



Mitchell and Robin Hume  
1438 Sterling Road  
Charlotte, NC 28209

Gregory and Elizabeth Childress  
1444 Sterling Road  
Charlotte, NC 28209

**RE: VARIANCE**  
**1438 Sterling Road & 1444 Sterling Road**  
**CASE NUMBER 2016-064**

Dear Mitchell and Robin Hume and Gregory and Elizabeth Childress:

At its meeting on January 31, 2017, the City of Charlotte Zoning Board of Adjustment ("Board") **granted** three variances to allow an existing accessory structure, which encroaches into the required 3' separation for the side property line and rear property line, to remain. These variances include a:

- 3' variance from the left side property line of 1438 Sterling Road for the existing accessory structure;
- 2.1' variance from the rear property line of 1438 Sterling Road for the existing accessory structure; and,
- 1.2' variance from the side property line of 1444 Sterling Road for the existing accessory structure's eave overhangs.

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

1. The applicants are Mitchell and Robin Hume (1438 Sterling Road) & Gregory and Elizabeth Childress (1444 Sterling Road) - Represented by Susanne Todd with Johnston, Allison & Hord.
2. The subject properties are located at 1438 Sterling Road and 1444 Sterling Road further identified as tax parcels 151-053-11 & 151-053-10.
3. Both properties are zoned R-3 (single family residential).
4. Mitchell and Robin Hume purchased 1438 Sterling Road around 2002, as indicated by Mecklenburg County Real Estate information.
5. Per Code Section 12.106(2)(a), no accessory structures, including architectural features, shall be located within any setback or side yard required of these regulations, or located within three (3) feet of a lot line in the established rear yard.
6. An accessory structure is located within the established rear yard of the property located at 1438 Sterling Road. The carport portion of the structure currently encroaches into the required 3 foot separation from the side and rear property lines. The carport eave is 0.9 feet from the rear property and extends to the left side property line. The carport eave crosses the left property line onto the neighboring property at 1444 Sterling Road by up to 1.2 feet.

7. A notice of violation was issued October 10, 2016, stating that the accessory structure was in violation of the Zoning Ordinance. No permits were issued for modifications to the existing nonconforming garage nor were permits issued for the carport addition. It was indicated that the carport addition encroached into the required 3 foot separation from the side and rear property lines and would be required to be removed.
8. Mitchell and Robin Hume submitted an application for a variance on November 10, 2016. The variance application was amended on January 23, 2017 following the completion of a survey on their subject property at 1438 Sterling Road.
9. The applicants at 1438 Sterling Road are requesting a 3' variance from the left side property line and a 2.1' variance from the rear property line to allow an existing accessory structure to remain which encroaches into the required 3' separation for accessory structures from side and rear property lines when located within an established rear yard.
10. Gregory and Elizabeth Childress added their property at 1444 Sterling Road to the variance application on January 27, 2016. This request is to allow the 1.2 foot encroachment of the carport eave to remain within 3 foot separation requirement on their property if the neighbor's carport is allowed to remain within separation area of their subject property at 1438 Sterling Road.
11. A 10 foot storm sewer right-of-way was identified on the original plat (map book 1698 page 439) from 1954 for the subject property at 1438 Sterling Road and ran along the entire left side property line.
12. The Humes' contend that a carport previously existed in the same location as the existing carport but was removed in approximately 2005, due to deteriorating conditions caused by a storm drainage pipe under the driveway and carport area.
13. The previous carport would have been considered a nonconforming structure due to its location on and across the property line.
14. A permanent easement for storm drainage was recorded in Deed Book 14437 at Page 368 in the Mecklenburg Public Registry in 2004. The Hume's granted the City of Charlotte an easement measuring 10 feet on each side of the centerline of the storm drainage facilities.
15. The applicants at 1438 Sterling Road contend that during a 2011 renovation project of the remaining accessory structure, the carport was reconstructed to its original location.
16. The information in the variance application indicates the property owner at 1438 Sterling Road is unable to detach and move the carport away from the brick wall along the property line in order to accommodate the 3 foot separation requirement. Additional support columns are not allowed on the storm drainage pipe and the remaining space would not be wide enough to park a car.
17. Although common to all lots, the 10 foot storm drainage easement imposed by the original developer is unique to the Humes' property and dictated the exact location of the carport and garage when initially developed.
18. The easement location creates a hardship in that it prohibits location of the carport outside of the side lot setback. The carport cannot be moved to comply with the side and rear lot setback requirement without placing the posts within the easement area, nor can it be relocated elsewhere on the property.
19. Furthermore, the carport is comprised in part of a brick wall that runs the perimeter of the property and protects vehicles from driving down the driveway and provides a barrier from cars rolling off the end of the driveway.
20. The storm drainage pipe within the easement creates a hardship in that it caused storm water runoff from the neighborhood streets to erode the Humes' property and caused portions of the carport to collapse.
21. Work on the carport was continuously pursued from the date of the damage until completion of restoration. While the applicants at 1438 Sterling Road did not obtain a permit to restore the carport, the applicants at 1438 Sterling Road undertook in good faith to restore the carport in its previous location to its previous condition.

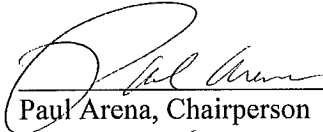
22. The carport is in keeping with numerous other detached carports in the neighborhood that are built to the property line.

**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.

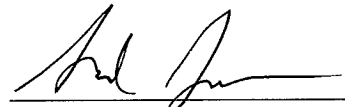
If any permits are required, please make sure the variance case number is referenced on the permit application and/or site plan. Section 5.111 of the Zoning Ordinance provides that unless otherwise specified by the Board, any decision of the Board granting a variance shall automatically expire if a permit or a certificate of occupancy pertaining to the need for the variance is not obtained within two (2) years from the date of the meeting of the Board at which the Board rendered its decision.

Sincerely,

  
Paul Arena, Chairperson

2/20/17  
Date

**DECISION FILED IN THE  
PLANNING DEPARTMENT:**

  
Shad Spencer, Zoning Administrator

3/1/17  
Date

cc: Johnston, Allison & Hord (Susanne Todd)