



Spartanburg County

Planning and Development Department

Board of Zoning Appeals MINUTES

February 23, 2021

Members

Present:

Jack Gowan, Jr., Chairman
Michael Padgett, Vice Chairman
Kae Fleming
Louise Rakes
Thomas Davies
Jason Patrick
Angela Geter
Glenda Brady

Members

Absent:

Marion Gramling

Staff Present:

Joan Holliday, Interim Director
Rick Carpenter, Planner IV
Leigh MacDonald, Sr. Planner
John Harris, County Attorney
Rachel Dill, Development Coordinator I

NOTICE: Pursuant to Section 30-4-80 of the S.C. Code of Laws, the annual notice of meetings for this Board was provided on or before January 1, 2015 via the County website. In addition, the Agenda for this Meeting was posted on the bulletin board at the entrance to the Administration Building as well as on the County's website and was emailed to all persons, organizations, and news media requesting notice.

1. Call to Order

Chairman Jack Gowan, Jr. called the meeting to order.

2. Approval of Minutes January 26, 2021 Meeting

Kae Fleming made a motion to approve the minutes. Mike Padgett seconded the motion. The motion carried with a vote of 8 to 0.

3. Unfinished Business – None

4. New Business –

A. Variance Request:

Rosa Curbello – 121 Sims Chapel Road

Tax Map Number: 7-20-02-072.00
 Variance On Front Setback
 Variance On Rear Setback

Rick Carpenter was sworn in and presented the following staff report(s):

Variance Request 1
Staff Report

Rosa Curbello			
Meeting Date: February 23, 2021			
Reference Name	121 Sims Chapel Rd.	Applicable Zoning Ordinance	ULMO
Zoning District		Partial Restrictive	
Factual Dates	Variance Application Received	1/25/2021	
	Deadline for Variance	1/26/2021	
	Public Notice	2/7/2021	
	Adjoining Property Owner Notification	2/8/2021	
	Variance Signs Posted on Property	2/8/2021	
Applicant	Travis Johnson – Agent of Authorization		
Applicant Status	Rosa Curbello		
Map Number	7-20-02-072.00		
Variance Case Number	VAR-01-21		

Request:

The applicant is requesting to reduce the total front setback required in Table 3a – Residential Setbacks and Other Requirements of the Unified Land Management Ordinance.

Setback	Requirement	Request
Front	20 Feet	14 Feet 6 inches

Background Information:

The subject site is currently a vacant interior lot with a block foundation and classified by the Assessor’s Office as non-qualified regular residential vacant. The subject parcel is approximately 7,400 square feet and was originally subdivided prior to the implementation of the ULMO. This site was purchased in 2020, and the applicant is proposing a new single family dwelling. Oakwood Homes applied for a building permit for setting up a modular home at 121 Sims Chapel Rd. and the footing and foundation were approved in October 2020. It was then found, when a new survey was presented to the County, that the foundation does not meet the front setback as required in the ULMO. The subject site is consistent

with adjacent parcels as it relates to lot width but the depth of the lot has led to the non-conformity. The foundation for the proposed 1,976 square foot modular dwelling unit, and decks designed for ingress and egress, encroach into the rear and front setbacks that are imposed on the property. A modular home is considered, within the State of South Carolina Building Code, as a stick-built single family home. Additionally, Duke Energy has a setback from a power line along the street frontage. Duke Energy has reviewed the site and determined that the applicant may proceed with the proposed development in relation to the distribution line.

Total Acreage:

7-20-02-072.00 – Approximate parcel acreage is 0.175 ac.

Applicable Ordinance and Zoning:

Section 2.02-1 Dimensional Standards, Table 3a – Residential Setbacks and Other Requirements

Staff Planner(s):

Richard Carpenter – Planner IV

Staff Position:

Staff has determined that the proposed dwelling unit foundation is non-conforming due to the size and shape of the parcel and the design of the proposed structure. When all setbacks are applied, there is a small triangular piece of land available for development. The applicant is proposing one single family dwelling on this parcel. The proposed dwelling unit is 1,976 square feet and would encroach into both the front and rear property setbacks. The unusual size and shape of the parcel is the determining factor that would make it difficult for the applicant to complete the proposed structure without a reduction in size. The following setbacks apply to this parcel and are required for residential use on a minor street:

Ordinance	Front Lot Line	Rear Lot Line	Side Lot Line
Residential Setbacks and Other Requirements	20 Feet	20 Feet	5 Feet

