

Petition No: 00-20c
Petitioner: Mecklenburg County Engineering
and Building Standards Dept.

APPROVED BY COUNTY COMMISSION

DATE 12/12/00

ZONING REGULATIONS
TEXT AMENDMENT NO. 83

THE MECKLENBURG COUNTY
ZONING REGULATIONS

BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF MECKLENBURG COUNTY, NORTH CAROLINA:

Section 1. The Mecklenburg County Zoning Regulations as embodied in the Zoning Ordinance are hereby amended as follows:

1. Amend CHAPTER 3: DECISION-MAKING AND ADMINISTRATIVE BODIES, PART 3: BOARD OF ADJUSTMENT, Section 3.301 "Powers and Duties" by deleting items (1) and (2) in their entirety and replacing them with the following:
 - (1) To hear and decide appeals from and to review any specific order, requirement, decision or determination made under these regulations by the Zoning Administrator (except with respect to S.W.I.M. stream buffers as regulated by PART 8 of CHAPTER 12 and watershed buffers regulated by a watershed overlay district which are within a S.W.I.M stream buffer).
 - (2) To hear and decide petitions for variances from these regulations (except with respect to S.W.I.M. stream buffers as regulated by PART 8 of CHAPTER 12 and watershed buffers regulated by a watershed overlay district which are within a S.W.I.M stream buffer) in accordance with the provisions of Section 5.108.
2. Amend CHAPTER 3: DECISION-MAKING AND ADMINISTRATIVE BODIES, by adding a new PART as follows:

PART 6: CHARLOTTE-MECKLENBURG STORM WATER ADVISORY COMMITTEE

Section 3.601. Powers and duties.

The Charlotte-Mecklenburg Storm Water Advisory Committee is designated as a planning agency and shall have the following powers and duties to be carried out in accordance with these regulations which include, but are not limited, to the following:

- (1) To hear and decide appeals from and to decide any specific order, requirement, decision or determination made by the Zoning Administrator under PART 8 of CHAPTER 12, S.W.I.M. (SURFACE WATER IMPROVEMENT AND MANAGEMENT) STREAM BUFFERS and with respect to watershed buffers regulated by a watershed overlay district which are within a S.W.I.M stream buffer.

- (2) To hear and decide petitions for variances from PART 8 of CHAPTER 12 and with respect to watershed buffers regulated by a watershed overlay district which are within a S.W.I.M stream buffer, in accordance with the provisions of Section 5.108.
- (3) To adopt such rules and procedures necessary for the administration of its responsibilities under this Ordinance not inconsistent with these regulations.
- (4) To assume any other duties assigned by the Board of Commissioners.
- (5) The Storm Water Advisory Committee shall follow the procedures contained in Part 2 of CHAPTER 5 with respect to the hearing and granting of appeals and variances.

Section 3.602. Membership; officers.

Members and officers of the Storm Water Advisory Committee shall be appointed and removed in accordance with the Interlocal Cooperation Agreement for Operation of a Single Storm Water System in Mecklenburg County made and entered into in 1993 between the City of Charlotte and Mecklenburg County, as it may be amended from time to time.

Section 3.603. Meetings, hearings and procedures.

- (1) All meetings and hearings shall be open to the public as required by law and shall be conducted in accordance with the procedures set forth in these regulations and rules of procedures adopted by the Storm Water Advisory Committee in accordance with these regulations and in accordance with the Interlocal Cooperation Agreement, as it may be amended from time to time.
- (2) Any rules of procedure adopted by the Storm Water Advisory Committee with respect to its duties under this Ordinance shall be kept on file at the office of the Zoning Administrator, and a current copy or synopsis of such rules shall be provided to each appellant or applicant at the time of filing a notice of appeal or variance application.
- (3) No meeting, hearing or action in fulfillment of its duties under this Ordinance shall be conducted by the Storm Water Advisory Committee without a quorum, as defined for the Storm Water Advisory Committee by the Interlocal Cooperation Agreement, as it may be amended from time to time.
- (4) The Storm Water Advisory Committee shall keep minutes of its proceedings, showing the vote of each member upon each question, or indicating the fact that a member is absent or excused from voting under the rules of the Storm Water Advisory Committee, and shall keep records of its examinations and other official actions pursuant to its responsibilities under this Ordinance, all of which shall be filed immediately in the office of the Zoning Administrator as public records.
- (5) The concurring vote of a majority of the members of the Storm Water Advisory Committee (five (5) of the nine (9) members regardless of the number of members present for a hearing) is required to reverse or modify any order, requirement, decision, or determination

made by the Zoning Administrator or to grant a variance from the requirements of these regulations.

