



Bradley and Hailey Freeze
4234 Prosperity Church Road
Charlotte, NC 28269

**RE: VARIANCE
4234 PROSPERITY CHURCH ROAD
CASE NUMBER 2022-006**

To Whom It May Concern:

At its remote meeting on February 22, 2022 the City of Charlotte Zoning Board of Adjustment (“Board”) **granted** three variances for compliance of an existing garage and construction of a new single family home:

1. An access variance from the required 15 foot exclusive easement.
2. A variance to allow an existing accessory structure in the established setback.
3. A variance to allow an accessory dwelling unit in the established setback.

The board based its decision on the following findings of facts:

1. The applicants are Bradley and Hailey Freeze.
2. The proposed site is located at 4234 Prosperity Church Road, identified as tax parcel 029-351-04.
3. The property is zoned R-3 (single family) and is approximately 3.746 acres.
4. There is an existing home and garage on the property that were constructed in 1955.
5. The applicants would like to obtain a permit to construct a new single family home at the rear of the property, maintain the existing garage within the newly established setback, and utilize the existing home as an accessory dwelling unit (ADU) within the newly established setback and not be placed in the rear yard.
6. The subject property does not abut a public street and is accessed by a 20 foot wide shared easement.
7. Per Code Section 12.101(1), a single family detached dwelling is permitted on a lot with a lot size of at least two acres that does not abut a street if the lot has access to a public street by an easement at least 15 feet in width for the exclusive use of the detached dwelling.
8. The lot size is greater than two acres and the easement has the required width. However, the easement is shared and not for the exclusive use of the subject property. Therefore, construction of a new single family home is not permitted per Code Section 12.101(1).
9. The proposed placement of the new home is behind the existing home and garage, which would result in the garage and existing home being located within the established setback.
10. Once the proposed new home is constructed the applicants wish to use the existing home as an ADU.
11. Per Code Section 12.407(6)(c), ADU’s must be located within the rear yard. The ADU would not be permitted in the established setback.
12. Per Code Section 12.106(2)(a), accessory structures are not permitted in the established setback, so the garage would not be permitted in the established setback.
13. The applicants are requesting three variances to construct a new home in the rear of the property, maintain the existing garage, and maintain and utilize the existing home as an ADU: 1) An access variance from the required 15 foot exclusive easement, 2) A variance to allow an existing accessory

structure in the established setback, and 3) A variance to allow an accessory dwelling unit in the established setback and not within the rear yard.

14. The hardship did not result from actions taken by the applicant.
15. The applicants purchased the property in its current configuration in 2020.
16. The hardship results from conditions that are peculiar to the property.
17. The existing 1955 home on the property is 768 square feet and the applicants would like to construct a larger home.
18. The applicants state they would like to keep the existing home as an ADU, but the ADU requirement for rear yard location would prevent this once the new home is constructed behind the existing home.
19. The applicants state they would like to keep the existing garage after the new home is constructed, but the accessory structure requirements would prevent this since the garage will then be located within the established setback of the new home.
20. Granting the variance will not alter the essential character of the area.
21. The home is accessed by an easement. The side in which the easement is located is considered the front of the property and from which the established setback is measured; although, it is not oriented toward any street.
22. The requested variance would not be easily detected since the property cannot be seen from the public right of way of Prosperity Church Road.
23. The applicant has provided architectural elevations they state are in keeping with neighborhood character.
24. Granting the variance is consistent with the intent of the Zoning Ordinance.
25. The property is 3.746 acres in size, which exceeds the minimum 10,000 square foot (0.22 acre) required lot area for the R-3 zoning district.
26. Granting the variance upholds public safety.
27. Although it is shared and not exclusive, there is a 20 foot wide deeded easement for access to the property.
28. The variance would not change the easement but would allow the applicant to obtain a building permit for a new single family home to be constructed on a lot located on a shared 20 foot wide easement, rather than an exclusive 15 foot wide easement.
29. Per the variance application, the applicants offered to purchase the sliver of land which contains the access easement out to Prosperity Church Road in order to obtain street frontage. However, the owner of the property declined to sell.
30. Due to the nonconforming nature of the lot, the existing 20 foot wide shared easement permitting access to the property, the current placement of the existing home and garage on the property, and the relatively large size of the property for the area, strict application of the ordinance would create a hardship for constructing a new single family dwelling.

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 not secured and substantial justice is not 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.

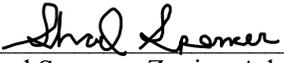
Sincerely,



Deborah Dryden, Co-Chair

3-10-2022
Date

**DECISION FILED IN THE
PLANNING DEPARTMENT:**



Shad Spencer, Zoning Administrator

Date