



DATE FILED 7/29/2011
APPLICATION NUMBER 2011-575
For office use only

**APPLICATION FOR CHANGE IN ZONING CLASSIFICATION
OR CHANGE IN CONDITIONS
(SEE FILING INSTRUCTIONS)**

TO: Town of Matthews Board of Commissioners
Town of Matthews Planning Board
232 Matthews Station Street
Matthews, North Carolina 28105-6713

Ladies and Gentlemen:

Your consideration of this petition is requested for:

- A change in zoning classification of the property hereinafter described; or
- A change in conditions to an existing conditional zoning plan.

Tax parcel number(s): 215-102-06

Address of property: 2001 Moore Road, Matthews, North Carolina

Location of property: East side of Moore Road south of its intersection with Matthews-Mint Hill Road

Title to the property was acquired on September 30, 2008
and was recorded in the name of Liberty Healthcare Properties of North Carolina, LLC
whose mailing address is c/o Doug Whitman, 2334 South 41st Street, Wilmington, NC 28403

The deed is recorded in Book 24162 at Page 240 in the office of the Register of Deeds for Mecklenburg County.

Present zoning classification: R/I(CD) & O-9(CD) Requested zoning classification: R/I(CD) & O-9(CD) Change of Conditions

List reason(s) why zoning should be changed (use separate sheet if necessary):

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To amend the approved conditional rezoning plan to (i) reduce the height of the proposed skilled nursing facility building from 2 stories to 1 story; (ii) reduce the maximum square footage of the proposed skilled nursing facility building; (iii) increase the size of the building footprint of the proposed skilled nursing facility building; (iv) to realign an internal drive; and (v) allow other minor adjustments to accommodate the foregoing.

By: Doug Whitman
Signature of property owner (must be original)

By: _____
Signature of property owner (must be original)

Liberty Healthcare Properties of North Carolina, LLC
Print name of property owner

Print name of property owner

c/o Doug Whitman, 2334 South 41st Street
Property owner's mailing address

Property owner's mailing address

Wilmington, NC 28403
Property owner's mailing address, continued

Property owner's mailing address, continued

Property owner's mailing address, continued

Property owner's mailing address, continued

910-332-1982 DWhitman@liberty-ltc.com
Property owner's phone number/email address

Property owner's phone number/email address

John H. Carmichael
Signature of agent (if any)

By: _____
Petitioner other than owner (if any)

