

Hearing Request Application - Form 1

Zoning Board of Adjustment

City of Charlotte

Date Filed: February 24, 2012 Case Number: 12-009

Received by: SSH

Instructions

This form must be filled 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: Men's Shelter of Charlotte, Inc. c/o John Carmichael

Mailing Address: 101 North Tryon Street, Suite 1900

City, State, Zip: Charlotte, NC 28246

Daytime Telephone: 704-377-8341

Home Telephone: _____

Interest in this Case (please circle one):

Owner

Adjacent Owner

Other

Property Owner(s) [if other than applicant/agent]: Men's Shelter of Charlotte, Inc. c/o Carson Dean

Mailing Address: P.O. Box 36471

City, State, Zip: Charlotte, NC 28236

Daytime Telephone: 704-975-5640

Home Telephone: _____

Property Address: 3410 Statesville Road, Charlotte, NC

Tax Parcel Number: 077-056-10

Zoning District: I-1

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.

2/24/12
Date

Men's Shelter of Charlotte, Inc.

By: [Signature]
Property Owner

Hearing Request Application - Form 2
Zoning Board of Adjustment
City of Charlotte

Date Filed February 24, 2012 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>	9.205(1)(g)	45 foot rear yard	35 foot rear yard (10 foot reduction from required)
A	12.538(b)	A site containing a homeless shelter shall provide a Class B buffer along all property lines next to residentially zoned and/or used property	Reduce the width of the required Class B buffer as more particularly depicted on <i>Exhibit A</i>
B	12.302(3) and Table 12.302(b)	Width of a Class B buffer for a 1.62 acre parcel shall be a minimum of 33 feet, or 24.75 feet with the installation of a fence or wall in accordance with the Ordinance	Reduce the width of the required Class B buffer as more particularly depicted on <i>Exhibit A</i>
C	12.538(c)	Site devoted to a homeless shelter shall have a minimum size of 2 acres	Reduce the minimum lot size requirement to 1.62 acres
D	9.1105(e)	5 foot side yard	Reduce width of the side yard as depicted on Exhibit A.
E	9.1105(f)	10 foot rear yard	Reduce width of the side yard as depicted on Exhibit A.

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

Men's Shelter of Charlotte, Inc. (the "Applicant") is a North Carolina non-profit corporation and the owner of an approximately 1.62 acre parcel of land located at 3410 Statesville Avenue that is designated as Tax Parcel No. 077-056-10 on the Mecklenburg County Tax Maps (the "Site"). The Site

contains a building (the "Building") that has approximately 8,520 square feet of heated floor area and a parking lot. The Site is zoned I-1.

In 2006, the Applicant began operating an emergency shelter within the Building on the Site. An emergency shelter is defined under the City of Charlotte Zoning Ordinance (the "Ordinance") as a "shelter or facility that provides temporary housing to people and/or families during times of severe life-threatening weather conditions (including, but not limited to hurricanes, natural disasters, extreme temperatures) or other emergency conditions." An emergency shelter is a use permitted under prescribed conditions in the I-1 zoning district. The Applicant's emergency shelter met the prescribed conditions for an emergency shelter set out in Section 12.537 of the Ordinance.

The Applicant operates a homeless shelter located at 1210 North Tryon Street and has done so since 1995. A "homeless shelter" is defined under the Ordinance as "a facility that provides free lodging and one or more of the following services for indigent individuals and/or families with no regular home or residential address, on a non-profit basis. Supportive services include, but are not limited to: provision of meals; assistance in obtaining permanent housing; medical counseling, treatment, and/or supervision; psychological counseling, treatment, and/or supervision; assistance in recuperating from the effects of, or refraining from, the use of drugs and/or alcohol; nutritional counseling; employment counseling; job training and placement; and child care." The Applicant's homeless shelter on North Tryon Street serves only indigent men.

In 2009, the Applicant began to operate a homeless shelter within the Building located on the Site to meet the needs of the community for this service.

A homeless shelter is permitted in the I-1 zoning district provided that it meets the requirements of Section 12.538 of the Ordinance. The requirements or conditions are as follows:

(a) New homeless shelters must be separated from existing homeless shelters by a distance of 800 feet as measured in a straight line from the closest edges of the buildings occupied by homeless shelters to the closest property lines of the homeless shelters.

(b) A Class B buffer shall be provided along all property lines abutting residentially zoned and/or used property.

(c) The property shall have a minimum size of two acres.

The homeless shelter operated on the Site meets the separation requirement from existing homeless shelters, but the Site does not meet the Class B buffer requirement or the requirement that the Site contain a minimum of two acres. Additionally, portions of the Building do not meet the rear yard and side yard requirements of the Ordinance.

