

**VARIANCE REQUEST
BOARD OF ADJUSTMENT
April 27, 2021**

CASE: BOA-958

PETITIONER: Sean McDonough, applicant, on behalf of Brett and Christy Tanner, property owners.

REQUEST: Variance of 8.8' from the 15' minimum side yard setback requirement per Section 3.2.6.D of the New Hanover County Unified Development Ordinance.

LOCATION: 8020 Bald Eagle Lane
PID: R07020-010-011-000

ZONING: R-20S, Residential District

ACREAGE: 0.57 Acres

BACKGROUND AND ORDINANCE CONSIDERATIONS:

Sean McDonough of NCA Builders, Inc., on behalf of Brett and Christy Tanner, property owners, is requesting a variance from the minimum side yard setback requirement of 15' in the R-20S district in order to construct a 12' x 22' addition (264 sf) to an existing 28' x 22' (616 sf) detached garage on the subject property.

The detached garage is located on a 0.57-acre lot which is ancillary to a single-family residence constructed in 1996. The property owners recently purchased the lot and are in the process of renovating the main residence to complete structural repairs and electrical and plumbing upgrades. During the renovation, it was discovered that the garage has sustained water damage resulting from inadequate surface water runoff on this portion of the lot. The applicant is proposing to construct the garage addition with a 2' tall masonry foundation wall in addition to other surface water mitigation measures to provide adequate stormwater controls on the lot.

Detached garages on single-family residential lots are considered accessory structures, which 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.)*

The 264 sf addition to the existing garage would maintain a total area over 600 square feet. 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 legally described as being part of Section D of Porters Neck Plantation, which was recorded in 1951, before there was an option to utilize the standards of a performance development. Although not recorded specifically as a conventional development, the parcel is subject to the required 15' side yard setback in the R-20S district as specified in the dimensional standards in Section 3.2.6 of the UDO:

3.2.6. RESIDENTIAL 20S (R-20S)

A. Purpose

The purpose of the R-20S Residential (R-20S) District is provide lands to accommodate primarily very low density single-family development. The intent of the district regulations are to allow development that is compatible with the preservation of the district's very low density single-family character, while accommodating residential opportunities for those who desire an exurban, low-density lifestyle. District residents should be willing to assume the costs of providing many of their own services and amenities while maximizing the protection of resources and the conservation of open space.

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)	20,000
1 Lot width, minimum (feet)	90
2 Front setback (feet)	30
3 Side setback, street (feet)	22.5
4 Side setback, interior (feet)	15
5 Rear setback (feet)	25
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.

The existing garage was constructed with a side yard setback of 6.2', which does not meet the minimum side yard setback requirement of 15' in the R-20S district. Research as to how the garage was able to encroach into the side yard has proven inconclusive, and staff is not able to determine that this dimension is a legal non-conformity. County records indicate that the area along Bald Eagle Lane, including the subject property, was rezoned from R-20 to R-20S in 1983, and an accessory building exceeding 600 sf would have been subject to the 15' side yard setback at the time the lot was developed in the mid 1990's. Thus, in order to complete the proposed addition, a variance is required.

The proposed addition will result in the detached garage having a total area of 880 sf. Applying the language from Section 4.4.4.B.1 would require that the structure meet the 15' side yard setback. The applicant is proposing to maintain the existing 6.2' setback on the northern side yard as shown on the proposed site plan, and the addition would not be an increase to the degree of the dimensional non-conformity.

