

FILED
UNION COUNTY, NC
CRYSTAL D. GILLIARD
REGISTER OF DEEDS

FILED Sep 28, 2023
AT 04:19 pm
BOOK 08788
START PAGE 0720
END PAGE 0756
INSTRUMENT # 23693
EXCISE TAX (None)
DM

Marvin Grove
Development Agreement between
Village of Marvin, NC and Zepso Capital, LLC
Village of Marvin, North Carolina

Prepared by Spencer & Spencer, PA

Mail to: Spencer & Spencer, PA, PO Box 790

Rock Hill, SC 29731

STATE OF NORTH CAROLINA

DEVELOPMENT AGREEMENT

COUNTY OF UNION

This Development Agreement (hereinafter the “**Agreement**”) is made and entered into as of the 20th day of September, 2023 (“**Effective Date**”), by and between **ZEPSA CAPITAL, LLC**, a North Carolina limited liability company authorized to do business in North Carolina (“**Developer**”), whose address is 1501 Westinghouse Blvd, Charlotte, NC 28273 and the **VILLAGE OF MARVIN, NORTH CAROLINA**, a municipal corporation of the State of North Carolina (“**Village**”), whose address is 10006 Marvin School Road, Marvin North Carolina 28173. Developer and Village, and any successors in interest/assigns thereto, are sometimes referred to separately herein as a “**Party**”, or jointly referred to as the “**Parties**.”

ARTICLE 1. FRAMEWORK

- 1.1 North Carolina General Statutes (hereinafter referred to as “**General Statutes**” or “**G.S.**”) Chapter 160D, Article 10, Sections 160D-1001 through 160D-1012 provides a statutory framework for development agreements between local governments and developers in accordance with those Sections.
- 1.2 On January 11, 2022, the Village adopted “An Ordinance to Adopt the Marvin Heritage District Form-Base Code as an Amendment to Title XV, Land Usage of the Code of Ordinances in the Village of Marvin, North Carolina” (as amended, the “**Heritage District Form-Based Code**”).
- 1.3 The Heritage District Form-Based Code requires entry into a development agreement concurrently with rezoning to the Heritage District-Commercial Only (“**HD-CO**”) conditional zoning district.
- 1.4 In addition to any force of law conferred upon this Agreement by Applicable Laws, the terms of this Agreement also are contractual in nature, are a significant inducement and consideration to enter into this Agreement and may be enforced as contractual terms.

ARTICLE 2. DEFINITIONS

In the construction of this Agreement, unless otherwise defined herein, the following capitalized words and terms shall have the respective meanings set forth below. Except as otherwise provided in this Agreement, terms used in the relevant portions of the General Statutes and the Village of Marvin Code of Ordinances shall have the same meanings as employed in those statutes and ordinances.

- 2.1 “**Applicable Law**” means all federal, state, and local statutes, ordinances, regulations, and requirements governing the Development, including, without limitation, the Current Regulations.

- 2.2 **“Current Regulations”** means all ordinances, resolutions, permits, policies, and regulations adopted by the Village, and in effect on or before the Effective Date and affecting the Development of the Property and includes, without limitation, laws governing permitted uses of the Property, density, design, and improvements.
- 2.3 **“Development”** or **“Develop”** shall mean any activity on the Property involving, requiring, or consisting of any of the following: (i) the construction of a new building; (ii) the construction or installation of structures or facilities such as, but not limited to, roads, greenways, paved trails, sidewalks, parking lots, and/or utility infrastructures; (iii) the clearing or alteration of land as an adjunct of such construction; (iv) the expansion of an existing building; or (v) the division of land into two or more Parcels or the recombination of Parcels. When appropriate to the context, Development refers to the planning for or the act of developing or the result of development.
- 2.4 **“Development Permit”** means any building permit, site plan, subdivision approval, rezoning certification, variance, certificate of occupancy and any other official action of Local Government having the effect of permitting the Development for the use of the Property contemplated in this Agreement.
- 2.5 **“Development Plan”** means a type of plan that becomes part of the zoning of a property that establishes the level of development allowed absent further zoning action, except as otherwise allowed or required under this Agreement, including but not limited to any subdivision plan or zoning site plan (or other plan for development of real property however designated in applicable Current Regulations) for development of a Parcel that has been approved by the Village.
- 2.6 **“Local Government”** means any municipality or governmental entity of the State of North Carolina established pursuant to Applicable Law which exercises regulatory authority over, and grants Development Permits for land Development or which provides public Infrastructure.
- 2.7 **“Master Plan”** means that site specific vesting plan identified as “Marvin Grove Site Plan” and which is incorporated into the zoning map change approved as part of Conditional Rezoning Case Number CZ 2023-1 (a copy of which is attached hereto as **Exhibit B**, together with all amendments and supplements thereto as requested by Developer and adopted by the Village after the Effective Date of this Agreement. The Conditional Rezoning Case Number CZ-2023-1 shall be referred to herein as the “Conditional Rezoning” or “Rezoning” and includes all elements of the Conditional Rezoning application approved as part of the Conditional Rezoning.
- 2.8 **“Parcel”** means each separate tract of the Property as the same may be constituted from time to time, including a tract as acquired by the Developer, a tract that has been subdivided out of another tract, or a tract that results from the recombination of two or more tracts.
- 2.9 **“Property”** shall mean the land located at 9908 New Town Road, Marvin, NC and comprised of approximately 1.54 acres bearing Union County Parcel identification number 06-225-009-A and as more specifically shown on the Master Plan. The Property

as it exists on the Effective Date is described in **Exhibit A** attached hereto.

- 2.10 **“Public Facilities”** means major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable watereducational, parks and recreational, and health systems and facilities.
- 2.11 **“Registry”** refers to the office of the Union County Register of Deeds.
- 2.12 **“Representative”** is a Person designated by the Developer to act for and on behalf of the Developer and Parcel Owners and subject to the terms ofthis Agreement. As of the Effective Date, the Representative is Peter Zepa. At any time and from time to time the Developer may designate a successor replacement Representative and shall notify the Village of any change in the Representative.

ARTICLE 3. BACKGROUND INFORMATION & RECITALS

- 3.1 9908 New Town LLC is the fee simple owner of the Property on the Effective Date and evidences its consent to entry into this Agreement by execution hereof. Developer is the sole manager and member of 9908 New Town LLC. The Property is located within the corporate limits of the Village.
- 3.2 Developer desires to develop a commercial project on the Property as generally described in the Master Plan (the “Project”). To permit Development of the Property for the Project, the conditional rezoning and associated Master Plan must be approved by the Village Council.
- 3.3 The purpose of this Agreement is to facilitate the Development (as defined herein) of the Property in a way that best realizes the benefits to the Parties.
- 3.4 The Development of the Property requires a major investment by the Developer and substantial commitment of resources to achieve the benefits of the Development for the Parties. The Developer will be unable to make and realize the benefits from such commitments without the assurances of the Village as provided by this Agreement.
- 3.5 The Marvin Heritage District Small Area Plan (the “Small Area Plan”) was adopted by the Village of Marvin Village Council (“Village Council”) on December 14, 2021 and describes as a principle goal the fostering of a village center that *“pays tribute to our rural heritage, incorporates pedestrian oriented design, neighborhood uses and inter-connected greenways”* Other goals include the establishment of a Municipal Service District for the Heritage District *“to create revenue to use finds for certain installation and maintenance of infrastructure and amenities in the Marvin Heritage District”*.
- 3.6 The associated Future Land Use Map to the Small Area Plan envisions use of the Property for Commercial Only purposes.

- 3.7 Without this Agreement, the Village will not be able to properly assure the provision of an efficient, effective, and practical overall plan for addressing the Development of the Property, including the protection of the existing structure, natural resources, the provision of open space and parkland, and commitments with respect to transit, greenways, multi-use paths, sidewalks, and road and other infrastructure improvements, as applicable.
- 3.8 After careful review and deliberation, the Village has determined and concluded that the above described Project on the Property complies with all statutory requirements and Current Regulations (unless otherwise provided herein), is consistent with the Small Area Plan and other adopted Village policies and that it is reasonable and in the public interest as the Project would further the Village's land use policies and objectives, as well as the health, safety and economic wellbeing of the Village.
- 3.9 The Village has also determined that development of Property for the Project presents a unique opportunity for the Village to secure quality planning and growth.

ARTICLE 4. DEVELOPMENT TERMS

NOW, THEREFORE, based upon the terms and conditions set forth herein and in consideration of the mutual promises and assurances provided herein, the Parties hereby agree as follows:

- 4.1 Paragraphs 1.1 through 3.09 are incorporated herein as if fully set out.
- 4.2 **Public Hearing:** Pursuant to §160D-1005 of the North Carolina General Statutes, the Village Council conducted a public hearing on August 8, 2023, to consider approval of the Conditional Rezoning and execution of this Agreement in accordance with the procedures set out in North Carolina Gen. Stat. §160D-602 applicable to zoning map amendments.
- 4.3 **Term.** The period of duration of this Agreement ("Term") shall commence upon the Effective Date and it shall exist and continue through the date that is seven (7) years immediately following the Effective Date, unless sooner terminated in accordance with the provisions of this Agreement, or unless extended by the mutual consent of the Parties hereto or their successors in interest. Expiration of the Term shall not terminate mutually agreed to obligations and commitments included within this Agreement that are expressly specified to extend beyond the Term, or any extensions thereof.
- 4.4 **Permitted Uses/Maximum Density/Placement and Types of Buildings/Preservation of Existing Structure.** The Property may be devoted to all uses permitted by right (except thrift or second hand stores (provided that consignment stores are still permitted with a Special Use permit)) in the Commercial Only Subdistrict of the Heritage District Form-Based Code ("HD-CO District"), plus the following three (3) special uses: Brewery/Micro Brewery, Restaurant Serving Alcohol and Veterinary Clinic (without boarding) which are specifically approved as part of the Conditional Rezoning approval

and therefore permitted by right. The three (3) special uses approved as part of the Conditional Rezoning are limited to one use for each category (i.e. one restaurant serving alcohol), and subject to compliance with Applicable Law including supplemental standards as set forth in the Heritage District Form Base Code. For avoidance of doubt, additional uses for each category of special uses approved as part of the Conditional Rezoning may be allowed on the Property with a Special Use Permit. In addition, amplified music/sound outdoors in exterior guest areas is only allowed between the hours of (i) 10:00 a.m. through 10:00 p.m. on Sunday through Thursday and (ii) 10:00 a.m. through 11:00 p.m. on Friday and Saturday. A Table of Uses setting forth uses allowed in the HD-CO District and supplemental standards are attached hereto as **Exhibit C** and incorporated herein by reference. All other special uses allowed in the HD-CO District shall require a Special Use Permit. The maximum gross floor area that may be devoted to commercial use shall not exceed 23,500 SF. Building types shall be those allowed in the HD-CO District. The placement of the buildings on the Property is generally depicted on the Master Plan. The existing structure on the Property shall be remodeled in a manner that maintains its original design intent and historical character but brings said structure into compliance with applicable building regulations so that it is safe for commercial use.

