



NEW HANOVER COUNTY

ZONING BOARD OF ADJUSTMENT AGENDA

230 Government Center Drive, Lucie Harrell Conference Room, Wilmington, NC 28403

Members of the Board

Raymond Bray, Chair | **Henry "Hank" Adams**, Vice-Chair

Joe Miller | **Cameron Moore** | **Mark Nabell**

Board Alternates

Kristen Freeman | **Brett Keeler** | **Richard Kern**

Wayne Clark, Director of Planning & Land Use | **Sharon Huffman**, Deputy County Attorney

August 27, 2019, 5:30 PM

I. Call Meeting to Order (Vice-Chairman Hank Adams)

II. Official Approval of July Minutes (*currently in draft status*)

July Member Attendees: Hank Adams, Kristin Freeman, Joe Miller, Brett Keeler, Richard Kern

III. Regular Items of Business

1. **Case ZBA-940** - Stroud Engineering, P.A., applicant, on behalf of Maritime West Development, LLC, property owner, is requesting variances from the street yard plantings required per Section 62.1-10(2)(A) and the parking lot perimeters plantings per Section 62.1-5(2)(A) of the New Hanover County Zoning Ordinance. The property is located at 4320 US HWY 421 N, Wilmington, NC.

MINUTES

ZONING BOARD OF ADJUSTMENT

The New Hanover County Zoning Board of Adjustment held a regular and duly advertised meeting at 5:30 P.M. at the New Hanover County Government Center Complex, 230 Government Center Drive, in the Lucie Harrell Conference Room, Wilmington, NC, on Tuesday, July 23, 2019.

Members Present

Hank Adams, Vice- Chairman
Joe Miller
Brett Keeler
Kristin Freeman
Richard Kern

Members Absent

Ray Bray, Chairman
Cameron Moore
Mark Nabell

Ex Officio Members Present

Ken Vafier, Executive Secretary
Sharon Huffman, County Attorney
Ron Meredith, Current Planner
Denise Brown, Clerk

Vice-Chairman Hank Adams explained that the Zoning Board is a quasi-judicial board appointed by the Board of Commissioners to consider zoning ordinance variances from residents in New Hanover County where special conditions would create unnecessary hardships. The Zoning Board also hears appeals of the County's interpretation in enforcement of the Zoning Ordinance. The appellants have thirty days in which to appeal any decision made by the Board to Superior Court.

Vice-Chairman Adams inquired on corrections to the June 25, 2019 minutes.

Mr. Keeler made a motion to approve the June 25, 2019 minutes. Mr. Miller second the motion. The motion passed unanimously.

Vice-Chairman Adams made a statement prior to the case to inform the public that today's hearing is to listen to testimony regarding whether the request for the special exception for reasonable accommodation is "reasonable" and "necessary."

Vice-Chairman Adams stated the applicant and the opposition will each have a time limit of 15 minutes for testimony and an additional 5 minutes for rebuttal or additional time may be allotted as deemed necessary.

CASE ZBA-939

Vice-Chairman Adams swore in County staff, Mr. Ken Vafier and Mr. Ron Meredith.

Mr. Meredith presented an overview of the case to the board stating the petitioner, Mr. Heafner, on behalf of the property owners, Zachary and Ashley Paulovits, is requesting a special exception for reasonable accommodation under the Federal Fair Housing Act to deviate from the maximum number of 6 residents that may be allowed in a group home to allow up to 8 residents in a group home at 602 Everbreeze Lane. Mr. Meredith stated the proposal is specifically for an Oxford House Group Home for Disabled Persons.

Mr. Meredith stated the property is located in the northeastern section of New Hanover County in the Summer Glen subdivision. The group home is in the residential area located north of Gordon Road, west of Eaton Elementary, and east

of I-40. The site is zoned R-15, Residential District, consistent with the general zoning designation in the area. A group home with six (6) residents is allowed by-right in this district per the zoning ordinance.

Mr. Meredith reviewed the New Hanover County Zoning Ordinance definitions for *Group Homes* and *Disabled Persons* in the New Hanover County Zoning Ordinance.

Mr. Meredith presented an aerial photo of the subject site and the adjacent area which consists of single family residential homes.

Mr. Meredith provided history that in 2015 the definition of Group Homes and Disabled Persons were adopted in the New Hanover County Zoning ordinance via text amendment in order to add provisions allowing reasonable accommodations for this respective protected class under the Federal Fair Housing Act.

Mr. Meredith stated the amendment defined these two terms as well as parameters for group homes, in allowing the number of occupants, parking, distance from others group homes and the special exceptions provisions and procedures.

Mr. Meredith stated the Board of Adjustment has the ability to decide on special exceptions under the Fair Housing Act.

The approval process set forth in Section 121-3 of the New Hanover County ordinance for variances and appeals shall to special exception requests. Mr. Meredith stated the approval criteria for a special exception request, that if the Board of Adjustment finds greater weight in reasonable accommodation will be determined that will not undermine the legitimate purpose and effects of the existence regulations such as financial or administrative burden on the county.

Mr. Meredith stated an accommodation shall be determined necessary if it will provide direct and meaningful therapeutic of the effects of the particular disability or handicap. This act will afford handicap or disabled person equal opportunity to enjoy housing.

Mr. Vafier stated typically the board decides on variance hearings however, with special exception requests the board is tasked with deciding if factors presented by the applicant meet the criteria to be determined reasonable and necessary.

Mr. Meredith stated the county tax records indicate the residence is 3 bedrooms and 3 bathrooms to accommodate the residents. The applicant can provide specific information on the accommodations and function within the residence as it relates to the Oxford House model.

Mr. Kern inquired of other group homes in the vicinity.

Mr. Meredith stated the nearest group home is 3,800 sf distance from 602 Everbreeze Lane.

Mr. Vafier added the minimum required distance from group homes is 2,000 sf. In this case hearing the applicant is meeting the group home distance requirement.

Mr. Miller stated to clarify today's proceeding that by right upon the 2015 text amendment implemented by the County Commissioners group homes are allowed to house 6 individuals in a home.

Mr. Keeler inquired of the bedrooms in the home.

Mr. Meredith stated the tax records stated the home has 3 bedrooms, however there may have been a modification to the residence. Mr. Meredith stated the applicant can clarify bedroom totals.

Ms. Freeman inquired of any Home Owners Association rules in place to the residence.

Mr. Vafier stated the county enforces zoning regulations only. All HOA enforcement is administered by the neighborhood association. Mr. Vafier also stated the county does not inspect bedrooms in these homes, however for this case the packet submitted to board members the application stated the home has four bedrooms. County tax records includes the home contains 3 bedrooms.

Mr. Meredith stated homes can be converted adding bedrooms however the number of bedrooms should not affect the decision on case hearing.

The Vice- Chairman then swore in Mr. Greg Heafner, Ms. Jacklyn Feliciano, Ms. Donna Griffith, Ms. Shanda Bordeaux, and Ms. Karen Conzema.

Mr. Greg Heafner, PLLC- Mr. Heafner stated he is representing Oxford House in today's proceedings; the owner of the home is leasing the house to the residents who participate in the Oxford House model. Mr. Heafner explained that Oxford House is a recovery program for people suffering from alcoholism or drug addiction. The home is located at 602 Everbreeze Lane with four bedrooms. Mr. Heafner stated there has been some modification to the residence, the house currently has five bedrooms.

Mr. Heafner stated he is requesting a special exception for reasonable accommodation under the Federal Fair Housing Act to increase residents at the Oxford House from 6 people to 8 people as the New Hanover Zoning Ordinance allows per Section 63.11(1).

Mr. Heafner stated the two extra people is necessary for the house to succeed. The residents support themselves; with an increase of residents to eight (8) the residents will benefit successfully in participating and meeting financial burden.

There is a therapeutic benefit in having more people in the house; all the residents support each other's goals. There is no financial burden to the county anticipated.

Mr. Heafner gave history that the first Oxford Home was established in the county in 1975 and there are over 200 Oxford Houses in NC. A home must be chartered by Oxford House and follow the manual and model standards that Oxford House operates under. Since 1990, the state has contracted with the Oxford House to provide residency for individuals requesting transitional housing.

Mr. Heafner stated the residents will elect home officials to ensure all chores, home guidelines, rules and utilities are properly attended. The residents all work together cohesively for the success of the Oxford House model. Mr. Heafner stated all Oxford House homes are leased with no profit to the Oxford House agency. The residents of Oxford Homes can reside for as long as they want; there is no time limit of residency for the participants. Mr. Heafner stated historically in NC, residents of Oxford House typically live in the homes for a year and a half. The homes are not coed.

Primarily the homes serve as a transition residence for individuals who have completed rehabilitation programs or who have elected to stay at Oxford House due to lack of individual family environment. The men will abide by standards established by the Oxford House model; there has been no incident to demonstrate that the home has a negative impact on the community. Mr. Heafner stated there is no evidence presented that stated this home will increase a financial burden on New Hanover County.

There are three rules for all residents to comply with: they will be self-supporting, self-governing, and there shall be no use of alcohol or drugs.

Mr. Heafner stated Oxford Houses are not half way houses or substance abuse centers and there is no treatment provided at the residence by any sort of staffing. The houses are used for residential living. Mr. Heafner implore the board to consider the request of the special exception for reasonable accommodation under the Federal Fair Housing Act to increase residents at the Oxford House from 6 people to 8 people as the New Hanover Zoning Ordinance allows.

Mr. Heafner stated residents who have been in residency for a long time at the home are typically awarded a bedroom without a roommate. However, usually all bedrooms are occupied by two residents. Mr. Heafner stated the home is for male residency only. The location of the home is good for the residents to access the bus route for transportation.

Mr. Heafner stated DePaul University surveyed the Oxford House model and determined eight (8) people or greater is an ideal number in a group setting for therapeutic value among recovery persons in sobriety.

Mr. Heafner concluded that the board is tasked with deciding if the request is reasonable and necessary. There is no administrative burden to the county and fundamentally the request does not change the zoning character of the neighborhood.

Currently, there are three existing Oxford Houses in the county's jurisdiction and there is no record of incident at the homes.

Mr. Miller inquired is the home currently operating with six residents.

Mr. Heafner stated the house opened in mid-July with less than six residents.

Vice-Chairman Adams inquired of other individuals with vary disabilities be allowed to live at the homes.

Mr. Heafner stated he's not aware of other residents with varied disabilities being allowed to live at the homes other than those specified with drug and or alcohol abuse. Mr. Heafner stated he has no knowledge of these individuals being excluded.

