

**CITY OF SANFORD BOARD OF ADJUSTMENT
REGULAR MEETING**

TUESDAY, SEPTEMBER 14, 2021, 6:00 PM

Buggy Company Bldg., 115 Chatham St., Sanford, NC- 1st Floor, Buggy Conference Room

Please access the building via the ground level entrance from the large public parking area at the rear of the building located between Charlotte Avenue & McIver Street and take the elevator to the Buggy Conference Room on the first floor.

Call to Order – 6:00pm

A. Approval of Agenda

B. Approval of Minutes – April 13, 2021

C. Disclosure of Conflict of Interest

E. Old Business - None

F. New Business

1. Application by Progressive Contracting Co., Inc. for property located at 200 Hawkins Avenue, Sanford, NC. The applicant is requesting a Variance from the Unified Development Ordinance (UDO), Article 7 Landscaping and Buffering Standards, Section 7.5 Buffer Yards, Table 7-4 Buffer Yard Landscaping Requirements. The request is for a fifteen (15) feet variance from the required landscape buffer yard width of fifteen (15) feet. In lieu of the required landscape buffer, the applicant is proposing the installation of a wood-on-wood fence that is that is 4 feet tall on top of the existing retaining wall along the property line and 8 feet tall along the property line where there is no retaining wall between the residential dwelling to the south of the site at 114 Hawkins Avenue and the commercial building proposed for renovation at 200 Hawkins Avenue. The subject property is zoned Office & Institutional (O&I) and is identified as Tax Parcel 9643-70-1901-00 on Lee County Tax Map 9634.19.

G. Other Business (*None unless added by the board*)

H. Adjournment

*****Please reference the information inserted at the rear of the agenda package ****

**MINUTES OF THE REGULAR MEETING OF THE
CITY OF SANFORD BOARD OF ADJUSTMENT
SANFORD, NORTH CAROLINA**

The City of Sanford Board of Adjustment met in regular session at the Sanford Municipal Center, 225 E. Weatherspoon Street in the Council Chambers on Tuesday, April 13, 2021, at 6:15 P.M.

ROLL CALL

Members Present: Roger Judd, Chair
Van Groce, Jr., Vice-Chair
Ann Barkley
Ron Willett
Tommy Brickle

Members Absent: Gordon Anderson

Staff Present: Angela Baker, Clerk to the Board
Amy McNeill, Zoning Administrator
Kevin Hornik, Attorney for Sanford Board of Adjustment

Serving as staff/legal counsel for this Board was Kevin Hornik, Esquire, of the Brough Law Firm, PLLC at 1526 E. Franklin Street, Chapel Hill, N.C 27514.

MEETING CALLED TO ORDER

Having noted the presence of a quorum, Chair Judd called the meeting to order.

APPROVAL/DISAPPROVAL OF AGENDA

Chair Judd entertained a motion to approve the agenda, so moved by Vice-Chair Groce, seconded by Board member Willett, and carried unanimously.

APPROVAL OF MINUTES

Chair Judd entertained a motion to approve the minutes from the July 23, 2020, meeting, so moved by Board member Barkley, seconded by Board member Willett, and carried unanimously.

DISCLOSURE OF CONFLICTS OF INTEREST

Attorney Hornik stated that there is a new NCGS Chapter 160D §109 (d) regarding conflicts of interest that reads as follows: *A member of the board or any other body exercising quasi-judicial functions pursuant to this Ordinance shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial (as defined in NCGS 160D-109(f)), business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.*

The language within the UDO is being updated accordingly and the Board should use this new definition.

Chair Judd asked each individual Board member for acknowledgement of any conflicts of interest in the case to be presented. No Board member had a conflict of interest.

Chair Judd asked the Petitioner, Ms. Taquita Reid, if she was aware of any Board member having a conflict of interest in the case to be presented. She stated that she was not aware of any Board member having a conflict of interest in the case to be presented.

NEW BUSINESS

1. SPECIAL USE PERMIT APPLICATION

Application by Taquita Reid to obtain a Special Use Permit for the conversion of an existing single-family dwelling at 531 Cox Maddox Road into a daycare facility / child care center. The site is located within the jurisdiction of the City of Sanford and is zoned Residential Single-family (R-20). Per the Unified Development Ordinance, Article 4 Zoning Regulations, Section 4.6 Use Regulations, Table 4.6-1 Permitted Use Matrix, a “Daycare Facility / Child Care Center” is permitted in the Residential Single-family (R-20) zoning district upon issuance of a Special Use Permit, subject to supplemental development standards of the UDO. The property is depicted on Lee County Tax Map 9661.02 as Tax Parcel 9661-56-5544-00 Lee County Land Records and is labeled as Lot 1 on a subdivision plat labeled “Final Plat Carr Crest”, recorded at the Lee County Register of Deeds Office in Plat Cabinet 8, Slide 34G.

Chair Judd read the “Opening Statement for the Sanford Board of Adjustment”.

Administering of Oath:

Chair Judd called all participants that were speaking in favor of or against the Special Use Permit and staff to come forward and be sworn in/affirm for testimony. Taquita Reid, Myers Colvin, Sr., and Staff person McNeill, appeared and were administered the affirmation.

Staff Presentation:

Staff person McNeill asked to enter the complete agenda packet into the Record as Exhibit A and Chair Judd accepted the document into the Record. Staff person McNeill read the Staff Report for the Special Use Permit located in the agenda packet.

Opening Statements:

The Petitioner is Ms. Taquita Reid of 531 Cox Maddox Road, Sanford, NC, 27330. Ms. Reid was not represented by legal counsel. Ms. Reid stated that she would like Mr. Myers Colvin, a professional engineer who is assisting her with the Special Use Permit request, to address the Board on her behalf. Mr. Myers A. Colvin, Sr. of 1300 B Pamalee Drive, Fayetteville, NC 28311, is a professional engineer licensed to practice in the state of North Carolina. The Board agreed to accept Mr. Colvin as an expert witness.

Mr. Colvin went through the four findings of fact.

He stated that the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved because the plan has been reviewed and approved by the City of Sanford Technical Review Committee, which verifies compliance with codes and they would not have approved it if it was unsafe.

He stated that the use meets all required conditions and specifications because the plans have been reviewed and approved by the City of Sanford Technical Review Committee, which verifies compliance with all required conditions and specifications.

He stated that the use will not substantially injure the value of adjoining or abutting property, per the information provided in the report provided by a Real Estate Appraiser, which is included in the agenda packet.

That the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the adopted long range land use plan because the existing façade will remain residential in appearance. Also, the commercial improvements, inclusive of landscaping, a designated drop-off/pick-up area, and parking, will enhance the aesthetic appearance of the site. Therefore, the character will remain in general conformity with the adopted long-range plan because the structure and site will remain residential in appearance.

Board Discussion:

Board member Barkley stated that this appears to be a simple request. The plans have been reviewed and approved by staff. The appearance will change only per the requirements for a daycare. It is an existing home daycare and the petitioner is asking to increase the number of children; hence the Special Use Permit request.

Vice-Chair Groce asked if there was a requirement for a handicap accessible ramp and parking. Staff person McNeill stated that a handicap accessible ramp is proposed to be constructed at the front of the structure as illustrated on the site plan. If gravel is approved as the material for the parking area as a condition of the Special Use Permit as requested by the applicant, the handicap accessible parking space must still comply with the State Building Code, which may or may not allow gravel to be used. Also, the building must be converted from a home into a commercial daycare facility and comply with the State Building Code, the Fire Code, and the State licensing requirements for a daycare.

Board member Brickle asked if the parking provided met the requirements. Staff person McNeill stated that the design of the parking area, including the number of parking spaces, complies with the UDO standards.

Board member Brickle stated that using gravel for the parking area instead of paving it as requested by the petitioner in the Staff Report appears to be reasonable and proposed that it be allowed as a condition of approval if the Special Use Permit is approved.

Vice-Chair Groce stated that most people will drop their kids off and will therefore be on site for a short duration.

Board member Willett asked if Cox Maddox Road was a dead-end road. Staff person McNeill verified that Cox Maddox Road is a dead-end road and therefore, has a low traffic volume.

Chair Judd summarized the facts.

REQUIRED FINDINGS OF FACTS

Chair Judd stated that the granting of a Special Use Permit is based upon four findings of fact. Each finding requires a majority vote by the Board to be approved. When voting, the Board must render a decision on each of the required findings and must state a reason for approval or denial of each finding of fact. He said that if one of the findings failed to pass, the Special Use Permit would not be approved. The Board proceeded with deliberation of the findings of fact.

Required Findings:

- 1. That the use will not materially endanger the public health or safety if located where proposed and developed according to the application and plan as submitted and approved.

Board member Barkley moved that the use and the plan as submitted will not materially endanger the public health or safety as it meets all the UDO conditions for a daycare, with the exception of compliance with the current required minimum building side yard setback of 15ft, which is grandfathered because the side yard setback was 10ft at the time that the lot was developed; and a home daycare is currently operating at this location.

With no further discussion, Chair Judd called for a second to the motion. Board member Brickle seconded the motion. Chair Judd called for a vote. The motion carried unanimously and a record of the vote is as follows:

- Ayes: Roger Judd, Chairman
Van Groce, Jr., Vice-Chair
Ann Barkley
Ron Willett
Tommy Brickle

Noes: None

- 2. That the use meets all required conditions and specifications.

Vice-Chair Groce stated that the use meets all required conditions and specifications of the UDO; the plan has been reviewed by the Technical Review Committee (TRC); the site plan has been reviewed and found to comply with the parking, landscape, and handicap accessible requirements; there is a fenced play area proposed in backyard; and, the State requirements for the licensing of a childcare facility must be met.

