



COUNTY OF LINCOLN, NORTH CAROLINA

302 NORTH ACADEMY STREET, SUITE A, LINCOLNTON, NORTH CAROLINA 28092

PLANNING AND INSPECTIONS DEPARTMENT
704-736-8440 OFFICE
704-732-9010 FAX

To: Zoning Board of Adjustment

From: Randy Hawkins, zoning administrator

Date: May 11, 2010

Re: VAR #321
Tony Jones, applicant
Parcel ID# 87827

The following information is for use by the Lincoln County Zoning Board of Adjustment at its meeting/public hearing on May 24, 2010.

Request

The applicant is requesting a variance from Section 7.5.2 of the Lincoln County Unified Development Ordinance to allow a driveway to cross a stream and to allow an outfall channel for a stormwater treatment system to cross a streamside buffer. Section 7.5.2 states that no land-disturbing activities are permitted within streamside buffers except for artificial bank or shoreline stabilization, water dependent structures and public or private projects such as road or utility crossings or installations of greenways where no practical alternatives exist. (A copy of the buffer regulations is included with this packet.) The proposed driveway would be constructed off N.C. 16. This property is accessible from N.C. 73 without crossing the stream.

Site Area and Description

This 3.8-acre parcel is located on the northwest corner of the intersection of N.C. 16 Business and N.C. 73. It is zoned B-G (General Business) and is adjoined on all sides by property zoned B-G. This property is located in an area designated by the Lincoln County Land Use Plan as Regional Business, suitable for commercial development. A small stream flows across the eastern portion of this property near N.C. 16, running roughly parallel with the highway.

Staff's Recommendation

Staff recommends approval of the variance request on the condition that an appropriate plan is carried out to protect and enhance the remaining streamside buffers. Details of such a plan were still being worked out at the time of this report.

Staff believes the evidence in this case will establish the following:

Proposed findings of fact

1) This property is located on the corner of an intersection of two major highways, N.C. 16 Business and N.C. 73. It is zoned B-G (General Business) and is located in an area designated by the Lincoln County Land Use Plan as Regional Business, an area suitable for commercial development.

2) A small stream flows across the eastern portion of this property, near N.C. 16, running roughly parallel to the highway. It is piped from this property under N.C. 73 and under a shopping center located on the opposite side of N.C. 73.

3) This property is proposed to be developed for a Walgreens store, with a driveway proposed to be built off N.C. 16 crossing the stream. Section 7.5.2 of the Unified Development Ordinance requires a minimum 50-foot buffer along streams, with an exception for crossings where no practical alternatives exist. However, there is a practical alternative in this case. The property can be accessed from N.C. 73.

4) The N.C. Department of Transportation has approved access to this property from both N.C. 16 and N.C. 73. The U.S. Army Corps of Engineers has previously approved plans for the stream crossing. The only thing preventing the crossing is the application of the Unified Development Ordinance.

5) If this were a lot on N.C. 16 with no access off N.C. 73 or if the stream ran through the middle of this property, a stream crossing would be permitted under the ordinance. This is a peculiar situation.

6) Corner lots at intersections are highly desirable as business locations because of the additional access and visibility they offer. It's reasonable and typical for corner lots at intersections to have access from both highways.

7) Without access from N.C. 16 and N.C. 73, no reasonable return can be secured from and no reasonable use can be made of this property.

8) Because of the impacts on the stream of the proposed crossing, this project will require a stormwater management plan to be approved by the N.C. Department of Environment and Natural Resources. An underground sand-filter is proposed for this project as a permitted method of treating stormwater runoff. Due to site constraints and the depth required for the sand-filter vault, it will be necessary for an outlet channel to be constructed across a streamside buffer. The disturbance will be minor, and the outfall channel will be revegetated.

9) Without the stormwater treatment system and the necessary outfall channel, no reasonable return can be secured from and no reasonable use can be made of this property.

