



Spartanburg County

Planning and Development Department

MINUTES

Unified Land Management

Board of Appeals

May 22, 2018

Members Present:

Michael Padgett, Chairman
Jack Gowan, Jr., Vice Chairman
Thomas Davies
Kae Fleming
Angela Geter
Marion Gramling
Jonathan Adams
Jason Patrick
Louise Rakes

Members Absent:

Staff Present:

John Harris, County Attorney
Bob Harkrader, Planning Director
Joshua Henderson, Senior Planner
Leigh Davis, Senior Planner
Laurie Horton, Senior Development Coordinator

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 Michael Padgett called the meeting to order.

2. Approval of Minutes of April 24, 2018 Meeting

Jason Patrick noticed the incorrect spelling of Ron Kirby's name. Marion Gramling made a motion to approve the minutes with the correction. Thomas Davies seconded the motion, which carried with a vote of 8 to 0.

3. Unfinished Business – None

4. New Business –

Angela Geter arrived.

**a. Variance Request – Keller Eye Care
1066 Boiling Springs Rd., Spartanburg (7-08-05-107.00)**

Josh Henderson was sworn-in and presented the following staff report:

Factual Dates

Variance Application Received	04/24/2018
Deadline for Variance	04/24/2018
Public Notice – Herald Journal	05/06/2018
Adjoining Property owners notified	05/08/2018
Variance Sign Posted on Property	05/08/2018
Board of Appeals Hearing	05/22/2018

Background Information

Keller Eye Care has submitted a variance request for the property located at 1066 Boiling Springs Rd., Spartanburg, SC 29303. The applicant is proposing an addition to the existing building.

The applicant is requesting the following variances:

Variance 1:

To reduce the front setback to 39.03’ from 50’ as required in Section 2.02-1 Dimensional Standards, Table 3b – Commercial & All Other Uses – Setbacks & Other Requirements.

Variance 2:

To reduce the front setback to 9.4’ from 30’ as required in Section 2.02-1 Dimensional Standards, Table 3b – Commercial & All Other Uses – Setbacks & Other Requirements.

Staff Recommendation

The Board may grant a variance if it makes the following findings:

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

The variance requests appear to meet this criteria.

The applicant wishes to expand an existing nonconforming building, which was constructed in 1955 prior to the adoption of the ULMO. According to the application, the existing porch steps extend 14’ into the setback and would be removed in order to place the expansion, which would only encroach 10’ into the setback.

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

The variance requests appear to meet this criteria.

Other properties in the vicinity do not contain existing nonconforming structures, which would restrict further development.

c.) 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.

The variance requests appear to meet this criteria.

Due to the existing nonconforming building, the applicant is unable to expand without approval of the variances.

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

The variance requests appear to meet this criteria.

The proposed addition is in the direction of the road rights-of-way and would not further encroach into any setbacks along property lines adjacent to residences. The encroachment would be reduced by removing the existing porch steps in favor of the expansion.

Given the existence of an already nonconforming structure, the requests to reduce the required front setback to 39.03' from 50' and front setback to 9.4' from 30' appear to meet the four 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). Therefore, staff recommends approval of the variances.

Josh Henderson presented the Board with an aerial image and street view of the property.

Chairman Padgett opened the public hearing.

Dr. Jarrod Keller, applicant, was sworn-in. He advised the Board that the addition would be used for personal office space and storage, not for an entrance or exit. The addition would not encroach any further than the existing encroachment and would be less when the existing porch is removed.

Chairman Padgett closed the public hearing.

Variance 1:

Thomas Davies made a motion to grant the variance based on the already non-conforming structure and determination that the request meets all 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).

a. The Board concludes that the Applicant(s) does have an unnecessary hardship because there are extraordinary and exceptional conditions pertaining this particular property based upon the following findings of fact:

The applicant wishes to expand an existing nonconforming building, which was constructed in 1955 prior to the adoption of the ULMO. According to the application, the existing porch steps extend 14' into the setback and would be removed in order to place the expansion, which would only encroach 10' into the setback.

b. The Board concludes that these conditions do not generally apply to other property in the area based on the following findings of fact:

Other properties in the vicinity do not contain existing nonconforming structures, which would restrict further development.

c. The Board concludes that 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 based on the following findings of fact:

Due to the existing nonconforming building, the applicant is unable to expand without approval of the variances.

d. The Board concludes that the authorization of the variance will not be of substantial detriment to adjacent property or the public good, and the character of the district will not be harmed by the granting of the variance based upon the following findings of fact:

The proposed addition is in the direction of the road rights-of-way and would not further encroach into any setbacks along property lines adjacent to residences. The encroachment would be reduced by removing the existing porch steps in favor of the expansion.