With no further discussion, Chair Judd called for a second to the motion. Board member Barkley seconded the motion. Chair Judd called for a vote. The motion carried unanimously and a record of the vote is as follows:

Ayes: Roger Judd, Chairman
Van Groce, Jr., Vice-Chair
Ann Barkley
Ron Willett
Tommy Brickle

Noes: None

3. That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity.

Board member Willett made a motion that the use will not substantially injure the value of the adjoining or abutting property because the property owner submitted a report by a real estate appraiser that determined that the daycare use would not injure the value of adjoining properties; the site is currently being used as a daycare; and the only real change is that the property owner will no longer be living there because it will become a full-time daycare.

With no further discussion, Chair Judd called for a second to the motion. Vice-Chair Groce seconded the motion. Chair Judd called for a vote. The motion carried unanimously and a record of the vote is as follows:

Ayes: Roger Judd, Chair
Van Groce, Jr. Vice-Chair
Ann Barkley
Ron Willett
Tommy Brickle

Noes: None

4. That the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the adopted long range land use plan (*Plan SanLee*).

Board member Willett made a motion that the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the surrounding area which it is located and in general conformity with the long range land use plan because it is a residential home that is already being used as a home daycare; the existing residential character of the home will be maintained; and any improvements, such as landscaping, will enhance the aesthetics of the property.

With no further discussion, Chair Judd called a second to the motion on the floor. Board Member Brickle seconded the motion. Chair Judd called for a vote. The motion carried unanimously. The record of the vote is as follows:

Ayes: Roger Judd, Chair

Van Groce, Jr. Vice-Chair
Ann Barkley
Ron Willett
Tommy Brickle

Noes: None

Board member Brickle made the final motion to approve the Special Use Permit, based on the preceding findings of facts being met and the use complying with all of the required conditions and specifications, and that gravel parking that complies with all codes be allowed as a condition of the Special Use Permit. Board member Barkley seconded the motion, and it carried unanimously.

Chair Judd called for a vote. The motion carried unanimously with gravel being allowed as the material for the parking area as a condition of the Special Use Permit and a record of the vote is as follows:

Ayes: Roger Judd, Chair
Van Groce, Jr. Vice-Chair
Ann Barkley
Ron Willett
Tommy Brickle

Noes: None

This decision is effective upon filing the written decision with the Clerk to the Board. This decision shall be subject to review by the Superior Court. If anyone is dissatisfied with the decision of the Board, an appeal may be taken to the Lee County Superior Court within 30 days after the decision has been filed with the Clerk to the Board in the Planning Department.

ADJOURNMENT

With no further business to come before the Board, the meeting was adjourned on motion of Board member Barkley, seconded by Board member Willett, and unanimously carried. The meeting was adjourned at 7:45 p.m.

Adopted this _____ day of _____, _____.

BY: _____
Roger Judd, Chairman

ATTEST:

Angela M. Baker, Clerk

Opening statement for the Sanford Board of Adjustment

“THIS HEARING IS A QUASI-JUDICIAL EVIDENTIARY HEARING. THAT MEANS IT IS LIKE A COURT HEARING. STATE LAW SETS SPECIFIC PROCEDURES AND RULES CONCERNING HOW THIS BOARD MUST MAKE ITS DECISIONS. THESE RULES ARE DIFFERENT FROM OTHER TYPES OF LAND USE DECISIONS LIKE REZONING CASES.

“THIS BOARD’S DISCRETION IS LIMITED. THIS BOARD MUST BASE ITS DECISION ON COMPETENT, RELEVANT AND SUBSTANTIAL EVIDENCE IN THE RECORD. A QUASI-JUDICIAL DECISION IS NOT A POPULARITY CONTEST. IT IS A DECISION LIMITED BY THE STANDARDS IN THE SANFORD UNIFIED DEVELOPMENT ORDINANCE (THE UDO) AND BASED ON THE FACTS PRESENTED AT THIS HEARING. IF YOU ARE SPEAKING AS A WITNESS, PLEASE FOCUS ON THE FACTS AND STANDARDS, NOT PERSONAL PREFERENCE OR OPINION.

“THIS MEETING IS OPEN TO THE PUBLIC. EVERYONE IS WELCOME TO WATCH. PARTICIPATION IS LIMITED. ONLY PARTIES WITH STANDING MAY PARTICIPATE BY PRESENTING EVIDENCE, CALLING WITNESSES AND MAKING LEGAL ARGUMENTS. PARTIES WITH STANDING ARE LIMITED TO THE APPLICANT, LOCAL GOVERNMENTS (INCLUDING THE CITY OF SANFORD) AND PERSONS WHO CAN SHOW THEY WILL SUFFER SPECIAL DAMAGES.

“OTHER INDIVIDUALS MAY SERVE AS WITNESSES WHEN CALLED BY THE BOARD. WITNESS TESTIMONY IS LIMITED TO FACTS, NOT OPINIONS. FOR CERTAIN TOPICS THE BOARD IS REQUIRED TO HEAR OPINION TESTIMONY FROM EXPERT WITNESSES. THESE TOPICS INCLUDE OPINIONS ON THE IMPACT ON PROPERTY VALUES AND INCREASED TRAFFIC CAUSED BY THE PROPOSAL. INDIVIDUALS PROVIDING EXPERT OPINIONS MUST BE QUALIFIED AS EXPERTS AND PROVIDE THE FACTUAL EVIDENCE UPON WHICH THEY BASE THEIR EXPERT OPINION.

“WITNESSES MUST SWEAR OR AFFIRM THEIR TESTIMONY. WITNESSES MUST BE RECOGNIZED BY THE CHAIR, SPEAK INTO THE MICROPHONES AND BEGIN THEIR TESTIMONY WITH THEIR NAME AND ADDRESS. THE SECRETARY WILL USE THE RECORDING TO MAKE THE MINUTES.

“AT THIS TIME, WE WILL ADMINISTER THE OATH FOR ALL INDIVIDUALS WHO INTEND TO SPEAK TONIGHT. THE SECRETARY WILL HOLD THE BIBLE. THE CHAIR (I) WILL READ THE OATH.”

Based on Owens and Lovelady, *Quasi-Judicial Handbook: A Guide for Boards Making Development Regulation Decisions* UNC School of Gov’t (2017) at page 35

Original

\$500 FEE, VARIANCE 9

Application No. 2021-0901

Energov Case No. VAR-003883-2021



City of Sanford-Lee County-Town of Broadway VARIANCE APPLICATION

Circle the Jurisdiction that Applies:

City of Sanford

Lee County

Town of Broadway

The Variance Process

A Variance is necessary when a proposed land use may have some consequences that may warrant review by the Board of Adjustment. This review is to insure there will be no detrimental effects to surrounding properties nor will it be contrary to the public interest.

In order to apply for a Variance, a completed application, fee, and all supporting documentation is required to be turned in to the Sanford-Lee County Community Department. Information regarding the submittal requirements, deadline dates, and meeting dates is provided in a separate handout specific to each jurisdiction that is available upon request. In order for the Board of Adjustment to grant approval of the Variance, the applicant must provide all of the information required.

If the Board finds that all approval criteria has been met, they may impose reasonable conditions upon the granting of any Variance to ensure public health, safety, and general welfare. If the application is approved the applicant may proceed with securing all required local, state, and federal permits necessary for the endeavor. Failure to follow conditions set in the approval process would result in a violation of the Sanford-Broadway-Lee County Unified Development Ordinance (UDO).

For questions concerning this process, you may contact the Sanford-Lee County Community Development Department, Zoning & Design Review Division, on the first floor of the historic Buggy company Building at 115 Chatham Street in downtown Sanford, N.C. during regular business hours M-F 8:00am to 5:00pm. Staff does require a consultation with the applicant and property owner prior to accepting a Variance request submittal to explain the process and legalities associated with this request. For additional information or questions please contact Amy J. McNeill, Zoning Administrator at 919-718-4656, ext. 5397 or amy.mcneill@sanfordnc.net.

Applicant Information

Name: Progressive Contracting Co., Inc. Contact: Mr. Todd Snyder
Address: 115 Chatham St., Suite 301, Sanford, NC 27330
Telephone No.: 919-718-5454 x 202
Email Address: tsnyder@progressivecci.com

Property Owner(s) Information

Name(s): Progressive Development Company, LLC Contact: Mrs. Joni Martin
Address: 115 Chatham St., Suite 301, Sanford, NC 27330
Telephone No.: 919-718-5454 x 213
Email Address: jmartin@progressivecci.com

TO THE BOARD OF ADJUSTMENT:

I, Todd Snyder petition the Board of Adjustment for a Variance from the literal provisions of the City of Sanford-Town of Broadway-Lee County Unified Development Ordinance (UDO) because under the interpretation given to me by the Zoning Enforcement Officer, I am prohibited from using the parcel of land described below in a manner shown by the plot plan attached to this application.

I request a Variance from the following provisions of the Ordinance (cite paragraph numbers):

City of Sanford-Town of Broadway-Lee County Unified Development Ordinance (UDO)

Article 7 Landscaping and Buffering Standards

Section 7.5 Buffer Yards, Sub-section 7.5.4 Standards for Buffer Yard Development

Table 7-4 Buffer Yard Landscaping Requirements, Type B

so that the property described below can be used in a manner indicated by the plot plan attached to the application or, if the plot plan does not adequately reveal the nature of the variance, as more fully described herein: _

To allow the installation of a wood-on-wood fence that is 4 feet tall on top of the existing retaining wall along the property line and 8 feet tall along the remaining property line where there is no retaining wall in lieu of the installation of a 15 feet wide landscape buffer between the residential dwelling to the south of the site at 114 Hawkins Avenue and the commercial building proposed for renovation at 200 Hawkins Avenue.

