

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

**November 21, 2024**

**4:00 PM**

**311 E. Marion St.**

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

**Invocation and Pledge of Allegiance**

**Approval of Minutes**

Approval of the 10-24-2024 BOA Minutes

**Cases**

Case 24-09: Variance Request for principal structure setbacks at 817 Mt. Zion Church Rd

**Miscellaneous Business**

**Adjournment**

**COUNTY OF CLEVELAND, NORTH CAROLINA**

**AGENDA ITEM SUMMARY**

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**Approval of the 10-24-2024 BOA Minutes**

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**Department:**

**Agenda Title:** Approval of the 10-24-2024 BOA Minutes

**Agenda Summary:**

**Proposed Action:**

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**ATTACHMENTS:**

File Name	Description
<input type="checkbox"/> 10-24-24_BOA_Minutes_DRAFT.pdf	10-24-2024 BOA 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.**  
**October 24, 2024**

<b>Members Present</b>	<b>Members Absent</b>	<b>Others Present</b>
Tommy Brooks, Chairman	Paul Aulbach, <i>alternate</i>	Dwayne Price
Thomas Fletcher, Vice Chairman		
Leon Martin	<b>Staff Present</b>	
Woody Edwards, <i>alternate</i>	Chris Martin, Planning Director	
	Hayden Whetstine, Planner	

**CALL TO ORDER**

**Chairman Brooks** called the meeting to order at 4:00 p.m.

**ESTABLISHMENT OF QUORUM**

It was determined that quorum was present.

**PLEDGE & INVOCATION**

**Chairman Brooks** led the pledge and invocation.

**APPROVAL OF MINUTES: August 29, 2024 MINUTES**

**Leon Martin** made a motion to approve the August 29, 2024 minutes. Thomas Fletcher seconded the motion and it carried unanimously.

**SUP CASE 24-08: Temporary Dependent Care Home at 3904-1 Fallston-Waco Rd.**

**Chairman Brooks** opened the Evidentiary Hearing.

**Chris Martin** was sworn in. He presented the case, stating that the applicants, Dwayne and Dianne Price submitted their application for their temporary dependent care home located at 3904-1 Fallston-Waco Rd. They have placed a single-wide mobile home on their property in accordance with their site plan, which was approved under the original temporary dependent care home on 6-24-2004 and renewed on 12-22-2009, 12-18-2014, and 10-30-2019. The applicants submitted a renewal application on 10-2-2024. They need the home to care for Dianne’s mother, Jeannette Owens, who owns the property. Mr. Martin presented a slideshow with the case details

**Martha Thompson** requested that the Board discuss if the application or evidence support compliance with the UDO Code Section 12-140.

**Dwayne Price** was sworn in. He stated that they need to care for Jeannette; they feed her and she stays with them most of the time. Chairman Brooks asked if it helps with her independence and Mr. Price said it does.

**Chairman Brooks** closed the Evidentiary Hearing.

**The Board** discussed the four criteria.

The Board Reviewed the four criteria:

- (1) Will it materially endanger the public health or safety- **No, there was no evidence of this.**
- (2) Will it substantially injure the value of adjoining or abutting property- **No.**
- (3) Will it **not** be in harmony with the area in which it is to be located- **No, it will be in harmony with the area.**
- (4) Will it **not** be in general conformity with the land use plan, thoroughfare plan, or other plan officially adopted by the board of commissioners- **No, it is in general conformity.**

**Chairman Brooks** entertained a motion.

**Woody Edwards** made a motion to approve SUP Case 24-08 for the Temporary Dependent Care home renewal. Leon Martin seconded the motion and it passed unanimously.

### **MISCELLANEOUS BUSINESS**

**Chris Martin** provided an update about the Kings Mountain ETJ relinquishment.

### **ADJOURNMENT**

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

**Thomas Fletcher** so moved the motion to adjourn. It was seconded by Woody Edwards and unanimously approved.

ATTEST:

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Tommy Brooks, Chairman

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Anna Parker, Clerk

**COUNTY OF CLEVELAND, NORTH CAROLINA**

**AGENDA ITEM SUMMARY**

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**Case 24-09: Variance Request for principal structure setbacks at 817 Mt. Zion Church Rd.**

