

OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC



TEL (864) 638-4218 FAX (864) 638-4168

Minutes

6:00 PM – June 28, 2021

Members in Attendance

Jim Codner

Bill Gilster

Bill Decker

Gwen Fowler

Staff

Katie Smith

Laura Zimmerman

Media

None

ITEM 1 – Call to Order – Mr. Codner called the meeting to order at 6:00 PM.

ITEM 2 – Approval of minutes of May 24, 2021 meeting – Mr. Gilster made a motion to approve; seconded by Mr. Decker. Vote 4/0 to approve.

ITEM 3 – Brief statement about rules and procedures – Mr. Codner outlined the proceedings of the meeting going forward:

- Applicant will provide a 5-minute presentation about the need for the variance, with the chairman having the unilateral ability to grant more time as needed
- Staff will address any additional issues
- Citizen comments – 5 minutes each – People speaking in favor of the variance will speak first, people speaking against will follow.
- Unsworn public comment – 3 minutes each
- Applicant rebuttal
- Board member questions
- Voting

ITEM 4 – Variance request application #VA21-008: Property owner Denise Surratt is requesting a variance from the 25' setback requirement from the right-of-way to permit a mobile home at 203 Newport Road, Seneca, SC 29678 (Tax ID #292-00-03-013).

Applicant's opening statement and provision of evidence:

Ms. Surratt stated she was appealing a zoning violation she received from the Oconee Planning Department regarding a 25' setback. She argued W & W set up her mobile home in 2019 using the 25' setback and getting approval from Oconee County Building Codes and Planning Departments. She asked why the placement was fine in 2019, but not now. Mr. Codner asked Ms. Surratt, where the 25' is from. Ms. Surratt explained it was from the center of the road as noted on the plat that was approved in 2019. Mr. Codner questioned that her property line was the center of the road. Mr. James Pierson, former neighbor and real estate professional that assisted Ms. Surratt in purchasing the home and property, was recognized to speak on Ms. Surratt's behalf. Mr. Pierson supported Ms. Surratt's statement that the setback was 25' from the center of the road because Newport Road is a private road, not a county road. Mr. Pierson noted that a year after W & W set up the mobile home with the County's approval, 21 acres around Ms. Surratt's property was sold. The new owners wanted to buy Ms. Surratt out and Ms. Surratt declined. Shortly after she declined their offer, the new owners complained that Ms. Surratt's home was in the required setback. It was determined that the home was in the setback and Ms. Surratt spent \$3,000 to have the home moved. The complainants have now filed a new complaint stating the home is still in the setback. Mr. Pierson added that the home cannot be moved further back as it would encroach onto the septic tank. Mr. Decker asked if there had been changes made to the road and whether the measurement was from the center of the road was to the home or the porch. Ms. Surratt confirmed that no changes had been made to the road and the measurement was to the underpinning of the mobile home. Ms. Fowler asked for confirmation that it was the center of the road, not the edge of the road, used in the measurement. Ms. Surratt confirmed it was the center and Mr. Pierson added that W & W also measured from the center when they reset the home. Mr. Codner expressed concern of where the property line is as the set back is 25' from the property line. Ms. Surratt and Mr. Pierson argued that the center of the road is the property line when the property is on a private road. Ms. Fowler agreed with that assessment and explained that criterion encourages property owners to maintain their portion of a private road. Mr. Codner noted the plat in the back up that showed what W & W submitted and Oconee County approved for the setup of the mobile home. Mr. Gilster asked for clarification of the sequence of events. Ms. Surratt summarized:

- The site plan for placement of the mobile home was submitted by W & W and was approved by Oconee County in 2019
- A complaint was filed in 2020 that the mobile was in the setbacks. The home was found to be in the setbacks and was moved with approval of site plan by Oconee County
- A new complaint has been submitted in 2021 claiming the home remains in the setbacks

Public comment time:

Mr. Codner opened up the public comment portion of the meeting. Mr. Tjay Bagwell, Attorney introduced himself as speaking on behalf of Danny and Trisha Varela. The Varelas own the property north of where Ms. Surratt is requesting the variance. Mr. Bagwell provided documents for review, including a survey showing the placement of the mobile home as of February 2020. The survey shows that the mobile home to be approximately 8' in the road right-of-way and therefore in the setbacks. The Varelas ask that the request for variance be denied siting that cars are being parked in the road right-of-way and pose potential safety issues and that access to the Varela's property by construction equipment will be limited. Mr. Bagwell referred to Sec. 38-9.3 (2) b – *Where a property abuts a street right-of-way, the setback shall be measured from the right-of-way line.* Mr. Bagwell asserted that the ordinances that address setbacks were created to give people a place to park their cars or to keep children in yards and out of the road. Mr. Bagwell acknowledges that Ms. Surratt is due frustration since placement of the mobile home was approved twice by the County. However, the Varelas ask that the variance be denied so rules that were established are followed. Ms. Fowler asked when did the Varelas purchase the 21 acres. Mr. Bagwell advised April 3, 2020. Mr. Codner asked for clarification regarding the plat Mr. Bagwell distributed to board members. Is the location of the mobile home on the plat its current location or before it was moved by Ms. Surratt? Mr. Bagwell stated the plat displays the mobile home prior to Ms. Surratt moving it. He added that he understands the mobile home is now out of the right-of-way, but does not adhere to the required 25' setbacks from the edge of the right-of-way. Ms. Fowler asked if the Varelas had a current plat that shows the mobile home sitting in the right-of-way. Mr. Bagwell answered no and confirmed the plat is inaccurate with respect of the current position of the mobile home. Mr. Decker stated the question is now where is the measurement for a setback taken since the plat Mr. Bagwell distributed say it is not the center of the road. Mr. Bagwell restated above referenced ordinance. Mr. Codner questioned if the right-of-way was part of the property. Ms. Fowler stated the right-of-way is part of the property as the center of the road is marked as the property line on the plat Mr. Bagwell distributed. Mr. Gilster asked Mr. Bagwell to confirm that the Varelas believe that the mobile home should be 50' from the center line—25' for the right-of-way and 25' for the setback. Mr. Bagwell confirmed that statement. Mr. Gilster suggested that an interpretation from staff on the right-of-way and setbacks were needed. Mr. Codner asked if the Varelas had plans to improve the road in the future. Mr. Bagwell has not discussed future plans with Varelas.

Applicant rebuttal:

Mr. Pierson stated, all property owners on the road would have to agree to give up some of their property to have Newport Road paved, because property lines go to the center of the road as they include the private road. Mr. Pierson also stated that the safety issues with parking in the road are no longer an issue. Ms. Surratt parks to the side or behind her mobile home now. Mr. Pierson reiterated that Ms. Surratt is not questioning the existence or the size of the setbacks or the right-of-way. She is simply

asking for a variance. Ms. Surratt disputed the claim that heavy equipment has been unable to get back to the Varela's property. When asked by Mr. Codner if she had to park in the right-of-way, Ms. Surratt explained that she parks behind her mobile home. Mr. Codner asked where Ms. Surratt's septic tank was located. Ms. Surratt and Mr. Pierson stated it was in the back and mobile home could not be moved back any further because it would be on the septic tank. Mr. Pierson again stated that Ms. Surratt is asking for a variance no matter what whatever the ordinance states. Mr. Gilster asked if all the property owners along the road are in the same situation as Ms. Surratt. Mr. Pierson explained that was not the point he was trying to make. He again explained the process of changing a private road into a county road. However, he believes that there may be houses in the development that are as close to the road as Ms. Surratt and it has never been an issue.

Mr. Codner asked Ms. Zimmerman is she had any comments or research to add to the discussion. Ms. Zimmerman did not. Mr. Decker stated he is unclear if the setbacks pertain to private roads. Mr. Codner stated he did not understand the rules regarding setbacks and right-of-ways when it is a private road; Mr. Gilster agreed. Ms. Fowler expressed her issue with the County giving Ms. Surratt two different permits and approvals only to have the placement of the mobile home to be questioned again. Ms. Fowler believes Ms. Surratt accommodated the complaint when she moved the mobile home in 2020 and that in should now fall on the County, who does not have a representative at hearing to tell the Board what they should do. Mr. Gilster suggested that the variance request should be put on hold until the Board can get reading from staff regarding the rules on right-of-ways.

Mr. Gilster made a motion to table the hearing for variance application #VA21-008 until the Board can get an official ruling from the County on setbacks and right-of-ways for private roads. Mr. Decker seconded the motion. Discussion: Ms. Fowler reiterated her view that the placement of the mobile home has been approved twice by the County, Ms. Surratt accommodated the first complaint by moving the mobile home. Ms. Fowler stated she believes the complainants are trying to get Ms. Surratt to leave the neighborhood. It was Ms. Fowler's opinion that Ms. Surratt has done all she can do. She cannot move the mobile home further back or she will be on her septic tank. Ms. Fowler suggested that since the Varelas have 21 acres, they should accommodate Ms. Surratt. Ms. Fowler added that the County staff have not done their job properly. Mr. Codner agreed and summarized that the question at hand is should the Board grant a variance to allow Ms. Surratt's home to come right up to the right-of-way. Ms. Fowler argued that the home is not in the right-of-way according the plat they reviewed. Mr. Decker noted that Ms. Surratt is not trying to cut corners as has paid \$3,000 to have the mobile home moved. Ms. Fowler agreed. Ms. Surratt is not trying to cut corners; all she is asking is to be left alone. Mr. Decker asked if the porch on the mobile home makes a difference, because it is not 25' back from the center line of the road. It was agreed that is part of the structure, but there is no consensus on the setbacks or right-of-way. Mr.