(If a Variance is requested for a limited time only, specify duration requested).

Lee County Deed Book 01582, Page 0596

Lee County Tax Parcel No. (PIN): 9643-70-1901-00

Property address: 200 Hawkins Ave, Sanford, NC 27330

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a Variance. Under the state enabling act, the Board is required to reach four conclusions before it may issue a variance (see 1-4 below). Additionally, please note that each of the four criteria will be voted upon individually and 4/5th of the Board members must find in favor for each criteria in order to pass. If any of the four criteria fails to pass, the Variance cannot be granted. In the spaces provided below and/or on additional sheets of paper submitted with the application, indicate the facts that you intend to show and the arguments that you intend to make to convince the Board that it can properly reach the required conclusions.

- (1) If he/she complies with the provisions of the ordinance, an unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the Variance, no reasonable use can be made of the property. However, it is not sufficient that failure to grant the Variance simply makes the property less valuable.*

If the applicant complies with the provision of the Ordinance, an unnecessary hardship would result from the strict application of the Ordinance because both the building and the site access are existing and, based upon the proximity of the existing building to the property line, installing the required 15 feet wide landscape buffer yard would eliminate the only access drive that the Sanford Fire Department/Emergency Services and occupants will have into this site due to the required UDO design standards for parking and traffic flow.

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

The hardship results from conditions that are peculiar to the property because there is approximately 20 feet from the existing retaining wall along the eastern property line to the existing building face (furthest projection). The installation of the required 15 feet wide landscape buffer along this property line would reduce the width of the driveway within this area to 5 feet. Both the UDO and the Sanford Fire Department allow a minimum of 12 feet in width for a one-way drive. Therefore, the installation of the required landscape buffer would effectively eliminate vehicular access to the site.

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

The hardship did not result from actions taken by the applicant or the property owner because (per Lee County tax records) the property was developed in 1955 and it was purchased by Progressive Development Company, LLC in July of 2020 with the existing building and site improvements already in place. The City of Sanford adopted zoning in October of 1965; therefore, there were no design standards in effect at the time of the development of this site.

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

The requested Variance is consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured and substantial justice is achieved because the landscape buffer requirement was established to provide a screen from noise and sight between different occupancy structures/types and the construction of a solid wood screen fence (i.e. board-on-board) instead of a landscape buffer will both meet the intent of the Ordinance and provide a better screen for both property owners.

Also, public safety will be secured because keeping the existing drive will allow access for the Sanford Fire Department/Emergency Services and occupants into the site.

The Sanford/Lee County Technical Review Committee (TRC), which includes representatives from the Sanford Fire Department, the Sanford/Lee County Zoning & Design Review Dept. and the City of Sanford Engineering Dept., has reviewed the concept plan for this project and was amenable to the project moving forward with a Variance request.

Required Attachments/Submittals

Please submit 12 paper copies and one digital copy of a to-scale site plan and/or civil set, whichever is appropriate for the project (created at a standard engineering scale that is legible) and 12 paper copies of all supporting documentation for inclusion with the agenda packages. Also, submit a Lee County tax map of the property and a copy of the latest recorded deed.

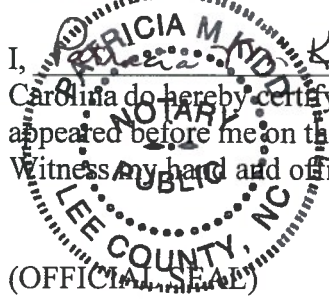
CERTIFICATION

I certify that all of the information in this application is true and accurate to the best of my knowledge, information, and belief. It is further understood that this application will be reviewed for completeness and accuracy and that it shall not be scheduled for official consideration until all required contents in proper form and fee made payable to the City of Sanford are submitted to the City of Sanford-Lee County Community Development Department.

TODD SNYDER / Todd Snyder _____ 7/20/21 _____
Signature of Applicant (Print & Sign) Date
This signature must be notarized below.

STATE OF NORTH CAROLINA
LEE COUNTY

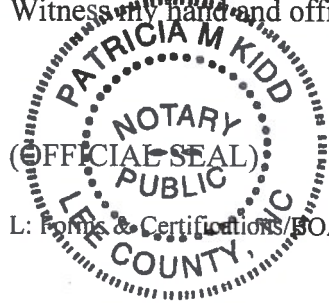
I, PATRICIA M. KIDD, a Notary Public for Lee County and State of North Carolina do hereby certify that Todd Snyder personally appeared before me on this day and acknowledged the due execution of the foregoing Instrument. Witness my hand and official seal, this the 20th day of July, 20 21.
Patricia M. Kidd
Notary Public Signature
My Commission expires: 03/03/2024



Joni Martin / Joni Martin _____ 7/20/21 _____
Signature of Property Owner (Print & Sign) Date
This signature must be notarized below.

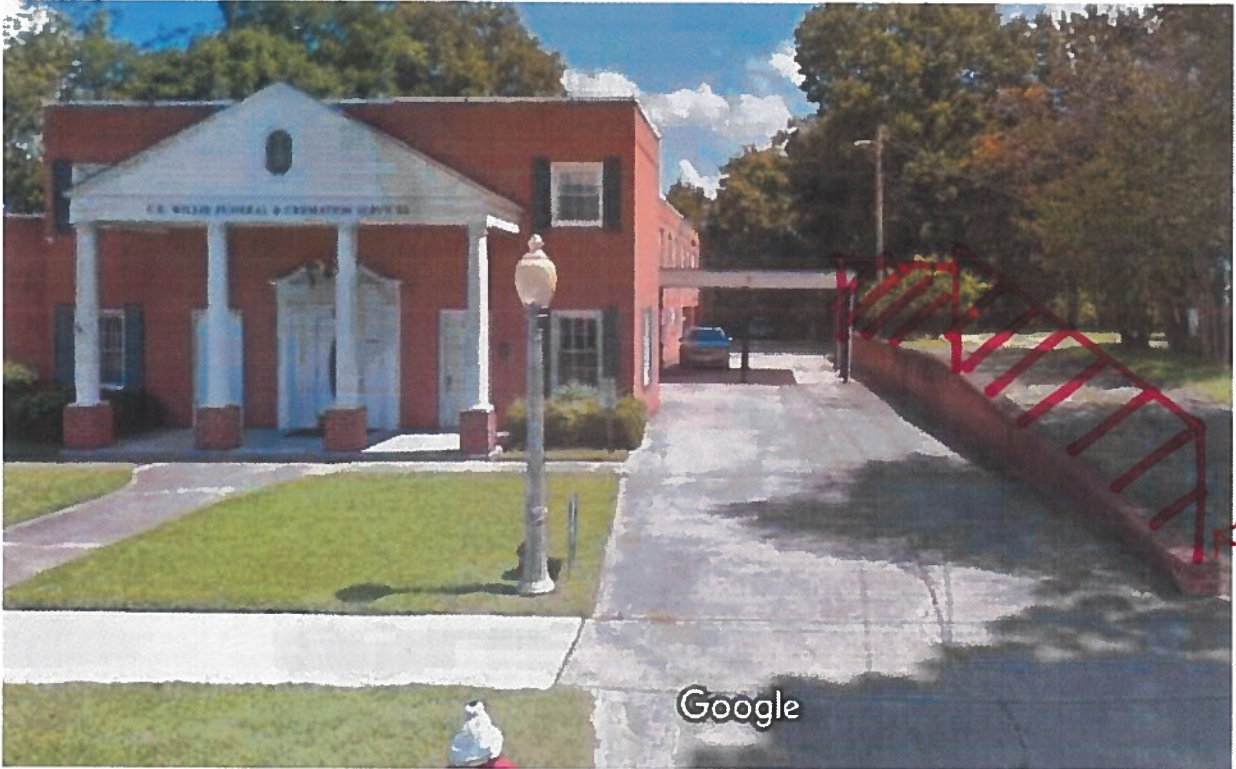
STATE OF NORTH CAROLINA
LEE COUNTY

I, PATRICIA M. KIDD, a Notary Public for Lee County and State of North Carolina do hereby certify that Joni Martin personally appeared before me on this day and acknowledged the due execution of the foregoing Instrument. Witness my hand and official seal, this the 20th day of July, 20 21.
Patricia M. Kidd
Notary Public Signature
My Commission expires: 03/03/2024





