

CHARLOTTE ZONING BOARD OF ADJUSTMENT MINUTES

March 28, 2023

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The Zoning Board of Adjustment (hereinafter “Board”) for the Charlotte Zoning Area held a meeting at 9:00 a.m., March 28, 2023. Chair Douglas Wilson called the meeting to order. Reference to “Ordinance” means “Charlotte Zoning Ordinance”.

Present: Douglas Wilson (Chairman), Deborah Dryden, Marshal Williamson, Tarik Hameed, Hamilton Cort

Also Present:

Lisa McCarter, Planning Coordinator
Solomon Fortune, Zoning Administrator
Terrie Hagler-Gray, Senior Assistant City Attorney
Jill Sanchez-Myers, Senior Assistant City Attorney
Terry Edwards, Clerk to the Board
Candy Thomas, Veritext Court Reporting

Index of Cases:

Case#2023- 015 335 Heathwood Road
Case#2023-016 1006 Rhyne Road
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RECOMMENDATION AGENDA

Case No.: 2023-015

Request: Requesting a 20 foot variance from required 45 foot rear yard to permit renovation and expansion within the established rear yard.

Applicant/Agent: Steven and Michelle Abels

Address: 335 Heathwood Road

Parcel ID Number: 157-122-17

Applicable Code Sections:

Section 7.103 Nonconforming structures:

(5) A nonconforming structure may be expanded, without bringing the nonconforming structure into conformity with these regulations, only if the part of the structure to be expanded and the area of the lot into which the expansion is taking place are both brought into conformity with the requirements of these regulations.

Section 9.205 Development standards for single family districts:

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- (1) All residential uses and structures permitted in the R-3 district shall meet the applicable development standards established in this Section and all other requirements of these regulations:
(e2) Minimum setback from right-of-way along local streets approved prior to 12-20-2010: 30 feet
(g) Minimum rear yard: 45 feet

Section 2.201 Definitions:

Nonconforming structure. Any structure lawfully existing on the effective date of these regulations, or on the effective date of any amendment thereto, which does not comply with these regulations or any amendment thereto, whichever might be applicable.

Yard, rear required. The minimum distance required by this ordinance between the rear of a principal building or structure and the lot line farthest from the street fronting the lot as measured parallel to the rear lot line, projected to the side lines of the lot on which the building or structure is located.

Yard, rear, established. The distance between the rear of a principal building or structure and the lot line farthest from the street fronting the lot as measured parallel to the rear lot line, projected to the side lines of the lot on which the building or structure is located.

Setback, established. The distance between the right-of-way line and the front building line of a principal building or structure, as constructed, projected to the side lines of the lot.

Setback, required. The minimum distance by which a building, structure, or use must be separated from

either 1) the street right-of-way or 2) the back of curb (existing or future) based on the street type a parcel abuts and/or the zoning designation. In the case of a through lot, the same minimum separation to the building, structure, or use will be required.

Staff recommends approval of the variance request. The findings of fact are:

1. The applicants are Steven and Michelle Abels.
2. The proposed site is located at 335 Heathwood Road, further identified as tax parcel 157-122-17.
3. The property is zoned R-3 (single family) and is approximately 0.45 acres.
4. The property was subdivided in 1950 and is identified as Lot 19 in Block 1 of recorded plat Map Book 6 Page 407.
5. There is a single family home on the property that was constructed in 1954.
6. Per Code Section 9.205(1)(g), the required rear yard for the property is 45 feet.
7. The existing home has an established rear yard of approximately 24 feet, which is an encroachment of approximately 21 feet.
8. The single family home on the site is a nonconforming structure because it was constructed prior to current ordinance regulations and does not meet the required rear yard.
9. The applicant wishes to make repairs, renovations, and an addition on the rear of the home that encroaches into the required rear yard.
10. Code section 7.103(5) states that nonconforming structures may be expanded only if the part of the structure to be expanded and the area of the lot into which the expansion is taking place comply with current zoning regulations.
11. The proposed expansion to the rear of the home will not meet the provisions of Code Section 7.103(5), because it is a vertical expansion in the area of the existing rear yard encroachment.
12. The applicants are requesting a 20 foot variance from the 45 foot rear yard requirement to allow the vertical expansion to the nonconforming structure.
13. ***Unnecessary hardships would result from the strict application of the Ordinance.***
14. Strict application of the ordinance would prevent the proposed addition since most of the nonconforming home is located in the required rear yard, and there is no compliant building area on the rear of the home.

