

TOWN OF CARRBORO



BOARD OF ADJUSTMENT

301 West Main Street, Carrboro, North Carolina 27510

A G E N D A

7:00 P.M.

Town Hall Board Room 110

F e b r u a r y 1 9 , 2 0 2 0

I. MINUTES APPROVAL

Consideration of January 15, 2020 minutes.

II. PUBLIC HEARING: Variance Request at 403 Tripp Farm Road

Marsha Hamilton & Frank Pitts, owners of 403 Tripp Farm Road (Orange County PIN 9779332240), have submitted a variance request application (Attachment C) to allow encroachment into the Zone 2 Water Quality Buffers as regulated by Section 15-269 of the Land Use Ordinance. They are working with the architects from Notch Design to bring this application forward to the Board of Adjustment.

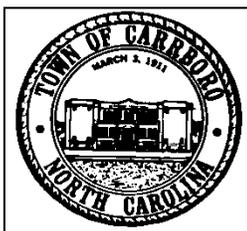
The variance would allow construction a 511 sf building addition (330 sf heated) to the back of the existing 1580 sf home; the proposed addition will encroach within the Town's Zone 2 regulatory stream buffer. See Attachment B for a GIS exhibit of the property showing the stream buffers.

III. PUBLIC HEARING: Appeal request of the Zoning Administrator's decision regarding a stream buffer encroachment on property located at 3200 Damascus Church Road.

Mr. Tony Merritt and Mrs. Ilene Merritt, as representative owners of property located at 3200 Damascus Church Road, have submitted an application appealing a decision of the Zoning Administrator regarding an encroachment into a stream buffer on their property. Specifically, the Zoning Division concluded that grading work on the property has disturbed a stream buffer on the south side of the property, in violation of Land Use Ordinance Section 15-269.2. The property is zoned Watershed Residential. The Board of Adjustment must receive the application, hold a public hearing, and make a decision regarding the appeal.

IV. Old/New Business

V. ADJOURN!



BOARD OF ADJUSTMENT M I N U T E S

Town of Carrboro

301 W. Main Street Carrboro, North Carolina 27510

J a n u a r y 1 5 , 2 0 2 0

7:00PM

Town Hall Room 110

MEMBERS PRESENT		TOWN ATTORNEY	STAFF
Garrett Baker		Nicholas Herman	Jeff Kleaveland
James Baker			Dorian McLean
Linda Bowerman			
Joseph Collins			
Michael Crowell			
Richard Ellington			

Absent/Excused: Brian Hageman, Wil Heflin, Sriv Navaratnam

MINUTES APPROVAL:

MOTION MADE BY JAMES BAKER AND SECONDED BY JOSEPH COLLINS TO APPROVE MINUTES FROM OCTOBER 16, 2019 MEETING. VOTE: AYES 6 (Garrett Baker, James Baker, Linda Bowerman, Joseph Collins, Michael Crowell, Richard Ellington). NOES 0: ABSENT/EXCUSED 4 (Brian Hageman, Wil Heflin, Sriv Navaratnam)

Linda Bowerman opened the public hearings by asking that anyone who wishes to speak on the Special Exception Permit or Variance Request may come up to be sworn in. Dorian McLean, swore in town staff and members of the general public that wished to speak concerning the Special Exception Permit and Variance Request. Ms. Bowerman proceeded to ask the town staff if they would like to proceed with the presentation about the Special Exception Permit at 102 Raven Lane.

PUBLIC HEARING: Special Exception Permit at 102 Raven Lane

The applicant, Joyce Tovell is requesting a Special Exception Permit for the installation of a 10' x 14' shed (approximate size) that will encroach six (6) feet into the rear-yard building setbacks at 102 Raven Lane (Orange County PIN 9778474264).

Her property is located in the Residential-10 (R-10) Zoning District with a standard boundary line building setback of 12 feet, but the applicant is requesting to encroach 5.25 feet into the rear-yard building setback; this is a 43.75% percent encroachment into the required setback. Section 15-92.1 of the Land Use Ordinance gives the Board of Adjustment the authority to grant Special

Exception Permits to allow reductions of up to fifty percent (50%) in the required distances buildings must be setback from lot boundary lines.

Jeff Kleaveland gave a brief Power Point presentation of the subject property of the proposed 10 x 14 shed. The applicant completed and submitted the application for the Special Exception Permit. Jeff Kleaveland mailed out neighbor petitions and received feedback from the surrounding neighbors about the proposed shed with the exception of neighbors Don White and Vicky Olive of 304 W. Poplar Street who are present and would like to present the reasoning not being in agreement of the proposed 10 x 14 shed.

Michael Crowell asked if the picture of the neighbor standing in the yard is the applicant's yard or their yard. Mr. Don White said he was standing in the applicant's yard 12 feet from the deck on their property to show the proposed location of the shed. Joyce Tovell applicant explained the reason for the proposed shed would be to keep her gardening tools and outdoor equipment with electricity included.

Richard Ellington asked if the applicant considered another location of proposed shed on her lot. Joyce Tovell wants to use the proposed location on her lot for the proposed 10 x 14 shed which she felt was a good location on her lot.

Don White presented reasoning for not approving the proposed shed was due to the trees being a good barrier for privacy and that his wife has hearing aids. Furthermore, if the proposed shed, were to be used for a noisy powered workshop, it would present a particular nuisance as his wife has hearing aids.

Michael Crowell asked Don White and Vicky Olive if they had sheds on their lot and they stated that they had two sheds and a 30 foot RV.

Linda Bowerman asked what kind of shop where the neighbors envisioning that the proposed shed would be.

James Baker stated that the applicant/owner was not presenting to be right on the property line and if she wanted to build a 10 foot fence on the property line the Land Use Ordinance would allow that. Mr. Baker asked if a few conditions would be added could the neighbors at 304 W. Poplar Street and applicant of 102 Raven Lane compromise about the setback and electricity.

Jeff Kleaveland stated that the setback rule in the Land Use Ordinance says that it is to create a quality livable space.

Garrett Baker said that if the applicant and neighbor come into agreement with the two added conditions that it could be workable to pass the Special Exception Permit.

Linda Bowerman and Joseph Collins board members were in agreement to approve the Special Exception Permit due to the neighbors being in agreement with the applicant for the proposed 10 x 14 shed with two added conditions.

MOTION WAS MADE BY JAMES BAKER AND SECONDED BY RICHARD ELLINGTON TO CLOSE THE PUBLIC HEARING. VOTE: VOTE: AYES 6 (Garrett Baker, James Baker, Linda Bowerman, Joseph Collins, Michael Crowell, Richard Ellington,). NOES 0: ABSENT/EXCUSED 3 (Brian Hageman, Wil Heflin, Sriv Navaratnam)

The Board of Adjustment apologized to the applicants of the Variance Request at 403 Tripp Farm Road to be moved to the February 19, 2020 meeting due to not having a quorum to vote on the Variance Request. The applicants agreed that they would be willing to wait until the February 19, 2020 meeting before presenting to the board.

MOTION WAS MADE BY LINDA BOWERMAN AND SECONDED BY JAMES BAKER THAT THE APPLICATION IS FOUND TO BE COMPLETE. VOTE: VOTE: AYES 6 (Garrett Baker, James Baker, Linda Bowerman, Joseph Collins, Michael Crowell, Richard Ellington). NOES 0: ABSENT/EXCUSED 3 (Brian Hageman, Wil Heflin, Sriv Navaratnam)

MOTION WAS MADE BY LINDA BOWERMAN AND SECONDED BY JOSEPH COLLINS THAT THE APPLICATION COMPLIES WITH THE FOLLOWING FINDINGS REQUIRED BY SECTION 15-92.1. VOTE: VOTE: AYES 6 (Garrett Baker, James Baker, Linda Bowerman, Joseph Collins, Michael Crowell, Richard Ellington). NOES 0: ABSENT/EXCUSED 3 (Brian Hageman, Wil Heflin, Sriv Navaratnam)

- A. The existing building is a conforming residential use in a residential district.
- B. The existing building has existed for at least three (3) years prior to the date of the application for a special exception permit.
- C. The special exception requested applies only to a setback from a lot line boundary.
- D. The special exception being requested does not exceed 50% of the required setbacks of Section 15-184(a)(4), nor would it permit any part of a building to be located closer to a lot boundary that a distance equal to one-half of the minimum building separation requirement of North Carolina State Building Code.
- E. The special exception, if granted, will not create a threat to the public health or safety.
- F. The special exception, if granted, will not adversely affect the value of adjoining or neighboring properties.

MOTION WAS MADE BY LINDA BOWERMAN AND SECONDED BY RICHARD ELLINGTON THAT THE APPLICATION BE ISSUED SUBJECT TO THE FOLLOWING CONDITIONS. VOTE: VOTE: AYES 6 (Garrett Baker, James Baker, Linda Bowerman, Joseph Collins, Michael Crowell, Richard Ellington). NOES 0: ABSENT/EXCUSED 3 (Brian Hageman, Wil Heflin, Sriv Navaratnam)

1. The applicant shall complete the development strictly in accordance with the plans submitted to and approved by this Board, a copy of which is filed in the Carrboro Town Hall. Any deviations from or changes in these plans must be submitted to the Zoning Administrator in writing and specific written approval obtained as provided in Section 15-64 of the Land Use Ordinance.

2. If any of the conditions affixed hereto or any part thereof shall be held invalid or void, then this permit shall be void and of no effect.
3. That the special exception is granted only to the extent necessary to provide for the proposed addition (including roof overhangs), and that no other additions, or enlargements of any other portion of the house is permitted by this special exception permit.
4. That the special exception granted is subject to the proposed shed observing a 12 foot building setback from rear property line shared with 304 W. Poplar (OC PIN 9778475183). The remaining boundary lines in the proximity of the proposed location, are hereby reduced to at least six feet from each side consistent with the side-yards as shown on the site plan presented to the Board of Adjustment on January 15, 2020.
5. That the shed not be hard-wired for electrical power.

MOTION WAS MADE BY LINDA BOWERMAN AND SECONDED BY JOSEPH COLLINS THAT THE APPLICATION BE GRANTED SUBJECT TO THE CONDITIONS AGREED UPON. VOTE: VOTE: AYES 6 (Garrett Baker, James Baker, Linda Bowerman, Joseph Collins, Michael Crowell, Richard Ellington). NOES 0: ABSENT/EXCUSED 3 (Brian Hageman, Wil Heflin, Sriv Navaratnam)

OLD/NEW BUSINESS

Town staff mentioned that the Variance Request at 403 Tripp Farm Road would be moved to February 19, 2020 meeting due to not enough members for a quorum for voting purposes. Nick Herman town attorney said that it would be possible other agenda items presented to the board in the future without a tentative date.

