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 PLANNING AND NEIGHBORHOOD SERVICES

Variance Staff Report

Case: VAR 2014-002 Accessory Structure Side Setback Encroachment		
Reference Name	Burney Accessory Structure Encroachment	
Proposed Request	Variance Relief from Section: <ul style="list-style-type: none"> 710.040 Lot and Building Standards, (E) Height of Accessory Structures 	
Existing Site Characteristics	Existing Zoning	SF-1 (Single-Family Residential)
	Existing Use	Single Family Home
	Site Acreage	0.497 (21,650 Square Feet)
Applicant	Timothy & Tammy Burney, Property Owners	
BOA Hearing Date	September 25, 2014	
Location	233 Enchanted Drive (Enchanted Forest Neighborhood), Matthews, NC 28104	
Tax Map Number(s)	07-132-146	
Plan Consistency	Designation	Old Monroe Village

Project Summary

Request: Timothy & Tammy Burney the property owners of 233 Enchanted Drive (Parcel 07-132-146) are requesting a variance to allow existing structure relief from the side setback requirement for accessory structures that are over a height of twelve (12') feet.

Mr. Burney's accessory structure is fifteen (15') feet in height which requires it to be set eleven (11') off the side property line. It is set approximately five (5') feet off the property line.

Background

Mr. Burney constructed a structure (no walls) in July of this year in the rear of his property along the side property line as a means to park his recreational vehicle. The structure was constructed without Town zoning or Union County building permits. Town staff learned of the existence of the structure through a citizen complaint. Union County permitting staff has indicated the applicant may go through the Town variance process in advance of obtaining the necessary building permits and making any building code required changes to the structure.

The applicable UDO Section is:

- 710.040 Lot and Building Standards, (E) Height of Accessory Structures
 Accessory structures may not exceed 12 feet in height or the height of the principle building

on the same lot, whichever is less. Request for heights beyond the 12-foot maximum shall require a setback from both the side and rear yard setback of two-feet for every one-foot in height.

Since the structure is fifteen (15') feet tall – three (3') taller than what's allowed, the structure should have been placed a minimum of eleven (11') feet from the side property line. It is currently only five (5') feet from the property line. Therefore, the owner is looking for relief of six (6') feet from the setback requirement in section 710.040 of the UDO.

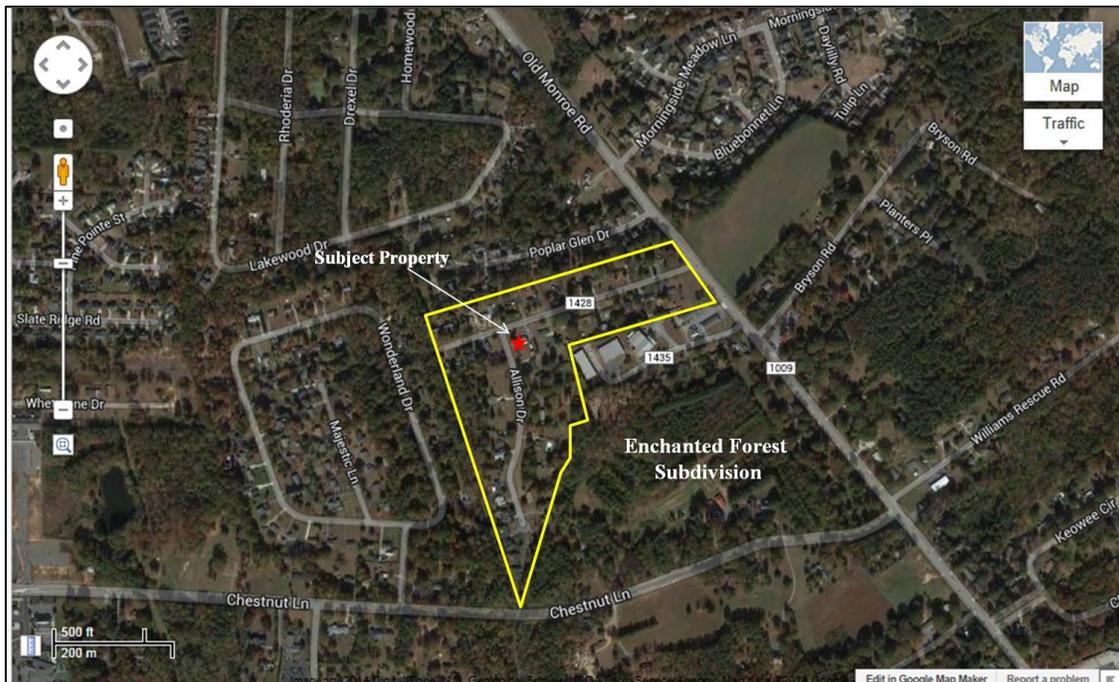
This public hearing for the subject variance was noticed in compliance with NC State Statutes and the UDO. Adjacent property owners were notified by first class mail and the property was properly posted. There are no HOA's in the vicinity to be notified.

