

## ZONING BOARD OF ADJUSTMENT

### AGENDA

Tuesday, April 26, 2022

6:00 p.m.

#### **BOARD OF ADJUSTMENT**

- I. CALL TO ORDER
- II. APPROVAL OF MINUTES
- III. CHANGES TO THE AGENDA
- IV. OLD BUSINESS
- V. NEW BUSINESS

#### **V-01-22**

**Flex Investments, LLC** has submitted a variance request for the property located at 276 Melrose Dr. SW. PIN 5529-69-3574. The applicant is requesting to reduce the front setback on the lot from 24ft to 20ft to build one (1) single-family residence. The minimum front setback for the RC (Residential Compact) zoning district is 24ft per Table 7.6.2.B of the City of Concord Development Ordinance.

- a. Swearing of Witnesses
- b. Open Public Hearing by Motion- *Motion, second and vote needed.*
- c. Staff Presentation
- d. Applicant's Testimony
- e. Other Testimony
- f. Close Public Hearing by Motion- *Motion, second and vote needed.*
- g. Approve Findings of Fact by Motion- *Motion, second and vote needed.*
- h. Approve Conclusion of Law by Motion- *Motion, second and vote needed.*
- i. Approve/Deny Variance by Motion - *Motion, second and vote needed.*

- VI. PRESENTATION OF PETITIONS AND REQUESTS
- VII. RECOGNITION OF PERSONS REQUESTING TO BE HEARD
- VIII. MATTERS NOT ON THE AGENDA
- IX. GENERAL COMMENTS BY THE COMMISSION OF A NON-BUSINESS NATURE

X. ADJOURNMENT

IN ACCORDANCE WITH ADA REGULATIONS, PLEASE NOTE THAT ANYONE WHO NEEDS AN ACCOMMODATION TO PARTICIPATE IN THE MEETING SHOULD NOTIFY THE PLANNING DEPARTMENT AT 704-920-5152 AT LEAST TWENTY- FOUR (24) HOURS PRIOR TO THE MEETING.



**DATE:** April 26<sup>th</sup>, 2022

**CASE #:** V-01-22

**ACCELA #:** CN-VAR-2022-00001

**DESCRIPTION:** Variance Request: To reduce the front setback on the lot from 24ft to 20ft to build one (1) single-family residence. The minimum front setback for the RC (Residential Compact) zoning district is 24ft per Table 7.6.2.B of the City of Concord Development Ordinance.

**APPLICANT/OWNERS:** Flex Investments, LLC

**LOCATION:** 276 Melrose Dr. SW, Concord, NC 28025

**PIN#:** 5620-73-6118

**AREA:** 0.121

**ZONING:** Residential Compact (RC)

**PREPARED BY:** Monterai Adams, MPA, CZO – Senior Planner

***Background***

The subject property is located at 276 Melrose Dr. SW. The 0.121-acre conforming lot of record is zoned RC (Residential Compact), and is currently vacant. Lots of record are defined in CDO Concord Development Ordinance” Article 13.1.2 as platted parcels of land “existing on November 23, 2000 existing on November 23, 2000.” The parcel is considered “conforming” as it meets the current dimensional standards for lots within the RC zoning district as it relates to lot area, depth, width, and street frontage. Roughly 0.06 acres of the lot is covered in the 100-year floodplain.

***Request***

The applicant is proposing a variance to reduce the front setback on the lot from 24ft to 20ft to build one (1) single-family residence. The minimum front setback for the RC (Residential Compact) zoning district is 24ft per Exhibit D.

***Detailed Description***

In accordance with CDO Table 7.6.2.A, the RC zoning district has minimum lot dimensions of 5,000 square feet with a minimum requirement of 50’ of width and of 100’ depth as defined in Article 14 of the CDO (Exhibit F). The lot has a lot area of 5,254 square feet. Therefore, the lot is considered conforming as it meets the required minimum lot dimensions. As a conforming lot of

record, the CDO requires that setback be met in accordance with Table 7.6.2.B (Exhibit D) The applicant is requesting a variance from the required 24ft front setback.

Article 14 of the CDO defines “Setback” as: “The distance from the street (in the case of a Front Setback) or property line to the nearest part of the applicable Building, Structure, measured perpendicular to the street or property line, in front of which no structure may be erected.” (Exhibit F)

The subject parcel originated from the 1946 “Anneva Terrace” plat, depicted in Exhibit G As can be seen the neighborhood layout developed differently than the 1946 design, including street/right-of-way locations. As a result, the required setback must be measured from the existing street in accordance with Exhibit F resulting in a portion of the property lying within an existing paved, City maintained, street. Based on the definition of “setback” the overall lot configuration, relative buildable area, is diminished based on required setbacks.