Mr. Keeler inquired of incident reports to homes being a burden to the county.

Mr. Vafier stated he's not aware of any zoning formal complaints at the Oxford Homes with additional residency.

Ms. Huffman stated she contacted the 911 Director regarding calls from the other three (3) existing Oxford Houses in the unincorporated area responding to incidents and there were none on record.

Ms. Freeman inquired of the Oxford House on Lullwater Drive in the city limits and its status with six (6) residents.

Ms. Jacklyn Feliciano - Oxford House Representative – Ms. Feliciano stated she's been working with the Oxford House organization for four (4) years and potential residents are always inquiring of a vacancy. Ms. Feliciano stated the homes provide a need for these individuals due to the population has increased with opioid substance.

Ms. Feliciano stated it's not usual for an Oxford House to have one to two vacancies. One of the homes in the city's jurisdiction is being purchased by NC DOT due to road expansion and currently Ms. Feliciano is searching for another residence to house the displaced tenants. Ms. Feliciano stated the City and the County have different zoning regulations for homes to adhere and some of the homes in the city have not requested additional residents as allowed.

Currently the home on Lullwater Drive has less than eight residents and functions however it has a high turnover. However, the Oxford House Chapter was able to assist to maintain sufficient occupancy for the home to function successfully.

Ms. Feliciano stated there are a total of eleven (11) Oxford Houses in New Hanover County seven (7) Oxford Homes are located in the City of Wilmington and four (4) Oxford Houses are located in the unincorporated areas of the county.

Mr. Miller inquired of how does the Oxford House communicate with the community in regards to house incidents that may impact the neighborhood.

Ms. Feliciano stated she is in communication with the neighbors that adjacent the Oxford House to address concerns.

OPPOSITION:

Ms. Donna Griffith-602 Blackburn Court (neighbor)- Ms. Griffith shared her concerns of the oversight how the home is managed. Ms. Griffith stated there should be limits on rental agreements with the owners of the homes and residents in assisting in the individuals to be self-sustained. Ms. Griffith stated the application was submitted for residents to follow the Federal Fair Housing Act, however she believes the individuals should monitor in staying at the house, if residents do not participate appropriately the disabled class should be revoked per the agency requirements in meeting the requirements.

Ms. Shanda Bordeaux-605 Everbreeze Lane (neighbor)- Ms. Bordeaux stated she supports and in favor of the Oxford House model and individuals rebuilding life choices to become productive citizens in the county. However, Ms. Bordeaux stated the Oxford House submitted an application on June 18th to the county misrepresenting themselves to house an eight (8) resident group home for women. Ms. Bordeaux stated the house should not be operational if zoning approval was not obtained to operate with eight (8) residents prior to the hearing. Ms. Bordeaux stated she took photos of the residents at the home and it is primarily men coming in and out of the resident.

Ms. Bordeaux stated the four (4) bedroom house was sold on June 11th, however in the Oxford House application it states the house is five bedrooms. Ms. Bordeaux stated on July 16 she contacted the Inspections Department regarding permit status being on file for the additional bedroom being added to the residence and no record was on file. Ms. Bordeaux stated the Oxford House website stated they are a not for profit however with the proposed rent of the home is on the higher level for residents to adhere to appears to be steep. Ms. Bordeaux stated this group home in the community will lower the property value.

Ms. Bordeaux stated she's concerned with the deceitfulness of the applicant in the inconsistency of the application submitted to the county on behalf of the Oxford House. She's concerned of lack of oversight of the Oxford House.

Ms. Greg Heafner - (Rebuttal) Mr. Heafner stated there was an error in that he indicated the incorrect gender of the residents that will reside at 602 Everbreeze Lane. Mr. Heafner stated in regards to the opposition testimony, none of the neighbor concerns relate to the reasonable and necessary.

Vice-Chairman Adams inquired on how is the house monitored for other inappropriate behaviors.

Mr. Heafner stated the house will only have men residing at the group home. The Oxford House manual specifically states if a resident uses they are asked to leave the home. Mr. Heafner stated if the house falls on hard times or behavioral issues they will meet with other residents in the Oxford Chapter and discuss a resolution to bring the house to a successful manner. Mr. Heafner stated the behaviors are monitored by the residents and persons can be voted out of the home residency. Mr. Heafner stated the Oxford Homes have resources to address issues that may arise in this area.

Ms. Feliciano –(Rebuttal) Ms. Feliciano stated if residences are found to encroach any of the basic principles of the Oxford module they may be asked to leave the home. Ms. Feliciano stated Oxford manual and principles are followed; they have been successful in providing housing to substance abuse residents who enroll in the program for the past 44 years. Ms. Feliciano stated the residents are fairly new to recovery and some issues do arise but they are addressed early on for positive outcome. There is typically a core member who is familiar with the group home process as a guide.

Ms. Feliciano stated there are three basic principles to the Oxford House success the residents must comply. There is zero tolerance for drug or alcoholic use. Ms. Feliciano stated if a resident is found or suspected of using any substance they will be immediately asked to leave the home. All residences must pay and maintain their own share of expenses. The resident cannot be found to be disruptive in behavior. It is not a requirement to have multiple residents in the bedrooms,

however, there is a therapeutic value to the residents in sharing a bedroom. There are three double bedrooms and 2 single bedrooms. The garage was converted into a bedroom.

Ms. Griffith-(Rebuttal)- Ms. Griffith stated that due the home being subject to the Federal Fair Housing Act, the home must follow more laws than testimony presented. Ms. Griffith stated there is a high level of mental issues in homes with individuals with drug or substance recovery in literature. Ms. Griffith stated to live in the home there should be some exclusions, due diligence, and government oversight to these homes. Ms. Griffith stated that according to Section 63.11 of the zoning ordinance, the group home should not be operational today without permit approval.

Ms. Vafier stated there is a review of a commercial facility packet requesting an 8-member group home. Mr. Vafier stated currently the home has three (3) residents living in the home and not active as a group home.

Ms. Karen Konzema-813 Worthington Way - (Rebuttal) Ms. Konzema presented literature regarding the residents who live near various Oxford Houses and these residents stated they witnessed ongoing issues at the residences. Ms. Konzema stated some parents of these group homes have given testimony that similar group homes like the Oxford House struggle with day to day situations and some have committed suicide.

Ms. Konzema stated the home is located in a cul-de-sac and a bus stop is close but she is concerned for safety of the multiple children that reside and the Oxford House residents will require walking through the neighborhood to travel to the bus stop location. Ms. Konzema stated the home in her opinion is not a good location for a group home.

PUBLIC HEARING CLOSED.

BOARD DISCUSSION:

Ms. Huffman presented a draft order for the board in their task to consider the special exception.

Mr. Keeler inquired if the board has authority to place conditions on the request.

Ms. Freeman stated that she is unsure of the necessity for the additional members in the home.

Ms. Huffman stated the board is tasked with approving or denying the request. Due to the special exception request, conditions do not apply to the group home request.

Vice-Chairman stated that the task is to decide if the request is reasonable and necessary as to amelioration of the effects of the disability and resident's equal opportunity to enjoy housing.

Ms. Huffman gave a history of the Commissioners approval of a text amendment in 2015 that allows group homes of six (6) members to reside in the unincorporated area of the county however, applicants could apply for an eight (8) member group home through the special exception approval process.

Ms. Huffman stated in the City of Wilmington's residential zoning districts eight (8) members are allowed to reside in a group home by-right without additional board approval.

Ms. Huffman stated the home must comply with neighborhood Home Owners Association if applicable.

Mr. Miller inquired of a motion to include all findings of facts.

Ms. Huffman stated the findings showing reasonable and necessity could be directed to items listed in notation and the application received for the special exemption by the applicant collaborating in draft with staff for the language.

Mr. Keeler stated in his research of case studies, there is a therapeutic value with 8 residents living together. Mr. Keeler stated with evidence presented the special exception request is reasonable and necessary.

Ms. Freeman agreed with Mr. Keeler's statement.

Mr. Kern made a motion to approve the special exception based on evidence presented by the applicant stating there is no burden to the county administration; no changing in zoning and there is a therapeutic benefit to eight (8) residents living together. The residents should enjoy greater equal opportunity in housing with an eight (8) member household.

Mr. Keeler second the motion.

The motion was unanimously approved.

All ayes to the motion presented.

BOARD DECISION:

On a motion by Mr. Richard Kern and seconded by Mr. Brett Keeler, the board voted 5-0 to grant the special exception request to allow up to 8 residents to reside in the group home at 602 Everbreeze Lane, Wilmington NC.

The Board's decision was based on the following conclusions and findings of fact:

1. **It is the Board's conclusion that, the request to deviate to eight from the limit of six disabled persons living together in a group home at 602 Everbreeze Lane is reasonable.** This conclusion is based on the following FINDINGS OF FACT:
 - The request does not place any additional financial or administrative burden on the county.
 - Allowing two additional persons to the proposed group home in which 6 persons are permitted by-right does not fundamentally alter the zoning scheme at this location.
 - The proposal meets all Zoning Ordinance requirements.
2. **It is the Board's conclusion that the request to deviate to eight from the limit of six disabled persons living together in a group home at 602 Everbreeze Lane is necessary.** This conclusion is based on the following FINDINGS OF FACT:
 - Residents in a group home operated by The Oxford House, Inc., support each other in defined household roles and living accommodations, limiting the need for paid staff on-site, which provides direct and meaningful therapeutic amelioration of the effects of the disability for the residents.
 - The allowance of 8 persons in a typical Oxford House is a model that has an increased rate of success for its' residents, and provides direct and meaningful therapeutic amelioration of the effects of the disability for the residents.

There being no further business before the board, it was properly moved by Vice-Chairman Adams and seconded by Mr. Keeler to adjourn the meeting. All ayes.

MEETING ADJOURNED.

Please note the minutes are not a verbatim record of the proceedings.

Executive Secretary

Chairman

DATE: _____

VARIANCE REQUEST
ZONING BOARD OF ADJUSTMENT
August 27, 2019

CASE: ZBA-940, 8/19

PETITIONER: Stroud Engineering, P.A., applicant, on behalf of Maritime West Development, LLC, property owner.

REQUEST: Variances from the parking lot perimeter planting requirements per Section 62.1-5(2)(A) and the street yard planting requirements per Section 62.1-10(2)(A) of the New Hanover County Zoning Ordinance.

