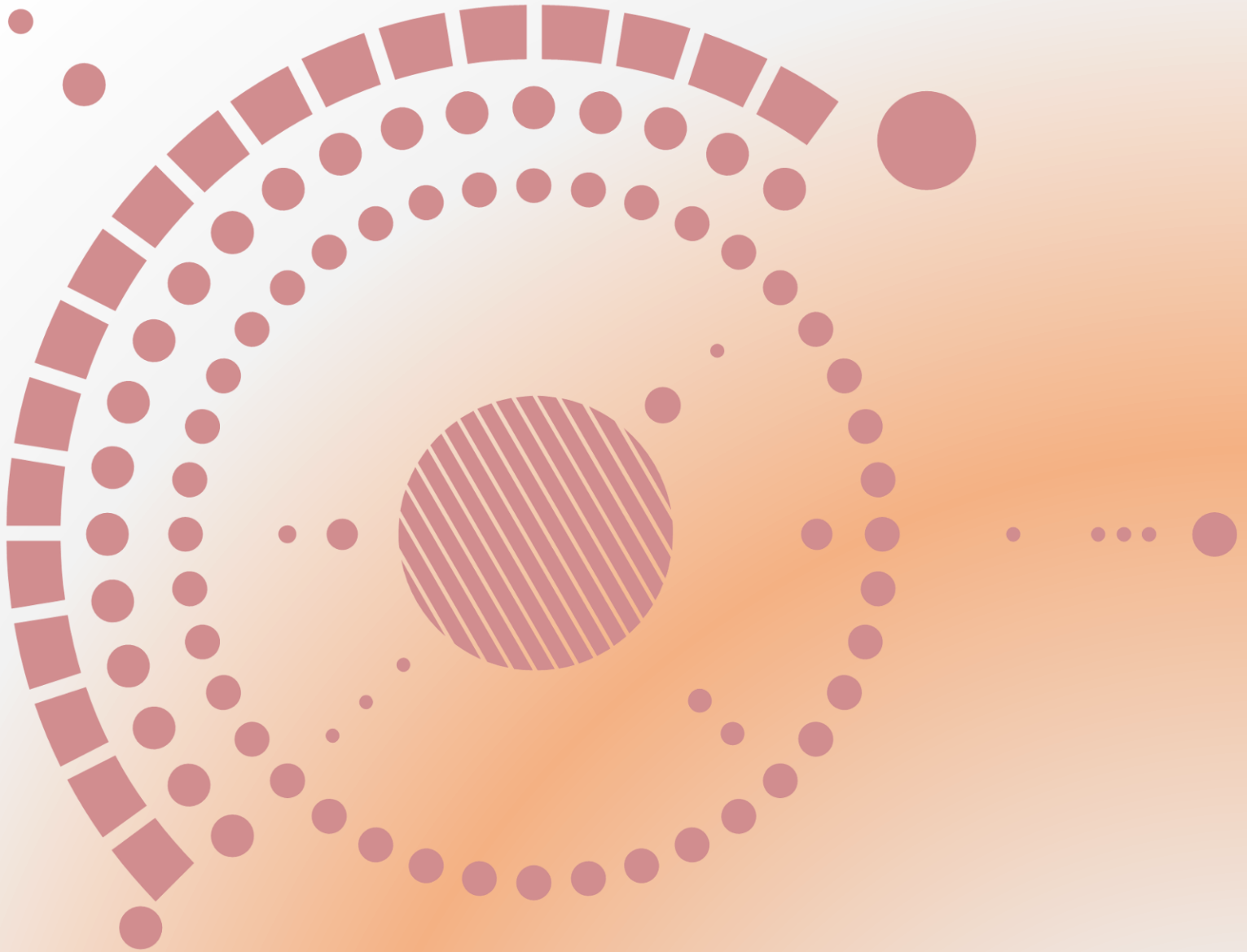


Board of Adjustment – Staff Report
5:30 p.m. Monthly Meeting
October 3, 2023



ROCKY MOUNT
DEVELOPMENT SERVICES
THE CENTER OF IT ALL



AGENDA
ROCKY MOUNT BOARD OF ADJUSTMENT MEETING
OCTOBER 3, 2023, AT 5:30 P.M.
GEORGE W. DUDLEY CITY COUNCIL CHAMBER, FREDERICK E. TURNAGE MUNICIPAL BUILDING

Voting Members: Apryl Davison-Cobb, Benjamin E. Moore Jr., Mark Oosterhout, Tonya Parker, Carl Revis, James Tharin, Tilda Whitaker-Bailey

Alternate: Vacant

Edgecombe County: Vacant

Nash County: Vacant

1. Call to Order

2. Approvals

a. Agenda

b. Minutes

3. Explanation of Rules of Procedure

4. Review of Application for Special Use Permits Relative to Public Hearings

5. Review of Variance Requests

5.1 Variance Request #10-03-23-04

Requested Action:	To allow a variation from maximum off-street parking requirements
Location:	Cobb Corners Drive [PIN 385113127596]
Existing Land Use:	Commercial (Off-Street Parking)
Proposed Land Use:	Commercial (Medical Care Facility)
Zoning:	B-2CD, Conditional Commercial Corridor District
Applicable Regulations:	LDC Sec. 708: Off-street Parking and Loading
Property Owner:	NC Land LLLP
Applicant:	2Z Development
Case Manager:	Bernetta Smith, Planner
Voting Representatives:	City Members

6. Review of Requests for Appeals

7. Review of Requests for Interpretations

8. Unfinished Business

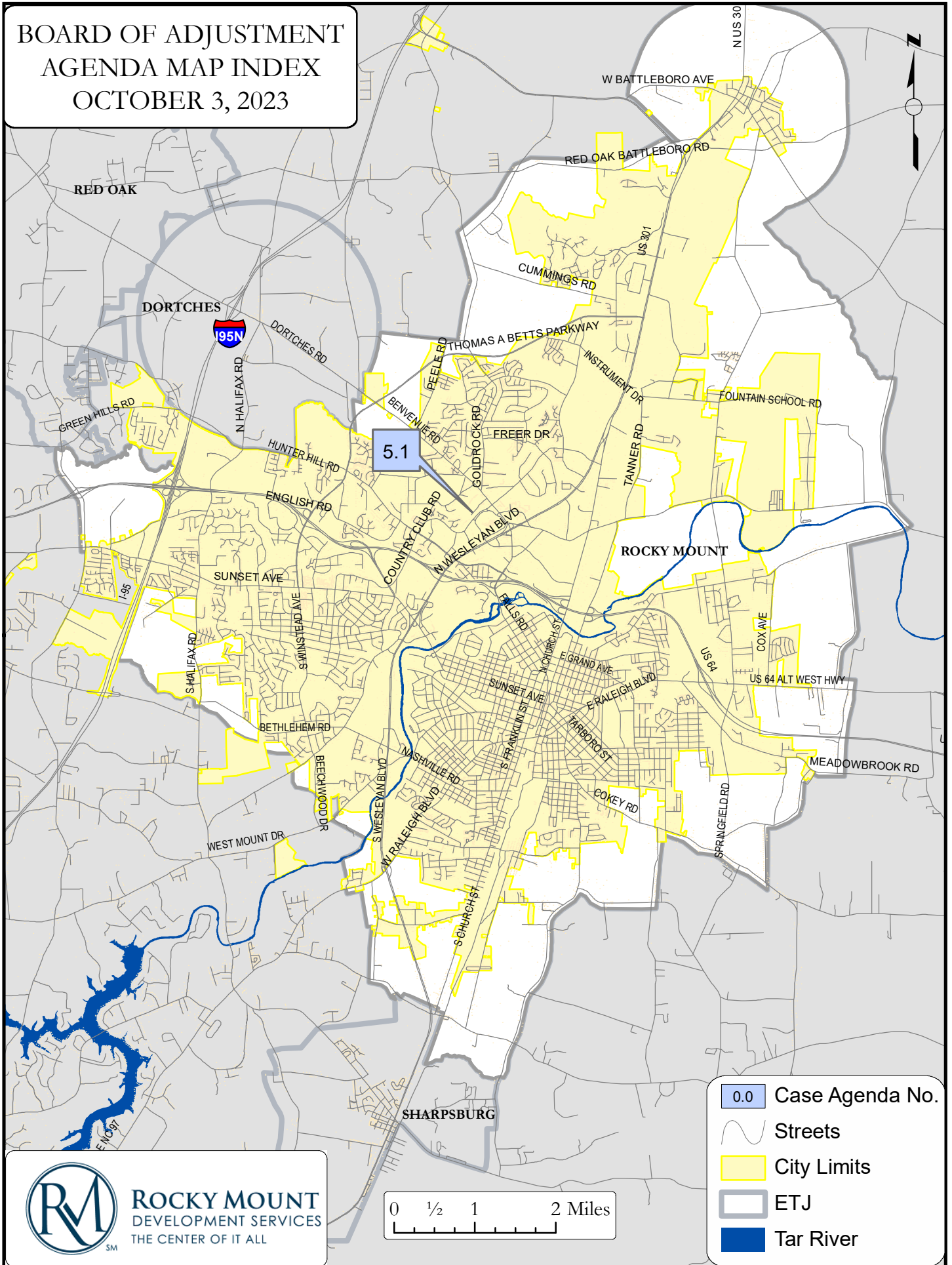
9. New Business

a. Items from the Board

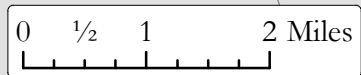
b. Items from the Secretary

10. Adjournment [Next meeting: November 7, 2023]

BOARD OF ADJUSTMENT
 AGENDA MAP INDEX
 OCTOBER 3, 2023



- 0.0 Case Agenda No.
- Streets
- City Limits
- ETJ
- Tar River



**MINUTES OF THE
ROCKY MOUNT BOARD OF ADJUSTMENT MEETING
HELD ON TUESDAY, SEPTEMBER 5, 2023, AT 5:30 PM
IN THE FREDERICK E. TURNAGE MUNICIPAL BUILDING, GEORGE W. DUDLEY CITY COUNCIL CHAMBER**

MEMBERS PRESENT

Apryl Davison-Cobb, Rocky Mount
Benjamin E. Moore, Jr., Rocky Mount
Mark Osterhout, Rocky Mount
Tonya Parker, Rocky Mount
James Tharin, Rocky Mount
Tilda Whitaker-Bailey, Rocky Mount

MEMBERS ABSENT

Carl Revis, Rocky Mount

MEMBERS SEATED

Apryl Davison-Cobb, Rocky Mount
Benjamin E. Moore, Jr., Rocky Mount
Mark Osterhout, Rocky Mount
Tonya Parker, Rocky Mount
James Tharin, Rocky Mount
Tilda Whitaker-Bailey, Rocky Mount

STAFF PRESENT

Samantha Andelin, Administrative Assistant
JoSeth Bocook, Deputy Director of Development Services
Aaron Dancy, Zoning Officer
Shamir Mitchell, Zoning Officer
Emilie Pinkston, Development Services Director
Bernetta Smith, Planner
Tiffany Wright, Planning Technician

ATTORNEY TO THE BOARD

William S. Hoyle

1. Call to Order

Board chairperson Mr. Osterhout called the meeting to order at 5:31pm.

Mr. Osterhout requested Board members to identify themselves and state what ward they represent. He also asked staff to identify themselves.

2. a. Approval of the Agenda

Mr. Osterhout presented the agenda and staff advised there were no changes; therefore, the Board approved the agenda as presented.

b. Approval of the July 18, 2023, Meeting Minutes

Mr. Osterhout presented the July 18, 2023, meeting minutes to the Board. There was one amendment that needed to be made. Items 1-5 should refer to Mr. Osterhout, not Mr. Tharin.

Board action: A motion was made by Mr. Tharin seconded by Ms. Davison-Cobb and unanimously carried to approve the amended minutes.

3. Explanation of Rules of Procedure

Mr. Osterhout stated that the Board of Adjustment is a quasi-judicial board and explained the Rules of Procedure. Mr. Osterhout explained that the case will be announced, and a representative from the city will be sworn in and present a general description of the case. The appellant/petitioner will be sworn in and present facts in support of their request. Mr. Osterhout will call for witnesses to speak in favor of the request, and then witnesses to speak who oppose the request. When both sides have completed their presentation, he will call for the city's recommendation relative to conformance with the City of Rocky Mount Land Development Code. The appellant will have an opportunity to present any rebuttal to the city's recommendation. After the Board has heard each appeal/request and discussion, the public hearing will be closed and the Board will hold an executive session, which is open to the public, to reach a decision as to the appeal or request. The Board will not entertain any additional comments from the public during this portion of the meeting. The Board will discuss the case and then call for a vote.

4. Review of Application for Special Use Permit Relative to Public Hearing.

No items were on the agenda for review.

5. Review of Variance Requests

5.1 Variance Request #09-05-23-02

Mr. Osterhout called for a representative from the city to present the case. Ms. Smith was sworn in and presented the petition to allow a variation from freestanding sign regulations.

Ms. Smith stated the subject site is a single parcel with an area of 3.88 acres located at 650 English Road; it is currently occupied by Davenport Motor Company. The property is zoned B-5 (Commercial Services District). The subject sites adjoining parcels to the north and east are zoned B-5. To the west, are parcels zoned I-2 (Heavy Industrial District) and B-5CD (Conditional Commercial Services District). To the south and across Highway US64 West are parcels zoned MA (Medical Arts District).

Ms. Smith stated that the appellant is requesting a variance from the city's sign regulations to replace existing signage for the purpose of updating the color scheme. The existing sign is 30 feet tall. The city's Land Development Code (LDC) Section 709.F. [Table 7-6] states that the maximum height for freestanding signage in the B-5 district is 16 feet.

Currently, LDC Section 709.O.1 states "If any sign becomes nonconforming as a result of the adoption of this LDC or an amendment thereto, that sign shall be removed in accordance with section 1104A. of this LDC, as may be amended from time to time, and the owner of the property where the sign is located shall bear the cost of removal." [LDC Section 1104.A reads: "Any sign existing on the date of the adoption of this LDC or any amendment thereto ("adoption date") and not conforming to its provisions shall be considered a presently existing, nonconforming sign, and may continue to be used for a period of three (3) years from the adoption date..."]

The appellant has provided documentation containing details of the proposed sign.

In approving the permit, the Board of Adjustment shall find that all the following conditions exist in conformance with Section 509. Zoning Variance Provisions of the Land Development Code:

1. The requested variance arises from conditions that are unique to the subject property, that are not ordinarily found in the same zoning district and that are not a result of the owner's intentional action.
2. The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.
3. The strict application of the applicable standards will constitute an unnecessary physical hardship (not economic hardship) or practical difficulty because the property cannot be used for an otherwise allowed use without coming into conflict with applicable site development standards.
4. The variance is the minimum action necessary to alleviate the hardship or practical difficulty and observes the spirit of this LDC; and
5. The variance desired will not adversely affect the public health, safety or general welfare or impair the purposes or intent of this LDC or the comprehensive plan.

Ms. Smith concluded her presentation.

Mr. Osterhout called for questions from the Board. He asked about the background presented in the report. It states that it is currently a non-compliant use and will continue to be non-compliant. Ms. Smith stated that the LDC was amended, and the current sign was already in place when that occurred. Whenever changes are requested after the amendment, those changes must be in compliance with the new standards. Mr. Osterhout asked that it wouldn't be grandfathered in. Ms. Smith stated that it would not.

Mr. Tharin asked if this was common among car dealerships. Ms. Smith stated that she has not received any requests from any other car dealerships, but it has been an issue with hotels, especially when ownership changes. Mr. Tharin asked if it was usually because of the size. Ms. Smith stated that it was a size [height] issue since the new signs must be in compliance with the LDC. Mr. Tharin asked if Ms. Smith knew what the ruling was on previous requests like this one. Ms. Smith stated that occurred before her role as a Planner. Ms. Smith asked

Mr. Bocook if he recalled the outcome. Mr. Bocook stated that ultimately the signs were brought into compliance with the current maximum height standards.