The applicant wishes to seek relief from the strict application of the zoning ordinance in relation to the front setback. Single family structures on Minor Streets have a front setback of twenty (20) feet and the applicant has requested to reduce the setback to 14 feet 6 inches. This reduction would allow the applicant the ability to finish constructing the dwelling unit in its present location. The structure has two four (4) foot by four (4) foot decks for ingress and egress. These decks meet the minimum requirements for South Carolina Building Code and are not projected to encroach any further. According to the submitted survey, the front deck encroaches 15' 6" into the front setback. The additional 1 foot requested by the applicant is presumed to be for flexibility in the design. After all setbacks are imposed, the buildable lot size would be decreased by approximately 5,450 square feet. This reduction constitutes approximately 74 percent of the total lot size. This particular site would still not be in compliance with the ULMO if this variance were granted. The subject site will need a variance from the Board of Zoning Appeals for one additional case concerning the rear setback encroachment.

Staff Analysis:

The board may grant a variance for an unnecessary hardship if it makes and explains in writing all of the following findings.

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property

Staff Analysis. The hardship, and subsequent need for variances, is partially due to beginning construction within the setback area without referencing the requirement. However, the subject property is impacted by the unusual shape and size of the parcel regardless of the existing development. The subject site was subdivided prior to the County having and land development regulations, and the unusual or exceptional condition that exists on this site are the spatial boundaries that were created through the subdivision. These parameters make it exceptionally hard for the applicant to orient any dwelling unit in a way that would satisfy all ULMO setback requirements without a significant reduction in the proposed structure size.



See Exhibit 2 for the applicant’s response to the hardship caused by strict application of the Ordinance.

2. These conditions do not generally apply to other property in the vicinity

Staff Analysis. The conditions subjected to the site do not generally apply to adjacent properties. This burden is not shared by parcels in the general vicinity, and relief through a variance could be exercised in this exceptional instance to preserve the spirit of the ordinance and achieve substantial justice.

See Exhibit 2 for the applicant’s response to the hardship caused by strict application of the Ordinance.

3. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.

Staff Analysis. The Strict application of the ordinance would likely eliminate the applicant’s ability to utilize this parcel based on the parameters of their existing foundation. The size and orientation of the parcel could constitute an unreasonable restriction on the applicant in regard to the placing a home of a practical, functional size. Utilizing the property for a residential use would meet the spirit of the ordinance in this largely residential neighborhood.

See Exhibit 2 for the applicant’s response to the hardship caused by strict application of the Ordinance.

4. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the area will not be harmed by the granting of the variance.

Staff Analysis. The authorization of a variance, as it relates to the front setback, may not have a negative impact on overall community character. The region where this vacant lot is located is primarily dominated by detached single family residential dwellings. Additionally, the proposed dwelling location is aligned with the neighboring parcel. The applicant has also submitted two documents that appear to be signed by adjacent land owners to show support for the development. These documents have been added as Exhibit 5.

See Exhibit 2 for the applicant’s response to the hardship caused by strict application of the Ordinance.

The fact that property may be utilized more profitably, if a variance is granted, may not be considered grounds for a variance.

Staff Analysis. The primary argument for this variance is the location of the foundation in relation to the front lot line. This residential project could not proceed in any capacity at this location while utilizing the existing structure design without the variance. It is this restriction that is the basis for the applicant’s argument for unreasonable hardship due to the strict application of the ordinance.

Exhibits:

1. Context map
2. Application
3. Site design
4. Frontal view of project site
5. Support documents

Variance Request 2
Staff Report

Rosa Curbello			
Meeting Date: February 23, 2021			
Reference Name	121 Sims Chapel Rd.	Applicable Zoning Ordinance	ULMO
Zoning District		Partial Restrictive	
Factual Dates	Variance Application Received	1/25/2021	
	Deadline for Variance	1/26/2021	
	Public Notice	2/7/2021	
	Adjoining Property Owner Notification	2/8/2021	
	Variance Signs Posted on Property	2/8/2021	
Applicant	Travis Johnson – Agent of Authorization		
Applicant Status	Rosa Curbello		

Map Number	7-20-02-072.00
Variance Case Number	VAR-02-21

Request:

The applicant is requesting to reduce the total rear setback required in Table 3a – Residential Setbacks and Other Requirements of the Unified Land Management Ordinance.

Setback	Requirement	Request
Rear	20 Feet	9 Feet 4in.

