



CITY OF BURLINGTON

PLANNING DEPARTMENT

Telephone (336) 222-5084 • Fax (336) 513-5410

P.O. Box 1358

Burlington, North Carolina 27216-1358

THE REGULAR MEETING of the **BOARD OF ADJUSTMENT** of the City of Burlington, North Carolina to be held on Tuesday July 14th, 2020 at 8:30 a.m. in the Municipal Conference Room, City of Burlington Municipal Building, 425 S. Lexington Avenue, for the purpose of hearing the following appeals:

***Due to Covid 19 the meeting room will be limited to no more than 10 people and we will be practicing social distancing and face coverings will be required. Staff will be available to assist anyone attending the meeting.*

AGENDA

ITEM NO. 1:

Call meeting to order.

ITEM NO. 2

Election of Chairman, Vice-Chairman and Secretary for 2020-2021

ITEM NO. 3:

Approval of the minutes of the meeting held November 12, 2019.

ITEM NO. 4:

CASE NO. 01-20 VARIANCE

***The property owner, Ms. Jordan Hope has withdrawn the application for this variance request. The notice to withdraw was made on July 3, 2020.**

Applicant: Ms. Jordan Hope

Location: Cedarwood Dr. (vacant lot)

Alamance County Tax Map number 172706

Details: Ms. Jordan has applied for an 18 foot variance from the 30 foot front setback requirement and an 18 foot setback variance from the 25 foot rear yard requirement for the proposed construction of a single family home. The home will be within 12 feet of the front property line and 7 feet from the rear property line.

UDO Section: § Section 3.10 Medium Density Residential District, Street and Rear setbacks.

ITEM NO. 5:

CASE NO. 02-20 SPECIAL USE PERMIT

Applicant: City of Burlington

Location: 827 S. Graham Hopedale Rd.

Alamance County Tax Map number 139644

Details: The City of Burlington is applying for a Special Use Permit for a Commercial Daycare Center that will care for 29 Children.

UDO Section: § Section 4.2 and section 4.4.B.6, Daycare Centers in residential districts.

All persons interested in the above mentioned appeal(s) are requested to appear before the BOARD OF ADJUSTMENT at the time and place mentioned above when, and where, they will be given the opportunity to be heard. For auxiliary aids and services please call (336) 222-5073 five days prior to the date of the public hearing.

H. E. Wilson, III
Chairman, Board of Adjustment

MINUTES
BOARD OF ADJUSTMENT
City of Burlington
November 12, 2019

Members Present

City:

Mike Gee, Vice-Chairman
Bob Lewis
Robert Giles II
Eric Grant, (Alt.)

Members Absent

City:

John Glenn
Chairman Mr. Ed Wilson

ETJ:

Mrs. Sylvia Greeson (Alt. ETJ)

ETJ:

Mr. David McDevitt

Also present was Mr. Chris Marland, Zoning Enforcement Officer and Mr. Joey Lea, Zoning Administrator.

Chairman Mr. Ed Wilson called the meeting of the Board of Adjustment to order at 8:30 a.m. Chairman Mr. Ed Wilson stated, the city representatives to the Board of Adjustment are appointed by the City Council. This is a quasi-judicial hearing. Everyone speaking before the Board should state their name, sign the log on the podium, and swear or affirm that everything they say is true to the best of their knowledge. Appeals of the Board's decisions may be taken to the Alamance County Superior Court. The City will state their position because of their knowledge of the case and the technical codes. The applicant will state their case, and then anyone from the public may speak. After the applicant and the public have presented all evidence the Board will then close the meeting to the public and discuss the case and vote. During this time no more evidence shall be admitted nor any other arguments made unless the Board wishes to ask the Applicant a question pertaining to the evidence already presented. Anyone that tries to make an argument or present any evidence at this time will be out of order. The Chairperson may order any individuals who willfully interrupts, disturbs, or disrupts to leave the meeting. Any person who fails to comply with this order is guilty of a class 2 misdemeanor. An affirmative four-fifths vote is required to grant a variance. A majority vote is required to grant a Special Use Permit or to determine an appeal.

DUE PUBLICATION: Mr. Chris Marland, Zoning Enforcement Officer with the City of Burlington stated, due notice and publication of this meeting of the Board of Adjustment has been made, and all required property owners were mailed a notice advising of this meeting.

SWORN TESTIMONY: Prior to testifying before the Board, each party was sworn in or affirmed that the testimony they were about to give was true to the best of their knowledge.

MEETING MINUTES: Chairman Mr. Ed Wilson asks if everyone had a chance to review the minutes from the August 13th meeting. Board member Ms. Sylvia Greeson submitted some grammatical errors that needed to be fixed, nothing substantive. Mr. Bob Lewis moved to accept minutes. Mr. Eric Grant seconds the motion to approve minutes.

Unanimous vote to approve the minutes for the August 13, 2019 hearing.

ITEM NO. 2:

CASE NO. 04-19 Variance (City)

Tanner Built Homes

1032 Apple Street

§ Section 32.3.F(5)

Vice Chairman Mr. Mike Gee stated, the case that we have before us today is case number 04-19 a variance request by Tanner Built Homes for a property located at 1032 Apple Street for members of the Board and for the applicant one thing to make sure to consider in this process today is that there are four different findings of fact that we need to address in the hearing so when we get ready to vote we will have a two phase vote on the request one would be to note the findings of fact and the second would be to grant the variance. Is someone here from Tanner Built Homes? We will call you in just a minute. Mr. Marland could you give us the background on what we are looking for?

Zoning Administrator Mr. Joey Lea, stated, my name is Joey Lea Zoning Administrator for the city of Burlington I swear that everything I say will be the truth to the best of knowledge I just want to swear in in case I need to say anything.

Chief Code Enforcement Officer Mr. Chris Marland, stated, Chris Marland Chief Code Enforcement Officer for the city of Burlington I swear that everything I testify is going to be the truth to the best of my ability. Today we are here to hear a case at 1032 Apple Street for Tanner Built Homes, Mr. Ryan Tanner will be presenting his testimony. What we have here is a single-family home proposed at this location. Mr. Tanner is seeking a 5 foot variance to the rear yard setback that would be 25 feet under normal circumstances. He is seeking this due to raw water lines that are under ground that cut his property in half diagonally as you can see on this map here these blue lines represent the raw water lines approximate location. Mr. Tanner does not wish to put the house in front of the water lines because it will be really close to the street and still outside of the setbacks if he did that. I received a few calls about this really questioning what is going on. I had one gentleman contact me to say why would we allow this I explained to him the raw water lines and he said he would like to get back to the neighborhood to figure out what was going on but he didn't believe that this would be a good fit for this lot, he thought something else would be going there. I explained to him it was a single-family home and he said he still thinks it would be too close to the back, but he was going to get with the neighborhood and call me back, but he never did. Everybody else was just seeking information and I explained the water line portion to them, and they were okay.

Mr. Ryan Tanner stated, we purchased this property to build a single-family home. I had the surveyor check for easements before buying it, unfortunately this was such an old water line there wasn't an easement assigned to it and it never got picked up in searching for easements and what not. So here we are with the property now ready to build and that's when we determined where that line was, and we had to set an easement of 15 feet either way, so we are in that situation. The house was originally supposed to be 44feet long but we shrunk it to 39 ½ feet long. We tried to get all that we could and that was about all we could do without making the rooms nonfunctional and the front porch there was supposed to go all along the front of the house too but we did a half front porch so that it wouldn't clip into the easement. So, we tried to make all the adjustments we could and still have a functioning home, but we fell just a little short of being able to get into that 25 foot set back.

Vice Chairman Mr. Mike Gee, stated, okay. Mr. Tanner when did you find out about that water line?

Mr. Ryan Tanner stated, well unfortunately we didn't find out until after the foundation was in, so we have got to remove the foundation. We didn't know that it was there when we pinned the property and had the foundation built and then inspected. During the inspection that's where one of the city inspectors noticed that there was a water line there. In the beginning when we pulled building permits,

it hadn't been noticed then I guess, because we got our building permits to build directly over the center line. That wasn't noticed during permitting time. So now we are in a position where we must take the foundation down, shrink it and hopefully go back behind the property if you will allow.

Vice Chairman Mr. Mike Gee asked, in your opinion can you kind of tell us what the unnecessary hardship would be if we carry out the strict letter of the ordinance?

Mr. Ryan Tanner stated, well the front as Chris said would need a variance any way to build in the front and it would be extremely close to the front of the street and it would look very odd. That is kind of just a rough Photoshop thing we did there of what it would be like. The backside I feel like with the house to the left of it, it is set very far back too so it would a little more natural there. Either way we would need a variance to make something fit on there or else we have a piece of land I don't really know what to do with. It makes the most sense for the variance on the back.

