

RICHLAND COUNTY
Board of Zoning Appeals



July 7, 2021
3 pm

Virtual Meeting

<https://www.youtube.com/user/richlandonline/videos>



**Richland County
Board of Zoning Appeals
Wednesday, July 7, 2021
3:00 p.m.**

Zoom Hearing

<https://www.youtube.com/user/richlandonline/videos>

Acting Chairman - Jason McLees

Mike Spearman • Lonnie Daniels • Cody Pressley

Agenda

- I. CALL TO ORDER & RECOGNITION OF QUORUM** Jason McLees, Acting Chairman
- II. PUBLIC NOTICE ANNOUNCEMENT**
- III. ADOPTION OF AGENDA**
- IV. RULES OF ORDER** Chairman
- V. APPROVAL OF MINUTES - June 2021**
- VI. PUBLIC HEARING** Geonard Price,
Zoning Administrator

OPEN PUBLIC HEARING [ACTION]

- 1. ZV21-004** Request a variance to encroach into the required yard setbacks on property zoned Residential Single-Family - Low Density (RS-LD) **District 1**
Scott Berry Bill Malinowski
201 Amenity Road
Chapin, SC 29036
TMS# 01312-06-04
Page 1

VII. OTHER BUSINESS

- a. Reconsideration of Case ZV21-003 - Bill and Cathy Hall**
Page 7

VIII. ADJOURNMENT



7 July 2021
Board of Zoning Appeals

REQUEST, DISCUSSION AND RECOMMENDATION

CASE:

ZV21-004 Variance

REQUEST:

The applicant is requesting the Board of Zoning Appeals to grant a variance to encroach into the required rear yard setback in the Residential Single-Family Low Density (RS-LD) district.

GENERAL INFORMATION:

Applicant: Perrin Scott and Dana Berry

TMS: 01312-06-04

Location: 201 Amenity Road, Chapin, SC 29036

Parcel Size: .22 acres (9,497 square feet)

Existing Land Use: Currently the property is undeveloped.

Proposed Land Use: The applicant proposes to construct a residential structure which will encroach into the required rear yard setback by eighteen (18) feet at the furthest point.

Character of Area: The area is residentially developed.

ZONING ORDINANCE CITATION:

Section 26-33 (a) (2) of the Land Development Code empowers the Board of Zoning Appeals to authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter would result in an unnecessary hardship. Such appeals shall be made in accordance with the procedures and standards set forth in Sec. 26-57 of this chapter.

CRITERIA FOR VARIANCE:

Standard of review. The board of zoning appeals shall not grant a variance unless and until it makes the following findings:

- a. That there are extraordinary and exceptional conditions pertaining to the particular piece of property; and
- b. That these conditions do not generally apply to other property in the vicinity; and
- c. That 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
- d. That the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.

DISCUSSION:

The applicant is proposing to construct a 3,468 square foot residential structure which will encroach into the required twenty (20) foot rear yard setback by eighteen (18) feet at the furthest point of the structure. Approximately 439 square feet of the structure will be located within the required setback. The remainder of the proposed structure will conform to the required setbacks for the RS-LD zoning designation.

The minimum lot area for a parcel in the RS-LD district is 12,000 square feet and the lot width is 75 feet. The lot area (9,497 square feet) and lot width (25.25 feet) for the subject site are both nonconforming.

The adjacent parcels along the peninsula are conforming as it relates to lot area and width. A majority of the structures on the adjacent parcels appear to encroach into the required rear or side yard setbacks. Records indicate that the structures were constructed prior to the adoption of zoning standards - 1978.

Staff believes that the subject parcel meets all of the criteria required for the granting of a variance. Staff recommends that the request be **approved**. According to the standard of review, a variance shall not be granted until the following findings are made:

a. Extraordinary and exceptional conditions

The nonconformity of the parcel, in addition to the required setbacks for the district, restricts the square footage and configurations of the proposed structure.

b. Conditions applicable to other properties

Staff determined that the other parcels in the general area of the subject site are conforming in area and width.

c. Application of the ordinance restricting utilization of property

While applying the setback requirements for the RS-LD district would not fully prevent the utilization of this parcel, it does restrict construction that is in character with the adjacent structures.

d. Substantial detriment of granting variance

There would be no substantial detriment to the surrounding properties if the variance is granted.

