

Appeal

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

Date Filed: 12-22-2011

Case Number: 12 - 002

Received by: SSA

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: Kenneth T. Davies, Attorney for Myers Park Homeowners Association and B.T. Atkinson

Mailing Address: 200 the Wilkie House, 2112 East 7th Street

City, State, Zip: Charlotte, NC 28204

Daytime Telephone: 704-376-2059

Home Telephone: _____

Interest in this Case (please circle one):

Owner

Adjacent Owner

Other

Property Owner(s) [if other than applicant/agent]: Queens College, Inc.

Mailing Address: 1900 Selwyn Avenue

City, State, Zip: Charlotte, NC 28274

Daytime Telephone: 704-337-2200

Home Telephone: _____

Property Address: 1900 Selwyn Avenue, Charlotte, NC 28274

Tax Parcel Number: 15108114

Zoning District: R-3

Subdivision Name: Myers Park

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.

21 December 2011

Date

[Signature]
Attorney for Myers Park Homeowners Association
And B.T. Atkinson

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

Date Filed: 12-22-11

Case Number: _____

Fee Collected: \$350.00

Has work started on this project?	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	
If yes, Did you obtain a building permit?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>	If yes, attach a copy.
Have you received a Notice of Violation for this project?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>	If yes, attach a copy.
Has this property been rezoned?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>	If yes, Petition Number: _____

(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
A	2.201	Definition of "Recreation Center" v "Stadium"
B	2.201	Definition of "Class V" v "Class VI" Street
C	9.204 (16)(c)	Primary Access not to be by Class VI Street
D	9.204 (16)(d)	Recreation Center limited to 30,000 square feet
E	9.205 (b)	Maximum Floor Area Ratio .50
F	9.205 (h)	Minimum Open Space 65%

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

(a) Code Section 2.201.

The Levine Center for Wellness and Recreation ("Levine Center") proposed by Queens University has erroneously been defined by the Zoning Administrator as a recreation center, where it is more properly defined as a stadium under Section 2.201 of the City of Charlotte Zoning Ordinance. Recreation Centers are allowed as an accessory use, but stadiums are not allowed. The Levine Center proposes 3,007 seats primarily for athletic and other performances. It therefore is a stadium as defined by the code and not allowed as an accessory structure.

(b) Code Section 2.201/9.204 (16)(c).

Wellesley Avenue in Myers Park was improperly categorized by the Zoning Administrator as a Class V street, when it is more appropriately categorized as a Class VI street under Section 2.201 of the Zoning Ordinance. Specifically, Wellesley Avenue is not designed to carry "low to moderate traffic volumes at low to moderate speeds." It is designed to "accommodate low volumes of traffic at low speeds" only. If Wellesley Avenue is a Class VI street, it may not be used as the primary access to the Levine Center, as such use would violate Section 9.204 (16)(c). The misclassification by Zoning Administrator enables Queens University to use Wellesley Avenue as the sole means of ingress and egress to the Levine Center.

(c) Code Section 9.204 (16)(d).

According to the site plan for the Levine Center, it appears to be at least 50,000 square feet, in violation of Section
9.204 (16)(d) of the Zoning Ordinance. The Zoning Administrator has failed to consider the size of the proposed
Levine Center in her review. If Levine Center is a recreation center, which appellant disputes, in any event it may not
Contain more than 30,000 square feet.

(d) Code Section 9.205(b).

The Levine Center, when considered in connection with other construction projects on the Queen's University Campus,
including the parking deck/dormitory structure recently approved, and the Rogers Science Center, recently approved,
exceeds the permissible maximum floor area ratio of .50 for the lot. The Zoning Administrator has failed to apply this
standard in her review of the Levine Center Project.

(e) Code Section 9.205(h).

The Zoning Administrator has failed to consider the minimum open space requirement of 65% required by 9.205(h) of
the Zoning Ordinance in her review of the Levine Center Application. The Levine Center, if built as proposed, along
with other recent projects on the Queens University Campus, including the parking deck/dormitory building and the
Rogers Science Center, appears to place Queens University in violation of the minimum open
space requirement of 65%. The Zoning Administrator has failed to consider or apply this restriction to the Levine
Center project.

