


Charlotte Department of Transportation

Memorandum

Date: November 27, 2015

To: Tammie Keplinger
Charlotte-Mecklenburg Planning Department

From: Michael A. Davis, PE 
Development Services Division

Subject: Rezoning Petition 15-101: Approximately 371 acres located on the northwest corner at the intersection of Rocky River Church Road and Albemarle Road. (*Revised Nov. 13, 2015*)

CDOT has previously commented on the subject petition in our memorandum to you dated September 24th, 2015.

Vehicle Trip Generation

This site could generate approximately 12,075 trips per day as currently zoned. Under the proposed zoning the site could generate approximately 17,560 trips per day.

In a meeting held previous to the submittal of the rezoning petition it was determined the developer submit a Traffic Impact Study (TIS) in order to evaluate the effect that site generated traffic will have on the thoroughfare system in the vicinity. Additional comments and any required transportation improvements will follow our review of the Traffic Impact Study.

CDOT requires the following changes to the rezoning plan:

1. CDOT requests the petitioner to revise the statement II-C Right of Way Availability to match the City's "Offsite Right-of-Way Acquisition Process for Public Infrastructure". The current statement does not align with the policy (see attached):
2. CDOT requests the petitioner dedicated right-of-way in fee simple to the appropriate governmental agency along the following thoroughfares as identified on the Charlotte Regional Transportation Planning Organization's (CRTPO) Thoroughfare Plan:
 - a. Albemarle Rd. is designated as a major Class III C – Commercial Aerial; please contact NCDOT regarding their future right-of-way needs along the site's Albemarle Rd.'s frontage.
 - b. Rocky River Rd. is designated as a minor thoroughfare needing a total of 70' right-of-way, therefore 35 feet of right-of-way is needed as measured from Rocky River's existing right-of-way centerline.
 - c. Camp Stewart Road is designated as a minor thoroughfare needing a total of 70' right-of-way; therefore 35 feet of right-of-way is needed as measured for Camp Stewart's Rocky River's existing centerline.

3. CDOT is still in the review process of the TIA. Further comments and road improvements will be forthcoming once CDOT and petitioner come to terms on the finalized TIS.

The following are requirements of the developer that must be satisfied prior to driveway permit approval. We recommend that the petitioner reflect these on the rezoning plan as-appropriate.

1. According to the City of Charlotte's Driveway Regulations, CDOT has the authority to regulate/approve all private street/driveway and public street connections to the right-of-way of a street under the regulatory jurisdiction of the City of Charlotte. CDOT has determined that a left-turn lane is necessary to serve the traffic using the proposed public street/private driveway connection(s) for this site. The engineering design and construction of the left-turn lane is the responsibility of the owner, and shall be performed by a professional engineer registered in the State of North Carolina who has roadway-design experience. CDOT will only approve the proposed public street/private driveway connection(s) provided that a left-turn lane improvements are constructed at the following intersections:
 - a. Albemarle Rd. and N/S Collector Rd.
 - b. Albemarle Rd. and Site Drive 1
 - c. Rocky River Rd. and Woodland Farm Drive
 - d. Camp Stewart Rd. and Old Iron Lane

We recommend the rezoning plan reflect the design of this required left-turn lane prior to submittal/approval of the public street/private driveway connection(s). The left-turn lane needs to be designed using NCDOT standards with a minimum 150 feet of storage. This roadway improvement is required to meet the traffic demands of the proposed development.

2. Adequate sight triangles must be reserved at the existing/proposed street entrance(s). Two 35' x 35' and two 10' x 70' sight triangles are required for the entrance(s) to meet requirements. All proposed trees, berms, walls, fences, and/or identification signs must not interfere with sight distance at the entrance(s). Such items should be identified on the site plan.
3. The proposed driveway connection(s) to Albemarle Rd., Rocky River Rd. and Camp Stewart Rd. will require a driveway permit to be submitted to CDOT and the North Carolina Department of Transportation for review and approval. The exact driveway location(s) and type/width of the driveway(s) will be determined by CDOT during the driveway permit process. The locations of the driveway(s) 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.
4. All proposed commercial driveway connections to a future public street will require a driveway permit to be submitted to CDOT for review and approval.
5. Any fence or wall constructed along or adjacent to any sidewalk or street right-of-way requires a certificate issued by CDOT.

6. 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. 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.

We understand that NCDOT is also requiring a TIS as a condition of their driveway permit approval. We anticipate that NCDOT's review of the TIS will occur after the City's Rezoning Process, and any TIS comments from CDOT for this petition will not include NCDOT's response to the subject TIS. The developer/petitioner is recommended to meet with NCDOT early in the development process to identify any issues that they may have. Additional CDOT/NCDOT comments and any required transportation improvements will follow our review of the Traffic Impact Study.

If we can be of further assistance, please advise.

R. Grochoske

cc: S. Correll
Wendy Taylor, NCDOT (via email)
Sean Epperson, NCDOT (via email)
Rezoning File

Offsite “Right-of-Way” Acquisition Process Overview for Public Infrastructure Associated with Private Development Projects

On occasion, public infrastructure improvements associated with private development projects, and funded privately, may require additional right-of-way or other property interests from nearby property owners not affiliated with the private development. Developers are expected to make good faith attempts, including fair market purchase offer(s), to independently acquire the necessary property interests. If a Developer is unable to reach a settlement with a property owner, the City may provide acquisition services related to the public infrastructure improvements. The Developer will remain responsible for all costs related to acquiring the property interests, even if the City agrees to provide acquisition services.

