

# ***CHARLOTTE UNIFIED DEVELOPMENT BOARD OF ADJUSTMENT MINUTES***

***August 27th, 2024***

***- 1 -***

The Unified Development Ordinance Board of Adjustment (hereinafter “Board”) for the Charlotte Unified Development Ordinance held a meeting at 9:00 a.m., August 27th, 2024. Chair Deborah Dryden called the meeting to order. Reference to “Ordinance” means “Charlotte Unified Development Ordinance” (“UDO”).

**Present:** Deborah Dryden (Chair), Kevin Shea (Vice-Chair), Hamilton Cort, Amy Sun, and Wes Davis (Gary Young present as additional alternate)

**Also Present:**

Solomon Fortune, Zoning Administrator  
John Kinley, Senior Project Manager  
Terrie Hagler-Gray, Senior Assistant City Attorney, Lead  
Jill Sanchez-Myers, Senior Assistant City Attorney  
Nicole Hewett, Assistant City Attorney  
Kamesha Lampley, Associate Planner/ Clerk to the Board  
Candy Thomas, Veritext Court Reporting

**Index of Cases:**

Case # VAR\_2024-00031  
Case # VAR-2024-00033  
Case # VAR-2024-00034

## **RECOMMENDATION AGENDA**

| \*The meeting began at 9:30 am and was not live streamed on YouTube due to technical difficulties\*

**Case No.:** VAR-2024-00031

**Request:** Variance request to eliminate the Class B - 25 ft wide landscape yard along the southern property line, with the condition that the existing masonry wall adjacent to the parking lot be repaired and extended to a height of 6 ft above the asphalt, a 6 ft high 75% opaque screen fence, finished side facing abutting property, extending from the wall to the rear property line be constructed and plantings (1 tree every 30 ft, 40% minimum evergreen and 1 evergreen shrub every 3 ft) are provided on the site parallel to the southern property line as depicted on the architectural site plan.

**Applicant/Agent:** Night Owl Companies (Represented by Terry Connarn/ Capital Architecture PLLC).

**CHARLOTTE UNIFIED DEVELOPMENT BOARD OF ADJUSTMENT MINUTES**

**August 27th, 2024**

**- 2 -**

**Address:** 6814 Orchard Ridge Dr.

**Parcel ID Number:** 10941167

**Applicable Code Sections:**

**Article 2.3 General Definitions**

**Landscape Yard.** Land area with landscape plantings and other components used to separate one use or development from another and/or to shield or block noise, lights, or other nuisances.

**20.9 LANDSCAPE YARD**

- A. Certain uses or zoning districts, because of their character and/or intensity, may create adverse impacts when developed abutting other less intensive uses or zoning districts. A landscape yard provides a transition between these uses and/or zoning districts that minimizes adverse impacts.
- B. When a landscape yard is required by this section, and a site does not have a landscape yard or the existing landscape yard on the site does not meet the standards of this section, a landscape yard shall be installed when any of the following actions occur:
  - 4. A change of use category within the Use Matrix found in Article 15, or an additional principal or accessory use is established on the site, when abutting a Neighborhood 1 Place Type.

**Article 20.9 Table 20-3:**

**Article 20.9 Table 20-2:**

*Staff supports the requested variance with the condition that the existing masonry wall adjacent to the parking lot be repaired and extended to a height of 6 ft above the asphalt, a 6 ft high 75% opaque screen fence, finished side facing abutting property extending from the wall to the rear property line be constructed and plantings (1 tree every 30 ft, 40% minimum evergreen and 1 evergreen shrub every 3 ft) are provided on the site parallel to the southern property line as depicted on the architectural site plan.*

