



CLARY ARCHITECTURE, PLLC  
5723 LAKE PROVIDENCE LANE  
CHARLOTTE, NC 28277

**RE: VARIANCE  
4604 WEST SUGAR CREEK ROAD  
CASE NUMBER 2021-042**

To Whom It May Concern:

At its remote meeting on May 25, 2021 the City of Charlotte Zoning Board of Adjustment (“Board”) **granted** a 10 foot variance from the required 40 foot transitional setback to construct a deck.

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

1. The applicant is Clary Architecture, PLLC.
2. The proposed site is located at 4604 W. Sugar Creek Road, further identified as tax parcel 043-105-09.
3. The property is zoned INST(CD) (Institutional Conditional District) and is approximately 0.66 acres.
4. The property abuts West Sugar Creek Road which is classified as a Class III Major Arterial thoroughfare and has an existing right-of-way of 25 feet measured from the street centerline.
5. Per Code Section 12.103(1), the minimum setback along a thoroughfare shall be measured from the ‘proposed right-of-way’ line, which is established by thoroughfare classification. Since West Sugar Creek Road is classified as a Class III Major Arterial, the ‘proposed right-of-way’ is 50 feet measured from the centerline of West Sugar Creek Road.
6. Based on the existing 25 foot right-of-way from the centerline of West Sugar Creek Road, and the required 50 foot ‘proposed right-of-way’, an additional 25 feet of right-of-way is required from the centerline of West Sugar Creek Road.
7. Per Code Section 9.505(1)(d) the required setback in the INST district is 40 feet.
8. Per Code Section 12.103(2), a ‘transitional setback’ shall be established along a thoroughfare that has an existing right-of-way which is not as wide as the right-of-way established for that thoroughfare.
9. Per Code Section 2.201, the ‘transitional setback’ is defined as the area that lies between the existing required setback line and the future required setback.
10. The required 40 foot ‘transitional setback’ along West Sugar Creek Road is measured from the 50 foot ‘proposed right-of-way’.
11. Per Code Section 12.103(2)(a) The ‘transitional setback’ established for lots abutting thoroughfares can be used for any purpose allowed by the particular zoning district, except for uses which are prohibited in the required setbacks.
12. Per Code Section 12.106(1), no principal building or structure shall be located in any setback.
13. The applicant is requesting a 10 foot variance from the required 40 foot transitional setback to construct a deck on the front of the structure.
14. The hardship was not a result of actions taken by the applicants.
15. The hardship results from strict application of the ordinance.
16. The site was developed in 1973 and the principal structure on the site abuts the transitional setback, so no addition could be made to the front of the structure without encroachment into the transitional setback area.

17. The proposed deck will not encroach into the existing or proposed right-of-way, and will be located 30 feet further than the existing required setback.
18. Granting the variance will not adversely affect adjacent or contiguous properties or alter the essential character of the area.
19. The 50 foot 'proposed right-of-way' and 40 foot 'transitional setback' on the subject property create a 90 foot minimum distance permitted from the principal structure to the street centerline of West Sugar Creek Road.
20. The residential property located to the south of the subject property has the 50 foot 'proposed right-of-way' and a '15 foot transitional street side yard' located along West Sugar Creek Road. The result is a 65 foot minimum distance of that structure to the centerline of West Sugar Creek Road, a difference of 25 feet from the subject property.
21. The variance will not impact public safety.
22. Staff has not received opposition from the Charlotte Department of Transportation or the North Carolina Department of Transportation regarding the request.
23. Due to the existing location of the principal structure on the property that abuts the transitional right-of-way, expansion to the front of the principal structure would be difficult without the requested encroachment.

**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