

**VARIANCE REQUEST
ZONING BOARD OF ADJUSTMENT
October 22, 2019**

CASE: ZBA-944

PETITIONER: Kurt R. Huff and Catherine A. Oliverio, property owners

REQUEST: Variance from the 25' front yard setback requirement per Section 51.6-2(3) of the New Hanover County Zoning Ordinance.

LOCATION: 210 Windy Hills Drive
PID: R07908-005-025-000

ZONING: R-15, Residential District

ACREAGE: 0.43 Acres

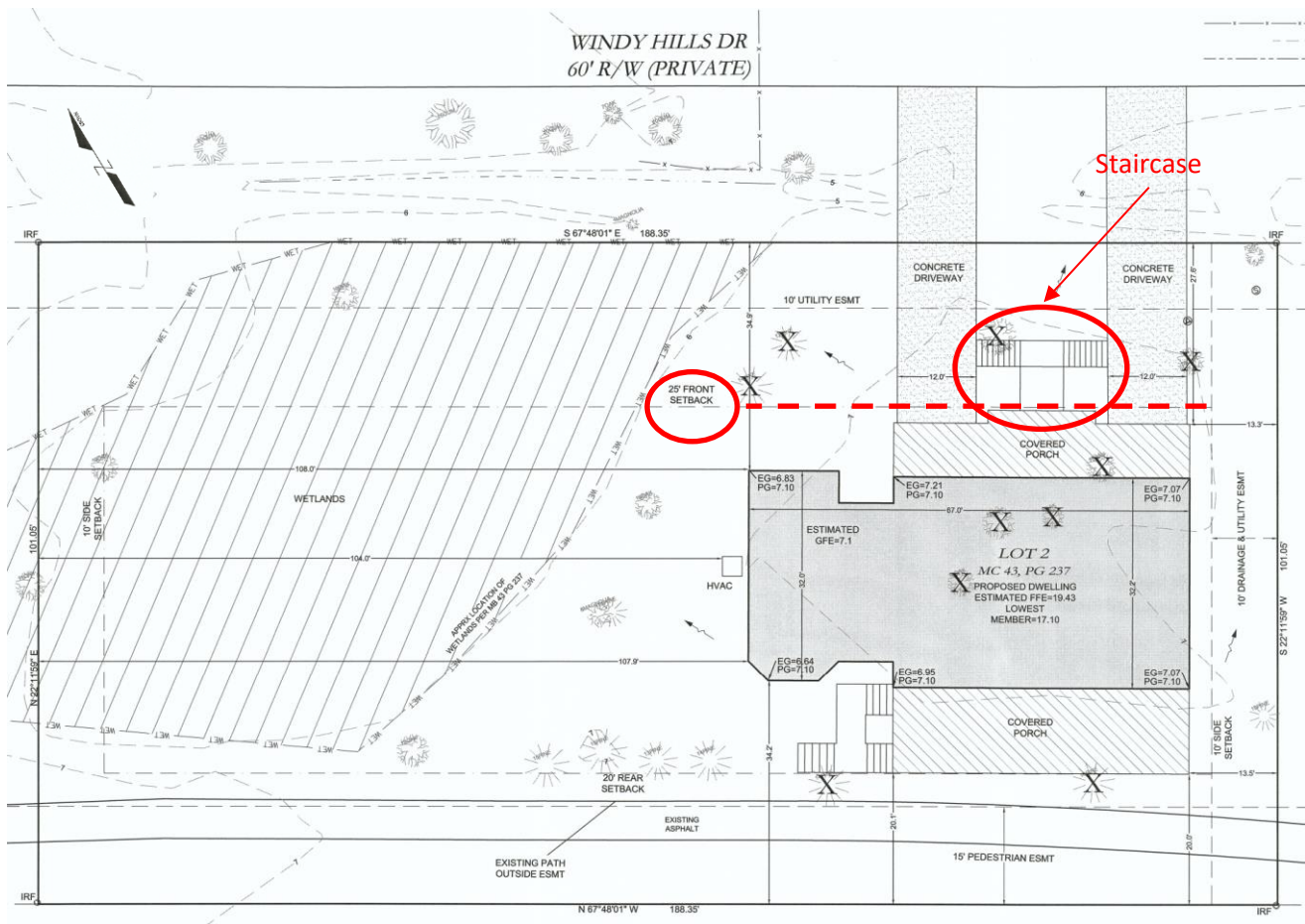
PETITIONER'S REQUEST:

Kurt Huff and Catherine Oliverio, property owners, are requesting a variance from the 25' front yard setback requirement for R-15 per Section 51.6-2 of the New Hanover County Zoning Ordinance. The property is located at 210 Windy Hills Drive, Wilmington, NC.

BACKGROUND AND ORDINANCE CONSIDERATIONS:

In July 2018, the property owner's agents submitted an application to construct a single-family residence on the site. The submitted site plan showed the front staircase encroaching approximately 9.7' into the required front yard setback. After proceeding through the review process, the application did receive zoning approval by staff with no indication that a revision or alteration to the plans was needed, although the zoning conditions document stated the structure was subject to a front yard setback of 25'.

On or about July 20, 2019, staff was notified that the front staircase appeared to encroach into the required front yard setback as observed during a routine building inspection during the construction process. At this time, staff advised the building contractor that despite the approval of the site plan, the structure would have to be brought into compliance with the applicable provisions within the zoning ordinance. As a result of the inadvertent staff approval of the site plan, county staff allowed construction to proceed and the building contractor and homeowner were advised of options to bring the structure into compliance with the front yard setback requirement. The applicant elected to continue construction of the home as designed and to pursue a variance to the front yard setback requirement in an attempt to bring the structure into compliance, and a Certificate of Occupancy was obtained on September 20, 2019.



Submitted site plan showing encroachment of staircase into 25' front yard setback.

The County's Zoning Ordinance does not have a specific allowance for features such as decks, staircases, or porches to encroach into any required yard area; and these features are considered to be part of the main structure per the definition of *Structure and/or Building*:

Structure and/or Building-Anything constructed or erected within a fixed location on the ground, or attached to something having a fixed location on the ground. The terms building and/or structure shall be construed to include porches, decks, carports, garages, sheds, roof extensions, overhangs extending more than 2', and any other projections directly attached to the structure and/or building. (12/17/2012)

As such, a home and any deck, staircase, or porch serving the structure would have to adhere to the yard requirements or relaxed yard requirements based on an approved variance.

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)*

The deed and record plat for the subject property, which was recorded in 2002, depict the lot as being Lot 2 of the Avalon Oaks Subdivision, which county records indicate is a conventional subdivision and thus must adhere to the yard requirements for R-15 in Section 51.6-2.

The applicant contends that the variance is necessary as the plans were duly submitted and approved by the county, and that all necessary inspections were conducted. In addition, the applicant contends the stairs are necessary in their location to provide access to the structure, which is required to be elevated due to its' location in the VE Special Flood Hazard Area.

In summary, the petitioner is requesting a variance of approximately 15' from the 25' front yard requirement of Section 51.6-2(3). If approved, the variance would allow the entry staircase to remain in its current position with a 9.7' encroachment into the front yard setback.

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.**