

**VARIANCE REQUEST
ZONING BOARD OF ADJUSTMENT
January 26, 2020**

CASE: ZBA-954

PETITIONER: Bradley Wivell, applicant and property owner.

REQUEST: Variance from the 180-day discontinuance of a non-conforming use duration per Sections 11.4 and 11.6; and a variance of 20.4' from the 35' minimum required front yard setback in the B-2, Regional Business District per Section 3.4.5.D of the New Hanover County Unified Development Ordinance.

LOCATION: 1112 Elm Street
PID: R08518-003-004-000

ZONING: B-2, Regional Business District

ACREAGE: .09 acres (approximately 3,920 square feet)

BACKGROUND AND ORDINANCE CONSIDERATIONS:

Bradley Wivell, applicant and property owner, is requesting a variance from three ordinance provisions governing non-conforming situations and required front yard setbacks within the New Hanover County Unified Development Ordinance (UDO) in order to construct a single-family dwelling within the B-2 District. The subject parcel is located in the Seabreeze community in southern New Hanover County and consists of approximately 3,920 square feet. The parcel is one of several lots in this area that comprise approximately 10 acres which were zoned B-2 in 1971 due to their historic use as waterfront business and recreation destinations.

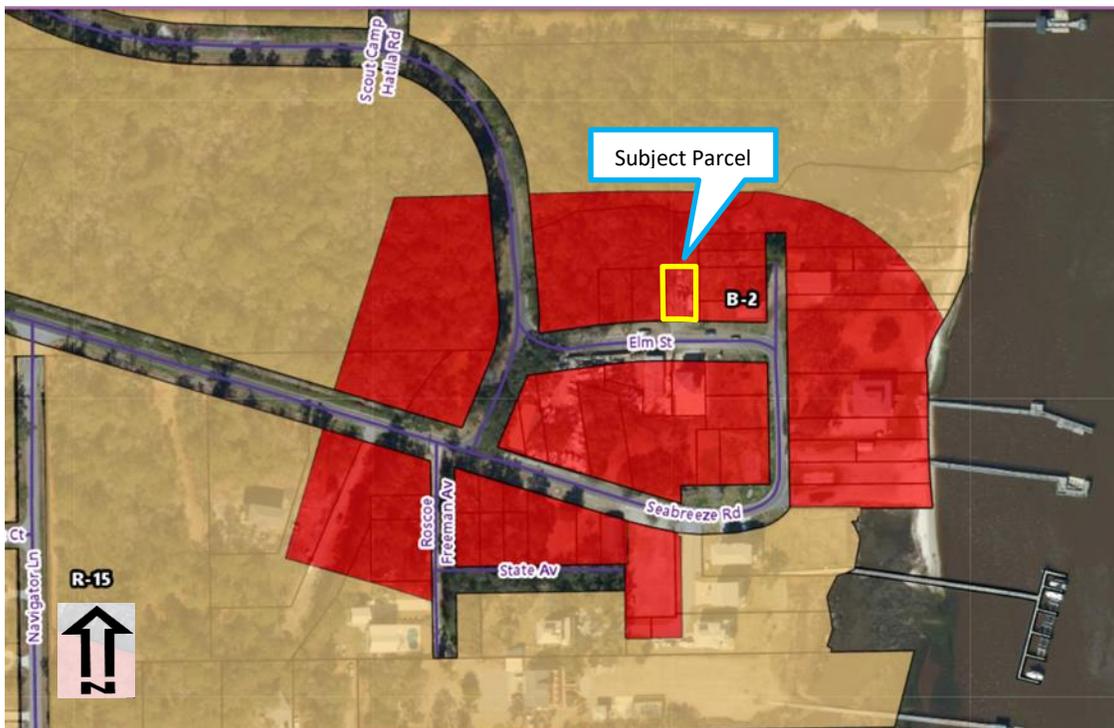


Figure 1: Seabreeze Community with B-2, Regional Business District Boundary

Currently, the site is operating as a boat trailer storage lot which is affiliated with the applicant's boat storage business located across Elm Street to the southwest of the subject parcel. The applicant was notified in November of 2020 that the expansion of the business onto the subject parcel would require the approval of a minor site plan through the county's development review process. At that time, the applicant indicated the intention to construct a single-family residence on the parcel. Single Family Dwellings are not permitted uses within the B-2 district, however, there are some legal non-conforming situations within this district as its development predates the application of its current zoning designation.

