



AGENDA

**Regular Board of Adjustment Meeting
September 14, 2021 - 6:30 PM**

Meeting Location:

Town Hall

101 Huntersville-Concord Road

Huntersville NC 28078

- 1. Roll Call, Determination of Quorum**
- 2. Approval of Minutes**
 - 2.A. Consider approval of the August 10, 2021 Regular Meeting Minutes
- 3. Hearing of Cases**
 - 3.A. Variance 21-05, 12802 Jamesburg Drive
- 4. Other Business**
- 5. Adjourn**



**Minutes
Regular Board of Adjustment Meeting
August 10, 2021 - 6:30 PM**

Meeting Location:

Town Hall

101 Huntersville-Concord Road

Huntersville NC 28078

1. Roll Call, Determination of Quorum

Quorum was determined, and Chairman Cecil called the meeting to order.

Regular Members in attendance: Chairman E. Cecil, Vice-Chairman P. Jacobson, S. Genenbacher, J. Bradshaw, J. Loucks, M. Bennett, and K. Burton.

Alternate Members present: K. Bray, J. Carbonell, and J. Passarelli

2. Approval of Minutes

2.A. Consider approval of the July 13, 2021 Minutes of the Meeting

J. Bradshaw made a Motion to Approve the July 13, 2021 Minutes of the Meeting. J. Loucks seconded the motion. The motion passed unanimously (7-0).

Chairman Cecil read the conflict of interest disclosure statement and asked all Board members if there was any conflict. There was no conflict stated.

3. Hearing of Cases

Prior to testimony, a group attestation was completed for all parties involved or giving testimony to the case. This included: Lauren Speight, Planner 1; Brad Priest, Principal Planner; Austin Watts 200 S Tryon Street, #200 Charlotte NC.

Chairman Cecil asked Staff if V21-07, V21-08 and V21-09 had complete applications. Staff responded that they did not. The Chairman asked the applicant if they would like to continue their items so as to submit a complete application. There was no objection.

J. Bradshaw made a Motion to Continue V21-07, V21-08, and V21-09 to September regular meeting or until a complete an application is submitted. P. Jacobson seconded the motion. The motion passed unanimously (7-0)

3.A. Variance 21-05, 12802 Jamesburg Drive

Lauren Speight, Planner I (also referred to herein as "staff") presented, and entered the Staff Report into the record through verbal testimony as indicated below, and written documentation, which is attached hereto as Exhibit A, and incorporated herein by reference.

L. Speight, Planner I provided an overview of the variance request as follows:

BACKGROUND:

1. The subject property, Parcel ID 011-211-08 is zoned Corporate Business (Conditional District), CB (CD).
2. The subject property is located within the Town of Huntersville.
3. The subject property is included within Rezoning R19-13 approved by the Huntersville Board of Commissioners 3/16/2020.
4. The subject property was conveyed via deed to MDH F1 Huntersville JV, LLC March 23, 2020. (Exhibit 1)
5. A commercial site plan was submitted to the Town for land development review April 27, 2020 and approved August 24, 2020. Polaris 3G and the approved commercial site plan did not show two intermittent streams (Exhibits 2 and 3) extended from the 35' SWIM buffer shaded in yellow below left. The two intermittent streams were also not identified on conditional rezoning plan R19-13.
6. A building permit for MMF Huntersville Distribution Park - Building A was issued September 24, 2020 based on the approved commercial site plan. (Exhibit 4)
7. A survey dated April 2021 by Kimley-Horn identified two intermittent streams not previously shown on Polaris 3G or the commercial site plan (Figure 4 of Variance Application).
8. A Certificate of Occupancy has not yet been issued for Building A.
9. Per Article 8.25.1 of the Zoning Ordinance, "The purpose of a stream buffer network is to filter pollutants, store floodwaters, provide habitat, and contribute to the "green infrastructure." Vegetated lands adjacent to the stream channel in the drainage basin serve as "buffers" to protect the stream's ability to fulfill its natural functions. Buffers have the primary natural functions of protecting water quality by filtering pollutants, providing intermittent storage for floodwaters, allowing channels to meander naturally, and providing suitable habitat for wildlife." (Exhibit 5)
10. Per Article 8.25.9 of the Zoning Ordinance, "Buffer boundaries including all buffer zones must be clearly delineated on all site-specific plans for Board of Commissioner approval, on all construction plans, including grading and clearing plans, erosion and sediment control plans, and site plans."
11. And, Per Article 8.25.4, S.W.I.M. Stream Buffers, throughout the jurisdiction of the Town of Huntersville shall be delineated by Mecklenburg County through its geographic information system (GIS), Polaris 3G.
12. Construction at the site has been ongoing since the building permit was issued in August 2020 (photo below from February 2021). Highlighted area shows approximate location of intermittent streams.
13. Staff received a variance application from Chris Stanley on behalf of MDH F1 Huntersville JV, LLC June 2, 2021. (Exhibit 6). According to the application, once it was discovered the two intermittent streams were impacted by development "...Town, State, and Corps were notified..."
14. Article 8.25.11 provides nine different options to mitigate impacts on SWIM Buffers when an applicant is seeking a variance. The ordinance states that any of these mitigation techniques shall be construed by the Board of Adjustment to be evidence responsive to Section 11.3.2(e)(4) consistent with adopted plans and protection of public safety and welfare.

STAFF FINDINGS (ordinance standards are in italics):

Please see Exhibit 6 for the applicant's responses to the required criteria for granting a variance.

In considering any variance request, the following Standards for Granting a Variance of the Huntersville Zoning Ordinance (Article 11.3.2.e) must be addressed:

Article 11.3.2.e Standards for Granting a Variance of the Huntersville Zoning Ordinance:

Before granting a variance, the Board of Adjustment shall have made the following findings:

Standards for Granting a Variance. 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:

- 1) *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.*

Staff Findings:

- A. The applicant states the S.W.I.M. Buffer surrounding the two intermittent streams has already been disturbed and additional hardship would result from the demolition of the existing construction and reestablishment of the original buffer.
- B. Per sheet C402 of the variance application, the area impacted by the intermittent streams is minimal.
- C. Polaris 3G and the approved commercial site plan do not show the two intermittent streams that are identified in Figure 4 of the variance application. (Exhibits 2 and 3)
- D. The applicant also states the Buffer did not appear on site plans as the result of an option not selected in the applicant's development system.
- E. If a variance is granted, mitigation is required for the disturbance per one of the prescribed methods indicated in Article 8.25.11.
- F. If a variance is not granted, restoration of the intermittent streams is required and the applicant would be required to remove permanent structures from the S.W.I.M. Buffer.
- G. As mitigation or restoration of the Buffer is required regardless, Staff finds unnecessary hardship would result from the strict application of the Ordinance. The additional demolition of within the Buffer would cause greater disturbance than mitigation alone.

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

Staff Findings:

- A. S.W.I.M. Stream Buffers are present throughout the Town of Huntersville and are not peculiar to the property.
- B. Polaris 3G and the approved commercial site plan do not show the two intermittent streams that identified in Figure 4 of the variance application
- C. The applicant states the Buffer did not appear on site plans as the result of an option not selected in the applicant's plan system.
- D. Staff finds that while S.W.I.M. Stream Buffers are not unique to the subject property, it is unique the two intermittent streams were not delineated by Mecklenburg County through its geographic information system (GIS), Polaris 3G.

- 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.*

Staff Findings:

- A. According to the variance application, the property owner, MDH F1 Huntersville JV, LLC, "...was unaware of the stream buffer as it did not show up on the GIS maps and was turned off on the subject plans." The intermittent streams were also not identified on the conditional rezoning plans for R 19-13 approved by Huntersville on 3/16/2020.
- B. While Article 8.25.4 indicates, S.W.I.M. Stream Buffers, throughout the jurisdiction of the Town of Huntersville shall be delineated by Mecklenburg County through its geographic information system (GIS), the applicant also states the Buffer did not appear on site plans as the result of an option not selected in the applicant's development system.

- C. Staff does find the property owner, MDH F1 Huntersville JV, LLC was unaware of the intermittent SWIM buffers at the time a building permit was issued.
- 4) *The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.*

Staff Findings:

- A. Per Article 8.25.11, regarding variance applications from S.W.I.M Buffer requirements, site specific mitigation plans using the mitigation techniques set out below and approved by the designated agency shall be construed by the Board of Adjustment to be evidence responsive to Section 11.3.2 e), subparagraph 4. The applicant has submitted a buffer mitigation plan that uses one the approved mitigation techniques set for in Article 8.25.11.
- B. The applicant is proposing:
(5) Bottom Land Hardwood Preservation. On a 2:1 acreage basis for impacted stream and buffer area 2 acres of bottomland hardwood for each acre of disturbed area), the owner may provide a combination of the preservation of existing bottom land hardwood forest or other specifically approved natural heritage area by conservation easement or other legal instrument, and the implementation of structural or non-structural BMPs to achieve specific pollutant removal targets within the impacted area. Plan to be approved by Mecklenburg County Land Use and Environmental Services Agency.
- C. The site mitigation plan is still under review and has not yet been approved by the County Storm Water Administrator.
- D. Pending the ultimate approval by the County Storm Water Administrator, Staff finds this requirement can be satisfied.

STAFF POSITION:

The applicant is seeking a variance from Article 8.25.11 of the Zoning Ordinance. Article 8.25.11 indicates strict parameters for disturbance allowed dependent upon the location of the disturbance within the Buffer and type of disturbance proposed. Disturbance not permitted by Article 8.25.11 requires a variance from the Board of Adjustment and a site mitigation plan approved by the designated agency. Staff finds the application meets the four requirements for granting a variance and therefore recommend approval of the request based on the below Staff Findings:

1. The subject property, Parcel ID 011-211-08 is zoned Corporate Business (Conditional District), CB (CD).
2. The subject property is located within the Town of Huntersville.
3. The subject property is included within Rezoning R19-13 approved by the Huntersville Board of Commissioners 3/16/2020.
4. The subject property was conveyed via deed to MDH F1 Huntersville JV, LLC March 23, 2020. (Exhibit 1)
5. A commercial site plan was submitted to the Town for land development review April 27, 2020 and approved August 24, 2020. Polaris 3G and the approved commercial site plan did not show two intermittent streams (Exhibits 2 and 3) extended from the 35' SWIM buffer shaded in yellow below left. The two intermittent streams were also not identified on conditional rezoning plan R19-13.
6. A building permit for MMF Huntersville Distribution Park - Building A was issued September 24, 2020 based on the approved commercial site plan. (Exhibit 4)
7. A survey dated April 2021 by Kimley-Horn identified two intermittent streams not previously shown on Polaris 3G or the commercial site plan (Figure 4 of variance application).
8. A Certificate of Occupancy has not yet been issued for Building A.
9. Per Article 8.25.1 of the Zoning Ordinance, "The purpose of a stream buffer network is to filter pollutants, store floodwaters, provide habitat, and contribute to the "green infrastructure." Vegetated

lands adjacent to the stream channel in the drainage basin serve as “buffers” to protect the stream’s ability to fulfill its natural functions. Buffers have the primary natural functions of protecting water quality by filtering pollutants, providing intermittent storage for floodwaters, allowing channels to meander naturally, and providing suitable habitat for wildlife.” (Exhibit 5)

10. Per Article 8.25.9 of the Zoning Ordinance, “Buffer boundaries including all buffer zones must be clearly delineated on all site-specific plans for Board of Commissioner approval, on all construction plans, including grading and clearing plans, erosion and sediment control plans, and site plans.”
11. And, Per Article 8.25.4, S.W.I.M. Stream Buffers, throughout the jurisdiction of the Town of Huntersville shall be delineated by Mecklenburg County through its geographic information system (GIS), Polaris 3G.
12. Construction at the site has been ongoing since the building permit was issued in August, 2020 (photo below from February 2021). Highlighted area shows approximate location of intermittent streams.
13. Staff received a variance application from Chris Stanley on behalf of MDH F1 Huntersville JV, LLC June 2, 2021. (Exhibit 6). According to the application, once it was discovered the two intermittent streams were impacted by development “...Town, State, and Corps were notified...”.
14. Article 8.25.11 provides nine different options to mitigate impacts on SWIM Buffers when an applicant is seeking a variance. The ordinance states that any of these mitigation techniques shall be construed by the Board of Adjustment to be evidence responsive to Section 11.3.2(e)(4) consistent with adopted plans and protection of public safety and welfare.
15. The applicant states the S.W.I.M. Buffer surrounding the two intermittent streams has already been disturbed and additional hardship would result from the demolition of the existing construction and reestablishment of the original buffer.
16. Per sheet C402 of the variance application, the area impacted by the intermittent streams is minimal.
17. If a variance is granted, mitigation is required for the disturbance per one of the prescribed methods indicated in Article 8.25.11.
18. If a variance is not granted, restoration of the intermittent streams is required and the applicant would be required to remove permanent structures from the S.W.I.M. Buffer.
19. As mitigation or restoration of the Buffer is required regardless, Staff finds unnecessary hardship would result from the strict application of the Ordinance. The additional demolition of within the Buffer would cause greater disturbance than mitigation alone.
20. S.W.I.M. Stream Buffers are present throughout the Town of Huntersville and are not peculiar to the property.
21. Polaris 3G and the approved commercial site plan do not show the two intermittent streams that are called out in Figure 4 of the variance application. (Exhibits 2 and 3 and below)
22. While Article 8.25.4 indicates, S.W.I.M. Stream Buffers throughout the jurisdiction of the Town of Huntersville shall be delineated by Mecklenburg County through its geographic information system (GIS), the applicant states the Buffer did not appear on site plans as the result of an option not selected in the applicant’s plan system.
23. Staff finds that while S.W.I.M. Stream Buffers are not unique to the subject property, it is unique the two intermittent streams were not delineated by Mecklenburg County through its geographic information system (GIS), Polaris 3G.
24. According to the variance application, the property owner, MDH F1 Huntersville JV, LLC, “...was unaware of the stream buffer as it did not show up on the GIS maps and was turned off on the subject plans.” The intermittent streams were also not identified on the conditional rezoning plans for R 19-13 approved by Huntersville on 3/16/2020.
25. Staff does find the property owner, MDH F1 Huntersville JV, LLC was unaware of the intermittent SWIM buffers at the time a building permit was issued.
26. Per Article 8.25.11, regarding variance applications from S.W.I.M Buffer requirements, site specific mitigation plans using the mitigation techniques set out below and approved by the designated agency shall be construed by the Board of Adjustment to be evidence responsive to Section 11.3.2 e), subparagraph 4. The applicant has submitted a buffer mitigation plan that uses one the approved mitigation techniques set for in Article 8.25.11.
27. The applicant is proposing:

(5) Bottom Land Hardwood Preservation. On a 2:1 acreage basis for impacted stream and buffer area 2 acres of bottomland hardwood for each acre of disturbed area), the owner may provide a combination of the preservation of existing bottom land hardwood forest or other specifically approved natural heritage area by conservation easement or other legal instrument, and the implementation of structural or non-structural BMPs to achieve specific pollutant removal targets within the impacted area. Plan to be approved by Mecklenburg County Land Use and Environmental Services Agency.

28. The site mitigation plan is still under review and has not yet been approved by the County Storm Water Administrator

29. Pending the ultimate approval by the County Storm Water Administrator, Staff finds this requirement can be satisfied.

