

Hearing Request Application - Form 1
Zoning Board of Adjustment
City of Charlotte

Appeal

Date Filed: 12/19/07 Case Number: 08-005 Received by: Stearns

Instructions

This form must be filed out completely. Please attach the appropriate additional form depending on your request type along with required information as outlined in the appropriate checklist. Please type or print legibly. All property owners must sign and consent to this application, attach additional sheets if necessary. If the applicant is not the owner, the owners must sign the Designation of Agent section at the bottom of this form.

The Applicant Hereby (check all that apply):

- ☐ Requests a variance from the provisions of the zoning ordinance as stated on Form 2
- ☐ Appeals the determination of a zoning official as stated on Form 3
- ☐ Requests an administrative deviation as stated on Form 4

Applicant or Agent's Name: Bob Bruner, Ballentyne Village, LLC

Mailing Address: PO BOX 470508

City, State, Zip: Charlotte, NC 28247

Daytime Telephone: _____ Home Telephone: _____

Interest in this Case (please circle one): Owner Adjacent Owner Other

Property Owner(s) [if other than applicant/agent]: _____

Mailing Address: _____

City, State, Zip: _____

Daytime Telephone: _____ Home Telephone: _____

Property Address: See attached sheets

Tax Parcel Number: See attached sheets Zoning District: CC

Subdivision Name: _____ Conditional District: (YES) NO

Applicant Certification and Designation of Agent

I (we) certify that the information in this application, the attached form(s) and documents submitted by me (us) as part of this application are true and correct. In the event any information given is found to be false, any decision rendered may be revoked at any time. I (we) hereby appoint the person named above as my (our) agent to represent me (us) in this application and all proceedings related to it. I (we) further certify to have received, read and acknowledged the information and requirements outlined in this packet.

12/19/07
Date

[Signature]
Property Owner

Date

Property Owner

Walter Fields
704-369-5805

Appeal Application - Form 3
Zoning Board of Adjustment
City of Charlotte

Date Filed: _____ **Case Number:** _____ **Fee Collected:** _____

Has work started on this project?
 If yes, Did you obtain a building permit?
 Have you received a Notice of Violation
 for this project?
 Has this property been rezoned?

YES ☒ NO ☐
 YES ☒ NO ☐
 YES ☐ NO ☒
 YES ☒ NO ☐

If yes, attach a copy.

If yes, attach a copy.

If yes, Petition Number: 96-29(c)

- (1) What zoning ordinance section numbers do you allege were applied in error? Please list each section, the requirement and the requested variance.

Item	Code Section	Code Requirement
<i>Example</i>	<i>9.205 (1)(g)</i>	<i>45 foot rear yard</i>
A	11.405	Development standards- CC district
B	2.201	Definition- project area
C	2.201	Definition- development
D	2.201	Definition- parcel
E	2.104	Addition

- (2) Please describe why you feel the code sections listed above were applied in error. Tell the Board what you feel is the appropriate application of each code section.

(a) Code Section 11.405

See attached sheets

(b) Code Section 2.201 project area

See attached sheets

(c) Code Section 2.201 development.



See attached sheets


(d) Code Section 2.201 parcel.


See attached sheets



(e) Code Section 2.104 additions to development.

