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KEVIN W. TYDINGS *
BENJAMIN R. HARDWICK

* ALSO ADMITTED IN VIRGINIA

January 20, 2006

OF COUNSEL

JOHN H. HASTY
JAMES D. MONTEITH
WILLIAM J. WAGGONER
S. DEAN HAMRICK
KIMBERLY R. MATTHEWS

RETIRED:
JOHN S. STATON

HAND DELIVERED

Ms. Lovely G. Bell
Clerk to ZBA
600 East Fourth St.
8th. Floor
Charlotte, NC 28202

Re: In re Appeal of Daniel Fisher d/b/a Bellaterra, LLC
Case # 06-001

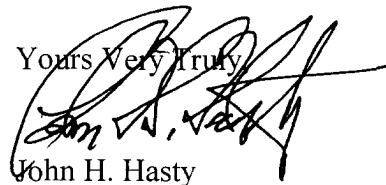
Dear Ms. Bell:

Please note that I will be representing Mr. Fisher in the above captioned appeal which is scheduled for hearing at 12:30 PM on Tuesday January 31, 2006 at the government center. Please note my appearance on the file and materials which may be furnished to the Board.

I also enclose Supplemental Documents to the appeal which I would ask that you attach to the appeal documents previously filed by Mr. Robert Brandon so that they are available to the Board with their normal package of materials.

If there is any change in the scheduling of the hearing please let me know. My cell phone is 704/577-0157 in the event that I am not in my office at the time you call. Otherwise, I, my client, and witnesses will be at the Innovation Station Meeting Room at the time appointed on your notice of January 10, 2006.

Yours Very Truly



John H. Hasty

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

Before the Charlotte Zoning Board
of Adjustment

Case # 06 - 001

In re Appeal of Daniel Fisher d/b/a]
Bellaterra, LLC]

SUPPLEMENTAL DOCUMENTS TO APPEAL APPLICATION

Now comes Daniel Fisher d/b/a Bellaterra, LLC by and through his attorney and counsel and submits the following documents in support of his appeal of the above matter to the Charlotte Zoning Board of Adjustment:

1. Letter dated February 1, 2005 from W. Leon Davis, attorney, to Ms. Linda Beverly, the Charlotte Mecklenburg Planning Commission Subdivision Administrator, enclosing a letter dated January 26, 2005 from Mr. Daniel Fisher d/b/a Bellaterra, LLC inquiring as to whether the City of Charlotte Subdivision Ordinance was applicable to various three (3) lot divisions of properties which also contain a Tree Save Area under § 21.93(f) of the Ordinance.
2. Letter dated February 16, 2005 from Ms. Beverly opining that a Tree Save Area qualifying under § 21.93(f) of the Ordinance is a “lot” as defined under § 2.201 of the Ordinance and therefore a division of property containing three (3) development lots and a Tree Save Area would be a subdivision of more than three lots and subject to the Subdivision Ordinance.

Note that this letter recognizes that only the Zoning Administrator has the authority to issue opinions and interpretations as to the applicability of the

zoning regulations defining a “lot”, and forwards a copy to the Interim Zoning Administrator with instruction that a meeting with Ms. Young should be arranged for an interpretation as to the definition of a “lot” under the Ordinance.

3. E-Mail correspondence to Ms. Young from Mr. Fisher confirming their meeting on October 11, 2205 containing the specific request for the Zoning Administrator’s interpretation of the Ordinance with respect to whether a proposed Tree Save Area located at 10016 Lawing School Road would, in her opinion, be classified as a “lot” under the Ordinance. As explained to Ms. Young, the Tree Save Area is a naturally heavily wooded area which will not be sold as a lot or parcel, will be permanently dedicated and restricted to tree save purposes, and cannot be developed for building of any type.

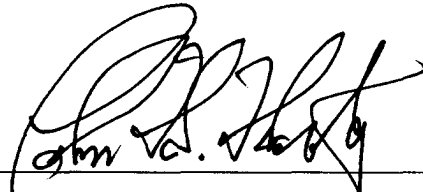
4. E-Mail correspondence from Ms. Young to Mr. Fisher dated October 19, 2005, enclosing a copy of Ms. Beverly’s letter of February 16, 2005 stating that the issue had been addressed by Ms. Young; and Mr. Fisher’s E-Mail inquiring of Ms. Young if she concurred with Ms. Young’s interpretation of the Ordinance.

5. E-Mail correspondence from Ms. Young, interim Zoning Administrator, dated October 19, 2005, stating that she concurred with Ms. Beverly’s letter of February 16, 2005.

6. As testimony will show, thereafter on November 8, 2005, Ms. Young issued her interpretation of the Ordinance that the proposed Tree Save Area at 10016 Lawing School Road would be a “lot” under the Ordinance and therefore counted as a lot when determining the applicability of the subdivision ordinance.

7. It is from this interpretation and ruling by the interim Zoning Administrator that this appeal was taken.

This the 20 day of January, 2006

A handwritten signature in black ink, appearing to read "John H. Hasty", written over a horizontal line.