Marion Gramling seconded the motion. The motion carried with a vote of 9 to 0.

Variance 2:

Jason Patrick made a motion to grant the variance based on determination that the request meets all 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).

a. The Board concludes that the Applicant(s) does have an unnecessary hardship because there are extraordinary and exceptional conditions pertaining this particular property based upon the following findings of fact:

The applicant wishes to expand an existing nonconforming building, which was constructed in 1955 prior to the adoption of the ULMO. According to the application, the existing porch steps extend 14' into the setback and would be removed in order to place the expansion, which would only encroach 10' into the setback.

b. The Board concludes that these conditions do not generally apply to other property in the area based on the following findings of fact:

Other properties in the vicinity do not contain existing nonconforming structures, which would restrict further development.

c. The Board concludes that 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 based on the following findings of fact:

Due to the existing nonconforming building, the applicant is unable to expand without approval of the variances.

d. The Board concludes that the authorization of the variance will not be of substantial detriment to adjacent property or the public good, and the character of the district will not be harmed by the granting of the variance based upon the following findings of fact:

The proposed addition is in the direction of the road rights-of-way and would not further encroach into any setbacks along property lines adjacent to residences. The encroachment would be reduced by removing the existing porch steps in favor of the expansion.

Kae Fleming seconded the motion. The motion carried with a vote of 9 to 0.

**b. Variance Request – Olaf Hoeglinger
Lyman Lake Rd., Lyman (1-50-04-001.00)**

Josh Henderson was sworn-in and presented the following staff report:

Factual Dates

Variance Application Received	04/24/2018
Deadline for Variance	04/24/2018
Public Notice – Herald Journal	05/06/2018
Adjoining Property owners notified	05/08/2018
Variance Sign Posted on Property	05/08/2018
Board of Appeals Hearing	05/22/2018

Background Information

Olaf Hoeglinger has submitted a variance request for the property located at Lyman Lake Rd., Lyman, SC 29356. The neighboring property received a variance in 2009 to encroach 15’ into the 20’ required setback due to topography conditions.

The applicant is requesting to reduce the front setback to 0’ from 20’ as required in Section 2.02-1 Dimensional Standards, Table 3a - Residential Setbacks & All Other Requirements.

Staff Recommendation

The Board may grant a variance if it makes the following findings:

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

The variance request appears to meet this criteria.

There is a 20' drop in elevation along the length of the property.

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

The variance request does not appear to meet this criteria.

Other properties along the lake are limited by similar topographic conditions.

c.) 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.

The variance request does not appear to meet this criteria.

The subject property appears to be capable of housing the proposed use with a modified home design and meet all requirements as set forth in the ULMO.

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

The variance request does not appear to meet this criteria.

Placing a garage right on the lot line could cause issues with the road right-of-way.

Given the concerns about the road right-of-way and ability of the owner to modify the home design, the request to reduce the required front setback to 0' from 20' does not appear to meet the four 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). Therefore, staff is unable to recommend approval of the variance.

Josh Henderson presented the Board with an aerial image and street view of the property.

Chairman Padgett opened the public hearing.

Olaf Hoeglinger, applicant, was sworn-in. He advised the Board that the required setback would move the house closer to the lake, which would force him to cut down a lot of the natural vegetation and trees on that end of the property.

Chairman Padgett inquired as to the square footage of the home. Mr. Hoeglinger responded that the proposed home would be 4,000 square feet.

Chairman Padgett closed the public hearing.

Thomas Davies believed the applicant was attempting to place a large home on a lot that was too small to accommodate the proposed square footage.

