

APPEAL FROM A DECISION OR INTERPRETATION

This application must be filed within thirty (30) days of a Notice of Violation or the written Interpretation of the Zoning Administrator. The Appeal Application must be filed in person, and can not be accepted by mail.

	FY2006
	Case #: 06 - 029
	Date Filed: 2-9-06
	Meeting Date: 3.28-06
]	Received By: LABEW
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TO THE CHARLOTTE ZONING BOARD OF ADJUSTMENT:

I,	Caroline (nan	Cloninger, ne)	hereby	appeal	to	the	Zoning	Board	of	Adjustment,
	uesting to rev	verse the decision of the Z								
at:	3815 Churc	hill Road, Char	rlotte, North (Addr		28211					
Ta	x Parcel Nur	nber15	7-073-34	 						
Vio	olation Numl	ber (if applicab	ole): <u>20050</u>	00622						
SE	CTIONS OF	CODE IN Q	UESTION:	Sections	4.102	(1) and	12.106(1)	and (3) of t	he Ord	linance
Att	tach copy of	Notice of Viola	ation or Int	erpretatio	n					
BC	STATE WHAT FACTS OR EVIDENCE YOU ARE PREPARED TO PROVE TO THE ZONING BOARD OF ADJUSTMENT THAT SHOULD LEAD THE BOARD TO CONCLUDE THAT THE DECISION OF THE ZONING OFFICER OR ADMINISTRATOR IS ERRONEOUS:									
		See Exhib	it A attache	d hereto ai	nd inco	rporate	d herein by	reference		
				,						
				·						
										
						 -		· · · · · · · · · · · · · · · · · · ·		

•	mation presented by the in this a	•	a of my knowledge.
Caroline Cloninger		John Carmichael	
Printed Name of Applicant		Printed Name of Represen	ntative (if any)
3815 Churchill Road	<u>. </u>	214 North Tryon Street, 4	7 th Floor
Mailing Address		Mailing Address	
Charlotte, NC 28211		Charlotte, NC 28202	
City, State, Zip		City, State, Zip	
704-366-7657		704-331-7509	704-353-3209
Telephone Number	Fax Number	Telephone Number	Fax Number
caroclon@aol.com		jcarmichael@kennedycov	rington.com
E-Mail Address (Urline)	Voncin	E-Mail Address	hard
Signature of Applicant	0	Réprèsented By	(Signature)
IF THE APPLICANT IS BEING REQUESTED, in	S NOT THE OWNER OF THe odicate the owner's name and a	IE PROPERTY FOR WHIC ddress:	CH THE APPEAL IS
Pr	operty Owner (If different from A	Applicant)	
Ā	1dress		
Ci	ty, 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 (rom the property, for which a variance is being requested. (Property ownership information is available at:

http://meckcama.co.mecklenburg.nc.us/relookup/ or http://mcmf.co.mecklenburg.nc.us;3007/cics/txre/txre00i

ADJACENT PROPERTY OWNERS:

1.	Caroline A Cloninger 3815 Churchill Rd	Tax Parcel No.	15707334
2.	Charlotte, NC 28211 Joel David Brandeis 306 Wendover Hill Ct	Tax Parcel No.	15707333
3.	Charlotte, NC 28211 Wendover Hill LLC	Tax Parcel No.	15707332
	1200 E The Plaza Charlotte, NC 28205		4
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

