



NEW HANOVER COUNTY

BOARD OF ADJUSTMENT

230 Government Center Drive, Lucie Harrell Conference Room, Wilmington, NC 28403

Members of the Board

Cameron Moore, Chair | **Kristin Freeman**, Vice-Chair
Henry "Hank" Adams | **Maverick Pate** | **Luke Waddell**

Board Alternates

Pete DeVita | **Richard Kern** | **Michael Keenan, Sr.**

Rebekah Roth, Director of Planning & Land Use | **Sharon Huffman**, Deputy County Attorney

March 23, 2021, 5:30 PM

I. Call Meeting to Order (Chairman Cameron Moore)

II. Approval of February Minutes (*currently in draft status*)

February Member Attendees: Cameron Moore, Kristin Freeman, Michael Keenan, Maverick Pate, Luke Waddell

III. Regular Items of Business

Case BOA-956 – Kenneth Haynes, applicant, on behalf of Jeffrey and Jeane Finucan, property owners, is requesting a variance of 8.33' from the 20' minimum rear yard setback requirement per Section 3.2.9.D of the New Hanover County Unified Development Ordinance. The property is zoned R-10, Residential District and is located at 4504 Barnards Landing Road.

Case BOA-957 – Martha Estela Vicente Andrade, applicant and property owner, is requesting a variance of 1.2' from the 20' minimum side yard setback requirement per Section 3.2.5.D of the New Hanover County Unified Development Ordinance. The property is zoned AR, Airport Residential District and is located at 1514 Roane Drive.

IV. Other Business

Unified Development Ordinance Amendment Update – Marty Little, Long Range Planner

V. Adjourn

MINUTES
BOARD OF ADJUSTMENT

The New Hanover County Board of Adjustment held a regular and duly advertised meeting at 5:30 P.M. at the New Hanover County Government Center Complex, 230 Government Center Drive, in the Lucie Harrell Conference Room, Wilmington, NC, on Tuesday, February 23, 2021.

Members Present

Cameron Moore, Chairman
Kristin Freeman, Vice-Chair
Maverick Pate
Luke Waddell
Michael Keenan

Members Absent

Hank Adams
Pete DeVita
Richard Kern

Ex Officio Members Present

Ken Vafier, Executive Secretary
Kemp Burpeau, Deputy County Attorney
Ron Meredith, Current Planner

The meeting was called to order at 5:30 P.M. by the Chairman, Mr. Cameron Moore.

Mr. Moore explained that the Board of Adjustment is a quasi-judicial board appointed by the Board of Commissioners to consider variances from residents in New Hanover County where special conditions would create unnecessary hardships. He said the Board of Adjustment also hears appeals of the County's interpretation in enforcement of the Unified Development Ordinance. The appellants have thirty days in which to appeal any decision made by the Board to Superior Court.

FIRST ORDER OF BUSINESS

Following a motion by Mr. Waddell and seconded by Vice-Chair Freeman, the minutes from the January 26, 2021 meeting were unanimously approved.

The Chairman then swore in County staff Ken Vafier and Ron Meredith.

CASE ZBA-955

Mr. Meredith stated that the applicant and property owner, is requesting two variances relating to landscaping and tree retention. The applicant is requesting a variance from tree retention requirements per Section 5.3.4(C) and interior landscaping requirements per Section 5.4.5(C) of the New Hanover County Unified Development Ordinance (UDO).

The subject site is called the Cape Fear Regional Soccer Complex expansion located at 205 Sutton Steam Plant Road, Wilmington, NC. The zoning classification for the subject site is I-2, Heavy Industrial District.

Mr. Meredith stated that the site consists of 65.47 acres located to the south of Sutton Steam Plant Road, north of Sampson Street. Currently, there are seven existing sports fields on the northern part of the property. The applicant has provided plans with intentions to construct four additional sports fields, a restroom facility, and additional parking on the site, totaling eleven sports fields to be housed at the complex.

The subject tract was once a landfill and is now part of an EPA Brownfields Revitalization Program. An environmental cleanup for the earlier use is active on the site. The cleanup action can aid in returning abandoned industrial facilities, waste disposal sites and former gas stations to productive future uses.

Mr. Meredith stated due to the Unified Development Ordinance requirements related to vegetation at the Brownfields location, the applicant finds difficulty in adhering to the tree planting requirements in the UDO.

When applying the applicable provisions of the UDO, approximately 323 trees would be required to be planted within the proposed disturbed area as part of the tree retention requirements, and one tree per 144 square feet would be required meet the interior parking standards to provide required plantings. A large portion of the site is occupied with landfill/brownfields areas so the planting area is limited.

The applicant has submitted a landscaping plan that proposes about 150 understory trees to be placed outside the landfill/brownfields boundary location. The applicant contends that the variance is necessary in order to be compliant with site vegetative cover standards for landfills/brownfields as specified by the North Carolina Department of Environmental Quality.

Mr. Meredith stated the applicant is requesting two variances; the first variance is from Section 5.3.4 (C) and is to plant 150 trees from the required 323 trees, and the second variance being requested is from the requirement of Section 5.4.5(C) for 49 trees to be planted due to the vegetative restrictions to the Brownfields area.

Chairman Moore asked if the variances could be separated.

Mr. Meredith answered that each variance request could be considered separately.

Mr. Vafier stated that if the Board deliberates and decides to grant the variances this could be done in one (1) motion or the variance could be individually decided upon based on the findings.

Mr. Keenan asked how were the outside boundary areas established.

Mr. Meredith stated the areas are listed per the designated Brownfields areas.

Chairman Moore then swore in David Bergmark.

Mr. David Bergmark, McAdams Engineering - Mr. David Bergmark stated he is assisting the applicant and owner of the subject site, City of Wilmington, with the application and process of requesting the variance. Mr. Bergmark stated that as the site was previously a landfill facility there are limits to planting the trees as required in the UDO, in addition to meeting the requirements of NC Department of Environmental Quality.

Mr. Bergmark stated that the landfill/brownfields boundary is restricted in that the root depth shall be no greater than 18 inches at maturity with no root runner. Mr. Bergmark stated they are requesting two variances, one variance under the provisions of the UDO, approximately 323 trees would be required, the applicant is requesting to plant 150 trees outside of the former landfill boundary. The second variance relates to the landscaping parking lot requirements of one (1) tree per 144 square feet required for interior parking standards. Mr. Bergmark stated they are imposing to plant six (6) trees around the restroom area.

Mr. Bergmark stated they are offering double the amount of additional green space to the parking lot. Mr. Bergmark stated they are limited in applying the UDO regulations in plantings due to the former landfill spacing, steep slopes, existing utilities and easements they cannot plant within.

Vice-Chair Freeman asked if the soccer fields are indoor or outdoor.

Mr. Bergmark stated the subject site fields are outdoor with one synthetic surface, the remaining are grass.