Jack Gowan made a motion to deny the variance based on the determination that the request does not meet all 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).

a. The Board concludes that the Applicant(s) does have an unnecessary hardship because there are extraordinary and exceptional conditions pertaining this particular property based upon the following finds of fact:

There is a 20' drop in elevation along the length of the property.

b. The Board concludes that these conditions do generally apply to other property in the area based on the following findings of fact:

Other properties along the lake are limited by similar topographic conditions.

c. The Board concludes that because of these conditions, the application of the ordinance to the particular piece of property would not effectively prohibit or unreasonably restrict the utilization of the property based on the following findings of fact:

The subject property appears to be capable of housing the proposed use with a modified home design and meet all requirements as set forth in the ULMO.

d. The Board concludes that the authorization of the variance will be of substantial detriment to adjacent property or the public good, and the character of the district will be harmed by the granting of the variance based upon the following findings of fact:

Placing a garage right on the lot line could cause issues with the road right-of-way.

Thomas Davies seconded the motion. The motion carried with a vote of 9 to 0.

**c. Variance Request – Northside Vision
2603 A Boiling Springs Rd., Boiling Springs (2-44-14-019.00)**

Marion Gramling recused himself and left the room due to his role as the surveyor of this property.

Josh Henderson was sworn-in and presented the following staff report:

Factual Dates

Variance Application Received	04/05/2018
Deadline for Variance	04/24/2018
Public Notice – Herald Journal	05/06/2018
Adjoining Property owners notified	05/08/2018
Variance Sign Posted on Property	05/08/2018
Board of Appeals Hearing	05/22/2018

Background Information

Northside Vision has submitted a variance request for the property located at 2603 A Boiling Springs Rd., Boiling Springs, SC 29316. The applicant is proposing a 1,000 square foot addition to the existing building.

The applicant is requesting to reduce the side setback to 13.51' from 15' as required in Section 2.02-1 Dimensional Standards, Table 3b – Commercial & All Other Uses – Setbacks & Other Requirements.

Staff Recommendation

The Board may grant a variance if it makes the following findings:

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

The variance request appears to meet this criteria.

The applicant wishes to expand an existing nonconforming building, which was constructed in 1991 prior to the adoption of the ULMO.

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

The variance request appears to meet this criteria.

Other properties in the vicinity do not contain existing nonconforming structures, which would restrict further development.

c.) 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.

The variance request appears to meet this criteria.

Due to the existing nonconforming building, the applicant is unable to expand without approval of the variance.

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

The variance request appears to meet this criteria.

The proposed addition would not encroach any further into the required setback than the existing structure. Adjoining properties are also owned and operated as commercial businesses.

Given the existence of an already nonconforming structure, the request to reduce the required side setback to 13.51' from 15' appears to meet the four 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). Therefore, staff recommends approval of the variance.

Josh Henderson presented the Board with an aerial image and street view of the property.

Chairman Padgett opened the public hearing.

Michael Evans, applicant, was sworn-in. He advised the Board that the adjacent property belongs to the same person.

Chairman Padgett closed the public hearing.

Angela Geter made a motion to grant the variance based on determination that the request meets all 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).

a. The Board concludes that the Applicant(s) does have an unnecessary hardship because there are extraordinary and exceptional conditions pertaining this particular property based upon the following finds of fact:

The applicant wishes to expand an existing nonconforming building, which was constructed in 1991 prior to the adoption of the ULMO.

b. The Board concludes that these conditions do not generally apply to other property in the area based on the following findings of fact:

Other properties in the vicinity do not contain existing nonconforming structures, which would restrict further development.

c. The Board concludes that 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 based on the following findings of fact:

Due to the existing nonconforming building, the applicant is unable to expand without approval of the variance.

d. The Board concludes that the authorization of the variance will not be of substantial detriment to adjacent property or the public good, and the character of the district will not be harmed by the granting of the variance based upon the following findings of fact:

The proposed addition would not encroach any further into the required setback than the existing structure. Adjoining properties are also owned and operated as commercial businesses.

Kae Fleming seconded the motion. The motion carried with a vote of 8 to 0.

Mr. Gramling returned to the meeting.