Section 3.604. Staff.

The staff for the Storm Water Advisory Committee shall be provided by the Mecklenburg County Engineering and Building Standards Department.

3. Amend CHAPTER 5: APPEALS AND VARIANCES, by placing all of the current Sections 5.101 through 5.113 in a new PART 1 entitled "Provisions of General Applicability".
4. Amend CHAPTER 5: APPEALS AND VARIANCES, by adding a new PART as follows:

PART 2: SPECIAL PROVISIONS FOR APPEALS AND VARIANCES WITH RESPECT TO S.W.I.M. (SURFACE WATER IMPROVEMENT AND MANAGEMENT) STREAM BUFFERS, AND WATERSHED BUFFERS REGULATED BY A WATERSHED OVERLAY DISTRICT WHICH ARE WITHIN A S.W.I.M STREAM BUFFER

Section 5.201. Authority of Charlotte-Mecklenburg Storm Water Advisory Committee.

- (1) The Storm Water Advisory Committee shall have the authority to hear and decide appeals from and to review any specific order, requirement, decision, or determination made under Part 8 of Chapter 12, S.W.I.M. (SURFACE WATER IMPROVEMENT AND MANAGEMENT) STREAM BUFFERS and with respect to watershed buffers regulated by a watershed overlay district which are within a S.W.I.M stream buffer of these regulations by the Zoning Administrator.
- (2) The Storm Water Advisory Committee shall have the authority to hear and decide petitions for variances from the requirements of Part 8 of Chapter 12, S.W.I.M. (SURFACE WATER IMPROVEMENT AND MANAGEMENT) STREAM BUFFERS and with respect to watershed buffers regulated by a watershed overlay district which are within a S.W.I.M stream buffer, of the regulations.
- (3) The Storm Water Advisory Committee shall have the authority to impose reasonable conditions and safeguards that the Committee judges ought to be made on the lot involved with respect to the uses of land or the establishment, extension, or use of structures.
- (4) The Storm Water Advisory Committee shall not have jurisdiction with respect to Section 6.201 Conditional Districts except as provided in this section. The Storm Water Advisory Committee shall have jurisdiction with respect to conditional districts if the request pertains to a variance from specified minimum requirements of Part 8 of Chapter 12, S.W.I.M. (SURFACE WATER IMPROVEMENT AND MANAGEMENT) STREAM BUFFERS or with respect to watershed buffers regulated by a watershed overlay district which are within a S.W.I.M stream buffer, of the regulations and is filed with the Storm Water Advisory Committee prior to the approval of a conditional district. In addition, the Storm Water Advisory Committee may also hear and decide on various petitions for approved conditional district plans on matters related to ordinance

provisions which are not associated with specifically approved conditions of the plan that are more restrictive than minimum ordinance requirements.

- (5) Pursuant to G.S. §153A-345(b) and (d), the Storm Water Advisory Committee only has the statutory authority to grant or to deny variances and to determine if the Zoning Administrator correctly or incorrectly interpreted and applied the zoning ordinance in rendering a decision. The Storm Water Advisory Committee does not have jurisdiction to address or rule upon constitutional and federal and state statutory issues or any other legal issues beyond its statutory authority.

Section 5.202. Initiation of an appeal or variance.

- (1) An appeal must be initiated by any person aggrieved or by any officer, department, board, or bureau of the City of Charlotte or Mecklenburg County.
- (2) A petition for variance may be initiated only by the owner of the affected property, an agent authorized in writing to act on the owner's behalf, or a person having a written contractual interest in the affected property.

Section 5.203. Filing of notice of appeal.