CONDITIONS:

26-57(f)(3)

Conditions. In granting a variance, the board of zoning appeals may attach to it such conditions regarding the location, character, or other features of the proposed building, structure or use as the board of zoning appeals may consider advisable to protect established property values in the surrounding area, or to promote the public health, safety, or general welfare. The board of zoning appeals may also prescribe a time limit within which the action for which the variance was sought shall be begun or completed, or both.

OTHER RELEVANT SECTIONS:

26-57 (f) (1) Formal review.

(1) Action by the board of zoning appeals. Upon receipt of the application for a variance request from the planning department, the board of zoning appeals shall hold a public meeting on the proposed variance request. Any party may appear in person or be represented by an authorized agent. In considering the application, the board of zoning appeals shall review the application materials, the staff comments and recommendations, the general purpose and standards set forth in this chapter, and all testimony and evidence received at the public hearing. After conducting the public hearing, the board of zoning appeals may:

a. Approve the request;

b. Continue the matter for additional consideration; or

c. Deny the request.

Any approval or denial of the request must be by a concurring vote of a majority of those members of the board of zoning appeals both present and voting. The decision of the board of zoning appeals shall be accompanied by written findings that the variance meets or does not meet the standards set forth in the Standard of Review. The decision and the written findings shall be permanently filed in the planning

department as a public record. The written decision of the board of zoning appeals must be delivered to the applicant.

Sec. 26-252. Nonconforming vacant lots.

- (a) *General.* A nonconforming vacant lot is a lot that was lawfully created prior to the effective date of this chapter, or any amendment thereto, but which does not conform to the dimensional or area requirements for the zoning district in which it is located.
- (b) *Standards.* A nonconforming vacant lot may be used for any of the uses permitted by Article V. of this chapter in the zoning district in which it is located if the use of the lot meets the following standards:
 - (1) All other minimum requirements for the particular zoning district and proposed use must be met or a variance obtained from these requirements.
 - (2) The nonconforming vacant lot does not adjoin and have continuous frontage with one or more other vacant lots in the same ownership. If a nonconforming lot does adjoin and have continuous frontage with one or more other vacant lots in the same ownership, such lots shall be combined or recombined as necessary to form a conforming lot or lots. This subsection shall not apply to a nonconforming vacant lot if a majority of the developed lots located on either side of the road where such a lot is located and within five hundred (500) feet of such lot are also nonconforming. The intent of this subsection is to require nonconforming lots to be combined with other lots to create conforming lots under the circumstances specified herein, but not to require such combination when that would be out of character with the way the neighborhood has been previously developed.

CASE HISTORY:

No record(s) of previous special exception or variance request.

ATTACHMENTS:

- Plat
- Application

ZV21-004
Perrin Scott and Dana Berry
201 Amenity Road
Chapin, SC 29036
TMS# 01312-06-04





BOARD OF ZONING APPEALS

VARIANCE APPEALS



Application # 2/21/09

1. Location 201 Amenity Road, Chapin SC 29036
 TMS Page R01312 Block 06 Lot 04 Zoning District 6UD

2. Applicant hereby appeals to the Zoning Board of Appeals for a variance from the strict application to the property as described in the provisions of Section _____ of the Richland County Zoning Ordinance.

3. Applicant requests a variance to allow use of the property in a manner shown on the attached site plan, described as follows: BERRY-SITE PLAN - Shows area shaded gray where a variance is being requested.
Right rear corner of lot.

4. The application of the ordinance will result in unnecessary hardship, and the standards for a variance set by Sec. 26-602.3b(1) of the Richland County Zoning Code are met by the following facts.

a) There are extraordinary and exceptional conditions pertaining to the particular piece of property as following: 201 Amenity Road is a non-conforming lot according to RS-LD. This is the only remaining lot on Amenity Road as all other houses were constructed 50+ years ago.

b) Describe how the conditions listed above were created: The homes on Amenity Road were developed between 1959 and early 1970's prior to RS-LD zoning codes being adopted. 201 Amenity Rd is the last undeveloped lot and is also the smallest lot on the street.

