Board of Adjustment
Case Report

City of Raleigh
Department of City Planning
One Exchange Plaza
Raleigh, NC 27601
(919) 996-2626
www.raleighnc.gov

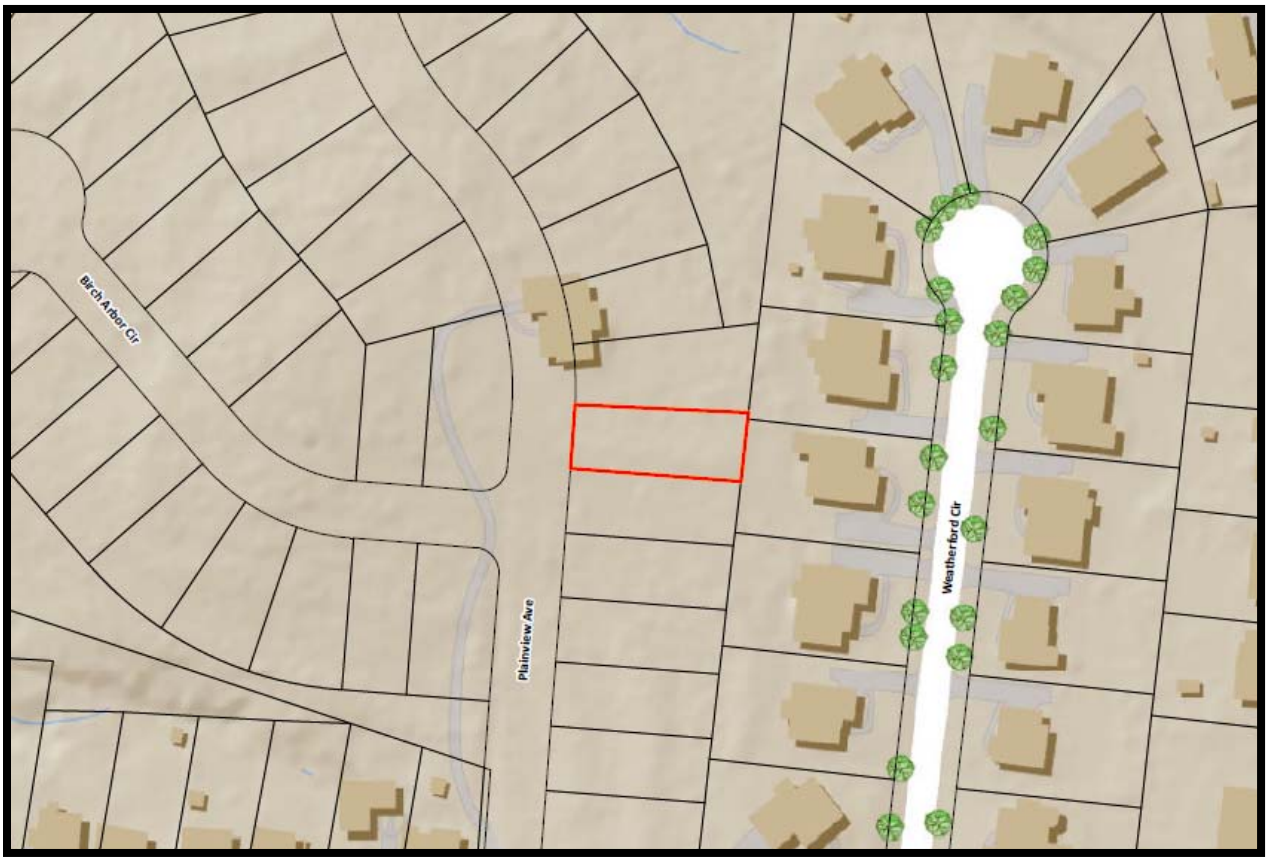
Case File: **A-75-15**

Property Address: 455 Plainview Avenue

Property Owner: Stephen Mallinson and Melanie Luques

Project Contact: Bob Lekich

Nature of Case: Request for a variance from the requirements set forth in Section 7.2.8.b.2. and Article 9.1 of the Part 10A Unified Development Ordinance to allow a fence to be located in a Tree Conservation Area on a .16 acre property zoned Residential-10 and located at 455 Plainview Avenue.

