



Vance County Planning & Development
305 Young Street, Suite B
Henderson, NC 27536
Ph: 252-738-2080 Fax: 252-738-2089



Agenda - Vance County Board of Adjustment

March 14, 2024

1. Call to Order Declaring Meeting Open
2. Chair Comments
3. Approval of Board of Adjustment minutes (NOTE: No minutes).
4. EVIDENTIARY HEARING(S):
 - a. CASE BOA24-001: VARIANCE: 95 S. Oliver Road (PIN 0525 04018).
 - i. Opening of Evidentiary Hearing
 - ii. Swearing in of witnesses
 - iii. Staff Report
 - iv. Testimony from witnesses
 - v. Questions
 - vi. Closure of Evidentiary Hearing/deliberation
 - vii. Decision
5. Adjournment



Planning and Development Department

305 Young Street, Suite B

Henderson, NC 27536

Phone: 252-738-2080 / Fax: 252-738-2089

<https://www.vancecounty.org/departments/planning-and-development/>

Staff Report March 14, 2024

Vance County Board of Adjustment

Case# BOA24-001

Owner: Charlene Denise
Sutton

Applicant: Same

Parcel ID: 0525 04018

Location:
95 S. Oliver

Current Zoning: R30
(Residential Low
Density)

Evidentiary Hearing:
March 14, 2024

Prepared by:
Michael D. Harvey

PURPOSE: To conduct an evidentiary hearing, receive testimony, and take action on a VARIANCE application in accordance with the provisions of Section 8 *Variances* of the Vance County Zoning Ordinance (hereafter 'the Ordinance').

Specifically the Applicant, Ms. Charlene Denise Sutton, is requesting relief from Section 3.2.3 *R-30 Residential Low Density – Dimensional Standards Built-upon Area Limits* by requesting the following:

- A reduction in the side yard setback (eastern property line) from 20 feet to 16.6 feet (a 3.4 foot variance request) to allow for the construction of a new residence.

BACKGROUND: The basic facts concerning the current application are as follows:

Applicant/Owner: Charlene Denise Sutton
211 Foxborough Lane
Henderson, NC 27516

hereinafter 'the Applicant'

Parcel Information:

- a. Location: 95 S. Oliver.
- b. PINs: 0525 04018.
- c. Size of parcel: 0.288 acres (12,523 sq.ft.).
- d. Zoning of parcel: R-30
- e. Roads: Access is through an existing driveway easement through an adjacent parcel off S. Oliver Drive.
- f. Water and Sewer Service: The property is not located within a primary utility service area meaning water and sewer service is provided by an individual well and septic system.

hereinafter 'the Property'. Refer to Attachment 2 for a vicinity map of the Property.

The Applicant submitted an application to redevelop the Property, specifically: demolish and replace the existing residence. The existing residence is located approximately 6 feet from the eastern property line (i.e., already non-conforming). Due to the size/topography of the lot, the location of existing structures, and location of the required septic system, the applicant cannot locate the proposed new structure on the property in compliance with the required 20 ft. side yard setback requirement for the R-30 general use zoning district per Section 3.2.3 of the Vance County Zoning Ordinance (hereafter 'the Ordinance').

The Applicant met with previous staff, who purportedly processed a variance request seeking a variance from the side yard setback allowing for the construction of the new residence.

Unfortunately, there is no record of the application being processed, no record of the Board ever reviewing the request, and no minutes of an EVIDENTIARY HEARING being held on the matter.

The Applicant moved forward with working with a contractor to secure all required permits for the deconstruction of the existing residence and development of the new residential structure. Unfortunately, current staff could not allow the request to proceed without evidence of a variance being processed.

The Applicant is seeking to secure a variance to allow for the redevelopment of the Property by requesting a variance from the 20 foot side yard setback requirement.

ORDINANCE REQUIREMENTS: Per Section 3.2.3 of the Ordinance, parcels within the R-30 general use zoning district are required to abide by the following dimensional requirements:

- 1. Minimum Lot Area in Square Feet: 30,000 Square Feet*
- 2. Minimum Lot Width: 100 Feet (see Note E above-Cul de Sacs/Flag Lots)*
- 3. Minimum Street Frontage: 100 Feet (see Note E above-Cul de Sacs/Flag Lots)*
- 4. Maximum Building Height: Thirty-Five (35) Feet*
- 5. Maximum Dwelling Units (density per acre): 1.45*
- 6. Maximum Lot Coverage-Net Area (Built Upon Area): 20%*
- 7. Minimum Setbacks: Front 30 Feet, Side 20 Feet, Rear 25 Feet*

The Applicant argues the parcel was developed/subdivided prior to the establishment of comprehensive zoning regulations and is too narrow to accommodate a residence meeting full 20 foot side yard setback requirement from both property lines. The proposed new structure does represent an attempt to erect a structure that is more compliant than what has existing on the parcel, which is only 6 feet from the eastern property line (i.e., currently a 1 foot encroachment).

