



Town of  
**INDIAN TRAIL**  
north carolina

Town of Indian Trail, NC

P.O. Box 2430

Indian Trail, North Carolina 28079

Telephone (704) 821-5401

PLANNING AND DEVELOPMENT DEPARTMENT

<b>Case: PD-A 2010-002 Appeal</b>		
<b>Reference Name</b>	Chestnut Place Subdivision	
<b>Appeal Request</b>	Notice of Violation	
<b>Existing Site Characteristics</b>	<b>Existing Zoning</b>	SF-4 and O-PED 1 (Pre-existing Development Overlay)
	<b>Existing Use</b>	Single-Family Residential
	<b>Site Acreage</b>	14.679 acres
<b>Appellant</b>	Reece Gibson	
<b>Submittal Date</b>	September 14, 2010	
<b>Location</b>	Chestnut Place Subdivision off Chestnut Lane	
<b>Tax Map Number(s)</b>	07-147-601 through 07-147-626 07-147-737 through 07-147-742	

### Project Summary

This is an appeal application being brought by the developer, Reece Gibson, of the Chestnut Place subdivision regarding two recent Notices of Violation (Attachment 2 and 3). The violations include sidewalks, landscaping, irrigation system, and drainage that was not installed per the approved plans. Mr. Gibson filed this appeal regarding the language of UDO Section 370.010 and 410.010 which reads as follows:

#### **UDO Section 370.010: Site Plan Review Applicability**

*Once a site plan application is determined complete, all proposed development will be consistent with the approved site plan. The Director of Planning and Development, upon recommendation of the Technical Review Committee, will approve all site plans, with or without conditions.*

#### **UDO Section 410.010: Permits Required Before Development**

**A.** *The use made of property may not be substantially changed (i.e. change from one use classification to another) and no substantial clearing, grading or preparing a lot for development other than a single-family detached residence. No buildings or other substantial structures may be constructed, erected, moved, or substantially altered except in accordance with and pursuant to one of the following permits:*

- a. *A zoning permit issued by the administrator;*
  - b. *A permit issued by staff;*
  - c. *A special use permit issued by the Board of Adjustment as required by the UDO.*
- B. *Zoning permits, development permits, special use permits and sign permits are issued under this ordinance only when a review of the application submitted, including the plans contained therein, indicates that the development will comply with the provisions of this ordinance if completed as proposed. Such plans and applications as are finally approved are incorporated into any permit issued, and except as otherwise provided in Section 410.110, all development must occur strictly in accordance with such approved plans and applications.*
- a. *Physical improvements to land to be subdivided may not be commenced except in accordance with a development permit after preliminary plat approval by the Town Council for a major subdivision and by final plat approval or minor subdivision approval by the Director of Planning and Development.*
  - b. *A zoning permit, development permit, special use permit, or sign permit must be issued in the name of the applicant (except that applications submitted by an agent will be issued in the name of the principal), will identify the property involved and the proposed use, will incorporate by reference the plans submitted, and will contain any special conditions or requirements lawfully imposed by the permit-issuing authority. All special use permits (except permits for single-family and two-family residential uses) must be recorded by the permit recipient in the Union County Registry after execution by the property owner of record.*

