

Hearing Request Application - Form 1

Zoning Board of Adjustment

City of Charlotte

Date Filed: December 30, 2011 Case Number: 12-003

Received by: SSK

Instructions

This form must be filled out completely. Please attach the appropriate additional form depending on your request type along with required information as outlined in the appropriate checklist. Please type or print legibly. All property owners must sign and consent to this application, attach additional sheets if necessary. If the applicant is not the owner, the owners must sign the Designation of Agent section at the bottom of this form.

The Applicant Hereby (check all that apply):

- ☒ Requests a variance from the provisions of the Zoning Ordinance as stated on Form 2
- ☐ Appeals the determination of a zoning official as stated on Form 3
- ☐ Requests an administrative deviation as stated on Form 4

Applicant or Agent's Name: Michael Hutchinson and Krista Hutchinson, c/o John Carmichael

Mailing Address: 101 North Tryon Street, Suite 1900

City, State, Zip: Charlotte, NC 28246

Daytime Telephone: 704-377-8341 Home Telephone: _____

Interest in this Case (please circle one): Owner Adjacent Owner Other

Property Owner(s) [if other than applicant/agent]: Michael Hutchinson and Krista Hutchinson

Mailing Address: 5942 Sharon Hills Road

City, State, Zip: Charlotte, NC 28210

Daytime Telephone: 704-582-9549 Home Telephone: 704-556-7746

Property Address: 5942 Sharon Hills Road, Charlotte, NC 28210

Tax Parcel Number: 209-401-15 Zoning District: R-3

Subdivision Name: Sharon Hills Conditional District: YES NO

Applicant Certification and Designation of Agent

I (we) certify that the information in this application, the attached form(s) and documents submitted by me (us) as part of this application are true and correct. In the event any information given is found to be false, any decision rendered may be revoked at any time. I (we) hereby appoint the person named above as my (our) agent to represent me (us) in this application and all proceedings related to it. I (we) further certify to have received, read and acknowledged the information and requirements outlined in this packet.

12/27/2011

Date

Michael Hutchinson

Michael Hutchinson

Krista Hutchinson

Krista Hutchinson

Hearing Request Application - Form 2
Zoning Board of Adjustment
City of Charlotte

Date Filed December 30, 2011 Case Number: _____

Fee Collected: _____

Has work started on this project? YES ☐ NO ☒

If yes, Did you obtain a building permit? YES ☐ NO ☒ If yes, attach a copy.

Have you received a Notice of Violation for this project? YES ☐ NO ☒ If yes, attach a copy.

Has this property been rezoned? YES ☐ NO ☒ If yes, Petition Number: _____

- (1) What zoning ordinance section numbers are you seeking a variance from? Please list each section, the requirement and the requested variance.

Item	Code Section	Code Requirement	Variance Request
<i>Example</i>	9.205(1)(g)	45 foot rear yard	35 foot rear yard (10 foot reduction from required)
A	9.205(1)(g)	45 foot rear yard	41 foot rear yard (4 foot reduction from required)
B			
C			
D			
E			

- (2) Please describe why the variance requested is necessary.

The Applicants, Michael Hutchinson and Krista Hutchinson (the "Hutchinsons"), are the owners of an approximately .4692 acre single family lot located at 5942 Sharon Hills Road that is designated as Tax Parcel No. 209-401-15 on the Mecklenburg County Tax Maps (the "Property"). The Property contains a multi-story frame house that was built in 1980 and contains approximately 2,284 square feet of heated floor area (the "Home"). The Property is zoned R-3, and a tax map depicting the Property is attached hereto as *Exhibit A*.

Mr. Hutchinson acquired the Property by a North Carolina General Warranty Deed recorded on October 11, 2005. In connection with Mr. Hutchinson's purchase of the Property, Mr. Hutchinson obtained a survey dated October 3, 2005 prepared by Pinnacle Land Surveying, PA that depicts the Property, the Home and the other improvements located on the Property (the "2005 Survey"). A copy of the 2005 Survey is attached hereto as *Exhibit B*. The 2005 Survey depicts a portion of the Home as being located 41.17 feet from the Property's rear property line, which portion of the Home is a family room addition to the Home that was constructed by the previous owners of the Property in 2000.

