



Rowan County Department of Planning & Development
402 North Main Street – Suite 204 – Salisbury, NC 28144
Phone: (704) 216-8588 rowancountync.gov/planning

MEMORANDUM

TO: Rowan County Board of Adjustment
FROM: Shane Stewart, Assistant Planning Director
DATE: February 29, 2024
RE: **BOA 01-24: Timothy & Donna Poole**

BOARD OF ADJUSTMENT ACTION

- Sworn oath for those testifying
- Receive staff report
- Petitioner comments
- Testimony from others
- Close hearing and discuss
- Motion to adopt findings of fact
- Approve / Deny / Table **BOA 01-24**

BACKGROUND On January 20, 2023, Planning Staff issued a zoning permit for a 2,592 sf (36’ x 72’) “Residential Storage Facility” (storage building on a lot without a residence) on a 1.718 acre tract located at 915 Driftwood Trail, further referenced as Parcel ID 646A-084 (see enclosed zoning permit). On June 9, 2023, property owners Timothy and Donna Poole obtained a building permit for the structure and received their first inspection three (3) days later. In November, a concerned citizen visited the Planning Office and questioned the structure’s zoning compliance. After a review, staff noticed the issued permit contained two (2) errors:

1. Based on a 1.71 acre lot per GIS, the maximum building size staff could approved administratively was 2,234 sf but permitted 2,592 sf (358 sf over). [Note a recent property survey revealed the lot size is actually 1.718 acres (which would allow 2,245 sf) and the building size is 36.2’ x 72.3’ or 2,617 sf (372 sf over the administrative allowance)].
2. The side street setback indicated 10’ but should have required 25’. Ten (10) foot is the minimum side street setback if a dwelling were on the property but otherwise must meet the same setback as for a dwelling (25’) for their Residential Suburban (RS) zoned property.

On December 11th, staff contacted the Poole family and shared this information with them and the need to revoke the zoning permit and to cease further work on the building until

Rowan County Board of Adjustment
BOA 01-24
March 13, 2024

the matter is resolved (see attached stop work order). Staff informed the Poole family of the two (2) necessary steps to address the matter:

1. Section 21-56(11) of the Zoning Ordinance provide the option of a special use permit when a residential storage facility will exceed the administrative allowance of 3% if the structure is 3,000 sf or less (the request will be considered by the Board of Commissioners on March 4th).
2. Section 21-332 of the Zoning Ordinance provide the option of a variance from the required side street setback since the reduction is less than 50% of the required amount.

When the stop work order was issued, the building was nearly complete, lacking only facia covering, siding, five (5) doors, and a final inspection. The Poole family did request completion of these remaining items based on concerns from the unprotected components and obtaining insurance on the building, which staff permitted. The building does not contain plumbing or mechanical connections but does have an electrical connection.

REQUEST On behalf of property owners Timothy and Donna Poole, Andy Abramson is requesting a variance from the required twenty-five (25) foot side street setback from sections 21-56(11)(d) and 21-84 of the Zoning Ordinance (see enclosed ordinance excerpt). The enclosed survey from Shulenburg Surveying dated December 21, 2023 indicate the building setback off the western property line (Riverview Circle) is 15.05 foot at the southwest building corner and 23.9 foot at northwest corner – a range from 9.95 to 1.1 foot into the required side street setback.

VARIANCE CRITERIA In accordance with section 21-332(2) of the Zoning Ordinance, “*A variance shall be granted by the BOA if it concludes that strict enforcement of this chapter would result in unnecessary hardships for the applicant. The board may reach these conclusions if it makes the following findings:*”

The criteria are listed in bold black text followed by staff comments in regular text.

- 1. Unnecessary hardship would result from the strict application of the ordinance. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;**

Adam Lovelady, Professor of Public Law and Government at the University of North Carolina at Chapel Hill, wrote an article entitled “*Variance Standards: What is hardship? And when is it unnecessary?*”, which provide a general overview of the five (5) statutory variance criteria [identified as 1-5 herein] (see enclosed). It is understood that an ordinance regulation introduce some degree of burden or “hardship” shared by land owners as a whole. According to Lovelady, “*The hardship must be more than mere inconvenience or a preference for a more lenient standard. Cost of compliance may be a factor, but cost is not determinative.*”

This criterion is intended to safeguard against abuse of the variance process in requesting a more convenient standard. The degree of hardship necessary to be defined as “unnecessary” is determined by the Board of Adjustment (BOA) based on evidence presented by parties with standing.

After receiving a citizen complaint in late November of 2023, Planning Staff inspected the property and noted the apparent setback violation for the nearly completed structure consisting of a poured concrete slab, masonry walls, and wood framing (see enclosed photos). The Poole family acted in good faith on zoning permit ZP-019213-2023 issued on January 20, 2023, which indicated a side street setback of ten (10) foot. According to the application, the storage building cost \$110,033.28 to construct.

- 2. The hardship results from conditions that are peculiar to the property such as location, size, or topography. Hardships resulting from personal circumstances and / or conditions common to the neighborhood or general public may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability;**

The property is comprised of Lots 20-22 of the Driftwood Cove subdivision – well above the minimum lot size of .46 acres and compliant with all lot dimension standards. According to GIS, topography is generally consistent with other lots along Riverview Circle containing a moderate slope to the High Rock Lake shoreline. The structure is placed on higher ground when compared to others along Riverview Circle. Additionally, a drainage feature extends along Driftwood Trail frontage leading to a narrow cove.

A residential storage facility is considered a principal use and subject to the same setbacks as a dwelling (50 ft. Front; 25 ft. Side Street; 20 ft. Rear; 10 ft. Side). If the property contained a detached dwelling, the current structure would be considered an “accessory” structure subject to the same front setback as the principal structure but only ten (10) foot on all other property lines. According to the owners, they will be constructing a new driveway connection to Driftwood Trail.