STAFF OBSERVATIONS:

1. The application was deemed complete and accepted for processing;
2. As required under Section 8.6 of the Ordinance, staff notified all adjacent property owners of the date, time and location of the Evidentiary Hearing. Notice was achieved through the mailing of letters to the affected property owner as well as all adjoining property owners using address information from County tax listings and the posting of a sign on the property advertising the hearing. This occurred on March 1, 2024, 13 days before the Evidentiary Hearing. Attachment 3 contains the Certificate of Notice.
3. The cadence of this meeting shall be as follows:
 - a. The Chair shall call the meeting to order and all parties intending to speak and offer testimony, including staff, shall be sworn by the Chair;
 - b. Staff shall present their report and answer any questions from Board members;

- c. Those intending to speak on an application (i.e. either in support or opposition) will come up one at a time and are required to demonstrate standing. Once they demonstrate standing to the Board's satisfaction, they will be allowed to present evidence;

STAFF COMMENT: The Applicant is deemed to have standing as the owner of the property.

- d. Once all evidence/testimony has been received, and questions asked, the Board will close the Evidentiary Hearing and deliberate on the request.
4. As detailed within Section 8 of the Ordinance, the Board is authorized to modify or vary regulations when strict compliance with applicable standards would result in unnecessary hardships upon the subject property.
 5. In accordance with the provisions of Section 8.1 of the Ordinance, when unnecessary hardships would result from carrying out the strict letter of the Ordinance, the Board may vary any of the provisions of this ordinance upon a showing of all of the following:
 - a. 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.
 - b. 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 general public, may not be the basis for granting a variance.
 - c. 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 a self-created hardship.
 - d. 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.
 6. The Board is not empowered to grant a variance without an affirmative finding of fact supported by substantial evidence in the record of the proceedings before the Board. Further, the Board may impose appropriate conditions provided same are reasonable related to the variance request.
 7. Per Section 8.7 of the Ordinance the affirmative vote of four of the members (i.e., '4/5's vote') of the Board is necessary to effect any variation of the Ordinance.
 8. Review of Variance applications are carried out in a *quasi-judicial* format. This means that decisions relating to the approval or denial of an application are based solely on the sworn testimony of all parties involved with the case, both those for and against an application, as well as the review of the competent, material, and substantial evidence submitted into evidence during the evidentiary hearing;
 9. The applicant has the burden of establishing, by the submission of competent, material, and substantial evidence the existence of facts and conditions that demonstrate the request complies with the various requirements and standards of the Ordinance for the issuance of a Variance.

Those opposing approval of the application shall have the burden of establishing, also through the submission of competent, material, and substantial evidence, the specific manner in which the proposal does not satisfy those same requirements.

10. Individuals asserting they have standing are required to present evidence/testimony supporting this claim. Persons who can claim standing include:

a. A person with legal interest in the subject parcel including:

- i. Property owner;
- ii. An individual who has an ownership or leasehold interest;
- iii. An individual who has an option or contract to purchase the subject property; or
- iv. An interest created by an easement, restriction, or covenant.

b. A person who will suffer special damages as the result of a decision;

STAFF COMMENT: Individuals are required to substantiate what special damages they will suffer for the Board to consider if they have standing. This typically includes proximity to the subject parcel, action on the proposal could result in economic damages such as a decrease in property values, or action on the proposal could result in direct adverse impacts on their property.

Individual asserting standing are required to do more than simply state that they live in the vicinity of the subject property and allege action on a proposal will harm property values. The party asserting standing must allege secondary impacts providing documentation of same.

c. An association organized to promote the interests of a particular area, such as a homeowner's association, so long as at least one member of the group would have standing as an individual and the association was not created in response to the development/application being acted upon by the Board of Adjustment.

STAFF COMMENT: Standing is a legal question to be determined by the Board of Adjustment. Staff does not have the discretion to make this determination.

The simple receipt of a meeting notice from the County is not a basis to assert 'standing'.

