



## VARIANCE APPLICATION

**THIS APPLICATION MUST BE FILED IN PERSON, IT  
CAN NOT BE ACCEPTED BY MAIL**

FY2006

Case #: 06-028

Date Filed: 2-9-06

Meeting Date: 3-28-06

Received By: Lybun

*Office Use Only*

Variance requested on property located at: 3815 Churchill Road, Charlotte, NC 28211

Property Zoned: R-3

Tax Parcel #: 157-073-34

Property Owner: Caroline Cloninger

Date Existing Structure Erected: 2004

### TO THE CHARLOTTE ZONING BOARD OF ADJUSTMENT:

I Caroline Cloninger, hereby petition the Board of  
(name)

Adjustment for a VARIANCE from the literal provisions of the Charlotte Zoning Ordinance because, under the interpretation given to me by the Zoning Administrator, I am prohibited from using the parcel of land described above in a manner shown by the Plot Plan attached to this form. I request a variance from the following provisions of the Zoning Ordinance (cite Section numbers and Code requirements):

Section 9.205(1)(g) of the Ordinance which provides that the required rear yard in the R-3 zoning district is 45 feet.

### Describe the VARIANCE being requested on the above referenced property:

On September 28, 2004, the Board of Adjustment granted the Applicant's predecessor-in-title and the builder of her dwelling unit a 10 foot variance from Section 9.205(1)(g) of the Ordinance so that a usable covered porch could be constructed at the rear of the dwelling unit located on the site. On August 30, 2005 in Case No. 05-073, the Applicant sought an additional 14 foot, 6 1/2 inch variance from the required rear yard to allow an existing attached deck and steps to encroach into the required rear yard. The Board of Adjustment denied the variance requested in Case No. 05-073. One of the findings of fact justifying the Board of Adjustment's denial of this variance request was that there were "options/alternatives available [to the Applicant] including building a patio at grade".

After the denial of the variance request in Case No. 05-073, the Applicant removed the attached deck and constructed in its place what she reasonably considered to be an at-grade patio (as that term is defined in the Ordinance) and an associated retaining wall. A "patio" is defined in the Ordinance as a "level, surfaced area directly adjacent to a principal building. A patio may be constructed of any material." The Applicant's patio meets this definition. The Applicant's patio is a level, surfaced area located directly adjacent to the principal building located on the site, namely the Applicant's home, and the related retaining wall is not attached to the principal building and provides no support thereto. Attached hereto as **Exhibit A** and incorporated herein by reference is a plot plan of the site that depicts the patio, and attached hereto as **Exhibit B** and incorporated herein by reference are pictures of the patio and the related retaining wall. As seen from the pictures attached hereto as **Exhibit B**, the patio is constructed at grade along its eastern edge and because of the topography of the site, a retaining wall was required along the northern and western edges of the patio.

After constructing the patio and associated retaining wall, the Applicant received a Zoning Violations Letter dated January 10, 2006 advising that the patio was in violation of Section 12.106 of the Ordinance because it illegally encroached into the site's rear yard. The Applicant disagrees with the Zoning Code Enforcement Inspector's interpretation of the Ordinance with respect to the patio and the associated retaining wall, and the Applicant filed an appeal of this interpretation contemporaneously with the filing of this Application for a Variance.

The Applicant is specifically requesting an additional 16 foot variance from Section 9.205(1)(g) of the Ordinance to allow the Applicant to maintain the patio and associated retaining wall. The Applicant did not obtain a building permit because the Applicant reasonably believes that a building permit is not required to build a patio and associated retaining wall.

## FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE:

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under the state enabling act, the Board is required to reach three conclusions as a prerequisite to the issuance of a variance: (a) that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance, (b) that the variance is in harmony with the general purposes and intent of the Ordinance and preserves its spirit, and (c) that in the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. In the following spaces, indicate the facts and the argument you plan to render, in order to convince the Board, to properly determine that each of these three (3) CONCLUSIONS are applicable to this structure and site.

- (a) **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:

- (1) **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.)

If the Applicant is required to comply with the 45 foot rear yard requirement as reduced by the 10 foot variance granted on September 28, 2004, the Applicant will be unable to maintain and will be forced to remove the patio and associated retaining wall at substantial expense. As seen from the pictures attached hereto as Exhibit B, the patio and associated retaining wall are an aesthetically appealing feature of the dwelling unit located on the site and enhances the Applicant's use and enjoyment thereof. When the Applicant's variance request in Case No. 05-073 was denied, she removed the deck as required and pursued an option noted in the Board of Adjustment's findings of fact, namely building a patio at grade. The Applicant respectfully submits that the patio constructed on the site is at grade because it is clearly at grade along its eastern edge, and the retaining wall is absolutely required in order to enable the Applicant to build a patio due to the topography of the Site. Therefore, the retaining wall is really a part of the grade in the Applicant's opinion.

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- (2) **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 unique topography of the site, which requires a retaining wall to be constructed to accommodate an at-grade patio. Simply put, a level, surfaced area known as a patio cannot be built directly adjacent to the Applicant's dwelling without utilizing a retaining wall.