Mr. Waddell inquired of which agency that imposes the Brownfields regulations

Mr. Bergmark stated the NC DEQ imposes regulations to Brownfields sites for oversight and operational use.

Chairman Moore asked how many boxes are there and where would the trees be located.

Mr. Bergmark stated they cannot go pass the 18 inches in caliber of trees at the site.

Mr. Waddell asked how the applicant came to propose the 150 trees.

Mr. Bergmark stated their team agreed 150 trees as the base to ensure growth with the space allowed for the trees to be successful in growth in the future.

The City of Wilmington representative was present as the owner of the subject site.

NO OPPOSITION PRESENT

PUBLIC HEARING CLOSED

BOARD DISCUSSION

Chairman Moore stated that both variance request could be combined in deliberation.

Mr. Burbeau stated the Board may reference the findings of fact in their deliberation in entirety.

Mr. Vafier stated the Board could consider any conditions that the applicant is referencing in the variance.

Chairman Moore stated that the applicant has provided a narrative and read the findings of facts submitted.

- A. A variance of 323 trees to be retained or planted. The applicant is proposing to plant 150 trees outside the Landfill/Brownfield boundary.

- B. A variance of 49 trees requiring one planted or existing tree shall be required every 144 sf of total interior landscaped area, with a minimum one tree in each parking island.

Mr. Keenan made a motion to approve the variance based on findings submitted. Mr. Waddell second the motion. The motion was unanimously approved.

The Board cited the following conclusions and findings of fact:

- 1. It is the Board's conclusion that, if the applicant complies with the literal terms of the ordinance, specifically a variance of 173 trees from Section 5.3.4(C) of the UDO requiring that a minimum of 15 trees at least two inches DBH or two caliper inches, as applicable, shall be retained or planted on a parcel where development occurs; and a variance of 49 trees required from Section 5.4.5(C) of the UDO requiring one planted or existing tree shall be required for every 144 square feet of total interior landscaped area, with a minimum of one tree in each parking island of the New Hanover County Unified Development Ordinance, that an unnecessary hardship would result. This conclusion is based on the following FINDINGS OF FACT:**

- Due to the site's previous use as a landfill, the strict application of the ordinance as it relates to tree plantings would directly conflict with the North Carolina Department of Environmental Quality's vegetative cover regulations for prior landfill sites. The DEQ's planting requirements include that the root depth be no greater than 18 inches at maturity with no root runner greater than 6 inches (See exhibit A-Section 2.1 Plant Requirements). This requirement permits grass and shrubs, but precludes planting of trees within the area of the site previously used as a landfill (Which is the vast majority of the site and fully includes the parking area by the building- See Exhibit L1).

- 2. It is the Board's conclusion that the hardship of which the applicant complains results from unique circumstances related to the subject property, such as location, size, or topography. This conclusion is based on the following FINDINGS OF FACT:**

- Prior use of the site as a landfill is what is creating the conflict the County's landscaping requirements. This existing condition is particular to this site, and with only one other landfill in the County, is not indicative of a condition that is common to the surrounding area or County in general.

- 3. It is the Board's conclusion that the hardship did not result from actions taken by the applicant or the property owner. This conclusion is based on the following FINDINGS OF FACT:**

- Neither the applicant nor the property owner established the prior use as a landfill. Thus, the site-specific circumstance creating the hardship did not result from actions taken by the applicant or the property owner.

4. It is the Board’s conclusion that, if granted, the variance will be consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT:

- Tree protection and landscaping regulations are intended to enhance the aesthetic appearance of new development with the natural landscape to the benefit of the County’s visual and environmental character.
- The requested variance to the County’s Tree Retention (Section 5.3.4) and Landscaping for the Parking Lot Interiors standards (Section 5.4.5.C) Represents the Minimum variance required in order to accommodate the State’s regulations for prior landfill sites, by removing specified trees plantings, while providing double the required amount of internal landscape island planting areas to offset the reductions in tree coverage.
- Care will be taken to the provide natural and aesthetically pleasing landscaping in areas where tree root depth would violate state regulations through the use of shrubs, ground covers, and ornamental grasses. It is our firm belief that the requested variance proposals are true to the spirit of the ordinance within the site limitations, and will preserve public safety and justice.

There being no further business before the Board, it was properly moved by Mr. Keenan and seconded by Vice-Chair Freeman to adjourn the meeting. All ayes.

Please note the minutes are not a verbatim of the record of the proceedings.

Executive Secretary

Chairman

Date _____

**VARIANCE REQUEST
BOARD OF ADJUSTMENT
March 23, 2021**

CASE: BOA-956

PETITIONER: Kenneth Haynes, applicant, on behalf of Jeffrey and Jeane Finucan, property owners.

REQUEST: Variance of 8.33' from the 20' minimum rear yard setback requirement per Section 3.2.9.D of the New Hanover County Unified Development Ordinance.

LOCATION: 4504 Barnards Landing Road
PID: R07015-004-009-000

ZONING: R-10, Residential District

ACREAGE: 0.27 Acres

BACKGROUND AND ORDINANCE CONSIDERATIONS:

Kenneth Haynes, on behalf of Jeffrey and Jeane Finucan, property owners, are requesting a variance from the minimum rear yard setback requirement of 20' in order to construct a 1,128 sf pool enclosure on the subject property.

The subject property is located on a 0.27-acre lot, and currently contains an existing 384 sf shed adjacent to an in-ground pool. The applicant applied for a screened-in enclosure to cover the in-ground pool, but a re-submittal was required as the total area of the accessory structure would require that it meets the principal setbacks for the R-10 district (see attached staff Exhibit 1)

The UDO defines an accessory structure as follows:

ACCESSORY STRUCTURE - *A structure subordinate to a principal structure and use, the use of which is customarily found in association with and is clearly incidental to the use of the principal structure of the land and which is not attached by any part of a common wall or roof to the principal structure. (When a specific structure is identified in this Ordinance as accessory to another use or structure, the structure need not be customarily incidental to, or ordinarily found in association with, the principal use to qualify as an accessory structure.)*

Section 4.4.4 of the UDO requires that accessory structures in excess of 600 sf meet the minimum required setbacks for a principal structure in their respective zoning district:

4.4.4 STANDARDS FOR SPECIFIED ACCESSORY USES AND STRUCTURES

B. Accessory Structure

Accessory structures shall comply with the following standards:

1. *No accessory structure shall be erected in any required yard nor within five feet of any other building, except that accessory buildings not exceeding 600 square feet may be permitted in the required side and rear yards provided such accessory buildings are at least five feet from the property line and do not encroach into any required easements.*

The UDO allows for two different types of subdivision design: Performance Residential Developments and Conventional Residential Developments. In a performance development, individual lots are not subject to the specific yard requirements of a zoning district provided that the density for the zoning district is not exceeded. In a conventional development, the UDO requires that the dimensional standards for each zoning district be met. The subject parcel is a part of Huntington Forest, which was recorded in 1994 as a conventional development. The required rear yard setback in the R-10 district is 20' as specified in the dimensional standards in Section 3.2.9 of the UDO:

3.2.9. RESIDENTIAL 10 (R-10) DISTRICT

A. Purpose

The purpose of the Residential-10 (R-10) District is to provide lands that accommodate new residential neighborhoods and encourage the conservation of existing residential lots and neighborhoods. Neighborhoods in the R-10 District are relatively low density in character and include a limited mix of single family and duplex housing types. If public water is not available, the water system infrastructure must be installed in accordance with County standards and connected when a public supply becomes available. R-10 district lands may be established in proximity to neighborhood or community commercial districts to encourage the establishment of walkable development patterns.

