



VARIANCE APPLICATION

THIS APPLICATION MUST BE FILED IN PERSON, IT
CAN NOT BE ACCEPTED BY MAIL

FY2005
Case #: <u>06-021</u>
Date Filed: <u>1-11-06</u>
Meeting Date: <u>28 Feb 06</u>
Received By: <u>[Signature]</u>
Office Use Only

Variance requested on property located at: 6520 E. Independence Boulevard

Property Zoned: B - 2

Tax Parcel #: 191-052-05

Property Owner: ConocoPhillips Company

Date Existing Structure Erected: 1968

TO THE CHARLOTTE ZONING BOARD OF ADJUSTMENT:

I DriveTime Car Sales, Inc., hereby petitions the Board of
(name)

Adjustment for a VARIANCE from the literal provisions of the Charlotte Zoning Ordinance because, under the interpretation given to me by the Zoning Administrator, I am prohibited from using the parcel of land described above in a manner shown by the Plot plan attached to this form. I request a variance from the following provisions of the Zoning Ordinance (cite Section numbers and Code requirements):

- Section 12.103(2) - Transitional Setback
- Section 12.106(1), (2) & (4) - Improvements to real property and building and goods
- (automobiles) in setback

Describe the VARIANCE being requested on the above referenced property:

Variance from the strict application for "setback" and transitional setback for property used for parking and commercial purposes that has been paved for over thirty-five (35) years to allow car sales and minor improvements to real property and building as shown on the attached site plan.

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE:

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under the state enabling act, the Board is required to reach three conclusions as a prerequisite to the issuance of a variance: (a) that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance, (b) that the variance is in harmony with the general purposes and intent of the Ordinance and preserves its spirit, and (c) that in the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. In the following spaces, indicate the facts and the argument you plan to render, in order to convince the Board, to properly determine that each of these three (3) CONCLUSIONS are applicable to this structure and site.

- (a) **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:

- (1) **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.)

The applicant is requesting a variance to use the property for automobile sales in the transitional right-of-way and transitional setback. The applicant is greatly impacted by the transitional provisions, especially due to the nature of its operation (automobile display, storage and sells). The site in question is an improved commercial site that is almost completely paved and has been in use for a variety of commercial uses, but primarily for a service station and automobile uses. These uses predate restrictions on parking in the setback area and the provisions for “transitional setback”. The most recent use was for the location of a BP Station. The site is paved along Independence Blvd., and that area has been used for parking and circulation for the uses on the site. Due to the setback requirements and to the transitional setback requirements from Independence Blvd., the Applicant has been prevented from purchasing the property and adding certain improvements to the real property and building because these are not allowed in the “transitional setback” area of the site. To do so would render the site unusable for the purpose for which it is clearly best adapted and could be used for. The specific variance being requested is to allow the existing and established paved portion of the site for parking and circulation, including the parking and display of vehicles associated with automobile sales on the site and for the installation of lights and other possible improvements as shown on the site plan consistent with the intent of the transitional setback and recognizes the prior existence of parking and circulation within the now-required district setback requirement.

- (2) **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 Commission. Also, unique personal or family hardships are irrelevant since a variance, if granted, runs with the life of the land.)

The Applicant’s site was previously developed and the existing configuration of the site predates both the setback and “transitional setback” standards. This circumstance, combined with sweeping impact of the transitional setback and the arguably incorrect application on of the new standards to this older site results in the need for the variance

I certify that all of the information presented by me in this application is accurate to the best of my knowledge,

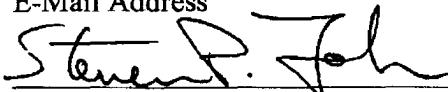
DriveTime Car Sales, Inc.
Printed Name of Appellant

4020 E. Indian School Road
Mailing Address

Phoenix, Arizona 85018
City, State, Zip

602-778-5003 602-778-5025
Telephone Number Fax Number

Steven.Johnson@DriveTime.com
E-Mail Address


Signature of Appellant Steven P. Johnson


Thomas L. Odom, Jr.
Printed Name of Representative (if any)

1109 Greenwood Cliff
Mailing Address

Charlotte, North Carolina 28204
City, State, Zip

704-377-7333 704-377-5747
Telephone Number Fax Number

theodomfirm@mecklaw.com
E-Mail Address


Represented By (Signature)

