



**TOWN OF MIDWAY
BOARD OF ADJUSTMENT AGENDA
DAVIDSON COUNTY GOVERNMENTAL CENTER
913 GREENSBORO STREET, LEXINGTON NC 27292
TUESDAY, JULY 28, 2020
5:00 PM**

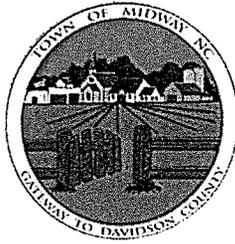
- 1. CALL TO ORDER**
- 2. DETERMINATION OF QUORUM**
- 3. ADOPTION OF MINUTES**

Board of Adjustment Meeting – February 25, 2020

- 4. ADOPTION OF AGENDA**
- 5. PUBLIC HEARING**

Request by Dustin Floyd for a Variance to the Front Yard Setback in a RS, Low Intensity Residential District.

- 6. ADJOURN**



**TOWN OF MIDWAY
BOARD OF ADJUSTMENT MINUTES
TUESDAY, FEBRUARY 25, 2020**

**MINUTES OF MIDWAY BOARD OF ADJUSTMENT MEETING HELD ON TUESDAY,
FEBRUARY 25, 2020 AT 5:00 P.M. AT MIDWAY TOWN HALL, 426 GUMTREE ROAD,
MIDWAY, NORTH CAROLINA**

CALL TO ORDER

Vice-Chairman Carl Tuttle called the meeting to order.

Board of Adjustment members present were: Charles Waddell, Jamie Hester, Carl Tuttle and James Smith. Absent: LeeAnn Tuttle-Thomas. Alternate: Vacant.

Town Manager Tammy Michael, Town Clerk Linda Hunt, Deputy Clerk Tammy Robertson, Davidson County Zoning Officers Lee Crook and Travis Swain were present.

ADOPT AGENDA

On motion by Board member Jamie Hester, seconded by Board member James Smith, the Board voted unanimously to adopt the agenda as presented.

PUBLIC HEARING

**REQUEST BY DUSTIN FLOYD FOR A VARIANCE TO THE FRONT YARD SETBACK IN A
RS, LOW INTENSITY RESIDENTIAL DISTRICT.**

Davidson County Zoning Officer Lee Crook discussed the procedures of a Variance request and stated that no ordinance is comprehensive enough to allow for everything that people can come up with in the development world. There has to be a procedure in the ordinance to allow for when certain circumstances are present, an exception to the rule. A Variance can only be to the dimensional or locational dimensions of the ordinance.

An applicant has to prove that an unnecessary hardship would result from the strict application of the ordinance. The hardship results from conditions peculiar to the property such as location, size, or topography that may hinder an applicant from developing his or her property in accordance with the standards of the law.

Since a Variance is an exception to the rule, the process requires a supermajority or four-fifths of the Sitting Board to approve a variance. Chairperson LeeAnn Tuttle Thomas was absent from the meeting due to a death in her family, but her seat still counts in the vote. The only way her seat would not be counted is if she had a conflict of interest in the Variance request. For the process to be carried out, the remaining four Board members would have to vote in approval.

A Quasi-Judicial Hearing is like a Court of Law, with sworn testimonies. All information presented must be factual and not opinion based.

Mr. Floyd asked the Board of Adjustment for a continuance with the hearing until the next available meeting time.

Mr. Crook said that asking for a continuance from the applicant is a common occurrence and applicants

have a right to ask this of the Board of Adjustment. Mr. Floyd has a right for the full Board of Adjustment to hear his case. It is up to the Board of Adjustment to decide whether to grant the request for a continuance and if the continuance is granted, to set a date and time specific for the next meeting.

Part of the legal process for Board of Adjustment hearings is to post two public hearing notices not less than ten days and no more than twenty-five days in the newspaper of local circulation. Notices of the public hearing are also mailed to adjoining property owners and a sign is also posted on the property of the applicant. By continuing the meeting to a date certain, legal obligations are still met in respect to North Carolina General Statutes. Mr. Crook stated that as a courtesy, the Davidson County Planning and Zoning Department will repost the property with a new date and time on it and mail new notices to the adjoining property owners.