B. Concept

The image consists of two side-by-side photographs. The left photograph shows a row of three single-story houses with brick and siding exteriors, set back from a paved street with a green lawn and trees. The right photograph shows a single-story house with a prominent chimney and a covered front porch, also with a green lawn and trees in the foreground.

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	Single Family Detached	Duplex
Lot area, minimum (square feet)*	10,000	15,000
1 Lot width, minimum (feet)*	70	70
2 Front yard, minimum (feet)*	25	25
3 Street side yard, minimum (feet)*	12.5	12.5
4 Interior side yard, minimum (feet)*	5	5
5 Rear yard, minimum (feet)*	20	20
Density, maximum (dwelling units/acre)**	3.3	
Building height, maximum (feet)***	40	

* Does not apply to Performance Residential Developments (see Section 3.1.3.D).

** Applies only to Performance Residential Developments (see Section 3.1.3.D).

*** Structures elevated on open foundations consisting of piers, posts, columns or piles shall have a maximum height of 44 feet.

The proposed enclosure will be attached to the existing shed and will total 1,512 sf. Applying the language from Section 4.4.4.B.1 would require that the structure meet the 20' rear yard setback. The applicant is proposing to locate the enclosure over the existing concrete pool deck, which would lie 11'8" from the rear property line, for an encroachment of 8.33' into the required setback.

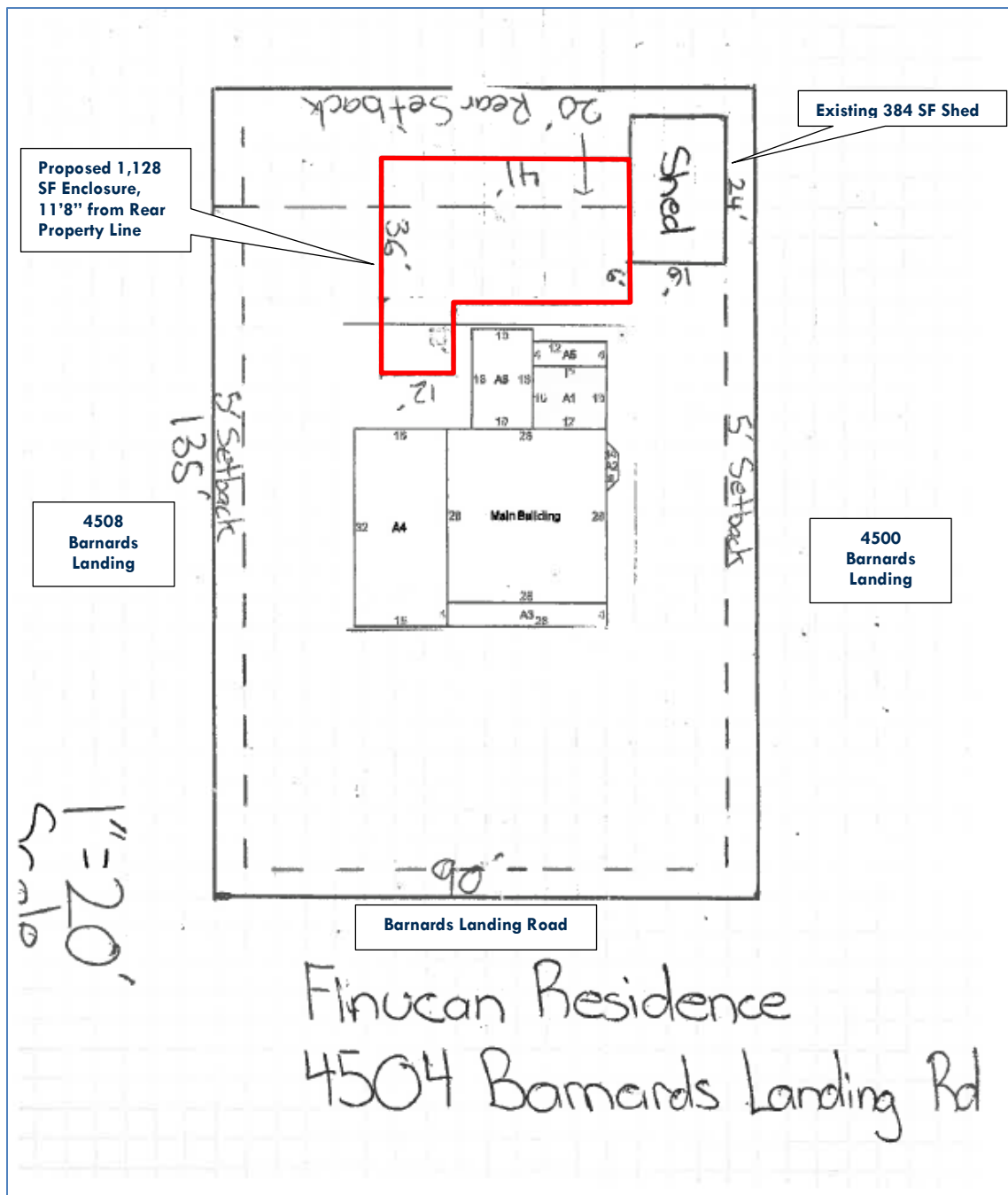


Figure 2: Proposed Site Plan with Staff Markups

The applicant contends that the variance is necessary in order to provide additional security for the pool in addition to protection of the applicant's young family members from insects. In addition, they contend that they began the project under the impression the enclosure could encroach up to 5' from the property line, and the pool and surrounding deck has already been installed and cannot be altered at this time.

In summary, the applicants are requesting a variance from the minimum rear yard setback requirement of 20' in order to construct a 1,128 sf pool enclosure on the subject property over the existing pool and deck.