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15. ***The hardship does not result from actions taken by the applicants.***
16. The applicants purchased the property in 2013 and no rear yard was shown on the survey.
17. The applicants became aware of the existing rear yard and encroachment of the home when they inquired about renovations to the home.
18. The nonconforming home was built in 1954, prior to current Zoning Ordinance regulations, and has an established 24 foot rear yard.
19. ***The hardship results from conditions peculiar to the property.***
20. The established setback is approximately 86 feet, which is 56 feet greater than the required 30 foot setback in the R-3 zoning district, and decreases the available building area in the rear of the home.
21. The requested rear yard of 25 feet is does not exceed the established rear yard of 24 feet, and is a lesser encroachment.
22. The applicant states that it would be difficult to locate the addition in another location and maintain a reasonable floorplan due to the 45 foot rear yard being located in the middle of the home that contains the main features of the living space.
23. It would be difficult to locate the addition in front of the home due to the location of a large mature tree.
24. ***The requested variance is consistent with the spirit, purpose, and intent of the Zoning Ordinance, in that the public safety is secured and substantial justice is achieved.***
25. Granting the variance will not alter the essential character of the neighborhood and will not expand the footprint of the home.
26. The applicant states that the requested variance would allow the consistent streetscape along Heathwood Road to continue.
27. Granting the variance will not exceed the 24 foot established rear yard.
28. The applicant states the requested variance will permit the roofline to align with the rest of the home.
29. The applicant has provided architectural elevations in character with the neighborhood.
30. The granting of the variance will not cause public safety issues, and the applicant states that the existing screen porch needs to be torn down due to issues with the footers.

Conclusion of Law:

1. Unnecessary hardships would result from the strict application of the Ordinance.
2. The hardship results 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 Zoning Ordinance, in that the public safety is secured and substantial justice is achieved.

Members who heard this case were Douglas Wilson (Chairman), Deborah Dryden, Marshal Williamson, Hamilton Cort, and Tarik Hameed. The decision of the Board was expressed in a motion by Board Member Hameed and seconded by Board Member Williamson to **grant** the variance. Board members Hamilton Cort, Tarik Hameed, Douglas Wilson, Marshal Williamson, and Deborah Dryden all voted to approve the variance.

Board Member Dryden made a motion to adopt staff's findings of fact and conclusions of law as written. Board Member Cort seconded. Board members Hamilton Cort, Tarik Hameed, Marshal Williamson, Douglas Wilson, and Deborah Dryden voted in the affirmative to approve the findings of fact and conclusions of law as written.

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Case No.: 2023-016

Request: Requesting two variances to allow development of a single-family residence on a nonconforming vacant lot:
1. A 10 foot variance from required 30 foot front setback.
2. A 20 foot variance from required 40 foot rear yard.

Applicant/Agent: Olympia and Wright, LLC (Represented by David W. Murray of Murray Law Firm, PLLC)

Address: 1006 Rhyne Road

Parcel ID Number: 053-015-14

Applicable Code Sections:

Section 9.205 Development standards for single family districts:

(1) All uses and structures permitted in the R-4 district shall meet the applicable development standards established in this Section and all other requirements of these regulations:

(e2) Minimum setback (streets approved prior to 12-20-2010): 30 feet from street right-of-way

(g) Minimum rear yard: 40 feet

Section 12.106. Uses and structures prohibited and allowed in required setbacks and yards.

(1) No principal building or principal structure shall be located within any setback or yard required by these regulations except as provided in this Section and elsewhere in these regulations.

Table 12.206(3) Development Standards for Off-Street Parking, Driveways, and Garages

Single-family & duplexes on individual lots:

Parking in Setback, Side Yards, and Right-of-Way: Parking is allowed in the setback, but vehicles shall not block the sidewalk and shall be parked only on improved surfaces*. No parking is permitted in the right-of-way, except for parking as approved by CDOT.

Driveways and Parking Pads: Shall have a minimum length of 20', measured from the back of the sidewalk, or back of the right-of-way, whichever is greater.

Section 2.201 Definitions:

Setback, required. The minimum distance by which a building, structure, or use must be separated from either 1) the street right-of-way or 2) the back of curb (existing or future) based on the street type a parcel abuts and/or the zoning designation. In the case of a through lot, the same minimum separation to the building, structure, or use will be required.