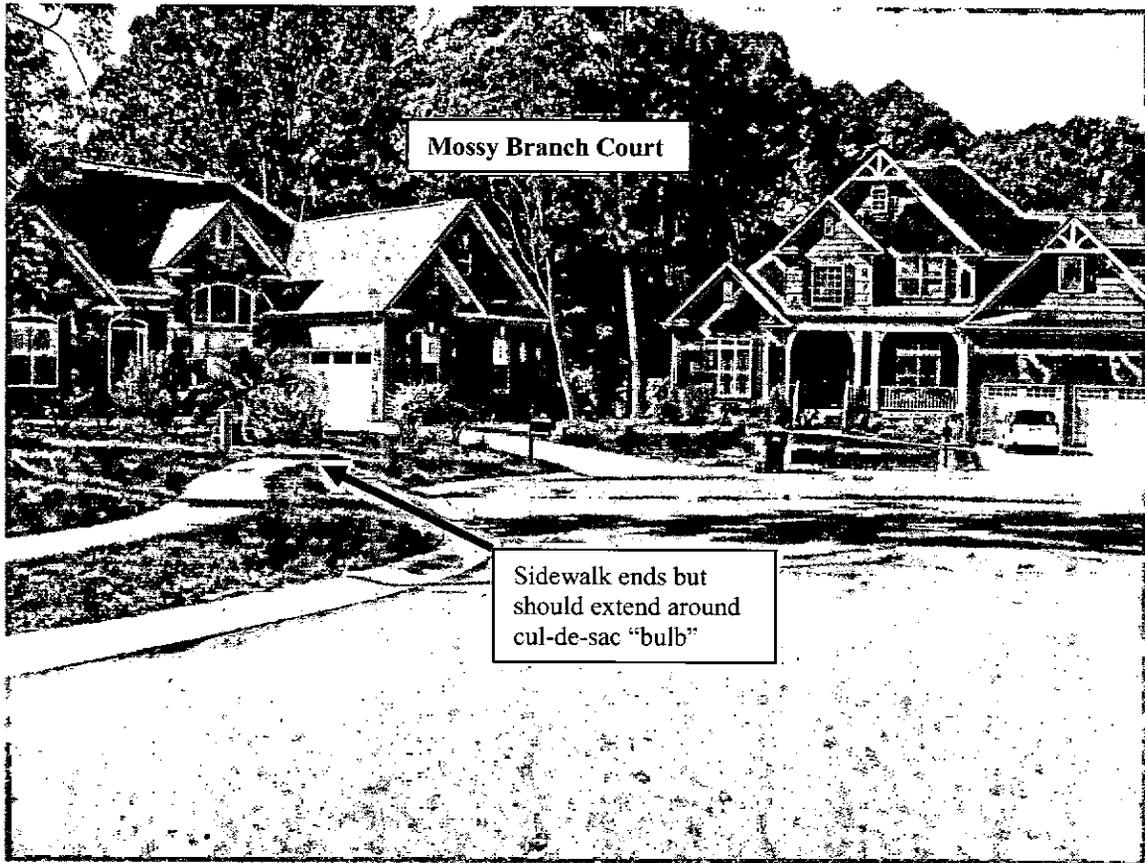
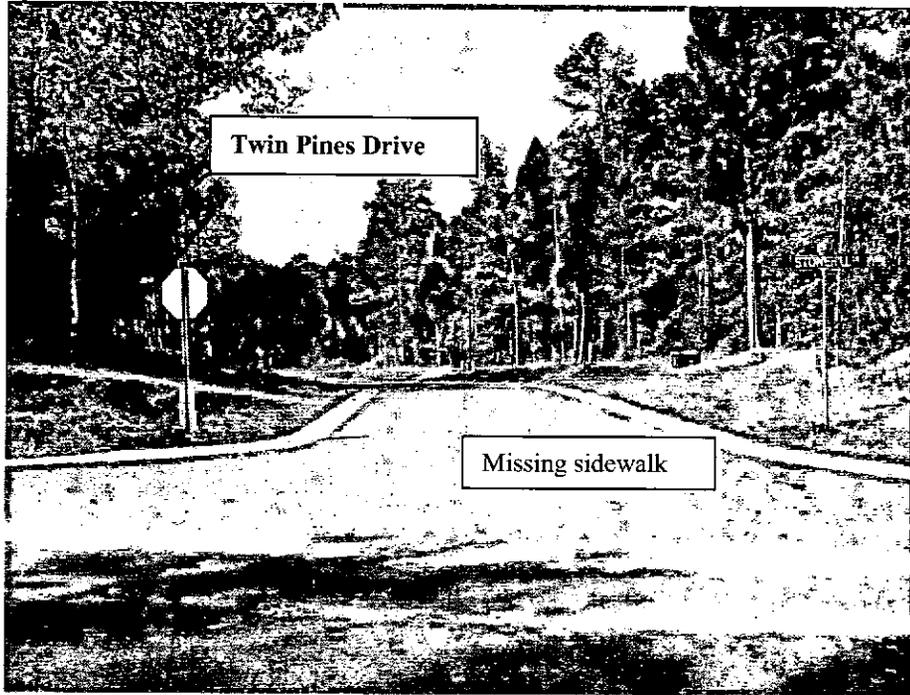
## **Analysis**

