

## **STATESVILLE CITY COUNCIL MEETING AGENDA**

**MAY 18, 2020**

**City Hall - 227 S. Center Street, Statesville, NC  
Pre-Agenda Meeting – 6:00 p.m. Council Chambers  
Regular Meeting – 7:00 p.m. Council Chambers**

- I Call to Order**
- II Invocation**
- III Pledge of Allegiance**
- IV Adoption of the Agenda**
- V Public Comment – Public Comments along with your full name and address should be e-mailed to the City Clerk at [clerk@statesvillenc.net](mailto:clerk@statesvillenc.net) or mailed to Statesville City Clerk, P.O. Box 1111, Statesville, NC 28687, and received by 12:00 noon, Monday, May 18, 2020.**
- VI Consent Agenda – All items below are considered to be routine by City Council and will be enacted by one motion. There will be no separate discussion on these items unless a Council member so requests, in which event, the item will be removed from the Consent Agenda and considered with the other items listed in the Regular Agenda.**
  - A. Consider approving the May 04, 2020 Council Meeting minutes. *Pg. 3***
  - B. Consider approving a Waiver Agreement, and an Ordinance and a Clerk’s Certificate for the Waiver Agreement, in order to receive the wholesale power bill electronically through e-mail from ElectriCities NCMPA1. *(Maclaga) Pg. 12***
  - C. Consider approving a Contract Line Crew Labor Contract with Sumter Utilities, Inc. with an initial purchase order amount of \$300,000. *(Maclaga) Pg. 24***
  - D. Consider approving a request to demolish the fire damaged detached garage located at 628 West End Avenue. *(Ashley) Pg. 36***

### **REGULAR AGENDA**

- VII Hold a public hearing on the proposed Fiscal Year 2020-2021 Budget. *(Tucker) Pg. 39*  
To make comments on this public hearing, please call the City Clerk at 704-878-3544 by 12:00 noon on Monday, May 18, 2020 for further instructions.**
- VIII Conduct a public hearing and consider approving Site Plan P20-03 (Quasi-Judicial) filed by Beretta Development for mini-warehouses located at 1739 Wilkesboro Highway, Tax Map 4735-35-1603. *(Ashley) Pg. 40*  
To make comments on this public hearing, please call the City Clerk at 704-878-3544 by 12:00 noon on Monday, May 18, 2020 for further instructions.**

- IX** Conduct a public hearing and consider approving first reading of Rezoning Request ZC20-03 filed by Calvary Baptist Church for the property located at 504 Whites Mill Road; Tax Map 4743-27-0142 from HI (Heavy Industrial) to R-15 (Urban Fringe Low-Density Residential) District. *(Ashley) Pg. 57*  
To make comments on this public hearing, please call the City Clerk at 704-878-3544 by 12:00 noon on Monday, May 18, 2020 for further instructions.
- X** Consider accepting an offer from the NC Department of Transportation to purchase a portion of a City-owned parcel for right-of-way and easements for the I-3819B (I-40 / I-77) Interchange project. *(Harrell) Pg. 67*
- XI** Receive information on a proposed new chapter to the City Code: Chapter 20 – Stormwater. *(Harrell) Pg. 71*  
This is for information only. Staff will review the proposal with Council at the 5/18 meeting and no decision is requested.
- XII** **Boards and Commissions Updates** *Pg. 90*
1. 04/02/2020 and 04/23/2020 Historic Preservation Commission Meeting Minutes
  2. 04/28/2020 Planning Board Meeting Minutes
  3. 04/15/2020 Technical Review Committee Meeting Minutes
- XIII** **Other Business**
- XIV** **Closed Session**
1. Legal Matter
  2. Economic Development Matters (2)
- [N.C.G.S. 143-318.11(a)(1)] Prevent the disclosure of privileged information;  
[N.C.G.S. 143-318.11(a)(3)] Consult with the Attorney and to protect the attorney-client privilege;  
[N.C.G.S. 143-318.11(a)(4)] To discuss matters relating to the location or expansion of business in the area served by this body.
- XV** **Adjournment**

**MINUTE BOOK 29, PAGE 075  
STATESVILLE CITY COUNCIL MEETING – MAY 04, 2020  
STATESVILLE CITY HALL COUNCIL CHAMBERS & VIRTUAL ZOOM MEETING–6:00 P.M.**

**Council Present:** Mayor Constantine H. Kutteh presiding, J. Johnson, Morgan, Staford, Jones, Foster, S. Johnson, Allison, Lawton via phone

**Council Absent:** 0

**Staff Present:** R. Smith, Fugett, Davis, Nesbit

**Staff Present via Zoom:** Ferguson, Harrell, Ashley, Maclaga, Tucker, Staley, Messick

**Media:** 0

**Others via Zoom:** Frank Fugate, Jim McMillan, Denis Blackburne, J. Nathan Duggins III

**I Call to Order**

Mayor Kutteh called the meeting to order and briefly reviewed the agenda.

Referring to item IX on the agenda, Council member Staford said that he does not like the wording “on showing of a financial hardship” that has been added to Section 20-144(b) and that he did not have a problem with the original language. City Attorney Messick explained that this wording was added because from a legal standpoint, the City has a duty to be able to extend the payment of the fees if they can show they have a financial hardship; however, in her opinion, the original wording will encompass that so it could be left as it was.

Council member Staford asked if the word “case” under Section 20-144(c) was supposed to state “cash”. Messick replied that it should state “cash” Staford asked if there is a requirement for liability insurance. Ron Smith replied that is included in the ordinance and should be in this document as well. Staff will verify this. Staford asked if bars and restaurants have to abide by this as well. Nancy Davis replied that they do not because they are permitted by the State ABC Commission.

Council members agreed to move Items IX and X to the Consent Agenda.

Mayor Kutteh stated that he would like to hold Budget Meetings on May 19<sup>th</sup> and 20<sup>th</sup> at 4:00 p.m.

Mayor Kutteh asked for a motion to move to Closed Session in accordance with N.C.G.S. 143-318.11(a)(3) to consult with the City Attorney and to protect the attorney-client privilege regarding potential litigation.

**Council member Jones made a motion to move to Closed Session, seconded by Council member Allison. The motion Carried unanimously.**

Upon return from Closed Session, Mayor Kutteh stated that Council consulted with the City Attorney regarding potential litigation and no action was taken.

**II Invocation**

Mayor Kutteh gave the invocation.

**III Pledge of Allegiance**

Mayor Kutteh led the Pledge of Allegiance.

**IV Adoption of the Agenda**

Council member Morgan made a motion to adopt the amended agenda, seconded by Council member Allison. The motion carried unanimously.

Mayor Kutteh announced that the Development Agreement for the Larkin Commercial Park has been executed by all parties and they are ready to proceed with their first building.

Mayor Kutteh advised that the City of Statesville is at 50% Census response, which is below the state's percentage. He encouraged everyone to complete the Census form online and noted that the City's website has a link to the form.

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Mayor Kutteh related that he received a call from Lamar Advertising who offered, at no charge to the City, to advertise the City on their digital billboard that is located on Highway-21 north in the area across from Publix. The advertising will run at least all of this month.

Mayor Kutteh stated that our Electric Utilities Department received the prestigious national honor of being named a Reliable Public Power Provider, which means that our department uses the best practices in four key areas; reliability, safety, workforce development and system improvement. Not only did they earn this RP3 distinction (one of 275 public power departments in the nation), they also earned it at the highest level, the Diamond Level. We will keep this designation for three years and in the meantime the Electric Department will continue its excellent work so that we can receive the RP3 distinction at the Diamond Level again when they re-apply in 2023. He thanked the department for their hard work and advised that a press release announcing this honor will go out tonight.

**V Consent Agenda**

Mayor Kutteh stated that all items below are considered to be routine by City Council and will be enacted by one motion. There will be no separate discussion on these items unless a Council member so requests, in which event, the item will be removed from the Consent Agenda and considered with the other items listed in the Regular Agenda.

- A. Consider approving the April 20, 2020 Council Meeting minutes.**
- B. Consider approving a Tolling Agreement with the United States Corps of Engineers (USACE) to be attached to a USACE Environmental Permit Application in relation to the Runway Safety Area Extension Project. (Ferguson)**
- C. Consider approving Budget Amendment #2020-18, #2020-19, #2020-20 to bring Fund 505- Airport Improvement Fund to current actual. (Tucker)**

- D. Receive the Statesville Convention and Visitors Bureau's Quarterly Financial Report for the quarter ended December 31, 2019. *(Tucker)*
- E. Consider approving the audit contract for fiscal year ending June 30, 2020 with Martin Starnes & Associates, CPA's, P.A. *(Tucker)*
- IX Consider amending a portion of the Special Events Ordinance (Chpt. 20, Article V, Sec. 20-148) to give more organizations the ability to sponsor events on city property that involve the distribution of alcohol, and streamline the special events permitting process. *(Davis)*
- X Consider authorizing funding for easement acquisition for the water main extension to serve Larkin Commerce Park and approving Budget Amendment No. 2020-22. *(Harrell)*

Mayor Kutteh asked if any Council member wanted to move any items from the Consent Agenda to the Regular Agenda. Hearing none, he asked for a motion to approve the Consent Agenda.

**Council member J. Johnson made a motion to approve, seconded by Council member Foster. The motion carried unanimously.**

**REGULAR AGENDA**

**VI National Nurses Week Proclamation.**

Mayor Kutteh read the Proclamation as follows:

**NATIONAL NURSES WEEK May 6-12, 2020**

**WHEREAS**, Florence Nightingale, born in 1820, is known as the founder of modern nursing; and

**WHEREAS**, Clara Barton, a nurse who earned the nickname "angel in the battlefield" during the Civil War, went on to create the American Red Cross in 1881; and

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**WHEREAS**, today, there are more than 3.9 million professionally active RNs and licensed practical nurses in the United States; and

**WHEREAS**, nursing is the nation's largest health care profession and one of the largest workforces in the United States; and

**WHEREAS**, nearly 20% of all registered nurses in the United States holds a master's degree; and

**WHEREAS**, there are hundreds of registered nurses working in Statesville; and

**WHEREAS**, National Nurses Week was designated by the White House and President Nixon in 1974, and has been recognized each year from May 6 to May 12; and

**WHEREAS**, nurses are on the frontlines of a world pandemic and face unprecedented times; and

**WHEREAS**, nurses are considered the most trustworthy of all professions in the United States.

**NOW THEREFORE**, the Statesville City Council does hereby proclaim May 6 to May 12, 2020 as **NURSES WEEK IN STATESVILLE** and asks all Statesville citizens to join in

extending our great appreciation for the dedication and service nurses provide to our community every day. Adopted this 4<sup>th</sup> day of May, 2020.

**VII Continue the public hearing from the March 16, 2020 City Council meeting and consider approving the first reading of an ordinance to annex the properties located adjacent to 110 Vance PO Road. (Ashley)**

Mayor Kutteh stated that at the end of the public hearing he will read into the record the comments that were received by the Clerk on this matter.

Sherry Ashley gave the following Staff Report:

The property being considered for annexation was submitted by Landon Greene LP, agent for property owners, and is adjacent to 110 Vance PO Road. The property is approximately 8.33 acres in size and encompasses Iredell County Parcel Identification Numbers 4765-32-5949 & 4765-33-7215. The properties are contiguous to the primary corporate limits of the City of Statesville. The properties are located in Iredell County's Zoning Jurisdiction and zoned CB (Central Business) District and therefore will have to be rezoned. The applicant has submitted a rezoning application to zone the property to R-8MF CU (Medium Density Multi-Family Residential Conditional Use) District to allow for up to 60 units of independent senior housing.

In February of 2017 an application was submitted to annex and rezone these two properties from IC-CB (Iredell County Community Business) to R-5MF (High Density Multi-Family Residential) District with the intention of using the site for an 80-unit workforce housing complex. The request was approved by the Planning Board on February 28, 2017. The case was then heard by Council and was tabled on March 20, 2017 before both the rezoning and annexation were withdrawn by the applicant. Then in 2018 a second application was submitted to rezone the property to B-2 (Neighborhood Business) District again with the intention of an 80-unit workforce house complex. The request was again approved by the Planning Board on January 23, 2018 but was withdrawn by the applicant prior to being heard by Council on February 5, 2018. Since the application was withdrawn prior to a decision by Council the applicant is permitted to submit another request for the same properties after 180 days have elapsed.

The tax value of this property is \$195,420. City sewer is available at the site. The property is in Energy United's electric service area and Iredell Water Corporations water service area. Without annexation of the property Council cannot consider rezoning the properties as they are currently in Iredell County's Zoning Jurisdiction. The Department recommends approving first reading of the ordinance to annex the property adjacent to 110 Vance PO Road. The City Manager concurs with Department's recommendation.

Mayor Kutteh declared the public hearing open and asked if anyone wished to speak in favor or in opposition of this item.

Frank Fugate with Woda Cooper Companies, Inc., speaking on behalf of the applicant, stated he would like to give his time to Denis Blackburn, the North Carolina Woda Cooper representative. Fugate pointed out that they are asking to rezone the property to Medium Density Multi-Family Residential.

Denis Blackburn with Woda Cooper Development Team, speaking on behalf of the applicant, gave a brief overview of the development they are proposing and the process they have followed so far.

Nathan Duggins, an attorney representing several residents of Iredell County who live on Bell Farm Road and are opposed to the annexation and rezoning. He asked if the 7-day notice was satisfied and adequate because his clients did not find out about this until Wednesday of last week. He pointed out that the NC School of Government has advised that non-critical matters be postponed so citizens could appear in person; however he is aware that Governor Cooper signed a bill 704 today to allow these types of hearing to move forward. His clients are concerned that the development will cause their property values to decrease, that a multi-unit housing development will create traffic congestion in the area, will add far more density in the area than what currently exists, Vance PO Road is a dead end road, and this type of development is not consistent with the rural nature of the area.

Mayor Kutteh read the following e-mails received by the Clerk in opposition of this item.

**Nina Bell**  
**115 Farmwood Drive**  
**Statesville, NC 28625**  
**704-450-3338**

We have lived and raised our family on Bell Farm Road for our lifetime. After twenty plus years of operating a dairy farm we currently raise crops and beef cows on Bell Farm Road and continue to be proud to be part of the farming community in this area. By rezoning and annexing the property on Vance Po Road we will once again be losing the buffer between the county and the city. Bell Farm Road continues to be a rural area with farming and single-family rural developments. Many families, including ourselves, who own large tracts of land on Bell Farm Road have vowed to continue to keep our area in farmland which is a vital part of Iredell County's economy. It concerns us that this annexation might open up this area for additional affordable multifamily housing developments. Traffic on Bell Farm Road was eased years ago by the development of Highway 70 bypass but there is still a lot of thru traffic from people accessing the interstates from Highway 70. Creating another access to a multifamily retirement development will only add to the growing traffic situation. Our family is strongly opposed to this current proposal and would like to make our concerns known. We also realize that while no one is at fault for the current situation in our state, it is not feasible to be making decisions of this nature without adequate representation from the community. Many rural people do not feel comfortable using the internet for their opposition forum and therefore we do not feel this is a adequate method of getting a true picture of our community feelings. Thank you

**Bethany Clifton - babel89@yahoo.com**

Our family is strongly opposed to this re-zoning and annexation. I have grown up on Bell Farm Rd my entire life. My dad is Burt Bell a previous dairy farmer, now beef farmer, on this road and to have any more traffic in this area would be detrimental to our farming community. Please put my vote in, along with my husband's vote (Jeremy Clifton), as OPPOSED to this. My son, Woodrow Clifton, lives with us as well, and I want to keep this a quiet community as much as possible. Thanks for your help!

**Jeremy Clifton - jwclifton60@yahoo.com**

Our family is strongly opposed to this re-zoning and annexation. I have grown up on Bell Farm Rd my entire life. My father-in-law is Burt Bell a previous dairy farmer, now beef farmer, on this road and to have any more traffic in this area would be detrimental to our farming community. Please put my vote in, along with my wife's vote (Bethany Clifton), as OPPOSED to this. My son, Woodrow Clifton, lives with us as well, and I want to keep this a quiet community as much as possible. Thanks for your help!

**Ann Beaver Secrest  
1521 Crown Vue Court  
Statesville, NC 28625  
secrestann@gmail.com**

I vote no on the RE-zoning of the property on Vance PO Road. I own land on Holly Brook Lane off Bell Farm Road. Thank you.

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**Heather & Brad Brady  
7 Pine Tree Road  
Salisbury, NC 28144  
704-421-5321**

To whom it may concern:

My name is Heather Roberts Brady. I am the granddaughter of LP Bell, Jr. and the late Joyce Bell of Bell Farm Road and the daughter of Hap and Annette Roberts of Bell Farm Road. My family is strongly opposed to the re-zoning and annexation to be addressed in the upcoming Monday meeting. We are opposed to this because we are trying to keep a buffer between commercial development and residential/farming lands. Also, this might open up our area of the county for additional affordable multi-family housing. We want to keep our neighborhood as a single family residential/farming community. My grandparents have lived on Bell Farm Road since 1927 and have kept their property farmland for almost 93 years. My daughter, Bell Brady and son Graham Brady have dreams of living on the farm when they "grow up". We sincerely hope that the Bell Farm Road community will remain as single family residential and farming neighborhood for our children and even their own children and all our extended Bell family for years to come. Please do not rezone this property. Thank you.

**Joanna Parlier  
312 Bell Farm Road  
Statesville, NC 28625  
(704) 873 6881**

Gentlemen:

Having been born and raised on Bell Farm Road to Cecil Bell, I love this community, the Bell farms, and the history we share. I still live at 312 Bell Farm Road just one mile south of Hwy. 64. Learning of the possibility of the zoning of the area across from Oakdale Baptist Church and tying into Bell Farm Road concerns me very much. It would affect the community if changed as proposed by allowing the affordable senior citizens development to come into this area and potentiality spreading further into the community over time. Please consider helping us keep this area rural. Thank you.

**Paul and Brenda Bell Fairbetter  
PO Box 4/ 1885 Main Street**



**Blowing Rock, NC. 28605**  
**mr.fairbetter@yahoo.com**  
**(828) 295-3892 and (828) 773-8902**

My name is Brenda Fairbetter. I am the daughter of L.P. Bell and the late Joyce Bell of Bell Farm Road. The Cool Springs Community, Bell Farm Road, and the surrounding areas are known for their farming standards, love of community, and their appreciation of a single-family housing lifestyle. The rezoning and annexation of 110 Vance PO Road would be a major change for this location. My husband, Paul Fairbetter, and I are strongly opposed to the rezoning and annexation of Vance PO Road site. A buffer between commercial and residential farming needs to remain for this community so that it may continue as a beautiful, rural location. A change in zoning would/could create a "creeping" process which would allow for future development of additional multi-family neighborhoods. Thank you for your time and consideration.

**Annette Bell Roberts and Hap Roberts**  
**492 Bell Farm Road**  
**Statesville, NC 28625**  
**annette@statewidetitle.com**  
**hap@statewidetitle.com**  
**Hap - cell: 704 232 0022 and Annette - cell: 704 213 4546**

Our names are Annette Bell Roberts and Harold (Hap) K. Roberts, Jr. We have a home and farm at 492 Bell Farm Road, Statesville, NC 28265. We are writing to you to voice our opposition to the annexation and re-zoning of the Vance Po property. The LP Bell Family, of which we are a part, has lived on Bell Farm Road and the Oakdale Community since 1927-as have many other farming families-many of whom are still farming today. We respectfully ask you to vote against the annexation and re-zoning of the Vance Po property at Monday evening's City Council meeting. We want to protect our rural farming community from large multi-unit housing. A multi-unit housing development will create additional traffic congestion in the area. Also, a 60-unit housing development will add far more density in this area than what currently exists. This area is made up of family farms and single-family houses. This development will fundamentally change the nature of our community and open the way for further high-density development which is unwanted by

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those who have made the community their home for many years. The Vance Po Road property has long served as a natural buffer between the City and the rural farming area immediately outside of the City limits. The construction of a multi-family housing development on this site will effectively destroy that buffer. The encroachment of further urban development threatens the long-term viability of the farming culture in this area. Finally, this property is already zoned for Commercial use. A small, community-based business would be much more beneficial for the members of the Oakdale Community and would not create the same density and traffic issues that a 60-unit housing development would. We sincerely hope that you will oppose this proposal and, by doing so, keep the future of our farming and rural community as it is.

**Paul Spencer Fairbetter - spencer.fairbetter@gmail.com**  
Good Morning,

My name is Paul Spencer Fairbetter, grandson of LP Jr and late Joyce Bell, and son of Brenda Bell Fairbetter. My family is strongly opposed to the re-zoning and annexation that will be address soon today. We are opposed to this proposal because it negates the

separation of commercial development and residential/farmland buffers. This proposal would also open the surrounding area to future affordable multi-family housing, and we want our area to remain a single family residential/farm community. Regarding Paul Spencer Fairbetter and Amber Joy Fairbetter our vote is opposed! Please do not rezone this area!

Mayor Kutteh asked City Attorney Messick to address Mr. Duggin's concern with the 7-day notice requirement. Messick stated that the notice is only sent to adjoining property owners. Sherry Ashley reminded Council that this item was on the March 16<sup>th</sup> agenda, so the notice was sent on March 6<sup>th</sup> and published in the newspaper. The public hearing was continued until this meeting at the March 16<sup>th</sup> Council meeting, which negated the requirement to re-advertise it.

Mayor Kutteh asked Messick and Ashley to address Mr. Duggin's other concern as to whether or not it is appropriate to proceed in this electronic/telephonic fashion under the guidance of the Governor and other state statutes that may be in effect in North Carolina. Messick stated she would largely agree with what Attorney Duggins said, that the School of Government recommends that these types of hearings not be held if possible and if everyone consents to delaying it, then she does not see a problem with it. Since there are those that are opposed to the item, the conservative approach would be to continue the hearing until we can all meet together.

**Council member S. Johnson made a motion to continue the public hearing on this item to the June 01, 2020 Council meeting, seconded by Council member J. Johnson. The motion carried unanimously.**

- VIII Continue the public hearing from the March 16, 2020 City Council meeting and consider approving the first reading of Rezoning Request ZC20-01 for the properties located adjacent to 110 Vance PO Road; Tax Maps 4765-32-5949 & 4765-33-7215 IC-CB (Iredell County Community Business) to R-8MF (Medium-Density Multi-Family Residential Conditional Use) District. (Ashley)**

**Council member S. Johnson made a motion to continue the public hearing on this item to the June 01, 2020 Council meeting, seconded by Council member J. Johnson. The motion carried unanimously.**

- IX Consider amending a portion of the Special Events Ordinance (Chpt. 20, Article V, Sec. 20-148) to give more organizations the ability to sponsor events on city property that involve the distribution of alcohol, and streamline the special events permitting process. (Davis)**

This item was moved to the Consent Agenda.

- X Consider authorizing funding for easement acquisition for the water main extension to serve Larkin Commerce Park and approving Budget Amendment No. 2020-22. (Harrell)**

This item was moved to the Consent Agenda.

**XI Receive the Fiscal Year 2020-2021 Manager’s recommended budget from the City Manager and staff and set a public hearing on the budget for May 18, 2020 at 7:00 PM. Consider setting Board workshop sessions. (Smith)**

City Manager Ron Smith presented the proposed 2020-2021 budget and read the budget message. Budget Workshop meetings will be held on May 19<sup>th</sup> and May 20<sup>th</sup> at 4:00 p.m.