BOARD OF ADJUSTMENT POWER AND DUTY:

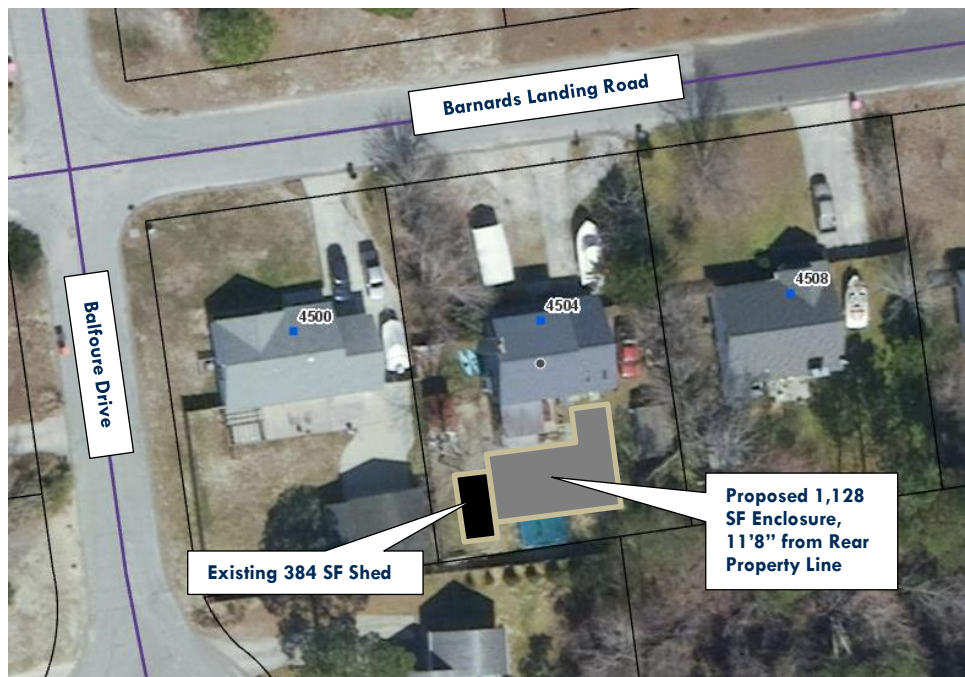
The Board of Adjustment has the authority to authorize variances from the terms of the Unified Development Ordinance where, due to special conditions, a literal enforcement of the regulations would result in unnecessary hardship. In granting any variance, the Board may prescribe appropriate conditions 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:

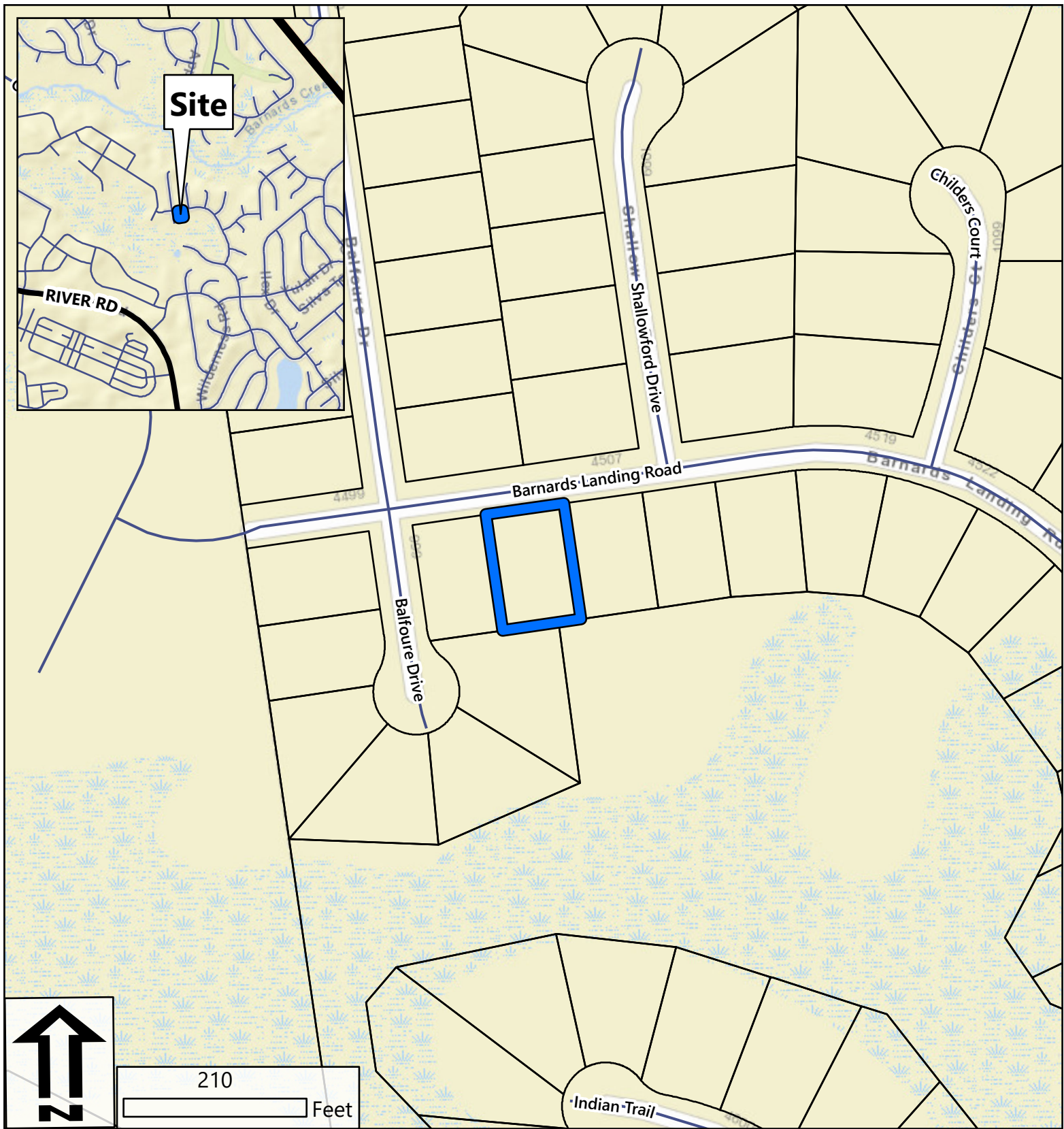
1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, 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.**

Staff Exhibit 1: 2020 Aerial Photo with Approximate Locations of Existing Shed and Proposed Pool Enclosure





Case: BOA-956

Address: 4504 Barnards Landing Rd
Variance from Rear Yard Setback Requirement
Applicant: Kenneth Haynes
Owner: Jeffery Finucan

Vicinity Map



Case: BOA-956

Address: 4504 Barnards Landing Rd
Variance from Rear Yard Setback Requirement
Applicant: Kenneth Haynes
Owner: Jeffery Finucan

Zoning Map



Case: BOA-956

Address: 4504 Barnards Landing Rd
Variance from Rear Yard Setback Requirement
Applicant: Kenneth Haynes
Owner: Jeffery Finucan

Aerial Map



NEW HANOVER COUNTY

BOARD OF ADJUSTMENT

230 Government Center Drive, Lucie Harrell Conference Room, Wilmington, NC 28403

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Board Alternates

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Rebekah Roth, Director of Planning & Land Use | Sharon Huffman, Deputy County Attorney

ORDER TO GRANT A VARIANCE – Case BOA-956

The Board of Adjustment for New Hanover County, having held a public hearing on March 23, 2021 to consider application number BOA-956, submitted by Kenneth Haynes, applicant, on behalf of Jeffrey and Jeane Finucan, property owners, a request for a variance of 8.33' from the 20' minimum rear yard setback requirement per Section 3.2.9.D to use the property located at 9515 River Road in a manner not permissible under the literal terms of the ordinance and having heard all the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

1. It is the Board's conclusion that, if the applicant complies with the literal terms of the ordinance, specifically a variance of 8.33' from the 20' minimum rear yard setback requirement per Section 3.2.9.D New Hanover County Unified Development Ordinance, that an unnecessary hardship would/would not result. *(It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.)* This conclusion is based on the following FINDINGS OF FACT:

- _____.
- _____.
- _____.
- _____.