Mr. Moore reiterated that the LDC had changed and that the current sign is 30 feet, and the applicant is asking for a variance for 30 feet. Ms. Smith agreed. Mr. Moore stated that it appears that they are doing a color scheme change and asked if the sign was being rebuilt or just changing panels. Ms. Smith stated that they would be changing panels. Mr. Moore questioned the need for a variance due to just the panels changing. Ms. Smith stated that because a change is being made to the current sign that it now must meet the current LDC standards. Mr. Moore stated that if the City of Rock Mount had a sign that was 30 feet and decided to change "The Center of it All", would there be a variance request submitted for that change. Ms. Smith stated that the city is not exempt from the LDC, citing the Fire Department's request for a variance at the board meeting the month prior.

Mr. Tharin asked for clarity on Mr. Moore's question regarding the structure of the current sign and the proposed in reference to leaving the sign and just changing the panels. Ms. Smith stated that was correct.

Mr. Osterhout asked for an explanation of the LDC Section 1104 regarding usage of a nonconforming sign for a period of three years from the adoption date of an amended LDC. He asked if that means after three years the city can take it down or force them to take it down. Ms. Smith stated that the amendment was made in 2004 and that for a period of three years from the date of the adoption they had the opportunity to change the sign and since three years have passed any changes must be in compliance with the LDC. Mr. Osterhout asked if the city would remove it. Ms. Smith stated that the city would not remove it; however, no changes could be made unless brought into compliance.

Mr. Tharin stated that he had a question for the applicant; however, in their absence he asked if staff knew if this was something General Motors was making them do. Ms. Smith stated that staff did not know.

Ms. Whitaker-Bailey stated that it is simply 30 feet to 16 feet. Ms. Smith agreed. Mr. Osterhout stated that they are wanting to just change the color. Ms. Davison-Cobb stated that to change the color they must bring it into compliance by bringing it to 16 feet or leave it as it is. Ms. Smith stated that was correct.

Mr. Tharin asked would they have to get a variance if it was damaged by a storm. Ms. Smith stated that even if it was damaged due to a storm, they would still have to get a variance. Regardless of why the changes must be made it would have to be brought into compliance with the current LDC.

Mr. Moore stated that to change the panels they must have a sign permit. Ms. Smith stated that is what initiated the variance request. Mr. Moore asked if color change with the same name is in the LDC. Ms. Smith stated that it does not specify color change but does state the changing of the sign, and they are requesting to change the sign. Mr. Moore stated that it is just a color change. Ms. Smith stated that the LDC is not specific on color change but if there is to be any changes made to the sign it must be brought into compliance.

Mr. Osterhout called for anyone else to speak in favor of the request; there were none.

Mr. Osterhout called for anyone to speak in opposition of the request; there being none, Mr. Osterhout called for a motion to close the public hearing. The motion was made by Mr. Tharin and seconded by Mr. Moore.

Mr. Tharin stated what the definition of changing the sign is and would've liked to have heard from the applicant as to what other dealerships are doing and why are the changes needed. Mr. Moore stated that the dealership would not be changing the color scheme unless being mandated to do so. Mr. Tharin stated that it doesn't look substantially different from any other town.

Mr. Osterhout brought the board's attention to the five criteria that must be met in order to move forward with the application.

After discussion among the board members, the executive portion of the meeting was closed.

Mr. Osterhout stated that there is no evidence that supports the five criteria that must be met to move forward with this application.

Mr. Osterhout stated that a "yes" vote would be in favor of allowing the variance request to change the color of the sign and stay 30 feet and a "no" vote would be a denial of the request and if a color change is made the sign must be reduced to 16 feet.

Board Action: The Board voted with four members seated voting in favor of the request to allow a variance from freestanding sign regulations and two voting in opposition. Thus, the request is denied as a concurring vote of four-fifths of the board shall be necessary to grant a variance [NC G.S. 160D-406(i)].

6. Review Requests for Appeals
6.1 Request for Appeal #09-05-23-03

Mr. Osterhout stated that the requested action is an appeal for a city's official decision regarding a Certificate of Occupancy (CO). He stated that in this case the appellant will speak first to make their case and then a representative from the city will present.

Mr. Osterhout called for the representative for the appellant, Royal Dane Holdings, LLC to be sworn in. Mr. Richard Hamlett, attorney at law, was present and refused to be sworn in as he was present as an attorney. Mr. Osterhout asked the Board Attorney, Mr. Hoyle, that if Mr. Hamlett was going to present evidence and answer questions does he need to be sworn in. Mr. Hoyle stated that if Mr. Hamlett is appearing as an attorney at law, he does not have to be sworn in. Mr. Hamlett stated that he intends to conduct this as an evidential hearing just as he would in court. He intends to start with an opening statement followed by presenting evidence and sworn testimony to support his position. Mr. Osterhout stated that sometimes lawyers come up and make presentations and present evidence as a witness. Mr. Hamlett stated that he was hoping that's not the case in this case, as he will be objecting to anything that is not proper pursuant to the rules of evidence. Mr. Osterhout asked if he would be calling witnesses and Mr. Hamlett stated that he would be calling witnesses and asking questions. Mr. Osterhout stated that he wanted to make sure that everyone in attendance understands what the rules are. Mr. Hamlett stated that he has a pre-hearing motion that he

wants to address before the court. Mr. Osterhout stated that as the attorney for appellant to proceed with making his statement.

Mr. Hamlett stated that he was not provided with a copy of the record on appeal. He stated that the statute provides that the official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the decision of appeal is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property. Mr. Hamlett stated that he had not seen that, that it had not been provided therefore he does not know what the hearing officers have in front of them, so he made an inquiry of that. Mr. Osterhout stated that he has a staff report that is attached to the agenda, some maps, property owners that were notified, a letter to the citizens regarding the notification, information regarding the requirement of the hearing, a zoning ordinance, notice of appeal to the Board of Adjustment, exhibits and information provided by Mr. Hamlett, agenda item that is a request for an appeal #07-18-23-03, and identifying information and analysis. Mr. Hamlett stated that he went to the city's website to look at the agenda and saw the analysis and thinks it is totally improper for the hearing board to have the other parties analysis before the hearing, therefore he moved to have that, the analysis from the city, struck from the record and stated that any evidence presented at the hearing should be competent evidence and that it is not. Mr. Osterhout stated that he allows the motion to strike that document as the city will be making their own presentation. Mr. Hamlett stated just so everyone is aware, he tries to be easy to get along with; however, in anticipation of a potential appeal, he will be making objections for the record, so he is not trying to be difficult when he objects but he does intend to hold the city to the rules of evidence with respect to hearsay and firsthand knowledge; and so if we all understand that he is ready to go.

Mr. Hamlett proceeded with his opening statement. Mr. Hamlett stated good evening, ladies, and gentlemen of the board, I'm Rick Hamlett with the law firm of Etheridge, Hamlett and Murray in Nashville, NC. I represent, in this case, a party who filed for a certificate of occupancy. The official name of the of the agency is Royal Dane Holdings, LLC, they operate under the assumed name of The Headquarters. Their business model is selling prepaid cell phone time and long-distance minutes promoted by a sweepstakes promotion. In 2019, the city of Rocky Mount granted my client a certificate of occupancy before the certificate of occupancy was granted the City of Rocky Mount said that they had to show their system to the police department and had to provide detailed drawings of where equipment would be setup. They said they had to come out and approve it and you have to submit an application which says specifically the business that you are engaged in. So, the evidence will show that my client did that. The City of Rocky Mount, including the police department, reviewed the information that was submitted and granted a certificate of occupancy for my client's business to conduct retail sale phone equipment promoted by a sweepstakes promotion. Subsequent to that, my client moved locations, had to file for a new certificate of occupancy, which they did. That certificate of occupancy was granted for the same use. Subsequent to that brings us current: my client moved locations again and has filed for a new certificate of occupancy. Now, mind you, the ordinance has not changed in any respect, but the city has denied the request for a certificate of occupancy based upon the stated reason that sweepstakes are illegal, and we do not allow sweepstakes in Rocky Mount. Mr. and Mrs. hearing officers, that is just not the case. I submit to you that the evidence is going to show that not all sweepstakes are illegal and that you and I could go after this meeting right now to a sweepstakes place in Rocky Mount where we could have dinner tonight and play sweepstakes, and this is going on with the knowledge of the city. And so, the argument that the city does not permit it, first of all, it's not justified by the land

development code. The same code under which they granted the certificate of occupancy is the code that they're now using to deny the certificate of occupancy. At the same time, they're allowing others engaged in the same business to conduct business and have taken no efforts to shut them down. We are going to be asking you to reject the decision of the Planning Department in denying the certificate of occupancy, grant my client the certificate of occupancy that has been granted twice before on the same facts and the same law.

Mr. Osterhout asked if Mr. Hamlett wanted to call any witnesses. Mr. Hamlett stated yes, he would like to call JoSeth Bocook. Mr. Bocook was sworn in. Mr. Osterhout confirmed that Mr. Hamlett's previous speech was just his opening statement. Mr. Hamlett confirmed that was correct.

Mr. Hamlett asked Mr. Bocook what his current occupation was. Mr. Bocook stated that he is the Deputy Director of Development Services for the city of Rocky Mount. Mr. Hamlett asked how long he had been in that position? Mr. Bocook responded, a month. Mr. Hamlett asked prior to that, what was your position? Mr. Bocook stated that he has been with the city since 2008, in various roles within the department.

Mr. Hamlett asked if Mr. Bocook was familiar with his client's petition for a certificate of occupancy. Mr. Bocook responded yes. Mr. Hamlett stated in fact, that Mr. Bocook denied the certificate of occupancy. Mr. Bocook stated that the City of Rocky Mount denied it as there were three parties to the Certificate of Occupancy inspection. Mr. Hamlett asked if Mr. Bocook remembered writing him a letter? Mr. Bocook stated, yes. Mr. Hamlett stated that he had an exhibit he would like to publish to the other hearing officers. Mr. Osterhout stated that Mr. Bocook needed to review the document to confirm that he recognized it. Mr. Bocook stated that he did. Mr. Hamlett stated that this is the letter where Mr. Bocook responded to his letters asking why the certificate of occupancy was denied. Mr. Hamlett stated that he had this exhibit marked as exhibit number one for purposes of this hearing. Mr. Hamlett stated to Mr. Bocook, if he stated in the letter the reason for the denial of the certificate of occupancy. Mr. Bocook stated yes because that use is not permitted within our land development code. Mr. Hamlett asked for clarification as to what exact use is not permitted under the land development code? Mr. Bocook stated sweepstakes.

Mr. Hamlett stated to Mr. Bocook that as part of his duties, the city is required to maintain the records that show what is permitted and what is not permitted under the land development code. Mr. Bocook stated that yes, generally the Development Services Department. Mr. Hamlett showed Mr. Bocook what he had marked as exhibit number five for purposes of this hearing. Mr. Hamlett presented a section of the land development code and asked if Mr. Bocook had ever seen that before. Mr. Bocook stated, yes, sir, this appears to be from chapter 12, dealing with enforcement from the city's land development code. Mr. Hamlett stated that under section 12-03, for Mr. Bocook to read into the record paragraph. Mr. Bocook read: Certificate of Occupancy/Compliance: Certificate of Occupancy is required as follows - No land shall be used or occupied, except for farm purposes, and no building or structure erected, altered, used or changed in use for other than farm purposes until a certificate of occupancy/compliance shall have been issued by the inspection services administrator or authorized agents, stating that the building and or the proposed use has been determined to be in compliance with the provisions of this land development code. Mr. Hamlett stopped Mr. Bocook stating that was sufficient and so it is true that before a certificate of occupancy can be granted, your office has to determine that the proposed use is in compliance with the land development code. Mr. Bocook stated that was correct. Mr.

Hamlett asked does our land development code, as it currently stands in the city of Rocky Mount, mention the word sweepstakes? Mr. Bocook stated that he didn't believe it does.

Mr. Hamlett showed what he had marked as exhibit number nine for purposes of this hearing to Mr. Bocook and asked if he could identify it. Mr. Bocook stated that the document was a certificate of occupancy application. Mr. Hamlett asked if it was dated. Mr. Bocook confirmed it was, June 11, 2019.

Mr. Hamlett stated that he would like to publish to the other hearing officers a copy of exhibit nine. Mr. Osterhout stated let the record reflect that exhibit nine has been admitted and circulated to the board. Mr. Hamlett asked Mr. Bocook if in this application was there a paragraph or a provision for the proposed name of the business. Mr. Bocook stated there is a field for proposed business name and type of business. Mr. Hamlett asked Mr. Bocook to confirm that the proposed business name is The Headquarters. Mr. Bocook stated that was correct. Mr. Hamlett asked Mr. Bocook to confirm that for type of business, it says see attached. Mr. Bocook confirmed. Mr. Hamlett asked Mr. Bocook to turn to the second page and read into the record what the proposed business type was in this application? Mr. Bocook read that the type of business indicated retail sales promoted by gaming promotions and that the applicant's business is the selling of telephone calling time/minutes to customers promoted by skill and dexterity-based game promotion to encourage the purchase of applicant's product. When applicant's products are purchased, customers receive the right to participate in the game promotion. Additionally, free opportunity to participate in the game promotion is also available without required purchase. Mr. Hamlett asked Mr. Bocook, if he was aware of whether a certificate of occupancy was granted pursuant to exhibit number nine, which is the application for a certificate of occupancy. Mr. Bocook stated that he believed so.

Mr. Hamlett showed what he had marked as exhibit number ten for purposes of this hearing to Mr. Bocook and asked if he could identify it. Mr. Bocook stated that it is a copy of a certificate of occupancy for 159 South Wesleyan Boulevard. The Headquarters occupancy type retail sales of telephones promoted by gambling. Mr. Hamlett asked if it was dated. Mr. Bocook confirmed it was, July 16th, 2019.

Mr. Hamlett stated that it was established just a moment ago that before a certificate of occupancy can be granted, the city must determine that the proposed use is in compliance with the land development code, and asked if Mr. Bocook agreed with that? Mr. Bocook stated, yes. Mr. Hamlett asked, and a certificate of occupancy was granted in this case? Mr. Bocook stated, yes.

Mr. Hamlett showed what he had marked as exhibit eleven for purposes of this hearing and asked if Mr. Bocook could identify the document. Mr. Bocook stated that it is a copy of a certificate of occupancy for 711 Sutters Creek Boulevard with the name of business listed as The Headquarters. Mr. Hamlett asked if the document was signed by an agent of the city? Mr. Bocook stated that appeared to be signed by Phillip Joyner, dated January 28, 2022. Mr. Hamlett stated that he would like to publish to the other hearing officers a copy of exhibit eleven. Mr. Osterhout stated let the record reflect that exhibit eleven has been admitted and circulated to the board.

Mr. Hamlett showed what he had marked as exhibit twelve for purposes of this hearing and asked if Mr. Bocook could identify the document. Mr. Bocook stated that it is a copy of an

Application for Certificate of Occupancy for the case you're appealing here for address 2760 North Wesleyan Boulevard, Rocky Mount, and the type of business listed is prepaid phone service, and the business' proposed name is DBA The Headquarters. Mr. Hamlett stated that this is the certificate of occupancy that Mr. Bocook denied. Mr. Bocook stated yes. Mr. Hamlett asked the reason you denied it was because sweepstakes are not permitted under the land development code. Mr. Bocook stated that is why the zoning portion of the inspection failed. Mr. Hamlett asked for Mr. Bocook to point to the provision in the zoning code which says sweepstakes are not permitted. Mr. Bocook stated that within section 503 of the city's land Development Code, there is a table of uses that list land uses permitted in the various zoning districts. There's a table for residential uses and a table for non-residential uses. Mr. Hamlett asked Mr. Bocook if it was his testimony that, that table of uses has changed since 2019. Mr. Bocook stated that it had changed since 2019. Mr. Hamlett asked if it has changed with respect to the issues of this case. Mr. Bocook stated with respect to whether sweepstakes are listed or not, no. Mr. Hamlett stated that so the same code with respect to 2019 under which two certificates of occupancy were granted exists today under which you denied the certificate of occupancy and you admit that. Mr. Bocook stated yes.

