

**BOARD OF ADJUSTMENT
MEETING
THURSDAY, JUNE 23, 2022
6:00 P.M.
Council Chambers
300 W. Crowell Street
Monroe NC**

A G E N D A

Item 1. **Call to Order.**

Item 2. **Approval of Minutes** – March 24, 2022

Item 3. **Conflicts of Interest**

Item 4. **PLZNA-2022-00185 Variance-** The Board of Adjustment is requested to consider a variance request from Derek Hodge, on behalf of Rogelio Marin, Sr., owner of 650 West Roosevelt Boulevard. The applicant is requesting to deviate from section 157.8.3.5 titled Perimeter Buffer Standards of the Unified Development Ordinance that required a Type 3 perimeter buffer at the subject property; section 157.8.3.7 titled Street Yard Buffer that requires a Type 2 street yard sign at the subject property; and section 157.3.3 titled Open Space Standards that requires a 5% of a new commercial development to be designated as open space, in order to construct a new restaurant. (Parcel # 09-189-02)

Item 5. **Procedural Discussions**

Item 6. **Next Meeting:** July 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
March 24, 2022 at 6:30 P.M.
Council Chambers
300 W. Crowell St.
Monroe, NC**

To S. Laney – e-mailed 4/13/2022

Item 1. Call to Order

Chairman Kenneth Deal called the March 24, 2022 meeting to order at 6:02 p.m. and noted that there was a quorum present with 3 members. Ashlyn Penegar, Administrative Assistant, called the roll.

Members Present: Kenneth Deal, 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; Ashlyn Penegar, Administrative Assistant

Guests: Ryan Price, J.H. Dickerson

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

Motion: Mr. Draper made a motion to approve the minutes of the December 16, 2021, and February 24, 2022, meetings.

Second: Mr. Smith

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

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

NAYS: **None**

Item 3. Conflicts of Interest

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

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)

Chair said that anyone who is going to give testimony in this case needs to be administered the oath. Megan Brightharp, Planner I and Ryan Price came forward and were sworn.

Megan Brightharp, Planner I, said this is a Variance request by Monroe Biomedical Research to modify setback requirements in order to accommodate a proposed building addition. She proceeded to enter the proposed Findings into the record:

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)

Chair asked Megan Brightharp if any inquiries were received from the public or adjacent property

owners.

Megan Brightharp said no.

Chair asked if there were any questions.

William Draper asked Megan Brightharp if the applicant had permits for the new building.

Megan Brightharp said they would have to be granted a variance before they can go through the permitting process.

George Smith (Vice Chair) asked Megan Brightharp if there is any way to structure the addition so that it wouldn't be so close to the line? Megan said she would defer to the applicant for that question.

Chair said now we will entertain comments for those who are in favor of the project and please approach the podium and give your name and address.

Ryan Price stated his name and said his legal address is 10875 Hartsell Rd., Midland, NC.

Ryan Price asked the Board if he should respond to the question?

Mr. Benshoff asked Ryan Price if he was the applicant?

Ryan Price said no, the applicant was not available to be here tonight. I am the General Contractor.

Mr. Benshoff asked if he (Ryan Price) is the agent of applicant?

Ryan Price said correct.

Mr. Benshoff asked if there is any evidence that you are the agent of the applicant?

Ryan Price asked what would you be looking for?

Mr. Benshoff said a letter of agency or a contract.

Ryan Price said there is evidence, but I do not have it with me.

Mr. Benshoff said just so you understand, it is your job to present enough evidence to this Board that they can grant the variance to you. So, it's your job to present the facts as you see them to the Board, so they can deal with the variance. Of course, they can ask you questions, if you don't have a prepared presentation.

Ryan Price said I do not have a prepared presentation. But I can go over the information that we put together for the application and give you a little bit of background on the owner of the business and what we are wanting a variance for.

Chair said understand that you are basically testifying as a witness and not as the applicant. The applicant is absent, but we have a properly submitted application for consideration.

George Smith (Vice Chair) said looking at the structure, it looks like one side is between the building and the property line and on the other side, you're right up against the property line. Do you have to sit it that way due to function?

Ryan Price said yes, sir. It is due to the location with the building. They have multiple work functions separating various areas.

Chair said I understand that looking at the drawing, basically you are marrying into an existing encroachment into the 10 foot easement off of the property line that was part of the original construction of the building.

Ryan Price said that is correct.

Chair asked Ryan Price what exists there now? Is there equipment, like external equipment like air conditioning compressors or something like that?

Ryan Price said no sir, the area is now what you would consider a courtyard with concrete in the area. The intent would be to take the existing courtyard and close it to give them more interior space for their operation. You will note that the extent of the building, which I think you have already stated, the extent of the encroachment would not increase, it would mirror the existing encroachment into the property line. I would also bring to your attention that the area of encroachment is directly bordered by a 20 ft. utility easement.

William Draper said you have 2 curb cuts on one side, that's where that building is going to go, and you will take one curb cut out? The curb cut you are proposing is on Venus Street?

Ryan Price said I don't remember anything about a curb cut in the plans. The designer is here if he can speak, but if not, I'm relatively certain there is no curb cuts.

Board discusses.

Chair asks if there are any questions.

Board discusses.

George Smith (Vice Chair) asked if there was a variance given for the initial conception the way it is?

Chair said it is currently a non-conforming situation. But, whether or not it was granted back then...

Megan Brightharp said we don't have a variance on file for that. However, our standards have changed over time, so whatever the setback requirement may have been at that time, it more than likely has changed to what it is now.

Ryan Price asked if the designer is allowed to speak.

Chair said anyone is allowed to speak. But you will have to come up and get sworn in.

John Dickerson with MBR came forward and was sworn by the Chair.

