

**CHARLOTTE UNIFIED DEVELOPMENT BOARD OF ADJUSTMENT MINUTES**

**May 29th, 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., May 29th, 2024. Chair Deborah Dryden called the meeting to order. Reference to “Ordinance” means “Charlotte Unified Development Ordinance” (“UDO”).

**Present:** Deborah Dryden (Chair), Kevin Shea (Co-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  
Nicole Hewett, Assistant City Attorney  
Crystal Monsegur, Planner  
Kamesha Lampley, Associate Planner/ Clerk to the Board  
Candy Thomas, Veritext Court Reporting

**Index of Cases:**

Case # VAR\_2024-00019  
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**RECOMMENDATION AGENDA**

**Case No.:** VAR-2024-00019

**Request:** Requesting a **Unified Development Ordinance** variance from Article 19.6 A. 1. a.

1. Variance to allow an increase in the driveway and parking width to 76 ft from 24 ft, and a 52 ft increase for a portion of the driveway and parking area between the building and the street.
2. Variance to allow surface parking areas other than individual driveways within the established setback.

**Applicant/Agent:** Custom Homes Carolina, LLC (Represented by Paul Sagadin) / Travis Gingras

**Address:** 3019 Selwyn Av

**Parcel ID Number:** 17509440

**Applicable Code Sections:**

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## **19.6 DESIGN OF SURFACE PARKING AND PARKING LOTS**

### A. Surface Parking and Parking Lot Location and Configuration

#### 1. Neighborhood 1 Zoning Districts and Neighborhood 2 Zoning Districts

##### a. Residential Dwellings

##### ii. Duplex, Triplex, and Quadraplex Dwellings on Individual Lots

The following apply to all duplex, triplex, and quadraplex dwellings on individual lots:

- (C) Driveways and parking pads shall have a maximum width of 40% of the lot width up to a maximum of 24 feet in width between any part of a street-facing façade and any front lot line. For corner lots, additional driveways and parking pads may be allowed on the side street but shall not exceed the permitted width as determined by the front lot width. This maximum width may be split between driveways and parking pads, but the cumulative width of all driveways and parking pads may not exceed the maximum width permitted along any applicable street frontage.

### **Article 2.3 General Definitions:**

**Street Classifications.** (See definitions below)

**Arterial Streets.** Streets that are moderate to high-volume surface streets (not including freeways or interstates) that provide for both short distance and city-wide travel. Arterials are shown on the Charlotte Streets Map as Main Streets, Avenues, Boulevards, or Parkways. They are shown on the Charlotte Region Transportation Planning Organization (CRTPO) Comprehensive Transportation Plan (CTP) as Minor Thoroughfares, Other Major Thoroughfares, and Boulevards.

**Staff supports the requested variance to driveway widths with the following conditions:** that the applicant provides a 4-foot brick privacy fence along Selwyn Avenue; screening shrubs 5 feet on center around the front and north side of the parking pads and individual driveways; and screening shrubs 5 feet on center between the driveway and parking pads/individual driveways and the southern property line as shown on the proposed revised site layout.

### ***The findings of fact are:***

1. The applicant is Custom Homes Carolina, LLC (Represented by Paul Sagadin) / Travis Gingras.
2. The site is located at 3019 Selwyn Av, further identified as tax parcel 17509440.
3. The property is zoned N1-A (Neighborhood 1-A) and is .416 acres.
4. The proposed triplex received Land Development approval on August 24, 2023 (LDIRL-2023-00285) which indicates the plan was approved by Urban Forestry and Charlotte Mecklenburg Stormwater.
5. A building permit has not been issued, there has not been a zoning review, and construction has not begun.
6. The approved Land Development Plans showed a 24 ft wide driveway connecting to Selwyn Av. providing access 3 individual driveways.
7. The width of the driveway increases to 76 ft at the individual driveways which are located between the proposed building and the street.
8. The proposed building is located towards the rear of the property.
9. The hardship results in strict application of the Ordinance because the triangular shape of the property resulted in the proposed triplex being located at the rear of the parcel restricting the ability to place driveways wider than 24 ft to the side or rear of the building.
10. The lot is 73 ft wide at the front setback line. Accounting for a 24 ft driveway and side setbacks would leave only 39 ft of width for the triplex.
11. The hardship results from conditions that are peculiar to the property because of the triangular shape property is narrower in the front than it is in the rear and there is an existing 16 in Elm tree to be protected in the front setback.

