

**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**


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**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.

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**B. Concept**




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**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.

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**D. District Dimensional Standards**

Standard	Single Family Detached	Duplex
Lot area, minimum (square feet)*	10,000	15,000
<b>1</b> Lot width, minimum (feet)*	70	70
<b>2</b> Front yard, minimum (feet)*	25	25
<b>3</b> Street side yard, minimum (feet)*	12.5	12.5
<b>4</b> Interior side yard, minimum (feet)*	5	5
<b>5</b> 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.

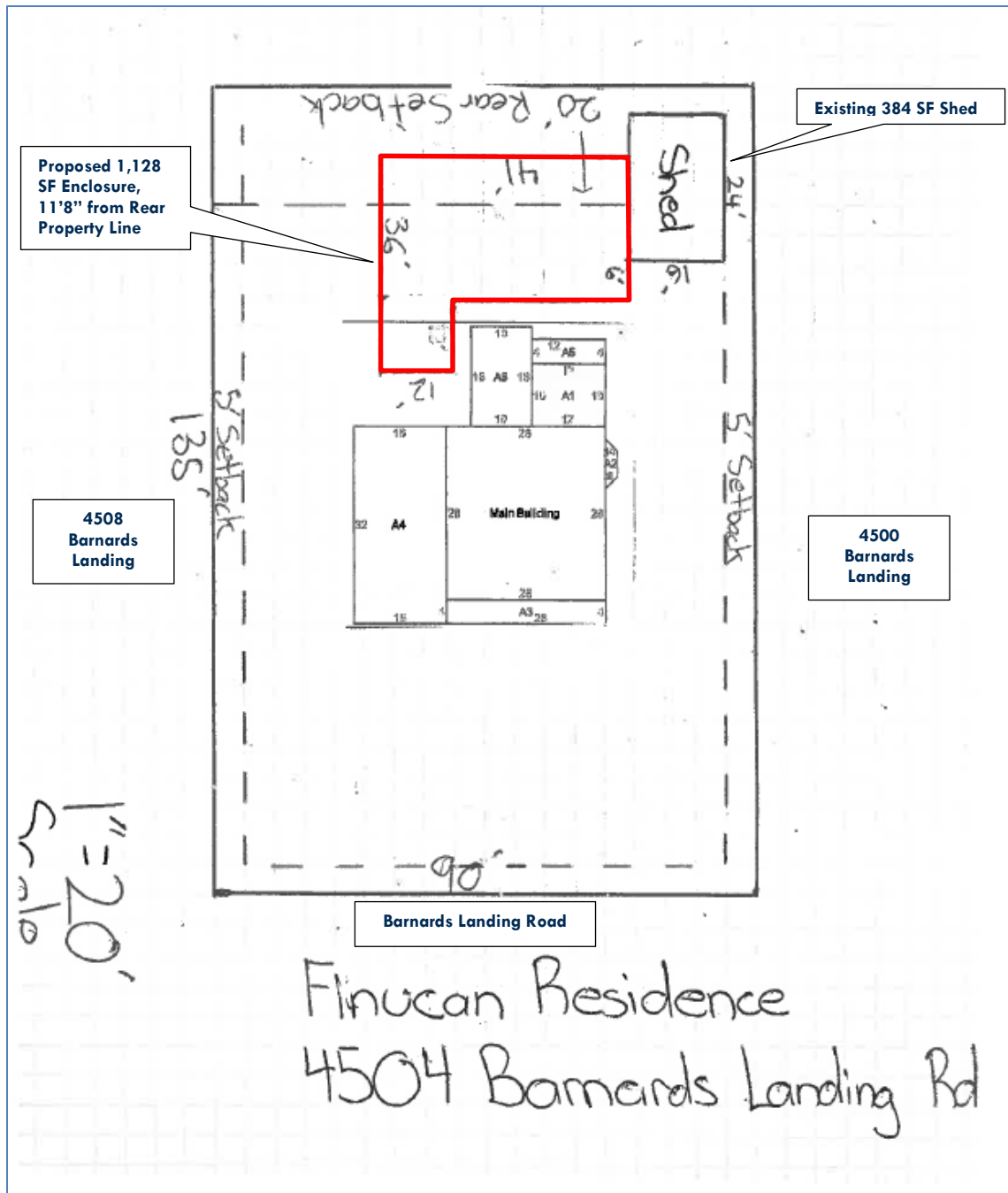


Figure 2: Proposed Site Plan with Staff Markups

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

