



CITY OF CHARLOTTE ZONING BOARD OF ADJUSTMENT  
CONFERENCE ROOM 280, 2<sup>ND</sup> FLOOR  
GOVERNMENT CENTER – 600 EAST FOURTH STREET  
TUESDAY, JUNE 29, 2010 – 9:00 A.M.

**REVISED AFTER HEARING AGENDA**

**CONTINUED TO JULY**

**CASE NO. 10-022** – Application has been made by **Alan B. Griffin** *for property located at 3609 Tuckaseegee Road, Tax Parcel Number 065-055-20*, requesting a 1.6 foot variance from the required 5 foot maximum height to allow a fence located in the required setback to remain as erected. **Code Section 2.201** defines a required setback as the minimum distance required by this ordinance between the street right-of-way line and the front building line of a principal building or structure as measured parallel from the street right-of-way line, projected to the side lines of the lot. In the case of a through lot, a required setback also will be measured from the right-of-way line at the rear of the lot to the rear building line. **Code Section 12.406(1)** states that no fence or wall located in the required setback shall be built to a height greater than 5 feet above grade unless it is a part of a zero lot line subdivision, then it may be 6 feet.

**DENIED BOTH VARIANCES**

**CASE NO. 10-023** – Application has been made by **Steve Waddell (Represented by Randy Suddreth)** *for property located at 17827 Theran Lane, Tax Parcel Number 217-191-39*, requesting two (2) variances: (1) a 45 foot variance from the 50 foot required buffer and (2) a 30 foot variance from the 40 foot requirement for all principal structures landward from the full pond level in order to construct a room addition and to construct a roof over the existing deck. **Code Section 2.201** defines a nonconforming structure as any structure lawfully existing on the effective date of these regulations, or on the effective date of any amendment thereto, which does not comply with these regulations or any amendment thereto, whichever might be applicable. **Code Section 7.103(1)** states that a nonconforming structure devoted to a use permitted in the zoning district in which it is located may continue only in accordance with the provisions of this section. **Code Section 7.103(3)** states that a nonconforming structure shall not undergo a change or use, renovation or expansion except as provided in subsections (4) and (5). **Code Section 7.103(4)** states that a nonconforming structure may undergo a change of use or renovation without having to bring the structure into conformity with the requirements of these regulations, provided that: (a) the change in use or renovation does not increase the floor area of the structure. **Code Section 7.103(5)** states that a nonconforming structure may be expanded, without bringing the nonconforming structure into conformity with these regulations, only if the part of the structure to be expanded and the area of the lot into which the expansion is taking place are both brought into conformity with the requirements of these regulations. **Code Section 10.702** defines the Critical Area as the area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The Buffer is defined as a natural or vegetated undisturbed area through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the full pond elevation of impounded structures and from the top of the bank of each side of streams or river. The

Variance Local Watershed is a variance from the requirements of this part which would not result in the relaxation of any State Standard. The Watershed is the entire land area contributing surface drainage into a stream, creek, lake or other body of water **Code Section 10.708(1)(a) Buffer areas required.** Undisturbed vegetative buffers are required along the shoreline of the Lower Lake Wylie measured from the full pond elevation and along each side of all perennial streams measured from the top of bank. In the Critical Area, the minimum buffer area is 50 feet for low density. **Code Section 12.515(7)(a) Special requirement for other uses along the Catawba River and its impoundments.** All principal structures, except for boathouses, piers, walkways, breakwaters, and marine railways, shall be located at least 40 feet landward from the full pond level.

Vote is Aye to Deny both Variances

Ayes – Jeff Davis, David Hoffman, Mark Loflin (alternate), Jennifer Coble (alternate)

