



CHARLOTTE
Zoning Board of Adjustment
City of Charlotte

Case No.: 2021-090

Request: Requesting a variance from the requirement that a medium sized religious institution be located on a lot with frontage on a minor or major thoroughfare.

Applicant/Agent: Charlotte Chin Christian Church (represented by David W. Murray, The Odom Firm, PLLC)

Address: 7115 The Plaza

Parcel ID Number: 097-031-04

Applicable Code Sections:

Section 2.201 Definitions:

Frontage. The part of the lot and/or building façade that faces a public or private street or space, such as but not limited to, an open space, public path, or transit corridor.

Religious institution. A church, synagogue, temple, mosque, or other place of religious worship, including any accessory use or structure, such as a school, day care center, or dwelling, located on the same lot.

Street, local (Class VI). A two-lane roadway which provides access directly to adjoining low/medium density land uses and conducts traffic to local limited and Class V streets which serve the area. The Class VI road is designed to accommodate low volumes of traffic at low speeds. A local limited street (Class VI-L) serves the same system function as the Class VI street but is located in residential environments which have been created through special conditions or design considerations. These unique environments include planned developments and other similar techniques or cul-de-sac streets in conventional subdivisions. A Class VI-L street may not provide vehicular access to elementary, junior or senior high schools, colleges or official sites for such schools or to proposed places of public assembly, including public or private parks, recreation facilities or greenways.

Street, major arterial (Class III). A multi-lane major roadway connecting Class I, II or III with lesser streets in the network or connecting the region to other regions. It is designed to accommodate large volumes of traffic at moderate speeds, but it is not intended to provide primary access to adjoining high trip generating uses.

Section 9.203. Uses permitted under prescribed conditions.

The following uses shall be permitted in R-4 (single family) if they meet the standards established in this Section and all other requirements of these regulations:

(18) Religious institutions, up to 750 seats, subject to regulations of Section 12.506.

Section 12.506. Religious institutions in residential districts.

Churches, synagogues, temples, mosques and other places of religious worship, along with their accessory uses, are permitted in residential districts subject to the following development approvals based upon size limitations:

Medium Religious Institutions, 401 to 750 seats in the largest place of assembly

(6) Street Classifications. Religious institutions shall be permitted only on lots fronting the following street and thoroughfare classifications: (c) Medium religious institutions shall be permitted only on a lot with frontage on a minor or major thoroughfare.

(7) Primary vehicular access to the use shall not be provided by way of a residential local (Class VI)



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street.

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

1. The applicant is Charlotte Chin Christian Church (represented by David W. Murray, The Odom Firm, PLLC).
2. The proposed site is located at 7115 The Plaza, identified as tax parcel 097-031-04.
3. The property zoned R-4 (single family) and is approximately 3.05 acres.
4. The property has frontage on St. Johns Church Road, a local Class VI street, and access to the property is by an easement to The Plaza, a Major Thoroughfare Class III Street.
5. A cemetery and a medium sized religious institution that was constructed in 1999 according to Mecklenburg County Tax Records are located on the property.
6. Per Code Section 9.203(18), a religious institution is a permitted use in the R-4 (single family) zoning district, subject to the regulations of Section 12.506 of the Zoning Ordinance.
7. Per Code Section 12.506, 6(c) & 7, a medium sized religious institution shall be permitted only on a lot with frontage on a minor or major thoroughfare, and primary access shall not be provided by a local (Class VI) street.
8. In 1999 when the existing church building was constructed, the regulations found in 12.506, 6(c) & 7 were the same as they are today, and the site was compliant because there was frontage on The Plaza at that time.
9. In April 2016, previous owners of the church property sold the parcel with frontage on The Plaza to QT for the development of a convenience store and gasoline sales.
10. QT conditionally rezoned the property. The approved rezoning petition #2015-092 gave an easement to the church from The Plaza for compliance with 12.506(7) so that primary access is provided by The Plaza, a major thoroughfare, and not by St. Johns Church Road, a local (Class VI) street.
11. The applicant would like to construct a fellowship hall that exceeds the size of the existing church and will require the site to come into compliance with Section 12.506.
12. As previously stated, the easement from The Plaza provided on the QT site plan would meet the requirement of 12.506(7), however, there is no lot frontage along a minor or major thoroughfare to comply with Section 12.506.6(c).
13. The applicant is requesting a variance from the requirement that a medium sized religious institution be located on a lot with frontage on a minor or major thoroughfare to allow for the construction of a new fellowship hall.
14. The hardship was not caused by the applicant.
15. The applicant purchased the property in July 2016 after the previous owners sold the portion of the site with frontage along The Plaza to QT.
16. The hardship results from conditions peculiar to the property.
17. The existing church and cemetery on the parcel are oriented towards and have primary vehicular easement access from The Plaza.
18. The requested variance is consistent with the spirit and intent of the Zoning Ordinance.
19. The site has been in use as a religious institution since the 1970's and the variance request will allow the use to continue.
20. There are no safety concerns with the granting of the variance and construction of the fellowship hall because The Plaza easement will remain as the primary vehicular access.
21. The hardship results from conditions that are specific to the subject property since the portion of the site fronting The Plaza was sold prior to current ownership, leaving an easement for primary vehicular access from The Plaza, with the church and cemetery still oriented toward The Plaza.



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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 Zoning Ordinance, in that the public safety is secured and substantial justice is achieved.



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Case No.: 2021-094

Request: Requesting a variance to allow for maneuvering of vehicles within the proposed right-of-way and transitional setback along Wilkinson Boulevard.