**XII Boards and Commissions Updates - None**

**XIII Other Business - None**

**XIV Closed Session – None**

**Council member J. Johnson made a motion to adjourn, seconded by Council member Foster. The motion carried unanimously.**

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Brenda Fugett, City Clerk

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Constantine H. Kutteh, Mayor

## CITY COUNCIL ACTION REQUEST

**TO:** Ron Smith, City Manager  
**FROM:** John Maclaga, Electric Utilities Director  
**DATE:** May 04, 2020

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**ACTION NEEDED ON:** May 18, 2020  
(Date of Council Meeting)

### **COUNCIL ACTION REQUESTED:**

**Consider approving a Waiver Agreement, and an Ordinance and a Clerk's Certificate for the Waiver Agreement, in order to receive the wholesale power bill electronically through e-mail from ElectriCities NCMPA1.**

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**Summary of Information:** ElectriCities NCMPA1 desires to only send the monthly wholesale power bill electronically through e-mail as opposed to our current arrangement through postal service. To do this, NCMPA1 is requesting a Waiver Agreement from each Participant that waives the US mail requirement outlined in the Project and Supplemental Power Sales Agreements. This item was discussed at the NCMPA1 Rate Committee meeting on March 19<sup>th</sup> and the NCMPA1 Board of Commissioners meeting on April 21<sup>st</sup>. The ElectriCities Board of Directors approved at its meeting on April 24<sup>th</sup>, authorization of such Waiver Agreement in the attached Resolution BDR-6-20.

**Previous Council or Relevant Actions:** None.

**Budget/Funding Implications:** None.

**Consequences for Not Acting:** The City could face conflict with the ElectriCities for failure to act in good faith to help lower costs through reducing paper and postage.

**Department Recommendation:** Staff recommends Council approve the Waiver Agreement. We already receive the wholesale bill electronically, which works well, and this option will cut down on unnecessary paper.

**Manager Comments:** Recommend for approval.

**Next Steps:** Upon approval, staff will return the signed documents to ElectriCities who will then e-mail an executed copy for our files.

### **Attachments:**

1. Waiver Agreement
2. Ordinance for Waiver Agreement
3. Clerk's Certificate for Waiver Agreement
4. NCMPA1 Resolution BDR-6-20.

## WAIVER AGREEMENT

This WAIVER AGREEMENT is dated as of May 18, 2020, by and between North Carolina Municipal Power Agency Number 1, a joint agency of the State of North Carolina (“Power Agency”), and the municipality of the State of North Carolina that has executed this Waiver Agreement (the “Participant”).

WHEREAS, Power Agency and the Participant, by agreement dated as of the first day of May, 1978, entered into a Project Power Sales Agreement (as amended in 1984 and as may be further amended or supplemented, the “PPSA”) pursuant to which Power Agency, among other things, agreed to sell, and the Participant, among other things, agreed to purchase and pay for, its Participant’s Share of Project Output; and

WHEREAS, Power Agency and the Participant, by agreement also dated as of the first day of May, 1978, entered into a Supplemental Power Sales Agreement (as amended in 1984 and as may be further amended or supplemented, the “SPSA” and, together with the PPSA, the “Agreements”) pursuant to which Power Agency, among other things, agreed to provide or cause to be provided and to sell, and the Participant, among other things, agreed to purchase, the Participant’s All Requirements Bulk Power Supply requirements, consisting of Project Output and Supplemental Bulk Power Supply, and

WHEREAS, Section 5(a) of each of the Agreements provides that Power Agency shall mail to the Participant prior to each Contract Year certain budget information and, when appropriate, certain amended budget information (collectively, “Annual Budget Information”); and

WHEREAS, Section 5(b) of each of the Agreements provides that Power Agency shall mail to the Participant during each month of each Contract Year a Monthly Bill (the “Monthly Bill”) and

WHEREAS, since the date of the Agreements, (i) Power Agency’s and the Participant’s accounting systems have significantly changed due to improvements to and enhancements in computer technology and their respective accounting and computer systems, and (ii) the advent of and improvements to electronic means of communication have been developed, in each case making it easier, faster and more efficient for Power Agency and the Participant to communicate and exchange information, including Annual Budget Information and Monthly Bills; and

WHEREAS, as a result of the foregoing, Power Agency and the Participant have determined that it is more efficient and preferable for Power Agency to transmit Annual Budget Information and Monthly Bills to the Participant by electronic means as opposed to United States mail, as is required by the Agreements; and

WHEREAS, on April 24, 2020, the Board of Directors of Power Agency adopted a resolution approving waiving the provisions of Section 5(a) and 5(b) of each of the Agreements requiring the mailing of Annual Budget Information and Monthly Bills, respectively, to the Participant and permitting Power Agency to provide Annual Budget Information and Monthly Bills to the Participant by electronic means (collectively, the “Waiver “), and directed that a waiver agreement be submitted to each of the Participants for approval and execution; and

WHEREAS, the Participant has determined that the Waiver is in the best interest of the Participant and has authorized and directed that this Waiver Agreement be executed for and on behalf of the Participant.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged hereby, the parties hereto mutually agree as follows:

Section 1. Unless the context clearly indicates to the contrary, all capitalized terms used in this Waiver Agreement shall have the meanings given them in the Agreements.

Section 2. For and during the remainder of the term of each of the Agreements, and any extensions thereto, the Participant hereby waives and forever relieves Power Agency of the obligation to mail Annual Budget Information and Monthly Bills to the Participant, as required by Section 5(a) and 5(b) of each of the Agreements, respectively, so long as Power Agency provides Annual Budget Information and Monthly Bills to the Participant by electronic means to such address as the Participant shall specify in writing to Power Agency (as such address may be changed similarly from time to time).

Section 3. This Waiver Agreement shall become effective upon the execution and delivery of similar waiver agreements by Power Agency and each Participant and shall otherwise become effective upon execution and delivery hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Waiver Agreement all by the authority of their respective governing bodies duly given.

Executed the 18<sup>th</sup> day of May, 2020.

City of Statesville

By: \_\_\_\_\_  
Constantine H. Kutteh, Mayor

ATTEST:

\_\_\_\_\_  
Brenda Fugett, City Clerk

(SEAL)

Executed this \_\_\_\_ day of \_\_\_\_\_, 2020.

NORTH CAROLINA MUNICIPAL POWER  
AGENCY NUMBER 1

By:\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
(Ass't) Secretary-Treasurer

(SEAL)



**ORDINANCE # \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF STATESVILLE, NORTH CAROLINA, DETERMINING THAT IT IS IN THE BEST INTEREST OF THE CITY OF STATESVILLE TO APPROVE A WAIVER AGREEMENT WITH NORTH CAROLINA MUNICIPAL POWER AGENCY NUMBER 1 AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE WAIVER AGREEMENT.**

**WHEREAS**, the City of Statesville, North Carolina (the “Municipality”) and North Carolina Municipal Power Agency Number 1 (“Power Agency”) entered into a Project Power Sales Agreement dated as of the first day of May, 1978, (as amended in 1984 and as may be further amended or supplemented, the “Project Power Sales Agreement”), pursuant to which Power Agency sells, and the Municipality purchases and pays for, the Municipality’s Participant’s Share (as defined in the Project Power Sales Agreement) of Project Output (as defined in the Project Power Sales Agreement); and

**WHEREAS**, the Municipality and Power Agency entered into a Supplemental Power Sales Agreement also dated as of the first day of May, 1978 (as amended in 1984 and as may be further amended or supplemented, the “Supplemental Power Sales Agreement” and, together with the Project Power Sales Agreement, the “Agreements”), pursuant to which Power Agency sells, and the Municipality purchases and pays for, All Requirements Bulk Power Supply (as defined in the Supplemental Power Sales Agreement), which consists of Project Output (as defined in the Supplemental Power Sales Agreement) and Supplemental Bulk Power Supply (as defined in the Supplemental Power Sales Agreement); and

**WHEREAS**, Section 5(a) of each of the Agreements provides that Power Agency shall mail to the Participant prior to each Contract Year certain budget information and, when appropriate, certain amended budget information (collectively, “Annual Budget Information”); and

**WHEREAS**, Section 5(b) of each of the Agreements provides that Power Agency shall mail to the Participant during each month of each Contract Year a Monthly Bill (the “Monthly Bill”); and

**WHEREAS**, as a result of changes to Power Agency’s and the Participant’s accounting systems due to improvements to and enhancements in computer technology and their respective accounting and computer systems, and (ii) the advent of and improvements to electronic means of communication since the date of the Agreements, in each case making it easier, faster and more efficient for Power Agency and the Participant to communicate and exchange information, including Annual Budget Information and Monthly Bills, Power Agency and the Participant have determined that it is more efficient and preferable for Power Agency to transmit Annual Budget Information and Monthly Bills to the Participant by electronic means as opposed to United States mail, as is required by the Agreements; and

**WHEREAS**, on April 24, 2020, the Board of Directors of Power Agency adopted a resolution approving waiving the provisions of Section 5(a) and 5(b) of each of the Agreements requiring the mailing of Annual Budget Information and Monthly Bills, respectively, to the Participant and permitting Power Agency to provide Annual Budget Information and Monthly Bills to the Participant by electronic means (collectively, the “Waiver “), and directed that a waiver agreement (the “Waiver Agreement”) be submitted to each of the Participants for approval and execution; and

**WHEREAS**, Power Agency has caused to be furnished to this governing body a copy of the Waiver Agreement.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Statesville, North Carolina:

1. After due consideration to the contents of each of the preambles set forth above and of the Waiver Agreement, it is hereby found and determined that it is in the best interest of the Municipality to approve and authorize the execution and delivery of the Waiver Agreement.

2. The Municipality hereby approves the form, terms and provisions of the Waiver Agreement in the form presented to the meeting at which this Ordinance is adopted, with such changes therein as shall be approved by the officials of the Municipality executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all such changes. The Mayor and the Clerk of the Municipality are hereby authorized and directed to execute, acknowledge and deliver the Waiver Agreement in the name of and on behalf of the Municipality and thereupon to cause the aforesaid Waiver Agreement to be delivered to Power Agency.

3. The officers and officials of the Municipality are hereby authorized and directed to execute such further documents and to take any and all further action as, upon the advice of the Attorney of the Municipality, shall be deemed necessary or desirable in order to effectuate the execution and delivery of the Waiver Agreement.

4. The Clerk of the Municipality is hereby directed to file with the minutes of the meeting at which this Ordinance is adopted the copy of the Waiver Agreement.

5. This Ordinance shall become effective from and after its adoption.

**ADOPTED** this 18<sup>th</sup> day of May, 2020.

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Constantine H. Kutteh, Mayor

(Impress SEAL here)

ATTEST:

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Brenda Fugett, City Clerk

## CLERK'S CERTIFICATE

I, Brenda Fugett, City Clerk of the City of Statesville, North Carolina, DO HEREBY CERTIFY as follows:

1. As of the date of this Certificate and the date of the introduction and adoption of the Ordinance hereinafter described, the City Council of the City of Statesville consisted of eight (8) members, all of whom have been duly elected and qualified.

2. Constantine H. Kutteh was the duly elected and qualified Mayor of the City of Statesville at the time of the introduction and adoption of the Ordinance hereinafter described and at the time of the execution by the Municipality of the document hereinafter described. Christopher Tucker was the Finance Officer of the Municipality duly appointed by the City Manager and confirmed by the City Council, and acting in that capacity at the time of the introduction and adoption of the Ordinance hereinafter described and at the time of the execution by the Municipality of the documents hereinafter described.

3. The undersigned has been duly appointed by the City Manager and such appointment was confirmed by the Governing Body as the City Clerk of the Municipality, to hold office at the pleasure of the City Manager, and the election as Clerk predated the introduction and adoption of the Ordinance hereinafter described and remains in full force and effect as of the date of this Certificate.

4. The seal, an impression of which appears below, is the corporate seal duly adopted by the Municipality.

5. The undersigned, as Clerk, is charged with the duty of keeping custody of the minutes and official records of the proceedings of the Governing Body.

6. At a regular meeting of the Governing Body conducted on the 18<sup>th</sup> day of May, 2020, the ordinance entitled "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF STATESVILLE, NORTH CAROLINA, DETERMINING THAT IT IS IN THE BEST INTEREST OF THE CITY OF STATESVILLE TO APPROVE A WAIVER AGREEMENT WITH NORTH CAROLINA MUNICIPAL POWER AGENCY NUMBER 1 AND APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE WAIVER AGREEMENT, a copy of which is attached hereto and made a part of this Certificate (the "Ordinance"), was introduced.

7. After consideration by the Governing Body, the Ordinance was duly adopted by the Governing Body at a regular meeting of the Governing Body conducted on the 18<sup>th</sup> day of May, 2020, by a vote of \_\_\_yeas and \_\_\_nays. The Ordinance was thereafter duly recorded in the ordinance book of the

Municipality and the municipal journal, if any. A copy of an excerpt of the pertinent minutes of said meeting is attached hereto.

8. The meeting referred to in this Certificate was a duly called and held regular meeting of the Governing Body, open to the public, and a quorum of the Governing Body was present and acting throughout; the excerpt of the minutes attached hereto has been compared by the undersigned with the original thereof that is on file and of record in the office of the undersigned and it is a full, true and complete copy of said original; the copy of the Ordinance attached hereto has been compared by the undersigned with the original thereof that is on file in the ordinance book (and municipal journal, if any) and it is a full, true and complete copy of said original. The Ordinance has not been amended, modified, superseded or repealed and is in full force and effect as of the date hereof.

9. A copy of the Waiver Agreement has been filed in the Clerk's office with the minutes of the proceedings at which the Ordinance was adopted.

10. The copy of the Waiver Agreement furnished to North Carolina Municipal Power Agency Number 1 by the undersigned, together with this Certificate, has been duly executed by the Mayor of the Municipality and duly attested by the undersigned as Clerk of the Municipality, and the corporate seal of the Municipality has been impressed thereon or affixed thereto, all pursuant to authority granted by the Ordinance. In addition, the execution copy of the Waiver Agreement has been endorsed by the appropriate representative of the Municipality to the extent such endorsement is required to be affixed thereto.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the City of Statesville this the 19<sup>th</sup> day of May, 2020.

(Impress Seal Here)

\_\_\_\_\_  
Brenda Fugett, City Clerk

Attachments:

Ordinance  
Minutes

**NORTH CAROLINA MUNICIPAL POWER AGENCY NUMBER 1  
BOARD OF DIRECTORS  
RESOLUTION NO. BDR-6-20**

**A RESOLUTION APPROVING AND AUTORIZING THE  
EXECUTION OF A WAIVER AGREEMENT BETWEEN  
NORTH CAROLINA MUNICIPAL POWER AGENCY  
NUMBER 1 AND EACH OF ITS PARTICIPANTS**

**WHEREAS**, North Carolina Municipal Power Agency Number 1 (“Power Agency”) and each of its Participants, by agreement dated as of the first day of May, 1978, entered into a Project Power Sales Agreement (as amended in 1984 and as may be further amended or supplemented, the “PPSA”) pursuant to which Power Agency, among other things, agreed to sell, and the Participant, among other things, agreed to purchase and pay for, its Participant’s Share of Project Output; and

**WHEREAS**, Power Agency and each of its Participants, by agreement also dated as of the first day of May, 1978, entered into a Supplemental Power Sales Agreement (as amended in 1984 and as may be further amended or supplemented, the “SPSA” and, together with the PPSA, the “Agreements”) pursuant to which Power Agency, among other things, agreed to provide or cause to be provided and to sell, and the Participant, among other things, agreed to purchase, the Participant’s All Requirements Bulk Power Supply requirements, consisting of Project Output and Supplemental Bulk Power Supply; and

**WHEREAS**, Section 5(a) of each of the Agreements provides that Power Agency shall mail to the Participant prior to each Contract Year certain budget information and, when appropriate, certain amended budget information (collectively, “Annual Budget Information”); and

**WHEREAS**, Section 5(b) of each of the Agreements provides that Power Agency shall mail to the Participant during each month of each Contract Year a Monthly Bill (the “Monthly Bill”); and

**WHEREAS**, since the date of the Agreements, (i) Power Agency’s and the Participants’ accounting systems have significantly changed due to improvements to and enhancements in computer technology and their respective accounting and computer systems, and (ii) the advent of and improvements to electronic means of communication have been developed, in each case making it easier, faster and more efficient for Power Agency and the Participant to communicate and exchange information, including Annual Budget Information and Monthly Bills; and

**WHEREAS**, as a result of the foregoing, Power Agency and the Participant have determined that it is more efficient and preferable for Power Agency to transmit Annual Budget Information and Monthly Bills to the Participant by electronic means as opposed to United States mail, as is required by the Agreements, and have agreed to execute a waiver agreement giving effect thereto.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS  
OF NORTH CAROLIA MUNICIPLA POWER AGENCY NUMBER 1:**

Section 1: Waiver Agreement. The Board of Directors of Power Agency hereby determines that it is in the best interest of Power Agency to execute an agreement waiving the provisions of Section 5(a) and 5(b) of each of the Agreements requiring the mailing of Annual Budget Information and Monthly Bills, respectively, to the Participant and permitting Power Agency to provide Annual Budget Information and Monthly Bills to the Participant by electronic means (collectively, the “Waiver”), approves and authorizes the execution of a waiver agreement (the “Waiver Agreement”) giving effect to the Waiver and directs that a copy of the Waiver Agreement be delivered to each of the Participants for the Participant’s approval and execution.

Section 2. Effective Date. This resolution shall take effect immediately upon adoption.

Adopted this 24<sup>th</sup> day of April, 2020.

## CITY COUNCIL ACTION REQUEST

**TO:** Ron Smith, City Manager  
**FROM:** John Maclaga, Electric Utilities Director  
**DATE:** May 4, 2020

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**ACTION NEEDED ON:** May 18, 2020  
(Date of Council Meeting)

### **COUNCIL ACTION REQUESTED:**

**Consider approving a Contract Line Crew Labor Contract with Sumter Utilities, Inc. with an initial purchase order amount of \$300,000.**

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**Summary of Information:** In 2018 the City entered into Assembly Units contracts with Lee Electric and Williams Electric to perform overhead and underground electric line projects. The original contracts fixed prices for two years. Since both of these companies wanted pay well above current year levels, new pricing was solicited in 2020. Sumter Utilities, Inc. appears to be the overall lowest cost provider. The contract could be extended after an initial three-year term to a five-year contract on a year-by-year basis.

**Previous Council or Relevant Actions:** Council approved the Lee and Williams contracts on April 16, 2018. Since then, from time to time, additional monies have been approved to spend on Electric projects using these contractors in \$300,000 increments.

**Budget/Funding Implications:** The Electric Fund will see its most cost-effective means of securing contract line crew labor based on the results of the request for proposals. There are sufficient monies in this year's budget to pay for this contract.

**Consequences for Not Acting:** The City would no longer have contract line crews to assist it, resulting in unavoidable delays to key projects, including with NCDOT and into developments such as Larkin. Sumter Utilities has some equipment the City lacks, such as pulling and tensioning rigs, and staff that has recent experience with these tools.

**Department Recommendation:** Staff recommends Council approve a contract line crew labor contract with Sumter Utilities, Inc. with an initial Purchase Order amount of \$300,000.

**Manager Comments:** Recommend for approval.

**Next Steps:** Upon approval, staff will coordinate the contract and the purchase order, as well as directing work for the contractor. Existing Purchase Orders with Williams and Lee will be closed out.

### **Attachments:**

1. Sumter Utilities, Inc. Contract

Bid Tab and Recommendation from Progressive Engineering Consultants and the Sumter Utilities Proposal are available in the Clerk's office for viewing or can be e-mail separately to you.



## CONSTRUCTION CONTRACT

This Agreement, made the \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Statesville, North Carolina (hereinafter called the "Owner") and **Sumter Utilities, Inc. of 1151 N Pike W, Sumter, South Carolina 29153** (hereinafter called the "Contractor"), a corporation organized and existing under the laws of the State of North Carolina.

**WITNESSETH**, that the Contractor and the Owner, for the consideration hereinafter named, agree as follows:

**WHEREAS**, the Owner desires to execute a **Request for Proposal for Assembly Units for Future Overhead and Underground Electric Distribution Line Construction** for the City of Statesville in accordance with the Notice and Instructions to Bidders, Bidder's Proposal, Description of Assembly Units, Construction Specifications and Assembly Unit Drawings attached hereto and as described in detail in this Construction Contract, and

**WHEREAS**, the Contractor is willing to undertake the work as described:

**NOW THEREFORE**, the parties to this agreement have covenanted and agreed to and with as follows:

### **A. DEFINITIONS**

The Owner, the Contractor, and the Engineer are those mentioned as such in this agreement and are treated as if each were a singular number and masculine gender.

The term "work" of the Contractor includes labor and equipment or facilities necessary for proper completion of the contract.

The term "completion" shall mean full performance by the Contractor of the Contractor's obligations under this contract and all amendments and revisions thereof. A certificate of completion, stating the date of completion, signed by the Engineer and approved in writing by the Owner, shall be the sole and conclusive evidence as to the fact of completion and the date thereof.

**B. THE OWNER AND/OR ENGINEER SHALL FURNISH****Drawings, Specifications, and Instructions**

Complete Drawings, Specifications, and Instructions covering all phases of the project design shall be furnished to the Contractor by the Engineer once the project has been approved by the City. These Drawings together with the Specifications and Instructions from the Engineer will constitute the Contractor's scope of work at the time the project is issued. No projects have been currently assigned to this contract.

**Material**

All material necessary for the completion of the work shall be furnished to the Contractor by the Owner.

**Owner's Representative**

The Engineer shall be the Owner's duly appointed representative on this Contract. The Engineer shall be present as necessary, during the progress of the work, will approve lines and grades and will be available for consultation and for approval of final construction. The Engineer shall have full authority to approve or reject work and shall be consulted by the Contractor in case of any uncertainty or question as to details pertaining to project design.

**C. THE CONTRACTOR SHALL FURNISH****Contractor's Superintendent**

A competent and experienced superintendent, who shall not be replaced without written notice fifteen (15) days prior to the Owner and Engineer except under extraordinary circumstances, together with necessary assistants, shall be kept at the site at all times by the Contractor. This Superintendent shall represent the Contractor and all directions given him shall be a binding as if given to the Contractor directly. Important directions shall be confirmed in writing when requested by the Contractor.

**Labor**

All labor required for the accomplishment of the work shall be employed by the Contractor in his own name and shall be his employee. The several classes of labor required shall be entirely competent and skilled in their lines of work. The Contractor shall at all times keep good order among his employees and, at the request of the Owner, shall remove from the job any employee who, in the judgment of the Owner or Engineer, is not competent or is detrimental to the orderly progress of the work or is interfering with the Owner's operations.

**Compliance with Labor Laws**

The Contractor agrees, as to all of his representatives and employees to be employed upon or in any way connected with the work, he shall comply fully with and be subject to the terms of the Workmen's Compensation Acts of the State before any work shall be undertaken.