LOCATION: 4320 Highway 421 N
PID: R02400-001-048-000

ZONING: I-2, Heavy Industrial District

ACREAGE: 11.45 Acres

PETITIONER'S REQUEST:

Stroud Engineering, P.A., applicant, on behalf of Maritime West Development, LLC, property owner, is requesting two variances related to landscaping requirements on the site. The Zoning Ordinance requires the provision of parking lot perimeter landscaping with 5 or more parking spaces or 2,500 square feet or more devoted to vehicular use. Street yard landscaping is required for new construction of principal structures or expansions to existing structures, or whenever additional off-street parking is required. In general, the Zoning Ordinance states that the purpose of providing landscaping is to address visual character, aesthetics, glare, dust, noise, runoff, and other potential impacts associated with development. The applicant is proposing variances from two separate sections of the Zoning Ordinance:

- (A) A variance from the parking lot perimeter requirement to plant 32 deciduous or evergreen trees required per Section 62.1-5(2)(A) of the ordinance. The applicant has proposed planting ornamental grasses on a raised berm in lieu of the parking lot perimeter requirements.
- (B) A variance from the required 104 understory trees and 208 shrubs that would be required to satisfy the street yard landscaping requirements per Section 62.1-10(2)(A) of the ordinance. The applicant is proposing 52 understory trees and 104 shrubs in order to provide half of the required street yard plantings.

The applicant contends that multiple utility easements adjacent to US Highway 421, stormwater features, and the need for adequate access within the proposed development do not allow for the site to be designed to accommodate the required plantings. The surveyed locations of each easement on the property with the accompanying restrictions have been provided by the applicant and are included as attachments to this summary.

BACKGROUND AND ORDINANCE CONSIDERATIONS:

The subject property consists of 11.45 acres located on the eastern side of US Highway 421 N and is zoned I-2, Heavy Industrial. Currently, there is an existing 6,240 sq. ft. building located in the northwestern corner of the property. The applicant intends to construct 7 separate warehouse buildings, totaling 34 units and 132,100 square

feet, on the remainder of the site for general warehousing. As the proposal will require additional off-street parking exceeding 5 parking spaces, the provision of parking lot perimeter and street yard landscaping is required.

The applicable language in the Zoning Ordinance in Section 62.1-5 addresses landscaping in parking lot areas:

62.1-5: Additional Landscaping Requirements for Parking Lots

(2) Design Criteria - Landscaping shall be required for parking lot perimeters and for parking lot interiors.

(A) Parking Lot Perimeters - A landscaped strip ten (10) feet in width shall be required along any side of a parking lot abutting a street right-of-way, separate parking lot or residentially zoned property. This landscaping shall consist of, at a minimum, one 3" caliper evergreen or deciduous tree every eighteen (18) to twenty-seven (27) feet. If a buffer strip is required in accordance with Section 62.1-4, then the ten-foot width may be included as part of the buffer strip. (4/2/90) The landscaped strip may be interrupted by driveway connections between parking lots. If adjacent parking lots are developed concurrently then both properties can install a minimum of 5 ft. strip or any multiple agreed upon in writing by the two property owners that would equal 10 ft. of planted area between the parking lots. Adjacent lots that choose to share a double parking row split along the middle of a drive isle are exempt from this requirement.

The parking lot perimeter landscaping requirements consist of one 3" caliper evergreen or deciduous tree every 18 to 27 feet along a parking lot abutting a street right-of-way. With the proposed development of this site, 32 trees would be required to meet the parking lot perimeter standards. The applicant is asking for a variance from the parking lot perimeter planting requirements in lieu of the street yard plantings as well as the provision of ornamental grasses on a raised berm to provide vegetative screening.

Additionally, applicable language from Section 62.1-10 of the Zoning Ordinance requires all new construction or expansions to install street yard landscaping consisting of planted trees and shrubs:

62.1-10: Street Yard Landscaping

(1) A street yard, as defined herein, must be provided for new construction of principal structures or for expansions to existing structures or used whenever additional off-street parking is required. However, no street yard improvements shall be required for those portions of lot frontage used for driveways constructed in accordance with County or State driveway regulations.

(2) It is intended that street yards be landscaped by meeting the following requirements:

*(A) For every 600 sq. ft. of street yard area, the street yard shall contain:
One Canopy/Shade tree, (3"caliper) minimum or 3 understory story trees, six ft. in height, only when overhead power lines exist above the street yard; and six shrubs, 12" in height at planting.*

(5) The Street yard area is calculated by:

Step One: Multiplying the designated street yard factor in accordance with the zoning designation of the property by the linear street frontage of the property less the road fronting width of any access drives within the street yard to determine the base street yard area;

Step Two: Subtracting the area of any walkways, sidewalks or other bicycle and pedestrian facilities, and transit amenities from the base street yard area to get the total required street yard area.

The applicant may install the street yard in any configuration that provides the required amount of street yard square footage between the property line and any site improvements. The maximum and minimum widths as listed in the following table may not be exceeded in any portion of the street yard. (10/7/13)

Zoning District	Streetyard Factor	Max	Min
B-2, I-1, I-2, A-1	25	37.5	12.5
B-1, O&I, EDZD, High Density	18	27	9
Non-Residential uses in Residential Districts	12	18	8

When applying the formula specified above, using the designated street yard factor of 25 for the I-2 Zoning District, the base street yard area totals 20,825 square feet:

863 Linear Feet of Street Frontage – 30 Linear Feet of Driveway = 833 Linear Feet of Street Frontage
 833 Linear Feet of Frontage x 25 = 20,825 sq. ft.

When applying the number of canopy trees and shrubs specified in Section 62.1-10(2)(A), the required number of plantings for this site are 35 canopy trees or 104 understory trees and 208 shrubs, all of which must be planted in a width ranging from 12.5' to 37.5' along the street frontage.



Figure 1: Recorded easements on property adjacent to US Highway 421 N in area of required landscaping.

The applicant contends that difficulties arise with providing the required number of plantings due to restrictions on vegetation within the multiple utility easements, which generally address interference with overhead lines and underground transmissions. The Zoning Ordinance allows for three understory trees to be planted for every canopy tree that would be required where the street yard is below overhead power lines. With the characteristics of the site, 104 understory trees would be required to be planted within the street yard area. Due to the presence of the easements along the street frontage, the available space for the planting of the required vegetation is limited.

The applicant has submitted a landscaping plan that proposes 52 understory trees and 104 shrubs, which is approximately half of the required plantings at this site.

In summary, the applicant is requesting a variance from the parking lot perimeter planting requirements detailed in Section 62.5-(2)(A) of the Zoning Ordinance. In addition, the petitioner is also requesting a variance from the street yard planting requirements in order to plant half of the required understory trees and shrubs as required in Section 62.1-10(2)(A).

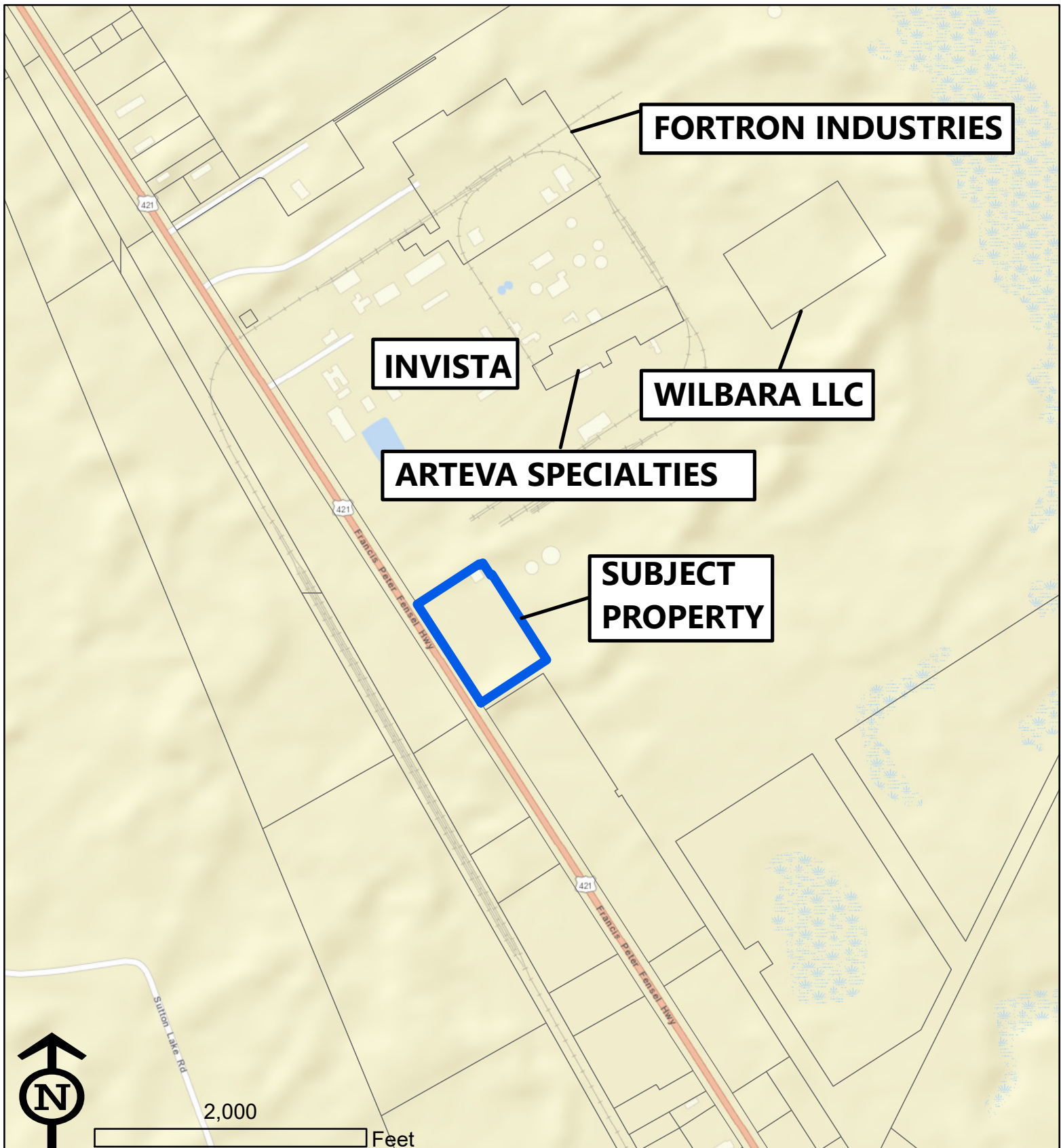
BOARD OF ADJUSTMENT POWER AND DUTY:

The Board of Adjustment has the authority to authorize variances from the terms of the Zoning Ordinance where, due to special conditions, a literal enforcement of the regulations would result in unnecessary hardship. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with the Zoning Ordinance. A concurring vote of four-fifths (4/5) of the voting members of the Board shall be necessary to grant a variance. A variance shall not be granted by the Board unless and until the following findings are made:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

ACTION NEEDED (Choose one):

1. **Motion to approve the variance request based on the findings of fact (with or without conditions)**
2. **Motion to table the item in order to receive additional information or documentation (Specify).**
3. **Motion to deny the variance request based on specific negative findings in any of the 4 categories above.**



Case: ZBA-940

Address: 4320 Highway 421 N

Variance request: Variances from the parking lot perimeter planting requirements and the street yard planting requirements

Applicant: Stroud Engineering, P.A.

