

**COUNTY OF CLEVELAND, NORTH CAROLINA**  
**AGENDA FOR THE BOARD OF ADJUSTMENT MEETING**

**July 26, 2018**

**4:00 PM**

**County Commissioners Chamber**

---

**Call to order and Establishment of a Quorum**

**Invocation and Pledge of Allegiance**

**Approval of Minutes**

Approval of Minutes from the June 28, 2018 Board of Adjustment Meeting

**Cases**

Case 18-06: Variance of 30' Front Residential Setback at 322 Harrelson Road

Case 18-07: Request to continue Conditional Use Permit for Temporary Dependent Care Housing at

**Miscellaneous Business**

**Adjournment**

**COUNTY OF CLEVELAND, NORTH CAROLINA**

**AGENDA ITEM SUMMARY**

---

**Minutes**

---

**Department:**

**Agenda Title:** Approval of Minutes from the June 28, 2018 Board of Adjustment Meeting

**Agenda Summary:**

**Proposed Action:**

---

**ATTACHMENTS:**

| File Name  | Description |
|--|-------------|
| <input type="checkbox"/> 6-28-18_BOA_minutes.pdf | Minutes     |



**MINUTES**  
**CLEVELAND COUNTY BOARD OF ADJUSTMENT**  
**Commission Chambers – County Administrative Building**  
**311 East Marion St., Shelby, North Carolina**  
**Regular Meeting - 4:00 p.m.**  
**June 28, 2018**

***Members Present***

Jeff Ward, Chairman  
Joyce Coleman, Vice Chairman  
Doug Lawing  
Paul Aulbach  
Thomas Fletcher

***Members Absent***

Tommy Brooks  
Bobby Watson

***Others Present***

Chris Martin, Senior Planner  
Henry Earle, Planner

**CALL TO ORDER**

**Jeff Ward** called the meeting to order at 4:00 pm.

**INVOCATION AND PLEDGE OF ALLEGIANCE**

**Joyce Coleman** led the Invocation and **Chairman Ward** led the Pledge of Allegiance.

**ROLL CALL TO ESTABLISH QUORUM**

**Chairman Ward** called upon Thomas Fletcher to fill in for Bobby Watson and quorum was established.

**APPROVAL OF APRIL 26, 2018 MINUTES**

**Paul Aulbach** made the motion to approve the April 26, 2018 minutes. It was seconded by Joyce Coleman and unanimously carried.

**CASE #18-05                      CONDITIONAL USE PERMIT: GAMING BUSINESS**

Applicant: Richard Jones  
Location: 2305 S. Post Rd.  
Parcel #: 3441

**Chris Martin** was sworn in to present a Staff Report on case 18-05. The applicant, Richard Jones, is requesting a conditional use permit for a video gaming business for a store at 2305 S. Post Rd., between Patterson Springs and Earl. Video Gaming is a compliant use in General Business zoning districts with a Conditional Use Permit. This property is zoned General Business and is owned by David Morrow. It is surrounded by General Business zoning in the

immediate vicinity, and Neighborhood Business to the North. There are also Residential zoning districts in the area, and the area is mixed use for business and residential. The Land Use Plan calls for the area as future commercial (a commercial business node).

The applicant turned in a site plan showing the existing store with a proposal of 55 parking spaces around the business, and 75 seats for gaming inside. Proper notice was provided to adjoining property owners, the applicant and the property owner, and a sign was posted at the store site. The building has two businesses in it, and the surrounding parking serves both businesses. The gaming business is proposed for the larger of the two sites in the building and staff is not aware of any use for the smaller adjoining the proposed business. The applicant is present and may be able to describe the relation of the two sites in the building in more detail.

The proposed site is about half a mile from the school (as measured on Cleveland County Web GIS during the meeting). There are no zoning Ordinances regarding specific standards for video gaming businesses, other than in the Table of Uses that regulate what zoning districts they are allowed in. The conditions provided are samples that have been applied by the Board of Adjustment in past cases, but they are not required by ordinance or code. For instance, parking conditions allowing one machine per parking space are not ordinance rules. It is just something the Board has applied consistently in the past.