- (1) A notice of appeal, in the form prescribed by the Storm Water Advisory Committee shall be properly filed by a person aggrieved with the Zoning Administrator contesting the specific order, requirement, decision, or determination within 60 days of the day the order, requirement, decision, or determination is made or rendered by the Zoning Administrator. Such period for appeal shall be provided for in the Storm Water Advisory Committee rules of procedure. The notice filed with the Zoning Administrator shall be accompanied by a nonrefundable filing fee as established by the Board of Commissioners. Failure to timely and properly file such notice and fee shall constitute a waiver of any rights to appeal under this Chapter and the Storm Water Advisory Committee shall have no jurisdiction to hear the appeal.
- (2) Upon the filing of such notice, the Zoning Administrator shall forthwith transmit to the Storm Water Advisory Committee all administrative papers, records, and other information regarding the subject matter of the appeal.
- (3) An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Storm Water Advisory Committee, after notice of appeal has been filed, that because of facts stated in the certificate a stay would cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of these regulations. In that case proceedings shall not be stayed except by a restraining order, which may be granted by the Storm Water Advisory Committee from which the appeal is taken and on due cause shown.

Section 5.204. Filing of variance petition.

A petition for variance, in the form prescribed by the Storm Water Advisory Committee, shall be filed with the Zoning Administrator, accompanied by a nonrefundable filing fee as established by the Board of Commissioners.

Section 5.205. Determination of completeness.

A notice of appeal or a variance petition will not be deemed properly filed unless it is complete. Upon proper filing, the Storm Water Advisory Committee shall schedule the appeal or variance for a hearing.

Section 5.206. Staff review.

After proper filing of a completed variance petition or notice of appeal application with the Zoning Administrator, the petition or application shall be reviewed by the Zoning Administrator, or his designee. A copy of an appeal or variance petition shall be transmitted to the Planning Director for informational purposes.

Section 5.207. Notice and hearing.

The Storm Water Advisory Committee shall, in accordance with rules adopted by it for such purpose, hold public hearings on any appeal or variance petition which comes before it.

Section 5.208. Standards for granting a variance.

- (1) Before granting a variance, the Storm Water Advisory Committee shall find:
 - (a) That practical difficulties or unnecessary hardship would result from the strict application of these regulations; and
 - (b) That the spirit of these regulations should be observed by taking into consideration the general intent of these regulations. The Storm Water Advisory Committee may also consider any adopted district plan or area plan covering the property, any other adopted written policies governing land development and the construction and improvement of public facilities; and
 - (c) That the public safety and welfare have been protected and substantial justice done.
- (2) The Storm Water Advisory Committee shall not grant a variance which would allow the establishment of a use which is not otherwise permitted in the district, would result in the extension or expansion of a nonconforming use, or would change the district boundary, or zoning classification of any or all of the subject property. Except under circumstances described in subsection (3) below, the Storm Water Advisory Committee shall not grant a variance.
- (3) Only the following three conditions shall constitute a practical difficulty or

unnecessary hardship and all must be met:

- (a) The difficulty or hardship would result only from these regulations and from no other cause, including the actions of the owner or previous owners of the property; and
- (b) The difficulty or hardship is peculiar to the property in question and is not generally shared by other properties in the same neighborhood and/or used for the same purposes; and
- (c) The difficulty or hardship resulting from the application of these regulations would prevent the owner from securing a reasonable return or making a reasonable use of the property. The fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not be considered as grounds for granting the variance.

Section 5.209. Standards for granting an appeal.

- (1) The Storm Water Advisory Committee shall reverse or modify the specific order, requirement, decision, or determination under appeal only upon finding an error in the application of these regulations on the part of the officer rendering the order, requirement, decision, or determination.
- (2) In affirming, reversing, or modifying the order, requirement, decision, or determination, the Storm Water Advisory Committee shall have all the powers of the officer from whom the appeal is taken.

Section 5.210. Action by Storm Water Advisory Committee.

- (1) The Storm Water Advisory Committee shall grant or deny the variance or shall reverse, affirm, or modify the order, decision, requirement, or determination under appeal. The Storm Water Advisory Committee shall make findings of fact and conclusions of law to support its decision.
- (2) If any aggrieved party wishes to receive a written copy of the decision of the Storm Water Advisory Committee, then the aggrieved party, as stated in G.S. Sec. 153A-345(e), must file a written request for a copy of the Committee's decision with the Secretary or Chairperson of the Storm Water Advisory Committee at the time of the hearing of the case.

