



Susan H. Murray  
178 W. Chestnut Street  
Asheville, NC 28801

**RE: VARIANCE  
1824 HALL AVENUE  
CASE NUMBER 2020-099**

To Whom It May Concern:

At its remote meeting on January 26, 2021 the City of Charlotte Zoning Board of Adjustment (“Board”) **denied** a requested variance from the 25% encroachment allowance to allow a deck to encroach 42.5% into the required rear yard.

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

1. The applicant is Susan Murray.
2. The proposed site is located at 1824 Hall Avenue, further identified as tax parcel 095-074-01.
3. The property is zoned R-22 MF (multi family) and is 0.09 acres.
4. Per Code Section 9.305(1)(g), the minimum required rear yard for R-22 MF is 20 feet.
5. The rear wall of the existing home on the property is approximately 20.3 feet from the rear property line, and complies with the required rear yard for R-22 MF zoning.
6. Previously, there was a deck with a depth of 5 feet on the rear of the home that is shown on a survey dated March 29, 2010.
7. Per Code Section 12.106(3)(b) a deck is permitted to encroach up to 5 feet, or 25% into the 20 foot required rear yard.
8. The previous 5 foot deck was compliant with the Zoning Ordinance deck encroachment provision.
9. Per the applicant’s testimony, the deck was expanded in 2019 to a depth of 16 feet, which is an 80% encroachment into the 20 foot required rear yard and approximately 4.4 feet from the rear property line. The newly constructed deck is shown on a survey dated October 6, 2020.
10. No permit was obtained for the deck construction.
11. On September 10, 2020 a Notice of Violation was issued for the deck construction. The violation was detected by field observation.
12. The applicant originally requested a variance of 55% from the 25% rear yard encroachment allowance to permit the deck to encroach 80% into the rear yard of the property, as it exists today.
13. At their regular December 8, 2020 meeting, the Zoning Board of Adjustment voted to continue the public hearing to allow the applicant to revise their original variance request.
14. The applicant’s revised variance request is for 17.5% from the 25% rear yard encroachment allowance to permit the top story of the deck to encroach 42.5% into the required rear yard. Further, the applicant proposes to detach the bottom of the deck, separating it from the home and the second story of the deck, so that it will no longer require a variance.
15. Staff has advised the applicant that in order to be considered a detached accessory structure, the bottom story of the deck must not be attached to either the home or the second story of the deck structure.

16. Unnecessary hardship would not result from strict application of the ordinance because a small deck with a 5ft width can still be constructed and the applicant will be required to renovate the deck regardless of whether the variance is granted or denied.
17. There was a previous deck on the home that was compliant with the Zoning Ordinance provision for 25% encroachment into the 20 foot rear yard.
18. The hardship is not peculiar to the property due to similar topography and drainage issues on the property and in the neighborhood and results from personal circumstances and conditions common to the neighborhood.
19. The applicant states the requested variance is for value and comfort, and to supplement the income of the owner.
20. The 25% rear yard encroachment provisions for attached decks are shared by all single family detached homes.
21. The hardship is not the result of actions taken by the applicant.
22. No permits were obtained for the deck prior to the acquisition of the property by the applicant.
23. Granting the variance will alter the essential character of the neighborhood.
24. The requested variance is easily detected.
25. The topography of the site elevates the deck causing increased visibility.

**Conclusion of Law:**

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 does not 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.

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,



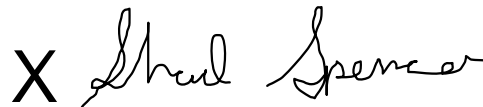
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Rick Sanderson, Chairperson

1/28/2021

\_\_\_\_\_  
Date

**DECISION FILED IN THE  
PLANNING DEPARTMENT:**

 Recoverable Signature



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Shad Spencer  
Zoning Administrator - 2/1/2021  
Signed by: sspencer@ci.charlotte.nc.us