ADJOURN

MOTION WAS MADE BY LINDA BOWERMAN AND SECONDED BY JOSEPH COLLINS THAT THE MEETING BE ADJOURNED. VOTE: VOTE: AYES 6 (Garrett Baker, James Baker, Linda Bowerman, Joseph Collins, Michael Crowell, Richard Ellington). NOES 0: ABSENT/EXCUSED 3 (Brian Hageman, Wil Heflin, Sriv Navaratnam)

BOARD OF ADJUSTMENT

AGENDA ITEM ABSTRACT

MEETING DATE: FEBRUARY 19TH, 2020

TITLE: A PUBLIC HEARING FOR A VARIANCE REQUEST AT 403 TRIPP FARM ROAD.

DEPARTMENT: PLANNING DEPARTMENT	PUBLIC HEARING: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
ATTACHMENTS: A. STAFF REPORT B. TOWN GIS EXHIBIT C. VARIANCE REQUEST WITH APPLICANT LETTER, SITE PLAN AND ELEVATIONS D. VARIANCE WORKSHEET	FOR INFORMATION CONTACT: JEFF KLEAVELAND- 918-7332

PURPOSE STATEMENT

Marsha Hamilton & Frank Pitts, owners of 403 Tripp Farm Road (Orange County PIN 9779332240), have submitted a variance request application (Attachment C) to allow encroachment into the Zone 2 Water Quality Buffers as regulated by Section 15-269 of the Land Use Ordinance. They are working with the architects from Notch Design to bring this application forward to the Board of Adjustment.

The variance would allow construction a 511 sf building addition (330 sf heated) to the back of the existing 1580 sf home; the proposed addition will encroach within the Town's Zone 2 regulatory stream buffer. See Attachment B for a GIS exhibit of the property showing the stream buffers.

INFORMATION

(see the Attached "Staff Report" – Attachment A)

STAFF RECOMMENDATION

The Town Staff recommends the Board complete the attached worksheet for the variance request for 403 Tripp Farm Rd allowing the construction a 511 sf building addition to the back of the existing 1580 sf home, as depicted in the site plan presented at the hearing, within the Zone 2 Water Quality Buffer. If the variance is approved the following conditions are recommended:

1. The applicant shall complete the development strictly in accordance with the presentation submitted to and approved by the Board on February 19th, 2020, a copy of which is filed in the Carrboro Town Hall. Any deviations from or changes in these plans must be submitted to the Zoning Administrator in writing and specific written approval obtained as provided in Section 15-64 of the Land Use Ordinance.
2. That all activities shall be designed, constructed and maintained to minimize soil and vegetation disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities.
3. To the extent practicable, the plan will demonstrate compliance with the diffuse flow requirements of Section 15-269.4 of the Land Use Ordinance.
4. If any of the conditions affixed hereto or any part thereof shall be held invalid or void, then this permit shall be void and of no effect.

STAFF REPORT

TO: Board of Adjustment

DATE: February 19th, 2020

PROJECT: Variance Request for 403 Tripp Farm Rd.

APPLICANT: Marsha Hamilton & Frank Pitts
403 Tripp Farm Rd
Carrboro, NC 27510

OWNER: (same)

PURPOSE: Request for a variance to allow encroachment into the Zone 2 Water Quality Buffer for the allowing the construction a 511 sf building addition (330 sf heated) building addition to the back of the existing 1580 sf home.

EXISTING ZONING: R-SIR Residential District

PARCEL ID NUMBER: 9779332240

LOCATION: 403 Tripp Farm Rd

LOT SIZE: Approximately 0.17 ac (7493 sf)

EXISTING LAND USE: Single Family Residence

SURROUNDING LAND USE: North ---- R-20, Vacant (Horace Williams Tract)
South ---- R-SIR, Single-Family Residence
East ---- R-SIR, R/W, Single-Family Residence
West ---- Fair Oaks HOA Open Space

ZONING HISTORY: R-SIR since 1980

RELEVANT ORDINANCE SECTIONS: Section 15-92 Variances
Section 15-269 Water Quality Buffers

ANALYSIS

Marsha Hamilton & Frank Pitts, owners of 403 Tripp Farm Road (Orange County PIN 9779332240), have submitted a variance request application (Attachment C) to allow encroachment into the Zone 2 Water Quality Buffers as regulated by Section 15-269 of the Land Use Ordinance. They are working with the architects from Notch Design to bring this application forward to the Board of Adjustment.

The variance would allow construction a 511 sf building addition (330 sf heated) building addition to the back of the existing 1580 sf home; the proposed addition will encroach within the Town's Zone 2 regulatory stream buffer. See Attachment B for a GIS exhibit of the property showing the stream buffers.

Per Section 15-269.3 of the LUO, *intermittent* streams maintain a 30' wide Zone 1 and a 30' wide Zone 2 stream buffer on either side of the drainage for a total of 60' on either side of the stream's edge. The subject property is approximately 53% restricted by these buffers (which were adopted by the Town in 2010).

The existing building and this building with the new addition does not violate any building setbacks. The rear and the front of the building provide the most room within the building envelope for an addition. The applicant and designer has chosen the rear of the building as the most suitable location for their expansion.

The Town's buffer ordinances are required to comply with the state's Jordan Lake water quality regulations. Typically a variance of these rules requires approval by the state Environmental Management Commission (EMC). However, Section 15-92(k) allows the Board of Adjustment to rule on stream buffer variances *without* EMC approval in cases where the disturbance *is not located within the first 30' from the edge of bank of the drainage-way*.

The proposed addition is not located within the first 30' from the edge of bank.

In summary, the applicant is applying for the variance under Section 15-92 of the LUO. Per the requirements of Section 15-102, residents within 150' of the subject property were given advance notice of this application and public hearing by mail and site posting. Section 15-92 gives the Board of Adjustment the authority to grant variances if certain findings are made. The findings and staff's response are listed below:

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

Staff Response: *Current regulations concerning water quality buffers width requirements (per Section 15-269.3(a)(3)) leave the property owner with reduced build options for the existing house.*

- 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.**

Staff Response: The hardship relates specifically to the proximity of an intermittent streams adjacent to the parcel. The water quality buffers for these streams, per the provisions of Section 15-269.3(a)(3) of the Land Use Ordinance, combine to restrict about 53% of the lot. The proposed addition somewhat reduces impact by not having a solid foundation.

The applicant is asking for relief per Section 15-269.5(a) of the Land Use Ordinance in order to construct an addition within Zone 2 Stream Buffer. This section of the LUO enables citizens to file for a variance in such instances.

- 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.**

Staff Response: The property was platted in 1988 prior to the existence of the current stream buffers which were adopted in 2010. The buffers that existed on the property prior to 2010 did not restrict the lot in the area of the proposed addition. The current regulations create a situation where about 53% of the lot area is now within a regulated stream buffer that prohibits construction. The property owner's actions were not the cause of the hardship.

- 4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.**

Staff Response: The buffers that existed on the property prior to 2010 did not restrict the lot in the area of the proposed addition. The current regulations create a situation where about 53% of the lot area is now within a regulated stream buffer that prohibits construction. The proposed action by the applicant is to expand an existing residence in a manner that is typical for the customary use of residential property.

CONCLUSION

The owners/applicant is restricted by current regulations from building an addition to the back of the existing house because of the existence of Water Quality Buffers as regulated by Article XVI of the LUO. Because of this, and per Section 15-269.5(a) the applicant is seeking a variance. Section 15-92 gives the Board of Adjustment the authority to grant variances subject to meeting the necessary findings as described in Section 15-92 (b).

RECOMMENDATION

The Town Staff recommends the Board complete the attached worksheet for the variance request for 403 Tripp Farm Rd allowing the construction a 511 sf building addition to the back of the existing 1580 sf home, as depicted in the site plan presented at the hearing, within the Zone 2 Water Quality Buffer. If the variance is approved the following conditions are recommended:

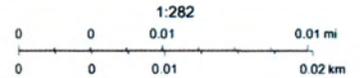
1. The applicant shall complete the development strictly in accordance with the presentation submitted to and approved by the Board on February 19th, 2020, a copy of which is filed in the Carrboro Town Hall. Any deviations from or changes in these plans must be submitted to the Zoning Administrator in writing and specific written approval obtained as provided in Section 15-64 of the Land Use Ordinance.
2. That all activities shall be designed, constructed and maintained to minimize soil and vegetation disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities.
3. To the extent practicable, the plan will demonstrate compliance with the diffuse flow requirements of Section 15-269.4 of the Land Use Ordinance.
4. If any of the conditions affixed hereto or any part thereof shall be held invalid or void, then this permit shall be void and of no effect.