- 4.5 Architectural Uniformity and Consistency with the Master Plan. In addition to the requirements set forth in the Heritage District Form-Based Code, the Development shall be substantially consistent with the design themes, architectural themes, architectural elements, building materials, and color palettes shown on the architectural renderings submitted and approved as part of the Conditional Rezoning (the “Elevations”) and attached hereto and incorporated herein as **Exhibit D**. Said elevations are conceptual in nature and minor modifications may occur during design, engineering and construction of the buildings provided, however that the overall design intent is maintained.
- 4.6 Vested Rights. Pursuant to the authority granted therefor in N.C.G.S. § 160D-1001 through 1012, all rights and prerogatives accorded the Developer by this Agreement, including, without limitation, application of the Current Regulations, shall constitute vested rights for the Development of the Property throughout the Term of this Agreement. The Parties agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. In accordance with N.C.G.S. 160D-1007(c), in the event State or federal law is changed after the Effective Date and the change prevents or precludes compliance with one or more provisions of this Agreement, the Village, upon finding that the change in State or federal law has a fundamental effect on this Agreement, may modify the affected provisions by ordinance after written notice to the Developer and an evidentiary hearing, and the Village shall record the modification in the Registry on or before the tenth (10th) day after the date of adoption of the modification. The provisions set forth in NCGS §§ 160D-108 and 108.1 further set forth vested rights and exceptions.
- 4.7 Generally Applicable Approvals. Except as otherwise provided by this Agreement and in accordance with N.C.G.S. § 160D-1007, Development of the Property, shall be in conformance with the Current Regulations and all other Applicable Law in force at the time of execution of this Agreement. Development shall further comply with all terms and provisions set forth in the Master Plan. In the event of a conflict with the body of this Agreement and the Master Plan, the body of this Agreement shall govern and control.

Without limiting the foregoing, the following shall apply:

- a) **Applicable Marvin Codes** – Standards not addressed, and code references that are referenced herein shall be governed by the Marvin Code of Ordinances as of January 11, 2022 and the Marvin Heritage District Form Based-Code as adopted on July 27, 2023.
- b) **Preliminary site & civil design plans.** The approval of a rezoning site plan confers approval upon land uses, preliminary site plans, setbacks, buffers, general arrangement of improvements upon the lot, deviation list, and development standards governing development upon the site and shall be considered equal to the approval of a sketch plan for purposes of plan approval, described in the Subdivision Chapter, pursuant to § 150.050. Within one year of the approval, preliminary site and civil design plans (i.e. construction documents) shall be prepared to meet the requirements of CHAPTER 150, Appendix 1 and receive review and approval pursuant to § 150.050.
- c) **Specific Site and Design Plans Required** –Approval of specific Site and Design Plans for roadway design, drainage, landscaping, and final lot layout shall be conferred during Design Review and Approval. Developer reserves the right to combine preliminary and civil design plans and specific site and design plan approval process phases.
- d) **Design Review and Approval** –Construction documents for the Project, shall receive review and approval pursuant to the process outlined in the Administration Section of the Marvin Heritage District Form-Based Code which incorporates certain provisions of the Village of Marvin Code of Ordinances
- e) **Building Codes and Laws Other Than Land Use Regulations.** Developer, notwithstanding any provision which may be construed to the contrary in this Agreement, must comply with any building, housing, electrical, mechanical, plumbing and gas codes subsequently adopted by the Village or other governmental entity. This Agreement shall not be construed to supersede or contravene the requirements of any building, housing, electrical, mechanical, plumbing, fire and gas codes subsequently adopted by the Village or other governmental entity.
- f) **Local Development Permits and Other Permits Needed.** The Parties anticipate that the following local Development Permits and other regulatory permits will be needed to complete the Development of the Project: Zoning permits, land development permits, street, water, sewer and stormwater construction drawing approval, building permits, certificates of compliance, Union County water and sewer permits, and stormwater control measure agreements.
- g) The failure of this Agreement to address a particular permit, condition, term, or restriction does not relieve the Developer of the necessity of complying with all laws governing permit requirements, conditions, terms, or restrictions.

4.8 **Tree Preservation and Buffers.** Developer shall preserve the twenty foot (20') wide “no cut” buffer of existing trees along the rear of the Property as shown on the Master Plan. Developer shall provide the Village with a tree removal and mitigation plan prior to preliminary site and civil design plan approval.

4.9 **Public Facilities.**

- a) The Public Facilities that will service the Development on the Property, the responsibility for provision of such Public Facilities are described in this Agreement, and other agreements between or among any of the following: Developer, the Village, other governmental authorizes, and private providers of services.

- b) Village Administration, Parks & Recreation, and Solid Waste Collection shall be provided to the Development commensurate with other areas within the municipal limits. Water services will be supplied through Union County's water system. Collection, and treatment of wastewater (i.e., sewer) from the Property will be provided by utilization of Union County Water and Sewer Department.
- c) If applicable, construction of streets on the Property will be provided by the Developer as necessary to serve the Property, except for any streets and related facilities that are constructed by Village or the North Carolina Department of Transportation ("NCDOT"). Developer will determine what, if any, right of way may be requested by NCDOT during its scoping meeting and agrees to dedicate to NCDOT, at no additional cost or expense any reasonable requested right of way as will be shown on the Master Plan along New Town Road.
- d) Stormwater control measures serving the Property will be either private facilities under management by the Developer, or part of an off-site regional system to be determined during preparation of the construction documents for the Project as part of the preliminary site and civil design plans process. All stormwater and drainage improvements shall be installed using best management practices, in accordance with the Applicable Laws and as otherwise provided by the plans and Village specifications therefore. Stormwater design and improvement plans shall be subject to review and approval in accordance with the Village Code. Structural BMPs (if any) will be maintained by the Developer or pursuant to a regional agreement (as the case may be) and shall be performed according to "North Carolina Department of Water Quality Best Management Practices Manual" as apply from time to time and performed with good materials in a good and workmanlike manner. The Developer may be required to execute a mutually agreeable Stormwater Agreement and Stormwater BMP Facility Access Easement upon request of Village.
- e) Developer shall pay for the construction and revision of all necessary water mains, service laterals and associated improvements.
- f) Developer shall pay for the construction of all necessary sewer mains, and service lateral lines and revisions connecting to the existing Union County system with manholes and associated improvements which will serve the Property.
- g) Permits and Occupancy. Upon approval by the Village of the final plans and specifications for the Public Facilities associated therewith, then zoning, stormwater, and building permits may be issued and, later, certificates of occupancy will be issued at such time as the Public Facilities have been made with respect to the development and have been accepted for use. Notwithstanding anything herein to the contrary, and in lieu of constructing Public Facilities for water and/or sewer, Developer reserves the right and option to investigate through Union County Environmental Health Department, to use of private well water and/or septic systems to service one or more buildings on the Property until public facilities to the Property become available. In the event Developer chooses this

option, the required permits and certificates of compliance/occupancy will be issued based on compliance with applicable requirements for the aforementioned private facilities. Notwithstanding anything to the contrary, in the event of a material breach of the provisions of this Agreement by Developer, the Village shall not be required to issue any certificates of occupancy, or to approve or accept the receipt and/or delivery of any service to any part of the property until and unless such breach is cured.

- h) **Plans and Specifications; Inspections; and Warranties.** The Public Facilities shall be constructed by the Developer in accordance with Applicable Law, subsequently approved construction plans and specifications, and as set forth in the Master Plan. The Village Planner and/or any entity accepting such Public Facilities (or their respective designee(s)) shall inspect the construction of the Public Facilities as is customary and prior to the connection of same. Inspection shall not in any way imply that the project shall not be inspected and supervised by the Developer's Engineer, nor shall the Village or other entity have any liability or responsibility with respect to the proper construction of the improvements, the function of such inspections being solely for the purpose of determining whether said improvements will qualify for connection to the respective systems. The Developer agrees that all construction contracts shall have a provision providing for customary warranties for not less than one year from completion date with respect to the work and material furnished and that said warranties may be assignable and enforceable by the Village and/or the Developer. Connection to the street systems of the Village shall not be evidence that the improvements are defect free or that the contractors constructing the same have no further liability with respect to warranties. The Plans and Specifications shall be subject to the approval Union County for water and sewer infrastructure and of such agencies of the State of North Carolina as is required by law, including, without limitation, the North Carolina Department of Environmental Quality and the NCDOT. The Developer shall be required to secure all easements and permit approvals from third parties which shall be required to construct the Public Facilities.

4.10 **Density; Commercial Lot Regulations.** There will be no more than 3 buildings on the Property as shown on the Master Plan. The placement of the buildings on the Property is generally depicted on the Master Plan but must comply with minimum regulations outlined in the Marvin Heritage District Form Based-Code as adopted on July 27, 2023, including but not limited to, Subdistrict Standards, Building Types and General Standards and the additional requirements as follows:

- a) 50 ft min front building setback (existing building exempt)
- b) 75 ft min rear building setback measured from rear property line.
- c) 5 ft minimum side yard setback.

