

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

**CASE:** BOA-959

**PETITIONER:** Keith Williams, applicant and property owner.

**REQUEST:** Variance of 10' from the 20' minimum Performance Residential periphery setback requirement per Section 3.1.3.D of the New Hanover County Unified Development Ordinance.

**LOCATION:** 6900 Persimmon Place  
PID: R07919-010-018-000

**ZONING:** R-15, Residential District

**ACREAGE:** 0.58 Acres

**BACKGROUND AND ORDINANCE CONSIDERATIONS:**

Keith Williams, applicant and property owner, is requesting a variance from the minimum Performance Residential Subdivision periphery setback requirement of 20' in order to construct a 41' x 30' (1,230 sf) accessory structure on the subject property.

The subject property consists of a 0.58-acre lot, and currently contains a single-family residence constructed in 1989. 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 Grove Point, Section 1, which was recorded in 1987 as a performance subdivision.

Section 3.1.3 of the UDO contains provisions governing Performance Subdivisions, which generally address design parameters and other approval requirements. Although the conventional front, side, and rear yard requirements are not mandated on a performance residential lot, this section still requires a 20' setback on the periphery of the subdivision:

### 3.1.3. SUPERSEDING DIMENSIONAL STANDARDS

#### D. Performance Residential Development

*Performance Residential Developments are not subject to the minimum lot size, minimum lot width, and front, rear, and side setback requirements in the zoning district where they are located. Performance Residential Developments shall comply with the standards in this section and with all other applicable standards in this Ordinance.*

#### 1. Setbacks and Spacing

- a. Buildings on the periphery of a Performance Residential Development shall be setback a minimum of 20 feet from the adjoining property line.

The subject property's rear yard lies on the periphery of Section 1 of Grove Point, as shown on the record plat recorded in MB 28, Page 98 of the New Hanover County Register of Deeds:

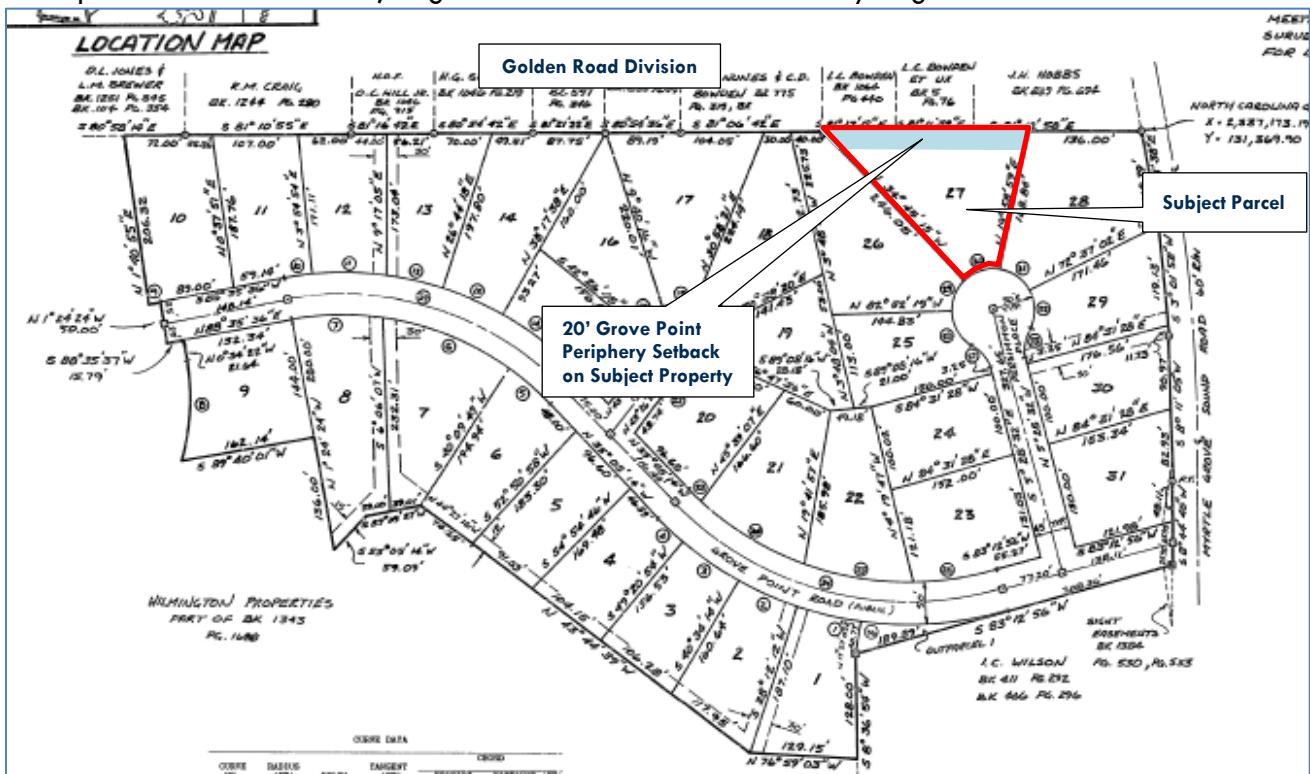


Figure 1: Inset from recorded plat of Grove Point Section 1 with staff markups showing approximate location of required periphery setback on subject property.