COPY

B.T. Atkinson
Attorney at Law
1553 Stanford Place
Charlotte, North Carolina 28207
(704)749-8954

November 10, 2011

VIA HAND DELIVERY

Ms. Deborah Campbell
Charlotte-Mecklenburg Planning Department
600 East Fourth Street (8th Floor)
Charlotte, North Carolina 28202

Re: Queens University of Charlotte
Proposed Levine Center for Wellness and Recreation

Dear Ms. Campbell:

Introduction

I have owned a home at 1553 Stanford Place in Myers Park for over 10 years. My three children each attended Myers Park Traditional Elementary School and my wife graduated from Queens College in 1990. As noted in the articles of incorporation of the Myers Park Neighborhood Association:

"Myers Park is an historic area with significance beyond Charlotte. Development began in 1911. Planners of national importance (planners such as John Nolen and Earle S. Draper) worked on the development of Myers Park. This suburb of Myers Park possesses national significance to students of city planning because of its influence on other Southern cities and its place in the careers of Nolen and Draper. In Myers Park have lived some of Charlotte's most prominent and influential citizens, and many of the homes built in Myers Park are architecturally significant and worthy of preservation."

From its earliest days, Queens College has been an integral part of Myers Park. Its campus has been and continues to be a cornerstone of the neighborhood. For the first 90 years of its presence in our midst, the school has truly enhanced the ambience and character of the neighborhood. New buildings and renovations have generally been embraced, if noticed at all. I recall no objections from neighbors to the McColl School of Business building at the corner of Selwyn and Wellesley. Similarly, no objections have been raised regarding the Rogers Science & Health Building currently under construction at the corner of Selwyn and Radcliffe. These buildings appear to be properly scaled and attractive. We are not categorically "anti-growth" with respect to Queens. When my wife and I purchased a home near the campus, we certainly understood that the school would likely grow and expand, and we have been delighted to see it begin to thrive after some difficult years. However, in recent months the school has embarked on an aggressive and rapid expansion program along the Wellesley corridor and across the side of campus that borders Myers Park Traditional Elementary School. This expansion program threatens the delicate and historically significant neighborhood that surrounds it, and far exceeds John Nolen's vision of a quaint, all girls school tucked safely away in an affluent suburb. The apparent speed and scope of the construction is nothing less than breathtaking.

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The engagement by school officials of the surrounding neighbors and the community at large has been, shallow, disingenuous and wholly unsatisfactory. They have issued press releases and sponsored media pieces mischaracterizing the size of the Levine Center and the extent of meaningful neighborhood involvement in developing their plans, conducted a "town hall" meeting filled with condescending platitudes like "we'll cross that bridge when we come to it", provided evasive answers on their ability to dictate the work hours of contractors, and offered up renderings that poorly present the real scope and positioning of the proposed buildings. While it is true that some design changes have been incorporated into the design of the proposed Levine Center at the request of neighbors on Wellesley Avenue, *the most significant potential impact of this development—a significant increase in the number of students living on campus and a 2,000 seat basketball arena and the tremendous increase in traffic that will accompany them—have either been dismissed as inconsequential, concealed, or simply ignored.*

The Myers Park Homeowners Association has Been Completely Neutralized

As the Planning Department and other city and county agencies consider and review the aggressive expansion plans of Queens, you should be aware that the Myers Park Homeowners Association (the "MPHA") has been completely neutralized as an effective advocate for the neighborhood. I believe this has been a concerted strategy on the part of the school. Indeed, the current president of the MPHA is a member of the faculty at Queens and members of its governing board have a long history of being deferential to the priorities of the school. Representatives of the MPHA stated publicly at the "town hall" meeting on October 24 that it is "neutral" on the proposed expansion by Queens and its role is limited to "facilitating dialogue between the neighborhood and the school." This conflicts with the purpose of the MPHA as stated its articles of incorporation:

"The purposes for which the corporation is organized are to preserve the original plan concept of Myers Park as a residential area, to protect Myers Park's existing housing stock, and to protect the interests of Myers Park *homeowners* in preserving the value of their residential property." (emphasis added)

I can think of no greater threat to the interests of Myers Park homeowners than unbridled institutional development by Queens. One need look no further than the damage Presbyterian Hospital's growth has done to the Elizabeth neighborhood, and the encroachment by the Carolinas HealthCare System on the Kings Drive, Morehead Street and lower East Boulevard corridors. *When considering the neighborhood impact of the Queens expansion program, please consider this correspondence notice that the MPHA does not speak for or represent the interests of the majority of residents on Wellesley Avenue, Radcliffe Avenue and Stanford Place.*

Specific Potential Zoning Violations

I am a corporate lawyer, with no expertise or experience on zoning matters. However, my "layman's" review of the City of Charlotte Zoning Ordinance (the "Ordinance") suggests that the following may be issues for consideration by the Planning Department and other governmental agencies prior to issuing the permit for the Levine Center and approving any other aspects of the Queens expansion program:

1. *Primary vehicular access by way of a residential street.* It is my understanding that the Queens property is zoned R-3. Section 9.203(22) of the Ordinance sets forth uses permitted under prescribed conditions in an R-3 zoning district by universities and colleges. Subsection (d) of

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Section 9.203(22) requires, as a condition for such use, that "primary vehicular access to the use will not be by way of a residential local (Class VI) street." I have been unable to ascertain whether Wellesley Avenue is a residential local (Class VI) street. However, it is difficult for this layman to believe that Wellesley Avenue would not meet its definition: "A two-lane roadway which provides access directly to adjoining low/medium density land uses and conducts traffic to local limited and Class V streets which serve the area. The Class VI road is designed to accommodate low volumes of traffic at low speeds." See Section 2.201 of the Ordinance.

Except for the first few hundred feet running from Selwyn toward Queens Road West, the street is barely wide enough for two cars to pass. If Wellesley is not currently classified as a Class VI street, it should be. *Nevertheless, the plan presented by Queens at the neighborhood meeting on October 24th indicates that the sole access for an 800-car parking facility is precisely that narrow section of Wellesley Avenue.* Given that Wellesley will be the sole access point, how can that not be the primary vehicular access point for the University? Was this considered when the permits for the new 500-car deck and residence hall were issued? Moreover, the facility will serve as the sole parking facility for the new Levine Center, and its 2,000 seat "performance gymnasium" that will host intercollegiate basketball games and other events. Should parking and traffic not be considered as part of the permitting process for the Levine Center?

At the October 24th "town hall" meeting, Queens officials essentially acknowledged that using Wellesley Avenue as the sole access point for an 800-car facility made no sense, but that they were "hopeful" that careful planning and sophisticated logistics would adequately address the problem. And if not, they would simply *"cross that bridge when they came to it."* Moreover, vague and unsubstantiated promises of an additional access to Radcliffe Avenue were made, and assurances provided that "one day" all adult and post-graduate classes would be held at facilities elsewhere, thereby alleviating commuter traffic. These potential off-campus facilities elsewhere in the city have not been acquired or even funded. How this passes for adequate planning is simply beyond my comprehension, and that of many of my neighbors. ~~The~~ Queens officials went on to cite a 2009 traffic study that they acknowledged was inadequate and was in the process of being updated. *Why was an updated traffic study not required as a condition to the permit for the parking deck/resident hall?* A truly independent and thoughtful traffic study would undoubtedly conclude that there is already a significant traffic problem on the residential streets surrounding the school that can only be exacerbated by an additional 500 parking spaces, two floors of additional residential space, and 2,000 people attending sports and other events.

2. *"Recreational centers" are restricted to 30,000 square feet.* Section 9.204 of the Ordinance (Permitted Accessory Uses And Structures), appears to list additional requirements that must be met for a university in an R-3 zoning district. Section 9.204(1) allows "Accessory uses and structures, clearly incidental and related to the permitted principal use or structure on the lot." Importantly, Section 9.204(16) appears to set forth the restrictions on recreational centers as an accessory use to a school. Such centers are permitted, provided that:

- (a) All buildings and off-street parking and service areas shall be separated by a Class C buffer from any abutting property used and/or zoned residential, as per the requirements of Section 12.302;

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- (b) The use will be located on a lot that fronts a collector, minor thoroughfare or major thoroughfare; and
- (c) *Primary vehicular access to the use will not be provided by way of a residential local (Class VI) street;*
- (d) *The use contains not more than thirty thousand (30,000) square feet.* (emphasis added).

Again, I am just a layman with respect to the intricacies of zoning law, but how could the proposed Levine Center for Wellness & Recreation not be a "recreational center" subject to the 30,000 square foot limitation prescribed by Section 9.204(16) of the Ordinance? Per the Queens website at <http://www.queens.edu/About-Queens/Campus-Improvements/Future-Projects/Levine-Center-for-Wellness-and-Recreation.html>, the proposed Levine Center is 140,000 square feet!

