

# OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC



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## Minutes

6:00 PM – July 26, 2021

### Members in Attendance

Jim Codner  
John Eagar  
Gwen Fowler  
Marty McKee

### Staff

Vivian Kompier

### Media

None

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

**ITEM 2 – Approval of minutes of June 28, 2021 meeting** – Mr. Eagar made a motion to approve; seconded by Mr. McKee. Vote 4/0 to approve.

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

- This is a continuation of the June 28<sup>th</sup> hearing
- Staff will clarify ordinances that apply to the variance request
- Board members will discuss
- Public attending will be given a chance to comment
- Voting

**ITEM 4 – Continuation of June 28<sup>th</sup> hearing for 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).**

Mr. McKee made a motion to bring variance request #VA21-008 off the table; seconded by Mr. Eagar. Vote 4/0 to approve.

Ms. Kompier stated that Mr. Chapman, the former Planning Director, approved the site plan for 25' from the property line. He was correct in doing so. County Ordinance

states driveways that serve 1-3 lots/units have no standards. The driveway Newport Road accesses three lots—Ms. Surratt's at 203, the lot behind her and 268. Ms. Kompier referred to a subdivision plat that was recorded in 2003 that is adding to the confusion regarding the right-of-way. The subdivision was never built so there is no right-of-way. The plat was then re-recorded and shows the driveway (Newport Road) services only three lots. If any of the three lot owners decided to subdivide, a right-of-way would be established at that point. As stated earlier, the site plan was correctly approved with a 25' from the property line. Consequently, Ms. Surratt's porch is in that 25' setback and this is why she is before the board—asking for a variance from the 25' setback. Mr. Codner correctly summarized Ms. Kompier's comments. Board members had no questions.

Mr. Codner opened comments to those in the audience.

- Mr. Jim Pierson, real estate agent for Ms. Surratt, asked how much Ms. Surratt's porch is encroaching into the setback. Ms. Kompier advised that Ms. Surratt would have to answer that question and added that the County does not have the authority to ask a property owner to get a survey. Mr. Codner offered 3-4' as a reasonable estimate. Mr. Pierson asked if they removed the porch would a small stoop be allowed? He also added that when the Varelas were in the process of purchasing their property, he asked the owner, Ms. Porter, if she would include the small strip of land across the driveway from Ms. Surratt's property so that if the Varelas ever needed to move or widen the driveway they could. Ms. Porter agreed. In light of this, Mr. Pierson doesn't understand why this has become an issue. The driveway could be shifted toward that small strip and then even Ms. Surratt's porch would be out of the setbacks. Mr. Pierson added that if the Varelas would agree to shift the driveway, Ms. Surratt would consider pitching in for the gravel. Mr. Codner asked if there was a door on the back side of the trailer where the entrance porch could be relocated. Ms. Surratt confirmed there was a door. Ms. Fowler question if moving the entrance porch would meet Building Codes. Mr. Pierson and Ms. Fowler stated that they believed you must have a front and back egress. Mr. McKee asked board members consider the make-up of the driveway. It is gravel, not asphalt and so there is no neat straight line as the gravel moves over time with use. Mr. McKee added that he would find it difficult to ask someone to remove a front stoop when there are no clear margins for the road and it continues to change. Mr. Codner stated that the Varelas provided a survey of Ms. Surratt's property that showed the trailer was 25' from the property line. Mr. Eager stated that the variance request is for about 4'.
- TJay Bagwell of Bagwell & Corley Law Firm, speaking on behalf of the Varelas provided the Board with complaint documentation for their review. Documentation was secured from the County through the Freedom of Information Act. Correspondence from Mr. Chapman, Oconee County, to Ms. Surratt in April 2020 states that that when the mobile home permit was applied