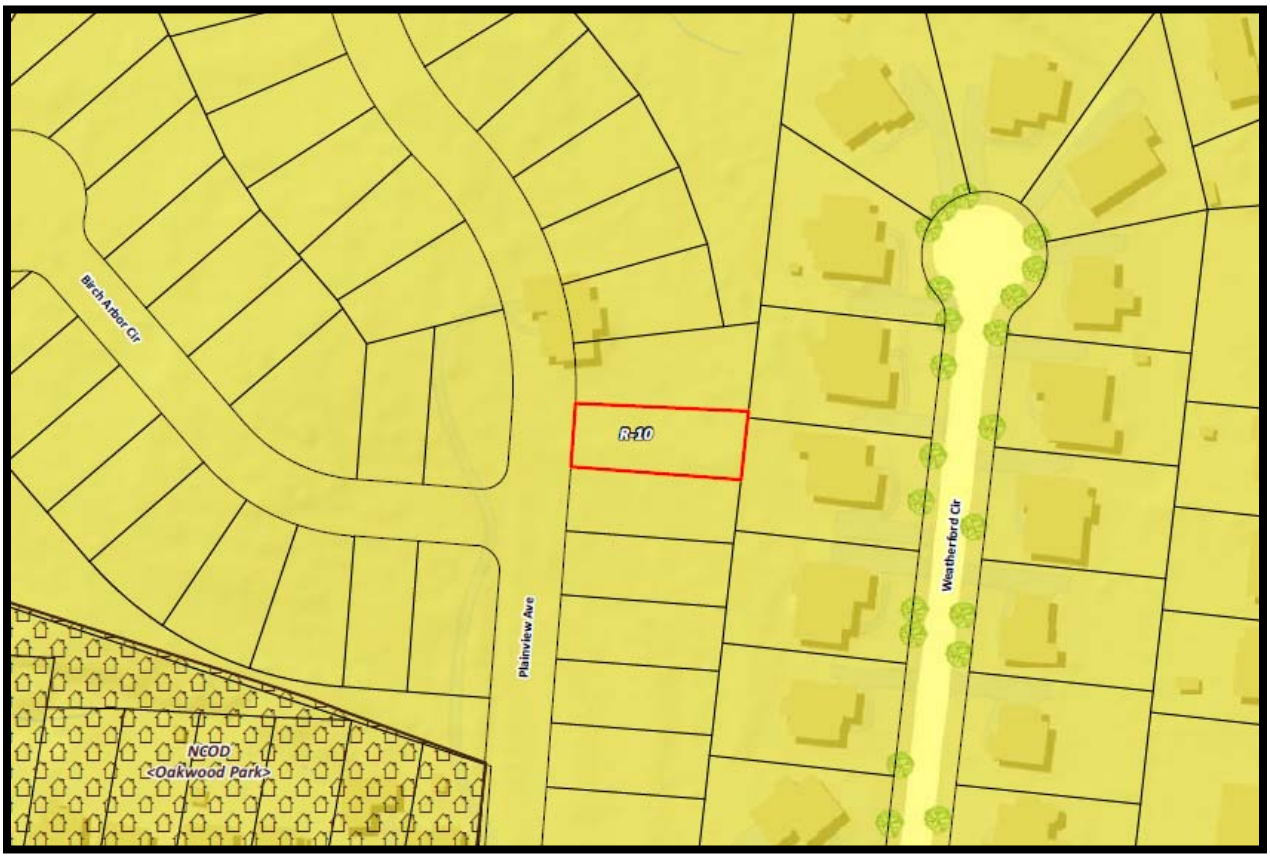


455 Plainview Avenue – Location Map

To BOA: 9-11-15

Staff Coordinator: Eric S. Hodge, AICP

ZONING DISTRICTS: Residential-10



455 Plainview Avenue – Zoning Map

VARIANCE STANDARDS: In accordance with UDO §10.2.10 Variance, before a variance request is granted, the Board of Adjustment shall show all of the following:

To Legalize the Existing Structure:

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.**

Sec. 7.2.8 Walls and Fences

A. Applicability

The following requirements apply to walls and fences located outside of a protective yard or required screening area.

B. General Standards

1. Fences and walls must be constructed of high quality materials including 1 or a combination of the following: decorative blocks; brick; stone; cast-stone; architectural block; split-faced block; stucco over standard concrete masonry blocks; glass block; wood; wrought iron; composite fencing; wire; PVC vinyl; aluminum; metal or other material approved by the Planning Director. .

2. **No wall or fence can be located within any tree conservation area.**

3. No wall or fence can be located within any City of Raleigh utility easement without prior written approval of the Director of Public Utilities.

4. No wall or fence can be located within any required drainage easement without prior written approval of the Public Works Director.

5. Barbed wire or concertina wire may be allowed in accordance with Sec. 13-3011.

6. Except in an IH district, chain-link fences are not allowed in any front or side street setback.

7. The maximum length of a continuous, unbroken and uninterrupted fence or wall plane shall be 100 feet. Breaks shall be provided through the use of columns, landscaped areas, transparent sections or a change in material.

8. Except in an IH district, a wall or fence not more than 6 and one half feet in height may be located in a front or side street setback, provided the opacity of the wall or fence above 4 feet in height does not exceeds 50%.

9. A wall or fence may not exceed 8 feet in height in a side or rear setback unless it is located adjacent to a street, in which case it may be no more than 6 and one half feet in height, provided the opacity of the wall or fence above 4 feet in height does not exceed 50%.

Cross reference: The Director of Public Utilities may approve structures within City of Raleigh utility easements, §8-2012 (d).

Article 9.1. Tree Conservation

Sec. 9.1.1. Intent

The intent of the tree conservation regulations is to preserve tree coverage, mature trees and natural resource buffers, and lessen the impact of development on the surrounding properties. The most significant trees, greater basal area tree stands and healthy trees in the most appropriate locations, should be considered when granting an alternate.

Sec. 9.1.2. Applicability

Prior to approval of any subdivision of any tract 2 acres or greater in size or site plan for a parcel 2 acres or greater, tree conservation areas must be provided in accordance with the requirements of this UDO, provided that delineation of tree conservation areas for a site subject to either condemnation or the threat of condemnation shall be delayed until a site plan or further subdivision of the parcel first occurs.

Sec. 9.1.3. Tree Conservation Required

A. Tree Conservation

1. Tree conservation area requirements by district are set forth below. The eligibility for tree conservation is based on the gross site area. The amount of conservation area required is calculated as a percentage of the net site area.

District	Conservation Area Required (min)
R-1, R-2	15%
All other districts	10%

2. Any eligible tree conservation priority in conflict with a build-to requirement is not required to be protected.

Sec. 9.1.4. Tree Conservation Area Allocation

A. Primary Tree Conservation Areas

The following are primary tree conservation areas and must be the first areas saved to meet the tree conservation requirement. All primary tree conservation areas on the site must be established even if doing so exceeds the minimum required percentage.

1. -SHOD-1 and -SHOD-2 protective yards (see *Sec. 5.3.1.*).
2. Parkway Frontage protective yards (see *Sec. 3.4.3.*)
3. CM primary tree conservation areas (see *Article 4.2. Conservation Management (CM)*).
4. -MPOD protective yards (see *Sec. 5.2.2.*).
5. A healthy, champion tree and its critical root zone.
6. Zone 2 of Neuse River Riparian Buffers, as established in title 15A of the North Carolina Administrative Code Subarticle 2B Section .0233.
7. Areas with a gradient of 45% or greater that are adjacent to or within floodways.
8. An undisturbed area adjoining a Thoroughfare varying in width between 0 and 100 feet; provided that the total undisturbed area is equal to an area measured 50 feet perpendicular to the Thoroughfare.

B. Secondary Tree Conservation Areas

1. The following secondary tree conservation areas, listed in priority order from highest to lowest, must be included once the primary tree conservation areas are exhausted.
   a. A minimum 65-foot wide perimeter buffer when the adjoining or adjacent property is not a Thoroughfare or is not vacant.
   b. A minimum 32-foot wide perimeter buffer when the adjoining or adjacent property is vacant.
   c. The critical root zone of any tree 10 inches or greater in DBH that is located within 50 feet of a Thoroughfare or within 65 feet of any non-vacant property boundary or roadway that is not a Thoroughfare.
   d. The critical root zone of any tree 10 inches or greater in DBH that is located within 32 feet of a vacant property boundary.
2. Secondary tree conservation areas described in h. through *Sec. 9.1.4.B.1.b.* above must be at least 32 feet in all directions and be a minimum of 4,000 square feet in area, excluding external boundaries.
3. The critical root zone of a saved tree in *Sec. 9.1.4.B.1.c.* or *Sec. 9.1.4.B.1.d.* above must be preserved in entirety even if it extends beyond 65 feet or 32 feet. When a landscape easement is obtained from the adjoining land that prohibits all tree disturbing activity, off-site areas for protected critical root

zones may be included as tree conservation areas provided that such areas are not under any circumstances to be counted as tree conservation area on both properties.