Background Information:

The subject site is currently a vacant interior lot with a block foundation and classified by the Assessor’s Office as non-qualified regular residential vacant. The subject parcel is approximately 7,400 square feet and was originally subdivided prior to the implementation of the ULMO. This site was purchased in 2020, and the applicant is proposing a new single family dwelling. Oakwood Homes applied for a building permit for setting up a modular home at 121 Sims Chapel Rd. and the footing and foundation were approved in October 2020. It was then found, when a new survey was presented to the County, that the foundation does not meet the rear setback as required in the ULMO. The subject site is consistent with adjacent parcels as it relates to lot width but the depth of the lot has led to the non-conformity. The foundation for the proposed 1,976 square foot modular dwelling unit, and decks designed for ingress and egress, encroach into the rear and front setbacks that are imposed on the property. A modular home is considered, within the State of South Carolina Building Code, as a stick-built single family home. Additionally, Duke Energy has a setback from a power line along the street frontage. Duke Energy has reviewed the site and determined that the applicant may proceed with the proposed development in relation to the distribution line.

Total Acreage:

7-20-02-072.00 – Approximate parcel acreage is 0.175 ac.

Applicable Ordinance and Zoning:

Section 2.02-1 Dimensional Standards, Table 3a – Residential Setbacks and Other Requirements

Staff Planner(s):

Richard Carpenter – Planner IV

Staff Position:

Staff has determined that the proposed dwelling unit foundation is non-conforming due to the size and shape of the parcel and the design of the proposed structure. When all setbacks are applied, there is a small triangular piece of land available for development. The applicant is proposing one single family dwelling on this parcel. The proposed dwelling unit is 1,976 square feet and would encroach into both the front and rear property setbacks. The unusual size and shape of the parcel is the determining factor that would make it difficult for the applicant to complete the proposed structure without a reduction in size. The following setbacks apply to this parcel and are required for residential use on a minor street:

Ordinance	Front Lot Line	Rear Lot Line	Side Lot Line
Residential Setbacks and Other Requirements	20 Feet	20 Feet	5 Feet

The applicant wishes to seek relief from the strict application of the zoning ordinance in relation to the rear setback. Single family structures have a rear setback of twenty (20) feet and the applicant has requested a reduction of approximately 50%. This reduction would allow the applicant the ability to construct the dwelling unit 9 feet 4 inches from the property line. The structure has two four (4) foot by four (4) foot decks for ingress and egress. These decks meet the minimum requirements for South Carolina Building Code and are not projected to encroach any further. After all setbacks are imposed, the buildable lot size would be decreased by approximately 5,450 square feet. This reduction constitutes approximately 74 percent of the total lot size. This particular site would still not be in compliance with the ULMO if this variance were granted. The subject site will need a variance from the Board of Zoning Appeals for one additional case concerning a front setback encroachment.

Staff Analysis:

The board may grant a variance for an unnecessary hardship if it makes and explains in writing all of the following findings.

5. There are extraordinary and exceptional conditions pertaining to the particular piece of property

Staff Analysis. The subject property is impacted by the unusual shape and size of the parcel. The subject site was subdivided prior to the County having land development regulations, and is too small to accommodate the proposed structure while remaining in compliance. The unusual or exceptional condition that exists on this site are the spatial boundaries that were created through subdivision. These parameters make it exceptionally hard for the applicant to orient any dwelling unit in a way that would satisfy all ULMO setback requirements without a significant reduction in the proposed structure size.



See Exhibit 2 for the applicant's response to the hardship caused by strict application of the Ordinance.

6. These conditions do not generally apply to other property in the vicinity

Staff Analysis. The conditions existing on the site do not generally apply to adjacent properties. This burden is not shared by parcels in the general vicinity and relief through a variance could be exercised in this exceptional instance to preserve the spirit of the ordinance.

See Attachment 2 for the applicant's response to the hardship caused by strict application of the Ordinance.

7. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.

Staff Analysis. The Strict application of the ordinance would likely eliminate the applicant's ability to utilize this parcel based on the parameters of their existing foundation. The size and orientation of the parcel could constitute an unreasonable restriction on the applicant in regard to the placing a home of a practical, functional size. Utilizing the property for a residential use would meet the spirit of the ordinance in this largely residential neighborhood.

See Exhibit 2 for the applicant's response to the hardship caused by strict application of the Ordinance.

8. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the area will not be harmed by the granting of the variance.

Staff Analysis. The authorization of a variance, as it relates to the rear setback, may not have a negative impact on overall community character. The region where this vacant lot is located is primarily dominated by detached single family residential dwellings. Additionally, the proposed dwelling location is aligned with the neighboring parcel. The applicant has also submitted two documents that appear to be signed by adjacent land owners to show support for the development. These documents have been added as Exhibit 5.

See Exhibit 2 for the applicant's response to the hardship caused by strict application of the Ordinance.

The fact that property may be utilized more profitably, if a variance is granted, may not be considered grounds for a variance.