Applicant/Agent: Durban Development (represented by Jake Potter)

Address: 3700 Wilkinson Boulevard

Parcel ID Number: 061-028-27

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.

(6) A nonconforming structure shall not be moved unless it thereafter conforms to the standards of the zoning district in which it is located.

Section 9.805. Development standards for business districts.

All uses and structures permitted in the B-1, B-2, B-D, and BP districts shall meet the applicable development standards established in this Section and all other requirements of these regulations.

(1) (g) Minimum setback: 20 feet

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

Parking in Setback, Side Yards, and Right-of-Way:

Parking of vehicles is not permitted within required setback or required side yard that abuts a street on any lot, nor within 5' of any exterior lot line. No parking is permitted in the right-of-way, except for parking as approved by CDOT.

Maneuvering space:

The space between the required setback, side, or rear yard abutting a street may not be used as maneuvering space for parking/unparking of vehicles.

Driveways and Parking Pads:

Driveways can be installed across the required setback and yard areas and shall be as nearly perpendicular to the street right-of-way as possible.

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: Commercial Arterial (Class III-C) 75 Foot Distance from Thoroughfare Centerline to Proposed Right-of-Way Line

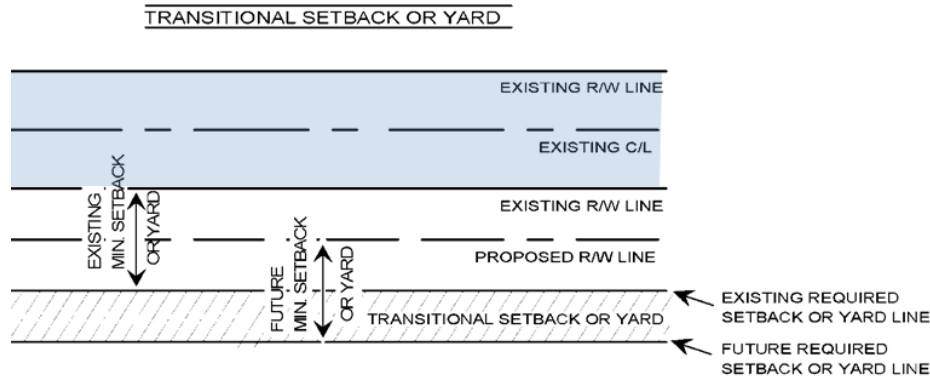
(2) A transitional setback or yard shall also be established for each zoning district which abuts a thoroughfare that has an existing right-of-way which is not as wide as the right-of-way established for that thoroughfare as illustrated in Figure 12.103. The transitional setback or yard area established for lots



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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.

Nonconforming Structure is 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.

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

1. The applicant is Durban Development (represented by Jake Potter).
2. The proposed site is located at 3700 Wilkinson Boulevard, further identified as tax parcel 061-028-27.
3. The property is zoned B-2 (general business) and located on Wilkinson Boulevard which is a Class III-C Commercial Arterial.
4. The site is currently in use as an automotive repair garage that was constructed in 1955, prior to current Zoning Ordinance regulations.
5. 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. Wilkinson Boulevard is classified as a Class III-C Commercial Arterial, so the 'proposed right-of-way' is 75 feet measured from the centerline of Wilkinson Boulevard.
6. Based on the existing 45 to 50 foot right-of-way from the centerline of Wilkinson Boulevard, and the required 75 foot 'proposed right-of-way', an additional 25 to 30 feet of right-of-way is required from the centerline of Wilkinson Boulevard.
7. Per Code Section 12.103(2), a 'transitional setback' shall be established along a thoroughfare that has an existing right-of-way which is not as wide as the right-of-way established for that thoroughfare.
8. The required 20 foot 'transitional setback' along Wilkinson Boulevard is measured from the 75 foot 'proposed right-of-way'.



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9. Per Code Section 12.103(2)(a) The ‘transitional setback’ established for lots abutting thoroughfares can be used for any purpose allowed by the particular zoning district, except for uses which are prohibited in the required setbacks.
10. Per Code Table 12.206(3) the parking of vehicles and maneuvering space for the parking of vehicles is not permitted within the setback.
11. Per Code Section 2.201, the ‘transitional setback’ is defined as the area that lies between the existing required setback line and the future required setback.
12. There is existing parking and maneuvering area on the property located within the 75 foot ‘proposed right-of-way measured’ from the centerline of Wilkinson Boulevard, and the 20 foot ‘transitional setback’ measured from the proposed right-of-way.
13. The existing development on the site is considered nonconforming since it predates ordinance requirements and doesn’t meet current standards for the ‘proposed right-of-way’ and ‘transitional setback’.
14. The applicant wishes to redevelop the site including the parking lot and driveway area. The proposed parking lot would be moved back from Wilkinson Boulevard by removing parking spaces from the ‘proposed right-of-way’ and ‘transitional setback’ than what currently exists, but having some maneuvering space remaining in the ‘transitional setback’ area.
15. Per Code Section 7.103(6), a nonconforming structure shall not be moved unless it thereafter conforms to the standards of the zoning district in which it is located.
16. The applicant is requesting a variance to allow for vehicle maneuvering space within the 75 foot ‘proposed right-of-way’ and 20 foot ‘transitional setback’ along Wilkinson Boulevard.
17. The hardship was not a result of actions taken by the applicants.
18. The site was developed in 1955 and current parking and maneuvering space encroaches into the ‘proposed right-of-way’ and ‘transitional setback’.
19. The proposed request meets the spirit and intent of the Zoning Ordinance
20. Granting the variance would bring the parking lot further into compliance by eliminating the existing encroachment of parking spaces in the ‘proposed right-of-way’ and ‘transitional setback’.
21. The Charlotte Department of Transportation and the North Carolina Department of Transportation were both notified and did not comment on the requested variance.
22. CATS (Charlotte Area Transit System) staff has no objections and stated that the future LYNX Silver Line is not within this section of the Wilkinson Boulevard right-of-way.
23. Granting the variance will not adversely affect adjacent or contiguous properties or alter the essential character of the area.
24. Many properties along Wilkinson Boulevard have parking areas that encroach into the ‘required setback’ and ‘transitional setback’.
25. The variance will not impact public safety.
26. The applicant’s proposed driveway and isles for maneuvering within the parking area will be better defined for safety.
27. Due to the existing nonconforming parking and maneuvering area on the property, and application of the ‘proposed right-of-way’ and ‘transitional setback’ along Wilkinson Boulevard, a hardship exists that would make redevelopment of the site difficult without the requested encroachment.
28. The location of the existing nonconforming parking on the property and application of the ‘proposed right-of-way’ and ‘transitional setback’ along Wilkinson Boulevard make it difficult to renovate the parking on the site without encroachment.