Vice Chairman Mr. Mike Gee asked who owns the property.

Mr. Ryan Tanner stated, Tanner Built Homes.

Vice Chairman Mr. Mike Gee stated, the pictures get a little weird. The pictures kind of jump showing the street the front and the back like those two pictures switch and on that picture who owns the property to the left where the drive way is?

Mr. Ryan Tanner stated, I'm not sure the name of the owner but right at the edge of that picture, right at the left edge of where that parking pad is over to the left is the property line right along the edge of that concrete. How they became tied together I supposed maybe the previous owners, there use to be a house there. The previous owners maybe had an agreement with one another, there was nothing on record but they had it tied in together I guess from a mutual understanding.

Board Member Mrs. Sylvia Greeson asked, do you know where the previous house was located on the property?

Mr. Ryan Tanner stated, I do not, I don't know where it was, I don't know if it was sitting over the raw water line itself. I am assuming the house was sitting farther back like we're wanting to do it but I'm not 100% sure.

Board Member Mrs. Sylvia Greeson asked, so the property has been vacant for some time when you bought it?

Mr. Ryan Tanner stated, yes.

Vice Chairman Mr. Mike Gee asked, so is this driveway going away when you finish building?

Mr. Ryan Tanner stated, well what I was going to do is I was just going to leave it up to the future home owner whoever buys the home if they want to continue that they could get it recorded with the city but if they don't want that shared we are going to cut a strip out and plant some bushes in between or something but I'm going to leave it up to whoever wants to own the property.

Board Member Mr. Bob Lewis stated, this survey says that this driveway is actually on the property that we are talking about right?

Chief Code Enforcement Officer Mr. Chris Marland stated, correct, up here towards the north though is where it loops around the house here so they are actually connected right here as you can see in this

photo here that is the section we are talking about but this entire stem is on the property in question at 1032 Apple.

Board Member Mrs. Sylvia Greeson asked, the other house has a driveway because it loops around?

Chief Code Enforcement Officer Mr. Chris Marland stated, correct.

Board Member Mrs. Sylvia Greeson stated, so taking away this driveway if you disconnect them you still haven't impacted their driveway.

Chief Code Enforcement Officer Mr. Chris Marland stated, correct.

Vice Chairman Mr. Mike Gee asked, this doesn't go directly to the hardship, but have you been in communication with the owner of that property? Are they aware that this driveway is not on their property.

Mr. Ryan Tanner stated, I have not, every time I've been over there, I have never seen somebody over there.

Chief Code Enforcement Officer Mr. Chris Marland stated, he is the one that called me, that said he was going to ask some of the neighbors around but never called me back.

Board member Mr. Eric Grant asked, from your understanding this easement was not recorded is that what I'm understanding.

Mr. Ryan Tanner stated, yes that's from my understanding yes, it was one of those old lines that when they put in they never recorded an easement with it I don't know the exact in's and out's, I don't know if maybe they could tell you about.

Zoning Administrator Mr. Joey Lea, stated, it was one of those cases where the city has what is called a prescriptive easement, it is there but it is not there if you will. So when they discovered this they required the easement to be recorded. That is why, if there was no easement, then he could have gotten a lot closer either way but that is exactly what happened there was no easement but now there is and that is what is forcing the house to be pushed back.

Board member Mr. Eric Grant asked, this is a city water line?

Zoning Administrator Mr. Joey Lea, stated, that is correct it is a raw water line it runs from the lake to the treatment plan

Board member Mr. Eric Grant stated, now you stated that you have reshaped your floor plan for this house and you have how many square feet in it now?

Mr. Ryan Tanner stated, it is 39 ½ feet by 24 feet I think it is at 948 square feet.

Board member Mr. Eric Grant stated, just looking at this plat we are looking at on the screen it looked like you could widen the house out and fit the guidelines without getting any variance.

Mr. Ryan Tanner stated, it is possible, but the footprint would get so small because to widen it out we would have to get very thin. We played with it in a lot of different dimensions as best we would have to do a very tight Cape Cod two story possibly but as we shrink that the angle going across, we would

be very thin and narrow. It was very tough to try to do, we tried turning the house sideways and all of them were very tough to do.

Board member Mr. Eric Grant asked, what brought your attention to the water line originally?

Mr. Ryan Tanner stated, after the foundation was in we had a foundation inspection to move forward and the inspector discovered it there. I don't know how it came about, how it was discovered but he or she was the very first one to find it.

Zoning Administrator Mr. Joey Lea, stated, residential permits go through a review process, they go through our office, they go through engineering, storm water, inspections that everybody signs off on and through the review process and they did not catch it as he stated until the foundation went in and that catch could have come from either myself or engineering who check for that but it was not caught

Mr. Ryan Tanner stated, actually we had a footing inspection first to support the footings and that passed and all and then the foundation and then when it was time to inspect the foundation that was when it was caught so we did get through one inspection prior to that.

Vice Chairman Mr. Mike Gee stated, Mr. Tanner can you tell us what a surveyor typically does when they are looking to provide you with a plat of a property on the front end what records they are looking for to make sure you are in compliance?

Mr. Ryan Tanner stated, when I first look to buy a property I ask the surveyor that we always use to see if the house will fit on the setbacks I ask him to look for any encroachments that could be a problem, any easements that I need to know about or anything like that, that would be recorded with the plat and he did perform that search and did not find anything. Now in one of the old records he could have found, and I wish he would have found a raw sewer line on one of the old plats but when he was searching for easements and all that it didn't come up but that is what we normally ask him to look for is easements, encroachments, etc.

Board Member Mrs. Sylvia Greeson asked, so he is not necessarily looking through old plats he is looking for recorded easements?

Mr. Ryan Tanner stated, correct and now that this has happened we are going to start looking deeper and it's a lesson learned with that but going back to old plats to see if there is anything there that hadn't been recorded but unfortunately we didn't

Zoning Administrator Mr. Joey Lea, stated, that raw water line runs through a lot of other properties as well you can see that is just part of it those blue lines.

Board Member Mr. Bob Lewis asked, and it is still in use?

Zoning Administrator Mr. Joey Lea, stated, partly.

Vice Chairman Mr. Mike Gee stated, I know we have an overhead shot can we go back to one of the ones that has the proposed house on it. Maybe the one where it is in the back? Okay Mr. Tanner the next thing we need to work out is it in the spirit or intents of the ordinance. I think one of the reasons there is an ordinance in place with required setbacks is to try to make sure houses are in a comparably spot and the impact that they are going to have on property owners that are adjacent. Can you tell us what you think, if we grant this, what is going to happen there?

Mr. Ryan Tanner stated, well I think I can understand getting too far back near somebody else's back yard but if you see in the corner there is main power lines the big high voltage power lines that cut through and so if you look at the full aerial view the houses are pulled forward some they are not against the back property line where these neighbors can step out the back door and shake hands. So I think that where we are at with that house being further away and all those houses to the left those properties going back, we are not endanger of getting very close or invading somebodies personal space.

Zoning Administrator Mr. Joey Lea, stated, Just to put this into perspective what you just said which is actually correct, the setbacks are minimal so there is nothing that says you cannot push a house back all the way to the back property line. Even though it would look odd it is certainly acceptable and staff believes that this would be entirely better than setting it in front of everyone. That is where you get in to the violation where you can't see around the front that is it again you can set a house as far back as you want typically it is not done because running your water and sewer will be costly.

Board Member Mr. Bob Lewis asked, it is just one raw water line that runs through this property?

Zoning Administrator Mr. Joey Lea, stated, there is actually two.

Board Member Mr. Bob Lewis asked, there is two?

Zoning Administrator Mr. Joey Lea, stated, they are shown there on the survey.

Chief Code Enforcement Officer Mr. Chris Marland stated, the two thick dotted lines that are shown in the easement

Board Member Mr. Bob Lewis asked, but they are inside the 30 foot easement?

Chief Code Enforcement Officer Mr. Chris Marland stated, correct.

Board Member Mr. Eric Grant stated, these photos show a foundation already on the lot that is what you already constructed at one point?

Mr. Ryan Tanner stated, yes.

Board Member Mr. Eric Grant stated, you've got that basically in line with the existing structures on either side as best you could.

Mr. Ryan Tanner stated, yes trying to stay in harmony with the neighborhood as best we could.

Board Member Mr. Eric Grant stated, but that is right on top of the easement.

Board Member Mr. Bob Lewis asked, can he encroach into the easement?

Zoning Administrator Mr. Joey Lea, stated, no.