On motion by Board member James Smith, seconded by Board member Charles Waddell, the Board of Adjustment voted unanimously for a continuance in the hearing for Variance request by Mr. Dustin Floyd until March 31, 2020 at 5:00 p.m. at Town Hall as recommended by Vice-Chairman Carl Tuttle.

ADJOURNMENT

On motion by Board member Charles Waddell, seconded by Board member Jamie Hester, the Board voted unanimously to adjourn the meeting at 5:09 p.m.

Carl Tuttle, Vice-Chairperson

Tammy H. Robertson, Deputy Clerk

COUNTY OF DAVIDSON STATE OF NORTH CAROLINA
APPLICATION TO THE BOARD OF ADJUSTMENT
and/or BOARD OF COMMISSIONERS FOR A HEARING

APPLICATION NO. 2-20-V

Applicant(s): Dustin Sean Floyd Date 12-19-2019

Address: 154 Livengood Dr., W.S NC 27107 Telephone No.: 336-486-1084

Property Owner: Same

Address: Same Telephone No.: Same

Property Location (General Description) Property is located on the north side of Livengood Drive approximately 350 feet west of

the Old Thomasville Road intersection and is located at the address 154 Livengood Dr.

Township: Midway Map No. 10A Blk. No. _____ Lot(s) 10

TYPE OF APPLICATION

Appeal from an action of the Zoning Officer and/or petition for an interpretation of the Zoning Ordinance

Special Use, Class _____

Variance

Legal Advertisement: Request by Dustin Floyd for a Variance to the Front Yard Setback in a RS, Low Intensity Residential District. Property is located on the North side of Livengood Dr. approximately 350 feet west of the Old Thomasville Rd. intersection and is located at the address 154 Livengood Drive. Property is further described as Midway Township, Tax Map 10A, Lot 10 containing approximately 0.52 acre more or less.

Planning Board Meeting Date: _____ Public Hearing Date: _____

Planning Board Recommendation: _____

Signature, Applicant(s) 

Fee Paid
Receipt No.

Variance Application

Application No. 2-20-V

COUNTY OF DAVIDSON
STATE OF NORTH CAROLINA

APPLICATION FOR A VARIANCE

Month: Feb Day: 13 Year: 2020

TO THE DAVIDSON COUNTY BOARD OF ADJUSTMENT:

I, Dustin Sean Floyd, hereby petition the Board of Adjustment for a VARIANCE from the literal provisions of the Davidson County Zoning Ordinance because, under the interpretation given to me by the Zoning Enforcement Officer, I am prohibited from using the parcel of land described in the attached form ("Application for a Hearing") in a manner shown by the Plot Plan attached to that form. I request a variance from the following provisions of the ordinance (cite paragraph numbers):
Article 4, Dimensional Regulations, Section 4.06 Dimensional Standards for Accessory Structures A, (2) & Section 4.13 Table of Dimensional Requirements.

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

Request for a Variance of 16 feet to the 30 feet required front setback leaving a 14 foot setback from the front property line.

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE:

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance under the terms of the Davidson County Zoning Ordinance. A variance may only be allowed by the Board of Adjustment in cases involving practical difficulties or unnecessary hardships when substantial evidence in the official record of the application supports all five of the findings of fact listed below. In the spaces provided below, indicate the facts you intend to show and the arguments that you intend to make to convince the Board that it can properly find the following five required findings of fact:

- 1) That the alleged hardships or practical difficulties are unique and singular as regards the property of the person requesting the variance and are not those suffered in common with other property similarly located. Due to my first storage building reaching it's capacity it is necessary to add a secondary storage building to store and protect my belongings.

Staff Comment: Mr. Floyd's property is unique and singular due to the shape of his lot narrowing to a point in the rear. Mr. Floyd already has 1 storage building located in front of his residence and is asking for a second. The placement of Mr. Floyd's septic system makes his property unique and difficult to place a storage building in the rear yard.

