



VARIANCE APPLICATION

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

FY2005
Case #: <u>06-018</u>
Date Filed: <u>2-8-06</u>
Meeting Date: <u>3-28-06</u>
Received By: <u>[Signature]</u>
Office Use Only

Variance requested on property located at: 5101 Prosperity Church Road, Charlotte, NC 28269

Property Zoned: INST (CD) - Institutional, Conditional District

Tax Parcel #: 02706206

Property Owner: Charlotte Retirement Residence II LLC

Date Existing Structure Erected: N/A

TO THE CHARLOTTE ZONING BOARD OF ADJUSTMENT:

I George Holodick on behalf of Charlotte Retirement Residence II LLC, hereby petition 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):

1. Chapter 12, Part 3: Buffers and Screening;

Table 12.302(a): Institutional Low Intensity abutting Single family use requires class C buffer.

Table 12.302(b): Class C buffer, 9.5 acres, required width 48 feet.

2. Chapter 12, Section 9.505 Development standards for the institutional district. Minimum side yard 20 feet.

Describe the VARIANCE being requested on the above referenced property:

Variance to allow driveway to be placed within the 48 feet Class C buffer and 20 feet side yard.

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.)

To provide safe access to the property the driveway must align with the property access opposite. In order to align with the driveway opposite, the driveway to the subject property falls within the setback. If we are unable to place the driveway in the setback we will be unable to provide access to the site.

- (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 circumstances uniquely relate to the subject property, specifically the relative location of the lot line and the driveway to the opposite property.

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

The hardship is the result of the requirement by the City of Charlotte and NCDOT to locate the driveway in-line with the access opposite.

(b) **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 only requires the drive to be in the setback for a minimum distance. The drive would then return to the required setback. The city ordinance does allow some entry into the setback although it is typically perpendicular to the yard.

(c) **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.)

The variance would allow the required drive alignment and provide a safer traffic flow to and from the site.

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

Charlotte Retirement Residence II LLC

Printed Name of Appellant

George Hollodick,
Blanco Tackabery Combs & Matamoros

Printed Name of Representative (if any)

P.O. Box 14111

Mailing Address

110 South Stratford Road, Suite 500

Mailing Address

Salem, OR 97309

City, State, Zip

Winston Salem, NC 27104

City, State, Zip

(503) 370 7070

Telephone Number

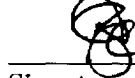
Fax Number

(336) 293 9000

Telephone Number

Fax Number

E-Mail Address



Signature of Appellant

geh@btcmllaw.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:

Property Owner (If different from Appellant)

Address

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://mcmf.co.mecklenburg.nc.us:3007/cics/txre/txre00i>

ADJACENT PROPERTY OWNERS:

- | | | |
|-----|--|------------------------------|
| 1. | <u>PROSPERITY PARK RETAIL LLC</u>
<u>1329 E MOREHEAD ST,</u>
<u>CHARLOTTE, NC 28204</u> | Tax Parcel # <u>02932145</u> |
| 2. | <u>PROSPERITY PARK LLC</u>
<u>1329 E MOREHEAD ST,</u>
<u>CHARLOTTE, NC 28204</u> | Tax Parcel # <u>02932131</u> |
| 3. | <u>PROSPERITY CHURCH ROAD LLC AND</u>
<u>LANDCRAFT PROPERTIES INC</u>
<u>201 N TRYON ST #2650, CHARLOTTE, NC 28202</u> | Tax Parcel # <u>02932226</u> |
| 4. | <u>WADE F AND VIOLET C MIZELLE</u>
<u>5024 PROSPERITY CHURCH RD,</u>
<u>CHARLOTTE, NC 28269</u> | Tax Parcel # <u>02932127</u> |
| 5. | <u>MICHELLE KELLEY</u>
<u>5025 PROSPERITY CHURCH RD,</u>
<u>CHARLOTTE, NC 28269</u> | Tax Parcel # <u>02755293</u> |
| 6. | <u>GEORGE M AND FELICIA K HARGROVE</u>
<u>12507 LOGANVILLE DR,</u>
<u>CHARLOTTE, NC 28269</u> | Tax Parcel # <u>02755272</u> |
| 7. | <u>DOROTHY L R VICK</u>
<u>12501 LOGANVILLE DR,</u>
<u>CHARLOTTE, NC 28269</u> | Tax Parcel # <u>02755271</u> |
| 8. | <u>KATHLEEN H AND TERRY A FOREMAN</u>
<u>12421 LOGANVILLE DR,</u>
<u>CHARLOTTE, NC 28269</u> | Tax Parcel # <u>02755270</u> |
| 9. | <u>JEREMY C AND DEBORAH K LONG</u>
<u>12415 LOGANVILLE DR,</u>
<u>CHARLOTTE, NC 28269</u> | Tax Parcel # <u>02755269</u> |
| 10. | <u>GARY W AND PAMELA S BARRERA</u>
<u>12409 LOGANVILLE DR,</u>
<u>CHARLOTTE, NC 28269</u> | Tax Parcel # <u>02755268</u> |