Board Member Mrs. Sylvia Greeson asked, in this picture I see a tree, now is that tree remaining or is that already gone?

Mr. Ryan Tanner stated, it will have to go so if you look at that tree if you imagine the back of the foundation just in front of it but it would be so close that it would damage the roots and it would be

right up against the house so it will have to go. Right there is going to be the very back of the foundation.

Ms. Verlyn Leath stated, Good morning my name is Verlyn Leath I own the property across the street, and I swear that I'm going to tell the truth.

Vice Chairman Mr. Mike Gee asked, so you said you own the property across the street?

Ms. Verlyn Leath stated, yes my property is 1031 across the street, I received a letter last week and I apologize I didn't get a chance to call any one. I didn't know what was going on so I just wanted to find out exactly, like I said I saw the construction was quite close to the street and I didn't understand why but I live down the street, I knew about the neighbors, I knew about the drive way and why the driveway was constructed it was hard to get on Apple street so they were friends so I don't know how much the property belonged to who so the circle driveway enabled them to go down the driveway without backing into the street, so when the lady was handicapped that worked out really well. As far as the placement of the house, when you would go to the front porch of the house that was torn down at 1032 you could not see the porch of 1034. So, the house was sitting back a little further than the actual house and it was more horizontal and there was not much space between the houses on each side, but the driveway gave more room for the house that was at 1034. The power line was always a concern because it was this huge powerline that was going across the neighborhood, now in terms of the water, the sewage line use to stop right there at 1032 and the house at 1034 had a sceptic tank, so I petitioned for the water to go down apple street completely and the land on the other side of my house was owned at that time by Duke Power, so the water line could go all the way down apple street. I don't know all the terminology but it was at that time that 1034 did receive sewage. I understand a little more now we are going to move the property back is that right? So it would be in line.

Vice Chairman Mr. Mike Gee asked, can we go back to the other picture? So the sewer was added to 1034, after it had been at 1032 is that correct?

Ms. Verlyn Leath stated, yes they had the bathrooms and stuff like that, so that was a contingency of why they didn't have that so that came later. I'm trying to think what years of when they added the water line, so say the water line was stopping right there at 1032 something about an uphill or downhill, I can't remember that at all but we finally got water, sewage because 1031 did not have sewage that was across the street. I'm trying to think of the year, it might have been in the early 70s.

Vice Chairman Mr. Mike Gee stated, got you. Let me ask you this do you think having a home back on the property would kind of be in harmony with the rest of the neighborhood or would you rather see it stay as a vacant lot?

Ms. Verlyn Leath stated, I think it would be great there, the neighbors right there in that area, everybody gets along and they do very well to try to keep the property up so I think it would be an asset to have a family dwelling there even though it is small, on a small spot, they even had gardens in the back at one time so they made it work.

Board Member Mr. Eric Grant asked, did you talk with any of your neighbors regarding this issue?

Ms. Verlyn Leath stated, I didn't, I asked what in the world a variance is, I didn't get a chance to speak to any of my neighbors. I didn't speak to Mr. Moore at all and Mr. Reeves, I don't think he got a letter. He may have gotten one and didn't know what it was, I did ask one of his relatives if he did get a letter and she didn't know at that time. Did everyone on the street get one or just those houses in the area?

Chief Code Enforcement Officer Mr. Chris Marland stated, we sent notice to anyone within 300 feet radius of that property.

Ms. Verlyn Leath stated, oh ok.

Chief Code Enforcement Officer Mr. Chris Marland stated, as well you saw a sign go up on the property.

Ms. Verlyn Leath stated, yes I saw a sign go up last week.

Vice Chairman Mr. Mike Gee asked, so do you understand exactly what is happening now ?

Ms. Verlyn Leath stated, yes, I think so because what I'm hearing now you are looking at perhaps moving it back further

Vice Chairman Mr. Mike Gee stated, yes ma'am.

Ms. Verlyn Leath stated, that will be fine, the property will look good, the yards were always kept up beautiful trees in the front of the yard. Right along the front of the yard, in front of where the construction is now.

Vice Chairman Mr. Mike Gee asked, does anybody else have any more questions for Ms. Leath. Okay, thank you again. Does anybody have any more questions for the city or the applicant ? Seeing as we have no further questions we will close this to discussion among the board again, four different items that need to be addressed in our decision, one is that unnecessary hardship would result if we carry out the strict application of the ordinance, I think there is very limited use for the property if we don't grant a variance.

Board Member Mrs. Sylvia Greeson stated, yes.

DISCUSSION:

Vice Chairman Mr. Mike Gee asked, the second is that the hardship results from a situation that is peculiar to the property such as location, size, or the topography; the hardship that is peculiar to the property does appear to be the raw water lines that are running diagonally through the property. That is pretty peculiar, I guess in the best case scenario that would have been discovered prior to purchasing the lot however that is peculiar to this piece of property. The third item is that the hardship did not happen because of actions taken from the applicant or the property owner which is the same in this case, and I think that this testimony has kind of demonstrated that it was not the result of his actions and actually there is going to be but we cannot consider financial hardship there is going to be a cost to the applicant because he has got to dig up a foundation that is already been put in place and replace that. I think that the hardship happened because the easement was not detected through permitting process and the fact that it was an unrecorded easement that the surveyor did not pick up that item as well. Then the last piece is that the variance is consistent with the intent of the ordinance such that public safety is secured and honestly I believe Ms. Leith's testimony in this case it kind of helped me feel better about that than actually what has been presented by the applicant just because it appears to be that locating the house a little further back is going to be a little more consistent with the property as it was before the prior house burned down. I had some concern from the shared driveway but we haven't had any testimony from that property owner in this meeting and we haven't heard anything from the property to the rear of the property. We are talking about 5 feet which is about the width of this table that is kind of my thoughts are there any other thoughts?

Board Member Mrs. Sylvia Greeson stated, well the fact that Ms. Leath said when you sat on the old front porch you couldn't see the front porch from this adjacent home and clearly from this proposed plan you still won't be able to see the front porch so it will preserve the privacy of the neighboring homes.

Board Member Mr. Eric Grant stated, if you look at the drawing of the proposed location and you go back and you look at where the new proposed site is it is in the rear, the house will be basically in the back yard.

Vice Chairman Mr. Mike Gee stated, I think you are right. I guess we have to balance that with testimony from the city that I think we are talking about 5 feet. I think if we were at the 25 foot set back it would still have the same appearance based on the site plan that was given. I mean if you think about it and you look at the picture that is on the screen here if you could project that 5 feet forward which I'm not capable of doing that but I'm assuming that that concrete pad is, I don't know 25 feet if you were to adjust 5 feet forward, the house would still be in the same spot and it would be in compliance.

Board Member Ms. Sylvia Greeson stated, yes, I think you are right, the 5 foot isn't going to make much of a difference, it is going to be adjacent to their backyard there is no way around that.

Board Member Mr. Eric Grant stated, I understand Mr. Ryan's dilemma in this he is kind of in a catch 22. I'm surprised the neighbors on either side did not ask questions or get involved in this. I would love to know their opinion on this.

Zoning Administrator Mr. Joey Lea, stated, well it is the lesser of two evils, it is either the back or the front and if I was a neighbor I wouldn't want it in the front of my house.

Board Member Ms. Sylvia Greeson stated, yes the alternative puts it awfully close to the street and in fact puts it in their front yards.

Board Member Mr. Robert Giles stated, the alternative also takes the circle driveway away.

Board Member Ms. Sylvia Greeson stated, totally yes.

Board Member Mr. Robert Giles stated, that a burden of ease, it is a necessity to get out on to Apple Street.

Mr. Ryan Tanner asked, may I ask something or is it closed?

Vice Chairman Mr. Mike Gee stated, it is closed, does anyone feel the need to open for further comment ? I don't think we have anything to gain by doing that.

Mr. Ryan Tanner stated, I was just going to show the prospective 5 feet where it is on this property, no big deal thank you.

Vice Chairman Mr. Mike Gee stated, Mr. Grant I hear your concern, think that if it was a large enough concern for the neighbors they would have come to voice that, because they were duly notified and we have testimony from Ms. Leath that the house that was there prior to this was that far back and she thought that the footprint that we see in this picture here was considerably closer to the street than what it had been.

Board Member Mr. Bob Lewis stated, Mr. Vice Chairman I move we grant the variance.

Vice Chairman Mr. Mike Gee stated, let me back up for a second. Is there any other conversation that there is to be had.

Board Member Ms. Sylvia Greeson stated, no.

Vice Chairman Mr. Mike Gee stated, so if someone will make a motion to grant the variance, what we will be doing is a variance of 5 feet to the rear yard setback and the motion will need to be in two parts, the motion will need to have the findings of fact for the four items needed to grant a variance. Mr. Lewis would you like to make a motion.