Further, 2,874.96 sf (55%) of the rear portion of the lot is covered in the 100-year floodplain, which coincides with the special flood hazard area as described-in Exhibit E- The City’s requirements for new construction in the special flood hazard area require cut, fill, and letters of map revision in order to develop within the area currently designated as special flood hazard area. On the lot in question, the floodplain is 20.6 feet at the deepest part and 20.3 feet from the street right of way, which, in combination with a 24’ front setback would limit the house that could be constructed on the site to 15.5 feet in depth (Exhibit C). The applicant is seeking a variance to allow for the structure to be four feet wider than the current regulations would allow with both front setback and special flood hazard area requirements being met. The proposed variance allows the structure to meet the floodplain development ordinance, but reduces the front setback. The current front setback ordinance was adopted in 2018.

***Background information regarding Case V-01-22 is as follows*** (based on application review):

- The subject property is currently vacant.
- The subject property is located at 276 Melrose Dr. SW, Concord, NC 28025.
- The parcel is a conforming lot of record.
- The applicant contends that the existence of the street impacts the required setback and buildable lot area.
- The applicant submitted a site plan depicting how the 100-year floodplain impacts the buildable lot area.
- The property is zoned RC (Residential Compact) and the required front setback is 24ft per Table 7.6.2.B of the City of Concord Development Ordinance.
- The applicant is requesting a variance to reduce the front setback on the lot from 24ft to 20ft to build one (1) single-family residence.

***Exhibits***

- A. Application
- B. Maps (Subject Property, Zoning, 2030 Future Land Use)
- C. Plot Plan
- D. Table 7.6.2.A., B., and
- E. Article 4.7.7.A(16) and Article 4.7.7.A (17)
- F. Article 14 Definitions for Lot Depth, Lot Width, and Setbacks
- G. Anneva Plat

*Potential Board's Conclusions of Law* (based on staff's Findings of Fact):

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.**
  - Flex Investments, LLC is requesting a variance in order to build a single-family home on a conforming, infill, lot of record. Due to a portion of the lot being located within an established public street and the existence of the 100-year floodplain over a +/- 55% of the lot, the buildable area becomes 640 sf or 20x32 size area. Application of the required setbacks would further limit the buildable area.
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.**
  - Approximately 17ft of the front of the lot extends into the existing paved public street. Measured from the Edge of pavement to the start of the 100-year floodplain is approximately 36.1 feet. The setback for Residential compact is 24ft. In order to build the proposed single-family detached structure, the reduction of the front setback would need to be 20ft.
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.**
  - The lot is an existing lot of record which was subdivided as part of the Anneva Terrace neighborhood in November 1946. In 2008 the 100-year floodplain hadn't risen to touch the lot. As of 2016 the 100-year floodplain was adjusted to depict current conditions and encompassed +/- 55% of the lot as shown on the current survey. The applicant purchased the lot and made no changes.
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.**
  - Approving a variance for 276 Melrose Dr. SW to have a 20ft front setback will allow the applicant to build a single-family detached home on this lot and create infill housing consistent with the surrounding uses within the in the area.

(Please type or print)

*Note: A variance is not a right. It may be granted to an applicant, only if the applicant establishes compliance with the hardship criteria established in NCGS § 160D-705(d).*

Applicant Name, Address, Telephone number: Flex Investments LLC  
4153 Olivia Ln, Rockwell NC 28138  
704-796-0972

Owner Name, Address, Telephone number: Flex Investments LLC  
4153 Olivia Ln, Rockwell NC 28138  
704-796-0972

Project Location/Address:  
276 Melrose Dr SW

P.I.N.: 5620736118

Area of Subject Property (acres or square feet):  
5,254 sq. ft

Lot Width: 50.16 Lot Depth: 104.79

Current Zoning Classification: RC

Existing Land Use: Vacant land

Description of Use Requested:  
Single family residential new construction home



*Variance Request*

I, Tanner Varley  
Flex Investments LLC, hereby petition the Board of Adjustment for a variance from the literal provisions of the City of Concord Development Ordinance because under the interpretation given to me by the Zoning Administrator, I am prohibited from using the parcel of land described in this application, in the manner that I have proposed. I request a variance from the following provisions of this Ordinance:

Lot is zoned RC which designates 24' front setback from right-of-way. I request a variance of 4' from front setback making a 20' front setback.