- 3. The hardship is not the result of the property owner or applicant's own actions. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship;**

This criterion is intended to ensure an applicant does not create the “hardship” by, for example, failing to obtain a permit, claiming a hardship, and then ask for a variance. Lovelady referenced a 2007 North Carolina Court of Appeals (NCCOA) case *Turik v. Town of Surf City* where the court concluded good faith reliance on a

survey and development permits is not a self-created hardship. In this case, property owners hired a professional land surveyor to survey the property and prepare a site plan for a proposed duplex. The plan complied with the town's side setback requirement and received a zoning and building permit. An adjoining landowner objected to the construction and alleged a setback violation. After two (2) more surveys were performed each depicting different property line locations (in addition to the third location with the first survey), a variance was granted by the town. After the adjoining landowner appealed the town's decision to both the local superior court and NCCOA, the court agreed with the town's decision acknowledging the special circumstances of the case do not result from the applicant's action in that they obtained a valid survey and all applicable permits to construct.

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved;

Lovelady's article states *"The substantial justice standard also can play in favor of the applicant. If an applicant relies in good faith on a city permit, and that permit turned out to be wrongly issued, the applicant would have no vested rights in the mistakenly issued permit. Substantial justice might argue for allowing a variance for the applicant."*

In staff's opinion, the Zoning Ordinance does not express a clear purpose and intent statement for this land use category that requires consideration for this section.

5. The variance will not result in a land use otherwise not permitted in the applicable zoning district nor authorize the extension of a nonconforming situation in violation of article VI, or other applicable provisions of this chapter; and

This request is not a use variance.

6. If applicable, the setback reduction is no more than fifty (50) percent of that required and the resulting setback is no less than five (5) feet from any property line or right-of-way.

The requested variance would reduce the required setback from twenty-five (25) foot to fifteen (15) foot – a 40% reduction. The structure will also maintain a fifteen (15) foot setback from the Riverview Circle right of way edge – three (3) times the minimum required distance.

PUBLIC NOTICE

February 21st – Letters mailed to sixteen (16) adjoining property owners.

February 21st – Sign posted on property.

March 1st – Request posted on department website.



STAFF COMMENTS

A variance is a powerful tool whereby the BOA can modify dimensional requirements based on unique circumstances that cannot be predetermined by an ordinance. Safeguards are established in the six (6) criterion and quasi-judicial process to apply an appropriate level of scrutiny to reveal the degree of hardship or lack thereof. Common “hardship” situations typically pertain to a specific limitation(s) of lot design, topography, environmental limitation, or other feature unique to a site that cannot be pre-determined on how to administer in an ordinance. Claimed hardships may prove to be merely a desire for a more lenient standard based on the applicant’s preference.

This hardship stems from good faith reliance on required setbacks incorrectly placed on the zoning permit. In staff’s opinion, this fact has a direct impact to not only absolve the owner from the “self-created” hardship criterion, but with all others less #5. Once the error was discovered, the block foundation structure was nearly complete only lacking siding, doors, and facia covering. One must assume if the permit was issued correctly, the owner’s building would have been constructed consistent with the required setback. Absent a variance request, no other reasonable options, including rezoning to another district, exist to remedy this situation.

ENCLOSURES

- Application
- Zoning Permit and map: January 20, 2023
- Zoning Ordinance Excerpt
- Building Permit: June 9, 2023
- Building Pictures: November 20, 2023
- Stop Work Order: December 11, 2023
- Building Pictures: February 26, 2024
- *What is Hardship? And when is it Unnecessary?*
- GIS Map
- Survey and Map from Shulenburger Surveying: December 21, 2023

Application



Rowan County Department of
Planning & Development
402 N. Main Street Ste 204
Salisbury, NC 28144
Phone (704) 216-8588
Fax (704) 638-3130
www.rowancountync.gov

Case # BOA 01-24
Date Filed 1/17/24
Received By SAS
Amount Paid \$ 200

Office Use Only

BOA-020807-2024

VARIANCE APPLICATION

OWNERSHIP INFORMATION:

Name: Timothy W. Poole and Donna W. Poole

Signature: *Timothy W. Poole Donna W. Poole*

Phone: 704-202-2751 Email: donna.poole@carolina.rr.com

Address: P.O. Box 875, Granite Quarry, NC 28072

APPLICANT / AGENT INFORMATION:

Name: Andrew J. Abramson

Signature: *Andy Ah*

Phone: 704-633-5000 Email: andy@woodsonlawyers.com

Address: P.O. Box 829, Salisbury, NC 28145

PROPERTY DETAILS:

Variance Requested on Property Located at: 915 Driftwood Trail, Salisbury, NC 28146

Tax Parcel: 646A-084 Zoning District: Residential Suburban

TO THE ROWAN COUNTY ZONING BOARD OF ADJUSTMENT:

I Andrew J. Abramsom, hereby petition the Board of Adjustment for a **VARIANCE** from the provisions of the Rowan County Zoning Ordinance because, under the interpretation given to me by the Administrator*, I am prohibited from using the parcel of land described above in a manner shown by the Plot Plan attached to this form. I request a variance from the following provisions of the ordinance (cite Section & Code req.):

I would request a reduction of the twenty-five foot (25') side street set back requirement collectively imposed by Rowan County ordinances 21-56(11)(d) and 21-84.

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE:

The Board of Adjustment may grant a variance if it concludes that strict enforcement of this ordinance would result in unnecessary hardships for the applicant. The Zoning Board of Adjustment, in granting, shall ensure that the spirit of this ordinance is maintained, public welfare and safety ensured, and substantial justice done. In the following spaces, indicate the **facts** and **argument** you plan to render, in order to convince the Board, to properly determine that their conclusions or findings of fact are applicable.

- 1) Unnecessary hardship would result from the strict application of the ordinance. (It shall not be necessary to demonstrate that, in the absense of a variance, no reasonable use can be made of the property);

A strict application of the ordinance would result in a 2592 square foot storage building, situated on a permanent concrete slab, and costing \$110,033.28.00 to construct, having to be torn down. Per the contractor, based on the nature of the structure, it can not be relocated.

- 2) The hardship results from conditions that are peculiar to the property such as location, size, or topography. (Hardships resulting from personal circumstances and / or conditions common to the neighborhood or general public may not be the basis for granting a variance);

The hardship results from an erroneously issued zoning permit wherein the set back requirement was listed at 10 feet (10'). This particular site was also preferable because the property owner wanted to use the balance of the property, to erect a house - an area more attractive for a residence because of a water view.

- 3) The hardship is not the result of the property owner or applicant's own actions. (The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self created hardship);

The hardship was not created by the property owner or applicant.

