AGENDA

Meeting Type:	B
Date.	12-20-1993

City of Charlotte, City Clerk's Office

Zoning Dinner 12/20/93

Mayor ✓
Baker ✓
Campbell ✓
Carson ✓
Jackson ✓
McCrory ✓
Majeed ✓
Martin ✓
Reid ✓
Scarborough ✓
Spencer ✓
Wheeler ✓

Lynn
Charlie } retired committee
Hoyle

Planning Comm.

O'Brien
Adams ✓
Hill
~~Gross~~
McMurray ✓
Dayton ✓
Gloria Fenning ✓
Bruno

Zoning Comm.

Whitchel ✓
Molloy ✓
Jones ✓
Barron ✓
Heard ✓
Byrne ✓
Jones ✓

93-52, 93-60, 93-62
Defer
93-54 - Petitioner requested withdrawal.

Public S
Bud + Jim

Competition +
Privatization
9-5 Fri 1/2 Sat
1/2 Fri. all day Sat.

Car / Aspen
1/2 Fri - all day Sat.

Vinson - Press Conf. - 5:30

Zoning Meeting 12/20/93

Mayor ✓
Baker ✓
Campbell ✓
Cannon ✓
Jackson ✓
McCrory ✓
Majeed ✓
Martin ✓
Reid ✓
Scarborough ✓
Spencer ✓
Wheeler ✓

Zoning Comm.	Planning Com
Whitlock ✓	O'Brien ✓
Motley ✓	Dayton ✓
James ✓	Adams ✓
Bacon ✓	Fenning ✓
Heard ✓	McMurray ✓
Byrne ✓	Briers ✓
Jones ✓	Hill ✓

6:00 p.m.

Mayor
Lynn Wheeler - Invocation
Pledge
Mayor
O'Brien
Mayor
Wheeler/Scarborough 93-54 Petitioner Withdrawn

Mayor
Scar /Wheeler Defer 93-52, 93-60, 93-62, 93-110
Mayor

60 days

30 days

Martin
Mayor
VOTE - Unan.

#1- John Dinkins House
Lewis Bledsoe
McCrory
Bledsoe
McCrory
Bledsoe
Mayor
Whe
Sc

$361.67 County $695.08

McCrory
Whe

Else Hoyt Unan.
App. Unan.

#2- 93-119
Mayor -
Underhill -
Mayor
Fields
Mayor
Jackson
Fields - Will become non-conforming
most of the 22
McCrory - 500', 1,000 FT RULE
Fields
McCrory

Fields - We used property line
McCrory - If home not in residential
district,
Fields -
McCrory
Martin
Fields - We have plotted the 22
Martin
Fields - all but about 6
Baker
Vinroot - Property line
Baker -
Vinroot
Frank Gilreath
Frances Harkey
Joe Ledford
Majeed
Ledford
Jackson
Ledford - 2 that have 10 year leases
Jackson
Ledford
Jackson
Ledford
Martin

Ledford
Martin
Vinroot
Cannon
Ledford
Reid
Underhill
Martin
Underhill
O'Brien
Fields
Underhill
Vinroot
Hill (Planning Committee)
Fields
Vinroot
Scarborough
McCrory
Scarborough
Cannon
Vinroot
Majeed
McCrory - ~~Arthur~~
Vinroot
Martin

Underhill
Mar /Whe Case Hang.
Unan.

#4 Vinroot 93-114
Bailey
Vin
Mc /Whe
Case Hang.
Unan.

#5 93-115 Vinroot
Bar
Sc /Whe Case
Unan.

#6-93-116 - Vinroot
Whe /Sc Case Hang.
Fields
VOTE - Unan.

#7 - 93-117
Vinroot
Bryant
Martin
Fields
Mc /Sc Case Hang.

VOTE - Unan.

#8 - 93-118
Vinroot
Wh /Sc Clse Hrng.
Unan.

Vinroot
Byrne
Vinroot

#9 - Land Sales
Mar /Camp Approve
Martin

VOTE - Unan.

#14
Scar /Wheeler
App. Unan.

Wheeler - Clarify - Defer 93-52 + 93-110 for 30 days
+ 93-60 + 93-62 for 60 days
OK
Vinroot
McCrory - Public Safety Committee
Camp /Reid App.
Vinroot - No motion necessary

Wheeler

Wheeler / Martin
Adjourn
Unan.
7:05

MAYOR'S SCHEDULE

December 20, 1993

<u>7:30 p.m. - Zoning Meeting</u>

1 Invocation by Rev L F Hatchell, Matthews Church of God

2 Pledge of Allegiance

3 The following requests to speak to agenda items have been received

(a) Agenda Item No 2, Hearing on Petition No 93-119

1 3RD Joe Ledford, 227 West Trade Street - 376-3200 - Against
2ND FRANCES HARKEY - FOR
1ST - Frank Gilreath

(b) Agenda Item No 4, Hearing on Petition No 93-114

1 Bailey Patrick, Jr , 227 West Trade Street - 372-1120 - FOR

(c) Agenda Item No 5, Hearing on Petition No 93-115

1 Bailey Patrick, Jr , 227 West Trade Street - 372-1120 - FOR

ITEM #1 - DINKINS HOUSE
① LOUIS BLEDSOE

#7 - 93-117 -
① Fred Bryant

MEETINGS IN DECEMBER '93

DECEMBER 1 - 3

1 Wednesday 7 30 p m	**YOUTH INVOLVEMENT COUNCIL** CMGC Conference Center
2 Thursday 3 30 p m	**STORM WATER APPEALS COMMITTEE** CMGC 14th Floor Conference Room
4 00 p m	**ELECTED OFFICIALS QUARTERLY MEETING** Omni Hotel 4th Floor Gwynn Room 222 E Third St

THE WEEK OF DECEMBER 6 - 10

6 Monday 12 00 Noon	**PLANNING COMMISSION/Work Session** CMGC 8th Floor Conference Room
2 00 p m	**PLANNING COMMISSION/Planning Committee** CMGC 8th Floor Conference Room
2 00 p m	**ADVISORY ENERGY COMMISSION** Hal Marshall Center 700 N Tryon St
7 Tuesday 3 00 p m	**COMMITTEE OF 100/Environmental Subcommittee** Hal Marshall Center 700 N Tryon St
8 Wednesday 8 00 a m	**CLEAN CITY COMMITTEE** CMGC Room 270
8 30 a m	**CIVIL SERVICE BOARD** CMGC 7th Floor Conference Room
9 30 a m	**CIVIL SERVICE BOARD/HEARING (Closed)** CMGC Room 118
3 00 p m	**HISTORIC DISTRICT COMMISSION** CMGC 8th Floor Conference Room
9 Thursday 8 30 a m	**COMMITTEE OF 100/Transit Services Subcommittee** CMGC Room 118
4 30 p m	**TRANSIT ADVISORY COMMITTEE** CMGC Room 119

THE WEEK OF DECEMBER 13 - 17

13 Monday 5 00 p m	**COUNCIL/MANAGER DINNER** CMGC
6 30 p m	**CITIZENS HEARING** CMGC Meeting Chamber (Televised Live on Cable Channel 16)
7 00 p m	**CITY COUNCIL MEETING & DISPARITY STUDY PUBLIC HEARING** CMGC Meeting Chamber (Televised Live on Cable Channel 16)
5 00 p m	**COMMUNITY RELATIONS COMMITTEE** Little Rock A M E Zion Church 401 N McDowell St
7 00 p m	**HISTORIC LANDMARKS COMMISSION** Commission Office 500 N Tryon St Suite 201
14 Tuesday 1 00 p m	**ZONING BOARD OF ADJUSTMENT** Hal Marshall Center 700 N Tryon St Training/Conference Room
2 30 p m	**HOUSING APPEALS BOARD** CMGC 5th Floor Conference Room
4 00 p m	**AIRPORT ADVISORY COMMITTEE** Charlotte/Douglas International Airport Conference Rooms A&B
7 30 p m	**YOUTH INVOLVEMENT COUNCIL** CMGC Conference Center
15 Wednesday 7 45 a m	**PRIVATE INDUSTRY COUNCIL** CMGC Rooms 270/271
16 Thursday 8 00 a m	**PLANNING COMMISSION/Planning Liaison Committee** CMGC 8th Floor Conference Room
12 00 Noon	**CMUD ADVISORY COMMITTEE** Utility Department 5100 Brookshire Blvd
7 00 p m	**CHARLOTTE TREE ADVISORY COMMISSION** CMGC Room 270

(Continued on Back)

Public Service And Information Department

600 East Fourth Street

Charlotte NC 28202 2861

704/336-2395

MEETINGS IN DECEMBER '93 (Continued)

THE WEEK OF DECEMBER 20 - 24

20 Monday 11 45 a m	**PLANNING COMMISSION/Executive Committee** - CMGC 8th Floor Conference Room
5 00 p m	**COUNCIL/MANAGER DINNER** CMGC Meeting Chamber Conference Room
6 00 p m	**CITY COUNCIL MEETING/Zoning Hearings** CMGC Meeting Chamber (Televised Live on Cable Channel 16)
Immediately After Council Meeting	**PLANNING COMMISSION/Zoning Committee** CMGC 8th Floor Conference Room
21 Tuesday 2 00 p m	**HOUSING AUTHORITY** Administrative Office 1301 South Boulevard
24 Friday	**CHRISTMAS HOLIDAY** All City Government Offices Closed

THE WEEK OF DECEMBER 27 - 31

27, Monday	**CHRISTMAS HOLIDAY** All City Government Offices Closed

NOTE. These organizations do not have meetings scheduled for DECEMBER

Citizens Cable Oversight Committee
Firefighters Retirement Board
Insurance & Risk Management
Mayor's International Cabinet
Parade Permit Committee

CHARLOTTE

Mayor Richard Vinroot | *Mayor Pro Tem Patrick McCrory*

Charles Baker
Stan Campbell
Patrick D Cannon
Mike Jackson
Nasif Rashad Majeed
Hoyle H Martin
Don D Reid
Ella Butler Scarborough
Sara Spencer
Lynn M Wheeler

Council Agenda

Monday, December 20, 1993

5 00 p m - Council-Manager Dinner
Meeting Chamber Conference Room

6 00 p m - ZONING HEARINGS
Meeting Chamber

Invocation by

ITEM NO.

PUBLIC HEARING

Wheeler/Martin Close Hrng Scarborough/Wheeler App Unan.

1 Hearing to consider designation of the John Dinkins House and Lodge, including the entire exterior and entire interior of the John Dinkins House and Lodge and the entire tract of land upon which it sits, located at 2400 Summerlake Road, Charlotte, Mecklenburg County, North Carolina, as historic landmark

The background information is shown in the attachment

Recommend adoption of an ordinance designating the John Dinkins House and Lodge as historic landmark

Ord #1
3 771-X
B 45
P-107

Attachment No 1

Martin/Wheeler Close Hrng Unan.

2 (93-119) Hearing on Petition No 93-119 by Charlotte-Mecklenburg Planning Commission for a text amendment to the City Zoning Ordinance to establish separation standards for adult establishments and to outline amortization procedures for certain nonconforming adult establishments

Attachment No 2

ITEM NO.

3 (93-54) Hearing on Petition No 93-54 by Fletcher G Keith for a change in zoning from B-1SCD to B-1(CD) for approximately 4 92 acres located on the northwesterly corner of U S Highway 29 and Carley Boulevard

Wheeler/Scarborough Allow Petitioner to withdraw petition unan.

This petition was deferred at the September 22, 1993 meeting and continued for 60 days at the October 20, 1993 meeting

Attachment No 3

4 (93-114) Hearing on Petition No 93-114 by Quail Corner Associates Limited Partnership, The Crosland Group, Inc for a change in zoning for approximately 14 7 acres located on the southwest corner of the intersection of Park Road and Sharon Road West from B-1SCD to CC

McCrory/Wheeler Close Hrng. unan.

Attachment No 4

5 (93-115) Hearing on Petition No 93-115 by Crosland Piper Glen Limited Partnership for a change in zoning for approximately 22 75 acres located on the southerly side of Links Drive at Piper Glen Drive within the Piper Glen Community from R-15MF(CD) and R-3 to R-3(CD)

Scarborough/Wheeler Close Hrng. unan.

Attachment No 5

6 (93-116) Hearing on Petition No 93-116 by Lowe's Companies for a change in zoning for approximately 13 609 acres located between Sardis Road North, Independence Boulevard and Crownpoint Executive Drive from B-1SCD to CC

Wheeler/Scarborough Close. Hrng. unan

Attachment No 6

7 (93-117) Hearing on Petition No 93-117 by University Research Park, Inc for a Text Amendment to the City of Charlotte Zoning Ordinance to permit financial institutions in the Research Districts

McCrory/Scarborough Close. Hrng. unan.

Attachment No 7

8 (93-118) Hearing on Petition No 93-118 by Lowe's Companies, Inc for a change in zoning for approximately 15 64 acres located on the westerly side of East W T Harris boulevard south of University City Boulevard (N C 49) and Chancellor Park Drive from O-15(CD) and B-1SCD to CC

Wheeler/Scarborough close. Hearing' man.

Attachment No 8

BUSINESS

9 Land Sales Agreement with Third Ward Neighborhood Development Association

Action

Adopt a resolution extending the expiration date of the Land Sales Agreement between the City and the Third Ward Neighborhood Development Association from December 31, 1993 to December 31, 1995 with the sales price of the land being $ 66 per square foot

This item was deferred for one week at the December 13, 1993 meeting

Staff Resource J W Walton

Explanation of Request

The Land Sales Agreement between the City and the Third Ward Neighborhood Development Association expires on December 31, 1993 This Agreement was a result of City Council's approval on August 24, 1981 of the sale of 15 312 acres of land in the Third Ward Area to the Third Ward Neighborhood Development Association for $ 66 per square foot

Martin/Campbell approve man.

Of the total 15 312 acres to be sold by the City to the Third Ward Neighborhood Development Corporation, 12 560 acres has been sold with 2 752 acres remaining to be transferred

Slow development of the Third Ward area has delayed the purchase and redevelopment of the remaining land Therefore, an additional two-year extension of time is needed to allow the Third Ward Neighborhood Association to purchase the remaining 2 752 acres

With the construction of the football stadium in Third Ward, award of the NFL franchise and the clean-up of environmental problems on the former scrap yard site in Third Ward, it is anticipated that the remaining land can be sold within the next two years

Third Ward Neighborhood Development Association is a joint venture comprised

of The Committee to Restore and Preserve Third Ward and NationsBank Community Development Corporation

Additional information requested by Council will be forwarded to the Council with the Manager's memo on Friday, December 17, 1993

Attachment No 9

DECISIONS

10 (93-52) Decision on Petition No 93-52 by Alan and Terry Beaty for a change in zoning from I-1 to I-2(CD) for approximately 5 27 acres located on the northeasterly side of Brookshire Boulevard east of Caldwell Williams Road

Scarborough/Wheeler Defer 93-52 + 93-110 for 30 days + 93-60 + 93-62 for 60 days unan.

A protest petition has been filed and is not sufficient to invoke the 20% rule

This petition was deferred for 30 days at the October 20, 1993 meeting

This petition was referred back to the Zoning Committee for 30 days at the November 22, 1993 meeting However, the Zoning Committee has not met since November 22 and will not meet until after our December 20th Zoning Meeting Therefore, there will not be a recommendation from the Zoning Committee until January 18, 1994

Attachment No 10

11 (93-60) Decision on Petition No 93-60 by Charlotte-Mecklenburg Planning Commission for a change in zoning for approximately 7 acres located on the north and south sides of Central Avenue from 10th Street to the Brookshire Freeway from B-2 to B-1

A protest petition has been filed and is sufficient to invoke the 20% rule requiring affirmative votes of 3/4 of the Mayor and Councilmembers, not excused from voting, in order to rezone the property

Deferred 60 days

This petition was deferred at the October 11, 1993 meeting

This petition was deferred for 60 days at the October 25, 1993 meeting

The Zoning Committee deferred action for 60 days

Attachment No 11

12 (93-62) Decision on Petition No 93-62 by Charlotte-Mecklenburg Planning Commission for a change in zoning for

A Properties along Latrobe Drive and Pro Am Drive from I-2 to I-1

Deferred 60 days

A protest petition has been filed and is sufficient to invoke the 20% rule requiring affirmative votes of 3/4 of the Mayor and Councilmembers, not excused from voting, in order to rezone the property, **with regards to Area A only.**

This portion of the petition was deferred at the October 11, 1993 meeting

This portion of the petition was deferred for 60 days at the October 25, 1993 meeting

The Zoning Committee deferred action for 60 days

Attachment No 12

13 (93-110) Decision on Petition No 93-110 by Ronald S and Betty B Cecil for a change in zoning from R-3 to B-2 for approximately 1 63 acres located on the northeasterly corner of the intersection of East W T Harris Boulevard and Robinson Church Road

Deferred 30 days

A protest petition has been filed and is sufficient to invoke the 20% rule, requiring affirmative votes of 3/4 of the Mayor and Councilmembers, not excused from voting, in order to rezone the property

This petition was deferred for 30 days at the November 22, 1993 meeting

The Zoning Committee recommends that this petition be denied

Attachment No 13

14 Recommend adoption of a resolution calling for public hearings on Tuesday, January 18, 1994 at 6 00 p m in the Meeting Chamber, of the Charlotte-Mecklenburg Government Center, on Petition Nos 94-1 through 94-4 for zoning changes

Scarborough/Wheeler
aye. unan. 0 32 p-24

Wheeler/Martin
adjourn 7:05 p.m.

AN ORDINANCE DESIGNATING A PROPERTY KNOWN AS THE "JOHN DINKINS HOUSE AND LODGE" (THE LAND LISTED UNDER TAX PARCEL NUMBER 211-551-44 AND INCLUDING THE ENTIRE EXTERIOR AND THE ENTIRE INTERIOR OF THE JOHN DINKINS HOUSE AND LODGE LOCATED WITHIN THE BOUNDARIES OF SUCH TAX PARCEL) AS AN HISTORIC LANDMARK THE PARCEL OF LAND TO BE DESIGNATED INCLUDES ALL OF THE LAND LISTED UNDER TAX PARCEL NUMBER 211-551-44 IN THE MECKLENBURG COUNTY DEED BOOK THE PROPERTY, OWNED BY JAMES F BOYD AND JULIA T BOYD, IS LOCATED AT 2400 SUMMERLAKE ROAD, CHARLOTTE, MECKLENBURG COUNTY, NORTH CAROLINA

WHEREAS, all of the prerequisites to the adoption of this ordinance prescribed in Chapter 160A, Article 19, as amended, of the General Statutes of North Carolina have been met, and

WHEREAS, the City Council of the City of Charlotte, North Carolina, has taken into full consideration all statements and information presented at a joint public hearing held with the Charlotte-Mecklenburg Historic Landmarks Commission on the day of , 19 , on the question of designating a property known as the "John Dinkins House and Lodge", (listed under Tax Parcel Number 211-551-44) as a historic landmark, and

WHEREAS, members of the Dinkins family were prominent early settlers and plantation owners settling in Mecklenburg County by 1723; and

WHEREAS, John Dinkins bought a 241 acre tract in 1795 and built his house ca. 1800; and

WHEREAS, the Dinkins family established a still extant cemetery which was restored in 1992; and

WHEREAS, the John Dinkins House, Lodge and Cemetery were designated local historic properties and listed in the National Register of Historic Places in 1973; and

WHEREAS, both the John Dinkins House and Lodge retain their historic association with the Dinkins family, and

WHEREAS, the John Dinkins House and Lodge have survived through the years with original historic exterior appointments, such as the door and window surrounds and leaded glass windows, intact and in very good condition, and

WHEREAS, the John Dinkins House and Lodge have survived with most original historic appointments, such as wood paneling, unusual decorative finishes and wooden paneled doors, intact and in very good condition; and

WHEREAS, the John Dinkins House is architecturally significant as one of the finest examples of the two-story, three-room plan houses to be found in Charlotte and Mecklenburg County; and

WHEREAS, the new site of the John Dinkins House and Lodge includes part of the stagecoach road between Charlotte and Charleston; and

WHEREAS, preservation of the John Dinkins House and Lodge gives honor and recognition to early settlers in Mecklenburg County.

WHEREAS, the Charlotte-Mecklenburg Historic Landmarks Commission has jurisdiction over the interior of the buildings which constitute the "John Dinkins House and Lodge" because consent for interior design review has been given by the Owner, and

WHEREAS, the Charlotte-Mecklenburg Historic Landmarks Commission has demonstrated that the property known as the

"John Dinkins House and Lodge' (listed under Tax Parcel Number 211-551-44) possesses integrity of design, setting, workmanship, materials, and/or association, and

WHEREAS, the Charlotte-Mecklenburg Historic Landmarks Commission has demonstrated that the property known as the "John Dinkins House and Lodge" possesses special significance in terms if its history, architecture, and/or cultural importance and

WHEREAS, the property known as the "John Dinkins House and Lodge" (listed under Tax Parcel Number 211-551-44) is vested in fee simple to James F Boyd and Julia T. Boyd

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina:

1. That the property known as the "John Dinkins House and Lodge" (listed under Tax Parcel Number 211-551-44 and including the entire exterior and the entire interior of the John Dinkins House and Lodge, and all of the land included in Tax Parcel Number 211-551-44 recorded in the Mecklenburg County Tax Office) is hereby designated as a historic landmark pursuant to Chapter 160A, Article 19, as amended, of the General Statutes of North Carolina. For purposes of description only, the location of said property is noted as being situated at 2400 Summerlake Road, Charlotte in Mecklenburg County, North Carolina Interior and exterior features are more completely described in the Survey and Research Report on the John Dinkins House and Lodge (July 26,

1993)

2 That said interior is more specifically defined as the original historical appointments, such as wood paneling, unusual decorative finishes and wooden paneled doors, intact and in very good condition.

3 That said designated property may be materially altered, restored, moved or demolished only following the issuance of a Certificate of Appropriateness by the Charlotte-Mecklenburg Historic Landmarks Commission An application for a Certificate of Appropriateness authorizing the demolition of said property may not be denied However, the effective date of such a Certificate may be delayed in accordance with Chapter 160A, Article 19, Part 3C, and amendments thereto, and hereinafter adopted

4. That nothing in this ordinance shall be construed to prevent or delay the ordinary maintenance or repair of any architectural feature in or on said property that does not involve a change of design, material, or outer appearance thereof, nor to prevent or delay the making of emergency repairs, nor to prevent or delay the construction, reconstruction, alteration, restoration, demolition or removal of any such feature when a building inspector or similar official certifies to the Commission that such action is required for the public safety because of an unsafe condition. Nothing herein shall be construed to prevent the property owner from making any use of this property not prohibited by other

statutes, ordinances, or regulations

5 That a suitable sign may be posted indicating that said property has been designated as a historic landmark and containing any other appropriate information If the owner consents, the sign may be placed on said property

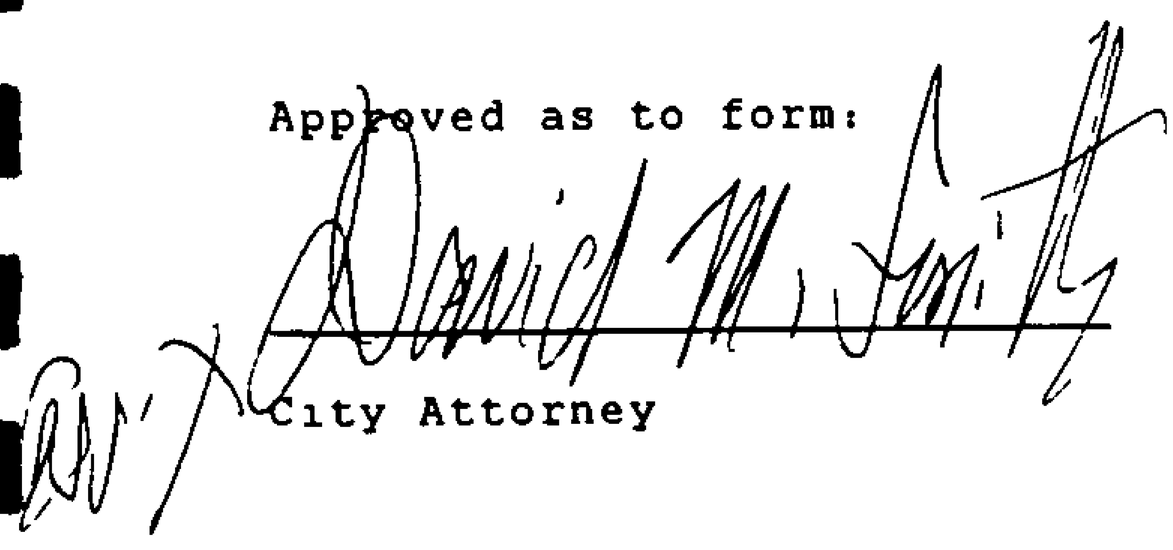
6 That the owners and occupants of the property known as "John Dinkins House and Lodge" be given notice of this ordinance as required by applicable law and that copies of this ordinance be filed and indexed in the offices of the City Clerk, Building Standards Department, Mecklenburg County Register of Deeds, and the Tax Supervisor, as required by applicable law

7 That which is designated as a historic landmark shall be subject to Chapter 160A, Article 19, and any amendments to it and any amendments hereinafter adopted.