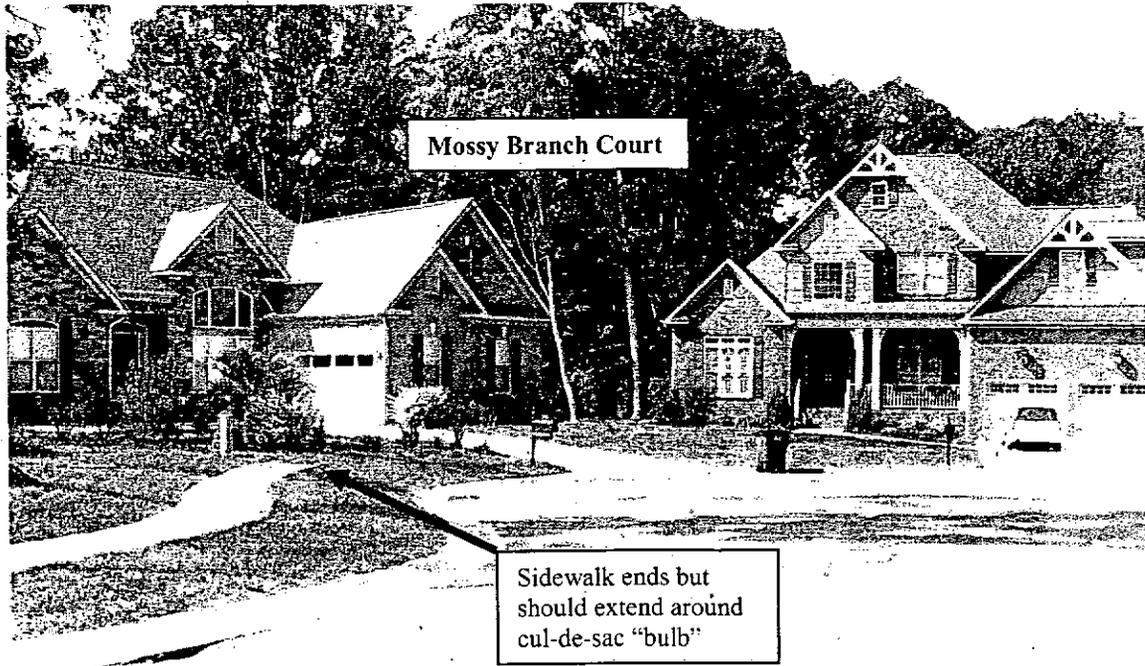
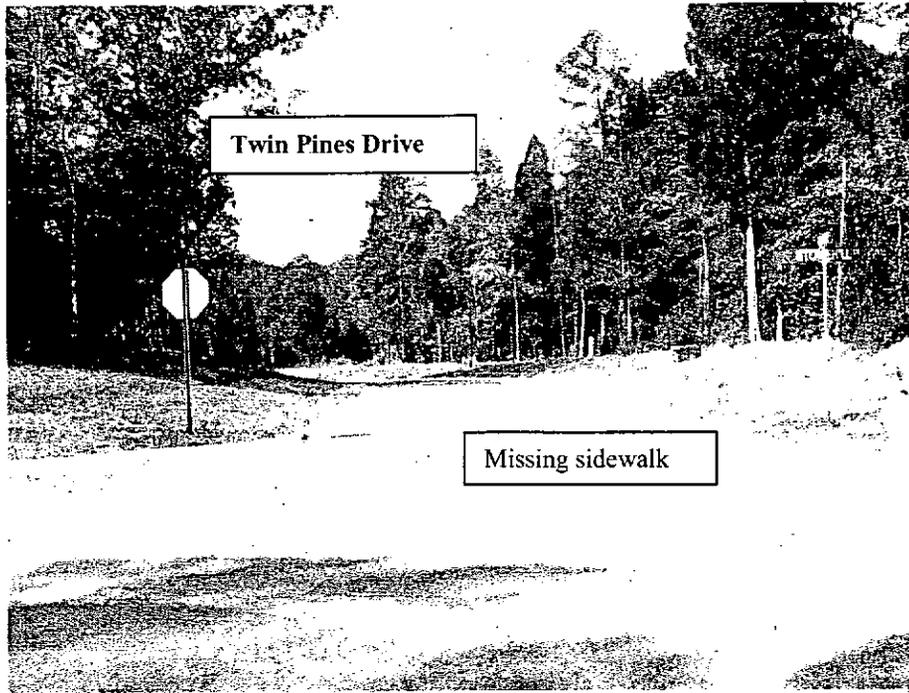
### **Question for the Board's Consideration**

Is the decision by town staff regarding the Notice of Violation correct with respect to the applicable sections of the Unified Development Ordinance (370.010 and 410.010)? The facts will show the site was not constructed according to approved plans. Substantial changes were made to the approved plans that were never approved. The following section will examine why the Notice of Violation was issued and deal with each of the four violations individually.

#### **1. SIDEWALK**

The approved site plan (Attachment 4) calls for a 5 foot sidewalk to be installed on one side of each street. The photos below show that a 4 foot sidewalk has been installed and where the sidewalk is missing.





The Notice of Violation references both of these issues in that the site shall be developed according to approved plans and any substantial changes shall be approved prior to installation. The proposed remedy requires installing the missing sections and correcting the width.

## **2. LANDSCAPE PLAN**

When the subdivision was approved as a Special Use Permit and when the site plan was originally approved, a landscape plan for the entrance was included. The plan included:

- a stand of trees approximately 40 feet wide to be preserved
- several groups of crepe myrtles to be planted
- a flower bed

The landscaping installed deviates from the approved plan by:

- many of the trees were removed
- crepe myrtles were never planted
- a flower bed that has no flowers
- a berm (that was never shown on the plans) was installed

The Notice of Violation states the site shall be developed according to approved plans and any substantial changes shall be approved prior to installation. The proposed remedy requires a revised landscape to be submitted.