In general, legal non-conforming situations occur when a land use, structure, lot of record, sign, or site feature was lawfully established before a regulation was adopted or amended and does not conform to the UDO's current terms and requirements. The ordinance allows legal non-conformities to remain until they are removed, but their continual use is not encouraged. Once a legal non-conforming use is discontinued, the ordinance establishes a 180-day duration after which the property may only be used for conforming uses.

A potential rezoning request for the property to a district that would allow a single-family residence was not a preferred option due to the minimum lot size requirements of districts that would be most in line with the 2016 Comprehensive Plan, thus the applicant elected to apply for a variance seeking relief of the 180-day discontinuance duration.

The applicant has provided a survey from 2002 showing that a single-family dwelling was located on the subject parcel at that time but was not present when the applicant purchased the property in 2017.

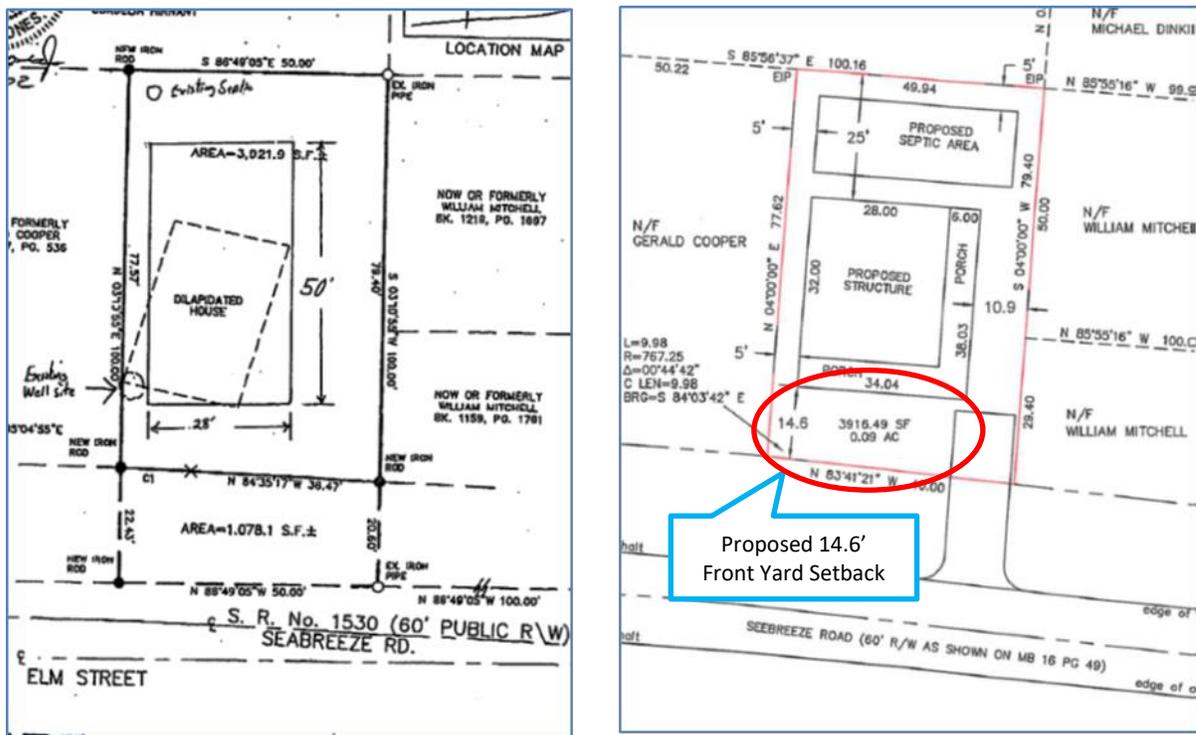


Figure 2: Survey from July 15, 2002 showing home on subject parcel, which was removed prior to the applicant purchasing the property, and proposed site plan with variance request of 20.4' from the 35' front yard setback in the B-2 District.