- 4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved;

The variance is a de minimus request and will in no way threaten public safety or bring any harm to surrounding property owners. In light of the circumstances leading to the placement of the structure, the impossibility of moving it, the costs incurred by the owner to date, a substantial justice would be achieved in granting the variance.

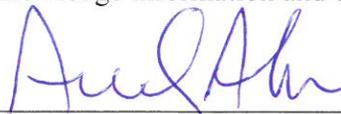
- 5) The variance will not result in a land use otherwise not permitted in the applicable zoning district nor authorize the extension of a nonconforming situation in violation of article VI, or other applicable provisions of this chapter;

The variance will not result in an unpermitted use or non-conforming use. An accessory structure is expressly permitted within the Residential Suburban zoning district and does not meet the description of a non-conforming situation as described in Article VI of the zoning

- 6) If applicable, the setback reduction is no more than fifty (50) percent of that required and the resulting setback is no less than five (5) feet from any property line or right-of-way.

The setback reduction sought is 9.95 feet, which is not more than fifty (50) percent of the actual 25 foot set back. Further, the resulting setback of 15.05 feet, is not less than five (5) feet from any property line or right-of-way.

I certify that all the information presented by me in this application is accurate to the best of my knowledge information and belief.


Signature

1/17/2024
Date

* Includes administrators and enforcement officers with the Department of Planning and Development.

OFFICIAL USE ONLY

1. Signature of Coordinator:  2. BOA Hearing: ___/___/___
3. Notifications Mailed: 2/21/24 4. Property Posted: 2/21/24 5. BOA Action: Approved ___
Denied ___ 6. Date Applicant Notified: ___/___/___ 7. Date CMO Notified: ___/___/___

Zoning Permit



Rowan County Planning & Development Department

402 North Main Street, Suite 204, Salisbury, NC 28144

Phone: (704) 216-8588 Fax: (704) 638-3130

<http://www.rowancountync.gov>

ZONING PERMIT

Plan Case # ZP-019213-2023	Parcel ID 646A084	Project	Application Date 01/20/2023
Proposed Use Accessory Structure	Previous Use Vacant	Sq. Ft. 2,592	Physical Address 280 Riverview Cir 915 PE Salisbury, NC 28146 Driftwood Trail

Applicant Timothy & Donna Poole	Address PO BOX 875 Granite Quarry, NC 28072	Phone 704-202-2751
Owner Timothy & Donna Poole	Address PO BOX 875 Granite Quarry, NC 28072	Phone 704-202-2751
Contractor Timothy & Donna Poole	Address PO BOX 875 Granite Quarry, NC 28072	Phone 704-202-2751

Principle Structure Setbacks	
Front	Side
Side Street	Rear
Accessory Structure Setbacks	
Front 50	Side 10
Side Street 10	Rear 10

Issued by:
Becky Bost

Updated by & Date:

Zoning District RS	Overlay District	Flood Zone x	FIRM Panel
Lot Size 1.71	Subdivision DRIFTWOOD COVE	Water Supply	Sewage Disposal

Additional Requirements / Comments:
2592 sq. ft. storage building for personal use; see site location on attached map

I hereby certify that I am aware of and will comply with the conditions indicated on this permit, the approved site plan (if any), an applicable provisions of the Zoning Ordinance. Structures or land authorized by this permit will only be used or occupied in compliance with permit conditions. Furthermore, I understand that any changes made to this project may require additional approvals and that a building permit may also be necessary for project approval. This permit remains valid if the work authorized the permit commences within one (1) year of the issuance date and all other required permits are obtained.

