



JOHN IBACH
SANDRA IBACH
5600 WINTERCREST LANE
CHARLOTTE, NC 28209

**RE: VARIANCE
5600 WINTERCREST LANE
CASE NUMBER 2021-034**

To Whom It May Concern:

At its remote meeting on May 25, 2021 the City of Charlotte Zoning Board of Adjustment (“Board”) **granted** a 3.1 foot variance from the required 15 foot street side yard for an existing addition to the principal structure.

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

1. The applicants are John and Sandra Ibach.
2. The proposed site is located at 5600 Wintercrest Lane, further identified as tax parcel 177-052-09.
3. The property is zoned R-3 (single family).
4. The site is 0.37 acres and contains a single family home.
5. The subject property is a corner lot, with the front of the lot facing Wintercrest Lane, and the right side of the lot located along Arundel Drive.
6. Code section 12.102(6) requires a minimum 15 foot street side yard along the Arundel Drive right-of-way, which is half of the required 30 foot setback per Code Section 9.205(1)(e2).
7. Code section 12.106(1) states that principal structures are not permitted within any setback or side yard.
8. According to a survey dated February 13, 2009, the existing home had an established street side yard of approximately 33.5 feet prior to 2009, which is compliant with the minimum required 15 foot side yard.
9. In 2009, Building Permit B2000004 was issued for an addition to the street side of the home, and showed a 15 foot required street side yard.
10. The addition was constructed and encroached into the 15 foot street side yard approximately 3.1 feet.
11. The encroachment was discovered though a survey dated April 13, 2021, commissioned by prospective buyers of the property.
12. The applicants are requesting a 3.1 foot variance from the required 15 foot street side yard for compliance of the home addition that was constructed in 2009, so that they may sell the property.
13. The hardship does not result from actions taken by the applicant.
14. The applicant’s provided the building permit that was obtained for the addition and stated that they were unaware of the encroachment when they had the addition built in 2009.
15. Per Code Section 9.205(1)(e1), setbacks in the R-3 zoning district are measured from the street right-of-way. Per Code Section 12.102(6), the required 15 foot street side yard, which is half of the required setback, would also be measured from the street right-of-way.
16. Staff believes that the contractor for the building addition in 2009 may have mistakenly measured the street side yard from the curb line instead of the street right-of-way, and thought to comply with zoning.

17. Unnecessary hardships would result from strict application of the Ordinance.
18. Strict application of the ordinance would require a portion of the 2009 addition to be demolished.
19. The hardship results from conditions peculiar to the property.
20. The subject lot is a corner lot which requires a greater side yard dimension when abutting a street than the typical side yard dimension when abutting another lot.
21. The subject property is identified as Lot 6 in Block 2 of Plat Map Book 8 Page 281 recorded in 1958 and shows a 50 foot setback along Wintercrest Lane.
22. Per Code Section 9.205 Footnote 1, setbacks shown on a recorded plat supersede required setbacks for the zoning district, therefore, a 50 foot setback is required along Wintercrest Lane.
23. The 50 foot setback imposed on the property by plat is 20 feet greater than the required 30 foot R-3 setback, and reduces the allowed building area for the property.
24. Granting the variance will not alter the essential character of the neighborhood.
25. The applicant has submitted photographs of the home addition which is in character with the other homes in the area.
26. Granting the variance will not adversely affect adjacent or contiguous properties.
27. The encroachment is not easy to detect and has been in existence for 12 years.
28. The encroachment is minor and exceeds the 2 foot administrative deviation provision in Section 4.107(2), for encroachments caused by an inadvertent errors during construction, by only 1.1 feet.
29. Hardships for the granting of the variance are due to the home's greater side yard dimension required of a corner lot, and the greater setback requirement on the recorded plat which lessen the allowable building area.

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.

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