Section 5.211. Effect of grant of variance or reversal or modification of administrative decision.

After Storm Water Advisory Committee approves a variance, or reverses or modifies an order, requirement, decision, or determination, of the Zoning Administrator, the appellant or petitioner shall be required to follow the applicable procedures of Chapter 4 for the approval of a building permit and certificate of occupancy in order to proceed with development of the subject property. Unless otherwise specified by the Committee, any decision of the Committee granting a variance shall automatically expire if a building permit or a certificate of occupancy pertaining to the need for the

variance is not obtained within one year from the date of the meeting of the Committee at which the Committee rendered its decision.

All orders, requirements, decisions, and determinations made by the Zoning Administrator under those procedures shall be consistent with the variance, reversal, or modification granted to the appellant or petitioner by the Storm Water Advisory Committee.

Section 5.212. Rehearing.

The Storm Water Advisory Committee may rehear an appeal or variance petition that has been denied at any time after two years from the date of the denial. Prior to that two year period, the Storm Water Advisory Committee shall refuse to rehear an appeal or variance petition unless it finds that there have been substantial changes in the conditions or circumstances relating to the subject property beyond the control of the appellant or petitioner or in the surrounding area or other extraordinary change.

Section 5.213. Appeal from the Storm Water Advisory Committee.

- (1) If no aggrieved party files a written request for a copy of the decision at the time of the hearing of the case, then any petition for a review of the Committee's decision in the nature of certiorari by Superior Court must be filed with the Clerk of Superior Court within thirty (30) days after the decision of the Storm Water Advisory Committee is filed in the Mecklenburg County Engineering and Building Standards Department. Upon the filing of the decision in the Engineering and Building Standards Department, the Zoning Administrator will make a notation on the filed decision stating the date upon which the decision has been filed.
- (2) If any aggrieved party has filed a written request for a copy of the decision at the time of the hearing of the case, as stated in G.S. Sec. 153-345(e), then a decision of the Committee may be delivered to that aggrieved party either by personal service or by registered or certified mail with return written receipt requested.
- (3) Any aggrieved party, who has filed a written request for a copy of the decision at the time of the hearing of the case, will have thirty (30) days from receipt of the decision of the Storm Water Advisory Committee to file the petition for review in the nature of certiorari in Superior Court with the Clerk of Superior Court, or will have thirty (30) days from the date of the filing of the decision in Engineering and Building Standards Department, by the Zoning Administrator, as stated above in Subsection (1), whichever is later.
- (4) If a petition for review pursuant to G.S. §153A-345(e) is filed, then the petitioner must order from the court reporter and pay for the original transcript of the hearing for delivery to the secretary of the Storm Water Advisory Committee for preparation of the filing of the record in superior court. If a court ultimately renders a decision in favor of the petitioner, then the County shall reimburse the petitioner for the cost of the transcript. In the event that the petitioner does not order the transcript and does not prevail on appeal, then the County shall request the Court to make the costs of the original transcript part of the costs of the action or recover the costs in the nature of the debt owed.

5. Amend CHAPTER 12: DEVELOPMENT STANDARDS OF GENERAL APPLICABILITY, PART 8: S.W.I.M. (SURFACE WATER IMPROVEMENTS AND MANAGEMENT) STREAM BUFFERS, Section 12.806. "Mitigation", Subpart 4 "Pre-approved Mitigation Techniques" by adding a new sentence to the introductory paragraph and by deleting items (b) (c) and (h) and replacing them with the following:

4. Pre-approved mitigation techniques

The following techniques are available to landowners for mitigation of buffer impacts, upon review and approval of a specific site mitigation plan by the Mecklenburg County Department of Environmental Protection. Mitigation techniques must have an equal or greater benefit to water quality than the diminution in water quality resulting from the buffer impacts as determined by the Mecklenburg County Department of Environmental Protection. Specifications for these pre-approved mitigation techniques are provided in the Charlotte-Mecklenburg Land Development Standards Manual.