John Dickerson came forward and stated his name and that he was at 423 Ridgewood Dr. Monroe, NC. He said I am speaking as a witness, and I am with Dickerson Architecture. We actually prepared the original plans for this building in the 1980's. I can't say for sure, but I'm almost certain that there was no encroachment at that time and matter of fact, the property line that you see on your plat, I don't think that was there when we built the building. I think Union Orthopedics built the first building and they developed that whole hilltop sort of building area. The Dialysis Clinic, which it was originally, was the second building that was built there, and that property line has an irregular shape to it, and I can't say for certain, but I'm pretty sure that the building was not a variance at the time. I'm wondering if that property line was added later, after the building was built and I'm not sure what those circumstances were. But as Ryan mentioned, the two factors in this, one, the small addition they are wanting and that's all this construction application is for, it's about 500 square foot addition. There is no site work or whatnot, other than filling in that courtyard. Again, the main point is that the addition does not encroach any more on that property line than the existing building and I do not think that was built in violation of any zoning setbacks. So, the main thing is that it doesn't do that. The second thing is there is a 20 foot utility easement opposite and that's important for the health, safety and welfare, which is my understanding is that most of these regulations are really to protect the health, safety and welfare of the public. There is nothing that can be put in that 20 ft. easement, and I think those are two of the main issues. It doesn't encroach any more than the existing building and there is a 20 ft. utility easement in front of it. That's all I want to say and if you have any questions, I'll try to answer them.

Chair asks if there are any questions.

John Dickerson said I would appreciate it if you could approve this variance, it would help the client very much.

Chair asks if there are any questions. There were none.

Mr. Benshoff said Mr. Chairman, as I've mentioned at the last meeting. I've prepared a worksheet. A different worksheet for you and this has the findings of fact that Ms. Brightharp read, except that it has a 7th condition in case the witnesses said anything that needs to be entered as a fact. Then on page two, there is Conclusions of Law in favor of granting the variance and then there is Conclusions of law to deny the variance.

Chair said excellent.

Mr. Benshoff said I did this so you can see both. I think the facts would be the same, in either case, it's just a question of how you interpret the facts and how you apply the facts to the conclusions.

Chair asked if there are any discussions. There were none.

Chair said since there are no discussions, I'm going to cover the Findings of Fact for the record. We would like a motion on whether to accept these Findings of Fact as a matter of record.

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)

I want to propose a new Finding of Fact, number 8.

8. This application of a non-conforming standard has in my opinion (Chair) no additional impact on the adjoining property than the existing setback has in that it is aligned with the existing elevation of the building and it is located within the property boundaries as established in the application.

Chair then added a second new Finding, number 9.

9 By demonstration on numerous occasions by the Mayor and City Council of Monroe, when deemed appropriate, they have felt it amenable to waive the 10 ft. setbacks on other properties that have been approved at the Council level, setting a legal precedence for waiving said setback rules.

Chair said now I ask for a motion on whether to approve the aforementioned Findings of Fact.

Mr. Benshoff asked the Chair if there can be a discussion before the motion.

Chair said certainly.

Mr. Benshoff said I believe it's a misstatement of North Carolina law to say that the Mayor and City Council's actions in a legislative proceeding to waive a setback is precedent for the Board of Adjustment.

Chair asked Mr. Benshoff even though their rules/actions have overridden their own UDO (Unified Development Order) in doing that? Which is what this is based on?

Mr. Benshoff said without the case and the context, I can't really answer that. But, I can say as a general rule, the Mayor and the City Council make legislative decisions, this is not a legislative decision, this is a quasi-judicial decision. The Mayor and the City Council are not a court, you're a court. Precedent does not apply to legislative actions, by the Mayor and the City Council. So what they did has no precedential value for the Board of Adjustment. I would caution you that I think that's a misstatement of the law to make the 9th conclusion. I suggest that you just note that the Mayor and the City Council have relaxed setbacks in the past, but not that it's a precedent.

Chair said good point, I will accept that.

George Smith (Vice Chair) said if they do it, it's a point of law, if we do it, it's a judgment.

Mr. Benshoff said if they do it... Chair said legislative.. Mr. Benshoff continued and said they don't have to hear testimony, they don't make Findings of Fact, they don't make Conclusions of Law. They have a different standard.

George Smith (Vice Chair) said they just make the law.

Mr. Benshoff said it's like the difference between Congress and the Supreme Court.

William Draper asked if going from 10 ft. to 4.74 ft., is that a hazard to get fire equipment in there?

Chair said not looking at the diagrams in my opinion, because the adjacent buildings aren't close by.

George Smith (Vice Chair) said they are no more hazard than it is right now.

Chair agreed and said we are not increasing the encroachment, we are only paralleling the encroachment.

William Draper agreed.

Chair said based on that, I will relent on Finding of Fact #9, let's just strike it to alleviate any confusion on the findings. With that stricken, we have 8 Findings of Fact.

Motion: Mr. Smith made a motion to approve the Findings of Fact 1-8.

Second: Mr. Draper

Action: The motion to approve the Findings of Fact 1-8 passed unanimously with the following votes:

AYES: Kenneth Deal, William Draper and George Smith

NAYS: None

Chair states based on the findings, that we are now moving on to the conclusion phase on whether to grant or deny the request for the variance.

Conclusions:

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

Motion: Mr. Draper made a motion that it would be a unnecessary hardship on the building and what they want to do with the property.

Second: Mr. Smith

Action: The motion passed unanimously with the following votes:

AYES: Kenneth Deal, William Draper 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. Smith made a motion that the hardship is peculiar to the applicant's property because the existing building encroached into the setback of the same amount as the requested variance, it's something that's already in the cards.

Second: Mr. Draper

Action: The motion passed unanimously with the following votes:

AYES: Kenneth Deal, William Draper 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 it is the Board's conclusion that it would be a hardship not on a result of anything the applicant has done and using that with the existing structures that are there.

Second: Mr. Smith

Action: The motion passed unanimously with the following votes:

AYES: Kenneth Deal, William Draper 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. Smith made a motion that it is the Board's conclusion that the variance is consistent with the spirit, purpose, and intent of the ordinance because it is the smallest variance it could be granted in order for the development to be built.

Second: Mr. Draper

Action: The motion passed unanimously with the following votes:

AYES: Kenneth Deal, William Draper 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 it is the Board's conclusion that in granting of the variance, the public safety will be secured and substantial justice will be achieved because of the de minimus increase in the building will not affect the public good.

Second: Mr. Draper

Action: The motion passed unanimously with the following votes:

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

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.

