

KINGSPORT BOARD OF ZONING APPEALS AGENDA

Thursday, April 4, 2013

Development Services Building - first floor, Bob Clear Conference Room

CALL TO ORDER – 12:00 P.M. NOON

INTRODUCTION / MEETING PROCEDURES

ADMINISTRATION OF OATH TO PERSONS WISHING TO TESTIFY

PUBLIC HEARINGS:

1. Case: 13-701-00003 – Property located at 3720 Brandywine Road Control Map 22M, Group F, Parcel 13 Requests a front yard variance of 16 feet to [Sect.114-182 (e)(1)(c)] in order to construct an addition at this location. The property is located in a R-1A, Single Family Residential District that requires an 40 foot front yard setback.

INTERESTED PARTIES:

Owner: Eric Stidham
3720 Brandywine Road
Kingsport, TN 37660
(423)245-8071 Cell 423-817-0798
samstidham@charter.net

Applicant /Agent: Same as above

Engineer/Architect: Not Known

2. Case: 13-701-00004 – Property located at 1455 East Center Street Control Map 61C, Group C, Parcel 2.00 Requests a variance to [Sect.114-600 (d)(2)] in order to use the required perimeter landscaping strip for parking at this location. The property is located in a B-3, General Business District that requires a 10 foot landscaped strip on the perimeter of property abutting a public street.

INTERESTED PARTIES:

Owner: Phillip McManus
1425 East Center Street
Kingsport, TN 37664
(423)245-2181
pmcmanus2@charter.net

Applicant /Agent: Same as above

Engineer/Architect: Not Known

3. Case: 13-701-00005 – Properties located at 1401, 1405 Prospect Street and 1308 Post Street Control Map 61C, Group D, Parcel 4.00, 5.00 and 3.00 Requests a Special Exception as allowed in [Sect.114-563(4)] to construct a parking lot in a Single Family Residential District. The properties are located in a R-1B, Single Family Residential District that requires Board approval.

INTERESTED PARTIES:

Owner: Phillip McManus
1425 East Center Street
Kingsport, TN 37664

(423)245-2181
pmcmanus2@charter.net

Applicant /Agent: Same as above

Engineer/Architect: Not Known

4. Case: 13-701-00006 – Property located at 2300 Pavilion Drive Control Map 47A, Group , Parcel 28.60 Requests a Special Exception as allowed in [Sect.114-191(c)(2)] to establish a skilled nursing home facility (nursing home) in a P-1, Professional Office District.

INTERESTED PARTIES:

Owner: Mountain States Health Alliance
400 N. State of Franklin Road
Johnson City, TN 37604
(423)282-1804
carrht@msha.com

Applicant /Agent: Henry Carr
208 Sunset Drive Apt # 103
Johnson City, TN 37604
(423)282-1804
carrht@msha.com

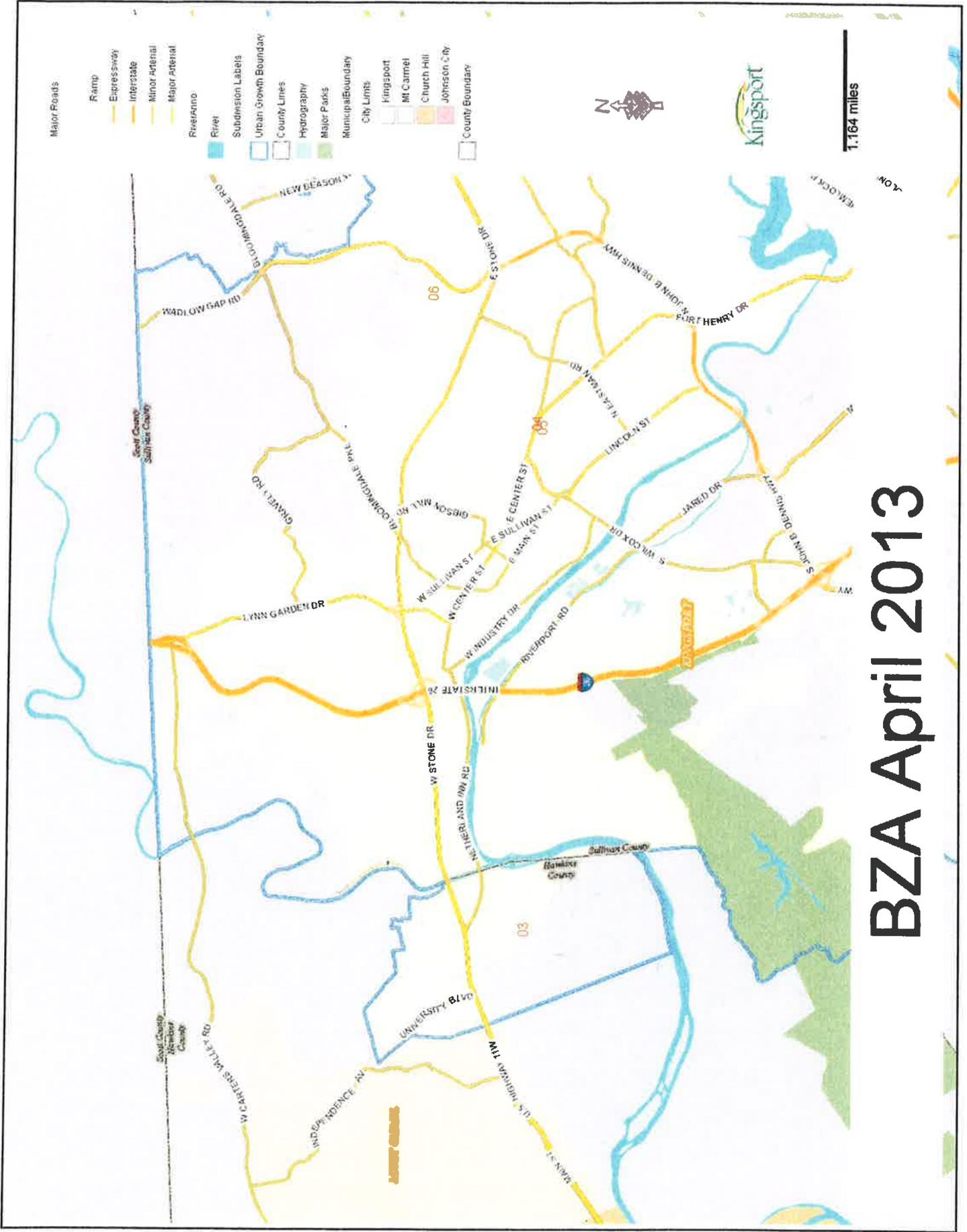
Engineer/Architect: Not Known

BUSINESS:

- Approval of the March 7, 2013 minutes.
- Stating for the public record, the next application deadline April 15, 2013 at noon, and meeting date (Thursday, May 2, 2013).
- Staff Reports

ADJUDICATION OF CASES:

ADJOURNMENT:



BZA April 2013

MEMORANDUM

TO: KINGSFORT BOARD OF ZONING APPEALS
FROM: Karen B. Combs, PRINCIPAL PLANNER
DATE: March 15, 2013
RE: 3720 Brandywine Road

The Board is asked to consider the following request:

Case: 13-701-00003 – Property located at 3720 Brandywine Road Control Map 22M, Group F, Parcel 13

Requests a front yard variance of 16 feet to [Sect.114-182 (e)(1)(c)] in order to construct an addition at this location. The property is located in a R-1A, Single Family Residential District that requires an 40 foot front yard setback.

APPLICATION
Board of Zoning Appeals



APPLICANT INFORMATION:			
Last Name	STIDHAM	First	ERIC
M.I.	L.	Date	2/14/13
Street Address	3720 BRANDYWINE ROAD		Apartment/Unit #
City	KINGSPORT	State	TN
Phone	423 245.8071	ZIP	37660
E-mail Address	SAM STIDHAM@CHARTER.NET		

PROPERTY INFORMATION:				
Tax Map Information	Tax map:	Group:	Parcel:	Lot:
Street Address	3720 BRANDYWINE ROAD			Apartment/Unit #
Current Zone	R-1A	Variance Request/ Special Exception		
Current Use	RESIDENCE	Proposed Use RESIDENCE		

REPRESENTATIVE INFORMATION:							
Last Name	STIDHAM	First	ERIC	M.I.	L.	Date	2/14/13
Street Address	3720 BRANDYWINE ROAD				Apartment/Unit #		
City	KINGSPORT	State	TN	ZIP	37660		
Phone	423.245.8071 / 423 817.0798		E-mail Address		SAM STIDHAM@CHARTER.NET		

REQUESTED ACTION:
REQUESTING VARIANCE ON YARD SETBACK FOR 16' x 30' ADDITION OF FAMILY ROOM / BASEMENT

DISCLAIMER AND SIGNATURE	114-182 (e)(1)(c)
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By signing below I state that I have read and understand the conditions of this application and have been informed as to the location, date and time of the meeting in which the Board of Zoning Appeals will review my application. I further state that I am/we are the sole and legal owner(s) of the property described herein and that I am/we are appealing to the Board of Zoning Appeals.

Signature: <i>Eric Stidham</i>	Date: 2/14/13
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Signed before me on this 15 day of Feb, 2013,
a notary public for the State of Tennessee
County of Sullivan

Notary Karen Bailey Combs
My Commission Expires March 1, 2017

Coned R-1A - Requires 40ft front yard setback

CITY PLANNING OFFICE

Received Date: 2-15-13

Received By: *Ka Coe*

Application Fee Paid: Due Day of mtg.

