

**KINGSPORT BOARD OF ZONING APPEALS AGENDA**

**Thursday, September 6, 2012**

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: 12-701-00006 – Property located at 694 Clinchfield Street; Control Map 46H, Group C, Parcel 07.00** Requests a special exception use as provided in Sec. 114-200(c)(6) in order to establish a church.

***INTERESTED PARTIES:***

Owner: Joseph Morin  
517 Lakewood Road  
Kingsport, TN 37660  
(423)963-1075

Applicant /Agent: Kevin Morris  
5848 Seneca Road  
Kingsport, TN 37664  
(423)571-8213  
kTmorris@eastman.com

Engineer/Architect: Same As Above

**2. Case: 12-701-00007 – Property located at 3212 Hull Drive; Control Map 77H, Group B, Parcel 09.00** Requests variance of 5 feet 7 inches to the front yard setback requirement [Sect.114-192.(e)(1)(c)] in order to construct a porch in a R-1B, Single Family Residential District. The code requires a 30 foot front yard setback.

***INTERESTED PARTIES:***

Owner: Alan Pairgin  
3212 Hull Drive  
Kingsport, TN 37664  
(423)677-3400  
apairgin@hotmail.com

Applicant /Agent: Same As Above

Engineer/Architect: Same As Above

**3. Case: 12-701-00008 – Property located at 2001 East Sevier Avenue; Control Map 61L, Group K, Parcel 03.00** Requests variance of 1 foot to the accessory building placement requirement [Sect.114-139.(2)] in order to construct a covered carport/ picnic area in a R-1B, Single Family Residential District. The code requires any accessory structure to be placed five foot from the principle structure.

***INTERESTED PARTIES:***

Owner: Judy Leach  
2001 East Sevier Avenue  
Kingsport, TN 37664  
(423)765-1240  
Judy Leach@charter.net

Applicant /Agent: Same As Above

Engineer/Architect: Same As Above

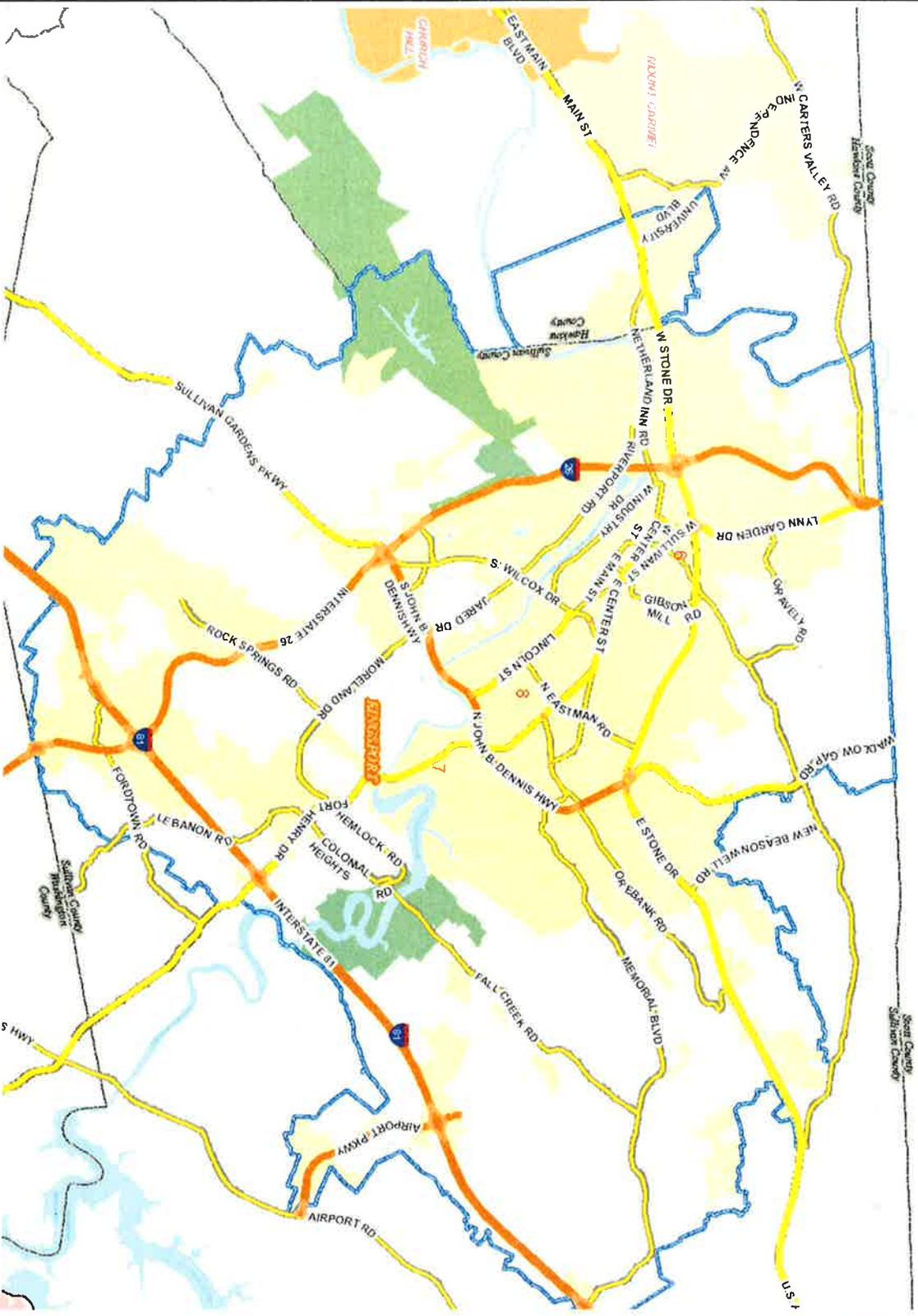
**BUSINESS:**

- Approval of the June 7, 2012 minutes.
- Stating for the public record, the next application deadline September 17, 2012 at noon, and meeting date (Thursday, October 4, 2012).
- Staff Reports

**ADJUDICATION OF CASES:**

**ADJOURNMENT:**

# September 2012 BZA Meeting



- River/Anno
- River
- Subdivision Labels
- County Lines
- Hydrography
- Major Parks
- Municipal Boundary
- City Limits
- Kingsport
- Mt Carmel
- Church Hill
- Johnson City
- County Boundary



1.934 miles

## MEMORANDUM

TO: KINGSPOINT BOARD OF ZONING APPEALS  
FROM: Karen B. Combs, PRINCIPAL PLANNER  
DATE: August 16, 2012  
RE: 694 Clinchfield Street

The Board is asked to consider the following request:

**Case: 12-701-00006 – Property located at 694 Clinchfield Street; Control Map 46H, Group C, Parcel 07.00** Requests a special exception use as provided in Sec. 114-200(c)(6) in order to establish a church.