Mr. Hamlett asked Mr. Bocook if he was aware of whether other businesses are currently operating in the city of Rocky Mount doing what his client proposed to do? Mr. Bocook stated there may be, I have not personally witnessed any of them. Mr. Hamlett asked Mr. Bocook if he recalled when they were corresponding about this case, he sent a list of businesses that were operating in the same manner that his client wanted to operate. Mr. Bocook stated that Mr. Hamlett sent information stating that he suspects that they were operating in the same manner. Mr. Hamlett stated that he gave Mr. Bocook a list of addresses and names. Mr. Bocook stated yes, sir. Mr. Hamlett asked what action was taken, was it investigated any further? Mr. Bocook stated that staff has gone out to investigate. Mr. Hamlett asked as part of the duties in the Development Services division of the city of Rocky Mount, does staff have the ability to send out notices of violation? Mr. Bocook stated, absolutely. Mr. Hamlett stated that when he filed his request for appeal, he filed a request for issuance of a subpoena or issuance of subpoenas, and asked if Mr. Bocook recalled that? Mr. Bocook stated, yes. Mr. Hamlett asked if Mr. Bocook brought today the information that he requested him to produce? Mr. Bocook stated no.

Mr. Hamlett showed what he had marked as exhibit 16 through 22 for purposes of this hearing. Mr. Hamlett stated that the first page is his request for issuance of a subpoena and the second are certificates of occupancy that have been granted by the City of Rocky Mount Department of Development Services. Mr. Hamlett asked Mr. Bocook to look through and make sure that that is, in fact, what they were. Mr. Bocook stated yes it was. Mr. Hamlett stated that he would like to publish exhibits 16 through 22 to the members of the board. Mr. Osterhout stated let the record reflect that exhibits 16 through 22 have been admitted and circulated to the board. Mr. Hamlett stated that when he filed the notice of appeal, he asked Mr. Bocook to produce at this hearing a complete copy of the Rocky Mount Department of Development Services files, including, but not limited to the applications for certificate of occupancy granted and or current certificates of occupancy and the notice of violations for the past five years for seven locations. Mr. Bocook stated that was correct. Mr. Hamlett stated that if he understood Mr. Bocook's testimony, he did not bring those to this hearing. Mr. Bocook stated that was correct and apologized and stated that on Mr. Hamlett's previous question that he didn't see where he had requested that the certificates of occupancy be provided. Mr. Bocook stated that Mr. Hamlett made reference that he believed they were

operating. Mr. Hamlett stated that he was not sure what Mr. Bocook was saying and reiterated that when he filed his notice of appeal, I requested the issuance of subpoenas, and asked if that was correct and that it is exhibit 16. Mr. Bocook asked for clarity if it was submitted in the notice of appeal? Mr. Hamlett stated yes, sir, it is attached to the notice of appeal. Mr. Bocook stated yes. Mr. Hamlett once again asked that when he filed the notice of appeal, he asked to have this information presented at this hearing. Mr. Bocook stated yes, sir. Mr. Hamlett stated, and you don't have it today? Mr. Bocook stated that he had provided it prior to the hearing, that is how he was able to produce exhibit 16 through 22. Mr. Hamlett asked if the applications for certificate of occupancy have been provided? Mr. Bocook stated no sir. Mr. Hamlett asked if the Notices of violation for the past five years had been provided. Mr. Bocook stated that with respect to the properties that are listed in the request, there are none, sir. Mr. Hamlett stated that's his point. If the city is aware that a business is being conducted and using a use that is not permitted under the land development code, you have the ability to shut that down, do you not? Mr. Bocook stated that's what the paper says, yes. Mr. Hamlett stated that a notice of violation can be sent. Mr. Bocook stated that's right. Mr. Hamlett stated that it had not been done for any of the businesses that he had just referenced. Isn't that true? Mr. Bocook stated not to his knowledge. Mr. Hamlett asked who would do it besides Mr. Bocook and his office? Mr. Bocook stated there are planning staff and inspections staff. Mr. Hamlett stated that he didn't mean to belabor the point, but when he filed this several weeks ago, he asked if there were any to produce them here today, and you're telling me you got none? Is that a fair assessment? Mr. Bocook stated that he had communicated that prior to this hearing.

Mr. Hamlett stated let's look at the certificate of occupancy, starting with exhibit 17. Would you please look at that with me? Now. What is the name of the business? Mr. Bocook stated No Limit. Mr. Hamlett asked, so what type of business is this? Mr. Bocook stated there is no occupancy type listed on this copy of the certificate. Mr. Hamlett stated, but a certificate of occupancy was granted on 4-13-22. And again, the certificate of occupancy at the top, it states this certificate is issued pursuant to the requirements of the building code, certifying that the at the time of issuance, the structure was in compliance with the various ordinances of the city. Mr. Bocook agreed. Mr. Hamlett stated let's move on to number 18, if you would. What is the name of the business with respect to exhibit 18? Mr. Bocook stated Ocean City Bingo. Mr. Hamlett asked Mr. Bocook if he knew what type of business is being conducted at this this location? Mr. Bocook stated the certificate states the occupancy type is bingo only. Mr. Hamlett stated that Mr. Bocook mentioned section 503 of the land development code and asked does the land development code in section 503 mention bingo? Mr. Bocook stated that he can't say for certain. Mr. Hamlett stated to Mr. Bocook, he wanted to show him what he had marked as exhibit seven, which he was going to represent to him, as the section 503, the zoning table of uses as it exhibits as it existed February of 2019. He stated he going to show you what I have marked as exhibit eight, which is the zoning table of uses as it currently exists. Mr. Hamlett asked Mr. Bocook to look at those documents and see if they purport to be what he had said they are. Mr. Bocook asked what was the source, where did he print it from? Mr. Hamlett stated off the City of Rocky Mount website. Mr. Bocook stated yes. Mr. Hamlett stated if Mr. Bocook could now look at the current version and see if it permits Bingo. Mr. Bocook stated it does not literally say bingo. Mr. Hamlett stated that then Mr. Bocook acknowledges that although a use is not specifically listed in the table of uses, it can be a valid use. You agree with that? Mr. Bocook stated that yes, staff is granted the latitude to classify unlisted uses.

Mr. Hamlett stated let's move back to exhibit 19, if you would. That's another certificate of occupancy. And let me know when you've found that, sir. Mr. Bocook stated that he had found it. Mr. Hamlett asked what is the name of the business for exhibit 19. Mr. Bocook stated Empire 94. Mr. Hamlett asked what was the occupancy type for that particular business? Mr. Bocook stated, Vape sales/gaming. Mr. Hamlett asked Mr. Bocook if he knew what that meant? What gaming meant when your office issued this certificate of occupancy? So, what does that mean? Mr. Bocook stated gaming in general, probably sweepstakes.

Mr. Hamlett stated to turn to number 20 and to just help out with time this is for TAPS located at 901 North Wesleyan Boulevard. He asked Mr. Bocook if he was familiar with that location. Mr. Bocook stated yes. Mr. Hamlett stated, and do you know what goes on inside TAPS? Mr. Bocook stated yes, Sweepstakes. Mr. Hamlett stated if we can move on to 21, this is for a business called S. Technology, and it is located at 1268 Independence Drive. Is that correct? Mr. Bocook stated that the certificate of occupancy, dated November 30, 2022, is issued for S. Technology at 1268 Independence Drive. Mr. Hamlett asked if Mr. Bocook was familiar with that business? Mr. Bocook stated no. Mr. Hamlett stated but the occupancy type is retail computer sales and repair. Mr. Bocook agreed. Mr. Hamlett stated let's move on to 22 and he helped us out by stating that the name of the business is HD Arcade and asked if Mr. Bocook could confirm, and he did. Mr. Hamlett asked what is the occupancy type for that business? Mr. Bocook stated that it states retail/U-Haul. Mr. Hamlett asked if there is discrepancy between the name of the business and the occupancy type that could be identified? Mr. Bocook stated that he could see that. Mr. Hamlett asked does the land development code section 503 have a provision for arcades? Mr. Bocook stated somewhat, they are amusement enterprises. Mr. Hamlett stated so amusement enterprises are permitted under the land development code? Mr. Bocook confirmed.

Mr. Hamlett stated that in the letter from Mr. Bocook he believed it was exhibit one, that primarily the use is not permitted within the land development code, as North Carolina courts routinely have found that sweepstakes are prone to violate state laws relating to gambling. Did you state that? Mr. Bocook confirmed. Mr. Hamlett asked if Mr. Bocook could articulate for the members of the board here this evening what is necessary for a sweepstakes to be illegal in this state? Mr. Bocook stated, not really. Mr. Hamlett stated to Mr. Bocook that he didn't know how to differentiate between a legal sweepstakes and an illegal sweepstakes. Isn't that true? Mr. Bocook stated that all sweepstakes, to his knowledge, are illegal. Mr. Hamlett asked if Mr. Bocook was aware of whether retail stores such as Lowe's or Zaxby's offer sweepstakes? Mr. Bocook stated that he was not sure. Mr. Hamlett showed to Mr. Bocook what he marked as exhibit 27 and present to you that this is the Lowe's All Pro Prize March Sweepstakes official rules and asked Mr. Bocook to verify that it was. Mr. Bocook stated that is what the paper says. Mr. Hamlett stated that the last page at the bottom is copyrighted by Lowe's Home Centers, LLC and it is dated for the sweepstakes period beginning March the 7th, 2022 at 12 a.m. Eastern time and ends March 31st, 2022, at 11:59 p.m. Eastern Time. Mr. Hamlett asked for Mr. Bocook to verify the information. Mr. Bocook stated that the information was correct. Mr. Hamlett asked if that was an illegal sweepstakes? Mr. Bocook stated he didn't know. Mr. Hamlett stated that when he was communicating with Mr. Bocook about his client's request for a certificate of occupancy, he asked him to reconsider his position, and asked if Mr. Bocook remembered that. Mr. Bocook stated yes, he did. Mr. Hamlett stated that he provided Mr. Bocook with a copy of a court order from another county and asked if he recalled that. Mr. Bocook stated, yes.

Mr. Hamlett showed Mr. Bocoock what he had marked as exhibit 15 and asked if he could look at the document and tell everyone what it purports to be. Mr. Bocoock stated that exhibit 15 was State of North Carolina, Robeson County. No Limit Games LLC. Plaintiff verses Sheriff of Robeson County et al. Mr. Hamlett state that this is a preliminary injunction that has been entered in that case, is that correct? Mr. Bocoock stated that he was not familiar, that it was an order on motion for preliminary injunction.

Mr. Hamlett showed Mr. Bocoock what he marked as exhibit 14 for purposes of this hearing and asked if he could tell everyone what it was. Mr. Bocoock stated it was State of North Carolina, County of Forsyth, BST USA LLC, and Victory Vending Company, LLC versus State of North Carolina. Mr. Hamlett stated that both are injunctions that have been entered by courts of competent jurisdiction in the state of North Carolina that says that the sweepstakes that are the subject of these two lawsuits are illegal. How would you respond to that? Mr. Bocoock stated he believed that this particular exhibit 14 was overturned last week. Mr. Hamlett stated that he was not aware and handed Mr. Bocoock another copy of exhibit 14. Mr. Hamlett asked Mr. Bocoock if he would, that these are under conclusions of law, read the highlighted portion. Mr. Bocoock read that “plaintiffs are reasonably likely to prevail on their claims that their promotional video sweepstakes is lawful under North Carolina General Statute 14 - 306.4. When viewing the sweepstakes in its entirety, it is likely that skill predominates over chance in determining both whether the player wins or loses and the relative amount of the player's winnings or losses.” Mr. Hamlett asked for him to turn to the last page and read that highlighted section. Mr. Bocoock read “plaintiff's motion for a preliminary injunction is granted. Specifically, defendants, including their officers, agents, servants, employees, attorneys, those persons in active concert or participation with them who receive actual notice in any manner of the order by personal service or otherwise, and anyone acting on behalf of or under color of authority of the state of North Carolina are hereby preliminarily and temporarily restrained from the listed four things; forcing the removal of plaintiff's internet kiosk and accompanying promotional sweepstakes from retail establishments in North Carolina, issuing warnings and citations to retail establishments for employing plaintiff's promotional sweepstakes to market and sell internet time, forcing compelling coercing or persuading any retail establishment and any other person in the state of North Carolina to remove the Internet kiosk and accompanying promotional sweepstakes and any equipment associated therewith or to refrain from promoting the sale of Internet time by relying on the promotional sweepstakes. Prosecuting any person in the state of North Carolina in possession of plaintiff's internet kiosk for reason that person is involvement in operating the promotional sweepstakes.”

Mr. Hamlett stated he told Mr. Bocoock in his letter that was the equipment that my client intended to use at his business. Mr. Hamlett showed what he had marked as exhibit 13 for purposes of this hearing and asked if Mr. Bocoock would identify it. Mr. Bocoock stated that exhibit 13 was a letter to him from Mr. Hamlett, dated June 23rd, 2023. Mr. Hamlett stated that the last paragraph on that page tells, additionally, he previously provided Mr. Bocoock with a copy of the preliminary injunction entered in Forsyth County Superior Court in case number 23 CVS 2042, that his client's equipment is the same equipment that is the subject of said preliminary injunction, and asked if Mr. Bocoock recalled that? Mr. Bocoock stated yes.

Mr. Tharin apologized for interrupting and stated to not all in the room were lawyers, and asked Mr. Hamlett to explain to what Forsyth County has to do with our development code? Mr. Hamlett stated that the order that has been entered in Forsyth County is a preliminary

injunction ruling that the equipment that is the subject of that case is likely legal in North Carolina and prohibiting law enforcement from interfering with anyone using said equipment. Mr. Hamlett stated that the position of the city is that all sweepstakes are illegal, and that's simply not the case. That injunction states that and prohibits enforcement during the time that case is pending and it's statewide although it was issued by Mr. Tharin stopped Mr. Hamlett and asked could it be legal and against the land code? And to him that is the issue he is trying to get to in his mind, and that would be a lot more helpful to him personally. Mr. Tharin stated that Mr. Hamlett could take it where he needed to, but when he is looking at it, unless I'm looking at it incorrectly, I'm trying to figure out whether, we've got a violation, it could be legal everywhere but still against our Land Development Code. Mr. Hamlett stated that the point he was trying to make is that the position taken by the city is they have denied the certificate of occupancy because it's illegal and well, it's not illegal. The court has said that it's not illegal and the land development code doesn't prohibit it, and under the same code, they granted many certificates of occupancy, so that's the point.

Ms. Whitaker-Bailey asked if it was the same situation in Robeson County, the other one Mr. Hamlett was talking about? Mr. Hamlett responded, yes, ma'am, there are two injunctions in two different courts and what he was representing and asking Mr. Bocoock to acknowledge is that we told the city, if they will give us a certificate of occupancy, we will use the equipment that is the subject of this lawsuit where the court has said that it is likely legal.

Mr. Bocoock stated that an appeals court has blocked that. According to a report by the Carolina Journal posted on August 25th, split State Court of Appeals panel has agreed to block a Forsyth County trial court order that favored local video sweepstakes operators, a majority vote, three judge appellate panel. Mr. Hamlett asked which case was that? Mr. Bocoock stated it was the one in Forsyth County, BST USA that Mr. Hamlett had highlighted in exhibit 14.

Mr. Hamlett asked Mr. Bocoock if he was aware if the other one had been blocked? Mr. Bocoock stated that he didn't know. Mr. Hamlett stated to Mr. Bocoock then he would acknowledge then that it is not a settled issue? Mr. Bocoock stated that he couldn't state any more than what he just did.

Mr. Hamlett asked Mr. Bocoock if his statement that all sweepstakes are illegal, do you still stand by that? Mr. Bocoock replied yes. Mr. Hamlett asked Mr. Bocoock if he knew the difference between a legal sweepstakes and an illegal sweepstakes. Mr. Bocoock stated, no sir. Mr. Hamlett stated that was all the questions he had for that witness.

Mr. Osterhout asked the board if they had any questions for Mr. Bocoock. Mr. Tharin asked if he could elaborate on section 503? Mr. Bocoock stated that Section 503 is in our land development code. Every zoning district has certain uses that are permitted. Some permitted by right and some that require a special use permit to be issued by the Board of Adjustment or a small number that may be issued by the City council. Section 503 has tables for each zoning district that show which uses are permitted in that specific zoning district. Mr. Tharin asked if it states that sweepstakes are not or does it not mention that. Mr. Bocoock stated that it does not mention sweepstakes. In the past we've had listed in the table "internet cafes," which was akin to sweepstakes. Mr. Hamlett followed up and asked if the current version of the statute does not prohibit sweepstakes. Mr. Bocoock stated that it does not permit them nor list it. Mr. Hamlett reiterated that it does not list it and asked Mr. Bocoock wasn't it true that

there is provision in the ordinance which says that certain things which are prohibited shall be denoted. Mr. Bocook stated that he was not sure.

