

Variance Application - Form 2
Zoning Board of Adjustment
City of Charlotte

Date Filed: 1/13/2012 Case Number: _____ Fee Collected: \$415.00

Has work started on this project? YES NO **Work already completed.**
 If yes, Did you obtain a building permit? YES NO If yes, attach a copy.
 Have you received a Notice of Violation for this project? YES NO If yes, attach a copy.
 Has this property been rezoned? YES NO If yes, Petition Number: _____

(1) What zoning ordinance section numbers are you seeking a variance from? Please list each section, the requirement and the requested variance.

Item	Code Section	Code Requirement	Variance Request
<i>Example</i>	<i>9.205 (b)(2)</i>	<i>15 min rear yard</i>	<i>35 foot rear yard (10% reduction from requirement)</i>
A	10.708(1)(a)	50 foot minimum buffer	Allowance for paved walkway, as built.
B	10.706(1)(a)(i)	20% Maximum B.U. Area req.	Relaxation of the maximum B.U. req. to allow applicant's home to remain on the subject property.
C			
D			
E			

(2) Please describe why the variances requested are necessary.

<p>A. The variance is necessary to prevent a hardship and allow a paved walkway to remain on the subject property and provide a reasonable use of the sloped backyard area, for purposes of accessing applicant's boat dock. Photographs showing the walkway are attached hereto as Exhibit A. The walkway is the only means of access for applicant's elderly parents and parents-in-law, who are wheelchair bound. Applicant has engaged the services of Andrew Zoutewelle to complete an updated survey of the property that will show the walkway and requested variance. Mr. Zoutewelle believes the survey will be completed by January 17, 2012. Applicant will supplement this application with the survey when it is received. Pursuant to Section 10.709 of the Code, applicant is willing to implement a site-specific mitigation plan approved by Charlotte Mecklenburg Storm Water Services, as a condition to the requested variance.</p>
<p>B. Applicant is not aware that it violated the maximum allowed B.U. requirement. Applicant has engaged the services of Andrew Zoutewelle to complete an updated survey of the property that contains impervious calculations to determine if a violation has, in fact, occurred. Mr. Zoutewelle believes the survey will be completed by January 17, 2012. Applicant will supplement this application with the survey when it is received. If there is a violation, the variance is necessary to prevent applicant from suffering a severe hardship involved in destroying portions of the home on the subject property. A Certificate of Occupancy was issued for the home on August 21, 2009. Prior to receipt of the Notice of Violation in December 2011, applicant had no reason to believe that the 20% maximum B.U. requirement had been violated. Any such violations were completely unintentional and unknown to applicant prior to receiving the violation letter.</p>

(3) THERE ARE PRACTICAL DIFFICULTIES OR UNNECESSARY HARDSHIPS IN THE WAY OF CARRYING OUT THE STRICT LETTER OF THE ORDINANCE. The courts have developed three rules to determine whether, in a particular situation, "practical difficulties or unnecessary hardships" exist. State facts and arguments in support of each of the following:

(a) If the property owner/applicant complies with the provisions of the Ordinance, the property owner can secure no reasonable return from, or make no reasonable use of his property. (It is not sufficient that failure to grant the variance simply makes the property less valuable.)

<p>A. The walkway was built on the backyard area of applicant's property, Lot 31. It extends from the driveway down and around the backyard, ending near applicant's boat dock (see enclosed photographs). This area is sloped away from the home. It is steep and cannot be traversed without difficulty. The area is relatively unusable without the walkway. This is especially true for applicant's elderly parents and parents-in-law, who are unable to walk down the steep slope or the wooden steps leading to the dock. The walkway is their only means of accessing this area.</p>
<p>B. Tearing down portions of the home on the subject property would be devastating. Construction of the home was completed in August 2009. Applicant's agents and builders took steps to ensure compliance with all building and city codes. Applicant would face a serious hardship if required to destroy portions of the home to comply with the 20% maximum B.U. requirement. It would not be feasible to tear down only portions of the home. Doing so would affect the structural integrity of the entire home.</p>

(b) The hardship of which the Applicant complains results from unique circumstances related to the Applicant's land. (Note: Hardships common to an entire neighborhood, resulting from overly restrictive zoning regulations, should be referred to the Charlotte-Mecklenburg Planning Department. Also, unique personal or family hardships are irrelevant since a variance, if granted, runs with the life of the land.)

<p>A. As described above, the topography of applicant's land is such that a walkway is the only means by which elderly persons, including applicant's family members, may access the boat dock and backyard areas of the subject property. Due to the slope of the property, the walkway could not have been built on other areas of the property and still provide access to the dock, below.</p>
<p>B. Applicant was not aware that the home violated the 20% maximum B.U. requirement. Applicant relied on the homebuilder to ensure that construction of the home complied with all building, zoning and other governmental regulations.</p>

(c) The hardship is not the result of the Applicant's own actions.