Under Section 9.205(1)(g) of the City of Charlotte Zoning Ordinance (the "Ordinance"), the required rear yard in the R-3 zoning district is 45 feet, and the family room addition to the Home encroaches into the required rear yard by approximately 4 feet in violation of the Ordinance. The 2005 Survey does not depict the required 45 foot rear yard and it does not note that the Home violates the 45 foot rear yard requirement. Additionally, neither the attorney representing Mr. Hutchinson in connection with his acquisition of the Property nor any of the other closing documents advised Mr. Hutchinson of the 45 foot rear yard requirement or the Home's encroachment into the required 45 foot rear yard.

The Hutchinsons have entered into a contract to sell the Property, and the contract purchasers advised the Hutchinsons of the encroachment of the Home into the required 45 foot rear yard in November 2011. The contract purchasers obtained a survey of the Property dated November 28, 2011 prepared by Derick L. Miles (the "2011 Survey") that depicts the 45 foot rear yard and the Home's encroachment into the required rear yard in violation of the Ordinance. A copy of the 2011 Survey is attached hereto as Exhibit C. The contract purchasers have advised the Hutchinsons that they will not purchase the Property due to the zoning violation unless the zoning violation is cured by way of a variance.

As a result, the Hutchinsons hereby respectfully request a variance from Section 9.205(1)(g) of the Ordinance to reduce the required rear yard on the Property from 45 feet to 41 feet.

- (3) THERE ARE PRACTICAL DIFFICULTIES OR UNNECESSARY HARDSHIPS IN THE WAY OF CARRYING OUT THE STRICT LETTER OF THE ORDINANCE. The courts have developed three rules to determine whether, in a particular situation, "practical difficulties or unnecessary hardships" exist. State facts and arguments in support of each of the following:
- (a) If the property owner/applicant complies with the provisions of the Ordinance, the property owner can secure no reasonable return from, or make no reasonable use of his property. (It is not sufficient that failure to grant the variance simply makes the property less valuable.)

If the Hutchinsons are required to comply with the 45 foot rear yard requirement set out in Section 9.205(1)(g) of the Ordinance, then the Hutchinsons will be unable to sell their home to the contract purchasers and they will be forced to put the Home back on the market for sale. Additionally, and more significantly, the Hutchinsons will be required to demolish and remove an approximately 4 foot portion of the rear of the Home and to repair the rear wall of the Home. This will be a significant expense to the Hutchinsons, and the removal of a portion of the Home will adversely impact the aesthetics of the Home and the functionality of the family room addition. Moreover, this will reduce the value of the Home and it could make it more difficult for the Hutchinsons to sell the Home.

- (b) The hardship of which the Applicant complains results from unique circumstances related to the Applicant's land. (Note: Hardships common to an entire neighborhood, resulting from overly restrictive zoning regulations, should be referred to the Charlotte-Mecklenburg Planning Commission. Also, unique personal or family hardships are irrelevant since a variance, if granted, runs with the life of the land.)

The hardship of which the Hutchinsons complain results from the following unique circumstances. Mr. Hutchinson, despite procuring the 2005 Survey prior to acquiring the Property and being represented by legal counsel in connection with the purchase of the Property, was not aware of the Home's encroachment into the required 45 foot rear yard until the Hutchinsons were advised of the encroachment by the contract purchasers in November 2011. Mr. Hutchinson exercised due care in connection with his purchase of the Property in 2005 and despite such due care, he was unaware of the encroachment and essentially acquired this problem. If Mr. Hutchinson had been apprised of the encroachment prior to his acquisition of the Property, he would not have purchased the Property or he would have required the seller to cure the zoning violation prior to his purchase of the Property.

- (c) The hardship is not the result of the Applicant's own actions.

