



Justin L. Nevill Trust
4133 Orr Ranch Road
Charlotte, NC 28205

RE: APPEAL
1316 Thomas Avenue
CASE NUMBER 2016-043

Dear Mr. Justin L. Nevill:

On August 30, 2016, the City of Charlotte Zoning Board of Adjustment ("Board") **upheld** the Zoning Administrator's determination that the off-street surface parking lot on the subject property is in violation of Zoning Ordinance and is not a nonconforming use.

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

1. The applicant is Justin I. Nevill Trust (Represented by Justin I. Nevill).
2. The subject property is located at 1316 Thomas Avenue, further identified as tax parcel 081-173-05.
3. The parcel is zoned R-5 (single family residential) and located within the historic district overlay (HD-O).
4. Per Section 9.202 (uses permitted by right) and Section 9.203 (uses permitted under prescribed conditions), an off-street surface parking lot is not a permitted principal use within the R-5 zoning district.
5. Below is the zoning history on the subject property.
 - a. The City of Charlotte established zoning on this subject property in 1962 and the original zoning classification was O-6 (office). Off-street surface parking was an allowed principal use in the O-6 (office) district.
 - b. The subject parcel was rezoned as part of a larger rezoning by the City of Charlotte in 1983 from O-6 (office district) to R-6MF (multi-family residential). Off-street surface parking was not an allowed principal use in the R-6MF (multi-family residential) district.
 - c. The R-6MF (multi-family residential) district converted to R-22MF (multi-family residential) following the rewrite of the Charlotte Zoning Ordinance in 1992. Off-street surface parking was not an allowed principal use in the R-22MF (multi-family residential) district.
 - d. In 2003, the Plaza Midwood neighborhood petitioned to have the subject site along with a larger area within the neighborhood rezoned from R-22MF (multi-family residential) to the current R-5 (single family residential) zoning designation. The Charlotte City Council approved the rezoning.
6. The applicant has provided no evidence that the principle use of the subject property was an off-street surface parking lot prior to 1983 when the site was zoned O-6 (office).
7. Aerial photographs from 1997, 2005, and 2009 on Government Exhibit #12 do not indicate an off-street surface parking lot on the subject property nor do the photographs provide evidence that a nonconforming off-street surface parking lot existed on the property.

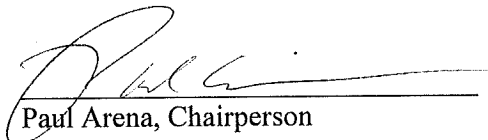
8. The 2010 aerial photograph on Government Exhibit #10 indicates wheel stops which delineate an off-street surface parking lot on the subject property.
9. The 2010 aerial photograph on Government Exhibit #10 indicates off-street surface parking on less than half of the subject property and indicates the subject property was covered with grass.
10. The 2016 aerial photograph on Government Exhibit #12 indicates an off-street surface parking lot on substantially all of the subject property and indicates that the subject property has been covered with gravel.
11. Per Section 7.102(3) of the Zoning Ordinance, a nonconforming use shall not be expanded.
12. Section 4.101(2) of the Zoning Ordinance requires a permit to be issued to establish a use on property within Charlotte.
13. The City of Charlotte has no record of permits being issued for the off-street surface parking lot.

Based upon the above findings of fact, the Board concludes that the applicant has failed to carry the burden stated in § 5.109(1) of the Ordinance to show an error in the Zoning Administrator's application of the Ordinance and more specifically:

The Zoning Board of Adjustment upholds the Zoning Administrator's determination that the off-street surface parking lot on the subject property is in violation of Zoning Ordinance and is not a nonconforming use.

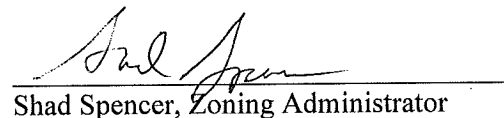
Pursuant to North Carolina General Statutes § 160A-388(e2), the Board's decision in Case No. 2016-043 may be appealed by a petition for review in the nature of *certiorari* to Superior Court within thirty (30) days from the date stated below, which is the date when the decision of the Board was filed 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,


Paul Arena, Chairperson

9/9/16
Date

**DECISION FILED IN THE PLANNING
DEPARTMENT:**


Shad Spencer, Zoning Administrator

9/19/16
Date

Cc: Thomas H. Harvey, Owner