

# RUTHERFORD COUNTY BOARD OF ZONING APPEALS

Regular Meeting September 14, 2016

Location Commission Chambers, 2<sup>nd</sup> Floor, Historic Courthouse



## AGENDA

- I. Call to Order: 4:30 PM
- II. Pledge of Allegiance
- III. Roll Call & Determine Quorum
- IV. Approval of August 10, 2016 Meeting Minutes
- V. New Business
  - A. **Richard Reeves – BZA 2016-049**  
Location: In the vicinity of 950 Jefferson Pike, Map No.:46, Parcel: 31, Request for temporary special exception approval for a borrow pit with relief from the area requirements for borrow pits in the RM-Medium Density Residential zone.
  - B. **Lucas Thompson – BZA 2016-050**  
Location: Jackson Ridge Road, Map No.:146, Parcel: 38.01, Request for special exception approval for the establishment of a mini-storage business upon a property located in the CS, Commercial Services zoning district.
  - C. **Esperanza Rosales – BZA 2016-051**  
Location: 3431 Adams Road, Map No.:82, Parcel: 103, Request for special exception approval for the establishment of an accessory structure before the principal structure for a property located in the RM, Medium Density Residential zoning district.
  - D. **Price Hartman – BZA 2016-052**  
Location: 451 Annadel Street, Map No.:93I, Group: B, Parcel: 9, Request for variance relief from the Rutherford County Noise Control Resolution that would allow the firing or discharging of firearms in major subdivision for a lot located in the RM, Medium Density Residential zoning district.
- VI. Board Business
- VII. Adjournment



**Minutes of the  
Rutherford County Board of Zoning Appeals  
Wednesday, August 10, 2016**

**Board Members Present:**

Gary Farley	Jerry Sartain	Zane Cantrell
Veronica Buchanan	Joe Meshotto	Michael Wrather

**Staff Members Present:**

Danielle Glouner, Assistant Director	Blake Garner, County Attorney
Shauntae Sherril, Administrative Support	
Joanne Criswell	

**Called to order at 4:30 pm. Quorum met. All voting members present.**

The Minutes of the July 13, 2016 meeting were presented. Chairman Cantrell asked for any corrections or additions. There being none, Chairman Cantrell called for a motion to accept the Minutes.

**Jerry Sartain moved, seconded by Joe Meshotto, to approve the Minutes as presented by Staff.**

**Motion Carried (Unanimous Voice)**

**The Minutes of the July 13, 2016 meeting were Approved.**

**BZA 2016-046            Kevin Ray Buck - 3815 John Bragg Highway**

The Applicant requested temporary special exception approval for a seasonal attraction located in the RM, Medium Density Residential zone. Danielle Glouner presented staff findings. There were no phone calls regarding the request. The site meets general requirement for special exception. The Applicant spoke regarding the request and answered questions the Board had regarding the site. **The public hearing was opened.** No one spoke for or against the request and **the public hearing was closed.**

**Joe Meshotto moved, seconded by Veronica Buchanan, to Approve the request as presented by staff with the following conditions: Signage shall meet the requirements of the Rutherford County Zoning Resolutions and no parking within the right-of-way of John Bragg Highway.**

**Motion Carried (5 - For, 0 - Against)**

**Request was Approved**

**BZA 2016-047            Hubert Wayne Baskett – 1234 Veterans Parkway**

Applicant requested a special exception approval for the establishment of a major home based business involving auto repair upon a property located in RM, Medium Density Residential zone. Danielle Glouner presented staff findings. There was inquiry on the activities for the site, but none in opposition of the request. The Applicant spoke regarding the request and answered questions the Board had regarding the site. **The public hearing was opened.** Nancy Preisser at 1225 Veterans Parkway spoke in favor of the request. **The public hearing was closed.**

**Gary Farley moved, seconded by Jerry Sartain, to Approve the request as presented by Staff.  
Motion Carried (5 - For, 0 - Against)  
Request was Approved**

**BZA 2016-048      Thomas Gregory Hyde – 1605 Mount Herman Road**

The Applicant requested special exception approval for the placement of a single wide residence on a tract less than five (5) acres on a property located in the RL, Low Density Residential Zone. Danielle Glouner presented staff findings. The site meets the general requirements for special exception approval. There were no phone calls regarding the request. Frank Caperton spoke on behalf of the applicant regarding the request. **The public hearing was opened.** No one spoke for or against the request and **the public hearing was closed.**

**Gary Farley moved, seconded by Joe Meshotto, to Approve the request as presented by Staff.  
Motion Carried (5 - For, 0 - Against)  
Request was Approved**

**There being no further business, the meeting was adjourned at 4:47 p.m.**

\_\_\_\_\_  
**Zane Cantrell, Chairman**

\_\_\_\_\_  
**Danielle Glouner, Assistant Director**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

# APPLICATION BZA 2016-049

## STAFF REPORT

REQUEST FOR TEMPORARY SPECIAL EXCEPTION APPROVAL FOR A BORROW PIT WITH RELIEF FROM THE AREA REQUIREMENTS FOR BORROW PITS IN THE RM-MEDIUM DENSITY RESIDENTIAL ZONE.

### OWNER AND APPLICANT DATA

Owner Name: Richard Reeves etux Joan W. Reeves  
Applicant Name: Richard Reeves

### SITE DATA

Location Address: In the vicinity of 950 Jefferson Pike      Site Acreage: 215.66  
Tax Map: 46      Parcel Number: 31.00  
Zoning District: RM- Medium Density Residential      Commission District: Steve Pearcy

### APPLICABLE SECTIONS OF THE RUTHERFORD COUNTY ZONING ORDINANCE

- Chapter 14, Section 1408
- Chapter 11, Section 1101 M. 7.
- Appendix A, Definition of borrow pit
- Chapter 4, Section 402 C.

### AREA DESCRIPTION

The subject property is vacant and located in the RM- Medium Density Residential District. The site is bordered by E. Jefferson Highway, Single-family homes [Riverwalk Subdivision], agricultural properties and Middle Point Landfill.

### DESCRIPTION OF REQUEST

Application 2016-049 seeks special exception approval for a temporary special exception permit approving borrow pit activities previously approved by the Board of Zoning Appeals on September 12, 2012, March 13, 2013, September 11, 2013, June 11, 2014, March 11, 2015 and December 9, 2015. Prior approval of the borrow pit activities was subject to the following conditions:

1. A variance is granted to area limitations contained in Section 1101. M. 7. permitting the extraction of clay from 32.87% or 70.9 acres of the 215.7-acre site.
2. Areas approved for excavation of clay are shown on the survey dated February 5, 2012 and showing the revision date of February 15, 2013.
3. Excavation activities shall be limited to sections of 5 acres or less at any time. Upon the completion of the excavation of each five-acre section, said section must be stabilized per the approved reclamation plan and inspected by the Rutherford County Engineering Department before excavation activities commence on the next five-acre section.
4. The activities proposed in BZA Application 2016-049 must continually comply with all applicable conditions established in Section 1101. M. 7 of the Rutherford County Zoning Ordinance for borrow pits including but not limited to the following:
  - Borrow pits shall be set back a minimum of 50 feet from all property lines and 150 feet from any residential property line.

- A drainage and erosion control plan must be submitted and approved by the County Engineer prior to commencement of excavation activities.
- A reclamation plan and restoration bond shall be submitted to and approved by the County Engineer prior to commencement of excavation activities.
- Prior to excavation, the Owner and/or Operator must obtain all federal, state and local permits, including but not limited to a Land Disturbance Permit required by the Rutherford County Storm Water Management Regulations. All required permits shall be submitted to the Rutherford County Engineering Department at a pre-construction meeting.
- The Temporary Use Permit for a borrow pit shall be valid for six (6) months with a one time, three-month extension that may be approved by the Planning Director. The effective date of said permit is February 3, 2016.
- All activities including but not limited to excavation and hauling of materials that are associated with the Temporary Use Permit shall be limited to the hours between sunrise and sunset.
- Dust control and erosion control measures shall be implemented on a continuing basis, for the duration of the activities permitted, to mitigate air pollution and prevent the deposit of mud, dust, and debris, on public roads.
- The owner and operator of the borrow pit shall be jointly responsible for compliance with the requirements of this Section. Required licenses shall be issued to the operator of the respective borrow pit. Owners of the land shall receive a copy of the required license issued to the operator.
- Within nine (9) months after completion of mineral extraction or after termination of the extraction/excavation permit, all equipment, vehicles, machinery, materials and debris shall be removed from the subject property.
- Within six (6) months after completion of mineral extraction or after termination of the permit, the restoration plan shall be completed by the property owner/operator and the extraction/excavation permit shall be void.

5. Ingress and egress to SR 266 (Jefferson Pike) of only those trucks and equipment that are actively hauling clay or are directly returning from hauling clay is prohibited. In the event that the plan for ingress/egress to the site is modified resulting in the use of Jefferson Pike or any other public/private residential road, the County Engineer shall be notified immediately and such change may require compliance with Section 7.04 I. 5. which states, "A road bond for an amount to be determined by the County Engineer along with a maintenance plan for the road shall be submitted prior to the commencement of extraction activities."

6. The Applicants will not conduct any blasting during the project.

7. The Applicants and their contractors will not conduct any trucking activity through the Riverwalk Subdivision during the project.

8. Upon the submittal of plans for review by the County Engineer, an announcement of said submittal shall be placed on the County website.

9. In the event of a written complaint, the Planning Department shall review this Temporary Use Permit. If the complaint is found to be valid, the Board of Zoning Appeals shall review this Permit.

The effective date of BZA 2015-004 was May 1, 2015. In accordance with Section 1101 M. 7. (h) of the Rutherford County Zoning Ordinance, the Applicant requested a three-month extension on October 5, 2015 and the extension was granted allowing activities to proceed until the final expiration of February 2, 2015.

Application 2016-049 seeks to renew the permits allowing the borrow pit activities and does not seek to modify any of the remaining conditions/commitments agreed upon in earlier permits, BZA 2012-044, BZA 2013-011, BZA 2013-047 ,BZA 2014-050 and 2015-004.

### **GENERAL REQUIREMENTS FOR SPECIAL EXCEPTION**

Section 14.08 C. of the Rutherford County Zoning Ordinance list the “General Requirements” that should be considered when special exceptions are requested. They are:

1. Is so designed, located, and proposed to be operated so that the public health, safety and welfare will be protected;

*When the Board of Zoning Appeals considered the each request made in 2012, 2013, 2014 and earlier in 2015, it was determined that the request as proposed and in consideration of the commitments/conditions agreed upon by the Applicant demonstrated that the activities proposed would occur in a manner that protected matters of public health, safety and welfare. The request in BZA 2016-049 seeks to renew the permit with previously approved conditions. The Applicant proposes no changes to the conditions/commitments agreed upon in earlier permits.*

2. Will not adversely affect other property in the area in which it is located;

*The conditions incorporated in Temporary Conditional Use Permit/ Special Exception Permit BZA 2015-004 to ensure that the borrow pit activities would not adversely affect other properties in the area will remain in effect if BZA 2016-049 is approved.*

3. Conforms to all applicable provisions of this ordinance for the district in which it is to be located and is necessary for public convenience in that location and if applicable, meets the specific standards below.

