



CERTIFIED MAIL

Richard B. Fennell and Jon P. Carroll
c/o James, McElroy & Diehl, P.A.
600 South College Street
Charlotte, NC 28202

**RE: VARIANCE
10762 TRAYMORE LANE
CASE NUMBER 12-005**

Dear Richard B. Fennell and Jon P. Carroll:

At its meeting on July 31, 2012, the City of Charlotte Zoning Board of Adjustment (“Board”) **denied** a variance to allow the paved walkway to remain in the required buffer and **granted** a variance with conditions to increase the amount of impervious area allowed.

For Variance #1, the Board based its decision on the following findings of fact:

1. The applicant is Schnider Group, LLC.
2. The property is located at 10762 Traymore Lane, further identified as Government Exhibit #18.
3. The site is zoned R-5 (single-family residential).
4. The property is located in the Lower Lake Wylie Watershed Critical Area.
5. The applicant is requesting a variance to allow a paved walkway to remain in the required buffer.
6. The applicant was issued a Zoning Violation Letter from the City on February 24, 2012, with a compliance date of March 26, 2012.
7. The violation letter stated that the walkway is located in the required 50’ S.W.I.M buffer and that the built upon area exceeds the Lower Lake Wylie Watershed Critical Area requirements of 20 percent.
8. Per Code Section 10.706(1)(a)(i), the maximum allowable built upon area for residential in critical area low density is 20 percent.
9. Per Code Section 10.708(3), no permanent structures, built upon areas, septic tanks systems or any other disturbance of existing vegetation shall be allowed within the buffer.
10. The applicant has constructed a walkway at the rear of the property which has ultimately increased the amount of impervious area.
11. The hardship is personal and not created by the requirement of the Zoning Ordinance but is created by the applicant’s desire to have a walkway.

Based upon the above findings of fact, the Board concludes that the applicant has failed to meet the three standards stated in §5.108(1) of the Ordinance, and more specifically:

1. No practical difficulties or unnecessary hardship exist because:
 - a. The difficulty or hardship is a result of action of the owner of the property.
 - b. The difficulty or hardship is not peculiar to the property in question.
 - c. The difficulty or hardship resulting from the application of these regulations would not prevent the owner from securing a reasonable return or making a reasonable use of the property.
2. The spirit of the regulations will be observed by denying the variance.
3. The public safety and welfare may not be protected and substantial justice not served.

Pursuant to N. C. G. S. Section 160A-388(e2), the Board's decision regarding Variance #1 in Case No. 12-005 may be appealed by a petition for review in the nature of *certiorari* to Superior Court within thirty (30) days from the date stated below, which is the date when the decision of the Board was filed in the Planning Department/Zoning Administration Division, or within thirty (30) days after receipt of the decision by an aggrieved party who filed a written request for such copy with the Clerk to the Board at the time of the hearing of the case, whichever is later.

For Variance #2, the Board based its decision on the following findings of fact:

1. The applicant is Schnider Group, LLC.
2. The property is located at 10762 Traymore Lane, further identified as Government Exhibit #18.
3. The site is zoned R-5 (single-family residential).
4. The property is located in the Lower Lake Wylie Watershed Critical Area.
5. The applicant is requesting a variance to increase the amount of built upon area allowed.
6. The applicant was issued a Zoning Violation Letter from the City on February 24, 2012, with a compliance date of March 26, 2012.
7. The violation letter stated that the walkway is located in the required 50' S.W.I.M buffer and that the built upon area exceeds the Lower Lake Wylie Watershed Critical Area requirements of 20 percent.
8. Per Code Section 10.706(1)(a)(i), the maximum allowable built upon area for residential in critical area low density is 20 percent.
9. Per Code Section 10.708(3), no permanent structures, built upon areas, septic tanks systems or any other disturbance of existing vegetation shall be allowed within the buffer.
10. The applicant has constructed a walkway at the rear of the property which has ultimately increased the amount of impervious area.
11. Government Exhibit #18 shows one commonly owned parcel as documented by deed.
12. The property has a steep slope.
13. The applicant was issued a Certificate of Occupancy on August 21, 2009, for the improvements shown on Government Exhibit #18 except walkway that is in the S.W.I.M. buffer.
14. There were no improvements added to the property after August 11, 2009, except walkway.
15. The existing drainage system helps remediate the effects of the built upon area.
16. It is unreasonable to require the owner to remove sufficient built upon area to comply with the 20 percent.

Based upon the above findings of fact, the Board concludes that the applicant has met each of the three standards stated in § 5.108(1) of the Ordinance, and more specifically:

1. Practical difficulties or unnecessary hardship would result from strict application.
2. Public safety and welfare has been protected and substantial justice done.

Based upon the above findings of fact, the Board places the following conditions on Variance #2:

1. Compliance with the mitigation plan described in Petitioner's Exhibit 6.
2. Build upon area of the property limited to 28.6%.
3. 28.6% build upon allowed within current footprint subjection to condition #4.
4. Petitioner has to keep and maintain the existing drainage system.
5. If any build upon area is removed, then it may not be replaced; subject to repair and maintenance.
6. The parcel stays in common ownership.

All applicable permits must be obtained from the Planning Department, which has been notified of this decision. The Ordinance § 5.111, 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,

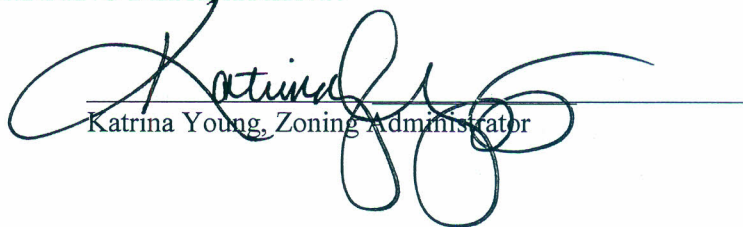


Randy Fink
Chairperson

8/24/2012
Date

DECISION FILED IN THE PLANNING DEPARTMENT:

August 28, 2012
Date



Katrina Young, Zoning Administrator