

Sumter City-County Zoning Board of Appeals

March 9, 2011

BOA-11-04, 229 Haynsworth Street (City)

I. THE REQUEST

Applicant:	Raymond E. Leidy
Status of the Applicant:	Property Owner
Request:	The applicant is requesting a 4.22 ft. variance from the side yard setback requirement of 5 ft.
Location:	229 Haynsworth Street
Present Use/Zoning:	Residential / R-9 (Residential-9)
Tax Map Reference:	228-07-02-024

II. BACKGROUND

A variance from the 10 foot setback requirement for the Residential-9 zoning district was approved for this property back in November 1985 by the Board of Appeals to allow for an addition to the side and rear of the existing house. The addition was to sit 5 feet from the side property line. Enclosed with this report is a copy of the site plan submitted to the Board of Appeals when they approved the variance. This site plan shows the existing house sitting 10 feet from the side property line and the 5 foot wide addition sitting 5 feet from the side line. The addition was built after this Board meeting.

Last year, Planning staff received a building permit application along with an as built plat of the existing conditions on this lot. The building permit was approved on June 24, 2010. The permit was to raise the existing house to a second story level within the existing setbacks. The as built survey showed the addition built some 25 years ago located .78 feet from the property line. Staff approved the permit because the second story addition was not encroaching any further than the existing house footprint which has existed for 25 plus years. Enclosed is a copy of the as built surveyed plat. It should be noted that the applicant is not the same property owner as back in 1985. The applicant purchased this home in 2001 as it existed. Mr. Leidy proceeded to construct a second story to his house and other improvements such as an attached garage with mother in-law suite above.

A couple of weeks ago, the adjacent neighbor came in inquiring about the construction and how close it was to her property line. She also had her side line surveyed in order to put up a fence in her back yard and found the house addition to be much closer than she thought to her line. At this time, Planning staff researched our history files and found BOA 85-26 approved by the Board of Appeals in October, 1985. This approval was to allow the addition 5 feet from the property line.

As one can see from the asbuilt survey done by Don Wilson, dated June 14, 2010, the existing house sits 5 feet from the property line instead of 10 feet as noted on the 1985 site plan; therefore placing the addition at .78 feet from the property line instead of 5 feet. Planning staff has not been able to find any paper work on the 1985 building permit; therefore we cannot answer questions pertaining to footing inspections at that time for the side addition. There appears to be a significant discrepancy from the site plan reviewed in 1985 and the as built survey as to the location of the side property line and this is what prompted this variance request before the Board.

It was only after going through this process and finding the site plan approved back in 1985 and comparing it to the asbuilt survey that it was discovered that another variance on this side yard setback would be necessary in order for this to be a legal nonconforming side setback. When this issue was brought to staff's attention, there was a meeting called to discuss the findings with the applicant and a stop work order posted on the house until this could be brought to this Board for review. It is possible that otherwise the need for a variance might not have been discovered as Sumter does not require residential plans review.

III. FOUR PART TEST

1) *There are extraordinary and exceptional conditions pertaining to the particular piece of property.*

The current layout of the house with the addition has existed for 25 years. Property owner bought this parcel in 2001 and refinanced in 2010. After going through two different closing to include title searches, this non-conforming setback was not caught at either time. Permit was approved on existing conditions and construction has been ongoing for almost a year with substantial amount of work completed.

2) *These conditions do not generally apply to other property in the vicinity.*

There is a substantial discrepancy between site plan measurements from 1985 site plan and the survey plot plan done by Don Wilson done June 14, 2010 regarding the existing structure's setback from the side property line. The previous owner built their addition in accordance with the site plan presented to the Board. If the site plan had been accurate in measurements back in 1985 then this variance would not be necessary.

- 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.*

The conditions imposed on this property do effectively prohibit or restrict the addition (new and old) to the existing structure. If the older addition and new construction were removed in order to meet the 5 foot setback requirement, the cost would be prohibitive.