2) That the alleged hardships and practical difficulties, which will result from failure to grant the variance, extend to the inability to use the land in question for any use in conformity with the provisions of this ordinance and include substantially more than mere inconvenience and inability to attain a higher financial return. Due to location of septic tank tail lines it will not be possible to fulfill the requirements of having a footing installed, which exists in the current location.

Staff Comment: It is the Board's job to determine if denying Mr. Floyd's request for a 2nd storage building rises to the level of "inability to use the land in question for any use in conformity with the ordinance." Multiple residential storage buildings are common accessory uses throughout the town and county.

3) That the variance, if allowed, will not substantially interfere with or injure the rights of others whose property would be affected by allowance of the variance. Location of building will not affect other person(s) that will travel in/out of the neighborhood. Current location allows sufficient visualization at stop sign of intersecting roads to see approaching traffic.

Staff Comment: No evidence has been submitted by the applicant to speak to property values. Unless Mr. Floyd submits evidence of maintenance for adjoining property values by an expert, staff feels that this finding is not met.

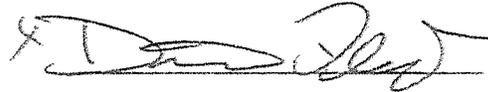
4) That the variance is in harmony with and serves the general intent and purpose of this ordinance. Secondary building as well as location of such are very common in this neighborhood as well as surrounding ones.

Staff Comment: In Staff's opinion, this part of Mr. Floyd's property is the only location that accessory structures can be located with street access. Being his 2nd storage building, the benefits and detriments of granting or denying the variance must be weighed as it would affect Mr. Floyd and the public in general.

5) That allowing the variance will result in substantial justice being done, considering both the public benefits intended to be secured by this ordinance and the individual hardships that will be suffered by a failure of the Board to grant a variance.

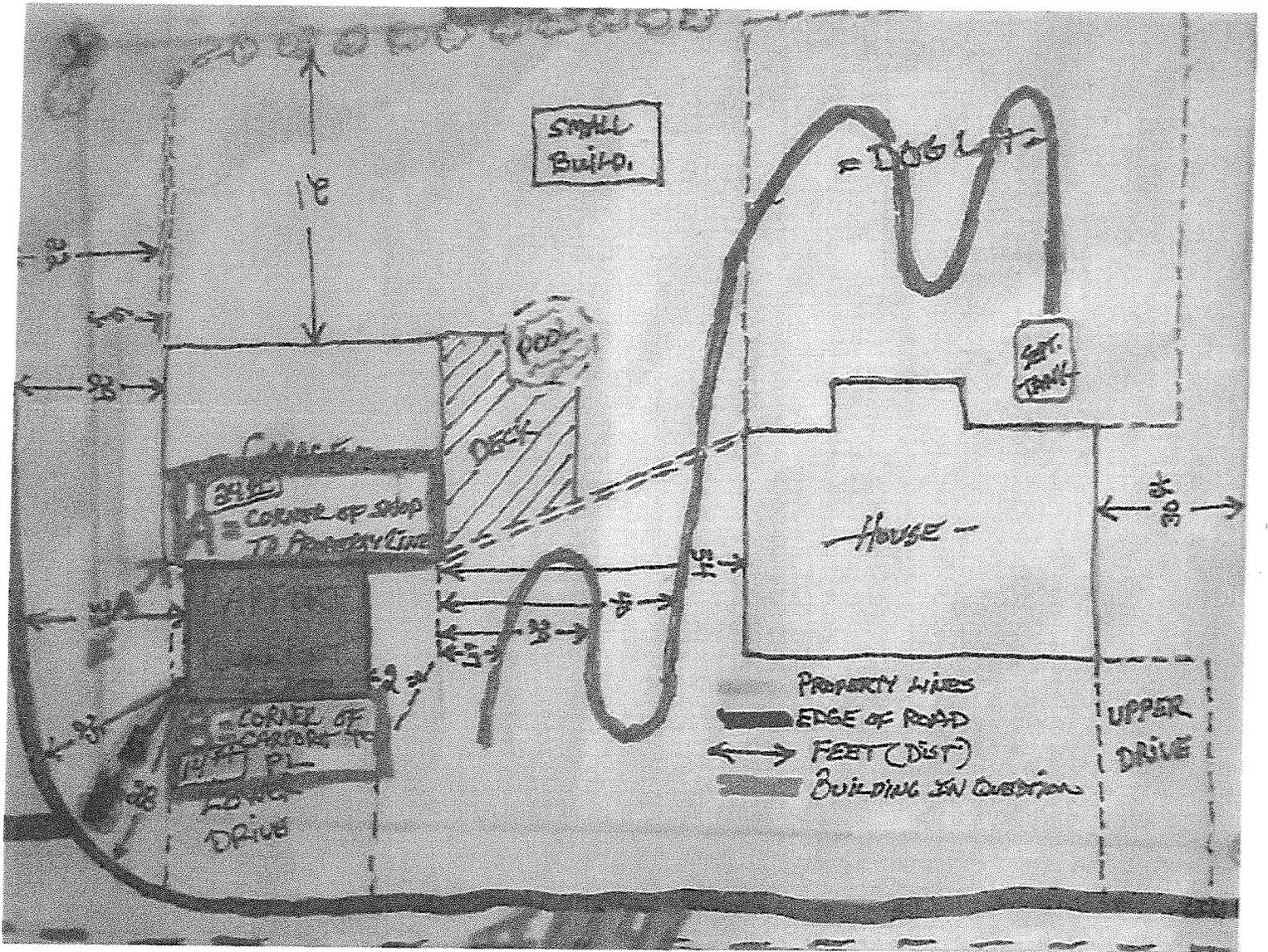
The extra storage will allow me to keep my belongings in a safe and dry place due to secondary building being used to it's fullest extent and will be in harmony with existing structures on property and appearance will not negatively impact the surrounding properties.

