



Mark & Amy Brown  
2033 Charlotte Drive  
Charlotte, NC 28203

**RE: VARIANCE**  
**2033 Charlotte Drive**  
**CASE NUMBER 2019-048**

To Whom It May Concern:

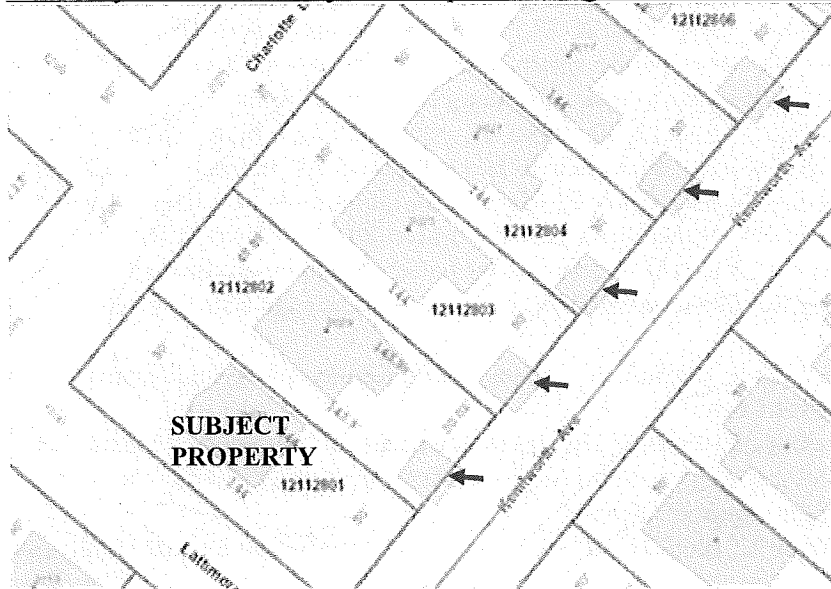
At its meeting on July 30, 2019, the City of Charlotte Zoning Board of Adjustment ("Board") **granted** a variance to allow an accessory structure to remain in the 40' proposed right of way and the 20' transitional setback.

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

1. The applicants are Mark and Amy Brown.
2. The proposed site is located at 2033 Charlotte Drive, further identified as tax parcel 121-128-01.
3. The approximately 0.16 acre property is zoned R-5 (single family) and located within the Historic District Overlay of Dilworth.
4. The site currently has a principal single family dwelling and an accessory structure on the property.
5. The single family dwelling is oriented with the front of the home facing Charlotte Drive and the rear of the home facing Kenilworth Avenue.
6. Per Code Section 9.205(1)(e2) & 12.102(4), the minimum setback is 20 feet, and since the setback and rear yard both abut public streets, the required rear yard is the same as the required setback, therefore, a 20 foot setback is required along Kenilworth Avenue.
7. Per Code Section 12.103(1), the minimum setback along a thoroughfare shall be measured from the 'proposed right-of-way' line, which is established by thoroughfare classification. Kenilworth Avenue is classified as a Class III Major Arterial, bounded by Route 4 and I-85, so the 'proposed right-of-way' is 40 feet measured from the centerline of Kenilworth Avenue.
8. Per Code Section 12.103(2), a 'transitional setback' shall be established along a thoroughfare that has an existing right-of-way which is not as wide as the right-of-way established for that thoroughfare.
9. The required 20 foot 'transitional setback' along Kenilworth Avenue is measured from the 40 foot 'proposed right-of-way'.
10. Per Code Section 12.103(2)(a) The 'transitional setback' established for lots abutting thoroughfares can be used for any purpose allowed by the particular zoning district, except for uses which are prohibited in the required setbacks.
11. Per Code Section 12.106(2)(a) no accessory structures shall be located within any setback.
12. There is an existing shed on the property located within the 'proposed right-of-way' and 'transitional setback' along Kenilworth Avenue.
13. The applicant is requesting a variance to allow the existing shed to remain in the 40 foot 'proposed right-of-way' and the 20 foot 'transitional setback'.

14. A Notice of Violation was issued on May 23, 2019 citing the need for a building permit as well as a Certificate of Appropriateness from the Historic District Commission due to the property being located in the Dilworth Historic District Overlay.
15. The applicants had previously obtained a Certificate of Appropriateness for the removal of a plastic shed and replacement with the existing wooden shed in the same location on August 2, 2018.
16. The applicants stated they were unaware they also needed a building permit in addition to the Certificate of Appropriateness.
17. The applicants became aware of the encroachment of the existing accessory structure into the 'proposed right-of-way' and 'transitional setback' along Kenilworth Avenue when they tried to obtain a building permit in response to the Notice of Violation.
18. The hardship was not a result of actions taken by the applicants.
19. The applicants survey dated July 23, 2015, that they obtained for the purchase of the property did not show the 'proposed right-of-way', or 'transitional setback', and did not identify any special considerations for the side of the property abutting Kenilworth Avenue.
20. The existing shed is located approximately 9 feet inside the property line abutting Kenilworth Avenue, and approximately 5 feet within the 'proposed right-of-way', and is within the 'transitional setback'. The shed is not located within the 'existing right-of-way' of Kenilworth Avenue.
21. Granting the variance will not adversely affect adjacent or contiguous properties.
22. Granting the variance will not alter the essential character of the area.
23. Adjacent properties along Kenilworth Avenue have nonconforming accessory buildings located within the 'existing right-of-way'.

Accessory Structures of Adjacent Properties along Kenilworth Avenue



24. The size of the property, the existing trees on the property, and the application of the 'proposed right-of-way' and 'transitional setback' along Kenilworth Avenue make it difficult to reasonably locate a shed on the site without encroachment.
25. The hardship is unique to the property because of the property has frontage along both a local street and a major arterial.
26. CDOT has indicated their support of the requested variance in an email dated July 8, 2019.

**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 does result 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,



Rick Sanderson, Vice-Chairperson

8/5/19  
Date

**DECISION FILED IN THE  
PLANNING DEPARTMENT:**



Shad Spencer, Zoning Administrator

8/9/19  
Date