## **3. DRAINAGE**

The approved grading plan has two inconsistencies:

- the grading and ditch section behind lots 1 through 5 was not completed per the approved plans
- required infrastructure at the end of Twin Pines Drive is incomplete.

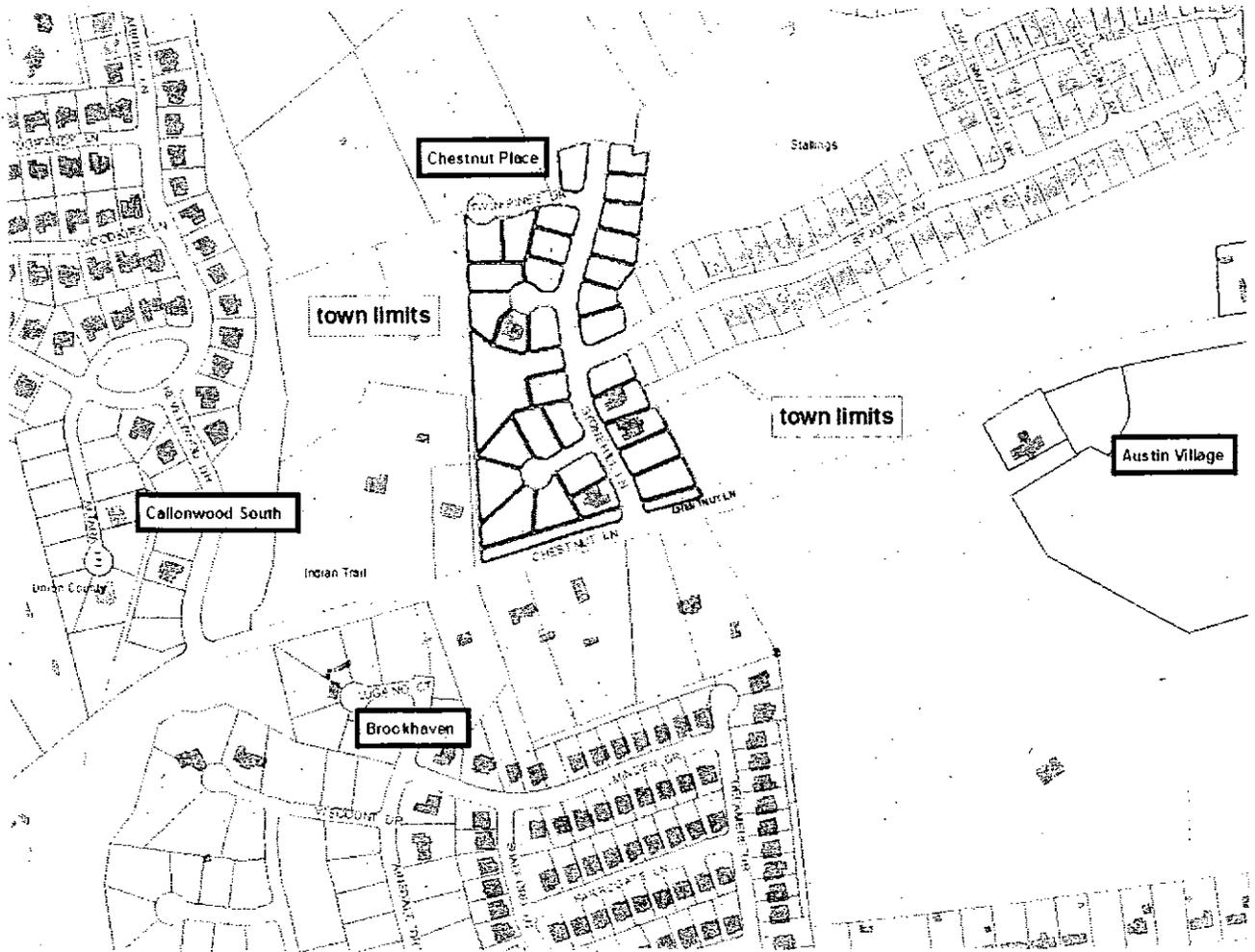
The Notice of Violation states the site shall be developed according to approved plans.

## **4. IRRIGATION SYSTEM**

When the neighborhood was originally approved, it was done so with a Special Use Permit (SUP2004-011 Attachment 5). Condition #8 of the approval required an irrigation system to be installed at the entrance for the landscaping and common area. The irrigation system has yet to be installed.

The Notice of Violation states the site shall be developed according to approved plans.

## Map of Chestnut Place Subdivision



### Recommendation

The Board of Adjustment, based on UDO Section 380.030(B)(1), has the power to do one of the following with respect to this appeal, after hearing all of the facts, evidence and testimony:

1. The Board can move to affirm the decision (in whole or in part) of the Town with respect to this appeal; or
2. The Board can move to reverse the decision (in whole or in part) of the Town with respect to this appeal; or
3. The Board can move to modify the decision (in whole or in part) of the Town with respect to this appeal.