When the City agrees to provide property acquisition services to a Developer, the City must follow certain legal guidelines for such acquisitions to insure that the rights of the private property owners are protected. It is important for every property owner involved to be fully advised of how a project affects their property, their legal rights, and any alternatives available to them. Consequently, once the Developer formally enters into an agreement with the City to provide acquisition services, the City assumes all decision making authority related to negotiations with the property owner, settlement amounts, timeframe for completing the acquisition, and when a condemnation action may be necessary. Please note that although condemnation is an option available to the City, it is a severe remedy for a failed negotiation. A condemnation action will not be considered until all reasonable alternatives for reaching a voluntary settlement with the property owner have been exhausted. The Developer should refrain from making any reference to potential condemnation actions in any communications held with the property owner.

The following procedure may be used when a Developer requires the assistance of the City to obtain offsite property interests related to City-mandated public infrastructure improvements (examples include public street widening for turn lanes into the development, intersection improvements, utility lines, etc.).

PROCEDURE

- 1) The Developer must obtain construction plan approval for the required improvements from all regulatory agencies.
- 2) If after a good faith effort, the Developer is unable to independently acquire the property interests needed for the required public infrastructure improvements, the Developer shall contact the Plan Review Engineer within the Land Development Division of E&PM (or Charlotte-Mecklenburg Utilities contact person for CMU related infrastructure improvements) to initiate City assistance with acquisition of necessary property interests. The Developer is responsible for providing the following information to the Plan Review Engineer:

- a) Two full size and two half-size sets of the approved construction plans. Plan sets shall bear the approval stamps of the City of Charlotte and the NCDOT, if applicable.
 - b) One original and three copies of PLS sealed acquisition plat for each parcel from which property interests are to be acquired.
 - c) Copy of negotiating diary and correspondence for each parcel, including purchase offers and rejections, and documentation of any concerns/objections raised by the property owner.
 - d) Listing of all parcels, for which property acquisition has not been completed, including tax parcel number, the current owner(s) name(s), site address, owner mailing address, and owner(s) phone number(s).
 - e) One copy of acquisition documents for any parcel(s) for which the Developer has independently completed acquisition of property interests related to the required public infrastructure improvements.
- 3) Upon receipt of the required information from the Developer, the Land Development Plan Review Engineer will complete the following tasks:
- a) Review and verify approved plans are current.
 - b) Check acquisition plat(s) for general agreement with the approved construction plans and for conformance with plat standards of City.
 - c) Review negotiating diary and other documentation provided by the Developer to confirm “good faith effort” on behalf of the Developer to independently obtain necessary property interests.
 - d) Obtain written documentation from the appropriate City agency that the infrastructure improvements are for public good and that the agency will support City assistance in obtaining necessary property interests to construct the required public infrastructure up to and including condemnation, if deemed necessary by City Real Estate staff.
 - e) Prepare right-of-way acquisition bond estimate.
- 4) If information received from Developer is in order, the Land Development Plan Review Engineer will arrange a meeting involving the Developer, staff from City Land Development, Real Estate, and any other City agencies associated with the required public infrastructure improvements. The purpose of the meeting is to review project specific details and allow the Developer an opportunity to ask detailed questions regarding the City’s acquisition process.
- 5) Developer shall submit the Right-of-Way Acquisition Bond, in the amount calculated by the Plan Review Engineer, to the Bond Administrator in the Land Development Division. At this point in the process, the surety may be in the form of a bond, letter of credit, or cash. However, if a condemnation action becomes necessary, then the surety must be in the form of a letter of credit or cash (see Step-10 of this process overview).
- 6) Upon notification of receipt of Right-of-Way Acquisition Bond by the Bond Administrator, the Plan Review Engineer will prepare a Request for Real Estate Services and forward it to the Real Estate Division contact person along with documentation collected in Steps 2 & 3 above.

- 7) The assigned Agent from the Real Estate Division will contact Developer, execute the Real Property Acquisition Services Agreement between City and Developer, and obtain a check from the Developer, payable to City of Charlotte in the amount of \$7,500 per parcel (amount subject to change), to cover the costs of administrative expenses incurred by the City (e.g., appraisals, abstracts, closing fees, filing fees, etc.) related to the acquisitions.
 - 8) City Real Estate Division will assume full control over negotiations, schedule, settlement amount and terms of the property acquisition. Developer will remain responsible for all costs associated with the acquisition.
 - 9) City Real Estate Agent will commence standard procedures for negotiation of property acquisition. Such efforts will continue until the Agent completes the assignment and submits documentation for City Council approval.
 - 10) Prior to submission of the parcel(s) to City Council, the Agent will contact the Developer and request a check totaling the amount of the property values for each parcel to be acquired as well as any other costs incurred above the original deposit amount. If the City determines that condemnation is required to obtain the necessary property interests, then the Developer must update the previously posted Right-of-Way Acquisition Bond to an amount equal to five times the appraised value of property to be acquired through condemnation. In addition to updating the surety amount, the updated surety must be in the form of a letter of credit or cash, such that the City could access the funds within the time period specified by the Court or other formal mediation agreement. The surety will be held until appropriate written authorization for surety release is received by the City's Bond Administrator. For acquisitions not involving a condemnation action, the City's Real Estate Agent may authorize release of the surety. For acquisitions requiring condemnation, the surety will not be released until the case is fully settled and the City Attorney authorizes release of the surety.
 - 11) Upon Council approval of the condemnation action, if such action is necessary, the City Attorney assumes full control of the acquisition process. The City Attorney will file the condemnation with the Clerk of Court. Following this filing, the Developer will be notified when construction can proceed. The mediation, negotiation, and trial process to determine appropriate compensation for the property rights obtained through condemnation can take several years to resolve. The Developer is responsible for any and all amounts by way of judgment or settlement, cost of litigation, expert witnesses, etc., over and above the funds deposited and/or bond amounts as specified in the Real Property Acquisition Services Agreement.
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