



Spartanburg County

Planning and Development Department

MINUTES

Unified Land Management

Board of Appeals

August 28, 2018

Members Present:

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

Members Absent:

Jonathan Adams
Jason Patrick
Marion Gramling

Staff Present:

John Harris, County Attorney
Bob Harkrader, Planning Director
Joan Holliday, Deputy 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 July 24, 2018 Meeting

Jack Gowan made a motion to approve the minutes as submitted. Thomas Davies seconded the motion, which carried with a vote of 6 to 0.

3. Unfinished Business – None

4. New Business –

a. Variance Request – SJWD Water District

1380 Mount Lebanon Rd., Campobello (1-37-00-011.09)

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

Factual Dates

Variance Application Received	06/28/2018
Deadline for Variance	07/31/2018
Public Notice – Herald Journal	08/12/2018
Adjoining Property owners notified	08/13/2018
Variance Sign Posted on Property	08/13/2018
Board of Appeals Hearing	08/28/2018

Background Information

SJWD Water District has submitted a variance request for the property located at 1380 Mount Lebanon Rd., Campobello, SC 29322. The applicant is proposing to place a 0.75 MG Composite Elevated Water Storage Tank on the property, which will encroach into the side setback. Table 3b of the ULMO, Maximum Height, footnote (Y) states that each additional foot above 35’ adds 1’ to each side and rear yard setback. The tank is 120’ tall, adding 85’ to the required 15’ side yard setback, resulting in a 100’ setback. The proposed tank is currently 73’ from the side property line. According to the applicant, this property was chosen in the SJWD service area to meet their upcoming needs, but also for the elevation and topographic conditions of the property. A specific pressure within the tank is required to be maintained and this location, due to the aforementioned factors, meets those requirements.

The applicant is requesting to reduce the side setback to 73’ from 100’ 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 property has the necessary topography required for a water tank. The elevation needed to maintain pressure is ideal on this property.

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

The variance request appears to meet this criteria.

There are no other properties that meet the ideal requirements listed above in this service area.

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.

Without the variance, the site cannot be used for the proposed use. The elevation of this property and topography make it the most practical location for the tank.

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 height of the tank is 120' and no structures are located within or near 120' on all sides of the tank.

Given the extraordinary conditions of the property, the request to reduce the required side setback to 73' from 100' 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, site plan, and street view of the property.

Chairman Padgett opened the public hearing.

Billy Cothran, Chief Operating Officer for SJWD, was sworn-in. Thomas Davies asked if this property was the only place with adequate elevation in the area that will work. Mr. Cothran replied that, yes, this is the only property that will work in their service area. He further explained that the design is a concrete column that will collapse on itself rather than topple to one side.

David Salyer was sworn-in. He advised the Board that he is not opposed to a water storage tank; however, he is concerned about the possibility of a cell tower added in the future. He would prefer to have the extra 27' of setback so as not to diminish his property value. Mr. Cothran clarified that SJWD has no plans of adding a cell tower to the site at this time and it will not be high enough to require a light. If they were to move the tank over the 27' and elevate the tank, the hydraulic gradient would be compromised. The existing tank is half a mile to the east and was built in the 60's and is undersized for the area.

Jeanne Kizer was sworn-in and asked the Board if a cell tower was added, would a second public hearing be required. Mr. Henderson responded that no, an additional public hearing would not be required.

Arthur Slater was sworn-in and asked for assurance that another cell tower would not be installed within 1,000' due to concerns regarding magnetic fields.

Paula Slater was also sworn-in and asked that no cell towers be allowed on the property.

Chairman Padgett closed the public hearing.

Thomas Davies made a motion to grant the variance based on the 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) with the condition that a cell tower not be permitted on the property at any point in the future.

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

The property has the necessary topography required for a water tank. The elevation needed to maintain pressure is ideal on this property.

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

There are no other properties that meet the ideal requirements listed above in this service area.

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 variance, the site cannot be used for the proposed use. The elevation of this property and topography make it the most practical location for the tank.

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 height of the tank is 120' and no structures are located within or near 120' on all sides of the tank.

Jack Gowan seconded the motion. The motion carried with a vote of 5 to 1, with Kae Fleming being the sole vote against the granting of the variance.