11. The Board of Adjustment shall render a decision **only** on the sworn testimony of all parties and on the competent, material, and substantial evidence submitted during the hearing relating to the approval or denial of the application;

12. Every decision of the Board of Adjustment shall be subject to review at the request of any aggrieved party by the Superior County by proceedings in the nature of certiorari.

Appeals have to be submitted with the Superior Court within 30 days of the availability of notice of decision.

Staff has prepared a script to aid the Board in its deliberations.

Attachments:

1. Application Package
2. Vicinity Map
3. Affidavit of Service – Advertising Certification
4. Script for Proceedings



Vance COUNTY

NORTH CAROLINA

Variance Application

Vance County Planning & Development Department

156 Church Street, Suite 3
Henderson, NC 27536
Ph: (252) 738-2080
Fax: (252) 738-2089

For Administrative Use Only:

Case #	
Fee Paid	
BOA Date	

Property Owner Information

Property Owner: Charlene Denise Sutton
 Mailing Address: 211 Foxborough Lane
 City: Henderson State: NC Zip Code: 27536
 Phone #: () - Fax #: () -
 E-mail Address: _____

Applicant Information

Applicant: Same
 Mailing Address: _____
 City: _____ State: _____ Zip Code: _____
 Phone #: () - Fax #: () -
 E-mail Address: sdasdf

Property Information *For multiple properties please attach an additional sheet.*

Property Address: 95 South Oliver
 Tax Map Number: _____ PIN (parcel identification #): 0525 04018
 Type of Petition: VARIANCE
 Existing Zoning: R-30
 Acreage: 0.29 Road Frontage: _____
 Existing Use: Single Family Residential

Deed Reference

- Metes and bounds description attached
- Site plan/sketch of proposal attached



Vance COUNTY

NORTH CAROLINA

Variance Application

Vance County Planning & Development Department

STATEMENT OF JUSTIFICATION

Application submitted for a variance from the Zoning Ordinance as follows: *Please explain below:*

Section 3.2.3 of the Zoning Ordinance, setback requirements of the R-30 zoning district. Applicant seeking relief from 20 foot side yard setback requirement for a new residence. Applicant requesting a 3.4 ft. variance on the eastern property line allowing for construction of new residence (see attached)

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. No change in permitted uses may be authorized by variance. Also, the Board may impose appropriate conditions on any variance, provided that the conditions are reasonably related to the variance.

Under the state enabling act, the Board shall vary ordinance provisions when unnecessary hardships would result from carrying out the strict letter of the ordinance. In order to determine whether a hardship is present the applicant shall provide an argument for the following items. In the following spaces, indicate the facts and the argument you plan to render, in order to convince the Board to properly determine that an unnecessary hardship exists from carrying out the strict letter of the ordinance.

(1) **THERE ARE UNNECESSARY HARDSHIPS THAT WOULD RESULT FROM THE STRICT ENFORCEMENT OF THIS ORDINANCE.** The courts have developed four rules to determine whether, in a particular situation, "unnecessary hardships" exist. State facts and argument in support of each of the following:

a. **The 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. (It is not sufficient that failure to grant the variance simply makes the property less valuable.)**

b. **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.**

Existing parcel is only 12,523 sq. ft. in area and only approximately 73 feet in width leaving a development window of 33 feet in width to accommodate a new residence. (see attached)



Vance COUNTY

NORTH CAROLINA

Variance Application

Vance County Planning & Development Department

- c. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing the property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

The parcel has always been this small and was created before county-wide zoning

- d. 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.

Approval of the variance will allow existing residence to be replaced with new, safer and structurally sound residence

Property Owners Signature

Charlene Sutton

Please sign in blue or black ink

Date 2-23-24

Applicants' Signature

Charlene Sutton

Please sign in blue or black ink

Date 2-23-24

Vance County Tax Parcel Viewer



10 m

Roads/Addressing

Vance County Roads (Centerlines)



Tax Parcels & Zoning

Buildings



Tax Parcels



Tax Parcels

Tax Parcels

PIN

0525 04018

Tax Card

Deed Book & Page

Owner Name

Owner Address

Owner Address - (2)

Owner Name - (2)

City

State

Zip Code

Calculated Acreage

Deeded Acreage

Tax Assessment \$

Plat Reference

Deed Book

Deed Page

Deed Reference (Legacy)

Deeded Acreage (Legacy)

Owner ID (Tax)

[View](#)

[View](#)

SUTTON CHARLENE DENISE

211 FOXBOROUGH LN

HENDERSON

NC

27536

0.29

0.00

8,632.00

1411

1303

0.29

1033092

This certifies that there are no delinquent ad valorem real estate taxes, which the Vance County Tax Collector is charged with collecting, that are a lien on:

Pin Number: 0525 04018
This is not a certification that this Vance County Tax Department Pin Number matches this Deed description.