Owner: Maritime West Development, LLC

New Hanover County Zoning Board of Adjustment

Vicinity Map

August 27, 2019



Case: ZBA-940

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New Hanover County Zoning Board of Adjustment

Easement Map

August 27, 2019



Case: ZBA-940

Address: 4320 Highway 421 N

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Applicant: Stroud Engineering, P.A.

Owner: Maritime West Development, LLC

New Hanover County Zoning Board of Adjustment

Aerial Map

August 27, 2019



NEW HANOVER COUNTY

ZONING BOARD OF ADJUSTMENT

230 Government Center Drive, Lucie Harrell Conference Room, Wilmington, NC 28403

Members of the Board

Raymond Bray, Chair | **Henry "Hank" Adams**, Vice-Chair

Joe Miller | **Cameron Moore** | **Mark Nabell**

Board Alternates

Kristen Freeman | **Brett Keeler** | **Richard Kern**

Wayne Clark, Director of Planning & Land Use | **Sharon Huffman**, Deputy County Attorney

ORDER TO GRANT/DENY A VARIANCE – Case ZBA-940

The Zoning Board of Adjustment for New Hanover County, having held a public hearing on August 27, 2019 to consider application number ZBA-940, submitted by Stroud Engineering, P.A., on behalf of Maritime West Development, LLC, a request for a variance to use the property located at 4320 US Highway 421 N in a manner not permissible under the literal terms of the ordinance and having heard all the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

1. It is the Board's conclusion that, if the applicant complies with the literal terms of the ordinance, specifically the parking lot perimeter planting requirements in Section 62.1-5(2)(A) and the street yard planting requirements in Section 62.1-10(2)(A) of the New Hanover County Zoning Ordinance, that an unnecessary hardship would result/would not result. *(It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.)* This conclusion is based on the following FINDINGS OF FACT:

- _____.
- _____.
- _____.
- _____.

2. It is the Board's conclusion that the hardship of which the applicant complains results/does not result from unique circumstances related to the subject property, such as location, size, or topography. *(Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.)* This conclusion is based on the following FINDINGS OF FACT:

- _____.
- _____.
- _____.
- _____.

3. It is the Board's conclusion that the hardship did/did not result from actions taken by the applicant or the property owner. *(The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.)* This conclusion is based on the following FINDINGS OF FACT:

- _____.
- _____.
- _____.
- _____.

4. It is the Board's conclusion that, if granted, the variance will/will not be consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT:

- _____.
- _____.
- _____.
- _____.

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE from New Hanover County Zoning Ordinance to allow variances from the parking lot perimeter requirements in Section 62.1-5(2)(A) and the street yard planting requirements in Section 62.1-10(2)(A) of the New Hanover County Zoning Ordinance be GRANTED/DENIED, subject to the following conditions, if any:

ORDERED this 27th day of August, 2019.

Henry Adams, Vice-Chairman

Attest:

Kenneth Vafier, Executive Secretary to the Board

NEW HANOVER COUNTY

DEPARTMENT OF PLANNING & LAND USE

230 Government Center Drive, Suite 110

Wilmington, North Carolina

Telephone (910) 798-7165

FAX (910) 798-7053

planningdevelopment.nhcgov.com



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AUG - 6 2019

VARIANCE Application

NEW HANOVER COUNTY
PLANNING & ZONING

Applicant/Agent Information		Property Owner(s) <i>If different than Applicant/Agent</i>	
Name DAVID L. MENIUS, P.E.		Owner Name MARITIME WEST DEVELOPMENT, LLC	
Company STROUD ENGINEERING, P.A.		Owner Name 2 BY: SCOTT GEROW, MEMBER	
Address 102-D CINEMA DRIVE		Address PO BOX 789	
City, State, Zip WILMINGTON, NC 28403		City, State, Zip CASTLE HAYNE, NC 28429	
Phone 910-815-0775		Phone 910-821-1735	
Email LMENIUS@STROUDENGINEER.COM		Email SGEROW@AOL.COM	
Subject Property Information			
Address/Location 4320 US HWY 421 NORTH WILMINGTON, NC 28401			
Parcel Identification Number(s) RO2400-001-048-000			
Total Parcel(s) Acreage 11.45			
Existing Zoning and Use(s) I-2, LAND USE CODE 281 (CHEMICAL AND ALLIED)			
Application Tracking Information		(Staff Only)	
Case Number ZBA-940	Date/Time received: August 6, 2019 - 4:30 pm	Received by: Lgr	

Energov - VAR-19-0006

PROPOSED VARIANCE NARRATIVE

Subject Zoning Regulation, Chapter and Section: 62.1-10 (2)(A) and 62.1-5 (2)(A)

In the below space, please provide a narrative of the application. (Additional pages may be attached to the application if necessary).

SEE ATTACHED

CRITERIA REQUIRED FOR APPROVAL OF A VARIANCE

The Zoning Board of Adjustment may grant a variance if it finds that strict application of the ordinance results in an unnecessary hardship for the applicant, and if the variance is consistent with the spirit, purpose, and intent of the ordinance. The applicant must explain, with reference to attached plans (where applicable), how the proposed use meets these required findings (please use additional pages if necessary).

1. **Unnecessary hardship would result from strict application of the ordinance.** *It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.*

SEE ATTACHED

2. **The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardship resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or general public, may not be the basis for granting a variance.**

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SEE ATTACHED

AUG - 6 2019

NEW HANOVER COUNTY
PLANNING & ZONING

3. **The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.**

SEE ATTACHED

4. **The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.**

SEE ATTACHED

APPLICATION REQUIREMENTS

Staff will use the following checklist to determine the completeness of your application. Please verify all of the listed items are included and confirm by initialling under "Applicant Initial". Staff will not process an application for further review until it is determined to be complete.

Required Information		Applicant Initial	Staff Initial
1	Complete Variance application		W
2	Application fee - \$400		W
3	Site plan or sketch illustrating requested variance		W
4	1 hard copy of ALL documents		W

ACKNOWLEDGEMENT AND SIGNATURES

By my signature below, I understand and accept all of the conditions, limitations and obligations of the variance application for which I am applying. I understand that I have the burden of proving why this application meets the require findings necessary for granting a variance. I certify that this application is complete and that all information presented in this application is accurate to the best of my knowledge, information, and belief.

I also appoint the applicant/agent as listed on this application to represent me and make decisions on my behalf regarding this application during the review process. The applicant/agent is hereby authorized on my behalf to:

1. Submit an application including all required supplemental information and materials;
2. Appear at public hearings to give representation and commitments; and
3. Act on my behalf without limitations with regard to any and all things directly or indirectly connected with or arising out of this application.

Signature of Property Owner(s)

SCOTT GEROW, MARITIME WEST DEVELOPMENT, LLC

Print Name(s)

Signature of Applicant/Agent

DAVID L. MENIUS, STROUD ENGINEERING, PA

Print Name(s)

NOTE: Form must be signed by the owner(s) of record. If there are multiple property owners a signature is required for each owner of record.

***The land owner or their attorney must be present for the case at the public hearing.**

By Staff Only

Application Comments

**Maritime North
4320 US Hwy 421 North**

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**NEW HANOVER COUNTY
PLANNING & ZONING**

Project Narrative

The 11.45 acre site is located on US Hwy 421, approximately 1 mile north of the intersection with SR 2145 (Sutton Lake Road) in an unincorporated portion of New Hanover County, NC. The site and adjoining properties are zoned I-2. Proposed improvements are consistent with this zoning and include 34 proposed warehouse units totaling 132,100 sf.

An existing building located on the northern corner of the site is to be retained along with the parking and driveway connection. The southern 2/3 of the site is presently vacant and is vegetated with a stand of 10" - 20" pine trees. No significant trees are located onsite. The central and eastern side of the site drains towards vacant land to the east. The western side of the site drains towards the 421 R/W. No stormwater conveyances are located on or adjacent to the site.

Access to the site is by an existing full-movement driveway off of US 421. Internal drive aisle widths are sufficient to allow fire apparatus access and a 96' diameter turnaround area is provided in the rear of the buildings.

Water and sewer service will be provided by extensions of private mains off of the CFPWA mains along US 421. The daily water usage is calculated to be 3400 GPD based on NCDEQ rules which prescribe 25 GPD per employee.

Stormwater runoff will be collected by inlets and conveyed via to an infiltration basin designed infiltrate the 1.5" storm in 72 hours. Additional volume in the basin is used to attenuate the 25 year storm in accordance with the NHC stormwater ordinance. A portion of BUA which is \leq the existing BUA onsite will bypass the basin. The drainage basins are aligned to mirror predevelopment sizes and directions and all runoff will be infiltrated.

Erosion control is accomplished through the temporary use of gravel construction entrances, silt fence, and hardware cloth and gravel inlet protection. The stormwater basin will be used as a skimmer basin during site construction and will be converted to a stormwater basin once the site is stabilized. Riprap aprons will be installed and left in place at all pipe outlets.

Variance Request Narrative

Due to its location adjacent to the Invista site and along US 421—the County’s primary industrial corridor—there are a significant number of underground, at grade, and overhead utilities and associated easements along the property frontage.

To accommodate these utilities and associated easements, the proposed parking is set back 25’ from the R/W. This distance meets the dimensional requirement of the street yard and perimeter landscaping; however, providing plantings at the quantity and spacing necessary to satisfy sections 62.1-5 (2)(A) and 62.1-10 (2)(A) of the ordinance is not feasible due to the easements.

Shifting site improvements back by the 20~25’ necessary to accommodate these plantings would provide inadequate width for the required loading spaces and drive aisles to support the warehouse use for which the property is presently and will be used.

