

Variance

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

Date Filed: JUN 28 2012

Case Number: 12-031

Received by: Sonda Kennedy
ZBA Clerk

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: Henry E. Stepp, II (HOA President)

Mailing Address: 106 Colville Rd. Apt. 31B

City, State, Zip: Charlotte, NC 28207

Daytime Telephone: 240-505-9723 Home Telephone: Same as Daytime

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

Property Owner(s) [if other than applicant/agent]: Alson Court Condominium Owners Assoc. Inc.

Mailing Address: 106 Colville Rd. Apt. 31B

City, State, Zip: Charlotte, NC 28207

Daytime Telephone: 240-505-9723 Home Telephone: Same as Daytime

Property Address: 127 South Laurel Ave. Charlotte, NC 28207

Tax Parcel Number: 115-03C-96 Zoning District: R-22MF

Subdivision Name: Eastover 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.

6.27.2012
Date


Property Owner

Date

Property Owner

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

Date Filed: _____ **Case Number:** _____ **Fee Collected:** _____

Has work started on this project?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
If yes, Did you obtain a building permit?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	If yes, attach a copy. See Exhibit K
Have you received a Notice of Violation for this project?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, attach a copy.
Has this property been rezoned?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	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>
A	9.305 (f)	5 foot side yard	3 foot side yard (2 foot reduction from required)
B	12.302	Class C Multi-Fam/Single Fam Buffer	3 ft buffer (12 ft. reduction from required assuming 25% reduction for fence/wall)
C			
D			
E			

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

The carport is a nonconforming structure that was legally constructed in 1939 (see exhibits A & B). The rear wall of the carport acts as both structural support for the carport as well as a retaining wall for the soil behind the wall. A tree located on the adjacent property is pushing on the rear wall of the carport causing the entire structure to lean (see exhibit C). The tree was recently removed per an agreement with adjacent property owner (see exhibit D). The Charlotte Fire Department deemed the structure “unsafe” (see exhibit J).

To make repairs to the carport, it is necessary to remove and rebuild part of the rear wall. To rebuild the rear wall, it is necessary to remove and rebuild part of the roof structure (see exhibit H)

(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.)

The carport is part of a condominium complex and is subject to the NC Condominium Act. Section 47C-3-107(a) of the Act, obligates the HOA to repair the carport. Section 3.3 of the HOA’s Declaration assigns each parking space in the carport to a particular Unit (see Exhibit E) and the use of that covered parking space is appurtenant to the Unit. Please note the phrase “covered parking space.” The covered parking space is defined as a Limited Common Element that makes the owners of particular Units responsible for the maintenance and repair of their particular covered parking spaces. The HOA is obligated through the Declaration to provide the covered parking spaces for certain owners. Courts in North Carolina have consistently characterized HOA Declarations as contracts between the HOA and owners.

Current zoning does permit the HOA to rebuild the rear wall as a retaining wall only. In other words, the HOA can rebuild the wall without the other parts necessary to cover the spaces. However, without the covered parts, the spaces the

HOA would not be able to provide to certain owners what is required by the Declaration. If the HOA is not able to provide the covered paces, certain owners may have grounds for legal action against the HOA based upon the breach of the HOA's covenants.

Subsequently, there may be secondary issues with the other owners concerning who shall be financially responsible for any future repairs made to the parking spaces once the cover is removed. This has the potential to lead to litigation against the HOA.

(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 configuration of the existing buildings does not allow for relocation of the carports to an area outside of the buffer zones. (See exhibit F)

Also the NC Condominium Act further restricts possible options for compliance, as the HOA, through its Board, does not have the power to reclassify or reassign particular elements of the property to achieve compliance.

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

The applicant did not plant the tree that grew into the wall, which necessitated the repairs. The tree is on the adjacent property. The tree was planted after the wall was constructed. (See exhibits F & G)

(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.)

The intent of the single family – multifamily buffer (Section 12.302) is to create visual separation between the two uses. The carport creates that buffer. Furthermore, the rear wall completes and compliments the adjacent owner's backyard. Since the carport has been in place since the inception of the neighborhood, it will not detract from the character of the neighborhood. The carport, once repaired, will essentially be the same nonconforming structure that has existed since 1939. The basic difference after the repairs will be the increased physical soundness of the nonconforming structure.

(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 carport is unsafe. Repairing it will make it safe. The public is not harmed by the granting of the variance. The variance will not change any condition that has existed for over seventy (70) years. The only affected person is the owner of the property. The only way that owner is affected is by the removal of the tree that is actually causing damage to the retaining wall and carport. That owner has no problem with the removal of the tree and the intended repairs to the retaining wall and carport.