4.11 **Trails and Open Space.** Recognizing the benefits of open space including both passive and active spaces, Developer has agreed to preserve open space as identified on the Master Plan. A standard Maintenance Plan and Agreement addressing buffer, landscaping and parking lot maintenance shall be executed by Developer prior to preliminary site and civil design plan approval.

- a) **Open space and trail system.** Developer will preserve the open space located on the Property as identified on the Master Plan for common use by occupants or customers of the Development on the Property. Developer will construct an 8 foot wide connection between the Project and the adjacent Preserve Internal Trail in the location as generally shown on the Master Plan. Developer reserves the right to gate the connection during non-business hours.
- b) **Sidewalk along New Town Road.** Developer will construct an eight (8) foot asphalt sidewalk within the existing right of way along the Property's New Town Road frontage in the location as generally shown on the Master Plan, or, upon the election of the Developer, make a payment to the Village (in an amount equal to the direct linear foot cost of the asphalt material for the proposed 8 foot asphalt sidewalk) in lieu of such construction, and the Village shall construct the sidewalk in accordance with the Marvin Loop project (NCDOT Project No. BL-0012). Developer reserves the right to meander the sidewalk out of the existing right of way to avoid physical and environmental constraints. Upon completion of construction, Developer will dedicate and/or convey an easement for the sidewalk to the Village in a form reasonably acceptable to the Village. Post construction, Developer shall have no obligation to maintain, repair or replace said sidewalk. Developer's obligation to construct the sidewalk is subject to NCDOT approval and must comply with NCDOT and Village plans for the Marvin Loop.
- c) In the event that Developer secures permanent off-site parking adjacent to the Property prior to approval of its construction plans, Developer may seek approval omitting or reducing the rear row of parking spaces and leaving a greater undisturbed buffer with the approval of the Planning Director.

4.12 Deviations. Notwithstanding anything in this Agreement to the contrary, Developer shall have the right (but not the obligation) to deviate from the Current Regulations as set forth in the Deviations Table attached hereto as **Exhibit E** and incorporated herein by reference. Said Deviations are approved as part of the Conditional Rezoning.

4.13 Miscellaneous Conditions. The following terms and conditions shall be a part of the Development of the Property.

- a) Building height shall not exceed 2.5 stories or a maximum building height of 35 feet.
- b) Outdoor Lighting. The Development shall be subject to Chapter 152: Outdoor Lighting of the Village Ordinances.
- c) Photometric Plan. A photometric plan for all pedestrian facilities, roadways and signs shall be provided and approved with the preliminary site & civil design plans.
- d) Engineering Manual. The Development shall be subject to the Village of Marvin Engineering Standards and Procedures Manual.
- e) Additional Road Improvements Along New Town Road. The Developer shall consult with NCDOT about the need for any road improvements along New Town

Road and reflect any agreed upon road improvements on the preliminary site & civil design plans.

- f) Access. Developer shall consult with NCDOT and the Village on making the exit of the Development a right out only.
- g) Native Plants. The Development shall conserve native plants where possible and replant with native species and identify this on their preliminary site & civil design plans.
- h) Developer reserves the right to Develop the Property with fewer than three buildings upon written notification to the Village.
- i) The number of parking spaces may be reduced from the 57 designated on the Master Plan provided that either: i) off-premises parking is secured in accordance with Paragraph 4.11(c) or (ii) as approved by the Village Planning Director, provided however, that the Planning Director shall approve any reduction of parking spaces determined by the Developer as reasonable necessary to facilitate preservation of trees or better overall site design.
- j) Developer agrees to have all uses close by midnight for a period of nine (9) months after a certificate of occupancy has been issued.

4.14 Amendment; Modification; Termination; or Extension of the Agreement Term. This Agreement may be amended, modified, or terminated, or the Agreement Term extended, by the mutual consent of the Parties. The Village Planner shall determine whether it is a major modification or a minor modification and shall notify the Developer of that determination using the following criteria, if applicable:

- a) A proposed increase or decrease of more than five percent (5%) of the acreage of the Property subject to this Agreement at the time of the proposed increase or decrease shall be considered a major modification. A cumulative increase or decrease of a total of fifteen percent (15%) of the initial acreage subject to this Agreement shall be considered a major modification.
- b) A change in the Agreement Term is a major modification.
- c) An increase in gross building area of more than five (5) percent is a major modification.

A major modification of this Agreement shall follow the same procedures as required by North Carolina law for the initial approval of a development agreement and shall follow any applicable provisions of the Village Code. A minor modification may be approved by the Village Planner by a letter.

4.15 Recordation/Binding Effect. Within fourteen (14) days after the Village and the Developer execute this Agreement, the Developer or Village shall record this Agreement

in the Registry. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to the benefit of, all successors in interest to the Parties hereto. All the provisions of this Agreement shall be enforceable during the Agreement Term as equitable servitudes and constitute covenants running with the land pursuant to Applicable Law.

- 4.16 Development Timing and Moratoria. A development schedule is attached hereto at **Exhibit F**. The Village and Developer acknowledge that the development schedule is an estimate. The failure of the Developer to meet a commencement or completion date does not, in and of itself, constitute a material breach of this Agreement, but must be judged based on the totality of the circumstances. The development schedule is a planning and forecasting tool only.
- 4.17 Periodic Review; Default.
- a) The Village Planner shall conduct a periodic review of the Development at least every 12 months and the Developer shall demonstrate good faith compliance with the terms hereof.
 - b) The failure of any Party to comply with the material terms of this Agreement shall constitute a default, entitling the non-defaulting Party or Parties to pursue such remedies as allowed under applicable law against the defaulting Party, provided, however, that no termination of this Agreement may be declared by a Party prior to the notice and opportunity to cure process. A Party seeking to hold another Party in default shall provide written notice of that default to the other Party with reasonable particularity the nature of the material breach. After such notice of breach has been served, the Party shall have a reasonable time in which to cure the material breach but such time shall generally be for no less than 30 days. If the breaching Party fails to timely cure its material breach of this Agreement, then the non-breaching party may elect to terminate this Agreement.
- 4.18 Force Majeure. In addition to specific provisions of this Agreement, no Party shall be responsible for any default, delay or failure to perform if such default, delay or failure to perform is due to causes beyond such Party's reasonable control, including, but not limited to, strikes, lockouts, actions or inactions of governmental authorities, epidemics, pandemics, wars, embargoes, fires, hurricanes, adverse weather, acts of God, acts of terrorism, interference duly caused by any other Party; or the default of a common carrier. In the event of a default, delay or failure to perform due to causes beyond such Party's reasonable control or due to interference by another Party, any date or times by which a Party otherwise is scheduled to perform, if any, shall be extended automatically for a period of time equal in duration to the time lost by reason of the cause beyond the reasonable control of such Party
- 4.19 Disclaimer of Joint Venture, Partnership and Agency. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between or among the Parties, or to impose any partnership obligation or liability upon such Parties.
- 4.20 No Third-Party Beneficiaries. The Agreement is not intended to and does not confer any

right or benefit on any third party that is not a Party.

4.21 Legal Actions. Any Party may institute legal action against a defaulting Party to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in the Agreement or to enjoin any threatened or attempted violation of the Agreement, or to obtain any remedies consistent with the purposes of the Agreement. Legal actions shall be instituted in the Superior Court of the County of Union, State of North Carolina, and the Parties submit to the personal jurisdiction of such court without application of any conflicts of laws provisions of any jurisdiction.

4.22 Notices. Unless specifically provided otherwise by this Agreement, any notice, demand, request, consent, approval or communication which a Party is required to or may give to another Party hereunder shall be in writing and shall be delivered or addressed to other applicable Parties at the address below set forth or to such other address as such Party may from time to time direct by written notice given in the manner herein prescribed. Such notice or communication shall be deemed to have been given or made when communicated by personal delivery, independent courier service or certified mail, return receipt requested.

Until changed as provided herein, all notices, demands, requests, consents, approvals, or communications to the Village shall be addressed to:

Village Manager
Village of Marvin
1006 Marvin School Road
Marvin, NC 28173

With copy to:

W. Chaplin Spencer, Jr.
Village Attorney
Spencer & Spencer, PA
P.O. Box 790
Rock Hill, SC 29731

Until changed as provided herein, all notices, demands, requests, consents, approvals or communications to the Developer shall be addressed to:

Peter Zepa
Zepa Capital, LLC
1501 Westinghouse Blvd,
Charlotte, NC 28273

With copy to:

Brian Zepa
9908 New Town LLC
1501 Westinghouse Blvd,
Charlotte, NC 28273

- 4.23 Entire Agreement. This Agreement sets forth and incorporates by reference all the agreements, conditions, and understandings between the Parties relative to this Agreement and the Property. There are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among the Parties relative to the matters addressed herein other than as set forth or as referred to in this Agreement.
- 4.24 Construction. All Parties agree that, in the interpretation of this Agreement, any amendments to this Agreement, or any Exhibits to this Agreement, there shall be no presumptions, preferences, or resolution of ambiguities in favor of or against any Party with respect to any part of this Agreement drafted by legal counsel of that Party.
- 4.25 Benefits and Burdens; Assignment. After notice to the Village, the Developer may at any time and from time to time assign its rights and responsibilities hereunder to subsequent developers or land owners of all or any portion of the Property, provided that no assignment as to a portion of the Property will relieve Developer of responsibility with respect to the remaining portion of the Property without the Village's consent, which shall not be unreasonably withheld. The Village Manager shall be authorized to consent for the Village. Upon the recordation of such assignment in the Registry, the Developer shall be released from the obligations assigned. No such assignment shall be effective until a written assignment of rights and responsibilities is executed by the assignor and the assignee and recorded in the Registry.
- 4.26 Governing Law. This Agreement shall be governed by the laws of the State of North Carolina. Any reference in this Agreement to a North Carolina General Statute ("G.S.") shall be deemed to include any successor or replacement statute as to the same matters subject to the statute that has been superseded or replaced.
- 4.27 Counterparts. This Agreement may be executed in two counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
- 4.28 Termination. Unless the Agreement Term is extended by the Village and Developer or by other provisions of this Agreement, this Agreement shall terminate on the earlier of the expiration of the Agreement Term specified in Section 4.3 of this Agreement or a specific termination made by operation of the provisions of this Agreement, or by agreement of the Parties. Any termination other than by expiration of the Agreement Term shall be recorded in the Registry. Termination of this Agreement as to the Developer shall not affect any requirements to comply with the applicable terms and conditions of the Ordinance, approval and acceptance of infrastructure improvements, and any applicable permits.
- 4.29 No Deemed Waiver. Failure of a Party to exercise any right under this Agreement shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future time said right or any other right it may have hereunder.