403 Tripp Farm Road site conditions



December 18, 2019

- | | | | | |
|------------------------------|---------------------------------------|-------------------------|-----------------------------------|---------------------------------|
| Drainage Pathways | Floodplain | Hardwood Areas | Wooded Areas, not Hardwood | ORANGE COUNTY OPEN SPACE |
| Streams | 0.2 pct annual chance (500-yr) | Slopes Greater Than 25% | MIXED | TRIANGLE LAND CONSERVANCY |
| 10-Foot Topographic Contours | 1 pct annual chance (100-yr) | Major Road Buffer | PINE | Subdivision Open Space |
| 2-Foot Topographic Contours | Floodway | 50 | Slopes Between 15 and 25% | Parks |
| Wetlands | 1 pct annual chance future conditions | 100 | Dedicated Public Access | Jurisdictions |
| Lakes, Ponds, and Creeks | Zone 1 Stream Buffer | Utility Easement | Other Open Space | CONSERVATION EASEMENT |
| | Zone 2 Stream Buffer | | | |



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

TOWN OF CARRBORO

VARIANCE REQUEST



ATTACHMENT A

FORM #: D-88-14

DATE: 12/11/19

STREET ADDRESS: 403 TRIPP FARM RD, CHAPEL HILL	PROPERTY PIN PIN # 9779332240
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DESCRIBE THE VARIANCE REQUESTED AND GIVE APPROPRIATE ORDINANCE SECTIONS:
 ORDINANCE SECTION 15-269 RESTRICTS CONSTRUCTION IN ZONE 2 STREAM BUFFERS.
 VARIANCE IS REQUESTED TO BUILD AN ADDITION THAT WILL ENCROACH IN THE BUFFER
 ZONE 2 FIVE FEET ON THE SOUTH SIDE OF THE BUFFER AND TEN FEET ON THE NORTH SIDE.
 OF THE BUFFER

REASON(S) FOR VARIANCE REQUEST:
 THE OWNERS, A FAMILY OF 4, OWN A RELATIVELY SMALL HOUSE COMPARED TO THE
 SURROUNDING HOUSES. THEY NEED MORE SPACE AND NATURAL LIGHT TO FULFILL THEIR
 NEEDS. THE 10FT NORTH EXTERIOR SETBACK, THE 30FT DRAINAGE EASEMENT ON THE
 SOUTH, AND THE ZONE 2 STREAM BUFFER LEAVE NO SPACE FOR AN ADDITION

THE BOARD OF ADJUSTMENT SHALL GRANT A VARIANCE IF IT CONCLUDES THAT STRICT ENFORCEMENT OF THE ORDINANCE WOULD RESULT IN UNNECESSARY HARDSHIPS FOR THE APPLICANT; AND THAT BY GRANTING THE VARIANCE THE SPIRIT OF THE ORDINANCE WILL BE OBSERVED, PUBLIC SAFETY AND WELFARE SECURED AND SUBSTANTIAL JUSTICE DONE. THE BOARD MAY REACH THESE CONCLUSIONS IF IT FINDS THAT:

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

Statement by Applicant supporting this finding:
 APPLICATION OF THE ORDINANCE IN REGARDS TO THE STREAM BUFFER ZONE 2
 WOULD MAKE IT IMPOSSIBLE TO CREATE AN ADDITION ON THE BACK OF THE HOUSE.
 THE OWNERS NEED TO CREATE AN ADDITION FOR FUNCTIONAL REASONS.

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 that basis for granting the variance;*

Statement by Applicant supporting this finding:
 THIS LOT IS PECULIAR BECAUSE THE STREAM IS CLOSER TO THE HOUSE
 THAN THE REST OF THE HOUSES IN THE NEIGHBORHOOD.

THE HOUSE IS ALSO PARTICULARLY SMALL COMPARED TO OTHER HOUSES IN THE
NEIGHBORHOOD.

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;*

Statement by Applicant supporting this finding:

THE HARDSHIP DID NOT RESULT FROM ACTIONS TAKEN BY THE OWNER OR
APPLICANT. THE LOT WAS CREATED BEFORE PURCHASE OF THE PROPERTY.

4. *The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved;*

Statement by Applicant supporting this finding:

GRANTING THIS VARIANCE WILL ALLOW THE CONSTRUCTION OF AN ADDITION VERY MUCH
NEEDED FOR THE OWNERS. THE ADDITION WILL BE COMPATIBLE IN SCALE AND FUNCTION
TO ITS NEIGHBORS.

APPLICANT'S SIGNATURE

DATE: 12/11/19



NOTCH DESIGN

www.notchdesign.usinfo@notchdesign.us

PO Box 9052

Chapel Hill, NC 27515

Jose R. Noya, Intl. Assoc. AIA

Michael Dickson-Mills, AIA

December 11, 2019

Town of Carrboro
Planning and Zoning Division
301 West Main Street, Carrboro, North Carolina 27510

Re: Narrative Regarding Zone 2 Stream Buffer Variance for 403 Tripp Farm Rd, Chapel Hill.
PIN # 9779332240

Dear Town of Carrboro Board of Adjustment and Planning Staff,

Please see attached materials regarding an application for a Zone 2 Stream Buffer Variance for an addition project located in 403 Tripp Farm Road, Chapel Hill.

We have designed this addition to be respectful of the scale and function of the neighborhood. This house, already small compared to other surrounding houses, is currently too small for the owner's needs, a young couple with two children. Adding on to the back of the house was the best solution to give them the space they need, create a larger open flexible space for the family to take advantage of the views, maximize natural light, and free some of the existing interior space to allow for more storage and other needed functions. The modern feeling of the addition will contribute to the rich and eclectic mix of styles seen in Carrboro.

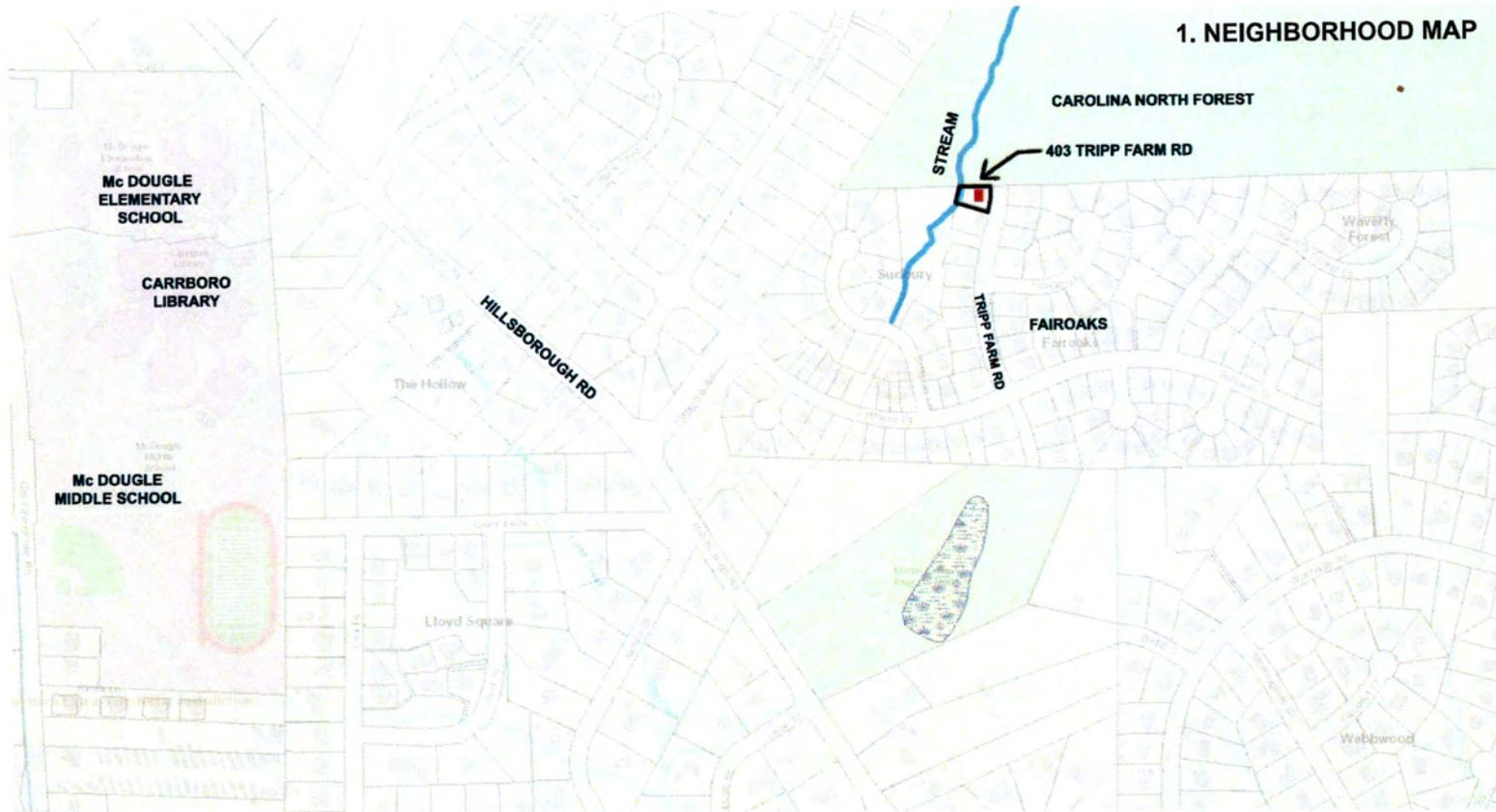
There is a zone 2 stream buffer running almost parallel to the back of the house. Since there is no room in this lot to create an addition due to the side yard setbacks plus a 30FT drainage easement, we request a variance so we can encroach 5 FT into the buffer zone at the South end of the existing house, and 10 feet into the buffer zone at the North end of the existing house.

We offer the following information regarding our application:

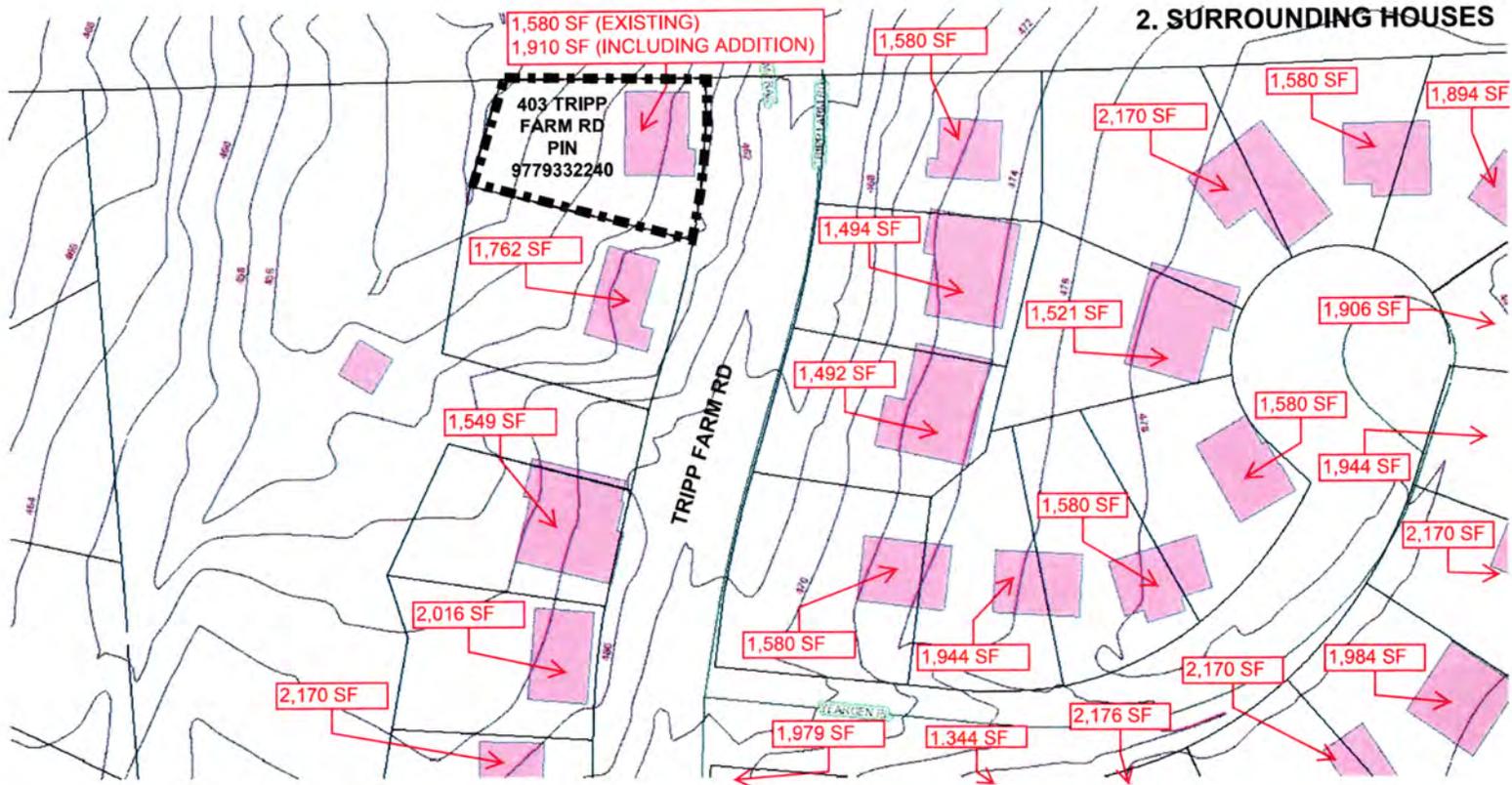
- Attachment A/ Form #: D-88-14
- 1. Neighborhood Map
- 2. Surrounding Houses
- 3. Survey
- 4. Site Plan - Existing
- 5. Site Plan - New
- 6. Interior view of the addition/ flex space
- 7. Exterior view of the addition
- 8. West elevation of the addition
- 9. South elevation of the addition
- 10. North elevation of the addition

Thank you,

Marsha Hamilton (Owner)
Frank Pitts (Owner)
Michael Dickson-Mills (Notch Design)
Jose Noya (Notch Design)



2. SURROUNDING HOUSES



3. SURVEY



NOTCH DESIGN P.L.L.C.
PO BOX 902
CHAPEL HILL, NC 27515

IMPERVIOUS SURFACE AREAS:
HOUSE: 1,175 SQ. FT.
PORCH: 59 SQ. FT.
PAVED AREAS: 524 SQ. FT.
CLUBHOUSE FOOTINGS: 5 SQ. FT.
UTILITY PADS: 4 SQ. FT.

TOTAL IMPERVIOUS SURFACE: 1,767 SQ. FT.
MAXIMUM IMPERVIOUS (PER CARRBORO): 5,000 SQ. FT.

FAIROAKS HOMEOWNERS ASSOCIATION INC
PIN# 9779-33-2083
DB 1465, PG 303
PB 71, PG 158

30' SANITARY SEWER EASEMENT (PB 47, PG 156)

- NOTES:**
1. SITE ADDRESS: 403 TRIPP FARM RD.
 2. ZONING: RSFR (PER CARRBORO GIS).
 3. SETBACKS: STREET 25', NORTH EXTERIOR 10', SIDE 5', REAR 5'.
 4. SETBACKS SHOWN PER PB 51, PG 6. SURVEYOR MAKES NO GARENTEE THAT MUNICIPALITY HAS/HAS NOT CHANGED THESE DIMENSIONS. CLIENT SHOULD CONTACT MUNICIPALITY TO CONFIRM SETBACKS BEFORE CONSTRUCTION. BEARINGS ARE BASED ON NAD83.
 5. DISTANCES SHOWN ARE GROUND DISTANCES.
 6. REFERENCES: PB 51, PG 6; DB 5596, PG 73; OF ORANGE COUNTY REGISTRY.
 7. MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.
 8. THE SURVEYOR MAKES NO GUARANTEE THAT ANY UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA EITHER IN SERVICE OR ABANDONED.
 9. THIS SITE IS NOT LOCATED IN A SPECIAL FLOOD ZONE, IT IS IN ZONE "X" AS SHOWN ON FEMA MAP 3710877900 K DATED NOVEMBER 17, 2017.
 10. THIS SURVEY MADE WITHOUT THE BENEFIT OF A TITLE SEARCH WHICH COULD DISCLOSE ZONING, RESTRICTIVE COVENANTS, EASEMENTS, BUILDING SETBACKS, OR OTHER INFORMATION WHICH COULD AFFECT THIS PROPERTY.
 11. THIS SURVEY IS NOT VALID FOR SUBSEQUENT OWNERS OR TRANSACTIONS.

UNIVERSITY OF NORTH CAROLINA
PIN# 9779-88-6375
DEED REFERENCE NOT FOUND

I, ERIC M. MANTURUK, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE RECORDED IN BOOK AND PAGE (AS SHOWN); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AND DRAWN FROM INFORMATION FOUND IN BOOK AND PAGE (AS SHOWN); THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000+; AND THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER, AND SEAL THIS 23RD DAY OF SEPTEMBER, 2019.

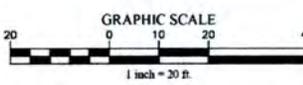


ERIC M. MANTURUK FLS L-5019

FRANK A PITTS & MARSHA A HAMILTON
PIN# 9779-33-2240
DB 5596, PG 73
PB 51, PG 6
AREA: 7,493 SQ. FT., 0.17 AC.

TRIPP FARM RD
60' PUBLIC R/W
(PB 51, PG 6)

- LEGEND**
- EXISTING IRON PIPE
 - SANITARY CLEANOUT
 - ⊕ SANITARY SEWER MANHOLE
 - HVAC UNIT
 - ⊕ CATV BOX
 - ⊕ WATER METER
 - ⊕ ELECTRIC METER
 - ⊕ ELECTRIC BOX
 - ⊕ TELEPHONE PEDESTAL
 - ⊕ GAS METER
 - FENCE LINE
 - R/W- RIGHT OF WAY
 - ▬ STREAM BUFFER



ROBERT J REARDON
PIN# 9779-33-4173
DB 6108, PG 481
PB 51, PG 6

JOB #: 219039.00
DATE: 23 SEPT 19
SCALE: 1"=20'
DRAWN BY: EMM / EJS
CHECKED BY: EMM
REVISIONS:

FINAL SURVEY FOR:
FRANK A PITTS & MARSHA A HAMILTON
403 TRIPP FARM RD
CHAPEL HILL TWP., ORANGE CO., NORTH CAROLINA

BALLENTINE ASSOCIATES PA
11292019
194
194

Marsha Hamilton and Frank Pitts
403 Tripp Farm Rd
CHAPEL HILL, NC

A-003
SURVEY

NOT FOR CONSTRUCTION

4. SITE PLAN - EXISTING



NOTCH DESIGN PLLC
 PO BOX 8052
 CHAPEL HILL, NC 27515
 www.notchdesign.com

Marsha Hamilton and Frank Pitts
 403 Troop Farm Rd
 CHAPEL HILL, NC
 11/09/2019
 014

A-004
 SITE
 PLAN-EXISTING

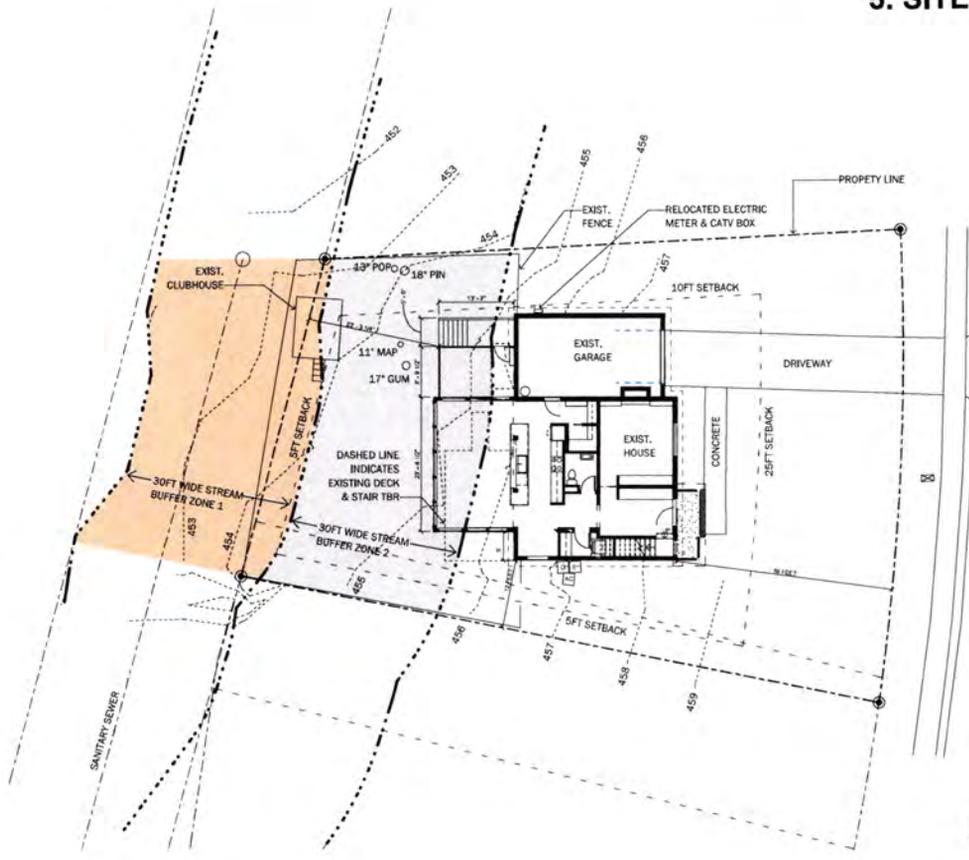
SEE A-003 FOR SURVEY
1 SITE PLAN-EXISTING SCALE: AS SHOWN

NOT FOR CONSTRUCTION

5. SITE PLAN - NEW



NOTCH DESIGN, PLLC
 P.O. BOX 802
 CHAPEL HILL, NC 27515
 www.notchdesign.com
 info@notchdesign.com



SEE ALSO FOR SURVEY
 SEE ALSO FOR EXISTING SITE PLAN
 1 SITE PLAN SCALE: 1/8"=1'-0"
 12/15/2019

Prepared by: Marsha Hamilton and Frank Pitts
 403 Tripp Farm Rd
 CHAPEL HILL, NC
 11/28/2019
 014
 014

A-005
 SITE PLAN-NEW

NOT FOR CONSTRUCTION



6. INTERIOR VIEW

EXISTING HOUSE

ADDITION

NEW DECK, STAIR
AND SCREEN PORCH

ATTACHMENT C10

7. EXTERIOR VIEW



NOTCH

8. WEST ELEVATION



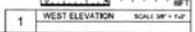
NOTCH DESIGN, PLLC
PO BOX 9502
CHAPEL HILL, NC 27515
www.notchdesign.com
info@notchdesign.com

Architect
Manda Hamilton and Frank Pitts
4033 Tripp Farm Rd
CHAPEL HILL, NC
11/09/2019
014

A-201

WEST ELEVATION

SEE PLAN FOR SLOPED ROOF OPTION.
SEE PLAN FOR MATERIAL DESCRIPTIONS.

