



Kershaw County Board of Zoning Appeals

AGENDA

APRIL 24, 2023 RESCHEDULED MEETING @ 5:30 PM
COUNCIL CHAMBERS
KERSHAW COUNTY GOVERNMENT CENTER
515 WALNUT STREET, CAMDEN, SOUTH CAROLINA

- I. **Call to Order and Determination of Quorum**
- II. **Approval of Minutes**
December 6, 2022
- III. **Case 23-01:** Property owners Monty and Wanda Floyd are requesting a variance to the required 10' minimum side yard setback and 35' front yard setback, for an accessory structure built prior to obtaining the proper zoning approval and building permits and located within an R-15 zoning district, as required in Article 3:2.5 of the Kershaw County Unified Code of Zoning and Land Development Regulations. Specifically, the applicant is requesting to allow the eastern side of the proposed accessory structure to encroach 0.2' into the side yard setback, which would result in a 9.8' side yard setback. Additionally, the applicant is requesting to allow the road front portion of the building to encroach 19.5' into the front yard setback, which would result in a 15.5' front yard setback. The property is located at 2472 Darby Lane, Liberty Hill, with TMS# 111-04-40-055.
- IV. **Case 23:02:** Property owner US Motors Enterprise, LLC (Nidal Matar) is requesting a variance to the required 35 ft. secondary street frontage setback for a proposed commercial building located within a B-2 zoning district, as required in Article 3:2.5 of the Kershaw County Unified Code of Zoning and Land Development Regulations. Specifically, the applicant is requesting to allow the western side of the proposed commercial building to encroach a maximum of 11.4' into the front yard setback along Elgin Estates Drive, which would result in a 23.6' front yard setback. The property is located at 2211 Highway 1 South, Elgin, with TMS# 335-08-00-001B.
- V. **Adjournment**



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Kershaw County Board of Zoning Appeals



MINUTES

KERSHAW COUNTY BOARD OF ZONING APPEALS DECEMBER 6, 2022 REGULAR SESSION COUNCIL CHAMBERS, KERSHAW COUNTY GOVERNMENT CENTER CAMDEN, SOUTH CAROLINA

Members Present: Ned Towell, Ben Strickland, and Amy Eudy

Members Absent: Mike Jones, and Cook Young

Staff Present: Joey Adams-Raczkowski, Justin Moore, and Rhonda Darity

CALL TO ORDER

The Chairman, Ben Strickland, confirmed that there was a quorum and called the meeting to order at 5:30 p.m.

MINUTES

The Chairman asked if there was any discussion on the minutes for the September 6, 2022 regular meeting. Hearing none, Chairman Strickland made a motion to approve the minutes. The motion to approve was seconded by Amy Eudy, and all vote to approve.

PUBLIC HEARING CASE #22-04

Ben Strickland opened the public hearing and introduced the case:

Planning Director, Joey Adams-Raczkowski, stated that Ms. Pierce would like to add on to the rear of her home. She is requesting a variance to the required 20 ft. minimum side yard setback for the proposed addition located within the RD-1 zoning district, as required in Article 3:2.5 of the Kershaw County Zoning and Land Development Regulations. The applicant is requesting to allow the eastern side of the proposed addition to encroach 4.2' into the side yard setback, which would result in a 15.8' side yard setback. Additionally, the applicant is requesting to allow the southeastern corner of the proposed access stairs to the proposed addition to encroach 8.2' into the side yard setback. This would result in a 11.8' side yard setback. The property is located at 175 Colonial Lake Drive, Camden, TMS# 228-00-00-018.

The house was built before County wide zoning, and built to the HOA standards. County regulations were adopted after the home was built and would like to stay within the alignment of the existing house. Mr. Adams-Raczkowski went over the staff analysis for the justification given by the applicant on their application.

The applicant, Jan Pierce was available for questions from the Board.

There was a brief discussion amongst the Board members and the applicant.

STAFF FINDINGS AND RECOMMENDATIONS:

In order to grant a variance, the Board of Zoning Appeals is required to determine that the application of the Ordinance will result in unnecessary hardship, and that all four standards for a variance set by State Law and the Ordinance are met by the following facts:

515 Walnut Street, Room 160 Camden, SC 29020 803-425-7233 Fax 803-424-5268

www.kershaw.sc.gov



1. There are extraordinary and exceptional conditions pertaining to the particular piece of property.
2. These conditions do not generally apply to other property in the vicinity.
3. Because of these conditions, the application of the Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.
4. The authorization of the variance will not be of substantial detriment to adjacent property or to the public good, and the character of the surrounding area will not be harmed by granting the variance.

STAFF RECOMMENDATION

Based upon the application materials as applied to the four (4) State law standards, in addition to the staff analysis and observations as provided in the staff report, staff recommends that the variance request to allow for the eastern side of the proposed addition to encroach 4.2' into the side yard setback, which will result in a 15.8' side yard setback, and to allow the southeastern corner of the proposed access stairs to the proposed addition to encroach 8.2' into the side yard setback, be granted for the subject property identified as TMS# 228-00-00-018.

REBUTTAL BY APPLICANT - None

PUBLIC COMMENT - None

There being no more testimony, the Chairman closed the hearing.

Ben Strickland made a motion to approve the variance request, to include staff analysis. The motion was seconded by Ned Towell, and all voted to approve the application for the variance.

ADJOURNMENT

At 5:49 p.m. the Chairman made a motion to adjourn, seconded by Ned Towell, and approval was unanimous.

Respectfully submitted,

Rhonda Darity
Rhonda Darity
Secretary

515 Walnut Street, Room 160 Camden, SC 29020 803-425-7233 Fax 803-424-5268

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STAFF REPORT

**APPLICATION TO THE BOARD OF ZONING APPEALS
FOR VARIANCE CASE # 23-01
MONTY & WANDA FLOYD, 2472 DARBY LANE, LIBERTY HILL**

**KERSHAW COUNTY BOARD OF ZONING APPEALS PUBLIC HEARING
Monday, April, 24, 2023 at 5:30 PM
Council Chambers, Kershaw County Government Center
515 Walnut Street, Camden, SC 29020**

APPLICANT: Monty & Wanda Floyd, Property Owners

PROPERTY: 2472 Darby Lane, Liberty Hill

TMS # 111-04-40-055

Zoning: R-15

CASE: Property owners Monty and Wanda Floyd are requesting a variance to the required 10 ft. minimum side yard setback, and the required 35 ft. front yard setback, for an accessory structure built without first obtaining proper permits, located within an R-15 zoning district, as required in Article 3:2.5 of the Kershaw County Unified Code of Zoning and Land Development Regulations.

Specifically, the applicant is requesting to allow the eastern side of the existing accessory structure to encroach 0.2 ft. into the side yard setback, which would result in a 9.8 ft. side yard setback. Additionally, the applicant is requesting to allow the front of the accessory structure to encroach 19.5 ft. into the front yard setback, which would result in a 15.5 ft. front yard setback.

Zoning and Land Development Regulations, Section 3:2.1: Determination of Front Yard and Setbacks: The required front, side, and rear yards for individual lots, as set forth for the particular zoning district within which a given lot is located, shall be measured inward toward the center of said lot from all points along the respective front, side, and rear property lines of the lot. In general, the principal building and front yard shall be oriented toward the public street right-of-way and the rear yard shall be the opposite property line and correspond to the rear of the principal building.

Zoning and Land Development Regulations, Table 3-4: Schedule of Lot Area: This table lists the minimum required side yard setback as being 10 ft., and the minimum required front yard setback as being 35 ft. for a residential accessory structure in an R-15. zoning district.

JUSTIFICATION FOR A VARIANCE:

The following is an analysis of the justification given by the applicant on the application:

- 1. Describe the provision of the Kershaw County Zoning and Land Development Regulations from which you seek a variance.**

Response from Applicant: Road/Property Line setback. Requesting a variance to the required 35ft minimum front yard setback for a recently constructed accessory structure built within an R-15 zoning district, as required in Article 3:2-5 of the Kershaw County Unified Code of Zoning and Land Development Regulations.