Adopted the day of , 1993 by the City Council of the City of Charlotte, North Carolina

Clerk to City Council

Approved as to form:



City Attorney

CHARLOTTE - MECKLENBURG PLANNING COMMISSION

December 7, 1993

Mayor and City Council:

RE: Petitions to be Heard in December, 1993

Attached you will find appropriate maps and copies of each petition, as well as the Pre-Hearing Staff Analysis, for petitions scheduled for public hearing on Monday, December 20, 1993 at 6:00 o'clock P.M., in the Charlotte-Mecklenburg Government Center, Meeting Chamber, 600 East Fourth Street.

This material is intended to provide background information concerning the requests and the area in which the properties are located.

Sincerely,

Walter G. Fields (LS)

Walter G. Fields, III
Land Development Manager

WGFIII:mlj

Attachments

600 East Fourth Street • Charlotte, North Carolina 28202-2853 • (704) 336-2205

PRE-HEARING STAFF ANALYSIS

Rezoning Petition No. 93-119

Petitioner: Charlotte-Mecklenburg Planning Commission

Request: Consideration of a text amendment to the City Zoning Ordinance to establish separation standards for adult establishments and to outline amortization procedures for certain nonconforming adult establishments.

BACKGROUND

Current Zoning Regulations for Adult Entertainment Establishments

The City Zoning Ordinance regulates certain "adult" establishments in the following manner:

- There is presently no separate definition for "adult" uses.
- Nightclubs, bars and lounges are allowed in B-1 and B-2 districts subject to a 400 foot separation from residential uses or districts.
- Nightclubs, bars and lounges up to 70,000 square feet are allowed in I-1 and up to 25,000 square feet are allowed in I-2 districts subject to a 400 foot separation from residential uses or districts.
- Entertainment establishments such as nightclubs, bars, lounges, taverns and cabarets are allowed in UMUD subject to a 100 foot separation from a residential structure in a residential district.
- Any type of bookstore, movie theater or restaurant is permitted in any of the commercial or industrial districts with no extraordinary conditions such as a separation requirement. There are no zoning regulations that prevent the conversion of a standard bookstore, theater or restaurant (permitted in B-1, B-2, UMUD, CC, I-1 and I-2) to an adult-oriented use and no separation requirements are imposed.

Review of Regulations in Other Localities

Localities throughout the Country which regulate adult establishments generally use one of two zoning approaches. The "concentration" technique confines adult establishments to specified areas. The "dispersal" technique separates adult businesses from each other (usually 1000 feet apart) and from residential districts and/or uses and certain "protected" uses such as churches, schools, day care centers, playgrounds and public parks (usually 500-1000 feet away). Many ordinances also prohibit sexually oriented signage or displays in view of the general public, disallow more than one adult use in the same structure, and amortize nonconforming adult uses.

Potential Impacts

There has been extensive research and numerous studies of the potential adverse impacts of adult businesses by municipalities across the nation in support of their ordinances. The documented potential impacts are outlined below.

Property Values

Several municipalities including Indianapolis, Minneapolis, St. Paul, Detroit, and Los Angeles have documented that areas with a concentration of adult businesses experience deteriorating property values, rental values, and rentability/salability and that this effect diminishes with distance.

Blight

It has also been documented that the economic decline resulting from concentrations of adult businesses often causes physical deterioration and blight. Negative physical impacts have been documented by cities including Detroit and Los Angeles.

Crime Rate

A number of impact studies from cities including Indianapolis, Austin, Minneapolis, St. Paul, Phoenix, Detroit, Los Angeles and Fayetteville indicate that areas with adult entertainment businesses tend to have higher crime rates than areas without such uses and sex-related crimes were substantially higher in these areas than the control areas without these businesses.

Summary of Court Reviews

Courts have generally upheld the constitutionality of zoning ordinances aimed at controlling adult establishments provided that the regulations do not excessively restrict these uses. Localities may seek to limit the potential negative impacts of adult uses as opposed to prevent their establishment.

Proposed Text Amendment

Separation Standards

This text amendment proposes to establish a separation requirement of 500 feet between any adult establishment and any residential use or zoning district and certain "protected" uses including churches, schools, child care centers, parks and playgrounds. (The subsequent location of a residential use or district or one of the protected uses would not render the adult use nonconforming.) The Board of Adjustment would not have the authority to vary this standard.

The amendment would also establish a 1000 foot separation requirement between adult uses.

Amortization Procedures

The amendment outlines a five year amortization provision for those adult establishments that are nonconforming as to the 500 foot separation standard.

CONCLUSION

This petition addresses the concerns of the City Council in establishing reasonable and appropriate standards for adult entertainment uses.

ZONING ORDINANCE TEXT AMENDMENT APPLICATION

CITY OF CHARLOTTE

Petition No 93-119

Date Filed 10/4/93

Received By LS

OFFICE USE ONLY

Section No 2.201 (Definitions) and 12.518 (Adult Establishments)

(Title)

Purpose of Change To establish a definition of and separation standards for adult entertainment establishments and to outline amortization procedures for certain nonconforming adult entertainment establishments.

Name of Agent

Agent's Address

Telephone Number

Charlotte-Mecklenburg Planning Commisiosn

Name of Petitioner(s)

600 E. Fourth St., Charlotte, NC 28202-2853

Address of Petitioner(s)

(704) 336-2205

Telephone Number

Signature

Petition No. 93-119

Petitioner: Charlotte-Mecklenburg Planning Commission

Ordinance No.

AN ORDINANCE AMENDING APPENDIX A
OF THE CITY CODE - ZONING ORDINANCE

AN ORDINANCE AMENDING THE CITY CODE
WITH RESPECT TO THE ZONING ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHARLOTTE:

Section 1. Appendix A,"Zoning" of the Code of the City of Charlotte is hereby amended as follows:

1. Amend Chapter 1 by adding the following term to Part 2 (Definitions) Section 2.201 in the proper alphabetical order.

> Adult establishment. Any structure or use of land which meets the definition of adult establishment as outlined in North Carolina General Statute Sec. 14-202.10.

2. Amend Chapter 12 by adding a new Section 12.518 as follows:

Section 12.518. Adult establishments.

Studies have shown that lowered property values and increased crime rates tend to accompany and are brought about by the concentration of adult establishments as defined herein. Regulation of these uses is necessary to insure that these effects do not contribute to the blighting of surrounding neighborhoods and to protect the integrity of the City's churches, schools, child care centers, parks and playgrounds which are typically areas in which juveniles congregate. It is the intent of this provision to establish reasonable regulations to prevent a concentration of adult establishments within the City of Charlotte and to separate adult establishments from those uses in which juveniles typically congregate.

Adult establishments are permitted in the B-1, B-2, UMUD, I-1, I-2 and CC districts subject to the following requirements:

> (a) Any structure in which an adult establishment is the principal or accessory use shall be separated by a distance of at least 500 feet, measured in any direction, from any residential use or district, church, school, child care center, park or playground. The Charlotte Zoning Board of Adjustment shall have no authority to grant a variance from the 500 foot separation standard. An adult establishment lawfully operating as a conforming use is not rendered a nonconforming use by the subsequent location of a residential use or district, church, school, child care center, park or playground within the 500 foot separation distance.

(b) Any structure in which an adult establishment is the principal or accessory use shall be separated by a distance of at least 1000 feet, measured in any direction, from any other adult establishment. No more than one adult establishment may be located within the same structure.

3. This ordinance shall become effective upon adoption. All existing adult establishments that are nonconforming with respect to Section 12.518(a) must comply with the provisions of this amendment within five years of its adoption.

Approved as to form:

_____
City Attorney

Read, approved and adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the _____ day of _____, 19___, the reference having been made in Minute Book _____, and recorded in full in Ordinance Book _____, at page _____.

_____
City Clerk

PRE-HEARING STAFF ANALYSIS

Rezoning Petition No. 93-54

Petitioner: Fletcher G Keith

Location: Approximately 4 92 acres located on the northwesterly corner of U. S. Highway 29 and Carley Boulevard

Request: Change from B-1SCD to B-1(CD).

BACKGROUND

1 **Existing Zoning.** The petitioned property is zoned B-1SCD and is included as part of the overall master plan for University Place which dates back to a 1982 County rezoning petition. Adjoining properties to the west and south are also zoned B-1SCD. The site to the north was recently rezoned to the CC category as a result of a 1992 rezoning petition. Properties on the east side of U.S. 29 are zoned for institutional purposes.

2 **Existing Land Use.** The subject property is presently undeveloped. A Montessori school is located just to the west. A number of apartment complexes, offices and commercial facilities are located nearby along Carley Boulevard, J. M. Keynes Drive and Olmstead Drive. Properties located along the east side of U.S. 29 across from the site are vacant.

3 **Public Plans and Policies.**

1. **2005 Plan.** The 2005 Plan indicates a major mixed use center at the intersection of Harris Boulevard and U. S. 29. The plan anticipates this major retail center will be surrounded by and include a significant amount of housing. The plan recognizes developing employment uses adjacent to University Place and existing employment in University Research Park. The University of North Carolina at Charlotte is recognized as a major institutional use in the area. The 2005 strategies include improvements to Harris Boulevard, the extension of water and sewer lines in the area and the development of the greenway system along Mallard Creek.

2. **Northeast District Plan (adopted 1990).** The Northeast District Plan recognizes University Place as the regional mixed use center for the area. This center would accommodate a significant amount of retail and office development.

3 **Transportation Improvement Program** The TIP includes the widening of Mallard Creek Church Road and the construction of the northeast segment of the outerbelt

4 **Site Plan**

1 Existing Site Plan. The existing site plan presently in effect for the petitioned property allows approximately 35,000 square feet of commercial and retail uses. The site plan includes a booklet of design guidelines and requires detailed site plan approval by a Design Review Board. Access to the property is to be provided by way of Olmstead Drive and is not permitted along Highway 29 or Carley Boulevard.

2. Proposed Site Plan. The site plan which accompanies this petition proposes a 35,000 square foot commercial development with access to both Highway 29 and Carley Boulevard. The proposed site plan carries forward the existing plan's commitments for a 40 foot buffer along Carley Boulevard with a 12 foot pedestrian path and a 50 foot buffer along Highway 29. The proposed plan states that architectural controls shall be developed in compliance with University Place Guidelines but does not commit to all of the standards contained in the design guidelines and submission of plans to the Design Review Board.

5 **School Information.** Not applicable.

6. **Zoning History (See Attached Map).**

Petition No.	Request	Action	Date
1. 70-2	R-12, B-2, RE to Inst.	Approved	05/18/70
2. 82-23(c)	Inst. to B-1SCD	Approved	08/04/82
3. 84-38(c)	Inst. to B-1SCD	Approved	11/05/84
4. 86-64(c)	B-1SCD Site Plan Amendment	Approved	12/01/86

7. **Neighborhood.** This petition falls within the area defined as the University City neighborhood.

REVIEWS

1 **Plan Consistency.** This petition seeks a change from one conditional commercial category to another. From this standpoint, it raises no particular plan consistency issue. However, the purpose of the petition is to accommodate direct vehicular access for the

OFFICIAL REZONING APPLICATION
CITY OF CHARLOTTE

STAFF REVIEW 8/3/93 10:00

Petition No 93-54

Date Filed July 6, 1993

Received By T. Davis

OFFICE USE ONLY

Ownership Information

Property Owner: Home Federal Savings and Loan Assn.

Owner's Address: 139 South Tryon Street Charlotte, NC 28202

Date Property Acquired: 8/86

Tax Parcel Number: 047-201-023

Location of Property (address or description)

Northeast corner of US Highway 29 at Carley Blvd

Description of Property

Size (Sq. Ft.-Acres): 4.922

Street Frontage (ft.): 402.48 Carley
525.23 US Highway 29

Current Land Use: Undeveloped

Zoning Request

Existing Zoning: B1-SCD

Requested Zoning: Site plan amendment

Purpose of Zoning Change: To provide for ingress and egress along US Highway 29 and Carley Blvd

R. Steve McNair
Name of Agent

5344 Central Avenue
Agent's Address

Charlotte NC 28212

Telephone Number (704) 535-7584

Fletcher G. Keith
Name of Petitioner(s)

4016 Triangle Drive
Address of Petitioner(s)

Charlotte NC 28266

Telephone Number
(704) 392-1338

Fletcher G. Keith Jr.
Signature

Signature of Property Owner, if Other Than Petitioner: Home Federal Savings

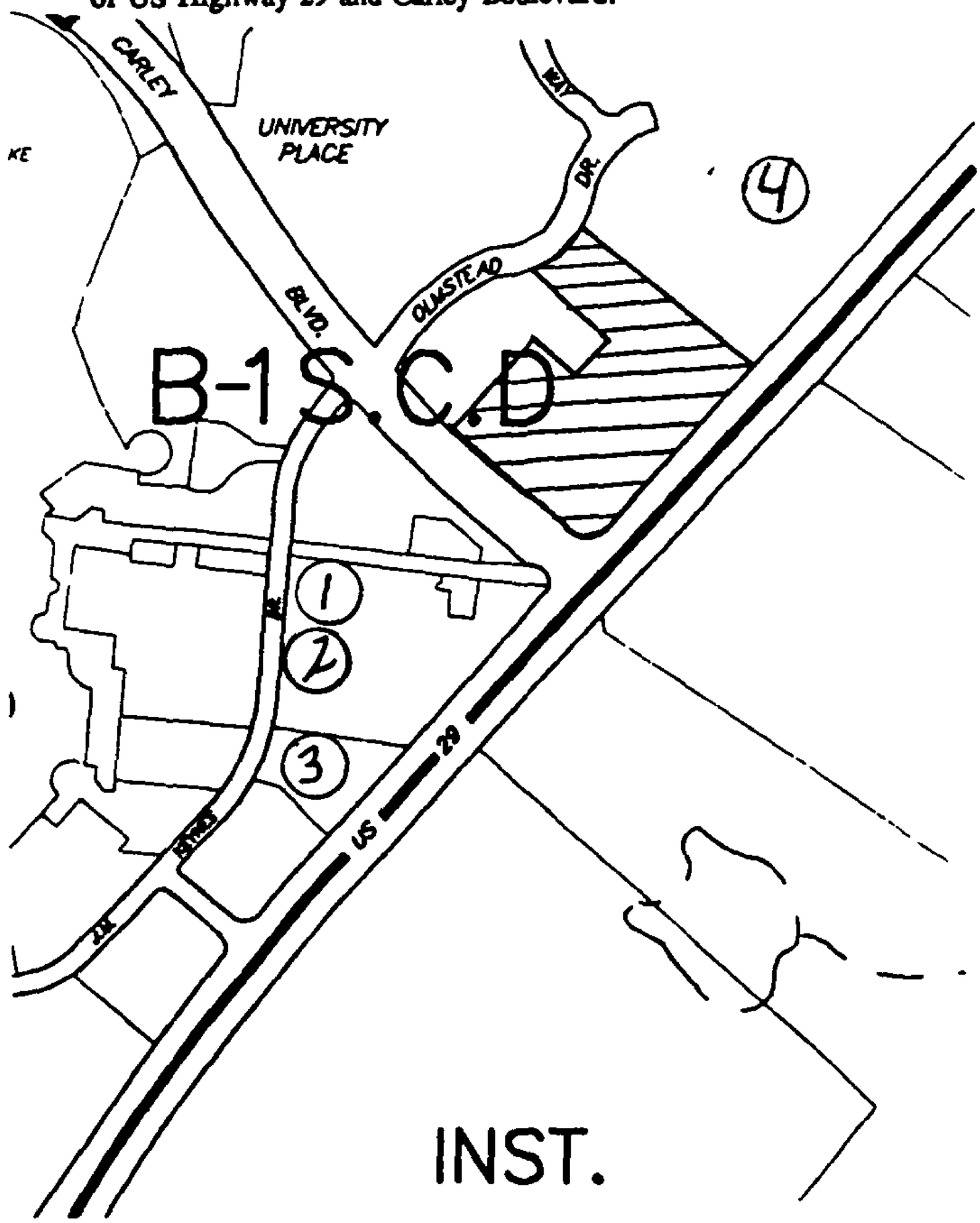
Petition #: 93-54

Petitioner: Fletcher G. Keith **Hearing Date:** September 20, 1993

Zoning Classification (Existing): B-1 SCD

Zoning Classification (Requested): Site Plan Amendment

Location: Approximately 4.92 acres located on the northwest corner of the intersection of US Highway 29 and Carley Boulevard.



Zoning Map #(s): 58

Scale: 1" = 400'

safety, applicable standards, and conflicting use of the right-of-way by the City and/or utility franchise holders. Further, CDOT and other City Departments will review the design and construction of the encroaching items and may impose certain requirements as a condition of Encroachment Agreement approval. An Encroachment Agreement must be approved by CDOT prior to the construction/ installation of the non-standard item(s). Contact CDOT for additional information concerning cost, submittal, and liability insurance coverage requirements.

If we can be of further assistance, please advise.

RDG/REG:hll

c: W. B. Finger
S. L. Putnam
R. E. Goddard
R. S. Williams
T. A. Richards
R. Steve McNair
Fletcher G. Keith
Rezoning File

M E M O R A N D U M

DATE: August 31, 1993

TO: Laura Simmons
Planning Commission

FROM: R. D. Gillis, Assistant Director
Department of Transportation

SUBJECT: Rezoning Petition 93-54 Site Plan Amendment:
Northwest Corner of US 29 and Carley Boulevard
(Revised 08/23/93)

This site could generate approximately 3,667 trips per day as currently zoned (with a maximum building square footage of 35,000 sf). Under the proposed zoning the site could generate approximately the same number of daily trips per day. The volume of daily trips will not have a significant impact on the surrounding thoroughfare system, provided that access to US 29 and Carley Boulevard, especially to restaurant/fast food types of land use, is handled internally to the larger shopping center/retail area and not as an out-parcel. CDOT is strongly opposed to direct access to US 29 and Carley Boulevard, which is to become a public street.

Under the original conditional zoning of this property, this is an outparcel and direct access to all the outparcels is prohibited to the thoroughfares and Carley Boulevard. Access is only allowed to the internal street system of the University Place Shopping Center Development (J. M. Keynes Drive and Olmstead Drive).

If the petition is approved as submitted, a minimum of 150 feet of internal channelization as measured from the right-of-way must be provided at the driveways to both US 29 and Carley Boulevard since it is proposed to be accepted as a public street. Therefore, all planned access locations would need to comply with the City Driveway Regulations (150 feet of internal channelization).

CDOT recommends sidewalk construction along the US 29 and Carley Boulevard frontages.

US 29 is a minor thoroughfare requiring a minimum of 100 feet of right-of-way. The developer/petitioner should dedicate right-of-way to meet this requirement, measuring 50 feet from the centerline of the roadway.

Adequate sight distance triangles must be reserved at the proposed private street connections. Two 35' x 35' and two 10' x 70' sight triangles are required for the private street connections to meet sight distance requirements. All proposed trees, berms, walls, fences and/or identification signs must not interfere with sight distance at the private street connections. Such items should be identified on the site plan.

The proposed driveway connections to US 29 and Olmstead Drive will require driveway permits to be submitted to the Charlotte Department of Transportation (CDOT) and the North Carolina Department of Transportation for review and approval. The exact driveway location and type/width of the driveways will be determined by CDOT during the driveway permit process. The location of the driveways shown on the site plan are subject to change in order to align with driveway(s) on the opposite side of the street and comply with City Driveway Regulations and the City Tree Ordinance.

All proposed commercial driveway connections to a future public street (Carley Boulevard) will require a driveway permit to be submitted to CDOT for review and approval.

To facilitate building permit/driveway permit review and approval, the site plan needs to be revised to indicate:

- a complete parking summary
- driveways which comply with the City Driveway Regulations
- typical parking module dimensions

Any fence or wall constructed along or adjacent to any sidewalk or street right-of-way requires a certificate issued by CDOT.

A Right-of-Way Encroachment Agreement is required for the installation of any non-standard item(s) (irrigation systems, decorative concrete pavement, brick pavers, etc.) within a proposed/existing City maintained street right-of-way by a private individual, group, business, or homeowner's/business association. CDOT will determine on a case by case basis whether an encroachment will be considered based on concerns for public

site to Carley Boulevard and Highway 29 and to reduce or eliminate some of the previously committed to design standards for University Place Therefore, the petition is inconsistent with the previously approved master plan which has governed the development of the balance of University Place.

2 **Technical Consistency**

1 **Pre-Hearing Staff Input.** The staff strongly discouraged this petition as well as numerous other inquiries over the years regarding this site's potential for access to Highway 29.

2. **Departmental Comments.** Departmental comments included the need for clarification on required buffers, sidewalk along Highway 29 and Carley Boulevard, and submission of design guidelines consistent with the plan for University Place. The remaining outstanding departmental comments include strong opposition from CDOT regarding the proposed vehicular access to Carley Boulevard and U.S. 29 and submission of design guidelines consistent with the plan for University Place including commitment to submit detailed plans to the University City Design Review Board. (CDOT comments are attached).

ISSUES

1. **Land Use.** This petition raises no particular land use issue inasmuch as it proposes a change from one commercial zoning category to another for essentially the same land use as allowed by the existing site plan. Therefore, from a land use standpoint, the petition could be considered appropriate for approval.

2. **Site Plan.** This petition raises a significant site plan issue. It proposes a rezoning for the purpose of accommodating direct vehicular access to Highway 29 and Carley Boulevard. The original University Place master plan created a public street system that provided a controlled and well thought out vehicular and pedestrian circulation system which generally limited outparcel access to minor roads rather the major roads. In this case, access is to be provided by Olmstead Drive. Other sites within University Place have successfully developed in accordance with this circulation system which was a major focus of the original plan. Direct vehicular connections to major thoroughfares for existing or future outparcels within University Place would have a negative effect on traffic conditions and needlessly interrupt the associated thoroughfare buffer treatments. In addition to the access issues, this site plan also lacks some of the design related conditions previously established for University Place. Therefore, this petition is not considered appropriate for approval from a site plan standpoint.

CONCLUSION

This petition is not appropriate for approval.

*Subject to further refinement following public hearing.

PRE-HEARING STAFF ANALYSIS

Rezoning Petition No. 93-114

Petitioner: Quail Corners Associates Limited Partnership, The Crosland Group, Inc.

Location: Approximately 14.7 acres located on the southwest corner of the intersection of Park Road and Sharon Road West.

Request: Change from B-1SCD to CC.

BACKGROUND

1. **Existing Zoning.** The petitioned property is zoned B-1SCD. The B-1SCD designation dates back to a 1979 rezoning petition under the County's jurisdiction that removed the original R-PUD designation from the south village of the Quail Hollow Estates Planned Unit Development and replaced that designation with a combination of B-1SCD, 0-15(CD), R-15MF(CD) and R-12. The site located across Park Road from the petitioned property is zoned B-1(CD) as a result of a 1989 rezoning petition. Otherwise, properties in the area are predominantly zoned R-3.

2. **Existing Land Use.** The petitioned property is the site of the Quail Corners Shopping Center. Properties located to the west and south are devoted to multi-family residential development. Across Park Road from the site are institutional uses including a school, a church and a retirement community. Otherwise, surrounding properties are devoted to single family and multi-family residential development.

3. **Public Plans and Policies.**

   1. **2005 Plan.** The 2005 Plan indicates existing residential land uses in the area of the subject property. The plan also recognizes the existing Quail Corners Shopping Center as a community commercial center.

   2. **Transportation Improvement Program.** The Transportation Improvement Program includes the widening of Park Road and the relocation of Park Road from Tyvola Road to N.C. 51 which has been completed. The widening of Sharon Road West from South Boulevard to Park Road has also been completed.

   3. **South Mecklenburg District Plan (adopted 1993).** The South Mecklenburg District Plan recognizes the existing commercial center at this location. The plan also recognizes the potential for light rail service in the area.

4. **Site Plan.**

Existing Site Plan

The site plan presently in effect for the petitioned property accommodates a maximum of 95,000 square feet of development and a maximum of two outparcels. The site plan notes extensive landscaping and berming along Sharon Road West and Park Road and provides cross-sections of the landscaping treatments. This plan was subsequently amended in 1987 to allow an addition to the existing Harris Teeter. This plan increased the maximum building area for the shopping center from 100,000 square feet to 104,650 square feet. Other aspects of the plan remained essentially unchanged.

