



Daniel and Amy Fain
C/O David W. Murray, The Odom Firm, PLLC
624 E. Kingston Ave
Charlotte, NC 28203

**RE: VARIANCE
624 E. KINGSTON AVE
CASE NUMBER 2020-069**

To Whom It May Concern:

At its remote meeting on August 25, 2020, the City of Charlotte Zoning Board of Adjustment (“Board”) **GRANTED** two variances to allow improvements within the established side yards:

1. A 4 foot reduction to the required 5 foot side yard on the right side of the property;
2. A 2 foot reduction to the required 5 foot side yard on the left side of the property.

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

1. The applicants are Daniel and Amy Fain (represented by David W. Murray, the Odom Firm, PLLC).
2. The proposed site is located at 624 E. Kingston Avenue, further identified as tax parcel 123-117-04.
3. The property is zoned R-5 (single family) and is located in the Dilworth Historic District.
4. The property is shown as lot 9 in Block 61 of an undated subdivision plat Map Book 230 Page 60.
5. A single family structure, built in 1931, currently occupies the site.
6. The single family home on the site is a nonconforming structure, because it was constructed prior to current ordinance regulations and does not meet the required side yard.
7. Per Code Section 9.205(1)(f), the required side yard for the property is 5 feet.
8. The existing home has established side yards of approximately 3 feet on the left side, and 1 foot on the right side, which are encroachments of approximately 2 and 4 feet.
9. The applicant wishes to replace the existing flat roof on the home with a pitched roof in portions of the home that encroach into the required side yard.
10. 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.
11. The proposed angled roof will not meet the provisions of Code Section 7.103(5), because it is a vertical expansion of the existing side yard encroachments.
12. The applicant is requesting two variances to allow the proposed roof improvements within the established side yards: 1) A 4 foot reduction to the required 5 foot side yard on the right side of the property; and 2) A 2 foot reduction to the required 5 foot side yard on the left side of the property.
13. The hardship does not result from actions taken by the applicant.
14. The home is an existing nonconforming structure with established side yards of approximately one and three feet.
15. The applicant states the current side yard encroachments date back to approximately 1960.
16. Granting the variance will not alter the essential character of the neighborhood.
17. Granting the variance will not expand the established side yards.

18. The applicant states that the portions of the existing home that encroach into the required side yards are flat and atypical for the neighborhood.
19. Granting the variance to construct a sloped roof will allow the home to be visually integrated with the sloped rooflines of the homes in the surrounding neighborhood.
20. The majority of the home is compliant with the required side yard.
21. Granting the variance is consistent with the spirit and intent of the Zoning Ordinance.
22. The applicant states that granting the variance will allow a roofline that is compliant with historic district standards.
23. If the variance is granted, the proposed improvements will require Historic District Commission approval.
24. Granting the variance will not adversely affect adjacent or contiguous properties.
25. The adjacent parcel to the left of the subject property is used for parking for Dilworth Methodist Church and will not be impacted by expanding the encroachment.
26. The encroachment is not easy to detect.
27. The applicant states there is a large established oak tree that serves to screen the encroachment on the right side of the home from the street and neighboring property.
28. The left side encroachment is screened from view of East Kingston Avenue by existing bushes and trees.
29. The granting of the variance will ensure public safety.
30. The applicant states that the variance will allow the owners to eliminate the existing flat roof that repeatedly leaks and requires ongoing maintenance.
31. Due to the home's established side yards of 1 and 3 feet, the existing vegetation that screens the encroachments, and the flat roof that is out of character with the surrounding area and in need of repair, hardships exist which make it difficult to construct a new roof out of the established side yard.

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

9/8/20

Date

**DECISION FILED IN THE
PLANNING DEPARTMENT:**

 Recoverable Signature



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