Staff Analysis and Additional Observations: The required 10 ft. minimum side yard setback, and 35 ft. front yard setback, for an accessory structure built within an R-15 zoning district is described in Sections 3:2.1 and Table 3-4 of the Kershaw County Unified Code of Zoning and Land Development Regulations (ZLDR).

- 2. Describe unusual conditions of the property causing unnecessary hardship which may justify variance from the terms of the ordinance.**

Response from Applicant: See applicant’s narrative on pages x-x of this staff report.

Staff Analysis and Additional Observations: This is an after construction / no permit issued variance request. Due to the sloping topographical conditions stated by the applicant, staff recognizes that development on lots with sloping topography can be challenging. However, these conditions are not necessarily unusual or provide the ability to justify a hardship. Additionally, the hardship in this circumstance has been self-created by the applicant.

- 3. Describe extraordinary and exceptional conditions pertaining to the particular piece of property.**

Response from Applicant: See applicant’s narrative on pages x-x of this staff report.

Staff Analysis and Additional Observations: Again, as the applicant has stated previously, the lot slopes toward the lakefront. However, these topographic conditions are present on many lakefront lots and are not necessarily unique to just this property. Therefore, staff concludes that there are not extraordinary or exceptional conditions pertaining to this particular piece of property.

- 4. Explain how the conditions described above do not generally apply to other property in the vicinity.***

Response from Applicant: See applicant's narrative on pages x-x of this staff report.

Staff Analysis and Additional Observations: Staff contends that sloping lots in the vicinity of the subject property are present. Some lots slope more or less than other lots. Therefore, similar topographic conditions do generally apply to other properties in the vicinity. Property owners must take responsibility to design buildings that will work with the site conditions on their specific property.

- 5. Due to these conditions, explain how the application of the Ordinance to this particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.***

Response from Applicant: See applicant's narrative on pages x-x of this staff report.

Staff Analysis and Additional Observations: Staff contends that the property can still be utilized for the proposed use when designed according to the site conditions present on the property and placed in compliance with the required setbacks.

- 6. Explain how the authorization of a variance will not be of substantial detriment to the adjacent property or to the public good, and how the character of the surrounding area will not be harmed by granting of the variance.***

Response from Applicant: See applicant's narrative on pages x-x of this staff report.

Staff Analysis and Additional Observations: The purpose of a setback is to offer spatial separation between uses and to ensure that structures are not built too close to neighboring properties and roadways. In this specific case, the 1800 sq. ft. accessory structure is located 15.5 feet from the road right-of-way. That equates to being 56% closer to the road right-of-way than the 35 feet that would be required of other properly permitted accessory structures within the surrounding area.

Staff contends that authorization of the variance would impact the character of the surrounding area given that other structures are properly setback further from the road right-of-way.

STAFF FINDINGS AND RECOMMENDATIONS:

An owner is not necessarily entitled to relief from a self-created or self-inflicted hardship.

According to the Comprehensive Planning Guide for Local Government as published by the Municipal Association of South Carolina, "A variance allows the board to modify an otherwise

legitimate zoning restriction when, due to unusual conditions, the restriction may be more burdensome than was intended. The variance must not impair the public purpose. To obtain a variance on the ground of unnecessary hardship, there must at least be proof that a particular property suffers a singular disadvantage through the operation of a zoning regulation.”

A variance must be granted on conditions of the specific piece of property and may not be granted because an applicant wants something other than what is allowed under the Ordinance and applied to all other properties within the same zoning district category.

The Board of Zoning Appeals is required to determine that the application of the Ordinance will result in an unnecessary hardship, and that all four standards for a variance set by State law and the Ordinance are met by the following facts:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property.
2. These conditions do not generally apply to other property in the vicinity.
3. Because of these conditions, the application of the Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.
4. The authorization of the variance will not be of substantial detriment to adjacent property or to the public good, and the character of the surrounding area will not be harmed by granting the variance.

STAFF RECOMMENDATION

Planning staff is sympathetic toward the applicant’s request for a variance and has studied the applicant’s justification closely to identify any evidence that could help establish a recommendation to approve. However, absent any additional evidence presented by the applicant during the upcoming public hearing, staff provides the following recommendation:

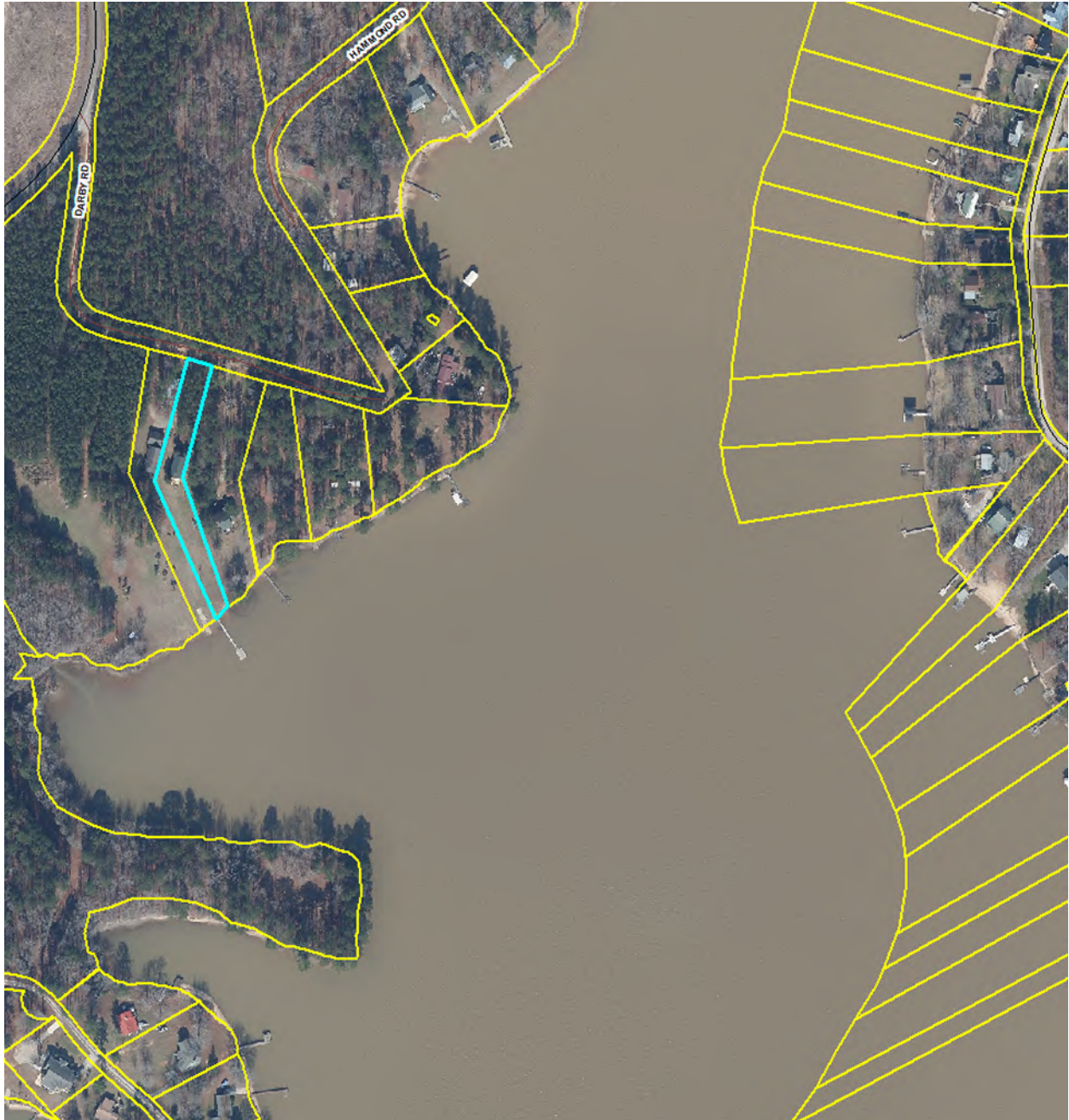
Based upon the application materials as applied to the four (4) State law standards, staff has not identified any justifiable reasoning provided by the applicant for approving a variance in accordance with the four State law standards to allow the unpermitted accessory structure to encroach 19.5’ into the front yard setback, or 0.2’ into the side yard setback.