Board of Zoning Appeals Meeting Date: April 4, 2013

Section of Applicable Code: 114-182(e)(1)(e)

Building/Zoning Administrator Signature: *Dee Mangan*

Date: 3/18/13

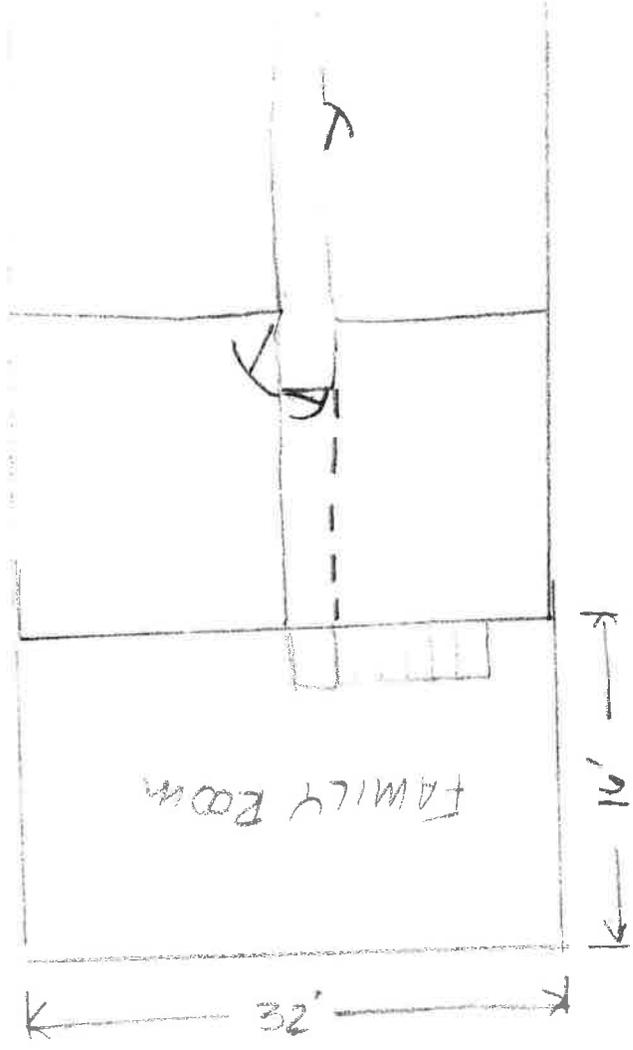
Completed Site Plans Received: No

Previous requests or file numbers: NONE

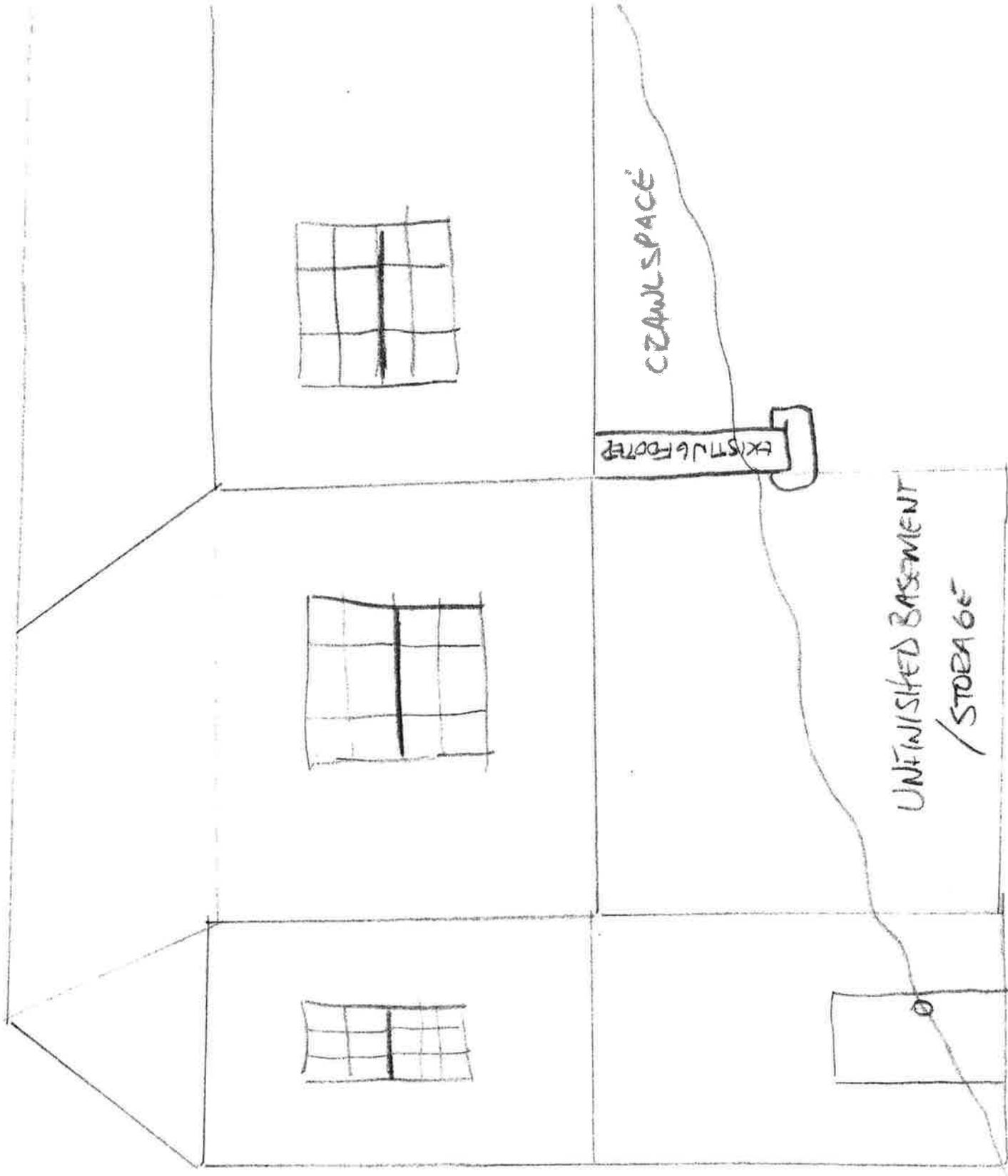
Signature of City Planner: *Ka Coe*

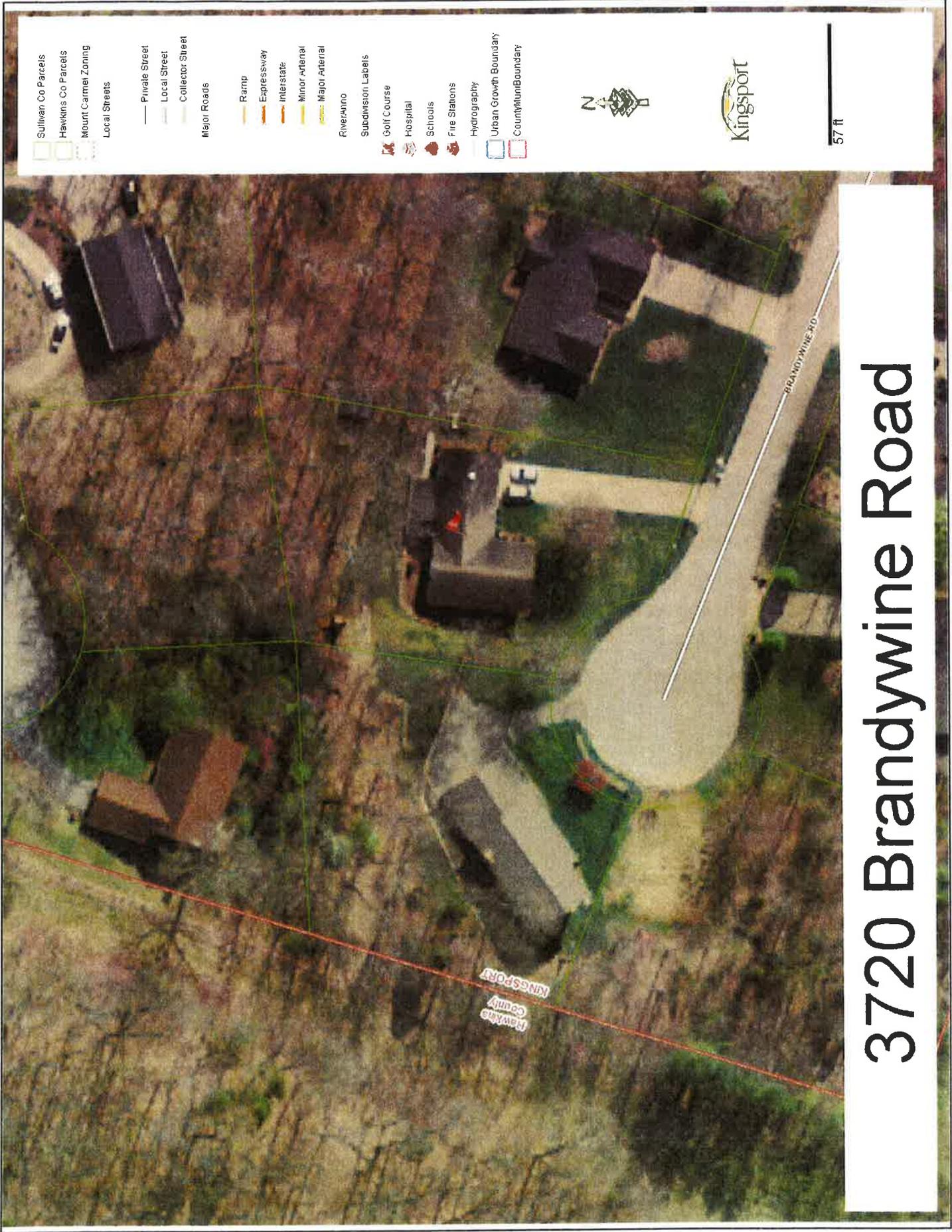
Date: 2-15-13

DRIVING IN THE ROOM



3720 BEANDY WINE ROAD





Sullivan Co Parcels
 Hawkins Co Parcels
 Mount Carmel Zoning
 Local Streets

Private Street
 Local Street
 Collector Street
 Major Roads

Ramp
 Expressway
 Interstate
 Minor Arterial
 Major Arterial
 River/Arroyo

Subdivision Labels

Golf Course
 Hospital
 Schools
 Fire Stations

Hydrography
 Urban Growth Boundary
 County/Muni Boundary



57 ft

3720 Brandywine Road

MEMORANDUM

TO: KINGSPOINT BOARD OF ZONING APPEALS
FROM: Karen B. Combs, PRINCIPAL PLANNER
DATE: March 15, 2013
RE: 1455 East Center Street

The Board is asked to consider the following request:

Case: 13-701-00004 – Property located at 1455 East Center Street Control Map 61C, Group C, Parcel 2.00

Requests a variance to [Sect.114-600 (d)(2)] in order to use the required perimeter landscaping strip for parking at this location. The property is located in a B-3, General Business District that requires a 10 foot landscaped strip on the perimeter of property abutting a public street.