**APPLICATION**  
Board of Zoning Appeals

Kingsport

12-701-00086

**APPLICANT INFORMATION:**

Last Name Morin First Joseph M.I. R Date 8/14/12  
Street Address ~~694 Clinchfield St~~ 517 Lakewood Rd Apartment/Unit #  
City Kingsport TN State TN ZIP 37660  
Phone 423-963-1075 E-mail Address J.Morin@6mail.com

**PROPERTY INFORMATION:**

Tax Map Information Tax map: 46H Group: C Parcel: 7.0 Lot:  
Street Address 694 Clinchfield St. Apartment/Unit #  
Current Zone P1 Proposed Zone  
Current Use VACANT Proposed Use

**REPRESENTATIVE INFORMATION:**

Last Name Morris First Kevin M.I. T Date 8/14/12  
Street Address 5848 Seneca Rd Apartment/Unit #  
City Kingsport State TN ZIP 37664  
Phone (423) 571-8213 E-mail Address KT MORRIS @ EASTMAN.COM

**REQUESTED ACTION:**

Request special exception to a P1 professional office district in order to allow for a church

**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: J P Morin ms

Date: 8/14/12

Signed before me on this 14<sup>th</sup> day of August, 2012,  
a notary public for the State of Tennessee  
County of Sullivan

Notary Crystal G. Johnson  
My Commission Expires May 19, 2015



**CITY PLANNING OFFICE**

Received Date: 8/14/12

Application Fee Paid: 8/14/12

Board of Zoning Appeals Meeting Date: 9-6-12

Section of Applicable Code: 114-200. (c)(6)

Building/Zoning Administrator Signature: Michael Freeman

Completed Site Plans Received: 8/14/12

Previous requests or file numbers: NONE

Signature of City Planner: 

Received By: Karen Combs

Date: Aug 16, 2012

Date: 8/15/12

August 14, 2012

City of Kingsport Board of Zoning and Appeals

Kevin Morris, Scott Harper, and Shawna Harper, representatives of IMPACT Ministries, would like to submit this letter to the Kingsport Board of Zoning and Appeals stating our intent to file for a special exception of the lease property located at 694 Clinchfield Street, Kingsport, TN 37660. This property is currently zoned P-1, office building.

IMPACT Ministries seeks to lease this 6,000 square foot, free standing building as a church. It is our understanding that this building must be zoned as a church before a lease can take place.

The normal operation of IMPACT Ministries will be on Wednesday evenings, Sunday mornings and Sunday evenings. Currently IMPACT has fifty members in its congregation. Our goal is for our congregation to grow to approximately one hundred members by mid-2013.

IMPACT Ministries will have a nominal effect on the flow of traffic on Clinchfield St., or any other adjacent streets, due to our service schedule. Typically, traffic congestion is minimal during services times. The lease property has two entrances separated approximately 250 feet apart, located northeast and southwest of the property.

Ample parking is available at the lease property and no other retail businesses are directly adjacent to the lease property. A physician's office is located directly northeast of the lease property. This office is open weekdays and closes at approximately 5 pm. Occupancy of the parking lot by IMPACT Ministries will be minimal during weekdays.

IMPACT Ministries will maintain the aesthetic characteristics of the building, as well as improve the current aesthetic condition of the lease property. We desire to be good stewards of the property by not only maintaining but also improving the property's surroundings.

IMPACT Ministries will not produce any excessive noise or disturbances.

The lease property currently possesses a chain link fence located at the rear of the property, with gates north and south of the building, and a large two door gate southwest of the property.

IMPACT Ministries would like to thank you for your consideration of our zoning exception.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Harper", written over the typed name.

Scott Harper

Youth Pastor

IMPACT Ministries



# 694 Clinchfield St

59 ft

**Special Exception Worksheet  
for**

**Case: 12-701-00006 – Property located at 694 Clinchfield Street; Control Map 46H,  
Group C, Parcel 07.00** Requests a special exception use as provided in Sec. 114-200(c)(6)  
in order to establish a church.

***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.***

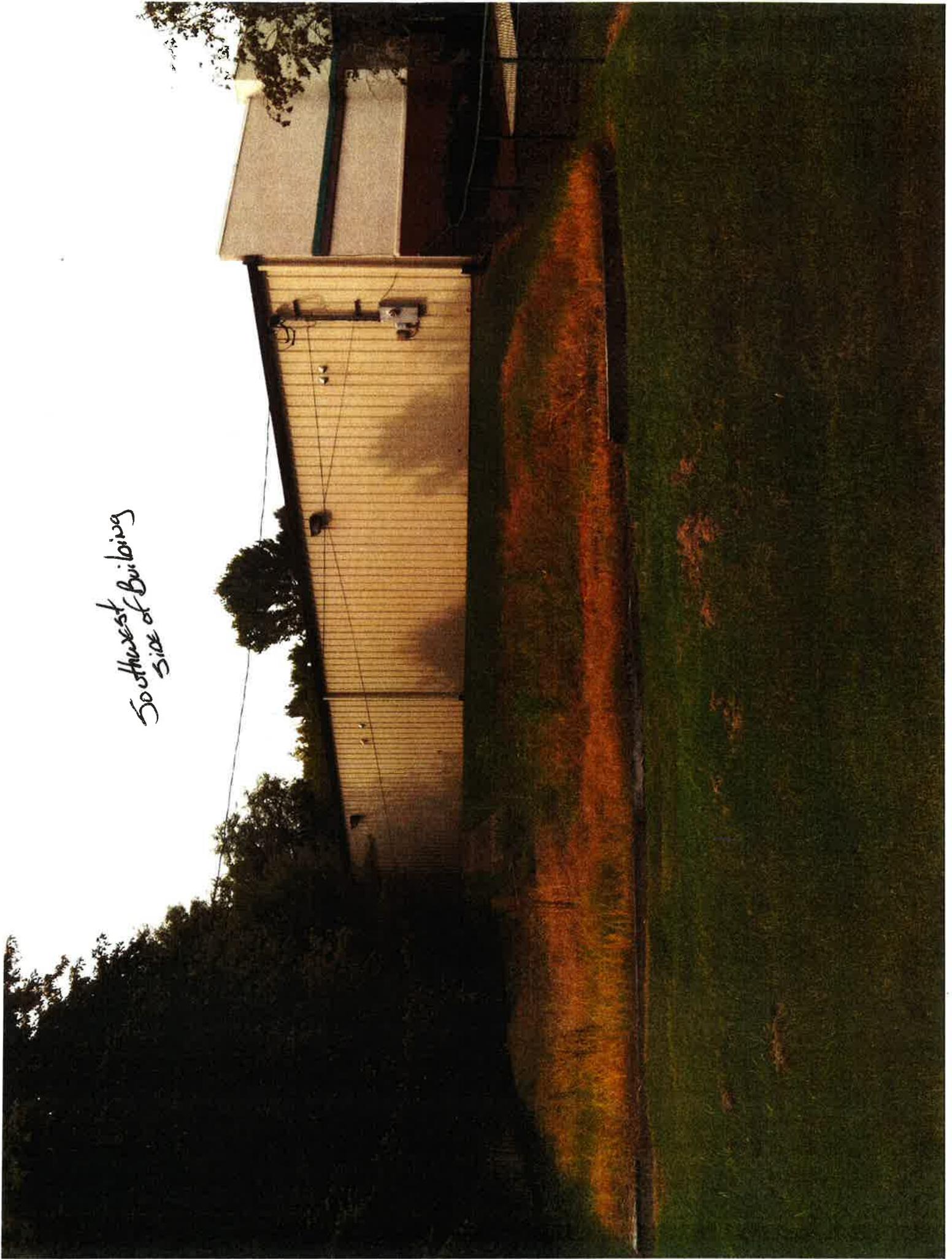
As in the case of variances, an applicant must show that the special exception meets the state law requirements, that the spirit of the ordinance shall be observed, public safety secured and substantial justice done.

