



**Town of Davidson
Board of Adjustment Hearing
Town Hall and Community Center
Community Room 120
251 South Street
Monday, October 27, 2025 at 6:00 PM**

- I. CALL TO ORDER**
- II. ROLL CALL AND DETERMINATION OF QUORUM**
- III. CHANGES TO THE AGENDA**
- IV. REVIEW/APPROVAL OF MINUTES**
 - a. Review/Approval of the September 29, 2025 Minutes**
Summary: Review/Approve Minutes
- V. NEW BUSINESS**
 - a. Watershed Review Board - Shearer Street Townhomes Built-Upon Area Averaging**
Summary: i. Explanation of built upon area averaging process
ii. Decision by Watershed Review Board
- VI. OLD BUSINESS**
 - a. 514 Walnut Street – Variance Request**
Summary: i. Explanation of Quasi-Judicial Proceeding
ii. Presentation of Evidence
iii. Deliberation and Decision by Board
- VII. ADJOURNMENT**



**Town of Davidson Board of Adjustment
Minutes
September 29, 2025**

I. **Call to Order:** The meeting was called to order by Chairman Shawn Copeland at 6:30 pm on September 29, 2025.

II. **Roll Call, Determination of Quorum**

Present Members: Shawn Copeland (Chair), Waller Blackwell (Vice Chair), Jason Ridenhour, David Lusk, Mendy McNeel, Sarah Cummings (ETJ), Rick Pacious (Alternate, ETJ), and Tom Watson (Alternate)

Town Representatives: Andrew Golden (Staff), Karen Wolter (Town Attorney), Jason Burdette (Planning Director)

Board of Adjustment Representative: Ryan Bolick (BOA Attorney)

III. **Changes to the Agenda:** None

IV. **Review/ Approval of Minutes**

A. **Review/Approval of the January 27, 2025 Minutes**

Motion to recommend approval of the minutes:

- Motion: David Lusk
- Second: Mendy McNeel
- Vote: 8-0 (All in Favor, Motion Passed Unanimously)

V. **New Business**

A. **514 Walnut St – Variance Request**

Chairman Copeland recused himself from the hearing due to conflicts of interest. Vice Chair Blackwell proceeded to lead the hearing. There were no other conflicts, and the two alternates were released.

A request to postpone the hearing was made by Mr. James Davis (Applicant). The Applicant learned at 3 pm that day that his son was scheduled for surgery the next morning in Winston-Salem. His attorney reached out to Mr. Bolick to notice the Board and state that if they were not granted the request for postponement, then the variance request would be formally withdrawn and subsequently resubmitted at a later date. Mr. Bolick discussed the timeline of messages for requesting postponement.

Mr. Blackwell asked what the Board's options were. Mr. Bolick stated the options were to grant the continuance or hear the matter tonight. Mr. Davis stated he was not prepared to go through the hearing at this time without his counsel present. The Town was willing to grant a delay, granted that it was the last time as this would be the fifth time a delay had been granted to the Applicant.

Ms. Wolter reiterated that both parties are under an order by the court to hear the requested variance and was unsure if the applicant had the authority to withdraw the variance request. Mr. Blackwell stated that there is no time line for when the variance is to be heard. Mr. Lusk asked for reasons for previous delays. Mr. Golden went over the previous delays for October 19, 2023, November 27, 2023, February 26, 2024, & March 27, 2024. All parties agreed to postpone the hearing for October 27, 2025, immediately following the 6:00 pm Planning Board meeting.

Motion to postpone the 514 Walnut Variance hearing to October 27, 2025 following the Planning Board meeting at 6:00 pm:

- Motion: Jason Ridenhour
- Second: Mendy McNeel
- Vote: 5-0 (All in Favor, Motion Passed Unanimously)

VI. Adjournment

Motion to adjourn the September 29, 2025 Board of Adjustment meeting:

- Motion: Jason Ridenhour
- Second: Mendy McNeel
- Vote: 5-0 (All in Favor, Motion Passed Unanimously)

There being no further business before the Board, the meeting was adjourned at 6:55 pm.

Approved:

Shawn Copeland

Chair of the Board of Adjustment



BUILT-UPON AREA AVERAGING: STAFF REPORT

Date: October 27, 2025
To: Board of Adjustment (Watershed Review Board)
From: Planning Department
Re: Habitat for Humanity Shearer Street Townhomes – Built-Upon Area Averaging Request

INTRODUCTION

APPLICANT INFO

- **Developer/Owner:** Habitat for Humanity
- **Location:**
 - Donating Lot – 955 Shearer Street, Davidson, NC 28036 (Mecklenburg County PID 00328248)
 - Receiving Lots – 968 & 970 Shearer Street, Davidson, NC 28036 (Iredell County PIDs 4654255730.000 & 4654255735.000)
- **Planning Area(s):** Neighborhood Center I

SUMMARY

Habitat for Humanity requests approval of a Built-Upon Area Certificate in accordance with Davidson Planning Ordinance (DPO) Section 17.8 in order to construct three affordable townhome units at 968 & 970 Shearer Street.

PLANNING STAFF REVIEW

Below is a summary of the relevant standards found in the Davidson Planning Ordinance (DPO), along with an explanation of how the proposal complies with those standards.

PROCESS & BUILT-UPON AREA AVERAGING REQUIREMENTS (DPO 17.8)

Built-Upon Area (BUA) Averaging allows parcels located within the Lake Norman Critical Watershed to obtain additional development rights through an increase in a site's built-upon area (BUA) by averaging the total BUA of the developing lot (i.e. "receiving lot") with the total BUA of an undeveloped/less developed lot within the same watershed and jurisdiction ("donating lot"). This is accomplished by transferring undeveloped area on a donating lot to a receiving lot via a BUA Averaging Certificate, which includes a non-revocable easement, metes and bounds description, and recorded plat of the area(s) to remain undisturbed. The BUA Averaging Certificate requires approval by the Watershed Review Board, a sub-set of the Board

of Adjustment. The Watershed Review Board will review the draft plat and supporting materials that will serve to record the conserving of land on the “Donating Lot” and the transfer of BUA (i.e., hardscape) to the “Receiving Lots.” Once approved, the NC Dept. of Environmental Quality receives a copy of the relevant documents.

REQUEST DETAILS

Habitat for Humanity requests the transfer of BUA from Donating Lot 955 Shearer Street, Davidson, NC 28036 (Mecklenburg County PID 00328248) to Receiving Lots 968 & 970 Shearer Street, Davidson, NC 28036 (Iredell County PIDs 4654255730.000 & 4654255735.000). The draft plat (Exhibit D) identifies an 8,534 sq ft area at the rear of the Donating Lot to remain in an undisturbed vegetated state. Of this 8,534 sq ft area, 2,048 sq ft or 24% will be donated to the Receiving Lots as allowable BUA. Resulting BUA permitted on Receiving Lots is 3,774 sq ft and 3,668 sq ft or 7,442 total sq ft as outlined in Figure 1 below. All lots will remain under Lake Norman Critical Watershed low density BUA thresholds.

	Donating Lot	Receiving Lots	
	PID 00328248	PID 4654255730.000	PID 4654255735.000
EXISTING LOT AREA	15,327 SQFT	11,459 SQFT	11,016 SQFT
EXISTING BUA ALLOWED (24%)	3,678 SQFT	2,750 SQFT	2,644 SQFT
UNDISTURBED NATURAL AREA	8,534 SQFT	–	–
UNDISTURBED NATURAL AREA BUA (24%)	(–) 2,048 SQFT	–	–
REALLOCATED BUA (24%)	–	(+) 1,024 SQFT	(+) 1,024 SQFT
TOTAL BUA ALLOWED (24%)	1,630 SQFT	3,774 SQFT	3,668 SQFT

Figure 1. BUA Chart from Draft Plat (Exhibit D)

BUAA REQUIREMENTS

DPO 17.8.1 lists various Eligibility, Process, and Documentation requirements that apply to the BUA Averaging process. The table below provides a summary of requirements and whether the proposal meets the requirements.

BUA Averaging Requirements Summary		
	Requirement	Satisfied/Not Satisfied
B.	Uses: Eligible uses include projects featuring affordable housing or classified as Civic/Educational/Institutional uses	Satisfied – Habitat will construct three affordable townhome units on Receiving Lots
1.	Ownership: Only the parcel owners may apply and land not under direct owner control may not be included (i.e., right-of-way, etc.)	Satisfied – Habitat owns both Donating & Receiving Lots

2.	Pre-Existing Variance: Neither parcel may have received or require a variance.	Satisfied – Donating & Receiving Lots have not received and will not require a variance
3.	Location: Both parcels must be located in the Lake Norman Watershed and within the Town of Davidson’s planning jurisdiction.	Satisfied – Donating & Receiving Lots are in the Lake Norman Critical Watershed & within the Town of Davidson’s Planning Jurisdiction
4.	Transferability: A property in a more restricted watershed area shall not acquire BUA from a property in a less restricted watershed area.	Satisfied – Donating & Receiving Lots are in the same watershed area
5.	Overall Area: The cumulative BUA of all participating parcels shall not exceed the BUA that would be allowed if the parcels were developed separately.	Satisfied – Donating & Receiving Lots will comply with low density BUA requirements (max. 24% BUA)
6.	Buffers: All parcels must meet applicable watershed buffer requirements.	Satisfied – Donating & Receiving Lots comply with applicable buffer requirements
7.	Preservation: The donated area shall remain in an undisturbed vegetated or natural state; previously developed or graded lots must be revegetated according to DPO requirements; and, the donated area shall be irrevocable	Satisfied – Donated area will remain in an undisturbed vegetated or natural state per draft plat notes
8.	Required Features: Donated area that fronts a right-of-way must include park or public space amenities.	Satisfied – Donated area does not front a right-of-way
9.	Stormwater Design: All parcels must meet applicable DPO requirements.	Satisfied – Donating & Receiving Lots will meet applicable low-density development requirement
10.	Design: Built-upon areas must minimize water quality impacts.	Satisfied – BUA will minimize water quality impacts

STAFF RECOMMENDATION

Staff recommends approval of a BUA Averaging Certificate in accordance with DPO 17.8 for Donating Lot 955 Shearer Street, Davidson, NC 28036 (Mecklenburg County PID 00328248) to Receiving Lots 968 & 970 Shearer Street, Davidson, NC 28036 (Iredell County PIDs 4654255730.000 & 4654255735.000) for development of three affordable townhome units.

RESOURCES & ATTACHMENTS

- **Davidson Planning Ordinance (DPO):** www.townofdavidson.org/planningordinance
- **Exhibit A.** Shearer Street THs – BUA Averaging Application
- **Exhibit B.** Shearer Street THs – Survey of Existing Conditions
- **Exhibit C.** Shearer Street THs – Approved Townhome Development Concept
- **Exhibit D.** Shearer Street THs – BUA Averaging Plat (DRAFT)
- **Exhibit E.** Shearer Street THs – Metes and Bounds Description of Donated Area
- **Exhibit F.** Shearer Street THs – Habitat for Humanity Deed Restrictions



DENSITY AVERAGING FORM

DATE: 8/27/2025

Note: Applications will not be considered complete or processed until all required information has been provided, including a completed form, fee, and parcel documentation.

1. PARCEL INFORMATION

A. RECEIVING PARCEL

Owner Information

- Address: 968/970 Shearer Street
- Phone #: 980-408-1431
- Owner Name: Habitat for Humanity of the Charlotte Region, Inc.
- Email: JGraham@HabitatCLTRegion.org
- Applicant/Lot Owner's Signature: *J. Graham* 08/27/2025

Property Information

- Planning Area Designation: NC-1 (Neighborhood Center I) Parcel #: 4654-25-5730 & -5735 (Iredell)
- Watershed Overlay District: Lake Norman Critical Watershed
- Lot Size (Acres): 0.506 Acres
- Existing Built-Up-on-Area (BUA): 0 SF
- Proposed BUA: 7,300 SF
- Received BUA: 2,048 SF
- Has a watershed variance ever been granted for this parcel [Y/N]? NO

Director of Land Acquisition and Development
003-283-11 & -12 (Mecklenburg)

B. GIVING PARCEL

Owner Information

- Address: 955 Shearer Street
- Phone #: 980-408-1431
- Owner Name: Habitat for Humanity of the Charlotte Region, Inc.
- Email: JGraham@HabitatCLTRegion.org
- Applicant/Lot Owner's Signature: *J. Graham* 08/27/2025

Property Information

- Planning Area Designation: NC-1 (Neighborhood Center I) Parcel #: 003-282-48 (Mecklenburg)
- Watershed Overlay District: Lake Norman Critical Watershed
- Lot Size (Acres): 0.365 Acres
- Existing Built-Up-on-Area (BUA): 560 SF
- Proposed BUA: 560 SF
- Donated BUA: 2,048 SF
- Has a watershed variance ever been granted for this parcel [Y/N]? NO

Director of Land Acquisition and Development



2. DESCRIPTION OF REQUEST

C. PROPOSAL DESCRIPTION

Briefly describe the nature of this proposal, including the general development plan(s) for each parcel and whether the parcel(s) intend to utilize the low- or high-density option:

The development located at existing 968/970 Shearer Street will consist of a 3-unit townhome structure which will provide affordable housing to the area. The project will require a mitigation payment due to exceeding 10% BUA as part of the Yadkin Watershed District, as allowed for lots under 1 acre in size. With additional area granted from the giving parcel, the project will remain within low density with less than 24% BUA as part of the Lake Norman Critical Area Watershed.

D. METES & BOUNDS DESCRIPTION

Provide a metes and bounds description of the space(s) to remain undisturbed:

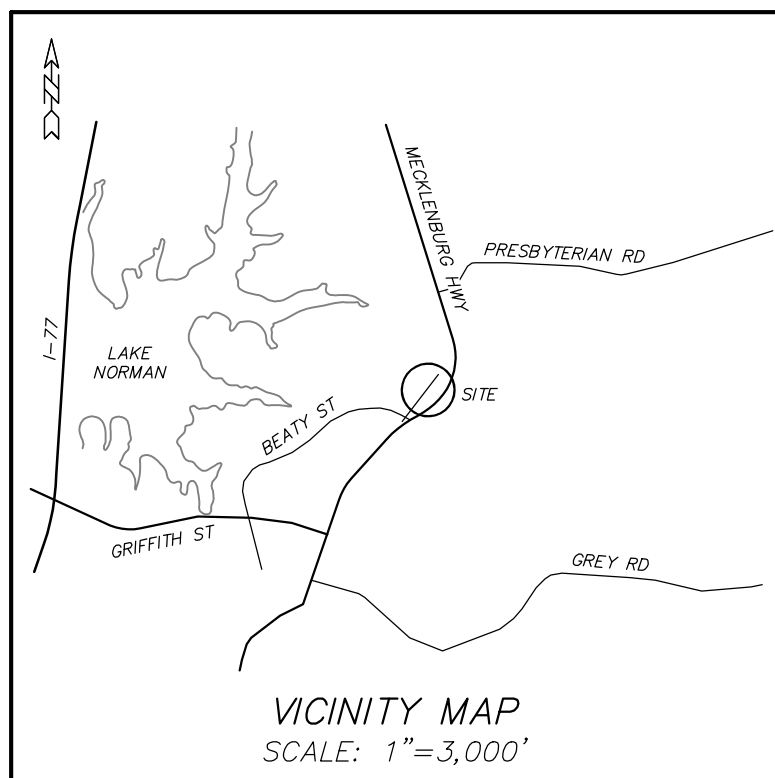
(The bearings herein are referenced to NC Grid North and the distances are ground feet)

BEGINNING at a pipe found having a North Carolina State Plane Coordinate of N:645,729.07 E:1,452,276.57 (NAD83/2011) (CF:0.99984789); thence with a bearing of S 40°15'31" W and a distance of 113.13' to a point; thence along the common line with Lot 9 as recorded in Map Book 36, Page 21 (Mecklenburg County Registry) with a bearing of N 48°28'28" W and a distance of 150.91' to a point; thence along the common line with Trane Technologies, LLC as recorded in Plat Book 76, Page 59 (Iredell County Registry) with a bearing of S 85°47'06" E and a distance of 186.59' to the point of BEGINNING, having an area of 0.196 acres (8,534 square feet) more or less, as shown on a survey by Carolina Surveyors, Inc.



3. RESOURCES

- E. **DAVIDSON PLANNING ORDINANCE:** *Section 17.8 Density Averaging provides an overview of the required materials and process and lists the conditions that must be fulfilled for participating parcels.*
- F. **CHARLOTTE-MECK. STORMWATER SERVICES WATER SUPPLY WATERSHED REGULATIONS:** *The county webpage contains an overview of various regulations that may affect parcels participating applying for a Density Averaging Certificate.*



LINE TYPE LEGEND

- BOUNDARY LINE
- TIE LINE
- RIGHT OF WAY
- APPROXIMATE RIGHT OF WAY (NOT SURVEYED)
- ADJOINING LINE (NOT SURVEYED)
- FENCE
- STORM DRAIN PIPE
- OVERHEAD ELECTRIC
- SANITARY SEWER PIPE
- UNDERGROUND ELECTRIC
- UNDERGROUND GAS
- UNDERGROUND TELECOMMUNICATIONS
- UNDERGROUND WATER
- UNDERGROUND UTILITY (TYPE UNKNOWN)

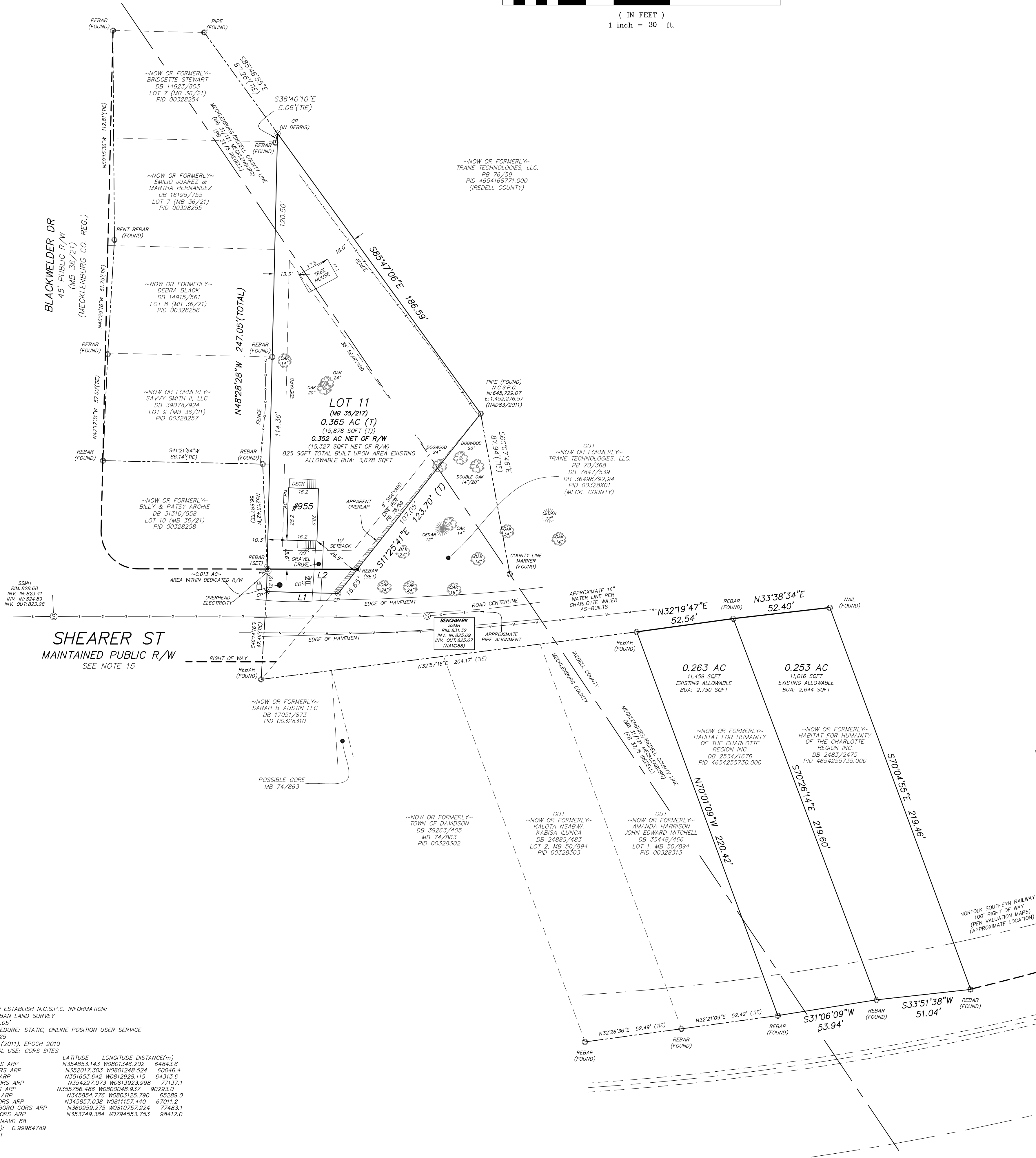
SYMBOL LEGEND

- SET MONUMENT (TYPE INDICATED)
- EXISTING MONUMENT (TYPE INDICATED)
- CALCULATED POINT
- WATER METER
- SANITARY SEWER MANHOLE
- DECIDUOUS TREE
- EVERGREEN TREE
- LIGHT POLE
- POWER/UTILITY POLE
- GUY WIRE
- DROP INLET
- SEWER CLEAN OUT

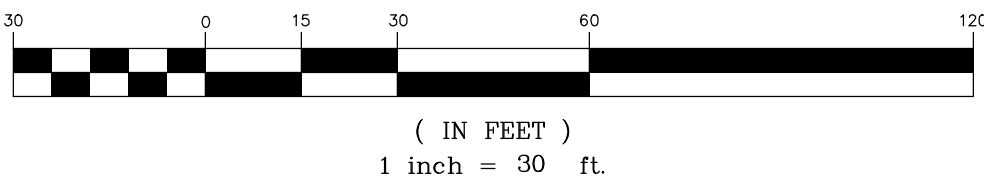
NOTES:

- IRON PINS SET AT ALL CORNERS UNLESS OTHERWISE NOTED.
- PROPERTY ZONED: MECKLENBURG COUNTY: NC-1
REDELL COUNTY: EMPCAT1
PROPERTY LOCATED WITHIN THE LAKE NORMAN CRITICAL AREA (CA)
BUILT UPON AREA: LOW DENSITY S24X
(SETBACKS & ZONING MATTERS ARE SUBJECT TO INTERPRETATION BY LOCAL MUNICIPALITIES)
- TAX PARCEL NUMBERS AS SHOWN.
- DEED REFERENCE AS SHOWN.
- BOUNDARY SURVEY ONLY THROUGH POINTS AS SHOWN.
- THIS PROPERTY IS LOCATED WITHIN AN AREA HAVING A ZONE DESIGNATION X BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA), ON FLOOD INSURANCE RATE MAP (FIRM) NO. 3710465400L, WITH A DATE OF IDENTIFICATION OF 11/16/2018.
- THIS PROPERTY MAY BE SUBJECT TO ADDITIONAL RECORDED OR UNRECORDED EASEMENTS, SETBACKS AND BUFFERS INCLUDING THOSE WITHIN THE APPLICABLE UNIFIED DEVELOPMENT ORDINANCE (UDO), RIGHTS-OF-WAY, IMPERVIOUS AREAS & BUILT UPON AREA (BUA) RESTRICTIONS, AND/OR RESTRICTIVE COVENANTS, OTHER THAN SHOWN, SURVEY MADE WITHOUT THE BENEFIT OF A TITLE EXAMINATION.
- AREA COMPUTED BY COORDINATE METHOD.
- NO NCGS MONUMENT FOUND WITHIN 2000'.
- UTILITY LOCATIONS SHOWN ARE LOCATED BASED ON SITE CONDITIONS AND MARKINGS AT THE TIME OF SURVEY. PIPES LABELED AS "DESTINATION UNKNOWN" (DU) ARE SHOWN BASED ON BEST OBSERVED EVIDENCE AT THE TIME OF SURVEY. IT IS RECOMMENDED ALL CRITICAL UTILITY CONNECTIONS AND CROSSINGS BE VERIFIED PRIOR TO FINAL DESIGN AND/OR CONSTRUCTION. CONTRACTORS ARE RESPONSIBLE TO HAVE ALL UTILITIES ACCURATELY MARKED PRIOR TO CONSTRUCTION.
- ANY CONSTRUCTION OR USE WITHIN ANY DELINEATED FLOOD AREA IS SUBJECT TO THE RESTRICTIONS IMPOSED BY ANY APPLICABLE ORDINANCES OR REGULATIONS.
- OFFSITE ADJOINER LINES AND RIGHT-OF-WAY LINES SHOWN AS DASHED ARE APPROXIMATE AND ARE FOR ILLUSTRATIVE PURPOSES ONLY.
- LINES SHOWN REPRESENTING FENCES AND WALLS ARE MEASURED FROM THE APPROXIMATE CENTERLINE AND DO NOT ACCOUNT FOR THE THICKNESS, PLUMBNESS OR MEANDER OF THE FENCE UNLESS OTHERWISE STATED.
- DISTANCES SHOWN ARE GROUND U.S. SURVEY FEET UNLESS OTHERWISE NOTED.
- NO RECORD OF RIGHT OF WAY FOUND, PER TOWN OF DAVIDSON POWELL BILL MAP. SHEARER STREET IS MAINTAINED BY THE TOWN OF DAVIDSON TO THE COUNTY LINE.

THE FOLLOWING WAS USED TO ESTABLISH N.C.S.P.C. INFORMATION:
(1) CLASS OF SURVEY: A-URBAN LAND SURVEY
(2) POSITIONAL ACCURACY: 0.05'
(3) TYPE OF GPS FIELD PROCEDURE: STATIC, ONLINE POSITION USER SERVICE
(4) DATES OF SURVEY: 6/9/25
(5) DATUM/EPOCH: NAD 83 (2011), EPOCH 2010
(6) PUBLISHED/FIXED-CONTROL USE: CORS SITES
PID DESIGNATION
D02757 NCLE LEWISTON CORS ARP LATITUDE LONGITUDE DISTANCE(m)
D02755 NCAL ALBEMARLE CORS ARP N354853.143 W0801346.292 64843.6
D07404 NCNM SHELLEY CORS ARP N352017.303 W0801248.524 60046.4
D07404 NCNM SHELLEY CORS ARP N351653.642 W0812928.115 64313.6
D07137 NCWG MORGANTON CORS ARP N354227.073 W0813923.998 77137.1
A14198 HPT HIGH POINT CORS ARP N355756.486 W0800048.937 90293.0
D02638 SCHW WHITE ROSE CORS ARP N348584.776 W0803125.790 63289.0
D02638 SCHW WHITE ROSE CORS ARP N345857.038 W081157.440 67011.2
D14047 NCNW NORTH WILKESBORO CORS ARP N360599.275 W0810757.224 77483.1
D16900 NCZO ASHEBORO 2 CORS ARP N353749.384 W0794553.753 98412.0
(7) GEOD MODEL: GEOD18; NAVD 88
(8) COMBINED GRID FACTOR(S): 0.99984789
(9) UNITS: U.S. SURVEY FEET



GRAPHIC SCALE



21 NCAC 56 .1604: MAP CERTIFICATION

I CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (TITLE REFERENCES AS SHOWN ON PLAT); THAT THE BOUNDARIES NOT SURVEYED ARE INDICATED AS DRAWN FROM TITLE REFERENCES AS SHOWN ON PLAT; THAT THE RATIO OF PRECISION OR POSITIONAL ACCURACY MEETS OR EXCEEDS 1:10,000; AND THAT THIS MAP MEETS THE REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA (21 NCAC 56 .1600).

THIS _____ DAY OF _____, 20____

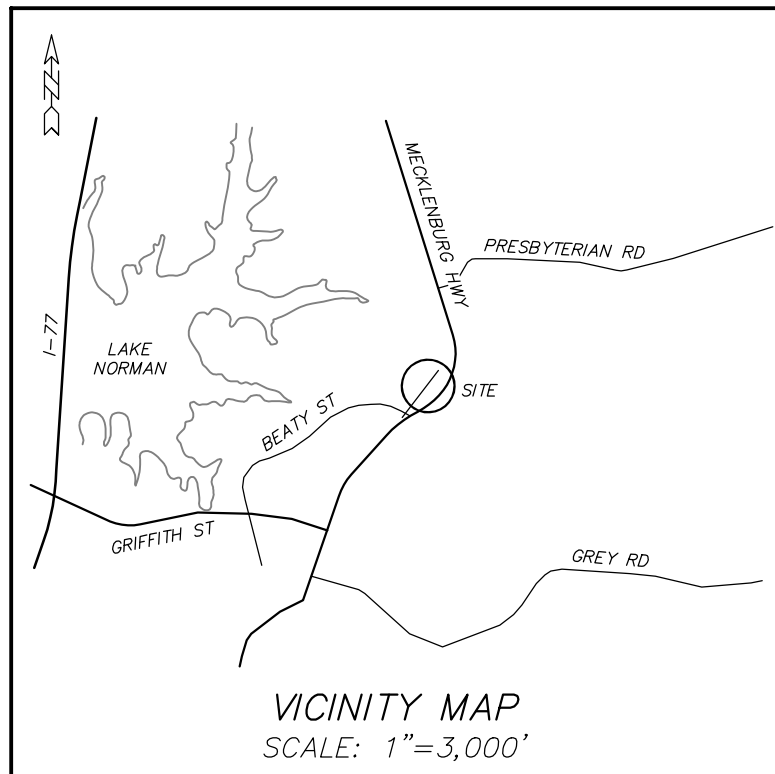
PROFESSIONAL LAND SURVEYOR

CAROLINA SURVEYORS, INC.

P.O. BOX 267 PINEVILLE, N.C. 28134 - 0267
THOMAS E. WHITE, NCPLS & SCPLS 704-889-7601
TWS@CAROLINASI.COM
CERTIFICATE OF AUTHORIZATION N.C.C-1242 SC-886

A BOUNDARY & PHYSICAL SURVEY SHOWING PROPERTY ALONG
SHEARER STREET
SURVEYED FOR: HABITAT FOR HUMANITY
OF THE CHARLOTTE REGION
TOTAL AREA: 0.881 ACRES
TOWN OF DAVIDSON
REDELL COUNTY & MECKLENBURG COUNTY
NORTH CAROLINA

LINE TABLE		
LINE	BEARING	LENGTH
L1	S41°39'13"W	38.57'
L2	N40°15'31"E	48.61'



- LINE TYPE LEGEND
- BOUNDARY LINE
 - TIE LINE
 - RIGHT OF WAY
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 - ADJOINING LINE (NOT SURVEYED)
 - FENCE
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 - SANITARY SEWER PIPE
 - UNDERGROUND ELECTRIC
 - UNDERGROUND GAS
 - UNDERGROUND TELECOMMUNICATIONS
 - UNDERGROUND WATER
 - UNDERGROUND UTILITY (TYPE UNKNOWN)

- SYMBOL LEGEND
- SET MONUMENT (TYPE INDICATED)
 - EXISTING MONUMENT (TYPE INDICATED)
 - CALCULATED POINT
 - WATER METER
 - SANITARY SEWER MANHOLE
 - DECIDUOUS TREE
 - EVERGREEN TREE
 - LIGHT POLE
 - POWER/UTILITY POLE
 - GUY WIRE
 - DROP INLET
 - SEWER CLEAN OUT

NOTES:

- IRON PINS SET AT ALL CORNERS UNLESS OTHERWISE NOTED.
- PROPERTY ZONED:
MECKLENBURG COUNTY: NC-1
IREDELL COUNTY: EMP/CAT
PROPERTY LOCATED WITHIN THE LAKE NORMAN CRITICAL AREA (CA)
BUILT UPON AREA: LOW DENSITY #248
(SETBACKS & ZONING MATTERS ARE SUBJECT TO INTERPRETATION BY LOCAL MUNICIPALITIES)
- TAX PARCEL NUMBERS AS SHOWN.
- DEED REFERENCE AS SHOWN.
- BOUNDARY SURVEY ONLY THROUGH POINTS AS SHOWN.
- THIS PROPERTY IS LOCATED WITHIN AN AREA HAVING A ZONE DESIGNATION X BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA), ON FLOOD INSURANCE RATE MAP (FIRM) NO. 3710465400L, WITH A DATE OF IDENTIFICATION OF 11/16/2018.
- THIS PROPERTY MAY BE SUBJECT TO ADDITIONAL RECORDED OR UNRECORDED EASEMENTS, SETBACKS AND BUFFERS INCLUDING THOSE WITHIN THE APPLICABLE UNITED DEVELOPMENT ORDINANCE (UDO), RIGHTS-OF-WAY, IMPERVIOUS AREAS & BUILT UPON AREA (BUA) RESTRICTIONS, AND/OR RESTRICTIVE COVENANTS, OTHER THAN SHOWN. SURVEY MADE WITHOUT THE BENEFIT OF A TITLE EXAMINATION.
- AREA COMPUTED BY COORDINATE METHOD.
- NO NCGS MONUMENT FOUND WITHIN 2000'.
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- LINES SHOWN REPRESENTING FENCES AND WALLS ARE MEASURED FROM THE APPROXIMATE CENTERLINE AND DO NOT ACCOUNT FOR THE THICKNESS, PLUMBNESS OR MEANDER OF THE FENCE UNLESS OTHERWISE STATED.
- DISTANCES SHOWN ARE GROUND U.S. SURVEY FEET UNLESS OTHERWISE NOTED.
- NO RECORD OF RIGHT OF WAY FOUND. PER TOWN OF DAVIDSON POWELL BILL MAP, SHEARER STREET IS MAINTAINED BY THE TOWN OF DAVIDSON TO THE COUNTY LINE.
- THE NATURAL AREA WILL REMAIN UNDISTURBED IN PERPETUITY.