Google



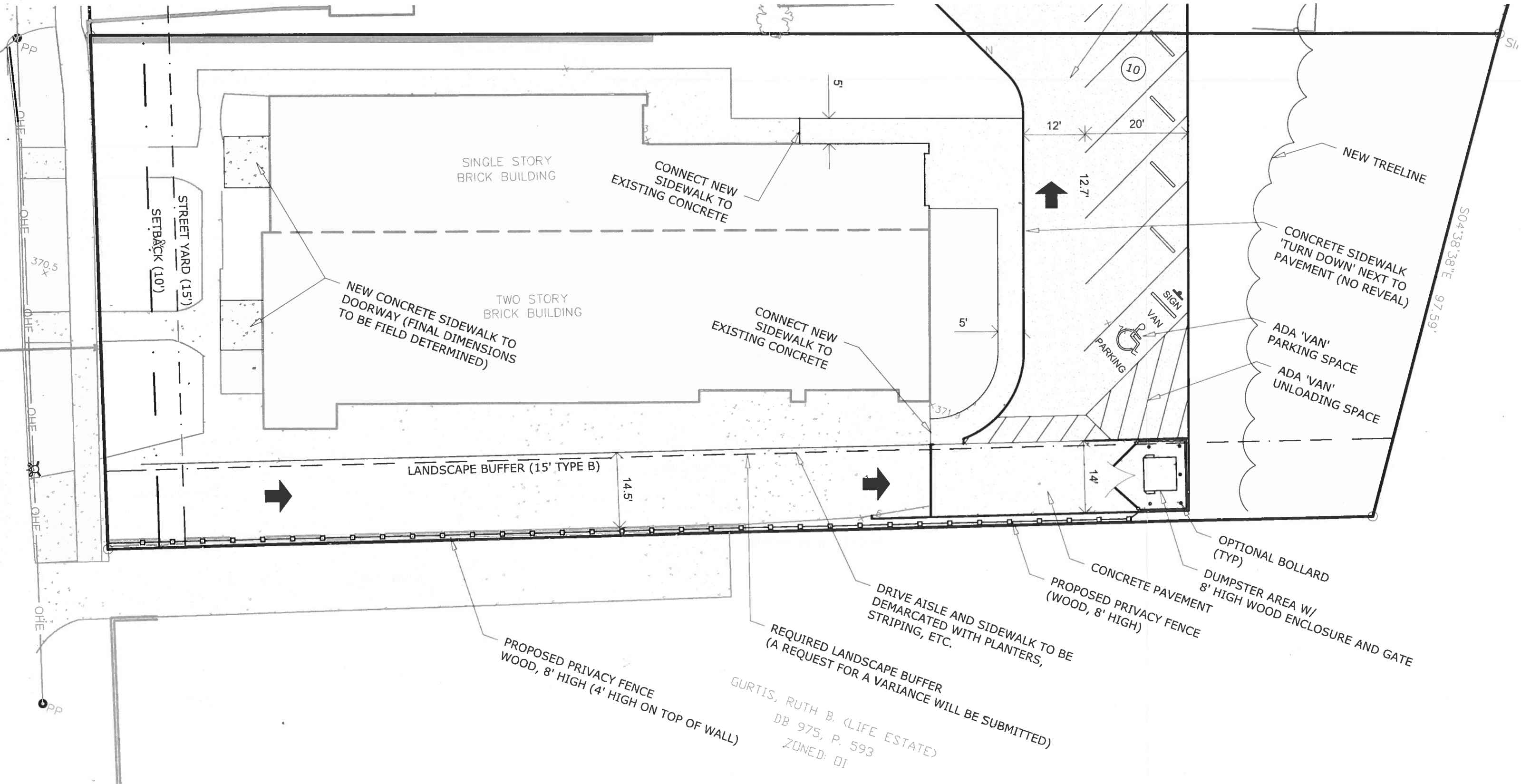
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LOCATION OF PROPOSED FENCE









SINGLE STORY BRICK BUILDING

TWO STORY BRICK BUILDING

STREET YARD (15') SETBACK (10')

NEW CONCRETE SIDEWALK TO DOORWAY (FINAL DIMENSIONS TO BE FIELD DETERMINED)

CONNECT NEW SIDEWALK TO EXISTING CONCRETE

CONNECT NEW SIDEWALK TO EXISTING CONCRETE

LANDSCAPE BUFFER (15' TYPE B)

NEW TREELINE

CONCRETE SIDEWALK 'TURN DOWN' NEXT TO PAVEMENT (NO REVEAL)

ADA 'VAN' PARKING SPACE

ADA 'VAN' UNLOADING SPACE

OPTIONAL BOLLARD (TYP)

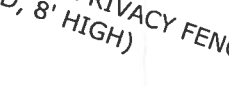
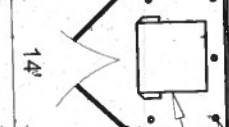
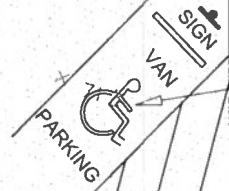
DUMPSTER AREA W/ 8' HIGH WOOD ENCLOSURE AND GATE

CONCRETE PAVEMENT (WOOD, 8' HIGH)

DRIVE AISLE AND SIDEWALK TO BE DEMARCATED WITH PLANTERS, STRIPING, ETC.

PROPOSED PRIVACY FENCE WOOD, 8' HIGH (4' HIGH ON TOP OF WALL)

REQUIRED LANDSCAPE BUFFER (A REQUEST FOR A VARIANCE WILL BE SUBMITTED)
GURTIS, RUTH B. (LIFE ESTATE)
DB 975, P. 593
ZONED: DI



**CITY OF SANFORD
BOARD OF ADJUSTMENT
PUBLIC HEARING INFORMATION
September 14, 2021**

APPLICATION # 2021-0901 FOR A VARIANCE

APPLICANT: Progressive Development Co., LLC
PROPERTY OWNER: Progressive Development Co., LLC
LOCATION: 200 Hawkins Avenue, Sanford, NC 27330
TAX PARCEL: 9643-70-1901-00
TOWNSHIP: West Sanford

REQUEST

Pursuant to Article 3 Zoning and Permitting Procedures, Section 3.7 Variances of the Unified Development Ordinance (UDO), Progressive Development Co., LLC has submitted an application requesting a Variance for property located at 200 Hawkins Avenue. The applicant is requesting a Variance from, Article 7 Landscaping and Buffering Standards, Section 7.5 Buffer Yards, Table 7-4 Buffer Yard Landscaping Requirements. The request is for a fifteen (15) feet variance from the required landscape buffer yard width of fifteen (15) feet. In lieu of the required landscape buffer, the applicant is proposing the installation of a wood-on-wood fence that is that is 4 feet tall on top of the existing retaining wall along the property line and 8 feet tall along the property line where there is no retaining wall between the residential dwelling to the south of the site at 114 Hawkins Avenue and the commercial building proposed for renovation at 200 Hawkins Avenue.

SITE AREA AND DESCRIPTION

The site is located in the 200 block of Hawkins Avenue, between E. Buffalo Street and the Carthage Street/Charlotte Avenue intersection. Specifically, the site is a 0.57 acre tract of land developed with a commercial building, formerly the C.E. Willie Funeral Home, addressed as 200 Hawkins Avenue. Hawkins Avenue is a NCDOT maintained public street with a 70ft right-of-way. The site and all adjoining properties are zoned Office & Institutional (O&I).

STAFF COMMENTS

The applicant purchased the property in 2020 and has submitted plans to change the use from a funeral home into an office/commercial use, which triggers the installation of a landscape buffer along the property line adjoining an existing house. The existing development limits the applicant's ability to install the required fifteen (15) feet landscape buffer; therefore, in lieu of the required landscape buffer, the applicant is proposing the installation of a wood-on-wood fence that is four (4) feet tall on top of the existing retaining wall along the property line and eight (8) feet tall along the property line where there is no retaining wall adjoining the house at 114 Hawkins Avenue.

Adjacent Zoning -

North: Office & Institutional (O&I).
 South: Office & Institutional (O&I).
 East: Light Industrial (LI), opposite the railroad right-of-way
 West: Office & Institutional (O&I), opposite Hawkins Avenue

ATTACHMENTS

- GIS Map of Property
- Unified Development Ordinance (UDO) references
- Legal Notice for Special Use Permit Application
- Adjoining Property Owner Notification of Public Hearing
- Certification of Adjacent Property Owner Notification
- List of Adjoining Property Owners
- Variance Hearing Procedures