Motion: Mr. Draper made a motion that the variance will not result in the extension of a nonconforming situation in violation of the ordinance 156.90 because it is an expansion of the permit by UDO, and it will not authorize the initiation of a nonconforming use of land because the business is an existing nonconforming to the side yard setback.

Second: Mr. Smith

Action: The motion passed unanimously with the following votes:

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

Chair asked for a motion to grant or deny the variance request

Motion: Mr. Smith made a motion to grant this variance based on the information provided.

Second: Mr. Draper

Action: The motion to grant the variance passed unanimously with the following votes:

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

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

Mr. Benshoff suggests one more motion and that is to permit the Chair to sign the orders out of session of the Board of Adjustment. He said I would also suggest that the motion allows the Chair to sign all future variance orders out of session of the Board of Adjustment because they are often modified during the meeting and the final version is not prepared, and that would allow you to come in and sign before the next meeting.

Motion: Mr. Smith made a motion that would permit the Chair to sign all future orders out of session of the Board of Adjustment.

Second: Mr. Draper
Action: The motion to permit the Chair to sign passed unanimously with the following votes:

AYES: Kenneth Deal, William Draper and George Smith

NAYS: None

Item 5. **Procedural Discussions**

Mr. Benshoff gave a slideshow presentation on the role and duties of the Board of Adjustment. (Slideshow attached)

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

Item 7. **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, William Draper and George Smith

NAYS: None

The meeting was adjourned at 7:25 p.m.

Respectfully submitted,

Kenneth Deal
Chair

Ashlyn Penegar
Clerk of the Board



REVISED STAFF REPORT

Case # PLZNA 2022-00185

TO: Board of Adjustment Members

DATE: June 23, 2022

FROM: Doug Britt, Senior Planner

PREPARED BY: Megan Brightharp, Planner

SUBJECT: Variance Request by Derek Hodge, representative of Rogelio Marin, Sr.,
for property located at 650 West Roosevelt Boulevard

SUMMARY STATEMENT

Derek Hodge, representative of Rogelio Marin, Sr., is requesting a variance to modify the street yard buffer and perimeter buffer requirements and a variance from the open space requirements in order to construct a new restaurant.

SITE DATA

Type of Action: Variance
Date of Petition: May 1, 2022
Name of Petitioner: Derek Hodge
Location: 650 West Roosevelt Boulevard
Tax ID #: 09-189-002
Lot Size: .91 Acres
Current Zoning Classification: GB (General Business) Zoning District

REVIEW

Proposed Findings:

1. The property located at 650 West Roosevelt Boulevard is owned by Rogelio Marin, Sr. and is zoned GB (General Business). (Exhibit 1 and 2)

2. A variance application was submitted on May 1, 2022 to modify the side yard buffer, the perimeter buffer, and open space requirements in order to construct a new restaurant. (Exhibit 3)
3. Unified Development Ordinance (UDO) Section 8.3 entitled “Landscaping, Buffering, Fences and Walls” states in relevant parts:

8.3.5. Perimeter Buffer Standards

- C. Perimeter Buffer – Required Perimeter Buffer Type by District.
3. To determine the perimeter buffer type required, identify the zoning district of the land in which a development is proposed. Using Table 8.3.2, the intersection of the row associated with the district of the proposed development and the column associated with the adjacent zoning district shows the buffer type required.
4. Perimeter buffer types required shall comply with the standards provided in Table 8.3.1. Options for achieving the required buffer intensity are provided in Table 8.3.1.
(Exhibits 4 and 5)

8.3.7. Street Yard Buffer

- A. Required. Any development that involves the construction of a new principal building or development along a right-of-way, except for exclusions listed in this Section, must include the installation of a street yard buffer (Buffer Type 2).
4. Unified Development Ordinance (UDO) Section 8.8 entitled “Open Space Standards” states in relevant parts:
 - A. Open Space Sizes. Open space may consist of a variety of different sizes. For the purpose of this Section, open space sizes shall be defined as small, medium, and large. The acreage of open space sizes for each open space size is defined in Table 8.8.1. (Exhibit 6)
5. In order to construct the restaurant, the applicant requests a perimeter yard buffer reduction from 25 feet to 4 feet as well as omitting the required landscaping and fencing as required for a Type 3 buffer. The applicant requests a street yard buffer reduction from 20 feet to 8 feet. Lastly the applicant is requesting to omit the required 5% (2,000 sf) open space as required per the City of Monroe UDO. (Exhibit 7)
6. 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.

THEREFORE, on the basis of all foregoing, IT IS ORDERED that the application Variance 2022-00185 be (**approved/denied**).

Exhibits:

Exhibit 1: Ortho Map
Exhibit 2: Zoning Map
Exhibit 3: Application
Exhibit 4 Table 8.3.1
Exhibit 5 Table 8.3.2
Exhibit 6: Table 8.8.1
Exhibit 7: Proposed Site Plan
Exhibit 8: APO List
Exhibit 9: APO Map

Prepared by: MB 6-15-2022

Ortho Map

650 West Roosevelt Boulevard

Legend

- Centerlines
- Parcels
- City Limits
- Subject Property

Owner:
Rogelio Marin, Sr.

Acres: .91

0 65 130 260 Feet

N



Exhibit 1

Zoning Map

650 West Roosevelt Boulevard

Legend

— Centerlines

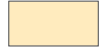
--- City Limits

□ Parcels

Zoning Districts

 GB

 GI

 RMD

 Subject Property

Owner:
Rogelio Marin, Sr.

Acres: .91

0 65 130 260 Feet

N



Exhibit 2

City of Monroe Variance Application Form

Applicant's Name: DEREK HODGE

Applicant's Address: 1208 CURTIS ST
MONROE, NC 28112

Property Owner's Name: ROGELIO MARIN, SR.