- (b) Stream Restoration: The owner may restore and preserve the buffer area on any stream of equivalent or greater drainage area the condition of which is determined to be qualified for restoration by the Mecklenburg County Department of Environmental Protection on a 1:1 basis in linear feet of stream utilizing square feet of buffer area impacted. This restoration shall include stream bank improvements and Stream Side and Managed Use Zone re-vegetation, in accordance with the Charlotte-Mecklenburg Land Development Standards Manual.
- (c) Stream Preservation: The owner may purchase, fee simple, other stream segments at equivalent or greater drainage area on a 1:1 linear feet basis utilizing square feet of buffer area impacted, and convey fee simple and absolute title to the land to the City/County or other conservation organization.
- (h) Mitigation Credits: The purchase of mitigation credits on a 1:1 basis utilizing linear feet of stream impacted square feet of buffer area impacted at the prevailing rate of purchase as established by the Mecklenburg County Department of Environmental Protection shall allow for stream buffer impacts on the specific site. Mitigation credits purchased under any other program (i.e., U.S. Army Corp of Engineers) shall not cover this requirement unless the issuing agency agrees to relinquish the funds to the appropriate City/County agency.

6. Amend CHAPTER 12: DEVELOPMENT STANDARDS OF GENERAL APPLICABILITY, PART 8: S.W.I.M. (SURFACE WATER IMPROVEMENT MANAGEMENT) STREAM BUFFERS, Section 12.807 "Appeals and Variances" by deleting the current section and inserting the following:

Section 12.807. Appeals and variances.

Appeals and variances from this Part shall be heard by the Charlotte-Mecklenburg Storm Water Advisory Committee and shall be subject to Part 2 of Chapter 5 of these regulations.

Section 2. This Amendment shall become effective upon its adoption.

Approved as to Form:

County Attorney

Read, approved and adopted by the Board of County Commissioners of Mecklenburg County, North Carolina, in meeting on the 12th day of December, 2000.

Clerk to the Board

Additions to existing text is indicated with **bold underlining** and deletions are shown with ~~strikethroughs~~. New sections and substituted sections are not underlined.

ZONING REGULATIONS
TEXT AMENDMENT NO. _____

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ZONING REGULATIONS

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 - (2) To hear and decide petitions for variances from these regulations **(except with respect to S.W.I.M. stream buffers as regulated by PART 8 of CHAPTER 12 and watershed buffers regulated by a watershed overlay district which are within a S.W.I.M stream buffer)** in accordance with the provisions of Section 5.108.
2. Amend CHAPTER 3: DECISION-MAKING AND ADMINISTRATIVE BODIES, by adding a new PART as follows:

PART 6: CHARLOTTE-MECKLENBURG STORM WATER ADVISORY COMMITTEE

Section 3.601. Powers and duties.

The Charlotte-Mecklenburg Storm Water Advisory Committee is designated as a planning agency and shall have the following powers and duties to be carried out in accordance with these regulations which include, but are not limited, to the following:

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regulated by a watershed overlay district which are within a S.W.I.M stream buffer.

- (2) To hear and decide petitions for variances from PART 8 of CHAPTER 12 and with respect to watershed buffers regulated by a watershed overlay district which are within a S.W.I.M stream buffer, in accordance with the provisions of Section 5.108.
- (3) To adopt such rules and procedures necessary for the administration of its responsibilities under this Ordinance not inconsistent with these regulations.
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- (5) The Storm Water Advisory Committee shall follow the procedures contained in Part 2 of CHAPTER 5 with respect to the hearing and granting of appeals and variances.

Section 3.602. Membership; officers.

Members and officers of the Storm Water Advisory Committee shall be appointed and removed in accordance with the Interlocal Cooperation Agreement for Operation of a Single Storm Water System in Mecklenburg County made and entered into in 1993 between the City of Charlotte and Mecklenburg County, as it may be amended from time to time.

Section 3.603. Meetings, hearings and procedures.

