



Ali Talebi and Sanaz Boroumand
C/O Susanna Todd Johnston, Allison & Hord, PA
2609 Hampton Ave
Charlotte, NC 28207

**RE: VARIANCE
2609 HAMPTON AVENUE
CASE NUMBER 2020-032**

To Whom It May Concern:

At its remote meeting on August 25, 2020, the City of Charlotte Zoning Board of Adjustment (“Board”) DENIED a variance to allow for a 3.1 foot variance from the required 6 foot side yard to allow a newly constructed accessory structure to remain.

At its remote meeting on March 30, 2021, upon remand from the Mecklenburg County Superior Court, The Board based its decision on the following findings of fact:

1. The applicants are Ali Talebi and Sanaz Boroumand (represented by Susanne Todd, Johnson, Allison & Hord, PA).
2. The subject site is located at 2609 Hampton Avenue, further identified as tax parcel 153-07-211.
3. The subject parcel is zoned R-3 (Single Family).
4. The property is approximately 0.34 acres.
5. The property was redeveloped starting in 2018 with a single-family home, pool house, pool, and detached garage.
6. The applicants provided a letter from their legal counsel on July 10, 2018, prior to permitting, that stated the proposed structures on the property were compliant with both zoning and deed restrictions. The applicants’ attorney did not confer with the City before or after issuing the legal opinion.
7. Mecklenburg County Building Permits were obtained for all four structures on the property; in particular, the applicants obtained Mecklenburg County Building Permit #B3390005 on August 22, 2018, for a pool house.
8. Permit #B3390005 listed the minimum side yard as 3 feet and contained the following remarks “This Project has not been reviewed and permitted as an Accessory Dwelling Unit. Construction for this Project must comply with all requirements in Code Section 12.106 of the City of Charlotte Zoning Ordinance. A HOLD may be placed on this project to verify zoning compliance. Call 704-336-7600 to schedule a zoning inspection in order to release the zoning HOLD.”
9. Per Code Section 12.106(2)(a), accessory structures located in the established rear yard may be located within 3 feet of a side or rear lot line, but accessory structures located to the side of the principal structure must comply with the required side yard of the principal structure.
10. The newly constructed home is ‘L’-shaped with a wing of the home extending along the right side property line towards the rear property line which results in a smaller established rear yard area than the previous home. The previous home on the property had a fairly straight rear building line which resulted in a larger established rear yard area.
11. The pool house must comply with the required side yard of the subject R-3 zoning district because the pool house is not located entirely within the established rear yard created by the principal dwelling.

The pool house is currently located to the left of the wing of the principal dwelling that extends along the right side property line.

12. Per Code Section 9.205(1)(f), the required side yard is 6 feet.
13. The pool house was constructed 2.9 feet from the left side property line and encroaches into the required 6 foot side yard by 3.1 feet.
14. The applicants received a Zoning Notice of Violation for the property issued on March 16, 2020. Applicants did not appeal the Notice of Violation.
15. The applicants request a 3.1 foot variance to allow the newly-constructed pool house to remain. The requested variance is more than 50% of the required side yard of 6 feet.
16. Per Code Section 4.107(2), an encroachment of up to 2 feet would be eligible for an administrative deviation, but since the encroachment is 3.1 feet, the subject request exceeds the allowable administrative deviation by 1.1 feet.
17. Testimony and evidence were provided during the hearing that, prior to the completion of the pool house, the applicants were placed on notice that construction of the pool house may constitute a violation of the city's Zoning Ordinance.
18. The applicants' property does not result from conditions peculiar to the property. The topography of applicants' property in the front and rear is similar to the other properties along Hampton Avenue as shown on Polaris 3G topography map. Such conditions that are common to the neighborhood or the general public are not a basis for granting a variance.
19. The orientation and placement of the principal dwelling by applicants does not constitute a condition peculiar to the land. In addition, applicants' principal dwelling is similar to other principal dwellings with a L-shaped orientation and placement as shown on Polaris 3G map.
20. The orientation and placement of the pool house by applicants does not constitute a condition peculiar to the land.
21. Applicants expressed that the pool house cannot be moved further from the left side property line and that it contains a bathroom and its plumbing system has been installed under the ground. Applicants, however, have not demonstrated that the strict application of the ordinance was the cause of this circumstance.
22. The affidavit of Damon Bidencope was not considered as evidence because it addressed a 2.5 foot variance which is different from the 3.1 foot variance requested by applicants.
23. The affidavit of Harry J. Schrader was not considered as evidence because it addressed restrictive covenants and this board does not interpret the language of restrictive covenants.
24. The requested variance is inconsistent with the spirit, purpose, and intent of the Zoning Ordinance because the requested variance encroaches more than 50% into the required side yard.

Based upon the above findings of fact, the Board concludes that the applicants have not met all the standards set forth in North Carolina General Statutes § 160A-388, and more specifically:

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 results 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 secured and substantial justice is achieved.

If any permits are required, please make sure the variance case number is referenced on the permit application and/or site plan. Section 5.111 of the Zoning Ordinance provides that unless otherwise specified by the Board, any decision of the Board granting a variance shall automatically expire if a permit or a certificate of occupancy pertaining to the need for the variance is not obtained within two (2) years from the date of the meeting of the Board at which the Board rendered its decision.

Sincerely,



Rick Sanderson, Chairperson

4/6/2021
Date

**DECISION FILED IN THE
PLANNING DEPARTMENT:**

 Recoverable Signature



Shad Spencer
Zoning Administrator - 4/13/2021
Signed by: sspencer@ci.charlotte.nc.us