*The proposed borrow pit activities will be required to comply with the applicable specific standards regulating temporary borrow pits listed in the following section of this report as well as the conditions agreed upon by the Applicant.*

4. Shall be located so as to be compatible with the surrounding area and provide safety to those using the facility.

*Allowing the borrow pit activities on the subject property, which is adjacent to the landfill, will eliminate increased truck traffic along Jefferson Pike resulting from dirt being hauled to the landfill from other areas. Application 2016-049 proposes to renew the plan that was deemed compatible and safe in prior permits. Staff finds this criterion is met.*

### **SPECIFIC STANDARDS FOR TEMPORARY BORROW PITS**

**Section 1101 M. 7. of the Rutherford County Zoning Ordinance outlines the following provisions regulating temporary borrow pits:**

- a. A boundary survey of the subject property, together with the proposed location of the limits of excavation shall be submitted at the time of application.

*Application 2016-049 meets this criterion.*

- b. Borrow pits shall be set back a minimum of 50 feet from all property lines and 150 feet from any residential property line.

*Application 2016-049 meets this criterion.*

- c. Borrow pits shall not occupy or cover more than 25 percent of any lot area where the lot is under 10 acres. Borrow pits on property where the lot area is 10 acres or larger may not occupy or cover more than 10 percent of any lot area or 2.5 acres, whichever is greater.

*The request in Application 2016-049 does not seek to modify the relief from this requirement established in special exception permit BZA 2014-050 and in BZA 2015-004.*

- d. A drainage and erosion control plan must be submitted and approved by the County Engineer prior to commencement of excavation activities.

*Application 2016-049 meets this criterion.*

- e. A road bond for an amount to be determined by the County Engineer along with a maintenance plan for the road shall be submitted prior to the commencement of extraction activities.

*The Applicant will be required to meet the condition relating to roadways approved in previous requests and incorporated into the conditions for BZA 2016-049.*

- f. A reclamation plan shall be submitted to and approved by the County Engineer prior to commencement of excavation activities.

*The activities proposed in Application 2016-049 have and will be required to meet this criterion.*

- g. Prior to excavation, the owner and/or operator must obtain all federal, state and local permits, including but not limited to a Land Disturbance Permit required by the Rutherford County Storm Water Management Regulations.

*The activities proposed in Application 2016-049 have and will be required to meet this criterion.*

- h. Unless otherwise specified in the temporary use permit, permits for a borrow pit shall be valid for six (6) months with a one time, three-month extension that may be approved by the Planning Director.

*The activities proposed in Application 2016-049 have and will be required to meet this criterion.*

- i. No blasting in association with borrow pit operations shall take place on any property except between the following hours:  
August 1 – May 31 – 8:00 AM to 5:00 PM  
June 1 – July 31 – 7:00 AM to 6:00 PM

*The Applicant agreed to a condition prohibiting blasting associated with excavation activities in BZA 2013-011, a condition that remains in effect.*

- j. Excavation (excluding blasting) and hauling of material is limited to the hours between sunrise and sunset.

*The activities proposed in Application 2016-049 have and will be required to meet this criterion.*

- k. Dust control and erosion control measures shall be implemented on a continuing basis, for the duration of the activities permitted, to mitigate air pollution and prevent the deposit of mud, dust, and debris, on public roads.

*The activities proposed in Application 2016-049 have and will be required to meet this criterion.*

- l. The owner and operator of the borrow pit shall be jointly responsible for compliance with the requirements of this Section. Required licenses shall be issued to the operator of the respective borrow pit. Owners of the land shall receive a copy of the required license issued to the operator.

*The activities proposed in Application 2016-049 have and will be required to meet this criterion.*

- m. Within nine (9) months after completion of mineral extraction or after termination of the extraction/excavation permit, all equipment, vehicles, machinery, materials and debris shall be removed from the subject property.

*The proposed request, if approved will be required to meet this standard at the appropriate time.*

- n. Within six (6) months after completion of mineral extraction or after termination of the permit, the restoration plan shall be completed by the property owner/operator and the extraction/excavation permit shall be void.

*The proposed request, if approved will be required to meet this standard at the appropriate time.*

- o. Any material extraction that is for the sole purpose of approved agricultural activities where the extracted material will not be sold, traded, bartered, etc. to another party or

person are exempt from these provisions.

*This criterion is not applicable to the request in Application 2016-049.*

## **STAFF FINDINGS**

In conclusion, Staff finds that the request in Application 2016-049 meets the “General Requirements For Special Exception” approval. In addition, Application 2016-049 meets the specific standards for borrow pits that can be demonstrated prior to the completion of the proposed activities. Staff recommends APPROVAL of Special Exception Permit BZA 2016-049 provided the activities remain in compliance with the following conditions:

1. A variance is granted to area limitations contained in Section 1101. M. 7. permitting the extraction of clay from 32.87% or 70.9 acres of the 215.7-acre site.
2. Areas approved for excavation of clay are shown on the survey dated February 5, 2012 and showing the revision date of February 15, 2013.
3. Excavation activities shall be limited to sections of 5 acres or less at any time. Upon the completion of the excavation of each five-acre section, said section must be stabilized per the approved reclamation plan and inspected by the Rutherford County Engineering Department before excavation activities commence on the next five-acre section.
4. The activities proposed in BZA Application 2016-049 must continually comply with all applicable conditions established in Section 1101. M. 7 of the Rutherford County Zoning Ordinance for borrow pits including but not limited to the following:
  - Borrow pits shall be set back a minimum of 50 feet from all property lines and 150 feet from any residential property line.
  - A drainage and erosion control plan must be submitted and approved by the County Engineer prior to commencement of excavation activities.
  - A reclamation plan and restoration bond shall be submitted to and approved by the County Engineer prior to commencement of excavation activities.
  - Prior to excavation, the Owner and/or Operator must obtain all federal, state and local permits, including but not limited to a Land Disturbance Permit required by the Rutherford County Storm Water Management Regulations. All required permits shall be submitted to the Rutherford County Engineering Department at a pre-construction meeting.
  - The Temporary Use Permit for a borrow pit shall be valid for six (6) months with a one time, three-month extension that may be approved by the Planning Director. **The effective date of said permit is November 4, 2016.**
  - All activities including but not limited to excavation and hauling of materials that are associated with the Temporary Use Permit shall be limited to the hours between sunrise and sunset.
  - Dust control and erosion control measures shall be implemented on a continuing basis, for the duration of the activities permitted, to mitigate air pollution and prevent the deposit of mud, dust, and debris, on public roads.
  - The owner and operator of the borrow pit shall be jointly responsible for compliance with the requirements of this Section. Required licenses shall be issued to the operator of the respective borrow pit. Owners of the land shall

- receive a copy of the required license issued to the operator.
- Within nine (9) months after completion of mineral extraction or after termination of the extraction/excavation permit, all equipment, vehicles, machinery, materials and debris shall be removed from the subject property.
  - Within six (6) months after completion of mineral extraction or after termination of the permit, the restoration plan shall be completed by the property owner/operator and the extraction/excavation permit shall be void.
5. Ingress and egress to SR 266 (Jefferson Pike) of only those trucks and equipment that are actively hauling clay or are directly returning from hauling clay is prohibited. In the event that the plan for ingress/egress to the site is modified resulting in the use of Jefferson Pike or any other public/private residential road, the County Engineer shall be notified immediately and such change may require compliance with Section 7.04 I. 5. which states, "A road bond for an amount to be determined by the County Engineer along with a maintenance plan for the road shall be submitted prior to the commencement of extraction activities."
6. The Applicants will not conduct any blasting during the project.
7. The Applicants and their contractors will not conduct any trucking activity through the Riverwalk Subdivision during the project.
8. Upon the submittal of plans for review by the County Engineer, an announcement of said submittal shall be placed on the County website.
9. In the event of a written complaint, the Planning Department shall review this Temporary Use Permit. If the complaint is found to be valid, the Board of Zoning Appeals shall review this Permit.

#### **LIST OF ATTACHMENTS**

1. Site Plan
2. Application materials submitted by Applicant
3. Zoning Map
4. Aerial Map

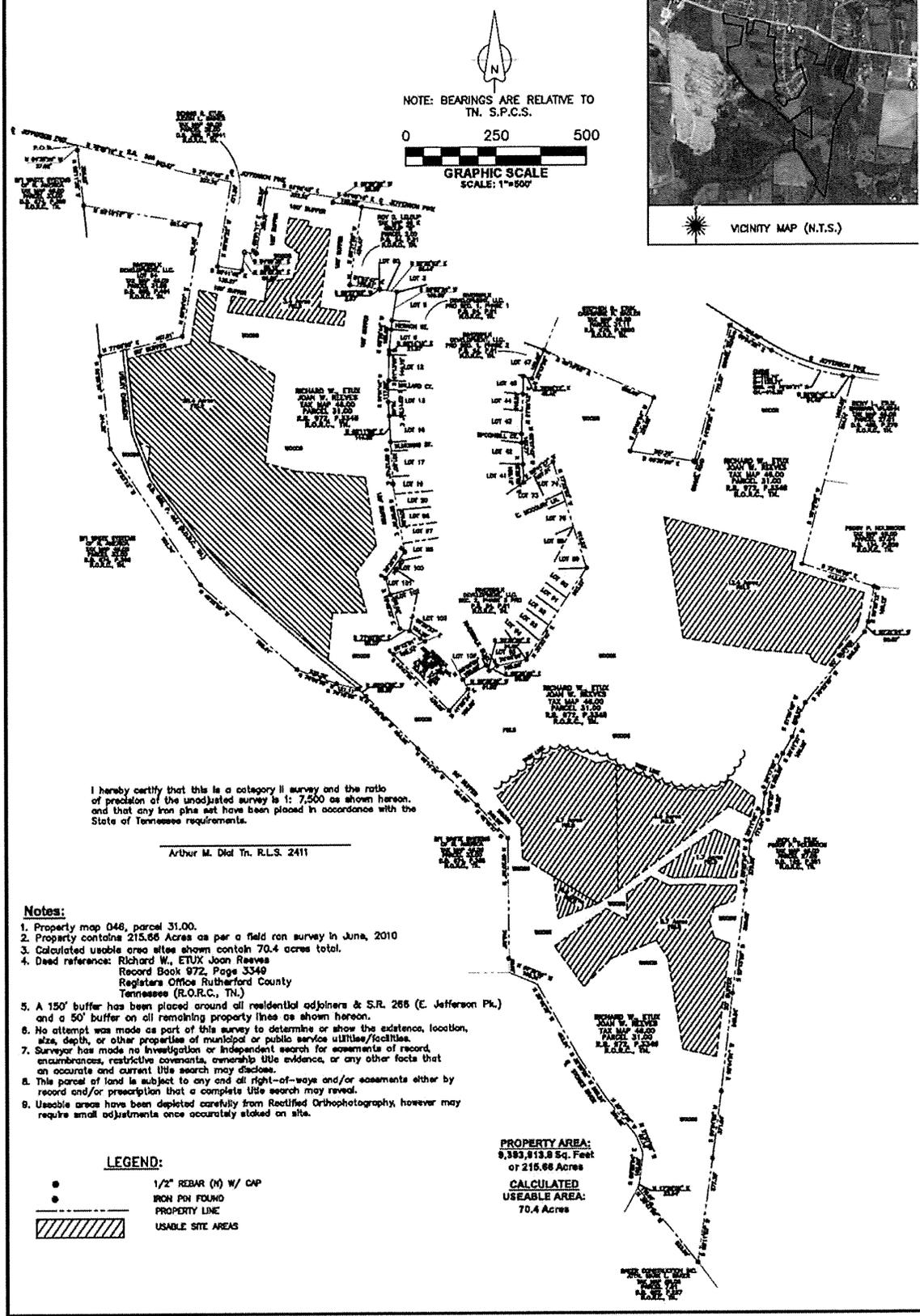
REVISIONS
1. 1-5-2012 Added the useable area sites to the drawing.
2. 1-5-2012 Added the useable area sites to the drawing.
3. 1-5-2012 Added the useable area sites to the drawing.
4. 1-5-2012 Added the useable area sites to the drawing.
5. 1-5-2012 Added the useable area sites to the drawing.

