

CHARLOTTE ZONING BOARD OF ADJUSTMENT MINUTES

May 30, 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., May 30, 2023. Chair Douglas Wilson called the meeting to order. Reference to “Ordinance” means “Charlotte Zoning Ordinance”.

Present: Douglas Wilson (Chair), Amy Sun, Kevin Shea, Marshal Williamson, 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#2023-027 1608 & 1610 Julia Maulden Place
Case#2023-028 7545 Morrocroft Farms Lane
Case#2023-011 2801 Carmel Road & 6024 Colony Road (Continued Until June 27, 2023)
Case#2023-051 13227 Woody Point Road (Continued Until July 25, 2023)

RECOMMENDATION AGENDA

Case No.: 2023-011 (Continued until June 27, 2023)

Request: Requesting five variances to allow nonconforming structures, driveways and required site improvements to encroach into a required 50 foot 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. A 40 foot variance from the required Class C buffer for a new access to Colony Road.
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

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The representative of the applicant presented a request to continue the case for 30 days. Board Members who heard this motion were Douglas Wilson, Marshal Williamson, Hamilton Cort, Kevin Shea, and Amy Sun. Board Member Cort made a motion to grant a 30-day continuance and Board Member Shea seconded the request. Board Members Wilson, Cort, Williamson, Shea, and Sun voted yes to continue the case for 30 days. The case will be heard at the June 27, 2023, meeting.

Case No.: 2023-027

Request: Requesting a 21 foot variance from required 40 foot proposed right-of-way from the centerline of Parkwood Avenue to allow an existing duplex to remain on the property.

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

Address: 1608 & 1610 Julia Maulden Place

Parcel ID Number: 081-075-24

Applicable Code Sections:

Section 9.205 Development standards for single family districts:

(1) All uses and structures permitted in the R-8 district shall meet the applicable development standards established in this Section and all other requirements of these regulations:

(e1) Minimum setback is 20 feet from the right-of-way along a designated thoroughfare.

(e2) Minimum setback is 20 feet from the right-of-way along a local street approved prior to 2010.

FOOTNOTES TO SECTION 9.205(1):

1. Setbacks shown on a plat recorded at the Register of Deeds shall supersede required zoning setbacks.

Section 12.102 Special lot, setback, yard and building envelope requirements.

(4) If both the setback and rear yard of a lot abut public streets, then the required rear yard shall be the same as the required setback in the district.

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.

Section 12.103 Requirements for lots along thoroughfares:

(1) The minimum yards or setbacks prescribed for each zoning district, which abuts a thoroughfare shall be measured from the proposed right-of-way line established for each classification of thoroughfare as follows:

- Thoroughfare Classification: Major Arterial (Class III) 50¹ Foot Distance From Thoroughfare Centerline to Proposed Right-of-Way Line

¹ The distance from thoroughfare centerline to proposed right-of-way line for Class III

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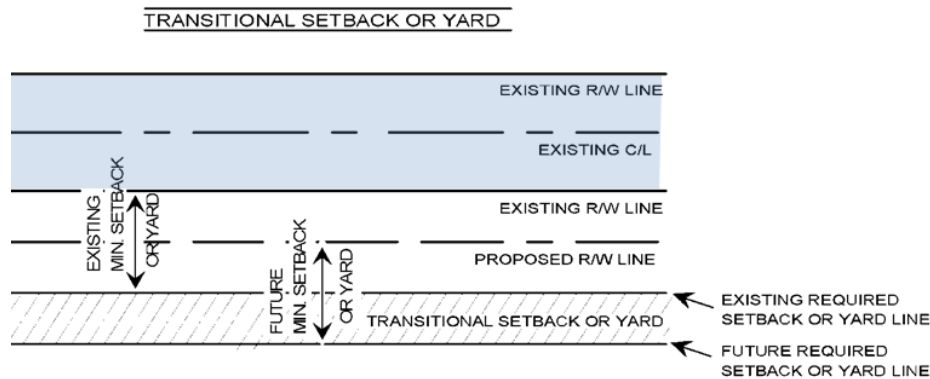
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thoroughfares located within the area bounded by Route 4 and I-85 shall measure 40 feet ...

(2) A transitional setback or yard shall also be established for each zoning district which abuts a thoroughfare that has an existing right-of-way which is not as wide as the right-of-way established for that thoroughfare as illustrated in Figure 12.103. The transitional setback or yard area established for lots abutting thoroughfares can be used for any purpose allowed by the particular zoning district, except for

(a) those uses which are prohibited in the required setbacks or yards as established by this ordinance...

