



CERTIFIED MAIL

Anh Ngoc Phan/Dao Thi Nguyen
9106 Windy Gap Rd
Charlotte, NC 28278

**RE: VARIANCE
9106 WINDY GAP ROAD
CASE NUMBER 2014-041**

Dear Anh Ngoc Phan/Dao Thi Nguyen:

At its meeting on September 30, 2014, the City of Charlotte Zoning Board of Adjustment ("Board") denied three (3) variances to allow an existing fence to remain as currently constructed:

1. a 2 foot 10 inch variance to allow the fence located within the required setback to exceed the 5-foot maximum height and remain at a height of 7 feet 10 inches,
2. a 1 foot 10 inch variance to allow the fence within the required side yard to exceed the 6-foot maximum height and remain at a height of 7 feet 10 inches, and
3. a variance to allow the portion of the fence currently within the Windy Gap Road right-of-way to remain within the public right-of-way.

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

1. The applicants are Anh Ngoc Phan/Dao Thi Nguyen (Represented by Cyndi Diem Dgoc Nguyen).
2. The proposed site is located at 9106 Windy Gap Road, further identified as tax parcel 199-391-22.
3. The subject parcel is currently zoned R-5 LLW-CA (single family, lower Lake Wylie critical area watershed overlay).
4. A residential structure currently occupies this location.
5. The property owners received a Notice of Violation on August 28, 2014, for erecting a fence that does not comply with the height standard for fences and walls in a residential district per the Ordinance.
6. The applicant filed for a variance on August 29, 2014.
7. The applicants had a fence installed in the required setback. It is 2 feet 10 inches higher than the maximum 5-foot standard in the required setback and the fence located in the required side yard is 1 foot 10 inches higher than the maximum 6-foot standard in the required side yard for a fence located in a residential district.
8. Code Section 12.406(1) states no fence or wall located in the required setback shall be built to a height greater than 5 feet above grade.

9. Code Section 12.406(2) states no fence or wall located in the required side yard between the required setback and established rear yard shall be built to a height greater than 6 feet above grade.
10. Windy Gap Road near subject parcel has a 60 foot public right-of-way with half of the right-of-way measured from the center line being 30 feet.
11. The fence is currently located 19 feet from the centerline of Windy Gap Road and therefore is 11 feet within the public right-of-way.
12. Code Section 12.110 states no structure shall be permitted which obstructs or otherwise interferes within public use of a street right-of-way or other public easement.
13. The hardship is personal in nature.
14. The lot has no irregular configuration or unique shape.

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 results 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.

Pursuant to North Carolina General Statutes § 160A-388(e2), the Board's decision in Case No. 2014-041 may be appealed by a petition for review in the nature of *certiorari* to Superior Court within thirty (30) days from the date stated below, which is the date when the decision of the Board was filed in the Planning Department/Zoning Administration Division, or 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, whichever is later.

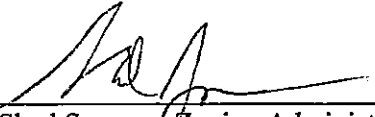
Sincerely,


Michael Knotts
Chairperson

10/2/14
Date

DECISION FILED IN THE PLANNING DEPARTMENT:

10/6/14
Date


Shad Spencer, Zoning Administrator

Cc: Cyndi Diem Ngoc Nguyen