

OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC



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

Minutes

6:00 PM – September 23, 2024

Members in Attendance

John Eagar – At Large
Jim Henderson – District 1
Thomas James – District 4
Bill Gilster – District 3

Tim Mays – District 5
Gwen Fowler -District 2
Will Decker – At Large

Members Absent

Staff

James Coley
Logan Gibbons

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

ITEM 2 – Motion to approve the minutes from June 24, 2024 – Mr. Gilster made a **motion** to approve the minutes; seconded by Mr. Henderson. Mr. Eagar called for a vote. The motion passed 4/0/3.

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

- Applicant will provide a presentation to state their request (5 minutes).
- Staff will be asked to make any comments regarding the request.
- The public is allowed to voice their approval or opposition to the proposed. Please do not repeat opinions that have already been stated into the record (3-5 minutes).
- Applicant rebuttal
- Board members will discuss in detail.
- Voting

ITEM 4. Variance application #VA24-000015 William McCowan is requesting a 5-foot variance to the side setback. TMS 110-02-01-007 with an address of 194 Palmetto Pointe Dr. Salem SC 29676. Ref. Sec. 38-10.2

Applicant Comments:

Stated Name: William McCowan

Mr. McCowan explained that he had owned the property for over 13 years and that it was always his intention to build on it. The property, however, had a steep decline which prevented construction where Mr. McCowan ideally would have wanted it. Because of this, Mr. McCowan's main concern was drainage at the front of the property.

Mr. McCowan stated that he contracted with Brian Ramey with Ramey Homebuilders to build the house. It was Mr. Ramey's recommendation to put in the retaining wall to help with runoff. Mr. McCowan explained that the purpose of the shape and dimensions of the retaining wall are such to funnel storm water down the retaining wall and out the back of the property. After putting in the wall, it was discovered that the last 8 feet of it fall within the County Setbacks.

Mr. McCowan explained that a county inspector approved of the retaining wall, but recommended that he seek a variance for the portion that is close to the property line.

Staff comments:

Mr. Coley explained the original building permit did not include a retaining wall.

- He also stated that the county inspector does not inspect pins and property lines. He explained it was the responsibility of the builder to determine those.
- Mr. Coley further stated that retaining walls meet the description of a structural element and are required to be outside of the setback.
- Mr. Coley explained that per chapter 32 builders are responsible for runoff before, during, and after development.

Public comment:

Stated Name: Elizabeth Nowell

Ms. Nowell introduced herself as the neighbor directly impacted by the variance request. Ms. Nowell distributed photos she had supplied as evidence to her comments. Ms. Nowell explained that from the time construction began, she has had issues with runoff coming from the applicant's property.

Ms. Nowell explained that she installed French Drain system to help mitigate the runoff coming from the applicant's property. She stated that shortly after Mr. McCowan's retaining wall was installed, her French Drains were completely covered in mud and silt. Ms. Nowell stated that the property lines initially marked were incorrect and she had a surveyor mark them again. She then explained that the closest edge of the retaining wall according to the newly marked property line was 3 inches.

Ms. Nowell then asked the board who was responsible for ensuring the retaining wall was outside of the setback.

- Mr. Eagar explained the home owner was responsible.

Ms. Nowell stated that the applicant had a silt fence that had been washed away and never replaced.

- Mr. Decker asked Ms. Nowell what her ideal solution would be.
 - o Ms. Nowell stated she wants the wall removed and erosion controlled.

Ms. Nowell explained that she attempted to alleviate some of the runoff by installing stones that have been placed on Mr. McCowan's property as well.

- Mr. Eagar asked if Ms. Nowell was opposed to the wall.
 - o Ms. Nowell stated she was opposed to the wall being 3 inches from her property. She also expressed her concerns about enough space for landscaping given the wall was installed so close to the property line.
- Mr. Eagar explained that even if the variance was denied, only the portion of the wall within the setback would be removed. Mr. Eagar asked Ms. Nowell if that would solve the issue for her.
 - o Ms. Nowell explained it would help, as it allowed for room for landscaping.

Stated Name: Tim Moricca

Mr. Moricca introduced himself as the neighbor of the applicant on the side opposite of the retaining wall. Tim referenced the letter he provided Planning Staff, and explained that it summarized his concerns.