Board Member Mr. Bob Lewis stated, yes I would, and I have to mention these four things.

Zoning Administrator Mr. Joey Lea, stated, you have to state the findings of fact and make sure that each one of those is met.

FINDINGS OF FACT:

Board Member Mr. Bob Lewis stated, I would like to make a motion based on the findings of fact.

Vice Chairman Mr. Mike Gee stated, if you will state that you want to make a motion for a 5 foot variance to rear setback based on these findings of fact.

Zoning Administrator Mr. Joey Lea stated, we need to do it backwards you do the findings of fact first for the use and then make a motion for the variance based on the findings of fact if you will read each one of those then given the findings of fact for each one .

Board Member Mr. Bob Lewis stated,

- 1) **Unnecessary hardship in the way of caring out the strict letter of the ordinance it shall not be necessary to demonstrate that in the absence of a variance for reasonable use can be made of the property.**

We have found that there is very limited area to the front of the lot, and it would put it very close to the street.

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

I think that we have found that the raw water line running diagonally through the property and the prescriptive easement that is now a recorded easement that was not found by the surveyor and rightfully so

- 3) **The hardship did not result from actions taken by the applicant or the property owner.**
They city granted the building permits and even approved the footing inspection but when the foundation inspection was made they found the prescriptive easements.
- 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.**

Ms. Leath's testimony has helped us understand the historic perspective.

Board Member Mr. Bob Lewis stated, I make a motion that those are the findings of fact.

Board Member Ms. Sylvia Greeson seconded the motion.

AYES: Gee, Lewis, Grant, Giles , Greeson

NOES:

DECISION:

Board Member Mr. Bob Lewis stated, I would now like to make a motion that we grant the 5 foot variance to the rear property line setback based on the preceding findings of fact located at 1032 Apple Street Burlington North Carolina.

Vice Chairman Mr. Mike Gee asked, is there a second?

Board Member Mr. Robert Giles seconded the motion.

AYES: Gee, Lewis, Grant, Giles , Greeson

NOES:

Vice Chairman Mr. Mike Gee stated, Mr. Tanner you have received your variance. Mr. Lea and Mr. Marland is there anything else to come before the board?

Zoning Administrator Mr. Joey Lea stated, we have a couple of things. As you know, or as you should know we have a new Unified Development Ordinance, there is going to be some changes that will affect this board. What's In front of you is a table that tells you all the different types of development standards that will be appealed to you. In the past the only thing you heard was appeals to decisions and appeals from the historic commission and now if you see where I have highlighted each one of these things in the ordinance any decision that is made for one of these will come to you under appeal. I don't know if any one of you, Mike you may have, ever sat on an appeal. In my almost 27 years here now and there has only one appeal that came to you from the historic commission, that was the only one, point being that this is probably going to be very rare, but it may happen. Just so you will know, and we will have to keep you abreast over time that appeal is basically what they call certiorari which means they are asking for record to be brought up to be reviewed. So on appeal, with exception to appeal that either Chris or I make that's a little bit different, but for these others all you do is look at the record to make sure that the proper decision was made you can hear more testimony, you don't necessarily have to and you can hear other arguments. Your basic job on an appeal, you will be given all the documents, everything that is in the record that will tell you what the decision was based on so your two functions there are to make sure that there was proper evidence to make that determination and that proper procedure was carried out. If either one of those two are incorrect then you can overturn the decision, you can modify the decision or you can remand the decision but otherwise that is your main goal, to look at the record to make sure that there was enough evidence to make the decision that was made and proper procedure was being followed. Another change that will make you very sad, we will not be hearing special use permits for in home daycares anymore they are now allowed as a matter of right. We did so many of them and most other places considers them to be accessory use to the property and we followed suite so we will no longer be hearing them. I expect special use permits to come down, and variances to go up. Within the UDO, one of the reasons we do not here a lot of variances is because they were handled through conditional zoning. For conditional zoning you can do whatever you want to do as long as council agrees to it well, we cut out all of those things that they were asking for to vary. So it is possible through the conditional process, now there is a planned development process which allows a little bit more but there is still somethings even through that process that they cannot deviate from. So it is possible that there might be more of that. Coming here we will certainly try to discourage them from the staff side because we want them to follow our guidelines. Those are some changes that will affect this board directly. Now the UDO is online, you can go on to our website burlingtonnc.gov, go to the planning page and it's on the upper right-hand

corner of the planning page as I discovered the other day. If you want a printed copy, let me know I will make that available to you this is about 700 pages so not everybody wants one, I will certainly get you a hard copy of it, but the online version of it is user friendly, anywhere you see links, you just click on that link it just takes you to that section unfortunately there is no back button so you have to kind of scroll back to where you were. Everything that comes before you is usually specific to one little area of the ordinances anyway but if you do want a printed copy, let me know and we will get you that. Otherwise that is all I have if you have any questions.

NEW BUSINESS: None

MEETING ADJOURNED

H.E. Wilson III, Chairman

Chief Code Enforcement Officer Chris Marland, Secretary

Case #01-20

CITY OF BURLINGTON BOARD OF ADJUSTMENT ZONING VARIANCE APPLICATION



The Board of Adjustment meets the second Tuesday of every month at 8:30 a.m. in the City Council Chambers. This application is to be completed by the applicant and returned according to the dates and times on the attached schedule along with a \$200.00 non-refundable filing fee.

Date: 3-23-20 Date of Meeting: 4-14-20

Name: Jordan Hope / Webb McAdams

Address: 1300 Falkirk Dr Burlington, NC 27215

Phone Number: 336-214-5234

Address or location where variance is requested: 0 Cedarwood

Variance requested from ordinance section(s): _____

Reason for variance: request to alter setbacks

Property zoned: residential

Factors relevant to the issuance of a variance:

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under the state enabling act, the board is required to reach four conclusions as a prerequisite to the issuance of a variance:

- (1) That there are unnecessary hardships in the way of carrying out the strict letter of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
- (2) That 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;

- (3) That 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 and;
- (4) That the requested variance is consistent with the spirit, purpose, and intent of the ordinance such that public safety is secured and substantial justice is achieved.

In the following spaces, indicate the facts that you intend to show and the arguments you intend to make to convince the Board that it can properly reach these required conclusions.

1) **THERE ARE UNNECESSARY HARDSHIPS IN THE WAY OF CARRYING OUT THE STRICT LETTER OF THE ORDINANCE.** (State facts and arguments to show how abiding by the code would create a hardship on the property. It is not necessary to demonstrate that without the variance, no reasonable use of the property can be made).

Statement by Applicant: Under current setbacks, there would allow only 10-15 ft. depth to build on at the deepest point of lot. The fact that the lot is so narrow would prevent us from meeting the current setback requirements.

2) **THE HARDSHIP RESULTS FROM CONDITIONS THAT ARE PECULIAR TO THE PROPERTY SUCH AS LOCATION, SIZE, OR TOPOGRAHY.** (State facts and arguments to show that conditions exist on the property that are not from personal circumstances or resulting from conditions that are common to the neighborhood or the general public, as these cannot be the basis for granting a variance).

Statement by Applicant: This property, being a corner lot, addressed on Cedarwood makes the rear setback 25 ft. If it were possible to address it on Edgewood the setback on that side would only be 10 ft.

3) **THE HARDSHIP DID NOT RESULT FROM ACTIONS TAKEN BY THE APPLICANT OR THE PROPERTY OWNER.** (State facts and arguments to show that no action was taken by the applicant to create the hardship being described. The act of purchasing property with the knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship).

Statement by Applicant: _____

At one point, the property was included in a larger parcel that has now been divided by Cedarwood Dr.

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.** (State facts and arguments to show that if the variance is granted, a reasonable use of property will not substantially detract from the character of the neighborhood and that if the variance is denied, the benefit to the public, on balance, will be substantially outweighed by the harm suffered by the applicant).

Statement by Applicant: _____

We are asking for a minimal setback reduction of the street side and rear of property, from what it would be if addressed on Edgewood Ave. The adjacent properties are built in a way, that this variance would not detract from neighborhood aesthetic.