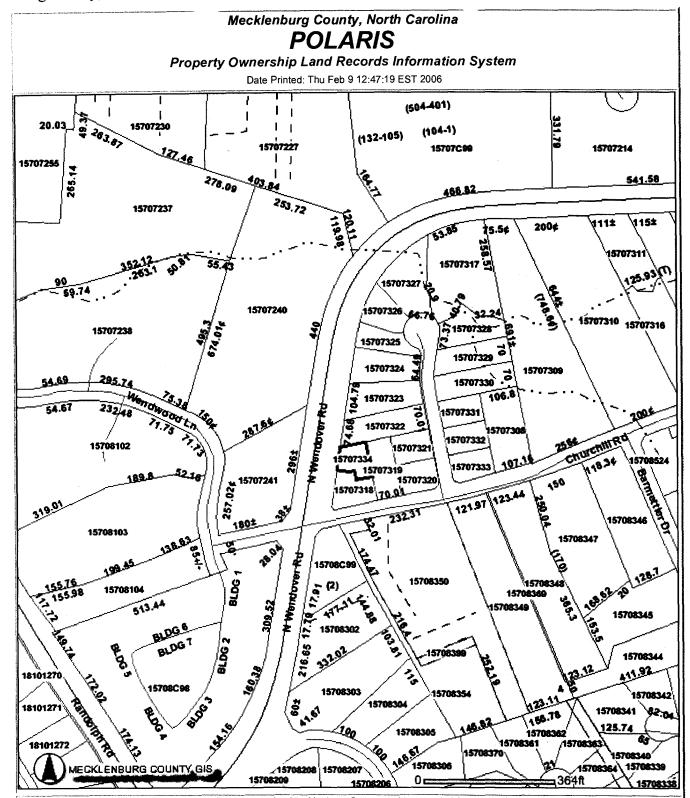
15.	Calvin William Sealey	Tax Parcel No.	15708106
10.	and Patricia Lawton Sealey		
	370 Wendover Heights Cr		
	Charlotte, NC 28211-3484		
16.	Rhonda Honey Duncan	Tax Parcel No.	15708107
	366 Wendover Heights Cr]
	Charlotte, NC 28211		
17.	James Smith Jr	Tax Parcel No.	15708108
	and Florence R Smith (Sp)		
	362 Wendover Heights Cr		}
	Charlotte, NC 28211		<u> </u>
18.	Keith W Nagy	Tax Parcel No.	15708109
	and Debra J Nagy (Sp)		}
	358 Wendover Heights Cr		
	Charlotte, NC 28211		}
19.	Peggy N Bond	Tax Parcel No.	15708110
	354 Wendover Heights Cr	}	
!	Charlotte, NC 28211	}	
20.	Theresa Y. Graham	Tax Parcel No.	15708111
	346 Wendover Heights Cr	}	
i	Charlotte, NC 28211)	,
21.	Julie M Lequire	Tax Parcel No.	15708112
	342 Wendover Heights Cr	1 300 2 302 2 00	1 -2. 332-2
	Charlotte, NC 28211	1	(
22.	Robert M Hobbs, Jr	Tax Parcel No.	15708113
	And Julie L Hobbs		\
	338 Wendover Heights Cr #D28		
	Charlotte, NC 28211	ļ	\
23.	Jayme B Levine	Tax Parcel No.	15708114
	334 Wendover Heights Cr	}	}
	Charlotte, NC 28211	Į.	
24.	Lewis S Simon	Tax Parcel No.	15708115
	And Danielle N Simon (Sp)		}
	330 Wendover Heights Cr		1
	Charlotte, NC 28211	<u> 1</u>	
25.	Vincent A Campitelli	Tax Parcel No.	15708116
}	And Mary Carol Campitelli	ł	
}	322 Wendover Heights Cr		{
	Charlotte, NC 28211		
26.	Norman Virgil Swenson Jr	Tax Parcel No.	15708117
	3451 Royal Tern Circle	1	1
	Boynton Beach, Fl 33436		
27.	Ronald W OConnor	Tax Parcel No.	15708118
	And Cynthia P OConnor		
	314 Wendover Heights Cr	{	
	Charlotte, NC 28211		
28.	John E Garlock	Tax Parcel No.	15708119
	310 Wendover Heights Cr		
L	Charlotte, NC 28211		