THE FOLLOWING WAS USED TO ESTABLISH N.C.S.P.C. INFORMATION:
(1) CLASS OF SURVEY: A-URBAN LAND SURVEY
(2) POSITIONAL ACCURACY: 0.06"
(3) TYPE OF GPS FIELD PROCEDURE: STATIC, ONLINE POSITION USER SERVICE
(4) DATES OF SURVEY: 6/9/25
(5) DATUM/EPOCH: NAD 83 (2011), EPOCH 2010
(6) PUBLISHED/FIXED-CONTROL, USE: CORS SITES

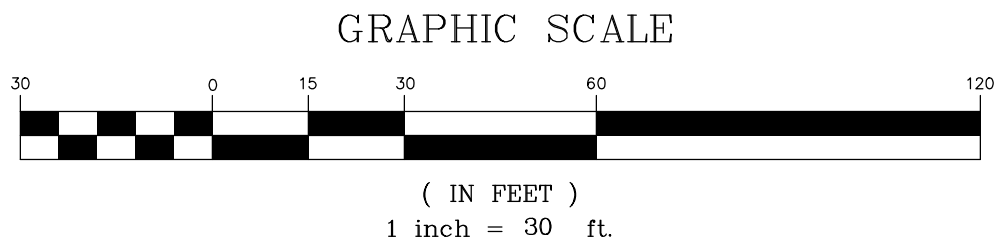
PID	DESIGNATION	LATITUDE	LONGITUDE	DISTANCE(ft)
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025755	NCAL ALBEMARLE CORS ARP	N352017.303	W0801248.524	60046.4
027404	NCNM SHELLEY CORS ARP	N351653.642	W0812981.115	64313.6
047137	NCMG MORGANTON CORS ARP	N354227.073	W0813923.998	77137.1
041980	HPT HIGH POINT CORS ARP	N355756.486	W0800048.937	90293.0
053680	NCNM MONROE CORS ARP	N348854.776	W0803125.790	63289.0
020638	NCWR WHITE ROSE CORS ARP	N345857.038	W081157.440	67011.2
044047	NCNW NORTH WILKESBORO CORS ARP	N360599.275	W0810757.224	77483.1
046900	NCZO ASHEBORO 2 CORS ARP	N333749.384	W0794553.753	98412.0

(7) GEOD MODEL: GEOD18; NAVD 88
(8) COMBINED GRID FACTOR(S): 0.99984789
(9) UNITS: U.S. SURVEY FEET

THE PURPOSE OF THIS PLAT IS TO REALLOCATE 6,534 SQUARE FEET OF BUILT UPON AREA LOCATED ON DONOR PID 00328248 (MECKLENBURG COUNTY) TO RECEIVING PID 4654255730.000 & PID 4654255735.000 (IREDELL COUNTY). PARCELS ARE LOCATED WITHIN THE SAME WATERSHED. THE DONATED AREA IS TO REMAIN IN AN UNDISTURBED VEGETATED STATE IN PERPETUITY.

SHEARER ST
MAINTAINED PUBLIC R/W
SEE NOTE 15

BLACKWELDER DR
45' PUBLIC R/W
(MB 36/21)
(MECKLENBURG CO. REC.)



THIS PROPERTY IS LOCATED WITHIN THE PUBLIC WATER SUPPLY WATERSHED. DEVELOPMENT RESTRICTIONS MAY APPLY. I CERTIFY THAT THE PLAT HEREON COMPLIES WITH THE WATERSHED PROTECTION ORDINANCE AND IS APPROVED BY THE TOWN OF DAVIDSON FOR RECORDING AT THE MECKLENBURG COUNTY REGISTER OF DEEDS OFFICE.

DATE: _____ WATERSHED ADMINISTRATOR, TOWN OF DAVIDSON

I HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREIN, WHICH IS LOCATED IN THE SUBDIVISION JURISDICTION OF THE TOWN OF DAVIDSON, AND THAT I HEREBY ADOPT THIS PLAN OF SUBDIVISION WITH MY FREE CONSENT, ESTABLISH MINIMUM BUILDING SETBACK LINES, PRESERVE AND PROTECT ALL MATURE AND SPECIMENT TREES AS DEFINED BY THE DAVIDSON PLANNING ORDINANCE IN THE TREE AND ROOT PROTECTION AREA, PLANT SUPPLEMENTARY TREES AND IF REQUIRED, AND DEDICATE ALL STREETS, ALLEYS, WALKS, PARKS, AND OTHER SITES AND EASEMENTS, TO PUBLIC OR PRIVATE USES AS NOTED. FURTHERMORE, I HEREBY DEDICATE ALL SEWER, STORM SEWER, AND WATER LINES THAT ARE LOCATED IN PUBLIC UTILITY EASEMENTS OR RIGHTS-OF-WAY TO THE TOWN OF DAVIDSON AND THE CHARLOTTE-MECKLENBURG UTILITY DEPARTMENT.

DATE: _____ OWNER(S)

I, REVIEW OFFICER OF MECKLENBURG COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

REVIEW OFFICER: _____ DATE: _____

THIS PLAT REPRESENTS A TRANSFER OF IMPERVIOUS RIGHTS THROUGH A DEDICATED UNDISTURBED NATURAL AREA FOR PROPERTIES WITHIN THE JURISDICTION OF THE TOWN OF DAVIDSON THAT MAY OR MAY NOT RESULT IN THE CREATION OF TRACTS OF LAND THAT ARE COMPLIANT WITH THE DAVIDSON PLANNING ORDINANCE (DPO). THIS PARCEL IS SUBJECT TO THE DPO DENSITY IMPERVIOUS STANDARDS. ANY CHANGE TO THE DEVELOPMENT PROPOSAL AFFECTING THE APPROVED IMPERVIOUS ALLOWANCE REQUIRES AMENDMENT TO THE EXISTING DENSITY AVERAGING CERTIFICATE AND APPROVAL BY THE DAVIDSON BOARD OF ADJUSTMENT. THE PLANNING DIRECTOR RESERVES THE RIGHT TO MAKE PERIODIC SITE INSPECTIONS TO ENSURE COMPLIANCE WITH THESE CONDITIONS.

PLANNING DIRECTOR: _____ DATE: _____

I, THOMAS E. WHITE, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN AS SHOWN, ETC.). THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION AS REFERENCED HEREON. THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, LICENSE NUMBER, AND SEAL, THIS DAY OF 20.

NCPLS #L-4689

	PID 00328248	PID 4654255730.000	PID 4654255735.000
EXISTING LOT AREA	15,327 SQFT	11,459 SQFT	11,016 SQFT
EXISTING BUA ALLOWED (24%)	3,678 SQFT	2,750 SQFT	2,644 SQFT
UNDISTURBED NATURAL AREA	6,534 SQFT	-	-
UNDISTURBED NATURAL AREA BUA (24%)	(-) 2,048 SQFT	-	-
REALLOCATED BUA (24%)	-	(+) 1,024 SQFT	(+) 1,024 SQFT
TOTAL BUA ALLOWED (24%)	1,630 SQFT	3,774 SQFT	3,668 SQFT

UNDISTURBED NATURAL AREA
BEGINNING AT A PIPE FOUND HAVING A NORTH CAROLINA STATE PLANE COORDINATE OF N:645,729.07 E:1,452,276.57 (NAD83/2011); THENCE WITH A BEARING OF S 40°15'31" W AND A DISTANCE OF 113.13' TO A POINT; THENCE ALONG THE COMMON LINE WITH LOT 9 AS RECORDED IN MAP BOOK 36, PAGE 21 (MECKLENBURG COUNTY REGISTRY) WITH A BEARING OF N 48°28'28" W AND A DISTANCE OF 150.91' TO A POINT; THENCE ALONG THE COMMON LINE WITH TRANE TECHNOLOGIES, LLC AS RECORDED IN PLAT BOOK 76, PAGE 59 (IREDELL COUNTY REGISTRY) WITH A BEARING OF S 85°47'06" E AND A DISTANCE OF 186.59' TO THE POINT OF BEGINNING, HAVING AN AREA OF 0.196 ACRES (6,534 SQUARE FEET) MORE OR LESS.

LINE TABLE		
LINE	BEARING	LENGTH
L1	S41°39'13"W	38.57'
L2	N40°15'31"E	48.61'

Preliminary Plat
Not for recordation,
conveyances, or sales

CAROLINA SURVEYORS, INC.

P.O. BOX 267 PINEVILLE, N.C. 28134-0267
THOMAS E. WHITE, NCPLS & SCPLS 704-889-7601
TEW@CAROLINASI.COM
CERTIFICATE OF AUTHORIZATION N.C.C-1242 SC-886

A BUILT UPON AREA REALLOCATION PLAT SHOWING PROPERTY ALONG

SHEARER STREET

OWNER: HABITAT FOR HUMANITY
OF THE CHARLOTTE REGION
TOTAL AREA: 0.881 ACRES

TOWN OF DAVIDSON
MECKLENBURG COUNTY
NORTH CAROLINA

Shearer Street BUA Reallocation

(The bearings herein are referenced to NC Grid North and the distances are ground feet)

BEGINNING at a pipe found having a North Carolina State Plane Coordinate of N:645,729.07 E:1,452,276.57 (NAD83/2011) (CF:0.99984789); thence with a bearing of S 40°15'31" W and a distance of 113.13' to a point; thence along the common line with Lot 9 as recorded in Map Book 36, Page 21 (Mecklenburg County Registry) with a bearing of N 48°28'28" W and a distance of 150.91' to a point; thence along the common line with Trane Technologies, LLC as recorded in Plat Book 76, Page 59 (Iredell County Registry) with a bearing of S 85°47'06" E and a distance of 186.59' to the point of BEGINNING, having an area of 0.196 acres (8,534 square feet) more or less, as shown on a survey by Carolina Surveyors, Inc.

EXHIBIT B

STATE OF NORTH CAROLINA

**Habitat for Humanity of the Charlotte Region,
Inc.**

COUNTY OF MECKLENBURG

**Declaration of Covenants, Conditions, and
Restrictions**

Habitat for Humanity of the Charlotte Region, Inc. ("Habitat") is the Declarant.

RESTRICTIONS

I. Residential use of property

All lots shall be used for residential purposes only, and no structure shall be erected, placed or permitted to remain on any lot other than one single family dwelling and any other outbuilding or structure customarily incident to such residential use; subject, however, to the provisions set forth herein.

No lot shall be used for advertising or conducting a business. No lot shall be used for the purpose of generating rental income. These restrictions do not prohibit Habitat from using the lot for such purposes.

II. Building Line Requirements

- a. All permanent structures must adhere to the minimum building setback lines of city building code.
- b. Any existing structure that does not comply with Habitat established restrictions may remain as is, but may not be altered to further violate the setback requirements. In the event of unintentional violations Habitat would have the right to change or waive the restrictions as long as those changes or waivers don't violate the building codes for Mecklenburg County.
- c. No detached outdoor structure including storage sheds may be located closer than 3 feet to any side or rear lot line, and the structure must be located to the rear of the house.

III. Use of Outbuildings Outdoor Storage Buildings and Similar Structures

No temporary structure shall be allowed to remain on the property. No trailer mobile home, tent, garage, barn or other similar structure shall be used as a residence temporarily or permanently. Outdoor storage buildings (sheds) must be structurally sound and outward appearance must be consistent with the house located on the lot, including the approximate color of vinyl siding on the house.

IV. Parking

No parking is permitted on the property except in designated areas as identified by pavement or gravel and be an extension of original driveway. If gravel is used it must be contained by borders. No parking is allowed on the sidewalk. No inoperable vehicle is allowed to remain on the property for more than 30 days. This includes vehicles with expired tags and/or inspection stickers.

V. Clotheslines

Clotheslines in the front yard are prohibited. Fences and porch railings cannot be used as clotheslines.

VI. Animals

All animals kept on the property must be maintained in accordance with local ordinances.

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VII. Signs

No advertising, business or commercial signs of any type or kind shall be erected, placed or permitted to remain upon or above any Lot with the exceptions of : (i) a single sign "For Sale", which sign shall not exceed two feet by two feet in dimension and shall only refer to the premises on which displayed, (ii) temporary political signs which shall not exceed five square feet in dimension, and (iii) permanent and temporary signs of Habitat on or above any unsold lot.

VIII. Recreational or Exercise Equipment

All swing sets and similar recreational and exercise equipment must be located to the rear of the main dwelling. Basketball goals may be located at paved surfaces on the side or rear of the property within Lot line.

IX. Outside Furniture

No furniture designed specifically for indoor use is allowed on the exterior of the house. Exterior furniture designed for outside areas may be placed in the outside areas of any Lot.

X. Bulky Items

Any item that cannot be disposed of properly in a closed container must be coordinated with the City of Charlotte for special pick-up and must be placed at the street neatly no more than 24 hours in advance of pick-up date.

XI. Nuisances, Unsightly Materials and Maintenance of Lot

All lots must be maintained in accordance with local ordinances.

XII. Antennas; Aerials; Satellite Dishes

No antenna, satellite dish or other reception device having a diameter or diagonal measurement greater than 24 inches shall be installed on any lot. The antenna, satellite dish or other reception device of appropriate size shall be located only on that portion of the structure on the lot to the rear of the house, which is least visible from public view.

XIII. Walls, Fences and Hedges

No fences higher than six (6) feet are permitted on any lot. Fences are only permitted along the perimeter beginning at the front corners of the house, any porch structure excluded, to each side lot line and extending to the rear perimeter of the lot. This restriction shall run with the land and be binding upon Grantee and its successors and assigns.

XIV. Garbage Cans, Lawnmowers Etc.

No garbage can, lawnmower or similar equipment may be kept in the front yard of any lot. Any garbage cans, lawnmowers or similar equipment maintained, kept or stored on the side of any house on any lot shall be screened by adequate planting or fencing so as to conceal the same from the view of neighboring owners and streets.

XV. Subdivision of Lot

No lot may be further subdivided into any smaller lot.

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XVI. Changing Elevations

No owner shall excavate or extract earth from the property for any business or commercial purpose. No elevation changes shall be permitted which materially affect storm water runoff or the surface grade of surrounding lots.

XVII. Non-Discrimination

During such time as the property described herein is used for a purpose for which assistance under the Housing Opportunity Program Extension Act of 1996, P.L. 104-120, was provided or for another purpose involving the provision of similar services or benefits, then no person having an interest in this property shall refuse services for or accommodation or other benefits to any person with respect to the property on account of the person's race, color, creed (religion), sex or national origin or otherwise engage in discrimination conduct of any kind on account of a person's race, color, creed (religion), sex or national origin with respect to the property. This covenant shall run with the land.

GENERAL PROVISIONS

Covenants Running with the Land

All provisions of this Declaration shall be construed to be covenants running with the land and with every part thereof and interest therein, and every owner or any other person or legal entity claiming an interest in any lot, and his heirs, executors, administrators, successors and assigns, shall be bound by all of the provisions of this Declaration.

Effective Period

The covenants and restrictions of this Declaration shall run with and bind with the land for a term of forty-five (45) years from the date this Declaration. This 45 year term will restart with each sale, transfer, or conveyance of the Property.

Severability

In the event that any covenant or restriction of this Declaration shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render the Declaration unenforceable or invalid as a whole, and in such event, such revision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions

Affordability Period

For a period of fifteen (15) years (the "Affordability Period") the Property shall be sold only to households with incomes of eighty percent (80%) or less of Mecklenburg County area's median income under the affordability guidelines as published and amended from time to time by HUD, or other reasonably equivalent data in the event such reports are now longer issued.

Shared Appreciation:

In the event the property shall be sold (including, without limitation, any foreclosure sale, or transfer by deed in lieu of foreclosure, or sale to satisfy a judgment lien, tax lien or assessment lien, or any similar proceeding), refinanced or otherwise encumbered by Grantee, there shall be due and payable to Grantor, in addition to the then unpaid principal balance under the Notes (as defined below) and any other then unpaid sums secured by the property, a share of the Appreciation in Value (as defined below) of the property as interest hereunder.

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Such share and such Appreciation in Value shall be computed as follows:

a) From the proceeds of sale net of normal sales and closing costs or from the proceeds of a new mortgage loan shall be subtracted the ownership basis of Grantee, which shall be the sum of the initial purchase price of the property to Grantee and the cost of such improvements as shall be approved in writing by Grantor and paid for by Grantee. The difference, if any, is the Appreciation in Value. Notwithstanding the foregoing, the entire proceeds of any secondary or junior mortgage loan shall be deemed Appreciation in Value.

b) If such a sale, refinancing or encumbrancing shall occur within five years from the date of the Deed to which this exhibit is attached, all of such Appreciation in Value shall be payable to Grantor. After five years from the date of said Deed, Grantee shall be entitled to retain that percentage of the Appreciate in Value, if any, equal to 4% per full year of ownership. For example, if ownership has been held for 10 full years from the date of the Deed to which this exhibit is attached, Grantee shall retain twenty percent (20%) of the Appreciation in Value. The balance of the Appreciation in Value shall be due and payable to Grantor and any remaining proceeds of sale (after payment of the balance of the Notes) shall be retained by Grantee or otherwise disbursed in accordance with applicable law.

ENFORCEMENT

Right to Enforcement

Habitat shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Grantor's Right of First Purchase

At all times from the date of this Declaration, Habitat shall have the first right and option to purchase the Property for the current fair market value as determined by an appraisal report prepared by an independent appraiser and obtained by Habitat within thirty (30) calendar days of receiving written notice of Owner's intent to transfer. Within a period of sixty (60) calendar days after said notice is sent by the Owner, Habitat shall either complete the purchase of the Property, or issue a conditional waiver of its right to purchase. In the event Habitat declines to exercise its right of first purchase, then Owner is free to offer the Property for sale to third Parties in accordance with the Habitat's conditional waiver.

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MEMO

Date: 09/19/2025
To: Board of Adjustment
From: Andrew Golden, Transportation Planner
Re: 514 Walnut Street – Variance Request for Accessory Structure Location

1. INTRODUCTION

APPLICANT INFO

- **Applicant:** James Davis
- **Owners:** James Davis & Mary Abernethy
- **Location:** 514 Walnut St, Davidson NC 28036, Parcel: 00705130
- **Area:** 0.181 Acres
- **Planning Area:** Village Infill, Green Overlay District

The subject site(s) is currently occupied by a single-family home. James Davis (applicant) owns the single-family detached house at 514 Walnut St, Davidson, NC (property).

2. TIMELINE

July 14, 2022: Mr. Davis applied for a pool permit. The permit was approved under the conditions that “pool equipment may not encroach into setbacks” (**Exhibit B**).

August 1, 2022: Mr. Davis argued the definition of a structure, as defined by the Davidson Planning Ordinance (DPO), was not applicable to pool equipment. Mr. Golden then explained to him why pool equipment is a structure and is therefore not allowed to encroach into setbacks. Mr. Davis complied with the determination (**Exhibit C**).

August 8, 2022: Mr. Davis reached out to the Planning Department with a sketch of a fireplace that he described “becomes part of the fence” and asked for staff input (**Exhibit D**). Mr. Golden responded via phone that he could not say if the fireplace would meet DPO regulations based on the sketch provided.

2023: Construction began on a pizza oven/fireplace/outdoor cooking area (“Outdoor Kitchen”), later categorized by the Planning Department as an accessory structure. It was built into the side yard setback, 10 - 12 inches from the neighbor’s property line at 510 Walnut Street. The Outdoor Kitchen is approximately 3.5 ft wide x 20 ft long x 15 ft high (at highest point) (**Exhibit E, Exhibit F, Exhibit G**).

April 20, 2023: John Hadden, the adjoining neighbor at 510 Walnut St, Parcel 00705112, sent an email to Jason Burdette, Planning Director, expressing concerns about the ongoing projects on the property and their proximity to the property line (**Exhibit H**).

April 24, 2023: Mr. Hadden sent a letter to Mr. Davis where he expressed concern that the new porch location would not comply with the DPO five-foot setback requirement for accessory structures, placing the porch immediately adjacent to his property (**Exhibit I**). That same day, Mr. Hadden also sent a written letter to Mr. Burdette, upset that the project was avoiding the Town's setback rules (**Exhibit J**).

June 14, 2023: After visiting the site with Ms. Yvonne Janssen, Planning Technician, at the request of Mr. Davis, Mr. Burdette sent an email to Mr. Davis informing him that a complaint had been received and asked for a summary and scope of work planned and underway so that staff could determine if a violation had occurred (**Exhibit K**).

July 7, 2023: Mr. Davis submitted a scope and summary of work planned and underway (**Exhibit L**).

July 11, 2023: Mr. Burdette issued a Notice of Violation (NOV) per NC General Statutes 160D-404 (**Exhibit M**).

July 14, 2023: After visiting the site with Ms. Janssen at the request of Mr. Davis, Mr. Burdette issued an Amended Notice of Violation per NC General Statutes 160D-404 (**Exhibit N**).

August 29, 2023: Mr. Davis filed an amended appeal to the amended Notice of Violation (**Exhibit O**) and amended variance requests for three separate variances, including the Outdoor Kitchen (**Exhibit A**).

April 29, 2024: The Board of Adjustment held a hearing for an Appeal of an Administrative Decision during which the second variance request was withdrawn. A separate hearing followed for the third variance request, but the Board of Adjustment failed to address the first variance request for relief from DPO Section 4.5.8.C.4 and 4.3.1.D.1 for the Outdoor Kitchen (**Exhibit P**).

May 20, 2024: The Board issued Findings and Conclusions for the Appeal. In the findings they determined that the Outdoor Kitchen was an accessory structure, that the Planning Director was correct in his determination, and that the Outdoor Kitchen would therefore need to be removed (**Exhibit Q**).

June 25, 2024: Mr. Davis filed an appeal to the Superior Court of Mecklenburg County (**Exhibit R**). The Third Claim for Relief addressed the BOA's failure to render a decision on the variance request for the existing Outdoor Kitchen.

August 15, 2025: The Superior Court of Mecklenburg County issued a consent order remanding the original variance request to the Davidson Board of Adjustment for review and decision (**Exhibit S**).

DPO 14.21 outlines variance procedures (**Exhibit DD**).

3. APPLICANT'S REQUEST

The applicant seeks a variance from the requirements of both DPO 4.5.8.C.4 and DPO 4.3.1.D.1 for the Outdoor Kitchen as defined as either a structure or a fence/wall so that they may be permitted to keep the height and location within the side yard setback.

The applicant claims that strict interpretation of the DPO in relation to the Outdoor Kitchen would create unnecessary hardship in the form of emotional distress, devastating mental anguish, financial stress, create a daunting and dangerous task of removal, and render the backyard unusable for the near future. The applicant claims the hardship is peculiar to the property due to the Town's previous zoning actions that created a significantly smaller lot. They also state that it is due to restrictive side setback rules that require the total of both side setbacks in the Village Infill Planning Area to be equal to or greater than 30% of the lot width at the

front building line. (Note: Accessory structure location is not regulated by the 30% side yard setbacks. Accessory structures are allowed to encroach into side yard setbacks up to five feet from the property line). The applicant claims the hardship is not a result of the applicant's actions as he reasonably and appropriately relied on licensed general contractor's knowledge and expertise, and that the variance request is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured, and substantial justice is achieved.

Therefore, the applicant concluded that a variance is the only solution to keep the Outdoor Kitchen.

4. RELEVANT ORDINANCE STANDARDS

DPO Section 4.5.8.C.4, "Accessory Structures – Location of Accessory Structure" states:

"In the Rural Reserve and Rural Planning Areas, any accessory structure over 900 square feet shall have a minimum 15 feet side yard setback and a minimum 30 feet rear yard setback. In all other circumstances, the minimum side yard setback shall be five feet and the minimum rear yard setback shall be five feet."

The property is not located in the Rural Reserve or Rural Planning Area; thus, the five-foot setback standard is applicable.

DPO Section 4.3.1.D.1, "General Site Design Requirements – Fences, Hedges, and Garden Walls" states:

"All Planning Areas: Fences, hedges, and/or garden walls located in front of the building line shall be no greater than three feet in height and fences shall be no more than two-thirds solid. Fences, hedges, and/or garden walls located behind the front building line shall be no greater than six feet in height. Chain link fencing is allowed in rear yards only. Hedges, garden walls, or fences may be built on property lines or as the continuation of building walls. For buildings on corner lots, both facades fronting a street shall be considered a front building line for purposes of fencing, hedges, and garden walls."

If the Outdoor Kitchen were to be considered a fence, it exceeds the allowable height. (Note: the Board of Adjustment has already determined that the Outdoor Kitchen is considered an Accessory Structure).

5. STATUTE REQUIREMENTS

The applicant filed a variance request per DPO Section 14.21. This section grants the Board of Adjustment the right to hear and decide requests for variances from the DPO pursuant to these regulations and in accordance with NCGS 160D-705(d).

To grant a variance for the applicant, the Board of Adjustment must determine, based on the evidence provided, that **all four findings of fact are in the affirmative:**

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 shall not be regarded as 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.

NCGS 160D-705(d) also indicates that “appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.”

6. CONCLUSIONS & PROCESS

The Board of Adjustment issued findings that determined the majority of the Outdoor Kitchen (the section in question) is an accessory structure, was constructed within the setback, and is therefore in violation of the DPO. A small portion was determined to be a wall and was permitted to stay **(Exhibit Q)**.

Accessory structures that meet or exceed 12 ft in any dimension require a building permit. No building permit application was ever received for the Outdoor Kitchen.

Accessory structure location is not regulated by the 30% side yard setbacks. Accessory structures are allowed to encroach into side yard setbacks up to five feet from the property line within all planning areas throughout the Davidson town limits **(Exhibit CC)**.

The Town did not create these lots. The Town approved lots submitted by a developer as part of the Davidson Springs Master Plan that were compliant with the DPO **(Exhibit EE)**. The location, size, and topography of the property are consistent with similar parcels in the neighborhood **(Exhibit FF)**.

The applicant wishes to be granted a variance allowing for the Outdoor Kitchen to encroach into the side yard setback, approximately 10 – 12 inches from the side yard property line. This is approximately 4’ – 4’- 2” further into the side yard setback than the DPO allows.

The Outdoor Kitchen is of a size and is located such that it is in violation of DPO § 4.5.8.C.4 or DPO § 4.3.1.D.1. The applicant must secure a variance from the Board of Adjustment to legally allow for the Outdoor Kitchen within the required setback.

7. EXHIBITS

- Exhibit A Amended variance application
 - Exhibit B Approved pool permit
 - Exhibit C Response to Planning Dept. – Swimming pool equipment setback
 - Exhibit D Fence idea email
 - Exhibit E Variance site plan documents
 - Exhibit F Site plan documents
 - Exhibit G Outdoor Kitchen photos
 - Exhibit H Email Hadden to Burdette
 - Exhibit I Haddon letter to Davis
 - Exhibit J Haddon letter to Burdette
 - Exhibit K Email notice to Davis
 - Exhibit L Scope of work response
 - Exhibit M Original Notice of Violation
 - Exhibit N Amended Notice of Violation
 - Exhibit O Amended appeal application
 - Exhibit P BOA Minutes April 29, 2024
 - Exhibit Q Findings and Conclusions appeal
 - Exhibit R Appeal of BOA decision
 - Exhibit S Consent order remanding to BOA
-
- Exhibit AA DPO Section 2.2.4 & 2.3.4
 - Exhibit BB DPO Section 4.3.1.D
 - Exhibit CC DPO Section 4.5.8
 - Exhibit DD DPO Section 14.21 & 14.22
 - Exhibit EE Davidson Springs Subdivision Phase 1 Plat
 - Exhibit FF Vicinity Maps

BOARD OF ADJUSTMENT

514 Walnut St

Variance Request for Accessory
Structure



Andrew Golden,
Staff Liaison
BOA Case
September 29, 2025

BOARD OF ADJUSTMENT – 9/29/2025

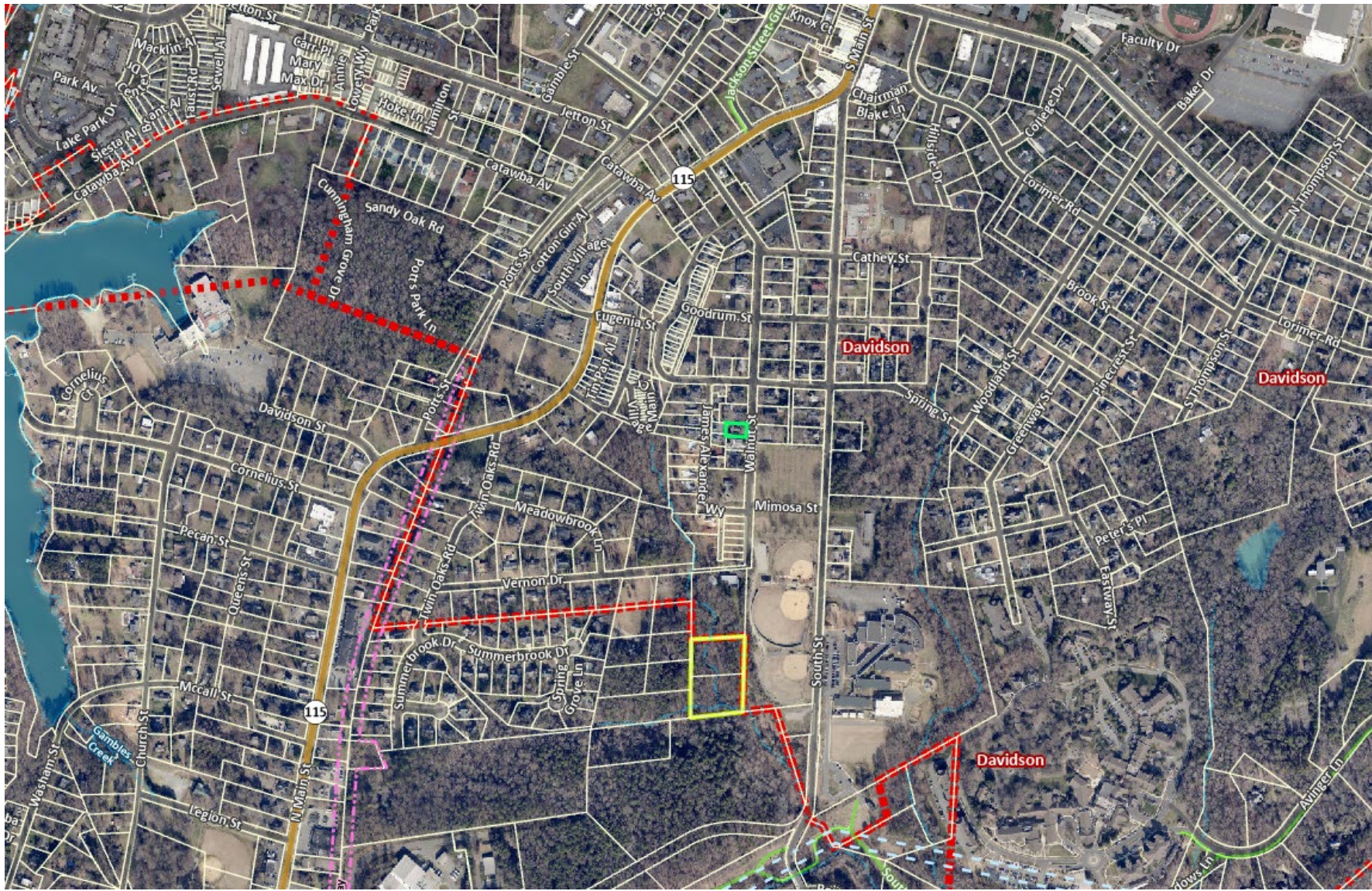
In Your Packets:

- Meeting Agenda
- Staff Analysis
- Exhibit Packet
 - DPO Sections
 - Photos & Site plans
 - Other relevant documents

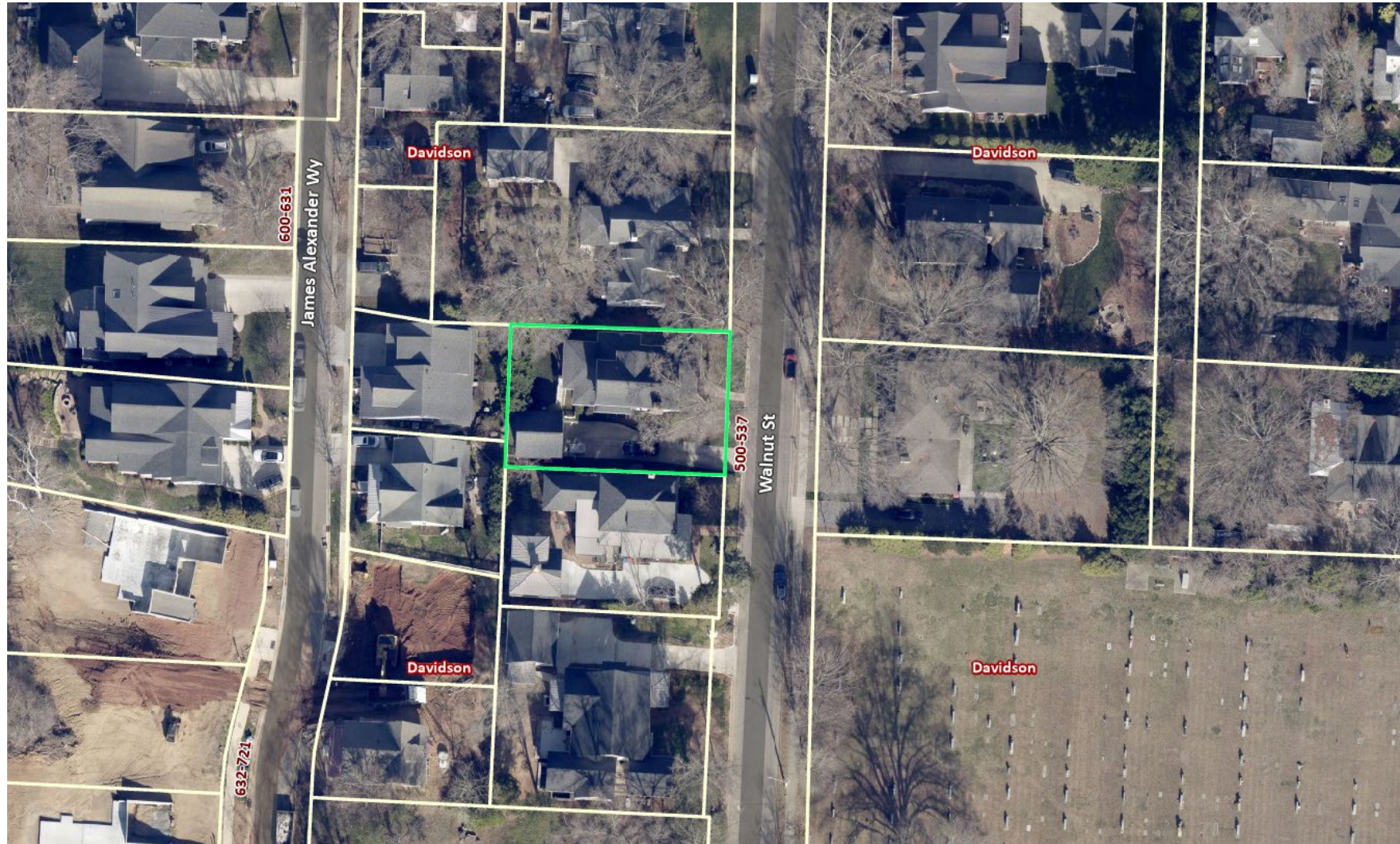
BACKGROUND

- James Davis (applicant)
- 514 Walnut St, PID: 00705130 (property)
- 0.181 Acres
- Single Family Detached House
- Planning Area: Village Infill, Green Overlay

VICINITY MAPS



VICINITY MAPS



VARIANCE REQUEST

- The applicant wishes to be granted a variance allowing for the Outdoor Kitchen to encroach into the side yard setback approximately 4 feet - 4 feet 2 inches further than the DPO allows.
- *In the event that the BOA determined that the Outdoor Kitchen was a fence or garden wall, the applicant also requested a variance for fence height. However, the BOA determined that the Outdoor Kitchen is not a fence or garden wall, thus rendering the variance request moot.*

TIMELINE

- **July 14, 2022:** Mr. Davis applied for a pool permit. The permit was approved under the conditions that “pool equipment may not encroach into setbacks” **(Exhibit B)**.
- **August 1, 2022:** Mr. Davis argued the DPO definition of a structure was not applicable to pool equipment. Mr. Golden then explained why pool equipment is a structure and is therefore not allowed to encroach into setbacks. Mr. Davis complied with the determination **(Exhibit C)**.