**E. JEFFERSON PIKE PROPERTY  
USEABLE AREA EXHIBIT DRAWING**  
Map 046, parcel 31.00  
RUTHERFORD COUNTY, TENNESSEE

DATE: 2/5/2012  
DRAWN BY: ALMO  
CHECKED BY: L.C.P.  
SCALE: 1"=500'  
PROJECT NO.: 12-01-002  
FILE NO.: 12-01-002

**P.L.A.L.**  
**LAND SURVEYING**  
1111 S. 10th St., Suite 2010  
Memphis, TN 38158  
Phone: 901-525-1111  
Fax: 901-525-1112  
www.plalandsurveying.com

SECTION NO.  
**1 OF 1**



**Explain in detail what you propose to do with this property and outline your long-term plans for the property. Staff recommends attaching an extra sheet of paper in order to provide more detail on the proposed use of the property.**

On December 9, 2015, the BZA approved the applicant's request for renewal of its Special Exception allowing Borrow Pits (BZA 2015-048). On July 21, 2016, the Planning Director granted the Applicant's request for a one-time three month extension as permitted by Section 1101 (M) (7) (h) of the Rutherford County Zoning Ordinance which extended the Special Exception's expiration date to November 3, 2016. The Applicant requests that the BZA renew its Special Exception with all existing variances and conditions. Applicant incorporates his applications, BZA 2015-048; 2015-004, 2014-050; BZA 2013-047, BZA 2013-024, BZA 2013-011, BZA 2012-044 by reference into this application as if set forth herein *verbatim*.

Applicant proposes to continue with the previously-approved Borrow Pit plan to remove clay from 70.9 acres (or 32.87% of his 215.7 acre property). Applicant requests that the BZA renew the variance granted for this purpose which was renewed in BZA 2015-048 (that application renewal approved on March 11, 2015).

All clay removed will be taken to adjoining property to the West, without being transported on any public road. This will provide necessary clay to the site without the use of public roads and without increasing the traffic on the roads. This will eliminate the necessity for tens of thousands of dump truck trips on public roads to service the landfill. Therefore, Applicant requests that the BZA again excuse the requirement of a Road Bond and maintenance plan because clay will not be hauled on any public road.

The Applicant's 215.7 acre property, is shown on the attached Concept Plan with the previously approved borrow pits shown in hatch marks. Applicant requests that the BZA reapprove the attached Concept Plan.

Applicant reaffirms and will continue to honor all prior commitments and promises made to his neighbors and to the County. All of Applicant's prior commitments and promises made to his neighbors and to the County are memorialized in writings filed with the County Planning Department and are hereby incorporated by reference as if fully set forth herein *verbatim*. Applicant will conduct activities in compliance with all applicable state, federal, and local laws, ordinances, and regulations.

**Explain how your proposal will be designed, located, and operated so that the public health, safety and welfare will be protected:**

Applicant incorporates by reference his application approved September 12, 2012, regarding the public benefit that will arise from eliminating the necessity of tens of thousands of truck trips to supply clay to the adjoining property. The elimination of these tens of thousands of dump truck trips will protect the public health, safety, and welfare by reducing congestion on public roads and decreasing the likelihood of collisions and other accidents involving dump trucks supplying necessary clay to the property abutting applicant's property.

In addition, "excavation activities shall be limited to sections of five (5) acres or less at any time. Upon the completion of the excavation of each five (5) acre section, said section must be stabilized per the approved reclamation plan and inspected by the Rutherford County Engineering Department before excavation activities commence on the next five (5) acre section." Prior to extracting the clay from each section, the top soil will be removed and stored on site. After activities are completed on each section, the top soil will be returned to the section and the section reseeded to restore the property. In addition, all existing trees will be preserved.

Applicant has already made a number of commitments to the neighbors and to the County regarding the design, location, and operation, of the Borrow Pit activities designed to protect the public health, safety, and welfare, all of which are memorialized in writings filed with the County Planning Department and are hereby incorporated by reference as if fully set for the herein *verbatim*. Applicant reaffirms and will continue to honor all prior commitments to his neighbors and to the County. Applicant will conduct all activities in compliance with all applicable state, federal, and local laws, ordinances, and regulations.

**Explain how your proposal will not adversely affect other property in the area in which it is located:**

The proposal will not adversely affect any other property in the area because it will be conducted in accordance with all required dust, erosion, and drainage control procedures in place. Additionally, Applicant and his contractors will not enter or exit the Applicant's property through any residential neighborhood. Trucks that are actively hauling clay or are directly returning from hauling clay to the abutting Property will be prohibited from utilizing the public roads. Applicant and his contractors will not conduct any trucking activity through the Riverwalk Subdivision during the project. In addition, the Applicant will not conduct any blasting during the project and excavation will occur only during daylight hours.

Furthermore, as previously stated, this Special Exception will remove tens of thousands of dump truck trips from the public roads thus decreasing congestion and wear and tear on public roads and decreasing the chances of collisions and other accidents involving heavy, clay-laden dump-trucks. Thus, rather than simply not adversely affecting other property in the area, this proposal will benefit the area in which it is located.

**Demonstrate that your proposal conforms to all applicable provisions of the Rutherford County Zoning Ordinance for the district in which it is to be located, is necessary for public convenience in that location, and if applicable, meets the specific standards contained in Section 1408 D-G, Section 1101 M. for Temporary Uses and/or Section 1105 for Wireless Telecommunication Facilities:**

As demonstrated in the Applicant's proposal approved by the BZA on September 12, 2012, which application is hereby incorporated by reference as if fully set forth herein *verbatim*, the use of the property will meet all specific standards in Section 1101 (M) (7) for Borrow Pits and will comply with all applicable provisions of the Rutherford County Zoning Ordinance for the district in which it is located except as in accordance with such variances as have been granted by the BZA. Applicant requests a renewal of the variance allowing him to remove clay from 70.9 acres or 32.87% of his total 215.7 acre-property.

Borrow Pits are permitted "in any district" but, the "area and bulk regulations of the district . . . shall apply." The applicant has already committed, and hereby renews his prior commitment, that all Borrow Pits shall be set back at least one hundred fifty (150) feet from all residential property lines and at least fifty (50) feet from all other property lines. These setbacks are in compliance with, the applicable set back requirements and lot coverage requirements for a "building" set forth in the Rutherford County Zoning Code.

The Applicant has already submitted, and has been operating pursuant to, a drainage and erosion control plan which was approved by the County Engineer prior to commencement of excavation activities.

As set forth above, the Applicant requests that the BZA again excuse the requirement of a Road Bond and maintenance plan because clay will not be hauled on any public road. The Applicant's reclamation plan has previously been approved by the County Engineer.

Applicant will not conduct any blasting during the project and excavation will occur only during daylight hours. As set forth above, the project will continue to be conducted in accordance with all required dust, erosion, and drainage control procedures in place

The proposed renewal of the Special Exception allowing Borrow Pit activities to continue is necessary for public convenience because it benefits and protects the surrounding area by removing tens of thousands of dump trucks from roads providing necessary clay to the nearby property thus decreasing congestion and wear and tear on public roads and decreasing the chances of collisions and other accidents involving heavy, clay-laden dump-trucks.