So that the above-mentioned property can be used in a manner described herein:

Build a single family Residential home on a lot that is otherwise unbuildable.

victorybuildersllc3@gmail.com  
Tanner.Varley@yahoo.com

*Factors Relevant to the Issuance of a Variance*

The Board of Adjustment has limited discretion in deciding whether to grant a variance. In order to determine whether a variance is warranted in a particular case, the applicant must present the facts addressing four (4) criteria. Providing evidence supporting these conclusions is the responsibility of the applicant. Below, indicate facts to convince the Board of Adjustment that these criteria are met:

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

The owner of the property is requesting variance in order to build a single-family home on the property with an appropriate depth. Without proposed variance the city would be unable to approve permit due to front setback.

2. The hardship results from conditions that are peculiar to the property, such as the 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. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

Property line per Plat book 7 page 65 shows front right property corner near opposite side of pavement. This creates Right-of-way at edge of near side pavement which there is no deed found for city of Concord effectively rendering lot unbuildable based off 24' setback

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.

There is no record of any actions of the owner that caused hardship.





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

*The variance is consistent with the spirit, purpose and intent of the regulation such that public safety is secured and substantial justice is achieved and will preserve its spirit.*



The Board may also impose reasonable conditions upon the granting of any variance to insure that the public health, safety, and general welfare shall be protected and substantial justice has been done.

\*\*Calls or conversations with Board members prior to the meeting cannot be considered in the final decision and may result in the Board Member's recusal due to a conflict of interest. If adjacent property owners are to testify on behalf of the applicant, they must be present. Petitions and written consent may be accepted by the Board, but they cannot be used as a basis for the decision.

***Certification***

*I hereby acknowledge and say that the information contained herein and herewith is true and that this application shall not be scheduled for official consideration until all of the required contents are submitted in proper form to the City of Concord Planning & Neighborhood Development Department.*

Date: 3/9/22

Applicant Signature: 