**Attachment 1- Appeal Application**

**Attachment 2- Notice of Violation dated August 18, 2010**

**Attachment 3- Notice of Violation dated September 27, 2010**

**Attachment 4- Site Plan**

**Attachment 5- SUP 2004-011 Approval**

**Staff Contact**

Craig Thomas

Junior Planner

(704) 821-5401 ext 238

[cat@planning.indiantrail.org](mailto:cat@planning.indiantrail.org)

**ATTACHMENT 1:  
Appeal Application**

# APPEAL APPLICATION



Town of  
**INDIAN  
TRAIL**  
north carolina

**PLANNING AND DEVELOPMENT DEPARTMENT**  
**PO Box 2430**  
**Indian Trail, NC 28079**  
**Telephone (704) 821-5401**  
**Fax (704) 821-9045**

**ONLY COMPLETE APPLICATIONS ACCEPTED**

Processing Fee \$250.00

Notification Fee \$2.50 per adjoining property owner.

Date Received

9/14/10

APPEAL APPLICATION



Submittal Requirements

- Completed Application
- Notarized signatures of applicant and property owner
- Letter of Intent
- 8 copies of Concept Plan
- Statement of Justification (used to determine if Findings of Fact can be made at public hearing)
- Statement of Appraisal, if necessary
- Fees associated with review

Timeline/Procedures

- The Board of Adjustment, which hears all Variances, meets on the fourth Thursday every month.
- All of the submittal requirements must be met by the first day of the month before the Appeal is heard. For example, if you wanted to present your case to the Board of Adjustment on the 4<sup>th</sup> Thursday of March, you must complete the submittal requirements by February 1<sup>st</sup>.
- The hearing is Quasi-Judicial in nature, which means there is no deliberation or communication before the hearing, as in a court case. See Section 310.080 of the UDO for more details.
- You must demonstrate to the Board of Adjustment that the official interpretation of the Planning Director is incorrect, and that your interpretation is correct based on facts and evidence alone.

General Information

Project Address Chestnut Place on Chestnut Lane  
 City Indian Trail State N.C. Zip \_\_\_\_\_  
 Tax Parcel ID 09-149-143 B Zoning Designation \_\_\_\_\_  
 Total Acres 14.59 Impervious Area \_\_\_\_\_  
 Project Description \_\_\_\_\_

Contact Information - Applicant

Name Reece Gibson  
 Address 4512 River Road  
 City Stanfield State N.C. Zip 28163  
 Phone 704-533-2461 Fax 704 888-1361  
 Email \_\_\_\_\_

## APPEAL APPLICATION



### Submittal Requirements

- Completed Application
- Notarized signatures of applicant and property owner
- Letter of Intent
- 8 copies of Concept Plan
- Statement of Justification (used to determine if Findings of Fact can be made at public hearing)
- Statement of Appraisal, if necessary
- Fees associated with review

### Timeline/Procedures

- The Board of Adjustment, which hears all Variances, meets on the fourth Thursday every month.
- All of the submittal requirements must be met by the first day of the month before the Appeal is heard. For example, if you wanted to present your case to the Board of Adjustment on the 4<sup>th</sup> Thursday of March, you must complete the submittal requirements by February 1<sup>st</sup>.
- The hearing is Quasi-Judicial in nature, which means there is no deliberation or communication before the hearing, as in a court case. See Section 310.080 of the UDO for more details.
- You must demonstrate to the Board of Adjustment that the official interpretation of the Planning Director is incorrect, and that your interpretation is correct based on facts and evidence alone.

### General Information

Project Address Chestnut Place on Chestnut Lane  
City Indian Trail State N.C. Zip \_\_\_\_\_  
Tax Parcel ID 02-149-143 B Zoning Designation \_\_\_\_\_  
Total Acres 14.59 Impervious Area \_\_\_\_\_  
Project Description \_\_\_\_\_

### Contact Information – Applicant

Name Reece Gibson  
Address 4512 River Road  
City Stanfield State N.C. Zip 28163  
Phone 704-533-2461 Fax 704-888-1361  
Email \_\_\_\_\_

APPEAL APPLICATION



Contact Information - Property Owner

Name Reece Gibson  
 Address 4512 River Road  
 City Stanfield State N.C Zip 28163  
 Phone 704 533-2461 Fax 704-888-1361  
 Email \_\_\_\_\_

Applicant's Certification

Signature Reece Gibson Date 9-14-10  
 Printed Name/Title Reece Gibson / Developer