John H. Hasty, NC Bar # 1958
Attorney for Daniel Fisher, d/b/a
Bellaterra 719 East Boulevard,
Charlotte, NC 28203
704/372-5600 Fax 704/372-4601

W. LEON DAVIS, P.C.
A LAW CORPORATION

5442 KERRY GLEN LANE
CHARLOTTE, NORTH CAROLINA 28226
Telephone 704-567-1089
Facsimile 704-541-4758

February 1, 2005

Ms. Linda Beverly
Charlotte Mecklenburg Planning Commission
Hal Marshall Building
700 N. Tryon Street
Charlotte, NC 28202-2222

Re: Attached

Dear Ms. Beverly:

Please review the attached letters and contact this firm or Bellaterra, LLC with your thoughts on resolving the application issues raised in Bellaterra's letter to this firm. Obviously, this matter presents some urgency by my client. Perhaps an early meeting by you and my client can facilitate Bellaterra's proceeding expeditiously with the business of both saving trees and developing exempt subdivisions.

Please feel free to communicate directly with Mr. Fisher since these matters do not appear to be legal issues.

Sincerely,



W. Leon Davis

WLD/ad

Cc: Mr. Daniel H. Fisher, Manager
Bellaterra, LLC

Bellaterra, LLC

January 26, 2005

W. Leon Davis, PC
5442 Kerry Glen Lane
Charlotte, NC 28226

Re: Tree preservation and exempt subdivisions in Charlotte, NC

Mr. Davis:

Bellaterra is interested in establishing tree preserves on tracts of land that it owns or plans to acquire in Mecklenburg County and the City of Charlotte. Your opinion is needed regarding the Codes of the City of Charlotte and of Mecklenburg County ("Codes"), specifically, how the Tree Ordinance §21 affects exempt subdivisions.

Landscape architecture is a profession that has as a core value the stewardship of the earth and responsible management and use of natural resources. This Landscape Architect applauds the City's establishment of incentives to preserve trees in Charlotte through the adoption of the Tree Ordinance last year. Bellaterra has made the preservation of trees and natural forests an integral part of its business plan. The provisions of the Charlotte Tree Ordinance should enable Bellaterra to establish permanent common open space tree preserves throughout Charlotte and Mecklenburg County as part of exempt subdivisions.

So that Bellaterra can proceed with certainty, please advise if the following is a correct interpretation of the provisions of the Tree Ordinance, Subdivision Ordinance and other sections of the Codes.

1. Under the Subdivision Ordinance §20 of the Codes and NCGS §153A-335, "the division of a tract in single ownership, whose entire area is no greater than two acres, into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the appropriate zoning classification" is not included in the definition of a subdivision, is not subject to the requirements of the Subdivision Ordinance, and as such is an exempt subdivision.
2. The Codes establish "standards of the appropriate zoning classifications" for exempt subdivisions as follows:

Zoning District	R-3	R-4	R-5	R-6	R-8	R-*MF
Acres required for three lot subdivision	1.000	0.750	0.600	0.500	0.375	0.310
Minimum Lot Area	12,000	9,000	6,000	4,500	4,500	4,500
Minimum Street Frontage	210	180	150	120	120	120

* in zoning districts allowing for 12 or more du/ac, the minimum acreage equals the minimum area of three lots.
3. The Codes §2.201 define a "lot" as "a parcel of land or any combination of several parcels of land occupied or intended to be occupied by a principal use or structure, together with any accessory structures or uses and such accessways, parking areas, yards, and open spaces required in these regulations".
4. A permanent tree save area in common open space should not be considered as a "lot" according to the above definition. Therefore, a division of a two acre or smaller tract into three lots plus a permanent tree save area in common open space, where no street right-of-way dedication is involved and where the three lots are equal to or exceed the lot size standards, should be determined to be an exempt subdivision.

10801 BACK RIDGE RD.
CHARLOTTE, NC 28277
704-617-3544

Bellaterra, LLC

5. Tracts with over 10% preserved as tree save area in common open space qualify for cluster provisions for that zoning category and a density bonus equal to the tree save area. (§ 21.93(f))
6. The below chart correctly calculates: a) minimum tract size that can be divided into two and three lots, b) minimum lot area and frontage under the cluster provisions, and c) minimum common open space tree save area associated with each exempt subdivision. Calculations will be consistent for each zoning district where the density for that zoning district and the minimum cluster lot area and frontage are used.

Exempt subdivision (Three Lots)	Calculation	R4	12du/ac
Min. Tree Save to qualify for a One Lot Bonus (s.f.)	$43,560 \div \text{zoning district density}$	10,890	3,630
Min. Cluster Lot Area (s.f.)	$\$ 9.205(5)$	6,000	3,500
Minimum Area for Three Cluster Lots (s.f.)	Min. Cluster Lot Area x 3 Lots	18,000	10,500
Total Tract Area (s.f.)	Min. Tree Save+(Min. Cluster Lot Area x 3)	28,890	14,130
Tract Acreage	Total Tract Area \div 43,560	0.663	0.324
Minimum Frontage for Three Cluster Lots	Cluster Lot Frontage [per $\$ 9.205(5)$] x 3 Lots	150	120
Exempt subdivision (Two Lots)	Calculation	R4	12du/ac
Minimum Tract Acreage	Use the greater of: a) $43,560 \div \text{allowed dwelling units} \times 2$, or b) Min. Tree Save+(Min. Cluster Lot Area x 2)	0.500	0.179
Total Tract Area (s.f.)	Tree Save Area + Cluster Lot Area	21,780	7,779
Min. Tree Save to qualify for cluster provisions (s.f.)	Total Tract Area x 10.01%	2,189	779 ¹
Min. Cluster Lot Area (s.f.)	$\$ 9.205(5)$	6,000	3,500
Available Area for Cluster Lots (s.f.) ²	Use the greater of: a) Min. Cluster Lot Area x 2, or b) Total Tract Area – Tree Save Area	19,591	7,000
Minimum Cluster Lot Frontage	Cluster Lot Frontage [per $\$ 9.205(5)$] x 2 Lots	100	80

