



VARIANCE APPLICATION

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

FY2005 Case #:	06-022
Date Filed:	1-30-06
Meeting Date:	
Received By:	<i>[Signature]</i>
Office Use Only	

Variance requested on property located at: 3503 David Cox Road, Suite B
Charlotte, NC 28269

Property Zoned: B-1 SCD

Tax Parcel #: 027-132-15
Bell Terraces at Cheshire, LLC, C+S Terraces at Cheshire, LLC,
Property Owner: Chai Terraces at Cheshire, LLC, Dorsett Terraces at Cheshire, LLC,
Norwood Terraces at Cheshire, LLC, Peterson Terraces at Cheshire, LLC
Waterford Terraces at Cheshire, LLC
Date Existing Structure Erected: Building - 2001
Deck - 2005

TO THE CHARLOTTE ZONING BOARD OF ADJUSTMENT:

I RDY MARIN of Fiesta Maya, 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):

See Attached Sheet

Describe the VARIANCE being requested on the above referenced property:

See Attached Sheet

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.)

- (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.)

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

See Attached Sheet

- (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.)

See Attached Sheet

- (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.)

See Attached Sheet

3507 David Cox Road, Suite B Charlotte, NC 28269
Factors Relevant to the Issuance of a Variance

I request a variance from the following provisions of the Zoning Ordinance (cite Section numbers and Code requirements):

The site in question is currently zoned B-1SCD (Shopping Center District). The property was rezoned in 1987. The specific variance is from the ordinance in effect in 1987 from the Mecklenburg County Zoning Ordinance Subsection 3210.4 Development requirements number 3 which states, "The minimum distance from other property lines to any building must be at least 25 feet for any building under 40 feet high." The B-1SCD zoning district has been replaced by the CC Commercial Center district but this site is still governed by the B-1SCD district standards that applied when the zoning was approved.

Describe the Variance being requested on the above referenced property:

The specific variance being requested is for the 11 ft. encroachment of an accessory use of the principal structure, a deck, into the 25 ft. setback.

(a) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance.

The addition of the deck will meet all current subdivision and zoning requirements, except the 11 ft. encroachment of the unenclosed deck added onto the existing restaurant. This prevents the property owner from utilizing this deck for additional seasonal seating. By following the 25 ft. setback, this area remains unusable.

(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.

The applicant's main reason for utilizing this building for a restaurant was because of the area that was indicated to him could be used for an accessory deck. The use of a deck would aid to offset the limited indoor seating. Outdoor seating as an accessory to a restaurant is a common feature in the community.

(2) The hardship of which the Applicant complains results from unique circumstances related to the Applicant's land.

This property is unique in that the property is zoned business (B-1SCD) and was rezoned in 1987. At this time, the adjacent property was zoned residential. Then in 1989 the adjacent property was also rezoned to the same business district (B-1SCD) and therefore the reason for the large setback was no longer needed.

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

The applicant did not create the hardship because he was not involved in either the rezoning of the subject property in 1987 or the adjacent property's rezoning in 1989 when the setbacks were determined. Therefore he had no

action during the rezoning of the property and the hardship is not the result of his own actions.

- (b) The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit.

The reason for the district standard of a 25 ft. building setback was written to protect existing residential properties that would need separation from a new shopping center neighbor. The subject property was rezoned in 1987, when the adjacent property (tax parcel 027-132-11) was still zoned residential. However, in 1989, the adjacent property (tax parcel 027-132-11) was also rezoned to the B-1SCD district. Therefore, the reason for the 25 ft. building separation from residential was no longer needed after the adjacent property was also zoned B-1SCD. The 25 ft. setback on each side of the property line results in a minimum 50 ft. separation between similar retail/restaurant uses. However, in this case, the adjacent existing building (also currently a restaurant) is approximately 200 ft. from the subject property. The adjacent restaurant provides their parking and circulation area very close to the property line (see picture). In addition, along the property line there are existing Leyland cypress trees that provide additional screening and buffer between the two sites (see picture). Furthermore, the deck is simply to be an accessory use to the principal structure, the restaurant, and will be unenclosed without walls or columns and therefore does not meet the definition of building used in the ordinance that existed when the zoning was approved. The property's current zoning B-1SCD is no longer used in the City of Charlotte for new rezonings. In the City of Charlotte's current business zoning districts, there is normally not a side setback required for a non-residential building adjacent to a non-residential building. The demand for outdoor seating has also increased in recent years because of the importance of pedestrian scale and activity. Therefore, this is a reasonable request and will allow reasonable continuing use of the property as a restaurant while still preserving the original spirit and intent of the B-1SCD requirements as well as current demands in the restaurant market.