§1408 (D-G) – N/A –

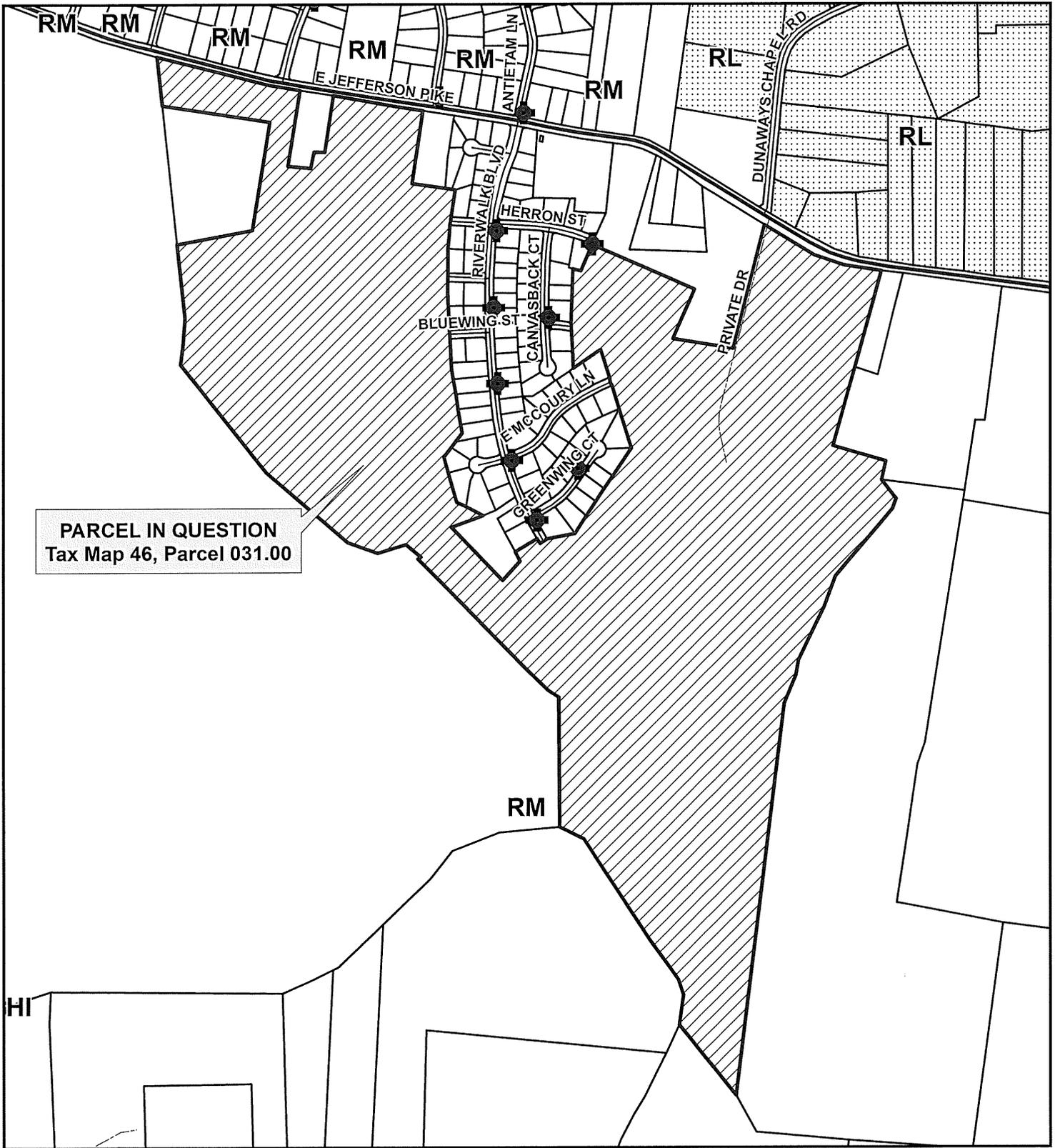
**Explain how your proposal is located in a manner that is compatible with the surrounding area and provide safety to those using the facility:**

The proposal is highly compatible with the surrounding area because, as was discussed at length in the process of the approval granted on September 12, 2012, (which is hereby incorporated by reference as if fully set forth herein *verbatim*) the operation will be compatible with the surrounding area and will provide for the public safety because it will eliminate the necessity of tens of thousands of dump-truck trips on nearby public roads thus decreasing congestion and increasing the safety of public roads and of the community while simultaneously decreasing maintenance costs for public roads by eliminating the need for tens of thousands of large, heavy, dump trucks driving on roads leading to the abutting property. In addition, the Applicants will not conduct any blasting during the project and excavation will occur only during daylight hours.

As a condition of receiving the September 12, 2012, approval, applicant made a number of commitments to his neighbors and to the County designed to make the project compatible with the surrounding area which are memorialized in writings filed with the County Planning Department and are hereby incorporated by reference as if fully set forth herein *verbatim*. Applicant reaffirms those commitments and will conduct the activities in accordance with those commitments as well as all applicable federal, state, and local laws, ordinances, and regulations.

There will not be any users of the facility other than the property owner and those engaged to perform the clay removal activities.

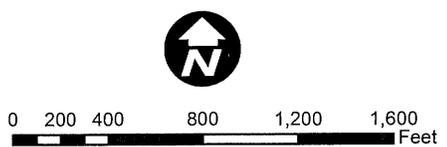
# 2016-049



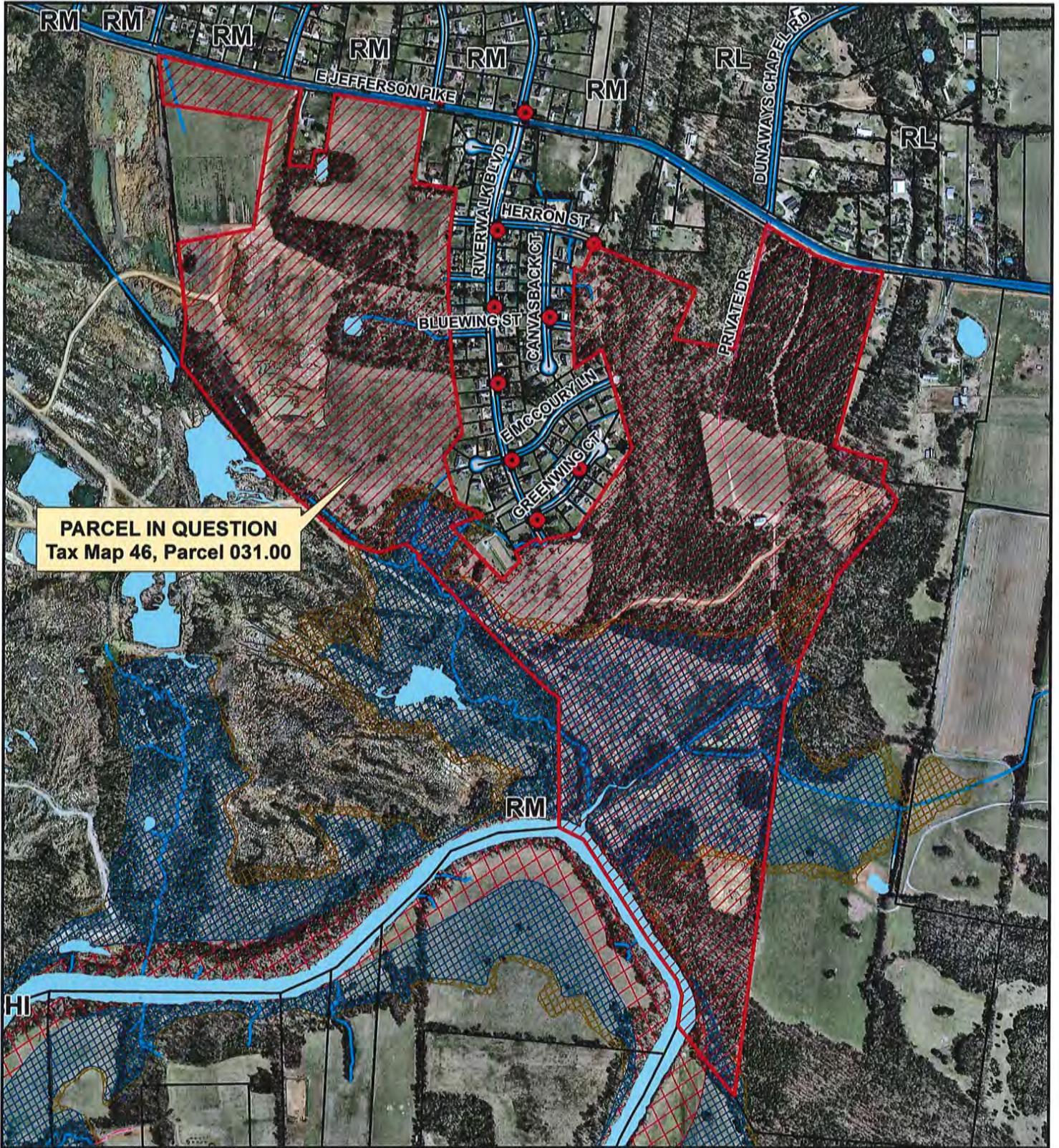
**PARCEL IN QUESTION**  
Tax Map 46, Parcel 031.00

-  RM - Medium Density Residential
-  RL - Low Density Residential
-  Property In Question

 Hydrants



# 2016-049



**PARCEL IN QUESTION**  
Tax Map 46, Parcel 031.00

	RL - Low Density Residential	<b>Flood Zone/Floodway</b>	Hydrants
	RM - Medium Density Residential	Floodway	A
	Property In Question	AE	
		0.2 Pct. Annual Chance Flood Hazard	



**APPLICATION BZA 2016-050**

**STAFF REPORT**

**REQUEST FOR SPECIAL EXCEPTION APPROVAL FOR THE ESTABLISHMENT OF A MINI-STORAGE BUSINESS UPON A PROPERTY  
LOCATED IN THE CS, COMMERCIAL SERVICES ZONING DISTRICT.**

**OWNER AND APPLICANT DATA**

Owner/Applicant Name: Lucas Thompson

**SITE DATA**

Location Address:	Jackson Ridge Road	Site Acreage:	5.34
Tax Map:	146	Parcel Number:	38.01
Zoning District:	CS- Commercial Services	Commission District:	Pettus Read

**APPLICABLE SECTIONS OF THE RUTHERFORD COUNTY ZONING ORDINANCE**

- Chapter 6, Commercial District Regulations
- Chapter 11, Section 1103 Use Specific Standards
- Chapter 14, Section 1408

**AREA DESCRIPTION**

The subject property is zoned CS, Commercial Services and is surrounded by RM, Medium Density Residential zoned properties on all sides. The Commercial Neighborhood (CN) zoning district is located at the intersection of Jackson Ridge Road and Rockvale Road. Adjacent land uses include Single-Family Residential to the south, west and east, vacant/agricultural to the north and commercial uses are located at the intersection of Jackson Ridge Road and Rockvale Road to the southeast

**DESCRIPTION OF REQUEST**

The subject property is located along Jackson Ridge Road. In August 2016, the Board of County Commissioners approved a request for an amendment rezoning the subject property from RM, Medium Density Residential to the CS, Commercial Services zoning district. The Applicants intentions to develop the subject property as mini-warehouses were considered as part of the zoning amendment request. According to Appendix B, Land Use Activity Table, of the Rutherford County Zoning Ordinance, mini-warehouses are permitted by special exception in the CS zoning district. The Applicant is proposing to build four (4) buildings and use the existing structure for storage.