2. It is the Board's conclusion that the hardship of which the applicant complains results/does not result from unique circumstances related to the subject 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.)* This conclusion is based on the following FINDINGS OF FACT:

- _____.
- _____.
- _____.
- _____.

3. It is the Board's conclusion that the hardship did/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.) This conclusion is based on the following FINDINGS OF FACT:

- _____.
- _____.
- _____.
- _____.

4. It is the Board's conclusion that, if granted, the variance will/will not be consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT:

- _____.
- _____.
- _____.
- _____.

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE from New Hanover County Unified Development Ordinance to allow a variance of 8.33' from the 20' minimum rear yard setback requirement per Section 3.2.9.D of the UDO be GRANTED/DENIED, subject to the following conditions, if any:

ORDERED this 23rd day of March, 2021.

Cameron Moore, Chairman

Attest:

Kenneth Vafier, Executive Secretary to the Board

NEW HANOVER COUNTY

DEPARTMENT OF PLANNING & LAND USE

230 Government Center Drive, Suite 110

Wilmington, North Carolina

Telephone (910) 798-7165

FAX (910) 798-7053

planningdevelopment.nhcgov.com



RECEIVED

FEB 17 2021

VARIANCE

Application

NEW HANOVER COUNTY
PLANNING & LAND USE

Applicant/Agent Information		Property Owner(s) If different than Applicant/Agent
Name	Kenneth Haynes	
Company	1st Choice Enclosures	
Address	1611 Hwy 90	
City, State, Zip	Conway SC 29526	
Phone	(843) 344-7350	
Email	1st Choice Enclosures.S@gmail	
Owner Name	Jeffrey Finucan	
Owner Name 2	Jeane Finucan	
Address	4504 Barnards Landing Rd	
City, State, Zip	Wilmington, NC 28412	
Phone	(910) 460-2289	
Email	FinucanJeffrey@gmail	
Subject Property Information		
Address/Location		
4504 Barnards Landing Rd, Wilmington		
Parcel Identification Number(s)		
R07015-004 009-000		
Total Parcel(s) Acreage		
0.27		
Existing Zoning and Use(s)		
R-10 Res.		
Application Tracking Information (Staff Only)		
Case Number	Date/Time received:	Received by:
BA-956	2/17/21 1:30 PM	KV

PROPOSED VARIANCE NARRATIVE

Subject Zoning Regulation, Chapter and Section: _____

In the below space, please provide a narrative of the application. (Additional pages may be attached to the application if necessary)

* See attached

CRITERIA REQUIRED FOR APPROVAL OF A VARIANCE

The Zoning Board of Adjustment may grant a variance if it finds that strict application of the ordinance results in an unnecessary hardship for the applicant, and if the variance is consistent with the spirit, purpose, and intent of the ordinance. The applicant must explain, with reference to attached plans (where applicable), how the proposed use meets these required findings (please use additional pages if necessary).

1. **Unnecessary hardship would result from 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.*

* See attached

2. **The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardship resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or 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.**

Finucan Variance

Proposed Variance:

This variance request is to build a screen pool enclosure into the rear building setback. The structure would be located eleven feet and eight inches from the rear property line. This entire project began under the impression that the rear building setback for accessory structures was five feet. The pool has already been installed and we would now like to enclose the pool with a screen lanai for both safety and enjoyment. The enclosure will protect the family from harmful insects and reduce maintenance on the pool. The rear building setback is different for larger structures. We were not aware of that when we proposed building the enclosure

1. Unnecessary hardship would result from strict application of the ordinance.

Not having the pool enclosure will propose an unnecessary hardship. The pool cannot be reasonably relocated at this time. The entire project hinged on the construction of the enclosure. Some family members have allergic reactions to certain insect bites. The enclosure will greatly reduce the risk of this. The enclosure will also bring the pool into compliance as far as a safety barrier for children. Both of these safety considerations could be solved by the addition of a pool enclosure.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography.

Other homes in the vicinity have similar setbacks. Each property is unique, and this situation is unique as well. A pool enclosure is an accessory structure, but is not used to house supplies, furniture and so forth. The overall size of an accessory structure should not change the building setback. This structure will not unreasonably restrict any visibility. It is constructed from aluminum beams and screens. It is see-through.

3. The hardship did not result from actions taken by the applicant or the property owner.

The property owner took every precaution to avoid this hardship that he knew to do. The owner checked the rear setback of the property and was told it was five feet for accessory structures. This had also been the case for another project pictured in this request. There was no reason to believe the overall size of the structure would affect the setback requirement.

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that the public safety is secured and substantial justice is achieved.

Granting of the variance would actually increase the public safety. The pool enclosure provides a lockable security deterrent. This would help to prevent any small children or mentally handicap people from entering the pool without supervision.

The variance is consistent with the spirit and purpose of the ordinance in that accessory structures are allowed to be built up to five feet from the property line. The overall appearance will be no different than anyone else in the neighborhood who has built workshops or storage buildings along their property.

APPLICATION REQUIREMENTS

Staff will use the following checklist to determine the completeness of your application. Please verify all of the listed items are included and confirm by initialing under "Applicant Initial". Staff will not process an application for further review until it is determined to be complete.

Required Information		Applicant Initial	Staff Initial
1	Complete Variance application	<i>[Signature]</i>	KV
2	Application fee – \$400	<i>[Signature]</i>	KV
3	Site plan or sketch illustrating requested variance	<i>[Signature]</i>	KV
4	1 hard copy of ALL documents	<i>[Signature]</i>	KV

ACKNOWLEDGEMENT AND SIGNATURES

By my signature below, I understand and accept all of the conditions, limitations and obligations of the variance application for which I am applying. I understand that I have the burden of proving why this application meets the require findings necessary for granting a variance. I certify that this application is complete and that all information presented in this application is accurate to the best of my knowledge, information, and belief.

I also appoint the applicant/agent as listed on this application to represent me and make decisions on my behalf regarding this application during the review process. The applicant/agent is hereby authorized on my behalf to:

1. Submit an application including all required supplemental information and materials;
2. Appear at public hearings to give representation and commitments; and
3. Act on my behalf without limitations with regard to any and all things directly or indirectly connected with or arising out of this application.