Staff Analysis. The primary argument for this variance is the location of the foundation in relation to the rear lot line. This residential project could not proceed in any capacity at this location while utilizing the existing structure design without the variance. It is this restriction that is the basis for the applicant's argument for unreasonable hardship due to the strict application of the ordinance.

Exhibits:

- 6. Context map**
- 7. Application**
- 8. Site design**
- 9. Frontal view of project site**
- 10. Support documents**

Rick Carpenter, Planner IV, presented both variance requests to the board. Mr. Carpenter said that the applicant was seeking a reduction in the front and rear setbacks of the property. He stated that Travis Johnson, the applicant and project manager, was present to answer any questions.

Mr. Carpenter said that the applicant had initially requested to reduce the front setback to 14' 6". He explained that the property did not have the depth of the adjoining or nearby lots and the overall orientation of the lot minimized the buildable area. He stated that the building would also encroach into the Duke Energy setback, and that Duke Energy had approved the encroachment. He showed the board images of the site plan.

Mr. Carpenter said that staff did support the variance request of 15' 6" for the Front Setback and referenced the submitted site plan for the discrepancy in distance from the application and staff report. He said that the applicant was seeking a 14' 6" setback, but staff would support the distance of 15' 6" and the 9' 4" rear setback as shown on the site plan.

Chairman Jack Gowan asked if there were any questions for staff. There being none, Chairman Jack Gowan opened the public hearing.

Travis Johnson, project manager and applicant, was sworn in. Mr. Johnson said he was there to speak in favor of the variance request. He stated the urgency of the request and that the applicant would not have a residence if not approved.

Tom Davies asked Mr. Johnson why the foundation was built without verifying the setbacks. Mr. Johnson replied that he was brought onto the project after the foundation was in place and came to the Planning Department upon his discovery of the setback discrepancies.

Tom Davies stated that there were recurrent issues with setbacks after construction had begun and wished to restate the importance of verifying setbacks before construction commenced on projects.

Chairman Jack Gowan asked if anyone else was present to speak in favor of the variance. There being none, Mr. Gowan asked if anyone was present to speak in opposition of the variance. There being none, Mr. Gowan closed the public hearing.

Glenda Brady asked Mr. Carpenter for clarification on the front setback and if it was to be 14' 6" or 15' 6". Mr. Carpenter said that the variance request was for a front setback of 15' 6".

County Attorney, John Harris, asked Mr. Carpenter if he was in possession of documentation from Duke Energy that confirmed their approval of the encroachment into their setback. Mr. Carpenter said that he had the documentation in writing.

Tom Davies made a motion to grant the variance request for a reduction in the front setback to 15' 6" on the determination that the request meets all the criteria for granting a variance as set forth in Section 5.02-2(2) of the ULMO and the SC Local Government Comprehensive Planning Enabling Act (SC Code of Laws, Title 6, Chapter 29) as expressed in the Staff Report. Glenda Brady seconded the motion. The motion carried with a vote of 8 to 0.

Mr. Gowan asked if Mr. Carpenter had anything else to add to the variance request for a rear setback reduction. Mr. Carpenter said that he believed he had covered everything in his presentation, but was open to any questions or further clarification.

Chairman Gowan opened up the public hearing for the rear setback request. Mr. Gowan asked if anyone was present to speak in favor of the variance request. There being none, Mr. Gowan asked

if anyone was present to speak in opposition of the variance request. There being none, Mr. Gowan closed the public hearing.

Glenda Brady made a motion to grant the variance request for a reduction in the rear setback to 9' 4" on the determination that the request meets all the criteria for granting a variance as set forth in Section 5.02-2(2) of the ULMO and the SC Local Government Comprehensive Planning Enabling Act (SC Code of Laws, Title 6, Chapter 29) as expressed in the Staff Report. Angela Geter seconded the motion. The motion carried with a vote of 8 to 0.

4. Other Business

A. Nomination Committee Report and the Election of Officers

Kae Fleming said that the Nominating Committee would like to nominate Jack Gowan as Chairman, Mike Padgett as Vice Chairman, and Tom Davies as Secretary.

Glenda Brady made a motion to close the nominations. Tom Davies seconded the motion. The motion carried with a vote of 8 to 0.

Jason Patrick made a motion to approve the slate of officers as presented by the Nominating Committee with Jack Gowan as Chairman, Mike Padgett as Vice Chairman, and Tom Davies as Secretary. Glenda Brady seconded the motion. The motion carried with a vote of 8 to 0.

5. Adjourn

There being no other business, Glenda Brady made a motion to adjourn. Tom Davies seconded the motion. The motion carried with a vote of 8 to 0.