Mr. Hamlett handed Mr. Bocook what he marked as exhibit 28 and asked for him to identify the document. Mr. Bocook stated that Mr. Hamlett's exhibit 28 was section 502 from the Land Development Code. Section 502 is interpretation of zoning use tables. Mr. Hamlett asked Mr. Bocook to read into record paragraph D. Mr. Bocook read "D states for uses not allowed or blank cell: a blank indicates that a use type is not allowed in the respective zoning district unless it is otherwise expressly allowed by regulations by other regulations of this land development code." Mr. Hamlett asked wasn't it true that sweepstakes and internet cafes are not expressly prohibited. And they could have been. Mr. Bocook stated that the blank cells are uses that are permitted in other districts that are not in certain zoning districts. Mr. Hamlett asked isn't it true that if the council had wanted to prohibit sweepstakes, it could have listed sweepstakes and then not provided an indication that its use is permitted? Mr. Bocook stated that would be unusual.

Mr. Hamlett presented exhibit 29 for purposes of this hearing and asked Mr. Bocook to take a look at that and tell him if he could tell him what it was. Mr. Osterhout interrupted and stated that there's a lot of exhibits going around, but knew Mr. Hamlett hadn't published any and board hadn't admitted. He stated that there was a lot of stuff that's not in evidence that Mr. Hamlett was stacking up in this hearing. Mr. Osterhout stated he just didn't know if Mr. Hamlett wanted to admit them. Mr. Hamlett stated that when he got done, he planned to move to admit all of his exhibits at some point, but he didn't think everything was necessary for the board to have their hands on. Mr. Tharin stated that some of the rolls with the commas and therefore and otherwise he must see them, or he would have to discount them. Mr. Hamlett stated, at some point he would publish everything. Mr. Hamlett continued by asking Mr. Bocook what did this purport to be? Mr. Bocook stated exhibit 29 comes from the Tarboro, North Carolina Code of Ordinances. Mr. Hamlett asked didn't that ordinance specifically prohibit sweepstakes? Mr. Bocook stated that it says electronic gaming operations. For the purposes of this section, the term electronic gaming operation refers to any business enterprise, whether as a principal or accessory use, where persons utilize one or more electronic machines, including, but not limited to computers and gaming terminals to conduct games of chance, including sweepstakes for cash, merchandise or other items of value are redeemed or otherwise distributed. Whether or not the value of such distribution is determined by electronic games played by predetermined odds. This does not include any lottery approved by the state of North Carolina or any operation exempt from taxation. Every person engaged in the business of electronic gaming operation shall pay for each business location where such operations are conducted. An annual privilege license tax. It's not legal in the amount to be determined from time to time by council and listed in the schedule of fees and charges.

Mr. Hamlett asked for Mr. Bocook to look at the second page at the list of permitted uses. Mr. Osterhout interrupted and asked if that was Tarboro's ordinance. Mr. Hamlett stated yes. Mr. Osterhout stated that he objected for the record. He stated that he doesn't know if what Tarboro does is relevant to what Rocky Mount could or would have or should have done. And getting into Tarboro's ordonnances just because it says what you want it to say is not relevant to what Rocky Mount did or didn't do. Mr. Hamlett stated he respected that ruling, but his point is that Mr. Bocook said it would be unusual to prohibit it and I'm showing that it's not that unusual to prohibit it if you want to prohibit it. Mr. Bocook asked Mr. Hamlett if

he had anything from Rocky Mount's land development code where the city has listed a use and not where it's not permitted in any of the zoning districts? Mr. Hamlett stated that he was not answering questions, so he would respectfully not answer that question, but that does bring him to another question. Mr. Hamlett stated that Mr. Bocook had already acknowledged that the code had not changed since 2019. Mr. Bocook stated yes. Mr. Hamlett stated that and in 2019, it was a permitted use and in 2019 Certificate of Occupancy. Certifying that it is a permitted use were granted. Mr. Bocook stated that was one way to look at it and present it. Mr. Hamlett stated that when the Certificate of Occupancy says this is to certify that the use is in compliance with the land development code, then that is a certification by the city. Mr. Bocook stated that there was more to it. Mr. Hamlett stated that he didn't have any other questions.

Mr. Osterhout stated that he would just like to reconcile if a certificate of occupancy for the company, The Headquarters were in two different locations and were those locations in the same zoning district that this application is for. Mr. Bocook stated that he didn't believe so, he believes the previous properties are zoned B-2 and this one is zoned B-5.

Mr. Osterhout asked if there was anything about those two zoning districts that influenced Mr. Bocook's decision? Mr. Bocook stated no. Mr. Osterhout asked how did Mr. Bocook reconcile granting two CO's at two other locations if there's nothing substantially different with this zoning code. Mr. Bocook asked if it was his turn to give his presentation, as he can answer that and that he could answer that in detail with his presentation.

Mr. Osterhout asked Mr. Hamlett if he had any other witnesses? Mr. Hamlett stated yes. He called Joseph Bass to the stand. Mr. Osterhout swore Mr. Bass in. Mr. Bass stated his name for record. Joseph Bass, Jr. Mr. Hamlett asked Mr. Bass where did he live? Mr. Bass stated he lives in Spring Hope. Mr. Hamlett asked Mr. Bass if back on August the 20th, 2023, did he visit certain businesses in the city of Rocky Mount and if so, could he state where he visited. Mr. Bass stated yes, sir but he didn't know the names of all of them right off the top of his head. He stated that he went to Reel It In, Taps, No Limit, something technologies up behind the car wash, and then an arcade that is over by, he thinks, Rocky Mount Motors.

Mr. Hamlett stated that Mr. Bass signed an affidavit testifying under oath to where he visited and asked Mr. Bass if that affidavit would help him to explain in more detail what you did? Mr. Bass stated that he knew what he did. Mr. Hamlett stated but as far as the exact locations, could you please refer to the affidavit. Mr. Bass stated that referring to paragraph two of the affidavit, on the evening of Sunday, August the 20th, 2023, he personally visited the locations of the following businesses in Rocky Mount, North Carolina, and a video of me at each location was made holding the weekend edition of the Rocky Mount Telegram, dated August 19th through the 21st, 2023, he went by Reel It In at 570 South Wesleyan Boulevard, No Limit at 412 Gold Rock Road, Taps 901 North Wesleyan Boulevard, S Technologies, 1268 Independence Boulevard, and Golden Suites at 2451 North Wesleyan Boulevard.

Mr. Hamlett stated that Mr. Bass mentioned that he was videoed at those locations, is that right? Mr. Bass stated yes, sir at each place. Mr. Hamlett stated that he would like at this point to play the video. Ms. Andelin played the videos submitted by Mr. Hamlett. Mr. Hamlett asked for Mr. Bass to identify himself and each location he was at. Mr. Bass stated that it was him and that he had visited Reel It In, S Technologies, Golden Sweepstakes,

No Limit. Mr. Hamlett asked Mr. Bass that when he went to No Limit, were there posters on the door and asked if he recorded what the poster said? Mr. Bass responded, yes, sir.

Mr. Osterhout interrupted and stated that he thinks the board has it and would like to speed it up. Mr. Osterhout asked for Mr. Bass to just state to the board what he did without the video, however the video can be introduced as evidence. Ms. Whitaker-Bailey asked if in the video did Mr. Bass have the newspaper up to reflect the date when he was there? Mr. Bass stated yes, ma'am it showed the date that I was there at each place.

Mr. Bass stated that at No Limit there were posters up indicating basically, Bring it in to Fish, they were having drawings for \$2,000 to give away \$400 drawings every hour from 1 p.m. to 3 a.m. And there was free food and that was at 412 Gold Rock Road.

Mr. Hamlett asked Mr. Bass if he had occasion to go to all of those locations again today? Mr. Bass stated that he went by each one of them today. Mr. Hamlett asked if they were still in operation? Mr. Bass stated that everybody was in operation. Mr. Hamlett asked if there was a new poster on the No Limit's door? Mr. Bass stated that at No Limit, we could all leave when we go and we can have baked spaghetti if you all would like to go over there. They're doing that tonight doing the same thing. Mr. Hamlett stated that was all the questions he had for Mr. Bass, but somebody else may have questions for Mr. Bass. Mr. Osterhout stated no, sir, thank you. Mr. Hamlett stated that he didn't have any other witnesses and that he would move at this point to enter, introduce into evidence all the exhibits that he had referred to, and at some point he will hand up what had not been distributed. Mr. Osterhout asked the board if anybody cared to see those exhibits. Mr. Moore asked Mr. Hamlett how long it would take for him to do that and if he was prepared to do that tonight, so that we can sit here and all of us can read your exhibits for another three hours. Mr. Hamlett responded if you like. Mr. Moore stated it was just a question. Mr. Osterhout asked if Mr. Hamlett had any more witnesses? Mr. Hamlett responded that he did not and that the appellant rests.

Mr. Bocook was sworn in. Mr. Osterhout stated that as it is standard with cases that come before the Board of Adjustment staff have prepared a report for presentation. Mr. Hamlett stated that he objected to any evidence that's being presented that does not come from the personal knowledge of this witness. Mr. Osterhout stated that Mr. Bocook could testify if he wanted to and could elaborate what's in the report that's coming from him. Mr. Hamlett stated that he would object to him saying what somebody else is saying. Mr. Osterhout stated that his objection was noted and it's overruled. Mr. Hamlett stated that he had to appeal to the full board for a ruling on that per statute. Mr. Osterhout asked what was his appeal? Mr. Hamlett stated that he was objecting to hearsay testimony. Mr. Osterhout stated that this is a quasi-judicial hearing. The rules of evidence are not strictly complied with. This is an informal hearing, and the hearsay is routinely allowed in these proceedings. Mr. Hamlett stated that it's not supposed to be, the statute is clear, that if he objects to the evidence, then it should be sustained, and it can come in if he doesn't object. Mr. Osterhout stated that he had overruled Mr. Hamlett's objection and that the objection is noted. Mr. Hamlett stated that he moved to appeal to the entire board and needed a ruling from each member. Mr. Osterhout asked did the board sustain his objection? Which means you allow his objection to hearsay, or do you overrule his objection, which means you'll allow hearsay? Mr. Tharin stated that he would be willing to go to a vote and cut off all witnesses. Mr. Osterhout stated that city staff still needed to give presentation. Mr. Osterhout asked all in favor to overrule the objection. Say yes, everyone on the board stated yes to overrule Mr. Hamlett's objection.

Mr. Bocook stated with respect to the appellant Royal Dane Holdings, LLC doing business as the headquarters, they have filed an appeal to staff's decision to deny issuance of a Certificate

of Certificate of Occupancy on the basis that the proposed use is not permitted within the city's Land Development Code, Section 503. The city's Section 502 of the Land Development Code does state that uses not specifically listed are prohibited if the director determines that the use does not fit with any of the listed use categories. Also, city code section 530 sets forth that no land or building may be used or occupied until a Certificate of Occupancy has been issued. Additionally, Land Development Code section 703 requires a CO to be issued when a change in existing use is proposed. Likewise, this section of the Land Development Code makes it unlawful to occupy a building without a valid certificate of occupancy, a certificate the City or Rocky Mount issues, a Certificate of Occupancy—we often refer to it as a CO for short—for a specific property address designated by parcel identification number. The code confirms that a specific property is safe to be occupied by a business or individual applicant and that the proposed use is permitted within the underlying zoning district. Again, as outlined in Land Development Code section 503, the code inspection consists of three separate inspections: building, fire, and zoning inspection. A CO is non-transferable, meaning that an individual or business must submit a new application for a CO if the business moves locations or occupies a new tenant space within the city of Rocky Mount. In this case, a Certificate of Occupancy application was submitted by a Royal Dane Holdings LLC to the City of Rocky Mount on May 30th, 2023, listing the proposed type of business as “pre paid [sic] phone service” at the proposed business address 2760 North Wesleyan Boulevard in Rocky Mount, the subject property. The subject property is zoned B-5CD, which is a conditional commercial services district with specific permitted uses and conditions detailed in city ordinance O-96-13 adopted by City Council in March of 1996, and I would like to submit Ordinance 96-13 to the record. City of Rocky Mount conducted an inspection of the subject property on June 2, 2023.

Mr. Hamlett stated that he objected, he didn't believe Mr. Bocook conducted the inspection and that he is not competent to testify about something he doesn't have personal knowledge of. This is a quasi-judicial proceeding. He's supposed to present evidence, sworn testimony based upon his personal knowledge. If he wasn't there, he has no personal knowledge, therefore, he was objecting again for the record. Mr. Moore stated that if he is a supervisor in charge of people or gets reports that would be necessary to do his job, the hearsay would be applicable, “Mr. Lawyer.” Mr. Hamlett stated that he would like to note for the record the hostility of one of the board members that had been directed at him. Mr. Osterhout stated that it was getting late. Mr. Hamlett stated obviously, that board member didn't want to be there and wonders why he's on the board if he doesn't want to be there and make a decision. Mr. Osterhout stated to all to just take a deep breath and to take a few minutes to kind of calm down. Mr. Osterhout stated that he was going to overrule Mr. Hamlett's objection. Mr. Hamlett stated that he didn't schedule this at 530 tonight, but it is a judicial proceeding, and I would like the people to take it serious. Mr. Osterhout reiterated that it is a quasi-judicial meeting and the rules of evidence and hearsay are not strictly observed and that the board will let him make his presentation and his report. He's a supervisor, and he's referring to a report in his business files.

Mr. Bocook continued with his presentation. The subject property failed the fire, zoning, and building inspection. The building contained non-compliant fire extinguishers and emergency lights in disrepair. There was not a minimum 36-inch clearance at all electrical panels and exit pathways. The city further determined that the actual proposed use of the subject property was to operate gaming and sweepstakes machines based on the interior layout and dialogue and demonstration with/from the proprietor. During the inspection the city

determined very little of the space was proposed to be used to sell phone cards or related accessories. The city informed the applicant of the above by letter dated June 22, 2023. The operation of a gaming and sweepstakes gambling facility violates North Carolina law.

Mr. Hamlett stated that he objected to Mr. Bocook telling the board what the law is in this state, that Mr. Bocook is not permitted to do that. Mr. Osterhout stated that Mr. Hamlett presented some case law and tried to tell the board what the law of the state was, and the board will let Mr. Bocook make the presentation. Mr. Osterhout stated that Mr. Hamlett's objection was overruled.

Mr. Bocook continued with his presentation. The proposed use also violates the Land Development Code as the operation of an Internet Cafe or a gaming and sweepstakes gambling facility is not a permitted use in this district or in any district in the city. Therefore, a Certificate of Occupancy could not be issued for the applicant. The City of Rocky Mount does not issue Certificates of Occupancy, authorizing the operation of a business utilizing internet-based sweepstakes and gaming machines based predominantly on chance as opposed to skill, judgment, and dexterity. Since the spring of 2022, Development Services staff has discouraged numerous inquirers from applying for a Certificate of Occupancy, informing the would-be proprietors that we do not allow the use in our jurisdiction. In spring of 2022, the Rocky Mount Police Department worked in concert to.

Mr. Hamlett stated that he objected to any evidence from the Rocky Mount Police Department through this witness. Mr. Osterhout stated that Mr. Hamlett's objection was overruled. Mr. Hamlett stated that he appealed that decision to the entire board. Mr. Tharin stated that he wanted to hear what staff had to say. Mr. Osterhout asked the entire board if they overruled or sustained to Mr. Hamlett's objection. The entire board unanimously overruled Mr. Hamlett's objection. Mr. Hamlett stated that he was glad that there's a court that's going to review this when this is over. Mr. Tharin stated that was all Mr. Hamlett was doing, was setting us up for some sort of appeal and that he knows he has lost this and was dragging out as many details as he could. Mr. Tharin made a motion that the board vote. Mr. Hamlett stated that he would like the record to reflect that before the evidence has been entered one of the members had already voted against him, so thank you, I think I have won my appeal. Mr. Osterhout stated that everybody needed to calm down. The city needs to make its presentation, and put its evidence in. Mr. Hamlett stated that, the man is standing here telling that the city doesn't allow this in this jurisdiction, when all of us can get in my car and go out there tonight. Mr. Osterhout stated to Mr. Hamlett that he understood and that he had made his points and it was on record and to let Mr. Bocook finish his presentation.