**\*\*\* *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.

Southwest  
Side of Building





Entrance →



Chestnuts

Southwest  
Entrance

FOR LEASE  
623-718-8228



Northeast  
Entrance



**Clinchfield**  
MEDICAL CENTER  
7 BRADY MORRIS, MD, FACP  
CLINCHFIELD, KY 40301  
CLINCHFIELD BEHAVIORAL HEALTH  
CLINCHFIELD FAMILY MEDICINE  
CLINCHFIELD, KY 40301  
WITH MEDICAL AND NURSING STAFF

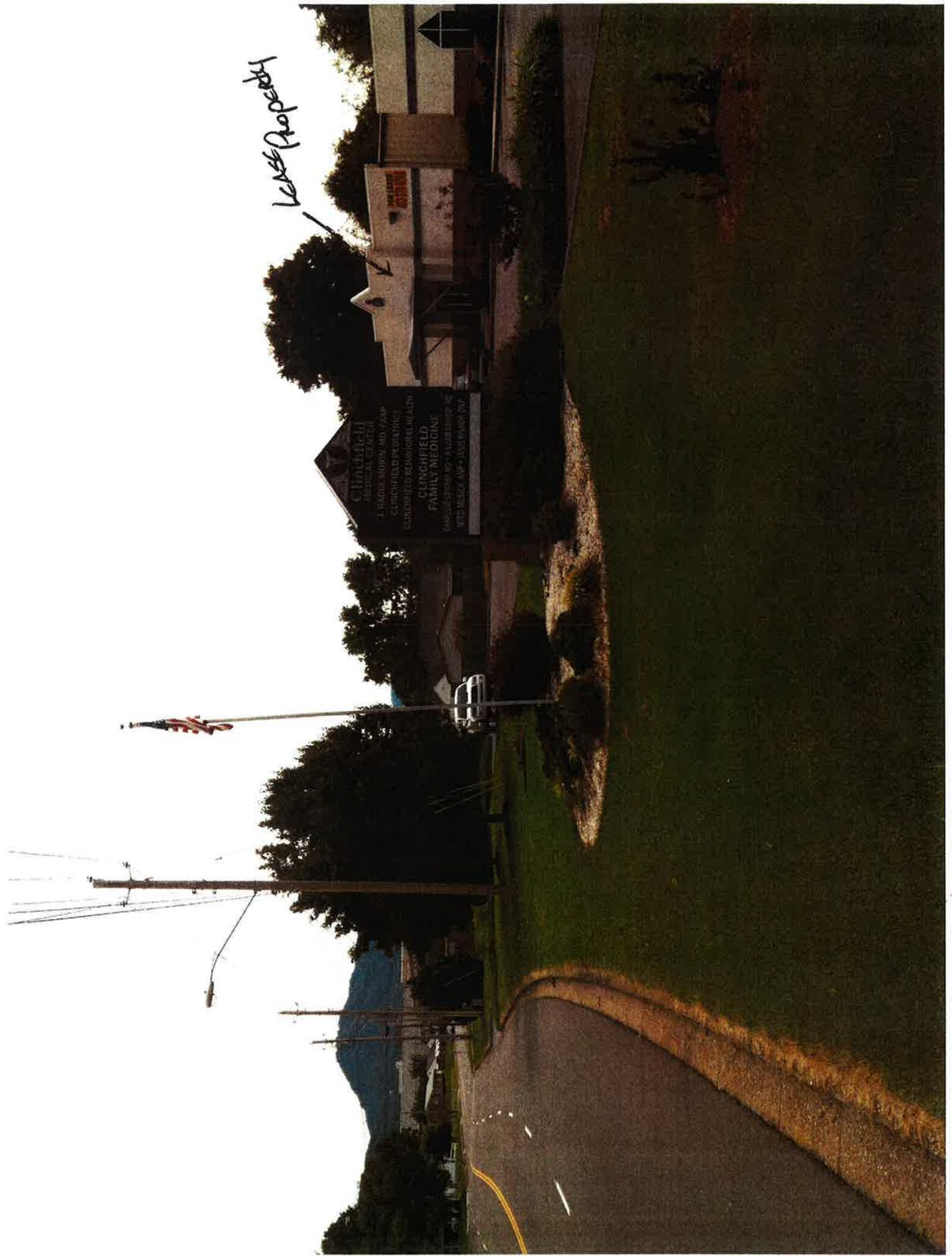


Clinchfield

Lease Property

Churchfield  
MEDICAL CENTER  
J. FRANK BOORIN, MD, FAAP  
CLINCHFIELD PEDIATRICS  
CLINCHFIELD BEHAVIORAL HEALTH  
CLINCHFIELD  
FAMILY MEDICINE  
COURTESY OF THE UNIVERSITY OF  
MISSISSIPPI • 1105 PRINCE DR