APPLICATION
Board of Zoning Appeals



APPLICANT INFORMATION:			
Last Name McMANUS	First Phillip	M.I. E	Date 3/14/2013
Street Address 1425 E Center St		Apartment/Unit #	
City Kingsport	State TN	ZIP 37664	
Phone 423 245 2181	E-mail Address pmcmanus2@chartertn.net		

PROPERTY INFORMATION:			
Tax Map Information	Tax map: 61C Group: C Parcel: 200 Lot:		
Street Address 1455 E. Center St		Apartment/Unit #	
Current Zone B3	Variance Request/ Special Exception		
Current Use WareHouse - vacant	Proposed Use Retail		

REPRESENTATIVE INFORMATION:			
Last Name Same as above	First	M.I.	Date
Street Address		Apartment/Unit #	
City	State	ZIP	
Phone	E-mail Address		

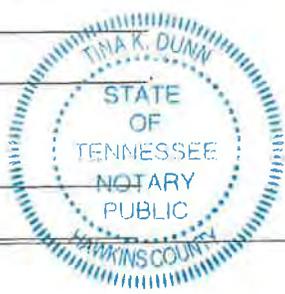
REQUESTED ACTION: Rear yard setback
10ft to be used as parking strip along road -
114-600(d)(2)

DISCLAIMER AND SIGNATURE

By signing below I state that I have read and understand the conditions of this application and have been informed as to the location, date and time of the meeting in which the Board of Zoning Appeals will review my application. I further state that I am/we are the sole and legal owner(s) of the property described herein and that I am/we are appealing to the Board of Zoning Appeals.

Signature: Phillip S. McManus	Date: 3/14/2013
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Signed before me on this 14 day of March, 2013
a notary public for the State of Tennessee
County of Sullivan
Notary Tina K Dunn
My Commission Expires 2/5/17



CITY PLANNING OFFICE

Received Date: 3-15-13

Received By: *[Signature]*

Application Fee Paid: 3-15-13

Board of Zoning Appeals Meeting Date: April 4, 2013

Section of Applicable Code: 114-600(d)(2)

Building/Zoning Administrator Signature: *[Signature]*

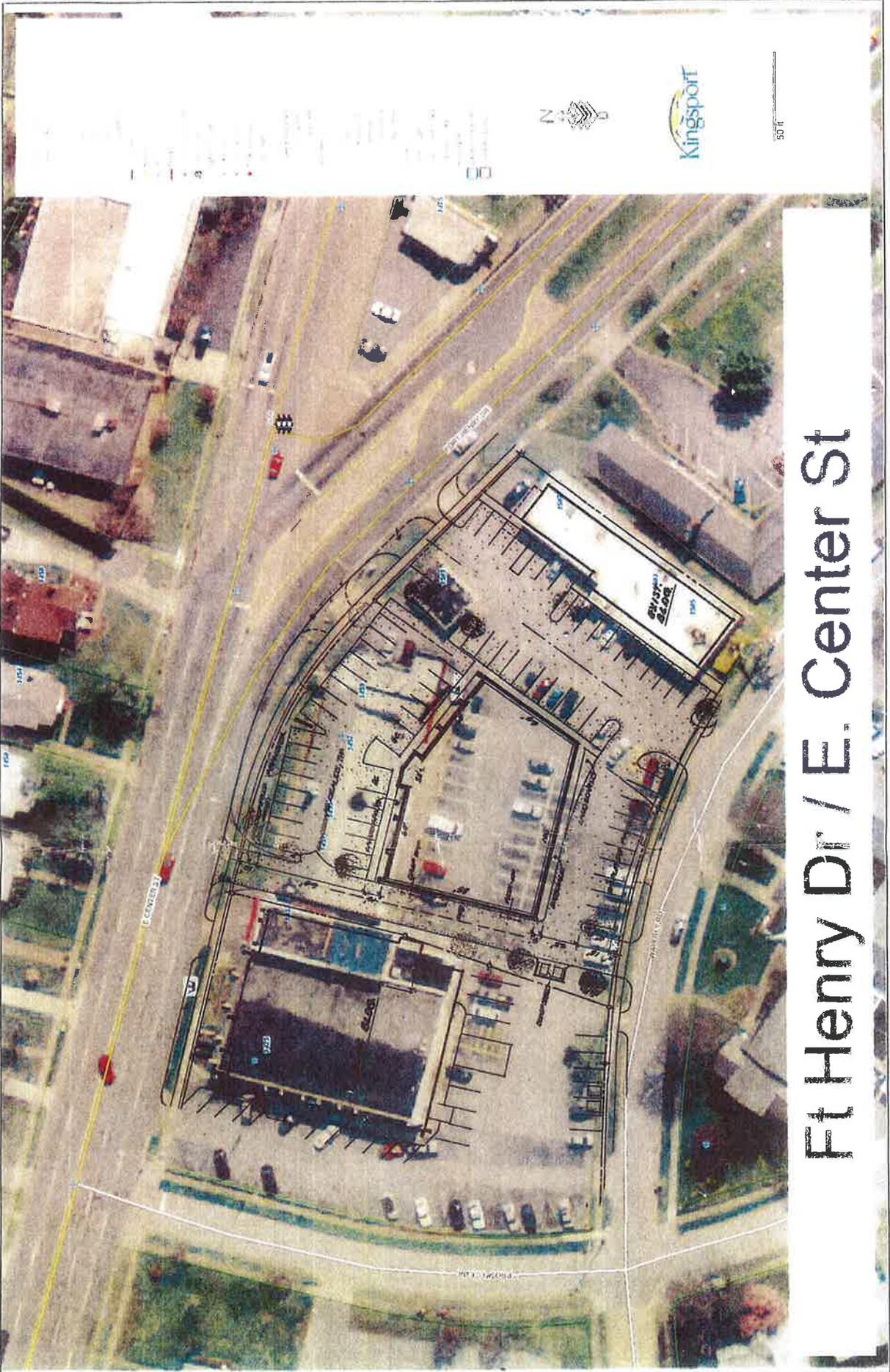
Date: 3/18/13

Completed Site Plans Received:

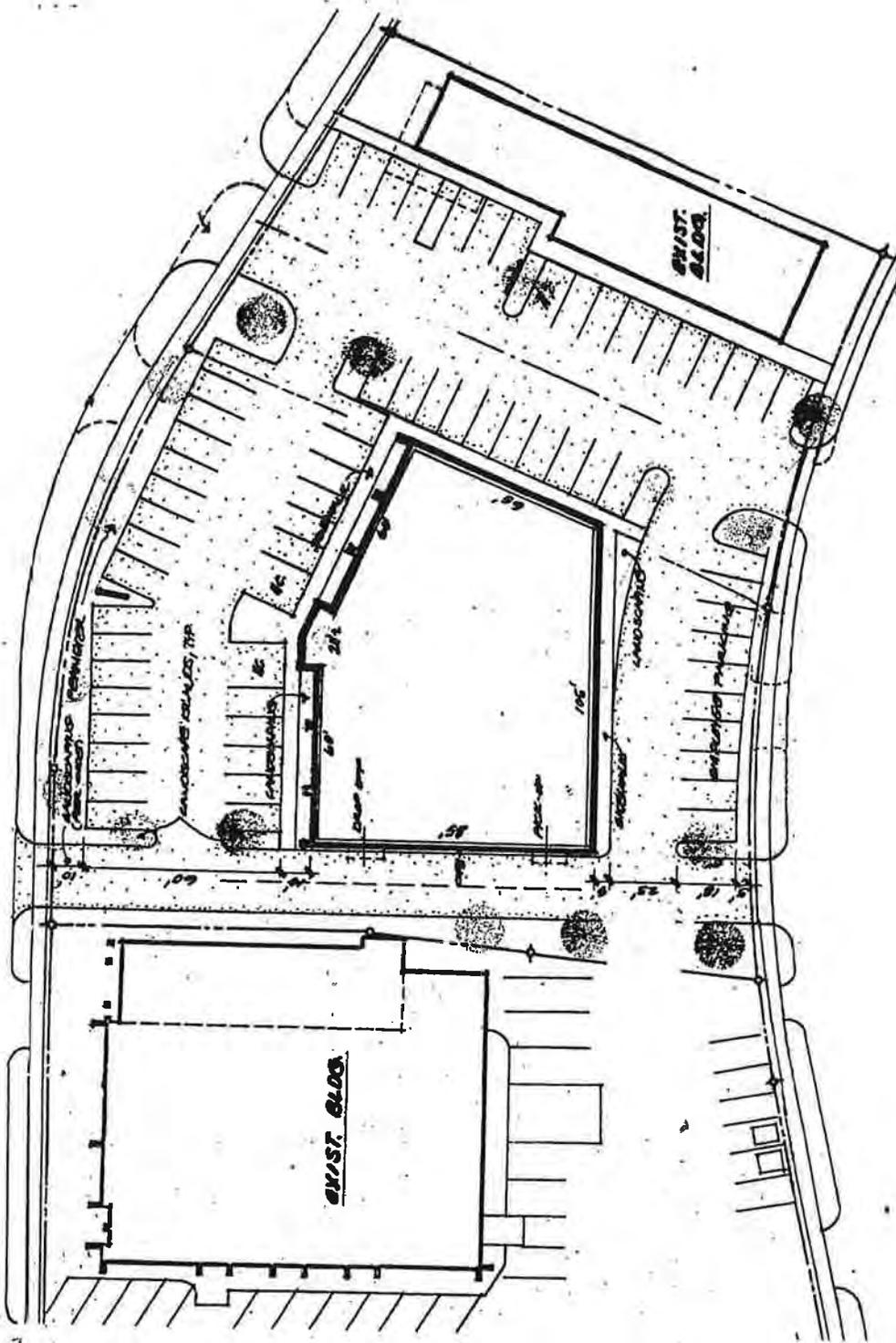
Previous requests or file numbers: NA

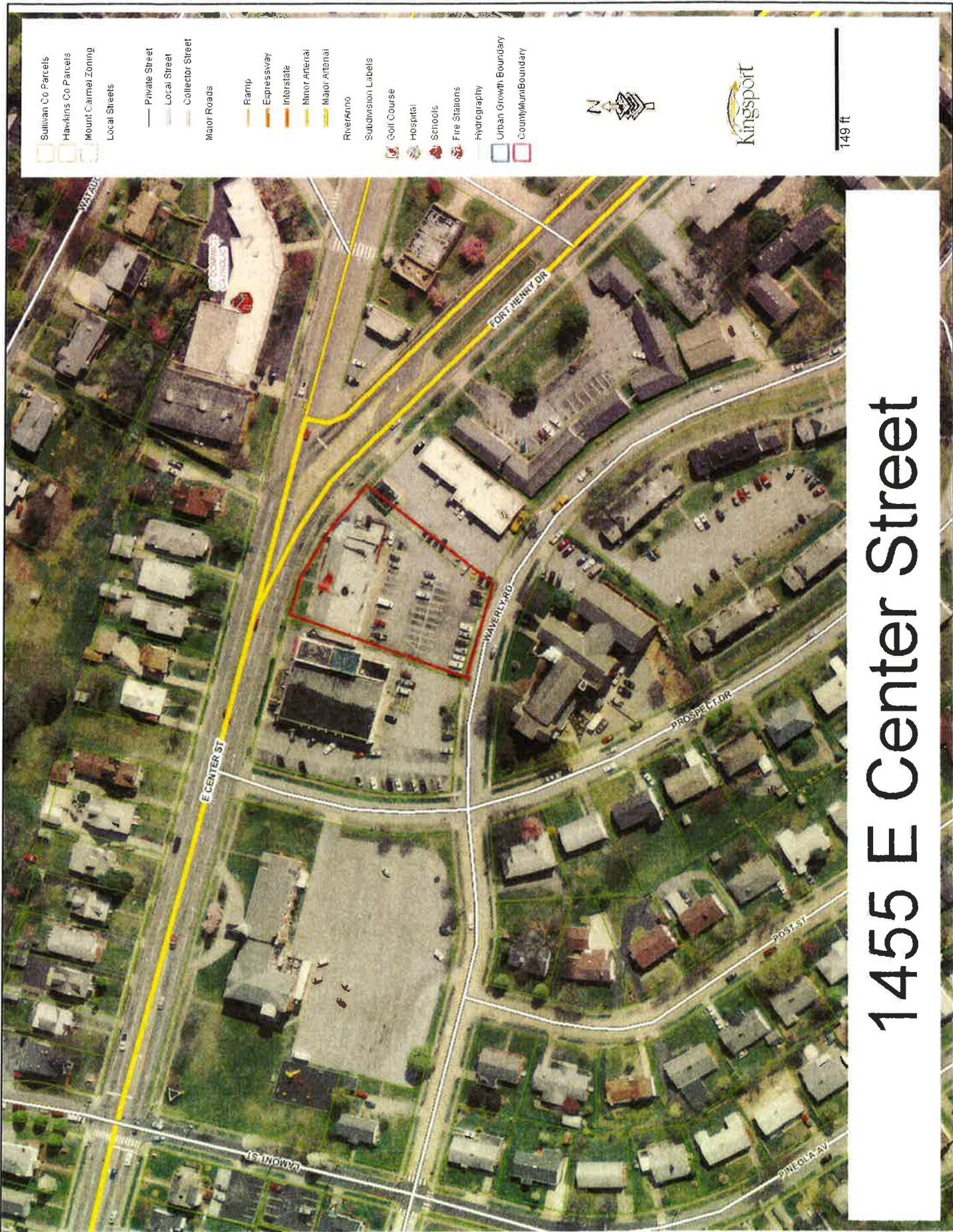
Signature of City Planner: *[Signature]*

Date: 3-15-13



Ft Henry Dr / E. Center St





1455 E Center Street

d. Reasons that the variance will preserve, not harm, the public safety and welfare and will not alter the essential character of the neighborhood.

Further, a variance may be granted only if the Board finds that such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zoning plan and this chapter. Variances shall not be granted permitting an increase in floor area or density above the maximum permitted by the zoning district; allowing a use other than those specifically authorized by this chapter in the applicable zoning district; or from the denial of a zoning permit when such denial is due to the fact that such lot has no frontage on a public street unless such lot was a lot of record on June 16, 1981.

Hardship - There is no definition of a "hardship". Some guidelines, based on legal precedent, for applying the concept of unnecessary hardship are:

1. The premises of cannot be used in a manner permitted by the Zoning Ordinance unless the variance is granted.
2. A strict application of the terms of the Zoning Ordinance precludes its use for any purpose to which the land is reasonably adopted.
3. Inability to put the property to its most profitable use DOES NOT constitute a "hardship".
4. Mere inconvenience to the applicant is not sufficient grounds for determining a "hardship". In granting a variance the BZA may not make any decision that is contrary to the purpose and intent of the Zoning Ordinance.

MEMORANDUM

TO: KINGSPOINT BOARD OF ZONING APPEALS
FROM: Karen B. Combs, PRINCIPAL PLANNER
DATE: March 15, 2013
RE: 1401 & 1405 Prospect Street and 1308 Post Street

The Board is asked to consider the following request:

Case: 13-701-00005 – Properties located at 1401, 1405 Prospect Street and 1308 Post Street Control Map 61C, Group D, Parcel 4.00, 5.00 and 3.00

Requests a Special Exception as allowed in [Sect.114-563(4)] to construct a parking lot in a Single Family Residential District. The properties are located in a R-1B, Single Family Residential District that requires Board approval.

To the Board of Zoning Appeal, March 6, 2013:

The proposed use is for employee parking for the hours of 7:30 a.m. to 7:00 p.m. and for Waverly Road Presbyterian Church and Mafair Church. Waverly Road Presbyterian Church also has a daycare and meals on wheels food service which would be better served by additional parking.

We currently have 22 employees at Mac's Medicine Mart. The churches have a significant number of members as well as other needs. Waverly Road is accessible and safe and this will provide more parking on these sites. Massive parking exists across Waverly Road at Mafair Church. This would be an extension of parking with the aesthetics being improved on the requested parcels by border screenings. Noise, traffic and dust would be minimal.

The fencing and screening along the periphery will be provided. The neighborhood's physical and environmental conditions should be about the same as they are at present. Health, safety and welfare should not be affected. This will not increase traffic or noise because the employees and the churches currently use Waverly Road.

Your kind consideration would be appreciated very much.