- (1) All meetings and hearings shall be open to the public as required by law and shall be conducted in accordance with the procedures set forth in these regulations and rules of procedures adopted by the Storm Water Advisory Committee in accordance with these regulations and in accordance with the Interlocal Cooperation Agreement, as it may be amended from time to time.
- (2) Any rules of procedure adopted by the Storm Water Advisory Committee with respect to its duties under this Ordinance shall be kept on file at the office of the Zoning Administrator, and a current copy or synopsis of such rules shall be provided to each appellant or applicant at the time of filing a notice of appeal or variance application.
- (3) No meeting, hearing or action in fulfillment of its duties under this Ordinance shall be conducted by the Storm Water Advisory Committee without a quorum, as defined for the Storm Water Advisory Committee by the Interlocal Cooperation Agreement, as it may be amended from time to time.
- (4) The Storm Water Advisory Committee shall keep minutes of its proceedings, showing the vote of each member upon each question, or indicating the fact that a member is absent or excused from voting under the rules of the Storm Water Advisory Committee, and shall keep records of its examinations and other official

actions pursuant to its responsibilities under this Ordinance, all of which shall be filed immediately in the office of the Zoning Administrator as public records.

- (5) The concurring vote of a majority of the members of the Storm Water Advisory Committee (five (5) of the nine (9) members regardless of the number of members present for a hearing) is required to reverse or modify any order, requirement, decision, or determination made by the Zoning Administrator or to grant a variance from the requirements of these regulations.

Section 3.604. Staff.

The staff for the Storm Water Advisory Committee shall be provided by the Mecklenburg County Engineering and Building Standards Department.

3. Amend CHAPTER 5: APPEALS AND VARIANCES, by placing all of the current Sections 5.101 through 5.113 in a new PART 1 entitled "Provisions of General Applicability".
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- (2) The Storm Water Advisory Committee shall have the authority to hear and decide petitions for variances from the requirements of Part 8 of Chapter 12, S.W.I.M. (SURFACE WATER IMPROVEMENT AND MANAGEMENT) STREAM BUFFERS and with respect to watershed buffers regulated by a watershed overlay district which are within a S.W.I.M stream buffer, of the regulations.
- (3) The Storm Water Advisory Committee shall have the authority to impose reasonable conditions and safeguards that the Committee judges ought to be made on the lot involved with respect to the uses of land or the establishment, extension, or use of structures.

- (4) The Storm Water Advisory Committee shall not have jurisdiction with respect to Section 6.201 Conditional Districts except as provided in this section. The Storm Water Advisory Committee shall have jurisdiction with respect to conditional districts if the request pertains to a variance from specified minimum requirements of Part 8 of Chapter 12, S.W.I.M. (SURFACE WATER IMPROVEMENT AND MANAGEMENT) STREAM BUFFERS or with respect to watershed buffers regulated by a watershed overlay district which are within a S.W.I.M stream buffer, of the regulations and is filed with the Storm Water Advisory Committee prior to the approval of a conditional district. In addition, the Storm Water Advisory Committee may also hear and decide on various petitions for approved conditional district plans on matters related to ordinance provisions which are not associated with specifically approved conditions of the plan that are more restrictive than minimum ordinance requirements.
- (5) Pursuant to G.S. §153A-345(b) and (d), the Storm Water Advisory Committee only has the statutory authority to grant or to deny variances and to determine if the Zoning Administrator correctly or incorrectly interpreted and applied the zoning ordinance in rendering a decision. The Storm Water Advisory Committee does not have jurisdiction to address or rule upon constitutional and federal and state statutory issues or any other legal issues beyond its statutory authority.

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- (1) An appeal must be initiated by any person aggrieved or by any officer, department, board, or bureau of the City of Charlotte or Mecklenburg County.
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- (2) Upon the filing of such notice, the Zoning Administrator shall forthwith transmit to the Storm Water Advisory Committee all administrative papers, records, and other information regarding the subject matter of the appeal.
- (3) An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Storm Water Advisory Committee, after notice of appeal has been filed, that because of facts stated in the certificate a stay would cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of these regulations. In that case proceedings shall not be stayed except by a restraining order, which may be granted by the Storm Water Advisory Committee from which the appeal is taken and on due cause shown.