4. As an alternative to *Sec. 9.1.4.B.1.a.* and *Sec. 9.1.4.B.1.b.* above, secondary tree conservation areas of undisturbed areas are allowed elsewhere on the site provided that the square footage of the substituted areas is at least 4,000 square feet. No portion of Zone 1 of Neuse River Riparian Buffers as established in Title 15A of the North Carolina Administrative Code, Subarticle 2B Section .0233, shall be designated an alternate undisturbed area.
5. As an alternate means of compliance with *Sec. 9.1.4.B.1.c.* or *Sec. 9.1.4.B.1.d.* above, secondary tree conservation areas of individual trees 10 inches or greater in DBH and their critical root zones are allowed anywhere on the site that is not otherwise tree conservation area provided that the critical root zone area in the alternate locations is not less than the critical root zone area that would have been required for priorities in *Sec. 9.1.4.B.1.c.* or *Sec. 9.1.4.B.1.d.* above and that no alternate saved tree is less than 10 inches in DBH.

C. Excluded Areas

Tree conservation areas must exclude the following.

1. Sight triangles.
2. Slope easements.
3. Drainage easements.
4. Cross access easements.
5. Governmental and utility easements that prohibit trees.
6. Any easement that authorizes tree disturbing activities.
7. Any area devoted or to be devoted to streets, future right-of-way reservation, sidewalks, driveways, walkways, storm drainage facilities, including without limitation, pipes, energy dissipaters and stormwater control measures which require the removal of vegetation.
8. Water-related activity areas located in, over, under or adjacent to a lake or natural watercourse shown on the site plan may not be included as Zone 2 areas of Neuse River Riparian Buffers.
9. Any tree 10 inches DBH and larger that has 30% or more of its critical root zone traversed in part or in entirety by any of the excluded areas in *Sec. 9.1.4.C.1.* through *Sec. 9.1.4.C.7.* above, by impervious surface or by any adjacent property.

D. General Conservation Area Requirements

1. Size

The minimum dimension of a primary tree conservation area is 20 feet, measured in all directions.

2. Greenways

a. City of Raleigh greenways may be included as tree conservation areas, provided that an area of 25 feet multiplied by the length of the greenway is excluded as tree conservation for trail construction.

b. Greenways can only be established as tree conservation areas after establishment of primary tree conservation areas.

3. Tree Quality

No tree may be used to meet the requirements of this Article if it is unhealthy or a hazardous tree.

4. Heritage Trees

A heritage tree and its critical root zone may be established as an optional tree conservation area after establishment of primary tree conservation areas. The area of critical root zone for a heritage tree conservation area shall be double credited toward the tree conservation requirement only when all of the following conditions are met.

a. The critical root zone shall be protected in entirety by, either being entirely on the developing property or the property owner shall obtain a landscape easement that prohibits all tree disturbing activity for the portion of the critical root zone on an adjacent property. The off-site area for protected critical root zone may be included as tree conservation area provided that such area shall not under any circumstances be counted as tree conservation area on both properties.

b. Any portion of the critical root zone within another tree conservation area shall not be eligible for double credit.

c. The condition of the heritage tree shall be a rating of "Good" or higher as determined by an arborist certified by the International Society of Arboriculture using the Guide for Plant Appraisal, latest edition, published by the International Society of Arboriculture and verified by the Planning and Development Officer.

d. A report of the tree condition shall be prepared on an evaluation form provided by the City and it shall be provided to the Planning and Development Officer.

e. An active tree preservation plan prepared by an arboorist, certified by the International Society of Arboriculture, must be approved by the Planning and Development Officer and implemented by the developer under the supervision of the certified arborist.

E. Tree Cover Required

1. Tree conservation areas proposed for -SHOD-1, -SHOD-2, Parkway Frontage, and undisturbed areas adjoining a Major or Minor Thoroughfare protective yard (*Sec. 9.1.4.A.1.*, *Sec. 9.1.4.A.2.* and *Sec. 9.1.4.A.8.*) and secondary priority areas (*Sec. 9.1.4.B.1.a.* and *Sec. 9.1.4.B.1.b.*) and their alternates, must contain a basal area of at least 30 square feet per acre as measured in increments of 50 lineal feet.

2. Any required protective yard for a -SHOD 1, -SHOD-2 or Parkway Frontage that does not contain a basal area of at least 30 square feet shall be planted in accordance with the overlay district landscaping standards and portions of the protective yard cannot be established as a tree conservation area.

3. For those developments that fulfill any of their tree conservation area requirement using a -SHOD-1, -SHOD-2, Parkway Frontage or undisturbed areas adjoining a Major or Minor Thoroughfare protective yard or with secondary tree conservation areas from *Sec. 9.1.4.B.1.a.* or *Sec. 9.1.4.B.1.b.* and their alternates, the following must be submitted:

   a. Photo panoramic panels of the intended area to be conserved. The photo panel shall equal 50 feet of the length of the tree conservation area to be saved;

   b. A tree cover report prepared by a North Carolina registered forester or North Carolina licensed landscape architect or Certified Arborist that, inventories each 50-foot length of proposed tree conservation area, to identify all eligible trees 3 inches DBH and larger, by species, DBH, with basal area calculations and a determination of the general health of the tree stand; and

   c. The most recent aerial photograph of the subject tract.

4. A survey of all eligible trees and computation of basal area may be substituted in lieu of *Sec. 9.1.4.E.3.a.* and *Sec. 9.1.4.E.3.c.* above, provided that no dead, unhealthy or hazardous tree is included in the survey.

5. An optional method to determine basal area for tree conservation areas is allowed when a North Carolina registered forester certifies in writing that the basal area is 60 square feet per acre or greater, provided all the following conditions are met:

   a. The contiguous tree conservation area that can consist of primary and secondary is at least 8,700 square feet in size, excluding easements and consists of undisturbed wooded areas with a basal area of 60 square feet per acre or greater comprised of trees 3 inches DBH and larger;

   b. All dimensions of tree conservation areas are at least 65 feet in all directions;

   c. Land area that does not contain trees must be excluded unless it contains critical root zones of trees being preserved;

   d. Any area of tree disturbing activity is excluded as a tree conservation area; and

   e. A legible copy of the latest Wake County/City of Raleigh aerial photograph must be included with the registered forester's certification.

6. Within each 50-foot linear increment of Zone 2 of Neuse River Riparian Buffers, MPOD natural resource buffer yards or greenway tree conservation areas that do not contain trees, a minimum of 2 shade trees to enhance the riparian buffer must be planted prior to issuance of a certificate of occupancy. Planted shade trees must be at least 10 gallon container size and free of circling roots at time of planting. If the area without trees will be used as shown on the approved site plan for either a tree disturbing activity allowed by *Sec. 9.1.6.* or a water-related activity located in, over, under or adjacent a lake or natural watercourse, no planting of new trees shall be required.