29.	Eleanor Irene Reese	Tax Parcel No.	15708120
29.	306 Wendover Heights Cr	Tax Tarcer IVO.	13700120
	Charlotte, NC 28211		
30.	Margaret M Ross	Tax Parcel No.	15708121
30.	237 Wendover Heights Cr	Tax Tarcer No.	13708121
	Charlotte, NC 28211		
31.	B Lynn Rogers and Cathy M Lucas	Tax Parcel No.	15708122
31.	231 Wendover Heights Cr	Tax Farcer No.	13708122
	Charlotte NC 28211		
22		Tax Parcel No.	15709133
32.	Joel Wesley Thompson	Tax Parcel No.	15708123
	And Mark Travis Owen		
	252 Wendover Heights Cr		
	Charlotte, NC 28211	T- DINI-	15700104
33.	Mark E Rabinovitz	Tax Parcel No.	15708124
	And Jane K Rabinovitz		
	248 Wendover Heights Cr		
	Charlotte, NC 28211		1550105
34.	John A Garner	Tax Parcel No.	15708125
İ	And Laurie M Garner		
	244 Wendover Heights Cr		
	Charlotte, NC 28211		
35.	Carolyn R Georgiade	Tax Parcel No.	15708126
	3929 Pleasant Green Rd		
	Durham, NC 27705		
36.	William Clay Grubb and Deirdre G. Grubb	Tax Parcel No.	15708127
	301 Colville Rd		
	Charlotte, NC 28207		
37.	Prakash Wadhwani	Tax Parcel No.	15708128
	And Tejal Wadhwani (Sp)		
	232 Wendover Heights Cr		
	Charlotte, NC 28211		****
38.	Sue K Arledge	Tax Parcel No.	15708129
	131 Wendover Heights Cr		
	Charlotte, NC 28211		
39.	Lynn M Taylor	Tax Parcel No.	15708130
	125 Wendover Heights Cr		
	#39D		
	Charlotte, NC 28211		
40.	William E Ballinger Jr	Tax Parcel No.	15708131
	119 Wendover Heights Cr		
	Charlotte, NC 28211		
41.	Stanley Trost	Tax Parcel No.	15708132
	And Elaine Trost		
	115 Wendover Heights Cr		
	Charlotte, NC 28211		
42.	Wallace K Kelley	Tax Parcel No.	15708133
	And Mary R Kelley		
	224 Wendover Heights Cr		
	Charlotte, NC 28211		

43.	Kirk R Crowder	Tax Parcel No.	15708134
13.	And J Roger Council III	Tax raiccirto.	10,00131
	220 Wendover Heights Cr		
	Charlotte, NC 28211		
44.	Jody S Justus	Tax Parcel No.	15708135
11.	216 Wendover Heights Cr		1
	Charlotte, NC 28211		
45.	Janet L Free	Tax Parcel No.	15708136
10.	212 Wendover Heights Cr	Tunt and of the	10,00100
	Charlotte, NC 28211		
46.	Kevin M. Carpenter and Susan V. Carpenter	Tax Parcel No.	15708137
10.	208 Wendover Heights Cr	Tast Tables Title	15, 5515.
	Charlotte, NC 28211		**
47.	Wayne Warren	Tax Parcel No.	15708138
17.	204 Wendover Heights Cr	Tax Tareer To.	10,00100
	Charlotte, NC 28211		
48.	Mark W Ryburn	Tax Parcel No.	15708139
10.	134 Wendover Heights Cr	Tux Turcer 140.	10,0010,
	Charlotte, NC 28211		
49.	Bonnie Lou Donovan	Tax Parcel No.	15708140
17.	130 Wendover Heights Cr	Tunt utcer 140.	10,00110
	Charlotte, NC 28211		
50.	Nabil Elias	Tax Parcel No.	15708141
	And Mary K Peterson		
	126 Wendover Heights Cr		
	Charlotte, NC 28211		
51.	Ethel S Harris	Tax Parcel No.	15708142
	122 Wendover Heights Cr		
	Charlotte, NC 28211		
52.	Janet Kocal	Tax Parcel No.	15708143
	118 Wendover Heights Cr		
	Charlotte, NC 28211		
53.	James T. Whiteman	Tax Parcel No.	15708144
	114 Wendover Heights Cr		
	Charlotte, NC 28211		
54.	Kerri Michelle Moloney	Tax Parcel No.	15708145
	110 Wendover Heights Cr		
	Charlotte, NC 28211		
55.	Gary M Caruso	Tax Parcel No.	15708146
	And Lane S Caruso		
	106 Wendover Heights Cr		
	Charlotte, NC 28211-3484		
56.	Marcus F West Jr and Frances Ann West	Tax Parcel No.	15708302
	216 N. Wendover Rd		
	Charlotte, NC 28211		
57.	Wendover Hill LLC	Tax Parcel No.	15708349
	1200 The Plaza #E		
	Charlotte, NC 28205		