Nays – Randy Fink

### **GRANTED**

**CASE NO. 10-024** – Application has been made by **Iglesia Apostoles Y Profetas Fuente DeAgua Vida (Represented by Donna H. Barbour, P.E.) for property located at 4811 East W. T. Harris Boulevard, Tax Parcel Number 107-131-25**, requesting a variance to allow vehicular access by way of a residential local (Class VI) street for a proposed religious institution. **Code Section 2.201** defines religious institution as a church, synagogue, temple, mosque, or other place of religious worship, including any accessory use of structure, such as a school, day care center, or dwelling, located on the same lot. Required setback is defined as the minimum distance required by this ordinance between the street right-of-way line and the front building line of a principal building or structure as measured parallel from the street right-of-way, projected to the side lines of the lot. In the case of a through lot, a required setback also will be measured from the right-of-way line at the rear of the lot to the rear building line. **Code Section 9.203(18)** states that religious institutions up to 750 seats, subject to regulations of Section 12.506 is a use permitted under prescribed conditions. **Code Section 12.506(7) Religious institutions in residential districts.** Primary vehicular access to the use shall not be provided by way of a residential local (Class VI) street. **Code Section 12.206(3) Development Standards for Off-Street Parking, Driveways, and Garages.** Parking of vehicles in setbacks for uses other than single-family, multi-family and planned multi-family is not permitted within required setback or required side yard that abuts a street on any lot, nor within 5 feet of any exterior lot line. No parking is permitted in the right-of-way, except for parallel parking as approved by CDOT.

Vote is Aye to Deny

Ayes – Jeff Davis, Randy Fink, David Hoffman, Mark Loflin (alternate), Jennifer Coble (alternate)

Nays – None

### **UPHELD ZONING ADMINISTRATOR'S DECISION**

**CASE NO. 10-015 (Appeal)** – Application has been made by **Bruce Moline and Randy Gager for property located at 5924 River Cabin Lane, Tax Parcel Number 199-561-01**, appealing the Zoning Administrator's interpretation that: (1) a fence surrounding a wireless communication facility is not required to be 200 feet from an abutting property line and (2) that the proposed tower meets concealment requirements. **Code Section 2.201** defines a public utility structure as an electricity or gas substation, water or wastewater pumping station, telephone repeater station, water storage tank, reservoir, recycling collection center, cellular and telephone transmission facilities, or similar structure used as an intermediary switching, boosting, distribution, or transfer station for electricity water, wastewater, cable television, or telephone services between the point of generation and the end user, or a wastewater treatment plant, but not including satellite dish antennas, facilities for the handling of solid waste (except for recycling collection centers), or radio, television, or microwave transmission or relay towers. **Code Section 12.108(7)** states that radio and television towers and similar structures, as a principal or accessory use, are permitted above the height limit in any district. If such a structure is located on a lot in or abutting a residential district, it must be located at least 200 feet from all abutting property lines. **Code Section 12.108(j)** states that all new wireless communication transmission facilities located in or within 400 feet of a residential zoning district are subject to the following additional standards: (1) the tower must be designed, constructed or integrated into or as a structure in such a manner that it no longer

appears to be a wireless communication tower; (2) the tower must have indiscernible antennae; (3) concealment measures used on any given facility (tower, antennae, and building structures at base) must blend into the character of the area or neighborhood by using architectural treatment similar in design to existing structures, and (4) the use of a flagpole as the concealment measure shall only be applicable on a site used for institutional or non-residential uses.

(1) Vote is Aye to Uphold

Ayes – Jeff Davis, David Hoffman, Mark Loflin (alternate), Jennifer Coble (alternate)

Nays – Randy Fink

(2) Vote is Aye to Uphold

Ayes – Jeff Davis, Randy Fink, Mark Loflin (alternate), Jennifer Coble (alternate)

Nays – David Hoffman

**THE BOARD WILL BREAK FOR LUNCH AFTER THE ABOVE CASES  
AT APPROXIMATELY 12:30 P. M.  
THE FOLLOWING CASES WILL NOT BE HEARD BEFORE 12:30 P.M.**