7. Within each 50 linear feet of watercourse buffer of the -MPOD that does not contain trees, a minimum of two 10 gallon container size shade trees, free of circling roots, must be planted to enhance the riparian buffer prior to the issuance of a certificate of occupancy.
8. Alternatively, areas that do not contain trees in Neuse Zone 2, greenways or -MPOD watercourse buffers may be established as permanently undisturbed primary tree conservation areas to allow natural regeneration of trees, provided such areas are not located on individual lots developed for single-unit living. Permanently undisturbed primary tree conservation areas shall not be cleared of any vegetation or subjected to any tree disturbing activity and shall be delineated with signs as specified by the City. Required signs must remain in place for a period of 7 years. Unlawful disturbance of any permanently undisturbed primary tree conservation area shall subject the violator to a civil penalty of a minimum of $1,000 plus 35 cents for every square foot of disturbed area and unlawfully disturbed areas shall be planted with twice the number of 10 gallon container shade trees as described above. Unlawful removal of any required signs shall subject the violator to a civil penalty of $100 for each removed sign and each removed sign shall be replaced. Civil penalties shall be processed as set forth in *Sec. 10.4.2.*

Sec. 9.1.5. Documentation of Tree Conservation Areas

A. Tree Conservation Permit Required

1. After the tree conservation areas have been determined and prior to any tree disturbing activity, a map with metes and bounds descriptions of all tree conservation areas must be given to Planning and Development and a tree conservation permit must be obtained from the City and tree protective fencing placed on the site.
2. After the tree conservation areas have been determined and a tree conservation permit has been obtained and prior to or concurrent to any subdividing of the property and prior to issuance of a building permit, the landowners shall record with the local County Register of Deeds the following:
   a. A plat with metes and bounds descriptions of all tree conservation areas;
   b. An easement that allows current and future lot owners access to otherwise inaccessible tree conservation areas to perform tree maintenance activities including required replacement plantings;
   c. A homeowners' association declaration prepared in conformity with N.C. Gen. Stat., Chapter 47F for the maintenance and protection of the trees within recorded tree conservation areas; and
   d. One or more deeds conveying all tree conservation areas in fee or in easement to the homeowners' association.

B. Neuse River Riparian

1. Metes and bounds descriptions of Neuse River Riparian Zone 2 shall include only the outer boundary of Zone 2 with a notation that the inner boundary is 20 feet parallel to the outer boundary.
2. The outer boundary of Zone 2 may optionally be surveyed as a series of tangents that shall be no more than 5 feet from the actual Zone 2 boundary.
3. When the tangent survey is used, metes and bounds descriptions of the tangent lines and the actual outer boundary of Neuse River Riparian Zone 2 (without metes and bounds) shall be shown on the recorded plat. Tree disturbing activities are prohibited and unlawful in the area between the tangent Zone 2 boundary and the actual Zone 2 boundary to the same extent as tree disturbing activities are within Zone 2 areas, but these areas shall not count toward the percentage tree conservation requirements of *Sec. 9.1.3.*, *Sec. 9.1.4.A.* and *Sec. 9.1.4.B.* as demonstrated to the Planning and Development Officer.

C. Secondary Conservation Areas

1. Where secondary tree conservation areas (*Sec. 9.1.4.B.1.a.* and *Sec. 9.1.4.B.1.b.*) abut one another, metes and bounds descriptions shall not be required for the boundary line between abutting tree conservation areas.
2. Previously recorded tree conservation areas and greenways may be shown without metes and bounds provided that the correct Book of Maps is referenced and greenways are re-recorded as greenway tree conservation areas.

D. Replacement by Condemnor

Whenever any condemnor acquires property through eminent domain it shall be the responsibility of the condemnor to replace, in accordance with the provisions of this UDO, those complying elements which were removed unless a less stringent standard is required.

E. Payment In Lieu of Compliance

1. Requests for fee-in-lieu payments will be considered, but not limited to, the following cases:
   a. Site condtions caused by man-made or natural topography that would require use of a retaining wall where the cost of wall construction would be greater than the fee-in-lieu for the area being relieved from compliance. In such cases, justification must be provided to demonstrate there are no alternate methods of construction other than use of a retaining wall. Quotes from 3 independent design firms or contractors must be provided to estimate the construction cost of the retaining wall; and
   b. Site conditions where the existence of priority areas under *Sec. 9.1.4.B.1.c.* and *Sec. 9.1.4.B.1.d.* render a site undevelopable.
2. General conditions for all fee-in-lieu requests.
   a. No primary tree conservation area is eligible for a fee-in-lieu payment.
   b. Fee-in-lieu payments for tree conservation area will not be considered when the objective is to develop the site without regard for the tree conservation priorities of *Sec. 9.1.4.*
   c. Fee-in-lieu payments for tree conservation area will not be considered when the objective is to achieve increased site visibility at the expense of tree conservation.
   d. Prior to requesting a monetary payment in lieu of compliance, the applicant must examine alternate methods to preserve the required tree conservation priority areas. Upon submittal of a fee-in-lieu request, the applicant must provide proof of consideration of alternatives and justification why the alternatives are not feasible. The City may require that additional alternate methods be examined.
   e. Alternative methods to preserve tree conservation areas include but are not limited to: re-design of the subdivision or site plan, use of retaining walls, alternate methods of construction (such as trex decking in place of concrete sidewalk) and arboricultural practices that include active tree preservation (such as root pruning of no more than 30% of the root zone with active tree preservation aftercare) performed under supervision of a certified arborist.
   f. Secondary tree conservation areas approved for a fee-in-lieu payment shall be paid at a rate equal to the tax value of the land.
   g. All fee-in-lieu payments shall be adjusted on an annual basis using the percent change Dec-Dec column of the Consumer Price Index chart available through the US Department of Labor.
3. All collected monies, including any income derived from such monies, shall be spent either for acquisition of lands where trees will be preserved or for tree planting. The City Council shall set forth specific eligible activities for tree preservation and tree plantings. All collected monies must be spent within the same open space fee zones from which the payments were collected.

Sec. 9.1.6. Permitted Tree Disturbing Activities

No tree disturbing activity shall take place in designated tree conservation areas except in conformity with the following.

A. Within Zone 2 of Neuse River Riparian Buffers and in watercourse buffers in a -MPOD, permitted tree disturbing activities are allowed for:
   1. Any work that is ancillary to activities allowed by the North Carolina Division of Water Quality in Zone 1 that is approved by the City;
   2. Any sanitary sewer installation when an existing permanent structure or any part of an existing permanent structure that is to remain on the site is within the width of the proposed permanent and temporary construction sanitary sewer easement plus 10 feet; and
   3. More than 50% of a reach of sanitary sewer main will be over 12 feet deep.

B. Within primary tree conservation areas and secondary tree conservation areas tree disturbing activities are allowed when all of the following are met.
   1. A tree conservation permit is obtained from the Planning and Development Officer. Tree conservation permits may be issued for one or more of the following:
      a. A certified arborist, registered forester or a licensed landscape architect certifies to the City in writing that the tree is either unsafe or is unhealthy. No certification is required if it can be shown that the tree died of natural causes and the dead tree is replaced in accordance with the replacement standards of this Article.

b. Tree removal or grading is being done to remove a visual obstruction from a sight triangle as set forth in the North Carolina Department of Transportation's Policy on Street and Driveway Access to North Carolina Highways Manual and all subsequent amendments.

c. The removal or grading is being done to install public improvements made pursuant to this UDO.

d. Where existing vegetation meets the minimum applicable tree conservation requirements for an applicable district or meets applicable transitional yard requirements, a tree conservation permit may be issued for wooded area clean-up of shade trees less than 2 inches DBH and understory trees less than 1 inch in DBH.

e. No permit for such removal may be issued until a plan is submitted showing the nature and extent of all tree work, how the work will be undertaken without compacting soils and damaging preserved trees and maintaining minimum applicable requirements.