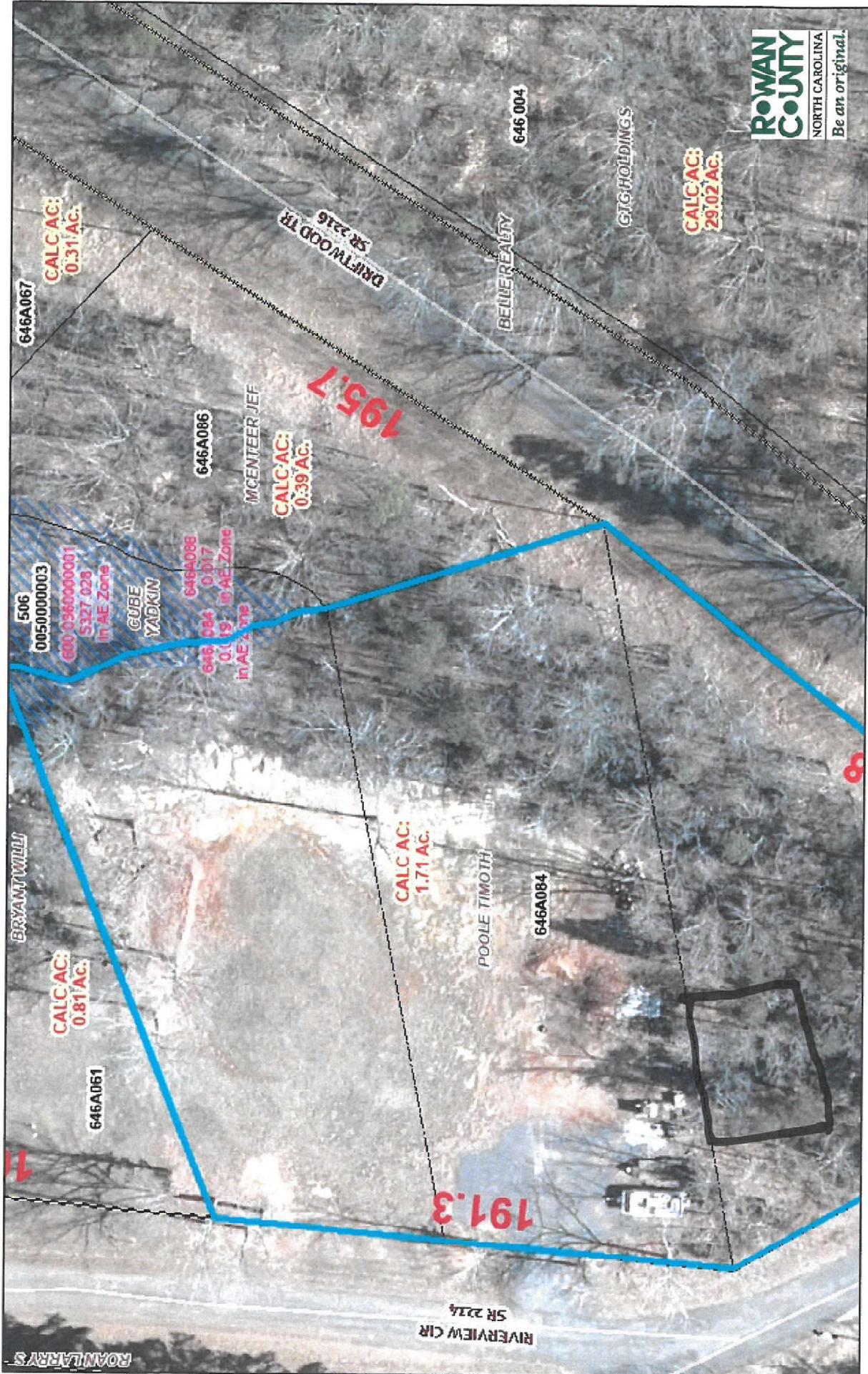

Applicant's Signature

1-20-23
Date

Rebecca Bost, Permit Technician
Authorized Zoning Signature

01/20/2023
Date

Rowan County



TP 1-20-23

January 20, 2023

□ Voluntary Agricultural Districts

Zoning Ordinance Excerpt
Sections 21-56(11)(d) & 21-84

1. Proof of accreditation by a recognized board, or provide proposed articles of incorporation and by-laws that provide specific criteria for a board of directors including membership makeup and general responsibilities for oversight of the facility.
2. Projected school enrollment and number of boarders.
3. Description of curriculum.
4. Traffic study.
5. Overnight staffing.

(10) *Additional standards applicable to specific uses listed as SR in the unclassified uses group.*

a. *Multitenant developments.*

1. *Application.* An application shall be provided with:
 - i. Site plan as provided in section 21-52; and
 - ii. Development name, name(s) and address(es) of owners and park designers.
2. *Board of commissioners review of the development proposal.* The board of commissioners shall review the site plan and other pertinent information to ensure that the general health, safety and public welfare have been adequately protected.
3. *Uses allowed.* Uses are limited to those provided in the district the multitenant development is located. Uses requiring special use permits shall obtain the required approval prior to issuance of a building permit.

b. *Reserved.*

(11) *Residential storage facilities.*

- a. The parcel shall be in fee simple ownership.
- b. Minimum lot size shall be the same as for a single-family residence.
- c. The structure shall not exceed the lesser of three (3) percent of the lot size or three thousand (3,000) square feet.
- d. Setbacks shall be at a minimum the same as single family dwellings.
- e. No outdoor storage is allowed except as specifically provided otherwise.
- f. Storage of vehicles shall not be in the front yard.
- g. Outside lighting shall be designed to prevent direct glare on adjoining residences.

Requests for residential storage facilities that exceed three (3) percent of the lot size referenced in subsection (c) but do not exceed three thousand (3,000) sq.ft. may be considered as a special use subject to the process outline in sections 21-57 through 21-59 if all other standards in this subsection are met.

(Ord. of 1-19-98, § IV; Ord. of 2-1-99(1), §§ 6, 7; Ord. of 10-18-99(1); Ord. of 4-21-03; Amend. of 2-20-06(1); Amend. of 4-21-08; Amend. of 11-2-09; Amend. of 9-6-11; Amend. of 3-5-12; Amend. of 3-4-13; Amend. of 8-19-13; Amend. of 12-2-13; Amend. of 4-21-14; Amend. of 9-6-16; Amend. of 10-15-18; Amend. of 9-3-19; Amend. of 6-21-21; Amend. of 6-20-22)

Sec. 21-57. Review and approval of special uses.

connecting these two (2) lines.

(Ord. of 1-19-98, § V)

Sec. 21-84. Table of dimensional requirements.

DISTRICTS	RA	RR	RS	MHP	MFR	AI	CBI	NB	INST	IND
Minimum zone lot size⁽¹⁾⁽³⁾										
Septic tank and individual or multi-connection well	20,000 sq ft	20,000 sq ft	20,000 sq ft	6 acres	2 acre with 3 du/acre ⁽²⁾	N/A	N/A ⁽²⁾	20,000 sq ft	N/A	N/A
Minimum zone lot size⁽¹⁾⁽³⁾										
Public water or community water or Public sewer or approved package treatment plant	15,000 sq ft	15,000 sq ft	15,000 sq ft	6 acres	2 acre with 8 du/acre ⁽²⁾	N/A	N/A ⁽²⁾	15,000 sq ft	N/A	N/A
Minimum zone lot size⁽¹⁾⁽³⁾										
Public water and sewer	10,000 sq ft	10,000 sq ft	10,000 sq ft	6 acres	2 acre with 12 du/acre ⁽²⁾	N/A	N/A ⁽²⁾	10,000 sq ft	N/A	N/A
Minimum lot width at right-of-way	35 ft	35 ft	35 ft	35 ft	35 ft ⁽⁶⁾	35 ft	35 ft	35 ft	35 ft	35 ft
Minimum lot width at Building setback line	70 ft	70 ft	70 ft	70 ft	70 ft ⁽⁶⁾	70 ft	70 ft	50 ft	70 ft	70 ft
Minimum lot depth										
Without public water & sewer	150 ft	150 ft	150 ft	150 ft	150 ft ⁽⁶⁾	100 ft	100 ft ⁽²⁾	100 ft ⁽²⁾	150 ft	150 ft
Public water and sewer	125 ft	125 ft	125 ft	125 ft	125 ft ⁽⁶⁾	100 ft	100 ft	100 ft	125 ft	150 ft
Principal structure setback										
Front Yard ⁽⁴⁾	30 ft	30 ft	50 ft	50 ft	50 ft ⁽⁶⁾	50 ft	50 ft ⁽²⁾	30 ft	30 ft	50 ft
Side street	20 ft	20 ft	25 ft	50 ft	50 ft ⁽⁶⁾	25 ft	30 ft ⁽²⁾	20 ft	20 ft	30 ft
Side yard ⁽⁴⁾	10 ft	10 ft	10 ft	50 ft	50 ft ⁽⁶⁾	10 ft	10 ft or 0 ft ⁽²⁾	10 ft or 0 ft ⁽⁷⁾	10 ft	10 ft or 0 ft
Rear yard ⁽⁴⁾	10 ft	10 ft	20 ft	50 ft	50 ft ⁽⁶⁾	20 ft	10 ft or 0 ft ⁽²⁾	10 ft or 0 ft ⁽²⁾⁽⁷⁾	10 ft	10 ft or 0 ft
Accessory structure setback⁽⁸⁾										
Front	30 ft	30 ft	50 ft	50 ft ⁽⁵⁾	50 ft ⁽⁶⁾	50 ft	10 ft	10 ft	10 ft	10 ft
Any right-of-way	10 ft	10 ft	10 ft	30 ft ⁽⁵⁾	50 ft ⁽⁶⁾	10 ft	10 ft	10 ft	10 ft	10 ft
Side and rear yard	10 ft	10 ft	10 ft	10 ft ⁽⁵⁾	10 ft ⁽⁶⁾	10 ft	10 ft	10 ft	10 ft	10 ft

