

September 21, 2010

Mr Tom Hulme
 General Manager, BMWNC/HWS
 3250 Campus Ridge Rd
 Matthews NC 28104
 Via e-mail at: thulme@hwsusa.com

Permit No.	Date	DIN
6009	September 29, 2010	11677

RECEIVED
September 22, 2010
 Solid Waste Section
 Asheville Regional Office

Dear Mr Hulme,

You have asked for any original letter or similar correspondence to current or past owners of the BMWNC site in Matthews NC explaining the nonconforming zoning situation. I am sending here a copy of the letter sent in August 1991 to all property owners within the Matthews Sphere of Influence but not within the Town limits at that time. This included approximately 1,000 parcels of land which were coming under Matthews planning and development regulations as the Town received the area as its Extraterritorial Jurisdiction (ETJ). Along with this letter is the certification it was mailed to all property owners identified on County tax records at the time, as well as minutes of the public meetings where this initial zoning action was discussed and approved.

I am also enclosing here a letter from December 2000 to the property owner representative at that time where the nonconforming situation was described and potential action steps were outlined.

Below, I have listed the current ordinance language and some pertinent comments that apply to both this site and to the adjacent steel drum recycling facility:

* Matthews zoned these properties R-20 Residential Single-Family in late 1991; this zoning designation was used for many properties at that time as a "holding" or interim category, in order to get some Matthews zoning designation on all 1000+/- parcels added to the Town's jurisdictional authority within 60 days; Matthews spent the next several months reviewing parcels and groups of properties in the ETJ to determine if further zoning action was necessary; these parcels, like many others, were left in R-20 until such time as new development proposals may be submitted which would trigger a property owner-initiated zoning action

* Matthews did not/does not have a zoning designation that fit these two operations

* the explanation in Matthews Zoning Ordinance on "Nonconforming situations" is, in part:

" . . . The Board of Commissioners recognizes that the strict application of these standards to those uses [that predate the ordinance] may create certain hardships for the property owner. The Board also recognizes that these nonconformities may be allowed to continue in use in accordance with the spirit of this ordinance. . . . Many nonconformities may continue, but the provisions of this chapter are designed to curtail substantial investment in nonconformities, and to bring about their eventual improvement or elimination. . . . It is the intent of this ordinance to allow . . . the repair and maintenance of such nonconformities, but . . . to determine whether it will substantially injure the value, use and enjoyment of neighboring properties. . . . "

* they can both continue operating as a "legal nonconforming use", with limitations:

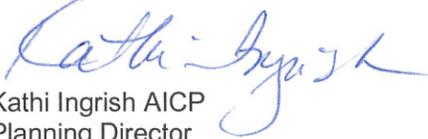
- can change from this nonconforming use to another nonconforming use that does "not generate any more truck or automobile traffic, noise, vibration, smoke, dust, or fumes";
- can change to a conforming use, and then cannot change again to any nonconforming use;
- "maintenance and repairs" necessary to "keep it in safe and sound condition" are allowed;
- expansion of the nonconforming use is only allowed within portions of the structure "which existed at the time that the use became nonconforming and which were designed or arranged to accommodate the use";

T Hulme
September 21, 2010
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- no structural alterations are allowed "except for those required by law or an order from the office or agent authorized by the Board of Commissioners to issue building permits to ensure the safety of the structure";
- once a nonconforming use is "abandoned" for a year, it cannot be reestablished;
- if the structure is "damaged by fire, flood, wind, or act of God, or condemnation proceedings", it can only be repaired to original dimensions and condition and this must be completed within one year of occurrence of damage.

Please let me know if you need any further documents.

Sincerely,

A handwritten signature in blue ink that reads "Kathi Ingrish". The signature is written in a cursive style with a large, sweeping "K" and "I".