c) These conditions do not generally apply to other property in the vicinity as shown by: The other homes on Amenity Rd were built prior to current zoning setback requirements. These other parcels can be observed on Richland Counties tax map and showing 201 Amenity being smallest and unusally shaped.

d) Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property as follows: Current setback would prohibit and unreasonably restrict the use of the property given the size and shape of lot limiting the buildable area which should be in keeping with the character of surrounding homes on Amenity Road.

e) The authorization of the variance will not be of substantial detriment to the adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance for the following reasons: There would be no detriment to adjacent property if variance is granted. A variance would allow for a house to be constructed in character with the surrounding homes. Front and side setbacks would be in compliance. Variance for rear setback is on the lake side with no neighboring homes

5. The following documents are submitted in support of this application [a site plan must be submitted]:

- a) Copy of Plat with proposed home site
- b) Richland County GIS Map
- c) _____

(Attach additional pages if necessary)

Perrin Scott & Dana W. Berry
 Applicant's Signature

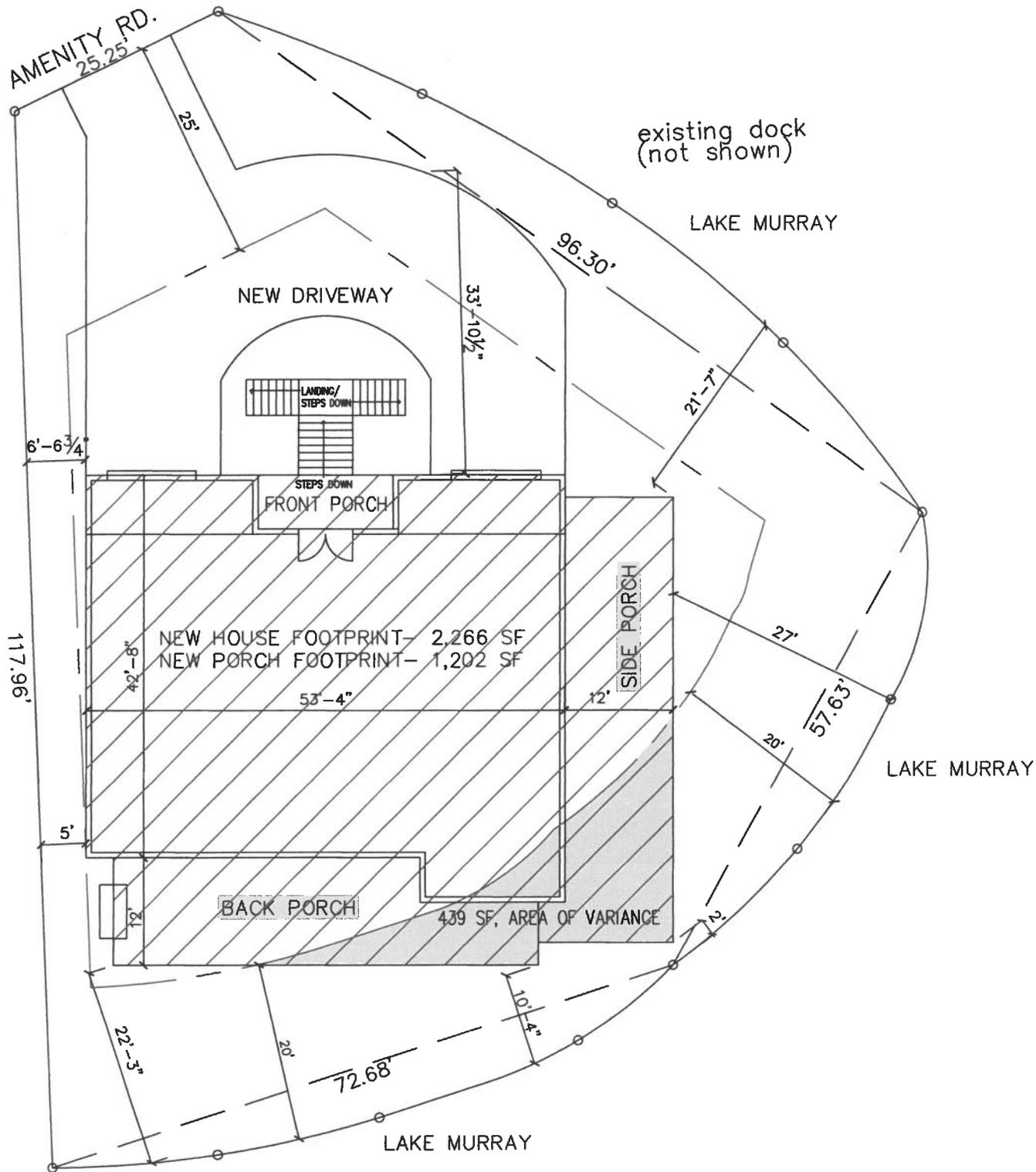
745 Moonsail Circle
 Address

803-269-7992
 Telephone Number

Perrin Scott & Dana W. Berry
 Printed (typed) Name

Chapin, SC 29036
 City, State, Zip Code

803-397-4028
 Alternate Number



BERRY- SITE PLAN

SCALE: 1/16"=1'-0"

4-29-21

TOTAL AREA OF PROPERTY: APPROX. 8,371 SF (without radius)
 TOTAL AREA OF PROPERTY: APPROX. 9,497 SF (with radius)
 NOTE: PROPERTY PERIMETER TAKEN FROM PLAT, TYPICALLY.
 VERIFY DIMENSIONS OF PROPERTY LINES ON ORIGINAL PLAT.

June 16, 2021

Mr. Tommy DeLage

Mr. DeLage and others to whom this needs to be addressed,

In attempting to follow protocol and to meet the requirements of the Richland County Zoning Board, and in light of your recent denial of our variance request based on "the applicant's failure to articulate clearly any extenuating or extraordinary circumstances", we offer this document as an appeal for your reconsideration of this situation regarding the height of our privacy fence. Also, please refer to the attached initial variance request which we submitted on April 16, 2021.

Please consider the following information, along with the initial request, and reconsider the denial of the fence variance based on the given reason of the applicant not articulating the ordinances required circumstances.