58.	Louis A Palomba	Tax Parcel No.	15708350
	And Betty Rose T	}	<u> </u>
]	3838 Churchill Rd		Į į
	Charlotte, NC 28211		
59.	Louis A Palomba Jr	Tax Parcel No.	15708354
	And Angela M Palomba		}
	3820 Churchill Rd		
<u> </u>	Charlotte, NC 28211		
60.	Kirk R Crowder	Tax Parcel No.	15708355
	And J Roger Council III	i	
Ì	3800 Churchill Rd	(1
	Charlotte, NC 28211		
61.	Deloress Jewell	Tax Parcel No.	15708356
	224 N Wendover Rd	1	
L	Charlotte, NC 28211		

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



This map is prepared for the inventory of real property within Mecklenburg County and is compiled from recorded deeds, plats, tax maps, surveys, planimetric maps, and other public records and data. Users of this map are hereby notified that the aformentioned public primary information sources should be consulted for verification. Mecklenburg County and its mapping contractors assume no legal responsibility for the information contained herein.



1/10/2006

Neighborhood Development Site Office Code Enforcement Division Merchandise Mart 800 Briar Creek Road, Suite AA405 Charlotte, NC 28205

Caroline Cloninger 3815 Churchill Road Charlotte North Carolina 29211

Zoning Violations Letter 2005000622

RE: Address:

3815 Churchill Road Zoning:

R-3

Parcel Number:

157-073-34

Map

Charlotte

Number:

Inspection

12/12/05

Date:

te:

The provision(s) of the City of Charlotte Zoning Ordinance indicated on the next page(s) have been violated:

You are hereby instructed to cease and desist remove the concrete/rock porch from the required rear yard set back

IMMEDIATELY CORRECT THE VIOLATION. If the violation is not corrected and there is no appeal to the Zoning Board of Adjustment, the Division reserves the right to exercise any one of the following REMEDIES: REVOCATION OF A CERTIFICATION OF OCCUPANCY making continued occupancy unlawful, issuing a CITATION, if unpaid and a judgement, could become a LIEN on the property, seeking of an INJUNCTION, or the issuance of a CRIMINAL SUMMONS.

The Zoning Board of Adjustment is empowered to rule on the interpretation of the Zoning Ordinance and to grant variances when a difficulty or hardship exists. Appeals will not be heard by the Board unless application is properly filed in the Zoning Administrator's office within thirty (30) days of the date on this Notice of Violation. Once the deadline has passed, your right of appeal is forfeited. Forms are available in this office

If you have any questions as to what is required by this Notice, please contact me at 704/353-0354 between 8:00 and 9:00 A.M.

Attachments: Section 8.105

Section 8.106

Zoning Code Enforcement Inspector

Code Section(s):

4.102(1)

4.102 Building permit required. (1) It is illegal for any person to begin the construction, reconstruction or demolition of a structure or any part of a structure, or to begin to excavate a structure, or to make any structural repairs, alterations, or additions to any structure, or to commence construction of any paved area, which will result in an area of more than twenty thousand square feet of impervious cover, without obtaining a building permit from the director of Building Standards.

12.106 (3) (a) (b) (c)

12.106. Uses and structures prohibited and allowed in required setbacks and yards. (3) Certain portions of the required rear yard on a lot used for a single family detached dwelling may be utilized for attached garages, porches, decks, greenhouses, covered patios and utility room extensions of the principal structure in accordance with the following restrictions and as illustrated in Figure 12.106: (a) No more than 20% of the area of the required rear yard may be used to accommodate extensions of the principal structure for attached garages, porches, decks, greenhouses, covered patios, or utility rooms; (b) No such extension may encroach into the rear yard more than 25% of the depth of the required rear yard; and (c) No such extension may be more than 50% of the width of the dwelling at the rear building line. These extensions must observe the same side yard or building separation as that required for the principal structure. If any portion of the required rear yard is used to accommodate an extension of the principal structure as allowed by this Section, no more than 15% of the remaining required rear yard may be occupied by any detached accessory structure.



CHARLOTTE CODE

CITATIONS - SEC. 8.105

Section 8.105. Citations.

