

CHARLOTTE UNIFIED DEVELOPMENT BOARD OF ADJUSTMENT MINUTES

July 30th, 2024

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The Unified Development Ordinance Board of Adjustment (hereinafter “Board”) for the Charlotte Unified Development Ordinance held a meeting at 9:00 a.m., July 30th, 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), Marshall Williamson, Amy Sun, and Gary Young

Also Present:

Solomon Fortune, Zoning Administrator
Lisa McCarter, Planning Program Manager
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
Crystal Monsegur, Planner
Kamesha Lampley, Associate Planner/ Clerk to the Board
Candy Thomas, Veritext Court Reporting

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RECOMMENDATION AGENDA

Case No.: VAR-2024-00025

Request: Three variance requests to:

- Eliminate the required 25 ft Class B landscape yard, on the eastern and northern side of the property lines.
- Reduction of rear setback abutting N1 place type from 20 ft to 5 ft.
- Reduction of side setback abutting N1 place type from 10 ft to 5 ft.

With the condition that the applicant will replace the existing chain link fence between the property and abutting parcel with a 6 ft high screen fence with vines running up it.

Applicant/Agent: EVP Properties LLC (Represented by James Malatesta)

Address: 3212 Weston St

Parcel ID Number: 14705117

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Applicable Code Sections:

Article 2.3 General Definitions:

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.

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.

Side setback is a required setback located along an interior side lot line(s) that divides the lot from another lot.

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.

Article 20.9 Table 20-2:

Article 13.3 Table 13-1:

Staff recommends approval of the variance request to waive the 25 ft wide Class B landscape yard and reduction of the side and rear setbacks to 5 ft when abutting N1 Place Type with the following condition: The existing chain link fence shall be replaced with a 6 ft high screen fence a minimum 75% opaque with vines with the finished side facing abutting property.

The findings of fact are:

1. The applicant is EVP Properties LLC (Represented by James Malatesta) and the property owner is CHARLOTTE RE LLC.
2. The site is located at 3212 Weston St., further identified as tax parcel 14705117 and is .0182 acres (7,927 sq ft).
3. The property is zoned TOD-NC (Transit Neighborhood Center Zoning District).
4. The *Charlotte Future 2040 Policy Map* recommends Neighborhood Center place type for the development site.
5. The abutting parcels to the east and north, at 312 and 318 Greystone Rd. are also zoned TOD-NC however the *2040 Policy Map* recommends Neighborhood 1 Place Type because it recognizes the existing single family land use.
6. The applicant proposes to develop the site with residential dwellings.
7. Per Article 20.9 Table 20-3, all development in TOD-NC zoning is required to provide a Class B landscape yard abutting Neighborhood 1 place type.
8. 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.

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9. Per Table 13-1, a 10 ft side setback and a 20 ft rear setback is required when abutting Neighborhood 1 Place Type.
10. The applicant originally requested to decrease the side setback from 10 ft to 1.5 ft, a 8.5 ft reduction, and decrease the rear setback from 20 ft to 1.5 ft, a 18.5 ft reduction.
11. The applicant has worked with staff and has agreed to a modified request. The applicant is requesting three variances, waive the required 25-foot landscape yard, decrease the side setback from 10 ft to 5 ft, a 5 ft reduction, and decrease the rear setback from 20 ft to 5 ft, a 15 ft reduction when abutting N1 Place Type.

(1) Findings of Fact for waiving the 25 ft wide Class B landscape yard

12. Unnecessary hardships would result from the strict application of the Ordinance since the lot is small and the landscape yard would reduce the buildable area of the lot by 3,897 sq ft almost half of the total lot area.
13. The hardship results from conditions that are peculiar to the property due the small parcel size for TOD-NC development. The parcel is located less than ½ mile from the New Bern transit station on the Lynx Blue Line and is zoned and recommended for transit-oriented development. The subject property zoning of TOD-NC is the same as the abutting parcels that the subject property must buffer from, but even though the zoning is the same, the place type of the abutting properties triggers the 25-foot buffer.
14. The hardship does not result from actions taken by the applicant or the property owner because the hardship is a result of the location and size of the lot and the recommendation of the *Policy Map* which is different from the zoning of the abutting property.
15. 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.
16. The abutting parcels, though currently developed with single family homes are zoned for transit-oriented development as part of the 2019 TOD alignment rezoning effort, which aligned zoning with the recommendations of the Transit Station Area Plans. It is unlikely the abutting parcels zoned TOD-NC will be downzoned to N1. They are in an area that has seen transition from traditional development to transit oriented development over the decade.
17. The applicant has agreed to a condition to construct a 6 ft high screen fence with vines on the applicant's property on the north and east side.