Figure 12.103



Code Section 2.201 (General Definitions):

Transitional setback or yard is that area, if any, along a thoroughfare which lies between the existing required setback line or yard line and the future required setback or yard line. The future setback or yard is measured from the proposed right-of-way...

Required Setback is 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.

Established Setback is 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.

Required Rear Yard is 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.

Lot, types. A through lot is defined as a lot other than a corner lot with a frontage on more than one street.

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

1. The applicant is Birdco Inc. (Represented by David W. Murray of Murray Law Firm, PLLC).
2. The proposed site is located at 1608 & 1610 Julia Maulden Place, further identified as tax parcel 081-075-24.
3. The parcel was subdivided in October 1989 and is identified as Lot 15 in Map Book 23 Page 393 recorded at the Register of Deeds.
4. The approximately 0.171 acre property is zoned R-8 (single family).
5. The site currently has a principal duplex dwelling on the property.

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6. The duplex is oriented with the front facing Julia Maulden Place and the rear of the home facing Parkwood Avenue.
7. Per Code Section 9.205(1)(e1&e2) & 12.102(4), the required minimum setback is 20 feet for the R-8 zoning district, and since the setback and rear yard both abut public streets, the required rear yard is the same as the required setback for the R-8 zoning district, therefore, a 20 foot setback is required along Parkwood Avenue.
8. Per Code Section 12.103(1), the minimum setback along a thoroughfare shall be measured from the 'proposed right-of-way' line, which is established by thoroughfare classification. Parkwood Avenue is classified as a Class III Major Arterial, bounded by Route 4 and I-85, so the 'proposed right-of-way' is 40 feet measured from the centerline of Parkwood Avenue.
9. Per Code Section 12.103(2), there is a required 20 foot 'transitional setback' along Parkwood Avenue measured from the 40 foot 'proposed right-of-way'.
10. Per Code Section 12.103(2)(a) The 'transitional setback' can be used for any purpose allowed by the particular zoning district, except for uses which are prohibited in the required setbacks.
11. Per Code Section 12.106(1) no principal structures shall be located within any setback.
12. On November 7, 2022, Mecklenburg County Building Permit B4308471 was issued to construct the existing duplex on the property.
13. The plot plan submitted with the permit application did not show the 'proposed right-of-way' or 'transitional setback' required along Parkwood Avenue and was approved as shown with the required 20 foot setback for the R-8 zoning district from the property line adjacent to Parkwood Avenue.
14. The duplex was constructed and encroaches into the 'transitional setback', and 'proposed right-of-way' along Parkwood Avenue.
15. The applicant is requesting a 21 foot variance from the 40 foot 'proposed right-of-way' for compliance of the existing home.
16. ***Unnecessary hardships would result from the strict application of the Ordinance.***
17. Strict application of the ordinance would require a portion of the existing permitted and constructed duplex structure to be removed.
18. ***The hardship results from conditions that are peculiar to the property (location, size or topography).***
19. Per Code Section 9.205(1)(e2) & Footnote #1 to 9.205, the 31 foot front setback shown on the 1989 subdivision plat supersedes the required 20 foot R-8 setback, which decreases the permitted building depth by 11 feet.
20. The established front setback is approximately 36 feet, which is 16 feet greater than the required 20 foot setback in the R-8 zoning district, and decreases the permitted building depth.
21. The property is triangular and narrows towards the front setback along Julia Maulden. There is a 10 foot drainage easement located along the right side of the property, decreasing the permitted building width towards the narrowed front of the lot.
22. The established rear setback is 25 feet, which is 5 foot greater, and therefore compliant with, the standard 20 foot R-8 rear setback for a though lot.
23. The hardship is unique to the property because of the property has frontage along both a local street and a major arterial.
24. ***The hardship does not result from actions taken by the applicant or the property owner.***
25. Birdco is the third owner of the property since July 31, 2020 when R-Cube investment purchased the property and obtained permits for the existing duplex structure.
26. Birdco states they didn't know about the requirements for 'proposed right-of-way' and 'transitional setback' until they submitted a plat to create sublots and were made aware of the encroachments.
27. ***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.***
28. Granting the variance will not adversely affect adjacent or contiguous properties.
29. Granting the variance will not alter the essential character of the area.

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30. Adjacent properties along Parkwood Avenue have older nonconforming homes that appear to be located within the ‘proposed right-of-way’ and ‘transitional setback’.

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 (Chair), Amy Sun, Kevin Shea, Hamilton Cort, and Marshal Williamson. The decision of the Board was expressed in a motion by Board Member Shea and seconded by Board Member Cort to **approve** the variance. Board members Hamilton Cort, Marshal Williamson, Douglas Wilson, Kevin Shea, and Amy Sun all voted to grant the variance.