for the platted 50' easement was not part of the permit request, despite the fact that the plat was public record and easily accessible from the Register of Deeds Office. Mr. Chapman also noted that the 25' setback was from the edge of the road right-of-way, not the property line. In May 2020, Mr. Chapman sent another letter to Ms. Surratt containing the same information as the letter in April 2020. Then in August 2020, a third letter from Mr. Chapman stated that the mobile home was moved without further permitting but still remains in the setback as described in the previous two letters. Mr. Bagwell argued that Ms. Surratt had created the issue when the initial permit application was not completed correctly, failing to include relevant information. He added that Ms. Surratt received ample notice and time to correct the issue. The final document was a picture that was taken earlier on this date of a car parked near Ms. Surratt's home and in the right-of-way. The Varelas have been approached by two developers interested in their property and their concern is that the mobile home and car(s) being in the right-of-way will hinder the ability to develop. Mr. Bagwell added that should the Varelas sell the property to a developer or develop the property themselves, they would be expected to follow the ordinances of the County and so should Ms. Surratt. Mr. Bagwell concluded by asking the Board to deny the variance request and have the mobile home and the porch moved out of the easement and the setbacks. Mr. Codner commented that the foundation of Mr. Bagwell's is that the County contended that a road right-of-way does exist. However, staff offered evidence that the right-of-way does not exist based on the subdivision not being developed and the classification of Newport Road as a driveway. Mr. Bagwell argued that the fact that the plat for the subdivision had been rescinded does not make the planned right-of-way Ms. Surratt's property. Ms. Fowler asked if the Varelas are paying taxes on the originally proposed individual lots or on the parcel as a whole. Mr. Danny Varela, owner of the 21-acre lot that is serviced by Newport Road, reported that he pays taxes on the tract as a whole. However, he clarified that water and power had already been run to the individual lots. He also rebutted the claim that the right-of-way was not in place. Mr. Varela explained when they purchased the property in February 2020 their attorney advised that they had to abide by all covenants, restrictions and ordinances that were in place. The attorney specifically singled out that there was a 50' right-of-way that was platted. He added that as they begin to build their home, they are abiding by all rules. Mr. Varela referred to the survey they had done, specifically a note that stated that Newport Road is a registered road with the County. Ms. Fowler commented that it is a private road and Mr. Varela agreed, but repeated it is a registered road, #P4238. Mr. Eagar asked if Mr. Varela's deed specified the right-of-way. Mr. Varela confirmed the deed specifies a 50' right-of-way in addition to water and electrical easements. Mr. Varela argued that despite the fact that Newport Road is classified as a driveway, the 50' right-of-way and 25' setback is currently platted and deeded. Mr. Eagar revisited the claim by Mr. Pierson that Ms. Porter included the strip of land across the street from Ms.

Surratt with the property sold to the Varelas. Mr. Varela stated that was an inaccurate account. The transaction was a land swap between Dr. Stone and the previous owners that they bought to allow access into the property. Mr. Eagar asked Mr. Varela for clarification on how the land swap doesn't make him whole with regards to the right-of-way. Mr. Varela explained that the only way to accomplish this would be to go to the property owner to the south of them, Mr. Burns. Mr. Eagar referenced one of the documents provided by Mr. Bagwell. Tract D is the land that is across the street from Ms. Surratt that would give them extra room. Mr. Varela stated that he owns tract D. Mr. Varela believes that allowing the variance eliminates his ability to develop the land into a subdivision, which would change the classification of Newport Road from driveway to a private road with a 50' right-of-way. Mr. Codner reminded all that the issue before the board is the location of Ms. Surratt's mobile home with regards to the setbacks. Mr. Codner summarized that there are differing opinions on whether there is a road right-of-way or just a 25' setback. Mr. Varela added that Ms. Surratt's deed and plat also shows a 50' right-of-way. In an effort to establish a timeline, Mr. McKee noted that the plat Mr. Varela referred to was recorded in April 2020 and four days later a complaint was filed. Mr. Varela explained the complaint was filed due to the roadway being blocked. Mr. Varela confirmed the mobile home was placed in April 2019. Mr. McKee added that the mobile home had been there for a year, plans to develop the subdivision were terminated, and Mr. Varela purchased the 21-acre tract in February 2020, recorded in April 2020. Mr. McKee stated that it seems logical that if the subdivision went away so would the right-of-way. Ms. Kompier confirmed Mr. McKee's statement as the County's position. Mr. Varela disagreed, stating that legally by plat, the right-of-way still exists. Additionally, Mr. Varela stated his attorney made specific statements during his closing to emphasize the need to adhere to the 50' right-of-way. Mr. McKee and Ms. Fowler commented that Mr. Varela had a new plat. Mr. Varela acknowledged he had a new plat, but argued the new plat also shows the 50' right-of-way, 25' setback, and the utility easements. Mr. Varela added that they pay taxes on three different lots. Ms. Trisha Varela stated that they did pay three individual tax bills. Mr. Varela explained that the parcel is assessed as agricultural with the tax assessor, but when they build their home that assessment will change. He added that they are placing their home based on all easements and County ordinances. Mr. Eagar asked Ms. Kompier if the Varelas would need to have the parcel re-platted if they develop into a subdivision. Ms. Kompier stated they would. Mr. Eagar asked if the land was one big parcel and being taxed under one parcel number. Ms. Kompier advised she could not speak to tax assessment, but stated that the deed shows two tax map numbers for the parcel. Mr. Codner asked if all could agree that they were discussing one 21-acre parcel and he wondered if the tax assessment was unrelated to the question at hand. Ms. Fowler stated that once the lots were combined under one parcel number, it was no longer a subdivision. Mr. Varela argued that legally Newport Road still