***The Board based its decision on the following findings of fact:***

1. Night Owl Companies (Represented by Terry Connarn/ Capital Architecture PLLC). The site is located at 6814 Orchard Ridge Dr., further identified as tax parcels 10941167.
2. The property is zoned OFC (Office Flex Campus Zoning District).
3. The site abuts single family residential dwellings zoned N1-A to the south.
4. The *Charlotte Future 2040 Policy Map* recommends Community Activity Center place type for the development site and Neighborhood 1 place type for the abutting parcels to the south.
5. The applicant proposes to improve the existing parking area and renovate the existing building for use as an office. The previous use was a childcare center.
6. Per Article 20.9 B. 3. a change of use category triggers a landscape yard when one is not present. Per Table 20-3 all development in OFC zoning is required to provide a Class B landscape yard abutting Neighborhood 1 place type.
7. Per Article 20.9 Table 20-2 the required width of a Class B landscape yard is 25 ft and shall contain 1 evergreen shrub for 3 linear feet and 1 tree per 30 linear feet, a fence is optional.

## **CHARLOTTE UNIFIED DEVELOPMENT BOARD OF ADJUSTMENT MINUTES**

**August 27th, 2024**

**- 3 -**

8. The applicant is requesting to eliminate the Class B landscape yard requirement and has agreed to the condition that the existing masonry wall adjacent to the parking lot be repaired and constructed to a height of 6 ft above the top of the asphalt, a 6 ft high 75% opaque screen fence, finished side facing abutting property, extending from the wall to the rear property line be constructed and plantings (1 tree every 30 ft, 40% minimum evergreen and 1 evergreen shrub every 3 ft) are provided on the site parallel to the southern property line as depicted on the landscape site plan.
9. The width of the planted portion of the proposed landscape yard ranges from 3.5 ft at the rear of the parking lot expanding to 10 ft at the rear of the building and continuing to the rear property line.
10. The hardship is a result of strict application of the ordinance because the Class B Landscape Yard is not feasible since there is an existing building and parking area. The applicant would have to remove the parking area and demolish part of the building. The Class B Landscape yard would also obstruct the existing egress sidewalk.
11. The hardship results from conditions that are peculiar to the property because the parcel zoned for office uses and is developed with an existing building and parking lot.
12. The hardship does not result from actions taken by the applicant. The building was constructed in 1981 by Charles York prior to the implementation of the UDO and the legacy Zoning Ordinance.
13. The requested variance is consistent with the spirit, purpose, and intent of the Unified Development Ordinance, in that public safety is secured and substantial justice is achieved.
14. The applicant is improving the existing conditions abutting the N1 Place type by providing a 6 ft high screen fence and where space allows, plantings including trees and shrubs.
15. Granting the variance will allow the reuse of the existing building and infrastructure on the parcel.

### **Conclusion of Law:**

1. Unnecessary hardships would result from the strict application of the Ordinance.
2. The hardship does result from conditions that are peculiar to the property (location, size or topography).
3. The hardship does not result from actions taken by the applicant or the property owner.
4. The requested variance is consistent with the spirit, purpose, and intent of the *Unified Development Ordinance*, in that the public safety is secured and substantial justice is achieved.

**Condition of approval:** The existing masonry wall adjacent to the parking lot be repaired and extended to a height of 6 ft above the asphalt, a 6 ft high 75% opaque screen fence, finished side facing abutting property extending from the wall to the rear property line be constructed and plantings (1 tree every 30 ft, 40% minimum evergreen and 1 evergreen shrub every 3 ft) are provided on the site parallel to the southern property line as depicted on the architectural site plan.

A motion was made by board member Kevin Shea to approve the variance. The motion was seconded by board member Wes Davis. All board members voted unanimously to **approve** the variance. The motion passed 5-0.

Board member Hamilton Cort made a motion to adopt the findings of fact and conclusions of law. Board member Amy Sun seconded the motion. All board members voted unanimously to **approve** the findings of facts and conclusions of law. The motion passed 5-0.