**UPHELD ZONING ADMINISTRATOR'S DECISION**

**CASE NO. 10-016 (Appeal)** – Application has been made by **Connecticut Avenue, LLC (Represented by Nasser Razmyer, Tyvola Theater, LLC)** *for property located at 940 Tyvola Road, Tax Parcel Number 167-042-46*, appealing the Zoning Administrator's interpretation that a theater, drive-in motion picture is not a permitted use at 940 Tyvola Road. **Code Section 6.206 Effect of approval.** (1) If a petition for conditional zoning is approved, the development and use of the property shall be governed by the predetermined ordinance requirements applicable to the district's category, the approved site plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the Zoning Maps. (2) If a petition is approved, the petitioner shall comply with all requirements established in Chapter 4 for obtaining a building permit and certificate of occupancy. Only those uses and structures indicated in the approved petition and site plan shall be allowed on the subject property. (3) Following the approval of the petition for a conditional zoning district, the subject property shall be identified on the Zoning Maps by the appropriate district designation. A parallel conditional zoning shall be identified by the same designation as the underlying general district followed by the letter "CD" (for example "O-1(CD)"). (4) Any conditional zoning district approved on or after October 1, 1991, shall have vested rights pursuant to N.C.G.S. Section 160A-385 for the period of time established pursuant to Section 1.110 of this Zoning Ordinance, except as such vested rights may be altered as allowed by N.C.G.S. Section 160A-385.1(e). Vested rights shall remain effective beyond the end of the period of time established pursuant to Section 1.110 of this Ordinance for any buildings or uses for which a valid building permit had been issued during the vested rights period, so long as such building permit is valid. Notwithstanding, the foregoing, property governed by this subsection shall not include as a permitted use an adult establishment, unless the approved site plan explicitly provides that an adult establishment is a permitted use or the site meets the standard of Section 12.518. **Code Section 11.402 (29)** states that theaters, motion pictures (not drive-in) are a permitted use by right in the CC district.

Vote is Aye to Uphold

Ayes – Jeff Davis, Randy Fink, Michael Knotts, David Hoffman, Mark Loflin (alternate)

Nays – None

**OVERTURNED ZONING ADMINISTRATOR'S DECISION**

**CASE NO. 10-017 (Appeal)** – Application has been made by **Donald Caudle (Represented by Charles L. Morgan, Jr.)** *for property located at 7906 Lawyers Road, Tax Parcel Number 135-076-01*, appealing

the Zoning Administrator's interpretation that the commercial business located at 7906 Lawyers Road is not a customary home occupation because there is no principal residential use. **Code Section 2.201** defines a dwelling unit as a room or combination of rooms designed for year-round habitation, containing a bathroom and kitchen facilities, and designed for or used as a permanent residence by at least one family. Commercial use is defined as an occupation, employment, or enterprise that is carried on for profit by the owner, lessee, or licensee. Customary home occupation is defined as an occupation, service, profession or enterprise carried on by a resident member of a family within a dwelling unit. **Code Sections 9.202** does not list a commercial use as a use permitted by right and **Code Section 9.203** does not list a commercial use as a use permitted under prescribed conditions in an R-4 zoned district. **Code Section 12.408(1)** states that the home occupation must be clearly incidental to the residential use of the dwelling and must not change the essential residential character of the dwelling. **Code Section 12.408(7)** states only residents of the dwelling may be engaged in work activities at the residence. If the customary home occupation has other employees, those employees may not come to the residence for work purposes, including pick-up of materials, vehicles, assignments, or similar purposes.

Vote is Aye to Overturn

Ayes – Jeff Davis, Randy Fink, Michael Knotts, David Hoffman, Mark Loflin (alternate)

Nays – None

### **OVERTURNED ZONING ADMINISTRATOR'S DECISION**

**CASE NO. 10-018/CASE NO. 10-021(Combined Appeal Cases)** – Application has been made by **Fred Frazier (Represented by Robert Brandon/Joe Ledford)** for property located at **3217 The Plaza, Tax Parcel Number 083-163-11**, appealing Zoning Violation #2010500770 which states that a nightclub is not allowed within 400 feet of a residential use or zoning district. **Code Section 2.201** defines a nightclub as any commercial establishment serving alcoholic beverages and providing entertainment for patrons including bars, lounges, and cabarets. **Code Section 9.803 (19)** states that any structure in which nightclubs, bars and lounges (B1 and B2 only) are the principal use shall be located at least 400 feet from any residential use or residential district.

Vote is Aye to Overturn

Ayes – Randy Fink, Michael Knotts, David Hoffman, Mark Loflin (alternate)

Nays – Jeff Davis

## **BUSINESS**

Approval of Minutes

**~ THE BOARD RESERVES THE RIGHT TO DEVIATE FROM THE AGENDA. ~**

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*City of Charlotte will comply with the American Disabilities Act (ADA), which prohibits discrimination on the basis of disability. Anyone needing special accommodations when attending this meeting and/or if this information is needed in an alternative format because of a disability please contact the Clerk to the Charlotte Zoning Board of Adjustment, (704) 336-3818 or skennedy@ci.charlotte.nc.us, at least 72 hours prior to the meeting.*

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