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**Department:**

**Agenda Title:** Case 24-09: Variance Request for principal structure setbacks at 817 Mt. Zion Church Rd

**Agenda Summary:**

**Proposed Action:**

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**ATTACHMENTS:**

<b>File Name</b>	<b>Description</b>
<input type="checkbox"/> 24-09_Staff_Report_Mt_Zion_Ch.pdf	Staff Report
<input type="checkbox"/> 24-09_Petition.pdf	Variance Petition
<input type="checkbox"/> Code_References.pdf	Code References
<input type="checkbox"/> 24-09_Map_Aerial_Map.pdf	Aerial Image
<input type="checkbox"/> 24-09_Site_Plan_B_W_line.pdf	Site Plan 1
<input type="checkbox"/> 24-09_Site_Plan_color_aerial.pdf	Site Plan 2

## STAFF REPORT

To: Board of Adjustment Meeting Date: November 21, 2024  
From: Chris Martin, Planner Director  
Subject: Case 24-09: Variance

**Summary Statement:** Cole Gurley is requesting a variance from Section 12-173, principle building setback requirements, to construct a residence at 817 Mt Zion Church Rd.

**Review:** Parcel 47241 is a 9 acre tract located at 817 Mt Zion Church Road in the northwest portion of the County. There is currently a manufactured home on the property. The property owner, Cole Gurley, wishes to construct a residence and is requesting a 6' foot variance to the side property line, as shown on the submitted site plan. Once the residence is constructed, the existing manufactured home will be removed.

Section 12-173 states principle structures should observe a 10 feet side property line setback. Mr. Gurley has completed an application and submitted a site plan illustrating the reasons for his request.

A variance is defined in Section 12-20 of the UDO as a grant of permission that authorizes the recipient to do that which, according to the strict letter of the chapter, he/she could not otherwise legally do. Such variance will not violate the spirit of this chapter and shall arise from a situation that is unique to the property in question, including timing of development, dimensions, or natural features.

Chapter 12-62(b) of the Cleveland County Unified Development Ordinance states that variances can only be granted by a **4/5 majority**. North Carolina General Statute 160D-705(d) states that the Board of Adjustment shall grant a variance upon showing all the following:

1. Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.



**Cleveland County**  
NORTH CAROLINA

## APPLICATION FOR VARIANCE

Name of Applicant:   Cole Gurley  

Mailing Address:   817 Mt. Zion Church Road  

City/State/Zip:   Casar, NC 28020  

Phone:   704-473-3396   E-Mail:   colegurley@yahoo.com  

Property Location:   817 Mt. Zion Church Road, Casar, NC  

Parcel   47241  

### TO THE CLEVELAND COUNTY BOARD OF ADJUSTMENT:

I/We hereby petition the Board of Adjustment for a VARIANCE from the literal provisions of the Cleveland County Development Ordinance because, under the interpretation given to me by the Zoning Enforcement Officer, I am prohibited from using the parcel of land described in the attached form (General Application Form) in a manner shown by the plot plan attached to that form. I request a variance from the following provisions of the Ordinance (cite paragraph numbers):

**Sec 12-173 – Building Set Back Requirements Section a, 3<sup>rd</sup> entry of first table – Side Set Back**

so that the above-mentioned property can be used in a manner indicated by the plot plan attached to the General Application form or, if the plot plan does not adequately reveal the nature of the variance, as more fully described herein (If a variance is requested for a limited time only, specify duration requested):

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### Factors Relevant to the Issuance of a Variance

The Board of adjustment does not have unlimited discretion in deciding whether to grant a variance. Under North Carolina General Statute 160D-705d, the Board is required to reach four conclusions before it may issue a variance: (a) unnecessary hardship would result from the strict application of the Ordinance; (b) the hardship results from conditions peculiar to the property, such as location, size or topography; (c) the hardship did not result from actions taken by the applicant or owner; and (d) the requested variance is consistent with the spirit, purpose, and intent of the ordinance. In the spaces provided below, indicate the *facts* that you intend to show and the *arguments* that you intend to make to convince the Board that it can properly reach these three required conclusions.

- A. Unnecessary hardship would result from the strict application of the regulation.
- A)   The hardship that would result is risk of damage to home by adjacent property owners' trees, encroachment onto septic system and future repair area, increased grading and construction costs, and storm drainage issues.

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- B. The hardship results from conditionals that are particular to the property, such as location, size and topography.