# Exhibit B



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, published by Ed Niven

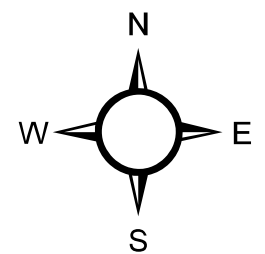


## Subject Property Map

V-01-22

Flex Investments, LLC

PIN:  
5620-73-6118

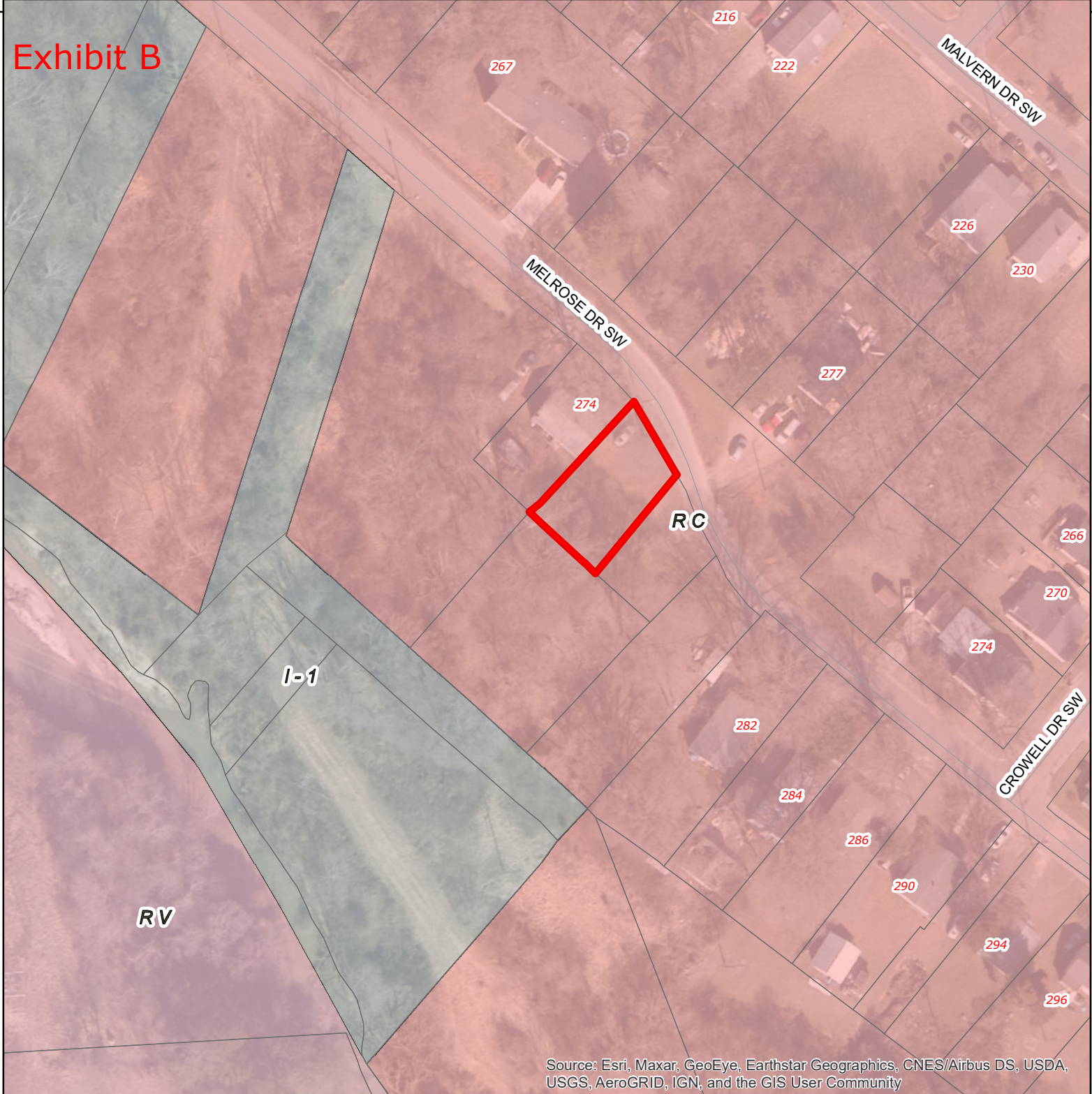


Source: City of Concord  
Planning Department

### Disclaimer

These maps and products are designed for general reference only and data contained herein is subject to change. The City Of Concord, it's employees or agents make no warranty of merchantability or fitness for any purpose, expressed or implied, and assume no legal responsibility for the information contained therein. Data used is from multiple sources with various scales and accuracy. Additional research such as field surveys may be necessary to determine actual conditions.