IF THE APPELLANT IS NOT THE OWNER OF THE PROPERTY FOR WHICH THE APPEAL IS BEING REQUESTED, indicate the owner's name and address:

ConocoPhillips Company
Property Owner (if different from Appellant)

13791 E. Rice Place, Suite 201
Address

Aurora, Colorado 80015
City, State, & Zip

TYPE OR PRINT below the COMPLETE names, tax parcel numbers, mailing addresses and zip codes for the owners of the adjacent properties, including the properties directly across the street from the property, for which a variance is being requested. Property ownership information is available at:

<http://meckcama.co.mecklenburg.nc.us/relookup/> or
<http://memf.co.mecklenburg.nc.us:3007/cics/txre/txre00i>

ADJACENT PROPERTY OWNERS:

- | | | |
|-----|--|------------------------------|
| 1. | <u>Bakis Associates Inc.</u>
<u>6600 Rocky Falls Road</u>
<u>Charlotte, NC 28211</u> | Tax Parcel # <u>16511101</u> |
| 2. | <u>Bakis Associates Inc.</u>
<u>6600 Rocky Falls Road</u>
<u>Charlotte, NC 28211</u> | Tax Parcel # <u>16511120</u> |
| 3. | <u>Bakis Associates, Inc.</u>
<u>6600 Rocky Falls Road</u>
<u>Charlotte, NC 28211</u> | Tax Parcel # <u>16511127</u> |
| 4. | <u>Ste 700 U-Haul Real Estate Co.</u>
<u>2721 N. Central Avenue</u>
<u>Phoenix, Arizona 85004-1121</u> | Tax Parcel # <u>16514307</u> |
| 5. | <u>6316 E. Independence Blvd. LLC</u>
<u>P.O. Box 70</u>
<u>Douglasville, Georgia 30133</u> | Tax Parcel # <u>19105202</u> |
| 6. | <u>Donna S. Levin</u>
<u>2343 Roswell Avenue</u>
<u>Charlotte, NC 28207-2762</u> | Tax Parcel # <u>19105204</u> |
| 7. | <u>Cherry Jim Interest Inc.</u>
<u>400 Indian Trail Road</u>
<u>Indian Trail, NC 28079</u> | Tax Parcel # <u>19105209</u> |
| 8. | <u>Cherry Jim Interest Inc.</u>
<u>400 Indian Trail Road</u>
<u>Indian Trail, NC 28079</u> | Tax Parcel # <u>19105210</u> |
| 9. | <u>Theresa Olivieri Alfero</u>
<u>633 Barrington Place</u>
<u>Matthews, NC 28105-6552</u> | Tax Parcel # <u>19105301</u> |
| 10. | <u>Cherry Jim Interest Inc.</u>
<u>400 Indian Trail Road</u>
<u>Indian Trial, NC 28079</u> | Tax Parcel # <u>19105302</u> |
| 11. | <u>Hassan and Nahid Radmanesh</u>
<u>8811 Gruenewald Lane</u>
<u>Charlotte, NC 28210</u> | Tax Parcel # <u>19106106</u> |
| 12. | <u>Hassan and Nahid Radmanesh</u>
<u>8811 Gruenewald Lane</u>
<u>Charlotte, NC 28210</u> | Tax Parcel # <u>19106108</u> |
| 13. | <u>Keith and Melanie Guercio</u>
<u>8925 Dartmoor Place</u>
<u>Charlotte, NC 28227</u> | Tax Parcel # <u>19106113</u> |

ConocoPhillips Company
12719 71st Drive SE
Snohomish, Washington 98296
425-338-5736

December 31, 2005

Charlotte Zoning Board of Adjustment
600 E. 4th Street
Charlotte, North Carolina 28202

Re: Property and Improvements at 6520 Independence Boulevard

Dear Sir or Madam:

This letter is approval on behalf of ConocoPhillips Company for the request for a variance to be filed by DriveTime Car Sales, Inc. for the above described property.

This the 3RD day of JANUARY, 2006.