Matthew Morrow Date 11-30-21
Vance County Tax Office

FILED Nov 30, 2021 02:55 pm
BOOK 01407
PAGE 0364 THRU 0365
INSTRUMENT # 05258
RECORDING \$26.00
EXCISE TAX (None)

FILED
VANCE
COUNTY NC
CASSANDRA D. NEAL
REGISTER
OF DEEDS
JJS

Excise Tax: 0.00 Parcel ID: 052504018

This instrument drafted by: Stella D. Jones, Attorney at Law (Title Not Examined)

After recording, mail to: Michael K. Sutton, 97 S. Oliver Drive, Henderson, NC 27537

Brief Description: Lots 1, 2, 3, 4, T/484 (95 S. Oliver Drive)

NORTH CAROLINA)
) **GENERAL WARRANTY DEED**
VANCE COUNTY) (Life Estate Only)

This **GENERAL WARRANTY DEED**, made and entered into this 30th day of November, 2021, between **MICHAEL K. SUTTON**, of 97 S. Oliver Drive, Henderson, NC 27537, **GRANTOR**; and **CHARLENE DENISE SUTTON, Unmarried**, of 211 Foxborough Lane, Henderson, NC 27536, **GRANTEE**;

WITNESSETH:

That the said Grantor, in consideration of the payment by the Grantee and other good and valuable consideration, the receipt of which is hereby expressly acknowledged, has and by these presents does give, grant, bargain, sell and convey to the said Grantee, **A LIFE ESTATE for the term of Grantee's natural life**, certain lots or parcels of land situate in Vance County, North Carolina, and more particularly described as follows:

New lots #1, 2, 3 and 4, a division of old lots 4 & 5 as shown on a map duly recorded in the office of the Registry of Vance County in Plat Book T, Page 484.

For further reference see Deed Book 1109, Page 001,
Vance County Registry.

TO HAVE AND TO HOLD the aforesaid lots or parcels of
land and all privileges and appurtenances thereto belonging
to the Grantee, **A LIFE ESTATE for the term of Grantee's
natural life**, in fee simple.

And the Grantor covenants with the Grantee, that the
Grantor is seized of the premises in fee simple, and has
the right to convey the same in fee simple, that the title
is marketable and free and clear of all encumbrances, and
that the Grantor will warrant and defend the title against
the lawful claims of all persons whomsoever, except for the
exceptions hereinafter stated.

In Testimony Whereof, said Grantor has hereunto set
his hand and seal the day and year first above written.

Michael K Sutton (SEAL)
MICHAEL K. SUTTON

State of North Carolina
Vance County

I, Beverly L. Joseph, a Notary Public of
the above named State and County, do hereby certify that
MICHAEL K. SUTTON personally appeared before me this day
and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal, this the 30th day of
November, 2021.

(Official Seal)
Beverly L. Joseph
NOTARY PUBLIC
Franklin County, NC
My Commission Expires August 04, 2024

Beverly L. Joseph
Official Signature of Notary
Beverly L. Joseph
Notary's printed or typed name

My commission expires: Aug. 04, 2024

GRANVILLE VANCE

public health

Existing System Approval

Vance County Health Department
Environmental Health Section
Environmental Health
Henderson, NC 27536
Phone: (252) 492-5263 Fax: (252) 492-2361

For Office Use Only

*CDF File Number: 374550
County ID Number: 0525 04018
Evaluated For: EXISTING

Permit Valid Until: 06/09/2023

Applicant: Charlene D Suttan
Address: 211 Forbrough Lane
City: Henderson
State/Zip: NC / 27536
Phone #: (919) 479-6400

Property Owner: Charlene D Suttan
Address: 211 Forbrough Lane
City: Henderson
State/Zip: NC / 27536
Phone #: (919) 479-6400

Property Location & Site Information

Address: 95 S Oliver Dr Subdivision: Phase: Lot:
Road#: Henderson NC 27537 Township:
*Structure: SINGLE FAMILY
of Bedrooms: 3 # of People: 2 Directions: See attachment
*Water Supply: EXISTING WELL Type of business:
Basement: Yes No Total sq. Footage: No. Of Employees:

*Proposed Improvement:

*Release Conditions: HOME MUST SET A MINIMUM OF 5' FROM ANY PART OF SEPTIC SYSTEM. EXISTING SYSTEM IS APPROVED FOR 3 BEDROOM UNIT

This release in no way expresses or implies that the existing subsurface sewage treatment and disposal system serving the site will continue to function for any period of time.