# Exhibit B



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

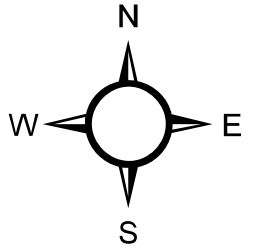


## Zoning Map

V-01-22

Flex Investments, LLC

PIN:  
5620-73-6118

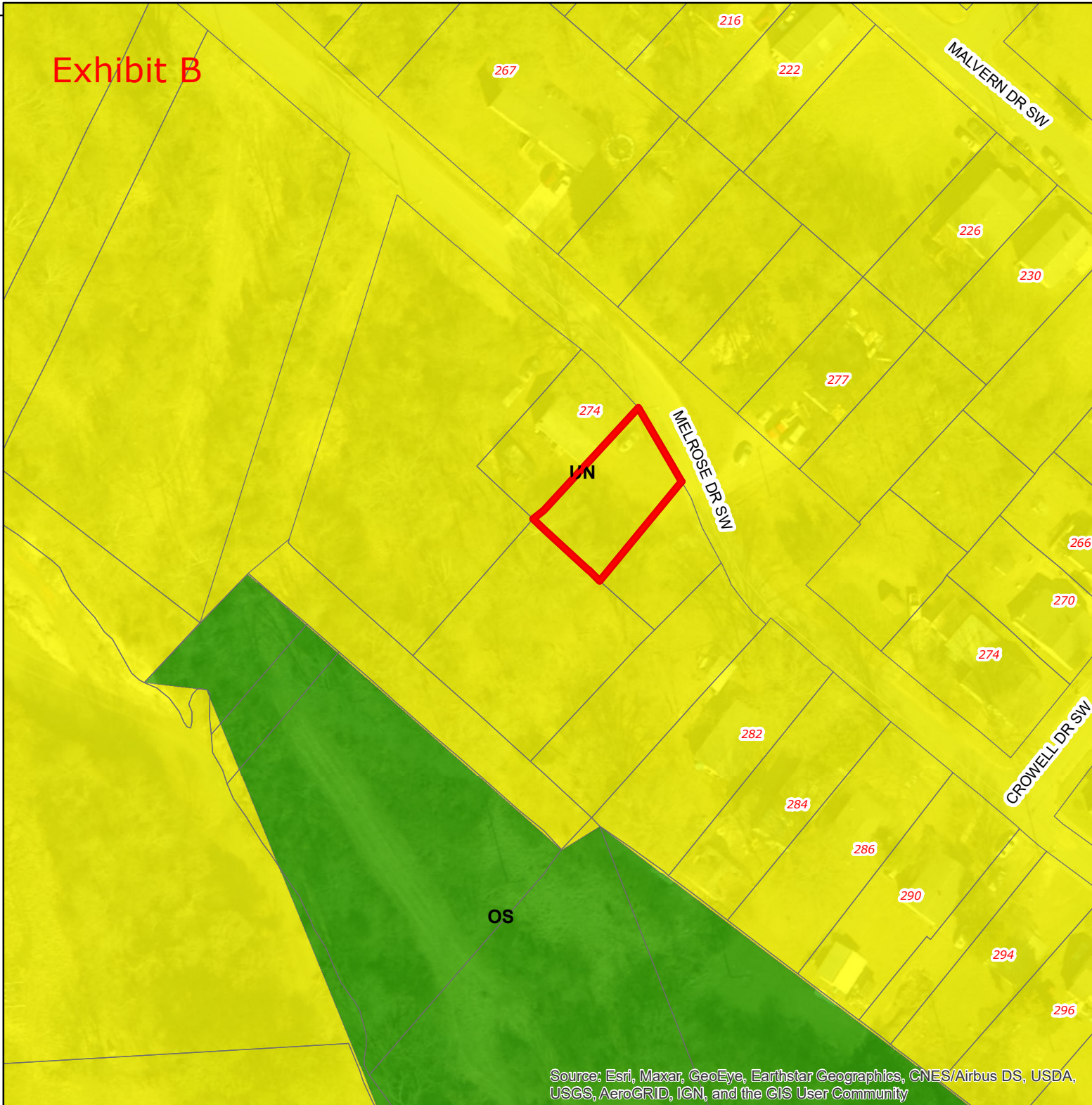


Source: City of Concord  
Planning Department

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# Exhibit B



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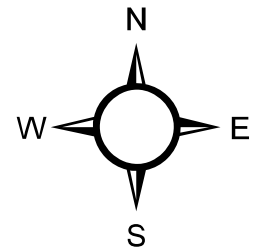


