



Nicholas J and Liza R Hart
648 Day Ave SW
Roanoke, VA 24016

**RE: VARIANCE
617 EAST 37TH STREET
CASE NUMBER 2020-061**

To Whom It May Concern:

At its remote meeting on July 28, 2020, the City of Charlotte Zoning Board of Adjustment (“Board”) **GRANTED** a variance of 9 feet from the required 10 foot street side yard for compliance of a home addition.

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

1. The applicants are Nicholas J. and Liza R. Hart.
2. The proposed site is located at 617 East 37th Street, further identified as tax parcel 091-106-07.
3. The property is zoned R-5 (single family).
4. The property was created through a subdivision plat in 1953.
5. A home originally built in 1923 currently occupies the site.
6. The original home on the site was a nonconforming structure, because it was constructed prior to current ordinance regulations and did not meet the required street side yard.
7. Per Code Section 2.201, Alexander Street unopened right-of-way meets the definition of a street because it is 30 foot wide and shown as a public street on a recorded subdivision plat.
8. The subject property is a corner lot, with the front of the lot facing East 37th Street, and the right side of the lot located along Alexander Street.
9. Code section 12.102(6) requires a minimum 10 foot street side yard along the Alexander Street right-of-way, which is half of the required 20 foot setback per Code Section 9.205(1)(e2).
10. Code section 12.106(1) states that principal structures are not permitted within any setback or side yard.
11. The existing home had an established street side yard of approximately 3.5 feet prior to 2006.
12. Code section 7.103(5) states that nonconforming structures may be expanded only if the part of the structure to be expanded and the area of the lot into which the expansion is taking place comply with the current zoning regulations.
13. In 2006 an addition was constructed onto the nonconforming structure with the area of expansion encroaching into the 10 foot street side yard approximately 8.3 feet, which is not in compliance with current zoning regulations.
14. The applicant’s purchased the property in 2007, after the addition was completed, and commissioned a survey dated March 13, 2007 that does not show the encroachment.
15. The encroachment was discovered though a survey dated June 13, 2020, commissioned by prospective buyers of the property.
16. The applicants are requesting a 9 foot variance from the required 10 foot street side yard for compliance of the home addition that was constructed in 2006, so that they may sell the property.

17. The hardship does not result from actions taken by the applicant.
18. The applicant's stated that they were unaware of the encroachment when they purchased the property in 2007.
19. Strict application of the ordinance would require a portion of the 2006 addition to be demolished.
20. The subject lot is a corner lot which requires a greater side yard dimension when abutting a street than the typical side yard dimension when abutting another lot.
21. Granting the variance will not alter the essential character of the neighborhood.
22. A variance was granted for property to the south in 2017 to eliminate the 10 foot street side yard along Alexander Street and allow expansion of the nonconforming structure on the lot. A condition was placed on the approval that expansion could not extend into the right-of-way and must remain within lot boundaries.
23. Granting the variance will not adversely affect adjacent or contiguous properties.
24. The encroachment is not easy to detect.
25. Per Code Section 12.102(3), side yards may be measured from the centerline of alleys that abut a property.
26. Staff believes that the unopened street right-of-way may have been mistaken for an alley by permitting staff, which would have allowed the side yard to be measured from the centerline of the right-of-way.
27. Hardships for the granting of the variance are due to the home's location along an unopened street, the greater side yard dimension required of a corner lot, and the variance to eliminate the street side yard requirement recently granted for the neighboring property.

Based upon the above findings of fact, the Board concludes that the applicant has met the standards set forth in North Carolina General Statutes § 160A-388, and more specifically:

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.

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

7/30/2020
Date

**DECISION FILED IN THE
PLANNING DEPARTMENT:**

 Recoverable Signature



Shad Spencer
Zoning Administrator
Signed by: sspencer@ci.charlotte.nc.us

8/4/2020
Date