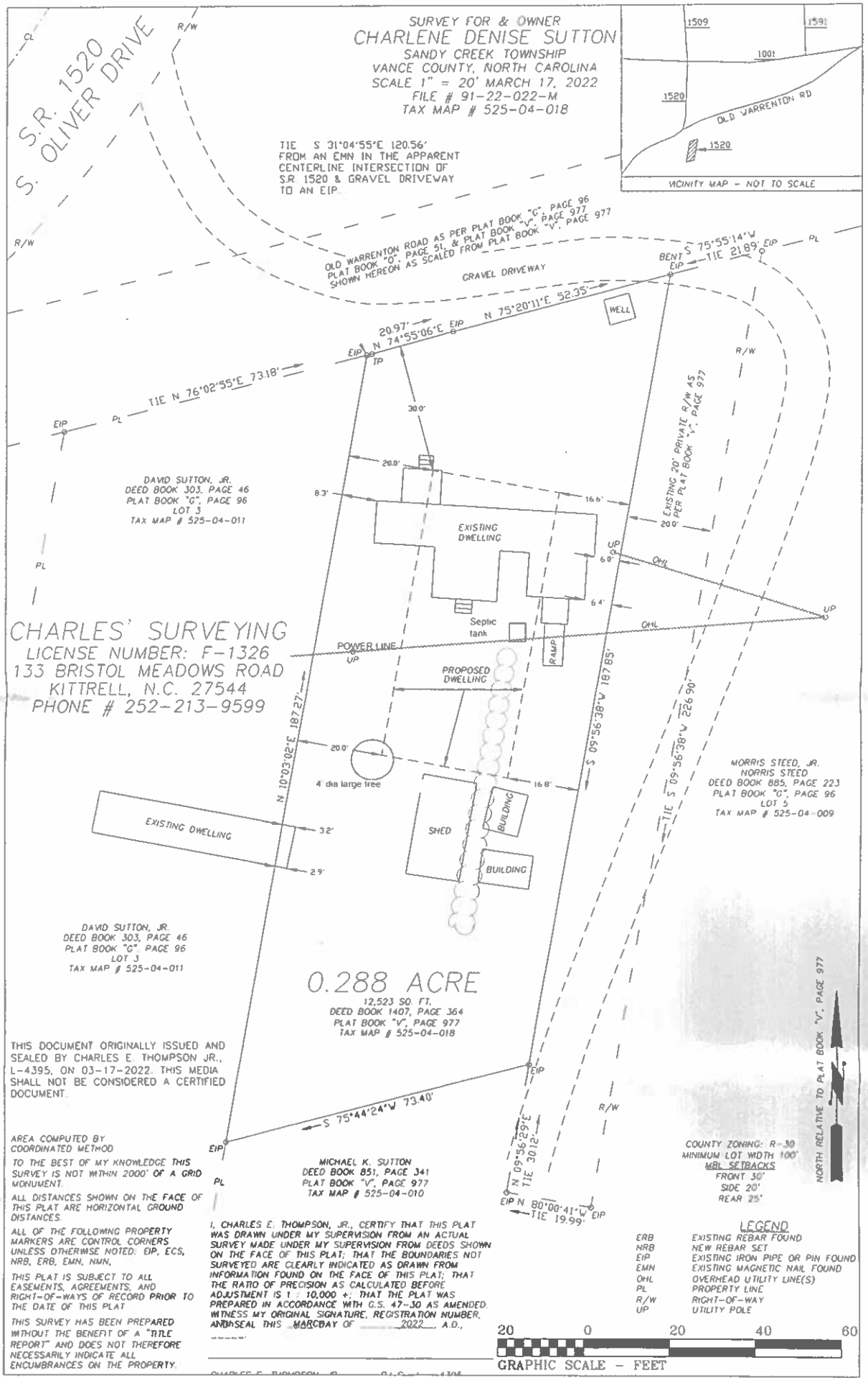
Applicant/Legal Reps. Signature Required? Yes No
Applicant/Legal Reps. Signature: Date:
*Issued By: Hedrick, Chris Date of Issue: 06/09/2022
Authorized State Agent: [Signature]

Site Plan/Drawing attached.