Yard, rear required. The minimum distance required by this ordinance between the rear of a principal building or structure and the lot line farthest from the street fronting the lot as measured parallel to the rear lot line, projected to the side lines of the lot on which the building or structure is located.

Building Envelope. A three-dimensional area on a lot that remains for placing a structure on a site after setbacks, yard, height, and bulk regulations are observed.

Staff recommends approval of the variance request. The findings of fact are:

1. The applicant is Olympia and Wright, LLC (Represented by David W. Murray of Murray Law Firm, PLLC).
2. The proposed site is located 1006 Rhyne Road, further identified as tax parcel 053-015-14.
3. The property is zoned R-4 (single family) and is 8,391 sf in area.

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4. The property can be seen on a historic 1980's zoning record map.
5. The original lot configuration was rectangular in shape and a larger area.
6. In the mid 2000's, right-of-way was acquired for Rhyne Road and Interstate I-485 which decreased the lot size and changed the lot to a triangular configuration.
7. Per Code Section Per Code Section 9.205(1)(e2), there is a required 30 foot front setback which is measured from the right-of-way.
8. Per Code Section 9.205(1)(g), there is a required rear yard of 40 feet.
9. Per Code Section 12.106(1) no principal buildings or structures shall be located within any setback.
10. Due to the lot's triangular shape, when the required setback and rear yard are imposed on the property, the center of the building envelope is 5 feet in depth, which is inadequate to build a residential dwelling.
11. The applicant is requesting two variances to allow development of a single-family residence: 1) A 10 foot variance from required 30 foot front setback; and 2) A 20 foot variance from required 40 foot rear yard.
12. ***Unnecessary hardships would result from the strict application of the Ordinance.***
13. When the required 30 foot setback and 40 foot rear yard are imposed on the property there is only 5 foot of building depth in the center of the building envelope.
14. The requested variance would result in a building envelope with a central depth of 35 feet, allowing the construction of a residential dwelling.
15. ***The hardship does result from conditions that are peculiar to the property (location, size or topography).***
16. After the property was subdivided, over half of the property was acquired for improvements to Rhyne Road and I-485.
17. The acquisition of property for right-of-way resulted in an irregular triangular shaped lot.
18. ***The hardship is not a result from actions taken by the applicant or the property owner.***
19. The property owner purchased the property in 2022 in its current configuration.
20. ***The requested variance is consistent with the spirit, purpose, and intent of the Zoning Ordinance, in that the public safety is secured and substantial justice is achieved.***
21. The requested variance will result in a permitted building depth of 35 feet which is consistent with other homes in the area.
22. Measuring from Charlotte Explorer GIS aerials, other homes along Rhyne Road range in depth from approximately 30 to 55 feet.
23. The variance will uphold public safety.
24. Per Code Table 12.26(3) driveways and parking pads are required a minimum length of 20 feet for single family homes with the intention of accommodating the 20 feet needed for parking and maneuvering area, ensuring that vehicles are not parked on sidewalks or yards, and allowing for visibility and pedestrian safety.

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 is not a 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 Zoning Ordinance, in that the public safety is secured and substantial justice is achieved.

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Members who heard this case were Douglas Wilson (Chairman), Deborah Dryden, Marshal Williamson, Hamilton Cort, and Tarik Hameed. The decision of the Board was expressed in a motion by Board Member Cort and seconded by Board Member Williamson to **grant** the variance. Board members Hamilton Cort, Tarik Hameed, Douglas Wilson, Marshal Williamson, and Deborah Dryden all voted to approve the variance.

Board Member Dryden made a motion to adopt staff’s findings of fact and conclusions of law as written. Board Member Cort seconded. Board members Hamilton Cort, Tarik Hameed, Marshal Williamson, Douglas Wilson, and Deborah Dryden voted in the affirmative to approve the findings of fact and conclusions of law as written.

AGENDA

Case No.: 2023-014

Request: Requesting a 3 foot variance from the required 30 foot front setback for compliance of an existing home.

Applicant/Agent: JJ Homes Restorations, LLC (Represented by Daniel Medina of DHM Design NC)

Address: 1211 Rock Haven Drive

Parcel ID Number: 033-095-04

Applicable Code Sections:

Section 9.205 Development standards for single family districts:

(1) All residential uses and structures permitted in the R-3 district shall meet the applicable development standards established in this Section and all other requirements of these regulations:
(e2) Minimum setback from the right-of-way along local streets approved prior to 12-20-2010: 30 feet

Section 4.107. Delegated authority for development approval based upon existing conditions.