See attached sheets

Mecklenburg County, North Carolina POLARIS Parcel Ownership and GIS Summary <i>Date and Time: 12/18/2007 9:33:07 PM</i>	
Parcel ID #: 22354105 GIS ID #: 22354105	
Owner Name:	BV DEVELOPMENT GROUP LLC AND % SHIELDS PROPERTY COMPANY
Mailing Address:	PO BOX 470508 CHARLOTTE, NC 28247
Property Characteristics	
Legal Desc.:	L4 M45-862
Land Area:	1.48AC
Fire District:	00-CITY OF CHARLOTTE
Special District:	N/A
Account Type:	NC CORP
Municipality:	1-CHARLOTTE
Property Use:	WAREHOUSE
Deed Reference(s) and Sales Price	
20494-643 (5/26/2006) \$0.00	
Situs Addresses Tied to This Parcel	
14735 JOHN J DELANEY DR	
Site Location Information	
Zoning Boundaries:	Contact Appropriate Planning Department or See Map.
ETJ Area: CHARLOTTE	
Charlotte Historic Districts: NO	
Within Charlotte 6/30/2007 Annexation Area: NO	
Census Tract #: 58.18	
S.W.I.M Stream Buffer	
Buffer Distance:	OUT
Post Construction District	
District:	Not Available
FEMA Flood Information	
FEMA Panel #:	3701580286E
FEMA Flood Zone:	OUT
FEMA Panel Date:	02/04/2004
Community Flood Information	
Community Flood Zone:	OUT
Regulated Watershed Information	
Watershed Name:	FOUR MILE
Watershed Class:	
Building Photography	
PHOTO #1 Location: 14735 JOHN J DELANEY DR	
	
<p>Information contained within this photo may be used as a visual aid and to generally locate, identify, and inventory parcels in Mecklenburg County, North Carolina. There are inherent errors and limitations associated with this type of electronic medium. Mecklenburg County cannot warrant or guarantee the information contained herein including but not limited to its accuracy or completeness.</p>	
<p>Powered by</p> 	
<p>The information provided by this program is prepared for the inventory of real property within Mecklenburg County and is compiled from recorded deeds, plats, tax maps, surveys, and other public records and data. Users of this map data are hereby notified that the aforementioned public primary information sources should be consulted for verification of the information. Mecklenburg County and its mapping contractors assume no legal responsibility for the information contained herein.</p>	

Mecklenburg County, North Carolina POLARIS Parcel Ownership and GIS Summary <i>Date and Time: 12/18/2007 9:33:32 PM</i>			
Parcel ID #: 22354106 GIS ID #: 22354106		FEMA Flood Information	
Owner Name:	BV DEVELOPMENT GROUP LLC AND % SHIELDS PROPERTY COMPANY	FEMA Panel #:	3701580286E
		FEMA Flood Zone:	OUT
		FEMA Panel Date:	02/04/2004
Mailing Address:	PO BOX 470508 CHARLOTTE, NC 28247	Community Flood Information	
		Community Flood Zone:	OUT
Property Characteristics		Regulated Watershed Information	
Legal Desc.:	L2 M45-862	Watershed Name:	FOUR MILE
Land Area:	0.637AC	Watershed Class:	
Fire District:	00-CITY OF CHARLOTTE	Powered by 	
Special District:	N/A		
Account Type:	NC CORP		
Municipality:	1-CHARLOTTE		
Property Use:	VACANT		
Deed Reference(s) and Sales Price			
20494-643 (5/26/2006) \$0.00			
Situs Addresses Tied to This Parcel			
14819 COSTIGAN LN			
Site Location Information			
Zoning Boundaries:	Contact Appropriate Planning Department or See Map.		
ETJ Area: CHARLOTTE			
Charlotte Historic Districts: NO			
Within Charlotte 6/30/2007 Annexation Area: NO			
Census Tract #: 58.18			
S.W.I.M Stream Buffer			
Buffer Distance:	OUT		
Post Construction District			
District:	Not Available		
<small>The information provided by this program is prepared for the inventory of real property within Mecklenburg County and is compiled from recorded deeds, plats, tax maps, surveys, and other public records and data. Users of this map data are hereby notified that the aforementioned public primary information sources should be consulted for verification of the information. Mecklenburg County and its mapping contractors assume no legal responsibility for the information contained herein.</small>			