TIMELINE

- **August 8, 2022:** Mr. Davis reached out to the Planning Department with a sketch of a fireplace that he described “becomes part of the fence” and asked for staff input (**Exhibit D**). Mr. Golden responded via phone that he could not say if the fireplace would meet DPO regulations based on the sketch provided.



TIMELINE

- **2023:** Construction began on the “Outdoor Kitchen.” Mr. Davis admitted that the accessory structure was built into the side yard setback, 10 - 12 inches from the neighbor’s property line at 510 Walnut Street. The Outdoor Kitchen is approximately 3.5 ft wide x 20 ft long x 15 ft high (at highest point) (**Exhibit E, Exhibit F, Exhibit G**).

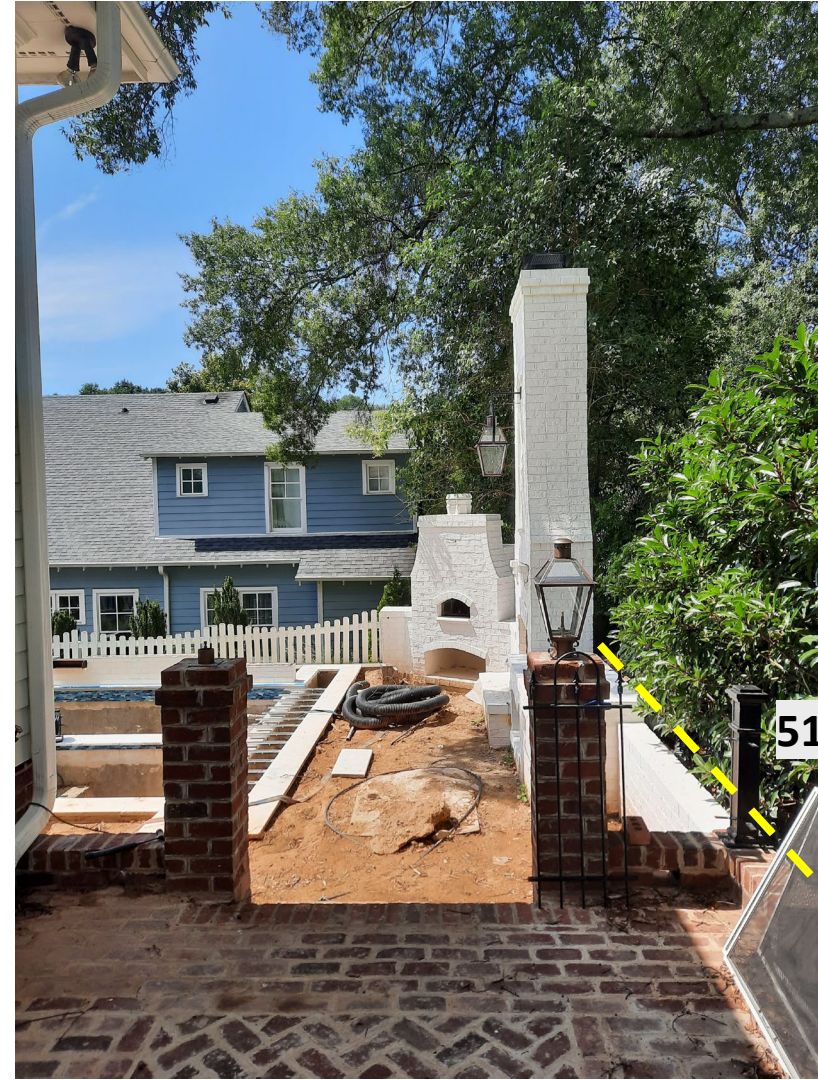


SITE IMAGES



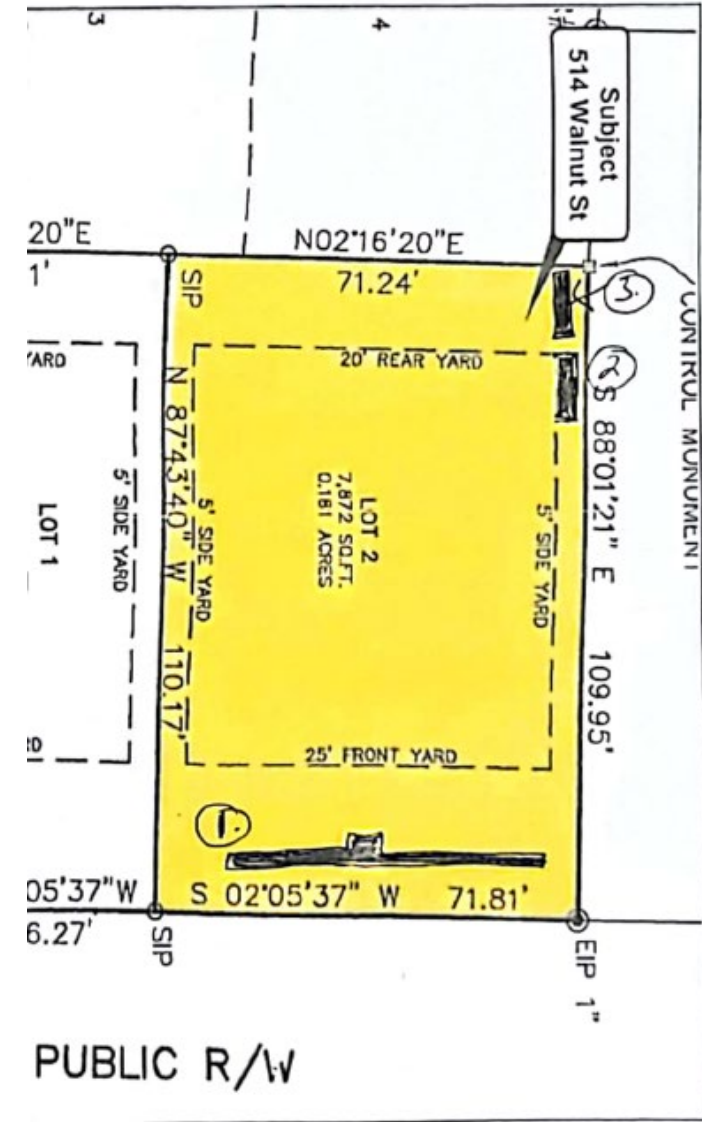
510 Walnut St

Approximate
Property Line



510 Walnut St

Approximate
Property Line



TIMELINE

- **April 20, 2023:** John Hadden, the adjoining neighbor at 510 Walnut St, sent an email to Jason Burdette, Planning Director, expressing concerns about the ongoing projects on the property and their proximity to the property line **(Exhibit H)**.
- **April 24, 2023:** Mr. Hadden sent a letter to Mr. Davis where he expressed concern that the new porch location would not comply with the DPO five-foot setback requirement for accessory structures, placing the porch immediately adjacent to his property **(Exhibit I)**. That same day, Mr. Hadden also sent a written letter to Mr. Burdette, upset that the project was avoiding the Town's setback rules **(Exhibit J)**.

TIMELINE

- **June 14, 2023:** After visiting the site at the request of Mr. Davis, Mr. Burdette sent an email to Mr. Davis informing him that a complaint had been received and asked for a summary and scope of work planned and underway so that staff could determine if a violation had occurred **(Exhibit K)**.
- **July 7, 2023:** Mr. Davis submitted a scope and summary of work planned and underway **(Exhibit L)**.
- **July 11, 2023:** Mr. Burdette issued a Notice of Violation (NOV) **(Exhibit M)**.
- **July 14, 2023:** After visiting the site with Ms. Janssen at the request of Mr. Davis, Mr. Burdette issued an Amended Notice of Violation **(Exhibit N)**.

TIMELINE

- **August 29, 2023:** Mr. Davis filed an amended appeal to the amended Notice of Violation (**Exhibit O**) and amended variance requests for three separate variances, including the Outdoor Kitchen (**Exhibit A**).
- **April 29, 2024:** The Board of Adjustment held a hearing for an Appeal of an Administrative Decision during which the second variance request was withdrawn. A separate hearing followed for the third variance request, but the Board of Adjustment failed to address the first variance request for relief from DPO Section 4.5.8.C.4 and 4.3.1.D.1 for the Outdoor Kitchen (**Exhibit P**).

TIMELINE

- **May 20, 2024:** The Board issued Findings and Conclusions for the Appeal. In the findings they determined that
 1. the Outdoor Kitchen was an accessory structure,
 2. the Planning Director was correct in his determination, and
 3. that the Outdoor Kitchen would therefore need to be removed **(Exhibit Q)**.
- **June 25, 2024:** Mr. Davis filed an appeal to the Superior Court of Mecklenburg County **(Exhibit R)**. The Third Claim for Relief addressed the BOA's failure to render a decision on the variance request for the existing Outdoor Kitchen.
- **August 15, 2025:** The Superior Court of Mecklenburg County issued a consent order remanding the original variance request to the Davidson Board of Adjustment for review and decision **(Exhibit S)**.

APPEAL DETERMINATION



PURPOSE OF HEARING –Variance Request

- The applicant wishes to keep a 3.5 ft wide x 20 ft long x 15 ft high Outdoor Kitchen both within the side yard setback and at the current height.
- The accessory structure is built into the side setback, ~ 10 -12 inches from the property line.
- Classified as an accessory structure by Davidson Planning Department and affirmed by the Board of Adjustment.
- Per DPO 4.5.8.C.4, the minimum side yard setback for an accessory structure is 5 ft.

BOA DETERMINATION IN THE APPEAL

- The BOA determined in their Appeal of Administrative decision findings that:
 1. The Outdoor Kitchen is a Structure as defined by the DPO because it is constructed and installed on the Property and is located and can be used on land.
 2. The Outdoor Kitchen is an above-ground structure that is subordinate in area and purpose to the principal residence on the Property and is therefore an Accessory Structure.
 3. The accessory structure is located within the side setback and is in violation of DPO Section 4.5.8.C.4.

ADDITIONAL INFORMATION

- Accessory structure location is not regulated by the 30% side yard setbacks as mentioned in the variance application. Accessory structures are allowed to encroach into side yard setbacks up to five feet from the property line within all planning areas throughout the Davidson town limits and ETJ **(Exhibit CC)**.
- The Town did not create these lots as mentioned in the variance application. The Town approved lots submitted by a developer as part of the Davidson Springs Master Plan that were compliant with the DPO **(Exhibit EE)**. The location, size, and topography of the property are consistent with similar parcels in the neighborhood **(Exhibit FF)**.

RELEVANT ORDINANCES

DPO Section 4.5.8.C.4, “Accessory Structures – Location of Accessory Structure” states:

- “In the Rural Reserve and Rural Planning Areas, any accessory structure over 900 square feet shall have a minimum 15 feet side yard setback and a minimum 30 feet rear yard setback. **In all other circumstances, the minimum side yard setback shall be five feet and the minimum rear yard setback shall be five feet.**”

REQUIRED FINDINGS OF FACT (GS 160D-705(d))

Must confirm in the affirmative all 4:

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 shall not be regarded as 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.

Questions?





**Board of Adjustment
Request to Participate in Hearing as a Witness**

I, the undersigned, would like to participate in the Board of Adjustment Hearing:

John Hadden as a witness.
(Insert the name of the Parties and/or the Project)

My Full Name: John Thomas Hadden

My Address: 510 Walnut St.
Davidson, N.C. 28036

My Telephone: 919-933-2899

My Email: haddenjm@gmail.com

I would like an opportunity to speak and be heard by the Board of Adjustment as a sworn witness. I understand that any testimony I give must be competent, relevant, and substantive to the matter referenced above.

Signed this 18th day of Sept., 2024.

John T. Hadden
(Signature)

NOTE: This form must be returned to the Town of Davidson Planning Department at least 48 hours prior to the hearing referenced above. You may either email the form to agolden@townofdavidson.org or mail the form to the physical address below in such a manner that it is delivered at least 48 hours prior to the hearing referenced above.

Town of Davidson – BOA Hearing Materials
Attn: Andrew Golden
P.O. Box 579
251 South Street
Davidson, NC 28036

THE TOWN OF DAVIDSON

BOARD OF ADJUSTMENT

AMENDED APPLICATION FOR VARIANCE FROM DAVIDSON PLANNING ORDINANCE

August 29, 2023

James T. Davis
514 Walnut Street
Davidson, NC. 28036
jamestdavislaw@gmail.com
(256) 303-4638

Name of Project: 514 Walnut St.

Tax Parcel: 00705130

Acreage: .181 acres

Existing Planning Area: VI- Green Overlay

*** Petitioner requests hearing before the Town's Board of Adjustment.**

I *respectfully* submit this Application to request the following variances from the *Davidson Planning Ordinance* (hereinafter "DPO"):

- **DPO 4.5.8.C.4, Accessory Structure Side Yard Setback:** Applicant seeks a variance to address an existing and newly constructed structure.

In the alternative, Applicant seeks a variance request from DPO 4.3.1.D.1, *Fences, Hedges and Garden Walls*, to address the same existing and newly constructed structure. Here, the structure/fence (pizza oven, fireplace, and outdoor cooking platform) may be categorized by the Board as either an "accessory structure" or as a "fence/garden wall."

*** Note:** "Structure" is defined herein by its everyday plain meaning.

- **DPO 4.5.8.C.4, Accessory Structure Side Yard Setback:** Applicant seeks a variance to build a covered patio ceiling over an already existing brick side-yard patio.
- **DPO 4.3.1.D.1, Fences, Hedges and Garden Walls:** Applicant seeks a variance request to install a 3 ft. 6 inch wrought iron and steel “hoop and picket” fence in the front yard.

I. STATEMENT OF RELEVANT FACTS:

- 1) James and Kathy Davis moved to Davidson in 2013.
- 2) In or about 2015, The Davis’ purchased 514 Walnut St.
- 3) James and Kathy Davis have one (1) son William (7). William is a special needs child diagnosed with Glut1 DS, a rare genetic metabolic disorder characterized by deficiency of a protein that is required for glucose (a simple sugar) to cross the blood-brain barrier and other tissue barriers. Symptoms include, but not limited to, abnormal eye-head movements, body movement disorders, developmental delays, and varying degrees of cognitive impairment, slurred speech, and language abnormalities. There is currently no cure.
- 4) On or about August 1, 2022, the Davis Family began pool construction. Davis Family kept all impacted neighbors generally informed and asked about concerns and preferences.
- 5) In 2023, Davis Family began construction of a fireplace, pizza oven, outdoor cooking platform, and considered potentially building a covered side porch.
- 6) Davis hired licensed contractors to perform all work.
- 7) Due to lack of construction knowledge and experience, Davis reasonably relied on licensed general contractors to follow all applicable laws, rules, regulations, and codes.

- 8) During pool construction and building of entertainment space, the Davis Family and all surrounding neighbors enjoyed a friendly neighborly relationship.
- 9) On or about mid-April 2023, Mr. John Hadden (neighbor at 510 Walnut St.) expressed his reasonable concern and issue regarding the potential building of a covered porch. I conveyed the Family's plans, explained how both families would mutually benefit from the building of a covered porch, and that the GC would submit all required permit applications.
- 10) On or about April 20, 2023, Hadden sent an email to Jason Burdette, Town of Davidson Planning Director.
- 11) On or about April 24, 2023, Hadden sent a letter to Jason Burdette, Town of Davidson Planning Director.
- 12) On or about April 24, 2023, Hadden delivered a letter to the Davis Family. Hadden courtesy copied Mayor Rusty Knox, PD Jason Burdette, and GC/Town Citizen Rodney Graham.
- 13) On or about May 11, 2023, Hadden sent an email to Ms. Yvonne, Town Planning Dept.
- 14) On or about June 9, 2023, Hadden sent an email to Ms. Yvonne, Town Planning Dept.
- 15) On or about June 14, 2023, Davis received notice from the Davidson Planning Dept. that a complaint was filed and requested a summary and scope of the work underway and planned.
- 16) On or about July 7, 2023, Davis formally responded to the Town's Planning Dept. and provided summary and scope.
- 17) On or about July 11, 2023, Town of Davidson Planning Dept. sent *Notice of Violation*.
- 18) On or about July 14, 2023, Town of Davidson Planning Dept. officials visited the build site and issued an *amended* Notice of Violation.

- 19) During 2022 and 2023, scores of town and county inspectors and code enforcement officers inspected Davis' builds for compliance with applicable town, city, and state laws, rules, regulations, ordinances, and codes. General contractors addressed all reported issues.
- 20) Davis Family did not intentionally violate any applicable laws, rules, regulations, and codes.
- 21) On or about August 25, 2023, Davis responded to Hadden's Letter- April 24,2023.
- 22) On or about August 25, 2023, Davis filed an appeal to the amended *Notice of Violation*.
- 23) On or about August 25, 2023, Davis Family filed a variance request.
- 24) On or about August 29, 2023, Davis filed an amended appeal.
- 25) On or about August 29, 2023, Davis filed an amended variance request.

II. APPLICABLE DAVIDSON PLANNING ORDINANCE PROVISIONS:

- **DPO 4.5.8.C.4: Location of Accessory Structure-** "...[t]he minimum side yard setback shall be five feet and the minimum rear yard setback shall be five feet." DPO pg. 4-18, (July 01, 2021).
- **DPO 4.3.1.D.1: Fences, Hedges and Garden Walls:** "All Planning Areas: Fences, hedges, and/or garden walls located in front of the building line shall be no greater than three feet in height and fences shall be no more than two-thirds solid. Fences, hedges, and/or garden walls located behind the front building line shall be no greater than six feet in height." DPO pg. 4-3, (July 01, 2021).

III. APPLICABLE LAW:

N.C.G.S. § 160D-705(D), *Quasi-judicial zoning decisions*

“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 is not 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.”

IV. FIRST VARIANCE REQUEST

DPO 4.5.8.C.4 or DPO 4.3.1.D.1- Existing Structure

The Town’s Board of Adjustment should approve Davis’ variance request from DPO 4.5.8.C.4 (accessory structure side yard setback), *or in the alternative*, from DPO 4.3.1.D.1

(backyard fence height) to address an alleged issue with an existing and newly constructed structure/fence (*i.e.*, pizza oven, fireplace, and outdoor cooking platform). Such approval is lawful, equitable, in-step with the Ordinance's purpose, intent, spirit, and does not impede or frustrate the Town's Mission to promote the health, safety, morals, and general welfare of the Davidson community. Applicant's application and analysis of the facts to the four-prong test laid out in N.C.G.S. § 160D-705(D) is as follows:

a. Unnecessary Hardship:

Strict application of the DPO would result in *unnecessary* hardship. Here, should the Board deny the Davis Family's request for variance, the existing and newly built structure sitting in the side setback would likely be required to be demolished, debris removed, submission of a new variance application, and if granted rebuild that which is already there. The approximate cost to come into strict compliance is substantial and likely to exceed \$100,000.00. While "financial loss alone is insufficient to grant a variance, it is a factor or an element to be taken into consideration and should not be ignored." *Williams v. N.C. Dep't of Env't & Natural Res.*, 144 N.C. App. 479, 486 (2001). Further, to carry out the above would be a daunting and dangerous task given the location of a pool approximately seven feet away. Moreover, strict application of the Ordinance would render the backyard unusable for the near future and will likely bring about emotional distress, devastating mental anguish, and financial stress. The above facts demonstrably evidence a hardship that is far beyond mere inconvenience or a minor setback. As such, strict application of the DPO would result in unnecessary hardship, substantial financial loss, serious safety concerns, and unnecessary mental anguish and emotional distress.

b. Hardship Results From Property's Peculiar Conditions:

The hardship results, in-part, from conditions that are peculiar to the property. Here, due to the Town of Davidson's property zoning/development division approvals over the years, the land in which 514 Walnut is situated on became significantly smaller. *See attached* Town of Davidson map pictures. What was once a large buildable lot and family friendly space, unfortunately and unnecessarily, became more difficult to live and raise a family on- all in the name of growth and progress. *See generally* Town of Davidson map (1981). The property is now .181 acres or 7,840sq ft. Note, the act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship. N.C.G.S. § 160D-705(D)(3). Further, the hardship is compounded by the DPO's mandate that the "total of both side setbacks shall be equal to or greater than 30 percent of the lot width at the front building line..." *See* DPO 2.2.4.D.1, pg. 2-22. As a direct result, the Davis Family is unable to enjoy its full bundle of property rights, to include but not limited, reasonable use, enjoyment, and control of 514 Walnut St. As such, due to the Town's zoning/development actions, coupled with restrictive setback rules, the Davis Family now endures demonstrable hardship from conditions that are peculiar to the property.

c. Hardship Is Not a Result of Applicant's Actions

The hardship is not a result of Applicant's actions. Here, Davis hired licensed contractors to perform all work. Due to lack of informal and formal construction knowledge and experience, Davis reasonably and appropriately relied on licensed GCs to follow all applicable laws, rules, regulations, and codes. *See generally* *Turik v. Town of Surf City*, 182 N.C. App. 427 (2007) (*conveying hardships resulting from good-faith reliance on survey are eligible for a variance*). Further, throughout the past fourteen (14)– sixteen (16) months, scores of city, county, and state inspectors and code enforcement officers visited the Davis home.

No issues were raised beyond the improper placement of a bond wire and an empty electrical conduit line placed for future construction. This variance request is similar in nature to that in *Turik*, as I reasonably relied upon licensed GCs to follow all applicable laws, rules, regulations, and codes, and after a multitude of inspections, no issues were raised with respect to setback or height requirements. I did not intentionally violate any applicable laws, rules, regulations, and codes. As such, the hardship is not a result of Applicant's actions.

d. Requested Variance is Consistent with the DPO's Spirit, Purpose, and Intent

The requested variance is consistent with the DPO's spirit, purpose, and intent. *See* DPO 4.1 The structures do not offend, subvert, or run afoul of DPO's Chapter 4 expressed purpose and intention. Here, the fireplace, pizza oven, and outdoor cooking/grilling platform brick formations follow Petitioner's imaginative design that respects the neighborhood context. In support thereof, the brick formations support the unique visual character in Davidson with their charming structural lines, impeccable architectural style incorporating modern Victorian transitional elements, and utilize architectural styles which respect the existing historic character of the Town through the incorporation of antique wood beams, historic handmade copper gas lanterns, and antique styled English chimney pot. Everything from the architectural style, items, to the paint colors were designed to reflect Davidson's sensibilities and complement the neighborhood. I believe it is vital to preserve the distinct character and historical fabric of Davidson. The outdoor entertainment space does just that. As such, the requested variance is consistent with the DPO's spirit, purpose, and intent.

The requested variance does not harm public safety or surrounding properties. The structures stand upon solid ground, are buttressed by sturdy concrete foundations, and were built by well-respected licensed master brick masons. Further, applicant is unaware of any facts and evidence to

support otherwise. As such, the requested variance does not harm public safety or surrounding properties.

The requested variance assists in achieving substantial justice. First, approval of a variance mitigates, in-part, the inadvertent harm caused by the Town's past zoning/development actions and current overly-restrictive backyard setback rules. In short, approval of a variance allows the Board to rightly address the unintentional consequences and hardship the Davis Family endures. *See* N.C. Gen. Stat. § 160A-388 (*stating* a board of adjustment "shall have the power to vary or modify any of the regulations or provisions" of an ordinance). Second, approval of a variance helps achieve substantial justice through equity and fairness by not punishing the Davis Family for its prudent, good faith, and reasonable reliance upon licensed general contractors. To do so, the Town would: 1) Unreasonably, and arguably unlawfully, place an undue heavy burden upon unlearned homeowners to oversee and implement major home construction projects generally carried out by strictly regulated licensed and bonded general contractors; 2) Offend traditional notions of fairness and 3) Obstruct the DPO's *spirit* and expressed intent to promote the health, *safety, morals*, and general welfare of the community. As such, the requested variance assists in achieving substantial justice.

Conclusion

Based upon the foregoing, Applicant having met his burden, the Town's Board of Adjustment should approve the Davis' variance request from DPO 4.5.8.C.4 (accessory structure side yard setback), *or in the alternative*, from DPO 4.3.1.D.1 (backyard fence height) to address an alleged issue with an existing and newly constructed structure/fence (*i.e.*, pizza oven, fireplace, and outdoor cooking platform). Such approval is lawful, equitable, in-step with the Ordinance's purpose, intent, spirit, and does not impede or frustrate the Town's Mission to promote the health, safety, morals, and general welfare of the Davidson community.

V. SECOND VARIANCE REQUEST

DPO 4.5.8.C.4 - Side Yard Setback- Covered Porch

The Town's Board of Adjustment should approve Davis' variance request from DPO 4.5.8.C.4 (Side yard setback) to build a covered side porch. Such approval is lawful, equitable, in-step with the Ordinance's purpose, intent, spirit, and does not impede or frustrate the Town's Mission to promote the health, safety, morals, and general welfare of the Davidson community. Applicant's application and analysis of the facts to the four-prong test laid out in N.C.G.S. § 160D-705(D) is as follows:

a. Unnecessary Hardship:

Strict application of the DPO would result in *unnecessary* hardship. Here, should the Board deny the request for variance, the Davis Family will not be able to enjoy any backyard relief from the sweltering and unforgiving North Carolina heat and will be forced to seek shelter inside for comfort, and relaxation. Our son, William (7) suffers from a rare genetic disorder (Glut1 Deficiency) where his symptoms can become compounded when exposed to direct sun for lengthy periods (lethargic, increased seizures, reduced energy, etc...) *See* generally N.C.G.S. § 160D-705(D)(2). As such, strict application of the DPO would result in unnecessary hardship.

b. Hardship Results From Property's Peculiar Conditions:

The hardship results, in-part, from conditions that are peculiar to the property. Here, due to the Town of Davidson's property zoning/development division approvals over the years, the land in which 514 Walnut is situated on became significantly smaller. What was once a large buildable lot and family friendly space, unfortunately and unnecessarily, became more difficult to live and raise a family on- all in the name of growth and progress. *See* generally Town of Davidson map (1981).

The property is now .181 acres or 7,840sq ft. Note, the act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship. N.C.G.S. § 160D-705(D)(3). Further, the hardship is compounded by the DPO's mandate that 30% of a property's backyard be restricted by setbacks. *See* DPO... As a direct result, the Davis Family is unable to enjoy its full bundle of property rights, to include but not limited, reasonable use, enjoyment, and control of 514 Walnut St. As such, due to the Town's zoning/development actions, coupled with restrictive setback rules, the Davis Family now endures demonstrable hardship from conditions that are peculiar to the property.

c. Hardship Is Not a Result of Applicant's Actions

The hardship is not a result of Applicant's actions. Here, no actions were taken by the homeowner to create the hardship. 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. As such, the hardship is not a result of Applicant's actions.

d. Requested Variance is Consistent with the DPO's Spirit, Purpose, and Intent

The requested variance is consistent with the DPO's spirit, purpose, and intent. *See* DPO 4.1 The structure will not offend, subvert, or run afoul of DPO's Chapter 4 expressed purpose and intention. Here, the proposed covered patio will match our charming Victorian front façade, provide a light and sound buffer for our discerning neighbors, and compliment the surroundings. Without the construction of a covered patio, strings of light bulbs will indiscriminately illuminate the uncovered patio and surrounding neighbor's backyard, as there is no structure in which to mount lighting. Moreover, I will be unable to control sound coming from amplified speakers, as there is no structure in which to mount the speakers to aid in directional and sound control. In short, without the

construction of a covered patio, there will be NO light and sound buffer to aid our neighbor's use and enjoyment of their property.

The requested variance does not harm public safety or surrounding properties. The structure will stand upon solid ground, buttressed by a sturdy concrete and brick foundation, and be built by well-respected licensed master brick masons. As such, the requested variance does not harm public safety or surrounding properties.

The requested variance assists in achieving substantial justice. Approval of a variance mitigates, in-part, the inadvertent harm caused by the Town's past zoning/development actions and current overly-restrictive backyard setback rules. In short, approval of a variance allows the Board to rightly address the unintentional consequences and hardship the Davis Family endures. *See* N.C. Gen. Stat. § 160A-388 (*stating* a board of adjustment "shall have the power to vary or modify any of the regulations or provisions" of an ordinance). As such, the requested variance assists in achieving substantial justice.

Conclusion

Based upon the foregoing, Applicant having met his burden, the Town's Board of Adjustment should approve the Davis' variance request from DPO 4.5.8.C.4 (Side yard setback) to build a covered side porch. Such approval is lawful, equitable, in-step with the Ordinance's purpose, intent, spirit, and does not impede or frustrate the Town's Mission to promote the health, safety, morals, and general welfare of the Davidson community.

VI. THIRD VARIANCE REQUEST

DPO 4.3.1.D.1- Front Yard Fence Hight

The Town's Board of Adjustment should approve Davis' variance request from DPO

4.3.1.D.1, to install a 3 ft. 6 inch wrought iron and steel “hoop and picket” fence in the front yard to aid the Family in providing a safe useable front yard for our special needs son and to allow reasonable accommodations under *The Fair Housing Act*. 42 U.S.C. § 3601 *et seq.* Such approval is lawful, equitable, in-step with the Ordinance’s purpose, intent, spirit, and does not impede or frustrate the Town’s Mission to promote the health, safety, morals, and general welfare of the Davidson community. Applicant’s application and analysis of the facts to the four-prong test laid out in N.C.G.S. § 160D-705(D) is as follows:

a. Unnecessary Hardship:

Strict application of the DPO would result in *unnecessary* hardship and fear. Pursuant to N.C.G.S. § 160D-705(D)(2), “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. 42 U.S.C. § 3601 *et seq.* Here, our son William (7) is a disabled special needs child diagnosed with Glut1DS. William suffers, in-part, from seizures (epilepsy), development delay, severe cognitive impairment, and ADHD. William is all “boy” and a “runner!” Due to William’s developmental delay, cognitive impairment, attention deficit, and impulsive behavior, he often runs into the front yard and darts across the street with little regard for oncoming traffic and appreciation for the seriousness of his actions. Moreover, William is growing like a weed. In a few years, William will likely be able to leap over a 3ft fence without breaking stride. We feel installing a more robust wrought iron fence, that is only 6 inches taller than that permitted, will: 1) Slow William down; 2) Give us more time to react; 3) Provide peace of mind and security; 4) Provide reasonable accommodation under *The Fair Housing Act*; and 5) Promotes the health, safety, and general welfare for a disabled Davidson citizen. As such, strict application of the DPO would result in unnecessary hardship, fear, and likely run afoul of *the Fair Housing Act* and the *Americans with Disabilities Act*.

b. Hardship Results From Property's Peculiar Conditions:

The hardship results, in-part, from conditions that are peculiar to the property. Here, 514 Walnut is very small due to the many property divisions over the years. The home is situated very close to the street; I suspect this is to allow the property owner just enough room in the backyard to stretch his legs; but I digress! The property sits just one block from Davidson Elementary, where traffic is highly congested during school months. Because the lot is small, the home being situated close to the street, and the large amount of school traffic, I reasonably fear that a 3ft fence would not provide my Wife or I enough time in which to react, control, and stop William from running through the front yard and darting across the street into oncoming traffic. It is my opinion that a 3ft fence would do little to stop William, as he can jump over such a small fence. While a 3 ½ foot fence is only 6 inches taller, the additional height makes it much harder to unlatch and jump over. As such, the hardship results, in-part, from conditions that are peculiar to the property.

Further, pursuant to N.C.G.S. § 160D-705(D)(2), “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. 42 U.S.C. § 3601 *et seq.* Here, our son William (7) is a disabled special needs child diagnosed with Glut1DS. William suffers, in-part, from seizures (epilepsy), development delay, severe cognitive impairment, and ADHD. William is all “boy” and a “runner!” Due to William’s developmental delay, cognitive impairment, attention deficit, and impulsive behavior, he often runs into the front yard and darts across the street with little regard for oncoming traffic and appreciation for the seriousness of his actions. Moreover, William is growing like a weed. In a few years, William will likely be able to leap over a 3ft fence without breaking stride. We feel installing a more robust wrought iron fence, that is only 6 inches taller than that currently allowed, will: 1) Slow William down; 2) Give us more time to react; 3) Provide peace of mind and security; 4) Is a

reasonable accommodation under *The Fair Housing Act*; and 5) Promotes the health, safety, and general welfare for a disabled Davidson citizen. As such, a variance is necessary and appropriate to make a reasonable accommodation under the *Fair Housing Act* for William, a disabled town citizen.

c. Hardship Is Not a Result of Applicant's Actions

The hardship is not a result of Applicant's actions. Here, no actions were taken by the homeowner to create the hardship. 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. N.C.G.S. § 160D-705(D)(3). Further, William's disease is de novo. Glut1DS is caused by changes (mutations) in the SLC2A1 gene and is inherited in an autosomal dominant pattern. Rarely, the condition also may be inherited in an autosomal recessive pattern. As such, the hardship is not a result of Applicant's actions.

d. Requested Variance is Consistent with the DPO's Spirit, Purpose, and Intent

The requested variance is consistent with the DPO's spirit, purpose, and intent. *See* DPO 4.1 The 3 ½ foot fence will not offend, subvert, or run afoul of DPO's Chapter 4 expressed purpose and intention. Here, the proposed wrought iron and steel proposed fence will complement our Victorian home and enhance the existing historic character of the Town through the incorporation of period correct iron posts and fencing. *See attached* hoop and picket fence picture.

The requested variance does not harm public safety or surrounding properties. The fence will stand upon solid ground, supported by sturdy cast iron posts, and be built by a well-respected licensed fence contractor. As such, the requested variance does not harm public safety or surrounding properties.

The requested variance assists in achieving substantial justice. Approval of the variance greatly

protects William's health, safety, and general welfare and promotes the same for the Davidson community. The variance will aid and assist the Davis Family in providing a safe useable front yard for our special needs son, allow reasonable accommodations under *The Fair Housing Act*. 42 U.S.C. § 3601 *et seq.*, and provides the Family with much needed peace of mind. As such, the requested variance is consistent with the DPO's spirit, purpose, and intent.

Conclusion

Based upon the foregoing, Applicant having met his burden, the Town's Board of Adjustment should approve Davis' variance request from DPO 4.3.1.D.1, to install a 3 ft. 6 inch wrought iron and steel "hoop and picket" fence in the front yard to aid the Family in providing a safe useable front yard for our special needs son and to allow reasonable accommodations under *The Fair Housing Act*. 42 U.S.C. § 3601 *et seq.* Such approval is lawful, equitable, in-step with the Ordinance's purpose, intent, spirit, and does not impede or frustrate the Town's Mission to promote the health, safety, morals, and general welfare of the Davidson community.

VII. CONCLUSION

In conclusion, I respectfully request the foregoing variances from the DPO. Such approvals are lawful, equitable, fair, in-step with the Ordinance's purpose, intent, spirit, and do not impede or frustrate the Town's Mission to promote the health, safety, morals, and general welfare of the Davidson community.

The Davis Family's sincere intention is to be compliant and consistent the DPO's spirit and intent- to promote the health, safety, morals, and general welfare of the Davidson community. To that end, I offer my full cooperation with the Town and earnestly seek appropriate and reasonable accommodations that are mutually beneficial to all parties.