## Land Use Map

V-01-22

Flex Investments, LLC

PIN:  
5620-73-6118



Source: City of Concord  
Planning Department

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# Exhibit C

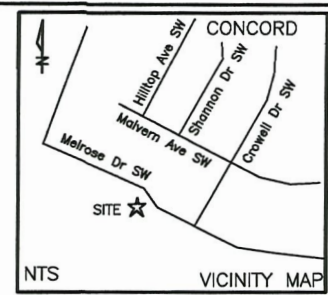
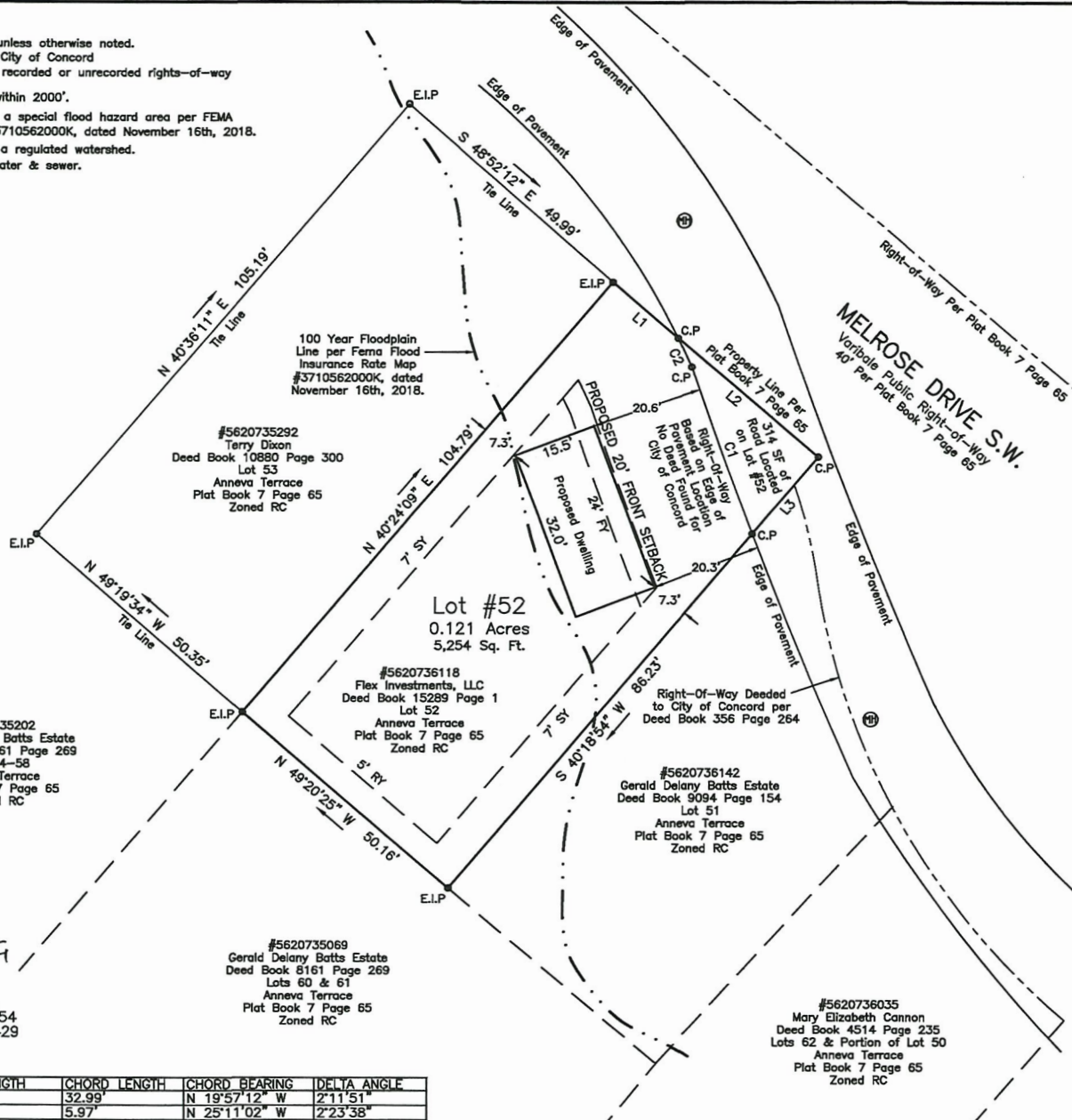
- Notes:**
1. Iron pins at all lot corners unless otherwise noted.
  2. This property lies within the City of Concord
  3. Property may be subject to recorded or unrecorded rights-of-way or easements not observed.
  4. No USGS monument found within 2000'.
  5. This property does lie within a special flood hazard area per FEMA Flood Insurance Rate Map #3710562000K, dated November 16th, 2018.
  6. Property does not lie within a regulated watershed.
  7. Property is served by City water & sewer.

**OWNER**  
 Flex Investments, LLC  
 4485 Triumph Drive, SW  
 Concord, NC 28027

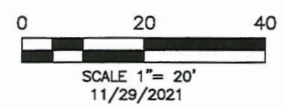
**ZONING**  
 ZONED: RC  
 24' FRONT SETBACK  
 5' REARYARD  
 7' SIDEYARD

**SPARKS SURVEYING PLLC**  
 4485 NEEDMORE RD.  
 WOODLEAF, N.C. 27054  
 PHONE(704) 577-8429  
 P-2041

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	860.15	32.99'	32.99'	N 19°57'12" W	2°11'51"
C2	142.96'	5.97'	5.97'	N 25°11'02" W	2°23'38"



- LEGEND**
- E.I.P. EXISTING IRON PIN
  - N.I.P. NEW IRON PIN
  - C.P. COMPUTED POINT
  - R.W. RIGHT-OF-WAY
  - SETBACKS
  - PROPERTY LINE
  - PROPERTY ADJOINERS
  - RIGHT-OF-WAY
  - ⊕ MANHOLE
  - ⊗ WATER VALVE
  - ⊞ WATER METER



LINE	BEARING	DISTANCE
L1	S 49°35'51" E	15.92'
L2	S 49°35'51" E	34.08'
L3	S 40°18'54" W	18.79'

**PLOT PLAN**  
 for  
**276 MELROSE DRIVE, SW**  
**CONCORD, NC 28027**  
 PIN# 5620736118 DB 15289 PG 1. PB 7, PG 65  
 Number 12 Township Cabarrus County, N.C.