Proposed Site Plan

The site plan which accompanies this petition proposes another expansion of Harris Teeter totalling 7,650 square feet. This expansion brings the maximum square footage for the shopping center to 112,300 square feet. The plan leaves the number of outparcels unchanged and retains the landscaping and berming treatments. The plan commits to right-of-way dedication of 60 feet from the centerline on Park Road for a distance of 570 feet from the centerline of Sharon Road West tapering back to 50 feet from the centerline elsewhere and dedicates right-of-way on Sharon Road West measuring 70 feet from the centerline for 560 feet back from the Park Road right-of-way tapering to 50 feet from the centerline elsewhere. The plan notes that signage on the site will remain essentially unchanged. Other aspects of the development will also remain essentially unchanged.

5. **School Information.** Not applicable.

6. **Zoning History (See Attached Map).**

Petition No.	Request	Action	Date
1. 65-15	R-9 & B-2 to R-PUD	Approved	03/01/65
2. 69-13(c)	R-12 to R-PUD	Approved	05/12/69
3. 73-36(c)	R-PUD to B-1SCD R-15MF(CD) & R-12	Approved	12/03/79
4. 84-22(c)	R-15MF(CD) to R-20MF	Approved	09/04/84
5. 87-79	B-1SCD Site Plan Amendment	Approved	10/21/87
6. 89-87	R-15 to B-1(CD) & R-20MF	Approved	11/20/89

7. **Neighborhood.** This petition falls within the area defined as the Sharon Lakes community.

REVIEWS

1. **Plan Consistency.** This petition proposes a relatively minor expansion of the Quail Corners Shopping Center. Publicly adopted plans for the area recognize the existing community commercial center at this location. Therefore, this petition is considered consistent with publicly adopted plans and policies for the area.

2. **Technical Consistency.**

   1. **Pre-Hearing Staff Input.** The staff provided technical assistance to the petitioner.

   2. **Departmental Comments.** Departmental comments noted the need for additional right-of-way dedication along Park Road and Sharon Road West. Departmental comments also included a request for designation of a Charlotte Transit Park-N-Ride lot at this location with 25 to 50 spaces (see attached CDOT comments).

ISSUES

1. **Land Use.** There are no land use issues which accompany this petition. The petition proposes a relatively minor expansion of an existing shopping center in an area recognized as a community commercial center by publicly adopted plans for the area. Therefore, this petition is considered appropriate for approval from a land use standpoint.

2. **Site Plan.** The site plan which accompanies this petition proposes an expansion of the Harris Teeter at Quail Corners Shopping Center. The proposed expansion totals 7,650 square feet and would bring the shopping center to 112,300 square feet. Other aspects of the plan remain essentially the same. The plan notes right-of-way dedication in excess of the street classification system and other departmental comments have been addressed by the revised site plan. The one issue that remains outstanding at this point is a request from the Department of Transportation for a 25 to 50 space Park-N-Ride lot. Otherwise, the site plan has adequately addressed all departmental comments and is, therefore, considered appropriate for approval.

CONCLUSION

This petition is considered appropriate for approval.

*Subject to further refinement following public hearing.

OFFICIAL REZONING APPLICATION
CITY OF CHARLOTTE

Petition #: 93-114
Date Filed: August 30, 1993
Received By: T. Nowe

OFFICE USE ONLY

OWNERSHIP INFORMATION:

Property Owner: Quail Corners Associates, Limited Partnership, The Crosland Group, Inc., General Partner

Owner's Address: 125 Scaleybark Road, Charlotte, NC

Date Property Acquired:

Tax Parcel Number(s): 207-153-01 + 207-153-04 + 207-153-05

LOCATION OF PROPERTY (Address or Description): The southwest corner of the intersection of Park Road and Sharon Road West.

Size (Sq.Ft. or Acres): 14.7 acres **Street Frontage (Ft.):** 3527 linear feet

Current Land Use: Strip retail center with two developed out parcels

ZONING REQUEST:

Existing Zoning: B1-SCD **Proposed Zoning:** CC

Purpose of Zoning Change: To construct additional square footage to the existing food store

Little & Associates Architects
Name of Agent

5815 Westpark Drive, Charlotte, NC
Agent's Address

704-525-6350
Telephone Number

Signature of Property Owner if other than Petitioner

Quail Corners Associates Limited Partnership, The Crosland Group, Inc.
Name of Petitioner(s)

125 Scaleybark Road, Charlotte, NC
Address of Petitioner(s)

704-523-2924
Telephone Number

Signature

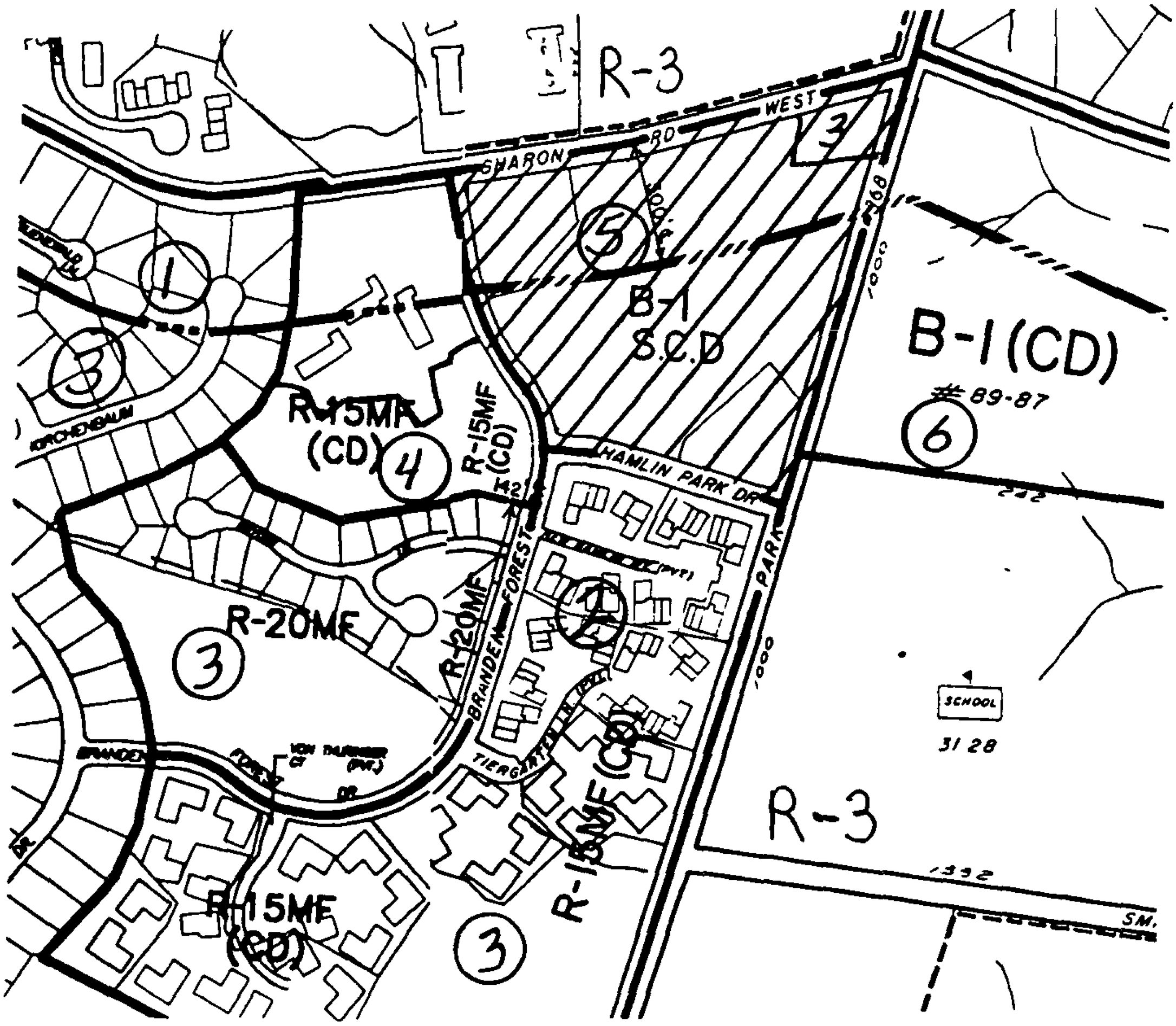
Petition #: 93-114

Petitioner: Quail Corners Associates Limited Partnership, The Crosland Group, Inc.
Hearing Date: December 20, 1993

Zoning Classification (Existing): B-1 SCD

Zoning Classification (Requested): CC

Location: Approximately 14.7 acres located at the southwest corner of the intersection of Sharon Road West and Park Road.



Zoning Map #(s): 158,157

Scale: 1" = 400'

M E M O R A N D U M

DATE: December 1, 1993

TO: Laura Simmons
Planning Commission

FROM: R. D. Gillis, Chief Traffic Engineer
Department of Transportation

SUBJECT: Rezoning Petition 93-114: Sharon Road West and Park Road (Revised 11/19/93)

This site could generate approximately 7,271 trips per day as currently zoned. The revised site plan indicates an increase in total proposed building square footage from 111,700 to 112,300. Therefore, the proposed trip generation has increased from 7,573 trips per day to 7,599 trips per day.

We have the following specific comments:

- We request the designation of a Charlotte Transit park-and-ride lot at this location with 25-50 spaces. Parking spaces would need to be reserved from 6:00 am to 6:00 pm, Monday - Friday.

We have the following general comments/statements:

Adequate sight distance triangles must be reserved at the existing entrances. Two 35'x35' sight triangles are required for the entrances to meet sight distance requirements. All proposed trees, berms, walls, fences and/or identification signs must not interfere with sight distance at the entrances. Such items should be identified on the site plan.

Park Road and Sharon Road West are both major thoroughfares requiring a minimum of 100 feet of right-of-way is required at the intersection of two major thoroughfares. The developer/petitioner has noted the dedication of right-of-way measuring 60 feet from the centerline on Park Road for a distance of 570 feet from the centerline of the Sharon Road West right-of-way, then tapering at a rate of 45:1 back to meet the minimum right-of-way requirement, measuring 50 feet from the centerline of the roadway, measuring 50 feet from the centerline of the roadway. They have also noted the dedication of right-of-way on Sharon Road West measuring 70 feet from the centerline of the roadway for 560 feet starting from the centerline of the Park Road right-of-way, then tapering at a rate of 20:1 back to meet the minimum right-of-way requirement, measuring 50 feet from the centerline of the roadway.

Any fence or wall constructed along or adjacent to any sidewalk or street right-of-way requires a certificate issued by CDOT.

A Right-of-Way Encroachment Agreement is required for the installation of any non-standard item(s) (irrigation systems, decorative concrete pavement, brick pavers, etc.) within a proposed/existing City maintained street right-of-way by a private individual, group, business, or homeowner's/business association. CDOT will determine on a case by case basis whether an encroachment will be considered based on concerns for public safety, applicable standards, and conflicting use of the right-of-way by the City and/or utility franchise holders. Further, CDOT and other City Departments will review the design and construction of the encroaching items and may impose certain requirements as a condition of Encroachment Agreement approval. An Encroachment Agreement must be approved by CDOT prior to the construction/ installation of the non-standard item(s). Contact CDOT for additional information concerning cost, submittal, and liability insurance coverage requirements.

To facilitate building/driveway permit review and approval, the site plan must be revised to include the following:

- A minimum of 150 feet of internal channelization will be required to be added to the existing Park Road driveway.
- Standard (Manual on Uniform Traffic Control Devices) "STOP" signs will be required to be placed and maintained by the developer at the Hamlin Park Drive and Brandon Forest Drive driveways (4 locations).
- Dimensions of all existing driveways
- Dimension typical parking modules
- Indicate the median and laneage on Park Road and Sharon Road West

If we can be of further assistance, please advise.

RDG/REG:hll

c: W. B. Finger
S. L. Putnam
R. E. Goddard
R. S. Williams
T. A. Richards
Little & Associates Architects
The Crosland Group, Inc.
Rezoning File

PRE-HEARING STAFF ANALYSIS

Rezoning Petition No. 93-115

Petitioner: Crosland Piper Glen Limited Partnership

Location: Approximately 22.75 acres located on the southerly side of Links Drive at Piper Glen Drive within the Piper Glen Community.

Request: Change from R-15MF(CD) and R-3 to R-3(CD).

BACKGROUND

1. **Existing Zoning.** The petitioned property is zoned a combination of R-15MF(CD) and R-3. The portion of the petitioned property zoned R-15MF(CD) was included in the original Piper Glen rezoning in 1986. Nearby properties zoned R-15(CD) and B-1SCD were also included in the Piper Glen plan. Other nearby properties are predominantly zoned R-3.

2. **Existing Land Use.** The petitioned property is presently undeveloped. Adjoining properties are devoted to single family residential development around the Piper Glen Golf Course.

3. **Public Plans and Policies.**

    1. **2005 Plan.** The 2005 Plan recognizes the area of the subject property as one of existing residential development. The plan recognizes the intersection of Elm Lane West and Providence Road West as a potential major mixed use center. Strategies for the area include the construction of the Outer Belt, Rea Road Extension, extension of water lines and extension of greenway in the area.

    2. **South Mecklenburg District Plan.** The South Mecklenburg District Plan recognizes potential multi-family development on the petitioned property. Surrounding properties are recognized as single family residential areas with a base density of three dwelling units per acre.

    3. **Transportation Improvement Program.** The Transportation Improvement Program includes construction of the Outer Belt and Rea Road Extension.

4. **Site Plan.**

Existing Site Plan

The master plan for the Piper Glen Community accommodates a total of 270 multi-family units on the petitioned property, a density of 12 dwelling units per acre. The plan notes a 50 foot buffer along the Outer Belt and the adjoining R-15(CD) tract to the west. The plan also recognizes a 40 foot buffer along Links Drive and a 20 foot buffer abutting the golf course along the easterly project edge. Access to the site is provided by one driveway connection to Links Drive. The plan includes a design manual that outlines phasing and landscaping commitments.

Proposes Site Plan

The site plan which accompanies this petition proposes the development of 40 single family lots on the petitioned property, a density of three dwelling units per acre. The plan indicates a 140 foot landscaped strip along the proposed Outer Belt and landscaping along Links Drive ranging from 20 feet in width to 60 feet in width. Access to the site remains the same and is provided by one connection to Links Drive. The plan references the appropriate sections of the original design manual.

5. **School Information.** Not applicable.

6. **Zoning History (See Attached Map).**

Petition No.	Request	Action	Date
1. 86-4(c)	R-15 to R-20MF, R-15(CD), R-12MF(CD), R-15MF(CD) B-1(CD) & B-1SCD	Approved	03/17/86
2. 89-39(c)	B-1SCD to B-1SCD Site Plan Amendment	Approved	01/16/90
3. 89-17(c)	R-20MF, R-12MF(CD), R-15MF(CD) to R-12MF(CD), R-20MF, R-15(CD) & R-15MF(CD)	Approved	08/07/89

7. **Neighborhood.** This petition falls within an area previously defined as the Raintree community. However, the area is now known as the Piper Glen community.

REVIEWS

1. **Plan Consistency.** This petition proposes rezoning from a combination of conventional

single family and conditional multi-family districts to a conditional single family category to accommodate the development of a single family residential subdivision. Plans for the area recognize the site as suitable for continued residential development with a base density of three dwelling units per acre. Therefore, the petition is consistent with plans for the area.

2. **Technical Consistency.**

   1. **Pre-Hearing Staff Input.** The staff provided technical assistance to the petitioner.

   2. **Departmental Comments.** There were few departmental comments on this petition and the revised site plan adequately addresses the minor issues raised.

ISSUES

1. **Land Use.** This petition proposes rezoning from a combination of conventional single family and conditional multi-family categories to a conditional single family district in an area in which publicly adopted plans envision continued residential development. Therefore, this petition is appropriate for approval from a land use standpoint.

2. **Site Plan.** The site plan which accompanies this petition proposes the development of a single family residential community with a maximum of 40 lots, a density of three dwelling units per acre. The site plan provides landscaping along the proposed Outer Belt and Links Drive and references the appropriate sections of the original concept plan/design manual for Piper Glen. Therefore, the petition is considered appropriate for approval from a land use standpoint.

CONCLUSION

This petition is appropriate for approval.

*Subject to further refinement following public hearing.

OFFICIAL REZONING APPLICATION
CITY OF CHARLOTTE

Petition #: 93-115
Date Filed: August 30, 1993
Received By: T. Morris

OFFICE USE ONLY

OWNERSHIP INFORMATION:

Property Owner: Crosland/Piper Glen Limited Partnership

Owner's Address: 141 Scaleybark Road, Charlotte, NC 28209

Date Property Acquired: 2/23/93

Tax Parcel Number(s): A portion of 225-51-001 & 225-51-006

LOCATION OF PROPERTY (Address or Description): Links Drive at Piper Glen Drive

Piper Glen Subdivision - Parcel 29

Size (Sq.Ft. or Acres): 22.755 acres

Street Frontage (Ft.): 60' Piper Glen Drive
1000' Links Drive
1400' Outer Belt

Current Land Use: vacant

ZONING REQUEST:

Existing Zoning: R-15 MFCD + R-3

Proposed Zoning: R-3 CD

Purpose of Zoning Change: To reduce the permissible number of residential units allowed from 270 multi-family units to 40 detached single family residential units - see accompanying rezoning plan.

Bailey Patrick, Jr.
Name of Agent

Perry, Patrick, Farmer & Michaux
2200 The Carillon, 227 W Trade Street
Charlotte, NC 28202
Agent's Address

372-1120
Telephone Number

Signature of Property Owner
if other than Petitioner

Crosland Piper Glen Limited Partnership
Name of Petitioner(s) by Crosland Development
141 Scaleybark Road, Charlotte, NC 28209

Address of Petitioner(s)

529-5233
Telephone Number

Signature Douglas L. Boone, VP

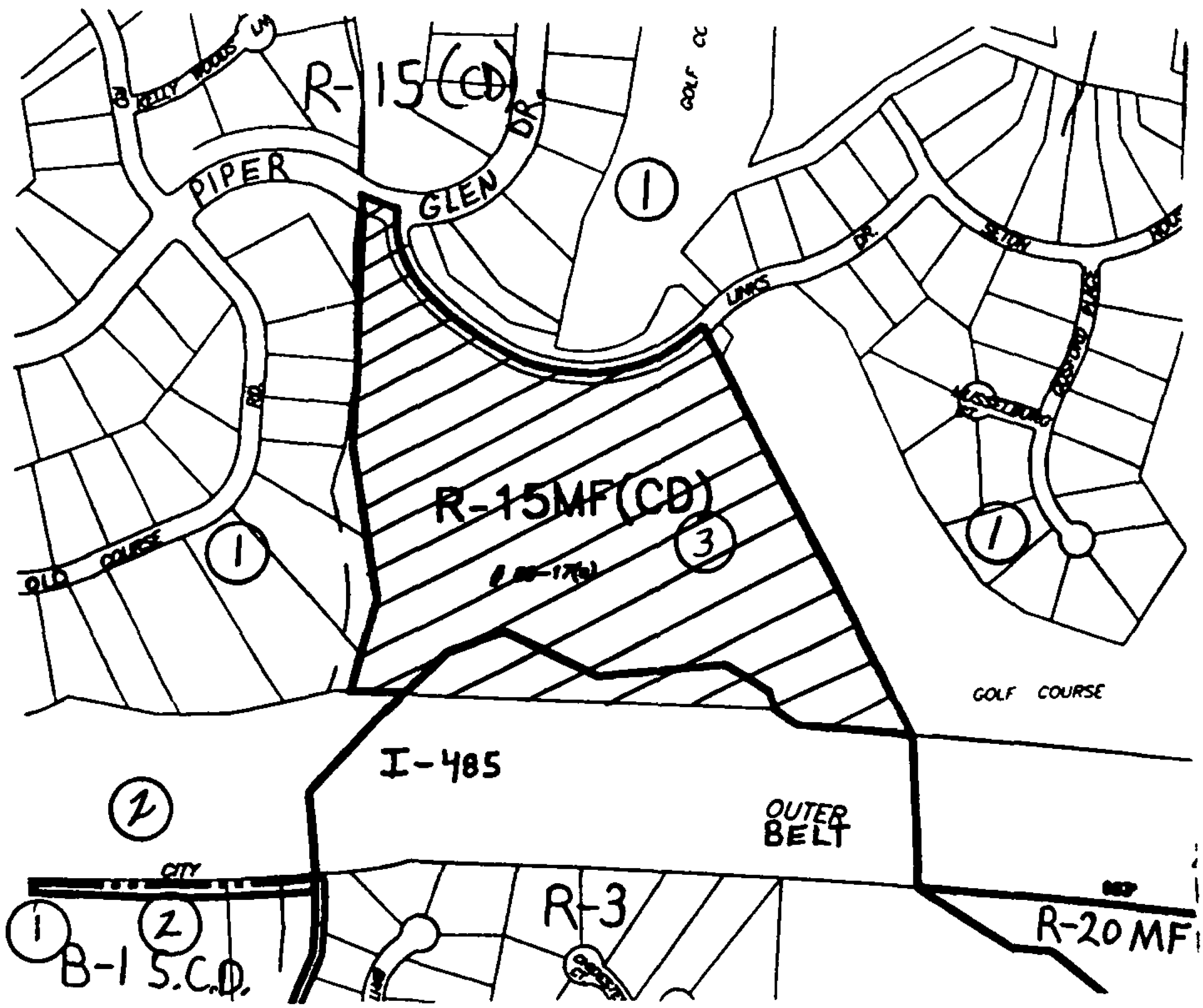
Petition #: 93-115

Petitioner: Crosland Piper Glen Limited Partnership
Hearing Date: December 20, 1993

Zoning Classification (Existing): R-15MF(CD) & R-3

Zoning Classification (Requested): R-3(CD)

Location: Approximately 22.75 acres located on the south side of Links Drive at Piper Glen Drive.



Zoning Map #(s): 177 **Scale:** 1" = 400'

M E M O R A N D U M

DATE: November 30, 1993

TO: Laura Simmons
Planning Commission

FROM: R. D. Gillis, Chief Traffic Engineer
Department of Transportation

SUBJECT: Rezoning Petition 93-115: Links Drive at Piper Glen Drive (Revised 11/19/93)

This site could generate approximately 1,890-2,430 trips per day as currently zoned. The revised site plan indicates no change in proposed land use. Therefore, the trip generation (440-480 trips per day) has remained the same.

Adequate sight distance triangles must be reserved at the proposed public street. Two 35'x35' sight triangles are required for the street connection to meet sight distance requirements. All proposed trees, berms, walls, fences and/or identification signs must not interfere with sight distance at the intersection. Such items should be identified on the site plan.

Any fence or wall constructed along or adjacent to any sidewalk or street right-of-way requires a certificate issued by CDOT.

A Right-of-Way Encroachment Agreement is required for the installation of any non-standard item(s) (irrigation systems, decorative concrete pavement, brick pavers, etc.) within a proposed/existing City maintained street right-of-way by a private individual, group, business, or homeowner's/business association. CDOT will determine on a case by case basis whether an encroachment will be considered based on concerns for public safety, applicable standards, and conflicting use of the right-of-way by the City and/or utility franchise holders. Further, CDOT and other City Departments will review the design and construction of the encroaching items and may impose certain requirements as a condition of Encroachment Agreement approval. An Encroachment Agreement must be approved by CDOT prior to the construction/ installation of the non-standard item(s). Contact CDOT for additional information concerning cost, submittal, and liability insurance coverage requirements.

If we can be of further assistance, please advise.

RDG/REG:hll

c: W. B. Finger
S. L. Putnam
R. E. Goddard
R. S. Williams
T. A. Richards
Bailey Patrick, Jr.
Crosland Piper Glen Limited Partnership
Rezoning File

PRE-HEARING STAFF ANALYSIS

Rezoning Petition No. 93-116

Petitioner: Lowe's Companies

Location: Approximately 13.609 acres located between Sardis Road North, Independence Boulevard and Crownpoint Executive Drive.

Request: Change from B-1SCD to CC.

BACKGROUND

1. **Existing Zoning.** The subject property is presently part of a larger site which was rezoned from B-D and I-1 to B-1SCD in 1985. Properties located to the east and northwest were also included in the same rezoning in 1985. Properties located to the north of Sardis Road North were rezoned to B-1SCD in 1988. Properties located across Independence Boulevard are zoned R-17MF. To the south of the subject property along Crownpoint Executive Drive properties are predominantly zoned I-1.