To provide the best possible appearance along the site’s frontage, the landowner/developer proposes to plant trees and shrubs consistent with 62.1-5 (2)(A) and 62.1-10 (2)(A) along the southern 2/3 of the frontage, where a 12’ wide strip of land is available for planting of all but canopy species that would interfere with overhead electric lines. The northern 1/3 of the frontage—which also includes the driveway access—will be planted with ornamental grasses whose shallow root systems will not interfere with the underground utilities present in this area. It should also be noted that these grasses are consistent with the NHC and NCDOT sight triangles associated with the existing driveway.

The specific variance request sought is to allow the owner/developer to omit:

- approximately half of the required 104 understory trees and 208 shrubs that would be required to satisfy the overall planting density in the 20,825 sf streetyard (62.1-10 (2)(A)); and
- approximately 15~20 trees which would be required to satisfy the perimeter landscaping (62.1-5 (2)(A)) along the northern 1/3 of the frontage.

Variance Criteria #1

Unnecessary hardship would result from strict application of the ordinance.

Shifting site improvements back by the 20~25’ necessary to accommodate these plantings would provide inadequate width for the required loading spaces and drive aisles to support the warehouse use for which the property is presently and will be used.

Variance Criteria #2

The hardship results from conditions that are peculiar to the property, such as location, size, or topography.

The property is located along US 421 in a heavily industrialized section of the county. Installation of underground, at grade, and overhead utilities to support these industries has led to a significant encumbrance of the site’s frontage where landscaping required by 62.1-5 (2)(A) and 62.1-10 (2)(A).

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NEW HANOVER COUNTY
PLANNING & ZONING

Variance Criteria #3

The hardship did not result from actions taken by the applicant or property owner.

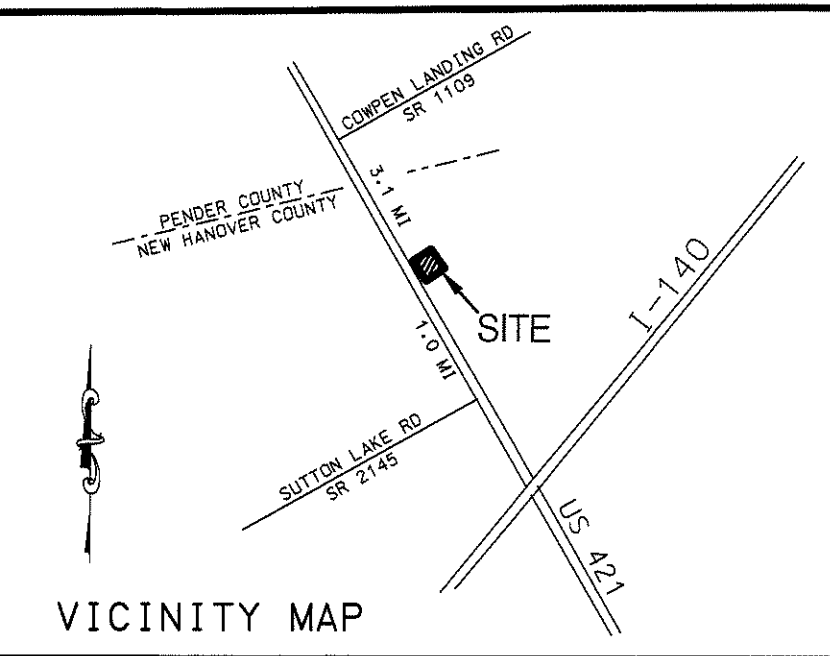
The easements were granted by previous owners and the current owner has no ability to amend these existing easement agreements or relocate the utilities.

Variance Criteria #4

The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

The proposed landscaping plan, which is provided along with this variance application, will provide an attractive property frontage, with plantings and groundcover along its entire length. Landscaping internal to the project is consistent with the ordinance and will enhance the appearance of an existing parking land and structure located on the property. Substantial justice can be achieved by the implementation of this plan.

Public health and safety will be best served by fully utilizing this industrial site for a use for which it is zoned and upon which significant infrastructure—most at the public's expense—has been installed. Newly constructed public water and sewer mains, a large existing driveway and deceleration lane, and electric distribution lines were all designed to support the continued growth of this corridor. The requested variance to the County's landscaping ordinance will allow for this continued growth in a manner that does not impede the utilities which enable it.



PROJECT DATA

PARCEL ID R02400-001-048-000
DEED BOOK/PAGE 6154/2247
PLAT BOOK/PAGE 65/3
ZONING I-2
CAMA LUC INDUSTRIAL
PROPERTY AREA 498,810 SF
11.45 AC

EX BUA 66,046 SF
EX BUA REMOVED 1,249 SF
EX BUA TO REMAIN 64,797 SF
PROP BUILDING 132,100 SF
PROP WALKWAYS 8,368 SF
PROP PARKING/DRIVES 136,594 SF
RESERVE 5,000 SF
TOTAL BUA 346,858 SF
7.96 AC
% OF PROPERTY 69.5 %

DISTURBANCE LIMITS 9.5 AC
RECEIVING STREAM NE CAPE FEAR RIVER
CLASSIFICATION C:Sw
STREAM INDEX 18-74-(52.5)

EXISTING SQUARE FOOTAGE 6,554 GSF
PROPOSED SQUARE FOOTAGE 132,100 GSF
TOTAL SQUARE FOOTAGE 138,654 GSF
PROPOSED USE WAREHOUSE

MINIMUM LOT AREA NA
MAXIMUM BLDG HEIGHT 50'
MINIMUM FRONT YARD NA
MINIMUM SIDE YARD NA
MINIMUM REAR YARD NA

PARKING LOT INTERIOR LANDSCAPING CALCULATIONS

TOTAL PROPOSED PARKING + DRIVE AISLE + WALKWAY = 144,962 SF
144,962 SF X 8.0% = 11,597 SF REQUIRED (11,754 PROVIDED)
PROVIDE CRAPE MYRTLES AS NOTED ON PLAN ALONG WITH GROUND COVER
CONSISTING OF MULCH AND (4) BLUE RUG JUNIPER PER 100 SF

STREETYARD CALCULATIONS

863 LF PROPERTY FRONTAGE - 30' DRIVEWAY = 833 LF
833 LF X 25 STREETYARD FACTOR = 20,825 SF REQUIRED (20,836 PROVIDED)
PROVIDE (3) UNDERSTORY TREES PER 600 SF OF STREETYARD = 104 REQUIRED (52 PROVIDED)
PROVIDE (6) SHRUBS PER 600 SF OF STREETYARD = 208 REQUIRED (104 PROVIDED)

FOUNDATION PLANTING CALCULATIONS

PROVIDE 5' WIDE FOUNDATION PLANTING BETWEEN BUILDINGS
AND PARKING/DRIVE AISLES.

5' WIDTH / 0.12 = 42' MAXIMUM FACADE HEIGHT .:OK

TREE NOTES:

THE UNDEVELOPED PORTION OF THE SITE IS WOODED WITH A THIN STAND OF
SMALL PINES AND TURKEY OAKS, MOST OF WHICH FALL UNDER THE SIZE
THRESHOLD OF REGULATED TREES. NO SIGNIFICANT TREES ARE LOCATED ONSITE.

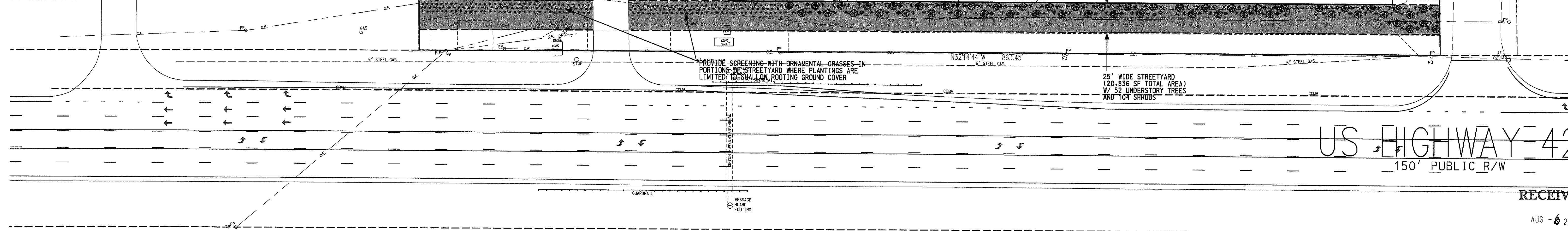
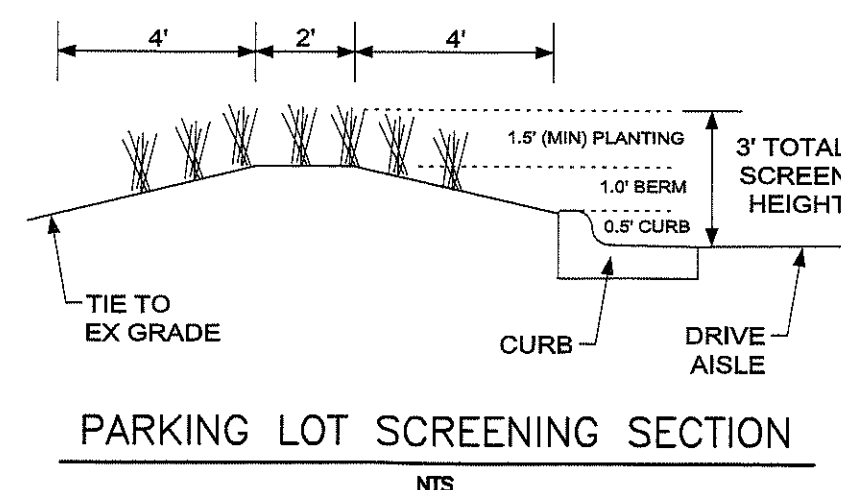
ALL TREES—REGULATED AND UNREGULATED—ARE TO BE REMOVED TO ENABLE GRADING
FOR ESSENTIAL SITE IMPROVEMENTS.

RETAIN OR PLANT 15 TREES (2" CALIPER) PER ACRE OF DISTURBANCE
9.5 ACRES DISTURBED X 15 = 143 TREES REQUIRED

AN INVENTORY OF RETAINED/PLANTED TREES SHALL BE REQUIRED PRIOR TO
THE ISSUANCE OF A CO.