(2) Yard, Buffers, and Encroachments. The Zoning Administrator shall also have the administrative authority to approve deviations from yard and buffer requirements. To approve a deviation, the Zoning Administrator must determine that there has been a surveying error, a misunderstanding about a property line, an action of Land Use and Environmental Services Agency (LUESA), Neighborhood and Business Services, Engineering and Property Management, and/or the Planning Department, or other similar basis that demonstrates an inadvertent error. Any approval for a reduction shall not exceed two feet...

Table 12.206(3) Development Standards for Off-Street Parking, Driveways, and Garages

Single-family & duplexes on individual lots:

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Parking in Setback, Side Yards, and Right-of-Way: Parking is allowed in the setback, but vehicles shall not block the sidewalk and shall be parked only on improved surfaces*. No parking is permitted in the right-of-way, except for parking as approved by CDOT.

Driveways and Parking Pads: Shall have a minimum length of 20', measured from the back of the sidewalk, or back of the right-of-way, whichever is greater.

Garages: Minimum setback of 20', or the district setback, whichever is greater. Setbacks are measured from the back of sidewalk or back of right-of-way, whichever is greater.

Section 2.201 Definitions:

Setback, required. The minimum distance by which a building, structure, or use must be separated from

either 1) the street right-of-way or 2) the back of curb (existing or future) based on the street type a parcel abuts and/or the zoning designation. In the case of a through lot, the same minimum separation to the building, structure, or use will be required.

Street. A public right-of-way or fee simple tract of land not less than 30 feet in width, set aside for public travel, which has been accepted by or offered for maintenance to the City of Charlotte or the State of North Carolina, has been established as a public street prior to the effective date of these regulations, or has been dedicated or offered for dedication to the City of Charlotte or the State of North Carolina for public travel by the recording of a subdivision plat.

Staff recommends approval of the variance request. The findings of fact are:

1. The applicants are JJ Homes Restorations, LLC (Represented by Daniel Medina of DHM Design NC).
2. The proposed site is located at 1211 Rock Haven Drive, further identified as tax parcel 033-095-04.
3. The 0.48 acre property is zoned R-3 (single family) and is located in the Lake Wylie Protected Area Watershed Overlay.
4. Per Code Section 9.205(1)(e2) there is a minimum 30 foot setback measured from the right-of-way along local streets.
5. On July 29, 2022 a building permit was issued to construct a single family dwelling on the property.
6. The building permit B421029 correctly noted the minimum front setback of 30 feet.
7. After the home was constructed an as-built survey showed a 2.61 foot encroachment into the required 30 foot setback.
8. The applicant is requesting a 3 foot variance from the required 30 foot setback for compliance of the home.
9. **Unnecessary hardships would result from the strict application of the Ordinance.**
10. Strict application of the ordinance would require a portion of the home to be demolished.
11. **The hardship does not result from actions taken by the applicant or the property owner.**
12. The applicant states that the encroachment is an inadvertent error because they did not have a survey prior to constructing the home and thought the property extended to the paved portion of the street right-of-way.
13. The applicant became aware of the encroachment when a survey was required after the home construction.
14. **The hardship results from conditions that are peculiar to the property (location, size or topography).**
15. The applicant states that they thought the 30 foot setback was measured from the paved portion of the street, so they thought they were exceeding the required 30 foot setback.
16. The Rock Haven Drive right-of-way is 60 feet, and the pavement width is approximately 15 feet wide measured from 2023 Charlotte Explorer GIS aerials.

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17. Since this is an older neighborhood, there is no sidewalk, and the paved portion of the right-of-way is located approximately 22.5 feet from the edge of the right-of-way adjacent to the subject property. This is a larger distance than new subdivisions that have a wider pavement width and sidewalk.
18. Although the distance of the home to the right-of-way is 27.39 feet, the distance of the home to the paved portion of the street is approximately 49.89 feet.
19. **The requested variance is consistent with the spirit, purpose, and intent of the Zoning Ordinance, in that the public safety is secured and substantial justice is achieved.**
20. The 2.61 foot encroachment is minor and not easy to detect.
21. Section 4.107(2) of the Zoning Ordinance allows administrative deviations for encroachments up to 2 feet due to an unintended errors. Since the encroachment is 2.61 feet, it cannot be remedied through this provision.
22. The requested variance upholds public safety.
23. The garage on the front of the home is located in the encroachment area.
24. Per Code Table 12.26(3) the garage is required a minimum setback of 30 feet with the intention of accommodating parking and maneuvering area, ensuring that vehicles are not parked on sidewalks or yards, and allowing for visibility and pedestrian safety.
25. Due to the increased distance between the back of right-of-way and pavement, the garage is located approximately 49.89 feet from the pavement, meeting the intent of the zoning standards.