3. *The 800-car parking decks and proposed Levine Center threaten the "suitable environment for family living" on Wellesley Avenue, Stanford Place and Radcliffe Avenue.* Even if there are technical reasons why the questions I have raised in Paragraphs 1 and 2 do not constitute zoning violations—and I would not be surprised if there are, I note the over-arching statement about R-3 zoning districts in Section 9.201 of the Ordinance, which states: "The R-3 . . . district[] [is] hereby established to protect and promote the development of single family housing and a limited number of public and institutional uses. The standards for these districts are designed to maintain a *suitable environment for family living* at various densities to accommodate preferences for different housing types." I would submit that the current traffic situation created by Queens' expansion to date constitutes a viable threat to suitable environment for family living on Wellesley, Stanford and Radcliffe. We are constantly subjected to a high volume of speeding cars driven by students, illegal parking, disrespectful conduct, party noise and traffic from "special events" at the Dana Auditorium and the Myers Park Traditional Elementary School athletic field currently under lease by Queens. That field already hosts athletic events, team practices and charitable events that are vastly out of scale with the neighborhood, the most notorious of which is the "24 Hours of Booty" bicycle race that turns the field into a weekend campground with live and recorded music and unparalleled restrictions on neighbor access to their own homes. I simply cannot imagine what the impact will be from an 800-car parking facility, vastly increased on campus housing, and a 2,000 seat "performance gymnasium."

Conclusion

It is frustrating and disappointing that I must raise these issues as a private resident. Ideally, the MPHA, which I believe has substantial financial resources at its disposal and expert counsel on retainer, would have raised them long ago. Per its charter, the MPHA should be at the forefront of defending the *homeowners'* interests with respect to the Queens expansion program. But, as noted above, that organization has been strategically "neutralized" by Queens. Thus, our only hope is that the appropriate officials of our city or county governments, including the Planning Department and the other officials I have copied on this correspondence, will address the legitimate concerns of the neighborhood and community raised herein. As an individual neighbor, I simply do not have the sophistication, funding, time or expertise to take up this cause on my own, nor fill the void left by the MPHA by organizing with other neighbors. You are our only hope to preserve the unique and historically significant character of

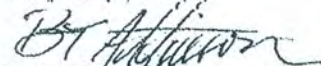
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Myers Park for the city, and the value of the homes that surround Queens. Actions I would like to see, in no particular order except for the first item, are:

1. Limitation of the Levine Center to the 30,000 square feet contemplated by the Ordinance, or relocation of the facility to the property Queens controls at the Marion Deihl Recreation Center or another appropriate site.
2. Establishment of an access point to the 800-car parking facility either on Radcliffe Avenue or Selwyn Avenue in addition to or lieu of the access to Wellesley, and the development of an independent, rationale and appropriate plan for traffic flows to and from the facility, both on a day-to-day basis and for special events, and a mechanism to enforce that plan with meaningful penalties for failure to follow it.
3. Enforceable restrictions on the types and timing of events Queens may hold at the Levine Center, if permitted in accordance with existing plans.
4. Elimination of the "24 Hours of Booty Event" and other larger scale events that restrict access to neighborhood streets.
5. Establishment of resident-only parking and speed humps on Stanford Place.
6. Elimination of on-street parking on Radcliffe Avenue, at least for non-residents if not entirely.
7. A commitment from Queens not to pursue acquisition and development, under any circumstances in the future, of the Myers Park Traditional Elementary School property and green space.
8. Enforceable commitments from Queens on the future development of the existing campus and relocation of adult and graduate programs away from the Myers Park campus, including firm timelines and meaningful penalties for failure to comply with those commitments.

Thank you in advance for your consideration of these matters.

Very truly yours,


B.T. Atkinson

Cc: Pamela Davies, Phd., President, Queens University of Charlotte
Tony Lathrop, Charlotte-Mecklenburg Planning Commission
Beverly Allen, President, Myers Park Homeowners Association
Jim Bartl, AIA, Director, Mecklenburg County Code Enforcement
Danny C. Pleasant, Key Business/Executive Director, Charlotte Department of Transportation
Mary Newsom, Associate Director, Urban & Regional Affairs, UNC Charlotte Urban Institute
Paul Bonner, Principal, Myers Park Traditional Elementary School
Laura Harmon, Charlotte-Mecklenburg Planning Department

Thank you for the prompt reply. I have a clarifying question or two on your response and hope to have those written up for you in the next few days.

B.T. Atkinson | Bryan Cave LLP
Attorneys at Law

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Charlotte, NC 28202

t: 704.749.8954 | c: 704.953.4408

e: bt.atkinson@bryancave.com

Visit www.BankBryanCave.com for the latest financial services reform updates.