LANDSCAPING/TREE PROTECTION LEGEND

- RIVER BIRCH
- CRAPEMYRTLE
- INDIAN HAWTHORNE



LEGEND

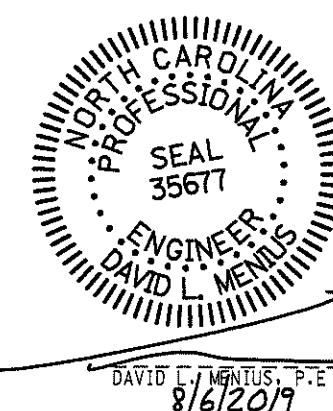
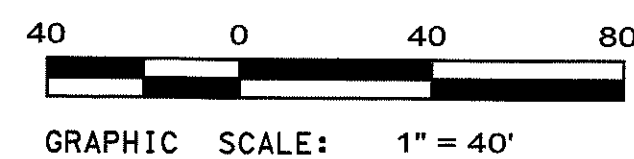
PROJECT BOUNDARY
EX WATER MAIN
EX FORCE MAIN
STORMDRAIN
WETLAND LINE
EX CONTOURS
SWALE
SILT FENCE
DISTURBED AREA

NOTES:

- BOUNDARY BY OTHERS.
- THE SUBJECT PROPERTY IS NOT LOCATED IN THE 100 YEAR FLOOD ZONE.
- 404 WETLANDS ARE NOT FOUND ON THE SUBJECT PROPERTY.
- WATER AND SEWER PROVIDED BY EXTENSION OF PRIVATE MAINS OFF OF EXISTING CPWA MAINS.
- SOLID WASTE REMOVAL BY PRIVATE CONTRACTOR.
- RUNOFF FROM IMPERVIOUS SURFACES SHALL BE DIRECTED TO THE COLLECTION/TREATMENT SYSTEM PER THE DRAINAGE AREAS NOTED ON THE PLAN.

SHEET INDEX

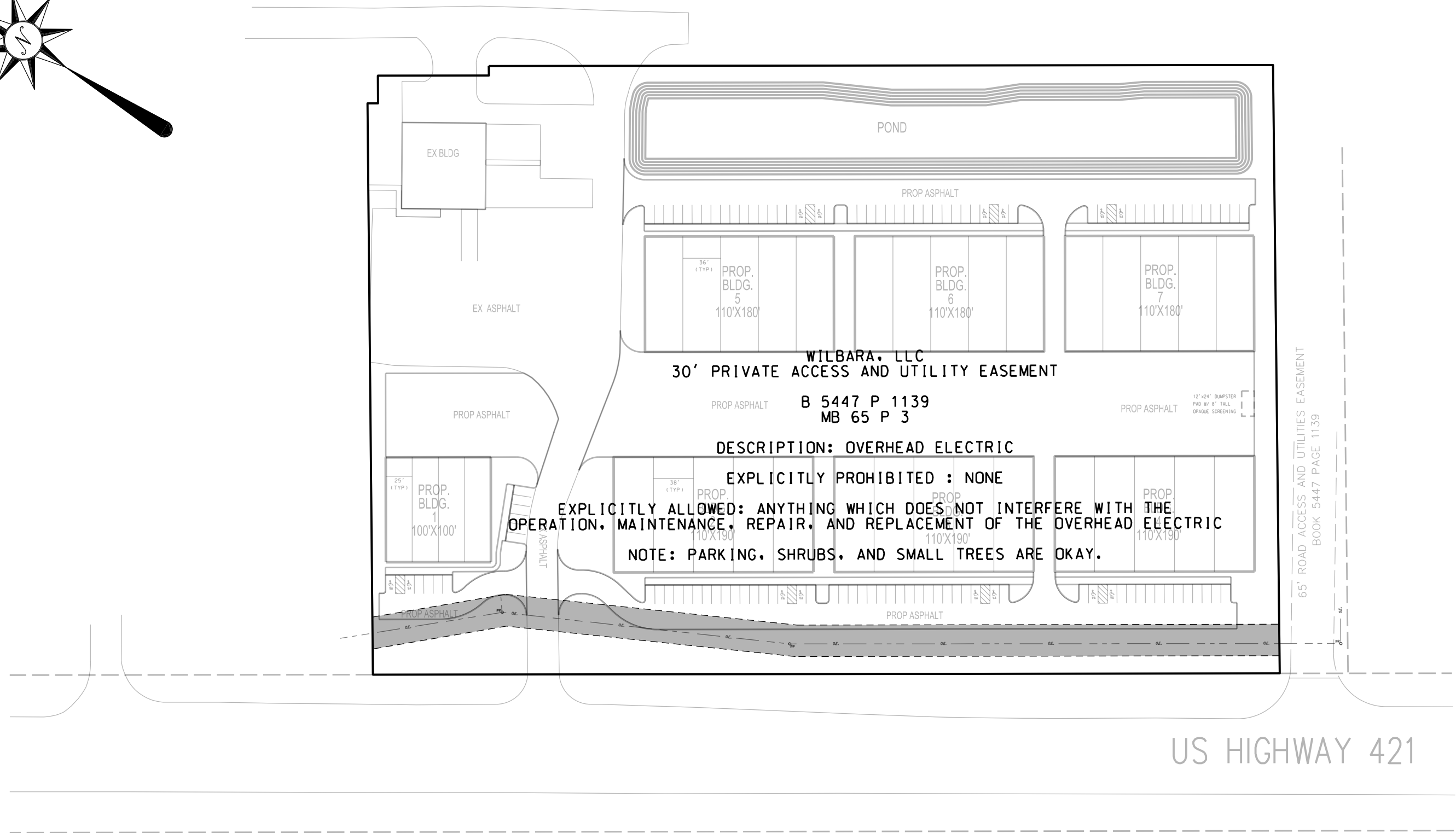
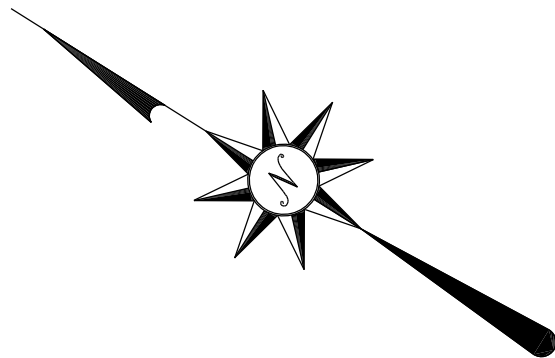
SITE PLAN 1
LANDSCAPE PLAN 2
SW & GRADING 3
DRIVEWAY PLAN 4
DETAILS 5



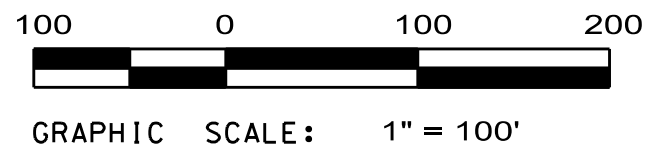
STROUD ENGINEERING, P.A.
102-D CINEMA DRIVE
WILMINGTON, NORTH CAROLINA 28403
(910) 815-0775
LICENSE NO. C-0647


DEVELOPER: MARITIME WEST DEVELOPMENT, LLC
ADDRESS: PO BOX 789
CASTLE HAYNE, NC 28429
PHONE: 910-821-1735

LANDSCAPE PLAN
MARITIME NORTH
4320 US HWY 421 NORTH
WILMINGTON, NC 28401



US HIGHWAY 421

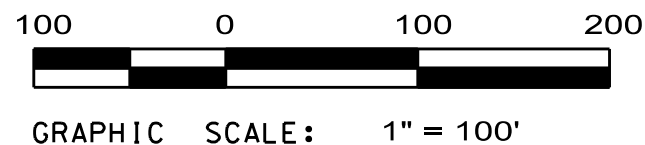
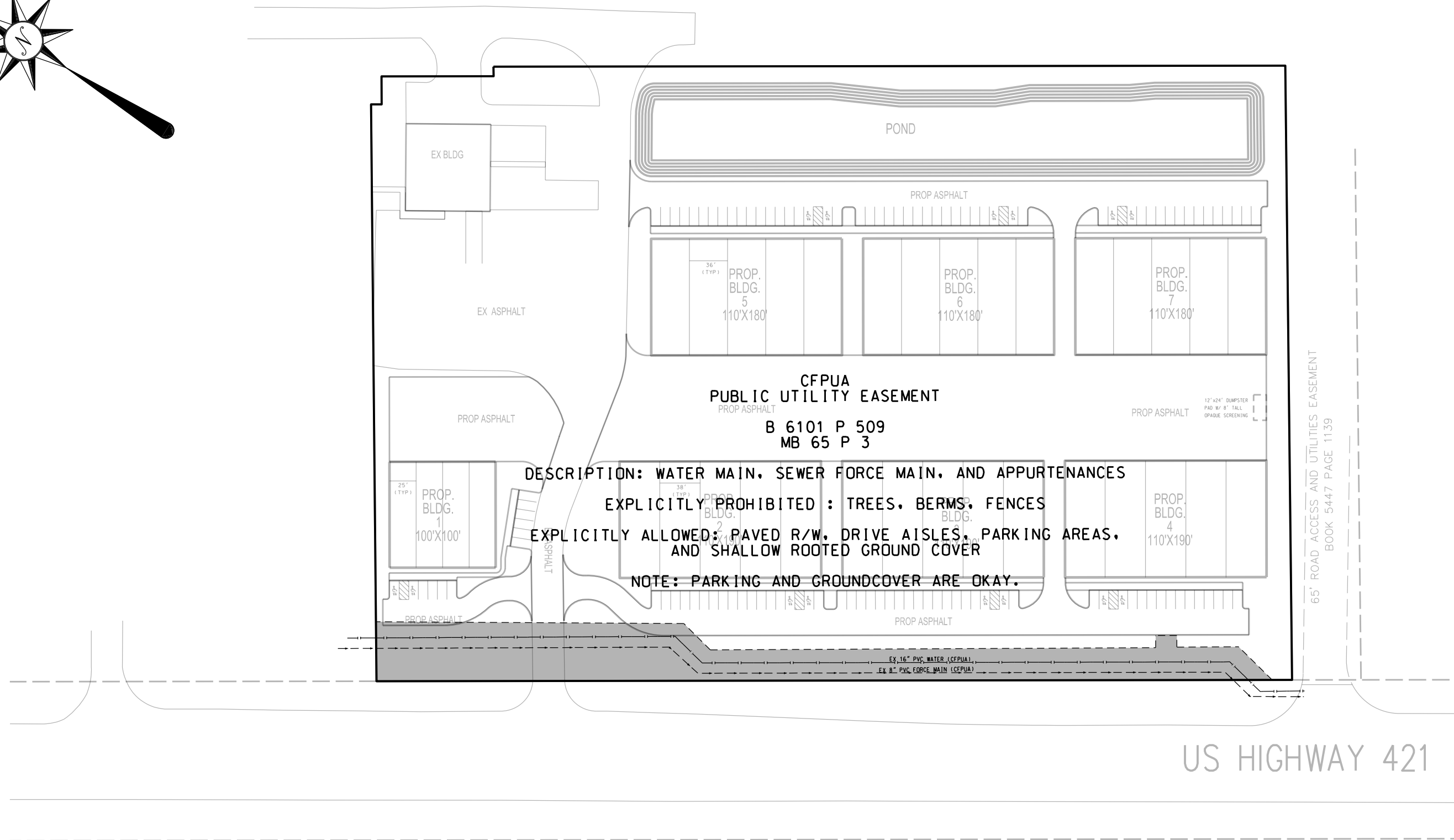
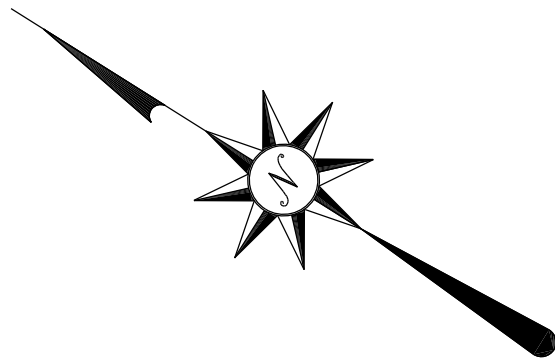