1. We have never been involved in a public meeting where we were the persons requesting your attention in some matter, but we were disappointed in that after we paid for and submitted a variance request, including our reasons for it and photos demonstrating the issue, there were one or more persons seated at that meeting, who seemingly did not even review that document.
2. In preparing to participate in the public hearing, and not even being informed of the "sign in the front yard" inviting the public to be involved, we saw where you had already "denied the request" ...before the meeting was even opened.
3. There was ONE response to the public concern re a fence height, after your sign was posted and our neighborhood website was invited to make their concerns known...only one.
4. The professional fencers in this county should be aware of the requirements of the zoning board, but obviously were not. It should be their responsibility to inform the customer of those requirements. Does the customer have the responsibility of determining the kind of wiring, etc. or any other building requirements when a house is being constructed?
5. Our lawyer researched this issue for us and reported that he "found no restrictions on fence height" which indicates this is not a glaring issue. We were also told that "the board usually does not even enforce this requirement unless someone complains".
6. The extenuating and extraordinary circumstances are the very ones we listed in our variance request. If those did not qualify in meeting those standards, what would? It is not our desire to drag anyone's name into this, but the fact is that we had to make our decision to install a privacy fence because of the extenuating and extraordinary circumstances these two neighbors presented us with. Those

circumstances were asked to be clarified in your public meeting and you shut us down from articulating those very circumstances!!

7. The final vote by the Chair Woman at the public hearing was said to be given "in light of this letter and the other votes, I also vote to deny the request." ONE LETTER! And that letter was from the very neighbors who are involved in the circumstances we have stated.

8. We have reason to believe one of your staff members, regardless of the committee he serves on, is a relative of one neighbor who has bullied, harassed and falsely accused us, removed and destroyed our personal property, and threatened us repeatedly, has violated our personal privacy with recording us against our will for several months now, and even verbally and viciously attacked our fences and us. If this is true, it would be reasonable to believe that that staff member would and could influence any decision that has to be made involving this situation which would not be in favor of his relative.