Signature of Notary Public Helen S. Boich Date 9-14-10

Notary Seal

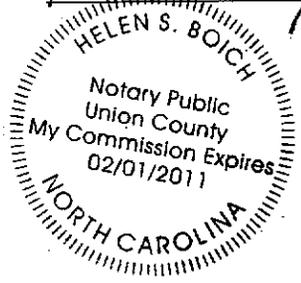


Property Owner's Certification

Signature Reece Gibson Date 9-10-10  
 Printed Name/Title Reece Gibson

Signature of Notary Public Helen S. Boich Date 9-14-10

Notary Seal



APPEAL APPLICATION



**TOWN OF INDIAN TRAIL OFFICE USE ONLY**

CASE NUMBER: PD-A 2010-002 / R-000207

DATE RECEIVED: 9/14/10 AMOUNT OF FEE: \$250

RECEIVED BY: CAF RECEIPT #: \_\_\_\_\_

**Project Information**

Has work started on the project? Yes  No

If yes, did you obtain a building permit? Yes  No  If yes, please attach a copy

Have you received a Notice of Violation for this project? Yes  No  If yes, please attach a copy

Has this property been rezoned? Yes  No  If yes, Petition Number \_\_\_\_\_

**Appellant's Statement**

I, Reece Nelson hereby appeal the Board of Adjustment from the following adverse decision of the Town of Indian Trail Planning Director:

Notice of Violation (C-001603) For Chestnut Place  
A - i, ii,  
B i,  
C i, ii

1. What UDO section numbers do you allege that were applied in error? Please list each section, and the requirement.

Item	UDO Section	Requirement
<b>Example</b>	810.140 Landscaping Adjacent to Buildings	3 foot landscape buffer required along facades
<b>A</b>	410.010 A+B+390.010	
<b>B</b>	All section List Violation	
<b>C</b>		

APPEAL APPLICATION



2. Please describe why you feel the UDO sections above were applied in error. Explain what you feel the appropriate interpretation would be.

(A) UDO Section 410.010(A+B) & 370.010, DEVEL STANDARD 1.03, SUP 2004-  
7

STANDARD OF OLD ORDINANCE 702(e) SHOULD BE USED.

SUP 2004-001 #4 CALLS FOR SIDEWALK ON ONE SIDE OF STREET, THIS IS IN PLACE. DISAGREE WITH 1 SIDE OF CUL-DE-SAC BULB

THE UDO IS NOT APPROPRIATE TO USE FOR THIS PLAN.

(B) UDO Section 410.010 A+B & 370.010 & SUP 2004-001 COND # 8

LANDSCAPING PLAN AS INSTALLED IS CONSISTANT WITH INTENT OF SUBMITTED PLAN

PROJECT/PLAN SHOULD BE EVALUATED BY ORDINANCE IT WAS APPROVED UNDER.

(C) UDO Section 410.010 A+B & 370.010 & SUP 2004-001-COND # 4

i CONDITION 4 IS NOT APPLICABLE, DITCH WOULD LOSE TOO MANY TREES,

ii PIPE AND RIP-RAP IS IN STALLINGS NOT MAINTAINING

PROJECT/PLAN SHOULD BE EVALUATED UNDER PROPER ORDINANCE.

## APPEAL APPLICATION

Applicant: Reece Gibson  
Property Owner: Reece Gibson  
Property Location: 1459 Acres, Chestnut Lane  
Parcel #: 07-1047-143B  
Proposed Use: Planned Residential Development  
Date: October 5, 2010

Union County Public Works has stopped allowing developers of residential, shopping centers and commercial property to put in public irrigation. As a result I am unable to get a water tap from Union County Water Department.

  
Reece Gibson

**ATTACHMENT 2:  
First Notice of Violation**



Town of  
**INDIAN TRAIL**  
north carolina

P.O. Box 2430  
Indian Trail, North Carolina 28079  
Telephone 704-821-5401  
Fax 704-821-9045

PLANNING AND DEVELOPMENT DEPARTMENT

August 18, 2010

Reece Gibson  
4512 River Road  
Stanfield, NC 28163

**Notice of Violation (C-001603) for Chestnut Place**

Dear Mr Gibson,

This letter serves as the Notice of Violation confirmed within the Chestnut Subdivision. The violations are as follows:

1. **Chapter 370.010** – all proposed development will be consistent with the approved site plan.
  - a. Sidewalk – ~~Violation Chapters 410.010 (A & B) & 370.010; Land Development Standard 1.03 and SUP 2004-001 Condition 4.~~
    - i. Missing Sidewalk – There are missing segments of sidewalk at various locations in front of existing homes. *Remedy – these segments must be built according to the approved plans.*
    - ii. Sidewalk substandard in width. The existing sidewalks built within the subdivision are 4-feet in width. The approved plans required all sidewalks to be a minimum of 5' in width consistent with the requirements of the Indian Trail Land Development Standard 1.03. *Remedy – all sidewalk shall be replaced with a minimum of 5-feet in width and constructed consistent with LDS 1.03.*
  - b. Landscaping Plan- ~~Violation Chapters 410.010 (A & B) & 370.010; and SUP 2004-001 Condition 8.~~
    - i. The landscaping along Chestnut Lane is inconsistent with the approved plans. A review of the Town Council Meeting minutes & packet for your project SUP2004-11 dated 12/14/2004, reveled a landscape plan consistent with that approved within your site plan (SP 2005-47). *Remedy – You will need to process a site plan modification delineating the alternative plan built for approval*