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EASEMENT EXHIBIT
MARITIME NORTH
4320 US HWY 421 NORTH
WILMINGTON, NC 28401

SCALE: 1" = 100'
SHEET: 1 OF 6



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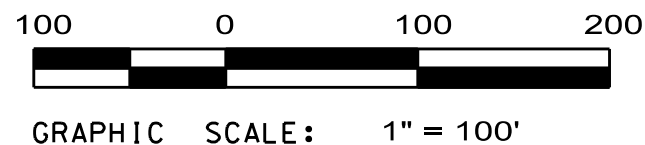
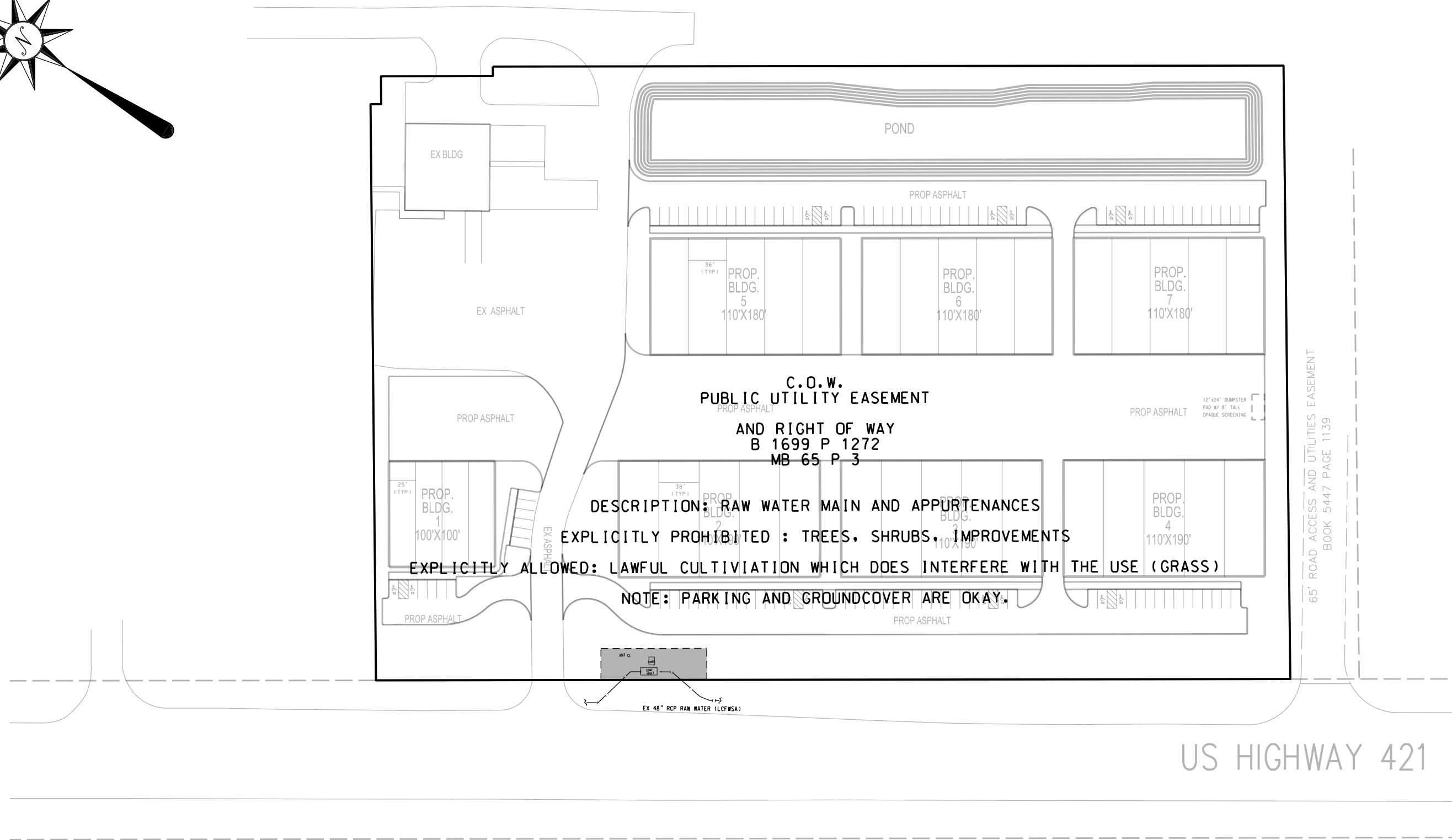
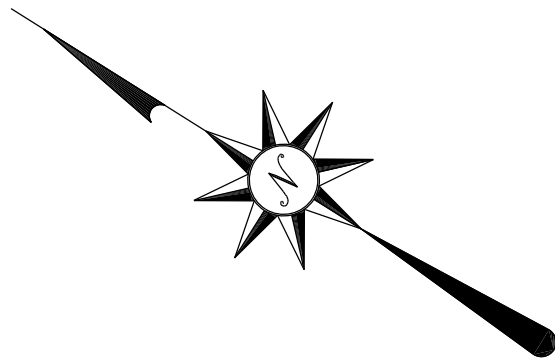
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SHEET: 2 OF 6



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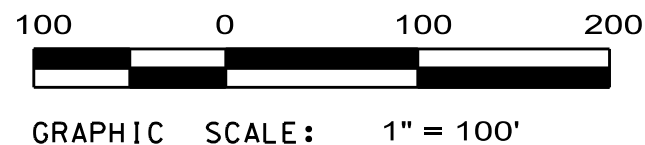
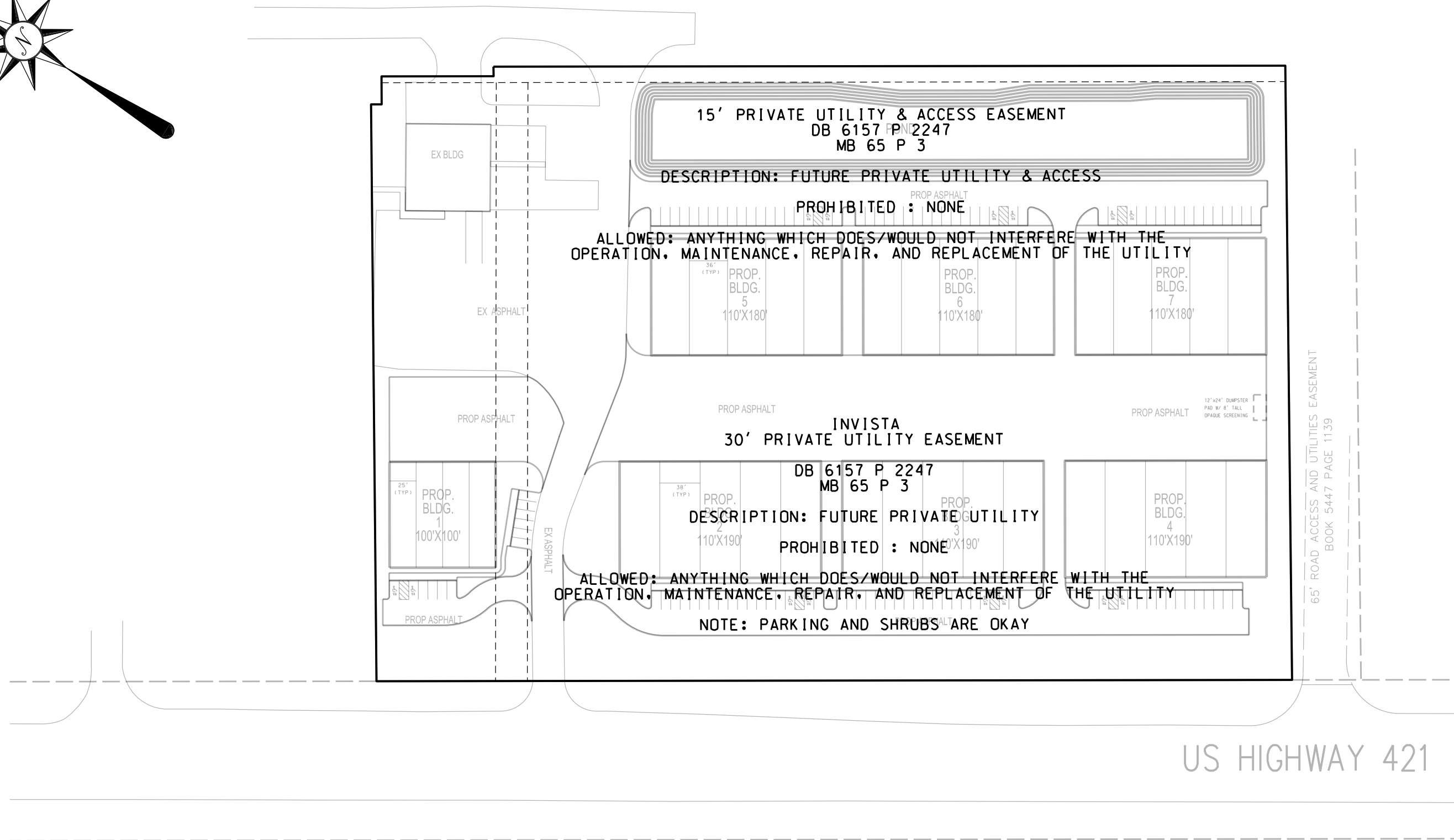
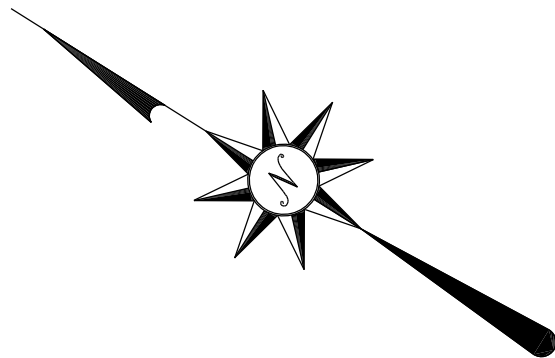
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SHEET: 3 OF 6