Therefore, staff recommends that a variance to allow the unpermitted accessory structure to encroach 19.5’ into the front yard setback, and 0.2’ into the side yard setback, be denied for the property identified in this application as 2472 Darby Road with TMS #111-04-40-055.

BOARD ACTION

After hearing testimony from the applicant and planning staff, the Board of Zoning Appeals may take the following actions: (1) Approval, with or without conditions; (2) Denial; (3) Table for a specific reason, to a specific meeting date.

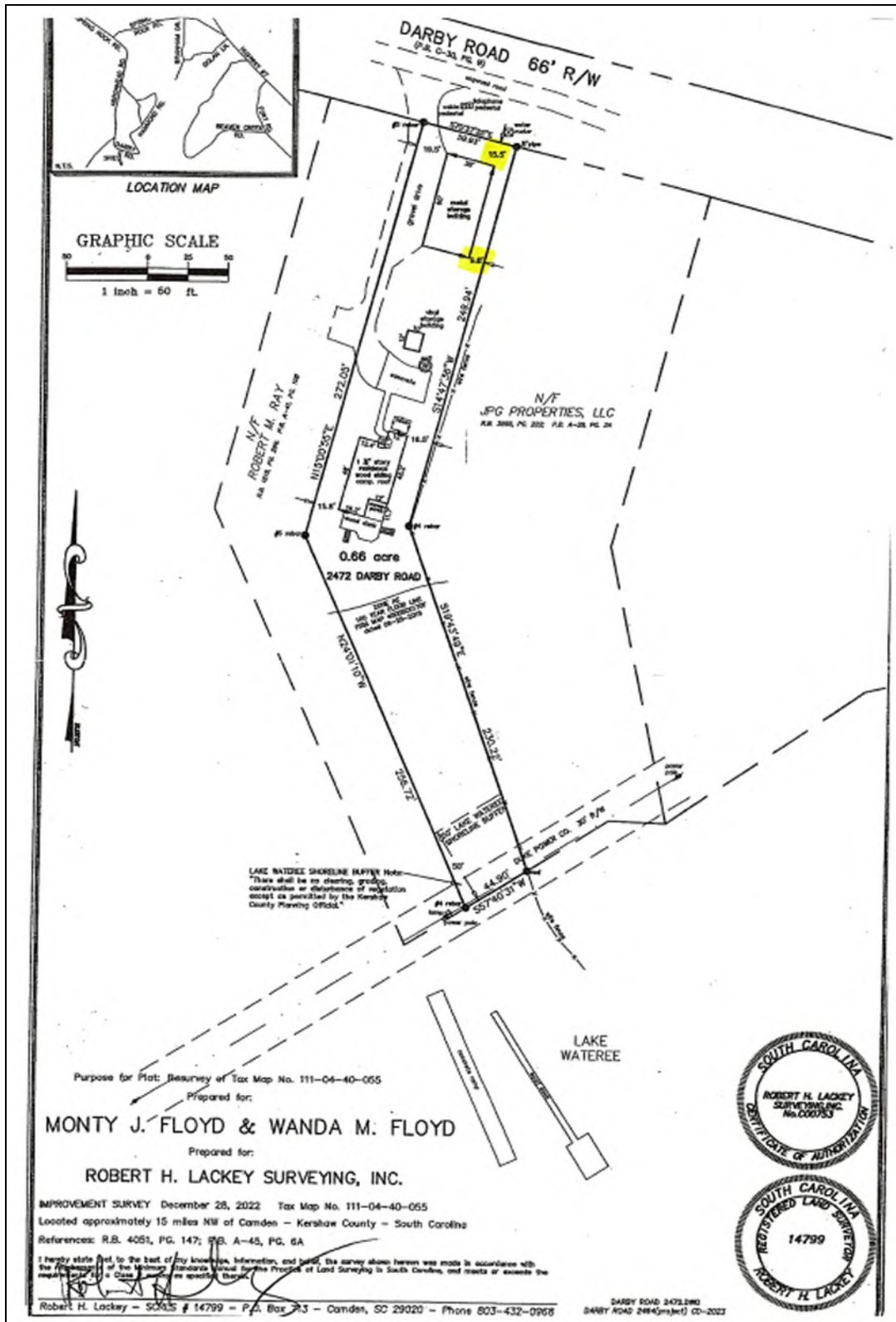
Aerial view of subject property (BZA# 23-01)



Closeup aerial view of subject property (BZA# 23-01)



Survey of Property (BZA# 23-01)



Purpose for Plot: Reurvey of Tax Map No. 111-04-40-055
 Prepared for:
MONTY J. FLOYD & WANDA M. FLOYD
 Prepared for:
ROBERT H. LACKEY SURVEYING, INC.

IMPROVEMENT SURVEY December 28, 2022 Tax Map No. 111-04-40-055
 Located approximately 15 miles NW of Camden - Kershaw County - South Carolina
 References: R.B. 4051, PG. 147; S.B. A-45, PG. 6A

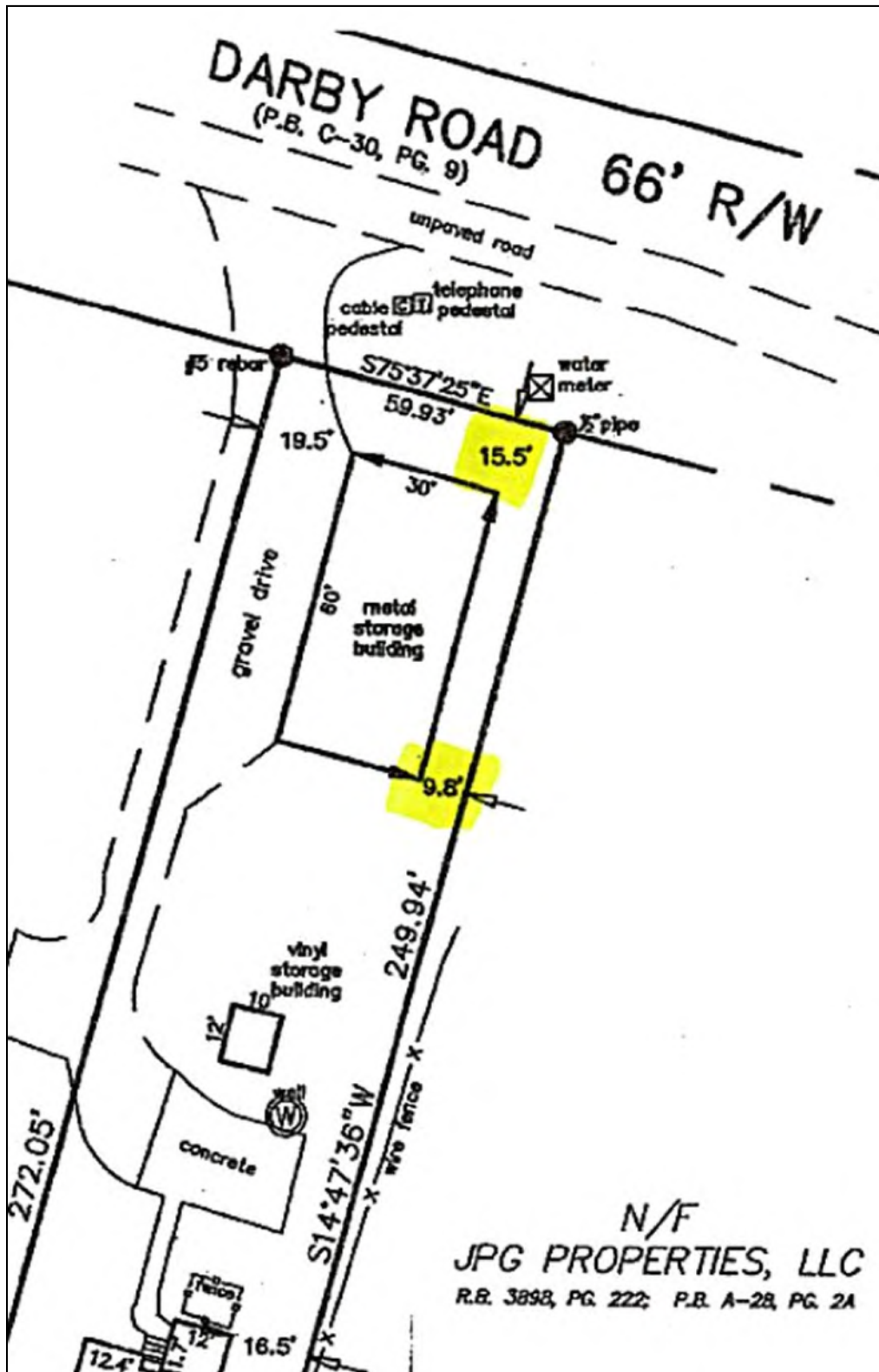
I hereby state that to the best of my knowledge, information, and belief, the survey shown herein was made in accordance with the requirements of the Statute: Statutes of the State of South Carolina, and that I am a duly Licensed Professional Surveyor in the State of South Carolina.