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12. The hardship does not result from actions taken by the applicant or the property owner, the hardship results from the lot configuration.
13. The requested variance is consistent with the spirit, purpose, and intent of the Ordinance.
14. Selwyn Avenue is a 2+ lane Avenue, an arterial street classification which is defined as a street that is moderate to high-volume surface streets.
15. Due to the higher intensity of the street classification and the narrowing of right-of-way along the road, the driveways were moved further back from the front of the lot.
16. The triplex does not encroach on the side yards abutting single family homes and granting the variance will not adversely affect the adjacent or contiguous properties because it is set back in the wider portion of the lot.
17. Granting the variance will not alter the essential character of the neighborhood.
18. The proposed development will be compliant with all other applicable UDO requirements. For clarity the site layout notes that the applicable dimension and design standards of Article 4.3 shall apply.
19. The applicant is mitigating the visual impacts of the driveway with the provision of a 4 ft tall screen wall along Selwyn Av and landscape shrubs 5 feet on center around the front and sides of the driveways as shown on the proposed revised site layout.
20. Text amendment #2024-033 pending city council approval proposes language that will increase the driveway width allowance and allow driveway widths to exceed 24 feet up to 40% of the lot width, but due to the narrowing of the lot along the right of way, the property would still have a maximum width allowance of 29 feet, which is only a 5-foot increase above the current limit.

**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.

Mr. Anderson Pearson lives next door to the property and presented in opposition of this variance. Once all information was presented and prior to deliberations, Board Member Kevin Shea requested a 10-minute recess.

Upon returning from recess the board reopened the case to allow the applicant to modify their request by removing item #2 (requested variance for parking area other than individual pads between the building and street) and committed to the following conditions:

1. A 4-foot brick privacy fence along Selwyn Avenue.
2. Screening shrubs 5 feet on center around the front and north side of the parking pads and individual driveways.
3. Screening shrubs 5 feet on center between the driveway and parking pads/ individual driveways and the southern property line as shown on the revised site layout.

A motion was made by Board Member Amy Sun to deny the variance. The motion was seconded by Board Member Marshall Williamson. Board members Amy Sun and Marshal Williamson voted **yes to deny the variance**. Board members Kevin Shea, Deborah Dryden, and Gary Young voted **no to deny the variance**.

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Because the motion did not receive a majority vote, the floor was opened for other motions. Board Member Kevin Shea made a motion to **approve the variance**. The motion was seconded by Board Member Gary Young. Board members Gary Young, Deborah Dryden, and Kevin Shea voted **yes** to **approve the variance**. Board members Amy Sun and Marshal Williamson voted **no** to **approve the variance**. The variance **was approved in a 3-2 vote**.

Board Member Gary Young made a motion to adopt the findings of fact and conclusions of law as amended. Board Member Kevin Shea seconded. Board members Deborah Dryden, Kevin Shea, and Gary Young voted **yes** to **approve the findings of fact and conclusions of law as amended**. Board members Marshall Williamson and Amy Sun voted **no**. The findings of facts and conclusions of law as amended were **approved in a 3-2 vote**.

**Case No.:** VAR-2024-00020

**Request:** Variance to reduce rear setback to 22 ft from 30 ft, an 8 ft reduction.

**Applicant/Agent:** Hunters Affordable Bonding Inc. (Represented by Ellis Hunter)

**Address:** 8337 Reedy Creek Rd.

**Parcel ID Number:** 11107432

**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>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.

2. **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.
5. On a **through lot**, where required setbacks are not established by a frontage, both setbacks along a street shall be considered front setbacks.

**Through Lot.** A lot which fronts upon two parallel streets, or which fronts upon two streets which do not intersect at the boundaries of the lot. A through lot is also called a double frontage lot or reverse frontage lot.

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

1. The applicant is Hunters Affordable Bonding (Represented by Ellis Hunter).

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2. The site is located at 8337 Reedy Creek Rd, further identified as tax parcel 11107432.
3. The property is zoned N1-A (Neighborhood 1-A) and is 0.230 acres.
4. The applicant relocated the dwelling to the property in 2022.
5. The pre-UDO zoning of the property was R-3 which required a 30 ft setback along throughfares and a 27 ft setback for local or collector streets.
6. The plat shows a 30 ft setback along both streets and was recorded in 2022.
7. The Unified Development Ordinance went into effect in June of 2023. The site's R-3 zoning was automatically translated to N1-A.
8. Under N1-A, the front setback is 27 ft and for a through lot, where required setbacks are not established by a frontage, both setbacks along a street shall be considered front setbacks.
9. Per footnote 1, front setbacks shown on a plat recorded at the Register of Deeds shall supersede required zoning district front setbacks so the setbacks for both properties along Reedy Creek Rd and the I-485 right-of-way are 30 feet.
10. The applicant is requesting to reduce the front rear setback along I-485 by 8 ft to 22 ft.
11. The hardship result in strict application of the Ordinance because the applicant received an approved permit (B4157460) that showed the building within the platted setbacks (as shown below).
12. The hardship results from conditions that are peculiar to the property because of the property's close proximity of highway I-485.
13. The hardship does not result from actions taken by the applicant or the property owner because when the dwelling was moved to the lot it was placed to avoid existing overhead power lines and trees.
14. The requested variance is consistent with the spirit, purpose, and intent of the Ordinance. Granting the variance would not devalue the quality of life or impact surrounding properties.