John Carmichael, Robinson Bradshaw
Print name of agent

Print name of petitioner

101 North Tryon Street, Suite 1900
Agent's mailing address

Petitioner's mailing address

Charlotte, NC 28246
Agent's mailing address, continued

Petitioner's mailing address, continued

Agent's mailing address, continued

Petitioner's mailing address, continued

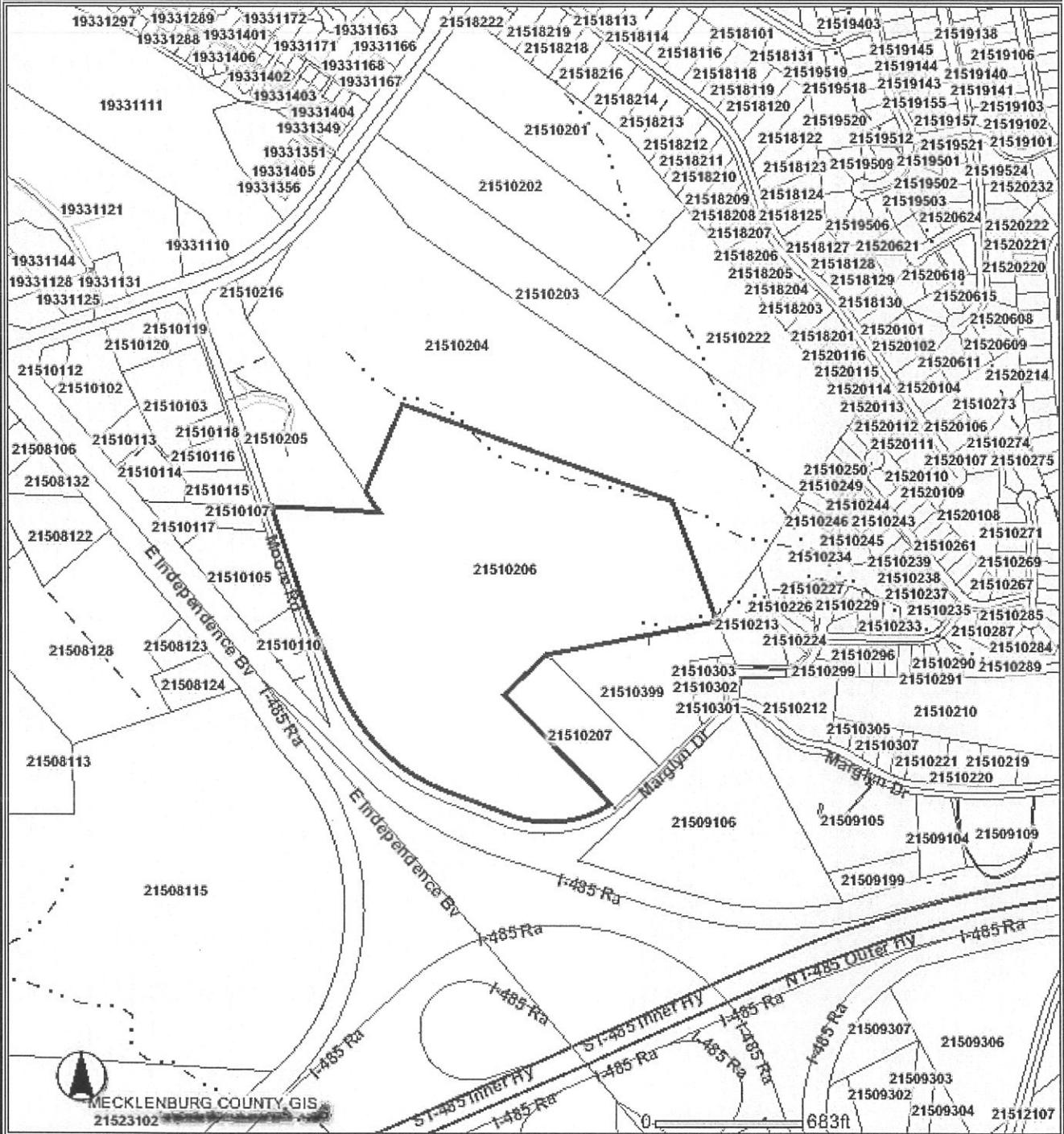
704-377-8341 jcarmichael@rbh.com
Agent's phone number/email address

Petitioner's phone number/email address

Mecklenburg County, North Carolina
POLARIS
Property Ownership Land Records Information System

Date Printed: Wed Jul 27 14:43:20 EDT 2011

215-102-06



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.

EXHIBIT A**ADJOINING PROPERTY OWNERS**

Parcel No.: 215-101-05

Name: Oxford-Matthews/Rock Hill 24, LLC et al.

Address: c/o The Oxford Capital Group, LLC, 350 W. Hubbard St., Suite 440

City: Chicago State: IL Zip: 60610

Parcel No.: 215-101-10

Name: North Carolina Department of Transportation

Address: P.O. Box 640

City: Albemarle State: NC Zip: 28001

Parcel No.: 215-091-06

Name: Leon Levine Properties Ltd.

Address: P.O. Box 1017

City: Charlotte State: NC Zip: 28201

Parcel No.: 215-101-07

Name: Rollins & Pace Properties LLC

Address: 2008 Moore Rd. #C

City: Matthews State: NC Zip: 28105

Parcel No.: 215-101-15

Name: OHM Parmatma LLC

Address: 1938 Moore Rd.

City: Matthews State: NC Zip: 28105

Parcel No.: 215-101-17

Name: Branful LLC

Address: 104 Mull St.

City: Morganton

State: NC

Zip: 28655

Parcel No.: 215-102-04

Name: Charlotte-Mecklenburg Board of Education

Address: P.O. Box 30035

City: Charlotte

State: NC

Zip: 28230

Parcel No.: 215-102-13

Name: Joe and Gail Orr

Address: 1813 Marglyn Dr.

City: Matthews

State: NC

Zip: 28105

Parcel No.: 215-103-99

Name: Yuriy Podgurniy and Natalya Rgoncharuk

Address: 1721 Marglyn Dr.