**b. Variance Request – FFNCO
2409 Boiling Springs Rd., Boiling Springs (2-51-03-015.00)**

Josh Henderson advised the Board that Staff had been notified of deed restrictions that are present on this property that would prevent the proposed use and that the applicant had requested his hearing be postponed to the September 25, 2018 meeting to resolve the matter.

Angela Geter made a motion to postpone this case to the September 25, 2018 meeting. Kae Fleming seconded the motion. The motion carried with a vote of 6 to 0.

**c. Variance Request – Conquip Rental
8861 Asheville Hwy., Boiling Springs (2-50-00-275.00)**

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

Factual Dates

Variance Application Received	07/16/2018
Deadline for Variance	07/31/2018
Public Notice – Herald Journal	08/12/2018
Adjoining Property owners notified	08/13/2018
Variance Sign Posted on Property	08/13/2018
Board of Appeals Hearing	08/28/2018

Background Information

Conquip Rental has submitted a variance request for the property located at 8861 Asheville Hwy., Boiling Springs, SC 29316. The applicant is proposing a 3,200 square foot building to run a high intensity commercial business for outdoor storage. The applicant wishes to utilize existing vegetation for the required bufferyard.

The applicant is requesting to reduce the required bufferyard to Bufferyard 4 from Bufferyard 6 as required in Section 2.02-2 Bufferyards, Table 4 – Side and Rear Bufferyard Requirements and Section 2.02-9 Design Standards for Certain Nonresidential Development, 4-J Buffers.

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.

There do not appear to be conditions that apply to this property that do not apply to other property in the vicinity.

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 existing vegetation does not meet the requirements of a Bufferyard 6. Staff finds the property capable of housing the proposed use while maintaining a 50' buffer.

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.

Reducing the buffer from 50' to 25' would be detrimental to the neighboring residence, which is within close proximity to the shared side property line.

Given the lack of extraordinary conditions of the property, the request to reduce the required bufferyard to Bufferyard 4 from Bufferyard 6 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, site plan, and street view of the property.

Chairman Padgett opened the public hearing.

Travis Weldon, owner of the property was sworn-in. He believes that utilizing existing vegetation is a better buffer than what the ordinance is requiring. If the variance is not granted, he will need to remove the existing vegetation to install a berm with smaller vegetation and would make the entire property visible to those around it.

Judy Kirkman was sworn-in and advised the Board of the current stormwater issues they currently deal with that will be exaggerated by clearing the land. She also has concerns about noise from equipment.

Robin Lennon was sworn-in and echoed the sentiments of Ms. Kirkman regarding storm drainage and noise. She requested a wall be installed as a buffer.

Darius Crosby was sworn-in. He preferred the trees to stay where they are to protect privacy.

Mr. Weldon classified his business as heavy equipment rental, which will consist of approximately 60 pieces of equipment that will not be operated on site. Business hours will be around 7:00 a.m. to 5:00 p.m. with three employees. He presented plans showing a different buffer that had not been provided to staff for review.

Chairman Padgett closed the public hearing.

Angela Geter made a motion to postpone this case to the September 25, 2018 meeting. Kae Fleming seconded the motion. The motion carried with a vote of 6 to 0.

**d. Variance Request – Lao Cafe
1207 Boiling Springs Rd., Spartanburg (7-08-01-100.00)**

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

Factual Dates

Variance Application Received	07/26/2018
Deadline for Variance	07/31/2018
Public Notice – Herald Journal	08/12/2018
Adjoining Property owners notified	08/13/2018
Variance Sign Posted on Property	08/13/2018
Board of Appeals Hearing	08/28/2018

Background Information

Lao Café has submitted a variance request for the property located at 1207 Boiling Springs Rd., Boiling Springs, SC 29303. The applicant is proposing to convert the existing residence into a commercial neighborhood cafe.

The applicant is requesting the following variances:

Variance 1:

To reduce the rear bufferyard to Bufferyard 3 from Bufferyard 5 as required in Section 2.02-2 Bufferyards, Table 4 – Side and Rear Bufferyard Requirements.

Variance 2:

To reduce the side setback to 7.21’ from 15’ as required in Section 2.02-1 Dimensional Standards, Table 3b – Commercial & All Other Uses - Setbacks & Other Requirements.

Variance 3:

To reduce the front setback to 29.85’ from 50’ 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.

Variance 1:

The variance request does not appear to meet this criteria.

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

Variance 2:

The variance request appears to meet this criteria.

