

**BOARD OF ADJUSTMENT
MEETING
THURSDAY, MARCH 24, 2022
6:00 P.M.
Council Chambers
300 W. Crowell Street
Monroe NC**

**REVISED
A G E N D A**

Item 1. **Call to Order.**

Item 2. **Approval of Minutes** – December 16, 2021 & February 24, 2022

Item 3. **Conflicts of Interest**

Item 4. **CASE #: PLZNA 2022-00148**– Variance Request- The applicant, Monroe Biomedical Research, is requesting a variance for the property located at 343 Venus St. from section 156.140 to modify setback requirements for a proposed building addition. (Tax ID # 09-156-029)

Item 5. **Procedural Discussions**

Item 6. **Next Meeting:** April 28, 2022

Item 7. **Adjournment**

*Attention: BOARD MEMBERS:
Please call Ashlyn Penegar at 704.282.4527 to confirm your attendance. Thank you!*

cc: *Mujeeb Shah-Khan
Ashley Duncan
Doug Britt
Keri Hutchins
William Nance*

**MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
February 24, 2022 at 6:30 P.M.
Council Chambers
300 W. Crowell St.
Monroe, NC**

To S. Laney – e-mailed 3-08-22

Item 1. Call to Order

Chairman Kenneth Deal called the February 24, 2022 meeting to order at 6:32 p.m. and noted that there was a quorum present with 4 members. Doug Britt, Senior Planner, called the roll.

Members Present: Kenneth Deal, Lou Philippi, William Draper and George Smith

Members Absent: None

Staff Present: Doug Britt, Senior Planner; Megan Brightharp, Planner I; Albert Benshoff, BOA Attorney; Ashley Britt, Assistant City Attorney

Guests: Symetha Blake, Barbara Faulk, William Plyler, Diane Plyler Hough, Alan Plyler, Wes Faulk, Darius Olesky

Item 2. Approval of Minutes – Minutes of December 16, 2021 Meeting

Doug Britt recommended minutes be tabled until the next meeting to make some corrections that we've received this afternoon. Kenneth Deal said it's been requested that the Minutes from the December 16, 2021 were tabled until the next meeting. Kenneth Deal asked if anyone objected. There was no one. The minutes will be tabled.

Item 3. Conflicts of Interest

Chair asked if there were any conflicts of interest. There were none.

Item 4. CASE PLZNA-2022-00099 – Chairman said the applicant, Stafford Street Monroe, LLC, is requesting a Variance to install an eight (8) foot chain-link fence with 12" inches of barbed wire on top for a total of nine (9) feet and to remove four (4) trees over seventy-five (75) inches in circumference at 1912 Stafford Street Extension/2026 Skyway Drive (Tax ID #09-180-004-90, 09-180-004-H-80, & 09-180-004-H-90) Continued from December 16, 2021 Meeting

Chair said that anyone who is going to give testimony in this case needs to be administered the oath. Doug Britt, Senior Planner, Wes Faulk, Plyler family attorney, and Darius Olesky, with Suncap Properties came forward and were sworn.

Doug Britt, Senior Planner, said this is a Variance request by Stafford Street Monroe, LLC to install an 8-foot chain-link fence with 12” of barbed wire on top for a total of nine (9) feet, as well as a variance to remove four (4) trees over seventy-five inches in circumference. He proceeded to enter the proposed Findings into the record:

Proposed Findings:

1. The property located at 1912 Stafford Street Extension/2026 Skyway Drive is owned by Dorothy Plyler Trustee and William Franklin Plyler and is zoned R-20 (single family residential). (Exhibit 1, 2)
2. A rezoning application was submitted in October of 2021 to rezone the subject properties from R-20 (single family residential) to GI (General Industrial). The request was modified to rezone a portion of parcel 09-180-004-90 to GI (General Industrial) and was approved by the City Council at the January 11th City Council meeting.
3. On November 11, 2021, the applicant submitted a variance application to request a variance from Sections 156.136 (A)(2) and 156.136 (B)(10) titled Fences and Walls and Section 156.221 titled Tree Preservation in order to install an eight (8) foot chain-link fence with 12” inches of barbed wire on top for a total of nine (9) feet and to remove four (4) trees over seventy-five (75) inches in circumference. (Exhibit 3, 4)
4. Sections 156.136 (A)(2) and 156.136 (B)(10) stipulate, the maximum height of a fence or wall in an industrial district shall be eight (8) feet and that barbed wire fencing is prohibited except in the R-40 and R-20 district, where it may be used in conjunction with bona-fide farming activities. (Exhibit 5)
5. Section 156.221 (A) stipulates trees seventy-five (75) inches in circumference must be preserved and shall not be removed. (Exhibit 5)
6. The variance requests will only be for the properties or portions of property that are zoned GI (General Industrial).
7. All adjacent property owners have been notified of the variance request. (Exhibit 6, 7)

Doug Britt concludes the presentation.

Mr. Deal asks if anyone would like to speak for this project to come forward. Speakers will need to state their name and address for the record.

Darius Olesky with SunCap Properties representing the applicant at 6101 Carnegie Blvd. Ste. 180, Charlotte, NC 28209. Olesky states that last time he was before the Board, there was some confusion over the extent and the boundary of what the variance would apply to. Mr. Olesky stated that we have since modified the rezoning application to carve out a piece of property that was objectionable to neighbors, which included the lake. That portion of the project/property was carved out of the rezoning and it was successful in having the project rezoned to Industrial. Mr. Olesky states he is back before the Board to ask for the variance just on the Industrial zoned portion of project for two things, 1) as Doug said, the 4 trees of which 3 are in the path of the sewer route. The path was designed as a gravity sewer route and the most direct path to existing utilities is along Skyway Dr. Unfortunately, there are 3 trees over 24 inches in that path, the remainder of trees are staying, so we are only clearing for sanitary sewer. Mr. Olesky references

an exhibit that Doug had used in his presentation [Exhibit 4, Site Plan] and states the part highlighted in green are the areas of trees that are on the property that are not going to be disturbed so that you can see the path of the sanitary sewer minimally going from Skyway to the back of the property. Mr. Olesky asks if there are any questions regarding the tree portion of the variance application?

Mr. Deal asked if there are any questions.

Mr. Philippi states that he cannot see that map and asks how many trees that are over 25 years old that are not being removed?

Mr. Deal asks 24 inches in diameter?

Mr. Olesky clarifies and says yes, they are 24 inches and states they only did a tree survey on the portion of the trees that are required to be surveyed. He states he does not know a number.

Mr. Philippi asks Mr. Olesky to eyeball the amount because he cannot walk the land.

Mr. Olesky shows Exhibit 4 again that shows the area in green that is not being cut down. He stated that he doesn't know if it's 1,000 trees or 2,000 trees.

Mr. Philippi says the point that he is trying to make is that there is a regulation on cutting down trees of that size unless it's absolutely necessary. If there is only 3 trees on the whole lot, I would like a little bit of explanation. If there are 12 trees on the whole lot, but we only have to cut 3 down, understand that?

Mr. Olesky, says that's right. Mr. Olesky states that there is 14 acres of wooded area, of that 14 acres, we are proposing to clear 2.6 acres. Of that 2.6 acres, there is only four trees subject to the ordinance. In addition to the 4 trees that are coming down, we are installing 1,900 trees and large shrubs. Of that, there is almost 500 trees is being installed. Mr. Olesky states that again, I don't know the exact number of trees that we surveyed.

Phillips says, as long as there is one.

Mr. Olesky and Mr. Philippi go back and forth to the effect that as long as there is one and there is no way around you have to take them down.

Olesky states that along this path, it's a direct path to the sanitary sewer that comes back to the property, points to the map and says three trees here and one additional tree.

Mr. Deal, states that it is still a considerable amount of trees.

Mr. Philippi agrees.

Mr. Olesky states again that he didn't complete a tree survey.

Mr. Deal asks if there are any other questions/discussions?

Mr. Olesky states if there are no further questions/discussions, he will switch to the second part of his application which is the fencing. Goes on to say as Doug showed the fence in question is securing the property, starts at the building and wraps around secured trough and comes back to the property. It's a standard detail for our client, it's (fence) 8 ft. tall with a foot of single strand barbed wire. Not concertina

wire. Mr. Olesky passes along an example [photograph, Exhibit 9] of fencing that includes barbed wire. It is a galvanized fence, 8 ft. tall with additional foot of 3 strand barbed wire at the top.

Mr. Draper states, it's not razor wire?

Mr. Olesky states that it's barbed wire and not concertina wire, that's correct and it's to prevent climbing over top. States that it's been found to be a safety deterrent across the country on facilities of this type that my client has used. Mr. Olesky asks respectively that we asked for a waiver on this grounds. Asks is there are any questions on this portion?

Mr. Deal asks is there are any questions/discussions?

Mr. Philippi asks even though we aren't allowed to know what that warehouse is, will it have small items in it.

Mr. Olesky states that the use is a small package warehouse.

Mr. Philippi confirms so the higher the fence, the more secure it is from someone stealing something.

Mr. Olesky states that there are plenty of security measures inside to prevent small packages from ending up in the bathroom or something like that. This takes the security measure outside to prevent things.

Mr. Philippi says that they are not storing bags of concrete,

Mr. Olesky says no.

Mr. Deal asks if there are anyone else with questions?

Mr. Benshoff asks that we have at least one of the pictures of the fencing to put in the record. [Photo of fencing example, Exhibit 8].

Mr. Deal asks if there are anyone else that would like to speak for this project.

Wes Faulk approached, and stated he is at 309 Post Office Dr. Indian Trail NC 28079. He says he is an attorney representing the trust involving this matter and wanted to rise to express our unanimous support and approval of this variance. Mr. Faulk states he has a statement from the trust sent from Mrs. Plyler that she had signed and notarized. He submits it into the record and states that on behalf of family and Mrs. Plyler we are in whole support and he is happy to answer any questions.

Mr. Deal asks if anyone else has any questions.

Mr. Benshoff requests the statement from Mrs. Plyler be submitted into the record. [Sworn statement from Dorothy Moser Plyler, Exhibit 9]

Mr. Smith asks if this is the same thing she signed in the previous meeting?

Mr. Faulk says yes, and it was notarized.

Mr. Deal asks is there anyone else that would like to speak for the project. There was none. He then asks if anyone would like to speak against the project? There was none.

Mr. Deal says very well and asks if there are any further questions from the Board?

Mr. Phillips states that he would like to give his two cents in this and explains how he goes from place to place on Goldmine Rd to Lancaster Hwy and it's residential/industrial and they have more fences out there with barbed wire than you can shake a stick at. He says that every-body uses the darn thing and being used in yards with trucks and things out there and he says he has seen some 8 ft. fences with 3 ft. of barbed wire on top. That's always used on electrical and gas lines as well. If this is a fence built on an industrial building where they don't own the land around it and where they have small packages, he thinks it is necessary for them to secure the freight because we do want the jobs and we want them to be there and pay taxes and hire our people.

Mr. Deal asks is there are any other discussions? Mr. Deal asks Mr. Olesky to step back up for a minute for clarification. Mr. Deals says he would like to make it clear that this is the only area that we are granting a variance for this fence is the fence shown on the site plan?.

Mr. Olesky says correct.

Mr. Deal says if there is any additional fencing that does over the standard regulations, you would have to come back.

Mr. Olesky says that's correct and if there is any other fencing on the property, it's going to meet the code and it's typically surrounding the storm water ponds and of 4 ft. height. Mr. Olesky says, we are only asking for the variance in this specific location.

Mr. Deal asks if there is a motion on conclusions.

Mr. Benshoff asks for the floor for a moment and says the findings presented to you, are the staff's proposed findings and it's the Board's job to find the findings of fact. The findings of fact are used to justify the conclusions of why that you find next. Mr. Benshoff recommends that the minutes state that the findings of fact were the staff's suggested findings and that they are not the findings of fact until they are adopted by this Board.

Mr. Deal asks that if you turn back to page one of the hand out that Doug Britt gave you, you have findings of fact 1-7.

We would like a motion on whether to accept these 7 findings of fact as a matter of record. Mr. Philippi asks if we should do it as bulk or individually. Mr. Deal says in bulk is fine, unless there is one you object to.