**Chairman Ward** opened the Public Hearing at 4:14 pm.

**Willie Mae Hunt** was sworn in. She stated she is presenting as an advocate for some of the people that live in the area. She is here on behalf of the restaurant that recently occupied the smaller adjoining site in the building at 2305 S. Post Rd. three weeks ago. She did not present specific evidence regarding her concerns for public safety and harmony regarding the gaming business. She suggested that the applicant use the property available at Eaves and Earl Rd. instead.

**Richard Jones** was sworn in. He is the applicant and will be the proprietor of the business. He stated that he intends to bring peace and provide lighting, cameras, and an armed guard, there will be no loud music, gangs or swearing, and they will benefit the restaurant business. They will not infringe on the restaurant's parking.

**Joyce Coleman** asked for more information on the parking. Mr. Jones said their parking would be at their business corner and around the back. The restaurant would have to the left of their building (the smaller building on the Web GIS aerial) and around the back (numbered 1-21 on the site plan). They currently share the same address but that can be adjusted by the Planning Department. Mr. Jones said the parking spaces will be clearly marked.

**Joyce Coleman & Doug Lawing** expressed concern for the property having enough room for the parking spaces notated on the site plan. The parking spaces are not currently marked.

**Melody McGuire** was sworn in. She stated that she just leased the restaurant in the adjoining big building. She said that some of the parking on the site plan is over the access to the grease pit, and there is only gravel and grass there now. She said the utilities bill for both sides of the site goes to her and she pays for both. She expressed concerns for parking and safety, but did not present evidence for the matter.

**Chairman Ward** stated that the utilities would be a landlord issue. He closed the Public Hearing at 4:30 pm when there was no further public comment.

**Pritesh Patel** requested to speak at this time and Chairman Ward re-opened the Public Hearing at 4:30 pm.

**Pritesh Patel** was sworn in. He owns the gas station across the street. He thinks the security brought by the proposed business will be a good thing.

**Sharon Ager** was sworn in. She works at the adjoining restaurant. She stated that the two building connect with a locked door.

**Mr. Jones** inquired about the hours of the adjoining restaurant business, and felt like that they were not open very often, but he did not present any evidence pertinent to the case.

**Ms. McGuire** stated that they signed the lease June 1<sup>st</sup> and the restaurant is closed on Mondays but open every other day and they filled the parking lot on Sunday.

**Chairman Ward** closed the public Hearing at 4:35 pm as there was no further comment.

**The Board** discussed the issue of parking. Joyce Coleman stated she did not see evidence of there being enough parking for the number of participants the applicant has requested (75 game stations).

**Mr. Lawing** stated that they did not want to end up with more people there than allowed per machine. Mr. Martin stated that is why in the past the Board had placed the condition of one parking space per machine. The proposed site plan submitted by the applicant shows how they want to develop the parking, and we have to trust that the surveyor measured out the spaces. Mr. Lawing does not want to see more people being at the site than there are machines. Mr. Martin stated that is why the Board had applied the parking to machine ratio in the past.

**Paul Aulbach** stated concern for them being next to the restaurant, and they can't necessarily designate their adjoining neighbor's parking.

**Tom Fletcher** wanted to make sure the condition about the clientele being 18 or older is applied to the gaming business specifically, and not "the premises" since the restaurant is at the same site.

**Chairman Ward** expressed the need for parking for both businesses, and that needs to balance. He reiterated that some of the concerns such as utilities and infrastructure of the shared door/wall will need to be addressed to the landlord, not by the Board.

**Mr. Lawing** inquired about fire code safety for the number of occupants safely allowed in the building. Henry Earle replied the Board cannot set the requirements for a firewall- that would be up to the Fire Marshall during their required inspection. Chairman Ward explained that the Code (Certificate) of Occupancy would need to be approved before they open, and that is not up to the Board to determine. Staff stated that there are no setbacks for parking spaces, they just can't be in the right of way or over the property line.

**Mr. Earle** stated that Mr. Lawing's questions about the building safety related to the fire marshal's code inspection, and not conditions of the business itself. There was no evidence presented concerning safety issues of the business and zoning itself.

**The Board** discussed the four criteria. Joyce Coleman questioned the harmony with the location since it is near churches and schools. Chairman Ward replied that the school is about half a mile away, and therefore not a factor. There area is zoned general business and therefore business activity is in harmony with the surrounding business.