The applicant wishes to change the use of an existing building, which was constructed prior to the adoption of the ULMO.

Variance 3:

The variance request appears to meet this criteria.

The applicant wishes to change the use of an existing building, which was constructed prior to the adoption of the ULMO.

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

Variance 1:

The variance request does not appear to meet this criteria.

There do not appear to be conditions that apply to this property that do not apply to other property in the vicinity, which would require this variance.

Variance 2:

The variance request appears to meet this criteria.

The property is located in a transitional area, with other commercial businesses that are not limited by the setback requirements.

Variance 3:

The variance request appears to meet this criteria.

The property is located in a transitional area, with other commercial businesses that are not limited by the setback requirements.

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.

Variance 1:

The variance request does not appear to meet this criteria.

Staff finds the property capable of housing the proposed use while maintaining the required buffer.

Variance 2:

The variance request appears to meet this criteria.

The subject property is unable to be used as a commercial business without approval of the variance.

Variance 3:

The variance request appears to meet this criteria.

The subject property is unable to be used as a commercial business 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.

Variance 1:

The variance request does not appear to meet this criteria.

The property adjoining the subject parcel to the rear is currently still used as a residence and should be sufficiently buffered from a commercial business.

Variance 2:

The variance request appears to meet this criteria.

The location of the existing building would not create any additional detriment to adjacent properties by conversion to a commercial business.

Variance 3:

The variance request appears to meet this criteria.

The location of the existing building would not create any additional detriment to adjacent properties by conversion to a commercial business.

Variance 1:

*Given the lack of extraordinary conditions of the property, the request to reduce the required bufferyard to Bufferyard 3 from Bufferyard 5 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.**

Variance 2:

*Given that the building was constructed prior to the adoption of the ULMO, the request to reduce the required side yard setback to 7.21' 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.**

Variance 3:

Given that the building was constructed prior to the adoption of the ULMO, the request to reduce the required front yard setback to 29.85' from 50', 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, site plan, and street view of the property.

Chairman Padgett opened the public hearing.

Suzanne Childs, with Childs Architecture, was sworn-in and advised the Board that there are commercial businesses surrounding them and are proposing a 6' privacy fence along with several trees and shrubbery. The café will only be open for lunch and dinner hours and will be closed by 9:30 p.m.

Chairman Padgett closed the public hearing.

Variance 3:

Thomas Davies made a motion to grant the variance based on the 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 to this particular property based upon the following finds of fact:

The applicant wishes to change the use of an existing building, which was constructed 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:

The property is located in a transitional area, with other commercial businesses that are not limited by the setback or bufferyard requirements.

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:

The subject property is unable to be used as a commercial business 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 location of the existing building would not create any additional detriment to adjacent properties by conversion to a commercial business. Adjacent properties are also used as commercial businesses and this property itself has been used as a commercial business in the past.

Jack Gowan seconded the motion. The motion carried with a vote of 6 to 0.

Variance 2:

Thomas Davies made a motion to grant the variance based on the 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 to this particular property based upon the following finds of fact:

The applicant wishes to change the use of an existing building, which was constructed 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:

The property is located in a transitional area, with other commercial businesses that are not limited by the setback or bufferyard requirements.

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:

The subject property is unable to be used as a commercial business 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 location of the existing building would not create any additional detriment to adjacent properties by conversion to a commercial business. Adjacent properties are also used as commercial businesses and this property itself has been used as a commercial business in the past.

Jack Gowan seconded the motion. The motion carried with a vote of 6 to 0.

Variance 1:

Jack Gowan made a motion to grant the variance to reduce the bufferyard to a 3(d) based on the 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 to this particular property based upon the following finds of fact:

The applicant wishes to change the use of an existing building, which was constructed 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:

The property is located in a transitional area, with other commercial businesses that are not limited by the setback or bufferyard requirements.

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:

The subject property is unable to be used as a commercial business 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 location of the existing building would not create any additional detriment to adjacent properties by conversion to a commercial business. Adjacent properties are also used as commercial businesses and this property itself has been used as a commercial business in the past.

Thomas Davies seconded the motion. The motion carried with a vote of 4 to 2, with Angela Geter and Kae Fleming voting against the granting the variance.

5. Other Business – None

6. Adjournment

There being no other business, Thomas Davies made a motion to adjourn. Jack Gowan seconded the motion. The motion carried with a vote of 6 to 0.