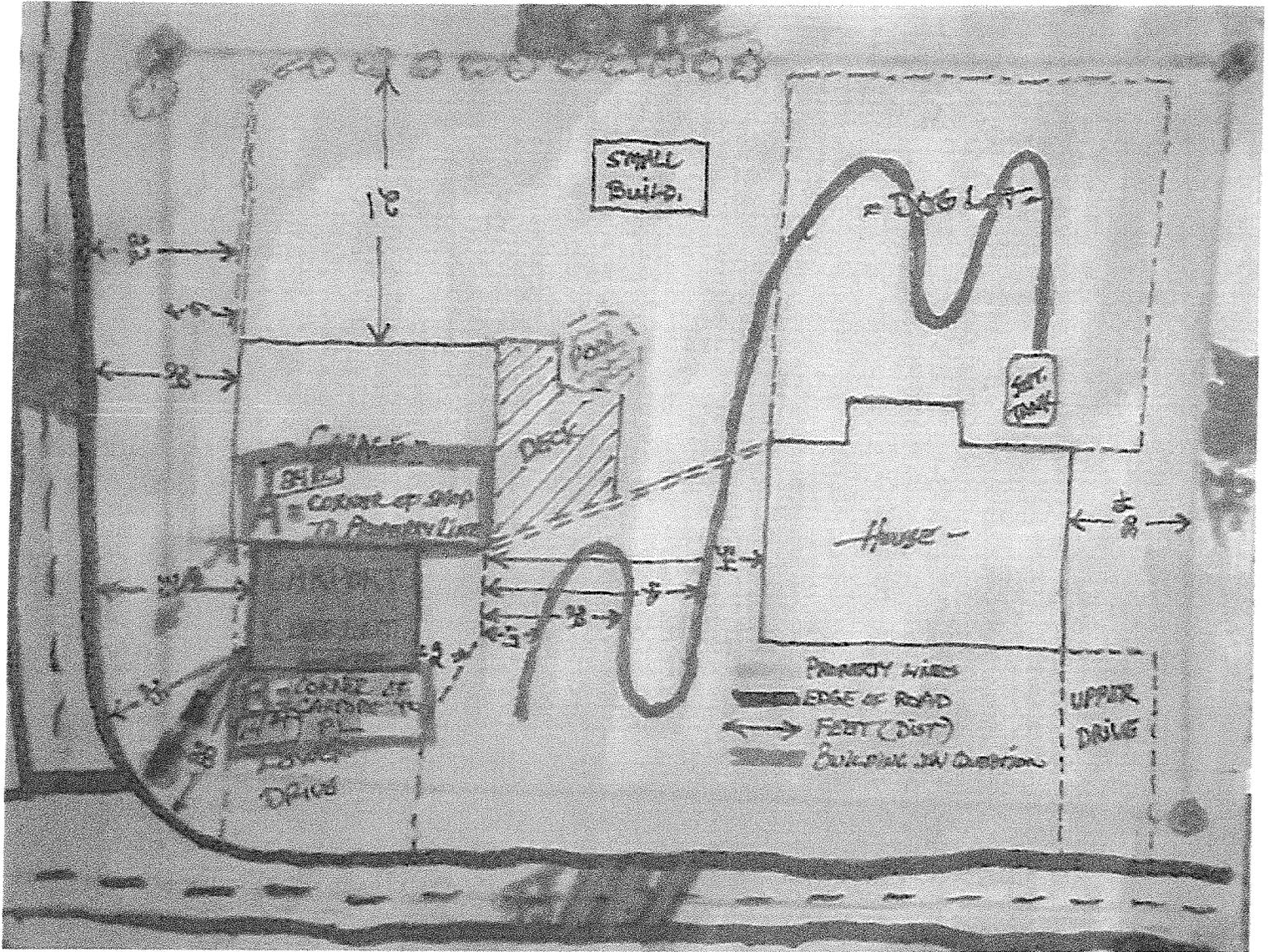
Staff Comment: Staff feels that the Board of Adjustment must set a precedent as to whether or not a denial of Mr. Floyd's request rises to the level of, "Not being able to use the land in question for any use in conformity with the ordinance." Mr. Floyd's property is unique and he can't physically meet the criteria of the ordinance with respect to placement of accessory structures. With a lack of evidence for Fact 3, which speaks (cont. below)
I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information, and belief.