Analysis

Site and Adjacent Properties

The subject property is located in the Section 2 of the Enchanted Forest subdivision. The neighborhood is zoned SF-1 (Single-Family Residential) and was created in 1974. The house on the property was built in 1984 & the lot is approximately .497 acres or 21,649 square feet and is located on the corner of Enchanted Drive and Allison Drive, as referenced in the maps below.

Enchanted Forest Subdivision



Parcel Map



Letter of Intent/Statement of Justification

The applicant states in his Letter of Intent and Statement of Justification (*See Attachment #1*) there are particular hardships from which he suffers.

1. He states that it's his intention to apply for a variance for the location of the structure, apply for a building permit and to bring the structure up to code in regards to the construction.
2. The applicant decided to build the structure to use as a cover for their recreational vehicle in its current location because it was the least intrusive on the surrounding homes. Because of the row of existing Leyland Cypress' (on adjacent property & approximately twenty (20') feet tall) they felt that this location would block the view of the RV from the neighbor's property.

Improvements

Mr. Burney constructed the structure out of 6'x6' wooden posts with a gabled frame roof system. The height at the peak of the structure is fifteen (15') feet, which by the UDO regulations, requires the structure to be an additional six (6') feet towards the interior of the property. The rear portion of the structure has some of its supports attached directly to the roof of the existing accessory structure. As noted above, an SUP and separate Union County building permits would be required to bring the structure into compliance (in addition to the variance).

Special Use Permit

It's important to reference that if the variance is approved, a Special Use Permit (SUP) approval would also be required to facilitate having the structure brought into compliance with Town permitting requirements/standards. Section 710.030 (1) of the Unified Development Ordinance (UDO) states: Accessory uses must be subordinate and clearly incidental to the principle use of the property. No accessory structure floor area may exceed 60% of the primary structure unless granted a Special Use Permit in accordance with Chapter 360 of this UDO.

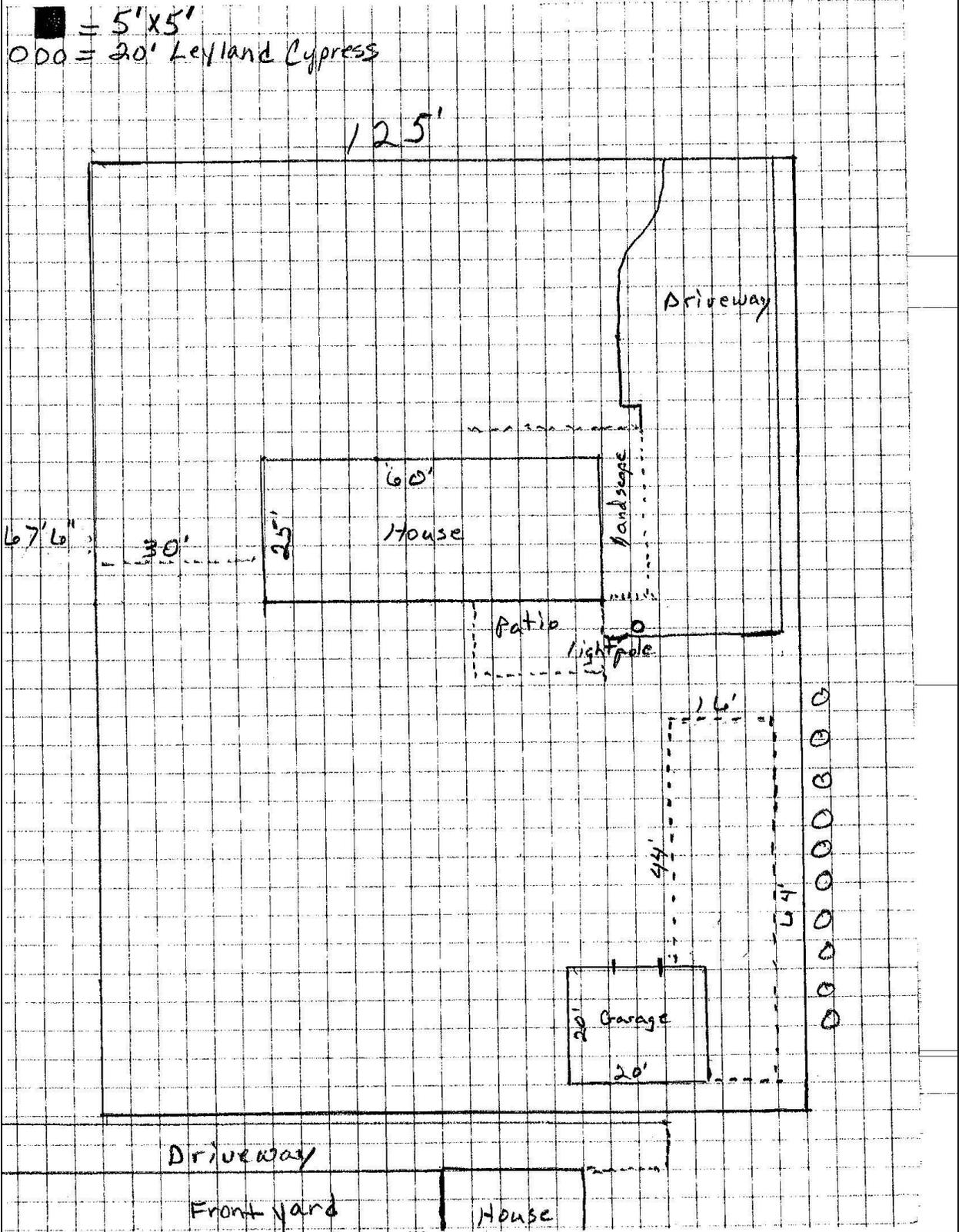
Based on the size of the principle house (1,500 square feet) the applicant is allowed to have an accessory structure up to 900 square feet (60% of 1,500 SF = 900 SF) without having to receive