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

Jordan Hope dotloop verified 06/30/20 12:52 PM EDT W5GQ-VKPF-QEB8-HUKX

Signature

OFFICE USE ONLY

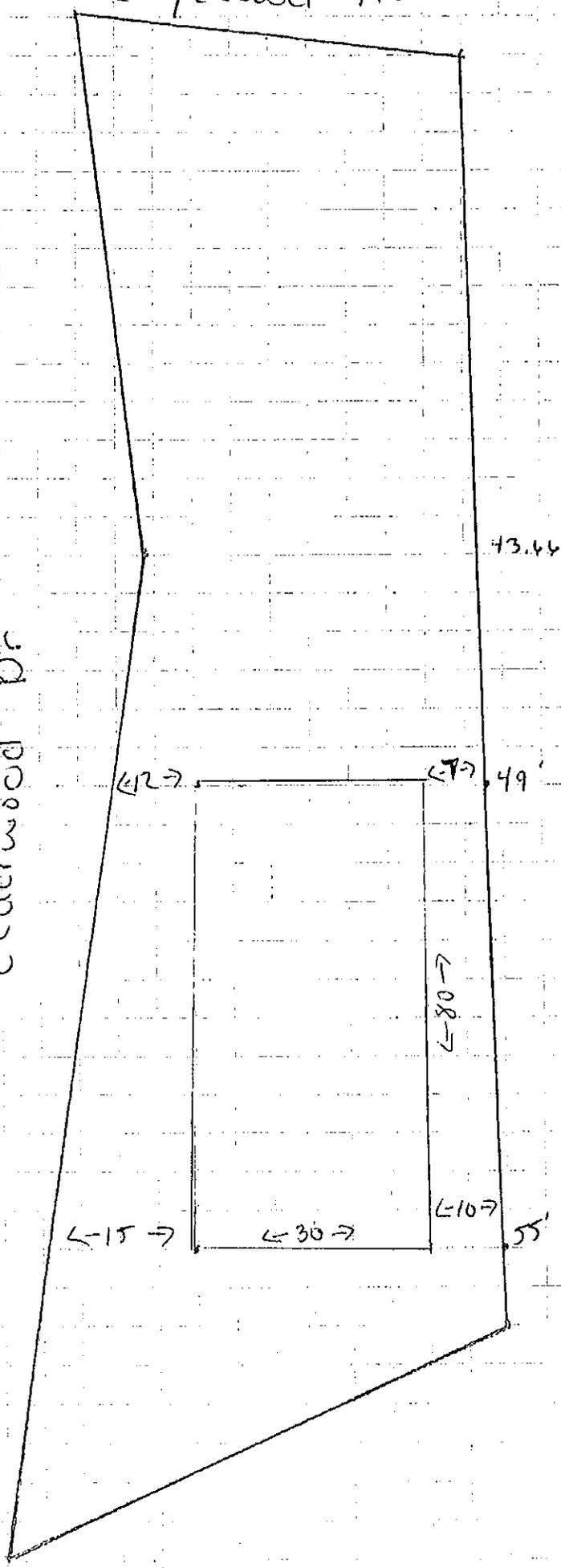
Application reviewed by: Joey Lea

Date: 7-1-2020

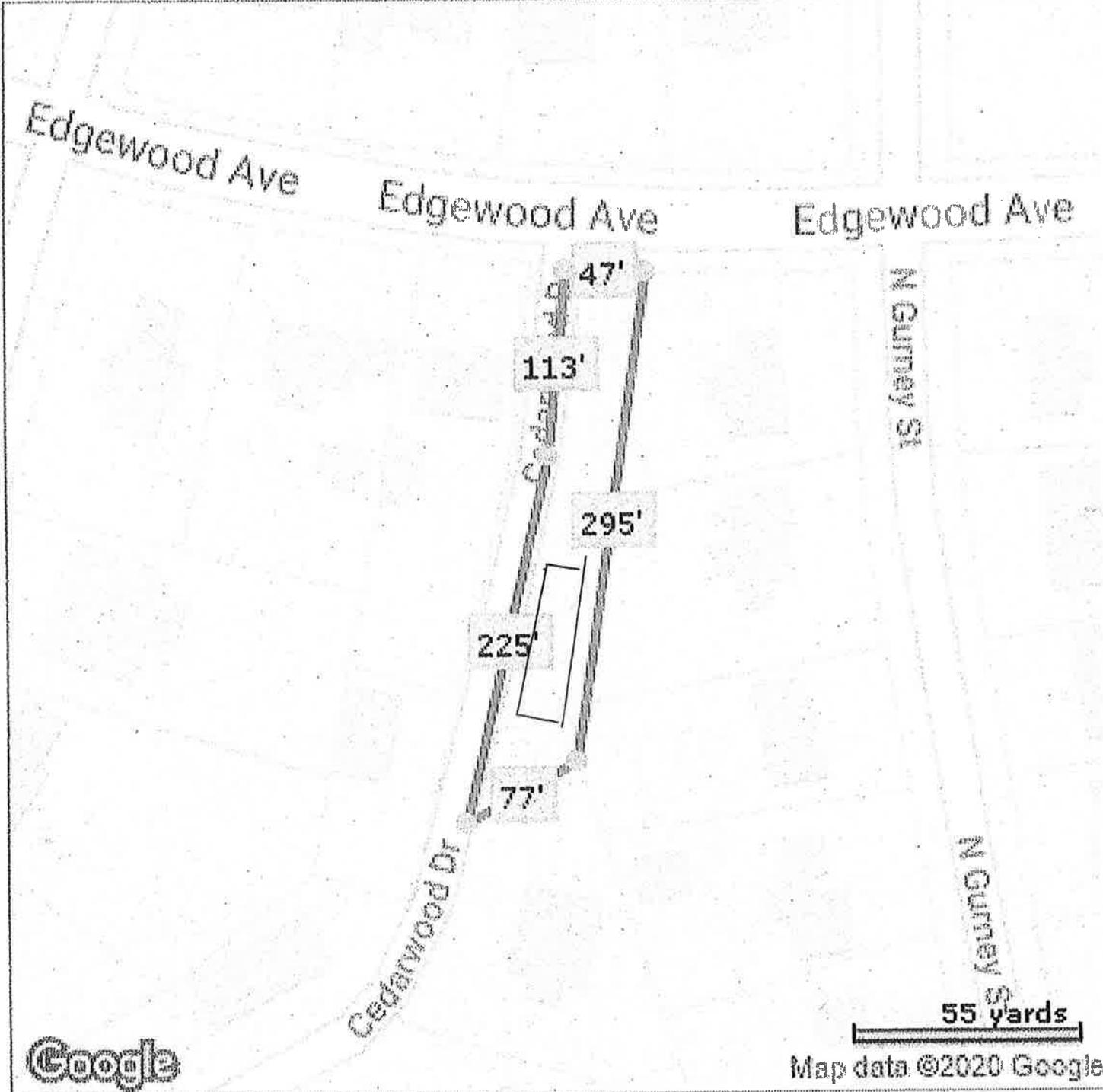
Date of Meeting: 7-14-2020

Cedarwood #112

Cedarwood Dr



Property Map



*Lot Dimensions are Estimated

City of Burlington
Zoning & Parcel
Information System



City of Burlington
GIS Division

Last Update:
June 02, 2009



1 inch = 200 feet



Corner of Cedarwood Dr
and Edgewood Ave

Disclaimer:
This map was compiled from the GIS resources of the Burlington Regional GIS Partnership for public planning and agency support purposes. These resources include public information sources of different scale, time, origin, definition and accuracy, which aspects produce inconsistencies among features represented together on this map. Neither the City of Burlington nor the Partnership shall be held liable for any errors in this map or supporting data. Primary public information sources from which this map was compiled, in conjunction with field surveys where required, must be consulted for the verification of the information contained within this map.