Due 10 @ noon -
Meeting Date March 7th @ Noon

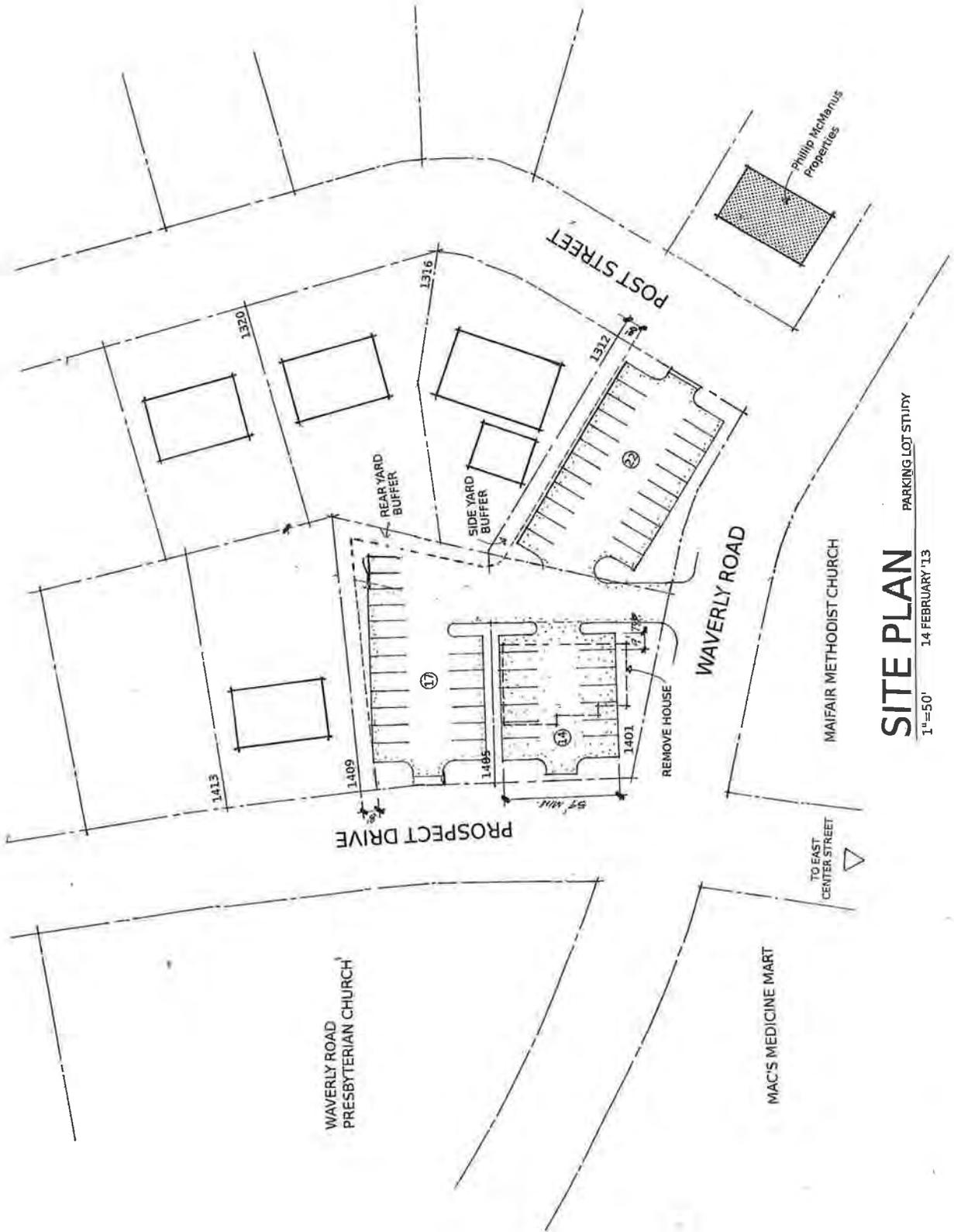
APPLICATION
Board of Zoning Appeals



APPLICANT INFORMATION:			
Last Name	McMANUS	First	Phillip
M.I.	E	Date	3/4/2013
Street Address	1425 E Center St		Apartment/Unit #
City	Kingsport	State	TN
ZIP	37664		
Phone	423-245-2181 579 6086	E-mail Address	pmcmanus2@chartertn.net
PROPERTY INFORMATION:			
Tax Map Information	Tax map:	Group:	Parcel: Lot:
Street Address	1401 & 1405 Prospect Dr + 1308 Post St		Apartment/Unit #
Current Zone	R2	Variance Request/ Special Exception	
Current Use	Housing	Proposed Use parking	
REPRESENTATIVE INFORMATION:			
Last Name	SAME as	First	
M.I.		Date	
Street Address	above		Apartment/Unit #
City		State	ZIP
Phone	E-mail Address		
REQUESTED ACTION:			
Special Exception to standards for parking to allow a parking lot in a residential zone & under same ownership Sect. 114-5203 (a)(b)			
114-563(4)			
DISCLAIMER AND SIGNATURE			
By signing below I state that I have read and understand the conditions of this application and have been informed as to the location, date and time of the meeting in which the Board of Zoning Appeals will review my application. I further state that I am/we are the sole and legal owner(s) of the property described herein and that I am/we are appealing to the Board of Zoning Appeals.			
Signature:	Phillip E. McManus		Date: 3/4/2013
Signed before me on this <u>4</u> day of <u>March</u> , 20 <u>13</u> , a notary public for the State of <u>Tennessee</u> County of <u>Sullivan</u>			
Notary <u>Kathy Payne</u>			
My Commission Expires <u>2-27-16</u>			



Building official: Dee Merga



SITE PLAN
1" = 50'
14 FEBRUARY '13
PARKING LOT STUDY

POST ST., PROSPECT DR., WAVERLY RD.

We the property owners on Post St., Prospect Dr., Waverly Rd. object to the rezoning for building of a parking lot on our street or the adjoining street in the back of our property. We feel this will lower our property value and create a serious water problem on our property.

Name	House No.	Phone No.
Wayne Noel	1329 Post St	247-9726
Lucia Noel	1329 Post St.	247-9726
Pamela Horton	1333 Post St.	247 4440
Angene Morrison	1528 Garden Dr.	245-7731
Kathleen Hyde	1320 Post	246-1231
Lore Winger		
Margaret Whisman		
Jane Whisman		
Mal He	1317 Post St	Post 723-5062
Bret Bud	1317 Post St.	
Marianne Adam	1214 Pine St	247-7984
Deanna Adam	1210 Pine St	247-7984
Delicia Morris	1313 Post St	578-1233
Kid Morris	1313 Post St	" "
Dorothy Clayman	1312 Post St.	246-4572
William Herman	Clayman 1312 Post St	246-4572
Brandi Walters	1325 Post St	3785215
Brandi Sharkey	1336 Post St.	378-5693
Shana Sharkey	1336 Post St.	378-5693
David Sharkey	1336 Post St.	378-5693
Gaelise Swagerty	1309 Post	791 6661
Judith Swagerty	1309 Post	791 6661
Margaret Swagerty	1305 Post	378-3702

POST ST., PROSPECT DR., WAVERLY RD.

We the property owners on Post St., Prospect Dr., Waverly Rd. object to the rezoning for building of a parking lot on our street or the adjoining street in the back of our property. We feel this will lower our property value and create a serious water problem on our property.

Name	House No.	Phone No.
Dexter J. Hunt	1006 Laurelwood	(423) 677-6760
Mildred Baker	1437 Carolina Ave.	423-246-6812
Chris Stout	1006 Laurelwood	(423) 292-0619
Tom A. A.	1006 Laurelwood	(423) 677-8927
Juan Steet	1006 Laurelwood Dr.	423-765-8722
J. Ellen Olinger	1316 Post St.	(423)-247-6584
Jersey M. Cannon	1308 Laurelwood St.	(423) 367-6411
Walter & Mary Fleming	1333 Pineola Ave.	(423) 247-2060
Ann Diller Water	1324 Post St.	423-247-8555
Scott Simonds	134 Keystone	333-7241
Susanne Simonds	1324 Post St.	247-8555

POST ST., PROSPECT DR., WAVERLY RD.

We the property owners on Post St., Prospect Dr., Waverly Rd. object to the rezoning for building of a parking lot on our street or the adjoining street in the back of our property. We feel this will lower our property value and create a serious water problem on our property.

Name	House No.	Phone No.
Bruce Fitch	1409 Prospect	
Harold Fitch	1409 Prospect	
Angela Fitch	1409 Prospect	
Daniel Fitch	1409 Prospect	
Jammy Collette	1430 Prospect	
Lindsay Chappel	1430 Prospect	
John Berger		
Bobby Basengeer		
Tom A. Queen	1417 Prospect	
Renee Queen	1417 Prospect	

POST ST., PROSPECT DR., WAVERLY RD.

We the property owners on Post St., Prospect Dr., Waverly Rd. object to the rezoning for building of a parking lot on our street or the adjoining street in the back of our property. We feel this will lower our property value and create a serious water problem on our property.

Name	House No.	Phone No.
Lena Rogers	Prospect Dr	
Aaron Rogers	Prospect Dr	
Fredrick Smith		
ANTHONY SMITH		
Jack Pierce		
BETSY PIERCE		
Bon Chappell		
Waverly Rd		
Lynn Cole	Post St.	

POST ST., PROSPECT DR., WAVERLY RD.

We the property owners on Post St., Prospect Dr., Waverly Rd. object to the rezoning for building of a parking lot on our street or the adjoining street in the back of our property. We feel this will lower our property value and create a serious water problem on our property.

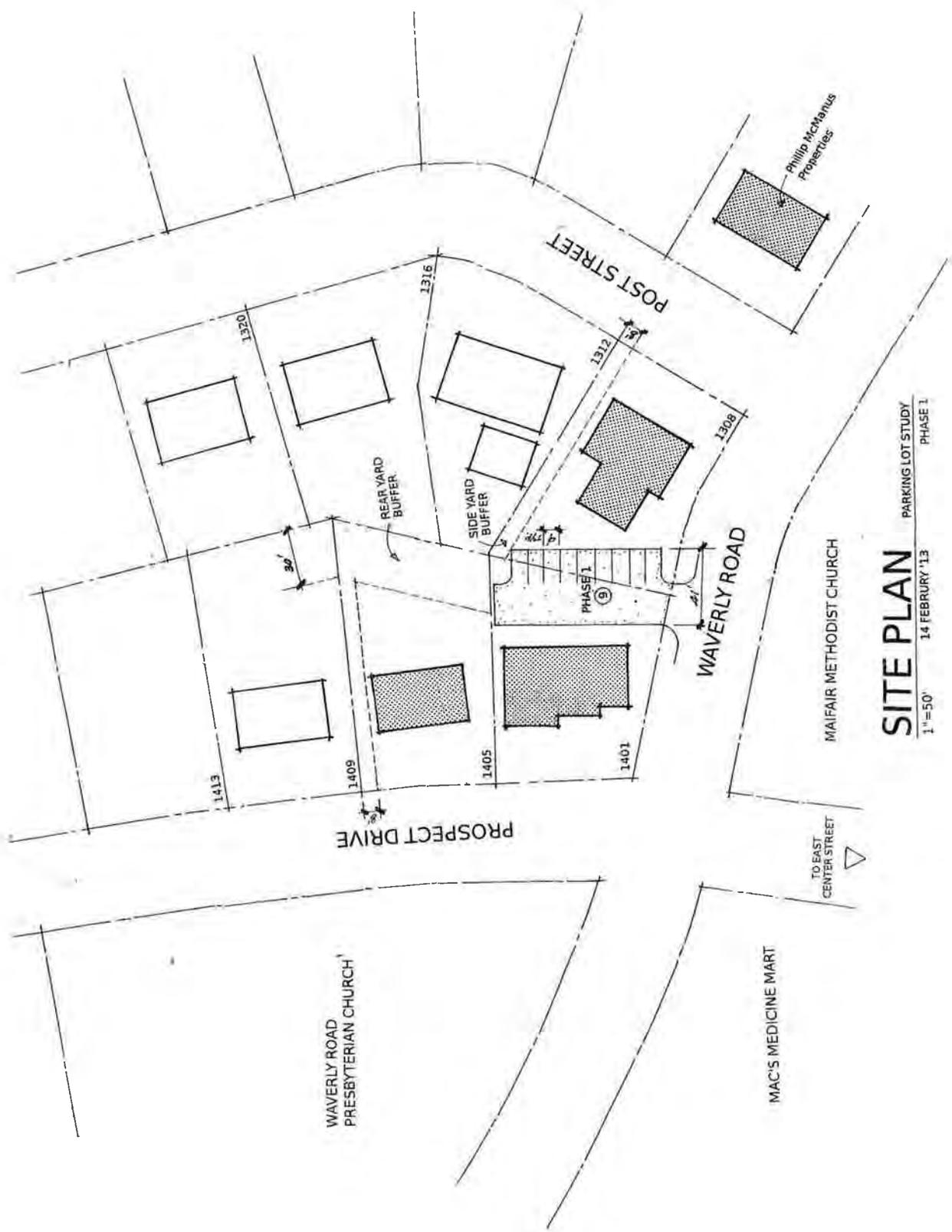
Name *Marilyn Hicks* House No. *1332 Post St* Phone No. *(423-429-5941)*