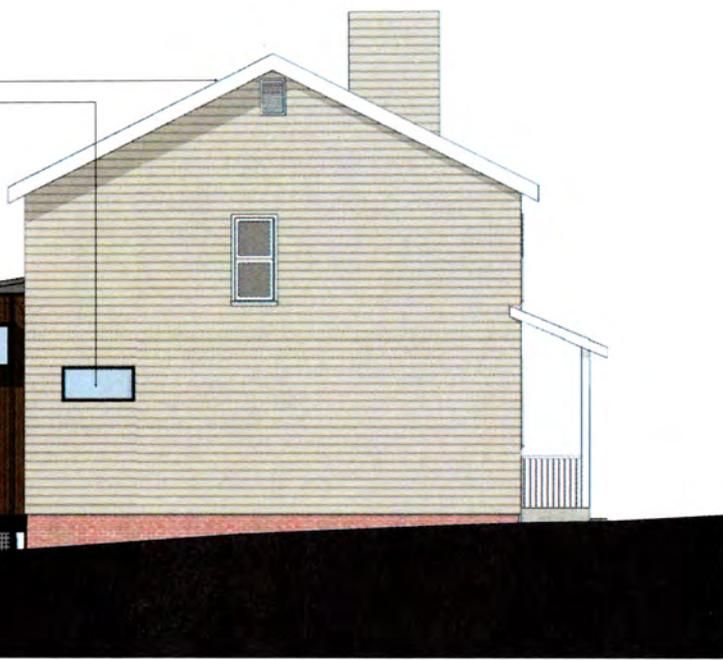
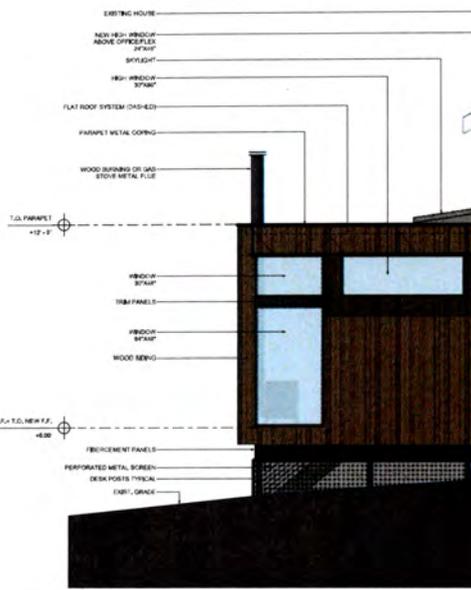


NOT FOR CONSTRUCTION

9. SOUTH ELEVATION



NOTCH DESIGN, PLLC
 PO BOX 8052
 CHAPEL HILL, NC 27515
 notchdesign.com
 info@notchdesign.com



Prepared by
 Marsha Hamilton and Frank Pitts
 403 Tripp Farm Rd
 CHAPEL HILL, NC
 Date: 11/29/2019
 Project: 014
 Scale:

A-202
 SOUTH ELEVATION

SEE A-202 FOR MATERIAL DESCRIPTIONS	1	SOUTH ELEVATION	SCALE 3/8" = 1'-0"
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NOT FOR CONSTRUCTION

10. NORTH ELEVATION



NOTCH DESIGN, PLLC
PO BOX 8052
CHAPEL HILL, NC 27515
www.notchdesign.com
info@notchdesign.com



Client: Mirsha Hamilton and Frank Pitts
Address: 4733 Tripod Farm Rd
City: CHAPEL HILL, NC

A-203
NORTH ELEVATION

1 NORTH ELEVATION SCALE: 3/8" = 1'-0"

NOT FOR CONSTRUCTION

TOWN OF CARRBORO

BOARD OF ADJUSTMENT



VARIANCE WORKSHEET

I. COMPLETENESS OF APPLICATION

- The application is complete.
- The application is incomplete _____

II. FINDINGS REQUIRED BY SECTION 15-92 OF THE LUO

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

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 that basis for granting the variance:
 - Yes
 - No

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:
 - Yes
 - No

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved:
 - Yes
 - No

III. CONSIDERATION OF PROPOSED CONDITIONS

If the variance is granted, the permit shall be issued subject to the following conditions:

1. The applicant shall complete the development strictly in accordance with the plans submitted to and approved by the Board, a copy of which is filed in the Carrboro Town Hall. Any deviations from or changes in these plans must be submitted to the Zoning Administrator in writing and specific written approval obtained as provided in Section 15-64 of the Land Use Ordinance.
2. If any of the conditions affixed hereto or any part thereof shall be held invalid or void, then this permit shall be void and of no effect.
3. Other conditions as necessary or desired: _____

IV. GRANTING THE APPLICATION

- The application is granted, subject to the conditions agreed upon under Section III of this worksheet.

V. DENYING THE APPLICATION

- The application is denied because it is incomplete for the reasons set forth above in Section I.
- The application is denied because it fails to comply with the additional ordinance requirements set forth above in Section II.

BOARD OF ADJUSTMENT

ITEM NO.: _____

AGENDA ITEM ABSTRACT

MEETING DATE: WEDNESDAY, FEBRUARY 19, 2020

SUBJECT: PUBLIC HEARING TO REVIEW AN APPEAL OF THE ZONING ADMINISTRATOR'S DECISION REGARDING A STREAM BUFFER ENCROACHMENT ON PROPERTY LOCATED AT 3200 DAMASCUS CHURCH ROAD

DEPARTMENT: PLANNING DEPARTMENT	PUBLIC HEARING: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
ATTACHMENTS: A. STAFF REPORT B. SEPTEMBER 2019 LETTER FROM ZONING DIVISION C. AUGUST 2019 LETTER FROM ZONING DIVISION D. PHOTOGRAPHS FROM 3100 DAMASCUS CHURCH ROAD E. APPEAL APPLICATION MATERIALS	FOR INFORMATION CONTACT: Marty Roupe, 918-7333, mroupe@townofcarrboro.org

PURPOSE

Mr. Tony Merritt and Mrs. Ilene Merritt, as representative owners of property located at 3200 Damascus Church Road, has submitted an application appealing a decision of the Zoning Administrator regarding an encroachment into a stream buffer on their property. Specifically, the Zoning Division concluded that grading work on the property has disturbed a stream buffer on the south side of the property, in violation of Land Use Ordinance Section 15-269.2. The property is zoned Watershed Residential. The Board of Adjustment must receive the application, hold a public hearing, and make a decision regarding the appeal.

ANALYSIS

(See attached staff report)

RECOMMENDATION

Town Staff recommends that the Board of Adjustment evaluate the facts as presented in the staff report and associated attachments and as presented in the public hearing and make a decision regarding the issue of an encroachment into an ephemeral stream buffer on the south side of property located at 3200 Damascus Church Road.

STAFF REPORT

TO: Board of Adjustment

DATE: February 19, 2020

PROJECT: Appeal of a Zoning Decision Regarding a Stream Buffer Encroachment at 3200 Damascus Church Road

APPLICANT / OWNER: TIK, LLC
3200 Damascus Church Road
Chapel Hill, NC 27516

PURPOSE: To review an appeal of the decision of the Zoning Administrator stating that an encroachment into an ephemeral stream buffer has occurred at 3200 Damascus Church Road (the “Subject Property”) and directing the Applicant to take certain remedial action. The property is residentially zoned and legally used for commercial purposes via the nonconforming use provisions of the Land Use Ordinance (LUO).

EXISTING ZONING: Watershed Residential – (WR)

LOCATION: 3200 Damascus Church Road

LOT SIZE: 46.21 acres

EXISTING LAND USE: Commercial Use – 14.300, Mining or quarrying operations, including on-site sales of products

SURROUNDING ZONING and LAND USE:

North ----	WR, Watershed Residential, Single Family Homes
South ----	WR, Watershed Residential, Child Daycare Facility and Farm
East ----	WR, Watershed Residential, Damascus Church Road
West ----	WR, Watershed Residential, Vacant

ZONING HISTORY: Watershed Residential since 1988
Orange County Jurisdiction Prior to 1988

PARTICULARLY RELEVANT ORDINANCE SECTIONS

Section 15-91
Section 15-269.2

Appeals
Required Buffers

ANALYSIS

Background

Over the course of the last approximately two years, staff has been in ongoing extensive and detailed discussions with the property owner at 3200 Damascus Church Road (“Subject Property”), as well as with the neighboring property owner at 3100 Damascus Church Road (“Neighboring Property”) regarding observations of changes on the Subject Property.

As additional background, the Subject Property has been used as an active gravel pit since the mid-1960s and is thereby a well-established nonconforming use under the Town’s Land Use Ordinance (LUO) pursuant to a mining permit issued by the State in or about 1968. As an active gravel pit, the Subject Property has been almost entirely governed and regulated by the State of North Carolina rather than at the municipal level.

By way of doing research into all matters related to the Subject Property and observations from the neighboring property owner, staff has been doing extensive research to determine which agencies have regulatory authority over the Subject Property, or some aspect of the activities being conducted there. It is clear that the State of North Carolina still has regulatory authority over the portion of the Subject Property still in use as an active mine, which is generally the eastern approximately one-half of the property. It has however become clear that the State has relinquished authority over the western portion of the Subject Property, which results in the Town of Carrboro and Orange County now having legal regulatory authority over the western portion.