Mr. Bocook continued with his presentation. In spring of 2022, the Rocky Mount Police Department worked in concert with the district attorney's office conducting enforcement based on a North Carolina Supreme Court ruling clarifying that the games machines conflicted with the state's gambling laws. Rocky Mount Police Department ended up acting at approximately 25 locations, finding most of them possessed illegal games. In 2019, Development Services began granting Certificates of Occupancy at locations that were obviously sweepstakes parlors. At the time, the city's legal counsel advised granting a CO if there were some retail activity at the location, and to treat the inspection process the same as any other use. This policy came about after a court settlement with the city and a sweepstakes owner. This led to the spread of sweepstakes facilities throughout Rocky Mount. Again, in the time between 2019 and 2022, there were there about 25 locations in operation. Between

2016 and 2019, Development Services would coordinate with the police department to have their officers present at CO inspections of suspected gaming and sweepstakes gambling facilities to inspect the games machines to determine their lawfulness. This was usually effective. Even so, there were some locations that evaded the city's efforts to prevent them from operating here in Rocky Mount. Mr. Osterhout interrupted and stated that the focus needed to be why we were here and not 2016-2019. Mr. Bocook stated that there was evidence that was presented from times that he referenced. Mr. Bocook stated that he wanted to have a full timeline of how the city has treated these land uses respectfully and continued. In the spring of 2010, Rocky Mount amended the Land Development Code to adopt Internet Cafes as a land use permitted in certain commercial zoning districts. In the years following across the state, several court rulings were issued questioning the legality of gaming and sweepstakes gambling facilities. Ultimately, in 2016, Internet Cafes were removed from the city's Land Development Code, thereby no longer permitting the use in Rocky Mount. So, the operation of the subject property as a gaming and sweepstakes gambling business is not permitted under the City Code or the Land Development Code. City properly denied the application submitted as the use is not permitted by the applicable zoning ordinance nor the Land Development Code pursuant to Land Development Code Section 510, an aggrieved party may file an appeal from a zoning related decision to the Board of Adjustment and Royal Dane Holdings LLC filed its notice of appeal to the board on July 19th, 2023. Again, the purpose and intent of the Land Development Code is to promote public health, safety, convenience, and welfare. This is accomplished by encouraging the most desirable use of the land and density of population in all areas of the city, and by encouraging the most appropriate use and occupancy of buildings and by promoting good land use planning. The development code clearly provides for these items. Upholding staff's decision in this case accounts for the best interests of the community and would be consistent with the spirit and interests of the city's Land Development Code. The Land Development Code, Section 510 sets forth the standards for handling the appeal of an administrative officer's decision. Mr. Bocook stated that he would be happy to answer any questions anyone may have. He also called on zoning officer Shamir Mitchell, who conducted the inspection on behalf of the planning division. Mr. Osterhout asked if anyone had any questions for Mr. Bocook. Mr. Hamlett asked if Mr. Bocook was subject to cross examination based on the stuff that he had just presented into the record. Mr. Osterhout stated that he would allow Mr. Hamlett to ask his questions but to be brief as he had asked a bunch of questions for an hour and a half. Mr. Hamlett asked that the city of Rocky Mount does not grant certificates of occupancy for sweepstakes businesses? Correct. Mr. Bocook responded, yes. Mr. Hamlett asked Mr. Bocook if he recalled him showing him multiple Certificates of Occupancy that were granted for sweepstakes businesses? Mr. Osterhout interrupted and stated that this had already been addressed and these questions had already been asked, we've already asked these questions and that he was just repeating.

Mr. Bocook stated thank you for your questions, Mr. Hamlett. Mr. Bocook stated that Mr. Hamlett was referring to eight locations in the city that he suspects are currently operating as sweepstakes. Mr. Bocook stated to bear with him, he wouldn't be long. Of the eight, four of them were granted their Certificate of Occupancy in the time that we were instructed to issue those CO's for retail and gaming combination uses. There are two who don't have a valid Certificate of Occupancy at all, no CO's. And then there was one in November 2022 and another one June 2023 that did not give any indication that they would be doing any sweepstakes, again, I have staff here who can attest to that. Ms. Whitaker-Bailey asked for clarity of the dates.

Mr. Osterhout asked Mr. Bocook if the division was doing anything to eradicate that or shutting those businesses down if they're not complying? Mr. Bocook stated that they would like to, yes. Ms. Whitaker-Bailey asked if those actions would be recorded for the ones that are now indicating sweepstakes that the city is not familiar with. Mr. Bocook stated that sweepstakes aren't allowed in Rocky Mount, and we don't want them operating here. That's correct. Mr. Osterhout asked for clarity on how does staff reconcile giving this business two CO's and not another CO if there's nothing substantial in the zoning districts? Mr. Bocook stated that the division was advised by the city's legal counsel, as policy, to issue the certificates during the time period from 2019 through the spring of 2022. Mr. Osterhout asked if the division has been directed otherwise now since spring of 2022? Mr. Bocook stated, yes. Mr. Hamlett objected and moved to strike. Mr. Osterhout asked if there were any questions? Nothing further.

Mr. Shamir Mitchell, Zoning Officer for the city of Rocky Mount was sworn in. Mr. Mitchell stated that on the day that he went to 2760 N Wesleyan Blvd. Mr. Osterhout asked whose business that is and is that the one here today? Mr. Mitchell stated yes. Mr. Mitchell stated that he took a picture of him stating that it was a cell phone business, but he didn't see any cell phones, it was gaming machines in there. Mr. Hamlett stated that he was going to object to Mr. Mitchell stating that somebody said something. Mr. Mitchell stated that he was there. Mr. Hamlett stated that he understood, but there's no indication of who said what. So, there's a lack of foundation for testifying to something somebody else said. Mr. Mitchell stated that he got a picture of it. Mr. Osterhout asked if Mr. Mitchell talked to somebody? Mr. Mitchell stated yes, the man told me that it's going to be used for. Mr. Hamlett objected to what the man told Mr. Mitchell. Mr. Osterhout asked Mr. Mitchell if he knew the man's name. Mr. Mitchell stated that he did not. Mr. Bocook asked if the man was present. Mr. Mitchell stated that no, he was not that he's operating the. Mr. Hamlett objected stating that it was hearsay. Mr. Osterhout stated that it was overruled. Mr. Mitchell stated that he wanted to present something that states that it is a sweepstake. Mr. Osterhout asked if it was somebody that says a sweepstakes? Mr. Mitchell stated, yes, sir. Mr. Osterhout asked Mr. Mitchell if he took the video? Mr. Mitchell stated, yes sir, I did. Mr. Osterhout asked when did Mr. Mitchell take the video? Mr. Mitchell stated when he went out for the CO inspection. Mr. Osterhout asked what was the date? Mr. Mitchell stated that he did not know the date and asked Mr. Bocook for the date. Mr. Osterhout asked if it was in the location? Mr. Mitchell stated yes sir, the man was at the location, but he did not have him in the picture. Mr. Osterhout asked if he could be heard in the background talking? Mr. Mitchell stated no sir. Mr. Osterhout stated that there was no dialogue on what was being presented that it was just a picture. Mr. Mitchell stated yes sir. Ms. Whitaker Bailey asked if the man identified himself as the owner or manager? Mr. Mitchell stated that he was just a representative for the sweepstakes or whatever it is. Mr. Mitchell stated that one of the pictures is of a QR code that will take you straight to a link where you can play the fish table, but it is written on the application that the location was going to be used for cell phone minutes. On the QR code it takes you to a sweepstakes, gambling stuff. Mr. Mitchell presented it to the board for review.

Mr. Osterhout asked for Mr. Mitchell to describe as carefully as he could for the record what he was presenting to the board for review and to also share it with Mr. Hamlett? Mr. Mitchell stated that when you scan the QR code, it pops up little games where you can win money, sweepstakes type. Mr. Osterhout asked did they have a name or a title. Mr. Mitchell stated that it did not, that all games have different titles. Mr. Osterhout stated that he was trying to

kind of be clear about what's in that picture on Mr. Mitchell's phone and asked if the games on that were under the QR have titles or anything. Mr. Mitchell stated that some of them did like Crazy Scientist, African King, just different names for each of them, that's just all types of games that you can play. Ms. Whitaker-Bailey asked where was the QR code located. Mr. Mitchell stated it was on the window at the location.

Mr. Osterhout asked if there were any questions for Mr. Mitchell? Mr. Bocook asked Mr. Mitchell, if in his job as zoning officer, has he been requested or has he received calls from people, walk-ins, who wanted to operate sweepstakes in Rocky Mount? Mr. Mitchell stated yes. Mr. Bocook asked what has been his response to those? Mr. Mitchell stated that it's not allowed.

Mr. Hamlett asked Mr. Mitchell if he knew why it is not allowed? Mr. Mitchell stated, it's not permitted. Mr. Hamlett asked why is it not permitted? Mr. Mitchell stated it's not in the Land Development Code. Mr. Hamlett asked if Mr. Mitchell realized under the same code it had been permitted in the past? Mr. Mitchell stated no, he wasn't in the division at that time, therefore he was not aware of that. Mr. Hamlett asked Mr. Mitchell if he could articulate the difference between a legal sweepstakes and an illegal sweepstakes? Mr. Mitchell stated that no, he can't. Mr. Hamlett stated that he did not have any other questions.

Mr. Osterhout asked if there was any more evidence from the city? Mr. Tharin asked Mr. Bocook if he could speak a little bit about the fire portion of the inspection relating to the crawl space, and it seems like there are things other than the sweepstakes issue that disqualified the CO. Mr. Bocook stated as he mentioned, there's three components to the Certificate of Occupancy in addition to failing the zoning portion. The building inspector failed it on due to all emergency lights not functioning and 36-inch clearance at the electrical panel not being maintained. The fire inspection was failed due to non-compliant fire extinguishers and emergency egress lights. The exit signs not being illuminated per requirements of the respective building and fire codes. Mr. Hamlett asked wasn't it true that those conditions were rectified later the same day? Mr. Bocook stated that they could have been, that they seemed minor. Mr. Hamlett asked if it was true that his client called and asked for a reinspection based upon what he was told needed to be done and the city would not go out and reinspect because he said it was a sweepstakes? Mr. Bocook stated yes. Mr. Moore asked when or exactly when did the city's position change on sweepstakes? Mr. Bocook stated that he did not know the exact date, but it is tied to a ruling that was issued by the state Supreme Court saying that sweepstakes games were illegal. Mr. Moore asked what month of what year did you start denying things that were sweepstakes? Mr. Bocook stated that he did not recall the exact month, but it is tied to the date that ruling was issued. Mr. Moore stated that of the eight that our esteemed attorney brought to light that sweepstakes are in operation and a witness has testified that he went and visited, you said that two were issued CO's without Development Services department's knowledge that there would be sweepstakes that would be occurring. Mr. Bocook stated that was correct. Mr. Moore asked who, if that's the case, whose job is it to eliminate those operations if sweepstakes are illegal? Mr. Bocook stated that it is the city, city staff. Mr. Moore asked within the city infrastructures whose job is that? Mr. Bocook stated Development Services Department, in combination with the Utilities Business Services Center and the Rocky Mount Police Department. Mr. Moore stated so it's just not one divisions job to go see those businesses are shut down. Mr. Bocook stated that was correct.

Mr. Osterhout asked if there were any further witnesses, any questions, or final remarks. Mr. Hamlett stated that he would like to make final remarks. He stated that he came to this hearing hopeful that his client would get a fair hearing. He stated that he is not so hopeful now. Based upon the response of a couple of the board members and how Mr. Bocook stood at table and told the board that Rocky Mount does not permit what I can leave here in five minutes and do and that Rocky Mount does not grant Certificate of Occupancies for sweepstakes. When I have shown you half a dozen that they have, it just it makes no sense. He stated that Mr. Bocook can't tell you the difference between a legal sweepstakes and an illegal sweepstakes. Yet, he says all sweepstakes are prohibited and they're clearly not. I would appeal to you as fair-minded individuals, if nothing else, the fact that right now, as I'm talking to you, the same business that my client wants to legally be in is going on and the city knows it, and it's taking absolutely no effort to shut them down. I asked him to bring to court tonight letters where he has written these businesses and said, hey, we hear you're in violation of your CO. But no such letters have been issued. The city is picking and choosing who they're going to let do this business. My client is on the wrong end, and I would ask you to grant the Certificate of Occupancy.

Mr. Osterhout moved to close the hearing. Mr. Osterhout asked for all in favor to close the hearing do so by saying yes. All those opposing say no. The board voted unanimously to close the hearing.

Mr. Osterhout asked if there was any discussion among the board? Mr. Tharin stated that he was hearing a couple of things. The first thing is the argument of there are people selling drugs down on the street, that doesn't mean that the city's allowing it, and also, he doesn't know that we've had the point addressed by the appellant of how our code allows this. It seems like that's really the basic issue. The issue to him is not whether they can do it, so I should be able to do it. The issue to him is, is, you know, what's the rule and really following the rules. I mean, that's the way he is looking at it.

Mr. Moore stated that a lot of what we've heard tonight is no argument about if there are eight places, if there are twenty places, whatever the reality is, it is. But, you know, things can change when the policy changed. And this man was directed, if I understand things correctly, to change the policy. That's what it sounds like to him. He stated he thought that's pretty clear cut. So, if the policy has changed, then the code is not appropriate. If it's legal in the state of North Carolina. He doesn't know. That's not his job on this board to know that he is not an attorney. He is not a superior court judge. He is not an appeals court judge. And he is not legal aid. Therefore, he is following what he thinks is rational thought, that if the policy changed and the man that was directed to it was directed to have the policy changed. This is the result of the policy change. Not any of these individuals' efforts or efforts to deny these two or three people, the lawyer, and the two clients. Nobody maliciously denied their right to have a sweepstakes place.

Mr. Tharin stated that he fails to see how they would be singled out. Mr. Osterhout stated the thing that concerns him about this is that Mr. Bocook can't say which games are legal and which games are illegal. And until we're clear about that, it's sort of a random, arbitrary decision to some extent to say they're all illegal when some might be very legal. He stated that he understands the argument is, well, why did you stop me for speeding when there's eight other guys out here speeding? It didn't stop. Now it doesn't matter. You were still speeding. The fact that we're not clear on what legal games are and illegal games are, and for

these guys to get a CO to other two locations and there's nothing substantially different from one zoning district to the next. And one CO clearly says it's gaming and what they're doing is no different from what they're doing in the next. I'm not sure. He stated he is not sure that just because they changed the policy doesn't mean they're right. He thinks there's still a question about what's legal and illegal on these games. Mr. Moore stated that they are not legal experts. Mr. Osterhout agreed and stated that the witness said he couldn't tell the difference. There just needs to be clarity. Mr. Moore stated that he would like to point out that the city didn't bother to have an attorney coach their employees. We're not naive up here. You know, you've got a skilled lawyer over there who makes a living doing this, and you've got a guy that's demonstrating how they—may have worked for the city for ten or fifteen years—are not used to being interrogated. Now, if that's life, so be it.

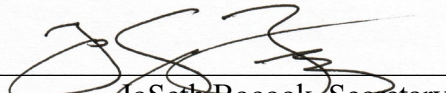
Mr. Osterhout asked if there were any more comments? There were none. Mr. Tharin seconded the motion. Mr. Osterhout stated all in favor indicate by saying yes. All in favor say no. All board members indicated yes to close the hearing and to move forward with a vote. Mr. Osterhout stated that he wanted to be clear. He stated that this is an appeal from the city decision. Yes. A yes vote means you're allowing the appellant's appeal. No. A no vote means you're upholding the city's decision. Mr. Osterhout asked if everyone was clear and asked for a roll call vote.

Board Action: The Board voted with one (1) [Mr. Osterhout] voting in favor of the appeal and five (5) [Ms. Davison-Cobb, Mr. Moore, Ms. Parker, Mr. Tharin, and Ms. Whitaker-Bailey] voting in opposition. The appeal was denied.