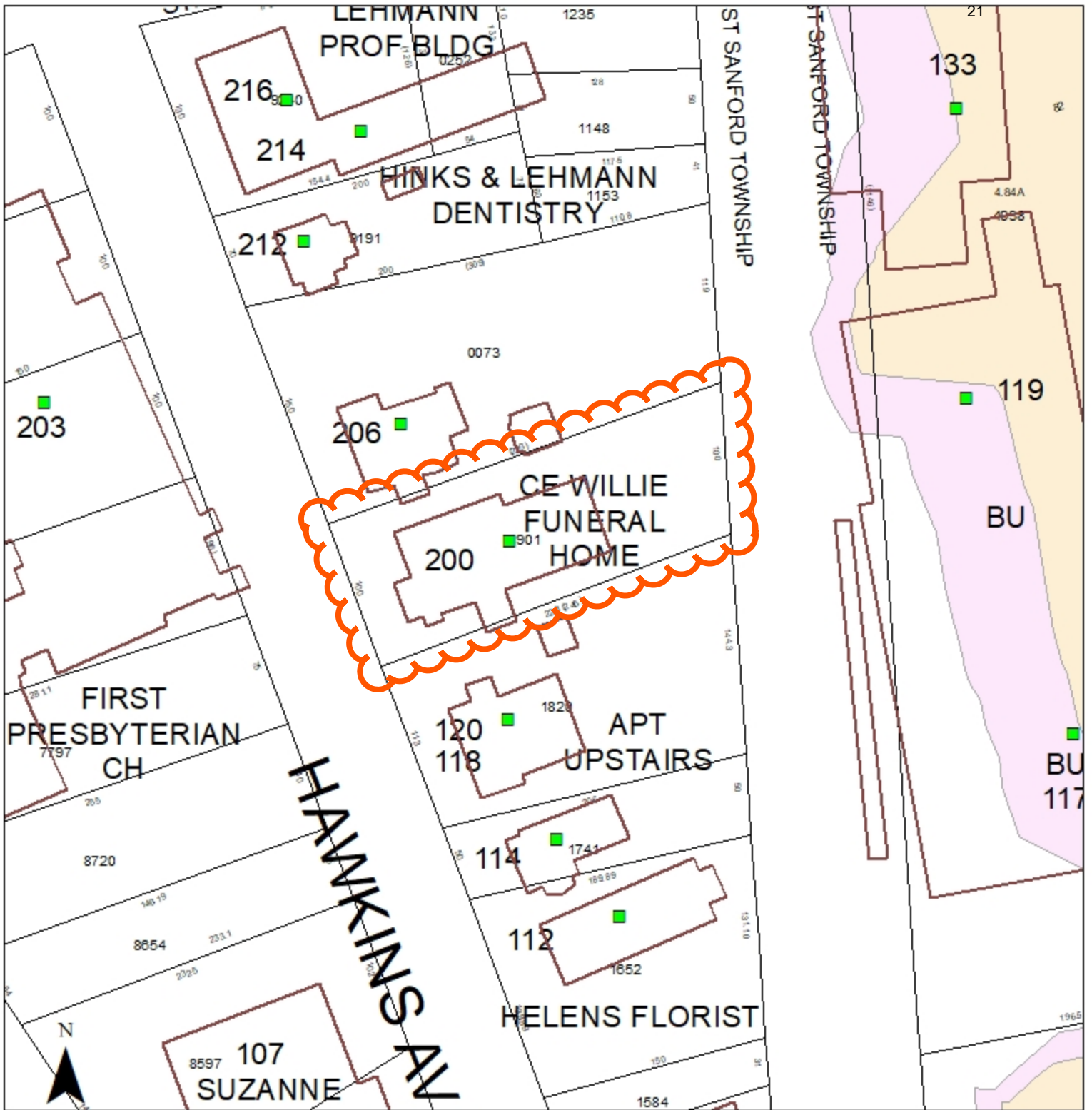
VARIANCE PROCEDURES

The variance procedures are intended to protect the rights of applicants, landowners, & affected persons by providing procedures for appeals from decisions of administrative officials and variances from the provisions of UDO.

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under the state enabling act, the Board is required to reach four conclusions before it may issue a variance:

- A. If he complies with the provisions of the ordinance, the property owner will suffer unnecessary hardship. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- B. The hardship of which the applicant complains results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- C. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- D. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Note: Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. A concurring vote of four-fifths of all members of the Board of Adjustment is required in order to grant the variance. Decisions of the Board of Adjustment shall be appealed to the Lee County Superior Court within 30 days of the Board final decision.



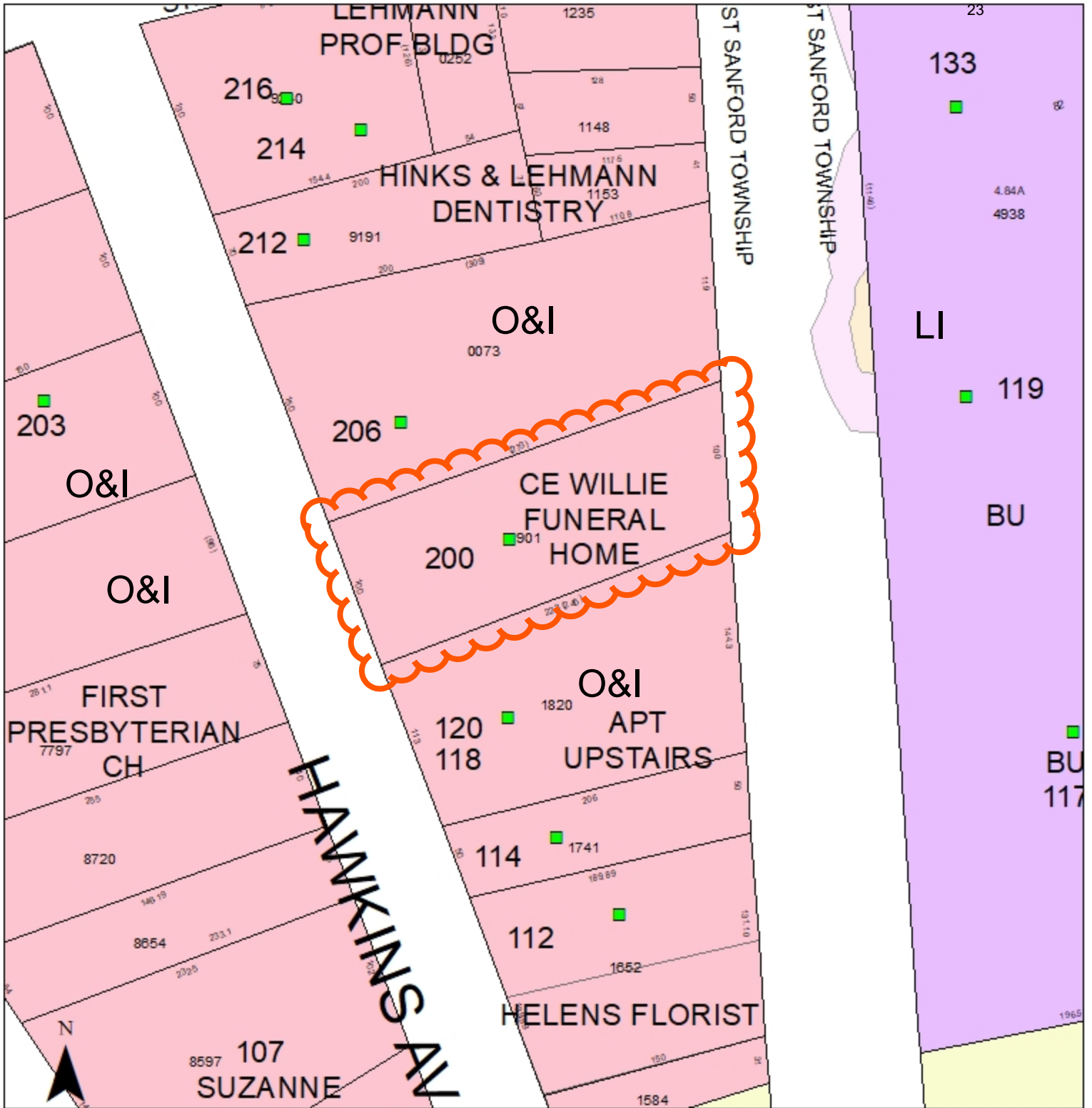
VARIANCE APPLICATION
 Application by Progressive Contracting Co., LLC
 for 200 Hawkins Avenue.

This is a graphic illustration and not a legal document.
 All information is comprised of layers of data that may or may not align correctly.