As the Neighboring Property was being sold in early -to-mid 2018, the prospective purchaser, and now owner, observed and questioned changes to the physical landscape on the Subject Property as well as on her property. Various representations of the changes were submitted as photographs, and staff continued researching the matters over the course of time.

Staff has observed the Subject Property from the Neighboring Property and has visited the Subject Property to better understand the physical changes to the Subject Property and to help determine which agencies have regulatory authority. Staff also closely checked various maps available and on file as well as historical aerial photography going back in time to see the changes to the physical characteristics of the Subject Property. It appears clear that physical changes to the subject property have occurred over time, most while it was governed by the State of NC, pursuant to the mining permit. At this time, staff is still assessing some matters on the Subject Property and continuing to work with other applicable regulatory authorities at both the county and State levels.

At this time, one matter which has been established involves an ephemeral stream located along the south side of the Subject Property, adjacent to the Neighboring Property. It is clear that grading has occurred in the buffer area in order to create an embankment along the common boundary line between the two properties to facilitate the creation of a haul road on the Subject Property, in violation of the LUO's stream buffer requirements. This matter was identified in the attached letter, Attachment B, which also included a request to the Applicant/Owner to survey the Subject Property to clarify exactly where the mine boundary is on the land and where the stream buffer is located in relation to the new road that has been constructed. The applicable LUO language states:

- LUO Section 15-269.2(c): "Buffers shall also be established adjacent to all ephemeral streams and ponds not shown on the above described maps that have a contributing drainage area that is at least five acres in size, as depicted in the Town's GIS database.

Some conversations regarding this matter have taken place since the appeal was filed, but no survey has been submitted to date and no known corrective actions have taken place to remove the obstruction into the buffer.

Basis of the Appeal

The appeal application refutes the decision of the administrator on one (1) count. Specifically, the petitioner suggests that *"The facility is not a landfill. Any waterways on the property were destroyed by mining before the stormwater ordinances were implemented."*

Count I

The first count of the appeal concerning the decision of the administrator centers around Section 15-269.2(c) of the LUO. Section 15-269.2(c) states that a buffer shall be established around an ephemeral stream with a contributing drainage area of five acres or more. In the Notice of Land Use Ordinance Violations letter dated September 26, 2019, staff requested that a survey be conducted to verify, by way of a professional licensed surveyor, where the subject ephemeral stream shown on the town's GIS system actually lies on the ground. This information would then inform how much of the haul road and embankment needs to be removed and remediated in order to restore the natural drainage of water from the Neighboring Property, as an uphill property, to the Subject Property, a downhill receiving property under common drainage law. A plan would then be created and implemented, in accordance with applicable land use ordinance regulations, to bring the matter to closure.

In relation to the applicant's suggestion that the waterway was previously destroyed, please note that an earlier letter dated August 14, 2019, Attachment C, first asserted that the ephemeral stream existed. The applicant did not appeal that determination. The appeal filed in relation to the September 2019 letter, now under consideration, relates to the type of remedy that is appropriate to correct the situation, which is clearly and visibly

blocking the flow of water from the Neighboring Property to the Subject Property. Recent actions by the owner of the (downhill) Subject Property have clearly impeded the flow of the water from the (uphill) Neighboring Property, and corrective measures are needed in order to allow the water to properly flow onto the Subject Property.

Staff has judged the situation fairly and only desires to work with the property owner to review and approve an acceptable remediation plan in accordance with applicable regulations, and have the plan implemented in a timely manner, as outlined in detail in the September 26, 2019 letter. Absent a survey of the property and complete remediation plan, staff is now at the point of beginning to levy civil penalties against the property owner of the Subject Property as a means to prompt corrective action. As noted in the September letter, the civil penalties would potentially begin at 30 days, assuming an appeal was not filed. As an appeal has been filed, staff has not yet begun levying civil penalties.

Conclusion & Summary

Based on the information presented above, the Zoning Division has provided evidence that staff's interpretation of the LUO in relation to whether an ephemeral stream exists and has been disturbed at the Subject Property is correct. The record also establishes that the Zoning Division properly directed the applicant to provide additional information so that a plan for remedial action to correct the disturbance of the affected stream buffer could be developed and implemented.

Board of Adjustment Action on Appeals

Section 15-91(e) of the LUO allows that the Board of Adjustment may “reverse or affirm (wholly or partly) or may modify the order, requirement or decision or determination appealed...” The Board of Adjustment has all powers of the officer, in this case the administrator (Mr. Roupe), from whom the appeal is taken. Per Section 15-95, during the public hearing for the appeal, the “administrator shall have the initial burden of presenting to the Board sufficient evidence and argument to justify the . . . decision appealed from.” The burden of presenting contrary evidence and argument, as well as the burden of persuasion, falls upon the appellant.

Any decision of the Board of Adjustment regarding the appeal must include a statement of the reasons or findings in support of that decision per Section 15-96(a). A motion to reverse or modify the administrator's decision requires a simple majority vote of the Board.

RECOMMENDATION

Town Staff recommends that the Board of Adjustment evaluate the facts as presented in the staff report and associated attachments and as presented in the public hearing and

make a decision regarding the interpretation of the LUO in regards to the use of the property located at 3200 Damascus Church Road.



TOWN OF CARRBORO

NORTH CAROLINA

WWW.TOWNOFCARRBORO.ORG

Attachment B, Page 1

September 26, 2019

Mr. Tony Merritt, Member/Manager
Tik, LLC
3200 Damascus Church Rd.
Chapel Hill, North Carolina 27516-8055

**Re: Notice of Land Use Ordinance Violations – 3200 Damascus Church Road (Orange County
PIN: 9777 36 7019)**

Dear Mr. Merritt:

This letter is to follow up my August 14, 2019 letter to you regarding the above-referenced matter. This is also to follow up on the meetings and correspondence we have had with Katelin Merritt and Patrick Shillington, your engineer, about these issues. There are two issues raised in my previous letter which must be addressed, and one additional issue we need you to address. All issues are discussed below.

Please know that the Town acknowledges and respects that you are actively operating a gravel mine on your property, under a valid mining permit issued and regulated by State of North Carolina Department of Natural Resources Mining Division. The town has no intention or desire to interrupt in any way your ability to successfully operate the mine consistent with your current mining permit. The town is only interested, as you will read below, in bringing the portion of your property outside of the boundaries of the current permitted mine into compliance with applicable Town of Carrboro Land Use Ordinance (LUO) regulations as quickly as possible.

First, we have determined that there is a protected ephemeral stream running along a portion of your southern boundary, see red, outlined portion on attached map. Under Town regulations (LUO Section 15-269.2) there is a 30 foot wide protected buffer around such streams. When you extended the gravel drive westward along the southern boundary line onto the portion of your property that is no longer subject to the State's mining permit, part of the stream buffer was disturbed. **A professional survey must be conducted in order to determine which portions of the road are located within the stream buffer.** Upon determining by survey where the buffer area is in relation to the gravel drive, any disturbed portion of the stream buffer in that area needs to be restored and the functionality of the drainageway in the area which was impeded, causing ponding on the adjacent property, must be restored. **You must provide the Town with a survey and remediation plan within 30 days of the date of this letter, then commence remediation work within 14 days of the town approving your remediation plan.** The survey must identify (i) the location of the gravel drive, (ii) all utility poles installed in the gravel drive, (iii) the mining area boundary (i.e., identify the area on your property which is now subject to the State mining permit), and (iv) the ephemeral stream and buffer area.

With regard to discussions with your engineer about whether a pipe may be included as part of the remediation plan, please read and consider LUO Article XVI, Part III, Water Quality Buffers, found here: <https://nc-carrboro.civicplus.com/DocumentCenter/View/698/Article-XVI-Floodways-Floodplains-Drainage-and-Erosion-PDF>. The pertinent portion of the Article begins on page 42. More specifically still, LUO Section 15-269.5, beginning on page 48, cites allowable uses and disturbances within a stream

buffer. **The remediation plan must either completely remove the road from the buffered area in favor of restoring a natural waterway conveyance or be found as an acceptable use or disturbance under the cited section.**

Next, you must **immediately** cease all grading, filling and excavating on the portion of your property no longer subject to the State mining permit . Such land disturbing activities are not allowed on property zoned Watershed Residential (WR) such as yours pursuant to LUO Section 15-146. The only land disturbing activity allowed on that portion of your property is activity required by Orange County as a condition of the Soil and Erosion Control permit for that area.

Finally, the town needs to revisit the matter of a Certificate of Compliance having not been issued for relocation of a construction trailer on the property. A building and zoning permit were issued in June 2000 for this relocation, and a septic system permit was issued as well in October 2002. An electrical inspection was completed on the service but no building inspections were done and a Certificate of Compliance has never been issued. Orange County Environmental Health must certify that the septic system installation has been completed to their satisfaction as well. Also it is evident that additional structures have been located on the property as well, for which the town has no evidence of a permit application being filed. The town is very interested in working with you to bring all such structures into compliance. Absent a Certificate of Compliance and certified approval of the septic system, you cannot lawfully continue to occupy the structure. **This issue must be addressed within 30 days of this letter.**

Your failure to take action as described in this letter within 30 days may result in the assessment of civil penalties per LUO 15-114 and/or other enforcement action authorized by law. This letter represents the town's final determination regarding this matter. You have the right to appeal this determination to the Board of Adjustment within 30 days of receipt of this letter, pursuant to LUO Section 15-91.