\_ The hardship will result from several factors that are particular to this property. The biggest factor in determining any home location is mitigation of risk and investment protection as well as construction expenditures. The property is long and narrow in nature, most of which is not desirable for a home location being low lying areas, wooded and without access or utilities. The property also narrows as it intersects SR 1529, MT. Zion Church Road. The home is designed for a basement which is ideal for the sloping topography. However, the logical high point for the front of the home to rest on is not perpendicular to the property lines yet runs with a skew approximately 20 degrees from normal to the property line. Any attempt to rotate the home orientation to normal will increase the amount of fill and grading on the southern end of the home as the property slopes from north to south and north to west. This grading and fill placement will result in higher construction costs. The wood block to the south is owned by an adjacent property owner and moving the home closer to the southern line increases the risk of storm damage from falling trees. Also, the highpoint or terse acts as a drainage feature and there is concern pulling away from or rotating away from may result in storm drainage that cannot be addressed without encroaching onto the adjacent property to the south, of which is not controlled by the requested. Moving the home location to the west or further back on the property would encroach on future septic repair areas, existing septic system and Utility Right of Way which is not permissible. Moving the home location to the East or towards Mt. Zion Church Road compounds these issues as the property does narrow in this direction. Lastly an attempt to locate the home deeper into the property is not feasible as the nearest desirable location with acceptable topography is approximately 1300 feet to the West. This location is not cleared, no drive access, and further from utilities which would increase construction cost tremendously.

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C. The hardship did not result from actions taken by the applicant or the property owner.

\_ The topography, utility easements and adjacent property owner were in situ to this property upon acquisition. Septic and repair areas are logically placed behind the new home location due to topography, i.e. downhill grade behind the new home location.

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D. The requested variance is consistent with the spirit, purpose and intent of the ordinance.

\_ The request is for a variance for one corner of the new home to exceed the current 10-foot side set back. The intention is to conform to or exceed the remaining county rules and regulations. The property owner to the north is the requested property's mother who does not contest the encroachment of the corner of the new home against her property as the requested maintains the area of property adjacent to.

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I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information, and belief.

*Cole G. Smith*

Applicant's Signature

*11/5/2024*

Date

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**For Office Use Only**

Fee: \$300.00 Payment Code: **ZP31**

Date Paid: 11-5-24 Case # 24- Permit #: 181383

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**Sec. 12-173. Building setback requirements.**

- (a) Subject to section 12-174 and the other provisions of this article, the minimum principal building setback requirements shall be as follows:

From street right-of-way	30 feet
From street right-of-way	50 feet (RA and RU district)
<b>From side property line</b>	<b>10 feet</b>
From rear property line	30 feet
From side property line on corner lot	20 feet
From lot front on arterial	40 feet

If the street right-of-way line is readily determinable (by reference to a recorded map, set irons, or other means), the setback shall be measured from such right-of-way line. If the right-of-way line is not so determinable, the setback shall be measured from the street centerline and increased by twenty-five (25) feet.

- (b) The following structures shall also be subject to these setbacks:
- (1) Gas pumps and overhead canopies or roofs.
  - (2) Fences running along lot boundaries adjacent to public street rights-of-way if such fences exceed six (6) feet in height and are substantially opaque.
- (c) Setback requirements shall not apply to the location of:
- (1) Structures along the shoreline of Moss Lake.
  - (2) Decks, patios or other structures not used as a place of occupancy, storage or shelter.
- (d) The above setback requirements shall apply to the location of all fixed structures from any exterior lot line other than the shoreline of Moss Lake.

(Ord. of 6-17-97; Amd. of 12-17-02; Ord. No. 23-07, 3-19-24)

**§ 160D-705. Quasi-judicial zoning decisions.**

(a) Provisions of Ordinance. – The zoning or unified development ordinance may provide that the board of adjustment, planning board, or governing board hear and decide quasi-judicial zoning decisions. The board shall follow quasi-judicial procedures as specified in G.S. 160D-406 when making any quasi-judicial decision.

(b) Appeals. – Except as otherwise provided by this Chapter, the board of adjustment shall hear and decide appeals from administrative decisions regarding administration and enforcement of the zoning regulation or unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development. The provisions of G.S. 160D-405 and G.S. 160D-406 are applicable to these appeals.

(c) Special Use Permits. – The regulations may provide that the board of adjustment, planning board, or governing board hear and decide special use permits in accordance with principles, conditions, safeguards, and procedures specified in the regulations. Reasonable and appropriate conditions and safeguards may be imposed upon these permits. Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made for recreational space and facilities. Conditions and safeguards imposed under this subsection shall not include requirements for which the local government does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the local government, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land.

The regulations may provide that defined minor modifications to special use permits that do not involve a change in uses permitted or the density of overall development permitted may be reviewed and approved administratively. Any other modification or revocation of a special use permit shall follow the same process for approval as is applicable to the approval of a special use permit. If multiple parcels of land are subject to a special use permit, the owners of individual parcels may apply for permit modification so long as the modification would not result in other properties failing to meet the terms of the special use permit or regulations. Any modifications approved apply only to those properties whose owners apply for the modification. The regulation may require that special use permits be recorded with the register of deeds.