City of Burlington
Zoning & Parcel
Information System



City of Burlington
GIS Division

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June 02, 2009

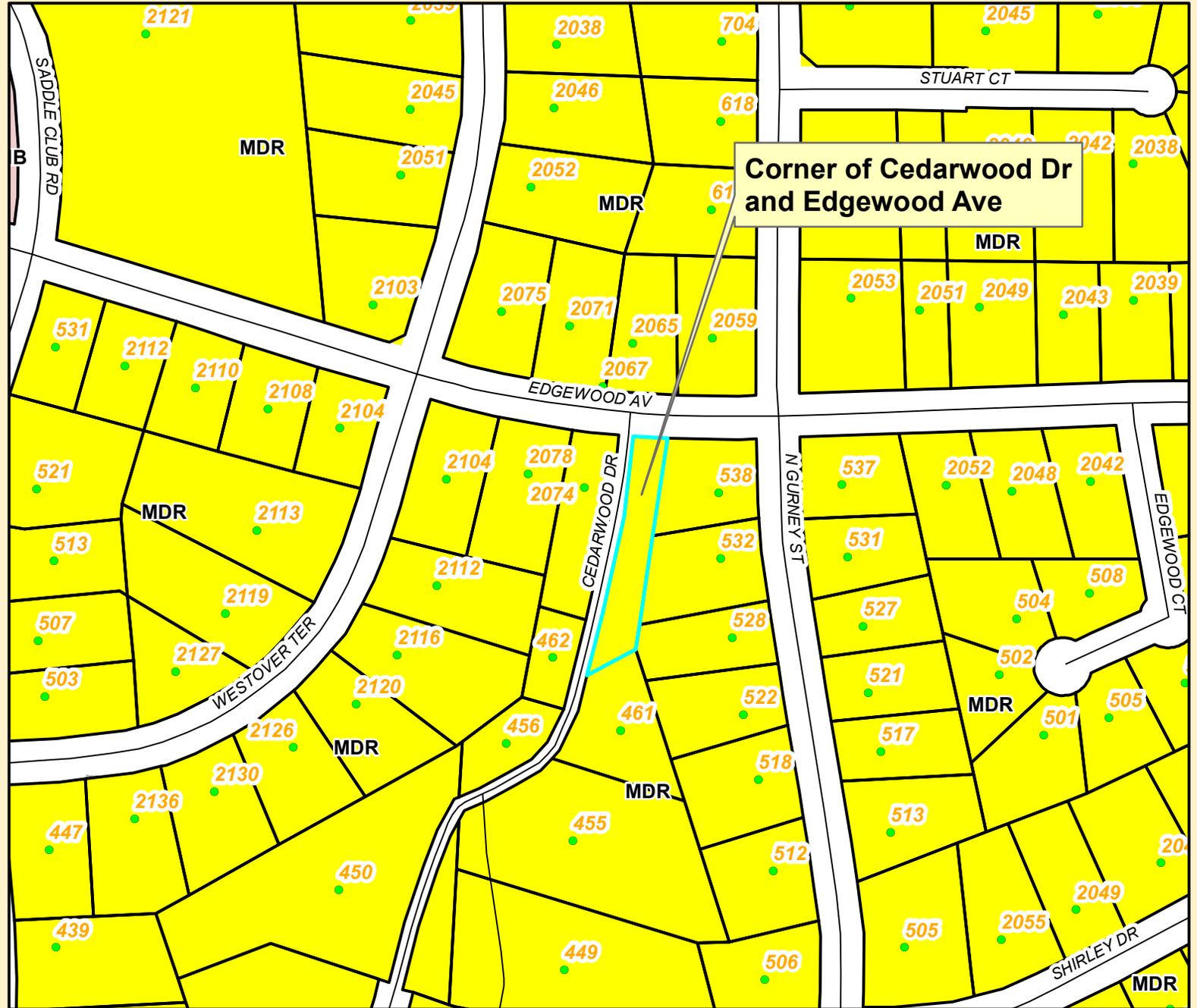
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Zoning

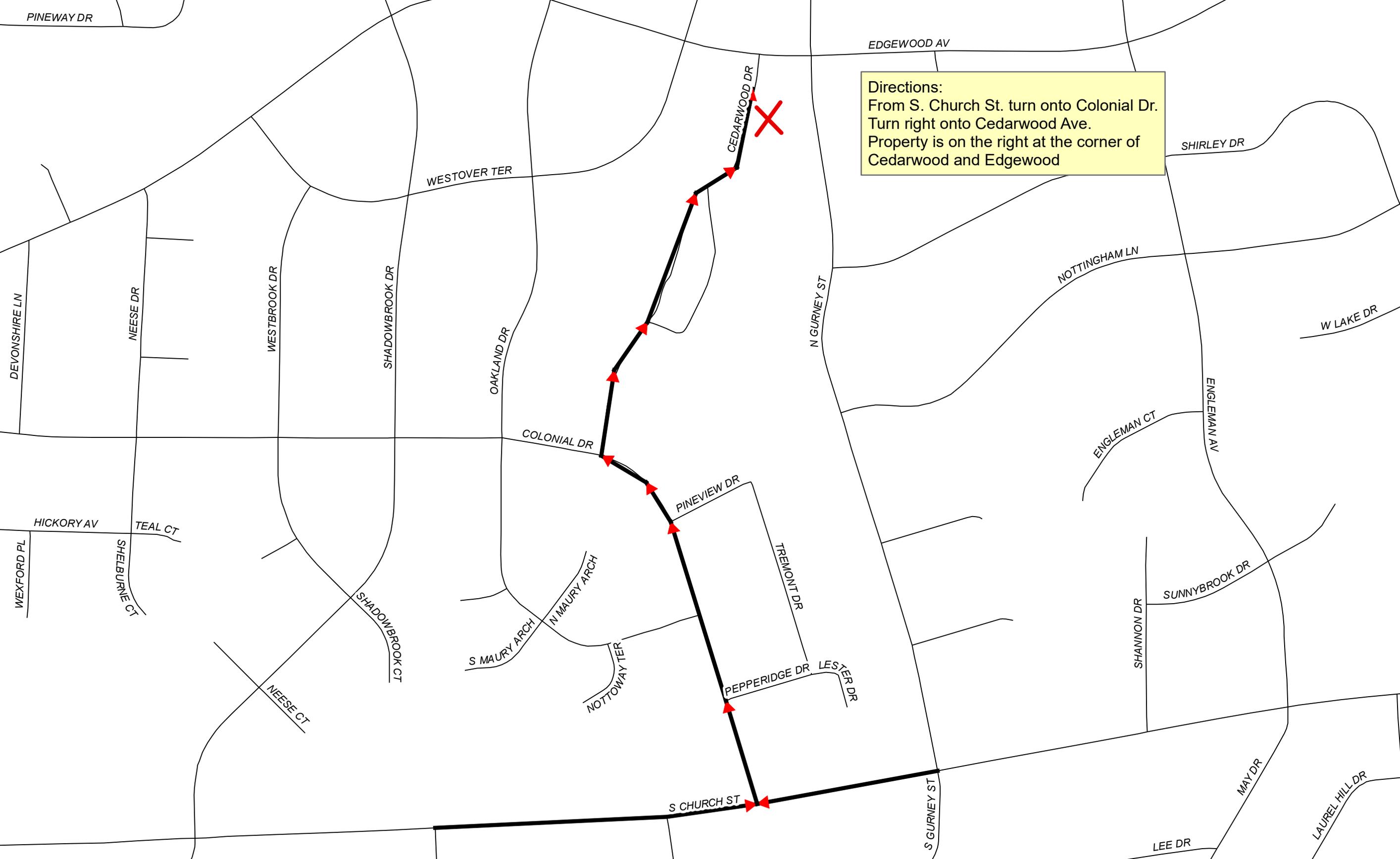
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	MDR		PC
	HDR		MX
	RMH		PD
	OI		PDD
	NB		CR
	GB		COI
	CBD		CB
	LI		CI
	MI		



1 inch = 200 feet



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Directions:
From S. Church St. turn onto Colonial Dr.
Turn right onto Cedarwood Ave.
Property is on the right at the corner of
Cedarwood and Edgewood

PINEWAY DR

EDGEWOOD AV

SHIRLEY DR

WESTOVER TER

NOTTINGHAM LN

W LAKE DR

DEVONSHIRE LN

NEESE DR

WESTBROOK DR

SHADOWBROOK DR

OAKLAND DR

N GURNEY ST

ENGLEMAN AV

COLONIAL DR

ENGLEMAN CT

HICKORY AV

TEAL CT

PINEVIEW DR

TREMONT DR

SUNNYBROOK DR

WEXFORD PL

SHELBURNE CT

SHADOWBROOK CT

S MAURY ARCH

N MAURY ARCH

NOTTOWAY TER

PEPPERIDGE DR

LESTER DR

SHANNON DR

NEESE CT

S CHURCH ST

S GURNEY ST

LEE DR

MAY DR

LAUREL HILL DR

BB. ZONING/SUBDIVISION VARIANCE

1. Purpose

The purpose of this section is to allow certain deviations from the dimensional standards of this Ordinance (such as height, setback, lot coverage, or similar numerical standards) when the landowner demonstrates that, due to special circumstances or conditions beyond the landowner’s control (such as topographical conditions, narrowness, shallowness, or shape of a specific parcel of land), a literal application of the standards would result in undue and unique hardship to the landowner and the deviation would not be contrary to the public interest.

2. Applicability

- a. Development that would otherwise be subject to undue and unique hardship from the applications of the standards in this Ordinance may seek relief from the standards in accordance with this section.
- b. No zoning/subdivision variance may be sought for uses not allowed in a zoning district.

3. Zoning/Subdivision Variance Procedure

The zoning/subdivision variance procedure is described in Figure 2.4.BB, Zoning/Subdivision Variance Procedure, as supplemented by the Procedures Manual.