Very truly yours,

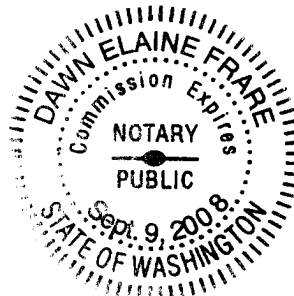
ConocoPhillips Company

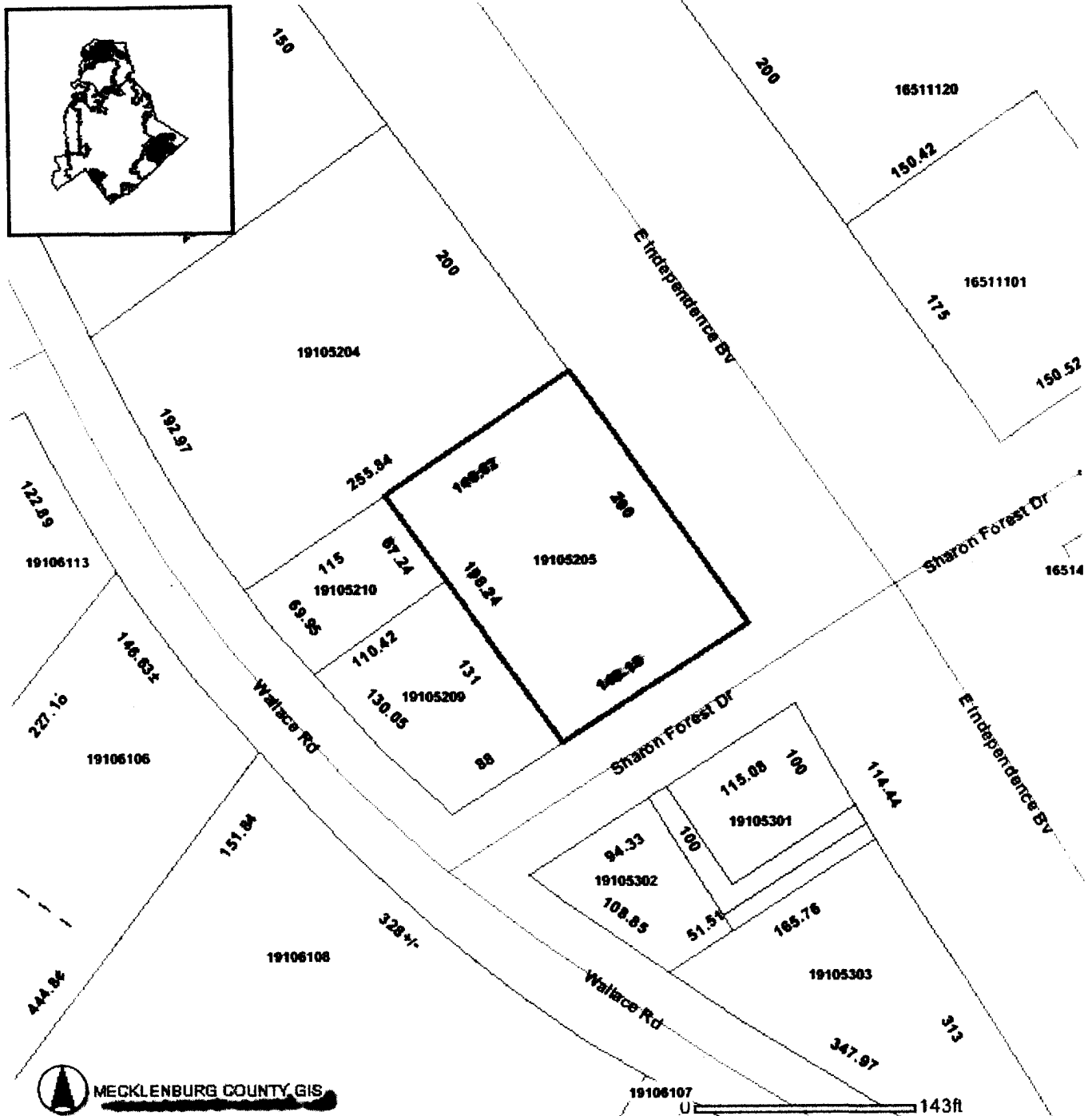
By: Jeff L Payne REAL ESTATE SUPERVISOR
Title