(1) May be increased based on location in regulated watershed.

(2) For single family use standards for RA district.

(3) For individual lot size/space standards in an MHP district refer to section 21-60(11)n.

(4) For individual space setbacks in an MHP district refer to section 21-60(11)d.

(5) From exterior property lines.

(6) Requirements may be modified or exempted as provided by section 21-60(16). Dimensional criteria for subdivided lots shall be as provided for in the RA district, excluding external boundaries of the development.

(7) See "special requirements" for NB district for setbacks from residential zoning districts.

(8) Refer to section 21-285 for additional standards.

Building Permit

Rowan County Building Inspections Department
PERMIT APPLICATION

402 North Main St. Suite 207, Salisbury • Phone: 704.216.8619

Single Family Two Family Commercial Mobile Home Modular

Permit No. 104098
Map/Parcel 646A084

Check # 3817

Company OR Applicant's Name: Timothy W Poole

Date: 5-09-23 Company OR Applicant's Phone: 704-202-2751

Job Site Address: 915 Driftwood Trail Salisbury 28146 Property Owner's Phone: 704-202-2751

Property Owner: Timothy W & Donna W Poole Property Owner's Email: donnapoole@carolina-rr.com

Directions to Job Site (REQUIRED): (from 402 N Main St) KEEP ST TO LONG ST - LEFT ON LONG TO BRINBLE FERRY
RIGHT ON BRINBLE FERRY TO CLARK ROAD - LEFT ON CLARK TO DRIFTWOOD TRAIL - PROPERTY IS ON CORNER OF DRIFTWOOD & RIVERVIEW CIRCLE

BUILDING PERMIT

Type of Work: New Addition Renovation Accessory Other
Proposed Use STORAGE OF EQUIPMENT Type of Construction IA IB IIA IIB IIIA IIIB IV VA VB
Description of Work: 36 X 72 STORAGE BUILDING

Commercial: Building Area (sq. ft.): _____
(Includes heated, unheated, exterior covered spaces, etc.) OR
Project Area (sq.ft.): _____
(if project is partial renovation or addition)
Number of Stories: _____
Sprinklers: NFPA13 NFPA13R / D
Multi-family No. Units: _____

Residential: No. Bedrooms: — No. Fireplaces: —
Basement (sq.ft.): —
1st Floor (sq.ft.): 2592 SF
2nd Floor (sq.ft.): _____
Porch/Deck (sq.ft.): _____
Attached Garage/Carport (sq.ft.): _____
TOTAL (sq. ft.): 2592 SF
DETACHED Garage/Carport (sq.ft.): _____

Manufactured Home: SW DW TW
Make: _____ Year: _____
VIN: _____
Park: _____
No. Bedrooms: _____ Total (sq.ft.) _____

Other:
Signs: No. _____
Piers/Decks (sq. ft.): _____
Pool (sq. ft.): _____ Value: _____

Total Project Cost \$ 75,000 Building Permit Fee \$ 188

P. M. & E PERMITS

Plumbing: [Mark Number of Each Fixture/Connection]
Commodos _____ Sinks _____
Lavatories _____ Washing Machines _____
Bathtubs _____ Dishwashers _____
Showers _____ Disposals _____
New Water /Sewer Connection: Yes No
Floor Drains _____ Water/Sewer Connections _____
Water Heater - Elec _____ Bidets _____
Water Heater - Gas _____ Urinals _____
Water/Sewer Service _____ Other: _____

Description of Work: _____
Plumbing Permit: _____ Plumb Permit Fee \$ _____

Mechanical: Gas: Yes No Gas Company:(REQUIRED) DUKE ENERGY # Gas Connects/Appliances: _____
BTUs: _____ Air Tons: _____ Number of Units: Split Units: _____ Package Units: _____ Gas Pac Units: _____
Description of Work: _____

Mechanical Permit: _____ Cond. Gas Permit: _____ Mech Permit Fee \$ _____

Electrical: Power Company: (REQUIRED) DUKE ENERGY
New Service: Amperage: 200 Voltage: 240 Phase: Single 3 Phase Is this a RECONNECT? Yes No
Change of Service: Yes No If Change of Service, Amperage from _____ to _____ Change of Phase: Yes No
Builder's Service: Yes No Swimming Pool Low Voltage SOLAR PV KVA (REQUIRED) _____
Description of Work: Wire Building
Elect: 104099 Bldr Srv: _____ Cond: _____ Elect Permit Fee \$ 150

Total Permit Fee \$ 338

I hereby certify that all information in this application is correct and all work will comply with the State Building Code and all other applicable State and local laws, ordinances, and regulations. The Rowan County Building Code Enforcement Office will be notified of any changes in the approved plans and specifications for the project permitted herein.

LICENSED CONTRACTOR INFORMATION

I confirm I am the holder of a North Carolina Contractor's License in accordance with North Carolina General States 87-1, 87-21, 87-43 and/or 87-57, in the trade shown below. I confirm I am the contractor of record of the work described on this application. Therefore, I agree to comply with all applicable State and Local laws and ordinances regulating the work.

