

**VARIANCE REQUEST
ZONING BOARD OF ADJUSTMENT
February 27, 2018**

CASE: ZBA-924, 2/18

PETITIONER: Scott Stewart on behalf of SP3 LLC, applicant and property owner

REQUEST: Variances from the yard requirements of Section 51.5-2 of the New Hanover County Zoning Ordinance

LOCATION: 397 Whisper Park Drive
PID: R04400-004-095-000

ZONING: R-20, Residential District

ACREAGE: 0.46 Acres

PETITIONER’S REQUEST:

Scott Stewart, on behalf of applicant and property owner SP3 LLC, is requesting variances from the yard requirements of Section 51.5-2 of the New Hanover County Zoning Ordinance in order to locate a home closer to the property lines than the yard requirements allow. The property is located at 397 Whisper Park Drive, Wilmington, NC.

BACKGROUND AND ORDINANCE CONSIDERATIONS:

New Hanover County’s zoning and subdivision regulations allow for subdivisions to utilize Performance or Conventional requirements. Under Conventional requirements, lots that are created must adhere to the dimensional requirements for the zoning district. For example, lots created under Conventional requirements in the R-20 zoning district must meet the dimensional requirements of Section 51.5-2:

Section 51.5: R-20 Residential District

51.5-1: The R-20 Residential District is established as a district in which the principal use of land is for low density residential and recreational purposes. The regulations of this district are intended to discourage any use which because of its character would substantially interfere with the development of residences and which would be detrimental to the quiet residential nature of the areas included within this district.

51.5-2: Conventional Residential Regulations

Dimensional Requirements:

- (1) Minimum lot area 20,000 sq.ft. Duplex 35,000 sq.ft.*
- (2) Minimum lot width 90 feet*
- (3) Minimum front yard 30 feet*
- (4) Minimum side yard 15 feet*
- (5) Minimum rear yard 25 feet*
- (6) Maximum Height 35 feet*

Setbacks for structures on Conventional Residential lots are dictated by the yard requirements of the zoning district of the property, per the definitions of *Setback Line* and *Yard* in the Zoning Ordinance:

Setback Line - *The line on the front, rear, and sides of a lot, which delineates the area upon which a structure may be built and maintained. (23-28)*

Yard - *A required open space unoccupied and unobstructed by a structure or portion of a structure provided, however, that fences, walls, poles, posts, and other customary yard accessories, ornaments and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility. (1/5/81) Private driveways or easements serving three or fewer lots pursuant to Section 65 may also be permitted in any yard. (3/8/93) HVAC units elevated to comply with flood plain regulations may be permitted in any side yard provided the supporting structure is at least (5) feet from the adjoining property line. (8/18/03) (23-42)*

Yard, Front - *A yard extending between side lot lines across the front of a lot adjoining a public or private street. The depth of the required front yard shall be measured at right angles to a straight line joining the foremost points of the side lot lines, and in such a manner that the yard established shall provide minimum depth parallel to the front lot line. (7/6/92) (23-43)*

Yard, Side - *A yard extending from the rear lines of the required front yard to the rear lot line. Width of a required side yard shall be measured in such a manner that the yard established is a strip of the minimum width required by the district regulations with its inner edge parallel with the side lot line. (23-44)*

Yard, Rear - *A yard extending across the rear of the lot between inner side yard lines. In the case of through lots and corner lots, there shall be no rear yards, but only front and side yards. Depth of a required rear yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the rear lot line. (23-45)*

The County's Zoning Ordinance does not have allowances for features such as decks, staircases, or porches to encroach into any required yard area. As such, a home and any deck, staircase, or porch serving the structure would also have to adhere to the yard requirements or relaxed yard requirements based on an approved variance.

For lots that are created under Performance Residential criteria, the dimensional requirements do not have to be met. There are no minimum lot sizes or yard requirements, and the only structure setback requirements are that structures on the periphery of a Performance Residential development must be at least 20' from the property line, and single-family residential structures must be a minimum of 10' apart.

The subject parcel was created under Conventional Residential requirements for R-20 in 2009 (MB 54 Page 19) as Lot 2A from a minor division of Tract 1A of the Canady Division, which was recorded in 1997 (MB 37 Page 84). Tax records indicate Mr. Stewart acquired the property in 2010. The parcel is currently undeveloped, but Mr. Stewart intends to build a single-family residential structure on the property and is seeking variances to situate the home in a location that is harmonious with the location of the townhomes on the adjacent properties in Demarest Village. The subject parcel is not a part of Demarest Village.

Demarest Village was originally approved in 1999 under the County's Performance Residential regulations in Section 51.1-2 of the Zoning Ordinance. The lot adjacent to the subject property is Lot 10A, recorded in Section

2A for Demarest Village in 2000. The townhome on the adjacent Lot 10A of Demarest Village is setback 10' from the front property line.

If approved, the variance would allow the front of the home on the subject property to be in line with the adjacent townhome, excluding the front porch, which protrude 10' from the new home up to the front property line on the subject parcel, necessitating a 30' variance from the 30' front yard requirement of Section 51.5-2.

The applicant has included a plot plan of the proposed home, which includes the main home portion and a covered breezeway/arbor connecting to a garage at the rear of the property. Because the main home portion, breezeway/arbor, and garage would all be connected, all three portions are considered part of one structure and are subject to the yard requirements for Conventional Residential R-20 from Section 51.5-2 shown above.

As proposed, the breezeway/arbor would be 3' from the side property line, a difference of 12' from the 15' required in Section 51.2-2. The main portion of the structure as proposed would be 5' from the property line. Only one side yard variance is necessary since the breezeway/arbor is connected to the main portion of the structure.

In summary, the petitioner is requesting a 30' variance from the 30' front yard requirement of Section 51.5-2 and a 12' variance from the 15' side yard requirement of Section 51.5-2. The variances would allow the property owner to situate a proposed home on the subject parcel closer to the side and front property lines than the Conventional Residential yard requirements in the R-20 zoning district allow. In his application, the petitioner has included draft findings of fact to support the four conclusions required to approve the variance, along with detailed site plans and pictures depicting the proposed location of the structure.

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.**