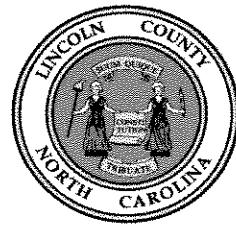
10) Under the plans as submitted, disturbance to the streamside buffer will be limited to the minimum extent necessary to construct the driveway and outfall channel, sizeable areas along the stream will be left undisturbed and will be enhanced with additional

plantings, disturbed areas along the driveway will be restored, and stormwater runoff from the site will be controlled and treated.

11) The driveway across the stream is part of a master plan that was developed at the direction of the N.C. Department of Transportation and Lincoln County to provide internal connections between all the properties along N.C. 73 from N.C. 16 Business to the new N.C. 16 bypass, in order to improve access and traffic flow.

Variance Application

Lincoln County Planning and Inspections Department
302 N. Academy St., Suite A, Lincolnton, NC 28092
Phone: (704)736-8440 Fax: (704)732-9010



Part I

Applicant Name TONY JONES 46 D. TODD WULFHORST, ATTORNEY

Applicant Address 3758 Hwy 16 N, DENVER

Applicant Phone Number 704-483-3415

Property Owner's Name L TGM, LLC

Property Owner's Address 438 S NC 16 HWY STANLEY NC 28164

Property Owner's Phone Number _____

Part II

Property Location HWY 16 + HWY 73

Property ID # (10 digits) 4602 43 8824 Property Size 3.84 A.

Parcel # (5 digits) 87827 Deed Book(s) 2066 Page(s) 76

Part III

Briefly describe how the parcel is zoned, used, and list any existing structures.

B-G UNDEVELOPED

Briefly explain your reason for seeking a variance.

TO CONSTRUCT A DRIVEWAY OFF HIGHWAY 16 AND TO
CONSTRUCT AN OUTFALL CHANNEL FOR A STORMWATER MANAGEMENT SYSTEM
FOR A PROPOSED WALGREENS STORE
Describe the type of variance you need.

A VARIANCE FROM SECTION 7.5.2 OF THE UNIFIED DEVELOPMENT
ORDINANCE TO ALLOW A ROAD TO CROSS A STREAM AND TO ALLOW
AN ENROACHMENT INTO THE STREAMSIDE BUFFER FOR A STORMWATER
DUE FALL CHANNEL

\$500 APPLICATION FEE MUST BE RECEIVED
BEFORE PROCESSING A VARIANCE REQUEST

I hereby certify that all of the information provided for this application and attachments is true and correct to the best of my knowledge.

Applicant

 Jim W. Nef

ATTORNEY

Date

5/3/10

Owner

Date

This page to be completed by County

Application #: _____

Date of Application: _____

FINDINGS OF FACT

1. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance.

YES _____ NO _____

A. If the property owner complies with the provisions of the ordinance, he can secure no reasonable return from or make no reasonable use of his property. Yes _____ No _____

Factual reasons cited by the Board:

B. The hardship results from the application of the ordinance. Yes _____ No _____

Factual reasons cited by the Board:

C. The hardship is suffered by the applicant's property. Yes _____ No _____

Factual reasons cited by the Board:

D. The hardship is not the result of the applicant's own action. Yes _____ No _____

Factual reasons cited by the Board:

E. The hardship is peculiar to the applicant's property. Yes _____ No _____

Factual reasons cited by the Board:

2. The variance is in harmony with the general purpose and intent of this ordinance. Yes _____ No _____

Factual reasons cited by the Board:

3. In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. Yes _____ No _____

Factual reasons cited by the Board:

4. The reasons set forth in the application justify the granting of a variance, and that the variance is a minimum one that will make possible the reasonable use of land or structures. Yes _____ No _____

Factual reasons cited by the Board:

Based on the Findings of Fact, the following action was taken on _____ by the Lincoln County Zoning Board of Adjustment after a public hearing was held and duly advertised:

In approving said variance, the following conditions have been imposed by the Zoning Board of Adjustment:

§7.5. Streamside Buffers

§7.5.1. General Provisions

A. Intent

The streamside buffer regulations contained herein are intended to limit exposure of perennial and intermittent streams to the cumulative and secondary impacts of development. These impacts include increased stormwater runoff from impervious surface areas, altered hydrographic conditions, nutrient loading and pesticide contamination from point and non-point sources.

