



JEFFREY W. MONTGOMERY  
C/O TY SHAFFER  
CAROL M. MONTGOMERY  
3109 CUTCHIN DRIVE  
CHARLOTTE, NC 28210

**RE: VARIANCE  
12317 HAYMARKET ROAD  
CASE NUMBER 2021-031**

To Whom It May Concern:

At its remote meeting on April 27, 2021 the City of Charlotte Zoning Board of Adjustment (“Board”) **granted** a 50 foot variance from the required 100 foot Mountain Island Lake Watershed Overlay buffer in order to construct a single family home.

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

1. The applicants are Jeffrey W. and Carol M. Montgomery, represented by Ty Shaffer .
2. The proposed site is located at 12317 Haymarket Road, further identified as tax parcel 023-151-08.
3. The subject parcel is unincorporated and located within Charlotte’s sphere of influence and zoning jurisdiction.
4. The parcel is zoned R-5 (single family) and within the CA-4 (Critical Area 4) of the MIL (Mountain Island Lake) Watershed Overlay.
5. The parcel is identified as lot 19 on Plat Map Book 18 Page 111 recorded on June 30, 1977.
6. The site is approximately 0.694 acres and contains a manufactured home that was located on the property in 1975.
7. Per Code Section 10.508(1)(a) the property is subject to a 100 foot undisturbed vegetative buffer measured from the normal pool elevation of Mountain Island Lake.
8. Per Code Section 10.508(3) no permanent structures or any other disturbance of existing vegetation shall be allowed within the buffer.
9. The applicants wish to redevelop the site with a single family home.
10. The applicants are requesting a 50 foot variance from the required 100 foot MIL Watershed Overlay buffer in order to construct the new single family home.
11. The hardship was not caused by the applicants.
12. The lot was subdivided in 1977, prior to the adoption of the MIL regulations in 1993.
13. The existing development on the property dates to 1975, which also predates the MIL ordinance requirements.
14. The hardship results from the strict application of the ordinance.
15. The 100 foot watershed buffer encumbers most of the property.
16. Strict application of the ordinance requirements would not permit the property to be redeveloped.
17. Per Code Section 9.205(1)(e2)Footnote 1, the property has a 30 foot setback as shown on the approved plat, which is an additional 10 feet in depth from the minimum 20 foot setback required in the R-5 zoning district.
18. The additional 10 feet of setback depth contributes to the development constraints of the property.

19. The requested variance is in keeping with the neighborhood character and will not adversely affect adjacent or contiguous properties.
20. On February 22, 2005, the Zoning Board of Adjustment granted variance #2005-013 for the subject property which permitted a 48 foot variance into the required 100 foot watershed buffer with the following conditions: “1) the applicant is obligated to meet minimum impervious area calculations – including the boat ramp; 2) applicant to work with and comply with Water Quality department’s mitigation conditions – specifically addressing additional shrubbery around the property.”
21. A building permit was not obtained for the subject property following the 2005 variance. Therefore, the variance expired per Code Section 5.111 which requires a building permit be obtained within two years from the date the Board rendered its decision.
22. Five other variance requests from the 100 foot MIL buffer requirements have been granted for properties in the surrounding area.
23. The applicant has provided elevations that are in character with residential development in the area.
24. Per Code Sections 10.403(1) & 11.302(2), manufactured homes are permitted in the Manufactured Home Overlay District and the Manufactured Housing District but they are not listed as a permitted use in the R-5 zoning district.
25. Redevelopment of the property will bring further compliance because the existing manufactured home on the property will be replaced with a single family detached dwelling, which is a permitted use in the R-5 zoning district.
26. The requested variance will uphold public safety.
27. Per Code Section 10.508, disturbance of the MIL buffer area requires mitigation.
28. Charlotte-Mecklenburg Storm Water Services is in support of the variance request with an approved mitigation plan.
29. The condition of a mitigation plan will ensure the development along the waterfront will not negatively impact water quality.
30. The existing septic system on the property is proposed to be abandoned and the new development will connect to the sanitary sewer system.
31. The applicant has agreed to the conditions of compliance with the 24% maximum built upon area allowance of the MIL Watershed Overlay and providing a mitigation plan. Single family homes developed on existing lots are exempt from the MIL Watershed Overlay maximum built upon area provisions per Code Section 10.503(2).
32. Due to the previously granted 48 foot variance from the 100 foot buffer, the location of the MIL buffer which covers most of the property, and the additional 10 foot of setback depth imposed by plat, hardships exist that make it difficult to redevelop the property without the requested variance.

**Conditions:**

1. The redevelopment of the property be compliant with the 24% maximum built upon area allowance per Code Section 10.506(1)(c).
2. A mitigation plan be approved by Charlotte-Mecklenburg Storm Water Services per Code Section 10.508(4).
3. A double-walled silt fence be installed and maintained during construction activities on the site.

**Conclusion of Law:**

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.

Decision Letter  
Case # 2021-031

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

04/28/2021  
Date

**DECISION FILED IN THE  
PLANNING DEPARTMENT:**

4/30/2021

X *Shad Spencer*

---

Shad Spencer  
Zoning Administrator - April 30, 2021  
Signed by: 4370c57f-ee18-462b-b92c-d54f5ed20af9