an SUP but anything over 900 SF triggers the requirement. Based on the calculations of both the new and existing accessory structure, the total square footage is 1,364 SF or 90% of the primary home size. The proposal contemplates a major expansion of an accessory structure requiring an SUP in addition to the variance and building permits. The applicant is permitted to apply for the SUP after a determination is made on the proposed variance.

Aerial Map with Structure Location



Diagram of Proposed Addition



Initial Inspection Date



Variance Request

This request is for relief of six (6') feet of the required side setback associated with Section 710.040 of the UDO, which provides regulations for lot and building standards within the Town.

Section 710.040 Lot and Building Standards

E. Height of Accessory Structure

Accessory structures may not exceed 12 feet in height or the height of the principle building on the same lot, whichever is less. Request for heights beyond the 12-foot maximum shall require a setback from both the side and rear yard setback of two-feet for every one-foot in height.

Outside Agencies

Union County Building Code Enforcement – The Residential Building Supervisor has stated (via email 8-15-14);

“That without extensive engineering from a licensed structural engineer resting a load from one building to another in this manner is just not possible, nor could we use a code book to make it possible unless the roof is penetrated and the load path of the new structure carried all the way to the ground. In a case such as this, if it is not torn down, at the minimum an engineer will have

to be hired because we cannot see the footings or test the bearing capacity of the soil supporting the section of the new building that is not resting on the existing one, and then that same engineer could address the other problems.”

Plan Consistency

The subject property is located within the Old Monroe Village Plan of the Comprehensive Plan, which is a Suburban Mix Village. This project could be consistent with Comprehensive Plan goal 2.3.2 Land Use and Housing in light of it being a continuation of a residential use if a Variance and other associated permits (SUP, building permits, etc.) can be obtained and impacts to adjacent properties are minimized.

2.3.2 Land Use and Housing – Improve existing Indian Trail neighborhoods to create strong and vibrant communities.

The addition would provide a location for Mr. Burney to place his recreational vehicle while creating the least amount of impact on surrounding properties.

Required Findings

Under UDO Chapter 380, the Board of Adjustment, when considering whether to approve an application for a variance request, shall review and evaluate the following:

1. **Whether the permit is in the Town’s Jurisdiction according to the table of permissible uses:**
The subject permit is within the Town’s jurisdiction to regulate single-family residential uses and its accessory uses.
2. **Whether the application is complete.**
Staff is of the opinion that the application for VAR2014-002 is complete.
3. **The Board will consider whether the application complies with all of the applicable requirements of this ordinance.**
The facts show that VAR 2014-002 would not be in compliance with the setback requirements set forth by the Unified Development Ordinance, however, the subject application is for a Variance to these requirements. In addition, the applicant would be subject to receiving a Special Use Permit as stated above in order to comply with all other applicable requirements.

Under UDO Section 380.020, the Board of Adjustment must make these required considerations of public health, safety, and welfare. The Board of Adjustment’s authority in the review of this variance application is broad and the Board may approve with conditions if it concludes, based upon the information submitted at the hearing, that the proposed request finds that:

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; *and*
2. The hardship results from conditions that are peculiar to the property, such as location, size, or 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; *and*

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 the granting of a variance shall not be regarded as self-created hardship; *and*
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; *and*
5. The variance will neither result in the extension of a nonconforming situation in violation of DIVISION 1400, Nonconformities nor authorize the initiation of a nonconforming use of land.

If one of these findings cannot be made, then the Board must move to deny the variance request, stating for the record why the Board has decided to do so.

If the Board is of the opinion that the above required findings can be made to approve the variance, staff recommends the site be subject to the following conditions:

1. Applicant must obtain a Special Use Permit from the Board of Adjustment; and
2. Asbuilt Survey by a licensed land surveyor determining the exact amount of encroachment and foot print of the structure; and
3. All necessary permits must be obtained from Union County Building Code Enforcement Department and any other outside agencies; and
4. Provide screening in the form of mesh/fabric material that is installed along the side of the structure fronting Allison Drive to minimize the impact for other adjacent properties.

Summary

The Town has provided its analysis of this variance request in the above staff report, and now offers this into the record for the Board's consideration.

Staff Contact

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Attachment 1 – Application/Letter of Intent

Attachment 2 – Additional Images

ATTACHMENT #1
Application/Letter of Intent

ATTACHMENT #2
Additional Images