Motion: Mr. Philippi a motion to find these findings in fact correct

Second: Mr. Smith

Mr. Deal states that the motion has been made to accept findings 1-7 as a matter of record and they have been properly seconded

Action: The motion to accept findings 1-7 passed unanimously with the following votes.

AYES: Kenneth Deal, William Draper, Louis Philippi and George Smith

NAYS: None

Mr. Deal states based on the findings, that we are now moving on to the conclusions.

Conclusions:

1. It is the Board's CONCLUSION, that unnecessary hardship (**would**/~~would not~~) result from the strict application of the ordinance.

Motion: Mr. Smith made a motion that the unnecessary hardship would result from the strict application of the ordinance.

Second: Mr. Draper

Mr. Benshoff states before you vote on that, are there any facts that support that conclusion? It's a requirement of our law that the Board states facts support each conclusion.

Mr. Smith states that it is the most economical to extend utility by cutting trees and not zig zagging; The fence provides security.

Mr. Philippi asks when did trees come in?

Mr. Smith says we have 2 issues here, one for the fence and one for the trees and we have to address both of them.

Mr. Philippi confirms for the necessary hardship and Mr. Smith concurs.

Mr. Deal states if I am hearing correct, it would be an unnecessary hardship to re-route sewer and electrical lines to get around these trees, financially and time-wise.

Philippi and Smith agree.

Mr. Philippi also says the fence provides security for the merchandise inside of the building and putting a fence that was not adequate to do the job would cause unnecessary hardship.

Action: The motion passed unanimously with the following votes:

AYES: **Kenneth Deal, William Draper, Louis Philippi and George Smith**

NAYS: **None**

2. It is the Board's CONCLUSION, that the hardship (**is**/~~is not~~) peculiar to the applicant's property.

Motion: Mr. Draper made a motion that the hardship is peculiar to the applicant's property because the trees exist, so they are particular to the applicants location and the fence is necessary to protect the property and what's inside.

Second: Mr. Philippi

Action: The motion passed unanimously with the following votes:

AYES: **Kenneth Deal, William Draper, Louis Philippi and George Smith**

NAYS: None

3. It is the Board's CONCLUSION, that the hardship (~~is~~/is not) the result of the applicant's own actions.

Motion: Mr. Draper made a motion that the hardship is not the result of the applicant's own actions because the trees come with the land and the type of structure that is proposed, and what they are going to do inside the fences make the fence a necessary evil to accommodate the proposed use.

Second: Mr. Smith

Action: The motion passed unanimously with the following votes:

AYES: Kenneth Deal, William Draper, Louis Philippi and George Smith

NAYS: None

4. (a) It is the Board's CONCLUSION, that the variance (~~is~~/is not) consistent with the spirit, purpose, and intent of the ordinance.

Motion: Mr. Philippi made a motion that the variance is consistent with the spirit, purpose and intent of the ordinance. There is no indication that there is anybody who has any dislike for trees or would like to build a fence to the sky. This is what's necessary (the tree removal and fence construction) to be done to create the jobs and do the business. The ordinance is not being injured in any shape or form. The fence is necessary and you've got to have it there or they cannot do business.

Second: Mr. Smith

Action: The motion passed unanimously with the following votes:

AYES: Kenneth Deal, William Draper, Louis Philippi and George Smith

NAYS: None

- (b) It is the Board's CONCLUSION, that in granting of the variance, the public safety (~~will~~/will not) be secured and substantial justice (~~will~~/will not) be achieved.

Motion: Mr. Smith made a motion that in the granting of the variance will conform and it will improve the neighborhood or the property. It does the public good.

Second: Mr. Draper

Action: The motion passed unanimously with the following votes:

AYES: Kenneth Deal, William Draper, Louis Philippi and George Smith

NAYS: None

5. The variance (~~will~~/will not) result in the extension of a nonconforming situation in violation of 156. and it (~~will~~/will not) authorize the initiation of a nonconforming use of land.

Motion: Mr. Philippi made a motion that the variance will not result in the extension of a nonconforming situation in violation of Section 156.90 and it will not authorize the initiation of a nonconforming use of land. They are conducting business in a normal

manner and enriching the community.
Second: Mr. Smith
Action: The motion passed unanimously with the following votes:

AYES: William Draper, Louis Philippi, George Smith, and Kenneth Deal
NAYS: None

Mr. Deal asked for a motion to grant or deny the variance request

Motion: Mr. Draper made a motion to grant this variance based on the information provided.
Second: Mr. Smith
Action: The motion to grant the variance passed unanimously with the following votes:

AYES: Kenneth Deal, William Draper, Louis Philippi and George Smith
NAYS: None

THEREFORE, on the basis of all foregoing, IT IS ORDERED that the application Variance PLZNA- 2022-00099 be (**approved/denied**).

Item 5. **CASE PLSUP-2022-00122** – The applicant, Symetha Blake, is requesting to modify the conditions of an existing Special Use Permit to operate a Childcare Center for ages 6 weeks to 12 years old Monday – Friday from 6:30 a.m. to 6:00 p.m. on the property located at 1103 Icemorlee Street (Tax ID #09-270-049)

Mr. Deal asks that Megan Brightharp and Symetha Blake be administered the oath. They came forward and were sworn.

Megan Brightharp, Planner I, introduced the findings.

Proposed Findings:

1. The property at 1103 Icemorlee Street is owned by Southgate Properties, LLC and is zoned CD (Conditional District) Icemorlee Business Center (Exhibit 1, 2).

2. A Special Use Permit was approved at the July 26, 2007 meeting with the following conditions (Exhibit 3):

- That the maximum number of children to be served by this facility not exceed 25
- That the ages of the children range from 5-17
- That the hours of operation for this facility be Monday- Friday 7:00 a.m.- 6:00 p.m.

3. The applicant, Symetha Blake, submitted a Special Use Permit application to the Planning Department on January 27, 2022 to deviate from the original conditions as follows (Exhibit 4):

- Allow children from 6 weeks to 12 years of age
- Allow the hours of operation to span from 6:30 a.m. to 6:00 p.m.

- Allow the number of children permitted to coincide with the limit set by the building and fire codes to be determined through the change of use permit process

4. A Standard 5 Appraisal Impact Study was completed by Morrison Appraisal, Inc. It is the opinion of Morrison Appraisal, Inc. that a childcare/recreational facility will not adversely affect the value of the adjoining properties. (Exhibit 5)

5. All adjoining property owners have been notified of the Special Use Permit application. (Exhibit 6&7).

Megan Brightharp, Planner I, concludes her presentation.

Mr. Deal asks if any inquiries were received regarding the change?

Ms. Brightharp said no.

Mr. Philippi says the only difference here is that they want a half hour of more operating time and the age limits for the kids.

Ms. Brightharp confirms.

Mr. Smith responds and states his son used to attend, they handle special needs within that age window. He states it's more than a daycare, because these children are watched closer. Mr. Smith continues to explain how it puts a little less stress on neighbors and says it's just from his knowledge from his son.

Ms. Brightharp states that the application is addressing the number of children being served, the age range and the time frame in which they will be open for business.

Mr. Philippi says the regulation of whose in there and how many of them and how they are cared for and what kind of furniture they have is handled by a different agency, but to insure the safety of the children, is that correct.

Symetha Blake of 1103 Icemorlee St. Monroe NC 28110, confirms that it handled by Social Services.

Mr. Philippi says in other words you are under government regulations for the manner in which you handle children and you are inspected by property inspectors of those agencies (State).

Mr. Philippi says our only concern here is can she have her lights on a half hour longer.

Mr. Deal states it's an arbitrary number that isn't supported by the specifications of access.

Ms. Blake states that the building inspectors give her that number and she has to follow whatever they say.

Mr. Philippi says if she is satisfied with the results of the building inspectors, then he doesn't see any questions here.

Mr. Benshoff asks Ms. Blake if the 2007 Special Use Permit was for all the building or some of the building.

Ms. Blake responds and says it was for the whole building, the total building.

Mr. Benshoff asks if this updated permit is for the total building or some of the building,

Mr. Deal responds and says this is to modify the already existing Special Use Permit.

Ms. Blake confirms that previously there was 2 sections of the building and now it's for the whole building.

Mr. Draper asks if the building has a sprinkler system?

Ms. Blake says no, we are an educational facility which does not require the sprinklers.

Doug Britt says any of that stuff whether it's required or not would come out when they submit plans to go through the building permit. The Fire Department will confirm the occupant load, all that will be reviewed. But, this is just the zoning of use, not whether the building is sprinklered, and can she modify the Special Use Permit, which is what was originally approved with what she's asking for tonight.

Mr. Benshoff wants to clarify if the footprint of the Special Use Permit is being expanded?

Doug Britt responds and says Ms. Blake is requesting this for the entire building.

Mr. Benshoff says ok and thank you.

There is a discussion amongst the Board Members.

Doug Britt mentioned that we advertised for the entire portion of the property.

Mr. Deal says it clearly states 1103 with no sub suite numbers, so that is the entire building.

Mr. Benshoff agrees.

Mr. Deal asks if there are any questions?

Mr. Deal says the Board of Adjustment is here to make a decision concerning the proposed Special Use Permit and we shall consider the following staff findings. The application is complete and the jurisdiction proper. Under section 2 Special Use General Standards, the use will not endanger the public health or safety of located, designed, and proposed to be operated in accordance with the plan.

Mr. Deal asks if we have a motion to whether this standard has been met or not met.

Mr. Benshoff interjects and says this should be approved the same way as the previous item. The findings of fact should be adopted first and says the petitioner has done an excellent job of stating why this should be approved in her response and if you agree with her, you could find that the standards are met for the reasons stated in the petitioners response.

Mr. Deal says based on that, do I have a motion to approve the findings of fact, items 1-5?

Motion: Mr. Philippi made a motion to approve the findings of fact.

Second: Mr. Draper

Action: The motion to approve the findings of fact passed unanimously with the following

votes:

AYES: Kenneth Deal, William Draper, Louis Philippi and George Smith
NAYS: None

Special Use General Standards-

1. **The use will not materially endanger the public health or safety if located, designed, and proposed to be operated according to plan.**

Motion: Mr. Philippi moved that the proposed amendment will not materially endanger the public health or safety if developed as presented based on the findings.
Second: Mr. Smith
Action: The motion passed unanimously with the following votes:

AYES: Kenneth Deal, William Draper, Louis Philippi and George Smith
NAYS: None

2. **The use or development complies with all regulations and standards of the City of Monroe Zoning Ordinance, as well as any other state or local rule or regulation governing the development of land.**

Motion: Mr. Philippi made a motion that the standard is met based on the findings. All ordinances are met.
Second: Mr. Smith
Action: The motion that the standard is met passed unanimously with the following votes:

AYES: Kenneth Deal, William Draper, Louis Philippi and George Smith
NAYS: None

3. **The use or development will not adversely impact surrounding property and will not substantially injure the value of adjoining property.**

Motion: Mr. Smith made a motion that the standard is met based on the findings of fact.
Second: Mr. Draper
Action: The motion that the standard is met passed unanimously with the following votes:

AYES: Kenneth Deal, William Draper, Louis Philippi and George Smith
NAYS: None

4. **The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Monroe Land Development Plan.**

Motion: Mr. Draper moved that the location and character of the use will be in harmony with the neighborhood in which it is located and in conformity with the Monroe Land Development Plan because the use already exists in an existing building, whose exterior will not be changed.