2. When a tree conservation permit is issued in accordance with *Sec. 9.1.6.B.1.*, the property owner must install replacement trees for any tree situated within the limits of the tree disturbing activities in one of the following ways:

a. One or more undisturbed areas of equal size containing vegetation similar in size and quantity as that which is being removed is preserved in alternate undisturbed areas meeting the requirements of *Sec. 9.1.4.B.* through *Sec. 9.1.4.E.* for priority areas *Sec. 9.1.4.B.1.a.* and *Sec. 9.1.4.B.1.b.*

b. For each 200 square feet of tree disturbed land area, a 2-inch caliper tree is either planted between the principal building and the roadway or is planted in approved alternate areas of the site.

c. Whenever a tree of priority area under *Sec. 9.1.4.B.1.c.* and *Sec. 9.1.4.B.1.d.* is removed after being certified as a hazardous tree, unhealthy or dead; it shall be replaced with 10 caliper inches of new shade trees. Any replacement tree shall be planted within the tree conservation area previously recorded for the removed tree. The minimum size of any replacement tree shall be 2 caliper inches.

d. All substituted natural areas and newly planted areas must be designated as tree conservation areas on plats with metes and bounds descriptions recorded with the Wake County Register of Deeds.

3. All portions of critical root zones of trees situated inside a designated tree conservation area that adjoin proposed tree disturbing activities shall remain undisturbed areas for trees with 10 inches or greater DBH.

4. Prior to commencing any tree disturbing activity, the boundaries of such activities shall be delineated by a protective fence in the field.

Sec. 9.1.7. Penalties

A. A violation of this Article, where unlawful tree disturbing activity has occurred and trees and stumps are absent, shall subject the violator to a civil penalty of a minimum of $1,000 for the first tree plus 35 cents of every foot of unlawful tree disturbing activity.

B. Where trees or stumps are present after unlawful tree disturbing activity has occurred, the civil penalty shall instead be calculated as $1,000 for the first tree plus $100 per diameter inch for any other tree or stump 3 inches diameter and larger. Civil penalties shall be processed as set forth in *Sec. 10.4.2.*

Sec. 9.1.8. Restoration

A. In addition to the civil penalty of *Sec. 9.1.7.*, the owner of real property, where a violation has occurred, shall remove each unlawfully disturbed tree and replace with a tree or trees of equal caliper.

B. Prior to any replanting, the Planning and Development Officer shall first approve a replacement planting and maintenance plan. Replacement trees shall be 2 inches in caliper and no replacement tree shall be located in those portions of a tree conservation area with a basal area of over 80 square feet per acre.

C. All replacement trees shall be planted in a planting area of at least 200 square feet in area with minimum dimensions of 8 feet.

D. If the tree conservation area where the violation has occurred fails to contain sufficient land area to replant the required replacement trees and replacement trees can not be planted on other portions of the property, then in lieu of such replacement trees, a replacement fee equal to $100 per caliper inch of replacement trees shall be paid to the City.

Sec. 9.1.9. Watershed Protection Overlay Districts

A. Except as otherwise provided below, every lot located within a -UWPOD, -FWPOD or -SWPOD must provide and maintain an area set aside for trees equal to at least 40% of the lot area. Within this area, trees must either be preserved or planted in accordance with the following:

1. Tree areas may be 1 contiguous area or scattered areas throughout the lot, but no required tree area may be less than ⅓ of the total gross land area required to be set aside for trees;
2. All areas required to be set aside for trees shall be maintained as wooded areas;
3. Wooded areas may consist of either areas where active tree preservation is observed or tree planting areas;
4. Each active tree preservation area must contain a minimum of 2 inches of tree caliper per every 100 square feet and within such areas, active tree preservation shall be followed;
5. Areas that are set aside for trees that do not meet the standards for active tree protection areas must be planted with shade trees; and
6. The minimum size and planting rate of new tree plantings used to fulfill this requirement shall be either 1 bare-root seedling at least 14 inches tall planted per 100 square feet (10 feet by 10 feet centers) or one 2-inch caliper tree planted per 200 square feet.

B. After wooded areas have been determined and prior to or concurrent to any subdividing of the property or issuance of building permit, the landowner shall record with the local County Register of Deeds a plat with metes and bounds descriptions of all wooded areas.

C. For lots located within areas designated "New Urban" by the Swift Creek Land Management Plan, the regulations of *Sec. 9.1.9.A.* above apply with the exception that only 25% of each lot must contain an area set aside for trees.

D. For lots located within a conservation development, areas set aside for trees may in lieu of being situated on the individual dwelling lots may instead be located within the required open space, provided that the overall acreage set aside for trees is not diminished.

E. The requirements of this section do not apply to lots devoted exclusively to stormwater control measures or to those lots located in those areas of the Comprehensive Plan designated for impervious surfaces in excess of 30%.

Sec. 9.1.10. Lots Without Recorded Tree Conservation Areas

A. Applicability

1. Any tree disturbing activity, except a minor tree removal activity, on sites 2 acres and larger in size that do not have an established or recorded tree conservation area shall meet the requirements of this section.
2. Nothing in this section shall prevent the otherwise lawful grading and installation of streets, utilities or other improvements shown on an approved subdivision plan or site plan.
3. All applicable laws, including soil erosion and sedimentation control and tree protection regulations, must be obeyed. No champion tree, including its critical root zone, is subjected to any tree disturbing activity.

B. Tree Protection Plan Required

1. A tree protection plan must be approved by the Planning and Development Officer for all applicable tree protected areas.
2. Tree protection fences must be in place prior to the issuance of any City permit and prior to engaging in any tree disturbing activity.

C. Perimeter Buffers

1. No tree disturbing activity, except a minor tree removal activity, shall occur within a 32-foot wide perimeter buffer when the adjoining or adjacent property is vacant.
2. No tree disturbing activity, except a minor tree removal activity, shall occur within a 65-foot wide perimeter buffer when the adjacent property is a roadway other than a Thoroughfare or is not vacant.
3. No tree disturbing activity, except a minor tree removal activity, shall occur within a 50-foot wide perimeter buffer when the adjoining or adjacent property is a Thoroughfare or higher designation roadway.
4. No trees 10 inches DBH or larger can be removed, with the exception that a maximum of 5 trees between 10 inches and 22 inches DBH may be removed within the 32-foot wide buffer, the 65-foot wide buffer or 50-foot wide

Thoroughfare buffer, within a continuous 5-year period, with a permit issued by the Planning and Development Officer, provided that such tree removal would not diminish future tree conservation areas that may be required, all as shown on a report submitted to Planning and Development.