Hand Drawing Import Drawing

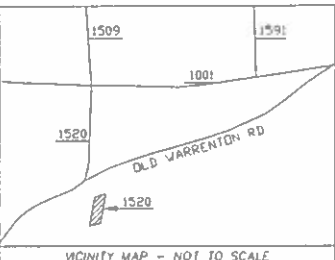
Total Time: (HH:MM) Hours Minutes

Activity Code:



SURVEY FOR & OWNER
CHARLENE DENISE SUTTON
 SANDY CREEK TOWNSHIP
 VANCE COUNTY, NORTH CAROLINA
 SCALE 1" = 20' MARCH 17, 2022
 FILE # 91-22-022-M
 TAX MAP # 525-04-018

TIE S 31°04'55"E 120.56'
 FROM AN EBM IN THE APPARENT
 CENTERLINE INTERSECTION OF
 S.R. 1520 & GRAVEL DRIVEWAY
 TO AN EIP.



S.R. 1520
 S. OLIVER DRIVE

OLD WARRENTON ROAD AS PER PLAT BOOK "G", PAGE 96
 PLAT BOOK "O", PAGE 51, & PLAT BOOK "V", PAGE 977
 SHOWN HEREON AS SCALED FROM PLAT BOOK "V", PAGE 977

DAVID SUTTON, JR.
 DEED BOOK 303, PAGE 46
 PLAT BOOK "G", PAGE 96
 LOT 3
 TAX MAP # 525-04-011

CHARLES' SURVEYING
 LICENSE NUMBER: F-1326
 133 BRISTOL MEADOWS ROAD
 KITTRELL, N.C. 27544
 PHONE # 252-213-9599

DAVID SUTTON, JR.
 DEED BOOK 303, PAGE 46
 PLAT BOOK "G", PAGE 96
 LOT 3
 TAX MAP # 525-04-011

0.288 ACRE
 12,523 SQ. FT.
 DEED BOOK 1407, PAGE 364
 PLAT BOOK "V", PAGE 977
 TAX MAP # 525-04-018

MORRIS STEED, JR.
 NORRIS STEED
 DEED BOOK 885, PAGE 223
 PLAT BOOK "G", PAGE 96
 LOT 5
 TAX MAP # 525-04-009

THIS DOCUMENT ORIGINALLY ISSUED AND SEALED BY CHARLES E. THOMPSON JR., L-4395, ON 03-17-2022. THIS MEDIA SHALL NOT BE CONSIDERED A CERTIFIED DOCUMENT.

AREA COMPUTED BY COORDINATED METHOD TO THE BEST OF MY KNOWLEDGE THIS SURVEY IS NOT WITHIN 2000' OF A GRID MONUMENT.

ALL DISTANCES SHOWN ON THE FACE OF THIS PLAT ARE HORIZONTAL GROUND DISTANCES.

ALL OF THE FOLLOWING PROPERTY MARKERS ARE CONTROL CORNERS UNLESS OTHERWISE NOTED: EIP, ECS, HRB, ERB, EBM, HMM. THIS PLAT IS SUBJECT TO ALL EASEMENTS, AGREEMENTS, AND RIGHT-OF-WAYS OF RECORD PRIOR TO THE DATE OF THIS PLAT. THIS SURVEY HAS BEEN PREPARED WITHOUT THE BENEFIT OF A "TITLE REPORT" AND DOES NOT THEREFORE NECESSARILY INDICATE ALL ENCUMBRANCES ON THE PROPERTY.

I, CHARLES E. THOMPSON, JR., CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION FROM DEEDS SHOWN ON THE FACE OF THIS PLAT; THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND ON THE FACE OF THIS PLAT; THAT THE RATIO OF PRECISION AS CALCULATED BEFORE ADJUSTMENT IS 1 : 30,000 +; THAT THE PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER, AND SEAL THIS MARCH DAY OF 2022, A.D.