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

AGENDA

Case 2023-028 was moved from recommended agenda to regular agenda.

- Case No.:** 2023-028
- Request:** Requesting a 25 foot variance from required 55 foot rear yard on the southeast (adjacent to parcels 183-203-07 & 183-203-03) to construct an addition.
- Applicant/Agent:** David & Sinclair Gillespie (Represented by Sarah Beason of Alexander Ricks, PLLC)
- Address:** 7545 Morrocroft Farms Lane
- Parcel ID Number:** 183-173-38

Applicable Code Sections:

Section 5.101. Authority of City of Charlotte [ZBA],

(4) The Board of Adjustment shall not have jurisdiction with respect to Section 6.201 Conditional Zoning Districts except as provided in this section. The Board of Adjustment shall have jurisdiction with respect to conditional zoning districts if the request pertains to a variance from specified minimum requirements of the zoning ordinance and is filed with the Board prior to the approval of a conditional zoning district. In addition, the Board of Adjustment may also hear and decide on various petitions for approved conditional zoning district plans on matters related to ordinance

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

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.
- (3) Certain portions of the required rear yard on a lot used for a single family (attached or detached) duplex, triplex, and quadraplex, may be utilized for attached garages, porches, decks, greenhouses, covered patios and utility room extensions of the principal structure in accordance with the following restrictions and as illustrated in Figure 12.106:
 - (b) No such extension may encroach into the rear yard more than 25% of the depth of the required rear yard

Section 6.206. Effect of approval.

(1) If a petition for conditional zoning is approved, the development and use of the property shall be governed by the predetermined ordinance requirements applicable to the district's category, the approved site plan for the district, and any additional approved rules, regulations, and conditions, all of which shall

constitute the zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the Zoning Maps.

Code Section 2.201 (General Definitions):

Required Rear Yard is 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.

Required Setback is 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.

Established Setback is 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.

1980 Zoning Ordinance References:

Article IV. Area, Yard and Height Regulations: Division 1. Residential Districts.

23-41.(a)(1) One family detached dwellings: R-15 Min Rear Yard: 55 feet

Sec. 23-35.4. R-PUD planned unit development district.

(a) Definition. For purposes of this section a "planned unit development" shall be a tract of land, residentially zoned but not including R-1 OMF or R-6 MFH districts, at least thirty-six (36) acres in area, under single, corporation, firm, partnership, or association ownership, planned and developed as an integral unit, in a single development operation or a definitely programmed series of development operations and according to an approved outline development plan and a preliminary site plan.

(c) Application. Application for the establishment of an R-PUD district should be submitted and reviewed in accordance with section 23-35.

Sec. 23-35. Conditional zoning district process.

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Staff recommends approval of the variance request with the following condition of approval:

A hold shall be placed on the permit for the requested addition prohibiting the final certificate of occupancy until the heated space over the garage that encroaches into the northeastern rear yard is brought into compliance. ***The findings of fact are:***

1. The applicants David & Sinclair Gillespie (Represented by Sarah Beason of Alexander Ricks, PLLC).
2. The proposed site is located at 7545 Morrocroft Farms Lane, further identified as tax parcel 183-173-38.
3. There is currently a single family home on the property that was constructed in 1996.
4. The property is subject to an approved rezoning plan #1988-032 which was approved on July 17, 1980, for R-15 PUD (single family Planned Unit Development) zoning.
5. R-15 PUD zoning was a previous conditional zoning district per the 1980 Code Sections 23-35 & 23-35.4(c).
6. The property is subject to the conditional rezoning plan 1988-032, and the zoning ordinance in effect at the time of rezoning approval.
7. The subject property is identified as Lot 22 in Plat Map Book 23 Page 333 recorded at the Register of Deeds on September 14, 1989.
8. The approved plat shows a 55 rear yard along both the northeastern and southeastern property boundaries.
9. Per the 1980 Code Section 23-41(a)(1), there was a 55 foot required rear yard for detached dwellings in the R-15 zoning district.
10. Per Code Section 5.101(4), the Board of Adjustment may hear and decide on petitions for approved conditional zoning 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.
11. The subject request is a variance from the southeastern 55 foot rear yard which was the standard rear yard for R-15 at the time of the conditional rezoning approval, and is not more restrictive than the minimum ordinance requirements.
12. The applicants would like to construct a home addition and are requesting a variance of 25 feet from the 55 foot rear yard to the southeast.
13. ***Unnecessary hardships would result from the strict application of the Ordinance.***
14. Per Code Section 6.206(1), the development and use of the conditionally zoned property is governed by the predetermined ordinance requirements applicable to the district's category, the approved site plan for the district, and any additional approved rules, regulations, and conditions.
15. The recorded subdivision plat shows two rear yards located along the northeastern and southeastern property boundaries.
16. Per Code Section 12.201, current regulations would only require one rear yard to the northeast because that is the farthest lot line from the street.
17. ***The hardship results from conditions that are peculiar to the property (location, size or topography).***
18. This is the only property in the area with two rear yards, and the adjacent property to the south has a 30 foot rear yard along the same boundary.
19. The home is located on the end of a cul-de-sac and the front of the home faces the cul-de-sac with the rear of the home facing the rear corner of the lot.
20. There is an established front setback of 71 feet, which is 31 foot greater than the 40 foot required front setback, and decreases the depth of the permitted building envelope.
21. There is a 20 foot public drainage easement along the western property line that decreases the width of the permitted building envelope.
22. The applicants state the addition could not be constructed to the rear of the home without having to demolish the exterior covered patio and outdoor living area.