B. Effect of Streamside Buffer Regulations

The streamside buffer regulations are applied in combination with zoning districts and have the effect of modifying the requirements, regulations and procedures applying in the applicable zoning district to the extent expressly indicated in this section. Whenever the provisions of any other ordinance, statute or agreement require more restrictive standards than are required in this section, the provisions of such ordinance, statute or agreement shall govern.

C. Applicability

1. Redevelopment of impervious surface areas of existing development is allowed if the rebuilding activity does not have a net increase in impervious surface area.
2. Single-family detached dwellings may be expanded, redeveloped or replaced in accordance with the other requirements of the UDO without being subject to the restrictions of this section.
3. Existing development as defined herein.

D. Prior Approvals

This section shall render no valid permitted structure or conforming use nonconforming. An existing structure may be rebuilt if damaged or destroyed even if the structure fails to conform to these regulations.

§7.5.2. Streamside Buffer Zones

A. A streamside buffer, consisting of an undisturbed vegetative cover, the width of the 100-year floodplain, as identified on the current Flood Insurance Rate Map (FIRM) published by FEMA, shall be established and maintained along all indicated or identified perennial and intermittent waters. Where the floodplain width is less than 50 feet measured from the top of the stream bank or no flood plain exists, a minimum 50-foot streamside buffer is required along all indicated or identified perennial and intermittent waters. Streamside buffers shall be shown by metes and bounds on all appropriate plans and plats. For the 50-foot streamside buffer, the following shall be required and in no case shall disturbance exceed the following:

B. No development, including land-disturbing activities, shall occur within streamside buffers except as listed in §7.5.3 below.

1. **Buffer Zone 1**

Buffer Zone 1 shall be a minimum of 30 feet from the top of bank and shall remain undisturbed. No new development is permitted within the Buffer Zone 1 except for artificial stream bank or shoreline stabilization, water dependent structures and public or private projects such as road or utility crossings or installations of greenways where no practical alternatives exist. Activities within buffer areas shall minimize impervious coverage, direct runoff away from surface waters and maximize the utilization of stormwater best management practices.

2. **Buffer Zone 2**

Buffer Zone 2 shall be a minimum of 20 feet extending landward from Buffer Zone 1. This buffer is an area of managed vegetation and shall be vegetated by grass, other ground cover or natural vegetation. Disturbance of existing vegetation shall be minimized to the greatest extent possible except for the installation of artificial stream bank or shoreline stabilization, water dependent structures and public or private projects such as utility service lines, road crossings or greenways where no practical alternatives exists.

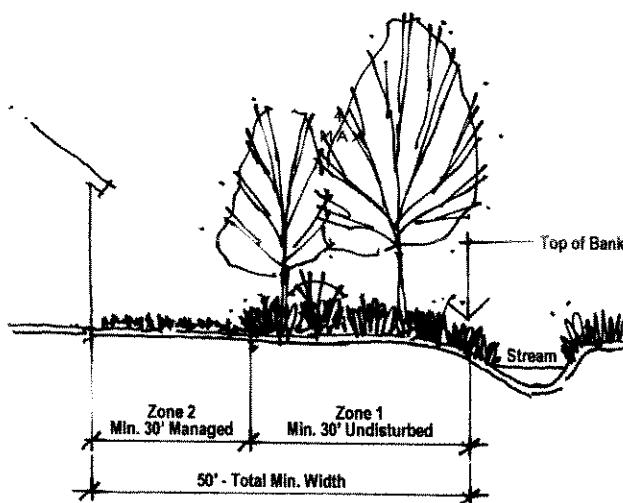


Figure 86. Streamside Buffer Zones

§7.5.3. Limited Activity Permitted Within and Adjacent to Buffers

Except for the following limited activities, lands within and adjacent to buffer areas shall remain undisturbed.