**GENERAL REQUIREMENTS FOR SPECIAL EXCEPTION**

Section 14.08 C. of the Rutherford County Zoning Ordinance list the "General Requirements" that should be considered when special exceptions are requested. They are:

1. Is so designed, located, and proposed to be operated so that the public health, safety and welfare will be protected;

*The Applicant states, "The site is designed to provide screening to surrounding residential. Stormwater will be diverted to a detention pond that discharges to Concord Creek."*

*The development of the site as a mini-warehouse facility will undergo site plan review for a determination of compliance with the Rutherford County development regulations that were established to protect the public health, safety and welfare of those property owners surrounding the site as well as those using the facility.*

2. Will not adversely affect other property in the area in which it is located;

*The Applicant states that the "West building rear wall is solid with no rear access and landscape screen adjacent to existing residential." The Applicant further indicates that access will be provided via Jackson Ridge Road.*

*Though no commercial uses are developed adjacent to the subject property, this site was considered appropriate for the development of the commercial uses with the approval of the CS zoning amendment request by the BOCC in August 2016. A mini-storage facility might be considered to have less negative impact (traffic, noise, etc.) than other uses permitted by right and not requiring special exception approval in the CS district. In addition, the general area for which the site is located, i.e. next to an arterial roadway and near the landfill, has already experienced the impacts of an area in transition.*

3. Conforms to all applicable provisions of this ordinance for the district in which it is to be located and is necessary for public convenience in that location and if applicable, meets the specific standards below.

*The development of the site as a mini-warehouse facility will undergo site plan review and demonstration of compliance with County standards (i.e. lot coverage, setbacks, etc.) will be verified during this time. Specific standards are addressed below.*

4. Shall be located so as to be compatible with the surrounding area and provide safety to those using the facility.

*Staff finds the proposed use compatible with existing development patterns in the surrounding area.*

#### **SPECIFIC STANDARDS FOR MINI WAREHOUSES**

Section 1103 of the Rutherford County Zoning Ordinance outlines specific standards for mini warehouses. They are:

- a) There shall be provided along the entire site boundaries fencing, screening, and landscaping in accordance with Section 1104. When the outdoor storage of boats, campers and trailers is to be accommodated on the site, the fencing and screening heights shall be increased to completely screen from public view the boats, campers and trailers.

*The concept plan submitted by the Applicant does not indicate how screening and landscaping will be addressed though the Applicant indicated that development of the site will comply with established standards. Compliance with this criterion can be verified during the site plan review process.*

- b) The use of buildings in which the exterior facade is of one hundred (100) percent metal construction shall be prohibited with the buildings which face a street having a minimum of fifty (50) percent brick or stone;

*Though the Applicant does not specify how this standard will be addressed, this item can be demonstrated during the site plan review process.*

- c) No individual storage unit may be used for sleeping or housekeeping, any business operation or for music

and band operations.

*The proposed use, if approved, must continually comply with this standard.*

- d) All buildings shall be separated by a minimum of twenty (20) feet;

*This item can be demonstrated during the site plan review process.*

- e) The setback for such activities (i.e. buildings and outdoor storage) shall be a minimum of sixty-five (65) feet, provided that if there is access on only one side of the building, the setbacks of the district can apply. The buildings may be used as part of the required buffer if the design and appearance is approved by the Board of Zoning Appeal or Planning Commission, as applicable, consistent with Section 1104 of this Ordinance:

*Based upon a review of the conceptual plan, this criterion appears to be met; however, a plan demonstrating compliance with this standard will be required during site plan review.*

- f) An apartment on site may be permitted for security purposes;

*It does not appear that an onsite apartment is planned at this time.*

- g) The maximum size of an individual storage unit shall be five hundred (500) square feet;  
*Though the Applicant does not specify the size of individual storage units, this item can be demonstrated during the site plan review process.*

- h) The facilities shall be designed to discourage the use by and generation of heavy or semi-truck vehicles.  
*Though the Applicant does not specify how this standard will be addressed, this item can be demonstrated during the site plan review process.*

#### **STAFF FINDINGS**

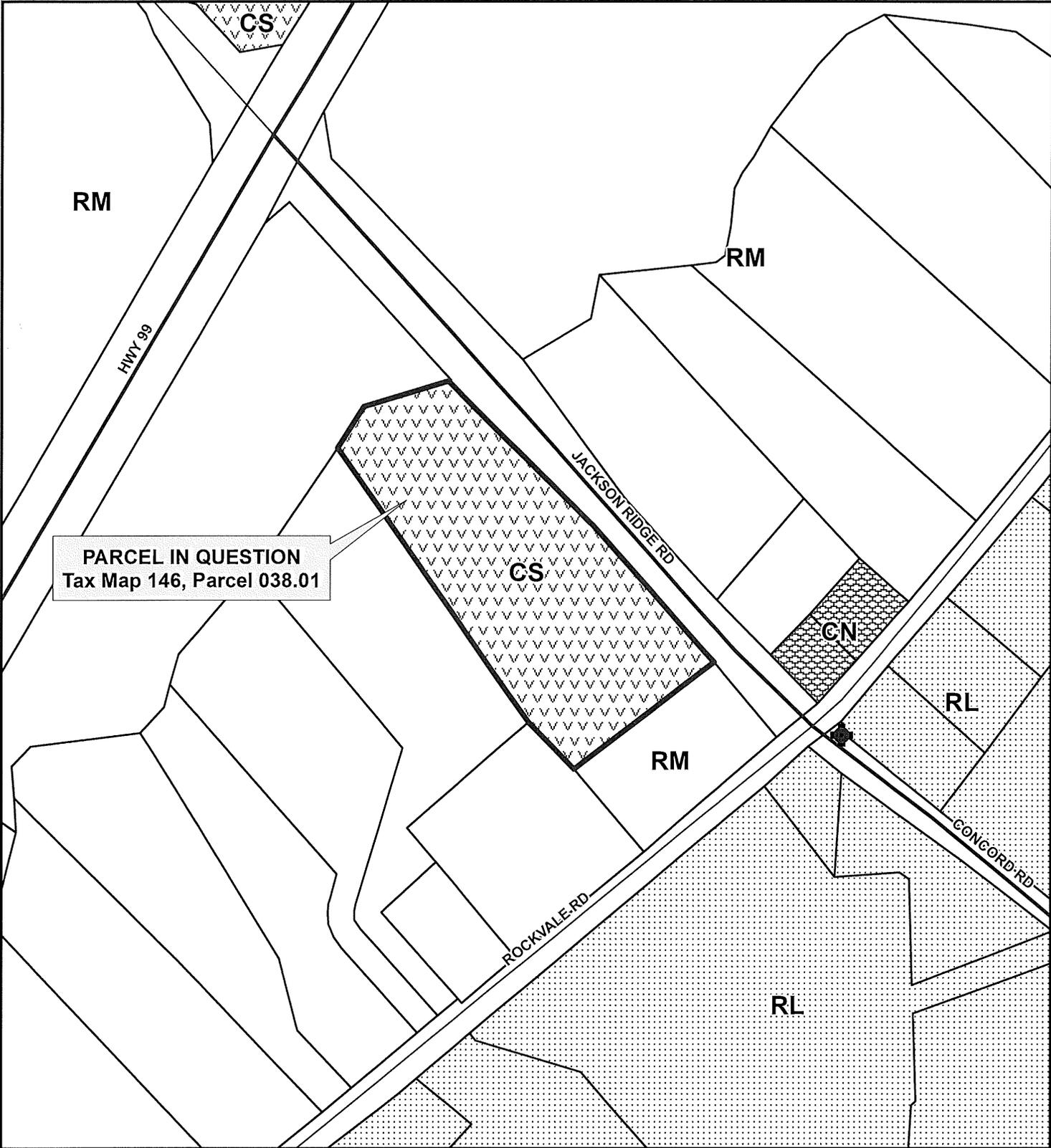
In conclusion, Staff finds that the request in Application 2016-050 for special exception approval for the establishment of a mini-warehouse facility meets the "General Requirements For Special Exception". Staff recommends APPROVAL.

#### **LIST OF ATTACHMENTS**

1. Conceptual Plan
2. Zoning Map
3. Aerial Map



# 2016-050



  Property In Question  CS - Commercial Service  Hydrants

 RM - Medium Density Residential  CN - Commercial Neighborhood

 RL - Low Density Residential

0 50 100 200 300 400 Feet

# 2016-050



**PARCEL IN QUESTION**  
Tax Map 146, Parcel 038.01



 Property In Question

 Hydrants

0 50 100 200 300 400  
Feet

# APPLICATION BZA 2016-051

## STAFF REPORT

REQUEST FOR SPECIAL EXCEPTION APPROVAL FOR THE ESTABLISHMENT OF AN ACCESSORY STRUCTURE BEFORE THE PRINCIPAL STRUCTURE FOR A PROPERTY LOCATED IN THE RM, MEDIUM DENSITY RESIDENTIAL ZONING DISTRICT.

### OWNER AND APPLICANT DATA

Owner/Applicant Name: Esperanza Rosales

### SITE DATA

Location Address:	3431 Adams Road	Site Acreage:	1
Tax Map:	82	Parcel Number:	103.00
Zoning District:	RM- Medium Density Residential	Commission District:	Robert Peay Jr.

### APPLICABLE SECTIONS OF THE RUTHERFORD COUNTY ZONING ORDINANCE

- Chapter 14, Section 1408
- Chapter 4, Residential District Regulations
- Chapter 11, Section 1101 D.

### AREA DESCRIPTION

The subject property is a 1 acre parcel and is zoned RM, Medium Density Residential. Surrounding properties, also zoned RM, Medium Density Residential, are developed as single-family homes and agricultural uses on large tracts.

### DESCRIPTION OF REQUEST

Application 2016-051 requests special exception approval to establish an accessory structure prior to the principal structure. The subject property is located off Adams Road and measures 1 acre in area. The Applicant wishes to construct a handball court that will be used for private recreation. The Applicant does not indicate if there are plans to establish the primary residence within a given period.

### GENERAL REQUIREMENTS FOR SPECIAL EXCEPTION

Section 14.08 C. of the Rutherford County Zoning Ordinance list the "General Requirements" that should be considered when special exceptions are requested. They are:

1. Is so designed, located, and proposed to be operated so that the public health, safety and welfare will be protected;

*The proposed structure will be utilized as private recreation only and not be associated with the operations of a business. With this in mind, the proposed use should have a negligible impact on the traffic conditions and will not affect public health, safety and general welfare.*

2. Will not adversely affect other property in the area in which it is located;  
*According to information submitted by the Applicant, the "residential style garage" will be located more than 100 feet from any property line.*

*Construction of the proposed accessory structure will not have a substantial or adverse effect upon adjacent properties if the use of the structure remains in compliance with the provisions of Section 1101 D. 6. D. of the Rutherford County Zoning Ordinance.*

3. Conforms to all applicable provisions of this ordinance for the district in which it is to be located and is necessary for public convenience in that location and if applicable, meets the specific standards below.

*The proposed structure must be constructed in compliance with setbacks required for detached accessory structures, which requires a minimum 5' from side and rear property lines.*

4. Shall be located so as to be compatible with the surrounding area and provide safety to those using the facility.

*The subject property will be accessed via private driveway located off Adams Road. If approved, the proposed building will be required to meet the setback regulations for detached accessory structures and use of the structure must continually comply with the specific standards addressed below. With this in mind, the proposed building should be compatible with the development and use of adjacent properties.*

#### **SPECIFIC STANDARDS FOR NON-COMMERCIAL STORAGE FACILITY, WORKSHOP, OR OTHER STRUCTURE FOR THE PRIVATE USE OF THE LANDOWNER**

##### Section 1101 D. 6.

- a. The size of the accessory structure must conform to the size limitations of Subsection 1101 D.4.

