



MECKLENBURG COUNTY
Land Use and Environmental Services Agency
Water & Land Resources
Zoning Division

CERTIFIED MAIL

Andrew Fastanas
5741 N. Graham Street
Charlotte, NC 28269

RE: APPEAL FROM AN INTERPRETATION
5741 N. GRAHAM STREET
CASE NUMBER 05-047

Dear Andrew Fastanas:

At its meeting on April 26, 2005, the City of Charlotte Zoning Board of Adjustment ("Board") **upheld** the Zoning Administrator's decision that the business located at 5741 N. Graham Street is a bar/nightclub.

The Board based its decision on the following findings of fact:

1. Louis G. Ratcliffe Inc., owns tax parcel code ("parcel") 045-112-02, which is located at 5741 N. Graham Street. The parcel is zoned B-2.
2. Applicant testified that there is dual use of the property as a restaurant and as a bar/nightclub.
3. The Zoning Administrator determined that the primary use of the property is a bar/nightclub.
4. Criteria the Zoning Administrator used to determine that the use was not primarily a restaurant was: 1) there were more than 9 bar stools; 2) meals were not served twice daily; and 3) there were a low percentage of food sales versus other sales at the bar.
5. Zoning Staff testified that the photographs presented as exhibits established several characteristics of a nightclub/bar/lounge use, such as: a door charge (cover charge), dance floor, pool table, electrical equipment (DJ booth and equipment), and the hours of operation.
6. A petition submitted by a neighboring church was in opposition to the appeal.

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7. The Zoning Ordinance specifies that in the event of a conflict in zoning provisions, the more stringent code restrictions apply.

Based upon the above findings of fact, the Board concludes that the applicant has failed to meet the requirements of §5.109(1) of the Ordinance, and more specifically makes the following conclusions of law:

1. The spirit of the Ordinance would not be observed, because granting the variance would have the effect of amending the Zoning Ordinance.
2. The decision of the Zoning Administrator that the property at 5741 N. Graham Street is operating as a nightclub, bar or lounge is upheld.

Pursuant to N.C.G.S. Section 160A-388(e), the Board's decision in Case no. 05-047 may be appealed by a petition for review in the nature of *certiorari* to Superior Court within thirty (30) days from the date stated below, which is the date when the decision of the Board was filed in the Land Use and Environmental Services Agency/Zoning Division, or within thirty (30) days after receipt of the decision by an aggrieved party who filed a written request for such copy with the Staff Assistant to the Board at the time of the hearing of the case, whichever is later.

Sincerely,



Thomas Mussoni
Chairperson

cc: David Radcliffe
Jose Morales
Cary Saul, Director of LUESA
Katrina J. Young, Interim Zoning Administrator
Mia Carter, Zoning Inspector
Keith MacVean, Planning Commission

DECISION FILED IN THE LAND USE & ENVIRONMENTAL SERVICES AGENCY:

July 7, 2005
Date

Katrina J. Young
Katrina J. Young, Interim Zoning Administrator