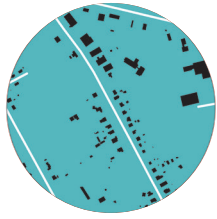
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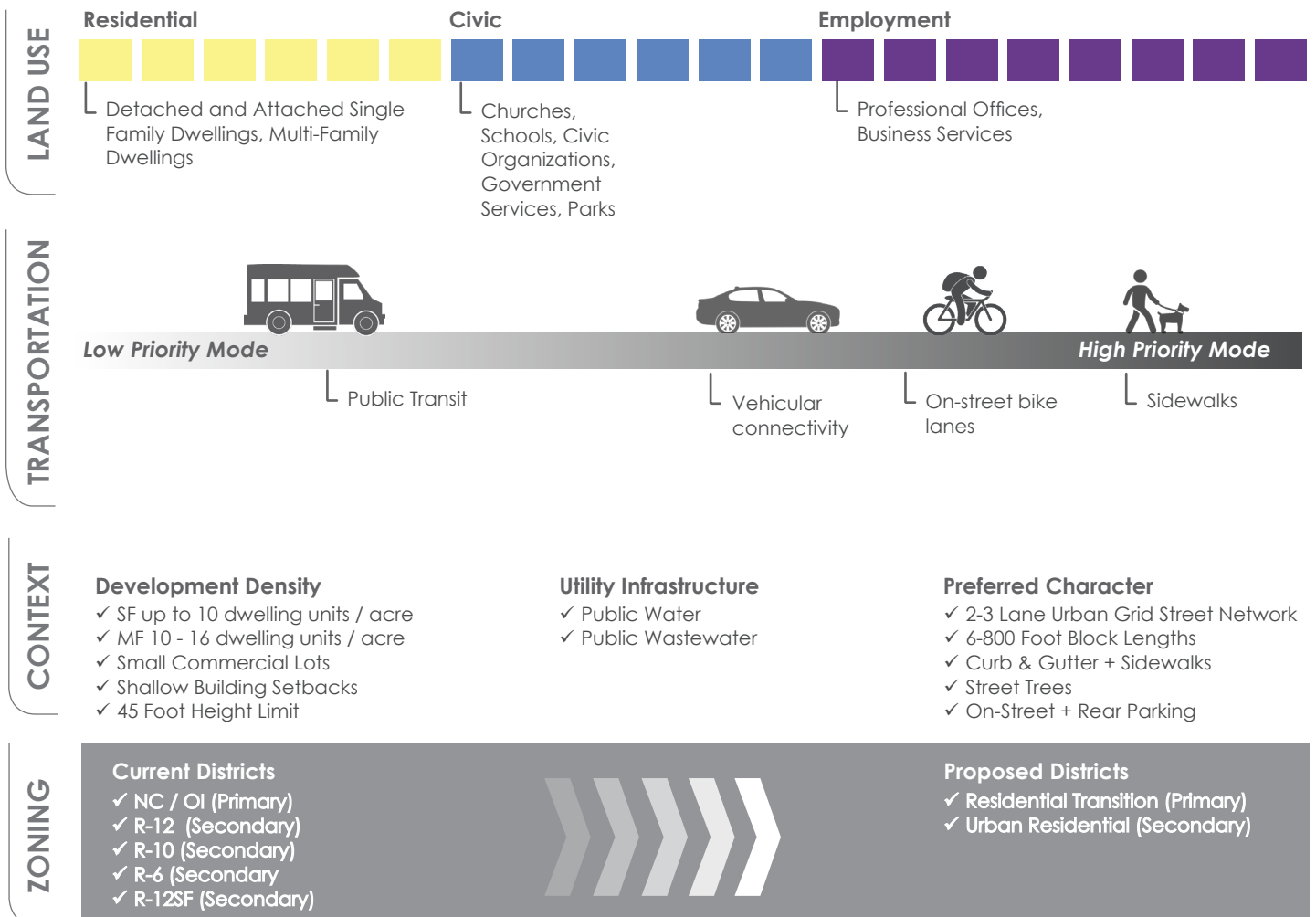
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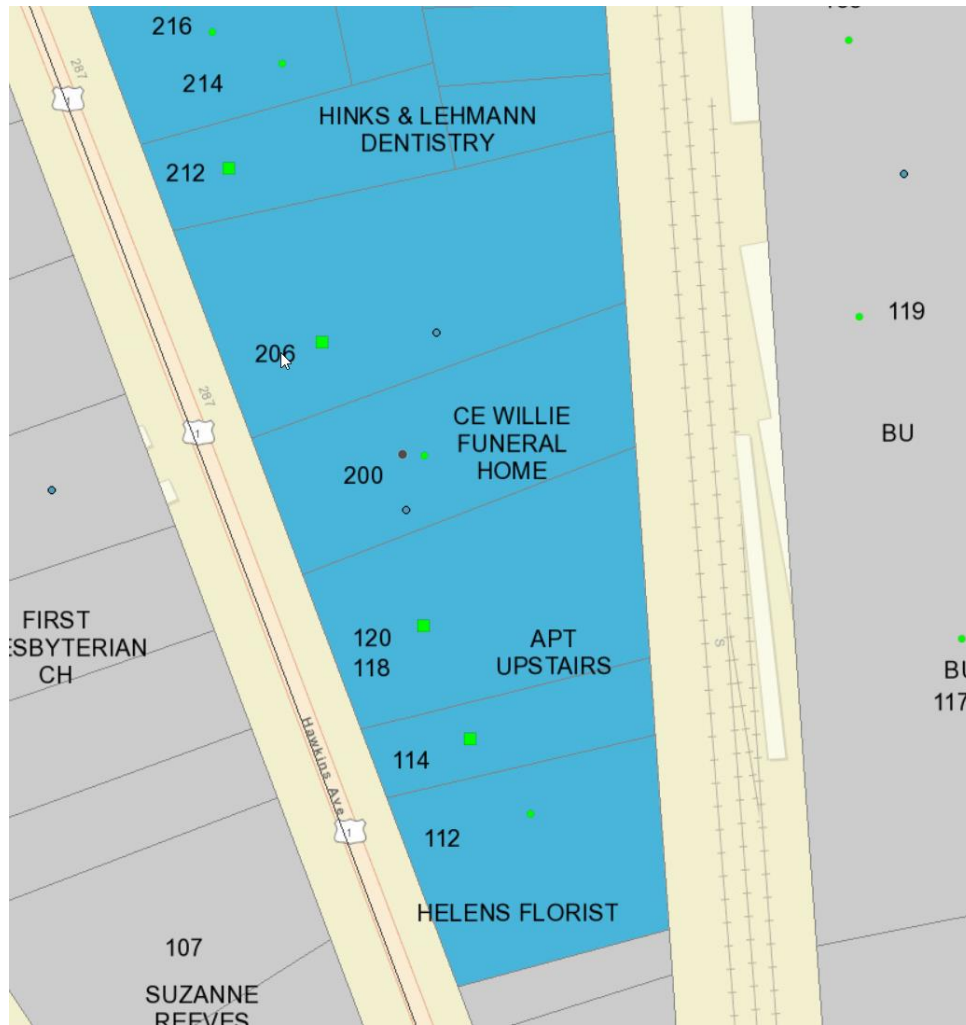
NEIGHBORHOOD TRANSITION AREA

- ✓ Legacy residential neighborhoods that may be transitioning to small offices and service businesses
- ✓ Positioned along primary transportation routes leading to downtown
- ✓ Preserving residential character, buffer between downtown and urban neighborhoods

Local Example - Woodland Avenue in Sanford



Long Range Plan – Interactive Map of Site



Place_Types

- Place Types
- Commercial Corridor
 - Countryside
 - Crossroads
 - Downtown
 - Industrial Center
 - Maker District
 - Mixed Use Activity Center
 - Neighborhood Center
 - Neighborhood Transition
 - Professional and Institutional Campus
 - Suburban Neighborhood
 - Urban Neighborhood
 - Village Center
 - Village Neighborhood

3.2.3.4 CHANGES OF USE

3.2.3.4.1 A Change of Use shall require a Zoning Compliance Permit only when the change of use would otherwise require a building permit. A “Change of Use” shall be further defined as “a change from one principal use of a building or land to another principal use of the building or land whether or not there is an increase in the size of the existing building or extent of the use of land”. Furthermore, for the purposes of zoning, a change of use shall be determined based on the more broad land use groupings of Table 4.6-1 of this UDO (i.e. “Institutional and Civic” vs. “Retail Trade”). If it is determined that no change of use has occurred, no design standards of this UDO shall be required.

3.2.3.4.2 If it is determined that a change of use has occurred, the Administrator must then determine what design standards should apply.

(a) Minor Change of Use. This group includes the following:

- a change of use has occurred, but no additional parking is required
- a change of use has occurred and additional parking is required but is less than 10 total spaces

When a Minor Change of Use is determined, no additional UDO design or dimensional standards shall be applied except that:

- uses abutting single-family residential developed properties must provide a Buffer (screening) Yard as set forth in Section 7.5 of this Ordinance.
- off-street areas that will be used for the new land use shall be paved in accordance with Section 8.2.6.1
- if fronting on a corridor as defined in Section 10.7 of the UDO, the building(s) shall be retrofitted to conform to all design standards of that section
- all outdoor solid waste disposal areas shall be screened in accordance with Section 10.1 of the UDO

(b) Major Change of Use. For a change of use that provides 10 or more additional total parking spaces, the following UDO site improvements shall be required:

- street Yard buffer as set forth in Section 7.7 of the UDO. The Street Yard buffer shall not be required where existing buildings encroach into the area that would be required to provide such a buffer. This exemption does not include existing parking areas.
- parking area landscaping as set forth in Section 7.6 of the UDO.
- if abutting single-family residential developed properties, a Buffer (screening) Yard as set forth in Section 7.5 of the UDO.
- off-street parking areas that will be used for the new land use shall be paved in accordance Section 8.2.6.1
- if fronting on a corridor as defined Section 10.7 of the UDO, the building(s) shall be retrofitted to conform to all design standards of that section
- all outdoor solid waste disposal areas shall be screened in accordance with Section 10.1 of the UDO.

3.2.3.5 EXCEPTIONS.

The provisions of the Section 3.2 shall not apply to any legal nonconforming use established in accordance with provisions of Article 13 of this Ordinance.

3.2.3.6 PROCEDURES.

The Applicant shall file a complete application on the prescribed form for a Zoning Clearance Permit with the Administrator. If Site Plan Review is required in accordance with § 3.6 of this Ordinance, the approved site plan must be submitted with application for a zoning clearance. If the proposed development or development activity is not subject to site plan review pursuant to § 3.6, a plot plan must be filed for review as set forth in Figure 3.2-1. The requirements for a plot plan are:

- Location of structure(s), including but not limited to all proposed decks, steps, or other similar structural improvements
- Building Setbacks
- Location of off-street parking
- Location of 100-year floodplain

Following review, the Administrator shall approve, approve with conditions, or deny the application for a zoning clearance permit. Applications that are denied

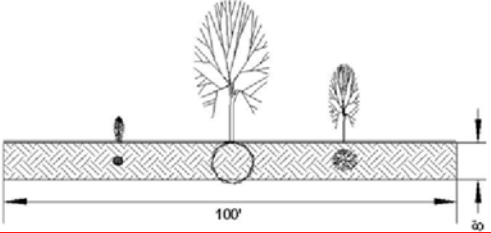
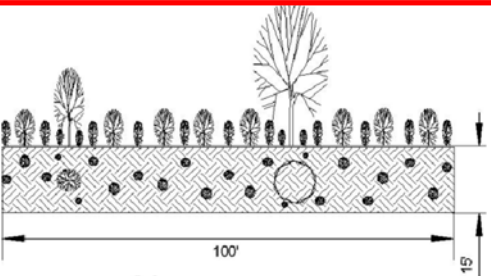
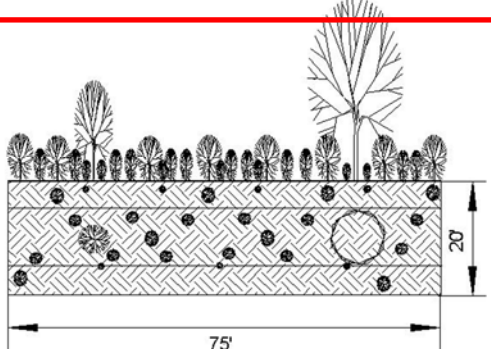
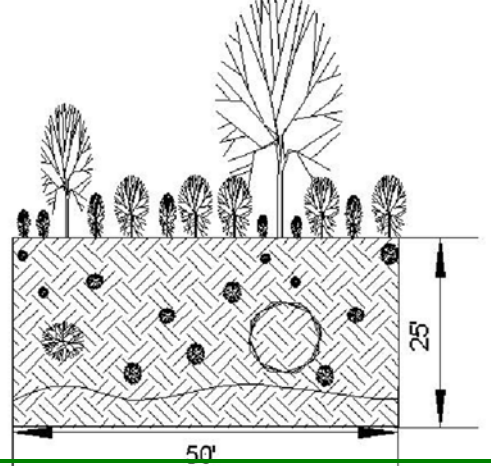
TABLE 7-2