5. In lieu of protecting perimeter buffers, tree conservation areas may be designated in conjunction with an approved development plan, or an approved forest management plan, provided that all tree conservation areas are shown on recorded plats.

D. Forest Management Activity Allowed

1. Forest management activity is allowed in the perimeter buffers provided that the landowners first record with the local County Register of Deeds a covenant running with and binding the land stating: "That forest management operations were initiated within regulated perimeter buffers of the real property on _____ (date and year) and that pursuant to State Law, no building permit, site plan or subdivision plan will be approved by the local governing authority for a period of 5 years following harvesting completion date."
2. A copy of this covenant recorded with the local County Register of Deeds shall be provided to the to Planning and Development.
3. The allowable hours of operation any given day are between 7 AM and 8:30 PM, other than emergency work for the preservation of public health or safety.
4. Access ways through perimeter buffers shall not exceed 25 feet in width and all construction entrances of the access ways must be constructed in accordance with the latest City "Guidelines for Land-Disturbing Activities" or latest State of North Carolina "Erosion and Sediment Control Planning and Design Manual", whichever is more stringent.
5. At least 1 access way shall be permitted and additional access ways may be allowed provided such additional access ways are justified by a North Carolina registered forester and additional access ways fronting the same roadway are spaced at least 1,000 feet apart.

E. Violations

1. A violation of this section, where unlawful tree disturbing activity has occurred and trees and stumps are absent, shall subject the violator to a civil penalty equal to $1,000 for the first tree plus 35 cents of every square foot of unlawfully disturbed perimeter buffer.
2. Where trees or stumps are present after unlawful tree disturbing activity has occurred, the civil penalty shall instead be calculated as $1,000 for the first tree plus $100 per diameter inch for any other tree or stump 3 inches diameter and larger.
3. No civil penalty shall exceed ⅓ of the current land tax value of the entire site.
4. The penalty shall be processed as set forth in *Sec. 10.4.2*. In addition to this civil penalty, within the unlawfully disturbed perimeter buffer, the land owner shall install one 2-inch caliper tree for each 200 square feet of all of the unlawfully disturbed perimeter buffer; provided that, in R-1 and R-2 no more than 15% of the acreage of the entire tract and no more 10% of the acreage of the entire tract of all other districts shall be planted.
5. Prior to any replanting, the Planning and Development Officer shall first approve a replacement planting and maintenance plan.
6. The replanting areas shall be designated as tree conservation areas on plats with delineated metes and bounds descriptions recorded with the local County Register of Deeds, however, the replacement planting areas shall not count toward the tree conservation percentage requirements of *Sec. 9.1.3*. Following the recording of this plat, no tree disturbing activity shall take place within the designated tree conservation areas.

A-75-15

Planning & Development

Development Services
Customer Service Center
One Exchange Plaza
1 Exchange Plaza, Suite 400
Raleigh, North Carolina 27601
Phone 919-996-2495
Fax 919-516-2685

Variance Application

	OFFICE USE ONLY
Nature of variance request (Submit addendum on separate sheet, if more space is needed.) Requesting a variance to Section 9.1 to allow a fence in a tree ~~protection~~ conservation area.	**Transaction Number**
Provide all previous transaction numbers for Coordinated Team Reviews, Due Diligence Sessions or Pre-Submittal Conferences. If this property was the subject of a previous variance request, provide the case number.	

GENERAL INFORMATION		
Property Address 455 Plainview Ave. Raleigh, NC 27604		**Date** 8/20/15
Property PIN 1714247487	**Current Zoning** R-10	
Nearest Intersection Plainview Ave + Birch Arbor Circle		**Property size (in acres)** .16
Property Owner Stephen Mallinson Melanie Luques	**Phone** 919-260-5039 **Email** sjmallinson@gmail.com	**Fax**
Project Contact Person Bob Lekich	**Phone** 919-846-2229 **Email** infinityfence@nc.rr.com	**Fax** 919-324-3675
Property Owner Signature	**Email** sjmallinson@gmail.com	
Notary Sworn and subscribed before me this 20 day of August, 2015 EXPIRES 7/27/2020	**Notary Signature and Seal** JACK B. PHILBIN NOTARY PUBLIC WAKE COUNTY, NC	

It is improper to contact any member of the Board of Adjustment prior to the disposition of a case to discuss the request. Variance application will not be considered complete until all required submittal components listed on the Variance Checklist have been received and approved.

WAKE COUNTY NORTH CAROLINA

Home

Wake County Real Estate Data
Account Summary

iMaps
Tax Bills

Real Estate ID **0420126** PIN # **1714247487**

Account Search

Location Address
455 PLAINVIEW AVE

Property Description
LO7 Oakwood North BM2014-00145

Pin/Parcel History Search Results New Search

Account | Buildings | Land | Deeds | Notes | Sales | Photos | Tax Bill | Map

For real estate accounts created or new construction built after January 1, 2015: Property values are under review for tax year 2016. Land and building values on these properties will reflect an assessment based on the January 1, 2008 Schedule of Values until late 2015 or early 2016 at which time the January 1, 2016 revaluation values for both land and buildings will be available.

Property Owner	Owner's Mailing Address	Property Location Address
MALLINSON, STEPHEN & MELANIE LUQUES (Use the Deeds link to view any additional owners)	**455 PLAINVIEW AVE** **RALEIGH NC 27604-2333**	**455 PLAINVIEW AVE** **RALEIGH NC 27604-2333**

Administrative Data		Transfer Information		Assessed Value	
Old Map #	**524--**				
Map/Scale	**1714 14**	Deed Date	**9/29/2014**	Land Value Assessed	**$100,000**
VCS	**01RA585**	Book & Page	**15794 1207**	Bldg. Value Assessed	**$206,146**
City	**RALEIGH**	Revenue Stamps	**749.00**		
Fire District		Pkg Sale Date	**9/29/2014**		
Township	**RALEIGH**	Pkg Sale Price	**$374,500**	Tax Relief	
Land Class	**R-<10-HS**	Land Sale Date			
ETJ	**RA**	Land Sale Price		Land Use Value	
Spec Dist(s)				Use Value Deferment	
Zoning	**R-10**	**Improvement Summary**		Historic Deferment	
History ID 1				Total Deferred Value	
History ID 2		Total Units	**1**		
Acreage	**.16**	Recycle Units	**1**		
Permit Date		Apt/SC Sqft		Use/Hist/Tax Relief	
Permit #		Heated Area	**2,203**	Assessed	
				Total Value Assessed*	**$306,146**

*Wake County assessed building and land values reflect the market value as of January 1, 2008, which is the date of the last county-wide revaluation. Any inflation, deflation or other economic changes occurring after this date does not affect the assessed value of the property and cannot be lawfully considered when reviewing the value for adjustment.