Robert H. Lackey - S.C.S.S. # 14799 - P.O. Box 283 - Camden, SC 29020 - Phone 803-432-0968



DARBY ROAD 2472.DWG
 DARBY ROAD 2472(1) (1) 02-2022

Enlargement of Front and Side Setback Encroachments (BZA# 23-01)



View of right side of Accessory Building from Darby Road



View of left side of Accessory Building from Darby Road



View of front of Accessory Structure as viewed from Darby Road
front garage door access is within the setback area



View of side of Accessory Structure as viewed from neighboring property one, if not two, of the garage door access points is within the front yard setback



Describe the provision of the Kershaw County Zoning and Land Development Regulations from which you seek a variance.

Requesting a variance to the required 35 ft minimum front yard setback for a recently constructed accessory structure built within an R-15 zoning district, as required in Article 3: 2-5 of the Kershaw County Unified Code of Zoning and Land Development Regulations.

1. Describe unusual conditions of the property causing unnecessary hardship which may justify variance from the terms of the ordinance.

When I started having dirt hauled in to level the lot, I had to build up enough to divert the flow of water. The slope of the land forced me to put it as close to the front as I could because it would have to be built up too much for the doors not to have a steep uphill incline to be able to enter the doors with trailers and such. I have one and half of another door with slight inclines even after I moved the doors to the first 35 feet of the building. Any further back would render the doors useless. Still I thought I was within the 35 ft from the road. With the diversion of water and buildup, I proceeded to put water in the driveway under the rock, instead of putting it on Mr. Green. The water flows down between Mr. Rays house and mine.

2. Describe extraordinary and exceptional conditions pertaining to the particular piece of property.

This piece of property slopes down starting at the northwestern edge going south and East. At the southwest corner of the building, it has a 39" drop and the southeast corner, it has a 46" drop. At the northeast corner, it has a 13" drop. The northwest corner is flat, even with the ground. The 100 year flood line is in the back, (lakeside) too close to put anything besides a small storage building. The lot is too beautiful on the lakeside to put anything there. I put the building where it is, thinking I was within the 35' setback described by Kershaw County. The lot is only 60' wide for the first 250' and my house and a small storage building is included on that.

When I first started this project, I called the Planning and Zoning department to ask questions, such as, when do I need a permit and what are the property line setbacks. The guy that talked to me proceeded to say that I need a permit when the building starts going up. Not knowing the full details, I asked, do I need a permit to pour the concrete pad. Again, he said, "when the building starts going up". Then he proceeded to say, 10' from either side property line, 35' from ROAD, 120' from my house etc.etc. I knew I wasn't going to put it on the lake side, so the 100 year flood line and water frontage didn't require any further thought. So I measured 10' from the East side property line, 20' from the western property line. Then I went to the road to figure my starting point. I went to be what appeared to be the wood line where I saw other property line markers. I measured 37' and put my front corner markers down.

After the property was leveled and concrete pad was down, I went to the Zoning and Planning Department again to check on getting a permit. That's when Mrs. Rhonda sent me, by email, all the requirements to obtain a permit. In the mean time, I hired a surveyor and called the manufacturer to push back the construction. This was about 3 weeks before Christmas. I had to return to my farm for my duties there. When I returned home 2 days before Christmas, the construction was 70% complete.

When the surveyor completed his job, I figured out that my front, road setback was not in compliance with Kershaw County's Zoning and land development regulations.

3. Explain how the conditions described above do not generally apply to other property in the vicinity.

My property and Mr. Ray's property (to the west) are basically the same with all the same conditions. Mr. Green's property (to the East) starts a slope like mine at the front, but his is much wider than mine and from his, going around to the end (empty house) are all wider than mine and don't have the same slope as mine. Mr. Darby's lot and Mr. Higgins' lot don't slope as bad as mine and they are all much wider than mine. Mr. Higgins and the last house (old Kelly place) doesn't have room to build a structure the size of mine.

4. Due to these conditions, explain how the application of the ordinance to this particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.

It would not prohibit use of this property. However, if the application of the ordinance was applied, I would only be able to use one roll up door on the north side and one roll up door on the west side. The southern 2/3 end would only be accessible from the front. The walk in door is already 2 & 1/2 feet up. I had to consider water run off for the walk in door to be used. I added the rock so water would flow under it to the driveway. The rock in the driveway allows water to flow underneath it in the driveway to the grass behind my building and between my house and Mr. Ray's house.

5. Explain how the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and how the character of the surrounding area will not be harmed by the granting of the variance.

There is not any detriment, substantial or minor, to any of the adjacent properties. All construction was completed in a manner of consideration to all properties that might have been affected. Although my building 15.5 feet from the front property line, I thought I was within the correct setback of 35'.

As far as the public good, Darby Road is a private right of way, and should not have public traffic. Only local residents, utilities, fire, EMS, and law enforcement. It is a one way in and one way out right of way. It does not connect to Hammond Road as shown on the tiny map at the corner of my surveyors plat.

As for the character of the surrounding area being harmed, I have attached comments from all of the residents on Darby Road except the vacant home and Duke Energy building on the left at the end of Darby Road.

My building will only be used for my personal storage of my equipment and such.

Letters/ text messages from home owners on Darby Road

Micheal Ray: The building does not have any negative impacts on the neighbor and helps improve surroundings by allowing for storage of boats and equipment keeping the outside surroundings looking neat and clean.

Also, it's a private road and should only have neighbor traffic, so being too close to the road is not an issue for us.

Jay Green: My name is James D Green Jr., an owner at 2468 Darby Road. I have no objections to Monty Floyd's storage building recently constructed next door to me.

Robert Darby: I am a neighbor of Monty Floyd on Darby Road. I consider the metal building on Monty Floyd's property to be beneficial to the Darby Road area. It blends in well and looks very nice. I think the placement on his property is in the best interest on all of the surrounding property owners. Please contact me if you need additional feedback . Robert Darby 2460 Darby Road 843-729-4408.

Hank Higgins: I have no problem with Monty Floyd's new garage. I own property across the street and at the end of Darby Road. Due to the fact that Darby Road is a private and narrow street, I had not thought about it violating county setbacks. Hank Higgins Beaver Creek Family Limited Partnership.

It also is a better looking building than the Duke Energy commercial looking building I stare at from my lot at 2450 Darby Road.

Scott McCluskey: We live at 2464 Darby Lane and have no issue with your garage size or alignment to property line. We also see no issues arising because of your garage. Thanks, Scott McCluskey

Kershaw County Planning and Zoning Department
515 Walnut Street, Room 160, Camden, SC 29020 803-425-7233

23-01

**PETITION TO BOARD OF ZONING APPEALS
FOR A VARIANCE**

INSTRUCTIONS

The Board of Zoning Appeals (BZA) may grant a variance from the terms Article 3, Zoning Regulations, of the Kershaw County Unified Code of Zoning and Land Development Regulations as long as the variance will not be contrary to public interest where, owing to special conditions, a literal enforcement of the provisions of the Ordinance will, in an individual case, result in unnecessary hardship so that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done. A variance may be granted in an individual case of unnecessary hardship if the Board finds that:

- (a) There are extraordinary and exceptional conditions pertaining to the particular piece of property; and
- (b) these conditions do not generally apply to other property in the vicinity; and
- (c) because of these conditions, the application of the Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- (d) the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

The Board may not grant a variance, the effect of which would allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land, or to change the zoning district boundaries shown on the Official Zoning Map. The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance.

