

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

CASE: BOA-962

PETITIONER: Jeffrey Serens, applicant, on behalf of Ted Meehan, 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: 1140 Lt. Congleton Road
PID: R07900-003-473-000

ZONING: R-15, Residential District

ACREAGE: 0.22 Acres

BACKGROUND AND ORDINANCE CONSIDERATIONS:

Jeffrey Serens, applicant, on behalf of Ted Meehan, property owner, is requesting a variance from the minimum Performance Residential Subdivision setback requirement of 20' in order to construct a 504-sf addition to the existing single-family residence on the subject property.

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 property is a 0.22-acre parcel in the Tarin Woods subdivision, which was recorded in 2016 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 setback a minimum of 20 feet from the adjoining property line.*

The subject property's eastern side yard lies on the periphery of Tarin Woods, as shown on the plat recorded in MB 61, Page 139 of the New Hanover County Register of Deeds. This eastern side yard is adjacent to the rear yards of lots within Congleton Farms, which is a separate performance residential subdivision recorded in 2018.

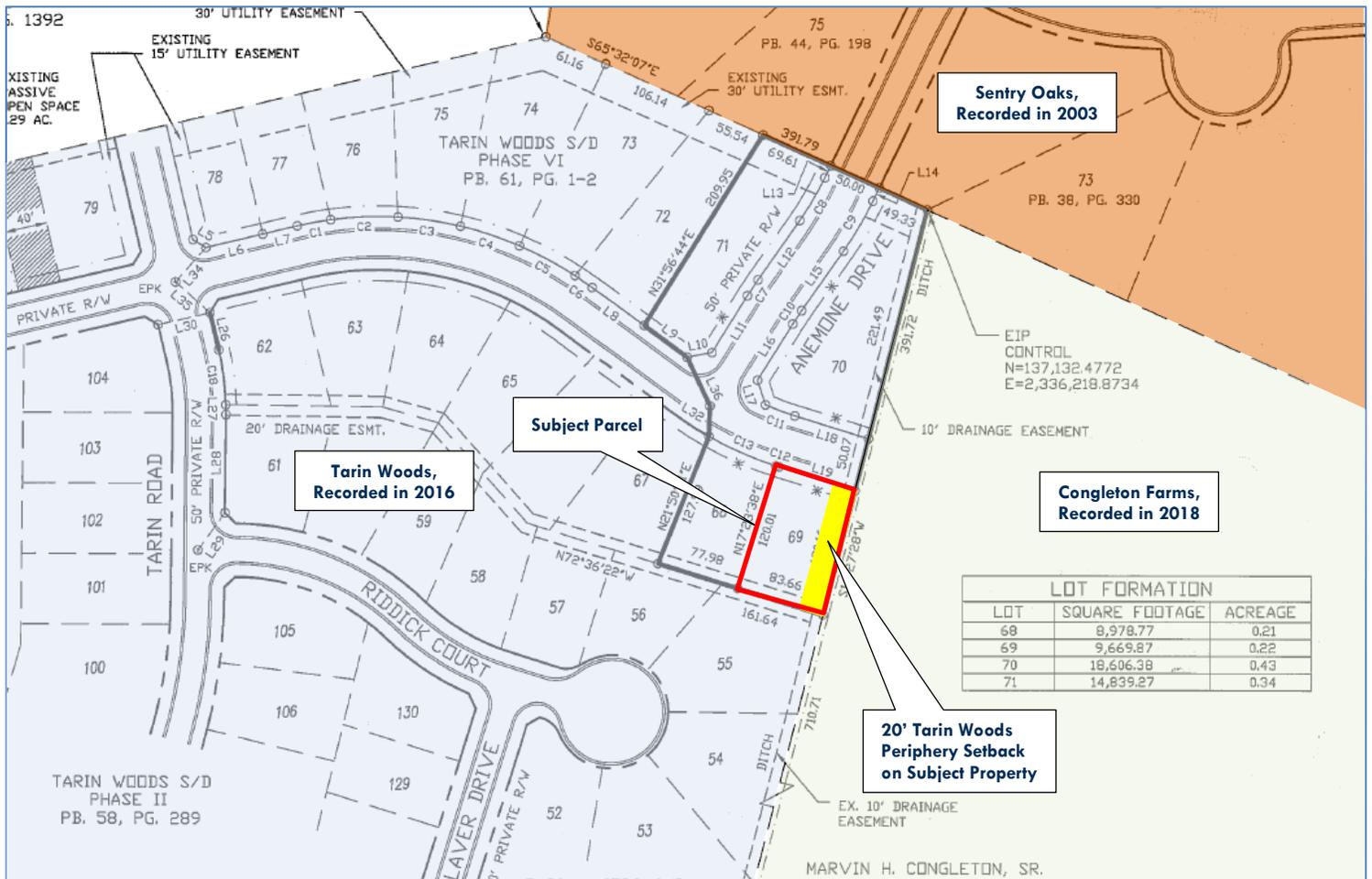


Figure 1: Inset of record plat for Tarin Woods, Phase VII showing boundaries of separate Performance Subdivisions and location of required periphery setback on subject property.