**CHARLOTTE UNIFIED DEVELOPMENT BOARD OF ADJUSTMENT MINUTES**

**August 27th, 2024**

**- 4 -**

**Variances**

**Case No.:** VAR-2024-00033

**Request:** Two Variance requests from Article 4.3 Table 4-2 of the UDO.  
1. To reduce front setback from 30 ft to 15 ft, a 15 ft reduction.  
2. To reduce rear setback from 40 ft to 20 ft, a 20 ft reduction.  
  
With condition only a single family detached dwelling and associated accessory uses and structures be permitted.

**Applicant/Agent:** David Murray

**Address:** 11816 Timber Ridge Road

**Parcel ID Number:** 05118112

**Applicable Code Sections:**

**Article 4. Table 4-2 Neighborhood 1 Zoning District Building Siting Standards**

Standards for N1-A zoning

Minimum Front Setback 27 ft<sup>1</sup>

Minimum Rear Setback: 40 ft

<sup>1</sup> Front setbacks shown on a plat recorded at the Register of Deeds shall supersede required zoning district front setbacks.

**Article 2.3 General Definitions:**

**Dwelling.** A structure, or portion thereof, designed or used for human habitation.

**Setback.** The minimum dimension a structure may be located as measured from a curb line, lot line, right-of-way line, or other point set by the Ordinance, along frontages and side and rear lot lines. A setback shall be located at or behind the required pedestrian/bicycle facilities and planting strip/amenity zone.

- **Front setback** A required setback located along the shortest lot line dividing the lot from the right-of-way.
- **Rear setback.** A rear setback is a required setback located opposite and/or farthest from a front setback along the rear lot line dividing the lot from another lot.

***Staff supports the requested variance with the condition that only a single family detached dwelling and associated accessory uses and structures shall be permitted on the property.***

***The Board based its decision on the following findings of fact:***

1. The applicant is David Murray representing the property owner David Buchanan.
2. The site is located at 11816 Timber Ridge Rd, further identified as tax parcel 05118112.

# **CHARLOTTE UNIFIED DEVELOPMENT BOARD OF ADJUSTMENT MINUTES**

**August 27th, 2024**

**- 5 -**

3. The property is zoned N1-A (Neighborhood 1-A) and is 0.1447 acres as stated on the applicant's<sup>2</sup> survey.
4. The *Unified Development Ordinance* went into effect in June of 2023. The site's R-3 zoning was automatically translated to N1-A.
5. Per UDO Table 4-2 Footnote 1 the 30-foot front setback shown on the recorded plat supersedes 27-foot front setback for the N1-A zoning district, so the required front setback is 30 feet.
6. The parcel is an existing lot of record based on historical 1985 zoning maps.
7. Physical survey completed on April 7<sup>th</sup>, 2023, shows the parcel, the dimensions of the lot, and building envelope without the variance granted.
8. The parcel is approximately 75.15 feet deep front to back at the deepest point. Without the variance, the setbacks would result in a building envelope 6 ft deep at the deepest point.
9. The rear of the lot is surrounded by the Old Stone Crossing at Caldwell Creek HOA. The lot southwest of the property is a vacant lot. The property northeast of the lot is a single-family dwelling.
10. The applicant is requesting to reduce the front setback from 30 ft to 15 ft, a 15 ft reduction and a rear setback from 40 ft to 20 ft, a 20 ft reduction, resulting in a building envelope 38.5 ft at the deepest point to allow the construction of a single-family dwelling.
11. The applicant proposed and agreed to the condition of only a single family detached dwelling and associated accessory uses and structures be permitted.
12. The hardship results in strict application of the Ordinance because of the small size and lack of depth of the property, which creates an unbuildable building envelope.
13. The hardship results from conditions that are peculiar to the property because of the unique shape, small size and depth of the lot.
14. The hardship does not result from actions taken by the applicant or the property owner. The parcel is an existing lot of record and was not created by the property owner the hardship results from the lot shape and size.
15. The requested variance is consistent with the spirit, purpose, and intent of the Ordinance, in that the public safety is secured and substantial justice is achieved.
16. The proposed setbacks are comparable to other residential zoning districts.
17. There are no other homes on the east side of Timber Ridge Rd.
18. The rear of the parcel is separated from homes along Erwin Ridge Ave by a 30-50 ft wide parcel of common open space owned by Old Stone Crossing HOA.
19. Granting the variance will not alter the essential character of the neighborhood.