Mecklenburg County, North Carolina POLARIS Parcel Ownership and GIS Summary <i>Date and Time: 12/18/2007 9:33:50 PM</i>			
Parcel ID #: 22354104 GIS ID #: 22354104		FEMA Flood Information	
Owner Name:	BV DEVELOPMENT GROUP LLC AND % SHIELDS PROPERTY COMPANY	FEMA Panel #:	3701580286E
		FEMA Flood Zone:	OUT
		FEMA Panel Date:	02/04/2004
Mailing Address:	PO BOX 470508 CHARLOTTE, NC 28247	Community Flood Information	
		Community Flood Zone:	OUT
Property Characteristics		Regulated Watershed Information	
Legal Desc.:	L3 M45-862	Watershed Name:	FOUR MILE
Land Area:	0.485AC	Watershed Class:	
Fire District:	00-CITY OF CHARLOTTE	Powered by 	
Special District:	N/A		
Account Type:	NC CORP		
Municipality:	1-CHARLOTTE		
Property Use:	VACANT		
Deed Reference(s) and Sales Price			
20494-643 (5/26/2006) \$0.00			
Situs Addresses Tied to This Parcel			
14805 JOHN J DELANEY DR			
Site Location Information			
Zoning Boundaries:	Contact Appropriate Planning Department or See Map.		
ETJ Area: CHARLOTTE			
Charlotte Historic Districts: NO			
Within Charlotte 6/30/2007 Annexation Area: NO			
Census Tract #: 58.18			
S.W.I.M Stream Buffer			
Buffer Distance:	OUT		
Post Construction District			
District:	Not Available		
<small>The information provided by this program is prepared for the inventory of real property within Mecklenburg County and is compiled from recorded deeds, plats, tax maps, surveys, and other public records and data. Users of this map data are hereby notified that the aforementioned public primary information sources should be consulted for verification of the information. Mecklenburg County and its mapping contractors assume no legal responsibility for the information contained herein.</small>			

Mecklenburg County, North Carolina POLARIS Parcel Ownership and GIS Summary <i>Date and Time: 12/18/2007 9:34:04 PM</i>	
Parcel ID #: 22354103 GIS ID #: 22354103	
Owner Name:	BV RETAIL LLC AND % SHEILD PROPERTY COMPANY LLC
Mailing Address:	PO BOX 470508 CHARLOTTE, NC 28247
Property Characteristics	
Legal Desc.:	L1 M45-862
Land Area:	7.398AC
Fire District:	00-CITY OF CHARLOTTE
Special District:	N/A
Account Type:	NC CORP
Municipality:	1-CHARLOTTE
Property Use:	COMMERCIAL
Deed Reference(s) and Sales Price	
20745-284 (7/14/2006) \$0.00	
20494-643 (5/26/2006) \$0.00	
Situs Addresses Tied to This Parcel	
14815 JOHN J DELANEY DR ✱ 14825 JOHN J DELANEY DR 14835 JOHN J DELANEY DR	
Site Location Information	
Zoning Boundaries:	Contact Appropriate Planning Department or See Map.
ETJ Area: CHARLOTTE	
Charlotte Historic Districts: NO	
Within Charlotte 6/30/2007 Annexation Area: NO	
Census Tract #: 58.18	
S.W.I.M Stream Buffer	
Buffer Distance:	OUT
Post Construction District	
District:	Not Available
FEMA Flood Information	
FEMA Panel #:	3701580286E
FEMA Flood Zone:	OUT
FEMA Panel Date:	02/04/2004
Community Flood Information	
Community Flood Zone:	OUT
Regulated Watershed Information	
Watershed Name:	FOUR MILE
Watershed Class:	
Building Photography	
PHOTO #1 Location: 14825 JOHN J DELANEY DR	
 22354103 001	
PHOTO #2 Location: 14815 JOHN J DELANEY DR	
 22354103 002	
PHOTO #3 Location: 14835 JOHN J DELANEY DR	



Information contained within this photo may be used as a visual aid and to generally locate, identify, and inventory parcels in Mecklenburg County, North Carolina. There are inherent errors and limitations associated with this type of electronic medium. Mecklenburg County cannot warrant or guarantee the information contained herein including but not limited to its accuracy or completeness.