The single-family residence on the parcel was constructed in 2016. However, the periphery setback was not applied to this side yard at the time of construction, and the structure currently lies 14' from the eastern side property line at its closest extent in the front of the lot. Research into the specific reason the periphery setback was not applied in this instance is inconclusive. As the structure was submitted, reviewed, and permitted with an encroachment into the 20' periphery setback, staff determined that this extent constitutes a legal non-conformity. With this interpretation, the applicant would be able to construct the addition utilizing the 14' setback as it does not increase the degree of the non-conformity, as stated in Section 11.4.6 of the UDO:

- 11.4.6.** Physical alteration of structures or the placement of new structures on open land are unlawful if they result in:
- A.** An increase in the total amount of space devoted to a nonconforming use; or
 - B.** A greater non-conformity with respect to dimensional restrictions such as yard requirements, height limitations, or density requirements.

However, the addition is proposed on the southeastern corner of the structure and would lie 10' from the eastern property line, extending approximately 4' further into the periphery setback than the existing structure. The applicant intends to utilize the additional living area for a bedroom, bathroom and kitchenette for an aging family member.

The applicant contends that the variance is necessary to permit construction of the addition which the property owners intended to pursue when they purchased the home. The preliminary plot plan provided by the surveyor when the home was submitted for permitting labeled the side yard setbacks as 10', and the property owners were not informed of the required 20' periphery setback.

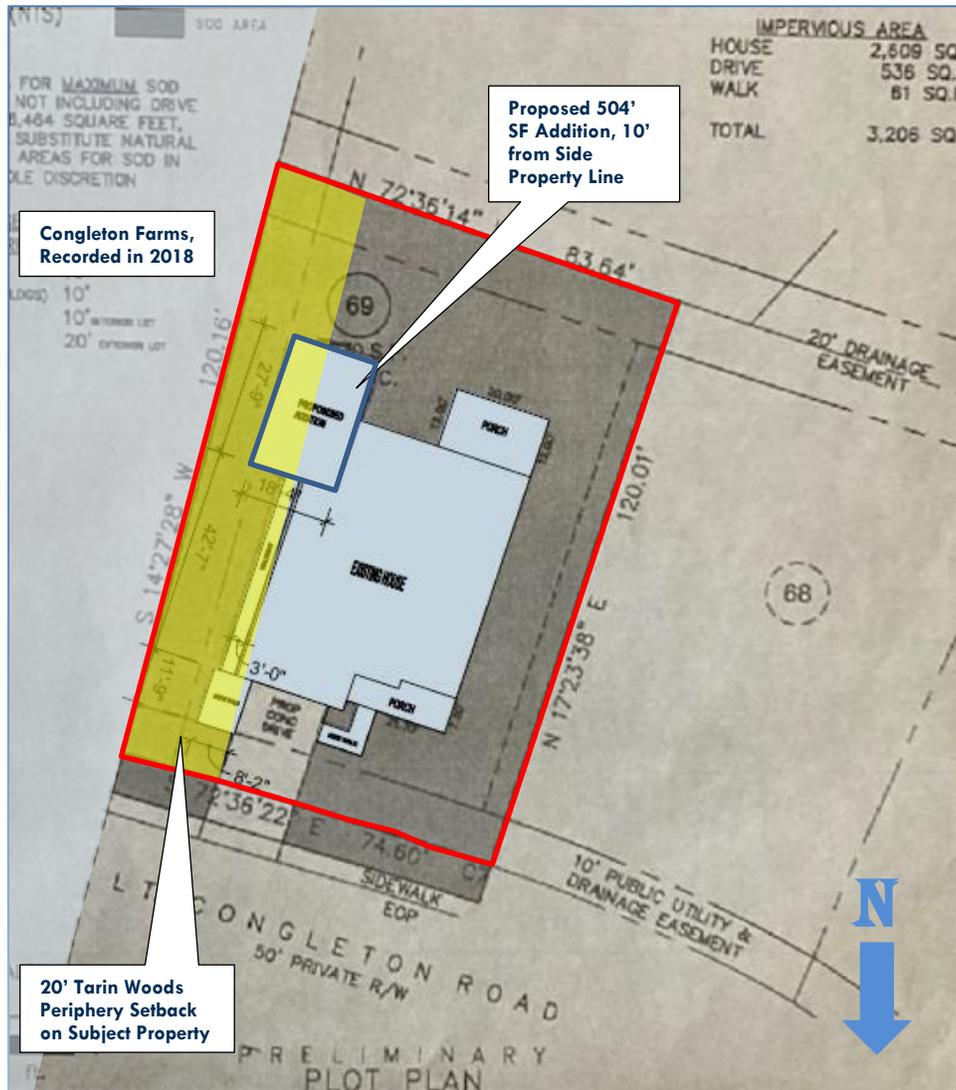


Figure 2: Proposed Site Plan with Staff Markups

In summary, the applicants are requesting a variance from the 20' Performance Subdivision periphery setback requirement of 10' in order to construct a 504 sf addition to the existing single-family dwelling on the subject property, which will be set back 10' from the periphery of Tarin Woods.

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.**