These persons, including the Appellant and the representative, will be notified in writing of the time and place of the hearing. (Attach additional sheet if necessary).

FOR REGISTRATION JUDITH A. GIBSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
2005 DEC 28 02:33 PM
BK 19817 PG 192-195 FEE \$20.00
EXCISE TAX \$938.00
INSTRUMENT # 2005258438



2005258438

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$938.00

Mail after recording to **Blanco Tackabery Combs & Matamoros**
P.O. Drawer 25008
Winston-Salem, NC 27114-5008

This instrument was prepared by Amy C. Lanning

Brief Description for the index

9.510 acres Prosperity Church Road 027-062-06

THIS DEED made this 27th day of December, 2005, by and between

GRANTORS

David B. Dye and wife, Beverly S. Dye

GRANTEE

Charlotte Retirement Residence II LLC, an Oregon
limited liability company
P.O. Box 14111
Salem, Oregon 97309

The designation Grantors and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantors, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, have and by these presents do grant, bargain, sell and convey unto the Grantee in fee simple that certain lot or parcel of land situated in Mecklenburg County, North Carolina and more particularly described as follows:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

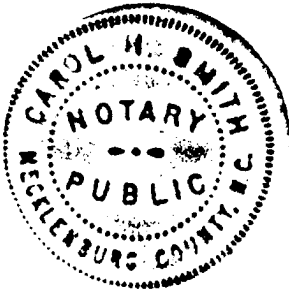
And the Grantors covenant with the Grantee, that Grantors are seized of the premises in fee simple, have the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantors will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions set forth below:

1. 2006 taxes and subsequent years.
2. Easements and restrictions of record, if any.

IN WITNESS WHEREOF, the Grantors have hereunto set their hands and seals, the day and year first above written.

David B. Dye (SEAL)
David B. Dye

Beverly S. Dye (SEAL)
Beverly S. Dye



STATE OF North Carolina
Mecklenburg COUNTY

I, Carol H. Smith, a Notary Public for said County and State, do hereby certify that David B. Dye and wife Beverly s. Dye, either being personally known to me or proven by satisfactory evidence, personally appeared before me this day, and acknowledged the voluntary due execution of the foregoing instrument by he/she/them for the purposes stated therein.

WITNESS my hand and notarial seal, this 31 day of December, 2005.