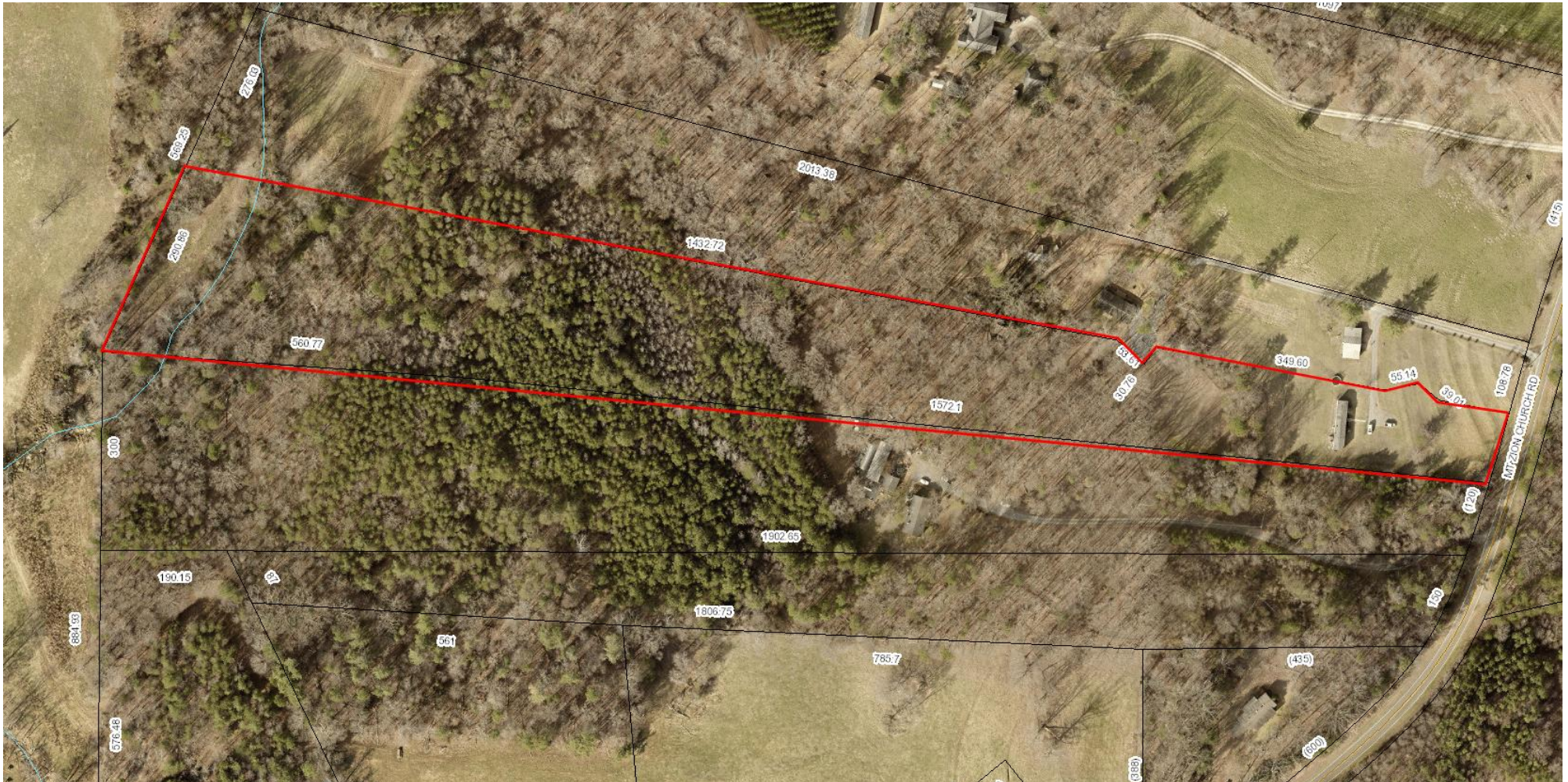
(d) Variances. – When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the board of adjustment shall vary any of the provisions of the zoning regulation upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other development regulation that regulates land use or development may provide for variances from the provisions of those ordinances consistent with the provisions of this subsection. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 17, 50(b), 51(a), (b), (d).)