The Davidson Planning Department's patience, aid, and assistance are greatly appreciated. Town officials were quick to respond, cordial, respectful, and polite. It's been a pleasure to work with the Department's cordial and respectful staff.

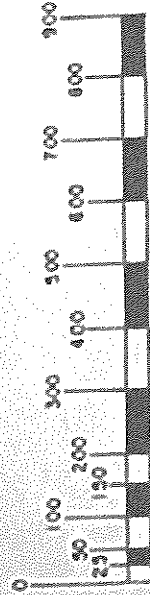
Respectfully submitted,

Your fellow Town citizen,

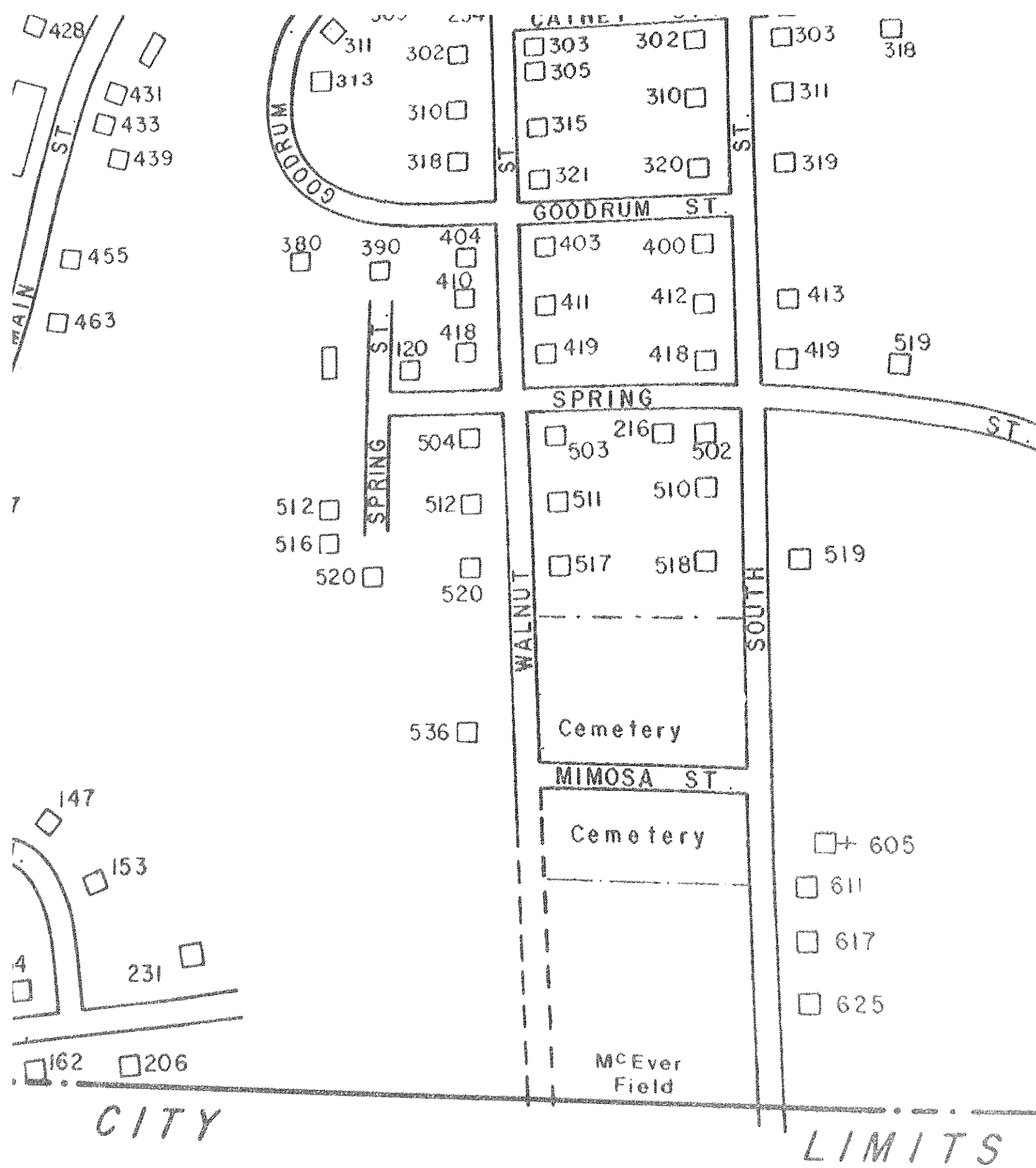
A handwritten signature in blue ink, appearing to read "James T. Davis", is centered on the page.

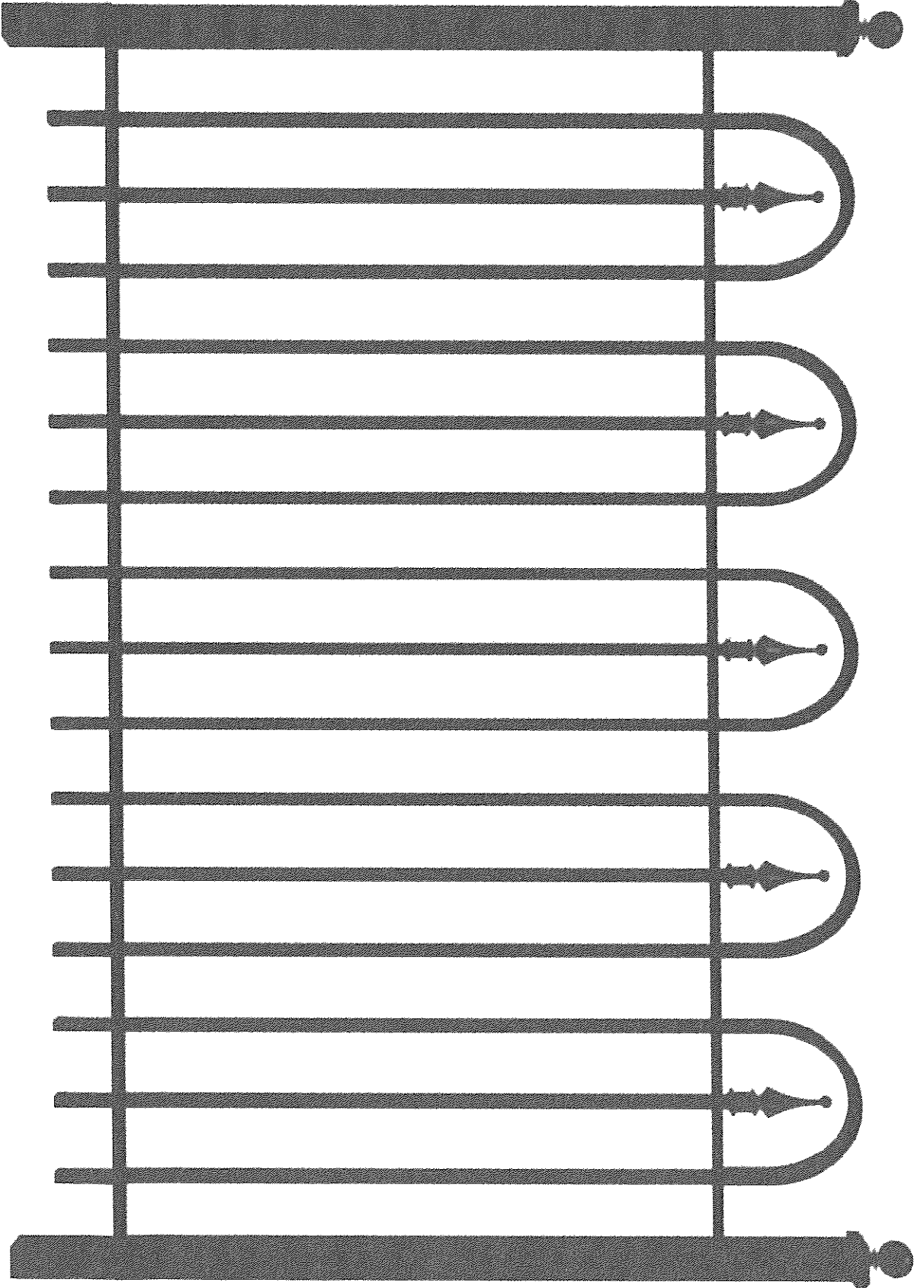
James T. Davis

DAVIDSON N. C.



NOV. 1981





Hoop Picket

FORM CENTER

VIEW SITE

MAIN

FIELD SETS

LEGACY FORMS

PROPERTIES

PERMISSIONS

BACK

PRINT

Form Center ► Planning ► Planning Department Submittal Form ► Submission #16712

This form is intended for submission of permits, plan reviews, plats, design review and other Planning Department-related items. Should you have any questions, send comments to planning@townofdavidson.org or by phone 704 892-7592.

Contact Name: *

Date: *

James Davis

7/14/2022

//

//

Contact Phone: *

Contact Email: *

256-303-4638

jamestdavislaw@gmail.com

//

//

Project Address: *

514 Walnut Street

//

Mecklenburg Co. Tax Parcel #: *

Total Construction Costs: *

00705130

\$104,300

//

//

Project Description: *

SAVE CHANGES

CANCEL

Form Details

Submitted By:

James T. Davis

Submitted On:

July 14, 2022 3:04 PM

IP Address:

108.90.90.92

Referrer:

<https://www.townofdavidson.org/F...>

Answered 11 of 14 (78.6%)

[HOME/PAGE](#)[DASHBOARD](#)[MODULES](#)

1

YVONNE J

[HELP](#)

/

Please upload Application Form and all other pertinent plan documents below.

Application Form: *

Davis Pool Building Permit Applications-Meck Co and Davidson.pdf

Site Plan:

Davis Pool Building Permit Applications-Meck Co and Davidson.pdf

Other Attachment:

No file chosen

Other Attachment:

No file chosen

Other Attachment:

No file chosen

Copy of the fee schedule:

[Fee Schedule](#)

There is NO NEED to create an account to submit your payment.

Please do NOT hit your back button or refresh your screen until the transaction is complete.

Permit Fee Price: *

Resubmit new single-family addition or accessory structure - \$40.00



NOTE: Charges made to the town of Davidson may show up as "EBS-ECS ePay" or "EBS Davidson" on your credit card statement.

BUILDING PERMIT APPLICATION



Code Enforcement MECKLENBURG COUNTY

ONE/TWO FAMILY PERMIT TYPE

PERMIT #

ADDRESS

STREET # NSEW STREET NAME AV.RD.ST etc SUITE/UNIT(S) TAX JURISDICTION

SITE DATA

PROJECT/SUBDIVISION NAME PHASE SECTION PROJECT #

OWNER ADDRESS CITY

STATE ZIP PHONE # LOT # BLOCK # LAND AREA (sq. ft.) TAX PARCEL #

TITLE INSURANCE COMPANY / LIEN AGENT NAME EMAIL

LIEN AGENT PHYSICAL ADDRESS LIEN AGENT MAILING ADDRESS

PHONE # FAX # LIEN AGENT ENTRY NUMBER

ZONING JURISDICTION MAP # RW

SPECIAL FLOOD PLAIN FLOOD ELEVATION FIRE DISTRICT

LOT FRONT SHEET (if different) APR'D

MINIMUM SETBACKS: FRONT LEFT SIDE RIGHT SIDE REAR REQ. PARKING

PROJECT

JOB # TYPE WORK PROPERTY USE

USDC # ☐ EXPANDED FOOTPRINT ☐ SHELL ☐ BASEMENT ☐ SPRINKLER SYSTEM ☐ IS FULL DEMO

PURPOSE PROJECT DESCRIPTION (Residence, Office, etc) Mobile Home: include Yr./Make/Serial #

OCC. TYPE PROJECT AREA (sq. ft.) NEW UNHEATED DECK(S) # STORIES

CONST CONVERTED FROM UNHEATED TO HEATED SQ FT RENOVATE EXISTING SPACE: SQ FT

MULTI-FAMILY: # HANDICAP UNITS ONE/TWO FAMILY, MODULAR, MOBILE HOME: TOTAL # ROOMS # BEDROOMS # BATHS

TOTAL # UNITS WORK INCLUDES: ☐ ATTACHED CARPORT ☐ ATTACHED GARAGE ☐ MASONRY FIREPLACE(S)

SERVICES

ELECTRICAL POWER COMPANY SERVICE: TOTAL AMPS # CIRCUITS

CONNECTIONS 120 VOLTS # CONNECTIONS OVER 120 VOLTS

MECHANICAL GAS COMPANY # GAS CONN # APPLIANCES H/C

- | | | | |
|---|--|--|---|
| ☐ HEAT PUMP | ☐ ELECT. CEILING | ☐ PRE-FAB FIREPLACE | ☐ REFRIGERATION ONLY |
| ☐ CENTRAL A/C | ☐ GAS/OIL FURNACE | ☐ CHIMNEY | ☐ GAS PIPING |
| ☐ ELECT. BASEBOARD | ☐ GAS/OIL STEAM | ☐ STOVE | |
| ☐ ELECT. FURNACE | ☐ GAS PACK | ☐ EXHAUST/VENTILATION | |

PLUMBING: # OF FIXTURES (Sink, Water Closet, etc.)

OF APPLIANCES (Dishwasher, Water Heater, etc.)

UTILITIES ☐ NEW ☒ EXISTING PUBLIC (CHAR-MECK UTILITY DEPT) N/A☐ WATER ☐ SEWER

PRIVATE

N/A

☐ WELL ☐ SEPTICWILL ADDITION / UPFIT CREATE / EXPAND
A BEDROOM?☐ YES ☐ NO

CONTRACTOR(S): Name/Address as Appears on License

ACCT #

BLDG

Superior Pools

PHONE #

704-896-7665

LIC #

68455

CONTRACT COST NEAREST
\$100
BLDG \$ (NOTE)APR'D
FEES

Superior

ADDRESS

20315 Knox Rd. Ste

CITY/STATE

Cornelius

ZIP

28031

\$104,300.00

NOTE:

Master Contract Cost less equipment
over \$500,000.

Does at least one (1) piece of equipment have a cost of over \$500,000.?

If YES see instructions below / If NO include all equipment in the construction cost

☐ YES ☒ NO

To calculate equipment costs when there is at least one (1) piece of equipment over \$500,000., enter the total equipment cost in the Equipment Cost field. Do not include this cost in the Master Contract Cost field. The system will calculate the total equipment cost as follows: \$500,000 at 100%, the remaining equipment cost at 20%

TOTAL EQUIPMENT COST

APR'D
FEES

ACCT #

ELECT

PHONE #

LIC #

CONTRACT COST NEAREST
\$100
ELECT \$APR'D
FEES

N/A

ADDRESS

CITY/STATE

ZIP

ACCT #

MECH

PHONE #

LIC #

CONTRACT COST NEAREST
\$100
MECH \$APR'D
FEES

ADDRESS

CITY/STATE

ZIP

ACCT #

PLUMB

PHONE #

LIC #

CONTRACT COST NEAREST
\$100
PLUMB \$APR'D
FEES

ADDRESS

CITY/STATE

ZIP

ARCH/ENG

PHONE #

LIC #

TOTAL CONSTRUCTION COST
\$PLANS ☐

ADDRESS

CITY/STATE

ZIP

FT ☐

TOTAL ESTIMATED PROJECT COST FOR FAST TRACK OR MODULAR \$

FT FEE \$

Contact
informationOTHER
FEES \$CID PLANS &
PLACARD☐ YES ☐ NO

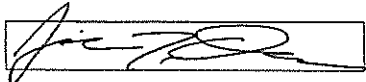
PROCESSING FEE OF \$15 WILL BE CHARGED FOR THIS SERVICE

METHOD OF PAYMENT

☒ CASH/CHECK ☐ ACCOUNTTOTAL
FEES \$

THE UNDERSIGNED HEREBY CERTIFIES THAT HE/SHE IS EITHER THE OWNER OR THE AUTHORIZED AGENT OF THE OWNER AND HEREBY MAKES APPLICATION FOR PERMIT AND INSPECTION OF WORK DESCRIBED AND AGREES TO COMPLY WITH ALL APPLICABLE LAWS REGULATING THE WORK.

APPLICANT'S SIGNATURE



DATE

7/14/20

PRINT APPLICANT'S NAME

James T. Davis

MECKLENBURG COUNTY LAND USE & ENVIROMENTAL
SERVICES
2145 SUTTLE AVENUE
CHARLOTTE NORTH CAROLINA, 28208
(980) 314-2633

HOLDS

PROCESSED BY

APPROVED BY

AG

VALIDATED BY

7/15/20

Scope of Work

* All pools must meet Mecklenburg County's rules governing

Swimming pools. * Pool equipment may not encroach into setbacks.

PAGE 2

REV 4/11/2017

DAVIDSON SPRINGS

TY MAP
SCALE

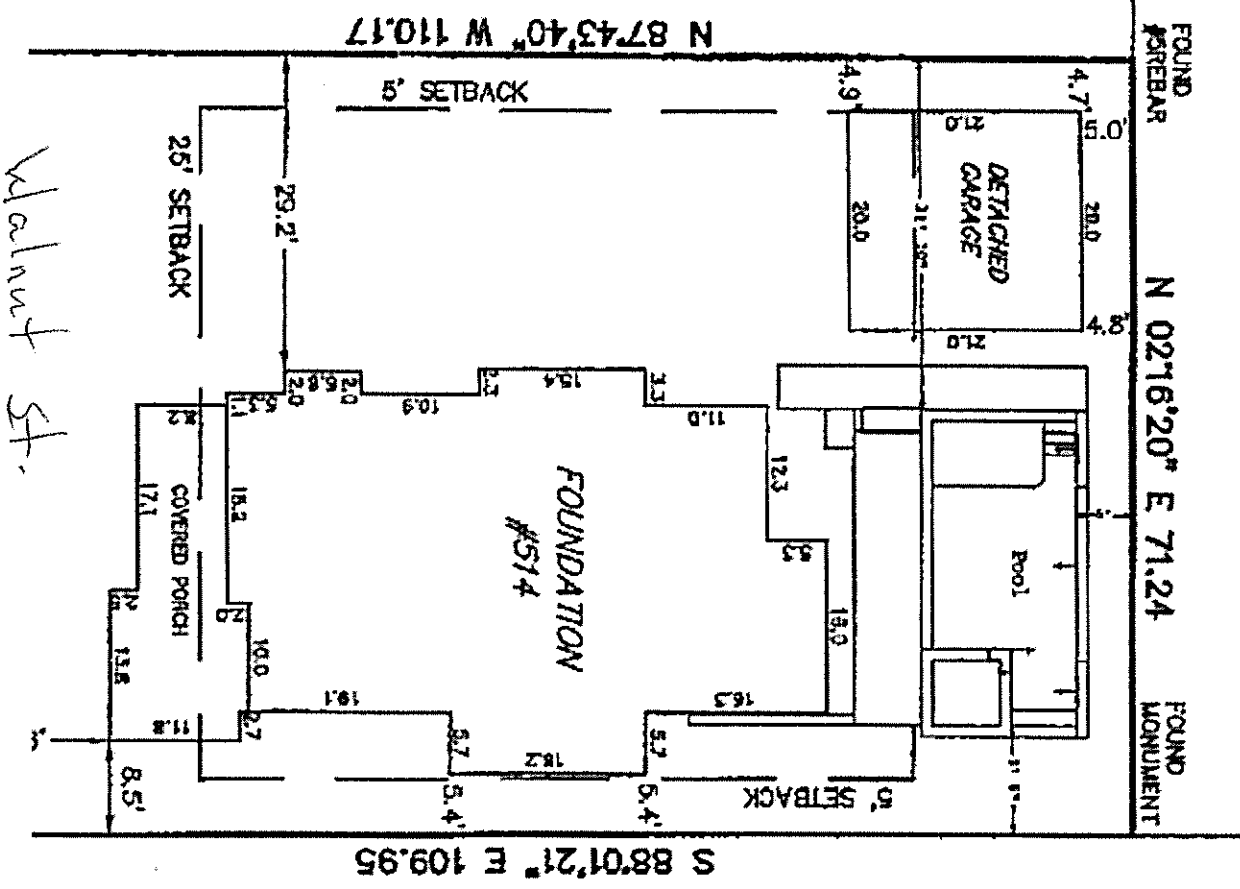
LOT 1

20705130

ED MAP PER THE
OF DAVIDSON.

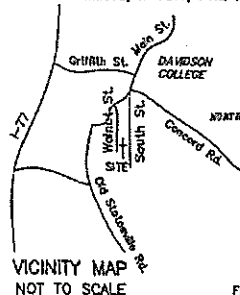
RED PORCH
D UP TO 8' INTO
SETBACK PER
OF DAVIDSON

ATER METER
OWER POLE



NOW OR FORMERLY
PHYLLIS A. &
WALTER M. PHARR
PID: 00705112
LOT 47 MB 80 PG 34

SIGNED _____
PROFESSIONAL LAND SURVEYOR



FUTURE LOT 4
DAVIDSON SPRINGS

VICINITY MAP
NOT TO SCALE

FOUND
#5 REBAR

N 02°16'20" E 71.24

FOUND LIGNMENT

LOT 1

NOTES:

1. PID 00705130
2. ZONED WP PER THE TOWN OF DAMSDON.
3. COVERED PORCH ALLOWED UP TO 8' INTO FRONT SETBACK PER TOWN OF DAMSDON

LEGEND:

WATER METER
POWER POLE

N 02°05'37" E 36.27
TIE INTO J5 REBAR

S 02°05'37" W 71.81

FOUND
#51 EBAR

FOUND
BENT 1/2" PIPE

WALNUT STREET
40' PUBLIC R/W

THIS IS TO CERTIFY THAT THE SUBJECT
PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD
HAZARD AREA AS SHOWN ON MAPS PREPARED
BY THE F.E.M.A. AND FEDERAL INSURANCE
ADMINISTRATION.

FOUNDATION SURVEY
OF

CAROLINA SURVEYORS, INC
P.O. BOX 267
PINEVILLE, N.C. 28134
(704) 889-7801
FAX: (704) 889-7814

SCALE $1'' = 20'$

LOT 2, DAVIDSON SPRINGS PHASE 1
TOWN OF DAVIDSON, MCKENLEBURG CO. NORTH CAROLINA

TOWN OF DAVIDSON, MECKLENBURG CO. NORTH CAROLINA

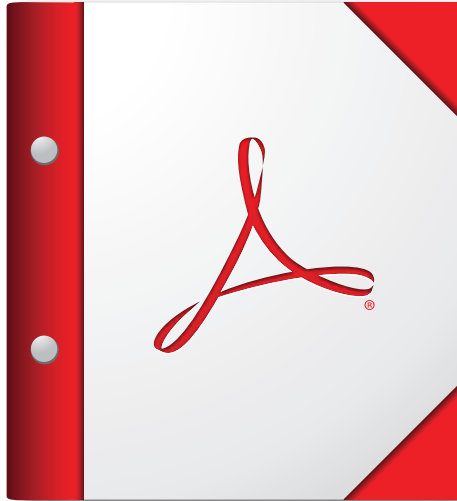
SURVEYED FOR JOHN MARSHALL CUSTOM HOMES, INC.

MAP RECORDED IN BOOK 48 AT PAGE 213 DEED RECORDED BOOK PAGE

DRAWN BY DH FIELD WORK DACU FIELD BOOK # IN FOLDER

PAGE _____
LDD 2007 MEDWISDOM SERVICES
0000 0003 051 APR04

Scale: 1/20" = 1 ft



**For the best experience, open this PDF portfolio in
Acrobat X or Adobe Reader X, or later.**

Get Adobe Reader Now!

From: [James Davis](#)
To: [Andrew Golden](#)
Subject: James Davis: Fence Idea
Date: Monday, August 8, 2022 3:19:37 PM

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

From: **James Davis** <jamestdavislaw@gmail.com>
Date: Mon, Aug 8, 2022, 3:07 PM
Subject: James Davis: Fence Idea
To: Tinaz, Andrew <antinaz@davidson.edu>

GA Andrew,

Personal thoughts on the below being approved (not formal or the Town's official position?)
The fireplace becomes part of the fence. Thanks!

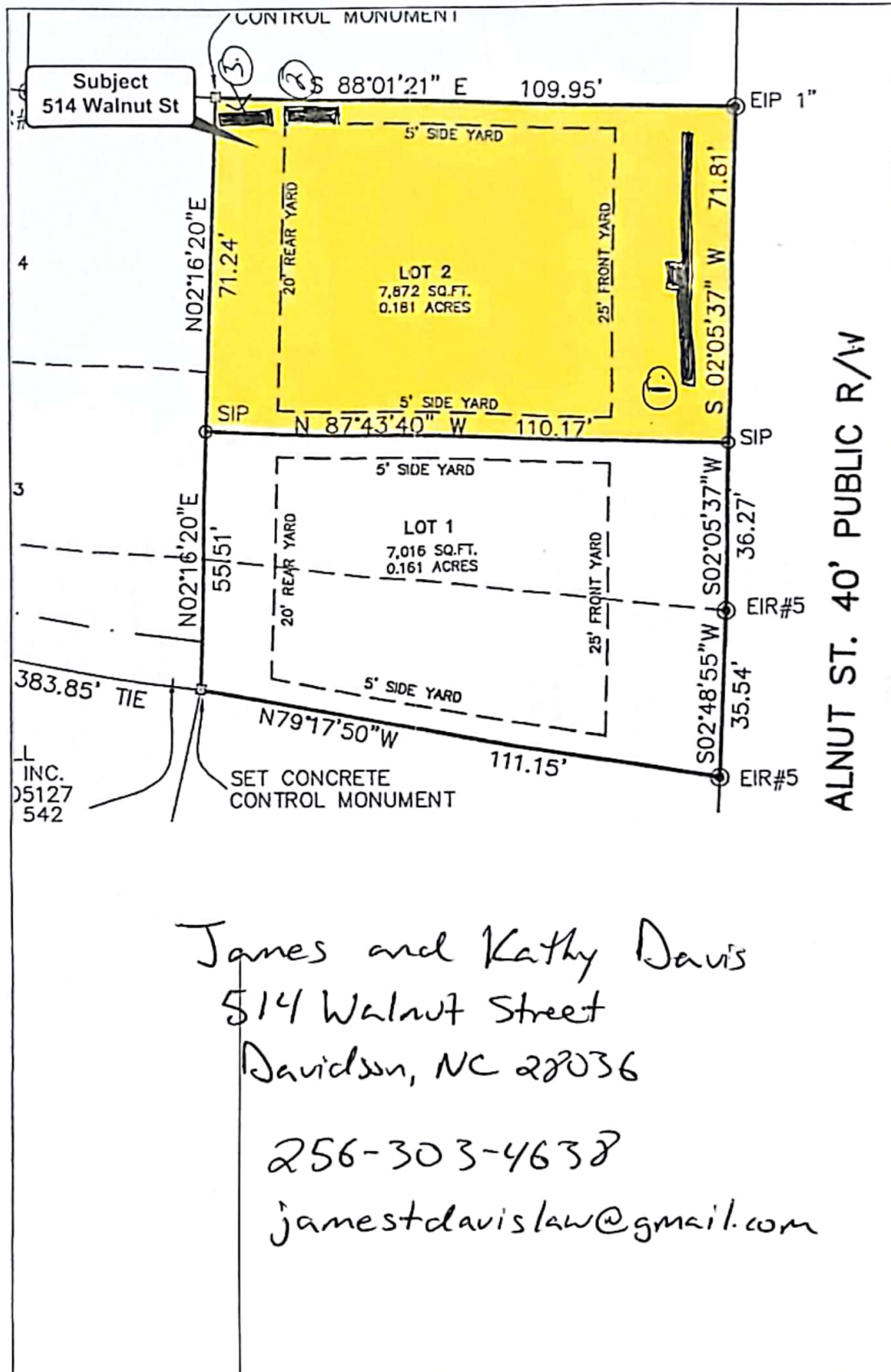
- james



PLAT MAP ADDENDUM

File # 7542016

Borrower/Cient	Mary K Abernethy		
Property Address	514 Walnut St		
City	Davidson	County	Mecklenburg
		State	NC
		Zip Code	28036
Lender	SunTrust Mortgage, Inc		



Andrew Golden

From: James Davis <jamestdavislaw@gmail.com>
Sent: Tuesday, September 26, 2023 10:32 AM
To: Andrew Golden
Subject: Davis 514 Walnut St. Site Map
Attachments: CamScanner 09-26-2023 10.12.pdf; CamScanner 09-26-2023 10.08.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Good Morning Andrew,

See attached site plan docs.

A. Structure as defined by Webster's Dictionary / Fence

- i. Fence: Approx. 6ft H x 5 W → 3W at Top.
- ii. Variance Request: Approx. 6 ft.

B. Side Patio:

- i. Covered Porch Variance Request: Approx. 2ft
- ii. House cornices may be placed within 2 ft of side setback

C. Property Line:

- i. Approx. 10-12 inches from A and B.

D. Front Yard Fence:

- i. Approx. 4ft W and 42 inches H.
- ii. Front Fence Variance Request: Approx. 5-6 inches

E. Approx. distance from House → Property Line

F. 5ft Setback

Thanks for your patience, and please don't hesitate to reach out if you have any questions. Thanks!

Best regards,

- James

FOUND
#5REBAR

N 02°16'20" E 71.24

FOUND
MONUMENT

9'6"

NOW
PH
WALT
PIC
LOT 4'

N 87°43'40" W 110.17

5' SETBACK

25' SETBACK

5' SETBACK

S 88°01'21" E 103.95

FOUNDATION
#514

COVERED PORCH

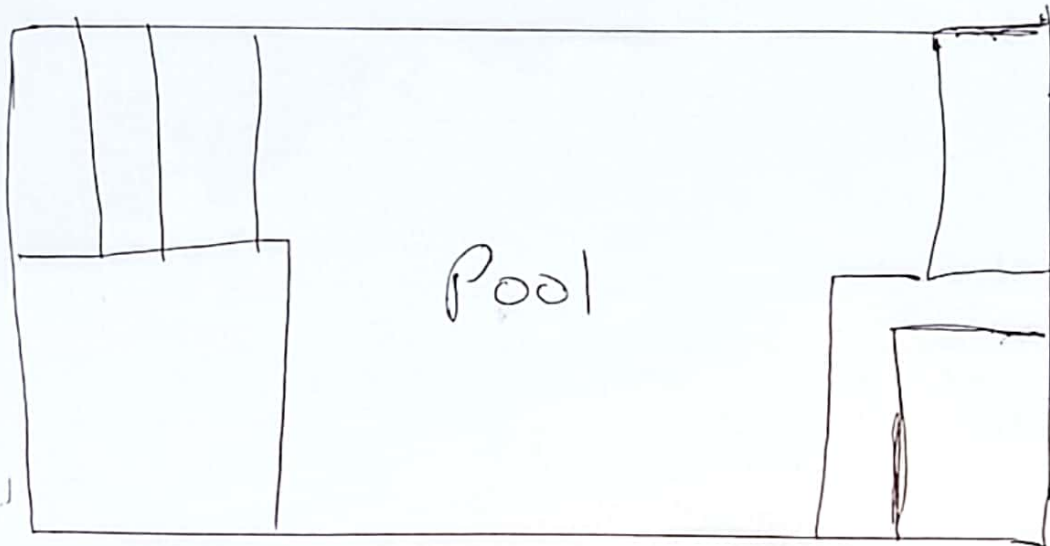
S 02°05'37" W 71.81

FOUND
#5REBAR

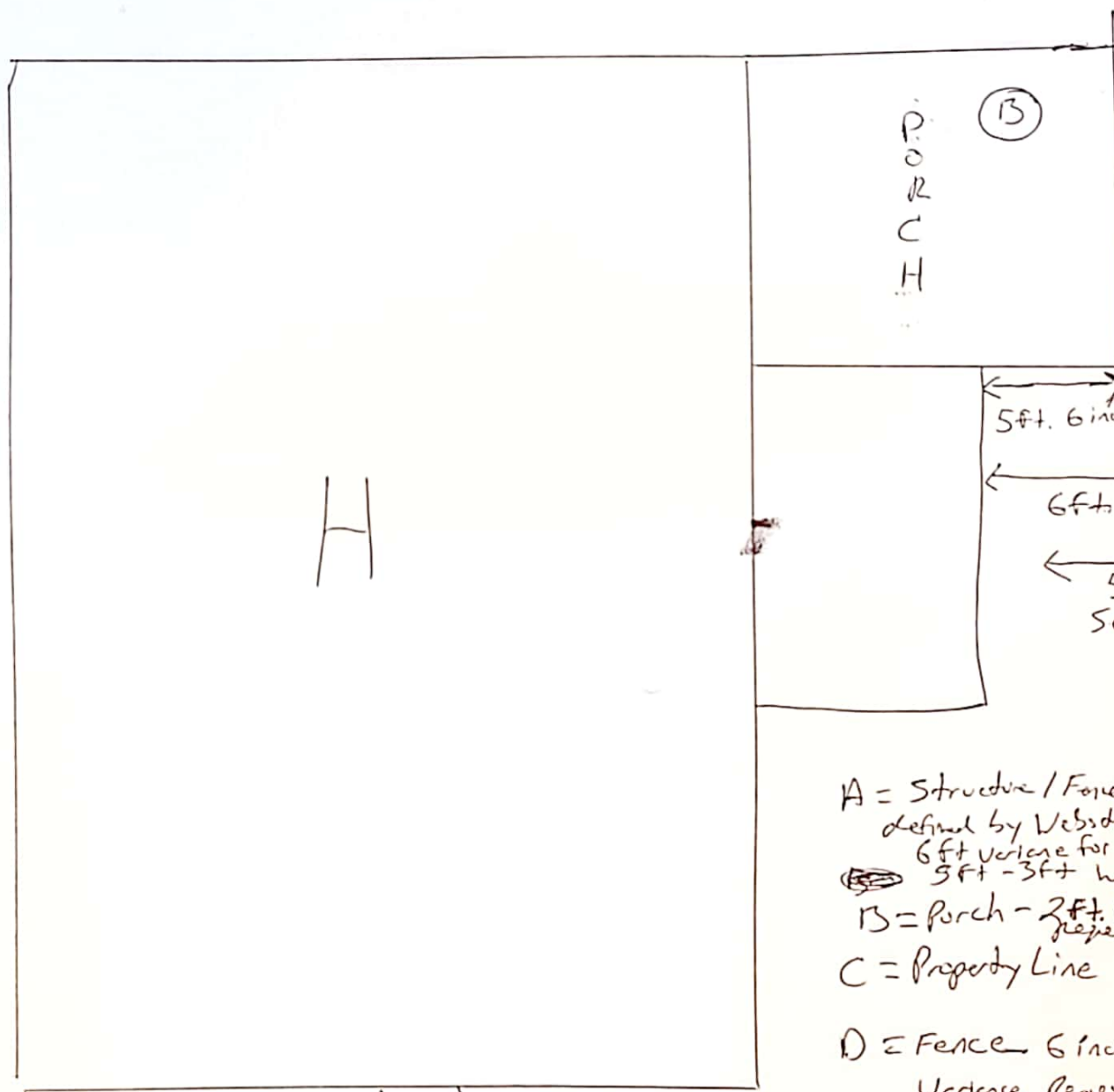
FOUND
BENT 1/2" PII

CURB

WALNUT STREET



① Approx.
10-12
meters
STRUCTURE/
FENCE



② →

Approx.
10-12
inches

5ft. 6 inches

6ft 4 (E)

5ft+
Setback (F)

A = Structure / Fence as
defined by Vebids.
6ft+ Verence for Fence
5ft - 3ft+ W

B = Porch - 2ft. Verence
request (Approx.)