2. **Existing Land Use.** The petitioned property is the portion of the Crownpoint Shopping Center occupied by Lowe's. Pace Warehouse is located to the east towards East Independence Boulevard and Brendles and several smaller shops are located to the west toward Sardis Road North. Properties located across Sardis Road North are also devoted to retail uses. To the southeast of the subject property along Independence Boulevard are additional commercial developments including restaurants and a car dealership.

3. **Public Plans and Policies.**

   1. **2005 Plan.** The 2005 Plan indicates developing employment land uses in the area and recognizes Crownpoint as a community commercial center for the area. The 2005 strategies include improvements to Independence Boulevard, the Independence Boulevard collector street system, water and sewer line extensions and extension of the County greenway system.

   2. **Transportation Improvement Program.** The Transportation Improvement Program includes the U.S. 74 collector street system to provide a parallel roadway system north and south of U.S. 74.

   3. **U.S. 74 Special Project Plan (adopted 1987).** The U.S. 74 Special Project Plan recognizes Crownpoint as an existing commercial center. The plan also calls for implementation of the collector street system and construction of the

necessary lanes through the development process.

4. **East District Plan (adopted 1990).** The East District Plan recognizes the existing community commercial center at the intersection of Sardis Road North and Independence Boulevard. The plan also indicates the collector street system parallel to Independence Boulevard as well as Sardis Road North Extension to connect with the eastern circumferential. The plan recognizes the expansion of water lines and potential light rail service in the area.

4. **Site Plan.**

Existing Site Plan

The site plan presently in effect for the petitioned property is the result of a 1985 rezoning petition that also includes the properties that constitute the Crownpoint Shopping Center. This plan accommodates a maximum of 273,900 square feet of development excluding detached outparcels. The plan accommodates five outparcels with a maximum building area of 32,000 square feet. The plan provides access to the site through one access point along Independence Boulevard and three access points along Sardis Road North.

Proposed Site Plan

The site plan which accompanies this petition accommodates an expansion of the existing 112,500 square foot Lowe's store by an additional 14,950 square feet for a total of 127,450 square feet. The plan provides for a potential future access road between the existing Office America store and the existing Baby Superstore from the parking lot to Crownpoint Executive Drive in order to maintain internal vehicular connectivity and circulation. Other aspects of the plan remain essentially the same.

5. **School Information.** Not applicable.

6. **Zoning History (See Attached Map).**

Petition No.	Request	Action	Date
1. 84-76	B-D & I-1 to B-1SCD	Approved	01/21/85
2. 88-33	I-1 & B-D to B-1SCD	Approved	01/18/88
3. 90-1	B-1SCD Site Plan Amendment	Approved	02/19/90

7. **Neighborhood.** This site does not fall within any defined neighborhood.

REVIEWS

1. **Plan Consistency.** This petition seeks an increase in the allowable square footage on a site already zoned for a shopping center. The 2005 Plan, the U.S. 74 Special Project Plan, and the East District Plan all recognize this center as providing major commercial services in the area. Therefore, this petition is consistent with publicly adopted plans and policies for the area.

2. **Technical Consistency.**

    1. **Pre-Hearing Staff Input.** The staff provided technical assistance to the petitioner.

    2. **Departmental Comments.** Departmental comments from reviewing agencies included the need for clarification of provided parking and the need for provision of vehicular access from the parking lot to Crownpoint Executive Center Drive. The revised site plan adequately addresses departmental concerns. See attached for CDOT comments.

ISSUES

1. **Land Use.** This petition does not raise any land use issues. Publicly adopted plans ranging from the 2005 Plan to the U.S. 74 Special Project Plan to the East District Plan all recognize the Crownpoint Center as providing a major commercial focus for the area. Therefore, this petition is considered appropriate for approval from a land use standpoint.

2. **Site Plan.** The site plan which accompanies this petition accommodates a relatively minor expansion of the existing Lowe's store to provide an expanded garden center. The revised site plan has provided for a potential future access road if required by CDOT between the existing Baby Superstore and existing Office America for the purpose of providing vehicular connection from the parking lot to Crownpoint Executive Center Drive. The site plan has adequately addressed departmental comments and is, therefore, considered appropriate for approval.

CONCLUSION

This petition is considered appropriate for approval.

*Subject to further refinement following public hearing.

OFFICIAL REZONING APPLICATION
CITY OF CHARLOTTE

STAFF REVIEW: SEPTEMBER 28
@ 10:00 A.M.

Petition #: 93-116
Date Filed: August 30, 1993
Received By: T. Morse
OFFICE USE ONLY

OWNERSHIP INFORMATION:

Property Owner: CROWN POINT RETAIL LTD PARTNERSHIP

Owner's Address: 125 SCALEYBARK ROAD

Date Property Acquired: 12/11/87

Tax Parcel Number(s): 19311101

LOCATION OF PROPERTY (Address or Description): 2500 SARDIS RD NORTH

Size (Sq.Ft. or Acres): 13.609 Street Frontage (Ft.): 100 FT.

Current Land Use: RETAIL SALES

ZONING REQUEST:

Existing Zoning: B-1 SCD Proposed Zoning: CC

Purpose of Zoning Change: INCREASE OF RETAIL SQUARE FOOTAGE TO ALLOW EXPANSION OF LOWE'S GARDEN CENTER & GREENHOUSE

SAME AS PETITIONER
Name of Agent

Agent's Address

Telephone Number

Signature of Property Owner
if other than Petitioner

J. DANIEL PARDUE, LOWE'S CO.
Name of Petitioner(s)

PO BOX 1111; N WILKESBORO, NC 28656
Address of Petitioner(s)

919-651-4771
Telephone Number

Signature

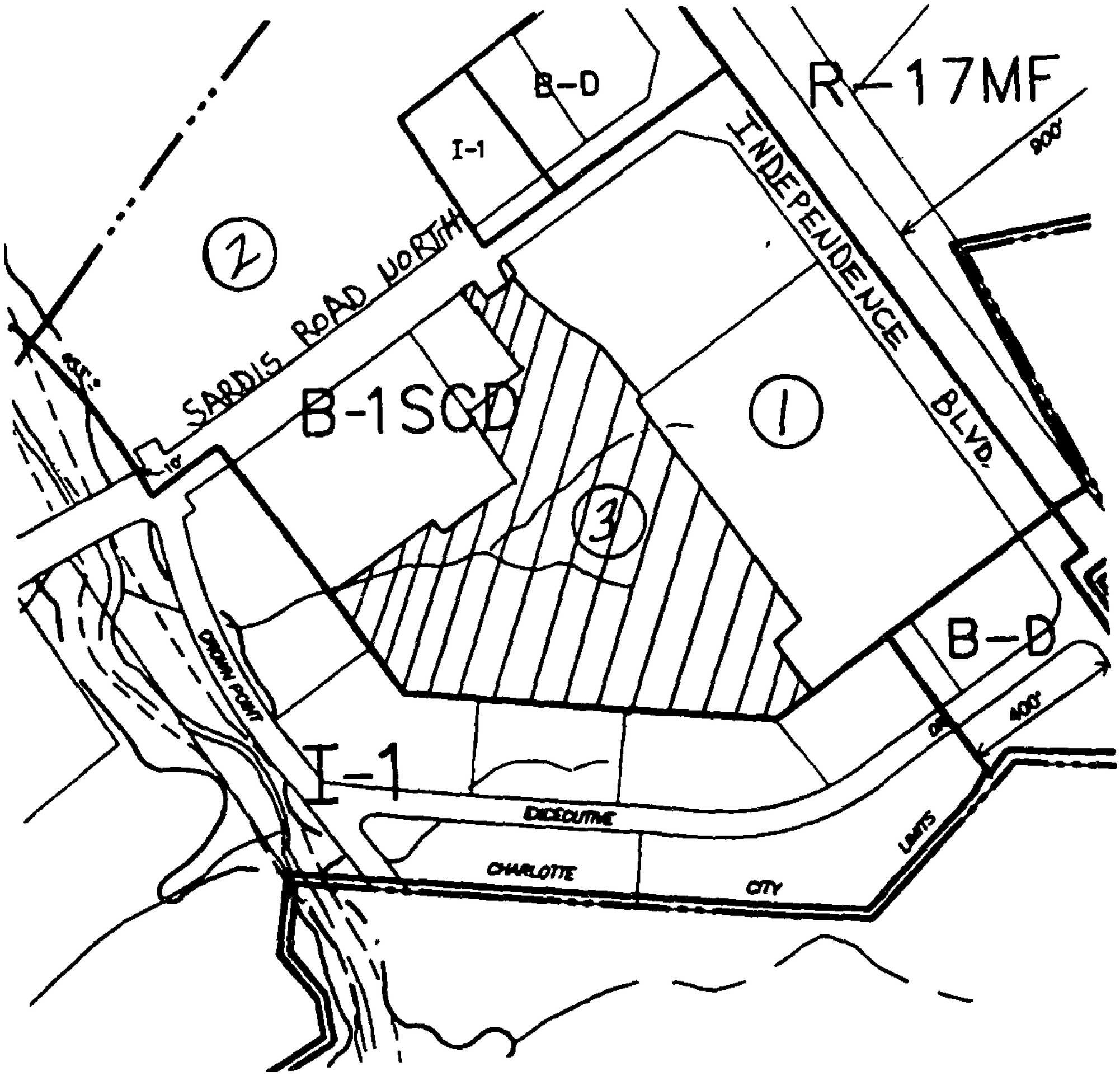
Petition #: 93-116

Petitioner: Lowe's Co **Hearing Date:** December 20, 1993

Zoning Classification (Existing): B-1 SCD

Zoning Classification (Requested): CC

Location: Approximately 13 609 acres located on the south side of Sardis Road North south of Independence Boulevard.



Zoning Map #(s): 144 **Scale:** 1" = 400'

M E M O R A N D U M

DATE: December 3, 1993

TO: Laura Simmons
Planning Commission

FROM: R. D. Gillis, Chief Traffic Engineer
Department of Transportation

SUBJECT: Rezoning Petition 93-116: Sardis Road North, South of Independence Boulevard
(Revised without a date)

This site could generate approximately 15,135 trips per day as currently zoned. The revised site plan indicates no change in proposed land use. Therefore, the trip generation (15,546 trips per day) has remained the same. Current trips, driveway design, and site circulation remain concerns of CDOT. The proposed site plan modifications as indicated on the revised site plan do not adequately address our concerns. We supply the following background information and remaining access concerns:

Background:

- The original development plan for the shopping center included an internal circulation system that provided for direct access to Sardis Road North and Crown Point Executive Center Drive via a main driveway aisle through the middle of the site. Access to Crown Point Executive Center Drive always has been an important aspect of site circulation since such access connects with Krefeld Drive, the planned collector - distributor service road that will run parallel to Independence Freeway between Margaret Wallace Road and NC51. Krefeld Drive also provides alternate access to Sardis Road North via a signalized intersection.

- Through a previously approved site plan amendment, the direct access to Crown Point Executive Center Drive via the driveway aisle was changed to indirect access to accommodate the Pace Warehouse development.

Access Concerns:

- The proposed zoning to accomodate the expansion of the Lowe's Garden Center will eliminate the only remaining indirect access to Crown Point Executive Center Drive.

- For a shopping center of this size, direct access to Crown Point Executive Center Drive via the main driveway aisle should not be eliminated. Doing so would concentrate access to the shopping center at the Sardis Road North entrance where congestion and accident experience is a concern. Should Council approve the proposed zoning and conditional site plan, CDOT recommends that the petitioner be required to realign/reconstruct the parking aisles and internal circulation roadways to align through the proposed opening in the existing brick screen wall between Office America and Baby Superstore. Without parking lot aisle and internal roadway realignment/reconstruction, the proposed access will not be beneficial in reducing congestion at the main Sardis Road North driveway.

- CDOT will require driveway modifications to the site should the petitioner apply for any building permits either based on the current approved plan or a modified plan. The driveway modifications will incorporate a new access driveway to Independence Boulevard that is currently being handled by the North Carolina Department of Transportation (NCDOT) separately from this zoning petition. The temporary access as shown on the revised plan is incorrect and does not reflect the current NCDOT plan. This driveway will be temporary and provide access only until the Independence Freeway improvements require that it be removed. The extent of other driveway modifications required by CDOT will depend on the petitioner's decision on reestablishing direct access to Crown Point Executive Center Drive. Driveway modifications on Sardis Road North minimally will require that the through movement out of the driveway be eliminated. Other restrictions could eliminate left-turns in and left-turns out of the driveway connection to Sardis Road North. The petitioner/developer would be responsible for reconstructing the driveway connection to Sardis Road North and the median channelization to eliminate the left-turn in through the provision of a new driveway permit issued in connection with issuance of a future building permit. The developer/petitioner has noted on the revised site plan, that they will comply with the provisions of driveway permits issued by the NCDOT and/or CDOT.

Sardis Road North is a major thoroughfare requiring a minimum of 100 feet of right-of-way. The developer/petitioner has indicated on the plan that sufficient right-of-way exists to meet this requirement, measuring 50 feet from the centerline of the roadway.

Independence Boulevard is a Class I thoroughfare (freeway/expressway) requiring a minimum of 350 feet of right-of-way. The developer/petitioner should dedicate right-of-way to meet this requirement, measuring 175 feet from the centerline of the roadway. In accordance with the previous conditional plan notes of Rezoning Petition 84-76 for this property, the site plan should indicate that the developer/petitioner will reserve and dedicate sufficient right-of-way to provide for the proposed Independence Boulevard/Sardis Road North interchange.

Adequate sight distance triangles must be reserved at the existing entrances. Two 35'x35'and two 10'x70' sight triangles are required for the entrances to meet sight distance requirements. All proposed trees, berms, walls, fences and/or identification signs must not interfere with sight distance at the entrances. Such items should be identified on the site plan.

To facilitate building permit review and approval, the site plan must be revised to include the following:

- Indicate standard (Manual on Uniform Traffic Control Devices) "STOP" signs at all Type III driveway locations within Crown Point Plaza.
- Dimension all existing driveways
- Dimension typical parking modules

If we can be of further assistance, please advise.

RDG/REG:hll

c: W. B. Finger
S. L. Putnam
R. E. Goddard
R. S. Williams
T. A. Richards
J. Daniel Pardue
Rezoning File

PRE-HEARING STAFF ANALYSIS

Rezoning Petition No. 93-117

Petitioner: University Research Park, Inc.

Request: Consideration of a text amendment to the City of Charlotte Zoning Ordinance to permit financial institutions in the Research Districts.

BACKGROUND

This text amendment proposes to add financial institutions as a permitted use in the Research Districts in the City Zoning Ordinance. The previous ordinance had a general designation of business, professional and corporate offices which were permitted in the research districts and banks were allowed under that general designation. The current zoning ordinance created a new use category termed "financial institutions" and did not include financial institutions as permitted uses in the research districts. This text amendment proposes to add financial institutions as a permitted use in the research districts and is thought to be consistent with the intent of the ordinance and the previous allowance of banks and savings and loans in the research category.

CONCLUSION

This petition is considered appropriate for approval.

*Subject to further refinement following public hearing.

ZONING ORDINANCE TEXT AMENDMENT APPLICATION

CITY OF CHARLOTTE

Petition No. 93-117
Date Filed October 4, 1993
Received By T. Pharr

OFFICE USE ONLY

Section No.[1] Chapter 9, Part 6 Research, Sec. 9.602 Uses By Right
(Title)

Purpose of Change:

When the new zoning ordinance was adopted in 1992, a different use designation was created - "Financial Institutions." The previous ordinance had used a combined designation of "Business, Professional and Corporate Offices." As a result of this redefinition, a bank, savings and loan, etc. now falls under the Financial Institution designation and not under the more general term of offices.

The new ordinance did not carry forward the Financial Institution category as a permitted use in Research Districts. This is a request to add Financial Institutions as a permitted use in RE-1 and RE-2 Districts. This is a reasonable and compatible use within these districts and it is believed it was an oversight not to allow them at the time the ordinance was drafted.

Fred E. Bryant, Planner
Name of Agent
1850 E. Third St., Charlotte, NC 28204
Agent's Address
(704) 333-1680
Telephone Number

University Research Park, Inc.
Name of Petitioner(s) 1980 Two First Union Center
Charlotte, NC 28282
Address of Petitioner(s)
(704) 375-6220
Telephone Number
Signature

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CITY CODE WITH RESPECT TO THE ZONING ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHARLOTTE:

Section 1. Appendix A., "Zoning" of the City of Charlotte is hereby amended as follows:

1 - Amend Chapter 9, Part 6 Research, Section 9.602 (Uses permitted by right) by adding the following new use:

"(5A) Financial Institutions"

Section 2. That this ordinance shall become effective upon adoption.

Approved as to Form:

_____
City Attorney

Read, approved and adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the ____ day of _____, 19 _____, the reference having been made in Minute Book _____, and recorded in full in Ordinance Book _____, at page _____.

_____
Brenda Freeze, City Clerk

PRE-HEARING STAFF ANALYSIS

Rezoning Petition No. 93-118

Petitioner: Lowe's Companies, Inc.

Location: Approximately 15.64 acres located on the westerly side of East W. T. Harris Boulevard south of University City Boulevard (N.C. 49) along Chancellor Park Drive.

Request: Change from 0-15(CD) and B-1SCD to CC.

BACKGROUND

1. **Existing Zoning.** The property involved with this request is zoned a combination of 0-15(CD) and B-1SCD. Those classifications result from both 1989 and 1991 rezoning petitions. Adjoining properties located to the north and west are zoned 0-15(CD) from the same 1989 rezoning petition. A site located just to the southeast is zoned R-9MF(CD). Properties located to the west and south are zoned a combination of Institutional and R-3. A site located across Harris Boulevard is zoned B-1SCD.

2. **Existing Land Use.** The petitioned property is the site of an existing Lowe's store. A multi-family complex is located just to the east and single family residential development is located to the south. The Town Center Shopping Center is located to the northeast across W. T. Harris Boulevard.

3. **Public Plans and Policies.**

    1. **2005 Plan.** The 2005 Plan indicates developing residential land uses in the area of the subject property and recognizes the Town Center Shopping Center across Harris Boulevard as a community commercial center for the area. The 2005 strategies for the area include extension of water and sewer services in the area and extension of W. T. Harris Boulevard from N.C. 49 to Newell-Hickory Grove Road.

    2. **UNCC District Plan (adopted 1984).** The UNCC District Plan envisions institutional type land uses associated with UNCC in the area of the subject property. The plan also states that existing Institutional zoning surrounding the university represents an opportunity for the expansion of a variety of office and residential uses.

3. **Northeast District Plan (adopted 1990).** The Northeast District Plan recommends office, research and business park land uses for the subject property. The plan recognizes the Town Center Shopping Center as an existing neighborhood mixed use center. The plan also recommends extension of water lines along Harris Boulevard.

4. **Transportation Improvement Program.**

   1. **N.C. 49 Widening.** This project provides for the widening of University City Boulevard (N.C. 49) to four lanes from Mallard Creek Church Road to the Cabarrus County Line.

   2. **N.C. 49/Graham Street Connector.** This project provides for a connector to be constructed between Graham Street and University City Boulevard (N.C. 49) with an interchange at I-85. The connector would provide access to the southern part of the University Research Park and to the land east of I-85 and south of Harris Boulevard.

   3. **N.C. 49/W. T. Harris Boulevard Interchange.** This project upgraded the N.C. 49 interchange at Harris Boulevard by providing ramps in the southwest quadrant.

4. **Site Plan.**

Existing Site Plan

The original Chancellor Park site plan accommodated a maximum of 290,000 square feet of office development. This plan was then amended in 1991 to provide a commercial component of 120,000 square feet leaving a balance of 110,000 square feet of office development. The plan provides for the construction of Chancellor Park Drive from Harris Boulevard to N.C. 49 and outlined phasing based on transportation improvements. Access to the site is provided by Chancellor Park Drive rather than Harris Boulevard. Buffers established by the plan include a 20 foot buffer adjoining residential areas, a 50 foot buffer adjoining Harris Boulevard and a 40 foot buffer adjoining Chancellor Park Drive.

Proposed Site Plan

The site plan which accompanies this petition accommodates an expansion of the commercial component of the overall Chancellor Park plan both in terms of square footage of building area and in land area for the purpose of an enlarged garden center for the Lowe's store. The plan proposes 140,000 square feet of retail development and essentially replaces the office component abutting Harris Boulevard with an expanded

parking area for the Lowe's store. (The remaining 0-15(CD) tract on the northerly side of Chancellor Park Drive would accommodate 90,000 square feet of office development.) The site plan provides for a 75 foot Class B buffer adjoining the residential sites located to the east and south in accordance with the zoning ordinance except in those cases where the existing service drive to the rear of the existing building encroaches slightly within the buffer. The landscaping treatment along both Harris Boulevard and Chancellor Park Drive remains unchanged with a 50 foot landscaped buffer along Harris Boulevard and a 40 foot landscaped buffer along Chancellor Park Drive. Sidewalk is provided along Chancellor Park Drive in lieu of Harris Boulevard. The plan notes that greenway dedication has been provided along Toby Creek. Access to the site remains unchanged and is provided by two driveway connections off of Chancellor Park Drive. No direct access is provided off of Harris Boulevard. Other aspects of the plan remain essentially unchanged.

5. **School Information.** Not applicable.

6. **Zoning History (See Attached Map).**

Petition No.	Request	Action	Date
1. 70-5	R-12, R-12MF, & B-2 to Inst.	Approved	05/18/70
2. 70-11	Institutional to B-1SCD	Approved	11/16/70
3. 80-26(c)	B-1SCD Site Plan Amendment	Approved	10/20/80
4. 85-3(c)	B-1SCD Site Plan Amendment	Approved	02/18/85
5. 87-38(c)	B-1SCD Site Plan Amendment	Approved	08-17-87
6. 88-24(c)	Institutional & R-12 to R-9MF(CD)	Approved	06/2/88
7. 89-9(c)	Institutional to 0-15(CD)	Approved	05/15/89
8. 90-50(c)	Institutional to R-12MF	Approved	12/19/90
9. 90-55(c)	B-1SCD Site Plan Amendment	Approved	01/22/91
10. 91-58	0-15(CD) to B-1SCD	Approved	11/25/91
11. 92-67	R-3 & Institutional to CC	Approved	02/15/93

7. **Neighborhood.** This project falls within the area defined as the Newell neighborhood.

REVIEWS

1. **Plan Consistency.** This petition proposes conversion of a portion of the office

component of Chancellor Park to commercial to accommodate an expansion of the existing Lowe's store. Publicly adopted plans and policies in effect for the area essentially recognize the Chancellor Park development and the Town Center Shopping Center as comprising a neighborhood mixed use center. The general policies for the district plans recognize these centers as retail/office combinations composed of 125,000 square feet of office uses and 125,000 square feet of commercial uses. Recently approved site plan amendments for the Town Center Shopping Center as well as for Chancellor Park have far exceeded the retail component of the neighborhood mixed use center concept. This petition would also serve to increase the retail component. From this standpoint, the petition is not consistent with publicly adopted plans and policies for the area. However, the expansion represented by this site plan is relatively minor and, therefore, does not raise a significant plan consistency issue.

2. **Technical Consistency.**

   1. **Pre-Hearing Staff Input.** Staff provided technical assistance to the petitioner.

   2. **Departmental Comments.** Departmental comments included the need for compliance with required buffers adjoining residential zoning, the need for the provided cross-sections to reflect existing conditions and the existing landscape plan, the potential need for a future alternative buffer plan and provision of sidewalk along Chancellor Park Drive in lieu of Harris Boulevard. The revised site plan adequately addresses all departmental comments. See attached for CDOT comments.

ISSUES

1. **Land Use.** Publicly adopted plans and policies in effect for this area essentially recognize the Chancellor Park development and the Town Center Shopping Center as comprising a neighborhood mixed use center with a balanced mixture of office and retail development. Plan amendments and rezonings for Chancellor Park and Town Center have effectively increased the retail component well above that normally associated with a neighborhood mixed use center. This petition does the same in that it accommodates a slight increase in the commercial component of Chancellor Park. From this standpoint, the petition is not consistent with publicly adopted plans. However, the commercial expansion proposed by this plan is a relatively minor difference of 20,000 square feet. Therefore, the petition does not raise significant land use issues and could be considered appropriate for approval from a land use standpoint.

2. **Site Plan.** The site plan which accompanies this petition proposes an expansion of the commercial component of Chancellor Park from 120,000 square feet to 140,000 square feet and in essence removes the office component on the southerly side of Chancellor

Park Drive in favor of the expanded commercial component. The office component remaining amounts to 90,000 square feet of development on the remaining 10.765 office zoned acres. Other aspects of the plan either remain the same or are enhanced. The plan notes the required 75 foot buffer adjoining residential and is, therefore, increasing that buffer from 20 feet to 75 feet. From a site plan standpoint, the petition is considered appropriate for approval.