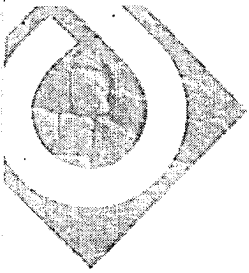
Powered by



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Date Printed: Tue Dec 18 21:30:00 EST 2007

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.



150 Fayetteville Street, Suite 950 Raleigh, NC 27601
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Shaping the Environment
Realizing the Possibilities

Land Planning
Landscape Architecture
Civil Engineering
Urban Design

November 13, 2007

Mr. Keith MacVean
Charlotte-Mecklenburg Planning Commission
600 East Fourth Street
Charlotte, North Carolina 28202

Re: 35182.07 – Ballantyne Village Building Area Consultation

Dear Keith:

Kindly advise regarding the status for Charlotte Mecklenburg Planning Commission's written response to our September 12, 2007 inquiry to clarify the definition of "project area" related to Ballantyne Village. We have attached our original email request pursuant to our meeting with you, Mr. Tim Manes and Ms. Katrina Young on September 11, 2007. Essentially, we, on behalf of our Client, need to thoroughly understand the correlation between "project area", which can be composed of multiple owners/deeds and parcels, and what may in the ordinance specifically prohibit or limit using the entire designated FAR within the "project area". This is a most critical issue given the assumptions reflected in the Ballantyne Village project and the tremendous investment made to date.

We have been exceedingly patient and encourage you to address this issue in writing as quickly as possible. Perhaps Ms. Debra Campbell or the City Attorney's office may have insight into this matter.

Many thanks.

Warmest personal regards,

COLEJENEST & STONE, P.A.

Michael S. Cole, RLA
Managing Principal

reg

Enclosure

cc: Ms. Debra Campbell – CMPC
Mr. Tim Manes – CMPC
Ms. Katrina Young, CZO – MCG
Mr. Robert B. Bruner – RBB
Ms. Susan G. Freyler, RLA



RECEIVED
ColeJenest & Stone

November 19, 2007

NOV 26 2007

PROJ. NO. _____

Michael Cole
ColeJenest & Stone
150 Fayetteville – Suite 950
Raleigh NC 27601

Subject: Ballantyne Village Floor Area Ratio (F.A.R.)

Dear Michael,

This letter is in response to your questions as to the association of Floor Area (FAR) to a “deeded” parcel versus a parcel otherwise defined, such as the area labeled “Parcel A” for the Ballantyne Town Center.

Rezoning Petition Number 96-29(c) involved a tract of land with existing zoning of B-1SCD and MX-1. The 168.23-acre tract identified parcels A, B, C and D. Because of the change in zoning from B-1SCD and MX-1, the standards and requirements of the CC (Commercial Center) District are now in effect.

Code Section 11.405 of the City of Charlotte Zoning Ordinances addresses the development standards for all uses and structures in the CC district. Specifically Code Section 11.405(4) states that in no event shall the amount of development within the project area exceed a floor-area-ratio of 1.0. If a parking deck is constructed as part of the development, the allowable floor area could be increased by 50 percent.

In Code Section 2.201 (Definitions) of the Zoning Ordinance, the definition of project area is: Any area of land, and/or water regardless of the number of individual parcels contained therein on which development is proposed under these regulations.

Code Section 2.201 also defines development as:

Except as limited in this subsection, the carrying out of any building activity, the making of any change in the use or appearance of any structure or land, or the subdividing of land into two or more parcels.

(a) Except as provided in Subsection (c) hereof, for the purposes of these regulations, the following activities or uses shall be considered “development:”

- i. *The reconstruction, alteration of the size, or substantial change in the external appearance of a structure on land or water;*
- ii. *A change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on land or a material increase in the number of businesses, manufacturing establishments, offices, or dwelling units in a structure or on land, but only so long as the increase in the number of such establishments materially increases the number of persons occupying or employed on the premises.*

Code Section 2.201 defines parcel as:

Any quantity of land and/or water capable of being described in definitive terms with respect to its location and boundaries. It may be established as distinct from other parcels which are designated by its owner or developer as land to be used or developed as a unit, or which has been used or developed as a unit.