Austin Watts, 200 S Tryon Street, Professional expert with Kimley Horn spoke for the applicant as an expert witness. He testified that the error was the result of a layer in AutoCAD being turned off which caused staff not to be notified of the intermittent stream. When the mistake was identified, staff quickly worked to resolve the problem and notify all of the proper agencies to seek permits and remedy the error. Currently a mitigation of two for one of hardwood preservation has been submitted, approximately 18,000 square feet were affected and nearly 40,000 square feet of hardwoods will be preserved.

E. Cecil asked how the layer was turned off, how far along were they in construction when this occurred and if there is an onsite team responsible for monitoring this. A. Watts responded that construction had been underway for 6-8 months before the problem was identified, approximately 30 feet of elevation has been added to the area in question, and there is not an onsite team to monitor this. It is possible that the area did not contain any visible signs of being an intermittent stream given the time of year.

J. Bradshaw asked if this was an error by the firm, what the plan is if the current mitigation offer is not successful, and if the variance is premature since the mitigation is not agreed to. A. Watts responded this was an error by the firm, they are confident that they will be able to use one of the eight mitigation options, and that the current offer has already been approved by Rusty Rozzelle and Mike McIntyre and is awaiting calculations by the Town for possible acceptance.

K. Burton asked how saving trees mitigates stream loss and what will happen to the water that used to run through there. A. Watts stated that tree mitigation is one of the acceptable methods of mitigation outlined by the State and County stormwater. The water will now run down a vegetated slope to the water retention ponds and then continue on as it previously did.

P. Jacobson asked what triggered the discovery of the error. A. Watts responded that the site required extra room at the entrance, while calculating this additional of a few square feet for a new pipe staff turned all layers on and learned of the error.

S. Genenbacher stated so their firm found the error that GIS missed and then brought it to the attention of the proper authorities. A. Watts confirmed that is correct.

P. Jacobson asked how far up the stream ran, if the new method will still achieve zero run off and if the water is still arriving at the same destination. A. Watts stated confirmed there are two detention ponds it will run through and then end at the same place and they will still maintain zero run off.

M. Bennett asked what will keep the same mistake from being made in the future. A. Watts commented it was simply human error.

P. Jacobson confirmed the mitigation efforts then would be for perpetuity, and under what criteria would the detention ponds be maintained. A. Watts confirmed it would be for all perpetuity and the detention ponds are inspected by Town staff and must meet the stormwater criteria established by the County.

S. Genenbacher asked when the mitigation is expected to be approved. B. Priest, Principal Planner

commented that County and Stormwater have already agreed to the proposed mitigation, it is only the Town that needs to sign off on the mitigation for it to be approved. At this time, the Town is completing a review of the tree save that was already indicated for the property to ensure that the mitigation proposed is not double dipping, or counting trees twice. Staff does not see this as a big hurdle and has no reservations that one of the eight available mitigation options can be met by the applicant.

P. Jacobson commented that the downside of requesting a variance with conditions versus an approved mitigation plan is the fiscal impact, he stated he would prefer to wait for clarity related to the mitigation effort and possibly continue this discussion until that time. He asked A. Watts if continuing the item would have a negative detriment to the applicant, A. Watts stated it would not.

J. Bradshaw made a Motion to Continue V21-05 to the regular September meeting. J. Loucks seconded the motion. The motion passed unanimously (7-0).

3.B. Variance 21-07, 15300 Holbrooks Road

3.C. Variance 21-08, 15300 Holbrooks Road

3.D. Variance 21-09, 15300 Holbrooks Road

4. Other Business

E. Cecil advised the Board that a review of the Rules of Procedure has been completed and he would like to bring the findings to the Board for review at either a special meeting or the regular September meeting.

5. Adjourn

J. Bradshaw made a Motion to Adjourn. P. Jacobson seconded the motion. The motion passed unanimously (7-0).

**Town of Huntersville
Board of Adjustment
September 14, 2021**

To: Town Board

From: Lauren Speight, Planner II

Date: September 14, 2021

Subject:

EXPLAIN REQUEST:

The applicant is requesting a variance from **Article 8.25** of the Zoning Ordinance. The request is for a variance to impact an intermittent stream buffer as a part of grading for development at the subject property.

ACTION RECOMMENDED:

Consider a decision on Variance 21-05, 12802 Jamesburg Drive

FINANCIAL IMPLICATIONS:

N/A

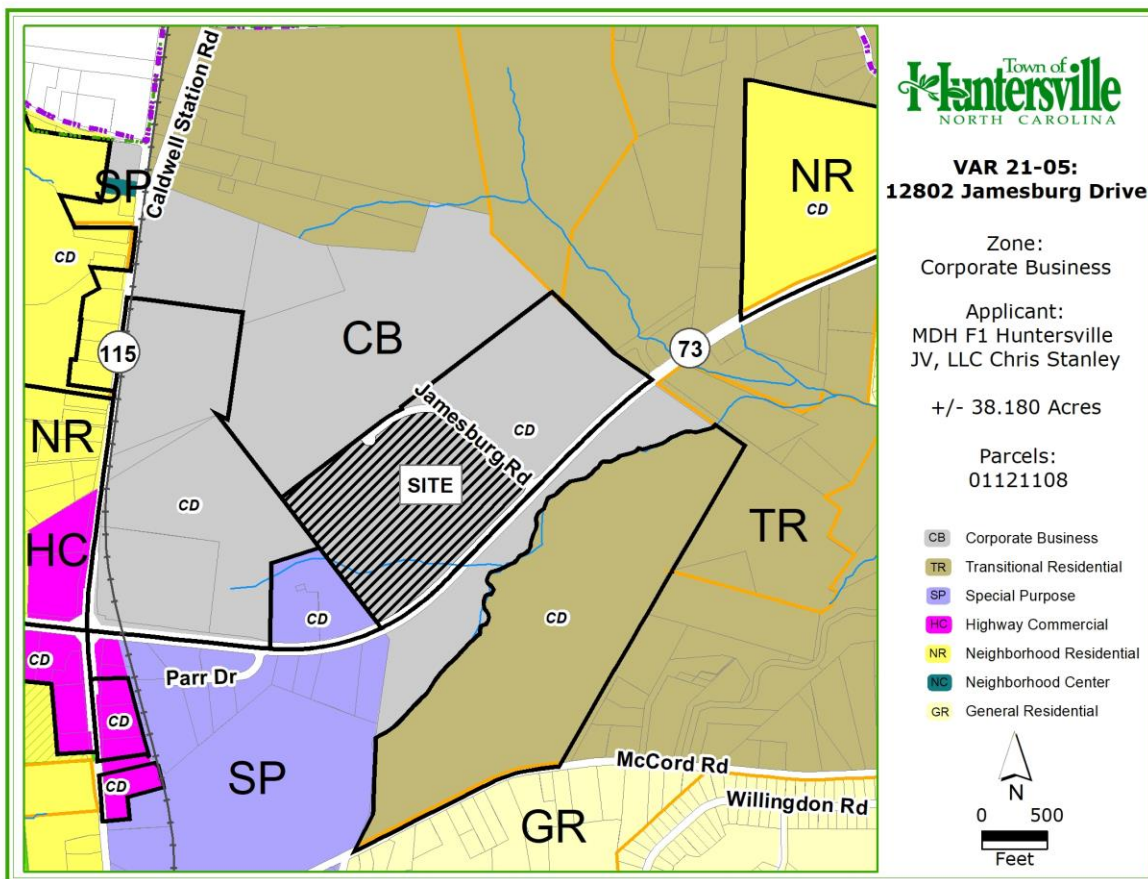
ATTACHMENTS:

1. V21-05 Staff Report_For Web9821

V 21-05, 12802 Jamesburg Drive
Parcel ID 01121108

Case #: V21-05
Address: 12802 Jamesburg Drive, Huntersville, NC 28078
Parcel #: 011-211-08
Acreage: 38.180 acres
Property Owner/Applicant: Chris Stanley on behalf of MDH F1 Huntersville JV, LLC
Owner/Applicant Address: 3715 Northside Parkway NW, Building 400, Suite 240
Staff: Lauren Speight – Planner II

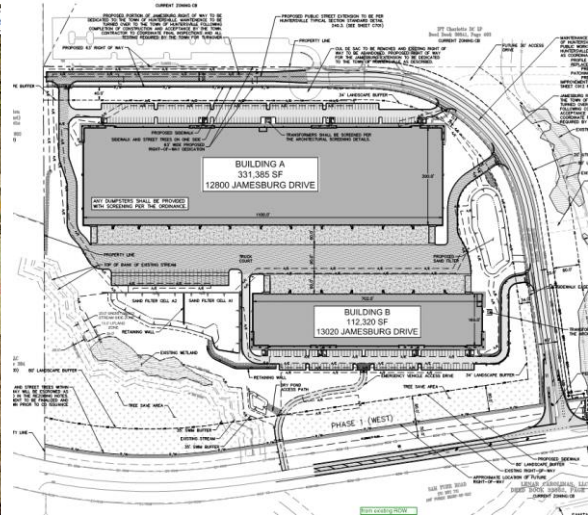
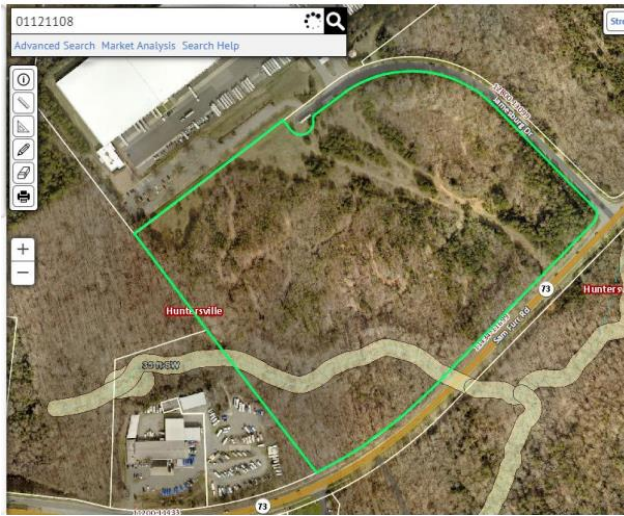
Currently under active development, the 38.180-acre property is served by unmaintained apparent right-of-way that is not a public street accepted for maintenance by NCDOT. The applicant, Chris Stanley on behalf of MDH F1 Huntersville JV, LLC is requesting a variance from **Article 8.25.11 S.W.I.M Buffers** to allow disturbance and mitigation of an intermittent stream as established in Section 8.25.11 (b) of the Zoning Ordinance.



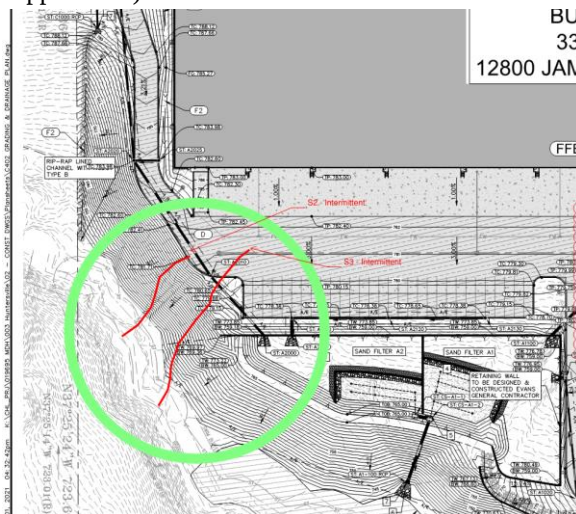
BACKGROUND:

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6. A building permit for MMF Huntersville Distribution Park - Building A was issued September 24, 2020 based on the approved commercial site plan. (Exhibit 4)
7. A survey dated April 2021 by Kimley-Horn identified two intermittent streams not previously shown on Polaris 3G or the commercial site plan (Figure 4 of Variance Application).



8. A Certificate of Occupancy has not yet been issued for Building A.
9. Per Article 8.25.1 of the Zoning Ordinance, "The purpose of a stream buffer network is to filter pollutants, store floodwaters, provide habitat, and contribute to the "green infrastructure." Vegetated lands adjacent to the stream channel in the drainage basin serve as "buffers" to protect the stream's ability to fulfill its natural functions. Buffers have the primary natural functions of protecting water quality by filtering pollutants, providing intermittent storage for floodwaters, allowing channels to meander naturally, and providing suitable habitat for wildlife." (Exhibit 5)
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- 1) *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.*

Staff Findings:

- A. The applicant states the S.W.I.M. Buffer surrounding the two intermittent streams has already been disturbed and additional hardship would result from the demolition of the existing construction and reestablishment of the original buffer.
- B. Per sheet C402 of the variance application, the area impacted by the intermittent streams is minimal.
- C. Polaris 3G and the approved commercial site plan do not show the two intermittent streams that are identified in Figure 4 of the variance application. (Exhibits 2 and 3)
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- F. If a variance is not granted, restoration of the intermittent streams is required and the applicant would be required to remove permanent structures from the S.W.I.M. Buffer.
- G. As mitigation or restoration of the Buffer is required regardless, Staff finds unnecessary hardship would result from the strict application of the Ordinance. The additional demolition of within the Buffer would cause greater disturbance than mitigation alone.

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

Staff Findings:

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- B. Polaris 3G and the approved commercial site plan do not show the two intermittent streams that identified in Figure 4 of the variance application. (Exhibits 2 and 3 and below)



- C. The applicant states the Buffer did not appear on site plans as the result of an option not selected in the applicant's plan system.
 - D. Staff finds that while S.W.I.M. Stream Buffers are not unique to the subject property, it is unique the two intermittent streams were not delineated by Mecklenburg County through its geographic information system (GIS), Polaris 3G.
- 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.*

Staff Findings:

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

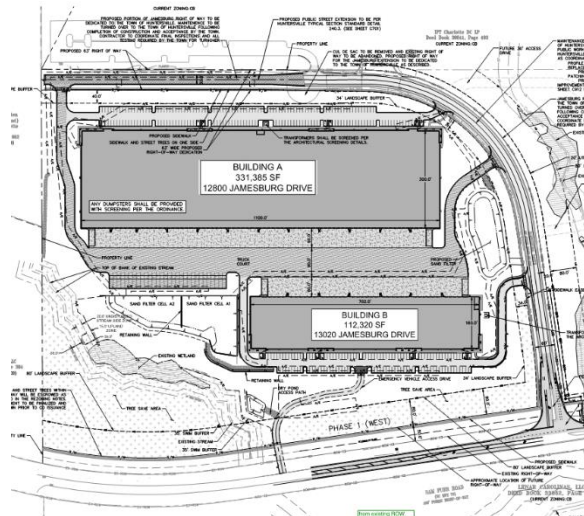
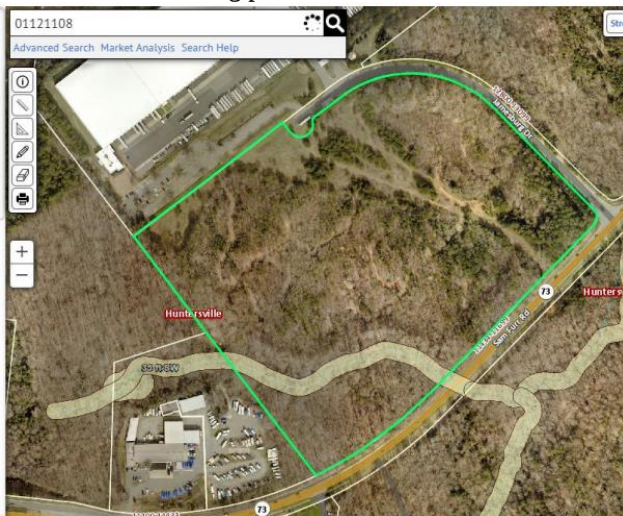
Staff Findings:

- A. Per Article 8.25.11, regarding variance applications from S.W.I.M Buffer requirements, site specific mitigation plans using the mitigation techniques set out below and approved by the designated agency shall be construed by the Board of Adjustment to be evidence responsive to Section 11.3.2 e), subparagraph 4. The applicant has submitted a buffer mitigation plan that uses one the approved mitigation techniques set for in Article 8.25.11.
- B. The applicant is proposing:
- (5) Bottom Land Hardwood Preservation. On a 2:1 acreage basis for impacted stream and buffer area 2 acres of bottomland hardwood for each acre of disturbed area), the owner may provide a combination of the preservation of existing bottom land hardwood forest or other specifically approved natural heritage area by conservation easement or other legal instrument, and the implementation of structural or non-structural BMPs to achieve specific pollutant removal targets within the impacted area. Plan to be approved by Mecklenburg County Land Use and Environmental Services Agency.
- C. The site mitigation plan has been approved by the County Storm Water Administrator. (Exhibit 7)

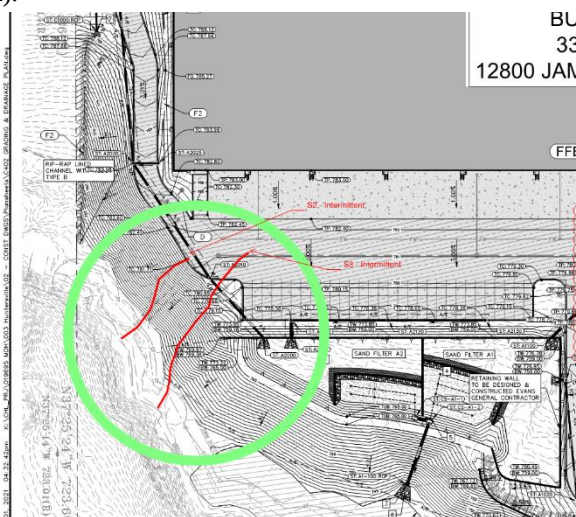
STAFF POSITION:

The applicant is seeking a variance from Article 8.25.11 of the Zoning Ordinance. Article 8.25.11 indicates strict parameters for disturbance allowed dependent upon the location of the disturbance within the Buffer and type of disturbance proposed. Disturbance not permitted by Article 8.25.11 requires a variance from the Board of Adjustment and a site mitigation plan approved by the designated agency. Staff finds the application meets the four requirements for granting a variance and therefore recommend approval of the request based on the below Staff Findings:

1. The subject property, Parcel ID 011-211-08 is zoned Corporate Business (Conditional District), CB (CD).
2. The subject property is located within the Town of Huntersville.
3. The subject property is included within Rezoning R19-13 approved by the Huntersville Board of Commissioners 3/16/2020.
4. The subject property was conveyed via deed to MDH F1 Huntersville JV, LLC March 23, 2020. (Exhibit 1)
5. A commercial site plan was submitted to the Town for land development review April 27, 2020 and approved August 24, 2020. Polaris 3G and the approved commercial site plan did not show two intermittent streams (Exhibits 2 and 3) extended from the 35' SWIM buffer shaded in yellow below left. The two intermittent streams were also not identified on conditional rezoning plan R19-13.



6. A building permit for MMF Huntersville Distribution Park - Building A was issued September 24, 2020 based on the approved commercial site plan. (Exhibit 4)
7. A survey dated April 2021 by Kimley-Horn identified two intermittent streams not previously shown on Polaris 3G or the commercial site plan (Figure 4 of variance application).

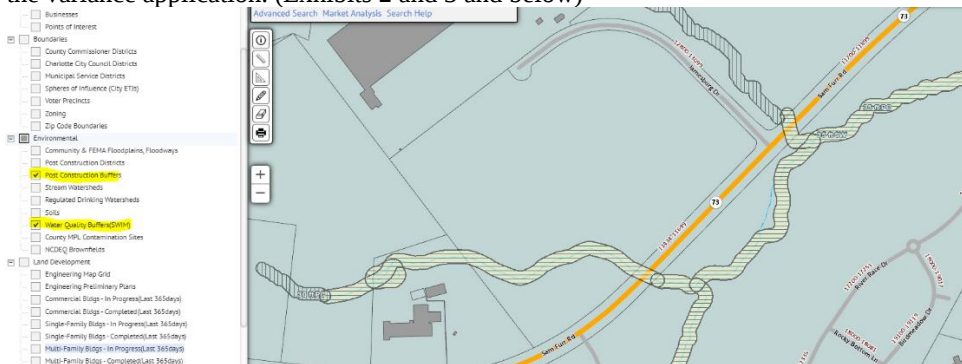


8. A Certificate of Occupancy has not yet been issued for Building A.

9. Per Article 8.25.1 of the Zoning Ordinance, “The purpose of a stream buffer network is to filter pollutants, store floodwaters, provide habitat, and contribute to the “green infrastructure.” Vegetated lands adjacent to the stream channel in the drainage basin serve as “buffers” to protect the stream’s ability to fulfill its natural functions. Buffers have the primary natural functions of protecting water quality by filtering pollutants, providing intermittent storage for floodwaters, allowing channels to meander naturally, and providing suitable habitat for wildlife.” (Exhibit 5)
10. Per Article 8.25.9 of the Zoning Ordinance, “Buffer boundaries including all buffer zones must be clearly delineated on all site-specific plans for Board of Commissioner approval, on all construction plans, including grading and clearing plans, erosion and sediment control plans, and site plans.”
11. And, Per Article 8.25.4, S.W.I.M. Stream Buffers, throughout the jurisdiction of the Town of Huntersville shall be delineated by Mecklenburg County through its geographic information system (GIS), Polaris 3G.
12. Construction at the site has been ongoing since the building permit was issued in August, 2020 (photo below from February 2021). Highlighted area shows approximate location of intermittent streams.



13. Staff received a variance application from Chris Stanley on behalf of MDH F1 Huntersville JV, LLC June 2, 2021. (Exhibit 6). According to the application, once it was discovered the two intermittent streams were impacted by development “...Town, State, and Corps were notified...”.
14. Article 8.25.11 provides nine different options to mitigate impacts on SWIM Buffers when an applicant is seeking a variance. The ordinance states that any of these mitigation techniques shall be construed by the Board of Adjustment to be evidence responsive to Section 11.3.2(e)(4) consistent with adopted plans and protection of public safety and welfare.
15. The applicant states the S.W.I.M. Buffer surrounding the two intermittent streams has already been disturbed and additional hardship would result from the demolition of the existing construction and reestablishment of the original buffer.
16. Per sheet C402 of the variance application, the area impacted by the intermittent streams is minimal.
17. If a variance is granted, mitigation is required for the disturbance per one of the prescribed methods indicated in Article 8.25.11.
18. If a variance is not granted, restoration of the intermittent streams is required and the applicant would be required to remove permanent structures from the S.W.I.M. Buffer.
19. As mitigation or restoration of the Buffer is required regardless, Staff finds unnecessary hardship would result from the strict application of the Ordinance. The additional demolition of within the Buffer would cause greater disturbance than mitigation alone.
20. S.W.I.M. Stream Buffers are present throughout the Town of Huntersville and are not peculiar to the property.
21. Polaris 3G and the approved commercial site plan do not show the two intermittent streams that are called out in Figure 4 of the variance application. (Exhibits 2 and 3 and below)



22. While Article 8.25.4 indicates, S.W.I.M. Stream Buffers throughout the jurisdiction of the Town of Huntersville shall be delineated by Mecklenburg County through its geographic information system (GIS), the applicant states the Buffer did not appear on site plans as the result of an option not selected in the applicant’s plan system.

23. Staff finds that while S.W.I.M. Stream Buffers are not unique to the subject property, it is unique the two intermittent streams were not delineated by Mecklenburg County through its geographic information system (GIS), Polaris 3G.
24. According to the variance application, the property owner, MDH F1 Huntersville JV, LLC, "...was unaware of the stream buffer as it did not show up on the GIS maps and was turned off on the subject plans." The intermittent streams were also not identified on the conditional rezoning plans for R 19-13 approved by Huntersville on 3/16/2020.
25. Staff does find the property owner, MDH F1 Huntersville JV, LLC was unaware of the intermittent SWIM buffers at the time a building permit was issued.
26. Per Article 8.25.11, regarding variance applications from S.W.I.M Buffer requirements, site specific mitigation plans using the mitigation techniques set out below and approved by the designated agency shall be construed by the Board of Adjustment to be evidence responsive to Section 11.3.2 e), subparagraph 4. The applicant has submitted a buffer mitigation plan that uses one the approved mitigation techniques set for in Article 8.25.11.
27. The applicant is proposing:
 - (5) Bottom Land Hardwood Preservation. On a 2:1 acreage basis for impacted stream and buffer area 2 acres of bottomland hardwood for each acre of disturbed area), the owner may provide a combination of the preservation of existing bottom land hardwood forest or other specifically approved natural heritage area by conservation easement or other legal instrument, and the implementation of structural or non-structural BMPs to achieve specific pollutant removal targets within the impacted area. Plan to be approved by Mecklenburg County Land Use and Environmental Services Agency.
28. The site mitigation plan has been approved by the County Storm Water Administrator. (Exhibit 7)

EXAMPLE MOTION: V21-05, 12802 Jamesburg Drive, Parcel ID 011-211-08, Huntersville, NC 28078

Planning Department	Board of Adjustment
APPROVAL: In considering the application for V21-05, a request by Chris Stanley on behalf of MDH F1 Huntersville JV, LLC for a variance from Article 8.25.11 of the Zoning Ordinance, the Planning Department recommends approval of the variance request based on a finding that the request meets all of the four criteria, outlined in the Zoning Ordinance for granting a variance.	APPROVAL: In considering the application for V21-05, a request by Chris Stanley on behalf of MDH F1 Huntersville JV, LLC for a variance from Article 8.25.11 of the Zoning Ordinance, the Board of Adjustment approves the variance request based on a finding that the request meets four of the four criteria, outlined in the ZONING ORDINANCE, for granting a variance. The Board of Adjustment finds the request meets four of the four criteria for granting a variance. The Board grants Variance _____ and incorporates (Staff/Applicant's – please choose one) Findings of Fact for the standards to grant a variance. <u>OR</u> The Board grants Variance _____ based on the following Findings of Fact: (explain the findings of fact for each of the 4 standards). If conditions are to be added: This variance is granted based on the condition(s)_____.
	DENIAL: In considering the application for V21-05, a request by Chris Stanley on behalf of MDH F1 Huntersville JV, LLC for a variance from Article 8.25.11 of the Zoning Ordinance, the Board of Adjustment denies the variance request based on a finding that the request meets _____ of the four criteria, outlined in the ZONING ORDINANCE, for granting a variance. The Board of Adjustment finds the request does not meet the criteria for granting a variance based on the following findings of fact: <i>(explain findings of fact)</i>

Exhibit 1 –2020 Deed of Subject Property, DB 34393, P 628

Exhibit 2 – Subject Property with S.W.I.M. Buffer Layer in Polaris 3G

Exhibit 3 – Page 301 from Approved Commercial Site Plan

Exhibit 4 – Building Permit for Building A

Exhibit 5 – Article 8.25 of Zoning Ordinance

Exhibit 6 – Variance Application with Attachments

Exhibit 7 - Approved Site Mitigation Plan

Exhibit 1 –2020 Deed of Subject Property, DB 34393, P 628

For Registration
 Fredrick Smith
 Register of Deeds
 Mecklenburg County, NC
 Electronically Recorded
 2020 Mar 23 10:36 AM RE Excise Tax: \$ 0.00
 Book: 34393 Page: 628 - 632 Fee: \$ 26.00
 Instrument Number: 2020040394

Fredrick Smith

Excise Tax \$0.00 Recording Time, Book and Page

Tax Lot No.: 011-033-05, 011-033-12 and 011-034-01

Prepared by:

Anna R. Kouba, Esq.
 Morris, Manning & Martin, LLP
 1401 Eye Street, N.W., Suite 600
 Washington, D.C. 20005
 NC Bar # 36879

Mail after recording to:

MDH F1 Huntersville JV, LLC
 3715 Northside Parkway, NW
 Building 400, Suite 240
 Atlanta, GA 30327

Brief description for the Index: Lot 2, DSC Logistics – Map 1, Map Book 26, Page 902

NORTH CAROLINA SPECIAL WARRANTY DEED

THIS DEED made as of this 20 day of March, 2020, by and between

GRANTOR	GRANTEE
Louise G. Howard Family Investments, L.P. c/o Atlanta Hardwood 5596 Riverview Road Mableton, GA 30126	MDH F1 Huntersville JV, LLC 3715 Northside Parkway, NW Building 400, Suite 240 Atlanta, GA 30327

The designation Grantor and Grantee, as used herein, shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

Submitted electronically by "First American Title Insurance Company - NCS Atlanta"
 in compliance with North Carolina statutes governing recordable documents
 and the terms of the submitter agreement with the Mecklenburg County Register of Deeds.

fee simple, all that certain lot or parcel of land situated in Mecklenburg County, North Carolina, and more particularly described as follows:

See Exhibit "A" attached hereto and incorporated herein by reference. Said property having been acquired by James W. Howard, Sr. by instrument recorded in Book 2487, Page 320, Mecklenburg County Registry. James W. Howard, Sr. died on October 19, 1992. See Estate File # 94 E 253 regarding Estate of James W. Howard, Sr.

Together with all appurtenances thereto and privileges thereto, together with (i) any land lying in the bed of any strips, gores, highway, street, road or avenue, opened or proposed, in front of or abutting or adjoining such tract or piece of land and any easements and appurtenances pertaining thereto and (ii) any easements, rights-of-way, covenants, development rights, water rights, air rights, subsurface rights, oil gas and other hydrocarbon substances, mineral rights, licenses privileges, rights of ingress or egress other interests, rights and benefits belonging to, owned by or vested in Grantor as related thereto.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And Grantor covenants with Grantee, that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, except for the exceptions hereinafter stated on Exhibit "B".

The Property does not contain the primary residence of Grantor.

Title to the Property is subject to the following matters: See Exhibit "B".

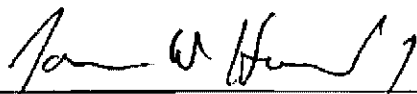
[SIGNATURE APPEARS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Grantor has executed this Deed under seal on the day and year set forth above.

GRANTOR:

**LOUISE G. HOWARD FAMILY INVESTMENTS,
L.P., a Georgia limited partnership**

By: Howard Family Holdings, Inc., a Georgia
corporation, its sole general partner

By: 

Name: James W. Howard, Jr.

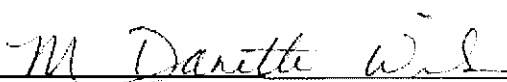
Title: President

(CORPORATE SEAL)

STATE OF GA
COUNTY OF Cobb

I certify that the following person personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Date: 3-18, 2020


Official Signature of Notary

M Danette Wilson
Notary's printed or typed name, Notary Public

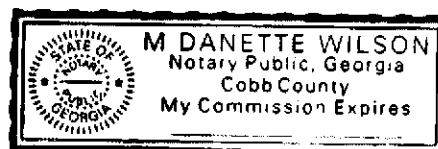


EXHIBIT "A"
LEGAL DESCRIPTION

BEING ALL OF LOT 2, DSC LOGISTICS-MAP 1 AS SHOWN ON PLAT RECORDED IN
MAP BOOK 26, PAGE 902 OF THE MECKLENBURG COUNTY PUBLIC REGISTRY.