Property Owner's Address: 312 WHEATBERY HILL DR.
MATTHEWS, NC 28104

Legal Relationship of Applicant to Property Owner: ARCHITECT

Contact Person Name and Phone Number: DEREK HODGE 704.283.2908

Existing Use of Property: VACANT

Property Location: 650 WEST ROOSEVELT BLVD

Tax Map Number: 09.189.002 Lot Size: 0.91 Zoning District: GB

Ordinance section number to which a variance is being sought. 8.3.7, 8.3.5.C, 8.8.3

Proposed variance description: 1) 12' VARIANCE FROM STREET YARD BUFFER, 2) 21' VARIANCE FROM 1 TO OMIT LANDSCAPING + FENCING FROM PERIMETER BUFFER, 3) VARIANCE FROM 5% OPEN SPACE

For Staff Use Only

Application #: _____

Date Submitted: _____

Approved: _____

Denied: _____

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.]

NEWLY PASSED UDO COMPLETELY VOIDS 7 MONTHS OF WORK
FOR PROJECT BEING DEVELOPED UNDER "OLD" UDO - MANY
DISCUSSIONS W/ TOWN STAFF ABOUT COMPLIANCE NEVER
MENTIONED THE BUFFER INCREASES OF THE NEW UDO
WHICH ARE 4-500% GREATER MAKING THE PROJECT
UNBUILDABLE WITHOUT THIS VARIANCE.

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]

WE MET "OLD" BUFFERS. NEW UDO BUFFERS MAKE THE PROJECT UNBUILDABLE AS DESIGNED UNDER "OLD" ORDINANCE.

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]

WE HAVE BEEN WORKING + PLANNING THIS PROJECT FOR OVER 7 MONTHS UNDER THE PREVIOUS UDO + ARE CLOSE TO SUBMITTING FOR PLAN REVIEW.

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.

VERY CONSISTENT WITH PREVIOUS UDO - BUT NOT UNDER THE RECENTLY PASSED UDO BUFFER SECTION.

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.

THIS PROJECT WOULD BE CONFORMING TO ALL PROVISIONS OF THE PREVIOUS UDO BUT NOT BUILDABLE UNDER THE CURRENT.

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.

DEREK HODGE

Printed name of Applicant

DA

Signature of Applicant

4-28-22

Date

Rogelio Marin sr

Printed name of Owner

Rogelio Marin

Signature of Owner

04-28-22

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: _____

Table 8.3.1 Perimeter Buffer Types Table

PERIMETER BUFFER TYPES TABLE			
TYPE	OPTION 1	OPTION 2	OPTION 3
1	15' Width 2 Trees 30 Shrubs Per 100 LF	15' Width 3 Trees 20 Shrubs Per 100 LF	15' Width 4 Trees 10 Shrubs Per 100 LF
2	20' Width 3 Trees 40 Shrubs Per 100 LF 6' Fence (Optional)	20' Width 4 Trees 30 Shrubs Per 100 LF 6' Fence (Optional)	20' Width 5 Trees 15 Shrubs Per 100 LF 6' Fence (Optional)
3	25' Width 3 Trees Per 100 LF 1 Understory Trees Per 100 LF 50 Shrubs Per 100 LF 6' Fence	25' Width 4 Trees Per 100 LF 2 Understory Trees Per 100 LF 30 Shrubs Per 100 LF 6' Fence	25' Width 4 Trees Per 100 LF 3 Understory Trees Per 100 LF 20 Shrubs Per 100 LF 6' Fence
4	50' Width 4 Trees Per 100 LF 2 Understory Trees Per 100 LF 60 Shrubs Per 100 LF 6' Wall	50' Width 5 Trees Per 100 LF 3 Understory Trees Per 100 LF 40 Shrubs Per 100 LF 6' Wall	50' Width 5 Trees Per 100 LF 4 Understory Trees Per 100 LF 25 Shrubs Per 100 LF 6' Wall
5	100' Width, 8 Trees Per 100 LF, 4 Understory Trees Per 100 LF, Continuous Hedge, 8' Wall, 5' High Berm		
Additional Standards: 1. Required plant material may not be clustered to achieve requirements. A maximum allowable 10' gap may be permitted. 2. Minimum shrubs may be double staggered.			

3. Required trees may be on both sides of a fence/wall as long as a minimum one half of required trees are in front.
4. If perimeter buffer types are more intense than a required parking area buffer, the perimeter buffer will take precedent.

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of the row associated with the district of the proposed development and the column associated with the adjacent zoning district shows the buffer type required.

4. Perimeter buffer types required shall comply with the standards provided in Table 8.3.1. Options for achieving the required buffer intensity are provided in Table 8.3.1.

Table 8.3.2. Required Perimeter Buffer Type by District

TABLE 8.3.2. REQUIRED PERIMETER BUFFER TYPE BY DISTRICT											
ZONING DISTRICT OF SUBJECT PROPERTY	ZONING DISTRICT OF ADJACENT PROPERTY										
	RR	RLD	RMD	RHD	OM	NB	GB	GI	HI	PUD	PCD
RR	2	2	3	4	4	4	4	4	5	4	4
RLD	2	2	3	4	4	4	4	4	5	4	4
RMD	3	3	3	4	4	4	4	4	5	4	4
RHD	4	4	4	3	4	4	4	5	5	3	3
OM	4	4	4	4	3	3	3	4	5	3	3
NB	4	4	4	4	3	3	3	4	5	3	3
GB	4	4	4	4	3	3	3	4	5	3	3
GI	4	4	4	4	4	4	4	2	1	4	4
HI	5	5	5	5	5	5	5	1	2	5	5
PUD	4	4	4	3	3	3	3	4	5	3	3
PCD	4	4	4	3	3	3	3	4	5	3	3