*which shall include the minimum planting of 18 trees as shown in the existing plan.*

- c. Site grading- Violation Chapter 410.010 (A & B) & 370.010; and SUP 2004-001 Condition 4. There are several inconsistencies from the approved grading plan which has lead to drainage complaints from residents. The inconsistencies consisted of the following:
- i. Lots 1-5- The approved plans call for the installation of a drainage ditch along the rear property line of the yards. *Remedy - This drainage ditch must be graded so that the water flows into the structure installed at the back of lot four (4).*
  - ii. End of the cul-de-sac at Twin Pines Drive- *Remedy - The pipe and rip-rap should be installed to match the approved plans.*

The items listed above must be corrected within thirty (30) days of the receipt pursuant Chapter 1520.040 of this letter. If the violation is not corrected within 30 days, you will be subject to a fine of \$100.00 for each and every day that the violation continues (Chapter 1520.050). If you have any further questions, please contact the Town at 704-821-5401 or at [jd@planning.indiantrail.org](mailto:jd@planning.indiantrail.org).

Sincerely,

John Deer  
Code Compliance Officer

cc: Shelley DeHart, Planning Director, Town of Indian Trail (via email)  
Katie R. Drye, Town of Indian Trail (via email)  
Todd Huntsinger, Engineer, Town of Indian Trail (via email)

**ATTACHMENT 3:  
Second Notice of Violation**



Town of  
**INDIAN TRAIL**  
north carolina

PLANNING AND DEVELOPMENT DEPARTMENT

**Zoning Code Enforcement**

September 27, 2010, 2010

Reece Gibson  
4512 River Road  
Stanfield, NC 28163

**Notice of Violation** Chestnut Place Sub Division

Dear Mr. Gibson,

This letter serves as the Notice of Violation confirmed within the Chestnut Subdivision. The violation is:

- **Chapter 410.010 B** – all proposed development will be consistent with the approved Special Use Permit. The existing landscaping located at the front of the subdivision is inconsistent with the approved plans and is improved without an irrigation system. Condition #8 of SUP 2004-011 dated 12/14/2004 required the entrance and common area be landscaped according to approved plans and said area be irrigated.

You have submitted a new landscape plan for our review. Preliminary review noted an irrigation system is not included. You had indicated in a verbal conversation you had no intention of constructing a well/irrigation system to meet the condition.

The item listed above must be corrected within thirty (30) days of the receipt pursuant Chapter 1520.040 of this letter. If the violation is not corrected within 30 days, you will be subject to a fine of \$100.00 for each and every day that the violation continues (Chapter 1520.050). If you have any further questions, please contact the Town at 704-821-5401 or at [jd@planning.indiantrail.org](mailto:jd@planning.indiantrail.org).

Sincerely,

John Deer

Code Compliance Officer

cc: Shelley DeHart, Planning Director, Town of Indian Trail (via email)

Katie R. Drye, Town of Indian Trail (via email)

**ATTACHMENT 4:  
Site Plan**

**ATTACHMENT 5:  
SUP2004-011 Approval**

Filed for record

Date 7-20, 2005Time 9:15 o'clock A mCrystal D. Crump, Register of Deeds  
Union County, Monroe, North CarolinaRECEIVED  
EJC

84252

**Town of Indian Trail**

P.O. Box 2430  
Indian Trail, North Carolina 28079  
Telephone 704/821-5401

**SPECIAL USE PERMIT 2004-011 GRANTED**  
**WITH CONDITIONS**

**Applicant:** Reece Gibson  
**Property Owner:** Reece Gibson  
**Property Location:** 14.59 Acres, Chestnut Lane  
**Parcel #:** 07-147-143B  
**Proposed Use:** Planned Residential Development  
**Meeting Date:** December 14, 2004

The Town Council for the Town of Indian Trail, having held a public hearing on December 14, 2004 to consider Special Use Permit Application 2004-011, submitted by Reece Gibson requesting a special use permit to develop a Planned Residential Development on 14.59 acres of land located on Chestnut Lane made the following **FINDINGS OF FACT** and draws the following conclusions:

- (1) It is the opinion of the Town Council that the proposed subdivision will not endanger the public health or safety because conditions have been placed to ensure compliance with the minimum standards of the Town's Subdivision and Zoning Ordinance.
- (2) It is the opinion of the Town Council that the development, as proposed, complies or exceeds the minimum specification required for the development.
- (3) It is the opinion of the Town Council that the development, as proposed will not injure the value of the adjoining or abutting properties because it is consistent with the existing

uses and density in the vicinity.