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

The Applicant's hardship is not the result of her own actions. As noted above, the hardship results from the unique topography of the site, and the fact that the Ordinance does not expressly prohibit the construction of a patio and associated retaining wall in the rear yard. In fact, the Applicant submits that the Ordinance provides little if no guidance on this issue.

- (b) **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 requested variance represents the least possible deviation from the Ordinance to allow the Applicant to maintain the patio and associated retaining wall located at the rear of her dwelling. This is because the only variance that is required to the Applicant's best knowledge and belief is the requested variance from the rear yard requirement of the Ordinance. Additionally, if the requested variance is granted and the Applicant is permitted to maintain the patio and associated retaining wall, the character of the neighborhood will not be harmed.

The rear yard of the site and the patio and associated retaining wall do not directly face the rear or side of another dwelling unit. Rather, the rear yard of the site and the patio and associated retaining wall are located to the side and rear of the lot that adjoins the site at its rear boundary line, and this adjoining lot is located in the same subdivision as the site. Moreover, the patio is at grade and/or relatively low to the ground, and it is located at least 19 feet from the site's rear boundary line. As a result, the granting of this variance will not detract from the character of the neighborhood.

- (c) **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.)

As described above, the granting of the requested variance will not harm the general public or those individuals who reside near the site, and will do substantial justice to the Applicant as it will allow her to maintain the patio and associated retaining wall. Given the surrounding facts and circumstances, it was certainly reasonable for the Applicant to believe that the patio and associated retaining wall are permitted to encroach into the site's rear yard. The denial of the requested variance will harm the Applicant and will not benefit the public.

I certify that all of the information presented by me in this application is accurate to the best of my knowledge,

Caroline Cloninger

Printed Name of Appellant

3815 Churchill Road

Mailing Address

Charlotte, NC 28211

City, State, Zip

704-366-7657

Telephone Number

Fax Number

caroclon@aol.com

E-Mail Address



Signature of Appellant

John Carmichael

Printed Name of Representative (if any)

214 North Tryon Street, 47<sup>th</sup> Floor

Mailing Address

Charlotte, NC 28202

City, State, Zip

704-331-7509

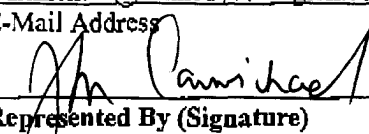
Telephone Number

704-353-3209

Fax Number

jcarmichael@kennedycovington.com

E-Mail Address



Represented By (Signature)

**IF THE APPELLANT IS NOT THE OWNER OF THE PROPERTY FOR WHICH THE APPEAL IS BEING REQUESTED, indicate the owner's name and address:**

Property Owner (If different from Appellant)

Address

City, State & Zip

**TYPE OR PRINT below the COMPLETE names, tax parcel numbers, mailing addresses and zip codes for the owners of the adjacent properties, including the properties directly across the street from the property, for which an appeal is being requested. (Property ownership information is available at <http://meckcama.co.mecklenburg.nc.us/relookup/> or <http://memf.co.mecklenburg.nc.us:3007/cics/txre/txre00i>)**

**ADJACENT PROPERTY OWNERS:**

1.	Caroline A Cloninger 3815 Churchill Rd Charlotte, NC 28211	Tax Parcel No.	15707334
2.	Joel David Brandeis 306 Wendover Hill Ct Charlotte, NC 28211	Tax Parcel No.	15707333
3.	Wendover Hill LLC 1200 E The Plaza Charlotte, NC 28205	Tax Parcel No.	15707332
4.	Jeffrey M. Jones and Josephine C. Jones 318 Wendover Hill Ct Charlotte, NC 28211	Tax Parcel No.	15707331
5.	Brian A Blais and Patricia A Blais 324 Wendover Hill Ct Charlotte, NC 28211	Tax Parcel No.	15707330
6.	Denise Abood and Darlene Maleki 321 Wendover Hill Ct Charlotte, NC 28211	Tax Parcel No.	15707324
7.	David Taylor Norman and Barbara Hichew Norman 323 Wendover Hill Ct Charlotte, NC 28211	Tax Parcel No.	15707323
8.	Cannon S Cory And Elizabeth M Cory 319 Wendover Hill Ct Charlotte, NC 28211	Tax Parcel No.	15707322
9.	James T Young 313 Wendover Hill Ct Charlotte, NC 28211	Tax Parcel No.	15707321
10.	Robert L Shore and William Brian Caldwell 307 Wendover Hill Ct Charlotte, NC 28211	Tax Parcel No.	15707320
11.	Alfonso McMillan Jr and Sydney Ann Burgess 3821 Churchill Rd. Charlotte, NC 28211	Tax Parcel No.	15707319
12.	Wendover Hill LLC 1200 E The Plaza Charlotte, NC 28205	Tax Parcel No.	15707318
13.	Wendover Heights LLC 2100 Rexford Rd Ste 215 Charlotte, NC 28211-3484	Tax Parcel No.	15707241
14.	Mary C Bayne 4610 Town & Country Dr Charlotte, NC 28226	Tax Parcel No.	15707240