**Equipment and Tools**

The Contractor shall furnish all necessary tools, vehicles and other equipment that may be necessary for the full and complete prosecution of the Contract. All construction equipment shall be modern and of adequate size and capacity to conduct safely and efficiently the work for which it is used.

**Permits**

Permits necessary for the prosecution of the work will be secured by the Contractor.

**Taxes**

The Contractor shall include in his quoted price all Federal, State, or other governmental division taxes and contributions for unemployment compensation, and old age or other benefits, effective during the term of this contract.

**Insurance**

The Contractor shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the Contractor's execution of the work, whether such execution be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable:

- Claims under workmen's compensation disability benefit and other similar employee benefit acts.
- Claims for damages due to bodily injury, occupational sickness, disease or death of any person other than his employees.
- Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of any offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person, and
- Claims for damages resulting in injury to or destruction of tangible property, including loss of use resulting there from.

Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the work. These Certificates shall contain provisions such that coverage afforded under the policies will not be canceled unless at least fifteen (15) days prior written notice has been given to the Owner.

The Contractor shall secure and maintain at his own expense, during the Contract period, liability insurance as hereinafter specified:

- Contractor's General Public Liability and Property Damage Insurance including vehicle coverage issued to the Contractor and protecting him from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the Contract Documents, whether such operations be by himself or by any Subcontractor under him, or anyone directly or indirectly employed by the Contractor or by a Subcontractor. Insurance shall be written with a limit of liability of not less than \$1,000,000.00 for all damages arising out of bodily injury, including death, at any time resulting there from, sustained by any one person in any one accident, and a limit of liability of not less than \$1,000,000.00 aggregate for any such damages sustained by two or more persons in any one accident.
- Insurance shall be written with a limit of liability of not less than \$500,000.00 for all property damage sustained by any one person in any one accident; and a limit of liability of not less than \$500,000.00 aggregate for any such damage sustained by two or more persons in any one accident.

- The Contractor shall secure and maintain, at his own expense, during the Contract period, in accordance with the provisions of the laws of the State of North Carolina, Workmen's Compensation Insurance, including occupational disease provisions, for all of his employees at the site of the work and in the case Subcontractors, the Contractor shall require such Subcontractors similarly to provide Workmen's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In the event that any class of employees engaged in hazardous work under this contract at the site is not protected under Workmen's Compensation, the Contractor shall provide, and shall require each Subcontractor to provide, adequate insurance for the protection of his employees not otherwise protected.
- General liability shall include coverage of Comprehensive form, Premises-Operations, Explosion and Collapse Hazard, Underground Hazard, Products/Completed Operations, Contractual, Broad Form Property Damage, Independent Contractors, and Personal Injury.
- An umbrella liability policy shall cover the General Public Liability and Property Damage Insurance with minimum \$1,000,000 limit per occurrence in addition to the limits above.

**Bond**

The Contractor shall furnish bonds acceptable to the Owner's Attorney for the full contract price guaranteeing the faithful performance of the Contract and the payment of all obligations arising from same.

**D. MANNER OF CONSTRUCTION**

The Contractor shall do no work without detailed drawings and instructions. The work is to be made complete and to the satisfaction of the Owner notwithstanding any minor omissions in the Specifications or Plans.

The Owner acting through the Engineer shall have the right to direct the Contractor to construct any part or parts of the project before any other part or parts thereof. The Contractor shall comply with all other reasonable directions of the Owner and Engineer.

The Engineer shall have the right to require the Contractor to increase the number of his employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Engineer. Failure of the Engineer to give any such directions shall not relieve the Contractor of his obligations to complete the work within the time and in the manner specified in this Contract.

The manner of construction of the project, and all materials and equipment used therein, shall be subject to the inspection, tests, and approval of the Engineer, and the Contractor shall furnish all information required by the Engineer concerning the nature or source of any materials incorporated or to be incorporated in this project. The Contractor shall provide all reasonable facilities necessary for such inspection and test. The Contractor shall have an authorized agent accompany the Engineer or his Agent when inspections are made.

The Engineer shall have the authority to suspend the work wholly or in part for such period or periods as the Engineer may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for the satisfactory prosecution of the work or because of the failure of the Contractor to comply with any of the provisions of the contract. The Contractor shall not suspend work pursuant to this provision without written authority from the Engineer so to do. The time of completion hereinabove set forth shall be increased by the number of days of any such suspension, except when such suspension is due to the failure of the Contractor to comply with any of the provisions of this contract. In the event that work is suspended by the Contractor with the consent of the Owner, the Contractor, before resuming work, shall give the Engineer at least forty-eight (48) hours' written notice thereof.

**E. DEFECTIVE WORKMANSHIP AND MATERIALS**

The acceptance of any workmanship, materials or equipment by the Engineer shall not preclude the subsequent rejection thereof if such workmanship, materials or equipment shall be found to be defective after delivery or installation, and any such workmanship, materials or equipment found defective before final acceptance of the construction shall be repaired or replaced, as directed by the Engineer, by and at the expense of the Contractor. Any defective material or equipment shall be immediately removed from the site by the Contractor at the Contractor's expense. The Contractor shall not be entitled to any additional compensation hereunder. The Contractor shall not be held responsible for defective material furnished by the Owner, provided however that it is determined that the Contractor was unaware of such defects prior to his installing said material.

Notwithstanding any certificate which may have been given by the Engineer, if any workmanship, material or equipment which does not comply with the requirements of the Contract shall be discovered within one (1) year after completion of the project, the Contractor shall repair any such defective workmanship or replace such defective materials or equipment within thirty (30) days after notice in writing of the existence thereof shall have been given by the Owner. In the event of failure by the Contractor so to do, the Owner may repair such defective workmanship or replace such defective materials or equipment, at the Owner's discretion, the Contractor shall pay to the Owner the cost and expense thereof.

**F. PAYMENT AND RELEASE OF LIENS**

**Contract Price**

All future work undertaken by the Contractor under this Contract shall be paid for by the Owner on the basis of the total of all assembly unit prices for all of the various items of work to be performed by the Contractor. The assembly unit prices listed in the Contract shall include in each case the furnishing of all necessary construction equipment and tools, supervision, field and office overhead and expenses, insurance, taxes, specified materials, labor, Workmen's Compensation Insurance and Social Security Tax and Contractor's profit. The entire compensation of the Contractor shall be the amount herein stated, plus any additional amount for extra work, as authorized by the Owner and the Engineer and for which compensation has been mutually agreed upon in writing.

**Payment Terms**

Within the first fifteen (15) days of each Accounting Month, the Owner shall make partial payment to the Contractor for construction accomplished during the preceding Accounting Month. The Contractor shall submit to the Engineer his application for payment in triplicate on the enclosed form by the twenty-first (21<sup>st</sup>) of each month in order to receive payment by the seventh (7<sup>th</sup>) of the following month. Application for Payment shall require the approval of both the Owner and the Engineer solely for the purpose of payment. Such approval by the Owner and the Engineer shall not be deemed approval of the workmanship or materials. Ninety percent (90%) of each such estimate approved during the construction of the project shall be paid by the Owner to the Contractor prior to completion of the project. Upon completion by the Contractor of the construction of the project, the Contractor shall certify to the Engineer that the Contract is completed and the Engineer, after verifying such certification and making any necessary corrections therein, shall certify the same to the Owner together with a certificate of the total cost of the construction performed under this Contract. Upon the approval of said certificates by the Owner, the Owner shall make payment to the Contractor of all amounts to which the Contractor shall be entitled thereunder which have not previously been paid. No payment shall be due while the Contractor is in default in respect to any of the provisions of this contract and the Owner may withhold from the Contractor the amount of any claim by a third party against either the Contractor or the Owner based upon alleged failure of the Contractor to perform the work hereunder, in accordance with the provisions of this Contract.

**Release of Liens**

Upon completion by the Contractor of the construction of the project, but prior to the payment to the Contractor of any amount in excess of ninety percent (90%) of the total cost of the completed project as certified by the Engineer, or at any other time specified by the Owner, the Contractor shall deliver to the Engineer, in triplicate, release of all liens and of rights to claim any lien on the attached Waiver and Release of Lien forms, executed by any and all manufacturers, material suppliers and subcontractors furnishing services or materials for the project in conjunction with the completion of the Contract. The Contractor shall also deliver to the Engineer in triplicate, an Affidavit from the Contractor on the attached form certifying that the cost of all labor and material used on or for the project has been paid and that all such releases have been submitted to the Engineer.

**G. PROTECTION TO PERSONS AND PROPERTY**

The Contractor shall at all times take all reasonable precaution for the safety of all employees on the work and of the public, and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes and shall be solely responsible for implementation of same. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America, unless such instructions are incompatible with Federal, State, or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

- The Contractor shall so conduct the construction of the project as to cause the least possible obstruction of public highways.

- The Contractor shall provide security personnel as necessary to properly protect all construction work done and materials furnished under this contract.
- The Contractor shall provide and maintain any and all guard lights and other protection for the public as may be required by applicable statutes, ordinances, and regulations or by particular local conditions.
- During the Contract period, all risks in connection with the construction of the project and the materials to be used therein shall be borne by the Contractor. The Contractor shall make good and fully repair all injuries and damages to the project or any portion thereof under the control of the Contractor where the same shall have occurred by reason of the Contractor's negligence. The Contractor shall hold the Owner harmless from any and all claims for injuries to persons or for damage to property happening by reason of any negligence or faulty construction on the part of the Contractor or any of the Contractor's agents or employees during the control by the Contractor of the project or any part thereof.
- Any and all excess earth, rock, debris, underbrush and other excess material shall be removed by the Contractor from the site as rapidly as practicable as the work progresses.
- Upon notice of violation on this provision being delivered to the Contractor by the Engineer or the Owner, the Contractor shall immediately correct such violation. Upon failure of the Contractor to act to remedy such violation the Owner may correct such violation at the Contractor's expense. The Owner may, if he deems it necessary or advisable in the interest of public safety, correct such violation at the Contractor's expense without such prior notice to the Contractor.

## **H. REMEDIES**

### **Completion on Contractor's Default**

If default shall be made by the Contractor or any subcontractor in the performance of any of the terms of this Contract, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Contractor and the Surety or Sureties upon the Contractor's Bond or Bonds written notice requiring the Contractor to cause such default to be corrected. Unless within ten (10) days after the service of such notice upon the Contractor such default shall be corrected or arrangements for the correction thereof satisfactory to the Owner shall be made, this Contract shall be terminated. In the event of any such termination the Owner shall serve notice thereof upon said Surety or Sureties, which shall have the right to take over and perform the obligations of the Contractor herein contained. If said Surety or Sureties shall not assume the performance of the Contractor's obligations hereunder within twenty (20) days after the date of such notice, the Owner may assume the construction of the project and prosecute the same to completion by Contractor or otherwise for the account and at the expense of the Contractor, and the Contractor and its Surety or Sureties shall be liable to the Owner for any cost or expense in excess of the contract price required thereby. In such event the Owner may take possession of and utilize, in completing the construction of the project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Contractor or any of its subcontractors, which may be situated at the site. The Owner in such contingency may exercise any right, claims or demand which the Contractor may have against

third persons in connection with this Contract and for such purpose, the Contractor does hereby assign, transfer, and set over unto the Owner all such rights, claims and demands.

### **Liquidated Damages**

The time of the completion of the construction of all projects to be completed under this contract is of the essence of this contract. Should the Contractor neglect, refuse, or fail to complete the construction within the time agreed upon prior to construction, after giving effect to extensions of time, if any, herein provided, then in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such moneys which may be then due, or which may become due and payable to the Contractor, the sum of One Thousand Dollars (\$1,000.00) per day for each and every day that such construction is delayed in its completion beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to become due from the Owner to the Contractor is insufficient to pay in full any such liquidated damages, the Contractor shall pay to the Owner the amount necessary to effect such payment in full.

### **Cumulative Remedies**

Every right or remedy herein conferred upon or reserved to the Owner shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute, and the pursuit of any right or remedy shall not be construed as an election:

Provided, however, that the provisions set forth above shall be the exclusive measure of damages for failure by the Contractor to complete the construction of the project within the time herein agreed upon.

### **Litigation Venue**

Any controversy or litigation arising out of this Contract shall be resolved by and venued in the courts of Iredell County, North Carolina.

## **I. MISCELLANEOUS**

### **Purchase of Material**

All material shall be furnished by the Owner and all units shall be labor only with the contractor furnishing the necessary labor and equipment unless otherwise specified to complete the proposed improvements as specified.

### **Assignment of Guarantees**

All guarantees of materials and workmanship running in favor of the Contractor shall be transferred and assigned to the Owner on completion of construction and at such time as the Contractor receives final payment.

### **Patent Infringement**

The Contractor shall save harmless and indemnify the Owner from any and all claims, suits, and proceedings for the infringement of any patent or patents covering any Contractor furnished materials or equipment used in construction of the project.



**Permits for Explosives**

All permits necessary for the handling or use of explosives in connection with the construction of the project shall be obtained by and at the expense of the Contractor.

**Compliance with Statutes and Regulations**

The Contractor shall comply with all applicable statutes, ordinances, rules, and regulations pertaining to the construction of the project.

**IN WITNESS, WHEREOF**, the parties hereto have caused this contract to be signed and sealed, all as of the date and year first written:

Executed in three (3) counterparts.

**SUMTER UTILTIES, INC.**

(Contractor)

**ATTEST:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**AFFIX  
SEAL**

**CITY OF STATESVILLE  
STATESVILLE, NORTH CAROLINA**

(Owner)

**ATTEST:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**AFFIX  
SEAL**

**IREDELL COUNTY, NORTH CAROLINA  
CITY OF STATESVILLE**

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

DATE: \_\_\_\_\_

By \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

# **CITY COUNCIL ACTION REQUEST**

**TO:** Ron Smith, City Manager  
**FROM:** Sherry Ashley, Assistant Planning Director  
**DATE:** May 6, 2020

---

**ACTION NEEDED ON:** May 18, 2020  
(Date of Council Meeting)

## **COUNCIL ACTION REQUESTED:**

**Consider approving a request to demolish the fire damaged detached garage located at 628 West End Avenue.**

---

**Summary of Information:** The house located at 628 West End Ave was built ca. 1935 and is referenced in the historic survey as the Hefner House. The structure is a classical revival-style two-story, brick house with a gable roof, exterior end chimneys, classical entrance with sidelights and transom, and a two-story pedimented portico. A detached, brick gable-roof garage stands behind the house.

On March 30, 2020, a fire occurred in the accessory garage structure. The garage was severely damaged. The owner, Ms. Grace Cunningham is requesting to demolish the detached garage. The structural engineer's report states the fire caused damage to the wood roof framing, cracking of the masonry walls, and spalling of the brick masonry. The applicant plans to remove the remnants of the burnt structure, remove the concrete pad garage flooring and plant the area in grass.

**Previous Council or Relevant Actions:** N/A

**Budget/Funding Implications:** N/A

**Consequences for Not Acting:** Applicant will not be able to demolish the structure therefore creating a nuisance and hazard on the property.

**Committee Recommendation:** The Historic Preservation Commission recommended to demolish the fire damaged garage at their regularly scheduled virtual meeting on April 23, 2020. All demolitions in the Statesville Historic Districts require approval by City Council.

**Manager Comments:** Recommend for approval.

**Next Steps:** If approved, the applicant will obtain a demolition permit to remove the fire damaged garage and plant grass in the same location.

## **Attachments:**

1. Photos of the structure before the fire.
2. Photos of the structure after the fire.

628 West End Ave – Garage Conditions Before Fire



Garage

Backyard - Garage



Backyard - Garage



Backyard - Garage



Garage Roof – Zoom In

**628 West End Ave – Garage Existing Conditions After Fire**



**Garage East Elevation**



**Garage North Elevation**



**Garage West Elevation**



**Garage South Elevation**

## **CITY COUNCIL ACTION REQUEST**

**TO:** Ron Smith, City Manager  
**FROM:** Christopher Tucker, Finance Director  
**DATE:** May 06, 2020

---

**ACTION NEEDED ON:** May 18, 2020  
(Date of Council Meeting)

### **COUNCIL ACTION REQUESTED:**

**Hold a public hearing on the proposed Fiscal Year 2020-2021 Budget.**

---

**Summary of Information:** As required by NC General Statutes, the Council must hold a public hearing before adopting its annual budget. This public hearing was duly advertised 10 days prior by the City Clerk.

**Previous Council or Relevant Actions:** The City Council received the Fiscal Year 2020-2021 Manager's Recommended Budget at the May 04, 2020 meeting. The Council took the action of setting this public hearing.

**Budget/Funding Implications:** The annual budget sets forth the expected revenues balanced against expected expenditures for the City's operating funds.

**Consequences for Not Acting:** Violation of General Statutes or begin path to interim budget.

**Department Recommendation:** Hold public hearing.

**Manager Comments:** Concur with department recommendation.

**Next Steps:** Hold workshop sessions on May 19, 2020 and May 20, 2020, if needed. Adopt budget at the June 01, 2020 meeting, or any time before July 01, 2020.

**Attachments:** None

## **CITY COUNCIL ACTION REQUEST**

**TO:** Ron Smith, City Manager  
**FROM:** Sherry Ashley, Planning Director  
**DATE:** May 05, 2020

---

**ACTION NEEDED ON:** May 18, 2020  
(Date of Council Meeting)

### **COUNCIL ACTION REQUESTED:**

**Conduct a public hearing and consider approving Site Plan P20-03 (Quasi-Judicial) filed by Beretta Development for mini-warehouses located at 1739 Wilkesboro Highway, Tax Map 4735-35-1603.**

---

**Summary of Information:** The site is located at 1739 Wilkesboro Highway behind the Old Wilkes Shopping Center (see GIS Map). The property is currently 2.583 acres in size and is proposed to be developed with mini warehouses. The site is zoned B-4 (Highway Business) District. The site will be accessed from the existing driveway off Wilkesboro Highway that also serves the rear of the Old Wilkes Shopping Center (Food Lion).

New construction in the B-3, B-4 or B-5 zoning districts are required to get Planning Board and City Council approval. The site plan (see attached) indicates a total of 3 buildings (26,154 sq. ft.). The setback requirements have been met. New landscaping and existing vegetation are shown on the plan, however additional vegetation will need to be planted in accordance with the Unified Development Ordinance (UDO) if the existing vegetation is not enough or is removed i.e. street yard, north and west property boundaries. The site has 14 parking spaces which meets the requirement of the (UDO). Stormwater measures are required and shown as a combination of underground pipes and an above ground sand filter. Curb and gutter were not required by NCDOT on this section of Wilkesboro Highway however fee in lieu will be submitted to the City instead of installing the sidewalk. The exterior walls of the mini warehouses are required to be wood, masonry, stone or architectural metal however the Board of Adjustment granted a variance to allow utilitarian metal on the rear wall of building #1, three sides of building #2 except the eastern side and all walls of building #3 (see blue highlights on site plan). This was contingent upon increasing the buffer adjacent to Food Lion from 8 ft. to 10 ft. and planting an opaque screen halfway down building #2. The site plan indicates the buffer requirement. The elevations (see attached) indicate the brick walls and the utilitarian metal walls for each building. Photos are also attached for an example of style and color.

The TRC approved the site plan at its April 01, 2020 meeting contingent upon NCDOT approval, providing the city a copy of the cross-access agreement, and approval of stormwater plans. NCDOT has since approved the plan.

The Board of Adjustment granted the variance on March 17, 2020.



**Previous Council or Relevant Actions:** Planning Board recommended unanimously to approve the site-plan contingent upon the landscaping being met for the street yard, north and west boundaries if existing vegetation is deficient or removed, providing the city a copy of the cross-access agreement and approval of the stormwater plans. Otherwise the plans meet the requirements of the Unified Development Ordinance. There was no opposition at the Planning Board meeting.

**Budget/Funding Implications:** The tax value of the land is \$134,160. The estimated value of the completed development is approximately \$800,000. City water, sewer, and electric will service the site.

**Consequences for Not Acting:** Property may remain vacant.

**Department Recommendation:** Staff recommends approving the site plan contingent upon the landscaping being met for the street yard, north and west boundaries if existing vegetation is deficient or removed, providing the city a copy of the cross-access agreement and approval of the stormwater plans. Otherwise the plans meet the requirements of the Unified Development Ordinance.