[Signature]
 Signature of Property Owner(s)

JEFFREY L FRANCAU
 Print Name(s)

[Signature]
 Signature of Applicant/Agent

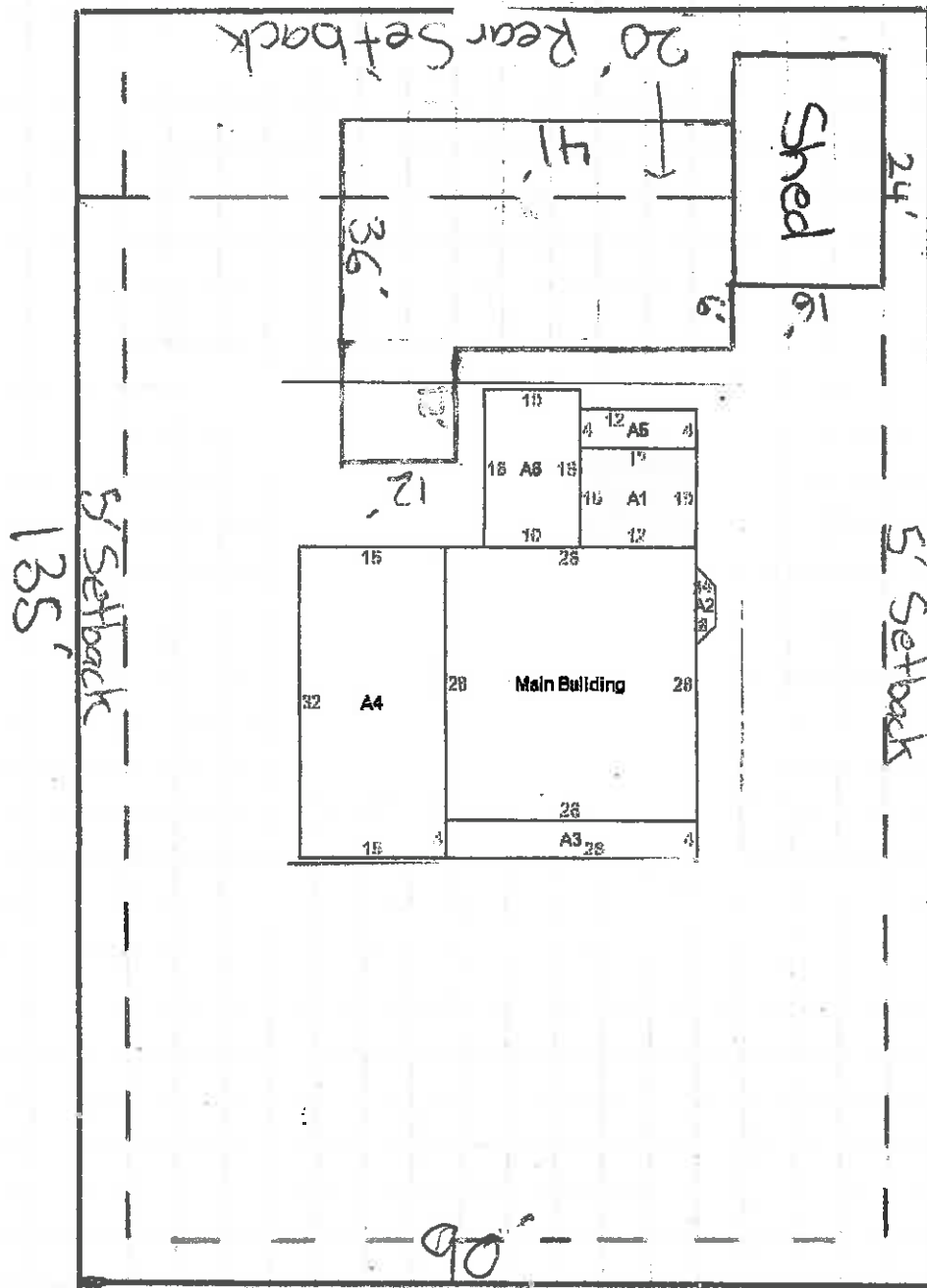
Kenneth Haynes
 Print Name(s)

NOTE: Form must be signed by the owner(s) of record. If there are multiple property owners a signature is required for each owner of record.

***The land owner or their attorney must be present for the case at the public hearing.**

For Staff Only

Application Comments



Finucan Residence

4504 Barnards Landing Rd

1" = 20'
Scale

Finucan



VED

2021

DADE COUNTY

**VARIANCE REQUEST
BOARD OF ADJUSTMENT
March 23, 2021**

CASE: BOA-957

PETITIONER: Martha Estela Vicente Andrade, applicant and property owner.

REQUEST: Variance of 1.2' from the 20' minimum side yard setback requirement per Section 3.2.5.D of the New Hanover County Unified Development Ordinance.

LOCATION: 1514 Roane Drive
PID: R04211-003-003-000

ZONING: AR, Airport Residential District

ACREAGE: 0.34 Acres

BACKGROUND AND ORDINANCE CONSIDERATIONS:

Martha Estela Vicente Andrade, applicant and property owner, is requesting a variance from the minimum side yard setback requirement of 20' in order to place a 1,792 sf mobile home on the subject property. The applicant is proposing to relocate the 64' x 28' mobile home on the parcel, which consists of 0.34 acres and has width of 101.62'. The placement of the home would result in both side yards having an 18.8' setback.

