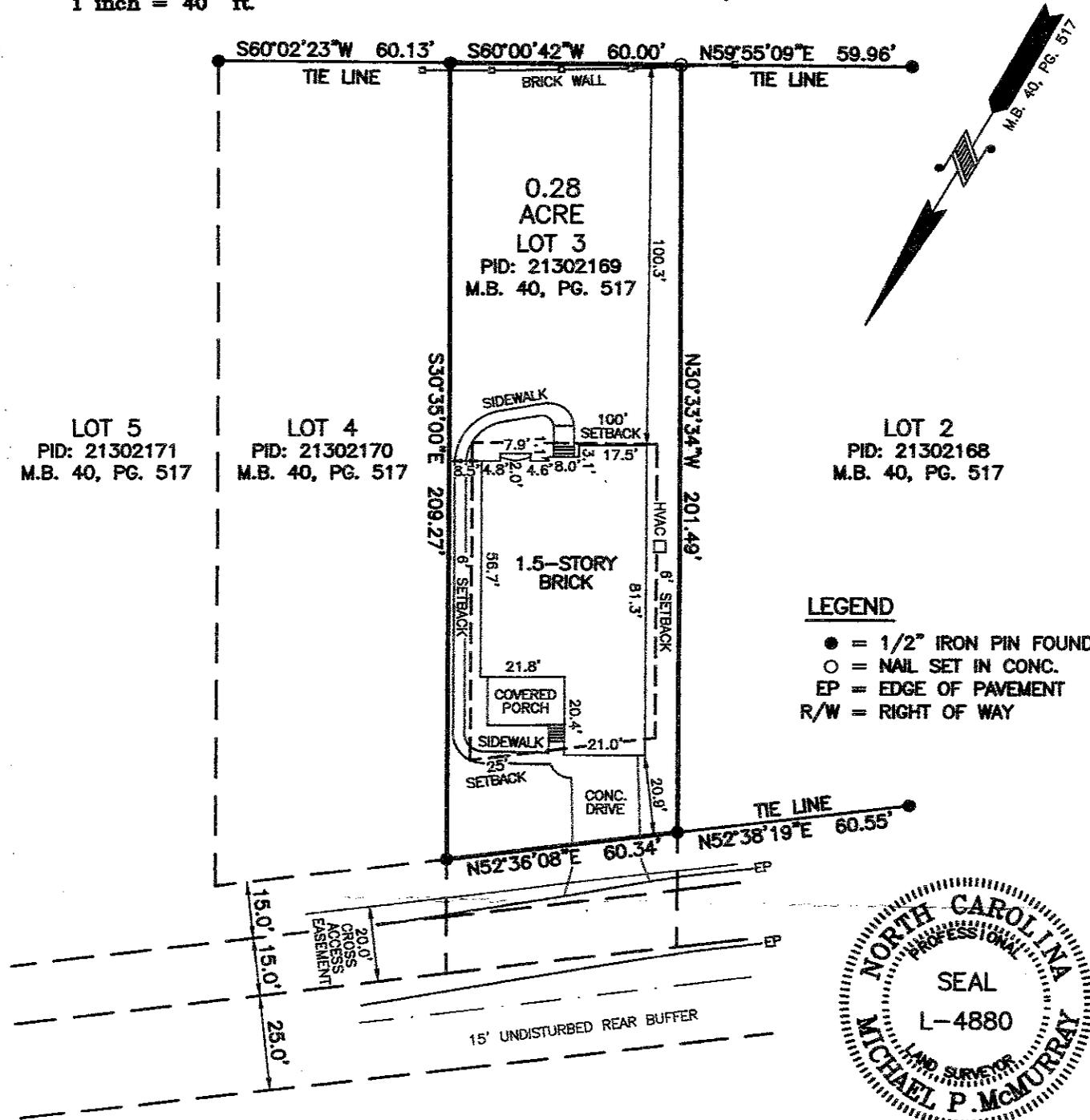
- AREA DETERMINED BY COORDINATE METHOD.
- SUBJECT PROPERTY DESCRIPTION RECORDED IN DEED BOOK 27103 PG. 220.
- THIS SURVEY WAS COMPLETED WITHOUT THE BENEFIT OF A TITLE REPORT.
- THIS PROPERTY MAY BE SUBJECT TO RECORDED OR UNRECORDED EASEMENTS, RIGHT OF WAYS, SETBACKS AND/OR RESTRICTIVE COVENANTS NOT SHOWN HEREON.
- THIS MAP IS NOT INTENDED TO MEET G.S. 47-30 AND IS NOT TO BE RECORDED AS A PLAT.
- SUBJECT PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD ZONE AS PER FIRM PANEL 3710457000J, DATED MARCH 2, 2009.



**GRAPHIC SCALE**

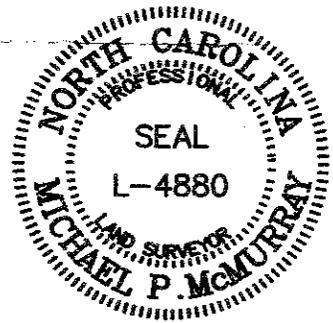


**MATTHEWS TOWNSHIP PKWY (HWY 51)**  
100' PUBLIC R/W



**LEGEND**

- = 1/2" IRON PIN FOUND
- = NAIL SET IN CONC.
- EP = EDGE OF PAVEMENT
- R/W = RIGHT OF WAY



**PHYSICAL SURVEY**

115 MATTHEWS TOWNSHIP PARKWAY  
LOT 3, ADELENE C. RIEVES PROPERTY  
MAP BOOK 40, PAGE 517  
MATTHEWS, MECKLENBURG COUNTY, NORTH CAROLINA

PREPARED FOR: OLEG & CATHERINE KIO

**MICHAEL P. MCMURRAY LAND SURVEYING**  
MICHAEL P. MCMURRAY, NCPLS L-4880  
318 E. OLD HIGHWAY 74  
MONROE, N.C.  
704-254-2736

I hereby certify that this map was drawn under my supervision from an actual survey made under my supervision; that the ratio of precision or positional accuracy is 1:10,000+; that the boundaries not surveyed are shown as broken lines plotted from information found in (references as shown), and that this map meets the requirements of the Standards of Practice for Land Surveying in North Carolina (21 NCAC 56. 1600). Witness my original signature, registration number and seal this 8th day of March, 2012.

*Michael P. McMurray*  
Professional Land Surveyor

L-4880  
Registration Number

This survey is of an existing parcel of land.