City: Matthews

State: NC

Zip: 28105

Parcel No.: 215-102-05

Name: BVF Chambers Ridge Limited Partnership

Address: c/o Marvin F. Poer & Co., 3250 Piedmont Road N.E., Suite 410

City: Atlanta

State: GA

Zip: 30305

Parcel No.: 215-102-07

Name: Vera Starnes and Edward Starnes Family Trust

Address: 1701 Marglyn Dr.

City: Matthews State: NC Zip: 28105

Parcel No.: 215-081-15

Name: Mecklenburg County

Address: c/o Real Estate Finance Department, 600 East 4th Street, 11th Floor

City: Charlotte State: NC Zip: 28202-2816

Parcel Nos.: 215-101-16 and 215-101-14

Name: Bill Gallis and Mary P. Gallis

Address: 4417 Indian Trail-Waxhaw Road

City: Indian Trail State: NC Zip: 28079

Parcel No.: 215-103-03

Name: Donna L. Aveni

Address: 2122 Alexander Ridge Drive

City: Matthews State: NC Zip: 28105

Parcel No.: 215-103-02

Name: Michael Cothran and Denise Cothran

Address: 2126 Alexander Ridge Drive

City: Matthews State: NC Zip: 28105

Parcel No.: 215-103-01

Name: Matthew Blackmon and Jennifer Stevenson

Address: 2130 Alexander Ridge Drive

City: Matthews State: NC Zip: 28105

Parcel No.: 215-102-12

Name: Curtis Stilwell and Vickie Stilwell

Address: 1821 Marglyn Drive

City: Matthews State: NC Zip: 28105

SUMMARY OF THE REZONING PROCESS

Application number
2011-575
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PETITIONER: Fill in dates for each action below before filing application. Refer to the current Planning Department rezoning schedule for correct dates.

PROPERTY OWNERS: These dates are assumed to be correct at the time of zoning application submittal but are subject to revision. Contact the Planning Department (704-847-4411, extension 224) for verification.

- Application submitted to and accepted by the Town of Matthews July 29, 2011
- Town Board of Commissioners formally accepts application and sets Public Hearing date August 8, 2011
- Notices sent via mail to affected/adjacent property owners on or before August 29, 2011
- Protest petition filed with Planning Department by 5:00 pm on September 7, 2011
- Public hearing: petitioner may give explanation of why s/he wishes to have property rezoned and neighboring owners may ask questions and voice opinions on the proposed zoning September 12, 2011
- Town Planning Board reviews petition, information, and comments from the public hearing, then makes a recommendation to the Board of Commissioners on whether to approve or deny the request September 27, 2011
- Town Board of Commissioners approves or denies application October 10, 2011

GENERAL STATUTE 160A-385: CHANGES.

- (a) Zoning ordinances may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a qualified protest against a zoning map amendment, that amendment shall not become effective except by favorable vote of three-fourths of all the members of the city council. For the purposes of this subsection, vacant positions on the council and members who are excused from voting shall not be considered "members of the council" for calculation of the requisite supermajority. To qualify as a protest under this section, the petition must be signed by the owners of either (i) twenty percent (20%) or more of the area included in the proposed change or (ii) five percent (5%) of a 100-foot wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right of way shall not be considered in computing the 100-foot buffer area as long as that street right of way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine the "owners" of potentially qualifying areas. The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise, or to an amendment to an adopted (i) special use district, (ii) conditional use district, or (iii) conditional district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved for the special use district, conditional use district, or conditional district.
- (b) Amendments in zoning ordinances shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either (i) building permits have been issues pursuant to GS 160A-417 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to GS 160A-418 and unrevoked pursuant to GS 160A-422 or (ii) a vested right has been established pursuant to GS 160A-385.1 and such vested right remains valid and unexpired pursuant to GS 160A-385.1.



John H. Carmichael
Charlotte Office
704.377.8341 Direct Phone
704.373.3941 Direct Fax
jcarmichael@rbh.com
rbh.com

July 29, 2011

VIA HAND DELIVERY

Ms. Kathi Ingrish
Planning Director
Town of Matthews
232 Matthews Station Street
Matthews, NC 28105

Re: Rezoning Petition filed by Liberty Healthcare Properties of North Carolina, LLC for a change of conditions to the approved R/I (CD) and O-9 (CD) conditional rezoning plan relating to that approximately 48.39 acre parcel of land located on the east side of Moore Road south of its intersection with Matthews-Mint Hill Road (Tax Parcel No. 215-102-06)

Dear Kathi:

This letter is being submitted with the above-captioned Rezoning Petition pursuant to the requirements of Paragraph 13 of the Instructions for Filing an Application for a Change in a Zoning Classification or Change in Conditions for Property in the Town of Matthews (the "Instructions"). As you are aware, Paragraph 13 of the Instructions requires the Petitioner to submit documentation regarding the land use recommendations for the site as set out in adopted land use plans and a statement as to how this rezoning request complies with such recommendations.

