Sumter City-County Board of Zoning Appeals

May 9, 2012

BOA-12-20, 629 Periwinkle Court (City)

The applicant is requesting a 1.5 ft. variance from the side yard setback requirement of 5 ft. for an accessory storage building per Article 4, Section 4.g.2.b.5 Development Standards for Residential Accessory Buildings

Sumter
SOUTH CAROLINA

Appeals - Variance - Special Exception

Sumter City-County Zoning Board of Appeals

May 9, 2012

<u>BOA-12-20, 629 Periwinkle Ct. (City)</u>

I. THE REQUEST

Applicant:	Maria Russell & Natividad Burroughs
Status of the Applicant:	Property Owners
Request:	The applicants are requesting a 1.5 ft. variance from the side yard setback requirement of 5 ft. for an accessory storage building.
Location:	629 Periwinkle Court
Present Use/Zoning:	Residence/Residential-15
Tax Map Reference:	204-07-01-029

II. <u>BACKGROUND</u>

The property owners poured a concrete slab, shown in the photograph to the right measuring 14 feet by 34 feet in their rear yard in order to place a storage building. They did not obtain a building permit before starting construction. Zoning received a call, did a site inspection and found the side setback nonconforming. The required setback is 5 feet from the side line. The rear corner of slab meets the setback with 6.5 feet but the front corner only has 3.5 feet setback.

Therefore, the property owners are asking for a variance of 1.5 feet in side yard setback in order to keep the slab in its current location so they can place a storage building there per Section **4.g.2.b.5 Setbacks for Residential Accessory Structures.**

The adjacent property owners at 625 Periwinkle have no objection to the slab (letter is included with report- **Attachment 1)** as long as the applicant installs a white vinyl privacy fence along the side property line between their properties. Applicant agreed to do this and the fence is being installed as shown in the photograph below. Applicants also intend to remove the existing storage building on their property

Accessory building in rear of lot to be removed.

Fence Installed as agreed between Applicant & Neighbor

Neighbor to the Right

Also included is the property owner's response to the four-part hardship criteria for your review. (**Attachment 2)**

III. FOUR PART TEST

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

   There are no extraordinary or exceptional conditions pertaining to this property. The parcel has more than sufficient area to meet the 5 foot setback requirement. If permit had been obtained before work began then the variance would not be needed because the required setback would have been noted on the permit and there would have been some discussions with staff before the fact.

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

   Conditions do apply to other properties in this area. These same setbacks and regulations are required and apply to all residential properties proposing to construct accessory structures.

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 would not prohibit the use of the property. There is an existing residence on the property and sufficient area for detached accessory structures within the buildable area of this parcel.

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 could possibly pose a substantial detriment to the adjacent property. The intent of the ordinance is to have some type of reasonable open space between neighbor's property lines so not to feel like one is encroaching upon the other.

IV. STAFF RECOMMENDATION

Staff recommends denial of this request because it does not meet the four part criteria as outlined in the City Zoning Ordinance.

V. DRAFT MOTIONS FOR BOA-12-20

A. I move that the Zoning Board of Appeals deny BOA-12-20, subject to the findings of fact and conclusions contained in the draft order, dated May 9, 2012, attached as Exhibit 1.

B. I move that the Zoning Board of Appeals approve BOA-12-20, on the following findings of fact and conclusions:

C. I move that the Zoning Board of Appeals enter an alternative motion for BOA-12-20.

VI. ZONING BOARD OF APPEALS –MAY 9, 2012

The Sumter City-County Board of Appeals at its meeting on Wednesday, May 9, 2012, voted to approve this request subject to the findings of facts and conclusions listed on exhibit 1.

Exhibit 1
Order on Variance Application
Sumter Board of Appeals

BOA-12-20, 629 Periwinkle Court

May 9, 2012

Date Filed: May 9, 2012 Permit Case No. BOA-11-23

The Sumter Board of Appeals held a public hearing on Wednesday, May 9, 2012 to consider the appeal of Maria Russell & Natividad Burroughs, 629 Periwinkle Ct., 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 concrete slab was poured on February 21, 2012. It is adjacent to a property line that is diagonal, in relation, to the concrete slab. The rear of the concrete slab is approx. 6.5 feet from the property line which is in compliance with aforementioned zoning ordinance. The front of the concrete slab is approx. 3.5 ft. from said property line, placing it in violation of said zoning ordinance. In order to move the slab, we would have to cut and re-pour the concrete which would result in unnecessary hardship due to it costing more money.

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:

   Other properties in the vicinity do not have a concrete slab already poured and in place. Unfortunately, the property line is not straight, thus, causing the difference in distances from the rear of the slab versus the front of the slab.

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 application of the ordinance, for said concrete, would effectively prohibit or unreasonable restrict the utilization of the property by not allowing us to place a shed on the slab, as intended. If the variance application is denied, then we will be

forced to cut the concrete slab but will not be able to afford re-pouring of the concrete slab due to the cost of concrete, labor costs and the damage the cement truck would cause again. Therefore, not allowing us to properly store our personal belongings.

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 adjacent property owners have given a letter of no contest to include with this application as long as conditions are met in said letter. The letter states, they have no objections to concrete slab and shed being built as long as permit is issued to place a privacy fence on the property line. As of April 12, 2012, said permit has been issued and privacy fence has been installed. Said property owner agrees it will raise the aesthetics of not only said properties but the neighborhood as a whole.

THE BOARD, THEREFORE, ORDERS that the variance is ❒ **DENIED –**
☑ G**RANTED:**

Approved by the Board by majority vote.

Date issued: _____
Chairman

Date mailed to parties in interest: _____
Board Secretary

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