This issue will cause this nice, relatively quiet neighborhood, more traffic, less privacy, more noise, littering, will lessen the appeal to the property in the area, and cause a fall in property value.

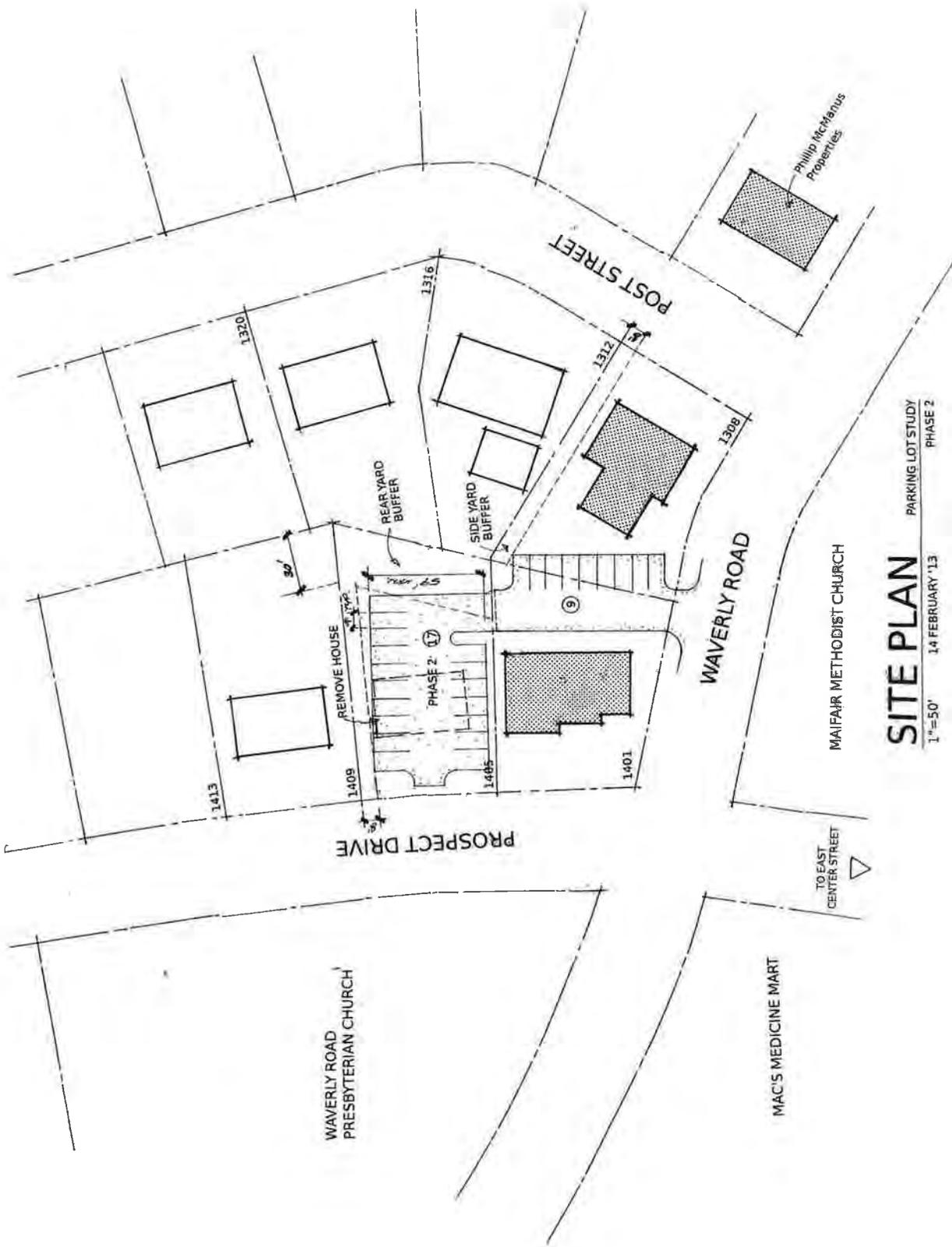
POST ST., PROSPECT DR., WAVERLY RD.

We the property owners on Post St., Prospect Dr., Waverly Rd. object to the rezoning for building of a parking lot on our street or the adjoining street in the back of our property. We feel this will lower our property value and create a serious water problem on our property.

Name	House No.	Phone No.
Mary Spel		239-4773
Elizabeth		276-1249
Sandra Ketrin		967-8310
Nancy Fatin		608-7616
Pam Ketrin		600-4462