Table 8.8.1. Open Space Sizes

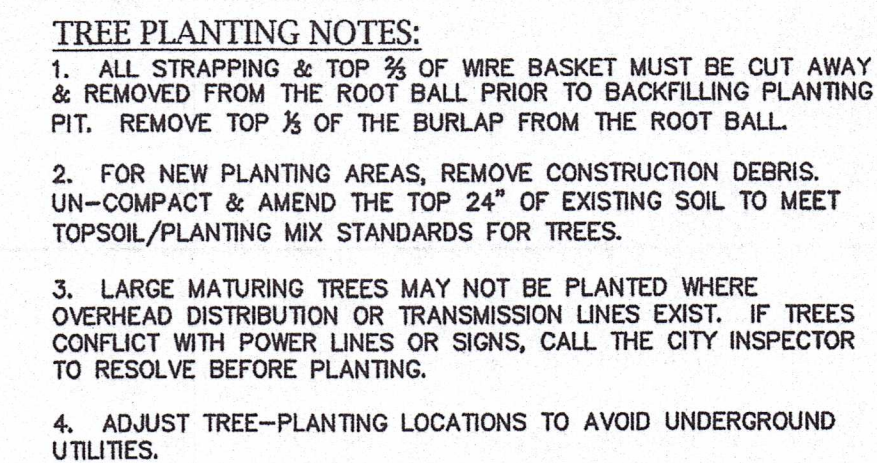
Open Space Size	Acreage (Range)
Small	500 SF – 1.0 Acres
Medium	1.0 – 2.5 Acres
Large	2.5 Acres Or More

C. **Open Space Types.** In addition to different sizes, open space may take different forms, dependent upon both the nature of the development and the land in which it is established. Because of their nature, open space types may be considered more than a single open space size (i.e., an open space type may be considered both a small and medium open space size). Open space includes the following open space types, as defined below:

1. **Small Open Space.**

- a. **Pocket Park.** Pocket parks are defined as a small open space. Pocket parks are primarily intended to provide small active or passive recreation opportunities and act as a gathering space for residents or customers. Features may include small shade structures, gazebos, seating areas, multi-purpose lawn space, playgrounds, community gardens, dog parks, trails, or natural elements such as a stream or pond.

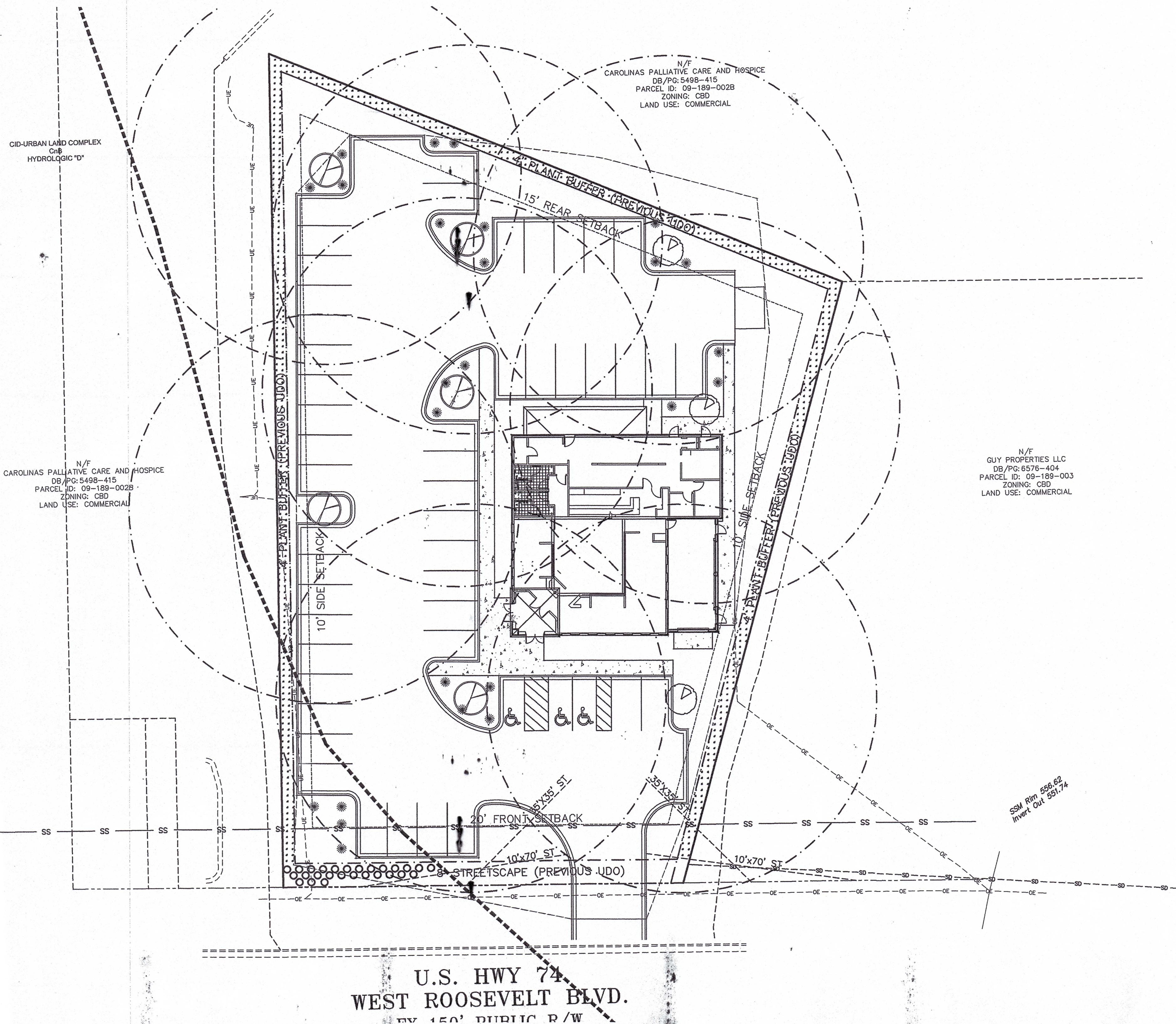
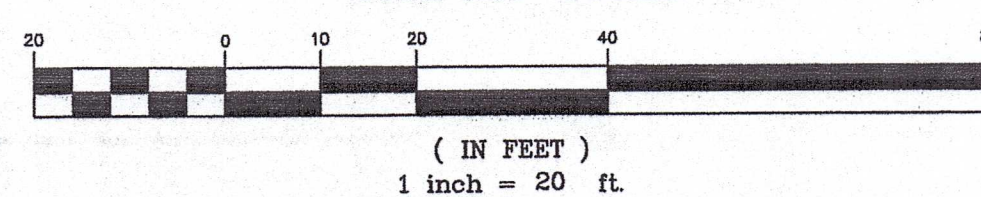