C = Property Line

D = Fence 6 inches
Verence Request

E = Disten H → Property Line

F = 5ft Side Setback

FRONT FENCE ①

Outdoor Kitchen Photos







Yvonne Janssen

From: Jason Burdette
Sent: Thursday, April 20, 2023 1:00 PM
To: John & Martha Hadden
Cc: Yvonne Janssen
Subject: RE: property line concerns

John,
Yvonne Janssen (copied here) should be able to help you.

Best,



Jason Burdette, AICP
Planning Director

Web: www.townofdavidson.org/planning

Office: (704) 940-9621

NOTE: Town Hall offices have moved to a new location at 251 South Street.

*E-mail sent to and/or from this address is subject to North Carolina Public Records Law and may be disclosed to third parties

From: John & Martha Hadden <haddenjm@gmail.com>
Sent: Thursday, April 20, 2023 10:21 AM
To: Jason Burdette <jburdette@townofdavidson.org>
Subject: property line concerns

Jason,

My name is John Hadden, I live at 510 Walnut St., Davidson.
One of my next door neighbors is in the process of building a pool
and although there is not a problem at the moment, there is a potential
problem as this project proceeds.
I would like to sit down with you or a member of your staff to get a
good idea of the town property line codes and how they apply to
this particular project. I expect I would only need 10 to 15 minutes
of your time. I am retired, and would be available to meet at
your convenience.

Thank you,
John Hadden

April 24, '23

James,

The purpose of this letter is to inform you that Martha and I are very upset with your plan to build a rear "Porch" at the back of your house that avoids the Town 5 foot set back rule, thereby placing your Porch immediately adjacent to our property. I'm not sure how or why the Town Planning Commission approved this decision as Jason Burdette the Planning Director referred me to Yvonne Janssen a Planning Technician who tells me that she doesn't know why this exception was approved but the matter has now been referred to Hicklenburg County and now is in their hands. I expect that having Rodney Graham as your Builder may have had something to do with this decision but I don't know that as no one will talk to me about it.

James, we have no problem with your new pool or your new fire place or your new Pizza Oven and we wouldn't have a problem with a patio, but an addition to your house in the form of a Rear Porch that avoids the 5' set back rule between our houses is just too much. There is just not enough room

to squeeze all that in. Town's have
set-back rules for good reason.

We love living in Davidson on Walnut
St. We have good Neighbors and we think
we have been a good neighbor. As you know
we recently agreed with you to remove a
telephone pole in front of your house, even
though we couldn't even see it from our
house. We did that at a cost of \$4,000.
because we thought it was the right thing
to do.

We write this hoping that you will
reconsider this addition.

Finally, we do not want lights in
our tree and back and we prefer that
you keep your stepping stones on your
property.

For your consideration.

John and Martha Hadden

cc: Rusty Knox, Mayor Davidson
Jason Burdette, Planning Dir.
Rodney Graham, Builder.

April 24, '23

Jason,

This is regarding the matter I
tacted you about recently. You
referred me to Yvonne Janssen who
told me the matter has been trans-
ferred to Mecklenburg Co. and is now
their hands.

I'm upset that a decision to void
Town's set back rule immediately
pertinent to my property was made without
consulting me.

This whole project is ridiculous given
size of the lot. Nevertheless, all I am
concerned about here is the addition being
built next to my house.

John T. Hadden

510 WELCH ST.
DAVIDSON, NC. 28036

919-933-2899

haddenjt@gmail.com

Andrew Golden

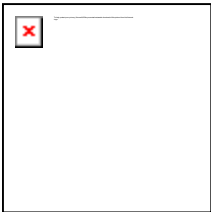
From: Jason Burdette
Sent: Wednesday, June 14, 2023 3:23 PM
To: jamestdavislaw@gmail.com
Cc: Yvonne Janssen
Subject: 514 Walnut
Attachments: IMG_20230510_110355300_HDR.jpg; IMG_20230510_110019558_HDR.jpg; IMG_20230510_110041385_HDR.jpg

Dear Mr. Davis,

The Town of Davidson Planning Department has received a complaint about the construction work underway at your residence located at 514 Walnut Street. Specifically, the complaint concerned current construction related to location (in the side yard setback) and height (exceeding fence/wall height of six feet). See pictures attached.

Please provide a summary and scope of the work planned and underway so that staff may determine if a violation has indeed occurred.

Your swift attention to this matter is greatly appreciated.



Jason Burdette, AICP
Planning Director

Web: www.townofdavidson.org/planning

Office: (704) 940-9621

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*E-mail sent to and/or from this address is subject to North Carolina Public Records Law and may be disclosed to third parties

Andrew Golden

From: James Davis <jamestdavislaw@gmail.com>
Sent: Friday, July 7, 2023 8:06 PM
To: Jason Burdette
Cc: Yvonne Janssen
Subject: Re: 514 Walnut

July 7, 2023

Dear Mr. Burdette,

In re: 514 Walnut Complaint

I am in receipt of your email dated June 14, 2023, and write to respond to the Town's requests. Response, limited in scope to the objects pictured in your email as of 6/14/2023), is as follows:

- **Summary and Scope of Work Underway:**

- There is no work currently underway.

- **Summary and Scope of Work Planned:**

- - Paint front face of brick objects;
 - Install approximate 5ft wood oak beam;
 - Install one (1) gas copper lantern on middle brick object and turn on gas supply;
 - Install two (2) gas copper lanterns on patio columns and turn on gas supply;
 - Install and connect low-voltage landscape lighting;
 - Build an approx. 4ft W x 18-20 inch (H) brick wall, supported by adequate foundation, to hold back soil and shrub roots between low brick object and brick patio;
 - Install an approx. 16ft W x 27 inch (H) steel and wrought iron fence along brick patio;
 - Install an approx.. 4 ft W x 42 inch (H) steel and wrought iron gate leading onto brick patio;
 - Install three (3) copper pool scuppers;
 - Install two (2) Bolland outdoor 180 speakers along back retaining wall;
 - Landscape back retaining wall;
 - Ensure all plumbing, drain lines, and electrical conduits are appropriately buried and covered with mulch.

* Summaries listed above are to the best of my knowledge and good-faith recollection. I am a homeowner, not a licensed contractor. Omissions and errors are not intentional. I will gladly supplement the above summaries should additional facts and information become available.

Additionally, please know:

- Licensed contractors performed all of the work;
- It is my understanding that all necessary permits were pulled and approved;
- I have no formal construction knowledge, experience, and relied heavily on the GCs to follow all applicable laws, rules, regulations, and codes;
- I did not knowingly and/or intentionally violate any applicable laws, rules, regulations, and codes.

I welcome inquiry from the Town, and I am amenable to a site visit at the Town's convenience. Should the Planning Board properly find that I did in fact violate a Town ordinance, I pledge to work in-good-faith with the Town to address the concerns, issues, and work towards a reasonable resolution and equitable remedy (e.g., request a variance, pay reasonable fine, etc...) that is mutually beneficial and meets the spirit of the Town's Planning Code.

Respectfully submitted,

- *James*

James Thomas Davis, J.D.

256-303-4638

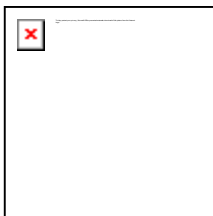
On Wed, Jul 5, 2023, 1:10 PM Jason Burdette <jburdette@townofdavidson.org> wrote:

Mr. Davis,

I'm following up on our earlier request for information (dated June 14). You stated that you would have a response last week. Your attention to this matter is greatly appreciated.

Best,

Jason Burdette, AICP
Planning Director



Web: www.townofdavidson.org/planning

Office: (704) 940-9621

NOTE: Town Hall offices have moved to a new location at 251 South Street.

*E-mail sent to and/or from this address is subject to North Carolina Public Records Law and may be disclosed to third parties

From: James Davis <jamestdavislaw@gmail.com>
Sent: Monday, June 26, 2023 4:18 PM
To: Jason Burdette <jburdette@townofdavidson.org>
Cc: Yvonne Janssen <yjanssen@townofdavidson.org>
Subject: Re: 514 Walnut

Good Afternoon Jason,

Hope all is well. I left a voicemail and also following up with this email. Writing to let you know I received your email. I will provide a response to your requests this week. In the meantime, please feel free to reach out.

Thanks,

- james

256-303-4638

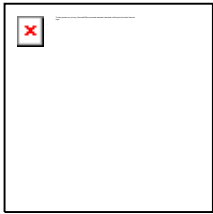
On Wed, Jun 14, 2023, 3:22 PM Jason Burdette <jburdette@townofdavidson.org> wrote:

Dear Mr. Davis,

The Town of Davidson Planning Department has received a complaint about the construction work underway at your residence located at 514 Walnut Street. Specifically, the complaint concerned current construction related to location (in the side yard setback) and height (exceeding fence/wall height of six feet). See pictures attached.

Please provide a summary and scope of the work planned and underway so that staff may determine if a violation has indeed occurred.

Your swift attention to this matter is greatly appreciated.



Jason Burdette, AICP
Planning Director

Web: www.townofdavidson.org/planning

Office: (704) 940-9621

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NOTICE OF VIOLATION

July 11, 2023

James T. Davis and Mary K. Davis (Abernethy)
514 Walnut St.
Davidson, NC 28036

RE: 514 Walnut St., Davidson, NC
PARCEL NO.: 00705130

ZONING: VI-Green Overlay
MAP NUMBER: M51-763
SITE VISIT DATE: 5/10/2023

Consistent with Davidson Planning Ordinance (DPO) section 15.1.2 (Complaints Regarding Violations), the town received a complaint regarding a building code and setback violation at your residence, 514 Walnut Street. Mecklenburg County Code Enforcement has visited the site twice and found no building code violation. However, based upon the photographic evidence attached and a site visit by town staff, the Town of Davidson is compelled to issue the following Notice of Violation per NC General Statutes 160D-404.

The following provisions of the DPO have been violated:

- **DPO 16: Yard, Side, Required:** When required by this ordinance or established by recorded plat, a minimum distance between the side lot line and the side building line, extending from the established setback to the required rear yard. For buildings not set back from the street right-of-way, the side yard shall be defined as extending from the street line to the required rear yard.
- **DPO 4.5.8.C.4:** The minimum side yard setback shall be five feet and the minimum rear yard setback shall be five feet.
- **DPO 4.3.1.D.1: Fences, Hedges and Garden Walls:** All Planning Areas: Fences, hedges, and/or garden walls located in front of the building line shall be no greater than three feet in height and fences shall be no more than two-thirds solid. Fences, hedges, and/or garden walls located behind the front building line shall be no greater than six feet in height.

Per DPO and General Statutes, you have three options available to you.

- 1) Remedy.** Remove all vertical construction located in the setback save for any structure determined to be a fence, hedge, or garden wall within 14 days. While patios and fences are permitted to encroach into the setback, vertical construction (including fences exceeding six feet in height) may not.
- 2) Appeal.** Per General Statutes Section 160D-705(b), the Board of Adjustment has the authority to hear an appeal of this Notice of Violation. The state statute empowers the Board of Adjustment to hear and decide appeals from administrative decisions regarding administration and enforcement of the zoning regulation or unified development ordinance. The provisions of G.S. 160D-405 and G.S. 160D-406 are applicable to an appeal. The property owner has 30 days from receipt of written notice to file an appeal. Applications are available at the Town of Davidson's Planning Office and on the Town's website at www.townofdavidson.org/84/Board-of-Adjustment. If the 30-day deadline has passed and an appeal application has not been properly filed, then the Board shall have no jurisdiction to hear an appeal of this notice. Your right to appeal shall have been forfeited.
- 3) Variance.** When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the Board of Adjustment shall hear application for variances consistent with G.S. 160D-705(d). Variance applications are available at the Town of Davidson's Planning Office and on the Town's website at www.townofdavidson.org/84/Board-of-Adjustment. The property owner has 30 days from receipt of written notice to file an application for a variance. If the deadline passes, the Board shall have no jurisdiction to grant a variance and your rights for a variance shall have been forfeited.

If the violation has not been remedied and there is no application for appeal or variance to the Board of Adjustment within the timeframe prescribed by NC General Statutes, the Town reserves the right to exercise any one of the remedies consistent with DPO 15.2 (Penalties For Violation & Enforcement Mechanisms), that may include Injunction, Order of Abatement, Stop Work Order, and Civil Penalty.

If you have any questions about what is required by this Notice, please contact me at 704-940-9621.

Sincerely,



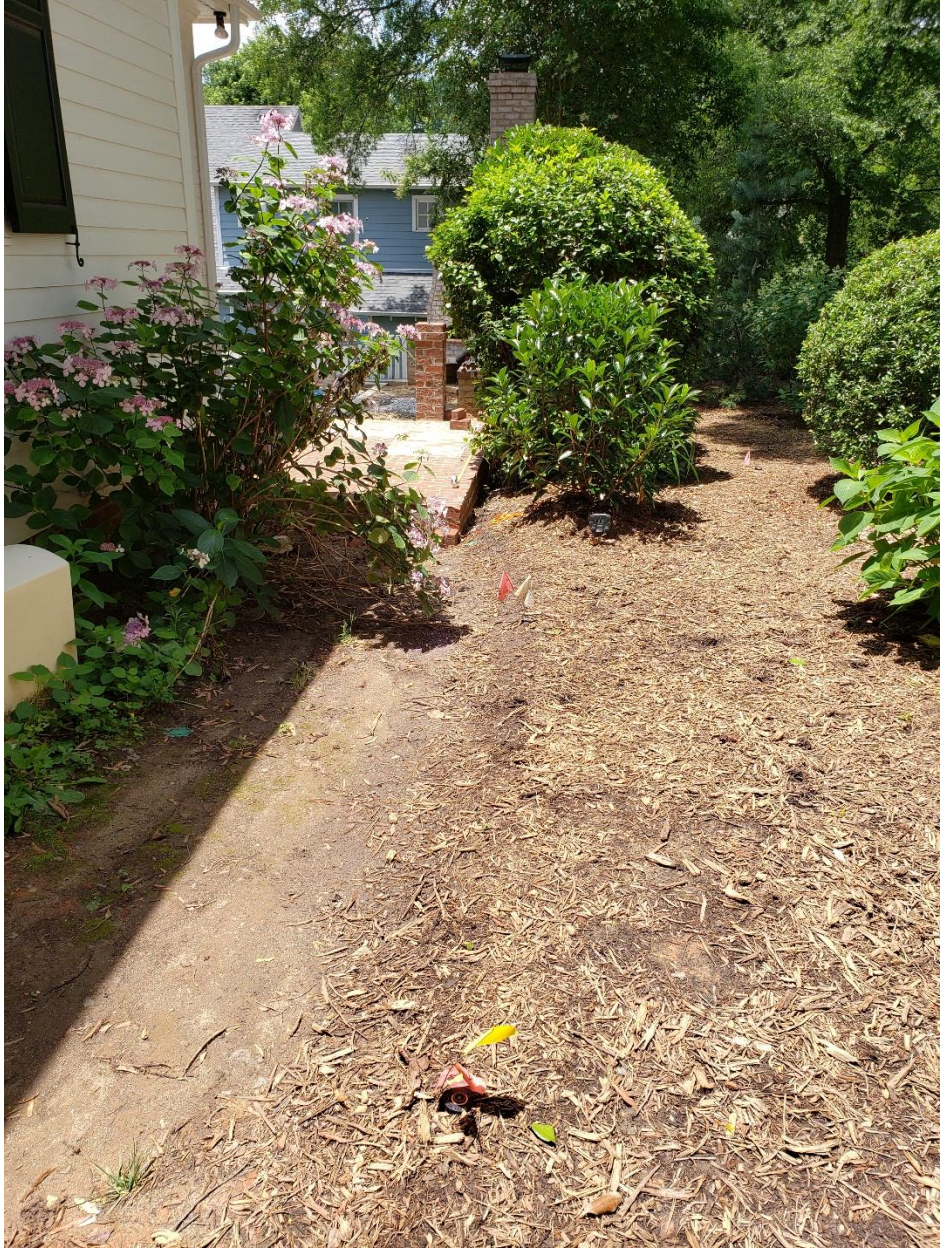
Jason Burdette, AICP
Planning Director

Cc: Karen Wolter, Town Attorney
Yvonne Janssen, Planning Technician

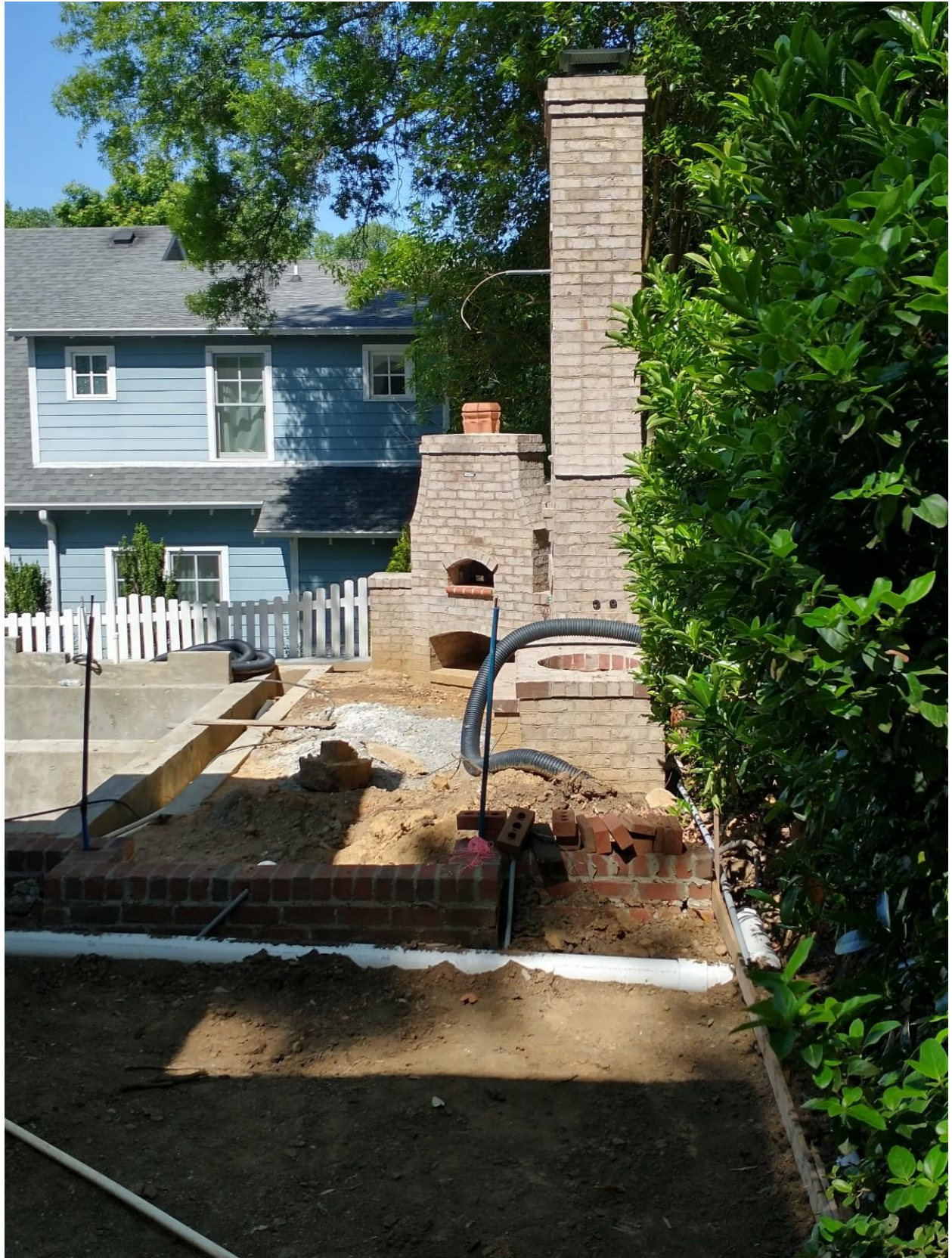


















NOTICE OF VIOLATION, AMENDED

July 14, 2023

James T. Davis and Mary K. Davis (Abernethy)
514 Walnut St.
Davidson, NC 28036

RE: 514 Walnut St., Davidson, NC
PARCEL NO.: 00705130

ZONING: VI-Green Overlay
MAP NUMBER: M51-763
SITE VISIT DATE: 5/10/2023

Consistent with Davidson Planning Ordinance (DPO) section 15.1.2 (Complaints Regarding Violations), the town received a complaint regarding a building code and setback violation at your residence, 514 Walnut Street. Mecklenburg County Code Enforcement has visited the site twice and found no building code violation. However, based upon the photographic evidence attached and a site visit by town staff, the Town of Davidson is compelled to issue the following Notice of Violation per NC General Statutes 160D-404.

The following provisions of the DPO have been violated:

- **DPO 2.2.4.D.1 Setback Requirements:** *See attached plat ("Davidson Springs Subdivision, Phase 1" July 6, 2009)*
- **DPO 16: Yard, Side, Required:** When required by this ordinance or established by recorded plat, a minimum distance between the side lot line and the side building line, extending from the established setback to the required rear yard. For buildings not set back from the street right-of-way, the side yard shall be defined as extending from the street line to the required rear yard.
- **DPO 4.5.8.C.4:** The minimum side yard setback shall be five feet and the minimum rear yard setback shall be five feet.
- **DPO 4.3.1.D.1: Fences, Hedges and Garden Walls:** All Planning Areas: Fences, hedges, and/or garden walls located in front of the building line shall be no greater than three feet in height and fences shall be no more than two-thirds solid. Fences, hedges, and/or

garden walls located behind the front building line shall be no greater than six feet in height.

Per DPO and General Statutes, you have three options available to you.

- 1) Remedy.** Remove all vertical construction located in the setback save for any structure determined to be a fence, hedge, or garden wall within 14 days. While patios and fences are permitted to encroach into the setback, vertical construction (including fences exceeding six feet in height) may not.
- 2) Appeal.** Per General Statutes Section 160D-705(b), the Board of Adjustment has the authority to hear an appeal of this Notice of Violation. The state statute empowers the Board of Adjustment to hear and decide appeals from administrative decisions regarding administration and enforcement of the zoning regulation or unified development ordinance. The provisions of G.S. 160D-405 and G.S. 160D-406 are applicable to an appeal. The property owner has 30 days from receipt of written notice to file an appeal. Applications are available at the Town of Davidson's Planning Office and on the Town's website at www.townofdavidson.org/84/Board-of-Adjustment. If the 30-day deadline has passed and an appeal application has not been properly filed, then the Board shall have no jurisdiction to hear an appeal of this notice. Your right to appeal shall have been forfeited.
- 3) Variance.** When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the Board of Adjustment shall hear application for variances consistent with G.S. 160D-705(d). Variance applications are available at the Town of Davidson's Planning Office and on the Town's website at www.townofdavidson.org/84/Board-of-Adjustment. The property owner has 30 days from receipt of written notice to file an application for a variance. If the deadline passes, the Board shall have no jurisdiction to grant a variance and your rights for a variance shall have been forfeited.

If the violation has not been remedied and there is no application for appeal or variance to the Board of Adjustment within the timeframe prescribed by NC General Statutes, the Town reserves the right to exercise any one of the remedies consistent with DPO 15.2 (Penalties For Violation & Enforcement Mechanisms), that may include Injunction, Order of Abatement, Stop Work Order, and Civil Penalty.

If you have any questions about what is required by this Notice, please contact me at 704-940-9621.

Sincerely,



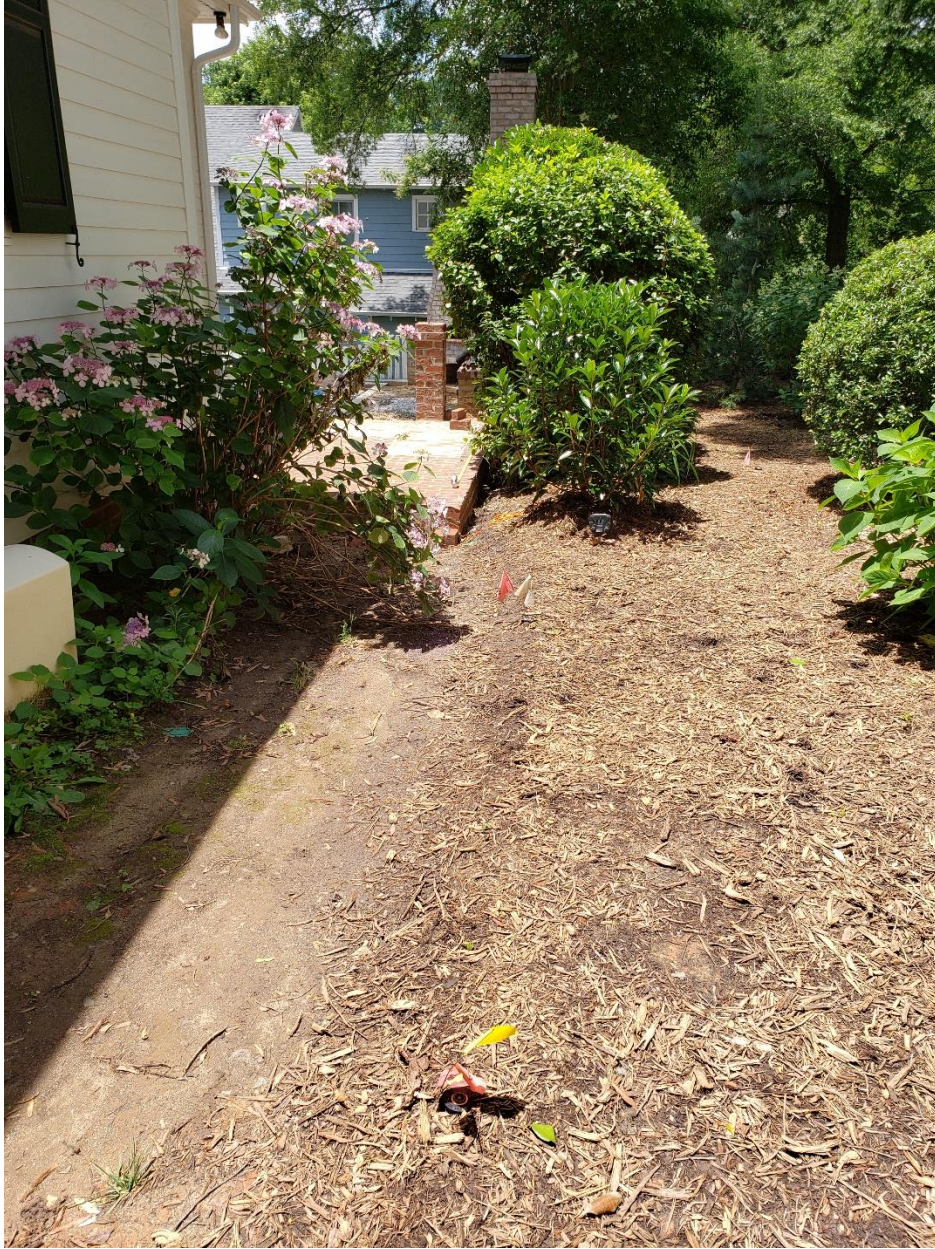
Jason Burdette, AICP
Planning Director

Cc: Karen Wolter, Town Attorney
Yvonne Janssen, Planning Technician

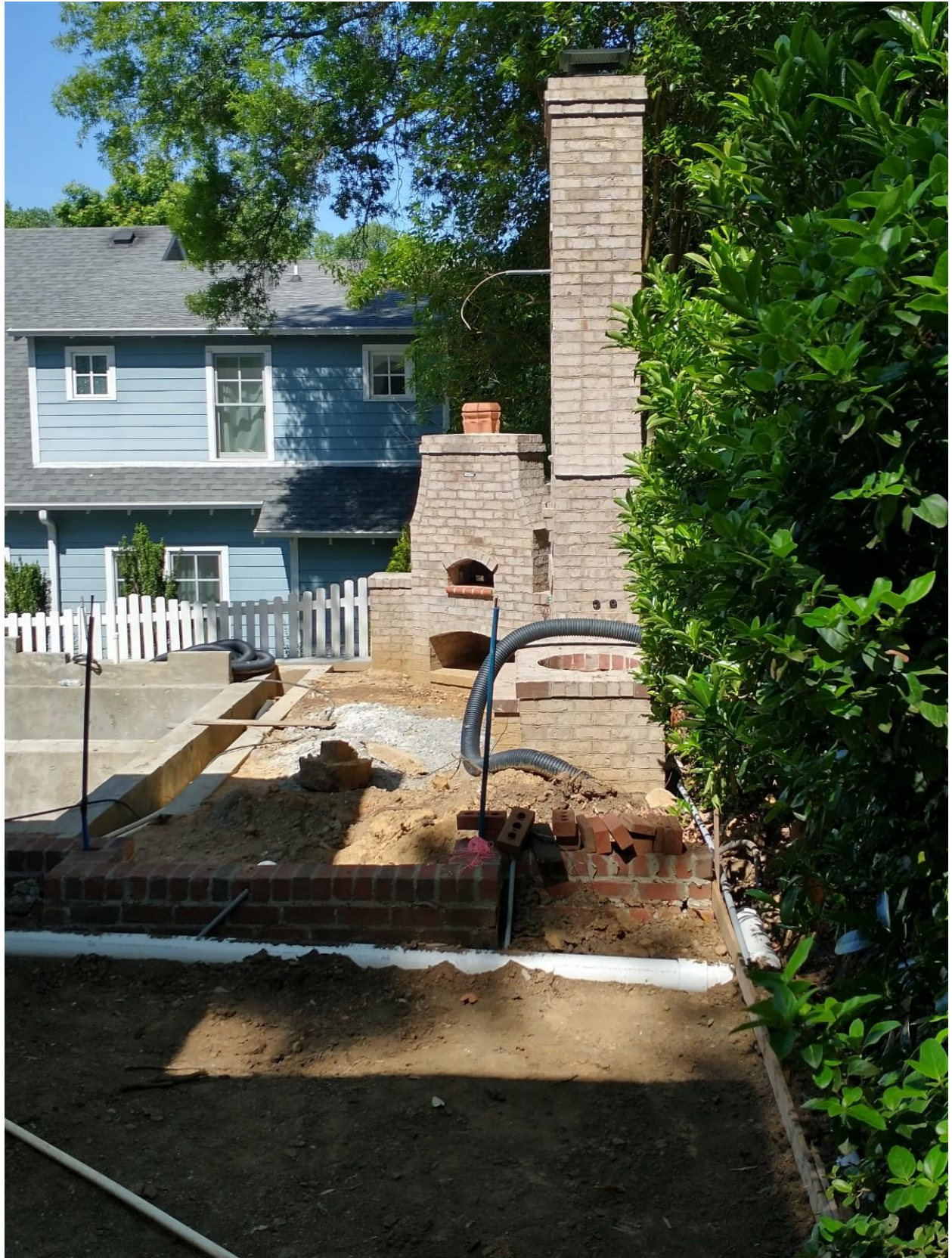
















THE TOWN OF DAVIDSON

BOARD OF ADJUSTMENT

AMENDED APPEAL FROM NOTICE OF VIOLATIONS

August 29, 2023

James T. Davis
514 Walnut Street
Davidson, NC. 28036
jamestdavislaw@gmail.com
(256) 303-4638

Name of Project: 514 Walnut St.

Tax Parcel: 00705130

Acreage: .181 acres

Existing Planning Area: VI- Green Overlay

*** Petitioner requests hearing before the Town's Board of Adjustment.**

I. DAVIDSON PLANNING DIRECTOR- FINDINGS OF VIOLATIONS:

Davidson Planning Director Jason Burdette set forth four (4) separate and distinct violations.

They are as follows:

1. **DPO 2.2.4.D.1 Setback Requirements:** "See attached plat ("Davidson Springs Subdivision, Phase 1" July 6, 2009)."
2. **DPO 16: Yard, Side, Required:** "When required by this ordinance or established by recorded plat, a minimum distance between the side lot line and the side building line, extending from the established setback to the required rear yard. For buildings not set back from the street right-of-way, the side yard shall be defined as extending from the street line to the required rear yard."

3. **DPO 4.5.8.C.4:** "...[T]he minimum side yard setback shall be five feet and the minimum rear yard setback shall be five feet."
4. **DPO 4.3.1.D.1:** "Fences, Hedges and Garden Walls: All Planning Areas: Fences, hedges, and/or garden walls located in front of the building line shall be no greater than three feet in height and fences shall be no more than two-thirds solid. Fences, hedges, and/or garden walls located behind the front building line shall be no greater than six feet in height."

II. STATEMENT OF RELEVANT FACTS:

- 1) On or about August 1, 2022, the Davis Family began pool construction. Davis Family kept all impacted neighbors generally informed and asked about concerns and preferences.
- 2) In 2023, Davis Family began construction of a fireplace, pizza oven, outdoor cooking platform, and considered potentially building a covered side porch.
- 3) Davis hired licensed contractors to perform all work.
- 4) Due to lack of construction knowledge and experience, Davis reasonably relied on licensed general contractors to follow all applicable laws, rules, regulations, and codes.
- 5) During pool construction and building of entertainment space, the Davis Family and all surrounding neighbors enjoyed a friendly neighborly relationship.
- 6) On or about mid-April 2023, Mr. John Hadden (neighbor at 510 Walnut St.) expressed his reasonable concern and issue regarding the potential building of a covered porch. I conveyed the Family's plans, explained how both families would mutually benefit from the building of a covered porch, and that the GC would submit all required permit applications.

- 7) On or about April 20, 2023, Hadden sent an email to Jason Burdette, Town of Davidson Planning Director.
- 8) On or about April 24, 2023, Hadden sent a letter to Jason Burdette, Town of Davidson Planning Director.
- 9) On or about April 24, 2023, Hadden delivered a letter to the Davis Family. Hadden courtesy copied Mayor Rusty Knox, PD Jason Burdette, and GC/Town Citizen Rodney Graham.
- 10) On or about May 11, 2023, Hadden sent an email to Ms. Yvonne, Town Planning Dept.
- 11) On or about June 9, 2023, Hadden sent an email to Ms. Yvonne, Town Planning Dept.
- 12) On or about June 14, 2023, Davis received notice from the Davidson Planning Dept. that a complaint was filed and requested a summary and scope of the work underway and planned.
- 13) On or about July 7, 2023, Davis formally responded to the Town's Planning Dept. and provided summary and scope.
- 14) On or about July 11, 2023, Town of Davidson Planning Dept. sent *Notice of Violation*.
- 15) On or about July 14, 2023, Town of Davidson Planning Dept. officials visited the build site and issued an *amended* Notice of Violation.
- 16) During 2022 and 2023, scores of town and county inspectors and code enforcement officers inspected Davis' builds for compliance with applicable town, city, and state laws, rules, regulations, ordinances, and codes. General contractors addressed all reported issues.
- 17) Davis Family did not intentionally violate any applicable laws, rules, regulations, and codes.