Class 1	Class 2	Class 3	Class 4	Class 5
<i>RA Residential Agricultural</i> <i>RR Residential Restricted</i> <i>R-20 Residential Single-Family</i> <i>R-14 Residential Single-Family</i> <i>R-12 SF Residential Single-Family</i> <i>R-12 Residential Mixed</i> <i>R-10 Residential Mixed</i>	<i>R-6 Residential Mixed</i> <i>MF-12 Multifamily</i>	<i>NC Neighborhood Commercial</i> <i>O&I Office and Institutional</i> <i>C-1 Light commercial and Office</i>	<i>C-2 General Commercial</i> <i>HC Highway Commercial</i>	<i>LI Light Industrial</i> <i>HI Heavy Industrial</i>
<i>Residential uses – single-family detached homes and individual duplex on individual lot only</i>	<i>Residential uses – other than Class 1</i>	<i>Commercial, Office, Institutional and Civic uses</i>	<i>Retail Trade uses</i> <i>Wholesale Trade uses</i>	<i>Manufacturing and Industrial uses</i> <i>Transportation, Warehousing and Utilities uses</i>

TABLE 7-3: BUFFER YARD CHART: BUFFER YARD TYPES FOR ADJACENT LAND USE CLASSES

Land Use Classification	1 Existing	2 Existing	3 Existing	4 Existing	5 Existing
1 Proposed	N/A	N/A	N/A	N/A	N/A
2 Proposed	A	A	A	A	A
3 Proposed	B	B	A	A	A
4 Proposed	C	C	B	A	A
5 Proposed	D	D	C	B	N/A

TABLE 7-4: BUFFER YARD LANDSCAPING REQUIREMENTS

Buffer Yard Type	Minimum Width	Minimum Required Large Trees	Minimum Required Small Trees	Minimum Required Points per Linear Foot	Illustration
A	8'	1 per 100'	optional	0.2	
B	15'	1 per 75'	1 per 100'	0.7	
C	20'	1 per 50'	1 per 75'	1.0	
D	50' or 25' with 6' high berm	1 per 50'	1 per 50'	1.2 or 0.6 with 6' high berm	

Site Plan for review by the Department of Community Development, which is accompanied by an application for a Special Use permit, conditional zoning, or a rezoning to a zoning district for which a Major Site Plan is required. As the second step, after the decision-making agency renders its decision on the underlying zoning map amendment and/or Special Use permit application, the applicant files a final site plan for approval by the Department of Community Development and an application for a Zoning Clearance Permit.

3.6.6.2 PRELIMINARY SITE PLAN.

- (a) The Department of Community Development shall determine whether the application for a preliminary site plan is complete as prescribed in Appendix B.
- (b) If the preliminary site plan is complete, the Department of Community Development shall forward the application, along with the zoning amendment or Special Use permit application, to the Planning Commission as prescribed in § 3.4, or the Board of Adjustment as prescribed in § 3.5. If the preliminary site plan is incomplete, the Department of Community Development shall return it to the applicant with a statement of the reasons why the proposed preliminary site plan does not conform to the provisions of Appendix B.

3.6.6.3 FINAL SITE PLAN.

After a final decision to approve, or approve with conditions the zoning map amendment or Special Use permit application and preliminary site plan, , the applicant may file an application for Final Site Plan approval. The final site plan shall be prepared and submitted to the Department of Community Development.

3.6.7 FINAL INSPECTION.

The Department of Community Development shall inspect the site for compliance with the approved site plan before a Zoning Clearance Permit is issued for the project. The Department of Community Development will write a letter to the applicant stating any deficiencies.

3.6.8 SCOPE.

3.6.8.1 The Department of Community Development will sign and date the site plan to

indicate approval. Approval shall become effective immediately.

3.6.8.2 The owner of a use or property subject to the site plan will be notified if site plan approval must be suspended. Suspension is caused by 1.) violation of any applicable provision of this section, or 2.) failure to comply with any applicable required conditions.

3.6.8.3 If ownership changes of the site plan or structure in question, the site plan approval remains valid.

3.7 VARIANCES

3.7.1 PURPOSE.

The purpose of this Section is to protect the rights of applicants, landowners, and affected persons by providing procedures for variances from the provisions of this UDO. This Section implements the provisions of NCGS § 160D-705.

3.7.2 APPLICABILITY.

This Section applies to any an application for a variance as prescribed in NCGS § 160D-705.

3.7.3 DECISION.

3.7.3.1 The application shall be considered by the appropriate Board of Adjustment following receipt of a complete application and appropriate notification of meeting. The Board of Adjustment shall conduct a hearing on the appeal pursuant to the procedures established in NCGS § 160D-406 and §3.1.5.3 of this Ordinance.

3.7.3.2 Appeals from the decision of the Board of Adjustment shall be filed with the Clerk of the local government jurisdiction, within 30 days of the final decision of the Board. The Board of Adjustment's decision shall be considered a final decision upon filing of the Board's Order in the Clerk to the Board's office.

3.7.4 APPROVAL CRITERIA.

3.7.4.1 When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

- (a) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (b) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- (c) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- (d) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

3.7.4.2 No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

3.7.4.3 Voting. The concurring vote of four-fifths of the board shall be necessary to grant a variance. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

3.7.5 APPLICATION FOR VARIANCE.

A variance is not a right. It may be granted to an applicant only if the applicant establishes compliance with the criteria established in NCGS § 160D-705.

3.8 APPEALS

3.8.1 PURPOSE.

The purpose of this Section is to protect the rights of applicants, landowners, and affected persons by providing procedures to hear and decide appeals from decisions of administrative officials charged with enforcement of the unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development. This Section implements the provisions of NCGS § 160D-405.

3.8.2 APPLICABILITY.

This Section applies to any of the following:

- (1) appeals from and review any order, requirement, decision, or determination made by an administrative official charged with enforcing this Ordinance, as prescribed in NCGS §§ 160D-405.

3.8.3 PROCEDURES

3.8.3.1 The board of adjustment shall hear and decide appeals decisions of administrative officials charged with enforcement of the zoning or unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

- a) Any person who has standing under G.S. 160D-1402 or the local government with jurisdiction over the location of the property at issue may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the Clerk to the Board of Adjustment. The notice of appeal shall state the grounds for the appeal.
- b) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
- c) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
- d) It shall be conclusively presumed that all persons with standing to appeal have constructive

Sanford/Lee County

Planning and Development
P.O. Box 3729, Sanford, NC 27331-3729

September 1, 2021

Dear Adjacent Property Owner:

The Unified Development Ordinance (UDO) of Sanford, North Carolina requires that adjacent property owners be notified when a request for a variance has been scheduled for a public hearing before the City of Sanford Board of Adjustment.

CITY OF SANFORD LEGAL NOTICE

Notice is hereby given that the City of Sanford Board of Adjustment will conduct a public hearing on Tuesday, September 14, 2018 in the Buggy Conference Room on the first floor of the Historic Buggy Company Building at 115 Chatham Street, Sanford, NC. The public hearings will begin at 6:00p.m. or as soon thereafter as deemed practical by the Board to consider the following application:

1. Application by Progressive Contracting Co., Inc. for property located at 200 Hawkins Avenue, Sanford, NC. The applicant is requesting a Variance from the Unified Development Ordinance (UDO), Article 7 Landscaping and Buffering Standards, Section 7.5 Buffer Yards, Table 7-4 Buffer Yard Landscaping Requirements. The request is for a fifteen (15) feet variance from the required landscape buffer yard width of fifteen (15) feet. In lieu of the required landscape buffer, the applicant is proposing the installation of a wood-on-wood fence that is that is 4 feet tall on top of the existing retaining wall along the property line and 8 feet tall along the property line where there is no retaining wall between the residential dwelling to the south of the site at 114 Hawkins Avenue and the commercial building proposed for renovation at 200 Hawkins Avenue. The subject property is zoned Office & Institutional (O&I) and is identified as Tax Parcel 9643-70-1901-00 on Lee County Tax Map 9634.19.

The public is cordially invited to attend this quasi-judicial hearing. Due process requirements for quasi-judicial decisions mandate that certain standards be observed when these decisions are made. This includes the right of parties for or against the proposal to offer evidence, have sworn testimony, and have findings of fact supported by competent, substantial and material evidence.

All interested parties have the right to be represented by an attorney. Further information may be obtained by contacting the Sanford/Lee County Zoning & Design Review Department at 115 Chatham Street, Sanford, NC 27330 or by calling 919-718-4656. Upon request and with 24-hour notice, the City will provide an interpreter for the hearing impaired or any other auxiliary aid.

Cualquier ciudadano que tenga preguntas o comentarios de las cosas al referido, puede comunicarse a el departamento de desarrollo para Sanford/Condado de Lee, llame al (919) 718-4656.

Thank you.

By Bonnie Davis, City Clerk

ADJACENT PROPERTY OWNERS NOTIFICATION CERTIFICATION

I, Tanner O'quin, hereby certify that the property owners and adjacent property owners of the following rezoning petitions, as indicated on the Lee County Tax Maps, were notified by First Class U.S. Mail on Friday September 3, 2021.