PROPERTY  
OFFICE





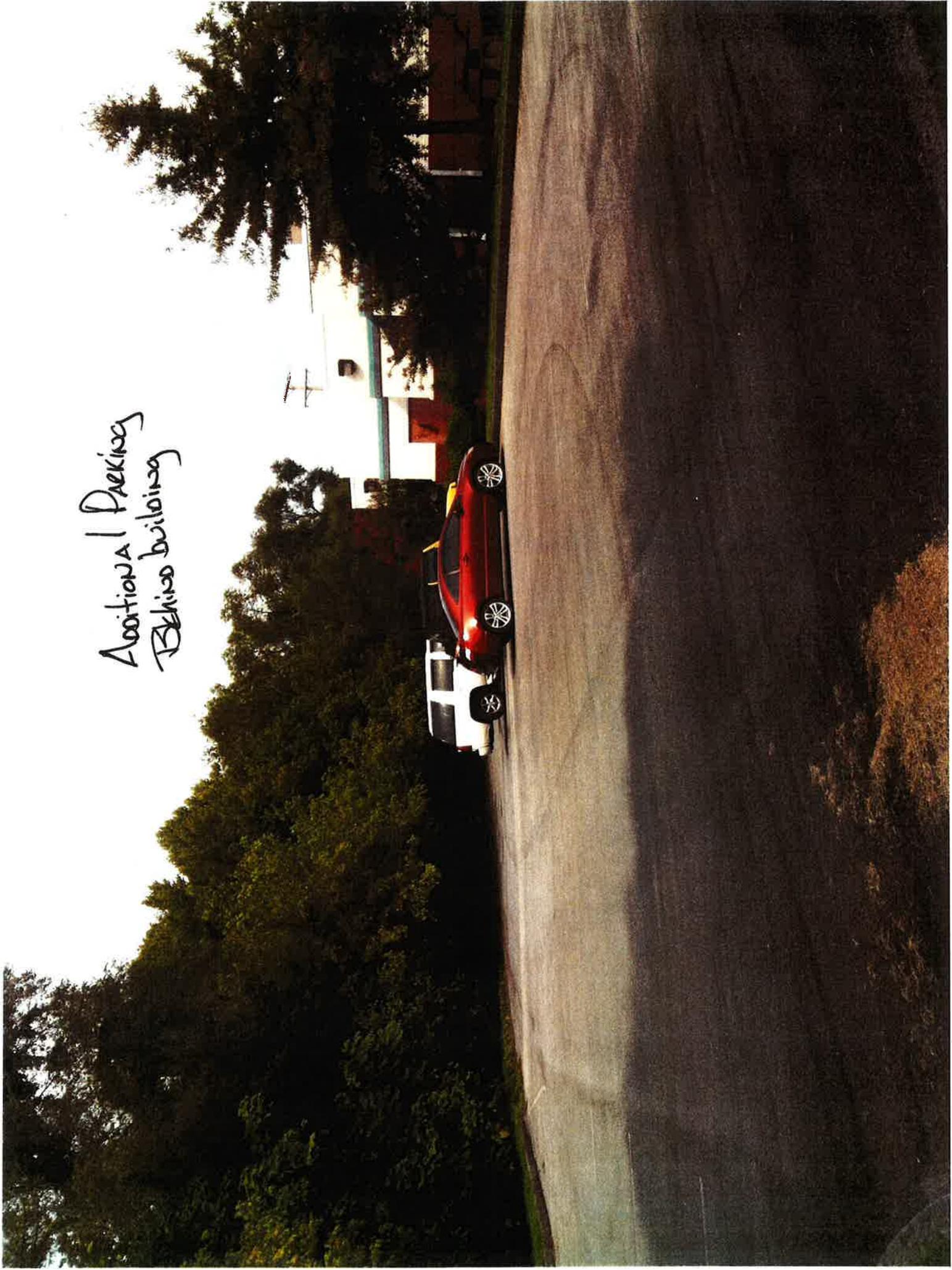
Building Area of

Crested



Rear of Property

Additional Parking  
Behind building

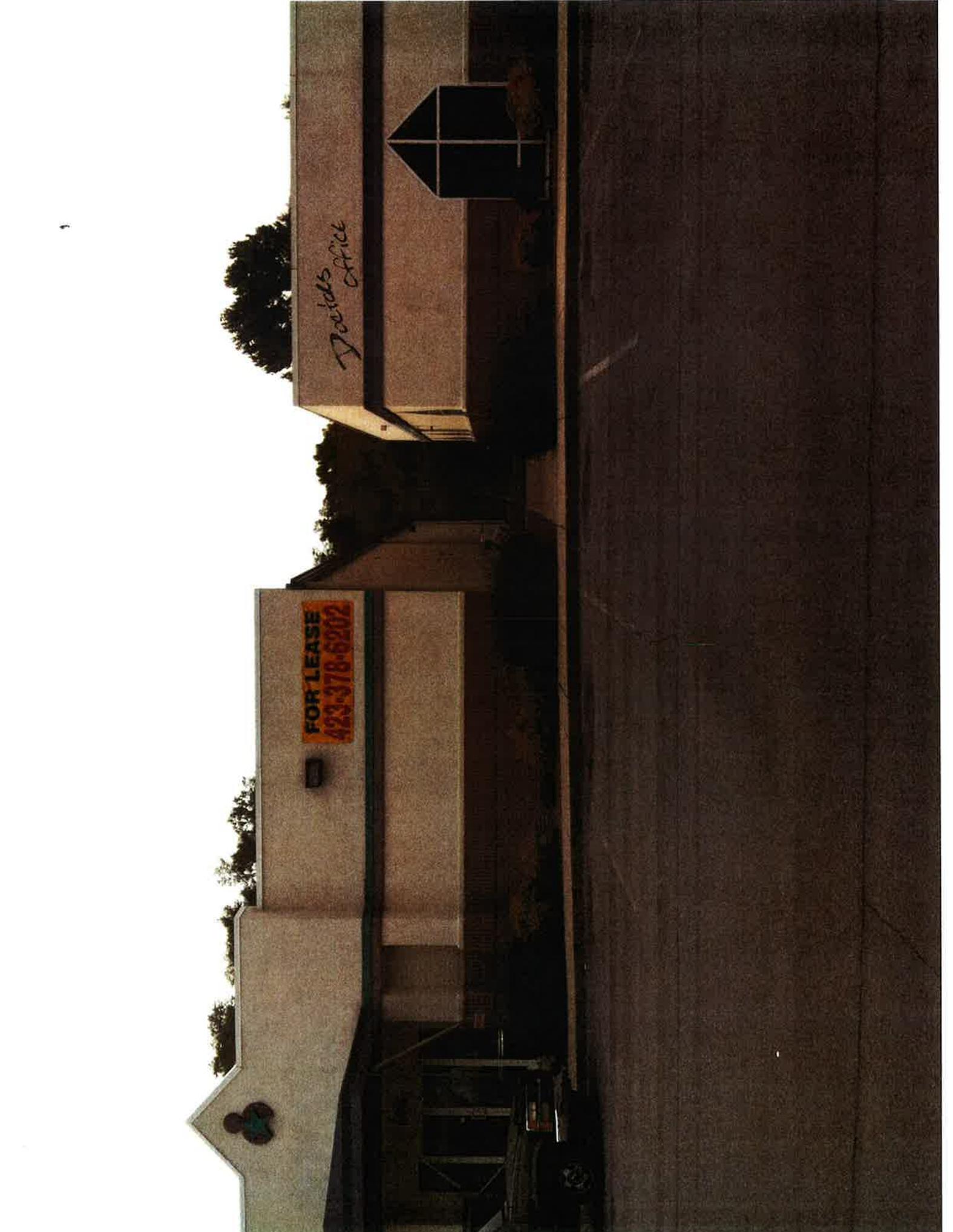


Northwest  
Entrance





WALK  
THROUGH  
THE HISTORY  
OF  
CLONE  
MEMORIAL  
MUSEUM



**FOR LEASE**  
**423-378-6202**

*David's Office*

FOR LEASE  
423-378-6202





Southwest  
Entrance



## MEMORANDUM

TO: KINGSFORT BOARD OF ZONING APPEALS  
FROM: Karen B. Combs, PRINCIPAL PLANNER  
DATE: August 16, 2012  
RE: 3212 Hull Drive

The Board is asked to consider the following request:

**Case: 12-701-00007 – Property located at 3212 Hull Drive; Control Map 77H, Group B, Parcel 009.00**

Requests variance of 5feet 7inches to the front yard setback requirement [Sect.114-192.(e)(1)(c)] in order to construct a porch in a R-1B, Single Family Residential District. The code requires a 30 foot front yard setback.