- 18) On or about August 25, 2023, Davis responded to Hadden's Letter- April 24,2023.
- 19) On or about August 25, 2023, Davis filed an appeal to the amended *Notice of Violation*.
- 20) On or about August 25, 2023, Davis Family filed a variance request.
- 21) On or about August 29, 2023, Davis filed an amended appeal.
- 22) On or about August 29, 2023, Davis filed an amended variance request.

III. PETITIONER'S RESPONSE

A. VIOLATION #1

DPO 2.2.4.D.1 Site Design Standards, Setback Requirements

The Town fails to state a violation conveying a mandatory requirement which creates a duty for Petitioner to act or refrain from acting.

DPO 2.2.4.D.1 states "Setback Requirements: The following table establishes the required setbacks for the Village Infill Planning Area. *See* DPO pg. 2-21, 2-22.

Here, DPO 2.2.4.D.1 *establishes* the required setbacks for the Village Infill Planning Area. This statement of establishment constitutes a statement of fact, not a statement conveying requirements. The Statement contains no action words, such as, "shall," "must," and "will." Because the Statement contains *no* action words creating mandatory requirements, there is no expressed or implied obligation for Petitioner to comply with or duty to refrain from acting.

Additionally, upon review of Table 2-15, Petitioner is unable to ascertain what applicable "building type" the Planning Director refers to. Without clarity and proper notice, it is difficult

to pen a proper response. For purposes of addressing this specific violation only, Petitioner assumes the Planning Director is referring to building type "Accessory Structure." This building type, noted in Table 2-15, states "†††" with regards to applicable accessory structure side setback. Table 2-15 references table ††† directs the reader as follows: "See Section 4.5.8 for permitted location and setbacks of accessory structures." Again, the above statements constitute statements of fact, not statements conveying requirements, as they contain no action words, such as, "shall," "must," and "will." Because the Table and its assumed applicable reference section contains no action words creating mandatory requirements, there is no expressed or implied obligation for Petitioner to comply with or duty to refrain from acting.

Where there is no duty, there can be no violation. Petitioner respectfully request violation DPO 2.2.4.D.1 be amended or withdrawn.

* **Note:** On August 11th, Petitioner contacted Davidson Planning Office seeking clarity. Mr. Andrew Golden *respectfully and courteously* expressed his understanding of my argument, but stated the Planning Office will not be making any changes to the amended *NOV*. For purposes of completeness, Petitioner penned the above response.

B. VIOLATION # 2

DPO 16, Definitions: Yard, Side, Required

The Town fails to state a violation conveying a mandatory requirement which creates a duty for Petitioner to act or refrain from acting.

DPO 16: *Yard, Side, Required* states "When required by this ordinance or established by recorded plat, a minimum distance between the side lot line and the side building line, extending from the established setback to the required rear yard. For buildings not set back from the street right-of-way, the side yard shall be defined as extending from the street line to the required rear

yard.” DPO pg. 16-30.

Here, this is a statement *defining* the term “Yard, Side, Required.” The definitional Statement conveys no mandatory requirements. The definitional Statement contains no action words; such as, “shall,” “must,” and “will.” Because the definitional Statement contains no action words creating mandatory requirements, there is no expressed or implied obligation for Petitioner to comply with or duty to refrain from acting. Additionally, Petitioner is unable to ascertain the definition’s relevancy to the issues at hand as the definitional Statement addresses, in-part, “minimum distance between the side lot line and the side building line.” Petitioner is not aware of any building line issue. Petitioner purchased 514 Walnut St. with building lines and cornerstones already in place. Petitioner has not built any additions to the home extending the building line. Without clarity and proper notice, it is difficult to pen a response. Notwithstanding, the issue is moot as DPO 16 *Yard, Side, Required*, fails to convey a mandatory requirement implying an obligation for Petitioner to comply with or duty to refrain from acting.

Where there is no duty, there can be no violation. Petitioner respectfully request violation DPO 16 *Yard, Side, Required*, be amended or withdrawn.

* **Note:** On August 11th, Petitioner contacted Davidson Planning Office seeking clarity. Mr. Andrew Golden *respectfully and courteously* expressed his understanding of my argument, but stated the Planning Office will not be making any changes to the amended *NOV*. For purposes of completeness, Petitioner penned the above response.

C. VIOLATION # 3

DPO 4.5.8.C.4

* **Note:** *The following interpretation of the Davidson Planning Ordinance as set forth herein is strictly limited to the defense of this specific violation.*

The constructed brick formations are not “accessory structures.” Thus, DPO 4.5.8.C.4 is not applicable.

Structure is defined as “Anything constructed, installed, or portable, the use of which requires a location on a parcel of land. This includes a fixed or movable building which can be used for residential, business, commercial, agricultural, or office purposes, either temporarily or permanently. “Structure” also includes, but is not limited to, swimming pools, tennis courts, signs, cisterns, sewage treatment plants, sheds, docks, mooring areas, and similar accessory construction.” DPO 16-3, *Definitions*: DPO pg. 16-26.

Accessory Structure or Use is defined as “A use or aboveground structure that is to a principal use or structure; is clearly subordinate in area, extent, or purpose to the principal use or structure; and is located on the same lot as the principal use or structure. In no event shall “accessory use” or “accessory structure” be construed to authorize a use or structure not otherwise permitted in the planning area in which the principal use is located.” DPO 16-3, *Definitions*: DPO pg. 16-3.

“For the purpose of interpreting this ordinance, certain words, concepts, and ideas are defined herein. Except as defined herein, all other words used in this Ordinance shall have their everyday meaning as determined by their dictionary definition.” DPO 16.1, *Intent*, DPO pg. 16-1.

The *Plain Language Doctrine* provides, in-part, when construing legislative provisions, courts look first to the plain meaning of the words of the statute itself. *See generally State v. Ward*, 364 N.C. 157, 160, (2010). “Where the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must give it plain and definite meaning.” *Williams v. Williams*, 299 N.C. 174, 180, (1980). *See also State v. Beck*, stating “If the statutory language is clear and unambiguous, the court eschews judicial” (*e.g., statutory*) “construction in

favor of giving the words their plain and definite meaning.” 359 N.C. 611, (2005).

The purpose and intention of DPO Chapter 4, *Site and Building Design Standards* “... [i]s to provide physical standards and guidelines for site and building design. Design regulations are not intended to replicate existing built form or achieve a specific stylistic result, but to allow imaginative design that respects the neighborhood context. It is the specific intention of this chapter to ensure that development:

- Is compatible with surrounding areas;
- Supports the unique visual character and streetscapes in Davidson;
- Utilizes architectural styles which respect the existing historic character of the town;
- Spatially defines streets, squares, and parks through careful building placement and site design;
- Encourages walking by orienting buildings to public streets, providing easy pedestrian connections, and bringing activities and visually interesting features closer to the street.”

In order to address the accessory structure violation, it must first be determined whether or not the brick formations are indeed “structures.”

To that end, one must determine which definition of “structure” to apply- the DPO definition or the “everyday meaning” definition. Here, the DPO, authored by the Town of Davidson, expressly defines the term “structure.” *See* DPO 16.1, Intent, DPO pg. 16-1. The DPO’s definition is clear, unambiguous, and requires no interpretation. The DPO’s definition of “structure” means exactly what the author intends it to mean. The Ordinance’s clear definition contains no technical words or requires one to be learned in legalese to understand the Ordinance’s definition. *See generally* the *Plain Language Doctrine*. As such, because the DPO, authored by the Town of Davidson, expressly defines “structure,” and the definition is clear and unambiguous, the Ordinance’s plain and strict definition of the word “structure” is applicable and

controlling. The word structure's everyday meaning is not applicable. *Id.* The word structure's everyday meaning may not be used for purposes of context or intent. *Id.*

Analysis begins by applying the *Davidson Planning Ordinance's* definition of "structure" to the brick formations constructed to create a fireplace, pizza oven, and outdoor cooking/grilling platform. "Structure" is defined, in-part, as "Anything constructed, installed, or portable, the use of which requires a location on a parcel of land..." DPO 16-3, Definitions: DPO pg. 16-26.

Here, the brick formations, while typically constructed on a parcel of land, are not required to be located on a parcel of land in order to be used or operated. In support thereof, a brick fireplace, pizza oven, and outdoor cooking/grilling platform can be constructed elevated above one's land and still properly operate without being placed on, coming into contact with, or supported by a parcel of land. For example, a brick fireplace, pizza oven, and outdoor cooking/grilling platform could be constructed upon a steel, iron, or concrete cantilevered deck, lateral support beams extending from a supporting and appropriately weighted structure, or a platform supported by vertical steel/iron beams. Because a brick fireplace, pizza oven, and outdoor cooking/grilling platform can be used and operated while not located on a parcel of land, the fireplace, pizza oven, and outdoor cooking/grilling platform brick formations do not meet to the DPO's the Ordinance's strict, clear, and unambiguous definition of the word "structure." Thus, the brick formations are, by the Ordinance's definition, not "structures."

Further, because the brick formations are, by the Ordinance's definition, not "structures," no further analysis is required. The brick formations are not "structures," and thus cannot be "accessory structures." Because the brick formations are not accessory structures, the setback requirements conveyed in DPO 4.5.1.8.C. 4 are not applicable. The brick formations may properly reside within Petitioner's setback.

Moreover, the brick formations do not offend or run afoul of the purpose and intention of DPO Chapter 4, *Site and Building Design Standards*. The fireplace, pizza oven, and outdoor cooking/grilling platform brick formations follow Petitioner's imaginative design respects the neighborhood context. In support thereof, the brick formations support the unique visual character in Davidson with their charming structural lines, impeccable architectural style incorporating modern Victorian transitional elements, and utilize architectural styles which respect the existing historic character of the town through the incorporation of antique wood beams, historic handmade copper gas lanterns, and an antique styled English chimney pot. As such, the brick formations do not offend or run afoul of DPO's (Chapter 4) purpose and intention.

In conclusion, because the Town of Davidson *must apply* the plain meaning of the Ordinance's definition of the word "structure," the brick formations do not meet the DPO's strict, but clear, definition. Because the brick formations are not structures, they cannot be accessory structures. Further, the brick formations do not offend the purpose and intentions expressed in DPO Ch. 4. Thus, the accessory structure setback requirements conveyed in DPO 4.5.1.8.C. 4 are not applicable.

D. VIOLATION # 4

DPO 4.3.1.D.1

**** Note: The following interpretation of the Davidson Planning Ordinance as set forth herein is strictly limited to the defense of this specific violation.***

The constructed brick formations are not "fences, hedges and garden walls." Thus, the cited violation is not applicable.

Pursuant to DPO 4.3.1.D.1, "Fences, Hedges and Garden Walls: All Planning Areas: Fences, hedges, and/or garden walls located in front of the building line shall be no greater than

three feet in height and fences shall be no more than two-thirds solid. Fences, hedges, and/or garden walls located behind the front building line shall be no greater than six feet in height.”

DPO pg. 4-3.

“For the purpose of interpreting this ordinance, certain words, concepts, and ideas are defined herein. Except as defined herein, all other words used in this Ordinance shall have their everyday meaning as determined by their dictionary definition.” DPO 16.1.

The Davidson Planning Ordinance does not define the words “fence,” “hedges,” or “garden walls.” As such, pursuant to GPO 16.1, all words not defined by the Ordinance “shall have their everyday meaning as determined by their dictionary definition.” They are as follows:

- Webster’s Dictionary defines “fence,” in-part, as: “a barrier intended to prevent escape or intrusion or to mark a boundary; especially: such a barrier made of posts and wire or boards;”
- Webster’s Dictionary defines “hedge” as “a fence or boundary formed by a dense row of shrubs or low trees;”
- Webster’s Dictionary defines “garden wall” as “a masonry bond employing three courses of stretchers to one of headers;”
- Webster’s Dictionary defines “structure” as “something (such as a building) that is constructed; something arranged in a definite pattern of organization. While the DPO defines the word “structure,” the constructed brick formations *do not* meet the DPO’s strict, limiting, and exclusive definition of “structure.” As such, Petitioner applies its everyday meaning.

The brick fireplace, pizza oven, and outdoor cooking/grilling platform are structures, as defined by their common everyday meaning, The brick formations were constructed and arranged

in a definite pattern of organization to create a brick fireplace, pizza oven, and outdoor cooking/grilling platform.

Here, the brick fireplace, pizza oven, and outdoor cooking/grilling platform (*i.e.*, structures) are not fences as they are not intended to prevent escape or intrusion, do not mark any boundary, and are made of brick, not of posts, wire, and boards. Because the brick formations are not fences, they are allowed to encroach into the side setback.

The brick fireplace, pizza oven, and outdoor cooking/grilling platform are not “hedges” as they are not fences or boundaries formed by dense rows of shrubs or low trees. Rather the constructed brick formations are formed with masonry elements. Because the brick formations are not hedges, they are allowed to encroach into the side setback.

The brick fireplace, pizza oven, and outdoor cooking/grilling platform are not “garden walls” as the masonry bond employs more than three (3) courses of stretchers. Because the brick formations are not garden walls, they are allowed to encroach into the side setback.

In conclusion, the constructed brick formations, as defined by their common everyday meaning, are not “fences, hedges and garden walls.” As such, DPO 4.3.1.D.1, is not applicable.

E. CONSTITUTIONAL PROTECTIONS AND RIGHTS

Petitioner hereby invokes and incorporates, as if fully set forth herein, all federal and state constitutional protections, rights, and privileges afforded in law and equity to include, *but not limited to*, the U.S. Const. amend. V, U.S. Const. amend. VIII., U.S. Const. amend. XIV, and North Carolina Constitution Art. I.

IV. CONCLUSION

Based upon the foregoing, Petitioner did not violate the cited DPO provisions. The Town failed to state a violation in DPO 2.2.4.D.1 and DPO 16 which conveys a mandatory requirement

creating a duty for Petitioner to act or refrain from acting. Where there is no duty, there can be no violation. DPO 4.5.8.C.4 is not applicable, as the constructed brick formations are not accessory structures. DPO 4.3.1.D.1 is not applicable as the constructed brick formations are not “fences, hedges and garden walls.” Thus, Petitioner did not violate the cited DPO provisions.

In closing, Petitioner sincerely appreciates the Davidson Planning Department’s patience, aid, and assistance. Town officials were quick to respond, cordial, respectful, and polite. While in disagreement, it’s been a pleasure to work with the Department to seek a proper and appropriate remedy that is mutually beneficial and supports the Town’s mission to promote the health, safety, morals, and general welfare of the Davidson community.

Respectfully submitted,

Your fellow Town citizen,



James T. Davis



**Town of Davidson Board of Adjustment
Minutes
April 29, 2024**

- I. **Call to Order:** The meeting was called to order by Vice Chairman Waller Blackwell at 6:01 pm on April 29, 2024.

II. **Roll Call, Determination of Quorum:**

Present Members: Waller Blackwell (Vice Chair), Janice Lewis, Susan Cooke, Sara Cummings (ETJ), Rick Pacious (ETJ), Mike Fabrizius (Alternate), Nora Barger (Alternate, ETJ)

Others Present: Ryan Bolick (attorney for the Board of Adjustment), Karen Wolter (attorney for the Town of Davidson), Jason Burdette (Planning Director), James Davis (Appellant), & Andrew Golden (Town Staff)

- III. **Explanation of Quasi-Judicial Procedure:** Chairman Blackwell explained the quasi-judicial procedure. Mr. Davis asked if rules of evidence are in play. Chairman Blackwell stated evidence will be included as the Board deems appropriate. Town council took the position of the Board on the matter.

- IV. **Conflict of Interests:** There were no conflicts of interest. Nora Barger and Mike Fabrizius were dismissed.

V. **514 Walnut St Appeal of an Administrative Decision - Hearing**

Mr. James Davis is appealing the Planning Director's July 14, 2023 Amended Notice of Violation (the "NOV") for 514 Walnut St (the "property").

John & Martha Haddon claimed to have standing as the adjoining neighbors at 510 Walnut Street. Mr. Haddon stated that they have special damages due to their proximity to the property. There were no objections.

Mr. Jason Burdette was sworn in. Mr. Burdette gave a presentation based on the staff analysis and covered the timeline of events, each of the four violations in the NOV, and concluded by stating that he defines the outdoor kitchen as an accessory structure, the location of which is in violation of the Davidson Planning Ordinance (the "DPO"). DPO 4.5.8.C.4 states that the minimum side and rear yard setbacks shall be five feet for accessory structures. He believed he was correct in issuing the NOV which also had a clear remedy of removing vertical structures within the setback.

Mr. Burdette then answered questions from the Board about fence regulations and procedure for building inspectors from Mecklenburg County. He clarified the differences between building code and zoning regulations and spoke about the original pool permit approval. He believed that the patio was also above grade and the NOV applied to the patio and the outdoor kitchen.

Additional photographic evidence from the appellant was entered into evidence.

Mr. Davis cross examined Mr. Burdette and addressed the four separate violations. Mr. Davis's response to the NOV was entered into evidence. The Board determined that Violation 1 and Violation 2 were for context and supplemental to Violation 3 and could therefore be combined into Violation 3. Mr. Burdette affirmed that even if there is an error in the wording of the DPO, that it would be superseded by the plat based on North Carolina law.

Mr. Davis discussed Violation 3 and argued that the DPO has a definition for structure and therefore he must use that strict interpretation, not the common everyday meaning of 'structure'. He concluded that the outdoor kitchen was therefore not a structure and so was not bound by the setback regulations of the DPO. Town conceded that the plain meaning of the definition should be the standard and Mr. Burdette stood by his interpretation that the outdoor kitchen was a structure because it was actually constructed, actually installed, and actually located on a parcel of land. It was also an accessory structure because it is aboveground, subordinate in area to, and located on the same lot as the principal use or structure.

The Board stipulated that the potential covered patio should be viewed in its current condition.

Chairman Blackwell called for a 5 minute break.

Mr. Burdette stated that Violation 4 was included because previous records referred to the structure as a fence and so, should the board determine it is a fence, it was still in violation of DPO 4.3.1.D.1.

Mr. James Davis was sworn in and gave testimony that he had met his burden, and the violations should be removed. Mr. Davis did not address Violation 1 and Violation 2 as they were earlier deemed to be supplemental to Violation 3.

Mr. Davis discussed the context and definition of words in the DPO, arguing that the outdoor kitchen was not a structure because the use did not require a location on a parcel of land and therefore was not in violation. Board members asked when Mr. Davis came to this conclusion and if he ever presented the outdoor kitchen to the town before construction. Mr. Davis responded that everything was done in good faith, but he did not bring the plans to the town.

Mr. Davis submitted a text message from him to Mr. Haddon sent on May 4, 2023 informing that he would no longer be building a covered patio. Mr. Davis showed photographic evidence of the patio construction and argued that it is below grade. He also stated that there is currently a variance request for a covered patio. Mr. Burdette believes that the brick columns are in violation of the DPO. Mr. Davis stated that they are part of the fencing that is required for pools by Mecklenburg County. Mr. Davis then discussed proper intent and lack of personal knowledge on requirements as a citizen. He followed by discussing where the measurement for a fence started and questioned town staff credibility.

Chairman Blackwell called for a 5 minute break.

The Board determined that staff credibility was not relevant because Mr. Burdette made the decision to issue the NOV. Mr. Davis objected to all email evidence from Yvonne Janssen. His objection was noted.

Mr. Davis closed by stating that there were misunderstandings due to lack of communication, that he must abide by the town's definition of a structure, and that the outdoor kitchen does not meet those requirements. Mr. Davis was asked about the pool equipment conversation he had before building the outdoor kitchen. He determined that the pool equipment was not a structure, even though the previous town attorney told him it was. Board members found that it was already clear to him that something much smaller than the outdoor kitchen could not be located within the setback.

Mr. Davis withdrew his variance request for the covered patio.

Mr. John Haddon is sworn in and gives testimony as to his talks with town staff and his concerns with the potential setback violations at 514 Walnut Street.

Mr. Davis gave closing remarks. Ms. Wolter then gave closing remarks for the town.

The Board moved into deliberation, focusing on Violations 3 & 4. They concluded that they should use the plain meaning of the DPO and abide by the same enforcement that Davidson has always had. Chairman Blackwell applied the DPOs definition of structure and accessory structure to the outdoor kitchen.

Violation 3, outdoor kitchen:

The Board voted unanimously 5-0 to affirm that the outdoor kitchen is an accessory structure, and the Planning Director was correct in issuing a Notice of Violation.

The Board determined 4-1 that part of the outdoor kitchen is a fence/wall. Ms. Lewis voted no. Therefore, the Board determined that the fireplace, pizza oven, and countertops are all accessory structures. The rest of the material consisting of the one course of brick was determined to be a wall.

Violation 3, covered porch:

The Board determined that the patio was not in violation as it currently exists. The town stated that they have no problem allowing the pillar as part of the fence. Chairman Blackwell made a motion to approve the patio at grade, as is, with the post as part of the fence. The Board voted unanimously 5-0 in the affirmative. Therefore, the patio is not in violation of the DPO.

Violation 4:

The Board determined this Violation to be not applicable.

Remedy:

The Board determined that the remedy of the NOV is to remove the accessory structure within 90 days of receiving the signed conclusions of law. In the event that it is not removed in 90 days, the penalties laid out in the DPO will apply until remedied.

The appeal hearing was then closed. The request for variance was opened.

Mr. Davis requested a variance to keep a fence that is three feet and six inches in height in the front yard of his property at 514 Walnut St, which is six inches higher than the DPO allows. Mr. Davis spoke to the spirit and purpose of the ordinance and stated his son has a neurological disorder and was concerned about the safety of the fence height. The town stated that they had no issue with issuing the variance and views this as a fair accommodation for the disability described.

Motion to approve the variance be granted as requested:

- Motion: Susan Cooke
- Second: Janice Lewis
- Vote: 5-0 (Motion Passed Unanimously)

VI. **Adjournment:**

Motion to adjourn the April 29, 2024 Board of Adjustment Hearing:

- Motion: Sara Cummings
- Second: Rick Pacious
- Vote: 5-0 (Motion Passed Unanimously)

There being no further business before the Board, the meeting was adjourned at 10:25 pm.

Approved:



Shawn Copeland

Chair of the Board of Adjustment

BEFORE THE TOWN OF DAVIDSON
BOARD OF ADJUSTMENT

IN RE APPEAL OF NOTICE OF
VIOLATION
514 WALNUT STREET
PARCEL NO. 00705130

)
)
)

DECISION

HEARD: April 29, 2024

DELIBERATED: April 29, 2024

The Board of Adjustment members hearing this matter included Waller Blackwell (Vice Chair), Susan Cooke, Janice Lewis, Sara Cummings, and Rick Pacious. Ryan Bolick of Cranfill, Sumner, LLP acted as counsel for the Board.

Planning Director for the Town of Davidson ("Town"), Jason Burdette provided testimony for the Town. The Town was represented by Karen Wolter of Bringewatt, Wolter and Snover, PLLC.

James T. Davis provided testimony for the Appellant.

John Hadden provided testimony as a party determined to have standing by the Board.

THIS CAUSE, was heard by the Town of Davidson Board of Adjustment (hereinafter "Board"), pursuant to NCGS § 160D-705 upon appeal of the Town of Davidson's Amended Notice of Violation issued July 14, 2023 to James T. Davis and Mary K. Davis (Abernathy) by James T. Davis ("Mr. Davis").

The Board heard, reviewed and considered:

1. The Town of Davidson's staff's presentation regarding the reasons for the Notice of Violation, live testimony from witnesses brought forth by the Town, exhibits and other documentary evidence introduced by the Town in support of its decision; and

2. Mr. Davis' live testimony in support of his appeal, exhibits and other documentary evidence provided by Mr. Davis; and
3. Live testimony of Mr. John Hadden; and

The Board, having heard all evidence and having reviewed the applicable law including NCGS §§ 160D-405, and the Davidson Planning Ordinance ("DPO"); held public deliberations to consider the matter. The Board reached a final 5-0 decision to affirm the administrative decision to issue a Notice of Violation for building code and set-back violations at 514 Walnut Street, Davidson. As a result of the public hearings and deliberations on this matter, the Board hereby issues the following findings and conclusions based upon the record as follows:

FINDINGS

1. James T. Davis is an owner of the property located at 514 Walnut Street, Davidson, NC, tax parcel number 00705130 (the "Davis Property").
2. The Davis Property is approximately .181 acres.
3. The Davis Property setbacks were established by plat for the Davidson Springs Subdivision, Phase 1 recorded July 6, 2009. The required setbacks as established are front setback: 25'; rear setback: 20', right side setback: 5', left side setback: 5'.
(Collectively, the "Setbacks").
4. On July 14, 2022, Mr. Davis applied for a building permit to construct a swimming pool in the backyard of the Davis Property. Along with the permit application, Mr. Davis submitted a survey showing the size and location of the proposed swimming pool.
5. The survey presented to the Town showed that the pool was properly located upon the Property, and that it did not encroach upon the Setbacks required for accessory structures as set forth in DPO Section 4.5.8.C.4.

6. Town of Davidson approved the Building Permit for a residential swimming pool for James Davis on July 15, 2022. Among other things, the building permit:
 - i. Identified the Setbacks;
 - ii. Stated that all pools must meet Mecklenburg County rules governing swimming pools;
 - iii. Stated that pool equipment may not encroach into Setbacks.
7. On or around July 27, 2022, Mr. Davis contacted the Town to request that he be allowed to place pool equipment in the side setback.
8. On July 27, 2022, the Town reiterated that pool equipment is considered a structure and is not allowed in the Setback.
9. On August 1, 2022, Mr. Davis requested that the Town reconsider its decision and permit him to place pool equipment in the side setback. Mr. Davis provided the Town with a legal analysis and opined that pool equipment did not meet the Town's definition of "structure".
10. On August 3, 2022, the Town once again informed Mr. Davis that the pool equipment is a structure and is not allowed in the Setback.
11. On August 8, 2022, Mr. Davis submitted to the Town a hand drawn picture of a fence with a fireplace incorporated into the fence and asked, "Personal thoughts on the below being approved . . .". Town staff responded via telephone that they could not say, based on the drawing, if the fireplace would meet DPO regulations but the Town did not require permits for fences.
12. On April 20, 2023, John Hadden, a resident who resides next door to the Davis Property, contacted Mr. Burdette to express concerns about the ongoing project at the Davis

Property and the project's proximity to the property line. The Town contacted Mecklenburg County Code Enforcement. The Project included the swimming pool (the "Pool"), an outdoor pizza oven, fireplace, and countertop adjacent to the Pool (the "Outdoor Kitchen"), a brick wall ("Wall") and a patio/porch structure the ("Patio").

13. The Outdoor Kitchen is located in the side setback.
14. The Wall is located in the side setback.
15. The Patio is located in the side setback.
16. The Wall is less than six (6) feet in height.
17. The Patio is located at grade in its current configuration.
18. It was determined by Mecklenburg County that no Mecklenburg County permits were required for Outdoor Kitchen, the Wall and the Patio at the time of inspection. However, the Patio would require a building permit issued by the County if the project went "vertical", or above grade.
19. On June 14, Mr. Burdette sent an email to Mr. Davis informing him that a complaint had been received by the Town and asked Mr. Davis for a summary of the scope of work planned and underway so staff could determine if a violation had occurred.
20. On July 7, Mr. Davis provided the Town with a scope and summary of work planned and underway.
21. On July 11, Mr. Burdette issued a Notice of Violation per NCGS 160D-404.
22. On July 14, 2023, after visiting the Davis Property, Mr. Burdette issued an Amended Notice of Violation per NCGS 160D-404 (the "NOV").

23. The NOV served to notify Mr. Davis that vertical structures constructed within the Setback were in violation of DPO section 4.5.8.C.4 which requires that any accessory structure have a minimum side yard setback of five feet.
24. The NOV further served to notify Mr. Davis that any fence, hedge or garden wall located behind the front building line of the principle structure on the property may be no greater than six (6) feet in height.
25. The NOV informed Mr. Davis that he had three options; 1) Remove all vertical structures located in the Setback within 14 days and that while patios and fences are allowed in the Setback, vertical construction of the patio and a fence/garden wall over six (6) feet, were not; 2) Appeal the decision; 3) Apply for a variance.
26. On August 25, 2023, Mr. Davis filed an Application for Appeal. On August 28, 2023, Mr. Davis filed an Amended Appeal from the Notice of Violation.

CONCLUSIONS

BASED ON THE ABOVE FINDINGS, THE BOARD CONCLUDES AS FOLLOWS:

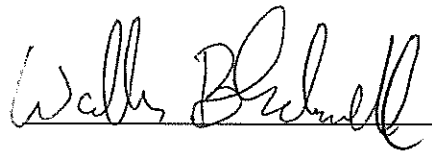
1. The Outdoor Kitchen is an Accessory Structure located within the Setback in violation of DPO 4.5.8.C.4 and must be removed within 90 days of the date hereof.
 - a. Structure is defined in the DPO Section 16.3 as “Anything constructed, installed or portable, the use of which requires a location on a parcel of land. . . .” The Outdoor Kitchen is a Structure as defined by the DPO because is constructed and installed on the Davis Property and is located and can only be used on land.
 - b. Accessory Structure is defined in the DPO Section 16.3 as: “A use or above-ground structure that is to a principal use or structure; is clearly subordinate in area, extent, or purpose to the principal use or structure; and is located on the

same lot as the principal use of structure. In no event shall “accessory use” or “accessory structure” be construed to authorize a use of structure not otherwise permitted in the planning area in which the principal use is located.” The Outdoor Kitchen is an above-ground structure that is subordinate in area and purpose to the principal residence on the Davis Property and is therefore an Accessory Structure.

- c. The Outdoor Kitchen is located within the side setback thus in violation of DPO Section 4.5.8.C.4.
 - d. The Outdoor Kitchen must be removed from the Setback no later than 90 days from the date set forth below.
2. The Patio is a Structure located within the Setback.
 - a. The Patio was constructed at grade in its current configuration. Accordingly, it is not in violation of DPO 4.5.8.C.4.
 - b. The vertical posts located on the patio are deemed part of the fence, which is required for pool safety by Mecklenburg County. Therefore, the posts are not in violation of DPO 4.5.8.C.4.
 3. The Wall is a Structure located within the Setback.
 - a. DPO 4.3.1.D.1 requires that “Fences, hedges, and/or garden walls located in front of the building line shall be no greater than three feet in height and fences shall be no more than two-thirds solid. Fences, hedges, and/or garden walls located behind the front building line shall be no greater than six feet in height.”
 - b. Garden walls are allowed to encroach within minimum required setbacks pursuant to DPO 4.3.1.F.1.

- c. The Wall is located behind the front building line and is less than six feet in height. Accordingly, the Wall does not violate DPO 4.3.1.D.1.
4. For the reasons stated above, the Board of Adjustments hereby affirms the administrative decision to issue the Notice of Violation for the setback violations related to the Outdoor Kitchen located at 514 Walnut Street, Davidson.
5. The Board further orders that the Outdoor Kitchen be removed from the Setback no later than ninety (90) days from the date set forth below.

This the 20 day of May, 2024

A handwritten signature in black ink, appearing to read "Waller Blackwell", written over a horizontal line.

Waller Blackwell

Vice Chair, Town of Davidson Board of Adjustment

Picture for Reference: Outdoor kitchen to be removed and wall permitted to stay



Picture for Reference: Patio permitted to stay



James Thomas Davis, J.D.

**514 Walnut Street
Davidson, North Carolina 28036
jamestdavislaw@gmail.com
(256) 303-4638**



June 25, 2024

Town of Davidson
251 South Street
Davidson, North Carolina 28036

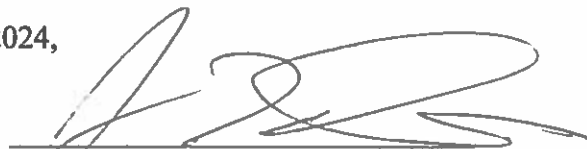
Hand Delivered

In re: Davis v. Town of Davidson, Notice of Appeal to the Superior Court of Mecklenburg
County- 24CV029218-590

To Whom It May Concern:

I, James Thomas Davis, Petitioner, hereby gives *NOTICE* to the Town of Davidson that NC Civil Case 24CV029218-590 was filed in the care and custody of the Honorable Elisa Chinn-Gary, Mecklenburg County Clerk of Superior Court appealing the Town of Davidson Board of Adjustment's administrative quasi-judicial Decision, in the matter of *Town of Davidson v. James T. Davis, Appeal of Notice of Violation, 514 Walnut Street*, denying Petitioner's Appeal from the Town of Davidson's Planning Department's *Notice of Violation, Amended*, dated July 14, 2023, with all legally required documents. See attached Notice, Petition, and Writ, excluding supporting documents already in the care and custody of the Town.

SERVED, this the 25th day of June 2024,


James Thomas Davis, J.D.

Enclosures: (1)

**IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
26TH JUDICIAL DISTRICT**

Respondent.

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Index per N.C. R. App. P. 26(g)(2)

1) Index	Pg. 1
2) Notice of Appeal From Judicial Quasi-Decision	Pg. 3
3) Notice of Appeal Certificate of Service	Pg. 5
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e. Assignment of Allegations and Errors.....	Pg. 16
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6) <i>Petition for Writ of Certiorari - Certificate of Service</i>	Pg. 24

7) *Petitioner’s Proposed Writ of Certiorari*Pg. 26

8) Attachments:

- a. *Petitioner’s Petition for Writ of Certiorari of Quasi-Judicial Decision;*
- b. *Petitioner’s proposed Writ of Certiorari;*
- c. *Town of Davidson’s Planning Department’s Notice of Violation, Amended,*
dated July 14, 2023;
- d. *Petitioner’s Amended Appeal From Notice of Violations;*
- e. *Petitioner’s Amended Variance Application;*
- f. *Petitioner’s Request For Production of Evidence;*
- g. *Town of Davidson v. James T. Davis, Appeal of Notice of Violation, 514*
Walnut Street, Parcel No. 00705130- Decision.

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
26TH JUDICIAL DISTRICT

JAMES THOMAS DAVIS
(Town of Davidson citizen)

Petitioner, *Pro Se*;

v.

TOWN OF DAVIDSON
(a North Carolina municipality)

Respondent.

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NOTICE OF APPEAL

NOTICE OF APPEAL FROM QUASI-JUDICIAL DECISION

TO THE HONORABLE SUPERIOR COURT, 26th JUDICIAL DISTRICT

COMES NOW, Town of Davidson citizen and petitioner JAMES THOMAS DAVIS, *pro se*, pursuant to N.C. G.S. 160D-406(k), in timely accordance with N.C.G.S. § 160D-1405(d), and in the nature of certiorari pursuant to N.C.G.S. § 160D-1402(d), hereby gives *NOTICE OF APPEAL* to this Honorable Court, filed in the care and custody of the Honorable Elisa Chinn-Gary, Mecklenburg County Clerk of Superior Court, from the Town of Davidson Board of Adjustment's administrative quasi-judicial Decision, in the matter of *Town of Davidson v. James T. Davis, Appeal of Notice of Violation, 514 Walnut Street, Parcel No. 00705130*, received via electronic mail on May 24, 2024, denying Petitioner's Appeal from the Town of Davidson's Planning Department's *Notice of Violation, Amended*, dated July 14, 2023, with all legally required documents attached hereto. *See attachments.*

RESPECTFULLY SUBMITTED, this the 25th day of June 2024.