*The proposed structure will be required to demonstrate that this requirement.*

- b. The structure must meet all applicable setback, height and lot coverage regulations.

*The Applicant indicates on a site plan and within the application materials that setback, height and lot coverage requirements will be met.*

- c. Only one (1) structure will be permitted per parcel, excluding approved agricultural structures.

*Only one structure is proposed.*

- d. The structure must not be used for any of the following activities:

- Living quarters
- Commercial activities
- Storage for businesses that occur off of the property, including home-based businesses

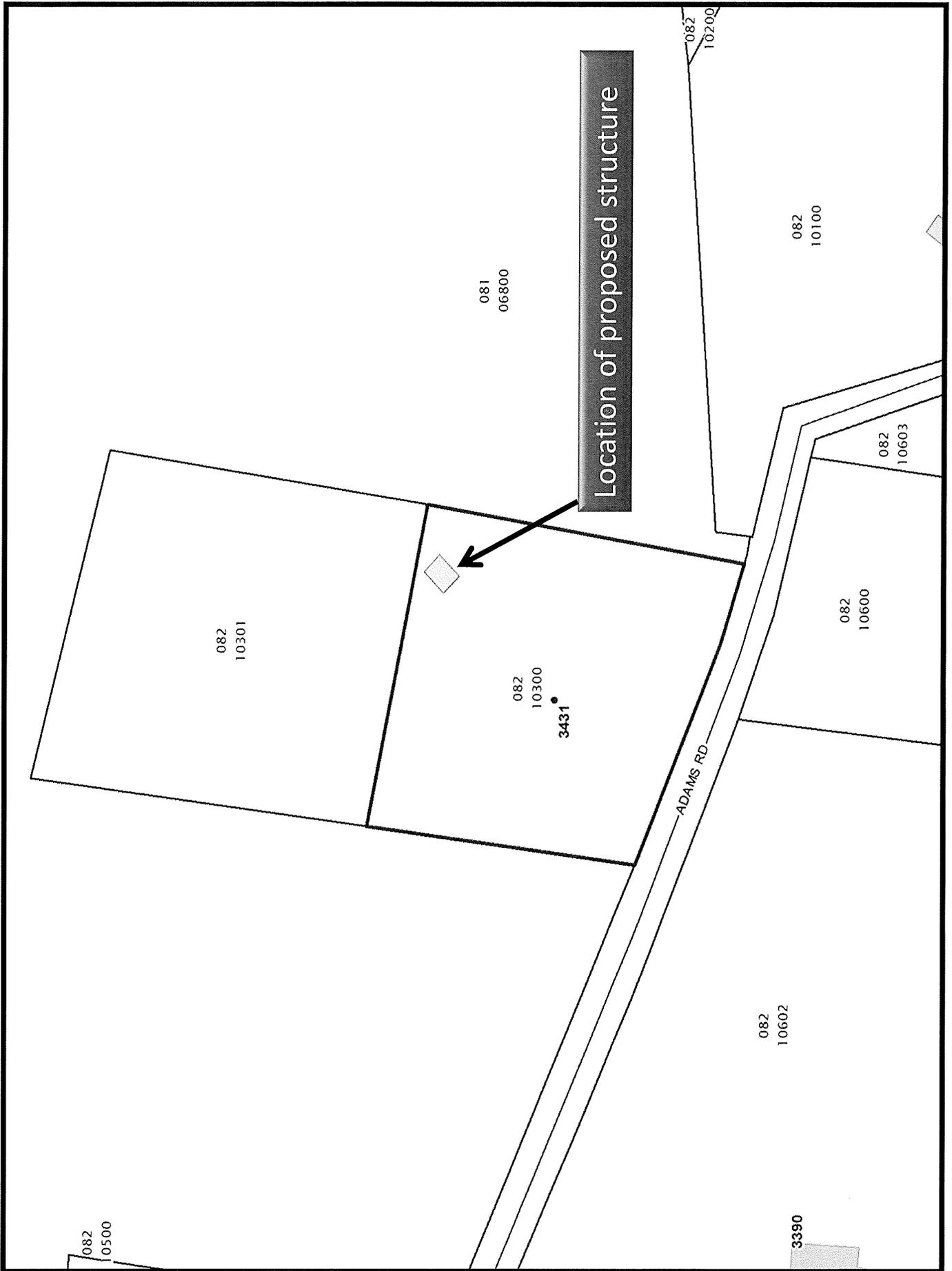
*The use of the proposed structure must continually comply with this requirement. According to the Applicant, the court will be used for personal recreation purposes.*

#### **STAFF FINDINGS**

In conclusion, Staff finds that the request in Application 2016-051 meets the "General Requirements For Special Exception" approval and the specific standards for the construction of an accessory structure prior to the establishment of a principal structure with the condition that the use continually comply with the standards for non-commercial storage facility, garage, workshop, or other structure for the private use of the landowner established in Section 1101 D. 6. Staff recommends APPROVAL.

#### **LIST OF ATTACHMENTS**

1. Site Plan
2. Zoning Map
3. Aerial Map

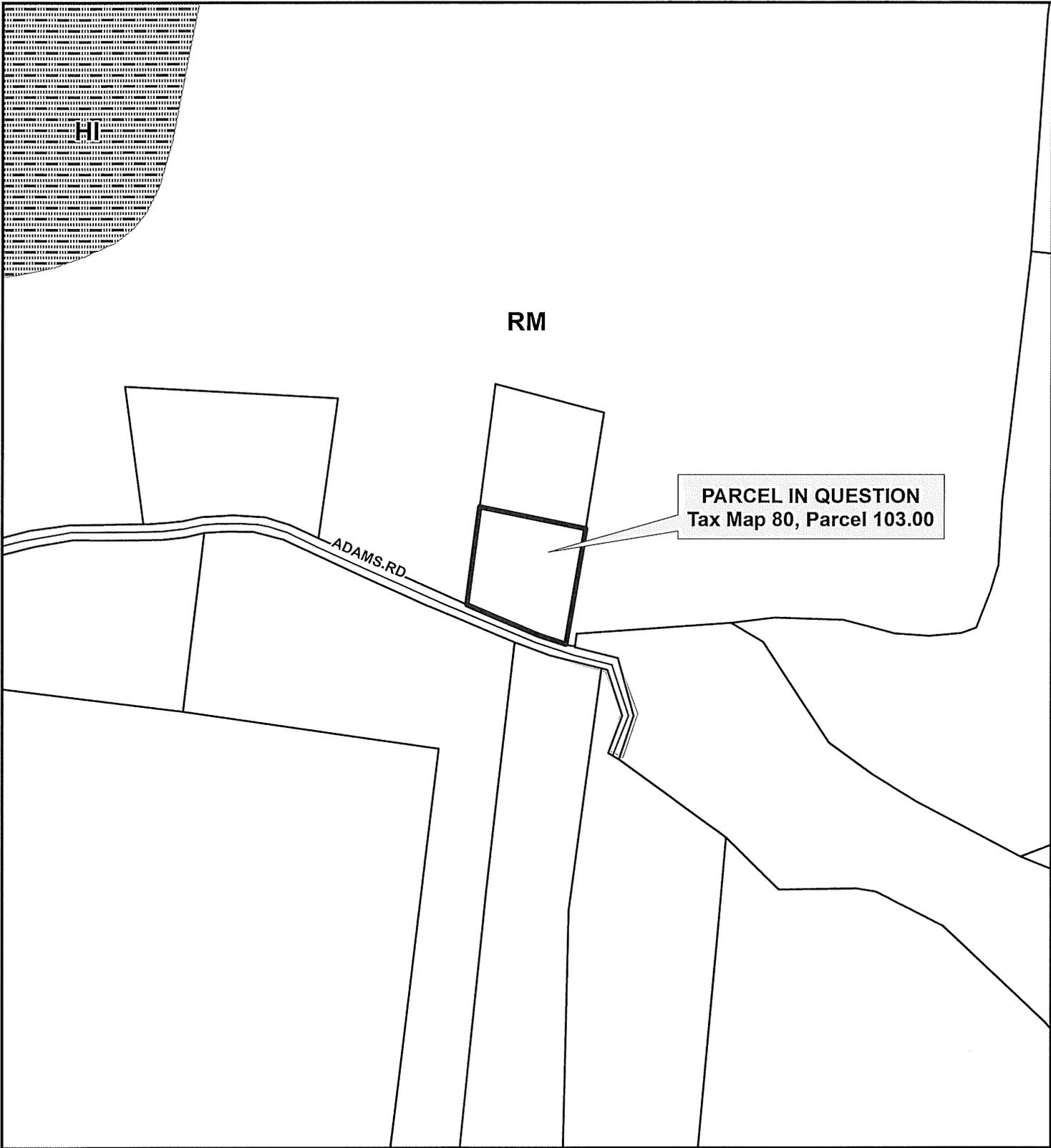


Location of proposed structure



3431

# 2016-051



0 50 100 200 300 400 Feet

  Property In Question  Hydrants

 RM - Medium Density Residential  HI - Heavy Industrial

# 2016-051



0 50 100 200 300 400  
Feet

 Property In Question

 Hydrants



## APPLICATION BZA 2016-052

### STAFF REPORT

REQUEST FOR VARIANCE RELIEF TO THE FROM THE RUTHERFORD COUNTY NOISE CONTROL RESOLUTION THAT WOULD ALLOW THE FIRING OR DISCHARGING OF FIREARMS IN MAJOR SUBDIVISION FOR A LOT LOCATED IN THE RM, MEDIUM DENSITY RESIDENTIAL ZONING DISTRICT.

#### OWNER AND APPLICANT DATA

Owner/Applicant Name: Price H. Hartman

#### SITE DATA

Location Address:	451 Annadel Street	Site Acreage:	8
Tax Map:	931 Group: B	Parcel Number:	9.00
Zoning District:	RM- Medium Density Residential	Commission District:	William T. Gooch

#### AREA DESCRIPTION

The subject property is an 8 acre parcel and is zoned RM, Medium Density Residential and developed as a single-family residence. It is located in Section VI, Royal Glenn Subdivision. Surrounding properties, also zoned RM, Medium Density Residential, are developed as single-family homes and agricultural uses on large tracts.