SITE PLAN
 1" = 50'
 14 FEBRUARY '13
 PARKING LOT STUDY
 PHASE 1



SITE PLAN

1" = 50' 14 FEBRUARY '13 PHASE 2

PARKING LOT STUDY

PHASE 2

TO EAST CENTER STREET



MAIFAIR METHODIST CHURCH

MAC'S MEDICINE MART

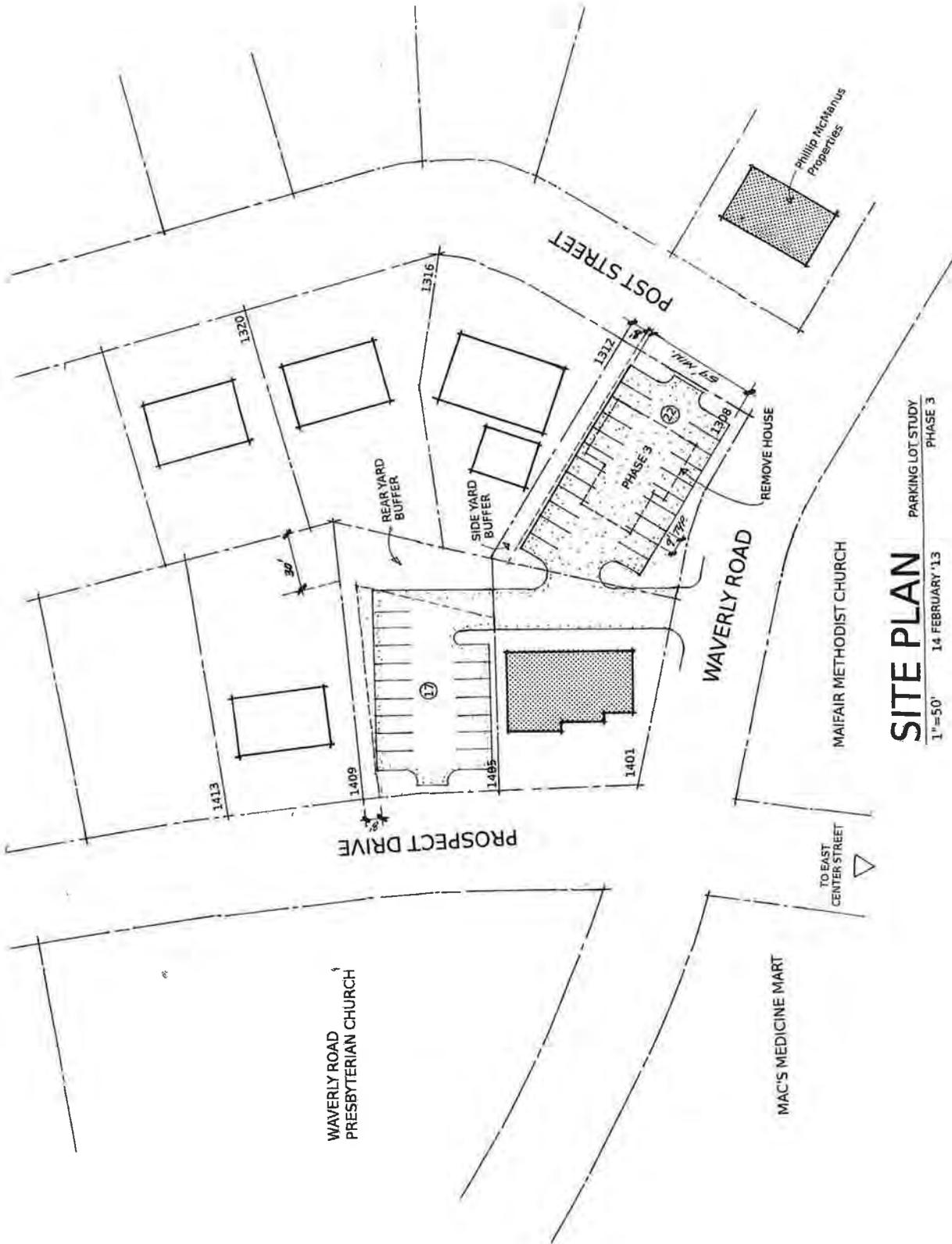
WAVERLY ROAD PRESBYTERIAN CHURCH

Phillip Mechanus Properties

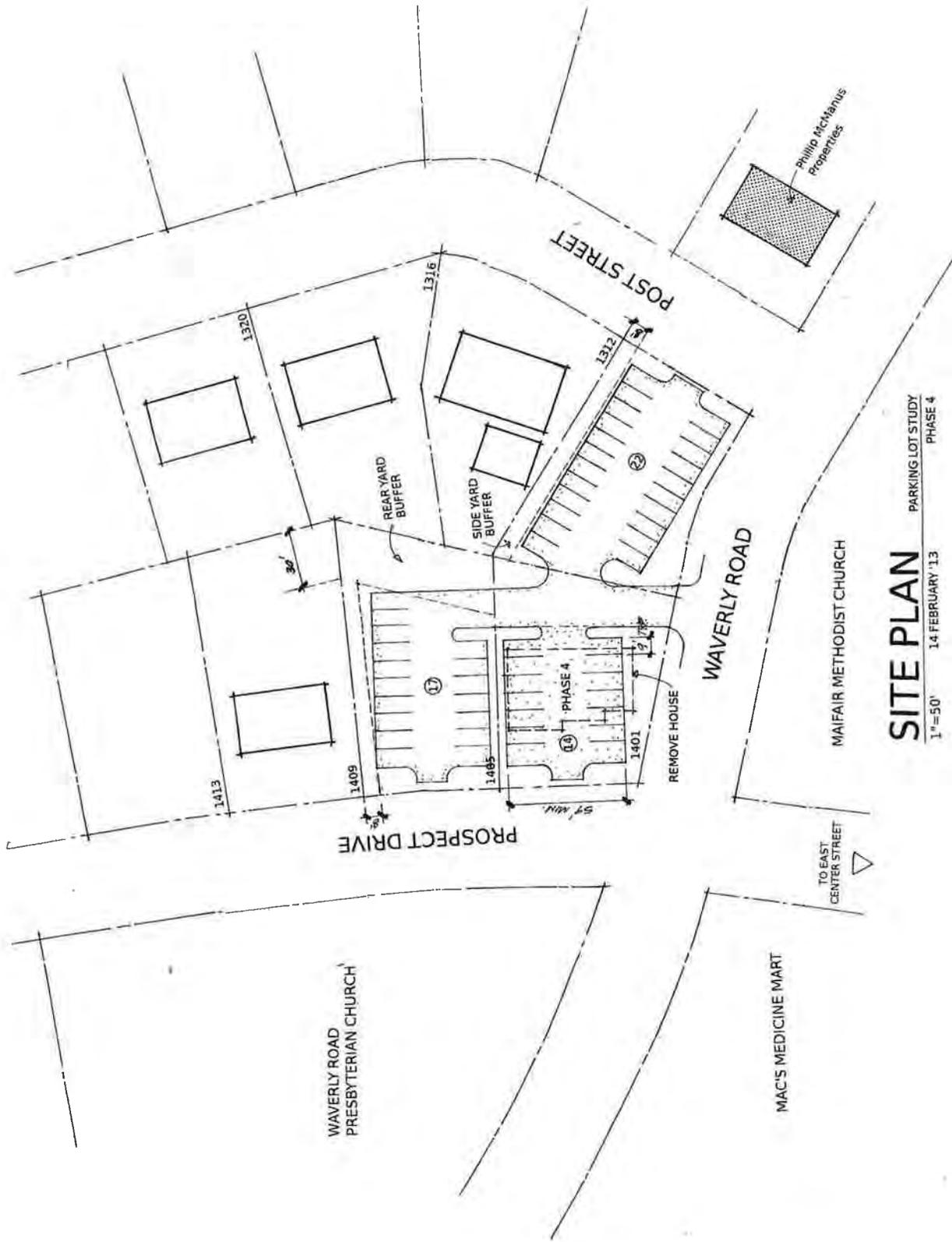
POST STREET

WAVERLY ROAD

PROSPECT DRIVE



SITE PLAN
 1"=50' 14 FEBRUARY '13
 PARKING LOT STUDY
 PHASE 3



SITE PLAN

PARKING LOT STUDY
PHASE 4

1" = 50' 14 FEBRUARY '13

**Special Exception Worksheet
for**

**Case: 13-701-00005 – Properties located at 1401, 1405 Prospect Street and 1308 Post Street
Control Map 61C, Group D, Parcel 4.00, 5.00 and 3.00**

Standards for Special Exception Use Variances

A Special Exception allows a use of land that is not permitted in the district in which the property is placed. Because this type of relief is so significant, granting of a special exception requires the existence of an unnecessary hardship, which is demonstrated by showing that:

1. The property would be uniquely restricted from a reasonable use for the purposes permitted in that zone district.

The principle behind a special exception is that it is necessary because the property is so uniquely restrictive that it cannot be reasonably used as it is zoned. Therefore, a thorough review is needed to first establish that none of the uses currently permitted in the district are appropriate for the property. While it is true that financial considerations are not generally the subject of review for variances, this standard may be satisfied by a finding that the property would essentially be valueless if an attempt were made to develop it as zoned. Part of this review will require determining if the property can be reasonably used for any of the uses permitted in the district. This does not mean that the use has to be the most profitable, or the use proposed by the applicant. It only requires a finding that there is one or more uses permitted in the district which could reasonably be placed on the property.

2. The plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions.

This standard is generally similar to that for variances, particularly with respect to the necessity for having unique circumstances that are specific to a property and not related to the applicant's personal situation. The other important aspect is the requirement that the situation on the property not be common in the area. If conditions are common to the area, a special exception would not be appropriate because the area should be reviewed by the planning commission to determine if the zoning for the entire area should be changed. But that is the function of the planning commission and not that of the zoning board of appeals.

3. The use would not alter the essential character of the area.

Probably the most difficult aspect of this standard is determining what the essential character of an area is, and if the special exception is approved, what effect might the special exception have on that character.

What is the “area” affected by a use variance?

The “area” which may be affected by a special exception will depend on the nature of the request and the size of the property that is the subject of the requested special exception. For example, a small residential lot requesting a use variance for an office will affect a smaller area than a request on a large site for an intensive commercial use. One of the easiest ways to determine the essential character of an area is through a site visit to examine the area and see the various land uses that exist. In some cases the character may be evidenced simply by the dominance of one land use over any others. In others it may not be as obvious. For example, some areas may have a wide variety of uses, occupying different sizes of lots. Viewing the area may not directly lead to a conclusion as to the character of the area and may require some degree of judgment.

Another way to determine the character of an area and the possible effect of a special exception is to examine the community’s master plan. The plan may clearly indicate the existing or intended character of an area. The BZA may also seek the advice of the planning commission to help interpret the master plan, or to provide guidance when there is no plan or if it is out-of-date. Any opinion of the commission is simply advice, and should be considered only as input to the BZA’s deliberations. After determining the essential character, the next step is to evaluate whether or not approval of the special exception would alter that character. This decision might hinge on whether or not the proposed use variance may tip the scales in one direction or another. If an area appears to be in transition from a residential to commercial area, for example, a commercial use special exception may be appropriate. However, if the specific character of the area is unclear, a special exception may not be appropriate since it could tend to establish a specific character. This type of decision will require the exercise of discretion by members of the BZA, as assisted by staff and consultants.

4. The problem is not self-created.

This standard is essentially the same as that for variances. If the applicant created a particular situation that made a property essentially unusable as zoned, that applicant would not be entitled to relief by approval of a special exception. For example, if a property owner subdivides a large, residentially zoned property, leaving a corner lot as an isolated parcel, an argument that the parcel should only be used for nonresidential purposes could fail because the parcel was created by the direct action of the applicant.

5. The other general requirements are met.

As in the case of variances, an applicant must show that the special exception meets the state law requirements, that the spirit of the ordinance shall be observed, public safety secured and substantial justice done.

***** FYI Use Variances and Rezoning - The Paragon Rule**

Understanding use variances was made more important by a 1996 decision of the Michigan Supreme Court, *Paragon Properties Company v City of Novi*, (452 Mich 568, 550 NW2d 772 (1996)) in which the court required a “final decision” of the municipality. Under the *Paragon* decision, it will not be deemed that a final decision has been rendered by the municipality until the property owner seeks a use variance from the Board of Zoning Appeals. The *Paragon* decision, therefore, requires submission of a use variance application following a rezoning request denial by the legislative body before any legal disputes may be brought before the court.

MEMORANDUM

TO: KINGSFORT BOARD OF ZONING APPEALS
FROM: Karen B. Combs, PRINCIPAL PLANNER
DATE: March 15, 2013
RE: 2300 Pavilion Drive

The Board is asked to consider the following request:

Case: 13-701-00006 – Property located at 2300 Pavilion Drive Control Map 47A, Group , Parcel 28.60

Requests a Special Exception as allowed in [Sect.114-191(c)(2)] to establish a skilled nursing home facility (nursing home) in a P-1, Professional Office District.