/s/ James Thomas Davis

James Thomas Davis
Petitioner, *Pro se*

514 Walnut Street
Davidson, North Carolina 28036
(256) 303-4638
jamestdavislaw@gmail.com

Attachments:

1. Petitioner's *Petition for Writ of Certiorari of Quasi-Judicial Decision*;
2. Petitioner's proposed *Writ of Certiorari*;
3. Town of Davidson's Planning Department's *Notice of Violation, Amended*, dated July 14, 2023;
4. Petitioner's *Amended Appeal From Notice of Violations*;
5. Petitioner's *Request For Production of Evidence*;
6. Petitioner's *Amended Variance Application*;
7. *Town of Davidson v. James T. Davis, Appeal of Notice of Violation, 514 Walnut Street, Parcel No. 00705130- Decision.*

CERTIFICATE OF SERVICE

I, James Thomas Davis, in accordance with N.C. R. App. 26(d), do hereby certify the foregoing *Notice of Appeal* was served on the Town of Davidson and its Counsel by hand delivery.

SERVED:

Jason Burdette
Planning Director
Town of Davidson

251 South Street
P.O. Box 579
Davidson, NC 28036
jburdette@townofdavidson.org
(704) 892-7592

Karen Wolter, Esq.
Town Attorney
Town of Davidson

Bringewatt, Wolter & Snover, PLLC
P.O. Box 453
Davidson, NC 28036
karen@bwsnclaw.com
(704) 778-1146

Ryan Bolick, Esq.
Attorney for the Board of Adjustment
Town of Davidson

Cranfill Sumner, LLP
2907 Providence Road, #200
Charlotte, NC 28211
rbolick@cshlaw.com
(704) 940-3416

SIGNED, this the 25th day of June 2024.

/s/ *James Thomas Davis*

James Thomas Davis
Petitioner, *Pro se*

514 Walnut Street
Davidson, North Carolina 28036

(256) 303-4638

**IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
26TH JUDICIAL DISTRICT**

Respondent.

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PETITION FOR WRIT OF CERTIORARI

PETITION FOR WRIT OF CERTIORARI OF QUASI-JUDICIAL DECISION

TO THE HONORABLE SUPERIOR COURT, 26th JUDICIAL DISTRICT

COMES NOW, Town of Davidson citizen and petitioner JAMES THOMAS DAVIS, *pro se*, pursuant to N.C.G.S. § 160D-406(k), in timely accordance with N.C.G.S. § 160D-1405(d), and in the nature of certiorari pursuant to N.C.G.S. § 160D-1402, hereby respectfully petitions the Mecklenburg County Superior Court for a Writ of Certiorari for review of a quasi-judicial decision with this Honorable Court from the Town of Davidson Board of Adjustment's administrative quasi-judicial Decision, received via electronic mail on May 24, 2024, denying Petitioner's Appeal from the Town of Davidson's Planning Department's *Notice of Violation, Amended*, dated July, 14, 2023. In support of this Petition, Petitioner respectfully shows unto the Court:

PARTIES

1. Petitioner, JAMES THOMAS DAVIS (hereinafter “Davis”) is a resident and citizen of the Town of Davidson, Mecklenburg County, located in the State of North Carolina.
2. Respondent, TOWN OF DAVIDSON, (hereinafter “Davidson or “Town”), inclusive of its Board of Adjustment and Planning Department, is a municipal corporation and a body politic created under and by virtue of G.S. § 160A-1, *et. seq.* located in Mecklenburg County, North Carolina.

JURISDICTION

3. This Court has exclusive subject matter jurisdiction to review Petitioner’s *Petition for Writ of Certiorari of Quasi-Judicial Decision* pursuant to N.C.G.S. § 160D-406(k) which states, in pertinent part, “Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to N.C.G.S. § 160D-1402.” This Court is a court of “general” jurisdiction. No other court or tribunal has exclusive subject matter jurisdiction.
4. Jurisdiction over this cause is conferred upon this Court under and by virtue of. *inter alia*. N.C.G.S. § 7A-245(2) and (4).
5. This Court has personal jurisdiction over Petitioner. Davis is a citizen and resident of North Carolina. Davis expressly consents to the personal jurisdiction of this Honorable Court by filing Petition.
6. This Court has jurisdiction over Respondent. The Town of Davidson is a municipality in Mecklenburg County, located in the State of North Carolina. Davidson’ quasi-judicial

Decision, actions, inactions, allegations, and errors giving rise to Petitioner's *Petition for Writ of Certiorari* arose in North Carolina.

VENUE

N.C. Gen. Stat. § 160D-1402(e)

7. Venue is proper in this Superior Court because Petitioner and Respondent's matters and conflict arose in Mecklenburg County, North Carolina.

STANDING

N.C. Gen. Stat. § 160D-1402(c)

8. Petitioner has standing to seek review. Davis was the appeal applicant to the Town's Administrative Decision. Davis has an ownership interest in the subject property adversely impacted by the Town's quasi-judicial Decision. Specifically, Davis owns the subject property at 514 Walnut Street, Davidson, NC 28036, Tax Parcel ID# 00705130.
9. Petitioner suffered and will continue to suffer irreparable harm primarily due to the Town of Davidson Board of Adjustment's arbitrary, capricious and unreasonable actions, inactions, and omissions hereinafter described.

BACKGROUND SUMMARY

10. In 2023, Petitioner constructed an outdoor fireplace, pizza oven, and outdoor grill area ("outdoor kitchen"). Davis used a licensed professional contractor. In June 2023, Davidson Planning Department provided Davis notice that a complaint was filed and requested a summary and scope of the work. Davis provided a summary of work and met on-site with the Town Planning Department. The Town issued a Notice of Violation

(NOV), consisting of four (4) separate and distinct charges, citing Davis, in pertinent part, for building an accessory structure within the five-foot side-yard setback, in violation of the Davidson Planning Ordinance (DPO). Davis argues the outdoor kitchen, when applying the word's everyday plain meaning, is indeed a structure, but the outdoor kitchen, as defined by the Ordinance's plain, strict, and narrowly tailored definition is not a "structure." Because the outdoor kitchen is not a "structure," as defined by the Ordinance, it cannot be an accessory structure. Where there is no accessory structure, there can be no setback violation. Davis appealed the Town's NOV. On or about April 2024, the Town's Board of Adjustment held a hearing, and after presentation of evidence and testimony, affirmed the Davidson's Planning Department's *Administrative Decision* (NOV) concluding, in-part, the outdoor kitchen is a "structure" as defined by the Ordinance. On May 24, 2024, Davis received the Board's written Decision via email. On June 25, 2024, Davis filed his *Notice of Appeal*.

STATEMENT OF FACTS

11. Davis is an owner of the property located at 514 Walnut Street, Davidson, NC, tax parcel number 00705130 (the "Davis Property").
12. Davis Property is approximately .181 acres.
13. Davis Property setbacks were established by plat for the Davidson Springs
14. Subdivision, Phase 1 recorded July 6, 2009. The required setbacks as established are front setback: 25'; rear setback: 20', right side setback: 5', left side setback: 5' (Collectively, the "Setbacks").

15. On July 14, 2022, Davis applied for a building permit to construct a swimming pool in the backyard of the Davis Property. Along with the permit application, Davis submitted a survey showing the size and location of the proposed swimming pool.
16. The survey presented to the Town showed that the pool was properly located upon the Property, and that it did not encroach upon the Setbacks required for accessory structures as set forth in DPO Section 4.5.8.C.4.
17. Town of Davidson approved the Building Permit for a residential swimming pool for James Davis on July 15, 2022. Among other things, the building permit:
 - i. Identified the Setbacks;
 - ii. Stated that all pools must meet Mecklenburg County rules governing swimming pools;
 - iii. Stated that pool equipment may not encroach into Setbacks.
18. On or around July 27, 2022, Davis contacted the Town to request that the pool equipment be allowed in the side setback.
19. On July 27, 2022, the Town conveyed that pool equipment is considered a structure and is not allowed in the Setback.
20. On August 1, 2022, Davis requested that the Town reconsider its decision and permit him to place pool equipment in the side setback. Davis provided the Town with a legal analysis and opined that pool equipment did not meet the Town's definition of "structure."
21. On August 3, 2022, the Town again conveyed that the pool equipment is a structure and is not allowed in the Setback. The Town provided no reasoning for its conclusion. Davis spoke to the Town Attorney and respectfully requested a scintilla of reasoning. Counsel

for the Town declined to provide any legal reasoning to aid Davis in understanding the Town's conclusion and simply conveyed "...[t]hat's just my opinion."

22. On August 8, 2022, Davis submitted to the Town a hand drawn picture of a fence with a fireplace incorporated into the fence and asked, "Personal thoughts on the below being approved ... ". Town staff responded via telephone that they could not say, based on the drawing, if the fireplace would meet DPO regulations but the Town did not require permits for fences.
23. On April 20, 2023, John Hadden, a resident who resides next door to the Davis Property, contacted Mr. Burdette to express concerns about the ongoing project at the Davis Property and the project's proximity to the property line. The Town contacted Mecklenburg County Code Enforcement. The Project included the swimming pool (the "Pool"), an outdoor pizza oven, fireplace, and countertop adjacent to the Pool (the "Outdoor Kitchen"), a brick wall ("Wall") and a patio/porch structure the ("Patio").
24. On or about April 24, 2023, Hadden delivered a letter to the Davis Family. Hadden courtesy copied Mayor Rusty Knox, PD Jason Burdette, and GC/Town Citizen Rodney Graham. This was the first time Davis learned of any concerns or issues.
25. On or about June 14, 2023, Davis received notice from the Davidson Planning Dept. that a complaint was filed and requested a summary and scope of the work underway and planned.
26. On or about July 7, 2023, Davis formally responded to the Town's Planning Dept. and provided summary and scope.
27. On July 11, Mr. Burdette issued a Notice of Violation per NCGS 160D-404.

28. On July 14, 2023, after visiting the Davis Property, Mr. Burdette issued an Amended Notice of Violation per NCGS 160D-404 (the "NOV").
29. On or about July 14, 2023, Town of Davidson Planning Dept. officials visited the build site and issued an *amended* Notice of Violation.
30. During 2022 and 2023, scores of town and county inspectors and code enforcement officers inspected Davis' builds for compliance with applicable town, city, and state laws, rules, regulations, ordinances, and codes. General contractors addressed all reported issues.
31. On or about August 14, 2023, Davis noticed appeal information and timelines conveyed by the Town were wrong. Davis notified the Town and provided substantial legal analysis to support his claim that for appeal filing deadline and the calculation of time. Town agreed with Davis' conclusion.
32. Town of Davidson, at the very next Board meeting, amended the Davidson Planning Ordinance "References to Days." *See* DPO section 16.2(F).
33. On or about August 25, 2023, Davis filed an appeal to the amended *Notice of Violation*.
34. On or about August 25, 2023, Davis Family filed a variance request.
35. On or about August 29, 2023, Davis filed an amended appeal.
36. On or about August 29, 2023, Davis filed an amended variance request.
37. On or about February 22, 2024, Davis formally requested review of alleged bad-faith actions and a request for Alternative Dispute Resolution. Town Counsel declined ADR.
38. On or about April 19, 2024, Davis filed a *Request for Persons to be Subpoenaed*. The Town failed to respond to Davis' Request for Production.
39. On April 29, 2024, the Davidson Board of Adjustment held a hearing to hear Petitioner's *Appeal of Notice of Violation and Variance Request*. The Davidson Board of Adjustment

failed to render a written decision regarding Davis' *Amended Variance Request* for the outdoor kitchen.

40. On May 20, 2024, the Davidson Board of Adjustment penned its Decision to affirm the Planning Department's administrative Decision.
41. On May 24, 2024, the Davidson Board of Adjustment forwarded its written Decision to Petitioner.

STANDARD OF REVIEW

N.C.G.S. 160D-1402(j)(2)

42. The basic standard for judicial review of quasi-judicial decisions is set forth in *Coastal Ready-Mix Concrete Co. v. Board of Commissioners* (299 N.C. 620, 265 S.E.2d 379 (1980)), codified at G.S. 160A-393(k)(1). "Courts reviewing quasi-judicial decisions examine the following five questions: (1) Were there errors in law? (2) Were proper statutory and ordinance procedures followed ?; (3) Were due process rights secured (including rights to offer evidence, cross-examine witnesses, and inspect documents)? (4) Was competent, material, and substantial evidence in the record to support the decision? And (5) Was the decision arbitrary and capricious ?" *Id.* at 626. 265 S.E.2d at 383.
43. A de novo review is made of alleged errors of law. G.S. 160A-393(k)(2). In these reviews the court is not bound by findings made by the decision making board. Instead, the court considers the matter anew, as if not considered or decided by the board. *Amanini v. N.C. Dep't of Human Res.*, 114 N.C. App. 668, 674, 443, S.E.2d 114, 118 (1994). When the issue before the court includes "... whether the decision-making board erred in interpreting an ordinance, the court shall review that issue de novo. The court shall consider the interpretation of the decision-making board, but is not bound by that interpretation, and

may freely substitute its judgment as appropriate. Whether the record contains competent, material, and substantial evidence is a conclusion of law, reviewable de novo.” N.C.G.S. 160D-1402(j)(2).

44. Deference in De Novo Reviews: “A court is not bound by a board’s interpretation of the terms of an ordinance, as these are questions of law subject to a de novo review. *Morris Commc’ns Corp. v. City of Bessemer City Bd. of Adjustment*, 365 N.C. 152 (2011). G.S. 160A-393(k)(2), enacted in 2009, provides that the court making a de novo review of a board interpretation “shall consider the interpretation of the decision-making board, but is not bound by that interpretation, and may freely substitute its judgment as appropriate.” *Owen’s Land Use Law*, 2nd Ed. *Procedures for Judicial Review*, Ch. 29, pg. 375.
45. “A whole record review is conducted of allegations that a decision was not supported by the evidence or that the decision was arbitrary and capricious.” *Powell v. N.C. Dep’t of Transp.*, 347 N.C. 614, 623, 499 S.E.2d. 180, 185 (1998). In these reviews, the board’s findings of fact are binding on the reviewing court if they are supported by substantial, competent evidence.” *Capricorn Equity Corp. v. Town of Chapel Hill Bd. of Adjustment*, 334 N.C. 132, 431 S.E.2d 183 (1993). *See also Owens* at p. 375.

STANDING

N.C. Gen. Stat. § 160D-1402(c)

46. Petitioner has standing to seek review. Davis was the appeal applicant to the Town’s Administrative Decision. Davis has an ownership interest in the subject property adversely impacted by the Town’s quasi-judicial Decision. Specifically, Davis owns the subject property at 514 Walnut Street, Davidson, NC 28036, Tax Parcel ID# 00705130.

ASSIGNMENT OF ALLEGATIONS & ERRORS

N.C. Gen. Stat. § 160D-1402(b)(2)

FIRST CLAIM FOR RELIEF

INABILITY TO OBTAIN AND INSPECT DOCUMENTS

47. The Davidson Board of Adjustment violated Petitioner's constitutional rights to procedural and substantive due process and equal protection under the laws by failing to respond to Petitioner's *Request for Production of Evidence* served on April 19th, 2024.
48. Pursuant to N.C.G.S. § 160D-406(g), ... "[T]he board making a quasi-judicial decision under this Chapter through the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the local government, and any person with standing under G.S. 160D-1402(c) may make a written request G.S. 160D-406 Page 2 to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties."
49. Here, Petitioner's *Request for Production*, following discovery of potential communications not yet received, seemingly went unanswered, as the Petitioner failed to receive any response from the Board.

50. The Board's failure to provide Petitioner any response and produce the documents requested is arbitrary and capricious in that Respondent violated Petitioner's constitutional rights to procedural and substantive due process and equal protection under the laws.

SECOND CLAIM FOR RELIEF

INADEQUATE OPPORTUNITY TO BE HEARD

51. The Davidson Board of Adjustment failed to provide Petitioner *adequate opportunity* to be meaningfully heard and afford sincere good-faith attention to Petitioner's defense regarding, in-part, statutory construction, the Plain Meaning Doctrine, and interpretation of the Ordinance's definition of "structure" violating Petitioner's constitutional rights to procedural and substantive due process and equal protection under the laws.
52. Pursuant to 5.3(e), *Hearing Procedures & Guidelines for Determining Cases*, "The Chair shall allow every sworn-in speaker to be heard, but may limit and/or cut off evidence or testimony that is irrelevant, repetitive, incompetent, or hearsay." Town of Davidson Board of Adjustment, *Rules of Procedure* (2/27/2023). "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1; N.C. Const. Art. I, § 19.
53. Here, the Board, failed to provide Petitioner *adequate opportunity* to be meaningfully heard and afford sincere good-faith attention to Petitioner's defense regarding, in-part, statutory construction, the *Plain Meaning Doctrine*, and interpretation of the Ordinance's definition of "structure," Petitioner's paramount defense. Specifically, but certainly not

limited to, the Record will show the Board pressured Petitioner to “move on,” and “get to the facts,” *etc.*... multiple times when Petitioner attempted to argue the foregoing. The Board stated in elevated tones, paraphrasing, “who cares, what does this have to do with the facts, *etc.*” “We’re not lawyers, and we’re not going to discuss interpretations and the law.” “This is not the proper venue to argue law.” In short, the Board appeared at every instance to deem Petitioner’s Argument “irrelevant.”

54. Petitioner agrees, in-part, that arguing the nuances of administrative law to non-citizen lawyers is challenging and should be avoided, if possible, but here, interpretations of the Ordinance were paramount, unavoidable, and unfortunately, within the Board’s duty to hear as the trier of facts. While the Board provided substantial time for the Hearing, even going into late hours, all the time in the world is of little value when the audience refuses to sincerely listen and even attempt to appear attentive. Petitioner’s Allegation rests upon the Board’s actions and words, not its willingness or unwillingness to agree with Petitioner’s Argument.
55. As such, the Board’s failure to provide Petitioner *adequate opportunity* to be meaningfully heard and afford sincere good-faith attention to Petitioner’s defense regarding, in-part, statutory construction, the Plain Meaning Doctrine, and interpretation of the Ordinance’s definition of “structure” thereby violating the Board’s *Rules of Procedure*.
56. Respondent’s failure to provide Petitioner adequate opportunity to be meaningfully heard is arbitrary and capricious in that Respondent failed to afford Petitioner due process and equal protection under the laws.

THIRD CLAIM FOR RELIEF
FAILURE TO RENDER DECISION ON PETITIONER’S VARIANCE REQUEST FOR
EXISTING OUTDOOR KITCHEN

57. The Davidson Board of Adjustment failed to render a decision regarding Petitioner’s *Variance Request* for the existing outdoor kitchen. See Petitioner’s *Amended Application for Variance from Davidson Planning Ordinance* (Aug. 29, 2023).
58. Pursuant to N.C.G.S. § 160D-406(j), Decisions. – “[T]he board shall determine contested facts and make its decision within a reasonable time...” “Each quasi-judicial decision shall be reduced to writing, reflect the board’s determination of contested facts and their application to the applicable standards, ...”
59. Here, the Board failed to render a to render a decision regarding Petitioner’s *Variance Request* for the existing outdoor kitchen. See Petitioner’s *Amended Application for Variance from Davidson Planning Ordinance* (Aug. 29, 2023), and *Town of Davidson v. James T. Davis, Appeal of Notice of Violation, 514 Walnut Street*, Parcel No. 00705130-*Decision*, dated May 20, 2024.
60. The Board’s failure to render a decision regarding Petitioner’s properly filed *Variance Request* for the existing outdoor kitchen is arbitrary and capricious in that Respondent violated Petitioner’s constitutional rights to procedural and substantive due process and equal protection under the laws.

FOURTH CLAIM FOR RELIEF
BOARD ERRED IN INTERPRETING THE DAVIDSON PLANNING ORDINANCE

61. The Davidson Board of Adjustment erred in its interpretation of the Davidson Planning Ordinance’s (DPO) definition of “structure.”

62. The DPO defines “structure” as

“Anything constructed, installed, or portable, the use of which requires a location on a parcel of land. This includes a fixed or movable building which can be used for residential, business, commercial, agricultural, or office purposes, either temporarily or permanently. “Structure” also includes, but is not limited to, swimming pools, tennis courts, signs, cisterns, sewage treatment plants, sheds, docks, mooring areas, and similar accessory construction.” DPO § 16.3, Definitions, pg. 16-26.

63. Here, the Board erred in interpreting the DPO’s plain meaning and narrowly tailored definition of the word “structure” when it failed to apply the strict meaning of the phrase “the use of which requires a location on a parcel of land” to Petitioner’s outdoor kitchen. This significant interpretation error led to the Board’s legally flawed and erroneous conclusion that Petitioner’s outdoor kitchen is a structure, in-part, because it “is located and can only be used on land.” *See Town of Davidson v. James T. Davis, Appeal of Notice of Violation*, 514 Walnut Street, Parcel No. 00705130- *Decision*, pg. 5.

64. While the outdoor kitchen is currently located and used on land, it is not required to be located on a parcel of land in which to be used. In support thereof, the outdoor kitchen could be constructed upon a steel cantilevered deck supported laterally by steel I beams extending from and attached to a supporting and appropriately weighted structure which is located on a parcel of land. Because the outdoor kitchen could be used and operated while not located on a parcel of land, the outdoor kitchen does not meet the Ordinance’s strict, clear, and unambiguous definition of the word “structure.” Because the outdoor kitchen is not a “structure,” it cannot be an accessory structure; where there is no accessory structure, there can be no setback violation. *See generally* New Bern, NC, Johnston County, NC, and Davidson County, NC, *et al.*, planning ordinances’ definition of structure properly and smartly broadening the definition to include structures attached

to something typically having a fixed location on the ground, etc....

PRAYER FOR RELIEF

N.C. Gen. Stat. § 160D-1402(b)(4)

As a result of the foregoing sufficiently pled allegations and errors, Petitioner is entitled to a full and complete review of the Record and the Board's Decision.

WHEREFORE, Petitioner respectfully prays this Honorable Court as follows:

1. Issue a Writ of Certiorari to Respondent permitting review of *Town of Davidson v. James T. Davis, Appeal of Notice of Violation*, 514 Walnut Street, Parcel No. 00705130- *Decision*;
2. Direct the Town of Davidson to prepare and certify to this Court the record of proceeding to include all relevant materials, documents, and evidence relating to *Town of Davidson v. James T. Davis, Appeal of Notice of Violation*, 514 Walnut Street, Parcel No. 00705130- *Decision*;
3. Direct the Town of Davidson to comply with Petitioner's *Request for Production* and produce any relevant evidence not yet produced;
4. Remand the Case back to the Davidson Board of Adjustment for a rehearing consistent with the Town of Davidson Board of Adjustment's *Rules of Procedure*, federal law, and state law, and to hear and decide Petitioner's *Variance Request* for the existing outdoor kitchen;

5. Issue a stay of the execution or enforcement of the Board's Decision pending this Court's review;
6. Afford Parties opportunity to submit supporting briefs and provide in-person testimony and presentation of evidence.
7. Order any other such relief this Honorable Court deems just and proper pursuant to law and equity.

RESPECTFULLY SUBMITTED, this the 25th day of June 2024.

/s/ *James Thomas Davis*

James Thomas Davis
Petitioner, *Pro se*

514 Walnut Street
Davidson, North Carolina 28036
(256) 303-4638
jamesdavislaw@gmail.com

VERIFICATION

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

The undersigned petitioner, being duly sworn, says:

The contents of the foregoing *Petition for Writ of Certiorari* are true to my knowledge, except those matters stated upon information and belief and, as to those matters, I believe them to be true.

SIGNED, this the 25th day of June 2024.

/s/ *James Thomas Davis*

James Thomas Davis
Petitioner, *Pro se*

514 Walnut Street
Davidson, North Carolina 28036
(256) 303-4638

Mecklenburg County, North Carolina

Sworn to (or affirmed) and subscribed before me by James Thomas Davis, this the 25 day of June, 2024.

Notary Public [Notary's Printed or Typed Name]:

Benjamin M Tourtelot

My Commission expires:

08/31/2026

Ben M Tourtelot



CERTIFICATE OF SERVICE

I, James Thomas Davis, in accordance with N.C. R. App. 26(d), do hereby certify the foregoing *Notice of Appeal* was served on the Town of Davidson and its Counsel by hand delivery.

SERVED:

Jason Burdette
Planning Director
Town of Davidson

251 South Street
P.O. Box 579
Davidson, NC 28036
jburdette@townofdavidson.org
(704) 892-7592

Karen Wolter, Esq.
Town Attorney
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Ryan Bolick, Esq.
Attorney for the Board of Adjustment
Town of Davidson

Cranfill Sumner, LLP
2907 Providence Road, #200
Charlotte, NC 28211
rbolick@cshlaw.com
(704) 940-3416

SIGNED, this the 25th day of June 2024.

/s/ James Thomas Davis

James Thomas Davis
Petitioner, *Pro se*

514 Walnut Street
Davidson, North Carolina 28036
(256) 303-4638

**IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
26TH JUDICIAL DISTRICT**

Respondent.

WRIT OF CERTIORARI

WRIT OF CERTIORARI

IT IS, THEREFORE, ORDERED that the Town of Davidson prepare and certify to this Court the record of proceeding and/or its complete file relating to the Petitioner's *Appeal of Notice of Violation*, cited below, within sixty (60) days of the date of the entry of this Writ of Certiorari.

Decision/Order Appealed: *Town of Davidson v. James T. Davis, Appeal of Notice of Violation, 514 Walnut Street, Parcel No. 00705130- Decision dated May 20, 2024.*

Parties: Petitioner- James T. Davis; Respondent- Town of Davidson

Heard: April 29, 2024

Location: Davidson Town Hall, 251 South St., Davidson, NC 28036

Deliberated: April 29, 2024

Written Decision provided to Petitioner: May 24, 2024

This Writ directs Petitioner to serve the filed *Petition* and the *Writ* upon each respondent named therein in the manner provided for service of a complaint under Rule 4(j) of the N.C. *Rules of Civil Procedure*. No summons shall be issued. The Court Clerk shall issue the Writ without notice to the Respondent as the Petition was properly filed and in proper form. A copy of the executed Writ shall be filed with the Court.

CERTIORARI GRANTED.

SO ORDERED, this the ____ day of _____, 2024

The Honorable
Superior Court Judge

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV029218-590

JAMES THOMAS DAVIS,

Petitioner,

v.

TOWN OF DAVIDSON,

Respondent.

**CONSENT ORDER REMANDING
JURISDICTION TO THE BOARD OF
ADJUSTMENT**

THIS MATTER comes before the Court upon a Writ of Certiorari filed in this case seeking a review of the Town of Davidson Board of Adjustment's ("Board") determination that upheld the administrative determination that Petitioner was in violation of a Town of Davidson Ordinance ("Administrative Decision"). Further, the Writ seeks review of a request for a variance requested by Petitioner (the "Variance"). The Decision and Order entered by the Board did not address the Variance. The Parties therefore consent to a remand of the jurisdiction of this matter to the Board of Adjustment so that it may render a decision on the requested variance. The Court, having reviewed the record and the applicable law, and with the consent of the parties, makes the following findings and orders:

FINDINGS OF FACT

1. The Court has jurisdiction over this matter pursuant to N.C. Gen. Stat. 160A-393, which governs judicial review of decisions by boards of adjustment.
2. The Petitioner filed a petition for Writ of Certiorari seeking review of the Board's decision regarding the Administrative Decision and the Variance.
3. While the Board rendered findings of fact and conclusions supporting its decision with respect to the Administrative Decision, it did not render findings and conclusions related to the Variance.
4. Under N.C. Gen. Stat. 160A-393(l), the Court has the authority to remand a case to the decision-making board with instructions for further proceedings.
5. The parties have consented to the remand of this matter to the Board for the purpose of rendering a decision on the requested Variance.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. Jurisdiction of this matter is remanded to the Board of Adjustment for the Town of Davidson for further proceedings the sole purpose of which is to render a decision on the requested Variance in accordance with applicable law and procedures. The Board shall issue a decision regarding the variance request.

2. Petitioner's appeal of the Board of Adjustment's decision related to the Administrative Appeal is hereby stayed pending the outcome of the Variance hearing and decision by the Town of Davidson Board of Adjustment.

3. In the event either the Town or the Petition seek judicial review of the Board of Adjustment's decision on the Variance as prescribed under NC law, the Court shall hear the appeal of both the Administrative Decision and the Variance concurrently. This Order does not otherwise affect the appeal of the Administrative Decision and the potential appeal of the decision on the Variance other than as set forth herein.

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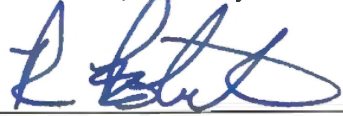
SO ORDERED, this the _____ day of _____, 2025.


The Honorable David H. Strick and

CONSENTED TO:



Ryan T. Vince, Attorney for Petitioner



Ryan D. Bolick, Attorney for Respondent

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing **CONSENT ORDER REMANDING JURISDICTION TO THE BOARD OF ADJUSTMENT** on all of the parties to this cause by:

_____ Depositing a copy hereof, postage prepaid, in the United States Mail, addressed to the attorney for each said party as follows:

 X Via electronic mail addressed to the attorney for each said party as follows:

Ryan T. Vince
Robertson & Associates, P.A.
2730 East W.T. Harris Boulevard, Suite 101
Charlotte, NC 28213
rtvince@rlrobertson.com

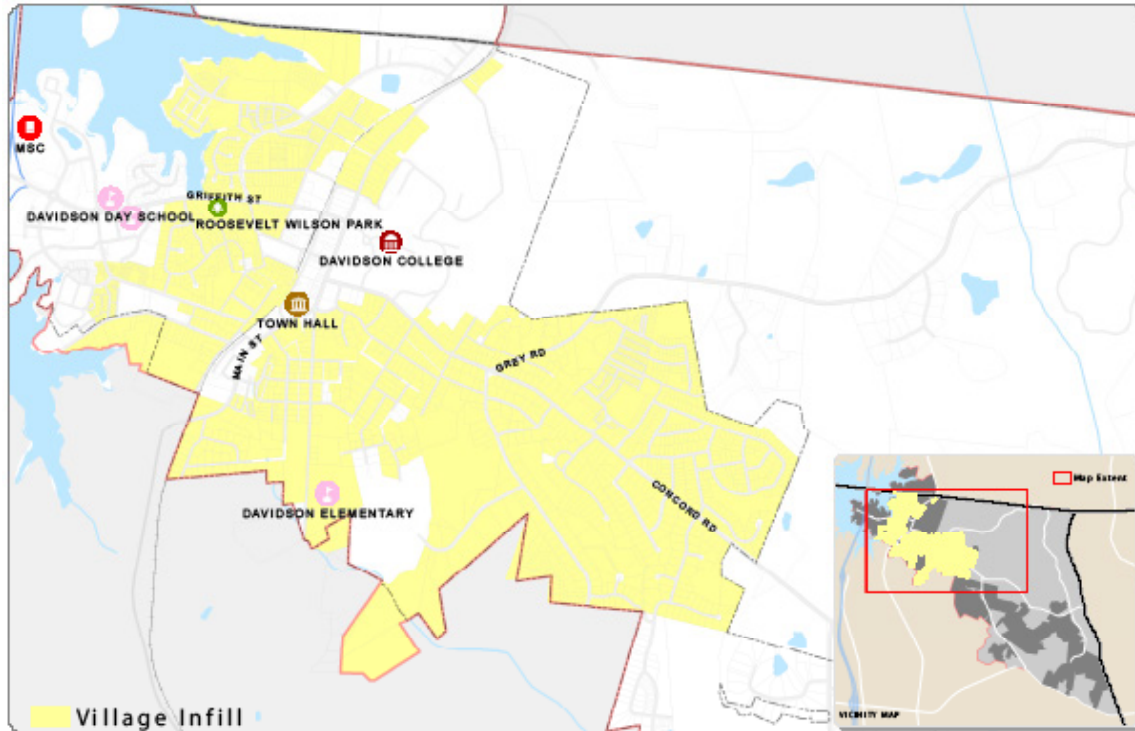
This the 18th day of August, 2024.

CRANFILL SUMNER LLP



BY: _____

Ryan D. Bolick, NC Bar #26482
Attorney for Respondent
P.O. Box 30787
Charlotte, NC 28230
Telephone (704) 332-8300
Facsimile (704) 332-9994
rbolick@cshlaw.com



2.2.4 VILLAGE INFILL PLANNING AREA

A. DESCRIPTION

The Village Infill Planning Area comprises Davidson's traditional, residential neighborhoods and provides for infill development surrounding the historic town center. Streets, sidewalks and greenways in the Village Infill Planning Area must be interconnected. A range of housing types is encouraged: For Master Plan projects on lots over three acres a mix of at least two different building types is encouraged.

Additionally, small retail establishments are permitted on corner lots, with restrictions. This encourages the provision of small-scale retail and service uses for surrounding residential areas. Buildings are restricted in size to promote a local orientation, to be pedestrian-oriented, to be compatible with the scale of surrounding residences, and to limit any adverse impacts on residential development.

B. PERMITTED USES

The following table establishes the permitted uses for the Village Infill Planning Area. Uses not listed in the table below are presumed to be prohibited. (See Section 2.1.3) Additional requirements are set out in Chapter 3, Uses with Additional Requirements.

TABLE 2-12: VILLAGE INFILL USE TABLE	
Residential Uses	
Bed & Breakfast	AR
Day Care Home	AR
Family Care Home	P
Residential	P
Commercial/Office/Retail Uses	
Home Occupation	AR
Professional Services	AR
Retail Secondary	AR
Civic/Educational/Institutional Uses	
Fire & Police Station	P
Government Services	P
Recreation Facility, Outdoor	AR
Transit Shelter	AR
Agricultural Uses	
Community Garden	P
Infrastructure Uses	
Essential Services I	AR
Accessory Uses	
Use customarily accessory to the principal use	P*
Accessory Dwelling	AR
Containment Devices for trash & recyclables	AR

P = Permitted, AR = Permitted with Additional Requirements

*Use must be approved by the Planning Director.

C. PERMITTED BUILDING TYPES.

The following table establishes the permitted building types for the Village Infill Planning Area. Building types not listed in the Building Type Table are presumed to be prohibited (See Section 2.1.4). Additional requirements and exceptions are set out in Section 4, Site & Building Design Standards.

TABLE 2-13: VILLAGE INFILL BUILDING TYPE TABLE				
Building Types	Allowance	Design Review	Height	
			Minimum	Maximum
Detached House	P	-	1 stories	37 feet ³
Townhouse	P	R	2 stories	37 feet ³
Attached House	P	R	2 stories	37 feet ³
Mixed Village	P	R	2 stories	2 stories
Live/Work ¹	P	R	2 stories	37 feet ³
Institutional	P	R	2 stories	37 feet ³
Storefront ²	P	R	2 stories	2 stories
Accessory Structure	P	See Section 4.5.8	1 story	2 stories

R = Required, P = Permitted

¹At least 50 percent of the heated floor area in a live/work building type must contain the residential dwellings unit(s).