EXHIBIT "B"
PERMITTED EXCEPTIONS

1. Taxes and assessments for the year 2020 and subsequent years, a lien not yet due and payable.
2. Easements and any other facts as shown on plat recorded in Plat Book 26, Page 902, Mecklenburg County Registry.
3. Easement to Board of Transportation, an agency of the State of North Carolina recorded in Book 3924, Page 177, Mecklenburg County Registry.
4. Easement to Board of Transportation, an agency of the State of North Carolina recorded in Book 3924, Page 181, Mecklenburg County Registry.
5. Easement to Duke Power Company recorded in Book 4145, Page 939, Mecklenburg County Registry.
6. Easement to Duke Power Company recorded in Book 6075, Page 857, Mecklenburg County Registry.
7. Easement to Dry Storage Corporation, an Illinois corporation recorded in Book 8242, Page 612, Mecklenburg County Registry.

**Exhibit 2 – Subject Property with S.W.I.M. Buffer Layer in
Polaris 3G**



POLARIS 3G

[Tutorials](#) [Quick Tips](#) [Report Issues](#) [More Map Apps](#)

[Search Results](#) [Layers/Labels](#) [Property Report](#) [Zoom To](#)

Property Key

Parcel ID GIS ID

01121108 01121108

Addresses located on Property (Postal City)

13020 JAMESBURG DR B HUNTERSVILLE NC 2807 ▼

Owner Name Mailing Address

MDH FI HUNTERSVILLE JV
LLC 3715 NORTHSIDE PARKWAY
NW BLDG 400 STE 240
ATLANTA GA 30327

[Is ownership or parcel boundary wrong?](#) Request Change

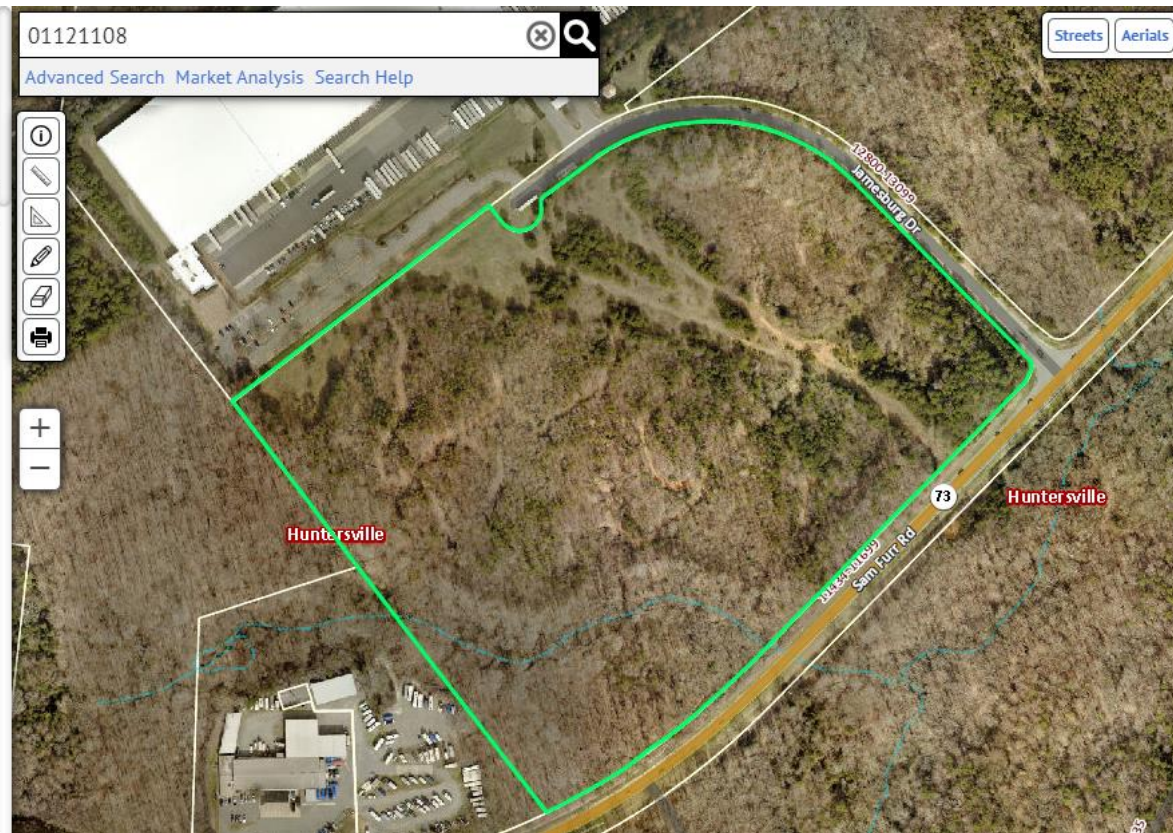
[Is the mailing address wrong?](#) Request Change

Link To

[Google Street View](#)

[Birdseye View maintained by Mecklenburg County](#)

[Unselect Property](#)





POLARIS 3G

[Tutorials](#) [Quick Tips](#) [Report Issues](#) [More Map Apps](#)

[Search Results](#) [Property Details](#) [Lyr Dictionary](#) [Legend](#)



Switching on too many overlays slows down the map

Overlay Toggle

- ☐ Labels
 - ☐ Lot Dimensions
 - ☐ Address No
 - ☐ Parcel IDs
 - ☐ Businesses
 - ☐ Points of Interest
- ☐ Boundaries
 - ☐ County Commissioner Districts
 - ☐ Charlotte City Council Districts
 - ☐ Municipal Service Districts
 - ☐ Spheres of Influence (City ETJs)
 - ☐ Voter Precincts
 - ☐ Zoning
 - ☐ Zip Code Boundaries
- ☒ Environmental
 - ☐ Community & FEMA Floodplains, Floodways
 - ☐ Post Construction Districts
 - ☐ Post Construction Buffers
 - ☐ Stream Watersheds
 - ☐ Regulated Drinking Watersheds
 - ☐ Soils
 - ☒ Water Quality Buffers(SWIM)

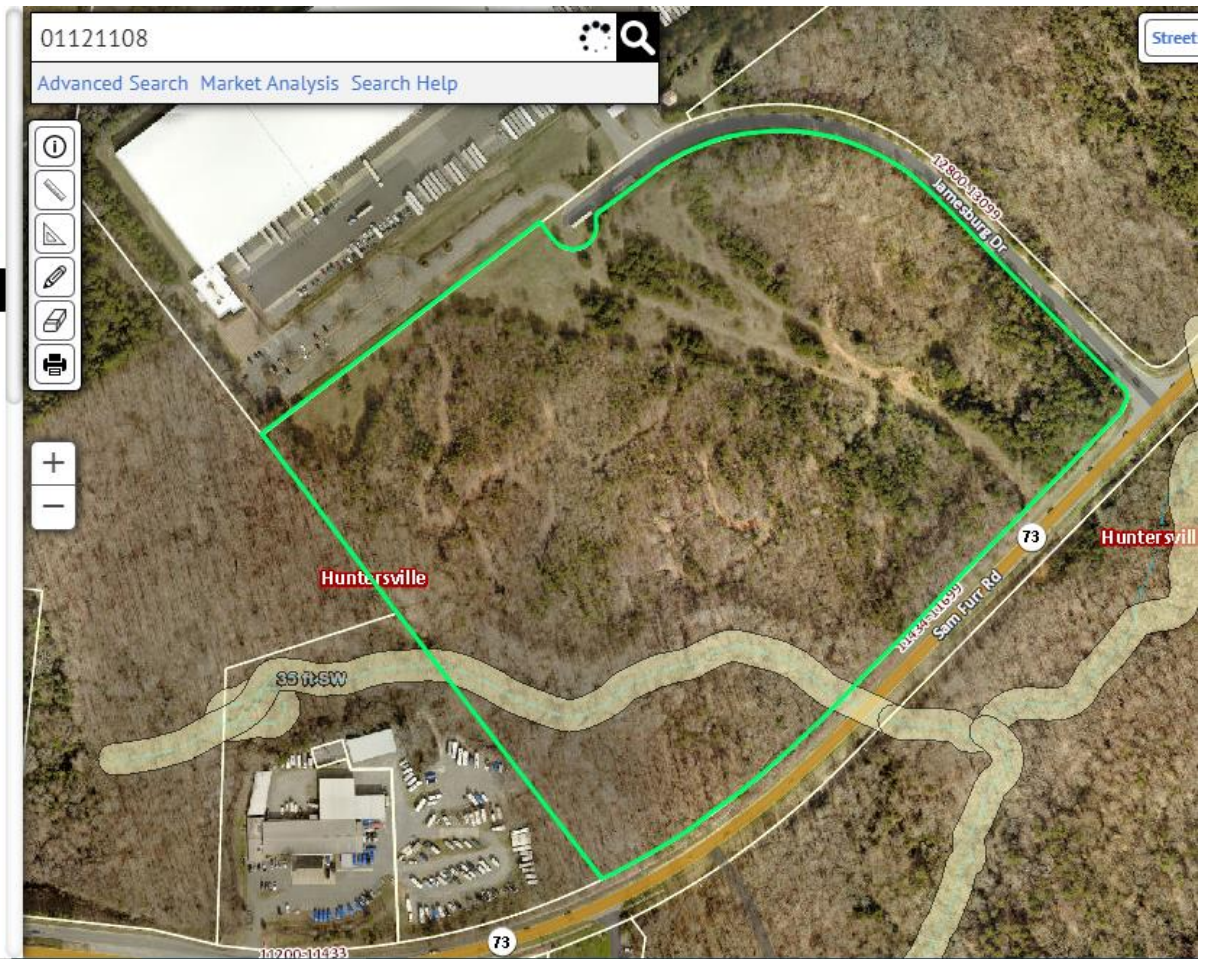
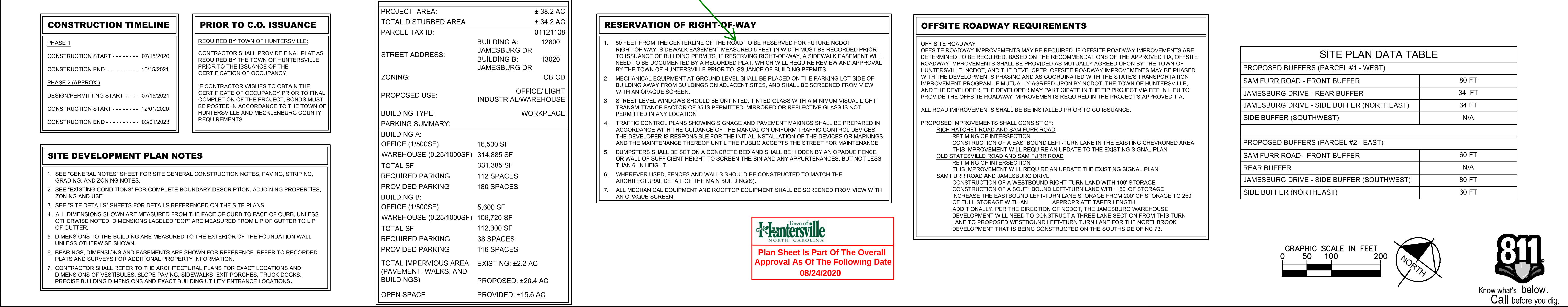


Exhibit 3 – Page 301 from Approved Commercial Site Plan



Kimley»»Horn
© 2020 KIMLEY-HORN AND ASSOCIATES, INC.
200 SOUTH TRYON ST., SUITE 200, CHARLOTTE, NC 28202
TEL: 704.375.1000
WWW.KIMLEY-HORN.COM
NC LICENSE #—0102



SITE PLAN - OVERALL

HUNTERSVILLE DISTRIBUTION PARK PREPARED FOR MDH PARTNERS LLC HUNTERSVILLE	SHEET NUMBER C301
---	-----------------------------

Exhibit 4 – Building Permit for Building A

Mecklenburg County
Land Use and Environmental Services
2145 Suttle Avenue
Charlotte, NC 28208
(980) 314 - CODE (2633)



Permit: B3832572
Issue Date: 09/24/2020
Issued By: Butler, Johnae

Building Permit

Commercial

Property Details:

Address:	13035 JAMESBURG DR	Tax Jurisdiction:	HUNTERSVIL LE
Subdivision:		Parcel Id:	01121110
Owner:	MDH Partners, LLC	Owner Phone No:	4049208479
Owner Address:	3715 Northside Parkway NWAtlanta, GA 30327		

Block:	Lot:	Land Area:	Corner Lot: N	Irregular Lot: N	Through Lot: N
Minimum Setbacks (ft.):	Front:	Rear:	Right Side:	Left Side:	

Project Details:

Project Number:	411311	Res Master Plan #:	
Project Name:	MMF Huntersville Distribution Park - Building A		
USDC Code:	329 - Commercial New Structures - not bldgs (retaining wall)		
Occupancy:	S1 * STORAGE - MODERATE HAZARD		
Lien Agent:	Agent: Chicago Title Company, LLCPhone: (888) 690-7384Fax: (919) 489-5231Email: support@liensnc.comMailing Address: 19 W Hargett ST Unit: 507, Raleigh, North Carolina 27601Physical Address: 19 W Hargett ST Unit: 507, Raleigh, North Carolina 27601	Lien Agent No:	1252023

Trade Details:

Building

Details:	Project is a speculative empty shell for storage occupancy. Potential for single or multiple future tenants. Construction is of load bearing tilt-up concrete panels with steel interior structure with a 32' clear height. The exterior wall finish will be reveal accents and texture paint with skylights along the dock wall. The roof is to be white TPO with skylights. Site is being graded and paved for truck access and auto parking, as well as landscaping under a separate permit. See civil scope below. Building A - 2000 amp service, code required emergency lighting, fire alarm panel with sprinkler monitoring, exterior wall pack lighting. Installation of unit heaters, exhaust fans, louvers, and gas piping for shell building. Shell building with (2) two 6" sanitary sewer systems and (1) one 2" domestic water line with 2" pressure reducing valve and (4) four non freeze wall hydrants.	SI Required: Y	Bedroom Addition:
-----------------	--	-----------------------	--------------------------

Type of Work: New

Square Footage:	Heated:	Renovated:	Deck:
	Unheated: 332165	Converted:	

Does the weight of the PV system exceed 3lbs per square foot?

Does the roof possess more than one layer of asphalt shingles?

Does the roofing material consist of a type other than asphalt or metal?

This permit will expire if work either has not started within 6 months or is discontinued for a period of 12 months.

Inspection required for verification of progress made.

No credit or refund will be given unless applied for within 120 days after a permit has expired.