4. Decision by BOA

- a. The concurring vote of four-fifths of the BOA shall be necessary to grant a zoning/subdivision variance.
- b. The decision shall be based on the competent, material, and subsequent evidence in the record, as supplemented by the arguments presented at the quasi-judicial hearing, and the standards in Section 2.4.BB.5, Zoning/Subdivision Variance Review Standards.
- c. The decision shall be one of the following:
 - i. Approval of the zoning/subdivision variance as proposed;
 - ii. Approval of the zoning/subdivision variance application with revisions; or
 - iii. Denial of the zoning/subdivision variance.
- d. Each decision shall be made in writing and reflect the BOA’s determination of contested facts and their application to the standards in this Ordinance.
- e. The written decision shall be signed by the Chair or other duly authorized member of the BOA.
- f. The decision of the BOA shall be effective upon the filing of the written decision by the Zoning/Subdivision Administrator.

5. Zoning/Subdivision Variance Review Standards

a. Required Findings

A zoning/subdivision variance application shall be approved provided on a finding the applicant demonstrates all of the following:

FIGURE 2.4.BB: ZONING/SUBDIVISION VARIANCE PROCEDURE	
STEP	ACTION
1	PRE-APPLICATION CONFERENCE See <u>Section 2.3.D, Pre-Application Conference</u>
2	FILE APPLICATION Filed with Zoning/Subdivision Administrator
3	COMPLETENESS DETERMINATION See <u>Section 2.3.F.6, Completeness Determination</u>
4	STAFF REVIEW May not seek to vary allowable density or allowable use types
5	PUBLIC NOTIFICATION See <u>Section 2.3.H, Public Notification</u>
6	BOA REVIEW & DECISION Quasi-judicial public hearing - See <u>Section 2.3.I, Public Meetings and Hearings</u> - Decision in writing, signed by Chair or authorized BOA member - Decision effective upon date of filing in the office of the Planning & Community Development Department
7	NOTIFICATION OF DECISION Delivered via personal service, electronic mail, or 1 st class mail

- i. Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- ii. The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- iii. The hardship did not result from actions taken by the applicant or the landowner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of the variance shall not be regarded as a self-created hardship.
- iv. 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.

b. Additional Criteria

In addition to the making the required findings in subsection (a) above, the BOA may also consider the following additional criteria:

- i. The variance approval is the minimum necessary to make possible the reasonable use of the land, building, or structure.
- ii. None of the following may be used as the basis for approving a variance:
 - a) Hardships resulting from factors other than application of the relevant standards of this Ordinance;
 - b) The fact that land or a structure may be utilized more profitably or be more marketable with a variance; or
 - c) Financial hardship.

6. Conditions of Approval

- a. The Board of Adjustment may apply conditions of approval that are reasonably related to the variance.
- b. All conditions shall be identified in the approval, the notice of decision, and on any associated site plans or preliminary plats.

7. Effect

Approval of a zoning/subdivision variance authorizes only the particular regulatory relief approved by the BOA. It does not exempt the applicant from the responsibility to obtain all other permits or development approvals required by this Ordinance or any other applicable laws, and does not indicate that the development for which the zoning/subdivision variance is granted should receive other permits or development approvals under this Ordinance unless the relevant and applicable portions of this Ordinance are met.

8. Amendment

Amendment of a zoning/subdivision variance may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

9. Expiration

A zoning/subdivision variance shall not expire.

10. Appeal

- a. Any decision by the BOA shall be subject to review by the Superior Court of the county where located by proceedings in the nature of certiorari and in accordance with Section 160A-393 of the North Carolina General Statutes.
- b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.

Case #02-20 **CITY OF BURLINGTON**
BOARD OF ADJUSTMENT
APPLICATION FOR SPECIAL USE PERMIT



Applicant must comply with the provisions of Section 32.13 of the City of Burlington Zoning Code
WHEN NECESSARY, PLANS MUST BE SUBMITTED ALONG WITH APPLICATION
For application submittal and meeting dates, please see the attached sheet.

APPLICATION FEE-----\$300.00

DATE APPLICATION SUBMITTED 7-1-2020

DATE OF BOARD OF ADJUSTMENT HEARING July 14, 2020

ZONING ORDINANCE SECTION Section 4.2 and 4.4.B.6

APPLICATION REVIEWD BY Joey Lea CASE# 02-20

PROJECT SUMMARY

- Project Name Fairchild Daycare Center
- Street Address or Property Description 827 South Graham Hopedale Road
- Tax Map / Block / Lot Number _____ Zoning District Medium Density Residential
- Existing Use Community Center
- Proposed Use Day Care Center
- Name of Applicant City of Burlington
- Address 425 S. Lexington Avenue
- City / State / Zip Burlington, NC 27215
- Telephone Number 336-222-5076 Fax Number _____
- Email address rkelly@burlingtonnc.gov
- Name of Property Owner / Developer (if different from above) _____
- Address _____
- City / State / Zip _____
- Phone Number _____ Fax Number _____
- Property Owners Signature _____

City of Burlington
Zoning & Parcel
Information System



City of Burlington
GIS Division

Last Update:
June 02, 2009

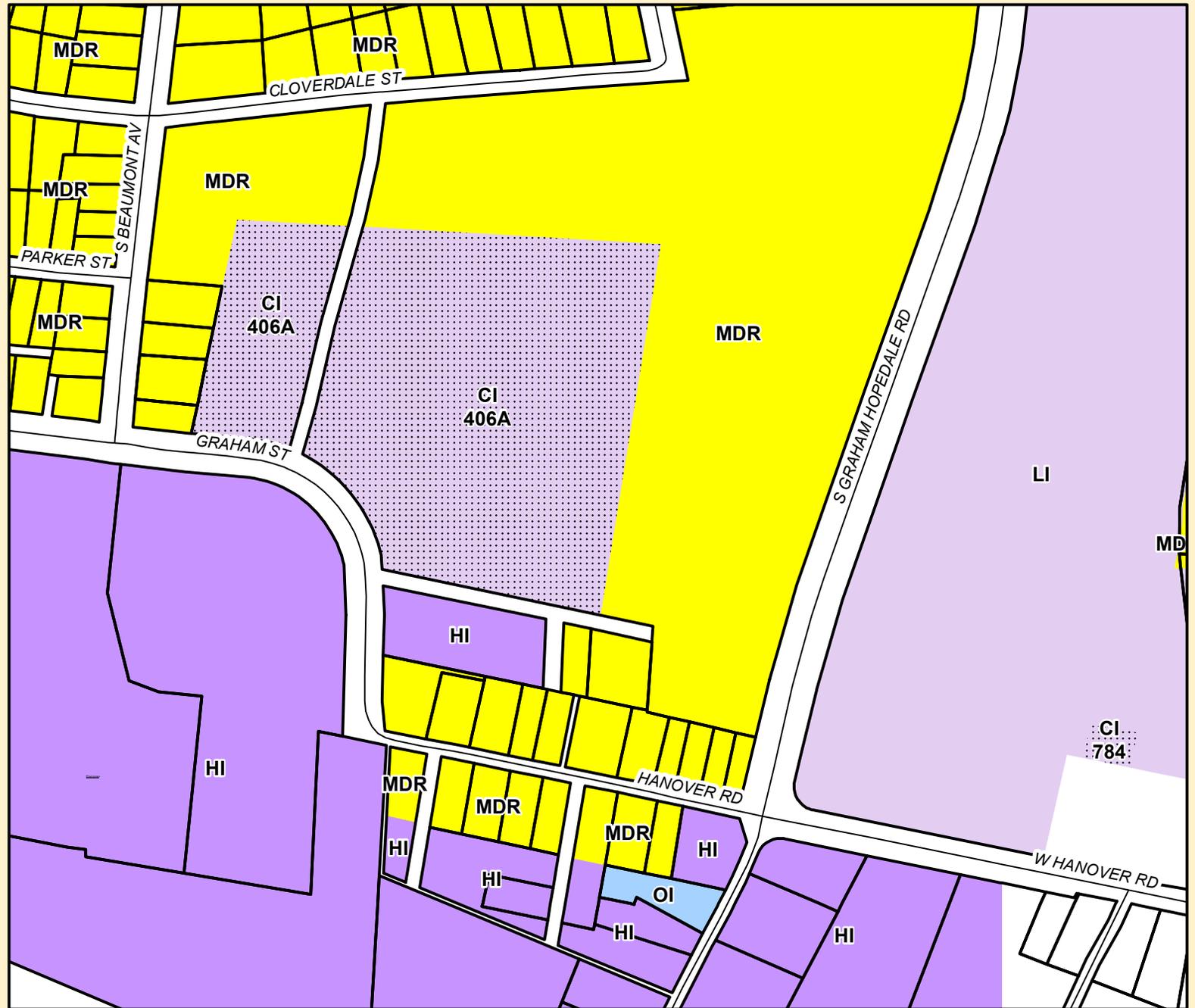
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Zoning