- A. Agriculture is subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990.
- B. Agricultural activities must maintain a minimum 10-foot wide vegetated buffer, or equivalent control as determined by the Soil and Water Conservation Commission, along all perennial waters located within the critical area of water supply watersheds.
- C. Animal operations greater than 100 animal units shall employ best management practice. The Soil and Water Conservation Commission is responsible for implementing these provisions pertaining to agricultural activities.
- D. Silviculture activities shall be subject to the provisions of the Forest Practices Guidelines related to Water Quality (15A NCAC 01I .0101-0209).

The North Carolina Division of Forest Resources is responsible for implementing these provisions pertaining to silviculture activities.

- E. New nonresidential uses requiring an erosion/sedimentation control plan under local or State law shall incorporate adequately designed, constructed and maintained spill containment structures if hazardous materials are either used, stored or manufactured on the premises.
- F. Road construction shall use bmps outlined in the North Carolina Department of Transportation document entitled, "Best Management Practices for the Protection of Surface Waters."
- G. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.
- H. Vegetative cover shall be reestablished for all areas disturbed by land development activities on sites adjoining the buffer area and shall be maintained on a permanent basis.
- I. Bmps shall not be constructed within jurisdictional waters.
- J. Construction activities within jurisdictional waters shall require prior approval from the U.S. Army Corps of Engineers and/or the N.C. Division of Water Quality.

§7.5.4. Variances and Waivers

- A. Applicants may seek variances from this section pursuant to §9.18, Variance.
- B. Waivers may be approved by the Director, as follows:
 1. Buffer widths may be averaged across the affected property. In no cases shall less than a 30 foot wide buffer be maintained.
 2. Encroachment may be approved into the required buffer zones for the construction of a required public improvement including, water, sewer, and roadways when a finding of no practical alternative is made. In making this determination the Director or their appointed designee shall consider terrain, accessibility, system function, cost, safety, and timing.