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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.



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Case No.: 2021-089

Request: Requesting a 15 foot variance from the 30 foot setback for construction of a duplex unit facing Willow Oak Road.

Applicant/Agent: JAS-AM, Inc. (represented by David W. Murray, The Odom Firm, PLLC)

Address: 3235 Willow Oak Road

Parcel ID Number: 151-113-36

Applicable Code Sections:

Code Section 9.205 Development Standards for Single Family Districts:

- (1) All residential 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 along local streets approved prior to 12-20-2010: 30 feet

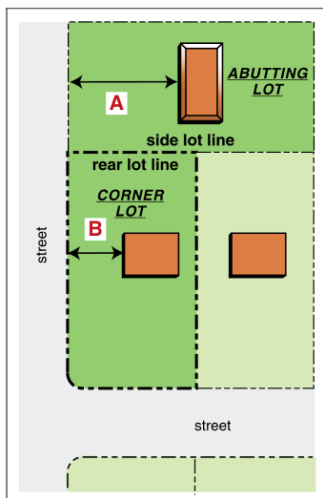
Code Section 9.203 Uses Permitted Under Prescribed Conditions

Section 9.203(6)(c) Requires that duplex dwellings on corner lots within the R-4 zoning district must meet the minimum setback requirement along each of the two different streets.

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

(7) If, in any district, a corner lot has a rear lot line in common with a side lot line of an abutting lot, then the side yard on the street side of the corner lot must be at least 50 percent of the required setback for the abutting lot but not less than 10 feet from the right of way as illustrated in Figure 12.102(b).

FIGURE 12.102(b)



- A** Setback
- B** Side yard for corner lot shall be at least 50 percent of Setback A
But not less than 10 feet from the right-of-way



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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.

Code Section 2.201 Definitions:

Dwelling, Duplex is defined as two dwelling units, including modular homes, placed one on top of another or attached side by side and sharing one or more common walls.

Dwelling unit is a single unit providing complete, independent living facilities for a family, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Lot, types: A corner lot is defined as a lot located at the intersection of two (2) or more streets.

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.

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

1. The applicant is JAS-AM, Inc. (represented by David W. Murray, The Odom Firm, PLLC).
2. The site is located at 3235 Willow Oak Road, further identified as tax parcel 151-113-36.
3. The subject parcel is zoned R-4 (single family) and has a lot area of 0.53 acres.
4. The property is a corner lot with frontage along Willow Oak Road and Townes Road.
5. The property is currently vacant with initial construction activity for a duplex dwelling unit.
6. The applicant obtained a Mecklenburg County building permit (B3995140) on June 25, 2021 to construct a duplex dwelling on the property.
7. The building permit stated that the minimum setback for the right side of the property, or the street side yard along Townes Road, is 15 feet.
8. Per Code Section 9.205(1)(e2), and 12.102(7), the typical street side yard in R-4 is 15 feet. However, per Code Section 9.203(6), duplex dwellings are permitted subject to specific conditions including being located on a corner lot and being subject to the minimum 30 foot setback along both streets.
9. On July 28, 2021, a Notice of Violation was issued indicating that the proposed duplex was not compliant with the required 30 foot setback along Townes Road.
10. The applicant is requesting a 15 foot variance from the 30 foot setback along Townes Road for the construction of the dwelling unit within the duplex which fronts along Willow Oak Road.
11. The hardship is not a result of actions taken by the applicant.
12. City staff provided incorrect information in the application regarding the regulation pertaining to the setback for duplex structures. The applicant proceeded with development plans based on the incorrect information.
13. The applicant states they were unaware of the 30 foot setback requirement along Townes Road for the proposed duplex until they received the Notice of Violation.
14. The applicant states that they had already begun construction and erected a retaining wall to accommodate the duplex when the notice was issued.
15. The applicant states that substantial resources had already been expended for the unit facing Willow Oak Road in reliance upon the 15 foot street side yard indicated on permits granted by the city and county.
16. The applicant was building the duplex according to the approved permit application and plot plan submitted with the building permit which indicated the Townes Road street side yard would range from 15 feet 8 inches to 17 feet 3 inches in depth.
17. The applicant has agreed to construct the dwelling unit facing Townes Road in compliance with the 30 foot setback as a compromise since site work for that unit was not as extensive.
18. In granting the variance, public safety is secured and substantial justice is achieved.