The site subject to this request for a change of conditions is an approximately 48.39 acre parcel of land located on the east side of Moore Road south of its intersection with Matthews-Mint Hill Road (the "Site"). The Site is located in the northeastern quadrant of the Independence Boulevard-Interstate 485 interchange between Independence Boulevard and Idlewild Road.

On August 9, 2010, the Matthews Board of Commissioners, pursuant to Rezoning Petition No. 2010-554, rezoned the Site from the R-12 zoning district to the Residential/Institutional (CD) and O-9 (CD) zoning districts to accommodate the development of a multi-use development comprised of:

- (A) a continuing care retirement community (as defined in the Zoning Ordinance) containing up to 300 independent living units, up to 75 assisted living units, a skilled nursing facility with a maximum of 169 beds and related amenities; and
- (B) a maximum of 60,000 square feet of office and office related uses.

Ms. Kathi Ingrish
July 29, 2011
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Pursuant to this Rezoning Petition, the Petitioner is seeking a change of conditions to amend the approved conditional rezoning plan to (i) reduce the height of the proposed skilled nursing facility building from 2 stories to 1 story; (ii) reduce the maximum square footage of the proposed skilled nursing facility building; (iii) increase the size of the building footprint of the proposed skilled nursing facility building; (iv) realign an internal drive; and (v) allow other minor adjustments to accommodate the foregoing.

The Matthews Land Use Plan (the "Plan") provides land use recommendations for the area in which the Site is located, namely the area located at or in proximity to the Independence Boulevard-Interstate 485 interchange between Independence Boulevard and Idlewild Road. Specifically, Section XII.3.C. of the Plan provides that the development patterns "should be destination-oriented, such as housing, offices and hotels. The land closest to the roads should have the greatest intensity of usage, and transitional office, multi-family or alternative housing styles should be designed as part of the first tier uses." Section XII.3.C. of the Plan further provides that "land directly fronting the Independence/I-485 interchange should be designed for destination uses in a mixed use concept." (See page 43 of the Plan).

The Petitioner submits that the proposed multi-use project is consistent with the land use recommendations of the Plan as set out on page 43 thereof. The housing and office type uses proposed by the Petitioner are destination uses specified for this area under the Plan, and the location of the Site in close proximity to Independence Boulevard and Interstate 485 supports the higher density senior multi-family uses proposed for the Site by the Petitioner as noted in the Plan. The Petitioner also submits that its proposed multi-use project is consistent with the Plan's recommendation for a mixed use concept in the relevant area.

The proposed multi-use project also meets several general objectives of the Plan. For example, an objective of the Plan is to provide a maximum range of choice in type, density and location of housing to meet the housing needs of all area residents while preventing adverse impacts to the environment and quality of life. (See page 13 of the Plan). The multi-family senior housing proposed by the Petitioner meets this objective without any adverse impacts on the surrounding community. Another objective of the Plan is to provide for "senior citizen housing, day care, recreation, assisted living and nursing/rest home care" as the demographics of the community indicate a need. (See page 18 of the Plan). The Petitioner submits that there is a need for this proposed senior community as evidenced by the certificate of need it has obtained for this project, and that the proposed senior community, therefore, meets this objective of the Plan.

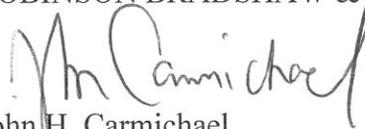
Based upon the foregoing, it is the Petitioner's belief that the proposed project is consistent with Plan's land use recommendations for the area in which the Site is located, and that it meets the general objectives of the Plan. The Petitioner's belief is supported by the approval of the proposed project by the Matthews Board of Commissioners on August 9, 2010.

Ms. Kathi Ingrish
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The Petitioner and I look forward to working with you and the Town of Matthews on this request for a change of conditions.

Sincerely,

ROBINSON BRADSHAW & HINSON, P.A.



John H. Carmichael

cc: Doug Whitman, Liberty Healthcare Properties of North Carolina, LLC