Second: Mr. Smith
Action: The motion that the standard is met passed unanimously with the following votes:

AYES: Kenneth Deal, William Draper, Louis Philippi and George Smith
NAYS: None

Mr. Deal asked for a motion to grant or deny the modification request of the Special Use Permit

Motion: Mr. Philippi made a motion to great the Special Use Permit modification request.
Second: Mr. Smith
Action: The motion to grant the Special Use Permit modification passed unanimously with the following votes:

AYES: Kenneth Deal, William Draper, Louis Philippi and George Smith
NAYS: None

Item 6. **Procedural Discussions**

Mr. Benshoff gave suggestions and said some communities do things a little differently. The attorney prepares an Order for consideration that states the findings of fact and states the conclusions of law and the reasons why the conclusions of law are met, one pro and one against. I can't speak for the staff, I can't tell them to do that, but I would be happy to do that for you for a couple meetings to see how it goes. Mr. Deal said I am willing to try. Mr. Benshoff said because what you did tonight will be turned into an Order that will be recorded with the Register of Deeds and it doesn't really matter when it's prepared, provided that you adopt the word of edits that it should order. Now about the findings and fact and conclusions of law, in the good old days, the Boards of Adjustments just made conclusory conclusions and they said the standards of the ordinance are met because the standards of the ordinance are met. Eventually the court of appeals sent those cases back and said you can't do that, you have to state reasons why the standards of the ordinance were met. In an unsupported conclusion of law is not valid and then after a while the courts just got frustrated and just said were not going to send it back, we are just going to issue the order ourselves and tell the city what to do. Generally, the cities don't like that, they would prefer to keep the power of control local and that's why you go through that process. Frankly, it doesn't matter if an application is approved and everyone is happy. The problem comes when an application is denied or it's contested and there's opponents and they will appeal it to the courts, and then you need to have done it correctly so if you practice for all the cases that are not hotly contested, it will be easier when you get one where the auditorium is packed with angry people and there's lawyers on both sides and they're cross-examining witnesses and they're making motions to strike evidence. That's why I started tonight, I didn't want to start in December because the Chairman was going out and it was his last meeting. So, that's why I said what I said. Now, if you would like, in addition to preparing the model Order for your next case, The Brough Law Firm has a training module for Boards of Adjustment that I can present to you sometime when you have a relatively short meeting. It's about an hour and we could break it up into a couple segments and I have to say that Boards of Adjustment have a hard job because they are a panable court in North Carolina and they're not lawyers and they're not judges. They kind of get thrown in, to figure it out. So, I have a lot sympathy for the position that you're in.

Mr. Philippi said I do appreciate it and I wish I would have brought last month's packet, but it's sitting on my desk because I kept it for a lot of reasons. If you give us the ayes and nays on two separate sheets, we don't necessarily always agree. At least if you're in opposition, you can look in front of you and see what

the pros and what the cons are in logic. Then other Board members can have their say as well, I think it's a wonderful idea. We appreciate that and we appreciate that class.

Mr. Deal said I would also like to add that we've gotten frustrated in some of the meetings when it's clear to me that the Board is not in favor of the position does not mean that the Board and I feel like we don't like this and we want to disapprove this. So, we're going to say everything is not met, when in some of the items they've met the standards. We had one gentleman that wanted to develop a couple of side by side homes, he had met some of the standards but he only needs to fail in one standard to get a denial. Because we are a quasi-judicial order and we have been challenged in court in the past, not very often, but it has happened. We need to be clear, every time we say no, because that's what they run to court for, the no's and not the yes's.

Mr. Smith said I welcome everything you just said.

Mr. Philippi said it's funny you just mentioned this, I remember I was the one that approved one of the things, because I can't say it's not true, it's true. (Rest of sentence inaudible). The fact is there is one thing I had to approve, that is correct.

Mr. Smith said that would be a safe house on that lot, but the neighbors hate it. But, that would mean it meets all zoning requirements and everything like that, but the neighbors all came out against it.

Mr. Benshoff said finally I'll make a plug for a book from the School of Government *Quasi-Judicial Handbook: A Guide for Boards Making Development Regulation Decisions*, that's you. It was published in 2021 by the School of Government Professors Owens and Lovelady. I don't know what the City's budget is, but I would recommend this book to you.

Doug Britt said the City can cover the books.

Item 7. Meeting Time Discussion

Doug Britt said some of our other meetings start at 6:00 p.m. and we didn't know if this would be a possibility for the attorney as well to meet at 6:00 p.m.

Mr. Benshoff said that's ok with me.

Mr. Deal says he likes the 6:00 time.

Mr. Smith says if we get out a half earlier rather than later, I'll be fine.

Mr. Deal asked if we have a motion to move the Board of Adjustment Meetings from 6:30 p.m. to 6:00 p.m.

Motion: Mr. Philippi made a motion to move the Board of Adjustment meeting from 6:30 p.m. to 6:00 p.m.

Second: Mr. Smith

Action: The motion to move the meeting time to 6:00 p.m. passed unanimously with the following votes:

AYES: Kenneth Deal, William Draper, Louis Philippi and George Smith

NAYS: None

Item 9. Next Meeting – March 24, 2022

Item 10. Adjournment

Motion: Mr. Draper made a motion to adjourn the meeting.

Second: Mr. Smith

Action: The motion to adjourn passed unanimously with the following votes:

AYES: Kenneth Deal, Louis Philippi, William Draper and George Smith

NAYS: None

The meeting was adjourned at 7:33 p.m.

Respectfully submitted,

Kenneth Deal
Chair

Ashlyn Penegar
Clerk of the Board

**MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
DECEMBER 16, 2021 at 6:30 P.M.**

**Council Chambers
300 West Crowell Street
Monroe NC**

To S. Laney – e-mailed 12-17-21

Item 1. Call to Order

Chairman George Massey called the December 16, 2021 meeting to order at 6:30 p.m. The Clerk of the Board called the roll. Mr. Massey noted that there was a quorum present with five members.

Members Present: George Massey, Kenneth Deal, Lou Philippi, William Draper and George Smith

Members Absent: None

Staff Present: Doug Britt, Senior Planner; Keri Mendler, Senior Planner; William Nance, Planning Technician; Megan Brightharp, Planner I; Albert Benshoff, BOA Attorney; Ashley Britt, Assistant City Attorney; and Maryann Brown, Administrative Assistant

Guests: See attached list

Item 2. Approval of Minutes – Minutes of August 26, 2021 Meeting

Approval of the minutes for the meeting was requested.

Motion: William Draper moved to approve the minutes of the August 26, 2021 Meeting.

Second: Kenneth Deal

Action: The motion to approve the minutes passed unanimously with the following votes:

AYES: **George Massey, Kenneth Deal, Louis Philippi, William Draper and George Smith**

NAYS: **None**

Item 3. Conflicts of Interest

Mr. Massey asked if there were any conflicts of interest. There were none.

Louis Philippi asked Mr. Massey if we were not supposed to set a policy on Conflicts of Interest since there was an incident with him two (2) meetings ago. He said he was recused and there was no reason whatsoever given by anybody. He said it was kind of humiliating since he still does not know why

he was recused. He said we should set up a policy whereby if someone is recused there is a reason given. He said, otherwise, anyone can be recused for anything. Mr. Massey said we will consult with the Attorney after the meeting and moving forward, that will be taken care of. He said we will always ask if there is a conflict of interest when opening a meeting.

Item 4. CASE PLSUP-2022-00080 – Chairman said the applicant, Matthew Ruggiero, on behalf of Better Path Homes, LLC, is requesting a Special Use Permit to construct a new single-family home at the property located at 605 Winchester Avenue (Tax ID #09-228-143)

Mr. Massey said that anyone who is going to give testimony in this case needs to be administered the oath. Keri Mendler, Senior Planner, Matthew Ruggiero, Rebekah Sosa and John Harris came forward and were sworn.

Mr. Massey said for the record, when you come to the podium please give your name and address.

Keri Mendler, Senior Planner, said tonight she is here to present a Special Use Permit for a single-family home to be built at 605 Winchester Avenue, which is located within the Winchester Overlay District. She said at this time she will introduce the Proposed Findings:

Proposed Findings:

1. The property at 605 Winchester Avenue is currently owned by Better Path Homes, LLC and is zoned R-10 (Residential - High Density). The property is also located in the Winchester Overlay District. (Exhibit 1, 2, 3)
2. According to Section 156.124, Overlay Districts, all principal developments in the Winchester Overlay District shall obtain a Special Use Permit. This section has several other requirements; however, due to state law changes, many can no longer be enforced. Each requirement has been addressed below (Exhibit 4):
 - a. The construction or renovation as proposed and designed will be compatible in the neighborhood, and along the street with which it is located.
-This requirement can no longer be enforced due to G.S. 160D-702 as it is considered a design standard, which cannot be used unless the applicant voluntarily consents to it.
 - b. The construction or renovation as proposed and designed fulfills the intent of §156.132 of the City of Monroe Code of Ordinances.
-This standard applies only to commercial properties.
 - c. The construction or renovation as proposed and designed will not substantially injure the value of adjoining or abutting property.
-This standard is addressed in the Special Use Permit standards.
 - d. The construction or renovation as proposed maintains the historic character and integrity of the infill neighborhood in which it is located.
-This requirement can no longer be enforced due to G.S. 160D-702 as it is considered a design standard, which cannot be used unless the applicant voluntarily consents to it.

- e. The construction or renovation as proposed shall adhere to the strategies and objectives outlined in the City of Monroe Land Development Plan.
-This standard is addressed in the Special Use Permit standards.
 - f. Duplexes may be allowed on corner lots.
-The applicant is not proposing a Duplex.
 - g. All principal developments shall obtain a Special Use Permit.
 - h. Mobile homes shall not be permitted.
-The applicant is not proposing a mobile home.
3. The applicant submitted a Special Use Permit Application on October 28, 2021 requesting to construct a new single family home on the property. The home is 1,290 heated square feet with a 109 square foot front porch. (Exhibit 5 and 6)
 4. A Comparative Market Analysis was completed by Rebekah Sosa of Allen Tate Realtors. (Exhibit 7)
 5. All adjoining property owners have been properly notified of this Special Use Permit. (Exhibit 8 and 9)

Keri said a worksheet has been completed by staff for your use and is located behind the staff report for reference.

Keri said she will be glad to answer any questions and the applicant is here to answer any questions as well.

Mr. Massey asked Keri if this particular case came up before. Keri said yes, it was just over a year ago. She said it was denied by the Board of Adjustment. She said since then, a year has passed and the applicant has submitted a new application.

Kenneth Deal asked Keri if there are any substantive changes between this submission and the last submission. Keri said they are both single-family houses and as far as the specific house size, she does not recall the house sizes on the applications but they were single-family houses on individual lots and they are still a single-family houses on individual lots.

Louis Philippi asked Keri if the single-family houses were one (1) story and now they are two (2) story. Keri said she believes one (1) house was a one (1) story and the other was a two (2) story on the applications that came before you last year.

Mr. Massey said it looks like nothing has changed other than the time. Keri said there has been a year in-between but they are requesting a single-family house on an individual lot. She said according to the Winchester Overlay District, a Special Use Permit must be obtained for any principal development, which would be the house.

William Draper asked what was the significance with the star on the map. Keri said that is the Adjoining Property Owner Map so the star indicates the subject property.

Mr. Massey asked Keri if she had received any calls either for or against the request. Keri said she received one (1) phone call yesterday and she called back today. She said the caller was not in favor of this request. She said she told the caller that she could come to this meeting and provide any testimony tonight.

Mr. Massey asked if there was anyone who wanted to provide testimony at this time.

Mr. Matt Ruggiero, COO of Better Path Homes, came forward and said there are a couple of changes from last year. He said they chose a slightly smaller plan and a little bit skinnier floor plan. He said the other plan was about 17-feet wider. He provided a drawn survey as well as a plan drawn by an engineer.

Mr. Ruggiero said they feel very strongly about the type of market that this type of house demands. He said they finished about 50-55 houses in the one (1) year that has gone by. He said this is a local Charlotte builder and our houses have sold very well. He said they are in high demand from the first-time homebuyer, single mothers, single fathers, veterans, etc.

Mr. Ruggiero said we believe that it is not necessarily the plans that have changed too much but the situation in Monroe, Charlotte, Gastonia, and Huntersville. He said there is a real estate agent here tonight to give some quick testimony as far as the market. He said another concern that the Board had with this was what happened if the house did not sell, would this become a rental etc.

Louis Philippi asked if this house would be sold to an owner-occupant, not to an investor. Mr. Ruggiero said if the only offer they received was from an investor, which he finds hard to believe, we would consider it. He said we have sold out most of their houses, all but probably two (2).

Mr. Ruggiero said his Project Manager has a final walk-through with the buyers and we are very involved with the whole process. He said people are very happy to get a house that is brand new. He said many of these people put every dollar they have into these houses. He said the houses have a very good warranty.

Louis Philippi said to Mr. Ruggiero that if we approve this there would have to be a provision that the house be sold to an owner-occupant and not an investor. He asked Mr. Ruggiero if that would work for you. Mr. Ruggiero said absolutely. He said this is something that has been discussed. He said most of the houses they have put on the market have anywhere from 20-30 showings in the first couple of days. He said we usually make a decision within three (3) days.