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19. The applicant states that the lot is one of the only corner lots on Willow Oak Road of sufficient size to support a duplex.
20. The proposed duplex on this subject corner lot requires a greater street side yard dimension that is twice the dimension of what is required for a single family dwelling on a corner lot.
21. The hardship is unique to subject property since the property located directly across Townes Road is undevelopable due to its lot width being only approximately 20'. Therefore, the property which would be most impacted by the variance request will not be developed.
22. The proposed placement of the duplex on the subject property will meet the spirit and intent of the Zoning Ordinance by having the dwelling unit facing Townes Road step back to the required 30' setback dimension to align with the required setbacks of the single family homes further east along the street.
23. The requested variance is in harmony with the intent of the Zoning Ordinance which permits duplexes on corner lots in the R-4 zoning district.

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.



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Case No.: 2021-092

Request: Requesting two variances:
1. A 6 foot variance from the 30 foot rear yard for compliance of the principal structure.
2. A variance from the 25% encroachment allowance to allow a deck to encroach 53% into the required 30 foot rear yard.

Applicant/Agent: Douglas and Paula Gentile

Address: 9319 Hanlin Court

Parcel ID Number: 223-203-31

Applicable Code Sections:

Section 9.205. Development Standards for Single Family Districts:

(5) Cluster Development. Cluster Development, as defined in 2.201, is permitted in all single family residential districts, except the R-8, in accordance with the following regulations:

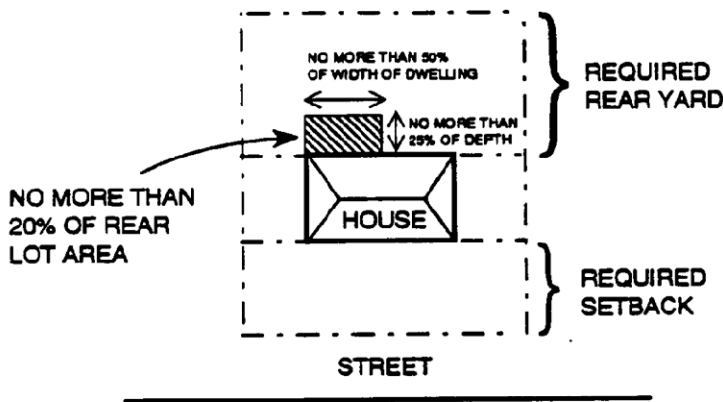
(a) R-3 Minimum Rear Yard for Interior Lots: 30 Feet

Section 12.106 Uses and Structures Prohibited and Allowed in Required Setbacks and Yards.

(3) Certain portions of the required rear yard on a lot used for a single family ... 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; and

Figure 12.106



Section 2.201 Definitions:

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.

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.



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Structure is anything constructed, installed, or portable, the use of which requires a location on a parcel of land. This includes a fixed or movable building which can be used for residential, business, commercial, agricultural, or office purposes, either temporarily or permanently...

Staff recommends

- (1) Approval of the 6 foot variance requested from the 30 foot rear yard for compliance of the existing principal structure.***
- (2) Denial of the variance requested from the 25% encroachment allowance to allow a proposed deck to encroach 53% into the required 30 foot rear yard.***

The findings of fact are:

1. The applicants are Douglas and Paula Gentile.
2. The site is located at 9319 Hanlin Court, further identified as tax parcel number 223-203-31.
3. The property is zoned R-3 (single family).
4. The site is approximately 0.2 acres and is identified as lot 6 on 2003 Cluster Subdivision plat Map Book 39 Page 898.
5. Per Code Section 9.205(5)(a), the property is subject to a required 30 foot rear yard.
6. There is a single family home on the property that was built in 2005.
7. A survey dated May 19, 2005 shows that the existing single family home encroaches 6 feet into the required 30 foot rear yard.
8. In June 2021, the applicant obtained Mecklenburg County building permit #B4006738 to construct a deck 22 feet in depth that would encroach 16 feet into the 30 foot rear yard.
9. The 30 foot required rear yard was noted on the approved permit, however the plot plan that was shown on the paperwork submitted with the building permit, was a different lot with a greater established rear yard area.
10. Staff believes the permit was issued due to the wrong plot plan shown on the permit application that had a larger rear yard to construct a compliant deck.

(1) Findings of fact (Approval) 6 foot variance requested from the 30 foot rear yard for compliance of the existing principal structure:

11. The 6 foot rear yard encroachment of the 2005 home is not a result of the applicants' actions.
12. The home was permitted, and the applicant has provided a copy of the Mecklenburg County Certificate of Occupancy dated June 7, 2005.
13. The encroachment of the rear of the home was shown on a 2005 survey from the purchase of the home, however the property owner was not aware there was an issue until 2021 after they obtained a deck permit.
14. The act of purchasing the property with knowledge that circumstances exist that may justify granting a variance shall not be regarded as a self-created hardship.
15. The requested variance will not detract from the character of the area.
16. The rear encroachment is centered toward the middle of the property and would not significantly detract from the pattern of the neighborhood's residential backyard character.
17. The rear yard abuts Common Open Space for the subdivision, separating the encroachment area from impact on other single family homes.
18. The granting of the variance for the permitted 2005 home ensures safety since the work was constructed and inspected to NC Building Codes through the permitting process.

Conclusion of Law (for existing home):

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).



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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.

(2) Findings of fact (Denial) variance from the 25% encroachment allowance to allow proposed deck to encroach 53% into the required 30 foot rear yard.

