



Ray Smith
Bainbridge Companies
1515 Mockingbird Lane, Ste 4110
Charlotte, NC 28209

**RE: VARIANCE
3007 BLUE HERSON CREEK ROAD
CASE NUMBER 2020-063**

To Whom It May Concern:

At its remote meeting on September 29, 2020, the City of Charlotte Zoning Board of Adjustment (“Board”) **GRANTED** a variance to allow two existing structures located within the FEMA special flood hazard area to be grandfathered into Flood Insurance Rate Map (FIRM) flood maps prior to the November 2018 revision.

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

1. The applicant is **Bainbridge-GCA Mallard Creek Owner LLC**.
2. The property is located at **3007 Blue Heron Road**, further identified as tax parcel **04713107**.
3. The subject parcel’s current zoning classification is **R-12MF(CD)**.
4. The applicant submitted an application for a planned multi-family subdivision on March 22, 2018.
5. The multi-family subdivision plans show four proposed Habitable Buildings located in the Community Special Flood Hazard Area currently 6020 & 6025 Turtle Trail, 7125 Verdant Hill Road and 5135 Gold Finch Road.
6. The applicant submitted an application for an Individual Floodplain Development Permit for the multi-family subdivision on June 27, 2018. Due to staff oversight, the Floodplain Development permit was never issued.
7. The multi-family subdivision plans were approved by the City of Charlotte’s Department of Transportation, Charlotte Planning, Design and Development Department, and General Services Department.
8. The Effective Flood Insurance Rate Map applicable to the property was adopted on March 2, 2009.
9. Preliminary Flood Insurance Rate Maps were released for public comment on August 30, 2016, which is when the higher flood elevations went into effect.
10. The Preliminary Flood Insurance Rate Maps were adopted for use on November 11, 2018.
11. The construction drawings contained the regulatory information from the FIRM that was effective when the subdivision plans were approved.
12. The four buildings were constructed consistent with the regulatory information contained on the approved subdivision plans.
13. The regulatory flood elevations contained on the Preliminary FIRM were higher than the elevations contained on the Effective FIRM at the time the plans were approved.
14. The building with address 7125 Verdant Hill Road is compliant based on the then Preliminary (now Effective) FIRM.

15. The buildings with addresses 6020 & 6025 Turtle Trail and 5135 Gold Finch Road are compliant with the Effective FIRM when the subdivision plans were approved but below the regulatory flood elevations contained on the Preliminary FIRM. All three buildings meet FEMA's minimum elevation standard because the lowest floor is at or above the current FEMA Base Flood Elevation.
16. Section 9-37 requires use of the regulatory elevations on a Preliminary FIRM if the elevations are higher than the regulatory elevations on the Effective FIRM.
17. The Floodplain Administrator has determined that the three buildings constructed below the currently Effective flood elevations meet the definition of a new Habitable Building.
18. Section 9-102 (d) of the City of Charlotte Floodplain Regulations requires Dryland Access to new Habitable Buildings during a flood event.
19. A variance from 9-37 is required because the building required Parking and Dryland Access were constructed below the regulatory flood elevations contained on the then Preliminary FIRM and now effective FIRM.

Conditions

1. Maintain flood insurance policies for all building located in the Effective Community Flood Fringe Area.
2. Maintain individual contents flood insurance policies for all tenants located in areas where the floor of the living space is below the Flood Protection Elevation.
3. FEMA Substantial Improvement requirements will apply to all Habitable Buildings having the lowest floor below the Effective Flood Protection Elevation located in the Effective Community Flood Fringe Area.
4. There will be no local funds made available in the future for flood mitigation assistance (Buyouts, elevations etc.) for said buildings or improvements.
5. The owner must provide the following for all parking spaces less than 0.5 feet below the currently Effective Community Base Flood Elevation:
 - a. A flood warning system (including controls, flood warning sensors, visual/audio alarms, etc.) designed by a professional engineer and approved by the Floodplain Administrator and,
 - b. Provide an operation and maintenance plan with annual testing requirements for the flood warning system, and
 - c. Provide a cabling system, or other restraint, designed by a professional engineer to prevent off site floatation of vehicles during a flood event approved by the Floodplain Administrator, and
 - d. Post a flood warning sign at the entrance to the parking area with wording approved by the Floodplain Administrator
6. All electrical and mechanical equipment must be elevated above the Flood Protection Elevation as shown on the original approved subdivision plans.
7. An Individual Floodplain Development Permit must be obtained for all development.
8. All conditions dependent on elevation measurements must be confirmed by a Professional Land Surveyor.
9. These conditions must be completed before a Certificate of Occupancy can be issued for the new buildings.

Based upon the above findings of fact, the Board concludes that the applicant has met each of the three standards stated in § 9-87 of the Floodplain Regulations, and more specifically:

1. There was a showing of good and sufficient cause to grant the variance.
2. There was a determination that failure to grant the variance would result in exceptional hardship.
3. There was a determination that granting the variance will not result in increased flood heights (unless the requirements of Section 9-102 are met), additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with other existing local laws or ordinances.

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

10/16/2020
Date

**DECISION FILED IN THE
PLANNING DEPARTMENT:**

 Recoverable Signature



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

10/23/2020
Date