William Draper said to Mr. Ruggiero that he had a problem before with the house closest to John Street in that the side yard looks like it is right up to that piece of property. Mr. Ruggiero said there is a 13.1 and 13.3 slope gap between the house and the side house. He said a lot of the houses we build do have to be squeezed into a tighter area. He said the last time we submitted our application he believes we had a ten (10) foot space. He said he definitely understands your concern.

Kenneth Deal said to Mr. Ruggiero that he appreciated the survey that was provided.

Mr. Massey asked if there were any further questions. There were none.

Ms. Rebekah Sosa of Allen Tate Realty came forward and gave a marketing presentation on homes being sold in this area. She said she has been working with Better Path Homes for two (2) years. She distributed material that has the house plan and a booklet of what is in the homes. She said out of the 26 that she has sold for Better Path Homes over the last year, only two (2) have sold to investors looking to rent them out.

Ms. Sosa said she really believes in their product. She said they sell homes that are affordable in the Charlotte region. She said she can testify that she has many buyers over the last year and a half that have been extremely disheartened by our market. She said in this region it is extremely difficult to find a home that buyers can afford without competing with 50-70 other offers on the table, often times them being cash offers. She said thankfully companies like Better Path have come along, they have seen the need and they are providing a quality home with a ten (10) year structure warranty and a full two (2) year warranty on the property. She said it is extremely sad what is happening throughout our region. She said we are pushing affordable housing out of our region. She said if we don't allow companies like this to build, and these are the kind of lots they can find, everything else is being sold to really large companies like Lennar or DL Horton.

Mr. Massey asked Ms. Sosa what the average price of these homes would be and the median income for Monroe, Union County and how do they compare. Ms. Sosa said the homes that she has sold have all been less than \$245,000 throughout the Charlotte region. She said the comps for this region show about \$235,000 which is an extremely affordable home in our market and very difficult to find. She said it would be less than a \$1,500 a month payment if you are a vet and need 100% financing.

Mr. Massey asked if there were any further questions. There were none.

Mr. Massey asked if there was anyone else who would like to give testimony.

Mr. John Harris of 2501 King Arthur Drive, Monroe, came forward and said his parents own 601 Winchester Avenue, which is the property adjoining 605 Winchester Avenue. He said he is also speaking on behalf of the neighbors that are homeowners nearby, the Morrow family, Ms. Alberta Wilson on John Street and also Hubert Harris, the owner of the property next door. He said we went through this last year. He said we are all about people in the Winchester neighborhood getting affordable houses. He said there was one (1) house sitting on the lots. He said talking with people in the neighborhood, we don't mind people building a house on the lot that is affordable, but not trying to squeeze two (2) houses on that little small lot. He said Winchester Avenue is a thoroughfare, a gateway coming from Hwy 74 downtown. He said he appreciated this Board last year and he hopes that the Board denies this again tonight because the only thing that they are doing is coming in and squeezing two (2) houses on a piece of property, getting their money, and leaving. He said they do not have to live here, we do, every day. He said in speaking on behalf of the homeowners, we hope you deny this. He said if they want to build a house they can build a single dwelling house that is affordable for some family to live in.

Mr. Harris asked how big the house was going to be. Someone said 1,200 square feet. Mr. Harris asked everyone if they would invest over \$200,000 in a 1,200 square foot house to live in.

Kenneth Deal asked Keri if this lot has been subdivided into two (2) lots or has it always been two (2) lots. Keri said staff did look into this and went to old parcel data and there has been two (2) individual lots for at least the last twenty years. She said that is the most information we could find. She said it has been two (2) individual lots since about 2000 and they are proposing to do one (1) house on an individual lot. She said there would be two (2) individual lots with one (1) house on each lot.

Kenneth Deal asked Keri if there was a house there previously. Keri said she cannot speak to that but it sounds like there may have been. She said she does not know if it was built over the property line. She said there certainly are houses out there, historic homes or just older homes, that were built over property lines. She said they did not have the same regulations that we have today.

Mr. Harris came forward and said there was one (1) house on that lot and a strip of land that was 15 feet wide. He said if they go back and look through the records they will find this. He said a lady approached him about buying the strip of land probably back in the early 1990s. He said he thinks she just went ahead and just gave it to Jeff when he bought the land. He said it was only a driveway in width and property. He said that house was the only thing there.

Mr. Massey asked if the applicant would like to respond. Mr. Ruggerio said the property was purchased as two (2) separate lots from the seller. He said he understands that it is a little tight. He said, however, if the price of everything goes up, unfortunately the sales price will also increase a little in this market. He said they are still trying to keep the median price in this market to \$285,000 for a house of this size.

Ms. Betty Williams came forward and was sworn in. She said she is a resident of the Winchester neighborhood. She said she is the lady that called the planning department this morning. She said she was very firm and matter-of-fact about the builders not getting a special permit to build two (2) houses on that small plot of land. She said as a social worker she sees that dysfunction that is pouring into the neighborhood. She said the City of Monroe is allowing all kinds of little, teeny houses, she calls them chicken coups, to be built and after they are built, the builders are gone. She said she lived in Monroe for 35 years and she has never been able to afford a house in Monroe because the prices are too high. She said the price of the houses is too high for this neighborhood. She said there are a lot of old people there who have been living in that neighborhood all their lives. She said the houses that they are living in are falling apart. She said instead of building these small houses that you can barely breathe in, do something for the older people that are living there. She said they can't move out of their homes. She said they cannot afford \$190,000 house.

Ms. Williams suggested that instead of building two (2) houses on this small plot of land, why don't they fix it up. She said it would be good for respite, walking, for old people to gather and talk during the day, and for children to play. She said it should be fixed up in honor of Robert Franklin Williams.

Ms. Williams said when the land is developed it should be called "Good Trouble". She said there should be a plaque for Robert Franklin Williams and maybe another plaque for Martin Luther King, Jr.

Mr. Massey asked if there were any questions. Mr. Benshoff asked what is the average size lot in the neighborhood. Keri said staff did take a look at this earlier because she knows it was a concern last time. She said the Winchester Overlay is made up of a number of residential single-family parcels and some multi-family parcels. She said there are some duplexes and some commercial. She said they tried to capture just the single-family parcels. She said there were about 376 lots with single-family homes within the Winchester Overlay District. She said what was calculated with the tax data was that the average lot size was .24 of an acre, which is about 10,454 square feet. She said this lot is 8,276 square feet so it is slightly less than the average lot size but in line with the average. She said she does not have the ranges of the lots but there were 370 lots.

Louis Philippi asked Mr. Massey if there could be limited discussion before this Board makes a decision. He said he would like to comment that he was one of the people that led in getting this request disapproved a year ago. He said his dream was to get just one (1) house on the lot. He said he would like to see a house that he is accustomed to but the fact is that one of the big things that stifles crime is when people live in a home that they own. He said you would be less likely to allow your kids be criminal, or yourself, because you got too much to lose. He said let them put a house up that was discussed but sell it to an owner-occupant, not to an investor. He said then we are giving that neighborhood a shot at more stability, even if it is not as pretty as we would like for it to be.

Kenneth Deal said to Mr. Philippi that he agrees with what he has said. He said any stipulation that we put on this builder does not convey to any future owners.

Mr. Massey said there are certain standards that this Board has to look at and have to be met and that is what we need to deal with:

A. The use will not materially endanger the public health or safety if located, designed, and proposed to be operated according to plan.

Motion: William Draper made a motion that this standard is **not met** because 13 feet is not enough separation.

Second: George Smith

Action:

Mr. Benshoff said we need a clear vote for the record. He said Mr. Massey will poll the Board and ask again that all of you in favor of the motion that the standard is not met, say aye.

Action: The motion that the standard is **not met** passed with the following votes:

AYES: George Massey, Louis Philippi and George Smith

NAYS: Kenneth Deal, William Draper

Mr. Benshoff reiterated that the motion was that the standard is not met. He said if you voted for the motion, you are saying that the standard is not met. He said the secretary needs to have the names of the people who said the standards is not met. Mr. Massey asked again for a final vote:

Action: The motion that the standard is **not met** passed with the following votes:

AYES: George Massey, Louis Philippi and George Smith

NAYS: Kenneth Deal, William Draper

B. The use or development complies with all regulations and standards of the City of Monroe Zoning Ordinance, as well as any other state or local rule or regulation governing the development of land.

Motion: George Smith made a motion that the standard is **met**.

Second: Kenneth Deal

Action: The motion that the standard is met passed with the following votes:

AYES: George Massey, Kenneth Deal, Louis Philippi and George Smith

NAYS: William Draper

C. The use or development will not adversely impact surrounding property and will not substantially injure the value of adjoining property.

Motion: Kenneth Deal made a motion that the standard is **met** based on the CMA (Property Values).

Second: Louis Philippi

Discussion was held on who seconded this motion. Maryann Brown had Louis Philippi and Keri had William Draper. Both denied seconding the motion. Kenneth Deal said he would ask the Board to take the time and read the standards before you make a motion. He said this standard is clearly stated based on value and we have a CMA as part of the package that supports the petitioner's value statement. He said that statement has been met. He said he will restate the motion:

Motion: Kenneth Deal made a motion that the standard **is met** based on the CMA (Property Values).
Second: George Smith
Action: The motion that the standard is met passed with the following votes:

AYES: Kenneth Deal, Louis Philippi and George Smith

NAYS: George Massey and William Draper

D. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Monroe Land Development Plan.

Motion: Kenneth Deal made a motion that the standard is **not met** based on the testimony of the surrounding residents and the character of the surrounding residences.
Second: Louis Philippi
Action: The motion that the standard is not met passed unanimously with the following votes:

AYES: George Massey, Kenneth Deal, Louis Philippi, William Draper, and George Smith

NAYS: None

Mr. Massey asked for a motion to grant or deny the Special Use Permit request.

Motion: George Smith made a motion to **deny** the issuance of the Special Use Permit.
Second: William Draper
Action: The motion to **deny** the Special Use Permit passed unanimously with the following votes:

AYES: George Massey, Kenneth Deal, Louis Philippi, William Draper, and George Smith

NAYS: None

Mr. Massey said the Special Use Permit CASE PLSUP-2022-00080 request has been denied.

Item 5. **CASE PLSUP-2022-00081 – The applicant, Matthew Ruggiero, on behalf of Better Path Homes, LLC, is requesting a Special Use Permit to construct a new single-family home at the property located at 607 Winchester Avenue (Tax ID #09-228-144)**

Request was withdrawn by Matthew Ruggiero. Mr. Benshoff said this withdrawal needs to be writing. Mr. Ruggiero said he would e-mail the withdrawal to Keri.

Item 6. CASE PLZNA-2022-00099 – Chairman said the applicant, Stafford Street Monroe, LLC, is requesting a Variance to install an eight (8) foot chain-link fence with 12” inches of barbed wire on top for a total of nine (9) feet and to remove four (4) trees over seventy-five (75) inches in circumference at 1912 Stafford Street Extension/2026 Skyway Drive (Tax ID #09-180-004-90, 09-180-004-H-80, & 09-180-004-H-90)

Mr. Massey said that anyone who is going to give testimony in this case needs to be administered the oath. Doug Britt, Senior Planner, Chris Platè, Monroe-Union County Economic Development Director, Darius Olesky, Suncap, Wes Faulk, Plyer Trust, Donna Plyer and Emily Parks came forward and were sworn.