Exhibit D

DENSITY AND DIMENSIONAL STANDARDS  
 TABLE 7.6.2 A - DIMENSIONAL STANDARDS

Zoning District	A	B	C	D	E	F	G
	Min. Lot Size (sq. ft.)	Max. Density (per acre)	Impervious Surface Ratio (2)	Min. Public Street Frontage (feet)	Min. Lot Width (feet)	Min. Lot Depth (feet)	Max. Building Height (feet)
AG**	43,560	1	-	30^	200	200	35
RE **	43,560	1	-	30^	150	150	35
RL**	20,000	2	-	15^	100	125	35
RM-1**	15,000	3	-	15^	75	125	35
RM-2**	10,000	4	-	15^	75	100	35
RV***	7,500	8	0.5	15^	50	100	35
RC***	5,000	15	0.5	15^	50	100	35
R-CO <sup>3</sup>	3,000	15	0.5	15	35	85	40
O-I	-	-	0.7	-	-	-	35
B-1	-	-	0.65	30^	50	100	50
CC	-	-	-	-	-	-	75 (4)
C-1	-	-	0.7	-	-	-	48
C-2	-	-	0.8	30^	50	100	48 (1)
I-1	-	-	0.8	30^	50	100	72
I-2	-	-	0.9	30^	50	100	72

NOTES

Exhibit D

**TABLE 7.6.2 B.  
SETBACKS**

Zoning District	Min. Front Setback (feet)	PRINCIPAL STRUCTURES			ACCESSORY STRUCTURES	
		Max. Front Setback (feet)	Min. Interior Side Setback (feet) <sup>2</sup>	Min. Rear Setback (feet)	Min. Interior Side Setback (feet)	Min. Rear Setback (feet)
AG	50	-	20 <sup>2</sup>	30	10	10
RE	45	-	20 <sup>2</sup>	30	5	5
RL	35	-	15 <sup>2</sup>	30	5	5
RM-1	25	-	10 <sup>2</sup>	25	5	5
RM-2	25	-	10 <sup>2</sup>	25	5	5
RV	24 <sup>3</sup>	-	7 <sup>2</sup>	5	5	5
RC	24 <sup>3</sup>	-	7 <sup>2</sup>	5	5	5
R-CO <sup>1</sup>	8	-	3	5	5	5
O-I	10	-	-	-	-	-
B-1	10	-	10	20	10	10
CC	-	10	-		-	-
C-1	10	-	-		-	-
C-2	10	-	-	-	-	-
I-1	30	-	-	-	-	-
I-2	30	-	-	-	-	-



## Exhibit E

### *ARTICLE 4: ENVIRONMENTAL/LAND DISTURBING ACTIVITIES*

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16. All fill material within the floodplain shall be cut from an adjacent portion of the floodplain on the same deeded parcel, provided that the soil meets the needed structural requirements. If the soil on the same parcel does not meet the structural requirements, fill material may be taken from another parcel. The net result of cut and fill within the floodplain area shall constitute no net loss to the flood storage capacity of the floodplain. A professional engineer shall certify that the activity or development would not result in an increase in the flood level during a base flood outside property boundaries. If change occurs within property boundaries, applicant will be required to obtain a letter of map amendment from FEMA prior to recording of final plat.
17. New construction is not allowed within the Special Flood Hazard Area.