**Mr. Aulbach** stated that the allowed gaming stations could be 38 games based on actual parking availability if they go by the general parking ratio used in the past (one parking space per machine, and one for every two employees).

**Paul Aulbach** made a motion to approve the conditional use permit case 18-05 for a Gaming Business with the said conditions as follows:

1. Complete strictly according to site plan on file with the Planning Department, with the exception to the allowed parking spaces for the gaming business be 32. (Motion was reformed from 38 to 32 spaces.)
2. No tinted, blocked or otherwise obscured windows
3. No Exterior flashing lights
4. No illegal activities allowed on the premises.
5. Exterior lighting shall illuminate total property, but shall not illuminate surrounding property or roadways in any way or amount.
6. A minimum of one properly marked parking spaces for each machine inside the business shall be provided, and one parking space for every two employees to be completed no later than thirty (30) days from issuance of permit.
7. Cars shall be prohibited from parking within the public right-of-way.
8. The applicant must obtain any and all necessary permits from county, including fire marshal, state and federal agencies prior to beginning operation.
9. No one under the age of 18 shall be allowed in the gaming premises. Operator must check ID's.
10. Hours of operation 9 am to 11 pm seven days a week.
11. Obtain NCDOT driveway permit for any new driveway construction.
12. Site must be kept clean and neat, and must not become a public nuisance.
13. Keep in harmony with surrounding community.
14. Any sign construction must meet sign requirements per Section 12-285 of the County Code.
15. Provide a dumpster by an approved trash hauler.
16. Limited to 30 gaming devices. (Motion was reformed from 38 to 30 machines.)
17. Permit must be renewed within three years by June 27, 2021 to maintain and regulate complaints, law regulation changes, etc.
18. Permit is not transferable and becomes null and void if there is a change of occupancy.
19. If any of the conditions or activities affixed hereto, or any part thereof, shall be held invalid or void, then this permit shall be void and of no effect.

It was seconded by Thomas Fletcher and unanimously carried.

**MISCELLANEOUS BUSINESS**

No Miscellaneous Business.

**ADJOURNMENT**

**Chairman Ward** entertained a motion to adjourn.

|   |
|---|
| <p><b>Thomas Fletcher</b> made the motion to adjourn the meeting. The motion was seconded by Doug Lawing and unanimously carried to adjourn at 5:10 pm.</p> |
|---|

ATTEST:

\_\_\_\_\_  
Jeff Ward, Chairman

\_\_\_\_\_  
Anna Parker, Administrative Assistant



# COUNTY OF CLEVELAND, NORTH CAROLINA

## AGENDA ITEM SUMMARY

---

### Case 18-06 Variance

---

**Department:**

**Agenda Title:** Case 18-06: Variance of 30' Front Residential Setback at 322 Harrelson Road

**Agenda Summary:**

**Proposed Action:**

---

**ATTACHMENTS:**

| File Name   | Description                   |
|---|-------------------------------|
| <input type="checkbox"/> 18-06_Staff_Report_Variance_322_Harrelson_Road.pdf | Staff Report                  |
| <input type="checkbox"/> Site_Plan_Version_2.pdf                            | Site Plan                     |
| <input type="checkbox"/> 18-06_Aerial_322_Harrelson_Rd_Variance.pdf         | Aerial Image                  |
| <input type="checkbox"/> Variances.pdf                                      | Section 12-62 Variances       |
| <input type="checkbox"/> photo_front_2.jpg                                  | Front Yard Photo              |
| <input type="checkbox"/> photo_existing_carport.jpg                         | Existing Carport Photo        |
| <input type="checkbox"/> photo_front.jpg                                    | Front Yard with Carport Photo |

## STAFF REPORT

To: Board of Adjustment  
Date: July 26, 2018  
From: Chris Martin, Senior Planner  
Subject: Variance Application 18-06

Summary Statement: Ricky and Robin Cobb are requesting a Variance from the 30' front residential setback for an attached carport. They have submitted a completed application and a site plan.

Review: The property, 322 Harrelson Road, is zoned Residential. Cleveland County zoning code, section 12-173, requires a thirty (30) foot setback from the front and rear property line, as well as ten (10) feet from the side property lines. **The Cobbs are requesting a variance of the 30' front setback rule to be able to place an attached carport onto the side of their house, which faces Harrelson Road.**

The Cobbs currently have a carport on their property that is in disrepair and in need of replacement. Due to a Duke Energy power line easement they are unable to place it where the existing carport is. The powerline easement, as shown on the site plan, eliminates much of the west and south of the property from consideration.