## **Conclusion of Law:**

1. Unnecessary hardships would result from the strict application of the Ordinance.
2. The hardship does result from conditions that are peculiar to the property (location, size or topography).
3. The hardship does not result from actions taken by the applicant or the property owner.
4. The requested variance is consistent with the spirit, purpose, and intent of the *Unified Development Ordinance*, in that the public safety is secured and substantial justice is achieved.

**Condition of Approval:** The applicant proposed and agreed to the condition of only a single family detached dwelling and associated accessory uses and structures be permitted.

There were four speakers for this case. Two of which were staff who presented case information.

Board Member Hamilton Cort made a motion to approve the variance with the condition of only a single-family home may be built on the property. Board Member Kevin Shea seconded the motion. All board members voted unanimously to **approve the variance**. The motion passed 5-0.

# **CHARLOTTE UNIFIED DEVELOPMENT BOARD OF ADJUSTMENT MINUTES**

**August 27th, 2024**

**- 6 -**

Board Member Kevin Shea made a motion to approve the findings of fact and conclusions of law as amended. Board Member Hamilton Cort seconded the motion. All board members voted unanimously to **approve** the findings of fact and conclusions of law as amended. The motion passed 5-0.

**The board took a recess at 10:32 am and returned at 10:43 am**

**Case No.:** VAR-2024-00034

**Request:** Variance request to reduce the separation distance for a group home from 800 ft to 247 ft, a 553 ft reduction.

**Applicant/Agent:** Artpark Foundation Group Homes, represented by Tamara Artist.

**Address:** 8343 Norcroft Drive

**Parcel ID Number:** 02723107

**Applicable Code Sections:**

**Article 2.3 General Definitions:**

**Separation.** When principal uses are required to be measured a certain distance from another use or district, the distance measured, in a straight line, from the nearest point of the lot line on which such principal use is proposed to be located to the nearest point on the lot line where the other use or district is located, unless otherwise specifically required to be measured differently by this Ordinance.

**Article 15.2 Global Use Matrix:**

**Table 15-1 Use Matrix** – Group home use is allowed with Prescribed Conditions

**Article 15.3 Use Definitions:**

**Group Home.** Group home means a “Family Care Home” as defined in N.C.G.S § 160D-907. A group home is a home with support and supervisory personnel that provides room and board, personal care, and habilitation services in a family environment for not more than six resident persons with disabilities. Person with disabilities are defined as a person with a temporary or permanent physical, emotional, or mental disability, including, but not limited to, an intellectual or other developmental disability, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances, and orthopedic impairments but not including persons with a mental illness who are dangerous to others as defined in G.S. 122C-3(11)b. In addition, a group home also means a residential use, even if it does not conform to the language above, that provides a residential environment which may require various services, living assistance, or supervision but does not include any facility that provides medical services requiring or comparable to on-site, nursing, physician, or medical care for the occupants which is only permitted in a dependent living facility or healthcare institution.

**Article 15.4 Principal Uses: Prescribed Conditions**

# **CHARLOTTE UNIFIED DEVELOPMENT BOARD OF ADJUSTMENT MINUTES**

**August 27th, 2024**

**- 7 -**

## **UU. Group Home**

1. A zoning use permit is required.
2. A group home is subject to the standards for a single-family dwelling unless modified by this section.
3. Group homes shall be licensed by the state.
4. Group homes in the Neighborhood 1 Zoning Districts shall be limited to a maximum of six residents. Group homes in all other zoning districts shall be limited to ten residents.
5. New group homes shall be separated from existing group homes in an Neighborhood 1 Place Type by a distance of 800 feet. This standard does not apply in circumstances when the sites are separated by an arterial, major topographical feature such as a major stream floodway, or by major nonresidential or public uses such as a public park, educational facility, place of worship, or commercial area.