As seen on *Exhibit A*, the Site is bounded by Statesville Avenue to the west, Northerly Road to the east and by parcels of land zoned I-1 to the north and south. Residential uses are not located on the parcels of land located to the south of the Site or on Tax Parcel No. 077-056-08 to the north of the Site. However, the structure located on Tax Parcel No. 077-056-01 located to the north of the Site is used for residential purposes (the "Residential Parcel"). Therefore, the only portion of the Site on which a Class B buffer is required is that portion of the Site abutting the Residential Parcel.

More specifically, a 33 foot Class B buffer is required to be located on those portions of the Site that are more particularly depicted on *Exhibit A*. Due to the location of the Building on the Site and the other existing improvements, the entire 33 foot Class B buffer cannot be provided. However, as depicted on *Exhibit A*, a portion of the buffer requirement is being met on the Site. As a result, the Applicant is requesting variances from the provisions of Sections 12.538(b) and 12.302(3) and Table 12.302(b) of the

Ordinance to allow the following variances from the Class B buffer requirement: (1) an approximately 2,127 square foot variance where the existing Building encroaches into the required buffer; (2) an approximately 307 square foot variance where a concrete pad encroaches into the required buffer; (3) an approximately 176 square foot variance where a portion of the parking lot encroaches into the required buffer; (4) and an approximately 167 square foot variance where a portion of the existing trash area encroaches into the required buffer. These requested variances are more particularly depicted on *Exhibit A*.

Additionally, the Applicant is requesting an approximately 43 square foot variance where a portion of the Building encroaches into the required 5 foot side yard, and a variance from the 10 foot rear yard requirement where a portion of the Building encroaches into the required rear yard. These requested variances are more particularly depicted on *Exhibit A*.

With respect to the requirement set out in Section 12.538(c) of the Ordinance that a site containing a homeless shelter have a minimum size of two acres, the Site falls short of this requirement, as it contains 1.62 acres. As a result, the Applicant is requesting a variance of .38 acres from Section 12.538(c) of the Ordinance to allow a minimum property size of 1.62 acres.

(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 Applicant is a non-profit corporation that provides free lodging and services to indigent men in the Building located on the Site. There are an increasing number of homeless men in our community, and there is a dire need for homeless shelters. If the Applicant is required to comply with the relevant provisions of the Ordinance, then the Applicant will be unable to operate a homeless shelter on the Site. The Applicant has owned the Site since 2005, and it does not have the funds to acquire an alternative Site for the homeless shelter it is currently operating on the Site. The requested variances are required to enable the Applicant to fulfill its mission and to provide a needed service to our community. Additionally, the Applicant will be required to demolish portions of the existing Building located on the Site if the variances with respect to the side yard and rear yard are not granted.

- (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 Commission. Also, unique personal or family hardships are irrelevant since a variance, if granted, runs with the life of the land.)

The hardship of which the Applicant complains results from the difficulties associated with converting an existing Building and Site to another use, namely, a homeless shelter. When the Applicant acquired the Site, the Building and the other improvements were in place such that the location, shape and size of the Building and the other improvements could not reasonably be altered to accommodate the full width of the required Class B buffer or to meet the side yard and rear yard requirements. Additionally, the size of the parcel cannot be increased to meet the two acre minimum lot size requirement, as funding to acquire additional property is not available.

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

The hardship is not the result of the Applicant's own actions. The hardship is the result of the relevant requirements of the Ordinance and the challenges that arise when converting an existing Building and Site to another use as described above. Additionally, the side and rear yard encroachments were in place when the Applicant purchased the Site.

- (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 variances requested are the least possible deviations from the Ordinance to allow the Applicant to continue to operate a much needed homeless shelter in the Building located on the Site. If the variances are granted and the homeless shelter is permitted to continue to operate on the Site, the homeless shelter will not detract from the character of the neighborhood. The Site is located on a well traveled major thoroughfare and it is surrounded by parcels of land located in the I-1 and I-2 zoning districts. The single family homes located across Statesville Avenue from the Site are separated from the Site by a four lane major thoroughfare, and vacant parcels of land are located to the south of the Site and across Northerly Road to the west of the Site. To the north of the Site is a parcel of land occupied by a commercial use and a parcel of land occupied by a residential use. Therefore, there is only one residential use that abuts the Site, and this residential use is a non-conforming use that will ultimately be discontinued. The Applicant has operated a homeless shelter on the Site since 2006, and it has not received a single complaint from any adjoining or nearby property owners. Likewise, the side yard and rear yard variances would not detract from the character of the neighborhood.

- (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.)

If the requested variances are denied, the Applicant will be harmed without any benefit to the public in the Applicant's view. If the variances are denied, the Applicant will be unable to continue to operate the homeless shelter located on the Site, and it will be unable to provide a much needed service to homeless men and to the community. The denial of the variance requests will not benefit the public because the continued operation of the homeless shelter will not adversely impact the character of the neighborhood. Likewise, the denial of the side yard and rear yard variance requests will harm the Applicant because it will be required to demolish portions of the Building to bring the Building into compliance with the Ordinance, and this will not benefit the public.