Kathi Ingrish AICP
Planning Director
Town of Matthews
kingrish@matthewsnc.com
704-847-4411 x 236



TOWN OF MATTHEWS

P.O. Box 398
224 N. Trade Street
Matthews, North Carolina 28106
704/847-4411

J. Shawn Lemmond - Mayor

BOARD OF COMMISSIONERS
Kathy Abernethy - Mayor Pro-Tem
M. David Bland
Bill Brawley
Ted F. Kiker
R. Lee Myers
Alex J. Sabo

August 22, 1991

Dear Property Owner,

According to Mecklenburg County tax records, you own real property which is not in the town limits of Matthews but is within the Sphere of Influence for Matthews. The Sphere of Influence is an agreed upon boundary between Matthews and the City of Charlotte, and it designates properties the Town of Matthews can ultimately incorporate into its town limits. There are no immediate plans to annex your property.

This summer, the North Carolina General Assembly approved a law which gives Matthews, rather than Mecklenburg County, the authority to apply its own zoning and subdivision regulations on properties in the Sphere of Influence. The Town is proceeding to implement this new law.

A public hearing will be held Monday, September 9, 1991 at 7:00 p.m. at Matthews Town Hall on initial zoning of all properties in the Sphere of Influence. In order to transfer zoning coverage from Mecklenburg County to Matthews, the Matthews Planning Board has recommended a temporary zoning designation of R-20 single-family residential on all properties.

The Planning Board and Matthews Town Board of Commissioners will continue to look at properties throughout the Sphere on an individual basis to determine if another zoning category is more appropriate. Because there are so many properties in the Sphere, this parcel-by-parcel review will take many months. You will be notified again before any further zoning action on your property is considered. Or, you may initiate a zoning request to another zoning classification at any time.

You are invited to attend the public hearing on September 9, at Matthews Town Hall, 224 N. Trade Street to ask questions or to give your opinion on the pending zoning action.

Sincerely,

Kathi Ingrish
Planning & Zoning Administrator



TOWN OF MATTHEWS

P.O. Box 398
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CERTIFICATION OF MAILING NOTICES ON PENDING ZONING ACTION ETJ PROPERTIES

I certify that notice of pending zoning action by the Town of Matthews on all properties in the newly-authorized extraterritorial zoning jurisdiction (ETJ) have been sent by first class mail to the property owners of all affected properties and all adjacent properties. Owners' names and addresses were obtained from the Mecklenburg County and Union County Tax Offices.

Kathi Ingrish
Kathi Ingrish
Planning and Zoning Administrator
TOWN OF MATTHEWS

September 9, 1991
Date



TOWN OF MATTHEWS

P.O. Box 398
224 N. Trade Street
Matthews, North Carolina 28106
704/847-4411

J. Shawn Lemmond - Mayor

BOARD OF COMMISSIONERS
Kathy Abernethy - Mayor Pro-Tem
M. David Bland
Bill Brawley
Ted F. Kiker
R. Lee Myers
Alex J. Sabo

PLANNING BOARD
TUESDAY, JULY 23, 1991
7:00 PM
MINUTES

PRESENT: Members Mary Ellen Conley, Malcolm Curtis; Alternate Member Joan Owen; Town Planner Kathi Ingrish.

ABSENT: Members Wayne Hatcher, Keith Defreitas, Frank Casale; Alternate Members Cheryl Sloan, Dan Stout.

CALL TO ORDER

180 Mary Ellen Conley called the meeting to order. Joan Owen will sit as a regular voting member this evening.

ETJ BLANKET ZONING

Because the Town Board adopted an ordinance last night to extend zoning powers into the extraterritorial jurisdiction, Matthews now must adopt zoning for all those properties. County zoning continues for a maximum of 60 days, and then there will be no zoning until Matthews imposes its own designations.

Zoning of the ETJ properties should be based on the Land Use Plan, but it will not be ready soon enough. An option is to initially zone all property in the ETJ one zoning category, as a blanket zoning measure, with the understanding that as soon as the Land Use Plan is completed, the Planning Board will go back and review ETJ properties on a case by case basis and then recommend alternate districts as appropriate to implement the Land Use Plan.

485 Mary Ellen Conley moved to recommend to Town Board that all properties in the ETJ be initially zoned to R-20 with the full understanding that further study would be done after completion of the Land Use Plan to recommend zoning districts on a piece by piece basis. Joan Owen seconded and motion passed unanimously.

