

**VARIANCE REQUEST
ZONING BOARD OF ADJUSTMENT
July 24, 2018**

CASE: ZBA-928, 7/18

PETITIONER: 16 Pointe Properties LLC, applicant, on behalf of Kenneth and Cynthia Tilley, property owners

REQUEST: Variance from the 25' front yard requirement of Section 51.6-2 of the New Hanover County Zoning Ordinance

LOCATION: 237 Windy Hills Drive
PID: R07908-003-060-000

ZONING: R-15, Residential District

ACREAGE: 0.33 Acres

PETITIONER'S REQUEST:

16 Pointe Properties LLC, applicant, on behalf of Kenneth and Cynthia Tilley, property owners, is requesting a variance from the 25' front yard requirement for R-15 per Section 51.6-2 of the New Hanover County Zoning Ordinance. The property is located at 237 Windy Hills 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-15 zoning district must meet the dimensional requirements of Section 51.6-2:

Section 51.6: R-15 Residential District

51.6-1: The R-15 Residential District is established as a district in which the principal use of land is for residential purposes and to insure that residential development not having access to public water and dependent upon septic tanks for sewage disposal will occur at sufficiently low densities to insure a healthful environment.

51.6-2: Conventional Residential Regulations

Dimensional Requirements:

- (1) Minimum lot area 15,000 sq.ft. Duplex 25,000 sq.ft.*
- (2) Minimum lot width 80 feet*
- (3) Minimum front yard 25 feet*
- (4) Minimum side yard 10 feet*
- (5) Minimum rear yard 20 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)

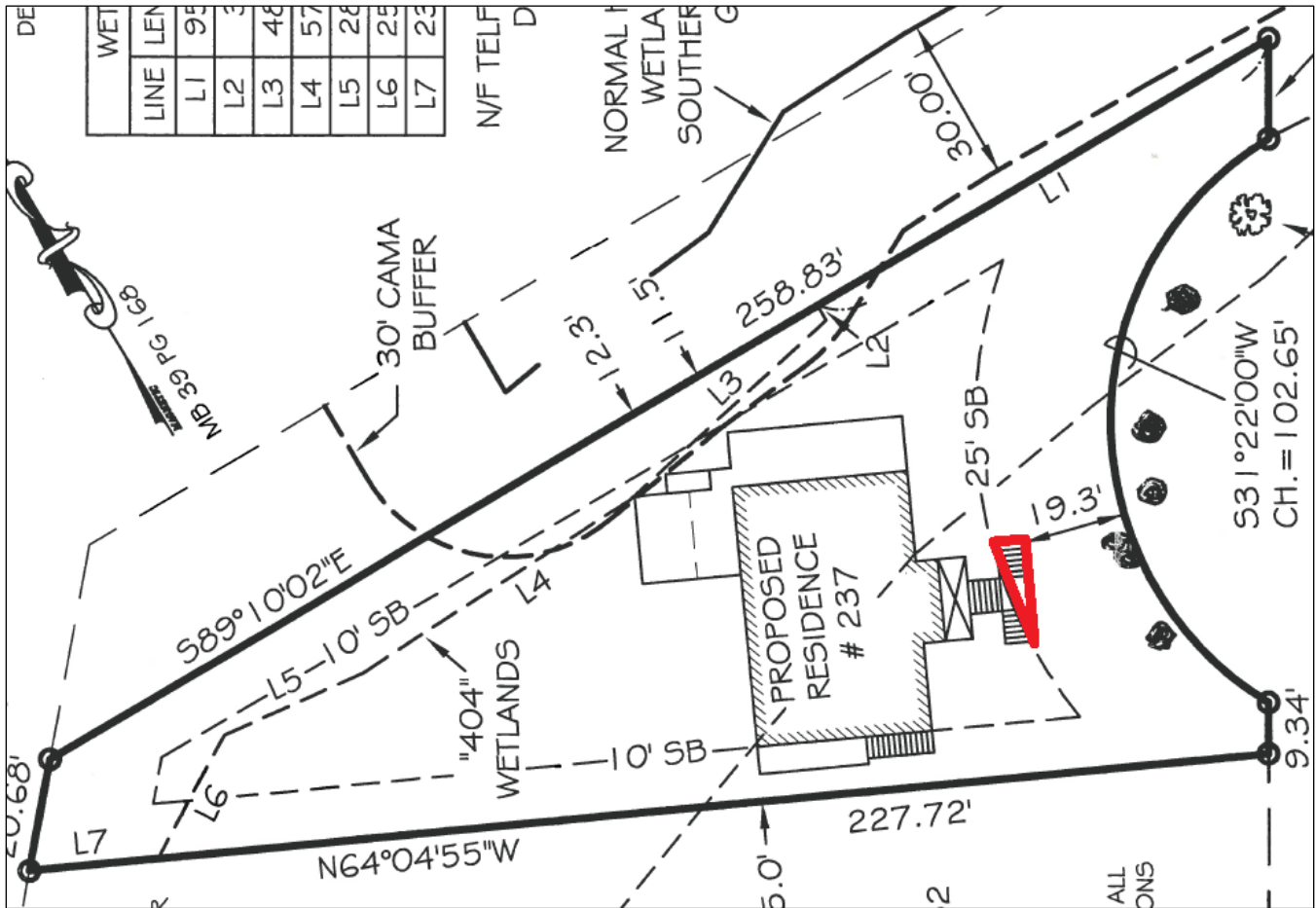
The County's Zoning Ordinance does not have allowances for features such as decks, staircases, or porches to encroach into any required yard area. As such, a home and any deck, staircase, or porch serving the structure would also have to adhere to the yard requirements or relaxed yard requirements based 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 property is Tract B shown on the "Map of Survey of Windy Hills Subdivision" which was recorded in 1999. That survey is labeled as an exact replica of a map entitled "Working Map of Windy Hills" that was surveyed and mapped in 1959. The lots in Windy Hills are considered Conventional lots and must adhere to the yard requirements for R-15 in Section 51.6-2.

The subject property is at the end of a cul de sac and is pie slice-shaped with the lot narrowing in width down to 20.68' at the rear property line. Adjacent to the north of the parcel are coastal wetlands; from normal high water 30' landward is a CAMA (N.C. Coastal Area Management Act) buffer that must remain undisturbed with few exceptions. No portion of a structure can encroach into the CAMA buffer. Also on the northern area of the parcel are "404" wetlands under the jurisdiction of the U.S. Army Corps of Engineers.

The lot shape and environmental constraints had led to a site design that pushes the proposed residence to the southeastern portion of the parcel. A dual staircase is proposed for the front entry to the home, a portion of which encroaches 5.7' into the required 25' front yard. There is also an elevated area for the HVAC components encroaching 5' into the southern side yard, which is permissible because the property is located within a VE Special Flood Hazard Area.



In summary, the petitioner is requesting a 5.7' variance from the 25' front yard requirement of Section 51.6-2. If approved, the variance would allow an entry staircase to encroach into the required front yard. 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.**