In closing, our request for an appeal of your initial decision to deny our request to not have to lower a \$9000 fence by one foot, please consider the following:

Obviously, the circumstances behind this request were in our best interest. Our personal privacy, our safety as a Richland County resident, our mental and emotional state, our family and other neighbors concerns regarding the threats against us with weapons by both the neighbors involved, the financial cost to us from having to seek legal counsel (which did no good at all in bringing this horrendous harassment to an end), to pay for a fence which was illegally removed from our property, for an unnecessary survey, the damage to our reputation from having the Sheriff Department deputies (more than a dozen over a period of a few months) called on us for false accusations and willful denial of our legal property line, having to go through this ordeal with your staff, and now having to file criminal claims against a neighbor for vandalism and trespassing...ALL OF WHICH CLASSIFY AS EXTENUATING AND EXTRAORDINARY CIRCUMSTANCES WHICH YOU WOULD NOT ALLOW US TO CLARIFY, NOR DID WE WANT TO HAVE TO EVEN BRING IT UP PUBLICALLY.

Given the fact that this issue of our eight foot fence height is of such little significance that only 2 people objected and both of those are neighbors who didn't want any kind of privacy fence installed. They threatened to "tear it down if we did put it up" and have proven to be the kind of neighbors that have made our lives deeply stressful for 15 months while we have attempted to negotiate with them over and over. We stated our intentions regarding the appearance, quality and maintenance of this fence in our request to you. It appears you have had to make your decision based on your personal opinion regarding this issue, and you have chosen to consider the mere opinions of these two neighbors in making your decision, as opposed to an objective decision based on the our facts which if they do not present as "extenuating and extraordinary circumstances", then what in the world would?

PLEASE BE OBJECTIVE REGARDING THIS ISSUE AND CONSIDER ALL THE FACTS. IF YOU WERE IN OUR PLACE, WHAT WOULD YOU DO? YES, WE HAD TO PRESENT FACTS THAT THE LEGAL SYSTEM HAS FAILED TO NAVIGATE THROUGH SUCCESSFULLY AND WE UNDERSTAND IT IS NOT YOUR PLACE TO MAKE DECISIONS REGARDING YOUR RESIDENTS LEGAL ISSUES, BUT WE HAVE DEMONSTRATED AND ARTICULATED AS CLEARLY AS WE CAN WHY WE ARE ASKING YOU NOT TO DENY THIS APPEAL IN

ALLOWING US TO LEAVE THE FENCE AT THE 8 FT. HEIGHT. IT PROVIDES NO DANGER TO ANYONE, IT IS BEAUTIFUL, AND PROVIDES US AND OUR FAMILY THE PROTECTION AND PRIVACY AND PEACE WE DESPERATELY NEED REGARDING THE NEIGHBORS WHO ARE ADJACENT. WHAT IT APPEARS TO COME DOWN TO IS WHICH RESIDENT GETS YOUR VOTE. NO OTHER RESIDENT HAS EXPRESSED ANY OBJECTION TO THE HEIGHT OF OUR FENCE. IT REALLY SEEMS NOT TO BE A VERY BIG ISSUE AS COMPARED TO OTHER ISSUES WHICH INVOLVE SO MANY OTHER RC RESIDENTS. IT HAS COST US DEARLY IN SO MANY WAYS ALREADY. TO THE OTHER TWO NEIGHBORS, IT IS A MATTER OF VINDICTIVE PERSONAL TASTE, WHICH DOES NOT, IN OUR OPINION, SUBSTANTIATE ENOUGH REASON TO DENY THIS REQUEST. A SIMPLE SOLUTION TO THEIR COMPLAINT WOULD BE TO PLANT SOME VERY FAST GROWING AND TALL TREES IF THEY DO NOT LIKE AN 8 FT FENCE. IT REALLY SEEMS TO US THAT ONE FOOT IS NOT GOING TO MAKE ONE BIT OF DIFFERENCE TO A DISGRUNTLED NEIGHBOR IN THE LONG RUN. PLEASE RECONSIDER YOUR PRIOR DENIAL AND GRANT US THE VARIANCE FROM YOUR STANDARD REQUIREMENTS.

Sincerely,

Bill and Cathy Hall



Richland County Government
2020 Hampton Street
Columbia, SC 29204

Phone (803) 576-2180
Fax (803) 576-2182