General or MH Set Up: _____ Phone: _____ Lic: _____
 Email: _____ Print Name: _____
 Addr.: _____ Signature: _____

Plumbing: _____ Phone: _____ Lic: _____
 Email: _____ Print Name: _____
 Addr.: _____ Signature: _____

Mechanical: _____ Phone: _____ Lic: _____
 Email: _____ Print Name: _____
 Addr.: _____ Signature: _____

Electrical: _____ Phone: _____ Lic: _____
 Email: _____ Print Name: _____
 Addr.: _____ Signature: _____

Unlicensed GC: _____ Phone: _____ **Contract < \$30,000**
 Email: _____ Print Name: _____
 Addr.: _____ Signature: _____ Date: _____

By signing, I confirm that this my contract for this permitted work is less than \$30,000, the work is general construction only, and that the property owner is aware that I am an unlicensed contractor acting under NCGS 87-14, exemption for projects less than \$30,000.

Owner acting as Trade Contractor (Plumbing, Mechanical, Electrical): **Personal Residence** **Firm/Corp.**
 Phone: 704-202-2751
 Email: donnapostle@carolina.rc.com Print Name: Timothy W. Poole
 Addr.: P.O. Box 875, Granite Quarry NC 28072 Signature: Timothy W. Poole Date: 6-9-23

Building Pictures
November 20, 2023



PROLINE

CHANDLER
The Club

PROLINE

PROLINE

ELITE

PROLINE



Stop Work Order



Rowan County Department of Planning & Development
402 North Main Street – Suite 204 – Salisbury, NC 28144
Phone: (704) 216-8588 rowancountync.gov/planning

December 11, 2023

Certified and 1st Class

Mr. Timothy and Mrs. Donna Poole
PO Box 875
Granite Quarry, NC 28072

Re: **Zoning Permit Revocation / Stop Work Order**
915 Driftwood Trl. Salisbury
Tax Parcel 646A-084

Mr. and Mrs. Poole:

Our office received a verbal inquiry from a concerned citizen regarding construction at 915 Driftwood Trail Salisbury on Tax Parcel 646A-084 and alleged violations of the Rowan County Zoning Ordinance (hereinafter, “ordinance”) pertaining to the structure use and setbacks. Planning staff researched zoning permits issued for this property and noted permit ZP-019213-2023 issued on January 20, 2023 for a storage building for personal use (i.e. not for business use). Section 21-4 of the ordinance defines an “accessory structure” without a residence on the property as a “Residential Storage Facility - an off-premises building classified as the principle structure on a lot, used for the storage of personal property and used in association with an owners residence or current tenant or lessee of the residence. This building is not intended for uses other than storage of personal vehicles, goods or materials”. Furthermore, section 21-56(11) of the ordinance identifies criteria (a) through (g)

- a. *The parcel shall be in fee simple ownership.*
- b. *Minimum lot size shall be the same as for a single-family residence.*
- c. *The structure shall not exceed the lesser of three (3) percent of the lot size or three thousand (3,000) square feet.*
- d. *Setbacks shall be at a minimum the same as single family dwellings.*
- e. *No outdoor storage is allowed except as specifically provided otherwise.*
- f. *Storage of vehicles shall not be in the front yard.*
- g. *Outside lighting shall be designed to prevent direct glare on adjoining residences.*

Requests for residential storage facilities that exceed three (3) percent of the lot size referenced in subsection (c) but do not exceed three thousand (3,000) sq.ft. may be considered as a special use subject to the process outline in sections 21-57 through 21-59 if all other standards in this subsection are met.

After reviewing the zoning permit, I regret to inform you it was discovered the 2,592 square foot (sf) building exceeds the requirement noted in subsection (c) [3% of the lot size] for administrative approval (i.e. planning staff) by 358 sf (1.71 acres = 74,487 sf x .03% = 2,234 sf based on GIS information). However, the above referenced section 21-56(11) provides the option of a special use permit to exceed 3% if the structure does not exceed 3,000 sf. A special use permit requires a site plan containing information from section 21-52 and 56(11) of the ordinance, application, responses to section 21-58(e) & 59 of the ordinance, and a \$200 fee subject to review by the Rowan County Board of Commissioners.

In addition, the side street setback was incorrectly identified on the zoning permit as ten (10) foot instead of twenty-five (25) foot, which is the requirement for a single family dwelling in the Residential Suburban (RS) zoning district (see sections 21-56(11)(d) and 21-84 [refer to www.rowancountync.gov/1268/Ordinances]). However, the GIS map noting your proposed building location submitted with your zoning permit appears to propose a side street setback of twenty-seven (27) feet, which would comply with ordinance requirements.

Based on a recent site inspection by Ordinance Enforcement Officer Ryan Mickey, the structure under construction is not located as indicated on the site plan and does not meet the required twenty-five (25) foot side street setback. Section 21-332 of the ordinance provides the option to apply for a variance where the required setback may be reduced by up to 50% of the required setback distance if approved by the Rowan County Board of Adjustment. A variance request should include a property survey showing the structure's distance from the property line, application with responses to variance criteria from section 21-332(2), and a \$200 fee.

This letter serves notice that ZP-019213-2023, issued on January 20, 2023, has been revoked and to cease and desist use any further construction on the building and submit your special use permit and variance applications. The Rowan County Building Inspections Department will be informed to cease further inspections until the zoning matter is resolved.

This decision may be appealed to the Rowan County Board of Adjustment in accordance with section 21-331 of the ordinance by filing written notice within thirty (30) days of receiving this order. Applications for filing an appeal may be found at the following link: <https://www.rowancountync.gov/DocumentCenter/View/3291/Appeal-PDF>

Your prompt attention in responding is appreciated, as it may prevent civil penalties as authorized by the ordinance.

This letter also serves as a reminder this structure was permitted as a storage building for personal use only, is subject to the residential storage facility definition and standards from section 21-56(11), and may not be used for business purposes of any kind.

We regret the inconvenience this has caused in the necessary special use permit and variance steps to complete your building. You may contact the County Manager's Office at (704) 216-8180 to inquire about the process to request a waiver of the \$400 fee. If you would like to meet to discuss these steps, I may be reached at the above listed number.