- CITY OF MONROE STANDARD LANDSCAPING NOTES:**
1. ALL TREES SHALL MEET OR EXCEED THE MINIMUM REQUIREMENTS AS NOTED IN DIVISION 06.00 OF THE CITY OF MONROE STANDARD SPECIFICATIONS AND DETAIL MANUAL.
 2. THE CONTRACTOR SHALL CONTACT NORTH CAROLINA ONE CALL PRIOR TO DIGGING.
 3. PLANTING BACKFILL MIXTURE: 4 PARTS TOPSOIL; 1 PART PEAT MOSS; 10 LBS. 5-10-5 PLANTING FERTILIZER THOROUGHLY MIXED PER CUBIC YARD.
 4. STAKE TREES IMMEDIATELY AFTER PLANTING.
 5. ALL DISTURBED AREAS SHALL BE SEEDED AND MULCHED IN ACCORDANCE WITH DIVISION 03.00 OF THE CITY OF MONROE STANDARD SPECIFICATIONS AND DETAIL MANUAL.

4' WIDE STREETScape BUFFER (WEST ROOSEVELT BOULEVARD)	
PER PREVIOUS UO	
- TOTAL LT OF STREETScape BUFFER	154
- MINIMUM WIDTH (FT)	8
- MIN. REQ. 2 CANOPY TREES PER 100 LF	4
- PROVIDED CANOPY TREES	27
- TREE PLANTINGS WAIVED THROUGH UO SECTION 8.3.7, Section 4	
- MIN. REQ. 20 SHRUBS PER 100 LF	27
- PROVIDED SHRUBS	27
4' MINIMUM GRASSED AREA (ALL PROPERTY BOUNDARIES)	
PER PREVIOUS UO	
- FREE OF ANY IMPERVIOUS ENROACHMENTS	
PARKING LOT YARD PER PREVIOUS UO	
- TOTAL VEHICLE SPACES:	50
- MIN. REQ. 1 CANOPY TREE PER 12 SPACES (HIGHEST REQUIREMENT)	4
- GROSS FLOOR AREA	5,100
- MIN. REQ. 1 CANOPY TREE PER 2,000 SF GFA	26
- PROVIDED CANOPY TREES	18
- MIN. REQ. 1 SHRUB PER 12 SPACES (HIGHEST REQUIREMENT)	26
- MIN. REQ. 8 SHRUBS PER 2,000 SF GFA	18
- PROVIDED SHRUBS	26
- MAXIMUM ALLOWABLE PERCENT DECIDUOUS TREES	40%
- MAXIMUM ALLOWED VEHICLE SPACES	0%
NO PARKING SPACE MAY BE LOCATED MORE THAN SIXTY-FOOT (60) FEET AWAY FROM CANOPY/DECIDUOUS TREE.	

GRAPHIC SCALE



NOTE:
1. CONTRACTOR SHALL NOT PLANT TREES OR SHRUBS IN ANY SIGHT TRIANGLES.

PLANT MATERIALS LIST

AY CARAMBA
FAMILY RESTAURANT
WEST ROOSEVELT BOULEVARD
MONROE, NC 28110

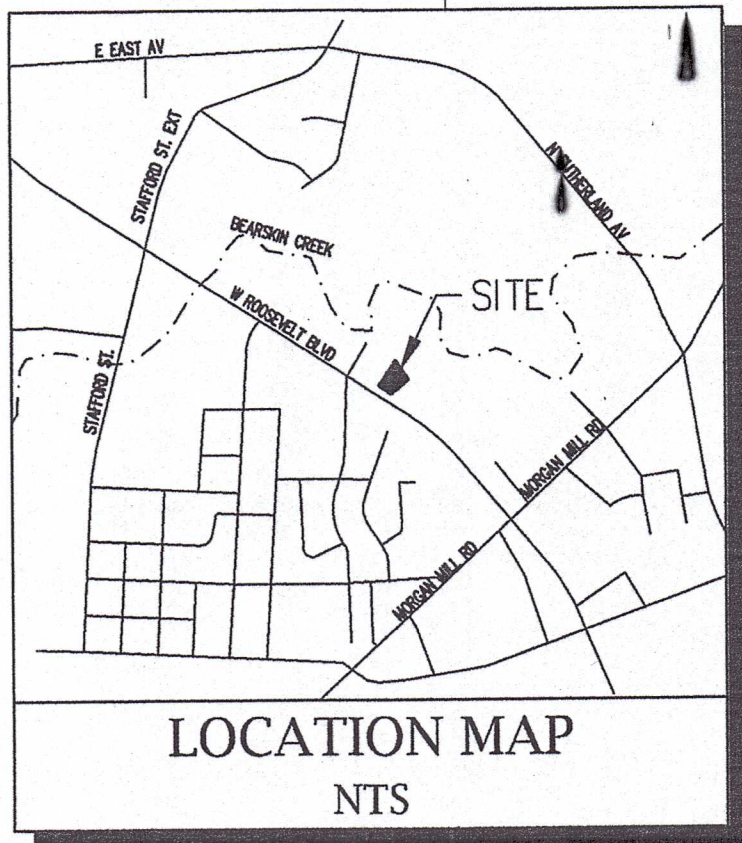
LANDSCAPE
PLAN[illegible]

CAD FILE: 22-008 BASE.DWG
PROJECT NO.: 22-008
DESIGNED BY: JDM
REVIEWED BY: JDM
DATE: MARCH 31, 2022

C5.0



Exhibit 7



TOTAL SITE AREA:	0.91 ACRES (±39,811 SF)
PARCEL IDS:	09-189-002
JURISDICTION:	CITY OF MONROE
DEED BOOK / PAGE:	8130 / 259
CURRENT ZONING:	GB
CURRENT USE:	VACANT
PROPOSED USE:	COMMERCIAL
PREVIOUS SETBACKS	
FRONT SETBACK:	50'
REAR SETBACK:	10'
SIDEYARD SETBACK:	10'
CURRENT SETBACKS	
FRONT SETBACK:	20'
REAR SETBACK:	15'
SIDEYARD SETBACK:	10'
PREVIOUS PLANT BUFFERS	
4' MINIMUM GRASSED AREA (ALL PROPERTY BOUNDARIES)	
8' STREETScape	
CURRENT PLANT BUFFERS	
25' ABUTTING "TYPE 3" PLANT BUFFERS	
20' STREETScape "TYPE 2" PLANT BUFFERS	
PARKING CALCULATIONS	
PROPOSED ON-SITE PARKING:	52
REQUIRED HANDICAP PARKING:	3
- 2 VAN ACCESSIBLE SPACE	

