

CITY OF SENECA

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**Edward R. Halbig, AICP
Director**

**ZONING BOARD OF APPEALS
July 16th, 2020
Council Chambers – City Hall
6:00 PM**

I. Opening

II. Approve Minutes

III. Zoning Variance Application:

<u>Docket Item 1:</u>	VA-2020-05
<u>Property Owner:</u>	Michael and Susan McCalister
<u>Applicant:</u>	Same
<u>Property Address:</u>	127 Julian Drive
<u>Tax Map #:</u>	520-52-02-008

IV. Old Business (tabled variance application-VA 2020-04)

V. New Business

VI. Adjourn

The Seneca Zoning Board of Appeals met on Thursday, June 18th, 2020 at 6:00 p.m. in the City Hall Council Chambers. Members present included Mr. Marvin Gray, Chair, Ms. Tammy Garland, Vice Chair, Dr. Ronald Moore, and Mr. John Voss. Also present was Mr. Edward Halbig, Director; and Ms. Tracy C. Smith, Admin. Assistant and other interested persons (list in minute book). Mr. John Gillespie was absent. The press and public were duly notified as required by law.

Mr. Gray called the meeting to order at 6:00 p.m. He asked if there was any conflict of interest among the board members with the following request and asked that the record reflect there was a quorum.

**MINUTES
MOTION**

MOTION made to have minutes accepted as submitted.

Ms. Smith read the hearing process.

Ms. Smith read the variance application.

Docket No 1:	VA 2020-02
Property Owner:	Kenneth T. Cooper
Applicant	Same
Property Address:	412 S. Townville St.
Tax Map #:	520-40-01-006

VA-2020-
02

Mr. Halbig presented the staff report. He discussed the reason for variance request.

Mr. Gray asked if there was anyone who wished to speak in favor of the application.

Mr. Kyle McCormick (406 S. Townville St) introduced himself to board as neighbor to Mr. Cooper. He stated that he had no issue with variance request. He also discussed that most of the homes in the area were built close to property line. He stated that it would not be detriment to the district.

Discussion followed.

Ms. Courtney Dukes (105 E. S. 5th Street) introduced herself to board as neighbor to applicant. She stated she had no issue with placing the carport closer to her property.

Mr. Gray asked if there was anyone who wished to speak in opposition of the application.

There being none.

MOTION:
VA 2020-
02

MOTION made by Ms. Garland to approve VA 2020-01 as submitted. 904.2 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 granting of the variance.

SECOND made by Mr. Voss

Discussion followed.

MOTION:
VA 2020-
02

AYE Mr. Gray, Ms. Garland, Dr. Moore, and Mr. Voss.

Ms. Smith read the variance application:

VA 2020-
03

Docket No 2:	VA 2020-03
Property Owner:	David (Ken) Sloan
Applicant	Same
Property Address:	209 N. Fairplay St
Tax Map #:	520-28-09-004

Mr. Halbig presented the staff report. He discussed the reason for variance request. He stated the city enforces short term rental in the downtown area. He discussed the staff oversight on restrictions in the downtown area.

Dr. Moore asked for clarification of core boundaries and felt that boutique hotels would be a good use to have in core district.

Mr. Halbig discussed.

Mr. Voss stated he felt it was beyond the scope of work for the board to be asked to amend the ordinance which is above their duties.

Mr. Halbig discussed the use of a conditional use that is permitted with conditions. He again addressed the error in ordinance regarding parking requirements with short term rentals in the core commercial district.

Discussion followed regarding parking requirements in core district and as well as nonresidential on 1st floor of buildings.

Mr. Gray asked if request for Section 740.3 d be taken off application.

Mr. Halbig stated it needs to be left on application.

Ms. Garland asked how many other properties could be in the same situation as applicant.

Mr. Halbig stated approximately 10 residential properties in the same condition in core commercial district.

Mr. Gray asked if there was anyone who wished to speak in favor of the application.

Mr. Ken Sloan introduced himself to board as property owner. He discussed his intent of property.

Mr. Gray asked if there was anyone who wished to speak in opposition of the application.

There being none.

MOTION made by Ms. Garland to approve VA 2020-01 as submitted. 904.2 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 granting of the variance.