A variance may be granted by the Board with a vote of 4/5 of the membership.

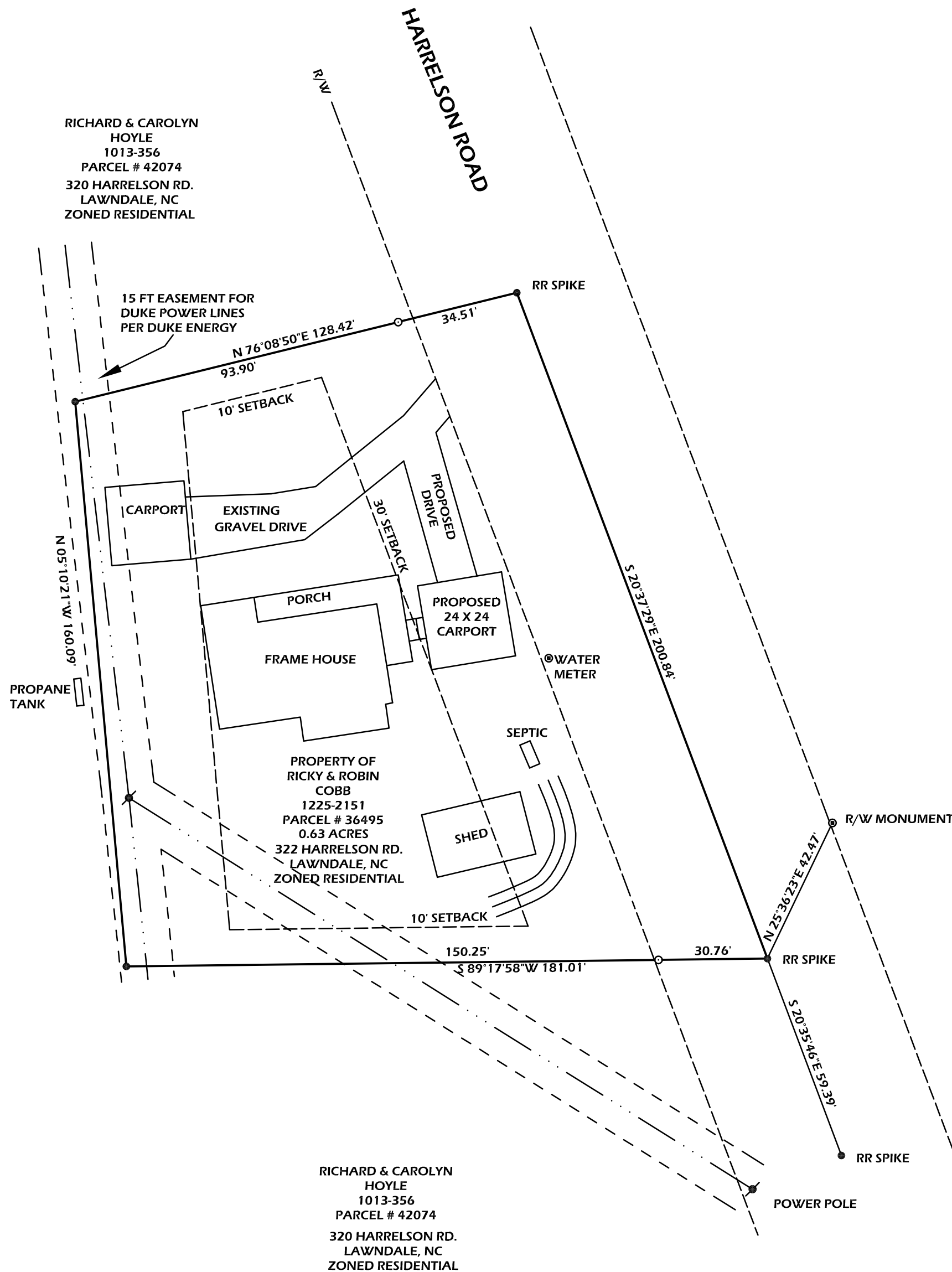
When issuing Variances, the Board must come to the following three conclusions:

1. There are unnecessary hardships in the way of carrying out the strict letter of the chapter as demonstrated by one or more of the following:
  - a. If following the strict letter of the law he/she can secure no reasonable return from, or make no reasonable use of, his/her property
  - b. The hardship of which the applicant complains results from unique circumstances related to the applicant's land
  - c. The hardship is not the result of the applicant's own actions.
2. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit
3. The granting of the variance secures the public safety and welfare and does substantial justice.