Mr. Moricca expressed drainage concerns. Mr. Moricca explained that he holds a position on the HOA and stated that the HOA never approved of the retaining wall. Mr. Moricca explained that they do not allow for solid concrete walls per their HOA covenants. However, he also stated that because the wall is already established the HOA would likely work with Mr. McCowan to find a solution.

- Mr. Eagar asked Mr. Moricca to clarify if the HOA explicitly does not allow for concrete walls.
 - o Mr. Moricca explained that it was his understanding that when someone bought land in the subdivision that they were given the HOA covenants and restrictions. He stated he built his house in accordance to those restrictions and it similarly should be the case with Mr. McCowan.
- Mr. Eagar asked if the building plans were ever presented to the HOA board.
 - o Mr. Moricca explained that there was a verbal discussion regarding the plans but no formal approvals were ever given to Mr. McCowan.

Mr. Moricca explained that he was also experiencing drainage issues from the construction of Mr. McCowan.

- Mr. Eagar asked if Mr. Moricca was for or against the variance.
 - o Mr. Moricca stated he was not in favor for it.

Applicant rebuttal:

Mr. McCowan confirmed he is on the HOA board as well. He explained that he had submitted drawings to the HOA board highlighting where the walls were placed. He stated that he was told by [Chirs Kline (former VP of HOA board)] that it was voted on and approved.

Mr. McCowan expressed concerns about Ms. Nowell's survey and stated that he would like the surveyor to communicate with [Ramey Builders]. Mr. McCowan said that her surveyor refused to speak with Ramey or anyone who is not a licensed surveyor. Mr.

McCowan showed his original plot plan showing existing pins and called into question the validity of Ms. Nowell's survey.

Mr. McCowan explained that Ms. Nowell's French drain and rocks are on his property and has not made a complaint about it.

Mr. Eagar pointed out that disputes over the property line were outside the scope of the BZA board.

Mr. McCowan reaffirmed that he retaining wall had a drainage system installed. He also planned to address the appearance of the wall completion of his home.

Mr. Mays asked if the applicant had talked with Mr. Ramey about the drainage issue on the side with the retaining wall.

- Mr. McCowan stated it was his idea.

Mr. Decker stated that there were complaints from both neighbors that their drains were clogged.

- Mr. McCowan stated that he does not believe that all of the silt in the drain is from his property. He explained after installing the silt fence, he has also placed mulch all over the property to stabilize it.

Board Questions/ Discussion:

Mr. Eagar asked if the applicant was aware of the county setbacks prior to installation of the retaining wall.

- Mr. McCowan stated he was not aware at the time of installation.

Mr. Gilster asked what the applicant would do if the variance does not get approved.

- Mr. McCowan explained he would have to get Ramey Homebuilders to remove the portion of retaining wall in the setback. He then stated he would have to address the erosion concerns in another manner.

Ms. Fowler questioned about current water control measures in place.

- McCowan explained that all water from the front of the house is diverted to a central drain via the retaining wall, and outflows to the lake from that drain. He stated all rain on top and behind the house flow directly to the lake.
- Ms. Fowler asked if the construction runoff is causing silt to get into the lake.
- Mr. McCowan explained that they had a silt fence in the early periods of construction and now stabilize the ground using mulch. Mr. McCowan stated that there is over 75ft of stabilized ground to dissipate runoff before it reaches the lake.

Mr. Gilster proposed that the applicant and neighbors should attempt to find a solution before a decision be made in regards to the hearing.

Mr. Decker asked the applicant if he intentionally ignored the bylaws of the HOA in regards to the concrete wall.

- Mr. McCowan stated he did not remember a specific bylaw for retaining walls. He explained that there was a restriction on freestanding walls that would serve a similar function as a fence, but not for retaining walls.

Mr. Mays asked if the variance was denied what Mr. McCowan's options would be.

- Mr. McCowan stated that his only option then would be to cut that section of the wall.

Mr. Mays asked how that would affect erosion.

- Mr. McCowan stated that it would increase the erosion.

Mr. Mays asked if there were any covenants referencing erosion control.

- Mr. McCowan said he was unaware of any.