Deadline - Aug 15<sup>th</sup> @ noon

**APPLICATION**

Board of Zoning Appeals



12-701-00007

**APPLICANT INFORMATION:**

Last Name Paiggin First Alan M.I. L. Date 8-14-12  
 Street Address 3212 HULL DR. Apartment/Unit #  
 City Kingsport State TN ZIP 37664  
 Phone \_\_\_\_\_ E-mail Address apaiggin@hotmail.com

**PROPERTY INFORMATION:**

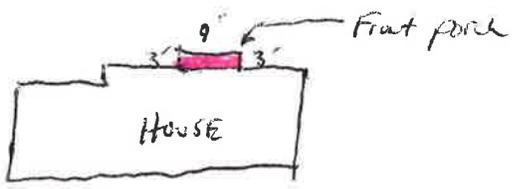
Tax Map Information Tax map: 77H Group: B Parcel: 9.00 Lot:  
 Street Address 3212 HULL DR. Apartment/Unit #  
 Current Zone R-1B Proposed Zone N/A  
 Current Use Single Family Proposed Use N/A

**REPRESENTATIVE INFORMATION:**

Last Name Paiggin First Alan M.I. L. Date 8-14-12  
 Street Address 3212 HULL DR. Apartment/Unit #  
 City Kingsport State TN ZIP 37664  
 Phone 677-3400 E-mail Address apaiggin@hotmail.com

**REQUESTED ACTION:**

To build a 3' x 9' Front porch.



**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: Alan L Paiggin Date: 8-14-12

Signed before me on this 14<sup>th</sup> day of August, 2012,  
 a notary public for the State of Tennessee  
 County of Sullivan

Notary Tina D. Taylor  
 My Commission Expires 8/17/2013



Pl. 8/14/12

**CITY PLANNING OFFICE**

Received Date: 8-14-12

Received By: Karen Combs

Application Fee Paid: 8-14-12

Board of Zoning Appeals Meeting Date: 9-6-12

Section of Applicable Code: 114-192.(e)(1)(A)

Building/Zoning Administrator Signature: Michael Freese

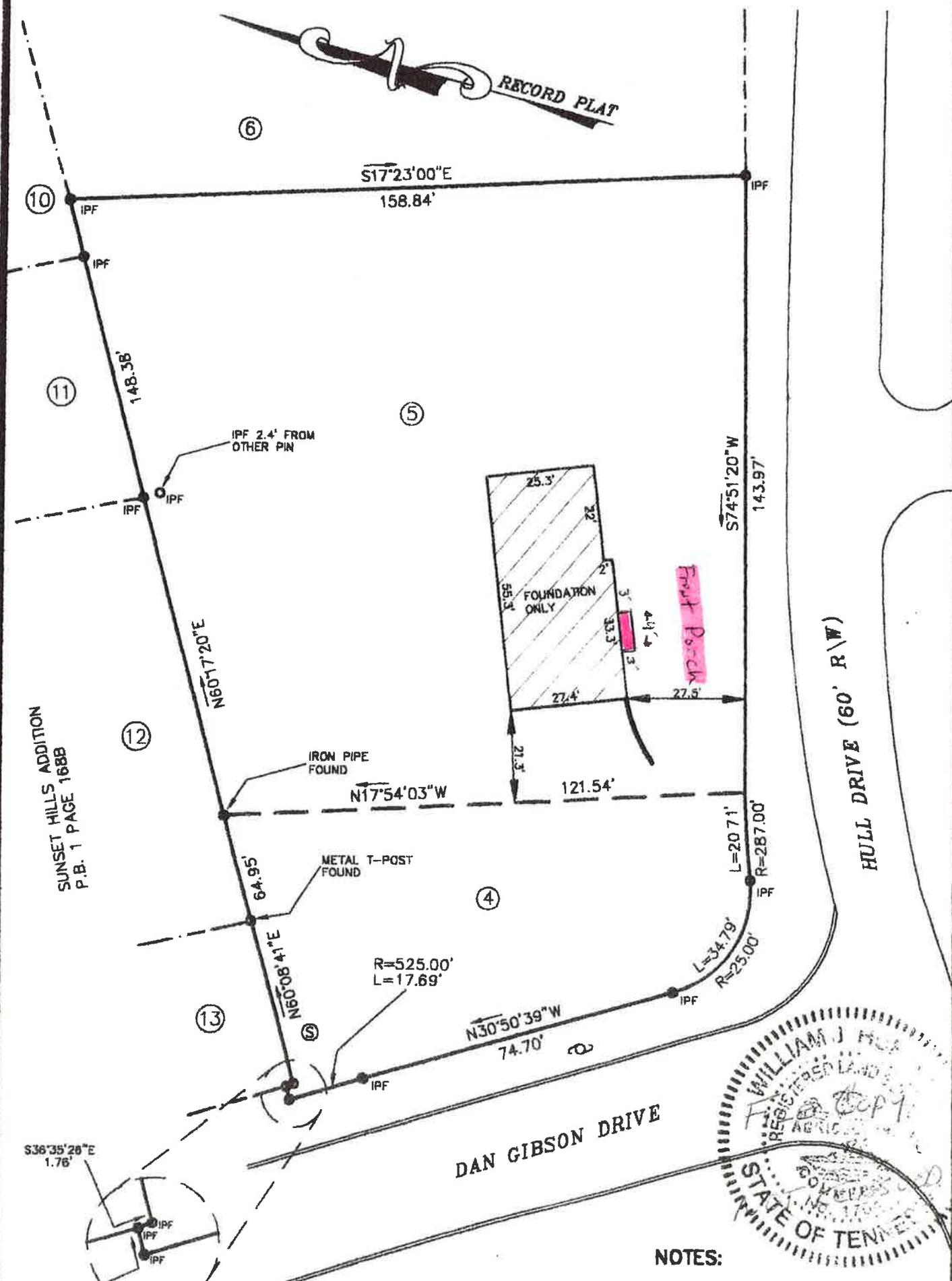
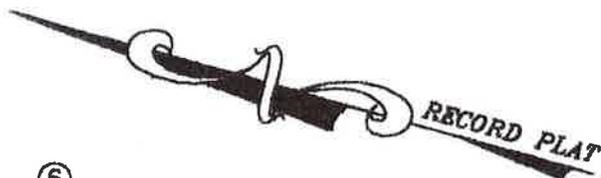
Date: Aug 16, 2012

Completed Site Plans Received: 8-14-12

Previous requests or file numbers: NONE

Signature of City Planner: [Signature]

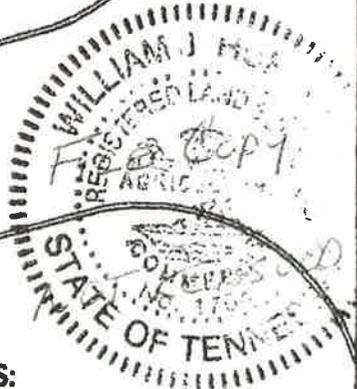
Date: 8-15-12



SUNSET HILLS ADDITION  
P.B. 1 PAGE 168B

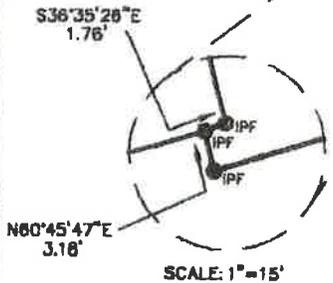
HULL DRIVE (60' R/W)