The applicant contends that the application of the 20' periphery setback would result in the garage encroaching into the septic drain line area and would result in the removal of two mature Hickory and Oak trees, which the applicant intends to retain. While the applicant was performing due diligence into the project, county staff did not make the applicant aware of the 20' periphery setback, thus the garage was sized, planned, and purchased with the assumption that a 10' setback could be utilized.

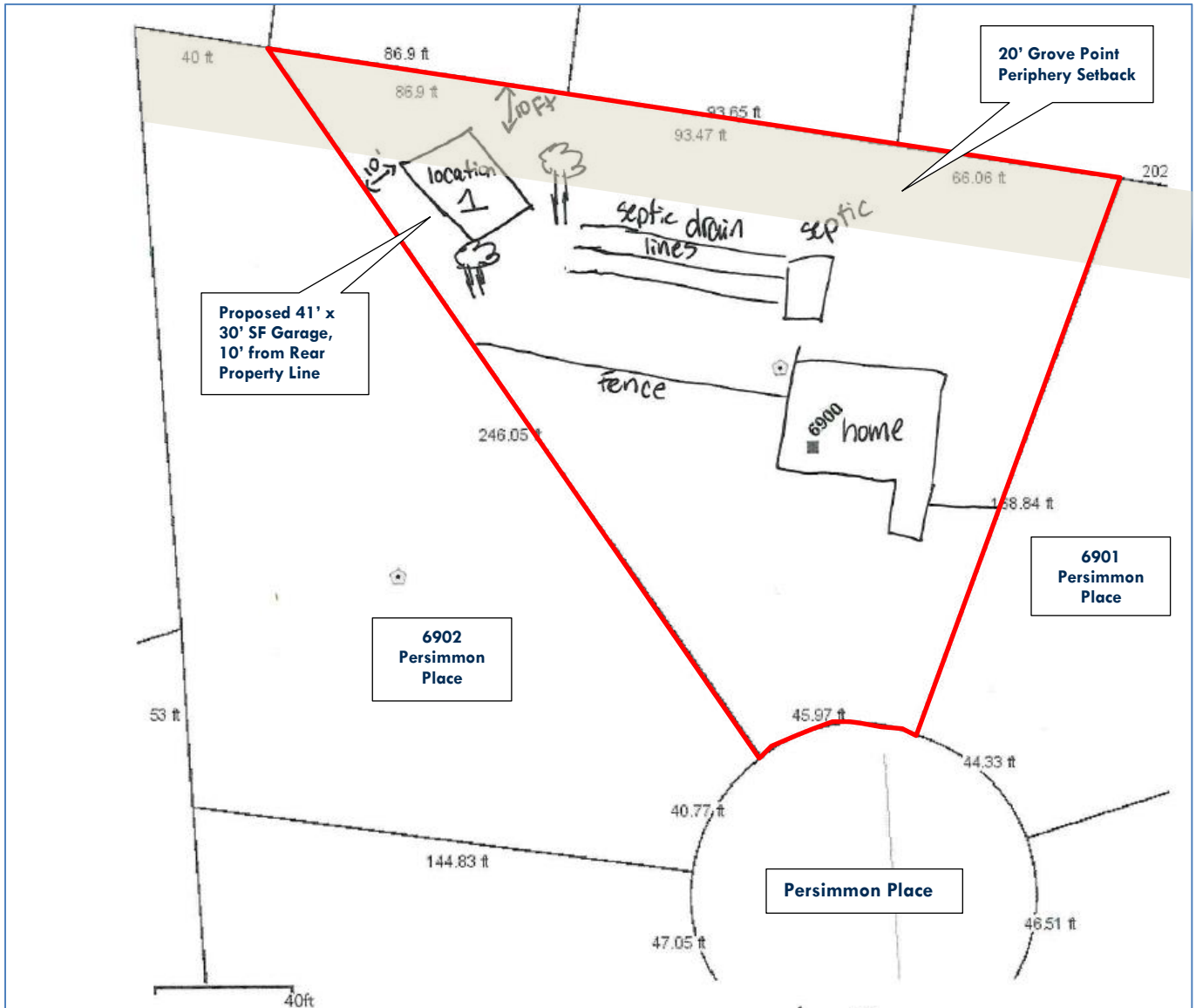


Figure 2: Proposed site plan with staff markups

In summary, the applicant is requesting a variance from the 20' Performance Subdivision periphery setback requirement of 10' in order to construct a 1,230 sf detached garage on the subject property, which will be set back 10' from the periphery of Grove Point.

## **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.**