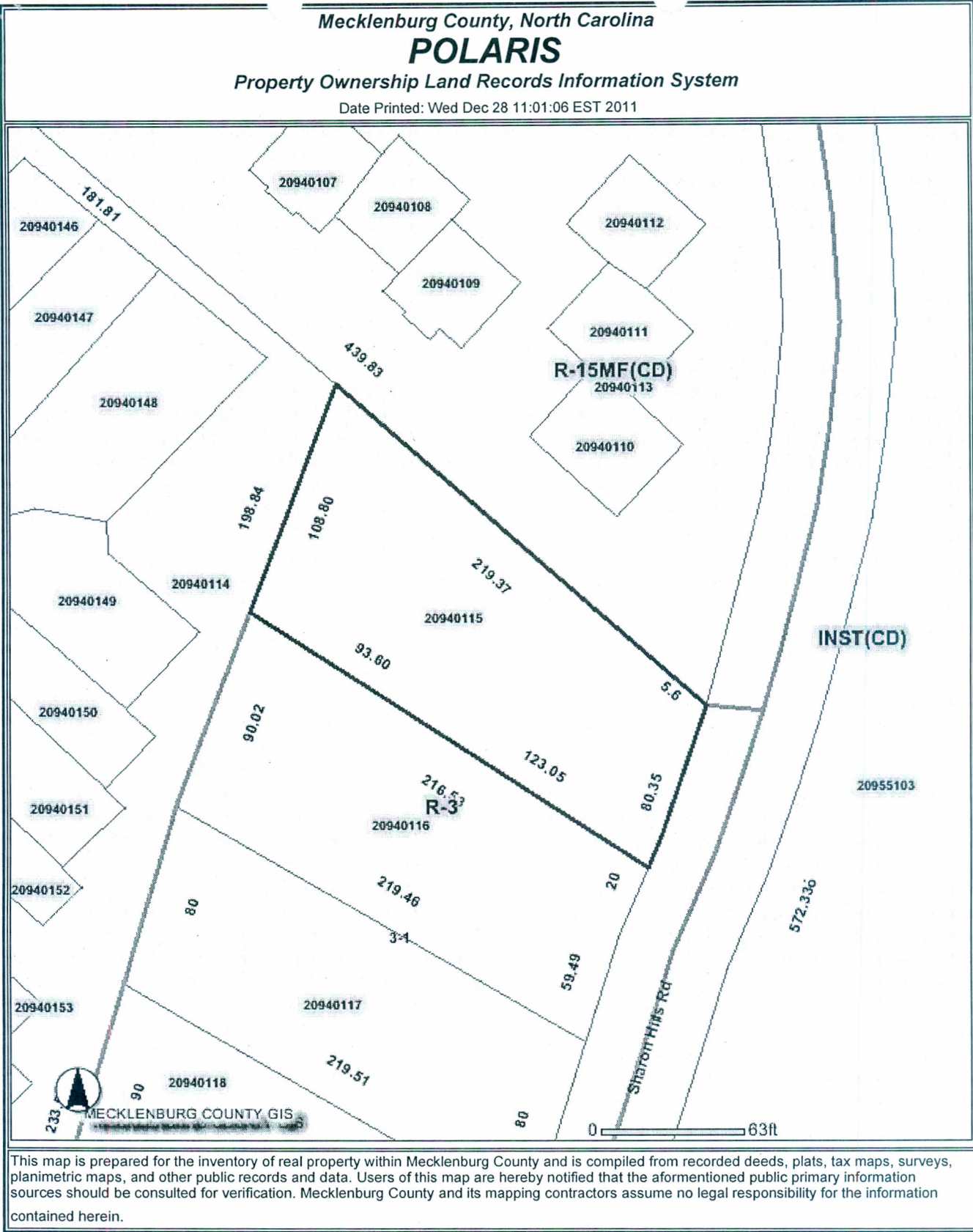
The hardship is not the result of the Hutchinsons' actions. The hardship is the result of Mr. Hutchinson's surveyor and closing attorney failing to recognize the encroachment and failing to advise Mr. Hutchinson of the encroachment of the Home into the required rear yard. These types of errors happen from time to time in connection with the sale of property. Mr. Hutchinson reasonably relied on these professionals when he acquired the Property in 2005.

- (4) THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ORDINANCE AND PRESERVES ITS SPIRIT. (State facts and arguments to show that the requested variance represents the least possible deviation from the letter of the Ordinance to allow a reasonable use of the land; and, that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood.)