- (c) The granting of the variance secures the public safety and welfare and does substantial justice.

The granting of the variance in no way jeopardizes the public safety and welfare. The granting of the variance would allow for options for patrons of the restaurant while still upholding the spirit and intent of the ordinances which are written for the public interest. In addition, justice would be done in that variances for similar uses have been granted for outdoor seating.

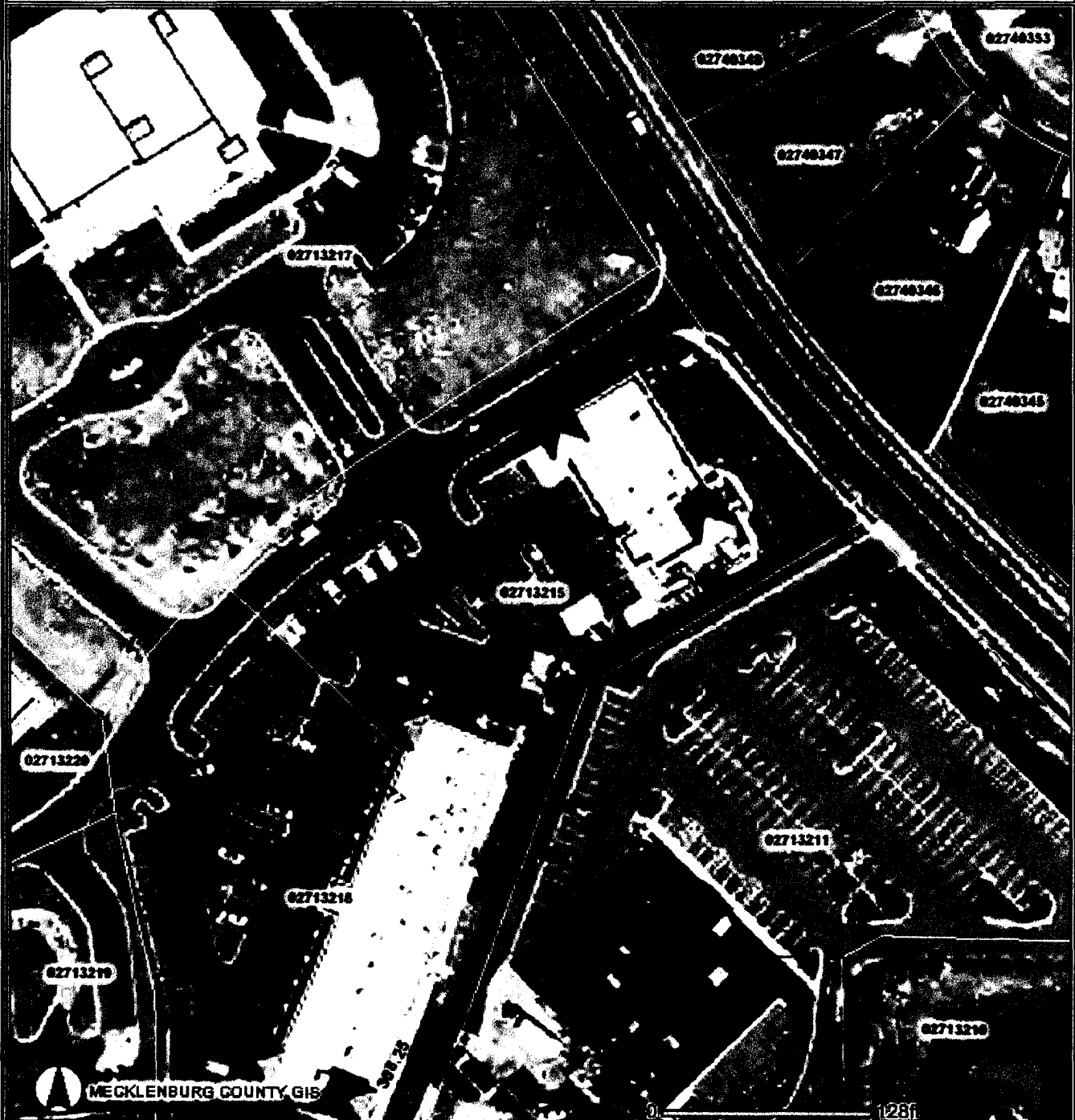


Mecklenburg County, North Carolina

POLARIS

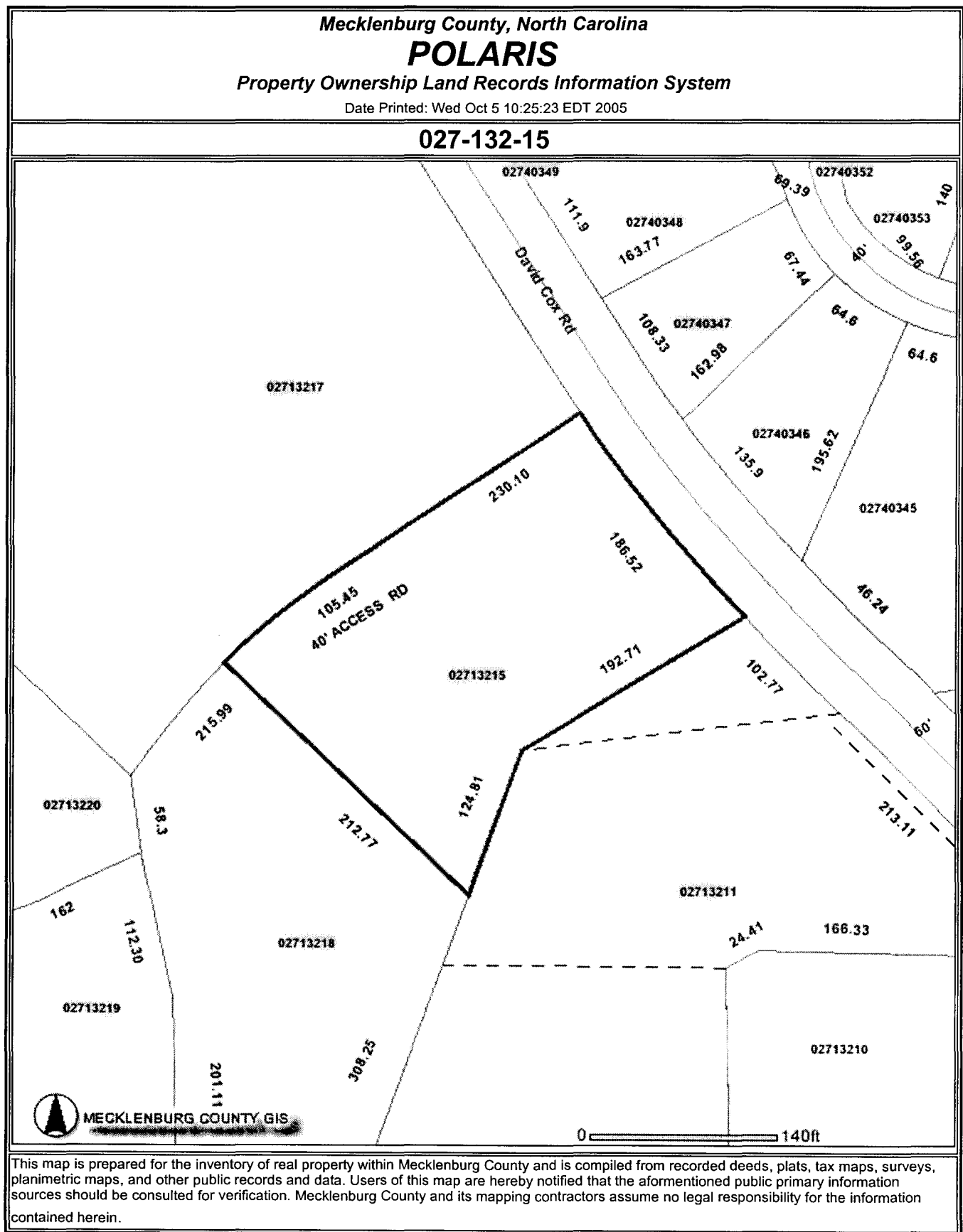
Property Ownership Land Records Information System