Solar PV Option:**Electrical**

Service:	New	Power Company:	ELECTRICITIES	
Total Amps:		# of Circuits:	Circuits at 120V:	Circuits Over 120V:

Mechanical

Heating Details:	
Gas Company:	PIEDMONT NATURAL GAS
# of Gas Connections:	# of Appliances

Plumbing

# of Fixtures:		<u>Public Meter/Connection</u>		<u>Private Service</u>	
		<u>Individual</u>	<u>Master</u>	<u>Individual</u>	<u>Community</u>
Type of Service:	New	<u>Water/Well:</u>	Yes	No	No
# of Appliances		<u>Sewer/Septic:</u>	Yes	No	No

Fees

Permit Fee Type:	Construction	Homeowner Recovery Fund:	\$0.00	Fast Track Fee:	\$0.00
*Permit Fee:	\$31,134.44	NESHAP Fee:	\$0.00	Fee Adjustment:	
Zoning Fee:	\$1,385.00	Paper Application Fee:	\$0.00	Total Fee:	\$32519.44
Triple Fee:	\$0.00	HFR Fee:	\$0.00	NESHAP OK:	
Fire Damage Fee:	\$0.00	Paper Plans Fee:	\$0.00	Vector OK:	
Comm Surcharge:	\$0.00			Charge To Acct:	Y
IsSchool Bond:	N	School Bond ID:		School Bond Name:	

* Permit Fee Calculation is based upon the following costs:

Equipment Summary

Bldg Cost less Equipment over \$500K:	\$10988400.00	Total Equipment Costs:	
SubPermit Costs:	\$432800.00	Equipment Cost at 100%	\$0.00
Total Equipment Fee:		Equipment Cost at 20%	
Total Cost Calculation:	\$11421200.00		

Contractors

Building Contractor	EVANS GENERAL CONTRACTING	Contr ID:	X51400
Phone:	6787137616	License #:	69054
Address:	2710 OLD MILTON PARKWAYSUITE 200ALPHRETTA, GA 30009	Homeowner:	No
		Permit #:	B3832572
		Contract Cost:	\$10,988,400.00

Electrical Contractor	LEWIS ELECTRICAL CONTRS INC	Contr ID:	X56510
Phone:	6784552282	License #:	28651
Address:	1346 STONEFIELD COURTTALPHARETTA, GA 30004	Homeowner:	No
		Permit #:	E3832602
		Contract Cost:	\$241,700.00

Mechanical Contractor	E SMITH HTG & AIR COND INC	Contr ID:	X56281
Phone:	7704221900	License #:	30849
Address:	964 INDUSTRIAL PARK DRMARIETTA, GA 30062	Homeowner:	No
		Permit #:	M3832603
		Contract Cost:	\$70,000.00

This permit will expire if work either has not started within 6 months or is discontinued for a period of 12 months.

Inspection required for verification of progress made.

No credit or refund will be given unless applied for within 120 days after a permit has expired.

Plumbing Contractor SERVICE PLBG OF CHARLOTTE INC
Phone: 7048958998
Address: P O BOX 1480 CORNELIUS, NC 28031

Contr ID: X27260
License #: 21540
Homeowner: No
Permit #: P3832604
Contract Cost: \$121,100.00

Agency Holds

As of the time of this permit issuance, the following holds exist on this project:

Agency	Phone #	Reason
---------------	----------------	---------------

Additional Information:

NOTE:

Permit Notes

EPM requested Address Hold based on Business Rules.

Disclaimer: Mechanical equipment shall be placed in side and rear yards only and shall not encroach into any required setbacks.

Inspection Team

Your project has been assigned to the Mega Team Inspection Team. For further assistance you can contact the Mega Team Inspection Team:

Manager:

Building Supervisor

To contact your project manager, inspection supervisor, or obtain inspection assistance with your project, call .

Exhibit 5 – Article 8.25 of Zoning Ordinance

- (i) Flags displaying a logo, message, statement, or expression relating to commercial interests and banners not meeting the definition of a flag contained herein shall conform to all applicable ordinances pertaining to signs.
- (j) A vertical flagpole must be set back from all property boundaries a distance which is at least equal to the height of the flagpole.
- (k) Flags and flagpoles shall be maintained in good repair, and to the extent applicable shall be in compliance with the building code. Flagpoles with broken halyards shall not be used and flags that are torn or frayed shall not be displayed.
- (l) On officially designated county, state, or federal holidays, there shall be no maximum flag size, number, or other limitations on display.
- (m) This section shall not be construed to restrict the right to display eligible flags as banners or signage as provided elsewhere in the ordinance.

8.19 - 8.24 Reserved

8.25 S.W.I.M. (Surface Water Improvement and Management) Stream Buffers
--

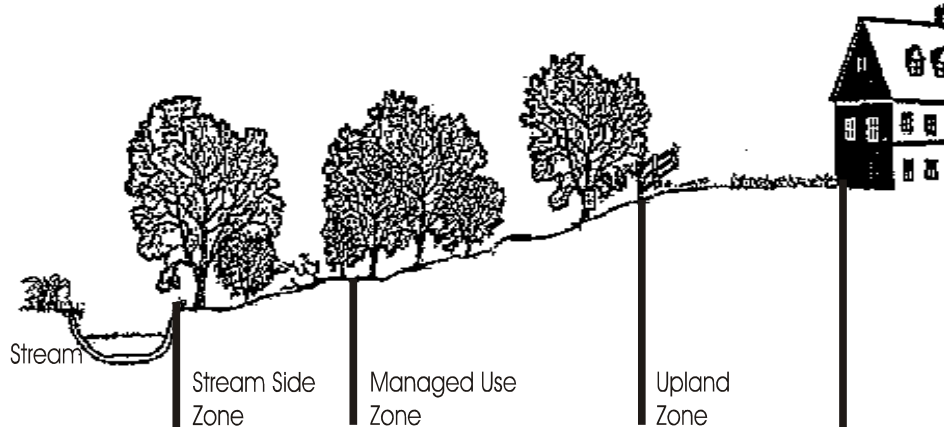
- .1 Purpose. The purpose of a stream buffer network is to filter pollutants, store floodwaters, provide habitat, and contribute to the “green infrastructure”. Stream systems are comprised of each stream and its respective drainage basin.
 - Streams have the primary natural functions of conveying storm and ground water, storing floodwater, and supporting aquatic life.
 - Vegetated lands adjacent to the stream channel in the drainage basin serve as “buffers” to protect the stream’s ability to fulfill its natural functions. Buffers have the primary natural functions of protecting water quality by filtering pollutants, providing intermittent storage for floodwaters, allowing channels to meander naturally, and providing suitable habitat for wildlife.
- .2 Definitions. For the purposes of this section, the following words and phrases shall be defined as specified below:

Best Management Practices (BMPs). A structural or nonstructural management based practice used singularly or in combination to reduce non-point source input to receiving waters in order to achieve water quality protection goals.

Buffer. A vegetated area through which storm water runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants.

Buffer Zones. Buffer widths are measured in three (3) zones as shown below. The buffer width is measured horizontally and must be surveyed by a licensed land surveyor on a line parallel to the surface water, landward from the top of the bank on each side of the stream.

Three Zoned Urban Stream Buffer



Drainage Basin. The area of land that drains to a given point on a body of water.

Floodway. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than the allowable surcharge (currently one foot).

Flood Fringe. The land area located between the limits of the floodway and the maximum elevation subject to inundation by the base (1% chance) flood.

Floodplain. The low, periodically flooded lands adjacent to rivers and lakes. For land use planning purposes, the regulatory floodplain is usually viewed as all land alongside a watercourse that would be inundated by the base (1% chance) flood; the floodway plus the flood fringe.

Mitigation. Actions taken on-site and/or off-site to offset the effects of temporary or permanent loss of a buffer.

Top of Bank. The landward edge of the stream channel during high water, bankfull conditions at the point where water begins to overflow onto the floodplain.

.3 Applicability.

- a) All properties shall comply with the buffer requirements of this Section except those which, as of the effective date of October 19, 1999, have previously secured a right to proceed by one of the following methods, and have received written authorization to disturb the buffer from the Town's Planning Staff:
 - Having been issued a Certificate of Building Code Compliance;
 - Being subject to an approved major subdivision preliminary plan and/or recorded final plat;
 - Being subject to a minor subdivision plat, exempt plat listed under the definition of subdivision in the Subdivision Ordinance, or described by metes and bounds in a recorded deed which:
 - If to be used for residential purposes, are one (1) acre or less in size.
 - If to be used for nonresidential purposes or mixed use purposes, are four (4) acres or less in size if located on a non-FEMA regulated floodway, or are seven (7) acres or less in size if located on a FEMA regulated floodway.
 - Being subject to a site specific development plan defined under Section 2.2.2 of these zoning regulations; or
 - Having otherwise secured a vested property right under state law.

ARTICLE 8 PROVISIONS

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- b) Redevelopment or expansion of uses and structures included in a), above, shall comply with the buffer requirements of this Section, however uses and structures previously approved and constructed in a buffer may remain.
- c) A site specific development plan amended by action of the Board of Commissioners subsequent to adoption of this Section shall comply, in its amended form, with the S.W.I.M. buffer requirements, however uses and structures previously approved for construction in a buffer may remain.
- d) Where stream buffers are also required as part of the Lake Norman or Mountain Island Lake Watershed Overlay Districts, the more stringent of the stream buffer requirements shall apply.

.4 Buffer Delineation.

S.W.I.M. Stream Buffers, throughout the jurisdiction of the Town of Huntersville shall be delineated by Mecklenburg County through its geographic information system (GIS) using the most current digital elevation model (DEM) of no greater than 10-foot cells. This stream buffer delineation including buffer widths shall be periodically updated as new data becomes available. The most recent delineation shall be provided for public use through Mecklenburg County's website.

.5 Minimum Buffer Widths.

All perennial and intermittent streams draining less than 50 acres shall have a minimum 30-foot vegetated buffer including a 10-foot zone adjacent to the bank. Disturbance of the buffer is allowed; however, any disturbed area must be revegetated and disturbance of the 10-foot zone adjacent to the bank shall require stream bank stabilization using bioengineering techniques as specified in the Design Manual. All perennial and intermittent streams draining greater than or equal to 50 acres and less than 300 acres shall have a 35-foot buffer with two (2) zones, including a 20-foot stream side and 15-foot upland zone. Streams draining greater than or equal to 300 acres and less than 640 acres shall have a 50-foot buffer with three (3) zones, including a 20-foot stream side, 20-foot managed use and 10-foot upland zone. Buffers for streams draining greater than or equal to 640 acres shall be 100 feet in width or include the entire floodplain, whichever is greater. This buffer shall consist of a 30-foot stream side, 45-foot managed use and 25-foot upland zone or the entire FEMA floodplain, whichever is greater. All buffers shall be measured from the top of the bank on both sides of the stream. A summary of minimum buffer widths is provided in the table below.

Table of Minimum Buffer Widths by Basin Size and Buffer Zone

Area Designation	Stream Side Zone	Managed Use Zone	Upland Zone	Total Buffer Width each side of Stream	Notes
< 50 acres	N/A	N/A	30 feet	30 feet	(1), (2)
> 50 acres	20 feet	None	15 feet	35 feet	(2)
> 300 acres	20 feet	20 feet	10 feet	50 feet	(2)
> 640 acres	30 feet	45 feet	25 feet or balance of floodplain, whichever is greater	100 feet or entire floodplain, whichever is greater	(2), (3)

Notes:

(1) All perennial and intermittent streams draining less than 50 acres shall have a minimum 30-foot vegetated buffer including a 10-foot zone adjacent to the bank. Disturbance of the buffer is allowed; however, any disturbed area must be revegetated and disturbance of the 10-foot zone adjacent to the bank shall require stream bank stabilization using bioengineering techniques as specified in the Design Manual.

(2) Buffer widths are surveyed horizontally on a line parallel to the surface water, landward from the top of the bank on each side of the stream.

(3) Floodplain and buffer calculations will be based upon the FEMA flood fringe and floodway encroachment lines, as locally adopted and as may be amended from time to time.

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.6 Buffer Description.

Buffer function, vegetation and use vary according to the different buffer zones and are described in the following table.

Table of Buffer Treatment by Buffer Zone

	Stream Side Zone	Managed Use Zone	Upland Zone	Notes
Function	Protect the integrity of the ecosystems	Provide natural filter; provide distance between upland development and the stream side zone	Prevent encroachment and filter runoff	
Vegetative Requirements	<u>Undisturbed (no cutting, clearing or grading).</u> If existing tree density is inadequate, reforestation is required.	<u>Limited clearing (no grading).</u> Existing tree density must be retained to a minimum of 8 healthy trees of a minimum 6 inch caliper per 1000 square feet. If existing tree density is inadequate, reforestation is encouraged.	<u>Herbaceous ground cover,</u> including grass, is allowed; maintenance of existing forest or reforestation is encouraged.	(1)
Uses	<u>Very restricted.</u> Permitted uses limited to flood control structures and bank stabilization (where permitted) as well as installation of parallel or near perpendicular ($\geq 75^\circ$) water and sewer utilities and near perpendicular road crossings ($\geq 75^\circ$) with stabilization of disturbed areas as specified in Section 8.25.10.	<u>Restricted.</u> Permitted uses limited to those allowed in the Stream Side Zone, as well as bike paths and greenway trails up to 10 feet in width.	<u>Restricted.</u> Permitted uses limited to those allowed in Stream Side and Managed Use Zones, as well as gazebos, non-commercial storage buildings less than 150 square feet, limited grading that does not change the functionality or extent of the floodplain, and storm water structural best management practices (BMPs) if approved in accordance with Section 8.25.11 b), as a condition of a buffer width variance or if they are located a minimum distance of 100 feet from the stream bank.	(2), (3), (4)

Note:

- (1) When reforestation of disturbed buffers is required, tree planting shall be as specified in the Charlotte-Mecklenburg SWIM Stream Buffer Implementation Guidelines.
- (2) Fill material **cannot** be brought into any required buffer. In the Upland Zone only, limited grading that does not change the extent or functional characteristics of the floodplain is permitted. Uses permitted in the buffer zones should be coordinated to ensure minimal disturbance of the buffer system. For example, if it is necessary to install utilities within the buffer, then if Greenway Trails are built they should follow these cleared areas instead of necessitating additional clearing.
- (3) Notwithstanding the uses and structures permitted in the “Upland Zone”, the stricter standards of floodway regulations, if applicable, shall apply.
- (4) Greenway Trails referenced in this table refer exclusively to those approved by and dedicated to the Town of Huntersville or Mecklenburg County Parks and Recreation Departments. Other paths or trails in the buffer shall be in accordance with the Charlotte-Mecklenburg SWIM Stream Buffer Implementation Guidelines.