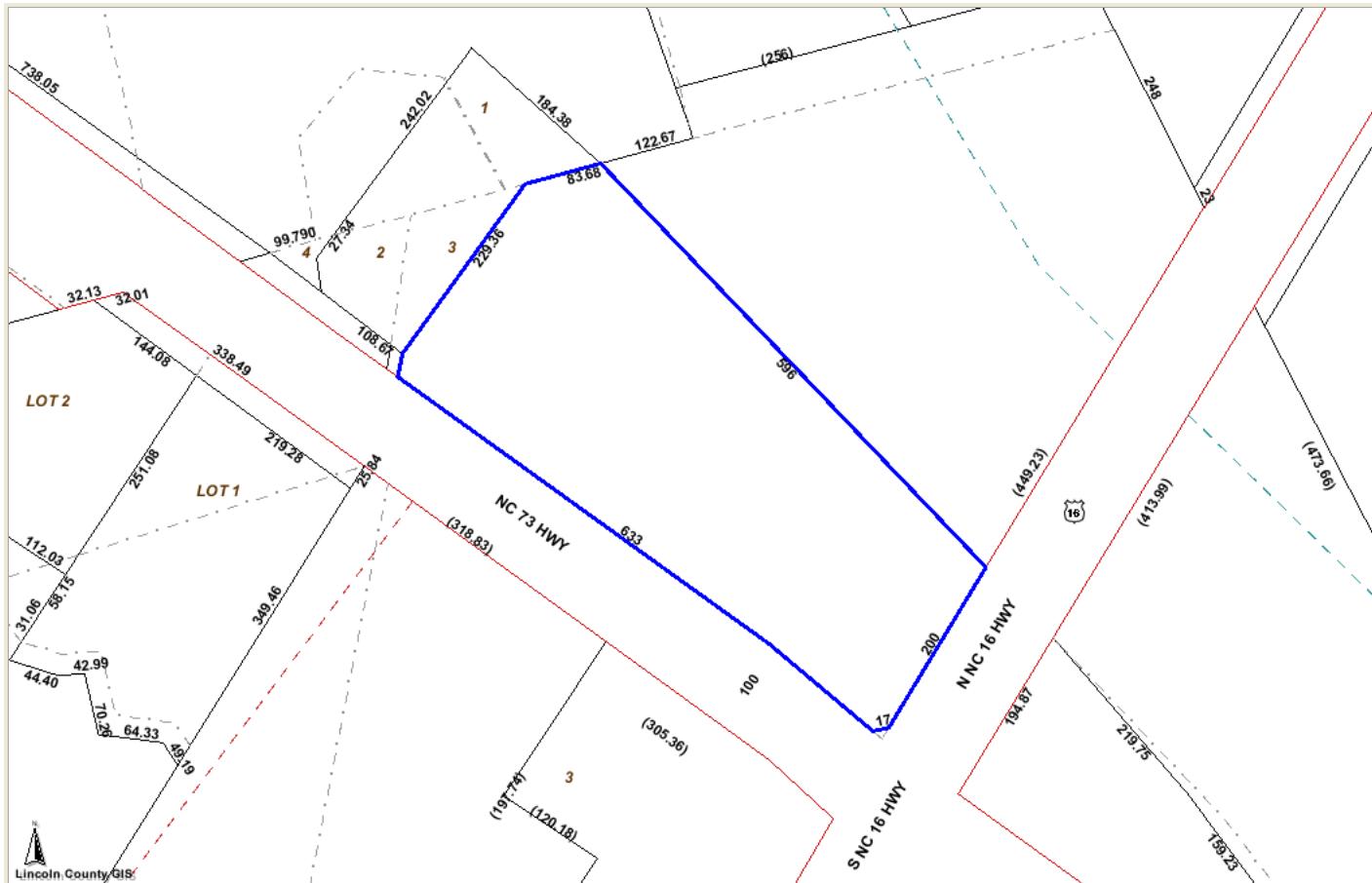
§7.5.5. Revegetation

All disturbed areas within the streamside buffer area, permitted or not, shall be revegetated with perennial vegetation as soon as practical (immediately) after the disturbance. Any noncompliance shall be treated as a violation of this UDO and be subject to enforcement as described in Article 11, Enforcement and Penalties. Plant materials shall be limited to those on the approved plant species list, which is available in the Planning and Inspections Department.



Lincoln County, NC

Office of the Tax Administrator, GIS Mapping Division
 Lincoln County and its mapping contractors assume no legal responsibility for
 the information contained on this map. This map is not to be used for land
 conveyance. The map is based on NC State Plane Coordinate System 1983 NAD.
Date: 5/11/2010 Scale: 1 Inch = 200 Feet



