

**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.

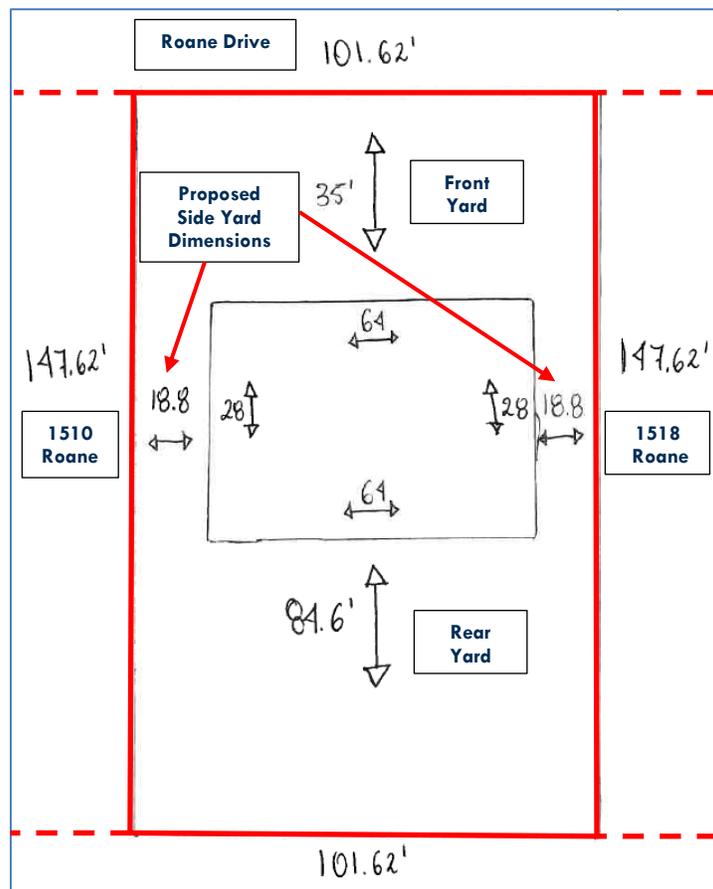


Figure 1: Proposed Site Plan with Staff Markups

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.**