1. VARIANCE APPLICATION

Application by Progressive Contracting Co., Inc. for property located at 200 Hawkins Avenue, Sanford, NC. The applicant is requesting a Variance from the Unified Development Ordinance (UDO), Article 7 Landscaping and Buffering Standards, Section 7.5 Buffer Yards, Table 7-4 Buffer Yard Landscaping Requirements. The request is for a fifteen (15) feet variance from the required landscape buffer yard width of fifteen (15) feet. In lieu of the required landscape buffer, the applicant is proposing the installation of a wood-on-wood fence that is that is 4 feet tall on top of the existing retaining wall along the property line and 8 feet tall along the property line where there is no retaining wall between the residential dwelling to the south of the site at 114 Hawkins Avenue and the commercial building proposed for renovation at 200 Hawkins Avenue. The subject property is zoned Office & Institutional (O&I) and is identified as Tax Parcel 9643-70-1901-00 on Lee County Tax Map 9634.19.

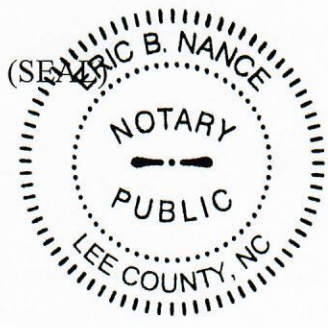
Signature: [Handwritten Signature] Date: 9/9/21
Title: Planning Technician

Lee County, North Carolina

I, Eric Nance, a Notary Public for Lee County and State of North Carolina do hereby certify that Tanner Oquin personally appeared before me on this day and acknowledged the due execution of the foregoing Instrument. Witness my hand and official seal, this the 9th day of September, 2021.

[Handwritten Signature]
Notary Public Signature

My Commission expires June 16th 2026



ADJOINING PROPERTY OWNERS LIST

APPLICATION BY: Progressive Contracting, Inc.

REQUEST: Buffer Yard Variance

LOCATION: 200 Hawkins Avenue, Sanford, NC 27330

PIN: 9643-70-1901-00

DATE: August 30, 2021

No.	PIN	PROP ADDR	OWNER 1	OWNER2	M #	MAIL ST	MAILCITY	ST	ZIP
01	9643-71-0073-00	206 HAWKINS AVE	PROGRESSIVE DEVELOPMENT CO LLC	-	115	CHATHAM STREET	SANFORD	NC	27330
02	9643-70-4938-00	117 FIRST ST	ORIGINAL INVESTORS, INC	-	-	PO BOX 2825	SANFORD	NC	27330
03	9643-70-1820-00	118 HAWKINS AVE	GURTIS, RUTH B (LIFE ESTATE)	-	114	HAWKINS AVE	SANFORD	NC	27330
04	9643-60-8720-00	203 HAWKINS AVE	FIRST PRESBY CH OF SFD NC PRESBY CH USA	-	203	HAWKINS AVE	SANFORD	NC	27330
05	9643-60-7855-00	205 HAWKINS AVE	FIRST PRESBY CH OF SFD NC PRESBY CH USA	-	203	HAWKINS AVE	SANFORD	NC	27330
06	9643-60-7903-00	205 HAWKINS AVE	FIRST PRESBY CH OF SFD NC PRESBY CH USA	-	203	HAWKINS AVE	SANFORD	NC	27330
07	9643-61-7045-00	205 HAWKINS AVE	FIRST PRESBY CH OF SFD NC PRESBY CH USA	-	203	HAWKINS AVE	SANFORD	NC	27330
08	APPLICANT & PROPERTY OWNER :	-	PROGRESSIVE DEVELOPMENT CO LLC	-	115	CHATHAM STREET	SANFORD	NC	27330

(0) = No address assigned to this parcel. Typically, it is vacant

Sanford/Lee County

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Thank you.
By Bonnie Davis, City Clerk

Please publish in the Legal Notices Section of the Sanford Herald on Friday, September 3, 2021 and Friday, September 10, 2021. If you have any questions regarding this notice, please call Amy J. McNeill at 718-4656, ext. 5397. Charge to Account 30031885 and refer to as Sanford Board of Adjustment Notice.

Please send publisher's affidavit to the Sanford/Lee County Community Development Dept., P.O. Box 3729, Sanford, NC, and attention: Angela Baker. Thank you.

Board of Adjustment Variance Hearing Procedures

1. PRELIMINARY MATTERS

- 1) Note for the record the presence of a quorum.
- 2) Chairman calls the meeting to order.
- 3) Approval of agenda. (Board members may add or delete items upon a majority vote.)
- 4) Approval of minutes of previous meeting.
- 5) Disclosure of conflict of interest and ex-parte communication by Board Members.

Conflict of Interest (Defined under new law) - A member of the board or any other body exercising quasi-judicial functions pursuant to this Ordinance shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

- 6) Old Business.
- 7) New Business.

2. VARIANCE HEARING

- 1) Chairman to announce the case:

“We will now hold a public hearing to consider the next matter on the agenda, which is the application of: Mr./Mrs. _____, seeking a variance for _____

- 2) Chairman to read statement:

A variance request is a quasi-judicial hearing which means that all parties have the right to offer evidence, cross-examine adverse witnesses, inspect documents,

have sworn testimony, have the decision based only on evidence that is properly in the hearing record, and have written findings of fact supported by competent, substantial and material evidence.

Since this is a quasi-judicial hearing, it is improper for a member of the Board of Adjustment to discuss this case or to independently gather evidence outside of this hearing.

- 3) Chairman then ask:
Does any board member have a conflict that they need to disclose?
- 4) Chairman then states:
Those wishing to testify must be sworn; however, anyone in attendance may ask questions of the person testifying.
- 5) Chairman then ask the following questions:
 - A. Is the applicant Mr./Mrs. _____ present?
 - B. Are you ready to proceed?
 - C. Are you represented by counsel?
- 6) Chairman calls for all witnesses who will testify in favor of the application to come forward to be sworn.
- 7) Chairman then calls for all witnesses who will testify in opposition to the petition to come forward and be sworn.
- 8) Chairman then call on the applicant or his counsel to present their case *in favor* of granting the variance.

The procedure with applicant will be as follows:

- A) Applicant/counsel testifies
- B) Those in opposition cross-examine the applicant/counsel
- C) Questions from the Board of Adjustment
- D) Redirect examination of applicant/counsel

- E) Re-cross examination of applicant/counsel by those in opposition
 - F) Further questions by Board of Adjustment
 - G) Questions by public (Must give name and address for the record)
- 9) Chairman then call on witnesses in favor of application to speak, and observe the same procedure as noted above.
- 10) After the applicant has completed presenting his/her case, Chairman then call upon those in opposition to the application to present their witnesses.

The procedure with witnesses will be as follows:

- A) Witness/counsel in opposition testifies
 - B) Applicant or his counsel cross-examines witness in opposition
 - C) Questions from the Board of Adjustment
 - D) Redirect examination by witness in opposition
 - E) Re-cross examination of witness in opposition by applicant
 - F) Further questions by Board of Adjustment
 - G) Questions by public (Must give name and address for the record)
- 11) Chairman to call the next and each succeeding witness in opposition to speak, and observe the same procedure as noted above)
- 12) After all witnesses for the applicant and those in opposition have testified, call upon the applicant to present whatever evidence he has in rebuttal. (Note: This is not an invitation to rehash everything the applicant/counsel or those in opposition has gone over in their direct testimony, but is the opportunity to present new evidence that the applicant/council or those in opposition has in rebuttal to what the other has stated.)

REBUTTAL

- A) Applicant/counsel can present any new evidence they have for rebuttal.
 - B) After the applicant/counsel rebuttal has been presented, then the opponents have the opportunity to present new evidence in rebuttal.
- 13) This would complete the hearing of evidence in the matter unless either party should ask for a chance to present further evidence. This would be a matter within the discretion of the Board.

14) Chairman to call on the applicant/counsel to present their summation or argument to the Board in favor of granting the variance.

15) Chairman to call on those in opposition to present their summation or argument to the Board as to why the variance should be denied.

Finally, after all evidence and the rebuttals have been presented,

16) The Chairman should summarize the evidence. (The secretary should write this summary down for inclusion in the minutes.)

17) The Chairman should tell the parties that the summary is intended to be the record of what has been presented and that they may offer any objections, corrections, or additions that will more accurately present their case.

This concludes the hearing and the Board shall then deliberate and make a decision.

18) The Chairman should state for the Board and those in attendance, that the granting of the variance is based upon findings of fact. Each finding requires a 4/5-majority vote (80%) by the Board to be approved. When voting, the Board must render a decision on *each* of the required findings and *must state a reason for approval or denial of *each* finding of fact. (The Board members should indicate for each required finding the evidence on which the finding was based. On the basis of these findings, a Board member should offer a motion either to grant or deny the variance. This motion should be discussed and any suitable conditions appended to it.)

19) Chairman should also state that if one of the required findings fail, they all fail.

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under the state enabling act, the Board is required to reach four conclusions before it may issue a variance:

- A. If he complies with the provisions of the ordinance, the property owner will suffer unnecessary hardship. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- B. The hardship of which the applicant complains results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

- C. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- D. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Note: Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

After the Board's decision has been rendered,

This decision is effective upon filing the written decision with the clerk to the board. This decision shall be subject to review by the superior court. If anyone is dissatisfied with the decision of the Board, an appeal may be taken to the Lee County Superior Court within 30 days after the decision has been filed in the clerk to the board in the Planning Department.