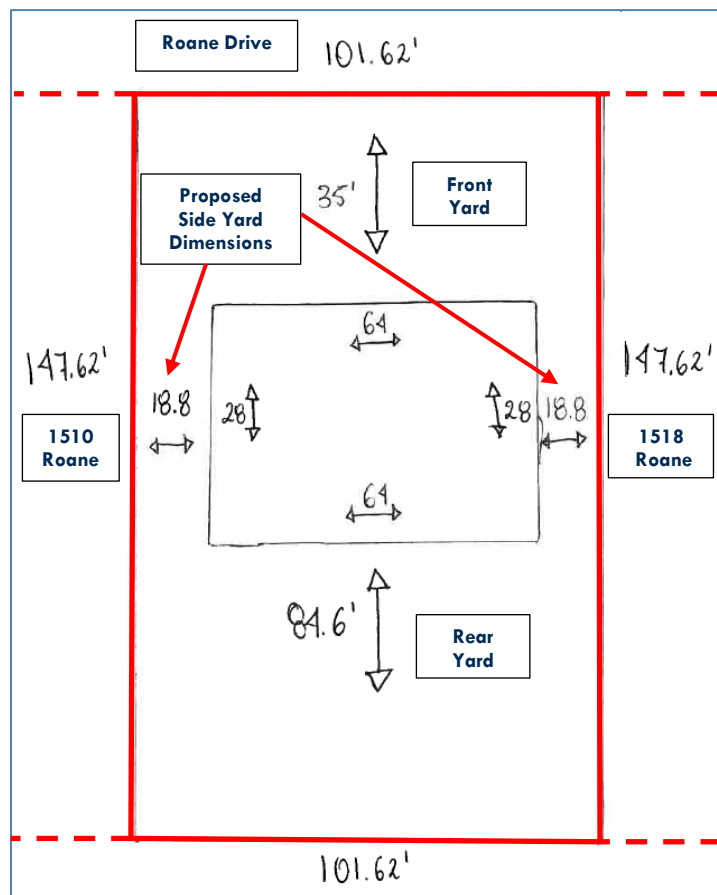


Figure 1: Proposed Site Plan with Staff Markups

The UDO allows for two different types of subdivision design: Performance Residential Developments and Conventional Residential Developments. In a performance development, individual lots are not subject to the specific yard requirements of a zoning district provided that the density for the zoning district is not exceeded. In a conventional development, the UDO requires that the dimensional standards for each zoning district be met. The subject parcel is a part of the Glynwood Subdivision, which was recorded in 1974 as a conventional development. The required side yard setbacks in the AR district are 20' as specified in the dimensional standards in Section 3.2.5 of the UDO:



3.2.5. AIRPORT RESIDENTIAL (AR) DISTRICT

A. Purpose

The Airport Residential (AR) District is established for the purpose of limiting the development of land within the vicinity of Wilmington International Airport to low density residential development. In promoting the general purpose of this district, its specific intent is to:

- Minimize airport hazards by limiting dense residential development;
- Prohibit the development of places of assembly such as schools, hospitals, rest homes or other uses that tend to concentrate large numbers of people;
- Promote the health, safety, and general welfare of County residents by preventing the establishment of hazards to airport activities by safeguarding the lives and property of both the users of the airport and nearby residents; and
- Prevent destruction or impairment of the utility of the airport and the public's investment in it.

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 [11-16-2020]

Standard	All Uses
Lot area, minimum (square feet)	43,560
1 Lot width, minimum (feet)	100
2 Front setback (feet)	25
3 Side setback, street (feet)	30
4 Side setback, interior (feet)	20
5 Rear setback (feet)	30
6 Building height, maximum (feet)*	40

* Structures elevated on open foundations consisting of piers, posts, columns or piles shall have a maximum height of 44 feet. All structures are subject to the height limits specified in Section 5.10, Airport Height Restriction.

A previous home existed on the lot with an approximate 14' side yard setback on the southern property line, and would have been considered a legal non-conforming situation as the AR district requirements were adopted in 1976. As the previous home was removed in 2019, continued utilization of this non-conforming side yard dimension is not permitted by Section 11.6 of the UDO, which states that if a non-conforming use or situation is discontinued for a period of 180 days, it can only thereafter be used in conformity with the current ordinance provisions:

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.*

The applicant contends that the variance is necessary in order to place the mobile home on the lot with the accommodation of the required septic system location, and that it is a replacement of a previous home with similar side yard dimensions.

In summary, the applicant is requesting a variance of 1.2' from the 20' minimum side yard setback requirement in order to place the proposed mobile home on the subject property.

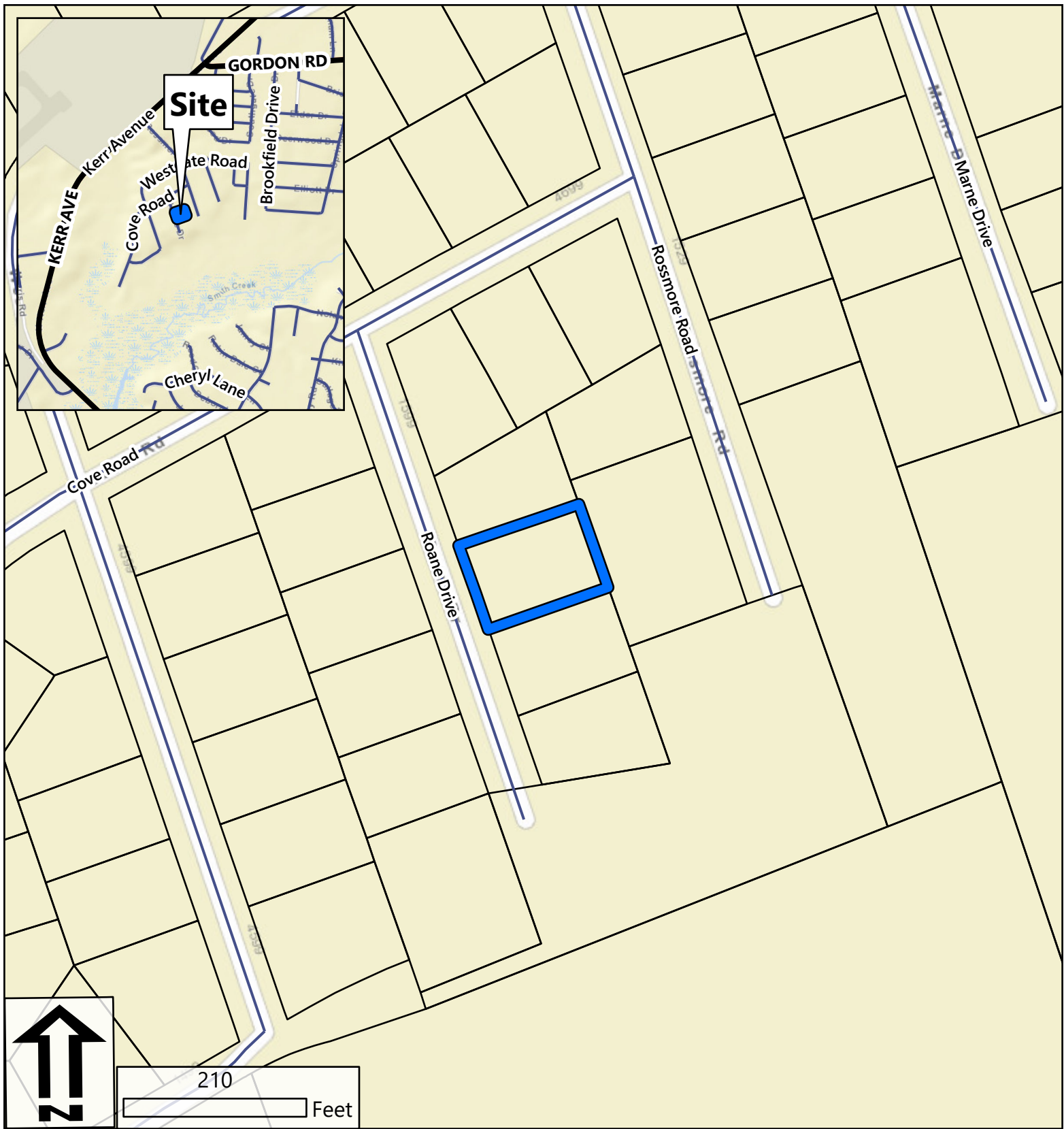
BOARD OF ADJUSTMENT POWER AND DUTY:

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.**



Case: BOA-957

Address: 1514 Roane Dr

Variance from Side Yard Setback Requirements

Applicant/Owner: Martha Andrade

Vicinity Map



Case: BOA-957

Address: 1514 Roane Dr

Variance from Side Yard Setback Requirements

Applicant/Owner: Martha Andrade

Zoning Map



Case: BOA-957

Address: 1514 Roane Dr
Variance from Side Yard Setback Requirements
Applicant/Owner: Martha Andrade

Aerial Map



NEW HANOVER COUNTY

BOARD OF ADJUSTMENT

230 Government Center Drive, Lucie Harrell Conference Room, Wilmington, NC 28403

Members of the Board

Cameron Moore, Chair | Kristin Freeman, Vice-Chair
Henry "Hank" Adams | Maverick Pate | Luke Waddell

Board Alternates

Pete DeVita | Richard Kern | Michael Keenan, Sr.