The construction of the proposed Ballantyne Village (BV) would be considered a development but not one that has been developed as a unit but one that is a product of a subdivision and is distinct from other parcels.

The City of Charlotte Zoning Ordinance states that if there was an existing development that is later subdivided, each development would be treated as a whole meaning that it must meet all of the development standards as a single development and will no longer be considered as part of an existing development

Section 2.104. Additions to existing development.

Whenever any increment or addition to existing development results in the total amount of development being greater than a threshold size identified in these regulations, the development shall be treated as a whole in determining the type of review and approval required under these regulations. For any single development that is later subdivided, each increment of development will be treated as a whole.

Based on the Zoning Code Sections cited, the subdivision of a development requires that each development must then individually meet the development standards of the district. Therefore, the use of another parcel to satisfy FAR requirements is not permitted.

If I can be of further assistance or provide any additional information, please let me know.

Sincerely,



Keith MacVean
Zoning Program Manager
Interim Zoning Administrator

Appeal Application supplemental sheets.

(2)(a) Section 11.405(4). The Acting Zoning Administrator has cited this single subsection in support of a faulty conclusion as to the allowable floor area that is permitted in the remaining portions of a Project originally approved in 1996. Section 11.405 contains the Development Standards that apply to development in the CC district. Subsection 11.405(4), as cited in the Acting Zoning Administrator's opinion, is simply quoted but fails to either support his opinion or is complete in its content in terms of its total effect on the issue. While the cited subsection is quoted correctly, the opinion ignores other subsections relevant to the issue and to the history of this site.

For example, subsection 11.405(5) relates to buffer standards that apply to development within a project in the CC district. Prior rulings in 2003 by the Zoning Administrator, Mr. Robert Brandon, had concluded that the perimeter of the entire project area, identified as a portion of Parcel A (being the area of original Parcel A lying south of Ballentyne Commons Parkway and west of US 521) of the 1996 rezoning, would be used to determine the applicability of the buffer standards for development within the project area. In that context, the buffer standards were applied to the exterior of the entire project area and not to individual components located at various locations within the project area. Therefore, the standard applied to determine the application of the buffer requirements was the entire project area and not components of the project. Thereafter, development of the various components of the project proceeded and funds expended in reliance on this interpretation.

Another example can be found in the application of the standards in subsection 11.405(6) which regulates building heights in the CC district. In this area of regulation, prior rulings in 2004 by the Zoning Administrator, Mr. Robert Brandon, concluded that, for the purpose of determining the allowable building height that would be permitted, the perimeter of the entire project area, identified as a portion of Parcel A (being the area of original Parcel A lying south of Ballentyne Commons Parkway and west of US 521) of the 1996 rezoning, would be used to determine the applicability of the height standards for development within the project area. Therefore, the standard applied to determine the application of the height requirements was the entire project area and not

components of the project. Thereafter, development of the various components of the project proceeded and funds expended in reliance on this interpretation. In the case of the Ballentyne Village component of the project, those expenditures were significant and involved the construction of a parking structure and other improvements based on the consistent interpretation that had been applied to the project area.

The Acting Zoning Administrator erred by failing to apply the consistent and logical interpretation relative to floor area that has been previously and consistently applied over the life of this project for other development standards in the CC district. Specifically, the perimeter of the entire project area, identified as a portion of Parcel A (being the area of original Parcel A lying south of Ballentyne Commons Parkway and west of US 521) of the 1996 rezoning, would be used to determine the applicability of the development standards for development within the project.

