



Keaton Properties 4 LLC
(Represented by Jordan Keaton)
10117 John Price Road
Charlotte, NC 28273

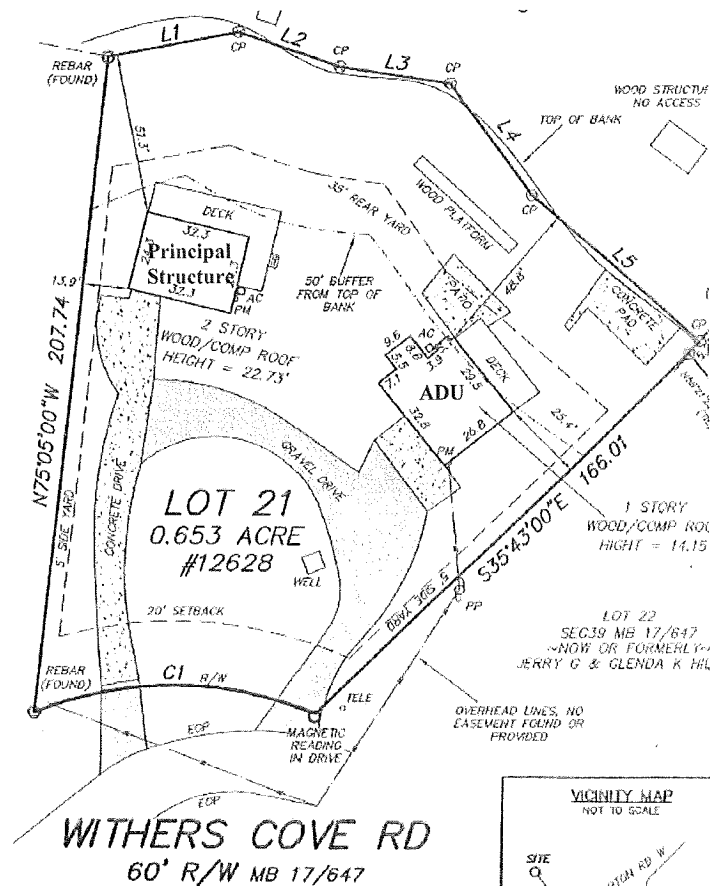
**RE: VARIANCE
12628 Withers Cove Road
CASE NUMBER 2019-074**

To Whom It May Concern:

At its meeting on October 29, 2019, the City of Charlotte Zoning Board of Adjustment ("Board") **granted** a variance to allow an existing structure proposed to be used for an Accessory Dwelling Unit (ADU) to remain in the established side yard.

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

1. The applicant is Keaton Properties 4 LLC (Represented by Jordan Keaton).
2. The subject site is located at 12628 and 12634 Withers Cove Road, further identified as tax parcel 199-381-21.
3. The subject parcel is zoned R-5 (Single Family).
4. The site is located in the Lower Lake Wylie Watershed Overlay - Critical Area.
5. The property is approximately 0.66 acres, or 28,749 square feet.
6. The property is identified as lot 21, Section 39 on Plat Map 17- Book 647, which was approved in 1976.
7. The property contains two structures including an 847 square foot, single family dwelling, constructed in 1946.
8. The other structure on the property is an approximately 1,400 square foot structure that was permitted in 1996 for a garage.
9. The applicant purchased the property on July 11, 2019 and obtained a Mecklenburg County building permit #B3583659 to renovate the structure constructed in 1996, and described as a 'residential accessory building' on the permit.
10. A Zoning Notice of Violation was issued for the property on August 27, 2019 because the two dwellings on the property do not meet the requirements in Section 12.407 of the Zoning Ordinance for an ADU (accessory dwelling unit).
11. The applicant met with zoning administration staff to explore remedies for the property.
12. The remedy to subdivide the 28,750 square foot property into two lots with one dwelling each is allowed by R-5 zoning, but prohibited by property deed restrictions of Duke Energy and Crescent Land and Timber Corporation. Restrictions in Deed Book 3146 Page 165, and Deed Book 3936 Page 0259 prohibit the size of any lot resulting from subdivision to be less than 30,000 square feet.
13. City Staff does not enforce deed restrictions, it is a civil property matter that prevents subdivision.



