



ROY MICHAUX  
1420 EAST 7<sup>th</sup> STREET, SUITE 100  
CHARLOTTE, NC 28204

**RE: VARIANCE  
8832 HEYDON HALL CIRCLE  
CASE NUMBER 2021-053**

To Whom It May Concern:

At its remote meeting on July 27, 2021 the City of Charlotte Zoning Board of Adjustment (“Board”) **granted** a 16.6 foot variance from the required 30 foot rear yard for an existing addition to the principal structure.

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

1. The original applicants were Lisa and Charles Benzing.
2. On June 28, 2021 the property changed ownership and an addendum was submitted to modify the applicants to Scott and Sarah Fligel (Represented by Roy Micheaux, with Alexander Ricks, PLLC).
3. The proposed site is located at 8832 Heydon Hall Circle, further identified as tax parcel 209-223-52.
4. The property is zoned MX-1 (mixed use) and is occupied by a single family dwelling constructed in 2005.
5. On October 20, 2016, building permit #B3048528 was issued for a 240 square foot unheated covered patio addition to the rear of the home.
6. Per Code Sections 11.205(2) & 9.205(1)(g) the required rear yard is 30 feet which was noted on the building permit.
7. A survey dated May 19, 2021 was commissioned for the sale of the home and shows that the addition encroaches 16.6 feet into the 30 foot rear yard.
8. Staff believes the permit may have been issued under the assumption that the covered patio encroached no more than 25% into the required rear yard, which is 7.5 feet on the subject property, as per the provisions of Code Section 12.106(3), however, the encroachment of 16.6 feet exceeded any encroachment allowance.
9. The applicants stated that the covered patio was enclosed and converted to heated space approximately a year after construction, so any encroachment permitted by Section 12.106(3) was no longer applicable.
10. The applicants are requesting a 16.6 foot variance from the required 30 foot rear yard to bring the encroachment created by addition into compliance and allow a 13.4 foot rear yard.
11. The hardship was not a result of actions taken by the applicants but were a result of actions taken by the previous owner.
12. The previous owners obtained a building permit for the addition that specified the required 30 foot rear yard for the property.
13. If the variance is granted, it will not substantially detract from or alter the essential character of the neighborhood or adversely affect adjacent or contiguous properties.
14. The addition cannot be easily detected because it is on the rear of the property and is bordered by a common open space area.
15. Unnecessary hardships does result from application of the Ordinance.

16. There is area within the allowed building footprint on the right rear of the home where an addition could be located.
17. The applicants state that the property is subject to a sidewalk, landscape, & irrigation easement from the right-of-way to the front building wall of the home, which is 44 feet wide and restricts the ability to make additions to that portion of the property.
18. There is evidence of practical difficulty or unnecessary hardship.
19. The shape and size of the subject property is consistent with other properties within the surrounding community.
20. Other homes in the area appear compliant with the required rear yard.
21. The hardship is peculiar to the applicant's property.
22. The property is identified as Lot 6 on Plat Map Book 43 Page 85.
23. A Common Drive and Community Park Easement in the front of the property is common to lots in the area.
24. There is a common open space area behind the property that is not unique to the property because most of the exterior lots on Heydon Hall Circle abut common open space area to the rear.

**Conclusion of Law:**

1. Unnecessary hardships would result from the strict application of the Ordinance.
2. The hardship does result 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, Chairman

08/04/2021

Date

**DECISION FILED IN THE  
PLANNING DEPARTMENT:**

 Recoverable Signature

X 

Shad Spencer

Zoning Administrator - August 5, 2021

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