**Manager Comments:** Recommend for approval with contingencies stated.

**Next Steps:** If approved, permits would be issued.

**Attachments:**

1. GIS Map
2. Site Plan
3. Elevations
4. Sample Materials





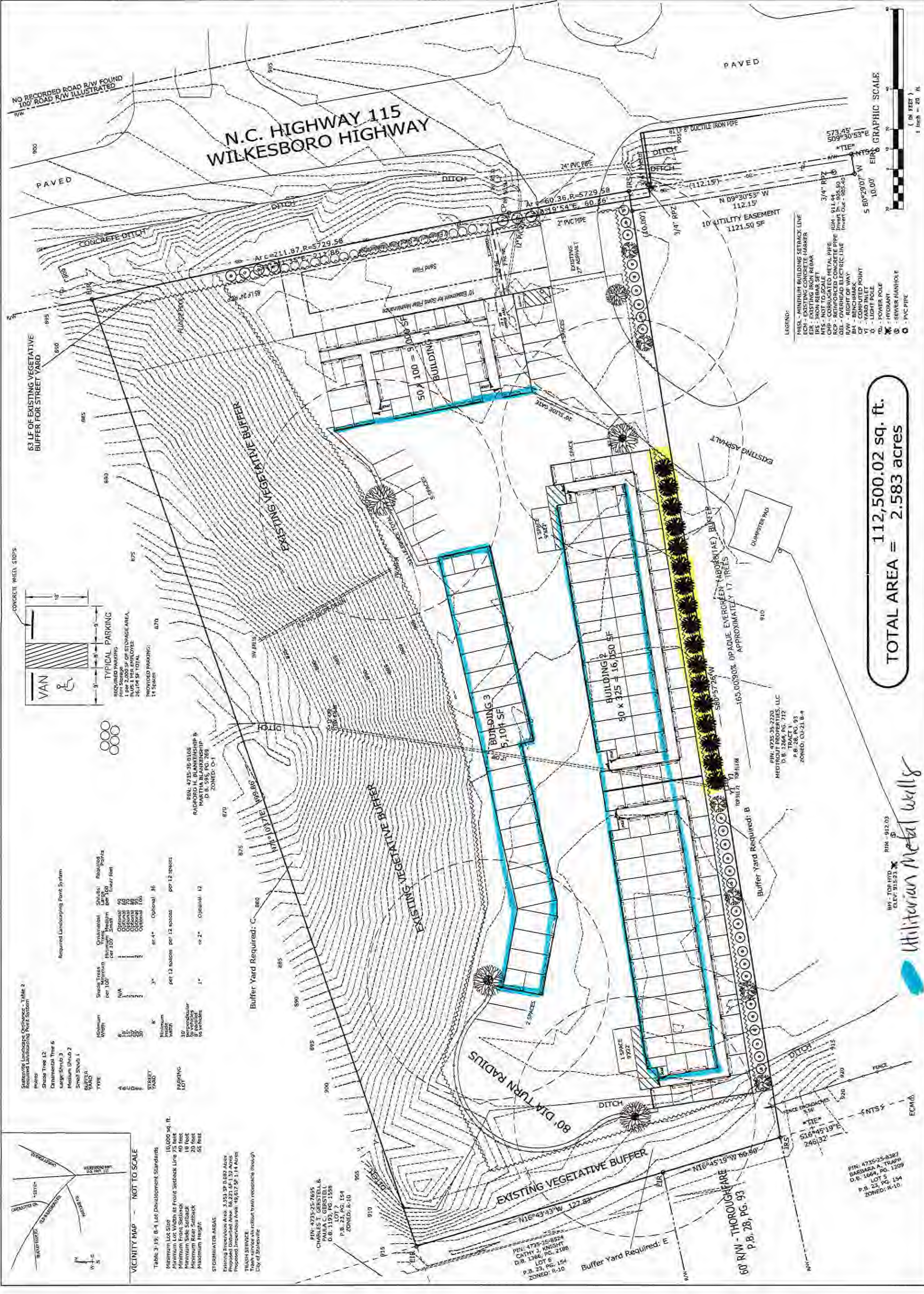
**JORDAN GRANT**  
 ENGINEERING • SURVEYING • PLANNING  
 JORDAN GRANT & ASSOCIATES, PLLC  
 P.O. BOX 151 • STATESVILLE, NC 28687  
 mattj@jordan-grant.com (704) 928-7915  
 FIRM # P-1227

**Beretta Development, Inc.**  
 1739 WILKESBORO HIGHWAY, STATESVILLE, NC 28625  
 DEED REF: SHOWN P/N NO: 4735-25-1603  
 DATE OF FIELD SURVEY: 04-29-2015  
 SCALE: 1" = 20'  
 DRAWN BY: SMS CHECKED BY: GVS

NO.	DATE	DESCRIPTION	BY
1	02/19/2020	T.R.C. COMMENTS	JAC
2	02/24/2020	T.R.C. COMMENTS	JAC
3	02/19/2020	B.O.A. COMMENTS	GVG
4	03/19/2020	ST. YD. COMMENTS	GVG

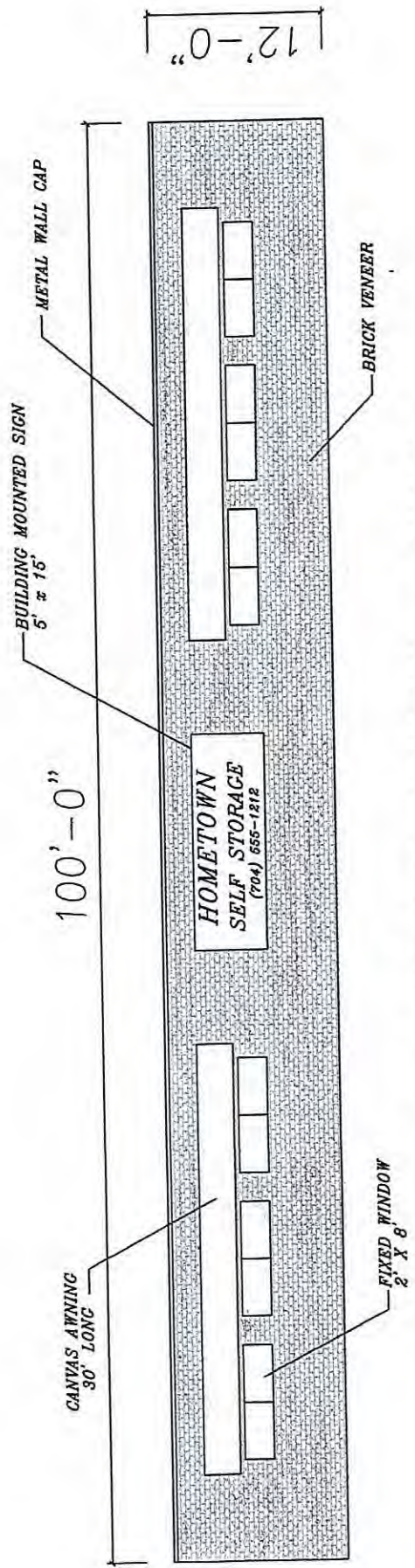
MAP REVISIONS:

Sheet No: **C200**



**TOTAL AREA = 112,500.02 sq. ft.**  
**2.583 acres**

Whitman Metal Works



EAST SIDE WALL ELEVATION - BLDG 1

Front facing Wilkesboro Hwy.

METAL WALL CAP

50' - 0"

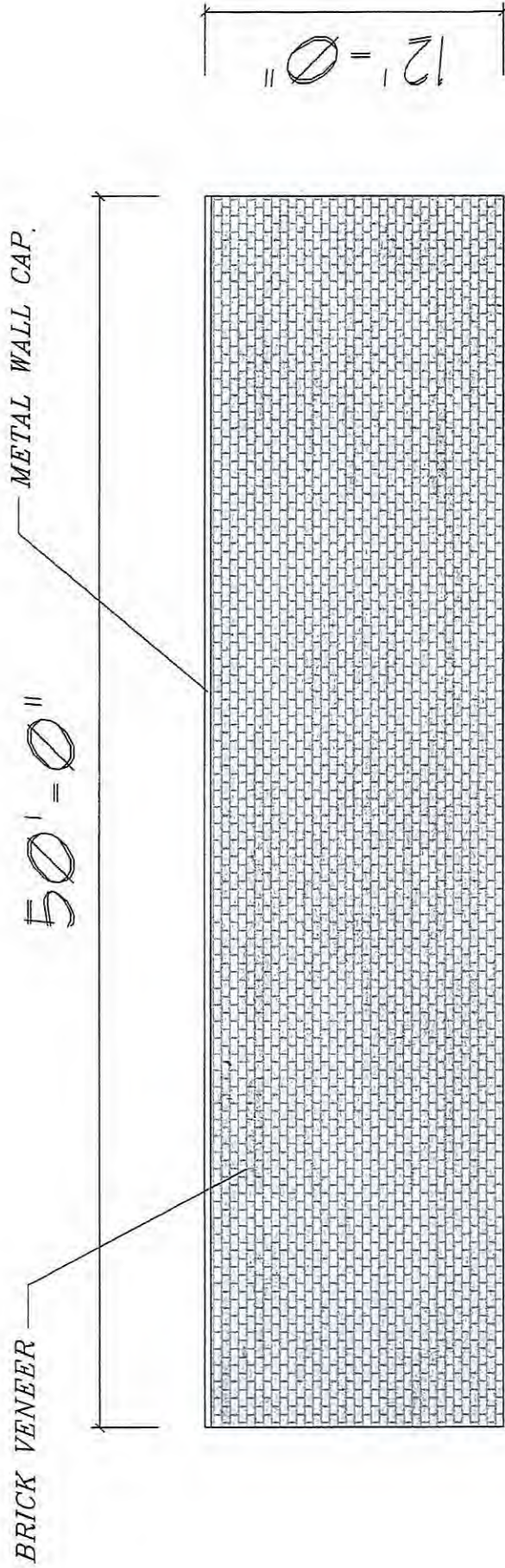
BRICK VENEER

12' - 0"

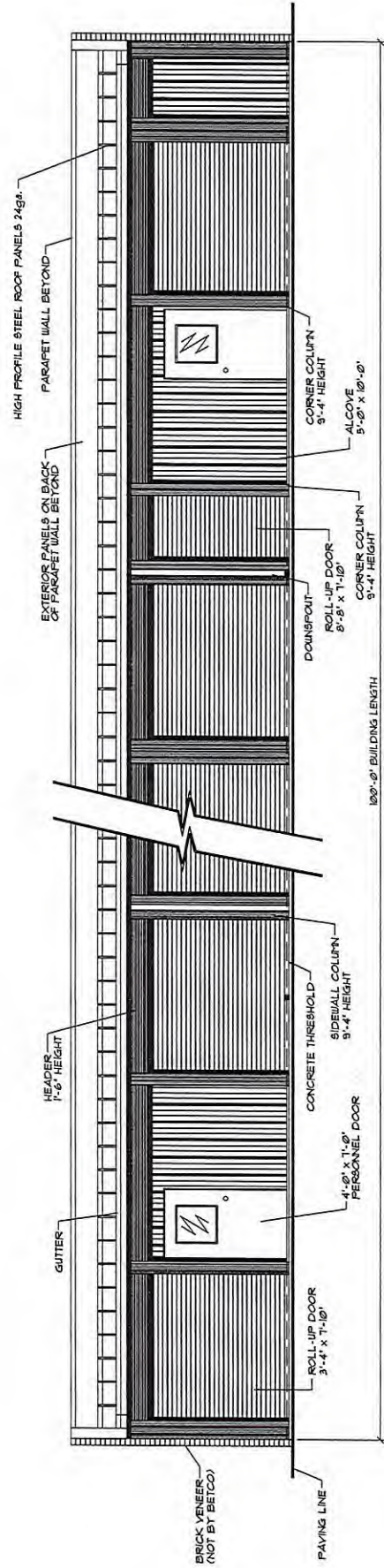
STOREFRONT DOOR  
36" W X 80" H

STOREFRONT WINDOW  
30" W X 60" H

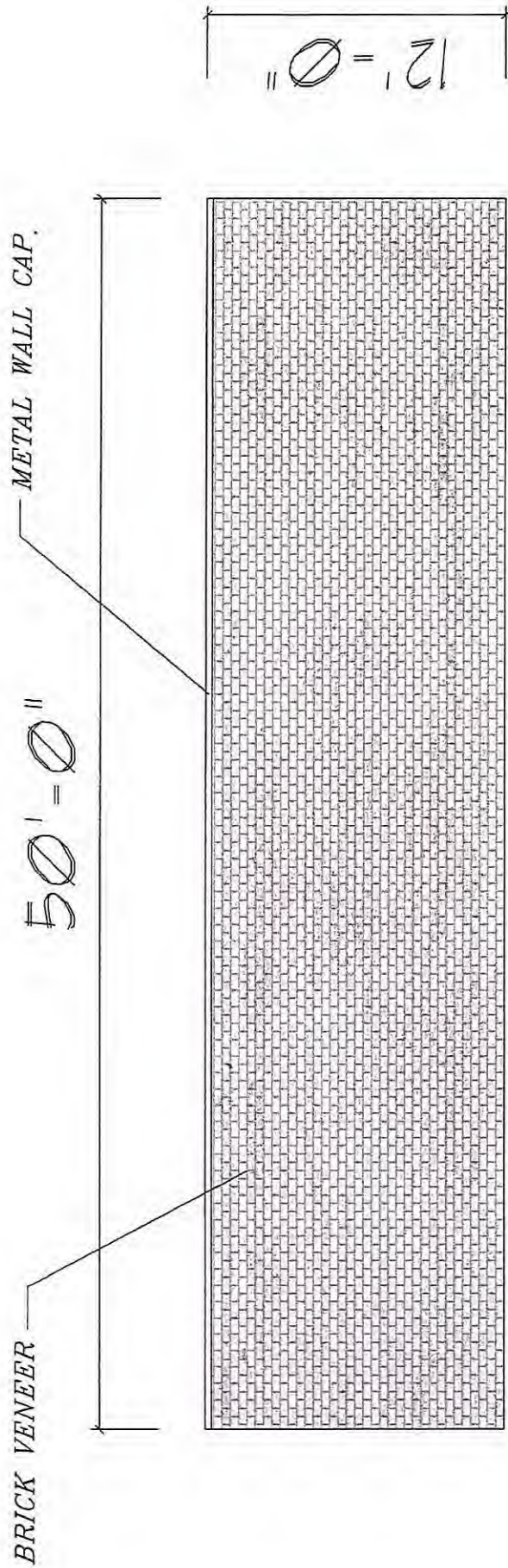
SOUTH END WALL ELEVATION - BLDG 1



NORTH END WALL ELEVATION - BLDG 1  
& EAST END WALL ELEVATION - BLDG 2

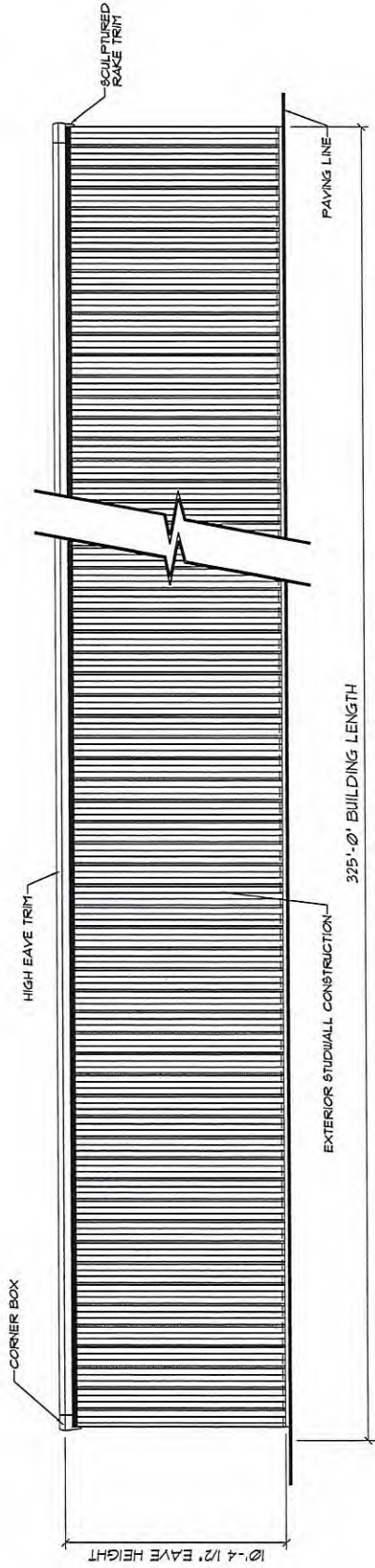


*WEST SIDE WALL ELEVATION - BLDG 1*

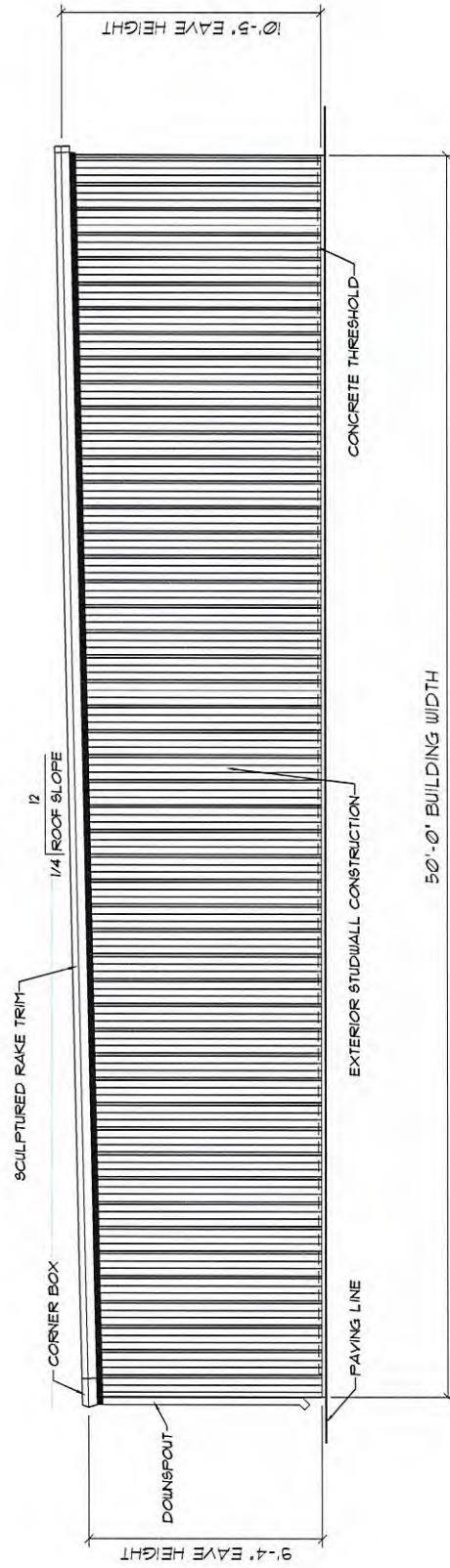


NORTH END WALL ELEVATION - BLDG 1  
& EAST END WALL ELEVATION - BLDG 2

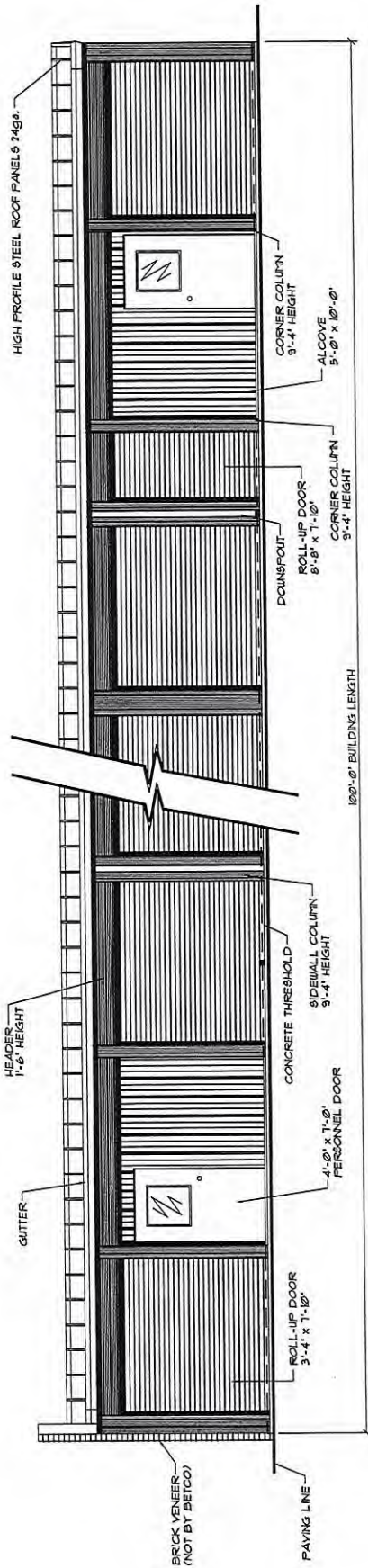




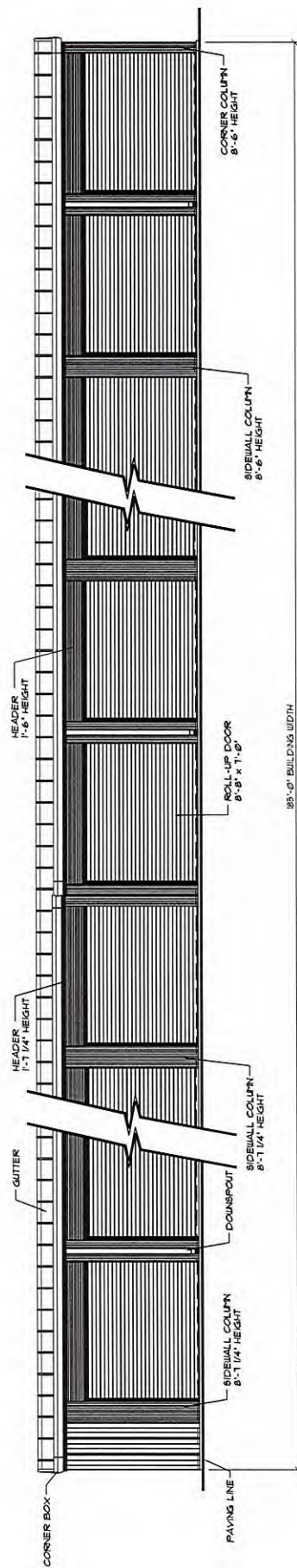
*SOUTH SIDE WALL ELEVATION – BLDG 2*



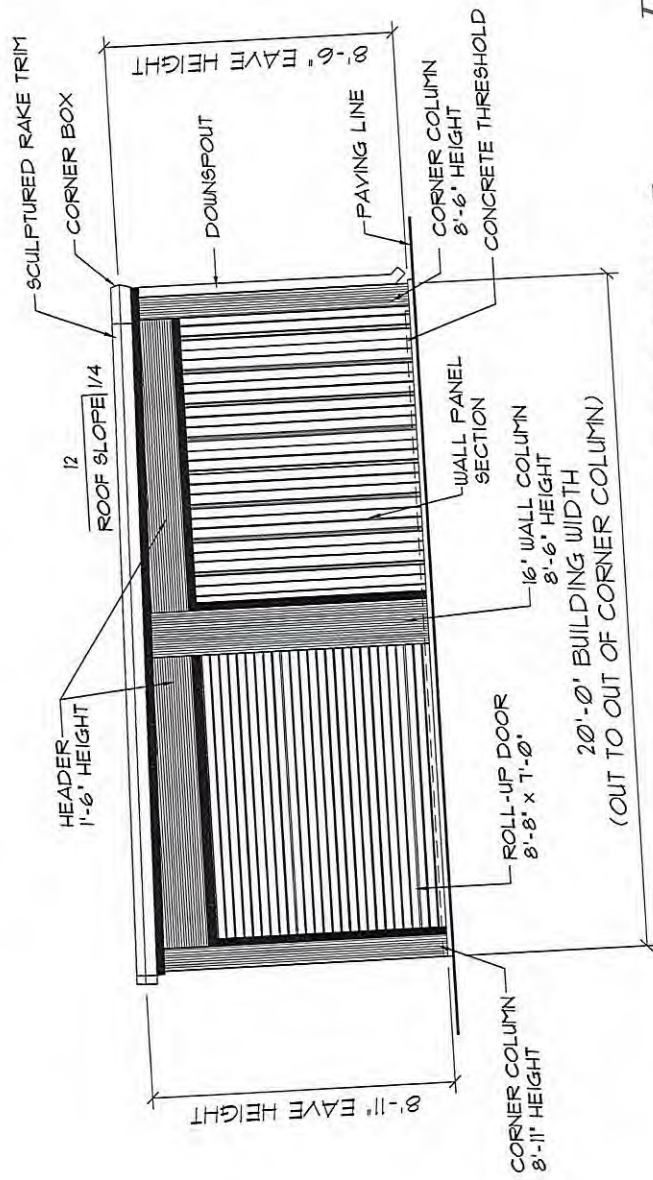
*WEST END WALL ELEVATION – BLDG 2*



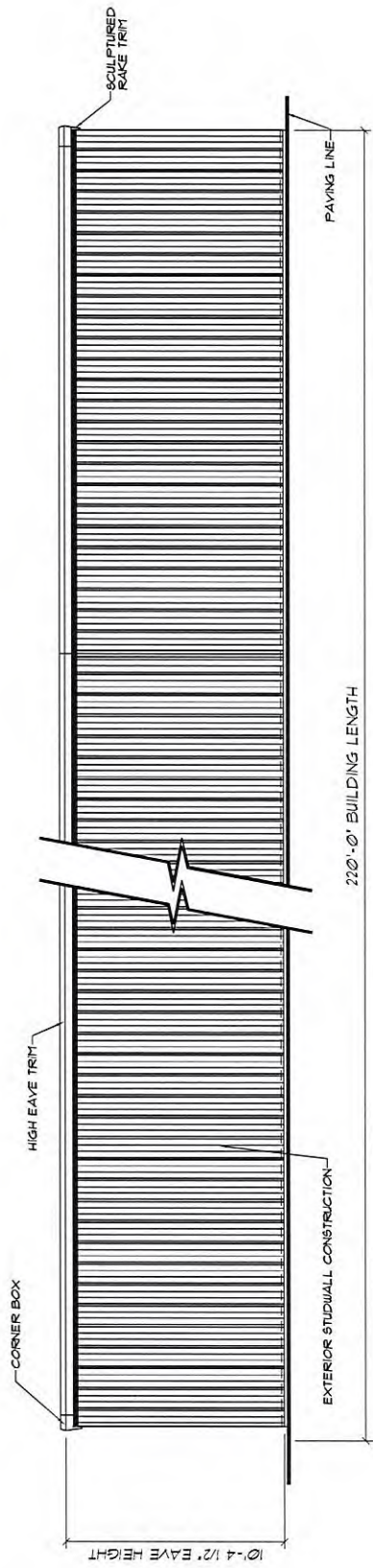
*NORTH SIDE WALL ELEVATION - BLDG 2*



*SOUTH SIDE WALL ELEVATION - BLDG 3*



WEST END WALL ELEVATION - BLDG 3



*NORTH SIDE WALL ELEVATION - BLDG 3*







## **CITY COUNCIL ACTION REQUEST**

**TO:** Ron Smith, City Manager  
**FROM:** Sherry Ashley, Planning Director  
**DATE:** May 06, 2020

---

**ACTION NEEDED ON:** May 18, 2020  
(Date of Council Meeting)

### **COUNCIL ACTION REQUESTED:**

**Conduct a public hearing and consider approving first reading of Rezoning Request ZC20-03 filed by Calvary Baptist Church for the property located at 504 Whites Mill Road; Tax Map 4743-27-0142 from HI (Heavy Industrial) to R-15 (Urban Fringe Low-Density Residential) District.**

---

**Summary of Information:** Calvary Baptist Church is requesting to rezone the property located at 504 Whites Mill Road from HI (Heavy Industrial) District to the R-15 (Urban Fringe Low-Density Residential) District. The purpose of this rezoning request is to allow the existing church to expand.