Notes:

1. tree save area must be at least 20 ft. wide, so a rectangular tract with 80 ft. frontage would likely have 1,600 s.f. min tree save.
2. Area in excess of the area of (minimum cluster lot area x 2 lots) may be used in lots or added to tree save area.

7. All of the attached examples of labeled A. through N., some of which use cluster provisions as allowed by the incentives described in the Tree Ordinance section of the Codes, are exempt subdivisions and not subject to the requirements of the Subdivision Ordinance sections of the Codes.

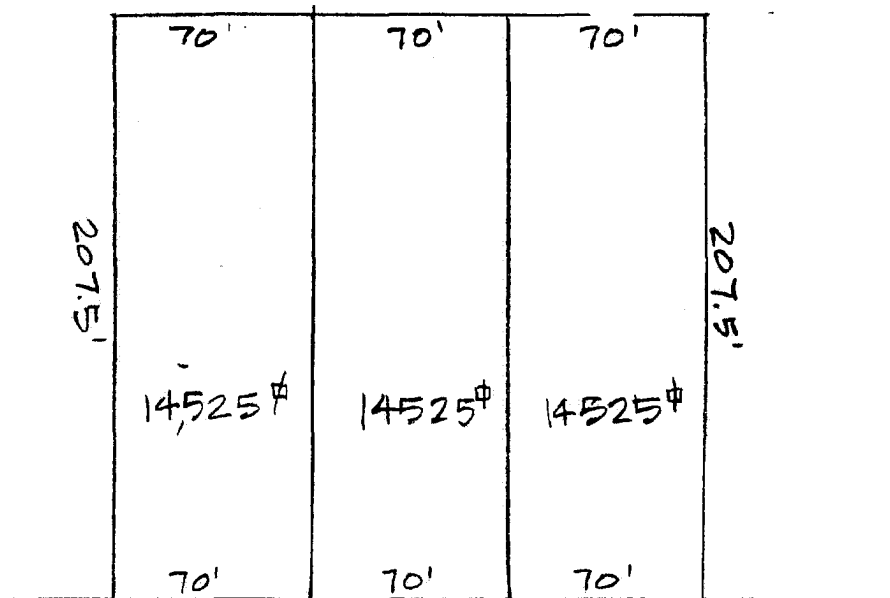
Your opinion is critical to commencing work on numerous projects your prompt response will be appreciated. If you have any questions or require additional information, please contact me immediately.