- 4.30 Severability. If any term or provision herein shall be judicially determined to be void or of no effect, such determination shall not affect the validity of the remaining terms and provisions. The Parties agree that if any provision of this Agreement is judicially determined to be invalid because it is inconsistent with a provision of state or federal law, this Agreement shall be amended to the extent necessary to make it consistent with state or federal law and the balance of the Agreement shall remain in full force and effect.
- 4.31 Parcels and Parcel Owners. This Agreement shall apply to the Property and to all Parcels and Parcel Owners, and by acceptance of a deed of conveyance, each subsequent Developer and Parcel Owner agrees to be bound by and abide by the terms and conditions of this Agreement as a Developer or Parcel Owner, as applicable to such Person's respective Parcel.
- 4.32 Representations and Warranties of the Developer. The Developer represents and warrants to the Village that:
- a) it is an entity duly organized, existing, and in good standing under the laws of the State of North Carolina and authorized to do business in North Carolina; and
 - b) it has the full right, power, and authority to execute this Agreement and to perform its obligations hereunder.
- 4.33 Indemnification. Developer agrees to indemnify, defend, and hold harmless the Village from liability for injury or death to any Person, or damage to any property, that arises out of or results from the willful or negligent acts or omissions of the indemnifying Developer, as applicable, in connection with any one or more of the following: (i) Development by the applicable Developer on the Property; and (ii) operation of any portion of the Property owned by the applicable Developer, except to the extent of the negligence or willful misconduct of the Village.

(End of Page; Execution Pages Follow)

IN WITNESS WHEREOF, the Village and Developer have executed this Agreement in legal and binding form on the dates indicated with the acknowledgments of their signatures,



Village of Marvin, a municipal corporation of the State of North Carolina

By: [Signature]
Name: Joseph E. Pollino Jr
Title: Mayor

This document has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Village of Marvin

By: [Signature]
Name: William M. Carilli
Title: Finance Director

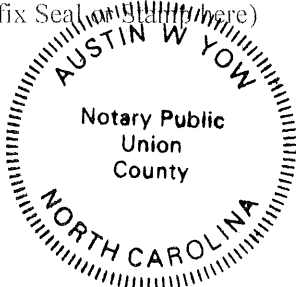
State of North Carolina
County of Union

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Joseph E. Pollino Jr. personally appeared before me this day and acknowledged to me that (s)he is the Mayor of the Village of Marvin, a municipal corporation of the State of North Carolina, and that by authority duly given and as the act of the Village Council, the foregoing document was signed in the Village's name by Joseph E. Pollino Jr., its Mayor, sealed with its Village seal.

Date: 9-29-2023

[Signature]
Notary Public
Printed/Typed Name: Austin W. Yow
My Commission Expires: 8-31-2025

(Affix Seal or Stamp here)



ZEPSA CAPITAL, LLC
a North Carolina limited liability company

By: P.Z.
Name: Peter Zepa
Title: Manager

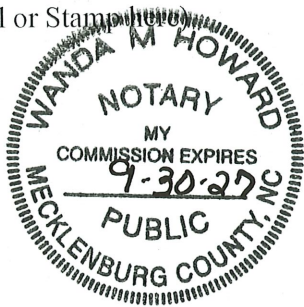
State of nc
County of Mecklenburg

I, Wanda M Howard, the undersigned, a Notary Public of the County and State aforesaid, certify that Peter Zepa personally appeared before me this day and acknowledged to me that, by authority duly given, he executed the foregoing document on behalf of ZEPSA CAPITAL, LLC, a North Carolina limited liability company, in the capacity indicated:

Date: 9-26-23

Wanda M Howard
Notary Public
Printed/Typed Name: Wanda M Howard
My Commission Expires: 9-30-27

(Affix Seal or Stamp)



The undersigned as current owner of the Property executed this Agreement in legal and binding form on the date indicated with the acknowledgment demonstrating consent of the Developer to enter into this Agreement.

9908 New Town, LLC
a North Carolina limited liability company

By: P. Z
Name: PETER ZEPSA
Title: MANAGER

State of North Carolina
County of Mecklenburg

I, Wanda M Howard, the undersigned, a Notary Public of the County and State aforesaid, certify that Peter Zepa personally appeared before me this day and acknowledged to me that, by authority duly given, he executed the foregoing document on behalf of 9908 New Town LLC, a North Carolina limited liability company, in the capacity indicated:

Date: 9-26-23

Wanda M Howard

Notary Public

Printed/Typed Name: Wanda M Howard

My Commission Expires: 9-30-27

(Affix Seal or Stamp here)

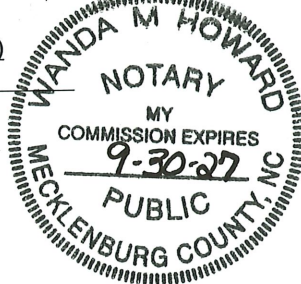


Exhibit A

Legal Description

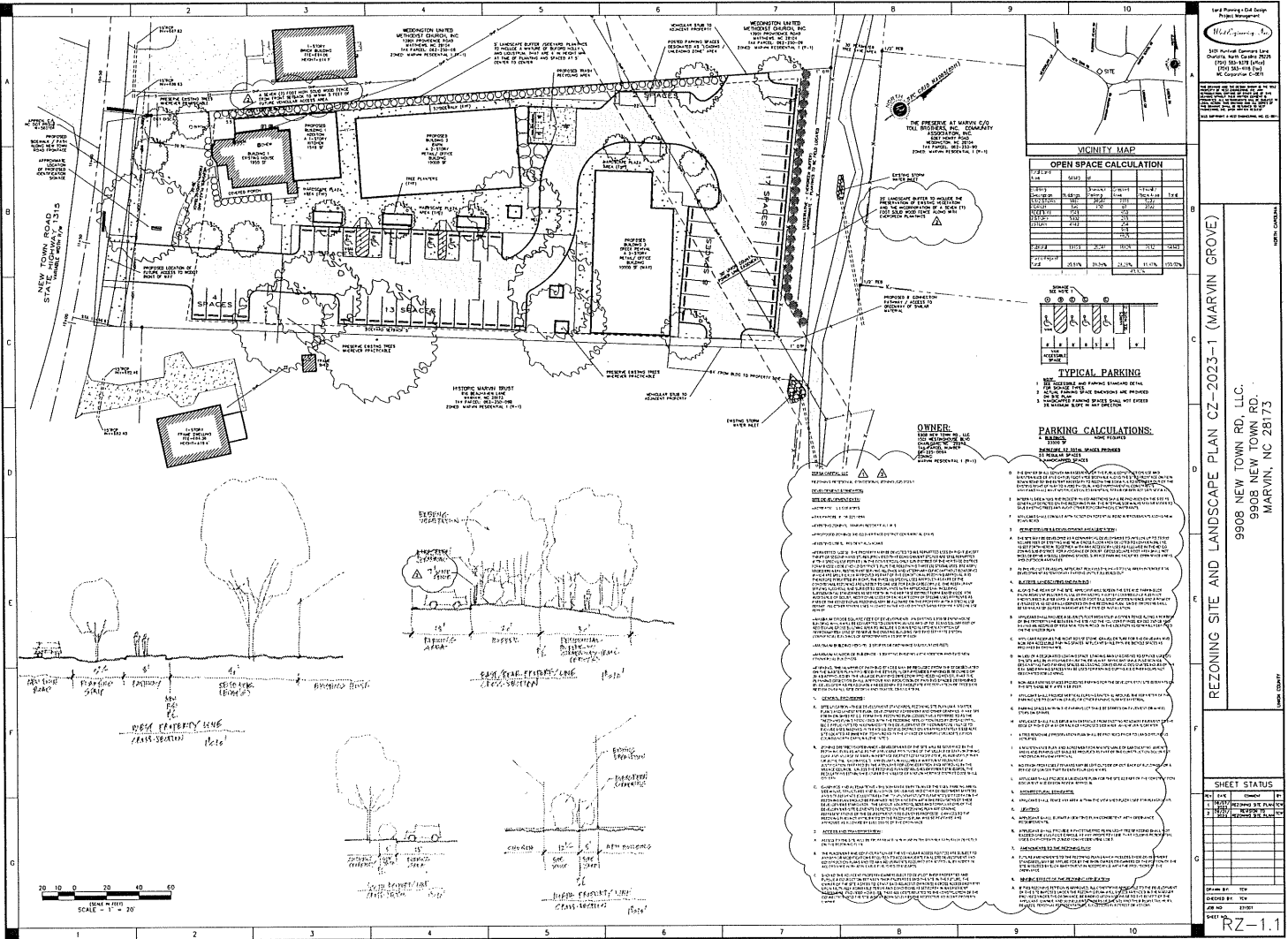
Lying and being situate in Union County, North Carolina, and being more particularly described as follows:

BEGINNING at a point located in the centerline of S. R. #1315, a corner of the Marvin Methodist Church and runs thence with two lines of said church property as follows: 1st, North 24 degrees 19 minutes East 25.8 feet to a concrete monument; 2nd, North 29 degrees 09 minutes East 426.3 feet, passing a concrete monument at 295.2 feet, to an iron pin located in a line of the William E. Ezzell (now or formerly) property (Deed Book 271, page 692); thence with a line of said Ezzell Property, South 51 Degrees 08 minutes East 174.86 feet to an iron pin, a corner of the 2.05 acre tract conveyed to Louise C. Payne in Book 383, page 132, Union County Registry; thence with a line of said Payne Property, South 35 degrees 05 minutes West; passing an iron pin at 412.43 feet, a total distance of 442.43 feet to a point located in the centerline of S. R. #1315; thence with the centerline of said road, North 52 degrees 49 minutes West 125.7 feet to the point of BEGINNING, and containing 1.54 acres, more or less, as shown on plat thereof by Allen D. Carter, NCRLS, dated March 31, 1984.