The site is approximately 9.369 acres in size and currently has a church and fellowship hall located on it (see GIS map and photo). The property is zoned HI and churches are not allowed in the HI District making the use non-conforming. Therefore, additions to a non-conforming use would not be permitted. The request to rezone to the R-15 District will bring the church use into compliance with the Unified Development Ordinance and the surrounding zoning districts. The site is in the City's Extra-territorial Jurisdiction and has city water (at outside rates) and city electric. Sewer is in the area but not utilized by the church at this time. The 2005 Land Use Plan calls for this property to be Mixed Use. Any additions/expansions to the church will require review and approval by the Technical Review Committee (TRC).

The surrounding zoning districts and land uses are as follows:

**NORTH & EAST OF THE SITE:** R-15M (Urban Fringe Low Density Residential/Manufactured Housing) District, Single-Family Homes and Pinehurst Forest Subdivision

**SOUTH OF THE SITE:** HI (Heavy Industrial) District, Undeveloped

**WEST OF THE SITE:** H-115 (Highway 115/Shelton Avenue Corridor) District, Single-Family Homes & Godfrey Lumber Company

**Previous Council/Relevant Actions:** N/A

**Budget/Funding Implications:** No budget implications due to the church being located in the

ETJ. The church already has city water and city electric. Garbage service would have to be contracted out. If future expansion requires sewer, the church could petition to annex.

**Consequences for Not Acting:** The church would not be allowed to expand under the existing HI district.

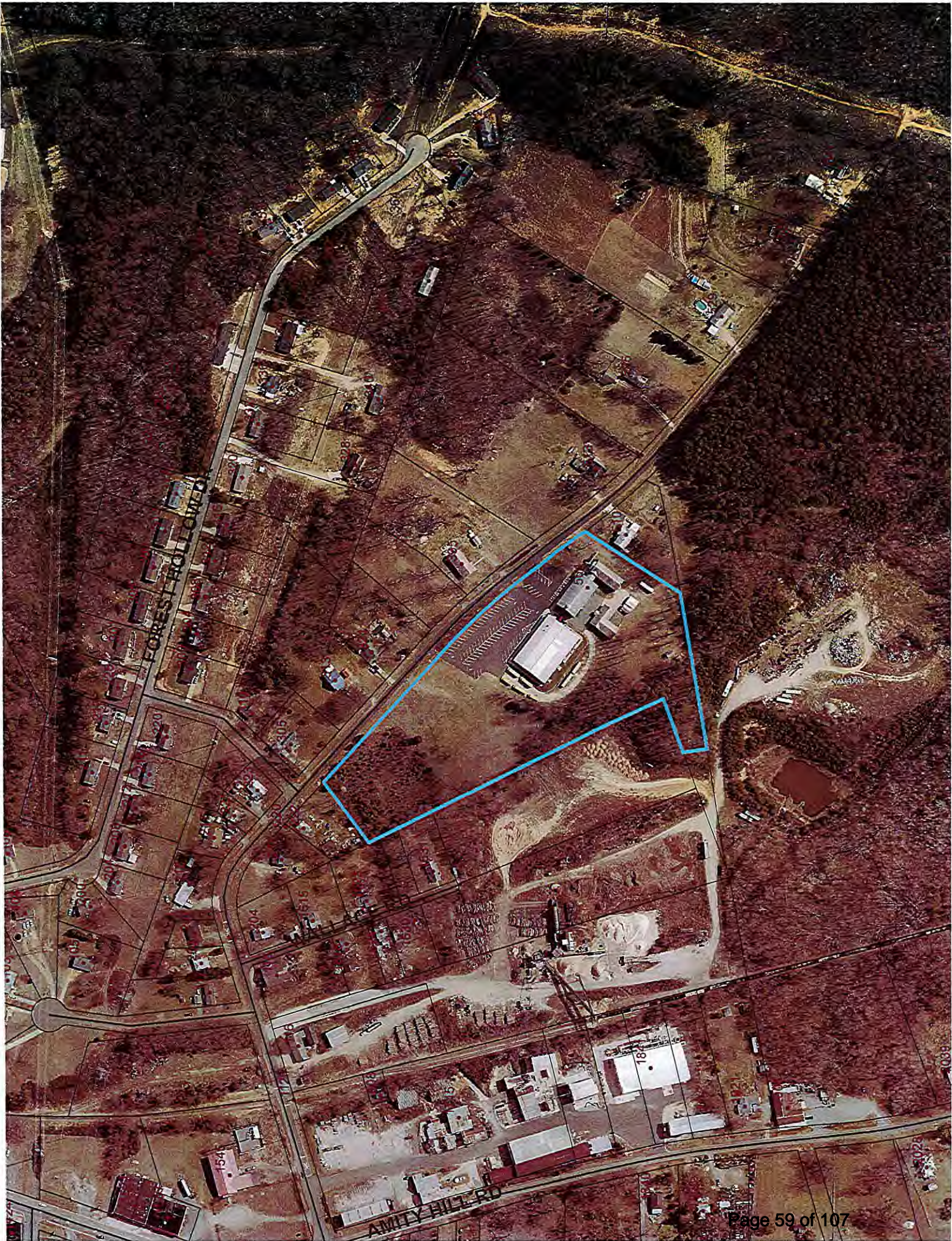
**Department Recommendation:** The 2005 Land Development Plan projects the property to be Mixed-Use. Though existing low-density residential does not fit in the Mixed-Use designation, churches, schools, parks etc. are allowed uses in residential districts and are allowed in the mixed-use designation. Therefore, the Planning Board and staff recommendation is **favorable** to rezone the property to R-15 because it is an existing church, and churches are allowed in residential districts, it is compatible with the uses and zoning of the surrounding area and it will allow a non-conforming use to come into compliance and expand.

**Manager Comments:** Recommend for approval.

**Next Steps:** If approved, the second reading of this request will be heard on June 1, 2020. If the second reading is approved, the property will be officially zoned R-15. The applicant can then submit expansion plans that will be reviewed by TRC.

**Attachments:**

1. GIS Map & Photo
2. Zoning Map
3. Council Consistency Statement
4. Planning Board Consistency Statement
5. Rezoning Ordinance
6. Certification of Mailed Notices





Calvary Baptist Church  
504 Whites Mill Road

Current Zoning





To: Statesville City Council  
From: Sherry Ashley, Planning Director  
Date: May 18, 2020  
Subject: Rezoning  
Case: ZC20-03, Calvary Baptist Church  
Address: 504 Whites Mill Road

The zoning amendment **is approved and is consistent with the City's comprehensive land use plan** and is reasonable and in the public interest because \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In addition to approving this zoning amendment, this approval is **also deemed an amendment to the City's comprehensive land use plan**. The change in conditions the Planning Board has considered in amending the zoning ordinance to meet the development needs of the community are as follows: Though low-density residential does not fit in the Mixed-Use designation, churches, schools, parks etc. are allowed uses in residential districts. The rezoning request is compatible with the uses and zoning of the surrounding area and it will allow a non-conforming use to come into compliance.

The zoning amendment **is rejected because it is inconsistent with the City's comprehensive land plan** and is not reasonable and in the public interest because \_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date: Constantine H. Kutteh, Mayor

\_\_\_\_\_  
Date: Sherry Ashley, Planning Director



To: Statesville Planning Board  
From: Sherry Ashley, Planning Director  
Date: April 28, 2020  
Subject: Rezoning  
Case: ZC20-03, Calvary Baptist Church  
Address: 504 Whites Mill Road

The zoning amendment **is approved and is consistent with the City's comprehensive land use plan** and is reasonable and in the public interest because \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In addition to approving this zoning amendment, this approval is **also deemed an amendment to the City's comprehensive land use plan**. The change in conditions the Planning Board has considered in amending the zoning ordinance to meet the development needs of the community are as follows: Though low-density residential does not fit in the Mixed-Use designation, churches, schools, parks etc. are allowed uses in residential districts. The rezoning request is compatible with the uses and zoning of the surrounding area and it will allow a non-conforming use to come into compliance.

The zoning amendment **is rejected because it is inconsistent with the City's comprehensive land plan** and is not reasonable and in the public interest because \_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date: Mark Tart, Planning Board Chairman

\_\_\_\_\_  
Date: Sherry Ashley, Planning Director

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING THE ZONING CLASSIFICATION OF THE AFTER DESCRIBED PROPERTY FROM HI (HEAVY INDUSTRIAL) DISTRICT TO R-15 (URBAN FRINGE LOW DENSITY RESIDENTIAL) DISTRICT

ZC20-03 Calvary Baptist Church  
504 Whites Mill Road  
PIN 4734-27-0142

WHEREAS, A NOTICE TO THE GENERAL PUBLIC AND PARTICULARLY THE CITIZENS OF THE City of Statesville's planning jurisdiction was duly given, notifying them of a virtual public hearing to be held on May 18, 2020 at 7:00 p.m. in the Council Chambers at City Hall, 227 South Center Street, Statesville, North Carolina, for the purpose of considering a proposed ordinance to change the zoning classification of the after described property from HI to R-15; said notice having been published in the Statesville Record and Landmark, a newspaper having general circulation in this area on May 8, 2020 & May 15, 2020, all in accordance with the procedure set forth in N.C.G.S. 160A-360; and

WHEREAS, said virtual public hearing was duly held in accordance with law, and all persons present were given an opportunity to be heard on said proposed ordinance prior to any action being taken thereon by the City Council;

NOW, THEREFORE, BE IT ORDAINED, that the zoning classification of the after described property be changed as particularly set out below, said property being more particularly described as follows:

**LEGAL DESCRIPTION**

Beginning at a PKS near the center of the right of way for Whites Mill Road (SR 2341) and in the northern corner of John A. Ballard (10E790), thence with the Ballard eastern line S 34-30-00 W 317.40 feet to an existing axel in the northern line of Treetown Development Co., LLP (DB 1016/191) (having passed through an existing axle at 18.07 feet), thence with the northern line of Treetown S 80-27-52 W 416.14 feet to an EIR, thence N 06-17-59 W 98.41 feet to an EIP corner of Godfrey Lumber Company (DB 967-903) (having passed through an IRS at 54.77 feet), thence with the southeastern line of Godfrey Lumber Company N 83-11-51 E 149.71 feet to an EIR, thence, with the northeastern line of Godfrey Lumber Company N 25-07-11 W 180.84 feet to an EIR, thence continuing with the northeastern line of Godfrey Lumber Company, N 24-56-43 W489.61 feet to an existing iron pin at the corner of Nathan L. Sharpe and wife, Denise L. Sharpe (now or formerly, see Deed book 669, Page 753); thence with the eastern lines of Sharpe, Gilbert M . Roth



(91E194) and American General Finance (Deed book 1926, Page 1033) N 25-19-24 W 182.37 feet (Now or formerly, see Deed Book 657, Page 178) thence with the southern line of Hartline N 54-40-36 E 223.00 feet to a P.K. Nail set near the center of the right-of-way for Whites Mill Road (having passed through an EAI at 196.99 feet located in the western margin of the right-of-way for White Mill Road), thence within the right-of-way for Whites Mill Road the following courses and distances 1.) S 48-26-19 E 399.10 feet to an EPK., thence 2.) S 46-28-23 E 74.46 feet to a PKS, thence 3.) S 46-28-23 E 97.03 feet to an EIR, thence 4.) S 34-30-00 E 265.63 feet to a PKS, thence 5.) S 34-30-00 E 30.23 feet to a PKS thence 6.) S 34-30-00 E 72.54 feet to the point and place of the beginning containing 9.369 acres more or less, in accordance with that survey dated 12/21/2011 be Steven D. Pope, PLS.

504 Whites Mill Road, Statesville, NC

This ordinance was introduced for first reading by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and unanimously carried on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Ayes:  
Nayes:

The second and final reading of this ordinance was heard on the \_\_\_\_\_ day of \_\_\_\_\_, 2020 and upon motion of Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and unanimously carried, was adopted.

Ayes:  
Nayes:

This ordinance is to be in full force and effect from and after the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF STATESVILLE

\_\_\_\_\_  
Constantine H. Kutteh, Mayor

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk



To City Council:

Subject: Certification Letter

Dear Council,

The purpose of this letter is to certify that the adjacent property owners of PIN 4743-27-0142 located on Whites Mill Road were mailed a notice notifying them of rezoning case ZC20-03 on April 14, 2020.

Thank you,

A handwritten signature in black ink that reads "Sherry Ashley". The signature is written in a cursive style with a large, sweeping flourish at the end.

Sherry Ashley, AICP

Planning Director

# **CITY COUNCIL ACTION REQUEST**

**TO:** Ron Smith, City Manager  
**FROM:** Scott Harrell, Exec Director of Public Works / City Engineer  
**DATE:** May 6, 2020

---

**ACTION NEEDED ON:** May 18, 2020  
(Date of Council Meeting)

**COUNCIL ACTION REQUESTED:**

**Consider accepting an offer from the NC Department of Transportation to purchase a portion of a City-owned parcel for right-of-way and easements for the I-3819B (I-40 / I-77) Interchange project.**

---

**Summary of Information:** The NC Department of Transportation (DOT) has submitted an offer to purchase a portion of a City-owned parcel adjacent to the I-40 / I-77 interchange. The property is needed for right-of-way (ROW) for the ongoing interchange project (DOT Project No. I-3819B).

The parcel is 1.187 acres, of which DOT desires to purchase 1.011 acres, valued at \$8,600. DOT also desires to purchase permanent drainage and utility easements covering an additional 0.136 acres of the parcel at a value of \$1,050. The total offer from DOT for ROW and easements is \$9,650.00. DOT has confirmed that this ROW and easement purchase and project construction will not impact access to City sewer and greenway infrastructure that cross the southern end of the parcel.

**Previous Council or Relevant Actions:** On August 19, 2019, Council approved an Entry Agreement with NC DOT to allow access to this parcel for electric utility relocation work.

**Budget/Funding Implications:** The purchase offer is \$9,650.00.

**Consequences for Not Acting:** Since the ROW is necessary for the interchange project, DOT has indicated that condemnation proceedings will be pursued if necessary, to keep the project on schedule.

**Department Recommendation:** Staff recommends accepting DOT's right-of-way and easement purchase offer and authorizing the City Manager and City Attorney to review and execute documents prepared by DOT to finalize the purchase.

**Manager Comments:** Recommend for approval.

**Next Steps:** If approved, DOT will prepare ROW and easement documents for the City to execute.

**Attachments:**

1. Location, ROW and Easement Figures (excerpts from DOT appraisal)
2. Purchase Offer

Claim of City of Statesville, I-3819B, Parcel 006, I-77/I-40 Interchange, Statesville, NC



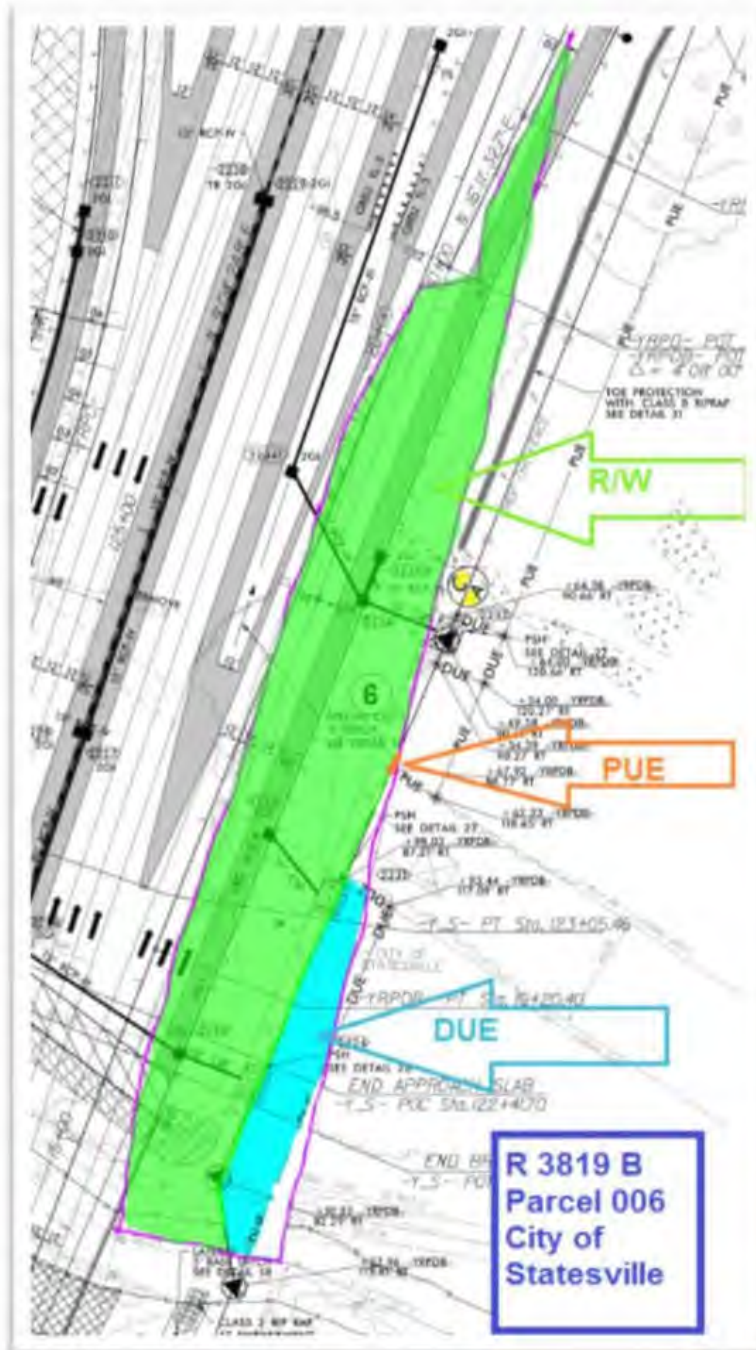
GIS Flood



TOPO

City-owned Parcel  
1.187 acres

**Claim of City of Statesville, I-3819B, Parcel 006, I-77/I-40 Interchange, Statesville, NC**



**Right-of-Way:**  
1.011 acres

**Permanent Utility Easement:**  
0.001 acre

**Drainage Utility Easement:**  
0.135 acre

**SUMMARY STATEMENT/CONTINGENT OFFER TO PURCHASE REAL PROPERTY  
DUE TO THE ACQUISITION OF RIGHT OF WAY AND DAMAGES**

TO: City of Statesville  
PO Box 1111  
Statesville NC 28625

DATE: 1/13/20  
TO: Lessee, if Applicable

TIP/PARCEL NO.: I-3819B 006  
COUNTY Iredell  
DESCRIPTION: I-40/I-77 Interchange

WBS ELEMENT: 34192.3.2

Dear Property Owner:

The following contingent offer of just compensation is based on the fair market value of the property and is not less than the approved appraised value for the appropriate legal compensable interest or interests. The approved value disregards any increase or decrease in the fair market value of the property acquired due to influence caused by public knowledge of this project. The contingent offer of just compensation is based on an analysis of market data, comparable land sales, and, if applicable, building costs in the area of your property. **Please retain this form as it contains pertinent income tax information.**

Value of Right of Way to be Acquired	\$ <u>8,600.00</u>
Value of Permanent Easements to be Acquired	\$ <u>1,050.00</u>
Value of Temporary Easement (Rental of Land) to be Acquired	\$ <u>0.00</u>
Value of Improvements to be Acquired	\$ <u>0.00</u>
Damages, if any, to Remainder	\$ <u>0.00</u>
Benefits, if any, to Remainder	minus \$ <u>0.00</u>
<b>TOTAL CONTINGENT OFFER</b>	<b>\$ <u>9,650.00</u></b>

The total contingent offer includes all interests other than leases involving Federal Agencies and Tenant owned improvements.

(A) Description of the land and effects of the acquisition

Subject property described in Deed Book 1877, page 1134, Iredell County Registry, contains approximately 1.187 acres of which 1.011 acres is being acquired as right of way, leaving 0.176 acres remaining on the right. Also being acquired is a Drainage/Utility Easement (DUE) containing approximately 0.135 acres, and Aerial/Permanent Utility Easement containing approximately .001 acres.

(B) The TOTAL CONTINGENT OFFER includes payment for the improvements and appurtenances described below:  
None.

Provided there is sufficient time remaining in the project schedule, you may repurchase these improvements for a retention value, with the stipulation that you remove them from the acquisition area at no expense to the Department.

(C) Should you desire to sell the Department the portion of your property considered to be an uneconomic remnant or buildable lot, as explained to you by the Right of Way Agent, the total contingent offer would be: \$ N/A. Please note that any contingent offer to purchase a remnant/buildable lot is conditioned upon the remnant/buildable lot being environmentally clean prior to the conveyance to the Department. You may be required to provide the Department with a release from the appropriate environmental agency stating that all contaminants have been remediated and/or removed to their standards.

The original of this form was emailed to Scott Harrell, Executive Director of Public Works / City Engineer on January 13<sup>th</sup> 20 20. Owner was furnished a copy of the Right of Way Brochure/Owner's Letter.

I will be available at your convenience to discuss this matter further with you. My telephone number is 980-613-3246

Please be advised that the agent signing this form is only authorized to recommend settlement to the North Carolina Department of Transportation, and any recommended settlement is not a binding contract unless and until accepted by the North Carolina Department of Transportation by its formal execution of documents for conveyance of Right of Way, Easements, and/or other interests.