CONCLUSION

This petition is considered appropriate for approval.

*Subject to further refinement following public hearing.

OFFICIAL REZONING APPLICATION
CITY OF CHARLOTTE

Rezoned 10/19/93

Petition #: 93-118
Date Filed: Sept. 4 1993
Received By: T. Dixon

OFFICE USE ONLY

OWNERSHIP INFORMATION:

Property Owner: Chancellor Park Limited Partnership

Owner's Address: 125 Scaleybark Road; Charlotte, NC 28209

Date Property Acquired:

Tax Parcel Number(s): 049-281-01,05

LOCATION OF PROPERTY (Address or Description):

Size (Sq.Ft. or Acres): 15.64

Street Frontage (Ft.): 1,300 ft. on Chancellor Park Dr.; 500 ft. on W.T. Harris Blvd.

Current Land Use: Building under construction and vacant land

ZONING REQUEST:

Existing Zoning: 3.78Ac.015 (CD) 11.86 Acr. Bl (SCD)

Proposed Zoning:

Purpose of Zoning Change: 15.64 Acres CC

In order to increase the allowable building area to accommodate a larger greenhouse.

Little & Assoc. Architects, Inc.
Name of Agent
Attn: Mr. Nick Vrettos
5815 Westpark Drive; Charlotte, NC 28217
Agent's Address

(704) 525-6350
Telephone Number

Signature of Property Owner other than Petitioner

Lowe's Companies, Inc.
Name of Petitioner(s)
Attn: Mr. Daniel Pardue
P. O. Box 1111; N. Wilksboro, NC 28656
Address of Petitioner(s)

(919) 651-4000
Telephone Number

Dan Pardue
Nicholas N Vrettos
Signature

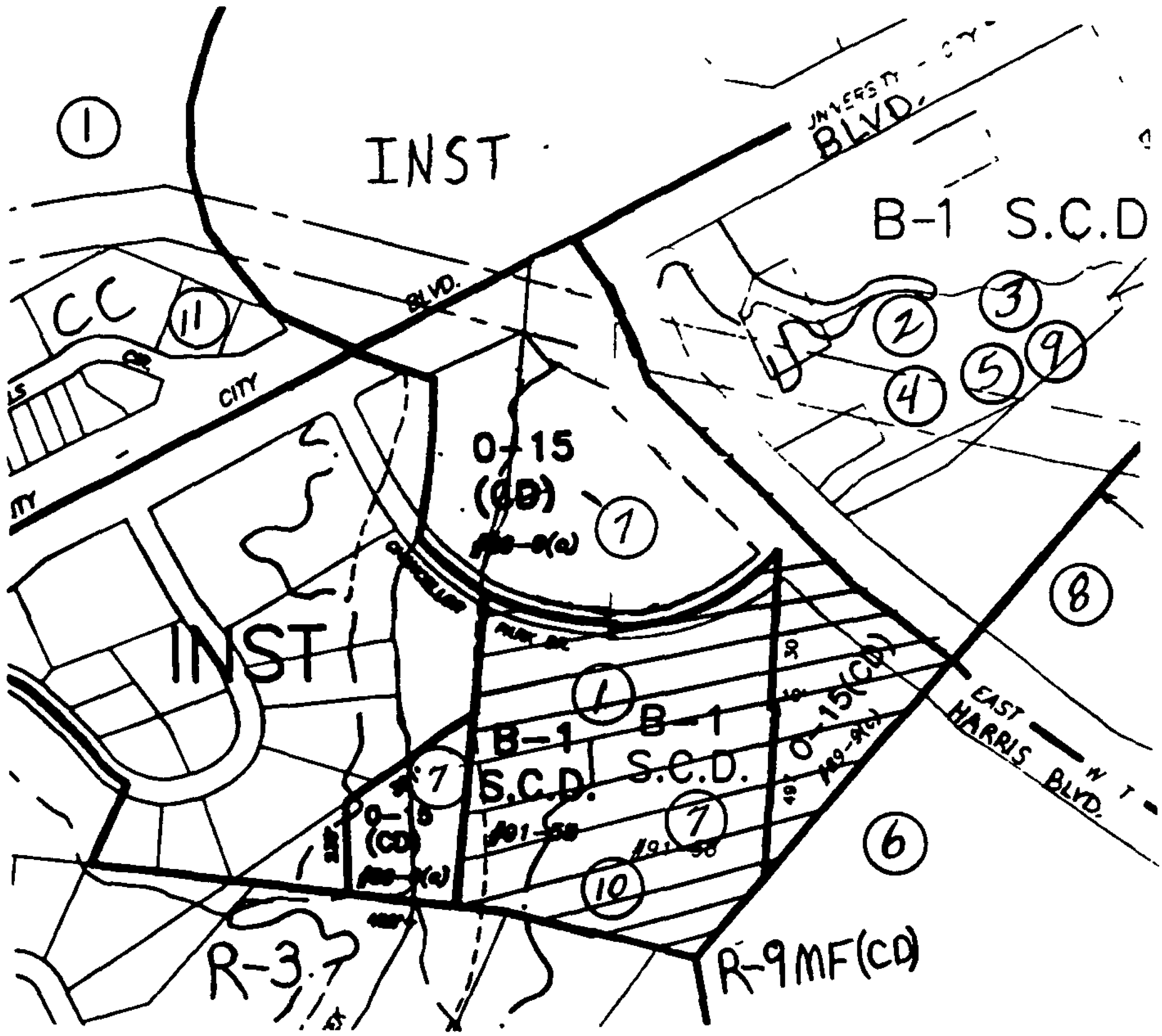
Petition #: 93-118

Petitioner: Lowe's Companies, Inc. **Hearing Date:** December 20, 1993

Zoning Classification (Existing): O-15(CD) and B-1 S.C.D.

Zoning Classification (Requested): CC

Location: Approximately 15.64 acres located on the south side of Chancellor Park Drive at East W.T. Harris Boulevard.



Zoning Map #(s): 71 and 72 **Scale:** 1" = 400'

M E M O R A N D U M

DATE: December 1, 1993

TO: Laura Simmons
Planning Commission

FROM: R. D. Gillis, Chief Traffic Engineer
Department of Transportation

SUBJECT: Rezoning Petition 93-118: Chancellor Park Drive at East W. T. Harris Boulevard
(Revised 11/10/93)

This site could generate approximately 9,428 trips per day as currently zoned. The revised site plan indicates an increase in proposed retail square footage from 136,000 to 140,000. Therefore, the overall trip generation has increased from 9,904 to 10,017 trips per day.

NC 49 and W. T. Harris Boulevard are both major thoroughfares requiring a minimum of 100 feet of right-of-way. The developer/petitioner has indicated that right-of-way currently exists which exceeds this requirement.

Adequate sight distance triangles must be reserved at the existing/proposed entrances. Two 35'x35' sight triangles are required for the entrances to meet sight distance requirements.

All proposed trees, berms, walls, fences and/or identification signs must not interfere with sight distance at the entrances. Such items should be identified on the site plan.

The driveway connections to Chancellor Park Drive for the proposed office development will require a driveway permit to be submitted to the Charlotte Department of Transportation (CDOT) and the North Carolina Department of Transportation for review and approval. The exact driveway locations and type/width of the driveway will be determined by CDOT during the driveway permit process. The location of the driveway shown on the site plan is subject to change in order to align with any driveways on the opposite side of the street and comply with City Driveway Regulations and the City Tree Ordinance.

Any fence or wall constructed along or adjacent to any sidewalk or street right-of-way requires a certificate issued by CDOT.

A Right-of-Way Encroachment Agreement is required for the installation of any non-standard item(s) (irrigation systems, decorative concrete pavement, brick pavers, etc.) within a proposed/existing City maintained street right-of-way by a private individual, group, business, or homeowner's/business association. CDOT will determine on a case by case basis whether an encroachment will be considered based on concerns for public safety, applicable standards, and conflicting use of the right-of-way by the City and/or utility franchise holders. Further, CDOT and other City Departments will review the design and construction of the encroaching items and may impose certain requirements as a condition of Encroachment Agreement approval. An Encroachment Agreement must be approved by CDOT prior to the construction/ installation of the non-standard item(s). Contact CDOT for additional information concerning cost, submittal, and liability insurance coverage requirements.

To facilitate building permit review/approval the site plan must be revised to include the following:

- Dimension width of the existing driveways.
- The drop-off/pick-up lane must be revised at each end by extending the curb and gutter around to the front of the building for proper transition out of and into the two lane section.
- Indicate typical parking module dimensions.
- Include a parking summary with figures for number of parking spaces required and provided.
- Plans must be provided at engineering scale of 1"=20', 30',40', or 50'.

If we can be of further assistance, please advise.

RDG/REG:hll

c: W. B. Finger
S. L. Putnam
R. E. Goddard
R. S. Williams
T. A. Richards
Little & Associates
Lowes Companies, Inc.
Rezoning File

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHARLOTTE APPROVING AN EXTENSION OF TIME FOR ACQUISITION OF PHASE II LAND UNDER AGREEMENT FOR PURCHASE AND SALE OF LAND IN THE THIRD WARD NEIGHBORHOOD STRATEGY AREA DATED AUGUST 24, 1981

WHEREAS, the City of Charlotte (the "City") entered into an Agreement with the Third Ward Neighborhood Development Association (the "Redeveloper") for the purchase and sale of land in the Third Ward Neighborhood Strategy Area, said Agreement being dated August 24, 1981; and

WHEREAS, said Agreement provided that Phase II land would be conveyed by warranty deeds from the City to the Redeveloper at a closing or series of closings to occur on or before June 30, 1983; and

WHEREAS, on June 13, 1983 the City Council approved a resolution extending the period for acquisition to December 15, 1984; and

WHEREAS, the City Council on December 10, 1984 approved a resolution extending the period for completion of the land sale to December 31, 1985; and

WHEREAS, the City Council on January 27, 1986 approved a resolution extending the period for completion of the land sale to December 31, 1986; and

WHEREAS, the City Council on December 22, 1986 approved a resolution extending the period for completion of the land sale to December 31, 1987; and

WHEREAS, the City Council on December 28, 1987 approved a resolution extending the period for completion of the land sale to December 31, 1989; and

WHEREAS, the City Council on December 11, 1989 approved a resolution extending the period for completion of the land sale to December 31, 1991; and

WHEREAS, the City Council on December 9, 1991 approved a resolution extending the period for completion of the land sale to December 31, 1993; and

WHEREAS, the Redeveloper has requested an extension to December 31, 1995 in order to purchase from the City any property that has not yet been acquired under the Agreement; and

WHEREAS, it appears that said request should be approved.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Charlotte that:

1. The period of acquisition for Phase II property be extended from December 31, 1993 to December 31, 1995.

2. The Mayor or his designee is hereby authorized to execute the amendment to said Agreement on behalf of the City.

APPROVED AS TO FORM:

Henry W. Underhill Jr.
City Attorney

OPTIONS

A Amend the Land Sales Agreement to extend the expiration date for conveyance of the remaining land until December 31, 1995 with the sales price of the land remaining the same ($.66 per square foot).

B. Amend the Land Sales Agreement to extend the expiration date for conveyance of the remaining land until December 31, 1995 but sell the remaining land to the Third Ward Neighborhood Development Association at the current appraised value at the time the property is conveyed.

C. Not approve the request for an extension of time. The contract would expire December 31, 1993 and the remaining 2.752 acres of land would no longer be committed to the Third Ward Neighborhood Development Association. It would become part of the City's land inventory and be available for sale and purchase through the bid process.

Staff recommends Option A because this neighborhood-based community development corporation has maintained its willingness to develop this land and has, in fact, developed over 135 housing units at a time when the economy and adverse environmental issues have worked against further development. Therefore, staff believes that this neighborhood-based community development corporation deserves the opportunity to continue its neighborhood promotion effort with this land sale Hopefully, the conditions will be changing with the award of the NFL franchise and the building of the football stadium.

BACKGROUND

- In FY76 the City began receiving Federal Community Development Block (CDBG) funds and 9 targeted areas in the city were identified to receive these funds These CDBG funds were spent to improve housing, recreation, public facilities and human resource programs in targeted areas. One of the targeted areas was Third Ward.

- In January 1976 City Council approved a Redevelopment Plan for the Third Ward Target Area. The objectives of the Redevelopment Plan were to:
  - reverse the internal physical and social decline threatening the area
  - reinforce the social and economic amenities and develop new facilities in order to recreate an adequately served residential community
  - stabilize the land uses and property values of the fringe area of the core of the Central Business District in order to prevent the ultimate deterioration of the heart of the city

- In 1980 a total of $4 million low-interest loan funds was committed by a local bank and several savings and loan associations to provide construction financing and permanent mortgage money for residential development in the Third Ward Area.

- On August 12, 1981 the Third Ward Development Association submitted a Redevelopment Proposal to acquire 15.312 acres of land in the Third Ward Target Area for residential development. The Third Ward Neighborhood Development Association is a joint venture between 2 non-profit corporations, The Committee to Restore and Preserve Third Ward and NCNB (now NationsBank) Community Development Corporation. Their goals were to:
  - obtain quality redevelopment in Third Ward consistent with the objectives of the Third Ward Redevelopment Plan
  - accomplish the redevelopment as quickly as possible through the use of low-interest mortgage loan funds

- In August 1981 the fair market value of the 15.312 acres was established at $.66 per square foot by three professional real estate appraisers.

- State law requires that a public hearing be held by City Council prior to the negotiated sale of redevelopment land to a non-profit corporation. The notice of the public hearing to sale the land to Third Ward Neighborhood Development Association was advertised in accordance with State law.

- On August 24, 1981 City Council held a public hearing and approved the sale of the the 15.312 acres of vacant land to the Third Ward Neighborhood Development Association for development of housing.

- The City and the Third Ward Neighborhood Development Association entered into a Land Sales Agreement which stated the 15 312 acres of land would be conveyed in 2 phases.
  - Phase I consisted of 3.589 acres to be conveyed by December 31, 1981
  - Phase II consisted of 11 723 acres to be conveyed by June 30, 1983

- Phase I land (3 589 acres) was immediately conveyed to the Third Ward Neighborhood Development Association and a townhouse development began

- Phase II land was to be conveyed in a series of closings by June 30, 1983 All of the land was not conveyed by that date, therefore, in June 1983 the Third Ward Neighborhood Development Association requested an extension of time to convey the remaining Phase II land.

- On June 13, 1983 City Council approved a resolution extending the time for completion of the Phase II land sale from June 30, 1983 to December 15, 1984

- As of December 1984, 12.560 acres of the total 15 312 acres had been conveyed to the Third Ward Neighborhood Development Association with 2.752 acres remaining to be conveyed.

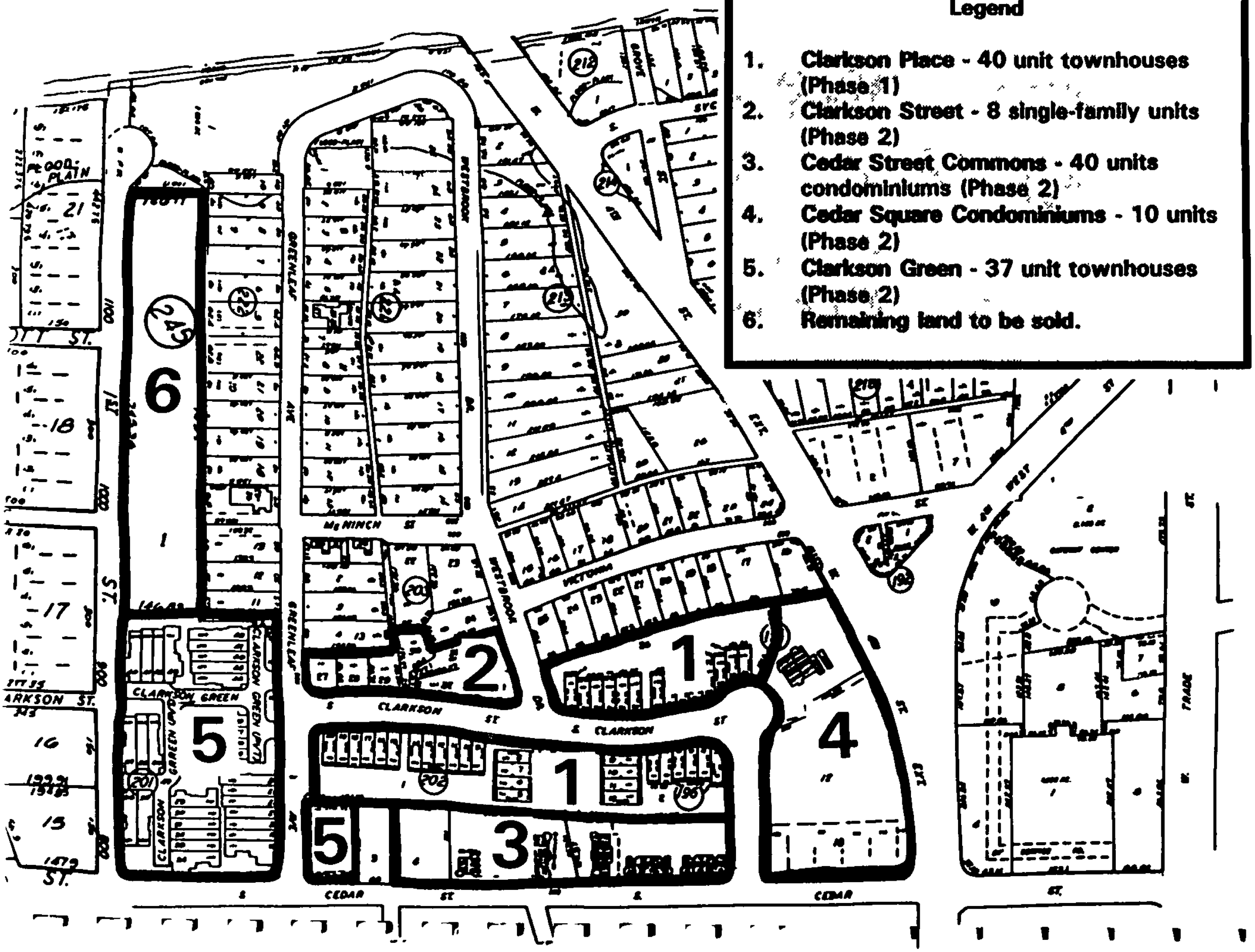
- A yearly extension for completion of the Phase II land sale was approved by City Council in 1984, 1985 and 1986 with the extension expiring December 31, 1987

- On December 28, 1987 City Council approved an extension for a two-year period with the contract expiring December 31, 1989. Additional extensions were approved in 1989 and 1991 with the last extension expiring December 31, 1993.

- To date, a total of 12.560 acres has been conveyed to Third Ward Neighborhood Development Association and developed. The developments are as follows:

Date Conveyed	Developer	Development
October 1981	NCNB/CDC	Clarkson Place - 40 townhouse units
January 1982	Chavis Properties, Inc.	8 single-family units on Clarkson Street
October 1982	Urban Real Estate Co./ Westminister	Cedar Square Condominiums - 10 units
March 1983	Browning Properties	Cedar Street Commons - 40 units
December 1984	NCNB/CDC	Clarkson Green - 37 townhouse units

The attached map indicates the land which has been sold and the land remaining to be sold.


Legend
1. Clarkson Place - 40 unit townhouses (Phase 1)
2. Clarkson Street - 8 single-family units (Phase 2)
3. Cedar Street Commons - 40 units condominiums (Phase 2)
4. Cedar Square Condominiums - 10 units (Phase 2)
5. Clarkson Green - 37 unit townhouses (Phase 2)
6. Remaining land to be sold.
FLOOD PLAIN
CLARKSON GREEN
CLARKSON GREEN UNITS
CLARKSON GREEN UNITS
GREENLEAF
WESTBROOK
McNINCH ST
VICTORIA
S. CLARKSON ST
S. CEDAR ST
CEDAR ST
TRADE ST
CLARKSON ST.
ST.
1
2
3
4
5
6

ZONING COMMITTEE
RECOMMENDATION

DATE: September 27, 1993

PETITION NO.: 93-52

PETITIONER(S): Alan and Terry Beaty

REQUEST: Change from I-1 to I-2

LOCATION: Approximately 5.27 acres located on the northeasterly side of Brookshire Boulevard east of Caldwell Williams Road.

ACTION: The Zoning Committee deferred action on this petition for 30 days.

VOTE: *Yeas:* Adams, Baucom, Byrne, Heard, James, Jones, McMurray, Motley, and Whelchel.

Nays: None.

NOTE: There are nine votes from the Planning Commission on this petition. Some of the members of the Zoning Committee were unable to attend the public hearing on this petition and two members of the Planning Committee attended in their absence. As a result, all of the members of the Zoning Committee as well as the two substitutes (Adams and McMurray) from the Planning Committee voted on this petition.

REASONS

This petition proposes a change from a light industrial district to a general industrial district. Publicly adopted plans for the area recommend light industrial land uses for the subject property. The Zoning Committee expressed concern about the existing violations and how they would be corrected. At the request of the Zoning Committee, the petitioner agreed to file a conditional site plan. Therefore, the Zoning Committee deferred action on this petition for 30 days to allow the petitioner to file a conditional site plan.

ZONING COMMITTEE RECOMMENDATION

DATE:		September 13, 1993
PETITION NO.:		93-60
PETITIONER(S):		Charlotte-Mecklenburg Planning Commission
REQUEST:		Change from B-2 to B-1 (Central District Plan)
LOCATION:		Approximately 7 acres located on the north and south sides of Central Avenue from 10th Street to the Brookshire Freeway
ACTION:		The Zoning Committee deferred action on this petition for 60 days.
VOTE:	*Yeas:*	Baucom, Byrne, Heard, Jones, Motley and Whelchel
	Nays:	None.
	Absent:	James.

REASONS

This petition proposes rezoning from the general business district to the neighborhood business district for commercial properties located along Central Avenue based on the Central District Plan. An association of the property owners has requested a deferral of the petition in order to evaluate the various options with the planning staff. The staff is to provide a progress report in 60 days. Therefore, the Zoning Committee deferred action on the petition for 60 days.

REZONE
B-2 TO B-1
R-22MF
B-2
R-5
O-2
I-2
HAWTHORNE
10TH
Independence Blvd
zoning case #
93-60
17

ZONING COMMITTEE
RECOMMENDATION

DATE: September 13, 1993

PETITION NO.: 93-62

PETITIONER(S): Charlotte-Mecklenburg Planning Commission

REQUEST: Change from I-2 to I-1 & B-1 (Central District Plan)

LOCATION: Approximately 54 acres located in two areas near the Arnold Palmer Business Park defined as (A) properties along Latrobe Drive and Pro Am Drive (from I-2 to I-1), and (B) business property on Wendover Road between Latrobe Drive and the rail line (from I-2 to B-1)

ACTION: The Zoning Committee took action on the two subareas separately

Area A: The Zoning Committee deferred action on this portion of the petition for 60 days.

VOTE: *Yeas:* Baucom, Byrne, Heard, James, Jones, Motley and Whelchel.

Nays None.

REASONS

This portion of the petition proposes rezoning from I-2 to I-1 for the business park properties located along Latrobe Drive and Pan Am Drive. A potential sale of the property is pending and the property owner has requested a 60 day deferral. Therefore, the Zoning Committee deferred action on the petition for 60 days.

Area B: The Zoning Committee recommends that this portion of the petition be approved.

VOTE: *Yeas:* Baucom, Byrne, Heard, James, Jones, Motley and Whelchel.