LESS AND EXCEPT the land conveyed by Deed for Highway Right of Way recorded in Book 7011, Page 45, Union County Registry.

EXHIBIT B
Master Plan/Development Plan

THIS MAP MAY NOT BE A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENTAL AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS AND HAS NOT BEEN REVIEWED FOR COMPLIANCE WITH RECORDING REQUIREMENTS FOR PLATS (G.S. 47-30(n))



PZ

EXHIBIT C

Marvin Heritage District Commercial Only (HD-CO) Permitted Uses and Supplemental Standards

Uses	HD-RO	HD-MU	HD-CO	HD-CIVIC
Art Gallery/Studio		P	P	
Brewery, Microbrewery		S	S	
Consignment/Thrift/second-hand merchandise		S	S	
Cosmetic Services (max. 1,200 s.f.)		P	P	
Doctor's Office		P	P	
Drop off only Post Office in Pharmacy		P	P	
Essential Services, Class I	P	P	P	P
Essential Services, Class II	S	S	S	S
Family Care, Day Care up to 6 people	P	P	P	P
Farmer's Market (Indoor or Outdoor)		S	S	S
Fitness Studio		P	P	
Gourmet Grocery Store (max. 15,000 s.f.)		S		
Government Building		S	S	P
Home Occupations	P	P		P
Ice Cream, Coffee Shop, Café		P	P	
Maker Space/ Artisan Retail		P	P	
Music Lessons and Sales		P	P	
Non-Public Office Rental Space (max. 1,500 s.f.)		P	P	
Professional Services		P	P	
Public Park/Open Space	Refer to Public Open Space Standards & Req'ts			
Religious Institutions (Church, Synagogue, Mosque or Place of Worship)	P	P	P	P
Restaurant, Dine-in		P	P	
Restaurant serving alcohol		S	S	
Single-Family Dwelling Unit	P	P		
Small Retail Sales (max. 3,000 s.f.)		P	P	
Specialty Food Market		P	P	
Tailor (may include drop-off cleaning, no on-site)		P	P	
Therapeutic Services		P	P	
Veterinary Clinic (without boarding)		S	S	

Supplemental Standards

Brewery, Microbrewery.

Zoning Districts identified in the Table of Uses where special use permits are required for this use shall comply with the following additional standards either with an issuance of a Special Use Permit or with the specific approval as part of a Conditional Rezoning.

A. Standards:

1. The principal use is the production of malt beverages for retail sales for on-premises and off-premises consumption in accordance with ABC permit requirements set forth in G.S. 18B-1001 as amended and issuance of on-premises malt beverage permit for breweries as authorized by G.S. 18B-1104 as amended and all other laws pursuant to G.S. 18B, as amended.
2. Accessory uses may include and be limited to only: retail sales; food and beverage consumption; entertainment; games; a tasting room; event room; and loading area.
3. A minimum of 30% of the microbrewery's floor area shall have operating brewing equipment that produces beer for retail sales. This percentage shall be satisfied at the time a Certificate of Occupancy inspection is conducted and shall be maintained thereafter.
4. Exterior guest areas shall not have amplified equipment.
5. A microbrewery shall not require a membership, cover or minimum charge for admittance or service.

Restaurant Serving Alcohol.

Zoning Districts identified in the Table of Uses where special use permits are required for this use shall comply with the following additional standards either with an issuance of a Special Use Permit or with the specific approval as part of a Conditional Rezoning

A. Standards:

- 1) When the ownership of any property or facility, which has a special use permit or an approval for a restaurant which serves alcohol establishment as part of a Conditional Rezoning approval, is transferred, the new owner or operator (as applicable) shall sign and file with the Planning and Zoning Administrator an acknowledgment of the rights, conditions and responsibilities of the special use permit prior to operation of the use under the permit. The acknowledgment shall be made on forms provided by the Planning Department.
- 2) The owner(s) and operator(s) of the restaurant shall collect and properly dispose of all litter and debris generated by their establishment or patrons immediately following the closure of business or not later than 7:00 a.m. each morning following any period of operation. All litter or debris shall be collected from within the boundaries of the establishment, associated parking areas, adjacent sidewalks and public rights-of-way or other adjacent public property open to the public.
- 3) Exterior guest areas-with amplified music must comply with Chapter 92: Noise at all times unless a Temporary Use Permit or any other applicable permit approvals has been granted for a special event.
- 4) A lighting plan shall be submitted to the Planning and Zoning Administrator for review and approval, and lighting fixtures shall be installed and maintained pursuant to the approved plan which illuminates all exterior portions of the building, lot area and parking lot as determined appropriate by the Planning and Zoning Administrator. Lighting shall be located and shielded to prevent the light cone of all exterior fixtures from encroaching beyond the property boundary line and into any adjacent public right-of-way, property or dwelling.

Veterinary Clinic (without boarding).

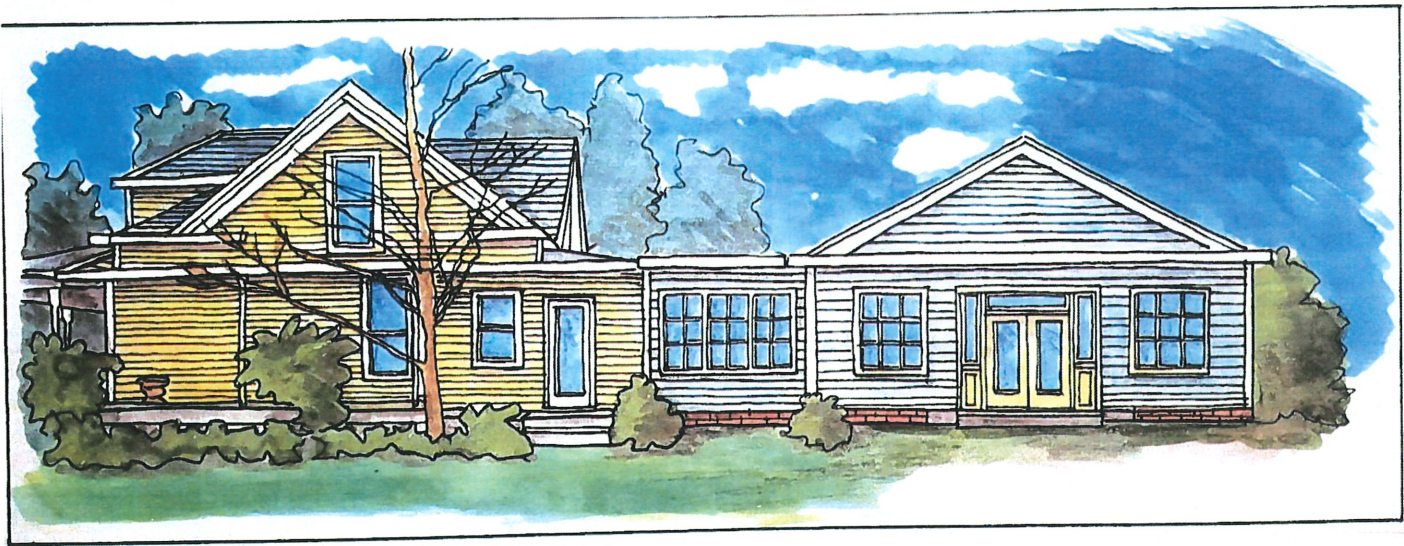
Zoning Districts identified in the Table of Uses where special use permits are required for this use shall comply with the following additional standards either with an issuance of a Special Use Permit or with the specific approval as part of a Conditional Rezoning

A. Standards:

- 1) Pens, runs, and/or other facility for the outdoor containment of animals shall be at least 400 feet from abutting property located in a residential or mixed-use district.
 - 2) Pens, runs, and/or other facility for the outdoor containment of animals shall be buffered from abutting property in a residential or mixed-use district with two staggered rows of evergreens with 2 inch calipers upon planting 6 feet on center and an opaque fence.
-

EXHIBIT D

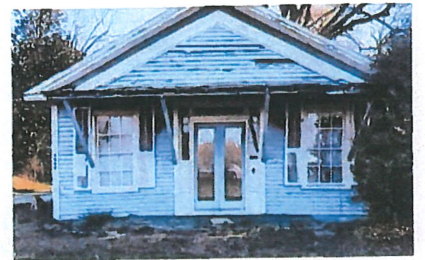
THIS MAP MAY NOT BE A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENTAL AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS AND HAS NOT BEEN REVIEWED FOR COMPLIANCE WITH RECORDING REQUIREMENTS FOR PLATS (G.S. 47-30(n))



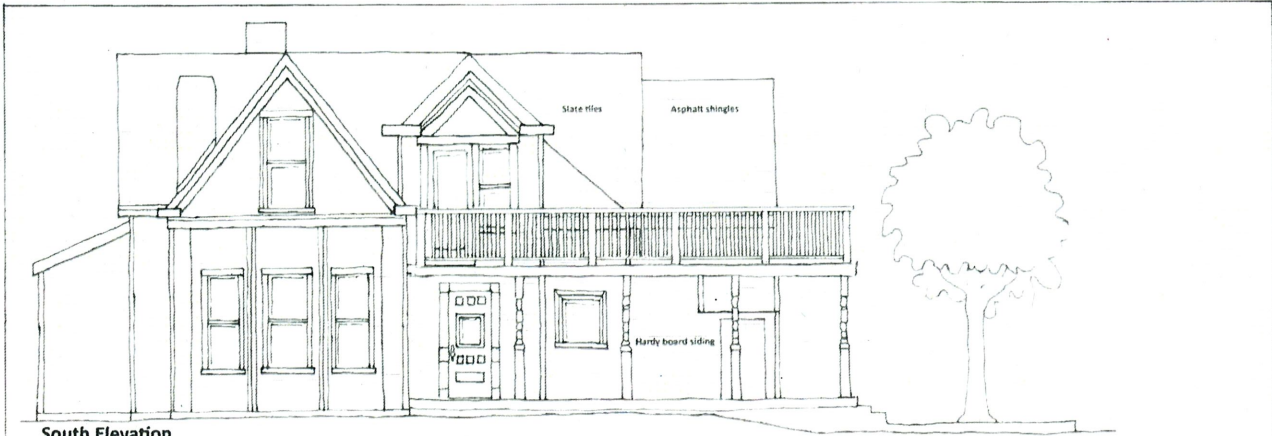
Materials: Wood or hardi plank siding, asphalt shingles, and brick.