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- (1) Before granting a variance, the Storm Water Advisory Committee shall find:
 - (a) That practical difficulties or unnecessary hardship would result from the strict application of these regulations; and

- (b) That the spirit of these regulations should be observed by taking into consideration the general intent of these regulations. The Storm Water Advisory Committee may also consider any adopted district plan or area plan covering the property, any other adopted written policies governing land development and the construction and improvement of public facilities; and
 - (c) That the public safety and welfare have been protected and substantial justice done.
- (2) The Storm Water Advisory Committee shall not grant a variance which would allow the establishment of a use which is not otherwise permitted in the district, would result in the extension or expansion of a nonconforming use, or would change the district boundary, or zoning classification of any or all of the subject property. Except under circumstances described in subsection (3) below, the Storm Water Advisory Committee shall not grant a variance.
- (3) Only the following three conditions shall constitute a practical difficulty or unnecessary hardship and all must be met:
- (a) The difficulty or hardship would result only from these regulations and from no other cause, including the actions of the owner or previous owners of the property; and
 - (b) The difficulty or hardship is peculiar to the property in question and is not generally shared by other properties in the same neighborhood and/or used for the same purposes; and
 - (c) The difficulty or hardship resulting from the application of these regulations would prevent the owner from securing a reasonable return or making a reasonable use of the property. The fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not be considered as grounds for granting the variance.

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- (1) The Storm Water Advisory Committee shall reverse or modify the specific order, requirement, decision, or determination under appeal only upon finding an error in the application of these regulations on the part of the officer rendering the order, requirement, decision, or determination.
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- (1) The Storm Water Advisory Committee shall grant or deny the variance or shall reverse, affirm, or modify the order, decision, requirement, or determination under appeal. The Storm Water Advisory Committee shall make findings of fact and conclusions of law to support its decision.
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Section 5.211. Effect of grant of variance or reversal or modification of administrative decision.

After Storm Water Advisory Committee approves a variance, or reverses or modifies an order, requirement, decision, or determination, of the Zoning Administrator, the appellant or petitioner shall be required to follow the applicable procedures of Chapter 4 for the approval of a building permit and certificate of occupancy in order to proceed with development of the subject property. Unless otherwise specified by the Committee, any decision of the Committee granting a variance shall automatically expire if a building permit or a certificate of occupancy pertaining to the need for the variance is not obtained within one year from the date of the meeting of the Committee at which the Committee rendered its decision.

All orders, requirements, decisions, and determinations made by the Zoning Administrator under those procedures shall be consistent with the variance, reversal, or modification granted to the appellant or petitioner by the Storm Water Advisory Committee.

Section 5.212. Rehearing.

The Storm Water Advisory Committee may rehear an appeal or variance petition that has been denied at any time after two years from the date of the denial. Prior to that two year period, the Storm Water Advisory Committee shall refuse to rehear an appeal or variance petition unless it finds that there have been substantial changes in the conditions or circumstances relating to the subject property beyond the control of the appellant or petitioner or in the surrounding area or other extraordinary change.

Section 5.213. Appeal from the Storm Water Advisory Committee.

- (1) If no aggrieved party files a written request for a copy of the decision at the time of the hearing of the case, then any petition for a review of the Committee's decision in the nature of certiorari by Superior Court must be filed with the Clerk of Superior Court within thirty (30) days after the decision of the Storm Water Advisory Committee is filed in the Mecklenburg County Engineering and

Building Standards Department. Upon the filing of the decision in the Engineering and Building Standards Department, the Zoning Administrator will make a notation on the filed decision stating the date upon which the decision has been filed.

- (2) If any aggrieved party has filed a written request for a copy of the decision at the time of the hearing of the case, as stated in G.S. Sec. 153-345(e), then a decision of the Committee may be delivered to that aggrieved party either by personal service or by registered or certified mail with return written receipt requested.
- (3) Any aggrieved party, who has filed a written request for a copy of the decision at the time of the hearing of the case, will have thirty (30) days from receipt of the decision of the Storm Water Advisory Committee to file the petition for review in the nature of certiorari in Superior Court with the Clerk of Superior Court, or will have thirty (30) days from the date of the filing of the decision in Engineering and Building Standards Department, by the Zoning Administrator, as stated above in Subsection (1), whichever is later.
- (4) If a petition for review pursuant to G.S. §153A-345(e) is filed, then the petitioner must order from the court reporter and pay for the original transcript of the hearing for delivery to the secretary of the Storm Water Advisory Committee for preparation of the filing of the record in superior court. If a court ultimately renders a decision in favor of the petitioner, then the County shall reimburse the petitioner for the cost of the transcript. In the event that the petitioner does not order the transcript and does not prevail on appeal, then the County shall request the Court to make the costs of the original transcript part of the costs of the action or recover the costs in the nature of the debt owed.