MOTION:
VA 2020-
03

SECOND made by Dr. Moore
AYE Mr. Gray, Ms. Garland, Dr. Moore
NAY Mr. Voss

Ms. Smith read the variance application:

VA 2020-
04

Docket No 2:	VA 2020-04
Property Owner:	Lance and Rachel Edwards
Applicant	Same
Property Address:	618 Pinecrest Dr.
Tax Map #:	520-44-02-006

Mr. Halbig read staff report.

Mr. Gray asked if there was anyone who wished to speak in favor of the application.

Mr. Edwards introduced himself to the board as property owner. He gave handout to board members. He discussed his intent of property was to replace his previous 2 car garage which was destroyed by tornado with a 3-car garage for more storage. He discussed the deed restrictions of the subdivision. He stated he and neighbor had discussed the reduced setback request.

Mr. Gray asked if there was anyone who wished to speak in opposition of the application.

Mr. Robert Harris (616 Pinecrest Dr.) introduced himself to board as neighbor to applicant. He discussed preserving the integrity of the neighborhood and a 10' barrier from garage to property line. He stated that a variance had never been allowed in the neighborhood.

Mr. Allen Hart (705 Ploma Dr.) introduced himself to board. He stated he had no issue with the applicant building a garage. His concern was how the variance might affect the character of the district.

Discussion followed.

MOTION:
VA 2020-
04

Motion made by Ms. Garland to table application until more clarification is gathered from city attorney on setback requirements and how they affect the covenant and restrictions.

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SECOND made by Dr. Moore
AYE Mr. Gray, Ms. Garland, Dr. Moore, and Mr. Voss.

**OLD
BUSINESS**

Mr. Gray asked if there was any old business to discuss.

There being none.

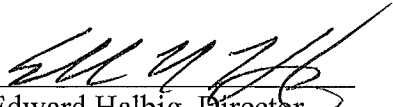
**NEW
BUSINESS**

Mr. Gray asked if there was any new business to discuss.

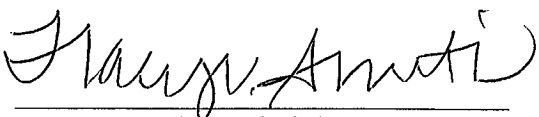
There being none.

ADJOURN

Meeting adjourned at 7:30 p.m.



Edward Halbig, Director
Planning & Development



Tracy C. Smith, Administrative Assistant
Planning & Development

ZONING VARIANCE APPLICATION

VA 2020-05

CITY OF SENECA, SOUTH CAROLINA

Variance: Request variance of set back from property line to replace utility sheds destroyed by the recent tornado. Sheds were destroyed by falling oak trees. Understand the established set back dimension is ten feet. Respectfully request the set back to be reduced to five feet or less.	Application Date:	
	Received By:	
	Public Hearing Date:	
	Public Notice Dates:	Publication: The Journal
	Fee: <i>20.00</i>	Receipt #:
Date Posted:	By:	

Property Owner(s): Michael P and Susan C McCalister	Phone #:864-886-0230
Owner(s) Address: 127 Julian Drive Seneca, SC 29678	
Applicant(s): Michael P and Susan C McCalister	Phone #:864-886-0230
Applicant(s) Address: 127 Julian Drive Seneca, SC 29678	

Property Location: (a plat must accompany this application) Lot No.7, Subdivision No.2		
Tax Map #: <i>520-52-02-008</i>		
Current Zoning Classification: R20	Non-Conforming Land/Structure Use <input type="checkbox"/>	
	Substandard Lot of Record <input type="checkbox"/>	
Land Area: 12,632 sq. ft.	Lot Dimensions: 100x128X100X12	Current Use of Property: Residential 1
Property Characteristics:		

Please answer the following:

1) Has any application involving this property been considered in previous action(s) by the Seneca Planning Commission or Zoning Board of Appeals? No Yes, please provide the date and details: _____

2) Please explain the reason for the request and additional information that supports the same:

The current set back places the sheds much closer to the house that we would like. I have spoken with a representative from the Seneca Baptist Church who is knowledgeable of the property line issues and placing the sheds closer to the property line is not a concern. This variance will allow us to replace the buildings destroyed by the tornado and still have the desired distance from the back of the house to the front of the sheds.

I/We request a variance from the following provision(s) of the Official Zoning Ordinance so that the property list in this application may be used in the manner indicated by the attached plot plan and reasons stated herein.