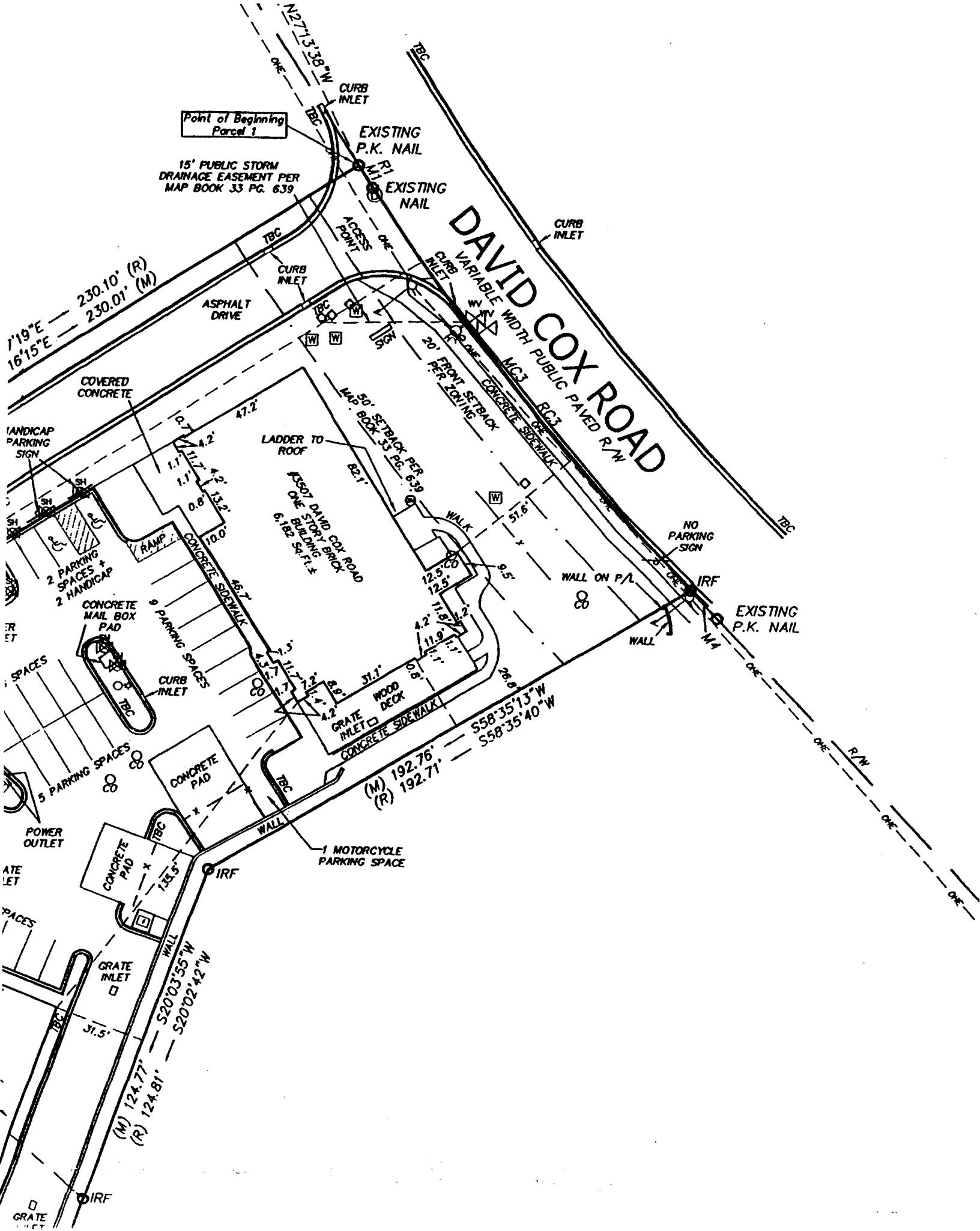
Date Printed: Thu Jan 26 11:56:28 EST 2006

Fiesta Maya

This map is prepared for the inventory of real property within Mecklenburg County and is compiled from recorded deeds, plats, tax maps, surveys, planimetric maps, and other public records and data. Users of this map are hereby notified that the aforementioned public primary information sources should be consulted for verification. Mecklenburg County and its mapping contractors assume no legal responsibility for the information contained herein.







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

Rogelio Marin

"Roy" Marin

Printed Name of Appellant

Monterrey Restaurante Mexicano

1007 W. Roosevelt Blvd. (Hwy 74)

Mailing Address

Monroe NC 28110

City, State, Zip

704-289-1320

Telephone Number

Fax Number

Send correspondence to Agent

E-Mail Address

Rogelio Marin

Signature of Appellant

Walter Fields

Printed Name of Representative (if any)

1919 South Blvd, Suite 101

Mailing Address

Charlotte NC 28203

City, State, Zip

704.372.7855

Telephone Number

704.372.7856

Fax Number

walter@walterfieldsgroup.com

E-Mail Address

[Signature]

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:

See Attached sheet

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>Anthony T. and Tina C. McNeill</u>
<u>3520 Briarthorne Drive</u>
<u>Charlotte, NC 28269</u> | Tax Parcel # <u>027-403-45</u> |
| 2. | <u>David P. and Tamora H. Cornwall</u>
<u>3516 Briarthorne Drive</u>
<u>Charlotte, NC 28269</u> | Tax Parcel # <u>027-403-46</u> |
| 3. | <u>Farah L. Gunnels</u>
<u>3512 Briarthorne Drive</u>
<u>Charlotte, NC 28269</u> | Tax Parcel # <u>027-403-47</u> |
| 4. | <u>United States Postal Service</u>
<u>3980 Dekalb Technology Parkway</u>
<u>Suite 840</u>
<u>Atlanta, GA 30340</u> | Tax Parcel # <u>027-132-17</u> |
| 5. | <u>Same as Subject Property</u>
<u>Owner</u> | Tax Parcel # <u>027-132-18</u> |
| 6. | <u>Harris-Cox Associates LLC</u>
<u>924 N. College Street</u>
<u>Charlotte, NC 28206</u> | Tax Parcel # <u>027-132-11</u> |
| 7. | _____

_____ | Tax Parcel # _____ |
| 8. | _____

_____ | Tax Parcel # _____ |
| 9. | _____

_____ | Tax Parcel # _____ |
| 10. | _____

_____ | Tax Parcel # _____ |

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).

ATTACH A PHYSICAL SURVEY OR DRAW A SITE PLAN, TO SCALE, DESCRIBING THE PROPERTY AND VARIANCE REQUEST. PROVIDE ALL APPROPRIATE DIMENSIONS; LOCATE ALL EXISTING AND PROPOSED BUILDINGS/STRUCTURES, AND PROVIDE THEIR DISTANCE TO THE PROPERTY LINES, RIGHTS-OF-WAY, ETC.

A large, empty rectangular box with a thin black border, intended for a physical survey or site plan. It occupies the majority of the page below the instructions.



STEVEN D. BELL & COMPANY

REAL ESTATE INVESTMENTS AND MANAGEMENT

January 4, 2006

Mr. Walter Fields
Walter Fields Group
1919 South Blvd.
Suite 101
Charlotte, NC 28203

RE: FIESTA MAYA RESTAURANT VARIANCE, PETITIONER: ROY MARIN

Dear Mr. Fields:

Please accept this letter as my authorization for you to proceed with filing of the variance with the City of Charlotte Board of Adjustment for the property located at 3507-B David Cox Road in Charlotte, North Carolina also known as tax parcel 027-132-15 with my consent as managing agent for the landowner of the property.

Sincerely,

Bell Terraces at Cheshire, LLC, C & S Terraces at Cheshire, LLC,
Chai Terraces at Cheshire, LLC, Dorsett Terraces at Cheshire, LLC,
Norwood Terraces at Cheshire, LLC, Peterson Terraces at Cheshire, LLC,
Waterford Terraces at Cheshire, LLC

By: Steven D. Bell
Steven D. Bell, Member/Manager

STATE OF North Carolina

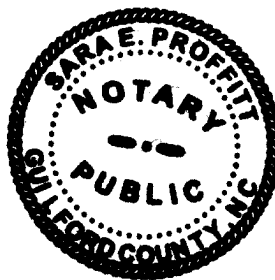
COUNTY OF Guilford

I, Sara E Proffitt, Notary Public, do hereby certify that
Steven D Bell personally came before me this day and
acknowledged the execution of the foregoing instrument.

Witness my hand and notarial stamp, this 10th day of January,
2006.

Sara E Proffitt
Notary Public

My Commission Expires: 8/9/07





MECKLENBURG COUNTY
Land Use & Environmental Services

Morales

CERTIFIED: _____
HAND DELIV: ☒ _____
POSTED: _____

COPY

STOP WORK ORDER

To: Roben Morales
Address: 3503 B David Cox Rd
Charlotte NC

Date: 4-1-05

Re: Job Address: 3507 B David Cox Rd, Charlotte, N.C.

Parcel No: _____

Permit No: _____

Inspection Date: 4-1-5

Inspector Name: Harold Simola

The Following Specific Work Shall be Stopped:

All work on patio & cover

Specific Reasons for Stopping Work:

Building without permits

(G.S. 160A-421 G.S. 153A-361)

Required Conditions to be Complied with Prior to Resuming Work:

Need to get zoning and building and electrical permits
Need to submit plans for review

Harold Simola
Inspector's Signature

NOTE: Violation of a STOP WORK ORDER shall constitute a Class I misdemeanor.