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23. The applicants have provided an architectural rendering and stated the proposed location of the addition would allow it to be architecturally compatible with the home.
24. The applicants have provided a Certified Master Arborist assessment that states the variance would allow all the current trees on the property to remain with minimal impact, and building within the compliant building footprint to the front of the existing home would cause the elimination of seven healthy mature trees ranging from 15-40 years old, and have a significant impact on the landscape.
25. ***The hardship does not result from actions taken by the applicant or the property owner.***
26. The applicants purchased the property in 2023 and the home was already constructed.
27. ***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.***
28. Granting the variance will not adversely affect adjacent or contiguous properties.
29. The requested 30 foot rear yard would align with 30 foot rear yard of the neighboring property to the south along the southeastern boundary.
30. The applicant has provided a letter from the Morrocroft Estates Architectural Review Committee in support of the requested variance and the proposed location of the addition.
31. The encroachment will not be easy to detect because of mature vegetation located along the southeastern property boundary.
32. The applicants state the requested variance would provide reasonable accommodations and have provided a doctors note.
33. The survey for the property shows that the garage encroaches 7.4 feet into the 55 foot northeastern rear yard.
34. Per Code Section 12.106(3), certain unheated extensions of a home can encroach up to 25% of the rear yard, however an area above the garage is heated and the applicant states they believe it encroaches 1 or 2 feet into the required rear yard.
35. The applicants have proposed the following condition of approval for their variance request: A hold shall be placed on the permit for the requested addition prohibiting the final certificate of occupancy until the heated space over the garage that encroaches into the northeastern rear yard is brought into compliance.
36. Staff is agreeable to and recommends the proposed condition.

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 (Chair), Amy Sun, Kevin Shea, Hamilton Cort, and Marshal Williamson. The decision of the Board was expressed in a motion by Board Member Cort and seconded by Board Member Shea to **approve** the variance. Board members Hamilton Cort, Marshal Williamson, Douglas Wilson, Kevin Shea, and Amy Sun all voted to grant the variance.

Board Member Williamson made a motion to adopt staff's findings of fact and conclusions of law as amended. Board Member Shea seconded. Board members Hamilton Cort, Marshal Williamson, Amy Sun, Kevin Shea, and Douglas Wilson voted in the affirmative to approve the findings of fact and conclusions of law as amended.

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APPEAL

Case No.: 2022-051 (Continued Until July 25, 2023)

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)

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 for 60 days. Members who heard this motion were Chair Douglas Wilson, Kevin Shea, Hamilton Cort, Marshal Williamson, and Amy Sun. The motion to continue the case for 60 days was expressed by Board Member Williamson and seconded by Board Member Shea. Members Wilson, Shea, Sun, Williamson, and Cort voted yes to continue for 60 days, until the July 25, 2023, meeting.

OPEN FORUM

UDO RULES OF PROCEDURE

Board Attorney Sanchez-Myers presented the Board with proposed written amendments to the Rules of Procedure to address upcoming changes under the Unified Development Ordinance (UDO). Board Attorney Sanchez-Myers explained any significant changes from the Board's current rules and informed the Board they may vote on amendments to the Rules of Procedure at the next meeting.

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MINUTES

Board Member Cort made a motion to approve the minutes from April 25, 2023 Zoning Board of Adjustment Regular Meetings. Board Member Shea seconded. Board Members Marshal Williamson, Hamilton Cort, Douglas Wilson, Kevin Shea, and Amy Sun voted in the affirmative to approve the April 25, 2023 regular meeting minutes.

This ____ day of _____, 2023.

Douglas Wilson, Chair

Terry Edwards, Clerk to the Board