Doug Britt, Senior Planner, said this is a Variance request by Stafford Street Monroe, LLC to install an 8-foot chain-link fence with 12” of barbed wire on top for a total of nine (9) feet, as well as to remove four (4) trees over seventy-five inches in circumference. He proceeded to enter the Proposed Findings into the record:

Proposed Findings:

1. The property located at 1912 Stafford Street Extension/2026 Skyway Drive is owned by Dorothy Plyer Trustee and William Franklin Plyer and is zoned R-20 (single family residential). (Exhibit 1, 2)
2. A rezoning application was submitted in October of 2021 to rezone the subject properties from R-20 (single family residential) to GI (General Industrial). The request will be considered by City Council at the January 11 City Council meeting.
3. On November 11, 2021, the applicant submitted a variance application to request a variance from Sections 156.136 (A)(2) and 156.136 (B)(10) titled Fences and Walls and Section 156.221 titled Tree Preservation in order to install an eight (8) foot chain-link fence with 12” inches of barbed wire on top for a total of nine (9) feet and to remove four (4) trees over seventy-five (75) inches in circumference. (Exhibit 3, 4)
4. Sections 156.136 (A)(2) and 156.136 (B)(10) stipulate the maximum height of a fence or wall in an industrial district shall be eight (8) feet and that barbed wire fencing is prohibited except in the R-40 and R-20 district, where it may be used in conjunction with bona-fide farming activities. (Exhibit 5)
5. Section 156.221 (A) stipulates trees seventy-five (75) inches in circumference must be preserved and shall not be removed. (Exhibit 5)
6. All adjacent property owners have been notified of the variance request. He said there were approximately 97 properties notified for tonight’s meeting. (Exhibit 6, 7)

Doug said staff is recommending one (1) condition if the Board chooses to grant the Variance: Variance approval will be contingent upon the rezoning that will be considered by City Council at the January 11, 2022 City Council meeting. He said if the rezoning is not approved, the Variance will be null and void. He said if the rezoning is approved, then the Variance will be approved contingent upon that rezoning being approved by City Council.

Doug said he would be glad to answer any questions at this time and the applicants are here as well. He passed out the Variance worksheet for the Board's consideration. He said the questions in the packet will help to assist you through this process.

Mr. Massey asked Doug if he received any calls from the adjoining property owners. Doug said staff received one (1) call. He said it was in opposition of the request.

Mr. Massey asked if there was anyone who would like to give any testimony.

Mr. Darius Olesky came forward and said he represents the applicant. He said his address is 6101 Carnegie Boulevard, Charlotte, NC 28209. He said he is here to answer any questions. He said Doug did a good job in his presentation. He said we are asking to remove four (4) trees, three (3) of which are in the path of the sewer line which is coming from Highway 601 into the property and back to the building. He said the fourth tree is being removed because of the pond on the site plan and also for the access drive that surrounds the property. He said we tried to save the tree but based on the grading and the root zone any attempts to save the tree would fail. He said the barbed wire fence is a standard security detail for this type of user, which is warehouse distribution. He said it is only proposed around the truck court. He said it is not proposed anywhere around the perimeter of the property or for employee parking, but strictly just for where the warehousing and distribution activities occur, one side which is van accessible and the other side which is tractor trailer accessible.

Louis Philippi said to Mr. Olesky that this is a 337,000 square foot distribution center. He said the only people he knows that are that big are Amazon, UPS and Fed Ex. He asked if this would be one of them. Mr. Olesky said he is under a non-disclosure agreement but yes, that would be the type of user that we are targeting for this facility.

Louis Philippi said that without the applicant being here, there cannot be a lot of discussion of what they can put up and what they cannot. Mr. Olesky said he is the applicant. Mr. Philippi said if this is not approved, the applicant can move to Wadesboro and Monroe would lose 300-400 jobs. Mr. Olesky said any one of the users that you mentioned know best how to operate their business. He said they require security. He said unfortunately we need to have security fencing to protect the packages that are being delivered to you and my home. He said concerning the packages, some are large, some are small but expensive. He said this is their best attempt in keeping the packages inside the facility.

Mr. Massey said it says that the maximum height is 8-feet for a business or industrial district. He asked Mr. Olesky if there would be a problem to have the fence 7-feet and the barbed wire top 12 inches. He said in this way you would be within the Ordinance. Mr. Olesky said there are two (2) requests. He said 8-foot tall is the minimum height and barbed wire is simply not allowed. He said the Variance request is asking for a 9-foot total height and for barbed wire. He said he would be open to suggestions. George Smith said he thinks, when looking at industry around Monroe, they have 8-foot fences with barbed wire fences.

Kenneth Deal said part of the reason for the barbed wire going on top of an 8-foot fence is to ensure that there is no incidental damages to people or wildlife that may come and encounter it. George Smith said you don't want someone to run into barbed wire.

Kenneth Deal said should this be approved tonight, he asked Mr. Olesky if he would have any problem with this Board adding a stipulation that none of this work is to commence until City Council has ruled on the rezoning. Mr. Olesky said he is perfectly fine with that.

Mr. Massey asked if there was anyone else who wanted to give testimony.

Mr. Wes Faulk came forward on behalf of the owner to offer support and said his business address is 309 Post Office Drive in Indian Trail, NC 28079. He said he is an attorney representing the owner of the property and is here on behalf of the owner to offer support for the Variance request and speak in favor of it. He said the owner is a Trust and the Trustee and sole beneficiary of that Trust is Dorothy Moser Plyler. He said Mrs. Plyler is his Grandmother. He said also here are certain members of the family, children and grandchildren, who are also in favor of the request.

Mr. Faulk said Miss Plyler chose to be home and settle down by this time of the evening. He said she did provide a written statement to him which she asked to be presented to the Board for its consideration. He distributed copies of the signed statement to the Board.

Mr. Faulk said to the Board, as you can see Miss Plyler has signed the statement and there is reference to an amendment to the current underlying agreement between the owner and the buyer. He said anticipating some potential opposition, we referenced that because there may be some opposition from certain parts of the adjoining property owners. He said there has been an amendment to the current contract that would remove a part of that property of the adjoining property to the Trust. He said that is on the 601 side of the lake. He said if an adjoining owner might have had any argument or opposition that would be meritorious, the carve out would effectively nullify that and make it moot and address it. He said again, he recommends the Variance request in full support of Miss Plyler as the Trustee and sole beneficiary of the Trust, and it also has support of several of the adjoining owners who are several of her children and grandchildren. He said he would be happy to answer any questions regarding this.

Chris Platè came forward and said he was the Director of Economic Development for the City of Monroe and Union County. He has been working with the end-user of the project as well as the applicant. He said this project is significant to the benefit to the City of Monroe and all of its residents. He said it could be as high as \$70,000,000 of investment on this property, generating over \$350,000 in property taxes per year, which is equivalent to one (1) penny of the tax rate that would be reduced. He said you are talking about several hundred jobs.

Mr. Platè said the area between Hwy. 601 and Hwy. 200 and North of Sutherland up to the Expressway has been targeted for industrial from the time that he has been here as the future growth for the City. He said knowing the Expressway was going to be built even in 1999 and 2000, we were targeting this area. He said with all of the projects he has worked on, well over \$2 billion in investment in Union County, specifically into Monroe, not a single one has been identical to the previous one. He said they all have their special needs and they all have special requirements, specifically around security. He said almost every one of those projects have an 8-foot fence with barbed wire attached. He said all of the companies have different types of requirements; this is no different and falls right in line with what you would have as reasonable accommodation and an expectation for a company coming into a community.

Mr. Platè said with that, and for the benefit of all the residents here, we are very much in favor of this project and Variance.

Mr. Benshoff asked if there was a representative here from Stafford Street Monroe LLC. Mr. Darius Olesky came forward. Mr. Benshoff said we have heard representations that the Variance request covers a smaller piece of property than the application details. He asked Mr. Olesky if he could amend the application to strike out the properties that are now not subject to the contract. He said, otherwise, the Board will have to consider all the properties despite the representations that we have that there is an amended contract. He said the Board has to consider the application that it has.

Mr. Olesky said the contract is for two (2) properties, one (1) of which is fronting on Hwy 601 and the second property is the remainder, which is straddled on either side of Stafford Street. He said the amended contract is still with those two (2) properties. He said basically what the contract amendment does is take Plyler Lake out of the contract. Mr. Benshoff said the application lists four (4) tax map numbers. Mr. Olesky said that is right. Mr. Benshoff said to Mr. Olesky that he is saying that all four (4) of the tax map numbers are subject to the application. Mr. Olesky said that is right, and they will continue to be subject. Mr. Benshoff said the four (4) tax map numbers are not the properties shown on the screen. Mr. Olesky said they still comprise of four (4) tax map numbers. Mr. Benshoff asked Mr. Olesky what property does your application cover. Mr. Olesky indicated the property on the screen.

Mr. Benshoff asked Mr. Olesky which representations about the contract changing the application are not correct. Mr. Faulk said the contract is going to be amended to take a portion of the property out of the contract, but none of that portion of the property is part of the site plan that is showing right now. He said it is not changing the site plan but what it is doing is taking the lake out. He said while we had done the contract amendment as an accommodation, if it makes it more difficult for the Board to understand it, we can ignore it for now or we can change the application, whichever is easier to digest. He said it is going to be the same for parcel numbers; a portion of one of those parcel numbers, which is the entirety of Plyler Lake, is going to be removed. He said this was done as a concession to adjacent property owners that have concerns about their access to the lake which we don't want to. Mr. Benshoff asked Mr. Faulk if it was his application. Mr. Faulk said yes. Mr. Benshoff said that is up to you whether you want to amend it or not. He said he is just trying to clarify what this Board is being asked to do.

Mr. Massey asked if there was anyone else who would like to speak in opposition.

Ms. Emily Plyler Parks came forward and said she grew up at 2040 Skyway Drive and she lives at 2042 Skyway Drive, right beside her Mom and Dad. She has a husband and two young kids. She said she understands that this company wants to put up an 8-foot fence with an additional 1-foot of barbed wire on top. She said her concern is that while it is proposed right now to be just around the building, what kind of assurances does she and her family have that the fence will not enter into her backyard. She said currently, her back fence on her property is at least 70 feet from the lake. She said if that fence is put up, her property value is ruined. She said who is to say that within five (5) years if they see her kids on a paddleboat that is a liability. She said she knows they said they are taking the lake out of the contract, but today it is still in the contract. She said she did not want to be here tonight but she has to fight for her property and what she thinks is right. She said if there is a fence there, her children will not be able to fish or feed the ducks. She said it will be turned upside down. She asked the Board to consider denying this until the lake is taken out of the contract. She said once the lake is taken out, they will not have any problem.

Ms. Parks said she just took the Variance application over to her Grandmother at 10:30 a.m. She said she handed the application to her Grandmother and her Grandmother looked at her and said she had never seen it before. She also said the sale of this would devastate her property more than it would affect anyone else or properties involved.

Kenneth Deal asked Ms. Parks to indicate on the map where her home is on the map. He also asked Ms. Parks if the sale of the property is pending on City Council's rezoning action. Ms. Parks said yes.

Doug Britt said the Variance request, as advertised, includes all four (4) parcels. He said the site plan shows the approximate location of the fence. He said when a Variance is approved, it would be for the entire property advertised unless the Board placed a condition on the approval.

Kenneth Deal said if so stipulated then they would have to come back for an amendment.

Ms. Donna Plyler came forward and said she lives at 2040 Skyway Drive. She said her husband is Aaron Plyler Jr. She said all this stems from a contract that was signed on July 4, 2021. She said Dorothy Plyler is the seller and she owns the family farm. She said she (Dorothy Plyler) signed a contract to sell the family farm, but she did not know when she signed it that it included her backyard, her daughter's backyard and the whole lake. She said they have been trying since July 10, 2021 to have all property, her backyard and her daughter's backyard, and she has been asking Wes Faulk, the attorney, to have this property pulled out. She said this morning, when we realized the meeting was tonight, we went to her house this morning at 10:30 a.m. to talk to her about this Variance application. She said Dorothy Plyler did not know anything about it. She said she had never seen the form, she didn't know it was tonight, she didn't know anything about it. She said she thought the land had already been pulled out and she wanted the lake to be pulled out. She said the lake was built by her husband, the late Aaron Plyler, 70 years ago.

Ms. Plyler said this Variance application is premature. She said their goal is just to get their property pulled out of this contract and they have been trying since July 10, 2021. She said an hour before she was to come to this meeting she got an e-mail from Wes Faulk which showed a map and some documentation that Dorothy Plyler had signed but the buyer hadn't signed.

Ms. Plyler said they are concerned if this Variance is approved and they do not get their land pulled out, then they could put up a fence wherever they want to.

William Draper asked Ms. Plyler if her house was on land she did not own. Ms. Plyler said no. She said they cleared out all property down to the lake. She said from her house you can see the lake. She said we use the lake, her grandchildren fish there. She said they did not know that behind their house is being sold. Ms. Parks said the Trust property runs all the way around their entire backyard.