Gilster commented that he made the motion to table the request because time does not seem to be critical to the outcome. He added he would like to get clarification on what is law and what isn't law and make his decision on based on that, and not emotions. Mr. Codner agreed with Mr. Gilster. Ms. Fowler added she wants to know why County staff approved it twice. Mr. Codner agreed and called for a vote on the motion. The motion passed 4/0. Mr. Codner advised Ms. Surratt to revisit County Departments to get explanation of approvals and the Board will determine the law that governs the issue at hand. Mr. Codner stated the next meeting would most likely be in August. Ms. Smith explained that a tabled request, must be taken up at the next scheduled meeting, which is July 26, 2021.

Item 5 – Variance request application #VA21-009: Fant Reichert & Fogleman, Inc. is requesting a variance from the 25' setback requirement from the right-of-way to permit underground storage tanks and light poles at 1631 Sandifer Boulevard, Seneca, SC 29678 (Tax ID# 222-00-02-012)

Applicant's opening statement and provision of evidence:

Mr. Blake Loudermilk stated he was speaking on behalf of Mr. R. L. "Chip" Fogleman, whose signature and stamp are on the plans to be discussed. Mr. Fogleman had a scheduling conflict that prevented him from attending tonight. Mr. Loudermilk stated that their client intends to develop the subject property into a gas station. When they submitted plans to the Planning Department, it was rejected because the storage tanks and light poles encroached into the 25' required setback. Thus, they are requesting a variance for the proposed plan. Mr. Loudermilk presented a visual to show the proposed location of the storage tanks and light poles. He explained that need for the gas trucks have a "one way in – one way out" route when they come to fill the tanks necessitated their variance request. Mr. Loudermilk added that the location of the light poles was designed for site light and safety. He noted that similar developments in Oconee County have been approved for the same variance for the same reasons. Mr. Codner asked for clarification on the number of entrances and their location. Mr. Loudermilk advised there were two entrances, one off Hitec Road. and one off Sandifer Boulevard (an existing entrance). Mr. Decker asked why proposed structures can't be pushed back and Mr. Loudermilk explained the proposed layout is the only way they can accomplish having a one-way in/one-way out and keep the parking needed for customers. Mr. Gilster asked if the storage tank will require maintenance and if lighting could be moved. Mr. Loudermilk advised the development will be brand new, so eventually the tanks may need maintenance. He added that the position of the light poles is critical to the lights' photo metrics and the ability to light the entire site. Mr. Loudermilk confirmed there are no safety concerns with the placement of the lights and tanks as it will be all inside the right-of-way. Mr. Codner asked what the small existing structure on the property is. Mr. Loudermilk deferred to Stephen Roach who said it was a lift station. Mr. Loudermilk confirmed Mr. Gilster's statement that the primary motivation for the variance request was to allow gas trucks to enter through one

entrance, fill-up tanks, and exit through the other entrance, without having to turn around. Mr. Roach said that ideally a truck would enter at Hitec Road, where there is a traffic light, fill up tanks and then exit onto Sandifer/HWY 123 without having to cross traffic.

Public comment time:

None

Applicant rebuttal:

None

Staff comments:

None

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

- a. Motion – Mr. Gilster made a motion, seconded by Mr. Decker
- b. Vote

In-favor	Opposed
4	0

Mr. Codner noted that the criterion passed.

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

- a. Motion – Mr. Gilster made a motion, seconded by Mr. Decker
- b. Vote

In-favor	Opposed
4	0

Mr. Codner noted that the criterion passed.

3. Because of these conditions, the application of this chapter to the particular piece of property **would** effectively prohibit or unreasonably restrict the utilization of the property; and

- a. Motion – Mr. Gilster made a motion, seconded by Mr. Decker
- b. Vote

In-favor	Opposed
4	0

Mr. Codner noted that the criterion passed.

4. The authorization of a variance ***will not*** be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.

- a. Motion – Mr. Gilster made a motion; seconded by Mr. Decker
- b. Vote

In-favor	Opposed
4	0

Mr. Codner noted that the criterion passed.

Mr. Codner asked – Based on the evidence presented to the Board, do I hear a motion that the proposed variance be **Approved**.

- Motion – Mr. Gilster made a motion; seconded by Mr. Decker.
- Vote

In-favor	Opposed
4	0

Mr. Codner noted that variance request was approved.

Item 6 – Adjourn

Mr. Codner asked for a motion to adjourn

Motion – Mr. Decker made a motion; seconded by Mr. Gilster

Vote – Unanimously approved.

Meeting was adjourned at 6:58 PM