- (1) The Zoning Administrator is empowered to issue citations to any person if There is a reasonable cause to believe that the person has violated any provision of these regulations. A violator shall be deemed to be the owner of the premises, the agent of the owner authorized to be responsible for the premises, or the occupant of the premises. Citations may be directly issued to the occupant, lessee, or person having immediate beneficial use of the property. The non-occupant owner or agent responsible for the premises each has a duty to maintain the premises in compliance with these regulations. A citation shall not be issued to a nonoccupant owner, agent or occupant for those premises unless there has been written notice delivered to the owner, agent, or occupant, or mailed to the last known mailing address as shown by public records, or by making other reasonable efforts to communicate the existence of the violation to the owner, agent, or occupant.
- (2) The initial citation for each violation shall be \$50.00. The issuance of a second citation for any violation that has not been corrected shall be in an amount up to \$200.00 upon the day of issuance, up to \$500.00 for the third citation, and up to \$500.00 thereafter. Any unpaid citations and delinquency charges shall be cumulative and shall subject the violator to a possible civil penalty to be recovered in a civil action in the nature of debt. The citations may be delivered in person to the violator or, if the violator cannot be readily found, then the citation may be mailed.
- (3) The citation shall direct the violator to make payment at the Building Standards Department within fifteen (15) days of the date of the citation, or alternatively pay the citation by mail. If the violator does not make such payment or does not mail the citation and payment within fifteen (15) days of the issuance, a delinquency charge of ten dollars (\$10.00) shall be added to the amount shown on the citation. The citation shall inform the violator that a civil complaint or criminal summons may be filed if the citation and delinquency charge is not paid within fifteen (15) days from the date of delinquency. Further, the citation shall state that the violation is a continuing violation and additional citations may be issued with escalating amounts for a continuing violation.



CHARLOTTE CODE

CIVIL JUDICIAL REMEDIES - SEC. 8.106

Section 8.106. Civil judicial remedies.

- (1) If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of these regulations or other regulation made under authority conferred thereby, the City, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or land, or to prevent any illegal act, conduct, business or use in or about the premises. The General Court of Justice shall have jurisdiction to issue such orders as may be appropriate.
- (2) If the Zoning Ordinance makes unlawful a condition existing upon or use made of real property, then the Zoning Ordinance may be enforced by injunction and order of abatement and the General Court of Justice shall have jurisdiction to issue such orders. When a violation of such an ordinance occurs the City may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commending the defendant to correct the unlawful condition upon or cease the unlawful use of the property.
- (3) In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished, or removed or that any other action be taken that is necessary to bring the property into compliance with the ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the City may execute the order of abatement. The City shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

Exhibit A

On September 28, 2004, the Board of Adjustment granted Appellant Caroline Cloninger's predecessor-in-title and the builder of her home located on the site a 10-foot variance from the required 45 foot rear yard set out in Section 9.205(1)(g) of the Ordinance so that a usable covered porch could be constructed at the rear of the home. On October 30, 2005 in Case No. 05-073, the Appellant sought an additional 14-foot, 6 1/2 inch variance from Section 9.205(1)(g) of the Ordinance to allow the Appellant to maintain an attached deck and steps located at the rear of her home. The Board of Adjustment denied the Appellant's request for an additional 14-foot, 6 1/2 inch variance from the required rear yard, and the Appellant was required to remove the deck. In its written decision, the Board of Adjustment made the following finding of fact: "There are options/alternatives available including building a patio at grade."

After the denial of her variance request in Case No. 05-073, the Appellant removed the attached deck and constructed a patio and a related retaining wall in the rear yard of the site adjacent to her home. Attached hereto as **Exhibit B** and incorporated herein by reference are pictures of the Appellant's patio and the related retaining wall. As seen from the attached pictures, the patio has a concrete surface with a stone border, and it is located at grade along its eastern edge. However, the topography of the sight falls rather dramatically from its eastern boundary line to its western boundary line. Therefore, as seen from the attached pictures, it was necessary to utilize a retaining wall along the northern and western edges of the patio to accommodate its construction. Without the retaining wall, it would have been impossible to construct the patio in the Appellant's backyard. It is important to note that the retaining wall is not attached to and does not provide any support to the Appellant's home.

The Appellant received a Zoning Violations Letter dated January 10, 2006 in which she was advised that her patio and retaining wall violate Sections 4.102(1) and 12.106(3)(a),(b) and (c) of the Ordinance, and that she will be required to remove the patio and retaining wall within thirty days of the January 10, 2006. The Zoning Enforcement Officer is of the opinion that the Appellant's patio and retaining wall violate Section 4.102(1) of the Ordinance because they were constructed without a building permit, and that they violate Section 12.106(3) of the Ordinance because they encroach into the required rear yard. For the reasons set out below, the Appellant respectfully disagrees with the interpretation and conclusions of the Zoning Enforcement Officer as set out in the Zoning Violations Letter.