Sincerely,

Bellaterra, LLC

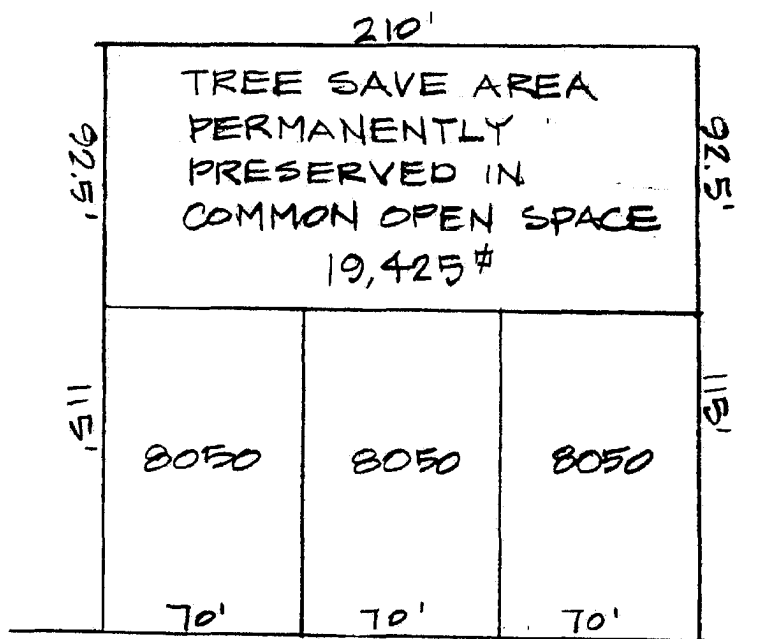

Daniel H. Fisher, Manager

10801 BACK RIDGE RD.
CHARLOTTE, NC 28277
704-617-3544



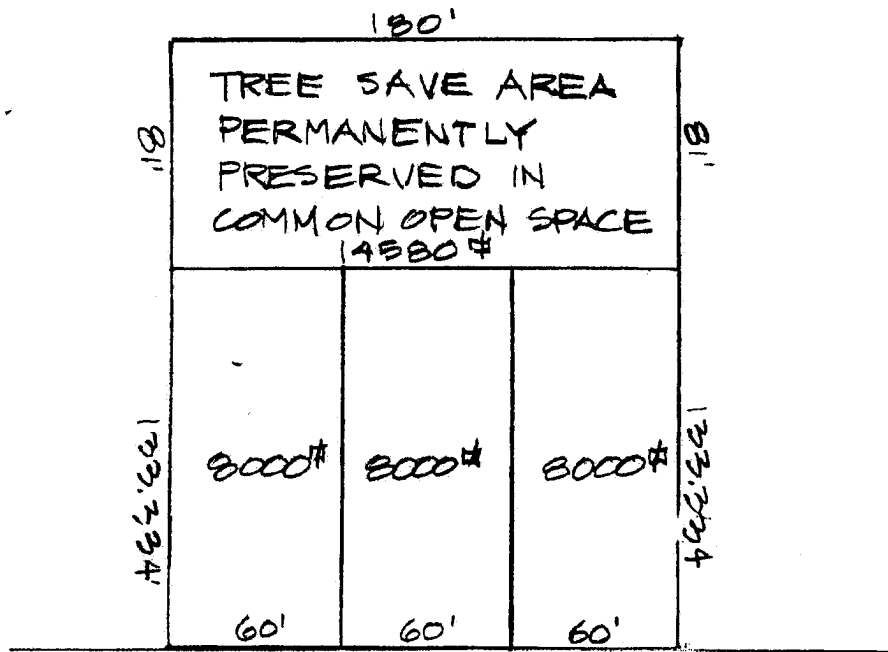
EXISTING 50' PUBLIC R/W

A. 3 LOT SUBDIVISION IN R-3 DISTRICT
 1" = 60'-0"

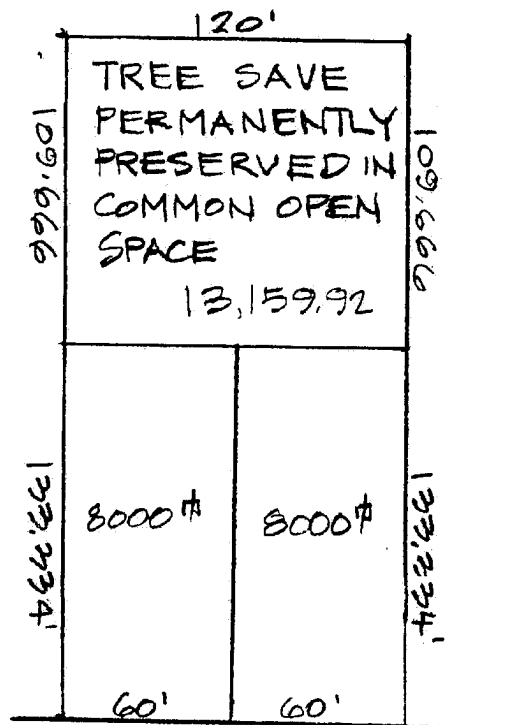


EXISTING 50' PUBLIC R/W

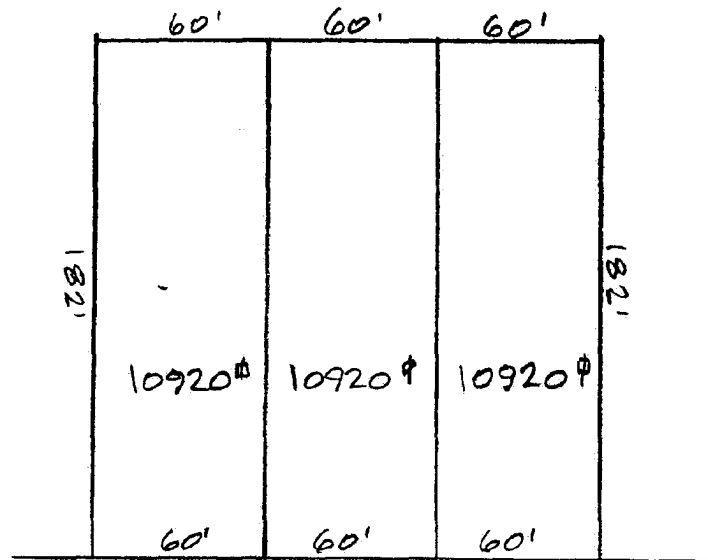
B. 3 LOT SUBDIVISION IN R-3 DISTRICT
 1" = 60'-0"