Mr. Osterhout stated that the city's decision has been upheld, and the appellant's appeal was denied. Mr. Osterhout asked Mr. Hamlett if he wanted his exhibits in the record. Mr. Hamlett stated yes, he did. Mr. Osterhout stated that Mr. Hamlett's exhibits have been identified and are admitted into the record. Mr. Hamlett asked if he would get a written order. Mr. Osterhout stated yes however the board is going to need to make findings of fact. The board has ten days to submit the findings of fact.

7. Review of Requests for Interpretations
There were no requests for interpretations.
8. Unfinished Business
There was no unfinished business.
9. New Business
 - a. There were no items from the Board.
 - b. There were no items from the Secretary.
10. There being no further business Mr. Osterhout adjourned the meeting at 7:46p.m.

Respectfully submitted,
Mark Osterhout


JoSeth Bocoock, Secretary
Rocky Mount Board of Adjustment

Variance Requests

Requested Action:	To allow a variation from maximum off-street parking requirements
Location:	Cobbs Corner Drive [PIN 385113127596]
Existing Land Use:	Commercial (Off-Street Parking)
Proposed Land Use:	Commercial (Medical Care Facility)
Zoning:	B-2CD, Conditional Commercial Corridor District
Applicable Regulations:	LDC Sec. 708: Off-street Parking and Loading
Property Owner:	NC Land LLLP
Applicant:	2Z Development
Case Manager:	Bernetta Smith, Planner
Voting Representatives:	City Members

ANALYSIS:

a) Land uses: Subject site and vicinity

The subject site is a single parcel, having tax parcel identification number (PIN) 385113127596, with an area of approximately 0.89 acres located on Cobb Corners Drive. The property is zoned B-2CD, conditional commercial corridor district. The subject site is currently developed as off-street parking in support of the surrounding commercial uses. To the north, east and south of the subject site are parcels zoned B-2CD. To the west are parcels zoned B-2CD, B-2 (commercial corridor district) and R-6 (medium-density single-family residential district).

b) Background

The appellant is requesting a variance from the city's off-street parking and loading requirements. The city's Land Development Code (LDC) Section 708. D.1 states for nonresidential uses, the maximum amount of automobile parking spaces allowed shall be no more than 20-percent above the minimum requirement unless the additional parking is balanced with a green roof or pervious pavement resulting in no net increase in nutrient runoff.

The applicant is requesting a variance to allow parking spaces more than twenty (20) percent above the minimum requirement. The proposed medical care facility has a building area of 3,000 square feet. LDC Sec. 708. D. Table 7-4 sets forth a medical clinic is required one parking space per 200 sq. ft. of building area, establishing 15 parking spaces as the minimum number of required parking spaces. The applicant has requested 36 parking spaces. The maximum number of parking spaces allowed is 18.

c) Conformance with Section 509. Zoning Variance Provisions

In approving the permit, the Board of Adjustment shall find that all the following conditions exist:

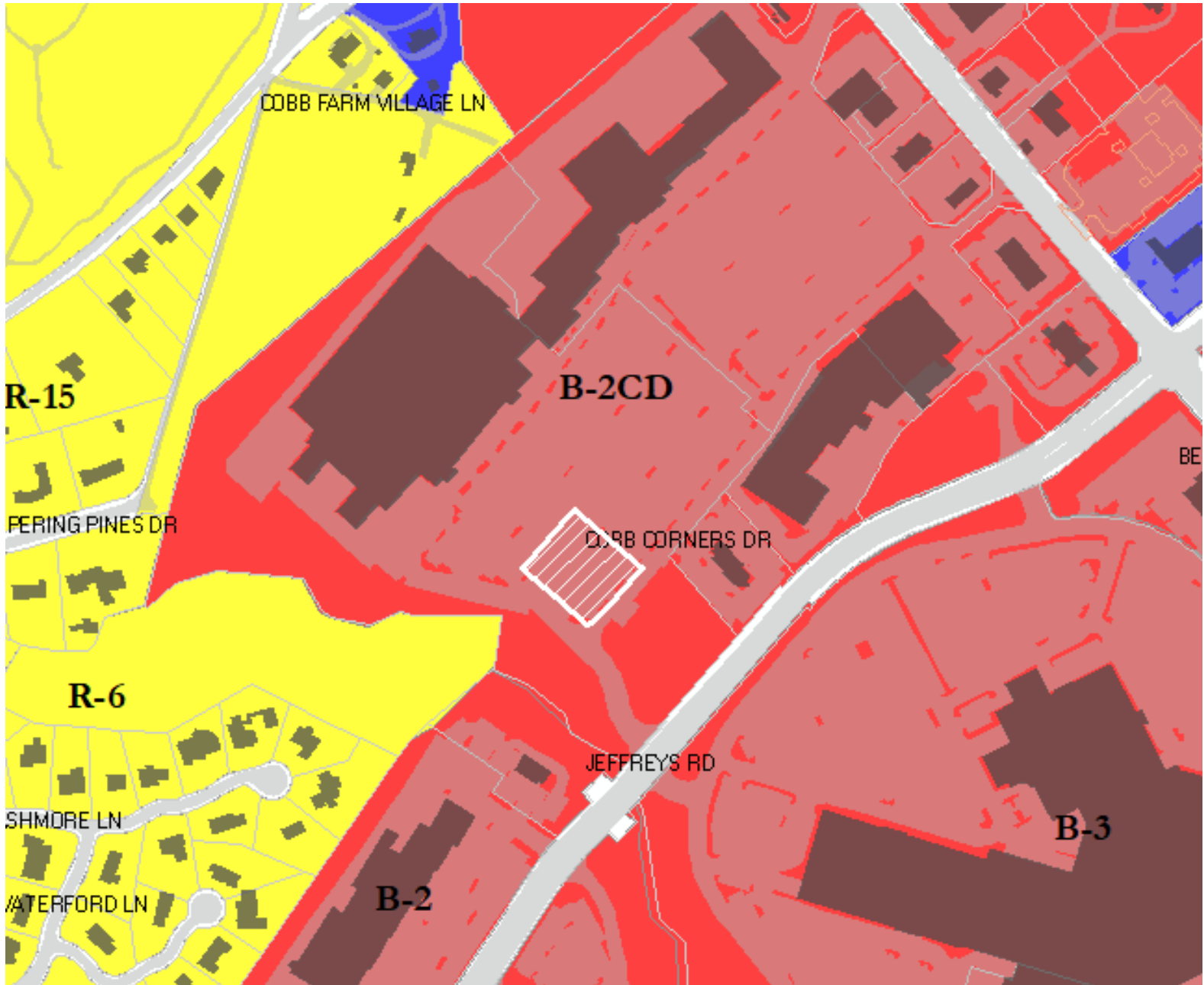
1. The requested variance arises from conditions that are unique to the subject property, that are not ordinarily found in the same zoning district and that are not a result of the owner's intentional action.
2. The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.

3. The strict application of the applicable standards will constitute an unnecessary physical hardship (not economic hardship) or practical difficulty because the property cannot be used for an otherwise allowed use without coming into conflict with applicable site development standards.
4. The variance is the minimum action necessary to alleviate the hardship or practical difficulty and observes the spirit of this LDC; and
5. The variance desired will not adversely affect the public health, safety or general welfare or impair the purposes or intent of this LDC or the comprehensive plan.

5.1– Variance Request # 10-03-23-03

Zoning Map

Cobb Corner Drive



ROCKY MOUNT
DEVELOPMENT SERVICES
THE CENTER OF IT ALL



-  Subject Property
-  Residential
-  Transitional
-  Commercial
-  Industrial

5.1– Variance Request # 10-03-23-03
Aerial Image & Written Notice Map

Cobb Corners Drive



-  Subject Property
-  Property Owners Mailed Notice

Cobb Corners Drive Walmart Parking Lot – Property Owner(s) Notified

5.1

Levine Investments Limited Partnership
5200 Buffington Rd
Atlanta GA 30349

NC Land LLLP
270 West New England Ave
Winter Park FL 32789

TRL LLC H F Rocky Mount LLC
Po Box 1139
Watkinsville GA 30677

MDC NC2 LP
Po Box 8050
Bentonville AR 72716-0555

Boddie Noell Enterprises INC
Po Box 1908
Rocky Mount NC 27802-1908



ROCKY MOUNT
DEVELOPMENT SERVICES
THE CENTER OF IT ALL

September 21, 2023

Reference: Request for Variance

Dear Citizen:

The City has received a request for a variance located at Cobbs Corners Drive [Parcel# 385113127596]. You are receiving this letter because, according to tax records, you are the owner of an adjoining or confronting property.

The request will be considered by the City of Rocky Mount Board of Adjustment at its meeting on Tuesday, October 3, at 5:30 p.m. The meeting will be conducted in person in the City Council Chamber located on the third floor of the Frederick E. Turnage Municipal Building (City Hall). This meeting is open to the public; if interested, you are welcome to attend. At this time, you will be granted an opportunity to present testimony to the board regarding the request on the subject site.

The Board of Adjustment is a quasi-judicial board with the authority to hear and make decisions concerning requests for special use permits and variances. Members of the Board of Adjustment are appointed by the elected officials of the City of Rocky Mount, Nash County, and Edgecombe County.

If you would like additional details about the case, please feel free to contact me directly at (252) 972-1102.

Sincerely,

Bernetta Smith
Planner

Notice of Request to Board of Adjustment for Variance

ROCKY MOUNT
DEVELOPMENT SERVICES
THE CENTER OF T.A.L.



Street address of property: 1251 Cobb Corners Dr.		
Parcel Identification Number (PIN): 385113127596		
Property Owner(s): NC Land LLLP		
Appellant Name: ZZ Development		Daytime Telephone: 614-296-0184
Mailing Address: 500 Trillium Dr.	City, State: Galloway, OH	Zip Code: 43119
Appellant Email Address: mzelnik@zelnikrealty.com		
Lot Dimensions: Width <u>186.02'</u>	Length <u>206.83'</u>	Total Area in Sq.Ft. <u>38,719</u>
Nature of Request: Please see attached.		

A fee of \$250.00 must be submitted with this application to the Department of Development Services so your request may be placed on the agenda

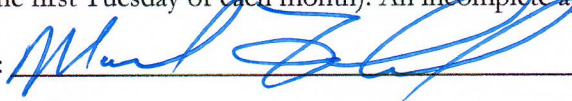
One (1) copy of the sketch plan drawn to scale on an 8.5" x 11" sheet is required to be submitted with the application.

NOTICE OF RIGHT TO HAVE MATERIALS FORWARDED TO MEMBERS OF ROCKY MOUNT BOARD OF ADJUSTMENT

Prior to each meeting of the Board of Adjustment, materials pertaining to each appeal request for a variance from the zoning ordinance, request for a special use permit, request for interpretation, and all other matters scheduled for hearing are forwarded to individual members of the Board of Adjustment for their review. If you are scheduled to appear before the Board, you are entitled to have forwarded to Members of the Board any written materials pertaining to your case, which can be duplicated and forwarded by U.S. Mail. To have your materials included in the packet of information, you must deliver the materials to the Department of Development Services at the same time the application is submitted. Materials must be reproduced on 8.5x11 sheets, except for surveys and maps.

You are reminded that you are not entitled to contact any Board of Adjustment Member in any attempt to discuss your case prior to the Board's scheduled meeting. If your written materials are not received by the date and time prior to the hearing, you will be deemed to have waived your right to have written materials of your choosing forwarded to Board Members.

I understand that all requests must be submitted *twenty-one (21) working days prior to the meeting date* of the Board of Adjustment (meetings are held the first Tuesday of each month). An incomplete application cannot be accepted.

Applicant Signature:  Date: 9/8/23

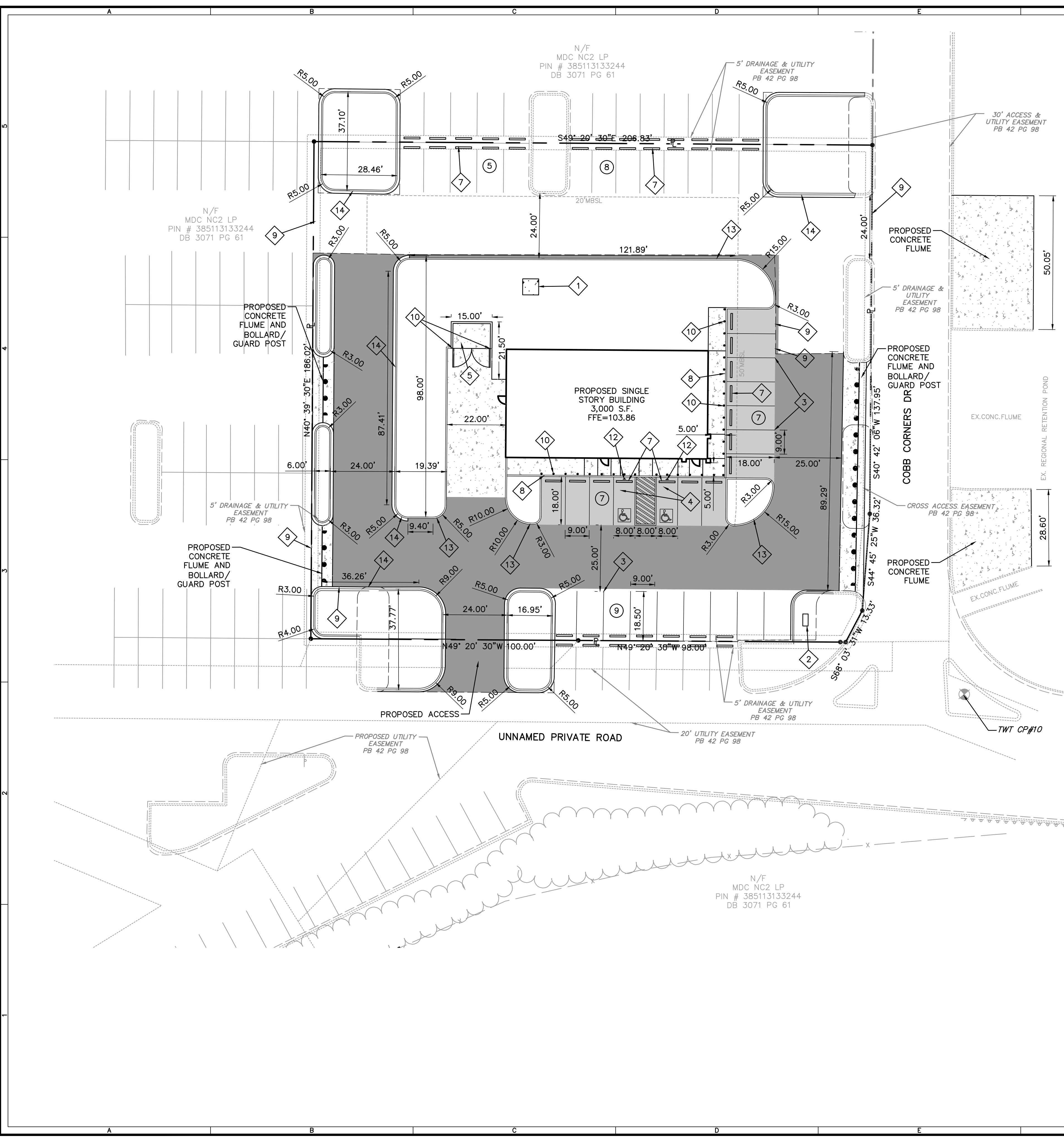
(Do not write below this line. For office use only.)

Application Number: _____	Date Received: _____	Staff Initials: _____
Fee of \$ _____ paid on _____		Staff Initials _____

Revised 12/19

We are requesting a variance to the allowed parking spaces that is over 20% of the city's minimum parking standards. The minimum standard is 13 and we are requesting 34. The current land use is part of Walmart's parking lot which is impervious asphalt. No additional green space would be used to provide these additional parking spaces. This would additionally allow Carolina Quickcare patients to wait in their car for treatment thereby decreasing the risk of viral spread in the event of a return to pandemic conditions.