- 2334 Motion by Commissioner Kiker, seconded by Commissioner Myers, to allow Petition No. 165 to be withdrawn. Motion approved unanimously.

Mayor Lemmond recognized Senator Fountain Odom, Representative Jim Black and Dr. Robert Rucho, candidate for Town Council, attending the meeting.

Mayor Lemmond explained the reasoning behind the extraterritorial zoning and the "donut hole" annexations, requiring Matthews zoning.

- 2981 RECESS REGULAR MEETING FOR PUBLIC HEARING ON MOTIONS AND PETITIONS TO AMEND THE ZONING ORDINANCE OF THE TOWN OF MATTHEWS

Motion by Commissioner Myers, seconded by Commissioner Kiker, to recess the meeting for this public hearing. Motion was approved unanimously.

PUBLIC HEARING

MOTION NO. 1:

To zone R-20, all that certain property commonly referred to as Matthews Extraterritorial Jurisdiction, and being all that property presently located in Mecklenburg County, and not in the corporate limits of the Town of Matthews and being located within the Matthews sphere of influence line, generally bounded to the northeast by Idlewild Road, and to the north by Margaret-Wallace Road, to the northwest by the Charlotte city limits line from just west of Margaret-Wallace Road to Independence Boulevard and from Independence Boulevard to Monroe Road and from Monroe Road to the Pineville-Matthews Road, and further being bounded on the west, just to the west of Reverdy Lane following the Charlotte city limits sign back towards Weddington Road and along Weddington Road to McKee Road and then being bounded by McKee Road all the way back to the Union County Line on the south and then following the Union County line back to Idlewild Road. All property within this sphere of influence line being generally described and being located in Mecklenburg County and not located within the corporate limits of the Town of Matthews is hereby being proposed to be rezoned.

The following people spoke in opposition to the zoning:

- 3019 Paul Ragone, 1103 Ashley Creek Drive, zoning along the Outer Belt.
- 3418 Peter J. Couchell, 5724 Waxhaw Indian Trail Road, owns 4.48 acres on Old Monroe road. He also submitted a letter. (Exhibit #1)

- 3765 Fountain Odom, representing Harrington-Dowd Realty Company, who are developing Winterbrooke Subdivision. He also submitted a letter. (Exhibit #2)
- 4077 John Polites, Independence Partnership. He also submitted a letter. (Exhibit #3)
- (Tape #1 ends at 4250 and Tape #2 begins.)
- 40 Paul Trotter, representing William Trotter Company, developing Matthews Plantation. He also submitted a letter. (Exhibit #4)
- 154 Jim Plyler, 2219 Hastings Drive, Charlotte, N. C., property on Independence Boulevard.
- 369 Bill Garity, Perry- Patrick Law Firm, representing Martin Marietta.
- 402 Jonathan Crotty, Attorney, representing Recovery Corporation of America (formerly Bio-Medical)
- 513 Robert Allen, Gerdes-Mason Law Firm, representing Worth Anderson on Sam Newell Road.
- 574 Marcy Withrow, 6667 Colson Court, Charlotte, N. C., zoning at the Outer Belt.
- 755 Debbie Wilfong, 9100-9136 Independence Boulevard.

853 **2-MINUTE RECESS AND PUBLIC HEARING RECONVENED**

Mayor Lemmond recognized Harvey Boyd, candidate for Town Council, attending the meeting.

Commissioner Myers encouraged anyone interested in serving on any of the appointed boards, to fill our an application, as we will need four (4) representatives from the ETJ areas. Those appointments will be made in January.

- 1068 **MOTION NO. 2:** To zone property recently annexed by the Town of Matthews on June 30, 1991 and being commonly referred to as the Donut Hole Annexations, Brightmoor II area, Hayden Way II area and the Drake apartments on Monroe Road as follows:
- Zone the following properties R-15(CD) Equestrian:
3130 Windrow Lane, 13915 Double Girth, 13901 Phillips Road, 14019 Phillips Road, 14010 Mill House, 14116 Mill House, 2500 Connemara, 2424 Gold Cup.
- To zone R-15 the following properties: 14142 Creekside, 14150 Creekside, 14428 Cricket Lane, 14044 Horseback, 14054 Horseback and 14059 Horseback.