DEVELOPMENT SUMMARY

CITY OF MONROE STANDARD NOTES:
ANY ADDITIONAL CONTRACTOR INITIATED REQUEST TO DEVIATE FROM THE CITY OF MONROE STANDARD SPECIFICATIONS AND DETAIL MANUAL SHALL BE REQUESTED IN WRITING ALONG WITH THE JUSTIFICATION FOR REVIEW AND RECOMMENDATION BY THE CITY OF MONROE ENGINEERING DEPARTMENT.

SUBSTANTIAL COMPLETION INCLUDES COMPLETION AND ACCEPTANCE OF THE STORMWATER BEST MANAGEMENT PRACTICE (BMP) PROPOSED FOR THE SITE. THE CERTIFICATE OF OCCUPANCY (CO) CANNOT BE RELEASED UNTIL THE BMP IS COMPLETE. A TEMPORARY CO MAY BE ISSUED IN CASES IF THE BMP IS FUNCTIONING BUT NOT COMPLETE DUE TO REQUIRED LANDSCAPING AND A BOND IS USED TO GUARANTEE COMPLETION.

- SITE NOTES:
1. DIMENSIONS AND COORDINATE POINTS ARE TO BACK OF CURB OR CORNER OF BUILDING UNLESS OTHERWISE NOTED.
 2. ANY DISCREPANCIES FOUND IN THE FIELD SHALL BE CALLED TO THE ATTENTION OF THE OWNER OR ENGINEER PRIOR TO PROCEEDING WITH WORK.
 3. PRIOR TO BEGINNING CONSTRUCTION, THE GENERAL CONTRACTOR SHALL OBTAIN ALL REQUIRED PERMITS AND APPROVALS NOT ALREADY OBTAINED BY THE DESIGN TEAM FROM ALL REGULATORY AUTHORITIES AND SHALL KEEP COPIES OF ALL APPLICABLE PERMITS ON SITE.
 4. THE GENERAL CONTRACTOR SHALL CONTACT ALL OWNERS OF EASEMENTS, UTILITIES, AND RIGHT-OF-WAYS, PUBLIC AND PRIVATE, PRIOR TO WORKING IN THESE AREAS.
 5. GENERAL CONTRACTOR SHALL MAINTAIN THE SITE IN A MANNER SO THAT WORKMEN AND THE PUBLIC SHALL BE PROTECTED FROM INJURY.
 6. DO NOT SCALE DRAWING FOR ACTUAL DIMENSIONS, AS IT IS A REPRODUCTION AND SUBJECT TO DISTORTION.
 7. ALL SIGNS, PAVEMENT MARKINGS, AND OTHER TRAFFIC CONTROL DEVICES SHALL CONFORM TO THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD), 1988 EDITION AS AMENDED.
 8. ALL PAVEMENT MARKINGS SHALL BE FOUR (4) INCHES WIDE "YELLOW" UNLESS INDICATED OTHERWISE ON THE DRAWINGS.
 9. CONTRACTOR SHALL SAW-CUT EXISTING ASPHALT PAVEMENT AREAS TO TIE IN SMOOTHLY TO PROPOSED PAVEMENT AT CONNECTION TO NEW ASPHALT PARKING AREA.

CITY OF MONROE ZONING NOTES:
AN AS-BUILT SURVEY SHALL BE REQUIRED FOR ALL NEW, EXPANDED, OR RELOCATED STRUCTURES WHICH SHALL ACCURATELY SHOW THE FOOTPRINT OF THE STRUCTURE, APPURTENANCES, ALL EXISTING STRUCTURES, APPLICABLE SETBACKS, AND PROPERTY BOUNDARY LINES PRIOR TO THE RELEASE OF ANY CERTIFICATE OF OCCUPANCY. ALL ZONING REQUIREMENTS MUST BE INSPECTED BY THE ZONING OFFICER PRIOR TO REQUESTING A CERTIFICATE OF OCCUPANCY. IF REQUIRED, CALL 704.282.4524 TO SCHEDULE A ZONING INSPECTION.

	STANDARD DUTY ASPHALT
	ASPHALT WITHIN NCDOT R/W
	HEAVY DUTY CONCRETE PAVEMENT
	FULL DEPTH ASPHALT REPAIR
	CONCRETE SIDEWALK