The January 1, 2008 values will remain in effect until the next county-wide revaluation, which begins January 1, 2016. Until that time, any real estate accounts created or new construction built is assessed according to the 2008 Schedule of Values.

For questions regarding the information displayed on this site, please contact the Revenue Department at RevHelp@wakegov.com or call 919-856-5400.

Real Estate ID **0420126** PIN # **1714247487**

Account Search

Location Address
455 PLAINVIEW AVE

Property Description
LO7 Oakwood North BM2014-00145

Pin/Parcel History Search Results New Search

Account | Buildings | Land | Deeds | Notes | Sales | Photos | Tax Bill | Map

Building Location Address	Building Description	Card **01** Of **01**
455 PLAINVIEW AVE	**01RA585**	

Bldg Type	**01 Single Family**	Year Blt **2014**	Eff Year **2014**	Base Bldg Value	**$163,478**
Units	**1**	Addns	Remod	Grade	**B+10 130%**
Heated Area	**2,203**	Int. Adjust.		Cond %	**B 97%**
Story Height	**2 Story**			Market Adj.	
Style	**Conventional**	Other Features	**One Fireplace**	Market Adj.	
Basement	**Crawl Space**			Accrued %	**97%**
Exterior	**Frame**			Incomplete Code	
Const Type				**Card 01 Value**	**$206,146**
Heating	**Central**			All Other Cards	
Air Cond	**Central**			Land Value Assessed	**$100,000**
Plumbing	**2.5 BATH**			Total Value Assessed	**$306,146**

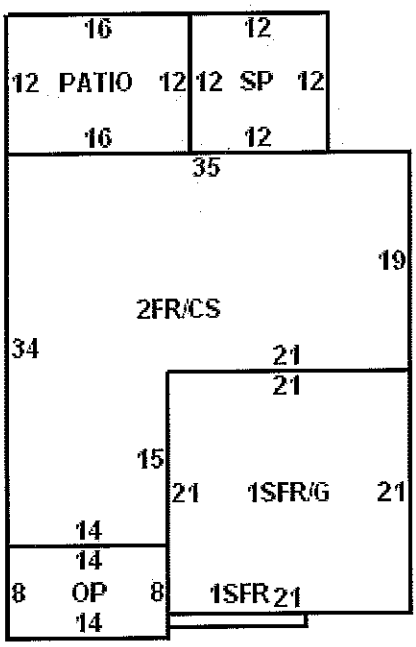
Main and Addition Summary

	Story	Type	Code	Area	Inc
M	2	FR/CS		875	
A		OP	R	112	
B		PATIO	$	192	
C		SP	S	144	
D	1	SFR/G	M	441	
E	1	SFR	A_2	12	
F					
G					
H					

Other Improvements

Units	DesItem	Code	Year	%ADJ	Inc	Value

Building Sketch



Photograph

City Of Raleigh
North Carolina

NOTICE OF VIOLATION
UDO ARTICLE 10.4

July 27, 2015

Stephen Luques and Melanie Mallinson
455 Plainview Ave
Raleigh, NC 27604

Re: Violation of UDO Article 9.1; Lot 7 Oakwood North Subdivision (S-28-12); 455 Plainview Ave, Raleigh, NC

Property Owner:

A fence has been constructed in your back yard and within the tree conservation area on lot 7 of Oakwood North (S-28-12) at 455 Plainview Ave, Raleigh, NC. No tree disturbing activity is allowed to take place within the tree conservation area unless in accordance with City of Raleigh Unified Development Ordinance (UDO) Section 9.1.6.. This is in violation of UDO Article 9.1.. A fence is not allowed within tree conservation areas per UDO Section 7.2.4.D.3.d.. In order to construct a fence a plot plan must be submitted, approved (UDO Section 10.2.7.A.2.a.), and a permit must be obtained. This tree conservation area was recorded in Book of Maps 2014 page 145, where this lot was recorded.

This letter serves as your official notice of the following:

1. That a plot plan must be submitted in accordance with UDO Section 10.2.7.A.2.a. and a fence permit is to be obtained. The fence cannot be shown in the tree conservation area. The fence will need to be constructed in accordance with the approved plot plan and the permit scheduled for a final inspection prior to October 31, 2015.
2. That your civil penalty is $100 and must be paid within 48 hours of receipt of this letter and citation. Payment to the City of Raleigh can be by made by: mailing the citation and the stated penalty to P. O. Box 590, Raleigh, NC 27602; or paying the stated amount at the cashier's window on the fourth floor of One Exchange Plaza.

3. That failure to pay the penalty within the prescribed time shall subject the offender to a civil action in the nature of debt for the stated penalty plus any additional penalties, together with the cost of the action to be taxed by the court.
4. That any tree disturbing activities within the tree conservation area will be subject to UDO Sections 9.1.7. and 9.1.8..
5. That failure to correct the violation by October 31, 2015 will result in the additional civil penalties and other enforcement action per UDO Section 10.4.2.E.1.d..

Enclosed is the initial civil citation. You may call me at (919) 996-2561 if you have any questions about this matter.

Sincerely,

Chris Crum, Conservation Forester
Parks, Recreation and Cultural Resources
P. O. Box 590; Raleigh, NC 27602
ph: 919.996.2561 fax: 919.516.2684

cc: Zach Manor, Urban Forester

CITATION

Raleigh City Code-Zoning Violation

RETURN WITH PAYMENT

[X] Initial Violation [ ] Continued Violation

Name Stephen Luques and Melanie Mallinson
Address 455 Plainview Ave
City Raleigh State NC Zip Code 27604

You are charged with a violation of the Raleigh City Code as set forth below.

Date 7/27/2015 Time 4pm
City Code Section UDO Article 10.4
Offense Fence construction without a permit
and within a tree conservation area

Location of Violation 455 Plainview Ave

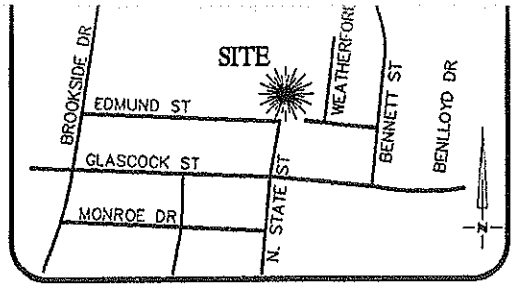
[$100.00] Civil Penalty

[ ] Administrative Fee (Account Code 52401)