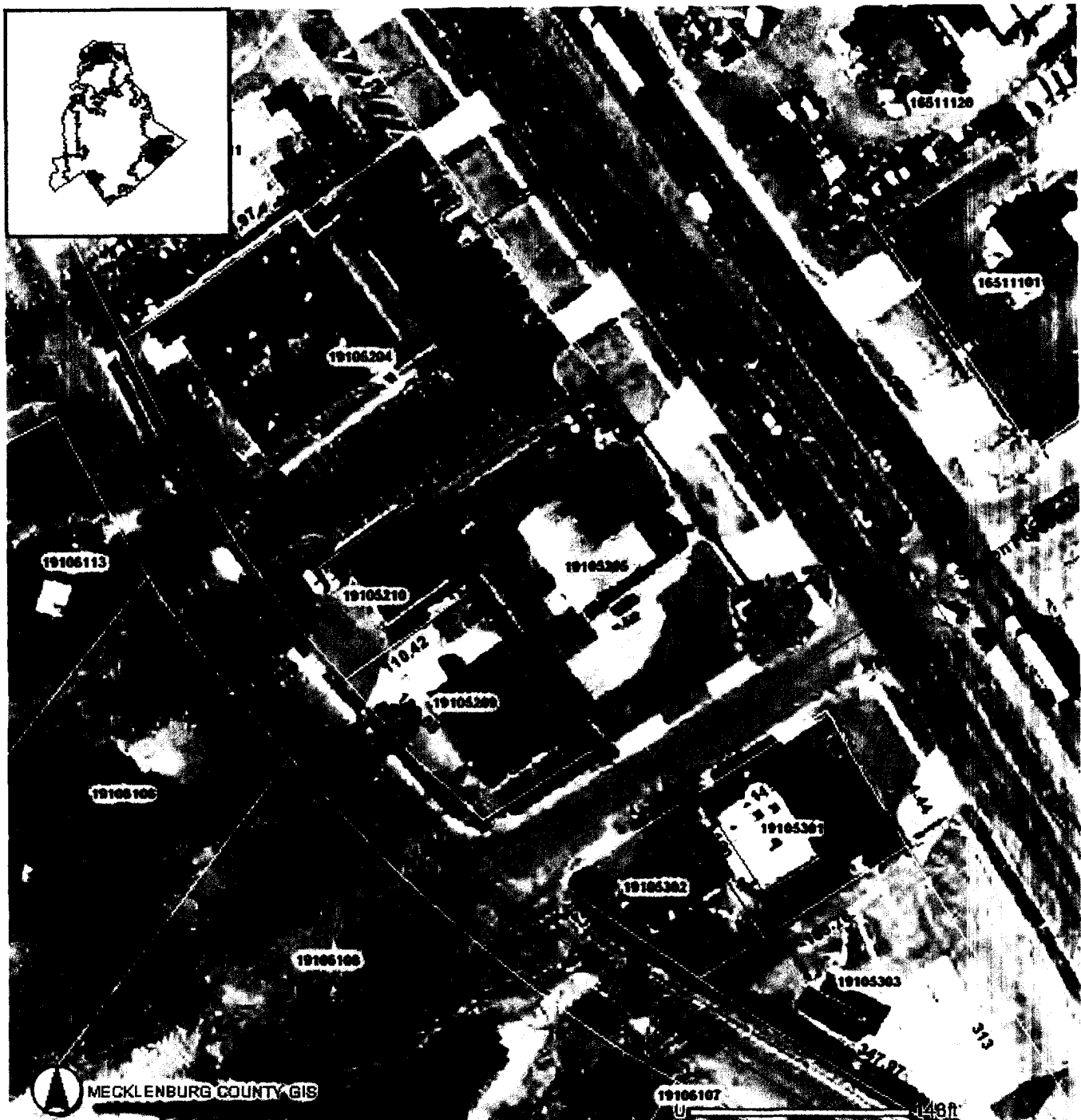
Sworn to and subscribed before me this
3rd day of January, 2006