exist and their deeds have not been updated by the County to state otherwise. Mr. Codner asked if the County Attorney should be consulted. Ms. Fowler stated that no consultation is needed. There is a County ordinance that defines road categories for the County and it clearly states that a road that services 1-3 lots/units is categorized as a driveway with no standards. Ms. Kompier clarified that Newport Road is a named driveway and if the subdivision had been completed the road name would have been changed to Maplewood Lane. Ms. Kompier added that all roads are assigned a number for 911 addressing and in the case of Newport Road, the P is for private. Mr. Eagar stated that it has been established by the County that Newport Road is a driveway. Mr. Bagwell stated that it is not in the best interest of the County, the Varelas or Ms. Surratt to reject the presence of the right-of-way. If there is no right-of-way, the entirety of Newport Road is on the Varelas property and Ms. Surratt would have no access to her property. Ms. Fowler explained that the Board is not deciding whether or not the driveway exists, but to decide if Ms. Surratt gets a variance for her porch. Mr. Bagwell stated that Ms. Surratt doesn't want a variance. When asked by Ms. Fowler to clarify, Mr. Bagwell stated that if she gets the variance, Ms. Surratt will be landlocked. Mr. Varelas brought attention to a letter from Ms. Kompier to Ms. Surratt in April 2021 that stated that the County's 25' setback was not being met. Mr. Codner asked Ms. Kompier why the letter was sent. Ms. Kompier replied that she was unaware that Ms. Surratt had the mobile home moved because the contractor did not pull the proper permit. Mr. Codner summarized that the mobile home was in the 25' setback, the home was moved but the porch remains in the setback, and now Ms. Surratt is asking for a variance of 3-4' for the porch from the 25' setback from the property line. Mr. Varela argued that there is no proof that the mobile home is out of the right-of-way. Mr. Codner disagreed, saying that minutes from the last meeting show that both parties, Ms. Surratt and Mr. Bagwell agreed that the mobile home is now 25' from the property line (center of Newport Road). Mr. Varela re-stated that there is nothing official to prove that the mobile home is outside of the right-of-way. Mr. Codner gave Mr. Varela permission to offer evidence otherwise. Mr. Varela stated it was not his job to prove someone did something wrong. Mr. Pierson stated for the record that he doesn't feel that access to Newport Road is an issue. Mr. Codner stated that Board is not there to determine the accessibility of Newport Road. Mr. Varela posed the question of what happens if the Board decides that Newport Road is a driveway and then they decide to sell to a developer that subdivides their property into multiple lots. Mr. Codner explained that the board does not have the duty to legislate any agreement between property owners. Mr. Varela argued that the stance the Board takes now will impact what they can do in the future but it will also set precedent for others in the future. Mr. Codner explained that the Board's hearings do not set precedent, the Board judges each case on its own merits. Mr. Varela re-stated that the decision made today will affect what they

can do with the property in the future and he asked the Board to consider this as they make their decision.

Mr. Eagar made a motion to grant the variance; Ms. Fowler seconded. Discussion followed:

Mr. McKee stated that it appears that Newport Road is a driveway, not a road, by County standards. Additionally, the fact that Ms. Surratt's mobile home has been there over a year should be considered. Ms. Fowler commented that the 21-acre parcel was originally subdivided, but now it is one parcel and is being taxed as such. By combining the lots into one parcel, it is no longer a subdivision. If Mr. Varela intended to develop the property into a subdivision, he should have left the lots as they were and deeded the lots individually, not as a parcel as a whole. Ms. Kompier interjected in to the discussion to remind Mr. Codner that they must answer the four questions established in the County Ordinance. Mr. Codner acknowledged the drift from the agenda. Mr. Eagar stated that considering the lots were combined and Mr. Varela owns the adjacent property, Mr. Varela could widen the access into his property to get the access he wants for any future plans to develop. Mr. Codner asked the Board reject the motion before the board so they can follow the correct protocol. He called for a vote to grant the variance. The motion was denied unanimously 4/0.

1. There **are** extraordinary and exceptional conditions pertaining to the particular piece of property:
  - a. Motion – Mr. Eagar made a motion, seconded by Ms. Fowler.
  - b. Discussion – Ms. Fowler stated that Ms. Surratt established a home site and the Varelas came in a year later wanting to change everything. They had to see the mobile home's placement before they completed the purchase. If they didn't like it, they should have stopped it at that point. Mr. Eagar stated he felt like the ask from Ms. Surratt is minor—3 to 4 feet.
  - c. 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. Eagar made a motion, seconded by Mr. McKee
  - b. Discussion – None
  - c. 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. Eagar made a motion, seconded by Ms. Fowler
  - b. Discussion – Ms. Fowler stated that if Ms. Surratt was made to remove her front stoop/porch, she would be not compliant with Building Codes. Mr. Eagar stated that he was unsure if that was true, but added that it makes a lot of sense that you should have an egress in the front and back of a dwelling.
  - c. 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. Eagar made a motion; seconded by Mr. McKee
  - b. Discussion – Mr. Codner stated he does not think there will be substantial detriment. He added that he understands that Mr. Varela is concerned about possible plans to develop in the future. Ms. Fowler commented that all they can consider today is the present plat that is one parcel, not a developed subdivision.
  - c. 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. Eagar made a motion; seconded by Ms. Fowler.
- 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. Eagar made a motion; seconded by Ms. Fowler

Vote – Unanimously approved.

Meeting was adjourned at 6:58 PM