### ***The board based its decision on the following findings of facts:***

1. The applicant is Tamara Artist representing Artpark Foundation Group Homes.
2. The site is located at 8343 Norcroft Drive, further identified as tax parcel 02723107, owned by Lionel Parker.
3. The property is zoned N1-A (Neighborhood 1 Zoning District) and is 0.434 acres.
4. The applicant proposes to locate a group home serving adolescents on the subject parcel.
5. Per the staff's Distance Exhibit the parcel is located 247 ft from an existing group home located at 3046 Heathcroft Ct. listed as a mental health facility serving individuals with intellectual disabilities per the NC Department of Health and Human Services-Division of Health Service Regulation list of facilities. <https://www.northcarolinahealthnews.org/wp-content/uploads/2012/05/mhllist.pdf>
6. The applicant is requesting to reduce the separation distance for a group home from 800 ft to 247 ft, a 553 ft reduction.
7. The hardship does not result from conditions that are peculiar to the property. The hardship is caused by the applicant and their desired use of the property which has separation requirements.
8. The hardship is not a result of strict application of the ordinance. There are other properties in this Charlotte region that are outside of the separation distance.
9. The hardship would result from actions taken by the applicant by proposing a group home that does not meet the prescribed conditions for separation requirements.
10. The requested variance is not consistent with the spirit, purpose, and intent of the *Unified Development Ordinance*, in that public safety is secured and substantial justice is achieved.
11. Section 15.3 of the UDO defines group homes as "Family Care Home" as defined in N.C.G.S § 160D-907.
12. N.C.G.S. 160D-907 states that, a family care home is deemed a residential use of property for zoning purposes and is a permissible use in all residential districts. However, a local government may prohibit a family care home from being located within a one-half mile radius of an existing family care home.
13. [https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_160D/GS\\_160D-907.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_160D/GS_160D-907.pdf)
14. The UDO prescribes an 800 ft separation for group homes, less than allowed by State Statute. The 800 ft separation has been in the City's Zoning Code since 1998.
15. Granting the variance would allow the establishment of a group home within close proximity, 1 street away, of an existing group home within the same neighborhood.
16. Circumstances do not exist where the sites are separated by an arterial, major topographical feature such as a major stream floodway, or by major nonresidential or public uses such as a public park, educational facility, place of worship, or commercial area.

**CHARLOTTE UNIFIED DEVELOPMENT BOARD OF ADJUSTMENT MINUTES**

**August 27th, 2024**

**- 8 -**

**Conclusion of Law:**

1. Unnecessary hardships would not result from the strict application of the Ordinance.
2. The hardship does not result from conditions that are peculiar to the property (location, size or topography).
3. The hardship does result from actions taken by the applicant or the property owner.
4. The requested variance is not consistent with the spirit, purpose, and intent of the Unified Development Ordinance, in that the public safety is secured and substantial justice is achieved.

There were four speakers for this case. One of which was a staff member who presented the case information.

Board member Hamilton Cort made a motion to **deny the variance**. Board member Kevin Shea seconded the motion. All board members voted unanimously to **deny the variance**. The motion passed 5-0.

Board Member Hamilton Cort made a motion to approve the findings of fact and conclusions of law. Board Member Wes Davis seconded the motion. All board members voted unanimously to **approve the findings of fact and conclusions of law**. The motion passed 5-0.

**MINUTES**

Board Member Amy Sun made a motion to approve the minutes from the July 30th, 2024, Board of Adjustment Meeting. Board Member Kevin Shea seconded. All board members voted unanimously to **approve** the July 30th, 2024, meeting minutes.

Meeting adjourned

This \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Deborah Dryden, Chair

\_\_\_\_\_  
Kamesha Lampley - Clerk to the Board