Conclusion of Law:

1. Unnecessary hardships would result from the strict application of the Ordinance.
2. The hardship results 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 Zoning Ordinance, in that the public safety is secured and subs

Members who heard this case were Douglas Wilson (Chairman), Deborah Dryden, Marshal Williamson, Hamilton Cort, and Tarik Hameed. The decision of the Board was expressed in a motion by Board Member Cort and seconded by Board Member Williamson to **grant** the variance. Board members Hamilton Cort, Tarik Hameed, Douglas Wilson, Marshal Williamson, and Deborah Dryden all voted to approve the variance.

Board Member Cort made a motion to adopt staff's findings of fact and conclusions of law as written. Board Member Hameed seconded. Board members Hamilton Cort, Tarik Hameed, Marshal Williamson, Douglas Wilson, and Deborah Dryden voted in the affirmative to approve the findings of fact and conclusions of law as written.

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Case No.: 2023-011 (Continued until May)

Request: Requesting five variances to allow nonconforming structures, driveways and required site improvements to encroach into a required Class C buffer to permit a rezoning and expansion of a facility:

1. A 24 foot variance from the 37.5 foot buffer with a fence for an existing building.
2. A 24 foot variance from the 37.5 foot buffer with a fence for existing parking and fire lane.
3. Allow Access to Colony Road to encroach up to 40 feet into required buffer.
4. A 11.5 foot variance from the 37.5 foot buffer for an existing internal drive.
5. A 18 foot variance from the required 50 foot buffer for existing utility transformers/pedestals.

Applicant/Agent: Carmel Hills, Inc. (Represented by David W. Murray of Murray Law Firm, PLLC)

Address: 2801 Carmel Road & 6024 Colony Road

Parcel ID Number: 211-632-98 & 211-361-18

Counsel for the property owner and counsel for the opposition presented a request to continue the case until the May meeting. Members who heard this motion were Chair Douglas Wilson, Deborah Dryden, Tarik Hameed, Hamilton Cort, Marshal Williamson. The motion to continue the case until May was expressed by Board Member Dryden and seconded by Board Member Cort. Members Wilson, Dryden, Hameed, Williamson, and Cort voted yes to continue until May.

APPEAL

Case No.: 2022-051 (Continued Until May)

Request: Appealing the Zoning Administrator's determination that a volunteer fire station is a permitted use on the subject property based upon the site meeting the prescribed conditions that the use will be located on a lot that fronts a collector street and that primary vehicular access to the use will not be provided by way of a residential local street.

The applicants cite the following Code Sections:

- A. 9.203(9)(c): Government Buildings up to 12,500 square feet
- B. 2.201: Street, Local (Class VI)
- C. 2.201: Street Collector (Class V)

Applicant/Agent: Thomas Lucian Selzer II, Amanda Marie Simmons Selzer, and Toby Bryan Porter (Represented by David W. Murray of Murray Law Firm, PLLC)

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Address: 13227 Woody Point Road

Parcel ID Number: 199-085-33

Counsel for the property owner and City Staff presented a request to continue the case until the May meeting. Members who heard this motion were Chair Douglas Wilson, Deborah Dryden, Tarik Hameed, Hamilton Cort, Marshal Williamson. The motion to continue the case until May was expressed by Board Member Dryden and seconded by Board Member Cort. Members Wilson, Dryden, Hameed, Williamson, and Cort voted yes to continue until May.

MINUTES

Board Member Dryden made a motion to approve the minutes from February 28, 2023 Zoning Board of Adjustment Regular Meetings. Board Member Cort seconded. Board Members Tarik Hameed, Hamilton Cort, Douglas Wilson, Marshal Williamson, and Deborah Dryden voted in the affirmative to approve the February 28, 2023 regular meeting minutes.

This ____ day of _____, 2023.

Douglas Wilson, Chair

Terry Edwards, Clerk to the Board