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- .7 Diffuse Flow Requirement. Diffuse flow of runoff shall be maintained in the buffer by dispersing concentrated flow through the use of level spreaders or other such devices to create sheet flow and by reestablishing vegetation. Techniques for providing diffuse flow are specified in the Charlotte-Mecklenburg BMP Design Manual.
- Maximum drainage area size shall be no greater than 10 acres for all outfalls discharging directly into a stream buffer.
 - When practical, a drop structure should be installed prior to the last section of outfall pipe discharging to a buffer. A short length of outfall pipe should be laid flat (0% Slope Energy Dissipater), prior to the riprap apron or other energy dissipater.
 - Concentrated runoff from ditches or other manmade conveyances shall be diverted to diffuse flow before the runoff enters the buffer.
 - Periodic corrective action to restore diffuse flow shall be taken by the property owner as necessary to impede the formation of erosion gullies.
- .8 Ponds that intersect the stream channel shall have the same buffers as the original stream. Buffer requirements do not apply to wet ponds used as structural BMPs.
- .9 Buffer Delineation. The following buffer delineations are required:
- a) Buffer boundaries including all buffer zones must be clearly delineated on all site-specific plans for Board of Commissioner approval, on all construction plans, including grading and clearing plans, erosion and sediment control plans, and site plans.
 - b) The surveyed outside buffer boundary, including all buffer zones, must be clearly marked on-site with orange “tree-protection” or “high-hazard” fence prior to any land disturbing activities. Tree protection is required by Section 7.4(3) of this Ordinance. Where existing trees are to be preserved in a buffer zone, the limits of grading shall equal the drip line of those trees plus an additional five (5) feet on the upland side of the buffer. All Specimen and Heritage trees require a tree survey prior to land-disturbing activity and shall be saved in all buffer zones.
 - c) The surveyed outside boundary of the buffer must be permanently marked with an iron pin at the intersection of the watershed buffer and each property line on each parcel following the completion of land disturbing activities and prior to occupancy. Properties greater than 200’ in width shall be marked at a maximum of 100’ intervals.
 - d) Separate buffer zones must be permanently marked at highway stream crossings.
 - e) Buffer boundaries including all buffer zones as well as all buffer requirements must be specified on the record plat, on individual deeds, and in property association documents for lands held in common.
- .10 Buffer Impacts Permitted under Section 8.25, S.W.I.M. The following buffer impacts are permitted, but design and construction shall comply with the specifications provided in the Charlotte-Mecklenburg Buffer Implementation Guidelines for stabilization of disturbed areas to minimize negative effects on the quality of surface waters.
- Near perpendicular (75° or greater) road crossings for connectivity or transportation links where the Town of Huntersville has granted site plan approval.

- Near perpendicular (75° or greater) utility crossings as approved by Charlotte-Mecklenburg Utilities.
- Parallel water and sewer utility installation as approved by Charlotte-Mecklenburg Utilities, where a logical and appropriate basis for the impact is demonstrated, where disturbance of the Stream Side Zone is minimized to the maximum extent practicable, and where guidelines for restoring vegetation within buffers disturbed as a result of parallel utility installation are met. These guidelines are specified in the Charlotte-Mecklenburg Buffer Implementation Guidelines.
- Public paths and trails parallel to the creek outside the Stream side Zone and near perpendicular stream crossings in any zone. Pathways must use existing and proposed utility alignments or previously cleared areas and minimize tree cutting to the maximum extent practicable. To the extent possible, pathways shall preserve existing drainage patterns and avoid drainage structures that concentrate storm water.
- Incidental drainage improvements/repairs for maintenance.
- Individual pedestrian paths connecting homeowners to the stream in the form of narrow, pervious footpaths with minimal tree disturbance.
- New domesticated animal trails (farming) where existing trails are lost as a result of action beyond the farmer's control. Stream crossings should be constructed to minimize impacts to the Stream Side Zone and be maintained with fencing perpendicular to and through the buffer to direct animal movement.
- Mitigation approved by a state or federal agency acting pursuant to Sections 401 or 404 of the federal Clean Water Act.

.11 Appeals and Variances.

- a) An appeal to reverse or modify the order, decision, determination, or interpretation of the Zoning Administrator shall comply with the procedures and standards of [Section 11.3](#) of these ordinances.
- b) Special Variance Provisions/Mitigation Techniques.
 - When “unnecessary hardships”, as defined in Section 11.3.2 e, would result from strict adherence to the buffer width requirements and/or buffer treatment standards, a petition for variance may be filed with the Huntersville Board of Adjustment in compliance with the procedures and standards of [Section 11.3](#).
 - Site specific mitigation plans using the mitigation techniques set out below and approved by the designated agency shall be construed by the Board of Adjustment to be evidence responsive to Section 11.3.2 e),– 4 consistency with adopted plans and protection of public safety and welfare. Specifications for these mitigation techniques are provided in the Charlotte-Mecklenburg Buffer Implementation Guidelines (for Structural BMPs). The techniques below are not construed to offset the requirement of Section 8.25.6 for diffuse flow.
- (1) Installation of Structural BMPs. The installation of an on-site structural BMP designed to achieve specified pollutant removal targets will allow for all proposed stream buffer impact on the specific site. The BMP must remain outside of the Stream Side Zone and Manage Use Zone. A detailed BMP design plan must be submitted to the Town of Huntersville for approval based on specifications contained in the Charlotte-Mecklenburg BMP Design Manual. This plan must also include a long-term maintenance strategy for

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the BMP, complete with the establishment of adequate financing to support the proposed maintenance practices.

- (2) Stream Restoration. The owner may restore and preserve the buffer area on any stream of equivalent or greater drainage area the condition of which is determined to be qualified for restoration by the Mecklenburg County Land Use and Environmental Services Agency on a 1:1 basis in linear feet of stream. This restoration shall include stream bank improvements and Stream Side and Managed Use Zone re-vegetation, in accordance with the Charlotte-Mecklenburg Buffer Implementation Guidelines, and receive approval from the Mecklenburg County Land Use and Environmental Services Agency.
 - (3) Stream Preservation. The owner may purchase, fee simple, other stream segments at equivalent or greater drainage area on a 1:1 linear foot basis and convey fee simple and absolute title to the land to the Town of Huntersville, Mecklenburg County, or conservation trust, with a plan approved by the Mecklenburg County Land Use and Environmental Services.
 - (4) Wetlands Restoration. On a 2:1 acreage basis for disturbed stream and buffer area (2 acres of wetland for each acre of disturbed area), the owner may provide a combination of the preservation and/or restoration of wetlands with protective easements and the implementation of structural or non-structural BMPs to achieve specific pollutant removal targets within the impacted area. Restoration plan must be approved by the Mecklenburg County Land Use and Environmental Services.
 - (5) Bottom Land Hardwood Preservation. On a 2:1 acreage basis for impacted stream and buffer area 2 acres of bottomland hardwood for each acre of disturbed area), the owner may provide a combination of the preservation of existing bottom land hardwood forest or other specifically approved natural heritage area by conservation easement or other legal instrument, and the implementation of structural or non-structural BMPs to achieve specific pollutant removal targets within the impacted area. Plan to be approved by Mecklenburg County Land Use and Environmental Services Agency.
 - (6) Controlled Impervious Cover for Disturbance Landward of Stream Side Zone. The owner may commit to, and provide, a specific site development plan for the parcel with requested buffer disturbance. The plan shall limit overall site impervious cover to less than or equal to 24%. Preservation of the Stream Side Zone is still required. Plan to be approved by Mecklenburg County Land Use and Environmental Services Agency.
 - (7) Open Space Development. The submission of a site-specific development plan that preserves 50% of the total land area as undisturbed open space. Plan to be approved by Mecklenburg County Land Use and Environmental Services Agency.
 - (8) Mitigation Credits: The purchase of mitigation credits through the Stream Restoration Program on a 1:1 basis, utilizing linear feet of stream impacted and the prevailing rate of purchase as established by the Charlotte-Mecklenburg Buffer Implementation Guidelines. Mitigation credits purchased under any other program (i.e., U.S. Army Corp of Engineers) shall not cover this requirement unless the issuing agency agrees to relinquish the funds to the appropriate local government agency.
 - (9) Alternative mitigation. The list of mitigation techniques shall not prevent the creative development of alternative mitigation plans that achieve the purposes of this section.
- .12 Posting of financial security required. When structural BMPs (wet detention ponds and other BMPs) are approved for mitigation of a buffer disturbance, the approval will be subject to the owner filing a surety bond or letter of credit or making other financial arrangements which are acceptable to the

Town of Huntersville, in a form which is satisfactory to the Town Attorney, guaranteeing the installation and maintenance of the required structural BMPs until the issuance of certificates of occupancy for seventy-five percent (75%) of all construction which might reasonably be anticipated to be built within the area which drains into the BMPs, allowing credit for improvements completed prior to the submission of the final plat. At such time that this level of occupancy is achieved, written notice thereof must be submitted by the owner to the Town of Huntersville. The owner must also verify the adequacy of the maintenance plan for the BMPs including the necessary financing to support the proposed maintenance practices. The Town of Huntersville will inspect the structural BMPs and verify the effectiveness of the maintenance plan; if both are found to be satisfactory, the department will notify the owner in writing within 30 days of the date of notice.

- .13 Maintenance responsibilities for structural BMPs – Civil Penalties. Maintenance of all structural BMPs will be the responsibility of the property owner or his designee. Any person who fails to maintain the required BMPs in accordance with the approved maintenance plan will be subject to a civil penalty of not more than \$5000. Each day that the violation continues shall constitute a separate violation. No penalties shall be assessed until the person alleged to be in violation has been notified in writing of the violation by registered or certified mail, return receipt requested, or by other means which are reasonably calculated to give actual notice. The notice shall describe the nature of the violation with reasonable particularity, specify a reasonable time period within which the violation must be corrected, and warn that failure to correct the violation within the time period will result in assessment of a civil penalty or other enforcement action.
- .14 Request for Determination of Buffer Requirements. When a landowner or other affected party believes that the S.W.I.M stream buffer delineation maps described in Section 8.25.4 inaccurately depict buffer requirements, he or she shall request a determination from the Storm Water Administrator. Such determinations shall be made by the Storm Water Administrator based on an on-site evaluation using the U.S. Army Corps of Engineers and N.C. Division of Water Quality methodology for stream delineation as well as information from databases maintained for stream delineation by Mecklenburg County. Such determinations can also be made at the discretion of the Storm Water Administrator in the absence of a request from a landowner or other concerned party. The buffer requirements of this ordinance shall apply based on determinations made by the Storm Water Administrator. Surface waters that appear on the maps shall not be subject to this ordinance if an on-site determination by the Storm Water Administrator shows that they fall into one of the following categories.
 - (1) Ditches and manmade conveyances other than modified natural streams.
 - (2) Manmade ponds and lakes that are not intersected by a buffered stream segment and that are located outside natural drainage ways.
 - (3) Ephemeral (storm water) streams.

8.26 Site Lighting

The purpose of the site lighting regulations is to ensure public safety and welfare and to protect the night sky. External lighting shall meet the following standards unless otherwise permitted or restricted by this ordinance.

- .1 General Requirements:
 - a. At a minimum, all lighting installations shall be designed to achieve no greater than the minimal illuminance levels for the activity as recommended by the Illuminating Engineering Society of North America (IESNA).
 - b. Including the base/mounting fixture, the maximum height for lighting (pole mounted and wall mounted) shall be 40 feet except for sports complex lighting as addressed in sections 9.21 and 9.35 of this ordinance.

Exhibit 6 – Variance Application with Attachments



Variance Application

Date of Application: 06/18/2021

Property/Building Address: 12802 Jamesburg Drive, Huntersville, NC 28078 Parcel Size (ac): 65.46 AC

Tax Parcel ID (PIN) Number(s): 01121108

Text of Ordinance to be varied

Ordinance: Zoning Article: 8 Section: 25.11

Description of Request:

The applicant requests a variance to impact an intermittent stream buffer as part of grading operations as permitted through the Army Corps of Engineers. This impact has already taken place as the buffers did not show up on GIS like County SWIM buffers and was not noticed during design.
Reference intermittent streams S2 and S3 on the attached map.

Submittal Requirements and Procedure

The following shall be submitted with the completed application (signed and dated by the property owner and/or applicant):

- One (1) electronic copy by email or (1) hard copy of applicable map(s), site plans, exhibits, and applications showing exact location of property with respect to existing streets, adjoining lots and other important features on or contiguous to the property. Also, include any maps and/or illustrations (to scale), which are necessary to show the location, number and size of buildings, signs, etc., on the property.
- Applications shall be emailed to planning@huntersville.org or mailed as directed below.
- A list of names, addresses and tax parcel identification numbers of properties that abut the site, are across the street from the site or are otherwise within one hundred feet (100') of the site.
- Review Fee - Please check most recent version of Fee Schedule for applicable Variance Review Fee. Reviews shall be submitted by mail as directed below or through the Town website: www.huntersville.org/planning (Select Permits & Process > Submit Planning and Zoning Fee)
- See the current Board of Adjustment Submittal Deadlines and Meeting Schedule for filing deadlines and meeting dates
- Please submit your complete application and fee by **noon the day filing deadline**

Physical Address: 105 Gilead Road | Third Floor (Fed Ex, UPS, and Couriers)
Mailing Address: P.O. Box 664 | Huntersville, North Carolina 28070 (USPS)
Attention: Planning Department

Please make checks payable to: Town of Huntersville
Include property address and/or Tax Parcel ID in memo

Notification Requirements

Planning Staff will be required to notify in writing each adjoining property owner.

Planning Staff will also be required, if you are seeking a variance from the requirements of the Mountain Island Lake or Lake Norman Watershed Overlay Districts, to notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for consumption as follows:

- * Mountain Island Lake Watershed Overlay. Local governments having jurisdiction in the watershed: Charlotte Mecklenburg, Cornelius and Huntersville. Entities using the water supply for consumption: Mecklenburg County, Gastonia and Mount Holly.
- * Lake Norman Watershed Overlay. Local governments having jurisdiction in the watershed: Davidson, Cornelius and Huntersville. Entities using the water supply for consumption: Mooresville, Mecklenburg County and Lincoln County.

Variance Requirements

STANDARDS FOR GRANTING A VARIANCE (Article 11.3.2.e.):

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 the following:

1. 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.
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.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed by the Board (Article 11.3.1.e.).

In the following spaces, indicate **FACTS** that demonstrate to the Board of Adjustment you meet all the standards for granting a variance:

1. 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. The difficulty or hardship would result only from these regulations and from no other cause, including the actions of the owner or previous owners of the property.
Strict application of the ordinance would not allow impacts to otherwise permitted streams. In this case, as the buffer is already impacted, an additional hardship would be the demolition of existing construction and reestablishment of the original buffer.

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 difficulty or hardship is peculiar to the property and is not generally shared by other properties classified in the same zoning district and/or use for the same purpose.
The stream impacts performed, while only noticed after impact, would have been similarly requested and permitted prior to construction due to site topography and the need to impact the subject area with grading.

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 applicant was unaware of the stream buffer as it did not show up on GIS maps and was turned off on the subject plans. Once discovered, the applicant, Town, State, and Corps were notified and after the fact permit applications were submitted.

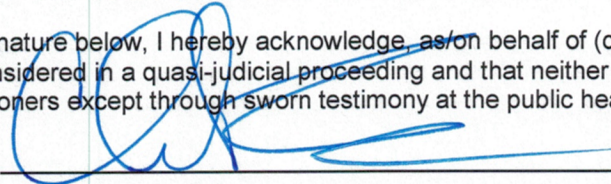
4. The public safety and general welfare have been protected and substantial justice done.
As this request pertains only to a buffer impact, public safety and general welfare are not impacted. Substantial justice will be done by the proposed buffer mitigation of 2:1 onsite dedication.

Applicant

Printed Name MDH F1 Huntersville JV, LLC - Chris Stanley Phone 404-920-8479

☐ Corporation ☒ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

☒ By signature below, I hereby acknowledge, as/on behalf of (circle one) the applicant my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Commissioners except through sworn testimony at the public hearing. (Applicable if box is checked)

Signature  Date 06/18/2021

Title Sr Managing Director Applicant Phone 404-920-8479

Applicant Email cstanley@mdhpartners.com

Address of Applicant 3715 Northside Parkway NW, Building 400, Suite 240, Atlanta, GA 30327

Property Owner (if different than applicant) SAME AS ABOVE

* Printed Name SAME AS ABOVE Phone _____

☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

☐ By signature below, I hereby acknowledge, as/on behalf of (circle one) the owner my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Commissioners except through sworn testimony at the public hearing. (Applicable if box is checked)

Signature _____ Date _____

Title _____ Applicant Phone _____

Applicant Email _____

Address of Property Owner _____

* Property owner hereby grants permission to the Town of Huntersville personnel to enter the subject property for any purpose required in processing this application.