APPLICATION
Board of Zoning Appeals



APPLICANT INFORMATION: Henry T Carr on behalf of

Last Name	Mountain States Health Alliance	First	Henry	M.I.		Date	3-15-2013
Street Address	400 W. State Franklin Rd			Apartment/Unit #			
City	Johnson City	State	TN	ZIP		37604	
Phone	423-282-1804	E-mail Address		carrht@MSNA.com			

PROPERTY INFORMATION:

Tax Map Information Tax map: 047H Group: Parcel: Lot: 0471A 028, 60

Street Address	2300 Pavilion Drive	Apartment/Unit #	
Current Zone	P-1	Proposed Zone	P-1
Current Use	Psychiatric Hospital	Proposed Use	Licensed Skilled Nursing Facility

REPRESENTATIVE INFORMATION:

Last Name	CARR	First	Henry	M.I.	T	Date	3/15/2013
Street Address	208 Sunset pr			Apartment/Unit # 103			
City	Johnson City	State	TN	ZIP		37604	
Phone	423-282-1804	E-mail Address		hcarr@corridorproperties.com			

REQUESTED ACTION:

This request is to change the use of the building from a psychiatric hospital to an skilled nursing facility that will provide short term rehabilitation services for area patients to enhance the continuum of care in the Kingsport market

DISCLAIMER AND SIGNATURE

114-191(c)(2)

By signing below I state that I have read and understand the conditions of this application and have been informed as to the location, date and time of the meeting in which the Board of Zoning Appeals will review my application. I further state that I am/we are the sole and legal owner(s) of the property described herein and that I am/we are appealing to the Board of Zoning Appeals.

Signature: Henry T Carr Jr. Date: 3-15-2013

Signed before me on this 15th day of March, 2013
 a notary public for the State of Tennessee
 County of Washington
 Notary Laraine Dover
 My Commission Expires Sept. 28, 2016



CITY PLANNING OFFICE

Received Date: 3-15-13

Received By: 

Application Fee Paid:

Board of Zoning Appeals Meeting Date: 4-4-13

Section of Applicable Code: 114-191(L)(2)

Building/Zoning Administrator Signature: 

Date: 3/18/13

Completed Site Plans Received: N/A

Previous requests or file numbers: N/A

Signature of City Planner: 

Date: 3-15-13

MINUTES KINGSPORT BOARD OF ZONING APPEALS (BZA)

Thursday March 7, 2013

10:30 a.m.

Tour of property at 2016 East Sevier Avenue

MEMBERS PRESENT:
Leland Leonard, Chairman
Frank Oglesby, Vice Chairman
Diane Hills

MEMBERS ABSENT:
Bob Winstead Jr
Bill Sumner

STAFF PRESENT:
Karen Combs

Chairman Leonard, Vice Chairman Oglesby and Board Member Hills visited the site at 2016 East Sevier Avenue after passing Eastman. The Board members were unclear on exactly where the property line was located in reference to the house. There was no other discussion concerning the case.

Chairman Leonard did ask if the signage on the new Urgent Care was within the City Code. Staff informed him that the location is in a B-4P that item went to the Planning Commission for review per the planning Director. Chairman Leonard stated that if the signage was over what was allowed for the development as a whole as set out in the code then staff should have brought the matter to the Board of Zoning Appeals as well. Staff referred further inquiries to the Planning Director Lynn Tully.

The Board had lunch at Henry's restaurant, no items were discussed. The Board then arrived at the Development Services building for the scheduled meeting at noon.

_____ Karen B. Combs, Principal Planner

**Special Exception Worksheet
for**

**Case: 13-701-00006 – Property located at 2300 Pavilion Drive Control Map 47A, Group ,
Parcel 28.60**

Standards for Special Exception Use Variances

A Special Exception allows a use of land that is not permitted in the district in which the property is placed. Because this type of relief is so significant, granting of a special exception requires the existence of an unnecessary hardship, which is demonstrated by showing that:

1. The property would be uniquely restricted from a reasonable use for the purposes permitted in that zone district.

The principle behind a special exception is that it is necessary because the property is so uniquely restrictive that it cannot be reasonably used as it is zoned. Therefore, a thorough review is needed to first establish that none of the uses currently permitted in the district are appropriate for the property. While it is true that financial considerations are not generally the subject of review for variances, this standard may be satisfied by a finding that the property would essentially be valueless if an attempt were made to develop it as zoned. Part of this review will require determining if the property can be reasonably used for any of the uses permitted in the district. This does not mean that the use has to be the most profitable, or the use proposed by the applicant. It only requires a finding that there is one or more uses permitted in the district which could reasonably be placed on the property.

2. The plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions.

This standard is generally similar to that for variances, particularly with respect to the necessity for having unique circumstances that are specific to a property and not related to the applicant's personal situation. The other important aspect is the requirement that the situation on the property not be common in the area. If conditions are common to the area, a special exception would not be appropriate because the area should be reviewed by the planning commission to determine if the zoning for the entire area should be changed. But that is the function of the planning commission and not that of the zoning board of appeals.

3. The use would not alter the essential character of the area.

Probably the most difficult aspect of this standard is determining what the essential character of an area is, and if the special exception is approved, what effect might the special exception have on that character.

What is the “area” affected by a use variance?

The “area” which may be affected by a special exception will depend on the nature of the request and the size of the property that is the subject of the requested special exception. For example, a small residential lot requesting a use variance for an office will affect a smaller area than a request on a large site for an intensive commercial use. One of the easiest ways to determine the essential character of an area is through a site visit to examine the area and see the various land uses that exist. In some cases the character may be evidenced simply by the dominance of one land use over any others. In others it may not be as obvious. For example, some areas may have a wide variety of uses, occupying different sizes of lots. Viewing the area may not directly lead to a conclusion as to the character of the area and may require some degree of judgment.

Another way to determine the character of an area and the possible effect of a special exception is to examine the community’s master plan. The plan may clearly indicate the existing or intended character of an area. The BZA may also seek the advice of the planning commission to help interpret the master plan, or to provide guidance when there is no plan or if it is out-of-date. Any opinion of the commission is simply advice, and should be considered only as input to the BZA’s deliberations. After determining the essential character, the next step is to evaluate whether or not approval of the special exception would alter that character. This decision might hinge on whether or not the proposed use variance may tip the scales in one direction or another. If an area appears to be in transition from a residential to commercial area, for example, a commercial use special exception may be appropriate. However, if the specific character of the area is unclear, a special exception may not be appropriate since it could tend to establish a specific character. This type of decision will require the exercise of discretion by members of the BZA, as assisted by staff and consultants.

4. The problem is not self-created.

This standard is essentially the same as that for variances. If the applicant created a particular situation that made a property essentially unusable as zoned, that applicant would not be entitled to relief by approval of a special exception. For example, if a property owner subdivides a large, residentially zoned property, leaving a corner lot as an isolated parcel, an argument that the parcel should only be used for nonresidential purposes could fail because the parcel was created by the direct action of the applicant.

5. The other general requirements are met.

As in the case of variances, an applicant must show that the special exception meets the state law requirements, that the spirit of the ordinance shall be observed, public safety secured and substantial justice done.

***** FYI Use Variances and Rezonings - The Paragon Rule**

Understanding use variances was made more important by a 1996 decision of the Michigan Supreme Court, *Paragon Properties Company v City of Novi*, (452 Mich 568, 550 NW2d 772 (1996)) in which the court required a “final decision” of the municipality. Under the *Paragon* decision, it will not be deemed that a final decision has been rendered by the municipality until the property owner seeks a use variance from the Board of Zoning Appeals. The *Paragon* decision, therefore, requires submission of a use variance application following a rezoning request denial by the legislative body before any legal disputes may be brought before the court.

MINUTES KINGSPORT BOARD OF ZONING APPEALS (BZA)

Thursday march 7, 2013

NOON

Bob Clear Conference Room, on the first floor of the Development Services Building

MEMBERS PRESENT:

Leland Leonard, Chairman
Frank Oglesby, Vice Chairman
Bob Winstead Jr
Diane Hills

MEMBERS ABSENT:

Bill Sumner

STAFF PRESENT:

Karen Combs

VISITORS:

Mary Miller

Carol Wellman

Chairman Leonard called the meeting to order.

Chairman Leonard then explained the meeting procedures.

Public Hearing:

Case: 13-701-00002 – Property located at 2016 East Sevier Avenue Control Map 61L, Group K, Parcel 8 Requested a side yard variance of 5.3 feet to [Sect.114-183 (e)(1)(d)] in order to construct a carport at this location. The property is located in a R-1B, Single Family Residential District that requires an 8 foot side yard setback. Ms. Mary Miller was sworn in by Karen Combs. Ms. Miller presented the case to the Board. In her presentation she stated that she wanted to construct a covered carport on the existing concrete slab. The Board asked for specific measurements from the rear of the proposed construction to the property line. Ms. Miller did not have those available. The Board also commented on the fact that there were no other carports in the neighborhood that have been constructed after the house. All current carports appear to have been built with the houses. Ms. Miller presented to the Board a picture of a porch that was constructed in the manner in which she would like to build her carport. The Board viewed the picture and clarified that this structure was a porch not a carport and was built within all setbacks.

Seeing no one else wishing to speak, Chairman Leonard closed the Public Hearing.

Other Business:

On a motion by Bob Winstead, the Board voted unanimously to approve the February 7, 2013 minutes as mailed.

The BZA stated for the public record the next application deadline on March 15, 2013 at noon and that the next meeting date would be on April 4, 2013.

Staff had no report this month.

Adjudication of Case:

Case: 13-701-00002 – Property located at 2016 East Sevier Avenue Control Map 61L, Group K, Parcel 8

During discussion of this item it was noted that the applicant did not have the right measurements for the item in question. The Board asked specifically for measurements from the house to the property line, the edge of the concrete to the property line and from the back edge of the proposed carport to the property line so that an accurate setback measurement could be established.

MOTION: made by Bob Winstead; seconded by Frank Oglesby – To table the request until the April 4, 2013 meeting so that the petitioner could obtain a surveyor to supply the correct measurements to the Board for review.

VOTE: 3-0 to table the item until April 4, 2013 meeting.

With no further business the meeting was adjourned.

_____ Karen B. Combs, Principal Planner