The variance requested is the least possible deviation from the Ordinance to allow the Home to remain as is and to encroach approximately 4 feet into the required rear yard. The Hutchinsons attempted to acquire property from the adjacent property owner, Wrenfield Homes Association, to cure the zoning violation, but the Board of Directors of the association had no interest in selling any property. If the variance is granted and the encroachment is permitted to remain on the Property, the encroachment will not detract from the character of the neighborhood. The encroachment into the required 45 foot rear yard is relatively small, approximately 4 feet, and the relevant portion of the Home is located approximately 41 feet from the Property's rear property line. Therefore, the encroachment is virtually undetectable by the naked eye, and the encroachment will not detract from the character of the neighborhood.

- (5) THE GRANTING OF THE VARIANCE SECURES THE PUBLIC SAFETY AND WELFARE AND DOES SUBSTANTIAL JUSTICE. (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the Applicant.)

If the requested variance is denied, the Hutchinsons will be harmed without any benefit to the public in the Hutchinsons' view. If the variance is denied, the Hutchinsons, as described above, will be significantly harmed as they will be required to remove and demolish an approximately 4 foot portion of the rear of the Home. This would be an expensive undertaking and it would adversely impact the aesthetics and functionality of the Home. The denial of the requested variance will not benefit the public because it is a relatively small variance request, a 4 foot reduction in the required 45 foot rear yard, and the reduced rear yard is virtually undetectable on the Property. The Hutchinsons have not received a single complaint about the location of the Home on the Property since Mr. Hutchinson acquired the Property in 2005. In short, there would simply be no benefit to the public as a result of the denial of the requested variance.

