

PLANNING STAFF REPORT

Variance Request

SUMMARY:

Hearing Date: October 16, 2013
Applicant: Lizzette Rodriguez
Property Owner: Lizzette Rodriguez
Case Number: 11021

Property Location and Description: The subject property is located at 154 Crooked Creek Drive, Burgaw, as referenced on Deed Book 3686, Page 345 (Exhibit 1), recorded at the Pender County Register of Deeds on September 25, 2009, Map Book 29, Page 76 (Exhibit 2), and may be identified by Pender County 3322-93-4021-0000.

Zoning District of Property: The property is zoned RA, Rural Agricultural District.

Variance Requested: Lizzette Rodriguez, applicant and owner, is requesting three separate variances for the property located at 154 Crooked Creek Drive, Burgaw:

1. a five foot structure separation variance between the proposed carport and the proposed storage building;
2. a four foot, six inch structure separation variance between the existing manufactured home and the proposed carport; and
3. a five foot side yard setback variance.

The variances are for relief from the required setback provisions required by UDO §5.3.3.A.1, which addresses the setback requirements of accessory buildings between 50-599 square feet in area.

BACKGROUND AND DESCRIPTION OF VARIANCES:

The subject property is currently 0.47 acres and hosts a single family structure on the back center of the property, constructed in 2009. A driveway runs the length of property from Crooked Creek Drive to the house along the south property line (Exhibit 3). The subject property is bound to the north, east and south by single family structures and to the west by Aaron Court (Guyan Subdivision).

On Friday, August 30th, 2013, the applicant met with Pender County permitting staff in order to submit an application to install two pre-manufactured accessory buildings at the rear of the existing driveway: one 10' x 24' accessory storage building (240 square feet in area), and one 18' x 21' accessory metal frame open carport (378 square feet in area).

Accessory buildings are permitted in the RA district, as outlined in the Pender County Unified Development Ordinance in Section 4.14 – Table of Permitted Uses, subject to setback and separation requirements as prescribed by Section 5.3.2. In the RA district, if the accessory building is between 50-599 square feet in area, it must be set ten feet from all property lines, access easements, and any other structures located on the property (UDO § 5.3.3.A.1).

In the applicant's proposal, the accessory structure (car port) would be located five feet from the property line, five feet from the second proposed accessory (storage) structure, and five feet four inches from the existing home. Therefore, in order to install the proposed accessory buildings at the applicant's preferred location, three variances are necessary: two structure separation variances and one side yard setback variance.

The applicant contends the location of the proposed buildings is necessary due to necessary septic and well separation and so that the placement remains consistent with the surrounding properties (Exhibit 4).

Specifically, the applicant contends that:

1. if the buildings are located behind the dwelling, the required 25' separation from the well cannot be met;
2. if the car port is moved towards the front left corner of the home, the five foot separation from the septic system cannot be met; and
3. if the buildings are located in the front yard, they would be in conflict with the character of the surrounding properties.

ZONING ADMINISTRATOR'S CONCLUSION:

Lizzette Rodriguez, applicant and owner, is requesting three separate variances for the property located at 154 Crooked Creek Drive, Burgaw:

1. a five foot structure separation variance between the proposed carport and the proposed storage building;
2. a four foot, six inch structure separation variance between the existing manufactured home and the proposed carport; and
3. a five foot side yard setback variance.

The variances are for relief from the required setback provisions required by UDO §5.3.3.A.1, which addresses the setback requirements of accessory buildings between 50-599 square feet in area.

Staff's research has shown that moving the proposed carport accessory structure forward 5 feet would result in the building meeting the required separation, reducing the total number of variances needed. Although the proposed carport would be moving to the east towards Crooked Creek Drive the required existing septic system setback appears to still be met. According to the Pender County Environmental Health Supervisor, the required setback between structures and existing septic system is five feet (Exhibits 5 and 6).

RELEVANT UDO PROVISIONS:

3.14 VARIANCE

3.14.1 Applicability

- A. The Board of Adjustment may vary certain requirements of this Ordinance, in harmony with the general purpose of these regulations, where special conditions applicable to the property in question would make the strict enforcement of the regulations impractical or result in a hardship in making reasonable use of the property.
- B. The Board of Adjustment may waive certain requirements when authorized to do so by provisions adopted as a part of this Ordinance.
- C. No variance shall be permitted that would have the effect of allowing a use not permitted in the use table of Section 5.2.3.
- D. No variance shall be permitted that would allow a project to exceed the maximum density as to number of dwelling units to the acre in a Zoning District. This maximum density shall be inclusive of any density bonus allowance or additional units in a planned unit development.
- E. The need for the variance cannot be a result of the owner's own actions and cannot be for strictly economic reasons.
- F. The Board of Adjustment may grant variances in the following special circumstances, as indicated in Section 3.14.7 of this Ordinance.