Additionally, I/we, the free holder(s) of the property/properties involved in this application certify and designate the person signing as applicant to represent me/us in this variance.

Property Owner(s) Name: (please print) <i>Michael P. AND Susan C. McCalister</i>
Property Owner(s) Signature(s): <i>Michael P. McCalister AND Susan C. McCalister</i>
Applicant(s) Name: (please print) <i>MICHAEL P. McCalister AND Susan C. McCalister</i>
Applicant(s) Signature(s): <i>Michael P. McCalister AND Susan C. McCalister</i>

STAFF USE ONLY	
Application Decision: <input type="checkbox"/> Approved <input type="checkbox"/> Denied	
Zoning Board of Appeals Chairperson Signature:	Date:
Comments:	

Staff Report

To: Zoning Board of Appeals
From: Edward Halbig
Planning Director

Date: July 8, 2020
Public Hearing: July 16, 2020
Docket: VA-2020-05

PROPERTY OWNER: Michael and Susan McCallister APPLICANT: Same
LOCATION: 127 Julian Dr. ZONING: R-20

REQUEST: Variance from Section 712 Side Yard Setback Requirements for Accessory Uses

TAX MAP #: 520-52-02-008

ANALYSIS:

The applicant seeks relief from Section 712 as it relates to side yard setbacks for accessory uses.

	Required Setback	Requested	Variance
Side Yard	10'	5'	50 %

The applicant owns a home in Seneca. An outbuilding was damaged during the EF3 tornado of April 13, 2020.

The applicant seeks to replace the outbuilding with another and seeks to place the building within the side yard setback. The applicant has requested a variance of 5 feet or less. As has been stated previously, placement of an accessory building at less than 5 feet requires additional code compliance with regard to fire protection.

STAFF FINDINGS

To be considered for a variance, one or more of the following findings must be made:

904.2 a) There are extraordinary and exceptional conditions pertaining to a particular piece of property in question because of its size, shape or topography;

There are no extraordinary and exceptional conditions due to size, shape or topography of the property.

904.2 b) Such conditions are peculiar to the particular piece of property involved and do not generally apply to other property in the vicinity;

Other properties in the area are similarly situated.

904.2 c) Because of these conditions, the application of the Ordinance on this particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;

The property is currently being used as a residence.

904.2 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 granting of the variance.

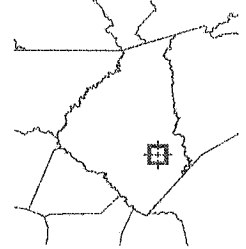
Other properties have accessory buildings that exhibit reduced side and rear yard setbacks; buildings being restored to those properties will either have to comply with setbacks or receive similar variances. maintaining a 5-foot setback should not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by granting of the variance.

904.2 e) The board may not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a non-conforming 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.




The variance would not allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a non-conforming use of land, or to change the zoning district boundaries shown on the official zoning map.



Overview



Legend

-  Parcels
-  Landhook
-  Roads

Date created: 7/9/2020
Last Data Uploaded: 7/8/2020 9:55:29 PM

Developed by  **Schneider**
GEO SPATIAL

Staff Report- Adendum

To: Zoning Board of Appeals
From: Edward Halbig
Planning Director

Date: July 9, 2020
Public Hearing: July 16, 2020
Docket: VA-2020-04

PROPERTY OWNER: Edwards, Lance and Rachael APPLICANT: Same
LOCATION: 618 Pincrest Dr ZONING: R-20

REQUEST: Variance from Section 522.6 Side yard setback

TAX MAP #: 520-44-02-006

At the meeting of June 18, 2020, the board asked for legal opinion of the city attorney regarding city zoning setback requirements and their effect on covenants and restrictions (C and Rs) of a subdivision. The text from the emails are included at the end of this report.

The attorneys state that lessening the restriction of the City's Zoning ordinance (which is within the purview of the ZBA) has no effect on reducing or negating the C and Rs of the subdivision. The enforcement of the C and Rs is the responsibility of the HOA. The more restrictive requirement shall apply (per section 101.1 of the City of Seneca Zoning Ordinance), and while the ZBA may reduce the setback, it still falls on the applicant and the HOA to come to agreement as to the reduction of the setback. Likewise, if the HOA and the applicant come to agreement on reduction of a setback, the City setbacks are still in force until such time as a variance is sought or the zoning requirements are changed.