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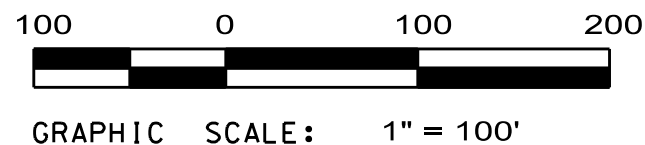
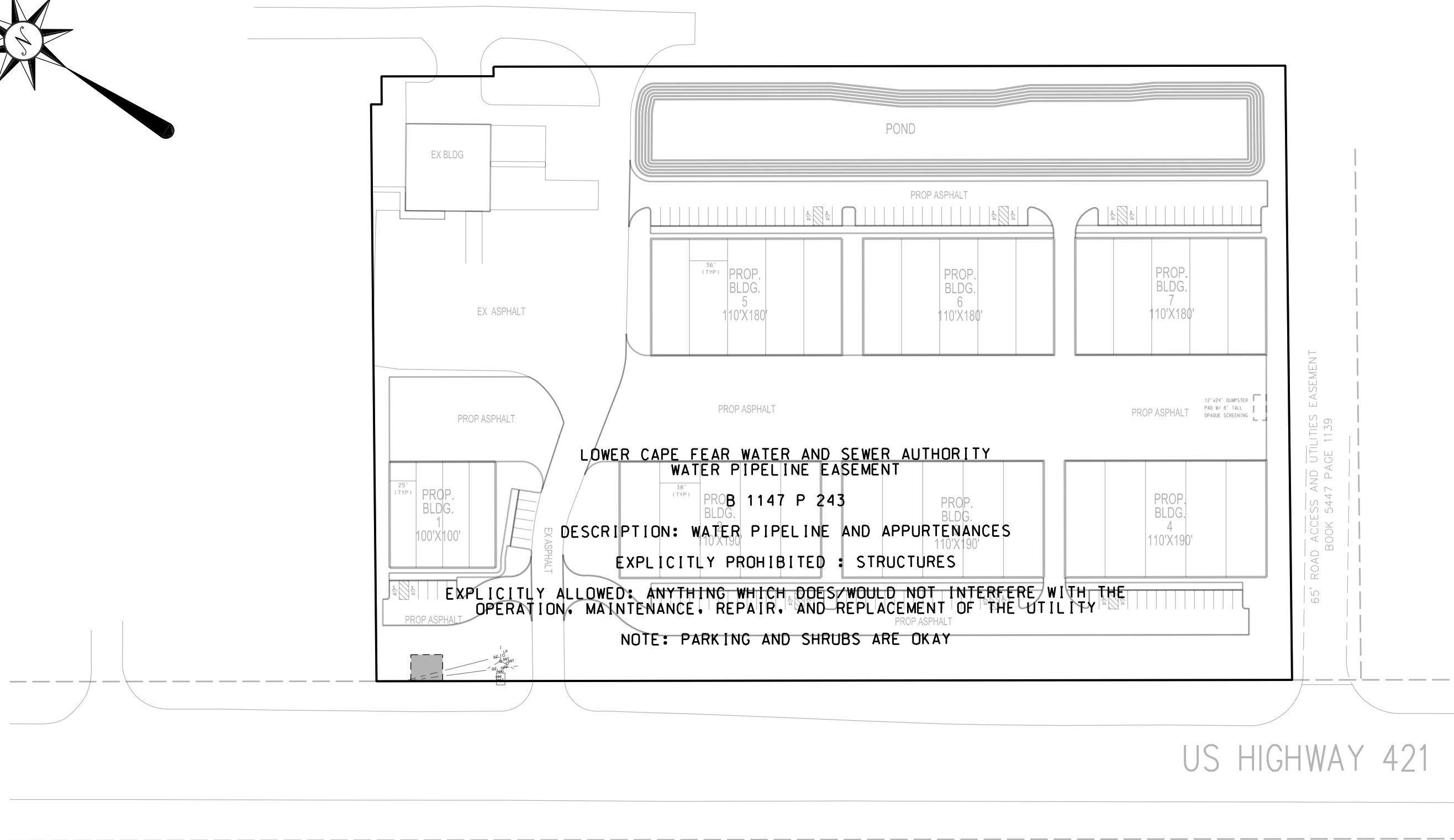
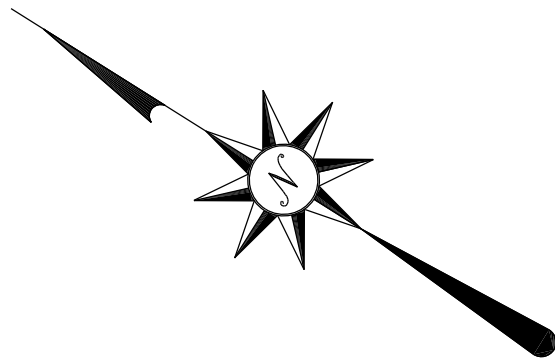
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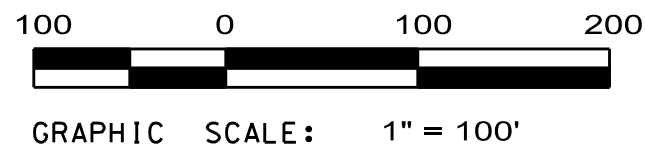
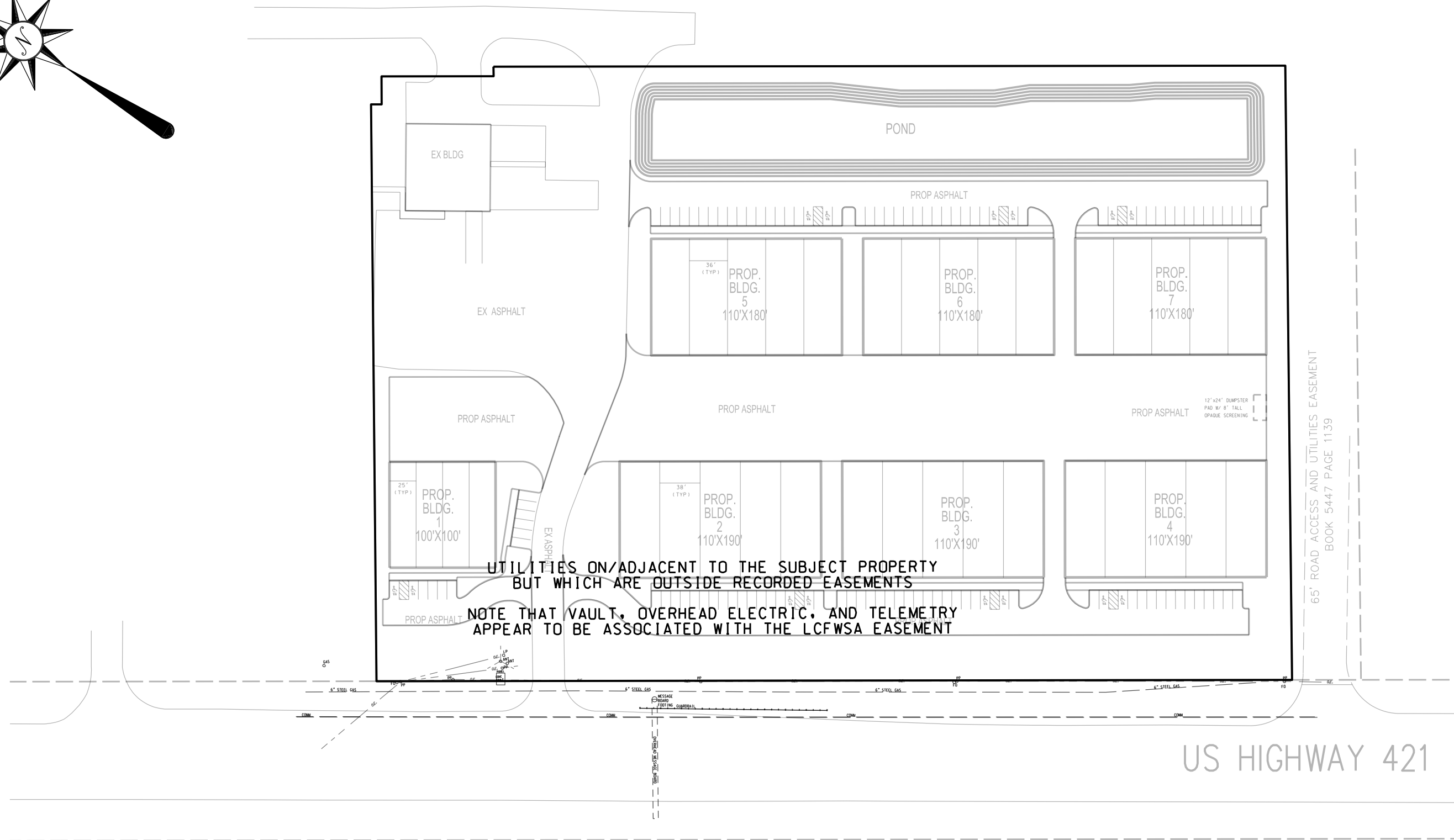
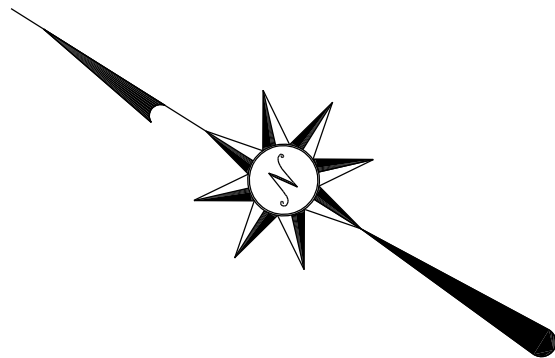


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