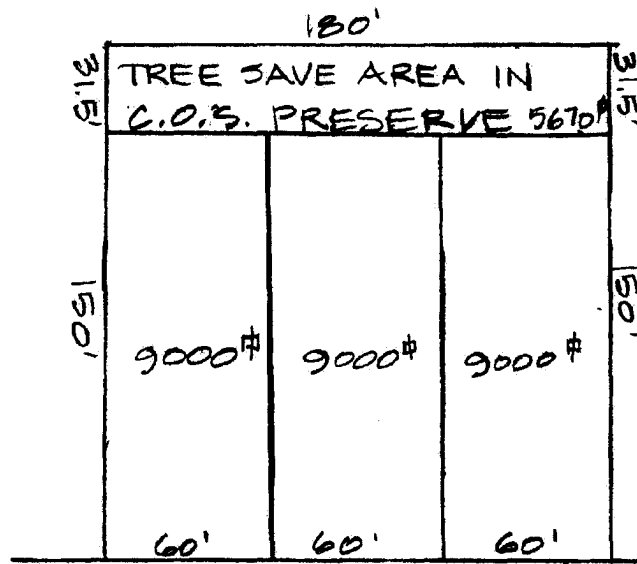
EXISTING 50' PUBLIC R/W
C. 3 LOT SUBDIVISION IN R-3 DISTRICT
 1" = 60'-0"



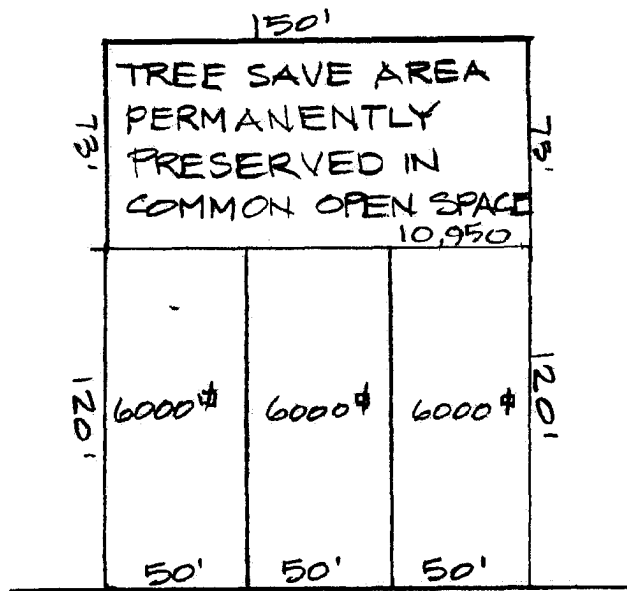
EXISTING 50' PUBLIC R/W
D. 2 LOT SUBDIVISION IN R-3 DISTRICT
 1" = 60'-0"



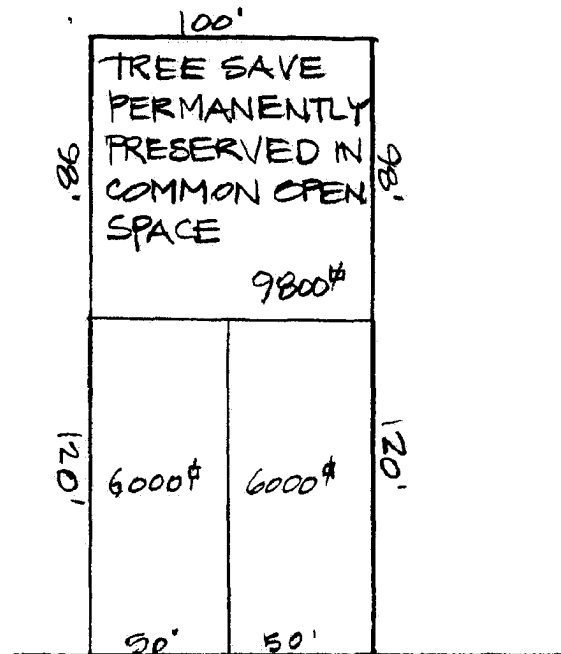
EXISTING 50' PUBLIC R/W
E. 3 LOT SUBDIVISION IN R-4 DISTRICT
 1"=60'-0"



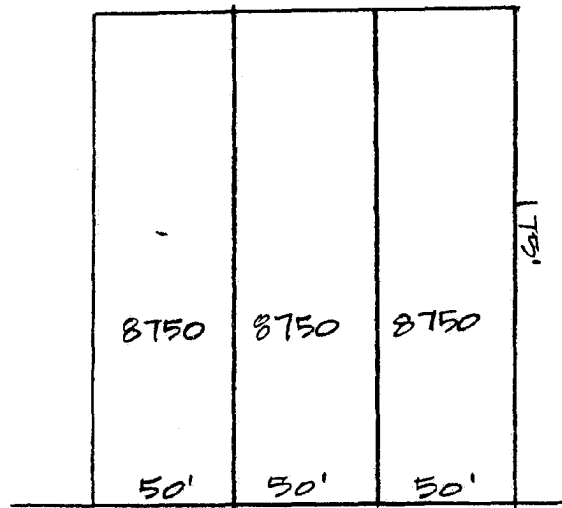
EXISTING 50' PUBLIC R/W
F. 3 LOT SUBDIVISION IN R-4 DISTRICT
 1"=60'-0"



EXISTING 50' PUBLIC R/W
G. 3 LOT SUBDIVISION IN R-4 DISTRICT
 1"=60'-0"