A property owner and/or his agent first submits a variance petition to the Kershaw County BZA. The BZA must then hold a public hearing and then make a determination on the variance. The applicant and/or agent may appear at the hearing to present the case. After the hearing, the applicant will be notified of the action by the Board. From start to finish, the process takes approximately four weeks.

The BZA considers variance petitions at its meetings on the first Tuesday of each month. The meetings are held on an "as needed" basis in Council Chambers, Kershaw County Government Center, 515 Walnut Street, Camden, S.C. at 5:30 p.m. Applicant and/or owner(s) will be notified of the specific dates that the request will be heard. All variance petitions must be filed at least one calendar month prior to the BZA meeting in which it is to be considered.

This application for variance must be neatly printed, completed in full, and returned to the Planning and Zoning Department at the Kershaw County Government Center, Room 160, 515 Walnut Street, Camden, SC 29020. It must be accompanied by:

- One copy of the property's recorded deed obtained from the Kershaw County Register of Deeds, Kershaw County Government Center, Room 180, 515 Walnut Street, Camden, SC 29020.
- One copy of the recorded plat obtained from the Kershaw County Register of Deeds.
- A non-refundable filing fee of \$250 for variance requests on residential property or \$300 for variance requests for commercial property which is required to process this application and cover advertising costs incurred for the public hearing. Checks are to be made payable to Kershaw County.
- Additional information, if requested by the Kershaw County Planning and Zoning Department.

If the subject property is owned by more than one person, each owner must be listed. If the applicant is not the property owner, the property owner must complete and notarize the Designation of Agent Form. If the property is owned by more than one person, each owner must complete and notarize a separate Designation of Agent Form. An additional form is provided on the last page of this application.

Kershaw County Planning and Zoning Department
515 Walnut Street, Room 160, Camden, SC 29020 803-425-7233

**PETITION TO BOARD OF ZONING APPEALS
FOR A VARIANCE**

All data and exhibits found herein or appended to this petition shall be deemed to be public record.

DATE:	REQUEST NO.: <u>23-01</u>
I, <u>Monty J. Floyd Sr.</u> , hereby make application to the Kershaw County Board of Appeals for a variance.	

PROPERTY LOCATION

STREET ADDRESS: <u>2472 Darby Rd Liberty Hill SC</u>		COMMUNITY/SUBDIVISION:	
TMS#: <u>111-04-40-055</u>		PROPERTY AREA: <u>.66</u> acres	
DEED BOOK:	PLAT BOOK:	SEWER DISTRICT:	WATER DISTRICT:
CURRENT USE: <u>Residential/Personal</u>		PROPOSED USE: <u>Residential/Personal</u>	
Has previous variance application been made for all or any part of this property? Yes [] No [<input checked="" type="checkbox"/>] If yes when?			
Per the South Carolina Local Government Planning enabling Act (Section 6-29-1145 of the South Carolina Code of Laws), is/are this/these tract(s) or parcel(s) restricted by any recorded covenant, restriction, easement, etc., that is contrary to, conflicts with, or prohibits the proposed land use? Yes [] No [<input checked="" type="checkbox"/>] If so, submit a copy with this application.			
THE APPLICANT IS: PROPERTY OWNER [<input checked="" type="checkbox"/>] AGENT OF PROPERTY OWNER [] OPTION HOLDER []			

PROPERTY OWNER (If property is owned by more than one person, each owner must be listed. An additional form is provided at the end of this application and may be duplicated if necessary.)

NAME: <u>Monty J. Floyd Sr Wanda M Floyd</u>		E-MAIL: <u>floydmonty@gmail.com</u>	
MAILING ADDRESS: <u>P.O. Box 434</u>		CITY: <u>Liberty Hill</u>	STATE: <u>SC</u> ZIP: <u>29074</u>
TELEPHONE:	CELL: <u>843-577-1674</u>	FAX:	

APPLICANT (If other than property owner.)

NAME: <u>Monty J. + Wanda M Floyd</u>		E-MAIL: <u>floydmonty@gmail.com</u>	
MAILING ADDRESS: <u>PO Box 434</u>		CITY: <u>Liberty Hill</u>	STATE: <u>SC</u> ZIP: <u>29074</u>
TELEPHONE:	CELL: <u>843-577-1674</u>	FAX:	

If applicant is other than owner, state applicant's interest in the proposed variance:

DESIGNATION OF AGENT (To be completed by owner, only if owner is not applicant. If property is owned by more than one person, each owner must complete a Designation of Agent Form. An additional form is available at the end of this application. The signature of each owner must be notarized.)

I, _____ (PROPERTY OWNER) hereby appoint _____ (APPLICANT)
as my agent to represent me in this request for administrative appeal.

Owner's signature: _____ Date: _____

Given under my hand and seal, this _____ day of _____, 20____

(Seal)

Notary Public for South Carolina

My commission expires on _____ day of _____, 20____

Describe the provision of the Kershaw County Zoning and Land Development Regulations from which you seek a variance.
Road/Property Line (setback) Requesting a variance to the required 35 ft. Minimum front yard setback for a recently constructed accessory structure built within an R-15 zoning district, as required in Article 3:2-5 of the Kershaw County Unified Code of zoning and land development regulations.

JUSTIFICATION FOR VARIANCE – If additional space is needed, use a separate sheet of paper.

Describe unusual conditions of the property causing unnecessary hardship which may justify variance from the terms of the ordinance.

Describe extraordinary and exceptional conditions pertaining to the particular piece of property.

Explain how the conditions described above do not generally apply to other property in the vicinity.

Due to these conditions, explain how the application of the Ordinance to this particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.

Explain how the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and how the character of the surrounding area will not be harmed by the granting of the variance.

APPLICANT'S SIGNATURE: *[Signature]* DATE: *3-1-2023*

ACTION BY APPEALS BOARD:

SIGNATURE OF CHAIRMAN: _____ DATE: _____

ADDITIONAL PROPERTY OWNER AND DESIGNATION OF AGENT FORMS

(To be duplicated if needed for additional property owners.)

PROPERTY OWNER FORM (To be completed by each owner if property is owned by more than one person.)

NAME:	E-MAIL:		
MAILING ADDRESS:	CITY:	STATE:	ZIP:
TELEPHONE:	CELL:	FAX:	

DESIGNATION OF AGENT FORM (To be completed by each owner if owner is not the applicant.)

I, _____ (PROPERTY OWNER) hereby appoint _____ (APPLICANT) as my agent to represent me in this request for administrative appeal.

Owner's signature: _____ Date: _____

Given under my hand and seal, this _____ day of _____, 20____

(Seal)
Notary Public for South Carolina

My commission expires on _____ day of _____, 20____

Variance Request to BZA 11.18.14

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STAFF REPORT

APPLICATION TO THE BOARD OF ZONING APPEALS
FOR VARIANCE CASE # 23-02
US MOTORS ENTERPRISE, LLC - NIDAL 'NICK' MATAR, 2211 HIGHWAY 1
SOUTH, ELGIN

KERSHAW COUNTY BOARD OF ZONING APPEALS PUBLIC HEARING
Monday, April, 24, 2023 at 5:30 PM
Council Chambers, Kershaw County Government Center
515 Walnut Street, Camden, SC 29020

APPLICANT: US Motors Enterprise, LLC - Nidal 'Nick' Matar, Property Owner

APPLICANT'S AGENT: William E. Lindler, Jr.

PROPERTY: 2211 Highway 1 South
TMS # 335-08-00-001B
Zoning: B-2

CASE: Property owner Nick Matar is requesting a variance to the required 35 ft. minimum side yard setback along Elgin Estates Drive for a commercially zoned corner lot for a proposed commercial structure located within a B-2 zoning district, as required in Article 3:2.1-3(C)2 of the Kershaw County Unified Code of Zoning and Land Development Regulations.