Dawn Elaine Fraire
Notary Public
Commission Expires: 9/9/08

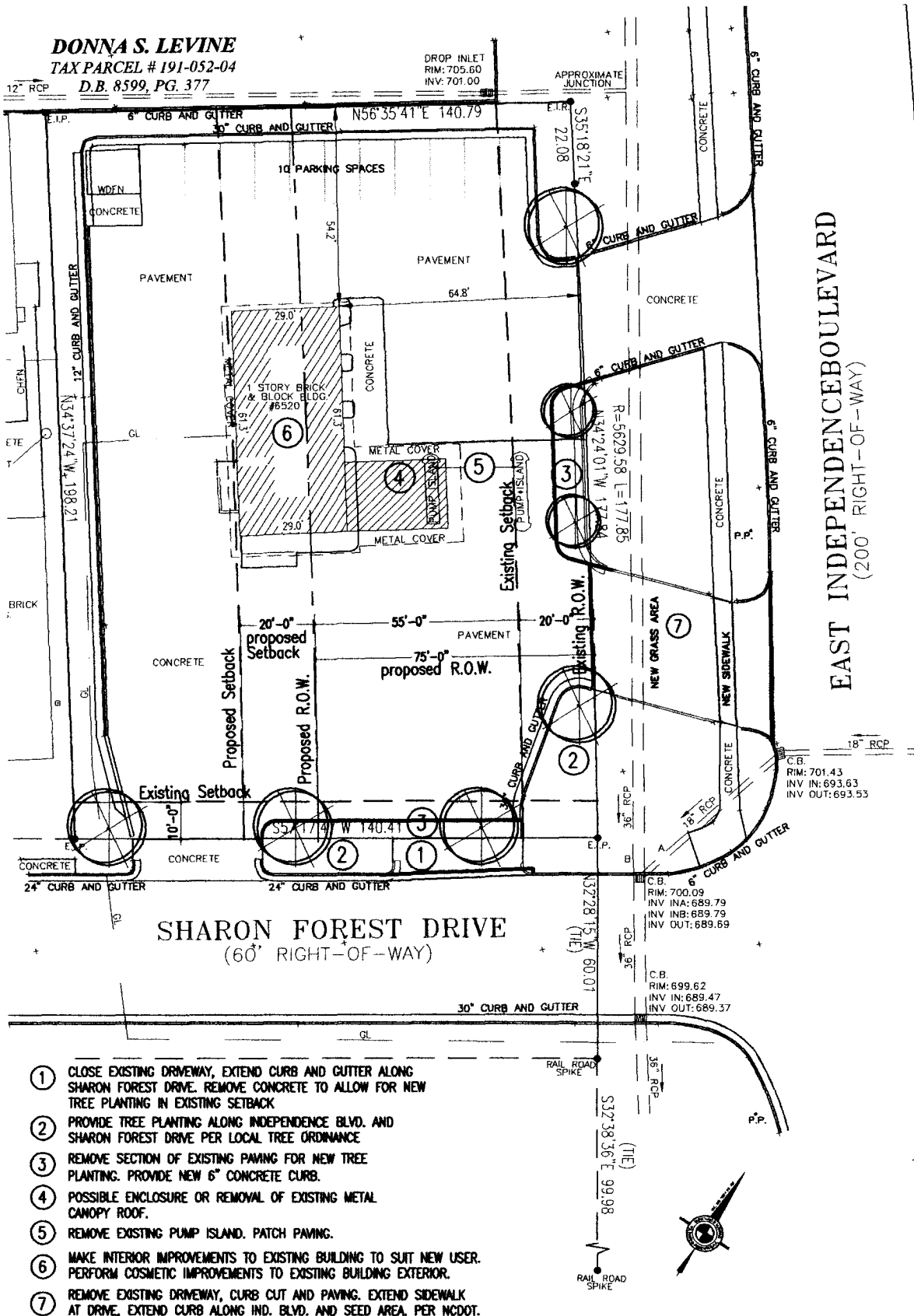
(SEAL)







DONNA S. LEVINE
TAX PARCEL # 191-052-04
D.B. 8599, PG. 377



Note: SECTION 12-103(2) Provides, in part, "At the time that the proposed right-of-way is dedicated or otherwise acquired for the roadway purpose, the property owner shall be responsible for the removal of any uses constructed after May 1, 1989, which are within the transitional setback or yard that are not otherwise permitted in the setback or yard by the district regulations."

THE ODOM FIRM, PLLC
Attorneys at Law
1109 Greenwood Cliff
Charlotte, North Carolina 28204

Thomas L. Odom, Jr.
Martha C. Odom

Of Counsel:
T. LaFontine Odom, Sr.

Telephone Number: 704-377-7333
Facsimile Number: 704-377-5747
www.mecklaw.com
tommyodom@mecklaw.com

February 15, 2006

Via Hand Delivery

Ms. Lovely Bell
Charlotte-Mecklenburg Planning Commission
600 East Fourth Street (8th Floor)
Charlotte, North Carolina 28202

Re: DriveTime Sales/ConocoPhillips
Property and Improvements at 6520 Independence Boulevard

Dear Lovely:

Enclosed please find the information you requested regarding ConocoPhillips and 6520 Independence Boulevard.

