

Hearing Request Application - Form 1  
Zoning Board of Adjustment  
City of Charlotte

APR 27 2012  
Date Filed: April 27, 2012

Case Number: 12-017

Received by: Sonda Kennedy  
ZBA Clerk

Instructions

This form must be filed out completely. Please attach the appropriate additional form depending on your request type along with required information as outlined in the appropriate checklist. Please type or print legibly. All property owners must sign and consent to this application, attach additional sheets if necessary. If the applicant is not the owner, the owners must sign the Designation of Agent section at the bottom of this form.

The Applicant Hereby (check all that apply):

- ☒ Requests a variance from the provisions of the zoning ordinance as stated on Form 2  
☐ Appeals the determination of a zoning official as stated on Form 3  
☐ Requests an administrative deviation as stated on Form 4

Applicant or Agent's Name: Providence Day School, Inc. c/o John Carmichael

Mailing Address: 101 North Tryon Street, Suite 1900

City, State, Zip: Charlotte, N.C. 28246

Daytime Telephone: 704-377-8341 Home Telephone: \_\_\_\_\_

Interest in this Case (please circle one): Owner Adjacent Owner Other

Property Owner(s) [if other than applicant/agent]: Providence Day School, Inc. c/o Paul Ibsen

Mailing Address: 5800 Sardis Road

City, State, Zip: Charlotte, N.C. 28270-5365

Daytime Telephone: 704-887-6014 Home Telephone: \_\_\_\_\_

Property Address: 5800 Sardis Road, Charlotte, N.C. 28270-5365

Tax Parcel Number: 187-041-21 Zoning District: R-3

Subdivision Name: N/A Conditional District: YES NO

Applicant Certification and Designation of Agent

I (we) certify that the information in this application, the attached form(s) and documents submitted by me (us) as part of this application are true and correct. In the event any information given is found to be false, any decision rendered may be revoked at any time. I (we) hereby appoint the person named above as my (our) agent to represent me (us) in this application and all proceedings related to it. I (we) further certify to have received, read and acknowledged the information and requirements outlined in this packet.

A-27-12  
Date

PROVIDENCE DAY SCHOOL, INC.  
BY: [Signature]  
Property Owner

Date

Property Owner

**Variance Application - Form 2**  
Zoning Board of Adjustment  
City of Charlotte

Date Filed: April 27, 2012

Case Number: \_\_\_\_\_

Fee Collected: \_\_\_\_\_

Has work started on this project? YES ☐ NO ☒  
 If yes, Did you obtain a building permit? YES ☐ NO ☒ If yes, attach a copy.  
 Have you received a Notice of Violation for this project? YES ☒ NO ☐ If yes, attach a copy.  
 Has this property been rezoned? YES ☐ NO ☒ If yes, Petition Number: \_\_\_\_\_

(1) What zoning ordinance section numbers are you seeking a variance from? Please list each section, the requirement and the requested variance.

Item	Code Section	Code Requirement	Variance Request
<i>Example</i>	9.205(1)(g)	45 foot rear yard	35 foot rear yard (10 foot reduction from required)
A	12.302	75 foot Class B Buffer	To allow the width of the required 56 foot, 3 inch
B			buffer (reduced to 56 feet, 3 inches by a fence) to be
C			reduced to 22 feet, 4 inches.
D			
E			

(2) Please describe why the variances requested are necessary.

Providence Day School ("Providence") is an independent, coeducational school located on an approximately 43.5 acre campus on Sardis Road in southeast Charlotte. Founded in 1970, Providence has a current enrollment of approximately 1,500 students in grades TK through 12 <sup>th</sup> . Providence offers a variety of extracurricular activities to its students, ranging from athletics to the performing arts. Providence's campus is zoned R-3. Providence is requesting a variance to allow a reduction in the width of the Class B buffer required to be established between its tennis courts located on the site and that adjacent parcel of land designated as Tax Parcel No. 187-041-24. Specifically, Providence seeks to reduce the width of the required buffer to 22 feet, 4 inches as seen on Exhibit B attached hereto so that it will lose only 1 tennis court rather than up to 3 courts as a result of the buffer.
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(3) THERE ARE PRACTICAL DIFFICULTIES OR UNNECESSARY HARDSHIPS IN THE WAY OF CARRYING OUT THE STRICT LETTER OF THE ORDINANCE. The courts have developed three rules to determine whether, in a particular situation, "practical difficulties or unnecessary hardships" exist. State facts and arguments in support of each of the following:

(a) If the property owner/applicant complies with the provisions of the Ordinance, the property owner can secure no reasonable return from, or make no reasonable use of his property. (It is not sufficient that failure to grant the variance simply makes the property less valuable.)

Attached hereto as Exhibit A and incorporated herein by reference is a plan that depicts the tennis courts and the adjacent parcel of land designated as Tax Parcel No. 187-041-24. As seen from Exhibit A, portions of four tennis courts are located in the required buffer between Tax Parcel No. 187-041-24 and the tennis courts. The tennis courts initially complied with the buffer requirements when they were installed in 2001, but a subsequent conveyance of property from Providence to the owner of Tax Parcel No. 187-041-24 has brought the tennis courts into non-compliance with the buffer requirements of the Ordinance. Background information on this transaction and other transactions between these property owners will be provided at the hearing. If Providence is required to comply with the buffer requirements, it will need to reconfigure the tennis courts and will lose up to 3 tennis courts.
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(b) The hardship of which the Applicant complains results from unique circumstances related to the Applicant's land. (Note: Hardships common to an entire neighborhood, resulting from overly restrictive zoning regulations, should be referred to the Charlotte-Mecklenburg Planning Department. Also, unique personal or family hardships are irrelevant since a variance, if granted, runs with the life of the land.)

The hardship of which Providence complains results from the size of its campus and the lack of area for its athletic facilities. The provision of athletic facilities is challenging on a growing campus located in the heart of the city.
The athletic opportunities provided by Providence are a vital part of its students' educational experience and contribute to the health and well being of its students.

(c) The hardship is not the result of the Applicant's own actions.

The hardship is the result of the size of Providence's campus and the challenges associated with locating athletic facilities on a growing campus in the heart of the city, and the result of the buffer requirements of the Ordinance.

(4) THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ORDINANCE AND PRESERVES ITS SPIRIT. (State facts and arguments to show that the requested variance represents the least possible deviation from the letter of the Ordinance to allow a reasonable use of the land; and, that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood.)

The variance requested is the least possible deviation from the Ordinance to allow the requested reduction in the Class B buffer on the site and to cause Providence to lose only 1 tennis court as opposed to possibly 3 tennis courts. If the variance is granted, it will not detract from the character of the adjacent home or the character of the neighborhood. A wooden fence has been installed between the tennis courts and Tax Parcel No. 187-041-24 that provides screening. Additionally, the tennis courts have been in place for approximately 11 years and have not adversely impacted the adjacent parcel or the surrounding area. Therefore, the granting of the requested variance will not substantially detract from the character of the adjacent single family home or the neighborhood.

(5) THE GRANTING OF THE VARIANCE SECURES THE PUBLIC SAFETY AND WELFARE AND DOES SUBSTANTIAL JUSTICE. (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the Applicant.)

If the variance is denied, Providence will be harmed without any meaningful benefit to the adjoining property owner or to the public. As noted above, Providence will be required to remove up to 3 tennis courts if the variance is denied, which will cause harm to Providence. There will be no corresponding benefit to the adjoining property owner or to the neighborhood, as a screening fence is located between the tennis courts and the adjoining parcel of land, and the tennis courts have been on the site for approximately 11 years and have not adversely impacted the neighborhood. Therefore, the granting of the variance will result in substantial justice.





