

**VARIANCE REQUEST
BOARD OF ADJUSTMENT
September 28, 2021**

CASE: BOA-963

PETITIONER: Jason D. Akins, applicant, on behalf of James Pressley, property owner.

REQUEST: Variance of 8' from the 25' minimum R-15 front yard setback (8' encroachment) and variance of 1' from the 10' side yard setback (1' encroachment) requirement per Section 3.2.8.D of the New Hanover County Unified Development Ordinance.

LOCATION: 1521 Marsh Cove Lane
PID: R07908-003-017-000

ZONING: R-15, Residential District

ACREAGE: 0.23 Acres

BACKGROUND AND ORDINANCE CONSIDERATIONS:

Jason D. Akins, applicant, on behalf of James Pressley, property owner, is requesting a variance from the minimum R-15 front yard setback requirement of 25' and a variance from the minimum side yard setback of 10' in order to construct steps to the front of the house and allow for a 1' intrusion into the side yard.

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 in Deed Book 958 PG 139 as being part of a subdivision of land which was originally recorded in December 1965, 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 25' front setback and 10' side setback in the R-15 district as specified in the dimensional standards in Section 3.2.8 of the UDO:

D. District Dimensional Standards [11-16-2020]		
Standard	Single Family Detached	Duplex
Lot area, minimum (square feet)*	15,000	25,000
1 Lot width, minimum (feet)*	80	80
2 Front setback (feet)*	25	25
3 Side setback, street (feet)*	15	15
4 Side setback, interior (feet)*	10	10
5 Rear setback (feet)*	20	20
Density, maximum (dwelling units/acre)**	2.5	
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 UDO prescribes a minimum lot width of 80' and size for the R-15 district of 15,000 sf. The subject property is a legal nonconforming 0.23-acre parcel recorded in 1965, and as a result the parcel contains dimensional non-conformities with respect to lot width and area, and is only 10,018 sf. As a result, the buildable area on the lot is reduced to approximately 1,200 sf. In a conventional development, the UDO requires that the dimensional standards for each zoning district be met. Please refer to the attached aerial map for context.

The subject property is a vacant lot with the exception of a slab of concrete and a boardwalk leading to a dock. As it is, the lot is already non-conforming in size and width. Buildable land on the lot has been further reduced by wetlands located on three sides of the property. Flood zone standards require elevated piling construction of the house, which results in additional rise and run required for the front steps which create further encroachment into the front setback. As the parcel is adjacent to the Intracoastal Waterway, it is subject to standards set forth in the Coastal Area Management Act which requires a 20' buffer from the mean high-water line at this site.

The structure is proposed in the only buildable area on the lot with the exception of the front stairs, which are necessary for access and the small corner that juts into the side setback and ensures the safe architectural construction of the building. According to the applicant, imposing the side setback requires the structure to be out of square by 9". In the absence of a variance for 1' into the side setback at the right rear corner the home could have potential structural issues.

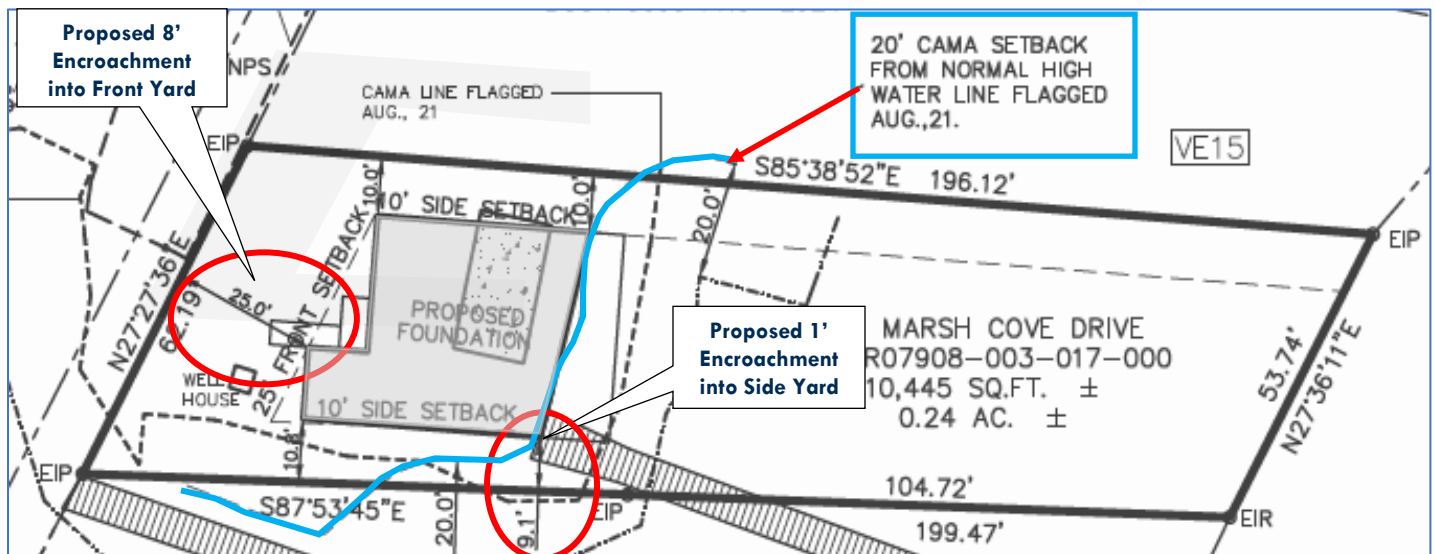


Figure 2: Proposed Site Plan with Staff Markups

The applicant contends that the variance is necessary to permit safe access to the front of the house and safe construction of the home which the property owners intended to pursue when they purchased the lot. Since purchasing the lot and development of the first layout, the normal high-water line has moved further inland forcing the structure to be located even closer to the front setback. Construction standards in the VE flood zone require elevated piling construction, which in turn means the structure must have more rise/run thus the steps encroach further into the front setback. Buildable area on the lot has been reduced since purchasing the lot which the applicant contends has created a hardship.

In summary, the applicants are requesting a variance from the 25' R-15 front yard setback requirement to construct stairs 8' into the front setback to the existing single-family dwelling on the subject property, which will be set back 17' from the Right-of-Way Marsh Cove Lane. In addition, the applicant is requesting a 1' variance from the 10' side 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.**