Note: Elevations presented are illustrative and subject to change.

**9908 New Town Road
Marvin, NC**

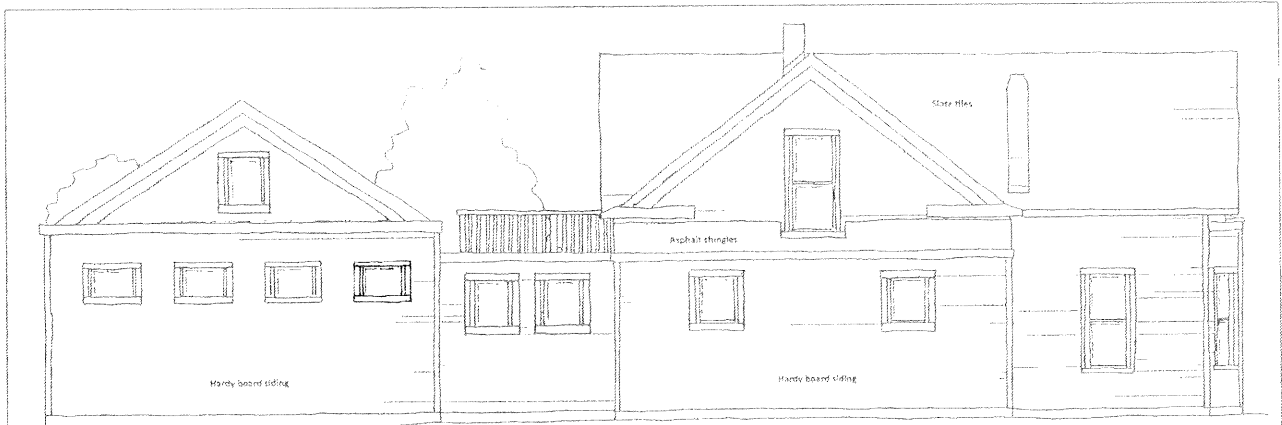


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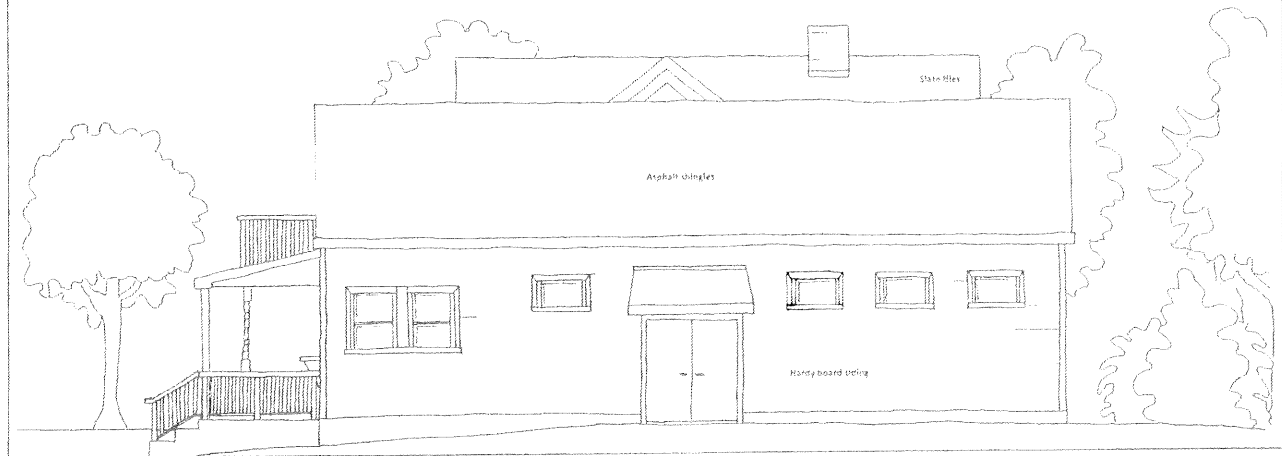


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9908 New Town Road
Marvin, NC

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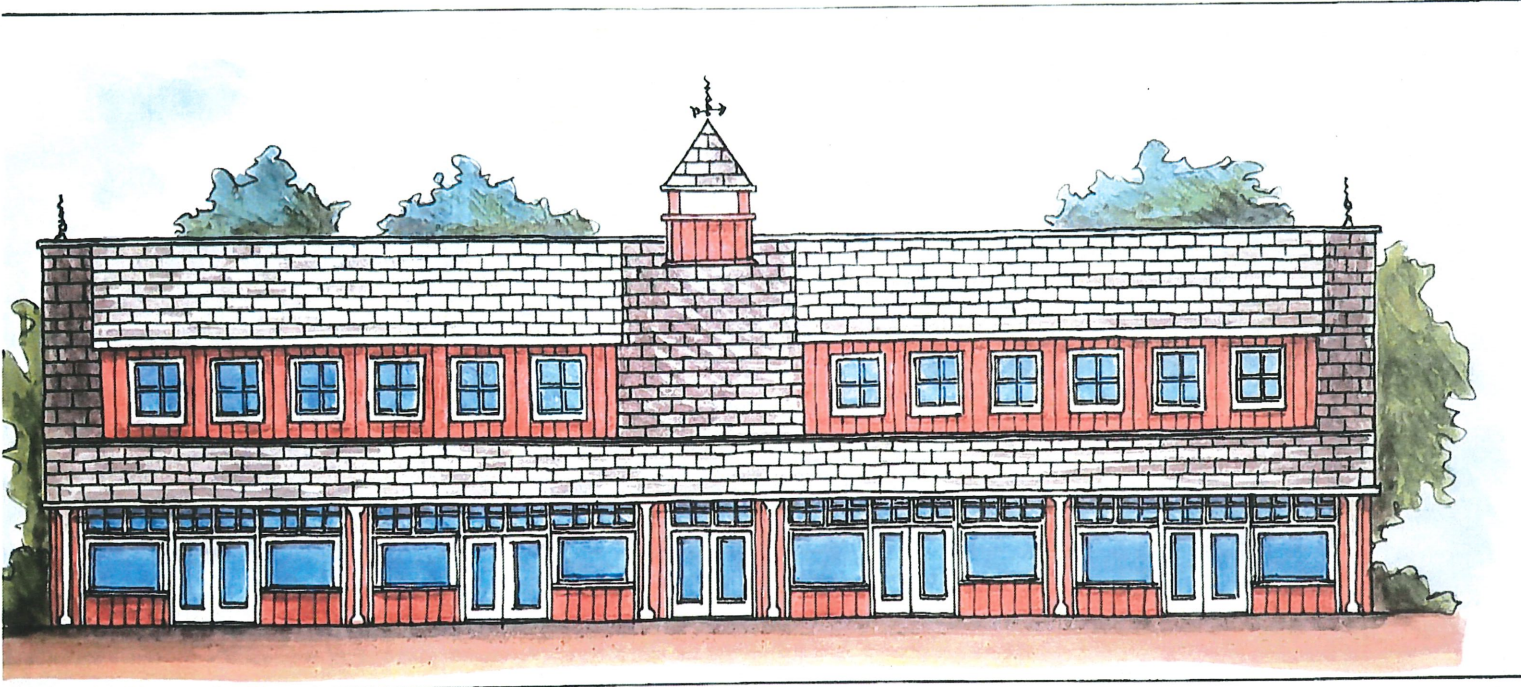


West Elevation



North Elevation

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9908 New Town Road
Marvin, NC