²Storefront buildings shall be permitted on vacant corner lots only and shall not exceed 2,500 square feet per story. A corner lot must be vacant for 12 months before a storefront building would be permitted.

³The height is measured from the finished floor elevation of the façade facing the street to the ridgeline or the highest point of the roof, where there is no ridgeline, excluding chimneys and basements.

D. SITE DESIGN STANDARDS

- Setback Requirements:** The following table establishes the required setbacks for the Village Infill Planning Area.
- Open Space Requirements:** The following table establishes the required open space for the Village Infill Planning Area.

TABLE 2-14: VILLAGE INFILL OPEN SPACE TABLE		
Open Space	Required % of Development	
	Minimum	Maximum
	10%	NA

- Density Requirements:** There are no density requirements in the Village Infill Planning Area.

TABLE 2-15: VILLAGE INFILL SETBACK TABLE						
Building Types	Front Setback		Side Setback		Rear Setback	
	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
Detached House	†	†	††	††	20	NA
Townhouse	5	10	10 ³	NA	5	NA
Attached House	†	†	††	††	20	NA
Mixed Village	†	†	††	††	20	NA
Live/Work	5	10	10	NA	5	NA
Institutional	0	NA	10	NA	5	NA
Storefront ¹	0	20 ⁴	10	NA	NA	NA
Accessory Structure	†††	†††	†††	†††	†††	†††

Setbacks are measured in feet.

†In the Village Infill Planning Area, front setbacks for detached and attached houses shall be within the minimum and maximum front setbacks for buildings within 500 feet along both sides of the same street in either direction AND within ten feet of the front setback for the closest house on the same side of the street. For dual-frontage lots, the Planning Director may waive the adjacent setback rule requiring the subject house to be within ten feet of the closest adjacent house based on the context of the block. Balconies, stoops, stairs, open porches, bay windows, and awnings are permitted to encroach up to five feet into the front setback area when this procedure is used to determine the setback.

††The total of both side setbacks shall be equal to or greater than 30 percent of the lot width at the front building line; however no side setback shall be less than five feet.

†††See Section 4.5.8 for permitted location and setbacks of accessory structures.

¹Pedestrian features such as plazas, stoops, walks, and sidewalk cafes, etc., are included as part of the front and side setback areas.

²On corner lots, the front setback applies to all street facing facades.

³Side setbacks apply only to a townhome side wall that is not shared with another townhome wall.

⁴Setback shall be no more than adjacent house.

E. DEVELOPMENT STANDARDS

For development standards applicable in the Village Infill Planning Area, see the following sections:

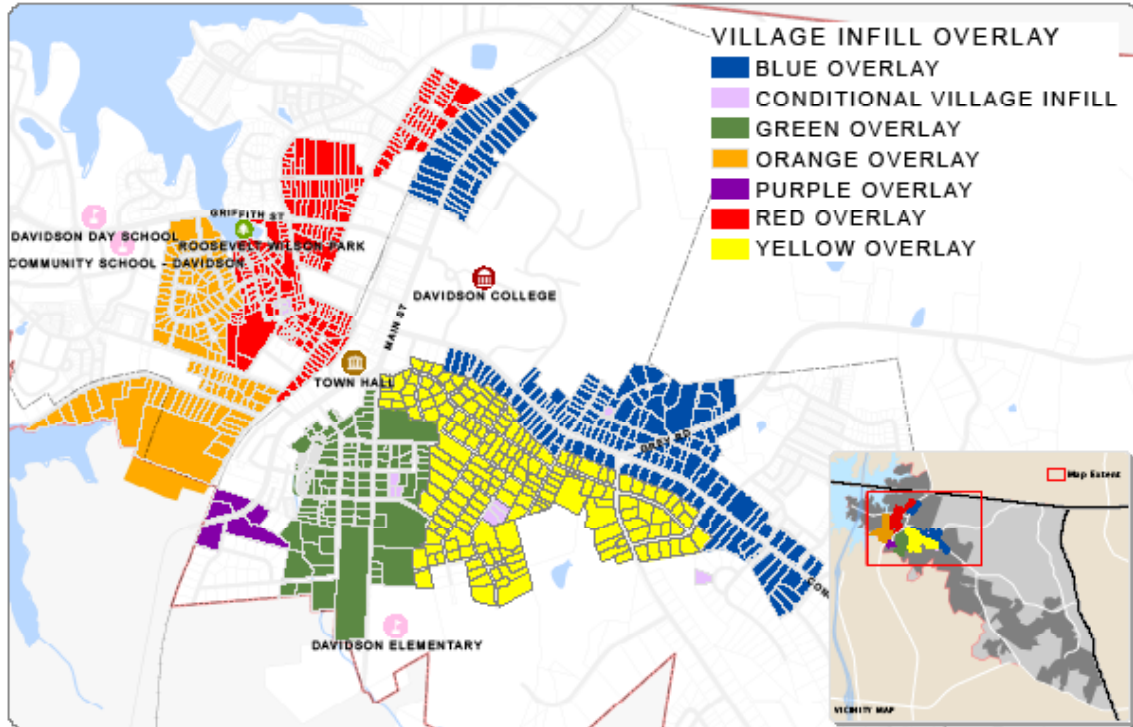
- Section 4, Site & Building Design Standards
- Section 5, Affordable Housing
- Section 6, Subdivision & Infrastructure
- Section 7, Parks & Open Space
- Section 8, Parking & Driveways
- Section 9, Tree Preservation, Landscaping & Screening
- Section 10, Lighting
- Section 11, Signs
- Section 17, Watershed Protection Regulations
- Section 18, Floodplain Regulations
- Section 21, Stream Buffer Regulations

The following are additional development standard(s) in the Village Infill Planning Area.

- In each master plan development creating 15 lots or more, 20 percent of the lots for detached, townhome, and live/work building types must be no greater than 32 feet nor less than 18 feet in width. These lots may not be combined to form a larger lot.
- A detached house may be demolished only if it is replaced with a residential dwelling unit.
- The setbacks and building heights in certain overlay districts sometimes exceed what is permitted in the Village Infill Planning Area. The stricter regulation shall take precedence.
- New development along the lake shall retain 100 percent of the lake shoreline for public use. The existing vegetation within this area shall be preserved. This area may be dedicated to the Town for general public use. Refer to Section 17 - Watershed Overlay District for restrictions on pervious surface in the shoreline buffer area.

F. Applicable Overlay Districts

- Village Infill Overlay (See Section 2.3.4)



2.3.4 (VI-O) VILLAGE INFILL OVERLAY DISTRICTS

A. PURPOSE

The Village Infill Overlay District is established to preserve the character of the older parts of Davidson as defined by the Village Infill Overlay Districts. The town's historic core cannot remain static, but its existing character is worth preserving. It is acceptable for new houses to be larger than older ones, but not so much larger as to threaten neighborhood character. Development in the Village Infill Overlay District should:

- Remind one of the surrounding neighborhood;
- Recognize the built environment;
- Have a human scale; and
- Preserve significant trees;

B. DISTRICTS

- Village Infill Overlay – Red
- Village Infill Overlay – Orange
- Village Infill Overlay – Yellow
- Village Infill Overlay – Green
- Village Infill Overlay – Blue
- Village Infill Overlay – Purple

The Village Infill Overlay District is depicted on Map 2.3.4.

C. PERMITTED USES

The permitted uses within each Village Infill Overlay District are those uses which are allowed in the underlying planning area.

D. BUILDING TYPES

The permitted building types within each Village Infill Overlay District are those uses which are allowed in the underlying planning area.

The following table establishes the maximum height of the primary structure in a Village Infill Overlay District. The height of the structure is measured from the finished floor elevation of the façade facing the street to the ridgeline or the highest point of the roof (where there is no ridgeline), excluding chimneys and basements. Accessory structures shall be as outlined in Section 4.

TABLE 2-64: VILLAGE INFILL OVERLAY HEIGHT TABLE	
Overlay District	Maximum
Red	35'
Orange	32'
Yellow	32'
Green	32'
Blue	35'
Purple	35'

E. SITE DESIGN STANDARDS

1. **Setback Requirements:** The following table establishes the required setbacks for the Village Infill Overlay District.

TABLE 2-65: VILLAGE INFILL OVERLAY SETBACK TABLE		
Front Setback	Side Setback ¹	Rear Setback
Front setbacks shall be the same as for the Village Infill Planning Area	The side setbacks shall be at a minimum the same as the Village Infill Planning Area. In addition, the total of both side yard setbacks shall be equal to or greater than 30% of the property's street frontage	Rear setbacks shall be the same as for the Village Infill Planning Area.

Setbacks are measured in feet.

¹On corner lots, the minimum and maximum side setback requirements shall be the same as the front setback requirements.

2. Single-family detached homes in each overlay district shall face the street and have a pedestrian access (walkway) connecting the front of the house to the street.

F. FLOOR TO AREA RATIO

An addition of 250 or more square feet to the exterior of an existing house (as of the adoption of this ordinance) or any new house construction within the Village Infill Overlay districts shall require compliance with Floor to Area Ratio (FAR) maximums.

Square footage counted toward FAR calculations shall include heated floor space within the primary structure, attached garage space, and any space above an attached garage whether heated or not, but not including finished basements. See Definitions for more information. Renovations of interior spaces not affecting the exterior of the house or external additions without floor or roof are not subject to design and size restrictions.

The owner/applicant may choose to build the maximum square footage allowed for a property in a smaller lot size category.

TABLE 2-66: VILLAGE INFILL OVERLAY FLOOR TO AREA RATIO TABLE						
Lot Size	Red	Orange	Yellow	Green	Blue	Purple
Less than 6,000	0.42	0.39	0.38	0.42	0.42	0.40
6,000 to less than 10,000	0.33	0.31	0.31	0.3	0.35	0.30
10,000 to less than 15,000	0.23	0.21	0.25	0.23	0.27	0.25
15,000 to less than 21,000	0.17	0.16	0.19	0.17	0.20	0.20
21,000 to less than 28,000	0.13	0.13	0.15	0.14	0.16	0.17
28,000 or more square feet	0.10	0.11	0.12	0.11	0.13	0.14

* A principal structure constructed in the village infill overlay district shall be designed in proportion to the size of the lot as described in the following chart. A detached house may be built with a total floor area of 1,500 square feet or not to exceed the maximum FAR as calculated in the chart. The owner/applicant may choose to build the maximum floor area allowed for a property in a smaller lot size category.

Lot size is measured in square feet.

7. Developments that include or front on an existing street must integrate that street into the development. Vehicular access may be from existing or new streets.
8. Berms that separate development from the street are prohibited.
9. See Section 8 for Parking and Driveway requirements and Section 6 for Street Design requirements.

B. Building Location and Orientation

1. Buildings must front on a public street, pedestrian way, or a dedicated public plaza that is open to a public street.
2. A building located at a street intersection shall not have parking, loading, or service areas at the corner.
3. Significant street vistas should terminate in a focal point, such as a distinct building, architectural or natural feature.

EXAMPLE 4-1: LOTS FRONTING PEDESTRIAN WAYS



Buildings fronting a pedestrian alley. Davidson, NC



Residential lots fronting a cottage court. Saint Charles, MO

C. Building Height

For building heights, see Section 4.4.1 and the specific district standards detailed in Section 2.

D. Fences, Hedges, and Garden Walls

1. All Planning Areas: Fences, hedges, and/or garden walls located in front of the building line shall be no greater than three feet in height and fences shall be no more than two-thirds solid. Fences, hedges, and/or garden walls located behind the front building line shall be no greater than six feet in height. Chain link fencing is allowed in rear yards only. Hedges, garden walls, or fences may be built on property lines or as the continuation of building walls. For buildings on corner lots, both facades fronting a street shall be considered a front building line for purposes of fencing, hedges, and garden walls.
2. Scenic Byway Overlay District: For parcels subject to the split-rail fence standards within the Scenic Byway Overlay District, fences shall be constructed with a top of rail height not to exceed 48 - 52 inches. Supporting posts may extend an additional six to eight inches above the top of rail, but may not exceed 58 inches total. Agricultural or equestrian-related exceptions may be permitted by the Planning Director.

3. Retaining Walls: The maximum height of retaining walls behind the front building line is six feet. In front of the building line the maximum height of retaining walls is three feet. Taller retaining walls may be tiered, with a minimum two foot separation between walls.

E Loading/Service Areas, Mechanical Equipment and Utilities:

1. Loading facilities, loading docks, service doors, and other service areas shall not be located along a primary street-facing façade, nor visible from a park or public open space.
2. Mechanical equipment (except small items such as fans and vents), utility meters, storage areas, solid waste containers (including dumpsters, compactors, recycling containers, and solid waste and recycling handling areas), transformers, generators, HVAC units and similar features, or other utility hardware on the building, roof, or ground shall be screened from public view with materials similar to the structure; OR they shall be so located as not to be visible from a primary fronting public street. In certain cases, screening using natural materials may be preferable. See Section 9 for landscape screening requirements. Note: Natural screening alternatives must be approved by the Planning Director in consultation with the Arborist.
3. Screening is not required for electronic vehicle charging stations.
4. Off-street parking shall not be located forward of the front façade of the building unless on a corner lot. On a corner lot, parking may not be located in front of the facade on the primary street. See Section 8 for more information on parking.
5. Underground Utilities: All utilities must be underground from the point of connection. See Davidson Municipal Code for right-of-way restrictions.

F. Encroachments: Certain structures shall be permitted to encroach within the minimum required setbacks established in the respective planning areas in Section 2 as specified below:

1. Hedges, garden walls, or fences may encroach within minimum required setbacks up to the property lines.
2. Cornices may encroach up to two feet within any required minimum setback.
3. Detached house, attached house, and townhouse building types may have:
 - a. Rear decks that encroach up to eight feet into the rear setback.
 - b. Balconies, stairs, stoops, open porches, bay windows, and awnings that encroach up to five feet into the minimum front setback area of the lot.
 - c. Outdoor swimming pools that encroach to within five feet of any side or rear property line.
4. Ramps for handicap accessibility and fire escapes required by the North Carolina State Building Code may encroach within any required minimum setback, but may not be closer than three feet to any property line.
5. Required street lighting and any landscape lighting may encroach into a minimum required setback.

G. Development Plans with Multiple Buildings

1. In order to encourage pedestrian activity, buildings should be grouped together

- C. Off-street parking areas are located behind the building or underground.
- D. The first floor shall be taller than upper floors and lower floors should be differentiated architecturally to create a sense of human scale.
- E. Main entrances shall be distinguished architecturally from the remainder of the building.
- F. Major building entrances that provide access to the primary use of the building shall be distinguished from the entrances used for secondary uses.
- G. The principal entrance to a building, and any groundfloor tenant space entrance shall front the primary public street or a public open space such as a square, plaza, courtyard, or pedestrian way.
- H. Secondary uses and entrances may be located off a rear parking area.
- I. Large buildings fronting multiple streets shall provide entrances from each street.

4.5.8 ACCESSORY STRUCTURES

An accessory structure is an above-ground structure that is clearly and customarily subordinate to a principal use or principal structure located on the same lot. An accessory structure is smaller in area, extent, or purpose than the principal use or principal structure. Accessory structures are permitted as established in the respective planning areas in Section 2 provided they meet the specific standards set forth in this section. Lots within the Rural Planning Area that are part of an approved master plan are subject to all applicable ordinance requirements and are not eligible for the exceptions granted to individually-developed lots located within the Rural Planning Area.

For the purposes of this ordinance, the establishment or construction of an accessory structure on an existing lot shall be considered an expansion of an existing use and/or structure and shall be subject to the approval procedures found in Section 14.

A. Number of Accessory Structures

- 1. In the Rural Reserve and Rural Planning Areas, on lots over two acres where the proposed accessory structure is located more than 150 feet from the right-of-way or is not otherwise visible from the right-of-way, accessory structures may include a detached garage and two other accessory structures.
- 2. In all other situations, the number of accessory structures on a lot may include a detached garage (if there is not an existing attached garage) and one other accessory structure. If the primary structure includes an attached garage, only one accessory structure is allowed.

B. Size of Accessory Structure

- 1. In the Rural Reserve and Rural Planning Areas, on lots over two acres where the proposed accessory structure is located more than 150 feet from the right-of-way or is not otherwise visible from the right-of-way, the footprint of an accessory structure

shall not exceed 1,200 square feet. In all planning areas, except the Rural Reserve and Rural Planning Areas, the footprint of an accessory structure must not exceed 650 square feet or 30% of the footprint of the principal building (up to a maximum of 900 square feet), whichever is greater.

2. All accessory structures ancillary to non-residential building types or multi-family building types shall be reviewed by the Design Review Board, in accordance with the procedures in Section 14. Additionally, certain residential accessory structures may require review by the Design Review Board or Historic Preservation Commission if they are located in certain historic districts and/or not subject to the North Carolina Residential Code for One and Two-Family Dwellings. See G.G. 160D for a full list of exceptions.
3. The height (elevation above mean sea level) of an accessory structure shall not exceed the height (elevation above mean sea level) of the principal structure or may not exceed two stories, whichever is less.
4. Street-facing doors on any accessory structure shall not exceed ten feet in width.*
5. Any accessory structure with street-facing doors shall have a maximum overall width of 25 feet.

C. Location of Accessory Structure

1. A minimum of ten feet shall be maintained between the proposed accessory structure and the following: 1) The principal structure; and, 2), any other accessory structure(s).
2. Accessory structures shall be located in the rear yard only.
3. Accessory structures shall not be served by a driveway separate from that serving the principal structure. A driveway serving a principal use may be extended to the accessory structure.
4. In the Rural Reserve and Rural Planning Areas, any accessory structure over 900 square feet shall have a minimum 15 feet side yard setback and a minimum 30 feet rear yard setback. In all other circumstances, the minimum side yard setback shall be five feet and the minimum rear yard setback shall be five feet.
5. Exceptions or minor variations to the accessory structure location regulations may be permitted with the approval of the Planning Director. Such provision will only be for extraordinary site conditions.
6. Pools must be located in the rear yard only. Pools must also be at least 5 feet from the property line. All pools must meet Mecklenburg County's rules governing swimming pools.

D. Detached garages

1. For the purpose of this ordinance, a detached garage is an accessory structure and shall meet all applicable standards of accessory structures, except as listed below.
2. If a garage has a minimum of 15 feet of wall in common with the main body of the

Where multiple local development permits are required to complete a development project, the development permit applicant may choose the version of each of the local land development regulations applicable to the project upon submittal of the application for the initial development permit. This provision is applicable only for those subsequent development permit applications filed within 18 months of the date following the approval of the original permit. For the purposes of the vesting protections described in G.S. 160D, an erosion and sedimentation control permit or a sign permit is not an initial development permit.

14.20 CERTIFICATE OF OCCUPANCY

No structure hereafter erected, moved, structurally altered or changed in use shall be used or occupied until a certificate of occupancy has been issued by Mecklenburg County Code Enforcement. Any certificate of occupancy issued shall state that the structure or portion of a structure is in compliance with the information stated on the zoning permit and with all applicable provisions of this ordinance. A record of all certificates of occupancy shall be kept on file in the office of the Mecklenburg County Code Enforcement and copies shall be furnished, on request, to all interested parties. If a certificate of occupancy is denied, the reasons for such denial shall be specified in writing and provided to the applicant.

14.21 APPEALS AND VARIANCES

14.21.1 INITIATION OF APPEALS AND VARIANCES

Appeals and variances shall follow the rules and procedures set out in G.S. 160D- 406 and 160D-705, as amended.

14.21.2 APPEALS PROCEDURE

- A.** The Board of Adjustment may, after having held an evidentiary hearing on the matter, reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision that ought to be made.
- B.** The Board of Adjustment shall have all the powers of the Planning Director in making any order, requirement, decision, interpretation, or determination with reference to an appeal or petition. All administrative decisions, unless otherwise provided by statute or ordinance, may be appealed to the Board of Adjustment. G.S. 160D.
- C.** The owner or party shall have 30 days from receipt of written notice to file an appeal. Any other party with standing shall have 30 days for receipt of any source to file an appeal. In the absence of evidence to the contrary, notice pursuant to G.S. 160D given by first class mail shall be deemed received on the third business day following deposit of notice for mailing with the United States Postal Service per G.S. 160D.
- D.** The official who made the determination, or their successor, must appear as a witness at the hearing. G.S. 160D.
- E.** An appeal stays the enforcement of the action appealed, including fines, until a determination is made, unless the Board of Adjustment receives a certified decision as otherwise provided in G.S. 160D.

14.21.3 VARIANCE PROCEDURE

When unnecessary hardships would result from carrying out the strict letter of these zoning regulations, the Board of Adjustment shall have the power to vary or modify any of the regulations or provisions of the zoning regulations pursuant to NCGS Section 160D-705(d), Variances.

- A.** The following are not cause for a variance:
 1. The citing of other nonconforming or conforming uses of land or structures in the same or other planning areas.
 2. The request for a particular use expressly, or by inference, prohibited in the district involved.
 3. The fact that the property may be utilized more profitably with a variance.
- B.** The Board of Adjustment may only grant a variance having first held a public hearing on the matter and having made determinations based on findings of fact, aligning with G.S 160D-705. These determinations are:
 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 shall not be regarded as 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.
- C.** The Board of Adjustment, in granting a variance, may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which a variance is granted, shall be deemed a violation of this ordinance and shall be punishable as described in Section 15.
- D.** Unless otherwise authorized by the Board of Adjustment and included in its decision to grant a variance, an order of the Board of Adjustment granting a variance shall expire, if a building permit, or certificate of occupancy (for a use for which a building permit is not required), has not been obtained within one year from the date of its decision.

14.21.4 APPEALS AND VARIANCES - APPLICATION PROCEDURE

The following regulations apply to all applications submitted to the Board of Adjustment:

- A.** Before a petition for an administrative appeal, interpretation of the planning ordinance, variance, or change or replacement of a nonconformity, or allowance of a temporary use shall be heard and a public hearing conducted by the Board of Adjustment, an application shall be submitted to the Planning Director along with a fee in accordance with the fee schedule established by the Board of Commissioners. Said fee shall be waived for any petition initiated by the Planning Director or other officials of Davidson who initiate a request on behalf of the Town of Davidson. For variance requests, the application shall be accompanied by a map clearly identifying the subject property and all contiguous pieces of properties (i.e. all properties traversed and/or separated by a road, stream, right-of-way, or similar natural or man-made configuration). In addition, a list of names and addresses of the owners of said properties, from the most recent official tax records, shall be provided by the applicant.
- B.** Within five working days after having received an application for an appeal, interpretation, variance, change or expansion of a nonconformity, or allowance of a temporary use, the Planning Director shall determine whether the application is complete. If he determines that the application is not complete, he shall serve a written notice to the appellant or petitioner specifying the application's deficiencies. The Planning Director shall take no further action on the application until the deficiencies are remedied. If the Planning Director fails to notify the appellant or petitioner, the application shall be deemed complete.

14.21.5 APPEALS AND VARIANCES - DECISIONS

The Board of Adjustment shall hold a public hearing on an application no later than 45 days after a complete application has been filed with the Planning Director. The application shall be received by the Board of Adjustment at least ten days prior to the next regularly scheduled meeting of the Board to be considered at that meeting. The Board of Adjustment shall decide on that matter which was presented at the public hearing within 31 days of the close of the public hearing.

All decisions of the Board of Adjustment shall be in writing and filed with the Planning Director. An appeal from the decision of the Board of Adjustment may be made by an aggrieved party and shall be made to the Mecklenburg County Superior Court in the nature of certiorari. Any such petition shall be filed with the court no later than 30 days after the applicant receives the written copy of the decision of the Board of Adjustment.

14.21.6 VARIANCE PROCEDURE - EFFECT OF APPROVAL

If the application for a variance is approved by the Board of Adjustment, the owner of the property shall have the ability to develop the use in accordance with the stipulations contained in the variance or develop any other use listed as "permitted use" for the planning area in which it is located.

14.22 QUASI-JUDICIAL DECISIONS

A. Process Required: In determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision, Boards and Commissions shall follow the quasi-judicial procedures set forth in G.S. 160D-406. An evidentiary hearing shall be held to gather competent material, and substantial evidence to establish the facts of the case. The evidentiary hearing must have testimony under oath and must establish written findings of fact and conclusions of law.

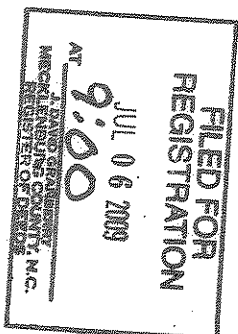
B. Notice of Hearing: Notice of evidentiary hearings conducted pursuant to G.S. 160D shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; and to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing. In the absence of evidence to the contrary, the local government may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the local government shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.

C. Presentation of Evidence: The applicant, the local government, and any person who would have standing to appeal the decision under G.S. 160D shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board.

Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board.

The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D. Objections based on jurisdictional issues may be raised for the first time on judicial review. Note: Even if there is no objection before the board, opinion testimony from a lay witness shall not be considered competent evidence for technical matters such as property value and traffic impacts.

D. Decisions: The board/commission shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board/commission shall have all the powers of the official who made the decision. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board.



REVIEW OFFICER CERTIFICATION
STATE OF NORTH CAROLINA, COUNTY OF MECKLENBURG
I, W. Lee, REVIEW OFFICER OF MECKLENBURG COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL THE STATUTORY REQUIREMENTS FOR RECORDING.
DATE 6/12/09
REVIEW OFFICER W. Lee

CERTIFICATE OF APPROVAL FOR RECORDING

I HEREBY CERTIFY THAT THE SUBDIVISION PLAT SHOWN HEREON HAS BEEN FOUND TO COMPLY WITH THE PLANNING ORDINANCE FOR DAVIDSON, NORTH CAROLINA, AND THAT THIS PLAT HAS BEEN APPROVED BY THE TOWN OF DAVIDSON FOR RECORDING IN THE OFFICE OF REGISTER OF DEEDS OF MECKLENBURG COUNTY. I FURTHER CERTIFY THAT THE BOARD OF COMMISSIONERS ONLY ACCEPTS THE DEDICATION OF THE PUBLIC PARKS SHOWN HEREON AND DOES NOT ACCEPT THE DEDICATION OF THE PUBLIC PARKS SHOWN HEREON NO RESPONSIBILITY FOR THE OPEN OR MAINTAIN THE SAME LIES WITHIN THE OFFICE OF THE BOARD OF COMMISSIONERS. IT IS IN THE PUBLIC INTEREST TO DO SO.
DATE 6/12/09
PLANNING DIRECTOR, DAVIDSON, NORTH CAROLINA W. Lee

CERTIFICATE OF APPROVAL FOR RECORDING

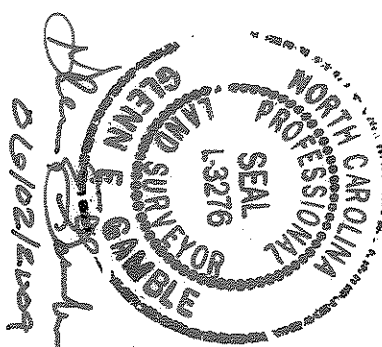
I CERTIFY THAT THIS PLAT IS NOT WITHIN A DESIGNATED PUBLIC WATER SUPPLY WATERSHED.
DATE 6/12/09
WATERSHED ADMINISTRATOR, TOWN OF DAVIDSON W. Lee

CERTIFICATE OF OWNERSHIP AND DEDICATION

I HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREON, WHICH IS LOCATED IN THE SUBDIVISION JURISDICTION OF THE TOWN OF DAVIDSON, AND THAT I HEREBY AM DONATING THE LAND OF SUBDIVISION WITHIN THE TOWN OF DAVIDSON TO THE TOWN OF DAVIDSON FOR THE PURPOSE OF PROTECTING ALL SIGNIFICANT TREES OVER 18 INCHES DIAMETER IN THE TREE AND ROOT PROTECTION AREA, PLANT SUPPLEMENTARY TREES IF REQUIRED, AND DEDICATE ALL STREETS, ALLEYS, WALKWAYS, PARKS, AND OTHER SITES AND EASEMENTS TO PUBLIC OR PRIVATE USES AS NOTED. FURTHERMORE, I HEREBY DEDICATE ALL SANITARY SEWER, STORM SEWER, AND WATER LINES THAT ARE LOCATED IN PUBLIC UTILITY EASEMENTS OR RIGHTS-OF-WAY TO THE TOWN OF DAVIDSON AND THE CHARLOTTE-MECKLENBURG UTILITY DEPARTMENT.

DATE 6/12/09

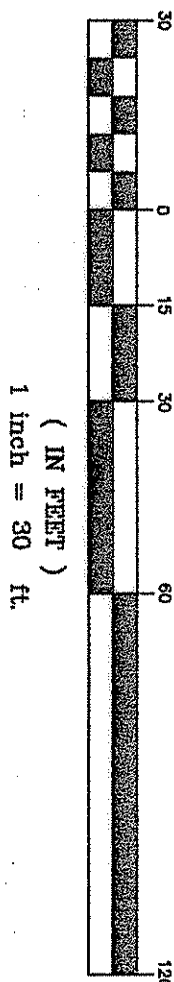
John Marshall
OWNER(S)
John Marshall
Redney Graham



NGCS MON. "CORNELIUS"
N: 633754.195
E: 1447793.827
ELEV: 836.199

THE SOLE PURPOSE MAP IS TO REMOVE THE 10' PEDESTRIAN EASEMENT ON LOT 1 AND CHANGE THE 10' SIDE SETBACK TO 5'. IT SUPERCEDES AND REPLACES MAP BOOK 48 PAGE 213 MECKLENBURG COUNTY REGISTER OF DEEDS.

GRAPHIC SCALE



(IN FEET)
1 inch = 30 ft.

LEGEND

CONCRETE MONUMENT SET	CONCRETE MONUMENT FOUND (CMF)
IRON REBAR FOUND (IRF)	IRON PIPE FOUND (IRP)
IRON REBAR SET (IRS)	IRON PIPE SET (IPS)
NO POINT SET	PK NAIL FOUND (PNF)
PROPERTY LINE	SANITARY SEWER EASEMENT
RIGHT OF WAY	S.W.M. BUFFERLINE

REVISED SUBDIVISION PLAT:
DAVIDSON SPRINGS SUBDIVISION
PHASE 1

FOR:
JOHN MARSHALL CUSTOM HOMES, INC.
P.O. BOX 2662
DAVIDSON, NORTH CAROLINA 28036

JOB NUMBER: 008 JOHNSMARSHALL	TAX ID: 000-101-01
COUNTY: MECKLENBURG	REF. AS SHOWN ON PLAT
DATE: 04/17/07	SCALE: 1" = 30'
CITY: DAVIDSON, NORTH CAROLINA	DETAILED BY: JBC
	CHECKED BY: GEG



SHEET 1 OF 1

- NOTES:
1. THE RATIO OF PRECISION FOR THIS SURVEY IS 1:15,000 OR BETTER.
 2. ALL DISTANCES SHOWN HEREON ARE GROUND DISTANCES UNLESS OTHERWISE NOTED.
 3. ALL PROPERTY CORNERS SET ARE #5 REBAR UNLESS OTHERWISE NOTED.
 4. THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF TITLE COMMITMENT FROM A TITLE COMPANY OR ATTORNEY. THIS PROPERTY IS SUBJECT TO ANY EASEMENTS, AGREEMENTS, OR RIGHTS-OF-WAY PRIOR TO THE DATE OF THIS SURVEY.
 5. AREA COMPUTED BY COORDINATE GEOMETRY
 6. THIS PROPERTY LIES IN ZONE X AREAS DETERMINED TO BE OUTSIDE TO 0.2% ANNUAL CHANCE FLOODPLAIN AREAS OUTSIDE FUTURE CONDITIONS 1% ANNUAL CHANCE FLOODPLAIN AS PER F.I.R.M. PANEL 3719C0028E EFFECTIVE DATE FEBRUARY 4, 2004.
 7. ZONING-VIP PER MECKLENBURG COUNTY GIS.
 8. HOUSE SIZES NO MORE THAN 2,500 HEATED SQUARE FEET.
 9. GARAGE IF ANY MUST BE DETACHED.

REFERENCES:

1. DEEDS AND PLATS SHOWN HEREON.
2. PLAT ENTITLED "A SUBDIVISION OF 504 WALNUT STREET UNIT #2" BY CAROLINA SURVEYORS, INC., DATED 06/28/06 AND RECORDED IN MAP BOOK 46 PAGE 227 MECKLENBURG COUNTY REGISTER OF DEEDS.
3. PLAT ENTITLED "MAP OF R.W. SHELTON'S ADDITION TO DAVIDSON MECKLENBURG CO. N.C." DATED MAY 1891 BY J.D. WILSON, CE MAP BOOK 90 PAGE 34 MECKLENBURG COUNTY REGISTER OF DEEDS.
4. PLAT ENTITLED "RECORD PLAT PROPERTY OF KEITH J. SHIRLEY & W.F. TERESA B." DATED SEPTEMBER 8, 1997 BY PYRAMID LAND SURVEYING, MAP BOOK 28 PAGE 631 MECKLENBURG COUNTY REGISTER OF DEEDS.
5. PLAT ENTITLED "A PLAT SHOWING MEREDITH AND KAMP PROPERTY MAP 1" DATED JULY 29, 1997, RECORDED IN MAP BOOK 28 PAGE 590 MECKLENBURG COUNTY REGISTER OF DEEDS.
6. CLOUD SANITARY SEWER EASEMENT PLAT FOR POTTS ST. PARALLEL OUTFALL (CLOUD JOB NO. 359-05-544).
7. PLAT ENTITLED SURVEY FOR TAX PARCELS 00705127, 00705111, AND 00705128 DATED JANUARY 18, 2007 BY MEADE GUNNELLE SURVEYING AND ENGINEERING.
8. PLAT ENTITLED "SUBDIVISION PLAT: DAVIDSON SPRINGS PHASE 1" DATED 04-17-2007 BY MEADE GUNNELLE SURVEYING AND ENGINEERING, PC, MAP BOOK 48 PAGE 213 MECKLENBURG COUNTY REGISTER OF DEEDS.
9. PLAT ENTITLED "SUBDIVISION PLAT: DAVIDSON SPRINGS PHASE 2" DATED 04-03-2008 BY MEADE GUNNELLE SURVEYING AND ENGINEERING, PC, MAP BOOK 50 PAGE 232 MECKLENBURG COUNTY REGISTER OF DEEDS.
10. PLAT ENTITLED "REVISED SUBDIVISION PLAT: DAVIDSON SPRINGS PHASE 2" DATED 10-29-2008 BY MEADE GUNNELLE SURVEYING AND ENGINEERING, PC, MAP BOOK 51 PAGE 140 MECKLENBURG COUNTY REGISTER OF DEEDS.

WANTY MAP
NOT TO SCALE