663 PUBLIC HEARING

Mayor Lemmond asked that we begin the public hearing by moving forward Petition No. 168 from Martin Marietta. We have had a request from Family Dollar and Pic N Pay, to continue this public hearing until they have had time to get additional information as to what affect the blasting at the rock quarry would have on their computer equipment.

No one in the audience spoke for or against this petition.

710 Motion by Mayor Lemmond, seconded by Commissioner Myers, to continue the public hearing on Petition No. 168 until November 4, 1991. Motion approved unanimously.

740 Mayor Lemmond explained we were having to hold another public hearing on the first items listed on the agenda, due to an error by The Matthews News in printing the required notices. These items are: Motion No. 1, Motion No. 2, Petition No. 164 and Petition No. 166.

MOTION NO. 1:

To zone R-20, all that certain property commonly referred to as Matthews Extra Territorial Jurisdiction, and being all that property presently located in Mecklenburg County, and not in the corporate limits of the Town of Matthews and being located within the Matthews sphere of influence line, generally bounded to the northeast by Idlewild Road, and to the north by Margaret-Wallace Road, to the northwest by the Charlotte city limits line from just west of Margaret-Wallace Road to Independence Boulevard and from Independence Boulevard to Monroe Road and from Monroe Road to the Pineville-Matthews Road, and further being bounded on the west, just to the west of Reverdy Lane following the Charlotte city limits sign back towards Weddington Road and along Weddington Road to McKee Road and then being bounded by McKee Road all the way back to the Union County Line on the south and then following the Union County line back to Idlewild Road. All property within this sphere of influence line being generally described and being located in Mecklenburg County and not located within the corporate limits of the Town of Matthews is hereby being proposed to be rezoned.

No one spoke for or against this motion.

Mr. L. H. Yandle, an adjoining property owner, spoke in favor of this petition.

2833 PETITION NO. 169 (Presbyterian Health Services Corporation)

Motion by Mayor Lemmond, seconded by Commissioner Myers, to continue the public hearing on Petition No. 169 until 8:30 p.m. Motion was approved unanimously.

2854 RECONVENE REGULAR MEETING

Motion by Mayor Lemmond, seconded by Commissioner Myers, to reconvene the regular meeting. Motion approved unanimously.

2881 REPORT FROM BOARD/COMMITTEE REPRESENTATIVES

PLANNING & ZONING BOARD

Town Planner Kathi Ingrish gave the Planning & Zoning Board Report. (Exhibit #5)

2986 She included, in the agenda package to the Council, a memo listing all of the projects that have been given to the Planning Staff and the Planning Board over the past year. They are requesting Council to give them some direction as to the top priorities on this list.

3028 ACTION, IF ANY, ON PLANNING & ZONING BOARD REPORT AND ITEMS FROM THE PUBLIC HEARING TONIGHT

MOTION NO. 1

Motion by Mayor Lemmond, seconded by Commissioner Myers, to approve Motion No. 1, to zone R-20 all that certain property referred to as the Matthews Extraterritorial Jurisdiction, with the exclusion of property contained in Petitions No. 166, No. 168, and No. 172, and Motions 2 through 5 on Page 3 of the agenda. Motion was approved unanimously. (Exhibit #6)

3108 MOTION NO. 2

Motion by Mayor Lemmond, seconded by Commissioner Myers, to approve the zoning, as listed, on the property annexed by the Town of Matthews on June 30, 1991. Motion approved unanimously. (Exhibit #7)

3155 PETITION NO. 164 - 2933 Matthews Mint Hill Road

Motion by Mayor Lemmond, seconded by Commissioner Myers, to deny this petition, as per Planning & Zoning Board's recommendation. Motion approved unanimously.