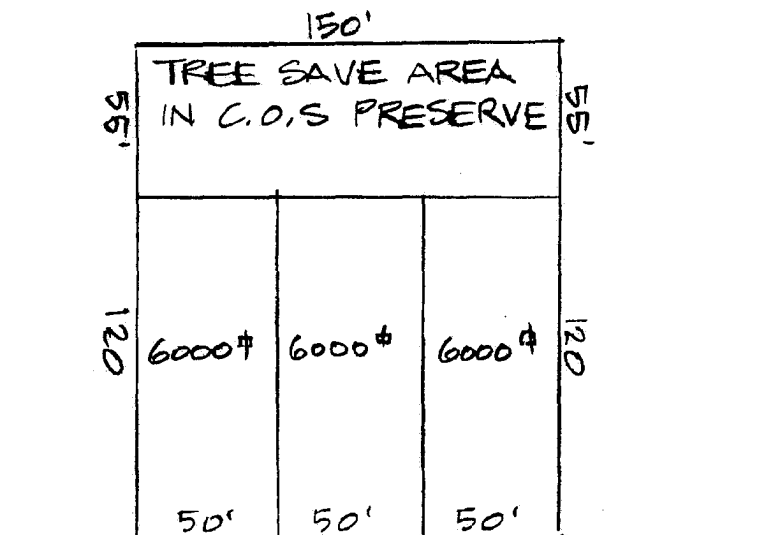
EXISTING 50' PUBLIC R/W
H. 2 LOT SUBDIVISION IN R-4 DISTRICT
 1"=60'-0"



EXISTING 50' PUBLIC R/W

I. 3 LOT SUBDIVISION IN R5 DISTRICT

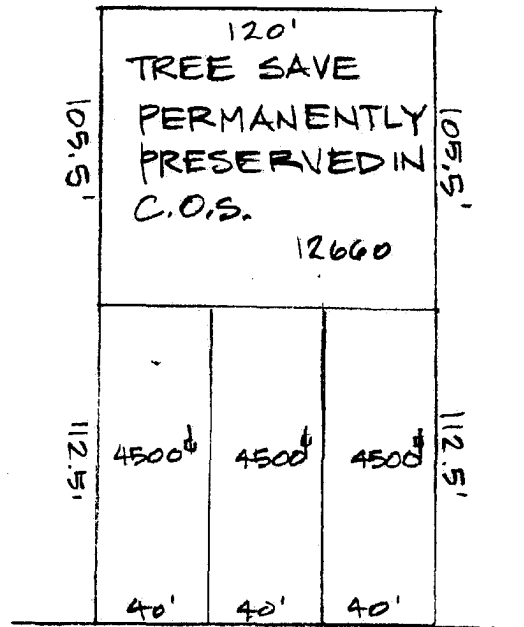
1" = 60'-0"



EXISTING 50' PUBLIC R/W

J. 3 LOT SUBDIVISION IN R-5 DISTRICT

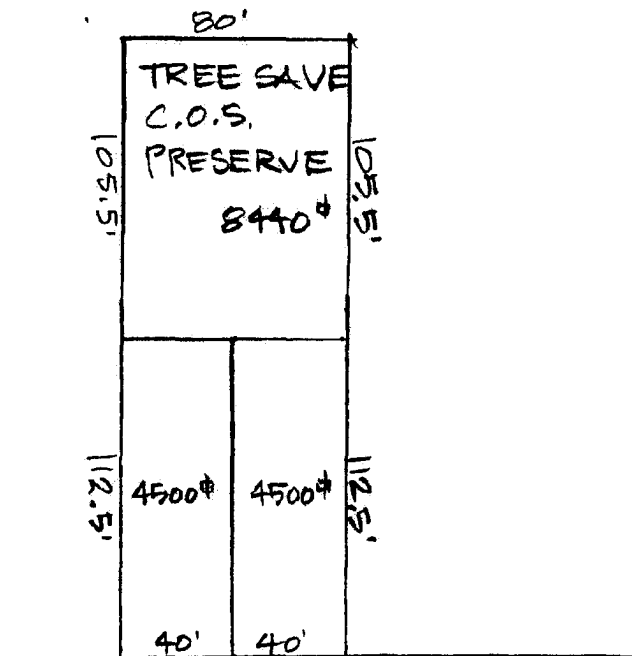
1" = 60'-0"



EXISTING 50' PUBLIC R/W

K. 3 LOT SUBDIVISION IN R-5 DISTRICT

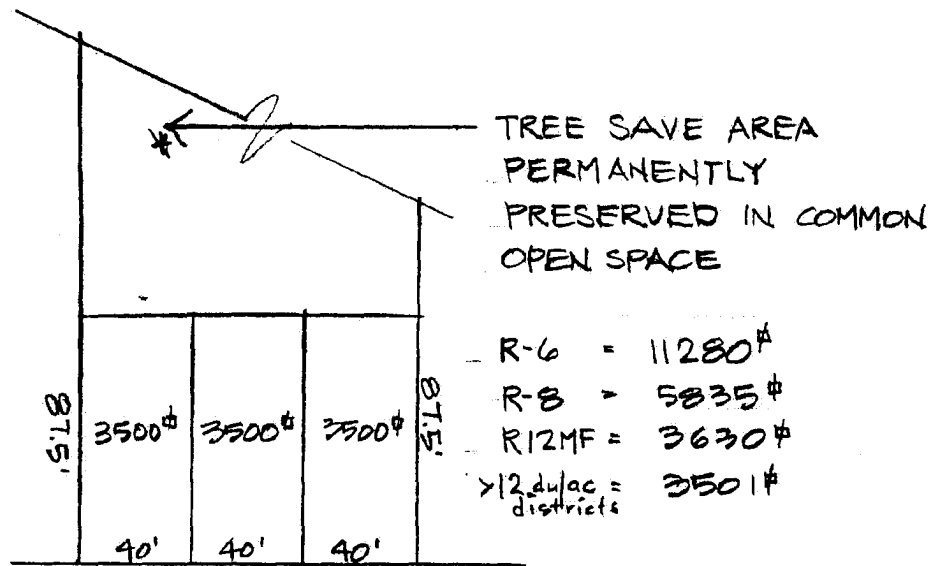
1"=60'-0"