Ms. Plyler said she cannot support anything until that land is taken out of the contract. She said the document that Wes Faulk sent her tonight will have to be shown to an attorney. She said she is not against the sale of the land but is against our backyards being owned by Suncap.

Mr. Massey suggested to the Board that since the approval of the rezoning by City Council may affect this one way or another, would you have any problem if this was delayed until City Council makes its decision.

Louis Philippi said [could not hear everything] he would like to protect the community and restrict them to what they can do on this property. He said he does not want to lose this tremendous asset for Union County

Mr. Massey said to Mr. Philippi that he hears his concern but his concern is if we act on this Variance request and City Council does not approve it, we are back at square one. William Draper agreed and made the following motion:

Motion: William Draper made a motion to table this Variance hearing until after City Council meets on January 11, 2022.

Second: George Smith

Mr. Benshoff suggested to Mr. Draper that he move to "continue" the hearing until the January meeting.

Doug Britt said staff also recommended that this be continued without further advertising. Mr. Benshoff said if it is continued, it does not have to be advertised.

Motion: William Draper made a motion to continue this Variance hearing until after City Council meets on January 11, 2022.

Second: George Smith

George Smith asked about the second pond on the map. Kenneth Deal said that is stormwater management. Mr. Smith asked if there would be fences around these ponds. Mr. Olesky said if they are required by the State, they will be four (4) foot fences.

Mr. Faulk said he has a fully executed amendment to the contract that carves out 22.4 acres of the exact property that Ms. Parks and Plyler are referencing. He said it is their concern that somehow the fence could be impactful on Trust-owned property that adjoins their property. He said it is not their property, it is Trust-owned property that adjoins their property. He said that problem is solved with this legally binding amendment to the contract which has been duly executed by Mrs. Plyler and a representative of the buyer. He said the only objection or voice of opposition has been heard on that basis. He said that problem is in every manner solved by reason of the amendment to the contract.

He said if we pull that property out, it will never be conveyed. He said it still involves the same parcels as Mr. Olesky touched on but the only point of dispute is fully rectified and resolved by the amendment to the contract. He said he sees no reason why there should be any delay or continuance when that problem has been addressed and there is overwhelming support, approval or agreement on behalf of the owner and the applicant.

Mr. Benshoff asked Mr. Faulk if he heard the conversation that he had with the representative of the applicant. Mr. Faulk said yes. Mr. Benshoff said this Board has an application, submitted by the applicant, and the applicant has to amend the application for a smaller footprint of the property or the Board has to consider the application before it. He said he does not doubt that you have a signed contract, but that is not in evidence before the Board. He said we have your statement that it was signed, but until the Board sees the contract, it is not in evidence. He asked again, does the applicant wish to amend their application. Mr. Faulk said he would be happy to hand out the fully executed contract for review if it is allowable, he said he means the amendment. Mr. Benshoff said it is allowed if you want to make than an exhibit.

Mr. Olesky said if the motion is going to be to continue this until after the City Council meeting, he is fine in doing that. He said if we have to clean-up the application prior to that, we can do that. He said we are trying to be as easy to work with as possible in trying to get these two (2) Variances heard and approved. He said if that means that, we wait until after the Council meeting, that is fine and we will leave the application as is.

Ms. Donna Plyler asked that we have a chance to look at the contract and have an attorney on our behalf review the contract. Mr. Benshoff said that is not a decision the Board can make.

Doug said staff wanted to point out that the City had no involvement with the property.

Kenneth Deal said he is not comfortable going forward when there is a dispute over boundaries of property unless the applicant wants to provide proof that it has been taken out of the equation as our attorney stipulated.

William Draper was asked to restate his motion:

Motion: William Draper made a motion to continue this Variance hearing to the January 27, 2022 Board of Adjustment meeting.

Second: George Smith

Action: The motion to continue passed unanimously with the following votes:

AYES: George Massey, Kenneth Deal, Louis Philippi, William Draper and George Smith

NAYS: None

Item 7. **CASE PLSUP-2022-00100** – Chairman said the applicant, Ken Hammond, is requesting a Special Use Permit to allow for a reduction of the front yard setback from 85 feet to 41 feet in order to build a new single-family residence at the property located at 1100 Leewood Drive (Tax ID #09-159-033)

Mr. Massey said that anyone who is going to give testimony in this case needs to be administered the oath. William Nance, Planning Technician, and Ken Hammond came forward and were sworn.

William Nance, Planning Technician, said tonight he will be presenting a Special Use Permit request by Ken Hammond to allow for the reduction of the front setback from 85 feet to 41 feet at the property located at 1100 Leewood Drive. He said at this time he will introduce the Proposed Findings:

Proposed Findings:

1. The property is located on Leewood Drive and is zoned R-20 (Residential – Low Density). (Exhibit 1 & 2)
2. According to Section 156.131 (2)(B)(i) of the Unified Development Ordinance titled *Supplementary Standards for Single Family and Infill Lot in Single Family Residential Districts*, the front setbacks for single family infill shall be computed as an average of the dwellings on the lots immediately adjacent to either side of the subject property. If the adjacent lots are undeveloped, the setback can be computed using the dwelling units within 100 feet. (Exhibit 3)
3. The only dwelling unit within 100 feet of the subject property has an approximate front setback of 85 feet. Therefore, the proposed home on the subject property would be required to have an 85-foot front setback. (Exhibit 4)
4. On November 30, 2021, Ken Hammond submitted a complete application for a Special Use Permit to reduce the front yard setback to 41-feet. (Exhibit 5-7)
5. All adjoining property owners have been properly notified of this Special Use Permit. (Exhibit 8-9)

William said a worksheet has been completed by staff for your use and is located in your staff report.

William said he will be glad to answer any questions and the applicant is here to answer any questions as well.

Kenneth Deal asked William if he could provide what the flood plain looks like. William said there is a blue line stream that runs at the back of this property (he pointed out the location on the map). He said he is not sure where the flood plain is on the property.

Mr. Benshoff asked William to show where the stream is on the topo map. William identified where the stream is located.

Mr. Massey asked if there were any further questions. There were none.

Mr. Massey asked anyone who would like to speak to come forward.

Mr. Ken Hammond came forward and said he is with True Homes. His address is 2649 Brekonridge Centre Drive in Monroe. He said they have the topographical survey with one (1) foot contour lines. He said the lot falls from the front to the back. He said every line represents one (1) foot until it gets into the creek bed and then it goes up on the other side. He said we pushed the house back as far as physically possible so it would not fall off a cliff. He said we were also very concerned about the creek and potentially flooding and all of the negatives that would go along with that.

Mr. Hammond said the only thing we are asking for here is to change the front setback from what would normally be 85 feet to 41 feet. He said the 85 feet is not a static setback that the rest of this neighborhood has to adhere to. He said the front setback is determined solely by how far back your neighbors are set. He said it is supposed to be an average of the two (2). He said there is a vacant lot to their left, so the City defaulted to the house that is next to them, which is 85 feet back. He said there are several homes in the neighborhood that are a lot closer than even the 41 feet that we are asking for. He said there are some homes that are 30 feet to the street, some that are 25 feet, so this would not be an anomaly in a neighborhood where all the homes are setback and we would be up front. He said they would be closer to the street than their neighbor and that is all. He said it is because of the natural topographic layout of the site---it is an active creek. He said we don't necessarily have any reason to ask for the house to be closer to the street other than that. He said the house will fit in really well as far as the shape, design and the size.

Mr. Hammond said there will be no negative impacts or detriments to the properties. He said it will be just the opposite. He said 41 feet is a decent setback from the street just based on the market and even for this neighborhood.

Kenneth Deal asked Mr. Hammond how many feet wide is your lot. Mr. Hammond said about 180 feet wide.

Louis Philippi said it looks like it is pretty cut and dry to him. He said this neighborhood appears to be a decent neighborhood and this house will not be a problem whatsoever.

Kenneth Deal said he agreed and if you look at houses in the back on Pamela Drive, they look very close to that setback as well. He said the house is in harmony with the surrounding area.

Mr. Massey asked if there was anyone else who would like to speak. There was no one.

Mr. Massey said there are certain standards that this Board has to look at and have to be met and that is what we need to deal with:

- A. The use will not materially endanger the public health or safety if located, designed, and proposed to be operated according to plan.**

Motion: Louis Philippi made a motion that this standard **is met**.
Second: George Smith
Action: The motion that the standard is met passed unanimously with the following votes:

AYES: George Massey, Kenneth Deal, Louis Philippi, William Draper, and George Smith
NAYS: None

- B. The use or development complies with all regulations and standards of the City of Monroe Zoning Ordinance, as well as any other state or local rule or regulation governing the development of land.**

Motion: Kenneth Deal made a motion that the standard **is met**.
Second: William Draper
Action: The motion that the standard is met passed unanimously with the following votes:

AYES: George Massey, Kenneth Deal, Louis Philippi, William Draper, and George Smith
NAYS: None

- C. The use or development will not adversely impact surrounding property and will not substantially injure the value of adjoining property.**

Motion: George Smith made a motion that the standard **is met**.
Second: Kenneth Deal
Action: The motion that the standard is met passed unanimously with the following votes:

AYES: George Massey, Kenneth Deal, Louis Philippi, William Draper, and George Smith
NAYS: None

- D. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Monroe Land Development Plan.**

Motion: Kenneth Deal made a motion that the standard **is met**.
Second: William Draper
Action: The motion that the standard is met passed unanimously with the following votes:

AYES: George Massey, Kenneth Deal, Louis Philippi, William Draper, and George Smith
NAYS: None

Mr. Massey asked for a motion to grant or deny the Special Use Permit request.

Motion: William Draper made a motion to grant the issuance of the Special Use Permit.
Second: George Smith
Action: The motion to grant the Special Use Permit passed unanimously with the following votes:

AYES: George Massey, Kenneth Deal, Louis Philippi, William Draper, and George Smith
NAYS: None

Mr. Massey said the Special Use Permit Case PLSUP-2022-00100 request has been granted.

Item 8. **CASE PLSUP-2022-00101 – Chairman said the applicant, Amber Martin, is requesting a Special Use Permit to allow an Event Center/Multipurpose space in the GB (General Business) zoning district at the property located at 103 Wilkes Drive, Unit H (Tax ID #09-222-057A)**

Mr. Massey said that anyone who is going to give testimony in this case needs to be administered the oath. William Nance, Planning Technician, Randy Martin and Amber Martin came forward and were sworn.

William Nance, Planning Technician, said tonight he will be presenting a Special Use Permit request by Amber Martin to allow an event center in the General Business zoning district located at 103 Wilkes Drive. He said at this time he will introduce the Proposed Findings:

Proposed Findings:

1. The property at 103 Wilkes Drive is zoned GB (General Business). (Exhibit 1, 2)
2. The applicant submitted a Special Use Permit Application on November 1, 2021 requesting to operate an Event Center/Multipurpose space on the property. (Exhibit 3)
3. According to Section 156.110 of the City of Monroe Unified Development Ordinance titled “Table of Permissible Uses”, Event Facilities are only allowed in the GB zoning district with the issuance of a Special Use Permit from the Board of Adjustment. (Exhibit 4)
4. A Standard 5 Appraisal Impact Study was completed by Morrison Appraisal, Inc. It is the opinion of Morrison Appraisal, Inc. that the proposed Event Center use will not adversely affect the value of the adjoining properties. (Exhibit 5)
5. All adjoining property owners have been notified of this special use permit. (Exhibit 6,7)

William said a worksheet has been completed by staff for your use and it is located behind your staff report. He said he would be happy to answer any questions and the applicant is also here to answer any questions.

Mr. Massey asked William if he received any calls from any of the adjoining property owners. William said he did not receive any phone calls. Keri said she received one (1) call and she returned the call and left a message. She said she did not get a return call.

William Draper asked if the parking lot is striped. William said yes.

Ms. Amber Martin came forward and said it was actually just paved last month. She said the property had a fire about a year ago. She said the owner had to redo everything so a lot of the building is a rebuild and the parking lot is newly paved with new lines. She said a lot of the former tenants have moved out due to the fire. She said only the bingo space is a pre-existing tenant. She said everyone else is new.

Kenneth Deal asked Ms. Martin if the structure inside the parking lot is a fuel pump. Ms. Martin said there is a gas station on the corner and directly across the street is another gas station. She said they will take up what was once several units of the parking lot. She said someone just got a permit to open an ice cream store. She said there is a new beauty salon, two (2) churches back-to-back and then there is Bingo, which takes up two (2) units.