3171 PETITION NO. 166 - Nursing Home, Fullwood Lane



TOWN OF MATTHEWS

P.O. Box 398
212 N. Trade Street
Matthews, North Carolina 28106-0398
704/847-4411 • Fax: 704/845-1964
www.matthewsnc.com

R. LEE MYERS - Mayor

BOARD OF COMMISSIONERS
Martha W. Krauss - Mayor Pro-Tem
Paul F. Bailey
Karina Glass
W. Kress Query
James P. Taylor
Ginger Wright

December 20, 2000

Mr. Bradley Pierson
Tempico
P O Box 428
Madisonville LA 70447

Mr. David Schoonmaker
2190 Rockcress Way
Golden CO 80401

RE: BMW-NC, 3250 Campus Ridge Road, Matthews, NC

Dear Mr. Pierson and Mr. Schoonmaker,

I understand that you are in the process of considering alternatives for the existing medical waste incinerator facility at 3250 Campus Ridge Road, Matthews. The particular land use when originally established under Mecklenburg County zoning authority was an "incinerator". This was a permitted use under County regulations in the County's I-2 Heavy Industrial zoning category. The property came under Matthews zoning jurisdiction in late 1991, and the zoning was then changed to R-20 Single-family Residential. The Matthews Zoning Ordinance did not then, and does not now, list "incinerator" as an allowed use in any zoning category.

When the BMW-NC site came under Matthews zoning jurisdiction, the use became nonconforming. The Matthews ordinance allows continuation but no expansion of nonconforming uses. Nonconforming uses may be changed to a conforming use, and then cannot return to any nonconforming use. Nonconforming uses may convert to another nonconforming use of the same or higher classification. Because "incinerator" is not a listed use anywhere in the Matthews Zoning Ordinance, there is no reference point in the regulations to "same" or "higher" classification uses.

The type of use you are currently considering would still accept medical waste and process it, by use of an alternative to incineration. The Matthews Zoning Ordinance does not have any listing for such as activity in any district category, and therefore there is currently no Matthews zoning district in which such a use would be permitted without some change to the ordinance language first. The existing nonconforming incinerator cannot be converted to a use that does not appear within the Matthews Zoning Ordinance.



Mr. B. Pierson
Mr. D. Schoonmaker
December 20, 2000
Page 2

The procedure for adding the medical waste processing use you wish to build on this site is as follows:

1) A zoning petition for a text amendment can be submitted, to revise the current Matthews Zoning Ordinance by adding the specific use to one or more zoning district classifications. The most likely classification would be the I-2 Heavy Industrial district. (Text amendment petition forms are available from the Matthews Planning department.)

2) The text amendment process involves a public hearing before the Town Board of Commissioners and the Planning Board, followed by a review and recommendation of the Planning Board. A subsequent Town Board meeting would determine whether the amendment was approved. This entire process, from submission to decision, generally takes about three months.

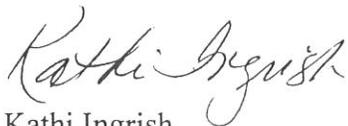
3) A zoning petition to change the zoning district classification on the BMW-NC site from R-20 to I-2(CD) can be submitted. The (CD) designation stands for Conditional District, and it assumes at a minimum a site plan showing footprints of improvements to the site and any other voluntary restrictions the petitioner and Town Board agree should be included. (Zoning petition forms are available from the Matthews Planning department.)

4) As with the text amendment process, this change in zoning classification would follow the same steps - submission, public hearing, Planning Board recommendation, and decision - and generally takes approximately three months. In addition, for this site-specific petition, a neighborhood meeting must be held by the petitioner prior to the public hearing. Once a conditional zoning plan is approved, any building permits and certificates of occupancy must match the zoning plans. If changes to the zoning site plan or zoning conditional notes are desired at a future date, they must be submitted to the Town for further review and approval.

5) A landscape plan will need to be submitted for Town staff review and approval prior to any building permit being issued by Charlotte-Mecklenburg Building Standards. All architectural and civil engineering plans are reviewed for the Town by Charlotte-Mecklenburg Engineering and Building Standards divisions. Environmental permits and clearances are handled by other County and/or State agencies.

Please let me know if you want copies of the text amendment and district classification petition forms, or if you need additional information on procedures.

Sincerely,



Kathi Ingrish
Planning Director
bmwnc-bp.d00