NOTES:  
-SURVEY BASED ON PHYSICAL EVIDENCE  
-NO FEATURES LOCATED OTHER THAN AS SHOWN  
-PROPERTY MAY BE SUBJECT TO RECORDED OR UNRECORDED EASEMENTS NOT OBSERVED  
-NO TITLE SEARCH PERFORMED BY THIS FIRM.  
-PROPERTY MAY OR MAY NOT BE IN A FLOOD ZONE, UNLESS SPECIFIED ON SURVEY, UPON REQUEST.  
-ANY UNDERGROUND UTILITIES SHOWN CANNOT BE FULLY VERIFIED BY THIS FIRM UNLESS UNCOVERED FOR VISUAL INSPECTION.  
-THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF TITLE ABSTRACT. THE SURVEYED PROPERTY IS SUBJECT TO ANY EXISTING EASEMENTS, RIGHTS OF WAY, RESTRICTIONS, SETBACK LINES, BURIED UTILITIES, PIPES, TANKS, MINERAL RIGHTS AND LANDFILLS WHETHER OR NOT SHOWN ON THIS PLAT OR WHETHER OR NOT RECORDED IN PUBLIC RECORDS.  
-R/W SHOWN SUBJECT TO NC DOT VERIFICATION

- LEGEND
- IRON PIN FOUND
  - IRON PIN SET
  - UNMARKED POINT
  - ✕ POWER POLE

RICHARD & CAROLYN HOYLE  
1013-356  
PARCEL # 42074  
320 HARRELSON RD.  
LAWNDALE, NC  
ZONED RESIDENTIAL

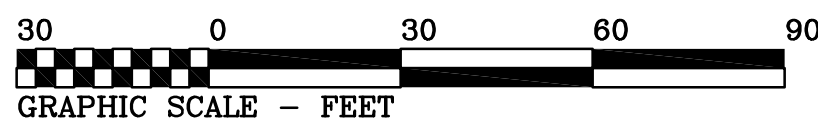


I, D. JASON WEST, CERTIFY THAT UNDER MY DIRECTION AND SUPERVISION THIS PLAT WAS DRAWN FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION; THAT THE BOUNDARIES NOT SURVEYED ARE SHOWN AS BROKEN LINES; THAT THE RATIO OF PRECISION AS CALCULATED IS A MINIMUM OF 1: 10,000; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH GS 47-30 AS AMENDED. WITNESS MY ORIGINAL SEAL, SIGNATURE AND REGISTRATION NUMBER THIS

7 DAY OF JUNE, 2018

*D. Jason West*

NCPLS L-4992



PROPERTY OF  
RICKY & ROBIN  
COBB  
1225-2151  
PARCEL # 36495  
0.63 ACRES  
322 HARRELSON RD.  
LAWNDALE, NC  
ZONED RESIDENTIAL  
PHONE # 704-473-8366

|             |  |                                   |               |
|-------------|--|-----------------------------------|---------------|
| SURVEY FOR: |  | RICKY COBB                        |               |
| LOCATION:   |  | TWSP. NO. 9, CLEVELAND COUNTY, NC |               |
| PARCEL ID:  |  | 36495                             |               |
| DATE:       |  | JUNE 7, 2018                      |               |
| SCALE:      |  | 1"=30'                            | DRAWN BY: DJW |
| FILE:       |  | RICKYCOBB.DWG                     |               |

**LEDFORD & WEST**  
LAND SURVEYING & MAPPING, PLLC.  
228 E. DOUBLE SHOALS ROAD  
LAWNDALE, NC 28090 704-312-6039  
DJWEST@CHARLOTTE.TWBCB.COM