(Signed)



Adam Hicks, TELICS - Right of Way Agent

## CITY COUNCIL ACTION REQUEST

**TO:** Ron Smith, City Manager

**FROM:** Scott Harrell, Executive Director of Public Works / City Engineer

**DATE:** May 06, 2020

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**ACTION NEEDED ON:** May 18, 2020  
(Date of Council Meeting)

### **COUNCIL ACTION REQUESTED:**

Receive information on a proposed new chapter to the City Code: Chapter 20 – Stormwater. **This is for information only. Staff will review the proposal with Council at the 5/18 meeting and no decision is requested.**

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**Summary of Information:** Staff is proposing to add a new chapter to the City Code. This chapter will contain guidelines and procedures for two required functions of the Stormwater Program: (1) Illicit discharge detection and elimination and (2) Tail ditch maintenance.

- (1) Illicit discharge detection and elimination (IDDE) is one of the six primary requirements of the City's Phase II NPDES (National Pollutant Discharge Elimination System) permit. It requires City staff to work with property owners to correct inappropriate discharges and connections to the City's storm drainage network, which includes storm drainpipes, drainage structures, channels, creeks and streams. The proposed Chapter 20 provides guidelines for identifying illicit discharges and connections, inspection authority for City staff, timelines and protocols for correcting such activity, enforcement procedures and civil penalties.
- (2) City-maintained storm drainage infrastructure is often affected by conditions outside of City right-of-way (ROW), when the tail ditches that carry flows away from City infrastructure become blocked or clogged due to lack of maintenance. About one-fourth of identified stormwater infrastructure issues involve tail ditch issues, but City staff have limited options to address these concerns due to a 1995 City resolution (Resolution 21-95) that prohibits City crews from working on private property. The proposed Chapter 20 provides guidelines and criteria for City staff to perform tail ditch maintenance outside of City ROW.

### **Previous Council or Relevant Actions:**

- (1) The City's Phase II NPDES permit went into effect on November 11, 2016. The permit specifies a 60-month time frame, or by November 11, 2021, for implementing six stormwater-related activities. Illicit discharge detection and elimination is one of the six required activities.
- (2) On September 17, 2018, Council instructed staff to include tail ditch maintenance in the scope of the Stormwater Program. Funding for this work was included in the Stormwater Utility that went into effect July 1, 2019.

- (3) On August 21, 1995, Council adopted Resolution 21-95 prohibiting City forces from working on private property.

**Budget/Funding Implications:** The Stormwater Program budget was developed to fund all required and anticipated program tasks, including IDDE and tail ditch maintenance.

**Consequences for Not Acting:** The City will be found in violation of its NPDES permit and could be subject to penalties and/or fines if the IDDE practice is not in place by November 11, 2021. City storm drainage infrastructure will continue to be impacted by poor tail ditch maintenance.

**Department Recommendation:** A draft ordinance establishing the proposed new chapter is attached. This ordinance will accomplish the following:

- (1) Renumber Chapter 20 – Streets and Sidewalks to Chapter 21 (the Code chapters are arranged alphabetically; there currently is no Chapter 21);
- (2) Establish a new Chapter 20 – Stormwater;
- (3) Amend Section 1.7 of the City Code to prevent a conflict with Section 20.29 of the proposed new chapter, related to civil penalties.

Staff will also request that Council consider repealing Resolution 21-95 to allow tail ditch maintenance outside City ROW (on private property), in accordance with the guidelines in the proposed Chapter 20.

**Manager Comments:** No recommendation at this time, for your information only.

**Next Steps:**

- Staff anticipates placing 1<sup>st</sup> reading of the proposed ordinance on the June 1, 2020 Council agenda. If 1<sup>st</sup> reading is approved on June 1, 2<sup>nd</sup> reading will be on the June 15, 2020 agenda.
- Once 2<sup>nd</sup> reading is approved, Stormwater Program staff will begin performing IDDE and tail ditch maintenance activities immediately.

**Attachments:**

1. Proposed Ordinance establishing Chapter 20 - Stormwater and related Code amendments
2. Resolution 21-95



**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE AMENDING CHAPTER 20 OF THE STATESVILLE CITY CODE**

WHEREAS, the City of Statesville is directed by the Federal Water Pollution Control Act of 1972 ("Clean Water Act") and the Federal Phase II Stormwater Rules promulgated under it, as well as the rules of the North Carolina Environmental Management Commission promulgated in response to Federal Phase II requirements, to incorporate Illicit Discharge Detection and Elimination into the activities of the City and,

WHEREAS, the Statesville City Council has directed that staff should incorporate maintenance of tail ditches into the activities of the City's Stormwater Program and,

WHEREAS, it is appropriate to codify these changes in a new Chapter 20 of the Statesville City Code,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STATESVILLE:

- Chapter 20 – Streets and Sidewalks is renumbered to Chapter 21 – Streets and Sidewalks and;
- Section 1-7. – General Penalty is amended to read as follows:

(b) **Except as set forth in subsection (c),** ~~✓~~violation of any provision of this Code shall subject the offender to a civil penalty in the amount of fifty dollars (\$50.00), to be recovered by the city in a civil action in the nature of debt if the offender does not pay the penalty within a period of seventy-two (72) hours after he has been cited for violation of the ordinance. Citation shall be in writing, signed by the appropriate department head or the department head's designee charged with the enforcement of the particular ordinance which has been violated, and shall be delivered or mailed to the offender either at his residence or at his place of business or at the place where the violation occurred. Each day's continuing violation shall be a separate and distinct offense. Violations of the following provisions shall not be misdemeanors, but shall subject the offender to the civil penalty; chapter 3; chapter 5; chapter 9; chapter 10; chapter 11; portions of chapter 12, including sections 12-4, 12-86, 12-125 and 12-170; chapter 13; portions of chapter 14, excluding section 14-11, subsection (a), sections 14-17 through 14-19, 14-52 through 14-54 and section 14-76; section 15-37; chapter 19; chapter 20; chapter 21; chapter 22, excluding section 22-2; chapter 23, article VIII; and the city's zoning ordinance. Any action to recover such civil penalty may be joined in action for appropriate equitable or other legal remedy, including injunctions and orders of abatement and including an action to recover damages owing to the city by reason of expenses incurred by the city in abating, correcting, limiting and otherwise dealing with the harmful effects of the offending action.

**(c) Violations of Chapter 20 shall subject the offender to civil penalties as set forth in Section 20-29.**

- A new Chapter 20 – Stormwater is established to read as follows:

**CHAPTER 20 – STORMWATER**

**Article I. – GENERAL**

**Article II. – ILLICIT DISCHARGE AND ILLICIT CONNECTION**

**Article III. – TAIL DITCH MAINTENANCE**

## **ARTICLE I. – GENERAL**

### **Sec. 20-1. – Supervision of Work.**

It shall be the duty of the Public Works Director and the Stormwater Program Manager, or their authorized representative, to supervise all work upon the stormwater conduits, structures, basins, and channels belonging to the city which are now or may be established. They shall report from time to time to the city council as directed on the condition of the stormwater conduits, structures, basins, and channels belonging to the city and, generally, keep the stormwater infrastructure of the city free from obstructions and in a state of good repair.

### **Sec. 20-2. – 20-25. – Reserved.**

## **ARTICLE II. – ILLICIT DISCHARGE AND ILLICIT CONNECTION**

### **Sec. 20-26. - General Provisions.**

- (a) *Authority.* The City Council of the City of Statesville, further referred to herein as “the City”, is authorized to adopt this section pursuant to North Carolina law, including but not limited to, Article 14, Section 5 of the Constitution of North Carolina; G.S. 143-214.7 and rules promulgated by the environmental management commission thereunder; Session Law 2004-163, G.S. 160A-174 and 160A-185.
- (b) *Findings.* It is hereby determined that:
- (1) Pollutants allowed to enter streams and lakes are harmful to public health and safety as well as to the natural environment.
  - (2) Further, the Federal Water Pollution Control Act of 1972 ("Clean Water Act") and Federal Phase II Stormwater Rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to Federal Phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt minimum stormwater controls such as those included in this section.
  - (3) Therefore, the Statesville City Council establishes this set of water quality regulations to meet the requirements of state and federal law regarding non-stormwater discharges to the storm drainage system.
- (c) *Purpose.* The purpose of this article is to provide for the health, safety, and general welfare for the citizens of the City of Statesville through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This article establishes methods for controlling the introduction of pollutants into the municipal separate storm

sewer system (MS4) in order to comply with requirements of the City's National Pollutant Discharge Elimination System (NPDES) permit. The objectives of this article are:

- (1) To enforce the City's Stormwater Management Program;
- (2) To reduce or prevent pollutants in the MS4 to the maximum extent practicable;
- (3) To prohibit illicit connections and discharges to the MS4;
- (4) To prevent improper disposal of materials that degrade water quality; and
- (5) To authorize all inspections, surveillance and monitoring procedures necessary to ensure compliance with this article.

(d) *Definitions.* For the purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- (1) *Clean Water Act.* The federal Water Pollution Control Act (33 U.S.C. §§ 1251 *et seq.*), and any subsequent amendments thereto.
- (2) *Construction Activity.* Activities subject to NPDES construction permits. These include construction projects resulting in land disturbance of one acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.
- (3) *Facility.* Any land use including, but not limited to: commercial, industrial, and residential land uses, and any other source including, but not limited to: motor vehicles and rolling stock that directly or indirectly contribute, cause, or permit the contribution of any discharge, illicit or otherwise, to the MS4.
- (4) *Hazardous Materials.* Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- (5) *Illegal or Illicit Discharge.* Any direct or indirect non-stormwater discharge to the storm drain system, except as exempted elsewhere in this article.
- (6) *Illicit Connections.* Either of the following:
  - a. Any drain or conveyance, whether on the surface or subsurface that allows an illegal discharge to enter the storm drain system including but not limited to any conveyances that allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or

- b. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.
- (7) *Industrial Activity*. Activities subject to NPDES industrial stormwater permits as defined in 40 CFR, § 122.26 (b)(14).
- (8) *Municipal Separate Storm Sewer System (MS4)*. The system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City of Statesville and designed or used for collecting or conveying stormwater, and that is not used for collecting or conveying sewage.
- (9) *National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit*. A permit issued by EPA (or by a state under authority delegated pursuant to 33 U.S.C. § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.
- (10) *Non-Commercial Car Washing*. Any occasional automotive washing performed by individuals or groups without charging any fee or in exchange for a charitable donation. This shall include, but is not limited to, car washes performed by local church groups, school groups, athletic teams, youth organizations, and individuals at their place of residence.
- (11) *Non-Stormwater Discharge*. Any discharge to the storm drain system that is not composed entirely of stormwater.
- (12) *Person*. Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.
- (13) *Pollutant*. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid wastes, solid wastes, animal wastes, and yard wastes (including grass clippings and leaves); refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage (including flushing of sanitary sewer lines and equipment), fecal coliform, and pathogens; dissolved and particulate metals; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.
- (14) *Premises*. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- (15) *Storm Drainage System*. Facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped

storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

- (16) *Stormwater*. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
- (17) *Stormwater Control Measures (SCMs)*. There are two major categories of SCMs: structural and non-structural.
- a. Structural SCMs refer to physical structures designed to remove pollutants from stormwater runoff, reduce downstream erosion, provide flood control, and/or promote groundwater recharge. Structural SCMs may be mandated as a condition of site development.
  - b. Non-Structural SCMs are typically passive or programmatic and tend to be source control or pollution prevention measures that reduce pollution in runoff by reducing the opportunity for stormwater runoff to be exposed to pollutants. Non-Structural SCMs are encouraged on all properties and should be implemented wherever feasible, however Non-Structural SCMs are typically not mandated as a condition of site development.
- (18) *Stormwater Conveyance System*. A network of linear and point structures designed to collect, receive, convey, and otherwise manage the controlled movement of stormwater runoff on and from the development site. The Stormwater Conveyance System can consist of numerous types of manmade structures and devices and natural conveyances including, but not limited to, swales, ditches, channels, pipes, culverts, tiles, curb inlets, yard inlets, drop inlets, junction boxes, manholes, outfalls, and the like.
- (19) *Stormwater Management Plan*. A document which describes the best management practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.
- (20) *Stormwater Management System*. All conveyances and structures (SCMs) that are constructed on a development site for the purposes of managing stormwater runoff by collecting, conveying, controlling, storing, detaining, retaining, infiltrating, filtering, and otherwise mitigating the negative impacts that stormwater has on the natural environment.
- (21) *Stormwater Program Manager*. The City employee hired by the City Manager to manage the City's stormwater programs.
- (22) *User*. Any person who owns real property on which a facility is owned.
- (23) *Wastewater*. Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.
- (e) *Jurisdiction and Scope of Authority*. The Illicit Discharge and Illicit Connection Ordinance codified in this article, hereinafter the article, shall apply to all facilities within the City limits. All users

whose facility is subject to this article, regardless of whether the user's facility is managed or operated by another person, shall comply with this article as well as any permits, enforcement actions or orders issued hereunder. The Stormwater Program Manager shall administer, implement, and enforce the provisions of this article. Any powers granted or imposed on the Stormwater Program Manager may be delegated by the Stormwater Program Manager to other designated personnel as may be necessary. Nothing in this article shall be interpreted to impose an obligation on the City to construct, maintain, repair or operate a storm drainage system, or any part thereof, located on another person's property.

- (f) *Abrogation.* This article is not intended to repeal, abrogate, annul, impair, or interfere with any existing agreements, covenants, rules, regulations or permits previously adopted or issued. However, if any provisions or requirements of this article conflict with any existing regulations or ordinances, the more restrictive provisions shall apply.

**Sec. 20-27. - Prohibited Discharges and Connections.**

- (a) *Illicit Discharges.* No person shall cause or allow the discharge, emission, disposal, pouring or pumping of any liquid, solid, gas or other substance, including but not limited to fuel, oil, anti-freeze, chemicals, soaps, animal waste, paints, garbage or litter, other than stormwater, in such manner and amount, directly or indirectly, so that the substance either does or is likely to reach any stormwater conveyance, waters of the state or lands within the City, except as provided in Section E.
- (b) *Allowable Discharges.* Non-stormwater discharges associated with the following activities are allowed and provided that they do not significantly impact water quality:
- (1) Water line flushing;
  - (2) Landscape irrigation;
  - (3) Diverted stream flows;
  - (4) Rising ground waters;
  - (5) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
  - (6) Uncontaminated pumped ground water;
  - (7) Discharges from potable water sources;
  - (8) Foundation drains;
  - (9) Air conditioning condensation;
  - (10) Irrigation water;
  - (11) Springs;

- (12) Water from crawl space pumps;
- (13) Footing drains;
- (14) Lawn watering;
- (15) Residential and charity car washing;
- (16) Flows from riparian habitats and wetlands;
- (17) De-chlorinated swimming pool discharges (free and total chlorine less than 1 ppm);
- (18) Firefighting discharge;
- (19) Dyes (that are both biodegradable and non-toxic) normally used to identify and trace underground pipe networks, but only if the user has notified the Stormwater Program Manager at least 24 hours prior to the time of the test;
- (20) Street wash water (note: prior to street washing, excess mud, sediment, debris, and other pollutants shall be removed to prohibit such from entering the drainage system);
- (21) Any other non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the user and administered under the authority of the EPA, or DWQ, provided that the user is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations. Discharges specified in writing by the Stormwater Program Manager as being necessary to protect public health and safety or discharges that have been filtered through an approved pretreatment system that consistently demonstrate no discharge of pollutants.

(c) Illicit Connections.

- (1) Connections to a stormwater conveyance system that allow or potentially allow the discharge of non-stormwater, other than the exclusions described in Section 20-27 (b) are unlawful. Prohibited connections include, but are not limited to: floor drains, domestic and commercial washing machines, commercial vehicle washing or steam cleaning, septic systems and sanitary sewers.
- (2) Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one year following the effective date of this article. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.

- (3) Where it is determined that said connection:
- a. May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat; or
  - b. Was made in violation of any applicable regulation or ordinance, other than this section;

The City Stormwater Program Manager shall designate the time within which the connection shall be removed.

- (4) In setting the time limit for compliance, the Stormwater Program Manager shall take into consideration:
- a. The quantity and complexity of the work;
  - b. The consequences of delay;
  - c. The potential harm to the environment, to the public health, and to public and private property; and
  - d. The cost of remedying the damage.
- (5) When necessary to stop an actual or threatened discharge that is imminently dangerous or prejudicial to the public's health or safety, the Stormwater Program Manager may, without prior notice, order that a user's access to the MS4 be suspended. If the violator fails to comply with this suspension order, the Stormwater Program Manager may take such steps as deemed necessary to remove, abate or remedy the actual or threatened discharge. The user shall reimburse the City the full cost of such removal, abatement or remedy according to the terms of this article. The user may appeal the Stormwater Program Manager's decision pursuant to this article, but the user may not reconnect to the MS4 without prior written approval of the City.

(d) Spills.

- (1) Spills or leaks of polluting substances released, discharged to, or having the potential to be released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their preexisting condition.
- (2) In the event of a known or suspected illicit discharge of hazardous materials into the MS4, the user or their employee, contractor, or agent, shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a non-hazardous illicit discharge, the user shall notify the Stormwater Program Manager in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Statesville Stormwater Program Manager within three business days of the phone notice. If an illicit discharge emanates from a commercial or industrial land use, the user shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.



**Sec. 20-28. - Right of Entry.**

- (a) The Stormwater Program Manager or designee shall have right of entry on or upon the property of any person subject to this article and any permit/document issued hereunder. The Stormwater Program Manager or designee shall be provided ready access to all parts of the premises for the purposes of inspection, monitoring, sampling, inventory, records examination and copying, and the performance of any other duties necessary to determine compliance with this article. However, in no case shall the right of entry, of itself, confer an obligation on the City of Statesville to assume responsibility for the structural SCM.
- (b) Where a person has security measures in force which require proper identification and clearance before entry into its premises, the person shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the Stormwater Program Manager or designee will be permitted to enter without delay for the purposes of performing specific responsibilities.
- (c) The Stormwater Program Manager or designee shall have the right to set up on the person's property such devices as are necessary to conduct sampling and/or metering of the person's operations.
- (d) Any temporary or permanent obstruction to safe and easy access to the areas to be inspected and/or monitored shall be removed promptly by the person at the written or verbal request of the Stormwater Program Manager or designee. The costs of clearing such access shall be borne by the person.
- (e) The Stormwater Program Manager or designee may inspect the facilities of any User in order to ensure compliance with this article. Such inspection shall be made with the consent of the owner manager, or signatory official. If such consent is refused the Stormwater Program Manager or designee may seek issuance of an administrative search warrant.

**Sec. 20-29. – Enforcement.**

- (a) *Authority to Enforce.* The provisions of this section shall be enforced by the Stormwater Program Manager, his or her designee, or any authorized agent of the City of Statesville. Whenever this section refers to the Stormwater Program Manager, it includes his or her designee as well as any authorized agent of the City of Statesville.
- (b) *Violation Unlawful.* Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this section, or the terms or conditions of any permit or other development or redevelopment approval or authorization granted pursuant to this section, is unlawful and shall constitute a violation of this article.
- (c) *Each Day a Separate Offense.* Each day that a violation continues shall constitute a separate and distinct violation or offense.

- (d) *Responsible Person/Entities*. Responsible persons are all persons or dischargers who participate in, assist, direct, create, cause, or maintain a condition that constitutes a violation of this article, or fails to take appropriate action so that a violation of this article results or persists.
- (1) Responsible persons include, but are not limited to, owners of property where a violation occurs; persons in the design or construction field who have created, directed, or assisted in the design or construction of an improvement or feature in violation of the requirements of this article; and persons who have control over the use or maintenance of property or the activities occurring on property where a violation has occurred.
  - (2) Multiple violations may be charged against multiple individuals or entities for an action that violates this article.
- (e) *Public Nuisance*. In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this article is a threat to public health, safety and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the responsible person's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.
- (f) *Notice of Violation*.
- (1) Whenever the City finds that a user has violated this article, the City shall notify the user and/or property owner in writing by registered or certified mail, personal service, or posting of said notice at the facility where the alleged violation occurred. The notice shall specify the violation and actions needed to be taken to comply. The notice may also indicate a requirement for the discharger to perform any or all of the following:
    - a. Install equipment or perform testing necessary to monitor, analyze and report of the condition of the user's storm drainage system;
    - b. Eliminate illicit connections or discharges;
    - c. Cease and desist all violating discharges, practices or operations;
    - d. Abate or remedy the stormwater pollution or contamination hazards and restore any affected property;
    - e. Pay a civil penalty; or
    - f. Implement source control or treatment SCM(s).
  - (2) If abatement of a violation and/or restoration of affected property are required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the user fail to meet the deadline, then representatives of the City shall enter upon the facility and are authorized to take any and all measures necessary to abate the violation and/or restore the facility and the expense thereof shall be charged to the user and collected pursuant to Section 20-28. – Right of Entry. Refusal to accept the notice shall not relieve the user of the obligation set forth herein.
- (g) *Remedies*.
- (1) *Recovery of costs and fines*. As authorized by G.S. § 160A-193, the offender shall be liable to the City for the civil penalty, all costs incurred by the City while enforcing this article,

including but not limited to: abatement costs, remedying the damage caused by the illicit discharge, restoring the facility, sampling, clean-up, the City's administrative costs, costs of court, and costs of litigation, to include reasonable attorney's fees. Within 30 days after the City has completed its abatement of the violation, restoration of the facility and/or its investigation and inspection, the violating user or person will be notified of the City's total costs and the civil penalty, if any. The total amount due shall be paid within 30 days of the date of notice. If the amount due is not paid within 30 days, the charges shall constitute a lien on the land or premises where the nuisance occurred. A lien established pursuant to this division shall have the same priority and be collected as unpaid ad valorem taxes. The total amount due is also a lien on any other real property owned by the user within the City limits, except for the person's primary residence. A lien established pursuant to this division is inferior to all prior liens and shall be collected as a money judgment. The user may avoid the lien on any other real property owned by the user within the City limits only if the user can show that the accrual or threatened discharge was created solely by another person. In the event that the user is able to pass the liability onto another person, the other person shall be liable to the City pursuant to this section.

- (2) *Withholding of inspections, permits, certificate of occupancy or other approvals.* Building inspections; permits for development or other improvements; requests for plan approval for zoning, subdivision, other development or construction; and certificates of occupancy may be withheld or conditioned upon compliance with this article until a responsible person with ownership or management of the property for which permits or approvals are sought has fully complied with this article and all actions taken pursuant to this article.
- (3) *Remedies not limited.* The remedies provided herein, whether civil, criminal, or administrative, are not exclusive; may be exercised singly, simultaneously, or cumulatively; may be combined with any other remedies authorized under the law; and may be exercised in any order.
- (4) *Remedies not exclusive.* The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City to seek cumulative remedies.

(h) Civil Penalties.

- (1) Any person who violates or fails to act in accordance with any of the provisions of this article or rules or orders adopted or issued pursuant to this article shall be subject to a civil penalty as described herein. Each day of a continuing violation shall constitute a separate violation under this subsection. Failure to comply with the requirements of this article may result in imposition of enforcement measures as authorized by G.S. 143-215.6B.
- (2) Said penalties shall be assessed by the City Manager, or his/her designee. No penalty shall be assessed until the person alleged to be in violation is served in writing by certified mail, personal service, or posting of said notice at the facility where the alleged violation occurred.