Sincerely,



Shane Stewart AICP, CFM
Assistant Planning Director

encl: Zoning Permit ZP-019213-2023
 Map from applicant

cc via email: Ryan Mickey, Ordinance Enforcement Officer
 Ed Muire, Planning & Development Director
 Thomas O'Kelly, Building Inspections Director
 Jay Dees, County Attorney
 Randy Cress, Assistant County Manager
 Aaron Church, County Manager

Building Pictures
February 26, 2024







***What is Hardship? And when is
it Unnecessary?***

Coates' Canons Blog: Variance Standards: What is hardship? And when is it unnecessary?

By Adam Lovelady

Article: <http://canons.sog.unc.edu/variance-standards-what-is-hardship-and-when-is-it-unnecessary/>

This entry was posted on May 27, 2014 and is filed under Land Use & Code Enforcement, Quasi-Judicial Decisions, Zoning

Generally, development regulations like zoning and subdivision standards apply equally to all properties. But sometimes a particular property is unfairly burdened by the general rules, creating an unnecessary hardship for the owner. The general statutes authorize the local board of adjustment to grant a variance from the rules in those limited circumstances. But what is an unnecessary hardship? Recent amendments to the state statute clarify what can (and what can't) qualify as unnecessary hardship. This blog explores those new standards.

General Statute section [160A-388\(d\)](#) sets forth the standards for granting a zoning variance (The standards also may be applied to subdivision and other development regulation). These mandatory standards apply to zoning variances for all counties and municipalities in the state, and the new standards override any contrary ordinance provisions that may have been in place prior to 2013. For a summary of the other changes to the board of adjustment statute, see this [blog](#) from my colleague David Owens.

Under the new statute a board of adjustment *shall* vary the provisions of the zoning ordinance if strict application of the ordinance would create unnecessary hardship. In order to obtain the variance, the applicant must show all of the following:

- Unnecessary hardship would result from the strict application of the ordinance
- The hardship results from conditions that are peculiar to the property
- The hardship is not a self-created hardship

Additionally, the applicant must show that the variance will

- Be consistent with the intent of the ordinance
- Secure public safety
- Achieve substantial justice

Finally, the statute prohibits any use variance.

To be sure, a variance is not a free pass from regulations or a tool to subvert the zoning ordinances. In order to obtain a variance, the applicant bears the burden of providing competent, substantial and relevant evidence to convince the decision-making board that the property meets all of the statutory standards for a variance. Merely showing some hardship is insufficient.

Let's consider each of the standards in more detail.

Unnecessary Hardship from Strict Application

Whenever there is regulation, there is some level of necessary hardship and inconvenience shared by all of the community. An applicant for a variance must show *unnecessary* hardship. What is enough hardship? Unfortunately, there is no simple formula. It is determined on a case-by-case basis. That is why the board of adjustment holds a quasi-judicial hearing and considers the evidence presented.

The hardship must be more than mere inconvenience or a preference for a more lenient standard. Cost of compliance may be a factor, but cost is not determinative. It is not enough for an applicant to say that development will cost more in order to comply. The applicant must show the substantial and undue nature of that additional cost as compared to others

subject to the same restriction.

Under the old statutes, many jurisdictions applied a standard that the applicant must show that there is no reasonable use of the property without a variance. Under current statutes, that stringent standard is no longer allowed. A property owner can prove unnecessary hardship, even if the owner has some reasonable use of the property without the variance.

Peculiar to the Property

The unnecessary hardship must be peculiar to the property, not general to the neighborhood or community. Such peculiar characteristics might arise, for example, from location of the property, size or shape of the lot, or topography or water features on the site.

Imagine a lot that narrows dramatically toward the front yard and where the side yard setbacks prohibit the property owner from building an addition. The hardship (not being allowed to build an addition) flows from the strict application of the ordinance (the setback) and is peculiar to the property (because of the shape of the lot). A variance may be appropriate if the owner presents evidence to show she meets all of the standards.

By contrast, a variance is not the appropriate remedy for a condition or hardship that is shared by the neighborhood or the community as a whole. Consider that same narrowing lot. If all of the houses on the street shared that hardship, a variance would not be appropriate. Such conditions should be addressed through an ordinance amendment.

Hardships that result from personal circumstances may not be the basis for granting a variance. The board is looking at the nature of the property and the land use ordinances, not the nature of the applicant and their circumstances. Bringing an elderly parent to live with the family, for example, is a change in personal circumstance, not a condition peculiar to the property.

The reverse is also true. An applicant's personal circumstances cannot be the basis for denying a variance. The board should consider the property, not the applicant's bank account and ability to cover the cost of the hardship. Moreover, the fact that the applicant owns property nearby is irrelevant to the consideration of whether this particular property deserves a variance (*Williams v. N.C. Dept. of Env. & Nat. Resources*, 144 N.C. App 479, 548 S.E. 2d 793 (2001))

Not Self-Created Hardship

You can't shoot yourself in the foot and then ask for a variance. The hardship must not result from actions taken by the applicant or property owner.

So what is self-created? Suppose a property owner sells part of a conforming lot and makes the remainder of the lot nonconforming. The hardship (limitations on the non-conforming lot) was self-created (by the owner selling the sliver off the parcel). The owner may not seek a variance for building on the substandard lot. Similarly, where an owner failed to seek zoning and building permits and then incorrectly placed foundation footings in the setback, the hardship is self-created. No variance is allowed. Ignorance of the law is no excuse.

What if the owner relied in good faith on seemingly valid surveys and obtained building permits? After construction began, a neighbor objected, citing a new survey and arguing that the foundation wall is within the setback. Is the owner's hardship self-imposed? Our North Carolina courts have held that hardships resulting from such good faith reliance on surveys and permits are eligible for a variance (*Turik v. Town of Surf City*, 182 N.C. App. 427, 642 S.E.2d 251 (2007)).

An important statutory provision applies here: "The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship." For example, if the original owner had a legitimate case for a variance, someone buying the lot from that owner would have the same legal position as the original owner. They could seek a variance. This rule aligns with the broader zoning concept that land-use permissions run with the land, and land-use decisions are based on the property and impacts of development, not based on the particular owner. Is this a loophole for an unscrupulous owner to overcome the limit on variances for self-created hardship by selling the property to a spouse or sham LLC? Maybe, but the requirement for substantial justice (discussed below) probably protects from someone gaming the system.