5. Amend CHAPTER 12: DEVELOPMENT STANDARDS OF GENERAL APPLICABILITY, PART 8: S.W.I.M. (SURFACE WATER IMPROVEMENTS AND MANAGEMENT) STREAM BUFFERS, Section 12.806. "Mitigation", Subpart 4 "Pre-approved Mitigation Techniques" by adding a new sentence to the introductory paragraph and by deleting items (b) (c) and (h) and replacing them with the following:

4. Pre-approved mitigation techniques

The following techniques are available to landowners for mitigation of buffer impacts, upon review and approval of a specific site mitigation plan by the Mecklenburg County Department of Environmental Protection. **Mitigation techniques must have an equal or greater benefit to water quality than the diminution in water quality resulting from the buffer impacts as determined by the Mecklenburg County Department of Environmental Protection.** Specifications for these pre-approved mitigation techniques are provided in the Charlotte-Mecklenburg Land Development Standards Manual.

- (b) Stream Restoration: The owner may restore and preserve the buffer area on any stream of equivalent or greater drainage area the condition of which is determined to be qualified for restoration by the Mecklenburg County Department of Environmental Protection on a 1:1 basis ~~in linear-feet-of-stream~~ **utilizing square feet of buffer area impacted**. This restoration shall include stream bank improvements and Stream Side and Managed Use Zone re-vegetation, in accordance with the Charlotte-Mecklenburg Land Development Standards Manual.
- (c) Stream Preservation: The owner may purchase, fee simple, other stream segments at equivalent or greater drainage area on a 1:1 ~~linear-feet~~ basis **utilizing square feet of buffer area impacted**, and convey fee simple and absolute title to the land to the City/County or other conservation organization.
- (h) Mitigation Credits: The purchase of mitigation credits on a 1:1 basis utilizing ~~linear-feet of-stream-impacted~~ **square feet of buffer area impacted** at the prevailing rate of purchase as established by the Mecklenburg County Department of Environmental Protection shall allow for stream buffer impacts on the specific site. Mitigation credits purchased under any other program (i.e., U.S. Army Corp of Engineers) shall not cover this requirement unless the issuing agency agrees to relinquish the funds to the appropriate City/County agency.

6. Amend CHAPTER 12: DEVELOPMENT STANDARDS OF GENERAL APPLICABILITY, PART 8: S.W.I.M. (SURFACE WATER IMPROVEMENT MANAGEMENT) STREAM BUFFERS, Section 12.806 "Appeals and Variances" by deleting the current section and inserting the following:

Section 12.806. Appeals and variances.

Appeals and variances from this Part **shall be heard by the Charlotte-Mecklenburg Storm Water Advisory Committee and** shall be subject to Part 2 of Chapter 5 of these regulations.

Section 2. This Amendment shall become effective upon its adoption.

Approved as to Form:

County Attorney

Read, approved and adopted by the Board of County Commissioners of Mecklenburg County, North Carolina, in meeting on the _____ day of _____, 2000.

Clerk to the Board



October 24, 2000

NOTICE OF A REZONING PUBLIC HEARING

This letter serves as notification of a pending text amendment to the Mecklenburg County Zoning Ordinance. A public hearing with the Mecklenburg County Commissioners has been scheduled for **Tuesday, November 14, 2000 at 6:00 P.M. in the Charlotte-Mecklenburg Government Center, Meeting Chamber at 600 East Fourth Street.** You are encouraged to attend the public hearing, if you have any concerns regarding this amendment.

Petition No.: 2000-20(c)

Petitioner: Mecklenburg County Engineering & Building Standards Department

Requested Change: To substitute the Charlotte-Mecklenburg Storm Water Advisory Committee (SWAC) for the County Zoning Board of Adjustment to hear appeals and requests for variances with respect to SWIM buffers and watershed buffers regulated by a watershed overlay district which are within a SWIM buffer; to amend and add administrative sections to the Ordinance to allow SWAC to hear such appeals and variances; to change the method for calculating mitigation credits from a linear foot basis to a square foot basis.

Should you have any questions regarding this request, please call Tom Drake or myself at (704)336-2205.

Sincerely,

Sonja S. Sanders
Land Development Planner

Attachment