Regarding the allegation that the Appellant was required to obtain a building permit prior to constructing the patio and the related retaining wall, the Appellant respectfully disagrees with this allegation. The Appellant submits that the patio and the related retaining wall are not a "structure" within the meaning of Section 4.102 of the Ordinance, and since the patio does not contain more than 20,000 square feet of impervious cover, a building permit was not required.

With respect to the allegation that the Appellant's patio and the related retaining wall encroach into the rear yard in violation of the Ordinance, the Appellant respectfully disagrees with this allegation as well. As an initial matter, the Appellant respectfully submits that the patio she installed in the rear yard of the site is a "patio" as that term is defined in the Ordinance. Section 2.201 of the Ordinance defines a "patio" as "a level, surfaced area directly adjacent to a principal building. A patio may be constructed of any material." The Appellant's patio clearly meets this definition.

Section 12.106 of the Ordinance entitled "Uses and structures prohibited and allowed in required setbacks and yards" sets out those uses and structures that can and cannot be located in the required rear yard of a lot. Specifically, Section 12.106(1) provides that "no principal building or principal structure shall be located within any setback or yard required by these regulations except as provided in this Section and elsewhere in these regulations." This provision clearly prohibits the principal building located on the Appellant's lot, namely, her home, from being located within the required rear yard.

Section 12.106(3) of the Ordinance, which is cited in the Zoning Violations Letter, enumerates several exceptions to the foregoing prohibition, as it provides that "certain portions of the required rear yard on a lot used for a single family detached dwelling may be utilized for attached garages, porches, decks, greenhouses, covered patios and utility room extensions of the principal structure" in accordance with certain restrictions and requirements set out in Section 12.106(3) of the Ordinance. Section 12.106(3) of the Ordinance further provides that "these extensions must observe the same side yard or building separation as that required for the principal structure." Therefore, Section 12.106(3) allows certain extensions of the principal building or structure into the required rear yard if certain restrictions or requirements are satisfied.

The Appellant respectfully submits that the patio and associated retaining wall constructed within the rear yard of her lot do not violate Section 12.106(1) of the Ordinance because neither the patio nor the retaining wall are a part of the principal building or structure located on her lot and they are not an extension of the principal building or structure. Consistent with the Ordinance's definition of a patio, the Appellant's patio is a level, surfaced area that is directly adjacent to the principal building, not a part thereof, and the retaining wall is not attached to the principal building and provides no support for the principal building. Therefore, neither the patio nor the associated retaining wall violate Section 12.106(1) of the Zoning Ordinance.

The fact that a patio is not considered to be an extension of the principal building or structure is evidenced by the fact that a patio is specifically excluded from the list of permitted extensions of the principal structure set out in Section 12.106(3) of the Ordinance. As noted above, this Section specifically lists extensions of the principal structure that are permitted under certain circumstances, and each of these extensions is clearly a structure that is attached to the principal building and can be considered to be a part thereof. Given that porches, decks and covered patios were expressly listed as extensions of the principal structure in Section 12.106(3) of the Ordinance, the drafters of the Ordinance would clearly have included a patio in that group if they considered a patio to be an extension of the principal structure.

Moreover, the Appellant respectfully submits that to the extent that Section 12.106 of the Ordinance applies to her patio and the associated retaining wall, the patio and associated retaining wall are "accessory structures" and pursuant to Section 12.106(2)(a) of the Ordinance, they may be located in the rear yard provided that they are not located within a side yard or within 3 feet of the rear property line. As seen from the plot plan of the lot attached hereto as **Exhibit C** and incorporated herein by reference, the patio and associated retaining wall are not located within a side yard or within 3 feet of the rear property line. Therefore, the patio and retaining wall may be located within the rear yard of the Appellant's lot.

Finally, the patio could not have been installed without the retaining wall due to the topography of the lot as seen from the pictures attached hereto as **Exhibit B**. The patio is clearly at grade along its eastern edge, and along its northern and western edges the retaining wall is required to accommodate the patio. Under these circumstances, the retaining wall should be considered to be part of the grade of the lot.

For the reasons set out above, the Appellant respectfully submits that the decision of the Zoning Enforcement Officer as stated in the Zoning Violations Letter dated January 10, 2006 should be reversed.