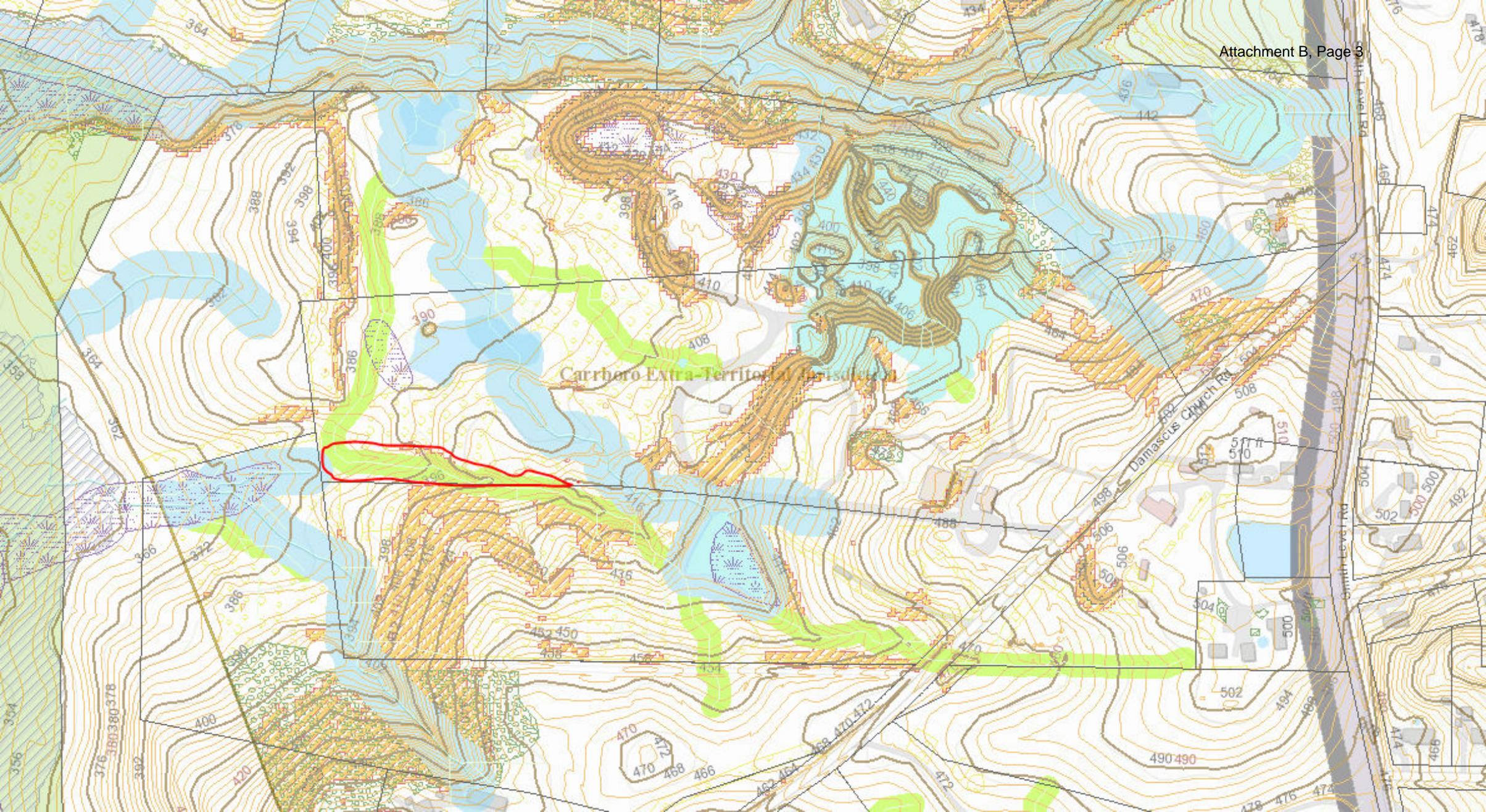
Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Marty Roupe". The signature is stylized and cursive.

Marty Roupe
Development Review Administrator

cc: Katelin Merritt (k.merrittsgravelpit@gmail.com)
Patricia McGuire, Planning Director
David Andrews, Town Manager
Robert E. Hornik, Jr., Town Attorney
Pat Shillington, Engineer



August 14, 2019

Mr. Tony Merritt, Member/Manager
Tik, LLC
3200 Damascus Church Rd.
Chapel Hill, North Carolina 27516-8055

Re: **Notice of Land Use Ordinance Violations – 3200**
Damascus Church Road (Orange County PIN: 9777 36 7019)

Dear Mr. Merritt:

As you know, we have been discussing with your daughter, Katelin Merritt, and with your engineer, Pat Shillington, the status of various activities recently occurring on the above-referenced property (particularly the portion no longer subject to your State mining permit No. 68-04) in relation to applicable provisions of the Town of Carrboro's Land Use Ordinance ("LUO"). Ms. Merritt and Mr. Shillington provided us with some information about those activities (primarily grading and excavation activities and hauling of fill material from offsite onto the area in question). We had been advised that the hauling activities and excavation related to the "reclamation" of the former mining operation on the western portion of the property had been completed. (See attached "Beneficial Fill/Grading and Erosion Control Plan). However, we have been advised of ongoing activity on that area of the property in recent days.

Furthermore, as you know, we have been reviewing the circumstances regarding the extension of a dirt or gravel "haul" road along your southern boundary (in common with the Wildflower property) and the resulting ponding of surface water along that common boundary line, and primarily on the Wildflower property.

None of the activities described above were reviewed or approved by the Town of Carrboro's Planning and Zoning Department. We have come to the conclusion that any activities involving bringing soil, dirt, or other fill material onto the western portion of your property, west of the "Existing Mine Permit Limits" as depicted on the enclosed plan) from off-site constitutes "landfill" activity (see General Statute 130A-290(a)(16)) which is not permitted on the property under the Town's Land Use Ordinance. Your property is located in a Watershed Residential (WR) zoning district and, per LUO 15-146 (Table of Permissible Uses), a landfill is not permitted in the WR district. Additionally, any other grading or excavation activities in the area released from your mining permit constitutes "development" and/or "land disturbing activity" as defined in the LUO, and requires a land use permit from the Town.

Moreover, we have determined that the creation and extension of the “haul” road along the southern boundary of your property in common with the Wildflower property violates Land Use Ordinance Section 15-261.1 and 15-269.2(c). Moreover, per LUO 15-46(a) a permit is required before excavating or grading activities may occur on the portion of the property no longer under the State mining permit. There is a stream along the southern boundary as shown on the Town’s GIS database, that is protected by a stream buffer under the Land Use Ordinance. Any disturbance of that stream buffer is prohibited (with limited exceptions, which we do not believe exist here).

Based on the foregoing, you must **cease** and **desist** any further grading, excavating, or hauling in of fill materials from any other location onto the western portion of your property, which area is no longer subject to a State Mining Permit. You must also take **immediate** steps to develop a plan to restore the stream buffer along your southern boundary (line in common with the Wildflower property).

Finally, we require that you, or your representatives, meet with us on or before Friday, August 23, 2019, in order to discuss how we may proceed to resolve these issues and the apparent violations of the Town’s Land Use Ordinance in a timely fashion, and in a way which satisfies the intent of the Land Use Ordinance. You should contact me at 919-918-7333 or email me at mroupe@townofcarrboro.org to schedule that meeting.

Should you fail to (a) discontinue landfilling activities and/or the grading and excavation on the western portion of your property beyond the “Existing Mine Permit Limits” as shown on the enclosed plan, or (b) contact me by August 23, 2019 to discuss your plans to correct the violations of the Land Use Ordinance described in this letter by Friday, August 23, 2019, the Town may commence more formal enforcement activity pursuant to the LUO.

Please consider this letter to be notice of the LUO violations pursuant to LUO 15-113(a) and (b). Your failure to comply may result in the assessment of civil penalties per LUO 15-114. You may appeal this determination to the Board of Adjustment by filing an appeal to that Board within 30 days of the date of this letter pursuant to LUO 15-117.

Thank you.

Very truly yours,

Martin Roupe
Development Review Administrator

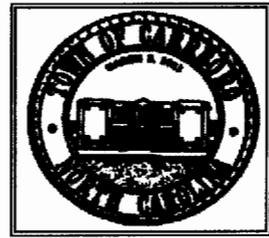
cc: Katelin Merritt (k.merrittsgravelpit@gmail.com)
Patricia McGuire, Planning Director
David Andrews, Town Manager
Robert E. Hornik, Jr., Town Attorney







TOWN OF CARRBORO



Attachment B: APPEAL

DATE: 10/28/19

DECISION BEING APPEALED:

The facility is not a landfill. Any water ways on the property
were destroyed by mining before the stormwater ordinances
were implemented.

DECISION RENDERED BY:

Martin Rouse

AFFECTED PROPERTY: ADDRESS:

3200 Damascus Church Road, Chapel Hill, NC

TAX MAP REFERENCE: MAP _____ BLOCK _____ LOT _____
DIN 9777367019 & DIN 9777365535

APPLICABLE LAND USE ORDINANCE SECTION(S):

Section 15-269.2, Section 15-269.5, Section 15-146

EXPLANATION OF APPEAL (ATTACH ADDITIONAL SHEETS, IF NECESSARY):

See Attached

[Signature]
APPEAL APPLICANT'S SIGNATURE



ENGINEERING & ENVIRONMENTAL SCIENCE COMPANY

3008 ANDERSON DRIVE, SUITE 102

RALEIGH, NC 27609

(919) 781-7798

June 18, 2019

Mr. Martin Roupe
Town of Carrboro
301 W. Main Street
Carrboro, NC 27510

RE: Beneficial Fill Facility
Merritt Property
3200 Damascus Church Road
Chapel Hill, NC 27516

Dear Mr. Roupe:

The following provides a historical summary of the above referenced site, and two proposed means to convey upslope stormwater runoff from the site.

Site Discussion

The Merritt Property consists of two (2) parcels of land totaling 46.21 acres. A portion of this land is under a State Mining Permit. About 18.33 acres of land is outside of the mine permit limits and this area is used for placement of beneficial fill. This area originally was part of the mine.

Per discussion with Mr. Tony Merritt, the mining on this property started in 1964. Per the 1980 aerial photograph and the USDA Orange County Soil Survey (See Attachment A), The western portion of the property was initially mined. The information in the Soil Survey was compiled between 1970 to 1975. The mining activities continued in this area beyond 1985. The mining activities conducted during this time period are located in the presently designated beneficial fill area.

My involvement with the site started in early 1995. At this time, the area within the present beneficial fill area was inactive. The northern portion of this area had small pine trees. In the southwest corner of the property, older growth pines were noted. The remaining area was sparsely grass covered. The west and north property perimeter had excavation walls 5 to 20 feet high (nearly vertical excavation walls). The east perimeter was a gradual slope at 3:1 (H:V) and flatter. The majority of the stormwater stayed in this area or drained east to the active mine area. A small area drained off-site to the northwest corner of the property. The central portion of the inactive mine area had shallow stagnant surface water.