#### DESCRIPTION OF REQUEST

Application 2016-052 is requesting that the Board of Zoning Appeals grant a variance from the Rutherford County Noise Resolution benefitting the eight-acre property located at 451 Annadel Street. The Rutherford County Noise Resolution is a "stand-alone" resolution with its standards not being contained in the Rutherford County Zoning Ordinance.

Section 3 of the Rutherford County Noise Resolution assigns the power for variances to the Noise Resolution. It states:

***"The Board of Zoning Appeals may vary the application of any provision of this amendment to any particular case when, in their opinion, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of this resolution or public interest. Nothing in this section shall authorize actions or inaction in conflict with applicable State law."***

The request is unique in that it represents the first request submitted to the Board of Zoning Appeals under the provisions of the Rutherford County Noise Resolution. Since the resolution is not incorporated into the Rutherford County Zoning Ordinance, the criteria for variance appeals established in Chapter 1407, which addresses Zoning Variances, would not be applicable.

Staff has included the following attachments for the Board's review while considering the request in Application 2016-052:

1. Rutherford County Noise Resolution
2. Report from David Jones, Building Official dated August 26, 2016
3. Applicant's written statement describing request
4. Site Layout Map
5. Zoning Map
6. Aerial Map

RESOLUTION

WHEREAS, the Public Works and Planning Committee has approved and recommended implementation of a Noise Control Resolution; and

WHEREAS, implementation of said Noise Control Resolution is in the best interest of the citizens and residents of Rutherford County.

NOW, THEREFORE, BE IT RESOLVED by the Rutherford County Board of Commissioners that the Noise Control Resolution, a copy of said Resolution being attached hereto as Exhibit "1" and incorporated herein by reference as if set forth verbatim, be and the same is hereby ratified, adopted and confirmed.

RESOLVED this 11th day of January, 2007.

RUTHERFORD COUNTY, TENNESSEE

ATTEST:

BY: \_\_\_\_\_  
ERNEST G. BURGESS, Chairman

\_\_\_\_\_  
GEORGIA LYNCH, County Clerk

## EXHIBIT "1"

### SECTION 1: NOISE CONTROL RESOLUTION

To further the health, safety and welfare of the citizens of Rutherford County, the requirements contained in Section 1 of this resolution shall be hereinafter referred to as the Rutherford County Noise Control Procedures.

#### 1.1: DEFINITIONS

For the purpose of this resolution, the following terms, phrases, words, and their derivation shall have the meaning given herein:

- a. Enforcement Authority – The Director of Building Codes for the County of Rutherford, Tennessee, or his duly authorized representative or persons designated by the County Mayor who are charged with the enforcement of this resolution.
- b. Owner – Owner is deemed to mean and include a holder of any legal or equitable estate in the premises, whether alone or jointly with others, and whether in possession or not, or occupants of property.
- c. Major Subdivision – Four (4) lots or greater.

#### 1.2: VIOLATION DETERMINED: NOTICE GIVEN

When it is determined by the enforcing authority that any owner of record of real property or occupants of property has created loud and raucous noise which because of volume level or duration disturbs or endangers the comfort, health, peace or safety of neighboring residents, the enforcing authority shall provide notice to the owner of record to remedy the condition immediately. The notice shall be given by United States mail, addressed to the last known address of the owner or occupant of record. The notice shall state that the owner of the property is entitled to a hearing. The notice shall include but not be limited to the following elements:

- a. A brief statement of the law which shall contain the consequences of failing to remedy the noted condition.
- b. The person, office, address and telephone number of the department giving the notice.
- c. A place wherein the notified party may return a copy of the notice indicating the desire for an administrative hearing.

#### 1.3: FAILURE TO COMPLY

If a person fails or refuses to remedy the condition immediately after receiving written notice, the enforcing officer may cite property owner or occupant to court.

#### 1.4: MAJOR SUBDIVISIONS

In major subdivisions, it is unlawful to engage in noise producing activities. A non-exclusive listing of activities which could cause a violation includes:

- a. The firing or discharge of firearms except by police officer or permitted variance by law.
- b. Operation of radios, televisions, live band or other sound reproduction devices in continuance, excessive and unreasonable volume levels.
- c. Operation of any motor vehicle, go carts, mini bike, motor bike, all terrain vehicles, dirt bike or other combustion engine in an unreasonably loud, raucous, frequent, repetitive or continuous nuisance.
- d. The keeping of animal, bird or fowl including domestic or agricultural that causes frequent, loud and continued noise.

#### 1.5: OTHER THAN MAJOR SUBDIVISIONS

On property located outside a major subdivision, it is unlawful to engage in noise producing activities while in parks and recreational areas, school zones, medical areas or other public areas.

#### 1.6: LIMITING NOISE LEVELS

The measurement of sound or noise shall be made at the property line of the property on which such noise is generated at five (5) feet above ground with a sound level meter.

*Octave band*

*Center frequency*

*Cycles per second*

Maximum permissible sound pressure

Below 75	65
75-150	60
150-300	55
300-600	55
600-1200	45
1200-2400	45
2400-4800	40
Above 4800	40

#### SECTION 2: EXEMPTIONS

Sounds exempt from this resolution include:

- a. Emergency vehicles, safety signals, warning devices and church bells.
- b. Emergency work for utilities and storm damage.
- c. Lawn maintenance equipment or agricultural equipment.

### **SECTION 3: VARIANCES AND MODIFICATIONS**

The Board of Zoning Appeals may vary the application of any provision of this amendment to any particular case when, in their opinion, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of this resolution or public interest. Nothing in this section shall authorize actions or inaction in conflict with applicable State law.

### **SECTION 4: VIOLATIONS AND PENALTIES**

Violation or failure to comply with this resolution is considered unlawful and subject to a fine not to exceed fifty (50) dollars. Each day such a violation is permitted to exist shall constitute a separate offense. Nothing in this section shall preclude the County from any and all other legal remedies available.

### **SECTION 5: CONFLICT WITH OTHER RESOLUTIONS**

In case of conflict between this resolution or any part hereof, and the whole or part of any existing or future resolutions of the County, the most restrictive provision shall in all cases apply.

### **SECTION 6: SEVERABILITY**

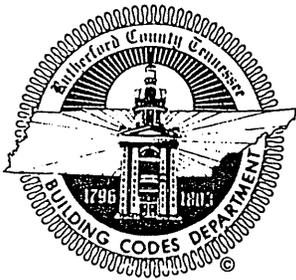
In any section, clause, provision, or portion of this resolution is held to be invalid or unconstitutional by any court of competent jurisdiction, it shall not affect any other section, clause, provision, or portion of this resolution, which is not of itself invalid or unconstitutional.

### **SECTION 7: EXERCISE OF POLICE POWER**

The entire resolution shall be deemed and construed to be an exercise of the police power of the County of Rutherford for the preservation and protection of the public health, safety and general welfare and all of its provisions shall be liberally construed to affect its purpose.

**SECTION 8: EFFECTIVE DATE**

This resolution shall take effect and be in force after its passage and publication in a newspaper of general circulation in the County of Rutherford, the public welfare demanding it.



DAVID H. JONES  
Building Official

# County of Rutherford

BUILDING CODES DEPARTMENT

ROOM 101, #1 SOUTH PUBLIC SQUARE  
MURFREESBORO, TENNESSEE 37130  
PHONE 615/898-7734  
FAX: 898-7941

Doug Demosi, Planning Director for Rutherford County  
and Rutherford County BZA members:

August 26, 2016

Our files and notes referencing BZA application for Price Hartman, 451 Annadel St.,  
Murfreesboro, TN 37128, Lot 256 Royal Glen Subdivision, noise violations.

1.) 12/31/14, @ 2:15 PM, Zoning Department received 2 phone calls about shots fired  
and a cannon being discharged at above mentioned address. We met with 2 sheriff  
deputies at the callers' home, located on Steelson Way. Melissa West and I, along  
with the deputies heard gunfire. We went to the address of 451 Annadel St. and  
spoke with the property owner, Mr. Price Hartman, and advised him of the County  
Noise Ordinance Laws. He was informed of the variance process, and stated he would  
apply.

2.) 8/8/16, I received an email from a homeowner who lives in Royal Glen Subdivision  
regarding gunfire for several days at above mentioned address. I called the property  
owner, Mr. Hartman, and informed him once again of the noise violation and regarding  
the Noise Ordinance Laws for Rutherford County. He stated once again, that he would  
apply for a Variance from the Noise Ordinance and his application and case will be heard  
at the BZA meeting on September 14, 2016.

Cordially,

A handwritten signature in black ink, appearing to read "David H. Jones". The signature is fluid and cursive, written over a white background.

David. H. Jones, Building Official for  
Rutherford County

Cc: Joanne Criswell, Zoning Official for  
Rutherford County

Dhj/mbw

## SECTION 1: NOISE CONTROL RESOLUTION

To further the health, safety and welfare of the citizens of Rutherford County, the requirements contained in Section 1 of this resolution shall be hereinafter referred to as the Rutherford County Noise Control Procedures.

### 1.1: DEFINITIONS

For the purpose of this resolution, the following terms, phrases, words, and their derivation shall have the meaning given herein:

- a. Enforcement Authority – The Director of Building Codes for the County of Rutherford, Tennessee, or his duly authorized representative or persons designated by the County Mayor who are charged with the enforcement of this resolution.
- b. ~~Owner~~ – Owner is deemed to mean and include a holder of any legal or equitable estate in the premises, whether alone or jointly with others, and whether in possession or not, or occupants of property.
- c. Major Subdivision – Four (4) lots or more as defined in the Subdivision regulations of Rutherford County.

### 1.2: VIOLATION DETERMINED: NOTICE GIVEN

When it is determined by the enforcing authority that any ~~owner~~ of record of real property ~~or occupants of property~~ has created loud and raucous noise which because of volume level or duration disturbs or endangers the comfort, health, peace or safety of neighboring residents, the enforcing authority shall provide notice to the owner of record to remedy the condition immediately. The notice shall be given by United States mail, addressed to the last known address of the owner or occupant of record. The notice shall state that the owner of the property is entitled to a hearing. The notice shall include but not be limited to the following elements:

- a. A brief statement of the law which shall contain the consequences of failing to remedy the noted condition.
- b. The person, office, address and telephone number of the department giving the notice.
- c. A place wherein the notified party may return a copy of the notice indicating the desire for an administrative hearing.

### 1.3: FAILURE TO COMPLY

If a person fails or refuses to remedy the condition immediately after receiving written notice, the enforcing officer may cite property owner or occupant to court.

#### 1.4: MAJOR SUBDIVISIONS

In major subdivisions, it is unlawful to engage in noise producing activities. A non-exclusive listing of activities which could cause a violation includes:

- a. The firing or discharge of firearms except by police officer or permitted variance by law.
- b. Operation of radios, televisions, live band or other sound reproduction devices in continuance, excessive and unreasonable volume levels.
- c. Operation of any motor vehicle, go carts, mini bike, motor bike, all terrain vehicles, dirt bike or other combustion engine in an unreasonably loud, raucous, frequent, repetitive or continuous nuisance.
- d. The keeping of animal, bird or fowl including domestic or agricultural that causes frequent, loud and continued noise.