(2 & 3) Findings of Fact for reduction of side and rear setback to 5 feet.

18. Unnecessary hardships would result from the strict application of the Ordinance.
19. Although TOD-NC development would allow 0 setbacks from lot lines if the site were not abutting Neighborhood 1 Place Type, the intent of the Ordinance is to provide building separation from single family uses.
20. Due to the size of the lot, **strict** application of the Ordinance (a 10 ft side setback and 20 ft rear setback) would result in unnecessary hardship. A setback of 5 ft (same as a side setback in single family zoning), rather than the originally requested 1.5 feet would provide adequate building separation.
21. The only place the proposed building would not meet a 5 ft setback are two corners along the rear of the building. The applicant could adjust the building plan to provide a setback of at least 5 ft on the right side and rear of the site.
22. The hardship does result from conditions that are peculiar to the property.
23. The parcel is a small size, and a 10 ft side setback and 20 ft rear setback would reduce the building envelope width from 72 ft to 62 ft and depth from 90 ft to 70 ft.
24. The hardship does not result from actions taken by the applicant because of the small lot size and adjacency to Neighborhood 1 Place Type place types would require large setbacks that reduce the building envelope.

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25. 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.
26. A setback reduced to 1.5 feet could result in impacts to the abutting single-family homes and would not be enough space for access around the building. A setback reduced to 5 ft would provide enough separation from the abutting single-family homes to accommodate access to the perimeter of the building and maintenance of the yard.

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.

This case was considered as a regular agenda matter to hear from members of the public wishing to speak about the case. Three members of the public spoke about this case:

1. James Malatesta – The property owner of the requested variance.
2. Devin Mendelsohn – The property owner at 318 Greystone Rd. (Neither for, nor against the variance).
3. Sarah Michaelson – A concerned member of the public, not residing in the neighborhood, but concerned about the trees on the property.

A motion was made by board member Kevin Shea to approve the variance with one condition. The motion was seconded by board member Gary Young. Board members Kevin Shea, Gary Young, Marshall Williamson, and Deborah Dryden voted **yes** to approve the variance. Board member Amy Sun voted no to deny the variance. **The variance was approved with one condition in a 4-1 vote.**

Condition of approval: The applicant will provide a new 6 ft high screen fence a minimum 75% opaqueness with vines with the finished side facing abutting property to the north and east. The fence must also be on the applicant's property.

Board member Kevin Shea made a motion to adopt the findings of fact and conclusions of law as amended. Board member Marshall Williamson seconded the motion. Board members Kevin Shea, Gary Young, Marshall Williamson, and Deborah Dryden voted **yes** to approve the findings of facts and conclusions of law as amended. Board member Amy Sun voted no. **The findings of facts and conclusions of law as amended were approved in a 4-1 vote.**

A 15-minute recess was taken.

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Case No.: VAR-2024-00027

Request: Variance request from Article 4.3 Table 4-2 of the UDO to reduce rear setback from 35 ft to 20 ft, a 15 ft reduction.

Applicant/Agent: Morgan McGrann

Address: 3310 Anson Street

Parcel ID Number: 14705317

Applicable Code Sections:

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

Standards for N1-B zoning
Minimum Rear Setback: 35 ft

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.

- **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.

Setback, Established. An established setback is the area between the curb line, lot line, or other point set by the Ordinance and the building line of a principal building or structure.

Nonconforming Structure. Any lawfully existing structure on the effective date (June 1, 2023) of these regulations, or any subsequent amendment thereto, which does not comply with the Ordinance regulations.

The findings of fact are:

1. The applicant is Morgan McGrann.
2. The site is located at 3310 Anson Street, further identified as tax parcel 14705317.
3. The property is zoned N1-B (Neighborhood 1-B) and is 0.176 acres.
4. The *Unified Development Ordinance* went into effect in June of 2023. The site's R-4 zoning was automatically translated to N1-B.
5. Physical survey completed on May 16th, 2024, shows the parcel and the dimensions of the lot, the existing home location encroaching into the rear setback.
6. The parcel is approximately 136 feet deep front to back at the widest point.
7. The rear property line is at angle, not parallel to the street.
8. The existing home encroaches 15 feet into the required 35 ft rear yard.
9. The rear of the property is abutting the rear of single-family homes.
10. The applicant is requesting to reduce the rear setback from 35 ft to 20 ft, a 15 ft reduction to allow a small (4 ft wide) addition to the right side of the home, and a second story over the existing footprint.