Please give me a call if you have any questions.

Very truly yours,



Thomas L. Odom, Jr.

TLOjr/mdg
Enclosure

FROM RL&F#1

(THU) 12/12/02 16:39/ST. 16:38/NO. 4864756297 P 2

Delaware

PAGE 1

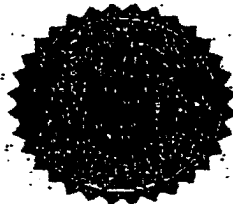
The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"TOSCO CORPORATION", A NEVADA CORPORATION,
WITH AND INTO "CONOCOPHILLIPS COMPANY" UNDER THE NAME OF
"CONOCOPHILLIPS COMPANY", A CORPORATION ORGANIZED AND EXISTING
UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED
IN THIS OFFICE THE TWELFTH DAY OF DECEMBER, A.D. 2002, AT 1:43
O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF
THE AFORESAID CERTIFICATE OF MERGER IS THE FIRST DAY OF JANUARY,
A.D. 2003, AT 3:01 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE
NEW CASTLE COUNTY RECORDER OF DEEDS.



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

0064324 B100M

AUTHENTICATION: 2143102

020763252

DATE: 12-12-02

DEC 09 2002 16:24

PAGE.02

FROM RL&F#1

(THU)12.12'02 16:39/ST. 16:38/NO. 4864756297 P 3

FROM RL&F#1

(THU)12.12'02 13:34/ST. 13:34/NO. 4864756297 P 13

STATE OF DELAWARE
DIVISION OF CORPORATIONS
FILED 01:49 PM 12/12/2002
020763252 - 0066324

CERTIFICATE OF MERGER

of

Tosco Corporation
(a Nevada corporation)

with and into

ConocoPhillips Company
(a Delaware corporation)

Phillips Petroleum Company, a Delaware corporation, to be renamed ConocoPhillips Company prior to the effective time of this certificate of merger (the "Surviving Corporation"), in compliance with the requirements of the General Corporation Law of the State of Delaware (the "DGCL") and desiring to effect a merger of Tosco Corporation, a Nevada corporation (the "Merging Corporation," and together with the Surviving Corporation, the "Constituent Corporations"), with and into the Surviving Corporation, and acting by its duly authorized officer, DOES HEREBY CERTIFY that:

First: As of the date hereof, the name and state of incorporation of each of the Constituent Corporations of the merger are as follows:

<u>NAME</u>	<u>STATE OF INCORPORATION</u>
PHILLIPS PETROLEUM COMPANY	Delaware
TOSCO CORPORATION	Nevada

Second: An agreement and plan of merger has been approved, adopted, certified, executed and acknowledged by each of the Constituent Corporations in accordance with the requirements of Section 252 of the DGCL;

Third: The name of the Surviving Corporation of the merger will be ConocoPhillips Company;

Fourth: The Certificate of Incorporation of ConocoPhillips Company immediately prior to the merger shall be the Certificate of Incorporation of the Surviving Corporation until such time as it may be amended in accordance with applicable law and the provisions thereof;

Fifth: The executed agreement and plan of merger is on file at an office of the Surviving Corporation, the address of which is 600 North Dairy Ashford, Houston, Texas 77079;

Sixth: A copy of the agreement and plan of merger will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of any Constituent Corporation;

HOURS: 11/15/24

1

FROM RL&F#1

(THU) 12. 12' 02 16:39/ST. 16:38/NO. 4864756297 P 4

FROM RL&F#1


(THU) 12. 12' 02 13:34/ST. 13:31/NO. 4864756279 P 14

Seventh: The authorized capital stock of the Merging Corporation is 100 shares of common stock, par value \$0.01 per share; and

Eighth: Pursuant to Section 103(d) of the DGCL, this certificate of merger will become effective at 3:01 a.m., Eastern time, on January 1, 2003.

Dated: December 12, 2002

PHILLIPS PETROLEUM COMPANY
(to be renamed ConocoPhillips Company)
(a Delaware corporation)

By: 
Name: Rick A. Harrington
Title: Senior Vice President, Legal,
and General Counsel