- (3) In the event the City is fined by the state or federal governments resulting from an illicit discharge or connection made by a discharger or other person, the discharger or other person at fault shall reimburse the City for the full amount of the civil penalty assessed by the state and/or federal governments as well as for the abatement costs incurred by the City during the investigation and restoration process pursuant to this article.
- (4) Civil penalties collected pursuant to this article shall be used or disbursed as directed by law.
- (5) *Illicit discharges.* Any user or other person, including but not limited to, a designer, contractor, agent, or engineer, who allows, acts, participates in, assists, or directs an illicit discharge, either directly or indirectly, shall be subject to civil penalties as follows:
- a. For first time offenders, if the quantity of the discharge is equal to or less than five (5) gallons and consists of domestic or household products in quantities considered ordinary for household purposes, said person shall be assessed a Category I Civil Penalty per violation, per day. If the quantity of the discharge is greater than five (5) gallons or contains non-domestic substances, including but not limited to process waste water, or if said person cannot provide clear and convincing evidence of the volume and nature of the substance discharged, said person shall be assessed a Category II Civil Penalty per violation, per day.
  - b. First time offenders who discharge into the MS4 any substance that is a byproduct of a commercial or industrial process or any substance that was purchased at a bulk sales location shall be assess a Category II Civil penalty. Each day's continuing violation shall constitute a separate and distinct offense for the purpose of assessing a civil penalty.
  - c. Repeat offenders. A user who discharges into the MS4 in violation of this article more than once within a 12-month period, shall be assessed a civil penalty at one category level higher than the category assessed for a first time offender of the substance discharged. Each day's continuing violation shall constitute a separate and distinct offense for the purpose of assessing a civil penalty.
- (6) *Illicit Connections.* Any user or other person, including but not limited to a designer, contractor, agent, or engineer, who allows, acts, participates in, assists, or directs the establishment of an illicit connection, either directly or indirectly, shall be subject to civil penalties as follows:
- a. First time offenders shall be assessed a Category II civil penalty in an amount set forth in the schedule of civil penalties. Each day's continuing violation shall constitute a separate and distinct offense for the purpose of assessing a civil penalty.
  - b. A user or person who is found to have violated this section more than once within a 12-month period shall be assessed a Category III civil penalty in an amount set forth in the schedule of civil penalties. Each day's continuing violation shall constitute a separate and distinct offense for the purpose of assessing a civil penalty.

- (7) *Penalty considerations.* In determining the amount of the penalty, the Stormwater Program Manager or designee shall consider:
- a. The degree and extent of harm to the environment, public health and public and private property; and
  - b. The cost of remedying the damage; and
  - c. The duration of the violation; and
  - d. Whether or not the violation was willful; and
  - e. The prior record of the person responsible for the violation in complying with this article; and
  - f. The City's enforcement costs and the amount of money saved by the violator through his, her or its noncompliance; and
  - g. Any other consideration relevant to the violation.
- (8) *Schedule of penalties.* The following civil penalties shall be imposed, up to the amount shown for each category, upon the user or person found to have violated this article:
- a. Category I: civil penalty not to exceed \$100 per day per violation.
  - b. Category II: civil penalty not to exceed \$1,000 per day per violation.
  - c. Category III: civil penalty not to exceed \$5,000 per day per violation.

**Sec. 20-30. – Appeals.**

- (a) Any order, requirement, decision or determination made by the Stormwater Program Manager may be appealed to and decided by the Statesville Board of Adjustment.
- (b) An appeal from a decision of the Stormwater Program Manager must be submitted to the Statesville Board of Adjustment within 30 days from the date the order, interpretation, decision or determination is made. All appeals must be made in writing stating the reasons for appeal. Appeals must be mailed or delivered to the Public Works Director and clearly marked with the following: "Appeal of IDIC Decision – Board of Adjustment." Following submission of an appeal, the Public Works Director will forward the appeal request to the BOA. Within 30 days or at the next regular BOA meeting, the Stormwater Program Manager shall provide all documentation constituting the record upon which the action appealed from was taken.
- (c) An appeal stays all proceedings in furtherance of the action appealed, unless the Statesville Public Works Director certifies to the Statesville Board of Adjustment, that by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by a court of record upon due cause shown.
- (d) The Statesville Board of Adjustment shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney. Decisions of the Statesville Board of Adjustment are final.

**Sec. 20-31. - Nuisance; Injunctive Relief.**

- (a) Illicit discharges and illicit connections which exist within the City are hereby found, deemed, and declared to be dangerous or prejudicial to the public health or public safety and are found, deemed, and declared to be public nuisances.
- (b) It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. If a person has violated or continues to violate the provisions of this article, the City may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

**Sec. 20-32. – 20-50. – Reserved.**

**ARTICLE III. – TAIL-DITCH MAINTENANCE**

**Sec. 20-51. – General Purpose.**

- (a) The intended purpose of this policy is to provide general guidelines and procedures for maintenance and repair of tail ditches within the City of Statesville’s (City) jurisdiction. The City maintains the drainage system within the City’s right-of-way (RoW) and on City property. Consistent with the provisions of this Policy and City ordinances, the City may also maintain and repair drainage infrastructure outside of City RoW for the purpose of maintaining tail-ditches and other City infrastructure.
- (b) It is recognized that many properties have been privately developed in the floodplains of creeks and streams in Statesville and that such properties are occasionally subject to nuisance flooding, standing water, and poor drainage. The City is not legally or fiscally responsible for the repair and maintenance of general flooding on private property. However, it shall be the policy of the City to enter onto private property under these conditions and for the purpose of maintaining and repairing city infrastructure, which includes but is not limited to streets, curb and gutter, pavement, or storm pipes when it is determined that: (1) a problem has been created due to a tail-ditch issue; and (2) the City determines all of the Primary Criteria listed herein are met. The Stormwater Program Manager or designee shall administer and interpret this policy.
- (c) This policy is not intended for problems affecting recently constructed, occupied structures. This policy is intended only for a residence wherein a certificate of occupancy has been issued at least ten (10) years prior. This policy is also not intended to address control issues such as algae, mosquitoes, water quality, and trash removal, and they do not qualify for maintenance or improvements through this policy.

**Sec. 20-52. – Primary Criteria for Tail Ditch Maintenance.**

- (a) The Stormwater Program Manager shall analyze each tail ditch to determine if the following primary criteria are present:
  - (1) The tail-ditch is located within the City limits of Statesville, North Carolina, or a tail-ditch located outside of the territorial limits affects City infrastructure, such as roads or streets;
  - (2) A Certificate of Occupancy has been issued for the residence at least ten (10) years prior to the date the application was submitted;
  - (3) The property owner(s) is (are) willing to execute a Right of Entry Agreement;
  - (4) The problem threatens or creates a danger to public safety in a City RoW;
  - (5) The problem is caused by stormwaters emanating from public or private lands or right-of-way (i.e. public stormwater).

**Sec. 20-53. – Terms and Conditions of City Participation.**

- (a) If the Stormwater Program Manager determines all primary criteria are present, he or she shall do repair and maintenance work to tail-ditch issues as funding allows. The Stormwater Program Manager must prioritize approved applications according to approved, available funds, net public benefit, and potential dangers and harm to the public or public property.
- (b) Any work performed must be done according to the following terms and conditions:
  - (1) All work must be performed by City personnel or a City contractor. The City will not furnish materials to the property owner for installation by Owner or Owner’s contractor;
  - (2) Participating property owners must donate to the City, where necessary, a permanent easement to construct the Project and maintain the drainage system. Future stormwater maintenance by the City shall be limited to repairs and maintenance of a substantive nature that ensures the adequate performance of the infrastructure. Ongoing stormwater system maintenance for the purposes of aesthetics or convenience shall be the responsibility of the property owner.
  - (3) All maintenance and repair services are subject to available funding, determined each Fiscal year pursuant to the direction of the Statesville City Council.
  - (4) The City will not participate in maintenance and repair of Stormwater Control Measures or Stormwater Best Management Practices that are privately owned and/or required under site plans approved by the City or NC Department Environmental Quality.
  - (5) All work performed by the City shall be constructed to meet current City design standards located in the Drainage Design Manual

**Sec. 20-54. – 20-75. – Reserved.**

Effective date:

This amendment, and any ordinances affected by this amendment, is effective on the date of its enactment.

This, the \_\_\_\_ day of \_\_\_\_\_, 2020.

This ordinance was introduced for first reading by Council member \_\_\_\_\_, seconded by Council member \_\_\_\_\_, and unanimously carried on the \_\_\_\_ day of \_\_\_\_\_, 2020.

AYES:

NAYS:

The second and final reading of this ordinance was heard on the \_\_\_\_ day of \_\_\_\_\_, 2020, and upon motion of Council member \_\_\_\_\_, seconded by Council member \_\_\_\_\_, and unanimously carried, was adopted.

AYES:

NAYS:

This ordinance is to be in full force and effect from and after the \_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF STATESVILLE

\_\_\_\_\_  
Constantine H. Kutteh, Mayor

APPROVED AS TO FORM

\_\_\_\_\_  
Leah Gaines Messick, City Attorney

ATTEST:

\_\_\_\_\_  
Brenda Fugett, City Clerk



RESOLUTION DISCONTINUING THE  
STORM DRAINAGE POLICY ON PRIVATE PROPERTY

WHEREAS, the City of Statesville has for many years participated with property owners in piping ditches on private property; and

WHEREAS, this policy creates more problems than it solves; and

WHEREAS, it is in the best interest of the City of Statesville to discontinue providing labor and equipment to construct or pipe ditches on private property;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Statesville that the policy of providing labor and equipment concerning storm drains, creeks, ditches, etc. on private property is hereby discontinued effective this date of adoption.

This the 21 day of August, 1995.

John E. Marshall  
Mayor

ATTEST:

Mary L. Kerley  
City Clerk



**Historic Preservation Commission Called Meeting Minutes  
Virtual Meeting via Zoom  
April 02, 2020 @ 7:00 p.m.**

Chairman Dearman called the meeting to order and conducted roll call with the following attendance recorded:

**Members Present:** Jonathan Dearman, Agnes Wanman, Billie Chrystler, Barry Edwards, Don Underhill, Brittany Hill, David Richardson, Richard Boyd

**Members Absent:** Glen Setzer

**Staff Present:** Marci Sigmon - Historic Preservation Planner, Brenda Fugett - City Clerk

**Council Present:** John Staford

**Others:** William Morgan

**Media:** 0

Chairman Dearman explained that this is a quasi-judicial hearing and that all those who planned to speak must be sworn in. He swore in Marci Sigmon and William Morgan.

**Consider approving the February 27, 2020 HPC meeting minutes.**

**Boyd made a motion to approve the February 27, 2020 minutes, seconded by Hill.  
The motion carried unanimously.**

**Consideration of Certificate of Appropriateness COA20-06 from Mr. & Mrs. William Morgan to replace the metal roofing material with architectural shingles on the structure located at 422 West End Avenue due to the roof leaking; Tax Map 4734-85-1946.**

Marci Sigmon gave the following Staff Report:

**Background**

The structure located at 422 West End Avenue was built around 1900 and is a Late Victorian two-story L-shaped home. The primary features are the overall form of the house, paired windows and the wrap-around porch. A past approval includes during 2013 installing a decorative aluminum four-foot fence on the property.

**Request**

Mr. and Mrs. William Morgan are requesting to replace the metal roofing shingles on the main house with traditional architectural shingles. The new architectural shingles will be the same color, style and texture of the existing dark gray architectural shingles on the rear of the house and garage. The new shingles will be manufactured by CertainTeed and cover approximately 1,800 square feet of the roof. During the roof replacement, the owners are also proposing to remove the

metal in the hidden gutter locations around the roof perimeter, repair the damaged wood in these areas, and install new hidden gutters fabricated from copper sheet goods.

### **Commission Review**

The commission must consider the following pages in the Design Guidelines when rendering their decision: Chapter 3-Changes to Building Exteriors, Pages 32-33: F. Roofs

Chairman Dearman declared the public hearing open.

William Morgan briefly described the leaking roof issue he is dealing with and the work he wants to do to fix it.

Boyd stated that the original metal roofs have about a 100-year life expectancy, and this one has reached it.

Underhill asked what will happen to the downspouts. Morgan replied that they will be left in place as they are in good condition.

There being no other speakers or questions, Dearman closed the public hearing.

Chairman Dearman stated that the Commission must either answer all five Findings of Fact in the affirmative or determine that such finding does not apply to the specific project under consideration:

1. **The historic character of the property will be retained and preserved. Yes**
2. **Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of distinctive features, the new feature will match the old in design, color, texture, and where possible, materials. Replacement of missing features has been substantiated by documentary, physical, or pictorial evidence. Yes**
3. **Chemical or physical treatments, if appropriate, will be undertaken using the gentlest method possible. N/A**
4. **Archeological resources will be protected and preserved in place. If such resources must be disturbed, the applicant has shown that mitigation measures will be undertaken. N/A**
5. **New additions, exterior alterations, or related new construction will not destroy historic materials that characterize the property. The new work will be differentiated of the old and will be compatible with the massing, size, scale, and architectural features to protect the integrity of the property and its environment. Yes**

Underhill made a motion to approve COA20-06 as submitted, citing guidelines Chapter 3, F-Roofs, 1 & 5, seconded by Wanman. The motion carried unanimously.

There being no other business, Boyd made a motion to adjourn, seconded by Edwards. The motion carried unanimously.

**Historic Preservation Commission Meeting Minutes**  
**Virtual Meeting via Zoom**  
**April 23, 2020 @ 7:00 p.m.**

Chairman Dearman called the meeting to order and conducted roll call with the following attendance recorded:

**Members Present:** Jonathan Dearman, Agnes Wanman, Billie Chrystler, Barry Edwards, Don Underhill, Brittany Hill, David Richardson, Richard Boyd, Glen Setzer

**Members Absent:** 0

**Staff Present:** Marci Sigmon - Historic Preservation Planner, Brenda Fugett - City Clerk

**Council Present:** John Staford

**Others:** Laura Confoy, Grace Cunningham

**Media:** 0

Chairman Dearman explained that this is a quasi-judicial hearing and that all those who planned to speak must be sworn in. He swore in Marci Sigmon, Laura Confoy, and Grace Cunningham.

**Consider approving the April 02, 2020 HPC meeting minutes.**

**Richardson made a motion to approve the April 02, 2020 minutes, seconded by Boyd. The motion carried unanimously.**

**Consideration of Certificate of Appropriateness COA20-10 submitted by Ms. Grace Cunningham to demolish the detached garage on the property located at 628 West End Avenue due to a catastrophic fire; Tax Map 4734-75-0608.**

Marci Sigmon gave the following Staff Report:

**Background**

The house located at 628 West End Ave was built ca. 1935 and is referenced in the historic survey as the Hefner House. The structure is a classical revival-style two-story, brick house with a gable roof, exterior end chimneys, classical entrance with sidelights and transom, and a two-story pedimented portico. A brick gable-roof garage stands behind the house. In 1999, the garage was enlarged and converted to a residence. A chimney now occupies one gable end.

The home was constructed by Burton N. Hefner and his wife, Julia. Burton Hefner owned Hefner's Café, a popular eatery located at 119 E. Broad Street in downtown Statesville. Ina Hefner, whose relation to Burton N. Hefner is not determined, later owned the house. Ina Hefner owned Ina's Beauty Shop in Cooper Street.

In 1999, a COA was granted to enclose the garage with matching brick. During 2004, approval was given to expand the driveway and parking area. During 2019, an application was approved to replace the metal roof shingles on the house and detached garage with architectural shingles.

### Request

Ms. Grace Cunningham is requesting to demolish the detached garage due to a fire severely damaging the structure on March 30, 2020. The structural engineer's report states the fire caused damage to the wood roof framing, cracking of the masonry walls, and spalling of the brick masonry. In addition, the structural engineer's report states he cannot rule out differential cracking and movement of the wall, and spalling of the brick masonry that resulted in section loss. The applicant plans to remove the remnants of the burnt structure, remove the concrete pad garage flooring and plant the area in grass.

The Commission will make a recommendation to City Council. City Council decides on all requests for demolition in historic districts.

### Commission Review

The commission must consider the following pages in the Design Guidelines when rendering their decision: Chapter 5 - Relocation, Demolition, & Securing Buildings, Pages 55-56: B. Demolition of Buildings

Chairman Dearman declared the public hearing open.

Grace Cunningham stated that her engineer has recommended to demolish and not to reuse. She plans to rebuild a structure that looks very similar to the original in the future.

Boyd asked how soon demolition will occur. Ms. Cunningham replied demolition will take place as soon as it is approved, and the insurance payment comes in. She advised that she plans to try to salvage some of the brick to use for a patio or something.

There being no other speakers, Chairman Dearman declared the public hearing closed.

### Findings of Fact

The Commission must either answer all five Findings of Fact in the affirmative or determine that such finding does not apply to the specific project under consideration. The Commission reviewed the following Findings of Fact:

**1. The historic character of the property will be retained and preserved.**

No: Wanman, Setzer, Richardson, Chrystler, Edwards, Hill  
Not Applicable: Boyd, Underhill

**2. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of distinctive features, the new feature will match the old in design, color, texture, and where possible, materials. Replacement of missing features has been substantiated by documentary, physical, or pictorial evidence.**

Not Applicable: Unanimous

**3. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest method possible.**

Not Applicable: Unanimous

4. **Archeological resources will be protected and preserved in place. If such resources must be disturbed, the applicant has shown that mitigation measures will be undertaken.**

Not Applicable: Unanimous

5. **New additions, exterior alterations, or related new construction will not destroy historic materials that characterize the property. The new work will be differentiated of the old and will be compatible with the massing, size, scale, and architectural features to protect the integrity of the property and its environment.**

No: Wanman, Chrystler

Not Applicable: Richardson, Boyd, Setzer, Underhill, Hill, Edwards

**Boyd made a motion to approve as submitted citing guideline Chapter 5 - Relocation, Demolition, & Securing Buildings, Pages 55-56: B. Demolition of Buildings, #2. Setzer seconded the motion. The motion carried unanimously.**

**Consideration of Certificate of Appropriateness COA20-08 submitted by Mr. & Mrs. Brian Confoy to rebuild a fallen section of the house on the property located at 627 West Sharpe Street; Tax Map 4734-73-8590.**

Sigmon gave the following Staff Report

#### **Background**

The house located at 627 West Sharpe Street was built ca. 1910. The historic survey describes the structure as a framed cottage with a double-pile, low-hip-roof and a projecting front facing bay on the east side of the three-bay façade. Sidelights frame the main entry and molded intels cap the four-over-four windows. The hip-roofed front porch had replacement metal supports and railing at the time of the survey. The kitchen and dining room ell extends to the rear.

Under the previous owner, the structure had a history of having nuisance violations and neighbors located near the home complaining due to the condition of the structure. The property was sold to new owners in February 2020. The new owners are cleaning up the property and renovating the interior and some exterior elements.

#### **Request**

Mr. and Mrs. Brian Confoy are requesting to rebuild an addition to the house which collapsed at some point in time. Previous owners had built an addition to the original structure at the rear of the house on the southeast corner. At some point, the addition collapsed. The remnants of the addition were still lying on the ground when the applicant purchased the home. Since the addition was where the only bathroom in the structure was located, the applicant needed to rebuild the addition.

The applicant is requesting to:

1. Retain the addition built with the same dimensions as the original addition which collapsed. The addition is six feet wide, twenty feet long, and nine feet high.

2. Place mortar over the concrete block foundation and paint to match the existing foundation color on the rest of the house.
3. Retain the black asphalt shingles placed on the rebuilt addition. The original addition had black asphalt shingles.
4. Place HardiePlank or wood on the sides of the addition to match the original structure's wood siding in height and depth.

### **Commission Review**

The commission must consider the following pages in the Design Guidelines when rendering their decision: Chapter 4 - New Construction, Pages 48: B. Additions to Historic Buildings; Chapter 3 - Changes to Building Exteriors, Pages 28-29: C. Masonry & Stone: Foundation & Chimneys; Chapter 3 - Changes to Building Exteriors, Pages 32-33: F. Roof; Appendix, Page 82: G. New Construction Materials Guide.

Chairman Dearman declared the public hearing open.

Chrystler asked if there is a window by the bush. The applicant, Laura Confoy, replied that it is not, but just a piece of shingle or paper and it is no longer there.

Chrystler asked what the pitch of the roof is. Confoy replied that she does not know, but the original addition did not match either and it is attached to the main house. Chrystler asked if any of the original metal shingles were disturbed when the addition was built on. Confoy replied no.

Boyd asked if the addition will have windows and if so, he would recommend the applicant come back for approval of the windows. He asked what the applicant plans to do to the roof. Confoy replied that they will paint it black or silver, but most likely black.

Edwards asked if the drainpipe will stay. Confoy replied that she is not sure if it will stay or if she will hide it with bushes or a chase. Edwards asked if she already has a building permit. Confoy replied yes, she did. Edwards asked if the roofline on the addition will match the rest of the house. Confoy replied that it will.

Boyd asked if she is installing a gutter system. Confoy replied that she tries not to on the older homes, so the look of the house is not compromised unless they are just absolutely necessary in a certain location. Boyd advised that the northeast corner of the foundation looks deteriorated and that it has most likely been caused from water.

Edwards asked if Confoy would consider using the same siding since it is such a small area. Confoy replied she will if she can find it.

There being no other speakers, Chairman Dearman declared the public hearing closed.

### **Findings of Fact**

**The Commission must either answer all five Findings of Fact in the affirmative or determine that such finding does not apply to the specific project under consideration. The Commission reviewed the following Findings of Fact:**

1. **The historic character of the property will be retained and preserved.**

Yes: Unanimous

2. **Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of distinctive features, the new feature will match the old in design, color, texture, and where possible, materials. Replacement of missing features has been substantiated by documentary, physical, or pictorial evidence.**

Yes: Unanimous

3. **Chemical or physical treatments, if appropriate, will be undertaken using the gentlest method possible.**

Not Applicable: Unanimous

4. **Archeological resources will be protected and preserved in place. If such resources must be disturbed, the applicant has shown that mitigation measures will be undertaken.**

Not Applicable: Unanimous

5. **New additions, exterior alterations, or related new construction will not destroy historic materials that characterize the property. The new work will be differentiated of the old and will be compatible with the massing, size, scale, and architectural features to protect the integrity of the property and its environment.**

Yes: Chrystler – noted that it does compromise the original structure since it is attached to the house., Edwards, Underhill, Hill, Wanman, Richardson, Boyd, Setzer

**Boyd made a motion to approve contingent upon the applicant using wood to match the rest of the house, citing guidelines: Chapter 4 New Construction, Pages 48: B. Additions to Historic Buildings #5 & #8; Chapter 3 Changes to Building Exteriors, Pages 28-29: C. Masonry & Stone: Foundation & Chimneys #4 & #10; and Chapter 3 Changes to Building Exteriors, Pages 32-33: F. Roof #1 & #4. Chrystler seconded the motion. The motion carried unanimously.**

Sigmon gave an update on the status of the Reavis Funeral Home repairs stating that they are more than 50% complete with their repairs and that the Planning Director has said that staff will extend their deadline before assessing fines.

Sigmon stated that the City Attorney has recommended that staff extend the date for 531 Walnut Street.