My commission expires:

5/23/09

(Affix seal or stamp)

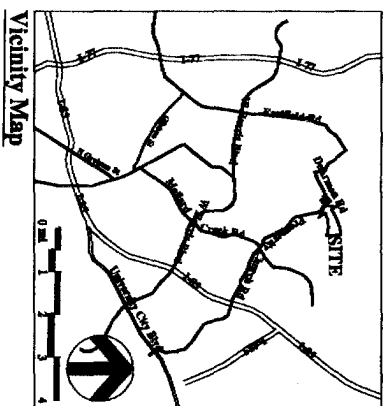
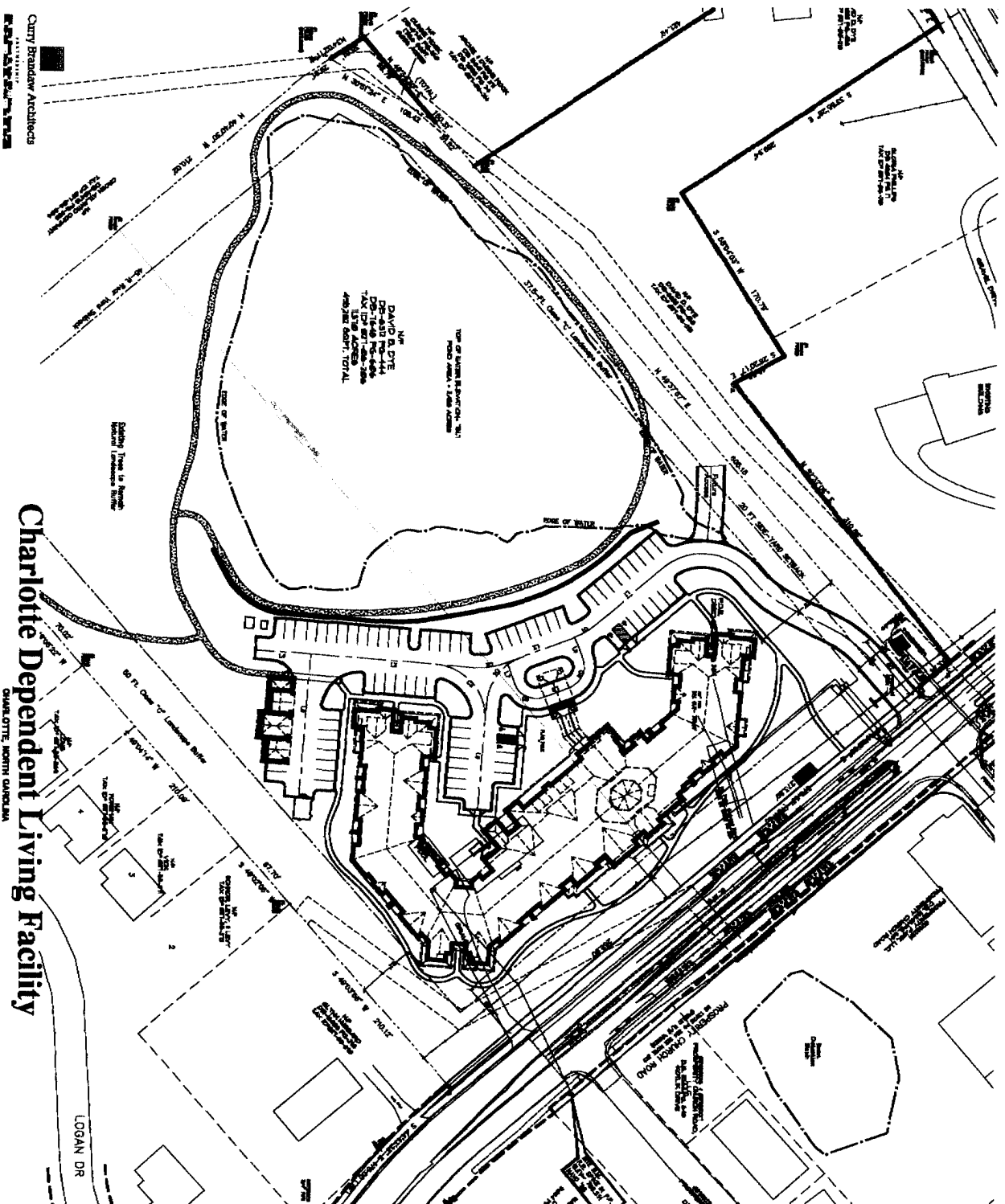
Carol H. Smith Notary Public