**Sec. 12-62. - Variances.**

- (a) An application for a variance shall be submitted to the board of adjustment by filing a copy of the application with the administrator in the Planning Department. Applications shall be handled in the same manner as applications for conditional use permits in conformity with the provisions of section 12-33.
- (b) A variance may be granted by the board of adjustment, with a vote of four-fifths ( 4/5 ) of the membership, only if it reaches the following three conclusions:
  - (1) There are unnecessary hardships in the way of carrying out the strict letter of this chapter, as demonstrated by findings supporting all of the following:
    - a. If the applicant complies with the literal provisions of this chapter, he can secure no reasonable return from, or make no reasonable use of, his property.
    - b. The hardship of which the applicant complains results from unique circumstances related to the applicant's land.
    - c. The hardship is not the result of the applicant's own actions. 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.
  - (2) The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit.
  - (3) The granting of the variance secures the public safety and welfare and does substantial justice.
- (c) In the case of a variance from standards governing subdivisions, it must involve matters of the timing of development, dimensions, geography, topography, stream flow, geology, soil type, and other natural conditions, which create a condition unique to the subdivision.
- (d) In the case of a zoning variance, it will neither result in the extension of a non-conforming situation in violation of Section 12-8, nor authorize the initiation of a non-conforming use of land.
- (e) In granting a variance, the board of adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.
- (f) Any variance may be issued for an indefinite duration or for a specified duration only.
- (g) The nature of a variance and any conditions attached to it shall be entered on the face of the zoning permit, or the permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such

conditions are enforceable in the same manner as any other applicable requirement of this chapter.

(Amd. of 5-20-97; Amd. of 2-5-08; Amd. of 4-1-08, § 19; Amd. of 3-18-14(2))















# COUNTY OF CLEVELAND, NORTH CAROLINA

## AGENDA ITEM SUMMARY

---

### Case 18-07 CUP

---

#### Department:

**Agenda Title:** Case 18-07: Request to continue Conditional Use Permit for Temporary Dependent Care Housing at

#### Agenda Summary:

#### Proposed Action:

---

#### ATTACHMENTS:

| File Name                |  | Description  |
|--------------------------|--|--------------|
| <input type="checkbox"/> | CUP_18-07_Staff_Report_temp_dep_care_renewal_3534_plainfield.pdf | Staff Report |
| <input type="checkbox"/> | 18-07_Aerial_temp_dep_care_3534_plainfield.pdf                   | Aerial Map   |

## STAFF REPORT

To: Board of Adjustment Meeting Date: 7-26-2018

From: Chris Martin, Senior Planner

Subject: Conditional Use Permit Renewal Application 18-07 for an Existing Temporary Dependent Care Home

Summary Statement: Glenda and Ronnie McCurry are requesting a conditional use permit (CUP) renewal for an existing Temporary Dependent Care Home at 3534-1 Plainfield Dr. They were originally granted a conditional use permit to install the home on October 30, 2003. The CUP has been renewed on September 25, 2008 and August 29, 2013.

The Double Wide Mobile Home was completed according to the site plan submitted and the set up final was certified on 01/15/2004. It was placed in the side yard instead of behind the existing single family dwelling due to the steep grade in the rear yard, and it meets all setback requirements, as approved in the CUP 03-07 issued on 8-29-13.

The McCurry's wish to continue using the home for their 50 year old son who doesn't have the means to take care of himself. He was in a wreck 20 years ago and isn't capable of working.

Review: The Cleveland County Unified Code of Ordinances (Section 12-140) states that temporary dependent care homes are allowed in Rural Agriculture Districts with a Conditional Use Permit. The McCurry's have submitted their application in accordance with Section 12-140 with the exception that the temporary dependent care home is in the side yard due to the steep grade in the rear yard, as approved in CUP 03-07.

When issuing conditional use permits, the Board must consider the following four findings:

- (1) Will not materially endanger the public health or safety;
- (2) Will not substantially injure the value of adjoining or abutting property;
- (3) Will be in harmony with the area in which it is to be located; or
- (4) Will be in general conformity with the land use plan, thoroughfare plan, or other plans officially adopted by the board of commissioners.

**Case 18-07 CUP** for Renewing Existing Temporary Dependent Care Home  
**Ronnie & Glenda McCurry**

**Parcel # 35820:** 3534-1 Plainfield Dr.