**d. Variance Request – Dan Ryan Builders South Carolina, LLC
777 Sterling Dr., Boiling Springs (2-44-00-041.13)**

Josh Henderson was sworn-in and presented the following staff report:

Factual Dates

Variance Application Received	04/10/2018
Deadline for Variance	04/24/2018
Public Notice – Herald Journal	05/06/2018
Adjoining Property owners notified	05/08/2018
Variance Sign Posted on Property	05/08/2018
Board of Appeals Hearing	05/22/2018

Background Information

Dan Ryan Builders South Carolina, LLC has submitted a variance request for the property located at 777 Sterling Dr., Boiling Springs, SC 29316. The home was built and permitted prior to the as-built survey revealing the encroachment into the setback.

The applicant is requesting to reduce the front setback to 16.7' from 20' as required in Section 2.02-1 Dimensional Standards, Table 3a - Residential Setbacks & All Other Requirements.

Staff Recommendation

The Board may grant a variance if it makes the following findings:

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

The variance request does not appear to meet this criteria.

The property does not appear to contain extraordinary or exceptional conditions, which would require a variance.

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

The variance request does not appear to meet this criteria.

The remainder of the subdivision has homes that were built with covered porches and were able to observe required setbacks.

c.) 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.

The variance request does not appear to meet this criteria.

The subject property appears to be capable of housing the proposed use with the original proposed plan and meet all requirements as set forth in the ULMO.

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

The variance request appears to meet this criteria.

Other homes in the neighborhood were built with the same covered porch design. According to the written application, the HOA is prepared to approve a variance of their restrictions if the County grants this variance request.

Given the lack of extraordinary conditions of the property, the request to reduce the required front setback to 16.7' from 20' does not appear to meet the four 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). Therefore, staff is unable to recommend approval of the variance.

Josh Henderson presented the Board with an aerial image and street view of the property.

Chairman Padgett opened the public hearing.

Marv McDaris, applicant, was sworn-in. He advised the Board that the need for the variance arose from two costly mistakes. The first mistake was that the wrong plan was submitted to the surveyor. The second mistake was that a field adjustment was made to build the porch to match the other homes in the community. They only became aware of the encroachment after the home had been sold and at the time of the final survey. If the variance is not granted, significant modifications will need to be made to the front porch and the brick columns would need to be removed.

Chairman Padgett closed the public hearing.

Marion Gramling made a motion to grant the variance based on determination that the request meets all 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).

a. The Board concludes that the Applicant(s) does have an unnecessary hardship because there are extraordinary and exceptional conditions pertaining this particular property based upon the following finds of fact:

The property contains an exceptional condition in that the home has already been built and given a CO without meeting setbacks.

b. The Board concludes that these conditions do not generally apply to other property in the area based on the following findings of fact:

The other homes in the neighborhood were built in compliance with the required setbacks.

c. The Board concludes that 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 based on the following findings of fact:

Without the granting of the variance, the builders would be required to tear off the front porch, leaving a different home design from the rest of the community.

d. The Board concludes that the authorization of the variance will not be of substantial detriment to adjacent property or the public good, and the character of the district will not be harmed by the granting of the variance based upon the following findings of fact:

Other homes in the neighborhood were built with the same covered porch design. According to the written application, the HOA is prepared to approve a variance of their restrictions if the County grants this variance request.

Jonathan Adams seconded the motion.

Bob Harkrader suggested that the Board add a contingency to the motion that the HOA must approve a variance from its restrictions as well.

Marion amended his motion to add this contingency.

Jack Gowan did not believe the request met all four criteria. Mr. Gramling found that due to the mistakes, exceptional conditions were present on the property. Thomas Davies agreed but expressed his concern that these mistakes should not be made if pins were set for inspections. Mr. Gowan questioned the unreasonable restriction. Mr. Gramling responded that creating a cloud on title or forcing the front of the home to be removed is unreasonable.

The motion carried with a vote of 6 to 3. Voting in favor of the variance was Jack Gowan, Thomas Davies, Jason Patrick, Louise Rakes, Marion Gramling, and Jonathan Adams. Mike Padgett, Kae Fleming, and Angela Geter voted against the motion for approval of the variance.

5. Other Business – None

6. Adjournment

There being no other business, Jack Gowan made a motion to adjourn. Thomas Davies seconded the motion. The motion carried with a vote of 9 to 0. The meeting adjourned at 5:30 p.m..