19. The hardship is caused by the applicant.
20. The applicants building contractor was issued a building permit for the proposed deck that indicated that the rear yard was 30 feet.
21. The plot plan submitted with the building permit application showed the wrong lot. The lot shown on the plot plan had permitted building area in the rear yard in which to construct a deck, however the subject lot does not have permitted building area in the rear yard in which to construct a deck.
22. Staff believes the permit was issued due to the wrong plot plan shown on the application.
23. There is no hardship resulting from a peculiarity of the property.
24. Per Code Section 12.106(3)(b), decks can encroach up to 25% into the required rear yard. If variance #1 is granted, then it will allow a deck to encroach 6 feet into the 24 foot rear yard, and 18 feet from the rear property line. This permits 4.5 foot of additional encroachment than is currently permitted for the required 30 foot rear yard. (See Requested Variances Encroachment Chart)
25. The granting of variance #2 would permit the construction of a deck that is 22 feet in depth. The granting of variance #1 will allow a deck that is 18 feet in depth, which is a difference of 4 feet from the depth requested in variance #2.
26. Unnecessary hardships do not result from strict application of the Ordinance.
27. The hardship is the result of actions proposed by the applicant and the desired location and increased depth of the proposed deck.
28. The applicant has the option to shorten the proposed depth of the deck 4 feet for compliance with the 25% encroachment allowance if variance #1 is granted.
29. The requested variance is out of character with neighboring properties, which do not appear to have deck encroachments and appear to observe the 30 foot rear yard in aerial photography.

Conclusion of Law (for proposed deck):

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



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Requested Variances Encroachment Chart

			Variance #2: Requested 14 foot rear yard for deck		
Required Rear yard	25% permitted	Permitted distance of deck to rear lot line	Encroachment into required rear yard	Encroachment % into required rear yard 7.5	Variance Needed
30' required	7.5 feet	22.5 feet	16 feet	53%	28% more than 25%
Variance #1 (if granted): 24' required	6 feet	18 feet	10 feet	42% (41.6)	17% (16.6) more than 25%



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Case No.: 2021-078

Request: Appealing the Zoning Administrator's interpretation that the subject property has common law vested rights from previous governmental approvals.

Applicant/Agent: Joseph K. Gatewood

Address: 1700 Industrial Center Circle

Parcel ID Number: 097-223-05

Applicable Zoning Ordinance Sections:

Section 2.201 Definitions:

Planned development. Land under unified control which is to be planned and developed as a whole, as a single development project, or a definitely programmed series of development operations or phases. A planned development includes principal and accessory structures, buildings and uses substantially related to the character and purpose of the planned development. In general, a planned development will be outlined in a conditional district plan, a zoning site plan, or a subdivision plan.

Conditional zoning. A legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment.

2021 ZONING ORDINANCE REGULATIONS:

Section 12.302. Buffer requirements.

(8A) The width of any required buffer for residential uses abutting industrial property, or for industrial uses abutting residential property may be reduced by 25% if a berm is provided that meets the following standards.

(a) Berms shall be a minimum height of 4 feet with a maximum slope of 3:1. Berms in excess of 6 feet height shall have a maximum slope of 4:1 as measured from the exterior property line;

(b) Berms shall be stabilized to prevent erosion and landscaped; and

(c) If a berm is constructed, shrubs are required but the number may be reduced by 25%. However, the number of trees shall not be modified by the reduction of buffer width.

Table 12.302(a) Minimum buffer requirements by use and district categories

Industrial Use Abutting Existing Single Family: Class A Buffer

Table 12.302(b). Buffer Requirements (Minimum Widths and Required Plantings)

Required Buffer Width for A Class on 2.6 Acres: 55 feet

Required Buffer Width for A Class on 10 or more Acres: 100 feet

1990 ZONING ORDINANCE REGULATIONS:

1600. Supplementary Regulations: 1601. Screening.

1601.2. Special definitions. For the purposes of this section the following words will have these specific meanings.



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.1 Screen or screening: means a fence, wall, hedge, landscaping, earth berm, buffer area or any combination of these provided to create a visual and/or physical separation between certain land uses. A screen may be located on the property line or elsewhere on the site.

.2 Buffer: means an area with a minimum width of 20 feet along the property line for the retention of natural vegetation or the provision of land area to establish new vegetation. A buffer area may include any required screening for the site and may not be used for any other purpose, such as parking or maneuvering space. Driveways providing access to the site may be installed across the buffer area.

1601.3. Application of screening requirements.

1601.3.1.4 Developing industrial use adjacent to residential use or district a buffer and screening is required.

NC STATE STATUTORY AND CITY OF CHARLOTTE VESTING AND CONDITIONAL REZONING REGULATIONS ARE LOCATED AT THE END OF THIS REPORT

Code Sections Listed on Applicant's Appeal Application Form 3

- A. 1.102 Authority and Purpose (these regulations are included at the end of this report)***
- B. 1.110 Procedures for establishing a vested right and permit choice (these regulations are included at the end of this report)***
- C. 12.302 Buffer Requirements***

Staff recommends upholding the Zoning Administrators decision:

1. The applicant, Joseph K. Gatewood, is appealing the Zoning Administrator's interpretation that the subject property has common law vested rights from previous governmental approvals.
2. The applicant resides at 6123 Old Coach Road which is an abutting residential property to the south of the subject property. Per Mecklenburg County tax records, Patricia A. Gatewood owns the home at 6123 Old Coach Road and has own the home since 1988.
3. The subject property is located at 1700 Industrial Center Circle and identified by tax parcel number 097-223-05.
4. The property owner of the subject property is Frank Shepardson (Washburn 3100 Inc.) (Represented by David Murray, The Odom Firm, PLLC).
5. The subject property is located in the General Commerce Center industrial subdivision, comprised of several parcels of land which were rezoned from I-1 (Light Industrial) and R-9 (Single Family) to I-1(CD) (Light Industrial, Conditional District) and I-2(CD) (General Industrial, Conditional District) by the Charlotte City Council per rezoning petition 1990-073 on October 15, 1990.
6. The General Commerce Center industrial subdivision meets the Zoning Ordinance definition of a "planned development" because it was developed as a definitely programmed series of development operations or phases and is occupied with a variety of tenants and accessways, yards, undisturbed vegetative buffers, and other items/uses required by the Zoning Ordinance.
7. Section 2.201 of the Zoning Ordinance defines "planned development" as "land under unified control which is to be planned and developed as a whole, as a single development project, or a definitely programmed series of development operations or phases. A planned development includes principal and accessory structures, buildings and uses substantially related to the character and purpose of the planned development. In general, a planned development will be outlined in a conditional district plan, a zoning site plan, or a subdivision plan."
8. Per Code Section 6.206, the subject parcel is bound to the approved conditional zoning plan and



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governed by the predetermined ordinance requirements applicable to the district's category, the approved 1990 site plan for the General Commerce Center development, and approved conditions which constitute the zoning regulations for the site and are binding on the property as an amendment to the zoning regulations and maps.

9. Code Section 2.201 defines conditional zoning approvals as a zoning map amendment with site-specific conditions incorporated into the zoning map amendment.
10. Therefore, since the subject property is in a conditional zoning district, it is subject to the specific standards and conditions of the 1990 approved conditional rezoning site plan.
11. Per Code Section 6.207, any deviations from the conditional rezoning plan for General Commerce Center require an amendment to the conditional rezoning.
12. Per Code Section 6.208, the City Council has the authority to classify a property to another zoning district if they determine that progress has not been made in accordance with the approved rezoning petition after three years from the conditional zoning approval. This authority has not been used by the City Council because it has not been determined that there has been insufficient progress in accordance with the approved rezoning petition.
13. Since the conditional rezoning approval, any changes in the General Commerce Center development have required amendments to the conditional zoning plan. Administrative amendments to the plan have been approved as recently as October 12, 2010, which demonstrates that the site is bound to the approved plan.
14. The applicant's appeal includes a reference to Code Section 1.110 stating, 'Procedures for establishing a vested right are absent with respect to the subject property'. However, per Code Section 6.206, the conditional rezoning for the subject property approved on October 15, 1990 is exempt from those requirements since Code Section 1.110 applies to conditional zoning districts approved on or after October 1, 1991.
15. Although not subject to Code Section 1.110, the property is subject to vested rights as provided in the NC General Statute 160D-108 (statutory vested rights), as well as common law vested rights which are authorized in caselaw.
16. North Carolina Statutes 160D-1403.1 allows for a decision of the Zoning Administrator to be challenged by a party with standing by bringing a claim that the ordinance was erroneously interpreted to the Zoning Board of Adjustment.
17. The Zoning Administrator's interpretation is that the subject property has common law vested rights from previous government approvals.
18. North Carolina courts recognize common law vested rights which run with the land and are transferred with the sale of a property. NC Courts have the following test for the establishment of vested rights in which the owner must:
 - a. Obtain a valid government approval.
The General Commerce Center development (including the subject property) received valid government approval through the conditional rezoning approval and subdivision plat approval in 1990.
 - b. Reasonably rely upon the approval.
Infrastructure improvements have been made to the subject planned development in reliance on valid governmental approvals and in compliance with the various regulations in place at the time of governmental approval.
 - c. Make a substantial expenditure.
Substantial expenditures have been made in reliance on governmental approvals to construct public streets (grading, pavement, and curb & gutter) and install utilities (water, sewer, underground electrical, storm drainage, and etc.) within the planned development in which the subject property is located.



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d. Act in good faith.

The majority of the properties within the General Commerce Center industrial park have been developed in good faith and reliant upon governmental approvals. Only two of the 19 lots within planned development remain vacant. One of the two remaining vacant lots is the subject property. Mecklenburg County has assessed the land and building values within the planned development at \$16,012,000.

e. Experience detriment to comply.

The property owner will experience detriment if required to comply with the new zoning buffer regulations. The developable width of the subject property is reduced from approximately 140' to 70' if to comply with the new regulations.