(2)(b) Section 2.201. The Acting Zoning Administrator has cited the definition for the term “project area” as part of his analysis, seemingly for the purpose of highlighting that the word “development” is contained within the term “project area”: the term “project” is not defined. We would assert that the term “project” would normally be used to refer to any or all of the various development activities that occur within the “project area”. He does not, however, apply that definition to the question at hand that was posed in September nor to the geography of the “project area” in question. Over the life of this entire project there has been a consistent determination as to the application of the ordinance. Specifically, the perimeter of the entire project area, identified as a portion of Parcel A (being the area of original Parcel A lying south of Ballentyne Commons Parkway and west of US 521) of the 1996 rezoning, would be used to determine the applicability of the development standards for development within the project.

(2)(c) Section 2.201. The Acting Zoning Administrator has cited the definition for the term “development” and some of the subsections of that definition and highlighted the language that notes that the term “development” includes “the subdivision of land into two or more parcels”. However, he does not apply the term “development” to the question at hand that was posed in September nor to the specifics of the project

located within the project area, identified as a portion of Parcel A (being the area of original Parcel A lying south of Ballentyne Commons Parkway and west of US 521) of the 1996 rezoning. Although commonly used as a noun, the definition cited clearly intends the term “development” to be representative of an action or activity, not a thing or a building. As such, the “subdivision of land” is indeed defined as one form of development, but that has no bearing on the question at hand and does not relate to the previously cited definition of “project area”. We contend that subdivision, building construction, infrastructure installation, grading and landscaping are all various types of “development” that can take place within a project area and the fact that those activities can properly occur does not change the standards by which these forms of development can take place. The Acting Zoning Administrator erred in not applying a consistent and logical interpretation to this site. Over the life of this entire project there has been a consistent determination as to the application of the ordinance. Specifically, the perimeter of the entire project area, identified as a portion of Parcel A (being the area of original Parcel A lying south of Ballentyne Commons Parkway and west of US 521) of the 1996 rezoning, would be used to determine the applicability of the development standards for development within the project.

(2)(d) Section 2.201. The Acting Zoning Administrator has cited the definition of the term “parcel” and highlights language within the definition which has no bearing on the question at hand. There is no standard in the ordinance that establishes limits or criteria that apply to “parcels” within a project area, except those that define lot size and dimensional standards. The highlighted language, “used or developed as a unit”, is not a standard but rather a modifier or further explanation to support the root definition. The entire term simply recognizes what various types of individual land tracts or interest in land might be, that they be identifiable in some form, and allows for and such type of land or interest to be developed individually or as component of a larger project. Beyond citing the definition, the Acting Zoning Administrator offers no connection between this term and his opinion. Therefore the fact that there may be different parcels within the project area is irrelevant to the opinion as to the development rights and development standards that apply within the project area. Over the life of this entire project there has been a consistent determination as to the application of the ordinance. Specifically, the perimeter of the entire project area, identified as a portion

of Parcel A (being the area of original Parcel A lying south of Ballentyne Commons Parkway and west of US 521) of the 1996 rezoning, would be used to determine the applicability of the development standards for development within the project.

(2)(e) Section 2.104. The Acting Zoning Administrator has cited the standard for “Additions to existing development”, apparently as a basis to support a conclusion that is inconsistent with the history of the site and prior interpretations that have been applied to this project. But he uses only part of the definition to support his conclusion and there is at least one major flaw in his approach. The heart of the definition says, in fact, what has been the practice for this project from the beginning; that the “development be treated as a whole” in determining the total amount of development and the type of review and approval that is required. Over the life of this entire project there has been a consistent determination as to the application of the ordinance. Specifically, the perimeter of the entire project area, identified as a portion of Parcel A (being the area of original Parcel A lying south of Ballentyne Commons Parkway and west of US 521) of the 1996 rezoning, would be used to determine the applicability of the development standards for development within the project. In addition, normal development reviews have been applied to all of the various development activities that have occurred within the project area. So up to this point, there has been a consistently applied standard and consistently applied normal development review process. But Section 2.104 deals with additions to “existing development” and the project is still in its initial development phases which have continued for several years and will continue for many years to come. So the application of a standard for “existing development” ignores the fact that the development within the project is not “existing”, it is continuing. If the Acting Zoning Administrator wants to rely on this section, then he must accept that development rights should be determined by looking at the entire project with which we agree and which would be consistent with prior interpretations and development review processes that have been applied to this project. The last sentence on the section cited relates to “any single development” which incorrectly uses the term “development” but clearly contemplates, with the words “is later subdivided”, some action after the project is completed that would create a new component. This sentence does not apply to the question at hand since the development that has not