- 4) *The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.*

The authorization of this variance will not pose a substantial detriment to the adjacent property and to the public good. This is a substantial upgrade to this house originally built in 1930's. Applicant has attempted to meet with adjacent neighbor for some type of mutual compromise.

IV. STAFF RECOMMENDATION

Staff recommends approval of this request.

V. DRAFT MOTIONS FOR BOA-10-02

- A. I move that the Zoning Board of Appeals approve BOA-11-04, subject to the findings of fact and conclusions contained in the draft order, dated March 9, 2011, attached as Exhibit 1.
- B. I move that the Zoning Board of Appeals deny BOA-11-04, on the following findings of fact and conclusions:
- C. I move that the Zoning Board of Appeals enter an alternative motion for BOA-11-04.

VI. ZONING BOARD OF APPEALS – MARCH 9, 2011

The Sumter City-County Board of Appeals at its meeting on Wednesday, March 9, 2011, voted to approve the above referenced request allowing for the .78 foot side yard setback. A condition was placed on this approval not to allow any 2nd story construction above the 1 story addition to the house measuring a width of 4.9 feet from the original wall of the house. This measurement is taken from the as-built survey done by James D. Wilson dated 6-14-10. Any 2nd story addition is required to meet the 5 foot setback approved in 1985 by the Board of Zoning Appeals.

Exhibit 1
Order on Variance Application
Sumter Board of Appeals

BOA-11-04, Raymond E. Leidy
229 Haynsworth Street
March 9, 2011

Date Filed: March 9, 2011

Permit Case No. BOA-11-04

The Sumter Board of Appeals held a public hearing on Wednesday, March 9, 2011 to consider the appeal of Raymond E. Leidy located at 229 Haynsworth Street, Sumter, for a variance from the strict application of the Zoning Ordinance as set forth on the Form 3 affecting the property described on Form 1 filed herein. After consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions.

1. The Board concludes that the Applicant **has** - **does not have** an unnecessary hardship because there are extraordinary and exceptional conditions pertaining to the particular piece of property based on the following findings of fact:

The current layout of the house with the addition has existed for 25 years. Property owner bought this parcel in 2001 and refinanced in 2010. After going through two different closings to include title searches, this non-conforming setback was not caught at either time. Permit was approved on existing conditions and construction has been ongoing for almost a year with substantial amount of work completed.

2. The Board concludes that these conditions **do** - **do not** generally apply to other property in the vicinity based on the following findings of fact:

There is a substantial discrepancy between site plan measurements from 1985 site plan and the survey plot plan done by Don Wilson done June 14, 2010 regarding the existing structure's setback from the side property line.

3. The Board concludes that because of these conditions, the application of the ordinance to the particular piece of property **would** - **would not** effectively prohibit or unreasonable restrict the utilization of the property based on the following findings of fact:

The conditions imposed on this property do effectively prohibit or restrict the addition (new and old) to the existing structure. If the older addition and new

construction were removed in order to meet the 5 foot setback requirement, the cost would be prohibitive.

4. The Board concludes that authorization of the variance will– will not be of substantial detriment to adjacent property or to the public good, and the character of the district will - will not be harmed by the granting of the variance based on the following findings of fact:

The authorization of this variance will not pose a substantial detriment to the adjacent property and to the public good. This is a substantial upgrade to this house originally built in 1930's. Applicant has attempted to meet with adjacent neighbor for some type of mutual compromise.

THE BOARD, THEREFORE, ORDERS that the variance is DENIED – GRANTED, subject to the following conditions:

The Sumter City-County Board of Appeals at its meeting on Wednesday, March 9, 2011, voted to approve the above referenced request allowing for the .78 foot side yard setback. A condition was placed on this approval not to allow any 2nd story construction above the 1 story addition to the house measuring a width of 4.9 feet from the original wall of the house. This measurement is taken from the as-built survey done by James D. Wilson dated 6-14-10. Any 2nd story addition is required to meet the 5 foot setback approved in 1985 by the Board of Zoning Appeals.

Approved by the Board by majority vote.

Date issued: _____

Chairman

Date mailed to parties in interest: _____

Secretary

Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.