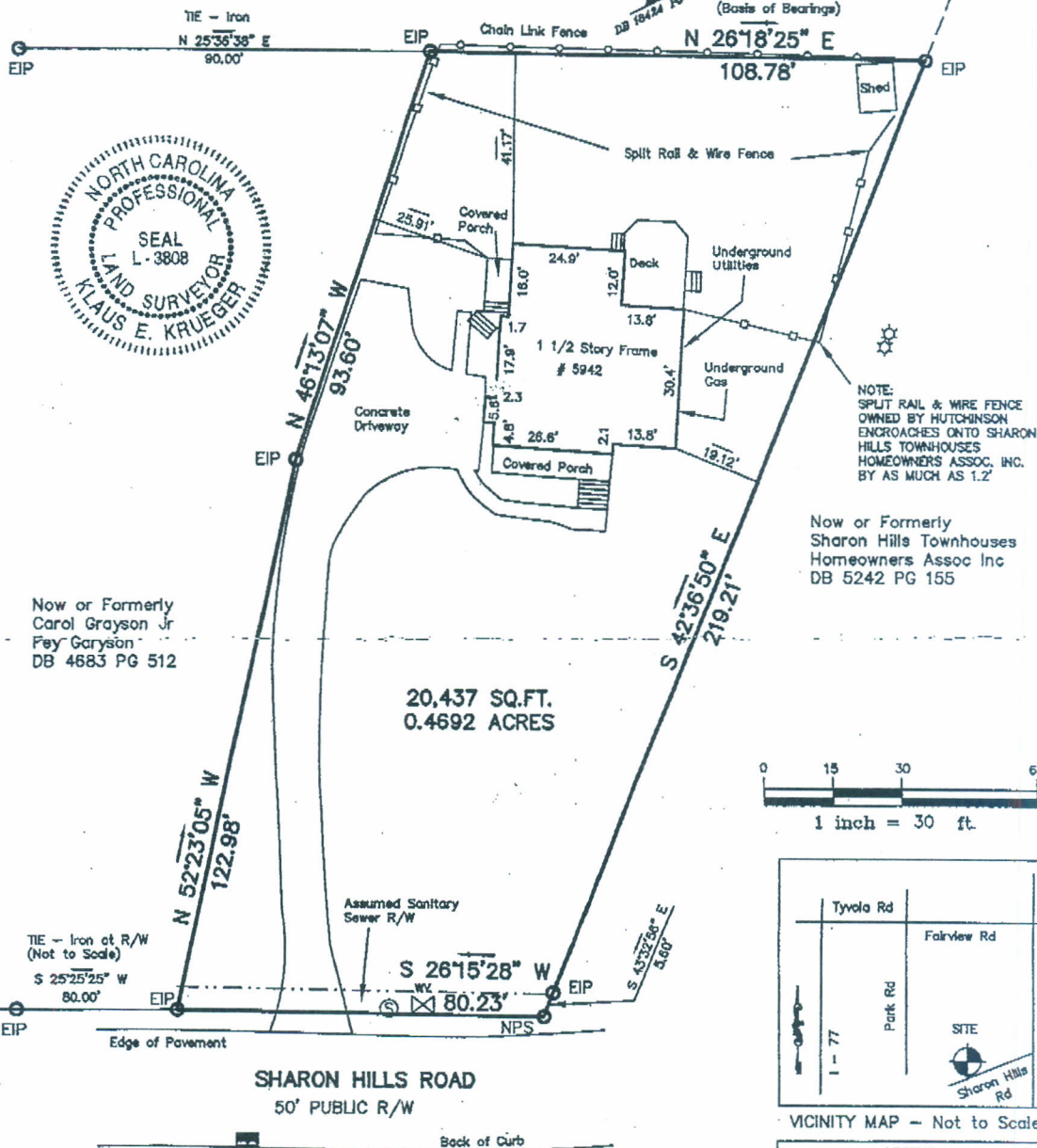




SURVEYING - PLANNING - MAPPING
P.O. BOX 2727 (704) 399-9120
HUNTERSVILLE, NC 28070 FAX (704) 398-1226
© PINNACLE LAND SURVEYING, PA

Klaus E. Krueger
KLAUS E. KRUEGER PLS L-3808

Now or Formerly
Wrenfield Homes
Association
DB 8738 PG 198



I certify that this survey was performed by me (Klaus E. Krueger), under my supervision. This survey is of an existing parcel of land. The Raw Error of Closure was better than 1:10,000. I did not do a full title search on this property.

This property is located in Zone X - (Areas determined to be outside 0.2% chance annual floodplain) as shown on FEMA map Panel 37119C 0246 E dated February 4, 2004.

DATE of:

Survey 10/03/06
Drawing 10/03/05

Job No: 4280

File: 5942SHARONHILLS

Drawn by: KEK

For Buyer:
MICHAEL S. HUTCHINSON
Physical Survey of

5942 SHARON HILLS ROAD
CHARLOTTE, NORTH CAROLINA 28210
CITY of CHARLOTTE, MECKLENBURG COUNTY

Deed Recorded in Deed Book 18424 Page 454

Tax Parcel # 209-401-15

To be Conveyed to Michael S. Hutchinson

Metes & Bounds

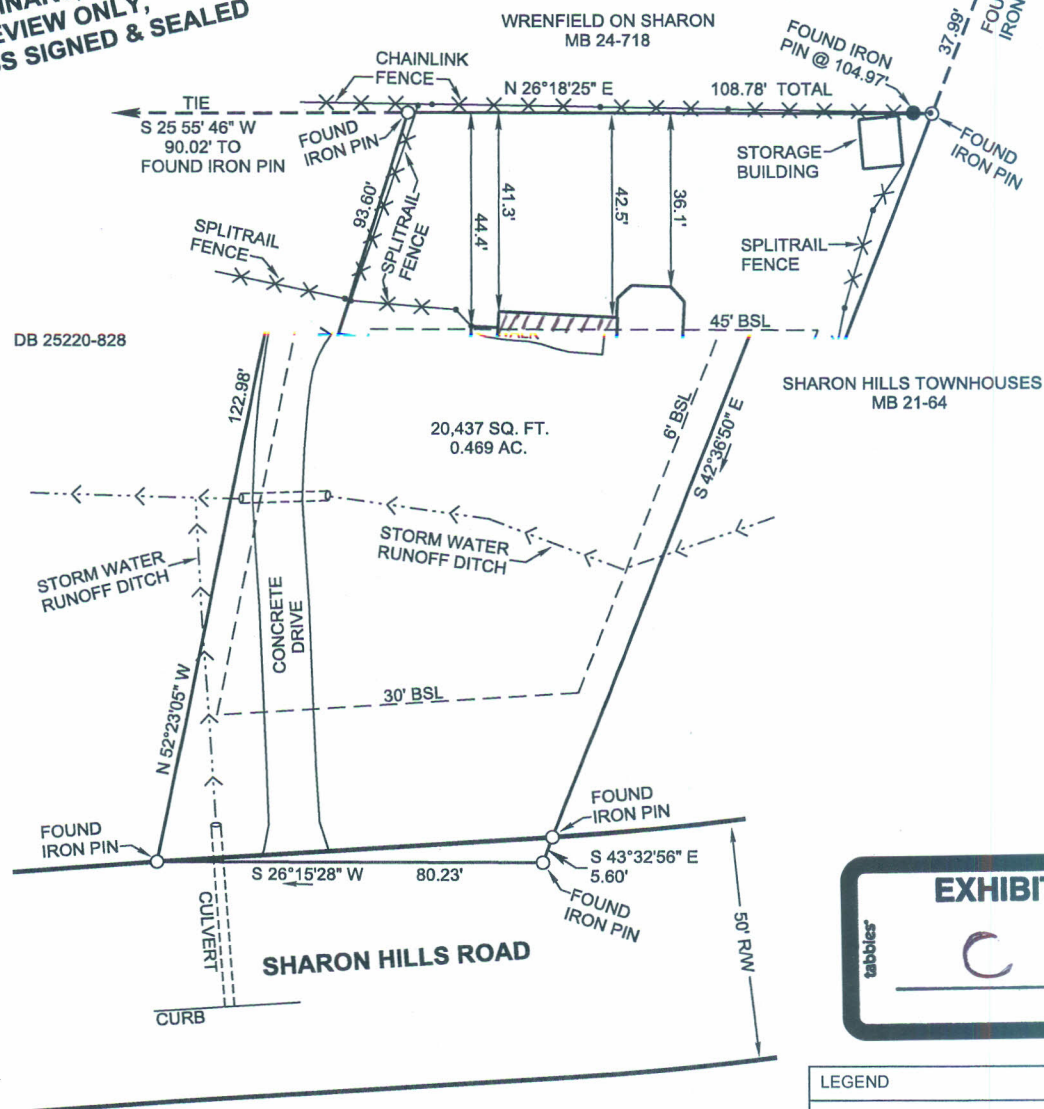
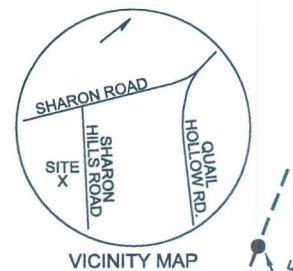
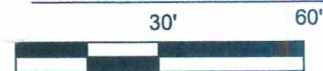
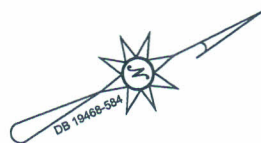
Currently Owned by: Brian N. Boggs & Terrie S. Boggs

PHYSICAL SURVEY
OF
5942 SHARON HILLS ROAD
FOR: NEAL PORTER & SARAH PORTER
PROPERTY OF:
MICHAEL S. HUTCHINSON
DEED REFERENCE : 19468-584

TAX PARCEL : 209-401-15
CITY OF CHARLOTTE, MECKLENBURG COUNTY, N.C.
SURVEY DATE: NOVEMBER 28, 2011
SCALE: 1"= 30'

SURVEYED BY: DERICK L. MILES NCPLS
4901 PINE OAK DRIVE
MONROE, N.C. 28112
TELE: 704-764-7763

**PRELIMINARY,
FOR REVIEW ONLY,
UNLESS SIGNED & SEALED**



- NOTES**
1. AREA BY COORDINATE GEOMETRY.
 2. PROPERTY IS ZONED R-3 PER CITY OF CHARLOTTE ZONING DEPARTMENT. BUILDING SETBACK LINES SHOWN ARE R-3 ZONING BUILDING SETBACKS.
 3. PROPERTY IS SERVED BY UNDERGROUND UTILITIES; SUBJECT TO UTILITY EASEMENTS.
 4. SHARON HILLS ROAD RIGHT-OF-WAY IS PER DEEDS.
 5. SURVEY IS OF AN EXISTING PARCEL OF LAND AND DOES NOT CREATE OR CHANGE AN EXISTING STREET.

EXHIBIT

tabbles
C

LEGEND

AC.	ACRE
BSL	BUILDING SETBACK LINE
CON.	CONCRETE
R/W	RIGHT-OF-WAY
CP	COVER PORCH