DAN GIBSON DRIVE



NOTES:

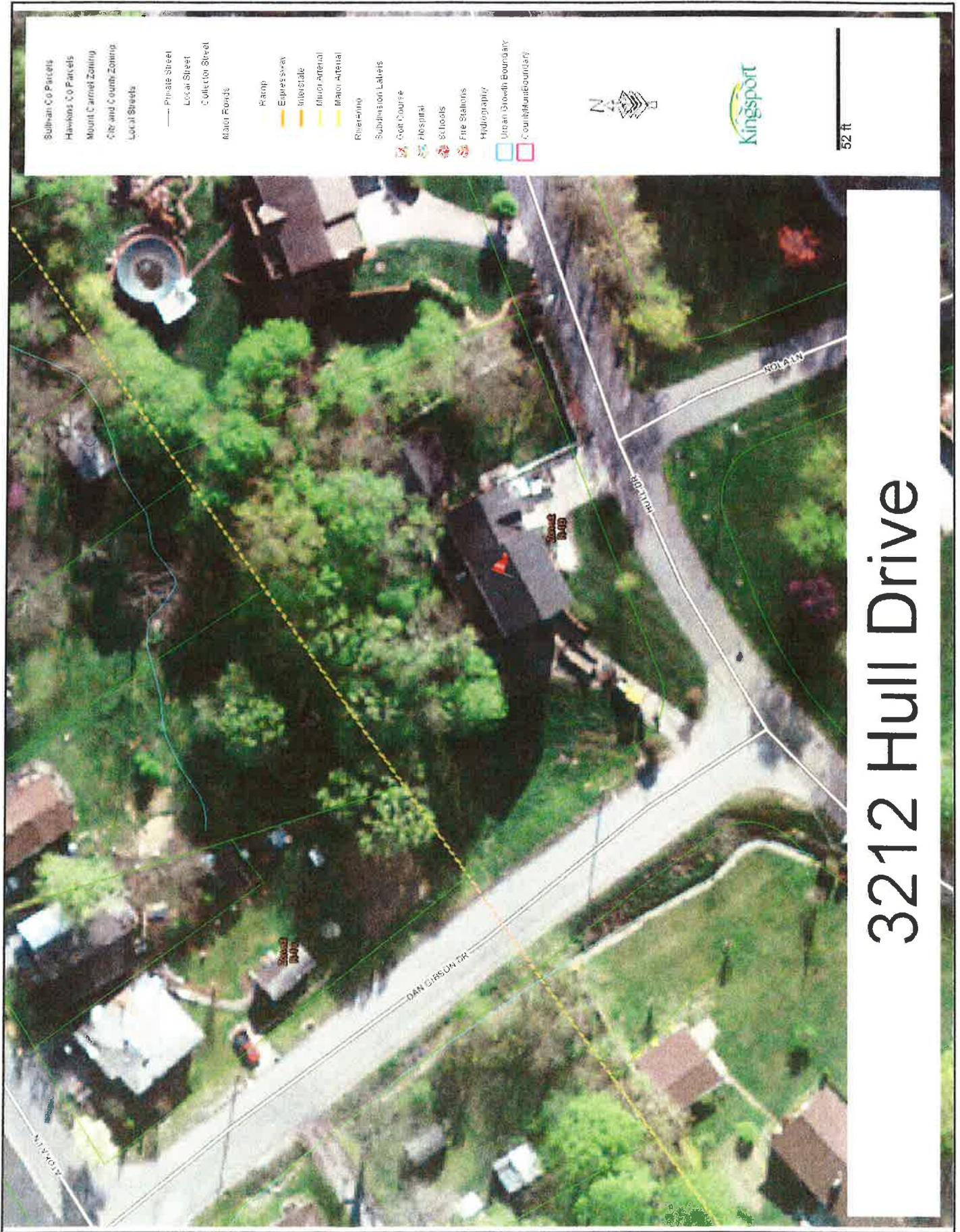
1) I HEREBY CERTIFY THAT THIS SURVEY WAS MADE USING THE LATEST RECORDED DEED AND OTHER INFORMATION PROVIDED BY THE TITLE ATTORNEY.



SCALE: 1"=15'

8/14/2012

- (A) The specific conditions: The lot has an extreme sloped bank at the rear of the house. The topography wouldn't allow the house to have been built any further back.
- (B) The manner in which strict application of this chapter would deprive: All guest, family members, & packages are exposed to inclement weather. Increased cost of maintenance of front door due to exposure to the elements. Slight moisture problem thru porous bricks on front porch/basement wall. A 3 x 9 covered porch would solve the above issues.
- (C) Unique conditions: & circumstances: The variance wouldn't affect any other part of the lot except where front porch would be.
- (D) Reasons the variance will preserve: Many of my neighbors have covered porches or entrances. The covered porch with it classic columns will enhance the appearance of the house/neighborhood. My next door neighbor within the last couple of years received a variance to build a carport in his/her front side yard (3204 Hull Dr.)



# 3212 Hull Drive

Sullivan Co Parcels  
 Hawkins Co Parcels  
 Mount Carmel Zoning  
 City and County Zoning  
 Local Streets

Private Street  
 Local Street  
 Collector Street  
 Major Road

Ramp  
 Expressway  
 Interstate  
 Minor Arterial  
 Major Arterial

River/mo  
 Substation Labels  
 Sewer Course  
 Hospital  
 Schools  
 Fire Stations

Hydrography  
 Urban Growth Boundary  
 County/Municipality



52 ft

Variance Worksheet – Finding of Facts for:

**Case: 12-701-00007 – Property located at 3212 Hull Drive; Control Map 77H, Group B, Parcel 009.00**

Requests variance of 5feet 7inches to the front yard setback requirement [Sect.114-192.(e)(1)(c)] in order to construct a porch in a R-1B, Single Family Residential District. The code requires a 30 foot front yard setback.

*Variances.* Except as provided herein to hear and decide applications for variance from the terms of this chapter, because of exceptional narrowness, shallowness or shape of a specific piece of property which on June 16, 1981, was a lot of record or where, because of exceptional topographic conditions or other extraordinary or exceptional situation or condition of a piece of property, the strict application of this chapter would result in peculiar and exceptional practical difficulties to exception or undue hardship upon the owner of such property, provided that such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this chapter. In granting a variance the board may attach thereto such conditions regarding the location, character and other features of the proposed building, structure or use as it may deem advisable in furtherance of the purposes of this chapter. Before any variance is granted, the board must find all of the following, which shall be recorded, along with any imposed conditions or restrictions, in minutes and records and issued in written form to the applicant to constitute proof of the variance:

a. The specific conditions in detail which are unique to the applicant's land. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity.

b. The manner in which the strict application of this chapter would deprive the applicant of a reasonable use of the land.

c. The unique conditions and circumstances are not the result of actions of the applicant taken subsequent to the adoption or amendment of this chapter.