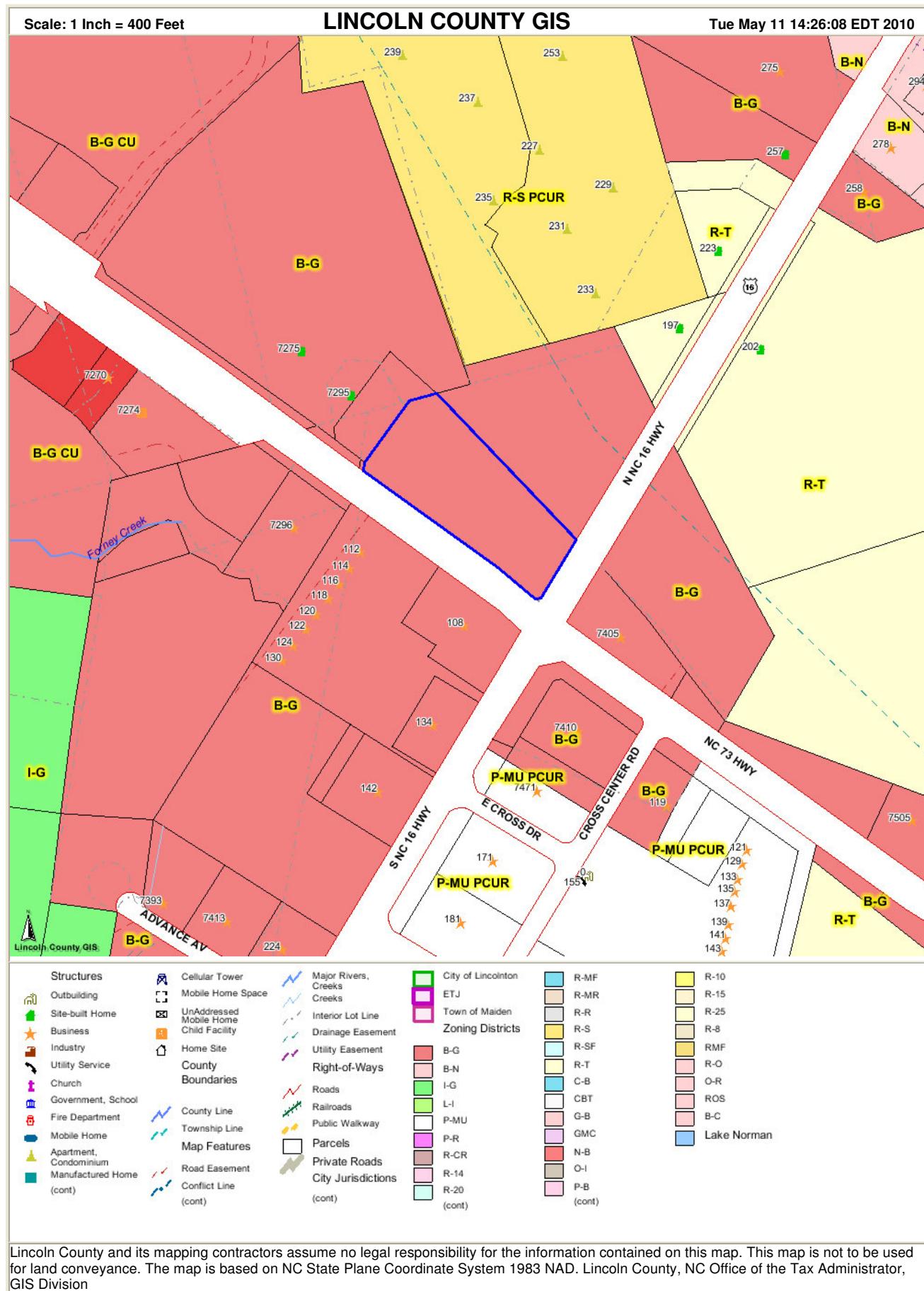
PHOTOS