Specifically, the applicant is requesting to allow the southwestern corner of the proposed commercial building to encroach into the 35 ft. required side yard setback along Elgin Estates Drive by 11.4 ft which would result in a 23.6 ft. side yard setback. Additionally, the applicant is requesting to allow the northwestern corner of the proposed commercial building to encroach into the 35 ft. required side yard setback along Elgin Estates Drive by 10.6 ft which would result in a 24.4 ft. side yard setback.

Zoning and Land Development Regulations, Section 3:2.1-3(C)2: Determination of Front Yard and Setbacks - Side Yards: When the intersection of two streets forms a corner lot, then the following criteria for side setbacks shall apply: (2) All Uses Other Than Detached Single-Family Residential: The side setback on the side street shall not be less than the required front setback.

JUSTIFICATION FOR A VARIANCE:

The following is an analysis of the justification given by the applicant on the application:

1. ***Describe the provision of the Kershaw County Zoning and Land Development Regulations from which you seek a variance.***

Response from Applicant: 3:2.1-3-C (Side Yards) - 2. (All Uses Other Than Detached Single-Family Residential).

Staff Analysis and Additional Observations: Commercially zoned corner lots in a B-2 zoning district must adhere to a side yard setback that is equal to the front yard setback. In this specific case, the commercial side yard setback is 35 ft. along Elgin Estates Drive.

2. ***Describe unusual conditions of the property causing unnecessary hardship which may justify variance from the terms of the ordinance.***

Response from Applicant: The eastern portion of the property lies within a 100 year flood hazard area and is depicted as a wetland on the National Wetland Inventory Map. See attached site plan.

Staff Analysis and Additional Observations: The eastern portion of the property is indeed within flood hazard and wetland areas. These conditions do complicate the ability to develop on the eastern side of the property. However, these conditions are not present on the western side of the property and do not necessarily justify a hardship. The hardship in this circumstance is self-created because the applicant is designing a building width that does not fit within the required side yard setback.

3. ***Describe extraordinary and exceptional conditions pertaining to the particular piece of property.***

Response from Applicant: The eastern portion of the property has topographic challenges and is near the Kershaw County sanitary sewer pump station. The sewer pump station emits septic odor. See attached site plan.

Staff Analysis and Additional Observations: Staff concurs with the applicant that the topographic conditions and sewer pump station are present on the site. However, again, staff is of the opinion that this variance request is a self-created hardship because the property owner is designing a building that will not fit on the site. A building of less width and longer in depth could be designed to fit on the site and within the required 35 ft. side yard setback along Elgin Estates Drive.

4. ***Explain how the conditions described above do not generally apply to other property in the vicinity.***

Response from Applicant: Other properties do not have similar site conditions, ie: topography, 100 year flood hazard, wetlands, sanitary sewer pump station.

Staff Analysis and Additional Observations: Staff agrees that these conditions do not generally apply to other properties in the vicinity. However, property owners must take responsibility to design buildings that will work within the site conditions on their specific property. Again, in this circumstance, a narrower but longer building could be designed to fit on the site.

5. ***Due to these conditions, explain how the application of the Ordinance to this particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.***

Response from Applicant: Application of this ordinance conflicts with the 17.5 ft. secondary front setback approved by Planning on the 2015 site plan. The eastern portion of the property is undevelopable because of 100 year flood hazard area and wetlands. See attached plan approved 3.16.2015.

Staff Analysis and Additional Observations: Staff researched the regulations in place during 2015. The regulations read exactly the same for commercially zoned corner lots and required that the setback along Elgin Estate Drive be 35 ft. The plat approved by a former Planning Director on 3.16.2015 incorrectly depicted the setback along Elgin Estates Drive as being 17.5 ft. The recently proposed commercial building that is subject to this variance request was not shown on the 3.16.2015 plat.

Actually, the property has not been developed per the 3.16.2015 approved site plan. Landscaping has not been installed per the approved plan, and the property is using an unapproved commercial driveway leading to/from Elgin Estates Drive.

Staff contends that the lot can still be utilized for commercial building(s) if designed property to fit within the required side yard setback along Elgin Estates Drive.

6. ***Explain how the authorization of a variance will not be of substantial detriment to the adjacent property or to the public good, and how the character of the surrounding area will not be harmed by granting of the variance.***

Response from Applicant: Authorization of this variance request will not be of substantial detriment to adjacent property or the public good because it conforms to current uses along the Highway 1 South corridor.

Staff Analysis and Additional Observations: All new development on commercial lots along the US Highway 1 corridor must conform to the same side yard setback standard as the subject property. Authorization of the variance would impact the adjoining residence to the south, and the adjacent residences across Elgin Estates Drive. Currently, the residences impacted are setback 35 ft. from Elgin Estates Drive. Allowing a new building to project further into the side yard setback along Elgin Estates Drive would not protect those residential uses from the purpose of a setback, which is to allow for consistency of development appearance as well as the availability of light and open space. Staff contends that authorization of the variance would impact the character of the surrounding area given that other structures are properly setback from the road right-of-way.

STAFF FINDINGS AND RECOMMENDATIONS:

An owner is not necessarily entitled to relief from a self-created or self-inflicted hardship.

According to the Comprehensive Planning Guide for Local Government as published by the Municipal Association of South Carolina, "A variance allows the board to modify an otherwise legitimate zoning restriction when, due to unusual conditions, the restriction may be more burdensome than was intended. The variance must not impair the public purpose. To obtain a variance on the ground of unnecessary hardship, there must at least be proof that a particular property suffers a singular disadvantage through the operation of a zoning regulation."

A variance must be granted on conditions of the specific piece of property and may not be granted because an applicant wants something other than what is allowed under the Ordinance and applied to all other properties within the same zoning district category.

The Board of Zoning Appeals is required to determine that the application of the Ordinance will result in an unnecessary hardship, and that all four standards for a variance set by State law and the Ordinance are met by the following facts:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property.
2. These conditions do not generally apply to other property in the vicinity.
3. Because of these conditions, the application of the Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.
4. The authorization of the variance will not be of substantial detriment to adjacent property or to the public good, and the character of the surrounding area will not be harmed by granting the variance.

STAFF RECOMMENDATION

Planning staff is sympathetic toward the applicant's request for a variance and has studied the applicant's justification closely to identify any evidence that could help establish a recommendation to approve. However, absent any additional evidence presented by the applicant during the upcoming public hearing, staff provides the following recommendation:

Based upon the application materials as applied to the four (4) State law standards, staff has not identified any justifiable reasoning provided by the applicant for approving a variance in accordance with the four State law standards to allow a proposed commercial structure structure to encroach 11.4 ft. and 20.6 ft. into the required 35 ft. side yard setback.

Therefore, staff recommends that a variance to allow the proposed commercial structure to encroach 11.4 ft. and 10.6 ft. into the required 35 ft. side yard setback, be denied for the property identified in this application as 2211 Highway 1 South with TMS #335-08-00-001B..

BOARD ACTION

After hearing testimony from the applicant and planning staff, the Board of Zoning Appeals may take the following actions: (1) Approval, with or without conditions; (2) Denial; (3) Table for a specific reason, to a specific meeting date.

