



CERTIFIED MAIL

Sergei and Tatyana Semyrog
133 Lutomma Circle
Charlotte, NC 28105

**RE: VARIANCE
133 LUTOMMA CIRCLE
CASE NUMBER 2016-001**

Dear Sergei and Tatyana Semyrog:

At its meeting on February 23, 2016, the City of Charlotte Zoning Board of Adjustment ("Board") **denied** a 2 foot 6 inch variance to allow the fence located within the required setback of a residential zoning district to exceed the 5 foot maximum height and remain at a height of 7 feet 6 inches as currently constructed.

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

1. The applicants are Sergei and Tatyana Semirog (Represented by Semirog Law Firm pllc).
2. The proposed site is located at 133 Lutomma Circle, further identified as tax parcel 187-151-68.
3. The subject parcel is currently zoned R-3 (single family residential).
4. A residential structure currently occupies this location.
5. A Notice of Violation was issued to the applicant on November 2, 2015, 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 has installed an aluminum and concrete fence that exceeds the 5 foot maximum height allowed within the required setback.
7. Per the applicant's survey and pictures taken by staff, it has been determined that the fence is located within the 60 foot public right-of-way of Lutomma Circle.
8. Fences are prohibited in the right-of-way unless approved by the City of Charlotte Department of Transportation ("CDOT").
9. Lutomma Circle is considered a local street with a maximum posted speed of 35mph.
10. The applicant's fence is 2 foot 6 inches higher than the maximum 5 foot standard.
11. 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.
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.
15. The applicant discussed a continuance but did not formally request one. As a result, the Board ruled on the variance request.
16. While the location of the fence in the right-of-way is a matter reserved for CDOT, the height of the fence is in the purview of this Board.

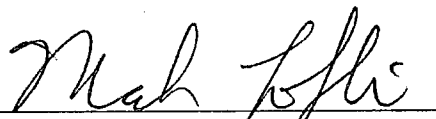
17. The NOV was not appealed and therefore was not before this Board.
18. The applicant failed to explore other options that would allow compliance with the ordinance.

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 hardships would not result from the strict application of the Ordinance.
2. The hardship does 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 not secured and substantial justice is achieved.

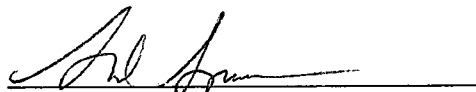
Pursuant to N. C. G. S. Section 160A-388(e2), the Board's decision in Case No. 2016-001 may be appealed by a petition for review in the nature of *certiorari* to Superior Court within thirty (30) days from the date stated below, which is the date when the decision of the Board was filed in the Planning 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,


Mark Loflin, Acting Chairperson

3-1-16
Date

**DECISION FILED IN THE PLANNING
DEPARTMENT:**


Shad Spencer, Zoning Administrator

3/2/16
Date