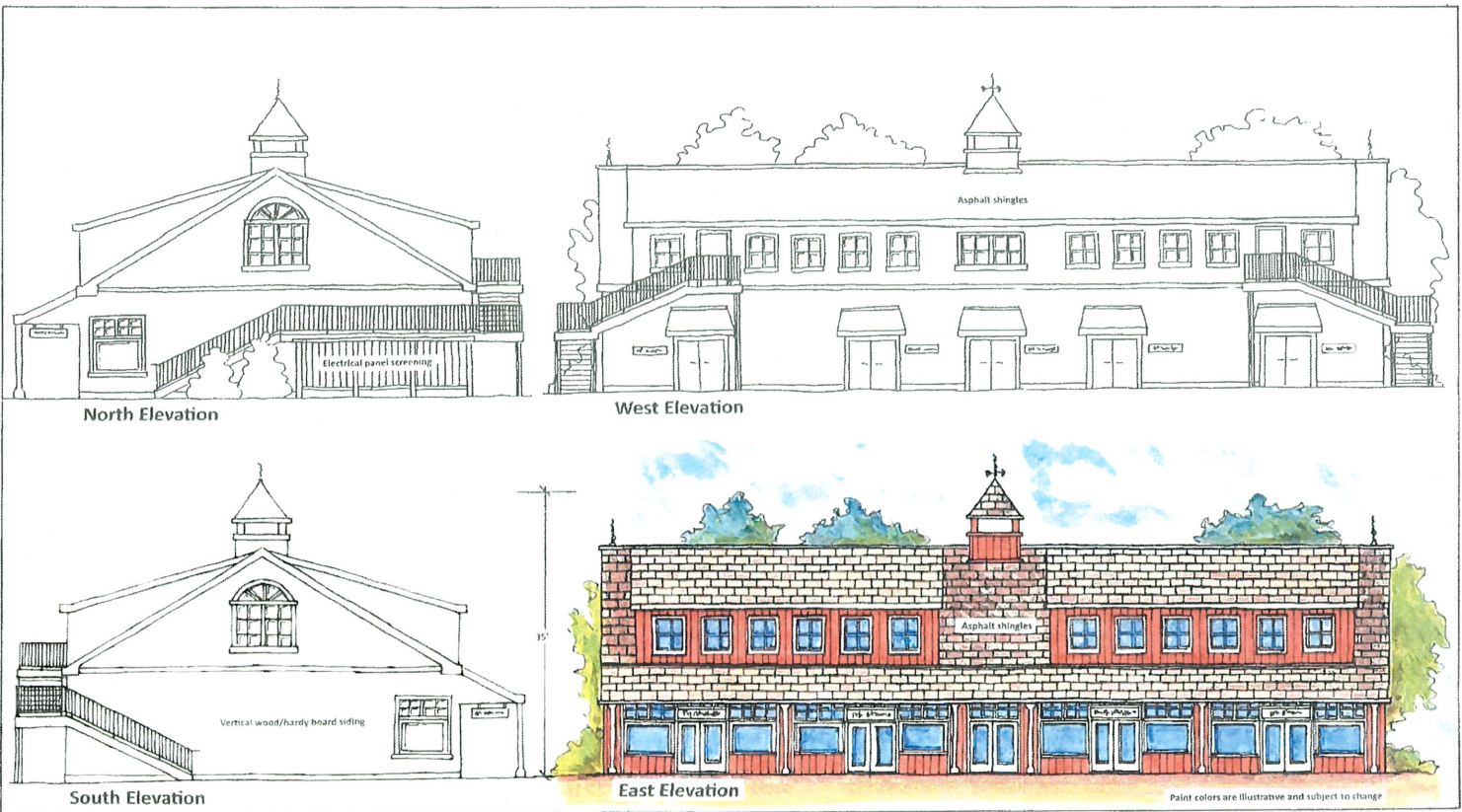
Materials: Wood or hardi plank siding, asphalt shingles, and brick.

Elevations presented are illustrative and subject to change.

18 New Town Road
Riverton, NC

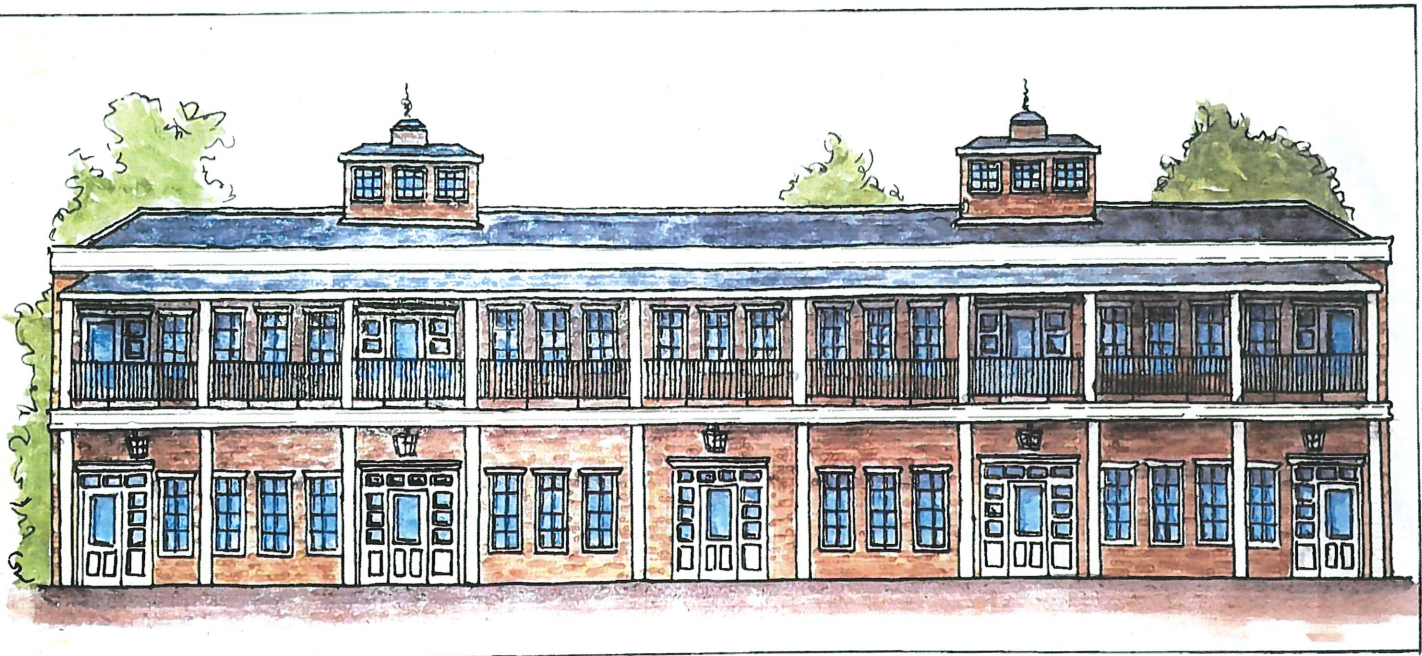


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9908 New Town Road
Marvin, NC

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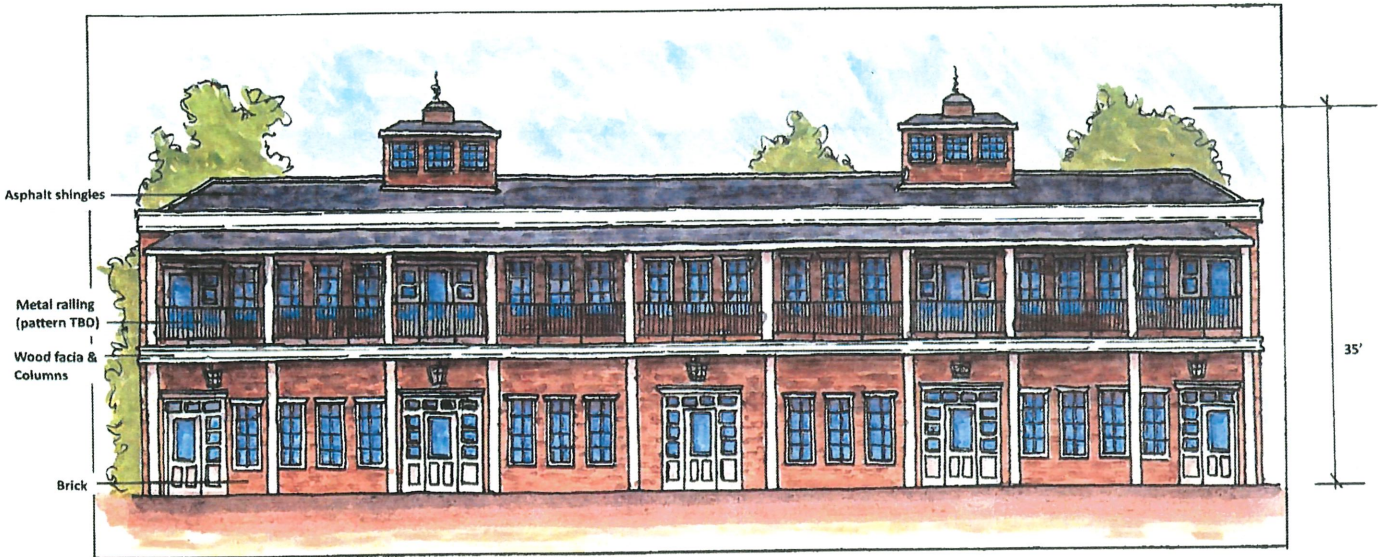
Materials: Brick and asphalt shingles.

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**9908 New Town Road
Marvin, NC**



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Front Elevation

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**9908 New Town Road
Marvin, NC**