**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: KINGSFORT BOARD OF ZONING APPEALS  
FROM: Karen B. Combs, PRINCIPAL PLANNER  
DATE: August 16, 2012  
RE: 2001 East Sevier Avenue

The Board is asked to consider the following request:

**Case: 12-701-00008 – Property located at 2001 East Sevier Avenue; Control Map 61L, Group K, Parcel 03.00**

Requests variance of 1 foot to the accessory building placement requirement [Sect.114-139.(2)] in order to construct a covered carport/ picnic area in a R-1B, Single Family Residential District. The code requires any accessory structure to be placed five foot from the principle structure.

**APPLICATION**  
Board of Zoning Appeals



12-701-00008

**APPLICANT INFORMATION:**

Last Name Leach First Judy M.I. A Date 08/13/2012  
Street Address 2001 E Sevier Ave Apartment/Unit # N/A  
City Kingsport State TN ZIP 37664  
Phone 423-765-1340 E-mail Address Judy Leach@Charter.net

**PROPERTY INFORMATION:**

Tax Map Information Tax map: 611 Group: K Parcel: 3 Lot: -  
Street Address 2001 E. Sevier Apartment/Unit #  
Current Zone R-1B Proposed Zone -  
Current Use Single Family Proposed Use Covered Carport - Single Family

**REPRESENTATIVE INFORMATION:**

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

**REQUESTED ACTION:**

Sec. 114-139 (2) within 5 ft of Principle Structures

**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: Judy A. Leach

Date: 8/15/12



Signed before me on this 15 day of August,  
a notary public for the State of Tennessee  
County of Sullivan

Notary Karen B. Combs  
My Commission Expires May 12, 2013

**CITY PLANNING OFFICE**

Received Date: 8-15-12

Application Fee Paid: No

Board of Zoning Appeals Meeting Date: 9-6-12

Section of Applicable Code: 114-139(2)

Building/Zoning Administrator Signature: Michael J. J...  
*(Handwritten signature)*

Completed Site Plans Received: NO

Previous requests or file numbers: NONE

Signature of City Planner: *(Handwritten signature)*

Received By: Karen Combs

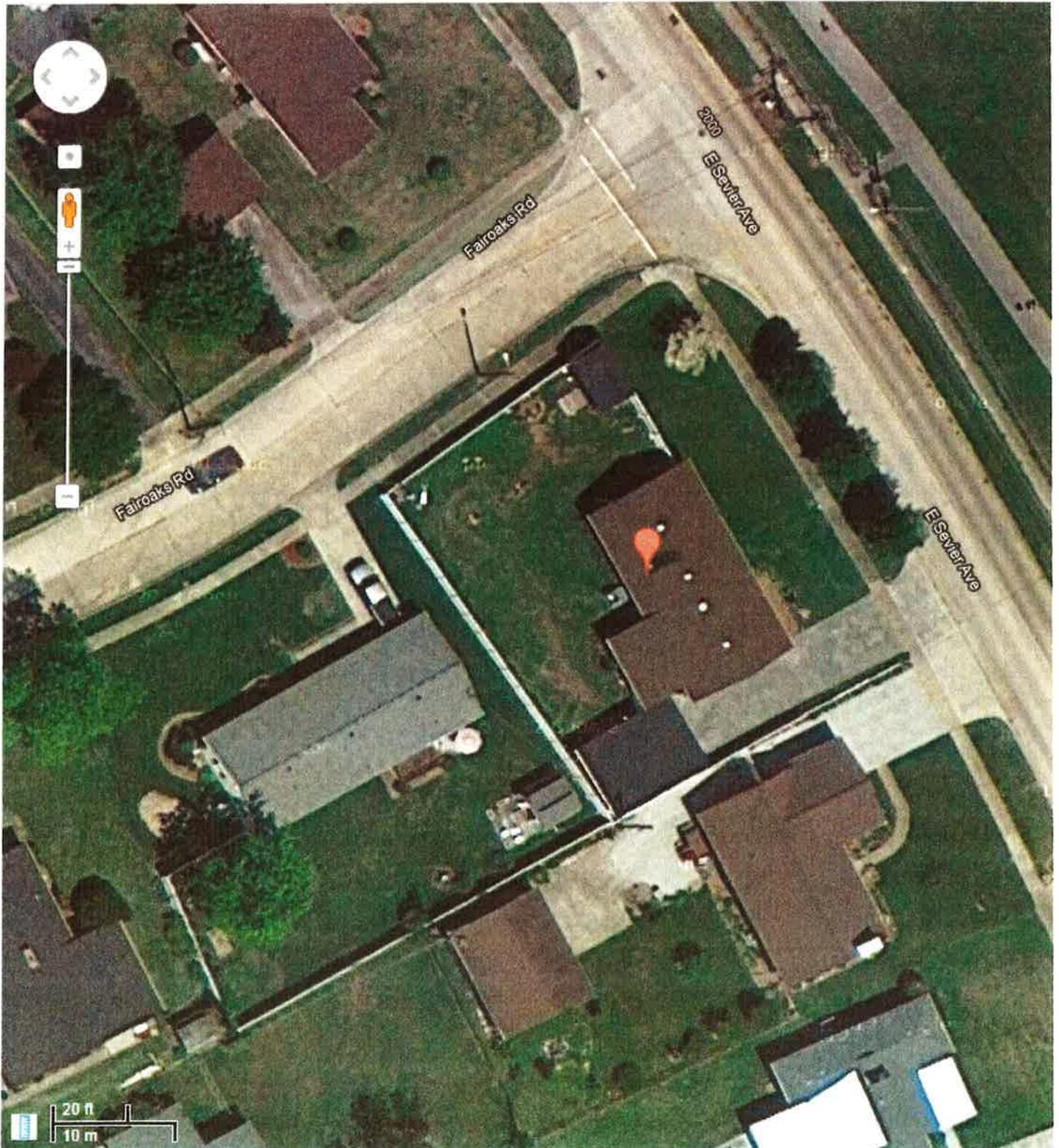
Date: Aug 16, 2012

Date: 8-15-12

## Combs, Karen

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**From:** Tully, Lynn  
**Sent:** Wednesday, August 15, 2012 2:08 PM  
**To:** Combs, Karen  
**Subject:** 2001 E. Sevier St. Sent from Snipping Tool



Variance Worksheet – Finding of Facts for:

**Case: 12-701-00008 – Property located at 2001 East Sevier Avenue; Control Map 61L, Group K, Parcel 03.00**

Requests variance of 1 foot to the accessory building placement requirement [Sect.114-139.(2)] in order to construct a covered carport/ picnic area in a R-1B, Single Family Residential District. The code requires any accessory structure to be placed five foot from the principle structure.

*Variances.* Except as provided herein to hear and decide applications for variance from the terms of this chapter, because of exceptional narrowness, shallowness or shape of a specific piece of property which on June 16, 1981, was a lot of record or where, because of exceptional topographic conditions or other extraordinary or exceptional situation or condition of a piece of property, the strict application of this chapter would result in peculiar and exceptional practical difficulties to exception or undue hardship upon the owner of such property, provided that such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this chapter. In granting a variance the board may attach thereto such conditions regarding the location, character and other features of the proposed building, structure or use as it may deem advisable in furtherance of the purposes of this chapter. Before any variance is granted, the board must find all of the following, which shall be recorded, along with any imposed conditions or restrictions, in minutes and records and issued in written form to the applicant to constitute proof of the variance:

a. The specific conditions in detail which are unique to the applicant's land. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity.

b. The manner in which the strict application of this chapter would deprive the applicant of a reasonable use of the land.

c. The unique conditions and circumstances are not the result of actions of the applicant taken subsequent to the adoption or amendment of this chapter.