- LEGEND**
- ERB EXISTING REBAR FOUND
 - HRB NEW REBAR SET
 - EIP EXISTING IRON PIPE OR PIN FOUND
 - EBM EXISTING MAGNETIC NAIL FOUND
 - OHL OVERHEAD UTILITY LINE(S)
 - PL PROPERTY LINE
 - R/W RIGHT-OF-WAY
 - UP UTILITY POLE



NORTH RELATIVE TO PLAT BOOK "V", PAGE 977

Vicinity Map



STATE OF NORTH CAROLINA
COUNTY OF VANCE

VANCE COUNTY BOARD OF ADJUSTMENTS
Case # BOA24-001 95 S. Oliver

RE:

VARIANCE
PIN 0525 04018
95 S. Oliver
OWNER: Charlene Denise Sutton

AFFIDAVIT OF SERVICE

NOW COMES the undersigned and deposes and says:

1. I am the Vance County Planning and Development Director.
2. On March 1, 2024, I issued the attached Notice of EVIDENTIARY HEARING to the property owner/applicant as well as all adjacent property owners advertising the date, time, and location of the hearing as required by the Vance County Zoning Ordinance and in accordance with NC General Statute 160D-406 (b), as shown on the attached Exhibit "A".
The above notices were sent by first class mail, certified mail to the property owner, postage prepaid and deposited in the mail on March 1, 2024, 13 days prior to the date of the EVIDENTIARY HEARING.
3. On Friday March 1, 2024 I did personally place/post on the subject property, a sign giving prominent notice of the EVIDENTIARY HEARING. The sign was posted 13 days prior to the date of the HEARING.

Further your Affiant saith not.

This the 1st day of March, 2024.

Sherry Moss

Sherry Moss MPA, CZO
Planning Director

Sworn and subscribed to before me
This 1st day of March, 2024.

Kelly H. Grissom

Name: *Kelly H. Grissom*, Notary Public
My commission expires: *9-24-26*





Vance COUNTY

NORTH CAROLINA

Planning and Development Department

www.vancecounty.org

March 1, 2024

305 Young Street, Suite B
Henderson, NC 27536

Phone: (252) 738-2080
Fax: (252) 738-2089

RE: **NOTICE OF EVIDENTIARY HEARING - VANCE COUNTY BOARD OF ADJUSTMENT REVIEW OF VARIANCE REQUEST for 95 S. Oliver Road (PIN 0525 04018).**

To Whom It May Concern:

In accordance with the provisions of the Vance County Zoning Ordinance (hereafter 'the Ordinance') this letter is being sent to inform you of a pending EVIDENTIARY HEARING by the Vance County Board of Adjustment.

The HEARING is scheduled to occur on **Thursday March 14, 2024 at 4:00 p.m.** The HEARING will be held in the Commissioners Meeting Room at 122 Young Street in downtown Henderson.

Specifically, the Board of Adjustment will review a VARIANCE REQUEST submitted by Ms. Charlene Denise Sutton (owner/property owner) for a variance from Section 3.2.3 *Dimensional Standards – R-30 General Use Zoning District* of the Ordinance requesting a reduction in the minimum side yard setback along the eastern property line from 20 feet to 16.6 feet. **Please note the approval or denial of this request should not have an impact on the development or use of your property.**

In accordance with Section 8.6 of the Ordinance, and consistent with the provisions of NC General Statute 160D-406 (b), this letter serves as your official notice of the EVIDENTIARY HEARING. This notice is required in order for the Board to conduct the HEARING.

As a general reminder, the Board of Adjustment conducts an Evidentiary Hearing through a 'quasi-judicial' proceeding. This means decisions are based on the competent material evidence and sworn testimony of all parties with standing to appear before the Board. While this meeting is open to the public, only those individuals with standing shall be allowed to be sworn and present evidence and testimony on the request. Individuals asserting they have standing to present evidence/testimony on a request are required to submit evidence supporting this claim including:

1. A person with legal interest in the subject parcel (Property owner, individual who has an ownership or leasehold interest, individual with an option to purchase the subject property);
2. A person who will suffer special damages as the result of a decision;

NOTE: Individuals must substantiate what 'special damages' they will suffer for the Board to consider if they have standing. This typically includes proximity to the subject parcel, action on the proposal could result in economic damages such as a decrease in property values, or action on the proposal could result in direct adverse impacts on their property.

vision • vitality • variety



Vance COUNTY

NORTH CAROLINA

Planning and Development Department

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305 Young Street, Suite B
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Phone: (252) 738-2080

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3. An association organized to promote the interests of a particular area, such as a homeowners association, so long as at least one member of the group would have standing as an individual and the association was not created in response to the development/application being acted upon by the Board of Adjustment.

Please note: Individuals will need to be prepared to provide evidence of standing to the Board for consideration prior to being able to offer any additional testimony or evidence on this matter.