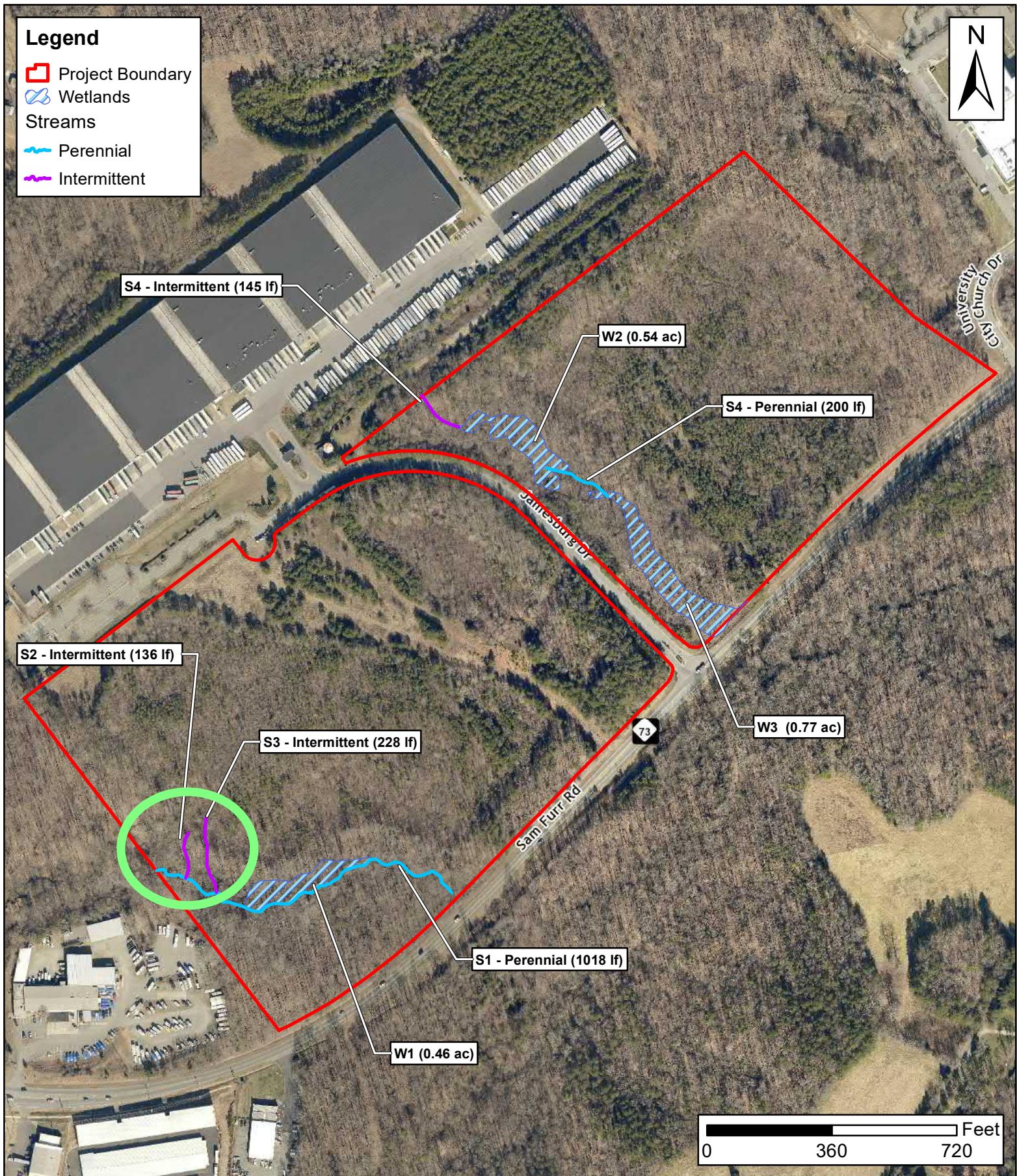
Every owner of each parcel included in this application, or the owner (s) duly authorized agent, must sign this application. If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION. **If additional space is needed for signatures, attach the Town of Huntersville Signature Addendum Form.**

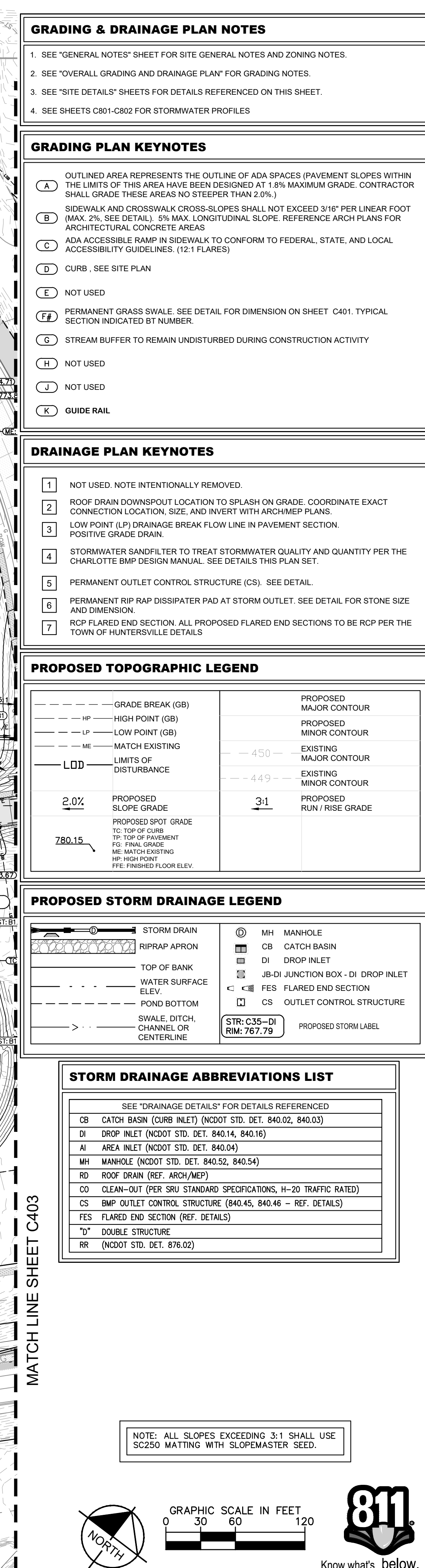
Contact Information

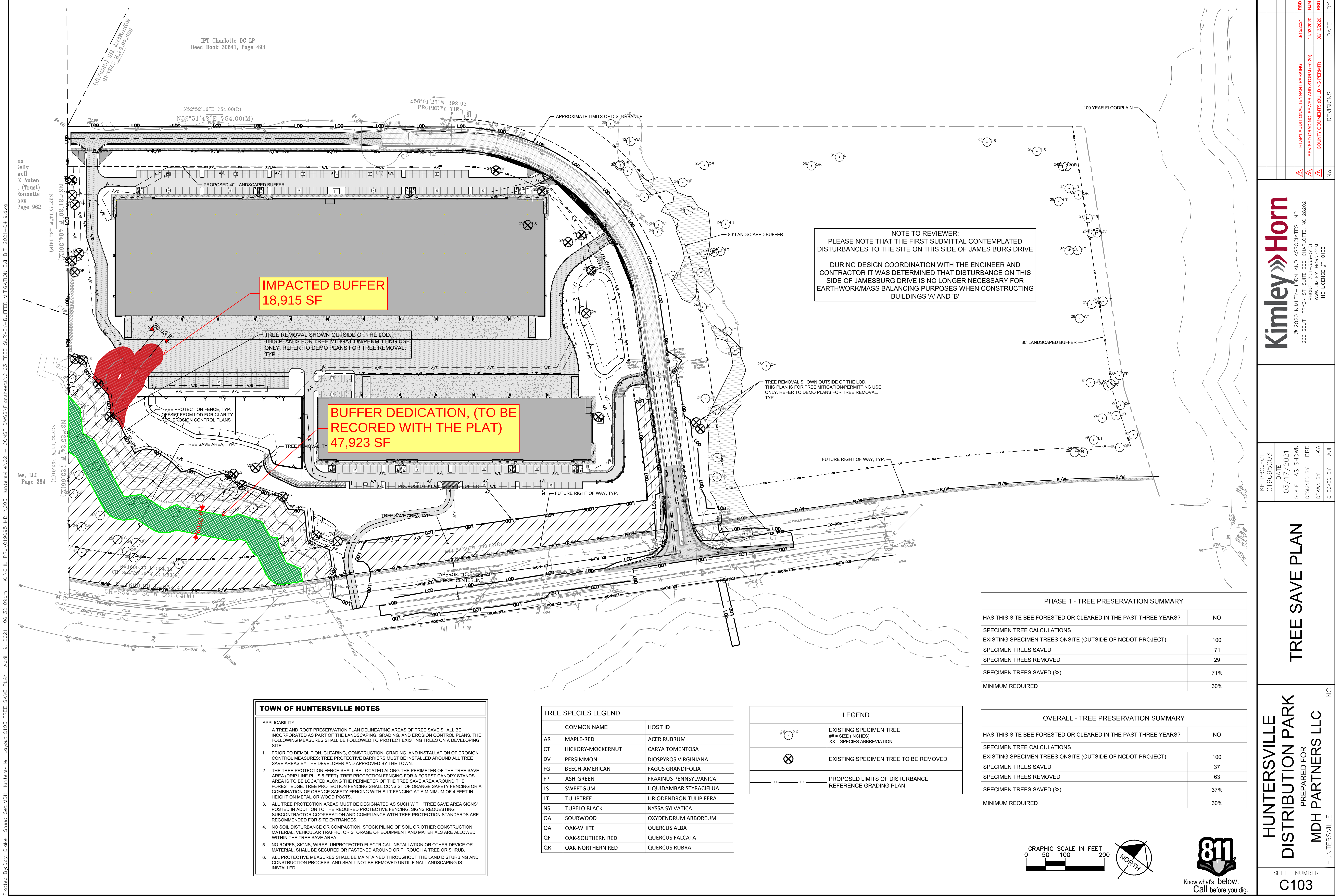
Town of Huntersville Phone: 704-875-7000
Planning Department Fax: 704-875-6546
PO Box 664 Physical Address: 105 Gilead Road, Third Floor, Huntersville, NC 28078
Huntersville, NC 28070 Website: <https://www.huntersville.org/228/Planning-Department>

Received By Planning Department Staff: _____

Staff Initials: _____









Aerial 01-20-2020



Aerial 01-23-2021

Exhibit 7 – Approved Mitigation Plan

August 18, 2021

Mr. Austin L. Watts, P.E.
Kimley-Horn
200 South Tryon Street, Suite 200
Charlotte, NC 28202

Re: Approved Post-Construction Buffer Mitigation for 13020 Jamesburg Road, Huntersville

Dear Mr. Watts:

Please be aware that Charlotte-Mecklenburg Storm Water Services does hereby approve the above referenced buffer mitigation request as summarized below:

- Buffer Area Impacted = 18,915 square feet of upland zone
- Onsite Buffer Preservation to Serve as Mitigation = 42,626 square feet (ratio >2.25 to 1)

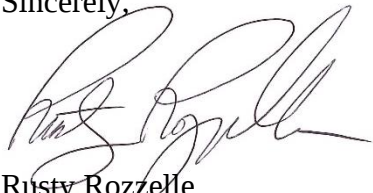
The approved mitigation involves adding 80 feet to the existing 35-foot S.W.I.M. buffer located in the southern corner of the property resulting in an additional 42,626 square feet of stream buffer at roughly 115 feet in total width, excluding the tree save areas. However, unlike the S.W.I.M. buffer that allows minimal disturbance in the upland zone, this 42,626 is a designated Buffer Preservation area and any future disturbance is strictly prohibited. The impacted buffer is shown in red, and the Buffer Preservation area is shown in green in Attachment 1 of the Application for a Water Quality Buffer Disturbance (see attached).

To ensure future protection, the recorded plat for the project must include the designation of the 42,626 square feet of Buffer Preservation area along with a note indicating the following: "This is a Buffer Preservation area used to mitigate the disturbance of the post-construction buffer on the property. Disturbance of this area is strictly prohibited."

If you have any questions, please contact me at 980-314-3217 or rusty.rozzelle@mecklenburgcountync.gov.

Thank you.

Sincerely,



Rusty Rozzelle
Water Quality Program Manager

Attachment

cc: Brad Priest, Principal Planner for the Town of Huntersville



Authorization Certificate Application for a Water Quality Buffer Disturbance

FOR OFFICE USE ONLY: Application Received

Date: 8-18-21 Time: 12:37 PM Complete Submittal ☒ Yes ☐ No

FOR OFFICE USE ONLY: Authorization

Certificate Number: 22-01

Instructions for the proper completion of this form are available on the following website: <http://stormwater.charmeck.org> (Select "Regulations", select "Buffers & BMPs", select "Water Quality Buffer Implementation Guidelines" see Section 5).

SECTION 1: GENERAL INFORMATION

Applicant's Name: MDH F1 Huntersville JV, LLC - Chris Stanley	
Applicant's Mailing Address: 3715 Northside Parkway NW, Building 400, Suite 240, Atlanta, GA 30327	
Applicant's Phone Numbers: Office 404-920-8479	Cell
Applicant's Email: cstanley@mdhpartners.com	
Owner's Name (if different from above applicant): same as above	
Owner's Address:	
Owner's Phone: Office	Cell
Owner's Email:	
If applicant is different from owner, describe affiliation and attach to this application written authorization for the buffer disturbance signed by the property owner: Evans General	
Contractor's Name (or name of other parties involved in buffer disturbance and/or mitigation if applicable): Contracting	
Contractor's Mailing Address: 6101 Carnegie Blvd, Suite 150 Charlotte, NC 28209	
Contractor's Phone Numbers: Office 704-897-1095	Cell
Contractor's Email: cmarshall@evans-gc.com	
Jurisdiction/Town where Proposed Buffer Disturbance is Located: Huntersville	
Address and/or Parcel # of Proposed Buffer Disturbance: 01121108	
Name of Development where Proposed Buffer Disturbance is Located (if applicable): Huntersville Distribution Park	
Type of Buffer (select only one): Water Supply ☐ ; S.W.IM. ☒ ; Post-Construction ☐ ; Goose Creek ☐ ; or Six Mile Creek ☐	
Type of Buffer Disturbance (select all that apply): Removal of Vegetation ☐ ; Installation of Structure ☐ ; Addition of Fill ☒ ; Grading/Land Disturbance ☒ ; and/or Other Specify:	
Specify the Nature of the Activity that will Disturb the Buffer: Grading	
Specify the Reason for the Buffer Disturbance: tying out 30' of grade change per USACE permit	
Square Footage of Parcel: 1,663,992	Square Footage of Disturbed Area: 1,489,752 sf
Square Footage of Buffer on the Parcel: Stream Side Zone 40,986; Managed Use Zone	; Upland Zone 49,405; Total 90,391 sf
Square Footage of Buffer to be Disturbed: Stream Side Zone	; Managed Use Zone ; Upland Zone 18,915; Total 18,915 sf
Date When Buffer Impact will Occur: September 2020	
Date When Mitigation will be Completed: 9/30/21	

Map: Attach to this application a scaled map (copy of survey is acceptable) containing the following information:

1. Lengths of all boundary/property lines for the parcel and parcel address where the buffer disturbance is to occur.
2. Location(s) of all water course(s) on the property, including all perennial and intermittent streams, lakes, ponds and wetlands.
3. Location(s) of buildings, parking areas, and other impervious surfaces.
4. Location(s) of the buffer area on the parcel, including lengths of all boundary lines and total square footage of the entire buffer (including all buffer zones if applicable).
5. The scale of the map, which must not be smaller than 100 feet to the inch.
6. Date of map.
7. A small scale vicinity map and north arrow.
8. Location of the proposed buffer disturbance (boundary lines and total square footage for each zone), including the area of the footprint of the use, the area of the boundary of any clearing and grading activities, and the area of any ongoing maintenance corridors. The boundaries of temporary equipment access areas must be shown on the map but are not included in the total disturbed area calculation provided tree removal and grading do not occur in the area and it is properly stabilized.
9. Location, number, size and species of trees greater than two (2) inches in diameter that will be removed from the buffer.