Code Enforcement Division  
Southeast Service Area  
700 Parkwood Avenue  
Charlotte NC 28205



8/16/2011

PROVIDENCE DAY SCHOOL INC  
5800 SARDIS RD  
CHARLOTTE NC 28270

### ZONING NOTICE OF VIOLATION

Case Number: Z20110034736 Document # 1304

Property Address: 432 GLEN OAKS RD CHARLOTTE NC 28270 Zoning Classification: R-3  
Tax Parcel No.: 18704121 Compliance Date: 8/29/2011

#### Violation Summary:

TENNIS COURTS BUILT IN REQUIRED BUFFER. MUST BE REMOVED TO AVOID MONATARY CITATIONS.

IMMEDIATELY CORRECT THE VIOLATION. If the violation is not corrected and there is no appeal to the Zoning Board of Adjustment, the Division reserves the right to exercise any one of the following REMEDIES: REVOCATION OF A CERTIFICATION OF OCCUPANCY making continued occupancy unlawful, issuing a CITATION, if unpaid and a judgment could become a LIEN on the property, seeking of an INJUNCTION, or the issuance of a CRIMINAL SUMMONS.

The Zoning Board of Adjustment is empowered to rule on the interpretation of the Zoning Ordinance and to grant variances when a difficulty or hardship exists. Appeals will not be heard by the Board unless application is properly filed in the Zoning Administrator's office within thirty (30) days of the date of this Notice of Violation. Once the deadline has passed, your right of appeal is forfeited. Forms are available in this office and online at [http://www.charmeck.org/Planning/Fees\\_Applications/ZoningAdministrationApplicationPacket.doc](http://www.charmeck.org/Planning/Fees_Applications/ZoningAdministrationApplicationPacket.doc).

If you have any questions as to what is required by this Notice, please contact me at the number below.

GEORGE LEE  
Zoning Code Inspector  
(704)336-5260  
glee@cl.charlotte.nc.us

#### Violations

##### Z-No Required Permit

#### 4.103. Certificate of occupancy required.

(1) It is illegal for any person to occupy or use any land, building, or structure or change the use of any land, building, or structure, except for land used for agricultural purposes, without first obtaining a certificate of occupancy.

(Petition No. 2006-116 §4.103(1), 01/16/07)

(2) A certificate of occupancy shall not be issued unless it has been determined that the site, parcel, building or structure is in compliance with all applicable provisions of these regulations, or an instrument, acceptable to the City, to guarantee conformance with these regulations.

(Petition No. 2006-116 §4.103(2), 01/16/07)

#### Section 4.104. Zoning review.

Professional Staff identified in Part 5 of Chapter 3 shall conduct reviews and make approvals of zoning compliance under all applicable provisions of these regulations. Professional Staff is authorized to withhold approval for the issuance of, suspend, or revoke a building permit or a certificate of occupancy if it is determined that a project, structure, site or lot is not in compliance with applicable provisions of this ordinance.

(Petition No. 2005-78 §4.104, 06/20/05), (Petition No. 2006-116 §4.104, 01/16/07)

#### 4.105. Public notification process for institutional uses locating adjacent to, or abutting single family residential zoning districts (R-3, R-4, R-5, R-6, and R-8). (Petition No. 2008-061, §4.105, 04/21/08)

##### (1) Purpose

Institutional uses, because of their nature or scale, may have some impacts on adjacent and abutting property owners. While these uses may be permitted under prescribed conditions, property owners shall receive a courtesy notification when a change of use permit or a commercial building permit has been issued for a structure previously used as a residence so that they may be aware of upcoming land use changes.

##### (2) Notification process

(a) The Zoning Administrator, individually, or by and through his or her authorized designees in Engineering and Property Management, shall mail a notice to adjacent and abutting property owners, as shown on the current City tax abstracts, including those across a street. Such notice shall provide the applicant's name and information on the type of institutional use for which the permit was issued. The courtesy notice shall be mailed within 10 working days from the time that the Engineering and Property Management staff issues a change of use permit or a building permit. (Note: this is a courtesy notification of a permit being issued; not an opportunity for public input).