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.

## MINUTES KINGSPORT BOARD OF ZONING APPEALS (BZA)

Thursday June 7, 2012

NOON

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

**MEMBERS PRESENT:**

Leland Leonard, Chairman  
Frank Oglesby, Vice Chairman  
Bill Sumner  
Diane Hills

**MEMBERS ABSENT:**

Bob Winstead Jr

**STAFF PRESENT:**

Karen Combs  
Lynn Tully

**VISITORS:**

Richard McCarty  
Stephen Palmer

Ken Bates

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Chairman Leonard called the meeting to order.

Chairman Leonard then explained the meeting procedures. Those wishing to testify were sworn in.

**Public Hearing:**

**Rehearing - Case: 12-701-00003 – Property located at 1220 Tuscany Way; Control Map 78A, Group E, Parcel 00100** Requested variance of 8 feet to the periphery yard requirement [Sect.114-196.(e)(1)(d)] in order to construct a single family house in a PD, Planned Development District. The code requires a 30 foot undeveloped periphery yard surrounding the district. Mr. Bates presented the case to the Board. In his presentation he stated that he had made a mistake and forgot about the 30 foot periphery yard boundary. He was used to building the houses on the inside where the boundary is not a requirement. It was also noted that staff had previously approved the footers for this house and that Mr. Bates had received a building permit. The error was brought Mr. Bates' attention when the house next to the house in question was sold and the bank required a survey. The surveyor contacted Mr. Bates and he then contacted the City. Staff received several phone calls on this item with one of them being the neighbor that directly backs up to the house in question. She has no problems with the placement of this house. The other phone calls were inquiries in nature and no one had an issue for this house but stated that they would not like to see a variance for the whole development. Staff produced a drawing certified by Danny Carr, surveyor that showed the exact measurements concerning this property. Mr. McCarty spoke in favor of this item. He lives in the house adjacent to the property in question.

**Case: 12-701-00004 – Property located at 1062 Cooks Valley Road; Control Map 62L, Group A, Parcel 03.50, Lot 7** Requested variance of 748 square feet to the accessory building size requirement [Sect.114-139.(2)] in order to construct a garage in a R-1B, Single Family Residential District. The code allows a maximum of 1,100 square feet in accessory structures on one lot. Mr. Palmer gave the

presentation to the Board. In his presentation he stated that the structure would be as a “mud room”/woodworking shop and would not be used for living quarters or any type of business. He stated that he had 1.3 acres of property that is well screened. Diane Hills asked staff if they were still working on changing the ordinance from the fixed amount of 1,100 square feet and an amount tied to lot coverage thus allowing larger lots to have an increased amount. Staff confirmed that the ordinance is still be considered and was put on the back burner in the last but that the intention is to remove the restriction and an ordinance should be coming forward for their approval. Chairman Leonard noted that it was obvious through the number of requests the Board receives that changes to the ordinance are needed. No one spoke for or against this item.

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

**Other Business:**

On a motion by Diane Hills, the Board voted unanimously to approve the June 7, 2012 minutes as amended.

The BZA stated for the public record the next application deadline on June 15, 2012 at noon and that the next meeting date would be on July 5, 2012.

**Adjudication of Case:**

**Case: 12-701-00003 – Property located at 1220 Tuscan Way; Control Map 78A, Group E, Parcel 00100**

Based on the survey presented to the Board, the Board changed the variance request to 11.1 feet.

**PROOF PRESENTED:**

1. The specific conditions in detail which are unique to the applicant's land. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity. *This lot is irregular in shape and sets at the end of a cul-de-sac.*
2. The manner in which the strict application of this chapter would deprive the applicant of a reasonable use of the land.  
*With the existing cul-de-sac, the house needed to be push further towards the rear so that an acceptable driveway could be built and the house could be in line with the two existing houses adjacent to this house.*
3. The unique conditions and circumstances are not the result of actions of the applicant taken subsequent to the adoption or amendment of this chapter.  
*Though the developer did install the roadway and exiting infrastructure that caused the need for the variance, the Board felt that mistakes made by City staff worked in combination with the developer's mistake to create these circumstances. The Board felt that the mistakes were not intentional and wanted to provide some relief to the inexperienced developer. However, the Board made clear that a mistake like this one would not be tolerated in the future.*

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

*The structures are in line and present a cohesive appearance. Forcing the movement of the structure would have greatly altered the essential character of the neighborhood. Granting this variance does not harm the public safety or welfare of the residents. The developer agreed to install the public open space that was encroached upon somewhere else in the development.*

**MOTION:** made by Frank Oglesby; seconded by Diane Hills – To approve a request of a 11.1 foot variance to the periphery yard requirement [Sect.114-196.(e)(1)(d)] in order to construct a single family house in a PD, Planned Development District with the condition that 443.64 square feet of public open space in added to an amended plan development plan for this project and approved by the Director of Planning because granting the variance would cause the least harm to the neighborhood.

**VOTE:** 3-0 to grant the variance request with conditions.

**Case: 12-701-00004 – Property located at 1062 Cooks Valley Road; Control Map 62L, Group A, Parcel 03.50, Lot 7**The Board discussed this item and the ordinance briefly.

**PROOF PRESENTED:**

1. The specific conditions in detail which are unique to the applicant's land. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity. *This lot is an exceptionally large lot containing approximately 1.3 acres.*

2. The manner in which the strict application of this chapter would deprive the applicant of a reasonable use of the land.

*The owner could not enjoy the property as it was intended because of this strict restriction of size of Accessory buildings in relation to the size of the existing lot.*

3. The unique conditions and circumstances are not the result of actions of the applicant taken subsequent to the adoption or amendment of this chapter.

*This ordinance has been in place for several years. As this Board has seen through the amount of variance requests the need of our citizens has changed. This is due to the City's aggressive annexation policy in which the City is gaining property that used to be considered agriculture in nature. Lots of this nature are traditionally larger and undeveloped or have a lower density than lots within the urban core of the City. The Board has requested that this particular ordinance be revised to fit the current needs of the residents that are served by this Board.*

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

*This lot is secluded with the current vegetation existing on the property. The lot is surrounded by a line of trees that are somewhat mature and thus the structure would be difficult to see from adjoining parcels. There is also a large accessory building located without screening on an adjacent lot that was constructed when the property was located outside the city limits.*

**MOTION:** made by Diane Hills; seconded by Bill Sumner – To grant the variance of 748 square feet to [Sect.114-139(2)] to allow the construction of an accessory structure because of the size of the lot and that with all the screening currently in place the variance would not be detrimental to the surrounding neighborhood.

**VOTE:** 3-0 to grant the variance request.

\_\_\_\_\_ Karen B. Combs, Principal Planner