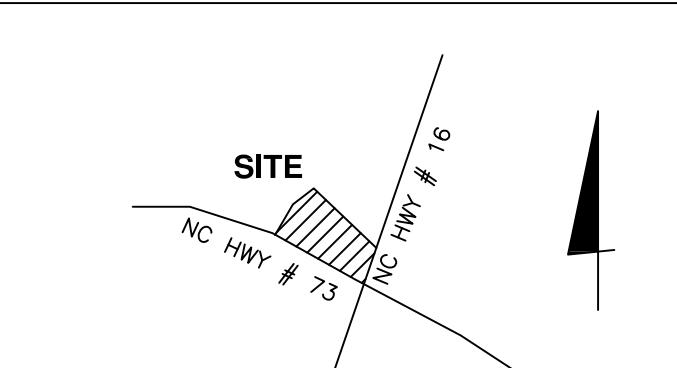
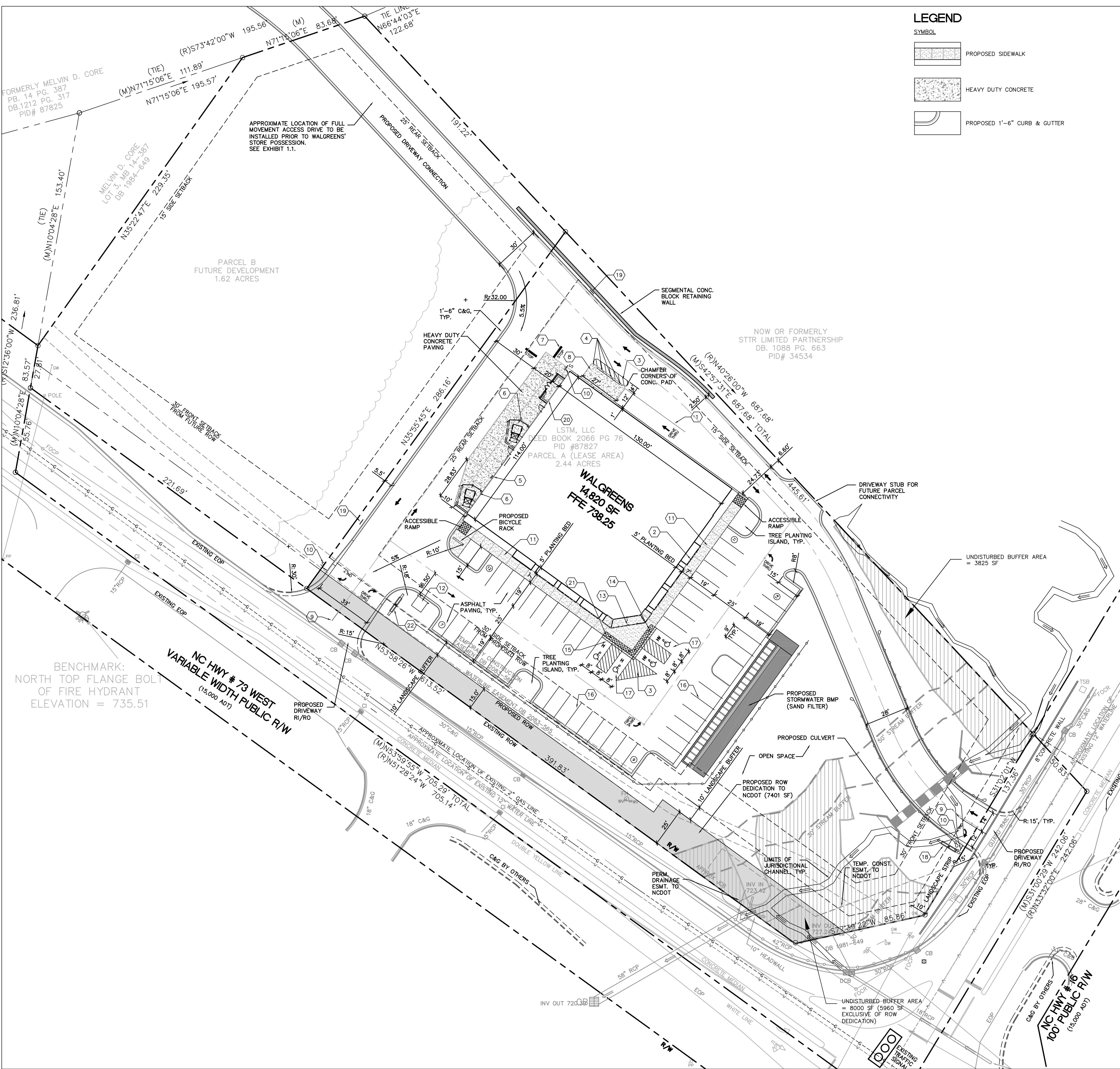