Rebekah Roth, Director of Planning & Land Use | Sharon Huffman, Deputy County Attorney

ORDER TO GRANT A VARIANCE – Case BOA-957

The Board of Adjustment for New Hanover County, having held a public hearing on March 23, 2021 to consider application number BOA-957, submitted by Martha Estela Vicente Andrade, applicant and property owner, a request for a variance of 1.2' from the 20' minimum side yard setback requirement per Section 3.2.5.D to use the property located at 1514 Roane Drive in a manner not permissible under the literal terms of the ordinance and having heard all the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

1. It is the Board's conclusion that, if the applicant complies with the literal terms of the ordinance, specifically a variance of 1.2' from the 20' minimum side yard setback requirement per Section 3.2.5.D New Hanover County Unified Development Ordinance, that an unnecessary hardship would/would not result. *(It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.)* This conclusion is based on the following FINDINGS OF FACT:

- _____.
- _____.
- _____.
- _____.

2. It is the Board's conclusion that the hardship of which the applicant complains results/does not result from unique circumstances related to the subject 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.)* This conclusion is based on the following FINDINGS OF FACT:

- _____.
- _____.
- _____.
- _____.

3. It is the Board's conclusion that the hardship did/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.) This conclusion is based on the following FINDINGS OF FACT:

- _____.
- _____.
- _____.
- _____.

4. It is the Board's conclusion that, if granted, the variance will/will not be consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT:

- _____.
- _____.
- _____.
- _____.

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE from New Hanover County Unified Development Ordinance to allow a variance of 1.2' from the 20' minimum side yard setback requirement per Section 3.2.5.D of the UDO be GRANTED/DENIED, subject to the following conditions, if any:

ORDERED this 23rd day of March, 2021.

Cameron Moore, Chairman

Attest:

Kenneth Vafier, Executive Secretary to the Board

NEW HANOVER COUNTY

DEPARTMENT OF PLANNING & LAND USE

230 Government Center Drive, Suite 110

Wilmington, North Carolina 28403

Telephone (910) 798-7165

FAX (910) 798-7053

planningdevelopment.nhcgov.com



ZONING & SUBDIVISION VARIANCE APPLICATION

This application form must be completed as part of a request for a zoning and/or subdivision variance. The application submitted through the county's online COAST portal. The main procedural steps in the submittal and review of applications for a variance are outlined in the flowchart below. More specific submittal and review requirements, as well as the standards to be applied in reviewing the application, are set out in Section 10.3.11 of the Unified Development Ordinance.



1. Applicant and Property Owner Information

Applicant/Agent Name Martha Estela Vicente Andrade	Owner Name (if different from Applicant/Agent) Martha Estela Vicente Andrade
Company	Company/Owner Name 2
Address 6509 Greenville Loop Rd. #178	Address 6509 Greenville Loop Rd #178
City, State, Zip Wilmington, NC. 28409	City, State, Zip Wilmington, NC
Phone 910 269 9427	Phone 910 264 9427
Email stellaazarar@gmail.com	Email stellaazarar@gmail.com

2. Subject Property Information

Address/Location 1514 Roane Dr.	Parcel Identification Number(s) R04211003003000
Total Parcel(s) Acreage .34 acres	Existing Zoning and Use(s) Residential

3. Proposed Variance Narrative

Subject Zoning Regulation, Chapter and Section

In the space below, please provide a narrative of the application (attach additional pages if necessary).

To request a Variance From the Airport Residential Side Setback From 20' on both Sides to 18.8'.

CRITERIA REQUIRED FOR APPROVAL OF A VARIANCE

The Board of Adjustment may grant a variance if it finds that strict application of the ordinance results in an unnecessary hardship for the applicant, and if the variance is consistent with the spirit, purpose, and intent of the ordinance. The applicant must explain, with reference to attached plans (where applicable), how the proposed use meets these required findings (attach additional pages if necessary).

1. Unnecessary hardship would result from 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.

Would not be able to relocate mobile home on property.

2. The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardship resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or general public, may not be the basis for granting a variance.

Property is on older lot with a smaller lot size than currently required in zoning.
Septic location restricts relocation options.

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.

We, the owner of the property, bought the lot as is without the knowledge of current restrictive setbacks due to previous structure not meeting them prior to zoning.

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.

Yes, the requested variance is consistent with the spirit.

Staff will use the following checklist to determine the completeness of your application. Please verify all of the listed items are included and confirm by initialing under "Applicant Initial". Applications determined to be incomplete must be corrected in order to be processed for further review.

Application Checklist

- ☐ This application form, completed and signed
- ☐ Application fee: \$400 per application
- ☐ Site plan or sketch illustrating the requested variance
- ☐ One (1) hard copy of ALL documents
- ☐ One (1) PDF copy of ALL documents

Applicant Initial

M. V.
M. V.
M. V.
M. V.
M. V.

Acknowledgement and Signatures

By my signature below, I understand and accept all of the conditions, limitations, and obligations of the variance application for which I am applying. I understand that I have the burden of proving why this application meets the required findings necessary for granting a variance. I certify that this application is complete and that all information presented in this application is accurate to the best of my knowledge, information, and belief.

If applicable, I also appoint the applicant/agent as listed on this application to represent me and make decisions on my behalf regarding this application during the review process. The applicant/agent is hereby authorized on my behalf to:

1. Submit an application including all required supplemental information and materials;
2. Appear at public hearings to give representation and comments; and
3. Act on my behalf without limitations with regard to any and all things directly or indirectly connected with or arising out of this application.


Signature of Property Owner(s)

Martha Estela Vicente Andrade
Print Name(s)

Signature of Applicant/Agent

Print Name

Note: This form must be signed by the owner(s) of record. If there are multiple property owners, a signature is required for each owner of record.

- The land owner or their attorney must be present for the case at the public hearing

1514 Roane Drive

101.62'

35'

147.62'

18.8

28

64

28

18.8

147.62'

64

84.6'

101.62'