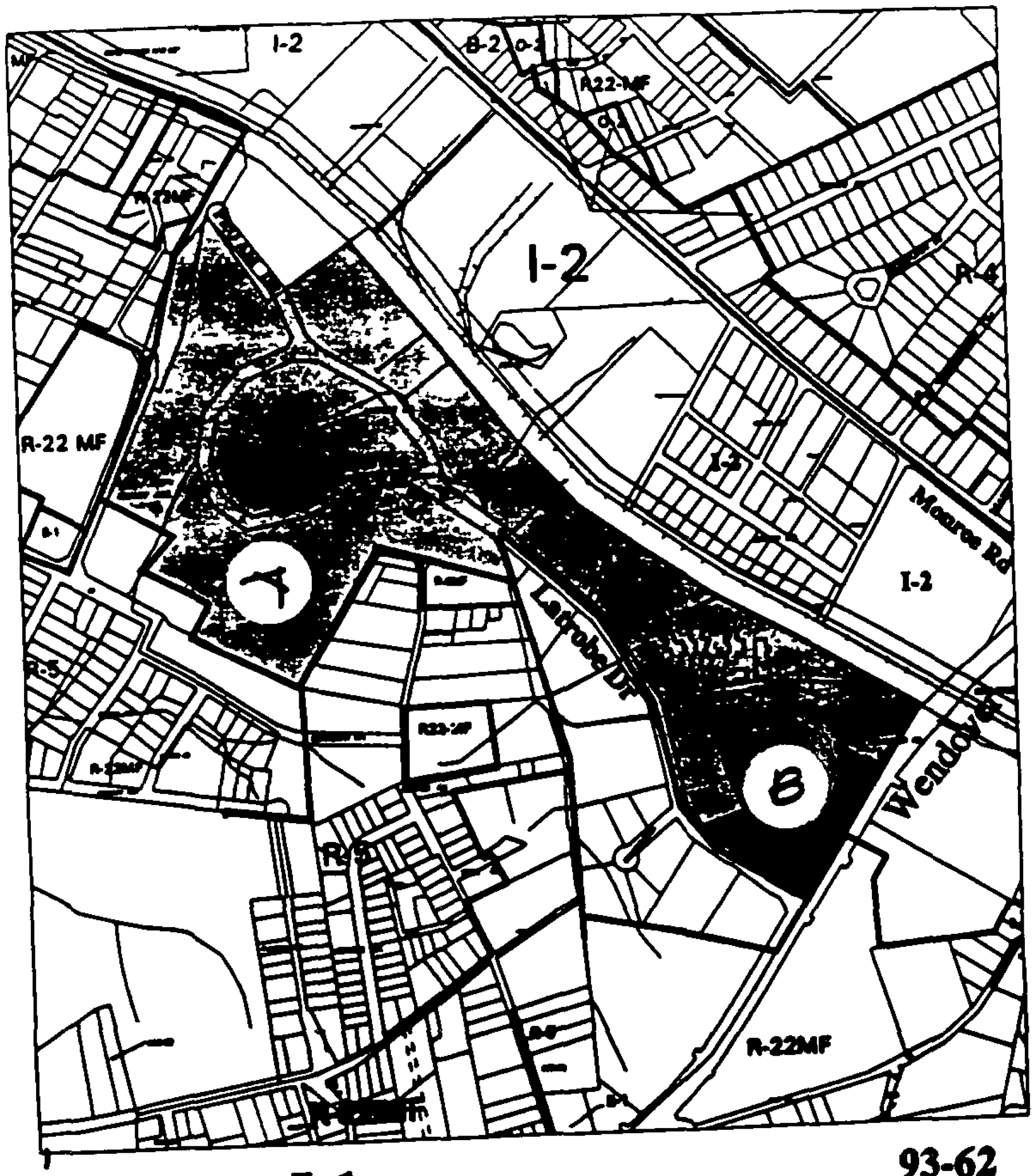
Nays. None.

REASONS

This portion of the petition proposes rezoning from I-2 to B-1 for the shopping center property located along Wendover Road between Latrobe Drive and the rail line. The Zoning Committee viewed the proposed commercial classification as appropriate for the area and recommends approval of this portion of the petition

STAFF OPINION

The Staff agrees with the recommendation of the Zoning Committee.



93-62

- I-2 to I-1
- I-2 to B-1

CHARLOTTE - MECKLENBURG PLANNING COMMISSION

November 19, 1993

Mayor Richard Vinroot
Members, City Council
Charlotte, North Carolina

Dear Mayor and Council Members:

Attached is a recommendation of the Zoning Committee of the Charlotte-Mecklenburg Planning Commission on a petition which has been heard and referred to the Planning Commission for consideration. The recommendation as reflected herein was arrived at in a meeting of the Planning Commission on November 15, 1993.

According to the adopted rules of procedure, this recommendation will be sent to the interested parties with a time period for the conveyance of any written statement set to elapse 12:00 Noon on Monday, December 13, 1993. This will then permit this matter to be placed on your agenda for consideration on Monday, December 20, 1993.

If you have questions or wish to discuss any aspect of this recommendation, please let me know.

Respectfully submitted,

Jack P. Byrne (mcm)

Jack P. Byrne
Charlotte-Mecklenburg Planning Commission
Zoning Committee Chairperson

JPB:mcm

Attachments

600 East Fourth Street • Charlotte, North Carolina 28202-2853 • (704) 336-2205

ZONING COMMITTEE
RECOMMENDATION

DATE: November 15, 1993

PETITION NO.: 93-110

PETITIONER(S): Ronald S. & Betty B. Cecil

REQUEST: Change from R-3 to B-1(CD)

LOCATION: Approximately 1 63 acres located on the northeasterly corner of the intersection of East W T. Harris Boulevard And Robinson Church Road.

ACTION: The Zoning Committee recommends that this petition be denied

VOTE: *Yeas·* Baucom, Byrne, Heard, James, Motley and Whelchel.

Nays: None.

Absent: Jones.

REASONS

This petition proposes a change from a single family residential category to a conditional neighborhood business district. Publicly adopted plans for the area recommend continued residential development along the Harris Boulevard corridor. This petition was originally submitted as a request for a conventional general business category. However, the Zoning Committee previously deferred action on this petition to allow the petitioner the opportunity to submit a conditional site plan for a landscaping business. The petitioner has submitted a plan that states that the "uses shall be limited to a business office with a maximum expansion of 4,000 square feet total for storage and office space". The Zoning Committee asked the petitioner to consider adding a note to the plan limiting the use of the site to a landscaping business. The petitioner did not agree to add such a note. Due to the established setback of the house and adequate front yard, the Zoning Committee viewed the impact of the widening of Harris Boulevard on this site as less severe than on other sites. The Zoning Committee feels that rezoning this parcel for commercial land uses would be spot zoning and would begin the domino effect in this area. Therefore, the Zoning Committee recommends that this petition be denied.

STAFF OPINION

The staff agrees with the recommendation of the Zoning Committee.

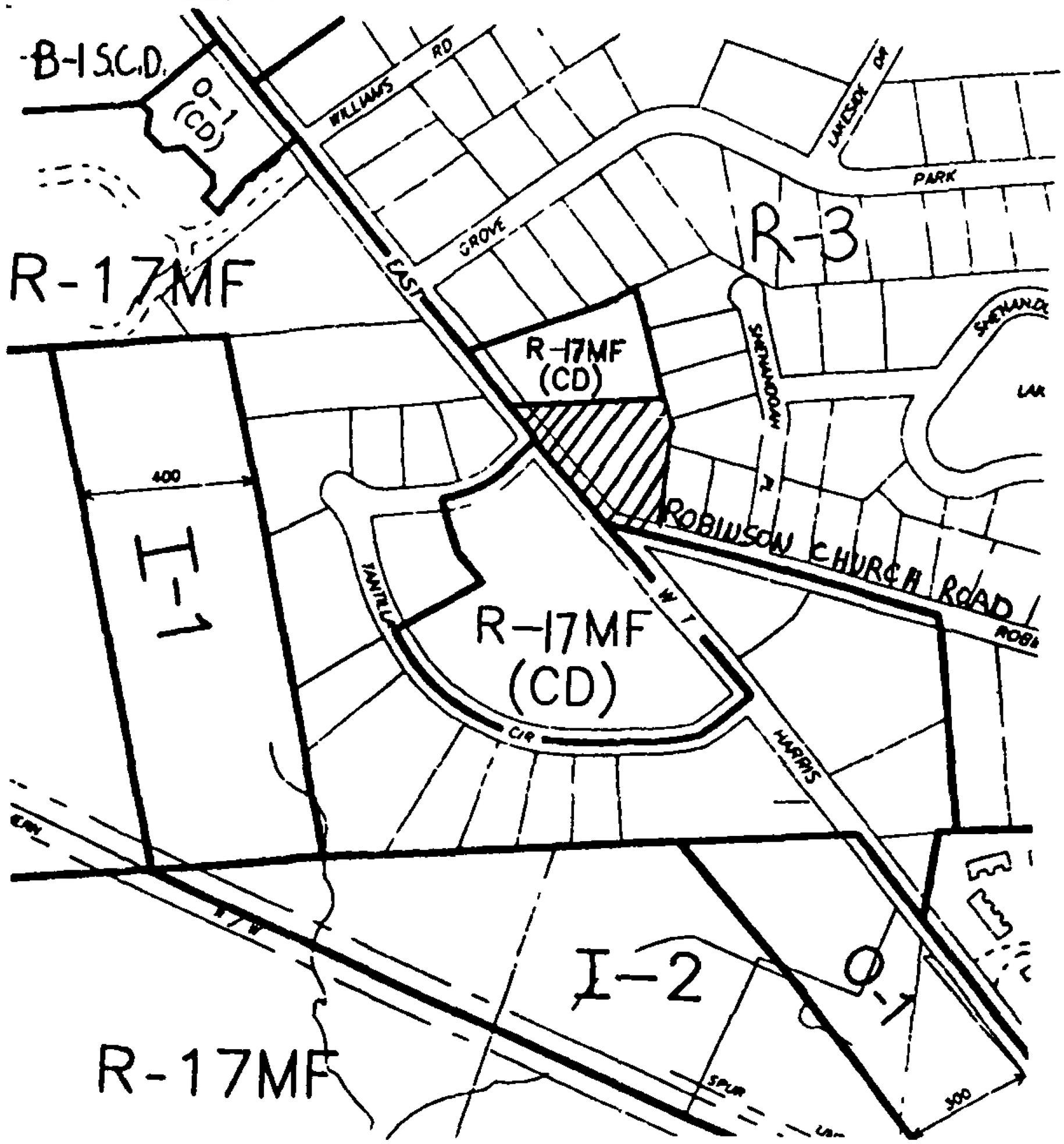
Petition #: 93-110

Petitioner: Ronald S. & Betty B. Cecil **Hearing Date:** October 20, 1993

Zoning Classification (Existing): R-3

Zoning Classification (Requested): B-1 (CD)

Location: Approximately 1.63 acres located on the northeast side of the intersection of East W.T. Harris Boulevard and Robinson Church Road.



Zoning Map #(s): 99 **Scale:** 1" = 400'

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ZONING ADMINISTRATOR

MWBE PLAN REVISION SCHEDULE

November 15, 1993

1	November 15, 1993	Council Workshop on the Disparity Study
2.	December 13, 1993	Public Hearing on the study during Council Meeting
3	December 14 - February 11, 1994	City staff rewrites the MWBE Plan

(Input and assistance form the MWBE Advisory Committee, Community Organizations, and D.J. Miller)

4.	February 14, 1994	Revised MWBE Plans available for public review
5.	February 28, 1994	Public Hearing on the new MWBE Plan during the Council Meeting
6.	March 1 - March 10, 1994	Final Revisions
7.	March 14, 1994	Council approves the new MWBE Plan

CITY OF CHARLOTTE MWBE

DISPARITY STUDY

October, 1993

Executive Summary
Conclusions & Recommendations

EXECUTIVE SUMMARY

INTRODUCTION

Charlotte, North Carolina—a growing, prospering city, a city whose businessmen benefit from a thriving economy slowed only recently by recession. Charlotte—third largest banking center in the country, hub of banking in the Southeast, headquarters of NationsBank and First Union Major companies, domestic and foreign, seek new frontiers in Charlotte's aggressive commercial climate This is the portrait of Charlotte which greeted D J. Miller & Associates, Inc. (DJMA) upon beginning this Disparity Study.

Beyond the Charlotte that made headline news and filled the covers of magazines, however, another Charlotte emerged, rich in small Black and female business owners, struggling to survive in the midst of a prospering economy teeming with wealth. Yet these businesses owned by Blacks and women faced exclusion as they attempted to break the old mold of Charlotte where the wealth and opportunity were accessible to only a few. These businesses experienced City government that, until recently, had exhibited reticence to change outdated purchasing methods and practices. Excluded, these businesses were trapped by the economy: having no wealth, they could create no wealth The effect of these constraints on the business environment for minorities and women has been their inability to fully participate in the economic prosperity of the other Charlotte

DJMA spent nine months documenting the experiences of people in Charlotte business market, researching and analyzing evidence gathered to determine the nature and extent of discrimination, if any, against minority and women business enterprises in the City of Charlotte's relevant market area. DJMA's findings are documented in eight Chapters. I. Introduction, II. Historical and Legal Findings; III. Economic Market Analysis; IV. Comments form the Marketplace; V. Procurement Policies and Practices & Their Impact on MWBE Utilization, VI. Statistical Analysis of Availability and Utilization of MWBEs/DBEs, VII. Alternatives to Race-Conscious Goal Programs, and VIII.

Conclusions and Recommendations Following is a synopsis of each chapter, illustrating the position of minority and women businesses in the Charlotte community

Historical and Legal Findings

Chapter II traces the development of the City of Charlotte from its creation to present day activities in the areas of public education, employment discrimination, housing discrimination and public segregation, aiming to identify events and influences upon MWBE business growth and development. This research revealed a pattern of systematic exclusion of African Americans This exclusion has occurred even during a period in which Charlotte has enjoyed economic prosperity In some cases, this exclusion has been intentional, such as the wholesale removal of African Americans from downtown property which the City desired to use for "tax yielding" purposes In other cases, the influence of societal discrimination spilled over into the professional arena as African Americans and women were excluded from professional fields, often because of the unwillingness of public and private employers to hire them. Only recently have these employment practices been addressed, and then most forcefully by the public.

Added to the systematic exclusion of African Americans and Women from opportunities has been the City's ability to control the forces of change that African Americans and Women have attempted to inject into governmental operations. Early leaders in the City of Charlotte adeptly anticipated situations that could have a negative economic impact on the City and then diffused them. The most effective tool used by the City of Charlotte in controlling change has been the Consent Order DJMA researched several different areas of public activity in the Historical and Legal Analysis Public Accommodations, Public Education, Employment and Housing In each area, DJMA documented the use of Consent Orders in major court cases that allowed the City to avoid court mandated remedies. By so doing, the Consent Order has been used to "stay one step ahead of the law", to allow City government leaders to negotiate how and when change would occur.

Based on the evidence collected and analyzed in the Historical and Legal Analysis, DJMA concludes that the City of Charlotte has been involved in a pattern of discrimination against Blacks DJMA was unable to identify active discrimination against women due to a lack of documentation. The small amount of information DJMA was able to obtain on Women points, however, to discrimination. The paternalistic social structure so intrinsic to the economic fabric of commercial activity also camouflaged specific events of discrimination.

Economic Market Analysis

The Economic Market Analysis presents economic conditions in the Charlotte MSA that serves as a basis for a determination of the general market availability and utilization of minority and women owned businesses in the area This chapter examines several factors in assessing the economic capacity of minorities and women to set up and operate business enterprises These factors include (1) home equity available to leverage mortgage loans, (2) unearned income which serves as wealth available for business start-up or expansion, (3) self-employment income representing individuals holding themselves out as being independent businesses ready, willing and able to do business, and (4) self-employment availability in construction, procurement and professional services. These analyses created an economic portrait of conditions in Charlotte for MWBEs, and were used to develop profiles of the construction, procurement and professional services industries in the Charlotte metropolitan area.

According to the 1990 Census, Charlotte's metropolitan population was 1,162,093, of which about 22 percent were minorities. Blacks were by far the largest minority group in the metropolitan area at 19.9 percent. Asian/Indians followed at 1.7 percent and Hispanics at .9 percent Among the major population race/ethnic groups, Whites were the fastest growing, increasing by 85 percent from 1980 to 1990. Black metropolitan population growth during that same period was 68 percent. Other Minorities in the Charlotte area experienced explosive growth during the 1980s, more than doubling their total numbers Hispanics actually declined in absolute numbers during the 1980s by 49.5 percent.

Census data for 1990 revealed that Blacks median household income, $21,617 per year, lower than that of other Minorities: Hispanics—$28, 747, Asians—$34, 926 and non-minorities, $29, 272. Although Blacks had smaller household incomes, they made up 28 percent of the workforce. Blacks are also 50 percent of the unemployed citizens of Charlotte.

An examination of household income in the Charlotte economy highlighted important differences in the sources of income. For purposes of this Study, the relevant sources of income for which there were major differences by race and ethnicity were self-employment income, and wealth-based income. Research revealed that Black households are only 33 percent as likely as White households to receive earnings from self-employment; Hispanics are 56 percent as likely as their White counterpart to receive funds from this source.

Racial and ethnic differences in receipt of wealth-based income are a direct reflection of the difference in the distribution of wealth These differences in wealth distribution are an important cause and consequence of differences in business formation and availability White households were four times more likely than Black households and 76 percent more likely than Hispanic households to received income from interest, dividends and rents Although Hispanic households made up less than one percent of total households, the amount of wealth based income accruing to Hispanic households in 1979 outpaced that accruing to Blacks by 24 percent.

The poverty population in the Charlotte MSA reflected the uneven impact of poverty among the various groups during the 1980s. Black families were the most represented among poor households Among minority households in general, there was an absolute increase in the number of poor families despite a decline in the poverty rate.

Home ownership and the building of home equity are important factors of wealth accumulation In the Charlotte area, amidst a general decline in the rate of home ownership in the 1980s, minority households had substantially lower home ownership rates compared to White households Housing values, too, were less for minorities than for Whites. The 1990 median value of housing Black and Hispanic households was $81,000 and $55,700, respectively, compared to $93,000 for White households.

In order to determine market disparities, DJMA also reviewed the business availability of MWBEs and nonminorities in the areas of construction, procurement and professional services This study's review of business availability shows that the construction, procurement and professional services industries are dominated by nonminority males. In construction, only 11 percent of firms with employees were MWBEs. MWBEs' availability in procurement and professional services was 17 percent and 28 percent, respectively, of all firms with employees.

The availability of minority and women owned business in each of these three industries was compared with the market share of receipts going to all businesses. The resulting market disparity ratios indicated that construction enterprises owned by Blacks and Hispanics were underutilized, along with firms owned by Other Minorities. On the other hand, market disparity ratios indicated that women are not underutilized in the construction industry.

In wholesale trade, enterprises owned by Other Minorities were very rare. Black owned firms also were very few, numbering only 4 firms with employees out of a total 807 firms counted in the 1987 Census Enterprises owned by women accounted for almost 16 percent of firms with paid

employees MWBEs are underrepresented in Wholesale Trade, measuring by a ratio of 1 4 for all firms in the industry and 1 2 for firms with employees For women owned businesses, in particular, substantial disparity (1 2) existed between their receipts and the number of firms in the marketplace

Important market disparities were found for MWBEs in the services industry category Black and women owned businesses were the most clearly underutilized Hispanic owned firms experienced no apparent shortfall of receipts relative to numbers of available firms

Comments from the Marketplace

Chapter IV presents the findings of the Survey Analysis This survey was administered to minority and nonminority businesses in the City of Charlotte Of 996 surveys mailed, the market survey elicited responses from 142 firms in the City of Charlotte's immediate market area. The survey intentionally over-sampled MWBEs, which comprised 49 percent of the survey respondents. The survey captured responses through multiple choice questions; 69 of the respondents also provided narrative comments about their experiences doing business in the marketplace and with public sector entities.

Eighty-three percent of the surveyed firms were corporations. Forty-four percent of the respondent firms produced goods, 37 percent supplied services, and 19 percent were in the construction industry Architectural and engineering firms were 8 percent of all respondents, twenty percent of the respondents were suppliers; 37 percent were in the service industry and another 37 percent operated in the construction industry. Forty-one percent of the respondents were women businesses, 35 percent were Black owned.

Survey findings were divided into three categories for analysis: demographics, business climate, involvement with public agencies.

Surveyed businesses were asked to identify from among 17 listed services those they tried to obtain in the market, and to indicate when they were successful in obtaining those items. The survey showed that minority owned firms were less likely to attempt to obtain bid and performance bonds compared to firms owned by nonminorities. Also, minorities were less likely to attempt to obtain prime contracts and subcontracts compared to non-minority businesses. Women owned firms and Black owned firms had the most difficulty in winning prime contracts, being successful about 60 percent of the time. Nonminority firms were successful 92 percent of the time.

Disparities were noted in the ability of minority enterprises to receive commercial loans, lines of credit, bonds and RFPs However, all firms reported a success rate in obtaining commercial insurance Black owned firms had the most difficulty in getting commercial loans, only 44 percent of Black firms that applied were successful Hispanic companies were successful half the time in obtaining loans Women owned businesses obtained loans three times out of four attempts, as did nonminority firms

Chapter IV also presents anecdotal data captured during confidential discussions with community leaders, majority, minority and women business owners and trade association representatives The methodology employed in gathering the anecdotal accounts was designed to yield detailed and particularized accounts of instances of discrimination from individuals who were likely to be in possession of such evidence

Sixty-seven percent of DJMA's interviewees reported their perceptions and experiences of discriminatory treatment of minority and women owned firms that seek to do business with the City of Charlotte. Many of the MWBEs interviewed were reluctant to share specific instances of unfair treatment due to fear of identification by and retaliation from public officials and prime contractors. Others reported that discrimination is encountered as a matter of course in their dealings with the City and that it continues to be especially pervasive in the City's Purchasing, General Services, and Engineering Departments, and in experiences with City staff, and inspectors involved in City construction projects. Specific projects cited were· the City Jail, the Government Complex, the Coliseum, and the Convention Center.

The results of the market survey identify specific problems faced by MWBEs in the Charlotte business area. The survey highlighted three areas of particularly serious problems. The three areas are capitalization, obtaining bonds and networking opportunities.

The capitalization problems of MWBEs are revealed in the percentages of firms that tried to obtain commercial loans or lines of credit. Only 44 percent of Black owned firms that applied for commercial loans in the past three years were successful, and only 68 percent of those firms applied for commercial loans. Black owned firms were also unable to obtain lines of credit, with only 49 percent being successful. These figures are in stark contrast to firms owned by white males that were able to secure commercial loans 75 percent of the time and lines of credit 85 percent of the time. Since capitalization is an essential element in the success of an business, the difficulty faced by Black owned firms in securing financing deserves closer investigation.

The survey also shows that MWBEs have not been applying for bid bonds and performance bonds These bonds are often a prerequisite to being awarded large contracts The failure of MWBEs to secure these bonds is therefore a source of concern Only 33 percent of Women owned firms applied for Bid and Performance bonds Even fewer Black owned firms applied, with 24 percent applying for Bid Bonds and 28 percent applying for Performance Bonds Of those MWBEs that apply for the bonds, over half are rejected. Only 42 percent of Black owned firms are successful in acquiring Bid Bonds This difficulty obtaining bonds is reflected in the difficulty Black owned firms face in obtaining prime contractor status Of the firms surveyed, 24 percent of the prime contractor status

A third area of concern for MWBEs is the failure of MWBEs to secure affiliation with trade associations All of the businesses owned by White males were successful in obtaining membership in professional trade associations. This contrasts with 85 percent of Black owned firms and 85 percent of Women owned firms Only 68 percent of Black owned firms attempted to obtain membership in a professional trade association. The numbers are similar for other dealings with the trade associations. This failure highlights the problem minority business owners have in networking and developing relationships with prospective clients, other contractors and suppliers. The failure is also an indication of the sense of alienation from the contracting process expressed by MWBE owners in the following anecdotal section.

Considerable agreement existed among those interviewed for this Study that minority participation goals on City Contracts are ignored by primes with no repercussions by the City ("no one challenges it") They report that City agency personnel "don't respect the MWBE program." Prime contractors "just do what they want to" and "answer to nobody" due to lack of monitoring by the City. MWBEs interviewed for this study report that the present MWBE program is seen as ineffective, "just something good on paper", and that it is commonplace for White male contractors in Charlotte to be awarded City jobs with no MWBE participation, knowing that "nothing will happen to them". Others report that the MWBE program focuses on the evaluation of a prime contractors "good faith effort" in contacting MWBEs, not on primes' commitment to actually meeting MWBE participation goals on a project. In sum, MWBE contractors in Charlotte report that under the City's current M/WBE Plan for City construction and procurement "there are too many cracks for GCs who want to avoid MWBE participation to wiggle through".