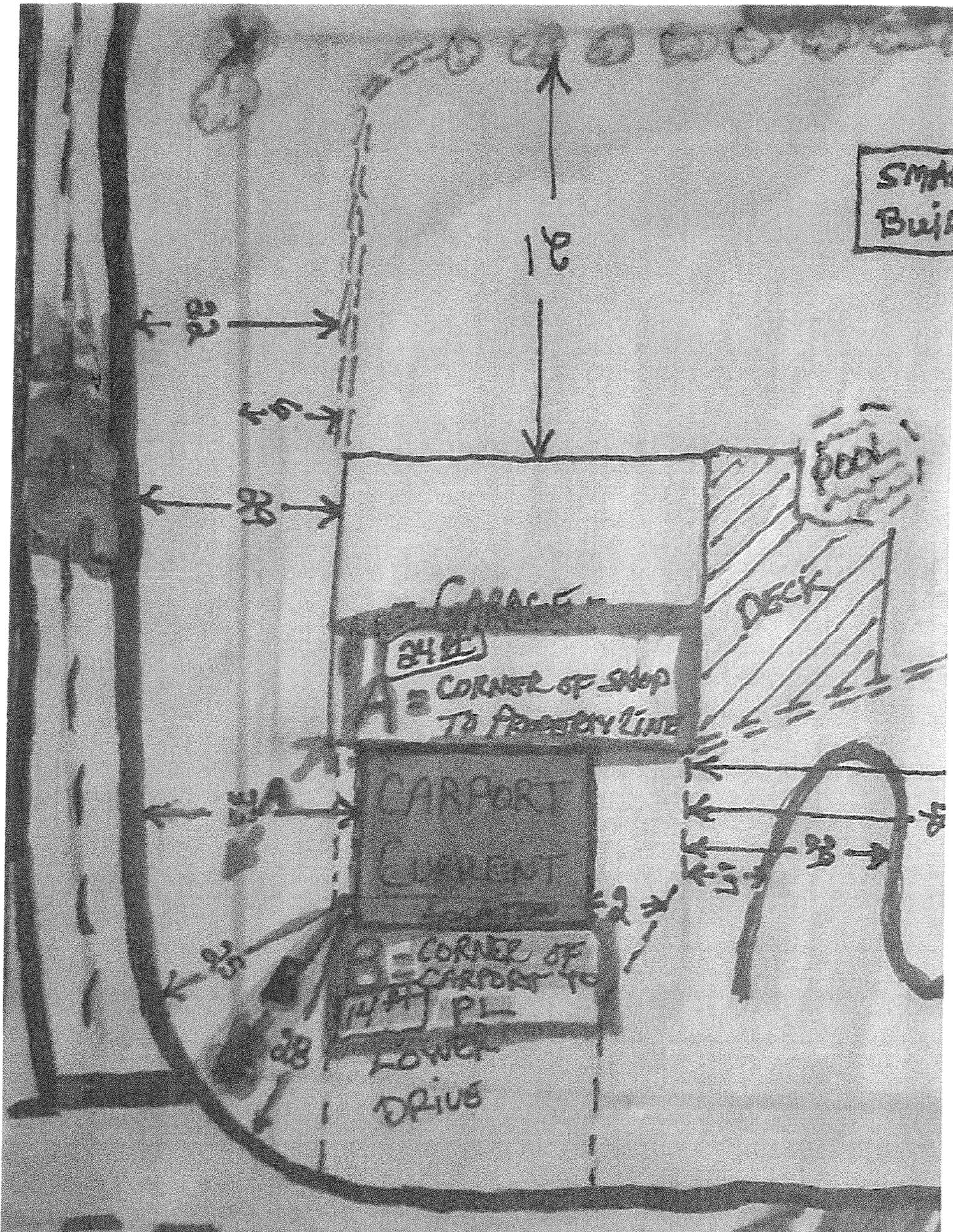
Signature of Applicant

-to the injury of other properties, staff feels the application must be denied.





SMALL
BUILDING



24 FT

A = CORNER OF SHOP
TO PROPERTY LINE

CARPORT
CURRENT

DECK

B = CORNER OF
CARPORT TO
10 FT PL

LOWER
DRIVE

22

10

28

28

24

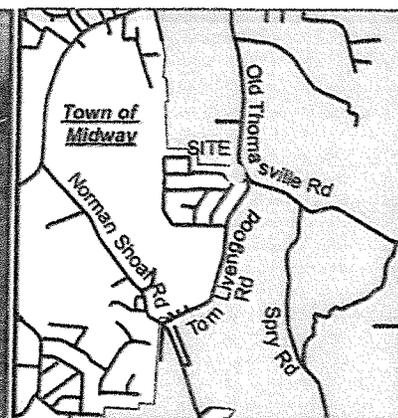
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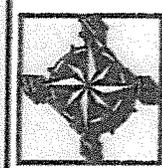
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28



Legend

- county
- centerlines
- SECONDARY
- INTERSTATE
- NCHWY
- USHWY
- ZONING BOUNDARIES
- PROPERTY LINES



Applicant:
DUSTIN SEAN FLOYD

Property Owner:
DUSTIN SEAN FLOYD

Scale: 1" = 200'	Drawn By: RLC
Date: 02/06/20	REVISED:

VARIANCE

**TO THE FRONT YARD SETBACK IN A RS,
LOW INTENSITY RESIDENTIAL DISTRICT**

MIDWAY TWSP., MAP 10A,
LOT 10, .52 ACRES + OR -

©2018 Aerial Photography

230 DECATURVILLE RD

**Dustin Sean Floyd
Variance Request**

The following information is provided for informational purposes only. It is not intended to constitute an offer of insurance or any other financial product. The information is subject to change without notice. Please contact your agent for more information.