Mr. Eagar stated that if Mr. McCowan would have to remove that portion of the wall, he would still be responsible for erosion control.

Consideration of VA24-000015:

Mr. Decker explained that the decision for the variance should be postponed, and require the applicant to show adequate erosion control measures if the wall is removed.

Mr. Eagar stated that the board should table the variance, and require that the applicant work with the HOA, builders, and neighbors to create a plan to mitigate erosion.

Mr. Fowler stated parties who gave approval to Mr. McCowan to install the retaining wall should appear and explain their approval.

Mr. Decker stated that the issue will still persist even if there was HOA approval.

Mr. Eagar stated that requiring an approved plan from all parties involved will removed barriers to the variance and make the decision easier to make.

Ms. Fowler stated she would deny the variance if the ruling was made. Ms. Fowler expressed concerns that the applicant should address drainage. She stated that the board was not presented any proof that Mr. McCowan had approval to put the retaining wall in and should be required to remove the portion in the setback.

Mr. Henderson stated that requiring the applicant to perform any of the discussed remediations were outside their scope explained they should focus on just the variance portion of it. He then explained he would be in favor of the variance being approved.

Mr. Eagar suggested they table the variance.

1. Table the variance until the next BZA meeting to be held November 25, 2024 with the parties involved meeting to come up with an amicable and cohesive plan to solve the erosion issue and decide whether or not the variance has the approval of the affected parties or not.
 - a. Motion – Mr. Mays made a motion in the affirmative, seconded by Mr. James. No discussion
 - b. Vote

In-favor	Opposed
7	0

ITEM 5. Variance application #VA24-000016 Paul O’Flynn is requesting a 4-foot variance to the side setback for a proposed garage. TMS 210-01-03-032 with an address of 618 Broadway St. Seneca, SC. 29672. Ref. Sec. 38-10.2

Applicant Comments:

Stated Name: Paul O’Flynn

Mr. O’Flynn stated that the property in question was purchased by his wife Janice McMeekin in 2019 to be a retirement home. Mr. O’Flynn explained that he was in need of more space for parking, wood working, and a she shed. He stated that in order to maintain the 5ft space required by international fire code and the setback would not allow for enough space to build the garage. Mr. O’Flynn stated that they needed to be 3.3 ft closer to the property line which was the need for the variance.

Mr. O’Flynn explained that he has already communicated with the neighbor who would be affected by the granting of the variance and has come to an agreement with them.

Staff comments:

Mr. Coley confirmed that the applicant was seeking to build the garage 1.7ft from the property line.

Public comment:

Applicant rebuttal:

NA.

Board Questions/ Discussion:

Consideration of VA24-000016:

- 2. There **are** extraordinary and exceptional conditions pertaining to the particular piece of property:
 - a. Motion – Mr. Henderson made a motion in the affirmative, seconded by Mr. Decker. No discussion
 - b. Vote

In-favor	Opposed
7	0

Mr. Eagar noted that the criterion **did pass**.

- 3. These conditions **do not** generally apply to other property in the vicinity:
 - a. Motion – Mr. Gilster made a motion in the affirmative, seconded by Mr. Henderson. No Discussion
 - b. Vote

In-favor	Opposed
7	0

Mr. Eagar noted that the criterion **did pass**.

- 4. 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.
 - a. Motion – Mr. James made a motion in the affirmative, seconded by Mr. Decker. No discussion.
 - b. Vote

In-favor	Opposed
7	0

Mr. Eagar noted that the criterion **did pass**.

- 5. 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. Mays made a motion in the affirmative, seconded by Mr. Henderson. No Discussion
 - b. Vote

In-favor	Opposed
7	0

Mr. Eagar noted that the criterion **did pass**.

6. Mr. Eagar asked – Based on the evidence presented to the Board, do I hear a motion that the proposed variance be **Approved**.
- a. Motion – Mr. Henderson made a motion; seconded by Mr. Decker. No Discussion.
 - b. Vote

In-favor	Opposed
7	0

Mr. Eagar noted that variance request was **approved**

ITEM 6- Adjourn – Mr. Mays made a motion to adjourn, seconded by Mr. James. Mr. Eagar called for a vote. Motion passed unanimously 7/0.