



JAMES BELLEW
JEANNE BELLEW
3627 OAKWOOD AVENUE
CHARLOTTE, NC 28205

**RE: VARIANCE
3627 OAKWOOD AVENUE
CASE NUMBER 2020-121**

To Whom It May Concern:

At its remote meeting on February 23, 2021 the City of Charlotte Zoning Board of Adjustment (“Board”) **denied** a 9 foot variance from the required 15 foot rear yard for an Accessory Dwelling Unit (ADU).

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

1. The applicants are James and Jeanne Bellew.
2. The proposed site is located 3627 Oakwood Avenue, further identified as tax parcel 091-061-14.
3. The property is zoned R-5 (single family) and is approximately 0.146 acres.
4. The single family dwelling on the property was built in 2015.
5. In January 2018 the applicant submitted a building permit application with associated plans for an ADU (accessory dwelling unit) on the property.
6. Per Code Section 12.407(6)(c), an ADU shall be located in the rear yard and not be any closer than 15 feet to a rear property line or along any side property line within the required side yard dimension.
7. Per Code Section 9.205(f), the required side yard dimension for the property is 5 feet.
8. The applicant’s plot plan on the permit application showed the proposed location of the structure 5 feet from the side and rear property lines, which is compliant with the 5 foot minimum side yard, but not compliant with the 15 foot minimum rear yard required for an ADU.
9. The plans were revised in February 2018 to remove the kitchenette dwelling component so that the structure would not be classified as an ADU, and would instead be subject to accessory structure standards.
10. Per Code Section 12.106(2)(a), accessory structures located in the established rear yard are subject to a minimum 3 foot side and rear yard.
11. On November 2, 2020, a Notice of Violation was issued when the accessory structure was converted to an ADU per Code definition, because it is being used as a residence with a bathroom and kitchen facility.
12. The use of the structure as an ADU resulted in noncompliance with the 15 foot minimum ADU rear yard.
13. This came to staffs attention through a complaint received about another accessory structure in the rear of the subject property.
14. The physical survey of the subject property shows the encroachment of the ADU approximately 9 feet into the required rear yard.
15. The applicant is requesting a variance of 9 feet from the required 15 foot rear yard for an ADU.
16. The hardship is the result of actions taken by the applicant.

17. The applicant created the hardship by changing the use of the structure to an ADU causing a greater rear yard requirement.
18. The applicant states they were not told by their contractor of the increased rear yard required for an ADU at the time of permitting.
19. There is adequate rear yard area that would allow the applicant to relocate the structure in compliance with the 15 foot rear yard and obtain an ADU permit.
20. Zoning compliance can be obtained by ceasing the use of the structure as an ADU.
21. The hardship does not result from conditions peculiar to the property (location, size, topography).
22. The property is similar in size to other properties in the area.
23. There is no significant topography or grade changes on the property.
24. There is not sufficient evidence of practical difficulty or unnecessary hardship.
25. Due to the other available options of ceasing the ADU use of the structure, and building on other compliant areas on the property, there is not an unnecessary hardship that would result from strict application of the Ordinance.

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 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 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,

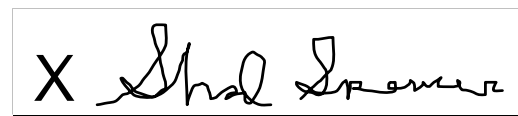


Rick Sanderson, Chairperson

___3/1/2021_____
Date

**DECISION FILED IN THE
PLANNING DEPARTMENT:**

 Recoverable Signature



Shad Spencer
Zoning Administrator - 3/1/2021
Signed by: sspencer@ci.charlotte.nc.us