SECTION 2: REQUEST FOR A NO PRACTICAL ALTERNATIVES DETERMINATION

Explain why the basic project purpose cannot be practically accomplished in a manner that would better minimize the disturbance, preserve aquatic life and habitat, and protect water quality. See attached.

Explain why the use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize the disturbance, preserve aquatic life and habitat, and protect water quality. See attached.

Describe the plans for practices that have been incorporated into the project to minimize the buffer disturbance. See attached.

FOR OFFICE USE ONLY: Specify the anticipated impacts of the buffer disturbance on the overall quality and usability of the surface water resource, including its ability to support varied species of aquatic life and meet applicable water quality standards.

FOR OFFICE USE ONLY: Specify any additional conditions that must be met by the applicant to better protect water quality and aquatic life propagation.

SECTION 3: MITIGATION PLAN

Instructions: Select the type of buffer proposed for disturbance, identify the mitigation option being proposed and provide the information requested below that option (only one buffer type can be selected). Also, submit with this application the additional information specified in Section 5.4 of the "Water Quality Buffer Implementation Guidelines" available at the website described at the top of page 1 of this application. **Important Note:** If the mitigation techniques described below are required for compliance with another ordinance, the technique cannot be used as mitigation for water quality buffer impacts.

☐ **Water Supply Watershed Buffer Disturbance:**
☐ Buffer Restoration on Same Parcel (this is the only mitigation option available for this type of buffer disturbance)

- Is a Level 2 revegetation plan being proposed? Yes ☐ No ☐ If "No", explain why:

- Square Footage of Buffer to be Revegetated:

☒ **S.W.I.M., Post-Construction or Lower Lake Wylie Buffer Disturbance:**
☐ Installation of Structural BMP

- Type of BMP or Infiltration Method:

- Size of Drainage Area to be Treated (acres):

- Percentage of Impervious Cover in this Drainage Area:

☐ Buffer Restoration

- Revegetation Type: Level 1 ☐ Level 2 ☐

- Square Footage of Buffer to be Revegetated (if buffer does not have zones, indicate under "Total"): Stream Side Zone ; Managed Use Zone ; and/or Upland Zone Total

☒ Buffer Preservation

- Square Footage of Buffer to be Preserved (if buffer does not have zones, indicate under "Total"): Stream Side Zone ; Managed Use Zone ; and/or Upland Zone 42,626 Total 42,626 sf

☐ Wetland Preservation

- Square Footage of Wetland to be Preserved:

☐ Bottom Land Hardwood Preservation

- Square Footage of Bottom Land Hardwood Area to be Preserved:

☐ Controlled Impervious Cover

- Amount of Impervious Cover on Parcel square feet ÷ Size of Parcel square feet = x 100 = %

☐ Open Space Development

- Amount of Preserved Open Space on Parcel square feet ÷ Size of Parcel square feet = x 100 = %

☐ Mitigation Payment/Credit

- Area of Buffer Disturbance square feet x \$10 = \$

☐ Alternative Mitigation Techniques (not pre-approved) Specify:

☐ **Goose Creek or Six Mile Creek Buffer Disturbance:**

- Buffer Disturbance Area: Footprint of Use in Buffer square feet + Clearing Limits Outside the Footprint

- square feet + Maintenance Corridor Outside the Footprint and Clearing Limits square feet = square feet

- Mitigation Area: Buffer Disturbance Area square feet x 3 = square feet

☐ Mitigation Payment

- Mitigation Area square feet x \$.96 = \$

☐ Donation of Property

- Appraised Value of Donated Property Interest \$ ÷ Calculated Mitigation Payment \$ = x 100 = %

☐ Stream Buffer Restoration or Enhancement

- Buffer Restoration Area square feet ÷ Calculated Mitigation Area square feet = x 100 = %

- Buffer Enhancement Area square feet ÷ Calculated Mitigation Area square feet = x 100 = %

☐ **Unauthorized (Illegal) Buffer Disturbance:**
☐ Buffer Restoration (this is the only mitigation option available for this type of buffer disturbance)

- Is a Level 2 revegetation plan being proposed? Yes ☐ No ☐ If "No", explain why:

- Square Feet of Buffer to be Revegetated (if buffer does not have zones, indicate under "Total"): Stream Side Zone ; Managed Use Zone ; and/or Upland Zone Total

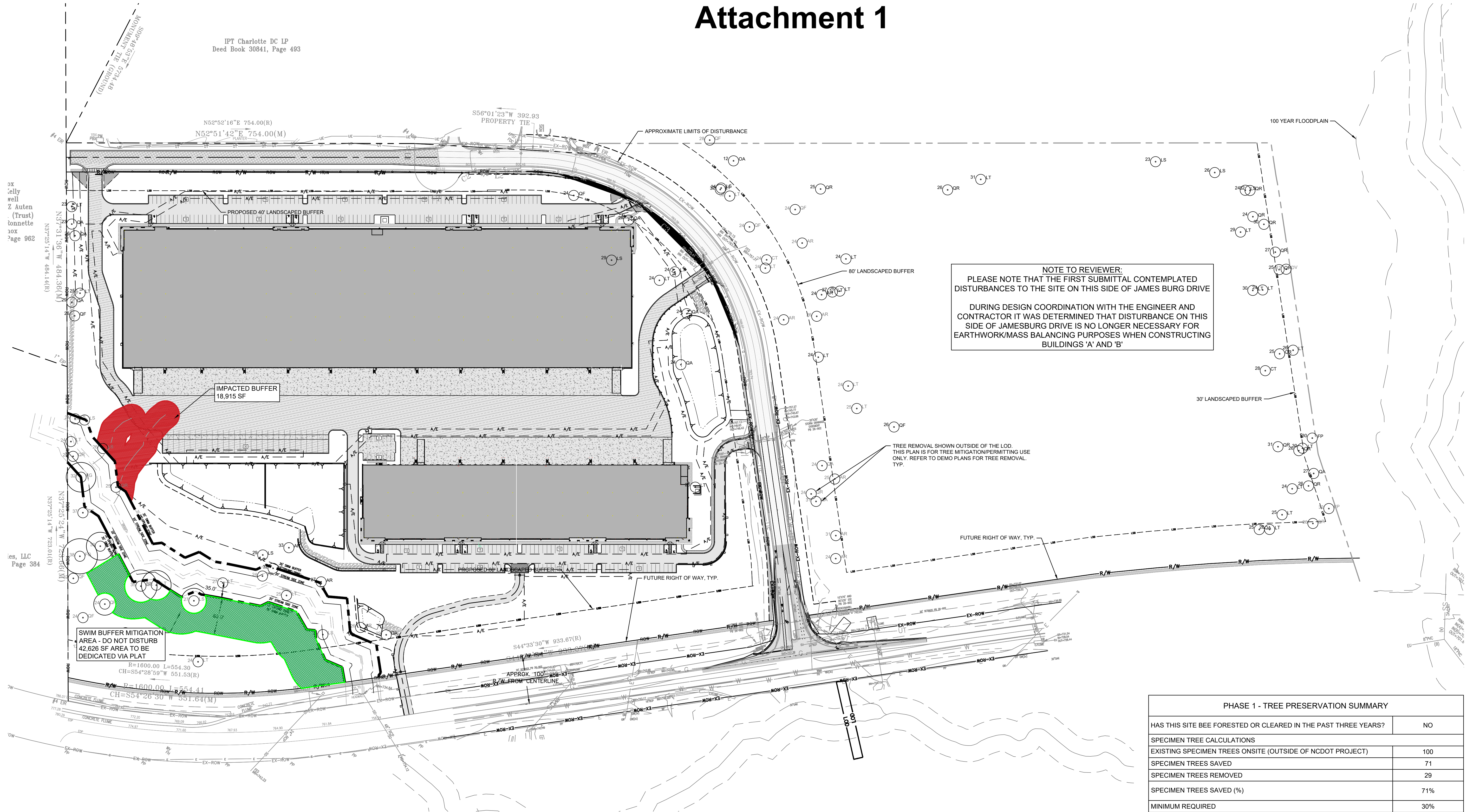
Issuance of the Authorization Certificate: Upon the approval and subsequent signing of this Application, the Authorization Certificate for approval of the buffer disturbance is granted and remains valid for a period of 12 months following the approval date indicated below. All buffer disturbances and mitigation must be performed in strict accordance with the information contained herein and attached to this Application. Failure to do so will immediately render this Authorization Certificate null and void and all buffer disturbances will be subject to penalties. Ensure that proper erosion control is practiced during all land disturbing activities and that once the buffer disturbance is completed that all disturbed areas are properly stabilized. In addition, diffuse flow through the buffer must be maintained in perpetuity.

FOR OFFICE USE ONLY:
☐ Disapproved ☒ Approved ☐ Approved With Modifications ☐ Approved With Performance Reservation

Issued By: Rusty Rozzelle Date: August 18, 2021

Attachment 1

IPT Charlotte DC LP
Deed Book 30841, Page 493

**TOWN OF HUNTERSVILLE NOTES**

APPLICABILITY

A TREE AND ROOT PROTECTION PLAN DELINEATING AREAS OF TREE SAVE SHALL BE INCORPORATED AS PART OF THE LANDSCAPING, GRADING, AND EROSION CONTROL PLANS. THE FOLLOWING MEASURES SHALL BE FOLLOWED TO PROTECT EXISTING TREES ON A DEVELOPING SITE.

1. PRIOR TO DEMOLITION, CLEARING, CONSTRUCTION, GRADING, AND INSTALLATION OF EROSION CONTROL MEASURES, TREE PROTECTIVE BARRIERS MUST BE INSTALLED AROUND ALL TREE PROTECTION AREAS BY THE DEVELOPER AND APPROVED BY THE TOWN.
2. TREE PROTECTION FENCING SHALL BE LOCATED ALONG THE PERIMETER OF THE TREE SAVE AREA (DRIP LINE PLUS FIVE FEET). TREE PROTECTION FENCING FOR A FOREST CANOPY STANDS AREA IS TO BE LOCATED ALONG THE PERIMETER OF THE TREE SAVE AREA AROUND THE FOREST EDGE. TREE PROTECTION FENCING SHALL CONSIST OF ORANGE PLASTIC FENCING OR A COMBINATION OF ORANGE SAFETY FENCING WITH SILT FENCING AT A MINIMUM OF 4 FEET IN HEIGHT ON METAL OR WOOD POSTS.
3. ALL TREE PROTECTION AREAS MUST BE DESIGNATED AS SUCH WITH "TREE SAVE AREA SIGNS". IN ADDITION TO THE TREE PROTECTION FENCING, SIGNS MUST BE REQUESTED FROM THE SUBCONTRACTOR OPERATION AND COMPLIANCE WITH TREE PROTECTION STANDARDS ARE RECOMMENDED FOR TREE SITES.
4. NO SOIL DISTURBANCE OR COMPACTION, STOCK PILING OF SOIL, OR OTHER CONSTRUCTION OF ANY TYPE, INCLUDING VEHICULAR, TRAFFIC, OR STORAGE OF EQUIPMENT AND MATERIALS ARE ALLOWED WITHIN THE TREE SAVE AREA.
5. NO ROPES, SIGNS, WIRES, UNPROTECTED ELECTRICAL INSTALLATION OR OTHER DEVICE OR MATERIAL, SHALL BE SECURED OR FASTENED AROUND OR THROUGH A TREE OR SHRUB.
6. ALL PROTECTIVE MEASURES SHALL BE MAINTAINED THROUGHOUT THE LAND DISTURBING AND CONSTRUCTION PROCESS, AND SHALL NOT BE REMOVED UNTIL FINAL LANDSCAPING IS INSTALLED.

TREE SPECIES LEGEND

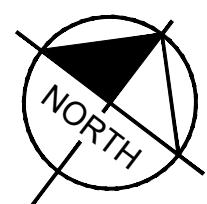
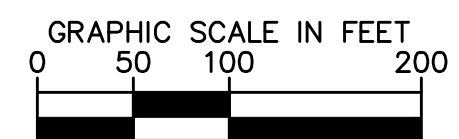
	COMMON NAME	HOST ID
AR	MAPLE-RED	ACER RUBRUM
CT	HICKORY-MOCKERNUT	CARYA TOMENTOSA
DV	PERSIMMON	DIOSPYROS VIRGINIANA
FG	BEECH-AMERICAN	FAGUS GRANDIFOLIA
FP	ASH-GREEN	FRAXINUS PENNSYLVANICA
LS	SWEETGUM	LIQUIDAMBAR STYRACIFLUA
LT	TULIPTREE	LIRIODENDRON TULIPIFERA
NS	TUPELO BLACK	NYSSA SYLVATICA
QA	SOURWOOD	OXYDENDRUM ARBOREUM
QA	OAK-WHITE	QUERCUS ALBA
QF	OAK-SOUTHERN RED	QUERCUS FALCATA
QR	OAK-NORTHERN RED	QUERCUS RUBRA

LEGEND

	EXISTING SPECIMEN TREE ## = SIZE (INCHES) XX = SPECIES ABBREVIATION
	EXISTING SPECIMEN TREE TO BE REMOVED
	PROPOSED LIMITS OF DISTURBANCE REFERENCE GRADING PLAN

OVERALL - TREE PRESERVATION SUMMARY

HAS THIS SITE BEE FORESTED OR CLEARED IN THE PAST THREE YEARS?	NO
SPECIMEN TREE CALCULATIONS	
EXISTING SPECIMEN TREES ONSITE (OUTSIDE OF NCDOT PROJECT)	100
SPECIMEN TREES SAVED	37
SPECIMEN TREES REMOVED	63
SPECIMEN TREES SAVED (%)	37%
MINIMUM REQUIRED	30%

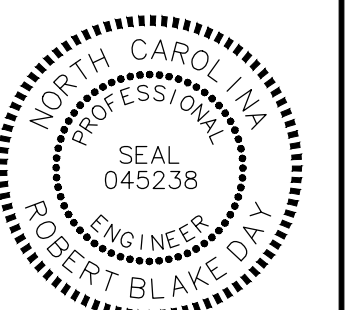


Know what's below.
Call before you dig.

HUNTERSVILLE
DISTRIBUTION PARK
PREPARED FOR
MDH PARTNERS LLC
HUNTERSVILLE

TREE SAVE PLAN

KH PROJECT	019695003
DATE	03/17/2021
SCALE	AS SHOWN
DESIGNED BY	RBD
DRAWN BY	JKA
CHECKED BY	AJH



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