14. Section 12.407(6)(a) requires the floor area of an ADU not exceed 50% of the principal structure, up to a maximum of 800 heated square feet.
15. The applicant indicated permits and construction required to comply with Section 12.407(6)(a) would be obtained for the structures.
16. On October 1, 2019 the applicant obtained building permit #B3627902, to decrease the heated square footage of the proposed ADU below 800 square feet.
17. The proposed ADU is not located in the rear yard as required per Section 12.407(6)(c).
18. On August 12, 2019, the applicant obtained a permit to add a deck to the proposed principal structure. The minimum rear yard noted on the permit was 35 feet, and it did not note the 50 foot undisturbed buffer from Lake Wylie.
19. Section 10.708.3 prohibits permanent structures from being located in the buffer.
20. The permitted deck was constructed and encroaches into the 50 foot buffer approximately 4 feet.
21. The applicant became aware of the 50 foot lake buffer after they obtained a survey for the ADU variance request.
22. The applicant requests a variance to permit the smaller (1946) structure that is proposed to be used for an ADU to remain in the established side yard. The applicant also requests a variance to allow a 4 foot encroachment of the wooden slatted deck into the 50 foot undisturbed buffer from Lake Wylie.
23. The applicant is unable to locate the proposed ADU structure in the rear yard due to the required 50 foot watershed buffer.
24. The hardship is not a result of actions taken by the property owner since the lot was created in 1976 and has deed restrictions preventing subdivision.
25. The hardship results from conditions that are peculiar to the property because of the 50 foot Lake Wylie buffer preventing use of the rear yard established by the 1946 home on the property.

26. The applicant was unaware of the requirement of the 50 foot undisturbed lake buffer for any new construction.
27. The deck that encroaches into the lake buffer was permitted and the 50 foot buffer was not noted.

Staff recommends the following conditions of approval:

1. All permits required to increase the square footage of the principal structure to at least 1,600 square feet shall be obtained, and associated construction must begin prior to the issuance of a Certificate of Occupancy for the ADU.
2. The deck encroachment shall remain uncovered and pervious, with no roof placed above, or imperious ground cover on or below the area of encroachment.

Findings related to proposed staff condition:

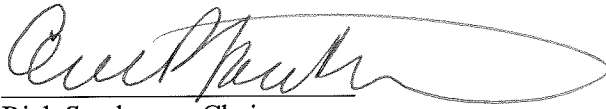
1. The applicant has agreed to the proposed conditions.
2. The condition will ensure compliance with the ADU supplemental regulations found in Section 12.407(6)(a).
3. The applicant indicated permitting will be obtained upon approval of the variance request to increase the floor area of the proposed principal structure to 1,600 square feet or greater.
4. Charlotte-Mecklenburg Storm Water Services supports the proposed request with the above deck condition.

Based upon the above findings of fact, the Board concludes that the applicant has met the standards set forth in North Carolina General Statutes § 160A-388, and more specifically:

1. Unnecessary hardships would result from the strict application of the Ordinance.
2. The hardship does result from conditions that are peculiar to the property (location, size or topography).
3. The hardship does not result from actions taken by the applicant or the property owner.
4. The requested variance is consistent with the spirit, purpose, and intent of the Zoning Ordinance, in that the public safety is secured and substantial justice is achieved.

If any permits are required, please make sure the variance case number is referenced on the permit application and/or site plan. Section 5.111 of the Zoning Ordinance provides that unless otherwise specified by the Board, any decision of the Board granting a variance shall automatically expire if a permit or a certificate of occupancy pertaining to the need for the variance is not obtained within two (2) years from the date of the meeting of the Board at which the Board rendered its decision.

Sincerely,



Rick Sanderson, Chairperson

11/26/19
Date

**DECISION FILED IN THE
PLANNING DEPARTMENT:**



Shad Spencer, Zoning Administrator

12/3/19
Date