Legend

- Property Lines
- Road Centerlines
- 2018 Photo

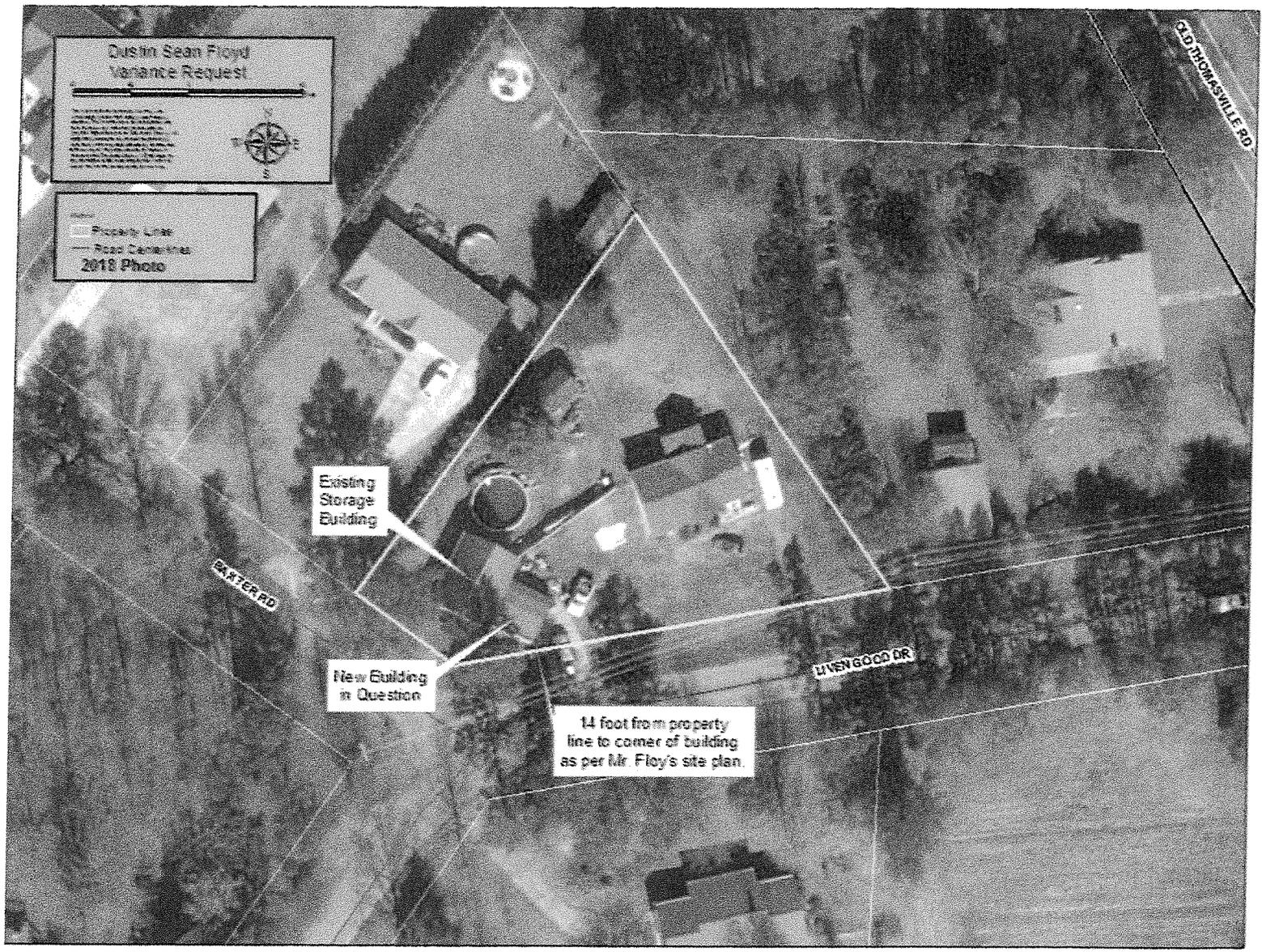
Existing Storage Building

New Building in Question

14 foot from property line to corner of building as per Mr. Floyd's site plan.