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11. The UDO allows rear setbacks to be measured as a radius from the furthest back rear corner when the angle of the side exceeds 135 degrees. The subject property has an angle of 128 degrees. The neighbor to the rear has a similar shape lot but with an angle of 138 degrees.
12. The hardship results in strict application of the Ordinance because of the lack of depth of the property, shape of the lot and the placement of the existing home on the lot are such that the existing nonconforming home already encroaches into the rear yard and that a radius cannot be used to measure the rear setback.
13. The hardship results from conditions that are peculiar to the property because, depth of the lot, the angle of the rear lot line and placement of the existing home restrict the building envelope.
14. The hardship does not result from actions taken by the applicant or the property owner, the hardship results from the lot configuration, angle of the rear lot line, and existing nonconforming home placement.
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 second story addition and the 4 ft wide addition to right, rear side will not extend closer to the rear property line than that of the existing home's footprint and will not exceed the established rear setback.
17. There are other parcels in the neighborhood with similar conditions and granting the variance will not adversely affect the adjacent or contiguous properties.
18. Granting the variance will not alter the essential character of the neighborhood since the home will remain in its existing footprint from 1951.

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.

Board Member Kevin Shea made a motion to approve the variance. Board Member Amy Sun seconded the motion. All board members voted unanimously to **approve the variance**. The motion passed 5-0.

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

Case No.: VAR-2024-00028

Request: Variance request to eliminate the Class B - 25 ft wide landscape yard along the right side/northern property line, with the condition that a 6 ft high opaque fence is provided along the northern and western property lines.

Applicant/Agent: Yaar Hosseini

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Address: 2538 Sam Wilson Rd

Parcel ID Number: Portion of 05314201 (approx. 0.83 acres)

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

- B. 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.

Article 20.9 Table 20-3:

Article 20.9 Table 20-2:

Staff supports the requested variance to the landscape yard with the following condition of approval:
That a 6 ft high opaque fence is provided along the northern and western property lines.

The findings of fact are:

1. The applicant is Yaar Hosseini, and the property owners are Jerry J. Hunter and Willie L. Hunter.
2. The site is located at 2538 Sam Wilson Rd, further identified as a 0.83-acre portion of tax parcel 05314201.
3. The property is zoned CG (General Commercial Zoning District), and prior to the effective date of the UDO, the property was zoned B-2 (General Business).
4. The *Charlotte Future 2040 Policy Map* (<https://cltfuture2040.com/2040-policy-map/>) recommends Neighborhood Center place type for the development site and Neighborhood 1 place type for the abutting parcels to the north. The parcel located at 2528 Sam Wilson Rd is single-family use and the parcel 05314202 to its rear is vacant.
5. Rezoning petition 2019-037, rezoned the abutting parcels referenced in #4 above to B-2(CD) to allow health, institution, school, religious, retail (10,000 SF max), car wash, hotel, office (40,000 SF max), banks, daycare, restaurant (including drive-thru) and neighborhood food and beverage uses.
6. Due to the timings of the drafting of the *Policy Map* and the processing of the rezoning petition, the *2040 Policy Map* does not reflect the change in future land use allowed by rezoning petition 2019-037 approved in January 2021. The first draft of the *Policy Map* was released in October 2021 and the final version adopted in March 2022.
7. The applicant proposes to develop the site with a proposed Waffle House building.
8. Per Article 20.9 Table 20-3 all development in CG zoning is required to provide a Class B landscape yard abutting Neighborhood 1 place type.
9. 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.
10. The applicant is requesting a variance to waive the required 25-foot landscape yard.
11. Per the applicant's variance exhibit they will provide a 6 ft tall opaque fence along the west and northern property lines.
12. The hardship is a result of strict application of the ordinance due to the size of the lot and because the *Policy Map* does not reflect the rezoning petition to the north. The B-2(CD) zoning of the abutting property is similar to CG zoning, and properties with a conventional zoning district classification of B-2 in effect before the effective date of June 1, 2023, translated to CG per UDO table 3-1.

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13. The hardship does result from conditions that are peculiar to the property.
14. The parcel is located on the corner of Sam Wilson Rd and Performance Dr which are classified as 2+ and 4+ Avenues, an arterial street type that requires additional distance from centerline to back of curb, and driveway placement considerations for the intersection. Driveway access to the parcel is required to be located on western (rear) of the site due to the proximity to the intersection of Performance Drive and Sam Wilson Rd.
15. The parcel is approximately 93 feet wide at the front setback line along Sam Wilson Rd. With the required 25 ft landscape yard the available width would be reduced to 67 ft.
16. The hardship does not result from actions taken by the applicant or the property owner. The site's size in conjunction with the landscape yard restricts the sites buildable envelope.
17. 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.
18. The abutting parcels to the north were recently rezoned to allow commercial uses. If the rezoning petition for the parcels to the north were done today, the rezoning would automatically update the *Policy Map* and a landscape yard would not be triggered.
19. There are other commercial uses around the intersection of Sam Wilson Rd and Performance Dr. including a gas station and truck stop.
20. Rezoning petition 2019-037 was for B-2(CD), a conditional zoning. The rezoning site plan includes a condition for the provision of a 28.5 ft wide buffer with a 6 ft high fence along its northern property line abutting single family uses.
21. The applicant is providing as a condition of the variance a 6 ft high fence along the western and northern property line to screen the proposed use from the existing single-family home.