Pay this amount
$100.00

Chris Crum
Conservation Forester

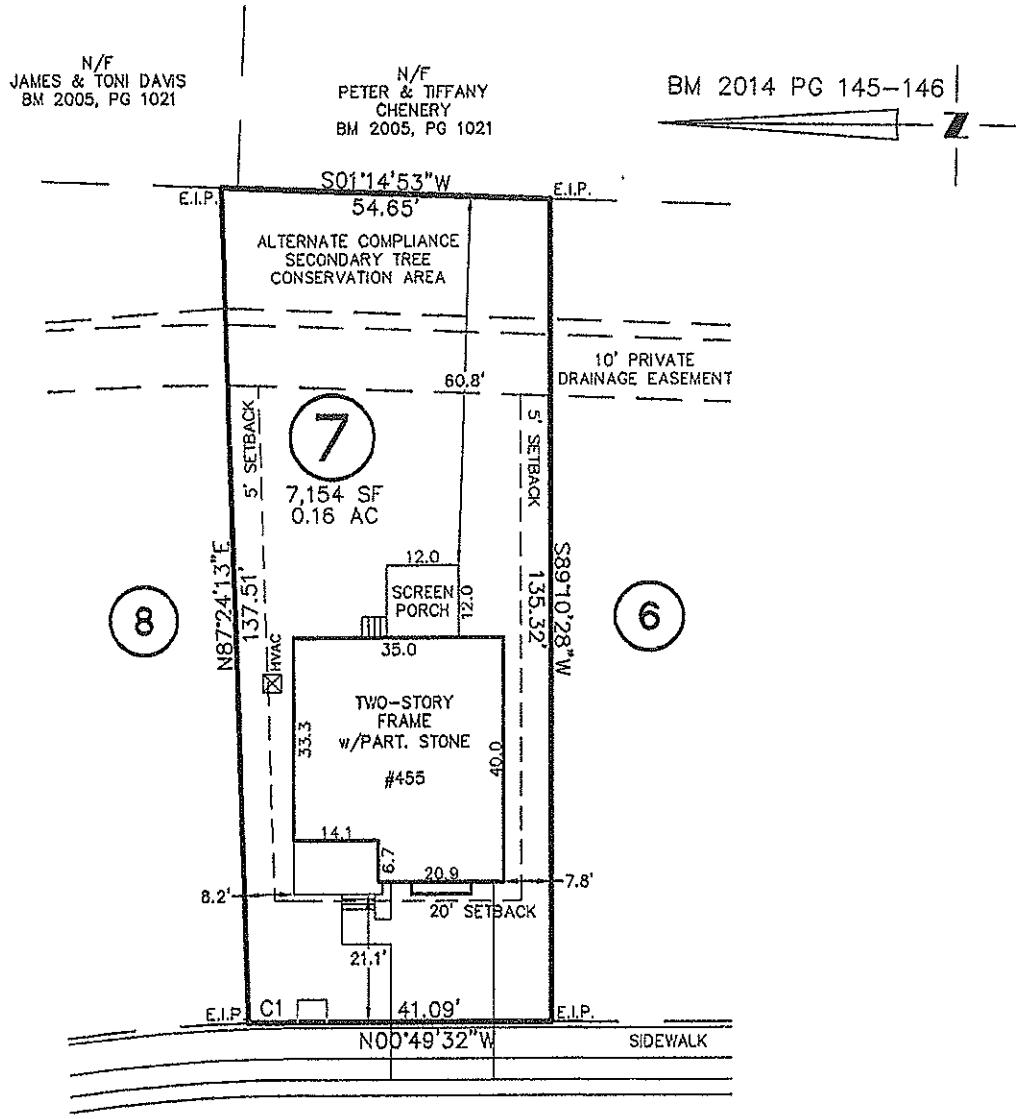
Under Article 10.4. of the City of Raleigh Unified Development Ordinance (UDO), the civil penalty listed is hereby assessed for this violation. Under Article 10.4. of the City of Raleigh UDO, this civil penalty is payable to the City of Raleigh between the hours of 8:00 a.m. and 4:45 p.m.,Monday through Friday at the cashier's window, 4th floor of One Exchange Plaza, 219 Fayetteville Street, Raleigh, NC or may be paid by mailing the citation and the stated amount to the attention of Chris Crum / Parks, Recreation and Cultural Resources, P.O. Box 590, Raleigh, NC 27602.
All payments must be received by the City within 48 hours after the issuance of a citation.
Failure to pay any penalty on time subjects the offender to a civil action in the nature of debt for the stated penalty plus any additional penalties, together with the cost of the action to be taxed by the court.



VICINITY MAP
Not To Scale

E.I.P.	EXISTING IRON PIN
E.C.M.	EXISTING CONCRETE MONUMENT
S.I.P.	SET IRON PIN
P.D.E.	PUBLIC DRAINAGE EASEMENT
S.D.E.	STORM DRAINAGE EASEMENT
P.U.E.	PUBLIC UTILITY EASEMENT
S.S.E.	SANITARY SEWER EASEMENT
F.P.E.	FLOOD PROTECTION ELEVATION
CLOSURE	EXCEEDS 1 INCH in 10,000'
--------	SETBACK LINE
═══	PROPERTY LINE
— —	ADJOINER PROPERTY LINE BY DEED OR PLAT

NORTH CAROLINA PROFESSIONAL SEAL L-4679 LAND SURVEYOR DEAN M. RHOADS



PLAINVIEW AVENUE

50' PUBLIC R/W

IMPERVIOUS SURFACE AREA	
DESCRIPTION	AREA
HOUSE w/ PORCH	1,430 S.F.
PORCH/PATIO/HVAC	153 S.F.
DRIVEWAY & WALKS	453 S.F.
TOTAL =	2,036 S.F.
LOT AREA =	7,154 S.F.
% IMPERVIOUS AREA	= 28.5%

THIS PROPERTY MAY BE SUBJECT TO ANY AND ALL APPLICABLE DEED RESTRICTIONS, EASEMENTS, RIGHT-OF-WAY, UTILITIES AND RESTRICTIVE COVENANTS WHICH MAY BE OF RECORD OR IMPLIED

30 0 30

SCALE: 1" = 30'

RESIDENTIAL LAND SERVICES, PLLC.
1500 Piney Plains Road, Suite 102

PHYSICAL SURVEY

FOR

#455 PLANVIEW AVENUE
LOT 7, OAKWOOD NORTH SUBDIVISION
Raleigh Township, Wake County, North Carolina

PROPERTY OF: STEPHEN MALLISON & MELANIE LUQUES

MAP BOOK 2014 PAGE 145-146 DEED REFERENCE

Adjacent Properties of 455 Plainview Ave.

Rear of Property:
Peter & Tiffany Chenery
1615 Weatherford Circle
Raleigh, NC 27604

James & Toni Davis
1619 Weatherford Circle
Raleigh, NC 27604

Side of Property:
Graham & Mike Dixon
459 Plainview Ave.
Raleigh, NC 27604

Eddie Cash
451 Plainview Ave.
Raleigh, NC 27604

Front of Property:
Jeff & Heather Phillips
745 Birch Arbor Circle
Raleigh, NC 27604