

Petition No. 77-25

Date Filed: June 9, 1977

TO CHARLOTTE-MECKLENBURG PLANNING COMMISSION
Charlotte, North Carolina

Gentlemen:

Your consideration of a recommendation to the City Council for a change in the zoning classification of the property hereinafter described is requested.

Title to the property was acquired February 20, 1973 and is in the name of Providence Square III Properties, whose address is 6214 South Boulevard, Charlotte, North Carolina 28210, and the deed is recorded in Book 3543, at page 579, in the office of the Register of Deeds for Mecklenburg County.

Location of Property: Approximately 1.41 acres within the area sometimes known as Providence Square Apartments, being located near Providence Road and Sardis Lane and shown on attached plat of Bobby J. Rape, Registered Surveyor, dated March 24, 1975, (revised May 18, 1977).

Present and Requested Zoning Classifications: The attached plat referred to above identifies the 2 parcels that comprise the total 1.41 acres that are the subject of this Petition. The following is a tabulation of the present zoning of each of these 2 parcels and the classification requested for each of them:

<u>Parcel Acreage</u>	<u>Present Zoning</u>	<u>Requested Zoning</u>
1.08 ac.	R-20MF (1.04 ac.) & R-15MF (0.04 ac.)	B-1(CD) parallel conditional use per §23-34.2 (as explained below)
<u>0.33 ac.</u> 1.41 ac.	R-20MF	R-15MF

Reasons Why Zoning Classification Should Be Changed: Although a modification of the zoning of 2 parcels (total acreage 1.41) is involved in this Petition, in actuality the changes are requested in order to accommodate the proposed use of the existing indoor tennis court building (having 3 courts and

located on the 1.08 acre parcel) by the general public, rather than the use of these courts being confined on a non-commercial basis to the apartment residents that the facility was originally designed to serve.

1. Prior Proceedings and Problem. Over two years ago, Petition No. 75-9 was filed with respect to substantially the same property to achieve the same purpose that is again sought by this current Petition, namely to allow the use of the same existing indoor tennis court building by the general public. In the earlier Petition, the problem was explained as follows:

"The indoor tennis facilities were originally conceived as a R-20 MF amenity for the exclusive use of the apartment residents. These tennis facilities were a part of a R-20MF "amenity package" which also included a club house, an outdoor swimming pool and 3 outdoor tennis courts and were completed in early December, 1973. The club house, pool and outdoor courts are extensively used and enjoyed by the apartment residents. However, experience and hind-sight now clearly show that the expensive and extensive indoor tennis facilities were ill-conceived, for the reason that the usage by the apartment residents is too small and the cost of the upkeep too large to justify the indoor tennis facilities as an amenity for the exclusive benefit of those residents. At the same time, there is an ever-increasing community interest in, and need for, indoor facilities. In order to justify the continued operation of these facilities, economic practicalities will require the support that will be afforded by allowing their use by members of the general public upon some appropriate fee or other charge basis. The zoning changes requested by this Petition are all necessary to accomplish this."

2. Present Problems. The present problem in substance is exactly the same as it was in 1975 -- except that things have gotten worse, not better. The earlier Petition never should have been denied and the Petitioner should not have been required to suffer through these past two years because of the two-year waiting period that the Zoning Ordinance prescribes for revival of a denied petition. The intervening two years have borne out what was obvious then and is obvious now: The establishment of the indoor court as a private R-20 MF amenity was a mistake from the very beginning. Perhaps the developer has only itself to blame for the costly error and the impracticability of the facility as a R-20 MF amenity. But the Petitioner has in good faith tried to make it "fly" -- and it has been established that it won't and can't. The Petitioner should be accorded relief by allowing the use of the indoor courts by the general public -- particularly in view of the fact that in doing so there will be no change in the location or appearance of the facility, which is already there "in the flesh."

3. Technical Aspects of Requested Zoning Changes. In 1975, the Petitioner sought conditional use approval of the indoor tennis facility which we know now (but not then) should have required judicial-type procedures. For technical reasons changes were also requested in 1975 for additional property in order to resolve certain density problems that were occasioned by the proposed release of the tennis facility as a R-20MF amenity. This current Petition is basically the same as the one filed two years ago. The only real difference now is that the Petitioner asks for B-1(CD) zoning of the tennis facility itself instead of the quasi-judicial conditional use request. Hopefully, this new approach not only will be more practical, but will also be less painful and time-consuming for all concerned. As already indicated, the purpose sought to be achieved by this Petition can be easily understood. However, the technical things that are necessary to accomplish this objective need explanation:

(a) The 1.08 Acre Parcel: The existing building that houses the 3 indoor courts is located on this 1.08 acre parcel. The size of this parcel was made sufficiently large to accomplish these things (in addition to providing for the building site itself):

- (1) Provide the prescribed yard requirements;
- (2) Provide 14 parking spaces for the indoor tennis facilities;
- (3) Provide B-1(CD) contiguity with the adjoining B-1SCD area on the southerly line of the 1.08 acre parcel and with the adjoining easterly margins of Landmark Drive.

The 1.08 acre parcel is comprised of 0.04 acre that is presently zoned R-15MF and 1.04 that is presently zoned R-20MF. Under the existing zoning ordinances, neither a R-15MF nor a R-20MF area may be used for general public use (on a fee or charge basis). For this reason the zoning classification of the 1.08 acre parcel must be changed to the proposed B-1(CD) parallel use classification.

(b) The 0.33 Acre Parcel: The original project provided for 300 units, of which 271 were in the R-20 MF area and 29 were in the R-15MF area. As will be observed from the submissions which accompany this Petition, 9 apartment units on the westerly side of Landmark Drive are "bisected" by the existing dividing line between the R-20MF and R-15MF areas in a manner that a majority (but not all) of each of the 9 units is presently in the R-20MF area. By

reason of the requested removal of the 1.04 acre parcel described in paragraph 3(a) above from the R-20MF area, the permissible unit density in the remaining R-20MF area will be exceeded unless the above-mentioned 9 units ("bisected" by the existing R-20MF - R-15MF dividing line) are changed to R-15MF. The request that the 0.33 acre parcel be changed from R-20MF to R-15MF is designed to take care of this. Observe that the newly created R-15MF line will be contiguous to the westerly margin of Landmark Drive, instead of bisecting the 9 units as heretofore.

As was also true two years ago, the Petitioner, has worked closely with the Planning Staff in evolving the various facets of the Petition, the identity and interrelation of the two parcels, the density and area computations and related matters.

4. Requirements and Purpose of Requested B-1(CD) Parallel Conditional Use. As explained by Sec. 23-34.1, the purpose of the parallel conditional use districts is to provide a voluntary procedure for the rezoning of a property for a specified use. The Petitioner has elected to go this route (instead of the quasi-judicial one) by now requesting B-1(CD). For the most part Sec. 23-34.1 appears to contemplate a petition for a use and facility not yet established and requires detailed schematics and information that must be filed along with the Petition. The Petitioner has complied with all of these formal prerequisites -- although as a practical matter they do not serve the usual functions because unlike the normal situation, the indoor tennis facilities have long since been established and there will be no change. The B-1(CD) approval will give assurance to everybody that the facilities cannot be expanded or used for something else.

Benj. S. Horack, Attorney
1300 Johnston Building
Charlotte, N. C. 28281
(704) 377-2500

PROVIDENCE SQUARE III PROPERTIES (Partnership)

By Charles C. Brwin, Partner
6214 South Boulevard
Charlotte, North Carolina 28210
(704) 523-1446