3.14.7 Findings

In granting any variance, the Board of Adjustment shall make the following findings:

- A. That special or unique circumstances or conditions or practical difficulties exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts;
 - 1. That the special conditions or circumstances or practical difficulties do not result from the actions of the property owner or applicant, their agent, employee, or contractor. Errors made by such persons in the development, construction, siting or marketing process shall not be grounds for a variance except in cases where a foundation survey submitted to the Building Official before a contractor proceeds beyond the foundation stage has not revealed an error which is discovered later;
 - 2. 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.
 - 3. The hardship results from conditions that are peculiar to the property, such as location, size, 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.
 - 4. 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 granting of a variance shall not be regarded as a self-created hardship.
- B. In making the findings above, the Board of Adjustment may give special weight to the number and percentage of nearby properties that share characteristics for which the variance is requested by the applicant. The Board of Adjustment may grant a variance to expand an existing structure, including the expansion of a nonconforming structure if the findings listed above can be made.

5.3.3 Accessory Uses and Structures

A. Accessory Building Setbacks and Separation Requirements

1.) Accessory Buildings 50-599 Square Feet In Area:

- a) Setback of ten (10) feet from all property lines, access easements, and any other structures located on the property.

Appendix A

ACCESSORY OR SECONDARY USE: A use of land or of a building or portion thereof customarily associated with and incidental and subordinate to the principal use of the land or building and located on the same lot with such principal use. A secondary use shall be a use not already permitted by right in a zoning district but may be permitted in conjunction with a permitted use. In no instances shall an accessory or secondary use be permitted without the presence of a primary use.

BUILDING: Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any persons, animals, processes, equipment, goods or materials of any kind.

LOT: A designated parcel, tract or area of land established or to be established by plat or subdivision or previously established as a recorded lot.

1. **LOT AREA:** The total area within the lot lines of a lot.
2. **LOT, CORNER:** A lot abutting two or more streets at their intersection. (See Figure 4.1)
3. **LOT COVERAGE:** The total built upon area, including all non-pervious surface materials.
4. **LOT, INTERIOR:** A lot other than a corner lot. (See Figure 4.1)
5. **LOT LENGTH:** The distance between the front lot line and the rear lot line measured at the maximum distance.
6. **LOT LINE, FRONT:** The front of a lot shall be considered to be that side of the lot which fronts on a street. In the case of a corner lot, either side abutting a street may be considered to be the front, provided the structure to be located on the lot is situated to meet the required front, side and rear yards for the zoning district in which the lot is located. (See Figure 4.1)
7. **LOT LINE, REAR:** The lot line opposite and parallel to the front lot line or within 45° of being parallel to the front lot line. (See Figure 4.1)
8. **LOT LINE, SIDE:** Any lot line other than front or rear lot lines. (See Figure 4.1)
9. **LOT OF RECORD:** A lot for which a plat or survey description has been legally recorded with the Pender County Register of Deeds.
10. **LOT, PIPESTEM:** A residential lot fronting on a public or a private street in which access is provided by a narrow strip of land, referred to as the "pipestem driveway yard," which is less than the minimum required front yard width, and located between adjoining residential lots fronting on the same street.
11. **LOT, THROUGH:** A lot, other than a corner lot, with frontage on more than one street. These lots may also be called "double frontage lots". (See Figure 4.1)
12. **LOT WIDTH:** The horizontal distance between side lot lines measured at the front yard setback line.

SETBACK: The required distance between a building or structure and a lot line.

1. **SETBACK, FRONT YARD:** The required distance between a street right-of-way line and the front line of a building or structure.
2. **SETBACK, REAR YARD:** The required distance between a building or structure and the rear lot line of the lot containing the building or structure.
3. **SETBACK, SIDE YARD:** The required distance between a building or structure and the side lot line of the lot containing the building or structure.

STRUCTURE:

1. Any man-made object having an ascertainable stationary location on or in land or water, whether or not it is affixed to the ground. All buildings are "structures."
2. For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. Structure, for insurance rating purposes, means a walled and roofed building, other than a gas or liquid storage tank, which is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

Board of Adjustment: Finding of Facts

1. It is the Board's CONCLUSION that the hardship of which the applicant complains **does/does not** 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. This conclusion is based on the following FINDINGS OF FACT:
2. It is the Board's CONCLUSION that, granting the hardship **does/ does not** result from conditions that are peculiar to the property, such as location, size, 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. This conclusion is based on the following FINDINGS OF FACT:
3. It is the Board's CONCLUSION that the hardship **did/ 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 granting of a variance shall not be regarded as a self-created hardship. This conclusion is based on the following FINDINGS OF FACT:
4. It is the Board's CONCLUSION that the requested variance **is/ is not** consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT:

Board Action:

Motion: _____ **Seconded:** _____

Approved: _____ **Denied:** _____ **Unanimous:** _____

Kane: ____ **Thompson:** ____ **Ferrante:** ____ **Newton:** ____ **Pullen:** ____

Alternates:

Peters: _____