EXISTING 50' PUBLIC R/W

L. 2 LOT SUBDIVISION IN R-5 DISTRICT

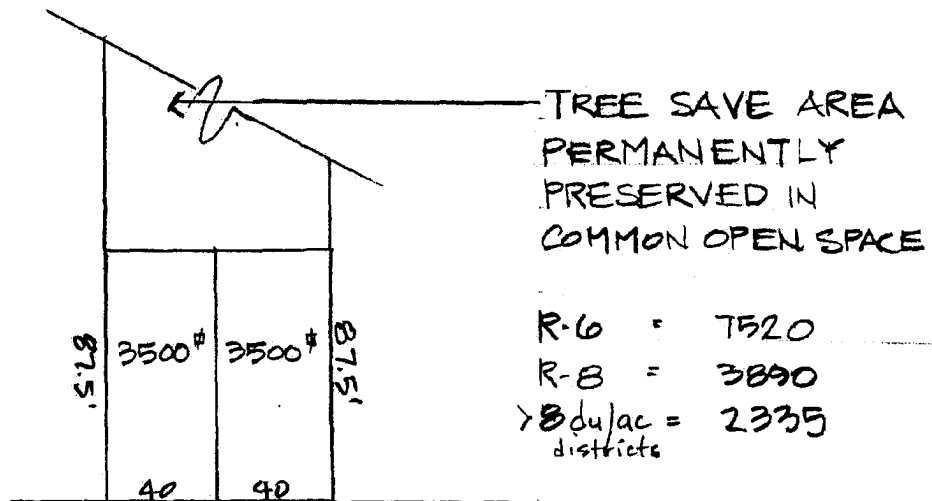
1"=60'-0"



EXISTING 50' PUBLIC R/W

M. 3 LOT SUBDIVISION IN VARIOUS DISTRICTS

1" = 60'-0"



EXISTING 50' PUBLIC R/W

N. 2 LOT SUBDIVISION IN VARIOUS DISTRICTS

1" = 60'-0"



February 16, 2005

Mr. W. Leon Davis
W. Leon Davis, PC
5442 Kerry Glen Lane
Charlotte, NC 28226

Re: February 1, 2005 letter w/ attachments

Dear Mr. Davis:

I have reviewed your letter and the attachments. An important factor in Mr. Fisher's letter appears to be the interpretation of the Charlotte Zoning Ordinance Section 2.201 Lot definition. It defines a lot as "a parcel of land or any combination of several parcels of land occupied or intended to be occupied by a principal use or structure, together with any accessory structures or uses and such access ways, parking areas, yards, and open spaces required in these regulations".

The separate parcels of land that Mr. Fisher proposes creating as Tree Save Area in Common Open Space do meet the definition of a "lot" as they are for the purpose of being occupied by a principal use. The reasons are as follows:

- The principal use is a Tree Save area in Common Open Space.
- Any other uses allowed in that area would have to be accessory to the principal use of Tree Save Area in Common Open Space and meet both the requirements of the Charlotte Tree Ordinance and the Charlotte Zoning Ordinance.
- A principal use does not have to be a structure nor have any structures associated with it.
- Tree Save Area in Common Open Space would be considered a private neighborhood park which is for the use and enjoyment of the residents of that neighborhood and not for the general public. Charlotte Zoning Ordinance Section 9.202 (6) allows parks as a use by right in residential zoning districts. It does not have to be improved for active recreation, but can remain in a natural state.
- The Tree Save Area required by the Charlotte Tree Ordinance requires that the area be placed in a separate Common Open Space lot to be eligible for the density bonus provision. If the owner/developer does not propose to use the density bonus provision the required Tree Save can be designated on the building lots and does not have to be on a separate lot designated as Common Open Space.

CHARLOTTE-MECKLENBURG PLANNING COMMISSION

www.charlotteplanning.org

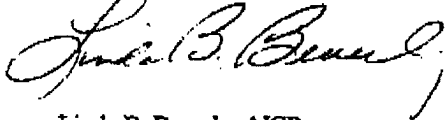
600 East Fourth Street
Charlotte, NC 28202-3853
PH: (704)-336-2205
FAX: (704)-336-5123

Therefore, as those parcels are intended to be occupied by the principal use of Tree Save Area in Common Open Space, they meet the definition of a lot.

