

Hearing Request Application - Form 1

Zoning Board of Adjustment

City of Charlotte

12-015

Sonda Kennedy  
ZBA Clerk

APR 27 2012  
Date Filed: \_\_\_\_\_

Case Number: \_\_\_\_\_

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: Concord Terrazzo Company, Inc., Peter Mielcarek, President  
(Hummingbird Properties LLC)

Mailing Address: 6914 Orr Road

City, State, Zip: Charlotte, NC 28213

Daytime Telephone: 704-921-4940 Home Telephone: \_\_\_\_\_

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

Property Owner(s) [if other than applicant/agent]: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Daytime Telephone: \_\_\_\_\_ Home Telephone: \_\_\_\_\_

Property Address: 10220 Old Concord Rd.

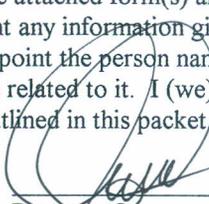
Tax Parcel Number: 05112214 Zoning District: I-2

Subdivision Name: N/A 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.

4-27-2012  
Date

  
Property Owner, Peter Mielcarek, President  
Concord Terrazzo Company, Inc.  
Hummingbird Properties LLC

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

**Date Filed:** \_\_\_\_\_ **Case Number:** \_\_\_\_\_ **Fee Collected:** \_\_\_\_\_

Has work started on this project? YES  NO   
 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 (1)(g)</i>	<i>45 foot rear yard</i>	<i>35 foot rear yard (10 foot reduction from required)</i>
<b>A</b>	12.302 - Table 12.302(a)&(b)	46 foot Class A buffer at rear of property adjoining residential use area across railroad R/W. A 25% reduction is allowed if a wooden fence is erected. Applicant will do this, so a 35' buffer required.	Eliminate requirement for Class A Buffer
<b>B</b>			
<b>C</b>			
<b>D</b>			
<b>E</b>			

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

For I-2 zoning districts, the zoning regulation requires that a 35' Class A buffer be left at the property line between the I-2 property and any adjoining property that is zoned residential (this for a 1.0 acre development or less, with reduction as above). This required buffer cannot be developed because the property adjoins a railroad R/W and, in fact, most of the applicant's property lies within this R/W. Therefore, the applicant has no control over this 35' of land adjoining the residential property. Even if the R/W area could be developed into a Class A buffer, the 35' would take up a portion of the areas the applicant needs to use for raw material storage and a portion of his proposed parking area.
The R/W width is 200', or 100' on each side of the railroad centerline. The centerline of the main railroad line is the property boundary. In addition, there is an existing spur track on the applicant's side of the main line which has been used in the past to serve the property and likely will do so in the future.

(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.)

Obviously, if the zoning ordinance is enforced in this instance, the applicant will be forced to drop the idea of redeveloping this former ready mix concrete site. He has no control over the land needed for the buffer and the only option for him would be to drop back off the railroad centerline to a point that he does "control" to set up the required buffer zone, that being the point at which the property is currently developed. This would be just outside the spur track. A 35' buffer begun on this line would extend far back into the existing developed area (the same area the applicant hopes to redevelop), leaving only a thin strip of useable land (approximately 25' wide) between the required buffer and the required 20' street setback.
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(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.)

The hardship is totally related to the characteristics of this lot. Due to its size, shape, and the fact that it adjoins the railroad, the property cannot be used for the owner's development if the zoning buffer requirement is enforced.

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

The Applicant has done all that he can do to lay out his planned operation in such a way as to meet the 20' street setback, which has already forced the development onto a small footprint. However, there is no way he can work around the buffer requirement. He has done nothing to bring this onto himself.

(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.)

In this particular case, the requested variance is the <u>only</u> possible deviation from the letter of the Ordinance that will allow for the reasonable use of the land. The applicant is willing to install a 6' wooden fence meeting the zoning requirements for a 25% reduction in the buffer width. The resulting 35' buffer would largely be outside of the existing and proposed developed area; however, the area could not be planted.
This being a redevelopment project, it will not detract from the neighborhood. In fact, the proposed redevelopment will help the neighborhood because a vacant and deteriorating site will be eliminated.

(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.)

The development as planned by the Applicant, even without the buffer, will protect the public safety. The site will
be completely fenced and gated. As for the public welfare, the railroad R/W itself (100' on the adjoining owner's
side of the main line) will serve to protect the interests of that owner. Over half of this R/W is currently in trees and
scrub growth. Although there are plans to install another rail line on that side, in all likelihood, at least 20' or so of
the R/W would remain undisturbed. If the Applicant's site is not redeveloped, it will likely remain in its current
unproductive condition as an eyesore to the community. The proposed development, with required landscaping and new
building, would enhance the appearance of the site and thus improve the neighborhood. In addition, the redevelopment
project will result in the addition of several jobs to the community.