**There being no other business, Chrystler made a motion to adjourn, seconded by Edwards. The motion carried unanimously.**



**Planning Board Meeting Minutes  
Virtual Zoom Meeting  
April 28, 2020 @ 7:00 p.m.**

**Members Present:** Mark Tart, Tammy Wyatt, Bernard Robertson, Don Daniel, Rosetta Williams, Todd Lange, Bo Walker joined the meeting at 7:30 p.m.

**Members Absent:** Brian Long, Bo Walker, Charlotte Reid

**Staff:** Sherry Ashley-Planning Director, Brenda Fugett-City Clerk, Steve Bridges-Senior Planner, Marci Sigmon-Historic Preservation

**Others:** Angela Imes, Chris Haizlip, Dermont Crabtree, Matt Grant

**Media:** 0

**Consider approving the February 25, 2020, Planning Board meeting minutes.**

**Robertson made a motion to approve the February 25, 2020 meeting minutes as presented, seconded by Daniel. The motion carried unanimously.**

**ZC20-03 rezoning request from Calvary Baptist Church rezoning approximately 9.369 acres located at 504 Whites Mill Road from HI, Heavy Industrial to R-15, Urban Fringe Low Density Residential District to allow an addition to the existing church, PIN #4743-27-0142.**

Sherry Ashley gave the following Staff Report:

**Rezoning Request**

Calvary Baptist Church is requesting to rezone the property from HI (Heavy Industrial) District to the R-15 (Urban Fringe Low-Density Residential) District. The purpose of this rezoning request is for an addition and improvements to the existing church.

**Evaluation**

The site is approximately 9.369 acres in size and located at 504 Whites Mill Road. The property is zoned HI and churches are not allowed in the HI District making the use non-conforming. Therefore, additions to a non-conforming use would not be permitted. The request to rezone to the R-15 District will bring the church use into compliance with the Unified Development Ordinance and the surrounding zoning districts. The site is in the City's Extra-territorial Jurisdiction. The site currently has city water (at outside rates) and city electric. Sewer is in the area but not utilized by the church at this time. The 2005 Land Use Plan calls for this property to be Mixed Use. The site plan for the addition will require review and approval by the Technical Review Committee (TRC).

The surrounding zoning districts and land uses are as follows:

**NORTH & EAST OF THE SITE:** R-15M (Urban Fringe Low Density Residential/Manufactured Housing) District, Single-Family Homes and Pinehurst Forest Subdivision

**SOUTH OF THE SITE:**

HI (Heavy Industrial) District, Undeveloped

**WEST OF THE SITE:**

H-115 (Highway 115/Shelton Avenue Corridor) District,  
Single-Family Homes & Godfrey Lumber Company

**Staff Recommendation**

The 2005 Land Development Plan projects the property to be Mixed Use. Though low-density residential does not fit in the Mixed-Use designation, churches, schools, parks etc. are allowed uses in residential districts. Staff's recommendation is favorable to rezone the property to R-15 because it is an existing church, and churches are allowed in residential districts, it is compatible with the uses and zoning of the surrounding area and it will allow a nonconforming use to come into compliance and expand.

**Chairman Tart declared the public hearing open and asked if anyone wished to speak in favor or against this rezoning.**

Pastor Chris Haizlip stated that the church had purchased the property a few years ago and had never had it rezoned, so they want to take care of that now, so that part of the process is in place when they are ready to expand.

**There being no other speakers for or against this rezoning, Chairman Tart declared the public hearing closed.**

**Lange made a motion to approve ZC20-03 as presented stating that in addition to approving this zoning amendment this approval is also deemed an amendment to the City's comprehensive land use plan and that the change in conditions the Planning Board has considered in amending the zoning ordinance to meet the development needs of the community are as follows: Though low-density residential does not fit in the Mixed-Use designation, churches, schools, parks etc. are allowed uses in residential districts. The rezoning request is compatible with the uses and zoning of the surrounding area and it will allow a non-conforming use to come into compliance. Robertson seconded the motion and it carried unanimously.**

**P20-03 Site Plan Review for mini-warehouses for Beretta Development, Inc., located at 1739 Wilkesboro Highway, PIN #4735-35-1603.**

Sherry Ashley gave the following Staff Report:

The site is located at 1739 Wilkesboro Highway behind the Old Wilkes Shopping Center. The property is currently 2.583 acres in size and is proposed to be developed with mini warehouses. The site is zoned B-4 (Highway Business) District. The site will be accessed from the existing driveway off Wilkesboro Highway that also serves the rear of the Old Wilkes Shopping Center (Food Lion).

New construction in the B-3, B-4 or B-5 zoning districts are required to get Planning Board and City Council approval. The site plan indicates a total of 3 buildings (26,154 sq. ft.). The setback requirements have been met. New landscaping and existing vegetation are shown on the plan, however additional vegetation will need to be planted in accordance with the Unified Development Ordinance (UDO) if the existing vegetation is not enough or is removed i.e. street yard, north and west property boundaries. The site has 14 parking spaces which meets the requirement of the UDO. Stormwater measures are required and shown as a combination of underground pipes and

an above ground sand filter. Curb and gutter were not required by NCDOT on this section of Wilkesboro Highway however fee in lieu will be submitted to the City instead of installing the sidewalk.

The exterior walls of the mini warehouses are required to be wood, masonry, stone or architectural metal however the Board of Adjustment granted a variance to allow utilitarian metal on the rear wall of building #1, three sides of building #2 except the eastern side and all walls of building #3. This was contingent upon increasing the buffer adjacent to Food Lion from 8 ft. to 10 ft. and planting an opaque screen halfway down building #2. The site plan indicates the buffer requirement. The elevations indicate the brick walls and the utilitarian metal walls for each building. Photos are also attached for an example of style and color.

The Technical Review Committee approved the site plan at its April 01, 2020 meeting contingent upon NCDOT approval, providing the City with a copy of the cross-access agreement, and approval of stormwater plans. NCDOT has since approved the plan.

The Board of Adjustment granted the variance on March 17, 2020.

Staff recommends approving the site plan contingent upon the landscaping being met for the street yard, north and west boundaries if existing vegetation is deficient or removed, providing the City with a copy of the cross-access agreement and approval of the stormwater plans. Otherwise the plans meet the requirements of the Unified Development Ordinance.

In response to a question from Lange, Ashley further explained what is meant by the requirement of the opaque vegetative screening.

Daniel asked if there are any problems with water runoff to the adjoining subdivision that is located behind the site. Ashley replied that the site plan must comply with the current stormwater ordinance and on the site plan there is a sand filter and pipes underground to detain and direct their water runoff.

**Chairman Tart declared the public hearing open and asked if anyone wished to speak in favor or against this Site Plan.**

Matt Grant, Engineer for the project stated that this site has a weird shape and presents several topography issues, so they feel this is the best use of the property.

Tart asked if the 12" CMP shown on the site plan is an existing stormwater item. Matt Grant replied that it is, and the plan is to bypass the sand filter and pick up on it and reroute it to the roadway ditch, which NCDOT has already approved.

**There being no other speakers, Chairman Tart declared the public hearing closed.**

**Lange made a motion to approve P20-03 contingent upon contingent upon the landscaping being met for the street yard, north and west boundaries if existing vegetation is deficient or removed, providing the City with a copy of the cross-access agreement and approval of the stormwater plans, seconded by Daniel. The motion carried unanimously.**

\*Planning Board member Bo Walker joined the meeting at 7:30 p.m.

**TA20-01 Text Amendment to the Unified Development Ordinance filed by Ms. Angela Imes to amend Article 9-Definitions, Section 9.02-Definitions, Adult/Child Home Day Care to allow a maximum of 12 children instead of 8 children.**

Sherry Ashley gave the following Staff Report:

Ms. Imes would like to be able to care for a maximum of 12 children in a home day care (her residence). The Unified Development Code currently allows 8 children, with 5 being pre-school age children and up to 3 being school aged children.

Ashley stated that many upgrades/increased standards are required by the state of North Carolina for in home Childcare Centers. According to Ms. Mackenzie Rathledge with the NC Department of Early Education, childcare centers are allowed as a home daycare provided parking is paved, handicap access is provided, the residence is improved to meet building code, fire code, and sanitation requirements and there is a certain amount of play area. Ms. Rathledge stated that there are only few of these in North Carolina due to the added expense of improving the property to meet these standards.

Staff has completed research and recommends allowing the number of children to be increased based on the age of the children since the state allows it and Section 5.02 Accessory Uses and Structures, E. Adult/Child home day care states "facilities shall maintain residential characteristics of primary use for residential purposes". All requirements of the North Carolina Department of Human Resources must be met. A fenced play area is required for children. Staff concerns are the size of the property and drop off/pick up creating a problem on the street.

The language to be removed is shown as strikethrough and the new language is underlined and highlighted as shown in the ordinance below:

**AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT CODE,  
ARTICLE 9-DEFINITIONS, SECTION 9.02-DEFINITIONS, ADULT/CHILD HOME DAY CARE  
TA 20-01**

**WHEREAS**, there is a request to amend the Unified Development Ordinance as the code currently does not address the proposed use of a childcare center as a home day care;

**NOW THEREFORE, BE IT ORDAINED** by the City Council of the City of Statesville that Article 9 Definitions, Section 9.02 Definitions, Adult/Child Care Home Day Care be amended as follows:

**Adult/Child Home Day Care** — a residence within which child or adult care and supervision is provided for less than a twenty-four (24) hour period. Childcare is limited to no more than five (5) preschool aged children including the caregiver's own preschool-aged children; plus, up to three (3) school-age children. Adult care is limited to five (5) adults, unrelated to the caregiver. A childcare center may be allowed as a home day care with a maximum of 10 children (ages 2-13) or a maximum of 12 children (ages 3-13). The childcare center must meet the requirements of the State of North Carolina in regard to parking, handicap access, building code, fire code and sanitation.

Williams questioned the ratio of children to caregivers, because it appears that the applicant is wanting to increase the number of children without increasing the number of caregivers. Ashley replied that as a home daycare provider the applicant cannot add staff, so the number of children

must stay within the number that is allowed by law for a home daycare, which is 1 caregiver for a maximum of 10 children, ages 2-13, or a maximum of 12 children, ages 3-13.

Daniels said he is concerned about one person being able to manage 12 children. Williams agreed pointing out that the ages are 3-13.

**Chairman Tart declared the public hearing open and asked if anyone wanted to speak in favor or against this text amendment.**

Angela Imes, the applicant, stated that she has had a childcare business since October 2006. Currently she has a first and second shift and has an enrollment of 14 children, that all arrive at different times and all 14 are never there all the same time. She needs the text amendment to be able to provide care for up to 12 children ages 3-13.

Williams asked if she has the ages split, for instance, do the older children only come after school. Ms. Imes replied that they all come at different times. She has children who come at 5:45 a.m. and leave at 2:00-2:30 p.m., then another set comes in and they leave around 4:30-5:00 p.m., then another set comes in and they are there until 11:30 p.m.

Daniels asked what the maximum number of children is that are present at one time. Ms. Imes replied that currently she is licensed for a maximum of 5 pre-school and 3 school age children for a total of 8 at one time.

Wyatt asked if there are state guidelines regarding the amount of square footage required for this enrollment number. Ms. Imes replied that there are, and that she meets all of the state's guidelines and only needs approval of this text amendment to comply with the city's ordinance. Wyatt asked what the square footage of the home is. Ms. Imes replied that she believes it is 1,685.

Daniel asked if she is set up for handicap. Ms. Imes replied that she is, and that at this point, all she has to do is get sanitation and building approvals and this text amendment approved. Everything else has been approved.

Ms. Imes stated that she has been going through this process for a little over five years and hopes to have this text amendment approved so she can serve more children and their families. She currently has a waiting list of twelve children. She considers herself a pillar of the community, and she knows that from a perspective of someone that does not care for this many children at one time, that it does seem like a lot, but she is licensed and trained to do what she does, and what she is asking to do more of.

Lange asked Ms. Imes if she is going to make the several changes to her home that will bring it into compliance with state and city codes. Ms. Imes replied that she is working with her licensed consultant and is ready to move forward to do what she needs to do to attain the remaining approvals that she needs, once this text amendment is approved. She advised that even if the text amendment is approved, if she does not make those other changes, the state will not license her for the enrollment changes.

**There being no other speakers, Chairman Tart declared the public hearing closed.**

Lange stated that even though he, as well as others on the board, have misgivings about the number of children for one caregiver, she must be in compliance with the state guidelines.

Williams asked if the square footage requirement can be verified. Ms. Imes said that this has been checked by her licensed consultant and she can provide any information the board wants.

Daniel asked if there are any restrictive covenants in that neighborhood regarding in-home childcare businesses. Sherry Ashley replied that deed restrictions are not enforced by the City, but by the neighbors, so if the neighbors were not happy with the situation, that would be a civil matter. She advised Ms. Imes to check her deed restrictions to confirm.

**Walker made a motion to approve TA20-01 as presented, seconded by Lange. The vote on the motion was as follows:**

**Ayes: Walker, Lange, Williams, Wyatt, Tart, Robertson**

**Nays: Daniel**

**Motion Carried: 6-1**

### **Reports-City Council Meeting**

Ashley reported that the Vance PO rezoning and annexation items were postponed by Council at their last meeting but will be heard at the May 4<sup>th</sup> Council meeting.

### **Other Business**

There was no other business.

**There being no other business, Lange made a motion to adjourn, seconded by Daniel. The motion carried unanimously.**

**Technical Review Committee**  
**Site Plan Review Comments**  
**April 15, 2020**

**1. Larkin 6B - Final Plat- Amity Hill Road**

Approved contingent upon Stormwater Review approval and bond amounts being approved.

**2. Georgetown Place - Revised Sketch Plan - James Farm Road**

Approved contingent upon Stormwater Review approval and labeling the number of units.

**3. 7-Eleven – Site Plan – Salisbury Road**

1. 10-feet for right-of-way dedication to NCDOT. (Gas pumps only have a 20-foot setback and underground tanks can be in setback)
2. Shown curb line on both sides of adjacent street and distance label face to face of curb
3. US/SR routes are not shown
4. Distance to adjacent drives not clearly shown
5. Unknown line on plans need to be labeled
6. TIA for NCDOT on progress
7. No Crepe Myrtles in Street Yard. Kousa, Dogwoods, or Redbuds are good replacements
8. Willow Oaks are too large for location replacement tree Trident Maple
9. Connection load for electric was provided
10. Iredell County needs to approve Erosion Control Plan
11. Need grease trap detail on plan
12. Fire - No Comment
13. Install a ¾" and 1" RPA BFA correct detail with one Regina Hoke sent you
14. Revised plans must be submitted by May 6th if you would like final approval at the next TRC meeting scheduled for May 20, 2020. Re-submit two full size copies of revised plans and a digital copy to staff.
15. Stormwater Comments:

Please note that these are only preliminary comments as a full review has not been completed. It should be noted that this plan had bypassed the Stormwater Review Process and was not approved for TRC by Stormwater. Therefore, the Stormwater will need additional time to complete this review. Stormwater does have other reviews ahead of this one that need to be completed first and will continue this review and submit those comments. Our goal is to have these complete within the next 1-2 weeks, and sooner if at all possible. Brief comments include:

  1. The package is currently incomplete and will need the submittal of additional items to complete the review.
  2. Please submit SEC Approval Letter with updated plan if modifications are needed; and NCGO1 to be submitted prior to land disturbance and the Pre-Construction Meeting

3. Complete and submit O&M Agreement with Maintenance Plan(StormEZ) and attachments for plan approval
4. Drainage Area Maps with stormwater discharge points (existing/post construction/post BMP):
  - a. Hard to delineate pre from post as they are the same color. Please change color or add dashes/canoe symbology; add this same sheet to the CDs for inspector convenience please.
  - b. Please add a copy to the construction drawings for our inspector's ease.
5. Soil Delineations: Please provide either USGS soils map or Iredell County Soils map
6. Please submit Form E: O&M Agreement with the Maintenance Plan (may use StormEZ tool) and attachments (Property card).
  - a. You may submit a draft without the signatures for review first. Then once approved it will need to be signed, notarized, submitted for the City signatures and recorded. Given the current state of Emergency, as long as we have a draft, this does not need to hold up the development process. It will need to be completed prior to any Plat submittal, however.
7. Submit SCM Detail sheet of the Contech Stormfilter and if this is approved by the State or how it meets the criteria of the State; and submit a detail sheet of the underground detention system.
8. To be in compliance with the City's scheduled IDDE (Illicit Discharge Detection & Elimination) Ordinance, the site will have a mechanism for separating oil/gas and water and preventing oil and gas from entering the stormwater system. Please provide details on the treatment or separation methods being utilized.
9. Please review our draft Checklist of items that should be included with a complete submittal.  
[https://statesvillencmy.sharepoint.com/:x/g/personal/cblack\\_statesvillenc\\_net/Ecinqk4k\\_KBKkmiW6F4-i-8BmDgQmKkF1fxbJI-ylzwbLQ?e=wOgeri](https://statesvillencmy.sharepoint.com/:x/g/personal/cblack_statesvillenc_net/Ecinqk4k_KBKkmiW6F4-i-8BmDgQmKkF1fxbJI-ylzwbLQ?e=wOgeri)

**4. Barkley Road Storage – Site Plan – Barkley Road**

1. Sidewalk required or approved for fee in lieu, amount must be paid before zoning is released
2. Need Landscape Plan complete with location and species planting detail
3. Right-of-way needs to be recorded and dedicated to NCDOT before CO is issued
4. No parking is shown. Code requires 1 parking space per 2000 sq. ft. plus 1 per employee
5. No dumpster on plan?
6. No new water service needed
7. Iredell County will need Erosion Control Plan.
8. Water Resources - No Comments
9. Backflow Control Co-Ordinator – Regina Hoke - No comments
10. A new meter is required. Statesville Electric will need Load information



11. Revised plans must be submitted by May 6th if you would like final approval at the next TRC meeting scheduled for May 20, 2020. Re-submit two full size copies of revised plans and a digital copy to staff.
12. Storm Water comments: Complete and submit the Application Package:
  1. Please Submit NCGO1 COC (Certificate of Coverage) prior to land disturbance commencing.
  2. Submit a signed copy of the SCM O&M Agreement and Maintenance Plan prior to final approval by Stormwater Division (may use Storm EZ) with Exhibit A, property card attachments:  
[https://statesvillencmy.sharepoint.com/:b:/g/personal/cblack\\_statesvillenc\\_net/EeQ7hBrF9l1NveAklBjxyMBqXOLNLALGfGfGSi4ZYxE2GHA?e=AAkazY](https://statesvillencmy.sharepoint.com/:b:/g/personal/cblack_statesvillenc_net/EeQ7hBrF9l1NveAklBjxyMBqXOLNLALGfGfGSi4ZYxE2GHA?e=AAkazY)
    - a. O&M Plan must state when the forebay is to be cleaned out.
    - b. A copy of the bond or letter of credit with Escrow Account details must be attached to the Agreement and reference made a part thereof.

Stormwater Calculations: are still under review. Additional comments are pending.

1. A cover letter and narrative was not provided.
2. Calculations must be signed and sealed.
3. Calculations show a Total site Area of 2.313 acres and plan sheet C-2 indicates an area of 2.578. Please clarify.
4. USGS Quad Map with delineated project limits was not provided.
5. A copy of the Iredell County Soil Survey map with delineated project limits was not provided.
6. Please provide a construction detail of the proposed brick catch basins on the plan set. Indicate a design intensity of 4 inches/hr.

Construction Drawings:

1. Please provide North arrow, graphic scale, drafting version date, and legend. Include drafting version, update legend symbology (LOD and others), include legends on SW and ESC pages with relevant symbols, include relevant permit #s.
2. Provide Calculated equivalent residential units (ERUs) on the SW plan set.
3. Show boundaries of existing predominant vegetation on the SW plans.
4. Please provide a letter and map from a qualified environmental consultant to show the absence or exclusion of wetlands and streams on this property. Delineation of known flood prone soil areas.
5. Please clearly label SCM easement around the SCM.
6. A grass swale is shown at the north side of the project and drains through a donut rip rap inlet and discharges downstream past the SCM. Is this accounted for in the calculations?

7. Show all existing and proposed Grading. Does drainage at the road frontage enter the subject site? Show contours at the existing business street frontage to clarify.
8. Drainage from the existing building on site is not shown. Is this drainage accounted for in the calculations?
9. Please include a table with pipe diameter, material, length, slope, rim elev, invert elev, grate type, drainage area and flow into structure.
10. Please add note to Construction Sequence - Grading and Drainage Plan Notes shall include language: "Call Stormwater Program Manager 72 hours before stormwater pipe is to be installed for site inspection. Call: 704-761-2385"
11. A slope greater than 3:1 is proposed at the SCM berm. Designs must meet all MDC in the NCDEQ SW Design Manual with 3:1 slope maximum.
12. Grading and Drainage Plan Notes shall include language: "Call Stormwater Program Manager 72 hours before stormwater pipe is to be installed for site inspection 866-4-1-STORM"
13. Add note in construction sequence to receive permission from the City as well as the County and to be notified via email prior to dewatering. Emails to be sent to [Stormwater@statesvillenc.net](mailto:Stormwater@statesvillenc.net)
14. Pre-Construction Meeting with the City to be requested and may be required by the Stormwater Program Manager.
15. Show rock construction entrance detail with cross pipe.

**5. Northwind Carwash – Small Addition – 530 Turnersburg Hwy**

The following revisions or information were requested and are required for final approval. Your plan was approved contingent upon Stormwater and NCDOT comments being addressed. You must submit two full size copies of the revised plans and a digital copy to staff.

1. It is unclear on the plan if the project will be adding more than 20,000 sq. ft. of impervious area to the property. No proposed square footage changes were shown on the plans. Please show existing and planned impervious coverage totals on the plan.
2. Plans must clearly show proposed impervious areas to remain and those to be removed. Show that the impervious area connects at the driveway.
3. It is unclear whether the carwash will recycle the wash water and what type of separator is proposed. Provide details for the proposed wash system and indicate the process on the plans. Soapy and grease laden water cannot reach the waters of the US.
4. Contours are not provided on the plans so it is unclear if the existing drainage features on adjacent properties shown on the site survey sheet will be impacted by the proposed improvements. Drainage flow lines must be shown on the plot plan.
5. Please refer to the City of Statesville Stormwater Design manual for submittal requirements for the project and maintenance of the wash system and add a note to the plan.  
[https://www.statesvillenc.net/UserFiles/Servers/Server\\_9409707/File/DEPARTM ENTS/Public%20Works/Stormwater/Statesville\\_Drainage\\_Manual\\_20190313.pdf](https://www.statesvillenc.net/UserFiles/Servers/Server_9409707/File/DEPARTM ENTS/Public%20Works/Stormwater/Statesville_Drainage_Manual_20190313.pdf)
6. Provide a Stormwater Management Plan application along with the clarifications on the plans for further review. See Form B in the manual.

7. NCDOT requiring Driveway Permit. Not in favor of leaving ingress/egress open
8. Fire - No comment
9. Water Resources - Need detail for oil and water separator
10. Planning - No Comments
11. Backflow - No comments. Location has Iredell Water service.
12. Electric - No Comments. Location has Duke Energy service.