Exhibit A

Being all that tract or parcel of land located in the City of Charlotte, Mecklenburg County, more particularly described as follows:

COMMENCING at NGS Monument "Highland", NAD '83 grid coordinates of N: 594, 969.571 and E: 1, 468, 082.740; thence South 17 deg. 47' 59" West a ground distance of 2,701.86 feet (2,701.43 grid distance) to a #5 rebar set; thence along the southwesterly right-of-way margin of Prosperity Church Road (SR# 2475) South 40 deg. 22' 08" East 33.74 feet to a #5 rebar set, being the POINT OF BEGINNING; thence along the southwesterly right-of-way margin of Prosperity Church Road South 04 deg. 22' 08" East 542.79 feet to a #5 rebar set at the northwesterly corner of lands owned now or formerly by Glynn Hubbard (Deed Book 18039, Page 293); thence departing said right-of-way margin and proceeding along the northwesterly boundary of lands of said Hubbard as well as Lots 2 through 9 as shown on map of Devonshire recorded at Map Book 26, Page 906 South 49 deg. 03' 56" West 760.18 feet to a one inch iron found at the southeasterly corner of lands owned now or formerly by Crown Atlantic Company (Deed Book 10478, Page 388); thence along the northeasterly boundary of lands of said Crown Atlantic Company North 40 deg. 39' 02" West 275.62 feet to a found #5 rebar; thence along said northeasterly boundary of Crown Atlantic Company North 40 deg. 40' 30" West 210.02 feet to a found #4 rebar; thence continuing along said northeasterly boundary of Crown Atlantic Company North 34 deg. 02' 11" West 29.91 feet to a found #4 rebar at the southeasterly corner of lands now or formerly owned by Dianne Mock (Deed Book 6742, Page 160); thence along the southeasterly boundary of Dianne Mock North 30 deg. 51' 24" East 108.42 feet to a set #5 rebar on the southerly boundary of lands owned now or formerly by Archie and Dianne Mock (Deed Book 15841, Page 371 and Deed Book 7089, Page 24); thence along the southerly boundary of lands of said Archie and Dianne Mock North 49 deg. 34' 30" East 51.52 feet to a found #4 rebar; thence along the southerly boundary of lands owned now or formerly by David B. Dye (Deed Book 8832, Page 458) North 49 deg. 37' 57" East 605.15 feet to the POINT OF BEGINNING.

Containing 9.510 acres as shown on plat entitled "ALTA/ACSM Land Title Survey for Tract 1 and Tract 2 lands of David B. Dye" prepared by Stantec Consulting Services, Inc., dated July 28, 2005.



SITE PLAN

SCALE: 1" = 40'-0"
DATE: 02 DEC 05

DATE: 02 DEC 05



Tax ID. # 027-06-206

Current Zoning: R-1

Proposed Zoning: Institutional

Proposed Use: Dependent Care Facility

115 Total Suites
Three Story / 36' 10" Maximum Height

from Average Extra Grade

PROJECT STATISTICS:

PROJECT AREA: 9.51 AC 414,256 SQ. FT.

AREA CALCULATIONS:

MAIN BUILDING: 37,844 SQ. FT. 9.

PATIO: 5,300 SQ. FT. 1.2%

DRIVES / PARKING: 41,668 SQ. FT. 10.1%

WALKS: 4,800 SQ. FT. 1.2%

OPEN SPACE: 324,644 SQ. FT. 78.4%

PARKING:

4 ACCESSIBLE SPACES

6 COVERED SPACES

72 OPEN SPACES

82 SPACES PROVIDED
Revised 1/2000/2/04/45 CM/CS

Required = 1 space / 3 beds = 45 SPACES

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Charlotte Dependent Living Facility

CHARLOTTE, NORTH CAROLINA

[Signature]
DATE: 12.10.10