yet occurred is not “existing” and the application of any of Section 2.204 would be an error.

As part of his reasoning, the Acting Zoning Administrator states

The construction of the proposed Ballantyne Village (BV) would be considered a development but not one that has been developed as a unit but one that is a product of a subdivision and is distinct from other parcels.

The City of Charlotte Zoning Ordinance states that if there was an existing development that is later subdivided, each development would be treated as a whole meaning that it must meet all of the development standards as a single development and will no longer be considered as part of an existing development

This reasoning is flawed for several reasons.

- The construction of Ballentyne Village is indeed “development” as defined by the ordinance, but is a component of a larger project that has and is developing in numerous phases for different parts of the project. Those phases are based on building type, infrastructure requirements, market conditions, and prerequisites such as the building of a parking deck with the additional structural support already built in to accommodate later phases of the project. But as such, it remains part of the larger project and the fact that the ownership of various parcels has changed is irrelevant to the application of the zoning ordinance. Zoning applies to the land, not to the ownership of the land. To accept this convoluted interpretation, one would require that every outparcel in an office park or shopping center be treated as a new and distinct ‘development’ even though it lies within a larger project area. This is illogical and counter to common practice.
- While the parcels are indeed “distinct”, they remain part of the larger project and are not some sort of outcast remnant that has to go it on its own. They are all components of the larger project within the overall project area.
- The project bound within the previously defined project area has and will continue to be developed in various phases and as such is not “existing development”. The fact that different components within the project area develop at different times does not alter the development standards that have been consistently applied to the development of this project.

- A telling statement from the Acting Zoning Administrator sums up the error in his opinion: “..will no longer be considered part of an existing development.” Clearly this statement acknowledges that prior interpretations that relate to the project have reached a different conclusion. It also appears that in the past, Section 2.104 may have been applied to the site and while we do not necessarily agree that such application is even accurate, it is clear that the determination of development standards in the past has recognized that the development within the project would be treated as a whole, not as freestanding development sites.

In his conclusion, the Acting Zoning Administrator finds:

Based on the Zoning Code Sections cited, the subdivision of a development requires that each development must then individually meet the development standards of the district. Therefore, the use of another parcel to satisfy FAR requirements is not permitted.

This statement, too, reveals errors.

- “the subdivision of a development” is a nonsensical statement since ‘subdivision’ is a form of ‘development. Even if it made sense, it is inapplicable since development, including subdivision, is not restricted within a project and the act of subdividing or creating ‘parcels’ with the development does not change the zoning development standards that apply to development within the project area..
- “each development must then meet the development standards of the district’ would be accurate if applied to individual parcels that happen to share the same zoning designation. But the “development” here is within a master planned project area with multiple components that have and will continue to develop over years. As such is should be treated as a whole which has been a consistent determination as to the application of the ordinance. Specifically, the perimeter of the entire project area, identified as a portion of Parcel A (being the area of original Parcel A lying south of Ballentyne Commons Parkway and west of US 521) of the 1996 rezoning, would be used to determine the applicability of the development standards for development within the project.
- To be consistent, the same standard that was applied in 2003 to determine the application of the buffer standards for the project

and the same standard that was applied in 2004 to determine the height limitations for the project should be used in 2007 to determine the floor area for the project. Substantial expenditures, over and above those necessary to accommodate the current level of development activity, have occurred in reliance on the consistent application of the ordinance to the development of the various components of this project.