In 1998, Gene and Billy Merritt, owners of the mine at this time, had the mine ownership transferred to Tony Merritt. Also, at this time, the permitted mine area was reduced. The parcel of land presently owned by Wildflower, property south of Damascus Church Road, and the present beneficial fill area were removed from the mine permit limits.

Beneficial Fill Reclamation

Although the present beneficial fill area was released from the mine permit limits, the perimeter excavation walls were steeper than 2:1 (H:V). Also, foul and stagnate surface water would develop in the central portion of this area. The use of the beneficial fill and deeper excavation in the central portion of the property has corrected these deficiencies. Per discussion with Mr. Tony Merritt, no more beneficial fill will be deposited in this area. Revegetating the area and minor grading remains to be completed. No plans for building construction or impervious surface construction are planned at this time. Mr. Merritt is aware that the addition of any impervious surface will require permitting through the Town of Carrboro.

Off-Site Stormwater Control

The erosion control plan has been approved for the beneficial fill area by Orange County. However, the design approval for the conveyance of the upslope, off-site stormwater is by the Town of Carrboro.

The SCS evaluation method was used to evaluate the 10, 25 and 100-year rain event for the off-site, upslope runoff. Two solutions have been evaluated. One solution is utilization of a 6-inch diameter Sch. 80 PVC pipe and the other is utilization of an 18-inch diameter HDPE pipe. The design drawings for the 6-inch pipe are provided in Attachment B. For the 18-inch pipe alternative, the layout would be the same except there will not be a turndown of the pipe at the inlet.

The evaluation indicates no discharge over the emergency spillway will occur for the 10 and 25-year rain events using the 6-inch diameter PVC pipe. The emergency spillway is activated only for the 100-year rain event. The outflow discharge rate is greatly reduced relative to the inflow rate. Surface water will temporarily pond on the adjacent Wildflower property.

The 18-inch diameter HDPE pipe will minimize ponding on the adjacent Wildflower property. The headwater depth is estimated at 2.0 ft. for the 10-year rain event, 3.0 ft. for the 25-year rain event and 4.2 ft. for the 100-year rain event.

Closure

Please contact me if you have any questions about the letter.

Sincerely,

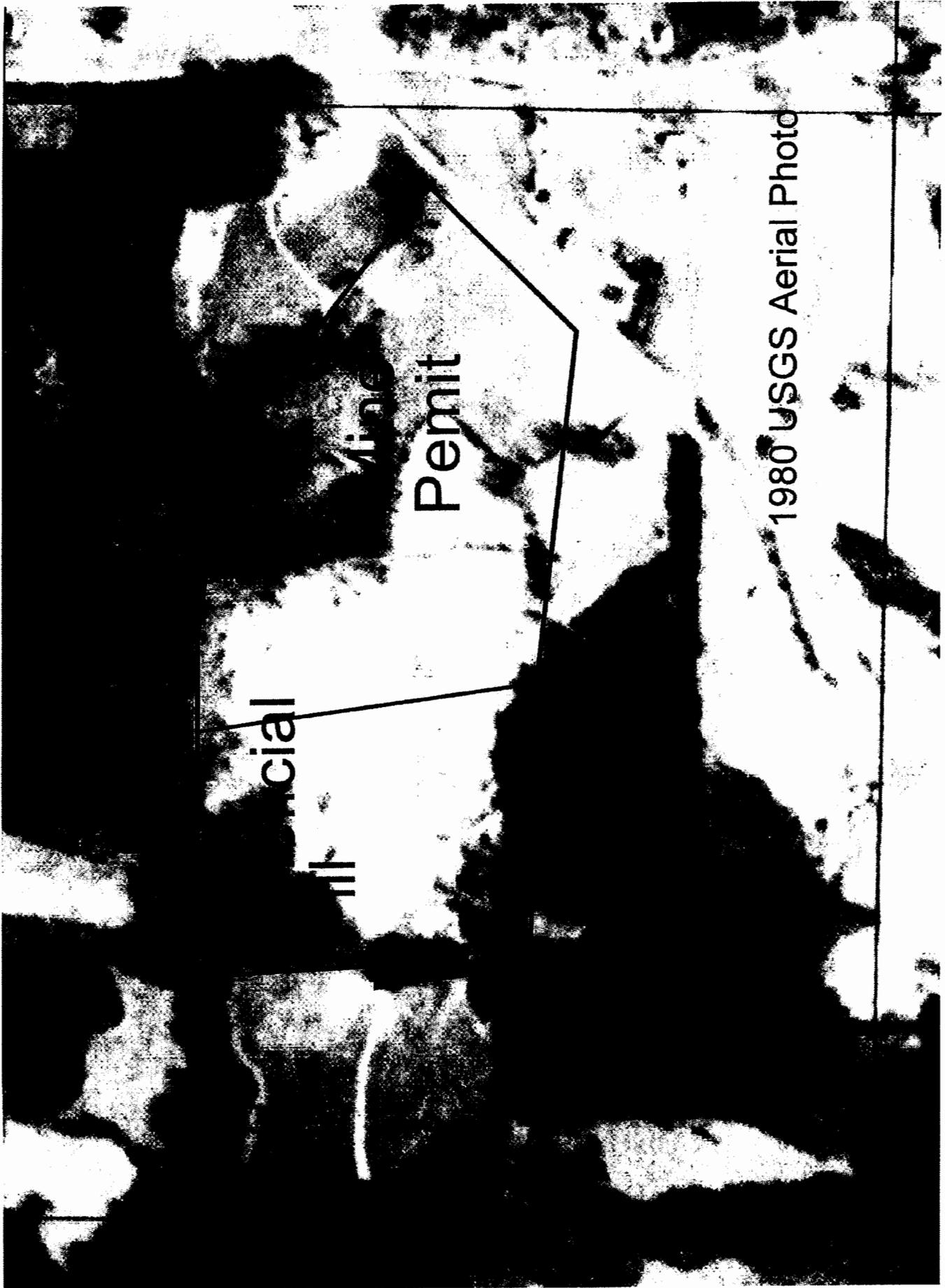
T. Patrick Shillington
T. Patrick Shillington, P. E.
President

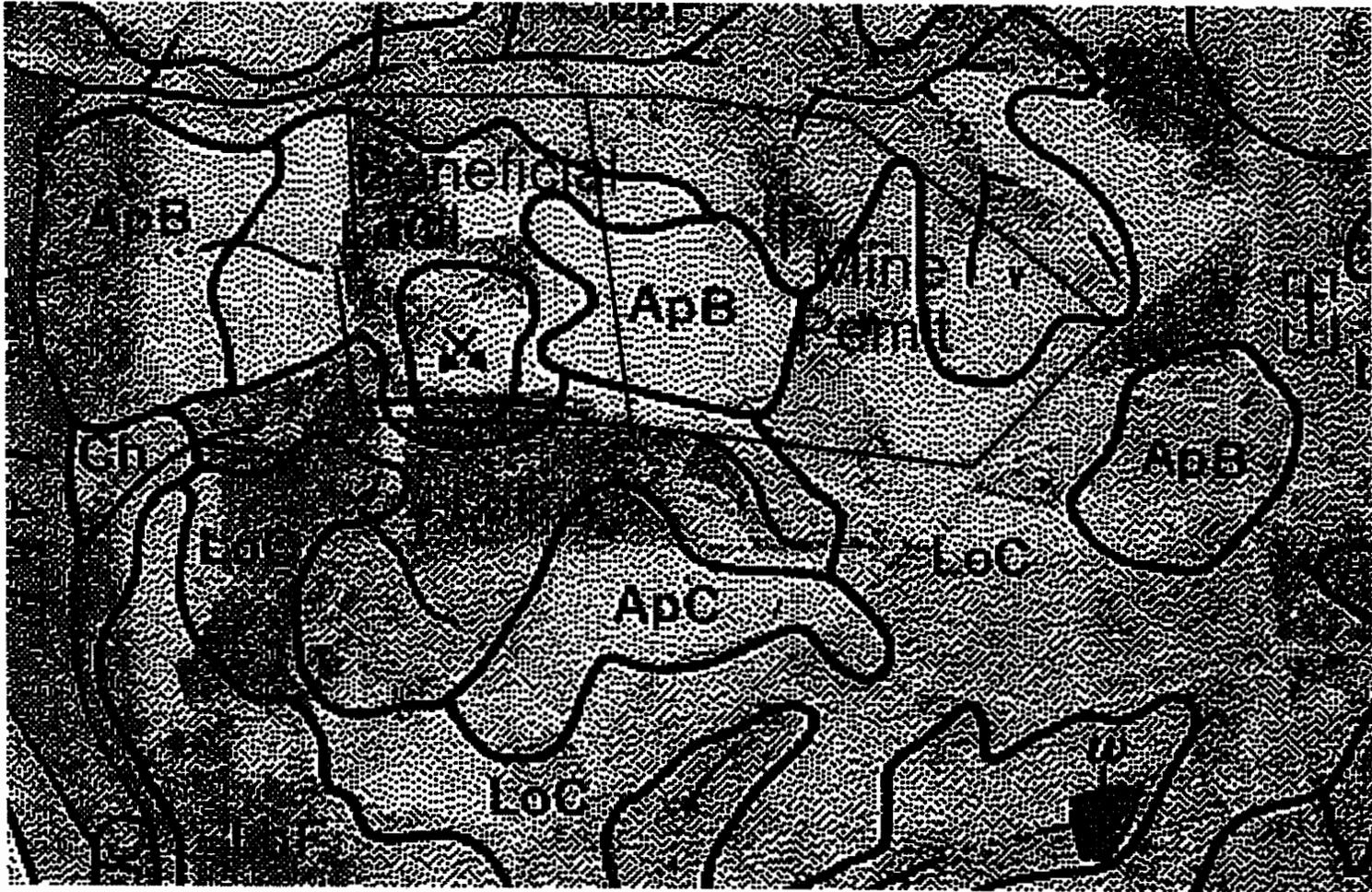


Attachment A: Historical Information

Attachment B: Drawings for Upslope, Offsite Stormwater Conveyance

Attachment A: Historical Information





Scale 1" = 500'

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	3088 ANDERSON DR., SUITE 102 RALEIGH, NORTH CAROLINA 27608 (919) 781-7798	
USDA Soil Survey of Orange Co. Tony Merritt's Gravel Pit Mine Permit No. 68-04 3200 Damascus Church Road Orange County, NC	DATE: 10/28/18	FIGURE NO. 2

Attachment B: Drawings for Upslope, Offsite Stormwater Conveyance