15.	Calvin William Sealey and Patricia Lawton Sealey 370 Wendover Heights Cr Charlotte, NC 28211-3484	Tax Parcel No.	15708106
16.	Rhonda Honey Duncan 366 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708107
17.	James Smith Jr and Florence R Smith (Sp) 362 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708108
18.	Keith W Nagy and Debra J Nagy (Sp) 358 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708109
19.	Peggy N Bond 354 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708110
20.	Theresa Y. Graham 346 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708111
21.	Julie M Lequire 342 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708112
22.	Robert M Hobbs, Jr And Julie L Hobbs 338 Wendover Heights Cr #D28 Charlotte, NC 28211	Tax Parcel No.	15708113
23.	Jayne B Levine 334 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708114
24.	Lewis S Simon And Danielle N Simon (Sp) 330 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708115
25.	Vincent A Campitelli And Mary Carol Campitelli 322 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708116
26.	Norman Virgil Swenson Jr 3451 Royal Tern Circle Boynton Beach, Fl 33436	Tax Parcel No.	15708117
27.	Ronald W OConnor And Cynthia P OConnor 314 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708118
28.	John E Garlock 310 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708119

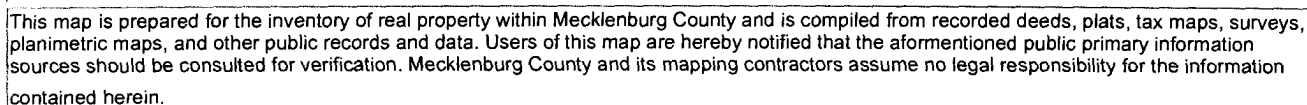


29.	Eleanor Irene Reese 306 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708120
30.	Margaret M Ross 237 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708121
31.	B Lynn Rogers and Cathy M Lucas 231 Wendover Heights Cr Charlotte NC 28211	Tax Parcel No.	15708122
32.	Joel Wesley Thompson And Mark Travis Owen 252 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708123
33.	Mark E Rabinovitz And Jane K Rabinovitz 248 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708124
34.	John A Garner And Laurie M Garner 244 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708125
35.	Carolyn R Georgiade 3929 Pleasant Green Rd Durham , NC 27705	Tax Parcel No.	15708126
36.	William Clay Grubb and Deirdre G. Grubb 301 Colville Rd Charlotte, NC 28207	Tax Parcel No.	15708127
37.	Prakash Wadhwani And Tejal Wadhwani (Sp) 232 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708128
38.	Sue K Arledge 131 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708129
39.	Lynn M Taylor 125 Wendover Heights Cr #39D Charlotte, NC 28211	Tax Parcel No.	15708130
40.	William E Ballinger Jr 119 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708131
41.	Stanley Trost And Elaine Trost 115 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708132
42.	Wallace K Kelley And Mary R Kelley 224 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708133

43.	Kirk R Crowder And J Roger Council III 220 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708134
44.	Jody S Justus 216 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708135
45.	Janet L Free 212 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708136
46.	Kevin M. Carpenter and Susan V. Carpenter 208 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708137
47.	Wayne Warren 204 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708138
48.	Mark W Ryburn 134 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708139
49.	Bonnie Lou Donovan 130 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708140
50.	Nabil Elias And Mary K Peterson 126 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708141
51.	Ethel S Harris 122 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708142
52.	Janet Kocal 118 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708143
53.	James T. Whiteman 114 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708144
54.	Kerri Michelle Moloney 110 Wendover Heights Cr Charlotte, NC 28211	Tax Parcel No.	15708145
55.	Gary M Caruso And Lane S Caruso 106 Wendover Heights Cr Charlotte, NC 28211-3484	Tax Parcel No.	15708146
56.	Marcus F West Jr and Frances Ann West 216 N. Wendover Rd Charlotte, NC 28211	Tax Parcel No.	15708302
57.	Wendover Hill LLC 1200 The Plaza #E Charlotte, NC 28205	Tax Parcel No.	15708349

58.	Louis A Palomba And Betty Rose T 3838 Churchill Rd Charlotte, NC 28211	Tax Parcel No.	15708350
59.	Louis A Palomba Jr And Angela M Palomba 3820 Churchill Rd Charlotte, NC 28211	Tax Parcel No.	15708354
60.	Kirk R Crowder And J Roger Council III 3800 Churchill Rd Charlotte, NC 28211	Tax Parcel No.	15708355
61.	Deloress Jewell 224 N Wendover Rd Charlotte, NC 28211	Tax Parcel No.	15708356

These persons, including the Applicant and the representative, will be notified in writing of the time and place of the hearing. (Attach additional sheet if necessary).



**ATTACH A PHYSICAL SURVEY OR DRAW A SITE PLAN, TO SCALE, DESCRIBING THE PROPERTY AND VARIANCE REQUEST. PROVIDE ALL APPROPRIATE DIMENSIONS; LOCATE ALL EXISTING AND PROPOSED BUILDINGS/STRUCTURES, AND PROVIDE THEIR DISTANCE TO THE PROPERTY LINES, RIGHTS-OF-WAY, ETC.**

**See Attached**