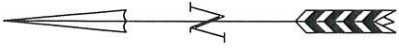


**Board of Adjustment Case #24-09**  
**Aerial Image**  
817 Mt. Zion Church Rd. Parcel # 35672





Property of:  
Cole & Emily Gurley



60' R/W

MT. ZION CH. RD.  
SR 1529  
(DB 15G-66,67)

R1

EIP  
RRS

SOIL DRIVE

Overhead Utility Lines

PROPERTY LINE

PROPERTY LINE

WOODED AREA

APPROX.  
4.0' FROM  
EXIST. LINE

PROPOSED  
HOME  
LOCATION

SOIL DRIVE

SHED

PROPOSED FUTURE  
DRAIN FIELD REPAIR  
AREA

1-S-D

APPROX.  
EXIST. SEPTIC  
TANK

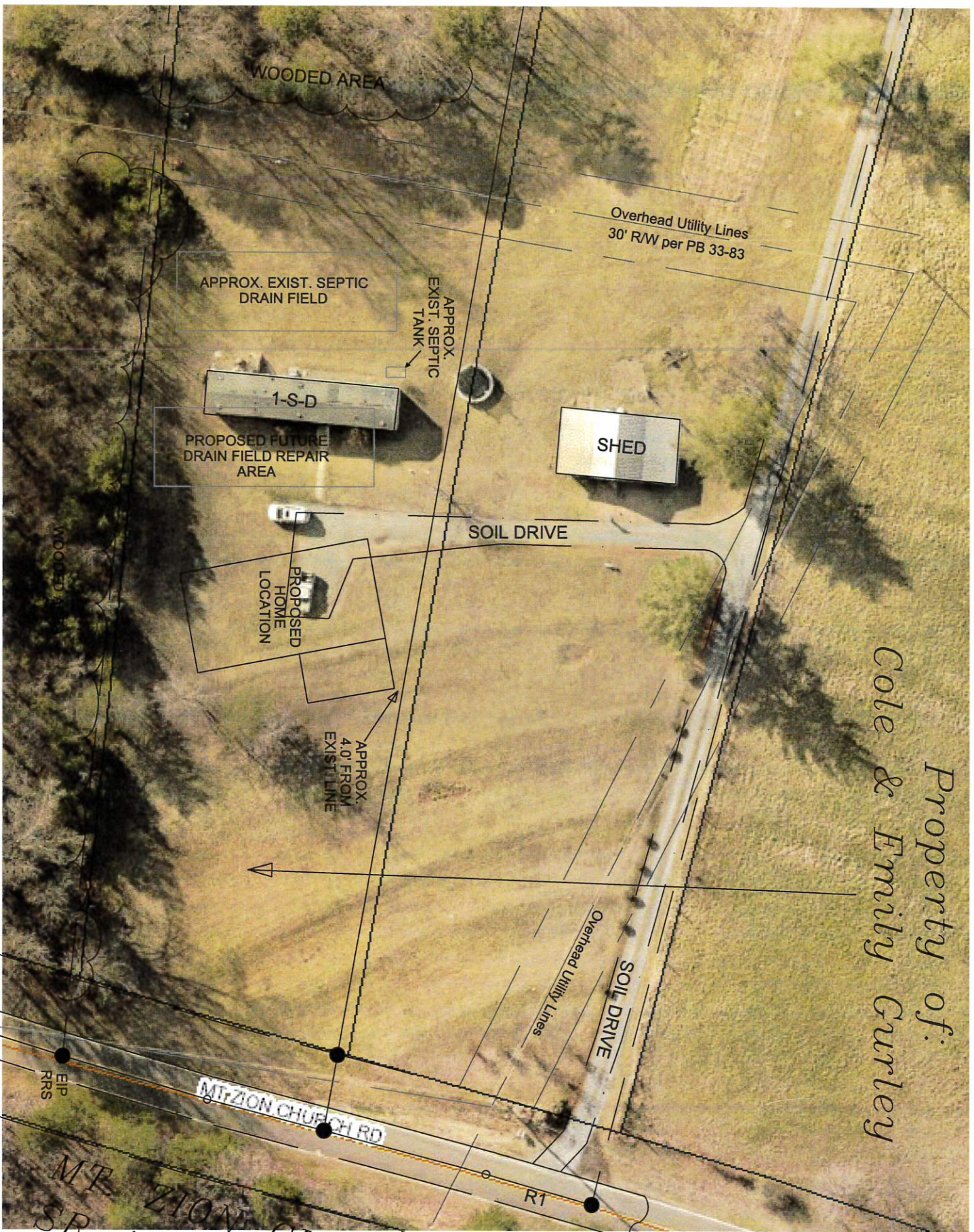
APPROX. EXIST. SEPTIC  
DRAIN FIELD

Overhead Utility Lines

WOODED AREA



Property of:  
Cole & Emily Gurley



EIP  
RRS

MT-ZION CHURCH RD

R1

MT ZION CH. RD.  
SR 1529  
(DB 15G-66,67)  
60' R/W