Ms. Martin explained that she and her husband, Randy, do events. She said they will be doing all-inclusive events. She said the next step for them is to own a space.

Mr. Massey asked Ms. Martin for the approximate capacity of the space. Ms. Martin said she did not know. Keri came forward to answer and was sworn in. She said any new business will have to go through the permit process with our Permit Center. She said that is where Ms. Martin will meet with Fire, Building and the other departments. She said the Fire Code will ultimately set her occupancy.

Randy Martin came forward and said some of the things they will do will vary. He said some will be instructional classes. He said there could be 15-30 people. He said some small events will be 50 people. He said this is why it will be a multipurpose place.

Ms. Martin said it will be a blanket space that you can transform into what you would need.

Kenneth Deal asked Ms. Martin what kind of hours was she looking at operating. Ms. Martin explained the hours, depending upon the event. Mr. Deal asked Ms. Martin if she would have some after dusk events. Ms. Martin said yes. Mr. Deal asked about lighting in the parking lot. Ms. Martin said because there is a gas station there, as well as a storage facility behind the strip mall, the area is well lit.

Mr. Massey said there are certain standards that this Board has to look at and have to be met and that is what we need to deal with:

A. The use will not materially endanger the public health or safety if located, designed, and proposed to be operated according to plan.

Motion: Kenneth Deal made a motion that this standard **is met**.

Second: Louis Philippi

Action: The motion that the standard is met passed unanimously with the following votes:

AYES: George Massey, Kenneth Deal, Louis Philippi, William Draper, and George Smith

NAYS: None

B. The use or development complies with all regulations and standards of the City of Monroe Zoning Ordinance, as well as any other state or local rule or regulation governing the development of land.

Motion: Kenneth Deal made a motion that the standard **is met**.
Second: George Smith
Action: The motion that the standard is met passed unanimously with the following votes:

AYES: George Massey, Kenneth Deal, Louis Philippi, William Draper, and George Smith
NAYS: None

C. The use or development will not adversely impact surrounding property and will not substantially injure the value of adjoining property.

Motion: George Smith made a motion that the standard **is met**.
Second: Louis Philippi
Action: The motion that the standard is met passed unanimously with the following votes:

AYES: George Massey, Kenneth Deal, Louis Philippi, William Draper, and George Smith
NAYS: None

D. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Monroe Land Development Plan.

Motion: Louis Philippi made a motion that the standard **is met**.
Second: William Draper
Action: The motion that the standard is met passed unanimously with the following votes:

AYES: George Massey, Kenneth Deal, Louis Philippi, William Draper, and George Smith
NAYS: None

Mr. Massey asked for a motion to grant or deny the Special Use Permit request.

Motion: Kenneth Deal made a motion to grant the issuance of the Special Use Permit
Second: William Draper
Action: The motion to grant the Special Use Permit passed unanimously with the following votes:

AYES: George Massey, Kenneth Deal, Louis Philippi, William Draper, and George Smith
NAYS: None

Mr. Massey said the Special Use Permit Case PLSUP-2022-00101 request has been granted.

Item 9. **Other**

Mr. Massey said this is his last meeting as he will be rotating off the Board. He wanted to thank each one of you for having served. He said he is quite sure you will handle everything appropriately.

Louis Philippi said he wanted to welcome the new Board Attorney. He said he is as sharp as a tack and he is glad to have him here. Mr. Benshoff said thank you.

Keri introduced Megan Brightharp. She said she is one of our new planners and she will be doing some Board of Adjustment cases so you will be seeing some more of her in the future. She said she comes from Carbondale, Illinois. She said she started just last week.

Doug said this is Maryann's last meeting. He said she is retiring after 21 years on January 21, 2022.

Item 10. **Next Meeting – January 27, 2022**

Item 11. **Adjournment**

Motion: Kenneth Deal made a motion to adjourn the meeting.

Second: William Draper

Action: The motion to adjourn passed unanimously with the following votes:

AYES: **George Massey, Kenneth Deal, Louis Philippi, William Draper and George Smith**

NAYS: **None**

The meeting was adjourned at 8:48 p.m.

Respectfully submitted,

George Massey
Chairman

Maryann Brown
Clerk of the Board



REVISED STAFF REPORT

Case # PLZNA 2022-00148

TO: Board of Adjustment Members

DATE: March 24, 2022

FROM: Doug Britt, Senior Planner

PREPARED BY: Megan Brightharp, Planner

SUBJECT: Variance Request by Benjamin Karsai, representative of Monroe Biomedical Research, for property located at 343 Venus Street

SUMMARY STATEMENT

Benjamin Karsai, representative of Monroe Biomedical Research, located at 343 Venus Street, is requesting a variance to modify setback requirements in order to accommodate a proposed building addition.

SITE DATA

Type of Action: Variance
Date of Petition: March 1, 2022
Name of Petitioner: Benjamin Karsai
Location: 343 Venus Street
Tax ID #: 09-156-029
Lot Size: 1.03 Acres
Current Zoning Classification: GB (General Business) Zoning District

REVIEW

Proposed Findings:

1. The property located at 343 Venus Street is owned by Monroe Biomedical Research, LLC and is zoned GB (General Business). (Exhibit 1 and 2)
2. Monroe Biomedical Research, LLC is a North Carolina limited liability corporation whose principal office is 343 Venus Street, Monroe, NC.

3. A variance application was submitted on March 1, 2022 by Owner Benjamin Karsai as the “Monroe Medical Investors Member, Chief Operating Officer” to modify the setback requirements in order to build a 590 square foot addition to the existing building. (Exhibit 3)
4. Monroe Medical Investors, LLC is a North Carolina limited liability corporation whose principal office is located at the address for Monroe Biomedical Research, LLC. Benjamin Karsai is the registered agent and a member. (Exhibit 4)
5. Unified Development Ordinance (UDO) § 156.140(e) entitled “Building Setback Requirements” reads “... setbacks from all property lines shall be a minimum of ten feet.” UDO § 156.90 states in relevant parts:

(A) Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:

 - (1) An increase in the total amount of space devoted to a nonconforming use; or
 - (2) Greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations or density requirements or other requirements such as parking requirements.

....

(D) The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other paragraphs of this section occur.

(Exhibit 5 and 6)
6. In order to construct the addition, the applicant requests a side yard setback reduction from ten feet to 4.74 feet. (Exhibit 7)
7. All adjacent property owners have been notified of the proposed variance. (Exhibit 8 and 9)

Conclusions:

1. It is the Board’s CONCLUSION, that unnecessary hardship (would/would not) result from the strict application of the ordinance.
2. It is the Board’s CONCLUSION, that the hardship (is/is not) peculiar to the applicant’s property.
3. It is the Board’s CONCLUSION, that the hardship (is/is not) the result of the applicant’s own actions.
4. (a) It is the Board’s CONCLUSION, that the variance (is/is not) consistent with the spirit, purpose, and intent of the ordinance.

(b) It is the Board's CONCLUSION, that in granting of the variance, the public safety (will/will not) be secured and substantial justice (will/will not) be achieved.

5. The variance (will/will not) result in the extension of a nonconforming situation in violation of § 156.90 and it (will/will not) authorize the initiation of a nonconforming use of land.

THEREFORE, on the basis of all foregoing, IT IS ORDERED that the application Variance 2022-00148 be (**approved/denied**).

Exhibits:

Exhibit 1: Ortho Map
Exhibit 2: Zoning Map
Exhibit 3: Application
Exhibit 4: Proof of LLC Status
Exhibit 5: UDO Section 156.140
Exhibit 6: UDO Section 156.90
Exhibit 7: Proposed Site Plan
Exhibit 8: APO List
Exhibit 9: APO Map

Prepared By: MB 3-24-2022

Ortho Map

343 Venus Street

Legend

- Centerlines
- Parcels
- Subject Property

Owner:
Monroe Biomedical Research

Acres: 1.03

0 40 80 160 Feet



Exhibit 1

**Zoning Map
343 Venus Street**

Legend

Centerlines

Parcels

Zoning Districts

R-MF

G-I

GB

CD

Owner:
Monroe Biomedical Research

Acres: 1.03

0 40 80 160 Feet

N



Exhibit 2

City of Monroe Variance Application Form

Applicant's Name: Monroe Biomedical Research

Applicant's Address: 343 Venus Street, Monroe, NC

Property Owner's Name: Monroe Biomedical Research

Property Owner's Address: 343 Venus Street, Monroe, NC

For Staff Use Only

Application #: _____

Date Submitted: _____

Approved: _____

Denied: _____

Legal Relationship of Applicant to Property Owner: _____

Contact Person Name and Phone Number: Benjamin Karsai (Owner) 704.283.7369

Existing Use of Property: Commercial; Medical Office

Property Location: 343 Venus Street, Monroe, NC

Tax Map Number: 09 - 156 - 029 Lot Size: 1.03 acre Zoning District: City of Monroe

Ordinance section number to which a variance is being sought. 156.140 Building Setback Requirements

Proposed variance description: Request variance to modify setback requirements for proposed building addition.

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under NC State law, the Board must reach the conclusions listed below before it can issue 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 the conclusions below.

Please provide facts and arguments on how the request for a variance meets each of the conclusions listed below. Please be as specific as possible in your statements. Should you need more room to complete the information, please attach a separate sheet.

1. **There are unnecessary hardships in the way of carrying out the strict letter of the ordinance.** [It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property, and it is not sufficient that failure to grant the variance will simply make the property less valuable.]

Proposed building addition does not encroach into required setback

any further than the footprint of existing building.

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]

Existing building is situated +/- 5' from affected property line with
20' general utility easement directly adjacent and parallel to
affected property line.

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]

Setback encroachment is existing from original construction.

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.**

Proposed building addition will allow owner to treat more patients and
will not interfere with any adjacent buildings or occupancies.

5. **The variance will neither result in the extension of a nonconforming situation in violation of § 156.90, nor authorize the initiation of a nonconforming use of land.**

Pursuant to Zoning Code 156.90 "Extension or Enlargement of Nonconforming
Situations" the proposed building addition will not project into the required
setback any further than the existing building, and thus does not extend any
nonconforming situations nor authorize initiation of nonconforming land use.

Request for variances may need to be accompanied by a sketch plan or survey from a Registered Land Surveyor. Said plan shall show, in a scaled form, the location and size of:

1. The boundaries of the lot(s) in question,
2. The size, shape and location of all existing buildings, parking facilities and accessory buildings,
3. The size, shape and location of all proposed buildings, parking facilities and accessory uses,
4. The location of all setbacks and front lot widths as measured at the front setback,
5. The location and type of screening and buffering proposed; and
6. Other information deemed by the Zoning Officer necessary to consider the application complete.

Benjamin Karsai
Printed name of Applicant

[Signature]
Signature of Applicant

28 FEB 2022
Date

Benjamin Karsai
Printed name of Owner

[Signature]
Signature of Owner

Monroe Medical Investors
Member, Chief Operating Officer

28 FEB 2022
Date

****If you are signing on behalf of a company, please include your title within the company****

FOR STAFF USE ONLY
(PLEASE DO NOT WRITE BELOW THIS LINE)

Scaled plan attached: Yes _____ No _____ Fee Attached: Yes _____ No _____

Adjoining property owner's information attached: Yes _____ No _____

Public hearing date: _____

Notice to applicant and adjoining property owners mailed on: _____ INT. _____

Action taken by the Board of Adjustment: _____

Notification of Action Mailed to applicant on: _____

• File an Annual Report/Amend an Annual Report • Upload a PDF Filing • Order a Document Online • Add Entity to My Email Notification List • View Filings • Print a Pre-Populated Annual Report form • Print an Amended a Annual Report form

Limited Liability Company

Legal Name

Monroe Medical Investors, LLC

Information

SosId: 1835481

Status: Current-Active ⓘ

Date Formed: 4/25/2019

Citizenship: Domestic

Annual Report Due Date: April 15th

Current**Annual Report Status:**

Registered Agent: Karsai, Benjamin

Addresses

Mailing	Principal Office	Reg Office	Reg Mailing
343 Venus Street Monroe, NC 28112	343 Venus Street Monroe, NC 28112	343 Venus Street Monroe, NC 28112	343 Venus Street Monroe, NC 28112

Company Officials

All LLCs are managed by their managers pursuant to N.C.G.S. 57D-3-20.