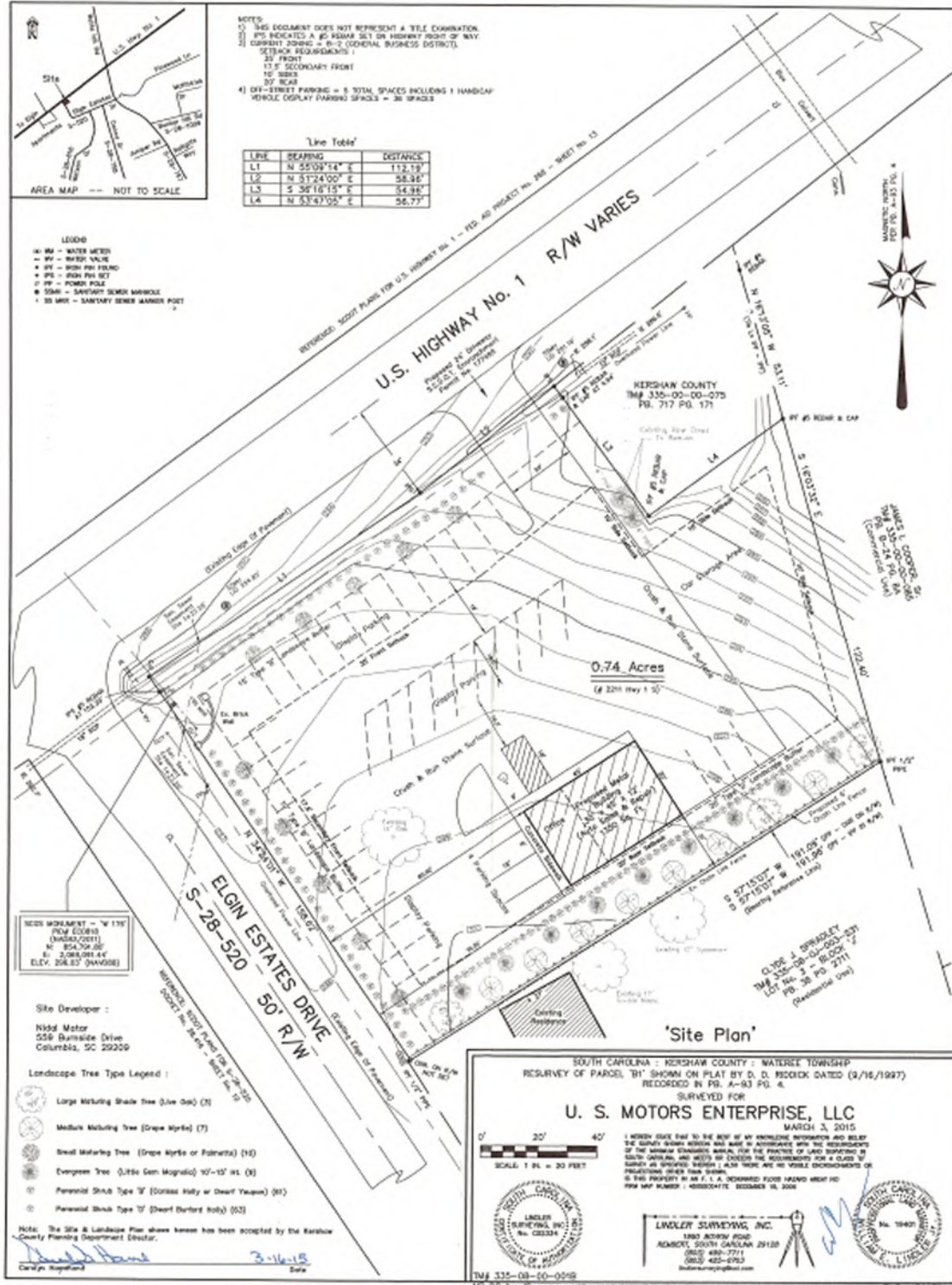
Aerial view of subject property (BZA# 23-02)



Closeup aerial view of subject property (BZA# 23-02)

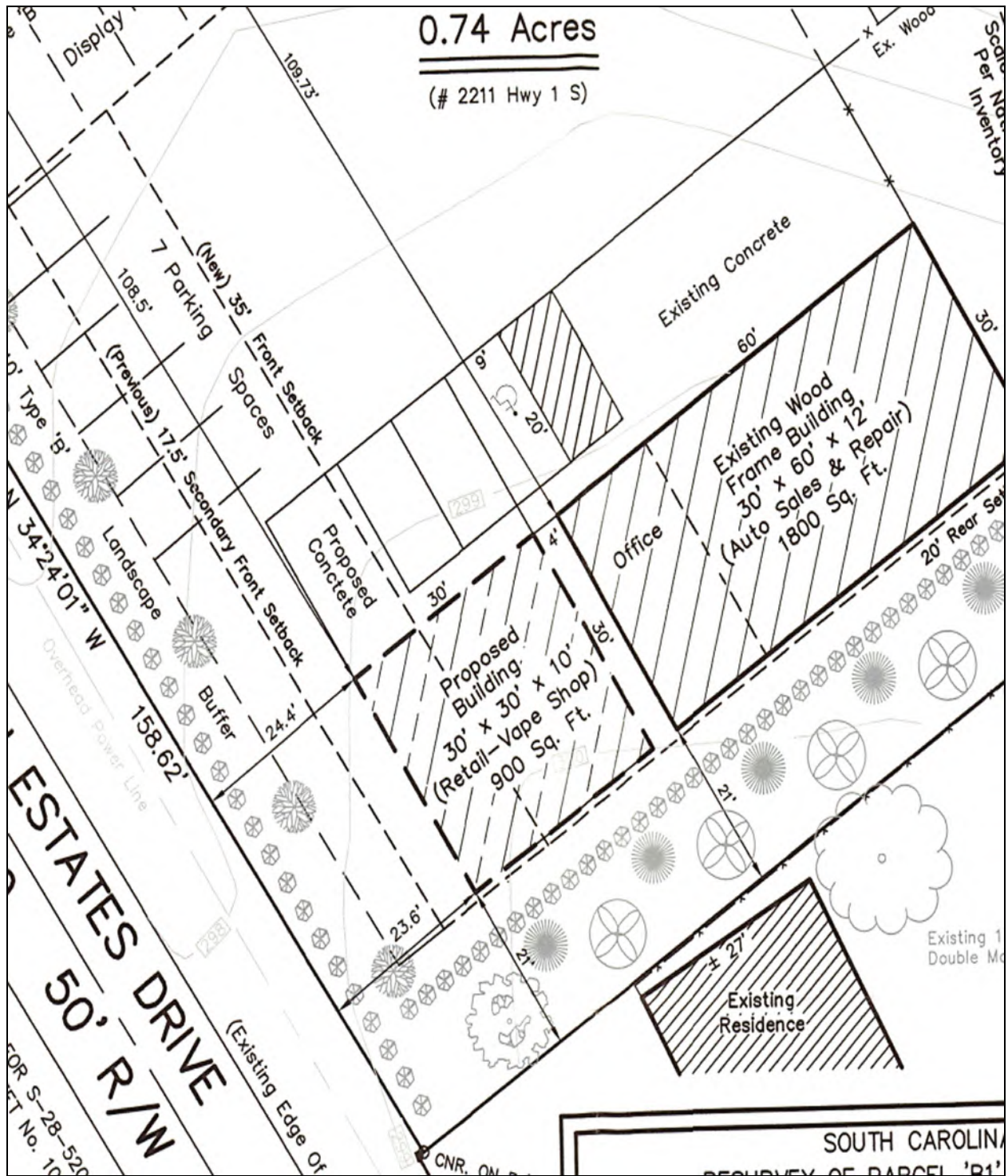


Previously Approved Site Plan 3.16.15 Showing Incorrect Side Yard Setback along Elgin Estates Drive
(BZA# 23-02)



Previously Approved Site Plan

Enlarged portion of site plan showing are of proposed commercial structure (BZA# 23-02)



View of area for proposed commercial structure from Elgin Estates Drive



View of existing commercial structure (left) in proximity to existing residential home (right)
Also shows inadequate landscaping as compared to what was approved on the 3.16.2015 site plan



Inadequate landscaping and unapproved driveway access along Elgin Estates Drive



Inadequate landscaping along Highway 1 South Road Frontage



Kershaw County Planning and Zoning Department
515 Walnut Street, Room 160, Camden, SC 29020 803-425-7233

RECEIVED

MAR 02 2023

**PETITION TO BOARD OF ZONING APPEALS
FOR A VARIANCE**

Planning and Zoning

2302

INSTRUCTIONS

The Board of Zoning Appeals (BZA) may grant a variance from the terms Article 3, Zoning Regulations, of the Kershaw County Unified Code of Zoning and Land Development Regulations as long as the variance will not be contrary to public interest where, owing to special conditions, a literal enforcement of the provisions of the Ordinance will, in an individual case, result in unnecessary hardship so that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done. A variance may be granted in an individual case of unnecessary hardship if the Board finds that:

- (a) There are extraordinary and exceptional conditions pertaining to the particular piece of property; and
- (b) these conditions do not generally apply to other property in the vicinity; and
- (c) because of these conditions, the application of the Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- (d) the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

The Board may not grant a variance, the effect of which would allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land, or to change the zoning district boundaries shown on the Official Zoning Map. The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance.