19. It is the Zoning Administrator's assessment that the General Commerce Center development meets the criteria for common law vesting as stated above.
20. The applicant references Code Section 1.102 on the appeal application, and states 'Authority and purpose of the code is not being fulfilled by applying a condition set 31 years ago'.
21. The Zoning Administrator's determination adheres to Code Section 1.102, because it utilizes and considers 'the authority granted to the City of Charlotte by Chapter 160D, Articles 1 through 14, of the General Statutes of North Carolina, and by any special local legislation enacted by the General Assembly for the City of Charlotte'.
22. The appellant also references Code Section 12.302, stating 'Buffers and screening are not being applied with respect to the subject property'. The applicant states the subject property should be subject to the current buffer regulations which they assert is a 100 foot Class A buffer.
23. The approved Conditional Zoning plan for the subject property requires a 30 foot wide undisturbed buffer and a 7 foot wood fence along the southern boundary abutting residentially zoned properties. This buffer width exceeded the minimum buffer standards of the 1990 Zoning Ordinance Section 1601, in effect at the time of City Council approval.
24. It is the Zoning Administrator's determination that the 30 foot wide buffer and 7 foot tall fence shown on the 1990 conditional zoning plan is the required buffer for the development of the subject property.
25. The subject property is 2.6 acres and the total area of the General Commerce Center planned development is greater than 10 acres.
26. Per Code Section 12.302, if the General Commerce Center development were held to current ordinance regulations, there would be a required buffer width of 100 feet from the abutting southern residential properties. However, if the subject parcel were not vested by common law into the approved conditional plan and buffer requirements for the General Commerce Center development, then the parcel would be reviewed separately. Per Code Section 12.302, a 55 foot buffer would be required for the 2.6 acre site that could be reduced to 41.25 feet with the installation of a berm.
27. Based on the Zoning Ordinance regulations, and the approved plans for the General Commerce Center, the Zoning Administrator made the determination that the subject property has common law vested rights from previous governmental approvals.
28. If the Zoning Administrator's determination that the subject property has common law vested rights is overturned, it will result in a precedent for other parcels located in a planned development within a conditional zoning district and could negate their development rights and entitlements under their approved plans.

Conclusion of law

The Zoning Board of Adjustment upholds the Zoning Administrator's interpretation that the subject property has common law vested rights from previous governmental approvals, including the requirement of a 30 foot buffer and 7 foot wood fence along the southern property boundary, and the entitlements and conditions of conditional rezoning petition 1990-073 for the General Commerce Center Development.



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ZONING ORDINANCE REFERENCES:

Section 1.102. Authority and purpose.

These regulations are adopted pursuant to the authority granted to the City of Charlotte by Chapter 160D, Articles 1 through 14, of the General Statutes of North Carolina, and by any special local legislation enacted by the General Assembly for the City of Charlotte, in order to carry out the purposes listed below: (1) These zoning regulations have been designed to promote the public health, safety, and general welfare. To that end, the regulations address, among other things, the following public purposes: to lessen congestion in the streets, to secure safety from fire, panic and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population, and to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks and other public facilities and services.

(Petition No. 2006-16, § 1.102(1), 05/20/06)

(2) The zoning districts and maps have been made with due consideration of future growth, development, and change in land development according to objectives expressed in the general plan or more detailed plan or policy for the development of the community, as well as with due consideration of existing development and uses of land in the City of Charlotte.

(3) These regulations and districts represent reasonable consideration of the character of the districts and their peculiar suitability for particular uses of land and have been made with a view to preserving the existing environment and/or assuring the development of a future environment that realizes the greatest possible use and enjoyment of land on individual properties. This is balanced against the necessary protection of the values of buildings and land and the use and enjoyment of land on adjacent properties and with the objective of promoting and protecting the public welfare through the regulation of land use and the process of land development.

Section 1.110. Procedures for establishing a vested right and permit choice.

(1) Vested Rights: Pursuant to G.S. §160D-102, 160D-108, and 160D-108.1, “Vested Rights”, a vested right to undertake and complete the development and use of the property under the terms and conditions as approved shall be established with respect to:

- (a) site-specific vesting plans (including conditional zoning district plans);
- (b) multi-phased developments pursuant to G.S. Section 160D-108(f);
- (c) development permits in accordance with N.C.G.S. 143-755; and
- (d) the terms of development agreements authorized by N.C.G.S 160D, Chapter 10.

(2) Period of Validity.

(a) Site-Specific Vesting Plans: A vested right for a site-specific plan (including conditional district zoning plans), which has been vested as provided for in this section, shall remain vested for a period of two years. The approving authority in its sound discretion may establish a vesting period exceeding the two year minimum, up to a period of five years where the applicant or petitioner shows such extended period is warranted in light of all relevant circumstances, including but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions, or other considerations.

(b) Multi-phased developments: A vested right for a development with multiple phases has an extended vesting period of seven years from the time the first site approval is granted for the initial phase. The development must be at least 25 acres in size; subject to a master development



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plan with committed elements showing the type and intensity of use for each phase; and is to be permitted and built in phases. A multi-phased development is vested for the entire development with the land development regulations then in place at the time a site plan approval is granted for the initial phase of the multi-phased development. Development permits (including zoning permits, site plan approvals): Development approvals are valid for 12 months, unless work authorized by the permit is substantially commenced.

(c) Modifications or amendments to an approved site-specific plan or multi-phased development does not extend the period of vesting unless specifically so provided by the City Council when it approves the modification or amendment.

(3) Effect of a Vested Right.

(a) A vested right, once established, precludes any action by the City Council that would modify, alter, impair, prevent, diminish, or delay the development or use of the property allowed by the applicable zoning regulations, except where a change in State or federal law mandating local government enforcement occurs after the development application is submitted that has a fundamental and retroactive effect on the development or use.

(b) The establishment of a vested right shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property, including, but not limited to, building, fire, plumbing, electrical and mechanical codes.

(c) A vested right obtained under this section is not a personal right but shall attach to and run with the subject property, except for the use of land for outdoor advertising governed by G.S. 136-136.1 and G.S. 131.2 in which case the rights granted run with the owner of the permit issued by the North Carolina Department of Transportation.

(d) New and amended zoning regulations that would be applicable to certain property but for the establishment of a vested right, shall become effective upon the expiration or termination of the vested rights.