In conjunction with our request for this increase in allowed parking spaces, we are also requesting a variance from the requirement to screen all vehicular use areas by means of 3 ft evergreens. To install areas for these screenings will alter the alignment of the parking stalls and drive aisles currently in use by Walmart customers, as well as the flow of our customer traffic into Walmart's drive aisle. We would, instead, ask to add landscape islands which align with the current traffic flow as shown on our landscape plan. We feel that aligning traffic flow with the existing parking conditions will create the safest environment for traffic in all directions. Additionally, our current plan is designed to work with the island and curbing already in place to help direct the water through our site and into the flumes where it ultimately flows to the retention pond. Shifting the parking and building to accommodate the screening will impede the water flow and cause ponding in the parking and drive aisles.



SITE PLAN LEGEND

- BOUNDARY LINE
- SETBACK LIMITS
- RIGHT-OF-WAY
- PROPOSED FULL-DEPTH SAWCUT LOCATION
- PARKING COUNT
- EXISTING TREE LINE
- PROPOSED HEAVY DUTY ASPHALT
- PROPOSED LIGHT DUTY ASPHALT
- PROPOSED CONCRETE

SITE WORK GENERAL NOTES AND SPECIFICATIONS

- THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING OR VERIFYING THAT ALL PERMITS AND APPROVALS ARE OBTAINED FROM THE RESPECTIVE TOWNSHIP, CITY/TOWN, COUNTY, AND STATE AGENCIES PRIOR TO STARTING CONSTRUCTION.
- IT SHALL BE THE CONTRACTORS RESPONSIBILITY TO DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES IN THE VICINITY OF THE CONSTRUCTION AREA PRIOR TO STARTING CONSTRUCTION.
- IT SHALL BE THE CONTRACTORS RESPONSIBILITY FOR NOTIFICATION AND COORDINATION OF ALL CONSTRUCTION WITHIN THE RESPECTIVE UTILITY COMPANIES.
- IT SHALL BE THE RESPONSIBILITY OF THE DEVELOPER AND CONTRACTOR TO MAINTAIN QUALITY CONTROL THROUGHOUT THE PROJECT, FAILURE TO DO SO MAY RESULT IN REMOVAL AND REPLACEMENT OF THE DEFECTIVE WORK. IT IS RECOMMENDED THAT THE DEVELOPER HAVE A QUALIFIED INSPECTOR ON THE JOB SITE AT ALL TIMES DURING CONSTRUCTION.
- IT IS ESSENTIAL THAT THE WORK TO BE DONE IN CONJUNCTION WITH THIS PROJECT SHALL BE INSTALLED ACCORDING TO THESE SPECIFICATIONS. THE ENGINEER WILL BE REQUIRED TO CERTIFY TO CERTAIN PORTIONS OF THIS PROJECT UPON COMPLETION. THEREFORE IT IS NECESSARY TO OBTAIN APPROVAL AND ACCEPTANCE BY THE CITY THAT CONSTRUCTION WAS DONE IN COMPLIANCE WITH THESE PLANS AND SPECIFICATIONS.
- ALL QUANTITIES GIVEN ON THE PRINTS, VERBALLY, OR IN THE SCOPE OF WORK SECTION ARE ESTIMATES AND SHALL BE CONFIRMED BY THE BIDDING CONTRACTOR.
- EXCAVATIONS EXCEEDING TWENTY (20) FEET IN DEPTH REQUIRE THE DESIGN OF A TRENCH SAFETY SYSTEM BY A REGISTERED PROFESSIONAL ENGINEER.
- HANDICAP SIGN TO BE LOCATED ON BUILDING UNLESS REQUIRED BY LOCAL MUNICIPAL CODE.

SITE DATA

ADDRESS: 1251 COBB CORNERS RD PARKING: MEDICAL CLINIC SERVICES
TAX DISTRICT/PARCEL: 7989-05-29-0625/141549 REQUIRED MINIMUM SPACES: 1 SPACE / 200 SQ. FT. = 3,000 / 200 = 15
PIN: 3851131217596 EXISTING PARKING SPACES = 122
SITE AREA: 0.89 AC. TOTAL PROPOSED STANDARD PARKING SPACES = 34
TOTAL PROPOSED ADA PARKING SPACES = 2
TOTAL PARKING SPACES = 36

ZONING: BUSINESS HIGHWAY DISTRICT

IMPERVIOUS AREA: EXISTING = 0.86 AC. PROPOSED = 0.70 AC.

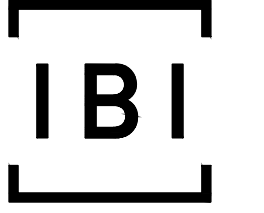
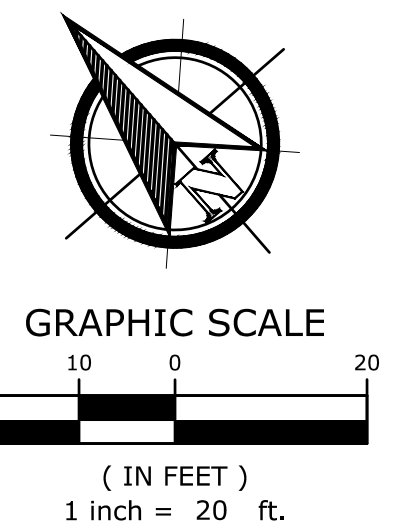
BUILDING AREA: 3,000 S.F.
SETBACKS: REAR - 20'
FRONT - 50'
SIDE - 20'

SITE PLAN NOTES

- ALL RADII AND STREET DIMENSIONS SHALL BE MEASURED TO FACE OF CURB OR FACE OF INTEGRAL CURB AND WALK. ALL DIMENSIONS TO THE BUILDING ARE TO THE OUTSIDE OF BUILDING FOUNDATION WALL.
- BEARINGS, DIMENSIONS, AND EASEMENTS ARE SHOWN FOR REFERENCE ONLY. SEE RECORD SURVEYS AND PLATS FOR EXACT INFORMATION.
- SEE ARCHITECTURAL PLANS FOR DETAILS OF BUILDINGS AND BUILDING DIMENSIONS.
- MAXIMUM CROSS SLOPE ON SIDEWALK IS 1/4" PER FOOT.
- ANY MINOR DEVIATION IN THE PLAN SHALL REQUIRE APPROVAL OF THE ADMINISTRATOR AND ANY MAJOR DEVIATION SHALL REQUIRE APPROVAL OF THE PROPER APPROVING BODY.

SITE KEYNOTE LEGEND

- | | |
|--|---|
| 1 PROPOSED CONCRETE TRANSFORMER PAD | 9 PROPOSED EDGE OF PAVEMENT |
| 2 PROPOSED MONUMENT SIGN | 10 PROPOSED BOLLARD, SEE DETAILS SHEET C004 |
| 3 PROPOSED PARKING STALL STRIPING | 11 PROPOSED LIGHT POLE, REFER TO MEP ELECTRIC DRAWINGS FOR SITE LIGHT POLE INFORMATION AND PHOTOMETRIC DATA |
| 4 PROPOSED ADA PARKING STALLS, SEE DETAILS ON SHEET C004 | 12 PROPOSED ADA PARKING SIGN, SEE DETAILS SHEET C004 |
| 5 PROPOSED HEAVY DUTY CONCRETE DUMPSTER PAD | 13 PROPOSED CONCRETE STRAIGHT CURB. SEE DETAILS SHEET C004 |
| 6 PROPOSED DUMPSTER ENCLOSURE, SEE ARCHITECTURAL PLANS FOR DETAILS | 14 PROPOSED 1'-6" CURB AND GUTTER. SEE DETAILS SHEET C005 |
| 7 PROPOSED CONCRETE PARKING BLOCK. SEE DETAIL SHEET C004 | 15 PROPOSED CURB AND GUTTER TO MEET EXISTING CURB AND GUTTER WIDTH AND GRADE |
| 8 PROPOSED INTEGRAL CURB AND WALK, SEE DETAILS SHEET C004 | |



IBI GROUP
8101 N High Street
Suite 100
Columbus OH 43235
tele 614 818 4900
fax 614 818 4902
Contact: Mike Murray ext: 2032
ibigroup.com

REVISION:

SUBMISSION:

- PRELIMINARY ENGINEERING SET
- AGENCY REVIEW SET
- CONSTRUCTION DOCUMENT SET
- AS-BUILT DOCUMENT SET

STAMP:

NOT FOR CONSTRUCTION

ROCKY MOUNT, NC 27804

CAROLINA QUICKCARE

1251 COBB CORNERS DRIVE

DESIGN	DRAFT	CHECK
LMS	MA	MSM

IBI No.: 142251

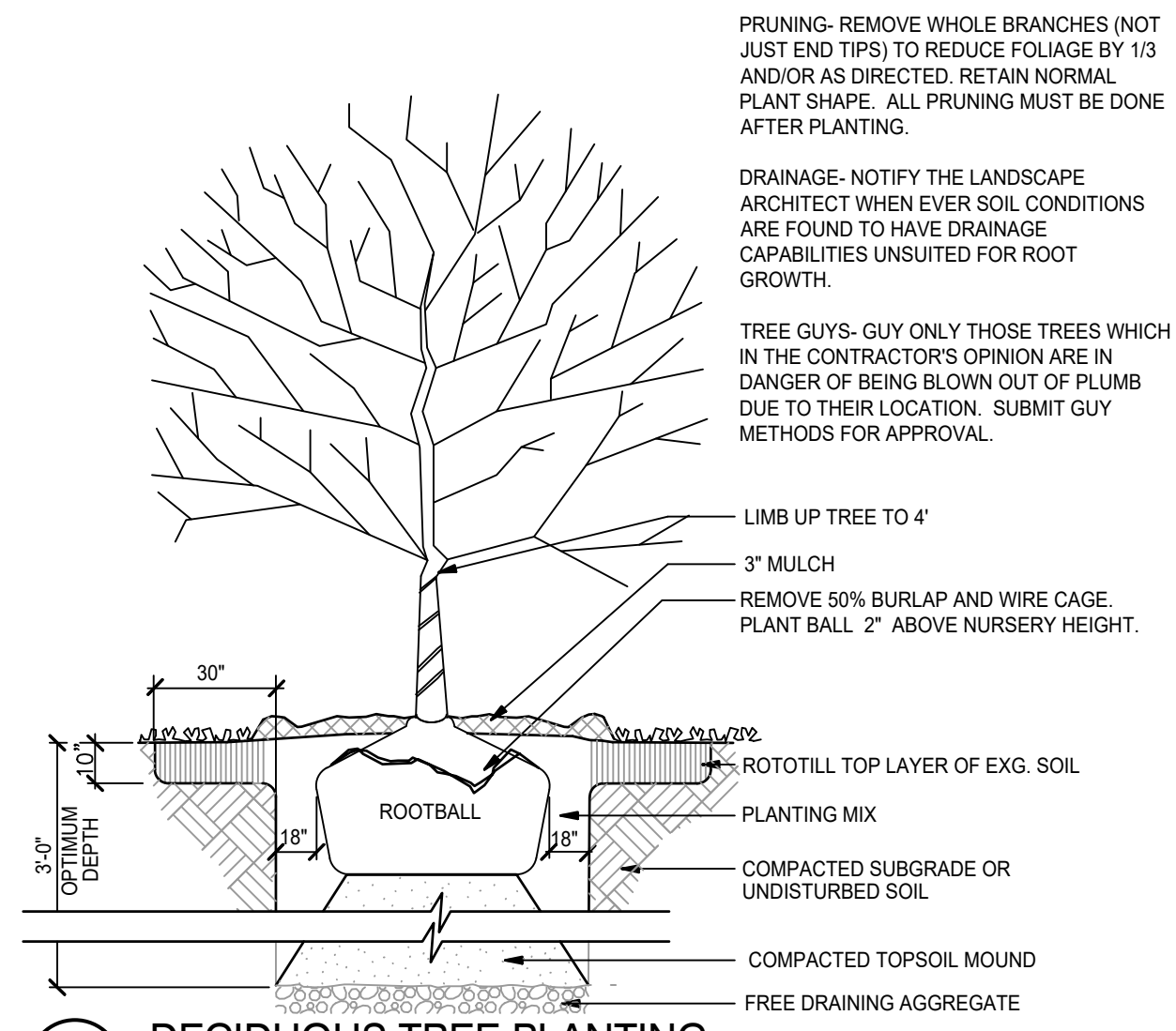
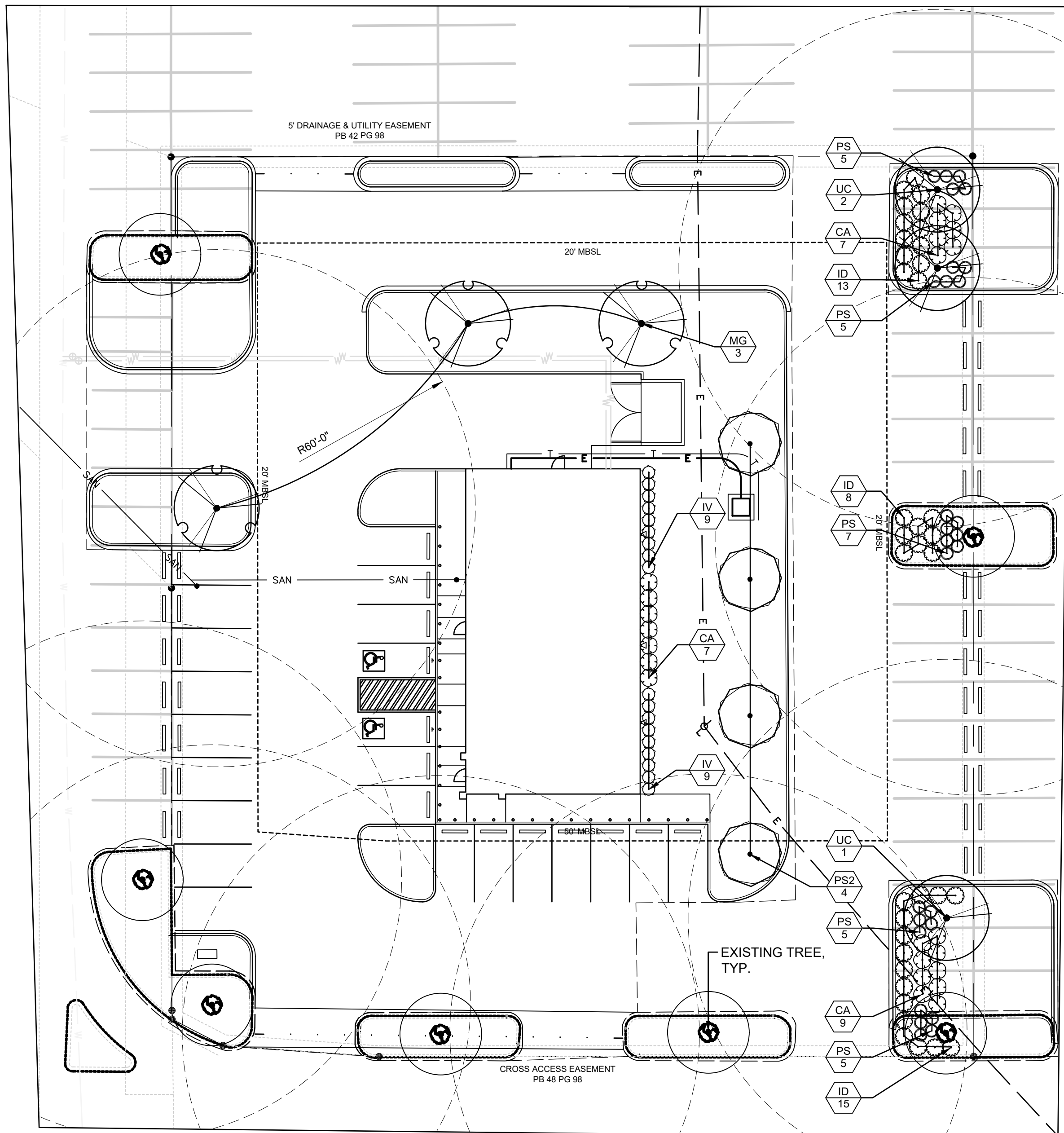
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SCALE:

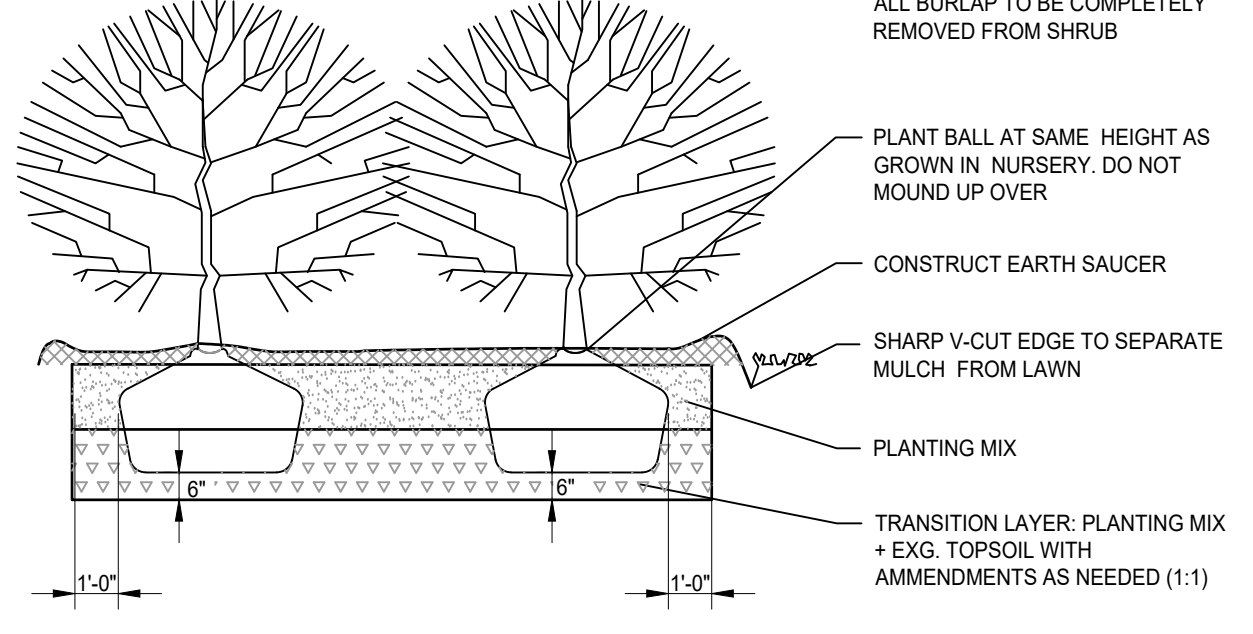
SHEET TITLE:

SITE DIMENSION PLAN

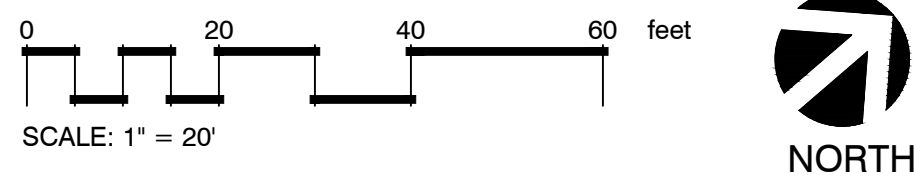
SHEET NO.: **C200**



1 DECIDUOUS TREE PLANTING
NTS P-CO-SAN-TOSO-02



2 SHRUB PLANTING GROUP
NTS P-CO-AND-WADS-04



PLANT SCHEDULE

TREES	QTY	COMMON / BOTANICAL NAME	CONT	CAL	SIZE
MG	3	Southern Magnolia / Magnolia grandiflora	B & B	2"Cal	
PS2	4	Scotch Pine / Pinus sylvestris	B & B		6'-7' HT.
UC	3	American Elm / Ulmus x 'Frontier'	B & B	2"Cal	
SHRUBS	QTY	COMMON / BOTANICAL NAME	CONT	CAL	SIZE
CA	23	American Beautyberry / Callicarpa americana	18" HT No. 3 Cont.		
ID	36	Schillings Dwarf Yaupon Holly / Ilex vomitoria 'Schillings Dwarf'	18" HT No. 3 Cont.		
IV	18	Henry's Garnet Sweetspire / Itea virginica 'Henry's Garnet'	18" HT No. 3 Cont.		
PS	27	Shenandoah Switch Grass / Panicum virgatum 'Shenandoah'	3 gal		

ZONING NOTES:

Sec. 704. - Landscaping and buffering.

F.2. Landscaped parking areas development within parking areas (including accessory drives and aisles) exceeding five thousand (5,000) square feet on the same parcel shall provide and maintain landscaped areas based upon the surfaced parking area. Areas under canopies, loading and service areas, and portions of drives with no parking on either side for a distance longer than twenty-five (25) feet and/or used exclusively as access to loading or service areas, are exempt from this requirement. The landscaping within parking areas shall be provided in addition to buffer requirements of this LDC. Internal areas provided for landscaping shall be in the amount equivalent to at least fifteen (15) percent of the paved parking area, and shall be used for either the saving of existing trees or their replacement with either trees or shrubs according to the credits below. Tree planting areas shall be located such that no parking space is farther than sixty (60) feet from a large tree trunk (To ensure this requirement is met the developer shall submit a parking landscape radius detail).

22,618 S.F. OF PARKING AREA. 22,618 * .15= 3,393 S.F. OF LANDSCAPE AREA REQUIRED. 4,014 PROVIDED.

GENERAL PLANTING NOTES:

- SURVEY INFORMATION OBTAINED ELECTRONICALLY. PLAN-IT STUDIOS CANNOT ATTEST TO THE ACCURACY OR RELIABILITY OF LEGAL BOUNDARIES, EASEMENTS OR FIELD GATHERED DATA.
- THE LOCATION OF THE EXISTING UNDERGROUND UTILITIES ARE SHOWN IN AN APPROXIMATE WAY ONLY AND HAVE NOT BEEN INDEPENDENTLY VERIFIED BY THE OWNER OR ITS REPRESENTATIVE. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES PRIOR TO COMMENCING WORK AND AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MIGHT BE OCCASIONED BY THE CONTRACTOR'S FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES.
- ALL DIMENSIONS ARE TAKEN TO FACE OF CURB OR BUILDING WHERE APPLICABLE UNLESS OTHERWISE NOTED. USE DIMENSIONAL INFORMATION GIVEN. DO NOT SCALE DRAWINGS.
- CONTRACTOR SHALL REFER QUESTIONS ON MATERIALS, FINISHES, LABOR, AND/OR PERFORMANCE STANDARDS NOT SPECIFIED HEREIN TO THE LANDSCAPE ARCHITECT.
- ALL CHANGES TO DESIGN OR PLANT SUBSTITUTIONS ARE TO BE AUTHORIZED BY THE LANDSCAPE ARCHITECT.
- CONSULT PLANT SCHEDULE FOR PLANT SIZES AND SPECIFICATIONS. CONTRACTOR IS RESPONSIBLE FOR ALL PLANTS DRAWN ON PLANS. PLANT LIST QUANTITIES ARE FOR CONVENIENCE ONLY.
- ALL PLANTS TO CONFORM TO THE AMERICAN STANDARD FOR NURSERY STOCK (ANSI-Z60.1-2014) IN REGARDS TO SIZING, GROWING AND B&B SPECIFICATIONS.
- ALL PROPOSED PLANTING BEDS TO BE TILLED TO A MINIMUM DEPTH OF 6". ADDITIONAL AMENDMENTS TO BE ADDED PER SOILS REPORT.
- ALL PLANTING BEDS TO BE FERTILIZED WITH 10-10-10 OR APPROVED EQUAL.

GENERAL NOTES:

- SURVEY INFORMATION OBTAINED ELECTRONICALLY. PLAN IT CANNOT ATTEST TO THE ACCURACY OR RELIABILITY OF LEGAL BOUNDARIES, UTILITIES, EASEMENTS OR FIELD GATHERED DATA.
- USE DIMENSIONAL INFORMATION GIVEN. DO NOT SCALE DRAWINGS.
- THE CONTRACTOR SHALL INCLUDE FOR PAYMENT THE COSTS OF REMOVAL AND DISPOSAL OF ALL TREES, BRUSH AND STUMPS WITHIN THE SCOPE OF PROPOSED WORK.
- LOCATION, SUPPORT PROTECTION AND RESTORATION OF ALL EXISTING UTILITIES AND APPURTENANCES SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR. THE COST OF THIS WORK SHALL BE INCLUDED IN THE UNIT PRICE BID FOR THE VARIOUS ITEMS.
- THE LOCATION OF THE EXISTING UNDERGROUND UTILITIES ARE SHOWN IN AN APPROXIMATE WAY ONLY AND HAVE NOT BEEN INDEPENDENTLY VERIFIED BY THE OWNER OR ITS REPRESENTATIVE. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES PRIOR TO COMMENCING WORK AND AGREES

DEVELOPMENT NOTES:

- All HVAC and mechanical equipment shall be screened from view of adjacent properties and along the entire public right-of-way.
- Large trees: Large trees shall have an expected mature height of thirty (30) feet or greater unless subject to a power line overhead, in which case a small tree may be substituted. Sixty (60) percent of the required trees shall be locally adapted natural evergreen species. Evergreen trees used to meet the requirements of this section shall be a minimum of six (6) feet in height when planted. Deciduous trees shall be a minimum of eight (8) feet in height and six and one-quarter (6.25) inches in circumference (two (2) inches in diameter) measured one-half (5) foot above ground level when planted. All trees shall be distributed throughout the yards, so that no required tree is closer than ten (10) feet to any other required tree.

hundred fifty (250) square feet, un-encroached upon by shrubs or impervious pavement, with a minimum dimension of ten (10) feet. Additional credit may be given for larger trees, up to four (4) inch caliper, when larger growing areas are also provided. One (1) small tree/large shrub or evergreen tree at the rate of one (1) eight (8) foot tall tree per one hundred twenty-five (125) square feet of required landscaped area. Small trees and evergreen trees shall be located within a minimum growing area of one hundred twenty-five (125) square feet, with a minimum dimension of seventy-two (72) feet, un-encroached upon by shrubs or impervious pavement. Small trees/large shrubs may be used to fulfill up to one half (1/2) of the required trees.

3,393 / 250 = 13.57 - 14 TREES REQUIRED. 4 EXISTING 10 LARGE TREES PROVIDED ON PLAN.

R.3. (c) Shrubs shall be credited at the rate of one (1) fifteen (15) to eighteen (18) inch minimum height evergreen or deciduous shrub per thirty-five (35) square feet of required landscaped area. This rate may be varied based upon size of installed shrubs or ground cover. Shrubs to meet this requirement must be located within fifteen (15) feet of the paved area. Additionally, shrubs shall be located to facilitate safe sight distance easements within parking lots, and to protect them from overhangs of motor vehicles.

3c393 / 35 = 96.94. 97 REQUIRED. 97 Provided.

10. PLANTING HOLES TO BE DUG A MINIMUM OF TWICE THE WIDTH AND 6-8 INCHES DEEPER THAN THE SIZE OF THE ROOT BALL OF BOTH SHRUB AND TREE AND TO BE AMENDED WITH ORGANIC SOIL CONDITIONER.

11. IN AREAS WHERE BEDROCK OR HEAVILY COMPACTED ROCK FILL IS ENCOUNTERED, THE PLANTING HOLES ARE TO BE DUG TO A MINIMUM OF THREE TIMES THE WIDTH AND ONE FOOT DEEPER THAN THE SIZE OF THE ROOT BALL. NOTIFY LANDSCAPE ARCHITECT IF FIELD CONDITIONS WARRANT ADJUSTMENT OF PLANT LOCATIONS.

12. CONTRACTOR TO PROVIDE A FULL 1 YEAR GUARANTEE ON ALL PLANTS INSTALLED AND PROVIDE COMPLETE MAINTENANCE ON ALL WORK DONE BEGINNING ON THE DAY OF APPROVAL FROM OWNER'S REPRESENTATIVE AND CONTINUING FOR A THREE MONTH DURATION AT WHICH TIME OWNER'S REPRESENTATIVE WILL DECLARE JOB ACCEPTANCE

13. ALL EXISTING PLANT MATERIAL SHOWN ON THIS PLAN IS TO BE PRESERVED UNLESS SPECIFICALLY NOTED OTHERWISE.

14. ALL SHRUBS AND GROUND COVER BEDS (EXISTING AND NEW), PLANTING BEDS, AND SHRUB MASSES SHALL HAVE A MINIMUM 3" DEEP SHREDDED HARDWOOD BARK MULCH. MULCH HEDGES IN A CONTINUOUS BED.

15. EXISTING GRASS TO BE REMOVED, IF PRESENT, AND TOPSOIL TO BE SPREAD SMOOTH AND HAND-RAKED TO REMOVE ALL ROCKS AND DEBRIS LARGER THAN 1 INCH IN DIAMETER PRIOR TO LAYING SOD OR SEEDING.

16. ALL AREAS DISTURBED BY CONSTRUCTION ARE TO BE RESTORED, FINE GRADED AND SEEDED. (SEE LANDSCAPE PLANS). SEEDING OR SODDING BY LANDSCAPE CONTRACTOR.

17. IF APPLICABLE LANDSCAPE CONTRACTOR TO COORDINATE WITH EXISTING OR PROPOSED IRRIGATION SYSTEM. IF PROPOSED IRRIGATION SYSTEM COORDINATE WITH IRRIGATION CONTRACTOR AND INSTALLATION OF SYSTEM.

7. TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MIGHT BE OCCASIONED BY THE CONTRACTOR'S FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES.

6. CONTRACTOR SHALL CALL UTILITIES PROTECTION SERVICE A MINIMUM OF 48 HOURS PRIOR TO CONSTRUCTION.

7. CONTRACTOR SHALL NOT REMOVE ANY TREES, SHRUBS, OR OTHER LANDSCAPE FEATURES NOT IDENTIFIED FOR REMOVAL WITHOUT THE EXPRESS WRITTEN CONSENT OF THE OWNER.

8. CONTRACTOR SHALL MAINTAIN POSITIVE DRAINAGE IN LAWN AREAS AT ALL TIMES.

9. ALL DIMENSIONS AND WALL RADII ARE TAKEN TO FACE OF CURB OR WALL, UNLESS OTHERWISE NOTED.

10. CONTRACTOR SHALL VERIFY DIMENSIONS AND NOTIFY OWNERS REP OF ANY DISCREPANCIES.

11. ALL CONCRETE WORK TO RECEIVE CONTROL JOINTS AT 5' O.C., AND EXPANSION JOINTS AT 30' O.C. MAXIMUM, WITH LIGHT BROOM FINISH UNLESS OTHERWISE NOTED ON PLANS.

3. Small trees: Small trees shall be a minimum of four (4) feet in height (and in a three (3) gallon container) at the time of planting and have an expected mature height of between ten (10) and thirty (30) feet. Sixty (60) percent or more of these trees shall be evergreen.

4. Shrubs: Shrubs shall be minimum of one and one-half (1.5) feet in height when planted and be expected to reach a height of six (6) feet or greater within five (5) years of planting. All such shrubs shall be evergreen, except that deciduous shrubs may be used in buffering for perennial watercourses



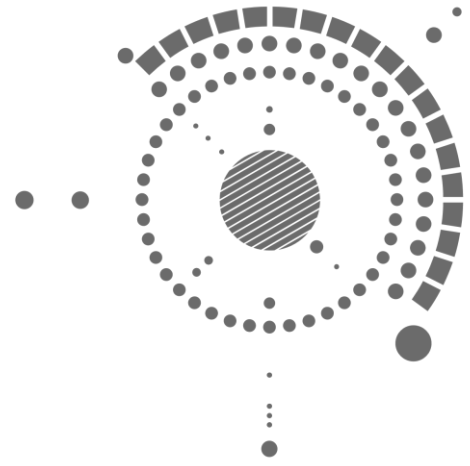
CAROLINA QUICKCARE
1251 COBB CORNERS DRIVE
ROCKY MOUNT, NC 27804

ISSUANCES

NO.	DESCRIPTION	DATE
A	ZONING SUBMISSION	04.20.23
B	ZONING SUBMISSION	08.31.23

PROJECT NO. 023-017
DRAWN BY K.A.A.
NOT FOR CONSTRUCTION

LANDSCAPE PLAN
L - 1.1



ATTENTION:

The next regular meeting of the
City of Rocky Mount
Board of Adjustment
is scheduled for
Tuesday, November 7, 2023 at 5:30 p.m.