SURFACE MATERIAL

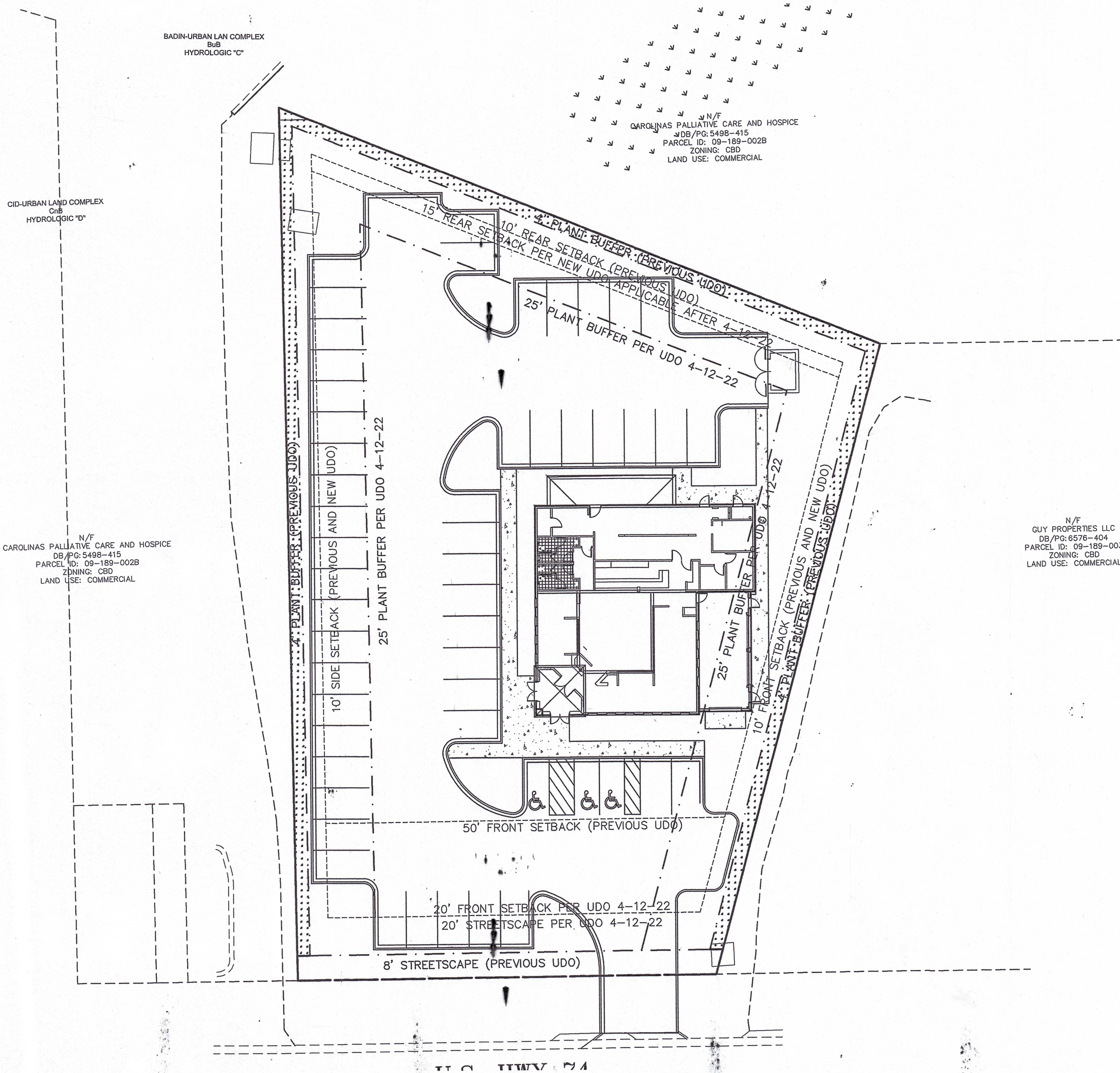
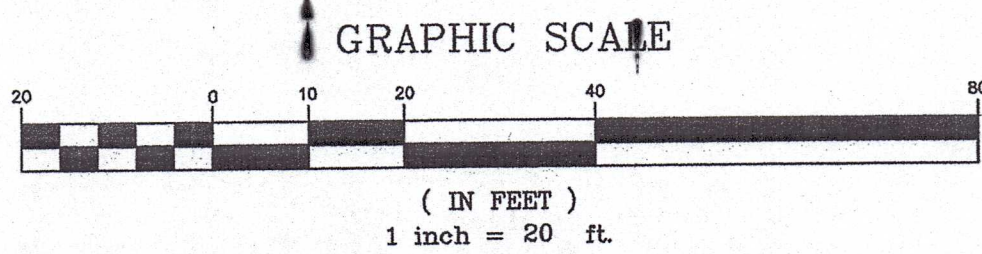


Exhibit 7



AY CARAMBA
FAMILY RESTAURANT
WEST ROOSEVELT BOULEVARD
MONROE, NC 28110

XXXXX
XXXXX

SITE
PLAN

REVISIONS	

CAD FILE: 22-008 BASE.DWG
PROJECT NO.: 22-008
DESIGNED BY: JDM
REVIEWED BY: JDM
DATE: MARCH 31, 2022

C2.0

ACCTNO	PIN	PROPERTYST	OWNERNAME1	OWNERNAME2	OWNERADDRE	OWNERCITY	OWNERSTATE	OWNERZIP
09189003	09189003	624 ROOSEVELT BLVD	GUY PROPERTIES LLC		4401 EAST INDEPENDENCE BL STE 204	CHARLOTTE	NC	28205
09189021	09189021	1008 KENNEDY ST	LITTLE ROSALIE E		1900 PATTON AVE	CHARLOTTE	NC	28216
09189001 90	09189001 90	950 W ROOSEVELT BLVD	RH HOLDINGS OF NC II LLC		950 WEST ROOSEVELT BLVD	MONROE	NC	281103441
09189004J	09189004J	620 W ROOSEVELT BLVD	BUNDY SIDI BROWN	BUNDY APRIL LAUREN	800 S COLLEGE ST	MONROE	NC	28112
09189002B	09189002B	700 W ROOSEVELT BLVD	CAROLINAS PALLIATIVE CARE AND	HOSPICE NETWORK INC	ATTN PATTI MORRIS PO BOX 32861	CHARLOTTE	NC	283232861
09189208	09189208	901 W ROOSEVELT BLVD	MILLS ROBERT	MILLS JERRY	901 ROOSEVELT BLVD W	MONROE	NC	281103440
09189004	09189004	622 ROOSEVELT BLVD	BUNDY SIDI BROWN	BUNDY APRIL LAUREN	800 S COLLEGE ST	MONROE	NC	28112
09189001 80	09189001 80	950 W ROOSEVELT BLVD	RH HOLDINGS OF NC II LLC		950 WEST ROOSEVELT BLVD	MONROE	NC	281103441
09189196A	09189196A	0 LASALLE ST	MCDOW MICHAEL DENNIS		1018 LASALLE ST	MONROE	NC	28110

Exhibit 8

APO Map

650 West Roosevelt Boulevard

Legend

-  Buffer
-  Centerlines
-  Parcels
-  City Limits
-  Notified Properties
-  Subject Property

Owner:
Rogelio Marin, Sr.

Acres: .91

Exhibit 9

0 100 200 400 Feet

N