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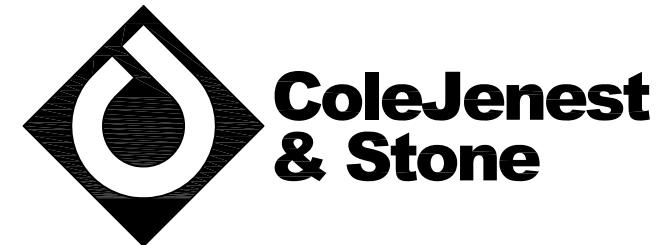
PARCEL INFORMATION FOR 4602-43-8824

| | | | |
|------------------------------------------------------|-------------------------|--------------------------|-------------------------|
| Parcel ID | 87827 | Owner | LTSM LLC |
| Map | 4602-00 | Mailing Address | 438 S NC 16 HIGHWAY |
| Account | 0215142 | Recorded | STANLEY NC 28164 |
| Deed | 2066-76 | Total Value | 9/16/2008 \$1,572,635 |
| Land Value | \$1,572,635 | Sale Price | 0 |
| ----- All values are for tax year 2010. ----- | | | |
| Description | S R JONES LAND | Tax/Fire District | EAST LINCOLN / EL SEWER |
| Address | NC 16 HWY | Deed Acres | 0 |
| Township | CATAWBA SPRINGS | Tax Acres | 3.83 |
| Improvement | No Improvements | | |
| Zoning | Calculated Acres | Voting Precinct | Calculated Acres |
| District | 3.84 | TRIANGLE (TR30) | 3.84 |
| B-G | | | |
| Watershed Class | | Sewer District | |
| Not in a watershed | 3.84 | In the sewer District | 3.84 |
| 2000 Census County | | Tract | |
| 37109 | | 071100 | 2016 |
| 37109 | | 071100 | 2021 |
| Flood | Zone Description | Block | 0.08 |
| X | NO FLOOD HAZARD | 4602 | 3.84 |





| | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| Walgreens | |
| FACILITIES PLANNING, DESIGN, & ENGINEERING 106 WILMOT ROAD DEERFIELD, IL 60015-5015 | |
| CONSULTANT PROJECT NO. 50243 | PROJECT TYPE |
| DRAWINGS/SPECIFICATIONS BY: <input type="checkbox"/> WALGREENS' <input checked="" type="checkbox"/> LANDLORD'S CONSULTANT | |
| ALL CONSTRUCTION WORK, UNLESS NOTED OTHERWISE, BY: <input type="checkbox"/> WALGREENS' CONTRACTOR <input checked="" type="checkbox"/> LANDLORD'S CONTRACTOR (TURNKEY CONSTRUCTION) | |
| STORE | BUILDING |
| NEW REMODELING RELOCATION OTHERS | NEW EXISTING NEW SHELL ONLY . . |



Land Planning
+ Landscape Architecture
+ Civil Engineering
+ Urban Design

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NO. DATE BY DESCRIPTION CONST

REVISIONS

CERTIFICATION AND SEAL

NOT FOR CONSTRUCTION

The drawings, the project manual and the design shown thereon are instruments of ColeJenest & Stone, P.A. The reproduction or unauthorized use of the documents without consent of ColeJenest & Stone, P.A. is prohibited.

ColeJenest & Stone, P.A. 2010

STORE NUMBER 13036

PROJECT NAME
Walgreens

Hwy 16 and Hwy 73, Denver, NC

DRAWING TITLE
SITE LEASE PLAN

| | | |
|------------------------|------------------|-------------|
| CADD PLOT: | SCALE: 1"=30' | DRAWING NO. |
| VOID PLOT: | DRAWN BY: RTF | |
| SUPERSEDES PLAN DATED: | DATE: 05/04/10 | |
| | REVIEWED BY: | |

EX1.0