**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 Gary Young made a motion to **approve the variance**. Board Member Amy Sun seconded the motion. Board members Amy Sun, Gary Young, and Marshall Williamson voted **yes** to **approve the variance**. Board members Deborah Dryden, and Kevin Shea voted **no**. The variance was **approved in a 3-2 vote**.

Board Member Kevin Shea made a motion to approve the findings of fact and conclusions of law as amended. Board Member Marshall Williamson seconded the motion. Board members Amy Sun, Deborah Dryden, Marshall Williamson, Kevin Shea, and Gary Young voted **yes** to **approve** the findings of fact and conclusions of law as amended. The findings of facts and conclusions of law as amended were **approved in a 5-0 vote**.

**Case No.:** VAR-2024-00021

**Request:** Variance to reduce rear setback to 22 ft from 30 ft, an 8 ft reduction.

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**Applicant/Agent:** Hunters Affordable Bonding Inc. (Represented by Ellis Hunter)

**Address:** 8341 Reedy Creek Rd.

**Parcel ID Number:** 11107412

**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>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.

3. **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.
6. On a **through lot**, where required setbacks are not established by a frontage, both setbacks along a street shall be considered front setbacks.

**Through Lot.** A lot which fronts upon two parallel streets, or which fronts upon two streets which do not intersect at the boundaries of the lot. A through lot is also called a double frontage lot or reverse frontage lot.

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

1. The applicant is Hunters Affordable Bonding (Represented by Ellis Hunter).
2. The site is located at 8341 Reedy Creek Rd, further identified as tax parcel 11107412.
3. The property is zoned N1-A (Neighborhood 1-A) and is 0.230 acres.
4. The applicant relocated the dwelling to the property in 2022.
5. The pre-UDO zoning of the property was R-3 which required a 30 ft setback along throughfares and a 27 ft setback for local or collector streets.
6. The plat shows a 30 ft setback along both streets and was recorded in 2022.
7. The Unified Development Ordinance went into effect in June of 2023. The site's R-3 zoning was automatically translated to N1-A.
8. Under N1-A, the front setback is 27 ft and for a through lot, where required setbacks are not established by a frontage, both setbacks along a street shall be considered front setbacks.
9. Per footnote 1, front setbacks shown on a plat recorded at the Register of Deeds shall supersede required zoning district front setbacks so the setbacks for both properties along Reedy Creek Road and the I-485 right-of-way are 30 feet.
10. The applicant is requesting to reduce the front rear setback along I-485 by 8 ft to 22 ft.
11. The hardship results from strict application of the Ordinance because the applicant received an approved permit (B4127308).
12. The hardship results from conditions that are peculiar to the property because of the property's close proximity to highway I-485.

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13. The hardship does not result from actions taken by the applicant or the property owner because when the dwelling was moved to the lot it was placed to avoid existing overhead power lines and trees.
14. The requested variance is consistent with the spirit, purpose, and intent of the Ordinance. Granting the variance would not devalue the quality of life or impact surrounding properties.

**Conclusion of Law:**

1. Unnecessary hardship 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 Gary Young seconded the motion. Board members Deborah Dryden and Kevin Shea voted **no**. Board members Gary Young, Marshall Williamson, and Amy Sun voted **yes** to **approve the variance**. The variance was **approved** in a **3-2 vote**.

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. Board members Amy Sun, Marshall Williamson, and Gary Young voted **yes** to **approve the findings of fact and conclusions of law as amended**. Board members Deborah Dryden and Kevin Shea voted **no**. The findings of facts and conclusions of law as amended were **approved** in a **3-2 vote**.

**MINUTES**

Board Member Kevin Shea made a motion to approve the minutes from the April 30th, 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 April 30th, 2024, meeting minutes.

Board Member Hamilton Cort was present and sworn in by Stephanie Kelly, the City Clerk.

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

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

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