Section 11.6 of the UDO provides the duration on the discontinuance of a non-conforming use:

Section 11.6 Abandonment and Discontinuance of Nonconforming Situations

11.6.1 *When a nonconforming use is discontinued for a consecutive period of 180 days, only a conforming use may be located on the property.*

As the previously existing structure has been removed from the site as recently as October 2017, a new residence would not be able to be located on the parcel with the application of Section 11.6.1. The applicant contends that the variance is necessary in order to allow a new single-family residential structure to be placed back on the subject property and that the property owner would have been allowed to do so if not for the passage of the 180-day duration

In addition, the applicant notes that Section 11.4.9 of the UDO states that, under certain parameters, a larger, single family residential structure may be constructed in place of a smaller one:

11.4.9 *A structure that is nonconforming in any respect, or a structure that is used in a nonconforming manner may be reconstructed or replaced if partially or totally destroyed, if:*

- A.** *A letter of intent is received by the Planning Director within six months from the time of such destruction.*
- B.** *A building permit is obtained from the Building Safety Department within one year from the time the damage or destruction took place.*
- C.** *The total amount of space devoted to a nonconforming use may not be increased, except that a larger, single family residential structure may be constructed in place of a smaller one and a larger mobile home intended for residential use may replace a smaller one.*

The applicant contends that the ordinance does allow for a structure outside that of the original structure's footprint to be rebuilt on a lot where the non-conformity is preserved if these parameters are met, and thus is requesting relief of provisions (A) and (B) above.

If the Board were to grant a variance from the aforementioned non-conforming provisions, the applicant is also requesting a variance from the 35' front yard setback requirement in the B-2 district in order to accommodate construction of a residence on the lot due to its area. The front yard setback in the B-2 district is generally based on the type of road frontage adjacent to a parcel. The subject site is adjacent to Elm Street, which is an NCDOT maintained road, thus making it subject to a 35' front yard setback per the dimensional standards for the B-2 district set forth in section 3.4.5 D of the UDO:

3.4.5. REGIONAL BUSINESS (B-2) DISTRICT

A. Purpose

The intent of the Regional Business (B-2) District is to provide for the proper site layout and development of larger format or larger structure size business uses, including big box stores and automobile dealers. It is also designed to provide for the appropriate location and design of auto-oriented uses that meet the needs of the motoring public or that rely on pass-by traffic.

B. Concept



C. Use Standards

Allowed uses and use-specific standards for principal, accessory, and temporary uses are established in Article 4: Uses and Use-Specific Standards.

D. District Dimensional Standards

Standard	All Uses
Lot area, minimum (square feet)	None
Lot width, minimum (feet)	None
1 Front setback (feet)	50 along highways and major thoroughfares; 35 along all other public highways or streets
2 Side setback, street (feet)	50 along highways and major thoroughfares; 35 along all other public highways or streets
Side setback, interior	*
Rear setback	*
Building height, maximum (feet)	40**

In summary, the applicant is requesting a variance from the 180-day discontinuance of a non-conforming use duration per Sections 11.4 and 11.6; and a variance of 20.4' from the 35' minimum required front yard setback in the B-2, Regional Business District per Section 3.4.5.D of the UDO in order to allow construction of a single-family residence on the subject parcel.

BOARD OF ADJUSTMENT POWER AND DUTY:

The Board of Adjustment has the authority to authorize variances from the terms of the Unified Development 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 Unified Development 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.**