**Exhibit F**

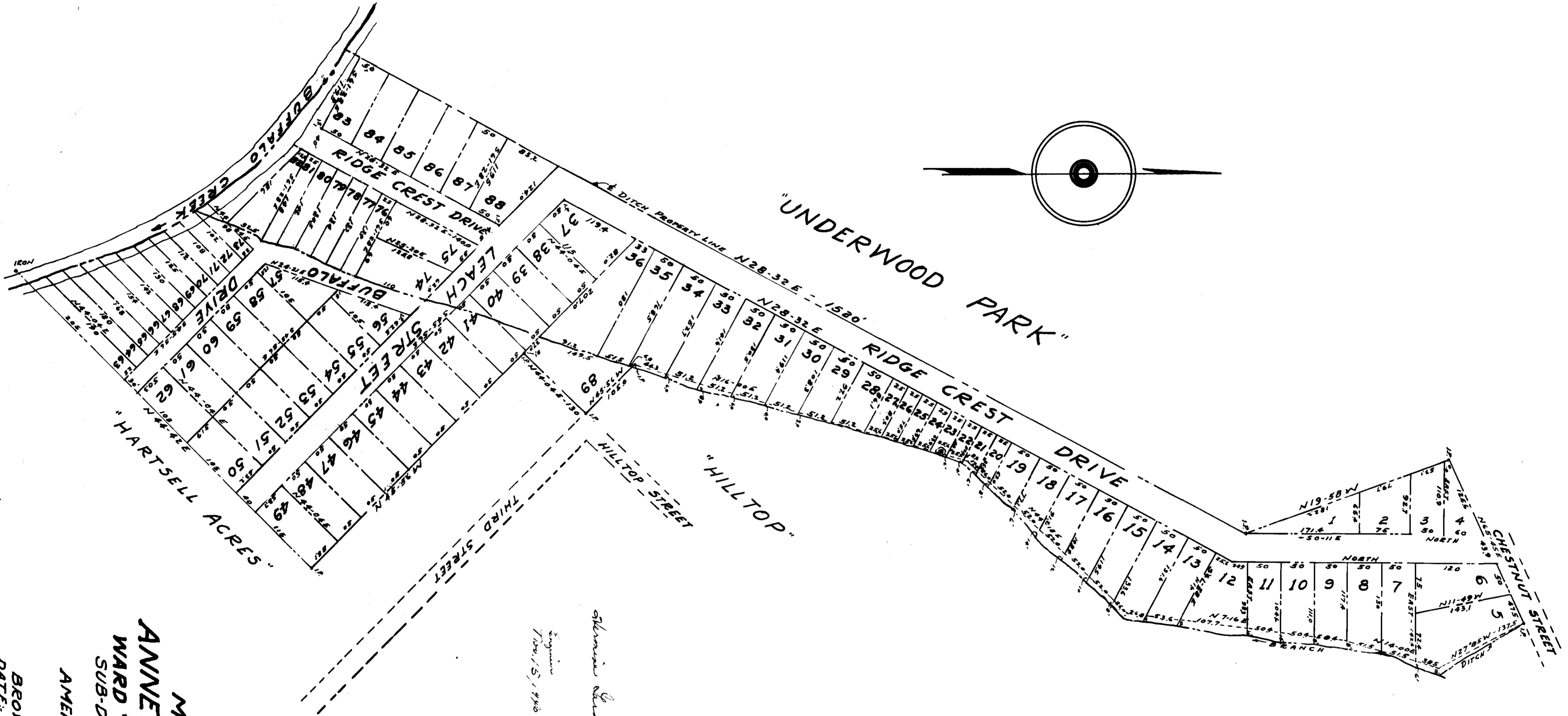
**LOT DEPTH (LENGTH)** - The length (or depth) of a lot shall be:

1. If the front and rear lines are parallel, the shortest distance between such lines.
2. If the front and rear lines are not parallel, the shortest distance between the midpoint of the front lot line and the midpoint of the rear lot line.
3. If the lot is triangular, the shortest distance between the front lot line and the line parallel to the front lot line, not less than ten feet long lying wholly within the lot.

**LOT WIDTH** - For rectangular lots, lots having side lot lines not parallel, and lots on the outside of the curve of a street, the distance between side lot lines measured at the required Minimum front yard line on a line parallel to the street or street chord; and for lots on the inside of the curve of a street, the distance between side lot lines measured 30 feet behind the required minimum front yard line on a line parallel to the street or street chord.

**Exhibit F**

**SETBACK** - The distance from the street (in the case of a Front Setback) or property line to the nearest part of the applicable Building, Structure, measured perpendicular to the street or property line, in front of which no structure may be erected.



*Stemmi's District*  
*Survey*  
 Nov 15, 1946  
*various*  
*Stemmi's District*  
*Report sent to the*  
*Com.*

16  
 11:00  
 Nov 17  
 Map  
 John R. Meyer  
 65

**MAP OF**  
**ANNEVA TERRACE**  
**WARD #4 CONCORD, N.C.**  
 SUB-DIVIDED INTO LOTS  
 FOR  
 AMERICAN LAND CO.  
 DEVELOPERS  
 BY  
 BROWN ENGINEERING CO.  
 DATE: NOV. 1, 1946  
 CONCORD, N.C.  
 SCALE 1"=100'  
 Drawn by  
 R.E. C.E.