- (4) It is the opinion of the Town Council that the proposed location and character of the proposed development is in harmony with the area and in conformity with the future land use plan adopted by the Town Council.

Therefore, on the basis of the foregoing, it is ordered that the application for Special Use Permit 2004-011 be **granted with the following conditions.**

1. Curb and Gutter is required on all interior streets.
2. Each single-family dwelling unit shall have a minimum parking pad width of sixteen (16) feet by thirty-two (32) feet to accommodate two automobiles parked side-by-side.
3. Usable common open space or recreational areas shall be provided within the development. Any common opens space area shall have a minimum area of ten-thousand square feet. All common open space areas shall be accessible by side walk from the residential developed portions of the PRD.
4. Sidewalks are required on at least one side of each street within the PRD.
5. Curb, gutter and sidewalk are required along the Chestnut Lane street frontage. Said improvements shall be constructed to the satisfaction of the Town Engineer and NCDOT.
6. The maintenance of the common open space areas shall be the responsibility of the Home Owners Association.
7. The Code Covenants and Restrictions associated with the home owners association shall include a restriction on the type of fencing that may be erected within the subdivision located within Indian Trail. Permitted fencing within the subdivision shall be of the same material and style subject to approval through the SID process by the Indian Trail Planning Department.
8. Provide the Planning Department with a desirable landscape plan of the entrance and common area along Chestnut Lane. Said common area along Chestnut Lane must be irrigated.
9. The applicant or responsible party shall obtain approval of the Statement of Integrity and Design prior to issuance of a Zoning Certification.
10. Said single-family dwellings shall provide the following minimum architectural embellishments:
  - a. Side elevations on corner lots shall be embellished by windows, shutters, or landscaping or combination thereof.
  - b. A masonry veneer skirt (of standard brick size) extending up the face of the slab consisting of a minimum of 4-courses of brick above finish grade is required.

11. The applicant or responsible party shall acquire the appropriate permits from NCDENR, NCDOT, Union County Public Works, and the Army Corp of Engineers prior to issuance of the site plan review permit and the subdivision map.
12. The applicant or responsible party shall preserve the wooded area as much as feasible for the development of the subdivision.
13. On-site detention is required based upon the down stream study.
14. If the projects utilizes a dry detention pond for storm water management it cannot be calculated as required open space.
15. Decorative street lights shall be provided within the development. Said lights shall be a consistent in style.
16. The minimum square footage of said homes shall not be less than 2500 square feet.
17. A left turn lane shall be required at the entrance on Chestnut Lane.
18. All homes are required to be completely brick.
19. Minimum of 6 and 12 pitched roofs with architectural shingles.
20. Architectural front plains not to exceed 24 feet without being broken.
21. The connecting road adjoining the existing development shall not be opened until 70 percent of the build out of the new phase.
22. A tot-lot shall be built in the open space.
23. An entrance design is presented to staff for review and approval prior to the project going to Council.

Ordered this 14th day of December, 2004.

Note: If you are dissatisfied with the decision of this Board, an appeal may be taken to the Superior Court of Union County within thirty days after the date this order is served on you.

TOWN OF INDIAN TRAIL

BY: Sandy B. Moore  
Sandy B. Moore, Mayor

ATTEST:

Karen B. Price  
Karen Price, Town Clerk



Reece Gibson  
Reece Gibson, Applicant & Owner



STATE OF NORTH CAROLINA  
COUNTY OF UNION

I, D. Hope Bergamini, a Notary Public of said County, do hereby certify that Karen B. Price personally came before me this day and acknowledged that she is Town Clerk of the Town of Indian Trail, a municipal corporation of said state, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Mayor, sealed with the corporate seal, and attested by its Town Clerk. Witness my hand and official seal, this the 6 day of July, 2005.

My commission expires: 3/26/2006

D. Hope Bergamini  
Notary Public

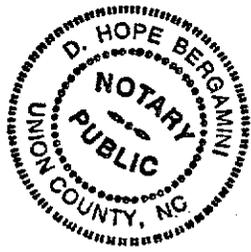
STATE OF NORTH CAROLINA  
COUNTY OF UNION

I, D. Hope Bergamini, a Notary Public for said County and State, do hereby certify that REECE GIBSON, Applicant & Owner personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal this the 1 day of July, 2005.

My Commission Expires: 3/26/2006

D. Hope Bergamini  
Notary Public

PREPARED BY & RETURN TO:  
TOWN OF INDIAN TRAIL  
P.O. BOX 2430  
INDIAN TRAIL, NC 28079



NORTH CAROLINA-UNION COUNTY  
The foregoing certificate(s) of  
D. Hope Bergamini  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
to be correct  
CRYSTAL D. CRUMP, REGISTER OF DEEDS  
BY: Crystal D. Crump  
ASST/DEPT