BARBER RD

WISYGOOD DR





Davidson County Planning Department

813 Greensboro Street
Post Office Box 1087
Lexington, North Carolina 27293-1087

Guy L. Comman, III
Planning Director

Toll Free Numbers
Lexington: 336-242-2220
Winston-Salem: 336-723-7890 ext. 2220
Denton: 336-859-2184 ext. 2220

Adjoining Property Owners

From the Tax Administrators Office as of:

02/10/2020

Parcel ID	Owner Name	Mailing Address
13010A0000296	MARTIN WILLIAM T	1710 SPRY ROAD WINSTON SALEM NC 27107-
13010A0000290	BALL JASON LANCE	159 LIVENGOOD DR WINSTON SALEM NC 27107
13010A0000086	COLVIN JAN P	110 PAM DRIVE WINSTON-SALEM NC 27107-
13010A0000014	NIFONG JARRET S	112 BAXTER ROAD WINSTON-SALEM NC 27107-
13010A0000010	FLOYD DUSTIN SEAN	154 LIVENGOOD DRIVE WINSTON SALEM NC 27107
13010A0000001	BRYAN TIM S	4345 OLD THOMASVILLE RD WINSTON SALEM NC 27107-

"Planning for a Better Tomorrow"

AFFIDAVIT OF PUBLICATION

STATE OF NORTH CAROLINA

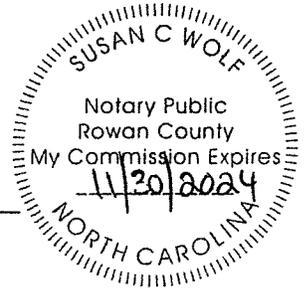
LEXINGTON, NC July 17, 2020

DAVIDSON COUNTY

I, Lynn Bowers OF THE DISPATCH, A NEWSPAPER PUBLISHED IN THE CITY OF LEXINGTON, COUNTY AND STATE AFORESAID, BEING DULY SWORN, SAYS THE FOREGOING LEGAL OF WHICH THE ATTACHED IS A TRUE COPY, WAS PUBLISHED IN SAID NEWSPAPER ONCE A WEEK FOR 2 WEEKS, BEGINNING THE 10th DAY OF July, 2020.

PUBLICATION FEE: \$ 271.00

Lynn Bowers (SEAL)



SWORN TO AND SUBSCRIBED BEFORE ME, THIS 17th DAY OF July 2020

Susan C. Wolf

MY COMMISSION EXPIRES 11/30/2024

Ad Copy:

STATE OF NORTH CAROLINA
COUNTY OF DAVIDSON

TOWN OF MIDWAY
NOTICE OF PUBLIC HEARING

VARIANCE REQUEST BY
DUSTIN SEAN FLOYD
154 LIVENGOD DRIVE,
WINSTON SALEM, NC 27107

THE PUBLIC IS HEREBY NOTIFIED:

Notice is hereby given that a Public Hearing will be held by the Town of Midway Board of Adjustment on July 28, 2020 at 5:00 PM in the Commissioners Meeting Room, Fourth (4th) Floor, Davidson County Governmental Center, 913 Greensboro Street in Lexington, North Carolina for the following zoning item listed below:

approximately 350 feet west of the Old Thomasville Road intersection and is located at the address 154 Livengood Drive. Property is further described as Midway Township, Tax Map 10A, Lot 10 containing approximately 0.52 acre more or less.

As a result of the Public Hearing, substantial changes might be made in the advertised proposal, reflecting objections, debate, and discussions at the hearing. All inquiries prior to the Public Hearing regarding the item mentioned above should be directed to the Davidson County Planning Department at (336)242-2220.

Persons with disabilities who may need special accommodations to participate in this meeting should notify the Planning Department at 336-242-2220 at least twenty-four hours prior to the start of the meeting.

TOWN OF MIDWAY

By: LeeAnn Tuttle-Thomas,
Chairperson Town of
Midway Board of
Adjustment

Linda A. Hunt,
Town Clerk

July 10, 17, 2020

ITEM #1: Request by Dustin Floyd for a Variance to the front yard setback in a RS, Low Intensity Residential District. Property is located on the north side of Livengood Drive