



NEIL HITCHMAN
CORA HITCHMAN
11600 OLD SURRY LANE
CHARLOTTE, NC 28277

**RE: VARIANCE
11600 OLD SURRY LANE
CASE NUMBER 2021-020**

To Whom It May Concern:

At its remote meeting on May 25, 2021 the City of Charlotte Zoning Board of Adjustment (“Board”) **granted** a 25 foot variance from the 55 foot required setback along Williams Pond Lane to construct a pool.

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

1. The applicant is Neil Hitchman.
2. The proposed site is located at 11600 Old Surry Lane, further identified as tax parcel 229-243-16.
3. The approximately 0.42 acre property is zoned R-3 (single family).
4. There is currently a single family dwelling on the property.
5. The single family dwelling is oriented with the front of the home facing the bulb of a cul-de-sac on Old Surry Lane and the rear of the home facing Williams Pond Lane.
6. Per Code Section 9.205(1)(e2), Footnote 1 & 12.102(4), since the setback and rear yard both abut public streets, the required rear yard is the same as the required setback. The required setback for the R-3 zoning district is 30 feet.
7. The subject property is identified as Lot 16 in Block 5 of Plat Map Book 21 Page 385 recorded in 1986 and shows a 55 foot setback along Williams Pond Lane.
8. Per Code Section 9.205 Footnote 1, setbacks shown on a recorded plat supersede required setbacks for the zoning district, therefore, a 55 foot setback is required along Williams Pond Lane.
9. Per Code Section 12.106(1) & (2)(a) no principal or accessory structures shall be located within any setback.
10. The home on the property was built in 1988.
11. A survey dated April 19, 2021, provided by the applicant shows an established rear yard of 40.8 feet, which is a 14.2 foot encroachment into the 55 foot setback along Williams Pond Lane.
12. The home is a nonconforming structure and was compliant at the time of construction in 1988, because Ordinance Petition #2014-088 adding Footnote #1 to Section 9.205(1) in which the setback shown on the recorded plat supersedes the required setback, was not approved by City Council until October 20, 2014.
13. On January 20, 2021, the applicant’s pool contractor applied for building permit #B3899004 to construct the proposed pool, but the permit was denied by zoning staff because the proposed pool encroaches into the 55 foot setback.
14. On February 18, 2021 an application was received for a 38 foot variance from the 55 foot setback along Williams Pond Lane to construct the pool.
15. Staff did believe this initial request met the criteria for granting a variance because the resulting setback was 17 feet, which is less than the 30 foot setback required in the R-3 zoning district.

Further, a sealed survey was not provided with the application, so the exact variance needed could not be determined.

16. At their regular meeting on March 30, 2021, the Zoning Board of Adjustment continued the public hearing so that the applicant could provide a sealed survey showing the exact variance needed for staff's final review and recommendation.
17. The applicant has since submitted a sealed survey dated April 19, 2021 and an addendum to their variance application to reduce their requested variance.
18. The applicant is currently requesting a 25 foot variance from the required 55 foot setback along Williams Pond Lane to construct the pool.
19. The current variance request is consistent with the spirit and intent of the zoning ordinance by imposing the required R-3 setback of 30 feet.
20. The hardship is a not a result of actions taken by the applicant.
21. The applicant states they were unaware of the 55 foot setback requirement until permitting staff notified the pool company.
22. The hardship results from conditions peculiar to the property.
23. Since the time the plat was recorded in 1986, and the home was built in 1988, the I-485 Interchange Analysis Plan was approved in 1999, and street improvements outlined in the plan were made to Williams Pond Lane in 2001.
24. The permitted building area for accessory structures is decreased for this property because of the setback along Williams Pond Lane.
25. Per Section 12.106(2)(a), without the imposition of a setback along Williams Pond Lane, an accessory structure would be permitted up to 3 feet from the side and rear property lines.
26. Granting the variance will not change the character of the area.
27. The encroachment would not be easily detected because of screening by a fence, vegetation, retaining wall and 4 foot grade change along Williams Pond Lane.
28. Granting the variance will not impact public safety.
29. Due to the increased setback requirement for the property, the completion of street improvements along Williams Pond Lane, and elements that cause the screening of the property from Williams Pond Lane, unnecessary hardships would result from the strict application of the Ordinance.

Conclusion of Law for modified variance:

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,

Patrick Welch

Patrick Welch, Chairperson

05/26/2021

Date

**DECISION FILED IN THE
PLANNING DEPARTMENT:**



Recoverable Signature

X *Shad Spencer*

Shad Spencer

Zoning Administrator - June 2, 2021

Signed by: 4370c57f-ee18-462b-b92c-d54f5ed20af9