From: Campbell, Debra [mailto:dcampbell@ci.charlotte.nc.us]
Sent: Tuesday, November 22, 2011 12:40 PM
To: Atkinson, B.T.
Cc: Harmon, Laura; 'Pamela Davies'; Davis, Michael (CDOT)
Subject: RE: Queens Expansion

Dear Mr. Atkinson:

Let me begin by first apologizing for the delay in responding to the recent letter you sent dated November 10, 2011 concerning the proposed Levine Center for Wellness and Recreation at Queens University. It took a little more time since several of the questions raised in your letter were outside the scope of my department and required my staff to coordinate with another City department on the response. We took the liberty to summarize your issues/questions and provided a brief response as follows.

1. **Recreation Centers allowed in single family districts:** The Zoning Ordinance defines a recreation center as a facility owned or operated by a governmental agency and serving as a facility where recreation programs are offered to the public. While Queens University has chosen to name the building the Levine Center for Wellness and Recreation, it is really a part of the University and is considered an accessory use to the University and allowed in the R-3 zoning district.
2. **Vehicular access:** Wellesley Avenue is classified as a Class V (Collector) street, as defined in the Zoning Ordinance, and access for the Levine Center is being provided by this Class V street. A Class V (Collector) is defined as "a roadway which assembles traffic from local streets and distributes it to the nearest arterial street, providing direct primary access to low/medium density land uses and designed to carry low to moderate traffic volumes at low to moderate speeds". The Charlotte Zoning Ordinance allows universities to be accessed from a Class V street. From our conversations with staff at Queens, they indicated to us that the university is "actively exploring the option of developing a road that would allow ingress/egress from the parking decks onto both Wellesley and Radcliff." While the City cannot force this connection to occur, we would likely support the additional access based on a preliminary assessment.
3. **Restrictions on the types and timing of events at the Levine Center:** The City has no authority to impose restrictions on the events at the Levine Center if it is built under conventional R-3 zoning. However, Queens University Staff have indicated that it is the university's intention to use the facility only for student-related activities.

4. **Elimination of large scale events from the neighborhood:** Since 2006, the city has relocated several events from the Myers Park neighborhood including the Heart Walk and the MS Walk in an effort to geographically balance the impacts of community events. The "24 Hours of Booty" is a fundraising event that does not close any streets. While we acknowledge the event presents some temporary challenges to the local residents, we believe the overall community benefit is significant. We regret that the event presents an inconvenience to area residents. Perhaps we can do more to provide advance information about the event and the route.
5. **Establishment of resident-only parking and speed humps on Stanford Place:** Charlotte Department Of Transportation's (CDOT) Public Service Division will be glad to work with your neighborhood on parking and traffic calming concerns. You can contact Chip Gallup, 704-336-3922 (rgallup@charlottenc.gov) or Doreen Szymanski (704-336-7527) (dszymanski@charlottenc.gov).
6. **Elimination of on-street parking on Radcliffe Avenue:** CDOT's Public Service Division can also work with your neighborhood on this issue.
7. **Commitment from Queens concerning Myers Park Traditional:** The City has no authority to require Queens to make this commitment. However, from conversations with staff at Queens University they stated the following: "While it is not possible for Queens to make a commitment of that nature, it is certainly not in our short term plans."
8. **Enforceable commitments from Queens on future development of the existing campus:** Since Queens is developing under the conventional R-3 zoning district, the City has no authority to require commitments beyond the requirements of this district. From our conversations with Queens University staff they indicated that "it is our firm intention to relocate our adult and graduate programs off campus... We believe our plans to return the Myers Park campus to an undergraduate residential campus is unequivocally in the best interest of the neighborhood, as it will reduce overall headcount and commuter traffic both on and off campus."

I hope this information responds to your questions and addresses some of your concerns. If you would like to discuss this further please feel free to contact me at the above email address or by phone at 704 336-2671. If you can't get me please feel free to contact my Assistant Director Laura Harmon. Laura can also be reached at the above email address and by phone at 704 336-4565.

From: Atkinson, B.T. [<mailto:Bt.Atkinson@BryanCave.com>]
Sent: Monday, November 14, 2011 5:05 PM
To: Campbell, Debra
Cc: Harmon, Laura
Subject: Re: Queens Expansion

Thank you very much. BT

On Nov 14, 2011, at 5:03 PM, "Campbell, Debra" <dcampbell@ci.charlotte.nc.us> wrote:

Thanks Mr. Atkinson for your recent letter and email message. Ms. Harmon is my Assistant Director Laura Harmon and doing the research and follow-up for me concerning this matter. I sensed the need for a quick response that's why I asked her to get back with you. We will prepare a written response to issues raised in your letter as soon as possible. Thanks for your patience.