



**CERTIFIED MAIL**

Ilonka Aylward  
1645 Scotland Avenue  
Charlotte, NC 28207

**RE: APPEAL  
1645 SCOTLAND AVENUE  
CASE NUMBER 11-010**

Dear Ms. Aylward:

At its meeting on June 28, 2011, the City of Charlotte Zoning Board of Adjustment ("Board") **upheld** the Floodplain Administrator's determination that an Individual Floodplain Development permit is required because the mulch, garden stones, pathways, and other encroachments are above-grade in the Community Base Floodplain and the FEMA Floodplain.

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

1. There are fundamental differences between the General Floodplain Development permit and the Individual Floodplain Development permit. A General Floodplain Development permit is issued as long as the use or activity within the Community Base Floodplain or the FEMA Floodplain will not inherently increase or result in technically measureable increases. The list of uses and activities for a General Floodplain Development permit are listed under Code Section 9-62(b)(1)(a)-(e). For all uses or activities not listed in Code Section 9-62(b)(1)(a)-(e) of the General Floodplain Development permit or for uses or activities that will inherently increase or result in technically measureable increases to either floodplain, then the Independent Floodplain Development permit is required.
2. In a letter entitled "Order to Take Corrective Action" dated February 16, 2011, from Bill Tingle, Floodplain Administrator, to Dr. Ilonka Aylward ("Appellant"), various methods were outlined to remedy the City of Charlotte Floodplain ordinance violations upon the property at 1645 Scotland Avenue. The letter, marked Exhibit 1, provided Appellant with two corrective action options to remedy the violations. The first corrective action option included: obtain an Individual Floodplain Development permit; present documentation signed and sealed by a North Carolina licensed land surveyor that the encroachments are or mulch is not above grade; remove any encroachments or mulch that is above grade and reposition the encroachments or mulch at or below grade; and remove any mulch that is higher than twelve inches deep. The second corrective action option included: obtain an Individual Floodplain Development permit; and required a certification and associated technical data signed and sealed by a North Carolina Professional Engineer. Either corrective action option must receive approval from the Floodplain


Administrator on or before April 16, 2011. Nothing in the record demonstrates that Appellant successfully remedied the violations given the corrective action options presented.

3. In a letter dated January 3, 2011, from Matthys N. Barker, PE, to Appellant, Mr. Barker stated "the finished height of the patio and walkways are only slightly higher than the existing grade." This statement by Appellant's representative contained in Exhibit 8 demonstrated that the encroachments were above grade and required an Independent Floodplain Development Permit.
4. Charlotte City Code Section 9-102(6) requires an Independent Floodplain Development for any encroachment into the Community Base Floodplain and/or the FEMA Floodplain if the encroachment is above grade.
5. Janet C. Thomas testified that she observed truckloads of dirt coming onto Appellant's property at 1645 Scotland Avenue when Appellant placed the encroachments into the Community Base Floodplain and/or the FEMA Floodplain. Ms. Thomas lives at 1649 Scotland Avenue which property is adjacent to Appellant's property.
6. The Floodplain Administrator testified that he observed on November 23, 2010, mulch being higher than twelve (12) inches on the property at 1645 Scotland Avenue inside the Community Base Floodplain and/or the FEMA Floodplain.
7. In a letter dated February 8, 2011, from Johnny H. Denton, PE, PLS to Appellant and marked as Exhibit 3, Mr. Denton failed to provide the hydrologic and hydraulic analysis required under Code Section 9-102(6) to the Floodplain Administrator. Appellant did not satisfy the requirements of Corrective Action #5 in the Floodplain Administrator's Order to Take Corrective Action because Mr. Denton's letter did not provide the associated technical data.
8. The substantial length of the broken concrete pathway from Appellant's detached garage into the Community Base Floodplain and/or the FEMA Floodplain requires an Independent Floodplain Development permit from the Floodplain Administrator. Furthermore, the entire broken concrete pathway rests upon twelve inch high mulch, which makes the property above grade.

**Based upon the above findings of fact, the Board upholds the Floodplain Administrator's decision because the majority of the Zoning Board of Adjustment did not find an error as stated in §5.109(1) of the Ordinance in the Floodplain Administrator's decision.**

Pursuant to N. C. G. S. Section 160A-388(e), the Board's decision in Case No. 11-010 may be appealed by a petition for review in the nature of *certiorari* to Superior Court within thirty (30) days after receipt of the decision by an aggrieved party who filed a written request for such copy with the Clerk to the Board at the time of the hearing of the case.

Sincerely,

  
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Jeff Davis  
Chairperson

7-26-11  
\_\_\_\_\_  
Date

**DECISION FILED IN THE PLANNING DEPARTMENT:**

July 26, 2011        
Date      Katrina Young, Zoning Administrator