Statistical Analysis

Chapter VI presents a statistical analysis of actual contract awards made by the City of Charlotte to disadvantaged, minority and women business enterprises Using the City's historical contract data with and MWBE contractors and subcontractors, DJMA determined the relevant market area for Charlotte, for each area of procurement The relevant market designation was then developed based on the geographic location threshold of 85 percent of an individual entity's bidders, vendors, or awardees The availability of MWBEs in the relevant market was then established Subsequently, utilization percentages for the City, by procurement type, were developed

The utilization reported is a combination of data developed by DJMA and reports compiled by each of the member entities Every attempt has been made to verify data reported. Utilization tables present the actual percent of MWBE utilization for each year tracked, by ethnic/gender/racial group for each category of purchasing (i e , professional services, construction, and procurement)

Following is a synopsis of the conclusions drawn from the Statistical Analysis:

Construction

- The relevant market for construction is North Carolina (Table 6 25)
- Native Americans among minorities was the only group to have disparity ratio less than one in the early program years (Table 6 28)
- Disparity ratios were generally indicating underutilization for all minority groups (Table 6.28)
- Construction availability, based on the RWA estimate, suggests MWBE availability at 20 percent (Table 6.26)
- The MWBE program has had little impact on the participation rates (Table 6.18)
- Based on all measures of availability, WBEs and Blacks comprise the bulk of firms available to do business with the City (Table 6 26)
- Large percentages of prime and subcontracting are performed by a only few contractors (Tables 6.24, 6 22)
- The City's goal-based program is largely a subcontract program (Table 6 14 and 6.15)

Professional Services

- The relevant market for professional services is the Southeast (Table 6 25)
- Similar to construction, a relatively few firms perform a large percentage of the City's professional services contracts (Table 6 24)
- Except for an Asian firm, no MWBE firm consistently participated in professional services contracting (Table 6 23)
- According to the RWA estimate, MWBE firms represent more than half of all available firms (Table 6 27)
- Disparity ratios are significantly greater than one, indicating underutilization for all groups (Table 6 29)

Race Neutral Analysis

Chapter VII presents analyses of race neutral programs to determine if they also stimulate the utilization of MWBEs without having been specifically designed to do so.

Present programs implemented by the City of Charlotte Community Development division provide the most consistent opportunity for the growth of MWBEs Based on Community Economic Development Revolving Loan Trust Fund data, with the exception of Black women, women owned business concerns do not benefit as much as Black and White male firms. In addition, a total of two loans were provided to Hispanic, Asian and American Indians business enterprises. The Development and Revitalization Fund program showed that White firms received 33.3 percent and Black male firms received 67.7 percent of funds awarded through this program. Women and Other Minorities have not benefited from the DARF program. Examination of the Rental Rehabilitation program supports the inference that White males benefit more than other members of the business population. The City within a City Loan Program has awarded four loans since its inception, although it has received over 1,600 applications.

A review of State race neutral programs primarily identified technical assistance programs, not financial assistance programs, to small businesses. The overall lack of minority participation in State programs like the Small Business Administration, which are race-neutral programs, indicates their ineffectualness in providing assistance to MWBEs. Although WBEs made up 16.68 percent of all firms with employees in the Charlotte MSA, they received only 10.2 percent of all SBA loans. White women received 84.1 percent of all loan dollars granted to women in the counties of

Cabarrus, Gaston, Lincoln, Rowan, Mecklenburg and Union Of all loan activity, White businesses were awarded 85 8 percent of the loans followed by Blacks at 5 2 percent, Asians at 4 6 percent and Hispanics at 1 2 percent

The evidence presented in this chapter shows that race neutral programs do not alone provide the necessary support needed to increase minority and women business enterprise participation

Recommendations

Chapter VIII offers recommendations for alleviating barriers identified in the City's procurement systems and the MWBE program Elimination of identified procurement barriers to MWBE participation is no guarantee that utilization of these firms will increase However, it will enhance equal access to opportunities and convey the agency official's support of the program. The Recommendations Chapter also includes suggestions for the establishment of objective targets for MWBE participation that meet the Supreme Court's requirements.

Among the several recommendations made by DJMA for the improvement of the procurement system is the centralization of all City purchasing and contracting and the integration of MWBE policy and procedures into that centralized system. DJMA also suggests the City conduct regular procurement audits to assess the effectiveness, fairness and impact of procurement on the involvement of MWBEs.

VIII. CONCLUSIONS & RECOMMENDATIONS

The findings of this study are listed in the conclusions of each chapter, and are submitted for examination by policy makers who will determine the sufficiency of these findings for the purpose of subsequent policy initiatives developed and implemented by the City of Charlotte These findings follow

Factual Predicate for MWBE Program

- There is extensive historical evidence of de jure discrimination practiced by the City of Charlotte against African Americans
- There is a pattern of systematic exclusion of African Americans from educational and employment opportunities by the City of Charlotte
- African Americans are not receiving a proportional share of self-employment income, income derived from wealth. They are also under-represented in terms of home ownership and over-represented in the indigent community.
- The disparity ratios indicate that MWBEs have difficulty winning contracts

Problems with the Procurement Process and MWBE Program

- MWBEs have difficulty gaining access to the necessary financial markets.
- MWBEs are not acquiring bonds in proportion to their numbers.
- MWBEs are deprived networking opportunities.
- The Charlotte business community has a negative perception of the City's MWBE program.
- There is no integration of the MWBE program and the procurement system.
- The organizational structure of the MWBE program inhibits the MWBE director's ability to effectively perform his duties.
- Race neutral programs offer valuable assistance to MWBEs but do not replace

the need for race conscious programs

- Without the MWBE program, some MWBEs would collapse

RECOMMENDATIONS

We suggest that the City consider the following recommendations to improve equal access to contracting and procurement opportunities for all groups The barriers identified above have the potential of limiting or deterring minority and women business enterprise participation in City purchasing and contracting Such barriers affect perception as well as the impact of exclusion of these businesses in the City procurement opportunities Eradication of these barriers can not guarantee inclusion of MWBEs in the City's purchasing and contracting activities, however, it will serve to promote fair and equitable opportunity to participation by all interested businesses Therefore, we offer the following recommendations, which involve all areas of City governance, to address the barriers.

Addressing MWBE Program Improvements

1) Review current loan programs with city banks which seek to provide loans to minorities and women, and work to establish loan credit criteria that reflect the needs of the MWBEs that those programs seek to assist
2) Reassess the City's bond waiver program to determine if it is operational and used on MWBE contracts.
3) Design goal program to more closely reflect the minority groups of Charlotte (See later explanation of goal program.)
4) Conduct sensitivity training programs for City personnel dealing with minority and women contractors.
5) Develop stricter monitoring procedures in order to ensure that general contractors are using subcontractors for which they are receiving MWBE credits.
6) Develop stronger alliance with groups such as the West Charlotte Business Incubator in order to increase Outreach into MWBE community and to develop a stronger technical assistance program.
7) Ensure that the MWBE director reviews and approves bidders' and contractors' compliance with MWBE program requirements before award of a contract can move forward.
8) Conduct desk audits and field audits to ensure contractor compliance with MWBE participation commitment.

9) Enforce sanctions for non-compliance
10) Provide appropriate staffing for the MWBE office
11) Investigate owners knowledge and experience to operate business requesting certification
12) Conduct on-site interviews as well as desk audits for all applicants

Addressing Problems in the Procurement Process

1) Centralize City purchasing and contracting
2) Update and standardize the City procurement manual
3) Integrate MWBE policy and procedures into standard procurement system operations
4) Purchase and install a state-of-the-art computerized procurement tracking and reporting system
5) Interface Purchasing Department system with Finance, Accounting and CIS
6) Address the need for procurement policy on contract extensions, which should be used only rarely and not exclude other vendors.
7) Conduct regular procurement audits to assess the effectiveness, fairness and impact of procurement on involvement of MWBEs.
8) Hold procurement personnel responsible and accountable for implementation of procedures.
9) Establish a tracking system for awards in construction, professional services, and procurement of goods and services.

Addressing Problems in Other Departments

1) Establish more visible support by top management of MWBE program by evaluating the MWBE Office's performance through reporting directly to the City Manager.
2) Make MWBE program reporting an agenda item in management meetings
3) Institute MWBE performance evaluations as an element of management performance reviews
4) Require user departments responsible for construction and professional service contracts to submit detailed monthly MWBE participation reports on contract activities to the MWBE Office (User departments should require monthly contract activity reports from prime contractors and

prime consultants identifying activities of MWBE subconsultant and subcontractors.)

5) Institute user department head and MWBE Office review contract amendments, especially extensions, to provide MWBEs and other firms the opportunity to participate

Increasing the Participation of MWBEs

1) Centralize and automate Citywide bidder's data bank
2) Standardize bidders list application process.
3) Coordinate certification and bidder list application process
4) Develop standard procedures for telephone and written quotes that provide opportunity for MWBE utilization
5) With input from the MWBE Advisory Committee, develop a Citywide policy that encourages procurement operations to maximize utilization of MWBEs in informal purchases.
6) Routinely update and disseminate MWBE Directory to procurement personnel
7) Establish telephone notification of bid opportunities to MWBEs
8) Develop ongoing outreach techniques to the MWBE community through monthly newsletters or bulletins announcing upcoming bid opportunities.
9) Increase procurement personnel participation in trade fairs and MWBE association meetings.
10) Routinely conduct seminars/workshops on "how to do business" with the City of Charlotte.
11) Provide unsuccessful bidders with feedback and information on quotes and selection process.
12) Place greater emphasis on contractors' goal attainment as opposed to "good faith efforts" to comply
13) Develop better awareness and sensitivity of management and procurement personnel to MWBE program goals and objectives.
14) Establish a computerized database that updates MWBE register and provides ethnicity breakout.

CONSIDERATION OF TARGET SETTING METHODOLOGY

Course of Action

The actual setting of MWBE goals is a policy decision and requires action by the City of Charlotte's legislative authorities The City Council and the Mayor should establish overall policy goals which can then be translated by MWBE staff into annual targets

The OMBA Office should develop an action plan that specifies procedural, program, and goal improvements that will be made and the timeline allocated for those tasks

Consideration of Target Setting Methodology

To assist the City of Charlotte in its efforts to establish objective targets for MWBE participation within the goal portion of the MWBE program, D J Miller & Associates has applied our ADM Target Methodology to sample data to provide the City with an indication of this algorithm's function.

This study indicates disparity in the utilization of minority and women businesses contract opportunities by the City of Charlotte Using this information as a factual predicate, we believe the application of the ADM Methodology is warranted

Therefore, in light of this evidence, it is suggested that the City of Charlotte consider this MWBE target methodology to define appropriate participation targets relevant to each racial/ethnic/gender group within the MWBE program to correct the stated disparities in utilization. This methodology has been designed to assist the City in providing a realistic and statistically valid model It relies on a two-part process. First, the examination of market conditions presented in our fact finding study can be consulted in making a policy determination regarding MWBE participation levels Second, a determination of the City of Charlotte's actual level of MWBE participation must be calculated.

In the policy arena we have not set a goal nor recommended a specific goal. The actual setting of goals is a policy decision reserved for the City of Charlotte's decision makers who must determine "who gets what, where, and when." One decision-making paradigm ties the City's utilization with the level of MWBE availability. Within this framework, the number of MWBEs in the relevant market would drive the City's policy decisions regarding the City's goal

A practical goal-setting methodology that reflects legal thought should incorporate the seven factors used in the report in establishing the current levels of subcontractor availability and the subsequent disparities in utilization

1) the size of female and minority populations in the relevant market area,
2) the number of female and minority owned businesses in the relevant market area,
3) the availability of female and minority-owned businesses in the relevant market area willing to do business with the City of Charlotte,
4) the general availability of minorities and females having the requisite skills to manage and/or form businesses in the relevant market area,
5) the percentage of minority and female businesses compared to the total number of businesses in the relevant market area,
6) the availability of minority and female businesses in the relevant market area which the City can reasonably add to its certification list,
7) the degree of outreach and training that the City is reasonably able to undertake as a means of making opportunity available to minority and female businesses.

The second part of the process charts a course for determining MWBE utilization targets in order to achieve the goals established by the policy. This section sets forth a process and methodology that can be used to determine appropriate levels of MWBE participation to be the utilization targets There is, however, no simple one-two-three calculation which can be used to determine MWBE utilization We caution the reader against the false comfort produced by a simple mathematical formula which seeks to create MWBE utilization targets. Many variables impact the data which composes the mathematical basis for subsequent calculations. This caution articulated, D.J Miller & Associates has developed the ADM formula (Algorithm Development Model), a five-step algorithm to assist in establishing MWBE utilization targets

The algorithm methodology for developing specific MWBE participation targets requires a five-step computation process.

Step 1: Compute the City's cumulative dollar expenditure for the desired time frame This requires that the City to establish a base year or starting point. We recommend Fiscal Year 1985 since this is the first year of the study period and the earliest year for which data is available for capital construction

Step 2: Compute City's minority cumulative dollar expenditures, assuming goal for time frame This requires computation of City's cumulative contracting and procurement dollar history from base year to current year That is, each succeeding year's total dollar volume of contracts and procurement is added to the sum of the previous year

Step 3: Compute difference between cumulative MWBE dollar expenditures for time frame and current cumulative minority dollar expenditures This requires computation of the City's cumulative dollars spent with minorities and women from base year to current year

Step 4: Divide Step 3 by total years between time frame and current This requires the selection of a time frame for which the City desires to bring minority and women contracting and procurement targets into conformance with the stated goals

Step 5: Divide Step 4 by projected annual City dollar expenditures This requires the selection of a final goal objective. This goal objective will be a function of the several variables described above

> Target = f, total population, minority population, total business population, total minority business population, total procurement and contracting dollars spent, total procurement and contracting dollars spent with minorities, other relevant considerations unique to the City.

Step 6: Estimate City contracting dollars from the current year to the time frame year The City must engage a capital project program administrator, budget director and other qualified individuals capable of developing sound targets. In the absence of another methodology, a department may use constant or percentage growth rates.

In addition to these steps, as mentioned earlier, City decision makers must determine the annual goal to be set The City may wish to average the goal over the selected time frame It may decide on a linear, increasing or decreasing goal.

The ADM algorithm simply restates the target setting methodology in an easy to follow mathematical formula that is easy to compute D J Miller & Associates has developed an algorithm and applied it to hypothetical MWBE goals for the City of Charlotte The annual minority targets, ATM, can be determined by the ADM formula

ADM Formula
for Computing Annual Targets for Minority Participation

$$ATM = \frac{G_p(TCE_t) - TME_p}{T - P} + TE_a$$

where

G_p = policy goal for MWBE participation. When the policy goal is used to bring utilization in line with availability, then

$G_p = A$

TCE_t	=	total cumulative expenditure at time frame
TE_a	=	total annual City's expenditure
TME_p	=	total minority cumulative expenditure at present
T	=	time frame year
P	=	present year

The ADM formula allows for the computation of an overall minority targets as well as targets for individual minority groups, e g., Black, Hispanic, Other, women, etc. Using data for the City of Charlotte's capital construction, a matrix has been created to demonstrate how variances in the policy goal and time frame of the program change the annual MWBE targets. For example, using a study period of *FY 1982 and 1986 – 1992 in construction, if the City's policy goal were 15* percent utilization of minority and women owned firms, and the length of the program 15 years, then the annual target for MWBE utilization would be 17 percent based on current utilization

TCE_{2007}	=	\$369,980,918 + 15 * 46,247,615
	=	\$370 million + 15 * 46.2 million
	=	\$1,063 million
TME_{1992}	=	\$40.9 million
TE	=	\$46.2 million
P	=	1992
T	=	2007
Goal	=	15%

$$ADM = \frac{(15\%)\ (\$1.063\ \text{million}) - \$40.9\ \text{million}}{2007 - 1992} + \$46.2\ \text{million}$$

$$= \frac{\$159.45\ \text{million} - \$40.9\ \text{million}}{15} + \$46.2\ \text{million}$$

$$= \frac{\$118\ \text{million}}{15 * 46.2\ \text{million}} = 17\%$$

Table 7.1

City of Charlotte
ADM Formula Matrix
Policy Goal/Program Target
Construction

Program Length (years)	Policy Goal (%)					
	15	20	25	30	35	40
5	21	34	47	60	73	86
10	18	27	36	45	54	63
15	17	25	32	40	48	55
20	17	24	31	38	45	52
25	16	23	29	36	43	47

Source: DJMA

For professional services, the following numbers are used with the base year of 1986 (study period 1986–1992).

TCE_t	=	\$57.9 million + program length * \$8.3 million
TME_p	=	\$2.3 million
TE	=	\$8.3 million
P	=	1992
T	=	Set by Entity
Gp	=	Set by Entity

Table 7.2

City of Charlotte
ADM Formula Matrix
Policy Goal/Program Target
Professional Services

Program Length (years)	Policy Goal (%)					
	15	20	25	30	35	40
5	30	42	54	66	84	90
10	23	31	45	48	57	65
15	20	28	35	43	50	58
20	19	26	32	39	46	53
25	18	24	31	37	44	50

Source DJMA.

SUMMARY

D J Miller & Associates submits that the findings of disparity between the availability of women and minority business enterprises and their utilization by the participating agencies in the relevant marketplace create an inference of discrimination. Black owned businesses experienced the greatest degree of disparity, largely as a result of the past and present discrimination against this group as exhibited in the legal and anecdotal sections of this report. The evidence compiled in this report clearly shows that the City of Charlotte has been an active and passive participant in the discrimination.

The economic and statistical analyses in this study can serve as the basis for policy decisions regarding the establishment of MWBE participation goals for specific racial, ethnic and gender groups in a race conscious program.

ADDRESS TO CHARLOTTE CITY COUNCIL

REGARDING MWBE DISPARITY STUDY BY

D.J. MILLER & ASSOCIATES

DECEMBER 13, 1993

Mayor Vinroot, Honorable members of the City Council, and City officials, my name is Richard Lancaster and I come to support the adoption and acceptance of the D.J Miller & Associates MWBE Disparity Study as the Factual Predicate for an improved MWBE Program for the City of Charlotte.

I come as a supporter of Small Business in general and African American Business in particular You have commissioned this Study and have received from D.J. Miller & Associates a well documented and professionally prepared study of the facts relating to the various governmental entities' approach to doing business with Minority Business Enterprises. Tonight, you have heard and will continue to hear the testimony of a few representatives of the many MBE's as to their struggle to participate in serving the City's and other governmental entities' need for goods and services. Many have and will express that they have been locked out of this economic marketplace by a variety of unfair trade practices. The Disparity Study establishes and documents, through thorough analysis and detailed research, what these hardworking individuals have testified to

The Supreme Court in its landmark Croson decision determined that "proper findings are necessary to define both the scope of injury and the extent to the remedy necessary to cure its effects". This study establishes the Factual Predicate required by the Supreme Court. Mr Mayor and members of the Council, I respectfully and strongly urge you to accept and adopt the MWBE Disparity Study and the recommendations contained therein, thus establishing the Factual Predicate necessary to implement a more effective MWBE program for the City of Charlotte.

Respectfully Submitted,

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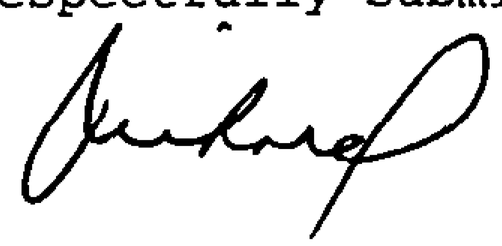

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I come as a supporter of Small Business in general and African American Business in particular You have commissioned this Study and have received from D.J. Miller & Associates a well documented and professionally prepared study of the facts relating to the various governmental entities' approach to doing business with Minority Business Enterprises. Tonight, you have heard and will continue to hear the testimony of a few representatives of the many MBE's as to their struggle to participate in serving the City's and other governmental entities' need for goods and services Many have and will express that they have been locked out of this economic marketplace by a variety of unfair trade practices The Disparity Study establishes and documents, through thorough analysis and detailed research, what these hardworking individuals have testified to

The Supreme Court in its landmark Croson decision determined that "proper findings are necessary to define both the scope of injury and the extent to the remedy necessary to cure its effects". This study establishes the Factual Predicate required by the Supreme Court. Mr. Mayor and members of the Council, I respectfully and strongly urge you to accept and adopt the MWBE Disparity Study and the recommendations contained therein, thus establishing the Factual Predicate necessary to implement a more effective MWBE program for the City of Charlotte.

Respectfully Submitted,

Richard A. Lancaster

ADDRESS TO CHARLOTTE CITY COUNCIL

REGARDING MWBE DISPARITY STUDY BY

D.J. MILLER & ASSOCIATES

DECEMBER 13, 1993

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ASSIGNED TO	ISSUE
	Firefighter's Pay continued Assignment: Human Resources will meet with Marvin Wilson, send information to Council
Bill Wilder	Police Pay Police employees came to Council about their pay increase, one cited the Law and Order magazine study on police pay, another said they understood the 4 5% was a bonus to cover insurance cost, do we need to get information back to Council? PBA representative talked about the marketing surveys they will be sending to Council in the next few weeks, accused Human Resources of deleting Durham from their report in order to show Charlotte at median pay Assignment Human Resources will meet with Dave Holland, et al , report to Council afterwards, revisit Police pay standard and bring back to Leadership Team
	Coalition for Justice Asked Council to punish criminals, they seem to be pushing the resolution on prison space
Martin Cramton	Charles Ellis Has four parcels on South Boulevard that were in the Central District Plan to be downzoned; they opposed the downzoning and were sustained by Council, they now want a waiver of the two-year rule in order to downzone the properties, Council said to start the process Assignment Planning needs to contact Mr Ellis and let him know what the steps are and what we will be doing to start the process
Don Steger	Joel Seagle et al Presented a proposal to Council (Tom has a copy) on ways to stem youth violence Assignment Prepare response to Mr Seagle, Fold ideas into Community Safety Report

ASSIGNED TO	ISSUE
Del Borgsdorf	Focus 2010 Speakers came to Council, Council took no action, however, at the dinner meeting Mayor commented that this could be brought back to Council at the January meeting for Council to decide if they want to do it differently from the way the Mayor suggested Council gave no indication of wanting this on their agenda Assignment Do nothing
Del Borgsdorf	Ruby Thomas - Yorkmont Community Said she'd left a list with Councilmember Cannon, she would like to have her neighborhood separated from the wealthy community down South Tryon Street so they could qualify for the Neighborhood Matching Grants Program Get list from Councilmember Cannon Assignment Del will follow-up
Bill Wilder	Long-term Temporary Employee Benefits Approved
Belinda Crowell	Prison Cap Resolution Approved as amended by Councilmember Martin Assignment Prepare letter for Mayor and send to Governor, et al
J. Walton	Third Ward Land Deferred for one week, bring back on zoning agenda, Council wants additional information on alternative uses and property appraisals Assignments C D will prepare agenda item for 12/20
Tom Flynn	Council Retreat Date set for February 4-5, 1994, need to find location, notify people and work with Council committee on agenda

STAFF ASSIGNMENTS
City Council Meeting
Monday, December 13, 1993

ASSIGNED TO	ISSUE
Wayman Pearson Greg Spearman	Roll-Out Containers Council asked questions about latch safety issues and animal proofing, are they too heavy to roll down hills and will the elderly be able to handle them Assignment Bring back bids on 1/10
Del Borgsdorf	MWBE Diversity Study Councilmember McCrory asked for a staff report on specific war stories that were told during the Council meeting and hearing Councilmember Baker asked for cost estimates on each recommendation that staff brings back to Council Assignment January 10 - agenda for Council to give staff direction on policy issue Del responsible for agenda item
Belinda Crowell	N.C League of Municipalities Mayor needs to send letter to the League supporting Ella's candidacy for third Vice President, Council adopted this resolution Assignment Belinda will prepare letter
Brenda Freeze	Pledge of Allegiance Assignment. Clerk to Add to Mayor's schedule after the invocation
Bill Wilder	Firefighter's Pay Group of firefighters complained that they did not receive their probationary pay in June, they were promoted on January 6 and got their promotional increase but they did not get an increase at the end of their probationary period as they had expected, need to get information back to Council

93-221

CITY OF CHARLOTTE
INTER-OFFICE COMMUNICATION

DATE: December 4, 1992

TO: Brenda Freeze
City Clerk

FROM: Purchase & Contract Dept.

SUBJECT: EXECUTED CONTRACT WITH:

Re: D. J. Miller & Associates

Attached for filing is formal contract between the City and subject company.

This contract, dated September 14, 1992 in the amount of $187,800.00 covers Disparity Study.