To that end, Mr. Harris, neighbor of the subject property, has sent a form letter to a number of residents who are under the requirements of the Adams Subdivision C and Rs; the residents have taken steps to agree on a reduction of the C and Rs; they have in turn sent letters to the Planning department stating their amenability to a setback reduction that maintains a 10 foot setback between the structure and the property (C and Rs require a 20 foot setback). To date we have received 7 of 14 letters sent, all in favor of the reduction.

As the residents of the subdivision have taken action, it will then fall on the City to consider its setbacks and whether reduction of the setback in this instance meets one or more of the tests for consideration of a variance.

Email text

Bo:

Last Thursday, the ZBA board tabled a matter before them, hoping to receive legal advice. The board was concerned with the intersection of city zoning setbacks with C and R requirements. The Ordinance states that the more restrictive shall apply. However, if the city chooses to provide relief based on their findings and grant a variance, they are simply removing relieving their requirement, and it has no bearing on the C and R restrictions. The enforcement of the C and R would then be the responsibility of the HOA.

The board likened this to the short-term rental (STR) issue from last year stating that our "dismissal" of C and R would set precedent that STRs could ignore C and Rs as well. Our position is that the ordinance is a layer of regulation that may be greater or less than C and Rs, but that our lessening of our ordinance does not negate C and Rs.

The board will be looking for a legal opinion on this before they proceed. Let me know if I can offer more information.

Thanks.

Ed Halbig

Good Morning Mr. Halbig,

I am assisting Clark in response to your email. If you could please either send or point out the ordinances involved as well as any documentation the ZBA has related to this issue that would be incredibly helpful.

Thanks,
Christian

Christian H. Thorndike
Attorney

Christian:

Thanks for your assistance. the zoning ordinance is linked here:

<http://www.seneca.sc.us/Departments/PlanningDevelopment.aspx>

The Section/subsection is 101.1 (page 9). I would be curious to know whether C and Rs are considered "statutes". We have just assumed that they are in that they are legally defensible.

Ed

Good Morning Mr. Halbig,

When restrictive covenants and zoning ordinances are in conflict, the more restrictive of the two prevails. So if the City grants a variance it then removes the conflict and the remaining covenants and restrictions would control. So the ZBA is correct, the enforcement of the C and R would be the responsibility of the HOA. However, the ZBA should make it clear that granting the variance only removes the city's requirements and does not affect any other restrictions that may be applicable to the property.

Thanks,
Christian

Robert and Carolyn Harris
616 Pinecrest Dr.

Robert

City of Seneca Zoning Appeals Board,

I agree to a ten-foot side setback for 618 Pinecrest Drive in the Adams-Pinecrest Subdivision

Jeanne M. Robinson Date *6/2/20*

Address *503 PLUMER*

City of Seneca Zoning Appeals Board,

I agree to a ten-foot side setback for 618 Pinecrest Drive in the Adams-Pinecrest Subdivision

Brittany Reese

Date 7/3/20

Address 511 Ploma Pr.

City of Seneca Zoning Appeals Board,

I agree to a ten-foot side setback for 618 Pinecrest Drive in the Adams-Pinecrest Subdivision

Janey Davis Turner

Date 7/2/20

Address 608 Pinecrest Drive
Seneca, SC
29678

616 Pinecrest Dr.

City of Seneca Zoning Appeals Board,

I agree to a ten-foot side setback for 618 Pinecrest Drive in the Adams-Pinecrest Subdivision

Robert E. Stillwell Marian B. Stillwell Date 7/2/2020

Address 706 W. Quincy Rd, Seneca, SC 29678

City of Seneca Zoning Appeals Board,

I agree to a ten-foot side setback for 618 Pinecrest Drive in the Adams-Pinecrest Subdivision

~~JH~~ Date 7-4-2020

Address 606 Pinecrest DR

City of Seneca Zoning Appeals Board,

I agree to a ten-foot side setback for 618 Pinecrest Drive in the Adams-Pinecrest Subdivision

Robert Harris Date June 29, 2020

Address 616 Pinecrest Dr, Seneca, SC 29678

City of Seneca Zoning Appeals Board,

I agree to a ten-foot side setback for 618 Pinecrest Drive in the Adams-Pinecrest Subdivision

Drew & Whitney Merck Date 7-2-2020

Address 612 Pinecrest Drive