



Robert & Sandra Gray
5636 McAlpine Farm Road
Charlotte, NC 28226

RE: APPEAL
5626 McAlpine Farm Road
CASE NUMBER 2018-042

To Whom It May Concern:

At its meeting on October 10, 2018, the City of Charlotte Zoning Board of Adjustment ("Board") upheld the Zoning Administrator's interpretation regarding the average grade from which the height of an accessory structure is measured.

The Board based its decision on the following findings of fact:

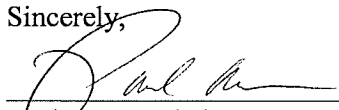
1. The applicant is Sandra Gray (Represented by K&L Gates LLP c/o Roy H. Michaux, Jr.).
2. The subject property is located at 5626 McAlpine Farm Road, further identified as tax parcel 221-351-08.
3. The parcel is zoned R-3 (single family residential) and is occupied with a single family home.
4. The subject property is owned by Rick and Lindsay Norvell.
5. The property owners obtained a permit in September, 2017 to construct a detached garage with a second floor recreational room on the subject property.
6. The applicant is appealing the Zoning Administrator's determination regarding the average grade from which the height of the detached garage was measured and the applicability of increased separation requirements from side and rear property lines indicated within Section 12.106(2)(a) of the Zoning Ordinance.
7. The accessory structure was constructed when the grade around the base was lower than the current conditions.
8. After the detached garage was completed, the land surrounding the garage was regraded and a retaining wall was added along a portion of the rear property line and a portion of the left side property line adjacent to the garage.
9. Height is defined by the Zoning Ordinance as being the vertical distance between the average grade at the base of a structure and the highest part of the structure.
10. Per the Zoning Ordinance, the average grade is calculated by adding the lowest point and highest point along the base of the structure and dividing the total by two.
11. The height of the detached garage was calculated using the modified elevation of the land/dirt at the base of the structure.
12. The maximum height of the detached garage was determined by C. Clark Neilson with R.B. Pharr & Associates, P.A. (Land Surveying & Mapping) as being 23.9 feet.
13. The natural topography of the subject site sloped down towards the left rear portion of property where the area around the detached garage was regraded and a retaining wall was installed.

14. The established finished floor of the garage along its front building line reasonably sets the finished grade for the perimeter of garage along the base of the structure.
15. The finished grade and slope established at the base of the structure is typical to drain water away from the foundation.
16. The grade of the driveway area that extends from the end of the previous driveway to the established finished floor of the detached garage is reasonably level with a slight grade that slopes away from the detached garage for drainage purposes.
17. Section 12.106(2)(a) states that if an accessory structure exceeds a height of 24 feet in a single family zoning district, it must be located at least 15 feet from the rear and side property lines. Per the 23.9 foot height measurement provided by R.B. Pharr & Associates, P.A. of the detached garage, the increased separation requirements of this section does not apply.
18. Section 12.106(2)(a) states if the accessory structure exceeds the height of the principal structure, it must meet the minimum side yard of the principal structure and be located at least 15 feet from the rear property line. Per the 23.9 foot height measurement provided by R.B. Pharr & Associates, P.A. of the detached garage and the 22.7 foot height measurement of the principal structure, the increased separation requirements of this section does apply.
19. The survey of the subject property dated September 18, 2018 indicates that the detached garage is 10.7 feet from the rear property line and 3.8 feet from the left side property line.
20. The subject site is in violation of Section 12.106(2)(a) of the Zoning Ordinance since the accessory structure is not a minimum of 15 feet from the rear property line nor 6 feet (i.e. minimum side yard of the principal structure) from the side property line.
21. A notice of violation was sent to the property owners on August 30, 2018 regarding this violation.

Conclusion of law

The Zoning Board of Adjustment upholds the Zoning Administrator's interpretation regarding the average grade from which the height of an accessory structure is measured.

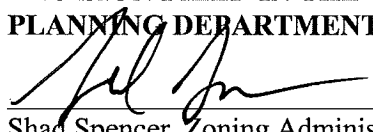
Sincerely,



Paul Arena, Chairperson

Date

**DECISION FILED IN THE
PLANNING DEPARTMENT:**



Shad Spencer, Zoning Administrator

Date