Attachment:
Contract

/bys

CC: Finance & Accounts Dept. - w/copy of contract

Brenda,
It is even an executed copy!
Ann

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

AGREEMENT FOR MINORITY/WOMEN BUSINESS ENTERPRISE DISPARITY STUDY

THIS AGREEMENT, entered into this the 14th day of September, 1992, by and between the City of Charlotte, a North Carolina municipal corporation (hereinafter referred to as "City") and D.J. Miller and Associates, Inc., a Georgia corporation (hereinafter referred to as "Consultant");

WITNESSETH:

WHEREAS, on July 23, 1989, the United States Supreme Court in the case captioned City of Richmond v. J.A. Croson Company, 109 S.Ct. 706, (1989) held that a local entity could take actions to rectify the effects of "identified discrimination" within a jurisdiction where there was a significant statistical disparity between the number of qualified minority business willing and able to perform particular services and the number of such business actually engaged by the locality or contractors to perform the particular services. The Court further ruling that narrowly tailored preference programs can be established to break down patterns of exclusion; and

WHEREAS, Consultant is capable of studying the level of participation of qualified minority and women businesses which are able to perform particular services and the number of such businesses actually engaged by the City or contractors to perform the particular services; and

WHEREAS, Consultant is further capable of determining whether there has been discrimination against minorities and women owned businesses in the market areas in which the City does business; and

WHEREAS, City desires to employ the services of Consultant to conduct a disparity study and provide related services; and

WHEREAS, Consultant is qualified, willing and able to perform the professional services required under the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the parties do hereby agree as follows:

SECTION I. SCOPE. The primary purpose of the study is to determine whether there has been discrimination against women/minority-owned businesses and to identify appropriate remedies for such discrimination. Consultant agrees to perform for the

City research and related professional services (hereinafter referred to as "Services") as described in Exhibit A entitled "Technical Proposal To Provide a Disparity Study for the City of Charlotte, submitted by D.J. Miller & Associates, Inc., July 15, 1992", attached hereto and incorporated herein by reference. The Services shall include, but not be limited to, the following tasks:

a. Provide an assessment of the procurement policies, procedures and practices of the City of Charlotte regarding their impact on fostering public contracting opportunities for M/WBE firms and gather much of the discovery information integral to the remaining tasks of this proposal; and

b. Determine the categories of contracts typically awarded by the City by identifying, classifying and providing an analysis of contract awards over the relevant study period by type of contract and by dollar value and determine the City's utilization of majority, minority, and women-owned firms as prime and sub-contractors under each contract type defined under the study; and

c. Determine the relevant market based on prime contractors, sub-contractors, vendors, consultants (1) solicited to bid, (2) receiving awards, and (3) a combination of bidder/awardees for contract areas identified in task number 2 (as set out in sub-paragraph b. above) let by the City.

d. Conduct a market survey to determine and analyze the pool of majority, minority, and women-owned firms and their utilization in each contract area within the relevant market area in both the private and public sectors, and provide economic and demographic profiles of these groups; and

e. For construction, professional and other services, and commodity contracts, identify and provide an analysis of the number and percentage of the majority, minority and women-owned firms and the relevant markets identified. The number and percentage of M/WBE's will be calculated separately for each racial/ethnic/gender group utilizing City procurement and market survey data derived from sub-paragraph e. above; and

f. Perform a statistical analysis of the utilization rates for the City to determine whether there is statistically significant disparity between the availability of minority/women-owned firms and their utilization for each contract type in the City; and

g. Identify and provide a record of specific instances of discrimination and of policies, procedures and practices in the construction, general and professional services, and supply industries which have had an adverse impact on the formation, growth and development of minority and women-owned businesses; and

h. Gather anecdotal evidence of discriminatory practices in the market place encompassing both past and present instances of discrimination in the categorized industries; and

i. Identify and determine the effectiveness of any race or gender neutral techniques that have been used by or available to the City to increase minority and women-owned business participation in contracting opportunities which will continue to insure or better assure that the City does not become a passive participant in racial or gender discrimination against minority and women-owned business; and

j. Submit progress reports, a draft report, and a final report incorporating all findings, data, conclusions and recommendations.

Except as provided above or otherwise contained in this Agreement including Exhibit A, Consultant agrees not to perform any additional research or professional services for the City related to the disparity study unless and provided such work is requested by City in writing and an addendum to this Agreement is executed by Consultant and City. It is expressly understood that City has no obligation to authorize Consultant to perform any additional services under this Agreement.

Consultant agrees to use its best efforts to perform all services provided for under this Agreement. Consultant further agrees to perform all services in accordance with such reasonable time requirements and written instructions as may be requested or provided by the City and in accordance with generally accepted professional standards.

Consultant shall have the right with the City's prior written consent to employ such persons or entities other than those identified in Exhibit A or Exhibit B entitled "RFQ for Disparity Study", submitted to City of Charlotte by D.J. Miller & Associates, Inc., May 29, 1992, which is attached hereto and incorporated herein by reference, to serve as sub-consultants to Consultant in connection with Consultant's performance of the services provided for under this Agreement.

SECTION II. <u>CITY'S RESPONSIBILITIES.</u> City shall consult with Consultant regarding the services to be rendered by Consultant hereunder, and City agrees to make available to Consultant such information in its possession concerning the work to be performed hereunder as Consultant may reasonably request. Consultant may rely upon such information where such reliance is reasonable.

(a) <u>Existing Studies and Documents.</u>

City agrees that Consultant may rely upon existing studies and findings of discrimination in the City of Charlotte and may utilize a 1983 minority/women business enterprise study prepared

by the Urban Institute of the University of North Carolina at Charlotte. Consultant may also rely upon records and documentation generated since 1984 by the City of Charlotte's M/WBE coordinator and the City's M/WBE certification committee. Consultant agrees to review prior findings and develop new findings of discrimination by reviewing any prior lawsuits and settlements involving contractors and/or the City of Charlotte which alleged discrimination in an industry with which the City typically contracts.

(b) M/WBE Coordinator or Designee; appointment

The City further agrees to appoint its M/WBE coordinator or an appropriate designee as the project coordinator during the preparation of the study. Consultant shall remain solely and primarily responsible for the preparation of the study. The project coordinator shall assist Consultant, upon request, by coordinating the copying and production of relevant City records and reports, by advising Consultant on City procedures regarding the City's M/WBE plan, by coordinating interviews and meetings with City staff, and by otherwise assisting Consultant in the preparation of the study. The project coordinator shall be and remain an employee of the City of Charlotte and shall be subject to the direct supervision of the City and its Purchasing Director. It is the intent of the City that the project coordinator act as a resource person with Consultant and, therefore, the project coordinator shall not incur any primary responsibility for the preparation of the study including the final report or document. Consultant agrees to meet periodically, upon the request of the project coordinator, to update the coordinator on the status of the study. The City agrees to provide through the coordinator a list of all resources and data known and available to the City to evaluate minority and non-minority business utilization.

SECTION III. COMPENSATION AND METHOD OF PAYMENT. Consultant agrees to provide those professional services identified in this Agreement including documents, presentations, copies of the final report for a fee of $187,180.00. City and Consultant agree that 10% of said fees shall be paid within fifteen (15) days of the effective date of this Agreement. The remainder of such fees shall be paid monthly based upon the percent of completion of the services as reasonably certified by Consultant and approved by City. Each billing by Consultant shall include an interim report on the status of the study. The final fifteen percent (15%) of the fee shall be paid by City upon the satisfactory completion of the study, presentation of oral reports, and submission of a final written report. Consultant agrees that City shall not be assessed any interest on payments not paid within forty-five (45) days from the date of invoice.

Consultant further agrees that under no circumstances shall the cost of this Agreement exceed $187,180.00.

SECTION IV. TERMINATION. This Agreement may be terminated in whole or in part in writing by City should Consultant fail to fulfill any of the terms, conditions or obligations contained herein or in the event the City discovers that any statement of fact furnished by Consultant in its proposal is false or materially misleading; provided, however, that if said failure is curable, no such termination shall be effected unless Consultant is given written notice of such default and an opportunity to cure such default within thirty (30) days after receipt of such notice. Consultant agrees that City may terminate this contract immediately where any default is not cured within thirty (30) days after receipt of notice or the default is deemed by the City to be non-curable. Upon termination, the City may withhold payments in excess of fair compensation for work completed, but no amount shall be allowed for profit on services or other work performed.

Upon receipt of notice of termination from City pursuant to the provisions contained in this paragraph, Consultant shall: (1) promptly discontinue all services affected (unless City directs otherwise); and (2) deliver or otherwise make available to City all documents (as hereinafter defined) as may have been accumulated by Consultant or by sub-contractors of Consultant in performing services under this Agreement, whether such documents are complete or in progress.

Upon termination pursuant to this section, City may take over the work and bring such work to completion by using its employees or by agreement with another party or otherwise. Where City exercises its authority under this paragraph, it shall not waive any rights it may have against Consultant arising out of Consultant's failure to fulfill any obligations under this Agreement.

SECTION V. DOCUMENTS: FURNISHING COPIES; OWNERSHIP; CONFIDENTIALITY; COPYRIGHT. Except as otherwise provided in this Agreement, Consultant agrees, at no additional cost or expense to City, to furnish to the City upon the completion of its services, reproduceable copies of all data, calculations, reports, memoranda, and all other documents and instruments of any type or nature which have been prepared by Consultant, its employees, agents or assigns, in rendering services hereinunder; except that Consultant shall furnish to City with fifteen (15) copies of its final report and (1) copy of all tapes and other computer information prepared by Consultant or its employees, agents or assigns, employing computer systems and rendering basic or additional services hereunder (hereinafter collectively referred to as "documents"). This shall be in addition to copies of documents which have been furnished to City during the performance of the services for review or informational purposes, which are to be provided in standard printed form. Consultant further agrees that at City's request, Consultant shall cause one or more of its qualified employees to promptly review personally with City and its

designated representatives including the Charlotte City Council if so requested, any and all documents.

Consultant agrees during the term of this Agreement and forever thereafter not to knowingly divulge, furnish or make available to any third person, firm or organization, without the express written consent of City, or unless incident to the proper performance of Consultant's obligations hereunder, or as required by applicable law, any information generated by Consultant or received from City or any member of City concerning services to be rendered by Consultant pursuant to this Agreement, and Consultant shall require all of its employees or agents to comply with the provisions of this paragraph.

Consultant agrees and acknowledges that it has been retained by City to create certain works, namely the disparity study. Consultant further agrees that in consideration of the compensation paid to it by City, such works shall be considered works made for hire, and City shall own all of the rights comprised in the copyright of all works of authorship (including any separate contributions to collective works) prepared by Consultant, alone or jointly with others, which relate to the task assigned to Consultant by City or which Consultant otherwise prepares for, in behalf of, or at the behest of City in connection with the disparity study. Consultant also agrees to sign any and all further documents deemed necessary by City to protect its copyrights.

To the extent that said works are or may ever be deemed not to be works made for hire, Consultant hereby assigns (and will assign without further consideration, except as may be provided by statute) to City, all right, title, and interest in and to said works and in and to the copyright of said works and any and all countries of the world, and such assignment is intended to affect a complete transfer of Consultant's rights in said works and in all copyright interests in them, including, without limitation, those not chosen for use, as well as the right of publication, the right to file application for copyright registration anywhere in the world in the name of City and its members or otherwise as they may direct, and the right to secure extensions and renewals thereof.

Consultant further agrees that it will obtain from all of its agents all rights comprised in the copyright of all works of authorship prepared by such agents, alone or jointly with others, which relate to the tasks assigned to such agents by Consultant or which are prepared for, on behalf of, or at the behest of Consultant in connection with the disparity study. The rights obtained by Consultant will be included among those acquired by City pursuant to this paragraph of this Agreement.

SECTION VII. NOTICES. All notices required to be given to City and Consultant hereunder shall be in writing and shall be given by United States Certified Mail, postage pre-paid, return receipt requested, addressed to:

To City: City of Charlotte Purchasing Director
600 East Fourth Street
Charlotte, NC 28202
Attn: Gregory K. Spearman

To Consultant: D.J. Miller and Associates, Inc.
600 West Peachtree Street, Suite 1550
Atlanta, GA 30308
Attn: Garry Blackwell

Any party may change its address for purposes of this paragraph by written notice to the other party given in accordance with the requirements of this paragraph.

SECTION VIII. REMEDIES. All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to any party at law or in equity. Notwithstanding any other provision of this Agreement, the responsibility of City for the costs of Consultant's services and any other liability under this Agreement shall be limited to $187,180.00, the total cost of such services or other liability in accordance with Consultant's cost of the disparity study.

Any claim, dispute or other matter in question arising out of or relating to this Agreement or a breach thereof, except for claims which have been waived pursuant to this Agreement, shall be brought in Charlotte (Mecklenburg County) North Carolina. It is agreed between the parties that any claim, dispute or other matter in question arising out of or relating to this Agreement or breach thereof, shall be interpreted and resolved in accordance with North Carolina law.

SECTION IX. WARRANTY. Consultant warrants that all materials produced hereunder shall be of original development by Consultant and shall be specifically developed for the fulfillment of this Agreement. Consultant further agrees that it will not knowingly infringe upon or violate any patent, copyright, trade secret or other property right of any third party and Consultant agrees to indemnify and hold City harmless from and against any loss, cost, liability, or expense arising out of any breach or claimed breach of this warranty.

SECTION X. TRANSFERS AND ASSIGNMENTS OF SUB-CONTRACTS. Consultant agrees not to transfer or assign any of its rights hereunder (except as authorized in Section I of this Agreement) or sub-contract any of its obligations hereunder to third parties without the prior express written approval and consent of City. City shall be entitled to withhold such approval at its sole discretion. Except as limited by the provisions of this paragraph, this Agreement shall inure to the benefit of and be binding upon City and Consultant and their respective successors and assigns.

SECTION XI. INDEPENDENT CONTRACTOR. City and Consultant hereby agree that Consultant, its officers, agents, sub-consultants, employees and assigns in the performance of this Agreement, shall act in the capacity of an independent contractor and not as an officer, employee nor agent of City.

SECTION XII. INDEMNIFICATION AND INSURANCE.

A. It is an express condition of this Agreement that the City, its officers, agents and employees shall be indemnified and held harmless by Consultant from any and all claims, causes of action, demands, debts, liabilities or expenses of every kind of character, whether in law or in equity, by reason of any death, injury or damage to any person or persons, or damage to or destruction of property of Consultant, its officers, agents or employees, or of any third persons, resulting from the acts or omissions of Consultant or any of its officers, employees, agents, contractors or sub-contractors in connection with the performance of services hereunder, unless such claim, cause of action, demand, debt, liability or expense was proximately caused solely by the negligence of City. Such indemnification shall include, without limitation, costs, reasonable attorneys' fees and all other actual legal costs incurred, including, but not limited to, those for paralegal, investigative, legal support services and expert witness testimony and analysis.

It is also an express condition of this Agreement that Consultant shall be responsible to City and its members for the acts or omissions of all of the Consultant's agents or sub-consultants and their officers, partners, employees and agents while engaged in activities in connection with this Agreement, and Consultant's indemnification obligation contained in this paragraph (A) and Consultant's insurance policies maintained pursuant to paragraph (B) of this Section IX shall apply to such acts and omissions of Consultant's sub-consultants as fully as if they were the acts and omissions of Consultant.

In claims against any person or entity indemnified under this Section IX(A) by an employee of Consultant, one of its sub-consultants, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section IX(A) shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Consultant or a sub-consultant under workers' compensation acts, disability benefits acts or other employee benefits acts.

B. Consultant shall maintain in force during the term of this Agreement commercial general liability insurance and comprehensive automobile insurance with minimum combined single limits per occurrence of $1,000,000.00 with a deductible or self-insured retention acceptable to City, with contractual liability coverage for company's covenants to and indemnification of City under this

Agreement, and Consultant agrees that City shall be included as an additional insured under such policy or policies of insurance.

Consultant shall also maintain in force during the term of this Agreement workers' compensation insurance in accordance with applicable law.

The insurance described herein shall be carried with a company or companies qualified to do business in the State of North Carolina with a rating from A.M. Best Company, Inc. of "A" or better, and said policies shall be in form satisfactory to City. A certificate or certificates evidencing such insurance coverage shall be filed with City upon the execution of this Agreement, and said certificates shall provide that such insurance coverage will not be reduced or cancelled without at least thirty (30) days prior written notice to City. If the Standard Accord form is used for the certificate(s) of insurance, the terms "endeavor to" and "but failure to mail such notice shall impose no obligations or liability of any kind upon the company, it agents or representatives" shall be deleted from the cancellation provision. At least ten (10) days prior to the expiration of any such policy, Consultant shall file with City a certificate showing that such insurance coverage has been renewed. If such insurance coverage is cancelled or reduced, Consultant shall, within five (5) days after such cancellation or reduction in coverage, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies approved by City. If Consultant fails to obtain or have such insurance reinstated, City may, if it so elects, terminate this Agreement immediately.

SECTION XIII. <u>COVENANTS AGAINST DISCRIMINATION.</u>

A. Consultant on behalf of itself, it successors in interest and its assigns, as a part of the consideration hereof, does hereby covenant and agree that in the furnishing of services to City hereunder: (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination; and (2) that Consultant shall perform its services hereunder in compliance with all other requirements. Likewise, Consultant shall comply with all laws of the United States prohibiting discrimination because of race, color, religion, sex, national origin, age, disability or marital status. Should Consultant authorize another person or entity, with City's prior written consent, to provide services or benefits in or in connection with its rights or obligations under this Agreement, Consultant shall obtain from such person or entity a written agreement pursuant to which such person or entity shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this paragraph. Consultant shall furnish the original or a true copy of such agreement to City.

B. Consultant will provide all information and reports required by said regulations, or by directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by City to be pertinent to ascertain whether there has been compliance with said regulations and directives. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to City as appropriate, and shall set forth what efforts it has made to obtain the information.

C. In the event of a breach of any of the above non-discrimination covenants, City shall have the right to impose such contract sanctions as it may determine to be appropriate. Such rights shall include the right to terminate this Agreement. The rights granted to City by the foregoing sentence shall not be effective until the procedures of Section VI are followed and completed.

D. Consultant further assures City that it will comply with pertinent statutes, executive orders and such rules as are promulgated to assure that no person shall on the grounds of race, creed, color, national origin, sex, age or disability be excluded from participating in any activity conducted at or in connection with the services to be provided hereunder. Consultant also assures City that it will require its agents and subconsultants and contractors to provide assurances to the same effect and ensure that such are included in contracts at all tiers which are entered into in connection with the services to be provided by Consultant hereunder.

E. City may from time to time be required to adopt additional or amended non-discrimination provisions concerning the services to by provided hereunder, and Consultant agrees that it will adopt such requirements as part of this Agreement.

SECTION XIV. <u>MISCELLANEOUS PROVISIONS.</u>

A. The rights granted to Consultant hereunder are non-exclusive, and City reserves the right to enter into agreements with other consultants to perform other professional services, including without limitation, any of the basic or additional services provided for herein.

B. Consultant and its employees shall promptly observe and comply with then applicable provisions of all Federal, State and local laws, rules and regulations which govern or apply to the services rendered by Consultant hereunder, or to the wages paid by Consultant to its employees. Consultant shall require all of its agents to comply with the provisions of this paragraph.

C. Consultant is not authorized to act as City's agent hereunder and shall have no authority, express or implied, to act for or bind City or its members hereunder, either in Consultant's

relations with agents or sub-consultants, or in any other manner whatsoever.

D. Time is of the essence of this Agreement.

E. The non-enforcement of any provision by any party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision for the remainder of this Agreement.

SECTION XVI. HEADINGS. The headings of the sections of this Agreement are for the purpose of convenience only and shall not be deemed to expand or limit the provisions contained in such sections.

SECTION XVII. ENTIRE AGREEMENT. This Agreement, including Exhibits A and B attached hereto and incorporated herein, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and any prior representations, statements or agreements made with respect to such subject matter, written or oral, as well as any contemporaneous oral representations, statements or agreements with respect to such subject matter, are merged herein; provided, however, that Consultant hereby affirms the completeness and accuracy of the information provided by Consultant in its proposal.

SECTION XVIII. AMENDMENT. This Agreement shall not be amended or modified other than in writing signed by the parties hereto.

SECTION XIX. EFFECTIVE DATE. This Agreement shall become effective on the date it has been executed by all of the parties hereto, and shall expire on the date the basic services have been completed by Consultant.

SECTION XX. VALIDITY. The validity, interpretation, construction and effect of this Agreement shall be in accordance with and be governed by the laws of North Carolina. In the event any provision hereof shall be finally determined to be unenforceable, or invalid, such unenforceability or invalidity shall not affect the remaining provisions of this Agreement which shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized officers, have caused this Agreement to be executed and their corporate seals to be affixed hereto, effective as of the day and year first above written.

D.J. Miller & Associates, Inc.

By: _____
President

ATTEST:

Barry E. Blackwell
Secretary

(CORPORATE SEAL)

CITY OF CHARLOTTE

By: Dee Bergley
Mayor/Manager

ATTEST:

Jean A. Gelbert
City Clerk

Approved as to form:

Asst. City Attorney

ARTICLE 26A

Adult Establishments

§ 14-202.10. Definitions.

As used in this Article

(1) "Adult bookstore" means a bookstore

a Which receives a majority of its gross income during any calendar month from the sale of publications (including books, magazines, and other periodicals) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section, or

b Having as a preponderance of its publications books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section

(2) "Adult establishment" means an adult bookstore, adult motion picture theatre, adult mini motion picture theatre, adult live entertainment business, or massage business as defined in this section.

(3) "Adult live entertainment" means any performance of or involving the actual presence of real people which exhibits specified sexual activities or specified anatomical areas, as defined in this section

(4) "Adult live entertainment business" means any establishment or business wherein adult live entertainment is shown for observation by patrons

(5) "Adult motion picture theatre" means an enclosed building or premises used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section, for observation by patrons therein "Adult motion picture theatre" does not include any adult mini motion picture theatre as defined in this section

(6) "Adult mini motion picture theatre" means an enclosed building with viewing booths designed to hold patrons which is used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined in this section, for observation by patrons therein

(7) "Massage" means the manipulation of body muscle or tissue by rubbing, stroking, kneading, or tapping, by hand or mechanical device

(8) "Massage business" means any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios, or massage parlors

(9) "Sexually oriented devices" means without limitation any artificial or simulated specified anatomical area or other device or paraphernalia that is designed principally for specified sexual activities but shall not mean any contraceptive device

(10) "Specified anatomical areas" means

a Less than completely and opaquely covered (i) human genitals, pubic region, (ii) buttock, or (iii) female breast below a point immediately above the top of the areola, or

b Human male genitals in a discernibly turgid state, even if completely and opaquely covered

(11) "Specified sexual activities" means

a Human genitals in a state of sexual stimulation or arousal,

b Acts of human masturbation, sexual intercourse or sodomy, or

c Fondling or other erotic touchings of human genitals, pubic regions, buttocks or female breasts (1977, c 987, s 1, 1985, c 731, s 1)

Editor's Note. — Session Laws 1985, c 731 s 4 is a severability clause

Effect of Amendments. — The 1985 amendment, effective Oct 1, 1985, rewrote this section

Legal Periodicals. — For article, "Regulating Obscenity Through the Power to Define and Abate Nuisances," see 14 Wake Forest L Rev 1 (1978)

CASE NOTES

Purpose of Article. — This Article is aimed at prohibiting a "supermarket" marketing technique that offers for sale or exhibition at one business location a variety of sexual wares in addition to printed materials. Hart Book Stores, Inc. v Edmisten, 612 F 2d 821 (4th Cir 1979), cert. denied, 447 U.S. 929, 100 S. Ct. 3028, 65 L. Ed. 2d 1124 (1980)

The essential regulation implemented by this Article is of location. Hart Book Stores, Inc. v Edmisten, 612 F.2d 821 (4th Cir 1979), cert. denied, 447 U.S. 929, 100 S Ct. 3028, 65 L. Ed. 2d 1124 (1980)

Constitutionality. — No Equal Protection Violation. — This Article does not violate equal protection since the unequal treatment of commercial establishments involved in this Article is based most essentially on the different effects they are considered to have on their surroundings. Hart Book Stores, Inc v Edmisten, 612 F.2d 821 (4th Cir 1979), cert. denied, 447 U.S 929, 100 S Ct. 3028, 65 L Ed. 2d 1124 (1980)

Same — First Amendment Not Violated. — Under this Article the incidental restriction on First Amendment interests is no greater than is essential to furtherance of the state's interest. The means chosen by North Carolina in its effort to eliminate the undesired secondary effects of adult establishments is one of the least burdensome means the state could have chosen. Hart Book Stores, Inc. v Edmisten, 612 F.2d 821 (4th Cir 1979), cert. denied, 447 U.S 929, 100 S. Ct. 3028, 65 L. Ed. 2d 1124 (1980)

On its face this Article is a permissible regulation of the external costs of adult establishments that is unrelated to the overall suppression of any protected materials offered by them for public consumption. Hart Book Stores, Inc. v Edmisten, 612 F 2d 821 (4th Cir 1979), cert. denied, 447 U.S. 929, 100 S Ct. 3028, 65 L. Ed 2d 1124 (1980)

This Article is merely a regulation of the place and manner of expression, without proscription of that expression, of the type not forbidden by the First Amendment. Hart Book Stores, Inc. v Edmisten, 612 F.2d 821 (4th Cir 1979), cert. denied, 447 U.S 929, 100 S Ct. 3028, 65 L. Ed 2d 1124 (1980)

While the First Amendment sets