(4) Expiration of a Vested Right

(a) A right, which has been vested as provided in this Section 1.110, shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

(b) A vested right expires for 1) an uncompleted development project, and 2) a nonconforming use of property, if the development work or use is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months. The 24-month period is tolled during any board of adjustment proceeding or civil action in a State or federal trial or appellate court regarding the validity of a development permit, the use of the property or the existence of the statutory vesting period.

(5) Permit Choice

(a) If an applicant submits a permit application for development, and after application submission, but before a development permit decision is made, the Development Regulation is amended, then the applicant may choose which version of the Development Regulation applies to the application and use of land, as per G.S. 143-755. If the applicant chooses the version of the rule or ordinance applicable at the time of the permit application, the development permit applicant shall not be required to await the outcome of the amendment to the rule, map, or ordinance prior to acting on the development permit. Where multiple development permits are required to complete a development project, the development permit applicant may choose the version of each of the local land development regulations applicable to the project upon submittal of the application for the initial development permit. This provision is applicable only for those subsequent development permit applications filed within 18 months of approval of the initial



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permit. For purposes of the vesting protections of this subsection, an erosion and sedimentation control permit or sign permit is not an initial development permit. If a permit application is on hold for six consecutive months, then permit choice is waived. If an applicant resumes an application after six months of discontinuation, then the rules in effect at the time of resuming apply.

Section 6.206. Effect of approval [Conditional Zoning District]

(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.

Any conditional zoning district approved on or after October 1, 1991, shall have vested rights pursuant to N.C.G.S. Section 160D-108 for the period of time established pursuant to Section 1.110 of this Zoning Ordinance, except as such vested rights may be altered as allowed by N.C.G.S. Section 160D-108.1(c).

Section 6.207. Alterations to approval [Conditional Zoning District]

(Petition No. 2007-27, § 6.207, 04/16/07)

(1) Changes to an approved site plan.

Except as provided in subsection 6.207(2) below, changes to an approved petition or to the conditions attached to the approved petition shall be treated the same as amendments to these regulations or to the Zoning Maps and shall be processed in accordance with the procedures in this Chapter.

Section 6.208. Review of approval of a conditional zoning district.

It is intended that property shall be reclassified to a conditional zoning district only in the event of firm plans to develop the property. Therefore, no sooner than three years after the date of approval of the petition, the Planning Commission may examine the progress made toward developing the property in accordance with the approved petition and any conditions attached to the approval. If the Planning Commission determines that progress has not been made in accordance with the approved petition and conditions, the Planning Commission shall forward to the City Council a report, which may recommend that the property be classified to another district.

NC STATE STATUTE REFERENCES:

§ 160D-108. Permit choice and vested rights.

(c) Vested Rights. – Amendments in land development regulations are not applicable or enforceable without the written consent of the owner with regard to any of the following:

Buildings or uses of buildings or land for which a development permit application has been submitted and subsequently issued in accordance with G.S. 143-755.

Subdivisions of land for which a development permit application authorizing the subdivision has been submitted and subsequently issued in accordance with G.S. 143-755.

A site-specific vesting plan pursuant to G.S. 160D-108.1.

A multi-phased development pursuant to subsection (f) of this section.

A vested right established by the terms of a development agreement authorized by Article 10 of this Chapter.

The establishment of a vested right under any subdivision of this subsection does not preclude vesting under one or more other subdivisions of this subsection or vesting by application of common law



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principles. A vested right, once established as provided for in this section or by common law, precludes any action by a local government that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property allowed by the applicable land development regulation or regulations, except where a change in State or federal law mandating local government enforcement occurs after the development application is submitted that has a fundamental and retroactive effect on the development or use.

(h) Process to Claim Vested Right. – A person claiming a statutory or common law vested right may submit information to substantiate that claim to the zoning administrator or other officer designated by a land development regulation, who shall make an initial determination as to the existence of the vested right. The decision of the zoning administrator or officer may be appealed under G.S. 160D-405. On appeal, the existence of a vested right shall be reviewed de novo. In lieu of seeking such a determination or pursuing an appeal under G.S. 160D-405, a person claiming a vested right may bring an original civil action as provided by G.S. 160D-1403.1.

§ 160D-1403.1. Civil action for declaratory relief, injunctive relief, other remedies; joinder of complaint and petition for writ of certiorari in certain cases.

(a) Civil Action. – Except as otherwise provided in this section for claims involving questions of interpretation, in lieu of any remedies available under G.S. 160D-405 or G.S. 160D-108(h), a person with standing, as defined in subsection (b) of this section, may bring an original civil action seeking declaratory relief, injunctive relief, damages, or any other remedies provided by law or equity, in superior court or federal court to challenge the enforceability, validity, or effect of a local land development regulation for any of the following claims:

(3) The ordinance, either on its face or as applied, constitutes a taking of property. If the decision being challenged is from an administrative official charged with enforcement of a local land development regulation, the party with standing must first bring any claim that the ordinance was erroneously interpreted to the applicable board of adjustment pursuant to G.S. 160D-405. An adverse ruling from the board of adjustment may then be challenged in an action brought pursuant to this subsection with the court hearing the matter de novo together with any of the claims listed in this subsection.

(b) Standing. – Any of the following criteria provide standing to bring an action under this section:

(1) The person has an ownership, leasehold, or easement interest in, or possesses an option or contract to purchase the property that is the subject matter of a final and binding decision made by an administrative official charged with applying or enforcing a land development regulation.

(2) The person was a development permit applicant before the decision-making board whose decision is being challenged.

(3) The person was a development permit applicant who is aggrieved by a final and binding decision of an administrative official charged with applying or enforcing a land development regulation.