

**VARIANCE REQUEST
ZONING BOARD OF ADJUSTMENT
October 24, 2017**

CASE: ZBA-919, 10/17

PETITIONER: Gary Dale Sutton, applicant and property owner

REQUEST: 10' variance from the 20' side yard requirement for structures per Section 51.3-2 of the Zoning Ordinance

LOCATION: 145 Brookgreen Road
PID: R01700-003-004-014

ZONING: RA, Rural Agricultural District

PETITIONER'S REQUEST:

Gary Dale Sutton, applicant, on behalf of himself and wife Sherry Spencer Sutton, property owners, is requesting a 10' variance to the 20' side yard requirement per Section 51.3-2 of the Zoning Ordinance in order to build a detached 1,000 to 1,050 sq. ft. accessory building up to 10' from the side property line. The property hosts several large oak trees that would have to be removed in order to meet the 20' side yard requirement.

BACKGROUND AND ORDINANCE CONSIDERATIONS:

The subject property is located at 145 Brookgreen Road, off of Castle Hayne Road in Castle Hayne, and it is approximately 0.92 acres. Mr. and Mrs. Sutton, the current property owners, purchased the property in 1984 and built their home in 1985. Mr. Sutton would now like to build a detached garage/workshop approximately 1,000 sq. ft. in size.

Setback requirements for detached accessory structures such as garages are regulated in Section 63.2 of the Zoning Ordinance:

Section 63.2: Accessory Building / Use

63.2-1: No accessory building shall be erected in any required yard nor within five (5) feet of any other building except that accessory buildings not exceeding 600 sq. ft. (9/4/84) may be permitted in the required side and rear yards provided such accessory buildings are at least five (5) feet from any property line and do not encroach into any required easements. Accessory buildings not exceeding 50 square feet and use exclusively to house well and pump equipment may be permitted in the required front, side and rear yards, provided such accessory buildings are at least five (5) feet from any property line and do not encroach into any required easements or sight angles. (1/4/88) An accessory building or use may be located on another contiguous or noncontiguous lot from the principal use with which it is associated, only to the extent that the principal use itself would also be permitted on such lot. (9/12/83)

Because the size of the proposed garage is over 600 sq. ft., the yard requirements for the RA zoning district in Section 51.3-2 apply and dictate the setback of the structure from the property lines:

51.3-2: Dimensional Requirements:

- (1) Minimum lot area: 30,000 sq. ft.
- (2) Minimum lot width: 115 feet
- (3) Minimum side yard: 20 feet
- (4) Minimum front yard: 40 feet
- (5) Minimum rear yard: 30 feet
- (6) Maximum height: 35 feet

Mr. Sutton provided two drawings with the application, both showing the location of the house, driveway, the large oak trees on the property, and two possible building footprints for the garage – 32' x 32' and 28' x 36'. One version shows the building footprints with the required 20' setback, and the proximity of the footprints to the oak trees. The other version of the drawing shows the building footprints 10' off the side property line with the requested 10' variance. The building placement with the 10' variance provides more distance between the proposed building and the oak trees.

Although the side yard setback in RA zoning is 20', the home on the property neighboring Mr. Sutton's property to the south at 137 Brookgreen Drive is about 5' from the property line. Staff concludes this is likely a result of the home being built in 1984 (according to New Hanover County Property Records) and zoning becoming effective in Castle Hayne on July 1, 1985.

The applicant has included findings of facts for the four required conclusion as part of his application materials.

BOARD OF ADJUSTMENT POWER AND DUTY:

The Board of Adjustment has the authority to authorize variances from the terms of the Zoning Ordinance where, due to special conditions, a literal enforcement of the regulations would result in unnecessary hardship. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with the Zoning Ordinance. A concurring vote of four-fifths (4/5) of the voting members of the Board shall be necessary to grant a variance. A variance shall not be granted by the Board unless and until the following findings are made:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. 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.
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.

ACTION NEEDED (Choose one):

1. **Motion to approve the variance request based on the findings of fact (with or without conditions)**
2. **Motion to table the item in order to receive additional information or documentation (Specify).**
3. **Motion to deny the variance request based on specific negative findings in any of the 4 categories above.**