Restrictive covenants and other legal limitations *may* be a factor in determining hardship. Consider a property that has limited development ability due to a privately-imposed covenant for a street setback and a publicly-imposed stream setback. Can the owner seek a variance from the public stream setback? The NC Court of Appeals—interpreting a specific local ordinance—found that the board should consider physical *and* legal conditions of the property, including restrictive covenants (*Chapel Hill Title & Abstract Co., Inc. v. Town of Chapel Hill*, 362 N.C. 649, 669 S.E.2d 286 (2008)).

Let me emphasize that covenants and other legal limitations *may* be a factor. In that case, the decision was based on the local ordinance, and the decision pre-dated the statutory variance standards. A self-imposed legal limitation—like an easement across a property that limits buildable area—that was created after a zoning ordinance limitation became effective, could be viewed as a self-imposed hardship so that no variance should be granted.

Ordinance Purpose, Public Safety, and Substantial Justice

In addition to those standards for “unnecessary hardship,” the statutory standard for granting a variance requires the applicant to show that “[t]he requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.”

Where an ordinance expresses a clear intent, a variance cannot subvert that intent. But, alternatively, a variance may help to give effect to the ordinance intent. In one North Carolina case, an applicant was seeking a variance to allow an additional sign at a secondary entrance. Among other things, the ordinance purpose was to provide “adequate and effective signage,” “prevent driver confusion,” and “allow for flexibility to meet individual needs for business identification.” The purpose, the court found, called for the flexibility that the applicant sought, and the variance was allowed. (*Premier Plastic Surgery Ctr., PLLC v. Bd. of Adjustment for Town of Matthews*, 213 N.C. App. 364, 369, 713 S.E.2d 511, 515 (2011)).

The applicant also must show that the variance does not harm public safety. Even if an applicant met the standard for unnecessary hardship, a variance may be denied for public safety concerns. A property owner may prove an unnecessary hardship exists from limitations on on-site drives and parking for a commercial use. But, if neighbors presented expert evidence that the increased traffic and stormwater effects will harm public safety, the board may be justified in denying the variance.

Additionally, the statute requires the applicant to show that through the variance “substantial justice is achieved.” The concept of substantial justice raises issue of fairness for the community and neighbors. This concept echoes the requirement that hardship must be peculiar to the property—not shared by the community. If everyone bears this hardship, then one lucky person should not be relieved through a variance. Similarly, the justice standard draws upon a notion of precedence. Suppose Joe sought a variance last year and was denied. If Karl is seeking variance this year that is essentially the same request for a similar property, then the variance outcome should be the same.

The substantial justice standard also can play in favor of the applicant. If an applicant relies in good faith on a city permit, and that permit turned out to be wrongly issued, the applicant would have no vested rights in that mistakenly issued permit. Substantial justice might argue for allowing a variance for the applicant.

No Use Variance

North Carolina courts long ago established that use variances are not permitted, and that rule is now part of the statutory standards. If a land use is not permitted on the property, a variance cannot be used to, in effect, amend the ordinance and allow the use. If only single family residences are permitted in a district, a variance cannot permit a duplex (*Sherrill v. Town of Wrightsville Beach*, 76 N.C. App. 646, 334 S.E.2d 103 (1985)).

If the use is already permitted on the property, a variance to allow the expansion of the permitted use is permissible. So, for example, if a sign is permitted for a commercial property, a variance to permit an additional sign is allowable. It is an area variance, not a use variance. (*Premier Plastic Surgery Ctr., PLLC v. Bd. of Adjustment for Town of Matthews*, 213 N.C. App. 364, 713 S.E.2d 511 (2011)).



Conclusion

Making decisions about variances is a hard job. How much hardship is enough hardship? Is justice being served? Does the variance preserve the spirit of the ordinance? Rarely are there clear answers for these questions. Seeking those answers is the hard task of the board of adjustment. The applicant must present competent, material, and substantial evidence that they meet all of the standards. And the board must consider the issues on a case-by-case basis; they must weigh the evidence, apply the required statutory standards, and decide if a variance is warranted.

Links

- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-388

GIS Map



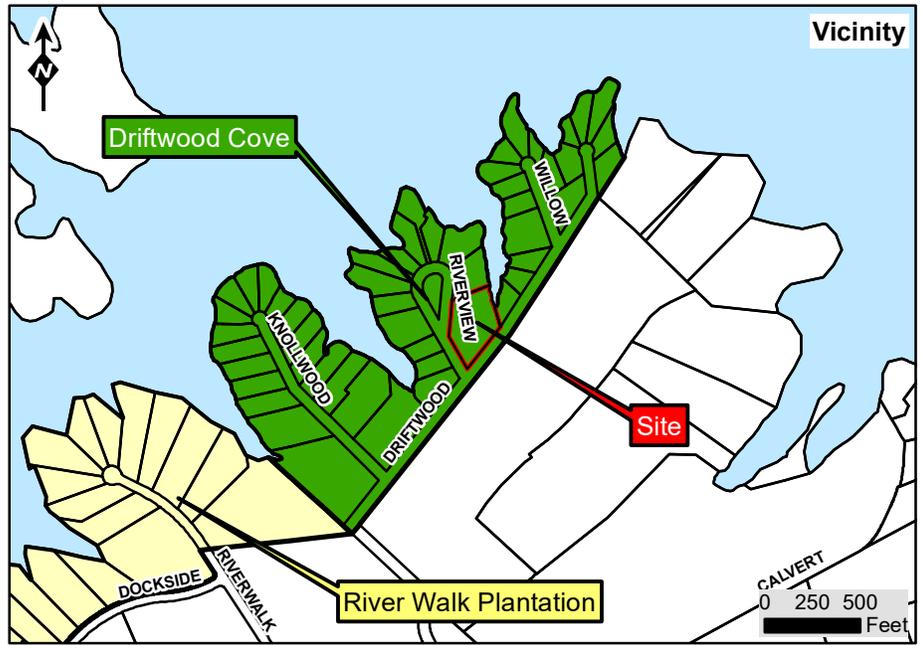
BOA 01-24:Poole

Legend

Site	Floodplain
Parcels	High Rock Lake
Roads	Address

Feb / Mar 22 Aerials

Prepared by: Rowan County Planning Dept. 2/8/24



Survey