Standing is a legal question to be determined by the Board of Adjustment. Staff does not have the discretion to make this determination. In acting on the request, the Board must be able to affirm the following standards as detailed in Section 8.1 of the Ordinance:

- A. *The 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.*
- B. *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. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.*
- C. *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 a self-created hardship.*
- D. *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*

If you have any questions, or require assistance, please contact staff at (252) 738-2091 or via email at: smoss@vancecounty.org.

Sincerely,

Sherry N. Moss
Planning & Development Director
252-738-2091

**VARIANCE REQUEST SUBMITTED BY
Charlene Denise Sutton
95 S. Oliver (PIN 0525 04018)**

**APPLICANT PROPOSED
FINDINGS VANCE COUNTY BOARD OF ADJUSTMENT**

As permitted under the Vance County Zoning Ordinance, the Board of Adjustment (hereafter 'the BOA') is authorized to modify or vary regulations of the Zoning Ordinance (hereafter 'the Ordinance') when strict compliance with the regulation or standard would result in unnecessary hardships upon the subject property.

In accordance with the provisions of Section 8.1 of the Ordinance, the BOA may approve a variance in cases where unnecessary hardships would result from carrying out the strict letter of the Ordinance, when substantial evidence in the official record of the application supports all of the following findings:

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.
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 general public, may not be the basis for granting a variance.
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 a self-created hardship.
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.

Per Section 8.2 of the Ordinance, the BOA is not empowered to grant a variance without an affirmative finding of fact supported by substantial evidence in the record of the proceedings before the Board. The Board may impose appropriate conditions provided same are reasonable related to the variance request.

Per Section 8.7 (D) of the Ordinance the affirmative vote of four of the members of the Board shall be necessary to effect any variation of the Ordinance.

REQUIREMENT	UDO	SUPPORTING EVIDENCE	BOA Determination	
FINDINGS:				
In accordance with Section 8.1 of the Ordinance, the BOA shall consider the following before the application for a VARIANCE can be approved.				
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.	8.1 (A)	<p>Application package (ATTACHMENT 1) inclusive</p> <p>The applicant argues the topography of the parcel, the width of the lot, the location of the septic system, and the ultimate size of the parcel prevent the new residence from meeting the side yard setback on the eastern property line requiring a 3.4 foot variance.</p>		
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 general public, may not be the basis for granting a variance.	8.1 (B)	<p>Application package (ATTACHMENT 1) inclusive.</p> <p>The hardship results from the current layout of the land, the required location of the septic system to support the residence, and the width/size of the property.</p> <p>The hardship is not a result of personal circumstances and is not a common condition. It's based on the size and topography of the lot, and location the proposed location of the utility infrastructure.</p>		
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 a self-created hardship.	8.1 (C)	<p>Application package (ATTACHMENT 1) inclusive</p> <p>The hardship is based on existing/proposed development and the size and topography of the lot.</p>		
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.	8.1 (D)	<p>Application package (ATTACHMENT 1) inclusive.</p> <p>Without the variance, the proposed structure cannot located on the property</p>		

After holding a duly advertised EVIDENTIARY HEARING, the Board voted _____ to _____ to (approve) (deny) the VARIANCE request as submitted.

Attachment 5



305 YOUNG STREET, SUITE B
HENDERSON, NC 27536-5574

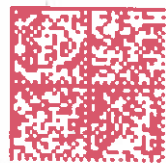
VANCE COUNTY PLANNING & DEVELOPMENT

CERTIFIED MAIL



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SUTTON CHARLENE DENISE
211 FOXBOROUGH LN.
HENDERSON, NC 27536



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SUTTON MICHAEL K
97 S OLIVER DR.
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1023 EASTERN BLVD.
HENDERSON, NC 27536



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305 YOUNG STREET, SUITE B
HENDERSON, NC 27536-5574

ERIN GRANTLY INVESTMENTS LLC
4101 FIVE OAKS DR.
DURHAM, NC 27707



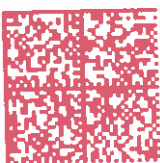
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305 YOUNG STREET, SUITE B
HENDERSON, NC 27536-5574

MORRIS STEED JR
NORRIS STEED
279 FOX POND RD
HENDERSON, NC 27537



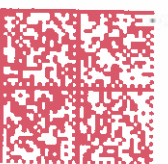
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SUTTON DAVID JR
376 BERGEN AVE, APT 210
JERSEY CITY, NJ 07304



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VAR24-001: 95 S Oliver Road – Signage of Evidentiary Hearing Posted on Property on 3/1/2024