#### 1.5: OTHER THAN MAJOR SUBDIVISIONS

On property located outside a major subdivision, it is unlawful to engage in noise producing activities while in parks and recreational areas, school zones, medical areas or other public areas.

#### 1.6: LIMITING NOISE LEVELS

The measurement of sound or noise shall be made at the property line of the property on which such noise is generated at five (5) feet above ground with a sound level meter.

*Octave band*  
*Center frequency*  
*Cycles per second*

Maximum permissible sound pressure

Below 75	65
75-150	60
150-300	55
300-600	55
600-1200	45
1200-2400	45
2400-4800	40
Above 4800	40

#### SECTION 2: EXEMPTIONS

Sounds exempt from this resolution include:

- a. Emergency vehicles, safety signals, warning devices and church bells.
- b. Emergency work for utilities and storm damage.
- c. Lawn maintenance equipment or agricultural equipment.

### **SECTION 3: VARIANCES AND MODIFICATIONS**

The Board of Zoning Appeals may vary the application of any provision of this amendment to any particular case when, in their opinion, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of this resolution or public interest. Nothing in this section shall authorize actions or inaction in conflict with applicable State law.

### **SECTION 4: VIOLATIONS AND PENALTIES**

Violation or failure to comply with this resolution is considered unlawful and subject to a fine not to exceed fifty (50) dollars. Each day such a violation is permitted to exist shall constitute a separate offense. Nothing in this section shall preclude the County from any and all other legal remedies available.

### **SECTION 5: CONFLICT WITH OTHER RESOLUTIONS**

In case of conflict between this resolution or any part hereof, and the whole or part of any existing or future resolutions of the County, the most restrictive provision shall in all cases apply.

### **SECTION 6: SEVERABILITY**

In any section, clause, provision, or portion of this resolution is held to be invalid or unconstitutional by any court of competent jurisdiction, it shall not affect any other section, clause, provision, or portion of this resolution, which is not of itself invalid or unconstitutional.

### **SECTION 7: EXERCISE OF POLICE POWER**

The entire resolution shall be deemed and construed to be an exercise of the police power of the County of Rutherford for the preservation and protection of the public health, safety and general welfare and all of its provisions shall be liberally construed to affect its purpose.

Attn: Rutherford County Zoning Appeals Board

Date: August 11, 2016 for review at the September 15, 2016 meeting

Request for variance to the Rutherford County "Noise Control Resolution"

Specifically: 1.4 Major Subdivisions Clause (a.) stating the firing or discharge of firearms except by law enforcement or permitted variance is prohibited

**Request for variance to discharge weapons for recreational use on lot 451 Annadel St Murfreesboro, Tn. Lot which is part of Royal Glen Subdivision.**

Request is in response to an individual who resides in the neighborhood who recorded a complaint via email per David Jones, codes official. Per David the complainant reported shots fired on the weekend of August 6<sup>th</sup> and previously on Sunday July 31<sup>st</sup> at 451 Annadel St. Said individual reported to the Sheriff's deputy the shooting was bothering his dogs per the deputy who visited my residence in result of a complaint to the Sheriff's office

**Request defined with the following parameters**

- 1. Target Shooting at the premises on 451 Annadel St will be NOT be performed before 9:00 AM in the morning or after 6:00 PM on any given day.**
- 2. Shooting will take place no more than six days per month in any given month not to exceed more than two days back to back**

**Requested due to the following circumstances**

1. Subdivision lot is 7.8 acres which does not fall under "normal subdivision parameters with the residence placed 450 ft from the road
2. Additional lots exist in Royal Glen with acreage up to and over 30 acres
3. 451 Annadel St is located at the rear of the subdivision bordering "Non" subdivision county property which is heavily wooded
4. Owner has a safe backstop prepared for bullet impact (Very large dirt pile)
5. Shooting takes place into the dirt pile in a direction away from the Royal Glen residents, lots or any of its occupants
6. Shooting area is approximately 325-350 yards (1000 ft) from the neighborhood houses and street where said complainant resides. Two large tree lines exist between the shooting area and the neighborhood Street

7. Owner has resided at 451 Annadel St for 6 years has shot on the property since moving in. To my knowledge no complaints have been filed to the codes department for gun fire until the September 31 complaint. One exception exists as we shot a reproduction Civil War Cannon on the property which resulted in a complaint to the codes due to the noise. Shooting does not happen every weekend or normally in a consistent pattern.

Attachments Provided

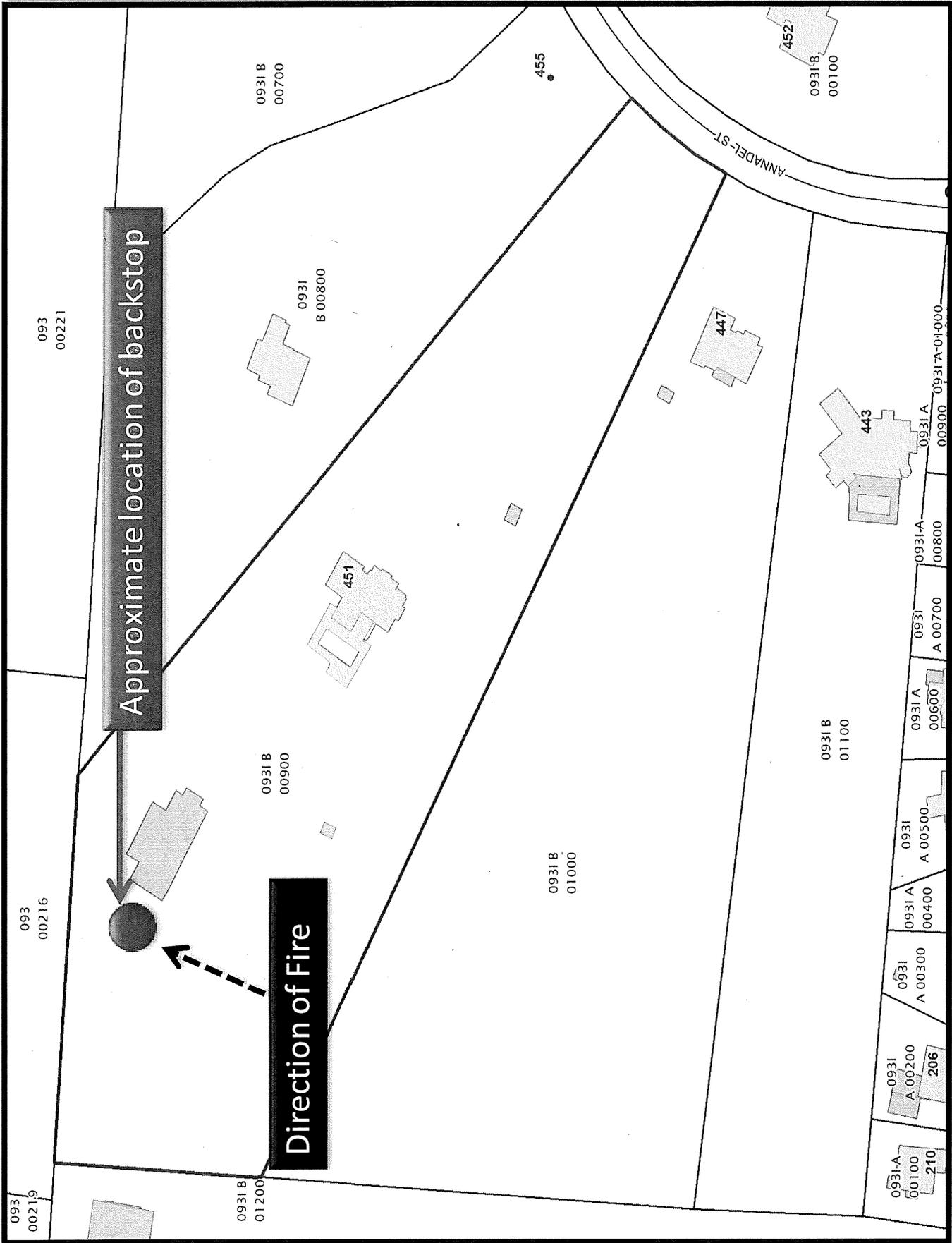
1. Plat of 451 Annadel St detailing location to Annadel St and Royal Glen lots
2. An aerial photograph detailing the location of the shooting area, bullet path and backstop
3. Photograph of the back stop
4. Photograph of one of the two tree lines that lay between the shooting area and the neighborhood "proper" taken from the shooting area

I and my family enjoy shooting and hunting..... Most shooting is with a 22 caliber weapon or pistol with the occasional larger pistol or rifle. Larger rifle fire is for a sighting in purpose generally in the fall before hunting season. We do not shoot every weekend and sometimes not even for a month or so. During the recent period form late September to early August I did shoot much more than normal and on a consistent basis every few days. I purchased a new rifle and have been in the process of sighting in and developing a cartridge that would shoot very accurately, thus requiring more than normal shooting activity. In that process I would shoot 3-6 rounds, go inside let my rifle cool down and shoot another 3-6 rounds. The Sherriff's deputy visited my house on the evening of Monday August 8<sup>th</sup> as a result of a call from the neighborhood. That particular evening I shot 6 rounds (times) which was not excessive. The recent activity is outside the norm for most shooting we conduct on the property as most is target shooting with a pistol. I enjoy long range shooting and this purchase was a new toy. I have completed the process and no longer need to shoot in the manner as the time period mentioned.

Please consider and approve my request as I do not think I am excessive in my sport and if so I believe the county would have received many more complaints. Also I do not see one complainant as a basis for declining my request. The possibility of a variance exists per the "Noise Control Resolution" documents. I purchased the property at a much larger expense than the normal neighborhood lot to allow my children to have room to play, ride and enjoy the property in addition for us to have a place to shoot without the inconvenience of travelling to another property or range.

I take every effort to abide by set rules and the law. Also I teach my children to do the same. I'm glad we live in a country where the complainant can raise his voice and I can apply for a variance to adjust the rules in certain situations. Therefore I will abide by the decision of the board and I appreciate your time and consideration

Price H. Hartman



# 2016-052



0 50 100 200 300 400 Feet



Property In Question



RM - Medium Density Residential



Hydrants

# 2016-052



**PARCEL IN QUESTION**  
Tax Map 93I, Group B, Parcel 9.00

RM

ANNADEL ST

RM

STEELESONWAY



 Property In Question

 Hydrants

0 50 100 200 300 400 Feet