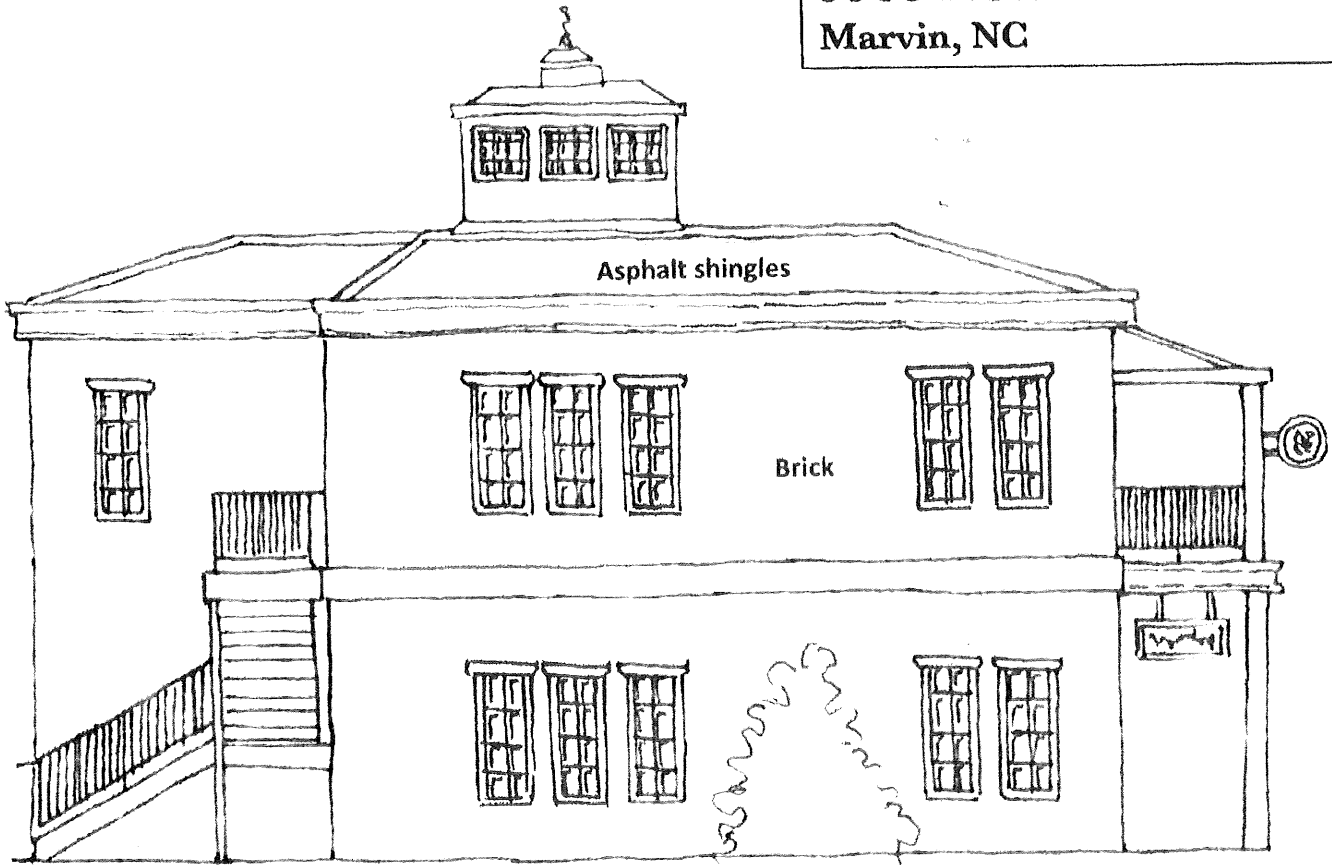
Proposed signage type and location



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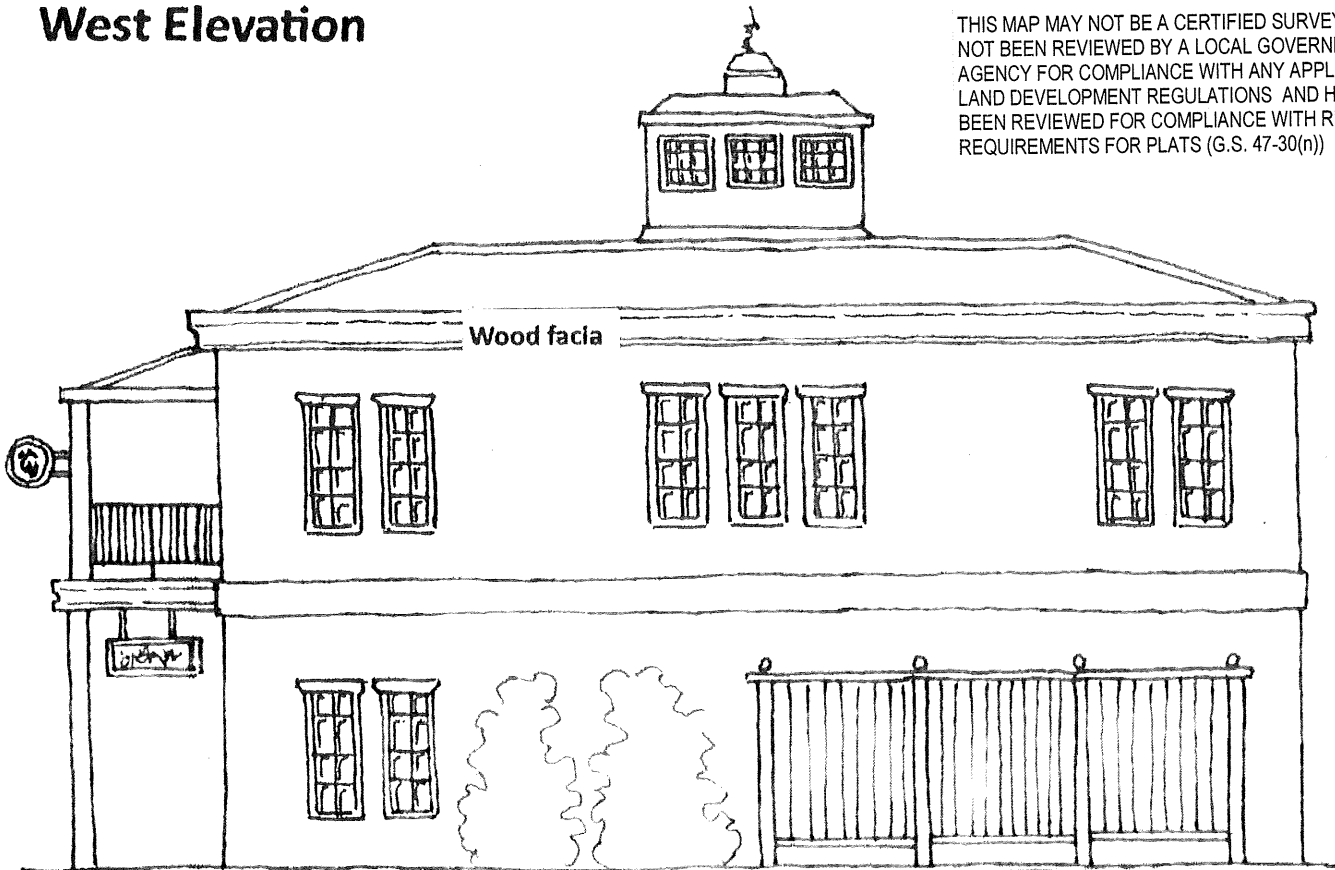
Note: Elevations presented are illustrative and subject to change.

9908 New Town Road
Marvin, NC



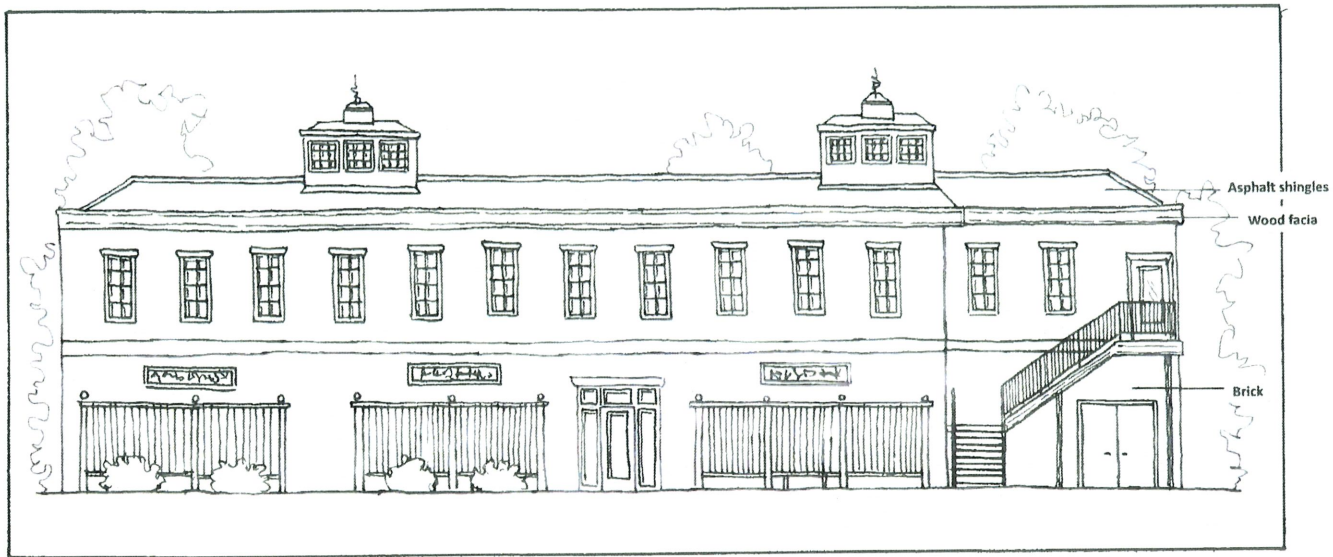
West Elevation

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East Elevation

Proposed electrical panel screening



Rear Elevation



Proposed screening and signage

Note: Elevations presented are illustrative and subject to change.

9908 New Town Road
Marvin, NC

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EXHIBIT E
Approved Deviations

Deviation Requested		Justification for Request
Parking Surfaces: Option to use stone, gravel or turf for non-ADA accessible parking spaces	Page 35 (HD Code): Parking Surfaces of parking lots having more than 10 parking spaces must be paved	Desire to preserve the historic feel of the Site and in keeping with adjacent parking lots and proposed driveway. All ADA parking spaces will be paved.
No designated Loading Space	Sec. 151.165 (L)(3) of Village Code: Requires provision of a 12 x 25 ft loading space	Site will be more effectively loaded from front of tenant spaces; avoids trucks having to drive behind building. Applicant providing 24 foot wide driveway to enable other vehicles to pass by during loading/unloading process. Applicant is proposing to use the two parallel parking spots near the trash and recycling area as a loading zone during certain hours.
Allow 9ft wide x 18ft deep Parking Spaces	Sec. 151. 165 (H)(1)(a)of Village Code requires 10ft x 20ft parking spaces.	Standard parking space size per DOT is 9ft x 18ft. ADA spaces will be size required by regulations.

Exhibit F
Development Schedule (Phasing)

1-3 Years (From Council approval) Building 1

3-5Years Building 2

5-7Years Building 3

NOTE: This development schedule is an estimate.