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.

Board member Marshall Williamson made a motion to **approve the variance** and board member Kevin Shea seconded the motion. All board members voted unanimously to **approve the variance**. The motion passed 5-0.

Board Member Gary Young made a motion to approve the findings of fact and conclusions of law as amended. Board member Amy Sun 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.

Case No.: VAR-2024-00029

Request: Variance request from Article 4.3 Table 4-2. of the UDO to reduce the front setback from 30 ft to 7 ft, a 23 ft reduction.

Applicant/Agent: David Murray

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Address: Pinestream Drive

Parcel ID Number: 07701506

Applicable Code Sections:

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

Standards for N1-C zoning

Minimum Front Setback from Street (measured from Right-of-way): 17 ft¹

¹ 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 front setback is a required setback located along the shortest lot line dividing the lot from the right-of-way.

Staff supports the requested variances to the setbacks with the following condition of approval:

Only a single-family detached dwelling and associated accessory uses/structures shall be permitted on the lot.

The findings of fact are:

1. The applicant is David Murray and the property owner is Olympia & Wright, LLC.
2. The site is located at Pinestream Drive, further identified as tax parcel 07701506.
3. The property is zoned N1-C (Neighborhood 1-C) and is 0.176 acres.
4. The pre-UDO zoning of the property was R-5 which required a 20 ft front setback per the Legacy Code.
5. The plat was recorded in 1961 and it shows a 30 ft front setback.
6. The *Unified Development Ordinance* went into effect in June of 2023. The site's R-5 zoning was automatically translated to N1-C.
7. Per Table 4-2, the required front setback in N1-C is 17 feet, however per footnote 1 to Table 4-2, the 30-foot setback shown on the recorded plat supersedes the N1-C setback, so the required front setback for the property is 30 feet.
8. Physical survey completed on June 10th, 2024, shows the parcel has multiple easements throughout the lot restricting construction, including Duke Energy overhead utility easement, sanitary sewer easements and stormwater drainage easement.
9. Without the proposed variance the building envelope is only 4 ft deep at the narrowest point. With the proposed variance the building envelope would be 14 ft at the narrowest point.
10. The lot at its deepest point is 62 ft with the required 30 ft front setback, there is only 32 ft left in the depth of the parcel. With the proposed variance there would be 55 ft of depth left in the parcel.
11. The lot became smaller in size and odd shaped when I-77 was constructed.
12. The parcel is approximately 73 feet deep front to back at the widest point.
13. The rear of the property is abutting Interstate I-77. The east side of the property is abutting a single-family dwelling.
14. The applicant is requesting to reduce the front setback from 30 ft to 7 ft, a 23 ft reduction.

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15. The hardship results in strict application of the Ordinance because of the lack of depth of the property and the number of easements restrict the building envelope.
16. The hardship results from conditions that are peculiar to the property because of the shape of the lot and the site has multiple easements that restrict the building envelope.
17. The hardship does not result from actions taken by the applicant or the property owner, the hardship results from the lot configuration, and easements constraints.
18. 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.
19. The variance would allow the construction of a single-family detached home and granting the variance will not adversely affect the adjacent or contiguous properties.
20. Granting the variance will not alter the essential character of the neighborhood.
21. The applicant has offered and agreed to the following condition: only a single-family detached dwelling and associated accessory uses/structures shall be permitted on the lot.

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.

Board member Marshall Williamson made a motion to **approve the variance** and board member Kevin Shea seconded the motion. All board members voted unanimously to **approve the variance**. The motion passed 5-0.

Board Member Amy Sun made a motion to approve the findings of fact and conclusions of law as amended. Board member Gary Young 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.

MINUTES

Board Member Amy Sun made a motion to approve the minutes from the May 29th, 2024, Board of Adjustment Meeting. Board Member Gary Young seconded. Board Members Deborah Dryden, Marshall Williamson, Amy Sun, Gary Young, and Kevin Shea voted in the affirmative to approve the corrected May 29th, 2024, meeting minutes.

Meeting concluded @ 11:17am

This ____ day of _____, 2024.

Deborah Dryden, Chair

Kamesha Lampley - Clerk to the Board