



**CERTIFIED MAIL**

**Michelle and Matthew Hull  
6308 Pineburr Road  
Charlotte, NC 28211**

**RE: VARIANCE  
1534 LUMARKA DRIVE  
CASE NUMBER 2015-041**

Dear Michelle and Matthew Hull:

At its meeting on August 25, 2015, the City of Charlotte Zoning Board of Adjustment ("Board") **denied** three variances to allow for an accessory dwelling unit (ADU) to be located within an existing accessory structure:

1. Allow a 196 heated square foot variance increase from the required 800 heated square foot limitation.
2. Allow the ADU to extend 1.2 foot above the height of the principal dwelling.
3. Allow a 6 foot variance from the required 6 foot side yard to allow the ADU to have a 0 foot side yard.

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

1. The applicants are Michelle & Matthew Hull.
2. The proposed site is located at 1534 Lumarka Drive, further identified as tax parcel 191-048-04.
3. The property is zoned R-3 (single family residential).
4. The single family structure that currently occupies the site was built in 1962.
5. In 1998/1999, the previous owners obtained a permit to construct a detached garage with storage to the rear of the single family home. The permit was renewed in 2002.
6. ADU's were not permitted in 2002. In 2012, a text amendment was adopted by City Council to allow ADU's within residential districts with prescribed conditions.
7. The storage area on the second floor of the detached garage was converted into an ADU at some unknown time by the previous property owner. There is no record of permits being issued for the renovation.
8. The Hulls purchased the property February 2015.
9. A notice of violation was issued on June 25, 2015, stating that the ADU had not been approved and that the ADU must comply with all applicable Zoning Ordinance provisions including Section 12.407.
10. Per Code Section 12.407(6)(a), in no case shall the ADU exceed 800 heated square feet.
11. The second floor of the accessory structure where the ADU is proposed is already constructed and contains a heated floor area of 996 square feet.
12. Per Code Section 12.407(6)(b), the structure containing the ADU shall be no taller than the principal dwelling.

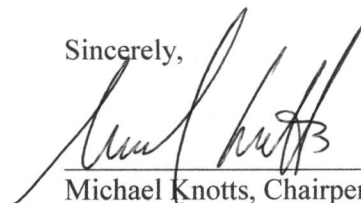
13. The accessory structure in which the ADU is proposed is 1.2 feet taller than the principal structure. The accessory structure is within the established rear yard. The topography of the subject property slopes down approximately 10 feet from the front of the property to the rear of the property.
14. Per Code Section 12.407(6)(c), the ADU shall not be any closer than 15 feet to a rear property line or along any side property line within the required side yard dimension. The required side yard dimension within the R-3 zoning district is six feet.
15. The applicant is requesting the following three variances to allow an ADU, which did not receive City approval, to remain:
  - a) Allow a 196 heated square foot variance increase from the required 800 heated square foot limitation.
  - b) Allow the ADU to extend 1.2 foot above the height of the principal dwelling.
  - c) Allow a 6 foot variance from the required 6 foot distance from the 6 foot side yard to allow the ADU to have a 0 foot side property line.
16. ADU's are allowed within residential zoning districts. However, this subject ADU does not meet the prescribed conditions of Section 12.407 of the Zoning Ordinance.
17. The shed/accessory structure to the rear of the first accessory structure is in violation of the required three foot separation for accessory structures.
18. The applicants have not demonstrated a hardship for continued placement of the shed in its present location.
19. Granting the variance would be in direct conflict with the Zoning Ordinance.
20. There is no hardship that is the result of the Zoning Ordinance.

**Based upon the above findings of fact, the Board concludes that the applicant has not met the standards set forth in North Carolina General Statutes § 160A-388, and more specifically:**

1. Unnecessary hardship would not result from the strict application of the Ordinance.
2. The hardship is not result from conditions that are peculiar to the property (location, size or topography).
3. The hardship results from actions taken by the applicant or the property owner.
4. The requested variance is not consistent with the spirit, purpose, and intent of the Zoning Ordinance, in that the public safety is not secured and substantial justice is not achieved.

Pursuant to N. C. G. S. Section 160A-388(e2), the Board's decision in Case No. 2015-041 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

8/27/15  
Date

**DECISION FILED IN THE PLANNING  
DEPARTMENT:**

  
Shad Spencer, Zoning Administrator

8/28/15  
Date