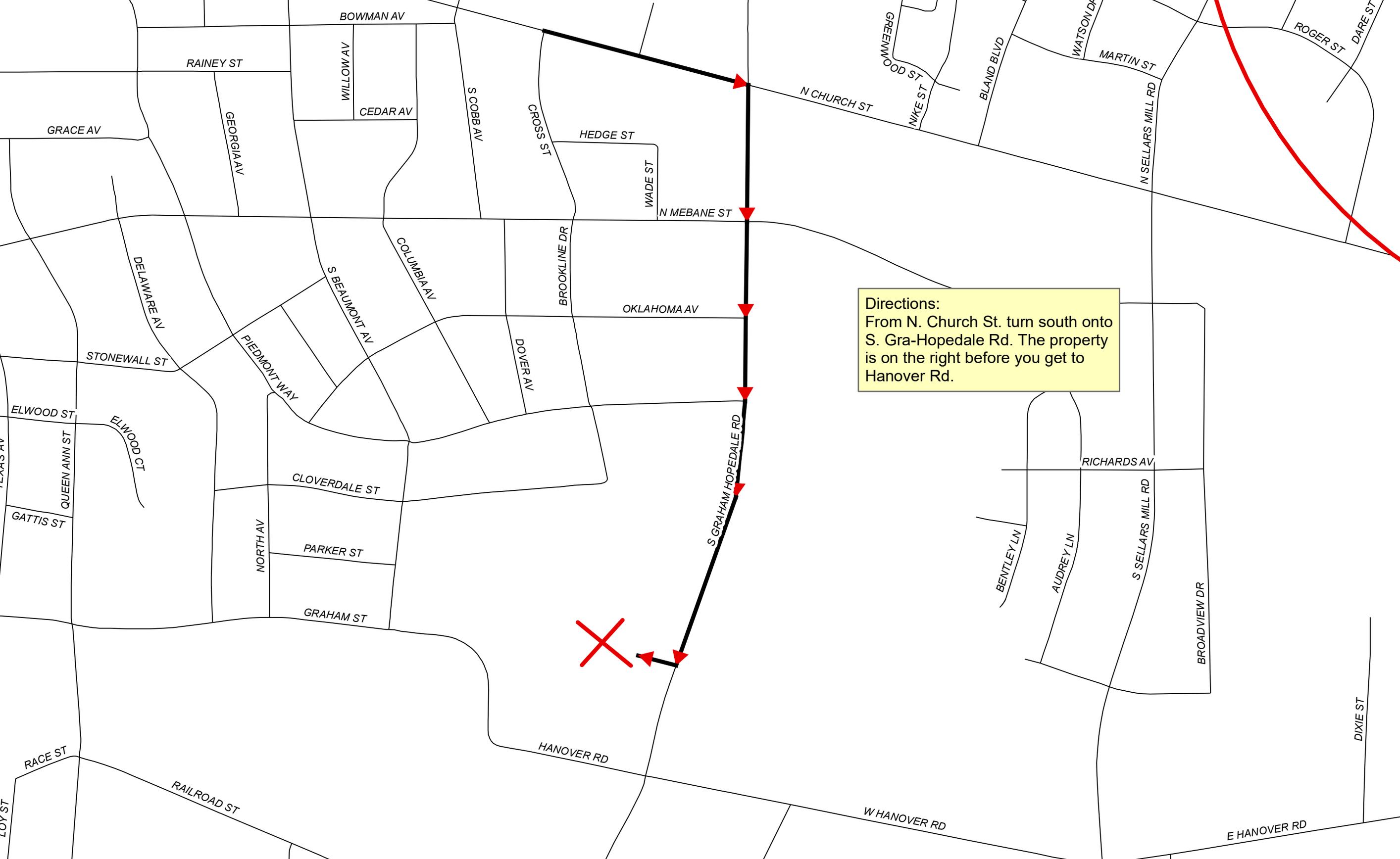
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 HDR	 MX
 RMH	 PD
 OI	 PDD
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 GB	 COI
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 MI	



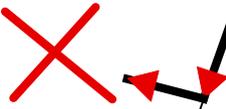
1 inch = 300 feet



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Directions:
From N. Church St. turn south onto
S. Gra-Hopedale Rd. The property
is on the right before you get to
Hanover Rd.



S. SPECIAL USE PERMIT

1. Purpose

This section sets out the procedure for consideration of an application for a special use permit. A special use is a use that may be appropriate in a zoning district, but because of its nature, extent, and external effects, requires special consideration of its location, design, and methods of operation before it can be deemed appropriate in the district and compatible with its surroundings.

2. Applicability

- a. Uses identified as requiring a special use permit in Table 4.2.C, Principal Use Table, shall be approved as a special use in accordance with the procedures and standards of this section, prior to development.
- b. Uses identified in an approved conditional zoning district application shall not be required to obtain a special use permit.

3. Special Use Permit Procedure

The special use permit procedure is described in Figure 2.4.S, Special Use Permit Procedure, as supplemented by the Procedures Manual.

4. Application

An application for a special use permit shall include a site plan depicting the proposed use and site configuration. The TRC shall review and comment on the site plan as required, prior to consideration of the application by the BOA.

5. Decision by BOA

- a. The decision shall be based on the competent, material, and substantial evidence in the record, as supplemented by arguments presented at the quasi-judicial hearing, and the standards in Section 2.4.S.6, Special Use Permit Review Standards.
- b. The decision shall be one of the following:
 - i. Approval of the special use permit, as submitted;
 - ii. Approval of a revised special use permit; or
 - iii. Denial of the special use permit.
- c. In making its decision on a special use permit, the BOA shall not waive or reduce any applicable standard of this Ordinance. It is permissible for the BOA to apply conditions of approval that exceed the standards in this Ordinance, as necessary, to mitigate any potentially negative impacts of the use on its surroundings.

6. Special Use Permit Review Standards

A special use permit shall be approved upon a finding that the applicant demonstrates the proposed special use:

- a. Complies with all required standards, conditions, and specifications of this Ordinance, including Chapter 4: Uses;
- b. Will not materially endanger the public health or safety if located where proposed;

FIGURE 2.4.S: SPECIAL USE PERMIT PROCEDURE	
STEP	ACTION
1	PRE-APPLICATION CONFERENCE See <u>Section 2.3.D, Pre-Application Conference</u>
2	NEIGHBORHOOD INFORMATION MEETING Optional - See <u>Section 2.3.E, Neighborhood Information Meeting</u>
3	FILE APPLICATION Filed with Zoning/Subdivision Administrator - Must include a site plan showing the use and configuration
4	COMPLETENESS DETERMINATION See <u>Section 2.3.F.6, Completeness Determination</u>
5	TRC REVIEW OF SITE PLAN TRC shall comment on the site plan as required
6	PUBLIC NOTIFICATION See <u>Section 2.3.H, Public Notification</u>
7	BOA REVIEW AND DECISION Quasi-judicial public hearing - See <u>Section 2.3.I, Public Meetings and Hearings</u>
8	NOTIFICATION OF DECISION Delivered via personal service, electronic mail, or 1 st class mail

- c. Will not substantially injure the value of the abutting land, or the special use is a public necessity;
- d. Will be in harmony with the area in which it is to be located; and
- e. Is in general conformity with the City's adopted policy guidance.

7. Conditions of Approval

- a. The Board of Adjustment may apply conditions of approval to assure that the use will be harmonious with the area where proposed and consistent with the purpose and intent of this Ordinance.
- b. The BOA may apply conditions limiting the permit to a specified duration or may place limits on the availability of proposed residential dwelling units to coincide with the provision or maintenance of adequate public facilities.
- c. All conditions shall be identified in the approval, the notice of decision, and on any associated site plans.

8. Effect

- a. A special use permit and the associated site plan approval are perpetually binding and run with the land, unless amended.
- b. An action invalidating a special use permit condition of approval for any reason (such as exceeding maximum allowable intensity or hours of operation limitation) shall render the entire special use permit null and void.

9. Amendment

Amendments of a special use permit may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

10. Expiration

Unless otherwise stated in the special use permit approval, a special use permit shall expire and become null and void if construction has not begun within two years from the date of the approval.

11. Appeal

- a. Any decision by the BOA shall be subject to review by the Superior Court of the county where located by proceedings in the nature of certiorari and in accordance with Section 160A-393 of the North Carolina General Statutes.
- b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.