

PLANNING STAFF REPORT
Variance Request

SUMMARY:

Hearing Date: November 19, 2014
Applicant: Gerald and Jane Kopecky
Property Owner: Gerald J. Kopecky et. al.
Case Number: 11273

Property Location and Description: The subject property, Tract 1 of Section 14 in Mallard Bay Residential Subdivision, Map Book 18, Page 12 (Exhibit 1), is located on Drake Road (SR 1692) in the Topsail Township. There is one (1) tract associated with this request totaling \pm 0.56 acres and the property may be identified by Pender County PIN 4213-16-8199-0000.

Zoning District of Property: The property is zoned RP, Residential Performance Zoning District.

Variance Requested: Gerald and Jane Kopecky, applicant and owners, are requesting a variance for relief from Pender County Unified Development Ordinance standards outlined in Section 4.14, Zoning District Dimensional Requirements, specifically requesting a variance for ten (10) feet from the minimum side yard setback requirement of ten (10) feet in the RP, Residential Performance Zoning District.

BACKGROUND AND DESCRIPTION OF VARIANCE:

On August 28, 2014 Planning Staff received a site plan submittal for a CAMA permit (PC 2014-09) for the adjacent property to the northeast (Exhibit 2).

After contacting the applicant and owners, Gerald and Jane Kopecky, it was determined this 8' x 12' garden shed was erected over the property line on the adjacent property by \pm 1.9 feet in error. The submitted site plan shows a structure over the property line by \pm 1.9 feet (Exhibit 3).

The applicant and the adjacent property owners (Paul and Carla Wolff) do have a recorded encroachment agreement for the structure (Exhibit 4). However, this agreement does not exempt the property owners from Pender County zoning regulations which necessitate structures be built at least with a ten (10) foot side yard setback in the RP, Residential Performance Zoning District.

As the structure is slightly on the adjacent property by \pm 1.9 feet, the required ten (10) feet setback in the RP, Residential Performance zoning district, per Section 4.14 Zoning District Dimensional Requirements, is not met. Therefore, the applicant is requesting a variance for ten (10) feet in total in order to keep the building where it is currently located.

If a variance is granted by the Board of Adjustment; the applicant must still meet all criteria outlined in the North Carolina Building Code for the structure. At current the applicant is seeking relief from solely standards outlined in Section 4.14 Zoning District Dimensional Requirements; ten (10) feet setback for side yard in the RP, Residential Performance Zoning District.

ZONING ADMINISTRATOR'S CONCLUSION:

Gerald and Jane Kopecky, applicant and owners, are requesting a variance for relief from Pender County Unified Development Ordinance standards outlined in Section 4.14, Zoning District Dimensional Requirements, specifically requesting a variance for ten (10) feet from the minimum side yard setback to meet the requirement of ten (10) feet in the RP, Residential Performance Zoning District.

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) 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, 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 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.
- 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.

Board of Adjustment: Finding of Facts

1. It is the Board’s CONCLUSION that the hardship of which the applicant complains (**results/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, the hardship (**results/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 (**results/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 (**consistent/ 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 all of the FINDINGS OF FACT:

Board Action:

Motion: _____ **Seconded:** _____

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

Ferrante: _____ **Pullen:** _____ **Newton:** _____ **Thompson:** _____ **Walton:** _____

Alternates:

Godridge: _____ **Peters:** _____

4.14 ZONING DISTRICT DIMENSIONAL REQUIREMENTS

Dimensional Requirements Table

Dimensional Standards ⁽⁹⁾	RA	RP	RM	MH	GB	OI	IT	GI	PD	EC
Lot Size	1 Acre ⁽⁸⁾	15,000 ⁽⁵⁾ Sq. Ft.	(1)	(7)	15,000 Sq. Ft. ⁽⁸⁾	15,000 Sq. Ft.	1 Acre	1 Acre	(1)	1 Acre
Lot Size Duplex	60,000 Sq. Ft.	22,000 Sq. Ft.	(1)						(1)	
Min. Area Rezoning ⁽³⁾	NA	5 Acres	10 Acres	5 Acres	1 Acre	1 Acre	5 Acres	5 Acres	100 acres	NA
Min. Lot Width-Ft	100 ⁽⁸⁾	80 ⁽⁶⁾	(1)	(7)	80 ⁽⁸⁾	80	100	100	(1)	100
Min. Chord Length at ROW line for “cul de sac’s”	45	30	(1)	20	30	30	45	45	(1)	45
Min. Front Yd.-Ft.	30 ⁽⁸⁾	30	(1)	(7)	25 ⁽⁸⁾	25	40	50	(1)	50
Min. Side Yard-Ft	15 ⁽⁸⁾	10	(1)	(7)	10 ⁽⁸⁾	10	25	25	(1)	25
Min. Corner Yard Ft (10)	15	15	(1)	(7)	12	12	20	25	(1)	25
Min. Rear Yard-Ft	30 ⁽⁸⁾	25	(1)	(7)	10 ⁽⁸⁾	10	25	25	(1)	25
Max. Height-Ft	35 ⁽²⁾	35 ⁽²⁾	45	35	40	40	50	50	(1)	40
Min. Req. Structure Separation	40 ⁽⁸⁾	30	(1)		50 ⁽⁸⁾	50	(11)	(11)	(1)	30

- (1) Dimensional standards in the Planned Development (PD) and Residential Mixed (RM) Districts are required to be specified on a Master Development Plan.
- (2) Maximum Height requirements in the RA, RP, RM and PD Zoning Districts shall be allowed an additional 10' feet if located within any Special Flood Hazard Area (SFHA) at the calculation of five (5) additional feet in building height per every two (2) feet built above the regulatory flood prevention protection elevation, as defined in the Pender County Flood Damage Prevention Ordinance with building height at a maximum of forty-five (45) feet.
- (3) Any parcel of property meeting the guidelines set forth in Sections 3.3 or 3.4 that adjoins an established zoning district that is identical to the district that is applying for a rezoning shall not have to meet the minimum area requirements for rezoning for that district.
- (4) The minimum required separation standards are for principal or primary structures, accessory structures must follow separation and setback requirements as outlined in Sections 4.6.3 and 5.3.3.A.
- (5) Minimum lot sizes in the RP zoning district may be reduced to twelve thousand (12,000) square feet with the evidence of public utilities (water and sewer) availability and connection is demonstrated.
- (6) Minimum lot width in the RP zoning district may be reduced to sixty (60) feet with the evidence of public utilities (water and sewer) availability and connection is demonstrated.
- (7) Dimensional requirements for a Manufactured Home District may be found in Section 5.3.2.D, Manufactured Home Community.
- (8) Dimensional requirements for a Recreational Vehicle Park may be found in Section 5.3.9.B, Recreational Vehicle Park.
- (9) Variations to Dimensional Standards are allowed for projects meeting LID Project Criteria, as overviewed in Section 7.14, Low Impact Development.
- (10) See Figure 4.1
- (11) North Carolina Building Regulations Apply