Member	Member	Member
Gregory Feldman 343 Venus St Monroe NC 28112	Suvi Gross 343 Venus St Monroe NC 28112	BENJAMIN KARSAI 37 NORTHFIELD RD GLEN COVE NC 28112

§ 156.140 BUILDING SETBACK REQUIREMENTS.

(A) No portion of any building may be located on any lot closer to any lot line or to the right-of-way line, whichever is more restrictive, than is authorized in the table set forth in this section.

(B) As used in this section, the term "building" includes any substantial structure which by nature of its size, scale, dimensions, bulk, or use tends to constitute a visual obstruction or generate activity similar to that usually associates with a building. Without limitation the generality of the foregoing, the following structures shall be deemed to fall within this description: Fences running along lot boundaries adjacent to public street right-of-way if such fences exceed six feet in height and are substantially opaque.

(C) Notwithstanding any other provisions of this chapter, a sign may be erected on or affixed to a structure that (i) has a principal function that is something other than the support of the sign (e.g., a fence), but (ii) does not constitute a building as defined in this chapter, only if such sign is located so as to comply with the setback requirement applicable to freestanding signs in the district where such sign is located.

(D) Gas pumps and overhead canopies or roofs shall have a 5 foot setback minimum from all public right-of-ways.

(E) With the exception of properties outlined in Subsections (F) and (G) of this section and §§ 156.132 and 156.98 of this chapter, setbacks from all property lines shall be a minimum of 10 feet from all right-of-ways.

(F) Minimum setbacks for properties within the Central Business District shall be all property lines.

(G) Properties having frontage along any of the following streets shall have a minimum of a 50 foot setback from all public right-of-ways:*

- (1) Franklin Street.**
- (2) Roosevelt Boulevard.
- (3) Morgan Mill Road.
- (4) Walkup Avenue.
- (5) Olive Branch Road.

- (6) Secrest Shortcut Road.
- (7) Goldmine Road.
- (8) ML King, Jr. Boulevard.
- (9) Stafford Street.
- (10) Old Charlotte Highway.
- (11) Charlotte Avenue. **
- (12) Lancaster Avenue.
- (13) Griffith Road.
- (14) Concord Avenue.
- (15) Dickerson Boulevard.
- (16) Fowler Secrest Road.

- (17) Medlin Road.
- (18) Pageland Highway.
- (19) Rocky River Road.
- (20) Secrest Avenue.
- (21) Skyway Drive.
- (22) Sutherland Avenue.
- (23) Sunset Drive.

* Infill neighborhoods and conditional districts will have varying street setbacks according to §§ 156.132 and 156.98.

** Segments of Franklin Street and Charlotte Avenue are subject to the provision outlined in Subsection (F).

(Ord. O-2003-63, passed 12-16-03; Am. Ord. O-2004-18, passed 6-1-04)

§ 156.90 EXTENSION OR ENLARGEMENT OF NONCONFORMING SITUATIONS.

(A) Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:

(1) An increase in the total amount of space devoted to a nonconforming use; or

(2) Greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations or density requirements or other requirements such as parking requirements.

(B) Subject to subsection (D), a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this chapter, was manifestly designed or arranged to accommodate such use. However, a nonconforming use may not be extended to additional buildings or to land outside the original building.

(C) A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming, except that a use that involves the removal of natural materials from the lot where the use was established at the time it became nonconforming if 10% or more of the earth products had already been removed on the effective date of this chapter.

(D) The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other paragraphs of this section occur.

(E) Notwithstanding subsection (A), any structure used for single-family residential purposes and maintained as a nonconforming use may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to such matters as setback and parking requirements.

(F) Notwithstanding subsection (A), whenever: (1) there exists a lot with one or more structures on it; and (2) a change in use that does not involve any enlargement of a structure is proposed for such lot; and (3) the parking or loading requirements of Article XV that would be applicable as a result of the proposed change cannot be satisfied on such lot because there is not sufficient area available on the lot that can practicably be used for parking or loading, then the proposed use shall not be regarded as resulting in an impermissible extension or enlargement of a nonconforming situation. However, the applicant shall be required to comply with all applicable parking and loading requirements that be satisfied without acquiring additional land, and shall also be required to obtain satellite parking if: (1) parking requirements cannot be satisfied on the lot with respect to which the permit is required; and (2) such satellite parking is reasonably available. If such satellite parking is not reasonable available at the time the zoning or special or conditional use permit is granted, then the permit recipient shall be required to obtain it if and when it does become reasonably available. This requirement shall be a continuing condition of the permit.

(Ord. O-2003-63, passed 12-16-03)

- 1) All boundary, topographic, and utility information was taken from a survey by Lawrence Associates, PA.
- 2) All improvements and construction shall be in accordance with state and local standards.
- 3) All pavement markings shall be four (4) inch white lines unless indicated otherwise on the drawings.
- 4) If any discrepancies found in the field shall be called to the attention of the owner prior to proceeding with the work.
- 5) Prior to beginning construction, the contractor shall verify that all required permits and approvals have been obtained from all regulatory authorities.
- 6) The contractor shall contact all owners of easements, utilities, and right-of-ways, public and private, prior to working in these areas.
- 7) Contractor shall maintain the site in a manner such that workman and the general public shall be protected from injury.
- 8) Do not scale drawing for actual dimensions, as it is a reproduction and subject to distortion.
- 9) All signs, pavement markings, and other traffic control devices shall conform to the latest edition of the Manual on Uniform Traffic Control Devices.
- 10) Pipe systems and/or channels located within public drainage easements are the maintenance responsibility of the individual property owner.
- 11) Non-standard items in the right-of-way require a right-of-way encroachment agreement with The City of Monroe prior to installation.
- 12) No planting of trees or bushes within right of way unless approved by The City of Monroe.
- 13) All debris is to be disposed of at an approved offsite location.

BUA Summary	
606.5 sf	Existing Impervious to be Removed
590 sf	Proposed Impervious
0 sf	Required Area to be Treated

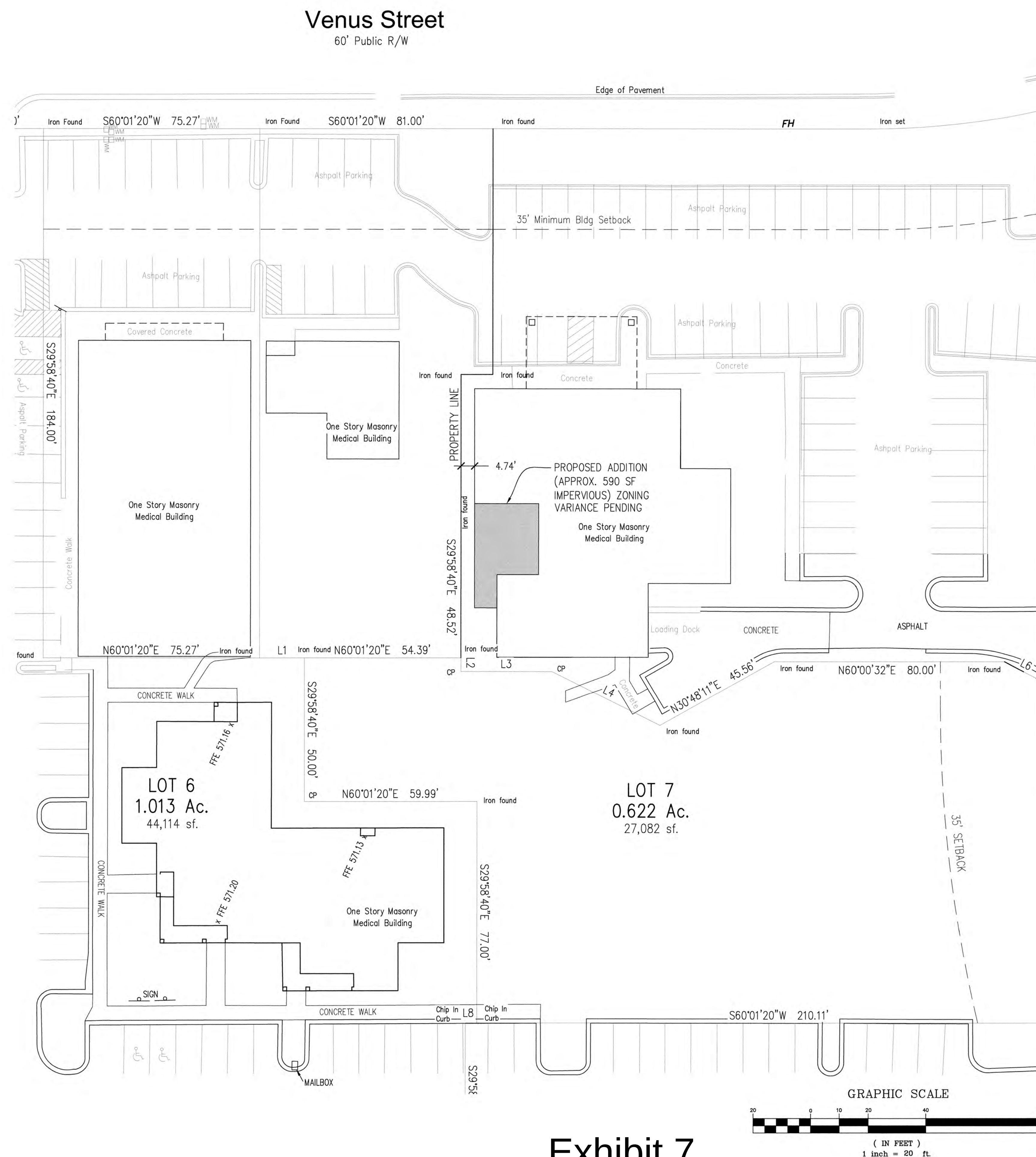


Exhibit 7

Site Plan

C-2.1

**Monroe Biomedical
Research Office Addition**

Attn.: Carroll Jenkins
Monroe, NC 28110
Phone: 704-323-4058
carroll.jenkins@jenconbuilders.com



**LAWRENCE
ASSOCIATES**

ASSOCIATES
106 W. Jefferson St.
Monroe, North Carolina 28112
704-289-1013 F 704-283-9035
www.lawrencesurveying.com
Firm License Number: C-2856



DESIGNED BY	CDL	DRAWN BY	CDL	CHECKED BY	WML
SCALE	1" = 20'	DATE	3/2/2022	JOB NUMBER	0531-RORRA

PIN	OWNERNAME1	OWNERNAME2	OWNERADDRE	OWNERCITY	OWNERSTATE	OWNERZIP
09156015B	UNION MEDICAL INC		1310 NEW SALEM RD	MONROE	NC	281109696
09156026	AKSHAR HOSPITALITY INC		350 VENUS ST	MONROE	NC	28112
09156002	SIMPSON CHAD L CO-TRUSTEE	SIMPSON LARRY B CO-TRUSTEE	4816 CAMPOBELLO DR	MONROE	NC	28110
09156025 01	UNION MEDICAL INC		1310 NEW SALEM RD	MONROE	NC	281109696
09156029	MONROE MEDICAL INVESTORS LLC		602 S SUTHERLAND DRIVE	MONROE	NC	28112
09153034	SMITH RAYMOND G		PO BOX 398	MONROE	NC	28111
09156015A	349 VENUS LLC		8807 ROSSLARE VILLAS CT	CHARLOTTE	NC	28226
09153035	UNION COUNTY BOARD OF EDUCATION		400 N CHURCH ST	MONROE	NC	28112
09156015C	UNION COLONY DEVELOPMENT VENTURE		%UNION MEDICAL INC 1310 NEW SALEM RD	MONROE	NC	281109696
09156015	701 EAST ROOSEVELT LLC		1235 EAST BLVD STE E #136	CHARLOTTE	NC	28203

Exhibit 8



APO Map
343 Venus Street

Legend

-  150 foot buffer
-  Centerlines
-  Parcels
-  Notified Properties
-  Subject Property

Owner:
Monroe Biomedical Research

Acres: 1.03

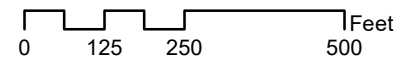


Exhibit 9