A property owner and/or his agent first submits a variance petition to the Kershaw County BZA. The BZA must then hold a public hearing and then make a determination on the variance. The applicant and/or agent may appear at the hearing to present the case. After the hearing, the applicant will be notified of the action by the Board. From start to finish, the process takes approximately four weeks.

The BZA considers variance petitions at its meetings on the first Tuesday of each month. The meetings are held on an "as needed" basis in Council Chambers, Kershaw County Government Center, 515 Walnut Street, Camden, S.C. at 5:30 p.m. Applicant and/or owner(s) will be notified of the specific dates that the request will be heard. All variance petitions must be filed at least one calendar month prior to the BZA meeting in which it is to be considered.

This application for variance must be neatly printed, completed in full, and returned to the Planning and Zoning Department at the Kershaw County Government Center, Room 160, 515 Walnut Street, Camden, SC 29020. It must be accompanied by:

- ✓ One copy of the property's recorded deed obtained from the Kershaw County Register of Deeds, Kershaw County Government Center, Room 180, 515 Walnut Street, Camden, SC 29020.
- ✓ One copy of the recorded plat obtained from the Kershaw County Register of Deeds.
- A non-refundable filing fee of \$250 for variance requests on residential property or \$300 for variance requests for commercial property which is required to process this application and cover advertising costs incurred for the public hearing. Checks are to be made payable to Kershaw County.
- Additional information, if requested by the Kershaw County Planning and Zoning Department.

If the subject property is owned by more than one person, each owner must be listed. If the applicant is not the property owner, the property owner must complete and notarize the Designation of Agent Form. If the property is owned by more than one person, each owner must complete and notarize a separate Designation of Agent Form. An additional form is provided on the last page of this application.

Kershaw County Planning and Zoning Department
515 Walnut Street, Room 160, Camden, SC 29020 803-425-7233

**PETITION TO BOARD OF ZONING APPEALS
FOR A VARIANCE**

All data and exhibits found herein or appended to this petition shall be deemed to be public record.

DATE: <u>2/28/2023</u>	REQUEST NO.: <u>23-02</u>
------------------------	---------------------------

I, William E. Lindler, Jr., hereby make application to the Kershaw County Board of Appeals for a variance.

PROPERTY LOCATION

STREET ADDRESS: <u>2211 Highway 1 South</u>	COMMUNITY/SUBDIVISION: <u>Elgin, SC</u>
TMS#: <u>335-08-00-001 B</u>	PROPERTY AREA: acres <u>0.74</u>
DEED BOOK: <u>3321-101</u> PLAT BOOK: <u>A-93-4</u>	SEWER DISTRICT: <u>Lugoff</u> WATER DISTRICT: <u>Lugoff</u>
CURRENT USE: <u>Auto Sales & Repair</u>	PROPOSED USE: <u>Retail - Vape Store</u>
Has previous variance application been made for all or any part of this property? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes when?	
Per the South Carolina Local Government Planning enabling Act (Section 6-29-1145 of the South Carolina Code of Laws), is/are this/these tract(s) or parcel(s) restricted by any recorded covenant, restriction, easement, etc., that is contrary to, conflicts with, or prohibits the proposed land use? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If so, submit a copy with this application.	
THE APPLICANT IS: PROPERTY OWNER <input type="checkbox"/> AGENT OF PROPERTY OWNER <input checked="" type="checkbox"/> OPTION HOLDER <input type="checkbox"/>	

PROPERTY OWNER (If property is owned by more than one person, each owner must be listed. An additional form is provided at the end of this application and may be duplicated if necessary.)

NAME: <u>Nidal Matar</u>	E-MAIL: <u>nickmatt01@yahoo.com</u>
MAILING ADDRESS: <u>559 Burnside Dr.</u>	CITY: <u>Columbia</u> STATE: <u>SC</u> ZIP: <u>29209</u>
TELEPHONE: <u>803-446-6099</u>	CELL: <u>Same</u> FAX: <u>---</u>

APPLICANT (If other than property owner.)

NAME: <u>William E Lindler, Jr. PLS</u>	E-MAIL: <u>lindlersurveying@aol.com</u>
MAILING ADDRESS: <u>1990 Boykin Road</u>	CITY: <u>Rembert</u> STATE: <u>SC</u> ZIP: <u>29128</u>
TELEPHONE: <u>803-425-0703</u>	CELL: <u>803-309-2864</u> FAX: <u>---</u>

If applicant is other than owner, state applicant's interest in the proposed variance:

Land Surveyor

DESIGNATION OF AGENT (To be completed by owner, only if owner is not applicant. If property is owned by more than one person, each owner must complete a Designation of Agent Form. An additional form is available at the end of this application. The signature of each owner must be notarized.)

I, Nidal Matar (PROPERTY OWNER) hereby appoint William E Lindler, Jr. (APPLICANT) as my agent to represent me in this request for administrative appeal.

Owner's signature: Nidal Matar Date: 03/01/2023

Given under my hand and seal, this 1st day of March, 2023

Patricia P. Coleman (Seal)
Notary Public for South Carolina

My commission expires on 9th day of Sept., 2024

Describe the provision of the Kershaw County Zoning and Land Development Regulations from which you seek a variance.

3:2.1-3 - C (Side Yards) - 2 (All Uses Other Than Detached Single Family Residential)

Requesting reduction of side setback from 35' to 23'.

JUSTIFICATION FOR VARIANCE - If additional space is needed, use a separate sheet of paper.

Describe unusual conditions of the property causing unnecessary hardship which may justify variance from the terms of the ordinance.

The eastern portion of the property lies within a 100 year flood hazard area and is depicted as a wetland on the National Wetland Inventory Map.

* See attached Site Plan

Describe extraordinary and exceptional conditions pertaining to the particular piece of property.

The eastern portion of the property has topographic challenges and is near the Kershaw County sanitary sewer pump station. The sewer pump station emits septic odor.

* See attached Site Plan

Explain how the conditions described above do not generally apply to other property in the vicinity.

Other properties do not have similar site conditions
IE: Topography, 100 Year Flood Hazard, Wetlands &
Sanitary sewer pump station

Due to these conditions, explain how the application of the Ordinance to this particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.

Application of this Ordinance conflicts with the 17.5' secondary front setback approved by Planning on the 2015 Site Plan. The eastern portion of the property is undevelopable because of 100 year flood hazard area & wetlands.

* See attached Site Plan approved 3-16-15

Explain how the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and how the character of the surrounding area will not be harmed by the granting of the variance.

Authorization of this variance request will not be of substantial detriment to adjacent property or the public good because its use conforms to current uses along the Highway 1 South corridor.

APPLICANT'S SIGNATURE: Walter E. Lee Jr. DATE: 2/28/2023

ACTION BY APPEALS BOARD:

SIGNATURE OF CHAIRMAN: _____ DATE: _____

ADDITIONAL PROPERTY OWNER AND DESIGNATION OF AGENT FORMS
 (To be duplicated if needed for additional property owners.)

PROPERTY OWNER FORM (To be completed by each owner if property is owned by more than one person.)

NAME:	E-MAIL:
MAILING ADDRESS:	CITY: STATE: ZIP:
TELEPHONE:	CELL: FAX:

DESIGNATION OF AGENT FORM (To be completed by each owner if owner is not the applicant.)

I, _____ (PROPERTY OWNER) hereby appoint _____ (APPLICANT) as my agent to represent me in this request for administrative appeal.

Owner's signature: _____ Date: _____

Given under my hand and seal, this _____ day of _____, 20____

 Notary Public for South Carolina (Seal)

My commission expires on _____ day of _____, 20____