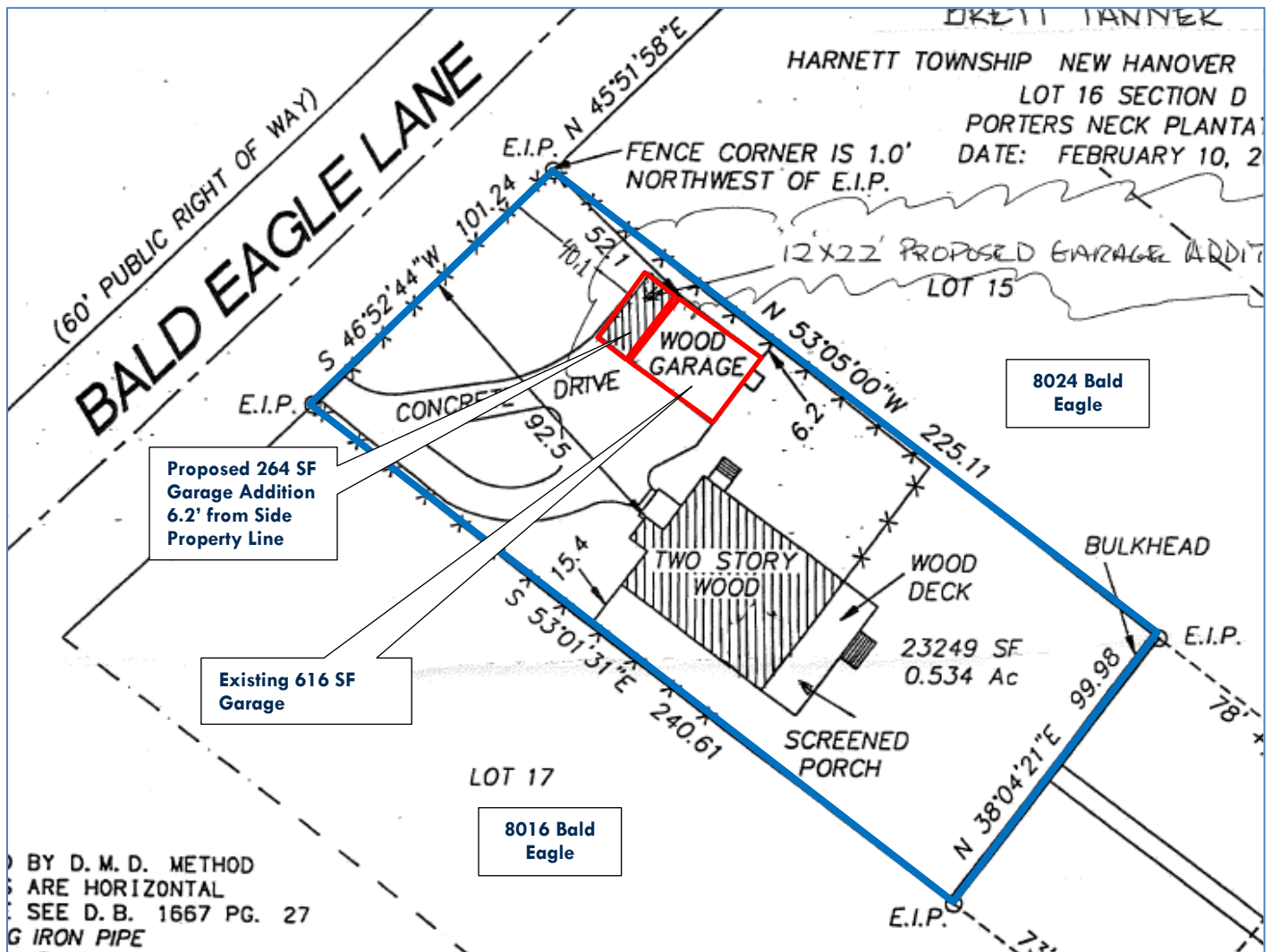


Figure 2: Proposed Site Plan with Staff Markups

The applicant contends that the variance is necessary in order to provide additional protected parking and storage for the new property owners, as well as to provide necessary mitigation for the stormwater surface runoff and mitigate water intrusion into the garage.

In summary, the applicants are requesting a variance from the minimum side yard setback requirement of 15' in order to construct a 264 sf addition to the existing detached garage on the subject property, which will maintain the existing 6.2' side yard setback.

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.**