The authority to render interpretations of the provisions of the zoning regulations is given to the Zoning Administrator's office. The Interim Zoning Administrator is Ms. Katrina Young. You or Mr. Fisher can contact her at 704-336-3571. I am forwarding a copy of yours and Mr. Fisher's letter to her with this reply.

I am willing to meet with Mr. Fisher at his convenience to discuss his questions.

Sincerely,



Linda B. Beverly, AICP
Subdivision Administrator

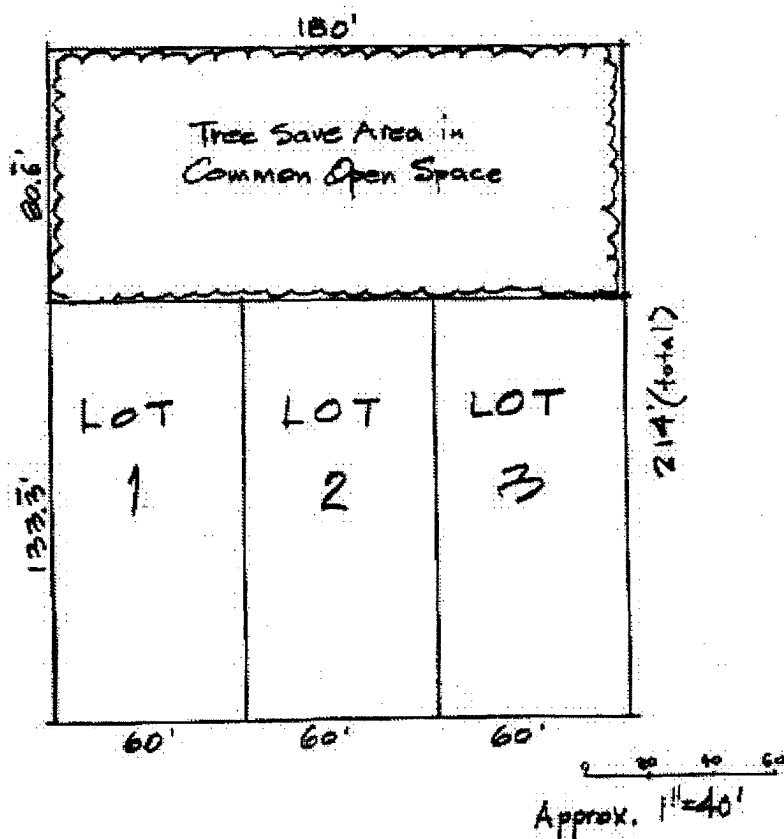
Cc: Mr. Daniel Fisher
Ms. Katrina Young

From: Bellaterra [mailto:danielf@bellaterra.us]
Sent: Tuesday, October 11, 2005 8:17 PM
To: Katrina Young (cjyoung@ci.charlotte.nc.us)
Subject: determination letters

Katrina:

Thank you for taking time out of your schedule to meet with me on short notice today.
 Thank you too for your agreeing to turn around our request for a determination letter by Monday. Your calendar is undoubtedly full and I appreciate the quick turnaround.

As suggested, I have sketched a three lot subdivision with tree save so that you can write a determination letter about its being an exempt subdivision.



Assumptions:

R-3 zoning district, cluster lot standards
 (6000 s.f. min lots), tree save area in common
 open space and at least 1/3 acre and
 greater than 25% of entire parcel (14520 s.f.)

If you have any questions or want more information, please call me anytime.
 Thank you,

Daniel Fisher

From: Daniel Fisher [danielf@bellaterra.us]
Sent: Wednesday, October 19, 2005 8:55 PM
To: 'Young, Katrina J.'
Subject: RE: determination letters

Do you concur with this determination?
Daniel

From: Young, Katrina J. [mailto:kjyoung@ci.charlotte.nc.us]
Sent: Wednesday, October 19, 2005 5:32 PM
To: danielf@bellaterra.us
Subject: RE: determination letters

Mr. Fisher,
I believed this issue has already been addressed by Linda Beverly. (Please see attached letter). If I can be of further assistance, please let me know.

Thank you

Katrina Young
Interim Zoning Administrator
City of Charlotte
600 E. Fourth Street
Charlotte NC 28202
Telephone: 704.336.3571
Fax: 704.336.5123
Email: kjyoung@ci.charlotte.nc.us

From: Bellaterra [mailto:danielf@bellaterra.us]
Sent: Wednesday, October 19, 2005 12:04 PM
To: Young, Katrina J.
Subject: RE: determination letters

Katrina:
It looks like I mistyped your e-mail address.
We look forward to your letters.
Thank you,

Bellaterra

Daniel Fisher
10801 Back Ridge Road
Charlotte, North Carolina, 28277
p. 704-617-3544
f. 704-540-1792

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Daniel Fisher

From: Young, Katrina J. [kjyoung@ci.charlotte.nc.us]
Sent: Wednesday, October 19, 2005 10:01 PM
To: daniel@bellaterra.us
Subject: RE: determination letters
Follow Up Flag: Follow up
Due By: Monday, October 31, 2005 8:00 AM
Flag Status: Completed
Attachments: image001.jpg

Yes. I do concur with Ms. Beverly determination.