<p>A. Applicant did not contribute to the slope of the land. To the contrary, certain structures that preexisted on the land and were located directly in the buffer area (a large retaining wall and steps on either side) were removed by applicant when he initially purchased the property, and efforts were taken to minimize the slope of the land in those areas.</p>
<p>B. Applicant was not aware that it violated the 20% maximum B.U. requirement. Applicant relied on the homebuilder to ensure that construction of the home complied with all building, zoning and other governmental regulations.</p>

(4) THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ORDINANCE AND PRESERVES ITS SPIRIT. (State facts and arguments to show that the requested variance represents the least possible deviation from the letter of the Ordinance to allow a reasonable use of the land; and, that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood.)

A. The walkway is in harmony with the general purpose and intent of the ordinance and will not substantially detract from the character of the surrounding neighborhood because (i) it does not in any way hamper or obstruct the flow of water; (ii) it is flat and only 3 feet wide; (iii) it represents a small modification to what was originally there; (iv) no trees or other vegetation were removed to allow for its construction; (v) it is aesthetically pleasing and harmonious with the surrounding neighborhood; and (vi) it has had no adverse effect whatsoever on the neighboring properties.

B. Applicant's home is in harmony with the general purpose and intent of the ordinance and will not substantially detract from the character of the surrounding neighborhood (i) it is aesthetically pleasing; (ii) it conforms to the general nature and characteristics of the neighborhood; (iii) any unintentionally violation of the maximum B.U. requirement has existed since 2009 and has never been an issue in the neighborhood; and (iv) any unintentional violation of the maximum B.U. requirement does not adversely affect the neighboring properties.

(5) THE GRANTING OF THE VARIANCE SECURES THE PUBLIC SAFETY AND WELFARE AND DOES SUBSTANTIAL JUSTICE. (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the Applicant.)

A. The walkway provides a safe means of reasonably accessing the boat ramp while not causing any harm to surrounding property owners. It represents a minor deviation from the surrounding property. Granting the requested variance to allow the walkway to remain on the subject property will continue these beneficial uses. If the requested variance is not allowed and the walkway is destroyed, applicant and his family members will suffer great harm, while any benefit to the general public will be minimal. A balancing of the interests reveals that the risk of harm in allowing the variance is greatly outweighed by the detriment resulting from its denial. Consistent with Section 10.709 of the Code, Applicant is ready, willing and able to consider all necessary mitigation efforts, including the implementation of an agreed-upon site-specific mitigation plan designed and approved by Charlotte Mecklenburg Storm Water Services, as a condition to allowing the walkway to remain on the subject property.

B. Any violation of the 20% maximum B.U. requirement was wholly unintentional and has not been shown to have harmed the surrounding properties in any way. If the variance is granted, the status quo is maintained and no one will be negatively affected. If it is denied, applicant faces the devastating prospect of destroying portions of the home. This hardship substantially outweighs any conceived benefit to the general public in enforcing the strict letter of the ordinance.

Hearing Request Application - Form 1
Zoning Board of Adjustment
City of Charlotte

Sonda Kennedy
ZBA Clerk

Date Filed: 1/13/2012

Case Number: 12 - 005

Received by: _____

Instructions

This form must be filed out completely. Please attach the appropriate additional form depending on your request type along with required information as outlined in the appropriate checklist. Please type or print legibly. All property owners must sign and consent to this application, attach additional sheets if necessary. If the applicant is not the owner, the owners must sign the Designation of Agent section at the bottom of this form.

The Applicant Hereby (check all that apply):

- Requests a variance from the provisions of the zoning ordinance as stated on Form 2
- Appeals the determination of a zoning official as stated on Form 3
- Requests an administrative deviation as stated on Form 4

Applicant or Agent's Name: Richard B. Fennell and Jon P. Carroll

Mailing Address: James, McElroy & Diehl, P.A., 600 South College Street

City, State, Zip: Charlotte, NC 28202

Daytime Telephone: (704) 372-9870 Home Telephone: N/A

Interest in this Case (please circle one): Owner Adjacent Owner Other

Property Owner(s) [if other than applicant/agent]: The Schnider Group, LLC

Mailing Address: The Schnider Group, LLC

City, State, Zip: P.O. Box 38470, Charlotte, NC 28278

Daytime Telephone: _____ Home Telephone: _____

Property Address: 10762 Traymore Lane, Charlotte, NC 28278

Tax Parcel Number: 19938132 Zoning District: R5

Subdivision Name: _____ Conditional District: YES NO

Applicant Certification and Designation of Agent

I (we) certify that the information in this application, the attached form(s) and documents submitted by me (us) as part of this application are true and correct. In the event any information given is found to be false, any decision rendered may be revoked at any time. I (we) hereby appoint the person named above as my (our) agent to represent me (us) in this application and all proceedings related to it. I (we) further certify to have received, read and acknowledged the information and requirements outlined in this packet.

1/13/2012
Date

[Signature]
Property Owner
Schnider Group, LLC
[Signature]
~~Property Owner~~

Date