#### 12.305

12.305. Maintenance responsibility for buffers and screening. In order for any buffers or screening to fulfill the purpose for which it was established it must be properly maintained. The owner of the property where buffers or screening is required will be responsible for the maintenance of all buffers and screening materials. Any required plant materials such as shrubs and trees, which may die, must be replaced in compliance with the minimum standards of this Section and fences or walls should be repaired. All buffers, screening and landscaping areas must be protected from damage by motor vehicles or pedestrians, which could reduce the effectiveness of the screening.

Attachments:

Section 8.105. Citations. (1) The zoning administrator, individually, or by and through his or her authorized designees, including the professional staff identified in part 5, chapter 3, is authorized to issue citations to any person if there is a reasonable cause to believe that the person has violated any provision of these regulations. A violator shall be deemed to be the owner of the premises, the agent of the owner authorized to be responsible for the premises, or the occupant of the premises. Citations may be directly issued to the occupant, lessee, or person having immediate beneficial use of the property. The non-occupant owner or agent responsible for the premises each has a duty to maintain the premises in compliance with these regulations. A citation shall not be issued to a non-occupant owner, agent or occupant for those premises unless there has been written notice delivered to the owner, agent, or occupant, or mailed to the last known mailing address as shown by public records, or by making other reasonable efforts to communicate the existence of the violation to the owner, agent, or occupant. (2) The initial citation for each violation shall be fifty dollars (\$50.00). The issuance of a second citation for any violation that has not been corrected shall be in an amount up to two hundred dollars (\$200.00) upon the day of issuance, up to five hundred dollars (\$500.00) for the third citation, and up to five hundred dollars (\$500.00) thereafter. Any unpaid citations and delinquency charges shall be cumulative and shall subject the violator to a possible civil penalty to be recovered in a civil action in the nature of debt. The citations may be delivered in person to the violator or, if the violator cannot be readily found, then the citation may be mailed. (3) The citation shall direct the violator to make payment to neighborhood development within fifteen (15) days of the date of the citation, or alternatively pay the citation by mail. If the violator does not make such payment or does not mail the citation and payment within fifteen (15) days of the issuance, a delinquency charge of ten dollars (\$10.00) shall be added to the amount shown on the citation. The citation shall inform the violator that a civil complaint or criminal summons may be filed if the citation and delinquency charge is not paid within fifteen (15) days from the date of delinquency. Further, the citation shall state that the violation is a continuing violation and additional citations may be issued with escalating amounts for a continuing violation.

Section 8.106. Civil judicial remedies. (1) If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of these regulations or other regulation made under authority conferred thereby, the city, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or land, or to prevent any illegal act, conduct, business or use in or about the premises. The General Court of Justice shall have jurisdiction to issue such orders as may be appropriate. (2) If the zoning ordinance makes unlawful a condition existing upon or use made of real property, then the zoning ordinance may be enforced by injunction and order of abatement and the General Court of Justice shall have jurisdiction to issue such orders. When a violation of such an ordinance occurs the City may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. (3) In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished, or removed or that any other action be taken that is necessary to bring the property into compliance with the ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the city may execute the order of abatement. The city shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and material man's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

Section 13.113. Enforcement. (1) Inspections and Investigations. (a) Neighborhood development will periodically inspect signs in order to determine whether there are any violations of this ordinance. (b) Neighborhood development shall have the power to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in these regulations, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting signs. No person shall refuse entry or access to any authorized representative of neighborhood development or engineering and property management who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such representative while in the process of carrying out his official duties. (c) Neighborhood development may require written statements, or the filing of reports with respect to pertinent questions relating to signs. (2) Citations. If, through inspection, it is determined that a person has failed to comply with the provisions of these regulations, neighborhood development shall issue a warning citation to the violator. Violations shall be corrected within ten (10) days of the issuance of such citation. If the violation is not corrected within the specified time period, the violator is subject to section 8.105, 'Citations', of this ordinance, which is incorporated by reference herein as if fully stated. (3) Other enforcement methods. In addition to the civil penalties, the provisions of these regulations may be enforced by one or more of the methods described in Chapter 8 of the Zoning Ordinance.



City of Charlotte Zoning Office  
700 N. Tryon Street, Charlotte, NC 28202

